

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

**CP(IB)-536/ND/2021**

**AND**

**IA-2515/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.

**IN THE MATTER OF: CP(IB)-536/ND/2021**

**UNION BANK OF INDIA**

(Erstwhile Corporation Bank)

A body corporate incorporated under the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970.

**Registered Office at:**

Union Bank Bhavan, 239,  
Vidhan Bhavan Marg, Nariman Point,  
Mumbai-400021, Maharashtra

**Branch Office at:**

M-93, Connaught Place,  
New Delhi-110001

**Through its Attorney**

Shri Dheeraj Gupta

**...Applicant/Creditor**

**Versus**

**Mr. AMIT KATYAL**

House no C-654, New Friends Colony,  
New Delhi-110065

**... Personal Guarantor**

**AND IN THE MATTER OF: IA-2515/2022**

Report under Section 99(1) of the Insolvency and Bankruptcy Code, 2016

**Mr. AJAY KUMAR JAIN**

**(RESOLUTION PROFESSIONAL)**

IBBI/IPA-002/IP-N00415/2017-2018/11188

E-15/209, Sector-8, Rohini,  
New Delhi-110085

... Applicant

**Order Delivered on: 19.07.2024**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**  
**SHRI ATUL CHATURVEDI, MEMBER (TECHNICAL)**

**Appearances:**

**For the Applicant:** Mr/Ms. Ekta Choudhary Advocate.

**For the Respondent:** Mr. Gajanand Kirodiwal, Adv Adity Rathee.

**For the RP:** Mr. Sourit Arora, Advocate

**ORDER**

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

1. The present application has been filed by **Union 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 against **Mr.Amit Katyal**, the Personal Guarantor to the Corporate Debtor i.e. **M/s. Angle Infrastructure Pvt. Ltd.** for the total debt amount of Rs. 114,83,00,000/- (One hundred and fourteen crores and eighty-three lakhs only).
2. It is stated that the Corporate Debtor had availed two loans from the Bank:
  - a. Term Loan dated 30.10.2014 for Rs. 90 Crores.
  - b. Agreement for term loan dated 22.02.2017 between Corporate Debtor and Corporation Bank and Deed of vehicle loan/agreement for hypothecation dated 22.02.2017 for Rs. 55 Lac.
3. It is stated that the Principal Borrower being in need of money for development and construction of the Housing Project approached Corporation Bank

(Corporation Bank merged with the Applicant Bank on 01.04.2020) for financial assistance. Accordingly, the Applicant provided certain financial assistance to the Principal Borrower in the year 2014 and 2017. However, due to certain circumstances beyond the control of the Principal Borrower, it unable to adhere to the repayment schedule.

- 4.** It is stated that Mr. Amit Katyal who stood as a personal guarantor to the credit facility availed by the corporate debtor-namely M/s. Angle Infrastructure Private Limited and is indebted to the Union Bank of India (Creditor) in an aggregate of amount of Rs.114,83,00,000/- (Rupees one hundred fourteen crore eighty three lakh only) plus interest and other expenses thereon as on 26.04.2021, in respect of Term Loan and Vehicle Loan facilities sanctioned by Union Bank Of India, financial creditor in favor of corporate debtor-M/s. Angle Infrastructure Private Limited.
- 5.** Mr. Amit Katyal the Personal Guarantor has committed a default in the capacity of the personal guarantor in making the payment of indebted amount of Rs.114,83,00,000/- (Rupees one hundred fourteen crore eighty-three lakh only) against the demand notice of the Union Bank of India, Secured Financial Creditor for which he has given the personal guarantee for credit facility availed by the M/s. Angle Infrastructure Private Limited (Corporate Debtor) in the form of Term Loan and Vehicle Loan.
- 6.** The aforesaid loan is secured by Equitable Mortgage and first charge on the land and residential building of the residential project, charge and assignment of all development rights with respect to the residential project and hypothecation/Escrow of receivables of the project.
- 7.** The Financial Creditor sent a Demand Notice Form- B dated 26.04.2021 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for insolvency Resolution Process of Personal Guarantors to

Corporate Debtor) Rules. The Personal Guarantor had sent a reply dated 10.06.2021 for the demand notice sent by the Financial Creditor.

8. This Adjudicating Authority vide order dated 17.05.2022 appointed Mr. Ajay Kumar Jain (having IBBI Registration: IBBI/IPA-002/IP-N00415/2017-2018/11188) 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 all modes.

**9. THE RECOMMENDATIONS OF THE RESOLUTION PROFESSIONAL ARE AS UNDER:**

The Resolution Professional vide IA-2515/2022 dated 28.05.2022 has filed its report before this Adjudicating Authority. The Recommendations of the Resolution Professional are as under:

- a. *That the One Time Settlement (OTS) between the Principal Borrower/CD has been initiated and payment has also been made by the CD against proposed OTS as claimed by the Personal Guarantor. However, the Applicant/Union Bank of India has not confirmed the RP about the present status of the loan qua payment against the OTS.*
- b. *That if the OTS has been finalized and accepted by the Bank, then the present application of the bank be rejected. However, if the OTS has been rejected by the Bank, then the present application of the bank be accepted.*

**10. THE OBJECTIONS OF THE PERSONAL GUARANTOR:**

- i. In response to the Report filed by the Resolution Professional, the Personal Guarantor filed its reply and stated that the Principal Borrower being in need of money for development and construction of the said Housing Project approached Corporation Bank (Corporation Bank

merged with the Applicant Bank on 01.04.2020) for financial assistance. Accordingly, the Applicant provided certain financial assistance to the Principal Borrower in the year 2014 and 2017. However, due to certain circumstances beyond the control of the Principal Borrower, it unable to adhere to the repayment schedule.

- ii. It is stated that during the pendency of the present matter, in response to the request made by the Principal Borrower for One Time Settlement (hereinafter referred to as "OTS"), the Applicant Bank vide letter dated 30.11.2022 sanctioned a one-time settlement (hereinafter referred to as "the OTS sanction letter dated 30.11.2022") for a total amount of Rs.95,00,00,000.00 (Rupees Ninety-Five Crore only) against all the dues payable by the Principal borrower to the Applicant bank.
- iii. That in view of the OTS sanction letter dated 30.11.2022 issued by the Applicant bank, this Hon'ble Tribunal vide order dated 25.08.2023 dismissed the aforementioned petition i.e. IB-704(ND)/2021 filed against the Principal borrower and specifically observed that "We are of the view that, since, the OTS proposal has already been approved by the Bank, cause of action in this matter does not survive any longer. Therefore, the petition is dismissed".
- iv. That after sanctioning of the aforementioned OTS by the Applicant Bank, some disputes and differences arose between the Applicant bank and Principal Borrower inter alia in respect to non-issuance of No Objection Certificate to the Principal Borrower allowing it to create third party right, interest and title on apartments in favour of apartment buyers. As such, the Principal Borrower filed a Writ Petition (W.P. (C) No. 4072 of 2023)

before the Hon'ble High Court of Delhi inter alia praying for directions to the Applicant Bank to issue No Objection Certificate.

- v. During the pendency of the said Writ Petition, the Principal Borrower and the Applicant Bank amicably resolved their disputes and reached a settlement/understanding.
- vi. It is stated that the Hon'ble High Court of Delhi vide an order dated 19.10.2023 disposed of the aforementioned Writ Petition (W.P. (C) 4072 of the 2023) with a direction to the parties to abide by the terms and conditions of the settlement/ undertaking.
- vii. That it is pertinent to bring to the notice of this Hon'ble Adjudicating Authority that even after repeated requests made on the part of the Principal Borrower, the Applicant is not allowing the Principal Borrower to operate its bank accounts for the purpose of utilizing some portion of the amount received from the Apartment Buyers to construct and develop the residential project.
- viii. It is stated that as of date, the Principal Borrower has already paid /transferred a total sum of Rs. 56,57,48,672.00 (Rupees Fifty-Six Crore Fifty-Seven Lakh Forty-Eight Thousand Six Hundred and Seventy-Two only) to the Applicant as per agreed terms.
- ix. It is further stated that this Hon'ble Tribunal vide Order dated 27.02.2024 admitted a Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against

the Principal Borrower in the matter of M/s. Splendor Landbase Limited Versus M/s. Angle Infrastructure Private Limited [C.P. (IB)- 624 (ND)/ 2021].

- x. It is stated that after the Director of the Principal Borrower filed an Appeal before the Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi, the Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi vide Order dated 07.03.2024 directed the Principal Borrower/ Appellant to deposit the principal amount before the Hon'ble Appellate Tribunal within one week and in the meantime, no further steps shall be taken in pursuance of the impugned order (i.e. the Order admitting the Principal Borrower to the insolvency).
  
- xi. Hence, the Principal Borrower has high chances of getting its insolvency proceedings terminated and then make the remaining payment to the Applicant Bank in terms of the OTS.
  
- xii. It is stated that in view of the OTS sanction letter dated 30.11.2022 and settlement/ undertaking arrived at between the Applicant Bank and the Principal Borrower, the cause of action in the present petition against the Respondent/ Applicant does not survive. In any case, the Hon'ble High Court had also directed the parties to remain bound by the terms of the OTS.
  
- xiii. Hence, in the given circumstances, it may kindly be considered that the Principal Borrower is likely to see the closure of its insolvency proceedings and further will abide by the terms of the OTS and

accordingly the Applicant Bank's remaining debt under the OTS will be satisfied. It is therefore prayed that the Application of the Bank at this stage may kindly be dismissed.

## **11. ANALYSIS AND FINDINGS:**

- i. We have heard the submissions made by Ld. Counsel for the Applicant, Resolution Professional and Personal Guarantor and perused the report.
- ii. The Objections raised by the Personal Guarantor are not substantiated with adequate evidence and are not tenable. The Personal Guarantor has raised an objection that the Principal Borrower is likely to see the closure of its insolvency proceedings and further will abide by the terms of the OTS and accordingly the Applicant Bank's remaining debt under the OTS will be satisfied. We are of the considered view that there is no confirmation from the Applicant/Bank regarding the OTS settlement and this objection does not prevent the Financial Creditor from filing a Petition for initiation of CIRP against the Debtor.
- iii. 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 One Time Settlement between the Principal Borrower/CD has been initiated and payment has also been made by the CD against proposed OTS as claimed by the Personal Guarantor. However, the Applicant/ Union Bank of India has not confirmed the RP about the present status of the loan qua payment. Since there is no confirmation from the Applicant/Bank regarding the One Time Settlement. The Personal Insolvency Resolution Process be initiated against the Personal Guarantor.



- iv. 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.
- v. Resultantly, the moratorium which had kicked in as per Section 96 of the Code shall cease and a fresh moratorium will begin in terms of 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.*
- vi. 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. 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.

- vii. 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.
- viii. 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.
- ix. 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.
- x. The Resolution Professional shall be paid an amount of Rs. 2,00,000/- by the Financial Creditor to undertake further proceedings as per the Code.

xi. In view of the above **IA-2515/2022** stands **disposed of**.

**Sd/-**

**ATUL CHATURVEDI  
MEMBER (TECHNICAL)**

**Sd/-**

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