

NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

112. IA/4180/2024 C.P. (IB)/399(MB)2024

IN THE MATTER OF

State Bank of India

... Petitioner

Vs

Mahesh Dhanashree

... Respondent

U/s 95(1) of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 01.10.2024

CORAM:

MS. REETA KOHLI,
MEMBER (J)

MS. MADHU SINHA,
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Applicant: Adv. Subir Kumar a/w Adv. Disha Shah (PH)

For the Respondent: Adv. Shweta Pandey (VC)

For the RP: Adv. Bhupendra Dave (VC)

ORDER

1. The captioned Company Petition is filed by **State Bank of India** under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") on **04.07.2023**, for initiation of Corporate Insolvency Resolution Process against **Mr. Mahesh Dhanashree**, who is the Personal Guarantor of the Corporate Debtor viz. **M/s MSM Steels Private Limited**.
2. It is the case of the Applicant, that the Respondent herein had given a personal guarantee in relation to the debts owed by the Corporate Debtor (i.e. M/s MSM Steels Private Limited) to the Financial Creditor and since the Corporate Debtor had defaulted in its debt obligations towards the Financial Creditor, the Applicant herein had invoked the personal guarantee given by the Respondent. However, the Respondent failed in repaying the debt as a result of which the Applicant herein is constrained to file this

application invoking the Personal Guarantor's Insolvency Resolution Process ('PGIRP') of the Respondent / Personal Guarantor.

3. The total amount of default as per the Application is **Rs. 232,65,85,673/-** (Rupees Two Hundred and Thirty-Two Crores, Sixty-Five Lakhs, Eighty-Five Thousand, Six Hundred and Seventy-Three Only) as on 31.03.2023 along with further interest from 01.04.2023.

Case of the Applicant (in brief):

4. The Financial Creditor had provided various credit facilities in form of Cash Credit / Term Loan for Machinery / WCTL Term Loan / Forced Loan Account to the Corporate Debtor. The Financial Creditor and the Corporate Debtor along with the Personal Guarantor has executed the *following* document (s) while granting the credit facilities to the Corporate Debtor :

- i. The *Sanction Letter dt. 08.04.2014 and 27.09.2014 (Anx.F & G)*
- ii. The *Loan Agreement dt. 07.08.2015 (Anx.K)*
- iii. The *Letter dt. 24.12.2014* granting individual limits within the overall limits (*Anx.H*)
- iv. The *Deed of Guarantee dt. 24.12.2014* executed between the Financial Creditor and the Guarantor / Respondent (*Anx.I*)
- v. The *Joint Deed of Hypothecation of Machinery dt. 07.08.2015 (with plant and Machinery, stock & Book Debts and other Fixed Assets) (Anx.J)*

5. As the Corporate Debtor failed to service the debts as per the agree terms between the parties, its account was classified as Non-Performing Asset on **25.01.2016**, consequently, the Financial Creditor issued **Notice dt. 05.08.2016** u/s 13(2) of the SARFAESI Act, 2002 (*Anx. L*) which was duly replied by the Corporate Debtor on behalf of Respondent - Personal Guarantor *vide Reply dt. 12.09.2016 (Anx.N)*.

6. Eventually, as the Respondent - Personal Guarantor failed to honour the legal obligation to re-pay the debt amount, therefore the Financial Creditor was constrained to issue a

Notice dt. 26.12.2016 u/s 13(4) of the SARFAESI Act, 2002 intimating the possession taken by the Financial Creditor in exercise of the powers conferred upon the Financial Creditor under Section 13 (4) of the Act read with Rule 8 of the Security Interests Enforcement Rules, 2002.

7. Subsequently, the Financial Creditor issued **Demand Notice in Form B dt. 26.08.2021 (Anx.Q)** 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) was issued by the Financial Creditor to the Respondent - Personal Guarantor in terms of the unpaid debt.
8. The Respondent - Personal Guarantor responded to the said Demand Notice *vide* its **Letter dt. 20.09.2021 (Anx.P)** offering a Compromise / Settlement for release of personal guarantee, thereby acknowledging the existence of debt.
9. The captioned Company Petition was filed by the Financial Creditor on **04.07.2023**.

Appointment of the Resolution Professional u/s 99 of the Code:

10. Having considered the submissions of the Financial Creditor and upon perusing the documents annexed to the captioned Company Petition, this Bench *vide* its Order dt. 15.07.2024 appointed **Mr. Purusottam Behera**, having Insolvency Registration No. IBBI/IPA-002/IP-N00940/2019-2020/12993, to act as the Resolution Professional in the matter of **Mr. Mahesh Dhanashree**.

Report of the Resolution Professional u/s 99 of the Code

11. The Resolution Professional Mr. Purusottam Behera has placed on record the Report dated 01.08.2024 u/s 99 of the Code by filing I.A. No. 4180/2024. The IA No. 4180/2024 was allowed *vide* Order dated 05.09.2024 and consequently, the Report u/s 99 of the Code was taken on record. The said Report has recommended for admitting

the present application. The reasons recorded by the Resolution Professional u/s 99(9) of the Code for recommending the acceptance of the application are briefly recapitulated below:

- a) In order to secure the financial facilities availed by M/s MSM Steels Private Limited, the Respondent – Personal Guarantor had furnished his unconditional and personal guarantee on 24.12.2014 in favour of the Financial Creditor i.e. State Bank of India.
- b) The Deed of Guarantee is continuing, valid, subsisting and binding upon the Personal Guarantor which makes him jointly and severally liable to make payments of the outstanding dues.
- c) The Applicant herein, vide Notice in Form ‘B’ dated 26.08.2021 served a Demand Notice on the Personal Guarantor claiming a debt amount of INR 159.92 Crores invoking the guarantee of the Personal Guarantor.
- d) The Personal Guarantor *vide* its e-mail on 29.07.2024 has not disputed the existence of debt claimed as unpaid by the Financial Creditor and in fact has admitted the existence of debt and that it is due and payable.
- e) The Application filed by the Financial Creditor is otherwise complete with the relevant information about the default by Personal Guarantor and the application was filed within the period of limitation.
- f) Thus, the Resolution Professional (‘RP’) submits that the present report which is being presented u/s 99(7) of the Code to the Adjudicating Authority with a recommendation of acceptance of the application is based on the reasons recorded above.

Reply of the Respondent/Personal Guarantor to the RP's Report:

12. The Personal Guarantor *vide* its e-mail dt. **29.07.2024** has admitted the existence of debt being due and payable and showed his willingness to submit a repayment plan.

FINDINGS

We have heard the learned counsel for the Financial Creditor.

13. This is an application filed by the Financial Creditor u/s 95 of the Code seeking to trigger the Personal Guarantor's Insolvency Resolution Process ('**PGIRP**') as the Respondent-Personal Guarantor has failed to honour his debts due of **Rs. 232,65,85,673/-** (Rupees Two Hundred and Thirty-Two Crores, Sixty-Five Lakhs, Eighty-Five Thousand, Six Hundred and Seventy-Three Only) as on 31.03.2023 along with further interest from 01.04.2023 towards the Financial Creditor under the Deed of Guarantee dated 24.12.2014
14. We have perused the Deed of Guarantee dated 24.12.2014 which was furnished by the Respondent / Personal Guarantor as against the various loans sanctioned by the Financial Creditor.
15. The copies of the statement of accounts of the Corporate Debtor maintained in the books of the Financial Creditor which pertains to the loans sanctioned by the Financial Creditor, reveal the factum of default on the part of the Corporate Debtor in repayment of loans to the Financial Creditor herein. The account of the Corporate Debtor was consequently classified as Non-Performing Asset on **25.01.2016** by reason of default committed by the Corporate Debtor.
16. On perusal of record, we find that the Demand Notice u/s 13(2) of the SARFAESI Act dated 12.09.2016 was issued to the Corporate Debtor and the Personal Guarantor for

enforcement of security interest. Therefore, the same cannot be construed as an invocation of personal guarantee.

17. The Personal Guarantee furnished by the Personal Guarantor/Respondent was invoked by the Creditor by serving a Demand Notice dated 26.08.2021 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 upon the Respondent, calling upon him to pay the amount of debt in default worth INR 159.92 within fourteen days of the receipt of the notice failing which the insolvency resolution process against him would be initiated. The Demand Notice dated 26.08.2021 was duly served on the Respondent/Personal Guarantor on 01.09.2021 by way of Registered Post.
18. The demand made under the above-referred notice was duly replied by the Corporate Debtor acknowledging the amount of debt *vide* its **Letter dt. 20.09.2021 (Anx.P)** offering a Compromise / Settlement for release of personal guarantee. The said Letter dt. 20.09.2021 is assigned by the Personal Guarantor.
19. As regards to the aspect of limitation, it is observed that, the Personal Guarantee furnished by the Personal Guarantor/Respondent was invoked by serving a Demand Notice dated **26.08.2021(Anx.Q)** under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. The said Demand Notice was duly replied by the Respondent – Personal Guarantor offering compromise and settlement offer *vide* its **Letter dt. 20.09.2021 (Anx.P)** and the Company Petition was filed under the provisions of Section 95 by the Financial Creditor on **04.07.2023**. Hence, the Petition is not barred by the law of limitation.
20. Further, the Resolution Professional ('RP'), has placed on record the Report dated 01.08.2024, u/s 99 of the Code by filing IA No. 4180 / 2024 and has recommended the acceptance of the application by admitting the Personal Guarantor into PGIRP as the

Personal Guarantor *vide* its **e-mail dt. 29.07.2024** has admitted the existence of debt being due and payable.

21. As the existence of debt due and the factum of its default by the Personal Guarantor have been proven on record and also since the petition is held to be within limitation, we deem it fit and appropriate to admit the Personal Guarantor herein into Insolvency Resolution Process and accordingly, we pass the following orders:

ORDER

- I. Initiate Insolvency Resolution Process against the Respondent / Personal Guarantor named **Mr. Mahesh Dhanashree** 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 Sec 101 of IBC, 2016.
- II. During the moratorium period, a) Any pending legal action or proceeding against the Respondent/Personal Guarantor in respect of any debt shall be deemed to have been stayed; b) The creditors of the personal guarantor shall not initiate any legal action or proceedings in respect of any debt; and c) The Personal Guarantor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein.
- III. The Resolution Professional viz., **Mr. Purusottam Behera**, having Insolvency Registration No. I IBBI/IPA-002/IP-N00940/2019-2020/12993, who was appointed vide Order dated 15.07.2024, is directed to cause a public notice to be published on behalf of the Adjudicating Authority within 7 days of uploading of this order on the website of NCLT, inviting claims from all Creditors within 21 days of such issue. The notice under sub section (1) of Section 102 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 and other in Vernacular, which are in circulation in the state where the Personal Guarantor 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 by the Petitioner under Section 95 and
 - B. claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice.
- VI. The Personal Guarantor 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 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.
- VII. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of the Code. 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 the Code 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 Petitioner is directed to deposit an advance payment of INR **75,000/- (Rupees Seventy-Five Thousand only)** to the bank account of Resolution Professional within one week, so as to initiate the process. This shall be adjusted towards the fee and expenses payable to the Resolution Professional.
- IX. The Registry is directed to communicate a copy of order to the parties within seven working days from the date of uploading of this order.
- X. In terms of the above, **CP(IB) No. 399 / 2024** filed under Section 95 of the IBC, 2016 **is hereby admitted** and the Insolvency Resolution Process stands initiated against the Applicant/Personal Guarantor and all any pending IAs stand **disposed of**.
- XI. File be consigned to records.

Sd/-
MADHU SINHA
Member(Technical)

Sd/-
REETA KOHLI
Member(Judicial)

/Ziyaul/