

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

**IA No. 969 of 2023**

**In**

**C.P. (IB) No. 1264/MB/2021**

Under Section 60(5) r/w Section 95(1) of the  
Insolvency & Bankruptcy Code, 2016

IA No. 969 of 2023

**In the Application of**

Rameshchandra Mansukhani

... Applicant

**In the matter of**

STCI Finance Limited (Creditor)

(Through the Resolution Professional  
Rajendra R. Agrawal)

...Financial Creditor

*Versus*

Mr. Jagdish Mansukhani

...Personal Guarantor

Order Pronounced On: **07.06.2024**

***Coram:***

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

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

***Appearances:***

For the Financial Creditor

Mr. Rohan Rajadhyaksha a/w Ms.  
Ferzona Beheamkamdin and Ms.

	Bharti Bhansali, Ld. Counsel for the Petitioner.
For the Resolution Professional	None Present for the Resolution Professional.
For the Personal Guarantor	Mr. Gautam Ankhad a/w Mr. Atul Singh, Hiral Thakker i/b Mitika Agrawal, Ld. Counsel for the Respondent.

**IA 969/2023**

1. Before we deal with the main Petition filed under section 95(1) of the Code, it is important to deal with the IA. 969/2023 filed by Mr. Rameshchandra Mansukhani i.e. the Applicant being one of the parties under the two Deed of Personal Guarantees executed by Mr. Jagdishchandra Mansukhani, the Respondent herein and the Personal Guarantor under two Deed of Personal Guarantees both dated 01.12.2015. The relief sought in the said Applications are reproduced herein below:

- i. *This Hon'ble Tribunal be pleased to dismiss and/or reject the captioned company petition.*
- ii. *This Hon'ble Tribunal be pleased to discharge the Insolvency Resolution Professional, Mr. Rajendra R. Agrawal; and recall the order dated April 19,2022, passed by this Hon'ble Tribunal;*
- iii. *Pending the hearing and final disposal of the captioned company petition, this Hon'ble Tribunal be pleased to stay the operation and effect of the order dated April 19,2022, passed in the captioned Company Petition; and*
- iv. *Pending the hearing and final disposal of the captioned company petition, this Hon'ble Tribunal be pleased to stay the operation and effect of the interim moratorium under section 96 of the IBC in respect of the Respondent;*
- v. *For interim and ad-interim reliefs in terms of prayer clause (A) to (D);*
- vi. *For such other orders as this Hon'ble Tribunal may deem fit.*

**Brief facts of Objection Application (IA No. 969 of 2023)**

2. The Applicant submits that the Applicant has filed a Commercial Execution Application No. 21 of 2022 (“**the Execution Application**”) against the Personal Guarantor before the Hon'ble High Court of Bombay *inter alia* for the execution of 60,00,000 shares of Man Industries India Limited (“**MIIL**”)

valued at approximately Rs. 65 crores due and payable by the Personal Guarantor to the Applicant under the Arbitral Award dated April 4, 2019 read with Additional Awards. The Execution Application is pending adjudication before the Hon'ble High Court, Bombay. The said Execution Application is not proceeded with in light of the pending captioned Company Petition and specifically on account of the interim moratorium against the Personal Guarantor. The Applicant is unable to proceed with its legal remedy/proceedings against the Personal Guarantor before the Hon'ble High Court, Bombay.

3. It is submitted that the present Application is being filed for seeking dismissal of the Company Petition being the *prima facie* barred by the law of limitation. The date of default as per the Information Utility in relation to the present debt is March 1, 2017. The present Company Petition was filed on September 30, 2021. As a result, the limitation period expires within 3 years of the date of default i.e. on March 1, 2020. Since the limitation period expires before March 24, 2020, the enlargement of the period granted by the Hon'ble Supreme Court on account of COVID-19 is not applicable to the present Company Petition filed by the Financial Creditor.
4. The Applicant submits that as a result of the interim moratorium, the Applicant and other similarly placed persons cannot proceed with pursuing appropriate legal action against the Personal Guarantor. Consequently, the Applicant is suffering from severe harm and grave prejudice. It is accordingly in the interest of justice & equity and more particularly in light of dismissal of Company Petition being C.P. (113) No. 312/MB/C-IV/2021 that the captioned company petition be also dismissed and/or reject or disposed of expeditiously. The Applicant apprehends that the Personal Guarantor in collusion with the Financial Creditor is misusing the interim-moratorium-with-a-sole-intention to defeat the rights of the Applicant, and other similarly placed creditors.
5. We have heard the Learned Counsel for the Applicant herein. It is seen that the only grievance of the Petitioner is that he is unable to pursue his case in the Hon'ble High Court due to interim moratorium and that he is apprehensive that Personal Guarantor in collusion with the Financial Creditor is misusing the interim moratorium.
6. Section 96 states that *“(1)When an application is filed under section 94 or section 95 -(a) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such*

*application; and (b) during the interim-moratorium period -(i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and (ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.(2) Where the application has been made in relation to a firm, the interim-moratorium under sub-section (1) shall operate against all the partners of the firm as on the date of the application. (3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*

7. In view of the provisions of the Insolvency & Bankruptcy Code,2016 no interference is called for on this account. The applicant's contention of collusion is also not supported by any evidence. Hence, the prayer of the Applicant for dismissal of company petition is devoid of any merits and deserves to be rejected.
8. Hence, the IA 969/2023 is dismissed.

**MAIN CP.NO.1264/MB/2021**

9. The present petition is filed on 30.09.2021 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 **STCI Finance Limited** ("Applicant") for the purpose of initiating insolvency resolution process against **Mr. Jagdish Mansukhani** ("Personal Guarantor / Respondent") for recovery of total debt amounting to INR 12,15,78,860/- (Indian Rupees Twelve Crore Fifteen Lakhs Seventy Eight Thousand Eight Hundred and Sixty only) as on 25.05.2021. The Date of Default, per Part-III of the petition, is 08.06.2017.
10. The Financial Creditor herein submits that Man Tubinox Limited ("**Corporate Debtor**") had executed Loan Agreement, Registered Mortgage Deed, Indenture Mortgage Deed and other security document subject to the terms and conditions thereto. Pursuant to which, the Personal Guarantor *viz.* Respondent herein was one of the executors of the Personal Guarantee Deed dated 01.12.2015 thereby personally guaranteeing the debt arising under the same and that the Guarantee shall be a continuing guarantee. Due to non-payment of amounts due under the same, the loan account of the Corporate Debtor was classified as 'NPA' on 31.03.2017. Pursuant to the same, the Financial Creditor issued a Legal Notice to the Corporate Debtor and its Guarantors (including the Respondent herein) dated 17.01.2017. Thereafter,

due to failure for repayment of outstanding debt notice under section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was issued on 01.06.2017 to recall the entire debt within 7 days from the date of the issuance of this notice.

11. The Financial Creditor submits that a Company Petition bearing C.P. (IB) 4348/MB/2018 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* 12.06.2019. Subsequently, the Financial Creditor issued a Demand Notice *dated* 08.07.2021 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.
12. We have heard the learned counsels and have perused the documents on record.
13. We have taken note of the averments raised by the Personal Guarantor *viz.* Respondent herein *via* its Affidavit(s)-in-Reply *dated* 14.03.2024. The issues raised by the Personal Guarantor are (i) that the captioned Company Petition as on date of its filing is categorically barred by law of limitation as the petitioner has invoked the guarantee on 17.01.2017 and called upon the respondent to discharge the liabilities within a period of 5 days from the notice date. Accordingly, the period of limitation ended on 22.01.2020. Since, the petition was filed on 30.09.2021 it is beyond the period of limitation. (ii) that no evidence of service of the Demand Notice.
14. On the aspect of Limitation, the Financial Creditor drew to the attention of the Bench to letter dated 12.06.2017 of Mr. Jagdish Mansukhani stating that *“they were at an advanced stage of discussion with the number of lenders and expect to close your loan shortly. You are therefore requested to grant time till July 31, 2017 and withhold any further actions under the said notice/SARFAESI Act”*. The Financial Creditor also relied on the decision of the Hon’ble Apex court in the case of Food Corporation of India versus Assam state Cooperative Marketing & Consumer Federation Limited and others wherein it was held that an acknowledgement of liability made in writing has the effect of commencing a fresh period of limitation from the date on which the acknowledgement was so signed. The Financial Creditor submitted that the letter of Personal Guarantor admitting the debt thereby starts a fresh period

of limitation from 12.06.2017. That the present petition having been filed on 30.09.2021, the same is within the period of limitation in view of the Judgement of Hon'ble Supreme Court passed in Suo Moto Writ Petition No. 3 of 2020.

15. In view of the submissions made by the Financial Creditor, and the decision of the Hon'ble Apex court relied upon by the Financial Creditor this bench is of the opinion that the petition is filed well within the limitation period. During the course of hearing the Personal Guarantor relied upon the Hon'ble Apex court in the case of CLP India Private Limited versus Gujrat Urja Vikas Nigam Limited and Another. We observe that the facts in the said case are different from the case at hand. In the cited case, the Apex Court held that "there was no admission on the part of CLP, at least of the kind, that extended the time for preferring and application for recovery of excess payments" and therefore the Hon'ble Apex Court concluded that the period of limitation cannot be extended. In the case at hand there is a clear admission by the Personal Guarantor vide letter dated 12.06.2017. Hence, we hold that a fresh period of limitation starts from the said date.
16. We note that this Bench had appointed the **Mr. Rajendra R. Agrawal**, Insolvency Resolution Professional ("RP") *vide* Order *dated* 19.04.2022 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* 07.05.2022, 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. Jagdish Mansukhani *viz.* the Personal Guarantor herein.
17. 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*].
18. We are of thus of the considered view that the captioned petition is complete in all aspects, and the present case is fit for admission. Ordered accordingly.

### **ORDER**

19. In terms of the above and in view of the foregoing observations rendered by us, the Application bearing No. 969/2023 filed by Mr. Rameshchandra

Mansukhani is dismissed. The captioned petition bearing C.P. (IB) No. 1264/MB/2021 filed under Section 95 of the IBC, 2016 is hereby **Admitted** and the Insolvency Resolution Process stands initiated against Mr. Jagdish Mansukhani *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. Rajendra R. Agrawal**, Insolvency Resolution Professional, with Registration No. IBBI/IPA-001/IP-P01209/2018-2019/11923, having address at 1306, Oberoi Woods Tower B, ,Mohan Gokhale Road, ,Goregaon East ,Mumbai City, Maharashtra ,400063, E-Mail: [rajendra.agrawal29@gmail.com](mailto:rajendra.agrawal29@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)**

**SD/-**  
**KISHORE VEMULAPALLI**  
**MEMBER (JUDICIAL)**