

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**COURT - 2**

ITEM No.301

IA/423(AHM)2024 in C.P. (IB)/292/AHM/2023

**Order under Section 100 IBC**

**IN THE MATTER OF:**

Dharit K Shah RP of Personal Guarantor Poonam Vinaybhai .....Applicant  
Patel

**Order delivered on: 14/05/2024**

**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.

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

-sd-

**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**AHMEDABAD (COURT - II)**

**IA No. 423 / NCLT / AHM / 2024**

**IN**

**CP(IB) No. 292 / NCLT / AHM / 2023**

[Under Section 94 of the Insolvency and Bankruptcy Code, 2016 read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019]

**IN THE MATTER OF:**

**Poonam Vinaybhai Patel PG for**

**M/s. Safal Flexibond Private Limited**

...Applicant

Versus

**State Bank of India**

...Respondent

**Order pronounced on 14.05.2024**

**Coram:**

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

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

**MEMO OF PARTIES**

**Poonam Vinaybhai Patel PG for  
M/s. Safal Flexibond Private Limited**

D-601, The Grand Eastern Phase – 2,  
Nr. Bhakti Circle, Nikol,  
Ahmedabad City, Ahmedabad Gujarat – 382350.

...Applicant

Versus

**State Bank of India**

Present Stressed Assets  
Management Branch,  
“Paramsiddhi” Complex,  
2<sup>nd</sup> Floor, Opp. V.S. Hospital,  
Ellisbridge, Ahmedabad – 380006.

...Respondent

**Present:**

For the Applicant : Ms. Aditi Sharma, Adv. for Mr. Atul Sharma,  
Adv.

For the PG : Mr. Tirth Nayak, Adv.

For SBI : Mr. Rituraj Meena, Adv.

**JUDGEMENT**

1. The Present Application is filed under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC, 2016") r/w Rule 6 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for IRP for Personal Guarantors to Corporate Debtor) Rules, 2019.
2. M/s. Safal Flexiband Pvt. Ltd. (hereinafter referred to as Corporate Debtor) has obtained cash credit and term load from State Bank of India (hereinafter referred to as Financial Creditor). The applicant is one of the guarantors for the credit facilities availed by the Corporate Debtor. The date of default of payment is 31.10.2023. Financial Creditor has issued demand notice u/s. 13(2) of SARFAESI Act against the Corporate Debtor as well as Applicant on 03.10.2023.
3. On presentation of the application by the Applicant/ Personal Guarantor, this Authority vide order dated 17.01.2024 has appointed the Resolution Professional viz., Mr. Dharit Kishorbhai Shah having Registration No. IBBI/IPA-001/IP-P00993/2017-2018/11640 & directed RP to file report under Section 99 of Insolvency and Bankruptcy Code, 2016, which

has been filed by him through an IA No. 423 of 2024, recommending the admission of the application filed under section 94 of IBC, 2016.

4. Respondent- State Bank of India filed its reply stating that the applicant is legally obligated to discharge the financial liabilities owed to the respondent as per the terms stipulated in the guarantee agreement.
5. We have heard the learned Counsel for both the parties and perused the documents on record. We have also gone through the report dated 20.02.2024 filed by the IRP. It is 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 both of them simultaneously. For benevolent reference, the said section of Indian 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.”*

6. 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 20.02.2024.
  - ii. The Respondent has admitted to have executed the Guarantee Agreement.
  - iii. The Respondent has demanded the amount outstanding from the Applicant vide Demand Notice dated 03.10.2023.
  - iv. Resolution Professional report states that no evidence was placed before him by the Applicant having paid the amount demanded by the Respondent and as such in over view entire amount demanded is unserviced as on the date of order.
7. From the report there does not appear any request of the Resolution Professional for issuance of the instructions for the purpose of conducting negotiations between the debtor and creditors for arriving at a repayment plan. Therefore Insolvency Resolution Process is to be initiated against Personal Guarantor.
8. Hence, we pass the following order:

**ORDER**

- I. CP(IB) No.292 of 2023 along with IA No.423 of 2024 is allowed.
- II. Initiate Insolvency Resolution Process against the Applicant/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 IBC, 2016. During the moratorium period;
  - a) Any pending legal action of 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, of 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 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.
- IV. 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 situated/resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.



V. The Resolution Professional in 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, and
- b) claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice.

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. 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 on the basis of which the creditors may agree upon the plan;

b) provision for payment of fee to the Resolution Professional.

- VI. 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.
- VII. 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 sub- section (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 provides under the provisions of Section 107 of 1BC, 2016.
- VIII. 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.

- IX. The Resolution Professional shall submit his periodic reports before this Tribunal every 30 days.
- X. 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.

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

**-sd-**

**CHITRA HANKARE  
MEMBER (JUDICIAL)**