

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

C.P.(IB)-1165(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

Kookmin Bank

Through its Authorised Representative Mr. Hyung Soo Byun, Chief Executive Officer

Having Address at: Unit No 2B/2, 2nd Floor, Two Horizon Centre, Golf Course Road, DLF Phase 5, Sector 43, Gurugram, Haryana- 122002.

.....**Financial Creditor/Applicant**

Vs

Bhavesh Harkishandas Mehta

S/o Late Harikishandas Tarachand Mehta

Having Address at: 1804, Wallace Apartments, Sleater Road, Mumbai- 400007.

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

Order Pronounced on: 18.12.2023

CORAM:

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

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

Appearances:

For the Financial Creditor : Adv. Abhijeet Swaroop and Shivani Karmakar

For the Personal Guarantor: Adv. Rajvi Sheth i/b Interjuris

ORDER

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

1. The Present Company Petition is filed under section 95 of Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) by **Kookmin Bank (“Financial Creditor/Petitioner”)** for initiating Insolvency Resolution Process against **Bhavesh Harkishandas Mehta (“Personal Guarantor”)** for default in repayment of loan.
2. The Financial Creditor had entered into a Channel Finance Agreement (“CFA”) with Samsung India Electronics Private Limited (“SIEL”), wherein credit facility is made available for dealers who wish to procure material from the manufacturers, however such procurement is impeded for want of funds. Under this model, the Financial Creditor, being a bank facilitates credit for the dealer/Corporate Debtor by paying the manufacturer upfront on behalf of the dealer at the stage of procurement/delivery of goods, which amount is subsequently realized by the bank from the Corporate Debtor.
3. Under the CFA, the Corporate Debtor (“Compuage Infocom Limited”) was recognized as a dealer of mobile products for SIEL. Consequently, the Financial Creditor issued a Sanction Letter on 17.11.2022 to the Corporate Debtor, for the total facility amount of INR 40,00,00,000/- [Indian Rupees Forty Crores Only]. Further, a Dealer Finance Facility Agreement was executed to concretize the terms and details of the Facility including its tenure, disbursement, repayment, etc. (“Master Facility Agreement/ MFA”).
4. As per the terms of the MFA, the promoters of the Corporate Debtor viz., Mr. Atul H. Mehta and Mr. Bhavesh H. Mehta (“Personal Guarantors”) executed a Deed of Personal Guarantee dated 24.11.2022. Copy of the Deed of Guarantee is annexed to the petition.

5. In accordance with the MFA, the Financial Creditor extended credit to the tune of INR 19,08,20,327.68 (Rupees Nineteen Crore Eight-Lakh Twenty Thousand Three Hundred Twenty-Seven and Sixty-Eight Paise only). However, the Corporate Debtor started defaulting on repayments.
6. Consequently, the Financial Creditor was constrained to issue a Notice dated 17.03.2023 to Corporate Debtor recalling all the facilities extended to the Corporate Debtor and further calling upon the Corporate Debtor to forthwith repay the entire outstanding amount, which as on the date of the Notice aggregated to INR 14,43,24,153.32 along with applicable interest (as per Sanction Letter).
7. As no response was forthcoming from the Corporate Debtor, the Financial Creditor invoked the Deed of Personal Guarantee furnished by the Personal Guarantor on 29.03.2023. Copy of the Guarantee invocation notice dated 29.03.2023 and the reply dated 31.03.2023, on behalf of the Respondent, to the said guarantee invocation notice are annexed to the petition.
8. It is submitted that the Financial Creditor issued a Demand Notice dated 29.09.2023 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 to the Personal Guarantor and the outstanding amount as on the date of issuance of the Demand Notice stood at INR 10,98,57,049.07 (Indian Rupees Ten crores, Ninety-Eight Lakhs, Fifty-Seven Thousand, Forty-Nine and Seven Paise Only) inclusive of interest and additional charges.
9. It is further submitted that despite expiry of the period of 14 days from the date of service of Demand Notice, the Personal Guarantor has failed to pay the debt.
10. Upon receipt of the advance copy of the present petition, the Respondent was present through its counsel during the hearing of the matter and

sought time to file reply. The Hon'ble Supreme Court in ***Dilip B Jiwrajka 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

11. The Petition for initiating insolvency resolution process against Personal Guarantor to the Corporate Debtor is complete in all respect. The Applicant has not proposed the name of the Resolution Professional. We therefore, upon verification of disciplinary status with the IBBI portal, appoint Shri. **Sanjay Samudra**, having Registration No: **IBBI/IPA-001/IP-P-02325/2021-2022/13641**, Email: sdhanuka@yahoo.com Ph. no.: **9819909200** as Resolution Professional ("RP") in the matter. 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.
12. This Bench also directs for an advance payment of Rs.2,00,000/- (Rupees Two Lakhs 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).

13. The Resolution Professional is directed to examine the application as set out in Section 97(6) of IBC, 2016 who after examining, shall submit its report as provided under Section 99(1) of IBC, 2016, **within 10 days**.
14. The Applicant is directed to serve copy of the application and the order on the Interim Resolution Professional.
15. List the matter for report of the RP on **15.01.2024**.

Sd/-

CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)

Sd/-

LAKSHMI GURUNG
(MEMBER JUDICIAL)

Arpan, LRA