

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

C.P. (IB) No. 1126/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

Bank of Maharashtra

...Financial Creditor

Versus

Mr. Sudhirrao Vitthalrao Khandar

...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

Ms. Raina Birla, Ld. Counsel for the Petitioner. (*Through VC*)

For the Personal Guarantor

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

ORDER

1. The present petition has been filed on 04.08.2022 *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** (“Applicant”) for the purpose of initiating insolvency resolution process against **Mr. Sudhirrao Vitthalrao Khandar** (“Personal Guarantor / Respondent”) for recovery of total debt amounting to INR 147,69,24,904.98/- (Indian Rupees One hundred and forty-seven crores, sixty-nine lakhs, twenty-four thousand, nine hundred four and Paise ninety-eight only). The Date of Default, per Part-III of the present petition, is 31.12.2019.
2. The Financial Creditor herein submits that one **Sudhir Constructions Infraspaces Pvt. Ltd.** (“Corporate Debtor”) was sanctioned cash-credit facility to the tune of INR 25 crores and term-loan facilities to the tune of INR 45 Crores *vide* Sanction Letter(s) *dated* 04.04.2018. As against the said facilities, the Corporate Debtor also availed a Bank Guarantee of INR 100 Crores from the Applicant Bank, which was secured *vide* a Counter Guarantee given by the Corporate Debtor in favour of the Applicant Bank, and an additional charge on the current assets of the Corporate Debtor.
3. The said term-loan facility was further secured by hypothecation of stocks, construction material, work in progress, receivables and was further secured by personal guarantees given by the Respondent herein and six other personal guarantors and, Corporate Guarantees given by two Corporate Guarantors.
4. Due to alleged irregularities in re-payment of monies in consonance with the afore-mentioned agreement(s) and subsequent failure in regularizing its account, the loan account of the Corporate Debtor was classified as ‘NPA’ on 31.12.2019. Subsequently, the Financial Creditor *viz.* Applicant herein issued the statutory Demand Notice *u/s.* 13(2) of SARFAESI Act *dated* 22.03.2022

to the Guarantor(s) including Personal Guarantor herein, and caused to issue paper publication in relation to the same. Consequently, the Financial Creditor *viz.* Applicant herein issued a Demand Notice *dated 23.06.2022* 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. A careful perusal of the records further reveals that the Personal Guarantor *viz.* Respondent herein could not be served and accordingly, the Financial Creditor caused to issue a paper-publication on 01.04.2022, and the same has been duly recorded by this Bench in its Order *dated 17.04.2023*. On request, the Personal Guarantor was granted opportunities to file its Reply *vide* Order(s) *dated 30.06.2023, 07.08.2023, 25.09.2023, 21.11.2023 and 15.01.2024*. In consonance with the same, the Personal Guarantor, *vide* its Reply *dated 13.01.2024*, has sought to challenge the veracity of captioned petition and has further sought to contest the Report filed by the Resolution Professional as afore-mentioned in para (5) hereto. We are however of the considered view that the objection(s) thereto are devoid of merits.
6. We note that this Bench had appointed the **Mr. Swapnil Mukund Agrawal**, Insolvency Resolution Professional (“RP”) *vide* Order *dated 17.04.2023* 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 12.06.2023*, after due examination of the application, and the requirements as mandated under clauses (1) to (10) of Section 99 of the IBC, 2016, recommends for “*..accepting the application against SUDHIRRAO KHANDAR filed by the financial creditor i.e. Bank of Maharashtra to initiate insolvency resolution process.*”
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. 1126/MB/2022 filed under Section 95 of the IBC, 2016 is hereby **Admitted** and the Insolvency Resolution Process stands initiated against Mr. Sudhirrao Vitthalrao Khandar *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. Swapnil Mukund Agrawal**, Insolvency Resolution Professional, having Registration No. IBBI/IPA-001/IP-P00845/2017-2018/11429, having address at F.No. 201, Krushna Kunj, P.No. 10c, Nawab Layout, Near Tilak Nagar Ground, Nagpur, Maharashtra -440010 [E-Mail: 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, 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)