

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No. 56/Chd/Pb/2022

**Under Section 95 of Insolvency and
Bankruptcy Code, 2016**

**(Report under Section
99-100, Read with Rule
7(2) of the Insolvency
and Bankruptcy Code,
2016)**

In the matter of:

State Bank of India

having its corporate office at
Madame Cama Road, Nariman Point
Mumbai-400021

Branch office at
Stressed Assets Management Branch
SCO 99-102, Pragati Bhawan,
First Floor, Madhya Marg,
Sector 8-C, Chandigarh-160009

Mr. Rajiv Khurana

Resolution Professional
having its Head office at
H. No. 1299, Sector 15B
Chandigarh-160015

....Applicant/Creditor

Vs.

Gurpreet Singh Bhinder

Personal Guarantor of Agro Dutch Industries Ltd.
H. No. 35B, Doctors Enclave, Stadium Road,
Patiala, Punjab-140603

Also At:
SCO No. 30, 2nd Floor
Sector 33-D, Chandigarh-160020

Also At-
Palatial Beach House on Lake Ontario

Canada, At 154 Brookfield Crescent
Oakville, Ontario
Montreal, Canada

...Respondent/Personal Guarantor

Judgment delivered on: 23.04.2024

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. L.N., GUPTA, MEMBER (TECHNICAL)**

Present:

For the RP : Mr. Viren Sharma, Advocate

**For the Respondent/
Personal Guarantor** : Ex-parte vide Order dated 21.02.2024

Per: Mr. Harnam Singh Thakur, Member (Judicial)

Mr. L.N. Gupta, Member (Technical)

JUDGMENT

The present petition is filed by State Bank of India through RP, Mr. Rajeev Khurana (hereinafter referred to as '**petitioner**') under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as code) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 (hereinafter referred to as Personal Guarantors Insolvency Rules) against Gurpreet Singh Bhinder (hereinafter referred to as '**respondent**'), seeking an order for initiation of the Insolvency Resolution Process ("IR Process") against the respondent Gurpreet Singh Bhinder, who is the personal Guarantor to Agro Dutch

Industries Limited (“Corporate Debtor/Principal Borrower”) and who has extended personal guarantee to financial creditor namely, State Bank of India.

2. On presentation of the petition, this Adjudicating Authority, appointed the Resolution Professional Mr. Rajiv Khurana, Registration No.IBBI/IPA-001/IP-P00126/2017-2018/10268,PhoneNo.9815547399,E mail:ip.rajivkhurana@gmail.com vide order dated 19.05.2022 under Section 97 of the Code.

3. The notice of this petition was issued to the respondent to show cause as to why this petition should not be admitted. The affidavit of service was filed vide Diary No. 00074/1 dated 31.03.2022. In compliance with the Order dated 19.05.2022, the Petitioner duly issued notice on both the registered address of the Respondent available with the Petitioner vide speed post, dated 21.05.2022. However, both the notices returned back with the remark "No such person in the address". Thereafter the Petitioner in compliance of the Order dated 19.05.2022, served notice through publications in both English (Times of India) & Hindi (Amar Ujala) newspapers on 07.06.2022. The Petitioner then filed an affidavit of service in compliance of the Order dated 19.05.2022 on 21.06.2022 vide diary number 00074/2 and the same was taken on record vide Order dated 09.09.2022.

4. The Resolution Professional was directed to file the report under Section 99 of the Insolvency and Bankruptcy Code, 2016 which has been filed by him vide Diary No. 00074/3 dated 09.09.2022 recommending

admission of the application filed under Section 95 of IBC, 2016. Thereafter, the Adjudicating Authority passed directions to the Petitioner vide order dated 18.01.2023 to inform the next date of hearing to the counsel opposite/ personal guarantor through speed post on the Registered address of the Respondent. In compliance with the Order, the Petitioner duly sent a speed post informing the next date of hearing along with a copy of the Order dated 18.01.2023, to both the registered addresses of the Respondent vide speed post dated 13.03.2023. However, both the notices returned back with the remark "No such person in the address". The Petitioner filed an affidavit of service vide diary number 00074/4 and the same was taken on record vide Order dated 24.05,2023. The matter was then listed on 19.12.2023, wherein this Adjudicating Authority observed that notice has already been served on Respondent even through the substituted mode of service ie. publication. However, as a matter of indulgence, the Adjudicating Authority directed the Petitioner to inform the next date of hearing to the Respondent and file an affidavit of service. In compliance with the Order, the Petitioner duly sent notices informing the next date of hearing along with a copy of the Order dated 18.12,2023, at both the registered addresses of the Respondent vide speed post dated 29.12.2023. However, both the notices returned back with the remark "No such person in the address" and "insufficient address". Thereafter, the Petitioner filed an affidavit of service in compliance with the Order dated 18.12.2023 on 08.01.2024 vide diary number 00074/5 and the same was taken on record vide order

dated 29.01.2024. Respondent failed to appear before this Adjudicating Authority despite multiple opportunities and accordingly the Respondent was finally set ex-parte vide Order dated 21.02.2024.

5. The RP vide its report filed under Section 99 has recommended admission of the present respondent into insolvency on the following grounds:-

- a. *“The Insolvency Application has been filed in the requisite form, Form C, in terms of Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019, supported by requisite fee and documents.*
- b. *The Insolvency Application satisfies the requirements set out in Section 95 of the Code.*
- c. *The Personal Guarantor was duly served with Demand Notice dated 28.12.2021 by the Financial Creditor under Rule 7(1) read with Rule 3(g) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 for repayment of the debt owed by him to the Financial Creditor in terms of the provisions of the Code prior to filing the Insolvency Application, but the Personal Guarantor neither repaid the outstanding nor provided any evidence of repayment of debt.*
- d. *In terms of Section 99(2) of the Code the undersigned informed the Respondent/Personal Guarantor vide letter dated 30.08.2022 about the Order dated 19.05.2022 and further requested the Respondent/ Personal Guarantor to prove the repayment of debt claimed as unpaid by the Applicant Bank/ Financial Creditor. It is submitted that the Respondent Guarantor was served with the letter on 01.09.2022 and was requested to provide its response within 3 days from receipt. However, the Respondent/ Guarantor failed to provide any response to the letter issued by the undersigned and the undersigned has prepared the report on the basis of documents/ information/ records forming part of the Application and provided by the Financial Creditor.*
- e. *That the debt claimed by the Creditor is also substantiated by the Order dated 30.11.2019 passed by the Ld. DRT against the Corporate Debtor as well as the Respondents. The Ld. DRT has also issued a Recovery certificate for the said outstanding amount on the Corporate Debtor as well as the Respondent Guarantor.*
- f. *The Insolvency Application does not relate to “exclude debts’ as defined under Section 79(15) of the Code.*

g. The Debtor, Personal Guarantor, is not eligible for fresh start under Chapter II of the Code”.

6. The written submissions have been filed on behalf of the petitioner vide Diary No. 00074/7 dated 08.04.2024 reiterating the above-mentioned facts.

7. We heard the submissions of RP and perused the report filed by RP under Section 99 and the Application filed by the Creditor under Section 95 of IBC, 2016.

8. The Creditor has placed on record, the Guarantee Deeds dated 03.03.2009, 28.12.2009, 22.02.2010, whereby the Personal Guarantor Gurpreet Singh Bhinder guaranteed the repayment of credit facilities granted by the State Bank of India to Agro Dutch Industries Limited, the Principal Borrower.

9. It is seen from the record that the aforesaid guarantees were invoked by the Creditor State Bank of India by issuing a notice dated 30.01.2014 under Section 13(2) of the SARFAESI Act, 2002.

10. Further, the Creditor sent the Demand Notice via Speed Post Form B dated 17.11.2021 and 26.11.2021 under Rule 7(1) of Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 to the Personal Guarantor demanding payment of total outstanding amount of Rs.1,33,42,65,500.33/- (Rupees One Hundred Thirty Three Crores Forty Two Lakhs Sixty Five Thousand Five Hundred and Paise Thirty Three only) as on 15.11.2021 together with interest and other

charges as per terms payable w.e.f. 16.11.2021. The said Demand Notice was served by Speed Post. The tracking reports are attached as Annexures A-29 and A-30 of the petition.

11. The petition filed by the creditor vide Dairy No. 00074 on 15.02.2022 and was re-filed on 04.03.2022 is well within the period of limitation of three years.

12. In the sequel to the above, based on the recommendation made by RP in its Report and no objection raised on behalf of the personal guarantor, **the application i.e. CP (IB) No. 56/Chd/Pb/2022 filed under the provisions of Section 95 of IBC, 2016 is hereby admitted under Section 100 of the IBC, 2016.** The Applicant Bank is directed to deposit Rs. 2,00,000/- (Rupees Two Lakh Only) to the bank account of the Resolution Professional within one week, utilisation and adjustment of which shall be subject to the rules and regulations made under the provisions of the Code. The Insolvency Resolution Process is initiated against the Applicant/Debtor and the moratorium is declared, which begins with the date of admission of the application and shall cease to have effect at the end of the period of 180 days, as provided under Section 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.

13. The Insolvency Professional, Mr. Rajiv Khurana, who has been appointed as RP under Section 97, is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of uploading of this order on the website of the NCLT, Chandigarh, inviting claims from all creditors, who shall register their claims as provided under Section 103 within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102(2) of IBC, 2016. The publication of the notice shall be made in newspapers, one in English and the other in Vernacular having wide circulation in the state where the debtor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry, one shall be placed by the Registry on the NCLT website and the other shall be affixed in the premises of this Authority.

14. The Resolution Professional in exercise of the powers conferred under Section 104 shall prepare a list of creditors within 30 days from the date of the notice. The debtor shall prepare a repayment plan in consultation with the Resolution Professional as provided under Section 105 which shall include the provisions for payment of fee to the Resolution Professional. 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.

15. In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons therefor. If the Resolution Professional is of the opinion that the meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3). 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, for which at least 14 days notice to the creditors(as per list prepared) shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107.

16. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 and 111. The Resolution Professional shall prepare a report of the meeting of the creditors on the repayment plan with all details as provided under Section 112 and submit the same to this Authority, copies of which shall be provided to the debtor and the creditors. It is made clear that the Resolution Professional shall perform its functions and duties in compliance with the code of conduct provided under Section 208 of the IBC, 2016.

17. As a sequel to the discussion foregoing, CP (IB) No. 56/Chd/Pb/2022 filed under Section 95 of the IBC, 2016 is

admitted accordingly. Consequently, the Insolvency Resolution Process stands initiated against the debtor/Personal Guarantor.

18. A copy of this order along with a copy of the application as also the report of the Resolution Professional shall be provided to the Creditor (Applicant), Respondent/ Personal Guarantor and IBBI by the Registry/Court Master within 7 days from today by e-mail.

19. To come up for consideration of Status Report to be filed by RP, within 8 weeks.

Sd/-

(L.N. Gupta)
Member (Technical)

April 23, 2024
TBG/PKA

Sd/-

(Harnam Singh Thakur)
Member (Judicial)