

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 11
(IB)-554(PB)/2022
IA-156/2024

IN THE MATTER OF:

State Bank of India

.... Petitioner

v.

Smt. Shanta Gupta

.... Respondent

Order U/s. 95 (1) of (IBC)

Order delivered on 03.04.2024

CORAM:

JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)

HYBRID HEARING (PHYSICAL & VC)

PRESENT:

For the Petitioner : Sr, Adv, K. Datta, Adv. Pranjit Bhattacharya,
Adv. Tarini Khurana
For the Respondent : Adv. Pooja M. Saigal, Adv. Rajat Juneja, Adv.
Sakshi Kapoor

ORDER

Dictated in Open Court

1. These three company petitions i.e. (IB)-551(PB)/2022, (IB)-552(PB)/2022 & (IB)-554(PB)/2022 have been filed by the State Bank of India ("SBI") under Section 95(1) of Insolvency and Bankruptcy Code, 2016 ("IBC") against the personal guarantors (PGs) of the Corporate Debtor namely SR Foils & Tissue Ltd. The brief facts leading to filing of these petitions against the personal guarantors are as follows:-
2. In 2010, the Corporate Debtor obtained credit facilities for working capital from SBI which was sanctioned on 27.01.2010 for a sum of Rupees Fifteen Crores.

3. The Corporate Debtor executed various documents and enjoyed the credit facilities. This limit was enhanced from time to time and the enhanced credit facility was supported by loan agreement, deed of guarantees and agreement-cum-indemnity.
4. In view of the several enhanced credit facilities and working capital from time to time, following personal guarantees were executed:
 - a. Guarantee Deed dated 18.03.2010 for INR 25 crores, executed by Sh. Rishi Gupta (page 214 of the Petition);
 - b. Guarantee Deed dated 26.05.2011 for INR 190 crores, executed by Sh. Rishi Gupta, Sh. Rakesh Gupta, Mrs. Shanta Gupta, and Sh. RC Gupta (page 306 of the Petition);
 - c. Guarantee Deed dated 02.07.2012 for INR 3 crores, executed by Sh. Rishi Gupta (page 356 of the Petition);
 - d. Guarantee Deed dated 25.09.2012 for INR 32 crores, 65 lacs, executed by Sh. Rishi Gupta, Sh. Rakesh Gupta, Mrs. Shanta Gupta, and Sh. RC Gupta (page 426 of the Petition);
 - e. Guarantee Deed dated 28.03.2013 for INR 356 crores, executed by Sh. Rishi Gupta, Sh. Rakesh Gupta, Mrs. Shanta Gupta, and Sh. RC Gupta (page 484 of the Petition); and
 - f. Guarantee Deed dated 10.06.2013 for INR 19.50 crores, executed by Sh. Rishi Gupta and Sh. Rakesh Gupta (page 553 of the Petition) and vide another deed executed by Shanta Gupta and Sh. RC Gupta (page 563 of the Petition).

5. The account of the Corporate Debtor was classified as NPA on 28.12.2013. A notice under Section 13(2) of the SARFAESI Act was issued on the Corporate Debtor as well as to the personal guarantor on 23.04.2014. The Legal Demand Notice was issued on the Corporate Debtor on 23.04.2014. On 10.08.2016 an OA-275/2014 was filed in the SARFAESI proceedings by the erstwhile banks assigning the debts in favour of Phoenix ARC.
6. Section 7 petition has been filed by the Financial Creditor through wrongly stated as Operational Creditor both in the main Section 95 petition and also in the brief notes submitted by the Bank/RP. We direct the Bank and the RP not to commit such mistakes in future as it gives wrong brief of facts which may have a bearing on the decision of the Adjudicating Authority, subject to payment of cost of Rs. 5,000/- to be paid to the IBBI by the RP or by the SBI. SBI is directed to ensure that all petitions filed by them are carefully scrutinized and list of dates and events are re-checked before it is filed. Casual approach in filing petitions should be avoided. We caution the Applicant Banks as well as the RP not to commit such errors in future and to ensure that correct facts are projected before the Adjudicating Authority. A copy of this order be sent to IBBI and Chief General Manager, SBI, Delhi.
7. According to the notes, the liquidation order was passed by the Principal Bench on 04.03.2020 which reads as follows:-

“Vide order dated 04.03.2020, the Hon'ble NCLT, Principal Bench, New Delhi allowed IA No.1034(PB)/ 2020 in C.P. No. (IB)- 144 (PB)/ 2017 i.e., an application

under section 33 of the IB Code and directed liquidation of the Corporate Debtor.”

8. At the time of the dictation of the order, Mr. Bhaskar, Ld. Counsel for the SBI and RP states that the IA number and CP number as stated in the above order in para 7 have been wrongly mentioned in the notes. The Correct IA number is IA-1034/2020 filed in CP IB-144/(PB)/2017. Both the IA number and CP IB number punched in the notes are wrong. This could have been avoided.
9. Though this does not actually impact the issue in hand, we find that the errors in facts should be avoided by the Counsel for the Bank, Counsel for the RP and RP as well so that the filing of rectification application can be avoided.
10. On 01.07.2021, the demand notice in terms of Rule 7(1) of the Insolvency & Bankruptcy (Application to Adjudication Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 was sent to all the personal guarantors who failed to pay dues within time stipulated and accordingly in terms of report of the RP filed under Section 99 vide IA-173/2024, a sum of Rs. 649,65,74,965.76/- (Rupees Six Hundred Forty-Nine Crores Sixty-Five Lakhs Seventy-Four Thousand Nine Hundred Sixty-Five and Seventy-Six Paisa only) is still due and payable to the Financial Creditors as on 31.03.2022 and is supported by the personal guarantors' undertaking to discharge the liability of the Corporate Debtor.
11. We also notice that the bank has been very lethargic in taking steps to realise its dues in the present case which is evident from the fact that having issued the demand notice

on 01.07.2021, the petition under section 95 (1) is filed on 10.06.2022 i.e. almost after a year has lapsed. There was no justification in the petition explaining the delay. The object of the Code is based on the timelines that have been specified and emphasized by the Hon'ble Supreme Court time and again for early resolution. In this case we do not find any justification for the bank to sleep over the matter for one year and no explanation is given. This should be taken note by the senior officers of the bank concerned and IBBI.

12. We say so taking note of the huge amount which is still due as on 31.03.2022 amounting to almost Rs. 649 Crores on a loan which was granted in the year 2010 and in respect of corporate debtor which has been finally ordered to be liquidated. We also observe that the reasonable due diligence by the bank while granting loans to such companies should also take place.
13. The copy of the report of RP under Section 99 was sent to the personal guarantors. Prior to the copy of the report being served on the personal guarantors, RP caused a letter to be served upon all the personal guarantors on 22.12.2023. Mr. Rishi Gupta and Mr. Rakesh Gupta acknowledged the same and for and on behalf of all the personal guarantors, Mr. Rishi Gupta replied to the RP which is annexure A-3 at page 19 of IA-173/2024 which reads as follows :-

Fw: Reply to your letter

ANNEXURE A-3 19

Ashok Gulla, RBSA <ashok.gulla@rbsa.in>

Tue 1/2/2024 11:43 AM

To: bhaskar@mitalandmital.com <bhaskar@mitalandmital.com>

Dear Bhaskar,

Reply from Mr. Rishi Gupta received in the mail below.

Regards

Ashok Kumar Gulla

From: gupta rishi <guptarishi8691@gmail.com>
Sent: Monday, January 1, 2024 12:27 PM
To: Ashok Gulla, RBSA <ashok.gulla@rbsa.in>
Subject: Reply to your letter

Dear Sir,

We refer to your letter dated 22.12.2023 and have to submit as under:

- S R Foils and Tissue Limited had availed various credit facilities from Consortium of banks including State bank of India since 2010. I had stood Personal guarantor to the credit facilities availed by S R Foils and Tissue Limited with SBI and other Banks. The business of the S R Foils and Tissue Limited was impacted adversely due to various reasons including unhealthy competition, currency demonetization and the market conditions, and corporate debtor has defaulted in making payment of debt. S R Foils and Tissue Limited is presently under the Liquidation Process since 14.04.2020.
- As personal guarantor, the properties held by me and mortgaged to bank was already taken possession and disposed by bank. I acknowledge that debt owned by S R Foils and Tissue Limited continues and as personal guarantor, I have no objection to initiate insolvency proceedings against me under the provisions of the Insolvency and Bankruptcy Code, 2016 (the Code). Further, I am not eligible for submitting application for fresh start under Sec 81 of the Insolvency and Bankruptcy Code, 2016. I have suffered various hardship during the last couple of years due to legal cases initiated against me and request that a sympathetic view may be taken towards me while dealing with this Insolvency proceedings against me.

Best Regards

Rakeshh Gupta and Rishi Gupta
Address: E-57, sector 55, Noida-201301

14. It is orally stated by RP that Mr. Rishi Gupta and Mr. Rakesh Gupta while acknowledging the debt also submitted to the RP that Mrs. Shanta Gupta, mother of Mr. Rishi Gupta and Mr. Rakesh Gupta was ill. She received the communication but no response is given.
15. Be that is it may, we find that the notice required in terms of Section 99(10) and Rule 7(1) has been satisfied, their debt is reflected in the relevant books of accounts and the personal guarantors have also admitted the debt as communicated above.
16. In view of the above, we admit the present petition bearing No. **(IB)-554(PB)/2022** filed under Section 95(1) for initiation of Insolvency Resolution Process against the Personal Guarantor.

17. 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 petition shall cease to have effect. 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.
18. We direct the RP to issue a public notice on our behalf in terms of the provision of Section 102 to invite the claims from the creditors at large. For this purpose, he will be paid a consolidated amount of Rs.2,00,000 by the PGs to meet the cost arising out of issuing public notice and inviting claims etc.
19. Copy of this admission order along with the report of RP be made available to SBI in terms of Section 100(3) of the Code, by the RP.
20. Copy of this order be also sent to IBBI by the Registry.
21. Ld. Counsel for the Respondent requested that he may be allowed to participate in resolving the issue. He is at liberty to proceed in accordance with the law.

-Sd/-
(RAMALINGAM SUDHAKAR)
PRESIDENT

-Sd/-
(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)

03.04.2024
Lalit