

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH- II
KOLKATA**

IA No.481/KB/2024

In

Company Petition (IB) No. 260 of 2022

In the matter of:

Report under Section 99 of the IBC, 2016 Recommending for Initiation of Insolvency Resolution Process Against Mr. Sourabh Agarwal.

Read with

An application under Section 95 of the Insolvency and Bankruptcy Code, 2016, under 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:

State Bank of India

...FINANCIAL CREDITOR

Versus

Mr. Sourabh Agarwal

...RESPONDENT/PERSONAL GUARANTOR

Versus

Sunil Mohan Acharya

...RESOLUTION PROFESSIONAL/APPLICANT

Date of Pronouncement of Order: **28.08.2024**

Appearances (via video conferencing/physically):

Mr. Jainarayan Gupta, Adv. CA]	For the Resolution Professional
Mr. Vishal Gupta, Adv.]	
Mr. Debanjan Gupta, Adv.]	
Ms. Tamalika Gupta, Adv.]	

O R D E R

Per: Bidisha Banerjee, Member (Judicial)

1. Heard. Learned Counsel for the Resolution Professional present.

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2. The Court Convened in a hybrid mode.
1. This IA(IB)No.481/KB/2024 in CP(IB)No.260/KB/2022 has been preferred by the Financial Creditor to seek initiation of Insolvency Process against the Respondent Personal Guarantor to Corporate Debtor Under Rule 95(1) of IBC read with Rule 7(2) of IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 ('Personal Guarantors Regulations').
2. The amount in debt is Rs.**56,31,29,868.38**/- as on **06.01.2022** together with interest and other charges as per the applicable rates with effect from **07.01.2022**. And the default is Rs.**34.89** crores as on **31.12.2017** together with interest and other charges as per the applicable rates with effect from **01.01.2018** till the date of payment or realization.
3. 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.
4. It is to be noted that Hon'ble Supreme Court in the judgment of **Dilip B. Jiwrajka V/s 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*

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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;*
- 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 jurisdiction under Section 100 to determine whether to accept or reject the application;
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- viii. The purpose of the interim moratorium under Section 96 is to protect the debtor from further legal proceedings; and*

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- ix. The provisions of Section 95 to Section 100 of the IBC are not unconstitutional as they do not violate Article 14 and Article 21 of the Constitution.*
5. The Applicant had proposed / not proposed the name of the Insolvency Professional for appointment as Resolution Professional. In view of the above, Mr. Sunil Mohan Acharya, IBBI Registration No. IBBI/IPA-003/IPA-N000174/2018-2019/12120, email ID: **intelligentpg6@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.
6. 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.
7. The Resolution Professional Mr. Sunil Mohan Acharya has vide his report dated 04.03.2024 suggested/stated as extracted hereunder:

BRIEF SUMMARY OF THE SECTION 99 REPORT OF THE RP

Name of the Resolution Professional (RP)	Sunil Mohan Acharya
Name of the Debtor (i.e, Personal Guarantor to Corporate Debtor)	Sourabh Agarwal
Name of the Applicant (creditor)	State Bank of India
Name of the Corporate Debtor for whose loans the Debtor has given Personal Gurantee	M/s B.D. Motors Limited
IBC Status of the Corporate Debtor(CD)	CD is Active(Non-Compliant) Presently CD is under liquidation Matter is before Hon'ble NCLAT, Kolkata

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Whether Debtor is a Resident Indian	Yes	
Whether Debtor is Director of the Corporate Debtor	Yes	
Annual Income of the Debtor in last years as per the application filed before the Hon,ble NCLT	Not Known	
Amount of Default of the Corporate Debtor as per the application Filed	Default of CD as on 06.01.2022 (date of liquidation order under C.P. (IB): 188/KB/2021) to FC is Rs.56,31,29,868.38	
Summary of Assets and Liabilities of the Debtor as per the Application Filed	Particular(Assets)	Amount
	Total Estimated Value of Immovable Property	Not Known
	Total Estimated Value of Movable Property	i. Rs. 22,58,282.00 investments in quoted and unquoted shares. ii. Rs.15,62,820.00 life insurance policy iii. Rs. 29,50,000.00, Jewellery
	Total	Not Known
Whether the application filed under Section 95 of the Code is complete	Yes.	
Section in which application is filed	Section 95 of the IBC	

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Nature of Transaction between the Applicant and the Corporate Debtor	Loan given by the Applicant to the Corporate Debtor for which Debtor has given Personal Guarantee
Date of Application filed by the Applicant with the NCLT	10.08.2022
Date of the order of Hon'ble NCLT for appointment of RP	12.01.2024
Date of Communication of order to the RP	29.01.2024
Whether Applicant has complied with the requirements specified in Section 95	Yes
Whether Form B was served on the Debtor required by the Law	Yes
Date of Form B was served on the Debtor	26.22.2021
Date when RP sought Information/Clarifications from the Debtor	19.02.2024
Date When the Debtor provided the clarifications	Not provided so far.
Date of communication to the Creditor by the RP to inform appointment of the RP	06.02.2024
Whether Debtor has Questioned/Challenged the application filed by the Creditor	No
Brief summary of the issues raised by the Debtor	NA.
Whether Debtor is eligible for Fresh Start Process	No
Recommendations of the RP	Recommended for admission of the petition for initiating Insolvency Resolution Process against the Debtor

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4. Compliance of Section 95 Read with Section 99(6)(a) of the Code by the Applicant/Creditor:

S.No	Provisions of the Code	Compliance
1.	Section 95(1): A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.	The Creditor has filed an Application u/s 95(1) of IBC,2016 SBI vs Sourabh Agarwal under case no C.P (IB) 260/KB/2022 on 10.08.2022
2.	Section 95(2) of the Code: A creditor may apply under sub-section (1) in relation to any partnership debt owed to him for initiating an insolvency resolution process against- (a) any one or more partners of the firm (b) the firm.	Not Applicable
3.	Section 95(3) of the Code: Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the Adjudicating Authority in which the first mentioned application is pending for adjudication and such Adjudicating Authority may give such directions for consolidating the proceedings under the applications as it thinks just.	Not Applicable
4.	Section 95(4) of the Code: An application under sub-section (1) shall be accompanied with details and documents relating to- (a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application; (b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and	The provisions of section 95(4) of the Code are complied.



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S.No	Provisions of the Code	Compliance
	98 (c) relevant evidence of such default or non-repayment of debt	
5.	Section 95(5) of the Code: The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.	The provisions of section 95(5) of the Code are complied.
6.	Section 95(6) of the Code: The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.	Complied with
7.	Section 95(7) of the Code: The details and documents required to be submitted under sub-section (4) shall be such as may be specified.	Complied with.

5. Compliance of Section 99 of the Code by the Resolution Professional

S. No	Provisions of the Code	Compliance
1.	Section 99(1) of the Code: The resolution professional shall examine the application referred to in Section 94 or Section 95, as the case may be, within ten days of his appointment, and submit a report to the Adjudicating Authority recommending for approval or rejection of the application.	Complied with.
	Section 99 (2) of the Code: Where the application has been filed under Section 95, the resolution professional may require the debtor to prove repayment of the debt claimed as unpaid by the creditor.	During interaction with the RP the debtor confirms not having repaid the debt claim as unpaid by the creditor. However, no written communication to this effect has been received from the debtor with in stipulated time



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S. No	Provisions of the Code	Compliance
3.	Section 99 (3) of the Code: Where the debt for which an application has been filed by a creditor is registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt.	No specific information available
4.	Section 99(4) of the Code read with Section 99(6)(b): Sub Section 4 states that to examine an application, the resolution professional may seek such further information or explanation in connection with the application as may be required from the debtor the creditor, or any other person who, in the opinion of the resolution professional, may provide such information. Further 99(6) states as under; The resolution professional shall examine the application and ascertain that – (a) the application satisfies the requirements set out in section 94 or 95; (b) the Creditor/Debtor has provided information and given explanation sought by the resolution professional under sub-section (4).	Requirement for seeking additional information in this connection was not felt by RP. As such no further information or explanation in connection of the application was sought by the RP
	Section 99(5) of the Code: The person from whom information or explanation is sought under sub-section (4) shall furnish such information or explanation within seven days of receipt of the request.	N.A
6.	Section 99(6) of the Code: The Resolution Professional shall examine the application and ascertain that – (a) the application satisfies the requirements set out in section 94 or 95; (b) the Creditor/Debtor has provided the information and given explanation sought by the Resolution Professional under sub-section (4)	99(6) (a) Complied with, 99(6) (b) N.A



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S. No	Provisions of the Code	Compliance
7.	Section 99(7) of the Code: After examination of the application under sub-section (6), Resolution Professional may recommend acceptance or rejection of the application in his report.	Complied with.
8.	Section 99(8) of the Code: Where the Resolution Professional finds that the debtor is eligible for a fresh start under Chapter II, the resolution professional shall submit a report recommending that the application by the debtor under Section 94 be treated as an application under section 81 by the Adjudicating Authority	N/A
9.	Section 99(9) of Code: The Resolution Professional shall record the reasons for recommending the acceptance or rejection of the application in the report under sub-section (7).	Complied with
10	Section 99(10) of Code: The Resolution Professional shall give a copy of the report under sub-section (7) to the debtor or the creditor, as the case may be.	complied with

8. Recommendation are as under:

For admission of the Petition for initiating Insolvency Resolution Process against the Debtor

9. The Personal Guarantor has neither entered appearance despite repeated opportunities nor refuted the statements in the report of Resolution Professional.

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.*

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**;

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(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

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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:

(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.

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(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. The RP appointed in the matter is directed to issue a public notice as envisaged in Section 102, on behalf of the Adjudicating Authority and invite claims from creditors, list of creditors etc and hold regular meeting and conduct the entire IR process as per Chapter -III of IBC 2016 read with the IBBI regulations cited above.

14. The Financial creditor shall deposit **Rs 1,00,000/- {Rupees One Lac}** with the RP for meeting all initial expenses. These expenses have to be adjusted in the final account to be rendered by the RP against remuneration and other expenses and is subject to final approval by the Financial Creditor /Creditors as the case may be.

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 the order may be issued, if applied for, upon compliance of all requisite formalities.

17. In terms of the above, C.P. (IB)/260(KB) 2022 is, thus, **admitted**.

I.A.(IB)/481(KB)2024 is allowed and **disposed of**.

18. List this matter for consideration on **25.10.2024**.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 28th August, 2024.

S. Ghose, (Steno)