

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – III

C.P.(IB)-319(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) Rule 2019.)

In the matter of

Bank of Maharashtra

Having Registered Office at: Stressed Asset Management Branch 'Janmangal', 4th Floor, 45/47, Mumbai Samachar Marg, Fort, Mumbai-400001.

.....**Financial Creditor/Petitioner**

Vs

Tejaswini Santosh Shinde

Residing at: Flat No. 102, B-Wing, Sai Leela Garden Society, Lane No. 10, Kalyaninagar, Tal:-Haveli, Pune-411006.

.....**Personal Guarantor/Respondent**

Order Pronounced on: 21.03.2024

CORAM:

**SHRI CHARANJEET SINGH GULATI
HON'BLE MEMBER (T)**

**SMT LAKSHMI GURUNG
HON'BLE MEMBER (J)**

Appearances:

For the Applicant : Adv. Subir Kumar
a/w Adv. Disha Shah

For the Personal Guarantor: None

ORDER

Per: - Ms. Lakshmi Gurung (Judicial Member).

1. The Present Application has been filed under section 95 of Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) by **Bank of Maharashtra (“Financial Creditor”)** for initiating Insolvency Resolution Process against **Mrs. Tejaswini Santosh Shinde (“Respondent”)** being the Personal Guarantor for the repayment of Credit Facility sanctioned to M/s Trimurti Corns Agro Foods Private Limited (**“Principal Borrower”**).
2. The Principal Borrower approached the Financial Creditor for sanction of credit facilities for their business which was sanctioned by the Financial Creditor vide Sanction Letter dated 30.09.2016.
3. The Respondent executed the Deed of Guarantee (RF154A) dated 21.10.2016 to secure the repayment of the credit Facility availed by the Principal Borrower, in the event of default for all facilities except Agricultural facilities.
4. The Financial Creditor issued notice dated **01.03.2017** under Section 13(2) of SARFESI Act, 2002 calling upon the Principal Borrower and the guarantors to repay in full, the default amount within 60 days.
5. The Principal Borrower defaulted in repayment of the said credit facilities and was admitted into the Corporate Insolvency Resolution Process (“CIRP) on 20.11.2018.
6. On 02.07.2022, the Financial Creditor issued a Demand Notice in Form B under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rule, 2019.
7. The total amount due and payable by the Respondent is Rs. 38,22,33,280/- (Rupees Thirty-Eight Crores Twenty-Two Lakhs Thirty-

Three Thousand Two Hundred and Eight only) as on 31.01.2023. According to Section 128 of the Indian Contract Act, 1872 the liability of the Surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract. In the present case, the default in repayment of credit facility by the Principal Borrower is co-extensive liability of the Respondent herein.

8. As per the provision of the Section 95 of the IBC, 2016 the present application is accompanied with details and documents relating to the debts owed by the Respondent to the Financial Creditor.
9. The Financial Creditor has issued demand notice dated 02.07.2022 to all Guarantors including the Respondent herein. The Respondent, despite expiry of the period of 14 days from the date of service of Demand Notice failed to repay the debt.
10. The Financial Creditor has also served the copy of application on the respondent through email dated 03.03.2023 and the copy of email is annexed to the application.
11. The Financial Creditor has also served a notice along with Covering letter dated 03.05.2023 and copy of the order dated 24.04.2023 passed by this Tribunal, through speed post which was delivered on 06.05.2023.
12. During the pendency of the said Section 95 Application, the Ld. Counsel appearing for the Respondent submitted that they have approached the Financial Creditor to initiate the settlement of outstanding debt and has already submitted an OTS proposal but the same was not accepted by the Financial Creditor.
13. The Hon'ble Supreme Court in ***Dilip B Jiwarajka 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

14. The Petition for initiating insolvency resolution process against Personal Guarantor to the Corporate Debtor is complete in all respect. The Applicant has proposed the name of the Insolvency Professional. We accordingly, appoint **Mr. Anil Kashi Drolia**, having Reg. No: **IBBI/IPA-001/IP-P-02327/2020-2021/13482**, Email: anildrolia.ip@gmail.com as Resolution Professional (“RP”) in the matter.
15. 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.
16. This Bench also directs for an advance payment of Rs. 1,00,000/- (Rupees One 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).
17. The Resolution Professional is directed to examine the application as set out in Section 97(6) of IBC, 2016, including the limitation aspect, and shall submit his report as provided under Section 99(1) of IBC, 2016, **within 10 days**.

18. The Applicant is directed to serve copy of the application and the order on the Resolution Professional.
19. List the matter for report of the RP on **26.04.2024**.

Sd/-

CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)

Sd/-

LAKSHMI GURUNG
(MEMBER JUDICIAL)

Arpan, LRA