

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

C.P. (IB) NO. 395/MB/2022

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. Haresh Ramchandani

Personal Guarantor to

Printek Value Direct

Communication Pvt. Ltd.

U74990MH2010PTC200916

.....Personal Guarantor/Applicant

Order pronounced on 22.07.2024

Coram:

Prabhat Kumar

Hon'ble Member (Technical)

Justice V.G Bisht, (Retd).

Hon'ble Member (Judicial)

Appearances

For the Resolution Professional: Mr. Aashray Chaudhary, Advocate
i/b Adv. Jatin Kumar for
Resolution Professional

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI COURT-1

CP (IB) No. 395/MB/2022

ORDER

Per: Virendrasingh Gyansingh Bisht, Member (Judicial)

1. This is a Company Petition filed on 14.01.2022 by Haresh Ramchandani (“the Petitioner / Personal Guarantor”), under Section 94(1) of the Insolvency & Bankruptcy **Code**, 2016 (**IBC**) read with Rule 6(1) of the Insolvency and Bankruptcy (Application for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 seeking to initiate Insolvency Resolution Process against himself being the Personal Guarantor to the Corporate Debtor. The Address of the Corporate Debtor is at 301, Kukreja Emerald, Sector-2, Plot No.100, Kopar Khairane, Navi Mumbai, Maharashtra -400709
2. That the amount in default is Rs.12,77,38,853/-. The date of default is as provided in part III of this Application.
3. That the present Applicant herein is a personal guarantor to Value Direct Communication Private Limited (herein referred to as the Corporate Debtor”) in respect of loans taken from various lenders, the details of the lender is given in this petition by way of Form-A.
4. It is submitted that Petitioner has been making all earnest efforts to revive the business and repay the overdue amounts of the
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 submits that they have not been able to fulfil his obligations pursuant to the Personal Guarantee invocation notices received from various Lenders. As a result of which the applicant is a debtor of default and is accordingly eligible to file the Instant Application under the provision of Section 94(1) of this code read in

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI COURT-1**

CP (IB) No. 395/MB/2022

consonance with the applicable Rules under the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rule,2019.

7. The loan Agreements were executed amongst the Corporate Debtors and the Financial Creditor, i.e., the Aditya Birla Finance Ltd., in which the Applicant executed a Personal Guarantee, for the Corporate Debtor. i.e., Value Direct Communication Private Limited. Further, the Applicant herein has also created the mortgage in his share of the property.
8. That an Application under section 7 of this code has been filed against Corporate Debtor by Karix Mobile Private Limited. Hon'ble Nclt, Mumbai heard the case on 21.10.2021 under CP No.IB-359/2021.
9. The interim-moratorium under Section 96(1) (a) of the Insolvency and Bankruptcy Code, 2016 has commenced on the date of filing of this application by the Financial Creditor and will cease to have effect on the date of admission.
10. During such interim-moratorium period –
 - I. any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and
 - II. the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.
11. Vide order dated 26.02.2024, this bench appointed **Mr. Harshad Deshpande,** having Insolvency Registration No. IBBI/IPA-IBBI/IPA-001/IP-P00166/2017-2018/10335, 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

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI COURT-1

CP (IB) No. 395/MB/2022

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, Mr. Harshad Deshpande, an insolvency professional with Registration No. IBBI/IPA- IBBI/IPA-001/IP-P00166/2017-2018/10335 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. Haresh Ramchandani, Guarantor to Corporate Debtor M/s. Value Direct Communication Private Limited 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. Haresh Ramchandani 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.

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI COURT-1

CP (IB) No. 395/MB/2022

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.”

3. We note that vide letter dated 19.10.2021 the Petitioner/Guarantor was called upon to pay the over due amount of Rs.74707/- in respect of debt owed to the Principal Borrower and thereafter vide letter 30.10.2021 the Financial Creditor advised the personal guarantor about the legal action having been initiated against them, including the Principal Borrower, in relation to outstanding debt of Rs. 3633462/- as on 24.08.2021 and asked them to amicably settle/resolve the outstanding amount. This clearly demonstrate that the Petitioner owed an amount of 12,77,38,853/-, including Rs. 3633,462/, and the said amount is in default. The debt in default is more than threshold limit.

4. Therefore, in view of the above facts, 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. 395 of 2022 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

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI COURT-1

CP (IB) No. 395/MB/2022

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. Harshad Deshpande**,, having Insolvency Registration No. IBBI/IPA- IBBI/IPA-001/IP-P00166/2017-2018/10335 ,registered address at 403,Kumar Millennium,Shivatirtha Nagar Kaman,Opp.Krishna Hospital,Paud Road,Kothrud,Pune,Maharashtra,411038 [E-Mail: *harshad_de@hotmail.com*] 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

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI COURT-1

CP (IB) No. 395/MB/2022

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. administers 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

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI COURT-1

CP (IB) No. 395/MB/2022

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)

Sd/-

JUSTICE V. G. BISHT
MEMBER (JUDICIAL)