

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

C.P. (IB) No. 983/MB/2023

Under Section **95(1)** of the Insolvency & Bankruptcy Code, 2016 *r/w* Rule **7** 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

Small Industries Development Bank of India

... Financial Creditor

v/s.

Shri Harshad Hirji Thakkar

... Personal Guarantor

Order delivered on: 04.07.2024

Coram:

Prabhat Kumar

Justice V.G Bisht,(Retd).

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor : Mr. Narendra Singh, Advocate

For the Personal Guarantor : *Ex-parte*

ORDER

Per: V.G Bisht, Member (Judicial)

1. The present petition is filed on 25.09.2023 u/s. 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") r/w. Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 by **Small Industries Development Bank Of India** (jointly "Financial Creditor / Applicant") for the purpose of initiating insolvency resolution process against **Harshad Hirji Thakkar** ("Personal Guarantor / Respondent") for the amount in default is of Rs. 12,13,71,004/- (Indian Rupees Twelve Crore Thirteen Lakh Seventy-One Thousand and Four only) as on 10.08.2023. Date on which the debt was due on 10.06.2019 and the Default occurred on 10.06.2019, as per Part-III of the present petition.
2. It is further stated that the debtor (i.e., the Personal Guarantor) has given his personal guarantee for the above Credit Facilities and has executed Personal Guarantee Agreements dated 21.11.2012, 21.03.2014 and 02.12. 2016.
3. Upon the request from the Corporate Debtor, the applicant herein granted credit facilities to the Corporate Debtor details of the loan account with the outstanding amount is below:

Loan Account Number	Outstanding Date as on	Amount Outstanding In Rs/-
D0000EA4	10.08.2023	89,57,612/-
D0000EAT	10.08.2023	2,96,86,896/-
D0000VQ8	10.08.2023	7,10,64,594/-

D0000E69	10.08.2023	88,88,020/-
D0000E6A	10.08.2023	27,73,882/-
Total		Rs.12,13,71,004/-

- 4.** The Financial Creditor submits that the Personal Guarantor has given guarantee for all of the above-mentioned credit facilities and has executed Deed of Guarantee for the same.
- 5.** The Deed of Personal Guarantee was executed by the Personal Guarantor on 21.11.2012, 21.03.2014 and 02.12.2016.
- 6.** The Financial Creditor submits that the Loan Account Nos. D0000EA4, D0000EAT, D0000VQ8, D0000E69 and D0000E6A of the Corporate Debtor with SIDBI turned NPA on 08.02.2019.
- 7.** Recall notice was issued on 25.02.2019 to the Corporate Debtor to recall the unpaid amount of Debt.
- 8.** Notice under section 13(2) of the SARFAESI Act, 2002 was issued on 27.03.2019 to the Corporate Debtor to pay the unpaid amount of Debt.
- 9.** SIDBI issued Possession Notice on 06.06.2019 to the Corporate Debtor to take possession of the secured property.
- 10.** The Financial Creditor submits that in view of default of the Corporate Debtor, the applicant herein invoked Personal Guarantee of the Personal Guarantor and issued him a notice of invocation of guarantee dated 10.06.2019 to pay entire outstanding dues of the Financial Creditor.
- 11.** The applicant also filed application under Section 7 of the IBC against the corporate debtor which was admitted.

12. In view of non-payment of dues by the debtor herein, the applicant issued Demand Notice in Form B, as per Sub Rule (1) of Rule 7 Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 on 14.09.2022. The notice was duly serviced to the Debtor. However, the debtor herein has not paid dues of the applicant (i.e., SIDBI) which are due from the debtor despite requests.

13. The Company has executed the following security documents in favour of applicant/Financial Creditor against the loan Facilities granted:

- i.** Letter of Intent dated 14.03.2014
- ii.** Deed of Hypothecation
- iii.** Deed of Guarantee.
- iv.** Recall Notice on 25.02.2019
- v.** Notice for Invocation of Guarantee
- vi.** Demand Notice (Form B) on 14.09.2022

14. We note that this Bench had appointed the **Mr. Gauav Mittal**, Insolvency Resolution Professional (“RP”) *vide* Order dated 13.12.2023 in the captioned petition and had thereby directed the Applicant to prepare and file a Report *u/s.* 99 of the IBC, 2016 and the same has been taken on record on 20.02.2024. The RP after due examination of the application, documents filed along with the application, in addition to the requirements as mandated under clauses (6) (a) (b) of Section 99 of the IBC, 2016, has recommended to “*..have formed the opinion to recommend the same for its admission under sub section (7) of Section 99 of the IBC, for initiation of Insolvency*”

Resolution Process against Mr. Harshad Hirji Thakkar and : a.) upon perusal of the documents attached along with the petition filed by the applicant , the Personal Guarantor has committed a default b.) The Applicant submits that the present application meets the necessary requirements of the Code for its approval by this Hon'ble Tribunal and the reason for the same have been submitted in the Report .

the RP has had formed the opinion to recommend the same for its admission under sub section (7) of Section 99 of the IBC. The recommendation for admission of the application before the Hon'ble Adjudicating Authority is based on the following grounds:

- a. "The Insolvency Application has been filed to initiate the Insolvency Resolution Process of Mr. Harshad Hirji Thakkar, in the requisite form, Form C, in terms of the Sub Rule 2 of Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019., supported by requisite fee and documents.*
- b. A notice in Form B as per Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 which was issued by the Creditor to the Debtor is also attached with the application.*
- c. The Insolvency Application for Initiating Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 satisfies the requirements set out in Section 95 of the Code.*
- d. The RP had allowed the Debtor concerned to prove repayment of the debt and provide additional documents/information. However, the debtor did not revert to the communication of the RP till the time of signing of this report.*

e. The Debtor, Personal Guarantor, is not eligible for the fresh start Process under Chapter II of Part III of the Code.

15. The personal guarantor was duly served with the report of RP but none has appeared either by himself or through counsel.

Findings:

16. Heard learned counsel for Financial Creditor and perused the documents on record.

17. We find that even after granting various opportunities, the Respondent herein chose not to appear, file & place on record Affidavit in Reply to the Report, which is filed by the Resolution Professional. Financial Creditor was directed to serve Notice upon the Respondent/Personal Guarantor by way of paper publication in two Newspapers, (i.e. one in English Language, and another in Local Vernacular Language), clearly intimating the next date of hearing and to place on record Affidavit enclosing therewith proof of publication of Notice in Newspapers, proof of service of Notice and the Copies of the Newspaper cuttings well before the adjourned date. The present Company Petition against the Respondent/Personal Guarantor, is thus, proceeded *ex-parte* vide order dated 19.06.2024. It is revealed from the records that this bench vide order dated 22.04.2024 had directed Petitioner to serve notice upon the Respondent/Personal Guarantor by way of Paper Publication. Despite service of Notice, Personal Guarantor chose not to appear before this Bench and file reply in the present matter.

18. This Court holds that the service upon the Respondent/Personal Guarantor is sufficient in the eyes of law.

19. The Financial Creditor submits that the Loan Account Nos. D0000EA4, D0000EAT, D0000VQ8, D0000E69 and D0000E6A of the Corporate Debtor with SIDBI turned NPA on 08.02.2019.

20. We note from the submission of the Financial Creditor that the Notice under section 13(2) of the SARFAESI Act, 2002 was issued on 27.03.2019 to the Corporate Debtor to pay the unpaid amount of Debt. In view of default committed by the Corporate Debtor, the Financial Creditor herein invoked Personal Guarantee and issued notice of invocation of guarantee dated 10.06.2019, to pay entire outstanding dues of the Financial Creditor.

21. We also note that this Petition was e- filed on 25.09.2023 and from the documents placed on records, it reveals that the Financial creditor invoked the guarantee by way of Notice of Invocation of Guarantee dated 10.06.2019, asking the guarantor to pay the amount in default which was admittedly not paid .Accordingly the date of default is 10.06.2019, which is the date of Invocation of the Guarantee and limitation runs from this date. As in view of the COVID-19, the Hon'ble Supreme Court in Suo Moto WP (Civil) No. 3 of 2022 in Re: Cognizance for Extension of Limitation held that the period i.e.15.03.2020 to 28.02.2022 is excluded for calculating the period of limitation. In the present case the period of limitation expires on 09.06.2022 which is after the after expiry of 28.02.2022, and the Period of 90 days there from expire on 29.05.2022. Accordingly, the present petition is filed on 25.09.2023 which is beyond the period of limitation and is barred by limitation.

22. In terms of the above, the C.P. (IB) No. 983/MB/2023 filed under Section 95 of the IBC, 2016 is hereby dismissed.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-

JUSTICE V. G. BISHT
MEMBER (JUDICIAL)