

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

IA(IB) No.852/KB/2024
In
C.P.(IB) No. 648/KB/2020

An application under Section 113 of the Insolvency & Bankruptcy Code, 2016

The Punjab National Bank.

...APPLICANT/FINANCIAL CREDITOR

And

Mr. Vivek Dugar,

...RESPONDENT/PERSONAL GUARANTOR

And

In the matter of:

Mr. Sajjan Kumar Dokania, RP.

...APPLICANT/RESOLUTION PROFESSIONAL

In the matter of:

1. The Punjab National Bank

...FINANCIAL CREDITOR

2. Mr. Vivek Dugar

...PERSONAL GUARANTOR

3. Mr. Pramod Kumar Singh

...APPLICANT

Date of pronouncement of order: **15.05.2024**

CORAM:

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

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

Appearances (via Video Conferencing/Physical):

None.

O R D E R

Per: Bidisha Banerjee, Member (Judicial)

1. The Court Congregated through a hybrid mode.
2. Learned Counsel for the parties present.
3. The Punjab National Bank Limited as “Creditor” filed an application bearing C.P. (IB) No. 648/KB/2020 on 25.02.2020 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 for initiation of Insolvency Resolution Process against Mr. Vivek Dugar the Personal Guarantor to M/s. Kohinoor Steel Private Limited the Corporate Debtor.
4. Mr. Sajjan Kumar Dokania, having IBBI Registration No-IBBI/IPA-001/IP-P00966/2017-2018/11587 was appointed to act as Resolution Professional under Section 97(5) of the Code vide order dated 22/12/2021.
5. The Resolution Professional issued notice via email and hardcopy to Mr. Vivek Dugar to furnish necessary information/evidence to prove the repayment of the debt claimed as unpaid by Punjab National Bank in accordance with Section 99(2) of the IBC, 2016 and filed his report dated 01.01.2022 under Section 99 of IBC, 2016.
6. This Tribunal agreed to the recommendation made by the Resolution Professional and admitted the application vide its order dated 02.03.2022.
7. In compliance with Section 102(1) & (2) of Insolvency and Bankruptcy Code, 2016, a public Announcement was made by the Resolution

Professional on 04/03/2022 in Ajkaal (Bengali, W.B Edition) & in Financial Express (English, W.B edition), informing the public at large about the commencement of Personal Insolvency of Mr. Vivek Dugar and last date to submit the claims was 24.03.2022. Pursuant to the Public Announcement, RP received claims against the Personal Guarantor and after perusal of documents accepted the claims as follows:

S No.	Creditor's Name	Claim Lodged in Rs.	Claim accepted in Rs.	Voting right %
1	Indian Bank	2919008561	2919008561	32.02
2	Punjab National Bank	789537951	789415975	8.66
3	Bank of Baroda	5763746261	5407300000	59.32
	Total	9472292774	9115724537	100

8. On 17/04/2022, notices were sent to Mr. Vivek Dugar and all the members of the CoC proposing 1st Meeting of Committee of Creditors (CoC) on 19/04/2022 via video conferencing with agenda.
9. On 19/04/2022 at the 1st CoC meeting held via video conferencing, all the financial creditors were present through their representatives. However, Mr. Vivek Dugar did not attend the meeting. He was sent minutes of the 1st CoC meeting via email on 21.04.2022.
10. The revised claim position after UBI gave its claim on 28.04.2022 was:

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S No.	Creditor's Name	Claim Lodged in Rs.	Claim accepted in Rs.	Voting right %
1	Indian Bank	2919008561	2919008561	21.96
2	Punjab National Bank	789537951.4	789415975.3	5.93
3	Bank of Baroda	5763746261	5407300000	40.68
4	Union Bank of India	4176192455	4176192455	31.42
	Total	13648485228	13291916991	100

11. It is submitted that the debtor has failed to give a repayment plan in consultation with Resolution Professional which shall contain a proposal to the creditors for restricting of his debts or affairs in terms of Section 105 of IBC.
12. The Resolution Professional wrote several emails and letters to the “Personal Guarantor” requesting the repayment plan and filed affidavit for service of notices, reports, minutes of the committee of Creditors (CoC) meetings and orders. The revised claim position was shared with the Financial Creditors via email dated 17/06/2022.
13. On 20.06.2022 this Tribunal vide its order dated 26.06.2022 directed the RP to serve a copy of the Report (1st CoC meeting minutes) to Mr. Vivek Dugar. Meanwhile, On 23/06/2022, claims were received from Bank of India and after obtaining necessary clarifications and

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documents/information, claim of Rs.169.16 crores were accepted by the Resolution Professional on 04.08.2022.

14. On 27.06.2022, the Resolution Professional even requested the Ambassador Extraordinary & Plenipotentiary, Embassy of Nepal at New Delhi through email as well as hard copy by speed post for help for execution of order of Hon'ble NCLT, Kolkata and on 13.07.2022, the Ministry of Corporate affairs.
15. On 22.07.2022, claims were received from Indian Overseas Bank.
16. Progress reports were filed from time to time till 13.09.2022. In the meantime, due to stay by Hon'ble Supreme Court of India there was no progress.
17. On 14.09.2022, claims from Federal Bank was received for Rs.54.28 crores.
18. On 14.10.2022, claims from ICICI Bank was received.
19. The revised Current Claim position and voting rights are as follows:-

	Creditor's Name	Claim Lodged in Rs.	Claim accepted in Rs.	Voting right %
	Indian Bank	2919008561.48	2919008561.48	14.49
2	Punjab National Bank	789537951.37	789415975.25	3.92
3	Bank of Baroda	5763746261.00	5407300000.00	26.85
4	Union Bank of India	4176192454.61	4176192454.61	20.74
5	Bank of India	1691630792.44	1691630792.44	8.40

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6	Indian Overseas Bank	4162353403.60	4162353403.60	20.67
7	Federal Bank	690080012.50	54,28,43,042.00	2.70
8	ICICI Bank	449891981.76	44,98,91,981.76	2.23
	Total	20642441419.00	20138636211.00	100.00

20. On 09.11.2023, Hon'ble Supreme Court vide its order revoked stay on Personal Insolvency of Personal Guarantor and on 19.02.2024, Notice along with agenda for 3rd CoC meeting on 23.02.2024 was sent to members of CoC including Mr. Vivek Dugar for a future course of action.
21. However, no Repayment Plan has been received from the Personal Guarantor. The members of the CoC have resolved with 100.00% (i.e. 100% members present in the meeting) to move an application to declare the personal guarantor- Mr. Vivek Dugar as "INSOLVENT".
22. The provisions of Section 113 of IBC, 2016 and Regulation 17A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 Inserted by Notification No. IBBI/2023-24/GN/REG107, dated 31st January, 2024 (w.e.f 31.01.2024) have been cited.
23. 17A envisages that at meeting of the creditors the resolution professional shall place the repayment plan for its consideration provided that where no repayment plan has been received within such period as stipulated under Section 106, the resolution professional shall notify the same in a meeting of creditors.

24. As such Creditors have decided to seeking declaration of Respondent i.e., Mr. Vivek Dugar as Undischarged Insolvent in terms of Section 115(2) of IBC, 2016 to file an application for bankruptcy under Chapter IV, Section 121 of IBC, 2016 at their meeting.
25. Hence, the present application has been filed to seek the following prayers:
- (i) To allow the present Application and take the present report under Section 113 of IBC on record with respect to decisions taken by creditors in the 3rd meeting of creditors dated 23.02.2024.
 - (ii) To declare Mr. Vivek Dugar, Personal Guarantor as Undischarged Insolvent.
 - (iii) To Grant liberty to creditors in terms of Section 115(2) of IBC, 2016 to file an application for bankruptcy under Chapter IV, section 121 of IBC, 2016.
 - (iv) To allow to initiate legal action in Nepal as per applicable provisions of law.
 - (v) Any other order as Hon'ble Bench may like to pass in the interest of justice.
26. We have noted the contentions.
27. Section 115 of the code envisages the following:
- 115(1) where the Adjudicating Authority has approved the repayment plan under Section 114, such repayment plan shall-
- (a) Take effect as if proposed by the debtor in the meeting;
 - (b) be binding on creditors mentioned in the repayment plan and the debtor.
- (2) Where the Adjudicating Authority rejects the repayment plan under Section 114, the debtor and the creditors shall be entitled to file an application for bankruptcy under Chapter IV.

(3) A copy of the order passed by the Adjudicating Authority under sub-section (2) shall be provided to the Board, for the purpose of recording an entry in the register referred to in Section 196.

28. Since no repayment plan has been received from the Personal Guarantor. We invoke the provision under Section 115(2) to allow the application for bankruptcy to be filed.

29. In the facts and circumstances noted above we allow the prayers.

30. Accordingly, I.A. (IB) No. 852/KB/2024 is allowed and **disposed of**. A Copy of the order be forwarded to the Board under Section 115(3) as above.

30. C.P.(IB) No. 648/KB/2020 for further consideration on **21.06.2024**.

31. 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.

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

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Singed on this, the **15th May, 2024**.