IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT VI, NEW DELHI

COMPANY PETITION (IB)-252/ND/2022

Under Sections 95 of Insolvency and Bankruptcy Code, 2016 r/w Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal guarantors to Corporate Debtor) Rules, 2019.

IN THE MATTER OF:

BANK OF BARODA
Head Office at:-
7th Floor, Baroda Bhavan,
C Dutt Road, Vadodara- 390007

.... Applicant/ Financial Creditor

Vs.

MR. RAJAN KUMAR
House No. 41-4/2, Jaroda Gate,
Jagadhari, Yamunanagar, Haryana- 135001

...Personal Guarantor

CORAM:

SHRI P.S.N PRASAD HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

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Appearance

For the Applicant: Mr. Sought Sinha, Mr. Manoj Kumar and Mr. R. Gayathri- Counsel for Applicant

For the Respondent: Mr. Abhishek Anand and Mr. Vishal Hirwat Counsels for Respondent

ORDER

Per: Rahul Bhatnagar, HON'BLE MEMBER (TECHNICAL)

Delivered on 01.07.2022

1. This is an application filed by Bank of Baroda (Applicant/Financial Creditor) on 11.03.2022, through Assistant General Manager, Ms. Sapna Kaushal, under Section 95, of Insolvency and Bankruptcy Code, 2016 (IBC, 2016), r/w Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal guarantors to Corporate Debtor) Rules, 2019 (Rules, 2019), to initiate Insolvency Resolution Process, against Mr. Rajan Kumar (Personal Guarantor), in respect of the debt disbursed to the borrower, M/s. Upal Buildtech Pvt. Ltd. (Corporate Debtor).

2. The reason for which the present application has been filed is stated as follows: -

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- That a Term loan of Rs 7,45,00,000/- (Rupees Seven Crore Forty-Five Lakhs) was sanctioned by the Applicant Bank vide Sanction No. ROO/RODGMLCC (14926)/48/2016-2017 dated 10.04.2,017 in favor of the UPAL Buildtech Private Limited (Hereinafter referred to as "Borrower/ Corporate Debtor") and Mr. Rajan Kumar (Hereinafter referred to as 'Respondent/Personal Guarantor) who is the Personal Guarantor in the financial facilities granted to the Corporate Debtor.
- That the Corporate Debtor had filed Form CHG-1 with the Registrar of Companies, Kanpur for the registration of charge of Rs 7,45,00,000/- in favor of the Financial Creditor to secure the amount. That Certificate of Registration of Charge was issued by the Registrar of Companies vide Charge ID No. 100098882 (date of creation 10.04.2017).
- Thereafter, the Corporate Debtor had approached the Financial Creditor for another term loan of Rs 2,50,00,000/-. The second term loan was sanctioned by the Financial Creditor vide sanction letter no. ROD/RODGMLCC(14926)/20/2017-2018 dated

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12.07.2017. Therefore, aggregated term loan facility sanctioned to the Corporate Debtor is Rs. 9,95,00,000/- (Rupees Nine Crores Ninety-Five Lakhs Only).

- That the Respondent stood as one of the Personal Guarantors for the financial facilities aggregating to Rs 9,95,00,000 (Rupees Nine Crores Ninety Five Lakhs) provided to Corporate Debtor and he further executed Letters of Guarantee and other documents thereby undertaking to guarantee the repayment of all the amounts payable by the Corporate Debtor and the due performance of terms and conditions.
- That, Corporate Debtor had duly availed the Term loan facilities granted to them by the Applicant Bank but became highly irregular in maintaining the same and neglected the financial discipline and regularity in repayment.
- That, the Corporate Debtor failed to pay dues of the Applicant Bank, therefore the term loan accounts of the Corporate Debtor had turned to NPA on 31.03.2021 in accordance with the RBI Guidelines.

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- That, the Corporate Debtor has also committed default in making payment of monthly interest and other monies on due dates and on demand.
- That, consequently, the Applicant Bank on 05.04.2021 issued notices in accordance of provisions of Section 13(2) of SARFAESI Act, 2002 to Corporate Debtor/Guarantors.
- That, on the failure of the Corporate Debtor to make payment, the Applicant Bank also issued possession notice u/s 13(4) of SARFAESI Act, 2002 dated 03.09.2021 to the Corporate Debtor in respect of immoveable properties mortgaged by the Corporate Debtor.
- That, the Applicant Bank is legally entitled to recover the loan amount from Respondents which includes principal borrower and guarantors.
- That, the total amount of debt from the Respondents for the Term Loan facilities granted to the Corporate Debtor including interest @ 12.15% per annum plus penal interest @ 2% Per Annum is as below: -

  Total Principal amount Rs. 8,97,43,324.00 (Rupees Eight Crore Ninety Seven Lakhs Fourty Three Thousand Three Hundred and Twenty Four)

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Total Interest amount Rs. 85,44,931 (Rupees Eigty Five Lakh Forty Four Thousand Nine Hundred and Thirty One) till 26.11.2021.

- That, the jurisdiction for filing the insolvency application against guarantor also rest with Hon'ble NCLT at New Delhi in terms of Section 60 of Insolvency and Bankruptcy Code, 2016.
- That, the applicant has issued Demand Notice (FORM B) on 31.12.2021 as per the provision of Insolvency and Bankruptcy Code, 2016 upon the Respondent's address i.e House No. 41-4/2, Jaroda Gate, Jagadhari, Yamunanagar, Haryana – 135001, calling upon him to repay the outstanding amount, but despite receipt of the said notice the Defaulters have failed to liquidate the outstanding amount.
- That, on the basis of the abovementioned facts the Petitioner is liable to file present application for initiating Insolvency Resolution Process against the Personal Guarantor.
- That, Part III of Form C states that as on 26.11.2021, the total debt payable by the Personal Guarantor is

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9,82,88,255.17/- (Rupees Nine Crores Eighty-Two Lakhs Eighty-Eight Thousand Two Hundred Fifty-Five and Seventeen Paisa)

3. This Tribunal heard the arguments advanced by the Ld. Counsel for the Applicant, after giving limited notice to the Guarantor and perused the averments made in the application as well as the documents enclosed with the application.

4. The present application is complete in all respects, the Demand Notice has been duly served on the Respondent's last known address and the Respondent has also appeared through counsel before this Tribunal. In terms of Judgement of Hon'ble NCLAT in *Ravi Ajit Kulkarni v. State Bank of India Company Appeal (AT) (Insolvency) No. 316 of 2021,* the only purpose for issuing limited notice is to secure the presence of the Personal Guarantor. Relevant extract from the judgement is reproduced as under:

> *"42. However, considering the judgment of the Hon'ble Supreme Court in the matter of „Swiss Ribbons', it appears to us that* ***keeping principles of natural justice in view, limited notice of the application should be given to the Personal Guarantors of the Corporate Debtors. The limited notice has to be only to secure presence of the Personal Guarantor referring to the Interim Moratorium which has commenced. Before appointment of the Resolution Professional no hearing as such is contemplated and before appointment of the Resolution***

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Professional the Debtor cannot be allowed to raise disputes for which the stage would be Section 100. *Under NCLT Rule 11, Adjudicating Authority is duty bound to pass orders to prevent abuse of process. As such,* ***limited notice to appear may be given to the Personal Guarantors so that when Resolution Professional is appointed, he may provide material as per Section 99(2) of IBC.*** *Till the stage of Section 100, the process is of collecting necessary evidence."*

43. The Appellant is himself criticizing the impugned order claiming that the Adjudicating Authority has already recorded finding that the Personal Guarantor has committed a default and thus the Resolution Professional cannot while examining the application under Section 99 give a contrary opinion. At the same time, the Learned Senior Counsel for the Appellant has tried to submit that before appointment of Resolution Professional the Personal Guarantor should be able to show that the debt is not due or that it is not payable. This is contradiction. ***In our view, the stage for examining merits of the Application would be Section 100 of IBC. To prevent abuse of process of double hearings, first on merit before appointment of Resolution Professional and again at the stage of Section 100 which will defeat the objects of IBC by protracted disputes, after limited notice to appear has been issued even if Debtor raises disputes on merit, the same may be adjudicated only after receipt of report from Resolution Professional under Section 99.*** *Before that point of time the process is more of filing of application and collecting of evidence through a professional person like Resolution Professional.*

44. In substance, ***once the application is "filed"*** *(as per Section 95, 96 read with Rule 10) the Adjudicating Authority has to act on it, and* ***following principles of natural justice, give limited notice to Personal Guarantor to appear*** *referring to the Interim Moratorium that has commenced as per terms of Section 96.* ***Then the next stage is of appointing Resolution***

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Professional as per Section 97 *read with Rules and Regulations.* ***Third stage will be Resolution Professional acting in terms of Section 99 and submitting Report.*** *At the* ***fourth stage comes in adjudication of the application under Section 100 which ought to be decided by giving hearing to parties keeping in view Application****, evidence collected and report under Section 99.*

5. Based on the documents produced and placed on record before this Tribunal and on the submissions made by the Applicant, we are satisfied that there is a 'default' on the part of the Personal Guarantor by not fulfilling the debt owed to the Corporate Debtor, M/s Upal Buildtech Pvt. Ltd.

Therefore, this Tribunal **"allows"** the application made by the Personal Guarantor. 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.

- The name of IRP has not been proposed in the application filed by the Applicant. From the panel of Insolvency Professional(s) (IPs) valid for the period – January, 1, 2022 – June, 30, 2022 issued by IBBI panel in terms of Section 97(3), this Adjudicating Authority, hereby appoints Mr. Hemant Gupta,

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(Email –hka.consultants@gmail.com), Reg. No: IBBI/IPA-001/IP-P01072/2017-2018/11763, to act as Interim Resolution professional. He shall take such other and further steps as are required under the statute, and file his report within 10 days before this Bench. He is directed to submit the report in terms of section 99 of IBC read with other relevant rules and regulations.

- The Name of IRP is taken from the list of IBBI panel of Insolvency Professional(s) (IPs) valid for the period – January, 1, 2022 – June, 30, 2022 issued by IBBI and the IBBI has not provided the revised the list, therefore, the Insolvency Professional is directed to file a short affidavit confirming the fact that his/her registration as an Insolvency Professional is continued and valid, the Insolvency professional has a valid Authorization for Assignment and there is no disciplinary proceedings pending against the him/ her in any authority including IBBI.

6. It is made known to everyone that on the date of filing this Application by the Applicant/ Creditor, the interim moratorium has commenced, as stipulated under Section 96(1) (a), in relation

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to all the debts of the Personal Guarantor and shall cease to have effect on the date of admission of this Application. During the interim-moratorium period, the following were 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

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. 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 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 IBC, 2016. The Resolution Professional shall provide a copy of the report under sub-section (7) of Section 99, to the Applicant/Creditor and

Personal Guarantor, as soon as the same is filed before this Authority.

8. The Applicant and the Registry are directed to serve copy of this order, along with copy of the Application and documents, immediately on the Resolution Professional so appointed for information and compliance

9. List the matter for further proceedings in the case on 21.07.2022.

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(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

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(P.S.N. PRASAD)
MEMBER (JUDICIAL)