

DIVISION BENCH
COURT - I

Mentioning

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. (IB)/245(KB)2023
And
IA(I.B.C)/346(KB)2024

**CORAM: 1. HON'BLE MEMBER(J), SHRI ROHIT KAPOOR
2. HON'BLE MEMBER(T), SHRI BALRAJ JOSHI**

IN THE MATTER OF	THE CANARA BANK LIMITED VS NANDU KISHINCHAND BELAN
UNDER SECTION	SECTION 95(1)

CORRIGENDUM ORDER

1. This matter was not on board today and was taken up upon mentioning.
2. In the order dated 25/06/2024, some typographical errors have occurred which are rectified as under:-
 - i. In the cause title, *I.A.(IBC)345/KB/2024* shall be read as '*IA(I.B.C)/346(KB)2024*'.
 - ii. The Financial Creditor shall be "**Canara Bank**" instead of '*State Bank of India*'.
 - iii. In the appearance column, the Name '*Mr. Surendra Kumar Agarwal, Adv.*' shall be read as '*Mr. Manish Jain, RP*'.
 - iv. In the header, '*C.P. (IB)/76(KB)2022*' shall be read as ***C.P.(IB)/245(KB)2023***.
 - v. Page 2, para No. 3, 1st line and 3rd line, the amount '*Rs. 1,97,36,12,442.68*' and '*Rs. 1,24,34,00,128.62*' shall be read as '***Rs. 197,36,12,442.68***' and '***Rs. 124,34,00,128.62***' respectively.
 - vi. Page 4, para 6, 1st line, '*Applicant had proposed the name*' shall be read as '***Applicant had not proposed the name***'
3. The rest of the contents of the order shall remain unchanged.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on 27th of June, 2024.

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And

I.A.(IBC) 345/KB/2024

*An Application 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*

In the matter of:

State Bank of India

...Financial Creditor

-Versus-

Nandu Kishinchand Belani

...Personal Guarantor

Date of pronouncement: 25.06.2024

Coram:

Smt. Bidisha Banerjee, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearance (via video conferencing/physically)

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

Ms. Sanjana Nandi, Adv.]

Ms. Shreya Choudhary, Adv.] For the Resolution Professional

Mr. Surendra Kumar Agarwal, Adv.]

O R D E R

Per: Bidisha Banerjee, Member(Judicial)

1. The Court Convened in a hybrid mode.
2. This C.P. (IB) 245/KB/2022 has been preferred by the Financial Creditor to seek initiation of Insolvency Regulation Process against the Respondent Personal Guarantor under Rule 7(2) of the Insolvency And Bankruptcy (Application to Adjudicating Authority For Insolvency Resolution Process For Personal Guarantors 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 (“Code”) read with applicable Regulation of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), Regulations, 2016.
3. The amount of debt¹ is Rs.1,97,36,12,442.68 (Rupees One Hundred Ninty-Seven Crore Thirty- Six Lakh Twelve Thousand Four Hundred Forty- Two and Sixty Eight Paise only). The amount in default is Rs. 1,24,34,00,128.62 (Rupees One Hundred Twenty Four Crore Thirty- Four Lakh One Hundred Twenty- Eight and Sixty Two Paise only).
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.
5. It is to be noted that Hon’ble Supreme Court in the matter 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 Judgment inter-alia are as follows:

“i. No judicial adjudication is involved at the stages envisaged in

¹ Page 218 of I.A.346 of 2024

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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*

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100 to determine whether 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 proposed the name of the Insolvency Professional for appointment as Resolution Professional. In view of the above, Mr. Manish Jain, IBBI Registration No.IBBI/IPA-001/IP-P00582/2017-2018/11023, having email ID: manishmahavir@gmail.com was appointed as Resolution Professional, subject to his possessing a valid AFA, in exercise of the power conferred on this Authority under Section 97 of the IBC, 2016.
7. The Resolution Professional was directed to file a 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 seven days.
8. The Resolution Professional Mr. Manish Jain, In I.A. (IB) 346/KB/2024 has filed his report dated 5th February 2024 wherein he has recommended admission of the personal guarantor into Insolvency resolution process. The relevant portion of his report has been extracted and appended below for the sake of convenience.

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**D. REASONS FOR ACCEPTING THE APPLICATION AND INITIATING THE INSOLVENCY
PROCEEDING AGAINST MR. NANDU KISHINCHAND BELANI.**

1. That the Application filed by Canara Bank satisfies the requirements as set out in section 94 of the Code.
2. That the corporate debtor has committed default in repayment of the Loan facility granted by Canara Bank. That Mr. Nandu Kishinchand Belani, personal Guarantor to corporate debtor has committed default in repayment of Loan facility demanded by Canara Bank after invocation of personal guarantee.
3. That the Insolvency Application has been filed in the requisite form in terms of rule 6(1) of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority for Insolvency Resolution process for personal Guarantors to Corporate debtors) Rule, 2019 and the applicant has paid the requisite fees.
4. The Insolvency Application does not relate to "excluded debts" as defined under section 79(15) of the IBC Code, 2016.
5. The Personal Guarantor to the Corporate Debtor, is not eligible for fresh start under Chapter II of the code.
6. That the Guarantor despite request from the Resolution Professional vide an email dated 01.02.2024 has not provided proof of payment of entire debt.
7. That the Financial creditors i.e. Canara Bank has provided the information and the application filed by them.




Hence, the RP after going through the contents of the main application and considering the requirements of the admission of Personal Guarantee as stipulated in the Code opines and confirms that Insolvency Resolution Process for personal Guarantor Mr. Nandu Kishinchand Belani, Personal guarantor for BBT Elevated Road Private Limited should be initiated and the Application filed by the Applicant i.e. Canara Bank who is the Creditor should be admitted.


MANISH JAIN

Registration Number: IBBI/PA-001/IP-P00582/2017-2018/11023

Resolution Professional

In the matter of Canara Bank verses Mr. Nandu Kishinchand Belani (Personal Guarantor for BBT Elevated Road Private Limited)

Place: Kolkata

Date: 06.02.2024

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9. The said report dated 5th February 2024 is taken on record and as such I.A. (IBC) 346/KB/2024 shall stand *disposed of* accordingly.
10. Further, it is noted that no representation has been filed on behalf of the Personal Guarantor in spite of several opportunities given by this Adjudicating Authority and as such, this Adjudicating Authority, vide order dated 08.04.2024, closed the Personal Guarantor's right to file reply.
11. We have considered the report and perused the details of claim indicated therein.
12. The default on the part of the Personal Guarantor being established we are satisfied with the recommendation.
13. In absence of any dispute or controversion by the Personal Guarantor, this application is admitted with the following directions:

(i) The application is **admitted** under **Section 100** of the Code;

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

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.

(iii) **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

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(c) the debtor shall not transfer, alienate, encumber or dispose of any of his assets or his legal rights or beneficial interest therein;

(iv) In relation to a firm, the moratorium under sub-section (1) shall operate against all the partners of the firm.

(v) 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.

(vi) In absence of any prayers from any quarters against the nominated Resolution Professional, the IRP will act as the Resolution Professional (RP in short).

(vii) The RP shall act in terms of Section 102, 103, 104 of the Code, to cause public notice, invite claims from creditors, prepare list of creditors and hold regular meeting as directed hereunder:

a. **In terms of Section 102:**

The Resolution Professional shall cause 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.

b. The notice under sub-section (1) shall include—

- i. details of the order admitting the application;
- ii. particulars of the resolution professional with whom the claims are to be registered; and
- iii. the last date for submission of claims.

c. The notice shall be—

- i. published in at least one English and one vernacular newspaper which is in circulation in the state where the debtor resides;
- ii. placed on the website of the Adjudicating Authority.

d. **In terms of Section 103:**

- i. 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.

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- ii. (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.
- e. **In terms of Section 104:**

The resolution professional shall, within 30 days from the date of notice prepare a list of creditors on the basis of—

 - i. the information disclosed in the application filed by the debtor under section 94 or 95, as the case may be; and,
 - ii. claims received by the resolution professional under section 102.
- f. **In terms of Section 105:**

The Resolution Professional shall assist the debtor in preparing repayment plan containing a proposal to the creditors for restricting of his debts or affairs.
- g. **In terms of Section 106:**

The Resolution Professional shall submit the repayment plan under Section 105 along with his report, within 21 days from the last date of submission of claims under Section 102 specifying.

 - i. That the repayment plan is in compliance with the provisions of any law for the time being in force;
 - ii. That the repayment plan has a reasonable prospect of being approved and implemented; and
 - iii. Whether there is a necessity of summoning a meeting of the creditors, if required, to consider the repayment plan:
- h. Meeting of creditors shall be held if necessary, specifying the
 - i. Date, Time and Place of meeting after consulting the creditors;
 - ii. Within 14 to 28 days from submission of its report;
 - iii. After issuance notice for meeting at least 14 days in advance, to all the creditors mentioned in the list of creditors.
- i. The Resolution Professional will act in accordance with Sections 107, 108, 109 and 110 to summon creditors, conduct meeting of creditors, allow

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them voting rights in accordance with voting share assigned to each, and seek approval of repayment plan if any.

j. The Resolution Professional shall prepare a report of the meeting in accordance with Section 112 and furnish a report to this Adjudicating Authority.

14. In terms of the above, C.P (IB) 245/KB/2022is, thus, *admitted*. I.A. (IBC) 346/KB/2024 shall stand *disposed of*.

15. List this matter for consideration on **09.08.2024**.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order signed on this, the 25th day of June, 2024.

SM(LRA)