

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT VI, NEW DELHI

COMPANY PETITION (IB)-473/ND/2022

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

Stressed Asset Management Branch-I
12th Floor, Jawahar Vyapar Bhavan,
STC Building, 1 Tolstory Marg
Janpath, New Delhi-110001

.... Applicant/ Financial Creditor

Through Resolution Professional
Mr. Madan Mohan Dhupar
IBBI/IPA-002/IP-N00860/2019-2020/12768

Vs.

MR. SHYAM BIHARI GOYAL

R/O House No 159, Saini Enclave
Karkardooma, Delhi 110093

...Respondent/Personal Guarantor

CORAM:

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

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

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Appearance

For the Applicant: Mr. Abhishek Devgan, Vishal Hirawat
and Mr. Tarun Kumar- Counsel for the
Applicant

For the Respondent: None

ORDER

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

Delivered on 24.08.2022

1. This is an application filed by State Bank of India (Applicant/Financial Creditor) on 31.05.2022 through Resolution Professional Mr. Madan Mohan Dhupar, under Section 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 Mr. Shyam Bihari Goyal (Personal Guarantor), in respect of the debt disbursed to the borrower, M/s. Kay Em Copper Pvt. Ltd (Corporate Debtor) having CIN U27101DL2011PTC226819 incorporated on 28.10.2011.

2. The reason for which the present application has been filed is stated as follows: -

- That, at the request of the Corporate Debtor and its Guarantor, the Financial Creditor has sanctioned and disbursed various loans and executed various documents related to the aforesaid loans details of which are stated in tabular form as below: -

DETAILS OF SECURITY DOCUMENTS:-

Sr. No.	NAME OF THE DOCUMENTS	NATURE OF SECURITY	DATE OF EXECUTION	AMOUNT SECURED(IN Rs.)
1	--	General agreement for grant of small industrial advances and hypothecation of movables, book debts & other assets executed by M/S Kay Em Enterprises through its proprietor Sh. AkashGoyal.	06.02.2004	50,00,000.00
2	Ancillary Agreement no.1	Agreement for grant of small industrial advances executed by M/S Kay Em Enterprises through its proprietor Sh. AkashGoyal.	06.02.2004	35,00,000.00
3	Ancillary Agreement No.-3	Agreement for grant of small industrial advances executed by M/S Kay Em Enterprises through its proprietor Sh. AkashGoyal.	06.02.2004	15,00,000.00
4	Annexure No.-3	Demand cash credit limit executed by M/S Kay Em Enterprises through its proprietor Sh. AkashGoyal	06.02.2004	35,00,000.00
5	Annexure No.-4	cash credit limit against bills in the course of collection executed by M/S Kay Em Enterprises through its proprietor Sh. AkashGoyal	06.02.2004	-----
6	--	Guarantee Agreement for small industrial advances executed by Sh. ShyamBihariGoyal	06.02.2004	50,00,000.00
7	Form -A	Letter of confirmation for creation of mortgage by deposit of title deeds executed by Sh. AkashGoyal .	06.02.2004	50,00,000.00
8	SME-1	Letter of arrangement executed by M/S Kay Em Enterprises through its proprietor Sh. AkashGoyal and Guarantors- Sh. AkashGoyal and ShyamBihariGoyal.	16.12.2005	1,40,00,000.00
9	SME 2	Agreement of loan cum hypothecation executed by M/S	17.12.2005	1,40,00,000.00

		Kay Em Enterprises Through Its Proprietor Sh. AkashGoyal		
10	SME 3	Guarantee Agreement executed by Sh. AkashGoyal , ShPrashantGoyal and Sh. ShyamBihariGoyal	17.12.2005	1,40,00,000.00
11	SME 12	Link Letter executed by M/S Kay Em Enterprises through its proprietor Sh. AkashGoyal and Guarantors- Sh. AkashGoyal and ShyamBihariGoyal.	17.12.2005	1,40,00,000.00
12	Form B	Letter of confirmation for extension of mortgage by deposit of title deeds covering enhanced limits and /or creation of equitable mortgage on additional properties for securing the existing limitsand/or enhanced limits and additional facilities executed by Sh. AkashGoyal	18.12.2005	1,40,00,000.00
13	SME 1	Letter of arrangement executed by M/S Kay Em Enterprises through its proprietor Sh. AkashGoyal and Guarantors- Sh. AkashGoyal , Sh. PrashantGoyal and ShyamBihariGoyal.	26.072007	21000000.00
14	SME 2	Agreement of loan cum hypothecation executed by M/S Kay Em Enterprises Through Its Proprietor Sh. AkashGoyal	26.072007	21000000.00
15	SME 3	Guarantee Agreement executed by Sh. AkashGoyal , ShPrashantGoyal and Sh. ShyamBihariGoyal	26.072007	21000000.00
16	FORM A	Letter of confirmation for creation of mortgage by deposit of title deeds executed by Sh. AkashGoyal .	27.07.2007	21000000.00
17	ANNEXURE BG-2A	Omnibus Counter Guarantee executed by M/S Kay Em Enterprises Through Its Proprietor Sh. AkashGoyal	26.07.2007	1500000.00
18	SME 12	Link Letter executed by M/S Kay Em Enterprises through its proprietor Sh. AkashGoyal and Guarantors- Sh. AkashGoyal ,Sh. PrashantGoyal and ShyamBihariGoyal.	26.07.2007	21000000.00
19	SME 1	Letter of arrangement executed	26.07.2007	20000000.00

		by M/S Kay Em Enterprises through its proprietor Sh. AkashGoyal and Guarantors- Sh. AkashGoyal , Sh. PrashantGoyal and ShyamBihariGoyal.		
20	SME 2	Agreement of loan cum hypothecation executed by M/S Kay Em Enterprises Through Its Proprietor Sh. AkashGoyal	10.02.2010	20000000.00
21	SME 3	Guarantee Agreement executed by Sh. AkashGoyal , ShPrashantGoyal and Sh. ShyamBihariGoyal	10.02.2010	20000000.00
22	SME 1	Letter of arrangement executed by M/S Kay Em Enterprises through its proprietor Sh. AkashGoyal and Guarantors- Sh. AkashGoyal , Sh. PrashantGoyal and ShyamBihariGoyal.	28.02.2011	38000000.00
23	SME 2	Agreement of loan cum hypothecation executed by M/S Kay Em Enterprises Through Its Proprietor Sh. AkashGoyal	28.02.2011	38000000.00
24	SME 3	Guarantee Agreement executed by Sh. AkashGoyal , ShPrashantGoyal and Sh. ShyamBihariGoyal	28.02.2011	38000000.00
25	SME 12	Link Letter executed by M/S Kay Em Enterprises through its proprietor Sh. AkashGoyal and Guarantors- Sh. AkashGoyal ,Sh. PrashantGoyal and ShyamBihariGoyal.	28.02.2011	38000000.00
26	SME 8	Letter of confirmation for extension of mortgage by deposit of title deeds covering enhanced limits and /or creation of equitable mortgage on additional properties for securing the existing limitsand/or enhanced limits and additional facilities executed by Sh. AkashGoyal	01.03.2011	38000000.00
27	SME 8	Letter of confirmation for extension of mortgage by deposit of title deeds covering enhanced limits and /or creation of equitable mortgage on additional properties for	01.03.2011	38000000.00

		securing the existing limits and/or enhanced limits and additional facilities executed by Sh. AkashGoyal		
28	SME 1	Letter of arrangement executed by M/S Kay Em Copper Pvt Ltd. through its Director Sh. AkashGoyal and Guarantors- Sh. AkashGoyal , Sh. PrashantGoyal and ShyamBihariGoyal.	23.02.2012	100000000.00
29	SME 2	Agreement of loan cum hypothecation executed by M/S Kay Em Copper Pvt Ltd Through Its Director Sh. AkashGoyal	29.02.2012	100000000.00
30	SME 3	Guarantee Agreement executed by Sh. ShyamBihariGoyal	29.02.2012	100000000.00
31	SME 3	Guarantee Agreement executed by Sh. AkashGoyal ,ShPrashantGoyal .	29.02.2012	100000000.00
32	Annexure 7	Omnibus Counter Guarantee executed by M/S Kay Em Copper Pvt Ltd Through Its Director Sh. AkashGoyal	29.02.2012	20000000.00
33	Annexure 8	General indemnity agreement executed by M/S Kay Em Copper Pvt Ltd through its director Sh. AkashGoyal	29.02.2012	60000000.00
34	SME 12	Link Letter executed by M/S Kay Em Copper Pvt LTD. through its Director Sh. AkashGoyal.	29.02.2012	--
35	SME 6	Letter of confirmation for creation of mortgage by deposit of title deeds executed by Sh. AkashGoyal .	29.02.2012	100000000.00
36	SME 6	Letter of confirmation for creation of mortgage by deposit of title deeds executed by Sh. AkashGoyal .	29.02.2012	100000000.00
37	SME 1	Letter of arrangement executed by M/S Kay Em Copper Pvt Ltd. through its Director Sh. AkashGoyal and Guarantors- Sh. AkashGoyal , Sh. PrashantGoyal and ShyamBihariGoyal.	11.04.2013	146000000.00
38	SME 4	Supplement Agreement of loan cum hypothecation executed by M/S Kay Em Copper Pvt Ltd	11.04.2013	146000000.00

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		Through Its Director Sh. AkashGoyal		
39	SME 3	Guarantee Agreement executed by Sh. AkashGoyal , ShPrashantGoyal and Sh. ShyamBihariGoyal	11.04.2013	146000000.00
40	Annexure 7	Omnibus Counter Guarantee executed by M/S Kay Em Copper Pvt Ltd Through Its Director Sh. AkashGoyal	11.04.2013	30000000.00
41	Annexure 8	General indemnity agreement executed by M/S Kay Em Copper Pvt Ltd through its director Sh. AkashGoyal	11.04.2013	110000000.00
42	SME 8	Letter of confirmation for extension of mortgage by deposit of title deeds covering enhanced limits and /or creation of equitable mortgage on additional properties for securing the existing limits and/or enhanced limits and additional facilities executed by M/S Kay Em Copper Pvt Ltd through its director Sh. AkashGoyal	12.04.2013	146000000.00
43	SME 8	Letter of confirmation for extension of mortgage by deposit of title deeds covering enhanced limits and /or creation of equitable mortgage on additional properties for securing the existing limits and/or enhanced limits and additional facilities executed by M/S Kay Em Copper Pvt Ltd through its director Sh. AkashGoyal	12.04.2013	146000000.00
44	---	Balance Confirmation as on 31.03.2013 executed by M/S Kay Em Copper Pvt Ltd through its director Sh. AkashGoyal	15.04.2013	--
45	--	Balance Confirmation as on 31.03.2014 executed by M/S Kay Em Copper Pvt Ltd through its director Sh. AkashGoyal	23.06.2014	--
46	SME 11	Revival letter executed by M/S Kay Em Copper Pvt Ltd through its Director Sh. AkashGoyal and Guarantors- Sh. AkashGoyal ,Sh. PrashantGoyal and	19.02.2015	--

		ShyamBihariGoyal.		
47	--	Balance Confirmation as on 31.03.2014 executed by M/S Kay Em Copper Pvt Ltd through its director Sh. AkashGoyal	20.05.2015	--
48	--	Sanction letter executed by M/S Kay Em Copper Pvt Ltd. through its Director Sh. AkashGoyal and Guarantors- Sh. AkashGoyal ,Smt. MeeraGoyal, Sh. PrashantGoyal and ShyamBihariGoyal.	09.03.2016	182800000.00
49	SME 1	Letter of arrangement executed by M/S Kay Em Copper Pvt Ltd. through its Director Sh. AkashGoyal and Guarantors- Sh. AkashGoyal ,Smt. MeeraGoyal, Sh. PrashantGoyal and ShyamBihariGoyal.	04.04.2016	182800000.00
50	SME 2	Agreement of loan cum hypothecation executed by M/S Kay Em Copper Pvt Ltd Through Its Director Sh. AkashGoyal	04.04.2016	182800000.00
51	SME 3	Guarantee Agreement executed by Sh. AkashGoyal , ShPrashantGoyal , Smt. MeeraGoyal and Sh. ShyamBihariGoyal	04.04.2016	182800000.00
52	Annexure 7	Omnibus Counter Guarantee executed by M/S Kay Em Copper Pvt Ltd Through Its Director Sh. AkashGoyal	04.04.2016	20000000.00
53	Annexure 8	General indemnity agreement executed by M/S Kay Em Copper Pvt Ltd through its director Sh. AkashGoyal	04.04.2016	115000000.00
54	ISDA	ISDA 2002 Master agreement executed by M/S Kay Em Copper Pvt Ltd Through Its Director Sh. AkashGoyal	04.04.2016	--
55	SME 8	Letter of confirmation for extension of mortgage by deposit of title deeds covering enhanced limits and /or creation of equitable mortgage on additional properties for securing the existing limits and/or enhanced limits and additional facilities executed by M/S Kay Em Copper Pvt Ltd through its director Sh.	05.04.2016	182800000.00

		AkashGoyal		
56	SME 8	Letter of confirmation for extension of mortgage by deposit of title deeds covering enhanced limits and /or creation of equitable mortgage on additional properties for securing the existing limits and/or enhanced limits and additional facilities executed by M/S Kay Em Copper Pvt Ltd through its director Sh. AkashGoyal	05.04.2016	182800000.00
57	--	Indemnity bond executed by M/S Kay Em Copper Pvt Ltd through its director Sh. AkashGoyal	04.04.2016	182800000.00
58	SME 1	Letter of arrangement executed by M/S Kay Em Copper Pvt Ltd. through its Director Sh. AkashGoyal and Guarantors- Sh. AkashGoyal ,Smt. MeeraGoyal, Sh. PrashantGoyal and ShyamBihariGoyal.	07.01.2017	199000000.00
59	--	Balance Confirmation as on 31.03.2017 executed by M/S Kay Em Copper Pvt Ltd through its director Sh. AkashGoyal	01.04.2017	-
60	SME 1	Letter of arrangement executed by M/S Kay Em Copper Pvt Ltd. through its Director Sh. AkashGoyal and Guarantors- Sh. AkashGoyal ,Smt. MeeraGoyal, Sh. PrashantGoyal and ShyamBihariGoyal.	30.05.2017	199000000.00
61	SME 4	Supplement Agreement of loan cum hypothecation executed by M/S Kay Em Copper Pvt Ltd Through Its Director Sh. AkashGoyal	02.06.2017	199000000.00
62	SME 3	Guarantee Agreement executed by Sh. AkashGoyal , ShPrashantGoyal , Smt. MeeraGoyal and Sh. ShyamBihariGoyal	02.06.2017	199000000.00
63	Annexure 7	Omnibus Counter Guarantee executed by M/S Kay Em Copper Pvt Ltd Through Its Director Sh. AkashGoyal	02.06.2017	10000000.00
64	Annexure 8	General indemnity agreement executed by M/S Kay Em	02.06.2017	120000000.00

		Copper Pvt Ltd through its director Sh. AkashGoyal		
65	ISDA	ISDA 2002 Master agreement executed by M/S Kay Em Copper Pvt Ltd Through Its Director Sh. AkashGoyal	02.06.2017	--
66	--	Indemnity bond executed by -- SmtMeeraGoyal	02.06.2017	----
67	--	Indemnity bond executed by Sh. AkashGoyal	02.06.2017	--
68	--	Indemnity bond executed by M/S Kay Em Copper Pvt Ltd through its director Sh. AkashGoyal	02.06.2017	--
69	SME 8	Letter of confirmation for extension of mortgage by deposit of title deeds covering enhanced limits and /or creation of equitable mortgage on additional properties for securing the existing limits and/or enhanced limits and additional facilities executed by M/S Kay Em Copper Pvt Ltd through its director Sh. AkashGoyal	02.06.2017	199000000.00
70	SME 8	Letter of confirmation for extension of mortgage by deposit of title deeds covering enhanced limits and /or creation of equitable mortgage on additional properties for securing the existing limits and/or enhanced limits and additional facilities executed by M/S Kay Em Copper Pvt Ltd through its director Sh. AkashGoyal	03.06.2017	199000000.00
71	SME 6	Letter of confirmation for creation of mortgage by deposit of title deeds executed by SmtMeeraGoyal .	03.06.2017	199000000.00
72	SME 11	Revival letter executed by M/S Kay Em Copper Pvt Ltd through its Director Sh. AkashGoyal and Guarantors- Sh. AkashGoyal ,Smt. MeeraGoyal,Sh. PrashantGoyal and ShyamBihariGoyal.	20.11.2018	---

- The Corporate Debtor has executed loan agreement along with other documents. In order to avail the aforesaid loans, the Respondent stood as one of the personal guarantors, vide Deed of Guarantee dated 04.04.2016 and 02.06.2017, for assuring the repayment of financial facilities provided to the Corporate Debtor.
- The Corporate Debtor started making defaults in the repayments of the dues and accordingly, the loan account of the Corporate Debtor was classified as Non-Performing Asset on 12.02.2019.
- That, after the default by the Corporate Debtor and its Guarantor, a notice under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Hereinafter referred to as SARFAESI ACT, 2002) was issued by the Financial Creditor to the Corporate Debtor and the Guarantor on 15.02.2019 demanding repayment of the dues under the financial assistance within 60 days. Subsequently, on account of continuous default and non repayment of dues the Applicant Bank filed an Original

Application bearing OA no 740/2019 before the Hon'ble Debt Recovery Tribunal – II Delhi.

- That, in the meantime, in the matter of TATA Capital Financial Services v. Kay Em Copper Pvt. Ltd. (CP(IB) 2027/ND/2019) this Hon'ble Tribunal admitted the Section 7 petition and initiated Corporate Insolvency Resolution Process of the Corporate Debtor vide order dated 19.04.2021
- That, Demand Notice in terms of Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution process of Personal Guarantor to Corporate Debtor) Rules, 2019 was sent to the Respondent/ Personal Guarantor on 20.07.2021 but the Respondent failed to pay the dues within the statutory period of 14 days from the service of the said notice.
- That, Part III of Form C states that as on 27.05.2022, the total debt payable by the Personal Guarantor is Rs 27,30,07,320 (Rupees Twenty-Seven Crores Thirty Lakhs Seven Thousand Three Hundred and Twenty).
- That based on the aforesaid facts the applicant prayed for the following relief(s)

- (a) To pass an Order under section 97 of the IBC, 2016 to appoint the Resolution Professional as recommended and direct him to submit report under section 99 of the Code within a period of 10 days of his appointment to the Adjudicating Authority
- (b) Admit the present application for initiation of Insolvency Resolution Process of the Respondent/ Personal Guarantor.
- (c) Pass such orders as necessary in the interest of justice

3. This Tribunal has heard the arguments advanced by the Ld. Counsel for the Applicant and perused the averments made in the application as well as the documents enclosed with the application.

4. The present application is complete in all respect, the Demand Notice has been duly served on the Respondent's last known address.

5. Based on the documents produced and placed on record before this Tribunal and on the submissions made by the Applicant, we are satisfied that there is a 'default' on the part of the Personal Guarantor by not fulfilling the debt owed to the

Corporate Debtor, M/s Kay Em Copper Pvt. Ltd. Therefore, this Tribunal **“allows”** the prayer (a) of the application made by the Applicant. 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. The Applicant in Part IV of the application has proposed the name of Mr. Madan Mohan Dhupar, Insolvency Professional having Regd. No- IBBI/IPA-002/IP-N00860/2019-2020/12768. The proposed RP has valid Authorization for Assignment (AFA) dated 29.10.2021 which is valid till 28.10.2022 Therefore, we hereby confirm the appointment of Mr. Madan Mohan Dhupar, Insolvency Professional having Regd. No- - IBBI/IPA-002/IP-N00860/2019-2020/12768 in the present matter. He is directed to submit the report in terms of section 99 of IBC read with other relevant rules and regulations.

6. The Petitioner has filed proof of service and proof of delivery of the copy of the petition to the Guarantor/Respondent, therefore the Personal Guarantor has the notice and knowledge of the matter. However, the Resolution Professional will also provide reasonable opportunity to the Guarantor to represent his case and thereafter prepare and submit his report.

CP (IB)-473/ND/2022

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7. It is made known to everyone that on the date of filing this Application by the Applicant/ Creditor i.e. 31.05.2022, the interim moratorium has commenced, 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 were 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.

8. 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.

9. 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

10. List the matter for further proceedings in the case on 13.09.2022.

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