

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 10
(IB)-438(PB)/2021

IN THE MATTER OF:

Alchemist Asset Reconstructions Company	Applicant/petitioner
Vs.		
Mr. Deepak Puri	Respondent

Order under Section 95(1) of IBC

Order delivered on 25.01.2022

CORAM:

JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Financial Creditor:	Mr. Nakul Mohta and Mr. Devansh Srivastava, Advs.
For the RP:	Mr. Palash Singhai, Adv. alongwith Mr. Saran Mohan, Garg, RP

ORDER

IA-376/2022

Mr. Palash Singhai, Ld. Counsel for the Resolution Professional, along with Mr. Saran Mohan Garg, RP are present.

Mr. Nakul Mohta, Ld. Counsel for the Financial Creditor is also present.

The Financial Creditor, through Resolution Professional, earlier filed an application under Section 95 of the IBC, 2016 initiating Insolvency Resolution Process against the Personal Guarantor, namely Mr. Deepak Puri. Mr. Deepak Puri who stood as a Personal Guarantor to the Corporate Debtor, namely Moser Baer India Limited. Notice under Section 95 of the IBC, 2016 application was issued on 16.08.2021. Notice of the application was made over to the Personal Guarantor by the RP. Thereafter at that time it appears that the Personal Guarantor was residing in the United States of America. At the time of enquiry

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in terms of Section 99 of the IBC, 2016, it came to the notice of the RP that the Personal Guarantor of the Corporate Debtor expired on 02.10.2021 at State of California, County of Santa Clara (USA). The proof of death is supported by death certificate at page no. 6 of the Section 99 report, issued by the Competent Authority in the State of California, County of Santa Clara and therefore, the RP has recommended the rejection of the application on the ground that the proceedings against the Personal Guarantor has to be closed as the proceedings will abate, consequent to the death of the Personal Guarantor. In this regard, he refers to definition of Section 5(22) of the IBC, 2016 which read thus:

“personal guarantor” means an individual who is the surety in a contract of guarantee to a corporate debtor;

RP therefore, states that the Personal Guarantor is an individual who stood as a guarantee to a Corporate Debtor and therefore, on his demise the proceedings against the Personal Guarantor would abate. He further stated that the proceedings under IBC, 2016 is not in the nature of recovery and therefore, it would be appropriate to close the proceedings on the death of the Personal Guarantor.

We have considered the report and the provision of law as projected by the Ld. Counsel for the RP, we concur with the reasoning given by the RP that the Personal Guarantor in this case is an individual, who stood guarantee to the Corporate Debtor and proceedings against him will have to be closed since on the death of the Persona Guarantor, proceedings will abate. It has been rightly pointed out that in a case of proceedings under Section 95 of the IBC, 2016, it is case for initiating Insolvency Resolution Process against the

Personal Guarantor and it is not a case for recovery of any amount because that will go contrary to the scheme of IBC, 2016, in such situation on the demise of the Personal Guarantor, an individual who has given his guarantee in the favour of the Corporate Debtor, the question of continuing the proceedings against such a dead person will not arise. Since the proceedings abate, the Section 95 application also has to be closed.

Accordingly, taking the report filed by the RP under Section 95 of the IBC, 2016, we are inclined to accept his recommendation and the proceedings stand closed. The Ld. Counsel for the Creditor has also received the copy of the report and has given his consent for closure of the proceedings. Accordingly, we record the same. The application under Section 95 of the IBC, 2016 is therefore rejected and the proceedings stand closed as above.

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**(RAMALINGAM SUDHAKAR)
PRESIDENT**

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**(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)**