

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**KOLKATA BENCH (Court-II)**

**KOLKATA**

**I.A.(IB)No.232/KB/2024**

**in**

**C.P. (IB)/218(KB)2022**

***An application under Section 99 (1) of the Insolvency and  
Bankruptcy Code, 2016***

***And***

***An application under Section 95(1) of the Insolvency and  
Bankruptcy Code, 2016 and Under Rule 7(2) of the Insolvency  
Resolution Process for Personal Guarantors to Corporate Debtors)  
Rule, 2019.***

**In the matter of:**

**Indian Bank**

**...Financial Creditor**

**Versus**

**Jatin Agarwal**

**...Personal Guarantor**

**And**

**Neeraj Kejriwal**

**...Applicant/Resolution Professional**

Date of pronouncement: **19.07.2024**

**CORAM:**

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)**

**SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

**Appearance (via video conferencing/ physically)**

Mr. Debasish Chakraborti, Adv. ] For the Financial Creditor

Mr. Snehasish Chakraborty, Adv. ]

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Mr. Sanwal Tibrewal, Adv. ] For the Personal Guarantor  
Ms. Sutapa Mitra, Adv. ]

**O R D E R**

**Per: D. Arvind, Member (Technical)**

1. The Court Convened in a hybrid mode.
2. This I.A. (IB)/232(KB)2024 in C.P.(IB)/218(KB)2022 has been preferred by the Financial Creditor to seek initiation of Insolvency Regulation Process against the Respondent Personal Guarantor to Corporate Debtor Rule, 2019 (“Personal Guarantors Rules”) and Regulation 4(2) of IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (‘Personal Guarantors Regulations’) in terms of Section 99 (1) of the Insolvency and Bankruptcy Code, 2016 read with applicable Regulation of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), 2016.
3. The amount in default is Rs.34,61,90,604.17/--(Rupees Thirty Four Crores Sixty One lakhs Ninety Thousand Six hundred Four and Paise Seventeen only) as on 30.04.2022.
4. The application is complete as required under Section 95 read with Rule 7 of the Insolvency and Bankruptcy (Application to

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Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019.

5. It is to be noted that Hon'ble Supreme Court in the judgment of **Dilip B. Jiwrajka vs. Union of India & Ors. In WP (Civil) No. 1281 of 2021** dated 09.11.2023 has upheld the Constitutional Validity of the Sections 94 to 100 and the propositions that can be culled out from the Judgments inter-alia are as follows:

- “i. No judicial adjudication is involved at the stages envisaged in Sections 95 to Section 99 of the IBC;*
- ii. The Resolution Professional appointed under Section 97 serves a facilitative role of collating all the facts relevant to the examination of the application for the commencement of the insolvency resolution process which has been preferred under Section 94 or Section 95. The report to be submitted to the adjudicatory authority is recommendatory in nature on whether to accept or reject the application;*
- iii. No adjudicatory function of Adjudicating Authority is contemplated at the admission stage. To read in such a requirement at that stage would be to rewrite the statute which is impermissible in the exercise of judicial review;*

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- iv. The resolution professional may exercise the powers vested under Section 99(4) of the IBC for the purpose of examining the application for insolvency resolution and CP/IB/337/AHM/2020 12 of 17 to seek information on matters relevant to the application in order to facilitate the submission of the report recommending the acceptance or rejection of the application;*
- v. There is no violation of natural justice under Section 95 to Section 100 of the IBC as the debtor is not deprived of an opportunity to participate in the process of the examination of the application by the resolution professional;*
- vi. No judicial determination takes place until the adjudicating authority decides under Section 100 whether to accept or reject the application. The report of the resolution professional is only recommendatory in nature and hence does not bind the adjudicatory authority when it exercises its jurisdiction under Section 100;*
- vii. The adjudicatory authority must observe the principles of natural justice when it exercises*

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*jurisdiction under Section 100 to determine whether to accept or reject the application; CP/IB/337/AHM/2020 13 of 17*

- viii. The purpose of the interim moratorium under Section 96 is to protect the debtor from further legal proceedings; and*
- ix. The provisions of Section 95 to Section 100 of the IBC are not unconstitutional as they do not violate Article 14 and A.”*

- 6.** The Applicant had proposed the name of the Insolvency Professional for appointment as Resolution Professional. In view of the above, Mr. Neeraj Kejriwal, IBBI Registration No. IBBI/IPA-001/IP-P00392/2017-2018/10710, email ID: **nkejriwal.ip@gmail.com**; was appointed as Resolution Professional, subject to his possessing a valid AFA, in exercise of the power conferred under Section 97 of the IBC, 2016 on this Authority.
- 7.** The Resolution Professional was directed to file declaration within seven days to the effect that he fulfils all the requirements for being

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appointed as Resolution Professional in the matter which he has given, and to file his report in terms of Section 97 in two weeks.

8. The Resolution Professional Mr. Neeraj Kejriwal has vide his report dated 25.01.2024 suggested/stated as extracted hereunder:

**Report** under section 99(1) of the Insolvency & Bankruptcy Code 2016 in the matter of Insolvency Resolution Process of Jatin Agarwal, personal guarantor of the Corporate Debtor being Krishna Alex Pvt. Ltd. by Resolution Professional Neeraj Kejriwal.

The application for Insolvency Resolution Process filed by **Indian Bank, Financial Creditor under Section 95** of the Insolvency and Bankruptcy Code, 2016 read with Rule 7(2) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 was considered by the **Hon'ble NCLT, Kolkata and the Hon'ble NCLT** vide its Order dated 04/12/2023 appointed **Mr. Neeraj Kejriwal**, the undersigned, as Resolution Professional (RP) (the copy of order received from NCLT registry on 11/01/2024) and further directed the Resolution Professional to examine the application and make recommendation for acceptance/rejection of the application as mentioned in section 99(7) of the Insolvency and Bankruptcy Code, 2016.

In compliance with the order passed by the Hon'ble Tribunal and requirements of the Code and related regulations, a Report under section 99(1) is being submitted as below:

1. RP submits that the Order of Appointment of Insolvency Professional have been received by the undersigned on Thursday 11-01-2024 at 01.48 p.m. Communication sent through email is enclosed herewith marked as **Annexure- "A"**.
2. As per Hon'ble NCLT Kolkata Order the matter for consideration on the basis of RP Final Report was listed and heard on 12-01-2024. RP attended the NCLT hearing virtually and intimated the Tribunal about late receipt of order. The matter will be listed on 29-02-2024 for next hearing.

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3. RP submits that he has sent an email communication to Indian Bank on 13-01-2024 seeking Application/Petition Copy filed u/s 95(1), the communication address, email I'd, contact number, Net worth statement and debt of the personal guarantor to the corporate debtor. Communication sent through email is enclosed herewith marked as **Annexure- "B"**.
4. RP submits that he has sent email communication to Indian Bank on 13-01-2024 regarding confirmation of amount due and recovery made from the corporate debtor Krishna Alex Pvt. Ltd. and the Guarantors till date. Communication sent through email is enclosed herewith marked as **Annexure- "C"**.
5. RP submits that he has sent email communications to Mr. Jatin Agarwal on 13-01-2024 at the email Id made available by Indian Bank, Intimating and providing the NCLT order for appointment of RP and seeking proof(s) or evidence of repayment, if any, of the debt claimed as unpaid by the creditor, Indian Bank under section 99(2). RP sent another email on 18-01-2024 to Mr. Jatin Agarwal to respond & provide information and Co-operate with RP. Communications sent through email are enclosed herewith marked as **Annexure- "D"**.
6. RP has also sent letter physically on 18-01-2024 at the address provided by the petitioner which was received by Mr. Jatin Agarwal. Communication sent to the guarantor through hand delivery is enclosed herewith collectively marked as **Annexure- "E"**.
7. RP submits that as directed by NCLT he has submitted/uploaded a declaration that he fulfills all the requirements for being appointed as Resolution Professional alongwith AFA on 18-01-2024 at NCLT website. The uploading receipt, Undertaking and AFA is enclosed herewith marked as **Annexure- "F"**.
8. RP submits that on 15-01-2024 Indian Bank sent necessary information regarding the debt and other information available with them relating to affairs of the personal guarantor. The bank statement and email showing details of amount due and recovery made, are enclosed herewith collectively marked as **Annexure- "G"**.
9. RP submits that on 20-01-2024 Mr. Jatin Agarwal sent email stating that he has not made any payment to the Creditor out of his resources. He has also sent a letter copy





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which was sent to the petitioner contesting the application filed. Reply sent by the guarantor through email is enclosed herewith marked as **Annexure- "H"**.

The undersigned has examined the application under section 99(6) of IB Code, 2016 and ascertain that the application satisfies the requirements as set out in section 95 and the applicant has provided information and given explanation sought by the resolution professional.

- 9.** The Resolution Professional Mr. Daulat Ram Jain has vide his report dated 22<sup>nd</sup> May, 2022 has recommended admission of the personal guarantor into the Insolvency resolution process. The relevant portion of his report has been extracted and appended below for the sake of convenience.



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Therefore, the I conclude and recommend that the insolvency Resolution process be initiated against Mr. Jatin Agarwal, the guarantor to the Applicant for the loans granted to Corporate Debtor M/s Krishna Alex Private Limited.

The grounds for acceptance of the application are as below:

Krishna Alex Private Limited ("KAPL") has availed various credit facilities from the Indian Bank and other banks in consortium. In order to secure the aforesaid loan granted to KAPL, Mr. Jatin Agarwal alongwith his brother had furnished personal guarantee towards security for due repayment of the loans and advances granted to the principal borrower and executed several Deeds of Guarantee in favour of the Financial Creditor from time to time lastly on 30/07/2015. In spite of disbursement of the various amount pursuant to sanction of various credit facilities granted by the banks, the said corporate debtor has failed to pay the dues of the financial creditor, thereby the corporate debtor/guarantor committed default on and from 25/04/2018. That owing to the continuing default made by the borrower company (corporate debtor) as well as the personal guarantor as stated hereinabove, the Financial Creditor on 22/11/2019 through its notice of invocation of guarantee has invoked the Personal Guarantee of Mr. Jatin Agarwal and demanded to pay jointly and severally with other Borrower and other guarantors an aggregate outstanding amount of Rs.24,92,73,032.46 as on 31/10/2019.

The personal guarantor, viz., Mr. Jatin Agarwal had executed personal guarantees in favour of the Petitioner to secure the repayment of the principal amount of the facility agreements together with all interest, additional interest, liquidated damages, premium on pre-payments, reimbursement of all costs, charges and expenses and all other obligations payable by KAPL in respect of the facility agreements.

Indian Bank had issued a demand notice in Form-B on 03/06/2022 under rule 7(1) of the IB Rules, 2019 calling upon the guarantor to pay the amount of Rs.34,61,90,604.17 due as on 30/04/2022 but till date the said personal guarantor failed to liquidate the



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dues payable to the Financial Creditor.

The Corporate Debtor M/s. Krishna Alex Pvt. Ltd. has acknowledged its dues as well as its default in its balance sheet for the financial year ended 31st March, 2020, 31 March, 2021.

The Corporate Insolvency Resolution Process ("CIRP") of Principal borrower Company M/s. Krishna Alex Pvt. Ltd. registered as CP (IB) No. 1128/KB/2019 was admitted on 14.10.2021. The petitioner Indian bank recovered Rs. 5,33,89,151.67 from CIRP of Krishna Alex Pvt. Ltd. which can be seen in the statement provided by Indian Bank. Bank statement is enclosed herewith marked as Annexure- "G" above.

The Corporate Insolvency Resolution Process ("CIRP") of corporate debtor M/s. Bansal Alumex Pvt. Ltd. registered as CP (IB) No. 1204/KB/2019 was admitted on 25.02.2020. The petitioner Indian bank recovered Rs. 2,68,28,254.59 from CIRP of Bansal Alumex Pvt. Ltd. which can be seen in the statement provided by Indian Bank. Bank statement is enclosed as mentioned above and marked as Annexure- "G" above.

The petitioner has recovered nothing from the any of the guarantors till date. This can be seen in the statement provided by Indian Bank as mentioned above. The personal guarantor Mr. Jatin Agarwal also confirmed that he has not paid any amount to the petitioner Indian Bank. Communications received from the guarantor through email affirming no payment is enclosed herewith marked as Annexure- "H" above.

**10.** The Personal Guarantor by way of his reply has refuted/ contradicted the statements of the RP as in the following manner:

- (i) The Personal Guarantor say that salient facts raised by him in his reply to the Form B notice has not been addressed either by the bank or the RP. Copy of the said reply is enclosed herewith marked with Letter A.
- (ii) That there is no independent Report and Opinion of the RP under Section 99(1) of the IBC. The present IA filed by the RP only discloses the order of this Hon'ble Tribunal and correspondence exchanged by and between the Resolution Professional and the Bank and the Personal Guarantor.

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- (iii) Personal Guarantor own only 15.88% share of the undivided residential flat at 3 B Rammohan Mallick Garden Lane, Kolkata 700010. That Personal Guarantor have no real estate in his name apart from the said undivided share in the aforementioned property.
- (iv) The Personal Guarantor do not have any taxable income. The entire profit earned in the business of M/s Krishna Alex (P) Ltd. And Bansal Alumex Pvt Ltd was reaped in the business to keep the company afloat. However, the business failed.
- (v) That the Bank accounts referred to in the Application are either closed or has since depleted to negligible amounts due to financial stress.
- (vi) The investments as shown in the application are mostly in the private limited companies owned and control by me and my family including Krishna Alex Pvt. Ltd and Bansal Alumex Pvt Ltd which have been admitted to CIRP. The said shares have no value as the companies have either been subjected to CIRP or have accumulated losses more than the capital do the said companies.
- (vii) In Clause 3 of Part III of the Form, the bank has disclosed that the debt fell due on January 25, 2018. The bank has

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further disclosed the default occurred on three distinct dates i.e. 25.04.2018, 30.11.2019 and 21.06.2022. the discrepancy in the dates have not been explained though the point was raised in the rely to Form B notice. Further, the notice dated 22.11.2019 cannot be treated as a notice of invocation of Personal Guarantee. The notice dated 03.06.2022 alleged to be under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rule 2019 is without any force. No proper invocation was made of the guarantee before issuance of the said notice.

- (viii) That no disclosure has been made about the Corporate Insolvency Resolution Process (CIRP) of the principal borrower in the application of the bank.
- (ix) That the report of NESL/CIBIL does not disclose any default by Personal Guarantor as alleged.

**11.** We are satisfied with the recommendation of the Resolution professional to admit the application.

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**12.** In absence of any dispute or controversion by the Personal Guarantor, this application is admitted with the following directions:

(1) Since the application is **admitted under Section 100**;

(2) **In terms of Section 101 :**

When the application is admitted under section 100, a moratorium shall commence in relation to all the debts and shall cease to have effect at the end of the period of one hundred and eighty days beginning with the date of admission of the application or on the date the Adjudicating Authority passes an order on the repayment plan under section 114, whichever is earlier.

(3) **During the moratorium period—**

(a) any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;

(b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt; and

(c) the debtor shall not transfer, alienate, encumber or dispose of any of his assets or his legal rights or beneficial interest therein;

(4) Where an order admitting the application under section 96 has been made in relation to a firm, the moratorium under sub-section

(1) shall operate against all the partners of the firm.

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- (5) 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.
- (6) IRP is directed to cause a public notice on behalf of the Adjudicating Authority and Act in terms of Section 102, 103, 104 of the Code, to cause public notice, invite claims from creditors, list of creditors etc and hold regular meeting.

**102. Public notice and claims from creditors:**

- (1) The Adjudicating Authority shall issue a public notice within seven days of passing the order under section 100 inviting claims from all creditors within twenty-one days of such issue.
- (2) The notice under sub-section (1) shall include—
- (a) details of the order admitting the application;
  - (b) particulars of the resolution professional with whom the claims are to be registered; and
  - (c) the last date for submission of claims.
- (3) The notice shall be—
- (a) published in at least one English and one vernacular newspaper which is in circulation in the state where the debtor resides
  - (b) affixed in the premises of the Adjudicating Authority; and
  - (c) placed on the website of the Adjudicating Authority.

**103. Registering of claims by creditors:**

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(1) The creditors shall register claims with the resolution professional by sending details of the claims by way of electronic communications or through courier, speed post or registered letter.

(2) In addition to the claims referred to in sub-section (1), the creditor shall provide to the resolution professional, personal information and such particulars as may be prescribed.

**104. Preparation of list of creditors:**

(1) The resolution professional shall prepare a list of creditors on the basis of—

(a) the information disclosed in the application filed by the debtor under section 94 or 95, as the case may be;

(b) claims received by the resolution professional under section 102.

(2) The resolution professional shall prepare the list mentioned in sub-section (1) within thirty days from the date of the notice

**13.** In terms of the above, C.P. (IB)/306(KB) 2021 is, thus, **admitted**.

I.A.(IB)/232(KB)2024 is allowed and **disposed of**.

**14.** List this matter for consideration on **13.09.2024**.

**15.** The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.



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- 16.** Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**D. Arvind**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

**This Order signed on this, the 19<sup>th</sup>July, 2024.**

S. Ghose (Steno)