

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

C.P. (IB) NO. 199/MB/2023

Under Section 100 *r/w*
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

State Bank of India

...Applicant/Financial
Creditor

Versus

Shri Nenshi Ladhabhai

Shah

...Respondent/Personal
Guarantor

Order pronounced on 11.03.2024

Coram:

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

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

Appearances:

For the Applicant/Financial Creditor: Mr. Inayat Ali Quereshi,
Advocate

For the Respondent : Mr. Surekha Yadav, Advocate

ORDER

Per: Justice V. G. Bisht , Member (Judicial)

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 **State Bank of India** (hereinafter referred to as “Applicant/Financial Creditor”) for the purpose of initiating insolvency process against **Shri Nenshi Ladhahbai Shah** (hereinafter referred to as the “Respondent/Personal Guarantor/Guarantor”) for recovery of Rs.701,77,19,110.95/- with effect from 12.07.2022. The Date of Default, as specified in Part-III of the present petition, is **24.10.2020**.
2. The Applicant was incorporated on 01.07.1955 bearing PAN AAACS8577K having its permanent address at Corporate Office at Madam Cama Road, Mumbai – 400 031 and business address at Stressed Assets Management Branch, Ahmedabad, 2nd Floor, Paramsiddhi Complex, Ellisbridge, Ahmedabad. The Applicant is an Indian Multinational Public Sector Banking and Financial Services statutory body constituted under the State Bank of India

Act, 1955.

3. The Respondent is an Indian resident having his permanent address at 202, Asha Niketan, Baptista Road, Vile Parle (West), Mumbai 400 056.
4. The Respondent is a personal guarantor for **Euro Multivision Limited** (hereinafter referred to as the “Corporate Debtor”) having CIN L32300MH2004PLC145995 and having its registered office at F 12, Ground Floor, Sangam Arcade Vallabhbhai Road, Vile Parle (West) Mumbai – 400056.
5. The Financial Creditor since the year 2006 has lent and advanced various Credit Facilities to the Corporate Debtor, for a sum of Rupees 49.00 Crores by way of Term Loan and Working Capital Facilities under Sanction Letter bearing no. IFB/KMT/CPC/06-07/118 dated 01st September, 2006, which facilities stood enhanced/renewed/refreshed at several occasions vide various sanction letters.
6. The Financial Creditor filed Original Application No. 56 of 2012 before the Debt Recovery Tribunal-II, Ahmedabad, against the Corporate Debtor and its Guarantors including the present guarantor, inter-alia seeking Recovery Certificate against Corporate Debtor. Vide Order dated 27.11.2019, the Hon'ble Tribunal 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 rests 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.

7. However, the Corporate Debtor and its Guarantors has failed and/or neglected to comply with the order/judgement of the Debt Recovery Tribunal-II. Hence, the Financial Creditor filed a Company Petition No. 1379 of 2020 before this Tribunal for initiating CIRP against the Corporate Debtor. This Tribunal vide an Order dated 10.11.2022, initiated CIRP against the Corporate Debtor.
8. The Financial Creditor issued Demand Notice dated 12.07.2022 upon this guarantor in respect of the unpaid debt in default due from the Corporate Debtor as prescribed under the IBC, 2016.
9. Since the debt still stands due, the Financial Creditor has filed the present petition 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.
10. Vide order dated 08.11.2023, this bench had appointed **Mr. Vijender Sharma**, as Resolution Professional having Registration No. IBBI/IPA-003/IP-N00003/2016-2017/10022 having his address at 11, (3rd Floor) Hargovind Enclave, Vikas Marg, Delhi – 110092 to examine the petition and file his report within 10 days from the date of communication of the said order.
11. The Resolution Professional has filed an Interlocutory Application being IA No. 5551 of 2023 for submitting report u/s 99(1) of the Code on record. The same was taken on record and the said Interlocutory Application is allowed and disposed off.
12. The Respondent has neither appeared till date nor has filed and placed on record Affidavit in Reply to the main Company Petition.

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

“RECOMMENDATION BY RESOLUTION PROFESSIONAL U/S 99(1&7) OF IB CODE.

I, Vijender Sharma, an Insolvency Professional having IP reg. no. IBBI/IPA-003/IP-N00003/2016-2017/10022, appointed as Resolution Professional under sub section (5) of Section 97 vide order dated 08.11.2023, in connection with the proposed insolvency resolution process of Mr. Nenshi Ladhahhai Shah, (Personal Guarantor): CP- (IB)-199 (MB)/2023, hereby, on the basis of the gathered facts and figure is of the view that the application of creditor (State Bank of India) satisfies all the requirement u/s 95 of IB Code read with PG Rules, 2019.

It is pertinent to mention here that pursuant to section 60(2) &(3) of IBC, 2016, the present application bearing CP No. IB-199(MB)/2023, under section 95 listed before Hon'ble NCLT, Mumbai Bench- 1 must be transferred to Mumbai Bench Court-V, as the insolvency proceedings of the corporate debtor is pending before the Mumbai Bench Court-V.

The extract of Sec-60(2) &(3) of IBC, 2016 produced below for ready reference:-

60(1) ...

(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such

corporate debtor shall be filed before such National Company Law Tribunal.

(3) An insolvency resolution process or [liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of the corporate debtor] pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.

(4).....

(5).....

(6)

It is submitted that on combined reading of sub section (2) & (3) it is clear that personal insolvency application with respect to Guarantor of Corporate Debtor shall be filed before such Adjudicating Authority which is already dealing with insolvency proceedings of Corporate Debtor and if any application is pending before any Adjudicating Authority then such application will be transferred to such Adjudicating Authority which has already dealing with insolvency proceedings of Corporate Debtor. Therefore, a separate application is being filed by the Resolution Professional for transfer of these proceedings to Mumbai Bench Court-V.

In such premises it is just and equitable that insolvency process be initiated against the Debtor under the orders and directions of this Hon'ble Tribunal.

Therefore, I hereby recommend that present application u/s 95 deserve to be accepted by Hon'ble Tribunal. I hereby reached this conclusion based on the facts and observation derived from this application”

Findings:

14. Heard learned counsel for the Applicant and perused the record.
15. 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. Shri Nenshi Ladhabhai Shah, Personal Guarantor to Euro Multivision Limited has also committed default in repayment of loan facility demanded by the Financial Creditor after invocation of Personal Guarantee. That the Application filed by the Creditor satisfies the requirement as set out in Section 95 of the Code.
16. 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.”

17. Regarding the Resolution Professional's suggestion that the

present petition must be transferred to Mumbai Bench Court-V, as the insolvency proceedings of the corporate debtor is pending before the Mumbai Bench Court-V, cannot be entertained since the Hon'ble NCLAT in *Bhavesh Harkishandas Mehta v. Kookmin Bank & Anr. (Company Appeal (AT) (Insolvency) No. 75 of 2024)* has clearly held that the court handling the Section 95 application is not required to transfer proceedings to the court managing insolvency proceedings unless lacking jurisdiction, and that an order passed under Section 95 by a different courtroom is not without jurisdiction. Relevant portion from the said judgment is as under:

“From the definition of ‘bench’ as contained in the IBC as well as NCLT Rules, 2016 read with Sections 408 and 409, it is clear that the word ‘bench’ refers to a bench of NCLT as constituted under Section 419. The expression ‘bench’ as contained in IBC and NCLT Rules 2016 as well as under Section 419 of the Companies Act, 2013 only refers to Bench of NCLT. The legislature never contemplated NCLT for courts of particular Bench of NCLT sitting in composition of two members in a court, court of NCLT hearing a petition or application was not under contemplation in sub-section (2) of Section 60. Sub-section (2) of Section 60 refers to NCLT which includes also a bench of NCLT, hence, the bench shall mean a bench constituted under Section 419.”

Accordingly, this Court has appropriate jurisdiction in the present Company Petition.

18. Considering the above facts and circumstances and upon perusal of the documents on record, the C.P. (IB) 199/MB/2023 filed under Section 95 of the IBC, 2016 is hereby **Admitted** and the Insolvency Resolution Process stands initiated against Shri Nenshi Ladhahbai Shah 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 Sec 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. Vijender Sharma** Insolvency Resolution Professional, having Registration No.IBBI/IPA-003/IP-N00003/2016-2017/10022, having registered address at 11, (3rd Floor) Hargovind Enclave, Vikas Marg, Delhi – 110092 [E-Mail: *vijender@vsa.net.in*, *Mobile no.: 9810166877*] 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)