

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - I

ITEM No.303- C.P.(IB)/184(AHM)2023
With
ITEM No. 304- IA/35(AHM) 2024

Order under Section 95 IBC

IN THE MATTER OF:

Canara Bank,ARM Branch
V/s
Bhavana Rohit Shah

.....Applicant

.....Respondent

Order delivered on 06/03/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon,ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

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SAMEER KAKAR
MEMBER (TECHNICAL)

-sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-I, AHMEDABAD**

**I.A. No.35/NCLT/AHM/2024
With
CP (IB) No.184/NCLT/AHM/2023**

*[Application under Section 95 (1) of the Insolvency and
Bankruptcy Code, 2016 read with Rule 7 (2) of the Insolvency
and Bankruptcy Application to Adjudicating Authority Rules,
2019]*

Mr. Sunil Kumar Kabra

(IRP of Mrs. Bhavna Rohit Shah)

Having address at:
301, 3rd Floor, Reegus Business Centre,
Above Mercedes Benz Showroom,
New City Light Road,
Bharthana-Vesu, Surat-395007
Email id: ipsunilkabra@gmail.com

.....Applicant

In the matter of

Canara Bank

ARM Branch,
7th Floor, Tower-1, Sabarmati Capital One,
Gift City, Gandhinagar-382355
Email id: cb3966@canarabank.com

.....Financial Creditor

VERSUS

Mrs. Bhavna Rohit Shah

Plot No. 17, Opp. B Division Police Station,
Sector 1, Gandhidham-370201
Email id: woodmangim@yahoo.com

.... Personal Guarantor

Order pronounced on 06.03.2024

CORAM:

SH. SHAMMI KHAN, MEMBER (JUDICIAL)

SH. SAMEER KAKAR, MEMBER (TECHNICAL)

For Applicant/FC : Mr. Urvesh Gor, Adv.

For Respondent/PG : Ms. Himali Soni, Adv.

For IRP/RP : Mr. Aditya Raval Adv.

ORDER

Per: Bench

1. The Present Application is filed on 04.07.2023 under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as IBC, 2016") read with 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 Canara Bank (hereinafter referred to as "Financial Creditors") for the purpose of initiating insolvency process against Ms. Bhavna Rohit Shah (hereinafter referred to as "Personal Guarantors") for a default amount of Rs.3,85,69,680.95/-. The Respondent/Personal Guarantor stood as Guarantor in respect for repayment of interest, cost, charges and other expenses in respect of Deed of Guarantee dated

18.02.2015 in favour of Applicant. The date of default is stated to be 30.03.2021.

2. In so far as the Personal Guarantor to Corporate Debtor is concerned, the Hon'ble Supreme Court of India in the matter of **Lalit Kumar Jain vs. Union of India & Ors.** in the Transferred Case (Civil) No.245/2020 has upheld the vires of the notification issued by the Central Government vide S.O. 4126(E) dated 15.11.2019, in so far as it relates to coming into force of Insolvency and Bankruptcy Process of Personal Guarantors to Corporate Debtor. Thus, when a Corporate Insolvency Resolution Process in relation to Corporate Debtor is pending before this Adjudicating Authority, then as per Section 60(2) of IBC, 2016 the NCLT would be competent forum to file an Application for Personal Guarantor in relation to such Corporate Debtor.
3. It is stated that M/s. Woodman Trading Co. Pvt. Ltd. being principal borrower applied for a loan for its operations from the Applicant Bank which was approved vide letter dated 28.12.2002. The Respondent was

Director and personal Guarantor of the Corporate Debtor who executed and signed various standard loan documents in favour of Applicant Bank.

4. It is stated that the Respondent also entered into a Deed of Guarantee, Agreement of hypothecation of goods, stock, Raw Material, Plant Machinery, Fixture, Furniture-Vehicles, Computers and Other Articles was executed with the Financial Creditor on 18.02.2015. The Corporate Debtor and Respondent/Guarantor also executed Revival Letter on 28.12.2018 for total Credit Facilities OF Rs.7.50Crores.
5. However, after availing the Loan/Credit Facilities, the Corporate Debtor failed to maintain financial discipline as per terms and conditions of the loan agreement due to which loan account became irregular. Consequently, the said loan account of the Corporate Debtor was classified as NPA on 30.03.2021 and recalled by Applicant Bank. Further, due to non-payment of the amount by the Corporate Debtor, in compliance with Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating

Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtor) Rule, 2019, the Canara Bank served Form B (Demand Notice) to the Respondent/Personal Guarantor and requested to pay the unpaid debt in default in full within 14 (fourteen) days from the receipt of this notice dated 11.05.2023.

6. Thereafter, in pursuant to non-receipt of any response, the Canara Bank accordingly filed the petition in 'Form-C' under Section 95 of the Code read with rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, against the Personal Guarantors before the Hon'ble National Company Law Tribunal, Ahmedabad Bench, on 04.07.2023 with respect to the initiation of Individual Insolvency Resolution Process of Personal Guarantors to the Borrower.
7. On presentation of the application by the Applicant/Financial Creditor, this Tribunal vide order dated 19.12.2023, appointed Interim Resolution

Profession (hereinafter referred to as "IRP") as suggested by the Financial Creditors viz. Mr. Sunil Kumar Kabra to carry out Insolvency Resolution Process of the Personal Guarantor as per section 97(3) of IBC, 2016, with a direction to submit the report under Section 99 of the IB Code, 2016, within ten days. The IRP is also directed to file its report through separate IA.

8. The Interim Resolution Professional has filed the report through IA No. 35 of 2024, vide inward diary No. E 2327, dated 01.01.2024 recommending the admission of the application filed under Section 95 of IBC, 2016. The summary of grounds for admission of the application as per the Report are as follows:-

- i. In pursuant to non-receipt of any response on the Demand Notice (Form B) served to the personal guarantor dated 11.05.2023, the Canara Bank filed the Petition in 'Form C' under Section 95 of the Code read with rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, against the Personal

Guarantors before the Hon'ble National Company Law Tribunal, Ahmedabad Bench, on 04.07.2023 with respect to the initiation of Individual Insolvency Resolution Process of Personal Guarantors to the Borrower.

- ii. The Hon'ble National Company Law Tribunal (Ahmedabad Bench) passed an order dated 19.12.2023 (order uploaded on the website of NCLT on 21.12.2023) (Case No.: C.P. (I.B.) No. 184/NCLT/AHM/2023) w.r.t. the declaration of interim-moratorium period which shall commenced from the date of application i.e., 04.07.2023 as per Section 96 of the Insolvency and Bankruptcy Code, 2016 (Code') and directed to submit the RP Report as per Section 99 of the Code on admission or rejection of the application made by the Canara Bank under Section 95 of the Code.
- iii. As per the documents provided by Canara Bank, Mrs. Bhavna Rohit Shah is standing as a personal guarantor for the credit facilities granted to M/s Woodman Trading Company Private Limited.

- iv. RP has sent intimation u/s 99 of IBC, 2016 and asked the Personal Guarantor Mrs. Bhavna Rohit Shah to provide proof of repayment of outstanding amount of credit facilities granted to the borrower M/s Woodman Trading Company Private Limited. But the respondent has not provided any documentary evidence.
- v. Thus, Resolution Professional is of the view that application may be accepted and proceedings should be initiated with respect to the Individual Insolvency Resolution Process of Mrs. Bhavna Rohit Shah (Personal Guarantor to M/s Woodman Trading Company Private Limited) in order to recover the outstanding debt payable as per the Personal Guarantee Agreement / deed executed dated 18.02.2015 between Canara Bank and Personal Guarantor.

- 9. Vide order dated 10.01.2024, this Tribunal issued a notice to the Respondent / Corporate Debtor and directed the respondent as well as to the Corporate Debtor to file its reply, if any, within two weeks from the

date of receipt of notice. Thereafter, rejoinder, if any, be filed within seven days.

10. Vide order dated 20.02.2024 passed by this Tribunal records that “in terms of the last order dated 30.01.2024, a weeks’ time was given to the respondent / personal guarantor to file a vakalatnama as well as reply. Learned Counsel for the respondent, submits that he has uploaded the Vaklatnama through e-mode, which is not reflecting in the e-portal. Further, he admits that no reply has been filed, as per time given by this Tribunal”. Therefore, this Tribunal given a last opportunity to the respondent to file reply / objection, if any, within three days.

11. Vide order dated 26.02.2024, records that “however, despite repeated opportunities given to the respondent / personal guarantor, no reply has been filed. Hence, right to file reply / objections, if any, to the report of the RP qua the respondent / personal guarantor is hereby closed”.

12. 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.

13. The Hon'ble Supreme Court in the judgement of **Dilip B. Jiwrajka V/s Union of India & Ors.** in **WP(civil)No. 1281 of 2021** dated **09.11.2023** upheld the Constitutional Validity of the Sections 94 to 100 and the Conclusion of the Judgments are as follows:

- 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 to determine 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.*

14. We have heard the learned counsel for both the parties and perused the documents on record. We have also gone through the report dated 04.01.2024 filed by the IRP.

15. It is seen from the petition that the present application is filed on 04.07.2023 within the period of limitation as the said loan account of the Corporate Debtor was classified as NPA on 30.03.2021 and Demand Notice dated 11.05.2023 invoking Personal Guarantee within the period of limitation, was served upon the Respondent who is one of the Directors of the Cooperate debtor which is not denied by the Respondent.

16. Further, 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 from both of them simultaneously. For benevolent reference, the said section of the 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."

17. Moreover, From the report of IRP, it is clear to us that:-

- i. IRP has recommended to accept the application for the reason as stated in the report dated 04.01.2024.
- ii. The Respondent has admitted to have executed the Guarantee Agreement.
- iii. The Applicant has demanded the amount outstanding from the Respondent vide Demand Notice dated 11.05.2023.
- iv. Resolution Professional report states that no evidence was placed before him by the

Respondent having paid the amount demanded by the Applicant and as such in over view entire amount demanded is unserviced as on the date of order.

v. In our view the application is not hit by Limitation.

18. In view of the foregoing we are left with no other choice but to order as under: -

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 Sec 101 of 1BC, 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. Sunil Kumar Kabra, having Registration No: IBBI/IPA-001/IP-P01011/2017-2018/11662, office at Office No. 303, 3rd Floor, Reegus Business Centre, Above Mercedes Benz Showroom, New Citylight Road, Bharthana-Vesu, Surat, 395007, Gujarat (e-mail id jlnusco@gmail.com] who was appointed when the Section 97 application was allowed vide Order dated 19.12.2023, is directed to cause a public notice published on behalf of the Adjudicating Authority within 10 days of passing this Order on

the website of the NCLT Ahmedabad 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 the 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.

V. 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.

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.

VI. 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. 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 provided under the provisions of Section 107 of IBC, 2016.

VIII. 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.

IX. The Resolution Professional shall submit his periodic reports before this Tribunal, every 30 days.

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.

19. In terms of the above, **CP (IB)/184(AHM)/2023** filed under Section 95 (1) of the IBC, 2016 is admitted and the Insolvency Resolution Process stands initiated against the Respondent/Personal Guarantor.

20. Accordingly, **IA/35(AHM) 2024** is stands disposed of.

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SAMEER KAKAR
MEMBER (TECHNICAL)

Vinit Patel / Steno

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SHAMMI KHAN
MEMBER (JUDICIAL)