

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.301
C.P.(IB)/79(AHM)2021

Order under Section 95 IBC

IN THE MATTER OF:

State Bank of India

.....Applicant

V/s

Sushil Kanodia

.....Respondent

Order delivered on: 24/04/2024

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. 79 / NCLT / AHM / 2021

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

State Bank of India
State Bank Bhavan,
Madame Cama Road,
Nariman Point, Mumbai-400021

Also at
State Bank of India
Stressed Assets Management Branch-1,
2nd Floor, The Arcade,
World Trade Centre,
Cuffe Parade,
Maharashtra-400005

... Financial Creditor

Versus

Mr. Sushil Kanodia
4, Sonabar, Plot No-13,
Ashok Nagar CHSL, NS Road No.10,
JVPD Scheme Juhu,
Vileparle (West), Mumbai-400049

... Personal Guarantor

Order pronounced on 24.04.2024

Coram:
MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)

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

Present:

For the Applicant : Mr. Vishal Raval, Adv.

JUDGEMENT

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. Sushil Kanodia (hereinafter referred to as Personal Guarantor) for default amount of Rs.633,52,57,131/- 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 19.09.2015.
2. The total debt (including any interest or penalties) is Rs.18,54,00,57,143/- and date of default mentioned is 25.01.2018. The applicant filed an original application bearing OA No. 185 of 2018 before Debt Recovery Tribunal II, Ahmedabad for recovery of dues. The stated appeal was disposed off. Thereafter, Company Petition bearing No. CP(IB) 350/NCLT/AHM/2019 filed by the applicant under Section 7 against Raj Rayon Industries Limited and same was admitted by this Hon'ble National Company Law Tribunal, Ahmedabad vide order dated 23.01.2020.

3. It is stated in the petition that the corporate debtor entered into Sixth Supplemental Joint Deed of Hypothecation in favour of the applicant (SBI & its subsidiary banks who have now been merged with applicant) for an amount of Rs. 292 crores along with interest due and payable. Further, applicant entered into seventh supplemental working capital consortium agreement dated 25.07.2014 with the corporate debtor.
4. In the year of 2018 applicant filed an Original Application bearing No. 185 of 2018 before Debt Recovery Tribunal, Ahmedabad. Further, in the year of 2019 applicant filed petition bearing CP(IB) 350 of 2019 under section 7 of the IBC before this Tribunal which came to be admitted on 23.01.2020.
5. 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. As per the Applicant, the personal guarantee was invoked vide notice dated 18.01.2018, Applicant issued demand notice to the respondent on 08.03.2021 under Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtors) Rules, 2019.
6. Vide order dated 19.07.2021 the Resolution Professional, as suggested by the financial creditor, Ms. Vineeta Maheshwari bearing Registration No. IBBI/IPA-001/IP-P00185/2017-18/10364 appointed

as Resolution Professional to carry out Insolvency Resolution Process of the Personal Guarantor as per Section 97(3) of the IBC, 2016.

7. Accordingly, the Resolution Professional has filed the report dated 25.08.2021 recommending the admission of the application filed under Section 95 of IBC, 2016. The Report of RP states that the RP had not received any evidence of repayment of the debt claimed in Sec.95 petition from Mr. Sushil Kanodia. Further, Vide notice dated 27.07.2021, RP communicated to the personal guarantor for any evidence of proof of payment of the debt claimed as unpaid by the creditor, RP has not received any such proof from the personal guarantor with respect to this notice. RP had neither received any document whereby the Personal Guarantee agreement dated 19.09.2015 was cancelled by both the parties nor received any order of court or any other forum whereby the personal guarantee agreement dated 19.09.2015 was cancelled or set aside.
8. The copy of the present application and the Report of RP was duly served upon the Personal Guarantor but the PG has chosen not to file any reply either to the application or the report of the RP. Even though, the applicant stated that there was a reply dated 25.03.2021, a copy was not closed.
9. 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 25.01.2018 and the present petition E-filed before this Tribunal on 23.04.2021.

10. 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. There has been no reply filed by the respondent Personal Guarantor in the matter.
11. We have heard the applicant, submissions and the report of RP. The respondent did not appear in the matter even when opportunity was granted. The application is allowed.
12. 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., Ms. Vineeta Maheshwari, who has been appointed under Section 97 vide order dated 19.07.2021, 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) 79 of 2021 is disposed off.

-Sd-

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

-Sd-

CHITRA HANKARE
MEMBER (JUDICIAL)