

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

C.P. (IB) NO. 356/MB/2023

Under Section 100 *r/w*
Section 95 of the Insolvency
& Bankruptcy Code, 2016
r/w Rule 7 (2) of the
Insolvency and Bankruptcy
(Application to the
Adjudicating Authority for
Insolvency Resolution
Process for Personal
Guarantors to Corporate
Debtors), Rules, 2019.

In the matter of

Bank of Maharashtra

...Applicant/Financial
Creditor

Versus

Mr. Umesh Krishna Joshi

...Respondent/Personal
Guarantor

Order pronounced on 15.05.2024

Coram:

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

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

Appearances:

For the Applicant/Financial Creditor: Adv. Meet Pandya i/b Kay
Legal LLP
For the Resolution Professional : Adv. Kartikee Korgaonkar,
Advocate
For the Respondent : None

ORDER

Per: Justice V. G. Bisht (Retd.), Member (Judicial)

Brief facts:

1. The present petition is filed *u/s.* 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to 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 **Bank of Maharashtra** (hereinafter referred to as “Applicant/Financial Creditor”) for the purpose of initiating insolvency process against **Mr. Umesh Krishna Joshi** (hereinafter referred to as the “Respondent/Personal Guarantor/Guarantor”) for recovery of Rs.12,11,77,686/- as on 18.10.2022 plus interest thereon from 18.10.2022 till payment/actual realization. The Date of Default, as specified in Part-III of the present petition, is **18.10.2022**.
2. The Applicant bearing PAN AACCB074B has its registered address at Asset Recovery Branch, 2nd Floor, Agarkar School Building, Near Apollo Cinema, Somwarpeth, Pune - 411011. The present application has been filed through authorized representative of the Applicant viz. Mr. Nandan Kumar.
3. The Respondent is an Indian resident having his permanent

address at 'Sarthak' Plot No.376, Mahatma Co-op Housing society, Kothrud, Pune - 411038.

4. The Respondent is a personal guarantor for **M/s. Auro Pharmaceuticals & Fine Chemicals Private Limited** (hereinafter referred to as the "Corporate Debtor") incorporated on 22.05.1992 having CIN U24232PN1992PTC066905 and having its registered office at 2007, Sadashiv Peth, Tilak Road, Pune - 411030.
5. The Corporate Debtor, M/s. Auro Pharmaceuticals and Fine Chemicals Pvt. Ltd., availed credit facility of Export Packing Credit cum FOBN cum back to back Letter of Credit of Rs. 5,00,00,000/- (Rs. Five Crores Only) on 22.06.2012 from the Applicant. Respondent have provided their Personal Guarantees against the said credit facilities availed by the Corporate debtor.
6. The Corporate Debtor defaulted in repayment of the loan resulting in being declared as NPA as on 29.10.2013. The Applicant thereafter addressed Demand Notices to each of the personal guarantors. The Respondents failed to reply to the said Demand Notice sent by the Applicant.
7. Since the debt still stands due, the Financial Creditor has filed the present petition u/s 95 of the Code r/w rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019.
8. Vide order dated 11.12.2023, this bench had appointed **Mr. Mahesh Surekha**, as Resolution Professional having Registration No. IBBI/IPA-001/IP-P00413/2017-18/10736 having his address at 173, Udyog Bhavan, Sonawala Road,

Goregaon East, Mumbai – 400063 to examine the petition and file his report within 10 days from the date of communication of the said order.

9. Vide order dated 28.03.2024 the Respondent was given last opportunity to file reply failing which matter was to be proceeded on the basis of material available on record. The reply has not been placed on record before this bench, hence proceeded accordingly.

Submissions of the Applicant:

10. Learned counsel for the Financial Creditor invited the attention of this bench to the demand notice dated 20.10.2022 invoking the guarantee against the respondent and to the proof of the demand notice. The Financial Creditor also invited the attention to the deed of guarantee being the guarantee for all facilities which was executed by the personal guarantor in favour of the applicant bank.
11. The Resolution Professional has filed an Interlocutory Application being IA No. 1354 of 2024 for submitting RP report u/s 99(1) of the Code on record. The same was taken on record and the said Interlocutory Application is allowed and disposed of.
12. The ground(s) for admission of the present application, as recorded in the said RP report, are reproduced in-verbatim as hereinafter:

“RECOMMENDATION

- 1. The Resolution Professional has gone through the section 95 application along with its annexures and it is in compliance with*

the provisions of section 95 of the IBC, 2016.

2. *The applicant has provided information sought by the Resolution Professional and given explanation regarding the same but the guarantor has not provided any reply or information.*
3. *Hence, Resolution Professional would like to recommend the acceptance of the application for initiation of Resolution process under section 99 (7) of IBC, 2016. And given reason for same as required under section 99 (9).*

A: The application filed by Petitioner is in compliance with regulations of section 95.

B: RP has sought the details and explanations from the guarantor but guarantor has not replied back.

C: The Personal guarantor have fixed asset as provided in Form C of application.”

Findings:

13. Heard learned counsel for the Applicant and perused records.
14. Upon perusal of the documents on record, it is clearly established that the Corporate Debtor has committed defaults in repayment of loan amount granted by the Financial Creditor. **Mr. Umesh Krishna Joshi**, Personal Guarantor to **M/s. Auro Pharmaceuticals & Fine Chemicals Private Limited** has also committed default in repayment of loan facility demanded by the Financial Creditor after invocation of Personal Guarantee. The Application filed by the Creditor satisfies the requirement as set out in Section 95 of the Code.
15. Considering the above facts and circumstances and upon perusal

of the documents on record viz. the demand notice, proof of service, guarantee deed dated 27.06.2012, consent by proposed IRP, etc., the C.P. (IB) 356/MB/2023 filed under Section 95 of the IBC, 2016 is hereby **Admitted** and the Insolvency Resolution Process stands initiated against **Mr. Umesh Krishna Joshi** viz. the Respondent herein. We hereby direct as hereinafter:

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. Mahesh Surekha** Insolvency Resolution Professional, having Registration No. **IBBI/IPA-001/IP-P00413/2017-18/10736**, having registered address at 173, Udyog Bhavan, Sonawala

Road, Goregaon East, Mumbai-400063 [E-Mail: *mahesh@mrsureka.com*, Mobile no.: 9322581414] 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 Applicant 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)