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

CP (IB)-1111(ND)/2020 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 **Shachi Jain**

M/s. Modern Credit Private Limited

....*Applicant/Financial Creditor*

Versus

Shachi Jain

.... *Personal Guarantor/Debtor*

Order delivered 18th January, 2021

Coram

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

For Applicant: Ms. Amrita Rana, Mr. Sagar Bansal
Mr. Aabhas Singh (Advocates)

ORDER

(Through Video conferencing)

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

1. Under consideration is an Application CP (IB)-1111/2020 filed 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 the personal guarantor viz., *Shachi Jain* (hereinafter referred as "Personal Guarantor/Debtor"), ex-Director in the company viz., *M/s. Cargo Planner Ltd.* (hereinafter referred as "Corporate Debtor").

19/01/2021

2. The factual matrix of the case is that, based on the representations made by the Corporate Debtor through its directors including the Personal Guarantor/Debtor, the Applicant/Creditor had disbursed loan facility for business purpose to the tune of Rs. 1,00,00,000/- (Rupees One Crore Only) to the Corporate Debtor by way of loan agreements dated 21.08.2014 account number LN13/14-15. As per the terms of the agreement, the loan amount was disbursed to the Corporate Debtor for a period 2.5 years (30 months) at an interest rate 24% P.A., on reducing basis and the EMI starting date was 01.10.2014. The details are as follows:

Sl.No.	Loan Account No.	Instalment amount	Interest p.a on reducing basis
1	LN13/14-15	30* Rs. 4,46,524/-	24%

Number of EMI *

3. The Personal Guarantor/Debtor stood as a personal guarantor for the loan facility and further executed a deed of guarantee dated 21.08.2014 alongwith guarantor's form and other relevant documents. On the request of the Corporate Debtor on 06.11.2018, the loan was rescheduled and subsequently an Addendum cum deed of Reschedulement was executed on the same date between the Corporate Debtor, co-borrowers /guarantors/parties to the original loan agreement including the Debtor and the Applicant/Creditor for restructuring the dues. As per clause, 10 of Addendum cum deed of Reschedulement in the event of any default on the part of all the borrowers, co-borrowers and guarantors including the Personal Guarantor/Debtor, the Applicant/Creditor shall have the right to recover the loan amount along with all the other charges as per the loan agreement. The Corporate Debtor issued 24 cheques for 24 EMI's payable on 2 dates every month starting from 12.11.2018 to 25.10.2019 and the cheque dated 27.08.2019 issued by the Corporate Debtor for the purpose of last EMI got dishonoured on 28.10.2019. The Applicant/Creditor had initiated the proceedings under Section 138 of Negotiable Instruments Act, 1881 against the Corporate Debtor because of which a partial payment of Rs.12, 00,000/- in 12 instalments of Rs. 1, 00,000/- was made by the Corporate Debtor.

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4. The Corporate Debtor did not adhere to the payment Schedule and did not make payments as per the agreed repayment schedule therefore, as defined in clause 9 of the Addendum cum deed of Reschedulement, the Applicant/ Creditor had sent a demand notice dated 13.07.2020 demanding the outstanding dues from the Corporate Debtor and the Personal Guarantor/Debtor. Further, the Applicant/Creditor issued demand notice dated 28.08.2020 in prescribed Form B as per the provisions of IBC, 2016 for the pending amount of Rs. 29, 76,373/- (Rupees Twenty Nine Lakhs Seventy Six Thousand Three Hundred and Seventy Three Only). As per the tracking report, the demand notice has been duly delivered to the Corporate Debtor and the Personal guarantor/Debtor.

5. 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 facility alongwith interest to the Applicant/Creditor for which she has given the personal guarantee to the Applicant/Creditor on behalf of the Corporate Debtor.

6. 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.

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7. The Applicant/Creditor has proposed the name of Mr. Piyush Moona Narang, Insolvency Professional for appointment as Resolution Professional, who has given written consent to be appointed and declared that he is eligible to be appointed. It is further stated that no disciplinary proceedings are pending against him. Therefore, **Mr. Piyush Moona** 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. Piyush Moona

Registration No. : IBBI/IPA-001/IP-00990/2017-2018/11630

E-mail: piyushmoona@gmail.com

Mobile Number: 9818175255

8.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 initiate the IR Process and to make the recommendations with the reasons 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, as soon as the same is filed before this Authority.

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

10. List the matter on 29th January 2021 at 10:30 AM.

-Sd-

NARENDRA KUMAR BHOLA
Member (Technical)

-Sd-

CH. MOHD SHARIEF TARIQ
Member (Judicial)

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15.1.2021

Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003

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