IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 10
(IB)-466(PB)/2022

IN THE MATTER OF:

Shakuntalam Securities Private Limited ... Applicant/Petitioner
Though Anil Gupta
Vs
Mr. Piyoosh Goyal ... Respondent

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

Order delivered on 15.05.2024

CORAM:
JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

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

HYBRID HEARING (PHYSICAL & VC)

PRESENT:

For the Applicant : Mr. Iswar Mohapatra, Advocate for the RP
For Respondent :

ORDER

IA-3302/2022

1. This is a report filed by Mr. Anil Gupta Resolution Professional (RP) under Section 99 of IBC, 2016. We have perused the Report. Ld. Counsel Mr. Iswar Mohapatra for the RP appeared physically.
2. The RP in his report has stated that the Principal Borrower/Corporate Debtor M/s Qutab Realcon Private Limited had approached the Financial Creditor M/s Shakuntlam Securities Private Limited for seeking loan facility and loan agreement dated 05.11.2015 and undertaking cum personal guarantee dated 05.11.2015 of Mr. Piyoosh Goel was executed. The Applicant /Financial Creditor has granted and disbursed loan of Rs. 75 lacs to the

Corporate Debtor for a period of 6 months repayable on demand.

3. Thereafter on 30.12.2015, an additional loan of Rs. 20 lacs was granted. On account of default in the payment of the loan, the Principal Borrower (CD) was put under Insolvency for a default amount of Rs. 1,44,15,000/- by admission order passed by this Adjudicating Authority under Insolvency & Bankruptcy Code in IB-161(PB)/2022 and CIRP was initiated vide order dated 05.05.2022.

4. Thereafter, as no resolution plan was received, the Principal Borrower was put under Liquidation vide order dated 02.01.2023 and subsequently, the Principal Borrower was dissolved by order of this Adjudicating Authority dated 12.03.2024. It appears that no major amount has been recovered by the Financial Creditor in the Insolvency Proceedings against the Principal Borrower.

5. The Personal Guarantee against Mr. Piyoosh Goel was invoked for the first time by the applicant/FC by sending a demand notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Gurantors to Corporate Debtors) Rules, 2019 seeking repayment of Rs. 1,44,15,000/- plus interest. The Respondent / Personal guarantor had received a demand notice on 02.03.2022 but he did not pay the outstanding debt.

6. The RP Mr. Anil Gupta was appointed by this Adjudicating Authority vide order dated 01.07.2022. Pursuant to the order of appointment, the RP has filed the present report on 14.07.2022. However, the same could not be taken up as the vires of Part III Chapter III of the IBC, 2016 was under challenge before the Hon'ble Supreme Court. Thereafter based on the final order dated 09.11.2023 passed by the Hon'ble Supreme Court in a batch of petitions titled as "***Dilip B Jiwrajka Versus Union of India & Ors." Writ Petition (Civil) No 1281 of 2021,*** the constitutional validity of Part III, Chapter III of the IBC, 2016 was upheld. Pursuant to which the matter has proceeded further.

7. The RP sent email to the Personal Guarantor seeking information and on 07.07.2022, the Personal Guarantor stated in his reply that he is not liable to make any payment as he has not received the loan amount from the Financial Creditor. Thereafter, the RP filed a report on 14.07.2022 under Section 99 of the IBC, 2016, with a copy to the Personal Guarantor. However, the Personal Guarantor (PG) has chosen not to appear before this Adjudicating Authority nor he has filed any reply nor any objection to the report filed under Section 99 of the IBC, 2016. This is despite the fact that on 16.02.2024, this Adjudicating Authority directed the RP to serve the copy of the report to the Personal Guarantor (PG) once again, which was duly acknowledged by the PG vide his email dated 04.03.2024.

8. The RP in his report has submitted that the provisions of the Code have been duly complied with while filing the report and in the end he has recommended for initiation of Insolvency Resolution proceedings against the Personal Guarantor. The recommendation of the RP is extracted below:

> *"In view of the above I, Anil Gupta, an Insolvency Professional having IP reg. no. IBBI/IPA-001/IP-P01762/2019-2020/12812, appointed as Resolution*

Professional under sub section (5) of Section 97 vide order dated 01.07.2022, (copy of the intimation of order received on 05.07.2022), in connection with the proposed insolvency resolution process of Mr. Piyoosh Goyal, (Personal Guarantor): CP- (IB)-466(PB)/2022, hereby, on the basis of the gathered facts and figures of the view that the application of financial creditor (Shakuntlam Securities Pvt. Ltd..) satisfies all the requirement u/s 95 of IB Code read with Personal Guarantor Rules, 2019, and

That the Resolution Professional submits that the present application is a fit case for initiation of insolvency resolution process against Personal Guarantor, i.e., Mr. Piyoosh Goyal, under Section 100 of the Insolvency and Bankruptcy Code, 2016.

That the Resolution Professional further declares that the present Report under Section 99 of the Insolvency and Bankruptcy Code, 2016 is bona-fide and in the interest of justice."

9. We have seen the grounds and the reasoning given by RP in his report more particularly on pages 6 & 7 of the report dated 06.07.2022, we are inclined to accept the report and **admit** this application.

Accordingly, the present petition bearing No. (IB)-466(PB)/2022 stands admitted under Section 100 of IBC, 2016.

10. The RP is directed to proceed further in accordance with the provisions of the Code. Interim moratorium which came into effect in terms of Section 96(1)(a) on the date of filing the Section 95 application shall cease to have effect. A fresh moratorium in terms of Section 101 of the Code shall commence as applicable. RP is directed to take all further steps in accordance with Part III, Chapter III of the Code.

11. The RP is directed to issue a public notice on our behalf in terms of Section 102 and to invite the claims from the creditors at large. For this purpose, he will be paid a consolidated amount of Rs. 2,00,000 by the Shakuntalam Securities Private Limited to meet the cost arising out of issuing public notice and inviting claims etc.

12. Copy of this admission order along with the report of RP be made available to Shakuntalam Securities Private Limited and to the Respondent Personal Guarantor in terms of Section 100(3) of the Code, by the RP.

13. Copy of this order be also sent to IBBI by the Registry.

Accordingly, the IA-3302/2022 stands allowed and disposed of.

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(RAMALINGAM SUDHAKAR)
PRESIDENT

-sd-
(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)

Dipak – 15.05.2024