

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

I.A.(IB) No.337/KB/2024

in

Company Petition (IB) No. 298 of 2021

In the matter of:

An application under Section 60(5) read with Section 99 of the Insolvency and Bankruptcy Code, 2016,

And

Rule 11 of the National Company Law Tribunal Rules, 2016

In the matter of:

Bank of Baroda

...FINANCIAL CREDITOR

Versus

Mr. Avinash Chandra Gupta

...RESPONDENT/PERSONAL GUARANTOR

Versus

Mr. Kannan Tiruvengadam

...APPLICANT/RESOLUTION PROFESSIONAL

Date of Pronouncement of Order: **07.05.2024**

Appearances (via video conferencing/physically):

Mr. Sanjib Das, Adv.] For the Financial Creditor

Ms. Mahuya Ghosh, Adv.]

Ms. Alisha Kar, Adv.]

Mr. Avik Chaudhuri, Adv.] For the Resolution Professional

O R D E R

Per: D. Arvind, Member (Technical)

1. Heard. Learned Counsel for the Financial Creditor present. Ld. RP in person present.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH- II
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I.A.(IB) No.337/KB/2024

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2. The Court Convened in a hybrid mode.
3. This IA (I.B.) No. 337/KB/2023 in CP (I.B) No.298/KB/2021 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’)
4. The amount in default is Rs.107,47,90,505.84/-
5. 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.
6. 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*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH- II
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I.A.(IB) No.337/KB/2024

in

Company Petition (IB) No. 298 of 2021

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.*

7. The Applicant had proposed the name of the Insolvency Professional for appointment as Resolution Professional. In view of the above, Mr.

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I.A.(IB) No.337/KB/2024

in

Company Petition (IB) No. 298 of 2021

Kannan Tiruvengadam, IBBI Registration No. IBBI/IPA-001/IP-P000253/2017-19/10482, email ID calkannan@gmail.com Mobile No.9836969699, 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.

- 8.** 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.
- 9.** The Resolution Professional Mr. Kannan Tiruvengadam has vide his report dated 24.06.2022 suggested/stated as extracted hereunder:
- 10.**

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

I.A.(IB) No.337/KB/2024

in

Company Petition (IB) No. 298 of 2021

PART I: - Application details

i.	Application filed by	Bank of Baroda
ii.	Amount Claimed	Rs. 107,47,90,505.84 as demanded by Bank of Baroda, under the application submitted to the Adjudicating Authority for initiation of insolvency Resolution Process of personal guarantors to Corporate Debtors.
iii.	Date of AA order for Preliminary Report & appointment of Insolvency Professional	15 th June, 2022, but order received by Resolution Professional on 22 nd June, 2022 through hard copy.
iv.	Date of service of order on IP by way of E mail by Hon'ble Bench	June, 2022
v.	Due date of debt	Q.E.30.06.2016 & 30.09.2016
vi.	Interest since	01.04.2016
vii.	Documents in support of the demand	1) Statement of account and certificate under Banker's Book of Evidence Act, 1891 2) Copy of Renewal/sanction letters issued in favour of corporate debtor dated 30.09.2015 3) Agreement of personal guarantee dated 29.03.2014 & 07.04.2016. 4) Notice of statutory demand notice dated 09.10.2019 U/S 13(2) of SARFAESI Act, 2002
viii.	Date of issue of demand notice as per the prescribed format as per clause (b) of sub section (4) of section 95 is served on the guarantor demanding payment of the amount of default, in the Form B under rule 7 (1) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules 2019	01.09.2020
ix.	The application under sub section (1) of the section 95 is submitted in Form C along with a fee of two thousand rupees as per rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules 2019	24.09.2021



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

I.A.(IB) No.337/KB/2024

in

Company Petition (IB) No. 298 of 2021

PART IV- Conclusion with recommendation

We clarify the following:

- i) Demand notice issued is as per the prescribed format.
- ii) No amount received within a period of 14 days of issue of demand notice nor even till date, the same has been clarified by the Personal Guarantor.
- iii) The bank vide its email dated: 23rd June 2022, have confirmed us the following on the debt/ outstanding dues:

Quote;

The Hon'ble National Company Law Tribunal, Kolkata Bench has ordered the commencement of Liquidation of Shri Badrinarain Alloys & Steel Limited on 06.09.202019. Mr. Sashi Agarwal had appointed as the Liquidator. As of now we had received total of Rs.9,33,19,494.00 as per our share through liquidation process by selling the assets the Corporate Debtors. Presently no assets are left of the CD.

There was a land in the name of the Corporate Guarantor M/s Vrinda Ispat Pvt Ltd which was under possession in SARFAESI and the full plot of land along with the shed, Plan & Machinery sold together. We had received our share of Rs.13959691.00 by selling the assets of the said Corporate Guarantor. There are another Personal Guarantor namely Mr. Narain Hari Gupta. We have initiated section 95(1) application against the said personal guarantor. RP engagement yet to be done by Hon'ble National Company Law Tribunal, Kolkata.

Unquote;

- iii) The application made is in the prescribed format.
 - a. The application satisfies the requirements set out in section 95 of IBC, 2016
 - b. The applicant has provided partial information and given explanation sought by me.

Email Annexed.

- iv) The Applicant is not eligible for fresh start under section 99 (8) of the code.

v) The Personal Guarantor through his Authorised Representative has sent an email on 24th June 2022, to the Resolution Professional wherein he has acknowledged that he had not paid any amount in his individual capacity towards repayment of debt and he have no objection to the debt amount as claimed by the creditor (Bank of Baroda) i.e. Rs. 107,47,90,505.84

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

I.A.(IB) No.337/KB/2024

in

Company Petition (IB) No. 298 of 2021

Recommendation are as under:

After examination of the application under Sub Section (6) of Section 99 of IBC, 2016 I hereby recommend for acceptance of the application under Section 95 of the Insolvency & Bankruptcy Code, 2016 for commencement of Insolvency resolution Process against Personal guarantor.

- 11.** The Personal Guarantor has neither entered appearance despite repeated opportunities has nor refuted the statements in the report of Resolution Professional.
- 12.** We have considered the report and perused the details of claim indicated therein.
- 13.** *We are satisfied with the recommendation.*
- 14.** Hence, this application is admitted with the following directions:
 - (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;

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

I.A.(IB) No.337/KB/2024

in

Company Petition (IB) No. 298 of 2021

- (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.
- (5) **Company Petition No. 160 of 2021** is thus **admitted**. **I.A.(IB) No.337/KB/2024** is **dismissed**.
- (6) Next date for consideration would be **13.06.2024**.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 07th May, 2024.