

THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-I

C.P.(IB) No. 1078/MB/2023

Small Industries Development Bank of India

... Petitioner

Vs.

Debjani R. Ghosh

... Respondent/Personal Guarantor

Order delivered on: 12.07.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

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

Appearances:

For the Petitioner : Mr. Avinash Khanolkar, Advocate

For the Respondent : Mr. Akash Agarwal, Advocate

ORDER

Per: CORAM

C.P. (IB)/1078(MB)2023

- 1) The Financial Creditor submits that Applicant- Financial Creditor has filed an application under section 95 of IB code 2016 against the Personal Guarantor Mr. Debjani R Ghosh of Corporate Debtor. Application should be accepted, and the Individual Insolvency Resolution Process should be initiated of Mr. Debjani R Ghosh (personal guarantor to Sparklet Engineers Private Limited) in order to recover the outstanding debt payable as per the Guarantee Agreement executed dated 11.04.2018. The Total outstanding debt is of Rs. 47,29,599/-(Rupees Forty Seven Lakhs Twenty Nine Thousands Five Hundred Eighty Eight only) as on 19.06.2023.
- 2) That Loan Agreement was executed between Sparklet Engineers Private Limited and SIDBI on 11.04.2018, on the same date 11.04.2018 Personal Guarantee Agreement was executed by Mr. Debjani R Ghosh in favour of SIDBI. The Financial Creditor on 08.03.2023 served a demand notice on personal guarantor invoking personal guarantee.
- 3) The Financial Creditor emphasised on the preliminary submission and to the objection raised by the Respondent in context of below points: -
 - Thresholds Limit.
 - Jurisdiction
 - Insufficient Stamped

- 4) It is submitted that Section 95 of the 1B code, 2016 is related to personal guarantors of corporate debtor as per the notification dated 1/12/2019. The application is filed under proper format as prescribed under the IB code 2016 and the contention raised by respondent is baseless and devoid of any legality. That the recent judgement of Supreme Court upholding the validity of entire part III has cleared out all the doubts with regard to the notified part III i.e. section 94 to 187.
- 5) Section 5(22) defines personal guarantor as an individual who is the surety in a contract of guarantee to a corporate debtor. A personal guarantor being an individual, provides guarantee in their personal capacity against the loans availed by the corporate debtor and as such, their liability is co-extensive with that of the Corporate Debtor.
- 6) The Counsel for the Respondent raised preliminary objection on the maintainability of the present Petition stating that the jurisdiction in the case of the Personal Guarantors of the Corporate Debtor, lie before this Tribunal in terms of Section 60(1) of the Code and the said provision falls under part II of the Code, which deals with Insolvency Resolution and Liquidation for Corporate Persons. It is submitted that Section 4, which is part of Part II, provides a monetary threshold of Rs. 1 Crore and the present Petition has been filed for a default amount of Rs. 47,29,599/-, hence, the Petition is not maintainable.

- 7) Heard Ld. Counsel for the Parties and perused the material available on record.
- 8) Part III of the Code provides for Insolvency Resolution and Bankruptcy for individuals and partnership firms. Section 78 of the Code, which is part of part III, provides that this part shall apply to matters relating to Bankruptcy of Individuals where the amount of default is not less than Rs. 1,000/-. Section 179(1) of the Code provides that *“Subject to the provisions of section 60, the Adjudicating Authority, in relation to insolvency matters of individuals and firms shall be the Debt Recovery Tribunal having territorial jurisdiction over the place where the individual debtor actually and voluntarily resides or carries on business or personally works for gain and can entertain an application under this Code regarding such person”*.
- 9) The provisions in relation to Insolvency and Bankruptcy of Personal Guarantors are contained Part III of the Code which is self contained Code. On bare perusal of Provision of Section 60 and 179 of the Code, we find that Section 179 gives way to Section 60 in so far as Insolvency of individuals, who are personal guarantors of the Corporate Debtor, is concerned. On the other hand, Section 78 is not subject to provisions of Section 4, as is the case in case of Section 179, which is subject to provisions of Section 60. Accordingly, we are of the considered view that Section 4 cannot be imported in the Part III, in the absence of specific provisions in Section 78 mandating it to be so. We have no hesitation to say that other provisions of

Part II cannot be applied to the Insolvency and Bankruptcy Individuals simply because jurisdiction in relation to these cases lie with this Tribunal in view of a specific carve out made in Section 179 r/w Section 60 of the Code. Accordingly, the objection on the ground of threshold limit invoking provisions of Section 4 of the Code, is not maintainable. We hold that the monetary limits as prescribed in Section 78 of the Code shall be applicable, even to the cases of Insolvency and Bankruptcy of Individuals or Partnership Firms under jurisdiction of this Tribunal.

- 10) In the present case, the debt in default is more than Rs. 1,000/- and the application is filed under proper format as prescribed under the IB code 2016 and the contention raised by respondent is baseless and devoid of any legality.
- 11) As regards the contention of the Respondent that the legal guarantee is *ex facie* unstamped and is not legally enforceable for the reason it being insufficiently stamped under the applicable law, we find that the deed of guarantee is executed on the stamp paper of Rs. 100. The Respondent has made really bald statement in Affidavit in Reply dt. 22.01.2024 and failed to state as to how and in what manner the said Deed of Guarantee is unstamped. Accordingly, this ground is also not maintainable.
- 12) In view of the forgoing, we consider it appropriate to proceed for appointment of the Resolution Professional. Having considered the submissions and upon perusing the above documents, this Bench is of the

considered view that the present Company Petition is complete in all aspects as required by law and thus hereby appoints Mrs. Pooja Damir Miglani, having Insolvency Registration No. IBBI/IPA-002/IP-N01189/2021-2022/13994, to act as the Resolution Professional in the matter of Mr. Debjani R. Ghosh, as the name of the Insolvency Professional has been suggested by the Petitioner herein.

- 13)** This Bench also directs for an advance payment to the tune of Rs. 2,00,000/- to be paid by the Financial Creditor to the Resolution Professional immediately to initiate the process which shall be adjusted towards fee and expenses payable to the Resolution Professional.
- 14)** The Resolution Professional shall examine the Application within 10 days from the date of his appointment and submit its report to the Adjudicating Authority recommending for approval or rejection of the Application as referred under section 99(1) of the Code. The RP is also directed to serve the copy of report on both the sides Financial Creditor as well as the Personal Guarantor and file proof of service of report.
- 15)** 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.
- 16)** During such interim-moratorium period –

- a. any legal action or proceeding pending 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.

17) Registry is directed to communicate this order immediately to the Resolution Professional, Mrs. Pooja Damir Miglani, having address House No. 83, New Fateh Singh Nagar, Ludhiana, Punjab - 141013.

18) Accordingly, stand over to 25.07.2024, for submission of the report by the Resolution Professional.

Sd/-

**PRABHAT KUMAR
MEMBER (TECHNICAL)**

Vedant Kedare

Sd/-

**JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)**