

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

CP (IB) No.182/Chd/Hry/2021

Under Section 94, of the IBC 2016

In the matter of:

Monica Bansal
Personal Guarantor
having its address at
H. No. 21, Sector 15, Panchkula
Haryana

....Petitioner

Judgment delivered on: 21.07.2022

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present through Video Conferencing:

For the Petitioner : Ms. Niharika Sohal, Advocate with
Resolution Professional Mr. Bishwaranjan
Chatterjee

For the Respondent : Ms. Meena Malhotra, Advocate for
Creditor-Bank of India

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

1. The petition is filed by Monica Bansal (Personal Guarantor) under Section 94 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as code) read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate

Debtor) Rules, 2019 (hereinafter referred to as Personal Guarantors Insolvency Rules, 2019), seeking an order for initiation of the Insolvency Resolution Process (“IR Process”) against her/applicant who is the personal Guarantor to M/s. Orchid Textiles Private Limited (“Corporate Debtor/Principal Borrower”), who has extended personal guarantees to financial creditor namely, **Manju Gupta** and other lenders for an amount of Rs. 1,25,08,386/- (Rupees One Crores Twenty Five Lacs Eight Hundred Three Hundred Eighty Six Only). The said personal guarantee has been extended for the loan facilities availed by the corporate debtor.

2. The present application has been filed in the prescribed proforma. Moreover, the compliance affidavit pursuant to order dated 07.03.2022 has been incorporated vide Diary No. 00504/2 dated 17.03.2022, whereby applicant stating that in terms of provision of Section 94(4) of I & B Code, 2016 the applicant is not an undischarged bankrupt or not undergoing a fresh start process or not undergoing an insolvency resolution process or not undergoing a bankruptcy process. Also, in terms of the provisions of 94(5), no application has been admitted against the applicant during the period of 12 months preceding the date of submission of the present application under Section 94(1) of I&B Code, 2016.

3. On presentation of the application by the Applicant/Personal Guarantor, this Adjudicating Authority vide Order dated 21.03.2022 has appointed the Resolution Professional Viz Mr. Bishwa Ranjan Chatterjee, Registration No. IBBI/IPA-002/IP-N00877/2019-2020/12806 Phone No. 9711401771 Email: brcind@gmail.com. At the same time, limited notice of this petition to the creditor(s) for presence is issued on 21.03.2022 by this Adjudicating Authority, pursuant to the said order compliance affidavit has been filed vide Diary No. 00504/4 dated 17.05.2022, whereby, the notice is served upon all the creditors via

speed post. The original postal receipts and tracking report as obtained from India Post Website is attached as Annexure A-2 of the affidavit and some of the articles have been returned back and those have been submitted in the Registry vide Annexure A-3 of the affidavit. Subsequently, Ms. Meena Malhotra, Advocate appeared for respondent-creditor-Bank of India. It is to be noted that no objection/reply has been filed by the said respondent-creditor-Bank of India.

4. The Resolution Professional was directed to file the report under Section 99 of Insolvency and Bankruptcy Code, 2016 which has been filed by him through IA No. 420/2022 filed in CP(IB) No. 182/Chd/Hry/2021 recommending the admission of the application filed under Section 94 of IBC, 2016. The grounds for admission of the application recorded in the report are as follows.

The Resolution Professional sought the following information, explanation and clarification.

- a) *List of Personal assets and liabilities as on date of the order i.e., 21.03.2022.*
- b) *In case, if there any guarantee deed that had been executed from your end to any other Company apart from Orchid Textiles Private Limited.*
- c) *The assets which are mortgaged with the Creditors against the Guarantee, if any.*
- d) *Apart from the above, following documents are also required;*
 - *Income Tax returns along with its computation for last three Financial Years i.e., FY 2018-19, 2019-20 and 2020-21.*
 - *Statement of affairs; for last three Financial Years i.e., FY 2018-19, 2019-20 and 2020-21.*
 - *GST Returns: for last three Financial Years i.e., FY 2018-19, 2019-20 and 2020-21.*
 - *Details of the Bank Account on your name and the bank statements of the said bank accounts for last one year.*

In response to the above-mentioned information, explanation and clarification sought by Resolution Professional, the Personal Guarantor had given the following information:

a.a *That the Personal Guarantor had not made any payment to any secured or unsecured creditor of the Corporate Debtor in his personal capacity.*

a.b *That the Personal Guarantor had guaranteed the loans extended by the banks to Corporate Debtor. Further, the Personal Guarantor had also shared the copy of Deed of Guarantee/Notices (Annexure A-3 Colly) executed between him and Manju Gupta is annexed herewith as ANNEXURE A-3.*

a.c *In addition to the above, as asked by the Resolution Professional, Personal Guarantor had provided his Net Worth Certificate as on 21/03/2022. As per the said certificate, the net worth of the Personal Guarantor is Rs -6.85 Crores.*

a.d *The Personal Guarantor had shared his Income Tax returns for financial year 2018-19, 2019-20 and 2020-21 and also shared the Bank Accounts being maintained by him.*

a.e *The Personal Guarantor has also shared the arbitrational award is annexed as ANNEXURE A-5 of the Petition.*

The Resolution Professional as mentioned in para no 8 and 10 of this report under Section 99, had sought additional information, explanation and clarification in connection with the Application from the creditors of the Corporate Debtor for the following information:

“.... the current status of the repayment of debt by the Debtor Monica Bansal or by the Corporate Debtor M/s. Orchid Textiles Private Limited.

In addition to the above the undersigned came to know that against the M/s. Orchid Textiles Private Limited the petition under section 7 of IBC, 2016 also been filed by Manju Gupta before Hon'ble National Company Law Tribunal, Chandigarh..

“....That the personal guarantor -Monica Bansal had guaranteed / taken the business loan of Rs25,00,000 from Punjab National Bank(Earlier OBC) Sector 26,Chandigarh and current outstanding is Rs 11,57,556 . Further the borrower informed that the matter is sub-judice at District Court Chandigarh

“...That the personal guarantor -Monica Bansal had guaranteed and taken Personal loan of Rs 1,50,000/- extended by Subrat Pusty. Further the guarantor informed that nothing has been paid till date and guarantor also informed that, he had no knowledge about any legal action taken by the lender or not for recovery of the personal loan

“...That the personal guarantor -Monica Bansal had guaranteed and taken Personal loan of Rs 1,36,169/- extended by Maurya Cleaning Services. Further the guarantor informed that nothing has been paid till date and guarantor also informed that, he had no knowledge about any legal action taken by the lender or not for recovery of the personal loan

“...That the personal guarantor -Monica Bansal had guaranteed taken the business/personal loans of Rs 51,47,500/- extended by Variety Properties Pvt Ltd. Further the borrower informed that he had issued post-dated cheques to the lender to avail the facilities and nothing has been paid till date and borrower and the matter is pending before CJM Chandigarh District Court under Section 138.

“...That the personal guarantor -Monica Bansal had guaranteed and taken Personal loan of Rs 42,25,000/- extended by Neetu Yadav. Further the guarantor informed that nothing has been paid till date and guarantor also informed that, he had no knowledge about any legal action taken by the lender or not for recovery of the personal loan

“...That the personal guarantor -Monica Bansal had guaranteed taken the business loans of Rs 99,00,000/- from Indian bank and the current outstanding balance is Rs 94,61,115. Further the borrower informed that the matter is sub-judice at DRT ,Sector 17 -Chandigarh

“...That the personal guarantor -Monica Bansal had guaranteed and taken Personal loan of Rs 17,00,000/- extended by Shri Kulwant Singh/Parminder Singh. Further the guarantor informed that he has issued post- dated cheques to the lender and nothing has been paid till date and guarantor also informed that,he had no knowledge about any legal action taken by the lender or not for recovery of the personal loan

“...That the personal guarantor -Monica Bansal had guaranteed and taken Personal loan of Rs 51,40,621/- extended by Inderdeep Kakkar/Paramjeet Kakkar. Further the guarantor informed that nothing has been paid till date and guarantor also informed that, he had no knowledge about any legal action taken by the lender or not for recovery of the personal loan

“...That the personal guarantor -Monica Bansal had guaranteed /taken the friendly loan of Rs 1,50,00,000/- extended by Mr VN Yadav . The personal guarantor had issued security cheques to the lender and matter is sub-judice at District Court Gurugram under Section 138 and other cities of which personal guarantor not aware of the location where the matter is sub-judice.

“...That the personal guarantor -Monica Bansal had guaranteed and taken Personal loan of Rs 1,30,000/- extended by Annapurna. Further the guarantor informed that nothing has been paid till date and guarantor also informed that, he has issued security cheques to the lender and had no knowledge about any legal action taken by the lender or not for recovery of the personal loan

“...That the personal guarantor -Monica Bansal had guaranteed and taken Personal loan of Rs 1,50,000/- extended by Asphire Careers LLP. Further the guarantor informed that nothing has been paid till date and guarantor also informed that, he has issued security cheques to the lender and had no knowledge about any legal action taken by the lender or not for recovery of the personal loan

“...That the personal guarantor -Monica Bansal had guaranteed and taken Personal loan of Rs 2,12,450/- extended by Guru Nanak Dairy. Further the guarantor informed that nothing has been paid till date and guarantor also informed that he had no knowledge about any legal action taken by the lender or not for recovery of the personal loan

“..That the personal guarantor -Monica Bansal had guaranteed and taken Personal loan of Rs 25,00,000/- extended by Indo Farm Equipment Ltd. Further the guarantor informed that nothing has been paid till date and guarantor also informed that he had no knowledge about any legal action taken by the lender or not for recovery of the personal loan

“....That the personal guarantor -Monica Bansal had guaranteed and taken Personal loan of Rs 51,850/- extended by Khalid Butchery. Further the guarantor informed that nothing has been paid till date and guarantor also informed that he had no knowledge about any legal action taken by the lender or not for recovery of the personal loan

“...That the personal guarantor -Monica Bansal had guaranteed and taken Personal loan of Rs 4,00,000/- extended by Kanika Gupta. Further the guarantor informed that nothing has been paid till date and guarantor also informed that he had no knowledge about any legal action taken by the lender or not for recovery of the personal loan

“...That the personal guarantor -Monica Bansal had guaranteed and taken Personal loan of Rs 30,00,000/- extended by Rajesh Bansal. Further the guarantor informed that nothing has been paid till date and guarantor also informed that he had no knowledge about any legal action taken by the lender or not for recovery of the personal loan

“...That the personal guarantor -Monica Bansal had guaranteed and taken Personal loan of Rs 20,00,000/- extended by Aditya Mittal. Further the guarantor informed that nothing has been paid till date and guarantor also informed that he had no knowledge about any legal action taken by the lender or not for recovery of the personal loan

“...That the personal guarantor -Monica Bansal had guaranteed and taken Personal loan of Rs 5,00,000/- extended by Deepika Gupta. Further the guarantor informed that nothing has been paid till date and guarantor also informed that he had no knowledge about any legal action taken by the lender or not for recovery of the personal loan

“...That the personal guarantor -Monica Bansal had guaranteed and taken Personal loan of Rs 10,00,000/- extended by Prashant Sanghvi. Further the guarantor informed that nothing has been paid till date and guarantor also informed that he had no knowledge about any legal action taken by the lender or not for recovery of the personal loan

“...That the personal guarantor -Monica Bansal had guaranteed and taken Personal loan of Rs 4,50,000/- extended by Daljeet Singh(Del Décor). Further the guarantor informed that he has issued post- dated cheques to the lender and nothing has been paid till date and guarantor also informed that he had no knowledge about any legal action taken by the lender or not for recovery of the personal loan

“...That the personal guarantor -Monica Bansal had guaranteed and taken Personal loan of Rs 40,000/- extended by Bala ji Agency. Further the guarantor informed that nothing has been paid till date and guarantor also informed that he had no knowledge about any legal action taken by the lender or not for recovery of the personal loan.

“...That the personal guarantor -Monica Bansal had guaranteed and taken Personal loan of Rs 2,85,000/- extended by Jaspreet Kang. Further the guarantor informed that nothing has been paid till date and guarantor also informed that he had no knowledge about any legal action taken by the lender or not for recovery of the personal loan

“...That the personal guarantor -Monica Bansal had granted and taken Business /Maintenance Charges of Rs 23,50,000/- extended by Emaar India Management Ltd. Further the guarantor informed that nothing has been paid till date and guarantor also informed that he had no knowledge about any legal action taken by the lender or not for recovery of the due

“...That the personal guarantor -Monica Bansal had guaranteed and taken Personal loan of Rs 65,000/- extended by Optimal Digitech Pvt Ltd. Further the guarantor informed that nothing has been paid till date and guarantor also informed that the guarantor has issued post dated cheques to the lender and he had no knowledge about any legal action taken by the lender or not for recovery of the personal loan

“...That the personal guarantor -Monica Bansal had guaranteed and taken Personal loan of Rs 41,200/- extended by Shree Shyam Lighting. Further the guarantor informed that nothing has been paid till date and guarantor also informed that he had no knowledge about any legal action taken by the lender or not for recovery of the personal loan

“...That the personal guarantor -Monica Bansal had guaranteed and taken Personal loan of Rs 1,10,320/- extended by Milap Kitchen Equipments / Sidak Technology . Further the guarantor informed that nothing has been paid till date and guarantor also informed that the guarantor has issued

post dated cheques to the lender and he had no knowledge about any legal action taken by the lender or not for recovery of the personal loan

“...That the personal guarantor -Monica Bansal had guaranteed and taken Personal loan of Rs 50,000/- extended by Elegant Communications. Further the guarantor informed that nothing has been paid till date and guarantor also informed that the guarantor has issued postdated cheques to the lender and he had no knowledge about any legal action taken by the lender or not for recovery of the personal loan

“...That the personal guarantor -Monica Bansal had guaranteed and taken Personal loan of Rs 1,00,000/- extended by Twinkle Jaggi. Further the guarantor informed that nothing has been paid till date and guarantor also informed that the guarantor he has no knowledge about any legal action taken by the lender or not for recovery of the personal loan

“...That the personal guarantor -Monica Bansal had received notice on behalf of the company a due of labour of Rs 7,50,000 /- (Rs. Fifty Thousand only) extended by Labour Department Gurugram. Further the guarantor informed that the matter is sub- judice before the Labour Court Gurugram

“...That the personal guarantor -Monica Bansal had received notice on behalf of the company a due of TDS Payment of Rs 3,50,000 /- (Rs. Fifty Thousand only) extended by Income Tax Department Gurugram.

“ ...That the personal guarantor -Monica Bansal had received notice on behalf of the company a due of pending Goods and Service Tax of Rs 4,12,430 extended by Excise and Taxation Department Gurugram.

OBSERVATION AND RECOMMENDATION BY RESOLUTION PROFESSIONAL

In view of the above facts and circumstances, I, BISHWA RANJAN CHATERJEE, the Resolution Professional appointed by this Hon'ble Tribunal, vide order dated 21.03.2022 in C.P. (IB) NO. 182/CHD/Pb/ 2021, hereby confirm that, I have perused/examined all the underlying documents and annexure and all the parameters are duly complied as per the provision of IBC and all the requisite & requirement under section 94 are duly met with, therefore, the Resolution Professional is of the considered opinion that the application filed by the applicant for initiation of Insolvency Resolution Process against Mrs Monica Bansal, Personal Guarantor to the Corporate Debtor M/s. Orchid Textiles Private Limited is in compliance with the provisions of the Code. Hence, the Resolution Professional considering the requirements of the admission of Personal Guarantee as stipulated in the Code recommends under section 99 (7) for approval of the application for initiation of Insolvency Resolution Process against Smt Monica Bansal, Personal Guarantor to the Creditors of Orchid Textiles Private Limited on the following reasons:

a. *That the Application filed by Mrs Monica Bansal, through Resolution Professional Sh. BISHWA RANJAN CHATERJEE (Resolution Professional) satisfies the requirement as set out in Section 94 of the Code;*

b. *That the Corporate Debtor have committed default in repayment of Loan Facility granted by the aforesaid banks and/or financial institution. The same is evident from the fact that an application was also filed by Manju Gupta for initiating CIRP against the Corporate Debtor before the Hon'ble National Company Law Tribunal, Chandigarh.*

c. *That Smt Monica Bansal, Personal Guarantor to Corporate Debtor has also committed default in repayment of Loan Facility demanded by the banks and/or financial institution after invocation of personal guarantee. Further, the Personal Guarantor had informed that he had not made any payment to any secured or unsecured creditor of Orchid Textiles Private Limited in his personal capacity.*

d. *No information received from Manju Gupta as the copy has been served by the Applicant to the Creditor(s) at the time of filing the application.*

5. After perusal of the report submitted by Resolution Professional, there does not appear any request of the Resolution Professional for issuance of instruction for the purpose of conducting negotiations between the debtors and the creditors for arriving at the repayment plan. Therefore, based on the reasons recorded in the report submitted by the Resolution Profesional, the application i.e. CP(IB) No. 182/Chd/Hry/2021 filed under the provisions of Section 94 of IBC, 2016 is hereby admitted under Section 100 of the IBC, 2016. The Insolvency Resolution Process is initiated against the Applicant/Debtor and the moratorium is declared, which begins with the date of admission of the application and shall cease to have effect at the end of the period of 180 days, as provided under Section 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.

6. The Resolution Professional, Mr. Bishwa Ranjan Chatterjee, who has been appointed under Section 97 vide order dated 21.03.2022, is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of uploading of this order on the website of the NCLT, Chandigarh, inviting claims from all creditors, who shall register their claims as provided under Section 103 within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102(2) of IBC, 2016. The publication of notice shall be made in newspapers, one in English and other in Vernacular which have wide circulation in the state where the debtor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry. One shall be placed by the Registry on our website and the other shall be affixed in the premises of this Authority.

7. The Resolution Professional in exercise of the powers conferred under Section 104 shall prepare a list of creditors within 30 days from the date of the notice. The debtor shall prepare a repayment plan in consultation with the Resolution Profesional as provided under Section 105 which shall include the provisions for payment of fee to the Resolution Professional. 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.

8. In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons therefor. If the Resolution Professional is of the opinion that the meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3). 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, for which at least 14 days notice to the creditors(as per list prepared) shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107.

9. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 and 111. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 and submit the same to this Authority, 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 the IBC, 2016.

10. In terms of the above, CP (IB) No. 182/Chd/Hry/2021 filed under Section 94(1) of the IBC, 2016 is allowed & admitted. Consequently the Insolvency Resolution Process stands initiated against the debtor/Personal Guarantor.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

July 21, 2022
PB/ASH

Sd/-

(Harnam Singh Thakur)
Member (Judicial)