

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

ITEM No. 306 – C.P.(IB)/165(AHM)2022
With
ITEM No. 307 – IA/325(AHM)2024

Order under Section 95 IBC

IN THE MATTER OF:

Canara Bank

.....Applicant

V/s

Shri Sajid Mohammed Farooqui

.....Respondent

Order delivered on 29/04/2024

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

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-I, AHMEDABAD**

**I.A. No.325/NCLT/AHM/2024
with CP/IB/165/AHM/2022**

[Application under Section 95(1) of the Insolvency & Bankruptcy Code, 2016 r.w. Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019]

In the matter of **Mr. Sajid Mohammed Farooqui**

Canara Bank ARM Brnach
Registered Office at:
7th Floor, Tower-1,
GIFT City, Gandhinagar.

... Applicant/Financial Creditor

VERSUS

Sh. Sajid Mohammed Farooqui
(Personal Guarantor to Corporate Debtor
M/s Texon Global Private Limited)
B-4, Kapil Tower,
Old Padra Road,
Vadodara, Gujarat – 390015.

... Respondent/Personal Guarantor

Order pronounced on 29.04.2024

CORAM:

**SH. SHAMMI KHAN, MEMBER (JUDICIAL)
SH. SAMEER KAKAR, MEMBER (TECHNICAL)**

APPEARANCE:

For the Applicant/RP : Mr. Ravi Pahwa, Advocate
For the Respondent/FC : Mr. Urvesh Gaur, Advocate
For the Respondent /PG : Mr. Rohan Shah, Advocate for
Mr. Rishbah Shah Advocate.

ORDER

1. The present application is filed on 14.06.2022 under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC, 2016") r/w 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 Applicant Bank (herein after referred to as "Financial Creditor") for the purpose of initiating of insolvency process against Mr. Sajid Mohammed Farooqui (herein after referred to as "Personal Guarantor") for a default amount of **Rs.11,48,37,793.25ps** including interest, penal interest & other charges. The date of default is stated to be **28.02.2017**.

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.

3. The brief facts of the matter are stated as under:-

- a. The Financial Creditor had granted various Credit facilities amounting to Rs.7.80 Cr. to the Corporate Debtor- (M/s Texon Telecom Engineers **Now** M/s

Texon Global Private Limited) vide Sanction Letter dated 26.12.2013 and 13.10.2015 respectively. The Corporate Debtor through its Directors as well as Personal Guarantors had executed various loan security documents and created mortgage charge over their assets to secure the Credit Facilities in favour of the Applicant Bank/Financial Creditor. The Respondent/Personal Guarantor also executed Guarantee Agreement dated 09.01.2014 and 24.11.2015 in favour of the Applicant Bank/Financial Creditor to secure the Credit Facilities provided by the Applicant/Financial Creditor.

- b. On 01.03.2018, the Corporate Debtor acknowledged its debt and liability for the Credit Facilities in favour of the Applicant Bank/Financial Creditor vide Letter of Acknowledgment Debt. The Corporate Debtor by that became irregular in repayment of its instalments and interest and

defaulted in repayment of its dues to the Applicant Bank/Financial Creditor.

- c. On 15.10.2018, the Corporate Debtor and its directors, guarantors filed one time settlement (OTS) with the Applicant Bank/Financial Creditor acknowledging their debts liabilities but could not pay the dues.
- d. However, after availing the aforesaid Loan/Credit Facilities, the Corporate Debtor failed to maintain financial discipline as per terms and conditions of the loan agreement and committed default. Subsequently, on 20.10.2018 the Applicant Bank/Financial Creditor issued Legal Notice to the Corporate Debtor, its Directors and Guarantors recalling the outstanding dues which was served to each of the Corporate Debtor, its Directors and Guarantors. But the same was unanswered and the dues of the Applicant Bank/Financial Creditor are still unpaid.

- e. Thereafter, on 28.12.2018, Applicant Bank/Financial Creditor filed an Original Application No.1 of 2019 before DRT-II Ahmedabad for recovery of its dues in which vide interim order dated 02.01.2019 show cause notice was issued to Corporate Debtor and its directors/ guarantors by giving stay order against transfer of its hypothecated and mortgage properties.
- f. Thereafter, one Operational Creditor/M/s Tijaria Polypipes Ltd. filed petition under section 9 of IBC, 2016 bearing CP(IB) No. 809 of 2019 against the Corporate Debtor for defaulting in paying the operational debt of Rs.11,81,682/-. The said petition was admitted by this Tribunal vide order dated 26.08.2020 and Corporate Insolvency Resolution Process was initiated against the Corporate Debtor.
- g. On 26.02.2021, the Guarantors of the Corporate Debtor submitted One Time Settlement (OTS) Letter dated 26.02.2021 with the Applicant

Bank/Financial Creditor which was much lower side and rejected by the Applicant Bank/Financial Creditor vide Letter dated 02.04.2021.

- h. On 25.04.2022, I.A. No. 608 of 2021 was filed for the liquidation of the Corporate Debtor as no resolution plan was received by the RP during the CIRP period. Thereafter, vide order dated 21.06.2022 the Corporate Debtor was ordered for liquidation.
 - i. The Applicant Bank/Financial Creditor invoked the personal guarantee and issued Demand Notice to the Respondent/Personal Guarantor on 09.05.2022 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.
4. Due to non-payment of the amount by the Corporate Debtor as well as Personal Guarantors, the Applicant Bank/Financial Creditor has filed this application for

initiation of Insolvency Resolution Process against the Respondent/Personal Guarantor in 'Form-C' under Section 95 of the IB Code, 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.

5. On presentation of the application by the Applicant Bank/Financial Creditor, this Tribunal vide order dated 10.01.2024, appointed **Ms. Vineeta Maheshwari, having registration no: IBBI/IPA-001/IP- P00185/2017-18/10364** to carry out Insolvency Resolution Process of the Personal Guarantor as per section 97(3) of IBC, 2016, with a direction to submit the report under Section 99 of the IB Code, 2016, within ten days. The IRP is also directed to file its report through separate IA.
6. The Interim Resolution Professional has filed the report through **IA No. 325 of 2024**, vide inward diary No. **E-467**, dated **12.02.2024** recommending the

admission of the application filed under Section 95 of IBC, 2016. The Interim Resolution Professional submitted observation as regards admission of the application in her Report dated 09.02.2024 on page 17 of the I.A. as under:-

“.....

Thus, Resolution Professional is of the view that application should be accepted and proceedings should be initiated with respect to the Individual Insolvency Resolution Process of Shri Sajid Mohammed Farooqui (Personal Guarantor of M/s. Texon Global Private Limited) in order to recover the outstanding debt payable to the Financial Creditors as per the deed of guarantee executed dated 09.01.2014 between the Ex-Syndicate Bank now known as Canara Bank and Personal Guarantors.

The present application is filed against the personal Guarantor in the prescribed format and is complete in all respects.

...”

7. Vide order dated 16.02.2024, this Tribunal issued a notice to the Respondent/Personal Guarantor and directed the Respondent/Personal Guarantor as well as to the Corporate Debtor to file its reply, if any,

within one week from the date of receipt of notice. Thereafter, rejoinder, if any, be filed within seven days.

8. The Respondent/Personal Guarantor filed Affidavit in Reply on 21.03.2024 vide inward diary no 2528 which was taken on record. No rejoinder was been filed by the IRP or Applicant Bank/Financial Creditor. The Respondent/Personal Guarantor in reply raised following objections:-

- i. The present application is not maintainable as the demand notice is not supported by any resolution or authority letter issued by the Applicant Bank/Financial Creditor in favour of the signatory (Mr. Chandrashekhar Yadav) authorising him on behalf of the Applicant Bank/Financial Creditor to issue said notice in Form-B.
- ii. It is submitted that the Applicant Bank/Financial Creditor was guilty of suppressio veri and suggestion falsi as the

Applicant Bank/Financial Creditor had suppressed the material facts.

iii. It is submitted that the Applicant Bank/Financial Creditor issued notices under the SARFAESI Act to Respondent/Personal Guarantor and Corporate Debtor which was in complete contravention of the order dated 19.02.2021 of the DRT-II, Ahmedabad which set aside and quashed the action of the Applicant Bank/Financial Creditor in declaring the account of the Corporate Debtor as NPA.

iv. It is submitted that against the order of the DRT, the Applicant Bank/Financial Creditor moved before DRAT, Mumbai. The Applicant Bank/Financial Creditor cannot run parallel proceedings in another forum being in this Tribunal.

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 personnel 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 and the Conclusion of the Judgments are as follows:

- i. *No judicial adjudication is involved at the stages envisaged in Sections 95 to Section 99 of the IBC;*
- ii. *The resolution professional appointed under Section 97 serves a facilitative role of collating all the facts relevant to the examination of the application for the commencement of the insolvency resolution process which has been preferred under Section 94 or Section 95. The report to be submitted to the adjudicatory authority is recommendatory in nature on whether to accept or reject the application;*
- iii. *The submission that a hearing should be conducted by the adjudicatory authority for the purpose of determining 'jurisdictional facts' at the stage when it appoints a resolution*

professional under Section 97(5) of the IBC is rejected. No such adjudicatory function is contemplated at that stage. To read in such a requirement at that stage would be to rewrite the statute which is impermissible in the exercise of judicial review;

- iv. The resolution professional may exercise the powers vested under Section 99(4) of the IBC for the purpose of examining the application for insolvency resolution and to seek information on matters relevant to the application in order to facilitate the submission of the report recommending the acceptance or rejection of the application;*
- v. There is no violation of natural justice under Section 95 to Section 100 of the IBC as the debtor is not deprived of an opportunity to participate in the process of the examination of the application by the resolution professional;*
- vi. No judicial determination takes place until the adjudicating authority decides under Section 100 whether to accept or reject the application. The report of the resolution professional is only recommendatory in nature and hence does not bind the adjudicatory authority when it exercises its jurisdiction under Section 100;*

- vii. *The adjudicatory authority must observe the principles of natural justice when it exercises jurisdiction under Section 100 to determine whether to accept or reject the application;*
- viii. *The purpose of the interim moratorium under Section 96 is to protect the debtor from further legal proceedings; and*
- ix. *The provisions of Section 95 to Section 100 of the IBC are not unconstitutional as they do not violate Article 14 and Article 21 of the Constitution.*

11. We have heard the learned counsel for both the parties and perused the documents on record. We have also gone through the report dated 09.02.2024 filed by the IRP.

12. It is seen from the petition that the present application is filed on 14.06.2022. The date of default as stated to be on 28.02.2017. Acknowledgment of debt was given on 01.03.2018 by the Corporate Debtor regarding the debt and liabilities for the aforesaid Credit Facilities in favour of the Applicant Bank/Financial Creditor. One Time Settlement (OTS) Letter was given by the

Corporate Debtor on 15.10.2018. Thereafter, Applicant Bank/Financial Creditor served Legal Notice dated 06.04.2019 to the Borrower and Guarantors to repay the outstanding dues.

13. Further, on 26.02.2021 One Time Settlement (OTS) Letter was given by the Guarantors admitting the debt liability. Further, the Section 9 application being CP (IB) No.809/7/NCLT/AHM/2019 was filed against the Corporate Debtor in which the order of admission was passed on 26.08.2020 and vide order dated 21.06.2022 the Corporate Debtor was ordered for Liquidation. Hence the debt is proved. The objections of the Respondent/Personal Guarantor are not sustained.

14. Ultimately, Demand Notice dated 09.05.2022 issued 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 invoking Personal Guarantee within the period of limitation, was served

upon the Respondent/Personal Guarantor who is one of the Directors of the Cooperate debtor which is not denied by the Respondent/Personal Guarantor. The said.

15. However, Hon'ble Supreme Court ***in Suo Moto WP (Civil) No. 3 of 2022 in Re: Cognizance for Extension of Limitation*** held that the period i.e. 15.03.2020 to 28.02.2022 is excluded for calculating the period of limitation. Therefore, we find that the debt as well as default is very much proved on record against the Respondent/Personal Guarantor and present the Application is well within the limitation period.

16. Further, 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."

17. Moreover, 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 09.02.2024.
- ii. The Respondent/Personal Guarantor had not denied to have executed the Guarantee Agreement.
- iii. The Applicant Bank/Financial Creditor has demanded the amount outstanding from the Respondent/Personal Guarantor vide Demand Notice dated 09.05.2022.
- iv. Resolution Professional report states that no evidence was placed before her by the Respondent/Personal Guarantor having paid

the amount demanded by the Applicant
Bank/Financial Creditor.

18. 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
1BC, 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. Vineeta Maheshwari, having registration no: IBBI/IPA-001/IP- P00185/2017-18/10364** who was appointed when the Section 97 application was allowed vide Order dated 10.01.2024, is directed to cause a public notice published on behalf of the Adjudicating Authority within 10 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.

V. 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.

VI. 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.

VII. 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.

VIII. 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.

IX. 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.

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

XI. 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.

19. In terms of the above, **CP (IB)/165(AHM)/2022** filed under Section 95 (1) of the IBC, 2016 is admitted and the Insolvency Resolution Process stands initiated against the Respondent/Personal Guarantor.
20. Accordingly, **IA/325(AHM) 2024** is stands disposed of.

**-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)**

**-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)**

AT