

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

ITEM No.302
C.P.(IB)/61(AHM)2022

Proceedings under Section 95 IBC

IN THE MATTER OF:

State Bank of India

.....Applicant

V/s

Manoj Narendrakumar Patel

.....Respondent

Order delivered on: 04/07/2024

Coram:

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

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

PRESENT:

For the Applicant :

For the Respondent :

ORDER
(Hybrid Mode)

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

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SAMEER KAKAR
MEMBER (TECHNICAL)

-sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

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

CP/IB/61/NCLT/AHM/2021

[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. Manoj Narendrakumar Patel***

State Bank of India

Stressed Assets Management Branch,
2nd floor, Paramsiddhi Complex,
Opp. V.S. Hospital,
Ellisbridge, Ahmedabad,
Gujarat-380006

...Applicant/Financial Creditor

VERSUS

Mr. Manoj Narendrakumar Patel

(Personal Guarantor to Maktel Control & Systems Private Limited)
At- Flat No. 1 Green flat, Suvarnapuri Society,
Chikuwadi, Racecourse Circle,
Vadodara, Gujarat-390007

.... Respondent/Personal Guarantor

Order pronounced on 04.07.2024

CORAM:

SH. SHAMMI KHAN, MEMBER (JUDICIAL)

SH. SAMEER KAKAR, MEMBER (TECHNICAL)

APPEARANCE:

For Applicant/SBI : Mr. Ritursj Meena, Adv.
For the Respondent/
Personal Guarantor : Mr. Harmish K Shah, Adv
For IRP/RP : Mr. Saurabh Rachchh, Adv

O R D E R

Per: Bench

1. The Present Application is filed on 04.02.2022 under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC, 2016") r/w Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 by Applicant Bank (herein after referred to as "Financial Creditor") for the purpose of initiating of insolvency process against Mr. Manoj Narendrakumar Patel (hereinafter referred to as "Personal Guarantor") for a default amount of Rs.32,38,54,261.68Ps. as on 31.10.2021 in respect of Deed of Guarantee dated 14.11.2014 executed in favour of Applicant Bank/Financial Creditor.

2. 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.
3. Brief facts of the case are that initially, on 13.04.2009 the Corporate Debtor Maktel Control & Systems Pvt. Ltd. was sanctioned and granted Credit Facilities of Rs.22.70 Crore. Later on 14.11.2014 Credit Facilities were enhanced to Rs.28.90 Crore for which various loan

security documents were executed by the Corporate Debtor through its Director in favour of the Applicant Bank. Respondent/Personal Guarantor has also executed Deed of Guarantee on 14.11.2014 in favour of the Applicant Bank/Financial Creditor to secure the Credit Facilities provided to the Corporate Debtor which is enclosed along with the Application

4. 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. Consequently, the said loan account of the Corporate Debtor was classified as NPA on 13.03.2018.
5. Subsequently, the Applicant Bank recalled the loan amounts and served Demand Notice dated 20.04.2018 issued U/s 13(2) of the SARFAESI Act, 2002 to the Borrower and Guarantors to repay the outstanding dues. Thereafter, on 19.06.2018 Applicant Bank filed

O.A. No.858 of 2018 before DRT, Ahmedabad against the Corporate Debtor as well as the Respondent/Personal Guarantor and others.

6. Thereafter, Corporate Debtor submitted OTS proposal on 30.11.2019 and 31.12.2019 which was rejected by the Applicant bank vide Rejection Letter dated 28.01.2020. Further, by order dated 02.02.2021, the Corporate Debtor was admitted to CIRP and an order of moratorium was passed by this Adjudicating Authority in CP(IB) No.499/9/NCLT/AHM/2019.
7. Thereafter, Applicant Bank invoked the personal guarantee and issued Demand Notice to the Respondent/Personal Guarantor on 10.11.2021 under Rule 7(1) of the Insolvency and Bankruptcy Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 which was delivered to the

Respondent/Personal Guarantor on 29.11.2021 as per tracking report of Postal Authority.

8. Due to non-payment of the amount by the Corporate Debtor as well as Personal Guarantors, on 04.02.2022 the Applicant Bank/Financial Creditor has filed this application for initiation of Insolvency Resolution Process against the Respondent/Personal Guarantor in 'Form-C' under Section 95 of the IB 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) Rules, 2019.
9. On presentation of the application by the Applicant/Financial Creditor, this Tribunal vide order dated 08.03.2022 appointed Interim Resolution Profession (hereinafter referred to as "IRP") as suggested by the Financial Creditors viz. **Mr. Vinod Tarachand Agarwal** 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.

10. The Interim Resolution Professional has filed the report dated 01.04.2022 on 21.04.2022 vide inward dairy no. D2195 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 filed by the IRP are as follows:

- i. Mr. Manoj Narendra Kumar Patel had extended Personal Guarantee as evidenced by the Deed of Guarantee submitted along with the application;
- ii. The State Bank of India on 20.04.2018 invoked the personal guarantee against Mr. Manoj Narendra Kumar Patel by issuing notice to the Borrower and Guarantors u/s 13(2) of Securitization and Reconstruction of financial assets and Enforcement of Security Interest Act, 2002 (SARFAESI) and directed to pay the debt. However, the Personal Guarantor failed to pay the debt;

- iii. In pursuant to non-receipt of any response of the demand notice (Form-B) served to the personal guarantor, The State Bank of India filed the petition in Form-C under Section-95 of the Code read with rule 7(2) of the Insolvency and Bankruptcy Rules, 2019 against the personal guarantor before this Tribunal, on January, 2022 with respect to the Initiation of Individual Insolvency Resolution Process of the Personal Guarantors to the Borrower.
- iv. This Tribunal vide order dated 08.03.2022 w.r.t the declaration of interim-moratorium period which shall commence from the date of application as per Section 96 of the Insolvency and Bankruptcy Code, 2016 and directed the RP Report as per section 99 of the code on admission or rejection of the application made by the State Bank of India under section 95 of the code;
- v. The Interim Resolution Professional have sent Intimation letter through speed post-delivery to State Bank of India and Mr. Dharit Kishorbhai Shah (Resolution Professional of M/s Maktel Control &

systems Private Limited) dated 11.03.2022 along with the order of this Adjudicating Authority and through e-mail dated 15.03.2022, to provide us any records and evidence with regard to personal guarantee provided by Mr. Manoj Narendra Kumar Patel to State Bank of India on behalf of M/s Maktel Control & Systems Private Limited.

- vi. The Interim Resolution Professional have sent hard copy of letter through speed post-delivery to his business and personal address along with the copy of order of this Adjudicating Authorities dated 08.03.2022 to Mr. Manoj Narendra Kumar Patel and vide our e-mail dated 15.03.2022. Wherein he was requested to submit the reply within 7 days of receipt of the letter. But IRP did not receive either any acknowledgement or any evidence from Mr. Manoj Narendra Kumar Patel to prove the repayment of the debt claimed as unpaid by State Bank of India.
- vii. Status of letter dispatched through speed post-delivery to personal address is marked as "Item

Returned Addressee moved". However, status of letter sent to business address is marked as "Item Returned Addressee Left without instructions".

- viii. However, IRP tried to intimate about Initiation of Insolvency Process to him through call, but no response regarding the same was received from him.
- ix. Thus, Resolution Professional is of the view that application should be accepted and proceedings should be initiated with respect to the Individual Insolvency Resolution Process of Mr. Mr. Manoj Narendrakumar Patel (Personal Guarantor to M/s Maktel Control & systems Private Limited) in order to recover the outstanding debt payable as per the Personal Guarantee Agreement/ deed executed between the SBI and Personal Guarantors.
- x. The Present application is filed against the personal guarantor is in the prescribed format and complete in all respects.

11. The Respondent/Personal Guarantor appeared in the matter through Counsel. However, he has not filed any reply to report filed by the Interim Resolution Professional.
12. The proceedings in the matter was put on hold since the Constitutional Validity of the Sections 94 to 100 relating to the insolvency of personal Guarantor was pending before the Hon'ble Supreme Court in the matter of **Dilip B. Jiwrajka V/s Union of India & Ors.** in WP(civil)No. 1281 of 2021.
13. The Hon'ble Supreme Court in the judgement of **Dilip B. Jiwrajka V/s Union of India & Ors.** in **WP(civil)No. 1281 of 2021** dated **09.11.2023** upheld the Constitutional Validity of the Sections 94 to 100 and the Conclusion of the Judgments are as follows:
 - i. *No judicial adjudication is involved at the stages envisaged in Sections 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 adjudicatory authority is recommendatory in nature on whether to accept or reject the application;*
- iii. *The submission that a hearing should be conducted by the adjudicatory authority for the purpose of determining ‘jurisdictional facts’ at the stage when it appoints a resolution professional under Section 97(5) of the IBC is rejected. No such adjudicatory function is contemplated at that stage. To read in such a requirement at that stage would be to rewrite the statute which is impermissible in the exercise of judicial review;*
- iv. *The resolution professional may exercise the powers vested under Section 99(4) of the IBC for the purpose of examining the application for insolvency*

resolution and to seek information on matters relevant to the application in order to facilitate the submission of the report recommending the acceptance or rejection of the application;

- v. *There is no violation of natural justice under Section 95 to Section 100 of the IBC as the debtor is not deprived of an opportunity to participate in the process of the examination of the application by the resolution professional;*
- vi. *No judicial determination takes place until the adjudicating authority decides under Section 100 whether to accept or reject the application. The report of the resolution professional is only recommendatory in nature and hence does not bind the adjudicatory authority when it exercises its jurisdiction under Section 100;*
- vii. *The adjudicatory authority must observe the principles of natural justice when it exercises jurisdiction under Section 100 to determine whether to accept or reject the application;*

- viii. *The purpose of the interim moratorium under Section 96 is to protect the debtor from further legal proceedings; and*
- ix. *The provisions of Section 95 to Section 100 of the IBC are not unconstitutional as they do not violate Article 14 and Article 21 of the Constitution.*
14. We have heard the learned counsel for both the parties and perused the documents on record. We have also gone through the report dated 01.04.2022 filed by the IRP.
15. It is seen from the record that the present application is filed on 04.02.2022. Personal Guarantee dated 14.11.2014 was executed in favour of in favour of Applicant Bank.
16. Loan account of the Corporate Debtor was classified as NPA on 13.03.2018 and recalled vide Demand Notice dated 20.04.2018 issued U/s 13(2) of the SARFAESI Act, 2002. Thereafter, Corporate Debtor submitted OTS

proposal on 30.11.2019 and 31.12.2019 which was rejected by the Applicant bank vide Rejection Letter dated 28.01.2020. Further, by order dated 02.02.2021, the Corporate Debtor was admitted to CIRP and an order of moratorium was passed by this Adjudicating Authority in CP(IB) No.499/9/NCLT/AHM/2019.

17. Demand Notice dated 10.11.2021 was issued Under Rule 7(1) of the Insolvency and Bankruptcy Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 invoking Personal Guarantee within the period of limitation, was served upon the Respondent/Personal Guarantor on 29.11.2021 as per tracking report of Postal Authority.
18. 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."

19. 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 01.04.2022.
 - ii. The applicant has placed on record the Guarantee Agreement on 14.11.2014 in favour of Applicant Bank/Financial Creditor. Hence, the Petition is very much maintainable.
 - iii. The Applicant has demanded the amount outstanding from the Respondent initially vide Demand Notice dated 20.04.2018 and then vide Demand Notice 10.11.2021.

- iv. Resolution Professional report states that no evidence was placed before him by the Respondent having paid the amount demanded by the Applicant and as such in over view entire amount demanded is unserviced as on the date of order.
 - v. In our view the application is not hit by Limitation.
20. 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 1BC, 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. Vinod Tarachand Agarwal**, having Registration No: IBBI/ IPA-001/IP-P00641/2017-2018/11090, office at 204, Wall Street-1, Near Gujarat College, Ellis Bridge ,Ahmadabad, Gujarat, 380006 (e-mail id ca.vinod@gmail.com] who was appointed when vide

Order dated 08.03.2022 under Section 97 of the IBC, 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.

21. In terms of the above, **CP (IB)/61/(AHM)/2022** filed under Section 95 (1) of the IBC, 2016 is admitted and the Insolvency Resolution Process stands initiated against the Respondent/Personal Guarantor.

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SAMEER KAKAR
MEMBER (TECHNICAL)

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SHAMMI KHAN
MEMBER (JUDICIAL)