

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

ITEM No.305 - C.P. (IB)/121(AHM)2024
With
ITEM No.306 - IA/547(AHM)2024

Order under Section 95 IBC

IN THE MATTER OF:

CENTRAL BANK OF INDIA LIMITED

.....Applicant

Vs

Arvinbhai Kacharabhai Patel Personal Guarantor to MAP
Refoils India Limited

.....Respondent

Order delivered on: 17/05/2024

Coram:

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

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

PRESENT:

For the Applicant :

For the Respondent :

ORDER

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

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)

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

**CP/IB/121/NCLT/AHM/2024
With
IA/547(AHM)2024**

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

*In the matter of **Mr. Arvindbhai Kacharabhai Patel***

Central Bank of India

Having its branch office at:
Mid Corporate Finance Branch,
1st Floor, Central Bank of India
Building, Lal Darwaja,
Ahmedabad – 380 001

... Financial Creditor/Applicant

Versus

Mr. Arvindbhai Kacharabhai Patel

(Personal Guarantor to MAP Refoils India Limited)

Having its address at:
1 & 2, Swami Vivekanand Society,
Kadi Karan Nagar Road, Kadi,
Mehsana, Gujarat – 382 715

.... Personal Guarantor/Respondent

Order pronounced on 17.05.2024

CORAM:

SH. SHAMMI KHAN, MEMBER (JUDICIAL)

SH. SAMEER KAKAR, MEMBER (TECHNICAL)

APPEARANCE:

For the Applicant/IRP :Mr. Jigar Tarunkumar Bhatt
For the Personal Guarantor :Ms. Natasha D. Shah, Advocate
For the Liquidator of CD :Mr. Monaal Davawala, Advocate
For the Financial Creditor :Mr. Priyam Shah, Advocate

ORDER

Per: Bench

1. The Present Application is filed on 07.03.2024 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. Arvindbhai Kacharabhai Patel (hereinafter referred to as "Personal Guarantor") or a default amount of Rs. 30,26,71,982/-, it became Rs.44,68,67,561/- after addition of interest and penalties are as on 25.12.2023 in respect of Deed of Guarantee dated 16.04.2019 and General Form of Guarantee dated 20.06.2020 executed in favour of Applicant Bank.

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 the case of the Applicant Bank that Corporate Debtor-MAP Refoils India Limited being principal borrower applied for various a loan/credit facilities for its operations under consortium banking arrangements which was approved vide Sanction Letter dated 09.04.2019. The Respondent was Director personal Guarantor of the Corporate Debtor

who executed and signed various standard loan documents which include Deed of Guarantee dated 16.04.2019 and General Form of Guarantee dated 20.06.2020 in favour of Applicant Bank.

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 28.08.2021.
5. Subsequently, on 31.03.2022 the Lead Bank of Consortium Bank of Baroda issued Demand Notice U/s 13(2) of the SARFAESI Act, 2002 to the Corporate Debtor as well as to the Guarantors asking to the to repay the outstanding dues.
6. Thereafter, by order dated 04.04.2022, the Corporate Debtor-M/s. MAP Refoils India Limited was admitted and order of moratorium was passed by the Hon'ble

Adjudicating Authority in CP (IB) No. 240/9/NCLT/AHM/2021.

7. Thereafter, Applicant Bank/Financial Creditor invoked the personal guarantee and issued Demand Notice to the Respondent/Personal Guarantor on 26.12.2023 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 05.01.2024.

8. Due to non-payment of the amount by the Corporate Debtor as well as Personal Guarantors, on 07.03.2024 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 18.03.2024 appointed Interim Resolution Profession (hereinafter referred to as "IRP") as suggested by the Financial Creditors viz. **Mr. Jigar Bhatt** 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 by way of IA/547(AHM)2024 dated 05.04.2024 vide Inward No. E 887 recommending the admission of the application filed under Section 95 of IBC, 2016. The recommendation of RP is as follows:
 - i. It is stated that the CP (IB)/121(AHM)2024 is affirmed as satisfying the requirement of Section 95 of the IB Code;

- ii. It is stated that no evidence provided by the Personal Guarantor confirming the repayment of the debts within fourteen days in pursuance of the demand notice issued by the financial creditors in Form B for the debt claimed as unpaid by the financial creditor;
- iii. It is stated that there has been no order of any Court, or any other forum whereby personal guarantee agreement has declared void or cancelled or set aside.
- iv. It is stated that the principal borrower has undergone CIRP and now undergoing Liquidation Process, wherein claims of the Financial Creditor has been duly admitted by the IRP/RP/Liquidator and neither orders admitting CIRP or Liquidation nor claims filed by the Financial Creditor has been challenged by the Personal Guarantor or any other party as per the available records.
- v. 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. Arvindbhai Kacharabhai Patel (Personal Guarantor to M/s MAP Refoils India Limited).

vi. The Present application is filed against the personal guarantor is in the prescribed format and complete in all respects.

11. The Respondent/Personal Guarantor filed an affidavit in reply dated 13.05.2024 under Diary No. D 4051 and raised following objections to the Application as under:

a) The respondent stated that the Financial Creditor/Central Bank of India, at the time of filing of the petition before this Hon'ble Tribunal has failed to comply with Rule 7(3) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 which mandates service of an advance copy upon the corporate debtor. In view of the aforesaid, the petition preferred by

the Financial Creditor is defective and deserves to be dismissed *in limine*.

- b) It is stated that the corporate debtor received credit facilities from Central Bank of India along with others members of the consortium, the latest being the Third Supplemental Working Capital Consortium Agreement dated 19.01.2021. The Central Bank of India, Bank of Baroda, State Bank of India, South Indian Bank and Punjab National Bank also forms a part of the consortium of lenders of M/s. MAP Refoils India Limited. According, to the consortium agreement, Bank of Baroda is the lead bank. It is further stated that on perusal of the consortium agreement placed on record by the Financial Creditor, any action taken for enforcement of security against the borrower ought to be taken by the Lead Bank i.e. Bank of Baroda (erstwhile Dena Bank).
- c) Thus, it is stated that the present petition is only preferred by the Central Bank of India and no

authority letter/intimation letter whatsoever that may have been issued by the lead bank-Bank of Baroda has been placed before this Hon'ble Authority.

- d) It is stated that it is a trite law that in cases of default, the lender has to act through the Lead Bank for enforcement of security interest against the borrower and thus, Central Bank of India cannot be said to have the requisite entitlement to prefer the present petition. In view of the same, the present petition is not maintainable at the behest of the present financial creditor.
- e) It is stated that the deponent herein along with its co-guarantors i.e. Shri Mehulbhai Arvindkumar Patel and Smt. Khushboo Mehulkumar Patel of the corporate debtor-M/s. Map Refoils India Limited and M/s. Map Oil LLP have proposed a Scheme under Section 230-232 of the Companies Act, 2013 to the lenders of the borrower. It is also submitted that the said scheme proposes to deal with the liabilities of all

the lender banks of M/s. Map Refoils India Limited along with M/s. Map Oil LLP. Further, it is stated that in the event that the present scheme is approved, there would be no occasion for initiation of Insolvency Resolution Process.

- f) It is stated that with respect to M/s. Map Refoils India, Limited, the concerned liquidator had issued an E-Auction Notice dated 15.03.2024 for E-Auction proposed to be held on 06.04.2024. In view of the said E-Auction having been failed, the concerned liquidator issued another notice dated 11.04.2024 for E-Auction proposed to be held on 04.05.2024. It has been informed to the deponent that the said E-Auction has also failed.
- g) It is further stated that with respect to M/s. Map Oil LLP, the concerned liquidator issued E-Auction notice on 15.06.2023 for E-Auction proposed to be held on 1307.2023. It is stated that the reserve price for sale of the corporate debtor as a going concern was fixed at Rs. 9,55,46,049/-. However, the said E-Auction has

been failed. Thereafter, the concerned liquidator issued another notice dated 18.03.2024 for E-Auction proposed to be held on 18.04.2024 wherein the reserve prices for sale of the assets of the corporate debtor was reduced to Rs.7,17,00,000/- and the said E-Auction has also failed.

h) It is further stated that by way of the schemes, the deponent along with other guarantors are proposing a total amount of Rs.39,00,00,000/- to the secured financial creditors of the corporate debtor as evident on perusal of the Schemes. It is stated that the deponent by way of email dated 29.04.2024 has also informed the liquidator that the deponent along with guarantors are open for further negotiation.

12. 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.*

13. During the hearing dated 13.05.2024, the learned counsel appearing for the opposite parties stated that there is no need to file any rejoinder and ready to making submission. The Respondent/Personal Guarantor has taken three objections against the admission of the matter under Section 100 of the IB Code, 2013.

First is that this petition is not maintainable as in terms of Rule 7(3). A copy of the same was not served upon the Corporate Debtor.

Second, this petition has been filed without the consent of the lead bank being consortium finance.

Third a consolidated scheme has been proposed which is under consideration.

However, in rebuttal the counsel appearing for the opposite side stated that the copy of the petition and the report was duly served upon the corporate debtor which is under liquidation as confirmed by learned counsel, Mr. Monaal Davawala appearing for the liquidator of the corporate debtor.

Further, the learned counsel for the Financial Creditor submits that this application is very much maintainable without the lead bank. This application is maintainable as Central Bank of India has also obtained the independent general bank guarantee 20.06.2020 which has been invoked by way of notice issued under Form-B on 26.12.2023.

Further, the learned counsel appearing for the liquidator of corporate debtors submits that consolidated scheme has already been rejected by the SCC of both the corporate debtors and same is no more in consideration.

14. We have heard the learned counsels for the parties and perused the documents on record. We have also

gone through the report dated 05.04.2024 filed by the IRP vide IA/547(AHM)2024.

15. 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."

16. 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 05.04.2024.
 - ii. The Respondent has admitted to have executed the Guarantee Agreement dated 20.06.2020 in favour of Applicant Bank apart from Deed of Guarantee dated 16.04.2019 executed in favour of Consortium Lender Banks. Hence, the Petition

is very much maintainable without the lead bank.

- iii. The Applicant has demanded the amount outstanding from the Respondent vide Demand Notice dated 26.12.2023.
- iv. The copy of the petition and the report was duly served upon the Corporate Debtor in terms Rule 7(3) which is under liquidation as confirmed by the counsel appearing for the liquidator of the Corporate Debtor.
- v. The consolidated scheme has already been rejected by the SCC of both the Corporate Debtors and same is no more in consideration.
- vi. 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 un-serviced as on the date of order.
- vii. In our view the application is also not hit by Limitation.

17. 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 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. Jigar Tarunkumar Bhatt**, having Registration No: IBBI/IPA-001/IP-P01917/2019-2020/13005, having address at: 1010, Shilp-Zavero. Shyamal Cross Roads, Satellite, Ahmedabad – 380 015, (E-mail ID: jigarb.jigarb@gmail.com] who was appointed when the Section 97 application was allowed vide Order dated 18.03.2024, 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.

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.

18. In terms of the above, **CP (IB)/121(AHM)2024** filed under Section 95 of the IBC, 2016 is admitted and the Insolvency Resolution Process stands initiated against the Respondent/Personal Guarantor.
19. Accordingly, **IA/547(AHM)2024** stands disposed of.

Sd/-

**SAMEER KAKAR
MEMBER (TECHNICAL)**

SK

Sd/-

**SHAMMI KHAN
MEMBER (JUDICIAL)**