

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

(IB) 985 (ND)/2020

IN THE MATTER OF:

HULAS RAHUL GUPTA,

C-12 FRIENDS COLONY(EAST)

NEW DELHI-110065

....PETITIONER/ GUARANTOR

VERSUS

1. UNION BANK OF INDIA

INDUSTRIAL FINANCE BRANCH

M-11, FIRST FLOOR, MIDDLE CIRCLE,

CONNAUGHT CIRCUS,

NEW DELHI 110001

.....RESPONDENT NO.1

2. CORPORATION BANK

INDUSTRIAL FINANCE BRANCH

FIRST FLOOR, MAIN ARYA SAMAJ ROAD

KAROL BAGH NEW DELHI-110001

.....RESPONDENT NO.2

3. BANK OF BARODA

CORPORATE FINANCE SERVICES

(LARGE CORPORATE BRANCH)

11TH FLOOR, BANK OF BARODA BUILDING

16, SANSAD MARG, NEW DELHI-110001

.....RESPONDENT NO.3

4. ASSET RECONSTRUCTION COMPANY INDIA LIMITED

28P FLOOR, PLOT NO. 2, SETHI CHAMBERS

DDA SHOPPING CENTRE, MOR LAND

NEW RAJINDER NAGAR

NEW DELHI-110001

..... RESPONDENT NO.4

5. INDOSOLAR LIMITED

THROUGH RESOLUTION PROFESSIONAL

GULSHAN GABA

GH 13/882, SFS FLATS

PASCHIM VIHAR, NEW DELHI-110087

.....RESPONDENT NO.5

SECTION: U/S 94 of IBC, 2016

Order delivered on: 07.01.2021

CORAM:

MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

MR. K.K. VOHRA, MEMBER (TECHNICAL)

For the Applicant/Financial Creditor: Adv. Abhishek Anand, Adv. Kunal Godhani and Adv. Mohak Sharma.

For the Respondent/Corporate Debtor:

ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

1. The present petition has been filed under Section 94 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code"), Read With Rule 6 Of The Insolvency And Bankruptcy (Application To Adjudicating Authority For Insolvency Resolution Process For Guarantors To Corporate Debtor) Rules, 2019 praying for initiation of Corporate Insolvency Resolution Process of the Personal Guarantor of the Respondent No.5/Corporate Debtor.

2. The facts mentioned in the application in brief are as follows:
- a) That the Applicant, Hulas Rahul Gupta along with his father Mr. Bhushan Kumar Gupta has extended Personal Guarantee for the credit facilities availed by Corporate Debtor amounting to Rs. 344 Crores on 08.09.2008 which were enhanced to Rs. 460 Crores vide agreement dated 16.01.2009. The facility was further enhanced to Rs. 672.13 Crores vide Working Capital Consortium Agreement dated 05.07.2012. The said facilities were restructured through CDR Mechanism vide Master Restructuring Agreement dated 28.03.2012.
- b) That on 16.01.2019 when Credit Facilities were enhanced to Rs. 460 Crore under Consortium with Leading Bank Union Bank of India, Exposure of all the Respondents was as follows:-

NAME OF LENDER	AMOUNT(IN CRORE)
Andhra Bank (Assigned to Asset Reconstruction Company India on : 24.08.2017)	80.00
Indian Bank (Assigned to Asset - Reconstruction Company India on 27.03.2017)	80.00
Bank of Baroda	90.00

Corporation Bank	90.00
Union Bank of India	120.00
TOTAL	460.00

(c) (c) that the Account of the Corporate Debtor became NPA (Non Performing Asset) on 01.07.2017 due to the High Investment Cost and availability of Chinese product at cheaper prices.

(d) That the Net worth of the Applicant and his father at the Time of availment of Loan was Rs. 86.15 Crore and Rs. 52.05 Crore respectively which was majorly in the form of investment in the shares of the Corporate Debtor.

e) That the Application under Section 7 of The Insolvency & Bankruptcy Code, 2016 filed by the Financial Creditor, Corporation Bank, which was duly admitted vide order No CP No. 1481(PB)/2018- dated 12.04.019 and Mr. Gulshan Gaba was appointed as the Interim Resolution Professional (hereinafter referred as IRP) of the company under CIRP vide same order. Committee of Creditors("COC")in its meeting held on 15" May 2019 has appointed him as the Resolution Professional (RP) of Indosolar Limited ("Corporate Debtor").

f) That the CIRP in the matter of the Corporate Debtor is at its advance stage and COC has approved the Resolution Plan for the revival of the Corporate Debtor submitted by successful Resolution Applicant namely WAAREE Engineers Limited.

g) Further, Total Debt of the Personal Guarantor in the matter of the Corporate Debtor is arrived as under:

Claims of Financial Creditors admitted as on CIRP date	Rs. 2137.91 Crore
Less Amount proposed to be paid by Resolution Applicant namely WAAREE Engineers Limited	90.00 Crore
Less Amount to be received by FCs by way of capital subsidy receivable in respect of corporate debtor	Rs. 270.00 crore
Balance Recoverable from Guarantors	Rs. 1777.91 crore

h) That it is submitted that the Applicant has complied with the provisions of Insolvency and Bankruptcy Code, 2016 and Rules and Regulations framed there under. The Applicant has attached the followings necessary information for the admission of present Application and appointment of Interim Insolvency Resolution Professional, i.e.

1. FORM-A duly filled in and completed along with necessary documents and supporting papers as provided u/s 122 of the Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority For Insolvency Resolution

Process for Guarantors to Corporate Debtor) Rules, 2019

2. Written communication from the Insolvency Professional, namely, Mr. Vikram Vishal Minhas having Reg. No. IBBI/IPA-001/IP-P-01534/2018-2019/12398, in FORM-A under Regulation 4(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Regulations, 2019 along Regulation 4 (1) as quoted above.
3. We have heard the Ld. Counsel for the applicant and perused the averment made in the application.
4. Ld. Counsel for the applicant in course of his arguments submitted that an application under Section 7 of the IBC was filed by the Corporation Bank/Financial Creditor which was registered as CP No. 1481/PB/2018 and that application was admitted on 12.04.2019 and Mr. Gulshan Gaba was appointed as IRP.
5. He further submitted that the CoC has approved the Resolution Plan for the revival of the Corporate Debtor submitted by successful Resolution Applicant.
6. He further submitted that the total debt of the personal guarantor in the matter of Corporate Debtor is Rs. 1777.91 crores which are recoverable from the guarantors/applicant.
7. He further submitted that the applicant has complied all the necessary formalities and duly filled up the Form A as prescribed under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Guarantors to Corporate Debtor) Rules, 2019.

8. He further submitted that the applicant on 16.01.2009 and 05.07.2012 executed the deed of guarantee and so the present application may be admitted under Section 100 of the IBC.

9. He further submitted that under Section 94 is applicable in case of the application filed by the personal guarantor.

10. Now, in the light of the submission raised on behalf of the applicant's counsel, we consider the maintainability of the application filed under Section 94 of the IBC.

11. The present application is filed under Section 94 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Guarantors to Corporate Debtor) Rules, 2019.

12. Therefore, at this juncture, we would like to refer Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Guarantors to Corporate Debtor) Rules, 2019 and the same is quoted below: -

Application by guarantor.— (1) The application under sub-section (1) of section 122 shall be submitted in Form A, along with an application fee of two thousand rupees.

(2) The guarantor shall serve forthwith a copy of the application referred to in sub rule (1) to every creditor and the corporate debtor for whom the guarantor is a personal guarantor.

13. Mere plain reading of the provision shows that under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Guarantors to Corporate Debtor) Rules, 2019, the application by the debtor under Section 122 of the IBC will be filed in Form A, therefore, in view of Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Guarantors to Corporate Debtor) Rules, 2019 if any application filed by the debtor under Section 122 of the IBC it must be in Form A along with records of Insolvency Resolution Process,

statement of affairs of the debtor and a copy of order passed by the Adjudicating Authority under Chapter III of part III permitting the debtor to apply for bankruptcy.

14. At this juncture, we would also like to refer the definition of Corporate Guarantor which is defined under Section 5A of the IBC and the same is quoted below: -

[(5A) "corporate guarantor" means a corporate person who is the surety in a contract of guarantee to a corporate debtor;]

15. Admittedly the applicant is the surety in a contract of guarantee to the Corporate Debtor and deed of contract of personal guarantee is enclosed at page 138 of the application and the averment made in the deed of guarantee shows that as per condition 3 **"the guarantor hereby guarantee jointly and severally to pay the lenders unconditionally after demand in writing of all the amounts, monies, interest, damages, fees, remuneration and expenses, cost and charges etc"** mentioned in clause 2 of the deed of guarantee.

16. We further notice that the applicant has also enclosed the demand notice dated 21.10.2019 of Union Bank of India, which is at page 118 of the application and the demand notice shows that the Union Bank of India has demanded Rs. 1074.87 crore as on 20.10.2019 and that is the reason the present application has been filed on behalf of the applicant of course the deed of guarantee was executed lastly on 05.07.2012, therefore, the question is that Limitation Act is applicable in this case or not but before considering the point of limitation, we think it proper to give an opportunity to the respondent¹ to place their point on the point of limitation and that is the reason instead of disposing of the application at this stage, we think it proper to issue notice upon the respondents.

17. Accordingly, it is therefore, ordered to issue notice upon all the respondents by all modes including their emails as well as through the process of the bench.

18. In the meantime, in view of Section 96 of the IBC, the interim moratorium shall commenced on the date of application till the date of admission of the application.

19. List the matter on 29.01.2021

-Sd-

K. K. VOHRA

Member (T)

-Sd-

ABNI RANJAN KUMAR SINHA

Member (J)