

IN THE NATIONAL COMPANY LAW TRIBUNAL

AT MUMBAI BENCH, C-IV

CP (IB) NO. 1123/MB/2022

*An application under section 100 read with section 95 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*

*Bank of Maharashtra*

*...Financial Creditor / Applicant*

*Versus*

*Mr. Sharad Sudhirrao Khandar*

*... Respondent / Personal Guarantor of  
M/s. Sudhir Constructions Infraspac  
Private limited.*

**Order delivered on: 06.06.2024.**

*Coram:*

Ms. Anu Jagmohan Singh

Mr. Kishore Vemulapalli

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

***Appearances:***

For the Financial Creditor : M/s. Raina Birla, Ld. Counsel.  
For the Personal Guarantor : None Appeared.

***ORDER***

1. The present petition is filed on **21.10.2022** 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 **Bank of Maharashtra** ("Financial Creditor / Applicant") for the purpose of initiating insolvency resolution process against **Mr. Sharad Sudhirrao Khandar** ("Personal Guarantor / Respondent") for recovery of total debt amounting to INR 147,69,24,904.98/- . The Date of Default, per Part-III of the present petition, is 31.12.2019.

2. The particulars of debts due from the borrower are reproduced hereinbelow for ready reference:-

**A. CASH CREDIT**

i. Amount due in the account including	
Interest till 31.12.2019	:- 75,07,72,492.98
ii. Unapplied interest from 15.04.2022	:- 21,89,08,773.00
<b>TOTAL</b>	<b>:- 96,96,81,265.98</b>

**B. TERM LOAN ACCOUNT**

i. Amount due in the account including	
Interest till 31.12.2019	:- 37,14,95,503.00

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ii. Unapplied interest till 15.04.2022	:- 13,57,48,136.00
<b>TOTAL</b>	<b>:- 50,72,43,639.00</b>
<b>GRANDTOTAL</b>	<b>:-147,69,24,904.98</b>

C. That there are no outstanding dues in the Bank guarantee account of the borrower since the same have been offset against the Cash Credit Account of the borrower.

3. The Financial Creditor herein submits that they have granted cash credit facilities to M/s. Sudhir Constructions Infraspace Private limited, through a sanction letter dated 04.04.2018. The Applicant states that, in view of the sanction of the above referred loans and limits, the Corporate Debtor and Guarantors have executed various security documents. The Directors of Corporate Debtor along with Respondent executed Deed of Guarantee. Pursuant to which, the Personal Guarantor viz. Respondent herein was one of the executors of the Personal Guarantee dated 25.04.2018, thereby personally guaranteeing the debt arising under the said Agreement. However, the Guarantor has failed and neglected to honour the terms of the agreement for Guarantee of all facilities except agricultural facilities dated 25.04.2018. Accordingly the account of the Borrower/ Corporate Debtor have been declared as Non-Performing Assets on 31.12.2019.
4. The Applicant states that, the borrower defaulted in repayment of the facilities and accordingly the Applicant was constrained to invoke the said Guarantee against the Guarantor by Demand Notice dated 22.03.2022 thereby demanding an amount of Rs. 147,69,24,904.981/-. The Applicant states that, the said demand notice was a statutory notice U/s. 13(2) under SARFAESI Act and the same was also addressed to the borrowers. The said Demand Notice was not received by all the Guarantors, therefore the Applicant Bank was constrained to make a paper publication on 01.04.2022. However, there

was no reply to the said. Pursuant to which, the Financial Creditor issued a Demand Notice in Form B dated 23.06.2022 to the Guarantor as contemplated u/s 95 (4) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudication Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtor) Rules, 2019. The said Demand Notice was duly delivered to the Guarantor however, Personal Guarantor/ Respondent did not choose to reply to the said notice.

5. However, till date, the Respondent and the other guarantors have not paid the unpaid debt in default due from the Corporate Debtor.
6. On presentation of the application by the Financial Creditor, under section 95(1) of the IBC,2016 for initiating Insolvency Resolution Process against the Personal Guarantor, this Tribunal vide order dated 17.04.2023 had appointed ***Mr. Swapnil Mukund Agrawal*** bearing Registration No. IBBI/IPA-001/IP-P00845/2017-2018/11429 as Resolution Professional and directed to exercise all the powers as enumerated u/s.99 of the Code, R/w. Rules made thereunder. Accordingly, he has filed a report on ***21.06.2023*** and was further directed to make recommendations with reasons in writing for acceptance or rejection of the Company Petition.
7. The Resolution Professional has filed a report recommending for approval of the said application under section 95 of the Code by the Creditor i.e. Bank of Maharashtra through Resolution Professional. The Resolution Professional had recommended that “...*accepting the application against Sharad Sudhirrao Khandar filed by the Financial Creditor i.e. Bank of Maharashtra to initiate Insolvency Resolution Process...*”

8. The Personal Guarantor viz. Respondent herein, via his Reply dated 13.01.2024, has disputed the contentions of the Financial Creditor with regards to the maintainability of the petition since it is allegedly incomplete; petition has been filed without any authority letter or power of Authority; Non- Compliance of Mandatory Requirement i.e. service of demand notice; guarantee agreement is not valid since it is insufficiently stamped; non-invocation of personal guarantee; and has further disputed the Report filed by the Resolution Professional.

***Findings:***

9. We have heard the learned counsel(s) for both the parties and have duly perused the documents on record.

9.1. The personal guarantor vide its reply had contended that, the report of IRP is incorrect. After the perusal of record, this bench is of the considered view that, the IRP before preparing the report gave opportunity to Respondent and asked Respondent to provide information/ documents. However, the Respondent did not provide any information; In so far as the dispute to the veracity of the Demand Notice dated 23.06.2022 and its service to the Respondent herein is concerned, we find that the same had been duly served upon the Respondent. The proof-of-service *apropos* the same forms part of the records hereto, and the said contention is therefore devoid of any substance.

9.2. We are of the considered view that the Respondents' contention(s) are devoid of any merits whatsoever on account of valid invocation of the Personal Guarantee vide Demand Notice dated 23.06.2022 and the subsequent *default* in relation thereto.

10. Moreover, From the report of RP, it is clear to us that:

- a) RP has recommended accepting the application for the reason stated in the report dated 23.05.2023.
  - b) The Respondent had not denied to have executed the Guarantee Agreement.
  - c) The Applicant has demanded the amount outstanding from the Respondent vide Demand Notice dated 23.06.2022.
  - d) Resolution Professional report states that he had not received any evidence of repayment of the debt from the Respondent.
  - e) It is further stated that, the RP had not received any order of court or any other forum whereby guarantee agreement dated 25.04.2018 was cancelled or set aside.
11. 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 was put on hold since the Constitutional Validity of the Sections 94 to 100 relating to the insolvency of Personal Guarantor was pending. The Hon'ble Supreme Court in the judgement of *Dilip B. Jiwrajka V/s Union of India & Ors. in WP (civil)No. 1281 of 2021* dated 09.11.2023 upheld the Constitutional Validity of the Sections 94 to 100.
12. 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.
13. In terms of the above, **CP(IB)/1123/MB/2022** 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 1BC, 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. Swapnil Mukund Agrawal** having **IBBI/IPA-001/IP-P00845/2017-2018/11429**, having registered address F.No. 201, Krushna Kunj, P.No. 10 c, Nawab Layout, Near Tilak Nagar Ground ,Nagpur,Maharashtra ,440010 **swapnil.ip845@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)  
06.06.2024.

Sd/-

KISHORE VEMULAPALLI  
MEMBER (JUDICIAL)