

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH - I
KOLKATA**

I.A (IB) No. 310/KB/2022

in

C.P (IB) No. 319/KB/2021

An application under section 95 of the Insolvency and Bankruptcy Code.

In the matter of:

IFCI Limited [CIN L74899DL1993GOI053677]having registered office at IFCI Tower, 61, Nehru Place, New Delhi - 110019

...Financial Creditor

Versus

Manoj Toshniwal, son of Late Pushkar Narayan Toshniwal, residing at CL-280, Salt Lake, Sector – II, Kolkata – 700091

... Personal Guarantor

I.A (IB) No. 310/KB/2022

An application under section 60 (5) of the Insolvency and Bankruptcy Code.

In the matter of:

Manoj Toshniwal, son of Late Pushkar Narayan Toshniwal, residing at CL-280, Salt Lake, Sector – II, Kolkata – 700091

...Applicant/ Personal Guarantor

Versus

IFCI Limited [CIN L74899DL1993GOI053677]having registered office at IFCI Tower, 61, Nehru Place, New Delhi - 110019

...Financial Creditor

Date of Hearing: 22.04.2022

Date of pronouncing the order: 07.06.2022

Coram:

Shri Rajasekhar V.K.

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

Appearances (through Video Conferencing)

For the Financial Creditor

:Mr. Om Narayan Rai, Advocate.

: Mr. Debasish Chakraborti, Advocate.

For the Corporate Debtor

:Mr. Mainak Bose, Advocate.

:Ms. Urmila Chakrabarty, Advocate.

:Mr. Pranav Sharma, Advocate .

For Resolution Professional

:Mr. Ashok Kumar Agarwal, RP in person

ORDER

Rajasekhar V.K., Member (Judicial)

Prologue

1. The Court convened *via* hybrid mode.
2. On 12 November 2018, EMC Limited (***‘Corporate Debtor’***) was admitted into Corporate Insolvency Resolution Process (***‘CIRP’***) and Mr. Rakesh Kumar Agarwal was appointed as the Interim Resolution Professional. Further, *vide* order dated 06 February 2019 Mr. Kannan Tiruvengadam was appointed as the Resolution Professional. The Resolution Plan was approved *vide* order dated 21 October 2019.
3. Thereafter, in the year 2021, an application under section 95 of the Code, being (C.P (IB) No. 210/KB/2021), was filed by the State Bank of India (***‘SBI’***). Further, IFCI Limited (***‘IFCI’***), being one of the Financial Creditor of the Corporate Debtor, ***also*** filed an application being (C.P (IB) No. 319/KB/2021), under section 95 (1) of the Code against the Personal Guarantor of the Corporate Debtor.

I.A (IB) No. 310/KB/2022

4. This is an application under section 60(5) of the Insolvency and Bankruptcy Code (***‘Code’***) by Mr. Manoj Toshniwal (***‘Personal Guarantor’***) of the Corporate Debtor *inter alia*, praying for the following reliefs;
 - (a) An order for setting aside the order dated 17 February, 2022, passed by this Adjudicating Authority.

Submission by the Ld. Counsel appearing on behalf of the Personal Guarantor

5. The application filed by the SBI was listed before Court – II of the Kolkata Bench (***‘Coordinate Bench’***). The Coordinate Bench *vide* its order dated 14 January, 2022 appointed Mr. Kannan Tiruvengadam, as the Resolution Professional (***‘RP’***) and directed to file a report under section 99 of the Code. However, the order dated 14 January, 2022 was modified by an order dated 21

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH- I**

I.A (IB) No. 310/KB/2022 in C.P (IB) No. 319/KB/2021
In the matter of IFCI Limited v. Manoj Toshniwal

February, 2022 by the Coordinate Bench and the name of the RP was changed from Mr. Kannan Tiruvengadam to Mr. Tarun Kumar Ray.

6. Subsequently, the application filed by IFCI came up for hearing on 17 February, 2022 before this Adjudicating Authority, wherein a different Resolution Professional was appointed and directed to submit report.
7. As per under section 96(1)(b) of the Code during the interim moratorium period the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt. Hence, the proceeding in C.P (IB) No. 319/KB/2021 before this Adjudicating Authority should also be stayed.

Analysis and Findings

8. We have heard the Ld. Counsel appearing on behalf of the parties and perused the documents on record.
9. On a conjoint and careful reading of section 96¹ of the Code it appears that an *interim moratorium shall commence on the date of the application* in relation to ***all the debts*** and shall cease to have effect on the date of admission of such application ***and***; during the interim moratorium period, all legal actions or proceedings pending in respect of any debt shall remain stayed and *creditors shall not initiate any legal action or proceeding in respect of any debt*.

¹ 96. (1) When an application is filed under section 94 or section 95—

- (a) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and
- (b) during the interim-moratorium period—
 - (i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and
 - (ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.
- (2) Where the application has been made in relation to a firm, the interim-moratorium under sub-section (1) shall operate against all the partners of the firm as on the date of the application.
- (3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH- I

I.A (IB) No. 310/KB/2022 in C.P (IB) No. 319/KB/2021
In the matter of IFCI Limited v. Manoj Toshniwal

10. The presence of the term ‘and’ in the section should be read as a conjunctive one, which joins clause 1(a) of the section with clause 1(b) and infers that interim moratorium commences against **all the debts (including his personal debt)** and the creditors of the debtor are barred from initiating any legal proceedings in respect of any debt. Hence, we are of the view that the interim-moratorium restrains any ongoing or fresh legal action or proceeding in respect of any debt pertaining to the Personal Guarantor.
11. Further, the application by IFCI was filed on 29 September, 2021, whereas, the application by SBI was filed on 09 July, 2021, which indicates that the interim moratorium against the personal guarantor commenced from 09 July, 2021.
12. In view of the above facts and circumstances, we, hereby, order as follows;
- (a) I.A (IB) No. 310/KB/2022 is **allowed**.
- (b) Resultantly, C.P (IB) No. 319/KB/2021 is **stayed**.
- (c) Consequently, the order dated 17 February, 2022 is hereby **recalled**.
- (d) The Resolution Professional appointed *vide* order dated 17 February, 2022 shall be discharged of his duties.
13. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

BALRAJ Digitally signed
by BALRAJ JOSHI
JOSHI Date: 2022.06.07
17:13:50 +05'30'

Balraj Joshi
Member (Technical)

Rajasekha Digitally signed by Rajasekhar V K
r V K
DN: c=IN, cn=Personal, title=0605,
pseudoDn=890a4513ac3a9866d42365dbf55b7504
ee43a6491c9e489a8d57bacffde55cc,
postalCode=600018, st=Tamil Nadu,
serialNumber=05120aac967978d74f18a3ac75eb5
9d05e036e92a850593b5c6e6c8a8c7396,
cn=Rajasekhar V K
Date: 2022.06.07 16:57:46 +05'30'
Adobe Acrobat Reader version: 2022.001.20117

Rajasekhar V.K.
Member (Judicial)

The order is pronounced on 07 June, 2022

Safura A., [LRA]