

THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT- III

Filed under Section 94 of the Insolvency & Bankruptcy Code, 2016.

IA-559/ND/2024

In

IB-182/ND/2022

SHIV KUMAR BAGOLIA

Resident of House No. 1155,
Sector – 33(C)
Chandigarh - 160036

.....Personal Guarantor

Delivered on: - 05.03.2024

Coram:

Shri Bachu Venkat Balaram Das
Hon'ble Member (Judicial)

Shri Atul Chaturvedi
Hon'ble Member (Technical)

Appearances:

For Applicant : Mr. Avtaar Singh, Advocate

For Respondent : Mr. S. S. Lingwal, Advocate

ORDER

Per: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The Present Application is filed under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC, 2016") r/w Rule 6 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for IRP for Personal Guarantors to Corporate Debtor) Rules, 2019, seeking to initiate the Insolvency Resolution Process (hereinafter referred as "IR Process") against the Applicant/Debtor who is the Personal Guarantor.

2. Facts of the Case are as follows: -

i. M/s. Sandwoods Infratech Projects Private Limited was incorporated on 29.09.2003 having CIN No. U45201DL2003PTC122426 with the Registrar of Companies, Delhi. The Personal Guarantor, Sh. S.K. Bagolia has been the Director of the Company since 29.09.2003.

ii. Punjab National Bank ("PNB") vide sanction letter dated 18.01.2016 sanctioned a term loan of Rs. 20 Crores to M/s. Sandwoods Infratech Private Limited ("Corporate Debtor") for completion of housing project Opulencia at Mohali which was secured by way of 1st Pari-passu charge with State Bank of India ("SBI") by way of creation of EM of IP situated at Sector 110 Mohali measuring 6.45 acres and Personal Guarantee of Managing Directors Sh. S.K. Bagolia and Smt. Uma Bagolia along with Corporate Guarantee of M/s. Revolution Infocom Private Limited. The last date for repayment of the aforesaid loan was in the month of March

2019. The Company, Sandwoods Infotech Projects Private Limited failed to meet their commitments of repayment of their loan.

iii. Further, State Bank of India ("SBI") vide sanction letter dated 21.05.2016 sanctioned a term loan of Rs. 15 Crores to M/s Sandwoods Infotech Private Limited ("Corporate Debtor ") which was secured by way of pari passu charge over the project land by way of EM and Personal Guarantee of Managing Directors Sh. S.K. Bagolia and Smt. Uma Bagolia along with Corporate Guarantee of M/s. Revolution Infocom Private Limited. The last quarterly installment for the said loan was due in the month of March, 2020. The Company, Sandwoods Infotech Projects Private Limited failed to repay the loan.

iv. Subsequently, the Operational Creditor of the Company, Balaji Durobuild Private Limited filed an Application under Section 9 of IBC before this Adjudicating Authority, bearing Company Petition (IB) No. 292/2021, titled as "Balaji Durobuild Private Limited vs. Sandwoods Infotech Projects Private Limited seeking to initiate Corporate Insolvency Resolution Process ("CIRP") of the Company. Henceforth, the CIRP of the Company was initiated on 25.10.2021. Further, PNB and SBI submitted their claim in Form C (Submission of claim by Financial Creditors), which was duly accepted by the Resolution Professional of the Corporate Debtor.

v. PNB vide its letter dated 18.01.2022 invoked the guarantee given by the Personal Guarantor to pay the amount due with respect to Term Loan I & II and GECL for amount of Rs. 25,76,81,105/- PNB is the lead bank of the consortium. The other Bank is State Bank of India. The Personal Guarantor is unable to pay the abovementioned amount due to paucity of funds as the real estate industry has faced several obstacles over the past few years.

3. This Authority vide order dated 15.12.2023 appointed Mr. Parminder Singh Bhullar, having Registration No. IBBI/IPA-002/IP-N-01127/2021-2022/13700 as the Resolution Professional and directed the RP to file report under Section 99 of Insolvency and Bankruptcy Code, 2016, which has been filed by him through an Affidavit dated 12.01.2024 recommending the admission of the application filed under section 94 of IBC, 2016. The grounds for admission of the application recorded in the Report are as follows: -

a. Punjab National Bank vide its letter dated 18.01.2022 invoked the guarantee given by the Personal Guarantor to pay the amount due with respect to Term Loan I & II and GECL for amount of Rs. 25,76,81,105/- PNB is the lead bank of the consortium to M/s. Sandwoods Infra Tech Projects Private Limited. The other bank is State Bank of India and thus, the personal guarantor has committed default within the meaning of section 3(12) of IBC and the said amount of default is more than Rs. 1000.

b. That on perusing the Application filed under Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 along with documents attached thereto, it is evident that the Personal Guarantor has provided a personal guarantee for the debt of Corporate Debtor, Sandwoods Infratech Projects Private Limited .The guarantee has been invoked and remained unpaid in full and hence the Personal Guarantor has committed a default in terms of section 94(1).

c. That in view of the above-stated facts and circumstances, and on examining the documents available on record and based on the information, the Resolution Professional recommends that the Application filed by the Personal Guarantor bearing CP (IB) No. 182(ND)/2022 satisfies the requirement as stipulated under section 94 of IBC and therefore recommended that the present application may be accepted/ admitted by this Hon'ble Tribunal.

4. It is further stated in the Report that all the documents required to be attached along with Form A under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 have been appended to the Application. The Resolution Professional has relied and attached various documents with its report which are as follows: -

a. Particulars of debt owed by guarantor to associates of the Corporate Debtor copy of ITR's of Assessment Year 2023 – 2024.

b. Bank Statement statements and with all annexures and schedules and other documents owned by the guarantor are placed on record in the report.

5. We have heard the learned Counsel for both the parties and perused the record. We have also gone through the report dated 12.01.2024 filed by the IRP. On a perusal of the report, we find that the Resolution Professional has given reasonable opportunity following the Principle of Natural Justice and has taken into consideration various documents and has come to a conclusion that Insolvency Resolution Process should be initiated against the Personal Guarantor.

6. Therefore, in view of the above averments, we are of the considered opinion that it is a fit case for admission and proceed against the Personal Guarantor/Applicant and initiate Insolvency Resolution Process. Hence, we admit CP (IB) No. 182 of 2022 filed under the provisions of section 94 of IBC, 2016 under Section 100 of the IBC, 2016 by following order: -

I. Initiate Insolvency Resolution Process against the Applicant/Personal Guarantor and moratorium in relation to all the debts is declared, from today i.e. date of admission of the application and shall cease to have effect at the

end of the period of 180 days, or this Tribunal passes order on the repayment plan under Section 114 whichever is earlier as provided under Sec 101 of IBC, 2016. During the moratorium period;

a) Any pending legal action of proceeding in respect of any debt shall be deemed to have been stayed;

b) The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt;

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.

II. The Resolution Professional Mr. Parminder Singh Bhullar, who has been proposed by Financial Creditor was appointed under Section 95 vide Order dated 15.12.2023, is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of uploading of this Order on the website of the NCLT Delhi, inviting claims from all Creditors, who shall register their claims as provided under Section 103 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 which have wide circulation in the State where the Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry. One shall be placed by the Registry on this Authority's website and the other shall be affixed in the premises of this Authority.

III. The Resolution Professional in exercise of the powers conferred under

Section 104 of IBC, 2016, 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 Resolution Professional. The Resolution Professional shall submit the Repayment Plan along with his report on the plan to this Adjudicating Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106 of IBC, 2016.

IV. In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof. If the Resolution Professional is of the opinion that the meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3). 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 of the IBC, 2016, for which at least 14 days' notice to the creditors [as per the list prepared] shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of the IBC, 2016.

V. 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 of the meeting of the creditors on the Repayment Plan with all details as provided under Section 112 of the IBC, 2016 and submit the same to this Adjudicating Authority, copies of which shall be provided to the debtor and the creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of the IBC, 2016.

7. In terms of the above, **CP (IB)-182/ND/2022**, filed under Section 94 of the IBC, 2016 is ***admitted*** and the Insolvency Resolution Process stands initiated against the Personal Guarantor.

SD/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

SD/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**