

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

C.P.(IB)-250(MB)/C-III/2023

(Under Section 95(1) 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

Tata Capital Financial Services Limited

Having Registered Office at: 11th Floor Tower A,
Peninsula Business Park, Ganpatrao Kadam Marg,
Lower Parel, Mumbai- 400013.

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

Vs

Ushma D. Mehta

Residing at: D3/D4, Amal Fi, L.D. Ruparel Marg,
Malabar Hill, Mumbai-400006.

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

Order Pronounced on: 08.01.2024

CORAM:

SHRI CHARANJEET SINGH GULATI
HON'BLE MEMBER (T)

SMT LAKSHMI GURUNG
HON'BLE MEMBER (J)

Appearances:

For the Applicant : Adv. Akshay Sawant a/w. Adv. Yash Pitroda
i/b I.V. Merchant & Co.

For the Personal Guarantor: Adv. Rohan Agarwal a/w Adv. Riya
i/b Tushar Goradia

ORDER

Per: - Charanjeet Singh Gulati (Technical Member).

1. The Present Company Petition is filed under section 95(1) of Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) by **Tata Capital Financial Services Limited (“Financial Creditor/Petitioner”)** for initiating Insolvency Resolution Process against **Ushma D. Mehta (“Personal Guarantor”)** being the Personal Guarantor of Smart Card IT Solutions Private Limited (**“Principal Borrower”**).
2. The Principal Borrower is a private limited company incorporated under Companies Act, 1956 and is engaged into the business of manufacturing data cards. The Respondent herein has in his personal capacity as a personal guarantor guaranteed due repayment of the Equipment Finance Facility availed by Smart Card IT Solutions Private Limited, in the event of default.
3. The Petitioner vide Sanction Letter bearing reference no. CF\EF\Mum\1567716 dated 02.04.2018 sanctioned the Equipment Finance Facility for an amount of Rs.11,92,00,000/-(Rupees Eleven Crore Ninety-Two Lakh Only) for a period of 48 months at a floating rate of interest @ 11% p.a. and on the additional terms and conditions set out therein.
4. The Principal Borrower had availed the Equipment Finance Facility from the Petitioner and executed a Loan Cum Hypothecation Cum Guarantee Agreement dated 16.04.2018 which was executed by and between the Petitioner and the Principal Borrower along-with the Personal Guarantors to the Principal Borrower Mrs. Ushma Deven Mehta and Mr. Deven Jitendra Mehta.
5. Net Worth Affidavit was executed by the Respondent in favour of Petitioner along with Letter of Undertaking cum Indemnity dated 16.04.2018 furnished by Corporate Debtor undertaking to abide by the terms and conditions of the sanction letter dated 02.04.2018.

6. The Principal Borrower defaulted in repayment of Equipment Finance Facility from February 2020 onwards, hence the Petitioner sent an E-mail on 06.06.2020 to clear the outstanding of Rs. 1,37,17,525/- (One Crore Thirty-Seven Lakhs Seventeen Thousand Five Hundred and Twenty-Five Only) as on 06.06.2020 along with interest, additional interest and further interest, costs, charges and expenses against Principal Borrower and the Personal Guarantors to Principal Borrower.
7. The Principal Borrower as well as the Personal Guarantors failed to reply to the email dated 06.06.2020 sent by the petitioner for repayment of the outstanding amount, thereby committing default in terms of Clause No. 17 of the said Loan cum Hypothecation cum Guarantee Agreement, and accordingly the loan account of the Principal Borrower came to be declared Non- Performing Asset ("NPA") by the Petitioner on 24.07.2020 as per the directive rules of the Reserve Bank of India.
8. The Petitioner after following up multiple times for repayment of the outstanding amount of Rs. 8,59,72,629/- (Eight Crores Fifty-Nine Lakhs Seventy-Two Thousand Six Hundred and Twenty-Nine Only) due as on 30.07.2020, in view of default as per Clause No. 17 of the said Loan cum Hypothecation cum Guarantee Agreement, through its Authorized Officer issued a Demand Notice under section 13(2) of SARFAESI Act, 2002 on 05.08.2020 against the Principal Borrower to pay the entire amount due together within 60 days from the date of the notice.
9. The Principal Borrower issued cheques in favour Petitioner dated 7th May, 2020 of Rs.50,00,000/- (Fifty Lakhs Only), 18.06.2020 of Rs. 50,00,000/- (Fifty Lakhs Only) and 05.09.2020 of Rs. 70,00,000/- (Seventy Lakhs Only) towards repayment of outstanding loan amount due, which on presenting before the bank got dishonoured. In view of same petitioner filed section criminal complaint under section 138 of Negotiable Instruments Act, 1881 against the principal borrower along with personal guarantors with the court of Metropolitan Magistrate-34, Ahmedabad.

10. The petitioner issued Demand Notice (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) Rules, 2019 dated 11.02.2022 to the Corporate Debtor along with Personal Guarantors for repayment of outstanding loan.
11. Due to the failure to pay the outstanding amount, Petitioner filed Section 95 Application bearing no. CP (IB)/640/2022 on 30.03.2022. During the pendency of the said Section 95 Application, the Respondent approached the petitioner to initiate the settlement of outstanding debt, hence the petitioner with the Personal Guarantors including but not limited to the Respondent herein entered into a Settlement Agreement dated 07.07.2022 wherein the personal guarantors agreed to repay the outstanding debt in various instalments and also other terms and conditions as mentioned in the Settlement Agreement.
12. As per the said Settlement Agreement, this tribunal, allowed the petitioner to withdraw the said Application filed under section 95 of the Code. Despite executing the said Settlement Agreement, the Respondent failed to make the due repayment towards the outstanding debt to the petitioner, thereby committing breach in terms and conditions under Clause Nos. 6 and 7 of the said Settlement Agreement.
13. Therefore, the Respondent has committed breach in terms and conditions as per Clause Nos. 6 and 7 of the said Settlement Agreement the entire outstanding amount of Rs. 10,68,79,941/- Rupees Ten Crores Sixty-Eight Thousand Seventy-Nine Thousand Nine Hundred and Forty-One Only) as on 25 January, 2022. Furthermore, the said Settlement Agreement shall also stand terminated.
14. In view of the failure to comply with the terms and conditions under the said settlement agreement the petitioner once again issued a fresh Demand Notice (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) Rules,

2019] dated 16th January, 2023 (“New Form B - Demand Notice”) to the Respondent herein.

15. The Personal Guarantor despite expiry of the period of 14 days from the date of service of Demand Notice failed to repay the debt. The documents enclosed with the present Application clearly establish the existence of the debt/outstanding amount and failure/default on the part of the Corporate Debtor as also the Personal Guarantor to repay the same.

16. In such circumstances, the Financial Creditor has filed the present Petition.

17. 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

18. 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. Bhaskar Gopal Shetty**, having Reg. No: **IBBI/IPA-001/IP-P-01285/2018-19/12003**, Email: cabgshetty@gmail.com as Resolution Professional (“RP”) in the matter. 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.

19. This Bench also directs for an advance payment of Rs.2,00,000/- (Rupees Two Lakhs 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).
20. 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**.
21. The Applicant is directed to serve copy of the application and the order on the Resolution Professional.
22. List the matter for report of the RP on **08.02.2024**.

Sd/-

CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)

Sd/-

LAKSHMI GURUNG
(MEMBER JUDICIAL)

Arpan, LRA