

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

Company Petition No. (IB)-872(ND)2020

IN THE MATTER OF :

State Bank of India
Stressed Assets Management Branch
12th Floor, STC Building
Jawahar Vyapar Bhawan
Janpath, New Delhi-110001 ... **Financial Creditor / Applicant**

Versus

Mr. Sunil Sharma
D-23, Bhagwan Dass Nagar
East Punjabi Bagh,
New Delhi-110026 **Personal Guarantor/ Respondent**

Order Delivered on: 06.10.2021

SECTION: 95(1) of IBC 2016

CORAM:

SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Mr. Vipin Datta, Advocate

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

The State Bank of India, Stressed Assets Management Branch **(the ‘Applicant/Financial Creditor’)** has filed this Application under Section 95(1) of IBC, 2016 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for IRP for Personal Guarantors to Corporate Debtor) Rules, 2019) for initiating the Insolvency Resolution Process **(the “IR Process”)** against Mr. Sunil Sharma **(the Personal Guarantor)**, the Ex- Managing Director of M/s. Benlon India Limited **(the ‘Corporate Debtor’)**.

2. It is stated by the Financial Creditor/Applicant that the following Term Loans were sanctioned by the Applicant Bank [erstwhile State Bank of India, Patiala (SBOP)] and pursuant to that the following Guarantee Deeds were executed by the Personal Guarantor to secure the debts of the Corporate Debtor:

Term Loan Number	Date of Sanction	Amount in (Rs.in Cr)	Date of Guarantee Deed
Term Loan-I	18.03.2011	07.00	04.04.2011
Term Loan-II	07.03.2012	21.75	24.03.2012
Term Loan-III	02.04.2013	13.25	04.04.2013
Term Loan-IV	10.03.2014	09.50	12.03.2014
Term Loan-V	19.05.2015	15.00	25.05.2015

3. It is further submitted by the Applicant that the Corporate Debtor had also availed the Working Capital Facilities (WCF) of Rs.375 Crore under Consortium Banking Arrangement. That out of Rs.375 Crore, the Applicant Bank sanctioned vide letters dated 27.06.2015 (of erstwhile SBOP) and 03.08.2016 (of erstwhile SBB) and granted WCF worth

Rs.193.50 Crore. The WCF were secured by the equitable mortgage of the properties of the Corporate Debtor and of the personal guarantor Mr. Balbir Sharma. The Credit facilities were also secured by the personal guarantees of Mr. Sunil Sharma along with other guarantors.

4. That it is added that the Applicant Bank further enhanced the WCF from Rs.193.50 Crore to Rs.213.50 Crore and the Consortium of Banks enhanced such WCF from Rs. 375 Crore to Rs.430 Crore. The Corporate Debtor (Benlon India Ltd.) executed the Balance Confirmation Letter acknowledging its liability in favour of the Applicant Bank.

5. It is stated by the Applicant that since the Corporate Debtor failed to repay the aforesaid loan, the account of the Corporate Debtor was classified as Non-performing Assets (NPA) on 15.12.2018.

6. That the Applicant has also placed on record a copy of the order dated 19.12.2018 whereby, in the meantime, the CIR Process was initiated against the Corporate Debtor, namely M/s. Benlon India Ltd. in IB-1612/ND/2018 in the matter of Gaurav Goel, Proprietor of Riyal Packers (one of the operational creditors) Vs. M/s. Benlon India Ltd.

7. It is further stated by the Applicant that it had invoked the Guarantees against the Personal Guarantors of the Corporate Debtor and by filing 02 Original Applications, namely, OA. No. 999 of 2019 and O.A. No. 1020 of 2019 before the DRT-II Delhi against the Guarantors for recovery of its dues in the Loan account of the Corporate Debtor. The DRT issued notices in both the OAs vide separate orders.

8. It is submitted by the Applicant that it had served the Statutory Demand Notice on the Personal Guarantor Mr. Sunil Sharma and others via Speed Post on 27.01.2020, seeking payment of the outstanding/unpaid debt of Rs.266,74,89,740/-.

9. That it submitted by the Applicant that the Personal Guarantors have failed to pay the debt due even after receipt of the Demand Notice dated 27.01.2020 hence, the Applicant Bank has preferred the present Application under Section 95 of IBC, 2016.

10. That the Applicant Bank vide Additional Affidavit dated 07.04.2021 had averred that the said demand notice was served on the Respondent through speed post no. ED 2445265151N and the same could be seen as proof of service which is duly stamped by the post office, Sansad Marg, New Delhi. Further, it is stated that the notice was sent at the correct address and the same has not been received back by the SBI. Hence, it may be presumed that the notice sent by the Speed Post is duly delivered to the addressee.

11. That during the course of hearing on 26.03.2021 and 11.08.2021, the Applicant Bank was directed to satisfy this Bench regarding service of the Demand Notice to the Respondent. On 03.09.2021, Ld. Counsel for the Applicant stated that she has already filed the Proof of service on 30.08.2021 to show that the demand notice dated 27.01.2020 was duly served upon the Respondent. The Applicant has filed the Delivery Manifest/Receiving Sheet from the record of the post office,

which depicts that the Demand Notice was delivered. The scanned copy of the Delivery Manifest/Receiving Sheet is reproduced below :

Department of Post India

Delivery Manifest of JONY- 110026

Issue Date :- JAN 31, 2020

Name of Postman:- JONY

Shift No :- GEN2

ED984197063IN Inland Speed Post Inland/Inland HO	HOL 325 PUNJABI BAGH S O WEST DELHI 110026 Delhi India SANTIM KETAN	2/26	Person of this address
EX401728745IN Inland Speed Post BNP, Hyderabad	AARTI AGGARWAL Shandara S O Shandara S O Punjab S O WEST DELHI 110026 Delhi India	17/29	JONY
39 ED290480572IN Inland Speed Post Rehrn Sector 14 PO	MS HIMANSHI NEGI B 44TH FLOOR BHAGWAN DASS NAGAR PUNJABI BAGH S O WEST DELHI 110026 Delhi India	B=U	जय 21/9/1
40 ED983583981IN Inland Speed Post Hyderabad HO	LEGENDA 10 PUNJABI BAGH S O WEST DELHI 110026 Delhi India	F=10	H. C.
41 ED244526535IN Inland Speed Post Sansad Marg HO	SUNIL SHARMA PUNJABI BAGH S O WEST DELHI 110026 Delhi India	P=23	7/9
42 ED244526498IN Inland Speed Post Sansad Marg HO	BAI BIR SHARMA PUNJABI BAGH S O WEST DELHI 110026 Delhi India	11	
43 ED244526507IN Inland Speed Post Sansad Marg HO	SUDISH SHARMA PUNJABI BAGH S O WEST DELHI 110026 Delhi India	11	

Postmaster General
21/01/2020
POST Office

12. That it is also seen from the case record that in terms of the provision contained in Section 95(5), the Applicant has also dispatched the copy of the present Application to the Applicant via courier 03.07.2020.

13. It has been stated by the Applicant in its Additional Affidavit as well as during the course of hearing that the Personal Guarantor is having knowledge of the Application filed against it under Section 95. To support its contention, the Applicant has annexed with its additional affidavit, a Copy of the Application filed by Mr. Sunil Sharma, Personal Guarantor before the DRT- II, New Delhi for stay of the proceedings at DRT, in view of the initiation of Interim Moratorium since the date of filing of the Application herein before this Adjudicating Authority under Section 95 of IBC, 2016. The scanned copy of the Application filed by Mr. Sunil Sharma, Personal Guarantor before the DRT-II, New Delhi is reproduced below:

BEFORE THE DEBT RECOVERY TRIBUNAL-II, DELHI, 4TH FLOOR,
JEEVAN TARA BUILDING, P. STREET, NEW DELHI-110001

OA/999/2019

IN THE MATTER OF:-

State Bank of India

...Applicant

Versus

Benlon India Ltd. & Ors.

...Defendants

15-12-2020
N.D.O.H.:07-10-2020

APPLICATION UNDER SECTION 96 (1) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 ON BEHALF OF THE DEFENDANT NO. 3 FOR STAYING THE PROCEEDINGS OF THE PRESENT MATTER IN VIEW OF FILING OF AN APPLICATION UNDER SECTION 95 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 BY THE APPLICANT BANK BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI

MOST RESPECTFULLY SHOWETH:-

1. That the aforesaid matter is pending adjudication before this Hon'ble Tribunal and the same is listed on 07.10.2020 for hearing.
2. That the applicant bank after filing of the present OA before this Hon'ble Tribunal had also filed an application U/S 95 of I & B Code, 2016 for initiation of the insolvency proceedings against the applicant/ respondent no 3 and the same was registered as C.P. (IB)/872/2020 by the registry of Hon'ble NCLT, New Delhi.
3. That as per the provisions of section 96 (1) of the I & B Code, 2016 an interim moratorium shall commence on the date of application in relation to all the debts and shall cease to have effect on the date of admission of such application; and during the interim moratorium period, any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed.



4. That in view of the aforesaid provisions of section 96 (1) of the I & B Code, 2016, the present proceedings cannot be continued. Hence, this application.

PRAYER:-

In view of the aforesaid submissions, it is humbly prayed that this Hon'ble Tribunal may kindly be pleased to stay the present proceedings, in the interest of justice.

Delhi


(Sunil Sharma)

Dated:- 13/10/2020

Applicant/Respondent no. 3

14. After hearing submissions of the Applicant Bank, perusing the documents and Affidavits placed on record, this Bench observes that the Demand Notice as well as copy of the Application has been served to the Personal Guarantor Mr. Sunil Sharma. Further, it has been brought to our notice that the Personal Guarantor has committed, prima facie, default in making repayment of the loan (along with interest), for which he has given the personal guarantee to the Applicant Bank on behalf of the Corporate Debtor.

15. Here, it is worthwhile referring to the Judgment of the Hon'ble NCLAT passed in the matter of **Company Appeal (AT) (Insolvency) No.**

316 of 2021- "Mr. Ravi Ajit Kulkarni vs. State Bank of India :

"42. However, considering the judgment of the Hon'ble Supreme Court in the matter of 'Swiss Ribbons', it appears to us that keeping principles of natural justice in view, limited notice of the application should be given to the Personal Guarantors of the Corporate Debtors. The limited notice has to be only to secure presence of the Personal Guarantor referring to the Interim Moratorium which has commenced. Before appointment of the Resolution Professional no hearing as such is contemplated and

before appointment of the Resolution Professional the Debtor cannot be allowed to raise disputes for which the stage would be Section 100. Under NCLT Rule 11, Adjudicating Authority is duty bound to pass orders to prevent abuse of process. As such, limited notice to appear may be given to the Personal Guarantors so that when Resolution Professional is appointed, he may provide material as per Section 99(2) of IBC. Till the stage of Section 100, the process is of collecting necessary evidence. ...”

The Hon'ble NCLAT, in the aforesaid Judgment, has held that a limited notice needs to be given to secure presence of the Personal Guarantor that the Interim Moratorium has commenced.

16. However, in the present case, we observe that the Personal Guarantor is not only aware of the initiation of interim-moratorium but he has also used the ground of interim moratorium to seek stay on the proceedings before the DRT-II New Delhi. Therefore, we are of the considered view that there is no need of issuing of the limited notice to the Personal Guarantor.

17. In view of the above, **we are inclined to proceed in the matter.** Accordingly, it is made known to everyone that on filing this Application by the Applicant/Financial 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 are 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.

18. The Applicant/Financial Creditor has proposed the name of Mr. Manish Gupta, Insolvency Professional for appointment as Resolution Professional, who has accepted to be appointed and declared that he is eligible to be appointed as there are no disciplinary proceedings pending against him. Therefore, 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, **Mr. Manish Gupta IP, is appointed as the Resolution Professional.** The details of the Resolution Professional are as under:

Name	:	Mr. Manish Gupta
Registration No	:	IBBI/IPA-001/IP-P01452/2019-2019/12280
Present Address	:	331, Block-II, Ganga Shopping Complex, Sector-29, Noida Uttar Pradesh-201301
Permanent Address	:	C-67, Sarita Vihar, New Delhi-110076
E-mail	:	manee Gupta@gmail.com
Mobile Number	:	9818478888

19. The Resolution Professional Mr. Manish Gupta shall exercise all the powers as enumerated under Section 99 of the IBC, 2016 read with

the Rules made there under. **He is directed to initiate the Insolvency Resolution (IR) Process and 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.

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

21. List the matter on 20.10.2021.

**Sd/-
(L. N. Gupta)
Member (T)**

**Sd/-
(Abni Ranjan Kumar Sinha)
Member (J)**