

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 09
(IB)-83(PB)/2022

IN THE MATTER OF:

IDBI Trusteeship Services Ltd

.... Petitioner/Applicant

v.

Mr. Manoj Gaur

....

Respondent

Order under Section 95(1) of Insolvency & Bankruptcy Code, 2016.

Order delivered on 01.05.2024

CORAM:

JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

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

(HEARING THROUGH PHYSICAL MODE AND VC)

PRESENT:

For the Applicant : Mr. Shashwat Anand, Mr. Prabhat Ranjan Raj, Mr. Gunjesh Ranjan, Advs.
For Respondent : Sr. Adv. Mr. Krishnan Venugopal, Mr. Anupam Chaudhary, Mr. Sarvesh Mehra, Mr. Krishnan Agarwal, Mr. Avinash Mathews, Advs.

ORDER

1. The Applicant herein viz. IDBI Trusteeship Services Limited has moved the present application u/s-95(1) of IBC, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (Personal Guarantor Rules) against Personal Guarantor (PG) to Corporate Debtor with a prayer to initiate insolvency resolution process. According to the Ld. Counsel for the applicant, the demand notice under Section 95(4)(b) read with Rule 7 of the Personal Guarantor Rules, demanding payment of amount of default (in Form-B) is enclosed with the application and is placed on record at page no. 626-631 of the application.
2. Mr. Krishnan Venugopal, Ld. Sr. Counsel appeared for the Respondent/Personal Guarantor and pointed out that there is no

board resolution in favor of Mr. Dipak Kumar, Chief Manager, to initiate proceedings against the Personal Guarantor; and secondly, the authorization of every consortium member to initiate proceedings against the Personal Guarantor has not been taken before filing of the Petition.

3. He also drew our attention to the order of Coordinate Bench passed in IB-29(PB)/2022 in the matter of **IDBI Bank Limited vs. Manoj Gaur** dated 05.05.2022, which held that the Applicant IDBI Bank cannot act on behalf of the lenders without obtaining their formal consent and the applicant cannot step in the shoes of the security trustee. Therefore, the Application under Section 95 on behalf of the Applicant IDBI was held not maintainable and was dismissed.
4. Mr. Krishnan Venugopal, Ld. Sr. Counsel for the Respondent drew our attention to Para-20 of the aforementioned order, which is extracted below:

20. Apparently, a trustee is appointed to hold the trust property for the benefit of the beneficiaries of the trust, who have a beneficial interest in the trust property. Where, there are multiple beneficiaries, the trustee is bound to execute the trust for the benefit of all the beneficiaries in accordance with the Trust Deed only after taking consent of other co-lenders. This clause was apparently incorporated with an intent to save the guarantor from being harassed at the hands of unscrupulous individual lender. In the matter in hand, there were other banks which extended loan facilities to corporate debtor apart from the applicant bank although it was having major share in comparison to other co-lenders. The security agreement clearly lays down **Lenders shall mean collectively the refinancing lenders and the RTL facility Lenders (Vol-IV, Pg-560)**. The, word "lender" herein cannot be interpreted to be used as plural, once all the lenders to be taken as collectively. Hence, all the bankers must decide together to revoke the guarantee. In the absence of the same, an individual Beneficiary (such as the Applicant Bank) was under obligation to take consent of co-lenders/beneficiaries.

5. We have perused the judgment of the Hon'ble Supreme Court of India delivered in a batch of 384 petitions including W.P. (Civil) No. 1281/2021 in the matter of ***Dilip B. Jivrajka vs. Union of India & Ors.*** filed under Article-32 of the Constitution of India on 09.11.2023. As per the Judgment of the Hon'ble Supreme Court, the stage of adjudication would begin after the RP has filed his report under Section 99 of IBC, 2016. At that time, the Respondent/Personal Guarantor will get all the opportunities to raise its defense/arguments in the matter. All technical or legal plea taken by the Sr. Counsel for the Personal Guarantor will be considered after the report u/s-99 is filed.
6. The order of the Hon'ble Supreme Court has been passed after the judgment of the Coordinate Bench dated 05.05.2022 and in any case, it is the Judgment of the Hon'ble Apex Court of the Country; hence, the same will prevail.
7. As per provision of the Law, on filing of this application, the interim moratorium as stipulated under Section 96(1)(a) of IBC, has already commenced in relation to all debts of the Personal Guarantor.
8. The Applicant has filed IA-1995/2024 for appointing **Mr. Surendra Raj Gang** as the resolution professional, therefore this bench appoints **Mr. Surendra Raj Gang** as the Resolution Professional, whose details are given below:
IBBI Registration No: IBBI/IPA-001/IP-P01066/2017-2018/11773.
E-mail Address: surendra.Raj@in.gt.com
9. Mr. Surendra Raj Gang has filed his written consent in Form A to act as Resolution Professional. He has also stated that he is holding a valid AFA and that he is not subject to any disciplinary proceedings initiated by the Board or the insolvency professional agency.
10. The Resolution Professional so appointed shall perform all the functions as stipulated under Section 99 of IBC, 2016 read with Rules made thereunder. He shall also examine the application and make recommendations with reasons in writing for acceptance or rejection

of the present application within the time stipulated under Section 99 of IBC, 2016

- 11.** The Resolution Professional shall give a copy of its Report to the Applicant, creditors of the applicant as well as to Personal Guarantor as soon as the same is filed before this Authority.
- 12.** The Applicant and his counsel are directed to make available the copy of this order along with copy of the application and documents immediately to **Mr. Surendra Raj Gang** Resolution Professional by all modes for information and necessary compliance.
- 13.** List the matter on 15.05.2024 for the perusal of the Report of the RP and further proceedings.

Sd/-
(RAMALINGAM SUDHAKAR)
PRESIDENT

Sd/-
(AVINASH KUMAR SRIVASTAVA)
MEMBER (TECHNICAL)