

IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD

DIVISION BENCH

COURT - I

ITEM No.302

C.P.(IB)/205(AHM)2021

Proceedings under Section 94 IBC

IN THE MATTER OF:

Khodabhai Ghusabhai Thumar

.....Applicant

V/s

Premraj Ramratan Laddha Liquidator of Corporate Debtor

.....Respondent

Order delivered on 22/04/2024

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

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**SAMEER KAKAR
MEMBER (TECHNICAL)**

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**SHAMMI KHAN
MEMBER (JUDICIAL)**

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

CP/IB/205/AHM/2021

Filed under Section 94 of the Insolvency & Bankruptcy Code, 2016

*In the matter of **Mr. Khodabhai Ghusabhai Thumar***

Mr. Khodabhai Ghusabhai Thumar,
Personal Guarantor to Corporate Debtor
New Tech Forge And Foundry Ltd.
3th Floor, Subham Apartment,
4- Narmada Park Corner,
Vidyakunj Society Main Road,
Rajkot 360 005

... Personal Guarantor

Versus

1. Shri Premraj Ramratan Laddha

(Resolution Professional / Liquidator)
304, Abhijit-3, Above Pantaloon,
Mithakhali – Law garden Road,
Ellisbridge, Ahmedabad – 6

2. State Bank of India

Stressed Assets Management Branch
Paramsiddhi Complex, 2nd Floor, Opp. V.S. Hospital
Ellisbridge, Ahmedabad – 06

3. Oriental Bank Commerce (Now PNB)

Mangal Bhuvan, Yoginiketan Plot
Nirmal Convent School Road,
Rajkot -360 007

4. Corporation Bank

Nijanand, Dhebar Road,
P.B. No. 556
Rajkot – 360 002

5. State Bank of Hyderabad (Merged with State Bank of India)

Ashram Road Branch
Opp. A.U.D.A
Nagindas Chamber, Usmanpura Ashram Road,
Ahmedabad – 380 041

6. International Assest Reconstruction Company Pvt. Ltd.

A/508, 5th Floor, 2015 Atrium Kanakia Spaces
Andheri Kurla Road, Andheri (E)
Mumbai – 400 069

Order pronounced on 22.04.2024

CORAM:

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

For the IRP : Ms. Anjali Choksi, IRP in person

For the Applicant / PG : Mr. Rajesh Bohra, Advocate

For the FC/ SBI : Mr. Raju Kothari, Advocate.

For the other FCs : None

ORDER **Per: Bench**

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 Bankruptcy Process for Personal Guarantors to Corporate Debtor) Rules, 2019 to initiate the Insolvency Resolution Process (hereinafter referred to as "IR Process") against the Applicant/Debtor who is the Personal Guarantor of M/s. New Tech Forge and Foundry Ltd. for a default amount of Rs.17,374.26 Lakh in relation to the credit facility extended by the Banks namely the State Bank of India, Oriental Bank of Commerce, State Bank of Hyderabad (now merged with SBI), HDFC (Loan assigned to International Asset Reconstruction Company Pvt Ltd.

2. **The facts of the Case are as follows: -**

The Applicant Personal Guarantor had given a personal guarantee in respect of credit facility by the following consortium of banks in favour of the Corporate Debtor, the details are as under:

Corporate Debtor - New Tech Forge and Foundry Limited

I) State Bank of India

The Applicant Personal Guarantor had given personal guarantee in respect of credit facility amounting to Rs.

68,00,00,000 extended to New Tech Forge and Foundry Limited, having Registered Office at 207, Ajanta Commercial Complex, Opp. Bombay Hotel, Gondal Road, Rajkot-360002, by State Bank of India- Commercial Branch, Ahmedabad, on 14.12.2004.

II) Oriental Bank of Commerce

The Applicant Personal Guarantor had given personal guarantee in respect of credit facility amounting to Rs. 34,00,00,000 extended to New Tech Forge and Foundry Limited, by Oriental Bank of Commerce Nirmala Convent School Branch, Rajkot, on 08.01.2005.

III) Corporation Bank

The Applicant Personal Guarantor had given personal guarantee in respect of credit facility amounting to Rs. 34,00,00,000 extended to New Tech Forge and Foundry Limited, by Corporate Bank – Nijanand Dhebar Road Branch, Rajkot, on 22.01.2005.

IV) State Bank of Hyderabad (Now Merged with SBI)

The Applicant Personal Guarantor had given personal guarantee in respect of credit facility amounting to Rs.

24,25,00,000 extended to New Tech Forge and Foundry Limited, by State Bank of Hyderabad (now merged with SBI)-Ashram Road Branch, Ahmedabad, on 31.12.2007.

V) International Asset Reconstruction Company Pvt Ltd

The Applicant Personal Guarantor had given personal guarantee in respect of credit facility amounting to Rs. 25,00,00,000 extended to New Tech Forge and Foundry Limited, by HDFC Bank (later assigned to International Asset Reconstruction Company Pt Ltd) on 17.08.2007.

VI) The Financial assistance given by the consortium was secured by personal guarantees of 1) Mr. Rasikbhai Ghusabhai Patel 2) Mr. Gordhanbhai Ghusabhai Patel 3) Mr. Mukesh Khodabhai Patel 4) Ms. Vijayben Rasikbhai Patel 5) Mr. Khodabhai Ghusabhai Patel 6) Mr. Manojbhai Khodabhai Patel and corporate guarantees of 1) New Tech Fitting Pvt Ltd and 2) Micro Forge (India) Ltd.

The debt was also secured by hypothecation of asset. Annexure 5 on Page No. 26-28 of **FORM A** contains Details of Financial Creditors and Page No. 21 of **FORM A** contains Particulars of hypothecated assets.

VII) The Corporate Debtor (CD) defaulted in repayment of dues; accordingly, the debt was classified as Non-Performing Asset by the consortium led by SBI and a Demand Notice dated 30.11.2009 was issued u/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, calling upon the borrower to repay the amount mentioned in the notice i.e., Rs. 68,69,61,234.86 plus interest and other incidental charges. Page No. 18 of **FORM A** contains Proof of Invocation of Guarantee.

VIII) On 11.05.2017, Corporate Debtor-New Tech Forge and Foundry Limited filed an application before this Adjudicating Authority (herein after referred to as AA) to initiate CIRP against it under section 10 of Code, and the same was admitted by this AA vide its order dated 25.09.2017. Thereafter, the Liquidation order of New Tech Forge & Foundry Ltd., was passed by this AA on 12.12.2017, and this AA further passed an order for dissolution of the Corporate Debtor on 18.12.2019.

3. On presentation of the application by the Applicant/Debtor, this Authority vide order dated 17.11.2021 has appointed the Resolution Professional viz., Mrs. Anjali Nirav Choksi, having Registration No. IBBI/IPA-001/IP-P00165/2017-18/10334 & directed RP to file a report under Section 99 of Insolvency and Bankruptcy Code, 2016, which has been filed by IRP through an Affidavit filed on 29.12.2021 under Diary No. D-0124 recommending the admission of the application filed under section 94 of IBC, 2016. The RP recorded in the report that:

“The RP recommends the admission of the application filed u/s 94 of the IBC, 2016 it satisfies all the conditions mentioned thereto”.

4. It is further stated that the Applicant has placed on record the Notice u/s 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Act, 2002 in the petition Dated 30.11.2009, given by the State Bank of India.

5. The Applicant filed an additional affidavit of service on 04.04.2024, vide inward diary No. D-2856, in compliance with the order dated 12.03.2024.

6. That the Learned Counsel for the FC/SBI, Mr. Raju Kothari, submitted in the hearing that they have no objection if the petition is allowed by this Tribunal for passing an order under Section 100 of the IBC, 2016 and the same was recorded Vide order dated, 08.04.2024. However, despite serve no other Financial Creditor appeared or filed any reply/objection in the matter.
7. The Hon'ble Supreme Court dated 09.11.2023, has passed certain orders addressing the virus of Section 94, 95, 97 and 100 of the IBC, 2016, pursuant to that orders this Adjudicating Authority directed the Applicant to file a copy of the order of the Hon'ble Supreme Court.
8. As directed by this Adjudicating Authority the Applicant has filed a copy of the Hon'ble Supreme Court order on 08.12.2023, vide inward diary No. D-4842 in the matter of ***Dilip B Jiwarajka Vs. Union of India & Ors.***, in Writ Petition (Civil) No. 1281 of 2021. The same is taken on record.

9. It is also seen from the interim order dated 12.03.2024, that the report of the IRP itself is not complete qua the conclusion mentioned therein.
10. The Applicant has filed an additional affidavit on 04.04.2024, vide inward Diary No. D-2856, to place on record the following documents which is reproduced as under:
1. A copy of Deed of Guarantee dated 23.12.2004 of Micro Forge (India) Ltd.
 2. A Copy of Deed of Guarantee New Tech Forge and Foundry Ltd.
 3. Copy of Demand Notice dated 09.07.2019 issued by Recovery Officer, DRT-II Ahmedabad in RC No.216/2016 to establish factum of invocation of Guarantee against the Applicant.
11. We have heard the learned Counsel for both parties and perused the documents on record. We have also gone through the report dated 29.12.2021 filed by the IRP.

12. 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.”

13. 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.

14. 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.

15. From the report of IRP, it is clear to us that:

- i. IRP has recommended accepting the application for the reason as stated in the report dated 29.12.2021.
- ii. Demand Notice dated 09.07.2019 issued by Recovery Officer, DRT-II Ahmedabad in RC No.216/2016, is invocation of Guarantee against the Applicant/Personal Guarantor.
- iii. It is stated in the report that the Applicant is eligible under Section 94(4) of the IBC, 2016.
- iv. It is stated in the said report that all the documents required under Rule 6 along with the Form-A of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor.
- v. Further, Demand Notice dated 09.07.2019 issued by Recovery Officer, DRT-II Ahmedabad in RC No.216/2016 invoking guarantee and the filing of the application was on 11.10.2021, which is under the period of limitation.

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

- I. 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, of 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. Anjali Nirav Choksi, having Registration No. IBBI/IPA-001/IP-P00165/2017-18/10334, office at DJNV & Co., 2nd Floor, H.N. House, Opposite Muktajivan Colour Lab, Stadium Circle, Navarangpura, Ahmedabad, Gujarat, 380009 who was

appointed when the Section 97 application was allowed vide Order dated 17.11.2021, 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 situated/resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.

IV. 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 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. 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.
- VI. 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.
- 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 provides under the provisions of Section 107 of 1BC, 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.

17. In terms of the above, **CP(IB)/205(AHM)/2021** filed under Section 94 (1) of the IBC, 2016 is admitted and the Insolvency Resolution Process stands initiated against the Applicant/Personal Guarantor.

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SAMEER KAKAR
MEMBER (TECHNICAL)

Vinit Patel/ Steno

SHAMMI KHAN
MEMBER (JUDICIAL)