

IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD

COURT - 2

ITEM No.306

IA/81(AHM)2024 in CP(IB)/165(AHM)2023

Order under Section 99 IBC,2016 r.w.Rule 11 of NCLT,2016

IN THE MATTER OF:

Bhavik Haribhai Rupapara RP of PG Sureshbhai
Labhshankar Shilu

.....Applicant

V/s

.....Respondent

Sureshbhai Labhshankar Shilu PG to Shrinathji Ginning
Process Private Limited & Another

Order delivered on: 09/05/2024

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 the order.

The common order is pronounced in the open court, vide separate sheet.

-Sd-

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

-Sd-

**CHITRA HANKARE
MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY
THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT - II)**

IA/81(AHM)2024 in CP(IB) No. 165 / NCLT / AHM / 2023

(Application filed under Section 99 of the Insolvency & Bankruptcy Code, 2016 r.w Rule 11 of NCLT Rules, 2016.)

In the matter of :

Mr. Bhavik Haribhai Rupapara Resolution Professional
of Mr. Sureshbhai Labhshankar Shilu
310, Star Chamber, Nr. Harihar Chowk,
Rajkot, Gujarat-360001

... Applicant/Resolution Professional

Versus

Mr. Sureshbhai Labhshankar Shilu
Personal Guarantor to Shrinathji Ginning
Process Private Limited
Rameshwar, Vimal Nagar 4, Plot No. 22,
B/h Pushkar Dham, University Road,
Saurashtra University Area, Rajkot-360005

....Respondent No. 1/Personal Guarantor

Mr. Mukeshbhai Labhshankar Shilu
71/E, Orchid White Field,
Nr. Makarba Railway Crossing, Makarba,
Ahmedabad-380051

....Respondent No. 2/Creditor

And in the matter of

Mr. Mukeshbhai Labhshankar Shilu
71/E, Orchid White Field,
Nr. Makarba Railway Crossing, Makarba,
Ahmedabad-380051

Applicant/Financial Creditor

Versus

Mr. Sureshbhai Labhshankar Shilu
Personal Guarantor to Shrinathji Ginning
Process Private Limited
Rameshwar, Vimal Nagar 4, Plot No. 22,
B/h Pushkar Dham, University Road,
Saurashtra University Area, Rajkot-360005

Respondent/Personal Guarantor

Order pronounced on 09.05.2024

CORAM:

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

**DR. V. G. VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)**

Present:

For the Applicant : Ms. Hirva Dave, Adv. a.w. Mr. Jaimin Dave, Adv
For the Respondent : None

JUDGEMENT

1. The Present Application is filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as IBC, 2016) read with Rule 7(2) of the Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 by Mr. Mukeshbhai Labhshankar Shilu (hereinafter referred to as "Financial Creditor") for the purpose of initiating insolvency resolution process against Mr.

Sureshbhai Labhshankar Shilu (hereinafter referred to as Personal Guarantor) for default amount of Rs.4,31,00,000/- The Respondent personal guarantor stood as guarantor in respect of repayment of interest, cost, charge and other expenses in respect of Deed of Guarantee dated 02.01.2019.

2. The creditor is engaged in the business of trading of cotton bales. In between the period of September, 2016 to March 2018 the Applicant/FC had advanced funds to M/s. Shrinathji Ginning Process Private Limited from time to time as per its requirement and demand. Mr. Sureshbhai Labhshankar Shilu Director of Corporate Debtor stood as guarantor for the dues of the applicant/creditor under the deed of guarantee dated 02.01.2019.
3. The total debt is Rs.4,31,00,000/- and date of default mentioned is 07.10.2021. Due to non payment of the outstanding dues by the corporate debtor, the financial creditor has filed this application for initiation of Insolvency Resolution Process against the guarantor under section 95 of IBC, 2016. Applicant issued demand notice to the respondent on 16.05.2023 under Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency

Resolution Process for Personal Guarantor to Corporate Debtors)
Rules, 2019.

4. Vide order dated 06.12.2023 the Resolution Professional, as suggested by the financial creditor, Mr. Bhavik Haribhai Rupapara bearing Registration No. IBBI/IPA-001/IP-P-02741/2022-23/14196 appointed as Resolution Professional to carry out Insolvency Resolution Process of the Personal Guarantor as per Section 97(3) of the IBC, 2016.

5. The Resolution Professional has filed the report dated 11.01.2024 recommending the admission of the application filed under Section 95 of IBC, 2016. The Report of RP states that the RP had not received any evidence of repayment of the debt claimed in Sec.95 petition from Mr. Sureshbhai Labhshankar Shilu. Further, Vide notice dated 12.12.2023 RP communicated to the personal guarantor for any evidence of proof of payment of the debt claimed as unpaid by the creditor and other details, RP has not received any such proof from the personal guarantor with respect to this notice. RP had neither received any document whereby the Personal Guarantee agreement dated 02.01.2019 was cancelled by both the parties nor received any

order of court or any other forum whereby the personal guarantee agreement dated 02.01.2019 was cancelled or set aside.

6. The copy of the application and the Report of RP was duly served upon the Personal Guarantor but the PG has chosen not to file any reply either to the application or to the report of the RP. Pursuant to notice dated 12.12.2023 sent by RP to the PG, no evidence of proof of payment of outstanding debt claimed by FC received.
7. The RP has recommended to initiate the Insolvency Resolution Process against the Personal Guarantor. The RP has submitted the copies of documents and also details of assets of respondent. 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.
8. It is stated in the report of the RP that the Karur Vysya Bank had issued notice for sale of immovable and movable properties to borrower and guarantors under the Security Interest (Enforcement)

Rules, 2022 under the SARFAESI Act, 2002 on 04.09.2023. Further, RP came to know that Mr. Mukesh Labhshankar Shilu has also filed suit in Civil Court Rajkot for lease pendency notice Registration dt.: 08.02.2021 in which he is demanding Rs. 4,28,01,185/- from Mr. Sureshbhai Labhshankar Shilu in addition to personal guarantee given. The RP served the notice on the Personal Guarantor and the report to the respondents, namely the Personal Guarantor and Financial Creditor. They have not filed any reply.

9. On the basis of above these debts covered under this guarantee does not fall under the purview of IBC 2016. The agreement between the parties was that the third party (Applicant) had contributed towards the economic strength in the business and development of fourth party by advancing funds and supplying goods cotton bales on credit. This transaction is done by the sole proprietor entity which could be a commercial exchange of goods or a provision of a temporary funds which does not have any interest and is not a financial debt. The letter dated 27th August 2021 from the applicant evidences that this is an individual arrangement to give and seek return of funds. Also the individual who is the applicant could have provided some financial accommodation. Since the debt cannot be defined in terms

of Sec 3(11) of the IBC, this invocation of guarantee on a document executed between the individual parties has no relevance or cannot be adjudicated by this Tribunal under Sec 100 of IBC 2016.

10. Hence we pass following order:

ORDER

I. IA/81(AHM)2024 in CP(IB)/165(AHM)2023 is rejected.

-Sd-

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

-Sd-

**CHITRA HANKARE
MEMBER (JUDICIAL)**