



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH – IV

C.P. (IB) NO. 300/MB/2022

Under Section 95(1) 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

State Bank of India

... Financial Creditor

v/s.

Satish Dondiram Chavan

... Personal Guarantor

Order delivered on: **13.11.2024**

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor:

Adv Sagar Dhakane i/b Agma Law Associates, Ld. Counsel for the Petitioner.



For the Personal Guarantor:

Adv Sayli Patil a/w Adv. Kanhaiya
Pagare i/b Vivek Patil &
Associates, Ld. Counsel for the
Respondent.

ORDER

1. The present petition is filed on 17.02.2022 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 **State Bank of India** ("Applicant") for the purpose of initiating insolvency resolution process against **Satish Dondiram Chavan**("Personal Guarantor / Respondent"). The Date of Default, per Part-III of the present petition, is 31.05.2019.
2. The total debt amounting to INR 52,44,47,851.86/- (Indian Rupees fifty two Crores, forty four lakhs, seven thousand, eight hundred and fifty-one only and eighty six paisa) as on 01.04.2019. The Date on which the Guarantee was invoked on 13.08.2019.
3. The Company has executed the following security documents in favour of applicant/Financial Creditor against the loan Facilities granted:
 - i* Deed of Guarantee
 - ii* Agreement of Hypothecation
 - iii* Deed of Mortgage
4. The Financial Creditor herein submits that one **M/s. Pratibha Krushi Prakriya Limited** ("Corporate Debtor") was sanctioned some credit facilities vide Sanction Letter dated 21.04.2015 along with the Loan Agreement dated 31.07.2017. Through the said Loan Agreement, Corporate



Debtor was provided a Dropline OD limit of Rs 18,20,00,000/- and Term Loan limit of Rs 23,00,00,000/- As against the said facility, the Respondent herein had provided Personal Guarantee to the Creditor and had executed a Deed of Guarantee dated 31.07.2017, thereby personally guaranteeing the debt amount of Rs 41,20,00,000/- and that the Guarantee provided along with interest, fees, commission, charges, costs and expenses including the legal costs and also executed Agreement of Hypothecation dated 31.07.2017. The personal guarantors also executed a Deed of Mortgage dated 16.10.217 by creating a mortgage of 2nd charge on the properties already mortgaged in favour of SBI.

5. Due to alleged irregularities in re-payment of monies in consonance with the afore-mentioned facility and subsequent failure in regularizing its account, the loan account of the Corporate Debtor was classified as 'NPA' on 30.03.2019. The Financial Creditor issued a notice dates 01.04.2019 under Sec 13(2) of the SARFAESI Act 2002 upon the corporate debtor as well as to the personal guarantors. The Financial Creditor again issued a notice for payment of outstanding dues on 13.08.2019 through its lawyer to which Personal Guarantor responded on 06.09.2021.
6. The Financial Creditor submits that, the financial creditor also filed an application under Section 7 of the IBC against the corporate debtor which was admitted and NCLT Mumbai Bench in Company Petition No 1852/I&BP/2019 and was thereby pleased to initiate Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor herein vide Order dated 04.09.2019.
7. Subsequently, the Financial Creditor issued a Demand Notice dated 20.01.2022 to the Personal Guarantor herein, in Form-B under Rule 7(1) of the Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, demanding forthwith payments of its dues within 14



days. However, the Personal Guarantor has failed to act thereupon Hence, the present petition.

8. The Personal Guarantor states that the Demand Notice 20.01.2022 issued by the Financial Creditor is invalid, incorrect, misconceived and bad in law as the Financial creditor allegedly claimed that they have provided unsecured loan of Rs 50,09,47,851.86/- for which they have not provided any details for the same to the personal guarantors. The Personal Guarantor further states that the claim of Financial creditor was admitted by the Resolution Professional to the extent of Rs 39,00,00,000/- however the alleged demand notice issued by the Financial Creditor is for total amount of Rs 52,44,47,851/- which includes Rs 35,51,07,938/- towards outstanding and Rs 16,93,39,913.86/- towards interest for the period 01.01.2019 to 19.01.2022. Hence the Demand Notice issued by the Financial Creditor is bad in law, incorrect and invalid.

9. The Personal Guarantor also states that the Corporate Debtor on 26.02.2019 had made total repayment of Rs 8,83,30,872/- comprising towards the principal outstanding along with interest. The Financial Creditor have admitted that they have received payment of Rs 65,00,000/- on 26.02.2019. Despite the aforesaid facts the Financial Creditor without following the due process of law and various guidelines issued by the Reserve Bank of India declared the account of Corporate Debtor as NPA on 30.03.2019. The Personal Guarantor further submits by that the Corporate Debtor had made last payment of Rs 65,00,000/- towards the said facility to the Financial Creditor on 26.02.2019 as it is evident from the bank account statements of the Corporate Debtor. Therefore, the Financial Creditor has grossly committed an error in classifying the Loan Account of Corporate Debtor as Non-Performing Assets.



10. We have heard the learned counsel(s) for both the parties and have duly perused the documents on record.

10.1. The present petition is filed on 17.02.2022 against Personal Guarantor/ Respondent for the amount in default is of Rs. 52,44,47,851.86/- (fifty two Crores, forty four lakhs, seven thousand, eight hundred and fifty-one only and eighty six paisa) as on 01.04.2019, the Default occurred on 31.05.2019, as per Part-III of the present petition.

10.2. In light of the afore-stated, we find no merit in the contentions of the Personal Guarantor disputing the veracity of the Demand Notice dated 29.06.2021 and on 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. The Personal Guarantor 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.

10.3. On the aspect of limitation, we find that the Demand Notice under Sec 13(2) of the SARFEISI Act dated 01.04.2019 and another Demand Notice dated 20.01.2022 invoking the guarantee was duly served to the Personal Guarantor herein, thus constitutes the valid invocation in relation to the Guarantee Deed dated 31.07.2017 and the petition has thus been filed well-within the limitation period as mandated under law.

11. We note that this Bench had appointed the **Mr. Anuj Bajpai**, Insolvency Resolution Professional (“RP”) *vide* Order *dated* 09.05.2022 in the captioned petition and had thereby directed the Applicant to prepare and file a Report *u/s.* 99 of the IBC, 2016. The RP *via* his Report *dated* 03.06.2022, after due



examination of the application, and the requirements as mandated under clauses (1) to (10) of Section 99 of the IBC, 2016, has recommended initiation of Insolvency Resolution Process in respect of Mrs. Ashwini Chavan *viz.* the Personal Guarantor herein.

12. We are of thus of the considered view that the captioned petition is complete in all aspects, and the present case is fit for admission. Ordered accordingly.
13. In terms of the above, the captioned petition bearing **C.P. (IB) No. 300/MB/2022** filed under Section 95 of the IBC, 2016 is hereby **Admitted** and the Insolvency Resolution Process stands initiated against Mrs. Ashwini Chavan *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. Anuj Bajpai**, Insolvency Resolution Professional, having Registration No. IBBI/IPA-001/IP-P00311/2017- 2018/10575, having address at 708, Raheja Centre , Nariman Point ,Mumbai City, Maharashtra, 400021 [E-Mail: anuj19603@yahoo.co.in] 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.* realize 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 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.
- IX.** 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/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)