

NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

106. C.P. (IB)/400(MB)2024

IN THE MATTER OF

State Bank of India

VS

Mr. Shivkumar Patil

Section 95(1) of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 15.07.2024

CORAM:

MS. REETA KOHLI
MEMBER (J)

MS. MADHU SINHA
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner: Adv. Subir Kumar (PH)

For the Respondent: Adv Manish Jha (VC)

ORDER

1. The captioned Company Petition is filed by **State Bank of India** under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") on **04.07.2023**, for initiation of Corporate Insolvency Resolution Process against **Mr. Shivkumar Patil**, who is the Personal Guarantor of the Corporate Debtor **M/s MSM Steels Private Limited**.
2. As per the averments made in the application, M/s MSM Steels Private Limited had taken credit facilities / loan from the Financial Creditor. The Respondent herein had given personal guarantee to the said credit facilities / loan. The Corporate Debtor failed to repay the debt which led the Financial Creditor to initiate CIRP against the Respondent.
3. Learned counsel appearing for the Petitioner invited the attention of this Bench to PART- III of the Application. The total amount of default as per the Application is **Rs. Rs. 232,65,85,673/-** (Rupees Two Hundred and Thirty-Two Crores, Sixty-Five Lakhs,

Eighty-Five Thousand, Six Hundred and Seventy-Three Only) as on 31.03.2023 along with further interest from 01.04.2023 and the date of default is **25.01.2016 [NPA Date]**.

4. The Creditor has placed the *following* document (s) executed between the Creditor and Corporate Debtor / Guarantor on record:

- xi. The ***Sanction Letter dtd. 08.04.2014 (Anx.F)***
- xii. The ***Loan Agreement dtd. 07.08.2015 (Anx.K)***
- xiii. The ***Letter dtd. 24.12.2014*** granting individual limits within the overall limits *(Anx.H)*
- xiv. The ***Deed of Guarantee dtd. 24.12.2014*** executed between the Financial Creditor and the Guarantor / Respondent *(Anx.I)*
- xv. The ***Joint Deed of Hypothecation of Machinery dtd. 07.08.2015 (with plant and Machinery, stock & Book Debts and ither Fixed Assets) (Anx.J)***

5. As the account of the Corporate Debtor turned NPA on 25.01.2016, the Financial Creditor issued **Notice dtd. 05.08.2016 u/s 13(2) of the SARFAESI Act, 2002.** *(Anx.L)* which was duly replied *vide Reply dtd. 12.09.2016 (Anx.N)* on behalf of the Respondent. Eventually, as the Respondent failed to honour the legal obligation to repay the debt amount, the Financial Creditor issued a **Notice dtd. 26.12.2016 u/s 13(4) of the SARFAESI Act, 2002** intimating the possession taken by the Financial Creditor in exercise of the powers conferred upon the Financial Creditor under Section 13 (4) of the Act read with Rule 8 of the Security Interests Enforcement Rules, 2002.

6. Subsequently, the Financial Creditor issued **Demand Notice in Form B dtd. 26.08.2021 (Anx.Q)** under Rule 7 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors Rule, 2019) was issued by the Financial Creditor to the Personal Guarantor / Respondent in terms of the unpaid debt. The Personal Guarantor / Respondent responded to the said Demand Notice *vide its Letter dtd. 20.09.2021 (Anx.P)* and offered a Compromise / Settlement for release of personal guarantee. And the captioned Company Petition came to be filed on **04.07.2023**.

7. We have heard the Ld. Counsel for the Petitioner.

8. Section 95 of IBC provides that a creditor may apply either by himself, or jointly with other creditors, or through a Resolution Professional to the Adjudicating Authority for initiating an Insolvency Resolution Process under the Section by submitting an application. The application shall be accompanied with details and documents relating to the debts or by the debtor to the creditor as on the date of application, failure by the debtor to pay the debt within a period of 14 days of the service of the Notice of Demand and the relevant evidence of such default or non-payment of debt. It also provides that *“the creditor shall provide a copy of the application to the debtor and the application shall be in such form and manner.”*

9. The Hon’ble Supreme Court in **Dilip B Jiwrajka Vs. Union of India & Ors.** in Writ Petition (Civil) No. 1281 of 2021 decided on 09.11.2023 while dealing with the jurisdiction of NCLT in relation to adjudication of cases filed under Section 94 and 95 of IBC, 2016 has summarized in para-86 as follows;

86. We summarise the conclusion of this judgment below:

- (xix) No judicial adjudication is involved at the stages envisaged in Sections 95 to Section 99 of the IBC;*
- (xx) The resolution professional appointed under Section 97 serves a facilitative role of collating all the facts relevant to the examination of the application for the commencement of the insolvency resolution process which has been preferred under Section 94 or Section 95. The report to be submitted to the adjudicatory authority is recommendatory in nature on whether to accept or reject the application;*
- (xxi) The submission that a hearing should be conducted by the adjudicatory authority for the purpose of determining ‘jurisdictional facts’ at the stage when it appoints a resolution professional under Section 97(5) of the IBC is rejected. No such adjudicatory function is contemplated at that stage. To read in such a requirement at that stage would be to rewrite the statute which is impermissible in the exercise of judicial review;*

- (xxii) The resolution professional may exercise the powers vested under Section 99(4) of the IBC for the purpose of examining the application for insolvency resolution and to seek information on matters relevant to the application in order to facilitate the submission of the report recommending the acceptance or rejection of the application;*
- (xxiii) There is no violation of natural justice under Section 95 to Section 100 of the IBC as the debtor is not deprived of an opportunity to participate in the process of the examination of the application by the resolution professional;*
- (xxiv) No judicial determination takes place until the adjudicating authority decides under Section 100 whether to accept or reject the application. The report of the resolution professional is only recommendatory in nature and hence does not bind the adjudicatory authority when it exercises its jurisdiction under Section 100;*
- (xxv) The adjudicatory authority must observe the principles of natural justice when it exercises jurisdiction under Section 100 for the purpose of determining whether to accept or reject the application;*
- (xxvi) The purpose of the interim-moratorium under Section 96 is to protect the debtor from further legal proceedings; and*
- (xxvii) The provisions of Section 95 to Section 100 of the IBC are not unconstitutional as they do not violate Article 14 and Article 21 of the Constitution.*

10. The Hon'ble Supreme Court has held that no judicial adjudication is involved at the stages envisaged in Sections 95 to Section 99 of the IBC and also there is no violation of natural justice under Section 95 to Section 100 of the IBC as the debtor is not deprived of an opportunity to participate in the process of the examination of the application by the resolution professional. The Respondent / Personal Guarantor will be given an opportunity to file a reply once the RP has filed his Report under Section 99 of IBC, 2016.

FINDINGS:

11. 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 **Mr. Purusottam Behera**, having

Insolvency Registration No. IBBI/IPA-002/IP-N00940/2019-2020/12993, Email Id: purusosbbj@yahoo.com to act as the Resolution Professional in the matter of **Mr. Shivkumar Patil**.

12. The fee payable to Resolution Professional (RP) shall be in accordance with the Insolvency and Bankruptcy Board of India (IBBI) Regulations/Circulars/Directions issued in this regard.

13. This Bench also directs for an advance payment to the tune of **Rs. 75,000/-** 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 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.

15. During such interim-moratorium period –

- v. *any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and*
- vi. *the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.*

16. The Resolution Professional is directed to examine the application as set out in Section 97(6) of IBC, 2016 who after examining, shall submit his report as provided under Section 99(1) of IBC, 2016 within 10 days.

17. Registry is directed to communicate this order immediately to the Resolution Professional, Mr. Purusottam Behera, having Insolvency Registration No. I IBBI/IPA-002/IP-N00940/2019-2020/12993, having Email Id: purusosbbj@yahoo.com

Accordingly, stand over to 06.09.2024 for submission of the report by the Resolution Professional.

SD/-
MADHU SINHA
Member (Technical)
//Anmol//

SD/-
REETA KOHLI
Member (Judicial)