

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB)/ 1405/MB-IV/2020

Under Section 95
Of
Insolvency and Bankruptcy Code, 2016
read with Rule 7(2)
Of
Insolvency and Bankruptcy (Application to
Adjudicating Authority for Insolvency Resolu-
tion Process for Personal Guarantors to Cor-
porate Debtors) Rules, 2019

In the matter of

Nipun Thakkar Applicant

Vs.

Pramod Waman Bhosale Respondent

Order pronounced on:01.02.2021

Coram:

Mr. Rajesh Sharma

Mrs. Suchitra Kanuparthi

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances (through video conferencing)

For the Applicant: Mr. Chetan Kapadia a/w Mr. Akshay Petkar and Ani-
ket Malu, Advocates

For the Respondent : Mr.Zal Andhyaurjina, Senior Advocate a/w Mr. Nausher
Kohli, Mr.Amit Vyas, Ms.Rishika Rajadhyaksha,
Mr.Pratik Jhaveri, Mr.Aditya Vyas, Mr.Devdutta
Uchil, Advocates i/b Vertices Partners

ORDER

Per: Rajesh Sharma, Member (Technical)

1. The Court is convened through videoconference today.
2. This Petition has been filed by the Applicant (Financial Creditor) Mr. Nipun Thakkar (sole proprietor of Ami Corporation) under Section 95 of the Insolvency and Bankruptcy Code, 2016 (IBC) 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

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(Personal Guarantors Insolvency Rules) against Pramod Waman Bhosale, Personal Guarantor/Respondent of the Corporate Debtor Shivam Parivar Developers Private Limited, for initiating Insolvency Resolution Process.

3. The Learned Counsel for the Applicant submits that the Applicant is a financial Creditor of Shivam Parivar Developers Private Limited (Corporate Debtor) and had filed an Application CP No.(IB) 702/MB-IV/2019 under Section 7 of IBC against Corporate Debtor.
4. The Learned Counsel for the Applicant further submits that on admission of the said petition by this tribunal vide order dated 13.12.2019 thereby initiating CIRP of Corporate Debtor, the Petitioner agreed to withdraw CP No.(IB) 702/MB-IV/2019 under Section 12A of IBC upon the request of the Corporate Debtor and Personal Guarantor.
5. The Learned Counsel for the Applicant submits that the Consent Terms dated 19.12.2019 were executed and the Respondent provided his personal guarantee as per clause 9 towards the entire claim of the Petitioner in case of default.
6. The Learned Counsel for the Applicant submits further that this tribunal allowed the withdrawal of CP No.(IB) 702/MB-IV/2019 under section 12A of IBC vide order dated 10.01.2020 taking consent terms on record.
7. The Learned Counsel for the Applicant submits that in furtherance of the Consent Terms, Corporate Debtor and personal Guarantor provided 12(twelve) post dated cheques to the applicant for the agreed financial debt of Rs.8,21,75,781/- (Rupees Eight Crore Twenty One Lakh Seventy Five Thousand Seven Hundred Eighty One only) at the rate of interest of 12%p.a.
8. The Learned Counsel for the Applicant submits that the applicant deposited the post dated cheques given by the Corporate Debtor on their due dates and six(6) post dated cheques bearing nos. 000405, 000406, 000407, 000408, 000410, 000411 of Rs.1,00,00,000/- (Rupees One Crore each) were dishonored on account of insufficient funds. The applicant called upon the Personal Guarantor to make payment as per Consent Terms.

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9. The Learned Counsel for the Applicant submits that they have served a demand notice date 19.08.2020 under Section 95 of IBC read with Rule 7(2) of Personal Guarantors Insolvency Rules on the Respondent as he has failed to pay unpaid debt in default.
10. The Learned Counsel for the Applicant submits that the Personal Guarantor (Respondent) has sent a reply dated 03.09.2020 and 29.09.2020 to the Demand Notice under Section 95 of IBC sent by the Applicant.
11. The Learned Counsel for the Applicant submits that the Applicant has further sent a reply dated 04.10.2020 in lieu of reply dated 03.09.2020 and 29.09.2020 sent by Personal Guarantor (Respondent).
12. The Learned Senior Counsel for the Respondent has made his submissions basically on the periphery of maintainability of this application, taking plea of non-existence of debt and the ongoing negotiations between the Applicant and Respondent.
13. We have heard the parties at length, taken all their submissions into account and perused the documents and evidences placed on record by them. We have come to the conclusion that there is a default on the part of the Personal Guarantor/Respondent by not fulfilling the debts owed to the Corporate Debtor as per the clauses contained in the Consent Terms in respect of the outstanding financial debt which is apparent from the documents placed on record.

ORDER

14. This application filed under Section 95 of the **Insolvency and Bankruptcy Code, 2016 (IBC)** read with Rule 7(2) of the Insolvency and Bankruptcy Rules, 2019 filed by Nipun Thakkar (sole proprietor of M/s Ami Corporation), Financial Creditor/Applicant against Pramod Waman Bhosale, Personal Guarantor/Respondent of the Corporate Debtor, Shivam Parivar Developers Private Limited bearing **CP No.(IB)/ 1405/MB-IV/2020** is allowed as follows.

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15. 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.

16. During such 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

17. That this bench appoints **Mr. Prashant Jain, Insolvency Resolution Professional having Registration No. IBBI/IPA-001/IP-P01368/2018-2019/12131, Email Id: ipprashantjain@gmail.com**; from the Panel of Insolvency and Bankruptcy Board of India (IBBI), as the Resolution Professional (RP) to carry out functions as mentioned under the Insolvency and Bankruptcy Code, 2016. 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.

18. That 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).

19. The registry is directed to immediately communicate this order to the Financial Creditor, Personal Guarantor, Corporate Debtor and Resolution Professional even by way of email. Compliance report of the order by designated Registrar is to be submitted today.

Sd/-

Rajesh Sharma
Member (Technical)
01.02.2021

Sd/-

Suchitra Kanuparthi
Member (Judicial)

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