

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AT MUMBAI BENCH, C-IV**

IA 808/MB/2024

IN

CP (IB) NO. 55/MB/2023

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 /Applicant

Versus

Mrs. Ritu Anand Agarwal

... Personal Guarantor/Respondent.

Order delivered on: 29.04.2024.

Coram:

Ms. Anu Jagmohan Singh

Mr. Kishore Vemulapalli

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances:

For the Petitioner:

Ms. Ruchita Jain, Ld. Counsel.

For the Personal Guarantor:

Mr. Mayank Bagla, Ld. Counsel.

ORDER

1. The present petition is filed on 24.01.2023 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 ("Financial Creditor / Applicant") for the purpose of initiating insolvency resolution process against Mrs. Ritu Anand Agarwal ("Personal Guarantor / Respondent") for recovery of debt amounting to INR 273,28,37,727.21/- (Indian Rupees Two hundred seventy-three crores, twenty-eight lakhs, thirty-seven thousand, seven hundred twenty-seven and Paise twenty-one only) as on 30.09.2022. The Date of Default, as specified in Part-III of the present petition, is 08.11.2017. The Corporate Debtor was brought under CIRP under Section 7 of the IBC vide order dated 31.03.2022.
2. The Financial Creditor herein submits that M/s. Aaj Ka Anand Papers Ltd. ("Corporate Debtor") was sanctioned cash credit, term loan and corporate loan for an amount of INR 15.72 Crores on 01.01.2005. The said facility was renewed and enhanced from time to time. Pursuant to which, the Personal Guarantor viz. Respondent herein was one of the executors of the Deed of Guarantee dated 14.01.2005 and for two subsequent Supplemental Deeds of Guarantee dated 02.03.2006 and 14.07.2006. Consequent to the said loan account being classified as 'NPA'.

3. The Financial Creditor issued a 13(2) Notice dated 08.09.2017 under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 against Corporate Debtor and Personal Guarantors to recall the outstanding debt within 60 days from the date of this notice. The Financial Creditor issued a 13(4) Notice dated 29.08.2018 under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 against Corporate Debtor and Personal Guarantor regarding taking possession of properties. Further, the Financial Creditor herein took recourse under Debt Recovery Tribunal, Pune.
4. Subsequent to a Compromise Proposal dated 27.12.2021 floated by the Corporate Debtor and its failure thereof, the Financial Creditor viz. Applicant herein issued a Demand Notice dated 09.11.2022 in Form-B, to the Personal Guarantors including the Respondent herein demanding forthwith payments of its dues. However, the Personal Guarantor, per the Financial Creditor herein, has failed to act thereupon. Hence, the present petition.
5. We note that this Bench had appointed Mr. Anurag Kumar Sinha, Insolvency Resolution Professional (“RP”) vide Order dated 15.05.2023 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 17.08.2023, after due examination of the application, documents filed along with the application, in addition to the requirements as mandated under clauses (1) to (10) of Section 99 of the IBC, 2016, has recommended the “

the present application filed under section 95(1) of the Code filed by creditor SBI be admitted under section 100 of the Code and Insolvency Resolution Process be commenced against the personal guarantor, Ms Ritu S. Agarwal.”

Findings

6. After due perusal of records, we note that this bench vide order dated 16.08.2023 had duly taken the Report filed by the RP on record, and had subsequently directed the Personal Guarantor to file reply within 2 weeks. The matter was listed on 12.09.2023, the Respondent herein, sought time to file reply, and time was granted. The captioned matter was further listed on 02.02.2024, whereby, final opportunity was granted to the respondent to file reply within one week. We however note, that despite multiple opportunities granted to the Respondent herein, no reply was filed. Resultantly, the right to file reply was forfeited on 01.03.2024. Be that as it may, in the interest of principles of natural justice both parties were permitted to file submissions through Additional Affidavit. The same have been taken on record.
7. In furtherance of the accommodation granted by this Bench, the Personal Guarantor/Respondent herein sought to file an Application bearing IA No. 808/2024 dated 01.02.2024, whereby the prayers sought are extracted herein-under: -
 - a) *That the Hon'ble Adjudicating Authority be pleased to allow the*

present IA.

- b) That this Hon'ble Adjudicating Authority be pleased to recall and/or set aside the order dated 16th August, 2023 allowing the Interlocutory Application No. 3550 of 2023 (Exhibit D) and allow the present Applicant to file its Reply to the Interlocutory Application and accord an opportunity to represent itself before this Authority;*
- c) That this Hon'ble Adjudicating Authority be pleased to reject the Report dated 25th July, 2023 submitted by the Respondent No.1 under Section 99(1) read with Section 99(7) of the Insolvency and Bankruptcy Code, 2016 as being not in consonance with Section 95-100 of the IB Code;*
- d) That this Hon'ble Adjudicating Authority be pleased to direct the Respondents to serve upon the present Applicant a copy of the Interlocutory Application No. 3550 of 2023;*
- e) That the Hon'ble Adjudicating Authority be pleased to direct the Respondent No.1 to allow the present Applicant an opportunity to provide relevant details and thereafter prepare a report and submit before this Adjudicating Authority;*
- f) That the Hon'ble Adjudicating Authority be pleased to direct the Respondent No.1 to prepare a report in accordance with the provisions of Insolvency and Bankruptcy Code, 2016, including Section 99 of the said Code;*

g) For such other and further reliefs, that this Adjudicating Authority deems fit and proper considering the facts and circumstances of the present case.

8. In respect of the reliefs prayed for by the Personal Guarantor/Respondent, and more principally prayer-clause (b) as afore-stated in para {6} hereto; The records clearly evince that the Financial Creditor has duly served the copy of the report to the Respondent vide letter dated 16.12.2023, which has been clearly acknowledged by the Respondent thereby constituting proper service as mandated under law. This bench is therefore of the considered view that the principal contention raised by the PG/Respondent is devoid of merits and thus cannot be taken into consideration.
9. Further, the Personal Guarantor/Respondent sought to challenge the veracity of the RP Report dated 25th July, 2023, as afore-stated in prayer-clause {c} in para (6) hereto; This Bench feels that, the Report is only to assist the bench to arrive at a conclusive finding, and does not have material ramifications. The question on conclusive veracity of the RP report therefore, does not arise and resultantly; The contention(s) raised by the Respondent via prayer-clauses {d}, {e}, {f} and {g} herein do not stand the test of judicial prudence.
10. In view of observations stated *supra* IA No.808/2024 in CP No. 55/2023 is hereby *Rejected*.
11. This bench is of the considered view that One Time Settlement ('OTS') proposal dated 27.12.2021 fall within the definition of the ambit of

'acknowledgement of debt' as envisaged under Section 18 of the Limitation Act, 1963. A fresh limitation period as per section 18 of Limitation Act commences from the date of the acknowledgement of debt. The present Company Petition filed by the Applicant in the month of January 2023 is well within the period of three (3) years.

12. It is trite in law, that the liability of surety is co-extensive with that of the principal debtor. 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]*.
13. We are of the considered view that the captioned petition is complete in all aspects, and the present case is therefore fit for admission. Ordered accordingly.

ORDER

14. We have heard the learned counsel for both the parties and perused the documents on record.
15. In terms of the above, CP(IB)/55/MB/2023 filed under Section 95 of the IBC, 2016 is **admitted** and the Insolvency Resolution Process stands initiated against the Applicant/Personal Guarantor.
 - 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. Anurag Kumar Sinha having Registration No. IBBI/IPA-001/IP-P00427/2017-2018/10750, having registered address at Flat No.3602, Redwood (Tower No. 7), Runwal Greens, Mulund -Goregaon Link Road ,Bhandup(West) ,Mumbai City,Maharashtra ,400078 [aksinhaip3@gmail.com] 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's business or trade on his behalf or in his name: or
- b. realise the assets of the debtor; or
- c. administer 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 day 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 Rs.2 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)
29.04.2024.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)