

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – III

C.P. No. 1060 of 2022

Under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2019

In the matter of

State Bank of India through the Resolution Professional,
Mr. K. Easwara Pillai
Having its branch office at: 52 M R Square, D H Road,
Kochi- 682016

.....Petitioner/Financial Creditor

V/s.

Mr. Sudheer Kumar M Akkarakaran

(Personal Guarantor of M/s. Goodwin Jewellers Pvt. Ltd)
Having Present address at: - Flat No. 1-101, Ankit CHS Ltd.,
Opp. Kasturi Plaza, Manpada Road, Dombivli East, District
Thane - 421201

.....Respondent/Personal Guarantor

Order pronounced on: **05.06.2024**

CORAM:

SHRI CHARANJEET SINGH GULATI
HON'BLE MEMBER (T)

SMT LAKSHMI GURUNG
HON'BLE MEMBER (J)

Appearances:

For the Petitioner : Adv. Dhananjaya Sud
For the Personal Guarantor : None appeared

Per: - Shri Charanjeet Singh Gulati Member (T)

ORDER

1. The Present Company Petition has been filed under section 95 of Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) by **State Bank of India (Petitioner/Financial Creditor)** for initiating Insolvency Resolution Process against **Mr. Sudheer Kumar M Akkarakaran (“Respondent/Personal Guarantor”)**.
2. The Petitioner had sanctioned credit facilities INR 34,17,92,678.45 to M/s. Goodwin Jewellers Pvt. Ltd (hereinafter referred to **“Corporate Debtor”**) for which various security documents were entered into by Goodwin and the personal guarantors.
3. The guarantee agreement executed on 05.10.2016 and duly signed by the Personal Guarantor has been annexed to the Petition as exhibit-E.
4. Around September 2019 Corporate Debtor’s account became NPA and consequently Loan Recall Notice and Notice Invoking the Guarantees were issued to Corporate Debtor and its personal guarantors. On 20.12.2019, Corporate Debtor was admitted into CIRP.
5. The Petitioner had issued notice dated 30.10.2019 to the Respondent under section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) demanding repayment of entire loan amount to the tune of Rs. 25,99,13,072/-.
6. The Petitioner also issued a Demand Notice in Form B dated 20.07.2021 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 to the Respondent to pay dues of the Corporate Debtor amounting to Rs. 34,17,92,678.45 within Fourteen days from the date of the receipt of demand notice. Despite the

receipt of the demand notice, the Respondent has failed to pay the amount.

7. From the tracking report it can be seen that the copy of the petition has been served on the Personal Guarantor on 18.01.2022.
8. In view of the aforesaid, the present application has been filed for appointment of Resolution Professional under section 95 of IBC.
9. The Hon'ble Supreme Court in ***Dilip B Jiwrajka Vs. Union of India & Ors. Writ Petition (Civil) No. 1281 of 2021*** decided on 09.11.2023 held as follows:-

Quote

- i. No judicial adjudication is involved at the stages envisaged in Section 95 to Section 99 of the IBC;*
- ii. The Resolution Professional appointed under Section 97 serves a facilitative role of collating all the facts relevant to the examination of the application for the commencement of the insolvency resolution process which has been preferred under Section 94 or Section 95. The report to be submitted to the Adjudicating Authority is recommendatory in nature on whether to accept or reject the application.*

Unquote

10. The Petition for initiating insolvency resolution process against Personal Guarantor to the Corporate Debtor is complete in all respect. The Petitioner has proposed the name of the Insolvency Professional, Mr. K Easwara Pillai, having IBBI Registration No. IBBI/IPA-001/IP-P00448/2017-18/10791 for appointment as Resolution Professional who has given written consent dated 09.10.2022 to act as Resolution Professional. The AFA valid upto 04.10.2024 has been submitted.

11. Accordingly, we appoint **Mr. K Easwara Pillai**, Registration No. IBBI/IPA-001/IP-P00448/2017-18/10791 as Resolution Professional (**“RP”**).
12. The fee payable to Resolution Professional (RP) shall be in accordance with the Insolvency and Bankruptcy Board of India (IBBI) Regulations/Circulars/ Directions issued in this regard.
13. This Bench also directs for an advance payment of Rs.1,00,000/- (Rupees One Lakh only) to be paid by the Financial Creditor to the Resolution Professional (RP) immediately to initiate the process which shall be adjusted towards the fee and expenses payable to the Resolution Professional (RP).
14. The Resolution Professional is directed to examine the application as set out in Section 97(6) of IBC, 2016 who after examining, shall submit his report as provided under Section 99(1) of IBC, 2016, **within 10 days** of receipt of this order.
15. Further, the Registry is hereby directed to communicate this order to both the parties and to RP immediately. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record. The Petitioner is also directed to forthwith communicate this order to the Resolution Professional.
16. List the matter as and when the IA in respect of Report of RP is listed.

Sd/-

CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)

---Rajeev---

Sd/-

LAKSHMI GURUNG
(MEMBER JUDICIAL)