



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

C.P. No. 240 of 2022

Under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2019

In the matter of

Central Bank of India

Having its branch office at: Central Bank of India, SAMB-I, Chandermukhi, Ground Floor, Nariman Point, Mumbai- 400 021

.....Petitioner/ Financial Creditor

V/s.

Mr. Nayan Thakarshi Shah

(Personal Guarantor of M/s. Neptune Developers Limited)

Having Present address at: - Flat No. 14, 3rd Floor, Hemkunj, Zaver Road, Mulund West, Mumbai- 400 080 & Marathon Galaxy II, Marathon Avenue, Flat No. 1501/1502, 15th Floor, off. L.B.S. Road, Mulund West, Mumbai- 400 080

.....Respondent/ Personal Guarantor

Order pronounced on: **01.08.2024**

CORAM:

SHRI CHARANJEET SINGH GULATI
HON'BLE MEMBER (T)

SMT LAKSHMI GURUNG
HON'BLE MEMBER (J)



Appearances:

For the Petitioner : Adv. Ruchita Jain i/b MDP Partners
For the Personal Guarantor : Pranjit Bhattacharya a/w. Avdhoot Prabhu,
Adv. Divya Dave

Per: - SMT LAKSHMI GURUNG, MEMBER (J)

ORDER

1. The Present Company Petition has been filed under section 95 of Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) by **Central Bank of India (Petitioner/Financial Creditor)** for initiating Insolvency Resolution Process against **Mr. Nayan Thakarshi Shah (“Respondent/Personal Guarantor”)**.
2. The Petitioner has annexed Sanction Letter No. CFB: NP/ADV/2012-13/744 dated 18.02.2013 whereas the Central Bank of India had sanctioned Construction Loan of Rs. 100 Crores out of total project cost of Rs. 292.44 crores to the Neptune Developer Limited. The statement of Term Loan Account No. 3247696196 is also annexed.
3. The Deed of Guarantee executed on 30.03.2013, duly signed by the Personal Guarantors i.e. Shri. Nayan Bheda, Shri, Sachin Deshmukh, **Shri, Nayan Shah** have been annexed to the Petition as exhibit-F1.
4. On 16.07.2021, Corporate Debtor. i.e, M/s. Neptune Developers Limited was admitted into CIRP.
5. On 16.08.2018, Loan Recall Notice and Notice Invoking the Guarantees were issued to its personal guarantors, calling upon to pay the aforesaid amount of Rs. 93.53 Crore with interest from 31.03.2015 till the date of payment at the rate agreed upon within 7 days of this notice. Recall notice is annexed to the petition.



6. The Petitioner had issued a Demand Notice in Form B dated 17.08.2021, which has been filed by way of additional affidavit dated 30.03.2022, through speed post A. D under rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtor) Rules, 2019 to the Respondent to pay dues of the Corporate Debtor amounting to Rs. 2,55,61,31,888.49 within Fourteen days from the date of the receipt of demand notice. Despite the receipt of the demand notice, the Respondent has failed to pay the amount.
7. In view of the aforesaid, the Present application has been filed for appointment of Resolution Professional under section 95 of IBC.
8. The Hon'ble Supreme Court in ***Dilip B Jiwarajka 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

9. The Petition for initiating insolvency resolution process against Personal Guarantor to the Corporate Debtor is in prescribed form as mandated under section 95(6) of the IBC.



10. The petitioner has not suggested the name of IRP. We appoint, **CA Rajan Garg** Registration No. IBBI/IPA-001/IP-P02397/2021-22/13624 as Resolution Professional ("**RP**") from the list provided by IBBI.
11. 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.
12. This Bench also directs for an advance payment of Rs. 2,00,000/- 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).
13. The RP is also directed to examine the application including limitation aspect and after examining, shall submit his report as provided under Section 99(1) of IBC, 2016, **within 10 days** of the receipt of this order.
14. 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.
15. List the matter as and when the Report is filed by RP by way of an I.A.

Sd/-

CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)

---Rajeev---

Sd/-

LAKSHMI GURUNG
(MEMBER JUDICIAL)