



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

C.P. No. 1002/MB/C-III/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

Bank of Maharashtra

Having Office at: Bank of Maharashtra, Asset Recovery Branch, Nagpur Zone, Mahabank Bhavan, Sitabuldi, Nagpur- 440012

.....Petitioner/Financial Creditor

V/s.

Mr. Sunil Kumar Prabhakaran Menon

(Personal Guarantor of M/s. Narayana Farm Produce Pvt. Ltd)

Having Present address at: - R/ at Plot No. 45/46, 301 Sharda Apartments, Narkesari Layouot B/H SBI Branch, Jayprakash Nagar, Nagpur- 440010

.....Respondent/Personal Guarantor

Order pronounced on: **21.10.2024**

CORAM:

SHRI CHARANJEET SINGH GULATI
HON'BLE MEMBER (T)

SMT LAKSHMI GURUNG
HON'BLE MEMBER (J)



Appearances:

For the Petitioner : Adv. Deepali Jaiswar a/w Adv Raina Birla i/b.
Adv. Chaitanya Nikte
For the Personal Guarantor : Adv. Harsh Kesharia

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 **Bank of Maharashtra (Petitioner/Applicant Bank)** for initiating Insolvency Resolution Process against **Mr. Sunil Kumar Prabhakaran Menon, (“Respondent/Personal Guarantor”)**, who is the Personal Guarantor for the loan facility extended to M/s. Narayana Farm Produce Pvt. Ltd. **(“the Corporate Debtor”)**.
2. The Corporate Debtor approached the Applicant Bank for availing Term Loan of Rs. 70 crores and Cash Credit facility of Rs 5 Crores. The Applicant Bank on 04.10.2010 sanctioned the Term Loan and Cash Credit facility on the terms and conditions as mentioned in the said sanction letter.
3. On 01.11.2010, the Corporate Debtor executed Demand Promissory Notes for availing aforesaid facilities.
4. Further, in consideration of the said loan facilities extended to the Corporate Debtor, the Personal Guarantor, executed **Deed of Guarantee** in favour of the Applicant Bank on 01.11.2010.
5. It was further submitted that on 30.08.2011, the Guarantors also created equitable mortgage in respect of their immovable properties to secure the repayment of the aforesaid loan facilities availed by the Corporate Debtor.



6. The Applicant Bank, reviewed the Credit Facilities vide its letter dated 27.03.2012. The Applicant Bank received a letter dated 17.07.2012 from the Corporate Debtor as well as its Guarantors confirming the Balance Due and payable to the Applicant Bank in respect of said Loan facility as on 27.12.2012 and further undertook to make repayment of the said amount in the phased manner as per letter dated 27.03.2012.
7. As the Corporate Debtor failed to adhere to the terms and conditions of the sanction and committed defaults, the Applicant Bank issued Notice dated 20.08.2013 under section 13(2) of Securitization & Reconstruction of Financial Assets and Enforcement of Security Act 2002 addressed to the Corporate Debtor and all Personal Guarantors, including the respondent herein, calling upon them to repay the outstanding amount under Term Loan and cash Credit Facility.
8. Further, a legal notice was also issued on 19.09.2013 addressed to the Corporate Debtor as well as all the Personal Guarantors including the respondent herein.
9. Thereafter, the Applicant Bank also sent a Demand Notice in Form B dated 03.08.2022 under rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules 2019 addressed the Personal Guarantors including the Respondent herein to pay the unpaid debt in default by the Corporate Debtor amounting to Rs. 228,48,32,932/- within Fourteen days from the date of the receipt of demand notice. The Applicant Bank argued that this demand notice amounts to invocation of bank guarantee.
10. Despite the receipt of the demand notice, the Respondent has failed to pay the amount. A reply dated 22.08.2022 to the demand notice under Rule 7(1) of the Insolvency and Bankruptcy Code (**IBC**) has also been received by the Applicant Bank.



11. In view of the aforesaid, the present application has been filed for appointment of Resolution Professional under section 95 of IBC.
12. From the perusal of the petition, we observe that the copy of the petition has been served on the Personal Guarantor as reflected from the Tracking Report annexed to the petition.
13. The Hon'ble Supreme Court in ***Dilip B Jiwrajka 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

14. Therefore, at this stage no adjudication is required. The Petition for initiating insolvency resolution process against Personal Guarantor to the Corporate Debtor is, prima facie, complete in all respect.
15. We also note that the applicant Bank has proposed the name of Mr. Swapnil Mukund Agarwal to be appointed as RP. However, in the facts and circumstances of the case we deem it fit to appoint **Mr. Rajesh Ramesh Kamath**, from the list furnished by the IBBI, having IBBI



Registration No. IBBI/IPA-001/IP-P01606/2019-2020/12481 as
Resolution Professional (**“RP”**) of the Respondent.

16. 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.
17. This Bench also directs for an adhoc payment of Rs.1,00,000/- (Rupees One Lakh only) to be paid by the Financial Creditor to the Resolution Professional immediately to initiate the process which shall be adjusted towards the fee and expenses payable to the Resolution Professional.
18. The Resolution Professional is directed to examine the application as set out in Section 97(6) of IBC, 2016 including but not limited to issue relating to lamination and invocation of Bank Guarantee of the Respondent by the Petitioner and shall submit his report as provided under Section 99(1) of IBC, 2016, **within 10 days** of the receipt of this order.
19. 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.
20. List the matter for report of the RP as and when the Report is filed by RP by way of an I.A.

Sd/-

**CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)**

---Rajeev, PS---

Sd/-

**LAKSHMI GURUNG
(MEMBER JUDICIAL)**