

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

C.P. (IB) No. 1227/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

State Bank of India (Through Resolution Professional Mr. Surya Pratap Gupta)

...Financial Creditor

Versus

Mr. Abhijit Avarsekar

...Personal Guarantor

Order Pronounced On: 12.07.2024

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor

Ms. Priyanka Jadav a/w Mr. Ayush Rajani i/b AKR Legal, Ld. Counsel for the Petitioner.

For the Resolution Professional

None Present for the Resolution Professional.

For the Personal Guarantor

None Present for the Personal Guarantor.

1. The present petition is filed on 30.11.2021 *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 **State Bank of India** ("Applicant") for the purpose of initiating insolvency resolution process against **Mr. Abhijit Avarsekar** ("Personal Guarantor / Respondent") for recovery of total debt amounting to INR 21,40,62,546/- (Indian Rupees Twenty-One crores, Forty lakhs, Sixty-Two thousand, Five hundred and forty-six only) as on 10.11.2021. The Date of Default, per Part-III of the petition, is 25.03.2020.
2. The Financial Creditor herein submits that one Chomu Mahla Toll Road Private Limited ("**Corporate Debtor**") was sanctioned vide Sanction letter *dated* 28.08.2015 & 30.09.2015. As against the said facilities other security documents was executed subject to terms and conditions thereto. Pursuant to which, the Personal Guarantor *viz.* Respondent herein was one of the executors of the Personal Guarantee Deed *dated* 11.12.2015 thereby guaranteeing the debt and that the Guarantee shall be a continuing guarantee in the said Guarantee Deed.
3. The Personal Guarantor *viz.* Respondent herein was one of the three executors of the Personal Guarantee *dated* 11.12.2015 as against the afore-stated financial facilities, thereby guaranteeing the debt arising under the same. Due to non-payment of amounts due under the same, the loan account of the Corporate Debtor was classified as 'NPA' on 29.08.2016. Pursuant to the same, the Financial Creditor issued a Legal Notice to the Corporate Debtor and its Guarantors (including the Respondent herein) *dated* 05.03.2017 invoking the guarantee.
4. The Financial Creditor submits that a Corporate Debtor *viz* Chomu Mahla Toll Road Private Limited is under Liquidation vide order *dated* 09.05.2023. Subsequently, the Financial Creditor issued a Demand Notice *dated*

10.11.2021 to the Personal Guarantor herein, in Form-B under Rule 7(1) of the Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, demanding forthwith payments of its dues within fourteen days. However, the Personal Guarantor, per the Financial Creditor herein, has failed to act thereupon. Hence, the present petition.

5. We have heard the learned counsel for the Financial Creditor and have duly perused the documents on record.
6. After due perusal of records, we note that this bench vide order dated 27.03.2024 directed to issue court notice and the same was duly served upon the Personal Guarantor on 13.04.2024 and the said matter was listed on 14.05.2024. Despite service of notice, the Personal Guarantor neither appeared nor filed any reply. Resultantly, the Personal Guarantor was set *ex-parte*. In the aforesaid peculiar circumstances, we hereby proceed to decide the matter as per the basis material available on record.
7. On the aspect of limitation, we find that the Demand Notice *dated* 05.03.2020 invoking the guarantee was duly served to the Personal Guarantor herein, thus constitutes the valid invocation in relation to the Guarantee Deed dated 11.12.2015 and the petition has thus been filed well-within the limitation period as mandated under law.
8. We note that this Bench had appointed the **Mr. Surya Pratap Gupta**, Insolvency Resolution Professional (“RP”) *vide* Order *dated* 25.08.2022 in the captioned petition and had thereby directed the Applicant to prepare and file a Report *u/s.* 99 of the IBC, 2016. The RP *via* his Report *dated* 14.09.2022, after due examination of the application, and the requirements as mandated under clauses (1) to (10) of Section 99 of the IBC, 2016, has recommended initiation of Insolvency Resolution Process in respect of Mr. Abhijit Avarsekar *viz.* the Personal Guarantor herein.
9. The proceedings in the present matter were put on hold since the

constitutional validity of the Sections 94 to 100 of IBC, 2016, relating to the insolvency of personal guarantor was pending before the Hon'ble Supreme Court in the matter of *Dilip B. Jiwarajka V/s Union of India & Ors. [WP (Civil) No. 1281 of 2021]*.

10. 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. Taking into consideration the facts as submitted by the Financial Creditor and the report submitted by the Resolution Professional, this bench is of the view that this matter is fit case for admission.

ORDER

11. In terms of the above, the captioned petition bearing C.P. (IB) No. 1227/MB/2021 filed under Section 95 of the IBC, 2016 is hereby **Admitted** and the Insolvency Resolution Process stands initiated against Mr. Abhijit Avarsekar *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. Surya Pratap Gupta**, Insolvency Resolution Professional, with Registration No. IBBI/IPA-001/IP-P01060/2017-2018/11753, having address at 301, D-Wing, Imperial Heights, CTS Plot No. 1 (PT), Behind Goregaon Best Depot, Malad Link Road, Goregaon (West), Mumbai City, Maharashtra, 400104 [E-Mail: spgupta10@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 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, business or trade on his behalf or in his name:
or
- b.* realize 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 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/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)