

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT-III**

IB-486(ND)/2022

And

IA-1102/2023

**IN THE MATTER OF IB-486(ND)/2022:**

Under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), Rules 2019.

**M/s. STATE BANK OF INDIA**

*Having its Branch Office at:*

Stressed Asset Management Branch-I,  
12<sup>th</sup> Floor, Jawahar Vyapar Bhawan,  
1 Tolstoy Marg, Janpath, New Delhi-110001.

**..... Applicant/Financial Creditor**

**Versus**

**MR. SUNIL MOHAN WIG**

S/o Raghunandan Lal Wig  
R/o A-46/11, DLF City Phase-I,  
Gurgaon- 122008.

**..... Respondent/ Personal Guarantor**

**AND IN THE MATTER OF IA-1102/2023:**

Report Under Section 99 (1) of the Insolvency & Bankruptcy Code, 2016

Mr. Naveen Kumar Jain

IBBI Registration: **IBBI/IPA-001/IP-P00650/2017-2018/11097**

**..... Applicant**

**Order Pronounced On: 04.07.2024**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant : Mr. Amrendra Kumar Singh, Mr. Sanidhya Kumar, Adv.

For RP : Mr. Kushal Bansal, Adv. and Mr. Naveen Kumar Jain, RP

For Respondent : Mr. Arjun Maheshwari, Adv.

**ORDER**

**PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)**

1. The present application has been filed by M/s. State Bank of India, the Applicant under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Personal Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), Rules 2019 for initiation of Insolvency Resolution Process against Mr. Sunil Mohan Wig, the Personal Guarantor to the Corporate Debtor, M/s. Wig Brothers Construction Private Limited for the total debt amount of Rs.30,46,00,086.69/- (Rupees Thirty Crore Forty-Six Lakh Eight Six rupees and Sixty-Nine Paise Only) calculated up to 31.05.2021 at the applicable rate of interest.
2. It is stated that the Applicant/Financial Creditor had disbursed credit facilities to the tune of Rs. 34,00,00,000/- (Rupees Thirty-Four Crores Only) to the Corporate Debtor i.e. M/s. Wig Brothers Construction Pvt Ltd, in the year 2015 and executed Loan & Security documents in favour of the Applicant / Financial Creditor on 20.04.2015. It is pertinent to point out that the Respondent being one of the Personal Guarantors for the Corporate Debtor also signed and executed a Deed of Guarantee on 20.04.2015 and agreed that in case of defaults in payment by the Corporate Debtor to the Applicant / Financial Creditor, the Respondent will be jointly and severally liable for the dues of the Applicant.
3. However, subsequently the operation and conduct of the said credit facilities by the Applicant to the Corporate Debtor have become irregular and the debt has been classified as Non-Performing Assets (NPA) on 03.01.2017.

4. The Applicant/Financial Creditor has filed an Original Application before the Debts Recovery Tribunal-II, Delhi ("**DRT**") for recovery of an amount of Rs. 16,07,86,513.91 (Rupees Sixteen Crores Seven Lacs Eighty-Six Thousand Five Hundred Thirteen And paise Ninety-One Only) as on 15.06.2017 along with pendente lite and future interest, costs, and expenses, which was registered as OA No. 690/2017. The Hon'ble DRT vide its Order dated 30.11.2018 passed the Final Order allowing the Original Application and issued a Recovery Certificate in favour of the Applicant/ Petitioner, which was registered as Recovery Case (RC) No. 442/2018. The Ld. Recovery Officer in compliance of Judgment dated 30.11.2018 has already issued Demand Notice dated 23.02.2019 to the Borrower and its Guarantors as all are jointly and severely liable for the dues of the Bank as the Borrower/ Guarantors failed to pay the dues in terms of Judgment dated 30.11.2018 passed by the Hon'ble DRT.
5. In light of the clear and unequivocal terms of the Deed of Guarantee, the Personal Guarantor has, in case of default on part of the Corporate Debtor, to repay the debts in respect of the underlying Loan Agreements, undertaken to pay forthwith on demand to the Applicant, all the monies along with interest, costs, charges, expenses and/or any other monies, as payable by the Corporate Debtor. It may be noted that admittedly there is default on part of the Corporate Debtor to make payments under the Loan Agreements, in respect of which the Applicant had also sent a Notice dated 04.01.2017, to the Corporate Debtor as well as the Personal Guarantors including the Respondent herein being one of the Guarantor, in terms of Section 13(2) of the Securitisation and reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 ("**SARFAESI Act**") for an amount of Rs. 24,64,15,133/- (Rupees Twenty-Four Crores Sixty-Four Lacs Fifteen Thousand One Hundred Thirty-Three Only) as on 04.01.2017 with further interest and incidental expenses, costs for the Credit facilities availed by the Corporate Debtors for enforcing its Security under Section 13(4) of the Securitisation Act, 2002.
6. The Petitioner herein has again issued a Demand Notice dated 12.05.2017 for an amount of Rs. 16,07,86,513.91 through its Counsel and recalled the personal guarantee of the Respondent /Personal Guarantor.

7. This Adjudicating Authority vide its Order dated 09.07.2018 in **IB-614/ND/2017** admitted the Petition filed by M/s. NUVOCO Vistas Corporation Limited under Section 9 of the IBC, 2016 and initiated CIRP against the Corporate Debtor, i.e., M/s. Wig Brothers Construction Private Limited by appointing IRP Mr. Aditya Agarwal for resolution of the Corporate Debtor. It is pertinent to point out that as the Resolution process of the Corporate Debtor does not materialize, therefore, this Adjudicating Authority vide Order dated 27.11.2019 in **CA-139/C-III/ND/2019** on an Application filed by the Resolution Professional of the Corporate Debtor initiated Liquidation process and appointed the Resolution Professional as the Liquidator to liquidate the assets of the Corporate Debtor.
8. Further, in view of the default under the Deeds of Guarantee, the Applicant had sent a demand Notice dated 30.06.2021 to the Personal Guarantor under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, thereby demanding Rs. 30,46,00,086.69/- (Thirty Crore Forty-Six Lacs Eighty-Six Rupees and Sixty-Nine Paise) as on 31.05.2021 in respect of amount of debt in default as on 19.05.2017, which was dully served upon the Respondent. However, the Respondent choose not to pay the dues of the Applicant herein.
9. This Adjudicating Authority vide order dated 18.01.2023 appointed Mr. Naveen Kumar Jain (**IBBI/IPA-001/IP-P00650/2017-2018/11097**) as the Resolution Professional and was directed to submit a report in terms of Section 99 IBC within 10 days of his appointment, recommending for approval or rejection of the Application filed by the Creditor.
10. The Resolution Professional submitted that in accordance with Section 99(2) of the Code, he requested the Personal Guarantor to furnish any document proving repayment of the debt claimed, as unpaid, by the Creditor in its application dated 28.05.2022 within 7 days from the date of receipt of E-mail dated 04.02.2023 and letter sent via Speed Post delivered on 07.02.2023. However, no response has been received by the Resolution Professional from the Personal Guarantor.

- 11.** The Resolution Professional submitted that in accordance with Section 99(4) of the Code, the Resolution Professional wrote E-mail dated 04.02.2023 to the Applicant Bank regarding the status of repayment of amount of default as claimed by it. The Applicant vide its Reply via E-mail dated 06.02.2022 informed that no repayment has been made in the account of M/s Wig Brothers Construction Private Limited. The Resolution Professional wrote E-mail dated 18.01.2023 to the Liquidator of M/s. Wig Constructions Brothers Private Limited to provide the details regarding the status of any repayment to the Applicant Bank in the CIRP of the Corporate Debtor. However, no repayment has been made to the Applicant/State Bank of India in the Liquidation Process as confirmed by the Liquidator vide Reply dated 14.02.2023.
- 12.** The Resolution Professional vide IA-1102/2023 dated 15.02.2023 has filed its report before this Adjudicating Authority on 17.02.2023 after serving a copy of the same to the Personal Guarantor on 16.02.2023. The Report was again served to the Personal Guarantor on 24.04.2023 and 30.01.2024 via emails duly served. After detailed examination of the application along with the supporting documents thereof, the Resolution Professional is of the considered opinion that the application filed by the creditor, viz., State Bank of India, under Section 95(1) of the Code vide IB-486/ND/2022 for initiation of Insolvency Resolution Process of the Personal Guarantor to the Corporate Debtor, i.e., M/s. Wig Brothers Construction Pvt. Ltd. is in compliance with the provisions of the Code. It is clearly established that the Personal Guarantor, i.e., Mr. Sunil Mohan Wig defaulted in repayment of amount demanded by the Creditor vide Demand Notice on Form B issued on 30.06.2021. Hence, the Resolution Professional after considering the requirements of the Code recommends under Section 99(7) for acceptance of the Application for Initiation of Insolvency resolution Process of the Personal Guarantor. This Adjudicating Authority may pass an order **admitting** the Application under Section 100(1) of the Code and the Insolvency Resolution Process be commenced against the Personal Guarantor, viz., Mr. Sunil Mohan Wig.
- 13.** The Ld. Counsel for the Personal Guarantor vide IA-2096/2024 sought for setting aside and recall of Order dated 19.03.2024 by which the Personal Guarantor was set ex-parte on account of non-appearance and non-filing of

Objections to the Report submitted by the Resolution Professional. This Adjudicating Authority vide Order dated 02.05.2024 set aside the Order dated 19.03.2024 and the Reply Affidavit was taken on record.

**14.**In Response to the Report filed by the Resolution Professional, the Personal Guarantor filed its reply and raised the objection that the calculation of the total outstanding amount stated to be Rs. 30,46,00,086.69/- being the principal amount and the interest calculated till 31.05.2021 is absolutely perverse and incorrect.

**15.**We have heard the submissions made by Ld. Counsel for the Applicant, Resolution Professional and Personal Guarantor and perused the report.

**16.**The Ld. Counsel for the Personal Guarantor has raised an objection as to calculation of the total amount due and made the following submissions:-

- i. The amount due as on 30.11.2018, being the date of judgment of Hon'ble DRT, was Rs. 16,07,86,513.91/- however as per the statement of account filed along with the application states the principal amount due as Rs. 19,57,12,887.17 as on 01.08.2018. It is submitted that when a judicial forum has already adjudicated upon the amount due and payable in respect of an account, the applicant is not entitled to claim a different amount in a different forum.
- ii. Secondly, the Hon'ble DRT in its judgment, has categorically rejected the contention of the Petitioner to charge interest @ 16.15% with monthly rests and directed that the outstanding amount would carry simple interest @12% per annum. However, again in deviation with the said directions, the Applicant bank has calculated interest @16.15% monthly rests. No appeal was filed against the judgment of Hon'ble DRT and in fact recovery proceedings were initiated before the Recover Officer, DRT and thus the Applicant Bank is bound by the judgment.
- iii. Lastly, five properties were mortgaged with the Bank and the Hon'ble DRT directed the applicant bank to recover the outstanding amount from the said properties and any shortfall to be recovered from the personal assets of the other Respondents. However, the Applicant Bank has given no details as regards the auction/sale of the said properties and as to what amount has been recovered from the same. As per the information available with the Respondent, the sale of the said six properties have fetched an amount of approximately Rs.

7,63,00,000/- and any amount recovered from the sale of the said properties ought to have been accounted for.

17. The Resolution Professional vide IA-1102/2023 has filed its report before this Adjudicating Authority and filed a table of compliance under Sections 95 and 99 of the Code.

<p><b><u>Section 95(4)(a) of the Code:</u></b> Details and documents relating to the debts owed by the debtor to the creditor or creditors submitting the application for Insolvency Resolution Process as on the date of application.</p>	<p>The Applicant has annexed the documents evidencing the debts owned by the Debtor to the Creditor and the same are attached and marked as Annexure 4 to Annexure 20 of the main Application filed by the Applicant.</p>
<p><b><u>Section 95(4)(b) of the Code:</u></b> Details and documents relating to the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand</p>	<p>The Applicant has served a demand notice to the Respondent/Personal Guarantor dated 30.06.2021 wherein the Applicant has demanded to pay off the debts as per the deed of guarantee executed between the parties.</p> <p>The demand notice is attached with the copy of the postal record and marked as Annexure-15 of the main Application.</p>
<p><b><u>Section 95(4)(c) of the Code:</u></b> Details and documents relating to relevant evidence of such default or non-repayment of debt</p>	<p>The Applicant has annexed the statement of accounts along with certificates issued under Bankers Books Evidence Act as Annexure-16 of the main Application depicting non-repayment of debt.</p>
<p><b><u>Section 95(5) of the Code:</u></b> The creditor shall also provide a copy of the application made under sub-</p>	<p>The Applicant has serviced the advance copy of the Application to the Respondent/Personal Guarantor.</p>

<p>section (1) to the Debtor</p>	
<p><b><u>Section 95(6) of the Code:</u></b></p> <p>The Application should be in such form and manner and accompanied by such fee as prescribed.</p>	<p>The Application is filed in the prescribed form i.e. Form-C as per Rule 7(2) of The Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. The fee of Rs. 2,000 (Rupees Two Thousand only) has been duly paid by the applicant.</p>
<p><b><u>Section 99(2) of the Code:</u></b></p> <p>Where the application has been filed under section 95, the resolution professional may require the debtor to prove repayment of the debt claimed as unpaid by the Creditor</p>	<p>The Resolution Professional called for the required information vide E-mail dated 04.02.2023 enclosing copy of the order dated 18.01.2023 by this Tribunal, copy sent by email to the Personal Guarantor at his email ID: wigconst@yahoo.co.in. The Resolution Professional did not receive any information from the Respondent. As per the provisions of Section 99 (5) the person from whom the information is sought under sub-section (4) shall furnish such information or explanation within 7 days of receipt of the request. The email was sent to the Respondent on 04.02.2023 and a reminder letter via Speed Post was sent on 06.02.2023. However, no reply has been received from the Respondent till date.</p>



<p><b>Section 99(4) of the Code read with Section 99(6)(b)</b></p>	<p>The Resolution Professional has asked for the information and explanation from the Applicant i.e. State Bank of India in this matter for which the Resolution Professional has the requisite answers.</p>
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- 18.** Section 179 of the Code provides that the Adjudicating Authority for individuals and partnership firms is the Debt Recovery Tribunal (“DRT”). However, for Personal Guarantors, both the National Companies Law Tribunal (“NCLT”) and DRT have jurisdiction in different scenarios. Section 60(2) lays down that if a Corporate Insolvency Resolution Process (“CIRP”) or Liquidation process is ongoing against a corporate debtor, then an application for IRP or Bankruptcy of the Personal Guarantor to the Corporate Debtor shall be filed with the NCLT in which the CIRP or Liquidation is going on. Therefore, the Adjudicating Authority for Personal Guarantors will be the NCLT if parallel CIRP or Liquidation proceeding is going on for the Corporate Debtor for whom the guarantee is given.
- 19.** In view of the legal position elucidated above, it clear that Section 179(1), which provides the jurisdiction for the DRT with respect to insolvency matters of individuals and firms, is subject to Section 60 of the IBC. Section 60(1) of the Code provides that in relation to insolvency resolution for corporate persons, including corporate debtors and personal guarantors, the Adjudicating Authority shall be the NCLT. Section 60(2) provides that where the CIRP of a corporate debtor is pending before an NCLT, an application relating to the insolvency of a personal guarantor of such corporate debtor shall be filed before the same NCLT. Section 60 (3) further provides that the insolvency resolution process in respect of a personal guarantor pending in any Court or Tribunal, shall stand transferred to the Adjudicating Authority dealing with the insolvency resolution process of the Corporate Debtor.
- 20.** It is apposite to note that the present proceedings are not the recovery proceedings and are mere summary proceedings under the provisions of Insolvency and Bankruptcy Code 2016 to initiate Insolvency Resolution Process as per the provisions under section 95, 97, 99 & 100 of the Code read with the

Insolvency Bankruptcy Board of India (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. The respondent has not brought any record or any document denying or disputing the invocation of his Personal Guarantee. There is no evidence given by the Respondent to show that he has paid the debt or his Personal Guarantee Agreement is cancelled. It is settled law that the liability of the Guarantor and that of the Principal Debtor are co-extensive and that the Financial Creditor has the right to proceed against both the Guarantor and Corporate Debtor parallelly till the time outstanding due amount is recovered.

- 21.** On a perusal of the report, we find that the Resolution Professional has given reasonable opportunity following the principle of Natural Justice and has taken into consideration the various documents and has come to a conclusion that the Personal Insolvency Resolution Process be initiated against the Personal Guarantor as the application filed by the Creditor before this Hon'ble Tribunal is within the limitation period provided under the Limitation Act, 1963.
- 22.** The Objections raised by the Personal Guarantor are not tenable. We are satisfied with the grounds/reasons given by the Resolution Professional for the initiation of the Personal Insolvency Resolution Process against the Personal Guarantor. Having regard to the facts and circumstances of the case, we are of the view that the Personal Insolvency Resolution Process ought to be initiated against the Personal Guarantor. Hence, the Main Petition **IB-486(ND)/2022** is **admitted** and the Personal Insolvency Resolution Process is initiated against the Respondent- Personal Guarantor.
- 23.** Resultantly, the moratorium begins on the date of this Order. i.e., Date of Admission of the application and shall cease to have effect at the end of the period of 180 days from the date of this order, as provided under Section 101 of IBC, 2016. During the moratorium period, the following provisions shall be in effect:
- i. Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and
  - ii. The Creditors of the Debtor shall not initiate any legal action or proceedings in respect of any debt; and

- iii. The Debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;
  - iv. 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.
- 24.** The Resolution Professional is directed to cause a public notice to be published within 7 days of uploading this order on the website of this Adjudicating Authority for inviting claims from all Creditors, who shall register their claims as provided under Section 103 of IBC within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102(2) of IBC.
- 25.** The publication of the notice shall be made in newspapers, one in English and the other in Vernacular which have wide circulation in the state.
- 26.** The Resolution Professional in exercise of the powers conferred under Section 104 of IBC 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 Professional as provided under Section 105 of IBC 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 Adjudicating Authority within a period of 21 days from the last date of submission of claims as provided under Section 106 of IBC.
- 27.** In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof. 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) of IBC. The date of the 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 of IBC, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all relevant/feasible modes. Such notice must contain the details as provided under the provisions of Section 107 of IBC.
- 28.** The meeting of the Creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC. The Resolution Professional shall prepare a report

of the meeting of the creditors on the repayment plan with all details as provided under Section 112 of IBC and submit the same to this Adjudicating Authority, copies of which shall be provided to the debtor and the creditors.

**29.**The Applicant is directed to deposit Rs. 2,00,000/- to the bank account of Resolution Professional within one week, towards his fees. This shall be subjected to the rules and regulations under the provisions of IBC, 2016. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under IBC, 2016.

**30.**In view of the above **IA-1102/2023** stands **disposed of**.

**-Sd-**  
**(ATUL CHATURVEDI)**  
**MEMBER (TECHNICAL)**

**-Sd-**  
**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**