

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT-II)**

**Item Nos. 213 & 214**  
**IA-2612/2024, IA- 2275/2024 in IB-148/ND/2024**  
**&**  
**IA-2287/2024, IA-2615/2024 in IB-149/ND/2024**

**IN THE MATTER OF IB-148/ND/2024:**

**Uma Goel**  
**Through Resolution Professional**  
**Piyush Moona** ... **Applicant/Petitioner**

**IN THE MATTER OF IB-149/ND/2024:**

**Shiv Kumar Goel** ... **Applicant/Petitioner**

**Under Section: 94(1) of IBC, 2016**

**Order delivered on 10.07.2024**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)**  
**SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)**

**PRESENT:**

**For the CBI** : Adv. Akriti Gautam, Adv. Reema Khorana  
**For the Respondent** :  
**For the RP** : CA Piyush Moora a/w Adv. Vinod Chaurasiya

**Hearing Through: VC and Physical (Hybrid) Mode**

**ORDER**

**IA-2612/2024 in IB-148/ND/2024 & IA-2615/2024 in IB-149/ND/2024:**

For the reasons stated therein, the IAs IA-2612/2024 & IA-2615/2024 filed for taking the additional documents on record are **allowed**.

**IA-2275/2024 in IB-148/ND/2024, IA-2287/2024 and IB-149/ND/2024,**

**as also IB-148/ND/2024 & IB-149/ND/2024:** The Petitioners in captioned applications filed under Section 94 of IBC, 2016 are Husband and Wife (Shiv Kumar Goel and Uma Goel). Admittedly, both of them stood as Personal Guarantor qua the Financial Facilities extended to M/s. Sanyog Healthcare

Ltd., qua which the CIRP could be initiated by way of C.P.(IB)-1045/ND/2020. The Financial Facilities to said company were extended by a consortium of six banks comprising Central Bank of India, State Bank of India, Oriental Bank of Commerce, Andhra Bank, Tamil Nadu Mercantile Bank and Bank of Baroda. We issued notice to the said banks to seek their response qua the present proceedings, but when the Applicants have filed the Affidavit stating therein, that the notice has been served upon all the said Banks, there is no appearance on behalf of either of them. Obviously, in the present applications preferred by them, both the Applicants (Personal Guarantors) have accepted their liability to repay the amount of debt to the consortium, and the default committed by them in repaying the amount of debt. Though the Applicants have not filed any affidavit stating that they are not suffering from any ineligibility or disqualification to prefer the present proceedings, in terms of the provisions of Section 94 (4 and 5) of IBC, 2016, but in the Report filed by the RP, he has stated that the Applicants are not debarred in terms of the provisions of Section 94 (4 and 5) of the IBC, 2016 from filing the captioned applications. The para 13 of the report of the RP filed by way of IA-2275/2024 reads thus:

**13. COMPLIANCE OF TERMS OF SECTION 94 OF THE CODE READ WITH SECTION 99(6)(A) OF THE CODE**

<b>PROVISIONS</b>	<b>COMPLIANCES</b>
<b>Section 94(3) of the Code:</b>	For the purpose of examining the criteria of total debt, the definition of excluded debts under

	<p>Section 79 Sub-clause 15 of the Code is given as under:</p> <p>“Excluded debt” means –</p> <p>(a) liability to pay fine imposed by a court or tribunal;</p> <p>(b) liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation;</p> <p>(c) liability to pay maintenance to any person under any law for the time being in force;</p> <p>(d) liability in relation to a student loan;</p> <p>(e) any other debt as may be prescribed;</p> <p><b><u>Observation:</u></b></p> <p>It is submitted that the total debt of the Personal Guarantor does not comprise of any excluded debt.</p>
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<p><b>Section 94(4) of the Code: A debtor shall not be entitled to make an application if he is-</b></p>	
<p>a) That the Personal Guarantor is not an undischarged insolvent.</p>	<p>No order of insolvency is found to have been passed against the debtor personal guarantor in past and no insolvency proceedings is found to have been initiated against the debtor before the present application under section 94. Thus it is observed that the debtor personal Guarantor is not an undischarged insolvent.</p>

b) That the Personal Guarantor is not undergoing a fresh start process.	It is observed that the Personal Guarantor is not undergoing any Fresh Start Process.
c) That the Personal Guarantor is not undergoing an Insolvency Resolution Process.	It is observed that the Personal Guarantor is not undergoing any Insolvency Resolution Process.
d) That the Personal Guarantor is not undergoing Bankruptcy Process.	An application under Section 94 of the Code is under consideration by Hon'ble NCLT vide order dated 05.04.2024 and the interim moratorium has been commenced under Section 96 (1) (a) of the Code and the Personal Guarantor is not undergoing any Bankruptcy Process.
<b>Section 94(5) of the Code:</b> A debtor shall not be eligible to apply under Section 94(1) if an application has been admitted in respect of the debtor during the period of 12 months preceding the date of submission of the	It is observed that, no other application under this chapter has been admitted during the preceding 12 months of the date of submission of the present application u/s 94 of the code.
application under Section 94 of the Code.	

2. In para 14 of the Report/IA the RP has reproduced the provisions of Section 99 of IBC, 2016 and has stated that he has taken steps in terms of

the provisions of Section 99 (4), 6 (A & B). The relevant excerpt of para 14 reads thus:

PROVISIONS	COMPLIANCES
<p><b>Section 99(4) of the Code read with Section 99(6) (a) &amp; (b).</b></p>	<p>(a) That the Resolution Professional sent communication seeking additional information from Applicant, Liquidator of the Corporate Debtor and the Financial creditors (to whom guarantee was given for loans taken by CD)</p> <p>(b) The documents submitted by the applicant have been duly verified by the Resolution Professional in</p>
	<p>accordance with section 99(4) and 99(6) (a) &amp; (b) of the IBC, 2016. Thus, the RP submits that <i>the application satisfies the requirements set out in section 94</i></p>

3. Finally, the RP could make a recommendation for admission of IB-148/ND/2024. Para 16 of the application/Report reads thus:

**16. RECOMMENDATION BY RESOLUTION PROFESSIONAL UNDER SECTION 99(7) OF IBC, 2016**

1. That on perusing the Application filed under Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 along with documents attached thereto, it is evident that the Personal Guarantor has provided a personal guarantee for the debt of Corporate Debtor, Sanyog Healthcare Limited. The guarantee has been invoked and remained unpaid in full and hence the Personal Guarantor has committed a default in terms of section 94(1).
2. **Recommendation:** That in view of the above-stated facts and circumstances, and on examining the documents available on record and based on the information, **the Resolution Professional recommends that the Application filed by the Personal Guarantor bearing CP (IB) No. 148(ND)/2024 satisfies the requirement as stipulated under section 94 of IBC and therefore recommended that the present application may be accepted/ admitted by this Hon'ble Tribunal.**

**3. Reasoning for Recommendation:**

- a. I have examined the application **CP(IB) No.148/ND/2024** and the same is found to be satisfying all the requirements of Section 94 of the IBC, 2016.
- b. I have not received any evidence of repayment/payment towards debt, from either Banks/creditors or Applicant. The same has also been confirmed by the Liquidator in his communication that no distribution has been made by him against claims of banks filed in Liquidator. **Ref. Annexure A-8**
- c. I have not received any document cancelling/revoking the personal guarantee offered by Uma Goel for the borrowing made by the Corporate Debtor i.e. Sanyog Healthcare Limited.
- d. Application filed is within limitation being Loan recall/Demand Notice issued u/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) by Central Bank of India (lead Bank of the consortium), was dated 05.07.2021.
- e. I have not received any order of court or any other forum whereby the personal guarantee offered by Uma Goel was cancelled or set aside.

4. Ld. Counsel appearing for the RP submitted that the Reports filed in IB-148/ND/2024 in terms of IA-2275/2024 and the one filed in IB-149/ND/2024 in terms of IA-2287/2024 are **pari-materia** and are similar.

5. Since, the Applicants in both the Petitions viz. IB-148/ND/2024 & IB-149/ND/2024 stood as Personal Guarantors qua the same financial facility, apparently, the amount of debt and the date of default are same. The Applicants, in captioned Company Petitions being Husband and Wife own the same set of properties, jointly. The details of property given by them is as under:

11	List of assets of guarantor and	Immovable	Description	Estimated Value	Excluded asset or not
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<p>immediate family as on the application date.  Note: This will include all assets of guarantor, irrespective of them being excluded assets. Please mention which assets may be excluded assets.</p>	Immovable	Survey No. 96/2 situated at Maildevpally Village, Rajender Nagar Mandal & Municipality, Ranga Reddy District, Andhra Pradesh	3.10 to 3.60 Crores (Approx)	Not Excluded Asset
	Immovable	Flat Bearing No. 37, Block-B 3rd Floor, Bijli Apartments, Gujranwala Town, Model Town, Delhi	2.10 to 2.70 Crores (Approx)	Not Excluded Asset
	Immovable	Flat Bearing No. 38, Block-B 3rd Floor, Bijli Apartments, Gujranwala Town, Model Town, Delhi	2.10 to 2.70 Crores (Approx)	Not Excluded Asset
	Immovable	Plot No. D-27, Khasra No. 3525 Residential Property Admeasuring 555 Sq. Yards at Rameshwaram Park, Loni, Ghaziabad, Uttar Pradesh.	2.30 to 2.70 Crores (Approx)	Not Excluded Asset

Immovable	Commercial Property at B-1, Yadav Park, Opposite Metro Pilar No. 436, Nangloi, Delhi-110041	6.25 to 7.00 Crores (Approx)	Not Excluded Asset
Immovable	Grand Omaxe Plot No. 01, 02 & 03 Sector 93-B, Noida Gautam Budh Nagar, Uttar Pradesh	2.00 to 2.30 Crores (Approx)	Not Excluded Asset
Immovable	2/5 Roop Nagar, Delhi-110007	4.00 to 4.10 Crores (Approx)	Not Excluded Asset
Movable	Description	Estimated Value	Excluded asset or not
Vehicles	NIL	NIL	NA
Shares in listed companies	As per Annexure – 6(Colly)	NIL	NA
Shares in other companies	As per Annexure – 6 (Colly)	Nil	Not Excluded Asset
Life Insurance policy	NIL	NIL	NA

	Jewelry	NIL	NIL	NA
	Pension policy	NIL	NIL	NA
	Investment in mutual funds	NIL	NIL	NA
	Investment in other funds	NIL	NIL	NA
	Investment in partnerships and other business concerns	NIL	NIL	NA
	Any other movable property	NIL	NIL	NA

6. In view of the aforementioned, particularly the Report submitted by the IRP, we are left with no option, but to admit the present applications.

7. Nevertheless, the RP would conduct separate IRP qua both the Applicants.

8. It is made clear that, the RP would make roving inquiry to find out all the assets of the Personal Guarantors and would also be entitled to get the forensic audit conducted if necessary.

9. In view of the aforementioned, **we are left with no option but to admit the present petitions. Ordered accordingly.**

10. It goes without saying that during the Insolvency Resolution Process, the RP shall give an opportunity to personal guarantor to submit her repayment plan. Nevertheless, before that the RP shall also carry the exercise in terms of the provisions of Section 100(2) of IBC 2016. For such purpose it would be open to the Respondents to appear before RP within 1 week from today.



11. There is no request by the RP for the purpose of conducting negotiation between the debtor and the creditors. As a sequel of admission of the present application, a moratorium shall commence in relation to all the debts of the Respondent. During the moratorium period – (a) any pending legal action or proceedings in respect of any debt qua the Respondent shall be deemed to have been stayed; (b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt qua the Respondent; and (c) the debtors shall not transfer, alienate, encumber or dispose of any of the assets or his legal right or beneficiary interest therein. The moratorium shall cease to have effect at the end of period of 180 days.

12. A public notice shall be issued by the RP within seven days of passing of this order, inviting claim from all creditors within 21 days of such notice. The notice shall include details of the present order, particulars of the Resolution Professional with whom the claims have to be registered and the last date for the submission of the claims. The notice shall be – (a) published in two National Newspapers, one in English and other one Vernacular Language, in circulation in the State where the debtor resides; (b) affixed in the premises of this Adjudicating Authority; and (c) placed on the website of the Adjudicating Authority.

13. We are sanguine that the RP shall discharge all such duties as are incumbent upon him in terms of the provisions of Sections 102, 103, 104, 105, 106 , 107, 108, 112 and 113 of IBC, 2016, with the due deference of the procedure enshrined in Regulations 5, 7, 8, 9, 11, 12, 13, 14, 15 and 17 of IBBI (Insolvency Resolution Process for Personal Guarantor to Corporate Debtors) Regulations, 2019 and also in terms of the other extent provisions of

the aforementioned code/ regulations and/or any other provisions of law applicable to him, in discharge of his duties as RP.

14. A copy of this order along with the copy of the application as also the report of Resolution Professional shall be provided to the Creditor (Applicant), Personal Guarantor (Respondent) and IBBI, by the Registry/Court Master within 7 days from today by email.

**15. IA-2275/2024 in IB-148/ND/2024 & IA-2287/2024 in IB-149/ND/2024 stands disposed of accordingly. To come up for consideration of Status Report to be filed by RP, within 8 weeks.**

16. It goes without saying that whatever amount is paid to the creditor by the principal borrower (corporate debtor) and other guarantors would be deducted from the liability of the Respondent to repay.

**Sd/-  
(SUBRATA KUMAR DASH)  
MEMBER (T)**

**Sd/-  
(ASHOK KUMAR BHARDWAJ)  
MEMBER (J)**