

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

3. C.P. (IB)/283(MB)2025

CORAM: MS. LAKSHMI GURUNG, MEMBER (J)
SH. HARIHARAN NEELAKANTA IYER, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **10.03.2025**

NAME OF THE PARTIES: Manisha Mahendra Dhamal

Appearance

For Petitioner: Appeared, but appearance not marked.

For Respondent:

SECTION 94(1) OF THE IBC, 2016

ORDER

Hearing Through: Virtually and Physical (Hybrid) Mode

C.P. (IB)/283(MB)2025

1. The **Company Petition No. (IB) 283 of 2025** has been filed by **Mrs. Manisha Mahendra Dhamal ('Petitioner/ Personal Guarantor')** under **section 94** of the Insolvency and Bankruptcy Code, 2016 (**'the Code'**) for initiation of Corporate Insolvency Resolution Process (**'CIRP'**) read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (**'Insolvency Resolution Process for Personal Guarantors Rules'**) against herself being the Personal Guarantor of M/s RHJ Tubes Private Limited, (**'Corporate Debtor'**).
2. It is submitted that Wellfin Resources and Logistics Private Limited had disbursed a loan of Rs. 1,60,00,000 on 08.05.2024 but we note that the sanction letter is dated 10.05.2024. In order to secure the payment

towards the said debt, the Petitioner had executed Deed of Guarantee dated 15.05.2024 along with other directors of the Corporate Debtor.

3. The Petitioner, vide Loan Recall Notice dated 07.10.2024, invoked the personal guarantees furnished by the Petitioner. A copy of the Loan Recall Notice dated 07.10.2024 is annexed as Annexure - VI to the petition.
4. The Corporate Debtor submits that it has been unable to fulfil its obligations arising from the personal guarantee invocation notice. Consequently, the Corporate Debtor is in default and, therefore, is eligible to file this Application under the provisions of Section 94(1) of the IBC, read with the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.
5. In the present case, it is noted that no insolvency or liquidation proceedings of the corporate debtor are currently pending before this Tribunal. It is no more res integra that under Section 60(1) of IBC, the Adjudicating Authority in relation to insolvency resolution of corporate debtors and personal guarantors thereof is National Company Law Tribunal whether CIRP is pending against the corporate debtor or not. This position has been clearly laid down in the case of **Anita Goyal vs. Vistra ITCL (India) Ltd. & Anr.**, Company Appeal (AT)(Ins) No. 2282 of 2024, decided on 23.01.2025.
6. Further, as per the decision of the Hon'ble Supreme Court in **Dilip B Jiwarajka vs. Union of India & Ors. (Writ Petition (Civil) No. 1281 of 2021)** dated 09.11.2023, at the stage of appointment of RP under Section 97 of the Code, no judicial adjudication is involved. The relevant extract of judgment is reproduced as follows:-

“ xxx

86.

- 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.*

...xxx”

7. The interim-moratorium under Section 96(1) (a) of the Insolvency and Bankruptcy Code, 2016 commences on the date of filing which according to the DMS (NCLT filing portal) is 14.01.2025 and will cease to have effect on the date of admission. Hence, the petition is well-within limitation. Further, during 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.

8. The Petitioner/Operational Creditor has proposed name of an Insolvency Professional to be appointed as Interim Resolution Professional (IRP). However, we deem it appropriate to appoint IRP from the from the panel of Insolvency Professionals maintained with Insolvency and Bankruptcy Board of India (IBBI). This bench hereby **appoints Mr. Neehal Mahamulal Pathan, Registration No. IBBI/IPA-001/IP-P01561/2018-2019/12406 as the Interim Resolution Professional (IRP)** having e-mail ca.neehal@gmail.com to carry out the functions as mentioned under the Insolvency and Bankruptcy Code, 2016.

9. 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.
10. The Petitioner is directed to deposit INR 1,50,000/- (Rupees One Lakh Fifty Thousand Only/-) to the bank account of the Resolution Professional **within one week**, towards his fees & out of pocket expenses. This shall be subject to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.
11. The Resolution Professional is directed to examine the application, the details of assets, disbursal of loan amount, post disbursal sanction letter belonging to the Petitioners, etc. and submit its report in accordance with Section 99 of the Code within 10 days. The RP is also directed to serve copy of report on Financial Creditors and the Personal Guarantors and file proof of service of report.
12. The Registry is hereby directed to communicate this order to the Petitioner and to RP immediately. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (IBBI) for their record.
13. List the matter for report of the RP as and when report of RP is filed.

Sd/-
Hariharan Neelakanta Iyer
Member (Technical)

Akshita, LRA

Sd/-
Lakshmi Gurung
Member (Judicial)