

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

C.P.(IB)-1015(MB)/C-III/2022

(Under Section 95 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rule 2019.)

In the matter of

State Bank of India

Having Registered Office at: SARG, Commercial-III, Mumbai Branch-III, Mumbai Tulsiani Chambers, 1st Floor, Free Press Journal Marg, Nariman Point, Mumbai-400021.

.....**Financial Creditor/Petitioner**

Vs

Dhanish Vijayraj Mehta

Residing at: 3702, Electra Tower No. III, Planet Godrej, 30 K K Marg, Mahalkaxmi, Mumbai-400011.

.....**Personal Guarantor/Respondent**

Order Pronounced on: 26.04.2024

CORAM:

**SHRI CHARANJEET SINGH GULATI
HON'BLE MEMBER (T)**

**SMT LAKSHMI GURUNG
HON'BLE MEMBER (J)**

Appearances:

For the Applicant : Adv. Suhail Mhasvadkar
i/b M.V. Kini Law Firm

For the Personal Guarantor : None

ORDER

Per: - Charanjeet Singh Gulati (Technical Member).

1. The Present Company Petition is filed under section 95 of Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) by **State Bank of India (“Financial Creditor/Petitioner”)** for initiating Insolvency Resolution Process against **Dhanish Vijayraj Mehta (“Personal Guarantor”)** being the Personal Guarantor of VHM Industries Limited (**“Principal Borrower/Corporate Debtor”**).
2. The Financial Creditor extended financial assistance to M/s. VHM Industries Limited in the form of various Credit facilities. Mr. Dhanish Vijayraj Mehta, Director of the Corporate Debtor, offered his personal guarantee in favour of the Financial Creditor towards the repayment of financial assistance extended to the Corporate Debtor.
3. The Personal Guarantor executed following Deed of Guarantees in favour of the Financial Creditor towards repayment of financial assistance extended by the Financial Creditor to the Corporate Debtor.

Sr. No.	Document	Date	Annexure to the Petition
1.	Deed of Guarantee	19.03.2015	Pg. 242-309
2.	Deed of Guarantee	14.09.2015	Pg. 310-344
3.	Supplemental Deed of Guarantee for increase in overall limit	22.02.2016	Pg. 345-353

4. Subsequently, due to failure on part of the Corporate Debtor in meeting its repayment obligations, it was decided by the Financial Creditor to recall the advances extended to the Corporate Debtor and to invoke the personal guarantee given by Mr. Dhanish Vijayraj Mehta. Accordingly, the Financial Creditor issued Notice under Section 13(2) of SARFAESI Act, 2002 on 09.09.2021, to both the Corporate Borrower as well as the

Personal Guarantor to clear the entire outstanding dues held in the name of the Corporate Debtor.

5. Despite extending all kinds of support and opportunity to regularize the accounts, the Corporate Debtor, as well as Personal Guarantor, have failed in all respects to repay the outstanding dues including interest.
6. Therefore, an application was filed before this Tribunal for initiating corporate insolvency resolution process against the Corporate Debtor and same was admitted by this Tribunal vide order dated 02.08.2022.
7. On 31.01.2022, the Financial Creditor issued a Demand Notice in Form B under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rule, 2019.
8. The total amount due and payable by the Respondent/ Guarantor is Rs. 2,53,49,33,733/- (Rupees Two Hundred Fifty-Three Crore Forty-Nine Lakhs Thirty Thousand Seven Hundred Thirty-Three only) as on 31.05.2022.
9. The Personal Guarantor despite expiry of the period of 14 days from the date of service of Demand Notice failed to repay the debt.
10. Due to the failure to pay the outstanding amount, the Petitioner has filed the present petition and the Personal Guarantor was intimated by email dated 18.03.2024 and by Speed post.
11. 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

12. The Petition for initiating insolvency resolution process against Personal Guarantor to the Corporate Debtor is complete in all respect. The Applicant has proposed the name of the Insolvency Professional. We accordingly, appoint **Mr. Vasudev Ganesh Nayak Udupi**, having Reg. No: **IBBI/IPA-001/IP-P-00019/2016-2017/10043, 303/305, Rajmata CHS Ltd. near RTO Office, Four Bungalows, Andheri West, Mumbai-400053**. Email: uvnayak@gmail.com as Resolution Professional (“RP”) in the matter.
13. 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.
14. 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).
15. 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**.

16. 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.
17. List the matter for report of the RP on **03.06.2024**.

Sd/-

CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)

Sd/-

LAKSHMI GURUNG
(MEMBER JUDICIAL)

Arpan, LRA