IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH NEW DELHI
COURT- III

CP (IB)-25 (ND)/2021 filed under Section 95 (1) of IBC, 2016 R/w Rule 7 (2) of the IB (Application to Adjudicating Authority for IRP for Personal Guarantors to CD) Rules, 2019.

In the matter of **Smt. Pavan Kapoor.**

Volkswagen Finance Private Limited

....Applicant/Creditor

Versus

Smt. Pavan Kapoor

.... Personal Guarantor/Debtor

Order delivered on 3rd of Feburary,2021.

Coram:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)
SHRI NARENDER KUMAR BHOLA, MEMBER (TECHNICAL)

For Applicant: Mr. Rajeev Sagar (Advocate)

For Debtor: Ms. Vasuda Sen (Advocate)

ORDER

(Through Video conferencing)

Per: CH. Mohd Sharief Tariq, Member (Judicial)

1. Ld. Counsels for both the sides are present. Under consideration is CP (IB)-25(ND)/2021 filed by the Creditor viz., *Volkswagen Finance Private Limited* (hereinafter referred as "Applicant/Creditor") under Section 95 (1) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC, 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 (hereinafter referred as "IB Rules, 2019") for initiating the Insolvency Resolution Process (hereinafter referred as "IR Process") against personal guarantor viz., *Smt. Pavan Kapoor* (hereinafter referred as "Personal

Guarantor/Debtor") guarantor of company viz., *Sterling Vehicle and General Sales Private Limited* (hereinafter referred as "Corporate Debtor").

2. At the outset, it is necessary to record that the Ld. Counsel for the Personnel Guarantor has raised objection that the application is not maintainable on the grounds *inter alia* (i) the amount under guarantee is paid (ii) guarantee is expired by afflux of time (iii) claim is barred by limitation. Based on these grounds, it is submitted that first the objections be considered then, if need be, the insolvency Professional be appointed for submitting report under the provisions of Section 99 of IBC, 2016.

3. If the provisions of Sections 95, 96, 97 and 99 of IBC, 2016 are taken into consideration, then it can be seen that the Scheme under Chapter III provides that on the application filed under Sections 94 and 95 as the case may be, the interim moratorium shall commence. If an application under any of these Sections is not filed through Resolution Professional, then the Resolution Professional is appointed by this Authority. The Resolution Professional after examination of the application shall ascertain that the application satisfies the requirements set out in Sections 94 or 95 as the case may be and shall file a REPORT under Section 99 within 10 days *inter alia* recommending the acceptance or rejection of the application. A copy of the report is to be provided to the debtor or creditor as the case may be. Under Section 99 (2) of IBC, 2016 the Resolution Professional may require the debtor to prove repayment of debt, so the debtor will have full opportunity of defending him/herself.

4. Therefore, before appointing Resolution Professional and seeking REPORT from the Resolution Professional under Section 99 of IBC, 2016, there does not appear any procedure to deal with the issues raised by the Personnel Guarantor/Debtor or even sending notice to the Personnel Guarantor/Debtor. The Guarantor /Debtor can be given notice once the Resolution Professional recommends the acceptance of the application, filed under Section 95 of IBC, 2016. Thereafter, full opportunity of being heard could be provided to the debtor.

5. The factual matrix of the case is that the Applicant/Creditor viz., *Volkswagen Finance Private Limited* is a company incorporated under the provisions of Companies Act, 1956 and duly registered with the Reserve Bank of India as a Non-Banking financial Company. The Applicant/ Creditor had issued a sanction Letter dated 23.03.2012 with reference to the application made by the Corporate Debtor for grant of Credit Facility which indicates that the

nature of facility is New Car Unit funding & inventory stock Funding. The Applicant/Creditor had disbursed loan to the Corporate Debtor to the tune of Rs. 16,60,40,593.08 by way of Facility Agreements dated 23.03.2012, 27.06.2012, 31.10.2012, 25.02.2013, 22.0.2018 and 18.11.2013 and the Part III of Form C provides that the amount of default is Rs. 26,51,02,154.61/- and the date on which the default occurred is 31.05.2019 & 15.07.2020.

6. The Personal Guarantor viz., *Smt. Pavan Kapoor* vide Deed of Guarantee dated 23.03.2012 executed in favour of the Applicant/Creditor had guaranteed for the payments in respect of the Facility Agreements. The Personal Guarantor in the light of the clear unequivocal terms of the Deeds of Guarantees defaulted to repay the debt in respect of the underlying Agreements.

7. It is stated that the Corporate Insolvency Resolution Process was initiated vide Order 26.02.2019 against the Corporate Debtor under Section 7 of IBC, 2016 in the application bearing number IB- 546 (PB)/2018. The Corporate Debtor was liquidated vide Order dated 08.11.2019 passed in CA. 1637 (PB)/2019 filed in CP (IB) – 546 (PB)/2018 and Mr. Sunil Prakash was appointed as Liquidator therein.

8. It is averred that the Applicant/Creditor had sent a notice dated 11.10.2020 demanding payment of Rs. 26,51,02,154.61/-(Rupees Twenty-Six Crore Fifty-One Lakhs Two Thousand One Hundred Fifty-four and Paise Sixty-One Only) to the Personal Guarantor under Rule 7 (1) of the IB Rules, 2019, but no payments. Therefore, in the premises it is prayed to initiate the IR Process. The reply dated 12.10.2020 to the said demand notice and the rejoinder dated 16.10.2020 to the same is placed on file.

9. The Applicant/Creditor has clearly brought it out in its application coupled with admissible evidence that the Personal guarantor/Debtor has committed default in making repayment of the loan along with interest to the Applicant/Creditor for which she has given the personal guarantee to the Applicant/Creditor on behalf of the Corporate Debtor.

10. It is made known to everyone that on filing this Application by the Applicant/ Creditor the interim-moratorium commences as is 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 and during the interim- moratorium period the following is 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.

c. The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

11. The Applicant/Creditor has proposed the name of Mr. Kamal Agarwal, Insolvency Professional for appointment as Resolution Professional, who has accepted to be appointed, declared that he is eligible to be appointed and that no disciplinary proceedings are pending against him. Therefore, Mr. Kamal Agarwal is appointed as the Resolution Professional in exercise of the powers conferred under Section 97 of the IBC, 2016 on this Authority subject to the Regulation 4 (1) and (2) of the Insolvency and bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019. The details of the Resolution Professional are as under: -

Name: Mr. Kamal Agarwal

Registration No.: IBBI/IPA-001/IP-P00868/2017-18/11466

Address: 487/27 School Road, Near Peeragarhi Metro Station, New Delhi-110087

E-mail: advocate.kamal.aggl@gmail.com

Mobile Number: 9811138823

12. The Resolution Professional shall exercise all the powers as enumerated under Section 99 of the IBC, 2016 r/w the Rules made thereunder. He is directed to make the recommendations with the reasons recorded in writing for acceptance or rejection of this Application within stipulated time as envisaged under the provisions of Section 99 of the

IBC, 2016. The RP shall give 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.

13. The Applicant/Creditor and his Counsel are directed to serve the copy of this Order along with copy of the Application and documents with immediate effect on the Resolution Professional by all modes for information and compliance.

14. List the matter on 23rd of February 2021 at 10:30 AM.

-Sd-

NARENDER KUMAR BHOLA
Member (Technical)

-Sd-

CH. MOHD SHARIEF TARIQ
Member (Judicial)