

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
PRINCIPAL BENCH

IB-343 (PB)/2021

Section: Under Section 95 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), Rules, 2019.

In the matter of:

UNION BANK OF INDIA

(Through its Resolution Professional, Mr. Deepak Maini)

...Applicant/Financial creditor

versus

Mr. SACHIN GARG

...Respondent/Personal Guarantor

Order Pronounced on: 09.09.2021

CORAM:

SHRI. BHASKARA PANTULA MOHAN

HON'BLE ACTG. PRESIDENT

SHRI. HEMANT KUMAR SARANGI

HON'BLE MEMBER (TECHNICAL)

PRESENT

For the Applicant : Mr. Deepak Maini, R.P.



MEMO OF PARTIES

UNION BANK OF INDIA

HAVING ITS OFFICE AT:

STRESSED ASSET MANAGEMENT VERTICAL,
M-93, CONNAUGHT CIRCUS,
NEW DELHI-110001

THROUGH THE ASSISTANT GENERAL MANAGER

FILED THROUGH

RESOLUTION PROFESSIONAL
PROPOSED BY UNION BANK OF INDIA

MR. DEEPAK MAINI

INSOLVENCY PROFESSIONAL

HAVING IBBI REG. NO.

IBBI/IPA-001/IP-P00676/2017-2018/11149

C-100, SECTOR-2,

NOIDA, U.P.-201301

.... APPLICANT

VERSUS

SACHIN GARG

R/O-7, A/2, SATYAM APARTMENTS,
RAJPUR ROAD,
CIVIL LINES, DELHI-110054

.... RESPONDENT/ GUARANTOR

ORDER

Per: HEMANT KUMAR SARANGI, MEMBER (TECHNICAL)

1. This is an application filed by the Financial Creditor, M/s.

Union Bank of India, under Section 95 of the Insolvency
and Bankruptcy Code, 2016, through Resolution

Professional, Mr. Deepak Maini, against Mr. Sachin Garg,



Personal Guarantor to the Corporate Debtor (CD), 'M/s. S L Consumer Products Limited'. The Resolution Professional has been appointed by the Financial Creditor, M/s. Union Bank of India, to file the present Application, under Section 95 of the Code, seeking to initiate Insolvency Resolution Process against personal Guarantor of CD (M/s. S L Consumer Products Limited), Mr. Sachin Garg, in respect of the Outstanding debt of Rs. 76.48 crores (Rupees Seventy Six Crores Forty Eight Lakhs), as on 21.09.2020, due from the Corporate Debtor, under rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), Rules, 2019.

2. The Ld. Counsel for the Applicant states that the Respondent herein is the Personal Guarantor, who had executed a Guarantee Agreement, towards repayment of the loan amount due, under the credit facilities, granted by the Applicant Bank to CD. The Applicant has been dealing with CD since 1999, for provision of credit and working capital



facilities. The CD, through its guarantor, approached the Applicant for sanction of credit facilities, in the form of Cash Credit of Rs. 45 crores, which was extended to Rs. 55 crore, vide sanction letter dated 08.03.2013. The CD and its Directors/ Guarantors, executed fresh loan and guarantee documents dated 30.01.2017, in continuation of their liabilities and continuing the equitable mortgage of the said properties in question. The respondent executed the Personal Guarantee Agreements on various dates in favour of the Bank, undertaking to pay the amount which became due to the applicant, in the event, the CD failed to fulfill payment obligations under the Loan Agreements.

3. That the Ld. Counsel for the Applicant states that CD and the Respondent, despite regular follow-up by the Applicant, failed to maintain financial discipline and started committing default. The Applicant sent repeated reminders but the CD defaulted in repayment of the dues of the bank and the account of CD was thereafter declared as NPA on 30.04.2017. The Applicant issued notice dated 25.07.2021



to the borrower and to the respondent under section 13(2) of the SARFAESI Act, 2002, seeking repayment of outstanding debt of Rs. 56.04 crores as on 30.04.2017. That an application in respect of the Corporate Debtor, i.e., M/s. S L Consumer Products Limited, was admitted under Corporate Insolvency Resolution Process (CIRP), by NCLT, New Delhi, vide order dated 10.07.2019 in C.P. (IB) No. 840 (PB)/2018.

4. The Ld. Counsel for the applicant further submitted that the Guarantee of the Personal Guarantor was invoked by the bank, by way of notice dated 21.09.2020 and a Demand Notice in Form B under rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtor) Rules, 2019, was issued by the Financial Creditor, i.e., Union Bank of India on 21.09.2020, to the Personal Guarantor, in respect of the unpaid debt due from M/s. S L Consumer Products Limited (Corporate Debtor), under rule 7(1) of the IBC, 2016. Counsel for the Applicant



mentioned that the respondent has filed its reply, in which it states as follows:

“The purported notice is barred by limitation as the same has been issued after the prescribed period of limitation. The notice dated 21.09.2021, itself in Clause 2(d) refers to the date of default as 22.05.2017, which is more than the prescribed period of limitation. By virtue of Section 238A of the Insolvency Bankruptcy Code, 2016, (Code) the provisions of the Limitation Act, 1963 (36 of 1963) apply to the proceedings or appeals under the Code. Without admitting to any claim for any amount, the claim is hopelessly barred by the statute of limitation as such the bank has no right to issue such illegal and malicious notice.”

“CIRP against ‘Corporate Debtor’ has already initiated in Ld. NCLT and therefore according to the judgement delivered by the Ld. NCLAT in the case of Dr. Vishnu Kumar Aggarwal V. M/s. Piramal Enterprises Ltd. Company Appeal (AT) (Insolvency) No. 346 of 2018 it has been held that once an application under Section 7 has



been filed by the 'Financial Creditor' for a particular set of claim and the same is admitted against one of the 'Corporate Debtor' ('Principal Borrower' or 'Corporate Guarantor'), a second application by the same 'Financial Creditor' for the same set of claim and default cannot be admitted against the other 'Corporate Debtor' (the 'Corporate Guarantor(s)' or the 'Principal Borrower') which also includes Personal Guarantor."

5. The Counsel for the Applicant has also filed its response to the said reply by the personal guarantor, in its response the Applicant states as follows:

"It is denied and disputed that the notice is barred by limitation as the same has been issued after the prescribed period of limitation. It is admitted that the notice dated 21.09.2021 itself in clause 2(d) refers to the date of default as 22.05.2017, also by virtue of section 238A of the Insolvency and Bankruptcy Code, 2016 (Code) the provisions of the Limitation Act, 1963 apply to the proceedings or appeals under the Code. It is



submitted that the period of limitation for rights to sue the personal guarantor occurs on breach of guarantee contract and not from the time of default. It is submitted that as per Section 55 of the Limitation Act 1963, the time limit of 36 months would be reckoned from the dated the guarantee contract is breached. Breach of contract occurs if the payment is not made or refused 'on demand'. Article 113 of Limitation Act provides that the time begins to run only when the right to sue accrues. The same law was laid down by Hon'ble Supreme Court in M/s. Sundram Finance Ltd. vs Noorjahan Beevi & anr on 29th June, 2016. Further the default on the part of the principal borrower is still subsisting and continuing therefore the same is not barred by limitation."

6. It is pertinent to mention that as per part-III of Form-C, the total debt from the personal guarantor, by way of personal guarantee given to M/s. Union Bank of India, including interest as on 21.09.2020, amounts to Rs. 76.48 crores (Rupees Seventy Six Crores and Forty Eight Lakhs).



7. It is made known to everyone that on the date of filing this Application by the Applicant/ Creditor, the interim-moratorium commences as 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.

This shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

8. The Applicant/ Creditor has proposed the name of Mr. Deepak Maini, Insolvency Professional, having registration number IBBI/IPA-001/IP-P00676/2017-18/11149, email-



deepakmaini57@yahoo.com, Phone- 9711191523,
01204729400, for appointment as the Resolution
Professional. No disciplinary proceedings are pending
against him. Therefore, Mr. Deepak Maini is appointed as
the Resolution Professional in exercise of powers conferred
under Section 97 of the IBC, 2016 on this Authority subject
to Regulations 4 (1) and (2) of the IBBI (Insolvency
Resolution Process for Personal Guarantors to Corporate
Debtors) Regulations, 2019.

9. In this matter, the Resolution Professional, Mr. Deepak Maini, shall exercise all the powers, as enumerated under Section 99 of the Code, read with Rules made there under. He is directed to make the recommendations, along with reasons in writing, for acceptance or rejection of this Application within the stipulated time as envisaged under the provisions of Section 99 of the I & B Code, 2016. The Resolution Professional shall provide 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.

10. The Applicant and the Registry are directed to serve the copy of this order along with copy of the Application and documents immediately on the Resolution Professional so appointed for information and compliance
11. List the matter for further proceedings in the case on **25.10.2021.**

— sd —

**(BHASKARA PANTULA MOHAN)
ACTG. PRESIDENT**

— sd —

**(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)**

09.09.2021