

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

Item No.237 – IA/1460(AHM) 2023
In
CP(IB)/255(AHM)2022

Proceedings under Section 95 IBC

IN THE MATTER OF:

State Bank of India

.....Applicant

V/s

Keyurbhai Maganlal Likhya

.....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 RP / Applicant

: Mr. Sumit Parikh, Adv.

For the State Bank of India

: Ms. M A Gogia, Adv.

For the Personal Guarantor

: None

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 State Bank of India (hereinafter referred to as "Financial Creditor") for the purpose of initiating insolvency resolution process against Mr. Keyurbhai Maganlal Likhya (hereinafter referred to as Personal Guarantor) for default amount of Rs. 48,06,96,870.94 /-.The Respondent personal guarantor stood as guarantor in respect of certain facilities granted by way of Cash Credit, Term Loans and Bank Guarantee to M/s Pluton Trading Private Limited in respect

of the Deed of Guarantee dated 24.05.2017 and also signed an undertaking for personal guarantee as on the same date. The date of default as per the application was 3rd April 2018 and the applicant issued a legal demand notice on 26.03.2018. Further, the counsel of the applicant did not confirm as to whether any CIRP proceedings were initiated or under process against the CORPORATE DEBTOR before the Tribunal which is not also found as per records. Further, the applicant issued a notice under the SARFAESI Act on 21.07.2018 to the CORPORATE DEBTOR and the guarantors and the DRT passed an order against an Original Application bearing no. 999 of 2018 before Debt Recovery Tribunal II, Ahmedabad for recovery of dues and an Interim Order is passed on 18.10.2019 by the Debt Recovery Tribunal II, Ahmedabad. The orders issued a recovery certificate and directed defendants No.1 to 5 restraining them from depleting, transferring, encumbering, alienating or in any way dealing with their properties/assets without first paying the claim of the Applicant Bank.

2. Due to non-payment of the outstanding dues by the corporate debtor, the Financial Creditor has filed this application for initiation of the Insolvency Resolution Process against the guarantor under section 95 of IBC, 2016 and the date of default is mentioned in the application is 03.04.2018. The applicant issued a demand notice in Form -B dated 06.10.2021 to the respondent under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtors) Rule, 2019. The Demand notice was delivered to the respondent and the proof of service is attached to the application.

3. On presentation of the application by the Applicant/Financial Creditor, this Tribunal vide an order dated 04.12.2023 appointed Mr. TrupalKumar Patel bearing registration no. IBBI/IPA-001/IP-P01186/2018-19/11907 as resolution professional to carry out the Insolvency Resolution Process of the personal guarantor as per section 97(3) of IBC, 2016. Accordingly, the RP has filed a report on 15.12.2023 with observations.
4. It is submitted that, as provided in Section 99(6)(b) of IBC 2016, the applicant has provided information and given the explanation sought u/s 99(4). The applicant has evidenced that the balance outstanding of Rs 48,06,96,870.94/- as of 31st August 2022 as per Form C and no repayment was received from the Keyurbhai Maganlal Likhiya, Personal Guarantor after issue of Demand Notice in Form – B.
5. RP also sent an email and a letter to the Personal Guarantor Mr. Keyurbhai Maganlal Likhiya S/o Maganlal Likhiya on 11th December 2023 requesting to provide the proof for repayment of dues as provided u/s 99(2) of IBC 2016 and no reply received as on date of the report.
6. The RP in view of the reasons recorded in para 3,4 & 5 of this report, recommended the acceptance of the present application filed u/s 95(1) of the IBC 2016 by the Creditor to initiate the Insolvency Resolution Process against Personal Guarantor Mr. Keyurbhai Maganlal Likhiya of the Corporate Debtor M/s Pluton Trading Private Limited and the Adjudicating Authority may appropriate order u/s 100 of IBC, 2016 for admission of the application.
7. Heard the RP and the counsel for the applicant. No reply has been received from the respondents in the matter. This application is filed within the period of limitation stipulated under Sec 238 A of

the IBC 2016. The financial creditors have their right to proceed against the personal guarantors in view of the fact that the Corporate Debtor has not repaid the dues and the recovery certificate of DRT has not been complied with.

8. The judgement of the Hon'ble Supreme Court in the matter of Dilip B Jiwrajka Vs. Union of India and Ors, upholding the provisions of IBC under Sec 94 to 100 which allows the creditors to 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.
9. Accordingly, based on the report of Resolution Professional submitted under Section 99 the applicant satisfies the provisions of Section 95 of IBC 2016 and by treating the respondents having no say in the matter, who were given various opportunities by the RP and the tribunal, we pass the following orders in terms of Section 100 of IBC, 2016:
 - (i) Application is allowed.
 - (ii) The insolvency process is initiated against the respondent Personal Guarantor Mr. Keyurbhai Maganlal Likhiya. 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., Mr. Trupalkumar Patel, 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 a newspaper, one in English and the other in Vernacular which has 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 to the premises of this Authority.
- (iv) The Resolution Professional in the exercise of the power conferred under Section 104 shall prepare a list of creditors within 30 days from the date of the notice. The Debtor shall prepare a payment 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 the 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 list prepared) shall be issued by all relevant/feasible modes. Such notice contains the details as provided under the provisions of Section 107.

- (vi) The meeting of the creditors shall be conducted in accordance with sections 108, 109, 110 & 111. The Resolution Professional shall prepare a report of the meeting of the creditors on the 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)/255/(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
- (ix) The IA is disposed off.

Sd/-

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

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)