

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AT MUMBAI BENCH, C-IV**

CP (IB) NO. 1275/MB/2021

An application under section 100 read with section 95 of the Insolvency & Bankruptcy Code, 2016 R/w. Rule 7 (2) of the Insolvency and Bankruptcy (Application to the Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), Rules, 2019.

IN THE MATTER OF

*Bank of Baroda (Creditor) through
Resolution Professional,*

Mr. Shailesh Bhalchandra Desia

...Insolvency

Professional/Applicant

Versus

Mrs. Zulekha Amir Dodhia

... Respondent/Personal

Guarantor of Calchem

Industries (India) Limited.

Order delivered on: 14.03.2024.

IN THE NATIONAL COMPANY LAW TRIBUNAL
AT MUMBAI BENCH, C-IV

CP (IB) NO. 1275/MB/2021

Coram:

Ms. Anu Jagmohan Singh

Mr. Kishore Vemulapalli

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor : Mr. Ayush Rajani a/w Ms.Khushboo
Shah Rajani and Ms. Mitali Bhatt i/b
DKR Legal, Ld. Counsel.

For the Personal Guarantor : Mr. Devanshu P. Desia, Ld.Counsel.

ORDER

1. The Present Application is filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as IBC, 2016") read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 by Bank of Baroda (hereinafter referred to as "Financial Creditor") for the purpose of initiating insolvency process against Mrs. Zulekha Amir Dodhia (hereinafter referred to as "Personal Guarantor/Respondent") for recovery of Rs.50,14,15,575 as on 31.10.2020 plus unapplied interest w.e.f. 01.11.2020 and other relevant charges till the date of full and final payment. The date of default is stated to be 10.02.2018. The Corporate Debtor was brought under CIRP under Section 9 of the IBC vide order dated 25.09.2019.

2. The order of this bench dated 01.02.2024 was recalled as the applicant brought to the notice of this bench that inadvertently during the course of hearing he had omitted to rely on order passed by the Hon'ble Supreme Court of India regarding exclusion of limitation period from 15.03.2020 till 28.02.2022 due to the outbreak of the COVID19 pandemic.
3. It is stated that, a letter of Guarantee dated 23.04.2015 and 18.01.2016 was executed by the Personal Guarantors in favour of the Financial Creditor i.e. Bank of Baroda for an Amount of Rs. 27,19,00,000/- and 30,00,00,000/-
4. The Applicant vide demand notice dated 31.10.2020 in form B, under Rule 7(1) of the Insolvency and Bankruptcy Rules,2019 issued to the Respondent as well as the Personal Guarantor which was successfully delivered to Personal Guarantor on 02.11.2020 where upon the Respondent and the other guarantors were required to pay the unpaid debt in default due from the Corporate Debtor in terms of the Letter of Guarantee. However, till date, the Respondent and the other guarantors have not paid the unpaid debt in default due from the Corporate Debtor.
5. On presentation of the application by the Financial Creditor, under section 95(1) of the IBC,2016 for initiating Insolvency Resolution Process against the Personal Guarantor, this Tribunal vide order dated 08.03.2022 had appointed Mr. Shailesh Bhalchandra Desai bearing Registration No. IBBI/IPA-001/IP-P00180/2017-18/10362 as Resolution Professional and directed to exercise all the powers as enumerated u/s.99 of the Code, R/w. Rules made thereunder. Accordingly, he has filed a report on 31.03.2022 and was further directed to make recommendations with reasons in writing for acceptance or rejection of the Company Petition.

6. The Resolution Professional has filed a report recommending for approval of the said application under section 95 of the Code by the Creditor i.e. Bank of Baroda through Resolution Professional. The Resolution Professional had recommended that *“...the present present application meets the requirements of the code as is provided in this report and the Hon’ble NCLT may kindly pass appropriate orders under section 100 of the Code, “admitting” the present application....”*
7. The Personal Guarantor filed an affidavit in reply dated 31.10.2023 wherein it is stated are as follows: -

That the report of the RP dated 31.03.2022 is nothing but an abuse of law. The respondent vide Reply dated 29.03.2022 categorically denied the liability of Bank of Baroda; the Company Petition is barred by law of limitation; the Applicant has filed the Application and seeking relief against the Respondent in respect of the loan already paid off/ settled of the principal borrower i.e. Calchem Industries (India) Limited, under the Resolution Plan (which is pending), will be considered as payment of the entire debt due and payable by the borrower under the loan transaction facilities granted by Bank of Baroda to the Borrower i.e. Calchem Industries (India) Limited, and there is no cause of action in favour of the Applicant against this Respondent.

8. The proceedings in the present matter was put on hold since the Constitutional Validity of the Sections 94 to 100 relating to the insolvency of Personal Guarantor was pending. The Hon’ble Supreme Court in the judgement of *Dilip B. Jiwrajka V/s Union of India & Ors. in WP (civil)No.*

1281 of 2021 dated 09.11.2023 upheld the Constitutional Validity of the Sections 94 to 100.

Findings:

9. Heard learned counsel for the both the side and perused the record.
 - 9.1. On perusal of Deed of guarantee dated 18.01.2016, we find that the Respondent had stood guarantor for a sum of Rs. 50,14,15,575.16 Crores as on 31.10.2020 plus unapplied interest w.e.f 01.11.2020 and other relevant charges till date of full and final payment/realization. The Financial Creditor invoked guarantee to recover the dues from the Personal Guarantor.
 - 9.2. The Personal Guarantor in its reply has stated that the present petition is barred by limitation. This bench observed that the as per invocation notice dated 12.12.2017 the limitation period expires on 11.12.2020. The date of filing of present petition is 21.12.2021. In view of the directions passed by the ***Hon'ble Supreme Court of India in Suo Moto Writ Petition No.03 of 2020*** excluding the period due to the outbreak of the COVID19 pandemic, the present petition is within limitation.
 - 9.3. Secondly, the Applicant has filed the Application and seeking relief against the Respondent in respect of the loan already paid off/ settled of the principal borrower i.e. Calchem Industries (India) Limited, under the Resolution Plan (which is pending before the Adjudicating Authority). It is trite in law that the liability of surety is co-extensive with that of the principal debtor. Be that as it may, law on

extinguishment of claim against personal guarantor and/or third party on approval of Resolution Plan has been well-settled by *Hon'ble Supreme Court in Lalit Kumar Jain vs. Union of India and Ors. [(2021) 9 SCC 321]*, wherein the Hon'ble Supreme Court has held that approval of resolution plan does not ipso facto discharge a Personal Guarantor (of a Corporate Debtor) of her/ his liability under the contract of guarantee.

- 9.4. Considering the aforesaid decision, the contentions made by the personal guarantor in its reply has no substance and cannot be taken into consideration. We have no hesitation to hold that the Respondent is liable to be admitted to the Bankruptcy process in terms of section 100(2) of the code. The Application filed by the creditor satisfies the requirement as set out in section 95 of the Code.

ORDER

10. We have heard the learned counsel for both the parties and perused the documents on record.
11. In terms of the above, CP(IB)/1275/MB/2021 filed under Section 95 of the IBC, 2016 is **admitted** and the Insolvency Resolution Process stands initiated against the Applicant/Personal Guarantor.
- I. Initiate Insolvency Resolution Process against the Respondent/Personal Guarantor and moratorium in relation to all the debts is declared, from today i.e. date of admission of the application and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on the repayment plan

under Section 114 whichever is earlier 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.

II. The Resolution Professional viz., **Mr. Shailesh Bhalchandran Desai** bearing Registration No. **IBBI/IPA-001/IP-P00183/2017-2018/10362**, (Email Id:- ip10362.desai@gmail.com) is directed to cause a public notice to be published on behalf of the Adjudicating Authority within 7 days of uploading of this order on the website of NCLT. Inviting Claims from all creditors, who shall register their claims as provided under Section 103 within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102(2) of IBC. The Publication of the notice shall be made in two newspaper, one in English and the other in Vernacular which has wide circulation in the state where the debtor

resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry. One shall be placed by the Registry on our website and the other shall be affixed to the premises of this Authority.

- III. The Resolution Professional in exercise of the power conferred under Section 104 shall prepare a list of creditors on basis of the information disclosed in the application file by the debtor u/s 94 and 95 and claims received by the Resolution Professional u/s 102 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 Authority within a period of 21 days from the last date of submission of claims as provided under Section 106.
- IV. 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 the 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, for which at least 14 days notice to the creditors (as per list prepared) shall be issued by all relevant/feasible modes. Such notice contains the details as provided under the provisions of Section 107.

- V. The meeting of the creditors shall be conducted in accordance with sections 108, 109, 110 & 111 of the Insolvency and Bankruptcy Code, 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 and submit the same to this Authority, copies of which shall be provided to the debtor and the creditors. It is made clear that the resolution professional shall perform his function and duties in compliance with the Code of Conduct provided under Section 208 of the IBC, 2016. The Resolution Professional shall submit his periodic reports before this Tribunal, every 30 days.
- VI. The applicant is directed to deposit Rs.2 lakhs to the bank account of the Resolution Professional within one week, towards his fees. This shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.
- VII. The Registry is directed to communicate a copy of order, report and application within **seven** working days and upload the same on the website immediately after the pronouncement of order.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
14.03.2024.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)