

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT-V NEW DELHI BENCH  
IA. NO. 2338/PB/2021  
IN  
COMPANY PETITION NO. (IB)-202(PB)/2021**

**IN THE MATTER OF:**

**MUKUND CHAUDHARY  
THROUGH MR. ANIL KUMAR  
(RESOLUTION PROFESSIONAL)**

**...APPLICANT**

**AND**

**IN THE MATTER OF IA. NO. 2338/PB/2021:**

**ANIL KUMAR  
RESOLUTION PROFESSIONAL  
HOUSE NO. 7, 1<sup>st</sup> FLOOR  
PADMINI ENCLAVE, HAUZ KHAS  
NEW DELHI - 110016**

**...APPLICANT/RESOLUTION PROFESSIONAL**

**Order Delivered on: 30.04.2024**

**SECTION: Section 99-100 read with Section 95 of IBC 2016**

**CORAM:**

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (J)  
DR. SANJEEV RANJAN, HON'BLE MEMBER (T)**

**Appearances:**

**For the Applicant:**

**For the Personal Guarantor:** Mr. Lokesh Malik

**For the ARCIL:** Abhirup Dasgupta, Ishaan  
Duggal and Ruchi Goyal

**For the RP:** Mr Milan Negi and Nikhil Kumar  
Jha

## **ORDER**

**PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)**

1. The present I.A. No. 2338 of 2021 has been filed by Mr. Anil Kumar (hereinafter referred to as the 'RP'), qua Personal Guarantor Mr. Mukund Chaudhary (hereinafter referred to as 'Applicant/Personal Guarantor') enclosing therewith the Report prepared by him under Section 99 of IBC, 2016.
2. To put the facts concisely, the underlying main Petition CP (IB)-202/PB/2021 was filed by Mukund Chaudhary, the Personal Guarantor Section 94 of IBC 2016, to initiate the Insolvency Resolution process. Vide order dated 08.04.2021, this Adjudicating Authority directed the Resolution Professional to file a Report within 10 days in terms of Section 99 of the IBC, 2016.
3. In compliance with the order dated 08.04.2021 passed by this Adjudicating Authority, the present IA-2338/PB/2021 has been filed by Resolution Professional enclosing therewith the Report prepared in terms of the provisions of Section 99 of IBC 2016, recommending admission of the Application viz. IB-202/PB/2021 in respect of the Personal Guarantor.
4. The conclusive recommendation made by the RP reads thus:  
*"In view of the above facts and circumstances, I, Anil Kumar, the Resolution Professional appointed by this Hon'ble Tribunal, vide order dated 08.04.2021 in C.P. (IB) NO. 202(PB) of 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, I hereby recommend acceptance of the application to this Hon'ble Tribunal that personal insolvency of Mr. Mukund Choudhary be initiated in accordance with Part III of the Code based on following grounds:-*

- a) *That the Application filed by Sh. Mukund Choudhary, through resolution professional Sh. Anil Kumar (resolution professional) satisfies the requirement as set out in Section 94 of the Code;*
  - b) *That the Borrower-1, Borrower-2 & Borrower-3 have committed default in repayment of Loan Facility granted by the aforesaid banks and/or financial institution;*
  - c) *That Mr. Mukund Choudhary, Personal Guarantor to Borrower-1, Borrower-2 & Borrower-3 has also committed default in repayment of Loan Facility demanded by the banks and/or financial institution after invocation of personal guarantee.*
  - d) *That, in light of the above, it is just and equitable that insolvency resolution process be initiated against Mr. Mukund Chaudhary, Personal Guarantor to the Borrower-1, Borrower-2 & Borrower-3 under the orders and directions of this Hon'ble Tribunal”*
5. While making its recommendation for admission of the Application filed against the Personal Guarantor under Section 94 of IBC, 2016 the RP has given the Report as required under Section 99 of IBC, 2016 providing that:
- a) The Applicant granted the unconditional and irrevocable Personal Guarantee in favor of State Bank of India on 08.11.2005 for Rs. 15 Crore and Working Capital Loan of Rs. 4 Crore which was sanctioned to CLC Industries Limited/Borrower-1.
  - b) On 31.03.2009, the Applicant has executed another Deed of Guarantee in favor of State Bank of India being Lead Bank of Consortium for the principal sum not exceeding Rs. 418.17 Crore together with the interest costs charges expenses and other money due to the lead bank in respect of abovementioned credit facilities sanctioned to Borrower-1. Further, one more Deed of Guarantee was executed by the Applicant on 11.10.2012 in favor of State Bank of India being a Lead Bank of the Consortium for sum not exceeding

Rs. 352.97 Crore with interest costs charges and money due to Lead Bank for Loan sanctioned to Borrower-1.

- c) The Loan Agreement was further extended by Supplemental Agreement to continue credit facilities and not to sue to Borrower-1 for all or any of credit facilities. On 03.11.2014, the credit facilities continued for the sum of Rs. 150.13 Crores by way of Modification/Supplemental Agreement.
- d) Another Agreement of Guarantee was made between Oriental Bank of Commerce and the Applicant on 26.03.2015, to allow financial assistance of Rs. 134.70 Crores to Borrower-1 and Guarantor agreed to jointly and severally guarantee the repayment of sum due to the bank.
- e) Further, the Deed of Guarantee was executed by the Applicant on 08.09.2012 in favor of Axis Bank Limited for credit facilities of Rs. 35,69,70,000 along with interest and premium, sanctioned to Borrower-2. The said financial assistance is secured by an unconditional and irrevocable guarantee of the Applicant.
- f) The applicant also extended guarantee to UCO Bank for the sum of Rs. 12,80,45,000 along with interest @ 11.00% p.a. for the loan sanctioned to Borrower-3.
- g) The State Bank of India has filed original application before Debt Recovery Tribunal against the Corporate Debtor and Guarantors. The SBI being the lead bank is to recover from the Borrower-1 and its Guarantors the amount of Rs. 302,42,50,049 and other non-fund based facility of Rs. 7,07,79,455 along with interest. It is pertinent that if the mortgaged property sold out by the bank still Rs. 203.39 Crores remain recoverable from the Corporate Debtor and Guarantors. The State Bank of India has further assigned its debt to ARCIL. The Oriental Bank of Commerce has classified the Borrower-1 as NPA on 26.10.2015 due to default in repayment loan amount. Therefore, on 30.04.2017, the bank has filed an application before

Debt Recovery Tribunal for the recovery of outstanding of Rs. 118,94,13,331 along with interest & Charges.

- h) Borrower-2 has availed and utilized credit facilities of Rs. 35,69,70,000 granted by the Axis Bank and due to default in loan repayment, the bank has classified account of borrower as NPA. Hence, the bank has issued notice to Corporate Debtor and the Guarantors for payment of Rs. 2221.48 Lacs along with interest as per the Loan Agreement.
  - i) Amongst the principal borrowers, Borrower-2 has been resolved vide order dated 31.07.2018 in terms of I&B Code, 2016, while Borrower-1 and Borrower-3 are undergoing Corporate Insolvency Resolution Process and Borrower-4 & Borrower-5 are active Companies.
  - j) The RP has examined the application filed by the Creditor under Section 94 as per the proviso of Section 99(6) and same satisfies the requirements put forth in Section 94.
6. Notice has been issued to the Financial Creditors. We have heard the submission of all the parties and have perused the Application and the Report filed by the Resolution Professional. Both Financial Creditor and the Personal Guarantor has no objection to the Report and the same has been recorded vide order dated 13.02.2024 and 21.03.2024. The RP in his Report has placed on record, the Guarantee Deeds dated 31.03.2009, 08.09.2012, 11.10.2012, 03.11.2014 and 26.03.2015 in terms of which the Personal Guarantor, Mr. Mukund Chaudhary could stand as guarantor for repayment of loan facilities granted by the Banks and Financial Institutions to the Principal Borrower-1, 2 & 3.
7. It is seen from the record that the aforesaid Borrowers was committed default in repayment of loan facilities granted by the banks and the applicant stands Personal Guarantor to those Borrowers. Details of defaults and ongoing legal proceedings against the Borrowers is placed on record.

8. In view of the above, we are inclined to admit the present petition bearing No. (IB)-202(PB)/2021 filed under Section 94 (1) for initiation of Insolvency Resolution Process against the Personal Guarantor.
9. The RP is directed to proceed further in accordance with the provisions of the Code. Interim moratorium which came into effect in terms of Section 96(1)(a) on the date of filing the application shall cease to have effect.
10. A fresh moratorium in terms of Section 101 of the Code shall commence as applicable. RP is directed to take all further steps in accordance with Part III, Chapter III of the Code. During the moratorium period –
  - a) any pending legal action or proceedings in respect of any debt qua the Respondent shall be deemed to have been stayed;
  - b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt qua the Respondent; and
  - c) the Respondent shall not transfer, alienate, encumber, or dispose of any of the assets or his legal right or beneficiary interest therein.The moratorium shall cease to have effect at the end of the period of 180 days.
11. A public notice shall be issued by the RP, within seven days of passing of this order, inviting claims from all creditors within 21 days of such notice. The notice shall include details of the present order, particulars of the Resolution Professional with whom the claims have to be registered, and the last date for the submission of the claims. The said notice shall be –
  - a) published in English and one Vernacular Language newspaper which is in circulation in the State where the debtor resides;
  - b) affixed in the premises of this Adjudicating Authority; and
  - c) placed on the website of the Adjudicating Authority.
12. The RP shall discharge all such duties as are incumbent upon him in terms of the provisions of Sections 104, 105, 106, 107, 108, 112, and 113 of IBC, 2016, with due deference to the procedure enshrined in

Regulations 5, 7, 8, 9, 11, 12, 13, 14, 15 and 17 of IBBI (Insolvency Resolution Process for Personal Guarantor to Corporate Debtors) Regulations, 2019 and also in terms of the other extent provisions of the aforementioned code/ regulations and/or any other provisions of law applicable to him, in the discharge of his duties as RP.

13. A copy of this order along with a copy of the application and the report of the Resolution Professional shall be provided to the Financial Creditors by the Registry/Court Master within 7 days from today by e-mail.
14. IA-2338/PB/2021 is disposed of accordingly. To come up for consideration of Status Report to be filed by RP, within 8 weeks.

Copy of this order be also sent to IBBI by the Registry.

**Sd/-**  
**DR. SANJEEV RANJAN**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**MAHENDRA KHANDELWAL**  
**MEMBER (JUDICIAL)**