



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

C.P. No. 589 of 2024

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 for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rule, 2019 c

In the matter of

Canara Bank [Stressed Asset Management Branch]

Having Head office at 112, J.C. Road, Bangalore-560 002,
Having Branch Office at Canara Bank Building, C-14, G-Block, Bandra-Kurla Complex, Bandra, Mumbai-400 051
cb15550@ canarabank.com

.....Applicant/ Creditor

V/s.

Jayshree M. Limbani

Flat No. 804 & 904, 8th Floor & 9th Floor B wing Zeerawali Residency, CTS No 5229 A, Survey No. 256-B Vill. Derasar Lane Opp. Jain Derasar, Pant Nagar Ghatkopar East Mumbai-77

.....Respondent/ Personal Guarantor

Order Pronounced on: 04.09.2024



CORAM:

SHRI CHARANJEET SINGH GULATI
HON'BLE MEMBER (T)

SMT LAKSHMI GURUNG
HON'BLE MEMBER (J)

Appearances:

For the Petitioner : Adv. Anup Khaitan a/w Adv. Harsh Gutka i/b
Anup Khaitan & Co.

For the Personal Guarantor :

Per: - SHRI CHARANJEET SINGH GULATI MEMBER (T)

ORDER

1. The Present Company Petition is filed under section 95(1) of Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") by **Canara bank [Stressed Asset Management Branch]** for initiating Insolvency Resolution Process against **Jayshree M. Limbani ("Personal Guarantor")**.
2. The Canara Bank, Applicant/Creditor herein is a company incorporated under companies Act 1956 and they sanctioned a term loan of Rs. 50,00,00,000/- (Rs. 50 Crores only) to Elegant Forge & Equipments Private Limited on 05th October 2018. In terms of sanction, Jayshree M. Limbani (respondent/personal guarantor) provided a deed of personal guarantee dated 02.03.2019.
3. Canara Bank MCB, BKC branch Mumbai sanction a Term Loan of Rs. 50,00,00,000/- to the Corporate Debtor at their request vide sanction letter dated 05.10.2013
4. Pursuant to the Sanction Letter, a Joint Term Loan Agreement dated 02.03.2019 was entered into between the Corporate Debtor and Financial Creditor, in terms of which the parties crystallized the terms and conditions for the grant of the Facility to the Corporate Debtor.



5. In terms of the Sanction Letter and Loan Agreement, the Facility was to be utilized by the Corporate Debtor to enable it to carry out their business activities i.e. manufacturing of forged components.
6. In terms of the Loan Agreement read with the Sanction Letter, the said Term Loan specifically obtained from Canara Bank door to door tenure of 7 years and 5 months and carried an interest rate of 1year MCLR+5.30%+TP (0.85).
7. Pursuant to the terms of Sanction Letter and Loan Agreement, an amount of Rs. 50,00,00,000/- was disbursed to the Corporate Debtor by the Financial Creditor.
8. Subsequent to the disbursement, the Corporate Debtor failed to adhere to terms of the Loan Agreement and failed to pay interest / PEMI. Accordingly, the credit facilities availed by the Corporate Debtor was classified as none performing asset (NPA) as on 30.11.2021. the Corporate Debtor further failed to regularize the account or to repay the debt.
9. Mr. Jayshree M. Limbani secured the Term Loan via mortgaging
 - a. Flat No. 804, 8 Floor, "B" Wing, "Jeerawali Residency", Village Ghatkopar Kiorl Derasar Lane, Opp. Jain Derasar, Pant Nagar Ghatkopar (East), Mumbai 400 007, Maharashtra, CTS No. 5229A, Survey No. 256B, admeasuring area 1372 Sq. Ft. (Carpet Area) Equivalent to 1646 Sq. Ft. (built up area), standing in the name of **Mr. Manilal H. Limbani & Mrs. Jayshree M. Limbani**.
 - b. Flat No. 904, 9" Floor, "B" Wing, "Jeerawali Residency", Village Ghatkopar Kiorl Derasar Lane, Opp. Jain Derasar, Pant Nagar, Ghatkopar (East), Mumbai 400 077, Maharashtra, CTS No. 5229 A, Survey No. 256B, admeasuring area 1372 Sq. Ft. (Carpet Area)



equivalent to 1646 Sq. Ft. (built up area), standing in the name of **Mr. Manilal H. Limbani & Mrs. Jayshree M. Limbani**.

10. The payment obligation arises out of a Deed of Guarantee dated 02.03.2019 executed by 1. Mrs. Meena R. Mogra, 2. Mr. Ravindra K. Mogra, both adults residing at 701/A, Meenakshi Apartments, Gokuldharm, Goregaon (East), Mumbai-400 063, 3. Mrs. Jayshree Manilal Limbani, 4. Shri Manilal H. Limbani, both adults Indian Inhabitants and residing at SHIVKRUPA Flat No. 7, 2nd Floor Karani Lane Agra Road Ghatkopar Mumbai 400 086 and (5) M/s. Elegant Creation Pvt. Ltd. a company incorporated under the Companies Act, 1956, having its Registered Office at 701/A, Meenakshi Apartments, Gokuldharm, Goregaon (East), Mumbai-400 063 in favor of the Financial Creditor ("Deed of Guarantee") to secure the Facility sanctioned to the Corporate Debtor Elegant Forge & Equipments Private Limited. The Deed of Guarantee secures *inter alia* the performance of payment obligations of the Corporate Debtor and any failure to discharge such obligations renders Jayshree M. Limbani liable to pay such amounts in terms of her obligations under the aforesaid Deed of Guarantee
11. In view of the Corporate Debtor's default, a legal notice was issued on 13.04.2022 to the Corporate Debtor as well as to the Guarantor herein Mrs. Jayshree M. Limbani, further demand notice in form-B was also issued to the Corporate Guarantor on 17.11.2023.
12. However, Mrs. Jayshree M. Limbani (Guarantor herein) have not responded to the Invocation Notice, nor has any payment been made by her in discharge of her contractual obligation under the Deed of Guarantee.
13. As on 17.11.2023, a sum of Rs. 71,42,72,499.22/-towards the Disbursed Loan and the interest due thereon is due and payable by the Corporate Debtor to the Financial Creditor.



14. As per the terms of the Deed of Guarantee, the liability of Mrs. Jayshree M. Limbani is joint, several, irrevocable and coextensive with that of the Corporate Debtor. Since the Corporate Debtor has defaulted upon its payment obligations, Mrs. Jayshree M. Limbani in its capacity as the Personal Guarantor is liable to pay the entire Outstanding Amount without any delay and demur to the Financial Creditor.
15. Owing to the aforesaid default and consequential non-payment by Mrs. Jayshree M. Limbani, the Financial Creditor was constrained to issue the demand notice in accordance with Section 95(4) (b) of the Code, under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantor to Corporate Debtors) Rules, 2019 read with Section 95 of Insolvency and Bankruptcy Code 2016 dated 17.11.2023 calling upon the guarantor to pay the outstanding amount of INR 71,42,72,499.22/-.
16. In view of the aforesaid, it is submitted that the Respondent has defaulted in repaying the total outstanding amount & is unable to pay the debts within the meaning of the provisions of the Insolvency and Bankruptcy Code, 2016.
17. The copy of the petition has been served on the Personal Guarantor/Respondent.
18. 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

19. The Petition for initiating insolvency resolution process against Personal Guarantor to the Corporate Debtor is complete in all respect. The Applicant had proposed the name of the Insolvency Professional, Mr. Prashant Jain in the petition. Accordingly, we appoint Mr. Prashant Jain with registration no. **IBBI/IPA-001/IP-P01368/2018-2019/12131** A-501, Shanti Heights, Plot No. 2,3,9B/10, Sector 11, Koparkhairne, Thane, Navi Mumbai, Maharashtra-400709, as Resolution Professional ("RP").
20. 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.
21. This Bench also directs for an advance payment of Rs.1,00,000/- (Rupees One Lakh only) 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).
22. The Resolution Professional is directed to examine the application as set out in Section 97(6) of IBC, 2016 who after examining, shall submit his report as provided under Section 99(1) of IBC, 2016, **within 10 days** from uploading of this order.
23. 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.

24. List the matter for report of the RP as and when the report of RP is filed.

Sd/-

**CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)**

---Shaharukh. PS---

Sd/-

**LAKSHMI GURUNG
(MEMBER JUDICIAL)**