

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

C.P. (IB) No. 758/MB/2023

Under Section **95(1)** of the Insolvency & Bankruptcy Code, 2016 *r/w* Rule **3(1) (a)** 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

Small Industries Development Bank of India

... Financial Creditor

v/s.

Ujwala Anil Sali

... Personal Guarantor

Order delivered on: 24.04.2024

Coram:

Sh.Prabhat Kumar
Hon'ble Member (Technical)

Justice V.G Bisht,(Retd).
Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor : Mr.Rahul Darji,Adv.

For the Respondent : *Ex-Parte*

For Resolution Professional : Zulfiq Rafiq Multani,Adv.

Per: Justice V.G Bisht, (Retd).

ORDER

1. The present petition is filed *under Section 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 **Small Industries Development Bank of India** ("Financial Creditor / Applicant") for the purpose of initiating insolvency resolution process against **Ujwala Anil Sali** ("Personal Guarantor / Respondent") who is the Personal Guarantor of the Corporate Debtor, **Ujwal Electric Motors Private Limited**.
2. The total Debt amounting to INR 36,96,50,221 along with interest. The debt of the Corporate Debtor fallen due on the date of notice for invocation of Guarantee sent to the Personal Guarantor i.e.-01/11/2017. The date on which default occurred is 01.11.2017 where the debt of the Corporate Debtor fallen due on the date of notice of invocation of the Guarantee sent to the Personal Guarantor. The Corporate Debtor defaulted in payment on 19.09.2017, thereby the Applicant issued a recall letter regarding payment of outstanding dues.
3. The Applicant on 17.06.2015 thereby executed loan agreement with the Corporate Debtor wherein an amount of Rs.15 Crores for the purpose of setting up the abovementioned plot "referred as the project"
4. That on 17.06.2015 the Personal Guarantor has executed Deed of Guarantee in favour of the Applicant for all credit facilities advanced by the Applicant to the Corporate Debtor.
5. That Counsel for the Petitioner also invited the attention of this bench vide order dated 03.10.2023 to **the Deed of Guarantee executed between the Personal Guarantor on 17.06.2015 and Demand Notice was issued on 13.10.2017, under Section 13(2) of the Securitisation and Resolution of Financial Assets & Enforcement of Security Interest Act, 2002**, invoking Personal Guarantee in

respect of unpaid debt. Further Counsel for Petitioner invited our attention to the Demand Notice in Form-B dated 23.08.2022 as contemplated under section 95(4) of this code.

Submission on Behalf of the Financial Creditor / Petitioner

6. The Applicant submits that Ujwal Electric Motors Private Limited who is a Corporate Debtor for Financial assistance for expanding their business infrastructure.
7. That as on 23.08.2022, the outstanding dues owed by the Respondent in its capacity as the Personal Guarantor sums up to Rs. 36,96,50,221/- (Rupees Thirty-Six Crores Ninety-Six Lakhs Fifty Thousand Two Hundred and Twenty One Only), as tabulated hereinunder-

Sr. No.	Particulars	Amount (In INR)
(A) Account No. D0000SJ4		
a)	Principal Overdue	11,74,83,605/-
b)	Interest Overdue	8,34,50,789/-
c)	FI & PI Overdue	5,25,39,002/-
a+b+c	Sub-total (A)	25,34,73,396/-
(B) Account No. D0000SJ5		
d)	Principal Overdue	5,00,00,000/-
e)	Interest Overdue	3,87,54,105/-
f)	FI & PI Overdue	2,74,22,720/-
d+e+f	Sub-total (B)	11,61,76,825/-
GRAND TOTAL (A+B)		36,96,50,221/-

8. The Financial Creditor submits that on account of the failure of the Corporate Debtor to repay the outstanding amount, the Petitioner invited the attention of this bench vide order dated 03.10.2023 to **the Deed of Guarantee executed between the Personal Guarantor on 17.06.2015 and Demand Notice was issued on 13.10.2017, under Section 13(2) of the Securitisation and Resolution of Financial Assets & Enforcement of Security Interest Act, 2002**, invoking Personal Guarantee in respect of unpaid debt. Further Counsel for Petitioner invited this bench's attention to the **demand notice dated 23.08.2022** which was served upon the Respondent/Personal Guarantor.

- 9.** The Applicant States that, the Applicant Bank has obtained CIBIL report dated 25.07.2023 of the Respondent which reflects details of the finances and other relevant details of the Respondent. According to the Cibil reports, the last payment paid towards the outstanding debt by the Personal Guarantor is 03.11.2022.
- 10.** The Company has executed the following security documents in favour of applicant/Financial Creditor against the loan Facilities granted:
- i.** Deed of Guarantee
 - ii.** Copy of Subordinate Debt Agreement
 - iii.** Copy of (General Condition) loan Agreement
 - iv.** Deed of Hypothecation
 - v.** Declaration and undertaking the mortgage by Deposit of title deeds
- 11.** This Bench had appointed the **Mr. Anil Kashi Drolia**, Insolvency Resolution Professional (“RP”) *vide* Order dated 03.10.2023 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 was taken on record by a virtue of I.A.5263 of 2023, *vide* order dated 20.11.2023, after due examination of the application, documents filed along with the application, in addition to the requirements as mandated under of Section 99 of the IBC, 2016, has recommended to “..Admitting the present application filed by Small Industries Development Bank of India through the RP in CP(IB)/758(MB)/2023 after deciding by the adjudicating authority about the objection raised by the Personal Guarantor regarding the limitation period and thereafter declare Moratorium under Section 101 of the code and issue Public Notice for inviting the claims under section 102 of the code and may pass such orders as this Hon’ble NCLT deem necessary. It is further submitted that delay of 6 days in submitting the report after getting the order on 10th January ,2024 should be condoned which took place in getting the information from both Creditor & Debtor and also due to holidays”.

Findings:

- 12.** We have heard the learned counsel for Financial Creditor and have duly perused the documents on record.
- 13.** We find that even after granting various opportunities, the Respondent herein chose not to appear and file & place on record Affidavit in Reply to the Report, which is filed by the Resolution Professional. The present Company Petition against the Respondent, Personal Guarantor, is thus, proceeded *ex- parte* vide order dated 30.01.2024.
- 14.** We take a note of Financial Creditor's submission, that as on 23.08.2022, the outstanding dues owed by the Respondent in its capacity as the Personal Guarantor sums up to Rs. 36,96,50,221/- (Rupees Thirty-Six Crores Ninety-Six Lakhs Fifty Thousand Two Hundred and Twenty-One Only), as tabulated hereinunder-

Sr. No.	Particulars	Amount (In INR)
(A) Account No. D0000SJ4		
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d+e+f	Sub-total (B)	11,61,76,825/-
GRAND TOTAL (A+B)		36,96,50,221/-

- 15.** From the records it is observed that on account of the failure of the Corporate Debtor to repay the outstanding amount, the Personal Guarantee was invoked on 17.10.2017 calling upon the personal guarantor to pay the amount in terms of personal guarantee. Further, Counsel for Petitioner invited this bench's attention to the **demand notice** dated **23.08.2022** which was served upon the Respondent/Personal Guarantor.
- 16.** We find from the CIBIL report dated 25.07.2023 of the Principal Borrower which reflects details of the finances and other relevant details of the Principal Borrower that

the last payment was made towards the outstanding debt by the Principal Borrower on 03.11.2022, which constitutes the acknowledgement of the debt on part of Principal Borrower thereby further extending the period of limitation. It is trite law that the acknowledgement of debt by the Principal Borrower binds the guarantor as well. Accordingly, this petition is within limitation.

17. Mr. Anil Kashi Drolia the Resolution Professional has also recommended in the report filed u/s 99(7) and 99(9) that the Petition bearing C.P. (IB)/758(MB)2023 deserves to be admitted under Section 100 of the Code and Personal Insolvency Resolution Process be initiated against Ujwala Anil Sali in this regard.

18. 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. In terms of the above, the C.P. (IB) No. 758/MB/2023 filed under Section 95 of the IBC, 2016 is hereby **Admitted** and the Insolvency Resolution Process stands initiated against Mr. Ujwala Anil Sali viz. the Respondent herein. 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. 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 Mr. Anil Kashi Drolia, is appointed as a Resolution Professional, having Registration No. IBBI/IPA-001/IP-P-02327/2020-2021/13482, having address at B-906, Park Side 1, Raheja Estate, Kulupwadi, Borivali-East, Near National Park, Mumbai Suburban, Maharashtra-400066 Email- anildrolia.ip@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.

V. 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.

VI. 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.

VII. 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.

VIII. 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.

- IX.** 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.
- X.** The Resolution Professional shall submit his periodic reports before this Tribunal every 30 days.
- XI.** 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.
- XII.** 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/-

SH. PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-

JUSTICE V. G. BISHT
MEMBER (JUDICIAL)