

DIVISION BENCH ITEM NO.2

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP (IB) No.10/ALD/2024 with IA No.271/2024

In the matter of:

An application by Creditor to initiate Insolvency Resolution Process (Under Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019).

In the matter of:

STRESSED ASSETS STABILIZATION FUND (SASF),

Having its Principal office at 3rd Floor,
IDBI Tower World Trade Centre, Cuffe Parade,
Mumbai-400005

...Applicant/ Financial Creditor

Versus

MR. ANIL RAI

12, Aurangzeb Lane, New Delhi 110011
Personal guarantor for
Malvika Steel Limited,
Regd. Address at Usha Puram,
UPSIDC Industrial Estate,
Jagdishpur, Dist: Sultanpur, U.P.

...Respondent/ Guarantor

And in the matter of:

(Application Under Rule 11 of the NCLT Rules, 2016 seeking approval for change of proposed Insolvency Professional)

In the matter of:

STRESSED ASSETS STABILIZATION FUND (SASF),

Having its Principal office at 3rd Floor,
IDBI Tower, World Trade Centre, Cuffe
Parade, Mumbai-400005

...Applicant/ Financial Creditor

Order dated: 7th June, 2024

Coram:

Shri Praveen Gupta : Member (Judicial)
Shri Ashish Verma : Member (Technical)

Appearances (through physical/ virtual hearing):

Sh. Mohit Nandwani, Adv. : *For Financial Creditor & Applicant
in IA No.271/2024*

ORDER

1. Ld. Counsel representing the Financial Creditor is present physically.
2. Under consideration is an Application CP (IB) No.10/ALD/2024 filed under section 95 of the Insolvency and Bankruptcy Code, 2016 (*hereinafter referred to as "IBC, 2016"*) r/w rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 (*hereinafter referred to as "IB Rules, 2019"*) and regulation 4(2) of IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (*hereinafter referred to as "IB Regulations, 2019"*) for initiating the Insolvency Resolution Process (*hereinafter*

referred to as “IR Process”) against personal guarantor, *viz.*, Anil Rai, one of the promoter of Malvika Steel Limited.

- 3.** The factual matrix of the case is that the guarantor had executed deeds of guarantees in respect of the facilities entered into between Stressed Assets Stabilization Fund (SASF) and the Corporate Debtor i.e. Malvika Steel Limited and the total maximum debt sanctioned under the working capital facilities was Rs.3523,21,74,512.66/-. In terms of the facility agreement, the default occurred upon non-payment by the personal guarantor on 19.07.2016. The “Malvika Steel Limited” and the guarantor had failed and/or neglected to make payment as per terms of the said Facility Agreements.
- 4.** The Applicant/ Financial Creditor, thereafter, proceeded to issue statutory Demand Notice dated 10.09.2020 under Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Persons) Rules, 2019.

- 5.** The personal guarantor viz. Anil Rai has executed personal guarantee from time to time i.e. on 09.01.1998, 18.11.1999, 21.09.1996, 16.07.1994 and 23.09.1994 in favour of the Applicant to secure the repayment of the principal amount of the Facilities alongwith interest payable by “Malvika Steel Limited” in respect of the Facility Agreement. The Applicant has issued a Demand Notice in Form B on 10.09.2020 under Rule 7(1) of the IB Rules, 2019 but no response has been received, and the present petition has been filed on 28.03.2023.
- 6.** The application as discussed in foregoing paras, have been examined by us and after finding that the application is complete in all respect and made in accordance with the provisions of Section 95 of IBC read with Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, we order as under :-

ORDER

- I.** It is made known to everyone that on filing this Application by the Applicant/Creditor, the interim-moratorium commences in terms of section 96(1)(a) of IBC, 2016.

- II.** The Applicant/Creditor has also filed an IA No.271/2024 for change of the IRP from the earlier proposed IRP namely Mr. Sandeep Kumar Bhatt to Mr. Suman Kumar Verma. The consent with respect to the proposed IRP has been attached along with the present application as well as the AFA, which is shown to be valid till 02.06.2024, is attached. The Ld. Counsel representing the Financial Creditor however states that the AFA of Mr. Suman Kumar Verma, the proposed IRP, infact is valid till 30.06.2025, as available in his record. He also states that the said AFA would be filed in the Registry of this Tribunal. In view of the averments made in IA No.271/2024 and the submission made by the Ld. Counsel representing the Financial Creditor, the present application is allowed and the proposed IRP

namely Mr. Suman Kumar Verma is taken on record and considered for appointment in terms of Section 97(5).

III. Hence, this Adjudicating Authority appoints Mr. Suman Kumar Verma, IBBI Registration No.IBBI/IPA-003/00342/2021-2022/13657, R/o Plot No.WZ-D-9, KH. No.83/14, Gali No.5, Mahavir Enclave, Sulabh International, South West, National Capital Territory of Delhi, 110045, email: ipskverma@gmail.com, as Resolution Professional in exercise of the power conferred under section 97(5) of the IBC, 2016 on this Authority. The verification of the said IRP has been carried out by Law Research Associate of this Tribunal, Sarim Husain, and it is found that there is no proceeding pending against the IRP. Upon verification from the website of IBBI, it is found that IRP holds valid authorization till 30.06.2025. The IRP is directed to file declaration within seven days from the date of receiving of this Order to the effect that he

fulfils all the requirements for being appointed as Resolution Professional in the matter.

IV. The Resolution Professional shall exercise all the powers as enumerated under section 99 of the IBC, 2016 read with the Rules made there under. He is directed to make the recommendations for acceptance or rejection of this Application within a period of ten days as stipulated and envisaged under section 99(1) of the IBC, 2016. The RP shall give a copy of the report under sub-section (7) of section 99 of IBC, 2016 to the Applicant, as soon as the same is filed before this Authority.

V. The Counsel on record for the Applicant is hereby directed to serve the copy of this Order along with copy of the Application and documents on the Resolution Professional by all available modes for information and compliance. Proof of service shall be filed with this Bench for record.

- VI.** The report of the IRP would be submitted in accordance with the provisions of Section 99 of IBC, 2016 and other connected provisions of law.
- VII.** Let the main matter be adjourned for further hearing on 2nd July, 2024.
- VIII.** The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsels for information and for taking necessary steps.
- IX.** Certified Copy of this order be issued, if applied for, upon compliance of all requisite formalities.
- X.** IA No.271/2024 stands disposed off accordingly.

-Sd-

(Ashish Verma)
Member (Technical)

7th June, 2024

Kavya Prakash Srivastava
(Stenographer)

-Sd-

(Praveen Gupta)
Member (Judicial)