

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

**C.P. No. 722/IBC/MB/2021**

Under Section 95 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 its registered office at: Stressed Asset Management Branch- II, Raheja Chambers, Ground Floor, Wing B, Free Press Journal Marg, Nariman Pont, Mumbai- 400021

*.....Petitioner/ Financial Creditor*

**V/s.**

**SHRI CHANDRA PRAKASH MADRECHA**

Having its registered office at: Flat No. 2501, 25<sup>th</sup> Floor, Electra Tower No.3, Godrej Planet, Keshav Rao, Khadye Marg, Maharaj Chowk, Mahalaxmi, Mumbai- 400011.

*.....Respondent/ Personal Guarantor*

Order Pronounced on: 05.04.2024

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

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

**Appearances:**

**For the Resolution Professional:** Adv. Satyasrikant Vutha

a/w. Adv. Tamanna Meghrajani

i/b M/s Khaitan Legal Associates

**For the Respondent**

**: Dr. S.K. Jain**

**ORDER**

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

1. This Company petition is filed under section 95 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2019 by State Bank of India (hereinafter called "Petitioner") seeking to initiate Insolvency Process against Shri. Chandra Prakash Madrecha (Respondent/Personal Guarantor).

**Facts of the Case:-**

2. The Petitioner/Financial Creditor had advanced loan amounts equivalent to Rs. 328,90,57,388/- to Trimax IT Infrastructure & Services Limited towards Working Capital under Consortium Banking Arrangement and Term Loan under Multiple Banking Arrangements.
3. Trimax IT Infrastructure & Services Limited defaulted in making payments to the Petitioner/FC with the default due from Trimax IT Infrastructure & Services Limited. The total outstanding amount due and payable to the Petitioner/FC as on 31.03.2021 is Rs. 534,51,18,962.55 including interest and penalties.
4. The Respondent had executed deed of guarantee dated 26.05.2016 to secure the loan granted to Trimax IT Infrastructure & Services Limited and is Personal Guarantor under section 95 of IBC.
5. On 14.10.2020, the Financial Creditor issued a Demand Notice in Form B under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rule, 2019 invoking the personal guarantee and asking the Respondent to make the default payment in following terms-

*“The undersigned request you to unconditionally **pay the unpaid debt in default in full within fourteen days** from the receipt from of this letter failing which insolvency resolution process, under the code shall be initiated against you.”*

6. Despite expiry of the period of 14 days as above, the Personal Guarantor failed to repay the debt.
7. This Bench vide order dated 09.12.2021 had appointed the Resolution Professional, Mr. Huzefa Fakhri Sitabkhan, having registration number IBBI/IPA-001/IP-P00031/2017-18/10115 and directed to submit his report. The Resolution Professional on 10.01.2022 submitted report under section 99 of Insolvency and Bankruptcy Code, 2016 and submitted that he has conducted the examination of the application filed by the Petitioner in terms of Section 99 of the Code read with applicable rules and regulations and on the basis of the documents available and responses sought / received, the Resolution Professional recommends approval for the present application on the following grounds:
  - i. *The sanction letters, bank statements and other financial documents enclosed with the application and the reports of the Information Utility shared by the Petitioner for various financial facilities extended by the Petitioner to Trimax IT Infrastructure & Services Limited reflects that the amount of INR 534,51,18,962.55/- (Principal: INR 328,90,57,388/- + Interest: INR 159,71,56,550.56+ Penal Interest INR 45,89,05,023.99) ("Default Amount") is due and payable by Trimax IT Infrastructure & Services Limited as on the date of filing this Company Petition / Application.*
  - ii. *The documents such as various deeds of guarantees along with other financial documents enclosed with the application*

*shows that the Personal Guarantor has given his personal guarantee for the above-mentioned Default Amount payable by Trimax IT Infrastructure & Services Limited. Hence, the Personal Guarantor is liable for the Default Amount.*

- iii. The Personal Guarantor, till date, has not responded to the notice dated December 25, 2021 sent by the Resolution Professional seeking proofs of repayment of Default Amount in terms of Section 99(2) of the Code and therefore, the Resolution Professional has no proofs, which suggest that the above-mentioned Default Amount have been paid to the Petitioner by Trimax IT Infrastructure & Services Limited or the Personal Guarantor.*
- iv. There are no reasons, documents, proofs or records to even suggest that any payments have been made against the Default Amount by Trimax IT Infrastructure & Services Limited or the Personal Guarantor.*

**Brief submission of the Respondent:-**

- 8. Mr. Chandra Prakash Madrecha, the Personal Guarantor of Trimax IT infrastructure & Services Limited submitted that he was Director of Trimax IT Infrastructure & Services Limited, which was admitted to CIRP by the Order dated 21.02.2019 in C.P. (I&B)3457/MB/2018.
- 9. This Tribunal by Order dated 04.05.2020 has approved the Resolution Plan submitted by “Ebix Software India Private Limited”. The Personal Guarantor had given Personal Guarantee to State Bank of India against facilities extended by the Bank to the Corporate Debtor.
- 10. This Tribunal had appointed the Resolution Professional as proposed by the State Bank of India by Order dated 09.12.2021. That the

Resolution Professional has filed Progress Report dated 31.12.2021 before this Tribunal and Personal Guarantor have filed reply dated 23.08.2022 to the Progress Report. The Resolution Professional by letter dated 25.12.2021 had asked Personal Guarantor to submit proof of repayment of amount due to State Bank of India by the Corporate Debtor. The Personal Guarantor have declared the status of investments/assets held in Personal Guarantor's name to the Resolution Professional.

11. The Respondent's latest status of Investments and Assets as at 31.12.2023 are as under: -

- a. The Respondent held a sum of Rs. 42,40,291/-in Provident Fund Account with State Bank of India. However, State Bank of India has attached the said amount of Rs. 42,40,291/- against invocation of Personal Guarantee by the said Bank.
- b. Car bearing registration no. MH-01-BK 8280 (make Skoda rapid) of 2014 model
- c. The Respondent had made investment of Rs. 45,000/- in units of Nippon India Small Cap by way of SIP under Folio number 404116681553. The current NAV is Rs. 1,45,884/-.
- d. The Respondent had made investment of Rs. 4,99,040/- in Sovereign Gold Bond with Syndicate Bank, Fort Branch, Mumbai.
- e. The Respondent has bank balance in the following bank:

<b>Account No.</b>	<b>Bank Name &amp; Branch</b>	<b>Balance Amount</b>	<b>Status</b>
31960201004915	UBI, Vikhroli West	2,254.93	Dormant
777701356135	ICICI Bank, Lower Parel	16,888.44	Active

054601526598	ICICI Bank, Lower Parel	14,855.22	Active
	<b>Total</b>	<b>33,998.59</b>	

f. The Respondent's investment in Equity Shares of the following Companies:

<b>Name of the company</b>	<b>No. of Shares</b>	<b>Amount (In Rs.)</b>
Trimax IT Solutions Ltd	24995	1
Standard Fiscal Markets Pvt Ltd	15000	1
Pratik Technologies Pvt Ltd	2300	1

g. The Respondent/PG had paid Insurance premium against insurance policies taken from SBI Life which however, have lapsed due to non-payment of insurance premium.

12. Heard the Learned Counsel and perused the documents on record. We have also gone through the report dated 10.01.2022 filed by the RP. It is 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 both of them simultaneously. For benevolent reference the said section of Indian 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."*

13. The Hon'ble National Company Law Appellate Tribunal in the matter of **State Bank of India Vs. Athena Energy Venture Private Limited** in Company Appeal (AT)(Ins) No. 633 of 2020 observed as under: -

*"19. It is clear that in the matter of guarantee, CIRP can proceed against Principal Borrower as well as Guarantor."*

14. The proceedings in the matter was put on hold since the Constitutional Validity of the Sections 94 to 100 relating to the insolvency of personnel Guarantor was pending before the Hon'ble Supreme Court in the matter of ***Dilip B. Jiwrajka V/s Union of India & Ors. in WP(civil)No. 1281 of 2021***. The Hon'ble Supreme Court in the aforementioned matter has upheld the Constitutional Validity of the Sections 94 to 100.
15. Therefore, in view of the facts and circumstances of the present case and the considering the report of the Resolution Professional confirming that the Respondent had given personal guarantee and till date has neither responded to the notice dated 25.12.2021 nor produced any proof of repayment of default amount, we are of the considered opinion that is a fit case for admission and proceeding against the Personal Guarantor to initiate Insolvency Resolution Process. Hence, we admit CP No. 722 of 2021 under Section 95 of the IBC, 2016 by following order:
- I. Initiate Insolvency Resolution Process against **SHRI CHANDRA PRAKASH MADRECHA** and moratorium under section 101 of IBC, 2016, shall commence in relation to all the debts and shall cease to have effect at the end of the period of 180 days beginning with the date of admission of the application or on the date this Tribunal passes an order on the repayment plan under Section 114 whichever is earlier as provided under Sec 101 of IBC, 2016.
  - II. During the moratorium period;
    - a) Any pending legal action of 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.
  
- III. The Resolution Professional, Mr. Huzefa Fakhri Sitabkhan 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 Mumbai 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.
  
- IV. The publication of notice shall be made in two newspapers, one in English Language and other in Vernacular Language which having wide circulation in the State where the Corporate Debtor and Personal Guarantor situated/resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.
  
- V. The Resolution Professional in 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 under Sections 95 and

- b) claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice.
- VI. 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. 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.
- VII. The repayment plan shall include the following, namely:-
- a) justification for preparation of such repayment plan and reasons on the basis of which the creditors may agree upon the plan;
  - b) provision for payment of fee to the Resolution Professional.
- VIII. 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.
- IX. 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 provides under the provisions of Section 107 of IBC, 2016.

- X. 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.
- XI. The Resolution Professional shall submit his periodic reports before this Tribunal every 30 days.
16. 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.
17. In view of the above observations and directions, the above Company Petition No. 722 of 2021 filed under section 95 of IBC, is admitted and the Insolvency Resolution Process stands initiated against the Personal Guarantor.

**Sd/-**

**CHARANJEET SINGH GULATI  
MEMBER (TECHNICAL)**

**Sd/-**

**LAKSHMI GURUNG  
MEMBER (JUDICIAL)**