

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT-III  
IB-1038(ND)2020**

Under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), Rules 2019.

**IN THE MATTER OF:**

**STATE BANK OF INDIA**

*Having its registered office at:*

State Bank Bhavan, Madame Cama Road,  
Nariman Point, Mumbai, Maharashtra-400021.

**..... Applicant/Financial Creditor**

**Versus**

**Mr. ARVIND DHAM,**

**R/o B-7, Geetanjali Enclave, New Delhi-110017.**

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

**Order delivered On: 28.02.2024**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For Applicant : Mr. Siddhant Kant, Ms. Charu Bansal and Mr. Prithviraj Oberoi, Advs.  
For RP : Mr. Abhishek Anand and Mr. Karan Kohli, Advs.  
For Respondent : Ms. Varsha Banerjee, Adv.

**ORDER**

**PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

1. The present application has been filed by State Bank of India, the Applicant under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating

Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), Rules 2019 against Mr. Arvind Dham, the Personal Guarantor to the Corporate Debtor.

- 2.** It is submitted that the Applicant had disbursed credit facilities to the tune of Rs. 244,25,00,000/- to the Corporate Debtor by way of four separate loan agreements, namely: a) Rs. 125,00,00,000/- vide Term Loan Agreement dated 26 November 2012 ("Term Loan I"); b) Rs. 75,00,00,000/- vide Term Loan Agreement dated 29 November 2012 ("Term Loan II"); c) Rs.28,00,00,000/- vide Corporate Loan Agreement dated 21 December 2015 ("Corporate Loan I") and d) Rs.16.25,00,000/- vide Corporate Loan Agreement dated 13 January 2016 ("Corporate Loan II").
- 3.** The payments in respect of Term Loan II and Corporate Loan II are guaranteed by the Personal Guarantor up to a sum of Rs.91,25,00,000/- vide Deed of Guarantee dated 13 January 2016 and payments in respect of Corporate Loan I are guaranteed by the Personal Guarantor up to a sum of Rs. 28,00,00,000/- vide Deed of Guarantee dated 14 January 2016. The Term Loan II, Corporate Loan I and Corporate Loan II are collectively referred to as "Loan Agreements", which are secured by way of Deeds of Guarantee. Additionally, default on part of the Corporate Debtor under the Loan Agreements is also reflected in the records of default/ debts, as registered with National E-Governance Services Limited ("Information Utility").
- 4.** On 08 January 2019, an application under Section 9 of the Code was admitted against the Corporate Debtor by this Adjudicating Authority and accordingly, the Corporate Insolvency Resolution Process ("CIR Process") with respect to the Corporate Debtor was initiated.
- 5.** This Adjudicating Authority vide order dated 23.11.2020 appointed Mr. Gian Chand Narang (having IBBI Registration: IBBI/IPA-002/IP-N00362/2017-18/11031) as the Resolution Professional and the Resolution Professional was directed to submit a report in terms of Section 99 IBC. Accordingly, the Resolution Professional has filed a report and a

copy of the said report has been duly served on the Personal Guarantor by all modes.

6. The Resolution Professional has filed its report before this Adjudicating Authority on 02.12.2020. The Recommendations of the Resolution Professional are as under:

*“24.1. The Insolvency Application has been filed in the requisite form, Form C, in terms of Rule 7 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019, supported by requisite fee and documents;*

*24.2. The Insolvency Application satisfies the requirements set out in Section 95 of the Code;*

*24.3. The Personal Guarantor was duly served with demand notice dated 19 August 2020 by the Financial Creditor for repayment of the debt owed by him to the Financial Creditor in terms of the provisions of the Code prior to filing the Insolvency Application, but the Personal Guarantor failed to repay the same.*

*24.4. In fact, even prior to the issuance of demand notice under the Code, a notice under Section 13 (2) of the SARFAESI Act, 2002 was served upon the Corporate Debtor and Personal Guarantor, Mr Arvind Dham, on 24 September 2018, however, no payment has been made by the Personal Guarantor in terms of the Deeds of Guarantee.*

*24.5. The undersigned has also sent a communication to the Personal Guarantor, Mr Arvind Dham, vide e-mail dated 25 November 2020, immediately on receipt of aforesaid order of this Hon'ble Tribunal, dated 23 November 2020, in terms of Section 99 (2) of the Code, asking him to prove repayment of debt claimed as unpaid by the Financial Creditor. However, till date no response has been received from him.*

*24.6. The Financial Creditor has submitted copies of reports downloaded from the Information Utility, evidencing registration of outstanding debts/default by the Corporate Debtor, as "Deemed to be Authenticated".*

*24.7. The Insolvency Application does not relate to "excluded debts" as defined under Section 79(15) of the Code.*

*24.8. The Personal Guarantor, is not eligible for fresh start under Chapter II of the Code.”*

- 7.** In Response to the Report filed by the Resolution Professional, the Personal Guarantor filed its reply and stated that the Resolution Professional has completely ignored the fact that the instant petition is barred by law and limitation and merely reiterated the contents of the application. The Resolution Professional has also not disclosed in his report, the fact of admission of SBI's entire claim in the ongoing CIRP of Stride, which denotes that the instant application has been filed on basis of an overlapping claim which renders the instant proceedings infructuous and bad in law.
- 8.** We have heard the submissions made by Ld. Counsel for the Applicant, Resolution Professional and Personal Guarantor and perused the report.
- 9.** On a perusal of the report, we find that the Resolution Professional has given reasonable opportunity following the principle of Natural Justice and has taken into consideration the various documents including copies of the record of default maintained by the Information Utility, in relation to the loan agreements with respect to Term Loan II Corporate Loan I & Corporate Loan II.
- 10.** We are satisfied with the grounds/reasons given by the Resolution Professional for the initiation of the Insolvency process against the Personal Guarantor. The Objections raised by the Personal Guarantor are not substantiated with adequate evidence and are not tenable. Having regard to the facts and circumstances of the case, we are of the view that the personal insolvency ought to be initiated against the Personal Guarantor.
- 11.** The Insolvency process is initiated against the Respondent - Personal Guarantor. The moratorium begun on the date of admission of the application shall cease to have effect at the end of the period of 180 days from the date of this order. During the moratorium period, the following provisions shall be in effect:

- i. Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and
  - ii. The Creditors of the Debtor shall not initiate any legal action or proceedings in respect of any debt; and
  - iii. The Debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;
  - iv. 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.
- 12.** The Resolution Professional is directed to cause a public notice to be published within 7 days of uploading of this order on the website of this Adjudicating Authority for inviting claims from all Creditors, who shall register their claims as provided under Section 103 of IBC within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102(2) of IBC.
- 13.** The publication of the notice shall be made in newspapers, one in English and the other in Vernacular which have wide circulation in the state.
- 14.** The Resolution Professional in exercise of the powers conferred under Section 104 of IBC shall prepare a list of creditors within 30 days from the date of the notice. The Debtor shall prepare a repayment plan in consultation with the Resolution Professional as provided under Section 105 of IBC which shall include the provisions for payment of fee to the Resolution Professional. The Resolution Professional shall submit the repayment plan along with his report on the plan to this Adjudicating Authority within a period of 21 days from the last date of submission of claims as provided under Section 106 of IBC.
- 15.** In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof. If the Resolution Professional is of the opinion that the meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of IBC. The date of the 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, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all relevant/feasible modes. Such notice must contain the details as provided under the provisions of Section 107 of IBC.

- 16.** The meeting of the Creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC. The Resolution Professional shall prepare a report of the meeting of the creditors on the repayment plan with all details as provided under Section 112 of IBC and submit the same to this Adjudicating Authority, copies of which shall be provided to the debtor and the creditors.
- 17.** The Applicant is directed to deposit Rs.2,00,000/- to the bank account of Resolution Professional within one week, towards his fees. This shall be subjected to the rules and regulations under the provisions of IBC, 2016. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under IBC, 2016.
- 18.** In view of the above IB-1038(ND)/2020 stands **disposed of**.

Sd/-  
**(ATUL CHATURVEDI)**  
**MEMBER (TECHNICAL)**

Sd/-  
**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**