IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

CP (IB) No. 12/CB/2022

Under section 95(1) of the Insolvency and Bankruptcy Code, 2016 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

In the matter of:

STATE BANK OF INDIA

...Petitioner/Financial Creditor

Versus

Shri Gopal Parsad Agarwal

...Respondent/Personal Guarantor

Coram:

Shri P. Mohan Raj : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing)

For the Applicant: : Mr. D. P. Sarangi, Adv.

Order reserved on: 24.02.2022
Order pronounced on: 04.03.2022

O R D E R

Per: Satya Ranjan Prasad, Member (Technical)

1. The Court convened *via* video conference.

2. Under consideration is an Application CP (IB) No.12/CB/2022 filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "**IBC, 2016**") read with rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency

Sd

Sd

Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 (hereinafter referred to as "**IB Rules, 2019**") and regulation 4(2) of IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (hereinafter referred to as "**IB Regulations, 2019")** for initiating the Insolvency Resolution Process (hereinafter referred to as "**IR Process**") against personal guarantor, viz., Mr. Gopal Prasad Agarwal one of the directors of Vandana Vidhyut Limited, (CIN: U04010CT1995PLC010142) (hereinafter referred to as "VVL").

3. So far, as the Personal Guarantor to the Corporate Debtors is concerned, the Apex Court in Lalit Kumar Jain Vs. Union of India & Ors. in Transferred case (Civil) No. 245/2020 has upheld the vires of the notification issued by the Central Government vide S.O.4126 (E) dated 15.11.2019, in so far as it is related to coming into force on Insolvency and Bankruptcy Process of Personal Guarantors to the Corporate Debtor. Thus, when a Corporate Insolvency Resolution Process in relation to Corporate Debtor is pending before this Adjudication Authority, then as per Section 60(2) of IBC, 2016 the NCLT would be the competent forum to file an Application for Personal Guarantor in relation to such Corporate Debtor. The factual matrix of the case is that the Financial Creditor is a Banking Company. The principal borrower company, i.e., Vandana Vidhyut Limited requested the applicant for sanction of credit limits and on being so approached the Financial Creditor. At the request of VVL the Financial Creditor sanctioned a Term Loan dated 09.04.2019 by the consortium of Bankers lead by Punjab National Bank (other members of the consortium are State Bank of India, Allahabad Bank (now Indian Bank), U. Co Bank and Bank of India) Credit facilities to the extent of Rs. 340,30,24,040.34 secured by personal guarantee of four personal guarantors deed of Guarantee dated 27.10.2010 on the terms and conditions as mentioned in the sanction letter. Thereafter, the applicant further submits that the Corporate Debtor i.e., VVL for enhancement of Credit facilities has again

Sd

Sd

executed Master Restructuring Agreement and other Consequential Supplementary Security Documents 28.03.2014 which is marked as Annexure 11 to 18 with the petition. After issuance of Sanction Letter VVL has entered into a Loan Agreement with the applicant bank on dated 27.10.2010, wherein the respondent stood as Guarantor by executing a deed of Guarantee. It is stated in the application that in the meantime, the Financial Creditor has enhanced several times the cash credit to the principal borrower company on different dates and number of times on request of the said principal borrower company. The said company along with its guarantors accepted the terms and conditions of the said sanction letter by putting their endorsement on the office copy of the sanction letter.

4. It is alleged that to secure the overall limit sanctioned as enhanced by the Financial Creditor from time to time to the principal borrower company, the guarantor herein has executed the guarantee documents to secure the said limits including the enhancement thereof, as security for due re-payment of the loans and advancement guaranteed to the principal borrower company along with the interest costs and expenses. The VVL and the guarantor had allegedly failed and/or neglected to make payment as per terms of the said Facility Agreements.

5. The personal guarantor, viz., Mr. Gopal Prasad Agarwal, has executed personal guarantees on 09.04.2009, 28.03.2013 and 31.03.2010 and 22.08.2014 in favour of the Applicant to secure the repayment of the principal amount of the Facility Agreements together with all interest, additional interest, liquidated damages, premium on prepayments, reimbursement of all costs, charges and expenses and all other obligations payable by CBIPL in terms of the Facility Agreements.

6. The applicant further submits that that, CIRP proceeding has already been initiated against the Corporate Debtor vide order dated 26.04.2018 by Hon'ble NCLT Mumbai Bench in CP No. 219/IB/NCLT/MAH/2018

Sd

Sd

under Section 7 of IBC 2016. As no resolution plan was received COC voted for Liquidation of the Corporate Debtor. The said Liquidation proceedings is continuing as of the date of filling of this application. The applicant has stated that a Demand Notice dated 21.06.2021 in Form-B under rule 7(1) of the Insolvency and Bankruptcy (Application to adjudicating authority for Insolvency Resolution Process of Personal Guarantors to the Corporate Debtors) Rules, 2019 has been sent to the respondent for payment of amount of alleged default i.e., ₹ 693,82,24,225.81/- However, the Respondent/Guarantor neither cleared the due nor replied to the said demand notice of the Applicant. The Demand notice dated 21.06.2021 is annexed with the petition and marked as **Annexure-31.** In the aforesaid circumstances the applicant submits that, there is a legitimate recoverable outstanding amount due and payable by the Respondent/guarantor to the applicant a sum of ₹ 693,82,24,225.81/-

7. In this factual conspectus, the applicant prays for initiation of insolvency resolution process.

8. The applicant has averred in its application coupled with documents that the personal guarantor stands as guarantor to the principal debtor for the loan availed by him, and the applicant failed to make the payment despite receipt of statutory notice.

9. It is made known to everyone that on filing of this Application by the Applicant/Creditor the interim-moratorium commences under section 96(1)(a) of IBC, 2016 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 is 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

Sd

Sd

(b) The Creditors of the personal guarantor shall not initiate any legal action or proceedings in respect of any debt.

(c) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

10. The Applicant/Creditor has proposed the name of Mr. Shikhar Chand Jain for appointment as Resolution Professional. Therefore, as proposed by the Financial Creditor, Mr. Shikhar Chand Jain [E-mail: adbcacs@gmail.com], having his address at AD&B Co., Chartered Accountants, 1st Floor, Mahavir Gaushala Complex, Maudhapara, Raipur (C.G) having Reg. No. IBBI/IPA-001/IP-P00495/2017-18/10883, is hereby appointed as Resolution Professional, in exercise of the powers conferred on this Adjudicating Authority under section 97 of the IBC, 2016 read with regulation 4(1) and (2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019. The resolution professional has filed the required declaration in Part IV of the Petition

11. The Resolution Professional shall exercise all the powers as enumerated under section 99 of the IBC, 2016 w/w the Rules made thereunder. He is directed to make recommendations with reasons in writing for acceptance or rejection of this Application within stipulated time as envisaged under the provisions of section 99 of the IBC, 2016. The RP shall give a copy of the report under sub-section (7) of section 99 of IBC, 2016 to the Applicant/Creditor, as soon as the same is filed before this Adjudicating Authority.

12. The Applicant/Creditor and its Counsel are hereby directed to serve the copy of this Order along with copy of the Application and documents on the Resolution Professional by all modes for information and compliance.

Sd

Sd

13. List this matter on 04.04.2022.

14. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

15. Certified Copy of this order be issued, if applied for, upon compliance of all requisite formalities.

Sd

Satya Ranjan Prasad
Member (Technical)

Sd

P. Mohan Raj
Member (Judicial)

Signed this 4th day of March, 2022

Ravijeet_P.S.