

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

C.P. (IB) NO. 296/MB/2022

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.

Nitin Om Kothari
*Resolution Professional for Personal
Guarantor*

...Applicant

In the matter of

Solapur Janata Sahakari Bank Limited

...Financial Creditor

Versus

Abhishek Satishchandra Sudarik

...Personal Guarantor

Order delivered on: 23.07.2024

Coram:

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

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor/ Applicant

Mr. Rohit Giri i/b Adv. Raina Birla, Ld. Counsel Present through Video Conferencing.

For the Personal Guarantor

Mr. Rahul Totala a/w Mr. Kunal Chheda, Ld. Counsel for

Personal Guarantor.

1. The present petition is filed on 01.12.2021 *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 **Solapur Janata Sahakari Bank Limited** (“Financial Creditor”) for the purpose of initiating insolvency resolution process against **Mr. Abhishek Satishchandra Sudarik** (“Personal Guarantor / Respondent”) for recovery of total debt amounting to INR 14,75,26,917/- (Indian Rupees Fourteen crores, Seventy-Five lakhs, Twenty-Six thousand and Nine Hundred and Seventeen Rupees only) as on 30.09.2021.
2. The Financial Creditor herein submits that one M/s. Shetkari Sakhar Karkhana (Chandapuri) Limited (“**Corporate Debtor**”) was sanctioned credit facilities vide Sanction letter *dated* 19.03.2016 & 20.08.2015. 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* 21.09.2015 & 23.03.2016 thereby guaranteeing the debt.
3. On account of Corporate Debtor’s successive defaults in re-payment of the outstanding amount disbursed under the afore-stated facilities, consequently, the Financial Creditor issued a Demand-Notice *dated* 21.11.2017 *u/s.* 13(2) of the SARFAESI Act to all the Guarantors (including the Personal Guarantor herein) seeking forthwith repayment of the outstanding amount along with the interest and accrued charges.
4. The Financial Creditor submits that, a Company Petition bearing C.P. (IB) No. 1349/MB/2017 was filed *u/s.* 9 of the IBC, 2016, and this Tribunal was thereby pleased to initiate Corporate Insolvency Resolution Process (“CIRP”) as against the Corporate Debtor herein *vide* Order *dated* 14.01.2019 and that the Resolution Plan submitted is approved by this Tribunal *vide* order dated

22.01.2021.

5. Subsequently, the Financial Creditor *viz.* Applicant herein 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.
6. We have heard the learned counsels and have perused the documents on record.
7. We have taken note of the averments raised by the Personal Guarantor *viz.* Respondent herein *via* its Affidavit-in-Reply *dated* 13.02.2024. The issues raised by the Personal Guarantor in its reply are that (i) The Loan agreement was never executed by Personal Guarantor, renewal of loan was also not executed by Personal Guarantor, documents and photographs were not submitted by him and that he was not presented before any notary or registrar; (ii) that the signature on the loan Agreement is forged and does not match with Personal Guarantor; (iii) that the initiation of petition itself is bad in law and a proper notice and service of the same was not done on Personal Guarantor; (iv) that the Company and Directors have themselves acknowledged that the Personal Guarantor was relieved from all the responsibilities and liabilities of the Bank after the Personal Guarantor resignation; (v) that the deed of guarantee is not stamped properly.

7.1 We have perused the Deed of Guarantee dated 21.09.2015 and the subsequent Consent Letter dated 21.09.2015. Clause 6 of the said Guarantee provides *“that the Guarantee shall not be revoked by the Guarantors and shall remain enforce till all the amounts due and payable to the bank by the borrowers are paid in full”*. We also notice that both these documents (Guarantee Deed and Consent Letter) are duly signed by

the Personal Guarantor Mr. Abhishek Satishchandra Sudarik, thereby evidencing that the Deed of Guarantee was duly executed by the Personal Guarantor.

- 7.2 We observe that the allegation by the Personal Guarantor that signature is forged is not substantiated by any documentary evidence or any criminal case for forgery filed by the Personal Guarantor. It is therefore clearly an afterthought.
- 7.3 We take note of the affidavit in reply filed by the Personal Guarantor wherein he has appended copy of the Board resolution dated 20.11.2016 of M/s. Shetkari Sakhar Karkhana (Chandapuri) Limited (Principal Borrower) wherein it is stated that *“Further Resolved that the said Mr. Abhishek Satishchandra Sudrik and is hereby relieved from all his liabilities as Whole Time Director with immediate effect and that the Bankers/Financial Institutions be requested to relieve Mr. Abhishek Satishchandra Sudrik from the Personal Guarantees given by him in favour of them as security for credit facilities”*. We also take note of the Advocate Notice issued on the instructions of Mr. Abhishek Satishchandra Sudarik to Solapur Janata Sahakari Bank Limited reiterating that in view of the said Board Resolution, he be relieved of his liabilities by the bank. We are of the view that these documents sufficiently go to prove that Personal Guarantee was given by Mr. Abhishek Satishchandra Sudarik and his objection that the Loan Agreement was never executed by him is devoid of merits.
- 7.4 We also notice that the invocation of Guarantee through Section 13(2) of SARFAESI dated 21.11.2017 was duly served upon the Personal Guarantor. The copy of Petition and Demand Notice was also duly served upon the Personal Guarantor and his contention that notice was not properly served is without any basis.
- 7.5 A Personal Guarantor can be relieved of his financial obligation with

respect to guarantee given by him only by the lender Financial institution. In this case, though there is a Board Resolution accepting his resignation as a director and stating that the Banker be requested to relieve him of his obligation, the Lenders/Banker i.e. Solapur Janata Sahakari Bank Limited has not issued any letter discharging the Personal Guarantor from his financial obligation. Therefore, the Personal Guarantor contentions that he was discharged of his financial obligation, is not tenable.

8. On the aspect of limitation, we find that the Demand Notice *dated* 21.11.2017 invoking the guarantee was duly served to the Personal Guarantor herein, thus constitutes valid invocation in relation to the Guarantee Deed. That the present petition having been filed on 01.12.2021, the same is within the period of limitation in view of the Judgement of Hon'ble Supreme Court passed in *Suo Moto Writ Petition No. 3 of 2020*. The Bench takes note that the Company Petition was served on the Personal Guarantor and that the Proof of Service is filed by the Petitioner evidencing delivery of Company Petition.
9. We note that this Bench had appointed the **Mr. Nitin Om Kothari**, Insolvency Resolution Professional ("RP") *vide* Order *dated* 20.09.2022 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* 03.12.2022, after due examination of the application, documents filed along with the application, in addition to 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. Abhishek Satishchandra Sudarik *viz.* the Personal Guarantor herein.
10. 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. Jiwrajka V/s Union of India & Ors. [WP (Civil)*

No. 1281 of 2021].

11. 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

12. In terms of the above, the captioned petition bearing C.P. (IB) No. 296/MB/2022 filed under Section 95 of the IBC, 2016 is hereby **Admitted** and the Insolvency Resolution Process stands initiated against Mr. Abhishek Satishchandra Sudarik 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. Nitin Om Kothari**, Insolvency Resolution Professional, having Registration No. IBBI/IPA-001/IP-P-02310/2020-2021/13477, having address at 5A/301 Alica Nagar ,Lokhandwala Township, Kandivali (east) ,Mumbai City, Maharashtra ,400101 [E-Mail: cakotharico@gmail.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)