IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
PRINCIPAL BENCH

COMPANY PETITION (IB)-490(PB)/2021

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:

STATE BANK OF INDIA
Through Resolution Professional
Mr. Chanchal Dua
Stressed Asset Management Branch-I
12th Floor, Jawahar Vyapar Bhavan,
STC Building, 1 Tolstory Marg
Janpath, New Delhi-110001

.... Applicant/ Financial Creditor

Vs.

Shri. V. MUTHUCHANDRASEKAR
Old No. 6, New No. 11, Thiruvengadam Street
Mandaveli, Chennai-600028 ...Personal Guarantor

ORDER DELIVERED ON: 23.03.2022

CORAM:

JUSTICE RAMALINGAM SUDHAKAR,

HON'BLE PRESIDENT

SHRI HEMANT KUMAR SARANGI,

HON'BLE MEMBER (TECHNICAL)

Appearance

For the Applicant: Mr. Bheem Sain Jain, Advocate,
Mr. Chanchal Dua, RP

For the Respondent: Ms. Pooja M Saigal, Mr. Anshul Bajaj,
Ms. Simrat Singh Pasay,
Mr. Chaiyanya Pandey, Advocates

ORDER

Per: Shri Hemant Kumar Sarangi Hon'ble Member (Technical)

1. This is an application filed by State Bank of India (Applicant/Financial Creditor), through the Resolution Professional Mr. Mr. Chanchal Dua, under Sections 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 Shri V. Muthuchandrasekar (Personal Guarantor), in respect of the debt disbursed to the borrower, M/s. Global Infonet Distribution Pvt. Ltd. (Corporate Debtor).

2. The Corporate Debtor availed Credit facilities from the applicant on 31.07.2012, to the tune of Rs. 42,00,00,000 (Rupees Forty-Two Crore) and a sanction letter was issued on the same date. The agreement of loan, Agreement cum Indemnity and the deed of guarantee were executed on 25.09.2012. The applicant renewed the working capital limit on 07.11.2013 and reduced its share of Forward Contract limit of Rs 2,00,00,000 (Rupees Two Crore) from the total

amount of Rs. 42,00,00,000 Rupees Forty-Two Crore). The Corporate Debtor on 24.04.2015, admitted its liability towards the applicant and acknowledged the debt vide a Revival Letter. The Personal Guarantor mortgaged his immovable property, with the applicant and confirmed the deposit of the title deeds vide letter dated 24.04.2015.

3. The Corporate Debtor approached the erstwhile bank, State bank of Mysore, for availing further credit facilities. The proposal of the Corporate Debtor was granted, and Sanction Letter dated 13.11.2015 for an amount of Rs. 25,00,00,000 (Rupees Twenty-Five Crore), was issued. The Personal Guarantor executed a deed of guarantee for overall limit was on 15.12.2015.

4. The Corporate Debtor executed a Revival Letter on 26.04.2018 and confirmed the outstanding dues payable to the applicant with respect to the credit facilities. The account of the Corporate Debtor was declared as Non-Performing Asset (NPA) on 28.10.2018, as the Corporate Debtor failed to repay the dues. The applicant sent a notice dated 08.11.2018, to the Corporate Debtor and to its Guarantors, recalling the credit facility. The debt due on the part of the Personal Guarantor occurred on 09.11.2018, in terms of Section 13 (2) of the SARFAESI Act, 2002, therefore, a notice was issued by the applicant, invoking the guarantees. The Corporate Debtor and its Guarantors failed to repay the outstanding amount as on 31.10.2018, therefore, the applicant filed an Original Application on 28.11.2018, before the Debt Recovery Tribunal-II, Delhi.

5. This Authority admitted the application, filed by the Financial Creditor viz., IBM India Private Limited under Section 7 of IBC, 2016 against the Corporate Debtor, vide Order dated 03.03.2020. The present applicant i.e., State Bank of India filed its claim on 18.03.2020 to the tune of Rs. 34,58,46,168.24 (Rupees Thirty-Four Crore Fifty-Eight Lakhs Forty-Six Thousand One Hundred and Sixty-Eight Paise Twenty-Four), which was admitted by the Interim Resolution Professional (IRP). The Corporate Debtor was liquidated vide Order dated 21.08.2020 and the present applicant filed its claim in FORM-D dated 18.09.2020, to the tune of Rs. 37,12,57,610.21 (Rupees Thirty-Seven Crore Twelve Lakh Fifty-Seven Thousand Six Hundred Ten paise Twenty-One), before the Liquidator, and the total amount was admitted.

6. The applicant sent a demand notice on 24.06.2021, calling upon the Personal Guarantor to pay Rs 43,38,58,364.80 (Rupees Forty-Three Crore Thirty-Eight Lakh Fifty-Eight Thousand Three Hundred Sixty-Four Paise Eighty), accrued debt, pursuant to invocation of the deed of Guarantee, which was duly served upon the Personal Guarantor on 08.07.2021, thus, completing the service of demand notice in terms of Rule 3 (g) of the Rules, 2019.

7. The Part III of FORM C states that as on 11.06.2021, the total debt payable by the Personal Guarantor is Rs. 43,35,58,364.80 (Rupees Forty-Three Crore Thirty-Eight Lakh Fifty-Eight Thousand Three Hundred Sixty-Four Paise Eighty) and that the credit facility was recalled on 08.11.2018, by serving a Legal Demand Notice upon the Corporate Debtor and Personal Guarantor. The debt was due, on the part of Personal Guarantor

in terms of SARFAESI Act, 2002 and the personal guarantee was invoked on 09.11.2018.

8. This Authority in the present application, issued notice on 08.09.2021. The Respondent has not filed any reply. The Insolvency and Bankruptcy Board of India (IBBI) has not filed a report confirming that there is nothing adverse on record against the Insolvency Professional Mr. Chanchal Dua.

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

10. The Applicant/ Creditor has proposed the name of Mr. Chanchal Dua, Insolvency Professional, having registration number IBBI/IPA-003/IP-N00083/2017-18/10821;E-mail-chanchalduaco@gmail.com; Phone No.- 9958990842, for appointment as the Resolution Professional and he has declared by an affidavit dated 14.12.2021, that no disciplinary proceedings are stated to be pending against him, therefore, Mr. Chanchal Dua, is appointed as the Resolution Professional, in exercise of powers conferred under Section 97 of the IBC, 2016 on this Authority, subject to Regulations 4 (1) and (2) of the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.

11. 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.

12. 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

13. List the matter for further proceedings in the case on 27.04.2022.

-Sd-

RAMALINGAM SUDHAKAR

(PRESIDENT)

-Sd-

HEMANT KUMAR SARANGI

MEMBER (TECHNICAL)