

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT – 1



ITEM No.307- C.P.(IB)/70(AHM)2024

with

ITEM No.308- IA/451(AHM)2024

Order under Section 95 IBC

IN THE MATTER OF:

STCI FINANCE LIMITED

.....Applicant

Vs

Aditya Ramniwas Dhoot

.....Respondent

Order delivered on: 05/11/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Sameer Kakar, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I, AHMEDABAD**

**CP/IB/70/NCLT/AHM/2024
with
I.A. No.451 of 2024**

[Application under Section 95(1) of the Insolvency & Bankruptcy Code, 2016 r.w. Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019]

*In the matter of **Mr. Aditya Ramniwas Dhoot***

CP (IB) No.70/NCLT/AHM/2024

STCI Finance Ltd.

A/B1-802, A wing 8th Floor, Marathon Innova,
Marathon Nextgen Compound Off
Ganpatrao Kadam Marg,
Lower Parte (W), Mumbai-400013 and
Branch office at 401, 412, Prakash Deep Building,
7, Tolstoy Marg, New Delhi, 110001.
E-mail- legal@stcionline.com

...Applicant/Financial Creditor

VERSUS

Mr. Aditya Ramniwas Dhoot

(Personal Guarantor to Corporate Debtor)
86-A, Netaji Subhash Road,
Marine Drive, Mumbai-400002
Mobile- +91-98200 71289
E-mail – aditya@imp-powers.com

.... Respondent/Personal Guarantor



I.A. No.451/NCLT/AHM/2024

Mr. Ram Ratan Kanoongo

IRP of Mr. Aditya Ramniwas Dhoot
Personal Guarantor to M/s IMP Powers Ltd.)
708, Raheja Centre, 7th Floor, Nariman Point,
Mumbai, Maharashtra, 400021.

...Applicant/IRP

VERSUS

Mr. Aditya Ramniwas Dhoot

(Personal Guarantor to Corporate Debtor)
86-A, Netaji Subhash Road,
Marine Drive, Mumbai-400002.

.... Respondent/Personal Guarantor

Order pronounced on 05.11.2024

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For Applicant/RP : Mr. Bhupendra Dave, Advocate
For the Respondent/
PG : Mr. Nausher Kohli, Advocate
: Ms. Honey Chandhani, Advocate

For the Financial
Creditor : Mr. Priyank Dave, Advocate for
: Mr. Amiraj Barot, Advocate for BOI
: Mr. Raju Kothari, Advocate for STCI
Finance Limited
: Mr. Karan Thackrey, Advocate a/w.
: Mr. Suhail Mhasvadkar, Advocate
i/b. M.V. Kini Law Firm
For IDBI Bank



ORDER
Per: Bench

1. The Present Company Petition i.e. CP(IB)/70(AHM)2024 is filed on 24.01.2024 under Section 95(1) of the Insolvency and Bankruptcy Code 2016, (IBC, 2016) read with Rule 7(2) of the I&B (AAA for IRP for PGCD) Rules, 2019 by the Applicant/FC (Financial Creditor) seeking initiation of Insolvency Resolution Process against **Mr. Aditya Ramniwas Dhoot** (hereinafter referred to as "Personal Guarantor") for a default amount of **Rs.39,75,63,897/-** as on 30.11.2023 in respect of Joint Deed of Guarantee dated 29.11.2017 executed in favour of Applicant/FC/Financial Creditor. The date of default is recorded as 30.05.2021.
2. IA/451(AHM)2024 being report of IRP was filed physically on 18.03.2024.
3. In so far as the Personal Guarantor to Corporate Debtor is concerned, the Hon'ble Supreme Court of India in the matter of **Lalit Kumar Jain vs. Union of India & Ors.** in the Transferred Case (Civil) No.245/2020 has upheld



the vires of the notification issued by the Central Government vide S.O. 4126(E) dated 15.11.2019, in so far as it relates to coming into force of Insolvency and Bankruptcy Process of Personal Guarantors to Corporate Debtor. Thus, when a Corporate Insolvency Resolution Process in relation to Corporate Debtor is pending before this Adjudicating Authority, then as per Section 60(2) of IBC, 2016 the NCLT would be competent forum to file an Application for Personal Guarantor in relation to such Corporate Debtor.

4. It is stated that the Corporate Debtor viz. **M/s IMP Powers Ltd.** availed financial assistance Rs.25.00 Crore and on 29.11.2017 entered into Agreement with Applicant/FC for Corporate Term Loan under Facility Agreement. The Corporate Debtor and others executed various loan/security documents in favour of the Applicant/FC.

5. The Respondent being personal Guarantor of the Corporate Debtor also executed and signed Deed of Guarantee dated 29.11.2017 in favour of Applicant/FC



to secure the credit facilities granted to the Corporate Debtor which are enclosed along with the Petition as **Annexure-F.**

6. However, after availing the Loan/Credit Facilities, the Corporate Debtor failed to maintain financial discipline as per terms and conditions of the loan agreement due to which loan account became irregular and committed default on 29.11.2020. Subsequently, on 09.02.2021 the Applicant/FC sent a notice to the Corporate Debtor and personal Guarantor regarding the event of default. A copy of the same is enclosed along with the Petition as **Annexure-O.**

7. Thereafter, on 25.02.2021 the Corporate Debtor admitted their liability under the loan agreement and subsequent defaults that occurred on their part in the repayment of Principal and payment of interest amount, requested that due to various reasons including force majeure which restrained them to pay the principal amount with interest and assured to amicably resolve



the same. A copy of the Reply of the same is enclosed along with the Petition as **Annexure-P**.

8. Thereafter, the Applicant/FC invoked the Personal Guarantee and on 21.05.2021 the Applicant/FC recalled the loan amounts advanced by way of which recall notice was served on the Corporate Debtor and its personal guarantor thereby calling to clear the outstanding amount of Rs.26,57,80,214/-. The recall notice was duly served to the Corporate Debtor and Personal Guarantor on 24.05.2021. The Respondent failed to reply to the recall notice and the debt was not disclosed. A copy of the Recall Notice is enclosed along with the Petition as **Annexure-Q**.

9. Subsequently, Operational Creditor filed CP(IB) 203/9/NCLT/AHM/2020 against the Corporate Debtor and this Adjudicating Authority, vide order dated 29.03.2022 admitted the Corporate Debtor into CIRP. Thereafter, vide order dated 19.12.2023 Corporate Debtor was ordered for liquidation by this Tribunal in IA 987/AHM/2023.



- 10.** Thereafter, the Applicant Bank invoked the personal guarantee by issuing **Form-B** being Demand Notice dated 19.01.2023 U/s 95(4)(b) of the IBC, 2016 r.w. Rule 7(1) of the I&B (AAA for IRP for PGCD) Rules, 2019 which was served to the Respondent/Personal Guarantor and requested to pay the unpaid debt in default in full within 14 (fourteen) days from the receipt of this Demand Notice. A copy of the same is enclosed along with the Petition as **Annexure-R**. A copy of the Reply of the same dated 31.01.2023 is enclosed along with the Petition as **Annexure-S**.
- 11.** However, due to non-payment of the amount by the Corporate Debtor as well as the Personal Guarantors, the Applicant Bank filed the present petition being Company Petition (IB) No. 70 (AHM) of 2024 for initiation of Insolvency Resolution Process against the Personal Guarantor in **Form-C** under Section 95 of IBC, 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.

- 12.** On presentation of the application by the Applicant/Financial Creditor, this Tribunal vide order dated 09.02.2024 appointed Interim Resolution Profession (hereinafter referred to as "IRP") as suggested by the Financial Creditors viz. **Mr. Ram Ratan Kanoongo, having registration no. IBBI/IPA-001/IP-P00070/2016-17/10156** to carry out Insolvency Resolution Process of the Personal Guarantor as per section 97(3) of IBC, 2016. This Tribunal directed the IRP to file his report.
- 13.** The Interim Resolution Professional has filed the report through IA No. 451 of 2024 on 18.03.2024 under dairy no. E 595 recommending the admission of the application filed under Section 95 of IBC, 2016." The summary of grounds for admission of the application as per the Report dated 18.03.2024 filed by the IRP are as follows:



“The RP most humbly submits before this Hon'ble Tribunal that the present application meets the necessary requirements of the Code for its approval by this Hon'ble Tribunal and the reason for the same have been submitted in the preceding part(s) of this report and therefore, this Hon'ble Tribunal may kindly pass appropriate orders under section 100 of the Code, "Admitting" the present application filed by State Bank of India through the RP in C.P. (1B)-70(AHM)2024 and declare "Moratorium" under section 101 of the Code and issue "Public Notice" for inviting the claims under section 102 of the Code and may pass such further orders as this Hon'ble Tribunal deems necessary.”

- 14.** That after issuance of notice in I.A. the Respondent/Personal Guarantor appeared and filed an affidavit in reply dated 05.07.2024 under diary no. D-5191 and raised following objections to the Application:-
- a) At the outset, it is submitted that the Resolution Professional has failed to apply his mind and has acted mechanically in recommending that the captioned petition must be admitted by this Adjudicating Authority. There is an apparent violation of sub-sections (6), (7) and (9) of Section 99 of the Code as elaborated hereunder.



b) It is stated that the Resolution Professional has at pg. C9 of the report, averred/stated against the compliance requirement under Section 99(6) that the application satisfies the requirements of Section 95 of the Code. Under Section 95(4)(c), the application filed for initiation of insolvency resolution process against a personal guarantor requires to be accompanied with details and documents inter alia relating to (i) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application and (ii) relevant evidence of such default or non-repayment of debt.

c) Further, the break-up of total amount claimed to be in default i.e. INR 39,75,63,897/- is given at Part III @ pg. 15 @ Vol. 1 as well as pg. 184 @ Vol. II of the petition. A perusal of the same indicates that the total amount claimed to be in default contains five heads viz. - principal outstanding, interest, management fee, unpaid TDS and legal



charges. Although the Financial Creditor seems to have provided the ledger evidencing disbursement of loan amount, repayments and charging of interest (Annexure H), no evidence is provided in support of management fee, unpaid TDS and legal charges and the resolution professional seems to have believed and approved the same at face value. No computation of each of the respective heads has ever been shared with me.

d) Even the ledger statements cannot be relied upon to fasten liability upon the Respondent in view of Section 34 of the Indian Evidence Act, 1872 which is reproduced as under:

Entries in the books of account, including those maintained in an electronic form, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

e) It is stated that without prejudice to the above, the ledger produced by the Financial Creditor does not meet the pre- conditions required for the printout



in accordance with the Bankers Books Evidence Act, 1891 and also that the Financial Creditor authorised officer has not given a further certificate in accordance with Section 2-A (c) and hence the ledger produced is defective and cannot be relied upon by the Financial Creditor. (Annexure H @ Vol. II @ pg. 165-184 of the Petition).

- f) It is further stated that the Financial Creditor has failed to prove from the documents or otherwise and from corroborative evidence that the amount claimed to be in default was actually due and payable or that default had occurred at all. Thus, no liability can be fastened on to the Respondent much less admission of the captioned company petition. (**Chandradhar Goswami & Ors. vs. Gauhati bank Ltd.** AIR 1967 SC I 058 - paragraph no. 6)
- g) Further, the Financial Creditor has provided a record of default being the NeSL Report dated April 1, 2021 (Annexure G @ Vol. II @ pg. 148 of the petition). It is humbly submitted that the debt and



default information submitted therein does not seem to have been verified by NeSL as per Regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017. In fact, the status of authentication as apparent from the said NeSL report is stated to be '*To be presented*' rather than '*Authenticated*', '*Disputed*' or '*Deemed to be Authenticated*'.

- h) It is stated that there is a clear mismatch I discrepancy in the date of default which can be gathered from the record and the date of default (Vol. I @ pg. nos. I5 and I6 of the petition) mentioned by the Financial Creditor in Part III of the petition. The date of default as mentioned in the record of default with the information utility (Annexure G @ Vol II @ pg. I5 2 of the petition) is stated to be February 29, 2020, whereas at Part III, it is stated to be May 30, 2021.
- i) The Section 3(12) of the Code states default means non-payment of debt when it becomes due and



payable in whole or in part. It is settled legal position that the date of default must necessarily be ascertained from contractual terms and conditions and such date cannot be pushed or changed to a later merely by virtue of issuing a notice I correspondence to the debtor. (Order dated 27th September 2023 passed by the NCLT Bengaluru Bench in C.P (!B) No. 125/BB/2022 in the matter of Mls. Asset Reconstruction Company (India) Ltd. versus MIS. Manyata Developers Pvt. Ltd. - paragraph nos. 6, 32 and 35).

- j) It is stated that without prejudice to the other grounds stated in the present reply, I humbly submit that the Petition filed by the Financial Creditor is barred by limitation as the limitation period for filing the captioned Petition has already expired on March 01, 2023, whereas the Petition has been filed on e-filed on January 24, 2024. The Financial Creditor has failed to apply or approach this Hon'ble Tribunal within the period of 3 years



from the date of default i.e., when the right to apply accrued.

k) It is humbly submitted that the sale of the Corporate Debtor as a going concern for Rs.78,00,00,000/- and order dated April 22, 2024, passed in Mis. A/1(AHM)2024 in CP(IB) 203 of 2020 have a material bearing on the present petition. In the event the sale certificate is allowed to be issued and proceeds are allowed to be distributed, the Financial Creditor may receive the entire amount which it is claiming to be in default and the alleged debt qua the Respondent may stand extinguished discharged. Thus, in the interest of justice and fairness, it is humbly submitted that the hearing in the captioned petition be deferred until the issue of sale certificate and distribution of sale proceeds is complete.

l) Thus, as demonstrated above, the Resolution Professional has ignored the discrepancies as apparent from the record and also failed to call for



any information or explanation in relation to the computation of amount claimed to be in default and proof of default from the Financial Creditor. It is rather surprising to note that the Resolution Professional has failed to mention or accord any reason in support of his recommendation of admission of the petition other than "*after examining the petition and other available documents on record, the RP is of the considered view that the debt guaranteed by the personal guarantor has not been repaid as claimed by the creditor and that the Respondent has not given a satisfactory response*"

m) It is pertinent to point out that none of the lenders including the Financial Creditor herein have extended benefits arising from RBI Circular(s) pertaining to MSMEs and SSIs as ought to have been applicable in the case of loan accounts of the Corporate Debtor.

n) As per Section 99(1) of the Code, the Resolution Professional is required to examine the application



under Section 95 of the Code within 10 days and submit a report to the Adjudicating Authority. This Adjudicating Authority had by way of an order dated February 9, 2024, appointed the Resolution Professional and directed him to submit his report under Section 99 within 10 days from the said date. The Resolution Professional has mentioned in his report that the copy of the said order was made available to him only on February 13, 2024. No proof in support of this belated receipt of order has been annexed by the Resolution Professional to the LA. Even assuming without admitting that he had received the order on February 13, 2024, the Resolution Professional ought to have filed the report by February 23, 2024. However, the report has been filed on February 27, 2024, i.e. after a delay of 4 days in contravention of Section 99(1) and the order passed by this Adjudicating Authority on February 9, 2024. No averment or submission for condoning the delay in filing the



report by the Resolution Professional has been made in the application.

- o) It is stated that the Board Resolution and the Power of Attorney annexed to the petition at Annexure A (pg. no. 33 onwards) date back to 2017. There is no averment that these authority documents have not been superseded by any other authority until the date of filing the petition.
- p) The electronic evidence produced by the Financial Creditor viz. Annexures C and D- Master Data of the Corporate Debtor and my director Master Data, Annexure G- NeSL Report, Annexure H Ledger account and Annexure N- Email dated 02.11.2020 sent by Corporate Debtor to the Financial Creditor are not supported by a valid certificate under Section 65(B) of The Indian Evidence Act, 1872 and conditions mentioned thereunder. Sub-section (2) of Section 65-B which stipulates the conditions for admissibility of evidence are reproduced as under:



- a) *the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;*
- b) *during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;*
- c) *throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and*
- d) *the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.*

15. However, vide an order dated 08.07.2024, it is recorded that the Counsel appearing for the IRP submits that there is no need to file any rejoinder to the reply filed by the Personal Guarantor.



16. One of the Financial Creditors to the Corporate Debtor IDBI Bank has filed its reply on 02.08.2024, vide inward diary No. D-6121. The following has been stated.

a) It is submitted that IDBI Bank Ltd had also extended working capital credit limits to the said corporate debtor viz., IMP Powers Ltd under consortium banking arrangement led by SBI. The last such sanction, communicating renewal of existing credit limits, took place in the year 2020 and in this respect IDBI Bank Ltd had issued its sanction letter bearing reference no IDBI/NPT/MCG/20-21/335 dated 19.11.2020. As per the said renewal sanction letter the corporate debtor was enjoying aggregate credit limits of Rs. 39.43 crores including Covid-FITL of Rs1.19 crores. The repayment of these credit limits was secured by personal guarantee of Mr Ramnivas Dhoot, Mr Aditya R Dhoot and Mr Ajay R. Dhoot in addition to primary and collateral securities as stipulated in the sanction letter on Pari passu basis along with other lenders. A copy of the said



sanction letter and a copy of the guarantee deed executed by Mr Aditya Dhoot as one of the personal guarantors to the corporate debtor is annexed and marked as **Annexure -1 colly**.

- b) It is stated that the Corporate Debtor was not prompt in meeting the repayment obligations and payment of interest debited to the account. In addition to that the corporate debtor had also committed defaults in terms of the working capital agreement. Due to this, loan accounts of the corporate debtor were classified into NPA w.e.f. 01.04.2021. Thereafter, on March 24, 2022, the credit limits sanctioned to the corporate debtor were recalled by issuing a recall notice wherein the corporate debtor was asked to repay the entire outstanding as at 31.12.2021 amounting to Rs.41,94,61,369.80ps. within the next 15 days and substitution of Bank Guarantees already issued by IDBI Bank to the extent of Rs.12,95,06,032 with the Bank Guarantee of another Bank. As there was no positive response to the recall notice from the



corporate debtor, the IDBI Bank Ltd issued a Demand Notice to the personal guarantors on September 22, 2022, calling upon each one of them to pay an aggregate sum of Rs.41,94,61,369.80ps. due from the corporate debtor outstanding as at 31.12.2021. A copy of the Recall Notice dated 24.03.2022 and Demand Notice dated 22.09.2022 are annexed and marked as **Annexurc-2 colly**.

- c) It is further stated that both the corporate debtor and personal guarantors have failed and neglected to make any payment to IDBI Bank Ltd in response to its recall notice dated March 24, 2022, and demand notice dated September 22,2022 issued to them respectively. This has compelled IDBI Bank Ltd to move an OA bearing no OA(l 26/2023 before DRT I Mumbai by claiming a default amount of Rs.42,06,43,736.75 (Rupees Forty-Two Crores Six Lakh Forty-Three Thousand Seven Hundred Thirty-Six and Paise Seventy-Five only). It is petiinent to note that in the OA filed in ORT, all the



personal guarantors to Corporate Debtor including Mr Aditya Dhoot were made as the Respondent in the present case. A copy of the OA No. 126-2023 filed before DRA 1 is annexed and marked as **Annexure-3.**

d) It is pertinent to submit that in the CIBIL report generated in respect of Mr Aditya Dhoot, one of personal guarantors to the corporate debtor viz., Mis IMP Powers Ltd., evidences the defaults committed by him in respect of various transactions. A copy of the said CIBIL report is annexed and marked as **Annexure -4.**

e) It is pertinent to submit that in the CIBIL report generated I submit that as of June 14, 2024, the total outstanding dues payable by the corporate debtor aggregates to Rs.50,52,64,505.35ps. A copy of Bank Statement drawn up to June 14, 2024, in respect of loan accounts held in the name of corporate debtor is annexed and marked as Annexure -5.n respect of Mr Aditya Dhoot, one of personal guarantors to the corporate debtor viz.,



M/s IMP Powers Ltd., evidences the defaults committed by him in respect of various transactions. A copy of the said CIBIL report is annexed and marked as **Annexure -4.**

f) It is submitted that as of June 14, 2024, the total outstanding dues payable by the corporate debtor aggregates to Rs.50,52,64,505.35ps. A copy of Bank Statement drawn up to June 14, 2024, in respect of loan accounts held in the name of corporate debtor is annexed and marked as **Annexure -5.**

g) It is stated that certain additional information on the personal guarantor Mr Aditya Dhoot as available with IDBI Bank Ltd is furnished in the form of a "Data Sheet" which may be useful to RP to continue with Personal Insolvency Resolution Process against Mr Aditya Dhoot as recommended now by IDBI Bank Ltd. A copy of the said "Data Sheet" is annexed and marked as **Annexure -6.** In addition to this, additional information on IDBI



Bank Ltd, the financial creditor is furnished and annexed as **Annexure-7**.

17. However, vide an Interim Order dated 02.08.2024, it is recorded that the Counsel appearing for the STCI Finance Limited and Can Bank Factors stated that there is no need to file any reply to support the reports of the IRP for admission of the Personal Guarantor for Insolvency.

18. One of the Financial Creditor i.e., Indian Bank has also filed its reply on 13.08.2024, vide inward diary No. D-6348. The following has been stated.

a) It is state and submit that, the outstanding dues of the bank are to the tune of Rs.63,26,01,537/- as on 31.07.2024 payable by the Personal Guarantor. Hence, we hereby put on record the following reply alongwith documents as per the directions of the Hon'ble Tribunal.

b) It is submitted that the Bank had sanctioned financial assistance to M/s. IMP Powers Limited vide Sanction Letter dated 10.12.2018 by providing



Cash Credit limit of Rs.15.00 Crores (Rupees Fifteen Crores Only) and NFB limit of Rs.25.00 Crore (Rupees Twenty Five Crores Only) under consortium banking. A Copy of the Sanction Letter dated 10.12.2018 is annexed hereto and marked as "**Annexure A**". That for the purpose of availing the abovementioned credit facilities, the Personal Guarantor had executed an Agreement of Guarantee dated 31.12.2018 in favour of the Bank. A Copy of Agreement of Guarantee dated 31.12.2018 is annexed hereto and marked as "**Annexure-B**".

c) It is further submitted that the Bank further vide Sanction Letter dated 01.06.2020 sanctioned another credit facility namely Ind-Covid Emergency Credit Line (Term Loan) to the tune of Rs. 1.5 crore to M/s. IMP Powers Limited. A Copy of Sanction Letter dated 01.06.2020 is annexed hereto and marked as "**Annexure-C**". That for the purpose of availing the abovementioned credit facility, the Personal Guarantor had executed an agreement of



Guarantee dated 06.06.2020 in favour of the Bank.

A copy of agreement of Guarantee dated 06.06.2020 is annexed hereto and marked as **“Annexure-D”**.

d) It is submitted that as on date, the total outstanding payable to the Bank is Rs.63,26,01,537/- as on 31.07.2024.

19. Bank of India has also filed affidavit in reply on 18.09.2024, vide inward diary No. D-7135. The following has been stated.

a) It is stated and submitted that Mr. Aditya R. Dhoot stood as a personal guarantor to the various financial services which were provided by the answering Respondent in a consortium from time to time to IMP Powers Limited i.e. the borrower Company.

b) It is stated that a deed of personal guarantee dated 16.02.2021 was also executed by and between the answering Respondent and Mr. Aditya R. Dhoot which in detail outlines about the



rights and liabilities of the parties thereto. *(A copy of the deed of personal guarantee is marked and annexed hereto as **ANNEXURE - R2**)*

- c) It is further stated and submitted that the principal borrower i.e IMP powers Limited could not fulfil its legal obligation to repay the financial assistance which was disbursed from time to time and therefore the answering Respondent had declared the account of the principal borrower as a Non-performing Asset.
- d) It is further stated and submitted that litigations are filed against the personal guarantors before which are pending adjudication.
- e) It is further state that on 20.12.2023, the answering Respondent along with the State Bank of India and Karnataka Bank Ltd. were constrained to issue a recall notice to Mr. Aditya R. Dhoot seeking recovery of the outstanding amount more particularly mentioned in the recall notice, thereby invoking the personal guarantee of Mr. Aditya R. Dhoot. *(A copy of the recall notice*



*dated 20.12.2023 is marked and annexed hereto as **ANNEXURE - R3***

- f) The said recall notice was replied by the Personal Guarantors vide reply dated 27.12.2023 denying the allegations made in the said recall notice.
- g) It is stated and submitted that the Bank of India has no objection if the report filed by the Learned Interim Resolution Professional is allowed and Personal Insolvency is initiated against the Personal Guarantor i.e. Mr. Aditya R. Dhoot by this Hon'ble Tribunal.

20. The STCI Finance Ltd., has filed an additional affidavit on 26.09.2024, vide inward diary No. D-7235. The following has been stated.

- a) It has come to the knowledge of the Financial Creditor that the Personal Guarantor herein, has, disposed of / created third-party rights over his properties (herein after collective referred to as "**properties**"), details of which are being mentioned herein below:



b) It is stated that by gifting his entire 50% share in the said property namely Mrs. Smita Aditya Dhoot, vide a Gift Deed dated 30.12.2019 registered with office of Sub-Registrar as document no. 12118/2019.

“Property at residential premises bearing Flat No. 2, Ground Floor, Shreeniketan Building, Shree Niwas, CHSL, Netaji Shubhash Road, Marine Drive, Mumbai-4002 admeasuring 1500 Sq. Ft. Carpet area.

c) It is stated that the Mr. Pavan Godiawala, Adv. had 50% share in each of the Properties and had he not gifted, the same would have constituted as an assets of the Personal Guarantor and would have formed part of its estate. However, with a malafide and dishonest intent to deceive the lawful claim of his creditors and protecting the said properties from the rigours of law the said transfers have been affected.

d) It is stated the transfer / gifting by the PG of his entire 50% share in the aforesaid Properties raises



serious concerns regarding its validity. It is humbly submitted that the transfers have been executed with the sole intent to defraud creditors and to avoid the properties from being considered as a part of his estate that would have been otherwise available for distribution under the Insolvency proceedings.

- e) The Financial Creditor further submits that the continuation of insolvency proceedings of the without taking cognizance of this fact would be prejudicial to the rights of all the creditors, as this act on part of the Personal Guarantor constitutes an attempt to undermine and derail the present insolvency process and evade his liability.
- f) Thus, in view of the same, the Financial Creditor seeks to bring this recent development on record vide the present affidavit and prays that all steps be taken on cancel the fraudulent transfers and that the said properties be taken into account for the insolvency proceedings of the Personal Guarantor.



21. The case was heard at length on 21.10.2024, in which Counsels of all the parties had made their submissions and following was noted in the midst of the hearing. The relevant portion of order dated 21.10.2024, is reproduced as under:

“Learned Counsel for the Respondent / PG raised three defences being there is a discrepancy in date of default, there is a mismatch/error in computation of outstanding dues as well as the Corporate Debtor has already been sold as a going concern which is under challenge before the Hon’ble NCLAT”.

22. We have heard the learned counsel for both the parties and perused the documents on record. We have also gone through the report dated 18.03.2024 filed by the IRP.

23. It is seen from the record that the Corporate Debtor viz. **M/s IMP Powers Ltd.** availed financial assistance Rs.25.00 Crore and on 29.11.2017 for Corporate Debtor and others executed various loan/security documents in favour of the Applicant/FC. The



Respondent/Personal Guarantor also executed joint Deed of Guarantee on 29.11.2017 in favour of Applicant/FC to secure the credit facilities granted to the Corporate Debtor.

24. However, after availing the Loan/Credit Facilities, the Corporate Debtor committed default on 29.11.2020. Consequently, on 09.02.2021 the Applicant/FC sent a notice to the Corporate Debtor regarding the event of default and demanded overdue amount with CC to the Respondent/Personal Guarantor. The Corporate Debtor through Reply dated 25.02.2021 admitted liability under the loan agreement and subsequent defaults that occurred on their part in the repayment of Principal and payment of interest amount.

25. Thereafter, the Applicant/FC invoked the Personal Guarantee and on 21.05.2021 the Applicant recalled the loan amounts advanced by way of event of recall notice was served on the Corporate Debtor and its personal guarantor thereby to calling to clear the outstanding amount of Rs.26,57,80,214/-. The Recall Notice was



duly served to the Corporate Debtor and Personal Guarantor on 24.05.2021. The Respondent/Personal Guarantor failed to reply to the recall notice.

- 26.** Thereafter, by order dated 29.03.2022, the Corporate Debtor- IMP Powers Limited was admitted under CIRP and order of moratorium was passed by the Adjudicating Authority in CP (IB) No. 203/NCLT/AHM/2020. Later on, order of liquidation passed on 19.12.2023 in IA No. 987 of 2023.
- 27.** Thereafter, the Applicant/FC also issued Demand Notice being **Form-B** dated 19.01.2023 U/s 95(4)(b) of the IBC, 2016 r.w. Rule 7(1) of the I&B (AAA for IRP for PGCD) Rules, 2019 which was replied by the Respondent/Personal Guarantor vide Reply dated 31.01.2023. The present Petition filed on 24.01.2024 is also very much within limitation as period of limitation for the same is available to the Applicant Bank from the date of default recorded as 30.05.2021 in ordinary circumstances even till 29.05.2024.



28. The Applicant/FC has claimed defaulted amount as **Rs.39,75,63,897/-** as on 30.11.2023 and filed Legdger Account of the Corporate Debtor as **Annecure-H**. Moreover, it is noted that the threshold for Part-III of IBC, 2016 is provided under Section 78 the same is reproduced below.

*“This Part shall apply to matters relating to fresh start, insolvency and bankruptcy of individuals and partnership firms where the amount of the default is not less than **one thousand rupees**.”*

29. On the issue raised by the Respondent/Personal Guarantor regarding the debt which could have been paid if the Plan given by the Respondent was approved by the CoC. The fact remains that the plan was never approved by the CoC. In fact, Corporate debtor was sold as going concern only for Rs.78,00,00,000/- under liquidation. As such we do not find any substance in the contention of the Respondent/Personal Guarantor.

30. However, there are other Creditors i.e. IDBI dues Rs.50.52 Crore, Indian Bank dues Rs.63.26 Crore, BoI



dues Rs.75.51 Crore, SBI dues Rs.165.09 Crore, Karnataka Bank dues are Rs.41.68 Crore as per **Annexure R-3 of BoI**. All of these creditors have invoked the Personal Guarantee of the Guarantor and most of them have filed reply before us. The dues of the Creditors will still survive since the admitted claim in liquidation of the Corporate Debtor are much more and cannot be fully settled with Rs.78,00,00,000/-. Further it was stated that an order of Insolvency is also an order in “Rem”.

31. It is seen that claims of Financial Creditors for Corporate Debtor in liquidation are to the tune of Rs.5,16,37,13,188.78ps. As such the claims of Financial Creditors are much more than threshold of Rs. 1000/- as prescribed under Section 78 of IBC, 2016.

32. Therefore, the plea/defence of the Respondent/Personal Guarantor qua mis-match/error in computation of outstanding dues or Corporate Debtor is sold as a going concern absolve the liability of the Respondent/Personal



Guarantor towards personal guarantee is not sustainable and rejected, accordingly.

- 33.** It is also noted under section 128 of Indian Contract Act, 1872 that when a default is committed the Principal Borrower and Surety are jointly and severally liable to Creditor and Creditor has the right to recover its dues from either of them or from both of them simultaneously. For benevolent reference, the said section of the Contract Act, 1872 is reproduced below:

"The liability of the surety is co- extensive with that of the principal debtor, unless it is otherwise provided by the contract."

- 34.** Moreover, from the report of IRP, it is clear to us that:
- i. IRP has recommended to accept the application for the reason as stated in the report dated 18.03.2024.
 - ii. The Respondent has admitted to have executed the Guarantee Agreement on 29.11.2017 in favour of Applicant/FC/Financial Creditor. Hence, the Petition is very much maintainable.



- iii. The Applicant/FC has demanded the amount outstanding from the Respondent initially vide Demand Notice dated 21.05.2021.
- iv. Resolution Professional report states that no evidence was placed before him by the Respondent having paid the amount demanded by the Applicant/FC and as such in over view entire amount demanded is unserviced as on the date of order.

35. The delay in filing of report by IRP is hereby condoned.

36. In our view, IRP has filed report with due application of mind, on the contrary the respondent has failed to provide proof of discharge of debt to the RP.

37. In view of the foregoing we are left with no other choice but to order as under: -

- I. Initiate Insolvency Resolution Process against the Respondent/Personal Guarantor and moratorium in relation to all 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. Ram Ratan Kanoongo**, having registration no. IBBI/IPA-001/IP-P00070/2017-2018/10156, office at 708, 7th Floor , Raheja Centre , Nariman Point ,Mumbai City,Maharashtra ,400021 (e-mail id rrkanoongo@gmail.com) who was appointed when the Section 97 application was allowed vide Order dated 09.02.2024, 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



Ahmedabad 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 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 the 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.



V. 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.

VI. 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 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.

VII. 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.

VIII. In case the Resolution Professional recommends that a meeting of the creditors is not required to be



called, he shall record the reasons therefor. 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 subsection (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.

IX. 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.



X. The Resolution Professional shall submit his periodic reports before this Tribunal, every 30 days.

XI. 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.

38. In terms of the above, **CP (IB)/70/(AHM)/2024** filed under Section 95 (1) of the IBC, 2016 is admitted and the Insolvency Resolution Process stands initiated against the Respondent/Personal Guarantor.

39. In view of the above, **I.A. No.451 of 2024** is disposed of.

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)

VP