

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT – III

C.P. NO. 835(IB)/MB/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 Debtor) Rules, 2019

State Bank of India

Through Ashish Saoji
(Insolvency Professional),
Having office at: State Bank Bhavan,
Madame Cama Road, Nariman Point,
Mumbai, Maharashtra – 400 021.

.... Petitioner/ Financial Creditor

Versus

Mr. Ishwarlal Shankarlal Lalwani (Jain)

Residing at: 169, Balaji Peth, Johari Bazar,
Jalgaon, Maharashtra – 425 001.
Also at: 189, Johari Bazar,
Jalgaon, Maharashtra – 425 001.

.... Respondent/ Personal Guarantor

Order Pronounced on: 30.10.2024

Coram:

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

Hon'ble Shri Charanjeet Singh Gulati (Technical)

Appearances:

For Petitioner: Adv. Fatema Kachwalla

For Respondent:

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PER: SHRI CHARANJEET SINGH GULATI, MEMBER (TECHNICAL)

ORDER

1. The present Company Petition (IB) No. 835 of 2023 was filed by the State Bank of India, through Ashish Saoji (**‘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 (**‘CIRP’**) against Mr. Ishwarlal Shankarlal Lalwani (Jain) (**‘Respondent’/ ‘Personal Guarantor’**).
2. State Bank of India, the Petitioner, herein is a body corporate constituted under the State Bank of India Act, 1955 (23 of 1955) on 01.07.1955. The Petitioner amongst its many functions as a ‘Bank’ in the present case provides financing Facility to small scale industries.
3. The Petitioner had extended certain Demand Cash Credit/ Working Capital Term Loan to a small industry, M/s Rajmal Lakhichand Jewellers Private Limited (**‘the Corporate Debtor’**) vide Sanction Letter dated 28.01.2006 (**‘Facility’**). The Facility was renewed and enhanced up to the tune of Rs. 243.88 Crores. The Facility was secured by the personal guarantee of the Respondent and other guarantors.
4. The Respondent is the Director and Shareholder of the Corporate Debtor. Further, the Respondent holds shares of the Corporate Debtor which is pledged with the Financial Creditor. The Respondent had executed multiple deed of guarantees with and other guarantors to secure the Facility as follows:-

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Sr. No.	Date of Guarantee Agreement	Types of Guarantee	Amount Secured (in Rupees)
1.	28.04.2009	Personal Guarantee	168.05 Crores
2.	10.03.2011	Third-Party Guarantee <i>in the individual capacity</i>	190.80 Crores
3.	30.03.2013	Personal Guarantee	243.88 Crores
4.	30.03.2013	Corporate Guarantee <i>in the capacity of the partner/director of the Corporate Debtor</i>	243.88 Crores

5. The Corporate Debtor defaulted in repayment towards the Facility despite numerous letters and reminders by the Petitioner. Accordingly, the account of the corporate debtor was declared as a Non-Performing Asset on 29.03.2013 for an amount of Rs. 541.40 Crores. Pursuant to such reminders, the petitioner issued a demand/recall notice dated 20.05.2016 as per Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (**'SARFAESI'**) to both the principal borrower/corporate debtor and other guarantors of the borrowers (**'Date of Default'**). Further, the Respondent in regards to the said debt payable has time to time acknowledged its liability towards the applicant.
6. The Petitioner has therefore, filed a Section 7 Company Petition (IB) No. 543 of 2022 on 02.04.2022 and initiated CIRP proceedings against the

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corporate debtor, which is pending before the Hon'ble National Company Law Tribunal at Mumbai. Also, recovery proceedings is filed before the Hon'ble Debts Recovery Tribunal at Aurangabad as Original Application No. 197 of 2016 against the Corporate Debtor.

7. Further, due to failure in repayment towards the Facility, the Petitioner issued a demand/recall notice under 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 16.06.2022 to the Respondent (through Registered Post dispatched on 18.06.2022) under Section 95 of the Code (**'said Demand Notice'**).
8. The Personal Guarantor/ Respondent defaulted to make payment of Rs. 5,71,41,34,813.21 (calculated as on 31.05.2022) together with interest and other charges as per the contractual rate with effect from 01.06.2022 till full payment thereof within fourteen (14) days of service towards the said Demand Notice thereby, making the default a continuing one (**'said Outstanding Debt'**). Further, The Respondent has not provided any security against the Facility hence, the said Outstanding Debt is unsecured as disclosed in demand notice under Form-B of the Code.
9. In view of the aforesaid, the present Company Petition has been filed for appointment of Resolution Professional under section 95 of IBC.
10. 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 upheld the constitutional validity of Sections 94 and 100 of the Code as follows-:
- “ xxxxx.....
- i. *No judicial adjudication is involved at the stages envisaged in Section 95 to Section 99 of the IBC;*

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- 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)

11. 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 e-mail dated 24.11.2022.
12. The petitioner has suggested the name of Resolution Professional (RP) and we hereby appoint, **Mr. Ashish Saoji**, Chartered Accountant, having Registration No. IBBI/IPA-001/IP-PO1268/2018-19/12150, e-mail id: ashishsaoji@gmail.com as RP. The Petitioner in compliance with order dated 06.02.2024 has placed on record a renewed Authorisation of Assignment (**'AFA'**) of the proposed RP which is valid from 19.12.2023 to 18.12.2024, before this Tribunal on 09.10.2024.
13. 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.
14. This Bench also directs for an advance payment of Rs. 2,00,000/- 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).

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15. 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.
16. The Resolution Professional 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 Bank 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.
17. Further, the Registry is hereby directed to communicate this order to Financial Creditor, Personal Guarantor, Corporate Debtor and Resolution Professional through speed post and 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.
18. List the matter as and when the Report is filed by RP by way of an I.A.

Sd/-

CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)

Akshita, L.R.A

Sd/-

LAKSHMI GURUNG
(MEMBER JUDICIAL)