

IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD

COURT - 2

ITEM No.303

CP(IB)/316(AHM)2022

Order under Section 95 IBC

IN THE MATTER OF:

Kirtanlal & Sons

.....Applicant

V/s

Himanshu Harshad Choksi

.....Respondent

Order delivered on: 04/03/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)

Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

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**DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)**

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**CHITRA HANKARE
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT - II)
C.P. (IB) No. 316 of 2022**

(Filed under Section 95(1) of the Insolvency & Bankruptcy Code, 2016)

IN THE MATTER BETWEEN

Kirtanlal & Sons

... Financial Creditor

Vs.

Himanshu Harshad Choksi

... Personal Guarantor

Order pronounced on 04.03.2024

Coram:

**MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)**

**MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)**

MEMO OF PARTIES

Kirtanlal & Sons

501, Corinthian, 5th Floor,
Plot No.370, Linking Road,
Khar (West), Mumbai – 400 052.

... Financial Creditor

Versus

Himanshu Harshad Choksi

2, Krishna Society, Ellisbridge

Ahmedabad – 380006.

... Personal Guarantor

Present:

For the Applicant : Ms. Anushree Soni, Adv. a.w Mr. Rohan Lavkumar

For the RP : Mr. Ravi Pahwa, Adv.

For the Respondent : Mr. Hiten Parikh, PCA

JUDGEMENT

1. This application filed under Section 99(1) of the IBC by the RP appointed in terms of order delivered on 05.12.2023 directing the RP to submit a report on the application filed under Section 95 of the IBC 2016 by the Financial Creditor against the Personal Guarantor.
2. From the report submitted by affidavit dated 15.12.2023, it is observed that there has been inconsistency in the observations and the RP has further pleaded that even though he had asked for details of the debt and repayment, if any, made, he had not received any reply from the Personal Guarantor. In view of the same, he has stated that he has

not been able to comment in the report as the details of the debt and repayment have not been furnished by the Personal guarantor and Financial Creditor. Thereby, the report submitted by the RP is without any recommendation to take further decision by this Tribunal under Sec 100 of IBC.

3. However, the applicant appeared through his Counsel and also stated that his documents submitted were not considered before sending this report. On perusal of the report and the application filed, it appears that the RP had sent a letter/email on 09.12.2023, 12.12.2023 and 14.12.2023 to the Personal Guarantor and on 12.12.2023 an email was sent to the applicant financial creditor. The financial creditor has sent an email on 13.12.2023 giving details from which we observe the debt and default seems to have already been decreed initially by the Hon'ble High Court of Mumbai vide order dated 15.03.2005 for an amount of Rs.28,91,836/-. Further, as per the application, there were further proceedings made by the applicant by filing an execution application No.92 of 2006, however the Corporate Debtor filed a reference application before the BIFR on 02.01.2006 under provisions of SICA. Further, it is observed

from application that an order was passed on 23.01.2007 wherein the decree was stayed and on appeal by applicant, the Hon'ble High Court of Bombay vide its order dated 26.09.2019 set aside the said order dated 23.01.2007 and allowed the applicant to proceed further in execution of the decree against guarantors. The applicant served a Demand Notice dated 14.07.2022 under rule 7(1) of the IBC and filed this application on 23.09.2022. In view of the same the application filed is within the period of limitation taking in to account the orders passed by the Hon'ble High Court of Mumbai in 2019.

4. Even though the RP to examined the documents and submitted a composite report, considering the facts of the case and getting the documents, he has not done so. He also acted belatedly, by starting correspondence at last moments i.e., on 12.12.2023 with Financial Creditor, which shows negligence on his part. The applicant has filed a fresh IA again under Sec 95 of IBC stating that he had in fact given the documents, but RP submitted the report without considering the same. As per the email produced by the applicant, a reply was given at 1.35 AM by email on 15.12.2023 which should

have been considered by RP when he finalised his report. When the RP was knowing he has to submit report within 10 days he should have issued notices to parties immediately after receiving order. When he received reply on 15.12.2023 he may have ask for further time to file report.

5. We view the act of the RP to be not in consonance with the IBC and regulations 2016 and the orders issued by this Tribunal to submit the report. We also find that his report is without any opinion and does not cover the facts of whatever documents submitted. The report of the RP is not considered as it is incomplete and not covered the facts after hearing and verifying documents submitted by both the parties. The performance of RP is considered not satisfactory.
6. After hearing submissions of the applicant, the respondent, it appears that the present application is filed within the period of limitation. It is observed from the record that the respondent had not brought on record any document denying or disputing the invocation of his Personal Guarantee. There is no any evidence given by the respondent to show that he has paid the debt or his Personal Guarantee agreement is

cancelled. Hence we pass the following order in terms of Section 100 of IBC, 2016:

ORDER

- I. The insolvency process is initiated against the respondent personal guarantor. The moratorium begun on the date of admission of the application shall cease to have effect at the end of the period of 180 days from the date of this order. During the moratorium period, the following provisions shall be in effect:
 - a. Any pending legal action or proceeding in respect of any debt 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 existing RP Rathin Amishbhai Majmudar is directed that his services are removed and he has to hand over all documents to the new RP appointed by this Tribunal and no fees or remuneration is to be given to him in this case

by the applicant for the reason of his having submitted incomplete and unverified report to this Tribunal.

III. We hereby appoint RP Hiten Ratilal Abhani having Registration No. IBBI/IPA-001/IP-P-02068/2020-2021/13231 and is directed to cause a public notice to be published on behalf of the Adjudicating Authority within 7 days of uploading of this order on the website of NCLT, inviting claims from all Creditors who shall register their claims as provided under Section 103 within 21 days of such issuance. The notice shall contain the necessary information as provided under section 102(2) of IBC. The publication of the notice shall be made in newspapers, one in English and the other in Vernacular which have wide circulation in the state where the debtor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry. One shall be placed by the Registry on our website and the other shall be affixed in the premises of this Authority.

IV. The Resolution Professional in exercise of the powers conferred under Section 104 shall prepare a list of creditors within 30 days from the date of the notice. The debtor shall prepare a repayment plan in consultation with

the Resolution Professional as provided under section 105 which shall include the provisions for payment of fee to the Resolution Professional. 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.

- V. In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof. If the resolution professional is of the opinion that the meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3). The date of meeting should not be less than 14 days or more than 28 days from the date of submission of the report under sub-section (1) of Section 106, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all relevant/feasible modes. Such notice must contain the details as provided under the provisions of Section 107.
- VI. The meeting of the creditors shall be conducted in accordance with sections 108, 109, 110 & 111. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 and submit the same to this Authority, copies of which shall be provided to the debtor and the creditors. It is made clear that the resolution professional shall perform his function and duties in compliance with the code of Conduct provided under

section 208 of the IBC, 2016.

- VII. The applicant is directed to deposit Rs.2 lakhs to the bank account of RP within one week, towards his fees. This shall be subjected to the Rules and Regulations under the provisions of IBC, 2016.
- VIII. Accordingly, CP(IB) 316 of 2022 is allowed and disposed off.

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DR.V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

CHITRA HANKARE
MEMBER (JUDICIAL)