IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

IA. NO. 1022/ND/2024
&
COMPANY PETITION NO. (IB)-13(ND)/2024

IN THE MATTER OF:

CREATIVE CAPITAL SERVICES LIMITED

...PETITIONER/FINANCIAL CREDITOR

VERSUS

SMT. ALKA GOYAL
(PERSONAL GUARANTOR, AKSHAJ HI-TECH INFRASTRUCTURE PRIVATE LIMITED)

...RESPONDENT/PERSONAL GUARANTOR

AND IN THE MATTER OF:

DR. TARUNA GOEL
RESOLUTION PROFESSIONAL

...RESOLUTION PROFESSIONAL/APPLICANT

Order Delivered on: 09.08.2024

CORAM:
SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)

Appearances:

For the Applicant : Adv. Nakul Gandhi & Adv. Mujeeb
For Personal Guarantor : Adv. Eshna Kumar, Adv. Akshat Maheshwari

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. The present IA No. 1022/ND/2024 has been filed by Dr. Taruna Goel (from now on referred to as the 'RP'), qua Personal Guarantor Smt. Alka Goyal (hereinafter referred to as the 'Respondent'/'Personal Guarantor')

enclosing therewith the Report prepared by him under Section 99 of IBC, 2016.

2. To put the facts succinctly, the underlying main Petition CP (IB) 13/ND/2024 was filed by M/s Creative Capital Services Limited against the Personal Guarantor Smt. Alka Goyal under Section 95 of IBC, 2016, to initiate the IR process. Vide order dated 09.02.2024, this Adjudicating Authority had appointed Dr. Taruna Goel as a Resolution Professional of the Personal Guarantor and directed him to file its Report under Section 99 of IBC, 2016.
3. In compliance with the order dated 09.02.2024 passed by this Adjudicating Authority, the present IA-1022/2024 has been filed by RP enclosing therewith the Report prepared in terms of the provisions of Section 99 of IBC 2016, recommending admission of the Application viz. IB-13/ND/2024 in respect of the Personal Guarantor.
4. The conclusive recommendation made by the RP reads thus:
   On examination of the documents available on record and statement of the Personal Guarantor herself, the Applicant recommends that Application filed by the Creditor satisfies the requirement as stipulated under Section 95 of IBC and therefore it is recommended an order u/s 100 of the I&B, Code 2016 be passed thereby admitting the application filed u/s 95 against the Personal Guarantor-Smt. Alka Goyal by this Adjudicating Authority.
5. While making its recommendation for admission of the Application filed against the Personal Guarantor under Section 95 of IBC, 2016 the RP has given the Report as required under Section 99 of IBC, 2016 providing that:
   a. The Corporate Loan Agreement of Rs. 8,50,00,000/- availed by the borrower from the lender dated 12.03.2012 and 18.12.2014 and also secured by deed of Personal Guarantee of the Personal Guarantor.
   b. In terms of the Loan Facility Agreements, Loan Documents or other financing documents, the Corporate Debtor was required to repay the principal amount outstanding along with interest and other

charges, fees, cost etc. as mentioned in the Loan Agreement. The total outstanding amount in connection with the loan facility is Rs 8,50,00,000/- (Eight crores fifty lakhs only) along with pendent-lite and future interest @ contractual rate of interest and the costs of the Legal charges and other expenses from the date of NPA as per the Loan Agreement till realization.

c. It is pertinent to state that the Borrower committed persistent breaches and defaults in repayment of the principal amount and payment of interest and other charges in respect of the Loan Facility. Further, the Borrower has neglected and failed to clear overdue sum in connection with the Loan Facility and on account of persistent default on the part of the Corporate Debtor as well as Guarantors to repay the debt, the Creditor on 19.08.2022 had issued a demand notice, where, the Borrower as well as Guarantors were requested to clear the outstanding liability.

d. As per Deed of Guarantee, Respondents/Guarantors has unconditionally and irrevocably agreed that in the event of any default on the part of the Borrower in the repayment of the Loan Facility together with interest, compound interest, liquidated damages and other charges due in respect of the Facility, Creative Capital shall, inter alia, be entitled to demand the total outstanding amount from the Respondents/Guarantors.

e. The Corporate Debtor has also duly acknowledged the debt in the loan account of Corporate Debtor vide Acknowledgement letters dated 31.03.2020, 31.03.2021 and 31.03.2022.

f. A demand notice of Rs 8,50,00,000/- (Eight crores fifty lakhs only) along with pendent-lite and future interest @ contractual rate of interest and the costs of the Legal charges and other expenses from the date of NPA till realization was made on Personal Guarantors/Respondents through Guarantee Invocation Notice dated 29.09.2022. However, the Personal Guarantor have miserably failed to make the payment as demanded in Guarantee Invocation

Notice dated 29.09.2022. Thus, a sum of Rs 8,50,00,000/- (Eight crores fifty lakhs only) along with pendent-lite and future interest @ contractual rate of interest from the date of NPA is required to be paid by Respondent till realization.

6. It is observed that M/s Creative Capital Services Limited issued a Demand Notice in Form B [Under Rule 7 (1) of the of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019] Rules, 2019 dated 07.01.2023 seeking repayment of dues along with pendent-lite & future interest @ contractual rate of interest and other expenses to the tune of Rs 8,50,00,000/- (Eight crores fifty lakhs only) within 14 days from the date of receipt of that notice.
7. This Adjudicating Authority in its order dated 16.05.2024 directed the Respondent to file its reply. In compliance with the order dated 16.05.2024, an affidavit has been filed by the Sh. Satinder Singh, Power of Attorney Holder of Smt. Alka Goyal (Personal Guarantor) of the Akshaj Hi-Tech Infrastructure Private Limited (Corporate Debtor) on 22.03.2024 admitting the debt and default of Rs. 8.5 Crores along with pendent-lite & future interest from the date of NPA till realization. Further, during the course of proceedings, the Learned Counsel for the Personal Guarantor submitted that they have no objection if the present application stands allowed.
8. Based on the above and the reasons recorded in the report submitted by the Resolution Professional, and after going through all the documents on record, this Adjudicating Authority hereby allow IA (IBC) No. 1022 of 2024 filed under Section 99 of the Code, 2016 and consequently the **Petition i.e. 13/ND/2024**, filed under the provisions of Section 95 of IBC, 2016 is hereby **admitted** under section 100 of the IBC, 2016. The Resolution Professional Dr. Taruna Goel, who was appointed under Section 95 vide order dated 09.02.2024, the Financial Creditor i.e., M/s Creative Capital Services Limited is directed to deposit Rs. 2,00,000/- (Rupees Two Lakh Only) to the bank account of the

Resolution Professional within one week, this fee shall be subject to the rules and regulations made under the provisions of the Code.

9. The Insolvency Resolution Process is initiated against the Personal Guarantor namely Smt. Alka Goyal and moratorium is declared, which commenced from the date of admission of the Petition i.e. date of this Order and shall cease to have effect at the end of the period of 180 days, as provided under Sec 101 of IBC, 2016. During the moratorium period;
   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 his assets or his 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.

10. A public notice shall be issued by the RP, within seven days of passing of this order, inviting claims from all creditors within 21 days of such notice. The notice shall include details of the present order, particulars of the Resolution Professional with whom the claims have to be registered, and the last date for the submission of the claims. The said notice shall be –
    A. Published in English and one Vernacular Language newspaper which is in circulation in the State where the debtor resides;
    B. Affixed in the premises of this Adjudicating Authority; and
    C. Placed on the website of the Adjudicating Authority.

11. The RP shall discharge all such duties as are incumbent upon him in terms of the provisions of Sections 104, 105, 106, 107, 108, 112, and 113 of IBC, 2016, with due deference to the procedure enshrined in Regulations 5, 7, 8, 9, 11, 12, 13, 14, 15 and 17 of IBBI (Insolvency Resolution Process for Personal Guarantor to Corporate Debtors) Regulations, 2019 and also in terms of the other extent provisions of

the aforementioned code/ regulations and/or any other provisions of law applicable to him, in the discharge of his duties as RP.

12. A copy of this order along with a copy of the application as also the report of the Resolution Professional shall be provided to the Creditor (Applicant), Respondent/Personal Guarantor, and IBBI, by the Registry/Court Master within 7 days from today by e-mail.
13. **IA-1022/2024 is disposed of** accordingly. To come up for consideration of Status report to be filed by RP, within 8 weeks.

Sd/-	**Sd/-**
DR. SANJEEV RANJAN	**MANNI SANKARIAH SHANMUGA SUNDARAM**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**