

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

7. I.A. 673/2021
I.A. 261/2021
I.A. 97/2021
I.A. 1771/2020
IN
C.P.(IB)-419(MB)/2020

CORAM: SHRI H.V. SUBBA RAO, MEMBER (J)
SHRI CHANDRA BHAN SINGH, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **30.09.2021**

NAME OF THE PARTIES: Finquest Financial Solutions Pvt Ltd.

V/s

Tusharkumar Nanubhai Desai

(Anoushka Medicare & Diagnostics Private Limited)

SECTION 95 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Mr. S.M. Algaus a/w. Mr. Zaid Mansuri, Ms. Priyanka Shah, Ms. Sneha Botwe
i/b MDP & Partners, counsel appearing for the petitioner, Mr. Prakhar Tandon
i/b Mr. Agam Maloo Ms. Dudha Dwivedi, counsel appearing for the
respondent are present through virtual hearing.

The Petition has been filed under Section 95 of the I & B Code through the
Resolution Professional (RP), Sudha Bhushan, bearing IBBI Registration No.
IBBI/IPA-001/IP-P01519/2018-19/12305 against Dr. Tusharkumar
Nanubhai Desai, Personal Guarantor to the Corporate Debtor, Anoushka
Medicare & Diagnostics Private Limited. The RP has been appointed by the
Creditor, Finquest Financial Solutions Private Limited, to file the present

Petition under Section 95 of the Code.

As per the submissions made by the Ld. Counsel for the Applicant, the Corporate Debtor Company (Anoushka Medicare & Diagnostics Private Limited) was admitted under Corporate Insolvency Resolution Process by an NCLT Mumbai Order dated 11.12.2019 vide CP No. 1929/I&BP/MB/2019.

It has been placed on record by the Petitioner that a Personal Guarantee by the suspended director, Dr. Tusharkumar Nanubhai Desai, of the Corporate Debtor Company, Anoushka Medicare & Diagnostics Private Limited, was given to Finquest Financial Solutions Private Limited vide a Deed of Personal Guarantee dated 01.08.2017. In this regard, the Bench notes that the Petitioner had enclosed a copy of the Deed of Personal Guarantee dated 01.08.2017 and the Bench observes that Para (2), (3) and (4) of the Deed of Guarantee mentions as under:

“2. The GUARANTOR Nos. 2 and 3 are respectively the Director and Authorised Signatory of the Borrower and are empowered to execute this Guarantee for the due performance and for the compliance of the terms and conditions of both the Deed of English Mortgage dated 4th August, 2017 entered between the Borrower and the Lenders;

One of the conditions for the Lenders agreeing to grant the said Loan to the Borrower was that all the GUARANTORS herein should execute an unconditional and irrevocable Guarantee in favour of the Lenders guaranteeing the due payment of the amount due and payable by the borrower to the Lenders in respect of the total Loan amount of Rs.

2,75,00,000/- (Rupees Two Crore Seventy-Five Lakh only) along with interest thereon and other amounts payable;

The GUARANTORS have jointly and severally agreed to guarantee due payment of the amount due to the Lenders in respect of the aforesaid aggregate Loan and other amounts payable on the terms and conditions as mutually agreed upon between the parties hereto.”

The Bench notes that a Demand Notice was issued by the Financial Creditor, i.e., Finquest Financial Solutions Private Limited on 26.12.2019 to the Personal Guarantor in respect of the unpaid debt due from Anoushka Medicare & Diagnostics Private Limited (Corporate Debtor) under rule 7(1) of the IBC, 2016.

The Bench notes that as required under the I&B Code, after 14 days from the date of service of the demand notice, the Petition under Section 95 in prescribed Form ‘C’ was filed on 27.01.2020.

The Bench notes that as per Form ‘C’ of the Petition, the total debt from the Personal Guarantor by way of personal guarantee given to Anoushka Medicare & Diagnostics Private Limited, the Corporate Debtor, including interest as on 20.12.2019 stands at Rs. 3,87,57,456/-.

The Bench, after hearing the Petitioner, notes that the Corporate Guarantor has not filed any submissions and on the date of hearing there was no representation from the side of the Respondent, i.e., the Personal Guarantor.

Based on the submissions made by the Applicant and the documents produced and placed on record before this Bench, the Bench has no doubt in its mind that there is a ‘default’ on the part of the Personal Guarantor by not

fulfilling the debt owed to the Corporate Debtor, i.e., Anoushka Medicare & Diagnostics Private Limited as per the Deed of Personal Guarantee entered between the parties through the Deed of Personal Guarantee dated 01.08.2017.

This Bench “Allows” the Application filed by Sudha Bhushan, Insolvency Resolution Professional on behalf of Finquest Financial Solutions Private Limited, the Financial Creditor, under Section 95 of the Insolvency & Bankruptcy Code, 2016 read with Rule 7 of the IBC Rules 2019 against Dr. Tusharkumar Nanubhai Desai, the Personal Guarantor of the Corporate Debtor, Anoushka Medicare & Diagnostics Private Limited in CP No. 419/2020. The Interim Moratorium as per Section 96(1) of the Code has commenced from the date of filing of Application by the Financial Creditor, i.e., 31.01.2020.

The Bench makes it clear that from the date of filing this Application i.e. 31.01.2020 by the Petitioner, Interim Moratorium commences as stipulated under Section 96(1) of the Code in relation to all the debts of the Personal Guarantor. During the Interim Moratorium period: (i) any pending legal action or proceedings 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.

The Bench notes that the appointment of Resolution Professional under Section 97 of the Code is critical and essential not only for the Applicant but

also to safeguard the assets of the Personal Guarantor in terms of the provisions of the Code. Since the present Petition has been filed through the Resolution Professional, Sudha Bhushan, bearing Registration No. IBBI/IPA-001/IP-P01519/2018-19/12305, this Bench confirms the appointment of the Resolution Professional in the matter.

In this matter, the Resolution Professional, Sudha Bhushan, shall exercise all the powers as enumerated under Section 99 of the Code read with Rules made there under. She 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 Creditor as soon as the same is filed before this Authority.

List the matter for further hearing along with IA 673 of 2021, IA 261 of 2021, IA 97 of 2021 and IA 1771 of 2020 on 02.11.2021.

Sd/-
CHANDRA BHAN SINGH
Member (Technical)

Sd/-
H.V. SUBBA RAO
Member (Judicial)