

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
SPECIAL BENCH
COURT – 2

ITEM No.207
CP(IB)/188(AHM)2021

Proceedings under Section 95 IBC

IN THE MATTER OF:

Central Bank of India & Anr
V/s
Shreem Developers
(Corporate Guarantor)

.....Applicant

.....Respondent

Order delivered on: 05/02/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

PRESENT:

For the Applicant :Mr. Sandeep C. Bhatt, Adv.
For the Respondent :Mr. Harmish Shah, Adv.

ORDER

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 & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 by the Central Bank of India and State bank of India (hereinafter referred to as "Financial Creditors") for the purpose of initiating insolvency resolution process against M/s Shreem Developers (a partnership firm, hereinafter referred to as Personal Guarantor) for default amount of Rs.155,71,43,829,.89/- The Respondent personal guarantor stood as guarantor in respect of repayment of interest, cost, charge and other expenses in respect of Deed of Guarantee dated 10.11.2012.
2. The amount in default is Rs. 155,71,43,829,.89/- and date of default is 25.09.2018. The applicant filed an original application bearing no. 62 of 2017 before Debt Recovery Tribunal, Ahmedabad for recovery of dues. Thereafter, Company Petition bearing No. CP(IB) 550/NCLT/AHM/2018 filed by the

Applicant under Section 7 against Shreem Spa & Resorts Limited and same was admitted by this Hon'ble National Company Law Tribunal, Ahmedabad vide order dated 23.09.2019.

3. It is stated in the petition that the Deed of Guarantee has been executed on 10.11.2012. Inter-Se Agreement was also executed on 11.03.2013 by and between the Central Bank of India and State Bank of India. Facility consortium agreement was executed on 11.03.2013.
4. Due to non-Payment of the outstanding dues by the corporate debtor, the Financial Creditor has filed this application for initiation of Insolvency Resolution Process against the guarantor under section 95 of IBC, 2016. Applicant-one issued demand to the respondent on 21.12.2020 under Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtors) Rule, 2019. The Demand notice delivered to the respondent on 24.12.2020.
5. On presentation of the application by the Applicant/Financial Creditors this Tribunal vide an order dated 22.10.2021 appointed Mr. Chirag R Shah bearing registration no. IBBI/IPA-001/IP-P01169/2018-19/11837 as resolution professional to carry out Insolvency Resolution Process of the personal guarantor as per section 97(3) of IBC, 2016. Accordingly the RP has filed a report on 16.11.2021 under Sec 99 of IBC 2016 with following observations:
 - I. It is stated that the Corporate Debtor has been engaged in Hotel business since 2009. At the request of the borrower, the lenders have sanctioned term loans and working capital facilities, both fund and non-fund based, from time to time. In the application, the comprehensive information about the lending facilities is clearly stated. The applicant in this case, Central Bank of India and State bank of India, has a total fund-based and non-fund-based lending portfolio with interest of Rs.155.71 crores as of 22.07.2021 as per the petition filed by the applicant(s).
 - II. After the Insolvency Resolution Process for Corporate Debtor took effect, the applicant served a demand notice on the corporate debtor's personal

guarantors, which included the respondent. The demand notice was issued on 21.12.2020, but no payment was made as mentioned in the petition. Following that, on 23.07.2021 the applicant filed an application with the NCLT, Ahmedabad bench, under section 95 of the Insolvency and Bankruptcy Code, 2016.

- III. The RP has demanded proof/evidence u/S. 99(2) of the IB Code from Shreem Developers to prove repayment, if any of the debt claimed as unpaid by the Creditor vide email dated 03.11.2021 but not received any reply from personal guarantor.
 - IV. The Application filed by the Creditor satisfies the requirement as set out in Section 95 of the Code. The Corporate Debtor, Shreem Spa & Resorts Limited.", has committed default in repayment of Loan Facility granted by the Creditor 'Central Bank of India' and 'State bank of India'. Shreem Developers, and the Personal Guarantors to CD have also committed default in repayment of Loan Facility demanded by the Creditor 'Central Bank of India' and 'State Bank of India'. Shreem Developers, under CIRP have not denied the existence of debt.
 - V. In view of the above stated facts and circumstances, as well as analysis, the RP based on the examination of material available on record, recommends that present Application under section 95 (1) of the Code filed by the Creditor Central Bank of India and State Bank of India be admitted under Section 100 of the Code and Insolvency Resolution Process be commenced against Shreem Developers, Personal Guarantors to Shreem Spa & Resorts Limited.
6. Respondent/personal guarantor filed a reply on 25.02.2022 stating the following issues:
- I. Personal Guarantor stated that petition has not been filed in consonance with the Section 95(1) of the Insolvency and Bankruptcy 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. Applicant is not authorized to file the applicant jointly. The nature of debt involves two

loans from two different banks. Demand Notice issued the Central Bank of India in respect of unpaid debt.

- II. Personal Guarantor further states that the applicant had not mentioned the excluded debt in the petition. Applicant bank sold many properties, one of the property auctioned in the year of 2021 but the bank has not stated how much amount was received by them.
 - III. The demand notice is not issued as per rule under rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate debtors) Rules, 2019. The demand notice is issued only by central bank of India while the amount of state Bank of India also claimed to invoke the personal guarantee and therefore the same is not maintainable. Further, Demand Notice is not properly served upon PG.
 - IV. It is submitted that the guarantee herein contained shall not be enforceable against the Guarantor. The Guarantee hereby given is not independent and distinct from any security that the Central Bank of India has taken. It is submitted the as per provisions of sections 140 and 141 of the Indian Contract Act, 1872 the Guarantor is to be discharged to any extent. There is negligence on the part of the bank and therefore the bank has no right to issue notice under IBC,2016
 - V. It is further submitted that date of Debt Due stated by the applicant bank on 24.09.2018 and debt when default occurred is shown as 25.09.2018 and therefore the same is not within the period of limitation and therefore the application deserves to be dismissed. However, the date of Decree passed by HON'BLE DRT on 24.07.2018.
 - VI. It is further submitted that N.K.PUNJABI is not authorized signatory of Central Bank of India and therefore the applicant has not produced any authority and therefore the application deserve to be dismissed
7. We have heard the Ld. Counsel for the petitioner and respondent and gone through the Report of RP and the documents available on records.
 8. On the basis of above facts and submissions it appears that the present application is filed within the period of limitation. Date of Default as mentioned in

the petition is 25.09.2018 and the present petition filed before this Tribunal on 23.07.2021. Therefore the present application is within the period of limitation.

9. The RP has recommended to initiate the Insolvency Resolution Process against the Personal Guarantor. The RP has submitted 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 document denying or disputing the invocation of his Personal Guarantee. There is no any evidence given by the respondent to show that he has paid the debt or his Personal Guarantee agreement is cancelled. The action initiated is within the period of limitation.

OBSERVATIONS

10. Present application is filed jointly by the Central Bank of India and the State Bank of India. The respondent is one of the Guarantor (IV) had executed a deed of guarantee in favour of Central Bank of India (one of the applicants) on 10th November 2012 in favour of both the applicant banks for sanction of credit facilities to the Corporate Debtor as per terms of the sanction letter dated 21.09.2012 and the deed of hypothecation of same date which as per para 11 is “irrevocable and enforceable against the guarantor notwithstanding any dispute between the lender and the borrower”. The date of default is stated as 25.09.2018 (as per recovery certificate) and there was another demand notice issued on 21.12.2020 on which the CORPORATE DEBTOR had not repaid the loan as per documents produced. There is an inter se agreement made on 11 March 2013 signed between the applicant banks and the CORPORATE DEBTOR which identifies the lead bank (central Bank of India) and also that any action for the enforcement of the said securities against the borrowers including that steps and actions to ensure compliance by the borrower with all the terms and conditions and stipulations in respect of said facilities, the repayment and payment obligations of the borrower or the guarantor/s to the said bank (para 8 of the agreement).
11. 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 treating the respondent, pass the following order in terms of Section 100 of IBC,2016.

12. The various judgments and of Hon'ble Supreme court in the matter of Dilip B Jiwrajka V/s Union of India and Others, upholding the provisions of IBC under Sec 94 to 100 which allows the creditors invoke the guarantee against personal guarantor as defined in Sec 5(22) of IBC and bring insolvency against such guarantors and this Tribunal has jurisdiction under Sec 60 (1) of the IBC to admit such application.
13. In view of the foregoing we are left with no other choice but to order as under: -
 - (i) Application is allowed.
 - (ii) The insolvency process is initiated against 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 admission of this application in terms of Section 101 of IBC,2016. During the moratorium period, the following provisions shall be in effect:
 - 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 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., Chirag R Shah, who has been appointed under section 97 vide order dated, 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 newspaper, one in English and other in Vernacular which have wide circulation in the state where the debtor resides. The Resolution

- (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) In terms of the above, **CP (IB)/188/(AHM)/2021** filed under Section 95 (1) of the IBC, 2016 is admitted and the Insolvency Resolution Process stands initiated against the Respondent/Personal Guarantor.

Sd/-

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

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)