

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

Item No. 302
CP (IB)/113(AHM) 2024

Order under Section 95 of IBC, 2016

M/s. Chamunda Enterprise

.... Applicant

Versus

Mr. Pankaj Jayantilal Mehta & Another

.... Respondent

Order Delivered on: 11.07.2024

Coram:

Mr. Shammi Khan, Member (Judicial)
Mr. Sameer Kakar, Member (Technical)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

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

SAMEER KAKAR
MEMBER (TECHNICAL)

SHAMMI KHAN
MEMBER (JUDICIAL)

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

CP(IB) 113/AHM/2024

[Application under Section 95(1) of the Insolvency & Bankruptcy Code, 2016r.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:

M/s. Chamunda Enterprise

Having its office at:

C/302, Centre Point Building,
Opp. Sagar Complex, Anand Mahel Road,
Surat, Gujarat – 395009

... Applicant/Operational Creditor

VERSUS

Mr. Pankaj Jayantilal Mehta

(Personal Guarantor of M/s. Rashmi Yarns Ltd.)

Having Residential Address at:

Krushal Tower, Ghatkopar Mahul Road,
Amar Mahal, Chembur West, Mumbai – 400089

... Respondent No. 1/Personal Guarantor

And

Mrs. Bharati Pankaj Mehta

(Personal Guarantor of M/s. Rashmi Yarns Ltd.)

Having Residential Address at:

Krushal Tower, Ghatkopar Mahul Road,
Amar Mahal, Chembur West, Mumbai – 400089

... Respondent No. 2/Personal Guarantor

Order pronounced on 11.07.2024

CORAM:

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

For the Applicant : Mr. Jugal Haria, (proxy), Advocate

For the Respondent : Mr. Sunil Kumar, Adv (ASREC India Ltd.)

ORDER

Per: Bench

1. The Present Application is filed on 24.02.2024 through e-mode 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 Applicant Bank (hereinafter referred to as "Financial Creditor") for the purpose of initiating insolvency process against Mr. Pankaj Jayantilal Mehta (hereinafter referred to as "**Respondent No. 1**") and Mrs. Bharati Pankaj Mehta (hereinafter referred to as "**Respondent No. 2**") for a default amount of **Rs.1,34,78,599/-** (Rupees One Crore Thirty Four Lakhs Seventy Eight Thousand Five Hundred

and Ninety Nine only) in respect of Deed of Guarantee dated 02.04.2018 executed in favour of Applicant/Operational 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. The Corporate Insolvency Resolution process in respect of the Corporate Debtor was ordered by this Adjudicating Authority on 04.10.2021. Hence, the present application in respect of the Insolvency and Bankruptcy proceedings of the Personal Guarantor of the

Corporate Debtor is filed by the Operational Creditor before this forum.

3. **Brief facts of the case:**

- i) That M/s. Chamunda Enterprise, the Petitioner qua Operational Creditor, in a proprietary concern of Shri Hitesh Narmadashankar Rajgor with its PAN No. ADTPR9442D and having its address at: C/302 Centre Point Building, Opp. Sagar Complex, Anand Mahel Road, Surat-395009, Gujarat.
- ii) That the Petitioner/ Operational Creditor have from time-to-time paid Rs.2,68,14,775/-to the Corporate Debtor M/s Rashmi Yarns Limited as advance payment towards value of supply of the goods but the Rashmi Yarns Limited failed to supply the goods to the Operational Creditor.
- iii) Accordingly, as agreed and undertaken and at the request of the Corporate Debtors-Rashmi Yarns Limited, The Respondent No.1 & 2 have provided their personal guarantee to the Operational Creditor by executing Deed of Guarantee dated 02.04.2018 whereby they have given personal guarantee to pay

to the operational creditor on demand the outstanding amount due under the ledger account of the transactions between Rashmi Yarns Limited and operational creditor with interest at 24% per annum till payment or realization due by Rashmi Yarns Limited to the operational creditor.

- iv) As on 01.12.2023 the Corporate Debtor was liable to pay to the operational Creditor the said outstanding amount of Rs. 1,34,78,599/- (Rs. One Crore Thirty-Four Lakhs Seventy- Eight Thousand Five Hundred and Ninety-Nine only) along with interest 24% per annum.
- v) That the Hon'ble NCLT, Ahmedabad Bench vide Order dated 06.10.2021 in CP (IB) 135/AHM/2020 U/s. 9 of the Insolvency and Bankruptcy Code, 2016 was pleased to initiate Corporate Insolvency Resolution Process against the Corporate Debtor Rashmi Yarns Limited.
- vi) On failure of the Personal Guarantors in paying the outstanding amount of Rs.1,34,78,599/- (Rs. One Crore Thirty-Four Lakhs Seventy-Eight Thousand

Five Hundred and Ninety-Nine only), the Operational creditor invoked the Personal Guarantee of the Guarantors vide 31.10.2023 and subsequently issued a Demand notice on 05.12.2023 as prescribed in Form B upon the Personal Guarantors.

- vii) Thereafter, the Operational Creditor had filed a Company Petition (IB) No. 41 of 2024 under Section 95 (1) of the Insolvency and Bankruptcy Code, 2016 before this Hon'ble Tribunal. Accordingly, this Tribunal has dismissed with a liberty to file fresh petition.
- viii) The Operational Creditor then sent a demand notice under rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019, dated 09.02.2024. Copy of the demand notice dated 09.02.2024 is annexed at Exhibit – A in the application.
- ix) It is also stated that one of the guarantors in the deed of guarantee dated 02.04.2018, one Mr.

Lakhabhai V. Vagh for discharge of his personal guarantee has entered into a settlement and signed and executed a settlement letter dated 25.01.2024 whereby he has agreed to pay the sum of Rs. 21,50,000/- (Rupees Twenty One Lakhs Fifty Thousand only) with the terms and conditions mentioned therein. The copy of the settlement letter dated 25.01.2024 is annexed in the application as Exhibit – G.

- x) Thus, this Petition has been preferred by the Operational Creditor to initiate Personal Insolvency Resolution Process against the Personal Guarantor under Section 95 (1) of the Insolvency and Bankruptcy Code, 2016 taking into consideration the non-payment of the outstanding amount to the Operational Creditor.
4. Ergo, this Petition u/s. 95 (1) of the Insolvency and Bankruptcy Code, 2016 for initiating Personal Insolvency Resolution Process against the Personal Guarantors.
 5. It is seen that the demand notice sent by the applicant, is a joint notice to both the respondents herein.

6. Further in the present matter, the applicant has filed a composite application against two guarantors of the Corporate Debtor before this tribunal. This tribunal vide order dated 15.05.2024, had directed the applicant to file written submission to satisfy as to the maintainability of the petition.
7. No written submissions were filed by the applicant. The case was taken up for hearing on 28.06.2024 by this tribunal wherein the applicant was directed to file written submissions within 3 working days in support of the maintainability of this petition.
8. The written arguments were filed on 29.06.2024 wherein reference was made to Section 95(1) of the IBC, 2016. Similarly, under Rule 7 of Personal Guarantors Rules, Petitioner can file an application u/s 95 of IBC against a guarantor. Under clause (e) of Rule 3 of Personal Guarantors Rules, guarantor is defined as "guarantor" means a debtor who is a personal guarantor to a corporate debtor and in respect of whom guarantee has been invoked by the creditor and remains unpaid in full or part". It is submitted that the phrase "*a debtor*" is a

plural phrase. Reliance is placed on the decision of Hon'ble Karnataka High Court in *CIT v. KG Rukminiamma*, 331 ITR 211.

9. It is further stated that all the threshold conditions are met: (i) Petitioner is a creditor; (ii) Respondents are guarantors, and (iii) Petitioner has filed application against Respondent as guarantors under Section 95 of the code. Language of provision of section 95(1) and Rule 7 of Personal Guarantor Rules is clear and unambiguous and that both are clearly met by the petition.

10. It is further submitted by the applicant that reading a bar as to filing of application against multiple guarantors will tantamount to adding words into the statute. There is no embargo upon Petitioner to file an application against multiple guarantors and even prescribed 'Form B' does not preclude filing application against multiple guarantors. Without prejudice, the form (i.e. Form B) cannot go beyond the statute (i.e. section 95 of IBC and Rule 7 of Personal Guarantor Rules).

11. It is stated that Petitioner has clearly demonstrated that the petition is maintainable against two guarantors. However, it was further submitted that in the alternative and without prejudice to the aforesaid objection, Petitioner is willing to drop proceeding against Respondent No. 2 (Bharati Mehta) and continue proceedings against Respondent No. 1 (Pankaj Mehta). It is submitted that this Tribunal ought to give an opportunity to Petitioner to remedy / rectify defects, if any, and ought not to reject application. Reliance is placed on the decision of Hon'ble NCLAT in *Palogix Infrastructure (P) Ltd. v. ICICI Bank Ltd.*, 2017 SCC Online NCLAT 366

12. We have heard the learned counsel for the applicant and perused the documents on record.

13. **Findings and Directions of the Tribunal:**

- i. Based on the averments made by the applicant, at the request of Rashmi Yarns Limited the Respondents have provided their personal guarantee to the Operational Creditor by executing Deed of guarantee dated 02.04.2018 whereby they

have given personal guarantee to pay to the operational creditor on demand the outstanding amount due under the ledger account of the transactions between Rashmi Yarns Limited and operational creditor with interest at 24% per annum till payment or realization due by Rashmi Yarns Limited to the operational creditor.

- ii. The amount of default is Rs. 1,34,78,599/-, the date of invocation of Guarantee is 31.10.2023, and the date of default on the same is 01.12.2023.
- iii. The applicant sent a composite demand notice on 05.12.2023 and thereafter filed a Company Petition vide CP(IB) No. 41 of 2024 under Section 95(1) of the code, before this tribunal.
- iv. It is to be noted that the same was found defective and was dismissed by this Tribunal vide order dated 23.01.2024 for the reasons stated therein.
- v. The applicant has therefore filed this composite application before this Tribunal against two personal guarantors i.e. Respondent No. 1 and Respondent No. 2.

vi. Section 95 of the Code states that:

“95. Application by creditor to initiate insolvency resolution process. -

(1) A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.

(2) A creditor may apply under sub-section (1) in relation to any partnership debt owed to him for initiating an insolvency resolution process against-

(a) any one or more partners of the firm; or

(b) the firm.

(3) Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the Adjudicating Authority in which the first mentioned application is pending for adjudication and such Adjudicating Authority may give such directions for consolidating the proceedings under the applications as it thinks just.

(4) An application under sub-section (1) shall be accompanied with details and documents relating to-

(a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;

(b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and

(c) relevant evidence of such default or non-repayment of debt.

(5) The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.

(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.

(7) The details and documents required to be submitted under sub-section (4) shall be such as may be specified.”

vii. Rule 7 of the Personal Guarantor Rules states that:

“7. Application by creditor.—

(1) A demand notice under clause (b) of sub-section (4) of section 95 shall be served on the guarantor demanding payment of the amount of default, in Form B.

(2) The application under sub-section (1) of section 95 shall be submitted in Form C, along with a fee of two thousand rupees.”

viii. Based on the above provisions reproduced, there is no mention of provision which allows the applicant to proceed with a composite application against multiple guarantors.

ix. Moreover, in the written submissions made by the applicant dated 29.06.2024 which was directed by this Tribunal as to satisfy the maintainability of the present petition. No additional affidavit was filed by the applicant. Further, the applicant made oral submission that the petition is maintainable against two guarantors. However, in the written arguments, it is further submitted that in the

alternative and without prejudice to the aforesaid objection, Petitioner is willing to drop proceeding against Respondent No. 2 (Bharati Mehta) and continue proceedings against Respondent No. 1 (Pankaj Mehta). It is submitted that this Tribunal ought to give an opportunity to Petitioner to remedy / rectify defects, if any, and ought not to reject application.

14. This tribunal is of the view that the prayer cannot be modified or rectified through written arguments.
15. In view of the foregoing, we are left with no other choice but to reject the application as there is no express provision wherein the applicant can file a composite application.
16. In terms of the above, **CP(IB)/113(AHM)/2024** filed under Section 95 (1) of the IBC, 2016 is ***rejected***.
17. Accordingly, **CP(IB) No. 113(AHM) of 2024** is disposed off.

SAMEER KAKAR

SHAMMI KHAN

MEMBER (TECHNICAL)

MEMBER (JUDICIAL)

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