

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

CP (IB) – 572(PB)/2023

ORDER UNDER SECTION 94 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 R/W RULE 6 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:

MANOJ KUMAR

...Applicant / Personal Guarantor

ORDER PRONOUNCED ON: 22.07.2024

CORAM:

**ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (JUDICIAL)**

**SHRI AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)**

Appearance:

For the Applicant : Ms. Dhyuti Ghai, Adv.

For the RP : Mr. Abhishek Anand & Mr. Karan Kohli, Advocates

ORDER

1. This is an application bearing CP(IB) No. 572/PB/2023 filed by Mr. Manoj Kumar (Personal Guarantor) under Section 94 of the Insolvency & Bankruptcy Code 2016 (**IBC/ Code**) r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (**Personal Guarantor Rules**) before this Tribunal on 15.09.2023.
2. There is another connected application filed by the Personal Guarantor Ms. Minakshi Vasudeva being CP(IB)- 574(PB)/2023 under Section 94 of

the Code r/w Rule 6 of the Personal Guarantor Rules before this Tribunal on 05.09.2023.

3. This Adjudicating Authority vide order dated 08.12.2023 confirmed the appointment of the proposed Resolution Professional Ms. Sunita, bearing Registration No. IBBI/IPA- 002/IP-NO1208/2021-22/14031.
4. Canara Bank had issued various loan facilities to the Principal Borrower, M/s Ratchet Laboratories Limited, whose section 10 application bearing CP(IB)-431(PB)/2023 is pending adjudication before this Tribunal, for an amount INR 42,99,63,954/- vide multiple loan agreements / sanction letter spanning from 2005 to 2014.
5. Another, Financial Creditor, namely Intec Capital Limited extended loan facility vide agreement dated 30.03.2013 to the Principal Borrower for a sum of INR 2,32,67,460/-.
6. The Applicant had initially stood as guarantor vide multiple Guarantee Deeds as specified and stated to be verified by the RP at page 12-13 of the Report for various credit facilities extended by Canara Bank to the Principal Borrower (M/s Ratchet Laboratories Limited). Further as regards the loan by Intec Capital is concerned, the Guarantee was executed by the Applicant on 30.03.2013.
7. The RP submits that as against the outstanding loan amount of the Principal Borrower i.e., M/s Ratchet Laboratories Limited to Canara Bank, the Bank has already undertaken a sale of securities vide e-auction on 08.08.2018 under SARFAESI Act and recovered an amount of approximately Rs. 10 crores so far, however substantial amount remained unpaid and is outstanding as on date.
8. It is stated by the Ld. Counsel for the Resolution Professional that in respect of loan of Intec Capital, personal guarantee of Mr. Manoj Kumar and Ms. Minakshi Vasudev was invoked vide Demand cum Legal Notice dated 30.03.2015. While as regards the loan of Canara Bank, RP in an affidavit dated 06.05.2024 has admitted that there was no specific demand notice issued to personal guarantors / applicants to invoke

their personal guarantee. The Relevant extract from the Affidavit dated 06.05.2024 filed by RP is as follows:

l. That Canara Bank further initiated filed O.A. No. 2567 of 2017 titled as Canara Bank v. M/s Ratchet Laboratories Limited before the Ld. Debt Recovery Tribunal, Chandigarh, seeking repayment from the Corporate Debtor along with all the Guarantors for an outstanding amount totalling to Rs. 45,23,58,643/- along with accrued interest.

m. Notably, the available records with the Resolution Professional do not indicate the issuance of specific demand notices pursuant to Section 13(2) of the SARFAESI et, 2002, directly addressed to the Guarantors for the invocation of their guarantees, except for the Corporate Guarantor namely Ratchet Biotech Pvt Ltd, to whom a separate notice invoking the corporate guarantee was issued under Section 13(2) of the SARFAESI Act, 2002 on 06.12.2014.

9. Furthermore, so far as limitation for this Application filed under section 94 is concerned, we first in this respect note that the Contract Act 1872 under section 128 provides that *liability of the surety is co- extensive with that of the principal debtor, unless it is otherwise provided by the contract.* Now so far as the contract i.e., Guarantee Deed dated 31.03.2013 executed by Mr. Manoj Kumar and Ms. Minakshi Vasudeva jointly in favour of Intec Capital Limited, is concerned it expressly witnesses co-extensive liability of the Guarantors with that of the Principal Borrower. The relevant clauses of the Guarantee Deed in this respect are as follows:

*5. That the **liability to discharge the dues payable** under the Agreement shall be joint, several and **co-extensive with that of the Borrower** and other co- guarantors, if any.*

*6. **In the event of demand being raised by INTEC CAPITAL LIMITED in respect of dues under the Agreement, the Guarantor agrees to discharge the dues** without any demur, reservation, contest, protest whatsoever within 7 days of such demand. This Guarantee is independent of and is without prejudice to such other security(ies) that may have been created in favour of INTEC CAPITAL LIMITED in regard to LOAN.*

10. From the above quoted clause of the Guarantee Deed, it is further clear that default of the Applicant / Guarantor would trigger only upon Applicant's failure to discharge the liability even after receipt of demand

notice invoking of personal guarantee. In the present case, demand notice invoking personal guarantee was issued by the Intec Capital Limited on 30.03.2015.

11. It is relevant to state that the Supreme Court in the matter of **Laxmi Pat Surana vs Union Bank of India & Anr.** Civil Appeal No. 2734 of 2020 has categorically held in paragraph 28:

... Whereas, upon default committed by the principal borrower, the liability of the company (corporate person), being the guarantor, instantly triggers the right of the financial creditor to proceed against the corporate person (being a corporate debtor)...

12. Further, since the liability of the Personal Guarantor is co-extensive with that of the Principal Borrower, personal guarantor is bound by subsequent acknowledgments of liability by the Principal Borrower in its Balance Sheets. Audited Balance Sheets for FY 2015-16 till FY 2022-23 of the Principal Borrower have been brought on record by the Applicant *vide* affidavit dated 06.05.2024 filed on 13.05.2024. These Balance Sheets show continuous acknowledgment of Principal Borrower's overall long term liability purportedly towards Canara Bank and Intec Capital Limited. However, we have observed that none of the balance sheets post FY 2015-16 shows Intec Capital Limited specifically named as against whom such long term loan is outstanding. Nevertheless, a certificate from Chartered Accountant (CA) is also placed on record *vide* the said affidavit certifying that as on 15.05.2023 total INR 20,776,828/- is outstanding towards the Intec Capital Limited.

13. Hence, we are of the view that since the debt of Intec Capital Limited has been acknowledged by Principal Borrower from year to year in its balance sheets and Personal Guarantor whose liability is co-extensive to that of the Principal Borrower, is also bound by such acknowledgments made by the Principal Borrower, present Application filed under section 94 is within the Limitation period.

14. Moving further, we note that our order dated 08.12.2023 appointing RP and directing RP to file this Report in terms of section 99, has been served upon creditors i.e., Canara Bank and Intec Capital, by the RP

vide email dated 22.12.2023 and 19.12.2023. Neither of the said two creditors have appeared before us and raised objection of any kind.

15. Be that as it may, the RP has stated that Application is complete and satisfies the requirement of Section 94 of the Code and has recommended in favor of the admission of Insolvency Proceedings against these Personal Guarantors, in view of the likelihood of a repayment plan. The RP's recommendation is extracted below:

24. That in view of the above-stated facts and circumstances and on examining the documents available on record, the Resolution Professional recommends that the application filed by the Personal Guarantor bearing C.P. (IB) NO. 572/PB/2023 satisfies the requirement as stipulated under section 94 of the IBC, 2016. There is a complete likelihood that a repayment plan can be prepared and for the purpose of the same, the Resolution Professional recommends that the application to initiate Insolvency Resolution Process be admitted and directions under section 100 of the IBC, 2016 be issued for conducting negotiations between the Personal Guarantor and the creditors for the preparation of the repayment plan.

16. We take on record the report filed / recommendations made by the RP and based on same, Application bearing **CP(IB)-572 (PB)/2023** filed under Section 94 is **Admitted**.

17. IA(I.B.C)/392(PB)/2024, being the Report filed by RP under section 99, as taken on record is thus **disposed of**.

18. Insolvency resolution process for the Applicant / Personal Guarantor i.e., Mr. Manoj Kumar is commenced hereby. Interim moratorium which came into effect in terms of Section 96(1)(a) on the date of filing the application shall cease to have effect and a fresh moratorium in terms of Section 101 of the Code shall commence as applicable.

19. As per Section 102, the Adjudicating Authority is required to issue a public notice. We direct the RP to issue a public notice on our behalf in terms of the provision and invite claims from creditors. For this purpose, RP will be paid a consolidated amount of Rs. 2,00,000/- by the applicant(s)/PGs i.e., Mr. Manoj Kumar and Ms. Minakshi Vasudeva, to meet the cost arising out of issuing public notice and inviting claims etc.

20. The Resolution Professional is directed to take all further steps as per the provision of the Code and in accordance with Part III, Chapter III of the Code and Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations 2019 (Personal Guarantor Regulations).
21. The RP is directed to serve copy of this order along with the report filed by the Resolution Professional and the application filed under Section 94(1) of the Code in terms of Section 100(3) of the Code upon the creditors of the Applicant within 7 days from the date of this order.

Registry is directed to send copy of this order to IBBI.

Sd/-
AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)

Sd/-
ASHOK KUMAR BHARDWAJ
MEMBER (JUDICIAL)