IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
PRINCIPAL BENCH

IB- 622 (PB)/2021

Section: *Under Section 94 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), Rules, 2019.*

In the matter of:

Mr. SATISH KUMAR KAURA
THROUGH MR. YOGESH MITTAL
(RESOLUTION PROFESSIONAL)

... Applicant/ Personal Guarantor

Order Pronounced on: 18.02.2022

CORAM:
CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT
SHRI. HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)

PRESENT

For the RP : Ms. Aditi Sharma, Advocate

ORDER

Per: HEMANT KUMAR SARANGI, MEMBER (TECHNICAL)

1. This is an application filed by the Personal Guarantor, Mr. Satish Kumar Kaura, through Mr. Yogesh Mittal, Resolution

Professional ("RP"), under Section 94(1) of the Insolvency and Bankruptcy Code, 2016. Mr. Satish Kumar Kaura, is the Personal Guarantor to the Corporate Debtor (CD), 'M/s. Samtel Color Ltd.'. The Applicant is seeking to initiate voluntary Insolvency Resolution Process against himself being personal Guarantor of the CD, in respect of the Outstanding debt of Rs.3,01,70,90,403/- (Rupees Three Hundred One Crore Seventy Lakhs Ninety Thousand Four Hundred Three Only), as on March, 2018, due from the Corporate Debtor, under rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), Rules, 2019.

2. The Ld. Counsel for the Applicant states that M/s. Samtel Color ("Corporate Debtor/CD"), availed working capital facility amounting to Rs.26,00,00,000/-, from M/s. ICICI Bank Ltd. vide credit arrangement letter ICBK/ND/SN dated 08.09.1995 and the same was renewed/ enhanced to Rs. 825,00,00,000/-, vide credit arrangement letter dated 24.10.2006. Further, the CD had also availed a term loan

facility of Rs. 100,00,00,000/-, from M/s. ICICI Bank Ltd. vide Facility Agreement dated 20.07.2001 and the same was secured by way of hypothecation of movable and immovable assets. The CD in 2007 approached the ICICI Bank and other banks, who had disbursed various facilities to the CD and requested the lenders for reworking in existing debt and to restructure the various facilities sanctioned by them to the CD, under the aegis of Restructuring mechanism.

3. The lenders approved the request of CD, for sanction of restructuring scheme, under Corporate Debt Restructuring, accordingly, the debt account of the CD was restructured by CDR lenders, vide Master Restructuring Agreement (MRA), dated 21.01.2008. Further, in order to secure the debt agreed via MRA, Mr. Satish Kumar Kaura, being the Personal Guarantor, executed Deed of Guarantee dated 21.01.2008. The Deed of Guarantee further provided that in the event of failure of CD to repay the debt amount, the personal guarantor shall be, jointly severally and co-extensively, liable to pay the restructured credit facility. The said MRA was further modified to amend the repayment

schedule and accordingly supplemental and amendatory MRA dated 09.05.2008 was executed between CD and CDR Lenders. Further, a supplemental and amended deed of guarantee dated 09.05.2008, was also executed by the personal guarantor, who's the Applicant here, following the supplemental MRA dated 09.05.2008.

4. It is submitted that the CD, for reasons beyond its control could not meet its repayment obligations under the MRA because of which the account of CD was classified as NPA on 31.02.2011, by ICICI Bank. As per the statement of account a sum of Rs. 1,50,13,11,937.61/- stood due to the bank, jointly and/ or severally.

5. In view of the default, ICICI Bank issued a notice, dated 24.05.2013, under section 13(2) of SARFAESI Act,calling upon CD to pay the due amounts. Thereafter, the ICICI Bank, vide notice dated 19.07.2013, invoked the personal guarantee executed by Mr. Satish Kumar Kaura, as the CD had failed to repay the installments of principal and interest, in respect of restructured facilities which had fallen due since September, 2012. Thereafter, M/s. ICICI Bank

Ltd. assigned all the loans/ debts, outstanding on its books relating to the CD, to Edelweiss Asset Reconstruction Company Ltd. ("Edelweiss"), vide assignment agreement dated 29.06.2016.

6. The ICICI Bank filed an OA No. 107/2014, under section 19 of the RDDBFI Act, before the Hon'ble DRT, Delhi, for the recovery of a sum of Rs. 1,50,13,11,938/- (Rupees One Hundred Fifty Crore Thirteen Lakhs Eleven Thousand Nine Hundred Thirty Eight), from CD and the personal guarantor, jointly and severally. However, after assignment of debt by M/s. ICICI Bank Ltd. to M/s. Edelweiss Asset Reconstruction Co. Ltd., it filed an IA No. 840 of 2016, for substitution in place of ICICI BAnk and the same was allowed vide order dated 04.10.2016. Thereafter, the final decree and judgement dated 02.09.2020, were passed by Hon'ble DRT against CD and personal guarantor directing them to jointly pay a sum of Rs. 1,50,13,11,938/- to Edelweiss.

7. That further in the interim, an application was also filed by Punjab National Bank for initiating CIRP against the CD

before the Hon'ble NCLT, which stood admitted vide order dated 07.09.2017 and Mr. Sanjay Gupta was appointed as the IRP and was confirmed as RP subsequently. However, since the resolution of the CD could not be achieved, the same faced rigors of liquidation vide order dated 04.07.2018.

8. The Edelweiss filed its claim before the Liquidator for a sum of Rs.301,70,90,403/- (principal of Rs. 230,94,05,760 + interest of Rs. 60,16,38,346 + penal interest of Rs. 10,53,03,909 and expenses of Rs. 7,42,388) out of which a sum of Rs. 299,27,65,366 stood admitted by the Liquidator). Thus, in view of the aforesaid facts and circumstances, the personal guarantor herein is indebted to the tune of Rs. 301,70,90,403/- against the liability towards the deed of guarantee dated 21.01.2008, executed in favour of ICICI Bank (the debt is now assigned to Edelweiss).

9. The Applicant/ Personal Guarantor has voluntarily brought it out in his application, that he has committed default, in making payments to the Bank, for the amount for which he has given the personal guarantee, on behalf of the

Company, therefore, it will be in the interest of the creditors of the Applicant to initiate the Insolvency Resolution Process under Chapter II of Part III of the IBC, 2016.

10. It is made known to everyone that on the date of filing this Application by the Applicant/ Guarantor, the interim-moratorium commences, as 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 are 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.

This shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

11. The Applicant/ Guarantor has proposed the name of Mr. Yogesh Mittal, Insolvency Professional, having registration number IBBI/IPA-001/IP-P-01849/2019-20/12906, email-mittalyogesh1982@gmail.com, Phone- 9810607937, for appointment as the Resolution Professional. No disciplinary proceedings are stated to be pending against her. Therefore, Mr. Yogesh Mittal, is appointed as the Resolution Professional, in exercise of powers conferred under Section 97 of the IBC, 2016 on this Authority, subject to Regulations 4 (1) and (2) of the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.

12. In this matter, the Resolution Professional, shall exercise all the powers, as enumerated under Section 99 of the Code, read with Rules made there under. He is directed to make the recommendations, along with reasons in writing, for acceptance or rejection of this Application, within the stipulated time, as envisaged under the provisions of Section 99 of the I & B Code, 2016. The Resolution Professional shall provide a copy of the report under sub-section (7) of Section

99 to the Applicant, as soon as the same is filed before this Authority.

13. The Applicant and the Registry are directed to serve copy of this order, along with copy of the Application and documents, immediately on the Resolution Professional so appointed for information and compliance

14. List the matter for further proceedings in the case on **21.03.2022.**

- Sd -

[CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR]
(PRESIDENT)

- Sd -

(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)

Pronounced today under Rule 151 of NCLT Rules, 2016 as the Hon'ble Member (T) Sh. Hemant Kumar Sarangi, is not holding the court today.

Court Officer
18.02.2022