

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH, JAIPUR

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 33/95/JPR/2024

IN THE MATTER OF:

TATA CAPITAL LIMITED

...Applicant

VERSUS

MR. GANESH KUMAR AGARWAL

...Respondent

MEMO OF PARTIES

TATA CAPITAL LIMITED

*Transferee of Tata Capital Financial Services Ltd.
Through Mr. Prahlad Khale, Authorised Officer*

Head Office: 11th Floor, Tower A,
Peninsula Business Park, Ganpatrao
Kadam Marg, Lower Parel Mumbai-
400013 (Maharashtra)

...Applicant

VERSUS

MR. GANESH KUMAR AGARWAL

E-236, Bank Colony, Near
Government School Murlipura
Scheme, Jaipur, Rajasthan

...Respondent

FOR THE APPLICANT : Diya Sodhi, Adv.
FOR THE RESPONDENT : Akarsh Mathur, Adv.

Sd/-

Sd/-

Order Pronounced on: 30.04.2024

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The present Application is filed by *M/s Tata Capital Limited* (Transferee of Tata Capital Financial Services Limited) ('Applicant'/ 'Creditor') with a prayer to initiate the Insolvency Resolution Process against *Mr. Ganesh Kumar Agarwal* ('Personal Guarantor'/ 'Respondent'), through Advocate, under Section 95 of the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. The Personal Guarantor has stood as Guarantor in respect of the loans availed by *M/s Vinayak Metasteel Pvt. Ltd.* ('Corporate Debtor').
2. It is stated that the Personal Guarantor had executed a personal guarantee to secure the repayment of financial assistance availed by the Corporate Debtor from the Applicant/Creditor. Pursuant to the default in repayment of debt by the Corporate Debtor, the personal guarantee of *Mr. Ganesh Kumar Agarwal* was invoked and accordingly, the Personal Guarantor was called upon to repay the debt of the Corporate Debtor, which it failed to repay.
3. It has been submitted that the Corporate Debtor, through its then directors, namely Mr. Vikas Agrawal, Mrs. Anita Devi Agarwal, & Mrs. Neelam

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Agarwal, approached the Financial Creditor for a grant of Channel Finance/Inventory Funding Facility/Trade Advance Facilities. This was sanctioned by the Financial Creditor on 15.12.2020, amounting to Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs Only). A loan cum guarantee (Channel Finance) dated 26.12.2020 was executed by the Corporate Debtor through its authorized signatory, Mrs. Neelam Agarwal. The agreement was also signed by Mr. Vikas Agarwal, Mrs. Anita Devi Agarwal, and Mrs. Neelam Agarwal, thereby jointly and severally guaranteeing repayment of all amounts due and payable by the Corporate Debtor, including interest, penal interest, and other lawful charges, costs, expenses, and all other monies. A memorandum recording extension mortgage was also executed by the Corporate Debtor in favour of the Financial Creditor.

4. Upon request and assurances by the Corporate Debtor, the Financial Creditor renewed and enhanced/ modified the Channel Finance Facility, amounting to Rs. 3,00,00,000/- (Rupees Three Crores Only), *vide* its sanction letter dated 16.04.2021. A top-up agreement for Channel Finance, dated 08.06.2021, was duly guaranteed by its directors. The Directors of the Corporate Debtor, *vide* Renewal Letter dated 08.06.2021, acknowledged the debt and confirmed the security, thereby recognizing their indebtedness to the Financial Creditor, amounting to Rs. 1,47,45,501/- (Rupees One Crore Forty-Seven Lakhs Forty- Five Thousand Five Hundred and One Only) as



on 08.06.2021. Subsequently, the Financial Creditor modified certain terms and conditions of the Channel Finance Facility *vide* its Addendum Sanction Letter dated 24.08.2021. The Channel Finance Facility was once again renewed and enhanced/ modified *vide* sanction letter dated 10.05.2022.

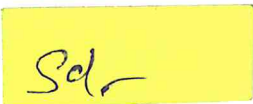
5. A loan cum guarantee (Channel Finance) Agreement, dated 13.05.2022, amounting to Rs. 6 crores, was executed by the Corporate Debtor through its Authorized Signatory, *Mr. Vikas Agarwal*, which was also signed by the Personal Guarantor of the Corporate Debtor. Thereafter, the Personal Guarantor, along with *Mr. Vikas Agarwal*, executed a Renewal Letter dated 13.05.2022, confirming the security and acknowledging the indebtedness of the Corporate Debtor, amounting to Rs. 2,66,81,494/- (Rupees Two Crores Sixty- Six Lakhs Eighty-One Thousand Four Hundred Ninety- Four Only) as on 13.05.2022.
6. After availing of the said facility, the Corporate Debtor defaulted in repayment of amounts due. Despite repeated reminders, the Corporate Debtor failed to make the payment. Therefore, the Financial Creditor issued a demand notice dated 22.08.2022 to the Corporate Debtor and the Personal Guarantor. However, both the Corporate Debtor and the Personal Guarantor failed to repay the outstanding loan amount. The Financial Creditor also filed a petition under Section 11(6) of the Arbitration & Conciliation Act, 1996, before the Hon'ble Delhi High Court, seeking the appointment of an

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Arbitrator. Consequently, by order dated 21.02.2023, Mr. Jayant Nath was appointed as Arbitrator, and the arbitration proceedings culminated in an award dated 01.02.2024.

7. Furthermore, the Corporate Debtor and the Personal Guarantor defaulted on payments amounting to Rs. 9,33,05,362/- (Rupees Nine Crores Thirty-Three Lakhs Five Thousand Three Hundred and Sixty-Two Only) as of 01.12.2023, which includes additional interest, contractual rate costs, charges, and expenses. The Financial Creditor issued a demand notice dated 27.12.2023 under Rule 7(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019.
8. In Part III of the Application, the total debt reflected is Rs. 9,33,05,362/- (Rupees Nine Crores Thirty- Three Lakhs Five Thousand Three Hundred and Sixty- Two Only) as on 01.12.2023 which includes additional interest, contractual rate, costs, charges, and expenses. The date on which the debt became due is 01.06.2022.
9. We have heard the learned counsels and perused the Application along with the documents on record.
10. It is observed that the Personal Guarantor has defaulted on payment of the dues within the statutory period from the service of the demand notice dated 27.12.2023. Consequently, the Applicant has filed this application under



Section 95 of the Code, read with Rule 7(2) of the IBC Rules, 2019, against Mr. Ganesh Kumar Agarwal, the Personal Guarantor of the Corporate Debtor. Hence, we are inclined to allow this application and appoint the Resolution Professional as envisaged under Section 97 of the Code.

11. It is clear that from the date of filing this application, i.e., 21.03.2024, the Interim Moratorium commences as stipulated under Section 96(1) of the Code in relation to all the debts of the Personal Guarantor. During the Interim Moratorium period: (i) any pending legal action or proceedings in respect of any debt shall be deemed to have been stayed; and (ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt. As per Section 96(3) of the Code, the provisions of sub-section 96(1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
12. It shall be noted that the appointment of the Resolution Professional under Section 97 of the Code is critical and essential for the Creditor but also relevant to safeguarding the assets of the Personal Guarantor in terms of the provisions of the Code. The Applicant has nominated *Mr. Manish Kumar Bhagat* as the Resolution Professional. In view of this, *Mr. Manish Kumar Bhagat* duly registered with the Insolvency and Bankruptcy Board of India, with Registration No. IBBI/IPA-001/IP-P00856/2017-18/11438 (email:

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mbhagat2003@gmail.com), is hereby appointed as the Resolution Professional.

13. The Applicant is directed to serve the copy of this order along with a copy of the Application and documents immediately on the Insolvency and Bankruptcy Board of India and file proof of service including dispatch and delivery thereof. Also, a copy of this Order and Application shall be served on the Personal Guarantor for the limited purpose of presence on the next date of hearing and to be informed about the commencement of the moratorium. The Personal Guarantor is directed to co-operate with the Resolution Professional appointed hereunder and provide all relevant information to the concerned Resolution Professional. The Personal Guarantor shall also furnish a copy of his last three years Income Tax Returns and the latest statement of affairs including, but not limited to position of assets and liabilities together with relevant documents to the Resolution Professional.
14. The Resolution Professional is directed to exercise all the powers as enumerated under Section 99 of the Code read with Rules made thereunder. The Resolution Professional is directed to make the recommendations with reasons in writing for acceptance or rejection of this Application within the stipulated time as envisaged under the provisions of Section 99 of the Code. The Resolution Professional shall provide a copy of the report under Section

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99(7) of the Code to the Creditor as soon as the same is filed before this Authority.

15. Further, the Applicant is directed to deposit Rs. 1,00,000/- (Rupees One Lakh Only) to the bank account of the Resolution Professional within one week, towards his fees. This shall be subject to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.
16. The Registry is directed to provide a soft copy of this order to the parties as well as mail the same to the Resolution Professional.



**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**



**RAJEEV MEHROTRA,
TECHNICAL MEMBER**