

NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT V

C.P.(IB)-334(MB)/2023

Under Section 95 (1) of the Insolvency and
Bankruptcy Code, 2016 read with Rule 7(2) of the
Insolvency and Bankruptcy (Application to
Adjudication Authority) Rule 2019

In the matter of

State Bank of India

Having Corporate office at Madam Cama Road,
Mumbai – 400031

... Applicant/Financial Creditor

V/s

Shri Suresh L. Shah

201, Saarthi Apartments, 2nd Floor, Hanuman Road,
Vile Parle (East), Mumbai – 400057

... Respondent/Personal Guarantor

Order Pronounced on: 23.04.2025.

Coram:

Shri. Sushil Mahadeorao Kochey, Hon'ble Member (Judicial)

Shri. Charanjeet Singh Gulati, Hon'ble Member (Technical)

Appearances:

For the FC/Applicant: Adv. Inayat Ali Qureshi (VC)

For the Respondent:

ORDER

1. The Present Company Petition is filed under section 95(1) of Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) by ‘**State Bank of India**’ for initiating Insolvency Resolution Process against ‘**Shri Suresh L. Shah**’ (“Personal Guarantor”).
2. The Applicant/State Bank of India since the year 2006 has lent and advanced various Credit Facilities to the Corporate Debtor being Euro Multivision Limited, for a sum of Rs. 49.00 Crores by way of Term Loan and Working Capital Facilities under Sanction Letter dated 01.09.2006, which facilities stood enhanced/renewed/refreshed at several occasions vide various sanction letters.
3. The Applicant/Financial Creditor filed Original Application No. 56 of 2012 before the Debt Recovery Tribunal-II, Ahmedabad (‘DRT’), against

the Corporate Debtor and its Guarantors including the present Guarantor, inter-alia seeking Recovery Certificate against the Corporate Debtor.

4. By an Order dated 27th November, 2019, the DRT allowed the Original Application for issuing recovery certificate against the Corporate Debtor and /or its Guarantors for repayment of the sum of Rs. 1,39,71,99,105.09/- together with interest thereon @ 14.75% per annum with monthly interest plus @ 2% simple interest from the date of filing of the Original Application till full recovery is made from the Corporate Debtor and/or its Guarantors.
5. However, the Corporate Debtor and its Guarantors have failed and/or neglected to comply with the order/judgment of the Debt Recovery Tribunal-II. Being constrained, the Financial Creditor filed a Company Petition No. 1379 of 2020 before the Adjudicating Authority, NCLT, Mumbai Bench for initiating CIRP against the Corporate Debtor.
6. In the meantime, the Financial Creditor issued Demand Notice dated 12.07.2022 in Form-B upon this Guarantor in respect of the unpaid debt in default due from the Corporate Debtor as prescribed under the IBC, 2016.
7. The Adjudicating Authority vide an order dated 10.11.2022 initiated CIRP against the Corporate Debtor. The Personal Guarantor has failed to clear the outstanding dues of the Financial Creditor.

8. Earlier, it was noted by the Bench that the Deed of Guarantees dated 12.09.2006 and 04.01.2008 executed by the Personal Guarantor in favour of the Financial Creditor were not enclosed with the Petition which have subsequently been filed by the Petitioners by way of an additional affidavit dated 20.09.2024.

9. As per the terms of the Deed of Guarantee, the Personal Guarantor, Shri Suresh L. Shah is liable to pay the outstanding amount to the Financial Creditor. The Guarantee executed by the Personal Guarantor, Shri Suresh L. Shah, is invoked by issuing a demand notice dated 12.07.2022 as per the prescribed Form under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantor to Corporate Debtors) Rules, 2019 read with Section 95 of Insolvency and Bankruptcy Code 2016. The report as to delivery of the demand notice is also annexed along with the Petition. The Personal Guarantor was called upon to pay the outstanding amount of Rs. 123,00,28,169.18/- and the date of default is 24.10.2020. The Personal Guarantor did not respond to the demand notice nor has made payment as demanded under the notice and, therefore, the present Application is filed for initiating the Insolvency Resolution Process against the Personal Guarantor.

10. At the stage of filing of the present application under Section 95, the judicial adjudication is not involved. The Resolution Professional is only required to be appointed who has a facilitative role of collating all the facts relevant to the examination of the application for the commencement of Insolvency Resolution Process or otherwise. The report has to be submitted to the Adjudicating Authority recommending whether to accept or reject the Application.

11. The above proposition is fortified by the judgment of the Hon'ble Supreme Court in the case of ***Dilip B Jiwrajka Vs. Union of India & Ors. Writ Petition (Civil) No. 1281 of 2021*** decided on 09.11.2023 held as follows:-

- 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."*

12. In the present case, the default by the Principal Borrower is established and the Corporate Debtor was admitted to CIRP on 10.11.2022. The issuance of demand notice on the Personal Guarantor is also established

and non-payment of the outstanding dues as per the Guarantee Agreement is also established *prima facie*.

13. Therefore, appointment of RP for collating the information and submitting the Report would be justified in the present case. The present Application has been filed through the Insolvency Professional, **Mr. Vijender Sharma** having Registration No. **IBBI/IPA-003/IP-N00003/2016-2017/10022** and email id- vijender@vsa.net.in as the RP. Authorisation for Assignment (AFA) of the RP has also been filed with the Petition. The AFA of the proposed RP is valid till 31.12.2025. Accordingly, **Mr. Vijender Sharma** appointed as a Resolution Professional in the present matter.

14. The fee payable to Resolution Professional (RP) shall be in accordance with the Insolvency and Bankruptcy Board of India (IBBI) Regulations/Circulars/ Directions issued in this regard.

15. This Bench also directs for an advance payment of Rs.1,00,000/- (Rupees One Lakh only) 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).

16. The Resolution Professional is directed to examine the application as set out in Section 97(6) of IBC, 2016 who after examining, shall submit his

report as provided under Section 99(1) of IBC, 2016, within 10 days from uploading of this order.

17. Further, the Registry is hereby directed to communicate this order to both the parties and to RP 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.

18. List the matter for report of the RP as and when the report of RP is filed.

Sd/-
CHARANJEET SINGH GULATI
MEMBER (TECHNICAL)

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Sd/-
SUSHIL MAHADEORAO KOCHEY
MEMBER (JUDICIAL)