



NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT V

C.P.(IB)-644(MB)/2023

Under Section 95 (1) of the Insolvency and
Bankruptcy Code, 2016 read with Rule 7(2) of the
Insolvency and Bankruptcy (Application to
Adjudication Authority) Rule 2019

In the matter of

M/s Micro Capitals Private Limited

Having address- Shop No. 35, Sonam Shopping
Centre CHS Ltd, old Golden Nest, Phase-6, Mira
Bharandar (E), Thane – 401105.

... Applicant/Financial Creditor

V/s

Mr. Dharamveer Singh Shekhawat

Flat No. 420, Aradhana Residency, Manglam City,
Kalwar Road, Jhotwara, Jaipur – 302012

... Respondent/Personal Guarantor

Order Pronounced on: 30.04.2025.



Coram:

Shri. Sushil Mahadeorao Kochey, Hon'ble Member (Judicial)

Shri. Charanjeet Singh Gulati, Hon'ble Member (Technical)

Appearances:

For the FC/Applicant: Adv. Aniruth Purusothaman G. (PH)

For the Respondent:

ORDER

1. The Present Company Petition is filed under section 95(1) of Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) by ‘**M/s Micro Capitals Private Limited**’ for initiating Insolvency Resolution Process against ‘**Mr. Dharamveer Singh Shekhawat**’ “Personal Guarantor”).
2. This Hon’ble Tribunal passed an Order dated 24.01.2023 initiating CIRP of the Corporate Debtor and thereby appointed Mr. Dharmendra Dhelariya as the Interim Resolution Professional of the Corporate Debtor.
3. The Respondent entered into the Deed of Guarantee dated 15.11.2021 with the Petitioner and agreed with all the terms and condition of the loan provided to the Corporate Debtor.



4. The Respondent provided for unconditional guarantee towards the repayment of the loan facility availed by the Corporate Debtor. In pursuant to the default by the Corporate Debtor, the Petitioner invoked the guarantee vide notice dated 02.06.2022.
5. As per the terms of the Deed of Guarantee, the Personal Guarantor, Mr. Dharamveer Singh Shekhawat is liable to pay the outstanding amount to the Financial Creditor. The Guarantee executed by the Personal Guarantor, Mr. Dharamveer Singh Shekhawat, is invoked by issuing a demand notice dated 28.03.2023 as per the prescribed Form-B under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantor to Corporate Debtors) Rules, 2019 read with Section 95 of Insolvency and Bankruptcy Coder 2016. The report as to delivery of the demand notice is also annexed along with the Petition. The Personal Guarantor was called upon to pay the outstanding amount of Rs. 67,11,69,217/- and the date of default is 02.06.2022. The Personal Guarantor did not respond to the demand notice nor has made payment as demanded under the notice and, therefore, the present Application is filed for initiating the Insolvency Resolution Process against the Personal Guarantor.
6. At the stage of filing of the present application under Section 95, the judicial adjudication is not involved. The Resolution Professional is only



required to be appointed who has a facilitative role of collating all the facts relevant to the examination of the application for the commencement of Insolvency Resolution Process or otherwise. The report has to be submitted to the Adjudicating Authority recommending whether to accept or reject the Application.

7. The above proposition is fortified by the judgment of the Hon'ble Supreme Court in the case of *Dilip B Jiwrajka Vs. Union of India & Ors. Writ Petition (Civil) No. 1281 of 2021* decided on 09.11.2023 held as follows:-

- 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.”*

8. In the present case, the default by the Principal Borrower is established and the Corporate Debtor was admitted to CIRP on 24.01.2023. The issuance of demand notice on the Personal Guarantor is also established and non-payment of the outstanding dues as per the Guarantee Agreement is also established *prima facie*.



9. Therefore, appointment of RP for collating the information and submitting the Report would be justified in the present case. The present Application has been filed through the Insolvency Professional, **Mr. Pawankumar Jagetia** having Registration No. **IBBI/IPA-001/IP-P00800/2017-2018/11366** and email id- pjagetiaco@yahoo.co.in as the RP. Authorisation for Assignment (AFA) of the RP has also been filed with the Petition. The AFA of the proposed RP is valid till 30.06.2025. Accordingly, Mr. Pawankumar Jagetia appointed as an Insolvency Professional in the present matter.
10. 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.
11. 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).
12. 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 from uploading of this order.

13. Further, the Registry is hereby directed to communicate this order to both the parties and to RP 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.

14. List the matter for report of the RP as and when the report of RP is filed.

Sd/-
Charanjeet Singh Gulati
Member (Technical)
/Ziyaul/

Sd/-
Sushil Mahadeorao Kochey
Member (Judicial)