IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH COURT III

C.P. No. (IB) 59/MB/C-III/2023

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 Debtors) Rules, 2019.

In the matter of

Bank of Maharashtra

Having registered office at:

Stressed Asset Management Branch 'Janmangal', 4^{th} Floor, 45/47, Mumbai Samachar Marg, Fort, Mumbai - 400001

... Financial Creditor/Petitioner

Vs.

Mr. Shashank Gokhale

Having address at:

8-B-287, Yoganand Society, Vazira, Borivali (W), Mumbai - 400091

... Personal Guarantor/Respondent

Order pronounced on: 05.04.2024

Coram:

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

Hon'ble Sh. Charanjeet Singh Gulati (Technical)

Appearances:

For the Financial Creditor	:	Adv. Subir Kumar a/w Adv. Disha Shah i/b SDS ADVOCATES
For the Personal Guarantor	:	Adv. Atishay Jain i/b. Adv. Kunal Kanungo

***Per:* Shri Charanjeet Singh Gulati, Member (*Technical*)**

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1. This Petition has been filed by Bank of India ("**Petitioner/ Financial Creditor"**) under section **95** of the Insolvency and Bankruptcy Code, 2016 (**"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 ("**Rules**") seeking to initiate Insolvency Resolution Process against Mr. Shashank Gokhale being the Personal Guarantor of M/s Brainer Impex Limited ("**Corporate Debtor**").

2. The Corporate Debtor and its guarantors approached the Financial Creditor in 2011 and requested for cash credit facility of Rs. 9,75,00,000/- for business purpose which was sanctioned by the Financial Creditor vide Sanction Letter dated 04.08.2011. In order to secure the repayment of the said credit facilities, the Personal Guarantor executed Guarantee Bond dated 25.10.2011 in favour of the Financial Creditor. Copy of the Continuing Guarantee Deed is annexed to the Petition.

3. It is submitted that the Corporate Debtor defaulted in repayment of the debt in consequence of which a Notice dated 17.04.2015 under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**SARFAESI Act**) was issued calling upon the Corporate Debtor along with the Personal Guarantors to repay the total outstanding due of Rs. 10,67,73,935.

4. Thereafter, an application no. 983/2016 was filed by the Financial Creditor against the Corporate Debtor before the Debts Recovery Tribunal, Pune (**DRT**) which is pending adjudication.

5. Meanwhile, the Corporate Debtor was admitted into CIRP vide this Tribunal's Order dated 24.06.2019 passed in CP (IB)/4134/MB/2018 filed by Cosmos Co-op Bank Limited. Upon failure of the resolution process, liquidation of the Corporate Debtor was ordered by this Tribunal vide order dated 23.09.2021.

6. As already stated above, the Financial Creditor invoked the personal guarantee vide notice dated 17.05.2015 under the SARFAESI Act. However, the Respondent failed to respond to the notice and/or paid the amount due and payable within 60 days from the date of receipt of the notice. Therefore, the default occurred on 17.07.2015.

7. Thereafter, a Demand Notice dated 27.06.2022 was issued in Form B under Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 to the Personal Guarantor of the Corporate Debtor calling upon him to pay the default amount of Rs. 13,32,59,257 (principal + interest). Copy of demand notice is annexed to the Petition. It is submitted that despite the service of Demand Notice, the Personal Guarantor failed to pay the debt. Hence, the Financial Creditor filed the present petition.

8. 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

9. The Petition for initiating Insolvency Resolution Process against Personal Guarantor to the Corporate Debtor is complete in accordance with section 95 of Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.

10. The Petitioner/Personal Guarantor has proposed the name of **Mr. Anil Kashi Drolia,** Registration No. IBBI/IPA-001/IP-P02327/2020-21/13482, to act as Resolution Professional. The Written Consent of the proposed RP dated 09.01.2023 as required under Regulation 4(2) of the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 is annexed to the Petition.

11. Accordingly, **we appoint Mr. Anil Kashi Drolia** to act as the **Resolution Professional (RP)** in the matter. The fee payable to RP shall be in accordance with the Insolvency and Bankruptcy Board of India (IBBI) Regulations/ Circulars/ Directions issued in this regard.

12. This Bench also directs for an advance payment of Rs. 50,000/- (Rupees Fifty Thousand 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 RP.

13. The Petitioner is directed to serve copy of the Petition and the Order on the Resolution Professional.

14. The Registry is also directed to send a copy of this order to the Resolution Professional for their record.

15. The Resolution Professional is directed to examine the application including the issue of limitation and to submit its report in accordance with Section 99 of the I&B Code **within 10 days**.

16. List the matter for report of the Resolution Professional on **29.04.2024**.

17. Accordingly, the Company Petition No. 59/MB/2023 stands **allowed** in above terms.

Sd/-	**Sd/-**
Charanjeet Singh Gulati	**Lakshmi Gurung**
Member (Technical)	**Member (Judicial)**

Uma, LRA