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

C.P. No. 196/MB/C-III/2023

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

Piramal Trusteeship Services Private Limited
Having its registered office at
4th Floor, Piramal Annex,
Ganpatrao Kadam Marg,
Lower Parel, Mumbai – 400013.

..Applicant/ Financial Creditor

Versus

Mr. Suresh Hirani
Residing at 405, Kent Garden CHS Ltd,
TPS Road, No. III, Factory Lane,
Borivali (West), Mumbai -
400092.   *...Respondent/Guarantor*

Order pronounced on: <u>30.10.2024</u>

Coram:

SHRI CHARANJEET SINGH GULATI   SMT LAKSHMI GURUNG
HON'BLE MEMBER (T)   HON'BLE MEMBER (J)

Appearances:

For the Applicant: Adv. Saif Dinsgankar a/w Adv.Saloni Salukhe

For the Personal Guarantor: Adv. Priyank Jadhav a/w Adv Ayush Rajani i/b AKR Legal

Per: - SMT LAKSHMI GURUNG, MEMBER (J)

ORDER

1. The Present Company Petition has been filed under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 (**"IBC"**) by **Piramal Trusteeship Services Private Limited (Applicant)** for initiating Insolvency Resolution Process against **Mr. Suresh Hirani ("Respondent/Personal Guarantor")**.

2. A Security Trustee Agreement was executed on 21.03.2018 between M/s. Shamik Enterprises Pvt. Ltd. (**"the Corporate Debtor"**) as Borrower and M/s Piramal Capital and Housing Limited, (as Lender) and Piramal Trusteeship Private Limited (as Security Trustee), whereby Piramal Trusteeship Private Limited was jointly appointed to act as Trustee for and on behalf of and for the benefit of the Lender therein and to hold the Securities created pursuant to the Loan Agreement between the Corporate Debtor, the Lender and the Security Trustee therein.

3. Thereafter, a Loan Agreement was entered into by the Corporate Debtor and the Lender on 22.03.2018 under which loan of Rs. 52 Crores (inclusive of Rs.12 Crores as revolving Credit Facility) was advanced to the Corporate Debtor.

4. A Deed of Guarantee was executed on 22.03.2018 in favor of the Applicant herein, whereby the Respondent gave an unconditional and irrevocable Personal Guarantee for repayment of the loan advanced under the said Loan Agreement dated 22.03.2018.

5. By an order dated 03.02.2022, Corporate Insolvency Resolution Process was initiated against the Corporate Debtor.

6. As on 03.02.2022 debt of Rs.8,89,49,651/- was due from the Corporate Debtor. A Demand Notice was issued on 04.03.2022 to the Respondent 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. The Reply dated 22.03.2022, to the demand notice was received by the Applicant, however, no dues were paid. Hence, the Applicant filed the present the present application under Section 95 of IBC.

7. After perusing the petition, we observe that the Demand Notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 was issued to the Personal Guarantor. A copy of the present petition has been served on the Personal Guarantor on 03.11.2023 via e-mail address *suresh@dkinfra.com.*

8. 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: -

   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.

9.   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.

10.   We also note that the Applicant has proposed the name of Mr. Arun Kapoor, whose Authorization for Assignment is valid up to 31.12.2025, to be appointed as Resolution Professional, therefore, we deem fit to appoint **Mr. Arun Kapoor** bearing IBBI Registration No. IBBI/IPA-003/IP-N00030/2017-2018/10230 as Resolution Professional of the Personal Guarantor.

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.   The Bench directs for immediate adhoc payment of Rs. Rs.1,50,000/- by the Financial Creditor to the Resolution Professional to initiate the process which shall be adjusted towards the fee and expenses payable to the Resolution Professional.

13.   The Resolution Professional is directed to examine the application as per the provisions laid down in Section 97(6) of IBC, 2016 including but not limited to issue relating to limitation 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.

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 for report of the RP as and when the Report is filed by RP by way of an I.A.

Sd/-	**Sd/-**
CHARANJEET SINGH GULATI	**LAKSHMI GURUNG**
(MEMBER TECHNICAL)	**(MEMBER JUDICIAL)**

Vaishnavi, LRA