

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. 5

CP (IB) -341/MB/2021

Under Section 95 of the I&B Code, 2016
read with Rule 7 of the I & B
(Application to Adjudicating Authority
for Insolvency Resolution Process for
Personal Guarantors to Corporate
Debtors) Rules, 2019

In the matter of

IDBI Bank Ltd,

through the Insolvency Professional,

Shri. Surya Pratap Gupta,

Office of IP- Headway Resolution and
Insolvency Services Pvt. Ltd. 708, 7th
Floor, Raheja Centre, Nariman Point
Mumbai-400021.

.... Petitioner/ IP

Vs.

Mr. Hari Prasad Agarwal

(Personal Guarantor of SPG Multi Trade
Private Limited)

Address-Prabha Co-operative Housing
Society Limited, Flat No. 10, 2nd Floor
R.B Mehta Marg, Ghatkopar (E)
Mumbai- 400077.

.... Respondent/ Personal Guarantor

Order Pronounced on: 03.08.2021

Coram:

Hon'ble Suchitra Kanuparthi, Member (Judicial)

Hon'ble Chandra Bhan Singh, Member (Technical)

For the Petitioner: Mr. Ankur Kumar Adv.

For the Respondent: None Present.

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. The court has been convened through Video Conferencing to hear the matter.
2. The Petition has been filed under Section 95 of the I & B Code through the Insolvency Professional (IP), Shri. Surya Pratap bearing IBBI Registration No. IBBI/IPA-001/IP-P01060/2017-2018/11753 against Mr. Hari Prasad Agarwal, Personal Guarantor to the Corporate Debtor, SPG Multi Trade Private Limited. The RP has been appointed by the Creditor, IDBI Bank Ltd., to file the preset Petition under Section 95 of the Code. The Bench notes that the Insolvency Professional has been authorized by the IDBI Bank Ltd., the Financial Creditor, to file the Petition for which an authority letter has been issued by IDBI Bank Ltd. vide their authorization letter dated 26.02.2021 addressed to the IP. As per this letter, Insolvency Professional has been appointed to initiate personal insolvency against the Personal Guarantor of the Corporate Debtor, i.e., M/s

SPG Multi Trade Private Limited. The Bench also notes that the consent form of the RP, Shri. Surya Pratap Gupta along with his IBBI Registration Certificate has been annexed with the Petition.

3. As per the submissions made by the Ld. Counsel for the Applicant, the Corporate Debtor Company (SPG Multi Trade Private Limited) was admitted under Corporate Insolvency Resolution Process by an NCLT Mumbai Order dated 03.03.2020 vide CP No. 3419/NCLT/MB/2019.

4. The Hon'ble Bench passed the liquidation of Corporate Debtor order on 04.12.2020.

5. It has been placed on record by the Petitioner that a Personal Guarantee was given to IDBI Bank Ltd vide a Deed of Guarantee dated 22.12.2009 and the Supplemental Guarantee was executed vide Agreement dated 13.07.2016. In this

regard, the Bench notes that the Petitioner had enclosed a copy of the Deed of Guarantee dated 22.12.2009 & 13.07.2016,

6. The Bench also notes that on 27.05.2019, the Personal Guarantee Invocation Notice was issued on the Personal Guarantor by the Financial Creditor, i.e., IDBI Bank Ltd.

7. The Bench notes that a Demand Notice was issued by the Financial Creditor, i.e., IDBI Bank Ltd. on 07.12.2020 to the Personal Guarantor in respect of the unpaid debt due from M/s SPG Multi Trade Private Limited (Corporate Debtor) under rule 7(1) of the IBC, 2016. The Applicant has produced proof of

evidence that the said notice was delivered to the Personal Guarantors on 12.12.2020 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.

8. 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 under Section 95 in prescribed Form 'C' was filed on 05.12.2020.

9. The Bench notes that as per Form 'C' of the Petition, the total debt from the Personal Guarantor by way of personal guarantee given to M/s SPG Multi Trade Private Limited, the Corporate Debtor, as on 25.11.2020 stands at Rs.86,99,49,261.55/-, i.e., about Rs. 86.99 crores and further interest at 12.75% p.a. till the time of realization.

10. The Bench, after hearing the Petitioner, notes that the Corporate Guarantor has not filed any submissions and on the date of hearing there was no representation from the side of the Respondent, i.e., the Personal Guarantor.

11. 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., M/s SPG Multi Trade Private Limited as per the Deed of Guarantee entered between the parties through the Deed of Guarantee dated 22.12.2009.

12. This Bench "Allows" the Application filed by Shri. Surya Pratap Gupta, Insolvency Resolution Professional on behalf of IDBI Bank Ltd., the Financial

Creditor, under Section 95 of the Insolvency & Bankruptcy Code, 2016 read with Rule 7 of the IBC Rules 2019 against Mr. Hari Prasad Agarwal, the Personal Guarantor of the Corporate Debtor, M/s SPG Multi Trade Private Limited in CP No. 341/2021. The Interim Moratorium as per Section 96(1) of the Code has commenced from the date of filing of Application, i.e., 15.01.2021.

13. The Bench makes it clear that from the date of filing this Application, i.e.15.01.2021, 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.

14. 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 Insolvency Professional, Shri. Surya Pratap Gupta bearing IBBI Registration No. IBBI/IPA-001/IP-P01060/2017-2018/11753, this Bench confirms the appointment of the Resolution Professional in the matter.

15. In this matter, the Insolvency Professional, Shri Surya Pratap Gupta, 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 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.

16. List this matter for further hearing on 27.09.2021.

Sd/-
Chandra Bhan Singh
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)