

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No.9
(IB)-610(PB)/2021

IN THE MATTER OF:

State Bank of India
Vs.
Shri Manish Goel

.... Petitioner/Applicant

.... Respondent

Order under Section 95 (1) of Insolvency & Bankruptcy Code, 2016

Order delivered on 08.05.2024

CORAM:

JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)

HYBRID HEARING (PHYSICAL & VC)

PRESENT:

For the RP : Ms. Reshma Mittal, RP in person
Mr. Lalit Mohan, Mr. Videh Vaish, Ms. Aakansha,
Mr. Vishal Mittal Mr. Tarish Ayoobi, Md. Tariq
Alam, Mohd Razi, Mr. Avinash Gupta, Advs.
For the Personal : None appeared
Guarantor

ORDER

IA-432/2022

1. Today, when the matter was called, nobody appeared on behalf of the Personal Guarantor.
2. We have perused the Report which has been filed by RP u/s. 99 of IBC, 2016.
3. The Petitioner has filed the present petition through RP, Ms. Reshma Mittal. RP was directed to file an affidavit certifying that no proceeding is pending against her vide order dated 23.11.2021. The RP filed the affidavit on 27.11.2021. Thereafter, the RP filed the present report on dated 17.01.2022 (I.A. 432 of 2022). However, the same could not be taken up as the vires of Part III Chapter III of the IBC, 2016 was under challenge before the Hon'ble Supreme Court. Thereafter based on the final order dated 09.11.2023 passed by the Hon'ble Supreme Court in a batch of petitions titled as "***Dilip B Jiwarajka Versus Union of India &***

Ors.” Writ Petition (Civil) No 1281 of 2021, the constitutional validity of Part III, Chapter III of the IBC, 2016 was upheld. Pursuant to which the matter was proceeded further.

4. The RP has made available a copy of the report to the Personal Guarantor but no response has been filed by the Personal Guarantor, neither did the Personal Guarantor file any response at the stage of Section 99 (4),(5),(6) proceedings.

5. It is stated that the CIRP proceedings against the Principal Borrower i.e M/s. Shilpi Cable Technologies Ltd. was commenced by this Adjudicating Authority vide order dated 24.05.2017 passed in CP (IB)-64/2017. Subsequently, the Corporate Debtor was put into liquidation by this Adjudicating Authority vide order dated 01.05.2019. It is stated by the RP that the debts of the applicant are still outstanding.

6. Accordingly, the application under section 95 of the Code was filed by the State Bank of India on 24.09.2021 for initiating Insolvency Resolution Process in respect of the Respondent Mr. Manish Goel who stood as a Personal Guarantor to the Principal Borrower i.e. M/s. Shilpi Cable Technologies Ltd. It is stated that as on 30.06.2021 an amount of Rs. 307,99,72,041.83 was payable by the Respondent Guarantor to the Applicant Bank together with the future interest applicable including penal interest and charges. The liability of the Guarantor is based on the deed of guarantee dated 28.12.2015.

7. The applicant bank invoked the personal guarantee of the respondent on 29.01.2018. However, the Respondent failed to repay the loan amount. The period for filing the petition got extended on account of the order passed by the Hon’ble Supreme Court in Suo-Moto Writ Petition (C) No. 03 of 2020 In Re: Cognizance for Extension of Limitation extending the period of of limitation up to 30.05.2022.

8. It is also stated that the demand notice as per Rule 7 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal

Guarantors to Corporate Debtors) Rules, 2019 was sent to the Personal Guarantor on 15.07.2021. However, the Personal Guarantor failed to reply and failed to pay the outstanding amount within the period of 14 days. A copy of the demand notice has also been attached as Annexure A-5 of the main petition.

9. The RP has recommended the initiation of the Insolvency Resolution Process after complying with Section 99 of the Code. The recommendation of the RP is extracted below:

“RECOMMENDATION BY RP FOR ACCEPTING THE PRESENT APPLICATION

It is humbly submitted by the RP that the present application meets the requirements of the Code as is provided in this report and this Hon'ble NCLT may kindly pass appropriate orders under section 100 of the Code, "ADMITTING" the present application filed by the Creditor through the RP in case of CP(IB) no. 610/PB/2021 and declare "Moratorium" under section 101 of the Code and issue "Public Notice" for inviting the claims under section 102 of the Code and may pass such orders as this Hon'ble NCLT deem necessary."

10. On 02.04.2024 and on 07.05.2024, Ld. Counsel for the Personal Guarantor, Mr. Navneet Thakran appeared through VC and he submitted that he does not want to file any reply on behalf of the Personal Guarantor.

11. As per the judgment of Hon'ble Supreme Court dated 09.11.2023 in Dilip B Jiwrajka Vs. Union of India and Ors. Writ Petition (Civil) No. 1281/2021, the role of Adjudicating Authority is to assess the various materials produced in both the applications and report of the RP to come to an independent assessment. The Adjudicating Authority is also bound to give a fair opportunity to the Personal Guarantors to give their views. We have complied with the above requirements and direction of the Hon'ble Supreme Court. All the details relevant for the adjudication is also captured in the application and the report and we find no reason to discredit the report on the plea raised by the Respondent.

12. In view of above, we are inclined to **ADMIT** the present application bearing no. **(IB)- 610(PB)/2021** filed under section 95 for initiating Insolvency Resolution Process proceedings against the Personal Guarantor, Mr. Manish Goel.

13. Accordingly, the present petition bearing No. (IB)-610(PB)/2021 stands admitted under Section 100 of IBC, 2016.

14. The RP is directed to proceed further in accordance with the provisions of the Code. Interim moratorium which came into effect in terms of Section 96(1)(a) on the date of filing the application shall cease to have effect. A fresh moratorium in terms of Section 101 of the Code shall commence as applicable. RP is directed to take all further steps in accordance with Part III, Chapter III of the Code.

15. The RP is directed to issue public notice on our behalf in terms of Section 102 and to invite the claims from the creditors at large. For this purpose he will be paid a consolidated amount of Rs. 2,00,000 by the State Bank of India to meet the cost arising out of issuing public notice and inviting claims etc.

16. Copy of this admission order along with the report of RP be made available to State Bank of India and to the Respondent debtor in terms of Section 100(3) of the Code, by the RP.

17. Copy of this order be also sent to IBBI by the Registry

18. Accordingly, the IA-432/2022 stands allowed and disposed of.

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**(RAMALINGAM SUDHAKAR)
PRESIDENT**

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**(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)**