

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I**

C.P. (IB) NO. 795/MB/2022

Under Section 95 of the
Insolvency & Bankruptcy
Code, 2016 *r/w* Rule 7 (2) of
the Insolvency and
Bankruptcy (Application to
the Adjudicating Authority
for Insolvency Resolution
Process for Personal
Guarantors to Corporate
Debtors) Rules, 2019.

In the matter of

Indian Bank Applying
through Mr. Ashok Kumar
Golechha

...Applicant/Financial
Creditor

Versus

Mr. Padma Bhushan Tiwari

...Respondent/Personal
Guarantor

Order pronounced on 05.03.2024

Coram:

Hon'ble Member (Judicial) : Justice V. G. Bisht (Retd.)

Hon'ble Member (Technical) : Sh. Prabhat Kumar

Appearances:

For the Applicant/Financial Creditor: Ms. Geeta Lundwani,

Advocate

For the Respondent : None

ORDER

Per : Justice V. G. Bisht

Brief facts:

1. The present petition is filed *u/s.* 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “IBC, 2016”) *r/w.* Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 by **Indian Bank, applying through Mr. Ashok Kumar Golechha** (“hereinafter referred to as Applicant/Financial Creditor”) for the purpose of initiating insolvency process against **Mr. Padma Bhushan Tiwari** (“hereinafter referred to as Personal Guarantor”) for recovery of Rs. 12,47,87,180.40/- (Rupees Twelve Crores Forty Seven Lakhs Eighty Seven Thousand One Hundred and Eighty Rupees only) as on 31.03.2022. The Date of Default, as specified in Part-III of the present petition, is **18.10.2018.**
2. The Applicant, Indian Bank, bearing Pan no. AAACI1607G has its registered office at Indian, Bank, Stressed Asset Management-Vertical, 73, 7th Floor, Mittal Chambers, Nariman Point, Mumbai – 400021. The present Application has been filed through Resolution Professional Mr. Ashok Kumar Golechha

having Registration number IBBI/IPA-002/IP-N000932/2019-2020/12973 for initiating insolvency resolution process against Mr. Padma Bhushan Tiwari. Mr. Ashok Kumar Golechha has been appointed as Resolution Professional vide order dated 21.08.2023 to examine the petition and file his report within 10 days from the date of communication of the said order.

3. The Corporate Debtor, viz., Sonachi Industries Limited bears CIN U24119MH2006PLC163851 and has its registered address at A-38, 2nd Floor, Raj Industrial Complex, Military Road, Off-Marol Maroshi Road Andheri (East) Mumbai – 400059.
4. The Personal Guarantor has his address at D-601, Ashok Avenue, 6th Floor, Military Road, Marol, Andheri (East), Mumbai 400072, E-mail : pbtiwari@sonachigroup.com.
5. As per the details available on the website of the Ministry of Corporate Affairs as on 22.03.2022, the Personal Guarantor has held directorship in Corporate Debtor since 2006. However, pursuant to the order dated 02.05.2018 and order dated 28.02.2019, the Corporate Debtor has been undergoing Liquidation under the IBC, and hence the powers of the Personal Guarantor as a director have been suspended.
6. The Corporate Debtor had approached the financial creditor (then Allahabad Bank) for providing CC and ILC/ FLC loan facilities. The Creditor vide sanction letter bearing Ref No. ZO/MUM/ADV/AndheriE/SIL/840 dated 26.11.2015 sanctioned CC and ILC/ FLC to the tune of 15 crores. In addition to the above the Corporate Debtor approached the financial creditor for providing Term Loan for purchase of car. The Creditor vide sanction letter bearing Ref No. AB/Andheri East/Adv/15 dated 11.05.2016 sanctioned a term loan of Rs

10,84,823/-. The aforesaid loans were secured by way of personal guarantee of the guarantor vide Guarantee Agreement dated 31.12.2015.

7. Upon violation of terms of sanction and occurrence of events of default, the account was classified as Non-Performing asset ("NPA") on 15/02/2018. Consequently, demand notice under section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 ("SARFAESI Act") dated 28/02/2018 was Issued upon the Corporate Debtors and its guarantors recalling entire loan amount due.
8. Further, a notice dated 18/09/2018 was issued upon the personal guarantors invoking their personal guarantees and demanding repayment of the loan amount in default.
9. Meanwhile, due to defaults in repayment of the outstanding amount of an operational creditor, Company Petition no. 1479/I&BC/2017 was filed under section 9 of the IBC seeking initiation of Corporate Insolvency Resolution Process ("CIRP") in respect of the Corporate Debtor. The said petition was admitted by this Hon'ble Tribunal vide its order dated 02/05/2018.
10. During the CIRP, one resolution plan was received from the promoter director Mrs. Jyoti Bhushan Tiwari alongwith M/s Comfab Technologies Pvt. Ltd. However, the committee of creditor in their commercial wisdom resolved to liquidate the corporate debtor. The Tribunal vide order dated 28/02/2019 allowed the liquidation application and appointed Mr. Kshitiz Gupta as the Liquidator of the Corporate debtor.

11. Vide Gazette Notification dated March 4, 2020 Allahabad Bank amalgamated into Indian Bank with effect from 1st day of April 2020. Consequently, all branches of Allahabad Bank started to function as branches of Indian Bank from April 1, 2020. Therefore, for the purpose of this application, considering that all the facilities were granted and disbursed by Allahabad Bank prior to the amalgamation, these facilities are considered to have been granted and disbursed by Indian Bank.
12. A demand notice dated 22.03.2022 (hereinafter referred to as “IBC Demand Notice”) was issued by the Indian Bank upon the Personal Guarantor under the provisions of the IBC, read with the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. No reply to the said IBC demand notice was received by the Indian Bank neither the Personal Guarantor complied with the requisitions/ demand put forth in the said IBC demand notice.
13. Hence, since the Personal Guarantor has not repaid the Default amount within fourteen days of receipt of the IBC demand notice, the present company petition is being filed by the Applicant on behalf of Indian Bank seeking initiation of insolvency resolution process against the personal guarantor u/s 95 of the Code r/w rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019.
14. The Resolution Professional has filed an Interlocutory Application being IA No. 4474 of 2023 for submitting the Report on record. The same was taken on record and accordingly the IA 4474/2023 was disposed of as allowed.

15. The ground(s) for admission of the present application, as recorded in the said RP report, are reproduced in-verbatim as hereinafter:

<i>Sr.no.</i>	<i>Requirements under S.99 of the IBC</i>	<i>Submission of the resolution Professional</i>	<i>Compliance with the requirements under Section 99 of IBC</i>
1.	<i>S.99 (1) The resolution professional shall examine the application referred to in section 94 or section 95, as the case may be, within ten days of his appointment, and submit a report to the Adjudicating Authority recommending for approval or rejection of the application.</i>	<i>The Copy of the order of the Hon'ble NCLT dated 21st August, 2023 was uploaded at the NCLT website and received by the RP only on 15th September, 2023. Accordingly, the Resolution examined the Application under Section 95 of IBC, along with the documents annexed thereto and based on same has prepared the report under S. 99 within 10 days of receipt of the order by the RP.</i>	<i>YES The present report is being filed by the Resolution Professional within 10 days of the receipt of the order by the Resolution Professional.</i>
2.	<i>S. 99(2) Where the application has been filed under section 95, the resolution professional</i>	<i>The Resolution Professional had sent intimation under S.99(2) of IBC to the Personal Guarantor through email on 23rd August, 2023 and 16th September, 2023 and speed post on 18th</i>	<i>YES The Resolution Professional had sent intimation to the Personal Guarantor Mr. Padma Bhushan Tiwari, requiring</i>

	<p>may require the debtor to prove repayment of the debt claimed as unpaid by the creditor by furnishing -</p> <p>(a) evidence of electronic transfer of the unpaid amount from the bank account of the debtor;</p> <p>(b) evidence of encashment of a cheque issued by the debtor; or</p> <p>(c) a signed acknowledgment by the creditor accepting receipt of dues.</p>	<p>September, 2023, to prove repayment of the debt as mentioned in the captioned Application. The copy of the Intimation sent to the Respondent through email and speed post (Annexure II colly).</p> <p>The Respondent vide email dated 18th September, 2023 has replied that all documents are in possession of Liquidator appointed by Honourable NCLT including Bank Statement, Payment Receipt from the Sales of the assets etc. of Sonachi Industries Ltd. and other income during the process of Liquidation. We have suspended as Directors in May 2018. So we do not have any details to submit. You may contact honourable liquidator.</p>	<p>to prove the repayment of the debt claimed.</p> <p>The respondent Mr. Padma Bhushan Tiwari vide email dated 18th September, 2023 has confirmed that all documents are in possession of Liquidator appointed by of honourable NCLT including Bank Statement, Payment receipt from the sales of the assets etc. of Sonachi Industries Ltd and other income during the process of Liquidation. We have suspended as Directors in May 2018. So we do not have any details to submit. You may contact honourable liquidator. (Annexure V)</p>
<p>3.</p>	<p>S. 99(3)</p> <p>Where the debt for which an application has been filed by a creditor is registered with the information</p>	<p>YES</p> <p>The Applicant/Creditor has vide email dated 4th September, 2023 confirmed that the creditor has registered its claim with the Information utility (NeSL)</p>	<p>YES</p>

	<i>utility, the debtor shall not be entitled to dispute the validity of such debt.</i>		
4.	<i>S. 99(4) For the purposes of examining an application, the resolution professional may seek such further information or explanation in connection with the application as may be required from the debtor or the creditor or any other person who, in the opinion of the resolution professional, may provide such information.</i>	<i>The Resolution Professional also sent an email to the Applicant on 21st August, 2023 and 16th September, 2023 to sought further information. Copy is enclosed as (Annexure III)</i>	<i>YES The Resolution Professional has sought information from the applicant regarding repayment vide email dated 21st August, 2023 and 16th September, 2023. The Applicant vide email dated 4th September, 2023 have confirmed that the bank has not received any payment from Corporate Debtor/ Personal Guarantor.</i>
5.	<i>S. 99(5) The person from whom information</i>	<i>The Applicant and the Respondent have provided the required information to the</i>	<i>YES The Applicant and the Respondent have provided the</i>

	<p>or explanation is sought under sub-section (4) shall furnish such information or explanation within seven days of receipt of the request.</p>	<p>Resolution Professional within 7 days of receipt of the email.</p>	<p>requisite information within 7 days of receipt of the request.</p>
6.	<p>S. 99(6)</p> <p>The resolution professional shall examine the application and ascertain that -</p> <p>(a) the application satisfies the requirements set out in section 94 or 95;</p> <p>(b) the applicant has provided information and given explanation sought by the resolution professional under sub-section (4).</p>	<p>(a) The Resolution Professional has examined the Application and ascertained that, the application satisfies the requirements set out in S.95 of the IBC.</p> <p>(b) The Applicant has provided information via email dated 4th September, 2023 as sought by the Resolution Professional.</p>	<p>YES</p> <p>The Resolution Professional has examined the Application and ascertained that the application satisfies the requirements set out in S.95 of the IBC.</p> <p>The Applicant provided the requisite information sought by the Resolution Professional under Section 99(4) of IBC.</p>
7.	<p>S. 99(7)</p>	<p>Upon examination of</p>	<p>YES</p>

	<p>After examination of the application under sub-section (6), he may recommend acceptance or rejection of the application in his report.</p>	<p>the Application and annexures there to by the Resolution Professional, it is recommended that the Application may be accepted.</p>	<p>The Resolution Professional recommends that the Application may be accepted.</p>
8.	<p>S. 99(8)</p> <p>Where the resolution professional finds that the debtor is eligible for a fresh start under Chapter II, the resolution professional shall submit a report recommending that the application by the debtor under section 94 be treated as an application under section 81 by the Adjudicating Authority.</p>	<p>The Application has not been filed under S.94 of IBC.</p>	<p>NOT APPLICABLE</p>
9.	<p>S. 99(9)</p> <p>The</p>	<p>The resolution professional examined the Application,</p>	<p>YES</p> <p>Based on the</p>

	<p><i>resolution professional shall record the reasons for recommending the acceptance or rejection of the application in the report under sub-section (7).</i></p>	<p><i>supporting documents thereto and the replies received from the Applicant and the Respondent and record the reasons for acceptance of the application:</i></p> <ul style="list-style-type: none"><i>a) The Personal Guarantor has executed the Deed of Guarantee in favor of the Applicant.</i><i>b) The Corporate Debtor and Personal Guarantors have defaulted in repayment of the debt,</i><i>c) The Bank has issued the notice u/s 13(2) SARFAESI Act, 2002.</i><i>d) Demand Notice is issued to PG dated 22.03.2022.</i><i>e) The email dated 4th September, 2023 confirms that the Personal Guarantor/Corporate Debtor has not made any repayment to the Applicant.</i>	<p><i>reasons recorded in the application and the present report, the Resolution Professional recommends for the acceptance of the application.</i></p>
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		<p>f) <i>The Respondent vide email dated 18.09.2023 have also stated that all documents are in possession of Liquidator appointed by honorable NCLT including Bank Statement, Payment receipt from the Sales of the assets etc. of Sonachi Industries Ltd. and other income during the process of Liquidation. We have suspended as Directors in May 2018. So we do not have any details to submit. You may contact honorable liquidator.</i></p> <p>g) <i>The Applicant has furnished the relevant evidence in the application of such default and non-payment of the debt.</i></p>	
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<p>10.</p>	<p><i>S. 99(10)</i></p> <p><i>The resolution professional shall give a copy of the report under sub-section (7) to the debtor or the creditor, as the case may be.</i></p>	<p><i>The Resolution Professional shall provide a copy of the report to the Applicant and Personal Guarantor.</i></p>	<p><i>YES</i></p> <p><i>The Resolution Professional hereby undertakes to provide a copy of the report to the Applicant and to Personal Guarantor/Respondent. The copy of the email service of the Report of the Resolution Professional under Section 99 of IBC, 2016 is attached as Annexure VI.</i></p>
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16. Vide order dated 15.01.2024, the Respondent was given last opportunity to file Affidavit in Reply. However, the Respondent has not placed the same on record. Hence the present Company Petition is proceeded ex-parte.

Findings:

17. Heard learned counsel for the Applicant and perused the record.
18. On perusal of Deed of guarantee dated 31.12.2015, we find that the Respondent had stood guarantor for a sum of Rs. 15 Crores with interest on any part thereof on such amount.
19. Since the amount due from the Corporate Debtor in relation to loan amount of Rs. 15 Crores is recoverable from the Guarantor whose liability is co-extensive, we have no hesitation to hold that the Respondent is liable to be admitted to the bankruptcy process in terms of Section 100 (2) of the Code.

20. Upon perusal of the documents on record, it is clearly established that the Corporate Debtor has committed defaults in repayment of loan amount granted by the Financial Creditor. Mr. Padma Bhushan Tiwari, Personal Guarantor to Sonachi Industries Limited has also committed default in repayment of loan facility demanded by the Financial Creditor after invocation of Personal Guarantee. The Application filed by the Creditor satisfies the requirement as set out in Section 95 of the Code.
21. It is trite in law that the liability of surety is co-extensive with that of the principal debtor. Be that as it may, law on extinguishment of claim against personal guarantor and/or third party on approval of Resolution Plan has been well-settled by Hon'ble Supreme Court in *Lalit Kumar Jain vs. Union of India and Ors.* [(2021) 9 SCC 321], wherein the Hon'ble Supreme Court has held that approval of resolution plan does not *ipso facto* discharge a Personal Guarantor (of a Corporate Debtor) of her/ his liability under the contract of guarantee. In paragraph (126) of the said judgement, the Hon'ble Supreme Court held as hereunder:
- “126. For the foregoing reasons, it is held that the impugned notification is legal and valid. It is also held that approval of a resolution plan relating to a corporate debtor does not operate so as to discharge the liabilities of personal guarantors (to corporate debtors). The writ petitions, transferred cases and transfer petitions are accordingly dismissed in the above terms, without order on costs.”*
22. Considering the above facts and circumstances and upon perusal of the documents on record, the C.P. (IB)/795/MB/2022 filed under Section 95 of the IBC, 2016 is hereby **Admitted** and the Insolvency Resolution Process stands initiated against Mr.

Padma Bhushan Tiwari *viz.* the Respondent herein. We hereby direct as hereinafter:

- 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 Section 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. Ashok Kumar Golechha** Insolvency Resolution Professional, having Registration No. IBBI/IPA-002/IP-N000932/2019-2020/12973, having registered address at B 703/704, River Park CHS Limited, Dattani Park Road, Thakur Village, Kandivali, East, Mumbai – 400 101[E-Mail: akgolecha9@gmail.com, Mobile no.: +919674117201] 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.

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 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. 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, business or trade on his behalf or in his name: or
- b.* realise the assets of the debtor; or
- c.* administers 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.

- V. 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.
- VI. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons thereof. 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 days 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.
- VII. 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.

- VIII. The Resolution Professional shall submit his periodic reports before this Tribunal, every 30 days.
- IX. The Applicant is directed to deposit **INR 2,00,000/-** (Indian Rupees Two lakhs) to the bank account of the Resolution Professional within **one week**, towards his fees. This shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.
- X. 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.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
<MK>

Sd/-

JUSTICE V. G. BISHT
MEMBER (JUDICIAL)