

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
(COURT – IV)

Restored Company Petition (IBC) /4/ND/2024
(Old Case C.P. (IB)/249/ND/2022)

[Under Section 95(1) of the Code, 2016 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019]

IN THE MATTER OF:

| | | |
|---|-----|--|
| State Bank of India | ... | Applicant/Financial Creditor |
| Versus | | |
| 1. Sri K. Gyandeep | ... | Respondent No. 1/Personal Guarantor |
| 2. M/s Abir Infrastructure Private Limited | ... | Respondent No. 2/Corporate Debtor |

Order delivered on: 19.04.2024

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Mithun Shashank, Adv.

ORDER

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1. The Applicant herein viz State Bank of India, has moved the present application u/s 95(1) of IBC, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 against Personal Guarantor to Corporate Debtor with a prayer to initiate IR process and to pass consequent order qua the PG. According to the Ld. Counsel for the applicant,

Demand Notice dated 28.10.2020 under clause (b) of sub-Section 4 of Section 95 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtors) Rules 2019 (ibid) demanding payment of amount of default (in Form-B) is enclosed with the application and is placed on record as Annexure- P30 at page No. 420-423 of the application.

2. The Ld. Counsel could also draw our attention to the proof of service of a copy of the application referred to in sub-Rule 1 of the afore-mentioned Rules, upon the Personal Guarantor but not upon the Corporate Debtor for whom the guarantor is a Personal Guarantor. We have also perused the Judgment of the Hon'ble Supreme Court of India delivered in a Batch of 384 petitions including WP (Civil No. 1281/2021 Dilip B Jiwrajka vs. Union of India & Ors. filed under Article 32 of the Constitution of India, on 09.11.2023.
3. As per the provision of the Law, on filing of this application, the interim moratorium as stipulated under Section 96(1)(a) of IBC, has already commenced qua all debts of the Personal Guarantor.
4. The applicant has proposed the name of Mr. Rajesh Chillale to act as RP. Accordingly, this Adjudicating Authority, hereby appoints Mr. Rajesh Chillale, (Email ID: chillaleraajesh@yahoo.co.in) as Resolution Professional, whose details are given below:

IBBI Registration No. : IBBI/IPA-001/IP-P00699/2017-2018/11226

E-mail Address : chillaleraajesh@yahoo.co.in

Contact Number : 9866294434

5. The Resolution Professional so appointed shall perform all the functions as stipulated under Section 99 of IBC, 2016 read with Rules made thereunder. He shall also examine the application and make recommendations with reasons in writing for acceptance or rejection of the present application within the period of 10 working days as stipulated under Section 99 of IBC, 2016.

6. Further, in view of the judgment of the **Hon'ble Supreme Court in Dillip B Jiwrjka**, it is now a settled position that question of adjudication of issues between the parties arises only at the stage of Section 100 and the RP has only role of facilitator. The RP has to submit a Report, after examining the Application under Section 95 and after giving opportunity to Personal Guarantor.
7. The Resolution Professional shall give a copy of its Report to the Applicant as well as the Creditors of the Applicant as soon as the same is filed before this Authority.
8. The Applicant and his counsel are directed to make available a copy of this order along with a copy of the application and documents immediately to Mr. Rajesh Chillale, Resolution Professional by all modes for information and necessary compliance.
9. The Petitioner shall also make a copy of the application with all enclosures available to the principal borrower forthwith.
10. The Court Officer is also directed to inform the RP by E-mail.

List on: 22.05.2024

Sd/-

**(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)**

Sd/-

**(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (JUDICIAL)**