IN THE NATIONAL COMPANY LAW TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

CP(IB)/324/(PB)/2021
IA(I.B.C)5504/PB/2021

In the matter of:

STATE BANK OF INDIA

through

Sh. Manoj Kumar Anand, Resolution Professional

Proposed by State Bank Of India

Having Registration Number:

IBBI/IPA-001/IP-P00084/2017-18/10180

Having Address at:

3rd Floor, 2nd community centre, Naraina,

New Delhi-110028

Email: anandmanoja@gmail.com

...APPLICANT/RP

VERSUS

MRS. ANURADHA MEHNDIRATTA

House No. 129, Siwan, Gate

Kaithal, Haryana- 136027

(Personal Guarantor of Corporate Debtor

M/S MASTANA FOODS

PRIVATE LIMITED)

Having Registered Office at:

1st Floor, Naya Bazar Gali, Raghunandan

New Delhi-110006

...RESPONDENT/PERSONAL GUARANTOR

UNDER SECTION 95 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 DEBTORS), RULES, 2019

Order Reserved on: 08.04.2022

Order Delivered On: 19.04.2022

CORAM:

SHRI RAMALINGAM SUDHAKAR

HON'BLE PRESIDENT

SHRI AVINASH K. SRIVASTAVA

HON'BLE MEMBER (T)

PRESENT:

For Applicant : S K Sharma, Manoj Kumar Anand (For RP)

For Respondent : Ritika Jain, Adv.

ORDER

PER SH. AVINASH K. SRIVASTAVA, MEMBER (TECHNICAL)

1. This is an application filed by **'State Bank of India' on 30.03.2021** under Section 95 read with Rule 7(2) of the IBC (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 (the Rules, 2019). The prayer is to initiate the Insolvency Resolution Process against the Respondent/Guarantor **Mrs. Anuradha Mehndiratta** who, along with other personal guarantors namely Mr. Krishan Mohan Mehndiratta, Mr. Anil Khurana, Smt. Sunanda Khurana and Smt. Radha Krishan Mehndiratta, stood as Personal Guarantor to the various loan facilities,

cash credit, short term loan etc. totalling Rs. 249.85 crore plus warehouse receipt financing of Rs. 25 crore availed by the Corporate Debtor namely **M/s Mastana Foods Private Limited.** The account of the Corporate Debtor was declared NPA by the Financial Creditor, SBI on **13.09.2017 and** notice under SARFAESI Act was issued for recalling all the credit facilities sanctioned to the Corporate Debtor. Corporate Insolvency Resolution Process was initiated against the Corporate Debtor by the Adjudicating Authority on **18.09.2019,** based on application of Financial Creditor u/s 7 of IBC, 2016.

2. On presentation of the application by the Applicant/Financial Creditor, this Tribunal vide order dated **09.09.2021**, has appointed the Resolution Professional **Mr. Manoj Kumar Anand**, to file report under section 99 of the Code, which has been filed by him through **IA (I.B.C)5504/PB/2021** filed in **CP (IB)/324/PB/2021** recommending the admission of the application filed under Section 95 of the Code on grounds explained in the report dated **19.11.2021.**

3. Background Facts of the Corporate Debtor for which Applicant stood as Personal Guarantor are:

- Corporate Debtor failed to adhere to financial discipline and on **13.09.2017** the account of the Corporate Debtor was declared NPA as per Rules and Regulations of RBI.
- SBI, the Financial Creditor/ Applicant had also issued notice under Section 13(2) of SARFAESI Act, 2002 for recalling all the credit facilities sanctioned to the Corporate Debtor.
- Afterwards, SBI/Financial creditor has filed an Original Application against the Corporate Debtor and against all the Guarantors included Mrs. Anuradha Mehndiratta before the Debts Recovery Tribunal, DRT-II, Chandigarh, which is pending till date.
- Applicant/Financial Creditor has filed an application under Section 7 of the IBC, 2016 for initiating the Corporate Insolvency

Resolution Process against the Corporate Debtor in **C.P. (IB) No. 630/ (PB) of 2019**. This Hon'ble Adjudicating Authority admitted the application against the Corporate Debtor.

- SBI/Financial Creditor had issued demand notice to the Personal Guarantors along with Mrs. Anuradha Mehndiratta on **27.11.2020 under rule 7(1) of the IBBI (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtor) Rules, 2019** calling upon the Personal Guarantor to pay the unpaid debt in default within 14 days from the receipt of the notice failing which the creditor would apply for the initiation of insolvency resolution process against the personal guarantor under the provisions of the Code. Financial Creditor in its application has submitted that till date, he has not even got the reply to the said notice inspite of the fact that the said notice was duly served upon the Personal Guarantor.

4. **On appointment of RP vide order dated 09.09.2021, he was directed to make the recommendations, alongwith reasons in writing, for acceptance or rejection of this application within stipulated time as envisaged under the provisions of the Code i.e. u/s 99 of the IBC, 2016.**

5. In Compliance of the Order dated 09.09.2021, Applicant/RP has submitted in its report dated**19.11.2021** u/s 99 that:

    - He asked for various details/information like Income Tax Returns and detailed computation of income for last 3 years, statement of affairs of the Personal Guarantor made upto a date not earlier than 7 days from the date of the Application, payment of indirect taxes including GST for previous three years, proof of repayment of the debt (if any) as per sec 99(2) of the IBC, 2016 and whether he is eligible for fresh start under sec 80 of the IBC, 2016 or not. etc. from the Personal Guarantor via various emails dated **1.04.2021, 5.7.2021, 15.07,2021,28.07.2021,**

21.08.2021, 08.09.2021, 21.09.2021, 05.10.2021. Copy of these emails, speed post are placed on record as Annexure- C2.

- Guarantor did not provide much information except copies of ITR for three years, Aadhar Card and PAN Card and Passport as on 05.10.2021.
- Applicant/RP submits that inspite of so many emails to guarantor for repayment of debt in accordance to Sec 99(2) , he failed to prove any repayment. He further submits in his report that debt was not registered with information utility as per Sec 99(3) of the Code. RP has asked for the information from the Resolution Professional of Corporate Debtor as well but the same is not provided with. He submits that only rudimentary information has been provided by them after a lot of reminders and phone calls.
- Applicant/RP submits that guarantor is not eligible for fresh start as his income during the F.Y. 19-20 was 4.15 lakhs. He further submits that if the gross annual income of the guarantor is 60,000/- or more, then, he is not eligible for fresh start u/s 80(2)(a) of IBC.

6. In view of the information received by Applicant/RP, RP had formed the opinion to recommend the approval of the insolvency application under sec 99 of the Code read with Rules and Regulations of the Code.

7. As per the Order dated **30.11.2021, Guarantors were asked to submit their views on the report filed by the RP under sec 99 of the Code.** Guarantor, Mrs. Anuradha Mehndiratta submits that guarantee amount and other material facts mentioned in the application filed by RP appears to be correct. He further submits that he is fully cooperating with the Resolution Professional in all respects and he had submitted some of the information asked by RP and rest of the information is being collated and shall be submitted within 3 days i.e. by

12.12.2021.

8. We have heard the learned counsels for both the parties and perused the documents on record. The Personal Guarantor has submitted his views dated 30.11.2021 in which he has admitted that the guarantee amount and other material facts in the RP's report appears to be correct.

9. Therefore, based on the reasons recorded in the report submitted by the Resolution Professional, the application bearing **CP (IB)/324/PB/2021** is hereby admitted under Section 100 of the Code. The Insolvency Resolution Process is initiated against the Respondent/Guarantor and the moratorium is declared, which begins with the date of admission of the application and shall cease to have effect at the end of the period of 180 days, as provided under Section 101 of the Code. During the Moratorium Period:

a) *Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and*

b) *The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and*

c) *The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;*

The Provisions of this Section 101 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

10. The Resolution Professional *viz.* **Mr. Manoj Kumar Anand**, who has been appointed under Section 97 vide Order dated **09.09.2021**, is directed to cause a public notice to be published within 7 days of uploading of this Order on website of the NCLT, inviting claims from all Creditors, who shall register their claims as provided under Section 103 of the Code within 21 days of such issuance. The notice shall contain necessary information as provided under Section 102 (2) of the Code. The Resolution Professional is directed to take steps as mandated under

the Code specifically mentioned under Part-III, Chapter-III of the Code.

11. The Resolution Professional shall prepare report of the meeting of the creditors on repayment plan with all details as provided under Section 112 and submit the same to this Authority, copies of which shall be provided to the debtor and creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance of Code of conduct provided under Section 208 of the Code.

12. In terms of the above the present application stands **ADMITTED**.

13. A copy of this order shall be communicated to the Financial Creditor, the Personal Guarantor, the Resolution Professional and IBBI by the Court Officer/Registry of this Tribunal.

-Sd

RAMALINGAM SUDHAKAR
PRESIDENT

-Sd

AVINASH K. SRIVASTAVA
MEMBER, TECHNICAL