

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

C.P. (IB) No. 1093/MB/2021

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

Omkara Assets Reconstruction Private Limited

... Financial Creditor
v/s.

Mr. Surendra Kedia

... Personal Guarantor

Order delivered 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

Adv. Aayush Kothari a/w Adv. Shreyansh Desai i/b M/s. V. Deshpande & Co.

For the Personal Guarantor

Adv. Ashwini Chindarkar i/b Adv. Amit Tungare, Ld. Counsel present through V.C.

For the Resolution Professional

Adv. Haris A. Khan i/b Adv.
Ajinkya Kurdukar, Ld. Counsel
present through V.C.

1. The present petition is filed on 27.10.2021 *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 **Omkara Assets Reconstruction Private Limited** ("Financial Creditor / Applicant") for the purpose of initiating insolvency resolution process against **Mr. Surendra Kedia** ("Personal Guarantor/ Respondent") for recovery of total debt amounting to INR 07,01,48,278/- (Indian Rupees Seven Crore, One Lakh, Forty Eight Thousand, Two Hundred and Seventy Eight only) as on 17.08.2021.
2. The Financial Creditor herein submits that M/s. KDJ Holidayscapes and Resorts Limited ("**Corporate Debtor**") had availed Cash Credit Facility from TJSB Sahakari Bank Limited in the year November,2013 which in turn stand assigned to the Applicant i.e. **Omkara Assets Reconstruction Private Limited** under the valid and subsisting Assignment Agreement *dated* 28.01.2021 and had executed Demand Promissory Note, Deed of Corporate Guarantee, Deed of Mortgage 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* 17.12.2013 thereby personally guaranteeing the debt and that the Guarantee shall be a continuing guarantee. 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 03.12.2015 to recall the entire debt within 60 days from the date of the issuance of this notice

3. The Financial Creditor submits that, a Company Petition bearing C.P. (IB) 2459/NCLT/MB/2019 was filed by *TJSB Sahakari Bank Limited u/s. 7* of the IBC, 2016, and this Tribunal was thereby pleased to initiate Corporate Insolvency Resolution Process (“CIRP”) against the Corporate Debtor herein *vide Order dated 23.09.2019*. Subsequently, the Financial Creditor issued a Demand Notice *dated 04.09.2021* 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, invoking the guarantee and 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.
4. The Personal Guarantor *Viz. Respondent herein via its Reply dated 23.09.2021* to the demand notice *dated 04.09.2021* issued by the Financial Creditor had denied the claim amount as mentioned in the notice, since the same is illegal. It was also stated that the deed of guarantee has executed on 17.12.2013, therefore the same is barred by law of limitation.
5. We have heard the learned counsel for the Financial Creditor and have duly perused the documents on record.
6. This Bench takes note of the order dated 23.04.2024 whereby the Counsel for the Personal Guarantor appeared and submitted that they do not want to file any objections to the admission of the Petition. Thus, when the matter was finally listed for hearing on 24.04.2024, the right to file reply was forfeited and the matter was heard on merits.
7. On the aspect of limitation, we find that the Demand Notice *dated 04.09.2021* was duly served to the Personal Guarantor herein and that the Personal Guarantor via its Response dated 23.09.2021 had replied to the said demand notice. The petition is filed on 27.10.2021 and that the demand notice is invoked on 04.09.2021. Thus, constitutes valid invocation in relation to the

Guarantee dated 17.12.2013 and that the Petition filed is well within the limitation.

8. We note that this Bench had appointed the **Mr. Kshitiz Gupta**, Insolvency Resolution Professional (“RP”) vide Order dated 11.05.2023 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 09.06.2023, after due examination of the application, documents filed along with the application, in addition to the requirements as mandated under clauses (1) to (10) of Section 99 of the IBC, 2016, has recommended to “...accept the application filed under Section 95 of the Insolvency and Bankruptcy Code, 2016, for initiation of Insolvency Resolution Process in respect of Mr. Surendra Kedia.”
9. 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 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].
10. 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. Taking into consideration the facts as submitted by the Financial Creditor and the report submitted by the Resolution Professional, this bench is of the view that this matter is fit case for admission.

ORDER

11. In terms of the above, the C.P. (IB) No. 1093/MB/2021 filed under Section 95 of the IBC, 2016 is hereby **Admitted** and the Insolvency Resolution Process stands initiated against Mr. Surendra Kedia 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 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. Kshitiz Gupta**, Insolvency Resolution Professional, having Registration No IBBI/IPA-002/IP-N00721/2018-2019/12140, having address at F-52, First Floor, Centrium, Lokhandwala Township , Akurli Road, Kandivali East ,Maharashtra,400101, E-Mail: kshitiz.ca@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)
