

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

C.P. (IB)/248(KB)2022

An Application Under Section 95 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 and Regulation 4 (2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.

In the matter of:

Tata Capital Financial Services Limited or Tata Capital Limited

...Financial Creditor

Versus

Pradip Kumar Bajaj

...Personal Guarantor

Date of pronouncement: 24.07.2024

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)

Appearance (via video conferencing/physically)

Mr. Avishek Guha, Adv.] For the Financial Creditor
Ms. Arunika Dutta, Adv.]
Mr. Kaustov De Sarkar, Adv.]

Ms. Pallavi Roy, Adv.] For the Resolution Professional

Mr. Sarbajit Mukherjee, Adv.] For the Personal Guarantor
Ms. Ankita Choudhury, Adv.]

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Mr. Sayantan Bose, Adv.]

O R D E R

Per: D. Arvind, Member (Technical)

1. The Court Convened in a hybrid mode.
2. This C.P. (IB)/248(KB)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’) in terms of Section 99 (1) of the Insolvency and Bankruptcy Code, 2016 read with applicable Regulation of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), 2016.
3. The amount in default is Rs.11,59,44,530.59/- (Rupees Eleven Crores Fifty Nine Lakh Fourty Four thousand Five Hundred Thirty and Fifty Nine Paise only) on 25.11.2019
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.

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5. It is to be noted that Hon'ble Supreme Court in the judgment of **Dilip B. Jiwrajka vs. 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 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*

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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*

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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*
- ix. The provisions of Section 95 to Section 100 of the IBC are not unconstitutional as they do not violate Article 14 and A.”*

- 6.** The Applicant had not proposed the name of the Insolvency Professional for appointment as Resolution Professional. In view of the above, Mr. Tarun Kumar Ray, IBBI Registration No. IBBI/IPA-001/IP-P01411/2018-2019/12228 email ID: **tarun.ray123@yahoo.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.
- 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.

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8. The Resolution Professional Mr. Tarun Kumar Ray has vide his report dated 23.02.2024 suggested/stated as extracted hereunder:

Report Under Section 99 of IBC,2016

1. Tata Capital Financial Services Ltd filed an Application before the Hon'ble NCLT, Kolkata Bench CP(IB)/248/KB/2022 under Section 95 (1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as IBC, 2016) read with rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process personal Guarantors to corporate Debtor) Rules, 2019 (hereinafter referred to as IB Rules, 2019) and regulation 4(2) of IBBI (Insolvency Resolution process for personal guarantors to corporate Debtors) Regulations, 2019 (hereinafter referred to as "IB Regulations, 2019) for initiating the Insolvency Resolution Process (hereafter referred to as IR Process) against Personal Guarantor, Mr. Pradip Kumar Bajaj, one of the directors of Mohan Motors Business Pvt. Ltd. (U50103WB1991PTC052893) hereinafter referred to as **MMBPL**.

2 The Application filed by Tata Capital Financial Services Ltd, as lender to the Principal Borrower **MMBPL** has been examined by the undersigned along with enclosures and documents furnished therewith, as per direction of the Hon'ble NCLT, Kolkata Bench, vide order dated 12.01.2024.

TARUN KUMAR

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3. MMBPL, the borrower company, had approached Tata Capital Financial Services Ltd seeking grant of various credit facilities which were duly appraised and sanctioned on several dates by the said lending Institution.

4. Tata Capital Financial Services Ltd, on representations made by MMBPL, extended credit facilities to the applicant company (MMBPL) on different dates such as; 18.08.2016, 26.10.2017 and lastly on 09.07.2019. The last sanction (renewal) letter was issued on 12.07.2019 reducing the Credit Facility from Rs 8.00 Cr. to Rs 5.65 cr. The Loan cum Guarantee Agreement was duly signed on 12.07.2019.

5. Separate Deeds of Guarantees were executed by Mr Pradip Kumar Bajaj as and when the credit facility (Channel Finance) was sanctioned / renewed/ enhanced and or reduced from time-to-time.

6. Thereafter, MMBPL started committing defaults resultantly the Account became NPA on 25.11.2019.

7. MMBPL, having failed to honour its repayment obligations, one of the Guarantors- Pradip Kumar Bajaj being a Director of the borrower Company, was issued Notice in Form-B (In terms of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019) dated 03.03.2022 resulting in invocation of the Guarantee provided against the Credit Facilities extended to the corporate debtor- MMBPL by Tata Capital Financial Services Ltd.

8. Several Deeds Letter of Guarantees were executed by Mr. Pradip Kumar Baja on 30.08.2016, 16.11.2017 and lastly on 12.07.2019 in favour of Tata Capital Financial Services Ltd to secure the repayment of the credit facilities under the Agreements entered into between Tata Capital Financial Services Ltd and MMBPL on 12.07.2019 together with all interests, additional interests, Liquidated damages, premium on repayment, reimbursement of all costs charges and expenses and other obligations payable by MMBPL in the event of failure on the part of repayment of the dues by the primary borrower.

9. Tata Capital Financial Services Ltd on 03.03.2022 issued a Demand Notice in Form- B under rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to corporate Debtor) Rules, 2019. However, no response was received by the lending Institution against the aforesaid Demand Notice.

10. The applicant Lending Institution has also serviced detailed statement of dues on various accounts along with break ups into several components comprising principal interest, compound interest, etc.

11. Tata Capital Financial Services Ltd has also furnished a copy of Certificate from NESL (National E-Governance Services Ltd) dated 08.06.2022 evidencing the dues owed by the primary lender and the Guarantor consequently.

12. Tata Capital Financial Services Ltd in its Application as aforesaid, states with evidence that Mr. Pradip Kumar Bajaj has committed default in re-payment of the credit



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facilities along with interest to it, for which he had furnished the personal guarantee to Tata Capital Financial Services Ltd on behalf of MMBPL.

13. Subsequent to issue of Invocation of Guarantee Notice in FORM-B, no response was received from the Guarantor's end.

14. The Hon'ble NCLT, Kolkata Bench was pleased to confirm interim moratorium under section 96 (l) (a) of IBC,2016 in relation to all the debts of Mr. Pradip Kumar Bajaj from the date of the said Application filed by Tata Capital Financial Services Ltd.

15. The Hon'ble NCLT, Kolkata Bench appointed the undersigned as Resolution Professional, who is required to file Report under section 99 of IBC, 2016. The Resolution Professional received the Order copy on January 30, 2024 obtained through personal sources and the copy from NCLT was received afterwards.

16. The undersigned issued letter to Pradip Kumar Bajaj on February 2, 2024 and requested to provide information/evidences in support of repayment of loan of Tata Capital Financial Services Limited or relinquishment of debt by Mr. Pradip Kumar Bajaj against his liability to the said Bank. The Letter was followed by another reminder mail dated. 09.02.2024. Both the communications remained un-responded.

17. The undersigned sent mail to the Applicant Financial Creditor dated 06.02.2024 seeking some additional information, followed by reminder mail dated 09.02.2024. Both the mails were un-responded.

9. The Resolution Professional Mr. Tarun Kumar Ray has vide his report dated 23rd February, 2024 has recommended admission of the personal guarantor in to the Insolvency resolution process. The relevant portion of his report has been extracted and appended below for the sake of convenience.

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RECOMMENDATIONS:

In view of the above reasons, the undersigned recommends acceptance of the said application filed by Tata Capital Financial Services Ltd Under Section 95(1) of IBC, 2016. The undersigned has also recorded the reasons as stated above recommending the acceptance of the said application in accordance with the provision laid down under Section 99(9) of IBC,2016.

REASONS FOR RECOMMENDATION

The undersigned recommends for acceptance of the application filed by Tata Capital Financial Services Ltd under section 95(1) of IBC,2016 for the following reasons: -

1. In terms of the provisions laid down under section 95(4) of IBC,2016, the said Application was filed accompanied with details along with documents relating to-

- a) The debts owed by MMBPL guaranteed by Mr. Pradip Kumar Bajaj to Tata Capital Financial Services Ltd
- b) the failure by Mr. Pradip Kumar Bajaj, Guarantor to pay the said Debts within fourteen days of service of the notice of demand to Tata Capital Financial Services Ltd
- c) Relevant evidence of the said default and non-repayment of the debts as aforesaid.

2. In accordance with the provisions laid down under section 95(5) of IBC, 2016 Tata Capital Financial Services Ltd has provided a copy of the Application as aforesaid to Mr. Pradip Kumar Bajaj.

3. Tata Capital Financial Services Ltd has served Demand Notice in Form B under Section 95(4)(b) of IBC,2016 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal

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Guarantors to corporate Debtor) Rules, 2019, to Mr. Pradip Kumar Bajaj, demanding payment of the amount of default.

4. Tata Capital Financial Services Ltd has served a copy of the application referred to in Rule 7(2) of IB Rules, 2019 to Mr. Pradip Kumar Bajaj and MMBPL, in accordance with Rule 7(3) of IB Rules, 2019.

5. In accordance with the provision laid down under section 99(2) of IBC 2016, the undersigned has requested Mr. Pradip Kumar Bajaj to prove repayment of debt of Tata Capital Financial Services Ltd.

6. In response to the communication sent to Mr. Pradip Kumar Bajaj, no reply has been received from Mr. Pradip Kumar Bajaj even after expiry of stipulated time and a reminder having been sent.

7. In accordance with the provisions laid down under section 99(6) of IBC,2016, the undersigned has examined the application filed by Tata Capital Financial Services Ltd and ascertained that the said application satisfies the requirements set out in section 95 of IBC, 2016.

8. In terms of provisions under section 99(8) of IBC 2016, the undersigned submits that the debtor is not eligible for a fresh start under Chapter II owing to overall level of debt to be recovered, being on higher side

10. The Personal Guarantor has entered appearance and gave no objection to the statements in the report of Resolution Professional.

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**;

(2) **In terms of Section 101 :**

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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 cause public notice, invite claims from creditors, list of creditors etc and hold regular meeting.

102. Public notice and claims from creditors:

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(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.

(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;

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(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.** In terms of the above, C.P. (IB)/248(KB) 2022 is, thus, **admitted**.
- 14.** List this matter for consideration on **12.09.2024**
- 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.
- 16.** 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)

This Order signed on this, the 24th July, 2024.

S. Ghose (Steno)