



IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.307 - C.P.(IB)/296(AHM)2023

With

ITEM No. 308 – IA/631(AHM)2024

Order under Section 95 IBC

IN THE MATTER OF:

Small Industries Development Bank of India

.....Applicant

V/s

Shilpaben Mukeshkumar Shah S/o Mukeshkumar
Bhagwandas

.....Respondent

Order delivered on: 20/12/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Sameer Kakar, Hon'ble Member(T)

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

-sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-sd-

SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I, AHMEDABAD**

CP (IB) No.296/NCLT/AHM/2023

With

I.A. No.631/NCLT/AHM/2024

[Company Petition under Section 95 of the Insolvency and Bankruptcy Code, 2016 r.w.Rule7 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019]

*In the matter of **Smt. Shilpaben Mukeshkumar Shah***

CP (IB) No.296/NCLT/AHM/2023

Small Industries Development Bank of India

Registered Office:

SIDBI Tower, 15 Ashok Marg,
Lucknow – 226001, Uttar Pradesh

Branch office:

Swavalamban Bhavan, SARB, 2nd Floor, C-11,
G Block Bandra Kurla Complex, Bandra East,
Mumbai, Maharashtra – 400051

Through Resolution Professional

Bhupinder Sethi

Insolvency Professional

IBBI/IPA-001/IP-P-02144/2020-2021/13366

B34-6650/24 B, Street No-2, New Atam Nagar,

Jassian Road, Haibowal, Ludhiana, Punjab-141001

.....Applicant/Creditor

VERSUS

Smt. Shilpaben Mukeshkumar Shah,

W/o Sh. Mukeshkumar Bhagwandas,

4, Ashwin Society, Fatehpura, Paldi,

Ahmedabad, Gujarat-380007.



...Respondent / Personal Guarantor

I.A. No.631/NCLT/AHM/2024

Mr. Bhupinder Sethi

(Resolution Professional of Personal
In the matter of Insolvency Resolution Process of
Personal Guarantor Smt. Shilpaben Mukeshkumar Shah
Registered Address: B34-665/24 B,
Street No-2, New Atam Nagar,
Jassian Road, Haibowal, Ludhiana, Punjab-141001
Email ID: ip.brsethi@gmail.com

**... Applicant
(Resolution Professional)**

Order pronounced on 20.12.2024

CORAM:

**MR. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
MR. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)**

For Applicant/RP : Mr. Roshan Kumar, Advocate
For the FC : Ms. Pinki, Advocate
For PG : Ms. Natasha D. Shah, Advocate

**ORDER
Per: Bench**

1. The Present Company Petition i.e. CP(IB)/296(AHM)2023 is filed on 18.12.2023 under Section 95 of the Insolvency and Bankruptcy Code 2016, (IBC, 2016) read with Rule 7(2) of the I&B (AAA for IRP for PGCD) Rules, 2019 by the Applicant Bank (Financial Creditor) though RP seeking initiation of Insolvency Resolution Process against **Smt.**



Shilpaben Mukeshkumar Shah (Personal Guarantor) for a default amount of Rs.17,31,47,306/- in respect of Deed of Guarantee dated 20.03.2014 executed in favour of the Applicant Bank.

2. The proceedings in the present matter was put on hold since the Constitutional Validity of the Sections 94 to 100 relating to the insolvency of personnel Guarantor was pending before the Hon'ble Supreme Court in the matter of **Dilip B. Jiwarajka V/s Union of India & Ors.** in WP(civil)No. 1281 of 2021. Later on vide order dated 09.11.2023 upheld the Constitutional Validity of the Sections 94 to 100 of the IBC, 2016.
3. In so far as the Personal Guarantor to Corporate Debtor is concerned, the Hon'ble Supreme Court of India in the matter of **Lalit Kumar Jain Vs. Union of India & Ors.** in the Transferred Case (Civil) No.245/2020 has upheld the vires of the notification issued by the Central Government vide S.O. 4126(E) dated 15.11.2019, in so far as it relates to coming into force of Insolvency and Bankruptcy Process of Personal Guarantors to Corporate Debtor. Thus, when a



Corporate Insolvency Resolution Process in relation to Corporate Debtor is pending before this Adjudicating Authority, then as per Section 60(2) of IBC, 2016 the NCLT would be competent forum to file an Application for Personal Guarantor in relation to such Corporate Debtor.

4. On presentation of the application by the Applicant Bank, this Tribunal vide order dated 01.03.2024, appointed Interim Resolution Profession (hereinafter referred to as "IRP") as suggested by the Financial Creditors viz. **Mr. Bhupinder Sethi**, to carry out Insolvency Resolution Process of the Personal Guarantor as per section 97(3) of IBC, 2016, with a direction to submit the report under Section 99 of the IB Code, 2016, within ten days. The IRP is also directed to file its report through separate IA.
5. The Interim Resolution Professional has filed the report through IA No. 631 of 2024 through E-mode on 08.04.2024 recommending the admission of the Company Petition filed under Section 95 of IBC, 2016. The IRP submitted observation and recommendation as regards admission of the Company Petition in his report dated



28.03.2024. The grounds for admission of the application as per the Report are as follows:-

- i. The Insolvency Application has been filed to initiate the Insolvency Resolution Process of Smt. Shilpaben Mukeshkumar Shah, in the requisite form, Form C, in terms of the Sub Rule 2 of Rule 7 of the Insolvency Resolution Process for Personal Guarantor to Corporate Debtors) Rules, 2019, supported by requisite fee and documents.
- ii. A notice in Form B as per Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 which was issued by the Creditor to the Debtor is also attached with the application.
- iii. The Insolvency Application for initiating Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 satisfies the requirements set out in Section 95 of the Code.
- iv. The RP had allowed the Debtor concerned to prove repayment of the debt and provide additional documents/information. However, the debtor did not revert to the letter send by the RP till the time of signing of this report.
- v. The Debtor, Personal Guarantor, is not eligible for the fresh start Process Under Chapter II of Part III of the Code.



6. Vide order dated 08.05.2024, this Tribunal issued a notice to the Respondent/Personal Guarantor as well as to the Corporate Debtor and directed them to file its reply, if any, within two weeks from the date of receipt of notice. Thereafter, rejoinder, if any, be filed within seven days.
7. Thereafter, on 18.06.2024 Applicant/IRP filed service report affidavit. As per service report affidavit, notice sent through registered post on 31.05.2024 delivered to the Corporate Debtor on 03.06.2024 and to Personal Guarantor on 04.06.2024 apart from service through e-mail. After, due service the personal Guarantor appeared but not filed any reply in the matter. Therefore, vide order dated 08.07.2024 right of reply of the personal guarantor was closed.
8. We have heard the learned counsel for Applicant Bank as well as learned Counsel for the IRP, learned Counsel for the Financial Creditor as well as Learned Counsel for the Respondent/Personal Guarantor and perused the documents on record. We have also gone through the report dated 28.03.2024 filed by the IRP.



9. We have heard learned counsels for Applicant Bank as well as learned Counsel for the IRP, whereas Respondent / Personal Guarantor was Ex-parte against the Respondent/Personal Guarantor and perused the documents on record. We have also gone through the report dated 28.03.2024 filed by the IRP.
10. On perusal of record it is seen that the Applicant Bank granted term loan for an amount of Rs.780.00 Lakh (Rupees Seven Hundred and Eighty Lakh Only) under the Secured Business Loan for MSMEs in Services Sectors Scheme of SIDBI to the Corporate Debtor **M/s Alps Liesure Holidays Private Limited** vide Sanction Letter dated 07.03.2014 for which various loan/security documents were executed by the Cooperate Debtor and other in favour of the Applicant Bank. Some of which are annexed with Petition as **Annexure- 3 to Annexure- 6** at **Page No.39-82.**
11. The Respondent/Personal Guarantor has also executed Deed of Guarantee on 20.03.2014 in favour of the



Applicant Bank to secure the Credit Facilities granted to the Corporate Debtor **M/s Alps Liesure Holidays Private Limited**, which is enclosed along with the Petition as **Annexure- 7** at **Page No.83-88**.

12. However, after availing the Loan/Credit Facilities, the Corporate Debtor failed to maintain financial discipline as per terms and conditions of the loan agreement due to which loan account became irregular and committed default in its obligations on 10.11.2016. Consequently, the loan account of the Corporate Debtor was classified as NPA on 08.02.2017.

13. Thereafter, Applicant Bank issued Recall Notice dated 02.05.2017 to the Corporate Debtor and the personal guarantors including the Respondent/Personal Guarantor invoking the Guarantee to pay the outstanding dues by in ten days which is annexed with Petition as **Annexure- 8** at **Page No.89-91**. Applicant Bank also served Demand Notice dated 07.07.2017 U/s 13(2) of the SARFAESI Act, 2002 to the Borrower and Guarantors to repay the



outstanding dues which is annexed with Petition as **Annexure – 10** at **Page No.94-100**.

14. On perusal of records and order in CP(IB) 178 of 2017 which pertains to the Corporate Debtor, it is noted from the order dated 13.11.2018, that the Corporate Debtor after receiving the Statutory Notice dated 07.07.2017, under 13(2) SARFAESI vide letter dated 13.07.2017 sought re-schedulement of the outstanding loan amount and vide letter dated 20.07.2017, sought in deferment in SARFESI action initiated by Applicant Bank. The Applicant Bank vide letter dated 24.07.2017, rejected the restructuring proposal and conveyed that SARFESI action initiated would continue. It is clear from the above paragraph that the Corporate Debtor had acknowledged the loan amount vide above mentioned letters.

15. Applicant Bank also issued Notice dated 26.05.2020 to the personal guarantors including the Respondent/Personal Guarantor again invoking the Guarantee to pay the outstanding dues by in ten days which is annexed with Petition as **Annexure– 9** at **Page**



No.92-93. Further, proof of dispatch being Postal Receipt dated 27.05.2020 and acknowledgment of delivery dated 30.05.2020 of the same was filed as **Annexure-3** by way of additional affidavit dated 27.11.2024.

16. Thereafter, the Applicant Bank also invoked the personal guarantee by serving **Form-B** being Demand Notice dated 19.09.2022 Section 95(4)(b) of the IBC, 2016 r.w. Rule 7(1) of the I&B (AAA for IRP for PGCD) Rules, 2019 which was duly served on 24.09.2022 to the Respondent/Personal Guarantor which is annexed with Petition as **Annexure-12** at **Page No.106-110**. Further, proof of dispatch being Postal Receipt dated 21.09.2022 and Tracking Report of delivery of the same was also filed as **Annexure-4** by way of additional affidavit dated 27.11.2024.

17. However, due to non-payment of the amount by the Corporate Debtor as well as the Personal Guarantors, the Applicant Bank filed this Company Petition on 18.12.2023, for initiation of Insolvency Resolution Process against the Personal Guarantor in Form-C under Section 95 of IBC, 2016 read with Rule 7(2) of the Insolvency and



Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.

18. In view of above sequence of events, it is considered that the Applicant Bank demanded the amount from the Respondent/Guarantor by invoking the Personal Guarantee through Recall Notice dated 02.05.2017 as well as through Demand Notice dated 26.05.2020 and Demand Notice dated in **Form-B** 19.09.2022 asking to repay the outstanding dues within period of limitation from the date of default/NPA.

19. Moreover, the Personal Guarantee is considered enforced though the Present Petition with in three years of limitation in view of acknowledgment of debt liability by the Corporate Debtor as noted in the order dated 13.11.2018 passed in CP(IB) 178 of 2017 in terms of section 18 of the Limitation Act as well as in view of judgment of Hon'ble Supreme Court *in Suo Moto WP (Civil) No. 3 of 2022 in Re: Cognizance for Extension of Limitation* whereby the period i.e. 15.03.2020 to



28.02.2022 is excluded for calculating the period of limitation. Hence, the present Petition is filed on 18.12.2023 within three years of limitation period from the date of invocation of the personal guarantee.

20. Further, it is noted under section 128 of Indian Contract Act, 1872 that when a default is committed the Principal Borrower and Surety are jointly and severally liable to Creditor and Creditor has the right to recover its dues from either of them or from both of them simultaneously. For benevolent reference, the said section of the Contract Act, 1872 is reproduced below:

"The liability of the surety is co- extensive with that of the principal debtor, unless it is otherwise provided by the contract."

21. Moreover, From the report of IRP, it is clear to us that:-

- i. IRP has recommended to accept the application for the reason as stated in the report dated 28.03.2024.
- ii. The Respondent has admitted to have executed the Guarantee Agreement.



- iii. The Applicant has demanded the amount outstanding from the Respondent vide Demand Notice dated 19.09.2022.
- iv. Resolution Professional report states that no evidence was placed before him by the Respondent having paid the amount demanded by the Applicant and as such in over view entire amount demanded is un-serviced as on the date of order.

22. In view of the foregoing we are left with no other choice but to order as under: -

- 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 IBC, 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. Bhupinder Sethi**, having Registration No: IBBI/IPA-001/IP-P-02 144/2020-2021/13366, office at B34-6650/24 B, Street No-2, New Atam Nagar, Jassian Road, Haibowal, Ludhiana, Punjab-141001 who was appointed when the Section 97 application was allowed vide Order dated 01.03.2024, is directed to cause a public notice published on behalf of the



Adjudicating Authority within 10 days of passing this Order on the website of the NCLT Ahmedabad 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 the 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.

V. The repayment plan may authorize or require the Resolution Professional to:

a) carry on the debtor's business or trade on his behalf or in his name: or

b) realise the assets of the debtor; or

c) administer 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.

VI. 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.

VII. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons therefor. 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 day 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.

VIII. 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.

IX. The Resolution Professional shall submit his periodic reports before this Tribunal, every 30 days.

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.

23. In terms of the above, **CP (IB)/296(AHM)/2023** filed under Section 95 (1) of the IBC, 2016 is admitted and the Insolvency Resolution Process stands initiated against the Respondent/Personal Guarantor.

24. Accordingly, **IA/631(AHM) 2024** is stands disposed of.

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SAMEER KAKAR
MEMBER (TECHNICAL)
VP

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SHAMMI KHAN
MEMBER (JUDICIAL)