

IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI

IB- 115/(PB)/2021

Section: Under Section 95 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 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:

Siemens Financial Services Pvt. Ltd.

Plot No. 2, Sector 2,
Khargar Node,
Navi Mumbai-410210

...Applicant/ Financial creditor

versus

Rakesh Saxena

(Personal Guarantor & Ex- Director of M/s. Durah Vitrak Limited)
194, Ashirwad Apartments,
Plot No. 74, I.P. Extn.,
Patparganj, Delhi-110092

...Respondent/ Personal Guarantor

Order Pronounced on: 07.01.2021

Coram:

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

PRESENT

For the Applicant : Mr. Ashwini Kr. Singh, Advocate
For the Respondent: Mr. Ashish Makhija, Advocate

IB- 115/PB/2021



ORDER

Per: HEMANT KUMAR SARANGI, MEMBER (TECHNICAL)

1. This is an application filed by 'M/s. Siemens Financial Services Pvt. Ltd.', under Section 95 of the Insolvency and Bankruptcy Code, 2016, through its Authorized Representative, Mr. Vaibhav Priyadarshi, seeking to initiate Insolvency resolution process against Mr. Rakesh Saxena, Personal Guarantor to the Corporate Debtor, 'M/s. Durha Vitrak Private Limited, in respect of the Outstanding debt of Rs. 2,58,05,020/- (Rupees Two Crores Fifty Eight Lakhs Five Thousand Twenty) due as on 30.06.2020 from the Corporate Debtor. The date of default is 15.10.2018, 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 vide three different Sanction Letters, dated 17.02.2016, 23.06.2016 and 01.08.2016 respectively, they sanctioned three different Loan Facilities to the CD and in lieu thereof, three Finance Agreements [Loan cum Hypothecation Agreement(s)] and



Promissory Notes dated 17.08.2016, 19.07.2016 and 04.08.2016 respectively, were executed by the CD. Deed of Personal Guarantees, dated 17.08.2016, 19.07.2016 and 04.08.2016, were also executed by the Directors (namely Rajesh Narang, Arinjay Jain, Anant Saxena and Rakesh Saxena) in their capacity as personal guarantors in favour of the Applicant.

3. That the Ld. Counsel for the Applicant states that Corporate Debtor defaulted in repayment of the dues of the bank and in respect of which the Corporate Debtor i.e., M/s. Durha Vitrak Private Limited, was admitted under Corporate Insolvency Resolution Process, by NCLT, Principal Bench in C.P. (IB) No. 470 (ND)/ 2019 vide order dated 08.11.2019, on an application filed by one Financial Creditor, namely, M/s. LIC Housing Finance Ltd., under Section 7 of the I & B Code, 2016.
4. The Ld. Counsel for the applicant submitted that a Personal Guarantee by Mr. Rakesh Saxena, personal guarantor of the Corporate Debtor, was given in favour of M/s. Siemens Financial Services Pvt. Ltd., vide Deed(s) of Guarantee



dated 17.08.2016, 19.07.2016 and 04.08.2016. The applicant has enclosed a copy of the Deed(s) of Guarantee dated 17.08.2016, 19.07.2016 and 04.08.2016 wherein the Clause (6) of the Deed of Guarantee mentions as under:

“6. The Guarantee shall be enforceable against the Guarantor(s) notwithstanding that any negotiable instrument may be outstanding at the time when demand is made or proceedings are taken against the Borrower or any security is available for the Borrower’s Dues with the Lender (or its assigns) or is sold or sought to be sold by the Lender (or its assigns).”

5. The Ld. Counsel for the applicant further submitted that the Guarantee of the Personal Guarantor was invoked by the bank by way of a Demand Notice in Form B under rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtor) Rules, 2019 which was issued by the Applicant, on 27.10.2020 to the Personal Guarantor, in respect of the unpaid debt due from M/s. Durha Vitrak Private Limited. (Corporate Debtor) under rule 7(1) of the IBC, 2016.
6. On filing this Application by the Applicant/ Creditor, 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 provided:

- 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.

7. The Present Application has been filed by a Financial Creditor through its A.R., and not by a Resolution Professional. Although the Applicant has suggested the name of a Resolution Professional, the scheme of the Code, does not contemplate the suggestion of a Resolution Professional by the Applicant as per Section 95 of the I & B Code, 2016.



8. In terms of Section 95 of the I & B Code, 2016 this Adjudicating Authority appoints **Mr. Amit Agrawal**, Insolvency Professional, having registration number **IBBI/IPA-002/IP-N00185/2017-2018/10456**, email-**amitagcs@gmail.com**, as the Resolution Professional from the verified list provided by the IBBI. Therefore, **Mr. Amit Agrawal**, 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.

9. 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 file a declaration that he is eligible to accept the appointment as the Resolution Professional and disclose the details of all the proceedings he is currently engaged in. Further, he is also directed to certify that there are no disciplinary proceedings pending against him with the IBBI or any other Professional Agency. He shall make full disclosures in accordance with



the Regulations set out in IBBI (Insolvency Professionals) Regulation, 2016.

10. The R.P. is also 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/Creditor and the Personal Guarantor, as soon as the same is filed before this Authority.
11. The Applicant and the Registry are directed to serve a copy of this order along with a copy of the Application and documents immediately on the Resolution Professional now appointed, for information and compliance.
12. List the matter for further proceedings in the case on

14.02.2022.

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

(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)