

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**COURT - 2**

ITEM No.301  
C.P.(IB)/11(AHM)2022

**Order under Section 95 IBC**

**IN THE MATTER OF:**

State Bank of India

.....Applicant

V/s

Sunil Surendra Kakkad

.....Respondent

**Order delivered on: 22/04/2024**

**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 the order. The order is pronounced in the 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)**

**CP(IB) No. 11 / NCLT / AHM / 2022**

(Filed under Section 95(1) of the Insolvency & Bankruptcy Code, 2016)

State Bank of India  
Stressed Assets Management Branch,  
Paramsiddhi Complex, 2<sup>nd</sup> Floor,  
Ellis Bridge, Ahmedabad-380006, Gujarat

... Financial Creditor

Versus

Shri Sunil Surendra Kakkad  
12/12A and 19,  
Ashwaraj Bunglows,  
Near Prahladnagar Auda Garden,  
Vejalpur, Ahmedabad-380051

... Personal Guarantor

**Order pronounced on 22.04.2024**

**Coram:**

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

**DR. V. G. VENKATA CHALAPATHY  
HON'BLE MEMBER (TECHNICAL)**

**Present:**

For the Applicant : Ms. Aishwarya Reddy, Adv. a/w Mr. Nisarg  
Bhardwaj

For the Respondent : Ms. Ina Jagad, Adv. for Mr. Mohit Gupta, Adv.

**JUDGEMENT**

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 Debtors) Rules, 2019 to initiate Insolvency Resolution Process against Shri Sunil Surendra Kakkad, the Personal Guarantor of the Corporate Debtor namely Sai Infosystem (India) Limited for default of an amount of Rs. 982,68,18,842.15/-
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 the Corporate Debtor and executed the bank's standard loan documents. The amount due to the Corporate Debtor was 982,68,18,842.15/- and date of default 24.12.2018. The Corporate Debtor was brought under CIRP under section 7 of the IBC vide order dated 30.11.2017 and presently under liquidation since 22.08.2019. 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 11.03.2013 between the applicant and the Guarantor. A demand notice under Rule 7 was issued on 18.09.2021.
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 18.09.2021 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. This Tribunal has appointed Mr. Sunil Kumar Kedia bearing registration No. IBBI/IPA-001/IP-P00028/2016-2017/10064 as resolution professional. Accordingly, he has file report on 09.05.2022.
  
5. On perusal of the report of RP, it is observed that he has examined various documents including deed of guarantee, DRT-I, Order in OA No. 440 of 2014, Statement of Account, Demand notice etc. RP has sent notice on 08.04.2022 through E-mail as well as 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 dated 08.04.2022 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 this notice. RP had neither received any document whereby the Personal Guarantee agreement dated 11.03.2013 was cancelled by both the parties nor received any order of court or any other forum whereby the personal guarantee agreement dated 11.03.2013 was cancelled or set aside. RP has also asked the financial creditor to provide latest statement of accounts. The financial creditor provided the same, the

statements also shows that no payment received either from the corporate debtor or from the personal guarantor. Therefore, RP recommended to admit the present petition.

6. The respondent/ Personal Guarantor filed an affidavit in reply dated 07.06.2022 and states that “The respondent herein does not oppose the admission of the present application under section 95 of IBC.” Respondent herein has admitted his liability and not opposed the petition if it is admitted.
7. 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 24.12.2018 and the present petition E-filed before this Tribunal on 15.12.2021.
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 document 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. 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) Application 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. Sunil Kumar Kedia, who has been appointed under Section 97 vide order dated 02.03.2022, 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, CP(IB) 11 of 2022 is disposed off.

-Sd-

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

-Sd-

**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**