

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No.245/Chd/Pb/2022

Under Section 94, of the IBC 2016

In the matter of:

Ajit Singh Kochar

#312 Lawrence Road, Bansal Sweets,
Krishna Nagar, Amritsar, Punjab 143001
PAN No.AAXPK4985B
Email Id:- sohal01119@gmail.com

....Petitioner

Judgment delivered on: 31 .01.2023.

Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

Present:

For the Petitioner : Ms. Niharika Sohal, Advocate

For the Respondent : None

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

The petition in Form 'A' has been filed by Ajit Singh Kochar (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 Guranators Insolvency Rules, 2019), seeking an order

for initiation of the Insolvency Resolution Process (“IR Process”) against his/applicant who is the personal Guarantor to M/s. Kochar Overseas Private Limited (“Corporate Debtor/Principal Borrower”), who has extended personal guarantee to financial creditor namely, Punjab National Bank and other lenders. The corporate debtor had availed a loan of Rs. 43 crores from the Punjab National Bank and to secure this debt Mr. Ajit Singh Kochar extended his personal guarantee in favour of the Punjab National Bank and other lenders. The said personal guarantee has been extended for the loan facilities availed by the corporate debtor.

2. The present application has been filed in the prescribed proforma. Moreover, the affidavit had been filed, 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 (Page 21-22 of the petition)

3. On presentation of the application by the Applicant/Personal Guarantor, this Adjudicating Authority vide Order dated 15.09.2022 has appointed the Resolution Professional Viz Mr. Bishwa Ranjan Chatterjee, Registration No. IBBI/IBBI/PA-002/IP-N00877/2019-2020/12806 Phone No. 9711401771 Email: brcind@gmail.com. At the same time, limited notice of this petition to the creditor(s) for presence is issued on 15.09.2022 by this Adjudicating Authority, pursuant to the said order compliance affidavit has been filed vide Diary

No.01911/01 dated 19.10.2022, whereby, the notice is served upon the creditor(s) 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. None appeared for respondent-creditor-Punjab National Bank. It is to be noted that no objection/reply has been filed by the said respondent-creditor-Punjab National Bank.

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.1596/2022 filed in CP(IB) No. 245/Chd/Pb/2022 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 Corporate Debtor Kochar Overseas Private Limited had availed loan of Rs.24,38,28,000/ (Rupees Twenty-Four Crores Thirty-Eight Lakhs Twenty-Eight Thousand only) from the Punjab National Bank, and to secure this debt Shri. Ajit Singh Kochar extended his Personal Guarantee. This Deed of Guarantee further provided that in event of failure of Corporate Debtor to repay the loan, the Personal Guarantor shall be jointly severally and co- extensively liable to repay back the entire loan outstanding along with any outstanding interest and penal interest.*
- *That, the said Corporate Debtor committed default in its loan account and the account was declared as Non-Performing Asset (NPA) on 13.11.2015, thereafter recall notice under Section 13(2) of SARFAESI ACT, 2002 was issued to the Corporate Debtor, Directors and Personal Guarantors. A Copy of the said 13(2) notice dated 13.11.2015 is annexed herewith as **ANNEXURE A -3**.*
- *Thereafter Punjab National Bank vide 13(2) notice dated 13.11.2015 invoked the Personal Guarantee executed by Shri. Ajit Singh Kochar, while informing that the Corporate Debtor had failed to repay the instalments of Principal and Interest in respect of Loan Facility which had fallen due since 30.09.2015, thereby in terms of the Guarantee Deed called upon the Personal Guarantor to pay as sum of Rs.40,07,46,685.86/ (Rupees Forty Crores Seven Lakhs, Forty-Six Thousand Eighty-Five and paise Eighty-Six only) with further interest thereon from 30.09.2015 at contractual rates until date of realization. Failure of both the Corporate Debtor and Personal Guarantor to repay the said dues, Punjab National Bank in its capacity of secured creditor*

took appropriate measures under the provisions of Section 13(4) of the SARFAESI ACT, 2002 and took symbolic possession of the mortgaged properties and the same were sold by the Punjab National Bank, according to the applicant he does not have any information regarding the amount received by Punjab National Bank from this sale.

- That meanwhile, an CP(IB)No.108/ Chd/Pb/2017 was filed by the Corporate Debtor, Kochar Overseas Private Limited under Section 10 of the Insolvency and Bankruptcy Code, 2016 before the Hon'ble National Company Law Tribunal, Chandigarh, and the same was accepted on 25.11.2017. At present Kochar Overseas Private Limited is under Liquidation.
- The Resolution Professional after examining the Insolvency Application has sought specific information regarding the status of repayment to Creditors as mentioned in the application filed by Shri. Ajit Singh Kochar.
- The applicant has informed the Resolution Professional that no payment has been made to Punjab National Bank in the interim and the outstanding figures remains the same as on date of filing this application under Section 94(1)
- The applicant has also informed that Central Bureau of Investigation has filed an FIR against the Company and its Directors including himself for defrauding Punjab National Bank, Hall Bazaar, Amritsar to the tune of Rs. 4007.47 Lakhs.
- The applicant also clarified that his Personal Guarantee was also given against loan sanctioned to another Corporate Debtor "Kochar Fibres Limited" but the said account has been settled through One Time Settlement.
- The applicant has also mentioned in his application about other unsecured creditors but has been unable to provide requisite documentation to verify those creditors' claims and hence they have not been accepted as on date.

"COMPLIANCE IN TERMS OF SECTION 94 OF THE CODE READ WITH SECTION 99 (6) (A) OF THE CODE

PROVISIONS	COMPLIANCES
<p align="center">SECTION 94(1) OF THE CODE</p> <p>A debtor who commits a default may apply, either personally or through a resolution professional, to the Adjudicating Authority for initiating the insolvency resolution process, by submitting an application</p>	<p>The application has been filed by the Personal Guarantor through his lawyer and the Resolution Professional, Shri. Bishwa Ranjan Chatterjee had provided his consent.</p>

<p>SECTION 94(3) OF THE CODE An application under sub-section (1) shall be submitted only in respect of debts which are not excluded debts</p>	<p>The RP has gone through the application and confirms that the Application is accompanied with details and documents evidencing the default / non-repayment of debt, however there is no document to evidence debt against some creditors mentioned in the application, and hence they have not been included by the RP.</p>
<p>SECTION 94(4) OF THE CODE A debtor shall not be entitled to make an application under sub-section (1) if he is (a) an undischarged bankrupt; (b) undergoing a fresh start process; (c) undergoing an insolvency resolution process; or (d) undergoing a bankruptcy process.</p>	<p>The RP confirms that the applicant does not fall under any category of Section 94(4)</p>
<p>Section 94(5) OF THE CODE A debtor shall not be eligible to apply under sub-section (1) if an application under this Chapter has been admitted in respect of the debtor during the period of twelve months preceding the date of submission of the application under this section.</p>	<p>The RP confirms that no application has been admitted in respect of the debtor during the period of 12 months preceding the date of submission of Application.</p>

COMPLIANCE IN TERMS OF SECTION 94 OF THE CODE READ WITH SECTION 99 (6)(A)(B) OF THE CODE

PROVISIONS	COMPLIANCES
<p>SECTION 99(1) OF THE CODE The resolution professional shall examine the application referred to in section 94 or section 95, as the case may be, within ten days of his appointment, and submit a report to the Adjudicating Authority recommending for approval or rejection of the application.</p>	<p>The Resolution Professional downloaded the NCLT order of 15.9.2022 on 21.09.2022 and has submitted his report to the Adjudicating Authority within the time period specified in the order dated 15.9.2022</p>

<p>SECTION 99(4) OF THE CODE <i>For the purposes of examining an application, the resolution professional may seek such further information or explanation in connection with the application as may be required from the debtor or the creditor or any other person who, in the opinion of the resolution professional, may provide such information</i></p>	<p><i>The Resolution Professional has sought for additional information from the Debtor to seek clarifications regarding information in the application filed by the Personal Guarantor</i></p>
<p>SECTION 99(5) OF THE CODE <i>The person from whom information or explanation is sought under sub-section (4) shall furnish such information or explanation within seven days of receipt of the request</i></p>	<p><i>The RP confirms that he has got the information and explanation as per the time period prescribed in the Section 99(5) of the IBC Code 2016 but some information is still pending.</i></p>
<p>SECTION 99(6) (a) OF THE CODE <i>The resolution professional shall examine the application and ascertain that - (a) the application satisfies the requirements set out in section 94 or 95;</i></p>	<p><i>The Resolution Professional Confirms that the application satisfies the requirements set out in section 94 of the code</i></p>
<p>SECTION 99 (6) (b) OF THE CODE <i>The applicant has provided information and given explanation sought by the resolution professional under sub-section (4).</i></p>	<p><i>The Resolution Professional confirms that the applicant has given all possible information and has not been able to give correct information regarding some unsecured creditors which have been excluded.</i></p>
<p>SECTION 99(7) OF THE CODE <i>After examination of the application under sub-section (6), he may recommend acceptance or rejection of the application in his report.</i></p>	<p><i>Resolution Professional confirms that this section has been complied with.</i></p>
<p>SECTION 99 (9) OF THE CODE <i>The resolution professional shall record the reasons for recommending the acceptance or rejection of the application in the report under sub-section (7).</i></p>	<p><i>Resolution Professional confirms that this section has been complied</i></p>

<p>SECTION 99 (10) OF THE CODE <i>The resolution professional shall give a copy of the report under sub-section (7) to the debtor or the creditor, as the case may be.</i></p>	<p><i>Resolution Professional confirms that this section has been complied</i></p>
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In view of the above facts and circumstances, Bishwa Ranjan Chatterjee, the Resolution Professional appointed by this Hon'ble Tribunal, vide order dated 15.09.2022 in C.P. (IB) NO. 245 /CHD/Pb/ 2022, had confirmed that, he had 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 Shri. Ajit Singh Kochar, Personal Guarantor to the Corporate Debtor Kochar Overseas 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 Shri. Ajit Singh Kochar, Personal Guarantor to the Creditors of Kochar Overseas Private Limited on the following reasons:

- 1. That the Application filed by Shri. Ajit Singh Kochar, satisfies the requirement as set out in Section 94 of the Code;*
- 2. That the Corporate Debtor have committed default in repayment of Loan Facility granted by the Punjab National Bank. That Shri. Ajit Singh Kochar, Personal Guarantor to Corporate Debtor has also committed default in repayment of Loan Facility demanded by Punjab National Bank after invocation of personal guarantee. He has confirmed that he has not made any payment to any secured or unsecured creditor of Kochar Overseas Private Limited in his personal capacity.*
- 3. The Insolvency Application has been filed in the requisite Form A, 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) Rules, 2019 and the applicant has paid the requisite fees.*
- 4. The Insolvency Application satisfies the requirements set out in Section 94 of the IBC Code, 2016*
- 5. The Insolvency Application does not relate to "excluded debts" as defined under section 79(15) of the IBC Code, 2016*
- 6. The Personal Guarantor to the Corporate Debtor, is not eligible for fresh start under Chapter II of the code".*

5. Vide order dated 23.11.2022 of this Adjudicating Authority, it was clarified that the copy of the report submitted by the Resolution Professional had been served upon creditor-Punjab National Bank. The Affidavit of service was filed vide Diary No. 01911/01 dated 19.10.2022. However, no response/ objections were filed to the said report.

6. 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. 245/Chd/Pb/2022 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.

7. The Resolution Professional, Mr. Bishwa Ranjan Chatterjee, who has been appointed under Section 97 vide order dated 15.09.2022 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.

8. 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.

9. 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.

10. 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.

11. In terms of the above, CP (IB) No. 245/Chd/Pb/2022 filed under Section 94(1) of the IBC, 2016 is admitted. Consequently, the Insolvency Resolution Process stands initiated against the debtor/Personal Guarantor.

-sd-
(Subrata Kumar Dash)
Member (Technical)

-sd-
(Harnam SinghThakur)
Member (Judicial)

January 31 ,2023.

SM/TB