

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH-VI, NEW DELHI

IA-1579/2022
in
CP (IB)-449/PB/2021

IN THE MAIN MATTER OF:

CFM Asset Reconstruction Private Limited (CFM-ARC)
Acting as trustee of CFMARC Trust -1 IB

Having its Registered Office at:

A3, Safal Profitaire, Near Prahlad Nagar Garden, Ahmedabad - 380015

Also at (Corporate Office):

1st Floor, Wakefield House, Sprott Road, Ballard Estate, Mumbai-400038.

Also at (Branch Office)

101-104 Mohta Building, Bhikaji Cama Place New Delhi – 110066

... Financial Creditor

versus

Mrs. Bharti Jain
(Personal Guarantor of M/s Noida Software Technology Park Limited)
(A company under liquidation)
R/o - 6/B, Sirifort Institutional Area, New Delhi-110049

... Respondent/Personal Guarantor

AND IN THE PRESENT MATTER OF:

Mrs. Jaya Bharuka
[IBBI/IPA-002/IP-N00781/2018-19/12432]

... Resolution Professional/Applicant

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

IA-1579/2022
in
CP (IB)-449/PB/2021

Present:

For the Petitioner: Adv. Ruchi Kohli and Adv. Anam Siddiqui.

For Resolution Professional: Adv. Pardeep Dahiya.

For the Respondent:

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date - 05.09.2024

1. The present application has been filed by Mrs. Jaya Bharuka, Resolution Professional [IBBI/IPA-002/IP-N00781/2018-19/12432] wherein she has filed a report u/s 99 of the Insolvency and Bankruptcy Code, 2016 as directed by this Adjudicating Authority vide its order dated 02.02.2022.
2. On 17.08.2021, notice was issued to the respondent namely Mrs. Bharti Jain. However, despite numerous opportunities granted, the Personal Guarantor failed to appear before this Adjudicating Authority and consequently was set ex parte, vide order dated 20.02.2024 passed by this Adjudicating Authority.
3. The applicant Resolution Professional has in her report dated 17.02.2022, has made the following submissions: -
 - (i) That M/s Noida Software Technology Park Limited [CIN: U72200DL1999PLC098726] ("Corporate Debtor"/ "Borrower") approached the Indian Bank ("Assignor Bank") and was sanctioned a Term Loan of Rs. 25,00,00,000/- (Rupees Twenty-Five Crores only) with sub limit LC of Rs. 20,00,00,000/- (Rupees Twenty Crores only) vide Sanction letter dated 20.02.2013.
 - (ii) That Mrs. Bharti Jain stood as one of the Personal Guarantor vide Term-Loan agreement dated 04.03.2013 for due repayment of the aforementioned

Term Loan along with Bank Charges and stipulated interest within the stipulate time as mentioned in the loan documents. Though three properties were held as security against the debt extended to the Corporate Debtor, none of them were tendered by Mrs. Bharti Jain.

(iii) On 16.04.2018 an Assignment Deed (registered on 17.04.2018) was executed between Assignor Bank (Indian Bank) and CFM Asset Reconstruction Private Limited, whereby Indian Bank assigned the present Loan Account of the Corporate Debtor together with its rights, title and interest and any underlying Security Interests, pledges and/or guarantees to CFM Asset Reconstruction Private Limited.

(iv) An Application bearing C.P No. 1344(PB)/2018 filed by Dena Bank against the Corporate Debtor under Section 7 of IBC, 2016 (titled as Dena Bank v. M/s Noida Software Technology Private Limited.) The Hon'ble National Company Law Tribunal, Principal Bench, New Delhi vide its order dated 08.02.2019 admitted the corporate debtor to CIRP and further appointed Mr. Alok Kumar Agarwal as Interim Resolution Professional (IRP).

(v) On 15.07.2020, CFM Asset Reconstruction Private Limited issued a demand notice under Rule 7(1) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 calling upon all the Personal Guarantors to the Corporate debtors including Mrs. Bharti Jain to pay Rs. 40,28,83,615.00/- against the liability accruing pursuant to invocation of Guarantee executed in respect of Corporate Debtor. Even after

14 days of the Demand Notice, no payment was received from the Guarantors/Respondent.

- (vi) Upon default by the Corporate Debtor, CFM Asset Reconstruction Private Limited issued a Demand Notice dated 11.08.2020 under Section 13(2) of the SARFAESI Act, 2002 seeking repayment of dues within 60 days and thereby, invoking the Personal Guarantee of the Guarantors of the Corporate Debtor.
- (vii) Meanwhile, this Adjudicating Authority on 04.09.2020 allowed initiation of liquidation proceedings against M/s Noida Software Technology Park Limited under Section 33(1) of IBC, 2016 and appointed Mr. Alok Kumar Agarwal as the Liquidator in the matter.
- (viii) On 09.06.2021, CFM Asset Reconstruction Private Limited filed CP (IB)-449(PB)/2021 under Section 95 of the Code before this Adjudicating Authority against Mrs. Bharti Jain in relation to the outstanding dues (i.e. Rs. 45,48,23,552.53 as on 15.03.2021 along with further interest at contractual rate and penal interest from 16.03.2021, cost and other charge still the date of final repayment) due and recoverable from the Corporate Debtor to CFM Asset Reconstruction Private Limited in respect of the Term Loan granted by Indian Bank (Assignor Bank).
- (ix) Since the debt is registered with the information utility (NeSL) vide Unique Debt Identifier Number being AAGCC196B_6108846903, the debtor is not entitled to dispute the validity of the same as mentioned in terms of Section 99(3) of the Code.

- (x) Accordingly, the applicant has formed the opinion to recommend the present case for initiation of insolvency resolution process in respect of Mrs. Bharti Jain by this Adjudicating Authority, based on following grounds: -
- a. The Personal Guarantor has executed a deed of guarantee in favour of the Applicant.
 - b. The said Guarantee was invoked vide notice dated 15.07.2020 issued under Rule 7(1) of IBC (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtor) Rules 2019 as well as vide SARFAESI Notice dated 11.08.2020 issued under Section 13 (2) of SARFAESI, 2002.
 - c. The Financial Creditor issued demand notice dated 15.07.2020 for repayment of the debt owed by corporate debtor to the Financial Creditor in terms of the provisions of the Code prior to filing the Insolvency Application, but the Personal Guarantor failed to repay the same within 14 days.
 - d. The Insolvency Application has been filed in the requisite form (Form C) in terms of Rule 7 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019, supported by requisite fee and documents.
 - e. The Insolvency Application satisfies the requirements set out in Section 95 of the Code.

- f. The Insolvency Application does not relate to "excluded debts" as defined under Section 79(15) of the Code.
- g. The Personal Guarantor, is not an undischarged bankrupt and is not eligible for fresh start under Chapter II of the Code.

ANALYSIS & FINDINGS

- 4. We have heard the Ld. Counsel appearing for the Resolution Professional in the matter and have perused the report submitted by the Resolution Professional.
- 5. That vide the communications and documents placed on record, the respondent Mrs. Bharti Jain admittedly stood as a Personal Guarantor to the loan availed by the Corporate Debtor, which as a matter of fact is also registered with the Information Utility (NeSL).
- 6. Moreover, the checklist of compliances submitted by the applicant (RP) along with the present petition appears to be of a satisfactory nature.
- 7. Based on the averments and reasons recorded in the report submitted by the Resolution Professional, and after going through all the documents placed on record in the Petition i.e., IB - 449/PB/2021, filed under the provisions of Section 95 of IBC, 2016, this Adjudicating Authority ***admits*** the petition for initiating insolvency resolution process of Personal Guarantor (Mrs. Bharti Jain) under section 100 of the IBC, 2016.
- 8. Accordingly, this Adjudicating Authority declares moratorium u/s 101 of the IBC, which commences from the date of admission of the Petition i.e. date of pronouncement of this Order and shall cease to have effect at the end of the

period of 180 days, as provided under Section 101 of the IBC, 2016. During the moratorium period, the following conditions shall be applicable: -

- a) Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and
- b) The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and
- c) The debtor shall not transfer, alienate, encumber, or dispose of any of her assets or her legal rights or beneficial interest therein;
- d) The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

9. The applicant Resolution Professional (Mrs. Jaya Bharuka) is directed to cause a public notice within 7 days of uploading of this Order on the website of the NCLT Delhi, inviting claims from all Creditors, who shall register their claims as provided under Section 103 within 21 days of such issuance. The said public notice shall contain the necessary information as provided under Section 102 (2) of IBC, 2016. The publication of notice shall be made in newspapers, one in English and other in Vernacular which have wide circulation in the State where the Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry. One shall be placed by the Registry on this Authority's website and the other shall be affixed in the premises of this Authority.
10. The Resolution Professional in exercise of the powers conferred under Section 104 of IBC, 2016, shall prepare a list of creditors within 30 days from the date of the notice. The debtor shall prepare a Repayment Plan in consultation with the Resolution Professional as provided under Section 105, which shall include the

provisions for payment of fee to the Resolution Professional. The Resolution Professional shall submit the Repayment Plan along with his report on the plan to this Adjudicating Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106 of IBC, 2016.

11. In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof. If the Resolution Professional is of the opinion that the meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3). The date of meeting should not be less than 14 days or more than 28 days from the date of submission of the Report under Sub-section (1) of Section 106 of the IBC, 2016, for which at least 14 days' notice to the creditors [as per the list prepared] shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of the IBC, 2016.
12. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of the IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on the Repayment Plan with all details as provided under Section 112 of the IBC, 2016 and submit the same to this Adjudicating Authority, copies of which shall be provided to the debtor and the creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of the IBC, 2016.
13. In terms of the above, **CP(IB) - 449/PB/2021**, filed under Section 95 (1) of the IBC, 2016 is **admitted** and the Insolvency Resolution Process stands initiated against the Personal Guarantor i.e., Mrs. Rashmi Jain.
14. Let the copy of the order be served to the parties.

-SD/-
RAHUL BHATNAGAR
MEMBER (TECHNICAL)

-SD/-
MAHENDRA KHANDELWAL
MEMBER (JUDICIAL)

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