

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I**

C.P. (IB) NO. 144/MB/2024

Under Section 94 of the
Insolvency and Bankruptcy
Code, 2016 r/w rule 6 of the
Insolvency & Bankruptcy
(Application to
Adjudicating Authority for
Insolvency Resolution
Process for Personal
Guarantors to Corporate
Debtors) Rules 2019.

In the matter of

Mr. Sahajahan S. Mulla

Personal Guarantor to Printek

Graphix India (P) Ltd. [CIN :

U22219MH2000PTC125086]

.....Personal Guarantor/Petitioner

Order pronounced on 04.07.2024

Coram:

Hon'ble Member (Judicial) : Justice V. G. Bisht (Retd.)

Hon'ble Member (Technical) : Sh. Prabhat Kumar

Appearances:

For the Personal Guarantor : Mr. Pratik Sarkar, Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

1.The present Company Petition has been filed by **Mr. Sahajahan**

S. Mulla (hereinafter referred to as “Personal Guarantor/Petitioner”), Personal Guarantor of the Corporate Debtor, **Printek Graphix India (P) Ltd.** (hereinafter referred to as “Corporate Debtor”), under section 94 of the Insolvency and Bankruptcy Code, 2016 (“the Code”) read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (“IBBI Rules”) seeking to initiate Insolvency Resolution Process against himself being the Personal Guarantor of Printek Graphix India (P) Ltd.

Brief facts:

1. The Corporate Debtor herein bears CIN U22219MH2000PTC125086 and has its registered address at 81/82 Gandhi Nagar, Dainik Shivner Marg, Worli, Mumbai 400018. The Petitioner was the director of the Corporate Debtor till 3rd June 2022.
2. The Corporate Debtor had taken loan from Abhyudaya Bank, Dena Bank, Citi Co-operative Bank Ltd., Intec Capital Ltd. (NBFC) (hereinafter collectively referred to as the “lenders/creditors”) and Petitioner is the Personal Guarantor for the same.
3. It is submitted that Petitioner has been making all earnest efforts to revive the business and repay the overdue amounts of the lenders. Following are the lender-wise details in respect of the applicant/s debts due:
 - a. Abhyudaya Bank - Rs. 17,25,78,117.74/-
 - b. Dena Bank - Rs. 7,96,45,063/-
 - c. Citi Co-operative Bank Ltd - Rs. 2,59,69,019.28/-
 - d. Intec Capital (NBFC) - Rs. 96, 90,000/-The amount in default is Rs. 28,78,82,200/-.

4. The creditors have invoked personal guarantee against the applicant Sahajahan S Mulla and in respect of Dena Bank the same is by way of relevant proceedings before Debt Recovery Tribunal Mumbai - OA 138/2015
5. It is submitted that the Petitioner is unable and incapable to pay any amount of debt, as such, left with no other remedy, the Petitioner has approached this Bench.
6. The Corporate Debtor has been admitted into CIRP by this Bench u/s 7 of the IBC vide order dtd 3rd June 2022 in the matter of Dena Bank V/s Printek Graphix India (P) Ltd. [CP (IB) No.4094/MB/2018].
7. Vide order dated 12.04.2024, this bench appointed **Mr. Vakati Balasubramanyam Reddy**, having Insolvency Registration No. IBBI/IPA-001/IP-P00662/2017-2018/11131, to act as the Resolution Professional in the present matter & directed RP to file report under Section 99 of Insolvency and Bankruptcy Code, 2016, which has been filed by him recommending the admission of the application filed under section 94 of IBC, 2016. The grounds for admission of the application recorded in the Report are as follows: -

“I, Vakati Balasubramanyam Reddy, an insolvency professional with Registration No. IBBI/IPA- 001/IP-P00662/2017-18/11131 appointed as the Resolution Professional (IRP) under sub section (5) of section 97 vide this Hon’ble Tribunal in connection with the proposed insolvency resolution process of Mr. Sahajahaan S Mulla, Guarantor to Corporate Debtor M/s. Printek Graphics (I) Pvt. Ltd, hereby, on the basis of the gathered facts and figures averred by the applicant in the present application, is of strong view that the application and the applicant satisfies all the requirements as set out under section 94.

In such premises, it is just and equitable that insolvency resolution process

be initiated against the Personal Guarantor Mr. Sahajahaan S Mulla under the orders and directions of this Hon'ble Tribunal.

Therefore, I hereby, recommend that present application under section 94 deserves to be accepted by this Hon'ble Tribunal. I have reached this conclusion based on facts and observations derived from the application and related documents and records annexed to the application and on receipt of explanation / clarifications accorded by the Applicant / Financial creditor.”

Findings:

1. Heard submissions of learned counsel for the Petitioner. Perused records. Also perused report placed on record by the Resolution Professional.
2. It may be noted that under section 128 of Indian Contract Act, 1872, 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.”

The Hon'ble National Company Law Appellate Tribunal in the matter of *State Bank of India Vs. Athena Energy Venture Private Limited* in *Company Appeal (AT)(Ins) No. 633 of 2020* observed as under: -

“19. It is clear that in the matter of guarantee, CIRP can proceed against Principal Borrower as well as Guarantor.”

3. Therefore, in view of the above averments, we are of the

considered opinion that is a fit case for admission and proceed against the Personal Guarantor/Petitioner and initiate Insolvency Resolution Process. Hence, we admit CP(IB) No. 144 of 2024 filed under the provisions of section 94 of IBC, 2016 under Section 100 of the IBC, 2016 by following order:

- I.** Initiate Insolvency Resolution Process against the Petitioner/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, 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. Vakati Balasubramanyam Reddy** Insolvency Resolution Professional, having Registration No. IBBI/IPA-001/IP-P00662/2017-2018/11131, having registered address at C-1205, Galaxy Apartment, Quoreshi Nagar, Kurla (East), Mumbai- 400070 [E-Mail: *vbsreddy7@gmail.com*, Mobile

no.: 8369170484] 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 Mumbai 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 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.

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.

- V.* 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.
- VI.* In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons thereof. 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 days 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.

- VII.** 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.
- VIII.** The Resolution Professional shall submit his periodic reports before this Tribunal, every 30 days.
- IX.** The Petitioner is directed to deposit **INR 2,00,000/-** (Indian Rupees Two lakhs) to the bank account of the Resolution Professional within **one week**, towards his fees. This shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.
- 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.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
MK

Sd/-

JUSTICE V. G. BISHT
MEMBER (JUDICIAL)