

NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

220. C.P. (IB)/820(MB)2021

IN THE MATTER OF

State Bank of India

... Petitioner

Vs

Sushil Kathuria

... Respondent

U/s 95(1) of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 12.07.2024

CORAM:

MS. REETA KOHLI
MEMBER (J)

MS. MADHU SINHA
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner: Adv. Kunal Kanungo (PH)

For the Respondent:

ORDER

1. Heard the Counsel for the Financial Creditor. The above Company Petition is filed by the **State Bank of India** which is the Financial Creditor herein for initiation of Insolvency Resolution Process against **Mr. Sushil Kathuria** (Respondent) who is the Personal Guarantor of **Sanaa Syntex Private Limited** (Corporate Debtor). Ld. Counsel appearing for the Financial Creditor invited the attention of this Bench to the Supplemental Deed of Guarantee dated 25.05.2013 and thereafter to the 13(2) Legal Notice dated 04.03.2016 under the provision of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act of 2002 invoking the personal guarantee of the Respondent. The Petitioner has also issued the Demand Notice in Form B dated 30.06.2021 against the Respondent and the proof of delivery of the same has been placed on record by the Petitioner by way of an Additional Affidavit dated 08.02.2022.

2. The petition for initiating insolvency resolution process against Personal Guarantor to the Corporate Debtor is complete in all respect.
3. The Hon'ble Supreme Court in *Dilip B Jiwrajka Vs. Union of India & Ors. Writ Petition (Civil) No. 1281 of 2021* decided on 09.11.2023 has held as follows:

“i. No judicial adjudication is involved at the stages envisaged in Section 95 to Section 99 of the IBC;

ii. The Resolution Professional appointed under Section 97 serves a facilitative role of collating all the facts relevant to the examination of the application for the commencement of the insolvency resolution process which has been preferred under Section 94 or Section 95. The report to be submitted to the Adjudicating Authority is recommendatory in nature on whether to accept or reject the application.”

4. Having considered the submissions and upon perusing the above documents, this Bench is of the considered view that the present Company Petition is complete in all aspects as required by law and thus hereby appoints **Mr. Birendra Kumar Agarwal**, having Insolvency Registration No. **IBBI/IPA-001/P-P00164/2017-2018/11040**, Email Id: bk@bhamaconsulting.com to act as the Resolution Professional.
5. The fee payable to Resolution Professional (RP) shall be in accordance with the Insolvency and Bankruptcy Board of India (IBBI) Regulations/Circulars/Directions issued in this regard.

6. This Bench also directs for an advance payment to the tune of **Rs. 1,00,000/-** to be paid by the Financial Creditor to the Resolution Professional immediately to initiate the process which shall be adjusted towards fee and expenses payable to the Resolution Professional.
7. The interim-moratorium under Section 96(1) (a) of the Insolvency and Bankruptcy Code, 2016 has commenced on the date of filing of this application by the Financial Creditor and will cease to have effect on the date of admission.
8. During such interim-moratorium period –
 - i. **any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and**
 - ii. **the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.**
9. The Resolution Professional is directed to examine the application as set out in Section 97(6) of IBC, 2016 who after examining, shall submit his report as provided under Section 99(1) of IBC, 2016 within 10 days.
10. Registry is directed to communicate this order immediately to the Resolution Professional, **Mr. Birendra Kumar Agarwal**, having Insolvency Registration No. **IBBI/IPA-001/P-P00164/2017-2018/11040**, Email Id: bk@bhamaconsulting.com;
11. Accordingly, the RP is directed to file his report within 10 days of the date of order. The copy of the Report be forwarded to the Petitioner as well as

Respondent. The Respondent/ Personal Guarantor may file his response to the Report filed.

12.Notice of motion. Petitioner as well as Registry are directed to issue notice to the Respondent/Personal Guarantor clearly intimating the next date of hearing. The Petitioner shall file service affidavit along with copy of notice sent to the Respondent/Personal Guarantor, original postal receipt, track report/acknowledgements, email etc, at least two days before the next date of hearing. Registry is also directed to submit service report along with notice copy sent to Respondent/Personal Guarantor, postal receipt, track report/acknowledgement. Post it for **19.08.2024**.

Sd/-
MADHU SINHA
Member (Technical)

Sd/-
REETA KOHLI
Member (Judicial)

// Avdhesh K Patel //