IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No. 301
CP(IB) 244 of 2021

Order under Section 95 of IBC, 2016

In The Matter Of:

State Bank of India ....**Applicant**
V/s
Mohit S Sharma ....**Respondent**

Order delivered on: 23/02/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD- **-SD-**

SAMEER KAKAR
MEMBER (TECHNICAL)

SHAMMI KHAN
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-I, AHMEDABAD

CP/IB/244/AHM/2021

Filed under Section 95 of the Insolvency & Bankruptcy Code, 2016

In the matter of ***Mr. Mohit S. Sharma***

State Bank of India
Registered office at
Stressed assets management branch,
Paramsiddhi Complex, 2nd Floor,
Opp. V.S. Hospital Ellisbridge
Ahmedabad-380006
Through
The Deputy General Manager … Financial Creditor

V/s

Mr. Mohit S Sharma
(Personal Guarantor)
At-Plot No.30 Sector 1
Gandhidham, Gujarat … Personal Guarantor

Order pronounced on 23.02.2024

CORAM:
SH. SHAMMI KHAN, MEMBER (JUDICIAL)
SH. SAMEER KAKAR, MEMBER (TECHNICAL)

APPEARANCE:
For the Applicant : Mr. Mandeep Saluja, Ld. Adv.
For the Respondent : Mr. Mohit Gupta, Ld. Adv.

O R D E R

1. The Present Application is filed under Section 95 of the Insolvency and Bankruptcy Code. 2016 (hereinafter referred to as IBC, 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 by State Bank of India (hereinafter referred to as "Financial Creditors") for the purpose of initiating insolvency process against Mr. Mohit S Sharma (hereinafter referred to as "Personal Guarantors") for a default amount of **Rs.27,19,11,952.01/-** including interest, penal interest, devolvement of Bank Guarantee & other charges. The date of default is stated to be **28.06.2017**.
2. In so far as the Personal Guarantor to Corporate Debtor is concerned, the Hon'ble Supreme Court of India in the matter of Lalit Kumar Jain vs. Union of India & Ors. in the Transferred Case (Civil) No.245/2020 has upheld the vires of the notification issued by the Central Government vide S.O. 4126(E) dated 15.11.2019, in so far as it relates to coming into force of Insolvency and Bankruptcy Process of Personal Guarantors to Corporate Debtor. Thus, when a Corporate Insolvency Resolution Process in relation to Corporate Debtor is pending before this Adjudicating Authority, then as per Section 60(2) of IBC, 2016 the NCLT would be competent forum to file an

Application for Personal Guarantor in relation to such Corporate Debtor. The Corporate Insolvency Resolution process in respect of CLS Industries Private Limited (hereinafter referred to as **"Corporate Debtor"**) was ordered by this Adjudicating Authority on 02.09.2020. Hence, the present application in respect of the Insolvency and Bankruptcy proceedings of the Personal Guarantor of the Corporate Debtor is filed by the Creditor before this forum.

3. The Financial Creditor had granted term loan and Cash Credit facilities amounting to Rs.11,50,00,000/, Rs.16,34,00,000/- and Rs.18,55,00,000/- to the Corporate Debtor vide sanction letter dated 02.02.2011, 15.02.2012 and 24.08.2016 respectively. The Personal Guarantor had executed Deed of Guarantee dated 02.02.2011, 15.02.2012 and 28.03.2014 for availing loan facility provided by the Financial Creditor. Subsequent to this another sanction letter dated 24.08.2016 was issued which was accepted by the Corporate Debtor as well as the Personnel Guarantor, after which default occurred in the accounts of the Corporate Debtor on 01.09.2017. Thereafter, the account of the Corporate Debtor was declared as a Non-Performing asset by the Financial Creditor on 28.06.2017.

4. Subsequently, the Financial Creditor issued notice under section 13(2) & 13(4) of SARFAESI Act, 2002 on 03.07.2017 and 06.10.2017 seeking repayment of dues of Rs.14,91,03,319.84/- and started recovery proceedings in DRT-Ahmedabad.
5. Thereafter, the Financial Creditor filed petition under section 7 of IBC, 2016 bearing CP(IB) No. 607 of 2019 against the Corporate Debtor for defaulting in paying the financial debt of Rs.20,53,85,216/- . The said petition was admitted vide order dated 02.09.2020 and Corporate Insolvency Resolution Process was initiated against the Corporate Debtor.
6. Due to non-payment of the amount by the Corporate Debtor, the Financial Creditor has filed this application for initiation of the Insolvency Resolution Process against the Guarantor under Section 95(1) of IBC, 2016. The Financial Creditor invoked the personal guarantee and issued a demand notice to the Respondent on 03.08.2021 under Rule 7(1) of the Insolvency and Bankruptcy Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. The demand notice was delivered to the Respondent on 06.08.2021.
7. On presentation of the application by the Applicant/Financial Creditor, this Tribunal vide order dated 09.12.2021 appointed Mr.

Sunil Kumar Kedia having Registration No. IBBI/IPA-001/IP-P00028/2016-17/10064 as Interim Resolution Professional (hereinafter referred to as "IRP"). This Tribunal also directed the IRP to file his report within 10 days from date of his appointment as IRP of the Personal Guarantor. The Interim Resolution Professional has filed the report before this Tribunal on 29.12.2021 vide Inward No. D2742 recommending the acceptance of the application filed under Section 95 of IBC, 2016. The recommendation of IRP is as follows:

> *"I have examined the application filed by State Bank of India (Creditor) in Form C and found that it is complete to the extent information available with them. The debtors and creditors relationship is established on the basis of agreements / deed executed by M/s. CLS Industries Private Limited (Corporate Debtor) and by Mr. Mohit Sharma (Personal Guarantor). The debt in default claimed by the State Bank of India (Creditor) is still exists. The Guarantor, Mohit Sharma is personally liable to pay the debt in default of Corporate Debtor M/s. CLS Industries Limited. The application filed by creditor satisfied the requirement set out in Section 95 of IBC 2016 and information asked from the creditors has been provided by them to me. On the basis of the above facts, I recommend that the application may be accepted for initiation of Insolvency Resolution Process against Mohit Sharma."*

8. The Respondent/Personal Guarantor filed an affidavit in reply dated 24.05.2022 before this Tribunal on 21.06.2022 under diary no. D3347.

9. The proceedings in the present matter was put on hold since the Constitutional Validity of the Sections 94 to 100 relating to the insolvency of personnel Guarantor was pending before the Hon'ble Supreme Court in the matter of **Dilip B. Jiwrajka V/s Union of India & Ors.** in WP(civil)No. 1281 of 2021.

10. The Hon'ble Supreme Court in the judgement of **Dilip B. Jiwrajka V/s Union of India & Ors.** in **WP(civil)No. 1281 of 2021** dated **09.11.2023** upheld the Constitutional Validity of the Sections 94 to 100.

11. The present matter proceeded before Court-2 of the Ahmedabad bench but was transferred to Court-1 of the Ahmedabad bench as another matter of the same corporate debtor/ other guarantor was listed in Court-1.

12. On hearing dated 12.02.2024, the learned counsel for the respondent confirms from his client that, in terms of the order dated 13.05.2022, the cost of Rs. 10,000/- had not been paid yet. For this very reason, Rejoinder was not filed by the applicant as reply was subject to the payment of the cost and there was a specific order to pay the cost within one week. Learned counsel for the respondent confirmed that no appeal was filed against the order dated 13.05.2022. The Tribunal ordered that to grant any opportunity at this stage to deposit the cost

after a belated period of more than one and half years is not possible. Hence, the reply was not to be taken on record and rejected accordingly.

13. We have heard the learned counsel for both parties and perused the documents on record. We have also gone through the report dated 29.12.2021 filed by the IRP. It is noted under section 128 of Indian Contract Act, 1872 that when a default is committed, the Principal Borrower and Surety are jointly and severally liable to Creditor and Creditor has the right to recover its dues from either of them or from both of them simultaneously. For benevolent reference, the said section of Indian Contract Act, 1872 is reproduced below:

"The liability of the surety is co- extensive with that of the principal debtor, unless it is otherwise provided by the contract."

14. It is observed from the application that the default occurred in account of the Corporate Debtor on 01.09.2017 in which case the limitation would expire on 01.09.2020. Further, from the date of NPA i.e. 28.06.2017, the limitation would expire on 28.06.2020 and from the date of issuing notice under section 13(2) dated 03.07.2017 the limitation would expire on 03.07.2020 and the application is filed on 17.11.21. However, in view of the order dated 23.09.2021 passed by the Hon'ble Supreme Court in M.A. No. 665/2021 in SMC (C)

No. 3 of 2020 (Cognizance for extension of limitation) the claim is within the period of Limitation.

15. From the report of IRP, it is clear to us that:

    i. IRP has recommended accepting the application for the reason as stated in the report dated 29.12.2021.

    ii. The Respondent has admitted to have executed the Guarantee Agreement.

    iii. The Applicant has demanded the amount outstanding from the Respondent vide Demand Notice dated 03.08.2021.

    iv. Resolution Professional report states that no evidence was placed before him by the Respondent having paid the amount demanded by the Applicant and as such in over view, the entire amount demanded is unserviced as on the date of order.

16. In view of the foregoing we are left with no other choice but to order as under:

    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 1BC, 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. Sunil Kumar Kedia having Registration No.IBBI/IPA-001/IP-P00028/2016-17/10064, office at 210B, 21st Century Business Centre, Near Udhna Darwaja, Surat-395002 (e-mail id: kedia_kedia@yahoo.com] who was appointed when the Section 97 application was allowed vide Order dated 07.03.2022, 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 Ahmedabad 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's business or trade on his behalf or in his name: or

b) realise the assets of the debtor; or

c) administer 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 day 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 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.

17. In terms of the above, **CP(IB)/244(AHM)/2021** filed under Section 95 of the IBC, 2016 is admitted and the Insolvency Resolution Process stands initiated against the Applicant/Personal Guarantor.

-SD-	**-SD-**
SAMEER KAKAR	**SHAMMI KHAN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Shubhanshu-LRA