

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
AT MUMBAI BENCH, C-IV  
CP (IB) NO. 1171/MB/2022**

*Filed under section 94 of the Insolvency & Bankruptcy Code, 2016.*

*IN THE MATTER OF*

***Mr. Dharmesh R. Chokshi***

*Flat No.6, Neelkanth Villa*

*90 Ft road, Garodiya Nagar,*

*Ghatkopar East, Mumbai*

*400077*

*... Applicant/ Personal Guarantor*

**Order delivered on: 02.07.2024.**

*Coram:*

Ms. Anu Jagmohan Singh

Mr. Kishore Vemulapalli

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

***Appearances:***

For the Petitioner/Personal Guarantor : Mr. Manoj Mishra, Ld. Counsel.

1. This is an application filed under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC, 2016") r/w Rule 6 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for IRP for Personal Guarantors to Corporate Debtor) Rules, 2019 by the Personal Guarantor, namely, Mr. Dharmesh R Chokshi for initiation of the Insolvency Resolution Process in respect of himself in the context of debt taken by the Corporate Debtor, namely, M/s Orbit Ayas Private Limited.
2. The M/s. Orbit Ayas Private Limited, herein, has availed Credit facilities from Union Bank of India aggregating to Rs. 23,00,00,000/-, through revised sanction letter dated 13.12.2018. The outstanding debt is of

Rs.18,48,58,833.60/- as on 30.06.2022 by way of guarantee. The applicant has executed various security documents in favour of the then Financial Creditor i.e. Union Bank of India . The date of default is 02.11.2019. However, on account of default in repayment of the loan, the account of Corporate Debtor was classified as NPA on 31.01.2020. Thereafter, the demand notice dated 12.07.2022 u/s 13(2) of the SARFAESI Act, 2020 was issued demanding repayment of the Debt.

3. On presentation of the application by the Applicant/ Personal Guarantor, this Authority vide order dated 21.06.2023 has appointed the Resolution Professional viz., Mr. Mukesh Kumar Jain, having Registration No. IBBI/IPA-001/IP-P01236/2018-2019/11944 & directed RP to file report under Section 99 of Insolvency and Bankruptcy Code, 2016, which has been filed by him through an IA No. 3240 of 2023 recommending the admission of the application filed under section 94 of IBC, 2016. The Resolution Professional had recommended that “...it is just and equitable that personal Insolvency Resolution Process (PIRP) be initiated against Shri. Dharmesh Chokshi, Personal Guarantor of M/s. Orbit Ayas Private Limited, under the orders and directions of this Hon’ble Tribunal...”.
4. The proceedings in the present matter was put on hold since the Constitutional Validity of the Sections 94 to 100 relating to the insolvency of Personal Guarantor was pending. The Hon’ble Supreme Court in the judgement of ***Dilip B. Jiwrajka V/s Union of India & Ors. in WP (civil)No. 1281 of 2021 dated 09.11.2023*** upheld the Constitutional Validity of the Sections 94 to 100.
5. As per material on record, the counsel for the Respondent appeared virtually but chose not file reply.
6. We are of the considered view that the captioned petition is complete is all

aspects, and the present case is therefore fit for admission. Ordered accordingly.

7. In terms of the above, **CP(IB)/1171/MB/2022** filed under Section 94(1) of the IBC, 2016 is *admitted* and the Insolvency Resolution Process stands initiated against the Applicant/Personal Guarantor.

I. Initiate Insolvency Resolution Process against the Respondent/Personal Guarantor and moratorium in relation to all the debts is declared, from today i.e. date of admission of the application and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on the repayment plan under Section 114 whichever is earlier as provided under Sec 101 of IBC, 2016. During the moratorium period,

- a. Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed, and
- b. The creditors of the debtor shall not initiate any legal action or 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:
- d. 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.

II. The Resolution Professional viz., *Mr. Mukesh Kumar Jain* having *Registration No. IBBI/IPA-001/IP-P01236/2018-2019/11944*, having registered address C-203, Edge Commercial ,Opp. Maruti Suzuki Arena, Vidhansabha Road, Mova ,Raipur,Chhattisgarh

,492007 *mkj2822@gmail.com* is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Mumbai Bench, inviting claims from all Creditors, within 21 days of such issue. The notice under Sub Section (1) of Section 102(2) 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.
- III. The publication of notice shall be made in two newspapers, one in English and other in Vernacular which have wide circulation in the State where the Corporate Debtor and Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.
- IV. The Resolution Professional in exercise of the powers conferred under Section 104 shall prepare a list of creditors on the basis of
- a. the information disclosed in the application filed by the debtor under Sections 94 or 95. as the case may be, and
  - b. claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice. The debtor shall prepare a repayment plan under Section 105, in consultation with the Resolution Professional, containing a proposal to the Creditors for restructuring of his debts or affairs.

The repayment plan may authorize or require the Resolution Professional to:

- a. carry on the debtor's business or trade on his behalf or in his name: or
- b. realise the assets of the debtor; or
- c. administer or dispose of any funds of the debtor.

The repayment plan shall include the following, namely;

- a. justification for preparation of such repayment plan and reasons based on which the creditors may agree upon the plan;
- b. provision for payment of fee to the Resolution Professional;
- c. such other matters as may be specified.

V. The Resolution Professional shall submit the repayment plan along with his report on the plan to this Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106.

VI. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons thereof. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of IBC, 2016. The date of meeting should not be less than 14 day or more than 28 days from the date of submission of the Report under sub- section (1) of Section 106 of IBC, 2016, for which at least 14 days' notice to the

creditors (as per the list prepared shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of IBC, 2016.

- VII. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of IBC, 2016 and submit the same to this Tribunal, copies of which shall be provided to the Debtor and the Creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of IBC, 2016.
- VIII. The Resolution Professional shall submit his periodic reports before this Tribunal, every 30 days.
- IX. The applicant is directed to deposit Rs.2 lakhs to the bank account of the Resolution Professional within one week, towards his fees. This shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.
- X. The Registry is directed to communicate a copy of order, report and application within seven working days and upload the same on the website immediately after the pronouncement of order.

Sd/-

**ANU JAGMOHAN SINGH**  
**MEMBER (TECHNICAL)**  
**02.07.2024.**

Sd/-

**KISHORE VEMULAPALLI**  
**MEMBER (JUDICIAL)**