

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - IV**

C.P. (IB) No. 278/MB/2022

Under Section **95(1)** of the Insolvency & Bankruptcy Code, 2016 *r/w* Rule **7(2)** of the Insolvency and Bankruptcy (Application to the Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), Rules, 2019.

In the matter of

State Bank of India

...Financial Creditor

Versus

Mr. Vipin Shersingh Agarwal

...Personal Guarantor

Order Pronounced On: **17.04.2024**

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor

Mr. Kunal Kanungo *a/w* Ms. Tanushree Sogani and Mr. Atishay Jain, Ld. Counsel for the Petitioner.

For the Resolution Professional

Mr. Suraj Chaudhary, Ld. Counsel for the Resolution Professional.

For the Personal Guarantor

Mr. Aniruth Purusothaman *a/w* Mr. Aditya Sharma, Ld. Counsel for the Respondent.

ORDER

1. The present petition is filed on 02.03.2022 u/s. 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") r/w. Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 by **State Bank of India** ("Applicant") for the purpose of initiating insolvency resolution process against **Mr. Vipin Shersingh Agarwal** ("Personal Guarantor / Respondent") for recovery of total debt amounting to INR 179,06,57,146/- (Indian Rupees One hundred and seventy-nine crores, six lakhs, fifty-seven thousand, one hundred and forty-six only) as on 30.11.2021. The Date of Default, per Part-III of the petition, is 31.01.2017.
2. The Financial Creditor herein submits that one **Vistar Metal Industries Private Limited** ("Corporate Debtor") was sanctioned multiple working capital facilities between 2012 to 2014, *vide* six Sanction Letter(s) by a Consortium of Bank which was led by the Applicant Bank herein. Pursuant thereto, the Corporate Debtor executed two Working Capital Consortium Agreements in respect of the afore-mentioned working capital facilities *dated* 19.01.2023 and 17.12.2014, subject to the terms and conditions contained thereto. As against the said facilities, various security documents were executed in favour of the said consortium for securing the afore-mentioned financial facilities availed by the Corporate Debtor.
3. The Personal Guarantor *viz.* Respondent herein was one of the three executors of the Personal Guarantee *dated* 17.12.2014 as against the afore-stated financial facilities, thereby guaranteeing the debt arising under the same. Due to non-payment of amounts due under the same, the loan account of the Corporate Debtor was classified as 'NPA' on 27.01.2016. Pursuant to the same, the Financial Creditor issued a Legal Notice to the Corporate Debtor and its Guarantors (including the Respondent herein) *dated*

16.01.2017. On account of inaction with regards to the same, the Consortium sought to file an Original Application before the Debt Recovery Tribunal (Mumbai) against the Corporate Debtor and its guarantors. The same is admittedly pending adjudication.

4. The Financial Creditor submits that a Company Petition bearing C.P. (IB) 1331/MB/2017 was filed *u/s.* 7 of the IBC, 2016, and this Tribunal was thereby pleased to initiate Corporate Insolvency Resolution Process (“CIRP”) as against the Corporate Debtor herein *vide* Order *dated* 14.10.2019. Subsequently, the Financial Creditor issued a Demand Notice *dated* 09.09.2021 to the Personal Guarantor herein, in Form-B under Rule 7(1) of the Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, demanding forthwith payments of its dues within fourteen days. However, the Personal Guarantor, per the Financial Creditor herein, has failed to act thereupon. Hence, the present petition.
5. We have taken note of the averments raised by the Personal Guarantor *viz.* Respondent herein *via* its Affidavit(s)-in-Reply *dated* 27.01.2023 and 14.02.2023, along-with the Rejoinder filed in relation to the same by the Applicant herein *dated* 31.07.2023. On the aspect of limitation, we find that the Demand Notice *dated* 09.09.2021 was duly served to the Personal Guarantor herein, and the petition has thus been filed well-within the limitation period as mandated under law. Additionally, the Legal Notice to the Corporate Debtor and its Guarantors (including the Respondent herein) *dated* 16.01.2017, has been duly addressed and properly serviced to the Personal Guarantor and the same constitutes valid invocation in relation to the Guarantee *dated* 17.12.2014. Further, the outstanding ‘debt’ meets the threshold requirement as mandated under the Code.
6. We note that this Bench had appointed the **Mr. Birendra Kumar Agrawal**, Insolvency Resolution Professional (“RP”) *vide* Order *dated* 09.03.2022 in the captioned petition and had thereby directed the Applicant to prepare and file

a Report *u/s.* 99 of the IBC, 2016. The RP *via* his Report *dated* 06.04.2022, after due examination of the application, and the requirements as mandated under clauses (1) to (10) of Section 99 of the IBC, 2016, has recommended initiation of Insolvency Resolution Process in respect of Mr. Vipin Shersingh Agarwal *viz.* the Personal Guarantor herein.

7. The proceedings in the present matter were put on hold since the constitutional validity of the Sections 94 to 100 of IBC, 2016, relating to the insolvency of personal guarantor was pending before the Hon'ble Supreme Court in the matter of *Dilip B. Jiwrajka V/s Union of India & Ors. [WP (Civil) No. 1281 of 2021]*.
8. We are of thus of the considered view that the captioned petition is complete is all aspects, and the present case is fit for admission. Ordered accordingly.

ORDER

9. In terms of the above, the captioned petition bearing C.P. (IB) No. 278/MB/2022 filed under Section 95 of the IBC, 2016 is hereby **Admitted** and the Insolvency Resolution Process stands initiated against Mr. Vipin Shersingh Agarwal *viz.* the Respondent herein.

We hereby direct as hereinafter:

- I. Initiate Insolvency Resolution Process against the Respondent/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 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 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.

II. The Resolution Professional *viz.* **Mr. Birendra Kumar Agrawal**, Insolvency Resolution Professional, with Registration No. IBBI/IPA-001/IP-P00564/2017-2018/11040, having address at 402, Corporate Annexe, Sonawala Lane Near Udyog Bhavan, Goregaon East, Mumbai City, Maharashtra-400063 [E-Mail: bk@bhamaconsulting.com | Mob: 9769379944] 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 Mumbai 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 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. 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, business or trade on his behalf or in his name:
or
- b.* realize the assets of the debtor; or
- c.* administers or dispose of any funds of the debtor.

The repayment plan shall include the following, namely;

- a.* justification for preparation of such repayment plan and reasons based on which the creditors may agree upon the plan;
- b.* provision for payment of fee to the Resolution Professional;
- c.* such other matters as may be specified.

V. 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.

VI. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons thereof. 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 days 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 provided

under the provisions of Section 107 of IBC, 2016.

- VII.** 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.
- VIII.** The Resolution Professional shall submit his periodic reports before this Tribunal, every 30 days.
- IX.** The Applicant is directed to deposit **INR 2,00,000/-** (Indian Rupees Two lakhs) to the bank account of the Resolution Professional within one week, towards his fees. This shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.
- X.** The Registry is directed to communicate a copy of order, report and application within seven working days and upload the same on the website immediately after the pronouncement of order.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
17.04.2024

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)