

**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI**  
**PRINCIPAL BENCH**

**ITEM No. 117**  
**(IB)-1091(PB)/2020**

**IN THE MATTER OF:**

CFM Asset Reconstruction Pvt Ltd.	...	Applicant/Petitioner
Vs		
Mrs. Ragini Jain M/s. Noida Software Technology Park Ltd.	...	Respondent

**Order under Section 95 of Insolvency & Bankruptcy Code, 2016.**

**Order delivered on 04.01.2021.**

**CORAM:**

**SH. B.S.V. PRAKASH KUMAR**  
**HON'BLE ACTG. PRESIDENT**

**SH. HEMANT KUMAR SARANGI**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant : Ms Ruchi Kohli, Ms Nidhi Jaswal, Mr Akhil Hasija; Advs  
For the Respondent: Mr. Aditya Dewan, Mr. Siddharth Chechani Advs.

**ORDER**

It is an application filed u/s 95 of IBC by a Creditor namely CFM Asset Reconstruction Private Limited through a Resolution Professional namely Mrs. Jayanti Jain for initiation of insolvency resolution process stating that already CIRP has been initiated against the Principal Borrower/Corporate Debtor namely Noida Software Technology Park Limited on 02.08.2019, following which, the liquidation of the Principal Borrower/Corporate Debtor being ordered, now the principal borrower is under liquidation process.

At this juncture, the Creditor CFM Asset Reconstruction Private Limited filed this application with details and documents relating to debts owed by the Principal Borrower to the Creditor for initiation of insolvency resolution process and also the guarantees



and details thereof reflecting this Guarantor failing to perform the promise of guarantee vouched to the creditor, and details of failure of the Debtor/Guarantor to make good the guarantee given by him within a period of 14 days of the service of notice of demand.

The Applicant/creditor has filed Guarantee deed executed by the guarantor (page 259), notice issued by the creditor to the guarantor (page 400), Notice dated 15.07.2020 issued under section 95 of the Code (page 29) and entry in Information Utility (page 236).

It has also been stated that this Creditor has served a copy of this application upon the Debtor through email dated 23.12.2020 and the hard copy vide mail dated 29.12.2020.

In pursuance thereof, one counsel namely Mr. Siddharth Chechani appeared on behalf of the Guarantor requesting time to file reply. But record is showing that this Respondent/debtor was served upon long before, and the Guarantor being aware of this matter coming up for hearing today, it is to be construed opportunity has already been provided to this Respondent to make submissions if any. Since the Respondent having failed to put forward her case before this Bench, we are constrained to proceed with passing orders under section 95. Once application filed is in compliance of sub-section of Section 95, this Bench ought to pass orders u/s 97 so that the RP will file his report within 10 days of his appointment to this Adjudicating Authority recommending for approval or rejection of the application.

It is evident on record that the Principal Borrower obtained a loan of ₹25Crore from one Nationalized Bank namely Indian Bank, whereupon the Principal Borrower having failed to repay the same,



this account was declared as NPA. In the meanwhile, this debt has been assigned to the present Applicant which has initiated proceedings against Principal Borrower/Corporate Debtor, based on which, the Company Petition was admitted. Subsequently, liquidation order was passed against the Corporate Debtor and liquidation process is in progress against the Corporate Debtor. Since this Debtor/Guarantor executed Personal Guarantee dated 04.03.2013 stating that she would pay the loan to the Creditor in the event the Principal Borrower failed to repay the loan as per the terms and conditions of the loan documents. In pursuance thereof, this Creditor issued notice on 15.07.2020, calling upon this Guarantor to pay the outstanding dues the Principal Borrower failed to repay stating that if the Guarantor failed to pay the same within 14 days of the service of notice of demand, this Creditor would proceed against this Guarantor u/s 95 of the Code. For there being no reply from this Guarantor to the notice issued as stated in Section 95(4)(b) of the Code, this Applicant filed this application on 21.10.2020 by serving notice upon the Guarantor.

Since, this application has been filed u/s 95, as per Section 96 interim moratorium automatically commences from the date of filing application u/s 95 of the Code, if this application is allowed, interim period will commence with effect from the date of filing this application, and in view of the commencement of interim period, any legal action or proceedings or any debt shall be deemed to have been stayed, therefore the Debtor and the Creditor shall not initiate any legal action in respect of any debt against the Guarantor.

For this application is in compliance with Section 95 of the Code, this Adjudicating Authority hereby appoints Resolution



Professional filed this application on the Creditor behalf, for this Bench has verified and noticed that this RP is continuing on the rolls of IBBI as on date with a direction that RP shall submit report within 10 days of his appointment as stated u/s 99 of the Code.

Accordingly, this (IB)-1091(PB) /2020 is hereby **allowed**.

Sd-

**(B.S.V PRAKASH KUMAR)**  
**ACTG. PRESIDENT**

Sd-

**(HEMANT KUMAR SARANGI)**  
**MEMBER (TECHNICAL)**

04.01.2021.  
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