

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

IB-507(ND)/2022

And

IA-644/2024

**IN THE MATTER OF IB-507(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. KARUR VYSYA BANK**

*Having its Branch Office at:*

Asset Recovery Branch No.6,  
3rd Floor, Pusa Road  
Opp. Metro Pillar No.80, Karol Bagh,  
Delhi -110005

*Through Authorised Signatory*

Mr. Kundan Singh

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

**Versus**

**Ms. MAMTA GUPTA**

W/o-Sh. Rajeev Gupta  
R/o B-2/9, Model Town-2,  
Delhi-110009

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

**AND IN THE MATTER OF IA-644/2024:**

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

Mr. Roshan Lal Jain

IBBI Registration: IBBI/IPA-001/IP-P00966/2017-2018/11587

**..... Applicant**

**Order Pronounced On: 14.06.2024**

**CORAM:**

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

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

**IB-507(ND)/2022 And IA-644/2024**

**Date of Order: 14.06.2024**

**Page 1 of 10**

**PRESENT:**

For Respondent : Mr. Mohit Chaudhary, Mr. Prakhar Mithal Adv.

For RP : Mr. Roshan Lal Jain (RP), Mr. Sumit Sinha Adv.

**ORDER**

**PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

1. The present application has been filed by M/s. Karur Vysya Bank, 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 Ms. Mamta Gupta, the Personal Guarantor to the Corporate Debtor, M/s. RCI Industries and Technologies Limited for the total debt amount of Rs. 18,60,38,128.46/- (Rupees Eighteen Crores Sixty Lakhs Thirty Eight Thousand One Hundred Twenty Eight & Forty Six Paise only).
2. It is stated that the Corporate Debtor, M/s. RCI Industries and Technologies Limited availed credit facilities from Creditor, as per Sanction Letter dated 06.12.2017. On 15.05.2018, the Second Amended & Restated Guarantee (Jointly & Severally) was executed by Ms. Mamta Gupta jointly and severally, in favour of The Karur Vysya Bank for the aforesaid credit facilities availed by M/s RCI Industries and Technologies Limited.
3. The Corporate Debtor made default in the payment and the loan account of M/s. RCI Industries and Technologies Limited was classified as Non-Performing Asset ("NPA") by the Creditor on 30.03.2020. Subsequently, on 24.03.2021, the loan was recalled by the Creditor by issuing notice dated 24.03.2021 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI") to the Corporate Debtor M/s RCI Industries & Technologies Limited and all the Guarantors to the Corporate Debtor.
4. The Financial Creditor issued a Demand Notice Form "B" dated 29.03.2022 to Ms. Mamta Gupta, Personal Guarantors under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for

Insolvency Resolution Process of Personal Guarantor to Corporate Debtors) Rules, 2019 for discharge in full the outstanding liabilities towards the Creditor.

5. The Personal Guarantor had executed an Agreement of Guarantee in favour of Creditor, as described above, pursuant to which the Personal Guarantor is jointly and severally liable for the dues of the Corporate Debtors arising out of the above-mentioned credit facilities. Further, pursuant to Section 128 of the Indian contracts Act, 1872, the liability of a guarantee is co-extensive to that of the principal borrower, i.e., the Corporate Debtors in this case.
6. This Adjudicating Authority vide order dated 22.12.2023 appointed Mr. Roshan Lal Jain (IBBI Registration: IBBI/IPA-001/IP-P00966/2017-2018/11587) as the Resolution Professional and the Resolution Professional was directed to submit a report in terms of Section 99 IBC. Accordingly, the Resolution Professional has filed a report and a copy of the said report has been duly served on the Personal Guarantor by letter and E-mail dated 03.11.2024.
7. The Resolution Professional submitted that in accordance with Section 99(2) of the IBC, 2016, the Personal Guarantor was requested to furnish any document proving repayment of the debt claimed by the Creditor in its application dated 16.06.2022 within 7 days from the date of receipt of aforementioned e-mail and letter. However, no response or revert has been received by the Resolution Professional from the Personal Guarantor.
8. The Resolution Professional vide IA-644/2024 dated 17.01.2024 has filed its report before this Adjudicating Authority and after detailed examination of the application along with the supporting documents thereof, recommended that the Application filed by the creditor, viz., The Karur Vysya Bank, under Section 95(1) of the Code vide IB-507/ND/2022 be admitted under Section 100 of the Code and the Insolvency Resolution Process be commenced against the Personal Guarantor, viz., Ms. Mamta Gupta for the reasons mentioned below:

*a. "There is nothing on record to prove that the Personal Guarantor had denied the existence of debt or default.*

- b. *It is established that the Personal Guarantor, viz., Ms. Mamta Gupta has committed default for an amount of more than Rs. 1000/- (Rupees One Thousand only).*
- c. *The Application is rightly filed before the Hon'ble NCLT, New Delhi Bench, which have jurisdiction over the place where the Personal Guarantor actually and voluntarily resides and carries on his business for gain and also the registered offices of the Corporate Debtor is situated in New Delhi.*
- d. *A demand notice demanding payment of amount in default has been served on the Personal Guarantor before filing the Application.*
- e. *The Application filed by the Creditor is complete and satisfies the requirements as set out in Section 95 of the Code.”*

**9.** In Response to the Report filed by the Resolution Professional, the Personal Guarantor filed its reply and raised the following objections on the maintainability of the Petition: -

- i. The Personal Guarantors stand discharged in view of the arbitrary reduction of limits by 10 Crore by Karur Vysya Bank without the knowledge/consent of the Personal Guarantors.
- ii. Karur Vysya Bank has no locus to initiate the present proceedings against the Personal Guarantors in as much as the Deed of Guarantee dated 15.05.2018 is executed in favour of the lead banker namely Union Bank of India and not Karur Vysya Bank.
- iii. Failure to invoke guarantee qua the Personal Guarantors as Notice under Section 13(2) of SARFAESI Act is not invocation of Guarantee.

**10.** Ld. Counsel for the Resolution Professional negated the Objections raised by the Personal Guarantors and have submitted that: -

- i. The Financial Creditor had reduced the sanction limit to Rs 13.50 Crores as per the Sanction Communication dated 29.06.2019 and the same was informed and consented by both Mr Rajeev Gupta and Mrs Mamta Gupta. No Evidence is put on record to show that the Personal Guarantors raised any objection as to the unilateral reduction of limit by Financial Creditor. As per Para 11 of the Second Amended and Restated Personal Guarantee dated 15.05.2018 states that the Personal Guarantor waives all and any of the rights conferred on the

Guarantor by Section 133, 134, 135, 139 and 141 of the Indian Contract Act, 1872.

- ii. The Financial Creditor has the locus to file the present application as the Deed of Guarantee mentions the name of the Guarantor as well as name of the Financial Creditor and as per Clause 6.2 of the Guarantee Deed, there is no requirement of taking consent of other lenders in the present case as per the provisions of the Deed of Guarantee mentioned above.
- iii. There was default on the part of the Corporate Debtor and they were declared as Non-Performing Asset on 30.03.2020 and the Notice under Section 13(2) of the SARFAESI Act was sent to the Corporate Debtor, Mrs Mamta Gupta for outstanding amount of Rs. 15,36,57,571.46/- as on 28.02.2021 and as such there was invocation of personal guarantee vide this letter. There was no mention of Sanction Communication dated 29.06.2019 in this Notice under Section 13(2) of SARFAESI Act but the amount mentioned in the Letter dated 29.06.2019 has not been disputed by the Personal Guarantor namely Mrs Mamta Gupta till date and as such no invocation of the personal guarantee is liable to be rejected.

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

**12.** 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.

**13.** The relevant clauses of the Guarantee Deed are reproduced as below:

*“6.1 Before taking steps to enforce this Guarantee, it shall not be necessary for the Lenders/Lead Bank:  
(A) to obtain judgment against the Borrower or Guarantor in any court or other tribunal; or*

*(B) to make or file any claim for bankruptcy or insolvency of the Borrower or the Guarantor; or*

*(C) to take any action whatsoever against the Borrower or the Guarantor under the Working Capital Facility Agreements or this Guarantee; and the Guarantor hereby waives all such notices, formalities or rights (except for notices expressly required under the terms under the terms of this Guarantee) to which they would otherwise be entitled or which the Lenders would otherwise first be required to satisfy or fulfil before proceeding or making demand against the Guarantor hereunder.*

**6.2** *This Guarantee may be enforced without the Lead Bank (on behalf of the Lenders) first having recourse to any other security or rights or taking any other steps or proceedings against the Guarantor or any other person and may be enforced for any balance due even after the Lenders has resorted to any one or more other means of obtaining payment or discharge of the monies obligations and liabilities hereby secured.*

**17.** *This Guarantee shall not be wholly or partially satisfied and exhausted by any payments made to or settled with the Lenders by the Borrower and shall be valid and binding on the Guarantor and operative until payment in full of all monies due to the Lenders under the Finance Documents.*

**19.** *The liability of the Guarantor under this Guarantee shall not be discharged, impaired or otherwise affected by reason of any of the following events or circumstances:*

*i) any time, forbearance or other indulgence given or agreed by the Lenders to or with the Borrower in respect of its obligations under the Working Capital Facility Agreements; or*

*ii) any legal limitation, disability or incapacity relating to the Borrower or the Guarantor; or*

*iii) any invalidity, irregularity, unenforceability, imperfection or avoidance of any defect in any security granted by, or the obligations of the Borrower or the Guarantor or any amendment*

*to or variation thereof or of any other document or security comprised therein; or*

*iv) any change in the name, constitution or otherwise of the Borrower or the Guarantor or any change in the set-up of the Borrower which may be by —way of change in the constitution, winding up, voluntary or otherwise, or any merger, acquisition, amalgamation or otherwise of the Borrower with any other corporate entity or concern; or*

*v) The liquidation, bankruptcy or dissolution (or proceedings analogous thereto) of the Borrower or the appointment of a receiver or administrative receiver or administrator or trustee or similar officer of any of the assets of the Borrower and for the Guarantor or the occurrence of any circumstances — whatsoever affecting the Borrower's and for the Guarantor's liability to discharge its obligations under the Working Capital Facility Agreements or this Guarantee respectively; or*

*vi) any release, renewal, exchange or realisation of any security or obligation provided under or by virtue of the Working Capital Facility Agreements and/or the Guarantee or the provision to the Lenders at any time of any further security for the WC Facility; or*

*vii) any failure whatsoever on the part of the Lenders (whether intentional or not) to take or perfect or enforce any security (if any) agreed to be taken under or in relation to the Working Capital Facility Agreements; or*

*viii) any other act, matter or thing which, to the extent the Guarantor has not fully discharged her obligations under and in accordance with this — Guarantee, might otherwise constitute a legal or equitable discharge of any of the Guarantor's obligations under this Guarantee; or*

*ix) any amendment or waiver of any or all, in whole or in part, of the terms and conditions set out in the Working Capital Facility Agreements and/or this Guarantee; or*

*x) any change in the management of the Borrower or takeover of the management of the Borrower by any government or by any other authority or the acquisition or nationalisation of the*

*Borrower or of any of its respective undertaking(s) or pursuant to any law; or*

*xi) any change in the constitution of the Lenders; or*

*xii) the insolvency or death of the Guarantor;*

**14.** The perusal of the above paragraphs clearly shows that the Lead bank as well other banks were entitled for proceeding against the Guarantor. Financial Creditor has right/locus to initiate the present proceedings and there is no requirement of taking consent of other lenders in the present case as per the provisions of the Deed of Guarantee

**15.** Therefore, the Objections raised by the Personal Guarantor are not substantiated with adequate evidence and 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-507(ND)/2022** is **admitted** and the Personal Insolvency Resolution Process is initiated against the Respondent- Personal Guarantor.

**16.** 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.



- 17.**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.
- 18.**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.
- 19.**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.
- 20.**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.
- 21.**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.

**22.** 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.

**23.** In view of the above **IA-644/2024** stands **disposed of**.

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

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