

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V NEW DELHI BENCH**

**COMPANY PETITION NO. (IB)-622(PB)/2021
A/W**

IA. NO. 2042/PB/2022 IN CP IB No. 622(PB)/2021

IN THE MATTER OF:

**SATISH KUMAR KAURA
THROUGH MR. YOGESH MITTAL
(RESOLUTION PROFESSIONAL)**

...PERSONAL GUARANTOR

AND

IN THE MATTER OF IA. NO. 2042/PB/2022:

**YOGESH MITTAL
RESOLUTION PROFESSIONAL
C-10, LGF, LAJPAT NAGAR-III
NEW DELHI - 110024**

...APPLICANT/RESOLUTION PROFESSIONAL

Order Delivered on: 26.07.2024

CORAM:

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)
DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For the Applicant:

Mr. Toshif Ahmed, Mr. Hashmat Nabi,
Adv. for PNB Mr. R P Agrawal, Ms.
Reema Mishra, Adv. for EARCL Ms.
Ruchita Jain, Adv. for LIC

For the Respondent:

For the RP:

Ms. Aditi Sharma

ORDER

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1. The present I.A. No. 2042 of 2022 has been filed by Mr. Yogesh Mittal (hereinafter referred to as the 'RP'), qua Personal Guarantor Mr. Satish Kumar Kaura (hereinafter referred to as 'Applicant/Personal Guarantor') enclosing therewith the Report prepared by him under Section 99 of IBC, 2016.
2. To put the facts concisely, the underlying main Petition CP (IB)- 622/PB/2021 was filed by Mr. Satish Kumar Kaura, the Personal Guarantor under Section 94 of the IBC 2016, to initiate the Insolvency Resolution Process. Vide order dated 18.02.2022, this Adjudicating Authority directed the Resolution Professional to file a Report in terms of Section 99 of the IBC, 2016.
3. In compliance of the order dated 18.02.2022 passed by this Adjudicating Authority, the present IA-2042/PB/2022 has been filed by Resolution Professional enclosing herewith the Report prepared in terms of the provisions of Section 99 of IBC 2016, recommending admission of the Application viz. IB-622/PB/2021 in respect of the Personal Guarantor.
4. The conclusive recommendation made by the RP reads thus:

"In view of the above facts and circumstances, I, Yogesh Mittal, the Resolution Professional appointed by this Hon'ble Tribunal, vide order dated 18.02.2022 in C.P. (IB) NO. 622 (PB) of 2021, hereby confirm that, I have perused/examined all the underlying documents and annexure of the subject application and additional information/documents provided by the Debtor/Creditor(s). I submit that all the requisites & requirements under section 94 of IBC are duly met with, therefore, I hereby recommend acceptance of the application to this Hon'ble Tribunal for initiation of personal insolvency of Mr. Satish Kumar Kaura in accordance with Part III of the Code based on following grounds: -

- a) *That the Application filed by Sh. Satish Kumar Kaura, through Resolution Professional Sh. Yogesh Mittal satisfies the requirement as set out in Section 94 of the Code;*
- b) *That the Corporate Debtor have committed default in repayment of Loan Facility/Master restructuring agreement/restructured debt granted by the aforesaid banks and/or financial institution.;*
- c) *That Sh. Satish Kumar Kaura, Personal Guarantor to Corporate Debtor has also committed default in repayment of Loan Facility demanded by bank upon invocation of personal guarantee.*
- d) *That having gone through the application the Resolution Professional confirms that the Application is accompanied with details and documents evidencing the default/non-repayment of debt. The Application has been filed in Form A as per Rule 6(1) of The Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 and the applicant has paid the requisite fee while filing the application.*
- e) *The Resolution Professional declares that he qualifies to be eligible under Regulation 4 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.*
- f) *The application is well within limitation.*
- g) *That, in light of the above, it is just and equitable that Insolvency Resolution Process be initiated against Mr. Satish Kumar Kaura, Personal Guarantor to the Corporate Debtor under the orders and directions of this Hon'ble Tribunal.*

5. While making its recommendation for admission of the Application filed against the Personal Guarantor under Section 94 of IBC, 2016 the RP has given the Report as required under Section 99 of IBC, 2016 providing that:

- a) The Corporate Debtor/principal borrower herein i.e., Samtel Colour had availed a working capital facility amounting to Rs. 26,00,00,000/- from,

ICICI Bank Ltd. vide credit arrangement letter ICBK/ND/SN dated 08.09.1995 and the same was renewed/enhances to Rs. 825,00,00,000/- vide credit arrangement letter dated 24.10.2006.

- b) Further, the Corporate Debtor had also availed a term loan facility to Rs. 100,00,00,000/- from ICICI Bank Ltd. vide Facility Agreement dated 20.07.2001 and the same was secured by way of hypothecation of movable and immovable assets. The Facility Agreement dated 20.07.2001 is placed on record as Annexure A-2. Thereafter, the Corporate Debtor in 2007 approached the ICICI Bank and other banks who had disbursed various facilities to the Corporate Debtor, and requested the lenders for reworking its existing debt and to restructure various facilities sanctioned by several banks to the Corporate Debtor, under the aegis of Restructuring Mechanism.
- c) Further, the Lenders approved for sanction of restructuring scheme under Corporate Debt Restructuring, accordingly account of the Corporate Debtor was restructured vide Master Restructuring Agreement (MRA) dated 21.01.2008 executed between the Corporate Debtor and the banks namely ICICI Bank, Punjab National Bank, Axis Bank, Canara Bank, Jammu & Kashmir Bank, Export Import Bank of India, Life Insurance Corporation of India, United Bank of India, Union Bank of India, Syndicate Bank, Yes Bank, Centurian Bank of Punjab, IDBI Bank, State Bank of India and ABN AMRO Bank. The total amount of term loan and working capital loan provided by the aforesaid lender banks to the Corporate Debtor as on cut-off date of CDR package being 01.01.2007 was Rs. 336.28 Crore and 290.32 Crore respectively.
- d) Vide Deed of Guarantee dated 21.01.2008, the personal guarantor agreed to be jointly and severally and co-extensively liable to pay all the amounts payable by the borrower under the Loan Agreements/Master Restructuring Agreement/ Approved CDR Package. Further, Clause 24 of the Deed provides that the liability of the guarantor hereunder shall

not exceed the sum of Rs. 6452.1 million as stated in schedule IV of the Deed.

- e) Furthermore, the Corporate Debtor could not meet its repayment obligations under the MRA because of which the account of the Corporate Debtor was classified as NPA on 31.12.2011 by ICICI Bank. In view of the default the ICICI Bank issued a notice dated 24.05.2013 under Section 13(2) of Securitisation and Reconstruction of the financial assets and Enforcement of Security Interest Act, 2002 (SARFAESI ACT) calling upon the Corporate Debtor to pay to the ICICI Bank within a period of 60 days from the date of notice, as sum of Rs. 1,50,13,11,937.61 as on 31.03.2013 together with applicable rate of interest on the restructured facilities along with any other charges thereon w.e.f 01.04.2013 at the contractual rate of interest until date of payment. However, the principal borrower and personal guarantor continued to commit default in repayment.
- f) Further, an OA No. 107/2014 was filed by ICICI Bank under Section 19 of the Recovery of Debts Due to the Bank and Financial Institutions Act, 1993 (RDDBFI) before Debt Recovery Tribunal, Delhi for recovery of sum of Rs. 1,50,13,11,938/- from Corporate Debtor and personal guarantor jointly and severally. However, after assignment of debt by ICICI Bank Ltd. to Edelweiss Asset Reconstruction Co. Ltd., Edelweiss filed an IA No. 840 of 2016 for substitution in place of ICICI Bank Ltd. and the same was allowed vide order dated 04.10.2016. Thereafter, the final decree and judgment dated 02.09.2020 were passed by the Hon'ble DRT against the Corporate Debtor and personal guarantor directing them to jointly pay a sum of Rs. 1,50,13,11,938/- to the Financial Creditor.
- g) The RP has examined the application filed by the Creditor under Section 94 as per the proviso of Section 99(6) and same satisfies the requirements put forth in Section 94.

6. It is observed that the CIRP of the Corporate Debtor/ principal borrower was initiated by this Adjudicating Authority vide order dated 07.09.2017.

However, the resolution of the Corporate Debtor could not be achieved, the same faced rigors of liquidation vide order dated 04.07.2018. Upon subsequent analysis by the Resolution Professional of the records pertaining to the Corporate Debtor, it is informed that the banks forming part of the MRA against whose debt Satish Kumar Kaura had provided, personal guarantee, had also filed their respective claims before the Liquidator, which stood admitted in certain proportion.

7. Notice has been issued to the Financial Creditors. We have heard the submission of all the parties and have perused the Application and the Report filed by the Resolution Professional. The Counsel on behalf of Financial Creditors i.e. LIC, EARC and PNB have submitted that they have no objection if the Report is accepted and the same has been recorded in the order dated 16.07.2024.
8. The RP in his Report has placed on record, the Guarantee Deed dated 21.01.2008 and amended deed of guarantee dated 09.05.2008 along with Master Restructuring Agreement dated 21.01.2008, in terms of which the Personal Guarantor, Mr. Satish Kumar Kaura stood as a guarantor for the repayment of loan facilities granted by the Banks and Financial Institutions to the Corporate Debtor.
9. On the perusal of the documents placed on record, it is observed that the aforesaid Corporate Debtor has committed default in repayment of loan facilities granted by the banks and the applicant stands as a Personal Guarantor to the Principal Borrower. Details of defaults and ongoing legal proceedings against the Borrower is placed on record. Hence, we are satisfied with the observations made by the RP Vide IA/2042/PB/2022.
10. In view of the above, we are inclined to admit the present petition. Therefore, the Company Petition bearing No. **(IB)-622(PB)/2021** filed under Section 94(1) for initiation of Insolvency Resolution Process against the Personal Guarantor stands **admitted**.

11. The RP is directed to proceed further in accordance with the provisions of the Code. Interim moratorium which came into effect in terms of Section 96(1)(a) on the date of filing the application shall cease to have effect.
12. A fresh moratorium in terms of Section 101 of the Code shall commence as applicable. RP is directed to take all further steps in accordance with Part III, Chapter III of the Code. During the moratorium period –
- a) any pending legal action or proceedings in respect of any debt qua the Respondent shall be deemed to have been stayed;
 - b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt qua the Respondent; and
 - c) the Respondent shall not transfer, alienate, encumber, or dispose of any of the assets or his legal right or beneficiary interest therein.

The moratorium shall cease to have effect at the end of the period of 180 days.

13. A public notice shall be issued by the RP, within seven days of passing of this order, inviting claims from all creditors within 21 days of such notice. The notice shall include details of the present order, particulars of the Resolution Professional with whom the claims have to be registered, and the last date for the submission of the claims. The said notice shall be –
- a) published in English and one Vernacular Language newspaper which is in circulation in the State where the debtor resides;
 - b) affixed in the premises of this Adjudicating Authority; and
 - c) placed on the website of the Adjudicating Authority.
14. The RP shall discharge all such duties as are incumbent upon him in terms of the provisions of Sections 104, 105, 106, 107, 108, 112, and 113 of IBC, 2016, with due deference to the procedure enshrined in Regulations 5, 7, 8, 9, 11, 12, 13, 14, 15 and 17 of IBBI (Insolvency Resolution Process for Personal Guarantor to Corporate Debtors) Regulations, 2019 and also in terms of the other extent provisions of the aforementioned code/ regulations

and/or any other provisions of law applicable to him, in the discharge of his duties as RP.

15. A copy of this order along with a copy of the application and the report of the Resolution Professional shall be provided to the Financial Creditors and Personal Guarantor by the Resolution Professional within 7 days from the receipt of this order.
16. IA-2042/PB/2022 in CP IB No. 622/PB/2021 is disposed of accordingly. To come up for consideration of Status Report to be filed by RP, within 8 weeks.

Copy of this order be sent to the IBBI by the Registry.

Sd/-
DR. SANJEEV RANJAN
MEMBER (TECHNICAL)

Sd/-
MAHENDRA KHANDELWAL
MEMBER (JUDICIAL)