

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH - I**

**C.P. (IB) NO. 1222/MB/2020**

Under Section 100 r/w Section 95 of  
the Insolvency & Bankruptcy Code,  
2016 r/w Rule 7 (2) of the  
Insolvency and Bankruptcy  
(Application to the Adjudicating  
Authority for Insolvency Resolution  
Process for Personal Guarantors to  
Corporate Debtors), Rules, 2019.

In the matter of

**IDBI Bank Limited**

...Applicant/Financial  
Creditor

*Versus*

**Mr. Shamik Apparao**

...Respondent/Personal  
Guarantor

**Order pronounced on 20.03.2024**

***Coram:***

Hon'ble Member (Judicial) : Justice V. G. Bisht (Retd.)

Hon'ble Member (Technical) : Sh. Prabhat Kumar

***Appearances:***

For the Applicant/Financial Creditor: Ms. Bindu Bhatia a/w Komal  
Bhoir i/b Ezy Laws,  
Advocates

For the Respondent : Mr. Dhruv Gandhi a/w Ms.  
Gauri Joshi, i/b Ganesh &  
Co., Advocates

**ORDER**

*Per : V. G. Bisht, Member (Judicial)*

**Brief facts:**

1. The present petition is filed *u/s.* 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “IBC, 2016”) *r/w.* Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 by **IDBI Bank Ltd.**(hereinafter referred to as “Applicant/Financial Creditor”) for the purpose of initiating insolvency process against **Shri Shamik Apparao** (hereinafter referred to as the “Respondent/Personal Guarantor/Guarantor”) for recovery of Rs.54,67,08,945.07 /- (Rupees Fifty-Four Crore Sixty Seven Lakhs Eight Thousand Nine Hundred and Forty-Five Rupees Seven Paisa only) together with further interest at contractual rates with effect from 01.08.2020. The Date of Default, as specified in Part-III of the present petition, is **15.05.2019**.
2. The present Application has been filed by IDBI Bank Ltd. bearing CIN L65190MH2004GOI148838 through authorized Representative Shri. Sanjay Nikam having business address at IDBI Tower, WTC Complex, Cuffe Parade, Mumbai City, Maharashtra - 400005.
3. The Respondent is an Indian resident having present address at

Flat no. 121, Samudra Mahal, Dr. A B Road, Worli, Mumbai - 400018.

4. The Respondent is a personal guarantor for **Tag Offshore Limited** (hereinafter referred to as the “Corporate Debtor”) incorporated on 21.03.2003 having CIN U63090MH2003PLC139657 and having its registered office at Unit no. B 002-Ground Floor, Everest Nivara Infotech Park Plot no. D-3, TTC Industrial Area, Turbhe, MIDC Navi Mumbai, Thane - 400705.
5. The account of the Corporate Debtor turned NPA on 15.05.2019 and accordingly personal guarantee was invoked by the Applicant on 10.06.2019. The total amount in default is INR 54,67,08,945.07 (Rupees Fifty-Four Crore Sixty-Seven Lakhs Eight Thousand Nine Hundred and Forty-Five Paise Seven Only) i.e. US\$ 70,40,551.38 and expenses of Rs. 2,02,71,429.18 together with further interest at contractual rates with effect from 01.08.2020 till the disposal of the present matter. (USD/INR-74.7722 as per RBI Ref. rate dated 31.07.2020).
6. The Applicant had issued demand notice dated 11.08.2020 in prescribed Form B under section 95 of the Code which was duly delivered to the Respondent on 18.08.2020, however, there was no response from the Respondent to the said demand notice within the stipulated period i.e.14 days from the date of receipt of the said demand notice, hence the Applicant has filed this Petition.
7. Further, the Applicant had filed IA 1651/2021 for urgent hearing of the main petition filed against the Personal Guarantor of the Corporate Debtor. Since the matter was taken up on 31.01.2022, the said IA was disposed of on 31.01.2022.

8. Vide order dated 24.07.2023, this bench had appointed **Mr. Pardeep Kumar Sethi**, as Resolution Professional having Registration No. IBBI/IPA-001/IP-P00711/2017-2018/11265 having his address at Unit No. 1121, Building No. II, 2nd Floor, Solitare Corporate Park, Chakala, Andheri-Kurla Road, Andheri-(E), Mumbai – 400 093 to examine the petition and file his report within 10 days from the date of communication of the said order.
9. The Resolution Professional has filed an Interlocutory Application being IA No. 4689 of 2023 for submitting report u/s 99(1) of the Code on record. The same was taken on record and the said Interlocutory Application is allowed and disposed of vide order dated 19.10.2023.
10. The ground(s) for admission of the present application, as recorded in the said RP report, are reproduced in-verbatim as hereinafter:

<i><b>“Sr. no.</b></i>	<i><b>Requireme nts under S.99 of the IBC</b></i>	<i><b>Submission of the resolution Professional</b></i>	<i><b>Complianc e with the requiremen ts under Section 99 of IBC</b></i>
1.	<i>S.99 (1) The resolution professional shall examine the application referred to in section 94 or section 95, as the case may be,</i>	<i>The Resolution Professional examined the Application under Section 95 of IBC, along with the documents annexed thereto.  The present Report is being filed by the Resolution Professional within the stipulated time i.e.. within 10 days of receiving Certified order copy.</i>	YES

	<p><i>within ten days of his appointment, and submit a report to the Adjudicating Authority recommending for approval or rejection of the application.</i></p>		
2.	<p><i>S. 99(2) Where the application has been filed under section 95, the resolution professional may require the debtor to prove repayment of the debt claimed as unpaid by the creditor by furnishing - (a) evidence of electronic transfer of the unpaid amount from the bank account of the debtor;</i></p>	<p><i>The Resolution Professional had sent intimation under section 99 (2) of IBC to the Personal Guarantor seeking details of repayment of debt claimed as unpaid by the applicant along with copy of Bank Statement of the account or any other document evidencing repayment of debt, through mail on 02.08.2023 and documents had also been sent through speed post on 03.08.2023 at the address available with the undersigned. Information from Personal Guarantor is awaited.</i></p> <p><i>The copy of intimation mail &amp; requirement list sent to Personal Guarantor on 02.08.2023 &amp; receipt of speed post is enclosed as Annexure-2</i></p>	<p><i>YES</i></p> <p><i>The Resolution Professional had sent intimation and a list of details required to prove repayment of the debt claimed in application to the Personal Guarantor and the same is awaited.</i></p> <p><i>Further, as per the Loan Account Statement received from the</i></p>

	<p>(b) evidence of encashment of a cheque issued by the debtor; or (c) a signed acknowledgment by the creditor accepting receipt of dues.</p>		<p>Applicant (IDBI Bank) for updated debt as on 24.07.2023, it is found that USD 6,84,198.52 was recovered on 18.01.2023 from sale of exclusive secured assets of the CD with the Applicant in FCTL-II A/c. 168867610 0000028.</p> <p>The copy of Loan Ac statement of FCTL A/c-II as on 24.04.2023 received from the Applicant vide e-mail 01.08.2023 is enclosed as Annexure-3.</p>
3.	<p>S. 99(3) Where the debt for which an application has been</p>	<p>The outstanding debt for which an application has been filed is -registered with National E- Governance Services Limited as per the report dt. 19.09.2020.</p>	<p>YES</p>

	<i>filed by a creditor is registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt.</i>		
4.	<i>S. 99(4) For the purposes of examining an application, the resolution professional may seek such further information or explanation in connection with the application as may be required from the debtor or the creditor or any other person who, in the opinion of the resolution professional, may provide</i>	<i>As mentioned above, the Resolution Professional had sought certain details/information from the Applicant vide mail sent on 27.07.2023, 31.07.2023 &amp; 14.08.2023 and information/documents were sought from the Personal Guarantor vide mail sent on 02.08.2023 &amp; through speed post sent on 03.08.2023 at the address available with the undersigned.  The copy of mail sent to the Personal Guarantor on 02.08.2023 is already enclosed as Annexure-2.  The copy of mail sent to the Applicant on 27.07.2023 &amp; 31.07.2023 are enclosed as Annexure-4.</i>	YES



	<p><i>n and given explanation sought by the resolution professional under sub-section (4).</i></p>	<p><i>outstanding debt amount (including interest) as on 24.07.2023 stands at INR 65,10,65,729/-.</i></p> <p><i>The copy of mail received on 01.08.2023 &amp; 02.08.2023 from Applicant for updated debt as on 24.07.2023, corresponding Loan A/c Statements &amp; calculation of Outstanding amount as on 24.07.2023 are attached as Annexure-5.</i></p> <p><i>It is ascertained that the application satisfies the requirements set out in section 95 of the IBC.</i></p>	
7.	<p><i>S. 99(7)</i></p> <p><i>After examination of the application under sub-section (6), he may recommend acceptance or rejection of the application in his report.</i></p>	<p><i>The Application &amp; annexures filed by the creditor u/s 95 and the additional information / documents received from the Applicant for their updated debt as on 24.07.2023 have been examined by the RP.</i></p>	YES
8.	<p><i>S. 99(8)</i></p> <p><i>Where the resolution professional finds that the debtor is eligible for a fresh start under Chapter II, the resolution</i></p>	<p><i>Since, the application has been filed u/s 95 of IBC, the said provisions are not applicable.</i></p>	NOT APPLICABLE

	<p><i>professional shall submit a report recommending that the application by the debtor under section 94 be treated as an application under section 81 by the Adjudicating Authority.</i></p>		
9.	<p><i>S. 99(9) The resolution professional shall record the reasons for recommending the acceptance or rejection of the application in the report under sub-section (7).</i></p>	<p><i>As mentioned above, the outstanding debt as on 31.07.2020 for which application had been filed by the creditor u/s 95, is INR 54,67,08,945/-, It is found from the supporting documents annexed with the application that the said debt is registered with Information Utility.</i></p> <p><i>Further, as per the additional documents received from the Applicant on 01.08.2023 &amp; 02.08.2023, it is found that USD 6,84,198.52 was recovered on 18.01.2023 from sale of exclusive secured assets of the CD with the Applicant in FCTL-A/c.1688676100000028. Consequently, the aggregate outstanding debt amount (including interest) as on</i></p>	YES

		<p>24.07.2023 stands at INR 65,10,65,729/-.</p> <p><i>In view of the same &amp; various facts mentioned under above points, it is recommended that the Application may be accepted.</i></p>	
10.	<p><i>S. 99(10) The resolution professional shall give a copy of the report under sub-section (7) to the debtor or the creditor, as the case may be.</i></p>	<p><i>The Resolution Professional shall provide a copy of the Report to the Creditor and Personal Guarantor upon filing.</i></p>	YES

*In view of the aforesaid, I hereby recommend the acceptance of the captioned Application filed by the Financial Creditor under Section 95 of the IBC”*

**Submissions of the Respondent:**

The Respondent has challenged the present Application on the following grounds:

11. The Respondent has submitted that he was the Promoter Director of a company called Tag Offshore Limited (now in liquidation) ("TOL") till 24.04.2019 when TOL came to be admitted into the Corporate Insolvency Resolution Process ("CIRP") under the provisions of the IB Code by virtue of an order passed by National Company Law Tribunal, Mumbai in Company Petition No. 54/1&8/2019 against TOL. Despite being aware of the same, Applicant Bank has opted to stay outside the liquidation process

and rather chose to enforce its security interest. Applicant Bank has received a substantial amount from selling the vessels charged by TOL in Applicant's favour.

12. In the year 2016, the IDBI Bank Ltd. ("Applicant Bank") granted the said Facility to TOL (now in liquidation) to the extent of USD 10.275 million (equivalent to Rs. 69 crores) in form of Foreign Currency Term Loan ("FCTL") vide 2 separate sanction letters dated 22 June 2016 and 26 October 2016, respectively, (collectively referred to as "the sanction letters").
13. Pursuant to issuance of the said sanction letters and in accordance with the terms thereof, TOL and its promoters directors executed all requisite documents for creating charge on security/collaterals, issued corporate and personal guarantees for the same and other incidental documents.
14. At the time when ONGC decided to terminate their existing charter-hire arrangements in order to take advantage of the fallen market prices, TOL had approximately 16 vessels that were in service for charter hire arrangements with ONGC. Therefore, the sudden and arbitrary decision on the part of ONGC - a state-owned public sector entity seriously imperiled TOL's business operations and led to a substantial fall in TOL's operating margins. In view thereof, the management of TOL (including the Petitioners) made multiple representations dated 14 August 2018, 27 August 2018 and 16 October 2018 to ONGC to reverse the terminations and to continue abiding by the terms of the existing arrangements.
15. In fact, ONGC's actions had widescale repercussions for the entire industry which prompted the Indian National Shipowners Association ("INSA") too to make their own representation dated

06 October 2017 to ONGC on behalf of its members. Further, INSA also approached the Competition Commission of India ("CCI") by filing Case No. 1 of 2018 seeking necessary directions against ONGC from terminating its arrangements with members of INSA. The Petitioners believe that the proceedings are currently pending with the Hon'ble NCLAT, who vide order dated 17 October 2019 continued the interim order passed by the Competition Commission of India on 15 June 2018, with regard to clause 14.2 of the 'Special Contract Conditions' (SCC).

16. The adverse change in the business environment was brought about by market forces that were beyond the control of TOL. As a result, in order to sustain its operations at this crucial juncture, TOL sought necessary financial assistance from its lenders, including but not limited to Bank.
17. TOL had successfully repaid an amount of approximately Rs.16 crores towards the availed facilities till March 2019. However, no further repayment was done by TOL.
18. Pertinently, the management of TOL (including me) made numerous requests to the lender banks of TOL, including Bank and offered various options such as restructuring of the facility, one time settlement offers, etc. However, despite extensive efforts on the part of the Petitioners and the management of TOL, no financial support was forthcoming.
19. In April 2019, Company Petition No. 54/1&8/2019 was filed by one of TOL's operational creditors ie. R IH Petroleum Private Limited, before the Mumbai Bench of the National Company Law Tribunal ("Adjudicating Authority") seeking to initiate the Corporate Insolvency Resolution Process against TOL in accordance with Section 9 of the Insolvency and bankruptcy

Code, 2016 ("IBC").

20. By way of its order dated 24 April 2019, the Adjudicating Authority admitted Company Petition No. 54/1&B/2019 as a result of which the CIRP against TOL was initiated under the provisions of the IBC.
21. As no resolution plan was received and/or approved, Resolution Professional of TOL moved an application under Section 33 of the IBC ("Liquidation Application") before the Adjudicating Authority seeking to initiate liquidation proceedings against TOL. The Liquidation Application was allowed by the Adjudicating Authority vide its order dated 26 September 2019 and the liquidation proceedings came to be initiated against TOL. Presently TOL is under liquidation and the liquidator is in charge of TOL. Pertinently, the Applicant Bank is not part of the Stakeholders committee as it chose to stay outside of the liquidation
22. Applicant had charged over two vessels ie Tag- 20 & Tag-Navya, Vessel Tag-Navya has been sold by Applicant and sale proceeds thereof may have been adjusted by Bank. Further, Applicant is yet to sell vessel Tag 20. If the same is sold, the substantial amount of the alleged outstanding would be reduced.
23. The Respondent has further suggested that sale of vessel Tag 20 should substantially reduce the alleged outstanding claimed in the present Application.

**Findings:**

24. Heard learned counsel for Applicant and Respondent and perused the record.

25. Upon perusal of the documents on record, it is clearly established that the Corporate Debtor has committed defaults in repayment of loan amount granted by the Financial Creditor. Mr. Shamik Apparao, Personal Guarantor to Tag Offshore Limited has also committed default in repayment of loan facility demanded by the Financial Creditor after invocation of Personal Guarantee. The Application filed by the Creditor satisfies the requirement as set out in Section 95 of the Code.
26. It is well established that the liability of surety is co-extensive with that of the principal debtor. Be that as it may, law on extinguishment of claim against personal guarantor and/or third party on approval of Resolution Plan has been well-settled by Hon'ble Supreme Court in *Lalit Kumar Jain vs. Union of India and Ors.* [(2021) 9 SCC 321], wherein the Hon'ble Supreme Court has held that approval of resolution plan does not *ipso facto* discharge a Personal Guarantor (of a Corporate Debtor) of her/his liability under the contract of guarantee. In paragraph (126) of the said judgement, the Hon'ble Supreme Court held as hereunder:
- “126. For the foregoing reasons, it is held that the impugned notification is legal and valid. It is also held that approval of a resolution plan relating to a corporate debtor does not operate so as to discharge the liabilities of personal guarantors (to corporate debtors). The writ petitions, transferred cases and transfer petitions are accordingly dismissed in the above terms, without order on costs.”*
27. Considering the above facts and circumstances and upon perusal of the documents on record, the C.P. (IB) 1222/MB/2023 filed under Section 95 of the IBC, 2016 is hereby **Admitted** and the

Insolvency Resolution Process stands initiated against Mr. Shamik Apparao *viz.* the Respondent herein. We hereby direct as hereinafter:

- I.** Initiate Insolvency Resolution Process against the Respondent/Personal Guarantor and moratorium in relation to all the debts is declared, from today *i.e.* date of admission of the application, and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on the repayment plan under Section 114 whichever is earlier as provided under Sec 101 of IBC, 2016. During the moratorium period,
  - a.* Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed, and
  - b.* The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and
  - c.* The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;
  - d.* 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.
  
- II.** The Resolution Professional *viz.* **Mr. Pradeep Kumar Sethi** Insolvency Resolution Professional, having Registration No. IBBI/IPA-001/IP-P00711/2017-2018/11265, having registered address at Unit No. 1121, Building No. II, 2nd Floor, Solitare Corporate Park, Chakala, Andheri-Kurla Road, Andheri-(E), Mumbai – 400 093. [*E-mail: Peekay.sethi@gmail.com; Mobile*

*no.:8422928145]* is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Mumbai Bench, inviting claims from all Creditors, within 21 days of such issue. The notice under Sub Section (1) of Section 102(2) shall include: -

- a.* details of the order admitting the application;
- b.* particulars of the resolution professional with whom the claims are to be registered; and
- c.* the last date for submission of claims.

**III.** The publication of notice shall be made in two newspapers, one in English and other in Vernacular, which have wide circulation in the State where the Corporate Debtor and Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.

**IV.** The Resolution Professional, in exercise of the powers conferred under Section 104, shall prepare a list of creditors on the basis of:

- a.* the information disclosed in the application filed by the debtor under Sections 94 or 95, as the case may be, and
- b.* claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice. The debtor shall prepare a repayment plan under Section 105, in consultation with the Resolution Professional, containing a proposal to the Creditors for restructuring of his debts or affairs.

The repayment plan may authorize or require the

Resolution Professional to:

- a.* carry on the debtor, business or trade on his behalf or in his name: or
- b.* realise the assets of the debtor; or
- c.* administers or dispose of any funds of the debtor.

The repayment plan shall include the following, namely;

- a.* justification for preparation of such repayment plan and reasons based on which the creditors may agree upon the plan;
- b.* provision for payment of fee to the Resolution Professional;
- c.* such other matters as may be specified.

- V.* The Resolution Professional shall submit the repayment plan along with his report on the plan to this Authority within a period of **21 days** from the last date of submission of claims, as provided under Section 106.
- VI.* In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons thereof. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of IBC, 2016. The date of 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, 2016, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of IBC, 2016.

- VII.** The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of IBC, 2016 and submit the same to this Tribunal, copies of which shall be provided to the Debtor and the Creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of IBC, 2016.
- VIII.** The Resolution Professional shall submit his periodic reports before this Tribunal, every 30 days.
- IX.** The Applicant is directed to deposit **INR 2,00,000/-** (Indian Rupees Two lakhs) to the bank account of the Resolution Professional within **one week**, towards his fees. This shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.
- X.** The Registry is directed to communicate a copy of order, report and application within **seven** working days and upload the same on the website immediately after the pronouncement of order.

Sd/-

**PRABHAT KUMAR**  
**MEMBER (TECHNICAL)**  
<MK>

Sd/-

**JUSTICE V. G. BISHT**  
**MEMBER (JUDICIAL)**