

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

C.P.(IB)-796(MB)/C-III/2022

(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 for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rule 2019.)

*In the matter of*

**Tata Capital Financial Services Limited**

Having Registered Office at: 11<sup>th</sup> Floor Tower A,  
Peninsula Business Park, Ganpatrao Kadam Marg,  
Lower Parel, Mumbai- 400013.

.....**Financial Creditor/Petitioner**

**Vs**

**Akshay Sunil Shah**

Residing at: Plot No. 11, Neel Bunglow Sr. No.  
613/614/29, Gangadham Phase 2 Bibvewadi  
Kondhawa Road, Pune 411037.

.....**Personal Guarantor/Respondent**

**Order Pronounced on: 28.02.2024**

**CORAM:**

**SHRI CHARANJEET SINGH GULATI**  
**HON'BLE MEMBER (T)**

**SMT LAKSHMI GURUNG**  
**HON'BLE MEMBER (J)**

***Appearances:***

For the Financial Creditor: Asv. Akshay Sawant i/b. I.V. Merchant & Co.  
For the Personal Guarantor: None

**ORDER**

**Per: - Ms. Lakshmi Gurung (Judicial Member).**

1. The Present Company Petition is filed under section 95(1) of Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) by **Tata Capital Financial Services Limited (“Financial Creditor/Petitioner”)** for initiating Insolvency Resolution Process against **Akshay Sunil Shah (“Personal Guarantor”)** being the Personal Guarantor of Neel Motors LLP (**“Principal Borrower/Corporate Debtor”**).
2. On representation of the Corporate Debtor, the Petitioner vide its Sanction Letter bearing number CF/CF/Pun/1204061 dated 29.12.2016 sanctioned Channel Finance Facility for an amount of Rs. 1,50,00,000/- for working capital purpose. The same was for tenure of 12 months carrying floating interest 11.25% p.a.
3. The Respondent had executed irrevocable and unconditional personal guarantee dated 29.12.2016 for the said Finance facility to the Corporate Debtor. The relevant terms of guarantee are as follows:

*“9. This Guarantee shall be enforceable against me/us notwithstanding that any negotiable instruments or security or guarantee shall be outstanding at the time when the proceeding against me/us shall be taken.*

*10. This Guarantee shall be a continuing guarantee to the extent at any time of the amount as given in Item No. 3(a) of First Schedule hereto, together with interest as more particularly set out in the said Loan Agreement and additional rate of interest as given in Item No. 5 of First Schedule hereto, over and above the aforesaid interest, in the event of delayed payment plus interest tax with monthly rests payable thereon as also the costs, charges, expenses payable under the said Facility, and shall not be considered as wholly or partially satisfied or exhausted by payment or liquidation at any time hereafter of any sum or sums of money for the time being due in respect of the Facility granted by TCFSL to the Borrower, but shall within the limit aforesaid extend to cover and be a security for every sum and all sums of money at any time due to TCFSL in respect thereof including all renewals, extensions,*

*variations or modifications or novations to the said Facility, notwithstanding the fact that the said Facility as aforesaid may at any time or from time to time be reduced or extinguished or the balance or the said Facility be brought to credit.”*

4. The said Finance facility was renewed from time to time. Upon failure to repay the loan facility, the Petitioner vide a Loan Recall Notice dated 26.02.2021 called upon the Corporate Debtor and the Respondent to jointly and/or severally make payment of the entire outstanding amount of Rs. 1,60,61,417.99 alongwith future interest and additional interest at contractual rate, costs, charges due under the facility as on 06.02.2021. Thus Guarantee has been invoked on 26.02.2021.
5. The Petitioner issued Form-B Demand Notice dated 18.02.2022 upon the Respondent 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 demanding payment of unpaid outstanding debt in default due from Corporate Debtor.
6. The Personal Guarantor filed a reply to the Demand Notice of the Petitioner on 23.02.2022 thereby denying all that was stated in Demand Notice of the Petitioner dated 18.02.2022.
7. The Petitioner has annexed to the petition, the Records of Default as on 20.05.2022 from National E-Governance Services Limited.
8. The Personal Guarantor despite expiry of the period of 14 days from the date of service of Demand Notice failed to repay the debt.
9. In such circumstances, the Financial Creditor has filed the present Petition. This Tribunal vide order dated 20.12.2022 held that the notice upon the Respondent is deemed served as the same was returned unclaimed.

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 held as follows:-

Quote

- 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.*

Unquote

11. The Petition for initiating insolvency resolution process against Personal Guarantor to the Corporate Debtor is complete in all respect. The Applicant has proposed the name of the Insolvency Professional. We therefore, appoint **Mr. Deepak Mohanlal Panpaliya**, having Reg. No: **IBBI/TPA-001/IP-P-00760/2017-2018/11319, Ph. No. 7588084601** Email: **dpanpaliya@gmail.com** as Resolution Professional ("RP") in the matter u/s 97(5) of IBC, 2016 and all applicable provisions thereof Part III Chapter III of IBC, 2016 will apply including interim moratorium u/s 96 of IBC, 2016. The fee payable to Resolution Professional (RP) shall be in accordance with the Insolvency and Bankruptcy Board of India (IBBI) Regulations/Circulars/ Directions issued in this regard.
12. This Bench also directs for an advance payment of Rs. 2,00,000/- (Rupees Two Lakhs only) 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).

13. The Resolution Professional is directed to examine the application as set out in Section 97(6) of IBC, 2016 who after examining, shall submit his report as provided under Section 99(1) of IBC, 2016, **within 10 days**.
14. The Applicant is directed to serve copy of the application and the order on the Resolution Professional.
15. List the matter for report of the RP on **20.03.2024**.

Sd/-

**CHARANJEET SINGH GULATI**  
**(MEMBER TECHNICAL)**

Sd/-

**LAKSHMI GURUNG**  
**(MEMBER JUDICIAL)**

Arpan, LRA