

**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI**  
**PRINCIPAL BENCH**

**ITEM No. 16**  
**(IB)-765(PB)/2023**  
**IA-1247/2024**

**IN THE MATTER OF:**

Anumod Sharma filed Through RP Ajay  
Gupta

.... Petitioner

**Order U/s. 94 (1) of (IBC)**

**Order delivered on 03.04.2024**

**CORAM:**

**JUSTICE RAMALINGAM SUDHAKAR**  
**HON'BLE PRESIDENT**

**SH. AVINASH K. SRIVASTAVA**  
**HON'BLE MEMBER (TECHNICAL)**

**HEARING HYBRID MODE (PHYSICAL & VC)**

**PRESENT:**

For the Petitioner : Mr. Ajay Gupta, RP  
For the Respondent : Not Marked

**ORDER**

**Dictated in Open Court:-**

1. This petition has been filed under Section 94 (1) of Insolvency and Bankruptcy Code, 2016 ("IBC") by Mr. Anumod Sharma, the personal guarantor to the loans extended by Bank of India, IDBI and HDFC to the Corporate Debtor i.e. M/s Great Indian Nautanki Company Pvt. Ltd. ("GINCPL"). The Corporate Debtor having failed to make payment to the lenders, was brought under CIRP vide our order dated 21.10.2022 and at present the same is undergoing CIRP.
2. RP states in his report dated 06.03.2024 filed vide IA-1297/2024 that the personal guarantor had extended personal guarantees in respect of credit facility to the Corporate Debtor and the guarantees were invoked vide

notices by IDBI on 29.11.2014, by HDFC on 11.12.2015, and to Bank of Baroda on 13.02.2015.

3. It is stated by the RP that the Bank guarantees are subsisting and the concerned banks have filed their claims before the RP appointed in the matter of CIRP of Corporate Debtor i.e. GINCPL. The RP states that he has complied with the provisions of the Code by giving notices to the creditors alongwith filing of the application, as well as by sending copy of the report under Section 99 (10) to the Creditors. It is submitted by the RP that the Applicant satisfies the requirements specified under Section 94 of IBC. The Applicant has provided information and given explanation sought by the RP.
4. After examination of the same, the RP has recommended acceptance of the application and recorded the reasons for acceptance at pages 14-16 of the report which read as follows:-

***14. DETAILS OF DEFAULTS***

- a. That Corporate Debtor failed to adhere to financial discipline and defaulted in conduct of the aforesaid loan facilities sanctioned by the Bank of Baroda, IDBI Bank and HDFC Bank. Consequently, Bank of Baroda w.e.f. 29.09.2012, IDBI Bank w.e.f. 29.07.2014 and HDFC Bank w.e.f. 09.06.2015, have classified the account of Corporate Debtor as NPA following the RBI Norms. Whilst the liability of guarantors was continuing, unconditional, independent and irrevocable, which is now required to repaid by personal guarantor towards the dues of the Corporate Debtor.
- b. That the CIRP for the corporate debtor has already been initiated by the Hon'ble NCLT, New Delhi, Principal Bench vide its order dated 21.10.2022.

- c. That the Resolution Professional has admitted the claim as on 21.10.2022 of Bank of Baroda, IDBI Bank and HDFC Bank amounting to Rs. 141.64 Crores, Rs. 96.18 Crores and Rs. 14.06 Crores respectively.

**15. OBSERVATIONS AND RECOMMENDATION:**

- a. In view of the above facts and circumstances, I, Ajay Gupta, the Resolution Professional appointed by this Hon'ble Tribunal, *vide order dated 16.02.2024 in (IB)-765(PB)/2023*, hereby confirm that I have perused/examined all the underlying documents and annexures and all the parameters as prescribed under the code.
- b. That the personal guarantor has provided continuing, irrevocable and unconditional personal guarantee in respect to the credit facilities availed by corporate debtor.
- c. That as per the demand notice u/s 13(2) of SARFAESI Act, 2002 served upon the personal guarantor by the lending banks, the total amount due was Rs. 89.46 Crores i.e. dues to Bank of Baroda of Rs. 43.76 Crores, IDBI Bank of Rs. 39.43 Crores and HDFC Bank of Rs. 6.27 Crores.

- d. That the CIRP has been initiated against the corporate debtor by the Hon'ble NCLT vide its order dated 21.10.2022 and the resolution professional has admitted the total claim of the banks amounting to Rs. 251.88 Crores (Bank of Baroda: Rs. 141.64 Crores, IDBI Bank: Rs. 96.18 Crores and HDFC Bank: Rs. 14.06 Crores). As such being joint & several liability of the personal guarantor, the admitted claim is liability of personal guarantor also.
- e. That the personal guarantor had filed application under section 94 and provided the following details and documents relating to:
- i. The debt owed by the debtor as on the date of application.
  - ii. Notice of demand under section 13(2) of the SARFAESI Act, 2002 and
  - iii. evidence relating to default or non-repayment of the debt amount.

16. That due to the above all, the conditions for acceptance of application are duly triggered 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 for initiation of personal insolvency of Mr Anumod Sharma in accordance with Part III based on the following grounds:

- a) That the Application filed by Mr. Anumod Sharma (Personal Guarantor to Corporate Debtor), through Sh. Ajay Gupta (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 institutions;
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- c) That Mr. Anumod Sharma, 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.
- d) That, in light of the above, it is just and equitable that insolvency resolution process be initiated against Mr Anumod Sharma, Personal Guarantor to the Corporate Debtor under the orders and directions of this Hon'ble Tribunal.
- e) That the Hon'ble NCLT appointed me, Ajay Gupta as Resolution Professional vide its order dated 16.02.2024. However, the order of my appointment as the resolution professional was uploaded on the NCLT's website on 26.02.2024.
- f) Further as per the directions of the Hon'ble NCLT vide order dated 16.02.2024, the resolution professional was directed to file the report within the time stipulated under section 99 of IBC, 2016.
- g) That in compliance to the order date 16.02.2024 of this Hon'ble NCLT, the instant report is being filed within the timelines provided in the said order.

5. No reply/response has been placed on record by Creditors. It is observed that CIRP of the Principal Borrower GINCPL is going on and the resolution plan is still to be received. The claims received are not crystalized into final payment to Creditors till now. The liability of the personal guarantor being co-extensive with that of Principal Borrower, IRP against personal guarantor can go hand in hand with CIRP against GINCPL. The outcome of this petition shall be subject to final payments received by Creditors in the case of CIRP against Principal Borrower GINCPL.
6. In view of the above, we are inclined to admit the present petition bearing No. **(IB)-765(PB)/2023** filed under Section 94 (1) for initiation of Insolvency Resolution Process against the Personal Guarantor.
7. 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. 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.
8. The RP is directed to issue a public notice on our behalf in terms of Section 102 of the Code to invite the claims from the creditors at large. For this purpose, he will be paid an amount of Rs. 2,00,000 by the personal guarantor to meet

the cost arising out of issuing public notice and inviting claims etc.

- 9.** Copy of this admission order along with the report of RP be made available to the Creditors BoI, HDFC and IDBI in terms of Section 100(3) of the Code, by the RP.
- 10.** Copy of this order be also sent to IBBI by the Registry.

**-Sd/-**  
**(RAMALINGAM SUDHAKAR)**  
**PRESIDENT**

**-Sd/-**  
**(AVINASH K. SRIVASTAVA)**  
**MEMBER (TECHNICAL)**

03.04.2024  
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