

DIVISION BENCH  
COURT - II

**M-2**

**MENTIONING**

**NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA**

C.P. (IB)/318(KB)2022  
IA(I.B.C)/354(KB)2024

**CORAM: 1. HON'BLE MEMBER(J), SMT. BIDISHA BANERJEE  
2. HON'BLE MEMBER(T), SHRI D. ARVIND**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 07<sup>TH</sup> MAY 2024**

IN THE MATTER OF	<b>TATA CAPITAL FINANCIAL SERVICES LIMITED VS ARCHANA MALLICK</b>
UNDER SECTION	<b>SECTION 95(1)</b>

**Appearance (via video conferencing/physically)**

**C O R R I G E N D U M   O R D E R**

1. This matter was not on board today. Upon mentioning order dated 20<sup>th</sup> March, 2024, the matter is taken up on board.
  - a. In the order dated 20<sup>th</sup> March, 2024, in para 14, sub-para 5 be added and read as:  
“(5) The RP is directed to cause a public notice published on behalf of the adjudicating authority, inviting claims from all Creditors, who shall register their claims as provided under Section 103 of the IBC, 2016 within 21 days of such issuance. The notice shall contain necessary information as provided under Section 10 2 (2) of IBC, 2016.”
  - b. Para 18 of the order dated 20<sup>th</sup> March, 2024 stands deleted.
2. Rest of the order dated 20<sup>th</sup> March, 2024 will remain unchanged.

**D. Arvind  
Member (Technical)**

**Bidisha Banerjee  
Member (Judicial)**

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COURT - II

**NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA**

C.P. (IB)/318(KB)2022  
IA(I.B.C)/354(KB)2024

**CORAM: 1. HON'BLE MEMBER(J), SMT. BIDISHA BANERJEE  
2. HON'BLE MEMBER(T), SHRI D. ARVIND**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 20<sup>TH</sup> MARCH 2024, 10:30 A.M**

IN THE MATTER OF	<b>TATA CAPITAL FINANCIAL SERVICES LIMITED VS ARCHANA MALLICK</b>
UNDER SECTION	<b>SECTION 95(1)</b>

**Appearance (via video conferencing/physically)**

Mr. Avishek Guha, Adv. ] For Tata Capital Ltd.  
Ms. Arunika Dutta, Adv. ]  
Mr. Kaustov De Sarkar, Adv. ]

**ORDER**

1. Ld. Counsel appearing on behalf of Tata Capital Ltd. present. None appears on behalf of the Personal Guarantor, despite repeated opportunities and calls.
2. Let necessary corrections be made in the cause title. The Registry is directed to permit the parties to make corrections in the cause title to incorporate the correct name “**Tata Capital Ltd.**” in place of “**Tata Capital Financial Services Ltd.**”
3. This Company Petition No. **C.P. (IB)/318(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’).
4. The amount in default is **Rs. 6,85,08,875/-** (Rupees Six Crores Eighty-Five Lakhs Eight Thousand Eight Hundred Seventy-Five Only).
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.

*Ar.*

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 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/Financial Creditor has not proposed the name of the Insolvency Professional for appointment as Resolution Professional. In view of the above, **Mr. Anand Kumar Jain, IBBI Registration No. IBBI/IPA-001/IP-P02819/2023-2024/14323, email ID [akj0608@gamil.com](mailto:akj0608@gamil.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.
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 and to file his report in terms of Section 97 in two weeks.
9. The Resolution Professional Mr. Anand Kumar Jain has *vide* his report suggested/stated as extracted hereunder: -

*From the above indicated fact and findings and observations derived upon perusal of the application together with the annexures attached herewith, I have been able to conclude that: -*

- (i) “Ms. Archana Mallick, the Respondent/Personal Guarantor has committed default in payment of the moneys as agreed upon and ABFL, the Applicant/Creditor has submitted the application himself and therefore, the first requirement as set out under Section 95(1) is satisfied.*
- (ii) The application is made against the Personal Guarantor in her personal capacity, hence Section 95(2) & (3) are not applicable.*
- (iii) That all the debts mentioned in the application are qualifying debts and not excluded debts.*
- (iv) The application is accompanied with details and documents as mentioned in Section 95(4).*
- (v) The Applicant/Creditor have provided copy of the application to the Respondent/Personal Guarantor, and proof of the same has been provided to the Resolution Professional as provided u/s. 95(5).*
- (vi) The application has been duly filed in the prescribed Form – C with the requisite fees – satisfies the requirement of section 95(6).*

*(vii) That the Respondent/Personal Guarantor is not eligible under Section 80 for a Fresh Start Process as provided under Part III Chapter II of IBC 2016.”*

**10.** We would note the recommendation of RP at page no. 21 is as under: -

*“I, on the basis of the gathered facts and documents made available by the Applicant I am of the view that there has been a default by A.K. Power Industries Private Limited. CD and that Respondent had given her personal guarantee to such Corporate Debtor. Further that I state that the application stratifies all the requirements as set out u/s 95. In such premises it is recommended that the present application be accepted by the Hon’ble Adjudicating Authority and the Insolvency Process be initiated against the Respondent/Personal Guarantor Ms. Archana Mallick under the order and direction of the Hon’ble Adjudicating Authority.”*

**11.** The Personal Guarantor has neither entered appearance despite repeated opportunities nor refuted the statements of the RP.

**12.** We have considered the details of claim statement as in page no. 287 onwards.

**13.** We are satisfied with the recommendation for admission sought for. Hence, report is taken on record. On the basis of the report and in absence of any controversion or denial of liability by the Personal Guarantor this application is admitted.

**14.** Following directions are issued: -

*(1) On the application being 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.*

**15.** Accordingly, this **C.P. (IB)/318(KB)2022** is thus **allowed**.

**16.** List the matter for further consideration on **06.05.2024**.

**17.** Meanwhile, the Personal Guarantor is directed not to alienate his assets in any form with immediate effect.

**18. IA(I.B.C)/354(KB)2024:**

- a.** This IA has been filed by the Liquidator to place on record the 19<sup>th</sup> Progress Report, which is placed at page nos. 13 to 31 of the application. This IA is supported by an affidavit which is placed at page nos. 7 to 11 of the application. The 19<sup>th</sup> Progress Report is taken on record, and this IA is accordingly **allowed** and **disposed of**.

**D. Arvind**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**