

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.303

IA/352(AHM)2024 in C.P.(IB)/25(AHM)2024

Order under Section 100 IBC, 2016

IN THE MATTER OF:

Rathin Amishbhai Majmudar Resolution Professional of
Personal Guarantor (Mr Sumit Vasudevbbhai Patel undergoing
Personal Insolvency Resolution Process)

.....Applicant

.....Respondent

V/s

HDFC Bank Ltd.& Ors

Order delivered on: 08/07/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)

Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

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DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

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CHITRA HANKARE
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT - II)**

**IA No. 352 / NCLT / AHM / 2024
IN
CP(IB) No. 25 / NCLT / AHM / 2024**

[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:

**Sumit Vasudevhai Patel PG for
M/s. Shree Gopinath Paper Mills Pvt. Ltd.** ...Applicant
Versus

HDFC Bank Limited & Another ...Respondents

Order pronounced on 08.07.2024

Coram:

**MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)**

**MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)**

MEMO OF PARTIES

Mr. Rathin Amishbhai Majmudar
Resolution Professional of Personal Guarantor

(Mr. Sumit Vasudevhai Patel undergoing
Personal Insolvency Resolution Process)

Having registered office at
604, Scarlet Gateway
Opp. Rivera Antilia, Corporate Road
Near Prahladnagr Garden
Ahmedabad-380 015

...Applicant

Versus

1. HDFC Bank Limited

Having its office at
1st Floor, Block D,
Shree Ghantakaran Mahavir
Cloth Market
Opp. Sarangpur Gate
Ahmedabad

2. Unity Small Finance

Having its office at
Sunrise Park Road
Sunrise Park, Gurukul
Ahmedabad-380 052

3. Mr. Sumit Vasudevhai Patel

Having its address at

12, Patel Society
80 Ft. Road
Wadhwan City Industrial Estate
Surendranagar-363 035

...Respondents

(No.1 to 2-Financial Creditors, No.3
Personal Guarantor to Shree Gopinath
Paper Mills Private Limited)

Appearance

For the Applicant/RP : Mr. Vishal Dave, Advocate.
For HDFC Bank : Mr. Hem Buch, Advocate

JUDGEMENT

1. The Present Application is filed under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC, 2016") r/w Rule 6 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for IRP for Personal Guarantors to Corporate Debtor) Rules, 2019.
2. M/s. Shree Gopinath Paper Mills Pvt. Ltd. (hereinafter referred to as Corporate Debtor) has obtained unsecured loan from HDFC Bank Ltd. and Unity Small Finance (hereinafter referred to as Financial Creditors). The applicant is one of the

guarantors for the credit facilities availed by the Corporate Debtor. The date of default of payment is 30.06.2023. HDFC Bank Ltd. has issued demand notice u/s. 13(2) of SARFAESI Act against the Corporate Debtor as well as Applicant on 23.06.2023.

3. On presentation of the application by the Applicant/ Personal Guarantor, this Authority vide order dated 17.01.2024 has appointed the Resolution Professional viz., Mr. Rathin Amishbhai Majmudar having Registration No. IBBI/IPA-001/IP-P-02576/2021-2022/13928 & directed RP to file report under Section 99 of Insolvency and Bankruptcy Code, 2016, which has been filed by him through an IA No. 352 of 2024, recommending the admission of the application filed under section 94 of IBC, 2016.
4. Respondent no.1 did not file any reply but orally objected to the application. Respondent no.2 neither filed any reply nor present during the course of proceeding.
5. We have heard the learned Counsel for applicant and respondent no.1 and perused the documents on record. We

have also gone through the report dated 14.02.2024 filed by the RP. 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 both of them simultaneously. For benevolent reference, the said section of Indian 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.”

6. 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 14.02.2024.
 - ii. The Respondent/personal guarantor has admitted to have executed the Guarantee Agreement.
 - iii. The Respondent No.1 has demanded the amount outstanding from the Applicant vide Demand Notice dated 23.06.2023.

- iv. Resolution Professional report states that no evidence was placed before him by the Applicant having paid the amount demanded by the Respondent and as such in over view entire amount demanded is unserviced as on the date of order.
7. Out of the 2 financial creditors to whom the applicant had provided guarantees, only one had appeared (R1), argued the matter and filed preliminary reply. Even if there was an exposure with the respondent No.1, the averments made in his reply does not enable any grounds for rejecting this application. The RP will consider a composite plan for the issue of resolving the personal guarantor, when such claims are received to decide the merits of the matter. Further, the entire assets of the personal guarantor will be taken into consideration by the RP in admitting such claims or a plan, hence the application is accepted, irrespective of the objections of the R1.
8. From the report there does not appear any request of the Resolution Professional for issuance of the instructions for the

purpose of conducting negotiations between the debtor and creditors for arriving at a repayment plan. Therefore Insolvency Resolution Process is to be initiated against Personal Guarantor and the RP is directed to do further due diligence on the outstanding liabilities including contingent to the guarantees issued and assets of the personal guarantor.

9. Hence, we pass the following order:

ORDER

- I. CP(IB) No.25 of 2024 along with IA No.352 of 2024 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;
- 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 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.
- IV. 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 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) provision 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 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 provides 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.
- X. 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.

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**DR.V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)**

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**CHITRA HANKARE
MEMBER (JUDICIAL)**

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