



IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI
CP(IB)/35(CHE)/2023

(Filed under Section 95(1) of the Insolvency and Bankruptcy Code, 2016)

BANK OF BARODA

Stressed Assets Management Branch
No 45, Moore street, JBAS Building,
Chennai- 600 001.

... Applicant/ Financial Creditor

-Versus-

Mr DINESH KOTHARI

No 50, 4th Cross street
Anna Nagar, Nellithoppe
Pondicherry-605 005

... Respondent/Personal Guarantor

Order pronounced on 16th February 2024

CORAM

SHRI. JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)
SHRI. RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Present:

For Petitioner :

*R Ramasubramaniam Raja,
A.S. Aravindh, Advocates*

ORDER

(Hearing conducted through Video Conferencing)

The Applicant, Bank of Baroda through its stressed asset management branch has filed this application under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 (“IBC”) for initiating Insolvency Resolution Process against the Personal Guarantor / Respondent **Mr**

Dinesh Kothari of M/s JR Foods Limited.



2. As per the averments made in the application *M/s JR Foods Ltd* had taken credit facilities from the Applicant. The Respondent herein had given personal guarantee to the said loan. The Corporate Debtor failed to repay the debt which made the Applicant initiate CIRP against the Corporate Debtor.

3. In Part-III of the application, the Applicant has given the particulars of debt as Rs.74,46,81,121.76/- (Rupees seventy four crore forty six lakh eighty one thousand one hundred twenty one and seventy six only) amount the default amount is Rs.41,60,00,144.26/- (Rupees Forty one crore sixty lakh one hundred forty four and twenty six paise only) and date of default has been stated as 03.05.2021. The Applicant has placed Letter of Guarantor dated in Pages 14, along with the demand notice.

4. The Demand Notice issued under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 to the Personal Guarantor dated 20.06.2022 is placed at **Page 85** of the typed set filed along with the application.

5. We have heard Learned Counsel for the Applicant and perused the document placed.



6. Section 95 of IBC provides that a creditor may apply either by himself, or jointly with other creditors, or through a Resolution Professional to the Adjudicating Authority for initiating an Insolvency Resolution Process under the Section by submitting an application. The application shall be accompanied with details and documents relating to the debts or by the debtor to the creditor as on the date of application, failure by the debtor to pay the debt within a period of 14 days of the service of the Notice of Demand and the relevant evidence of such default or non-payment of debt. It also provides that “the creditor shall provide a copy of the application to the debtor and the application shall be in such form and manner.

7. Hon’ble Supreme Court in the matter of **Dilip B Jiwrajka –Vs- Union of India & Ors** in *Writ Petition (Civil) No 1281 of 2021* while dealing with the jurisdiction of NCLT in relation to adjudication of cases filed under Section 94 and 95 of IBC, 2016 has summarized in para-86 as follows;

86. We summarise the conclusion of this judgment below:

- (i) No judicial adjudication is involved at the stages envisaged in Sections 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 adjudicatory authority is recommendatory in nature on whether to accept or reject the application;

- (iii) The submission that a hearing should be conducted by the adjudicatory authority for the purpose of determining 'jurisdictional facts' at the stage when it appoints a resolution professional under Section 97(5) of the IBC is rejected. No such adjudicatory function is contemplated at that stage. To read in such a requirement at that stage would be to rewrite the statute which is impermissible in the exercise of judicial review;*
- (iv) The resolution professional may exercise the powers vested under Section 99(4) of the IBC for the purpose of examining the application for insolvency resolution and to seek information on matters relevant to the application in order to facilitate the submission of the report recommending the acceptance or rejection of the application;*
- (v) There is no violation of natural justice under Section 95 to Section 100 of the IBC as the debtor is not deprived of an opportunity to participate in the process of the examination of the application by the resolution professional;*
- (vi) No judicial determination takes place until the adjudicating authority decides under Section 100 whether to accept or reject the application. The report of the resolution professional is only recommendatory in nature and hence does not bind the adjudicatory authority when it exercises its jurisdiction under Section 100;*
- (vii) The adjudicatory authority must observe the principles of natural justice when it exercises jurisdiction under Section 100 for the purpose of determining whether to accept or reject the application;*
- (viii) The purpose of the interim-moratorium under Section 96 is to protect the debtor from further legal proceedings; and*
- (ix) The provisions of Section 95 to Section 100 of the IBC are not unconstitutional as they do not violate Article 14 and Article 21 of the Constitution.*



8. Hon'ble Supreme Court has held that no judicial adjudication is involved at the stages envisaged in Sections 95 to Section 99 of the IBC and also there is no violation of natural justice under Section 95 to Section 100 of the IBC as the debtor is not deprived of an opportunity to participate in the process of the examination of the application by the resolution professional. The Respondent / Personal Guarantor will be given an opportunity to file a reply once the RP has filed his Report under Section 99 of IBC, 2016.

9. Considering the above facts and the case supra, we appoint the Resolution Professional who will collate all the facts relevant to the examination of the application for the commencement of the Insolvency Resolution Process in respect of the Personal Guarantor.

10. In the instant case, the Applicant has not proposed the name of the Resolution Professional henceforth, this tribunal based on the latest list furnished by Insolvency and Bankruptcy board of India applicable for the period between January 2024- June 2024 .We appoint Mr *Chandrasekar Lakshmishanker* with Registration number IBBI/IPA-001/IP-P-01782/2019-2020/12968 with AFA which is valid until 15.08.2024 as Resolution Professional in respect of the Personal Guarantor / Respondent.



11. The Applicant is directed to pay a sum of **Rs.25,000/-** (*Rupees Twenty Five Thousand Only*) to the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him.
12. The Resolution Professional is directed to examine the application as set out in Section 97(6) of IBC, 2016 who after examining, may recommend for the acceptance / rejection of the application as provided under Section 97(6) of IBC, 2016, **within a period of 10 days** as contemplated under Section 99(1) of IBC, 2016.
13. The Applicant is directed to serve copy of the application and the order on the Resolution Professional.
14. List this application for report / hearing on. **15.03.2024**

-SD-

RAVICHANDRAN RAMASAMY
Member (Technical)

-SD-

JYOTI KUMAR TRIPATHI
Member (Judicial)