

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**

C.P. (IB)/199(KB)2022
In
IA (I.B.C)/373(KB)2024

*An Application 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:

Indian Bank

...FINANCIAL CREDITOR

Versus

Mr. Animesh Roy

...RESPONDENT/PERSONAL GUARANTOR

Date of pronouncement: 22.07.2024

CORAM:

Smt. Bidisha Banerjee, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearance (via video conferencing/physically)

For the Financial Creditor

Mr. Debasish Chakrabarti, Adv.

Mr. Snehasish Chakrabarty, Adv.

For the Resolution Professional

Ms. Shreya Choudhary, Adv.

Mr. Surendra Kumar Agarwal, RP

Mr. Dhananjaya Sud, Adv.

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O R D E R

Per: Bidisha Banerjee, Member (Judicial)

1. The Court Convened in a hybrid mode.
2. This C.P. (IB)/199(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.309,04,01,986.97/- (Rupees Three Hundred and Nine Crores Four Lacs One Thousand Nine Hundred and Eighty Six and paise Ninety Seven only as on 28.02.2022).
4. The application is complete as required under Section 95 read with Rule 7 of the Insolvency and Bankruptcy (Application to 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*

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- iii. *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;*
- iv. *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;*
- v. *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;*
- vi. *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;*
- vii. *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;*
- viii. *The adjudicatory authority must observe the principles of natural justice when it exercises jurisdiction under Section 100 to determine whether to accept or reject the application; CP/IB/337/AHM/2020 13 of 17*

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- ix. *The purpose of the interim moratorium under Section 96 is to protect the debtor from further legal proceedings; and*
- x. *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. Surendra Kumar Agarwal**, IBBI Registration No. IBBI/IPA-001/IP-P00825/2017-2018/11401, email ID: surendraca@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 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. Surendra Kumar Agarwal, has vide his report dated 05/02/2024 has recommended admission of the personal guarantor in to the Insolvency resolution process. The relevant portion of his report has been extracted and appended below for the sake of convenience.

IV. RESOLUTION PROFESSIONAL'S RECOMMENDATION U/S 99(7):

The Resolution Professional recommend for acceptance of the application made u/s 95.



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V. In compliance of u/s 99(8), Resolution Professional examined the documents/ information provided in application and observed that the personal guarantor is not qualified for fresh start u/s 81.

VI. The Reason for recommendation u/s 99(9) of acceptance of application u/s 95 is as following reasons; -

1. It is concluded from the above facts, that there is a debt to corporate debtor, which is in default since 27th January 2018.
2. Mr. Animesh Roy has executed last deed of guarantee on 2nd September 2014 (Enclosed as Annexure "L") for the purpose of securing the credit facilities taken by Reacon Engineers (India) Ltd., corporate debtor.
3. The financial creditor has invoked the personal guarantee by issuing notice u/s 13(2) of the SARFAESI Act, dated 5th August, 2019 to personal guarantor Mr. Animesh Roy.
4. The Financial Creditor has issued the demand notice dated 4th March 2022 in Form "B" to the personal guarantor Mr. Animesh Roy (**Proof of Service of Demand Notice is enclosed as Annexure "M"**) as per applicable regulation of IBC 2016.
5. The Personal Guarantor has verbally confirmed that he had not made any payment against above stated debt and not provided any document supporting any payment against demand.
6. The Financial creditor has filed an application with the requisite court fees for initiation of insolvency resolution process of Mr. Animesh Roy



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u/s 95 of IBC 2016 and the copy of application was duly served upon the personal guarantor.

7. As per information provided in main application u/s 95, the debt was not registered with the information Utility.
8. The debt in default was not an excluded debt.
9. Resolution professional examined the application and found that the application satisfied the requirement of section 95 of IBC, 2016.
- VII. In compliance with Section 99(10), the resolution professional will give copy of the report to debtor or the creditor as case may be in due course of time.

Thus, the Hon'ble NCLT may kindly pass an appropriate order.


Mr. Surendra Kumar Agarwal

Resolution Professional

In the matter of

Mr. Animesh Roy, Personal Guarantor of

Reacon Engineers [India] Ltd.

Reg. No.: IBBI/IPA- 001/IP-P00825/2017-18/11401

Date: 08-02-2024

Place: Kolkata.



9. Vide order dated 24th June 2024, it was recorded that on 6th October, 2023 no one put his appearance on behalf of the Personal Guarantor and objections to the report of RP have not been filed.
10. We have considered the report and perused the details of claim indicated therein.
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.

(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:

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(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:

(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

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13. In terms of the above, C.P. (IB)/199 (KB)20222 is, thus, **admitted**.
14. List this matter for consideration on 06.09.2024.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on the day of 22nd July, 2024

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