NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

IA-1406/2022
In
Company Petition (IB) No. 71(ND)/2022

Under 96, 97, 99 & 100 of IBC, 2016 r/w Rule 6 (1) 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:

NOBLE COOPERATIVE BANK LTD.

.... Applicant/Creditor

Vs.

MR. VIVEK PRAKASH

.... Respondent/Personal Guarantor

In the matter of IA-1406/2022

NIRMAL KUMAR BHESONI

..... Resolution Professional

ORDER DELIVERED ON: 18.08.2022

CORAM:

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

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

Present:

For the Applicant: Adv. Govind Bhardwaj
For the RP: Adv. Paridhi Singh

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For the Respondent: None Present

ORDER

PER: SH. P. S. N. PRASAD, HON'BLE MEMBER (JUDICIAL)

1. Under consideration is application IA-1406/2022, which is a report filed by the Resolution Professional namely Mr. Nirmal Kumar Bhesoni, in accordance with Section 99 of the Insolvency and Bankruptcy Code, 2016 ("Code"). Originally, the Applicant/Financial Creditor, namely, Noble Co-operative Bank Ltd., had filed a petition under Section 95 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 7 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 (the Rules, 2019), against Mr. Vivek Prakash, who is the Personal Guarantor of the Corporate Debtor in relation to the Loan Agreement executed by the Company M/s. Jarvis Infratech Private Limited (Corporate Debtor) for the outstanding balance dues of Rs. 1,03,69,628/- against the Corporate Debtor.

2. On presentation of the Petition CP(IB) No. 71(ND)/2022, by the Creditor, this Adjudicating Authority vide order dated 11.03.2022, appointed the Resolution Professional, Mr. Nirmal Kumar Bhesoni, as proposed by the Financial Creditor in the Part IV of Form C, having Registration No. IBBI/IPA-001/IP-P00010/2016-2017/10016, having e mail id:ipnirmalkumar@gmail.com and directed him to examine the application referred in Section 95 of the Code and file a report under Section 99 of the Code and the interim moratorium was commenced from the date of the filing of application as stipulated under Section 96 of the Code. The Report

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under Section 99 of the Code has been filed by him through IA/1406(ND)2022 in C.P. (IB)/71(ND)2022, recommending the **admission of the application** filed under section 95 of the Code. The grounds for admission of the application recorded in the Report are as follows: -

- Admission of Corporate Debtor M/s Jarvis Infratech Pvt. Ltd. into CIRP on 10.02.2020 and subsequently into Liquidation on 16.02.2021.
- Existence of sufficient documents, records and evidence as to the Personal Guarantee Agreement, executed by Mr. Vivek Prakash against the Loan Liability of Corporate Debtor.
- Loan Documentation, along with Loan Application, Security Documentation Kit, Loan Agreement and Personal Guarantee Agreement/Contract duly executed, signed and undertaken by Mr. Vivek Prakash (Personal Guarantor) for loan availed by Corporate Debtor M/s Jarvis Infratech Pvt. Ltd.
- Existence of Charge against Corporate Debtor and existence of Guarantee Clause of Mr. Vivek Prakash and in such Charge Form, duly uploaded with MCA-ROC.
- Inability to satisfy outstanding claim of Rs. 1,03,69,628/- by Corporate Debtor due to insufficiency of funds/assets/properties with Corporate Debtor.
- No proof of payment against Demand Notice under Form B dated 10.11.2021, delivered by the Applicant Financial Creditor upon Mr. Vivek Prakash (Personal Guarantor).
- No response/reply towards objection/dispute against Demand Notice raise by Applicant Financial Creditor against

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Mr. Vivek Prakash (Personal Guarantor).

- Undisputed Record of Default of Rs. 1,03,69,628/- uploaded at NeSL Information Utility in terms of section 99(3) of IBC, 2016.
- No express rebuttal/reply observed in orders of Hon'ble Tribunal, affording opportunity to Mr. Vivek Praksh for filing reply/objection against the present Application filed by Financial Creditor u/s 95.
- Corporate Debtor's as well as Personal Guarantor's (Mr. Vivek Prakash) failure to discharge the balance outstanding dues of loan liability of Rs. 1,03,69,628/- against Applicant Financial Creditor.

3. The Respondent/Personal Guarantor has not filed any reply or written submissions.

4. We have gone through the documents placed on record and the averments made and heard the Learned Counsel for the Applicant/Resolution Professional. From the records of the Petition, it is observed that the Corporate Debtor availed the Overdraft Loan facility and executed the Loan Application Form dated 18.02.2019 and further executed Loan Agreement, Documentation and Security Kit on behalf of the Corporate Debtor on 06.03.2019. Consequently, Rs. 69,00,000/- were sanctioned and disbursed. It is further observed that Mr. Vivek Prakash executed his personal guarantee against the said Overdraft Loan. Due to continuous defaults by the Corporate Debtor, the loan account became Non-Performing Asset on 31.07.2019. Further,

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CIRP was initiated against the Corporate Debtor vide order dated 10.02.2020 and further into liquidation vide order dated 16.02.2021. That the Applicant, vide Claim Form dated 05.03.2021, filed its claim before the Liquidator for Rs. 1,27,69,628/- and in respect of the same, the total claim of Rs. 1,25,69,628/- was admitted vide email dated 01.04.2021. That a payment of Rs. 22,00,000/- was made on 30.06.2021 out of the total distribution of Liquidation Proceeds. Hence, the Applicant is having the outstanding balance dues of Rs. 1,03,69,628/- against the Corporate Debtor and the said default amount has also been recorded with NeSL Information Utility Portal. Furthermore, there is charge over the assets of the Corporate Debtor, as well as Personal Guarantee admitted by the Respondent Personal Guarantor vide MCA-ROC Charge CHG-1 Form. The Demand Notice dated 10.11.2021 in Form B was sent to the Personal Guarantor for payment of total outstanding net balance dues of Rs. 1,03,69,628/-. Neither any reply nor any payment was issued. We also observe that notice was served to the Respondent vide order dated 04.02.2022 and again vide order dated 05.07.2022. Despite the opportunity, the Respondent neither entered appearance nor filed any reply/written submissions.

5. Based on the above and the reasons recorded in the report submitted by the Resolution Professional, the Petition i.e., IB - 71(ND)/2022, filed under the provisions of Section 95 of the Code, is hereby ***admitted*** in terms of Section 100 of the Code. The Insolvency Resolution Process is initiated against the Personal Guarantor and the moratorium is declared, which begins with the date of admission of the Petition i.e. the date of this order and

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shall cease to have effect at the end of the period of 180 days, as provided under Sec 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;

d) The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

6. The Resolution Professional viz., Mr. Nirmal Kumar Bhesoni, who has been proposed by the Creditor and has given specific consent to act as Resolution Professional, has been appointed under Section 95 of the Code vide Order dated 11.03.2022. Therefore, the Resolution Professional is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of uploading of this Order on the website of the NCLT Delhi, 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 the necessary information as provided under Section 102 (2) of the Code. The publication of

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notice shall be made in newspapers, one in English and other in Vernacular which have wide circulation in the State where the Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry. One shall be placed by the Registry on this Authority's website and the other shall be affixed in the premises of this Authority.

7. The Resolution Professional in exercise of the powers conferred under Section 104 of the Code, shall prepare a list of creditors within 30 days from the date of the notice. The debtor shall prepare a repayment plan in consultation with the Resolution Professional as provided under Section 105, which shall include the provisions for payment of fee to the Resolution Professional. The Resolution Professional shall submit the Repayment Plan along with his report on the plan to this Adjudicating Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106 of the Code.

8. In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof. If the Resolution Professional is of the opinion that the meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of the Code. The date of meeting should not be less than 14 days or more than 28 days from the date of submission of the Report under Sub-section (1) of Section 106 of the Code, for which at least 14 days' notice to the creditors [as per the list prepared]

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shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of the Code.

9. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of the Code. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of the Code and submit the same to this Adjudicating Authority, copies of which shall be provided to the debtor and the creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of the Code.

10. In terms of the above, **CP(IB)-71(ND)/2022**, filed under Section 95 (1) of the Code is **admitted** and the Insolvency Resolution Process stands initiated against the Personal Guarantor i.e., Mr. Vivek Prakash.

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RAHUL BHATNAGAR
(Member Technical)

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P.S.N PRASAD
(Member Judicial)