

21 No. 392
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IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)

C.P. (IB) No.52/BB/2022
Under Section 95(1) of the 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 Debtors) Rules, 2019

IN THE MATTER OF:

1. **Nippon Life India Asset Management Limited**
Registered office at:
4th Floor, Tower A, Peninsula Business Park,
Ganapatrao Kadam Marg,
Lower Parel,
Mumbai- 400 013
2. **Reliance India Realty Opportunities LLP**
Corporate Office at:
4th Floor, Tower A, Peninsula Business Park,
Ganapatrao Kadam Marg,
Lower Parel,
Mumbai- 400 013
3. **Vistra ITCL India Limited**
IL&FS Financial Centre,
Plot C-22, G Block,
7th Floor, Bandra Kurla Complex,
Bandra (East)
Mumbai- 400 051.

... Petitioners/Financial Creditors

Versus

1. **Mr. Chandrashekar Hariharan**
No. 252, RMV 2nd Stage,
Corner of 5th Cross and 2nd B Main Road
Raj Mahal Vials, II Stage
Bangalore 560 094.

... Respondent No.1/Personal Guarantor



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2. **Mrs. Kanchan Kaur**
No. 252, RMV 2ND Stage,
Corner of 5th Cross and 2nd B Main Road
Raj Mahal Vials, II Stage
Bangalore 560 094

... Respondent No.2/Personal Guarantor

Order delivered on: 09th June, 2022

Coram: Hon'ble Shri. Ajay Kumar Vatsavayi, Member (Judicial)
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioners/Financial Creditors : Mr. Bibhas V Kittur. Adv.

ORDER

Per: Ajay Kumar Vatsavayi, Member (Judicial)

1. The present Application is filed by Vistra ITCL India Limited, the Debenture Trustee (formerly known as IL & FS Trust Company Limited) on behalf of the Debenture Holders along with the Debenture Holders, namely, (1) Nippon Life India Asset Management Limited and (2) Reliance India Realty Opportunities LLP (for brevity 'Applicants/Financial Creditors'), under Section 95(1) of the Insolvency and Bankruptcy Code, 2016, (for brevity 'IBC'/'Code') r/w Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 with a prayer to initiate Insolvency Resolution Process against Mr. Chandrashekar Hariharan and Mrs. Kanchan Kaur (hereinafter called as "Respondents /Personal Guarantors") who are the Personal Guarantors for the loan facilities extended by the Applicants/Financial Creditors to the Corporate Debtors (1) M/s BCIL Red Earth Developers India Private Limited (2) Biodiversity Conservation India Private Limited and (3) BCIL Zed Ria Properties Private Limited (hereinafter called as 'Corporate Debtors').
2. It is submitted by the Financial Creditors that upon the request by the corporate debtor and the Personal Guarantors and pursuant to the negotiations and discussions



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between the Applicants, Corporate Debtors and Personal Guarantors, the Debenture Holders had decided to invest in the Corporate Debtor for the purpose mentioned in the Debenture Subscription Agreement dated 17.01.2014. It is further stated that to facilitate the above transaction, the Corporate Debtors and the Obligor have agreed to enter into and execute a Debenture Trust Deed with IL&FS Trust Company Limited (Debenture Trustee), wherein the Debenture Trustee has agreed to act as a Trustee acting for and on behalf of and for the benefit of the Debenture Holders.

3. It is further submitted by the Learned Counsel that, in consideration of the Debenture Holders having agreed to subscribe to the Debentures the respondents herein have given guarantee as primary obligor and have undertaken to make payment to any of the Debenture Trustee or the Debenture Holder when the amount which have fallen due is not paid by the Corporate Debtors. It is submitted by the Applicant that the Corporate Debtors had failed to pay the outstanding amount and Demand Notices dated 12.04.2017 and 17.04.2017 was issued to the Personal Guarantor to pay the defaulted amount. It is further submitted that the Financial Creditors herein have initiated an application under section 7 seeking Corporate Insolvency Resolution Process against the Corporate Debtors, numbered as CP (IB) No. 03/BB/2018, CP (IB) No. 06/BB/2018 and CP (IB) No. 14/BB/2018 before this Hon'ble Tribunal which was admitted vide common order and moratorium was imposed on 09.08.2018.
4. It is submitted that a total debt of Rs. 111,53,60,282/- (Rupees One Hundred And Eleven Crores Fifty Three Lakhs Sixty Thousand Two Hundred and Eighty Two Only) including interest or penalties is outstanding against the Personal Guarantors. It is submitted that Corporate debtor, BCIL Red Earth Developers, has issued a Balance Confirmation Letter dated 06.07.2017 and has acknowledged and admitted the liability to the Financial Creditor. It is also submitted that the Financial Creditors have issued Demand Notice in Form B dated 20.03.2020 to the Personal Guarantors.



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5. Heard Mr. Bhibas V Kittur, learned Counsel for the Applicants/Financial Creditors. None for the Respondents. We have carefully perused the pleadings of the party and extant provisions of the Code, and the Rules made thereunder.
6. This Application has been filed by the Financial Creditors i.e., Nippon Life India Asset Management Limited, Reliance India Realty Opportunities LLP and Vistra ITCL India Limited, under Section 95(1) of the Code, r/w Rule 7(2) of the I&B (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, against Mr. Chandrashekar Hariharan and Mrs.Kanchan Kaur, the Personal Guarantors of the Corporate Debtors.
7. It is clarified that from the date of filing this Application i.e., 13.10.2020 by the Applicants, Interim Moratorium commences as stipulated under Section 96(1) of the Code in relation to all the debts of the Personal Guarantors. During the Interim Moratorium period: (i) any legal action or proceedings pending in respect of any debt shall be deemed to have been stayed: and (ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt. As per Section 96(3) of the Code, the provisions of Sub-section 96(1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
8. It shall be noted that the appointment of the Resolution Professional under Section 97 of the Code is critical and essential for the Applicant but also to safeguard the assets of the Personal Guarantor in terms of the provision of the Code. Since the Petitioner has not suggested any RP's name for appointment this Bench hereby appoints Mr.Raghuram Manchi, bearing Registration No. IBBI/IPA-002/IP-N00840/2019-2020 /12732, Email ID: raghuram.manchi@gmail.com as the Resolution Professional in the matter. He shall file his Registration Certificate and written consent within one week from the date of receipt of this order.



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9. The Applicants/Financial Creditors are directed to serve the copy of this order along with copy of the Application and documents immediately on the Resolution Professional by all modes.
10. The Resolution Professional is directed to exercise all the powers as enumerated under Section 99 of the Code, r/w Rules made thereunder. He is directed to make the recommendations 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 Code. The Resolution Professional shall provide a copy of the report under Sub-Section 7 of Section 99 to the Creditors as well as to the Personal Guarantor as soon as the same is filed before this Authority.
11. List the matter for further proceedings in this case on 10.08.2022.

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(MANOJ KUMAR DUBEY) ✓
MEMBER (TECHNICAL)



— sd —

(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)

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OF THE ORIGINAL

for Deputy/Regisr. 13/08
National Company Law Tribunal
Bengaluru Bench