



**IN THE NATIONAL COMPANY LAW
TRIBUNAL MUMBAI BENCH - I**

C.P. (IB) No. 1077/MB/2022

Under Section **95(1)** of the Insolvency & Bankruptcy Code, 2016 *r/w* Rule **7(2)** of the Insolvency and Bankruptcy (Application to the Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), Rules, 2019.

In the matter of

DBS Bank India Limited

... Financial Creditor

Versus

Mr.Sukanraj Babutmal Shah

... Personal Guarantor

Order delivered on: 22.10.2024

Coram:

Prabhat Kumar

Hon'ble Member (Technical)

Justice V.G Bisht, (Retd).

Hon'ble Member (Judicial)

Appearances:

For the Operational Creditor : Mr. Nikhil Rajani, Adv i/b V.Deshpande &
Co.

For the Corporate Debtor : Mr. Yahya Batatawala, Advocate



ORDER

Per: Virendrasingh G. Bisht, Member (Judicial)

1. The present petition is filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) r/w Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 by DBS Bank India Limited (“**Financial Creditor / Applicant**”) for the purpose of initiating insolvency resolution process against **Mr.Sukanraj Babutmal Shah (“Personal Guarantor / Respondent”)** who is the Personal Guarantor of the Corporate Debtor, **SKS Textiles Private Limited (formerly SKS Textiles Private Limited)**.
2. The total debt claimed to be in default amounts to INR 28,79,39,439.56/- (Rupees Twenty-Eight Crores Seventy-Nine Lakh Thirty-Nine Thousand Four Hundred Thirty-Nine and Fifty Only) as on 31.10.2021 with Further interest from 01.11.2021 till payment and/or realization. The Date on which the Debt fell due is 04.01.2021. The date of default is 20.01.2022.
3. The Date on which the Guarantee was invoked on 02.12.2022 by a way of demand notice.
4. The Account of Corporate Debtor M/s S.K.S. Textiles Limited, the principal borrower, was classified as Non-Performing Assets (NPA) on 06.04.2021.
5. The Deed of Guarantee was executed on 11.05.2015 by the Personal Guarantor and Supplemental Deed of Guarantee was executed on 03.03.2016.

Submission on Behalf of the Financial Creditor/Petitioner

6. DBS Bank India Limited (formerly known as DBS Bank Limited) is a banking company incorporated under the Companies Act,

2013, with its registered office in New Delhi and additional branch offices, including locations in Mumbai.

7. The Corporate Debtor had availed various loan facilities from the Applicant.
8. At the request of the Corporate Debtor on or around 10.09.2015, and 24.03.2016, the applicant, DBS Bank India Limited, granted and disbursed multiple facilities, for which various documents were executed, including a Demand Promissory Note.
9. The Personal Guarantors of the Corporate Debtor, by providing their Personal Guarantee for the above facilities on 11.05.2015, and 03.03.2016, guaranteed the repayment of these facilities in the event of default by the Corporate Debtor.
10. The facilities were extended from time to time, with repayment secured by executing various loan documents, including a Demand Promissory Note and the Guarantees of the Personal Guarantors.
11. The Personal Guarantor of the Corporate Debtor, by providing their Personal Guarantee dated 03.03.2016, guaranteed the repayment of the facilities in the event of default by the Corporate Debtor.
12. The said facilities were lastly extended pursuant to the sanction letter on 27.10.2020.
13. The Corporate Debtor, in its covering letter dated 05.10.2020, delivered undated repayment cheques for amounts of ₹7,40,00,000, ₹7,50,00,000, and ₹8,00,00,000. However, when these cheques were presented for payment on 11.05.2021, they were returned dishonored with the remark "Insufficient funds."
14. Due to the default, the Applicant recalled the entire loan facilities due from Corporate Debtor vide letters dated 03.05.2021, and 13.05.2021.



15. In light of the dishonor of the cheques, the Applicant issued a notice dated 18.05.2021, under Section 138 of the Negotiable Instruments Act. The Corporate Debtor responded with replies dated May 24.05.2021, and 31.05.2021 expressing a desire for an amicable resolution to the issues at hand and requested the Applicant to consider the restructuring proposal with compassion, emphasizing the importance of not jeopardizing the operation of the Company.
16. The Applicant has also filed recovery proceedings in Debt Recovery Tribunal-I, Mumbai, by submitting a regular Original Application, which is currently pending for hearing.
17. The Applicant/Financial Creditor submits that despite receipt of the notices, Corporate Debtor failed and neglected to make the payment or any part thereof.
18. The Financial Creditor states that, left with no alternative recourse, they dispatched a demand notice on January 5, 2022, issued 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 notice demands payment of ₹28,79,39,439.56 to settle the unpaid debt in full within fourteen days of receiving the demand notice.

Affidavit of Reply filed by the Respondent/Personal Guarantor:

19. The Personal Guarantor denies all the averments made in the Company Petition (IB) and contends that the Application should be dismissed with cost at the very instance.
20. **Incorrect date of default in the Demand Notice and Captioned Company Petition**
 - a. The Corporate Debtor/Personal Guarantor submits that on bare perusal of the Captioned Company Petition, it can be seen



that the Financial Creditor has kept on changing/ shifting date of default as per its own whims and fancies which is absurd and not permissible under law.

- b. In the Demand Notice in Form B dated 05.01.2022 due date has been shown as 04.01.2021 and date of default has been shown as 05.01.2021 purportedly.
- c. In the Captioned Company Petition in Form C of Petition, due date has been shown as 04.01.2021 and date of default has been shown as 20.01.2022 purportedly.
- d. It is surprising and shocking to see as to how date of default has been changed from 05.01.2021 to 20.01.2022 by the Financial Creditor without justifying and clarifying the reasons. In fact, the Financial Creditor has also not justified the reason to show as to how purportedly date of default of 05.01.2021 has been arrived at by the Financial Creditor in the Demand Notice dated 05.01.2022.
- e. It is further shocking and surprising to read the submission of the Financial Creditor under Part III, Pt. 3 (Date on which the debt was due) that *“04.01.2021 when despite receipt of Demand Notice cum invocation of Personal Guarantee Notice you have failed and neglected and or intentionally avoided to pay the amount of debt as called thereunder or any part thereof”*. I say and submit that I had not received any demand notice on 04.01.2021 as allegedly mentioned by the Financial Creditor. The submissions of the Financial Creditor are absurd, unsustainable and farfetched.
- f. The Personal Guarantor submits that due to default committed by the Corporate Debtor i.e., SKS Textiles Private Limited, the account of the Corporate Debtor was declared NPA on 06/04/2021. It is unimaginable to understand as to how date of default could ever arise prior to declaration of NPA by



Financial Creditor.

- g. The Personal Guarantor submits that the Financial Creditor for the 1st time recalled the entire loan amount from the Corporate Debtor and the Guarantors of the Corporate Debtor on 03/05/2021 by issuing a Recall Notice. Then it is surprising, shocking and unimaginable to understand as to how even prior to issuance of recall notice, default could arise i.e., 05/01/2021 as per the Demand Notice dated 05/01/2022 and default could arise i.e., 20/01/2022 as per the Captioned Company Petition
- h. The Personal Guarantor submits that at the face of it, it can be seen that Financial Creditor is time and again shifting the date of default as per its own convenience for this sole reason, the Captioned Company Petition is not maintainable and deserves to be dismissed at threshold.

21. No Proper authorization to file the Captioned Company Petition

- a. The Corporate Debtor submits that the purported Captioned Company Petition filed by Mr. Pankaj Maroo on behalf of Financial Creditor is illegal and unlawful as Mr. Pankaj Maroo lacks proper authorization and further submits that the purported authorization annexed to the Petition is invalid and untenable.
- b. Upon reviewing the purported document, it appears that an 'Authorisation Committee' passed a circular resolution on January 08.01.2021, purportedly appointing Mr. Pankaj Maroo. The Corporate Debtor asserts that the Financial Creditor is a registered company under the Companies Act of 2013, comprising a Board of Directors. Authorization to file the captioned company petition must be granted by the Board of Directors of the Financial Creditor, rather than by an Authorisation Committee, which lacks any legal standing this



case.

22. The Petitioner is not the Financial Creditor of the Respondent.

- a. The Corporate Debtor submits that they executed a Deed of Guarantee dated 11.05.2015, and a Supplementary Deed of Guarantee dated 03.03.2016, with DBS Bank Limited. However, it is noted that the captioned company petition has been filed by DBS Bank India Limited. The Corporate Debtor emphasizes that no Deed of Guarantee has been executed with DBS Bank India Limited.
- b. The Corporate Debtor states that the Financial Creditor has claimed that under a Scheme of Amalgamation, the entire undertaking of DBS Bank Limited was transferred to DBS Bank India Limited effective 01.03.2019. However, the Financial Creditor has not provided the Scheme of Amalgamation to clarify the true facts regarding what has been transferred, nor any order from the Reserve Bank of India as mentioned by the Financial Creditor. Therefore, the Corporate Debtor asserts that DBS Bank India Limited is a separate entity and that they have not entered into any Deed of Guarantee with it.
- c. The Corporate Debtor submits that the Financial Creditor has filed the Captioned Company Petition as “DBS Bank India Limited (formerly known as DBS Bank Limited)”. However, on perusal of the MCA Portal, both entities i.e., DBS Bank Limited and DBS Bank India Limited both are active and in existence.
- d. The Corporate Debtor submits that it is difficult to comprehend how the Financial Creditor can refer to itself as “formerly known as DBS Bank Limited” when DBS Bank Limited is still in existence. Additionally, it is unclear how the present



Petitioner, DBS Bank India Limited, is claiming to be the Financial Creditor of the Respondent, namely myself. Therefore, DBS Bank India Limited is not the Financial Creditor of the Respondent and, as such, could not have filed the captioned company petition. Consequently, the captioned company petition should be dismissed with exemplary costs.

Additional Affidavit Filed by the Financial Creditor

23. The Financial Creditor by filing an Additional Affidavit placed on record the Scheme of Amalgamation to justify their entitlement to file the present petition in response to the contention of the Respondent that he had executed a Deed of Guarantee in favor of DBS Bank Limited, while the petition has been filed by DBS Bank India Limited.
24. The Financial Creditor asserts that in or about 2018, DBS Bank Ltd., (the Singapore Entity) initiated the process of bringing together its operations in India under a wholly owned subsidiary which is incorporated in India under the Companies Act, 2013 and therefore incorporated the petitioner on or about 12.03.2018.
25. By an order dated February 4, 2019, the Reserve Bank of India approved and sanctioned the Scheme of Amalgamation under Section 44A of the Banking Regulation Act, 1949, resulting in the amalgamation of the entire undertaking of DBS Bank Ltd. (India Operations) with DBS Bank India Ltd., a wholly owned subsidiary of DBS Bank Ltd. (the Singapore entity). Based on the approval of this Scheme of Amalgamation, the Petitioner has been granted a license by the Reserve Bank of India to conduct banking operations in India through its wholly owned subsidiary. The Scheme of Amalgamation was directed to come into force on March 1, 2019. The Financial Creditor submits that with the scheme becoming effective, the entire DBS India Branch undertaking of DBS Bank



Ltd. (the Singapore entity), including its assets and liabilities, all debts, demands, deposits, payment obligations, financial contracts, and so on, has been transferred to and is deemed to be vested in DBS Bank India Ltd. as a going concern.

26. Under the said scheme, it is provided that the loans and obligations due or that may become due in the future between DBS Bank Ltd. (the Singapore entity) shall continue to exist and will not be deemed discharged, released, impaired, or otherwise affected in any manner. All security interests, guarantees, obligations, and similar instruments will be transferred to and vested in DBS Bank India Ltd., the Petitioner herein, and will continue to do so. As such, by virtue of the said Scheme, the rights and obligations of DBS Bank Ltd. (the Singapore entity) are vested in the Petitioner, who is entitled to enforce these rights and obligations against the constituents of DBS Bank Ltd. (the Singapore entity). Furthermore, it is submitted that, by virtue of the said Scheme, the Petitioner has become a lender/Financial Creditor and is therefore entitled to recover the outstanding dues payable by the Corporate Debtor and the Respondent, as well as to enforce the guarantee obligations.

Recommendation of Resolution Professional

27. This Bench had appointed the **Mr. Hirachand Nemichand Bafna**, Insolvency Resolution Professional (“RP”) *vide* Order dated 08.08.2023 in the captioned petition and thereby directed the Applicant to prepare and file a Report *u/s* 99 of the IBC, 2016 and the same has been taken on record by IA 4267 of 2023. The RP after due examination of the application, documents filed along with the application, in addition to the requirements as mandated under clauses (6) (a) (b) of Section 99 of the IBC, 2016, -
“.. *Observation of the Resolution Professional: The Application has been filed u/s 95 by the Applicant i.e. DBS Bank India Limited as on 29.09.2022 in the said application Debt owned by the Applicant is*



*Rs.28,79,39,439.56 (Outstanding as on 31.10.2021 as per Application of Section 95).....etc.; It is submitted that, in view of the reasons recorded in para 3,4 & 5 of this report, I hereby recommend for the acceptance of the application No. CP(IB)/1077 (MB)/2022 filed u/s 95(1) of the IBC 2016 by the Creditor to initiate Insolvency Resolution Process against **Mr.Sukanraj Babutmal Shah** Personal Guarantor of the Corporate Debtor M/s SKS Textile Limited and the Adjudicating Authority may appropriate order u/s 100 of IBC, 2016 for admission of the application”.*

28. The personal guarantor was duly served with the report of Resolution Professional.

Findings

29. We have heard the learned counsel for both the parties and have duly perused the documents on record.
30. Since, the Petitioner is successor of DBS (Singapore) and acquired the debt owed by the Corporate Debtor pursuant to scheme of arrangement duly approved by Reserve Bank of India contemplating transfer and vesting of all security interests, guarantees, obligations, and similar instruments in DBS Bank India Ltd., we do not find any substance in the contention of the Respondent that the Petitioner is not a financial creditor qua him.
31. An 'Authorisation Committee' of the Petitioner Company, duly authorized by the Board in this respect, passed a circular resolution on January 08.01.2021, appointing Mr. Pankaj Maroo, inter alia, to file the present Petition and the resolution passed by Authorisation Committee is duly signed by the Company Secretary of the Petitioners. There is no bar under the Companies Act to authorize a committee to discharge the powers vested in the Board of Directors. Accordingly, we do not find any merit in the contention that the authorized signatory is not authorized to file the present petition.



32. From the pleadings in Petition, it is clear that the Account of Corporate Debtor was classified as Non-Performing Assets (NPA) on 06.04.2021, however, the date of default is stated as 20.01.2022 in Part III Column 4 of the Petition on the ground that the obligations of the Personal Guarantor is continuing in nature and therefore the default continues when the Respondent despite receipt of demand notice dated 5.1.2022 under Rule 9(1) of the IBBI (Application to adjudicating authority for Insolvency Resolution Process of personal Guarantors to Corporate Debtor) fails to comply with the said demand notice dated 05.01.2022. Prior to this, we note that the demand notice dated 05.01.2022 states the date of default as 05.01.2021 and date of debt fallen due as 04.01.2021. The date of default stated as 05.01.2021 was qua Corporate Debtor in the absence of evidence of invocation of guarantee of the Respondent on such date. Admittedly, the guarantee was invoked on 18.05.2021 through a legal notice calling the Personal Guarantors as well to the pay the amount due from the Corporate Debtor, accordingly the default qua Personal Guarantor occurred on receipt of notice dated 18.05.2021. The Respondent has not disputed the service of said notice dated 18.05.2021 invoking their personal guarantee.

33. We observe that Part III of Form-C (Application) annexed to the Petition highlights the significance of the Date of Default in determining the limitation period and the Applicant has stated 20.01.2022, as the date on which the debt fell due. However, Exhibit FF of this Petition i.e. Form-B (Demand Notice) states that the date of default is stated as 05.01.2021. It is trite in law that the primary purpose of a demand notice is to inform the debtor of the claim and put him to notice to pay the outstanding debt failing which the resolution process can be initiated. There is no dispute that the present petition shall be maintainable even if date of default



is taken as 05.01.2021. The incorrect mentioning of date of default qua Personal Guarantor arising from the incorrect understanding in relation to date of default (whether qua Principal borrower or qua Guarantor) in the demand notice cannot be considered to be fatal so as to call for dismissal. Further, no adverse view can be taken simply because the date of default mentioned at column 4 of Part III of the Application is stated on interpretation that the guarantee is continuing one and the last default occurs on expiry of period stated in the demand notice dated 05.01.2022 i.e. 14 days from the receipt of said demand notice. The Petitioner has enclosed all documents and made elaborate pleadings which clearly shows the reasons for stating the different date of defaults.

34. We are of the considered view that the captioned petition is complete in all aspects, and the present case is therefore fit for admission. Ordered accordingly.

35. In terms of the above, the C.P. (IB) No. 1077/MB/2022 filed under Section 95 of the IBC, 2016 is hereby **Admitted** and the Insolvency Resolution Process stands initiated against Mr. Sukanraj Bhabutmal Shah *viz.* the **Respondent** herein. Ordered accordingly. We hereby direct as hereinafter:

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 **Mr. Hirachand Nemichand Bafna**, is appointed as a Resolution Professional ,having Registration No. IBBI/IPA-001/IP-P01207/2018-2019/11922, having address at 21-A, 1st Floor, 47/51, Soni Bhavan Opp. Godiji Temple, Mumbai-400002 [Email-hnb1502@rediffmail.com](mailto:hnb1502@rediffmail.com) , Mobile No. 9820428608, is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Mumbai 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 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, business or trade on his behalf or in his name: or

b. realize the assets of the debtor; or

c. administers or dispose of any funds of the debtor.

VI. 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.

VII. 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.

VIII. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons thereof. 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 days 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.

IX. 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.

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

XI. The Applicant is directed to deposit **INR 60,000/-** (Indian Rupees Sixty Thousand Only) to the bank account of the Resolution Professional within one week, which shall be adjustable towards his fees and out of pocket expenses as decided by the CoC. This shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.

Sd/-

Prabhat Kumar
Member(Technical)

Shivang-LRA

Sd/-

Justice V. G. Bisht
Member(Judicial)