

NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.5
C.P.(IB)/14(MP)2022

Proceedings under Section 94 IBC

IN THE MATTER OF:

Tehseen Khan

.....Applicant

Order delivered on 11/09/2024

Coram:

Chitra Ram Hankare, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

C.P.(IB)/14(MP)2022

This case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

A. Bhadauria

Sd/-

**CHITRA RAM HANKARE
MEMBER (JUDICIAL)**

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH**

CP(IB) 14 OF 2022

[Under Section 94 of the Insolvency and Bankruptcy Code, 2016 read with rule 6 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:

Mr. Tehseen Khan

Personal Guarantor

MIG-188, Next to Union Bank

Branch E-7 Arera Colony, Bhopal

R.S. Nagar Huzur, Bhopal - 462016

.... Personal Guarantor

Order pronounced on: 11.09.2024

Coram:

Hon'ble Chitra Ram Hankare, Member (Judicial)

Hon'ble Kaushalendra Kumar Singh, Member (Technical)

Appearance:

For Personal Guarantor : Ms. Noopur K. Dalal, Advocate

For State Bank of India : Mr. Rohit Dubey, Advocate

For IndusInd Bank : Mr. Amann Sharma, Advocate

JUDGMENT

1. The Present Application is filed on 09.02.2022 under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as IBC, 2016) read with Rule 6 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for IRP for Personal Guarantors to Corporate Debtor) Rules, 2019. The prayer made is to initiate the Insolvency Resolution Process (hereinafter referred to as IR Process) against the Applicant who is the Personal Guarantor for an amount of Rs. 56,40,99,136.52/- in relation to the credit facility extended by the Banks and Finance Corporations in favour of Srasthi Build Con Private Limited, Sagar Autotech (Mysore) Private Limited and Sagar Autotech Private Limited (hereinafter referred to as the Corporate Debtors).

2. The salient facts of the case are as follows: -
 - i. The Applicant Personal Guarantor had given a personal guarantee in respect of credit facility amounting to Rs. 56,40,99,136.52/- granted by the Financial Creditors, namely State Bank of India, Volkswagen Finance Private Limited, Union Bank, IndusInd Bank and LIC Housing Finance Limited. The debt was secured by way of hypothecation and mortgage of various assets.

 - ii. The Corporate Debtors however defaulted in repayment of dues and accordingly the debt was classified by the Financial Creditor State Bank of India as Non-Performing Asset on 24.09.2020.

- iii. The Demand Notices dated 16.06.2021, 31.08.2021, 13.04.2021 issued by State Bank of India and 04.10.2021 issued by Volkswagon Finance Private Limited under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, calling upon the personal guarantor to repay the amount mentioned in the notices. Page No. 15 of the Application contains the list of documents to show the proof of Invocation of Guarantee.
 - iv. On 09.02.2022, the Applicant Personal Guarantor, Tehseen Khan filed the present application to initiate the Insolvency Resolution Process.
3. On presentation of the application by the Applicant/ Debtor, this Adjudicating Authority vide order dated 24.02.2022 has appointed Mr.Bishwa Ranjan Chatterjee, having Registration No. IBBI/IPA-002/IP-N00877/2019-2020/12806 as Resolution Professional (RP) and directed RP to file report under Section 99 of Insolvency and Bankruptcy Code, 2016, which has been filed on 26.04.2022 recommending the admission of the application filed under section 94 of IBC, 2016. The grounds for admission of the application recorded in the Report are as follows: -
- i. The Applicant/Debtor has committed default in repayment of its debts; therefore, the first requirement as set out in section 94(1) is satisfied.
 - ii. All the debts mentioned in the Application are not excluded debts hence the requirement as set out in

section 94(3) is satisfied.

- iii. The Applicant/Debtor is not an undischarged bankrupt, not undergoing a fresh start process, not undergoing an insolvency resolution process or bankruptcy process, therefore satisfies the requirement set out u/s 94(4).
 - iv. That no application under Chapter III of IBC, 2016 has been admitted in respect of the Applicant/Debtor during the period of twelve months preceding the date of submission of this application u/s 94, therefore, satisfies the requirement set out u/s 94(5).
 - v. That the Application has been duly filed in the prescribed "Form A" along with requisite fee of Rs.2000/- satisfies the requirement u/s 94(6).
 - vi. That the Applicant/Debtor is not eligible u/s 80 for a fresh start process provided under Chapter II of IBC, 2016.
4. It is further stated in the Report filed by the RP that Financial Creditor State Bank of India was deliberately not served copy of the application by the personal guarantor to interrupt the amount recovery procedure of the Bank. However, the State Bank of India did not object to the admission of the present application.
5. The counsel for the IndusInd Bank during the course of hearing has submitted that they have no objection to the present application as there are no outstanding dues

remaining. There has been no appearance from Volkswagon Finance Private Limited.

6. Initially, the proceedings in the matter was put on hold since the Constitutional Validity of the Sections 94 to 100 relating to the insolvency of personnel Guarantor was pending before the Hon'ble Supreme Court in the matter of *Dilip B. Jiwrajka v. Union of India & Ors.* in WP(Civil)No. 1281 of 2021. The Hon'ble Supreme Court in the said judgment dated 09.11.2023 upheld the Constitutional Validity of the said provisions. Following that, the matter was taken up for hearing.
7. We have heard the learned Counsel for all the parties and perused the documents available on record. We have referred to the guarantee deed as well as the various demand notices issued by the financial creditors under section 13(2) of SARFAESI Act and as mentioned in the guarantee deed, when a default is committed, the Guarantor is jointly and severally liable to the Financial Creditors. It is also noted that the applicant in its application has stated that the date of default is 24.09.2020 which is the date when corporate debtor's account was declared as a Non Performing Asset. However, in the case of personal guarantors, the date of default is the date as per the invocation of guarantee. In the present case, the demand notice under section 13(2) of the SARFAESI Act will have to be considered for the invocation of guarantee deed and vide the first demand notice dated 13.04.2021, the applicant was called upon to make the payment within 60 days. Accordingly, as per the first such demand notice, the date of default would

be 14.06.2021. We have also noted that the present application under section 94 of the Code was filed on 09.02.2022. Therefore, the application is filed well within the limitation period of three years.

8. After considering the facts of the case, as well as the Report of the Resolution Professional, we are of the considered opinion that is a fit case for admission to proceed against the Personal Guarantor/Applicant for initiating Insolvency Resolution Process. Hence, we pass the following order:

ORDER

- I. The application CP(IB) 14 of 2022 is allowed.
- II. Initiate Insolvency Resolution Process against the Applicant/Personal Guarantor and moratorium in relation to all the debts is declared, from today i.e. date of admission of the application and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on the repayment plan under Section 114 whichever is earlier as provided under Sec 101 of IBC, 2016. During the moratorium period;
 - a. Any pending legal action of 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; and
- 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.

III. The Resolution Professional viz. Mr. Bishwa Ranjan Chatterjee, having Registration No: IBBI/IPA-002/IP N00877/2019-2020/12806 and having registered address at 68, Pink City, IDA Scheme No. 94 Extension, Ring Road, Indore – 452003, appointed vide Order dated 24.02.2022 is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order inviting claims from all Creditors, within 21 days of such Issue. The notice under Sub Section (1) of Section 102(2) shall include: -

- a. details of the order admitting the application;
- b. particulars of the resolution professional with whom the claims are to be registered; and
- c. the last date for submission of claims.

IV. The publication of notice shall be made in two newspapers, one in English and other in Vernacular language having wide circulation in the State where the Corporate Debtor and Personal Guarantor situated/resides. The Resolution Professional shall furnish two spare copies of the notice to the

Registry for the record.

V. The Resolution Professional in exercise of the powers conferred under Section 104 shall prepare a list of creditors on the basis of:

- a. the information disclosed in the application filed by the debtor under Sections 94, and
- b. claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice.

The debtor shall prepare a repayment plan under Section 105, in consultation with the Resolution Professional, containing a proposal to the Creditors for restructuring of his debts or affairs. The repayment plan may authorize or require the Resolution Professional to:

- a. carry on the debtor's business or trade on his behalf or in his name or
- b. realise the assets of the debtor, or
- c. administer or dispose of any funds of the debtor.

The repayment plan shall include the following, namely: -

- a. justification for preparation of such repayment plan and reasons on the basis of which the creditors may agree upon the plan;
- b. provisions for payment of fee to the Resolution

Professional.

- VI. 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.
- VII. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons therefore. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of IBC, 2016. 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 of IBC, 2016, for which at least 14 day's notice to the creditors as per the list prepared shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of IBC, 2016.
- VIII. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of IBC, 2016 and submit the same to this Tribunal, copies of which shall be provided to the Debtor and the Creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under

Section 208 of IBC, 2016.

IX. The Resolution Professional shall submit his periodic reports before this Tribunal every 30 days.

Sd/-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

RR (LRA)

Sd/-

CHITRA RAM HANKARE
MEMBER (JUDICIAL)