

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

C.P.(IB)-320(MB)/C-III/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 Corporate Debtors) Rule 2019.)

In the matter of

Bank of Maharashtra

Having Registered Office at: Stressed Asset Management Branch 'Janmangal', 4th Floor, 45/47, Mumbai Samachar Marg, Fort, Mumbai-400001.

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

Vs

Santosh Gulabrao Shinde

Residing at: Flat No. 102, B-Wing, Sai Leela Garden Society, Lane No. 10, Kalyaninagar, Tal:- Haveli, Pune-411006.

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

Order Pronounced on: 21.03.2024

CORAM:

SHRI CHARANJEET SINGH GULATI
HON'BLE MEMBER (T)

SMT LAKSHMI GURUNG
HON'BLE MEMBER (J)

Appearances:

For the Applicant : Adv. Subir Kumar
a/w Adv. Disha Shah

For the Personal Guarantor: None

ORDER

Per: - Charanjeet Singh Gulati (Technical Member).

1. The Present Company Petition is filed under section 95 of Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) by **Bank of Maharashtra (“Financial Creditor/Petitioner”)** for initiating Insolvency Resolution Process against **Santosh Gulabrao Shinde (“Personal Guarantor”)** being the Personal Guarantor of Trimurti Corns Agro Foods Private Limited (**“Principal Borrower”**).
2. The Corporate Debtor and its Guarantors approached the Financial Creditor in 2016 and thereafter requested for various credit facilities which was then sanctioned by the Financial Creditor vide a sanction Letter on 30.09.2016 for their purpose of business.
3. The Respondent herein has in his personal capacity as a personal guarantor guaranteed due repayment of the credit Facility availed by the Corporate Debtor, in the event of default.
4. The liability of the Guarantor is based upon the Deed of Guarantee dated 21.10.2016 executed by and between the Personal Guarantors, Corporate Debtor, and the Financial Creditor, in respect of various credit facilities sanctioned to the Corporate Debtor to secure the Financial debt.
5. The Principal Borrower had availed the credit Facility from the Petitioner and executed a Demand Promissory Note dated 21.10.2016, Deed of Hypothecation dated 21.10.2016.
6. The Deed of Guarantee (RF154A) was executed by Mr. Santosh Gulabrao Shinde, Mrs. Tejaswini Santosh Shinde, Mr. Nitin Gulabrao Shinde and Mr. Gulabrao Khanderao Shinde on all facilities except Agricultural facilities.
7. The Principal Borrower/Corporate Debtor defaulted in repayment of the said credit facilities. The date on which the debt fell due is 29.09.2017.

Further, the Corporate Debtor was admitted by this Tribunal into the Corporate Insolvency Resolution Process (“CIRP) on 20.11.2018.

8. On 02.07.2022, the Financial Creditor issued a Demand Notice in Form B 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.
9. The total amount due and payable by the Respondent/ Guarantor is Rs. 38,22,33,280/- (Rupees Thirty-Eight Crores Twenty-Two Lakhs Thirty-Three Thousand Two Hundred and Eight only) as on 31.01.2023
10. Due to the failure to pay the outstanding amount, the Petitioner has filed the present petition and same has been served to the respondent by email dated 03.03.2023 and by Speed post. During the pendency of the said Section 95 Application, the Ld. Counsel appearing for the Respondent submitted that they have approached the petitioner to initiate the settlement of outstanding debt and has already submitted an OTS proposal. The same was not accepted by the Petitioner/Financial Creditor.
11. The Personal Guarantor despite expiry of the period of 14 days from the date of service of Demand Notice failed to repay the debt.
12. 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

13. 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. Anil Kashi Drolia**, having Reg. No: **IBBI/IPA-001/IP-P-02327/2020-2021/13482**, Email: anildrolia.ip@gmail.com as Resolution Professional (“RP”) in the matter.
14. 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.
15. This Bench also directs for an advance payment of Rs.1,00,000/- (Rupees One Lakh 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).
16. 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**.
17. The Applicant is directed to serve copy of the application and the order on the Resolution Professional.
18. List the matter for report of the RP on **26.04.2024**.

Sd/-

CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)

Sd/-

LAKSHMI GURUNG
(MEMBER JUDICIAL)