

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

ITEM No.302 - C.P.(IB)/214(AHM)2022

With

ITEM No. 303- IA/792(AHM)2024

**Proceedings under Section Sec 60(5) r/w Rule11**

**IN THE MATTER OF:**

State Bank Of India

.....Applicant

V/s

Chandrashekhar Balkrishna Panchal & Another

.....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**

**CP (IB) No.214/NCLT/AHM/2022  
And  
I.A. No.792/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]*

**CP (IB) No.214/NCLT/AHM/2022**

**IN THE MATTER OF:-**

**M/s. Intec Capital Limited**

Having address at:

708, Manjusha Building, 57,

Nehru Place, New Delhi-110019

Email:IBC@INTECCAPITAL.COM

**...Applicant/Financial Creditor**

**VERSUS**

**Chandrashekhar Balkrishna Panchal**

Having address at:

14, Unik Park Society, Setelite Road,

Jodhpur Tekra, Ahmedabad, Gujarat –

380052

Email id: hsp@archonengicon.com

**...Respondent/Personal Guarantor**

**I.A. No.792/NCLT/AHM/2024**

**IN THE MATTER OF:-**

**State Bank of India**

Sam (Stressed Assets Management)  
Brnach, Paramsiddhi Complex,  
2<sup>nd</sup> Floor, Ellsbridge,  
Ahmedabad, 380006

**... Applicant**

**VERSUS**

**1) Chandrashekhara Balkrishna Panchal**

Having address at:  
14, Unik Park Society, Setelite Road,  
Jodhpur Tekra, Ahmedabad, Gujarat –  
380052  
Email id: hsp@archonengicon.com

**2) M/s. Intec Capital Limited**

Having address at:  
708, Manjusha Building, 57,  
Nehru Place, New Delhi-110019  
Email:IBC@INTECCAPITAL.COM

**...Respondents**

**Order pronounced on 28.06.2024**

**CORAM:**

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

For Applicant/FC : Mr. Manish Kumar, Advocate  
For SBI/FC : Ms. Aishwarya Reddy, Advocate  
For IRP : Mr. Mayur Kishanchandani, Advocate  
For Respondent/PG : Mr. Sahil Jayesh Rao, Advocate

## **ORDER**

1. The Present Application is filed on 21.07.2022 under Section 95 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 the Intec Capital Limited (hereinafter referred to as 'Intec' "Financial Creditor" or 'Applicant') for the purpose of initiating insolvency process against Mr. Chandrashekhar Balkrishna Panchal (hereinafter referred to as "Personal Guarantor") for a default amount of Rs.6,73,18,298/-. The Respondent/Personal Guarantor stood as Guarantor in respect for repayment of interest, cost, charges and other expenses in respect of Deed of Guarantee dated 15.03.2013 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 Term Loan facility for its operations from the Applicant/Financial Creditor which was approved by the Applicant/Financial Creditor vide Sanction Letter dated 08.03.2013 for Rs.4,09,85,771/-. The Corporate Debtor through its Directors i.e. the Present Respondent on 15.03.2013 executed various loan security documents in favour of the Applicant/Financial Creditor. The Respondent also stood as personal Guarantor of the Corporate Debtor in personal capacity and executed Deed of Guarantee dated 15.03.2013 in favour of Applicant/Financial Creditor.

4. Thereafter, the applicant filed arbitration case no. 30 of 2015 before the Arbitrator against the Corporate Debtor and Personal Guarantor, which was allowed vide order dated 15.03.2016 against the Corporate Debtor and the Personal Guarantor.
5. It is also stated that the Corporate Debtor thereafter made part payment in the loan account on 30.04.2016 and issued one cheque on 17.03.2017 which was not honoured. Further, in the month of May 2019, the Corporate Debtor also acknowledged the debt liability through email approaching for the settlement.
6. 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/NCLT/AHM/2020.
7. Thereafter, Applicant/Financial Creditor invoked the personal guarantee and issued Demand Notice to the Respondent/Personal Guarantor on 19.03.2022 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 22.03.2022.

8. Due to non-payment of the amount by the Corporate Debtor as well as Personal Guarantors, on 21.07.2022 the Applicant/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 26.07.2022, appointed Interim Resolution Profession (hereinafter referred to as "IRP") as suggested by the Financial Creditor viz. **Ms. Vineeta Maheshwari**, a 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.

10. The Interim Resolution Professional has filed the report through IA No.782 of 2022, vide inward diary No. DD-285, dated 23.09.2022 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. As per the documents provided by Financial Creditor Intec Capital Limited, Mr. Chandrashekhar Balkrishna Panchal is standing as a personal guarantor for the credit facilities granted to M/s Archon Engicon Limited.
- ii. RP has sent intimation u/s 99 of IBC, 2016 and asked the Personal Guarantor Mr. Chandrashekhar Balkrishna Panchal to provide proof of repayment of outstanding amount of credit facilities granted to the borrower M/s Archon Engicon Limited.
- iii. Thus, Resolution Professional is of the view that application may be accepted and proceedings should be initiated with

respect to the Individual Insolvency Resolution Process of Mr. Chandrashekhar Balkrishna Panchal (Personal Guarantor to M/s Archon Engicon Limited.) in order to recover the outstanding debt payable as per the Personal Guarantee Agreement / deed executed dated 15.03.2013 between the Intec Capital Limited and Personal Guarantor.

11. The Tribunal vide order dated 12.10.2022 has disposed of the I.A. of the I.R.P. by taking on the report of the main file of the case. Thereafter, vide order dated 16.02.2024, this Tribunal 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.
12. On the next date of hearing, dated 20.03.2024, no reply was filed by the Respondents. However, the Authorized Representative for the Respondent / Personal Guarantor appeared Mr. Sandeep Chaudhary (Ex-Director) and sought one more opportunity to file a reply as well as to engage a lawyer to represent in the matter. Hence, last opportunity was

given to the Respondent / Personal Guarantor to file a reply, if any.

13. Thereafter, vide order dated 23.04.2024, it is recorded that Respondent/Personal Guarantor appeared through Learned Counsel, Mr. D. V. Bhavsar and stated that he has been appointed to appear for the Respondent/Personal Guarantor and he is in possession of the physical copy of the Vakalatnama. Learned counsel for the Respondent/Personal Guarantor again sought and granted two weeks' time to file reply.

14. Vide order dated 15.05.2024, it is recorded that "three opportunities have been given to the Respondent/Guarantor to file reply in the matter. Despite all this the Respondent has not filed any reply in the matter. In view of the same, opportunity to file reply in the matter of the respondent is hereby closed as no one appeared on that day on behalf of the Respondent/Guarantor.

**IA No. 792 of 2024**

15. The State Bank of India being one of the financial creditors also filed IA No. 792 of 2024 on 10.05.2024 vide inward diary No. E-1442, to be pleaded as supporting party in the main CP. The prayers of the IA is reproduced as under:

*a) Admit and allow the present application;*

*b) To permit the Applicant to be added as a supporting party-respondent to the Main Application CP(IB) No. 214 of 2022;*

*c) Pass further and such other directions/ order of this Hon'ble Tribunal may deem fit in the interest of justice.*

16. 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.

17. 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.*

18. We have heard the learned counsel for both the parties and perused the documents on record. We have also gone through the report dated 05.08.2024 filed by the IRP.

19. It is seen from the petition that the present application is filed on 21.07.2022 within the period of limitation as the said loan account of the Corporate Debtor was recalled vide Recall Notice dated 26.05.2015 and arbitration award was passed on 15.03.2016. Further, the Corporate Debtor thereafter made part payment in the loan account on 30.04.2016 and issued one cheque on 17.03.2017 which was not honoured. Further, in the month of May 2019, the Corporate Debtor also acknowledged the debt liability through email approaching for the settlement.
20. 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/NCLT/AHM/2020.
21. Thereafter, Applicant/Financial Creditor invoked the personal guarantee and issued Demand Notice to the Respondent/Personal Guarantor on 19.03.2022 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 22.03.2022.

22. 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."*

23. 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 05.08.2022.
- 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 19.03.2022.
- 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.

24. 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., CA **Ms. Vineeta Maheshwari**, having Registration No: IBBI/IPA-001/IP-P00185/2017-2018/10364, office at Office 3rd Floor, Reegus Business Centre, Above Mercedes Benz Showroom, New City light Road, Bharthana, Vesu, Surat, 395007, Gujarat (e-mail id iirp.ael.vineeta@gmail.com) who was appointed when the Section 97 application was allowed vide Order dated 26.07.2022, 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.

25. In terms of the above, **CP (IB)/214(AHM)/2022** filed under Section 95 (1) of the IBC, 2016 is admitted and the Insolvency Resolution Process stands initiated against the Respondent/Personal Guarantor.

26. Since **CP (IB) 214 of 2022** and IA filed by the IRP being **IA 782 of 2022** are admitted and as **IA/792(AHM) 2024** filed by one of the Financial Creditors – State Bank of India is filed to support the main petition being **CP (IB) 214 of 2022** and report of IRP in **IA/782 of 2022** is disposed of, giving liberty to submit its claims before the RP within a stipulated period as per the acts and rules.

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**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

VP

-sd-

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**