

IN THE NATIONAL COMPANY LAW TRIBUNAL

AT MUMBAI BENCH, C-IV

CP (IB) NO. 1127/MB/2021

Under Section 95(1) 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

Central Bank of India

Through Resolution Professional Jitendra Palande

... Applicant

Versus

Mr. Shivaji Ramchandra Katke

*... Respondent/Personal Guarantor of
M/s. Innoventive Industries Limited.*

Order delivered on: 12.07.2024.

Coram:

Ms. Anu Jagmohan Singh

Mr. Kishore Vemulapalli

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor :

Mr. Prakhar Tandon a/w Mr.
Pawan Kulk, i/b AUP Partners,
Counsel.

For the Personal Guarantor : None Appeared.

1. The present petition is filed on **04.07.2021** 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 *Central Bank of India through Resolution Professional Mr. Jitendra Palande* ("Financial Creditor / Applicant") for the purpose of initiating insolvency resolution process against *Mr. Shivaji Ramchandra Katke* ("Personal Guarantor / Respondent") for recovery of total debt amounting to INR 188,98,55,733/- . The Date of Default, per Part-III of the present petition, is 29.12.2016.
2. That the Applicant/ Financial Creditor sanctioned various credit facilities (term loans, working capital facilities) to the Corporate Debtor since 2009 which the Corporate Debtor failed to repay. Thereafter the existing credit facilities extended to the Corporate Debtor were restructured pursuant to a Corporate Debt Restructuring (CDR) scheme vide letter dated 30.06.2014 and a Master Restructuring Agreement dated 09.09.2014 was executed between the consortium of Banks including the present Applicant Bank as lenders, the Corporate Debtor as principal borrower. Further, the said restructuring facility was secured by the unconditional, irrevocable and joint and several guarantee of the promoters of the Corporate Debtor/borrower in the capacity of Personal Guarantors. Thus, the present respondent/Personal Guarantor, *Mr. Shivaji Ramchandra Katke* having executed a personal guarantee in favor of the present Applicant and secured the debt of the borrower/Corporate Debtor failed to repay/discharge the Secured

Obligations of the Corporate Debtor despite repeated demands made by the present Applicant. That on 17.01.2017, Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor.

3. The present Applicant filed its claim before the Insolvency Resolution Professional (IRP) in FORM C under Regulation 8 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
4. Subsequently, the Liquidation Process against the Corporate Debtor was initiated vide order dated **08.12.2017** passed by the this tribunal. The Applicant submitted its claim of Rs. 188,98,55,733/- as on the date of liquidation to the Liquidator on **06.01.2018** in respect of the default committed by the Corporate Debtor, *M/s Innoventive Industries Limited* in repayment of the debt due to the present Applicant which claim has been admitted by the Liquidator.
5. The Applicant states that, the borrower defaulted in repayment of the facilities and accordingly the Applicant was constrained to invoke the said Guarantee against the Guarantor. Pursuant, to which 3 notices dated 19.09.2018, 11.02.2019 and 12.04.2019 were issued invoking Personal Guarantee of the Respondent.
6. Thereafter, Demand Notice dated **15.02.2021** 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 was sent by the Applicant to the Personal Guarantor specifying particulars of the unpaid debt in default and requesting him to unconditionally pay the unpaid debt in full within fourteen days from the receipt of the demand notice, failing which insolvency resolution process

under the Code shall be initiated against him. However, neither the unpaid debt in default as claimed in the Demand Notice has been paid to the Applicant nor the personal guarantor has replied to the said Demand Notice till date.

7. On presentation of the application by the Financial Creditor, under section 95(1) of the IBC,2016 for initiating Insolvency Resolution Process against the Personal Guarantor, this Tribunal vide order dated 02.12.2022 had appointed **Mr. Jitendra Palande** bearing Registration No. **IBBI/IPA-003/IP-N00028/2017- 2018/10188** as Resolution Professional and directed to exercise all the powers as enumerated u/s.99 of the Code, R/w. Rules made thereunder. Accordingly, he has filed a report on **21.06.2023** and was further directed to make recommendations with reasons in writing for acceptance or rejection of the Company Petition.
8. The Resolution Professional has filed a report recommending for approval of the said application under section 95 of the Code by Central Bank Of India through Resolution Professional. The Resolution Professional had recommended that *“perused/examined the Insolvency Application filed by the Financial Creditor under Section 95 of the Code along with all the underlying documents and annexures and have formed the opinion to recommend the same for approval to this Hon'ble Adjudicating Authority, based on following grounds”*
 - a) The Insolvency Application has been filed in the requisite form, Form C, in terms of Rule 7 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019, supported by requisite fee and documents.

- b) The Insolvency Application satisfies the requirements set out in Section 95 of the Code.
- c) The Personal Guarantor was duly served with demand notice dated 15-02-2021 by the Financial Creditor for repayment of the debt owed by him to the Financial Creditor in terms of the provisions of the Code prior to filing the Insolvency Application, but the Personal Guarantor failed to repay the same.
- d) It is therefore submitted that after proper verification, examination and perusal of above evidences and information gathered, the RP is of the view that default committed by the Personal Guarantor does not pertain to exclude debt defined in Section 79(15) of the Code.
9. The Resolution Professional has filed a report recommending for approval of the said application under section 95 of the Code by the Creditor i.e. Central Bank of India through Resolution Professional. The Resolution Professional had recommended that “..... *to initiate insolvency resolution process be commenced against Mr. Shivaji Ramchandra Katke...*”
10. The proceedings in the present matter was put on hold since the Constitutional Validity of the Sections 94 to 100 relating to the insolvency of Personal Guarantor was pending. 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.

Findings:

11. We have heard the learned counsel and have duly perused the documents on record.

11.1. On perusal of records, we note that despite notice being duly served on the Personal Guarantor 14.05.2024 there was no appearance by the Personal Guarantor either in person or through the counsel nor any reply was filed. We hereby proceed to decide the matter on the basis of material available on record.

12. We are of the considered view that the captioned petition is complete in all aspects, and the present case is therefore fit for admission. Ordered accordingly.

13. In terms of the above, **CP(IB)/1127/MB/2021** filed under Section 95 of the IBC, 2016 is *admitted* and the Insolvency Resolution Process stands initiated against the Applicant/Personal Guarantor.

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. Jitendra Palande* bearing Registration No. *IBBI/IPA-003/IP-N00028/2017- 2018/10188*, having registered address Office No. 411, Kakade Bizz Icon ,Ganeshkhind Road, Shivajinagar ,Pune,Maharashtra ,411005 *jitendra@7crllp.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 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 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.
- 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 Rs.2 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/-
ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
12.07.2024.

Sd/-
KISHORE VEMULAPALLI
MEMBER (JUDICIAL)