



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

COURT – IV

49.

C.P. (IB)/296(MB)2022

CORAM:

SHRI MANOJ KUMAR DUBEY
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON **20.09.2022**

NAME OF THE PARTIES: Solapur Janata Sahakari Bank Limited
Vs
Abhishek Satishchandra Sudarik
Personal Guarantor Of
M/S. Shetkari Sakhar Karkhana (Chandrapuri)
Limited

SECTION: 95(1) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

The Court is convened through Video Conference.

1. Ms. Jesal Singh, Ld. Counsel for the Petitioner present. Mr. Kunal Chheda, Ld. Counsel on behalf of the Personal Guarantor/Respondent present.
2. This is a Company Petition filed by Solapur Janata Sahakari Bank Limited (“the Financial Creditor”), under Section 95 of the Insolvency & 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 seeking to initiate Personal Insolvency Resolution Process (CIRP) against Mr. Abhishek Satishchandra Sudarik (“the Personal Guarantor”).
3. Under section 95 (1) of the I&B Code, the Financial Creditor issued demand notice on 10.11.2021 and the same was served to the Personal Guarantor on



20.11.2021. A copy of the petition also served on the Personal Guarantor on 02.12.2021. After compliance of these statutory requirements the Court had issued a Court Notice dated 21.03.2022 and the same was served to the Personal Guarantor on 30.03.2022. Counsel for the Financial Creditor filed proof of service of these three statutory requirements. Petition for initiating Insolvency Resolution Process against Personal Guarantor of the Corporate Debtor (Shetkari Sakhar Karkhana (Chandrapuri) Limited) is complete in all respect and ripe for appointment of RP.

4. Ld. Counsel for the Petitioner submits M/s Shetkari Sakhar Karkhan (Chadrapur) Limited, the Corporate Debtor is into CIRP vide order dated 14.01.2019.
5. It is a stage for appointment of RP for filing his report. However, Counsel for the Personal Guarantor appeared and opposed appointment of RP. He wants to file an application objecting the appointment of RP in this case.
6. In Section 95 proceedings against the Personal Guarantor whether an opportunity can be given to the Personal Guarantor before the appointment of Resolution Professional? The usual practice u/s 95 is that once the petition is complete in all respect, the court will appoint Resolution Professional to examine whether the Personal Guarantor is liable to be admitted into the CIRP or not and file a report. Thereafter, the matter will be heard in detail giving abundant opportunities to the respondent to make its reply/submissions. Normally there is no "stay" or "status quo" granted by the Apex Court on any petition filed against appointment of Resolution Professional under section 95.
7. As the application is complete in all respect, this bench appoints Mr. Nitin Om Kothari, Insolvency Resolution Professional having Registration No. IBBI/IPA-001/IP-P02310/2020-2021/13477; as the



Resolution Professional (RP) in the matter. 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.

8. The Resolution Professional shall examine the Application within 10 days from the date of his appointment and submit its report to the Adjudicating Authority recommending for approval or rejection of the Application as referred under section 99(1) of the Code. Resolution Professional may take into consideration the material supplied by the personal guarantor while preparing report.
9. This Bench also directs for an advance payment of Rs.2,00,000/- (Rupees two lakh 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 Resolution Professional (RP).
10. The interim-moratorium under Section 96(1) (a) 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.
11. During such interim-moratorium period -
 - a. any legal action or proceeding pending 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.
12. List this matter for hearing on **05.12.2022**.

Sd/-
MANOJ KUMAR DUBEY
Member (Technical)

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)