



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

IA No. 1123/KB/2024  
in  
C.P. No. 42/KB/2024

“a) To allow the present application under Section 99 of the Insolvency Bankruptcy Code, 2016 for taking on record Report filed by Resolution Professional; or

b) To pass any such further order/orders as this Hon’ble Bench may deem fit and proper in the interest of justice.”

4. There is no Financial Creditor in CP(IB) No.42/KB/2024. Mr. Rohit Jajodia, Personal Guarantor of GI International Private Limited filed a petition under Section 94(1) of the Insolvency and Bankruptcy Code, 2016.
5. The applicant is the Resolution Professional (RP) namely, Mr. Goutam Mukherjee, IBBI Registration No.IBBI/IPA-001/IP-P00334/2017-18/10604, e-mail ID: [manmohanjhawar@yahoo.co.in](mailto:manmohanjhawar@yahoo.co.in), office at 64, Behari Lal Pal Street, Sarada Apartment, 2<sup>nd</sup> Floor, Baranagar, Kolkata-700036, West Bengal, appointed by this Tribunal vide Order dated 1<sup>st</sup> March, 2024, for submission of report of the Insolvency Resolution Process under Section 99 of the Insolvency and Bankruptcy Code, 2016.
6. The Company Petition being CP (IB) No. 42/KB/2024 was filed under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 for initiating Insolvency Resolution Process on Mr. Rohit Jajodia, Personal Guarantor of GI International Private Limited.
7. Pursuant to the Order dated 01.03.2024, passed by this Tribunal, the applicant herein was appointed as Resolution Professional (RP) for submission of report under Section 99 of the IBC, 2016. On 18.04.2024 the applicant herein sent e-mail to Mr. Rohit Jajodia for submission of information and documents and further on 16.05.2024 another e-mail was sent to the Personal Guarantor for preparing his report with available information and documents. Copy of the e-mails dated 18.04.2024 and 16.05.2024, is annexed with the application and marked as **“Annexure-F”**.

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8. As per the directions of this Tribunal, the applicant herein submits its report as stated hereunder:

**II. FACTS OF THE CASE:**

As per the application under Section 94 of the IBC, 2016, the applicant Mr. Rohit Jajodia, had given guarantee for the credit facilities availed by M/s. GI International Private Limited (“GIPL”), the Corporate Debtor. Tata Capital Financial Services Limited (“TCFSL”) has sanctioned working Capital Demand Loan to GIPL. TCFSL vide its letter dated 28.03.2016 had issued Addendum Sanction Letter by which the working capital demand loan was enhanced to Rs.14.00 crores.

**III. OBSERVATIONS/FINDINGS OF THE RESOLUTION PROFESSIONAL:**

The instant application under Section 94 of the IBC, 2016 bearing no. Company Petition (IB) No.42 (KB) of 2024 has been filed by the applicant, Mr. Rohit Jajodia, who is one of the Directors of the Corporate Debtor GIPL. The application has been filed by the Applicant for default made by the Corporate Debtor M/s. G.I. International Private Limited for which the applicant has claimed in his application that he has given the personal guarantee. However, the Addendum Sanction Letter dated 28.03.2016, annexed as Annexure-I to the application, does not mention applicant’s name as the Guarantor in TCFSL’s Sanction Letter dated 28.03.2016. In this regard, the RP by his email dated 02.04.2024, sought the clarification and necessary supporting document evidencing that the applicant had given personal guarantee to the Corporate Debtor, however, nothing was provided even after continuous follow ups. Copy of emails dated 02.04.2024, 09.04.2024 & 13.04.2024 are annexed herewith and collectively marked as **Annexure-“D”**.

Thereafter, the RP had apprised the Hon’ble NCLT, in a hearing held on 18.04.2024, that nothing has been provided by the applicant. The Hon’ble NCLT, Kolkata Bench was pleased to direct the registry to issue notice to the

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Applicant to share relevant documents with the Resolution Professional to enable him to file the report. A copy of the order dated 18.04.2024 is annexed herewith and marked as **Annexure-“E”**.

Thereafter, the RP has also written email on 29.04.2024 informing him about the order of the Hon’ble NCLT Kolkata Bench and requiring the information and documents. Thereafter, by email dated 16.05.2024, the RP intimated to the Applicant that in the absence of any information and documents required by him, he will proceed ahead with the preparation of report under Section 99 of the IBC, 2016 based on the copy of the application under Section 94. Copy of emails dated 29.04.2024 and 16.05.2024 are annexed herewith and marked as **Annexure-“F”**.

On 18.05.2024, the Applicant has responded and provided his response. A copy of the applicant’s email dated 18.05.2024, reply to RP’s query and a copy of the Sanction Letter provided by the applicant are annexed herewith and marked as **Annexure-“G”**.

Based on the documents and information available with the RP, it has not been established by the Applicant that he is a Personal Guarantor as per Section 5(22) of the IBC, 2016 read with Rule 3 (e) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.

In the instant application, the applicant has annexed a List in which the guarantee has been given by the applicant as Annexure 1 of the application. The said annexure (TCFSL’s Sanction Letter dated 28.03.2016) does not have mention of Applicant’s name as the Personal Guarantor. When the RP has sought clarification from the Applicant on the above issue, the applicant has responded that “Since I hold a position as one of the Directors of the Corporate Debtor (G I International Pvt Ltd.), I have filed this application as a guarantor” and the applicant has provided the same sanction letter which was already annexed to the Section 94 application but did not provide any personal guarantee agreement.

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On perusal of further records attached to the application, there is no document annexed to the application, which suggests that guarantee is invoked by the Financial Creditor.

In the instant case, the applicant is a Director of the Corporate Debtor, but he is neither a Personal Guarantor as per the definition of Personal Guarantor given under Section 5(22) of the IBC, 2016, nor a guarantor as defined under Rule 3 (e) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.

**Other observations of the RP:**

In the synopsis of the application, the Applicant has stated that, “initiating insolvency proceedings can help safeguard the available assets of the guarantor from further depletion or potential dissipation. By appointing a Resolution Professional for the Insolvency Resolution Process, the process can be managed effectively, ensuring equitable distribution of assets and maximizing the chances of debt recovery”. However, the applicant has not declared any assets and value of the assets declared is Nil.

**9.** After examination of the application as per Sub-Section (6) of Section 99 of the Insolvency and Bankruptcy Code, 2016, the Resolution Professional and the applicant herein recommended rejection of the application filed under Section 94(1) of the Insolvency and Bankruptcy Code, 2016. The Recommendation of the Resolution Professional is as under:

**IV. RECOMMENDATION:**

It is submitted that the application under Section 94(1) of the IBC, 2016, has been filed by the applicant. To submit the report under Section 99 of the IBC, 2016. I have examined the application and ascertained whether it meets the requirements as set out in Section 94 of the IBC, 2016 or not.

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Based on the observations and findings outlined above, in the opinion of the RP, the application made by Mr. Rohit Jajodia before the Hon'ble National Company Law Tribunal, Kolkata, to initiate the Insolvency Resolution Process under Section 94 of the Insolvency and Bankruptcy Code, 2016, is **inadmissible**, as the applicant is not a Personal Guarantor to the Corporate Debtor, rendering him ineligible to make the application under Section 94 of the IBC, 2016. The Hon'ble NCLT may pass an appropriate order Under Section 100 of the IBC, 2016, in C.P.(IB)/42(KB)2024.

- 10.** In terms of the Resolution Professional's observations, we found that the applicant is not a Personal Guarantor to the Corporate Debtor that renders him ineligible to make the application under Section 94 of the IBC, 2016.
- 11.** Thus, in view of the above I.A.(IB) No.1123/KB/2024 is **allowed and disposed of**.
- 12.** Hence, C.P.(IB) No.42/KB/2024 is **rejected**.
- 13.** 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.
- 14.** 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)**

**Signed on this, the 19<sup>th</sup> July, 2024.**

S.Ghose(Steno)