IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 104
(IB)-950(PB)/2020

IN THE MATTER OF:
State Bank of India .... Applicant/petitioner
v.
Farah Khan .... Respondent

Order under Section 95 of Insolvency & Bankruptcy Code, 2016

Judgment delivered on 03.11.2020

CORAM:
SH. B.S.V. PRAKASH KUMAR
HON'BLE ACTG. PRESIDENT

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

PRESENT:
For the Petitioner Mr. Abhishek Anand, & Kunal Godhwani, Adv.
For the Respondent -

JUDGMENT

Dictated in open court

B.S.V. PRAKASH KUMAR, ACTG. PRESIDENT

It is an application filed u/s 95 of Insolvency & Bankruptcy Code (the Code) by a financial creditor namely State Bank of India through Resolution Professional (as stated in the definition of Section 79(21) of the Code) namely Mr. Anil Kohli inter alia seeking an order u/s 96 and 97(1) of the Code.

2. Though this application was filed on 24.08.2020, to provide an opportunity to the guarantor, despite there being a clear cut

provision to order as stated in the respective sections, this bench provided opportunity to the guarantor to represent his grievance if any, in pursuance thereof the guarantor appeared through counsel namely Mr. Hashmat Nabi on behalf of the guarantor on 29.09.2020, but today it appears no one is present on behalf of the guarantor.

3. On perusal of the facts available on record, it is evident that Ms. Farah Khan stood as personal guarantor to the loan facility availed by the corporate debtor namely M/s. Multiwal Pulp and Board Mills Pvt Ltd., against which resolution plan has already been approved by the CoC and the same is pending for approval of this bench.

4. For the law is clear that the creditor can proceed against the personal guarantor under Part-III (Insolvency Resolution and Bankruptcy for individuals and partnership firm) of the Code, the applicant creditor has filed this application u/s 95 of the Code for declaration that interim moratorium, as envisaged u/s 96, has been triggered against the personal guarantor from the date of filing of this company application, and for appointment of Resolution

Professional as stated u/s 97 for submission of report by the Resolution Professional as stated u/s 99 of the Code.

5. For this adjudicating authority, before appointing the RP, is required to direct IBBI to find out any disciplinary proceedings pending against the Resolution Professional, he has sought for a direction against IBBI as stated u/s 97(1) of the Code.

6. As we have noticed upon verification of the record, that there is material reflecting admission of company petition against the principal debtor (M/s Multiwal Pulp and Board Mills Pvt Ltd.) and this personal guarantor standing as guarantor to the loan availed by the said corporate debtor, we hereby clarified that interim moratorium is deemed to have commenced from the date of filing of this application in relation to all the debts and any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed and the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt and further directs IBBI to provide information as to any disciplinary proceedings pending against the Resolution Professional sought to be appointed in this case so as to appoint him as RP u/s 97(5) of the Code.

7. List this application on 25.11.2020 for the recommendation of IBBI as stated u/s 97 (2) of the Code. Accordingly, the Registry is forthwith directed to communicate this order to IBBI enabling it to file report as stated under Section 97 of the Code.

Sd/-

(B.S.V PRAKASH KUMAR)
ACTG. PRESIDENT

Sd/-

(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)

03.11.2020
Ritu Sharma

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HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Petitioner Mr. Abhishek Anand, & Kunal Godhwani, Adv.
For the Respondent Mr. Hashmat Nabi, Adv.

ORDER

Detail order to be followed.

The guarantor counsel has appeared at the end of cause list and asked to consider his appearance because he failed to timely come into video conferencing due to some technical glitch.

Sd/-

(B.S.V PRAKASH KUMAR)
ACTG. PRESIDENT

Sd/-

(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)

03.11.2020
Ritu Sharma