

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

I.A.(I.B.C)268/KB/2024

In

Company Petition (IB) No. 136 of 2022

In the matter of:

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:

Central Bank of India

...FINANCIAL CREDITOR

Versus

Mr. Sushil Kumar Bhansali

...DEFENDANT/PERSONAL GUARANTOR

Versus

Ms. Brinda Bidasaria

...RESOLUTION PROFESSIONAL/APPLICANT

Date of Pronouncement of Order: **13.05.2024**

Appearances (via video conferencing/physically):

Mr. Debnath Ghosh, Adv.] For the Financial Creditor
Mr. Biswaroop Mukherjee, Adv.]
Ms. Usha Doshi, Adv.]

Ms. Shreya Chaudhary, Adv.] For the Resolution Professional
Ms. Brinda Bidasaria, RP] RP-in-person

O R D E R

Per: D. Arvind, Member (Technical)

1. The Court Convened in a hybrid mode.

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2. This IA (I.B.C)No. 268/KB/2024 in C.P.(IB)No.136 of 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’)
3. The amount in default is Rs.**20,33,11,965.86/-**
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 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 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*

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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; 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 Article 21 of the Constitution.*
6. The Applicant had proposed the name of the Insolvency Professional for appointment as Resolution Professional. In view of the above, Ms.

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Brinda Bidasaria, IBBI Registration No. IBBI/IPA-001/IP-P-02818/2023-2024/14329, email ID cabrindadalmia@gmail.com Mobile No.9883339882, 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 Ms. Brinda Bidasaria has vide his report dated 30.01.2024 suggested/stated as extracted hereunder:

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**REPORT UNDER SECTION 99 OF THE INSOLVENCY AND BANKRUPTCY
CODE, 2016**

I. INTRODUCTION:

An application bearing no. Company Petition (IB) No. 136 (KB) of 2022 under section 95 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**" / "**the Code**") was filed by Central Bank of India (hereinafter referred to as "**CBI**") i.e. the Financial Creditor of the Corporate Debtor – Eastern Gases Limited (hereinafter referred to as "**EGL**") before this Hon'ble National Company Law Tribunal, Kolkata to initiate Insolvency Resolution Process against Mr Sushil Kumar Bhansali, the personal guarantor. The matter was heard on January 03, 2024 whereby the Hon'ble NCLT, Kolkata Bench was pleased to appoint my good self, Ms. Brinda Bidasaria (IBBI Regn No. IBBI/IPA-001/IP-P-02818/2023-2024/14329) as the Resolution Professional ("**RP**") in exercise of the power conferred under Section 97 of the IBC, 2016.

The copy of the said order was received by the RP vide email dated January 15, 2024 from the Registry, NCLT Kolkata Bench. Ms Usha Doshi, the Advocate for the Financial Creditor served the petition copy on January 17, 2024.

In the above referred order, the Hon'ble NCLT had directed the RP to file a declaration of eligibility within 7 days from the date of receiving the order to the effect that he fulfils all the requirements for being appointed as Resolution Professional in the matter. The RP submits before this Hon'ble NCLT that required declaration has been filed on January 17, 2024 through email and through e-filing on January 17, 2024 and physically on January 22, 2024.

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The copy of order dated January 03, 2024 of the Hon'ble NCLT, Kolkata Bench is enclosed herewith and marked as **ANNEXURE "A"** and a copy of declaration of Eligibility is enclosed hereto and marked as **ANNEXURE "B"**.

II. FACTS OF THE CASE:

2. That Central Bank of India (**herein referred to as "CBI"**), the Lead bank of the consortium finance account, had given financial support to M/s Eastern Gases Limited ("**EGL**" / "**Corporate Debtor**") on 16.11.2012 by grant the loan facilities of **Rs. 20.00 crore** out of which 12.00 crore was fund based and Rs. 8.00 Crore was Non-fund based Limit. Mr. Sushil Kumar Bhansali executed personal guarantee agreement thereby acting as Guarantor to the aforesaid loan agreements dated 05.02.2013.

3. M/s. Eastern Gases Limited subsequently defaulted in the repayment of loans. ICICI Bank Limited, had proceeded against the Corporate Debtor under the IBC, 2016 and filed an application under section 7 of the IBC, 2016 before National Company law Tribunal, Kolkata Bench. In the said proceeding by order 21.08.2018 Mr. Kuldeep Verma is appointed as liquidator. That in the process of liquidation of corporate debtor, the liquidator invited claim and accordingly the Financial creditor lodged its claim of Rs 23,93,04,951/- against which the liquidator admitted the claim of the Financial creditor herein a tune of Rs 23,15,37,663/-which was communicated by liquidator dated 02.11.2018. That against the said claim the Financial creditor on 02.08.2018 has received a sum of Rs 1,82,24,109/-, thus after deducting the said receipted sum there remains due and payable an outstanding sum of Rs 21,33,13,554/-plus interest from 21.08.2018 on the said principal sum.

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4. That vide an Order dated 03rd January, 2024, this Hon'ble Adjudicating Authority was pleased to appoint Ms. Brinda Bidasaria, IBBI Registration No. IBBI/IPA-001/IP-P-02818/2023-2024/14329 as the Resolution Professional, in exercise of the power conferred under Section 97 of the IBC, 2016 under the application filed 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 of Personal Guarantors to Corporate Debtors) Rules, 2019 by the Applicant bearing CP (IB) No. 136 of 2022.

5. That vide an Order dated 03rd January, 2024 the Hon'ble Adjudicating Authority was pleased to grant time for filing the report under Section 99 (1) of the IBC, 2016. Copy of the said order is being annexed here and marked as **Annexure-A.**

6. That the Applicant/ RP submits that the report under Section 99 of the IBC, 2016 has been prepared by her. Copy of the said Report is annexed herewith and marked as **Annexure-B.**

7. The Central Bank of India submits that the application on 11th April, 2022 2022 in Form-C to initiate insolvency resolution process under Section 95(1) of the Insolvency and Bankruptcy Code, 2016. The applicant has invoked the personal guarantee against Mr. Sushil Kumar Bhansali. However, the personal guarantor failed to repay the amount in default. As per mail exchanged with Financial Creditor dated 29.01.2024, it has been confirmed that after issuance of Form B, the financial creditor has not received any amount from the personal guarantor Mr. MR. SUSHIL KUMAR BHANSALI, and that the amount received in the account after the

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date of NPA is through liquidation and sale proceeds received on account of Liquidation. The Financial creditor also confirmed that the total amount outstanding as on 17.01.2024 is Rs. 9,11,50,196.11 + unpaid interest.

Recommendation are as under:

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III. RECOMMENDATION:

It is submitted that, the Application u/s 95 (1) of IBC, 2016 has been filed by the Creditor and to submit the Report u/s 99 and I have examined the application and ascertained the satisfaction of requirements set out in Section 95 as under:

Section		Observations of the Resolution Professional
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, Central Bank of India submitted the aforesaid application on 11.04.2022.
95(2)	A creditor may apply under sub-section (1) in relation to any partnership debt owed to him	Not Applicable

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	for initiating an insolvency resolution process against— (a) any one or more partners of the firm; or (b) the firm.	
95(3)	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
95(4)	An application under sub-section (1) shall be	

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	accompanied with details and documents relating to—	
95(4)(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;	Debt owed by M/s Eastern Gases Limited to the applicant Central Bank of India is Rs.21,33,13,554/-. The amount in default being Rs.20,33,11,965.86/-. Mr Sushil Kumar Bhansali had extended personal guarantee as evidenced by the deed of guarantee dated 05.02.2013 submitted along with the application. The applicant has invoked the personal guarantee against Mr Sushil Kumar Bhansali. However, the personal guarantor failed to repay the amount in default. Hence the debt owed by Sushil Kumar

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		Bhansali to the applicant is Rs.20,33,11,965.86/-.
95(4)(b)	Failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and	No repayment has been made within fourteen days of receipt of notice satisfying the requirement of Section 95(4)(b).
95(4)(c)	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 applicant, Central Bank of India have provided the copy of the Account Statement of the Corporate Debtor M/s. Eastern Gases Limited. It is also confirmed by Central Bank that no further payment was received either from M/s. Eastern Gases Limited or from Mr Sushil Kumar Bhansali, thus, meeting the requirement set out in 95(4)(c).

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95(5)	The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.	The Applicant, Central Bank of India through Advocate on record served a copy of the application to Mr Sushil Kumar Bhansali which was delivered on 22/11/2021 as evidenced by Indian Postal Track Consignment report.
95(6)	The application referred to in subsection (1) shall be in such form and manner and accompanied by such fee as may be prescribed.	The application was submitted in the prescribed form accompanied with prescribed fee. [ANNEXURE -G]
95(7)	The details and documents required to be submitted under sub-section (4) shall be such as may be specified.	The application alongwith related documents was presented in Form C along with a fee of Two Thousand rupees as prescribed under Rule 7(2) of the Insolvency and

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		Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules 2019.
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Further, the compliance set out in Section 99 is reported as under:

Section	REMARKS
99(1)	The RP shall examine the application referred u/s 94 or 95 within 10 days of appointment and submit a report to Adjudicating Authority for the approval/rejection of the application;
99(2)	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 by furnishing - It is submitted that, a letter to the Personal Guarantor, Mr Sushil Kumar Bhansali, was sent on 18.01.24 requesting to provide the proof for repayment of dues as provided u/s 99(2) of IBC 2016. [ANNEXURE - H.]

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	<p>Evidence of electronic transfer of the unpaid amount from the bank account of the debtor;</p> <p>Evidence of encashment of a cheque issued by the debtor;</p> <p>or</p> <p>a signed acknowledgement by the creditor accepting receipt of dues.</p>	<p>The Debtor has not replied to the email of the RP and hence failed to prove repayment of the debt.</p>
99(3)	<p>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.</p>	<p>The debtor has not disputed the debt.</p>
99(4)	<p>For the purposes of examining an application, the resolution professional may seek such further information or explanation in connection with the application as may be required from the debtor or the creditor or any other</p>	<p>The RP had sought information from the debtor who has not provided the information sought by the RP by email dated 18.01.2024. [ANNEXURE D]. Specific reply awaited.</p>

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	person who, in the opinion of the resolution professional, may provide such information.	
99(5)	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.	All information or explanation was called for submission within seven days of receipt of the request.
99(6)	The resolution professional shall examine the application and ascertain that- The application satisfies the requirements set out in Section 94 and 95; The applicant has provided information and given explanation sought by the resolution professional under sub-section (4).	The application has been duly examined. It is submitted that, as provided in Section 99(6) of IBC 2016, the applicant has provided information and given explanation sought u/s 99(4) except the record of networth statement of the Personal Guarantor and registration with Information Utility. The applicant has evidenced that the balance

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		outstanding of Rs 9,11,50,196.11/- as on 29.01.2024 and no repayment received from Mr. Sushil Kumar Bhansali, Personal Guarantor after issue of Demand Notice in Form - B. [ANNEXURE - I]
99(7)	After examination of the application under sub- section (6), he may recommend acceptance or rejection of the application in his report.	It is submitted that the present application satisfies the requirements of provisions of Section 95 as is required to be examined under Section 99(6) of the Code. It is further submitted that based on examination of the present application, it is recommended to be admitted under Section 100 of the Code and the Hon'ble NCLT may pass appropriate orders in this regard.

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99(8)	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.	Not Applicable
99(9)	The resolution professional shall record the reasons for recommending the acceptance or rejection of the application in the report under sub-section (7).	It is submitted that the present report is being presented under Section 99(7) of the Code to this Hon'ble NCLT with a recommendation of accepting the present application as the Personal Guarantor/debtor has not repaid the debt due to the Creditors.

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99(10)	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.	It is submitted that the requirement of providing a copy of this report prepared under Section 99(7) of the Code to the debtor has been complied.
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Considering the above, RP recommends for the acceptance of the application No. C.P. (IB)/136(KB)2022 filed u/s 95(1) of the IBC 2016 by the Applicant, Central Bank of India to initiate Insolvency Resolution Process against Personal Guarantor, Mr. Sushil Kumar Bhansali of the Corporate Debtor, M/s Eastern Gases Limited, The Hon'ble NCLT may pass appropriate order u/s 100 of IBC, 2016 for admission of the application.

Place: Kolkata

9. The Personal Guarantor has neither entered appearance despite repeated opportunities has 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. Hence, this application is admitted with the following directions:

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- (1) Since 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.
- (2) 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 transfer, alienate, encumber or dispose of any of his assets or his legal rights or beneficial interest therein;
- (3) 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.
- (4) 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.

13. Company Petition No. 160 of 2021 is thus admitted. I.A. (IB)/136(KB) 2024 is dismissed.

14. Next date for consideration would be **13.06.2024**.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 13th May, 2024.