

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court– I)
KOLKATA**

C.P. (IB) 1255/KB/2020

A Petition under section 95(1) of the Insolvency and Bankruptcy Code, 2016 (“Code”) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rule, 2019).

In the matter of:

DBS Bank Limited,

..... Financial Creditor/ Petitioner

-versus-

Mr. Mukul Somany [PAN: AIYPS6267P]

..... Personal Guarantor/ Respondent

Date of Pronouncement of the order: 03 May 2024

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Balraj Joshi, Member (Technical)

Appearances (via video conferencing/physical):

For the Financial Creditor:

Mr. Vikram Wadehra, Sr. Adv.

Mr. Mayukh Roy, Adv.

For the Personal Guarantor:

Mr. Jishnu Saha, Sr. Adv.

Mr. Kuldip Mallick, Adv.

Mr. Labanyasree Sinha, Adv.

Mr. Atasi Sardar, Adv.

Mr. Shukla Maity, Adv.

For the Resolution Professional:

Mr. Abhrajit Mitra, Sr. Adv.

Mr. Chandan Kumar Jain, Adv.

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. This Court convened through hybrid mode.
2. The Company Petition has been filed under section 95(1) of the Insolvency and Bankruptcy Code, 2016 (“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 (“IRP Rules”) and regulation 4(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (“IRP Regulations”) by **DBS Bank Limited**, seeking to initiate Insolvency Resolution Process (“IRP”) against **Mr. Mukul Somany**, the Personal Guarantor of **Hindustan National Glass & Industries Limited** (CIN: L26109WB1946PLC013294) (hereinafter referred to as “**Corporate Debtor**”) for debt amounting to Rs. 4,25,81,42,605.84 (Rupees Four Hundred and Twenty Five Crore Eighty One Lacs Forty Two Thousand Six Hundred and Five and Eighty Four Paise only).

Brief facts of the Case

3. The Financial Creditor had given various loan facilities to Hindustan National Glass & Industries Limited and its personal guarantor i.e Mr. Mukul Somany and the Personal Guarantor failed to make payment as per the terms of the Facility Agreement. As on 31 may 2020, sum of Rs. Rs. 4,25,81,42,605.84 has become due and payable by the Personal Guarantor.
- 4.
5. Upon the default committed by Hindustan National Glass & Industries Limited and the subsequent declaration of its account as Non Performing Asset (NPA) on 31.12.2017, it was admitted under Corporate Insolvency Resolution Process (“CIRP”) by this

Adjudicating Authority *vide* order dated 21.10.2021 on a petition filed under Section 7 in CP(IB) No.369/KB/2020, filed by Financial Creditor.

6. The Financial Creditor issued a Demand Notice¹ in Form B on 27.02.2020 under rule 7(1) of the IRP Rules to which the Personal Guarantor replied *vide* letter² dated 19.03.2020.
7. *Vide* an order³ dated 05.04.2022, this Adjudicating Authority appointed Mr. Chandra Kumar Jain, as the Resolution Professional under section 97 of the IBC subject to the Regulation 4(1) and (2) of the IRP Regulations and directed the Interim Resolution Professional to make the recommendations with the reasons in writing for acceptance or rejection of this Petition and file a report.

Report of the Resolution Professional

8. The Resolution Professional submitted his report on 27.04.2022. The averments made by the Resolution Professional therein are provided hereinafter:

“DBS Bank Ltd had sanctioned credit facilities to the Corporate Debtor i.e Hindustan National Glass & Industries Limited (“HNGIL”) for an aggregate limit of USD 6,00,00,000/- (United States Dollar Sixty Million).

The guarantor had executed two (2) Deed(s) of Personal Guarantee in favor of DBS Bank Limited, both dated 13th October 2015, at Kolkata each in respect of an external commercial borrowing, for repayment all amounts due and payable under the credit facilities granted to HNGIL the Corporate Debtor, The Personal Guarantor agreed to pay on demand all amounts which the Corporate Debtor/Borrower is at any time liable to pay and which the Guarantor, as surety, jointly and severally is liable to pay to the extent of USD 4,00,00,000/- (United States Dollar Forty Million) only plus interest, cost, expenses, fees

¹ Annexure E to RP’s Report

² Annexure F to RP’s Report

³ Annexure A to RP’s Report

and USD 2,00,00,000/- (United States Dollar Twenty Million) only plus interest, cost, expenses, fees till repayment in full respectively.

The Personal Guarantees, in terms of the instant proceedings, have been given by Mr. Mukul Somany (Promoter/Directors of HNGIL).

Due to default in the repayment of credit facilities and failure to adhere to the terms and conditions of the sanction letter, the account of the HNGIL, the Corporate Debtor was classified as Non-Performing Asset ("NPA") on 31st December 2017. It is upon the account of the Corporate Debtor having stood classified as a Non Performing Asset; the Corporate Debtor approached the consortium of lenders, including the Applicant, for compromise and settlement of its outstanding sums. Accordingly, upon discussions, the lenders agreed to enter into a Memorandum of Understanding (MOU) dated 27th August 2018 or the Compromise and Settlement Agreement dated 25th September 2018 highlighting the compromise offer as well as terms of re-payment thereunder, which stated that in the event of any breach/default, the lenders would have the right to cancel the Compromise and Settlement Agreement and take all or any actions permissible in law towards the original dues payable. The Corporate Debtor failed to adhere to the terms of the Memorandum of Understanding (MOU) dated 27th August 2018 or the Compromise and Settlement Agreement dated 25th September 2018. This was followed by a subsequent extension of a period of the OTS, which the Corporate Debtor, once again was in breach of repayment thereunder.

Accordingly, the Financial Creditor, DBS Bank Limited initiated proceedings under Section 7 of the Insolvency & Bankruptcy Code, 2016 initiating Insolvency Resolution Process claiming a debt of

Rs.388,83,42,403/- (Rupees Three Hundred Eighty Eight Crore Eighty Three Lakh Forty Two Thousand Four Hundred Three) was admitted for CIRP vide order dated 21 October 2021 passed by the Hon'ble NCLT, Kolkata Bench in C.P.(I.B.) No. 369/KB/2020. Copy of CIRP order of Corporate Debtor, Hindusthan National Glass & Industries Limited (HNGIL) is annexed hereto and marked as ANNEXURE "C".

During the CIRP, on 5th November 2021 DBS Bank Limited submitted its claim in Form-C for Rs. 445,86,86,884/- as on the Insolvency Commencement Date i.c. 21/10/2021. The claim has been verified and accepted in full by the Resolution Professional, Mr. Girish Siriram Juneja i.e. Rs. 445,86,86,884/- (as per the list of creditors available on the website of IBBI/website of the Corporate Debtor). A copy of list of creditors is annexed hereto and marked as ANNEXURE "D".

Meanwhile, a demand notice was issued by DBS Bank Limited on 27th February 2020 in Form B under Rule 7(1) of the Insolvency & Bankruptcy Board of India (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to the Corporate Debtor) Rules, 2019 demanding Rs. 394,63,55,501/- (Rupees Three Hundred And Ninety Four Crore Sixty Three Lakh Fifty Five Thousand Five Hundred And One) as on 31st January 2020 as outstanding dues payable by the Corporate Debtor to DBS Bank Limited together with unapplied interest, other charges and costs till the date of full and final payment. I have received the copy of reply to the said Demand Notice, submitted by the Guarantor, vide letter dated 19th March 2020 denying default in their liability. A copy of the Demand Notice dated 27th February 2020, and the Reply thereto dated 19th March 2020 are annexed hereto and marked as ANNEXURE "E" and ANNEXURE "F" respectively.

Thereafter, DBS Bank Limited filed the instant Company Petition (IB) No. 1139/(KB)/ 2020 before the Hon'ble National Company Law Tribunal, Kolkata to initiate Insolvency Resolution Process against Mr. Mukul Somany u/s 95 of the Insolvency and Bankruptcy Code, 2016 for a default of Rs. 425,81,42,605/- (Rupees four hundred and twenty five crore eighty one lakh forty two thousand six hundred and five) only as on 31st May 2020 plus unapplied interest, other charges and costs till repayment in full.. A copy of proof of service through email is annexed hereto and marked as ANNEXURE "G" A copy of the e-mail service dated 15th October 2020 is annexed hereto and marked as ANNEXURE "H". As per the confirmation received by the undersigned from the office of M/s Vidhii Partners, Advocates that the Guarantor has filed reply against the application filed u/s 95 of IBC 2016.)”

9. The Resolution Professional’s recommendation in the said Report is reproduced hereinafter:

“As evident from the above facts and information/explanation received by the RP, the RP understands that the proceedings instituted under Section 7 of the Code has been admitted and the Corporate Insolvency Resolution Process in respect of the Corporate Debtor is under process. The significance of initiation of the order admitting the Corporate Debtor into Insolvency Resolution Process is that this Learned Tribunal has concluded that there is a debt due and payable by the Corporate Debtor and that there exists a default in repayment thereof to the Financial Creditor i.e. DBS Bank Limited. Furthermore, from the foregoing, it is conclusive that the claim of DBS Bank Limited has been filed with the Mr. Girish Siriram Juneja, Resolution Professional to the Corporate Debtor and the said claim has been accepted, verified and admitted in full. It is also a matter of record that the amount claimed was Rs. 394,63,55,501/- (Rupees three hundred and ninety four crore

sixty three lakh fifty five thousand five hundred and one) up to 31 January 2020 in terms of the demand notice dated 27th February 2020 served in Form B to the guarantor Mr. Mukul Somany. In terms of the powers conferred under Section 99 of the Code, the RP, vide e- mail dated 17th April, 2022, addressed to Mr. Sanjay Somany, sought details of payment, if any, made by him subsequent to the demand notice issued by DBS Bank Limited. The Authorized representative of the Guarantor, however, has confirmed, vide e-mail dated 22nd April 2022 that no repayment of the outstanding debt has been made by the Guarantor. A copy of the e-mail dated 22nd April 2022 is annexed hereto and marked as ANNEXURE "I".

Considering the aforementioned facts and circumstances, it is concluded that there exists a debt due and payable and there is a default in repayment of such debts by the Corporate Debtor in favour of the *Financial* *Creditor*.

As far as the requirements of section 95 of the Code are concerned, the RP would like to bring to the notice of the Hon'ble Tribunal that the demand notice in Form B dated 27th February 2020 was served on the guarantor Mr. Mukul Somany by the Financial Creditor. As per the information provided by DBS Bank Limited, Form -B was delivered to the Personal Guarantor. As already stated above, the application along with requisite fee (marked as Annexure I) under section 95 of the Code was then served on to the guarantor Mr. Mukul Somany through e-mail by the Learned Advocate on Record for the Financial Creditor on 15th October 2020. A copy of the e-mail service dated 15th October 2020 is annexed hereto and marked as ANNEXURE "J".

The followings have been observed by the Resolution Professional:

(1) *It is concluded from the above facts, that there is a debt to corporate debtor, which is in default.*

(2) Mr. Mukul Somany has executed deed of guarantees dated 13th October 2015 for the purpose of securing the credit facilities taken by Hindusthan National Glass & Industries Ltd., corporate debtor. The Financial Creditor has issued the demand notice in Form "B" to the personal guarantor Mr. Mukul Somany as per applicable regulation of IBC 2016.

(3) The Personal Guarantor has confirmed that he had not made any payment against above stated debt.

(4) The Financial creditor has filed an application with the requisite court fees for insolvency resolution process of Mr. Mukul Somany u/s 95 of IBC 2016 and the copy of application was duly served upon the personal guarantor.

(5) As per information received, the debt was not registered with the information Utility.

(6) The debt in default was not an excluded debt.

(7) Resolution professional examined the application and found that the application satisfied the requirement of section 95 of IBC, 2016.

In the opinion of the RP on the basis of above facts, details and documents, the application made by DBS Bank Limited before the Hon'ble National Company Law Tribunal, Kolkata to initiate Insolvency Resolution Process against Mr. Mukul Somany, the personal guarantor of Hindusthan National Glass & Industries Limited u/s 95 of the Insolvency and Bankruptcy Code, 2016 is recommended for approval of application.

Thus, the Hon'ble NCLT may kindly pass an appropriate order. "

10. With the aforesaid observations, the Resolution Professional has recommended the acceptance of the Petition filed by State Bank of India under section 95(1) of the Code.
11. While this report of the IRP was under consideration by this Adjudicating Authority, the vires of Section 95- 100 came to be challenged by way of a number of WPs before

Hon'ble Supreme Court, who vide the judgement in the matter of **Dilip B. Jiwrajka V/s Union of India & Ors.** in WP(civil)No. 1281 of 2021 dated 09.11.2023 has upheld the Constitutional Validity of the Sections 94 to 100 and as such there is no impediment in considering the admission of this Personal Guarantor to the Insolvency resolution Process.

12. Even though the Corporate Debtor was already admitted into CIRP as brought out above, it has been held in a catena of judgments that the liability of the Corporate debtor and the guarantor is co-extensive and as such the present petition is maintainable. Further, the guarantee being a continuing guarantee, the demand notice has been sent on 27.02.2020, followed by filing of the petition on 15.10.2020, as such the same is within the limitation period prescribed under law.
13. In view of the above circumstances, the present petition made by the Petitioner is complete in all respects as required by law. We accept the Report of the Resolution Professional that the Personal Guarantor is in default of a debt due and payable.
14. It is, accordingly, hereby ordered as follows: -
 - a) The application bearing CP (IB) No. 1255/KB/2020 filed by **DBS Bank Limited**, the Financial Creditor, under section 95 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 for initiating Insolvency Resolution Process "IRP" against **Mr. Mukul Somany**, the Personal Guarantor, is **admitted**.
 - b) There shall be a moratorium under section 101 of the Code.
 - c) The moratorium shall have effect from the date of this order till the completion of the IRP or until this Adjudicating Authority approves the repayment plan under sub-section (1) of section 114 of the Code.
 - d) Public announcement of the IRP shall be made immediately as specified under section 102 of the Code.
 - e) **Mr. Chandra Kumar Jain**, IBBI Registration No. **IBBI/IPA- 001/IP-P00214/2017-2018/10414** email- ckacs@yahoo.co.in, Mobile No. 9748488836 is hereby appointed as Resolution Professional (RP) of the Personal Guarantor to carry out the functions as per the Code subject to submission of a valid

Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The RP shall carry out his functions as contemplated by sections 107, 108, 112, 113 of the Code.

- f) During the IRP period, the assets of the Personal Guarantor shall vest in the RP. The Personal Guarantor shall provide all documents in their possession and furnish every information in their knowledge to the RP within one week from the date of receipt of this Order, in default of which coercive steps will follow.
 - g) The RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the IRP in respect of the Personal Guarantor.
 - h) The Petitioner shall deposit a sum of **Rs.2,00,000/-** (Rupees TwoLakh Only) with the RP to meet the expenses arising out of issuing public notice and inviting claims.
 - i) The Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Personal Guarantor and the RP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
 - j) Additionally, a copy of the Petition, report of the Resolution Professional and this order shall be served on the creditors within seven days from the date of this order.
15. **CP (IB) No. 1255/KB/2020** to come up on **27 June 2024** for filing of periodical report.
16. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on this, the 3rd day of May, 2024