

Sr. No. 93/2021

1

THE NATIONAL COMPANY LAW TRIBUNAL
"JAIPUR BENCH, JAIPUR"
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

CP (IB) No. 50/95/JPR/2021

Under Section 95 of Insolvency and
Bankruptcy Code, 2016.

In the matter of:

State Bank of India
with its registered office at
Stressed Assets Management Branch-I
12th Floor, Jawahar Vyapar Bhavan,
STC Building, 1 Tolstoy Marg,
Janpath, New Delhi-110001
through Shri Sandeep Mahajan
having IBBI Registration No.
IBBI/IPA-001/IP-P00991/2017-2018/11631

...Applicant-Creditor

Vs.

Smt. Kanak Biyani
with her residence at
229, Ayodhya Path, Pratap Nagar,
Khatipura Road, Jaipur-302033

...Respondent-Personal Guarantor

Order delivered on: 01.09.2021

Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
Hon'ble Mr. Raghu Nayyar, Member (Technical)

CP (IB) No. 50/95/JPR/2021



[Signature]
Assistant Registrar
National Company Law Tribunal
Jaipur
02.09.2021

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Sr.No. 93/2021

2

Present through Video Conferencing:-

For the Applicant-Creditor : 1). Mr. Abhishek Anand, Advocate
2). Mr. Viren Sharma, Advocate

For the respondent-Guarantor : Mr. Ankit Sareen, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

ORDER

The present application is filed by State Bank of India (for brevity 'Creditor'/ 'Applicant') (Form-C) with a prayer to initiate Insolvency Resolution Process against Smt. Kanak Biyani (hereinafter called as "Personal Guarantor/Respondent"), through Shri Sandeep Mahajan, Insolvency Resolution Professional, under Section 95 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC' / 'Code') 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. The Respondent/ Personal Guarantor has stood as the Guarantor in respect of the loans availed by the Principal borrower viz. M/s Saga Automotive (I) Pvt Ltd (Corporate Debtor).

2. It is stated that various credit facilities were obtained by the Corporate Debtor from State Bank of India, but the Corporate Debtor was unable to abide by the financial discipline and thus neglected to regularize its credit facility by failing to make payment of the outstanding amount. It is also contended that the Corporate Debtor is currently undergoing Liquidation Process vide order dated 16.03.2021 being titled as State Bank of India Vs. Saga Automotive (I) Pvt Ltd passed by this Tribunal.

CP (IB) No. 50/95/JPR/2021

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Assistant Registrar 02.09.2021
National Company Law Tribunal
Jaipur

3. It could be seen that a Demand Notice dated 29.06.2021 was issued by the Creditor to the Personal Guarantor in respect of the unpaid debt due from the Corporate Debtor under rule 7(1) of the IBC Rules, 2019. It is stated that the Demand Notice was sent by speed post to the respondent but the same was returned, and the Demand Notice was then affixed to the premises of the last known address of the respondent as per Proviso to Rule 3(g) of the Rules, 2019 on 15.07.2021. Copy of the Demand Notice accompanying the speed post receipt along with the tracking report and photo of the affixed notice at the premises of the respondent is found attached as Annexure A-41 of the application. It is stated that no response has been received from the side of Respondent in lieu of this demand notice. The advance copy of this application is also stated to be served upon the respondent via speed post. Copy of the speed post receipt dated 02.08.2021 is attached at Page No. 351 of this application.

4. In Part III of Form C, the total debt from the Personal Guarantor by way of personal guarantee given to the corporate debtor is shown as Rs.28,36,04,727.55.

5. We have heard the learned counsel for the Applicant and perused the pleadings on record.

6. It is submitted that there is a default on the part of the personal guarantor by not fulfilling the debt owed by the corporate debtor as per the deeds of guarantee entered between the parties, which are a part of the present application.

7. Hence, the application by Mr. Sandeep Mahajan, Insolvency Resolution Professional on behalf of **State Bank of India**, under Section 95

CP (IB) No. 50/95/JPR/2021

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National Company Law Tribunal
Jaipur
02.09.2021

of the Code read with Rule 7 of the IBC Rules, 2019 against Smt. Kanak Biyani, the personal guarantor of the corporate debtor.

8. It is clarified that from the date of filing this application i.e. 02.08.2021 by the Applicant, 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.

9. It shall be noted that the appointment of the Resolution Professional under Section 97 of the Code is critical and essential for the Applicant but also to safeguard the assets of the personal guarantor in terms of the provisions of the Code. Since the present application has been filed through the Resolution Professional, Mr. Sandeep Mahajan, bearing Registration No. IBBI/IPA-001/IP-P00991/2017-2018/11631, this Bench confirms the appointment of the Resolution Professional in the matter.

10. The Applicant is directed to serve the copy of this order along with copy of the Application and documents immediately on the Resolution Professional by all modes.

11. The Resolution Professional is directed to exercise all the powers as enumerated under Section 99 of the Code read with Rules made thereunder. He is directed to make the recommendations with reasons in

CP (IB) No. 50/95/JPR/2021

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02.09.2021
Assistant Registrar
National Company Law Tribunal
Jaipur

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.

12. List the matter for further proceedings in this case on 05.10.2021.

Sd/-

(Raghu Nayyar)
Member (Technical)

Sd/-

(Ajay Kumar Vatsavayi)
Member (Judicial)

September , 2021
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