

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT – 1

ITEM No.305- C.P.(IB)/124(AHM)2024

with

ITEM No.306- IA/848(AHM)2024

Order under Section 95 IBC

IN THE MATTER OF:

State Bank Of India

Vs

Ramniwas Dhoot

.....Applicant

.....Respondent

Order delivered on: 05/11/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Sameer Kakar, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

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SAMEER KAKAR
MEMBER (TECHNICAL)

-sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I, AHMEDABAD**

CP/IB/124/NCLT/AHM/2024

with

I.A. No.848 of 2024

[Application under Section 95(1) of the Insolvency & Bankruptcy Code, 2016 r.w. Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019]

*In the matter of **Mr. Ramniwas Dhoot***

CP (IB) No.124/NCLT/AHM/2024

State Bank of India

Stressed Assets Management Branch
Raheja Chamber, Ground Floor,
Wing-B, Free Press Journal Marg,
Nariman Point, Mumbai-400021

...Applicant/Financial Creditor

VERSUS

Mr. Ramniwas Dhoot

(Personal Guarantor to Corporate Debtor)
35/C, Popular Press Building,
2nd Floor PT. M.M. Malviya Road,
Tardo, Mumbai 400034

.... Respondent/Personal Guarantor

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I.A. No.848/NCLT/AHM/2024

Mr. Purusottam Behera

IRP of Mr. Ramniwas Dhoot
Personal Guarantor to M/s IMP Powers Ltd.)
Headway Resoulktion & Insoveny Services Pvt. Ltd.
708, Raheja Centre, 7th Floor, Nariman Point,
Mumbai, Maharashtra, 400021.

...Applicant/IRP

VERSUS

Mr. Ramniwas Dhoot

(Personal Guarantor to Corporate Debtor)
86-A, Second Floor, Netaji Subhash Road,
Marine drive, Mumbai-400002.

.... Respondent/Personal Guarantor

Order pronounced on 05.11.2024

CORAM:


SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For Applicant/RP : Mr. Bhupendra Dave, Advocate
For the Respondent/
PG : Mr. Nausher Kohli, Advocate
For the Financial
Creditors : Mr. Priyank Dave, Advocate for
: Mr. Amiraj Barot, Advocate for BOI
: Mr. Raju Kothari, Advocate for STCI
Finance Limited
: Mr. Karan Thackrey, Advocate a/w.
: Mr. Suhail Mhasvadkar, Advocate
i/b. M.V. Kini Law Firm For SBI

ORDER
Per: Bench

1. The Present Company Petition i.e. CP(IB)/124(AHM)2024 is filed on 05.03.2024 through e-mode and physically on 18.04.2024 under Section 95(1) of the Insolvency and Bankruptcy Code 2016, (IBC, 2016) read with Rule 7(2) of the I&B (AAA for IRP for PGCD) Rules, 2019 by the Applicant Bank (Financial Creditor) seeking initiation of Insolvency Resolution Process against against **Mr. Ramniwas Dhoot** (hereinafter referred to as "Personal Guarantor") for a default amount of **Rs.4,05,97,896.14ps.** as on 30.11.2023 in respect of Deed of Guarantee dated 16.02.2021 executed in favour of Applicant Bank/Financial Creditor. The date of default is recorded as 25.12.2023.
2. IA/848(AHM)2024 being report of IRP was filed physically on 31.06.2024.
3. In so far as the Personal Guarantor to Corporate Debtor is concerned, the Hon'ble Supreme Court of India in the



matter of **Lalit Kumar Jain vs. Union of India & Ors.** in the Transferred Case (Civil) No.245/2020 has upheld the vires of the notification issued by the Central Government vide S.O. 4126(E) dated 15.11.2019, in so far as it relates to coming into force of Insolvency and Bankruptcy Process of Personal Guarantors to Corporate Debtor. Thus, when a Corporate Insolvency Resolution Process in relation to Corporate Debtor is pending before this Adjudicating Authority, then as per Section 60(2) of IBC, 2016 the NCLT would be competent forum to file an Application for Personal Guarantor in relation to such Corporate Debtor.


4. It is stated that the Corporate Debtor viz. **M/s IMP Powers Ltd.** availed financial assistance under the consortium lending and the Consortium Lenders sanctioned credit facilities aggregating to **Rs.358.18 Crore**, where the share of SBI is Rs.143.75 Crores (inducted into consortium in the year 1997), Karnataka Bank Rs.47.80 Crores (inducted into consortium in the year, 2000), BOI share Rs. 62.18 Crores (Inducted into consortium in the year 2001), IDBI share Rs.39.43



Crores, AXIS Bank share Rs.22.31 Crores, Indian Bank share Rs.42.71 Crores.


5. The Corporate Debtor and others executed various loan/security documents on 22.04.2019, 07.04.2020, 09.04.2020, 16.02.2021, in favour of the Applicant Bank from time to time some of which are annexed with the Petition as **Annexure-3 Colly, Annexure-4, Annexure-5.**
6. The Respondent/Personal Guarantor has also executed joint Deed of Guarantee a on 16.02.2021 for an amount of Rs.1,83,15,00,000/- together with interest costs, charges expenses and/or other money due in favour of Applicant Bank/SBI and IDBI to secure the credit facilities granted to the Corporate Debtor which are enclosed along with the Petition as **Annexure-6.**
7. However, after availing the Loan/Credit Facilities, the Corporate Debtor failed to maintain financial discipline as per terms and conditions of the loan agreement due to which loan account became irregular and committed

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default. Consequently, the said loan account of the Corporate Debtor was classified as NPA on 10.04.2021 as per the RBI Guidelines.


8. Subsequently, Operational Creditor filed CP(IB) 203/9/NCLT/AHM/2020 against the Corporate Debtor and this Adjudicating Authority, vide order dated 29.03.2022 admitted the Corporate Debtor into CIRP. Thereafter, vide order dated 19.12.2023 Corporate Debtor was ordered for liquidation by this Tribunal in IA 987/AHM/2023.
9. Post the Liquidation order of the Corporate Debtor on 22.12.2023 the Applicant Bank sent a Recall Notice to the Personal Guarantors calling upon the Respondent/Personal Guarantor to pay Rs.4,05,97,896.14ps. with further interest + penal interest. A copy of the same is enclosed along with the Petition as **Annexure-7**.
10. Thereafter, the Applicant Bank invoked the personal guarantee by issuing **Form-B** being Demand Notice



dated 02.02.2024 U/s 95(4)(b) of the IBC, 2016 r.w. Rule 7(1) of the I&B (AAA for IRP for PGCD) Rules, 2019 which was served to the Respondent/Personal Guarantor on 09.02.2024 through Registered Post and requested to pay the unpaid debt in default in full within 14 (fourteen) days from the receipt of this Demand Notice. A copy of the same is enclosed along with the Petition as **Annexure-8 Colly**.

11. However, due to non-payment of the amount by the Corporate Debtor as well as the Personal Guarantors, the Applicant Bank filed the present petition being Company Petition (IB) No. 124 (AHM) of 2024, for initiation of Insolvency Resolution Process against the Personal Guarantor in **Form-C** under Section 95 of 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.


12. On presentation of the application by the Applicant/Financial Creditor, this Tribunal vide order



dated 25.04.2024 appointed Interim Resolution Profession (hereinafter referred to as "IRP") as suggested by the Financial Creditors viz. **Mr. Purusottam Behera, having registration no. IBBI/IPA-002/IP-N00940/2019-2020/12993** to carry out Insolvency Resolution Process of the Personal Guarantor as per section 97(3) of IBC, 2016. This Tribunal directed the IRP to file his report.

13. The Interim Resolution Professional has filed the report through IA No. 848 of 2024 on 03.06.2024 under dairy no. E 1254 recommending the admission of the application filed under Section 95 of IBC, 2016." The summary of grounds for admission of the application as per the Report dated 03.06.2024 filed by the IRP are as follows:-

"The RP most humbly submits before this Hon'ble Tribunal that the present application meets the necessary requirements of the Code for its approval by this Hon'ble Tribunal and the reason for the same have been submitted in the preceding part(s) of this report and therefore, this Hon'ble Tribunal may kindly pass appropriate orders under section 100 of



the Code, "Admitting" the present application filed by State Bank of India through the RP in C.P. (1B)-124(AHM)2024 and declare "Moratorium" under section 101 of the Code and issue "Public Notice" for inviting the claims under section 102 of the Code and may pass such further orders as this Hon'ble Tribunal deems necessary."

14. That after issuance of notice in I.A. the Respondent/Personal Guarantor appeared and filed an affidavit in reply dated 15.06.2024 under diary no. D-5589 and raised following objections to the Application:-


a) It is stated that the Corporate Debtor had availed certain facilities from consortium of lenders which included Karkataka Bank Ltd., Bank of India, IDBI Bank, Indian Bank, Axis Bank and the Financial Creditor in the Company Petition.

b) On March 29, 2022, the Corporate Debtor was admitted into CIRP under the Code. The Financial Creditor being the lender was inducted into committee of creditors ("CoC") by the interim resolution professional/resolution professional.






- c) The Resolution Professional had, in the prescribed form, invited expression of interest for resolution/ revival of the Corporate Debtor. The provisions of the Code were amended so as to enable the promoters of MSME to submit a Resolution Plan. I, in my capacity as the promoter of the Corporate Debtor, had submitted a Resolution Plan for the revival of the Corporate Debtor on September 12, 2022.
- d) Under the resolution plan, an amount of Rs. 107.11 Crores was proposed to be paid to the creditors including a separate amount of Rs.8.00 crores for discharge of personal guarantees.
- e) Corporate Debtor is currently undergoing liquidation under the Code.
- f) Although, the Respondent had emerged as the highest bidder, the Resolution Plan proposed by us (being me, Mr. Ajay Dhoot and Aditya Dhoot) came to be rejected by CoC of the Corporate Debtor which included the Financial Creditor and currently the Corporate Debtor and at present the



Corporate Debtor is currently undergoing liquidation. The Financial Creditor, as one of the members of the CoC of the Corporate Debtor, was very well aware of the facts, and it is quite surprising to see that the Financial Creditor, despite being very well aware of the facts, went ahead to invoke my personal guarantee.


- g) The Guarantor further stated that he had also submitted a scheme of compromise or arrangement hoping that the same would ultimately satisfy the outstanding claims of all creditors. However, the same also came to be rejected by the CoC of the Corporate Debtor.
- h) Therefore, his advocates through their letter dated May 09, 2024, which was in response to Resolution Professional's letter dated May 03, 2024, had specifically pointed out all the above critical facts and also requested the Resolution Professional to consider all the above facts while preparing the Report to the Hon'ble NCLT. I specifically pointed out that I have failed to



understand the mode and manner in which the alleged unpaid amount of Rs.4,05,97,896/- is due and payable by me and stated that the Financial Creditor has failed to provide any legitimate calculation of the amount. Copy of the letter dated May 03, 2024, sent by Resolution Professional is @Annexure-3; pg. 46-48 of the Report and the reply dated May 09, 2024, is at Annexure-5; pg. 55-56 of the report.

- i) In view of certain typographical/inadvertent error in the letter dated May 9, 2024, his advocates vide their email dated June 18, 2024, sent a clarification that there was a typographical/inadvertent error in the reply on my behalf. It was clarified that 'STCI' or 'STCI Finance Ltd., as appearing in the reply to be read as 'State Bank of India' or 'SBI'. A copy of the e-mail dated June 18, 2024, sent to the Resolution Professional is hereto annexed and marked as **Exhibit "H"**.
- j) Despite the above developments, it appears that the Financial Creditor has preferred the Company





Petition against me in my capacity as the personal guarantor to the Company as against which my preliminary submissions are as under (without having access to the Company Petition filed by Financial Creditor).

- k) It is stated that without prejudice to my rights and contentions that I have not been served with a copy of the Company Petition, till date, I am making submissions only on the report filed by Resolution Professional. I submit that the Resolution Professional has failed to apply his mind and has acted mechanically in recommending that the Company Petition must be admitted by this Hon'ble Tribunal. There is an apparent violation of sub-sections (6), (7) and (9) of Section 99 of the Code as elaborated hereunder.
- l) Moreover, it is rather surprising to note that the Resolution Professional has failed to mention or accord any reason in support of his recommendation of admission of the petition other than the below at pg. 27 and 28 of the report.



"The RP hereby recommends for acceptance of the application which is the subject matter of the present report being submitted under Section 99(7) of the Code to the Hon'ble Tribunal for the reasons that the debt is due and payable by the personal guarantor"

m) As already stated hereinabove, I humbly submit that as the Company Petition has not been served upon me there has been a blatant violation of the Code and Application to AA Rules and the non-compliance thereto by the Resolution Professional and the Financial Creditor, which is a mandatory provision, under the Code. In view thereof the Company Petition be dismissed.


n) In view of the facts and submissions mentioned hereinabove it is humbly prayed that the present proceedings be dismissed against me, and no relief be granted by this Hon'ble Tribunal.

15. One of the Financial Creditors to the Corporate Debtor IDBI Bank has also filed its reply on 29.06.2024, vide inward diary No. D-5941. The following has been stated.

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- a) It is submitted that on perusal of the RP Report, Financial Creditors to the Corporate Debtor IDBI Bank have been given to understand that the State Bank of India [SBI], the Financial Creditor in the present case had initiated Personal Insolvency Proceedings against Mr. Ramniwas Dhoot who is one of the personal guarantors to the corporate debtor and also Respondent in the present case. In this respect, SBI had filed an Application before this Hon'ble Tribunal, under Section 95 of the Code, vide this present Company Petition bearing No. 124 (AHM) of 2024.
- b) In one of the hearings held in the subject Company Petition i.e., on 25th April 2024, RP was appointed, and he was directed to submit his Report under Section 99 of the Code before this Tribunal. Accordingly, on 10th May 2024, RP submitted his Report before this Tribunal vide IA No 848(AHM). In the subsequent hearing i.e., held on 05.06.2024, this Hon'ble Tribunal while taking on record the copy of the RP Report, directed the RP




to serve a copy of the said report to all Financial Creditors, Corporate Debtor and Personal Guarantor with a direction that recipient of the Report has to file their reply to the Report before this Tribunal within a week from the date of receipt of notice. Hence, this reply.

- c) It is further stated that IDBI Bank Ltd had also extended working capital credit limits to the said corporate debtor viz., IMP Powers Ltd under consortium banking arrangement led by SBI. The last such sanction, communicating renewal of existing credit limits, took place in the year 2020 and in this respect IDBI Bank Ltd had issued its sanction letter bearing reference no IDBI/NPT/MCG/20-21/335 dated 19.11.2020. As per the said renewal sanction letter the corporate debtor was enjoying aggregate credit limits of Rs 39.43 crores including Covid-FITL of Rs 1.19 crores. The repayment of these credit limits was secured by personal guarantee of Mr Ramniwas Dhoot, Mr Aditya R Dhoot and Mr Ajay R Dhoot in




addition to primary and collateral securities as stipulated in the sanction letter on Pari passu basis along with other lenders. A copy of the said sanction letter and a copy of the guarantee deed executed by Mr Ramniwas Dhoot as one of the personal guarantors to the corporate debtor is annexed and marked as **Annexure -1 colly**.

d) It is submitted that the corporate debtor was not prompt in meeting the repayment obligations and payment of interest debited to the account. In addition to that the corporate debtor had also committed defaults in terms of the working capital agreement. Due to this, loan accounts of the corporate debtor were classified into NPA w.e.f. 01.04.2021. Thereafter, on March 24, 2022, the credit limits sanctioned to the corporate debtor were recalled by issuing a recall notice wherein the corporate debtor was asked to repay the entire outstanding as at 31.12.2021 amounting to Rs.41,94,61,369.80 within the next 15 days and substitution of Bank Guarantees already issued by




IDBI Bank to the extent of Rs 12,95,06,032 with the Bank Guarantee of another Bank. As there was no positive response to the recall notice from the corporate debtor, the IDBI Bank Ltd issued a Demand Notice to the personal guarantor on September 22, 2022, calling upon each one of them to pay an aggregate sum of Rs 41,94,61,369.80 due from the corporate debtor outstanding as at 31.12.2021. A copy of the recall notice dated 24.03.2022 and Demand Notice dated 22.09.2022 are annexed and marked as **Annexure-2 colly.**

- e) It is submitted submit that both the corporate debtor and personal guarantors have failed and neglected to make any payment to IDBI Bank Ltd in response to its recall notice dated March 24, 2022, and demand notice dated September 22,2022 issued to them respectively. This has compelled IDBI Bank Ltd to move an OA bearing no OA/126/2023 before DRT I Mumbai by claiming a default amount of Rs



42,06,43,7~6.75(Rupees Forty-Two Crores Six Lakhs Forty Three Thousand Seven Hundred Thirty-Six and Paise Seventy-Five only). It is pertinent to note that in the OA filed in DRT, all the personal guarantors to Corporate Debtor including Mr Ramniwas Dhoot were made as the Respondent in the present case. A copy of the OA No. 126-2023 filed before DRT I is annexed and marked as **Annexure-3**.


- f) It is pertinent to submit that in the CIBIL report generated in respect of Mr Ramniwas Dhoot, one of personal guarantors to the corporate debtor viz., M/s. IMP Powers Ltd., the default committed by him in respect of the said guaranteed transaction is appearing. A copy of the said CIBIL report is annexed and marked as **Annexure -4**.
- g) It is submitted that as of June 14, 2024, the total outstanding dues payable by the corporate debtor aggregates to Rs 50,52,64,505.35. A copy of Bank Statement drawn up to June 14, 2024, in respect



of loan accounts held in the name of corporate debtor is annexed and marked as **Annexure -5**.

h) It is submitted that certain additional information on the personal guarantor Mr Ramniwas Dhoot as available with IDBI Bank Ltd is furnished in the form of a "Data Sheet" which may be useful to RP to continue with Personal Insolvency Resolution Process against Mr Ramniwas Dhoot as recommended now by IDBI Bank Ltd. A copy of the said "Data Sheet" is annexed and marked as Annexure -6. In addition to this, additional information on IDBI Bank Ltd, the financial creditor is furnished and annexed as **Annexure-7**.

16. One of the Financial Creditor i.e., Indian Bank has in the hearing conducted on 15.07.2024, stated that it has nothing to do with the Personal Guarantee, which is subject matter of the present case. The relevant portion of the order dated 15.07.2024, passed by this Hon'ble Tribunal in C.P. 124(AHM) 2024 is hereby reproduced as under:



“Further, Ms. Vishwa Shah, Proxy Advocate for Mr. Neeraj Vasu, Advocate state that she appeared for India Bank and India Bank has nothing to do with the personal guarantee of the present respondent guarantor in this matter.

17. In response to the reply filed by the Respondent/PG, the Applicant has filed Rejoinder on 26.09.2024, vide inward diary No.D-7315. The following has been stated.


Issue -1

- a) It is stated that no authority letter annexed by the Financial Creditor in favour of the Resolution Professional to sign, verify the pleading on their behalf.
- b) At the outset, it is submit that the subject Company Petition is complete in all respect according to the Rules and Regulations of the Code prescribed therein.
- c) It is stated that the written Consent of the Insolvency Professional viz., Mr. Purushottam Behera who is registered with the Indian Institute of Insolvency Professionals of ICAI and registered with the Insolvency and Bankruptcy Board, is



being attached to the Company Petition at page 267.


- d) It is further submitted that a copy of his Registration and Validity Certificate is being attached following his consent at page.269 along with AFA which is attached thereto at page 270 of the Company Petition.
- e) It is stated that along with the above mentioned documents, the authority letter drawn in my favor, by the Applicant authorizing me to sign this Affidavit-in-Rejoinder as deponent is attached at page 271 of the Company Petition.
- f) It is stated that a bare perusal of the Index exhibits the Authority Letter in favor of Mr. Behera at page 271-A, which has been inadvertently missed out while filing this present Petition. However, for the sake of judiciousness we are now attaching the same as **Annexure-A** to this Affidavit.
- g) It is further submitted that it is pertinent to note that the hard copies as well as soft copies of the



Company Petition bear the stamp of the IRP, Mr. Purushottam Behera who has verified the Petition after perusing the of the Original Documents available in custody of the Applicant.


Issue -2

- h) It is stated that Bank statements of Accounts produced by Financial Creditor is not in accordance with Banker's Book Evidence Act, 1891.
- i) It is stated that the copy of the extract of the Statement of accounts as per the Bankers' Books Evidence Act, 1891 is attached at page 31 of the Company Petition which are duly stamped and signed by the IRP in my presence after perusing Ledger Accounts maintained by the Applicant.
- j) It is stated that it is pertinent to note that the total debt claimed against the Respondent has been already admitted by the Hon'ble National Company Law Tribunal, Ahmedabad Bench while admitting the Company Petition filed against the Corporate Debtor. Therefore, the question of the



authenticity of debt and default is not a matter of question at this stage of the proceedings.

- k) It is stated that the question which arises today is that whether the debt is secured by the Personal Guarantee executed by the Respondent which has been answered in affirmative and also not disputed by the Respondent. Therefore, the debt and default are deemed to be admitted and hence this present petition deserves admission and initiation of Personal Insolvency Resolution Process against the Respondent.
- l) It is further submitted that bank statement attached to the Company Petition are computerized ones which do not need any authentication or signature. At the same time the copies of the sanction letter and other loan documents establishes the debt availed by the Corporate Debtor which are outstanding as on date for which the Respondent is responsible for clearing the liability as per the terms of Guarantee Agreement executed by the Respondent.




Issue - 3

- m) The Record of Default provided by the Financial Creditor is not generated from the Information Utility registered under the Code.
- n) It is stated that with regard to the record of default, I would like to submit that it is a matter of fact that as of now National e- Governance Services Ltd. (NESL) is the first and only registered IU approved by the IBBI.
- o) It is further submitted that normally the NeSL records prove the authenticity of information on record of default only in the case of Corporate Debtors and not for any individuals. In the case of individuals CIBIL reports are sufficient to authenticate the record of the default or the loans advanced in favor of the individuals.
- p) It is submitted that in the present case debt and default held in the name of corporate debtor has already been admitted by the appropriate Adjudicating Authority. Now, the question to be answered is whether such outstanding debt held




in the name of corporate debtor has been guaranteed by the Respondent or not. It is pertinent to note that the Respondent has so far not denied execution of Guarantee Deed in favor of the Applicant. Therefore, as the Deed of Guarantee attached to the Company Petition has not been disputed by the Respondent at any point of time, the subject Company Petition is eligible to be admitted.

- q) It is further stated that it is a matter of fact that if a report is generated from the NeSL Portal it would show records of the Corporate Debtor reflecting default date and outstanding default amount. The date of default is 25.12.2023 as reported in the Company Petition which happens to be expiry date of the notice period as mentioned in the recall cum invocation notice.
- r) It is stated that it is pertinent to note that the Respondent was one of the Directors of the Corporate Debtor which is in liquidation as of date due to failure of the Corporate Insolvency




Resolution Process initiated against the Corporate Debtor after admission of debt and default. As such, the Respondent is fully aware of all these developments and submitted the subject reply only to delay the proceedings.

Issue - 4

- s) Due verification of the Petition filed by the Financial Creditor has not been done by the Resolution Professional.
- t) It is stated that the Verification by Resolution Professional [RP] at page 16 of the Company Petition is indeed stamped and signed by the RP who has given his consent through Form 'A' at page 271 of the said Company Petition. It is pertinent to note that the RP Mr. Purushottam Behera has been appointed by this Hon'ble Tribunal vide order dated 19.04.2024 following due process of law. The IRP has also deposed through an Affidavit verifying the Petition at page 15 of the Company Petition.
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- u) It is further stated that at this point of time RP's appointment is undisputed as well as I have stated on oath that he has been authorized by the Applicant i.e., the State Bank of India to file this Company Petition U/s 95. The Applicant has also given me the Authorization vide Authority letter dated 02.02.2024 at page 271 of the Company Petition to sign on behalf of the Applicant.
- v) It is stated that, lastly, i would like to submit that the objections raised by the Personal Guarantor are petty and need no such consideration as the debt and default have not been disputed by the Respondent. At the same time, the Deed of Guarantee, which is the basis of filing this Petition, has also not been disputed. Therefore, the RP has been lawfully appointed by this Hon'ble Tribunal and he has also submitted his report recommending admission of the Company Petition.
- w) Therefore, it is stated that it would be in the interest of justice that this Petition be admitted,



and Personal Insolvency Resolution Process be initiated against the Respondent as he is liable to pay the debt fallen due in terms of the Deed of Guarantee executed by him.

18. In pursuant to the rejoinder filed by the Applicant, the Respondent / Personal Guarantor has filed a synopsis on 17.10.2024, vide inward diary No. D-7926. The following has been stated:


- a) The Record of default provided by Financial Creditor is not in accordance with the Provision of the Code.
- b) It is stated that The Financial Creditor has annexed CIBIL Reports to show the record of default on behalf of the Respondent. It is surprising that a leading public institution like State Bank of India has failed to bring on record the record of default generated by National e-Governance Service Limited ("**NeSL**") which is the first and only registered entity with the Insolvency and Bankruptcy Board of India ("**IBBI**"). Further, to buttress its argument, the Financial Creditor



has mentioned that normally NeSL report prove the authenticity of information on record of default only in the case of Corporate Debtor and not for any individuals. It is submitted by Financial Creditor that in case of individuals, CIBIL Reports are sufficient to authenticate the record of default or the loan advanced in favour the individuals. @Para 22.2, pg. 8 of the Rejoinder.

c) It is stated that CIBIL reports which have been relied upon by the Financial Creditor only shows a negative rating about an individual's profile, who may then find it challenging to borrow loans from the lending institutions. Such report which has been relied upon by the Financial Creditor would not authenticate the information regarding the debt or default.


d) It is stated that the law governing information utilities are Section 209 to 216 of the of the Insolvency and Bankruptcy Code, 2016 ("Code") and Insolvency and Bankruptcy Board of India



(Information Utilities) Regulations, 2017.


Information Utility (IU) is a professional organization which is registered under Section 210 of the Code whose function is to gather, assemble, accumulate, validate and disseminate financial information from companies and creditors to facilitate insolvency, liquidation and bankruptcy.

- e) It is also stated that as per Section 215 of the Code, financial creditors are obliged to submit financial information to IUs. Moreover, as per Section 214(2) of the Code read with Regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Amendment Regulations 2019, an information utility shall expeditiously undertake the process of *authentication and verification of information of default as soon as it is received. (2) For the purpose of sub-regulation (1), the information utility shall-*
- (a) deliver the information of default to the debtor seeking confirmation of the same within the time*



specified in the Technical Standards; (b) remind the debtor at least three times for confirmation of information of default, in case the debtor does not respond, allow three days each time for the debtor to respond; (c) deliver the information of default or the reminder, as the case may be, to the debtor either by hand, post or electronic means at the postal or e-mail address of the debtor.


- f) It is As at the moment only one entity i.e., NeSL is registered as an Information Utility. Therefore, placing reliance on any such report which is not in accordance with the provisions of the Code should not be considered, as the same does not prove the veracity or accuracy of such information. Moreover, Financial Creditor has failed to bring on record Form D (Record of Default) which is issued by Information Utility showing the record of default.
- g) On bare perusal of the CIBIL Report annexed by the Financial Creditor at *Annexure A, Pg. 18-25 of the Petition*, indicates that "CIBIL. does not accept



any responsibility on the accuracy, completeness, and veracity of all such information as provided".

Therefore, the CIBIL report annexed by the Financial Creditor cannot be relied upon to show record of default.

- h) It is stated that the Financial Creditor has no locus to respond to the allegation made at issue No.4 of the rejoinder.
- i) It is stated that the at Paragraph 12 of the Additional Affidavit has alleged that there is non-application of mind by the Resolution Professional while preparing the report u/s 99 of the Code. However, it appears that the Financial Creditor has misconstrued this allegation that Respondent is contesting the appointment of Resolution Professional which was appointed by this Hon'ble Tribunal.
- j) Vide the Additional Affidavit has pointed out the non-application of mind by the Resolution Professional and mechanical approach while preparing the report u/s 99 of the Code




recommending the admission of the Petition u/s 95 of the Code against Respondent.

k) It is stated that the Financial Creditor had no locus to respond to the allegation made by the Respondent against the Resolution Professional. In fact, for the sake of brevity and for clarification, it was the Resolution Professional who was supposed to point out these non-compliances while examining the Petition which have been raised by the Respondent in the Additional Affidavit. It is therefore submitted that the Resolution Professional has clearly failed in discharging his duties as prescribed under the Code read with Regulations (*amended from time to time*).

l) The Resolution Professional has brushed aside such glaring non-compliances and without applying his mind, and also without providing any explanation as mandated u/s 99(9) of the Code recommended the admission of the application filed by the Financial Creditor.



- m) Further, the Resolution Professional u/s 99 of the Code has to collate the information, facts and material for initiation of insolvency proceedings and the Resolution Professional has without calling for the same mechanically prepared the Report u/s 99 of the Code recommending the admission of the Petition.
- n) It is stated that the admission of debt of the financial creditor against the corporate debtor cannot be construed as admission of debt against the respondent.
- o) In the Additional Affidavit had mentioned that the bank statement produced by the Financial Creditor does not meet the pre-requirement of the printout in accordance with the Bankers Books Evidence Act, 1891 and also that the Financial Creditor authorised officer has not given a further certificate in accordance with Section 2-A (c) and hence the bank statement produced is defective and cannot be relied upon by the Financial




Creditor. @Refer to Para 10, Pg. 4 of the Additional Affidavit filed by the Personal Guarantor.

p) It is stated that the Financial Creditor has countered this allegation to say that the copy of the extract of the Statement of accounts as per Bankers' Book of Evidence Act, 1981 have been duly stamped and signed by the Resolution Professional in presence of the Financial Creditor which were maintained in their custody.

q) Further, if the total debt against the Respondent has been admitted by this Hon'ble Tribunal while admitting the Company Petition filed against the Corporate Debtor as stated by you at Paragraph 21.2 @ Pg.7 of the Rejoinder, then in that scenario the Financial Creditor should not have filed separate proceeding against the Respondent for the same debt.

19. The case was heard at length on 21.10.2024, in which Counsels of all the parties had made their submissions and following was noted in the midst of the hearing. The



relevant portion of order dated 21.10.2024, is reproduced as under:

"In this case, learned counsel for the Respondent / PG raised three defence being there is a discrepancy in date of default, there is a mismatch/error in computation of outstanding dues as well as the Corporate Debtor has already been sold as a going concern which is under challenge before the Hon'ble NCLAT. Thereafter, additional issue was raised by the Personal Guarantor that the main petition was filed by the Financial Creditor through the RP without any authorization from the Financial Creditor which reflect from the index Page No. 2, Serial No. 18 neither pagination has their nor any authority letter was annexed.

However, learned counsel for the Financial Creditor submits that in affidavit in rejoinder a copy of the authorization letter dated 02.02.2024, in favour of the RP was filed on 26.09.2024 through Diary No. 7315"




20. We have heard the learned counsel for the parties and perused the documents on record. We have also gone through the report dated 03.06.2024 filed by the IRP.
21. It is seen from the record that the Corporate Debtor viz. **M/s IMP Powers Ltd.** availed financial assistance under the consortium lending and the Consortium Lenders sanctioned credit facilities aggregating to **Rs.358.18 Crore**, where the share of SBI (Applicant) is Rs.143.75 Crores for which Corporate Debtor and others executed various loan/security documents on 22.04.2019, 07.04.2020, 09.04.2020, 16.02.2021, in favour of the Applicant Bank from time to time some.
22. The Respondent/Personal Guarantor has also executed joint Deed of Guarantee on 16.02.2021 for total an amount of Rs.1,83,15,00,000/- together with interest costs, charges expenses and/or other money due in favour of Applicant Bank/SBI and IDBI to secure the credit facilities granted to the Corporate Debtor.
23. However, after availing the Loan/Credit Facilities, the Corporate Debtor committed default. Consequently, the



loan accounts of the Corporate Debtor were classified as NPA on 10.04.2021. Thereafter, by order dated 29.03.2022, the Corporate Debtor- IMP Powers Limited was admitted under CIRP and order of moratorium was passed by the Adjudicating Authority in CP (IB) No. 203/NCLT/AHM/2020. Later on, order of liquidation passed on 19.12.2023 in IA No. 987 of 2023.

24. Thereafter, Applicant Bank as well as other Consortium Lender Bank invoked personal guarantee executed by the personal guarantors in its favour through Notice of Invocation of Guarantee dated 16.02.2021 through Recall Notice dated 22.12.2023, calling upon the Respondent/Personal Guarantor to pay Rs.4,05,97,896.14ps. with-in 48 hours of issue of this Recall Notice with further interest + penal interest which was neither replied nor paid by Respondent/Personal Guarantor. The Recall Notice was issued within three years period of limitation from the date of default/NPA of Corporate Debtor. Further, date of default is rightly recorded as 25.12.2023 in respect of the


✓



Respondent/Personal Guarantor which happened on the expiry date of the Recall Notice period as mentioned in the Recall cum invocation Notice.

25. Thereafter, the Applicant Bank also issued Demand Notice being **Form-B** dated 02.02.2024 U/s 95(4)(b) of the IBC, 2016 r.w. Rule 7(1) of the I&B (AAA for IRP for PGCD) Rules, 2019 which was served on 09.02.2024 to the Respondent/Personal Guarantor within three years period of limitation from the date of default/NPA of Corporate Debtor. The present Petition filed on 18.04.2024 is also very much within limitation as period of limitation for the same is available to the Applicant Bank from the date of default till 24.12.2026.

26. The Applicant Bank has claimed defaulted amount as **Rs.4,05,97,896.14ps.** on 30.11.2023 and filed Bank statements of Accounts in accordance with Banker's Book Evidence Act, 1891 as **Annecure-2**. Moreover, it is noted that the threshold for Part-III of IBC, 2016 is provided under Section 78 the same is reproduced below. ✓



*“This Part shall apply to matters relating to fresh start, insolvency and bankruptcy of individuals and partnership firms where the amount of the default is not less than **one thousand rupees.**”*

27. This Bench vide order dated 15.07.2024 directed the Financial Creditor / IRP to serve the complete paper books being CP(IB) No. 124 of 2024 upon the Respondent / Personal Guarantor within a period of three days.
28. Order dated 23.08.2024 records that reply was filed by the Personal Guarantor after receipt of copy of the CP paper book on 15.07.2024 under diary No.D-5589. Hence, the paper book was made available to the Respondent who has filed a reply.
29. Insolvency proceedings are proceedings in “Rem” admitted by the Corporate Debtor has availed financial assistance by way of loan from various institutions and Banks and to some of them the Respondent / Personal Guarantor has extended Personal Guarantee. Therefore, in fitness of the same this Bench directed the RP to serve its report on all the other Financial Creditor who were directed to file their reply.




30. IDBI Bank Ltd., one of the Financial Creditors of the Corporate Debtor filed its reply and stated that they were holding personal guarantee and which was invoked on 22.09.2022 and they demanded Rs.41,94,61,369.80ps. from the CD / Personal Guarantor which has remained unpaid. They have stated that as on 14.06.2024, the outstanding dues of the Corporate Debtor are Rs.50,52,64,505.35ps. and statement of account was also furnished.

31. On the issue raised by the Respondent/Personal Guarantor regarding the debt which could have been paid if the Plan given by the Respondent was approved by the CoC. The fact remains that the plan was never approved by the CoC. In fact, Corporate debtor was sold as going concern only for Rs.78,00,00,000/- under liquidation. The dues claimed by the Applicant are Rs.40.06 Crore. As such we do not find any substance in the contention of the Respondent/Personal Guarantor.



32. The dues of the Creditors will still survive since the admitted claim in liquidation of the Corporate Debtor are much more and cannot be fully settled with Rs.78,00,00,000/-. Further it was stated that an order of Insolvency is also an order in "Rem".
33. It is seen that claims of Financial Creditors for Corporate Debtor in liquidation are to the tune of Rs.5,16,37,13,188.78ps. As such the claims of Financial Creditors are much more than threshold of Rs. 1000/- as prescribed under Section 78 of IBC, 2016.
34. Therefore, the plea/defence of the Respondent/Personal Guarantor qua mis-match/error in computation of outstanding dues or Corporate Debtor is sold as a going concern absolve the liability of the Respondent/Personal Guarantor towards personal guarantee is not sustainable and rejected, accordingly.
35. Further, the plea of the Respondent/Personal Guarantor that the main petition was filed by the Financial Creditor through the RP without any authorization from the Financial Creditor is also not sustainable as the




Financial Creditor filed a copy of the Authorization Letter dated 02.02.2024, in favour of the RP was filed on 26.09.2024 through affidavit in rejoinder through Diary No. 7315 attaching the same as **Annexure-A**.

36. It is also noted under section 128 of Indian Contract Act, 1872 that when a default is committed the Principal Borrower and Surety are jointly and severally liable to Creditor and Creditor has the right to recover its dues from either of them or from both of them simultaneously. For benevolent reference, the said section of the Contract Act, 1872 is reproduced below:

"The liability of the surety is co- extensive with that of the principal debtor, unless it is otherwise provided by the contract."

37. Moreover, from the report of IRP, it is clear to us that:

- i. IRP has recommended to accept the application for the reason as stated in the report dated 03.06.2024.
- ii. The Respondent/Personal Guarantor has admitted to have executed the Guarantee Agreement on



16.02.2021 in favour of Applicant Bank/Financial Creditor. Hence, the Petition is very much maintainable.

iii. The Applicant has demanded the amount outstanding from the Respondent initially vide Recall Notice dated 22.12.2023 and Demand Notice 02.02.2024.


iv. Resolution Professional report states that no evidence was placed before him by the Respondent/Personal Guarantor having paid the amount demanded by the Applicant/FC.

38. The delay in filing of report by IRP is hereby condoned.

39. In our view, IRP has filed report with due application of mind, on the contrary the respondent has failed to provide proof of discharge of debt to the RP.

40. In view of the foregoing we are left with no other choice but to order as under: -

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. Purusottam Behera**, having registration no. IBBI/IPA-002/IP-N00940/2019-2020/12993, office at Raheja Centre, 7th Floor, Nariman Point, Mumbai, Maharashtra, 400021 (e-mail id purusosbbj@yahoo.com) who was appointed when the Section 97 application was allowed vide Order dated 25.04.2024, is directed to



cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Ahmedabad Bench, inviting claims from all Creditors, within 21 days of such issue. The notice under Sub Section (1) of Section 102(2) shall include: -

- a. details of the order admitting the application;
- b. particulars of the resolution professional with whom the claims are to be registered; and
- c. the last date for submission of claims.

III. The publication of notice shall be made in two newspapers, one in English and other in Vernacular which have wide circulation in the State where the Corporate Debtor and Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.

IV. The Resolution Professional in the exercise of the powers conferred under Section 104 shall prepare a list of creditors on the basis of

- a) the information disclosed in the application filed by the debtor under Sections 94 or 95. as the case may be, and



- b) Claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice.
- V. The debtor shall prepare a repayment plan under Section 105, in consultation with the Resolution Professional, containing a proposal to the Creditors for restructuring of his debts or affairs.
- VI. The repayment plan may authorize or require the Resolution Professional to:
- a) Carry on the debtor's business or trade on his behalf or in his name; or
 - b) Realise the assets of the debtor; or
 - c) Administer or dispose of any funds of the debtor.
- The repayment plan shall include the following, namely; -
- a) Justification for preparation of such repayment plan and reasons based on which the creditors may agree upon the plan;
 - b) Provision for payment of fee to the Resolution Professional;
 - c) Such other matters as may be specified.
- VII. 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.



VIII. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons therefor. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of IBC, 2016. The date of meeting should not be less than 14 day or more than 28 days from the date of submission of the Report under sub-section (1) of Section 106 of IBC, 2016, for which at least 14 days' notice to the creditors (as per the list prepared shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of IBC, 2016.

IX. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of IBC, 2016 and submit the same to this Tribunal, copies of which shall be provided to the Debtor and the Creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of IBC, 2016.



X. The Resolution Professional shall submit his periodic reports before this Tribunal, every 30 days.

XI. 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.

41. In terms of the above, **CP (IB)/124/(AHM)/2024** filed under Section 95 (1) of the IBC, 2016 is admitted and the Insolvency Resolution Process stands initiated against the Respondent/Personal Guarantor.

42. In view of the above, **I.A. No.848 of 2024** is disposed of.

-sdr

SAMEER KAKAR
MEMBER (TECHNICAL)

VP

-sdr

SHAMMI KHAN
MEMBER (JUDICIAL)