

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.302
CP(IB)/230(AHM)2022

Order under Section 95 IBC

IN THE MATTER OF:

State Bank of India

.....Applicant

V/s

Falguniben Arpit Hathi
(Personal Guarantor)

.....Respondent

Order delivered on: 15/05/2024

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 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)**

CP(IB) No. 230 / NCLT / AHM / 2022

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

State Bank of India
Stressed Assets Management Branch,
2nd Floor, Param Siddhi Complex,
Opp. V S Hospital, Ashram Road,
Ellis Bridge, Ahmedabad
Gujarat-380006.

... Financial Creditor

Versus

Mrs. Falguniben Arpit Hathi
E-102, Nilamber Bellisimo,
Vasna Road, Vadodara.

... Personal Guarantor

Order pronounced on 15.05.2024

Coram:
MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)

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

Present:

For the Applicant : Mr. Biju Nair, Adv.

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 State Bank of India (hereinafter referred to as “Financial Creditor”) to initiate insolvency resolution process against Mrs. Falguniben Arpit Hathi (hereinafter referred to as Personal Guarantor) for default amount of Rs. 50,96,14,531.03/- 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 12.04.2019.
2. The total debt is Rs. 50,96,14,531.03/- and date of default as mentioned in application is 17.07.2021. The applicant filed an original application bearing OA No. 717 of 2021 before Debt Recovery Tribunal II, Ahmedabad for recovery of dues. Thereafter, Company Petition bearing No. CP(IB) 186/NCLT/AHM/2022 filed by the applicant under Section 9 of the IBC against Miku Polymers and Plastics Limited and same was admitted by this Hon’ble

National Company Law Tribunal, Ahmedabad vide order dated 11.07.2023.

3. It is stated in the application that M/s Miku Traders was originally a partnership firm and the respondent herein was one of the partner of the firm. The said firm had been enjoying various fund based and non fund based credit facilities from 2013. In the year of 2019 the business of the firm along with all its rights and liabilities had been taken over by the new constituted company namely Miku Polymers and Plastics Limited on 01.03.2019. The guarantors and the Corporate debtor executed a confirmation deed on 28.03.2019 in favor of the applicant confirming the subsisting liability of the company and guarantors under the already executed documents and securities. A letter of new arrangement was made on 12.04.2019. The respondent had executed personal guarantee fresh in favour of the applicant on 12.04.2019 for Rs 44 crores. The limits were renewed fresh on 14.10.2020 and the respondent executed fresh guarantee on 14.09.2020 (documents not produced in this application). The respondent also gave a revival letter on 04.03.2020 and also created a mortgage of various properties for securing the loan on 26.11.2020. The corporate debtor has entered into Deed of Mortgage with the applicant on 26.11.2020. The

account turned NPA on 05.12.2020.

4. Vide order dated 29.08.2022 the Resolution Professional, as suggested by the financial creditor, Mr. Sunil Kumar Kedia bearing Registration No. IBBI/IPA-001/IP-P00028/2016-17/10064 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 12.01.2024 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 Mrs. Falguniben Arpit Hathi. Further, Vide letter dated 16.09.2022 RP communicated to the personal guarantor for any evidence of proof of payment of the debt claimed as unpaid by the creditor, RP has not received any such proof from the personal guarantor with respect to this letter. RP had neither received any document whereby the Personal Guarantee agreement dated 12.04.2019 was cancelled by both the parties nor received any order of court or any other forum whereby the personal guarantee agreement dated 12.04.2019 was cancelled or set aside. RP in a video conferencing meeting held with the respondent/personal

guarantor on 03.10.2022, the PG acknowledged the liability. Further, RP has also asked the State Bank of India to provide the latest statement of Accounts. Bank provided the same, the statement also shows that there is not payment was received either from the CD or from the PG.

6. The copy of the present 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 the report of the RP.
7. 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. As per the Applicant, the personal guarantee was invoked vide notice dated 18.05.2021, Applicant issued demand notice to the respondent on 11.11.2021 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtors) Rules, 2019. This application was filed on 28.03.2022 under Sec 95 of IBC 2016 against the respondent. The application is observed to have been filed within the period of limitation under section 18 of Limitation Act,1963.
8. On the basis of above facts and submissions it appears that the

present application is filed within the period of limitation. Date of Default as mentioned in the application is 17.07.2021 and the present petition E-filed before this Tribunal on 28.03.2022.

9. Vide order dated 22.12.2023 this Hon'ble Adjudicating Authority directed applicant to comply with the NeSL Requirement. In compliance with the order dated 22.12.2023 the applicant filed the purshis dated 01.01.2024 with respect to NeSL Certificate. On perusal of NeSL certificate it is shows that the same is complied and status of authentication is pending for authentication.
10. The respondent inspite of notices did not appear in the matter nor file any reply. The submissions and documents have revealed that the liability of the guarantor was extended and this application was filed within the time period required for submission under Sec 238 A of the IBC 2016.
11. Accordingly, based on the report of Resolution Professional submitted under Section 99 that the applicant satisfies the provisions of Section 95 of IBC 2016 and after hearing of the submissions of the applicant and the respondent, pass the following order in terms of Section 100 of IBC, 2016.

ORDER

- (i) Application is allowed.
- (ii) 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
- (iii) The Resolution Professional viz., Mr. Sunil Kumar Kedia, who has been appointed under Section 97 vide order dated 29.08.2022, 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 section 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) 230 of 2022 is disposed off.

-Sd-

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

-Sd-

CHITRA HANKARE
MEMBER (JUDICIAL)