



**IN THE NATIONAL COMPANY LAW TRIBUNAL
AT MUMBAI BENCH, C-IV**

CP (IB) NO. 1232/MB/2022

An application under section 100 read with section 95 of the Insolvency & Bankruptcy Code, 2016 R/w. Rule 7 (2) of the Insolvency and Bankruptcy (Application to the Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), Rules, 2019.

*IN THE MATTER OF
IDBI Bank*

*Through Resolution Professional,
Mr. Indrajit Mukherjee*

...Insolvency Professional/Applicant

Versus

Mr. Jitesh Shivaji Ganage

*... Respondent/Personal Guarantor of Ganage
Pressing Private limited.*

Order delivered on: 13.11.2024.

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)



Appearances:

For the Financial Creditor : Manish Jha, Ld. Counsel.

For the Personal Guarantor : Rahul Darji, Ld. Counsel.

ORDER

1. The present petition is filed on **04.11.2022** u/s. 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") r/w. 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 **IDBI Bank** ("Resolution Professional / Applicant") for the purpose of initiating insolvency resolution process against **Mr. Jitesh Shivaji Ganage** ("Personal Guarantor / Respondent") for recovery of total debt amounting to INR 75,02,18,289.92/- (Indian Rupees Seventy Five Crore Two Lakh Eighteen Thousand Two Hundred Eighty Nine Only) as on 30.06.2022 plus unapplied interest and other relevant charges till the date of full and final payment/realization.
2. The Financial Creditor herein submits that they have granted working capital facilities to Ganage Pressings Private Limited, through a sanction letter dated 21.02.2014. The Directors of Corporate Debtor along with Respondent executed Deed of Guarantee. Pursuant to which, the Personal Guarantor viz. Respondent herein was one of the executors of the Personal Guarantee dated 18.03.2014, thereby personally guaranteeing the debt arising under the said Agreement.



3. The Financial Creditor herein submits that Legal Notice was issued to the Corporate Debtor and its Guarantors (including the Respondent herein) *dated 12.06.2015* invoking the guarantee.
4. Subsequently, the Financial Creditor viz. Applicant herein issued Demand Notice dated 30.07.2022, herein, in Form- B under Rule 7(1) of the Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, demanding forthwith payments of its dues. However, till date, the Respondent and the other guarantors have not paid the unpaid debt in default due from the Corporate Debtor.
5. The Financial Creditor invited the attention of this bench that they have filed proceedings under the SARFEASI Act and further took recourse under DRT, Pune, to which the Recovery certificate was issued on 11.11.2021.
6. On presentation of the application by the Financial Creditor, under section 95(1) of the IBC,2016 for initiating Insolvency Resolution Process against the Personal Guarantor, this Tribunal vide order dated 22.11.2023 had appointed **Mr. Indrajit Mukherjee** bearing Registration No. IBBI/IPA-001/IP-P-01533/2018-19/12450 as Resolution Professional and directed to exercise all the powers as enumerated u/s.99 of the Code, R/w. Rules made thereunder. Accordingly, he has filed a report on 10.07.2024 and was further directed to make recommendations with reasons in writing for acceptance or rejection of the Company Petition.
7. The Resolution Professional has filed a report recommending for approval of the said application under section 95 of the Code by the Creditor i.e. IDBI Bank through Resolution Professional. The Resolution Professional had recommended that “...*recommend the acceptance of the captioned Application filed by the Financial Creditor under Section 95 of IBC...*”



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AT MUMBAI BENCH, C-IV

CP (IB) NO. 1232/MB/2022

8. We have heard the learned counsel(s) for both the parties and have duly perused the documents on record.
9. The Bench take note of the order dated 24.07.2024 wherein the Personal Guarantor was granted time to file reply. When the matter was finally listed for hearing on 23.10.2024, the Personal Guarantor appeared but no reply was filed. Therefore, the right to file reply was forfeited.
10. The records reveal that the Financial Creditor herein had caused the issuance of a Legal Notice upon the Personal Guarantor on 12.06.2015, thereby calling upon the latter to furnish its outstanding debt in relation to the Loan Sanction amount, failing which the former expressly reserved its right(s) towards enforcement of the Deed of Guarantee dated 18.03.2014. The Financial Creditor has further sought to buttress its position on the limited aspect of Limitation, via a Recovery Certificate dated 11.11.2021, issued at the behest of Debts Recovery Tribunal (Pune). Apropos the said Recovery Certificate, we find that the Personal Guarantor herein has not taken any constructive action(s) at the appropriate fora to dispute its liability arising concomitant to the same, and it thereby constitutes an acknowledgement of debt on part of the Personal Guarantor in consonance with the tenets of the Code.
11. We are of the considered view that the captioned petition is complete in all aspects, and the present case is therefore fit for admission. Ordered accordingly.
12. In terms of the above, **CP(IB)/1232/MB/2022** filed under Section 95 of the IBC, 2016 is ***admitted*** and the Insolvency Resolution Process stands initiated against the Respondent/Personal Guarantor.
 - I. Initiate Insolvency Resolution Process against the Respondent/Personal Guarantor and moratorium in relation to all



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AT MUMBAI BENCH, C-IV

CP (IB) NO. 1232/MB/2022

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 IBC, 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. Indrajit Mukherjee** having **Registration No. IBBI/IPA-001/IP-P-01533/2018-19/12450**, having registered address at Flat No. B 405, Siddhivinayak Twins, Plot No.9 , Sector 17, Roadpali, Kalamboli, Navi Mumbai ,Raigad, Maharashtra ,410218 [**indrajitmukherjee15@yahoo.com**] 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 Mumbai 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



IN THE NATIONAL COMPANY LAW TRIBUNAL
AT MUMBAI BENCH, C-IV

CP (IB) NO. 1232/MB/2022

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



IN THE NATIONAL COMPANY LAW TRIBUNAL
AT MUMBAI BENCH, C-IV

CP (IB) NO. 1232/MB/2022

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 applicant is directed to deposit Rs.2 lakhs to the bank account of the Resolution Professional within one week, towards his fees. This shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.
- 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.

Sd/-

**ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)**

Sd/-

**KISHORE VEMULAPALLI
MEMBER (JUDICIAL)**