

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

**Item No. 202 & 203**

**IA-1131/2024 & IA-1270/2024 in IB-592/ND/2023**

**IA-977/2024 & IA-1272/2024 in IB-589/ND/2023**

**IN THE MATTER OF IB-592/ND/2023:**

**IndusInd Bank Ltd.**

**... Applicant/Financial Creditor**

**Versus**

**Mr. R.S. Ramasubramaniam**

**... Respondent/Personal Guarantor**

**AND IN THE MATTER OF IA-1270/ND/2024:**

**(Under Section: 60(5) IBC, 2016 r/w Rule 11 of NCLT Rules, 2016)**

**Mr. R.S. Ramasubramaniam**

4404, B-5 & 6,

Vasant Kunj, New Delhi-110070

**... Applicant**

**Versus**

**1. IndusInd Bank Ltd.**

(Through its Authorised Officer)

2401, Gen Thimmayya Road,

Cantonment, Pune, Maharashtra- 411001

**2. Mr. Shreyansh Jain**

(Resolution Professional of Mr. R.S. Ramasubramaniam)

505 Silver Coin Apartment, Behind Aakashwani,

Paota C Road, Jodhpur, Rajasthan- 342001

**... Respondents**

**AND IN THE MATTER OF IA-1131/ND/2024:**

**(Under Section: 99 of IBC, 2016)**

**Mr. Shreyansh Jain**

505 Silver Coin Apartment, Behind Aakashwani,

Paota C Road, Jodhpur, Rajasthan- 342001

**... Applicant/  
Resolution Professional**

**IN THE MATTER OF IB-589/ND/2023:**

**IndusInd Bank Ltd.**

**... Applicant/Financial Creditor**

**Versus**

**Mrs. Rumjhum Chatterjee**

**... Respondent/Personal Guarantor**

IA-1131/2024 & IA-1270/2024 in IB-592/ND/2023

IA-977/2024 & IA-1272/2024 in IB-589/ND/2023

**AND IN THE MATTER OF IA-1272/ND/2024:**

**(Under Section: 60(5) IBC, 2016 r/w Rule 11 of NCLT Rules, 2016)**

**Mrs. Rumjhum Chatterjee**

House No. E-2278, Palam Vihar

Choma (62), Gurgaon-122017

**... Applicant**

**Versus**

**1. IndusInd Bank Ltd.**

(Through its Authorised Officer)

2401, Gen Thimmayya Road,

Cantonment, Pune, Maharashtra- 411001

**2. Mr. Shreyansh Jain**

(Resolution Professional of Mr. R.S. Ramasubramaniam)

505 Silver Coin Apartment, Behind Aakashwani,

Paota C Road, Jodhpur, Rajasthan- 342001

**... Respondents**

**AND IN THE MATTER OF IA-977/ND/2024:**

**(Under Section: 99 of IBC, 2016)**

**Mr. Shreyansh Jain**

505 Silver Coin Apartment, Behind Aakashwani,

Paota C Road, Jodhpur, Rajasthan- 342001

**... Applicant/  
Resolution Professional**

**Under Section: 99 r/w 95 of IBC, 2016**

**Order delivered on 09.07.2024**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)**

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

**PRESENT:**

**For the Applicant** : Adv. Jagriti Ahuja, Adv. Vijay Dutt along with Adv. Geetanshi Kathuria

**For the PG** : Adv. Vijay K Singh, Adv. Himanshu Dubey, Adv. Shruti Manchanda

**For the RP** : Adv. Tabrez Malawat, Adv. Hitesh Mankar, Adv. Rupali Jain

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

## ORAL ORDER

**IA-1131/2024:** Indubitably, the Respondent before us stood as Personal Guarantor qua the credit/financial facility extended by the Creditor/Applicant to M/s Feedback Energy Distribution Company Limited. Besides the Applicant, Mr. Vinayak Chatterjee as also Mrs. Rumjhum Chatterjee stood as PG qua the Corporate Debtor. The amount of loan/facility and the default in repayment of the same has been mentioned in Part-III of the application which reads thus:-

Part-III																					
PARTICULARS OF DEBT																					
1.	<b>Total (including interest penalties)</b>	<b>debt any or</b>	Rs. 80,33,00,000/- (Rupees Eighty Crores Thirty-Three Lacs only)																		
			Financial Creditor vide sanction letter No. IBL/CAD North/2018-19/5819 dated 30.03.2019 sanctioned credit facilities in the nature of Cash Credit, Term Loan etc. for an aggregate amount of Rs. 105.00 ("Credit Facilities") to the Corporate Debtor.																		
			That vide letter dated 30.03.2019 the existing interest rate and processing fee with respect to the term loan facility was amended/modified.																		
			Subsequently, due to economic distress caused by COVID 19 pandemic, an Emergency Credit Line Guarantee Scheme ("ECLG Scheme") was announced by the Ministry of Finance for Micro, Small and Medium Enterprises ("MSME"). That, at the request of the Corporate Debtor the Financial Creditor granted additional working capital term loan facility by way of Guaranteed Emergency Credit Line ("GECL") vide sanction letter No. IBL/CAD North/2020-21/2636 dated 04.02.2021 for an amount of Rs. 18.75 crores ("GECL Facility").																		
			The date of disbursement of aforesaid facilities are as under:																		
			<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%;">Account No.</th> <th style="width: 20%;">Disbursement dates</th> <th style="width: 30%;">Disbursed amount</th> </tr> </thead> <tbody> <tr> <td>Term Loan 1- 510003482845</td> <td>10-May-19</td> <td>00 40,00,00,000.</td> </tr> <tr> <td>Term Loan 2- 510003483484</td> <td>10-Jun-19</td> <td>00 35,00,00,000.</td> </tr> <tr> <td>Term Loan 3- 510003485761</td> <td>09-Oct-19</td> <td>00 15,00,00,000.</td> </tr> <tr> <td>GECL - 574000001032</td> <td>23-Feb-21</td> <td>00 18,75,00,000.</td> </tr> <tr> <td>Cash Credit - 650014112600</td> <td>06-May-2019</td> <td>00 10,00,00,000.00</td> </tr> </tbody> </table>	Account No.	Disbursement dates	Disbursed amount	Term Loan 1- 510003482845	10-May-19	00 40,00,00,000.	Term Loan 2- 510003483484	10-Jun-19	00 35,00,00,000.	Term Loan 3- 510003485761	09-Oct-19	00 15,00,00,000.	GECL - 574000001032	23-Feb-21	00 18,75,00,000.	Cash Credit - 650014112600	06-May-2019	00 10,00,00,000.00
Account No.	Disbursement dates	Disbursed amount																			
Term Loan 1- 510003482845	10-May-19	00 40,00,00,000.																			
Term Loan 2- 510003483484	10-Jun-19	00 35,00,00,000.																			
Term Loan 3- 510003485761	09-Oct-19	00 15,00,00,000.																			
GECL - 574000001032	23-Feb-21	00 18,75,00,000.																			
Cash Credit - 650014112600	06-May-2019	00 10,00,00,000.00																			

2.	Amount default in	<table border="1"> <thead> <tr> <th data-bbox="553 142 695 212">Facility</th> <th data-bbox="695 142 873 212">Account no.</th> <th data-bbox="873 142 1073 212">Amount (in Rupees) as on 31.07.2023</th> <th data-bbox="1073 142 1302 212">Rate of Interest</th> </tr> </thead> <tbody> <tr> <td data-bbox="553 212 695 296">Cash Credit</td> <td data-bbox="695 212 873 296">650014112600</td> <td data-bbox="873 212 1073 296">15,87,49,733.00</td> <td data-bbox="1073 212 1302 296">Normal Interest – 10.80% p.a. Penal Interest – 7.80% p.a.</td> </tr> <tr> <td data-bbox="553 296 695 562" rowspan="3">Term Loan</td> <td data-bbox="695 296 873 338">510003482845</td> <td data-bbox="873 296 1073 338">39,19,77,933.00</td> <td data-bbox="1073 296 1302 338">For 510003482845 – 10.95% p.a.</td> </tr> <tr> <td data-bbox="695 338 873 380">510003483484</td> <td data-bbox="873 338 1073 380">34,21,15,762.00</td> <td data-bbox="1073 338 1302 380">Total ROI including Penal – 12.10% p.a.</td> </tr> <tr> <td data-bbox="695 380 873 562">510003485761</td> <td data-bbox="873 380 1073 562">15,52,99,098.00</td> <td data-bbox="1073 380 1302 562">For 510003483484 – 11.20% p.a. Total ROI including Penal – 12.10% p.a. For 510003485761 – 10.10% p.a. Total ROI including Penal – 12.10% p.a.</td> </tr> <tr> <td data-bbox="553 562 695 674">GECL</td> <td data-bbox="695 562 873 674">574000001032</td> <td data-bbox="873 562 1073 674">22,29,18,096.00</td> <td data-bbox="1073 562 1302 674">9.25% p.a. (linked with 1 Y MCLR) Total ROI including penal interest – 11.25% p.a.</td> </tr> <tr> <td data-bbox="553 674 695 716"><b>TOTAL</b></td> <td data-bbox="695 674 873 716"></td> <td data-bbox="873 674 1073 716"><b>127,10,60,622.00</b></td> <td data-bbox="1073 674 1302 716"></td> </tr> </tbody> </table>	Facility	Account no.	Amount (in Rupees) as on 31.07.2023	Rate of Interest	Cash Credit	650014112600	15,87,49,733.00	Normal Interest – 10.80% p.a. Penal Interest – 7.80% p.a.	Term Loan	510003482845	39,19,77,933.00	For 510003482845 – 10.95% p.a.	510003483484	34,21,15,762.00	Total ROI including Penal – 12.10% p.a.	510003485761	15,52,99,098.00	For 510003483484 – 11.20% p.a. Total ROI including Penal – 12.10% p.a. For 510003485761 – 10.10% p.a. Total ROI including Penal – 12.10% p.a.	GECL	574000001032	22,29,18,096.00	9.25% p.a. (linked with 1 Y MCLR) Total ROI including penal interest – 11.25% p.a.	<b>TOTAL</b>		<b>127,10,60,622.00</b>	
Facility	Account no.	Amount (in Rupees) as on 31.07.2023	Rate of Interest																									
Cash Credit	650014112600	15,87,49,733.00	Normal Interest – 10.80% p.a. Penal Interest – 7.80% p.a.																									
Term Loan	510003482845	39,19,77,933.00	For 510003482845 – 10.95% p.a.																									
	510003483484	34,21,15,762.00	Total ROI including Penal – 12.10% p.a.																									
	510003485761	15,52,99,098.00	For 510003483484 – 11.20% p.a. Total ROI including Penal – 12.10% p.a. For 510003485761 – 10.10% p.a. Total ROI including Penal – 12.10% p.a.																									
GECL	574000001032	22,29,18,096.00	9.25% p.a. (linked with 1 Y MCLR) Total ROI including penal interest – 11.25% p.a.																									
<b>TOTAL</b>		<b>127,10,60,622.00</b>																										
3.	Date on which debt was due	10.10.2021																										
4.	Date on which default occurred	<p>The date of default is 10<sup>th</sup> October 2021 pursuant whereof the account of the Corporate Debtor was classified as Non-Performing Assets on 08.01.2022 (NPA date)</p> <p>On account of default on the part of Corporate Debtor, the Financial Creditor issued a loan recall-cum-invocation of guarantee notice dated 31.01.2022 calling upon the Corporate Debtor/other obligors to make payment of an amount of Rs. 106,40,64,155.00 due as on 24.01.2022 under various facilities along with further interest and other charges within a period of 07 days from the date of notice.</p> <p>Subsequently, the financial creditor under Form-B served upon Mr. R.S. Ramasubramaniam, Demand notice dated 19.05.2023 under Rule 7(1) off the Insolvency and Bankruptcy (application to adjudicating authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtor) Rules, 2019 calling upon Mr. R.S. Ramasubramaniam to pay the outstanding amount.</p> <p>The said demand notice was replied by Mr. R.S. Ramasubramaniam wide reply dated 03.06.2015 and the financial creditor also issued its rejoinder dated 07.07.2023 to the said reply.</p> <p>However, despite issuance of the aforesaid notices, the corporate debtor has not paid the demanded amount and the default is continuing as on date</p>																										
5.	Nature of the debt	Cash Credit Facility, Term Loan Facility and GECL Facility.																										

2. In terms of the order dated 04.01.2024, passed by this Tribunal as per the provisions of Section 97 of IBC, 2016, this Tribunal appointed RP qua the Respondent. The RP discharged his functions in terms of the provisions of Section 99 of IBC, 2016 and filed his report in terms of IA-1131/2024, recommending the initiation of CIRP qua the Respondent. Today, Mr. Vijay Singh, Ld. Counsel appearing for the PG opposed the admission of IB-592/ND/2023 espousing that:-

(i) The demand notice placed at page No. 310 of IB-592/ND/2023 is a joint notice, which is not permissible under the law.

(ii) The Respondent could not find any documents enclosed with the notice.

3. To buttress the plea, Mr. Vijay Singh referred to Para 3, 4, 9 & 16 of the reply to the Demand Notice and submitted that the infirmity as pointed out by him now could also be highlighted in the reply to notice. Referring to the provisions of Section 8 of IBC, 2016 and the Judgment of Hon'ble NCLAT in **Yuvrraj Agarwal and Ors. vs. Aspek Media Pvt. Ltd.** (Company Appeal (AT) (Insolvency) No. 340 of 2021), he submitted that wherever the Code intended that certain parties could be allowed to join together, a specific provision for the purpose could be made in the code and once neither Section 95(4) of the Code nor Rule 7(1) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process) Rules, 2019 used the plural expression like guarantors, the common notice issued by the creditor cannot be perceived as proper notice.

4. Rebutting the submissions made by Mr. Vijay Singh, the Ld. Counsels appearing for the Creditor and the RP submitted that as can be seen from the

response to the reply given by the Creditor to the PG, the documents were enclosed with the demand notice and the stand taken by the Respondent/PG without any basis cannot be countenanced and relied upon. Regarding the notice being joint, the Ld. Counsel for the Creditor submitted that since all the PG gave separate replies to the notice, it is clear that the notices were served upon them separately.

5. As far as the plea of joint notice being served upon the Personal Guarantor is concerned, what we see is that in the notice drafted as a common document in respect of all the Personal Guarantors, their addresses are mentioned. In other words, it is a common notice drafted on behalf of the creditor which is addressed to all the guarantors. It is not so that the notice required to be served upon the Personal Guarantor in terms of the provisions of Rule 7(1) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process) Rules, 2019 could be served only upon one of the guarantor for all the guarantors. The only admitted fact is that it is the common or same notice which is drafted to be served upon all the guarantors. A careful reading of Rule 7(1) of aforementioned Rules clearly indicating that the demand notice under clause (b) of sub-section (4) of Section 95 is required to be served on the guarantor. It is nowhere mentioned in the rule that there cannot be any common notice to be drafted in respect of all the guarantors. In the present case admittedly, the notice was served upon the Respondent individually and it is not so that the same was served only upon one guarantor, for all the guarantors. Besides, Section 146 of the Indian Contract Act, 1872 provides that where two or more persons are co-sureties for the same debt or duty, either jointly or

severally and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary are liable as between themselves to pay each an equal share of the whole debt or that part of which it remains unpaid by the principal debt. The Section 146 of the Indian Contract Act, 1872 reads thus:-

***“146. Co-sureties liable to contribute equally.— Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.”***

6. In the wake, we are of the view that it is in the interest of transparency as also in the interest of guarantors, if in respect of same financial facility qua which there stood Personal Guarantor, a commonly drafted notice is served upon all of them reflecting their addresses. Such practice and procedure would enlighten them about all those who are liable to repay the amount of financial facility. In view of the aforementioned, we do not find any substance in the plea raised on behalf of the Personal Guarantor that merely because a commonly drafted notice was addressed to all the guarantors, though served separately, the present proceedings would be vitiated. As far as the issue regarding financial statement referred to in Form-B is concerned, it is seen that the Clause 13 of the form provides that a statement of bank statement where deposits are made or credits received normally by the creditor in respect of the debt of the CD from the date on which the debt are incurred should be made and the Clause 14 provides that the list of the documents required to be attached to the notice.

7. In this regard, the Ld. Counsel for the creditor could draw our attention to the Para 13 & 14 of the notice. It is seen from the notice that the Applicant could specifically mention therein that a copy of statement of account maintained by the FC in respect of debt of the CD was enclosed as Annexure 1 to the notice. The Clause 14 indicates the further documents enclosed with the demand notice. Clause 13 & 14 of the notice (at Page no. 312 of the petition) reads thus:-

13.	A statement of bank account where deposits are made or credits received normally by the creditor in respect of the debt of the corporate debtor, from the date on which the debt was incurred	A copy of the Statement of Accounts maintained by the Financial Creditor in respect of the debt of the Corporate Debtor is hereto annexed and marked as Annexure "1"
14.	List of documents attached to this notice in order to prove the existence of debt and the amount in default	<ol style="list-style-type: none"> <li>1. Sanction Letter dated 30.03.2019</li> <li>2. Addendum Sanction letter dated 30.03.2019</li> <li>3. GECL Sanction Letter dated 04.02.2021</li> <li>4. Letter of Continuing Guarantee of Vinayak Chaterjee, Rumjhum Chaterjee &amp; R.S. Ramasubramaniam dated 29.04.2019</li> </ol>

8. Further having received reply from the PG to the demand notice, the Applicant could send response dated 07.07.2023 (at Page No. 320 of the petition) filed under Section 95 of IBC, 2016. Para 10 of the aforementioned reply/ response dated 07.07.2023 reads thus:-

*“10. That the contents of para 10 are false, frivolous and vexatious and hence the same are denied. It is denied that the Notice is silent about the details as to how and on what basis the outstanding amount as demanded in the Notice has been arrived at. Perhaps your client has not examined the Statement of Account maintained by the Bank with respect to the credit facilities sanctioned to the Borrower which has been annexed as Annexure-I with the Notice. Bare perusal of the said Statement of Account would have revealed the basis for calculation of the outstanding amount. It is denied that the amount demanded in the Notice or the rate of interest charged by the Bank are unjustified, arbitrary, abuse of dominant position, unwarranted*



*or inapplicable in the present case. All such allegations are devoid of any merit and cannot be substantiated by documentary evidence. You will find that the rate of interest has been charged on the credit facilities strictly in terms of the loan and security documents including the loan agreement executed by the Borrower and the same cannot be said to be arbitrary, unjustified or abuse of position. It is denied that there is no default or there are no dues which is outstanding. All such allegations and other contents of the para under reply are denied being false.”*

9. Irrespective of the aforementioned, we cannot be oblivious of the fact that in **Dilip B Jiwrajka vs. Union of India & Ors.**, Hon'ble Supreme Court ruled that no principal of natural justice is involved, till an RP is appointed in terms of the provisions of Section 97 of IBC, 2016 and after the report of RP is filed, the Personal Guarantor has opportunity to put forth his stand. It is not the stand of the PG that by discharging his function in terms of the provisions of Section 99 of IBC, 2016, the RP did not serve notice upon him, giving an opportunity to bring evidence in terms of the provisions of Section 99(4) & (5) of IBC, 2016 to show the repayment of debt. It is also not the case of the PG that before filing the application under Section 99 of IBC, 2016, the RP did not carry out the exercise required in terms of the provisions of Section 99(4), (6) & (7) of IBC, 2016.

10. As can be seen from the report of the RP, he discharged the function as required in terms of the provisions of the Code and has specifically reported that the PG could not adduce any such evidence as provided under Section 99(2) of IBC, 2016 to show the repayment of the amount of debt. Para 15 (c) & 16 to 22 of the report of the RP reads thus:-

“15. That in consonance with Section 99(6) of the Code, the Resolution Professional has examined the Application filed by the creditor:

.....

**c. Examination of the Application as required under Section 99 (2) & (4) of the Code:**

The Resolution Professional through letter dated 22<sup>nd</sup> January, 2024 has sought information from the guarantor which requires following confirmation/ documents

a.

- Repayment of debt done, if any along with requisite proof
- Details of assets which are mortgage with the Creditors against the Guarantee, if any
- IT returns, Statement of affairs, GST returns, bank account statements, documentary evidences of the assets etc.
- To confirm that Insolvency against the debtor is being passed for the first time and it is not undergoing a fresh start process.
- To confirm that the debtor is not declared as undischarged insolvent.

The Copy of the Consent form filed by the Resolution Professional is marked and attached as **Annexure H**

The copy of letter sent to the Personal Guarantor along with the tracking receipt is annexed and marked as **Annexure I**

An e-mail has also been sent to the Personal Guarantors for the same, a copy of which is annexed in the report **Annexure J**.

.....

16. The RP states that through the contents of the main Application, it can be ascertained that the default has been made by the debtor who is a Personal Guarantor to the Corporate Debtor.

17. The RP further states that through the contents of the main Application it can be ascertained that the default has been made by the debtor

*who is a Personal Guarantor to the Corporate Debtor. The RP had written to the Debtor seeking details of the Repayment of the Default along with the proof of the repayment.*

- 18. Though the Personal Guarantor reply to letter issued by the Resolution Professional wherein they have stated that they have not executed any deed of guarantee in his individual or personal capacity of bank and he was acting merely a non-executive director of Company and resigned from the Board of Directors of Company with effect from 10<sup>th</sup> June, 2021 and also added that he's no longer associated with Company upon his resignation. However, as per Continuing Deed of Guarantee executed on 29<sup>th</sup> April, 2019 the deed was executed in his personal capacity and has nothing to do with his association as director or otherwise with borrower and he shall be jointly, severally and co-extensively liable to pay the dues of borrower in the event of default.*
- 19. The guarantor had replied to the demand notice issued by the Financial Creditor merely stating that no dues are payable however they failed provide any proof of transfer of funds from their account to Financial Creditor.*
- 20. Therefore, there is no detail of payment and no grounds of denial of Corporate Debtor regarding non admissibility of the case to Hon'ble NCLT.*
- 21. The Personal Guarantor has not provided any details of proving they are non-defaulters in the present case whereas the Financial Creditor has submitted all the documents that are necessary and required.*
- 22. That for the purpose of ease of reference of this Hon'ble Tribunal the key requirements, which is explained in above paras in detail, have been summarized as follows:*

<b>Requirements</b>	<b>Comments of RP in brief</b>
Any Application under Insolvency and Bankruptcy Code, 2016 has been admitted in respect of the debtor during the period of 12 months preceding the date of submission of Application	The RP confirms that no application has been admitted in respect of the debtor during the period of 12 months preceding the date of submission of Application
Application is accompanied with details and documents relating to the debts owned by the debtor to the creditor(s) who has submitted the Application for Insolvency Resolution Process, as on date of Application	The same is provided by the Applicant.
Application is accompanied with details and documents evidencing the failure by the debtor to pay the debt within a period of fourteen days of service of the notice of the Demand.	The Debtor has replied to the Demand Notice stating that no dues are payable.
Application is accompanied with details and documents evidencing the default or non-repayment of debt.	The same is provided by the Applicant.
Copy of application filed by the Applicant is sent to the Debtor	Yes, the copy is served to the Respondent.
Other documents as required to be attached with the Application as per Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors) Rules, 2019	Yes, the application is attached with all the required documents as per the Code.
Application has been submitted in prescribed Form	Yes, the Application has been filed in 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
Fee is paid by the Applicant for filing the Application	Yes.

Demand notice served to the Debtor in the prescribed format	Yes, the demand notice has been served to the debtor under Rule 7(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 dated 19 <sup>th</sup> May, 2023 in requisite format i.e. under Form-B
---	--

11. Once the RP could give sufficient notice and opportunity to the Applicant, calling upon him to prove the repayment of debt and the Applicant failed to adduce any such evidence either before the RP or before us during the present proceedings, we are not inclined to accept the plea raised on behalf of the PG that since the documents relied upon in the notice issued under Section 7(1) of the relevant rules (ibid) were not provided to him, the present applications are not maintainable. The plea could be of relevance if after coming to know about his liability the PG could prove re-payment of debt. Even otherwise also indubitably the documents are enclosed with the application filed under Section 95 of IBC, 2016 i.e. IB-592/ND/2023 and the Respondent is aware about his liability. Additionally, in the IA under Section 99 of IBC, 2016 the RP has given the complete factual backdrop of the entire matter. Thus, the objection raised on behalf of the PG regarding maintainability of the IB-592/ND/2023 on ground of non-supply of documents to him is rejected.

12. Apparently, the RP could satisfy himself about the requirement of Section 99(2) of IBC, 2016. As can be seen from the CP-IB-592/ND/2023, Continuing Guarantee Deed dated 29.04.2019 executed by the Respondent is available on record at Page No. 137 to 153 of the IA filed under Section 95 of IBC, 2016. Other

relevant documents are also available on record from Page No. 27 to 136 and 154 to 441 of the paper book (IA). From the Deed of Guarantee, it is apparent that the Respondent is liable to repay the amount of financial facility. Of course, it is not the case of the PG that on service of demand notice, either he or the Principal Borrower or any one else repaid the amount of financial facility, thus apparently there is failure on the part of PG to repay the amount of debt. Finally instead of espousing or raising the plea that the PG could repay the amount of debt, on receiving the notice under Rule 7(1) of the aforementioned rules, the PG has taken the plea that the notice itself is defective, thus there is apparent default in repayment of debt. **In view of the aforementioned, we are left with no option but to admit the IB-592/ND/2023 and allow the IA-1131/2024. Ordered accordingly.**

13. 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.

14. 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 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.

15. We are sanguine that 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 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.

16. 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.

17. 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 Respondents to repay.

18. **IA-1131/2024 in IB-592/ND/2023 stands disposed of. To come up for consideration of Status Report to be filed by RP, within 8 weeks.**

**IA-1270/2024:** In view of the order passed in IB-592/ND/2023 and IA-1131/2024, **the IA-1270/2024 stands disposed of.**

**IA-1272/2024, IA-977/2024:** Mr. Vijay Singh, Ld. Counsel appearing for the PG fairly submitted that these applications are squarely covered by the order passed in IB-592/ND/2023 and IA-1131/2024, as the Respondent Mrs. Rumjhum Chatterjee stood as PG qua the same financial facility for which Mr. R.S. Ramasubramaniam (PG) stood as Personal Guarantor. Since Mrs. Rumjhum Chatterjee stood as PG in respect of the same financial facility qua which Mr. R.S. Ramasubramaniam Respondent in IB-592/ND/2023 stood as PG and the demand notice served upon the Respondent in the captioned application as also upon Mr. R.S. Ramasubramaniam is common, **we dispose of the captioned applications in terms of the order passed in IB-592/ND/2023 and IA-1131/2024.** It is made clear that the RP Mr. Shreyansh Jain would conduct separate IRP qua Mrs. Rumjhum Chatterjee.

**The IAs stands disposed of. No cost.**

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

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

*Upasana/Ruchita*