

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH NEW DELHI
COURT- III**

CP-IB/992/2020 filed under Section 95 (1) of IBC, 2016 r/w Rule 7 (2) of the IB (Application to Adjudicating Authority for IRP for Personal Guarantors to CD) Rules, 2019.

In the matter of Ajit Jain

Union Bank of India (UK) Limited

...Applicant

Coram

CH. MOHD SHARIEF TARIQ
Member (Judicial)
NARENDRA KUMAR BHOLA
Member (Technical)

For Applicant: Mr. Pritvi Rohan Kapur,
Mr. Shobit Nanda (Advocates)

Order delivered on 14th October, 2020

ORDER

(Through Video Conferencing)

Per: CH. Mohd Sharief Tariq, Member (Judicial)

1. Under consideration is an Application CP-IB/992/2020 filed under Section 95 (1) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC, 2016") r/w Rule 7 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 (hereinafter referred as "IB Rules, 2019") for initiating the Insolvency Resolution Process (hereinafter referred as "IR Process") against personal guarantor viz., *Mr. Ajit Jain*, one of the directors in private limited company viz., *DGP India Private Limited* (hereinafter referred as "DGP").

2. The factual matrix of the case is that the Applicant is a banking company incorporated in United Kingdom, which is wholly owned subsidiary of the Union Bank of India Ltd. DCP approached the Applicant seeking grant of financial facility in the form of USD term loan for the purpose of expansion of its processing unit based in Sonipat, Haryana, India. It was represented by DCP that it would utilise the financial facility for purchase of high-speed rice fortification machine as per the supply agreement dated 24.10.2016 executed between DCP and Smart Dragon PTE, a company based in Singapore. Based on the representations made by the *DCP India Private Limited*, the Applicant vide Facility Agreement dated 14.12.2016 executed between the Applicant and DCP has extended in USD denominated term loan aggregating to US\$ 5,000,000/- (USD Five Million). As per the Facility Agreement, DCP was obliged to repay the principle sum of loan in 12 instalments with the 1st instalment being due in December, 2017 and the last instalment in March, 2023. Besides this, the DCP was liable to pay interest on the quarterly basis to the Applicant as agreed. It is worthwhile to mention that an Addendum was executed between the parties on 24.12.2016, by which the repayment schedule was amended to allow DCP to start repayment of the principle advanced under the loan from March 2018 with complete repayment by September, 2023.

3. The personal guarantor viz., Mr. Ajit Jain has executed a personal guarantee on 14.12.2016 in favour of the Applicant to secure the repayment of the principal amount of the Facility Agreement together with all interest, additional interest, liquidated damages, premium on prepayments, reimbursement of all costs, charges and expenses and all other obligations payable by DCP in respect of the Facility Agreement. However, the DCP and the personal guarantor Mr. Ajit Jain failed to repay the term loan as agreed. The Applicant has issued a demand notice on 31.03.2020 under Rule 7 (1) of the IB Rules, 2019 but no response. Therefore, in the premises it is prayed to initiate the IR Process.

4. The Applicant has clearly brought it out in its application coupled with admissible evidence that the Personal guarantor has committed default in making repayment of the term loan along with interest to the Applicant for which he has given the personal guarantee to the Applicant on behalf of the DCP.

5. It is made known to everyone that on filing this Application by the Applicant/ Creditor the interim-moratorium commences as is stipulated under Section 96 (1) (a) in relation to all the debts of the personal guarantor and shall cease to have effect on the date of admission of this Application and during the interim- moratorium period the following is prohibited:

- a) Any pending legal action or proceeding in respect of any debt of the personal guarantor shall be deemed to have been stayed; and
- b) The Creditors of the personal guarantor shall not initiate any legal action or proceedings in respect of any debt.
- c) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

6. The Applicant/Creditor has not proposed the name of Insolvency Professional for appointment as Resolution Professional. Therefore, Mr. Rakesh Prasad Khandelwal whose name appears in the list of the Insolvency Professionals provided by the IBBI to NCLT Delhi is hereby appointed as Resolution Professional in exercise of the powers conferred under Section 97 of the IBC, 2016 on this Authority subject to the Regulation 4 (1) and (2) of the Insolvency and bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019. The Resolution Professional is directed to file declaration within 7 days from the date of receiving this Order to the effect that he fulfils all the requirements for being appointed as a Resolution Professional in the matter. The details of the Resolution Professional are as under:

Name: Rakesh Prasad Khandelwal

Registration No. IBBI/IPA-002/IP-N00639/2018-2019/11950

Address: E-504, Ispatika Apartments, Plot-29, Sector-4, Dwarka, South
West, New Delhi, National Capital Territory of Delhi, 110078

E-mail: rpkhll@gmail.com

7. The Resolution Professional shall exercise all the powers as enumerated under Section 99 of the IBC, 2016 r/w the Rules made thereunder. He is directed to make the recommendations with the reasons in writing for acceptance or rejection of this Application within stipulated time as envisaged under the provisions of Section 99 of the IBC, 2016. The RP shall give a copy of the report under Sub-Section (7) of Section 99 to the Applicant/Creditor, as soon as the same is filed before this Authority.

8. The Applicant/Creditor and his Counsel are directed to serve the copy of this Order along with copy of the Application and documents on the Resolution Professional by all modes for information and compliance.

9. List the matter on 4th November, 2020 at 10:30 AM

- Sdr

NARENDRA KUMAR BHOLA
Member (Technical)

- Sdr

CH. MOHD SHARIEF TARIQ
Member (Judicial)