

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-III

Item No.204
IB-143/(ND)/2021

IN THE MATTER OF:

Intec Capital Limited
Vs.
Prabal Pratap Singh

....APPLICANT

....RESPONDENT

SECTION :
Sec-95

Order delivered on 15.3.2021

CORAM:

CH. MOHD. SHARIEF TARIQ
MEMBER (JUDICIAL)
SHRI NARENDER KUMAR BHOLA
MEMBER (TECHNICAL)

PRESENT:

For the Applicant/OC :

For the Respondent/CD :

For the Intervener :

ORDER

The Interim order is pronounced. The matter is fixed for further consideration on 31.3.2021.

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(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)

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(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)

Surjit

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH NEW DELHI
COURT- III**

IB-143 (ND)/2021 filed under Section 95 (1) of IBC, 2016 r/w Rule 7 (2) of the IB (Application to Adjudicating Authority for IRP for Personal Guarantors to CD) Rules, 2019.

In the matter of Prabal Pratap Singh

M/s. Intec Capital Limited

....Applicant/Financial Creditor

Versus

Prabal Pratap Singh

.... Respondent/Personal Guarantor/Debtor

Order delivered on 15th March, 2021

Coram

**CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)
Shri. NARENDRA KUMAR BHOLA, MEMBER (TECHNICAL)**

For Applicant: Mr. Sagar Bansal, Mr. Aabhas Singh (Advocates)

ORDER

Per: CH. Mohd Sharief Tariq, Member (Judicial)

1. Under consideration is an Application No. IB-143 (ND)/2021 filed under Section 95 (1) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC, 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 as "IB Rules, 2019") for initiating the Insolvency Resolution Process (hereinafter referred as "IR Process") against the personal guarantor viz., *Mr. Prabal Pratap Singh* (hereinafter referred as "Personal Guarantor/Debtor"), ex-Director in the company viz., *M/s. Suvidha Infracon Pvt. Ltd.* (hereinafter referred as "Corporate Debtor").

2. The factual matrix of the case is that, based on the representations made by the Corporate Debtor through its directors/ promoters/ shareholders / representatives including the Personal Guarantor/Debtor, the Applicant/Creditor viz., *M/s. Intec Capital Limited* (hereinafter referred as "Applicant/Financial Creditor") had disbursed loan facility for business purpose to the tune of Rs. 2,80,00,000/- (Rupees Two Crore Eighty Lacs Only) to the Corporate Debtor by way of loan agreements dated 03.03.2012 bearing Loan account number LNNOI00111-120001147 and LNNOI00111-120001200. As per the terms of the agreement, the loan amount was disbursed to the Corporate Debtor for a tenure of 36 months at an interest rate 22.9% P.A. The details are as follows:

SI.No.	Loan Account No.	EMI/Interest	Amount of EMI
1	LNNOI00111-120001147	36 EMI @ 22.99% P.A.	First advance instalment was of Rs. 70,00,000/- and the rest of thirty five instalments were of Rs. 8,29,000/- each
2	LNNOI00111-120001200	36 EMI @ 22.99% P.A.	First advance instalment was of Rs. 16,01,320/- and the rest thirty-five instalments was of Rs. 1,89,643/- each

3. It is stated that subsequent to the disbursement of the loan facilities by the Applicant/Financial Creditor the Corporate Debtor failed to maintain adequate amount in the bank account, hence the cheques/ECS/ACH mandates were dishonoured and no payments were made as per the repayment schedule. Further, it is stated that the Applicant/Financial Creditor issued recall notices cum Arbitration notices dated 01.03.2016 and 07.03.2015 respectively.

4. It is submitted that the Loan accounts became NPA on 30.06.2013 and 31.03.2015 respectively. Further, the Applicant/Financial Creditor preferred arbitration proceedings against the Corporate Debtor and Personal Guarantor and the arbitral Award dated 15.03.2016 & 16.06.2017 was passed in favour of the Applicant/Financial Creditor. Further, it is stated that the Proceedings bearing no. CP (IB) - 93 (ND)/2020 under the Code against the Corporate Debtor is pending before this Authority.

5. The Personal Guarantor/Debtor stood as a personal guarantor for the loan facility and further executed a deed of guarantee dated 12.03.2012 alongwith guarantor's form and other relevant documents. The loan amount financed is also secured by (i) creation and registration of Charge on assets purchased under the Loan account at the time of purchasing the assets as defined in the loan Agreements (ii) Hypothecation in favour of the Applicant/Financial Creditor.

6. It is stated that the Applicant/Financial Creditor has issued Demand Notice in the prescribed Form-B dated 20.11.2020 which was duly delivered upon the Personal Guarantor demanding total amount of Rs. 7,87,59,543/-.

7. The Applicant/Financial Creditor has referred to clause 8 of the Deed of the Guarantee, and the Section 129, 130 of the Contract Act 1872, while answering the question about the limitation. The extract of the Clause 8 is under:

"8. This Guarantee shall be a continuing one till such time INTEC Capital LTD may have any claim against the Borrower under the Agreement and all dues are discharged completely to the satisfaction of INTEC CAPITAL LTD."

Therefore, the last date of default is the date of delivery of the demand notice i.e., 20.11.2020 issued by the Applicant/Financial Creditor demanding the financial debt arising out of the Deed of Guarantee.

8. It is brought out by the Applicant/Creditor that the guarantee is a continuing one, as the clause 8 of the Deed of Guarantee clearly states that till the time all the dues are discharged and the Applicant/Creditor is completely satisfied with the same in that case the guarantee would be said to be discharged. However, the Personal

Guarantor/Debtor even admitted the liability by issuing cheques, which got dishonoured.

9. The Applicant/Creditor has clearly brought it out in its application coupled with admissible evidence that the Personal guarantor/Debtor has committed default in making repayment of the loan facility to the Applicant/Creditor for which he has given the personal guarantee to the Applicant/Creditor on behalf of the Corporate Debtor.

10. It is made known to everyone that on filing this Application by the Applicant/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 is 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.

11. The Applicant/Creditor has proposed the name of Mr. Piyush Moona Narang for his appointment as Insolvency Professional. Mr. Piyush has given written consent for such appointment and declared that he is eligible. No disciplinary proceedings are pending against him. Therefore, **Mr. Piyush Moona** is hereby **appointed** as the Insolvency Professional 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. The details of the Resolution Professional are as under; -

Name: Mr. Piyush Moona

Registration No. : IBBI/IPA-001/IP-00990/2017-2018/11630

Address: Flat No. 04034, ATS, Advantage Ahinsa Khand 1, Indirapuram, Gaziabad, Uttar Pradesh-201014

E-mail: piyushmoona@gmail.com

Mobile Number: 9818175255

12. The Resolution Professional shall exercise all the powers as enumerated under Section 99 of the IBC, 2016 r/w the Rules made thereunder. He is directed to 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 and Debtor, as soon as the same is filed before this Authority. The Debtor may file objection/make representation against the report to avail the right of being heard.

13. The Applicant/Creditor and his Counsel are 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 the matter on 31st of March 2021 at 10:30 AM.

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(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)

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(CH. MOHD SHARIEF TARIQ)
MEMBER (JUDICIAL)