

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V NEW DELHI BENCH
COMPANY PETITION NO. (IB)-222(PB)/2021
A/W
IA. NO. 2144/ND/2024 IN CP IB NO. 222(PB)/2021**

IN THE MATTER OF:

**JYOTI CHOUDHARY
THROUGH MR. ANIL KUMAR
(RESOLUTION PROFESSIONAL)**

...PERSONAL GUARANTOR

AND

IN THE MATTER OF IA. NO. 2144/ND/2024:

**ANIL KUMAR
RESOLUTION PROFESSIONAL
HOUSE NO. 7, 1st FLOOR
PADMINI ENCLAVE, HAUZ KHAS
NEW DELHI - 110016**

...APPLICANT/RESOLUTION PROFESSIONAL

Order Delivered on: 23.07.2024

CORAM:

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)
DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For the Applicant:

Mr. Abhirup Dasgupta, Mr. Ishaan Duggal and Ms. Ruchi Goyal, advs.

For the Respondent:

For the RP:

Mr. Milan Singh Negi and Mr. Nikhil Kumar Jha, advs.

ORDER

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1. The present I.A. No. 2144 of 2024 has been filed by Mr. Anil Kumar (hereinafter referred to as the 'RP'), qua Personal Guarantor Ms. Jyoti Choudhary (hereinafter referred to as 'Applicant/Personal Guarantor') enclosing therewith the Report prepared by him under Section 99 of IBC, 2016.
2. To put the facts concisely, the underlying main Petition CP (IB)- 222/PB/2021 was filed by Ms. Jyoti Choudhary, the Personal Guarantor under Section 94 of the IBC 2016, to initiate the Insolvency Resolution Process. Vide order dated 20.03.2024, this Adjudicating Authority directed the Resolution Professional to file a Report in terms of Section 99 of the IBC, 2016.
3. In compliance of the order dated 20.03.2024 passed by this Adjudicating Authority, the present IA-2144/ND/2024 has been filed by Resolution Professional enclosing herewith the Report prepared in terms of the provisions of Section 99 of IBC 2016, recommending admission of the Application viz. IB-222/PB/2021 in respect of the Personal Guarantor.
4. The conclusive recommendation made by the RP reads thus:

"In view of the above facts and circumstances, I, Anil Kumar, the Resolution Professional appointed by this Hon'ble Tribunal, vide order dated 20.03.2024 in C.P. (IB) NO. 222/PB/2021, hereby confirm that, I have perused/examined all the underlying documents and annexure of the subject application and additional information/ documents provided by the Debtor. I submit that all the requisites & requirements under section 94 of IBC are duly met with, therefore, I hereby recommend acceptance of the application to this Hon'ble Tribunal for initiation of personal insolvency of Ms. Jyoti Choudhary be initiated in accordance with Part III of the Code based on following grounds: -

- a) That the Application filed by Ms. Jyoti Choudhary, through Resolution Professional Sh. Anil Kumar satisfies the requirement as set out in Section 94 of the Code;*

- b) *That the Corporate Debtor have committed default in repayment of Consortium Agreement/ Loan Facility/ Master Restructuring Agreement/ Restructured Debt granted by the aforesaid banks and/or financial institution;*
- c) *That Ms. Jyoti Choudhary, Personal Guarantor to Corporate Debtor has also committed default in repayment of Loan Facility demanded by the banks upon invocation of personal guarantee.*
- d) *That having gone through the application the Resolution Professional confirms that the Application is accompanied with details and documents evidencing the default / non-repayment of debt. The Application has been filed in Form A as per Rule 6(1) of The Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 and the applicant has paid the requisite fee while filing the application.*
- e) *The Resolution Professional declares that he qualifies to be eligible under Regulation 4 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.*
- f) *The application is well within limitation.*
- g) *That, in light of the above, it is just and equitable that Insolvency Resolution Process be initiated in the case of Smt. Jyoti Choudhary, Personal Guarantor to the Corporate Debtor under the orders and directions of this Hon'ble Tribunal.*

5. While making its recommendation for admission of the Application filed against the Personal Guarantor under Section 94 of IBC, 2016 the RP has given the Report as required under Section 99 of IBC, 2016 providing that:

- a) The Corporate Debtor/principal borrower herein i.e., CLC Industries Limited had availed various loan facilities from the consortium of banks, wherein SBI was the lead member. State Bank of Indore (Now merged with State Bank of India) had granted a working capital of Rs. 4 crore

and a term loan of Rs. 15 crores to the Corporate Debtor vide sanction letter dated 08.11.2005.

- b) In 2009, the Corporate Debtor approached the lenders/ banks for reworking its existing debt and in pursuance of which a Master Restructuring Agreement (MRA) dated 27.03.2009 was executed between the principal borrower and the lenders.
- c) On 31.03.2009, the principal borrower entered into Working Capital Consortium Agreement with the State Bank of India, the lead Bank of Consortium and availed a working capital facility of Rs. 418.17 crore. The said facility was secured by the irrevocable personal guarantees of Jyoti Choudhary (“Personal Guarantor herein”), Mukund Choudhary, Kapil Choudhary and Ajay Choudhary vide Guarantee Deed dated 31.03.2009. As per clause 13 of the Deed, the said guarantee was forthwith payable on demand by the Lead Bank i.e. SBI.
- d) A supplementary Restructuring Agreement dated 27.03.2012 was entered by the principal borrower with SBI (lead bank), whereby the credit facilities availed by principal borrower were enhanced, wherein the personal guarantor herein along with other guarantors again stood as guarantors to the said credit facility.
- e) In order to secure the credit facilities agreed via Working Capital Consortium Agreement dated 03.11.2014 and Joint Hypothecation Agreement dated 03.11.2014, executed by the principal borrower, the personal guarantors including the personal guarantor herein (Jyoti Choudhary) executed deed of guarantees dated 03.11.2014.
- f) Vide Deed of Guarantee dated 03.11.2014, the personal guarantor agreed to be jointly and severally liable at any time the default is made by the Principal Borrower/Corporate Debtor, in payment of the principal sum, not exceeding Rs. 395,07,00,000/- (Rupees Three Hundred Ninety-Five Crore and Seven Lacs) together with interest and other charges and any other money due to the Lead Bank and further indemnify the Lead

Bank against all the losses which may incur by the reason of default on the part of the Corporate Debtor.

- g) Further, on 03.11.2014, a deed of guarantee for an overall limit not exceeding Rs. 150,13,00,000/- (Rupees One Hundred and Fifty Crore Thirteen Lacs) was also executed by the personal guarantor.
- h) Further, on the request of the principal borrower, SBI renewed/sanctioned the credit limits vide letter dated 26.02.2015, of Rs. 587.48 crores which included all fund and non-fund based limits.
- i) The principal borrower was unable to fulfil the repayment obligations as outlined in the credit facility agreements, resulting in the account of the principal borrower/ Corporate Debtor being classified as Non-Performing Asset ("NPA") on 18.08.2015.
- j) Pursuant to the default, SBI issued a notice dated 14.03.2016 to the Corporate Debtor under Section 13(2) of the SRAFAESI Act, 2002 to pay within 60 days, the entire outstanding amount worth Rs. 286.75 crore as on 08.03.2016 together with future interest @ 3% along with other incidental expenses, costs, charges thereon w.e.f. 08.03.2016. However, the principal borrower and personal guarantor continued to commit default in repayment.
- k) SBI filed an application bearing No. O.A. No. 823/2017 before the Ld. DRT-1, Delhi on 08.02.2017 for recovery of a sum of Rs. 302,42,50,049/- along with interest and other charges from 10.02.2017 and also non-fund based amount of Rs. 7,07,79,455/- from 01.07.2015 till realization of the debt from the Corporate Debtor and Personal Guarantor jointly and severally. Thereafter, the loan of SBI was assigned to Alchemist Asset Reconstruction Company of India Ltd. ("ARCIL").
- l) The RP has examined the application filed by the Creditor under Section 94 as per the proviso of Section 99(6) and same satisfies the requirements put forth in Section 94.

6. It is observed that the CIRP of the Corporate Debtor/ principal borrower was initiated by this Adjudicating Authority vide order dated 03.01.2020 on an

application being CP (IB) No. 933 of 2019 filed by Edelweiss Asset Reconstruction Co. Ltd. Currently, the principal borrower stands resolved, as the resolution plan submitted by Manjeet Cotton Private Limited and Vitthal Corporation Ltd. is approved by this Adjudicating Authority vide order dated 12.05.2023.

7. Notice has been issued to the Financial Creditors. We have heard the submission of all the parties and have perused the Application and the Report filed by the Resolution Professional. Both Financial Creditor and the Personal Guarantor have submitted that they have no objection if the Report is accepted and the same has been recorded in the order dated 03.05.2024 and 06.06.2024. The RP in his Report has placed on record, the Guarantee Deed dated 31.03.2009 and Supplementary Restructuring Agreement dated 27.03.2012, in terms of which the Personal Guarantor, Ms. Jyoti Chaudhary stood as a guarantor for the repayment of loan facilities granted by the Banks and Financial Institutions to the Corporate Debtor. The RP has also annexed a copy of the Annual report of the Corporate Debtor for the year ending 31.03.2017.
8. On the perusal of the documents placed on record, it is observed that the aforesaid Corporate Debtor has committed default in repayment of loan facilities granted by the banks and the applicant stands as a Personal Guarantor to the Principal Borrower. Details of defaults and ongoing legal proceedings against the Borrower is placed on record. Hence, we are satisfied with the observations made by the RP Vide IA/2144/ND/2024.
9. In view of the above, we are inclined to admit the present petition. Therefore, the Company Petition bearing No. **(IB)-222(PB)/2021** filed under Section 94(1) for initiation of Insolvency Resolution Process against the Personal Guarantor stands **admitted**.
10. The RP is directed to proceed further in accordance with the provisions of the Code. Interim moratorium which came into effect in terms of Section 96(1)(a) on the date of filing the application shall cease to have effect.

11. A fresh moratorium in terms of Section 101 of the Code shall commence as applicable. RP is directed to take all further steps in accordance with Part III, Chapter III of the Code. 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 Respondent 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 the period of 180 days.

12. A public notice shall be issued by the RP, within seven days of passing of this order, inviting claims 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 said notice shall be –
- a) published in English and one Vernacular Language newspaper which is 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. The RP shall discharge all such duties as are incumbent upon him in terms of the provisions of Sections 104, 105, 106, 107, 108, 112, and 113 of IBC, 2016, with due deference to 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 the discharge of his duties as RP.

14. A copy of this order along with a copy of the application and the report of the Resolution Professional shall be provided to the Financial Creditors by the Registry/Court Master within 7 days from today by e-mail.
15. IA-2144/ND/2024 in CP IB No. 222/PB/2021 is disposed of accordingly. To come up for consideration of Status Report to be filed by RP, within 8 weeks.

Copy of this order be also sent to IBBI by the Registry.

Sd/-
DR. SANJEEV RANJAN
MEMBER (TECHNICAL)

Sd/-
MAHENDRA KHANDELWAL
MEMBER (JUDICIAL)