



IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV

CP (IB) No.958/MB-IV/2021

Under Section 95 of the IBC, 2016

Read with

Rule 7 of Insolvency and Bankruptcy  
(Application to Adjudicating Authority for  
Insolvency Resolution Process for Personal  
Guarantors to Corporate Debtor) Rules, 2019

*In the matter of*

**State Bank of India**

...Applicant/ Financial Creditor

Through,

**Mr. Purusottam Behra**

... Resolution Professional

v/s.

**Mr. Vijay Raghunath Lotekar**

...Personal Guarantor/Respondent

**Shiv Manufacturing Pipes Privat Limited**

...Corporate Debtor

Order Delivered on: 28.07.2022

*Coram:*

Mr. Manoj Kumar Dubey  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner

:

NA

For the RP

:

Mr. Ayush Rajani a/w Ms. Khushboo  
Shah i/b AKR Advisors, Advocates

For Respondent

:

NA





ORDER

*Per: Kishore Vemulapalli, Member (Judicial)*

1. The Court is convened through video conferencing today.
2. This is a Company Petition filed by State Bank of India, (“the Applicant”), under section 95 of the Insolvency & Bankruptcy Code, 2016 (IBC) 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 seeking to initiate Personal Insolvency Resolution Process (PIRP) against Mr. Vijay Raghunath Lotekar (“the Personal Guarantor to the Corporate Debtor”).
3. This Company Petition is filed by the Applicant through Mr. Purusottam Behra, the Insolvency Professional claiming total outstanding of Rs.42,60,82,375/- (Rupees forty-two crore sixty lakh eighty-two thousand three hundred seventy-five only) as on 30.06.2021.
4. The Learned Counsel for the Applicant submits that the Petition bearing CP No. 3749/I&BP/2018 under section 9 of the Code was admitted against the Corporate Debtor on 25.10.2019.
5. Vide order dated 16.02.2022, Mr. Purusottam Behra, Insolvency Resolution Professional (RP) was appointed as the Resolution Professional to conduct the Insolvency Resolution Process of the Personal Guarantor in the matter. Pursuant to the said order the RP has filed its report dated 03.03.2022 under section 99 of the Code and submits as under:
  - a. As per section 99(2) of the Code, the RP has issued an intimation on 23.02.2022 to the Personal Guarantor by speed post requiring him to prove repayment of the debt claimed as unpaid by the Creditor.







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- b. The RP did not receive any reply from the Personal Guarantor and hence it is concluded by the RP that the Personal Guarantor has nothing to say and has not repaid the debt claimed by the Creditor. The debtor has not disputed the validity of the debt.
- c. The RP had already examined the Application before filing the same with this Bench, hence no further information or explanation in connection with the Application is sought from the Creditor.
- d. The RP submits that the present Application satisfies the requirements of provisions of section 95 as has been provided in detail hereinabove in this report. Based on his examination the present Application deserves to be admitted under section 100 of the Code and this Bench may pass appropriate orders.
- e. The RP further submits that the provisions of section 99(8) of the Code does not apply to the present case on hand. The present report prepared under section 99(7) of the Code records the reasons for recommending acceptance of the present Application filed by RP on behalf of State Bank of India for further orders under section 100 of the Code.
6. The matter was listed for hearing on 21.04.2022. The Personal Guarantor failed to appear in the matter even after filing report by the RP. Hence, the matter was listed for final hearing on 29.06.2022 as the provision of section 100 mandates the Adjudicating Authority to admit or reject the Application within 14 days from the date of submission of Report of RP.
7. Demand Notice dated 12.07.2021 under Rule 7 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution of Personal Guarantor to Corporate Debtors) Rules, 2019 was issued to the Personal Guarantor claiming total outstanding of





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Rs.42,60,82,375/- (Rupees forty-two crore sixty lakh eighty-two thousand three hundred seventy-five only) as on 30.06.2021.

*Findings:*

8. We have heard the arguments of the Learned Authorised Representative for RP and perused the records.
9. The State Bank of India vide their Letter of Arrangement dated 22.03.2014, had sanctioned and granted Term Loan of Rs.9,95,00,000/- (Rupees nine crore ninety-five lakh only) on the terms and conditions as set out in the Letter of Arrangement. The said acceptance of the terms and conditions have been signed by the Personal Guarantor.
10. The Respondent executed the Deed of Guarantee dated 22.03.2014 for a sum of Rs.9,95,00,000/- (Rupees nine crore ninety-five lakh only) and dated 20.03.2015 for a sum of Rs.15,00,00,000/- (Rupees fifteen crore only), in favour of Financial Creditor. The said Deed of Guarantees dated 22.03.2014 and 20.03.2015 are attached at pp 98-105 as Annexure '9' and pp 106.111 as Annexure '10' of the Petition respectively.
11. It has been observed by the Bench that, the Applicant has invoked the Guarantee vide its Legal Notice dated 19.01.2018 which is at pp 119-130 as Annexure '12' of the Petition.
12. Upon perusal of the Documents on record and the Report of the RP, the Bench is of considered view that the Personal Guarantee of the Respondent is continuing in nature. Further, the Respondent has not appeared in the matter even after giving an opportunity. Upon bare perusal of the Report filed by the RP, this Bench has gone through the observations made by the RP with respect to the examination of the Application. The Report of the RP







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has recommended the admission of the Application filed by the Financial Creditor against the Personal Guarantor.

13. There is Guarantee given by the Personal Guarantor against the default made by the Corporate Debtor for payment of debt amount and the amount of default has been above the threshold limit. Therefore, we do not have any objection on record against the application filed for initiation of IRP against the Personal Guarantor to the Corporate Debtor.
14. The Application is complete and has been filed under the proper form. The debt amount is more than Rupees One Thousand and the default of the Personal Guarantor to the Corporate Debtor has been established.

ORDER

15. This Application being C.P. (IB) No. 958/NCLT/MB/C-IV/2021 filed by State Bank of India, Applicant, under section 95 of the Insolvency & Bankruptcy Code, 2016 (IBC) seeking to initiate Personal Insolvency Resolution Process (PIRP) against Mr. Vijay Raghunath Lotekar ("the Personal Guarantor") is **admitted**.
16. The copy of this order shall be provided along with the report of the RP and the Application referred to in section 95, to the Creditors within 7 (seven) days from the date of the said order.
17. The moratorium under Section 101 of the Insolvency and Bankruptcy Code, 2016 has commenced from the date of this order till the completion of the Insolvency Resolution Process as under:

I. During the moratorium period-





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- (a) any pending legal action or proceeding in respect of any debt against this Personal Guarantor to the Corporate Debtor shall be deemed to have been stayed;
- (b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt against this Personal Guarantor to the Corporate Debtor; and
- (c) The Personal Guarantor to the Corporate Debtor shall not transfer, alienate, encumber or dispose of any of the assets or his legal right or beneficial interest therein;
18. Mr. Purusottam Behera, Resolution Professional is to carry out the Insolvency Resolutions Process of Personal Guarantor to the Corporate Debtor as required under I&B Code.
19. The Registry is directed to send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of Respondent.
20. The registry is directed to immediately communicate this order to the Financial Creditor, Personal Guarantor, Corporate Debtor and Resolution Professional even by way of email. Compliance report of the order by designated Registrar is to be submitted today.

Sd/-  
Manoj Kumar Dubey  
Member (Technical)  
28.07.2022

Sd/-  
Kishore Vemulapalli  
Member (Judicial)



Certified True Copy  
Copy Issued "free of cost"  
On 08/08/2022  
*[Signature]*  
Deputy Registrar  
National Company Law Tribunal Mumbai Bench  
Government of India