

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT – III**



C.P. NO. 1035(IB)/MB/2023

Under Section 95 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Principal Borrower) Rules, 2019

Bank of Maharashtra

(Stressed Asset Management Branch)
2nd Floor, Agarkar School Building,
Near Apollo Cinema,
Somwarpeth, Pune – 411 011.

.... Petitioner/ Financial Creditor

Versus

Mr. Anand Vijaykumar Singh

Guarantor of M/s Soframe Defence Solutions
India Private Limited

Residing at:

44, Telco Senior Officers Housing Society,
Pimpri, Pune – 411 018.

.... Respondent/ Personal Guarantor

Order Pronounced on: 27.01.2025

Coram:

Hon'ble Smt. Lakshmi Gurung, Member (Judicial)

Hon'ble Shri Charanjeet Singh Gulati (Technical)

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Appearances:

For Financial Creditor: Adv. Revati Nansi i/b Kay Legal & Associates LLP

PER: SHRI CHARANJEET SINGH GULATI, MEMBER (TECHNICAL)


ORDER

1. The present Company Petition (IB) No. 1035 of 2023 is filed by Bank of Maharashtra (**'the Petitioner'/'the Financial Creditor'**) under Section 95 of the Insolvency and Bankruptcy Code, 2016 (**'the Code'/'IBC'**) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Principal Borrowers) Rules, 2019 seeking to initiate Personal Insolvency Resolution Process (**'CIRP'**) against Mr. Anand Vijaykumar Singh (**'Respondent'/'Personal Guarantor'**).
2. Bank of Maharashtra, the Petitioner herein, is a public company incorporated as 'The Bank of Maharashtra Limited' on 16.09.1935 before Registrar of Companies, Mumbai. The Petitioner was constituted as 'Bank of Maharashtra' under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. The Petitioner offers a range of financial services as a 'Commercial Bank'.
3. The Petitioner during the course of its business had extended a Cash Credit Facility to one M/s Soframe Defence Solutions Private Limited (**'the Principal Borrower'**) for a cash credit facility to the tune of Rs. 10 Crores vide Sanction Letter dated 27.12.2013 (**'Facility'**), wherein the Respondent is the Director of the Principal Borrower.
4. The facility was secured by a first-charge mortgage over the land, plant, and machinery (as described in the Sanction Letter), and by

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hypothecation of all present and future stock and book debts of Principal Borrower. Further, a Demand Promissory Note dated 31.12.2023 was executed by the Principal Borrower promising to pay jointly and severally Rs. 10 Crores availed through the Facility.

5. The Facility (except agricultural facilities) was secured by a corporate guarantee of one M/s Automotive Coaches and Components Private Limited dated 30.12.2013 and was also secured by Personal Guarantee of the Respondent, Mr. Anand Vijaykumar Singh along with other personal guarantors Mr. Dilip Jain, Mr. Rohit Sharma, Mr. Roopchand S. Baid and Mr. V.K. Singh vide Guarantee Agreement dated 31.12.2013. The personal guarantee as referred to at Annexure – '8 Colly' of the Petition was characterised as joint and several. Accordingly, the Respondent is to pay and satisfy to the Petitioner Bank on demand all indebtedness as primary obligor to the Principal Borrower.
6. The Principal Borrower defaulted in repayment of the Facility and accordingly, the account of the Principal Borrower was declared as a Non-Performing Asset on 16.07.2015.
7. The Petitioner issued a Demand Notice to the Principal Borrower, Corporate Guarantor and Personal Guarantor of the Corporate Guarantor on 06.04.2016 for payment of outstanding dues on RS. 17,21,73,781/-. Further, the Petitioner has initiated recovery proceedings vide Original Application No. 269 of 2016 before the Hon'ble Debts Recovery Tribunal at Pune on 06.05.2016, which is pending for adjudication.
8. The Petitioner issued a demand/recall notice read with Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Principal

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Borrower) Rules, 2019 through Inland Speed Post on 07.11.2022 under Section 95 of the Code to the Respondent (**‘said Demand Notice’**). The said Demand Notice dated 03.11.2022 was addressed for repayment towards an outstanding principal debt of Rs. 9,85,21,837/- as on 30.09.2022 and the amount of debt in default of Rs. 27,17,31,141/- as on 04.10.2022 plus future interest and expenses, charges, costs and so on till the date of payment/ actual realization, within fourteen days of service towards the said Demand Notice. Later, the Respondent failed to reply towards the said Demand Notice.

9. In view of the aforesaid, the present application has been filed for appointment of Resolution Professional under section 95 of IBC.
10. The Hon’ble Supreme Court in ***Dilip B Jiwrajka Vs. Union of India & Ors. (Writ Petition (Civil) No. 1281 of 2021)*** decided on 09.11.2023 upheld the constitutional validity of Sections 94 and 100 of the Code as follows-:

“ xxxxxx.....

- i. *No judicial adjudication is involved at the stages envisaged in Section 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 Adjudicating Authority is recommendatory in nature on whether to accept or reject the application.*

...xxxxxxx”

(emphasis provided)

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11. The Petition for initiating insolvency resolution process against Personal Guarantor to the Principal Borrower is in prescribed form as mandated under section 95(6) of the IBC, and a copy of this present petition was served on the Personal Guarantor/ Respondent via e-mail dated 11.05.2023.
12. The Counsel for the Petitioner has suggested the name of Resolution Professional (RP) to be appointed under the Code. Accordingly, we appoint **Mr. Mangesh Vitthal Kekre (IBBI/IPA-001/IP-P00539/2017-2018/10964)**, e-mail ID: ca.mangesh@gmail.com; as a Resolution Professional (RP) from the panel of RP maintained by the Insolvency and Bankruptcy Board of India (IBBI) in the present case. The Petitioner through Additional Affidavit dated 19.01.2024 submitted a valid Authorization for Assignment (AFA) of Mr. Kekre which is valid up to 26.09.2024, however, we note from the data available on IBBI website that the AFA is valid up to 31.12.2025.
13. The fee payable to Resolution Professional (RP) shall be in accordance with the Regulations/Circulars/Directions issued by the IBBI in this regard.
14. This Bench also directs for an advance payment of Rs. 1,50,000/- to be paid by the Financial Creditor to the Resolution Professional (RP) immediately to initiate the process which shall be adjusted towards the fee and expenses payable to the Resolution Professional (RP).
15. The interim-moratorium under Section 96 of the Insolvency and Bankruptcy Code, 2016 has commenced on the date of filing of this application by the Financial Creditor and will cease to have effect on the date of admission. During such interim-moratorium period (i) any legal action or proceeding pending in respect of any debt shall be

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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.

16. The Resolution Professional as appointed is directed to examine the application as set out in Section 97(6) of IBC, 2016 including but not limited to issue relating to limitation and invocation of Personal Guarantee of the Respondent by the Petitioner and shall submit his report as provided under Section 99(1) of IBC, 2016, **within 10 days** of the receipt of this order.
17. Further, the Registry is hereby directed to communicate this order to Financial Creditor, Personal Guarantor, Principal Borrower and Resolution Professional even by way of e-mail correspondence immediately. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record. The Petitioner is also directed to forthwith communicate this order to the Resolution Professional.
18. List the matter as and when the Report is filed by RP by way of an I.A.

Sd/-

**CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)**

Akshita, L.R.A

Sd/-

**LAKSHMI GURUNG
(MEMBER JUDICIAL)**