

**IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH, JAIPUR
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP No. (IB)-19/95(1)/JPR/2021

Under Section 95 (1) of the IBC, 2016

In the matter of:

State Bank of India

with its office at
Stressed Assets Management Branch-II,
11th Floor, STC Building,
Jawahar Vyapar Bhawan,
1, Tolstoy Marg Janpath
New Delhi – 110001

Through

Mr. Manohar Lal Vij

Proposed Resolution Professional
8/28, Wea, 3rd Floor, Abdul Aziz Road,
Karol Bagh New Delhi - 110005

.....Creditor/Applicant

Versus

Mr. Hemant Bohra

220, Ashok Nagar,
Udaipur – 313001

....Personal Guarantor/Respondent

Order delivered on: 16.07.2021

**Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. RAGHU NAYYAR, MEMBER TECHNICAL)**

For the Applicant : Kirti Kapoor, Adv.
For the Respondent : Apoorv Khator, Adv.

Per: Ajay Kumar Vatsavayi, Member (Judicial)



ORDER

1. The Court has been convened through Video Conferencing to hear

CP No.(IB)-19/95(1)/JPR/2021

Assistant Registrar
National Company Law Tribunal
Jaipur

20.07.2021

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the matter.

2. This Petition / Application has been filed under Section 95 of the I&B Code through the Resolution Professional (RP), Mr. Manohar Lal Vij, bearing IBBI Registration No. IBBI/IPA-001/IP/P-01480/2018-2019/12269 against Mr. Hemant Bohra, Personal Guarantor to the Corporate Debtor, Bohra Industries Limited. The RP has been appointed by the Financial Creditor, State Bank of India, to file the present Petition / Application under Section 95 of the Code. The Bench notes that the Resolution Professional has been authorized by the State Bank of India, the Financial Creditor, to file the Petition / Application for which an authority letter No. SAMB-II/ND/CL-V/2020-21/1480 dated 15.10.2020 has been issued by State Bank of India addressing the RP. As per this letter, Resolution Professional has been appointed to initiate personal insolvency against the Personal Guarantor of the Corporate Debtor, i.e., Bohra Industries Limited. The Bench also notes that the consent form of the RP, Mr. Manohar Lal Vij, along with his IBBI Registration Certificate has been annexed with the Petition as Annexure-16 (Colly).

3. As per the submissions made by the Ld. Counsel for the Applicant, the Corporate Debtor Company (Bohra Industries Limited) was admitted under Corporate Insolvency Resolution Process by an NCLT Jaipur Order dated 07.08.2019 vide CP No. (IB)-15777/JPR/2019. It has been placed on record by the Petitioner that a Personal Guarantee by the suspended director, Mr. Hemant Bohra, of the Corporate Debtor Company, Bohra Industries Limited, was given to State Bank of India in respect of a Sanction Letter dated 10.08.2017 for a loan amount of ₹68.5cr (Annexure 7). Further Supplementary Deed of Guarantee dated 05.09.2017 was executed by Respondent Personal Guarantor on 05.09.2017 (Annexure 11).

4. In this regard, the Bench notes that the Petitioner had enclosed a copy of the Sanction Letter dated 10.08.2017 & Supplementary Deed of Guarantee dated

CP No.(IB)-19/95(1)/JPR/2021

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05.09.2017 and the Bench observes that at page 120 of the petition / application which is the Personal Deed of Guarantee, it mentions Mr. Hemant Bohra as the Guarantor and he is jointly and severally liable to pay the bank on demand upon default made by the Borrower.

5. The Bench notes that a Demand Notice was issued by the Financial Creditor, i.e., State Bank of India on 25.08.2020 to the Personal Guarantor in respect of the unpaid debt due from M/s. Bohra Industries Limited (Corporate Debtor) under rule 7(1) of the IBBI (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. The Applicant has produced proof of evidence that the said notice was delivered to the Personal Guarantor on 19.09.2020 along with computation of the amount of default and other particulars. The Applicant mention that there has been no response from the Respondent side to the demand notice.

6. 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 / Application under Section 95 in prescribed Form 'C' was filed on 09.03.2021 and was served and copy of it was delivered to the Respondent side on 29.08.2020. A proof of delivery has been annexed by the Applicant at page 183 of the petition. The Bench notes that as per Form 'C' of the Petition / Application, the total debt from the Personal Guarantor by way of personal guarantee given in respect of M/s. Bohra Industries Limited, the Corporate Debtor, including the rate of interest as on 25.08.2020, stands at Rs.70,73,95,918.49/-. The Bench, after hearing the Petitioner, notes that the Corporate Guarantor has not filed any submissions as on the date of hearing.

7. 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. Bohra Industries Limited, as per the Deed of Guarantee entered between the parties through the Deed of Guarantee dated 05.09.2017.

8. This Bench heard the Application filed by Mr. Manohar Lal Vij, Insolvency Resolution Professional on behalf of State Bank of India, the Financial Creditor, under Section 95 of the Insolvency & Bankruptcy Code, 2016 read with Rule 7 of the IBBI (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 against Mr. Hemant Bohra, the Personal Guarantor of the Corporate Debtor, M/s. Bohra Industries Limited in CP No. (IB)-157/7/JPR/2019. 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., 09.03.2021.

9. The Bench makes it clear that from the date of filing this Application i.e. 09.03.2021 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.

10. 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, Mr. Manohar Lal Vij, bearing Registration No. IBBI/IPA-001/IP/P-

CP No.(IB)-19/95(1)/JPR/2021

Assistant
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Jaipur

20.07.2021



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01480/2018-2019/12269, this Bench confirms the appointment of the Resolution Professional in the matter.

11. In this matter, the Resolution Professional, Mr. Manohar Lal Vij, shall exercise all the powers as enumerated under Section 99 of the Code read with Rules made there under and relevant regulations. 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. As per rule 9 of the IBBI (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, the Applicant shall provide copy of application along with copy of this order to IBBI for its records.

12. List the matter for further proceedings in the case on 07.09.2021.

Sd/-
(Raghu Nayyar)
Member (Technical)

July 16, 2021

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



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