

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH  
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**CP (IB) No. 19/CB/2022**

*Under section 95(1) of the Insolvency and Bankruptcy Code, 2016  
read with rule 7(2) of the Insolvency and Bankruptcy (Application to  
Adjudicating Authority for Insolvency Resolution Process for  
Personal Guarantors to Corporate Debtor) Rules, 2019*

*In the matter of:*

**Siemens Financial Services Pvt. Ltd.**

**...Petitioner/Financial Creditor**

**-Versus-**

**Surendra Sabbineni**

**...Respondent/Personal Guarantor**

**Coram:**

Shri P. Mohan Raj : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

**Appearances (through video conferencing)**

For the Applicant: :

**Order reserved on: 17.03.2022**

**Order pronounced on: 23.03.2022**

**ORDER**

*Per: Satya Ranjan Prasad, Member (Technical)*

1. The Court convened *via* video conference.
2. Under consideration is an Application CP (IB) No.19/CB/2022 filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC, 2016**”) read with rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency

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Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 (hereinafter referred to as “**IB Rules, 2019**”) and regulation 4(2) of IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (hereinafter referred to as “**IB Regulations, 2019**”) for initiating the Insolvency Resolution Process (hereinafter referred to as “**IR Process**”) against personal guarantor, viz., Mr. Surendra Sabbineni, the personal guarantor of the borrower, namely, of Coastal Projects Limited, (hereinafter referred to as “CPL”).

3. So far, as the Personal Guarantor to the Corporate Debtors is concerned, the Apex Court in Lalit Kumar Jain Vs. Union of India & Ors. in Transferred case (Civil) No. 245/2020 has upheld the vires of the notification issued by the Central Government vide S.O.4126 (E) dated 15.11.2019, in so far as it is related to coming into force on Insolvency and Bankruptcy Process of Personal Guarantors to the Corporate Debtor. Thus, when a Corporate Insolvency Resolution Process in relation to Corporate Debtor is pending before this Adjudication Authority, then as per Section 60(2) of IBC, 2016 the NCLT would be the competent forum to file an Application for Personal Guarantor in relation to such Corporate Debtor. The factual matrix of the case is that the Financial Creditor is a non-Banking financial Company. The principal borrower company, i.e., Coastal Project Limited requested the applicant for sanction of credit limits and on being so approached the Financial Creditor. At the request of CPL the Financial Creditor sanctioned a loan facility vide Sanction Letter dated 14.03.2012 to the borrower. Subsequent, to the aforementioned Sanction Letter, Finance Agreement, Deed of Guarantee and Deed of Hypothecation, all dated 21.03.2012, were entered into by the Applicant as lender CPL as borrower, and Mr. Surendra Sabineni as guarantor. Thereafter, a Loan Restructuring Agreement (being a part of Loan cum Hypothecation Agreement dated 21.03.2022) dated 30.05.2014 was also executed between the applicant and the borrower. Along with the

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aforementioned Finance Agreements several other documents (viz. Acceptance Notes, Promissory Notes and Repayment Schedules) were also executed by the borrowers and guarantor (individually/jointly/severally) in favour of the Applicant for availing the said loan facility.

4. Thereafter, the borrower and the guarantor failed to adhere to the financial discipline and failed to repay the said loan amount on its due dated and, therefore, the account was accordingly declared as NPA on 20.05.2014. After that despite follow ups by the applicant for many months, no payment was made by the borrower and/or the guarantor and, therefore, the applicant was constrained to issue Demand Notice under Section 13(2) of SARFESI Act, 2002 on 31.07.2017 thereby calling upon the borrower and guarantor to pay the total outstanding amount of ₹ 22,58,13,790 (Rupees Twenty-Two Crore Fifty-Eight Lakhs Thirteen Thousand Seven Hundred and Ninety Only) due as on 31.12.2017.
5. In the meantime, the applicant has stated that the company petition bearing No. CP (IB) No. 593/KB/2017 filed by the State Bank of India under Section 7 of the Insolvency and Bankruptcy Code, 2016 against Coastal Projects Limited was admitted by the Hon'ble NCLT Kolkata Bench vide order dated 05.01.2018. On 17.01.2018, proof of claim was submitted by SFSPL in Form-C in the CIRP of borrower. Subsequently, vide order dated 06.12.2018 the Hon'ble Kolkata Bench confirmed the appointment of Liquidator and commencement of Liquidation proceeding. Thereafter, the Company Petition was transferred to this Bench and renumbered as TP No. 255/CTB/2019, and it is currently pending in the Liquidation state.
6. Subsequently, for recovery of loan a Demand Notice dated 02.06.2021 under Section 95(4) of the Insolvency and Bankruptcy Code, 2016 read with Rule 7(1) of the Insolvency and Bankruptcy Board of India (Insolvency and Resolution Process for Personal Guarantors to Corporate Debtors) Rules,

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2019 was issued by the applicant to Mr. Surendra Sabbineni to pay the total outstanding amount of ₹ 19,81,61,784/- (Rupees Nineteen Crore Eighty-One Lakh Sixty-One Thousand Seven Hundred and Eighty-Four only. Hence, no reply of payment was received from Mr. Surendra Sabbineni within the 14-day period stipulated in the demand notice.

7. It is alleged that to secure the overall limit sanctioned as enhanced by the Financial Creditor from time to time to the principal borrower company, the guarantor herein has executed the guarantee documents to secure the said limits including the enhancement thereof, as security for due repayment of the loans and advancement guaranteed to the principal borrower company along with the interest costs and expenses. The CPL and the guarantor had allegedly failed and/or neglected to make payment as per terms of the said Facility Agreements. In the aforesaid circumstances the applicant submits that, there is a legitimate recoverable outstanding amount due and payable by the Respondent/guarantor to the applicant a sum of ₹ 19,81,61,784/-
8. In this factual conspectus, the applicant prays for initiation of insolvency resolution process.
9. The applicant has averred in its application coupled with documents that the personal guarantor stands as guarantor to the principal debtor for the loan availed by him, and the applicant failed to make the payment despite receipt of statutory notice.
10. It is made known to everyone that on filing of this Application by the Applicant/Creditor the interim-moratorium commences under section 96(1)(a) of IBC, 2016 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:

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- (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.
11. The Applicant/Creditor has proposed the name of Mr. Umesh Chandra Sahoo for appointment as Resolution Professional. Therefore, as proposed by the Financial Creditor, Mr. Umesh Chandra Sahoo [E-mail: info@nayadarshan.com], having his address at Flat No. 304, Emerald apartment, Laxmisagar, Bhubaneswar- 751006 having Reg. No. IBBI/IPA-002/IP-N00621/2018-19/1185, is hereby appointed as Resolution Professional, in exercise of the powers conferred on this Adjudicating Authority under section 97 of the IBC, 2016 read with 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 resolution professional has filed the required declaration in Part IV of the Petition
12. The Resolution Professional shall exercise all the powers as enumerated under section 99 of the IBC, 2016 w/w the Rules made thereunder. He is directed to make recommendations with 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 of IBC, 2016 to the Applicant/Creditor, as soon as the same is filed before this Adjudicating Authority.

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13. The Applicant/Creditor and its Counsel are hereby directed to serve the copy of this Order along with copy of the Application and documents on the Resolution Professional by all modes for information and compliance.
14. List this matter on 25.04.2022.
15. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
16. Certified Copy of this order be issued, if applied for, upon compliance of all requisite formalities.

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**Satya Ranjan Prasad**  
**Member (Technical)**

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**P. Mohan Raj**  
**Member (Judicial)**

Signed this 23<sup>rd</sup> day of March, 2022

Ravijeet\_P.S.