

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

ITEM No.305- C.P.(IB)/26(AHM)2024
With
ITEM No. 306- IA/399(AHM)2024

Proceedings under Section 95 IBC

IN THE MATTER OF:

State Bank of India

.....Applicant

V/s

Balkrushna J.Panchal

.....Respondent

Order delivered on: 28/06/2024

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

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SAMEER KAKAR
MEMBER (TECHNICAL)

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SHAMMI KHAN
MEMBER (JUDICIAL)

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

**I.A. No.399/NCLT/AHM/2024
with
CP (IB) No.26/NCLT/AHM/2024**

[Application under Section 95 of the Insolvency and Bankruptcy 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]

In the matter of **Shri Balkrushna J. Panchal**

State Bank of India

Having address at:

SAM (Stressed Assets Management) Branch,
Paramsiddhi Complex, 2nd Floor,
Opp, V.S Hospital, Ellis Bridge,
Ahmedabad, Gujarat – 380006.

... Applicant/Financial Creditor

VERSUS

Shri Balkrushna J. Panchal

(Personal Guarantor of M/s. Archon Engicon Ltd.)
14, Unique Park Society,
Opp. ISRO, Jodhpur Tekra,
Satellite, Ahmedabad.
Gujarat –380052

... Respondent/Personal Guarantor

Order pronounced on 28.06.2024

CORAM:

**SH. SHAMMI KHAN, MEMBER (JUDICIAL)
SH. SAMEER KAKAR, MEMBER (TECHNICAL)**

For Applicant/RP : Mr. Atul Sharma, Advocate
For Respondent /PG : Ex-Parte
For the FC : Mr. Nisarg Bhardwaj, Advocate

ORDER

1. The Present Application is filed on 26.12.2023 under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as IBC, 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 by State Bank of India (hereinafter referred to as "Financial Creditor" or 'Applicant') for the purpose of initiating insolvency process against Shri. Balkrushna Panchal (hereinafter referred to as "Personal Guarantor") for a default amount of Rs.341,71,10,539/-. The Respondent/Personal Guarantor stood as Guarantor in respect for repayment of debt along-with interest, cost, charges and other expenses in respect of Deed of Guarantee dated 02.07.2015 executed in favour of Applicant.

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. It is stated that M/s. Archon Engicon Limited being principal borrower applied for a Loan facilities for its operations which was approved by the Applicant Bank/Financial Creditor vide Sanction Letter dated 18.12.2012. The Corporate Debtor through its Directors executed various loan security documents in favour of the Applicant Bank/Financial Creditor. The Respondent also stood as personal Guarantor of the Corporate Debtor in personal capacity and executed Deed of Guarantee dated 02.07.2015 in favour of Applicant Bank/Financial Creditor.

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 recalled by vide Recall Notice dated 10.01.2017. Thereafter, O.A. No.83 of 2017 was filed in DRT Ahmedabad which was allowed and Recovery Certificate was issued vide order dated 03.08.2021 against the Corporate Debtors as well as the Respondent/Personal Guarantor and others.
5. Thereafter, by order dated 07.09.2021, the Corporate Debtor- M/s. Archon Engicon Limited was admitted under CIRP and order of moratorium was passed by the Hon'ble Adjudicating Authority in CP (IB) No. 211/7/NCLT/AHM/2020.
6. Thereafter, Applicant Bank/Financial Creditor invoked the personal guarantee and issued Demand Notice to the Respondent/Personal Guarantor on 15.12.2021 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 replied by the Respondent/Personal Guarantor vide Reply dated 04.01.2022.

7. Due to non-payment of the amount by the Corporate Debtor as well as Personal Guarantors, on 26.12.2023 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.
8. On presentation of the application by the Applicant/Financial Creditor, this Tribunal vide order dated 06.02.2024, appointed Interim Resolution Profession (hereinafter referred to as "IRP") as suggested by the Financial Creditors viz. **Mr. Prawin Charan Dwary**, to carry out Insolvency Resolution Process of the Personal Guarantor as per section 97(3) of IBC, 2016, with a direction to submit the report under Section 99 of the IB

Code, 2016, within ten days. The IRP is also directed to file its report through separate IA.

9. The Interim Resolution Professional has filed the report through IA No. 399 of 2024, vide inward diary No. E-555, dated 01.03.2024 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 are as follows:-

- i. The Interim Resolution Professional examined the Application under Section 95 of IBC, along with documents annexed thereto.
- ii. Response is not yet received from the Personal Guarantor.
- iii. The said debt for which an application has been filed by the creditor is registered with National E-Governance Services Limited (“NESL”)
- iv. The Interim Resolution Professional had sent intimation under Section 99(2) of IBC to the Personal Guarantor on 10.02.2024 required to prove repayment of the debt as mentioned in captioned Application which is enclosed as **Annexure-A2**. No reply is received in that regard from the

Personal Guarantor. The RP also gave intimation to the Applicant Bank on 10.02.2024 by email seeking details of any loan repayment by the PG against the outstanding debt. Copy of the same is enclosed as **Annexure A3**. Reply received in that regard from the Applicant Bank on 15.02.2024 is enclosed as **Annexure A4 and Annexure A4.1** respectively.

- v. The Applicant Bank has provided a suitable reply to the information sought but no response is received from Personal Guarantor till date.
- vi. The Interim Resolution Professional has examined the application and ascertained that the application satisfies the requirement set out in section 95 of the IBC.
- vii. Upon examination of the Application and Annexures by the Interim Resolution Professional, it is recommended that the Application may be accepted.
- viii. The Interim Resolution Professional based on the application and supporting documents finds that the debtor is not eligible for a Fresh Start under Chapter II of IBC, 2016.

ix. The Interim Resolution Professional examined that Application, supporting documents and reply received from the Personal Guarantors and record the following reasons for the acceptance of the Application:-

(a) The Personal Guarantor has executed a deed of Guarantee in favour of the bank for the Corporate Guarantor

(b) The Corporate Debtors and Personal Guarantor have defaulted in the repayment of debt and demand notice issued by the bank.

(c) Other supporting documents like Order dated 03.08.2021 passed O.A. No. 83 of 2017 by Hon'ble Debts Recovery Tribunal-1, Ahmedabad, Demand notice dated 15.12.2021 addressed by the Applicant to the Respondent, Personal Guarantor's Reply to the Demand Notice and Form D Record of Default with the Information Utility NESL have been relied upon.

(d) Email from the Applicant Bank depicting outstanding dues as on 31.01.2024.

x. Thus, In view of the aforesaid, IRP recommend the acceptance of the captioned Application filed under Section 95 of the IBC.

10. The Tribunal vide order dated 01.03.2024 issued a notice to the Respondent/Personal Guarantor as well as corporate Debtor and directed them to file its reply, if any, within two weeks from the date of receipt of notice. Thereafter, rejoinder, if any, be filed within seven days.
11. On the next date of hearing, dated 23.04.2024, neither Respondent/Personal Guarantor appeared or filed any reply. Hence, last opportunity was given for filing reply/ objection, within a period of seven days.
12. Thereafter, vide order dated 17.05.2024, it is recorded that “after due service neither the Respondent/Personal Guarantor appeared in the matter nor any reply/objection has been filed. Therefore, right to file reply of the Respondent/Personal Guarantor was closed. Further, the Respondent / Personal Guarantor was proceeded **Ex-parte**.
13. The proceedings in the matter was put on hold since the Constitutional Validity of the Sections 94 to 100 relating to the insolvency of personnel 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.

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 01.03.2024 filed by the IRP.
15. It is seen from the petition that the present application is filed on 26.12.2023 within the period of limitation as the loan account of the Corporate Debtor was recalled by vide Recall Notice dated 10.01.2017. Thereafter, O.A. No.83 of 2017 was filed in DRT Ahmedabad which was allowed and Recovery Certificate was issued vide order dated 03.08.2021 against the Corporate Debtors as well as the Respondent/Personal Guarantor and others. Thereafter, Demand Notice dated 15.12.2021 invoking Personal Guarantee was issued within the period of limitation, was served upon the Respondent who is one of the Directors of the Cooperate debtor.
16. Further, 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 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."

17. 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 01.03.2024.
- ii. The Respondent has admitted to have executed the Guarantee Agreement.
- iii. The Applicant has demanded the amount outstanding from the Respondent vide Demand Notice dated 15.12.2021.
- 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.

18. 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 Section 101 of IBC, 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. Prawin Charan Dwary**, having Registration No: IBBI/IPA-002/IP-N00331/2017-2018/10937, office at Office 407, Akchhat Tower, Pakwan Cross Road, S.G. High way, Bodakdev, Ahmedbad – 380 015 Gujarat (e-mail id dwaryprawin@gmail.com) who was appointed when the Section 97 application was allowed vide Order dated 06.02.2024, is directed to cause a public notice published on behalf of the Adjudicating Authority within 10 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.

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.

V. 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.

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 provided under the provisions of Section 107 of IBC, 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.

19. In terms of the above, **CP (IB)/26(AHM)/2024** filed under Section 95 (1) of the IBC, 2016 is admitted and the Insolvency Resolution Process stands initiated against the Respondent/Personal Guarantor.

20. Accordingly, **IA/399(AHM) 2024** is stands disposed of.

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SAMEER KAKAR
MEMBER (TECHNICAL)

SHAMMI KHAN
MEMBER (JUDICIAL)

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