

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT – III**

**C.P. NO. 267(IB)/MB/2023**

Under Section 95 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019

**Punjab National Bank (International)  
Limited**

A Lender incorporated in England and Wales,  
Corporate Office at:  
1, Moorgate,  
London, EC2r 6JH.

Also at:  
Backoffice in 3,  
2<sup>nd</sup> Floor, Siddharth Enclave,  
Ashram Chowk,  
New Delhi – 110 014.

**.... Petitioner/ Financial Creditor**

**Versus**

**Dileep Thakurdesai**

Having address at:  
A-2/4, Vijay Nagar,  
Marol, Andheri (East),  
Mumbai, Maharashtra – 400 059.

**.... Respondent/ Personal Guarantor**

**Order Pronounced on: 30.10.2024**

**Coram:**

Hon'ble Smt. Lakshmi Gurung, Member (Judicial)

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Hon'ble Shri Charanjeet Singh Gulati (Technical)

**Appearances:**

For Petitioner: Adv. Fatema Kachwalla

For Respondent:

***PER: SHRI CHARANJEET SINGH GULATI, MEMBER (TECHNICAL)***

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**ORDER**

1. The present Company Petition (IB) No. 267 of 2023 is filed by the Punjab National Bank (International) Limited (**'the Petitioner' / 'the Financial Creditor'**) under Section 95 of the Insolvency and Bankruptcy Code, 2016 (**'the Code' / 'IBC'**) 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 seeking to initiate Personal Insolvency Resolution Process (**'CIRP'**) against Mr. Dileep Thakurdesai (**'Respondent' / 'Personal Guarantor'**).
2. Punjab National Bank (International) Limited, the Petitioner herein, is a private limited company incorporated under the Companies Act, 1985 on 13.04.2006 in the United Kingdom (UK). The Petitioner is registered as Company No. 5781326 with the Registrar of Companies at England and Wales. The Petitioner is a wholly-owned subsidiary of Punjab National Bank (PNB), India and offers a range of financial services as a 'Commercial Bank'.
3. The Respondent is the Director and Shareholder of the Corporate Debtor. Further, the Respondent holds shares of the Corporate Debtor which is pledged with the Financial Creditor.

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4. The Petitioner during the course of its business had extended a secured term loan to one M/s Steadfast Shipping Private Limited (**‘the Corporate Debtor’**) for an amount to the tune of USD 5.0 Million vide Sanction Letter dated 19.12.2011 (**‘Facility’**). The Corporate Debtor is engaged in the business of Shipping. The Facility were extended vide a Loan Facility Agreement dated 10.02.2012 in Loan Account Number: 56000851 for the purchase/acquisition of **‘Vessels’** (Motor Tug Bharati – VI (Official No. 3592), Landing Craft Bharati – VII (Official No. 3408), Mooring Boat Bharati-VIII (Official No. 01454)) worth USD 7.15 Million, by the Financial Creditor.
5. The Facility was secured by creating a first charge on acquired Vessels from the availed Facility; first debenture on all fixed and floating assets and first hypothecation charge over the assets of the Personal Guarantors and Corporate Debtor, respectively.
6. Further, the Facility was also secured by Personal Guarantee of the Respondent, Mr. Dileep Thukurdesai and Mr. Partho Protim Burmon Roy (since deceased) vide Guarantee Agreement dated 10.02.2012. The personal guarantee as referred to herein was characterised as unconditional, irrevocable, joint, several and continuing guarantee. Accordingly, the Respondent is to pay and satisfy to the Petitioner Bank on demand all indebtedness as primary obliger to the Corporate Debtor/Principal Borrower. Furthermore, a Statutory Mortgage Deed was executed on 27.06.2012.
7. The Corporate Debtor obtained a Certificate of Registration of Vessel – Motor Tug Bharati – VI (Official No. 3592) acquired from the Facility, in favour of the Petitioner Bank. Further, the Petitioner Bank issued a letter dated 11.04.2013 to the Mercantile Marine Department at Mumbai intimating registration of charge (under Form - 8 of the

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Companies Act, 1956) on the Vessels towards the Facility availed by the Corporate Debtor in favour of the Petitioner Bank on 10.01.2013.

8. The Petitioner initiated recovery proceedings against the Corporate Debtor and Personal Guarantors before the Hon'ble High Court of Justice (The Business and Property Courts of England and Wales), Chancery Division, in HC-2017-001290 titled as "*Punjab National Bank (International) Limited and Steadfast Shipping Private Limited, Thakurdesai Dilleep and Roy Protim Burman Patho*". The Hon'ble Court by its order dated 05.09.2018 directed each of the Corporate Debtor and Personal Guarantors to pay a sum of USD 48,60,439.21 including interest calculated up to 28.03.2017 for repayment towards the Facility availed vide Sanction Letter dated 19.12.2011.
9. The Corporate Debtor defaulted in repayment of the Facility as per the repayment schedule attached to the Facility Agreement being first instalment due on 27.11.2012 till the last instalment due on 27.02.2019. Accordingly, the account of the corporate debtor was declared as a Non-Performing Asset on 30.11.2014. The Petitioner has initiated recovery proceedings vide Diary No. 341/2020 in Original Application before the Hon'ble Debts Recovery Tribunal – 2 at Mumbai on 10.04.2021, which is pending for adjudication.
10. The Corporate Debtor in regards to the said debt payable has time to time acknowledged its liability (and also that of the Personal Guarantors) towards the Facility availed to the Petitioner from year 2014-2017. The Corporate Debtor vide letter dated 20.11.2015 addressed a proposal for rescheduling of the said Facility to ensure its timely repayment of overdue interest and instalments, which was later accepted by the Petitioner Bank.

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11. The petitioner issued a Legal/Recall/Demand notice dated 07.02.2020 (and also 12.02.2020) to both the principal borrower/Corporate Debtor and Respondent/ Personal Guarantor of the borrower for repayment towards a default of USD 67,64,814.35, as on 06.02.2020, payable within fifteen (15) days of receipt of said legal/ demand notice. The Corporate Debtor/ Respondent through their Counsel admitted the repayment towards the said outstanding debt due on 14.11.2020.
  
12. The Petitioner issued a demand/recall notice read with Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 through Inland Speed Post on 09.12.2022 and via e-mail dated 14.12.2022 under Section 95 of the Code to the Respondent (**'said Demand Notice'**). The said Demand Notice was addressed for repayment towards a default of USD 84,41,078.20, which upon conversion (1 USD = 81.30 INR) is INR 68,62,59,657 as on 30.11.2022, within fourteen days of service towards the said Demand Notice.
  
13. Later, an email dated 12.12.2022 was addressed wherein a proposal for One-Time Settlement (OTS) was placed by the Corporate Debtor to settle the liability of the Corporate Debtor and the Respondent (Personal Guarantor) by selling the assets of the Corporate Debtor at an estimated market value at Rs. 2.00 Crores (with Rs. 10 Lakhs payable as Upfront Charges to the OTS) thus, acknowledging the debt and default.
  
14. The Corporate Debtor and the Respondent failed to repay the debt despite numerous letters and reminders by the Petitioner towards the Facility availed thereby, making the default a continuing one. Further, the Date of Default as identified from Annexure 'A-15' of the Petition being Form – C of Record of Financial Information of the Petitioner

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maintained with Information Utility (NeSL) is 23.02.2023 and the amount of default recorded is USD 86,80,886.88 (**'said outstanding debt'**).

15. In view of the aforesaid, the Present application has been filed for appointment of Resolution Professional under section 95 of IBC.

16. The Hon'ble Supreme Court in ***Dilip B Jiwrajka Vs. Union of India & Ors. (Writ Petition (Civil) No. 1281 of 2021)*** decided on 09.11.2023 upheld the constitutional validity of Sections 94 and 100 of the Code as follows-:

“ xxxxxx.....

- i. *No judicial adjudication is involved at the stages envisaged in Section 95 to Section 99 of the IBC;*
- ii. *The Resolution Professional appointed under Section 97 serves a facilitative role of collating all the facts relevant to the examination of the application for the commencement of the insolvency resolution process which has been preferred under Section 94 or Section 95. The report to be submitted to the Adjudicating Authority is recommendatory in nature on whether to accept or reject the application.*

...xxxxxxx”

**(emphasis provided)**

17. The Petition for initiating insolvency resolution process against Personal Guarantor to the Corporate Debtor is in prescribed form as mandated under section 95(6) of the IBC, and a copy of this present petition was served on the Personal Guarantor/ Respondent via e-mail dated 20.03.2023 and by post on 31.03.2023.

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18. The Counsel for the Petitioner has not suggested the name of Resolution Professional (RP) to be appointed under the Code. Thereafter, we appoint **Hetal Gaurang Kothari (IBBI/IPA-001/IP-P01610/201-2020/12500)**, e-mail ID: iphetalkothari@gmail.com; Mobile No.: +91 7738226617 as a Resolution Professional (RP) from the panel of RP maintained by the Insolvency and Bankruptcy Board of India (IBBI) in the present Petition.
19. The fee payable to Resolution Professional (RP) shall be in accordance with the Regulations/Circulars/Directions issued by the IBBI in this regard.
20. This Bench also directs for an advance payment of Rs. 1,50,000/- to be paid by the Financial Creditor to the Resolution Professional (RP) immediately to initiate the process which shall be adjusted towards the fee and expenses payable to the Resolution Professional (RP).
21. The interim-moratorium under Section 96 of the Insolvency and Bankruptcy Code, 2016 has commenced on the date of filing of this application by the Financial Creditor and will cease to have effect on the date of admission. During such 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.
22. The Resolution Professional as appointed is directed to examine the application as set out in Section 97(6) of IBC, 2016 including but not limited to issue relating to limitation and invocation of Bank Guarantee of the Respondent by the Petitioner and shall submit his report as provided under Section 99(1) of IBC, 2016, **within 10 days** of the receipt of this order.

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23. Further, the Registry is hereby directed to communicate this order to Financial Creditor, Personal Guarantor, Corporate Debtor and Resolution Professional even by way of e-mail correspondence immediately. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record. The Petitioner is also directed to forthwith communicate this order to the Resolution Professional.

24. List the matter as and when the Report is filed by RP by way of an I.A.

Sd/-

**CHARANJEET SINGH GULATI  
(MEMBER TECHNICAL)**

Akshita, L.R.A

Sd/-

**LAKSHMI GURUNG  
(MEMBER JUDICIAL)**