IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI, COURT-III

IA-6684/2023
And
IB-112(ND)2023

Under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), Rules 2019.

IN THE MATTER OF:

BANK OF MAHARASHTRA

Having its registered office at:

Assets Recovery Branch, 6-30/31, W.E.A.,

Karol Bagh, New Delhi-110005. **..... Applicant/Financial Creditor**

Versus

Mr. ASHWANI KHANNA,

R/o K-275, Western Avenue, Ground Floor,

W-12 Lane, Sainik Farm, New Delhi-110062.

..... Respondent/ Personal Guarantor

Order delivered On: 28.02.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For Applicant	:	Mr. V K Gupta and Mr. Sunil Shukla, Advs.
For RP	:	Mr. Devvart Rana, Adv.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The present application has been filed by Bank of Maharashtra, the Applicant under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to

Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), Rules 2019 against Mr. Ashwani Khanna, the Personal Guarantor to the Corporate Debtor.

2. It is stated that the Applicant Bank had granted Cash Credit and Bank Guarantee to M/s. Ashoka Machine Tools International Pvt. Ltd. ("Corporate Debtor"/"Principal Borrower") for which the Respondent had stood as Guarantor.

3. The Applicant Bank had sanctioned a Cash Credit Hypothecation facility of Rs. 725.00 lakh with a Sub-limit facility of Packing Credit of Rs. 100.00 lakh to meet the Working Capital needs of the Corporate Debtor. The Cash Credit limit carried interest @ Base Rate plus 3.5% i.e. 13.50% per annum with monthly rests subject to change from time to time and a Bank Guarantee Limit of Rs. 75.00 Lakh.

4. Further, the Principal Borrower had requested the Applicant bank to grant of short-term Loan of Rs. 40.00 lakhs and the Applicant on 11.05.2013 had granted a short-term loan of Rs. 40.00 lakh the terms of which were duly accepted by the defendants. The Principal borrower and Guarantor had executed documents on 14.05.2013 in favour of the Applicant Bank. The account of the Principal Borrower had become irregular and classified as a Non-Performing Asset on 31.03.2014.

5. This Adjudicating Authority vide order dated 05.12.2023 appointed Mr. Anil Kumar (having IBBI Registration: IBBI/IPA-001/IP-P00144/2017-18/10308) as the Resolution Professional and the Resolution Professional was directed to submit a report in terms of Section 99 IBC. Accordingly, the Resolution Professional has filed a report and a copy of the said report has been duly served on the Personal Guarantor by all modes. However, no one has appeared on behalf of the Personal Guarantor and no objections have been filed to the report submitted by the Resolution Professional despite two opportunities being granted on 01.01.2024 and 11.01.2024.

6. The Resolution Professional vide IA-6684/2023 dated 26.12.2023 has filed its report before this Adjudicating Authority. The Recommendations of the Resolution Professional are as under:

A. *"That the application filed by Bank of Maharastra satisfies the requirement as set out in section 95 of the Code:*
B. *That Principal Borrower, M/s. Ashoka Machine Tools International Pvt. Ltd. has Committed default in repayment of Loan Facility granted by the aforesaid banks and/or financial institution:*
C. *That Mr. Ashwani Khanna, Personal Guarantor of M/s. Ashoka Machine Tools International Pvt. Ltd. (Principal Borrower) has also committed default in repayment of Loan Facility granted by the aforesaid banks after invocation of Personal Guarantee:*
D. *That, in light of the above, it is just and equitable that insolvency resolution process be initiated against Mr. Ashwani Khanna, personal guarantor to M/s. Ashoka Machine Tools International Pvt. Ltd, under the orders and directions of this Hon'ble Tribunal.*
E. *That, AFA of the RP valid on date may be taken on record."*

7. We have heard the submissions made by Ld. Counsel for the Applicant, Resolution Professional and Personal Guarantor and perused the report.

8. On a perusal of the report, we find that the Resolution Professional has given reasonable opportunity following the principle of Natural Justice and has taken into consideration the various documents including Mortgagor's Declaration dated 22.01.2013 for the Equitable Mortgage by deposit of title deeds in respect of immovable properties of the Principal Borrower, Memorandum of Record of Deposit of Title Deeds dated 24.01.2013, Mortgagor's Letter of confirmation of Equitable Mortgage dated 28.01.2013 and has come to a conclusion that Insolvency Proceedings be initiated against the Personal Guarantor.

9. We are satisfied with the grounds/reasons given by the Resolution Professional for the initiation of the Insolvency process against the Personal Guarantor. Having regard to the facts and circumstances of the

case, we are of the view that the personal insolvency ought to be initiated against the Personal Guarantor.

10. The Insolvency process is initiated against the Respondent - Personal Guarantor. The moratorium begun on the date of admission of the application shall cease to have effect at the end of the period of 180 days from the date of this order. During the moratorium period, the following provisions shall be in effect:

i. Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and
ii. The Creditors of the Debtor shall not initiate any legal action or proceedings in respect of any debt; and
iii. The Debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;
iv. 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.

11. The Resolution Professional is directed to cause a public notice to be published within 7 days of uploading of this order on the website of this Adjudicating Authority for inviting claims from all Creditors, who shall register their claims as provided under Section 103 of IBC within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102(2) of IBC.

12. The publication of the notice shall be made in newspapers, one in English and the other in Vernacular which have wide circulation in the state.

13. The Resolution Professional in exercise of the powers conferred under Section 104 of IBC shall prepare a list of creditors within 30 days from the date of the notice. The Debtor shall prepare a repayment plan in consultation with the Resolution Professional as provided under Section 105 of IBC which shall include the provisions for payment of fee to the Resolution Professional. The Resolution Professional shall submit the repayment plan along with his report on the plan to this Adjudicating Authority within a period of 21 days from the last date of submission of claims as provided under Section 106 of IBC.

14. In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof. If the Resolution Professional is of the opinion that the meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of IBC. The date of the 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, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all relevant/feasible modes. Such notice must contain the details as provided under the provisions of Section 107 of IBC.

15. The meeting of the Creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC. The Resolution Professional shall prepare a report of the meeting of the creditors on the repayment plan with all details as provided under Section 112 of IBC and submit the same to this Adjudicating Authority, copies of which shall be provided to the debtor and the creditors.

16. The Applicant is directed to deposit Rs.2,00,000/- to the bank account of Resolution Professional within one week, towards his fees. This shall be subjected to the rules and regulations under the provisions of IBC, 2016. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under IBC, 2016.

17. In view of the above IA-6684/2023 along with IB-112(ND)/2023 stands **disposed of.**

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)