

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT – 1

ITEM No.302
CP (IB) 56 of 2022

Order under 95 of IBC,2016

IN THE MATTER OF:

Tata Capital Financial Services Ltd.

V/s

Archana Jagdish Saboo

.....Applicant

.....Respondent

Order delivered on: 23/02/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, AHMEDABAD**

CP/IB/56/AHM/2022

Filed under Section 95 of the Insolvency & Bankruptcy Code, 2016

In the matter of Mrs. Archana Jagdish Saboo

Tata Capital Financial Services Limited

11th Floor, Tower A, Peninsula Business Park, G.K. Marg,
Lower Parel, Mumbai- 400013.

... Financial Creditor

-vs-

Mrs. Archana Jagdish Saboo,

(Personal Guarantor of Surya Exim Ltd.)

Having Residential Address at:

3-A, Nidhivan Apartment,

B/H, Gokul Row House,

Umara, Surat- 395007

... Personal Guarantor

Order pronounced on 23.02.2024

CORAM:

SH. SHAMMI KHAN, MEMBER (JUDICIAL)

SH. SAMEER KAKAR, MEMBER (TECHNICAL)

For Financial Creditor : Mr., Arjun Sheth, Ld. Adv. a. w. Ms. Kriti Kothari, Ld. Adv.

For Personal Guarantor : Mr. Mohit Gupta, Ld. Adv.

ORDER

Per: Bench

1. The Present Application is filed under Section 95 of the Insolvency and Bankruptcy Code. 2016 (hereinafter referred to as IBC, 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 by Tata Capital Financial Services Limited (hereinafter referred to as "Financial Creditors") for the purpose of initiating insolvency process against Mr. Archana Jagdish Saboo (hereinafter referred to as "Personal Guarantors") for a default amount of Rs. 4,62,75,433.70/-. The Respondent/Personal Guarantor stood as Guarantor in respect for repayment of interest, cost, charges and other expenses in respect of Deeds of Guarantee dated 13.05.2016 and 28.07.2018 in favour of Applicant.

2. In so far as the Personal Guarantor to Corporate Debtor is concerned, the Hon'ble Supreme Court of India in the matter of **Lalit Kumar Jain vs. Union of India & Ors.** in the Transferred Case (Civil) No.245/2020 has upheld the vires of the notification issued by the Central Government vide S.O. 4126(E) dated 15.11.2019, in so far as it relates to coming into force of Insolvency and Bankruptcy Process of Personal Guarantors to Corporate Debtor. Thus, when a Corporate Insolvency Resolution Process in relation to Corporate Debtor is pending before this Adjudicating Authority, then as per Section 60(2) of IBC,

2016 the NCLT would be competent forum to file an Application for Personal Guarantor in relation to such Corporate Debtor. The Corporate Insolvency Resolution process in respect of the Corporate Debtor was ordered by this Adjudicating Authority on 09.11.2020. Hence, the present application in respect of the Insolvency and Bankruptcy proceedings of the Personal Guarantor of the Corporate Debtor is filed by the Creditor before this forum.

3. It is stated that the Personal Guarantor has executed the two Deed of Guarantee on 13.05.2016 and 28.07.2018 and the said Deeds of Guarantee are enclosed along with the typed set filed along with the Application.
4. It is stated that the Personal Guarantor has executed the three Loan cum Guarantee Agreement on 28.03.2019, 06.08.2019 and 31.08.2019 and the said Loan cum Guarantee Agreement are enclosed along with the typed set filed along with the Application.
5. By order dated 03.02.2021, the Corporate Debtor was admitted and an order of moratorium was passed by this

Adjudicating Authority in CP IB
No.279/7/NCLT/AHM/2018.

6. Due to non-payment of the amount by the Corporate Debtor, the Financial Creditor has filed this application for initiation of the Insolvency Resolution Process against the Guarantor under Section 95(1) of IBC, 2016. The Financial Creditor invoked the personal guarantee and issued a demand notice to the Respondent on 23.07.2021 under Rule 7(1) of the Insolvency and Bankruptcy Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. The demand notice was delivered to the Respondent on 27.07.2021.
7. On presentation of the application by the Applicant/Financial Creditor, this Tribunal vide order dated 07.03.2022 held that the name of Interim Resolution Profession (hereinafter referred to as "IRP") as suggested by the Financial Creditors, Ms. Indira Suresh Vora to be appointed as IRP to carry out Insolvency Resolution Process of the Personal Guarantor as per section 97(3) of IBC, 2016. This Tribunal directed the IRP

to file his report. The Interim Resolution Professional has filed the report dated 18.04.2022 under inward diary No. D2073 recommending the admission of the application filed under Section 95 of IBC, 2016. The grounds for admission of the application as per the Report are as follows:

- i. it is stated that the IRP had examined the application CP (IB) No.56 of 2022 and the same is found to be satisfying all the ingredients of Sec.95 of IBC.
- ii. it is stated that the Corporate Debtor, Surya Exim Limited, had committed default in repayment of loan facility granted by the Creditor Tata Capital Financial Services Ltd. A Resolution plan has been approved by this Tribunal and the Applicant had invoked the Guarantee against the Personal Guarantor.
- iii. it is stated that the Personal Guarantor, Archana Jagdish Saboo has also committed default in repayment of loan Facility demanded by the Creditor “Tata Capital Financial Services Ltd.”

- iv. it is stated that the PG had not denied the existence of debt.
8. The Respondent/Personal Guarantor filed an affidavit in reply on 07.07.2022 under diary no. D3797 and stated that the respondent does not oppose the admission of the present application.
9. The proceedings in the matter was put on hold since the Constitutional Validity of the Sections 94 to 100 relating to the insolvency of personal Guarantor was pending before the Hon'ble Supreme Court in the matter of **Dilip B. Jiwrajka V/s Union of India & Ors.** in WP(civil)No. 1281 of 2021.
10. The Hon'ble Supreme Court in the judgement of **Dilip B. Jiwrajka V/s Union of India & Ors.** in **WP(civil)No. 1281 of 2021** dated **09.11.2023** upheld the Constitutional Validity of the Sections 94 to 100.
11. It is submitted that the Intervener had filed an intervener Application i.e. Inv. P. 01 of 2023 regarding the same property mortgaged by the personal guarantor which was later dismissed as withdrawn.

12. The present matter was proceeded before Court-2 of the Ahmedabad bench but was transferred to the court-1 of the Ahmedabad bench as other matter of the same corporate debtor/ other guarantor was listed.
13. We have heard the learned counsel for both the parties and perused the documents on record. We have also gone through the report dated 18.04.2022 filed by the IRP. It is noted under section 128 of Indian Contract Act, 1872 that when a default is committed the Principal Borrower and Surety are jointly and severally liable to Creditor and Creditor has the right to recover its dues from either of them or from both of them simultaneously. For benevolent reference, the said section of the Contract Act, 1872 is reproduced below:

"The liability of the surety is co- extensive with that of the principal debtor, unless it is otherwise provided by the contract".

14. From the report of IRP, it is clear to us that:
- i. IRP has recommended to accept the application for the reason as stated in the report dated 18.04.2022.

- ii. The Respondent has admitted to having executed the deed of Guarantee.
- iii. The Applicant has demanded the amount outstanding from the Respondent vide Demand Notice dated 23.07.2021.
- iv. Respondent in her reply had raised no objection and accepted to admit the present Application.

15. In view of the foregoing we are left with no other choice but to order as under: -

- I. Initiate Insolvency Resolution Process against the Respondent/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 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.

II. The Resolution Professional viz., Ms. Indira Suresh Vora, having Registration No: IBBI/IPA-001/IP-P01264/2018-2019/12000, office at A/2, Shivpujan Duplex, Nr. Shailganga Society, Chandkheda, Ahmedabad- 382424 (e-mail id: Indira.vora@yahoo.com) who was appointed when the Section 97 application was allowed vide Order dated 18.04.2022, is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Ahmedabad Bench, 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.

III. The publication of notice shall be made in two newspapers, one in English and other in Vernacular which have wide circulation in the State where the Corporate Debtor and Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.

IV. The Resolution Professional in the 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 or 95. as the case may be, 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 based on which the creditors may agree upon the plan;
- b) provision for payment of fee to the Resolution Professional;
- c) such other matters as may be specified.

V. 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.

VI. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons therefor. 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 day 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 days' 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.

VII. 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.

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

IX. The Registry is directed to communicate a copy of order, report and application within seven working days and upload the same on the website immediately after the pronouncement of order.

16. In terms of the above, **CP(IB)/56(AHM)/2022** filed under Section 95 (1) of the IBC, 2016 is admitted and the Insolvency Resolution Process stands initiated against the Applicant/Personal Guarantor.

-SD-

**SAMEER KAKAR
MEMBER (TECHNICAL)**

-SD-

**SHAMMI KHAN
MEMBER (JUDICIAL)**

Shubhanshu/LRA