

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

CP (IB) No.184/Chd/Pb/2021

Under Section 94, of the IBC 2016

In the matter of:

Sudhir Nanda

Personal Guarantor

having its address at

House No. 9, Sarabha Nagar Extension,

Near DAV School, Pakhowal Road,

Basant Avenue, Ludhiana

Punjab-141013

....Petitioner

Judgment delivered on: 25.07.2022

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present through Video Conferencing:

For the Petitioner

: Er. Sandeep Suri, Advocate with
Resolution Professional Mr. Bishwaranjan
Chatterjee

For the Respondent

: None

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

1. The petition is filed by Sudhir Nanda (Personal Guarantor) under Section 94 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as code) read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor)

Rules, 2019 (hereinafter referred to as Personal Guarantors Insolvency Rules, 2019), seeking an order for initiation of the Insolvency Resolution Process (“IR Process”) against him/applicant who is the personal Guarantor to M/s. S. Nanda Industries Private Limited (“Corporate Debtor/Principal Borrower”), who has extended personal guarantees to financial creditor namely, Indian Bank (Erstwhile Allahabad Bank) and other lenders. The corporate debtor had availed loan of Rs. 1200.00 Lakhs from the bank vide sanction letters dated 26.06.2010, 36.06.2012 and 17.09.2014.

2. The present application has been filed in the prescribed proforma. Moreover, the compliance affidavit pursuant to order dated 07.03.2022 has been incorporated vide Diary No. 00747/2 dated 15.03.2022, whereby applicant stating that in terms of provision of Section 94(4) of I & B Code, 2016 the applicant is not an undischarged bankrupt or not undergoing a fresh start process or not undergoing an insolvency resolution process or not undergoing a bankruptcy process. Also, in terms of the provisions of 94(5), no application has been admitted against the applicant during the period of 12 months preceding the date of submission of the present application under Section 94(1) of I&B Code, 2016.

3. On presentation of the application by the Applicant/Personal Guarantor, this Adjudicating Authority after getting the report about the antecedents of Insolvency Professional, appointed the Resolution Professional, Mr. Bishwa Ranjan Chatterjee, Registration No. IBBI/IPA-002/IP-N00877/2019-2020/12806 Phone No. 9711401771 Email: brcind@gmail.com vide order dated 21.03.2022 under section 97 of the Code. At the same time, limited notice of this petition to the creditor(s) for presence has been issued on 21.03.2022 by this Adjudicating Authority, pursuant to the said order compliance affidavit has been filed vide Diary No. 00747/4 dated

18.05.2022, whereby, the notice is served upon all the creditors via speed post. The original postal receipts and tracking report as obtained from India Post Website is attached as Annexure A-2 of the affidavit and some of the articles have been returned back and those have been submitted in the Registry vide Annexure A-3 of the affidavit. It is to be noted that no objection/reply has been filed by any of the respondent/creditor.

4. The Resolution Professional was directed to file the report under Section 99 of Insolvency and Bankruptcy Code, 2016 which has been filed by him through IA No. 419/2022 filed in CP(IB) No. 184/Chd/Pb/2021 recommending the admission of the application filed under Section 94 of IBC, 2016. The grounds for admission of the application recorded in the report are as follows.

The Resolution Professional sought the following information, explanation and clarification.

a) *The amount of default as claimed by the Creditor i.e., Indian Bank (Erstwhile Allahabad Bank), is Rs. 14,89,39,793/- (Rupees Fourteen Crores Eighty Nine Lakhs Thirty Nine Thousand Seven Hundred Thirty only) as mentioned in the application bearing no. IB-184/CHD/Pb/2021. Please confirm if any repayment of the debt has been made by you as claimed by the Financial Creditor. In case there is any repayment done by you, kindly provide us the evidence of electronic transfer of the unpaid amount from the bank account of the debtor;*

b) *The amount of default as claimed by the Creditor i.e. Siddharth Nayyar is Rs.1,80,74,861/- (Rupees One Crore Eighty lacs Seventy Four Thousand Eight Hundred Sixty One Only) as mentioned in the application bearing no. IB-184/CHD/Pb/2021. Please confirm if any repayment of the debt has been made by you as claimed by the Creditor. In case there is any repayment done by you, kindly provide*

us the evidence of electronic transfer of the unpaid amount from the bank account of the debtor;

c) List of Personal assets and liabilities as on date of the order i.e., 21.03.2022.

d) In case, if there any guarantee deed that had been executed from your end to any other Company apart from S. Nanda Industries Private Limited.

e) The assets which are mortgaged with the Creditors against the Guarantee, if any.

f) Apart from the above, following documents are also required;

- Income Tax returns along with its computation for last three Financial Years i.e., FY 2018-19, 2019-20 and 2020-21.*
- Statement of affairs; for last three Financial Years i.e., FY 2018-19, 2019-20 and 2020-21.*
- GST Returns: for last three Financial Years i.e., FY 2018-19, 2019-20 and 2020-21.*
- Details of the Bank Account on your name and the bank statements of the said bank accounts for last one year.*

In response to the above-mentioned information, explanation and clarification sought by Resolution Professional, the Personal Guarantor had given the following information:

- a. That the Personal Guarantor had not made any payment to any secured or unsecured creditor of the Corporate Debtor in his personal capacity.*
- b. That the Personal Guarantor had guaranteed the loans extended by the banks to Corporate Debtor. Further, the Personal Guarantor had also shared the copy of Deed of Guarantee/Notices executed between him and Indian Bank (Erstwhile Allahabad bank).*
- c. In addition to the above, as asked by the Resolution Professional, Personal Guarantor had provided his Net Worth Certificate as on 21/03/2022. As per the said certificate, the net worth of the Personal Guarantor is Rs -14.23 Crores.*
- d. The Personal Guarantor had shared his Income Tax returns for financial year 2018-19, 2019-20 and 2020-21 and No Bank Accounts being maintained by him.*
- e. The Personal Guarantor has also shared the arbitral award.*

The Resolution Professional as mentioned in para no 9 of this report under Section 99, had sought additional information, explanation and clarification in connection with the Application from the creditors of the Corporate Debtor for the following information:

“... the current status of the repayment of debt by the Debtor Sudhir Nanda or by the Corporate Debtor M/s. S. Nanda Industries Private Limited.

In addition to the above the undersigned came to know that M/s. S. Nanda Industries Private Limited is currently under CIR Process.

OBSERVATION AND RECOMMENDATION BY RESOLUTION PROFESSIONAL

In view of the above facts and circumstances, I, BISHWA RANJAN CHATERJEE, the Resolution Professional appointed by this Hon'ble Tribunal, vide order dated 21.03.2022 in C.P. (IB) NO. 184/CHD/Pb/2021, hereby confirm that, I have perused/examined all the underlying documents and annexure and all the parameters are duly complied as per the provision of IBC and all the requisite & requirement under section 94 are duly met with, therefore, the Resolution Professional is of the considered opinion that the application filed by the applicant for initiation of Insolvency Resolution Process against Mr Sudhir Nanda, Personal Guarantor to the Corporate Debtor M/s. S. Nanda Industries Private Limited is in compliance with the provisions of the Code. Hence, the Resolution Professional considering the requirements of the admission of Personal Guarantee as stipulated in the Code recommends under section 99 (7) for approval of the application for initiation of Insolvency Resolution Process against Mr Sudhir Nanda, Personal Guarantor to the Creditors of S.Nanda Industries Private Limited on the following reasons:

- a) *That the Application filed by Shri. Sudhir Nanda, through Resolution Professional Sh. BISHWA RANJAN CHATERJEE (Resolution Professional) satisfies the requirement as set out in Section 94 of the Code;*

- b) *That the Corporate Debtor have committed default in repayment of Loan Facility granted by the aforesaid banks and/or financial institution. The same is evident from the fact that an application was also filed by Siddharth Nayyar (Woolways Exports) for initiating CIRP against the Corporate Debtor before the Hon'ble National Company Law Tribunal, Chandigarh which stood admitted vide order dated 18/11/2021 and Mr Pawan Sharma was appointed as the RP and CIRP process is ongoing.*
- c) *That Shri. Sudhir Nanda, Personal Guarantor to Corporate Debtor has also committed default in repayment of Loan Facility demanded by the banks and/or financial institution after invocation of personal guarantee. Further, the Personal Guarantor has informed that he had executed of Deed of Guarantee for the loans extended by the banks to Corporate Debtor. Further, the Personal Guarantor had informed that he had not made any payment to any secured or unsecured creditor of S.Nanda Industries Private Limited in his personal capacity.*
- d) *No information received from Indian Bank (Erstwhile Allahabad Bank) as the copy has been served by the Applicant to the Creditor(s) at the time of filing the application.*

5. After perusal of the report submitted by Resolution Professional, there does not appear any request of the Resolution Professional for issuance of instruction for the purpose of conducting negotiations between the debtors and the creditors for arriving at the repayment plan. Therefore, based on the reasons recorded in the report submitted by the Resolution Profesional, the application i.e. CP(IB) No. 184/Chd/Pb/2021 filed under the provisions of Section 94 of IBC, 2016 is hereby admitted under Section 100 of the IBC, 2016. The Insolvency Resolution Process is initiated against the Applicant/Debtor and the moratorium is declared, which begins with the date of admission of the application and shall cease to have effect

at the end of the period of 180 days, as provided under Section 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.

6. The Resolution Professional, Mr. Bishwa Ranjan Chatterjee, who has been appointed under Section 97 vide order dated 21.03.2022, is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of uploading of this order on the website of the NCLT, Chandigarh, inviting claims from all creditors, who shall register their claims as provided under Section 103 within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102(2) of IBC, 2016. The publication of notice shall be made in newspapers, one in English and other in Vernacular which have wide circulation in the state where the debtor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry. One shall be placed by the Registry on our website and the other shall be affixed in the premises of this Authority.

7. The Resolution Professional in exercise of the powers conferred under Section 104 shall prepare a list of creditors within 30 days from the date of the notice. The debtor shall prepare a repayment plan in consultation with the Resolution Professional as provided under Section 105 which shall include the provisions for payment of fee to the Resolution Professional. 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.

8. In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons therefor. If the Resolution Professional is of the opinion that the meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3). The date of meeting should not be less than 14 days or more than 28 days from the date of submission of the report under Sub-Section (1) of Section 106, for which at least 14 days notice to the creditors(as per list prepared) shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107.

9. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 and 111. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 and submit the same to this Authority, 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 the IBC, 2016.

10. In terms of the above, CP (IB) No. 184/Chd/Pb/2021 filed under Section 94(1) of the IBC, 2016 is allowed & admitted. Consequently the Insolvency Resolution Process stands initiated against the debtor/Personal Guarantor.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

July 25, 2022
PB/ASH

Sd/-

(Harnam Singh Thakur)
Member (Judicial)