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

C.P. NO. 244(IB)/MB/2021

Under Section 95 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 Debtor) Rules, 2019

DBS BANK INDIA LIMITED (formerly known as DBS BANK LIMITED)
a banking company incorporated under the Companies Act, 2013,

Having its registered office at:
Ground Floor Nos. 11 and 12, and
First Floor- Nos. 110 to 115,
Capital Point, BKS Marg, Connaught Place,
New Delhi – 110 001.

Having its branch office at:
Ground Floor, Express Towers,
Nariman Point, Mumbai – 400 021.

.... Petitioner/ Financial Creditor

Versus

Mr. Vijay Kumar
Having its residential address at:
410, Mittal Park,
"E-Wing", Rula Park,
Juhu, Mumbai – 400 050.

.... Respondent/ Personal Guarantor

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

C.P. NO. 244(IB)/MB/2021

Order Pronounced on: 03.01.2025

Coram:

Hon'ble Smt. Lakshmi Gurung, Member (Judicial)

Hon'ble Shri Charanjeet Singh Gulati, Member (Technical)

Appearances:

For Petitioner: Appeared but not marked their presence

For Respondent: Appeared but not marked their presence

PER: SHRI CHARANJEET SINGH GULATI, MEMBER (TECHNICAL)

ORDER

1. The present Company Petition (IB) No. 244 of 2021 is filed by DBS Bank India Limited **('the Petitioner'/ 'the Financial Creditor')** under Section 95 of the Insolvency and Bankruptcy Code, 2016 **('the Code'/ 'IBC')** 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 seeking to initiate Personal Insolvency Resolution Process against Mr. Vijay Kumar **('Respondent'/ 'Personal Guarantor')**.

2. DBS Bank India Limited, the Petitioner herein, is a public company incorporated under the Companies Act, 2013 on 07.02.2018 at Registrar of Companies at Delhi and that the company is limited by shares. The Petitioner is registered with Corporate Identification Number (CIN) U65999DL2018FLC329236. The Petitioner is a wholly-owned subsidiary of DBS Bank Limited, Singapore **('original lender')** and offers a range of financial and banking services.

3. The Respondent is the Managing Director of the Corporate Debtor since 1976.
4. M/s Bharati Defence and Infrastructure Limited (earlier known as M/s Bharati Shipyards Limited) **('Corporate Debtor')** availed a term loan facility as a Bilateral Foreign Currency Loan drawable in Japanese Yen (JPY) equivalent of USD 20 Million from the original lender **('Facility')**. The Petitioner in its capacity as an arranger to the facility disbursed the facility amount to the corporate debtor vide letter bearing reference number CDT/ADMIN/095/2008 dated 12.07.2008 **('Sanction Letter')**.

5. The Corporate Debtor as per the terms of the Sanction Letter was to drawdown the facility in equivalent Japanese Yen so to request the original lender to enter into swap arrangements with it in respect of the Facility to hedge currency risk to JPY. The Sanction Letter provides for a final maturity of the facility was 6 years from first drawdown date.

6. Accordingly, the corporate debtor in its meeting of Board of Directors held on 28.07.2008 resolved to borrow from the original lender a term loan of an amount not exceeding USD 20 Million. Therefore, creating a pari passu first charge on fixed assets/ current assets of the corporate debtor, present and future and to deposit title deeds in respect of the properties owned by Corporate Debtor which are situated at Dabhol, District Ratnagiri, Maharashtra and all properties acquired out of the funds lent by the original lender and to express it to create equitable mortgage thereon by way of security for the loan sanctioned to the corporate debtor.

7. The Petitioner acted as an arranger to the facility and a security trustee for the original lender. A Facility Agreement dated 12.08.2008 was entered between corporate debtor as a borrower, arranged by the Petitioner with Petitioner acting as a Security Trustee and the original

lender as an agent and lender to the facility. An extract of the amount sanctioned to the corporate debtor in terms of Facility Agreement is reproduced as under

"xxx

Schedule 1
THE ORIGINAL LENDERS

Name of Original Lender	Commitment
DBS Bank Ltd., Singapore Branch	US$20,000,000

xxx"

8. The Borrower shall apply all amounts borrowed by it under the Facility towards part financing its project costs of INR 5800m for a new shipyard in Dabhol, provided that the proceeds of each Loan may only be so applied in or towards any such purpose to the extent the same is in compliance with the guidelines on external commercial borrowings and trade credits set out by the RBI from time to time and all other applicable law and regulations of India.

9. In pursuance to the terms of the Sanction Letter, a Demand Promissory Note dated 10.09.2008 at Mumbai was executed between the corporate debtor and the petitioner for a sum of USD 20 Million.

10. Further, the Facility was secured by Personal Guarantee of the Respondent, Shri Vijay Kumar vide Deed of Guarantee dated 30.03.2010. The personal guarantee as referred to herein was characterised as unconditional, irrevocable, joint, several and continuing guarantee. Accordingly, the Respondent is to pay and satisfy to the Petitioner Bank on demand all indebtedness as primary obliger to the Corporate Debtor.

11. The Petitioner issued a demand notice in Form-B read with Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority

for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 dated 21.09.2020 under Section 95 of the Code to the Respondent **('said Demand Notice')**. The said Demand Notice was addressed for requiring the respondent to repay unpaid debt of INR 2,32,01,43,673.35 (calculated as on 31.07.2020), within fourteen days from the date of receipt of the letter.

12. Later, a reply to said Demand Notice dated 30.10.2020 was addressed by the advocate of personal guarantor to the petitioner contending that the said Demand Notice is vague and ambiguous.

13. Thereafter, the Petitioner vide letter bearing no. VBD/2021 dated 11.01.2021 addressed a rejoinder to reply of the said Demand Notice to the Corporate Debtor.

14. However, the Corporate Debtor and the Respondent failed to repay the debt despite numerous letters and reminders by the Petitioner towards the Facility availed thereby, making the default a continuing one. In view of the aforesaid, the Present application has been filed for appointment of Resolution Professional under section 95 of IBC.

15. The present proceedings under Section 95 of the Code do not necessitate a substantive adjudication of the merits of the submissions contained within the reply and rejoinder to the Demand Notice. The instant petition is governed by the established precedent set forth by 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, wherein the Hon'ble Supreme Court upheld the constitutional validity of Sections 94 and 100 of the Code and have observed as follows-:

" xxxxx.......

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.

...xxxxxxx"

(emphasis provided)

16. The Petition for initiating insolvency resolution process against Personal Guarantor to the Corporate Debtor is in prescribed form as mandated under section 95(6) of the IBC, and a copy of this present petition was served on the Personal Guarantor/ Respondent via post on 03.02.2021. Therefore, provisions of Section 95 have been satisfactorily complied with.

17. The Counsel for the Petitioner has not submitted a valid AFA of the Resolution Professional (RP) to be appointed under the Code. Thereafter, we appoint **Pournima Jayant Tungatkar (IBBI/IPA-002/IP-N01188/2021-2022/13989),** e-mail ID: tungatkarpournima@gmail.com; Mobile No.: 9766255395 as a Resolution Professional (RP) from the panel of RP maintained by the Insolvency and Bankruptcy Board of India (IBBI) in the present Petition.

18. The fee payable to Resolution Professional shall be in accordance with the Regulations/Circulars/Directions issued by the IBBI in this regard.

19. This Bench also directs for an advance payment of Rs. 2,00,000/- to be paid by the Financial Creditor to the Resolution Professional immediately to initiate the process which shall be adjusted towards the fee and expenses payable to the Resolution Professional.

20. The interim-moratorium under Section 96 of the Insolvency and Bankruptcy Code, 2016 has commenced on the date of filing of this application by the Financial Creditor and will cease to have effect on the date of admission. During such interim-moratorium period (i) any legal action or proceeding pending 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.

21. The Resolution Professional as appointed is directed to examine the application as set out in Section 97(6) of IBC, 2016 including but not limited to issue relating to limitation and invocation of Personal Guarantee of the Respondent by the Petitioner and shall submit his report as provided under Section 99(1) of IBC, 2016, **within 10 days** of the receipt of this order.

22. Further, the Registry is hereby directed to communicate this order to Financial Creditor, Personal Guarantor, Corporate Debtor and Resolution Professional even by way of e-mail correspondence immediately. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record. The Petitioner is also directed to forthwith communicate this order to the Resolution Professional.

23. List the matter as and when the Report is filed by RP by way of an I.A.

Sd/-

CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)

Sd/-

LAKSHMI GURUNG
(MEMBER JUDICIAL)

Akshita, L.R.A