



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

**C.P. (IB) NO. 12/MB/2022**

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*

State Bank of India  
...Applicant/Financial  
Creditor

*Versus*

Vijaylaxmi Narayan  
Shenvi Prabhu

...Respondent/Personal  
Guarantor

**Order pronounced on 16.02.2024**

***Coram:***

Hon'ble Member (Judicial) : Justice V. G. Bisht (Retd.)  
Hon'ble Member (Technical) : Sh. Prabhat Kumar



***Appearances:***

For the Applicant/Financial Creditor : None  
For the Resolution Professional : Mr. Aniket Malu,  
Ld. counsel  
For the Respondent : None

**ORDER**

*Per* : Justice V. G. Bisht (Retd.)

**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 **State Bank of India** (“hereinafter referred to as Applicant/Financial Creditor”) for the purpose of initiating insolvency process against **Mrs. Vijaylaxmi Narayan Shenvi Prabhu** (“hereinafter referred to as Personal Guarantor”) for recovery of INR 89,89,34,410.64/- (Rupees Eighty Nine Crore Eighty Nine Lakh Thirty Four Thousand Four Hundred Ten and Sixty Four paise only) as on 30.06.2021 with further interest and applicable charges accruing thereon w.e.f. 01.07.2021. The Date of Default, as specified in Part-III of the present petition, is **14.08.2019**.
2. The Applicant was incorporated on 01.07.1955 bearing CIN U85100MH2015NPL266051 having its registered address at Stressed Asset Management Branch-I, “The Arcade”, 2<sup>nd</sup> Floor, World Trade centre, Cuffe Parade, Mumbai-400005.
3. The Personal Guarantor, viz. Mrs. Vijaylaxmi Narayan Shenvi



Prabhu having his address at B-2/4, Runwal Nagar CHS Limited, Kolbad Road, Near Flower Valley, Kolbad, Thane (W) – 400601 executed a Guarantee deed dated 29.05.2018 parties being the Personal Guarantor, the Applicant, and the Corporate Debtor, viz. Aditya Vidyut Appliances Ltd., bearing CIN U31200MH1989PLC052364 incorporated under the Companies Act, 1956 and having its registered office at Survey no.168, Hissa no.10, Sonale Village, Bhiwandi Bypass Road, NH-3 Bhiwandi MS Mumbai Thane- 421302. The Personal Guarantor is a shareholder of the Corporate Debtor holding shares amounting to Rs. 1,99,35,810/.

4. The Financial Creditor upon request by the Corporate Debtor, since 2008 has granted various credit facilities to the Corporate Debtor on terms and conditions as stipulated in the sanction.
5. In 2017, the Financial Creditor, upon request by the Corporate Debtor and its guarantors had renewed the credit facilities granted to the Corporate Debtor. In consideration of the credit facilities granted to the Corporate Debtor, the Guarantor executed a supplemental deed of guarantee dated 25.05.2018 in favour of the Financial Creditor, providing an irrevocable and continuing guarantee for the repayment of the facilities availed by the Borrower/Corporate Debtor.
6. Upon failure to fulfil its obligations on the part of the Corporate Debtor towards the Financial Creditor in relation to the credit facilities granted by the Financial Creditor, the account of the Corporate Debtor was classified as a non-performing asset by the Financial Creditor as on 16.10.2018. The Financial Creditor, through its advocates, issued a recall notice dated 30.07.2019 recalling the amounts payable by the Corporate Debtor to the



Financial Creditor to be repaid within a period of 7 days from the receipt of the recall notice by the Corporate Debtor.

7. This Tribunal vide its order dated 11.09.2019 commenced the CIRP proceedings against the Corporate Debtor. The Financial Creditor, on 09.07.2021, issued a demand notice u/r 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 to the Guarantor. Further vide order dated 16.04.2021 this Tribunal admitted the Company Petition IA. 1068/2020 in C.P. No. 547/I&B/MB of 2020 & IA. 78/2021 in C.P. 547/I&B/MB/2020 and C.P. 193/I&B/MB/2019 filed by Committee of Creditors of M/s. Aditya Vidyut Appliances Limited and M/s. Aditya Fabrication Private Limited through State bank of India (Applicant) V/s. M/s. Aditya Vidyut Appliances Limited (Respondents) permitting consolidated Corporate Insolvency Resolution Process ("CIRP") against the M/s. Aditya Vidyut Appliances Limited and M/s. Aditya Fabrication Private Limited.
8. Since the debt still stands due, the Financial Creditor has filed the present petition u/s 95 of the Code r/w rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019.
9. Vide order dated 25.07.2023, this bench appointed Mr. Pradeep Kumar Kabra, as Resolution Professional having Registration No. IBBI/IPA-001/IP-P01104/2017-2018/11790 to examine the petition and file his report within 10 days from the date of communication of the said order.
10. Further, the Resolution Professional had filed IA 5006/2023 to



place the report on record. Accordingly, the report was submitted and taken on record. Hence, vide order dated 02.11.2023, the said IA was allowed and disposed of.

11. The Respondent till date has not filed and placed on record Affidavit in Reply to the main Company Petition. Also, when the copy of the Petition and report was tried to be served upon the Respondent/Personal Guarantor, the Respondent refused to accept the same. In view of the above, the present Company Petition against the Respondent/Personal Guarantor is thus proceeded ex-parte.
12. The ground(s) for admission of the present application, as recorded in the said RP report, are reproduced in-verbatim as hereinafter:

***“OBSERVATION AS REGARDS ADMISSION OF APPLICATION:***

*In pursuant to non-receipt of any response on the Demand Notice (Form B) served to the personal guarantor on 09.07.2021, the Financial Creditor filed the Petition in ‘Form C’ under Section 95 of the Code read with rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, against the Personal Guarantors before the Hon’ble National Company Law Tribunal, Mumbai Bench, on 30th October 2021 with respect to the initiation of Individual Insolvency Resolution Process of Personal Guarantors to the Borrower.*

*The Hon'ble National Company Law Tribunal (Mumbai Bench) passed an order dated 25th July, 2023; (received on 04th August, 2023) (Case No.: C.P. (IB) No. 12/MB/2022) w.r.t. the appointment of RP Pradeep Kumar Kabra as per Section 97 of the*



*Insolvency and Bankruptcy Code, 2016 (“Code”) and directed the RP to submit the RP Report as per Section 99 of the Code on admission or rejection of the application made by the Financial Creditor under Section 95 of the Code.*

*On scrutiny of application under section 95 of the Code served by financial creditor State Bank of India, Mrs. Vijaylaxmi Narayan Shenvi Prabhu stood as a personal guarantor for the credit facilities granted to M/s Aditya Vidyut Appliances Limited.*

*Thus, Resolution Professional is of the view that application should be accepted and proceedings should be initiated with respect to the Individual Insolvency Resolution Process of Mrs. Vijaylaxmi Narayan 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. The present application is filed against the personal guarantor in the prescribed format and is complete in all respects.”*

13. It is trite in law, 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.”*

Furthermore, the Hon’ble NCLAT in *UV Asset Reconstruction Company Ltd. v. Electrosteel Castings Ltd.* [Company Appeal (AT)(Ins) 975/2022] has held that extinguishment and effacement of entire debt on account of approval of the resolution plan “..has to confine to the finding qua Corporate Debtor only and the finding cannot be read to mean that approval of Resolution Plan has led to extinguishment and effacement of entire debt against third party..”

In light of the aforesaid observations, it is accordingly hereby ordered.

**Findings:**

14. Heard learned counsel for the Applicant and perused the documents on record.
15. In terms of the above, the C.P. (IB)/12/MB/2022 filed under Section 95 of the IBC, 2016 is hereby **Admitted** and the Insolvency Resolution Process stands initiated against Mrs. Vijaylaxmi Narayan 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 Registration No. IBBI/IPA-001/IP-P01104/2017-2018/11790, having registered address at C/905, Ofira Building, VIP Road, Bharthana, Vesu, Surat – 395007 and business address at M-19, metro Tower, Ring road, Surat – 395002 [E-Mail: [ippradeepkabra@gmail.com](mailto:ippradeepkabra@gmail.com) , [pradeepkabraca@gmail.com](mailto:pradeepkabraca@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 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)**