

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, BENCH VI**

I.A 4764/2023

in

CP (IB) No.366/ND/2023

[An application under Rule 11 of the National Company Law Tribunal Rules, 2016]

IN THE MATTER OF:

Mr. Sumit Khaneja
D-7, Ansal Villa, Satbari, Chattarpur,
New Delhi – 110074

Also at:

56-58, Community Center, East of Kailash
New Delhi – 110065

E-mail – sk@collageindia.com

...Petitioner

AND IN THE MATTER OF:

IL&FS Financial Services Limited
[CIN : U65990MH1995PLC093241]

Having its Registered Office at:

Plot No. 22, G-Block, Bandra Kurla Complex, Mumbai, Maharashtra – 400051

...Applicant

Versus

Mr. Sumit Khaneja

...Respondent/Personal Guarantor

Date of pronouncement: 10.05.2024

CORAM:

SHRI MAHENDRA KHANDELWAL

: MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR

: MEMBER (TECHNICAL)

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Appearances (through Video Conferencing/ physical hearing)

For the Petitioner/Applicant: Mr. Pravar Veer Misra, Advocate

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

1. This is an application filed by the applicant herein under the provision of Rule 11 of The National Company Law Tribunal Rules, 2016 seeking impleadment as a respondent in the main matter i.e. **CP (IB) No.366/ND/2023**.
2. That the Insolvency application u/s 94 of IBC, 2016 was preferred by Mr. Sumit Khaneja (personal guarantor) who had undertaken personal guarantees for repayment of loan in respect of certain corporate debtors.
3. This Adjudicating Authority had issued a notice to respondents in the main matter on 02.08.2023.
4. This Adjudicating Authority vide order dated 12.02.2024 had already appointed Ms. Gunjan Mittal [IBBI/IPA-003/IP-N00361/2021-22/13756] as the Resolution Professional in the main matter. Reference is placed to the judgement of Hon'ble Supreme Court of India in the matter of Dilip B Jiwarjka vs Union of India & Ors. In Writ Petition (C) No. 1281 of 2021 where the apex court have concluded that no judicial adjudication is envisaged in Section 95-99 of the IBC and further held that no hearing is required by the adjudicating authority at the stage when it appoints a Resolution Professional under Section 97(5) of the IBC, 2016.
5. The applicant herein contended that despite it being a secured financial creditor, no notice of filing of the insolvency application had been served upon them by Mr. Sumit Khaneja neither prior nor post filing of the insolvency application (as required under Rule 6 of the IBC (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors Rules, 2019)).

6. However, via affidavit dated 10.10.2023, the Personal Guarantor, Mr. Sumit Khaneja has submitted that vide letter dated 25.02.2023 issued to IL&FS, it was duly communicated to IL&FS that he had filed a petition under Section 94 of the IBC, 2016 through the RP and also that interim moratorium u/s 96 of IBC, 2016 was in operation in furtherance of which no action qua the mortgaged property can be taken. Further, it mentions that despite being in receipt of the aforementioned letter, there was no response from IL&FS.
7. Regarding the prayer to exclude the aforesaid mortgaged property situated at Plot No.3, Anand Lok, Delhi from the scope of interim moratorium imposed, it is hereby clarified that no such provision exists in law to exempt a particular asset class of Personal Guarantor by filtering it in a selective manner.
8. Since RP has already been appointed in the main matter, the applicant herein would be at liberty to file their claim/reply to the report submitted by RP under Section 99 of the IBC. There is no locus for impleadment at this stage.
9. Further, regarding the prayer of the applicant herein to dismiss the insolvency petition filed by the Personal Guarantor, the same would be considered in accordance with law after perusal of the report submitted by the RP u/s 99 of the Insolvency and Bankruptcy Code, 2016.
10. This IA stands disposed off on the above terms.

-SD/-

RAHUL BHATNAGAR
MEMBER (TECHNICAL)

-SD/-

MAHENDRA KHANDEWAL
MEMBER (JUDICIAL)