



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **30.08.2024** THROUGH VIDEO CONFERENCING

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

APPLICATION NUMBER :
PETITION NUMBER : IBA/632/2020
NAME OF THE PETITIONER(S) : State Bank of India
NAME OF THE RESPONDENTS : Bhoopeshkumar Jain
UNDER SECTION : Sec 95(1) of IBC, 2016

ORDER

Present: Ld. Counsel Shri. Sashikumar for the Petitioner.

Shri. Amier Hamsa Ali Abbas Rawther, IRP in person.

Vide separate order pronounced in Open Court, the petition under Section 95 of IBC is **admitted** and Shri. Amier Hamsa Ali Abbas Rawther is appointed as the IRP.

Sd/-

(VENKATARAMAN SUBRAMANIAM)
MEMBER (TECHNICAL)

MG

Sd/-

(SANJIV JAIN)
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IBA/632/CHE/2020

(under Section 100 of the Insolvency and Bankruptcy Code, 2016)

State Bank of India

Stressed Asset Management Branch,
Cross Buildings
Egmore,
Chennai- 600 008

.....Applicant/Financial Creditor

Vs

Bhoopesh Kumar Jain alias Bhupesh Kumar Jain

Flat No: F, 6th Floor, Block No:II, "The ART"
Kothari Road,
Nungambakkam,
Chennai-34

....Respondent/Personal Guarantor

CORAM :

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAN, MEMBER (TECHNICAL)

For Applicant : ML Ganesh, Advocate

For Respondent : None Appeared

Order pronounced on 30th August, 2024

COMMON ORDER

(Hearing through hybrid mode)

The present Application IBA/632/CHE/2020 has been filed u/s. 95
of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to



as "IBC, 2016") r/w. Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 by Indian Bank ("Financial Creditor") for initiating insolvency resolution process against Mr. Bhoopesh Kumar Jain ("Personal Guarantor") in respect of Principal Amount of INR 359,95,77,333.94 (Rupees Three Hundred and Fifty Nine Crore Ninety Five Lakh Seventy Seven Thousand Three Hundred and Thirty Three and Paise Ninety Four Only) as on 15.09.2020. The Date of Default, as specified in Part-III of the present Application is 12.09.2017, i.e. the date on which the demand was made. The Corporate Debtor loan account slipped into NPA on 28.07.2017. This Application has been filed on 30.09.2020.

2. Part – I of the application sets out the details of the Applicant / Financial Creditor. It has its registered office in Cross Buildings Egmore, Chennai- 600 008. Part-II of the application sets out the details of the Personal Guarantor. The address of the Respondent is mentioned as Flat No: F, 6th Floor, Block No:II, "The ART" Kothari Road, Nungambakkam, Chennai-34. The Respondent stood as a personal guarantor in respect of the loans availed by M/s. Kanishk



Gold Private Limited, the Corporate Debtor. In part – III of the application, the applicant has given the debt amount of Rs. 359,95,77,333.94 (Rupees Three Hundred and Fifty Nine Crore Ninety Five Lakh Seventy Seven Thousand Three Hundred and Thirty Three and Paise Ninety Four Only) as on 15.09.2020. Part – IV of the Application sets out the details of the Resolution Professional. The Applicant has proposed Mr. Amier Hamsa Ali Abbas Rawther with IBBI Registration No IBBI/IPA-001/IP-P01727/2019-2020/12620 as the Insolvency Resolution Professional in respect of the Respondent /Personal Guarantor.

3. It is stated that the Corporate Debtor *M/s Kanish Gold Private Limited* is engaged in the business of manufacture and sale of gold jewellery at Chennai. The Corporate Debtor had approached the Consortium of Banks comprising of the Financial Creditor and 13 other banks for financial assistance which was extended from time to time.

4. It is stated that the Corporate Debtor is represented by its directors, Mr. Bhoopesh Kumar Jain and his wife Mrs. Neeta Jain who also stood as the guarantors to the loan availed by the Corporate Debtor. The Corporate Debtor and Guarantors had offered their



immovable properties as collateral security by depositing the original title deeds with an intention to create equitable mortgage in favour of Financial Creditor and 13 other banks in terms of Section 58(f) of Transfer of Property Act.

5. It is stated that prior to availing of the consortium loan, the Corporate Debtor had availed working capital credit facilities from the Financial Creditor for which the Corporate Debtor had executed the loan security documents on 25.10.2008 & 05.07.2010. It is further averred that, apart from the working capital facility from the Financial Creditor, the Corporate Debtor had availed Term Loan Facility for Rs.8.50 crores and executed the security documents on 08.02.2013.

6. It is stated that, besides the previous loan facilities, the Corporate Debtor availed the working capital credit facility under the consortium arrangement from the Financial Creditor and 13 other banks at regular interval for which the Corporate Debtor and guarantors executed the consortium loan security documents on 11.05.2011 (Rs.145.0 Crores), 27.02.2012(Rs. 237.30 crores), 26.06.2012(Rs. 257.30 crores), 08.02.2013(Rs.358.30 Crores)m 24.08.2015(Rs. 658 crores),



24.11.2015(Rs.670 crores), 09.01.2017(Rs.747 crores) conforming the loan liability.

7. It is stated that, the Corporate Debtor and Guarantor had deposited the original title deeds pertaining to the property with an intention to create equitable mortgage in favour of the Financial Creditor and 13 other banks by MOD executed from time to time for the extended credit facilities which were registered as document Nos. 196/2009, 701/2009, 792/2009, 1562/2010, 738/2011, 7503/2011, 4446/2011, 368/2013, 468/2013, 3420/2013, 1661/2013, 653/2015, 7653/2015, 15431/2015, 242/2016, 745/2016, 748/2016, 6/2017, 343/2017, 668/2017, 32/2017, 1142/2017 and the confirmation letters are of dates 30.04.2009, 25.06.2010, 01.08.2010, 31.03.2011, 08.06.2011, 03.10.2011, 26.12.2011, 09.01.2012, 20.03.2012, 03.07.2012, 24.12.2012, 21.02.2013, 25.02.2013, 10.09.2015, 12.09.2015, 25.11.2015, and 21.01.2017.

8. It is stated that, the Corporate Debtor failed and neglected to service the principal and interest and the loan accounts became NPA in the books of Financial Creditor on 28.07.2017.



9. It is stated that the Financial Creditor had caused a demand notice on 12.09.2017 under section 13(2) of the SARFAESI Act to the Corporate Debtor and Guarantors but of no avail. The Financial Creditor also issued a legal notice on 28.02.2018 to the Corporate Debtor and Guarantor to which, the Corporate Debtor and Guarantor gave an evasive reply on 07.03.2018.

10. It is stated that, the Financial Creditor has filed OA No. 347 of 2018 before DRT-II Chennai for recovery of dues from the Corporate Debtor and its Guarantors which is pending consideration.

11. It is stated that, the Financial Creditor has filed an Application under Section 7 of IBC, 2016 against the Corporate Debtor in IBA/920/2019, which was allowed on 22.01.2020.

12. It is stated that, the Corporate Debtor and guarantors are liable to pay a staggering amount of Rs.358,10,15,121.66 which includes interest, cost, and expenses as on 31.08.2020.

13. It is stated that the loan accounts slipped into NPA on 28.07.2017 and the present Application has been filed on 30.09.2020 and hence the application is filed within limitation.



Report filed by the IRP

14. Pursuant to the appointment of Mr. Amier Hamsa Ali Annas Rawther as Interim Resolution Professional(IRP) by this Tribunal vide order dated 15.02.2022, the IRP filed the report.

15. The iRP in his Report, after due examination of the application, documents filed with the application, and in addition to the requirements as mandated under clauses (1), (2), (3), (4), (5), (6), (7), (8), (9) and (10) of Section 99 of the IBC, 2016, has recommended for the admission of the present application by the Financial Creditor u/s. 95 of IBC, 2016.

16. After giving enough opportunities to the Respondent to file the reply, the Respondent failed to file the reply.

OBSERVATIONS AND FINDINGS OF THIS TRIBUNAL:

17. Heard the submissions made by the Learned Counsel for Applicant and perused the report of the IRP.



18. The IRP in his report has observed that the Applicant satisfies the requirement as set out in Section 95 of IBC, 2016. He has accordingly recommended for admission of the present application.

19. It is seen from the records that, the Corporate Debtor had taken loans but it failed to pay the same. The Respondent herein had given guarantee to the said loan.

20. Section 128 of the Indian Contract Act, 1872, provides that when a default is committed, the Principal Borrower and Surety are jointly and severally liable to the Creditor and the Creditor has right to recover its dues from either of them or from both of them simultaneously. Section 128 of the Indian Contract Act, 1872 is reproduced hereunder:

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

21. In the instant case, the date of default is reckoned as 28.07.2017 i.e., the date on which the loan account of Corporate Debtor was slipped into NPA. The present Application has been filed on 30.09.2020. The Applicant is entitled to benefit of limitation from 15.03.2020 to 28.02.2022 as extended by *Hon’ble Supreme Court in Suo*



Moto W.P. (Civil) No. 3 of 2020. Thus, considering the date of default and the date on which the Application has been filed, we are of the opinion that this Application is within the period of limitation.

22. In light of the afore-stated observations, the present Application i.e. IBA/632/CHE/2020 is admitted. The Insolvency Resolution Process stands initiated against **Mr. Bhupesh Kumar Jain** viz. the Respondent herein. We hereby direct as follows;

- I. Initiate Insolvency Resolution Process against the Respondent/Personal Guarantor. The 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. Amier Hamsa Ali Abbas Rawther, IBBI/IPA-001/IP-P-01727/2019-2020/12620** Insolvency Resolution Professional 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 Chennai 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.

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. realise the assets of the debtor; or c. administers 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.



- V. 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.
- VI. 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 subsection (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.
- VII. 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.

VIII. The Resolution Professional shall submit her periodic reports before this Tribunal, every 30 days.

IX. The Applicant is directed to deposit INR 2,00,000/- (Indian Rupees Two lakhs) to the bank account of the Resolution Professional within one week of this order, towards his expenses. This shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.

X. The Registry is directed to communicate to the concerned parties 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. Accordingly **IBA/632/CHE/2020** stands admitted.

-Sd-

VENKATARAMAN SUBRAMANIAM
Member (Technical)

-Sd-

SANJIV JAIN
Member (Judicial)

Kishore P