

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 209
(IB)-492/ND/2022
IA-102/2023

IN THE MATTER OF:

State Bank of India
(Through Sh. Prabhat Ranjan Singh) ... Applicant/Financial Creditor

Versus

Mr. K.M. Sebsatine & Anr. ... Respondent/Personal Guarantor

AND IN THE MATTER OF IA No. 102/2023:

Prabhat Ranjan Singh
(Resolution Professional)
Chamber No. 119, C.K. Daphtary Block,
Supreme Court of India, Tilak Lane,
New Delhi-110001
... Applicant

Under Section: 95(1) of IBC, 2016

Order delivered on 31.01.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Sidhi Bansal, Adv. Sagar Ratusaria, Adv.
Ridhi Bansal
For the Respondent : Mr. Prabhat Ranjan Singh

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

IA-102/2023: The present application has been preferred by the RP under Section 99 of IBC 2016, recommending the admission of the IB-492/ND/2022 filed by the State Bank of India for initiating IRP qua the Personal Guarantor namely Mr. K.M. Sebsatine. As can be gathered from the application, the CD M/s. Schiffliies India Limited incorporated under the

Companies Act, 1956 has been engaged in the business of export and distribution of western wear, salwar, woven garments, gents' shirts, embroidery products etc., avail the credit facility from the Applicant Bank. The creditor could extend some such facility after due consideration of the request of the CD to it. The total credit facility extended by the creditor to the CD was Rs. 17 crores viz. 6 crores as cash credit limit and 11 crores as term loan. The loan was sanctioned vide letter dated 20.10.2010. On availing the credit facility, the Respondent could stand as guarantor in favour of the creditor and for the CD. Mrs. Neelina Sebastine i.e. wife of the Respondent/PG had offered primary security to the Applicant Bank in the form of pari-passu charge on the stock of the CD comprising of raw materials/stores, spares, stocks in transit, finished goods, present and future book debts, receivables and other current assets. Additionally, as a collateral security, the Respondent along with Mrs. Neelina Sebastine created first pari-passu charge on the existing plant, building and other unencumbered fixed assets of the CD along with the pledge of shares of the CD in the name of the Respondent i.e. Mr. K.M. Sabestine and the other Guarantor Mrs. Neelina Sebastine. The other collateral securities, were the equitable mortgage of the land and building 59, Sector 4, IMT Manesar, Gurgaon existing in the name of the CD.

2. In some and substance, the Applicant stood as personal guarantor for the aforementioned loan facility extended by the Applicant to the CD. Indubitably, for the facilities in the form of term loan, the Respondent had signed the relevant letter of arrangement.

3. On the request made by the CD, the Applicant Bank extended the credit facility to the CD in the form of term loan to the tune of Rs. 14.25 crores and

SLC facility of Rs. 1 crore (Rs. 15.25 crores in total). Besides the working capital credit facility was also extended vide Sanction letter dated 06.01.2012. The brief facts of the case as mentioned in the application from para 3 to 35 reads thus:

“BRIEF FACTS OF CASE

3. That the Corporate Debtor, M/s. Schifflies India Limited was incorporated under the Companies Act, 1956 and has been engaged in the business of export and distribution of western wear, salwar, woven garments, gents'shirts, embroidery products etc. The said Corporate Debtor had approached the SME Gurgaon Branch of the Applicant/State Bank of India for availing the Cash Credit and Term Loan facilities in the year 2010. The aforesaid Gurgaon branch of the Applicant Bank after due consideration of the request of the Corporate Debtor sanctioned credit facilities of Rs. 17 Crores (cash credit limit of Rs. 6 Crores and Term Loan limit of Rs. 11 Crores) vide Sanction Letter dated 20.10.2010 bearing Ref. No. SME/2010-11/2019. For availing the aforesaid cash credit facility, the Corporate Debtor through the present guarantor along with another guarantor Mrs. Neelina Sebastine offered primary security to the Applicant Bank in the form of pari-passu charge on the stock of the Corporate Debtor comprising of raw materials/stores, spares, stocks in transit, finished goods, present and future book debts, receivables and other current assets (the Applicant's Bank Share 66.67% and Central Bank of India's share 33.33%). As security for availing the Term Loan limit, 1st and exclusive charge on the proposed building, plant & machinery of the Corporate Debtor was created in favour of the Applicant Bank. Further, as a collateral security the present Guarantor along with Mrs. Neelina Sebastine created 1st parri passu charge on the existing plant, building and other unencumbered fixed asset of the Corporate Debtor along with pledge of shares of the Corporate Debtor in the name of the present Guarantor, Mr. K.M.Sebastine and the other Guarantor, Mrs. Neelina Sebastine. Other collateral securities, the equitable mortgage

*of land and building 59, Sector 4, IMT Manesar, Gurgaon existing in the name of the Corporate Debtor (share of Applicant Bank 85%), the equitable mortgage of land and building situated at 244 Development Plots, Cochin Kerala existing in the name of the Corporate Debtor (share of Applicant Bank 85%), mortgage of residential property existing in the name of Mrs. Neelina Sebastine bearing Sy. No. 251, Kara Road, Edavilangu, Village, Kondunalloor Taluk Kerala (share of Applicant Bank 85%) and 1st pari-passu charge over the entire fixed assets, present and future movable & immovable, plant & machinery and other miscellaneous fixed assets situated at building 59, Sector 4, IMT Manesar, Gurgaon and 244 Development Plots, Cochin Kerala (Excluding land & building) (share of Applicant Bank 85%). Copy of Sanction Letter dated 20.10.2010 is annexed herewith as **Annexure-B**.*

*4. That for availing the aforesaid credit facilities from the Applicant Bank, a resolution was passed in the meeting of the board of directors of the Corporate Debtor on 16.11.2010 to accept the terms and conditions of the Sanction Letter and in which it was resolved that the present Personal Guarantor, Shri K.M. Sebastine and the other Personal Guarantor, Smt. Nileena Sebastine would furnish the required guarantees to the Applicant Bank for various credit facilities to the tune of Rs. 20 Crores. Copy of the Board Resolution dated 16.11.2010 is annexed herewith as **Annexure-C**.*

*5. That for facilitating the availing the credit facility in the form of Term Loan to the tune of Rs.11 Crores, a Letter of Arrangement, SME-1, dated 19.11.2010 bearing Letter No. SME/2010-11/219 was executed between the Applicant Bank and the Corporate Debtor. The aforesaid Letter of Arrangement was signed by the present Personal Guarantor, Shri K.M. Sebastine and the other Personal Guarantor, Smt. Nileena Sebastine as the directors of the Corporate Debtor. Copy of the Letter of Arrangement dated 19.11.2010 is annexed herewith as **Annexure-D**.*

6. That for availing the credit facility of Term Loan to the tune of Rs. 11 Crores by the Corporate Debtor, an Agreement of Loan-Cum-Hypothecation, SME-2, dated 19.11.2010 was executed by the Corporate Debtor. The aforesaid Agreement of Loan-Cum-Hypothecation was signed by the present Personal Guarantor, Shri K.M. Sebastine and the other Personal Guarantor, Smt. Nileena Sebastine as the directors of the Corporate Debtor. Copy of the Agreement of Loan-Cum- Hypothecation dated 19.11.2010 is annexed herewith as **Annexure-E**.

7. That for the facilitation of availability of the aforesaid credit facilities, a Deed of Guarantee dated 19.11.2010 bearing Ref. No. Form CF 4 was executed by the present Personal Guarantor, Shri K.M. Sebastine and the other Personal Guarantor, Smt. Nileena Sebastine. Copy of the aforesaid Deed of Guarantee dated 19.11.2010 is annexed herewith as **Annexure-F**.

8. That further a Gurantee Agreement dated 19.11.2010 bearing Ref. No. SME-3 was executed by the present Personal Guarantor, Shri K.M. Sebastine and the other Personal Guarantor, Smt. Nileena Sebastine in which the amount of Term Loan of Rs. 11 Crores plus interest, enhanced interest, fees, commission, charges, costs and expenses including legal costs was guranteed. Copy of the aforesaid Guarantee Agreement dated 19.11.2010 is annexed herewith as **Annexure-G**.

9. That the the present Personal Guarantor, Shri K.M. Sebastine and the other Personal Guarantor, Smt. Nileena Sebastine executed a Security Delivery Letter dated 26.11.2010 through which total number of 41,24,780 equity shares of the Corporate Debtor having value of Rs.10 each held by were pledged to the Applicant Bank. Out of 41,24,780 equity shares, 40,75,280 were pledged by the present Personal Guarantor, Mr. K.M. Seabstine. Copy of the Security Delivery Letter dated 26.11.2010 is annexed herewith as **Annexure-H**.

10 That at the request on behalf of the Corporate Debtor, the Applicant Bank sanctioned the enhancement of the credit limits to the Corporate

*Debtor of Term Loan from Rs. 11 Crores to 14.25 Crores and SLC facility to Rs. 1 Crore (Rs. 15.25 Crores in total), Working Capital Credit Facility from existing Rs.6 Crores to Rs. 12 Crores vide the Sanction Letter dated 06.01.2012 bearing Ref. No. SME/2011-12. For availing the aforesaid enhanced credit facilities, apart from the extension of earlier hypothecation and equitable mortgages created at the time availing the initial credit facilities in year 2010, exclusive charge was created on equitable mortgage of the Corporate Debtor's land and building situated at Block No.6, Survey No. 321 part, Muri-Thrikkakkara, Fikra- Thirvakulam, Village Thrikkakkara North, Sub-District-Edapally, Taluk-Kanayannur, District- Ernakulam measuring 1.3242 acres and exclusive charge on the plant and machinery of the Corporate Debtor was also created. Copy of the aforesaid Sanction Letter dated 06.01.2012 is annexed herewith as **Annexure-I**.*

*11. That for availing the aforesaid the enhanced credit facilities from the Applicant Bank, a Board Resolution was passed in the meeting of the board of directors of the Corporate Debtor on 07.01.2012 to accept the terms and conditions of the Sanction Letter and in which it was resolved that the present Personal Guarantor, Shri K.M. Sebastine and the other Personal Guarantor, Smt. Nileena Sebastine would furnish the required guarantees to the Applicant Bank for various credit facilities provided by the Applicant Bank. Copy of the Board Resolution dated 07.01.2012 is annexed herewith as **Annexure-J**.*

*12. That for facilitating the availing the aforesaid enhanced credit facilities amounting to Rs. 15.25 Crores, a Letter of Arrangement, SME-1, dated 07.01.2012 was executed between the Applicant Bank and the Corporate Debtor. The aforesaid Letter of Arrangement was signed by the present Personal Guarantor, Shri K.M. Sebastine and the other Personal Guarantor, Smt. Nileena Sebastine as the directors of the Corporate Debtor. Copy of the Letter of Arrangement dated 07.11.2012 is annexed herewith as **Annexure-K**.*

13. That further, the Corporate Debtor, M/s. Schifflies India Limited executed a supplemental agreement of loan cum hypothecation dated 07.01.2012. Copy of the Supplemental Agreement of Loan cum Hypothecation dated 07.01.2012 is annexed herewith as **Annexure-L**.

14. That for facilitating the availability of the enhanced credit facilities of Rs.15.25 Crores, a fresh Gurantee Agreement dated 07.01.2012 bearing Ref. No. SME-3 was executed by the present Personal Guarantor, Shri K.M. Sebastine and the other Personal Guarantor, Smt. Nileena Sebastine through which the amount of Term Loan of Rs. 15.25 Crores plus interest, enhanced interest, fees, commission, charges, costs and expenses including legal costs was guranteed. Copy of the Gurantee Agreement dated 07.01.2012 is annexed herewith as **Annexure-M**.

15. That for the aforesaid enhanced credit facilities, a Supplemental Deed of Gurantee dated 07.01.2012 bearing Ref. No. Form CF.4-A was executed by the present Personal Guarantor, Shri K.M. Sebastine and the other Personal Guarantor, Smt. Nileena Sebastine. Copy of the Supplemental Deed of Gurantee dated 07.01.2012 is annexed herewith as **Annexure-N**.

16. That on 31.01.2013, a Board Resolution was passed in meeting of board of directors of the Corporate Debtor for obtaining various credit facilities for availing the aforesaid credit facilities either in India or Foreign currencies to the tune of Rs. 29.25 Crores from the Applicant Bank and in which it was resolved that the present Personal Guarantor, Shri K.M. Sebastine was authorised to execute the necessary security documents/revival letters required by the Applicant Bank for grant of credit facilities. Copy of the Board Resolution dated 31.01.2013 is annexed herewith as **Annexure-O**.

17. That a Revival Letter/Acknowledgement Letter dated 31.01.2013 was executed and submitted on behalf the Corporate Debtor by the present Personal Guarantor, Mr. K.M. Sebastine and another Personal

Guarantor, Mrs. Neelina Sebastine to the Applicant Bank acknowledging the credit facilities availed by the Corporate Debtor by executing various security documents on 19.11.2010. Copy of the aforesaid Revival Letter dated 31.01.2013 is annexed herewith as **Annexure-P.**

18. That further, the Corporate Debtor, M/s. Schiffli's India Limited executed a Supplemental Agreement of Loan cum Hypothecation dated 31.01.2013 Ref. No. SME-4. Copy of the Supplemental Agreement of Loan cum Hypothecation dated 31.01.2013 is annexed herewith as **Annexure-Q.**

19. That for facilitating the availability of the enhanced credit facilities of Rs.25.24 Crores, a fresh Guarantee Agreement dated 31.01.2013 bearing Ref. No. SME-3 was executed by the present Personal Guarantor, Shri K.M. Sebastine and the other Personal Guarantor, Smt. Nileena Sebastine through which the amount of Term Loan of Rs. 25.24 Crores plus interest, enhanced interest, fees, commission, charges, costs and expenses including legal costs was guaranteed. Copy of the aforesaid Guarantee Agreement dated 31.01.2013 is annexed herewith as **Annexure-R.**

20. That the Corporate Debtor failed to maintain the financial discipline and due to non payment of instalments and interests relating to various credit facilities availed from the Applicant Bank, its loan account was classified as NPA (Non-Performing Asset) by the Applicant Bank on 30.06.2013 and the same was intimated to the Corporate Debtor vide letter/notice dated 31.07.2013. Copy of aforesaid letter/notice dated 31.07.2013 is annexed as **Annexure-S.**

21. That a demand/legal notice was got issued by the Applicant Bank through its advocate on 26.08.2014 calling upon the Corporate Debtor to repay a sum of Rs. 35,49,85,748.25/- as on 25.04 2014 with future interest and incidental expenses. Copy of the aforesaid demand/legal notice dated 26.08.2014 is annexed as **Annexure-T.**

22. That the Corporate Debtor offered proposals for One Time Settlement (OTS) on 28.11.2016 and 07.09.2017 but the same were not accepted by the Applicant Bank. Copy of proposal for One Time Settlement dated 28.11.2016 is annexed herewith as **Annexure-U**. Copy of proposal for One Time Settlement dated 07.09.2017 is annexed herewith as **Annexure-V**.

23. That the Applicant/ State Bank of India also filed an O.A. bearing 394 of 2014 against the Corporate Debtor and other guarantors including the present Personal Guarantor which was decreed for an amount of Rs. 35,87,60,842.92/- along with future interest at the rate of 12% per annum simple in the favour of the Applicant/ State Bank of India by the DRT, Bench-II, New Delhi on 28.01.2019. Copy of the decreed final order dated 28.01.2019 passed by Ld. DRT-II, New Delhi is annexed herewith as **Annexure-W**.

24. That however, the SARFAESI action undertaken by the Applicant Bank was set aside by the DRT-II, Chandigarh vide its judgment dated 17.08.2021 on the ground that possession notice issued by the Applicant Bank under Section 13(4) of the SARFAESI Act was published on 20.12.2015 in newspaper the Statesman and Vir Arjun which is not a leading newspaper. Copy of the judgment dated 17.08.2021 passed by DRT-II, Chandigarh is annexed herewith as **Annexure-X**.

25. That the amount of the default of the loan amounts availed by the Corporate Debtor was registered with the information utility, NeSL by the Applicant Bank on 21.03.2022. Copy of the Record of Default in the matter of the Corporate Debtor, M/s. Schifflies India Limited registered with NeSL dated 11.04.2022 is annexed as **Annexure-Y**.

26. That the Applicant Bank issued a demand notice dated 06.05.2022 in Form B under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Process for Personal Guarantors to Corporate Debtors) Rules, 2019.

Copy of the demand notice dated 06.05.2022 issued in Form-B is annexed herewith as **Annexure-Z**.

27. That the Corporate Insolvency Resolution Process of the Corporate Debtor has been commenced by the order dated 21.10.2022 passed in C.P. (IB)-599 (PB) /2022 on an application filed by the Applicant Bank. Copy of the order of admission of the CIRP of the Corporate Debtor dated 21.10.2022 is annexed herewith as **Annexure-AA**.

28. That the Applicant Bank through the present Insolvency Professional has filed the present C.P.(IB) No.492/2022 on 31.05.2022 under Section 95 of the Insolvency and Bankruptcy Code 2016 and this Hon'ble Tribunal vide its order dated 09.12.2022 (uploaded on the DMS on 13.12.2022 and came to the knowledge of the present RP on 14.12. 2022) appointed the present Applicant as the Resolution Professional.

29. That this Hon'ble Tribunal has further directed the Applicant/Resolution Professional to file his Report under Section 99 of the Code. As per provisions of Section 99 of the Code, the Resolution Professional is duty-bound to file a report before this Hon'ble Tribunal within 10 days of his appointment recommending for the approval or rejection of the application filed under Section 95 of the Code.

30. That the Resolution Professional sent the intimation along with the order dated 09.12.2022 passed by this Hon'ble Tribunal to the Personal Guarantor, Mr. K.M. Sebastine on 14.12.2022 requesting him to provide the proof and detail of repayment if any made to the Applicant/State Bank of India by courier on his known residential address i.e. S-425, First Floor, Greater Kailash, New Delhi-110048 which has not been served on him as per the report of the courier service provider "Not Delivered (RECEIVER SHIFTED FROM GIVEN ADDRESS)". The intimation to the personal guarantor to furnish the Proof of the repayment if any made to the Applicant/ State Bank of India along with the order dated 09.12.2022 of this Hon'ble Tribunal was also sent to his known residential address by speed post on

14.12.2022 which has also not been served upon him and the remarks as per postal tracking report is "Item Returned Addressee Left without instructions". Copies of the courier receipt along with the tracking report of the courier service provider are annexed herewith as **Annexure-AB(Colly)**. Copies of the speed post receipt along with the postal tracking report are annexed herewith as **Annexure-AC (Colly)**.

31. That the Resolution Professional sent intimation for furnishing evidence of repayment of debts sent through email dated 14.12.2022 to the Personal Guarantor, Mr. K.M. Sebastine along with the attached copy of the order dated 09.12.2022 of this Hon'ble Tribunal. Copy intimation for furnishing evidence of repayment of debts sent through email dated 14.12.2022 by the Resolution Professional to the Personal Guarantor, Mr. K.M. Sebastine along with the attached copy of the order dated 09.12.2022 of this Hon'ble Tribunal is annexed herewith as **Annexure- AD**. The Personal Guarantor, Mr. K.M. Sebastine sent reply through his email dated 21.12.2022 requesting the present Resolution Professional to deter the proceedings to be undertaken pursuant to order dated 09.12.2022 as he has claimed to have filed an appeal before Hon'ble NCLAT against the order of this Hon'ble Tribunal dated 09.12.2022. The Personal Guarantor/Debtor has neither served the copy of the appeal upon the present Applicant nor served any order of stay on the present proceedings relating to C.P.No.492/2022. Further the personal Guarantor/Debtor, Mr. K.M. Sebastine, has not furnished any proof of repayment of the amount of unpaid debt as claimed by the creditor/State Bank of India. Copy of email dated 21.12.2022 received from Mr. K.M. Sebastine is annexed herewith **Annexure-AE**.

32. That the Resolution Professional also sent an intimation along with the order of this Hon'ble Tribunal dated 09.12.2022 to the Creditor, State Bank of India by email dated 14.12.2022 for confirmation of the debt payable by Mr. K.M. Sebastine as a personal Guarantor for debt availed by the Corporate Debtor/M/s. Schifflies

India Limited. Copy of the email dated 14.12.2022 sent to the Creditor Bank is annexed herewith as **Annexure-AF**.

33. That the Resolution Professional received the response of the creditor State Bank of India by an email dated 19.12.2022. Through email dated 19.12.2022, it has been confirmed on behalf of the Creditor Bank that “No payment has been made by the Corporate Debtor and personal guarantor to the State Bank of India after the loan/credit facilities were recalled.” Copy of email dated 21.12.2022 received from State Bank of India is annexed herewith as **Annexure-AG**.

34. That till the preparation and subsequent filing of the instant report, the personal guarantor/ Mr. K.M. Sebastine has not submitted any proof/details of repayment of debt to State Bank of India.

35. That on examining the present application filed under Section 95 of the Code and statement of the bank account of the Corporate Debtor shared by the Creditor Sate Bank of India, it is crystal clear that the creditor has not received any repayment towards the defaulted loan accounts from either the corporate Debtor or the personal guarantor or any other means. No repayment has been made by the Corporate Debtor or any of the guarantors since 19.09.2014 when the Original Application before the DRT, New Delhi was filed. The Ld. DRT-II, New Delhi passed the judgment dated 28.01.2019 allowing the O.A. No. 394 of 2014 by upholding that the Applicant Bank is entitled to recover a sum of Rs. 35,87,60,842.92/- (Rupees Thirty Five Crores Eighty Seven Lacs Sixty Thousand Eight Hundred Forty-Two and Paise Ninety Two Only) futute interest @ 12% simple from the date of filing of the Original Application till realization from the defendants No.1 to 3 jointly and severally. The details of the outstanding amount of loan amounts as on 06.05.2022 and dates of repayments made to the Creditor Bank are as follows:

Decretal Amount (INR)	Amount of Interest from 19.09.2014 to 06.05.2022 @ 12 % per annum (INR)	Total(INR) as on 06.05.2022
35,87,60,842.92	32,87,23,222.76	68,74,84,065.68

The copy of Account Statement along with the interest of the Corporate Debtor M/s. Schiffli's India Limited till 06.05.2022, certified by the Creditor Bank, is annexed herewith as **Annexure- AH.**"

4. The loan/credit facility qua which the Respondent stood as guarantor has also been mentioned in Part-III of the application filed under Section 95 of the IBC, 2016 which reads thus:

PART-III


PARTICULARS OF DEBT		
1.	TOTAL DEBT (INCLUDING INTEREST OR PENALTIES)	Total amount of Debt: Rs.68,74,,84,065.70/- as on 06.05.2022 inclusive of interest till 06.05.2022.
2.	AMOUNT IN DEFAULT	Rs.68,74,,84,065.70/-
3.	DATE OF WHICH DEBT WAS DUE.	Debt is due since 19.09.2014 and Recovery proceedings are continuing before Debts Recovery Tribunal-II, Delhi
4.	DATE ON WHICH DEFAULT OCCURRED	19.09.2014 and Default is continuing
5.	NATURE OF THE DEBT	Working Capital and Term Loan
6.	SECURED DEBT INCLUDING PARTICULARS OF SECURITY HELD, THE DATE OF ITS CREATION, ITS ESTIMATED VALUE AS PER THE CREDITOR (AS APPLICABLE)	Rs.68,74,,84,065.70/-, Immovable property or any interest therein; Book debts; Movable property (not being pledge)
7.	UNSECURED DEBT (AS APPLICABLE)	N.A.
8.	DETAILS OF RETENTION OF TITLE ARRANGEMENTS (IF ANY) IN RESPECT OF GOODS TO WHICH THE DEBT REFERS (ATTACH COPY)	Copy of Original Application No.394/2014 is Annexed as Annexure-3

9.	DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR ANY OTHER MUTUAL DEALINGS BETWEEN THE GUARANTOR AND THE CREDITOR, WHICH MAY BE SET-OFF AGAINST THE CLAIM (ATTACH A PROOF)	N.A.
10.	PARTICULARS OF AN ORDER OF A COURT, TRIBUNAL OR ARBITRAL PANEL ADJUDICATING ON THE DEFAULT, IF ANY (ATTACH A COPY)	Copy of Judgment dated 28.01.2019 passed by Debts Recovery Tribunal-II, Delhi passed in O.A. No.394/2014 having cause title "State Bank of India Vs. M/s Schiffli India Limited & Ors" is Annexed as Annexure-4 , and copy of Judgment dated 17.08.2021 passed by Debts Recovery Tribunal-II, Chandigarh is Annexed as Annexure-5
11.	RECORD OF DEFAULT WITH THE INFORMATION UTILITY IF ANY (ATTACH A COPY)	Not Available
12.	DETAILS OF SUCCESSION CERTIFICATE, OR PROBATE OF A WILL, OR LETTER OF ADMINISTRATION, OR COURT DECREE (AS MAY BE APPLICABLE), UNDER THE INDIAN SUCCESSION ACT, 1925 (10 OF 1925 (ATTACH A COPY)	N.A.
13.	PROVISION OF LAW, CONTRACT OR OTHER DOCUMENT UNDER WHICH DEBT HAS BECOME DUE (ATTACH A COPY)	As mentioned in the Original Application No.394/2014 and Judgment dated 28.01.2019 passed by the Debts Recovery Tribunal-II, Delhi in O.A. No.394/2014. Copies attached as is Annexed as Annexure-3 and 4 above.
14.	A STATEMENT OF BANK ACCOUNT WHERE DEPOSITS ARE MADE OR CREDITS RECEIVED NORMALLY BY THE CREDITOR IN RESPECT OF THE DEBT OF THE CORPORATE DEBTOR, FROM THE DATE ON WHICH THE DEBT WAS INCURRED (ATTACH A COPY)	Statement of Account alongwith certificate under Banker's Book Evidence Act, 1881. is Annexed as Annexure-6
15.	LIST OF DOCUMENTS ATTACHED TO THIS APPLICATION IN ORDER TO PROVE THE EXISTENCE OF DEBT AND THE AMOUNT IN DEFAULT.	Attached separately
16.	STATEMENT BY CREDITOR IN RESPECT OF EXCLUDED DEBTS	• N.A.
17.	IF, YOU ARE A SECURED CREDIT, TICK THE APPLICABLE BOX IN THE RIGHT COLUMN RELATING TO FORFEITURE OF RIGHT TO ENFORCE SECURITY DURING THE PERIOD OF THE REPAYMENT PLAN, WHICH WILL DETERMINE THE VOTING SHARE AS PER SECTION 110 OF THE CODE.	• N.A.

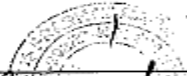
5. In para 36 of the application, the Applicant has indicated the compliance of the procedure stipulated in Section 95 & 99 of the IBC, 2016.

The para 36 of the application reads thus:

“36. That in compliance with the order dated 09.12.2022 passed by this Tribunal and after examination of the application filed under Section 95 of the Code, the present Applicant/Resolution Professional submits this recommending the acceptance of the application filed under section 95 of the Code for the following reasons:

S. No.	Requirements under the provisions of Section 99 of the Code of 2016	Submissions of the Resolution Professional	Compliance with the requirements of Section 99 of the Code of 2016 (Yes/No/Not Applicable)
1.	Section 99(1) of the Code: The resolution professional shall examine the application referred to in section 94 or section 95, as the case may be, within ten days of his appointment, and submit a report to the Adjudicating Authority recommending for approval or rejection of the application.	The Resolution Professional submits that the present report has been prepared in compliance the requirements of Section 99(1) of the Code	Yes, The present report is being filed in terms of the requirement of Section 99(1) of the Code.
2.	Section 99(2) of the Code: Where the application has been filed under section 95, the resolution professional may require the debtor to prove repayment of the debt claimed as unpaid by the creditor by furnishing- (a) evidence of electronic transfer of the unpaid amount from the bank account of the debtor; (b) evidence of encashment of a cheque issued by the debtor; or	The Resolution Professional has sent an intimation on 14.12.2022 through speed post and courier and also through email requiring the debtor to prove the repayment of debt as claimed by the creditor in compliance with Section 99(2) of the Code.	
	(c) a signed acknowledgment by the creditor accepting receipt of dues.	In response to the aforesaid intimation sent to the personal guarantor through email the Resolution Professional has received an email dated 21.12.2022 in which the personal guarantor has requested the Resolution Professional to defer the proceedings to be undertaken by the RP as he has claimed to have filed an appeal before the Hon'ble NCLAT challenging the order of this Hon'ble Tribunal passed on 09.12.2022. The Debtor has not furnished any evidence of repayment of debts owed by the CD to the Creditor.	

		<p>The Resolution Professional also sent an email to the Creditor, the State Bank of India on 14.12.2022 for confirmation of debt payable by Mr. K.M. Sebastine for debt availed by M/s. Schiffli India Limited. The Creditor sent its response to the Resolution Professional by email on 19.12.2022 and intimated that no payment has been made by the Corporate Debtor and personal guarantor to the State Bank of India after the loan/credit facilities were recalled.</p> <p>Therefore, the amount of outstanding debt of Rs. 68,74,84,065.68/- (Rupees Sixty Eight Crores Seventy Four Lacs Eighty Four Thousand Sixty Five and Paise Sixty Eight Only) has remained unpaid as on 06.05.2022. The Debtor/Personal Guarantor has not furnished any proof or evidence of repayment of the outstanding debt to the Creditor. Hence, the Resolution Professional has concluded that the Personal Guarantor has not repaid the debt claimed by the Creditor.</p>	
3.	<p>Section 99(3): Where the debt for which an application has been filed by a creditor is registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt</p>	<p>The amount of the default of the loan amounts availed by the Corporate Debtor was registered with the information utility, NeSL by the Applicant Bank on 21.03.2022. Copy of the Record of Default in the matter of the Corporate Debtor, M/s. Schiffli India Limited registered with NeSL dated 11.04.2022 has been annexed as Annexure-Y.</p>	Yes
4.	<p>Section 99(4): For the purposes of examining an application, the resolution professional may seek such further information or explanation in connection with the application as may be required from the debtor or the creditor or any other person who, in the opinion of the resolution professional, may provide such information.</p>	<p>The Resolution Professional has sent intimations on 14.12.2022 through speed post as well as courier and email requiring the Personal Guarantor to provide information for repayment of the debt claimed as unpaid by the Creditor Bank along with necessary</p>	Yes

		<p>evidence in compliance with the provisions of Section 99(4) of the Code. The Personal Guarantor sent a reply through email on</p> <p>21.12.2022 requesting the RP to defer the proceedings in the present matter as he has claimed to have filed an appeal before the Hon'ble NCLAT against the order dated 09.12.2022 passed by this Hon'ble Tribunal . In his reply he has not given any evidence of the proof of the repayment of the debt to the Creditor Bank. In response to the email sent to the Creditor i.e. State Bank of India on 14.12.2022, the Creditor has confirmed that no repayment has been made towards the amount of unpaid debt.</p>	
5.	<p>Section 95(5): The person from whom information or explanation is sought under sub-section (4) shall furnish such information or explanation within seven days of receipt of the request.</p>	<p>With respect to this report, the Resolution Professional has not received any reply from the Personal Guarantor in respect of repayment of debt claimed by the Creditor.</p>	<p>Yes</p> 
6.	<p>Section 99(6): The resolution professional shall examine the application and ascertain that-</p> <p>(a) the application satisfies the requirements set out in section 95 or 95;</p> <p>(b) the applicant has provided information and given explanation sought by the resolution professional under sub-section (4).</p>	<p>The Resolution Professional submits that the present Application satisfies the requirements of the provisions of Section 95 of the Insolvency and Bankruptcy Code, 2016. Section 95(4)(a) of the Code states as follows:</p> <p>(a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;</p> <p>The RP submits that the above sub-Section has been complied with as various security documents as stated in the preceding paras for availing the credit facilities were executed between the Creditor and the Debtor from 20.10.2010 till 31.01.2013.</p>	

That Section 95(4)(b) states as follows:
(a)the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and
The RP states that the above sub-section has been complied with as the demand notice d



in
06.05.2022 issued in Form B under Rule (7) (1)of the PG Rules 2019 was served on the Personal Guarantor S Mr.K.M.Seabstine on giving him 14 days'time to repay the outstanding amount. The same has b annexed with the main Application.

That Section 95(4) (c) states as follows:
(a)relevant evidence o such default or non-repayment of deb

The RP submits that Mr. K.M.Sebastine has not furnished any documents evidencing the repayment of debt as claimed by the Creditor Bank.

Section 95(5) states as follows:
The creditor shall also provide a copy of the application made und sub-section (1) to the debtor.

The RP submits that the above sub-section has been complied with as the copy of application was made available to the debtor on 03.12.2022 as per the affidavit of service filed before this Hon'ble



		<p>Tribunal on 07.12.2022. The Debtor was served on the email id schiffliies@gmail.com. The copy of affidavit of service dated 07.12.2022 is annexed herewith as Annexure-AI.</p> <p>Section 95(6) of the Code states as follows <i>(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.</i></p> <p>The Resolution Professional submits that the above mentioned sub-section has been complied with as the Application has been correctly filed in Form C and requisite fee of Rs. 2,000/- has been deposited online.</p> <p>Section 95(7) states as follows: <i>(7) The details and documents required to be submitted under sub-section (4) shall be such as may be specified.</i></p> <p>The RP submits that requirements of the provisions of Section 95(7) have been complied with as the documents received from the creditor executed by the debtor for availing the credit facilities have been annexed with the Application.</p>	
--	--	--	--

7.	Section 99(7): After examination of the application under sub-section (6), he may recommend acceptance or rejection of the application in his report.	The Resolution Professional submits that the present application satisfies the requirements of the provisions of Section 95 of the Code. The RP further submits that based on his examination of existence of debt, the default by the Debtor and non-payment of the debt, the present Application deserves to be admitted under Section 100 of the Code and this Hon'ble Tribunal may pass appropriate order/s in this regard.	Yes
8.	Section 99(8): Where the resolution professional finds that the debtor is eligible for a fresh start under Chapter II, the resolution professional shall submit a report recommending that the application by the debtor under section 94 be treated as an application under section 81 by the Adjudicating Authority.	The RP submits that the Debtor/ Personal Guarantor does not satisfy the requirements of Section 80(2) of the Code and is not eligible for a "fresh start process" under Chapter II of the Part III of the Code.	
9.	Section 99(9): The resolution professional shall record the reasons for recommending the acceptance or rejection of the application in the report under sub-section (7).	The RP submits that the present report is presented under Section 99(7) of the Code to this Hon'ble Tribunal with the recommendation for acceptance of the present Application filed under Section 95 of the Code as the Personal Guarantor has not repaid the debt due to the Creditor. There is existence of debt and there is default in the repayment of debt by the Debtor as the amount has not been repaid by the Debtor. The Application has Been filed by the Financial Creditor i.e. State Bank of India in	Yes The RP submits that the present report prepared under Section 99 (7) of the Code by recording the reasons for recommending the acceptance of the present application filed by the State Bank of India through the Resolution Professional for further orders under Section 100 of the Code.

		Compliance of the Section 95 of the Code. Hence, the RP recommends for the acceptance of the Application for the Personal resolution Process of the Debtor/ Personal Guarantor, Mr. K.M. Sebastine.	
10.	Section 99(10): The resolution professional shall give a copy of the report under section (7) to the debtor or the creditor, as the case may be.	The RP submits that that he is complying with the requirement of giving a copy of this report prepared under Section 99(7) of the Code with the Creditor and Debtor.	Yes A copy of this Report prepared under Section 99(7) of the Code is being shared with the Creditor i.e. State Bank of India and the Debtor i.e. Mr. K.M.Sebastine In compliance with The provisions of Section 99(10) of Code.

6. As can be seen from the para 36 of the application, the Applicant has categorically stated that the Guarantor could not produce any proof as indicated in Section 99(2) of the IBC, 2016 to prove the repayment of debt. In second row of the table mentioned in para 36 of the application, the RP has stated that he had given sufficient opportunity to the Respondents to adduce the required proof of payment. As can be seen from the prayer made in the application, the RP has asked for admitting the present application and declaration of moratorium in terms of the provisions of Section 101 of the IBC, 2016. Mrs. Sidhi Bansal, Ld. Counsel appearing for the PG argued vociferously that:- (i) the Applicant (creditor) did not serve any notice of demand upon the PG, (ii) as can be seen from the record the notice served upon the PG was incomplete, (iii) the notice of the invocation of bank guarantee was served upon the Respondent through Ld. Counsel, which is contrary to the provisions of Section 2(a) of the SARFESI Act. Section 2(a) of the SARFAESI Act reads thus:

“(a) “Appellate Tribunal” means a Debts Recovery Appellate Tribunal established under sub-section (1) of section 8 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993);”

6. To meet the submissions advanced on behalf of the debtor, the Ld. RP who is present in person could refer to the page No. 6 of the rejoinder to show the proof of service of demand notice upon the Respondent. With reference to the page No. 12 of the rejoinder, he submitted that the Respondent could give reply to the demand notice and there can be no better proof of service of demand notice upon him. He further submitted that the demand notice placed on record has been signed by the DGM i.e. an authority senior to Chief Manager, thus there is no infirmity in serving the demand notice upon the Respondent.

7. Confronted with such submissions, the Ld. Counsel appearing for the Respondent submitted that the demand notice is defective and is incomplete and such issue was raised by the Respondent also in reply to the demand notice. On a specific query, she submitted that the notice is defective, as the date of default mentioned in the same is anterior to the date of account being declared NPA. We heard the Ld. Counsels for the parties and perused the record. It is not so that the Respondent has any argument that there is some proof of repayment of the amount of debt defaulted to be paid. As can be seen from the Section 99(2) of the IBC, 2016, the RP appointed in terms of the provisions of the Section 97 of the IBC, 2016 need to call upon the PG/debtor to prove the repayment of debt as claimed unpaid by the creditor by furnishing the evidence mentioned in the Section. The Section 99(2) of the IBC, 2016 reads thus:

“99. Submission of report by resolution professional.

...

(2) Where the application has been filed under section 95, the resolution professional may require the debtor to prove repayment of the debt claimed as unpaid by the creditor by furnishing—

(a) evidence of electronic transfer of the unpaid amount from the bank account of the debtor;

(b) evidence of encashment of a cheque issued by the debtor; or

(c) a signed acknowledgment by the creditor accepting receipt of dues.”

8. It is not so that the debtor could furnish any such evidence as referred to in Section 99(2) of the IBC, 2016, to the RP.

9. As far as the technical plea of non-service of demand notice, the demand notice being incomplete and the guarantee being invoked by lawyer are concerned, we find that the RP has enclosed the proof of service of demand notice upon the debtor along with the rejoinder. It will not be gainsaid that an account is declared NPA only when default is committed in repayment of loan in full or any instalment thereof. An account is declared NPA only after 90 days of default. It is not so that when not the date of declaring the account as NPA and only the date of default is mentioned in demand notice, the demand notice would be vitiated. Besides once the demand notice has been signed by the competent authority, the invocation of bank guarantee being through legal counsel would not make any difference. The object of demand notice and invocation of bank guarantee is one and the same as in terms thereof, the debtor/PG is required to repay the amount of loan/debt defaulted to be paid by the CD. In view of the aforementioned particularly the fact that the debtor

could not produce any such evidence which has been specified in Section 99(2) of IBC, 2016 before RP to prove the repayment of loan, **we are left with no option but to admit the present application. Ordered accordingly.**

10. It is made clear that, whatever payment is recovered by the Creditor either by auction of the Securities or Corporate Debtor, or from any of the Guarantor would be taken into account in the repayment plan to be submitted by the Personal Guarantors and considered by the Creditors. It is further made clear that no amount beyond whatever is left out of the total term loan sanctioned to the Corporate Debtor would be recoverable from the Guarantors.

11. There is no request by the RP for the purpose of conducting negotiation between the debtor and the creditors. As a sequel of admission of the present application, a moratorium shall commence in relation to all the debts of the Respondent. 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 debtors 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 period of 180 days.

12. A public notice shall be issued by the RP within seven days of passing of this order, inviting claim 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 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.

13. We are sanguine that 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 the due deference of 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 discharge of his duties as RP.

14. A copy of this order along with the copy of the application as also the report of Resolution Professional shall be provided to the Creditor (Applicant), Personal Guarantor (Respondent) and IBBI, by the Registry/Court Master within 7 days from today by email.

15. It goes without saying that whatever amount is paid to the creditor by the principal borrower (corporate debtor) and other guarantors would be deducted from the liability of the Respondents to repay.

16. IA 102/ND/2023 is disposed of accordingly. To come up for consideration of Status Report to be filed by RP, within 8 weeks.

**Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)**

**Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)**