



SL. No.115

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

(Video Conference)

**CORAM: DR.VENKATA RAMAKRISHNA BADARINATH NANDULA – HON'BLE MEMBER (J)
CORAM: SHRI VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (T)**

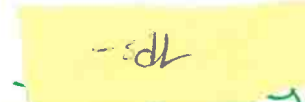
**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 19.10.2022 AT 02:30 PM THROUGH VIDEO CONFERENCE**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition IB/196/2022
NAME OF THE COMPANY	
NAME OF THE PETITIONER(S)	Stressed Assets Stabilisation Fund
NAME OF THE RESPONDENT(S)	Shashi Aggarwal
UNDER SECTION	95 of IBC

ORDER

Order pronounced vide separate Sheets.

In the result, Petition admitted.



MEMBER (T)



MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II, HYDERABAD**

C.P. (IB) No.196/95/HDB/2022
Under Section 95 of the IB Code, 2016 r/w
Rule 7(2) of I & B (Application to Adjudicating Authority for
Insolvency Process for Personal Guarantors to Corporate Debtor) Rules, 2019.

In the matter of
M/S SMT. SHASHI AGGARWAL

Stressed Assets Stabilization Fund,
3rd Floor, IDBI Tower, WTC Complex,
Cuffe Parade, Mumbai – 400 005

.... Financial Creditor/Petitioner

VS

Smt. Shashi Aggarwal
The Personal Guarantor of
M/S. Kumar's Metallurgical Corporation Limited
Plot No. 10-3-3/14, East Maredpally,
Secunderabad-500003, Telanagana

...Respondent No.1/
Personal Guarantor

M/S. Kumar's Metallurgical Corp. Ltd

...Respondent No.2/
Corporate Debtor

Date of order: 19/10/2022

Coram:

Dr. N. Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)

Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

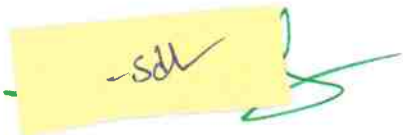
Appearance:

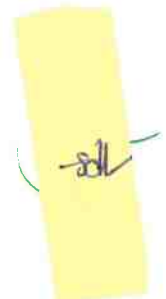
For the Petitioner: Shri. Dishit Bhattacharjee, Advocate/ Counsel.

For the R.P: Smt. Mumaneni Vazra Laxmi, Advocate/ Counsel.

PER: BENCH

ORDER







1. This petition is filed by the Stressed Assets Stabilization Fund (Financial Creditor) under Section 95 of Insolvency of Bankruptcy Code, 2016 (herein after referred as Code) read with Rule 7 (2) of the Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 (herein after referred to as Personal Guarantors Insolvency Rules, 2019), seeking an order for initiation of the Insolvency Resolution Process ("IR Process") against Smt. Shashi Aggarwal who is the Personal Guarantor of Kumar's Metallurgical Corp. Ltd / Respondent-2 herein.
2. Prayer: That it remains an undisputed fact that as on date the Personal Guarantor has not made payments to the Financial Creditor towards satisfaction of the unpaid Financial Debt. It is further submitted that it has become evident that the Personal Guarantor is unable to pay the outstanding loan amounts and the only option available to the Financial Creditor is to pray before this Adjudicating Authority to initiate Insolvency Resolution Process against the Personal Guarantor. As such the present Application is being preferred under section 95 of Insolvency and Bankruptcy Code 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 before this Adjudicating Authority under the provisions of the Insolvency and Bankruptcy Code, 2016.
3. That the Corporate Debtor had availed various types of the Term Loans from the Financial Creditor and its Associate Banks i.e., IFCI Limited and ICICI Bank under different loan documents.
4. That, in order to secure the repayment of the Financial Assistance, Smt Uma Aggarwal, Shri Anil Kumar Aggarwal, (Late) Shri Satish



Kumar Aggarwal and Smt Uma Aggarwal stood as guarantors and have executed Guarantee Agreements dated 05.02.1991, 10.10.1992, 05.06.1993, 30.10.1993 and 30.10.1995 securing the repayment of the Financial Assistance availed by the Corporate Debtor.

5. That the Financial Creditors Issue Loan Recall Letter dated 05.09.2001, invoked the personal guarantee on 27.09.2001 and issued Demand Notice dated 31.12.2021 to the Corporate Debtor and Personal Guarantor/Respondent No.1.
6. That it is subsequent to availing the Financial Assistance, the Corporate Debtor has committed default. The Financial Creditor exercised its rights and remedies available to it at that point of time and had issued notices to the Corporate Debtor and guarantors, recalling the outstanding amounts. However, neither Corporate Debtor nor the guarantors have come forward to repay the outstanding amounts. As neither the Corporate Debtor nor the personal guarantors had paid the outstanding amounts, the Financial Creditor and its Associate Banks had filed the following Original Applications ('O.A.') before the Hon'ble Debt Recover Tribunal-1 Hyderabad ("Hon'ble DRT"), which, after appreciating the documentary evidence filed before it, has passed decree and issued recovery certificate bearing reference number - RC No. 365/2019 dated 24.10.2019.
7. That the said Recovery Certificate the Hon'ble DRT had directed the Corporate Debtor and Guarantors (Certificate Debtors), to pay the amount ordered within 30 days. That the Adjudicating Authority, Hyderabad has admitted the section 7 application and Resolution Plan was approved vide order dated 01.10.2021. However, the Corporate Debtor and the personal guarantors are still liable to pay due payable debt of Rs.854,46,74,502/- (Rs. Eight Hundred Fifty

-3dt-

RS-



Four Crores, Forty Six Lakhs, Seventy Four Thousand, Five Hundred and two only/-) with an interest of @12% as on 31.12.2021 calculated as per RC No. 365/2019.

8. It is submitted that, pursuant to the Central Government framing the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019, which came into force from 01.12.2019, inter-alia permitting a Financial Creditor to institute Insolvency Resolution Process against Personal Guarantors of Corporate Debtors, the Financial Creditor/Petitioner has issued Demand Notice to Personal Guarantor/Respondent No.1 through registered post, dated 31.12.2021, in Form B under Rule 7(1) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019, with ref. no. SAF/KMCL/21-22/594. The financial creditor further issued the Demand Notice to Personal Guarantor/Respondent No.1 through registered post, dated 19.03.2022. However since the notices were not delivered, the financial creditors published the demand notice in daily newspapers viz "The Man Telengana" and "The Financial Express" on April 28, 2022. However, the Personal Guarantor has not come forward to pay the outstanding amounts. As the Personal Guarantor has failed to pay the amount of default, the Financial Creditor has filed the captioned case.
9. The personal guarantor has repeatedly remained absent and did not appear before this tribunal, therefore the personal grantor has been set ex-parte, vide order dated 18.08.2022.

-Sdl

-Sdl



10. Recommendations of Resolution Professional-

"Therefore, it is humbly submitted that in view of the aforementioned relevant facts the applicant/Resolution Professional is recommending for the approval of the petition CP (IB) No. 196/95/HDB/2022 filed by Financial Creditor against the personal Guarantor Smt. Shashi Aggarwal to the corporate Debtor M/s Kumar Metallurgic Corporation Limited.

11. In the light of the aforesaid factual matrix, the point that arises for our consideration is,

12. Whether Insolvency Resolution Process can be ordered against the Personal Guarantor Smt. Shashi Aggarwal / Personal Guarantor?

13. We have heard the Learned Counsel Shri. Dishit Bhattacharjee for the Financial Creditor and perused the material on record.

POINT

Whether Insolvency Resolution Process can be ordered against the Personal Guarantor Smt. Shashi Aggarwal / Personal Guarantor?

14. Admittedly, the 1st Respondent/ Personal Guarantor has neither disposed his liabilities nor denied the default in repayments of debt as claimed by the Petitioner in this petition. It is stated that, as per the petition, the outstanding debt payable by the Corporate Debtor is Rs. 854,46,74,502/-. With the report filed by Resolution professional, the RP has recommended for approval of the petition in terms of provisions of the Code.

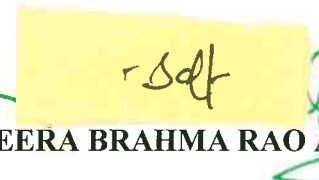
15. It is to be stated that when the debt in respect of the claim of the Financial Creditor is not in dispute it goes without saying that the default on the part of the debtor is ex facie apparent, hence the Tribunal finds no reason to reject this petition.

- Sd/-

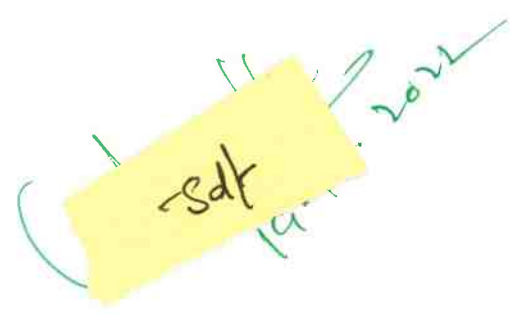


C.P. (IB) No.196/95/HDB/2022
u/s 95 of the IB Code, 2016
Date of the order: 19/10/2022

16. With the records presented before us, we are of the opinion, that it has become evident that the Personal Guarantor is unable to pay the outstanding loan amounts and the only option available to the Financial Creditor is to initiate Insolvency Resolution Process against the Personal Guarantor. As such under section 95 of Insolvency and Bankruptcy Code 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, we admit this application and pass an order accordingly to initiate the Insolvency Resolution Process against the Personal Guarantor.
17. This C.P. (IB) No.196/95/HDB/2022 is accordingly disposed off.


(VEERA BRAHMA RAO AREKAPUDI)

MEMBER (TECHNICAL)


(DR N.V. RAMAKRISHNA BADARINATH)

MEMBER (JUDICIAL)

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