



**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

Company Petition No. (IB)- 916(PB)/2022

&

IA-96 of 2024

IN THE MATTER OF:

Canara Bank Through RP

.... Applicant / Financial Creditor

Vs.

Mr. Kapil Aggarwal

... Respondent/Personal Guarantor

Order Under Section 95(1) of Insolvency & Bankruptcy Code

ORDER PRONOUNCED ON: 06.08.2024

CORAM:

**CHIEF JUSTICE (Retd.) RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT**

**SHRI AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For the : Adv. Abhishek Devgan with Mr. Manohar Lal Vij,
Applicant/RP RP



For the : Adv. Sahil Chandra
Respondent/
PG

ORDER

1. IA-91/2024 is a report u/s 99 of IBC filed by Mr. Manohar Lal Vij, the Resolution Professional (RP) appointed by this Adjudicating Authority vide order dated 05.12.2023 in the petition u/s-95 filed by Canara Bank.
2. The petition has been filed by Canara Bank through the RP u/s 95(1) of the Insolvency and Bankruptcy Code, 2016 (*The Code*) r/w Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (*the PG Rules*). The application seeks to initiate insolvency resolution process (IRP) against Mr. Kapil Aggarwal (*the Respondent/Personal Guarantor*) who stood as Personal Guarantor (PG) to a Company called M/s Sunstar Overseas Limited, the *Corporate Debtor* (CD) for default amount of Rs. 113,90,24,108.65/- as on 31.10.2022 after adjusting amount of Rs. 11,49,52,893/- recovered from CIR process of the CD.
3. Canara Bank is a body corporate/banking company constituted under the Banking Companies (Acquisition & Transfer of Undertaking Act, 1970 having its head office at 112, J.C. Road, Bangalore-560002, Karnataka. The Corporate Debtor (CD) was an entity engaged in manufacturing, supplying and export of rice having its registered office at 4119/7, First Floor, Naya Bazar, New Delhi-110006, India. Mr.



Kapil Aggarwal r/o 6-B Rajnarain Marg, Civil Lines, Delhi-110054 along with six other PGs, stood as the Personal Guarantor (PG) to the CD.

BRIEF FACTS

4. The CD M/s Sunstar Overseas Limited availed various facilities from time to time from consortium of Banks comprising of Karur Vysya Bank Ltd., City Union Bank Limited, Karnataka Bank Limited, Union Bank of India (erstwhile Corporation Bank Limited), Punjab National Bank, ICICI Bank and Canara Bank to meet the working capital requirements of the CD.
5. On 29.01.2010 an Interse Agreement was executed between Karur Vysya Bank Ltd. and other consortium banks authorizing/designating Karur Vysya Bank as the lead member of the Consortium. Also, deeds of personal guarantee were executed by various guarantors from time to time including the Respondent PG to secure the financial facilities advanced by the Consortium banks to the CD.
6. On 30.10.2015 a board resolution was passed by the CD for approval of Draft Master Restructuring Agreement along with Trust and Retention Account Agreement owing to the inability of the CD to repay its debt, with total restructured debt as Rs. 1127.89 Crores. Supplementary Master Restructuring Agreement dated 25.10.2016 was entered between the CD and Consortium banks.
7. On 25.04.2018, Personal Guarantee of the Respondent PG along with others was invoked by the Canara Bank by way of issuance of loan recall notice recalling entire advance/dues to it. Copy of loan recall notice is annexed as **Annexure 20** of the



petition.

8. On 20.07.2018 Application was filed by ICICI Bank Limited against the CD under Section 7 of the IB Code, 2016 bearing CP (IB) No. 265(PB)/2018 which was admitted by this Adjudicating Authority. Thereafter, order of approval of Resolution Plan to the tune of Rs 196 crores was passed by this Adjudicating Authority on 12.09.2019. Copy of Admission Order and Plan Approval Order is annexed as **Annexure 3 & 4** of the petition.
9. On 16.11.2022 Canara Bank issued demand notice under Rule 7(1) of the PG Rules to the PG seeking payment of default amount of Rs 113,90,24,108.65/- within 14 days. Since no payment was received from PG, the Canara Bank filed the petition u/s 95 of the Code on 24.12.2022. Copy of demand notice is annexed as **Annexure 21** of the petition.
10. Thereafter, RP appointed by this Adjudicating Authority on 05.12.2023 wrote a letter to the PG on 19.12.2023 by speed post at both the known addresses of the PG, as well as by e-mail, intimating him about his appointment and requested the PG to prove repayment of debt and sought certain information. RP also wrote to Canara Bank seeking information qua the PG. On 22.12.2023 Canara Bank vide email shared statement of accounts and confirmed non-receipt of payment from the PG.
11. On 30.12.2023 the RP filed his report u/s-99 of the Code and recommended for admission of the petition filed u/s-95 by Canara Bank.
12. In his report, the RP submits that the present petition satisfies the requirements of provisions of Section 95 as detailed in the report and based on his examination, the present application



deserves to be admitted as the Personal Guarantor/ debtor has not repaid the debt due to the creditor. As regards limitation, the RP submits that the personal guarantee was invoked on 25.04.2018. The period from 15.03.2020 to 28.02.2022 is to be excluded in terms of order passed by Hon'ble Supreme Court in *Suo Moto WP(C) No.3 of 2020*. The petition was filed u/s 95 on 25.12.2022, hence it is within limitation.

Analysis and Findings

13. We have heard the parties and perused the documents/pleadings. M/s Sunstar Overseas Limited (CD) had availed various credit facilities from a consortium of banks which was headed by Karur Vysya Bank and of which the applicant bank was also a lender. The PG in its reply of 23.04.2024 to the report filed by RP has primarily raised 3 objections against the admission of application.
14. The first objection raised by PG to the report of RP is that the report has been prepared by RP in undue haste without giving an opportunity to the PG to present his case and that the submissions of PG ought to have been considered by the RP before proceeding with the Report. This particular objection lacks substance as the RP on 19.12.2023 wrote a letter to the PG intimating him about his appointment as RP and requested the PG to prove repayment of debt and sought some other information. In its letter to the PG, the RP requested the PG to treat it as urgent and also mentioned that as per provisions of Section 99 of the code, the RP has to submit his report within a period of 10 days of his appointment. The PG chose not to reply to this letter until 10.01.2024 i.e. at a time when the RP



had already filed its report before this Adjudicating Authority on 30.12.2023. Furthermore, even after submission of report of RP to this Adjudicating Authority, the PG was given an opportunity to present his case by this Adjudicating Authority.

15. In the next objection, the PG contends that neither the Personal Guarantee nor the Master Restructuring Agreement (MRA) gives power to any single lender to act against the PG on a standalone basis and that the demand being raised against the PG ought to be raised by the lenders acting as Consortium. In its reply, the PG also refers to the '**Other Terms and Conditions**' mentioned in the sanction letter dated 24.11.2015 to substantiate that Canara Bank would be bound by the decision of the Joint Lender's Forum (JLF) and that it does not have any vested right to initiate standalone action. Relevant portion of the Sanction Letter dated 24.11.2015 as referred by PG is as follows:

"26. JLF Lenders, with the approval of JLF, shall have the right to revoke the restructuring package in case the Borrower commits an event of default, as described in the existing loan agreement or in the MRA or any Facility Agreement. The JLF lender has to inform JLF within seven days of the event of default and proposed course of action on the same.

27. JLF would give a decision on the same within 60 days; if not then individual lenders are permitted to take action at their discretion."



16. We take note that reliance by PG on the above extracted paras of sanction letter dated 24.11.2015 to contend that Canara Bank does not have the authority to act against the PG on individual basis lacks substance as the extracted clauses of sanction letter dated 24.11.2015 deals with a situation governing rights of JLF lenders to restructure the debt in case the CD commits default and not with the procedure laid for execution of personal guarantee by any single JLF lender. Further, no other document has been placed before us by the PG to substantiate its contention.

Per Contra Ld. Counsel for the RP to this particular objection contends that the same was also raised during the Section 7 petition against the CD M/s Sunstar Overseas Limited, wherein this Adjudicating Authority rejected the said contention and recorded in para 14 of the admission order dated 20.07.2018 passed in CP- 265(PB)/2018 as follows:

Another objection raised by the Corporate Debtor is that the Financial Creditor is a member of the consortium consisting of nine (9) banks. The total lending to the Corporate Debtor by the consortium was INR 860.76 crores out of which the Financial Creditor's share was only INR 56 crores i.e. 6.50% of the total lending. The Financial Creditor individually has no right to recover any monies, whatsoever unless there has been a consensus reached among all the lenders for such action.

According to explanation appended to Section 7



(1) of the Code an application by the 'Financial Creditor' either on its own behalf or jointly with the other financial creditor would be competent for initiating Corporate Insolvency Resolution Process against a 'Corporate Debtor' before this Tribunal when a default has occurred. It is obvious that the member of consortium bank like the petitioner is competent to file this application on its own behalf and also on behalf of lead bank & other banks who are members of the Consortium. In any case the controversy raised would pale into insignificance once it is remembered that once the petition is competent on behalf of the Financial Creditor alone then authorisation or approval from lead bank or other consortium members would not be necessary. Therefore, the objection raised is rejected.

The above ratio will apply in the present case as well.

17. Further, on perusal of the Deed of Guarantee dated 30.01.2016 at Annexure 19 of the petition, at Page 4 of the Deed, it is stated that 'Lenders' or 'Consortium' or 'the said Banks' or 'Existing Lenders' shall include each of them or any one or more of them and their respective successors and assignees. Therefore, we hold that the present petition on behalf of the petitioner Canara Bank acting alone is maintainable.
18. In the next objection, the PG contends that the CD defaulted on account of Consortium Banks not releasing the additional working capital funds as agreed between the CD and



Consortium Banks. This contention also lacks substance as the minutes of Joint Lender Meeting/Consortium Meeting dated 14th December, 2016 record as follows:

- *The Company informed that the stress is on account of non-availability of additional working capital limits as per restructuring package. The Company further stated that even after complying all the sanction terms and providing additional collateral security to the tune of Rs. 120 Crore as per restructuring package, the additional working capital limit of Rs 201.09 Crore is yet to be released. Hence, the Company is facing liquidity crunch and requested all the member banks to release the additional working capital immediately.*
- *DGM KVB informed that the delay in releasing of additional funds was due to delay on the part of the company with all the terms & conditions as per restructuring package. Since it is more than one year now from the date of restructuring the facilities, the company need to establish that the restructuring is still viable and company will be able to turn around and meet repayment obligations, so that JLF could take a decision on company's request for release of additional working capital.*

Therefore, the default committed by the CD cannot be attributed to not releasing of additional working capital by the consortium banks.

19. The Respondent Personal Guarantor in its reply dated



23.04.2024 has also stated that in response to the Demand Notice dated 16.11.2022 issued by Canara Bank, the PG had sent its reply dated 22.12.2022 to the Canara Bank. However, no response to this reply dated 22.12.2022 was received from Canara Bank and further Canara Bank also suppressed this fact in the present petition that it is in receipt of the reply of Personal Guarantor dated 22.12.2022 which details the facts and circumstances which would preclude filing of the present personal insolvency petition and despite that Canara Bank has filed the present petition without the aforesaid reply which is a material suppression. A copy of the reply dated 22.12.2022 has been annexed with the reply dated 23.04.2024 as filed by the PG.

20. Although, the Counsel for the Respondent/PG did not raise this contention in his arguments, However we address this issue as below.
21. We find that Canara Bank has not attached the reply dated 22.12.2022 of the PG to the demand notice dated 16.11.2022 with the present petition. However, we have perused the reply dated 22.12.2022 to the report u/sec.99 of the RP. In its reply dated 22.12.2022, the PG has stated that the constitutional validity of the provisions under Part-III of the Code are under challenge before the Hon'ble Supreme Court where the matter is currently pending. Secondly lenders have already filed Original Applications (O.As) before the DRT New Delhi. Hence pending the said OA and final adjudication regarding the liability of PG under the Personal Guarantee dated 30.01.2016, the demand notice cannot be issued against the PG. Another objection which PG took in its reply dated 22.12.2022 is that the alleged personal guarantee dated 07.11.2015 has not been



annexed with the Demand Notice and that the demand raised is time barred. Further the PG in its reply dated 22.12.2022 contends that with the resolution of the CD M/s. Sunstar Overseas Limited by virtue of Resolution Plan approval order of this Adjudicating Authority dated 12.9.2019, all outstanding debt including liability of the guarantor stood discharged; the event of default by CD was on account of keeping the CD M/s. Sunstar Overseas Limited starved of funds by the consortium of lenders.

22. We take note that the constitutional validity of the provisions of the part-III have already been upheld by the Hon'ble Supreme Court in their judgment delivered in a batch of 384 petitions including WP(Civil)No. 1281/2021 **Dilip B Jiwrajka vs. Union of India & Ors.** Further, the issue of limitation has already been addressed *supra*. Regarding the issue of keeping the CD starved of funds, the issue has been examined and found not tenable in para-18 of order *supra*. Further, regarding plea of OAs having been filed before the DRT Delhi the same objection was also raised by the CD earlier, wherein it has been held in the admission order dated 27.02.2018 passed by this Adjudicating Authority that the pendency of proceedings before the DRT, Delhi would not cause any impediment with regard to initiation of CIRP u/s-7 of the Code and pendency of such proceedings is no bar to the admission of the petition.
23. Thus in view of report submitted by the RP, it is clear that the RP has sent letters, notices informing the PG regarding the present application. Further the report of the RP makes it clear that he did not receive any evidence towards repayment of the debt claimed in terms of Section 95 application from the PG and that the Canara Bank also confirmed that it did not receive



any money from the PG post issuance of Demand Notice dated 16.11.2022. Moreover, in its reply the Respondent/PG has admitted the debt and default on its part.

24. Further as per the judgment of Hon'ble Supreme Court dated 09.11.2023 in ***Dilip B Jiwarajka Vs. Union of India and Ors. Writ Petition (Civil) No. 1281/2021***, the role of Adjudicating Authority is to assess the various materials produced in both the applications and report of the RP to come to an independent assessment. The Adjudicating Authority is also bound to give a fair opportunity to the Personal Guarantors to give their views. We have complied with the above requirements and direction of the Hon'ble Supreme Court. All the details relevant for the adjudication is also captured in the application and the report filed by the RP.
25. Having regard to the conspectus of the present case (as discussed above) we are inclined to **ADMIT** the present petition bearing No. **(IB)-916(PB)/2022** under the Provisions of Section 100(1) of IBC, 2016 for commencing Insolvency Resolution Process of the Personal Guarantor.

Accordingly, the present petition bearing No. (IB)-916(PB)/2022 stands admitted under Section 100 of IBC, 2016.

26. The RP is directed to proceed further in accordance with the provisions of the Code. Interim moratorium which came into effect in terms of Section 96(1)(a) on the date of filing the application shall cease to have effect. A fresh moratorium in terms of Section 101 of the Code shall commence as applicable. RP is directed to take all further steps in accordance with Part III, Chapter III of the Code.



27. IB- 913(PB)/2022, IB-916 (PB)/2022, IB-918 (PB)/2022, IB-919 (PB)/2022, IB-920 (PB)/2022, IB-921 (PB)/2022, IB-925 (PB)/2022 are the applications, which arise out of the same financial facility/transaction, as all the respondents / Personal Guarantors are qua the same Principal Borrower. In the Admission order in IB-913(PB)/2022, we have already directed the Canara Bank to deposit Rs. 2,00,000 with the RP for issuing public notice on our behalf in terms of Section 102 and for inviting claims from the creditors at large. For IB-916 (PB)/2022, IB-918 (PB)/2022, IB-919 (PB)/2022, IB-920 (PB)/2022, IB-921 (PB)/2022, IB-925 (PB)/2022 Canara Bank shall provide a consolidated sum of Rs. 3,00,000 (Rupees Three Lakhs) to the RP for issuing public notice on our behalf and for inviting claims in all these matters.
28. IA-96 of 2024 is disposed of in terms of above directions.
29. Copy of this admission order along with the report of RP be made available to Canara Bank in terms of Section 100(3) of the Code, by the RP.
30. Copy of this order be also sent to IBBI by the Registry.

Sd/-

(RAMALINGAM SUDHAKAR)
PRESIDENT

Sd/-

(AVINASH K. SRIVASTAVA)
MEMBER, TECHNICAL