

IN THE NATIONAL COMPANY LAW TRIBUNAL
AT MUMBAI BENCH, C-IV

CP (IB) NO. 919/MB/2023

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

HDFC Bank Limited

Financial Creditor / Applicant

Versus

Mr. Shyamsundar Toshniwal

*... Respondent / Personal Guarantor of
Eurolife Healthcare Private 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. Rushab Chopra i/b Vidhi Partners, Ld. Counsel.
- For the Personal Guarantor : Mr. Avinash R. Khanolkar a/w Ms. Surekha Yadav, Ld.Counsel.
- For Resolution Professional : Ms.Kartikee Kargaonkar, Ld. Counsel.(through Virtual Mode)

1. The present petition is filed on **14.09.2023** 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 **HDFC Bank Limited** ("Financial Creditor / Applicant") for the purpose of initiating insolvency resolution process against **Mr. Shyamsundar Toshniwal** ("Personal Guarantor / Respondent") for recovery of total debt amounting to INR 52,52,79,048.64/- (Indian Rupees Seventy Five Crore Two Lakh Eighteen Thousand Two Hundred Eighty Nine Only) as on 09.05.2023. The Date of Default, as per Part-III of the present petition, is 01.07.2021.
2. Eurolife Healthcare Private Limited (hereinafter referred to as 'Corporate Debtor') approached the Financial Creditor seeking financial assistance in the form of Cash Credit Facility in the sum of Rs. 25,00,00,000/- (Rupees Twenty Five Crores Only) and Term Loan in the sum of Rs. 24,00,00,000/- (Rupees Twenty Four Crores Only) for its working capital requirement and for

purchase of certain machinery. The aforesaid facilities were, based on the representations made on behalf of the Financial Creditor, sanctioned, and disbursed to it. Thereafter, the Corporate Debtor sought further financial assistance to the tune of Rs. 7,50,00,000/- (Rupees Seven Crores Fifty Lakhs Only) under the Government of India's Emergency Credit Line Scheme.

3. The said financial assistance was secured inter alia by a Personal Guarantee of Sandeep Toshniwal, the Personal Guarantor abovenamed. The facilities were also secured by exclusive charge (mortgage) over Immovable Property and hypothecation of Stock in Trade, Book Debts and Receivables, Plant and machinery and other Moveable Assets. The Deed of Guarantee was executed on 12.06.2017.
4. The Corporate Debtor failed to discharge its liability under the loan/financing documents therefore, the Applicant was constrained to classify its account as a 'Non-performing Asset on 27.09.2021 in accordance with the relevant guidelines issued by the Reserve Bank of India from time to time.
5. Hence, the Financial Creditor, through its advocates, addressed a "Recall of credit facilities sanctioned to EUROLIFE HEALTHCARE PRIVATE LIMITED and Invocation of Personal Guarantees" Notice dated 09.12.2021 to the Corporate Debtor and the personal guarantors (including Sandeep Toshniwal) demanding within 7 (seven) days payment of the Corporate Debtor's outstanding dues to the tune of Rs. 42,23,89,782.03 (Rupees Forty Two Crores Twenty Three Lakhs Eighty Nine Thousand Seven Hundred Eighty Two and Paise Three Only) being total amount due as on 30.11.2021 along with further interest thereon at the rate of 9.70% per annum and penal interest at the rate of 18% per annum from 01.12.2021 till date of actual payment. The Corporate Debtor as well as the personal guarantors, including

Sandeep Toshniwal failed to adhere to the aforesaid recall-cum-guarantee invocation notice.

6. On 10.02.2022, the Financial Creditor addressed Demand Notice u/s 13(2) of the SARFAESI Act, 2002 to the Corporate Debtor and the Personal Guarantor as well. A Possession Notice dated 12.07.2022 u/s 13(4) was also issued by the Financial Creditor.
7. Further, the Financial Creditor was thus constrained to issue Notice dated 21.12.2022 in Form B 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 to Sandeep Toshniwal, which was duly served upon him. However, he failed to discharge his liability under the personal guarantee, despite adequate notice.
8. In the meanwhile, the Financial Creditor submits that, a Company Petition bearing C.P. (IB) No. 912/2022 was filed u/s. 7 of the IBC, 2016, and this Tribunal was thereby pleased to initiate Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor herein vide Order dated 09.05.2023. Mr.Sandeep Toshniwal, one of the Suspended Directors of the Corporate Debtor filed Appeal No. 744 of 2023 before the Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi, impugning the aforesaid order dated 09.05.2023. This appeal came to be '*dismissed for non-prosecution*' on 29.08.2023.
9. The Personal Guarantor viz. Respondent herein, via his Reply *dated* 15.04.2024, has disputed the contentions of the Financial Creditor with regards to the Authorisation , wrong date of default , claim amount and has

further disputed deed of guarantee.

10. We note that this Bench had appointed the Mr. Mahesh Sureka, Insolvency Resolution Professional (“RP”) vide Order dated **20.12.2023** in the captioned petition, and had thereby directed the Applicant to prepare and file a Report u/s. 99 of the IBC, 2016. The RP via his Report dated **02.01.2024**, 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 that “*..the acceptance of the application for initiation of insolvency resolution process u/s 99(7) of the IBC, 2016.*”
11. It is trite in law, that the liability of surety is co-extensive with that of the principal debtor. 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]*.

Findings:

12. We have heard the learned counsel and have duly perused the documents on record.
13. We have examined the contentions raised by the Respondent with regards to incomplete Deed of Guarantee. In the present case what needs to be seen is that, when the debt became due and payable by the Personal Guarantor. In this regard, we hereby make a reference to the Deed of Guarantee. The relevant portion of the same has been extracted hereunder:

..... *The Guarantor(s) hereby irrevocably and unconditionally*

guarantee the due repayment to the Bank at any branch of the Bank on demand without demur and/ or contestation and notwithstanding any dispute between the Bank and the Borrower

From a perusal of the afore-stated Deed of Guarantee, it can be inferred that the Debt against Personal Guarantor became due and payable when the Creditor called upon the Guarantor to pay the amount. Further, the deed of Guarantee specifies the name of the Personal Guarantor and is duly signed by him and the guarantee has been duly invoked. The contention of the Respondent whereby it has sought to dispute the of the Deed of Guarantee does not warrant any consideration at this juncture. This bench is thus of the considered view that the Respondents' contention(s) are devoid of any merits whatsoever, on account of valid invocation of the Personal Guarantee vide Demand Notice *dated* 09.12.2021 and the subsequent default in relation thereto.

14. In light of the aforesaid observations, it is accordingly hereby ordered.
15. In terms of the above, the C.P. (IB)/919/MB/2023 filed under Section 95 of the IBC, 2016 is hereby Admitted and the Insolvency Resolution Process stands initiated against Mr. Shyamsundar Toshniwal viz. the Respondent.
 - 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. Mahesh Sureka* having *Registration No. IBBI/IPA-001/IP-P00413/2017-2018/10736*, having registered address at 173 Udyog Bhavan Sonawala Road, Goregaon East Mumbai ,Mumbai City,Maharashtra ,400063 [*mahesh@mrsureka.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)