

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.304

IA/378(AHM)2024 in C.P.(IB)/58(AHM)2024

Order under Section Rule 11 of NCLT Rules 2016
r/w 60(5) of IBC,2016

IN THE MATTER OF:

Pradeep Kumar Kabra RP in the matter of Ashok Kumar BaidApplicant

PG to M/s.Baid Industries Private Limited

V/s

.....Respondent

State Bank of India & Another

Order delivered on: 06/05/2024

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

-Sd-

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

-Sd-

CHITRA HANKARE
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT - II)**

**IA/378(AHM)2024
in
CP(IB) No. 58/NCLT/AHM/2024**

(Filed under Section 99 of the Insolvency & Bankruptcy Code, 2016)

Mr. Pradeep Kumar Kabra
RP of Mr. Ashokkumar Gulabchand Baid
Reg. No. IBBI/IPA-001/IP-P01104/2017-18/11790
Having office at,
JLN US & Co.,
M-19-20-2021, Metro Tower,
Nr. Kinnari Cinema,
Ring Road, Surat-395002

.... Applicant

In the matter of :-

State Bank of India
Stressed Assets Management
Branch,
2nd Floor, Paramsiddhi Complex,
Opp. V. S. Hospital, Ellisbridge,
Ahmedabad-380006, Gujarat

.... Applicant /
Financial Creditor

Versus

Mr. Ashokkumar Gulabchand Baid
Flat No. A/602, 6th Floor,
Monalisha Park, Apartment,
Opp. Dharam Row House,
City, Light Road, Surat

... Respondent/
Personal Guarantor

Order pronounced on 06.05.2024

Coram:

Mrs. Chitra Hankare, Member (Judicial)

Dr. V. G. Venkata Chalapathy, Member (Technical)

Present:

For the Applicant : Mr. Ravi Pahwa Adv.

For the Respondent : Ms. Aishwarya Reddy Adv. with Laghima Jain
for R-1.

For the PG : Mr. Mohit Gupta, Adv.

JUDGMENT

1. State Bank of India (Financial Creditor) has filed this Application 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 Debtor) Rules,2019 to initiate Resolution Process against Mr. Ashokkumar Gulabchand Baid, the Personal Guarantor of the Corporate Debtor namely Baid Industries Private Limited for default of an amount of Rs.119,50,40,108.66/-
2. On receipt of loan application from the Corporate Debtor, the financial creditor had sanctioned the loan facility. The respondent was a director and the personal Guarantor of Corporate Debtor and executed the bank's standard loan documents. The amount due to the Corporate Debtor was 119,50,40,108.66/- and date of default 25.11.2021. The Corporate Debtor was brought under CIRP under section 7of the IBC vide order dated 07.12.2022 and

presently under liquidation since 19.04.2024. The applicant bank has granted loan facility to the Corporate Debtor to which the respondent stood as a Personal Guarantor. The deed of Guarantee was executed on 20.03.2015 between the applicant and the Guarantor. A demand notice under Rule 7 was issued on 01.11.2023.

3. Due to non-payment of the amount by the Corporate Debtor, the Financial Creditor has filed this application for initiation of Insolvency Resolution Process against the Guarantor under Section 95(1) of IBC,2016. The Financial Creditor invoked the personal guarantee and issued demand notice to the Respondent on 01.11.2023 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudication Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019.
4. This Tribunal has appointed Mr. Pradeep Kabra bearing registration No. IBBI/IPA-001/IP-P01104/2017-18/11790 as resolution professional. Accordingly, he has filed report on 19.02.2024.
5. On perusal of the report of RP, it is observed that he has examined various documents including deed of guarantee, DRT-II, order in O.A. No. 192 of 2018, Statement of Account, Demand notice etc. RP has sent notice on 06.02.2024 through speed post and demanded details as well as documents from Personal Guarantor. The report of RP states that the RP had not received any evidence of repayment of the debt claimed in Sec.95 petition from personal

guarantor. Further, Vide notice 06.02.2024 RP communicated to the personal guarantor for any evidence of proof of payment of the debt claimed as unpaid by the creditor, no reply or communication was received from the personal guarantor with respect to his notice. RP had neither received any document whereby the Personal Guarantee agreement dated 20.03.2015 was cancelled by both the parties nor received any order of court or any other forum whereby the personal guarantee agreement dated 20.03.2015 was cancelled or set aside. RP has also asked the financial creditor to provide latest statement of accounts, proof of payment made against the outstanding debts if already paid. Therefore, RP recommended to admit the present petition.

6. The copy of the present application and the Report of RP was duly served upon the Personal Guarantor but the PG has chosen not to file any reply either to the application or the report of the RP. On 19.04.2024 Ld. Counsel for the personal guarantor and the financial creditor submitted that they do not want to raise any objections to the report of RP.
7. On the basis of above facts and submission it appears that the present application is filed within the period of limitation. Date of Default as mentioned in the petition is 25.11.2021 and the present petition E-filed before this Tribunal on 22.01.2024.
8. The RP has recommended to initiate the Insolvency Resolution Process against the Personal Guarantor. The RP has examined the copies of documents and also details of assets of respondent. It is

observed from the record that the respondent had not brought on record any documents denying or disputing the invocation of his Personal Guarantee. There is no evidence given by the respondent to show that he has paid the debt or his Personal Guarantee agreement is cancelled.

9. Reply has not been filed by the respondents. However, the Ld. Counsel for the respondent guarantor and financial creditor appeared on 19 April 2024 and stated that they have no objections to the RPs report.
10. Accordingly, based on the report of Resolution Professional submitted under Section 99 that the applicant satisfies the provisions of Section 95 of IBC 2016 and after hearing of the submissions of the applicant and the respondent, pass the following order in terms of Section 100 of IBC, 2016.

ORDER

- (i) The main application i.e., CP(IB) 58 of 2024 is allowed.
- (ii) The insolvency process is initiated against the respondent personal guarantor. The moratorium begun on the date of admission of the application shall cease to have effect at the end of the period of 180 days from the date of this order. During the moratorium period, the following provisions shall be in effect:
 - a. Any pending legal action or proceeding in respect of

- any debt 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 viz., Mr. Pradeep Kabra, who has been appointed under Section 97 vide order dated 02.02.2024, is directed to cause a public notice to be published on behalf of the Adjudicating Authority within 7 days of uploading of this order on the website of NCLT, inviting claims from all Creditors who shall register their claims as provided under Section 103 within 21 days of such issuance. The notice shall contain the necessary information as provided under section 102(2) of IBC. The publication of the notice shall be made in newspapers, one in English and the other in Vernacular which have wide circulation in the state where the debtor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry. One shall be placed by the Registry on our website and the other shall be affixed in the premises of this Authority.
- (iv) The Resolution Professional in exercise of the powers conferred

under Section 104 shall prepare a list of creditors within 30 days from the date of the notice. The debtor shall prepare a repayment plan in consultation with the Resolution Professional as provided under section 105 which shall include the provisions for payment of fee to the Resolution Professional. 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.

- (v) In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof. If the resolution professional is of the opinion that the meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3). 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, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all relevant/feasible modes. Such notice must contain the details as provided under the provisions of Section 107.
- (vi) The meeting of the creditors shall be conducted in accordance with section 108,109,110 & 111. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 and submit the same to this Authority, copies of which shall be provided to the debtor and the creditors. It is made clear that the resolution professional shall perform his function and duties in compliance

with the code of Conduct provided under section 208 of the IBC,2016.

- (vii) The applicant is directed to deposit Rs.2 lakhs to the bank account of RP within one week, towards his fees. This shall be subjected to the Rules and Regulations under the provisions of IBC, 2016
- (viii) Accordingly, report in IA/378(AHM)2024 in CP(IB) No. 58/NCLT/AHM/2024 filed under section 99 of the IBC,2016 is disposed off.

-Sd-

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

-Sd-

CHITRA HANKARE
MEMBER (JUDICIAL)