

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

Report filed U/S- 99 of IBC through IA-
4917/ (ND) 2020.

IN
CP (IB)-991/ (ND) 2020.

In the matter of Gaurav Jain

Union Bank of India (UK) Limited

.....Creditor

Versus

Gaurav Jain

...Personal Guarantor

In the matter of IA-4917/ (ND) 2020

Mr. Rakesh Prasad Khandelwal

....Applicant/Insolvency professional

Versus

Gaurav Jain

...Personal Guarantor

Order delivered on 27th of January 2021

Coram:

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

For Applicant: Mr. Rakesh Prasad Khandelwal (RP),
Mr. Abhishek Naik (Advocate)

For PG/Debtor: Mr. Arun Saxena, Mr. Shivam Mishra (Advocates)

ORDER

(Through Video Conferencing)

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

1. It is recalled that on presentation of the application by the Creditor viz., *Union Bank of India (UK) Limited* (hereinafter referred as "Creditor"), against the Personal Guarantor viz., *Mr. Gaurav Jain* (hereinafter referred as "Personal Guarantor"), the Resolution Professional viz., *Mr. Rakesh Prasad Khandelwal* (hereinafter referred as "Applicant") was appointed and directed to file report under Section 99 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC, 2016") which has been filed through IA- 4917/(ND) 2020 filed in CP (IB)-991/(ND)2020 by the Resolution Professional recommending the admission of the application filed under section 95 (1) of IBC, 2016.
2. It is noted that the Applicant had sent an E-mail dated 22.10.2020 to the Personal Guarantor requesting to submit the proof of repayment of debt if any made to the Creditor in response to the demand notice dated 31.03.2020 and a reply dated 26.10.2020 the Personal Guarantor stated that no repayment was made by him to the Creditor against the debt. The grounds for admission of the application provided in the Report are as follows: -

The application filed by the Creditor satisfies the requirement as set out in Section 95 of IBC, 2016.

The Corporate Debtor viz., DCP India Pvt Ltd has committed default in repayment of loan facility granted by the Creditor.

That the Personal Guarantor to the Corporate Debtor has also committed default in repayment of loan Facility demanded by the Creditor after invocation of Personal Guarantee.

That Personal Guarantor has acknowledged default in repayment of loan facility during his meeting with the Applicant held on 24.10.2020 by confirming the letter dated 10.04.2019 sent by him to the Creditor and letter dated 25.11.2019 sent to the legal counsel of Creditor in reply to the notice dated 23.10.2019.

That vide email dated 26.10.2020 the Personal Guarantor has confirmed the receipt of demand notice dated 31.03.2020 sent by the Creditor.

That the application submitted by the Creditor under Section 95(1) of IBC, 2016 R/w 7 (2) of the Rules, is properly filed in the prescribed Form –C along with prescribed fee.

The Creditor has given proper demand notice along with relevant evidence of default by the Corporate Debtor, for non-payment of debt within a period of 14 days of service of notice.

Objections/Reply by the Personal Guarantor

3. The Personal Guarantor has filed reply to the application and the preliminary objections/submissions are that the application is not complete in all aspects including technicalities and cannot be accepted in the present form. As per the personal guarantor following discrepancies/glitches have been highlighted:
 - i. The Application has been signed by Mr. Biswajit Haldar on behalf of the Creditor but the authorisation Letter dated 09.04.2020 is not signed by the Authority Holder i.e., Mr. Biswajit Haldar, also the address of authority holder is not mentioned in the said letter.
 - ii. Any Board Resolution authorising Mr. R. Viswesvaran to issue Authority letter is not placed on file.
 - iii. The application of the Applicant is not supported by the Articles of Association under which power to authorise is mentioned.
4. It is submitted by the Ld. Counsel for the Personal Guarantor that the Applicant has concealed a very crucial fact that the Personal Guarantor has given two settlement proposals to the Applicant on 18.03.2019 and 27.12.2019 respectively, which were rejected by the Applicant.
5. It is stated in the Report that during March 2018 the first instalment of repayment by the Corporate Debtor became due as per the agreed schedule, however, the Applicant did not receive the initial instalment nor any of the subsequent instalments. On account of default in payment of interest and the principal amount the Applicant on 10.04.2018 appropriated the entire FDR of Rs. 6, 83, 30,000/- along with the interest accrued thereon which was deposited

as collateral security, however, a substantial part of the Loan is still outstanding. The Applicant provided several opportunities to the Corporate Debtor for giving proposal for structuring repayment and making due payments.

6. As to the objections of the personal guarantor, it has been noted during the course of arguments that the petition has been filed by the same person who had advanced the Loan Facility, being signatory on behalf of the Applicant/Creditor, to the CD and with the same signatory the personal guarantor entered in to the contract of guarantee. Therefore, the doctrine of estoppels applies and the personal guarantor cannot be allowed to question the authority of the signatory, who has signed the application. However, the counsel for the personal guarantor has fairly admitted that the Authorised signatory of the Creditor, who had advanced the loan to CD is legally entitled to recover the loan in accordance with law. With regard to other technical objections, the counsel for the personal guarantor did not bring anything to our notice, which could be the basis for rejection of the application and the personal guarantor did not dispute his liability being guarantor on behalf of the CD. Therefore, the insignificant objections raised by the personal guarantor stand rejected.
7. The report file under Sec.99 by the insolvency professional is accepted which provides that the application is compliant with the provisions of Section 95 of IBC, 2016. The reasons recorded in the report of the Resolution Professional, as mentioned above, persuade this Authority to admitted the application filed under Sec.95 of the IBC,2016. Therefore, in exercise of the powers conferred under Section 100 of the IBC, 2016, this Authority admits the application, the Insolvency Resolution Process is initiated [in CP (IB)-991/ (ND)2020] against the Personal Guarantor and the moratorium is declared as provided under Sec 101 of IBC, 2016. During the moratorium period;
 - a) Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and

- b) The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and
- c) The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;
- d) The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
8. The Resolution Professional viz., Mr. Rakesh Prasad Khandelwal, who has been appointed vide Order dated 14.10.2020 under Section 97 of IBC, 2016, is directed to cause a public notice on behalf of the Adjudicating Authority within 7 days of uploading of this Order on the website of the NCLT Delhi. Invite claims from all Creditors, who shall register their claims as provided under Section 103 of IBC, 2016 within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102 (2) of IBC, 2016. The publication of notice shall be made in newspapers, one in English and other in Vernacular language, which has wide circulation in the State where the Debtor resides. The copy of the notice shall be affixed in the premises of this Authority and the Registry shall place a copy of the same on the website of this Authority.
9. The Resolution Professional in exercise of the powers conferred under section 104 shall prepare a list of creditors within 30 days from the date of the notice. The debtor shall prepare a repayment plan in consultation with the Resolution Professional as provided under Section 105, which shall include the provisions for payment of fee to the Professional. The Resolution Professional shall submit the repayment plan with his report within a period of 21 days from the last date of submission of claims as provided under Section 106. The Resolution Professional will convene a meeting of the Creditors, if he is of the opinion that the meeting of the creditors should be summoned. The date of meeting should not be less than 14 days or more than 28 days from the date of submission of the Report under Sub-section (1) of Section 106, for which at least 14 days'

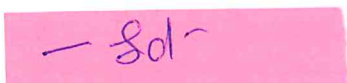
notice to the creditors [as per the list prepared] shall be issued by all modes fulfilling the requirements as per the provisions of section 107.

10. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of the IBC, 2016. The Resolution Professional shall prepare a report for repayment of plan as provided under Section 112 of the IBC, 2016 and submit the same to this Authority by providing a copy to the debtor and the Creditors. It is made clear that the Resolution Professional shall perform his function and duties in compliance with the code provided under section 208 of the IBC, 2016.

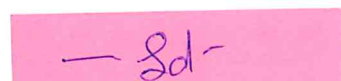
11. In terms of the above, the Insolvency Resolution Process stands initiated against the Debtor/Personal Guarantor.

12. Accordingly, the petition and the IA are **allowed**.

13. The Order is pronounced through video conferencing.



NARENDRA KUMAR BHOLA
Member (Technical)



CH. MOHD SHARIEF TARIQ
Member (Judicial)