

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
[Through Physical hearing/VC Mode (Hybrid)]

ITEM No.15
C.P.(IB) No.139/BB/2022

IN THE MATTER OF:

M/s. Bank of Baroda ... Petitioner
Vs.
Mr. Farooq Ali Khan ... Respondent

Order under Section 95(1) of Insolvency & Bankruptcy Code, 2016

Order delivered on: 16.02.2024

CORAM:

SHRI K. BISWAL
HON'BLE MEMBER (JUDICIAL)

SH. MANOJ KUMAR DUBEY
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Petitioner : Shri Lomesh Kiran Nidumuri
Shri Sharan Kukreja
Shri Abhijna Somashekara
Shri Karan
For the Respondent : Shri Sivarama Krishnan

ORDER

1. This is a Company Petition filed by the **Bank of Baroda** ("the Financial Creditor") under Section 95 (1) of the I&B Code, 2016 read with Rule 7(2) of the I&B (Application Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, seeking to initiate Insolvency Resolution Process in respect of **Mr.Farooq Ali Khan** ("the Personal Guarantor") for a default of amount of Rs.2,58,60,17,543.61/-.
2. It is stated that the Petitioner has separately filed the recovery application being O.A no.629 of 2021 before the Debt Recovery Tribunal-I Bengaluru and the same is pending. The Personal Guarantor has not paid the outstanding amount and therefore continues to be default till the date of filing of this application.

3. Heard the Ld. Counsel appearing for the Petitioner and Ld. Counsel for the Respondent/Personal Guarantor.
4. During the hearing, the Ld. Counsel for the Personal Guarantor raised objection regarding the limitation and stated that the agreement for the Personal guarantee is not valid, since the Personal Guarantor was released from the Guarantee.
5. In this context, it is to be noted that the *Hon'ble Supreme Court* in the judgement of *Dilip B Jiwrajka vs. Union of India and others* in Writ Petition (Civil) No.1281 of 2021 dated 09th November 2023, at Para-86 held as under:

“i. No judicial adjudication is involved at the stages envisages in Section 95 to Section 99 of the IBC;

ii.....

iii.....

iv.....

v.....

vi. No judicial determination takes place until the Adjudicating Authority decides under Section 100 whether to accept or reject the application. The report of the resolution professional is only recommendatory in nature and hence does not bind the adjudicatory authority when it exercises its jurisdiction under Section 100.

vii. The adjudicatory authority must observe the principles of natural justice when it exercises jurisdiction under Section 100 to determine whether to accept or reject the application;”

6. Therefore, the issue/objections raised by the Ld. Counsel for the Personal Guarantor will be considered after the submission of the report by the Resolution Professional and response of the Personal Guarantor on the same.
7. Accordingly, we appoint the **Shri Ram Ratan Kanoongo**, as proposed by the Financial Creditor in Part-IV of the Form-C, who is registered with IBBI as Insolvency Professional having Registration No. **IBBI/IPA-001/IP-P00070/2017-18/10156**, Mobile: 9821031996, email: rrkanoongo@gmail.com as the **Resolution Professional** in the present matter. Written consent is given by the said RP through Affidavit dated 20.12.2021 which is annexed as Exhibit -18 of the petition. The fee payable to RP shall be in accordance with the IBBI Regulations/Circulars/ Directions issued in this regard.

8. The Resolution Professional shall examine the Application within ten days from the date of his appointment and submit its report to the Adjudicating Authority recommending for approval or rejection of the Application as referred under Section 99(1) of the Code.
9. The interim-moratorium under Section 96(1)(a) of the I&B Code, 2016 has commenced on the date of filing of this Application by the Financial Creditor and will cease to have effect on the date of admission.
10. During such interim-moratorium period –
 - a. any legal action or proceeding pending 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.
11. The Resolution Professional is directed to serve a copy of his report on the Personal Guarantor. List the case for further consideration on **20.03.2024**.

Sd/-
(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

Sd/-
(K. BISWAL)
MEMBER (JUDICIAL)

Gayathri