



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

C.P. (IB) NO. 47/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

...Applicant/ Financial Creditor

V/s.

Mr. Narayan Pundlik Shenvi Prabhu

...Respondent/ 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/ RP

Mr. Aniket Malu, Ld. Counsel for the
Petitioner. (*Through Virtual Mode*)

For the Personal Guarantor

None for the Respondent.

Space Left Blank Intentionally




ORDER

1. The captioned petition has been filed on 30.10.2021 *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** (“Financial Creditor / Applicant”) for the purpose of initiating insolvency resolution process against **Mr. Narayan Pundlik Shenvi Prabhu** (“Personal Guarantor / Respondent”) for recovery of debt amounting to INR 89,89,34,410.64/- (Indian Rupees Eighty-nine crores, Eighty-nine lakhs, Thirty-four thousand, Four hundred ten and Paise Sixty-four only) as on 30.06.2021. The Date(s) of Default, as specified in Part-III of the present petition, are 14.08.2019 (*apropos a Demand-Notice to the Personal Guarantor herein dated 30.07.2019*) and 23.07.2021 (*apropos a Demand-Notice to the Personal Guarantor herein dated 09.07.2021*).
2. The Financial Creditor herein submits that *circa* 2008, one M/s. **Aditya Vidyut Appliances Limited** (“Corporate Debtor / Personal Borrower”) was sanctioned various credit facilities, which were subsequently renewed upon the request of the latter in *circa* 2017. As against the said credit facilities, the Personal Guarantor *viz.* Respondent herein was one of the executors of a Supplemental Deed of Guarantee dated 29.05.2018 in favour of the Financial Creditor, thereby “*..providing an irrevocable and continuing guarantee for the repayment of facilities availed by the Borrower/ Corporate Debtor.*”
3. The Financial Creditor submits that upon failure on part of the Corporate Debtor to fulfil its obligations in relation to the afore-mentioned credit facilities, the Account of the Corporate Debtor was classified as ‘NPA’ *w.e.f.* 16.10.2018. Pursuant to the same, the Financial Creditor caused the issuance of a Recall Notice



dated 30.07.2019, thereby recalling the amounts payable by the Corporate Debtor to the former, but to no avail.

4. The records reveal that a Company Petition bearing C.P. No. 193/I&BP/2019 was filed *u/s.* 8 and 9 of the IBC, 2016, and this Tribunal was thereby pleased to initiate Corporate Insolvency Resolution Process (“CIRP”) against the Corporate Debtor herein *vide* Order *dated 11.09.2019*. The Financial Creditor has further sought to draw our reference to the Order of this Tribunal dated 16.04.2021 apropos I.A. 1068/2020 in C.P. 547/I&B/2020 whereby, this Tribunal was pleased to consolidate the CIRP of the Corporate Debtor along-with one ***Aditya Fabrication Pvt. Ltd.*** (*viz. Corporate Debtor’s group-company*), so as to “*..exponentially increase the chances of successful resolution of both the Corporate Debtors.*”. In consonance with the dictum laid in law in this regard, and per para-no. {**22(b)**} of the afore-mentioned Order, the CIRP of the Corporate Debtor in the captioned application commences from the said Order *dated 16.04.2021*, and the same thereby duly forms part of the records for our consideration hereto.
5. The Financial Creditor submits that pursuant to the initiation of the Consolidated CIRP, it sought to issue a Demand Notice on 09.07.2021 in Form-B under Rule 7(1) of the *Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019*, to the Respondent herein demanding forthwith payments towards “*..the unpaid debt in default in full within fourteen days from the receipt of this letter failing which insolvency resolution process, under the Code, shall be initiated against you.*” However, the Personal Guarantor, per the Financial Creditor herein, has failed to act thereupon.
6. We have heard the learned counsel for the Applicant *viz.* Financial Creditor herein, and have duly perused the documents on record.
 - 6.1. We further note that the Personal Guarantor *viz.* Respondent herein, has chosen to not appear in the instant proceedings apropos the captioned petition



despite umpteen service of notice(s). Notwithstanding the same, and in the interest of principles of natural justice, this Bench sought to direct the Financial Creditor herein, *vide* Order dated 12.06.2024, “..to take out substituted service by way of publication of notice to the Corporate Debtor indicating the next date of hearing, in two daily newspapers; one in English and another in vernacular language i.e. Marathi and file proof of service before the next date of hearing.” The same was complied with by the Financial Creditor, but to no avail. This Tribunal was thus constrained to forfeit Personal Guarantor’s Right to file Reply, as duly recorded *vide* Order dated 21.10.2024.

7. We note that this Tribunal had appointed **Mr. Pradeep Kumar Kabra**, Insolvency Resolution Professional (“RP”) *vide* Order dated 22.03.2022 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* its Report dated 06.04.2022, after due examination of the application, documents filed along with the application, in addition to the requirements as mandated under clauses (1) to (10) of Section 99 of the IBC, 2016, has recommended that proceedings should be initiated “..of Mr. Narayan Pundlik Shenvi Prabhu (Personal Guarantor of M/s. Aditya Vidyut Appliances Limited) in order to recover the outstanding debt payable to the financial creditors as per the deed of guarantee executed dated 29.05.2018 between the SBI and personal guarantors.”
8. It is trite in law, that the liability of surety is co-extensive with that of the principal debtor. The proceedings in the present matter were put on hold since the constitutional validity of the Sections 94 to 100 of IBC, 2016, relating to the insolvency of personal guarantor was pending before the Hon’ble Supreme Court in the matter of **Dilip B. Jiwrajka V/s Union of India & Ors.** [WP (Civil) No. 1281 of 2021]. We are of the considered view that the captioned petition is complete in all aspects, and the present case is therefore fit for admission. Ordered accordingly.
9. In terms of the above, the captioned petition bearing C.P. (IB)/47/MB/2022 filed



u/s. 95 of the IBC, 2016 is hereby **Admitted** and the Insolvency Resolution Process stands initiated against **Mr. Narayan Pundlik Shenvi Prabhu** *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 Kabra**, Insolvency Resolution Professional, having Regd. No. IBBI/IPA-001/IP-P01104/2017-2018/11790, having address at *C/905, Ofira Building V.I.P Road, Bharthana, Vesu , Surat, Gujarat , 395007* [E-Mail: ippradeepkabra@gmail.com] 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 subsection (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)
13.11.2024

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)