

**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

CP (IB) No. 98/Chd/Hry/2021

**Under Section 95 of Insolvency and
Bankruptcy Code, 2016.**

In the matter of:

Intec Capital Limited
with its registered office at
708, Manjusha Building,
57, Nehru Place,
New Delhi-110019
through Mr. Piyush Moona,
Resolution Professional
(IBBI/IPA-001/IP-P00990/2017-2018/11630)

...Applicant-Creditor

Vs.

Rajat Saini
H. No. 61, Near Public Ground,
Sector 12, Panchkula,
Haryana-134109

...Respondent-Personal Guarantor

Order delivered on: 20.09.2021

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
Hon'ble Mr. K.K. Vohra, Member (Technical)**

Present through Video Conferencing:-

For the Applicant-Creditor : Mr. Sagar Bansal, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

ORDER

The present Application is filed, in Form-C, under Section 95 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor), Rules, 2019 by **Intec Capital Limited (for brevity 'Creditor' / 'Applicant')** with a prayer to initiate Insolvency Resolution Process against Mr. Rajat Saini (**hereinafter called as "Personal Guarantor/Respondent"**). The Respondent/ Personal Guarantor has stood as the Guarantor in respect of the loan availed by the Principal borrower viz. M/s Sarthak Logistics Private Limited (**Corporate Debtor**).

2. It is stated that a loan agreement was executed by the Corporate Debtor, along with other transitional documents for availing the loan facility for Rs. 56,00,000/- from the Creditor. It is further submitted that subsequent to the disbursement of the loan amount, the Corporate Debtor failed to maintain the adequate amount in the bank account as the result of which the cheques/ECS/ACH were dishonoured by the banker and the payments were not made to the Applicant as per the repayment schedule. It is also contended that the proceedings under the Code, against the Corporate Debtor are currently pending before this Tribunal being titled as Intec Capital Limited Vs. M/s Sarthak Logistics Private Limited bearing CP (IB) No. 592/Chd/CHD/2019.

3. It could be seen that a Demand Notice (Form B) dated 01.06.2020 was issued by the Creditor to the Personal Guarantor in respect of the unpaid debt due from the Corporate Debtor under rule 7(1) of the IBC Rules, 2019 (Annexure A-15). The Creditor has produced proof of evidence that the said notice was delivered to the Personal Guarantor via e-mail on 08.06.2020. It is stated that in response to the above stated demand notice, the respondent has stated that he is disputing the existence of any debt allegedly payable to the Creditor and the respondent is contesting the Arbitral Award dated 03.11.2017 passed by the sole arbitrator, Sh. Rajesh Rai under Section 34 of the Arbitration and Conciliation Act, 1996 before the Ld. Additional District Judge, Kurukshetra vide case No. 224 of 2019, which is pending adjudication. It is also stated that the appeal under Section 34 of the Arbitration Act, 1996, is still pending and merely because the arbitration award has been passed in the favour of the Creditor/ Applicant, it does not entitle the Creditor to invoke Section 7 of the Code. The advance copy of this application is stated to be served upon the respondent via e-mail dated 01.03.2021 and copy of the e-mail is found attached at Page No. 221 of the application. The copy of the application is also stated to be delivered upon the respondent vide speed post. The speed post receipts dated 27.03.2021 are attached at Page No. 221D of this application.

4. In Part III of Form C, the total debt from the Personal Guarantor by way of personal guarantee given to the corporate debtor is Rs. 1,34,54,968.

5. We have heard the learned counsel for the Applicant and perused the pleadings on record.

6. It is submitted that there is a default on the part of the personal guarantor by not fulfilling the debt owed by the corporate debtor as per the deed of guarantee entered between the parties through the Guarantee Agreement dated 30.05.2015 (Annexure A-8).

7. Hence, the application by Mr. Piyush Moona, Insolvency Resolution Professional on behalf of **Intec Capital Limited**, under Section 95 of the Code read with Rule 7 of the IBC Rules, 2019 against Ms. Rajat Saini, the personal guarantor of the corporate debtor.

8. It is clarified that from the date of filing this application i.e. 05.04.2021 by the Applicant, 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.

9. 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 provisions of the Code. Since the present application has been filed through the Resolution Professional, Mr. Piyush Moona, bearing Registration No. IBBI/IPA-001/IP-P00990/2017-2018/11630, this Bench confirms the appointment of the Resolution Professional in the matter.

10. The Applicant is directed to serve the copy of this order along with copy of the Application and documents immediately on the Resolution Professional by all modes.

11. The Resolution Professional is directed to exercise all the powers as enumerated under Section 99 of the Code read with 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 Creditor as soon as the same is filed before this Authority.

12. List the matter for further proceedings in this case on 25.10.2021.

Sd/-
(K.K. Vohra)
Member (Technical)

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

September 20th, 2021
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