

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, BENCH VI**

**I.A No. 1753/2023
in
CP (IB) No. 828/ND/2022**

IN THE MATTER OF:

Report Submitted by the Resolution Professional U/S 99 Of The IBC, 2016
Mr. Prabhakar Kumar
[IBBI/IPA-002/IP-N00774/2018-2019/12373]

AND IN THE MATTER OF:

Ms. PREETI GUPTA
r/o Flat No. 60-D, Pocket – A, Sukhdev Vihar, New Delhi - 110025

... PERSONAL GUARANTOR/APPLICANT

versus

1. M/S ADITYA BIRLA FINANCE LIMITED

Having its Delhi office at:

1st Floor, Vijaya Building, 17, Barakhamba Road, New Delhi - 110001

Email: care.finance@adityabirlacapital.com

...RESPONDENT NO. 1 / FINANCIAL CREDITOR

2. M/S CROSSWAYS VERTICAL SOLUTIONS LIMITED

[CIN: U74140DL2011PLC227766]

Having its office at:

405 (Basement), Patparganj Industrial Area, New Delhi – 110092

...RESPONDENT NO. 2 / CORPORATE DEBTOR

CORAM

SHRI. MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SHRI. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

I.A No. 1753/2023

in

CP (IB) No. 828/ND/2022

APPEARANCES

For the Applicant/RP: PCS Suraj Sharma in IA/1753/2023

For the Personal Guarantor: Mr. Abhishek Anand & Mr. Karan Kohli, Advocates

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

DATE: 11.07.2024

1. The present report has been prepared by Mr. Prabhakar Kumar, the Resolution Professional appointed by this Adjudicating Authority in relation to C.P. (IB) No. 828/ND/2022 titled "Ms. Preeti Gupta vs M/s Aditya Birla Finance Limited & Anr" filed by Ms. Preeti Gupta, Personal Guarantor of M/s Crossways Vertical Solutions Limited for initiating the Insolvency Resolution Process in respect of herself.
2. It is submitted that copy of order dated 28.02.2023 was received by the Resolution Professional via email on 07.03.2023. In pursuance to the order, being Resolution Professional gave an Intimation Notice under Section 99(2) of IBC to the Personal Guarantor and hence the delay of five days in the filing of report is not deliberate which may be condoned. This Adjudicating Authority accordingly condones the delay in filing of the report by the RP and proceeds to adjudicate the present application.
3. The report on behalf of the RP was taken on record with just exceptions vide order dated 16.06.2023 of this Adjudicating Authority.
4. In view of pendency of the matter regarding the constitutional validity of Sections 95 to 100 of the IBC before the Hon'ble Supreme Court, no further action was taken on that report. Later, when the Hon'ble Apex Court upheld the constitutional validity, the matters before this Adjudicating Authority were resumed.
5. Therefore, it was deemed necessary that notice be issued on this report to the Creditor. Accordingly, notice was issued to the Creditors on this report for filing their reply and appearance vide order dated 10.01.2024 of this Adjudicating Authority.
6. Since, no report had been filed and no one had appeared on behalf of the Financial Creditor(s), despite providing multiple opportunities, therefore, their right to file reply stood closed vide order dated 06.05.2024 of this Adjudicating

Authority.

7. The Resolution Professional has made the following submissions: -

- (i) On 09.11.2021, Loan facilities were granted to the Corporate Debtor (M/s Crossways Vertical Solutions Limited) by Aditya Birla Finance Limited.
- (ii) On 09.11.2021, a letter of guarantee was also executed by the applicant herein for securing the loan.
- (iii) On 27.10.2022, a letter was issued by Aditya Birla Finance Limited addressed to the Applicant herein regarding invocation of the personal guarantee of the applicant herein calling the Applicant to pay an amount of Rs. 3,64,30,620/- ((Rupees Three Crores Sixty-Four Lacs Thirty Thousand Six Hundred Twenty Rupees and Zero Paise Only) as on 10.10.2022.
- (iv) The Applicant also owes an additional Rs. 13,93,65,368 to other Financial Creditors towards ICICI Bank, IDBI Bank, Edelweiss Housing Finance Limited, Loksewak Leasing and Investment Pvt. Ltd, IndusInd Bank, Toyota Financial Services and other NBFC's.
- (v) RP vide email dated 01st March, 2023 in terms of Section 99(1) of the Code, requested Ms. Preeti Gupta to submit the proof for repayment of debt, if any, made to M/s Aditya Birla Finance Limited ("Respondent"). in response to the letter sent on 27.10.2022 bearing No. NIL thereby invoking the personal guarantee executed by the Applicant/ Guarantor.
- (vi) That the Personal Guarantor vide email dated 14.03.2023 replied to the email of the Resolution Professional on the same date wherein she confirmed that no payment has been made towards the debt claimed by the respondent.
- (vii) That since the guarantees extended by the Applicant are under default, the Applicant filed an application for the initiation of the insolvency resolution process.
- (viii) Further that RP sent an email to M/s Crossways Vertical Solution Limited (Corporate Debtor) on 14.03.2023 intimating them about the application made by the applicant under section 94 of IBC,2016 and also requested to provide various information.

- (ix) That the Crossways Vertical Solutions Limited (Corporate Debtor) vide email dated 14.03.2023 replied wherein it provided copy of sanction letter and Balance Sheet as on 31.03.2022.
- (x) That Resolution Professional received information that Respondent No. 1/ Aditya Birla finance Limited has served notice under section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 with reference to Account No. 80001730, 80003345, MINACS0288101 and credit facilities availed by M/s Crossways Vertical Solutions Limited on Ms. Preeti Gupta (Personal Guarantor).
- (xi) It is further contended that in terms of Section 99(3) of the IBC, which pertains to record of debt which has been registered with an information utility, there has been no information available with the Personal Guarantor.
- (xii) Finally, after examination of relevant documents, the RP has formed the opinion to recommend initiation of personal insolvency in the main petition (COMPANY PETITION (IB)/828(ND)2022); based on the following grounds -
- a. The Insolvency Application has been filed in the requisite form, Form A, in terms of Rule 6 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019, supported by requisite fee and documents.
 - b. The Insolvency Application satisfies the requirements set out in Section 94 of the Code.
 - c. That the Personal Guarantor has confirmed that no repayment has been made to the Financial Creditor.
 - d. The Insolvency Application does not relate to “excluded debts” as defined under Section 79(15) of the Code.
 - e. The Debtor, Personal Guarantor, is not eligible for fresh start under Chapter II of the Insolvency and Bankruptcy Code, 2016.

8. Arguments on behalf of the Resolution Professional and also on behalf of the Personal Guarantor were heard on 06.05.2024, however it is observed that no written response was submitted by the Personal Guarantor.

9. Based on the above averments and the reasons recorded in the report submitted by the Resolution Professional, and after going through all the documents on record in the Petition i.e., CP (IB) No. 828/ND/2022, filed under the provisions of Section 94 of IBC, 2016, is hereby **admitted** as per the provisions of section 100 of the IBC, 2016. The Insolvency Resolution Process is initiated against the Personal Guarantor and moratorium is declared, which will commence from the date of admission of the Petition i.e. date of pronouncement of this Order and shall cease to have effect at the end of the period of 180 days, as provided under Section 101 of IBC, 2016.
10. During the moratorium period;
- a) Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and
 - b) The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and
 - c) The debtor shall not transfer, alienate, encumber, or dispose of any of her assets or her legal rights or beneficial interest therein;
 - d) 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.
11. The Resolution Professional namely Mr. Prabhakar Kumar, who had been proposed by the Personal Guarantor and was subsequently appointed under Section 97 of IBC vide Order dated 28.02.2023, is directed to cause a public notice to be published on behalf of the

Adjudicating Authority within 7 days of uploading of this Order on the website of the NCLT Delhi, inviting claims from all Creditors, who shall register their claims as provided under Section 103 within 21 days of such issuance.

12. The aforesaid notice shall contain the necessary information as provided under Section 102 (2) of IBC, 2016. The publication of notice shall be made in newspapers, one in English and other in Vernacular Language which have wide circulation in the State where the Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry. One shall be placed by the Registry on this Authority's website and the other shall be affixed in the premises of this Adjudicating Authority.
13. The Resolution Professional in exercise of the powers conferred under Section 104 of IBC, 2016, 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, which shall include the provisions for payment of fee to the Resolution Professional.
14. 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, 2016.
15. 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). The date of 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 the IBC, 2016, for which at least 14 days notice to the creditors [as per the list prepared] shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of the IBC, 2016.

16. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of the IBC, 2016. 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 the IBC, 2016 and submit the same to this Adjudicating Authority, copies of which shall be provided to the debtor and the creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of the IBC, 2016.
17. In terms of Section 100 (3) of the IBC, the Registry is directed to provide Copy of this order along with the report of Resolution Professional submitted u/s 99 of the IBC, to the creditor(s) within 7 days of pronouncement of this order.

Without costs.

-SD/-
RAHUL BHATNAGAR
MEMBER (TECHNICAL)

-SD/-
MAHENDRA KHANDELWAL
MEMBER (JUDICIAL)