

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (Court-II), CHANDIGARH**

CP (IB) No.105/Chd/Chd/2023

Under Section 94(1) read with other applicable provisions of the Insolvency and Bankruptcy Code, 2016 read with Rule 6(1) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019

In the matter of:

Vivek Gupta

having its address at
Flat No. 301, Tower No. 5-B,
Parikrma Group Housing
Suncity Projects, Sector 20,
Panchkula 134116 Haryana
PAN- ABUPG3169M

Personal Guarantor M/s Vardhman Chemtech Ltd & Ors.

Having registered office at
SCO 85, Sector 35C, Chandigarh 160036

....Petitioner

Judgment delivered on: 03 .07.2024

**Coram: HON'BLE DR. PSN PRASAD, MEMBER (JUDICIAL)
HON'BLE MR.SATYA RANJAN PRASAD, MEMBER (TECHNICAL)**

Present:

For the Petitioner : Mr. Atul V. Sood, Advocate
For the RP : Mr. Raghav Kakkar, Advocate
For the IDBI and Indian Bank : Mr. Vishav Bharti Gupta and Mr. Gaurav Goyal,
Advocates
For the SBI : Mr. Harsh Garg with Mr. Pulkit Goyal,
Advocates

**PER: DR. PSN PRASAD, MEMBER (JUDICIAL)
MR.SATYA RANJAN PRASAD, MEMBER (TECHNICAL)**

ORDER

The present petition is filed under Section 94 and other applicable provisions of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the “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) by the Applicant/Debtor/Personal Guarantor namely Shri. Vivek Gupta (Personal Guarantor) seeking to initiate insolvency resolution process in respect of himself i.e. Vivek Gupta who is the personal Guarantor for M/s. Vardhman Chemtech Ltd. (“Corporate Debtor/Principal Borrower”), who has extended personal guarantees to State Bank of India, Indian Bank (Erstwhile Allahabad Bank) and IDBI Bank, financial creditors of the corporate debtor/principal borrower.

2. The facts of the case as stated in the application filed by the Applicant are as below-

- A. The principal borrower has obtained loan from consortium of banks including State Bank of Patiala, State Bank of Hyderabad, IDBI Bank, Allahabad Bank vide sanction letter dated 06.09.2012 loan amounting of 1,70,00,00,000.00/- (Rupees One Hundred Seventy Crores Only). The copy of the working capital consortium agreement dated 06.09.2012 is attached as annexure A-1 of the application.
- B. It is stated in the application that one of the members of consortium banks i.e. Indian Bank (Erstwhile Allahabad Bank) filed an application under Section 7 of IB Code for the initiation of CIRP in respect of corporate debtor M/s Vardhman Chemtech Ltd. which was admitted by this Tribunal vide order dated 25.09.2018

and CIRP was initiated in respect of the corporate debtor. Thereafter, IRP constituted CoC with three secured financial creditors as given below:-

Sr. No.	Name of the Financial Creditor	Amount Admitted	Voting Share
1.	Indian Bank (Erstwhile Allahabad Bank)	1,17,05,67,246.00/-	28.42 %
2.	State Bank of India (Earlier State Bank of Patiala)	1,97,97,17,774.59/-	55.64%
	State Bank of India (Earlier State Bank of Hyderabad)	31,25,31,519.54/-	
3.	IDBI Bank	65,64,79,144.00/-	15.94%

C. In the 11th meeting of CoC, Members of the CoC approved a resolution plan submitted by one M/s DPB Antibiotics Pvt. Ltd. and the same was also approved by this Adjudicating Authority vide order dated 12.01.2021. Copy of the order dated 12.01.2021 is annexed as annexure A-4 of the application.

D. It is further stated in the application that the personal guarantor has provided guarantees for the credit facilities of the following companies:-

Sr. No.	Name of the financial creditor	Name of the corporate debtor	Outstanding amount of credit facility demanded from the guarantors
1.	State Bank of India	M/s Vardhman Chemtech Ltd.	1,54,88,26,604.50/-
2.	Indian Bank (Earlier Allahabad Bank)	M/s Vardhman Chemtech Ltd.	83,10,72,467.80/-
3.	IDBI Bank	M/s Vardhman Chemtech Ltd.	52,78,40,163.00/-

- E. It is stated in the application that the corporate debtor/principal borrower could not honor the repayment terms of the loan sanctioned by SBI (consortium), and the value of the resolution plan could not satisfy the liabilities of the lender banks. The lender bank SBI invoked the guarantee of the applicant which he had provided for the credit facilities of the corporate debtor.
- F. The State Bank of India (Earlier State Bank of Patiala) issued notice u/s 13 (2) of SARFAESI Act dated 31.08.2016 demanding payment of Rupees 1,54,88,26,604.50 (One Hundred Fifty Four Crores Eighty Eight Lakhs Twenty Six Thousand Six Hundred Four and Paise Fifty Only) towards the guarantee amount, however the applicant did not make any payment as demanded by the lender bank. The copy of notice u/s 13 (2) of SARFAESI Act dated 31.08.2016 is attached as Annexure A-2 of application.
- G. The IDBI Bank issued notice u/s 13 (2) of SARFAESI Act dated 24.04.2017 demanding payment of Rs. 52,78,40,163.00 towards the guarantee amount, however the applicant did not make any payment as demanded by the lender bank. The copy of notice u/s 13 (2) of SARFAESI Act dated 24.04.2017 is attached as Annexure A-3 of application.
- H. It is also stated in the application that the banks have filed the following original applications before various Debt Recovery Tribunals-
- (a) OA/ 4524/2007 IDBI Bank
 - (b) OA/5546/2017 State Bank of India
 - (c) OA/4494/2017 Indian Bank (Earlier Allahabad Bank)

(d) TA/508/2022 State Bank of India (Earlier State Bank of Patiala)

- I. The applicant further stated that he is not in a position to meet his liability in their present quantum. The assets and other sources of income are insufficient to pay any of his liabilities. The statement of affairs attached with the application depicts that the personal guarantor has assets worth only Rs. 96,36,953.13 (Rupees Ninety Six Lakhs Thirty Six Thousand Nine Hundred Fifty Three Only) and liabilities of Rs. 2,90,80,64,235.00 (Rupees Two Hundred Ninety Crores Eighty Lakhs Sixty Four Thousand Two Hundred Thirty Five Only). The details of liabilities and assets and the deficiency in assets viz. a viz. liabilities are represented in the statement of affairs of the personal guarantor attached as Annexure A-5.
 - J. The amount claimed by all the creditor banks and other liabilities far exceeds the net worth and present and prospective capability of the applicant to repay his debts. Therefore, the applicant filed this present application u/s 94 of the IBC seeking initiation of Insolvency Resolution Process against him.
3. The present application has been filed in the prescribed proforma and pursuant to order dated 20.04.2023, the applicant also submitted affidavit in compliance of Section 94(5) of I & B Code, 2016 vide Diary No. 01116/01 dated 01.05.2023, stating that no similar/same Application/Petition under Chapter III of the Code has been filed/Admitted in respect of the Petitioner during the period of twelve months preceding the date of submission of the present Application under Section 94 of the Code.
 4. On presentation of the application by the Applicant/Personal Guarantor, this Adjudicating Authority after getting the report about the antecedents of Insolvency

Professional, appointed the Proposed Resolution Professional, Mr. Arvind Kumar, Registration No. IBBI/IPA-001/IP-P00178/2017-2018/10357 Mobile No. 9816055657 Email: sankhyain@gmail.com vide order dated 23.05.2023 under section 97 of the Code. At the same time, limited notice of this petition to the creditor(s) for presence has been issued on 23.05.2023 by this Adjudicating Authority, pursuant to the said order compliance affidavit has been filed vide Diary No. 01116/3 dated 08.01.2024, whereby, the notice is served upon the creditors via email. The copy of email is attached as Annexure A of the affidavit.

5. The Resolution Professional was directed to file the report under Section 99 of Insolvency and Bankruptcy Code, 2016 which was filed in IA No. 2968/2023 vide diary no. 04026 dated 19.12.2023 and was taken on record vide order dated 09.01.2024. On the same date, the Resolution professional sought liberty to file a supplementary report in addition to the report already filed, which was granted by this tribunal and the RP filed the same in compliance affidavit vide diary no. 01116/4 dated 25.01.2024 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 submitted that he requested a meeting at the office of Personal Guarantor for obtaining additional information and necessary for the completion of the report. The Personal Guarantor visited the office of the RP and provided the requisite information. The Personal guarantor provided a complete list of creditors as on the date of the report, which is annexed as Exhibit-6 of the affidavit. The assets of the personal guarantor are as follows-

Sr. No.	Description of Property	Amount
1.	½ share in the residential house. Area covered 1160 sq. feet, Suncity, Sector-20 Panchkula-134116 (Self-Occupied) Co-shared by spouse	75,00,000.00
2.	PNB Metlife	400000.00
3.	Reliance Nippon Life Insurance	200000.00
4.	Gold Ornaments	1,50,000.00
5.	Household Articles	2,50,000
6.	DMAT DP ID IN301549	3913.00

The RP also submitted that the present application is in compliance with terms of Section 94 and Section 99 of the Code and the details of the compliances are given by RP in its report. The Resolution Professional in its report recommended the admission of the application on the following grounds-

- a. The Insolvency Application has been filed, in terms of Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019, supported by requisite fee and documents.
- b. The Insolvency Application satisfies the requirements set out in Section 94 of the Code.
- c. The undersigned also convened a meeting, immediately on receipt of aforesaid order of this Hon'ble Adjudicating Authority, in terms of Section 99(2) of the Code, with the Personal Guarantor for obtaining additional information.

- d. The Insolvency Application does not relate to “*excluded debts*” as defined under Section 79(15) of the Code.
 - e. The personal guarantor is not eligible for fresh start process under section 80 of the Code as his assets and liabilities exceeds the threshold for the said process and moreover, Chapter II of the Code has not yet been notified.
 - f. The Personal Guarantor has Assets which can be utilized for repayment plan and hence, the insolvency process exercise can be initiated for exploring the repayment plan.
 - g. The Personal Guarantor claims to be a businessman, having rich experience in specialized industrial activities and is desirous of submitting a repayment plan in the insolvency resolution process.
6. Thereafter, the counsel for the Resolution Professional was directed to serve the report to the creditors and the affidavit of service was filed vide diary no. 01116/5 dated 02.02.2024 alongwith copy of email to the creditors. The creditors in the present petition strongly objected to the contents of the report which was recorded in the daily order dated 24.04.2024. Vide the same order, the RP as well as creditors were directed to file their written submissions.
7. The State Bank of India filed its written submissions vide diary no. 01116/6 dated 25.04.2024 and the contentions as stated by the SBI are given below-
- A. The financial creditor had sanctioned the Credit Facility of Rs. 117.41 crores in favour of the Corporate Debtor and the said financial facilities were secured by way of mortgage of properties in favour of the creditor

bank. However, the corporate debtor failed to maintain the financial discipline and therefore the account of CD was categorized as NPA.

- B. It was contended by the financial creditor that the present application is barred by limitation as the period of limitation for filing the application is three years from the date of default and the date of NPA/default in the present application is 23.04.2013. The financial creditor also cited Apex Court's decision in the cases of Trustee's Port Bombay vs. the Premier Automobile 1981 AIR 1982 and K. Shashidhar vs. Indian Overseas Bank (2019) 08 SC to support their contention.
- C. The financial creditor further contended that the present application is misconceived and has been filed in connivance with other personal guarantors of the corporate debtor with malicious intention only to defraud its creditors. It is also contended by the financial creditor that the Resolution Professional while submitting its report did not consider this fact and recommended admission of the present application in gross violation to the provisions of IBC, 2016. It is stated that the applicant had filed the present application with an intention to get the benefit of interim moratorium/moratorium in order to abrupt and halt the legitimate recovery process initiated by the Financial creditor under the SARFAESI Act, 2002.
- D. It is also contended by the financial creditor that the RP never contacted the respondent bank seeking information pertaining to the debt of the debtor and RP failed to demand relevant information and consider the factum of fraud which is mandate of Section 100(4) of IBC,2016. The

financial creditor also submitted that the respondent bank tried to contact the RP, but the RP never responded to the email & queries of the respondent bank. A copy of the email dated 13.02.2024 written to the RP is also attached as Annexure-I of the written submission.

E. The Financial Creditor also cited the decision of Apex Court in the matter of Dilip B Jiwarika vs. Union of India WP (Civil) No. 1281 of 2021 in which it was held that the function of the Resolution Professional under Section 99 is purely facilitative and Resolution Professional does not possess an adjudicatory function in terms of the provisions of Section 99 and the role of RP is purely recommendatory in nature and cannot bind the creditor, the debtor or the Adjudicating authority.

F. The Creditor bank finally submitted that the present application is abuse of process of law with malafide intention and has been misleading this tribunal with the purpose of defrauding its creditors in connivance with the directors/promoters of the corporate debtor/Principal borrower and therefore this application is liable to be rejected. In case this application is admitted, the answering respondent bank shall suffer irreparable losses and injury, which could not be compensated in any ways at later stage. The Financial Creditor also prayed that the respondent/ creditor bank may be allowed to file bankruptcy order under Chapter IV of IBC, 2016.

8. The IDBI Bank filed its written submissions vide diary No. 01116/8 dated 06.05.2024 and the objections raised by the Bank are as below:

- a. It is stated that the applicant i.e. Mr. Vivek Gupta is personal guarantor and mortgagor of the corporate debtor i.e. M/s Vardhman Chemtech Ltd. The Financial creditors has sanctioned working capital limit 46 crore (cash credit of 16 crore, LCBD of 10 crore, ILC/FLC/BG of 18 crore, LER 2 crore) in favour of the corporate debtor and the said financial facility were secured by way of mortgage properties by the Director/Personal Guarantor of the above said corporate debtor. The corporate debtor failed to maintain financial discipline and hence the account of the corporate debtor was categorized as NPA. The financial creditor IDBI Bank filed OA/4524/2017 in the DRT against the outstanding dues of the corporate debtor.
- b. The properties mortgage in the loan account of the corporate debtor are
 - i. Plot No. 136, Sector 110, TDI City Mohali, Punjab.
 - ii. D6 Focal Industrial Plant Derrabassi, Punjab.
 - iii. Property assets at village Jatwad, Rupnagar, Punjab.
 - iv. Village Saddemajra, Derrabassi, Punjab.
 - v. Village Nimbus Rampur Saini, Derrabassi, Punjab.
- c. The financial creditor IDBI Bank further made similar submissions as made by the SBI Bank, that the present application is misconceived and has been filed by the applicant in connivance with other personal guarantors of corporate debtor with malicious intention only to defraud its creditors. It is further contended by the creditor bank that the Resolution Professional did not seek information from

creditors for the purpose of examining the application, therefore, the respondent bank is filing objections to the application and to the report of RP.

D. The creditor bank also submitted that co-joint reading of Section 99 (4) and Section 100 (4) of IB Code 2016 makes it mandatory on the part of RP to examine the application filed by the applicant with regard to the fact that whether such application is made with intent to defraud its creditor or not. Further, as per the provisions of Section 100(4) of the Code, the application referred to in Section 94 or 95 as the case may be can very much be rejected by this Adjudicating Authority on the basis of the report submitted by the RP since the application has been filed by the applicant to defraud its creditors. The financial creditor also cited the landmark case of Dilip B Jiwarika vs. Union of India in WP (Civil) No. 1281 of 2021 in support of their objection. The other contentions raised by the IDBI Bank are same as that of SBI Bank and also prayed that the present application be dismissed with exemplary cost and the creditor may be allowed to file bankruptcy order under chapter IV of IBC 2016.

9. The Indian Bank filed its written submissions vide diary No. 01116/10 dated 06.05.2024 and the objections raised by the Bank are as below:

a. It is stated that the applicant i.e. Mr. Vivek Gupta is personal guarantor and mortgagor of the corporate debtor i.e. M/s Vardhman Chemtech Ltd. The Financial creditors has sanctioned working capital limit 46 crore (cash credit of 16 crore, LCBD of 10 crore, ILC/FLC/BG of 18 crore, LER 2 crore) in favour of the corporate debtor and the said financial facility were secured by way of mortgage properties by the Director/Personal

Guarantor of the above said corporate debtor. The corporate debtor failed to maintain financial discipline and hence the account of corporate debtor was categorized as NPA. The financial creditor Indian Bank filed OA/4494/2017 in the DRT against the outstanding dues of the corporate debtor.

b. The properties mortgage in the loan account of the corporate debtor are

- i. Plot No. 136, Sector 110, TDI City Mohali, Punjab.
- ii. D6 Focal Industrial Plant Derrabassi, Punjab.
- iii. Property assets at village Jatwad, Rupnagar, Punjab.
- iv. Village Saddemajra, Derrabassi, Punjab.
- v. Village Nimbus Rampur Saini, Derrabassi, Punjab.

c. The financial creditor Indian Bank further made similar submissions as made by the SBI Bank, that the present application is misconceived and has been filed by the applicant in connivance with other personal guarantors of corporate debtor with malicious intention only to defraud its creditors. It is further contended by the creditor bank that the Resolution Professional did not seek information from creditors for the purpose of examining the application, therefore, the respondent bank is filing objections to the application and to the report of RP.

d. The creditor bank also submitted that co-joint reading of Section 99 (4) and Section 100 (4) of IB Code 2016 makes it mandatory on the part of RP to examine the application filed by the applicant with regard to the fact that whether such application is made with intent to defraud its creditor or not. Further, as per the provisions of Section 100(4) of the Code, the application referred to in

Section 94 or 95 as the case may be can very much be rejected by this Adjudicating Authority on the basis of the report submitted by the RP since the application has been filed by the applicant to defraud its creditors. The financial creditor also cited the landmark case of Dilip B Jiwarika vs. Union of India in WP (Civil) No. 1281 of 2021 in support of their objection. The other contentions raised by the Indian Bank are same as that of SBI Bank and also prayed that the present application be dismissed with exemplary cost and the creditor may be allowed to file bankruptcy order under chapter IV of IBC 2016.

10. The Resolution Professional also filed its written submissions vide diary No. 01116/7 dated 30.04.2024. In response to the objections raised by the creditor banks, the Resolution Professional submitted the following:

a. The RP stated that the personal guarantor acted in good faith, not intended to defraud the creditors as the application has been filed by personal guarantor through Resolution Professional under Section 94(1) suggests a proactive approach to address financial challenges. This action of the personal guarantor indicates the acknowledgement of the situation and willingness to engage in a structured process to manage debts. This action of the personal guarantor serves to reassure creditor banks and relevant parties that any financial difficulties were not borne out of deceitful motives but rather unforeseen circumstances or genuine inability to meet obligations.

b. The Resolution Professional further submitted that the report filed by him did not demonstrate any fraud by the applicant/personal guarantor nor did it set out any facts to show any elements of fraud. It is firmly established in law that

allegations of defrauding creditors cannot be upheld by creditor banks solely on the basis of mere suspicion or vague assertions, lacking supporting evidence. Such claims are of serious nature and must be substantiated beyond reasonable doubt. The Resolution Professional also cited the decision of NCLAT in the matter of Shri. Baiju Trading and Investment Private Limited. Vs. Mr. Arihant Nenawati and others [Company Appeal (AT) (Ins.) No. 699 of 2021] where the appellant relied on the judgments of Svenska Handels Bunken vs. Indian Charge Chrome and others [(1994) 1 SCC 504] and Anil Rishi vs. Gurbaksh Singh [(2006) SCC 558] wherein the Hon'ble Supreme Court of India held that allegations of fraud are grave in nature and cannot be made on mere suspicion and needed to be pleaded with strong evidence.

11. After hearing the Resolution Professional and counsels for the applicant as well as creditor banks; and on perusal of the application and the record placed before this Adjudicating Authority, the findings of this Adjudicating Authority are as below-

A. The first contention of the Creditor bank is that the present petition is barred by limitation. The present application is filed by the personal Guarantor for M/s. Vardhman Chemtech Ltd. (Corporate Debtor/Principal Borrower), who has extended personal guarantees to State Bank of India, Indian Bank (Erstwhile Allahabad Bank) and IDBI Bank, financial creditors of the corporate debtor/principal borrower. The lender banks invoked the guarantees on the following dates-

Sr. No.	Name of the bank	Date of notice to the Personal Guarantor
1.	State Bank of India	31.08.2016

2.	Indian Bank (Erstwhile Allahabad Bank)	31.12.2017
3.	IDBI Bank	24.04.2017

The Applicant/personal guarantor in Part-III of Form A also stated the above mentioned dates as date of default and the present application is filed on 05.04.2023 which is far beyond the period of limitation of three years. Hence, the present application filed by the personal guarantor is liable to be dismissed.

12. Further, this Adjudicating Authority is also of the view that the present application is filed by the applicant personal guarantor to take the advantage of the moratorium and to delay the proceedings initiated by the Financial Creditors under the SARFAESI Act. The financial creditors may take necessary steps as per their entitlement.

13. In view of the above, CP (IB) No. 105/Chd/Chd/2023 filed under Section 94(1) of the IBC, 2016 is rejected by this Adjudicating Authority. The matter stands disposed off in all respects and without costs.

Sd/-

(Satya Ranjan Prasad)
Member (Technical)

July 03 , 2024

Vanshika

Sd/-

(PSN Prasad)
Member (Judicial)