

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (Court-II), CHANDIGARH**

CP (IB) No.275/Chd/Hry/2022

Under Section 95 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7(2) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019

In the matter of:

Indian Bank (E-Allahabad Bank)

Corporate Office 254-260,
Avvai Shanmuga, Salai,
Royapettah, Chennai 600014, Tamil-Nadu, India
And SAM Branch, SCO 49-50,
3rd Floor, Sector-17B, Chandigarh-160017

...Applicant

Versus

Sh. Kewal Krishan

S/o Sh. Lilu Ram,
having its address at
Old Anaj Mandi, Nissing,
Distt. Karnal, Haryana-132024

Personal Guarantor for M/s Ganeshom Cereals Pvt. Ltd.

Gonder Road, Nissing,
Distt. Karnal, Haryana-132024

...Respondent

Judgment delivered on: 03 .07.2024

**Coram: HON'BLE DR. PSN PRASAD, MEMBER (JUDICIAL)
HON'BLE MR.SATYA RANJAN PRASAD, MEMBER (TECHNICAL)**

Present:

For the RP : Mr. DP Garg, Advocate with Vivek Bansal, RP in person

**PER: DR. PSN PRASAD, MEMBER (JUDICIAL)
MR.SATYA RANJAN PRASAD, MEMBER (TECHNICAL)**

ORDER

The present application is filed under Section 95 and other applicable provisions of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as code) 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 (hereinafter referred to as Personal Guarantors Insolvency Rules, 2019) by the applicant/Creditor namely Indian Bank (E-Allahabad Bank) seeking to initiate Personal insolvency resolution process against the Respondent i.e. Sh. Kewal Krishan, being guarantor in the loan accounts of M/s. Ganeshom Cereals Pvt. Ltd. ("Corporate Debtor/Principal Borrower"), who has extended personal guarantees to the Applicant.

2. The facts of the case as stated in the application filed by the Applicant are as below-

A. The Applicant advanced/restructured the Cash Credit Limits, WCTL and Packing Credit Limits of total amount of Rs. 143.76 crores to M/s Ganeshom Cereals Pvt. Ltd. vide Sanction Letter dated 28.06.2014. The loan was not paid regularly and Applicant classified and declared the account of M/s Ganeshom Cereals Pvt. Ltd. as NPA and recall notice dated 02.12.2014 has been issued by the applicant bank. The respondent executed Guarantee Agreements dated 02.05.2012 & 24.03.2014 for the advances of the principal borrower. The principal borrower/corporate debtor M/s Ganeshom Cereals Pvt. Ltd. defaulted in payments and loan was recalled and guarantees were invoked vide notice dated 02.12.2014.

- B. It is stated in the application that the applicant Bank filed an application in this tribunal against Corporate Debtor/Principal borrower M/s Ganeshom Cereals Pvt. Ltd. vide CP(IB) No.45/Chd/Hry/2018 under Section 7 of Insolvency and Bankruptcy Code, 2016 which was admitted on 13.12.2018 and the CIRP process was initiated w.e.f. 19.12.2018. The resolution plan submitted by M/s Devki Retails Private Limited was approved by the CoC u/s 30(4) of IBC and then approved by this tribunal vide order Dated 18.05.2020. The amount of default was crystallized after receipt of amount of Rs. 1,00,00,000/- (One crore only) as paid by the Resolution Applicant M/s Devki Retails Private Limited on 21.08.2020 under the resolution plan approved by the Tribunal and the guarantor/ respondent are liable to pay the balance amount of default in accordance with the Guarantee Agreement.
- C. The applicant further stated that the said application is within the period of limitation as the acknowledgment of debt has been made continuously by the Principal Borrower M/s Ganeshom Cereals Pvt. Ltd. by way of submission of the audited balance sheets and has been acknowledging the debt in these Financial Statements. The latest Audited Balance Sheet for the year ended as on 31.03.2019 has been signed on 26.09.2019 and the acknowledgment made by the Principal Borrower is binding on the Guarantor. Thus this application is within limitation.
- D. The applicant further submitted that Demand Notice dated 30.04.2022 has been issued by the Applicant to the various addresses of respondent/ guarantor as available with the bank on Form B which were undelivered from

all addresses and returned back to branch. So publication has also been made in the two newspapers (in English language and in local language newspaper) to complete the service of above notices. But no response has been received from the respondent.

3. The present application has been filed in the prescribed proforma and on presentation of the application by the Applicant/ Financial Creditor, this Adjudicating Authority after getting the report about the antecedents of Insolvency Professional, appointed the Proposed Resolution Professional, Mr. Vivek Bansal, Registration No. IBBI/IPA-001/IP-P01475/2018-2019/12249 Phone No. 9815869228 Email: irp.vivekbansalca@gmail.com vide order dated 26.04.2023 under section 97 of the Code. At the same time, limited notice of this petition to the creditor(s) for presence has also been.

4. The Resolution Professional was directed to file the report under Section 99 of Insolvency and Bankruptcy Code, 2016 which was filed by him through IA No. 2303/2023 vide diary no. 02640 dated 16.08.2023 recommending the admission of the application filed under Section 95 of IBC, 2016.

5. The Resolution Professional in its report stated that in order to confirm the relevant evidence of such default and non - repayment of the debt by the Corporate Debtor or Personal Guarantor or repayment received under Resolution Plan or continuation of such default, an Email Dt. 01.08.2023 has been sent to the Applicant/ Creditor in pursuance of section 99(2) of IBC, 2016. In response to the same, the Applicant/ Creditor confirmed the non-repayment and continuity of the default through E-mail Dt. 10.08.2023 (Copy enclosed to the report).

6. Further, It is also stated by the Resolution professional that to intimate the respondent/personal guarantor and corporate debtor regarding the developments related the order passed by the Hon'ble NCLT Chandigarh and to confirm the repayment with evidence or non -payment, relevant evidence of such default and non -repayment of the debt by the Corporate Debtor or Personal Guarantor or continuation of such default, an Email Dt. 01.08.2023 has been sent to the respondent/ personal guarantor and the corporate debtor in pursuance of section 99(2) of IBC, 2016 and further requested to furnish the information related to the financial standing and assets owned by the respondent/ personal guarantor. But no response has been received from the respondent/ personal guarantor in this regard till date of this report. Hence the respondent/ personal guarantor failed to produce any proof of payment, if paid, initially under section 99(2) of IBC, 2016. The respondent has also not provided information related to the financial standing, annual income, assets owned, financial data etc. Thus, based on the information gap Resolution Professional has refrained from making any recommendations under Section 99 (8) of the IB Code. (Copy of Correspondence with PG/CD through Email enclosed as per Annexure R-3).

7. The grounds for admission of the application recorded in the report are as follows-

“That pursuant to Section 99 (1) & (6) of the Insolvency and Bankruptcy Code, 2016, I, the Resolution Professional in the matter of Sh. Kewal Krishan S/o Lilu Ram, hereby state that I have examined the aforesaid application under Section 95 of the Insolvency and Bankruptcy Code, 2016 and have ascertained the following:

- A. That the said application has been submitted only in respect of debts which are not excluded debts.
- B. That the application is accompanied with admissible evidence that the Personal Guarantor/ Debtor has committed default in making repayment of the loan facility along with interest, penal interest and other monies to the Applicant/ Creditor for which personal guarantee has been given to the Applicant/ Creditor on behalf of the Corporate Debtor. The application is coupled with details and documents relating to:
- (i) The debts owed by the debtor to the creditor as on the date of application.
 - (ii) Copy of the Notice of Demand in Form-B for outstanding debt of Rs. 1,60,94,16,076/- (Rupees One Hundred Sixty Crore Ninety Four Lac Sixteen Lac Seventy Six only) as on 31.12.2021 together with interest, further interest & penal interest at the contractual rates with effect from 01.01.2022 bearing Reference no. BR/SAM-CHD/2022-23/60, Dt. 30.04.2022 has been duly served. (Annexure A-12 & A-13 at Page No. 128-144 of Application filed u/s 95 of IBC, 2016).
 - (iii) The failure by the debtor to pay the debts within a period of 14 (fourteen) days of the service of the notice of demand.
 - (iv) Copy of the said application under Section 95 of the Insolvency and Bankruptcy Code, 2016 has been already provided by the Applicant/Creditor to the respondent/ personal guarantor as per Proof of Service of Advance Copy attached with the Application.

8. The counsel for the Resolution Professional was directed to serve the report to the creditors and the affidavit of service was filed vide diary no. 02640/01 dated 05.02.2024 alongwith copy of email to the creditors. However, none appeared on behalf of the personal guarantor/respondent and no objection was submitted by the respondents, therefore personal guarantor was proceeded against ex parte.

9. In view of the above, based on the recommendation made by RP in its Report, **the application i.e. CP (IB) No. 275/Chd/Hry/2022 filed under the provisions of Section 95 of IBC, 2016 is hereby admitted under Section 100 of the IBC, 2016.** The interim moratorium which began from the date of the application to this Adjudicating Authority ceases to have effect with the admission of this application. The Insolvency Resolution Process is initiated against the Personal Guarantor and the moratorium is declared, which begins with the date of admission of the application and shall cease to have effect at the end of the period of 180 days, as provided under Section 101 of IBC, 2016. During the moratorium period-

- (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 his assets or his 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.

10. The Insolvency Professional, Mr. Vivek Bansal, who has been appointed as Resolution Professional under Section 97, 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, Chandigarh, 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 the notice shall be made in newspapers, one in English and the other in Vernacular having wide circulation in the state where the debtor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry, one shall be placed by the Registry on NCLT website and the other shall be affixed in the premises of this Authority.

11. The Resolution Professional in exercise of the powers conferred under Section 104 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 alongwith its his report on the plan to this Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106.

12. In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons therefore. 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, for which at least 14 days notice to the creditors (as per list prepared) shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107.

13. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 and 111. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 and submit the same to this Authority, copies of which shall be provided to the debtor and the creditors. It is made clear that the Resolution Professional shall perform its functions and duties in compliance with the code of conduct provided under Section 208 of the IBC, 2016.

14. A copy of this order along with a copy of the application as also the report of the Resolution Professional shall be provided to the Creditor(Applicant), Respondent/ Personal Guarantor and IBBI by the Registry/Court Master within 7 days from today by email.

15. To come up for consideration of Status Report to be filed by RP, within 8 weeks.

Sd/-

(Satya Ranjan Prasad)
Member (Technical)

July 03 , 2024

Vanshika

Sd/-

(PSN Prasad)
Member (Judicial)