



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI
IA-3893/2021
IN
CP (IB)-353/ND/2021**

*Under 96, 97, 99 & 100 of IBC, 2016 r/w Rule 6 (1) of the IB
(Application to Adjudicating Authority for IRP for Personal
Guarantors to CD) Rules, 2019.*

In the matter of:

STATE BANK OF INDIA

Stressed Assets Management Branch-1,
New Delhi (Branch Code 04109),
12th Floor, Jawahar Vyapaar Bhawan,
1 Tolstoy Marg, New Delhi-110001

.... Financial Creditor/ Applicant
Vs.

MRS. ASHA MITTAL

Residence at: -

97, Chander Lok Enclave,
Pitampura,
Delhi- 110034.

.... Respondent/Personal Guarantor

And In the matter of IA-3893/2021

SUNIL KUMAR KABRA

..... Resolution Professional

CORAM:

SHRI P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER

(TECHNICAL)

IA-3893/2021

In

CP (IB) No. 353(ND)/2021

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Present:

For the Applicant: Mr. Ankur Mittal, Ms, Aishwarya Pandey,
Ms. Meera Murali, Advocates
For Respondent: Mr. Pallav Saxena, Advocate.

ORDER

Per: SH. RAHUL BHATNAGAR, HON'BLE MEMBER
(TECHNICAL)

Date- 17.08.2022

1. Under consideration is an application filed under section 95 read with section 99 of the Insolvency and Bankruptcy Code, 2016 bearing IA-3893/2021, which is a report filed by the Resolution Professional namely Mr. Sunil Kumar Kabra, who was duly appointed by this Tribunal vide order dated 05.08.2021. The present report has been filed in accordance with Section 99 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as IBC, 2016 / Code). Originally, the Applicant, namely, State Bank of India, had filed a petition under Section 95(1) of the Insolvency and Bankruptcy Code, 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 to as the Rules, 2019), against Mrs. Asha Mittal, who is the personal guarantor in relation to the credit facility availed by M/s. Hi Tech Grain Processing Pvt. Ltd. (hereinafter referred to as

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Corporate Debtor) for an amount of Rs. 209,61,09,614 (Rupees Two Hundred Nine Crores Sixty-One Lakhs Nine Thousand Six Hundred Fourteen) as on 31.08.2020.

2. On presentation of the Petition CP (IB) No. 353/ND)/2021, by the Applicant, this Adjudicating Authority vide order dated 05.08.2021, appointed the Resolution Professional viz., Mr. Sunil Kumar Kabra, as proposed by the Financial Creditor in the Part IV of Form C, having Registration No. IBBI/IPA-001/IP-P01011/2017-18/11662, having Email Id: iirp.hgppl@gmail.com and directed him to examine the application referred in Section 95(1) of IBC, 2016 and file a report under Section 99 of IBC, 2016. The interim moratorium was commenced from the date of filing the application i.e. 01.04.2021, as stipulated under 96(1) of the IBC, 2016. The Report under Section 99 of IBC, 2016 has been filed by him through IA-3893/2021 in CP(IB)353/ND/2021, recommending the **admission of the application** filed under section 95(1) of IBC, 2016 as per Section 99(7) of the Code. In terms of section 99(9), the reasons for admission of the application recorded in the Report are as follows: -

- The Corporate Debtor i.e. M/s Hi Tech Grains Processing Pvt Ltd, for meeting its working capital requirement approached the applicant by SBH Consortium aggregating Rs. 180.00 Crores vide Working Capital Consortium Agreement dated 12.03.2015. Further, the capital facilities were revised



from time to time.

- That, Personal Guarantee agreement dated 06.06.2017 executed by Mr. Naresh Mittal and Mrs. Asha Mittal (The Personal Guarantors), in favour of SBI Consortium, for guaranteeing the principal sum of Rs. 305 Crores together with interest, costs, charges, expenses and/ or other money for the time being due to the SBI Consortium in respect of the credit facilities, against all losses of the said principal and sum, all interest and/or other money due and all costs charges and expenses whatsoever which the SBI Consortium may incur by reason of any default on the part of the borrower in accordance with the terms of Working Capital Consortium Agreement dated 06.06.2017 and Joint Deed of hypothecation dated 06.06.2017 executed by M/s Hi Tech Grain Processing Private Limited (the borrower). The aforesaid Personal Guarantee Deed dated 06.06.2017 was in continuation of the Deed of Personal Guarantee dated 12.03.2015 for Rs.180.00 Crores and Deed of Personal Guarantee dated 25.04.2016 for Rs.235.00 Crores in aggregate furnished by the Guarantors
- Subsequently, Declaration & Undertaking dated 06.06.2017 executed by Mrs. Asha Mittal, in the matter of extension of mortgage by deposit of title deeds of immovable properties of Mrs. Asha Mittal, by constructive delivery as security for the working capital facilities Rs. 305.00 Crore in aggregate granted



to Hi Tech Grain Processing Pvt. Ltd., under consortium arrangement.

- The Corporate Debtor was in continuing default of its repayment obligations. Hence, the account of the borrower was classified as Non-Performing Asset (“NPA”) w.e.f. 31st March 2018.
- In view of default in payment of the credit facilities, the Financial Creditor on 03.09.2018 invoked the personal guarantee and issued a Legal Demand Notice upon the Personal Guarantors.
- The Financial Creditor served a Demand Notice dated 31.08.2020 in ‘Form B’ in compliance with the provisions of Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantee to Corporate Debtor) Rules, 2019, to the Personal Guarantors demanding the payment of outstanding debt in terms of the personal guarantee deed/ agreement within 14 (fourteen) days from the date of this notice. On non-receipt of any response from the Personal Guarantor, the Financial Creditor has filed the present petition under section 95(1) of the Insolvency and Bankruptcy Code, 2016.
- The Resolution Professional had sent letter dated 09.08.2021 to intimate the order passed by the Hon’ble National Company Law Tribunal dated 05.08.2021 for declaration of interim moratorium w.e.f. the date of application i.e., 1st April 2021, to:



- a. Personal Guarantor: Mrs. Asha Mittal
 - b. State Bank of India (Financial Creditor)
 - c. Income Tax Department
 - d. Resolution Professional of Hi-Tech Grain Processing Private Limited, Ms. Chanchal Dua.
- The Resolution Professional vide his letter dated 09.08.2021, asked the personal guarantor for the proof of repayment of outstanding debt claimed as unpaid by the financial creditor, if already paid, but no response was received from the Personal Guarantor.
 - The Resolution Professional has verified that the present application satisfies all the requirement as set out in section 95 of the Insolvency and Bankruptcy Code, 2016.
 - The Resolution Professional scheduled a meeting with Mrs. Asha Mittal to collect the information/ documents. However, Mr. Vipul Mittal (son of Asha Mittal) met with the RP. Mr. Vipul Mittal has informed that Mrs. Asha Mittal is not attending the office and he is taking care all the matters on her behalf. The RP collated some of the documents with respect to the finances of the Personal Guarantor including her Income Tax Returns, list of Immovable Properties etc.
 - Based on the reason stated above, the Resolution Professional is of the view that application should be accepted and proceedings should be initiated with respect to the Individual Insolvency Resolution Process



of Mrs. Asha Mittal (Personal Guarantor to M/s Hi Tech Grain Processing Private Limited) in order to recover the outstanding debt payable as per the Personal Guarantee Agreement/ deed executed dated 06.06.2017 between the SBI Consortium and Personal Guarantors.

- The Personal Guarantor has committed default in repayment of the debts; therefore, the requirement as set out under Section 95(1) is satisfied.
- That the Personal Guarantor is not an undischarged bankrupt and is not undergoing a fresh start process provided under Chapter II of IBC, 2016.

3. The Respondent/Personal Guarantor has not filed its reply to the report filed by the Resolution Professional under section 99 but in its reply to the application filed by the Financial Creditor under Section 95(1) of the IBC, 2016 dated 18.09.2021 has submitted that:

- i. That, on receipt of demand notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019, he duly contested the same by filing a detailed reply dated 14.09.2021 to the same. The same was delivered to the Applicant on 16.09.2021. However, the Applicant, in gross contravention of the provisions of the Code, has deliberately concealed the same with the sole intention of defrauding this Hon'ble



Tribunal as well as the Resolution Professional. In view of the above, the Applicant is liable to be punished under Section 184(1) of the Insolvency and Bankruptcy Code, 2016 for providing information which is false.

- ii. That, the proceedings against the Personal Guarantor is untenable as it is yet to be ascertained in the CIRP proceedings relating to the Corporate Debtor, as to what amounts the financial creditors will recover either on the culmination of CIRP into approval of the Resolution Plan or Liquidation of the assets of the Corporate Debtor, in the absence of which, the amount recoverable from the Respondent herein, if any, cannot be crystallized. Further, there is no averment in the Petition that simultaneous proceedings against the Corporate Debtor and the Personal Guarantor are necessary for eliciting much better resolution plans in respect of the Corporate Debtor. The present proceedings, thus, is not maintainable.
- iii. That, Respondent was coerced to stand as surety to secure the credit facilities sanctioned by the members of the consortium to Corporate Debtor. Pertinently, the Respondent were induced and compelled to append her signatures on a large number of undated and unfilled printed forms without being afforded any opportunity of understanding the contents, intent and purport thereof.
- iv. That, there were no financial defaults at all which could



result into the loan facilities becoming Non-Performing Assets.

- v. That, the Corporate Debtor, till 28.02.2018 paid interest due in the loan accounts to the members of the consortium. All the loan facilities were prudential standard and regular on 15.03.2018. However, the Applicant illegally and arbitrarily declared and classified the loan facilities as NPA on 31.03.2018.
- vi. The Respondent reiterates that her signatures were obtained on unfilled and undated printed forms under deceit and deception. No opportunity was afforded by the officials of the Applicant on the pretext of completion of formalities. In fact, a bunch of such papers would be piled up on which "x" marks were made in pencil and the Respondent was asked to quickly append her signatures. The true nature and import of all such papers were never explained. Thus, any allegation of the Respondent having "executed" any such alleged documents filed and heavily relied upon by the Applicant is vehemently denied and disputed individually and specifically. Even copies of the said papers on which signatures obtained were not furnished on the pretext that the same would be required to be properly filled up later by the concerned officials. Respondent was actually hoodwinked by the said officials. The entire process of appending signatures would be undertaken in a few minutes by a carefully planned and orchestrated manner by the said



persons so that the Respondent would get no opportunity of comprehending the contents, intent and purport thereof.

- vii. The aforesaid offending stipulations would render the alleged Agreement of Guarantee illegal and void in toto. Even otherwise, the Respondent did not consciously, willingly or intentionally waive any such statutory rights. The offending loaning and security documents are void ab initio and do not entitle the Applicant to fasten any liability upon the Respondent.
- viii. That, the alleged statement of accounts is not even accompanied by certificates issued under the provisions of Bankers Books Evidence Act, 1891 and Section 65B of Indian Evidence Act, 1872. In absence of the same, the documents relied upon by the Applicant cannot be considered by this Hon'ble Tribunal. Thus, the captioned Petition is liable to be dismissed on this ground alone
- ix. That, the Applicant has not placed on record the vouchers and other supporting documents in support of the alleged debit entries and other alleged transactions contained in the statements of accounts.
- x. Based on the facts as stated above the present petition is liable to be dismiss.

4. The Applicant, in the rejoinder dated 11.01.2022 has submitted that:

- That, applicant humbly submits that the applicant and the RP are not guilty of concealment and



suppression of material facts from the honorable Tribunal. Due to internal transfers of officers, the fact with regard to reply of respondent with regard to demand notice dated 31/8/2020 could not be brought to the notice of the Hon'ble Tribunal. The Resolution Professional personally visited the office of the Personal Guarantor at New Delhi on 16th August 2021, and collated some of the documents of the Guarantor, the said document could have been easily provided by the Respondents to the RP on his personal visit but the said fact was deliberately not revealed by the respondent which shows their ulterior motives to hide the facts from the RP.

- That, the applicant denies in totality the contentions raised by the respondent and the respondent are put to strict proof thereof. It is humbly submitted that neither the loan and security documents are invalid or non-enforceable nor the same are insufficiently stamped or devoid of consensus ad idem. The said contentions are raised for sake of raising the contention and are purely baseless and devoid of any law.
- That, the Deed of guarantee is duly signed by the respondent on 06.06.017 in favor of Members of Consortium i.e SBI, BOI, Andhra Bank, HDFC Bank, guaranteeing the principal sum of Rs. 305. crores together with all interest, cost, charge expenses and/or the other money due to the said banks in



respect of the or under the above-mentioned credit facilities or any of them on demand by the bank.

- The applicant i.e., State Bank of India, in the rejoinder, has also filed Certificate Under Banker's Books of Evidence Act, 1981

5. We have heard the learned counsel for the parties and perused the record and the written submissions filed by both the parties.

Three main issues were raised in the reply filed by the Respondent/ Personal Guarantor.

1. The amounts the financial creditors will recover either on the culmination of CIRP into approval of the Resolution Plan or Liquidation of the assets of the Corporate Debtor are yet to be ascertained and in the absence of which, the amount recoverable from the Respondent herein, if any, cannot be crystallized?

2. Whether the Respondent was coerced to stand as surety to secure the credit facilities sanctioned by the members of the consortium to Corporate Debtor?

3. That, the Applicant has not placed on record the vouchers and other supporting documents in support of the alleged debit entries and other alleged transactions contained in the statements of accounts.

The above contentions are addressed as below: -

1. One of the reasons why provisions related to initiation of Insolvency Resolution Process of the Personal Guarantor to



Corporate Debtor were incorporated in the legislation was to enable a comprehensive picture to emerge about the nature of assets available during and post insolvency process. The same would also enable the Committee of Creditors to better negotiate with the Personal Guarantor keeping in mind the prospect of realising some part of the creditor's dues from the personal guarantors and some from the Corporate Debtor. There is no provision in the Code which bars the initiation of Insolvency Resolution Process against the Personal Guarantor until the debt amount which is to be recovered from the Corporate Debtor gets crystallized. Further it is a well settled principle that the liability of surety in the Contract of Guarantee is co- extensive with that of Principal Borrower.

2. The second contention raised by the Personal Guarantor is that the Respondent/ Personal Guarantor was coerced into signing the Personal Guarantee agreement. The contention raised by the Respondent is implausible and unconvincing for the reason that it is not possible that the Respondent would not have got alerted if he was being made to sign a sheaf of documents in respect of a loan being taken by some other party. Further it is also not tenable because after the said coercion, no legal action was taken by the Personal Guarantor. The Law of Contract is very clear with respect to voidable contract that when consent to an agreement is caused by coercion, the agreement which is a contract is voidable at the option of the party whose consent was so caused. Meaning thereby



that unless proved otherwise the said agreement would be valid and enforceable and since no action was taken to make the contract void it will remain valid and enforceable as per law.

3. The third contention raised by the Respondent was that the Applicant has not placed on record the vouchers and other supporting documents in support of the alleged debit entries. It is pertinent to mention here that the Applicant has registered the debt with the Information Utility i.e. NESL and the copy of the same is also annexed with the application filed by the Financial Creditor. Further, section 99(3) of the IBC, 2016 states that when the debt is registered with the information utility the debtor shall not be entitled to raise dispute to the validity of such debt. Hence, this contention of the Respondent is also not sustainable.

6. Based on the above and the reasons recorded in the report submitted by the Resolution Professional, and after going through all the documents on record the Petition i.e., IB -353/ND/2021, filed under the provisions of Section 95 of IBC, 2016, is hereby **admitted** under section 100 of the IBC, 2016. The Insolvency Resolution Process is initiated against the Personal Guarantor and moratorium is declared, which commences from the date of admission of the Petition i.e. date of this Order and shall cease to have effect at the end of the period of 180 days, as provided under Sec 101 of IBC, 2016. During the moratorium period;

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- 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 her assets or her 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.

7. The Resolution Professional Shri Sunil Kumar Kabra, who has been proposed by the Financial Creditor was appointed under Section 95 vide Order dated 05.08.2021, 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.

8. 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.

9. 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.

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 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.

11. In terms of the above, **CP(IB)-353/ND/2022**, filed under Section 95 (1) of the IBC, 2016 is **admitted** and the Insolvency Resolution Process stands initiated against the Personal Guarantor i.e., Mrs. Asha Mittal.

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