IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 213
(IB)-67/ND/2024
IA-1488/2024

IN THE MATTER OF:

IDBI Bank Limited ... **Applicant/Petitioner**
(Through Jai Kishan Teotia)

Versus

Anu Appiah ... **Respondent**

AND IN THE MATTER OF IA-1488/2024:

Jai Kishan Teotia
(Resolution Professional)
159-BI, Shalimar Bagh Extension-1,
Sahibabad, Ghaziabad, UP-201005 ... **Applicant**

Versus

Anu Appiah
S/o Late Shri K.A. Aiyappa,
1030, 13th Cross, Roop Nagar,
Mysore, Karnataka ... **Respondent No. 1**

IDBI Bank Limited
NPA Management Group,
3th Floor, Plate 'B', Block-2,
NBCC Office Complex, East Kidwai Nagar
New Delhi-110023 ... **Respondent No. 2**

Under Section: 95(1) of IBC, 2016

Order delivered on 01.05.2024

CORAM:
SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)
PRESENT:
For the RP : CMA SK Bhatt along with CMA Kamal Deep Tyagi

Hearing Through: VC and Physical (Hybrid) Mode

REPORTABLE

ORAL ORDER

IA-1488/2024: The details of the financial transaction in respect of which the Respondent stood as Personal Guarantor are mentioned in the written synopsis filed by the Applicant along with the petition. The synopsis reads thus:

1. **IDBI Bank Limited ("the Applicant")** states that this Application under Section 95 of the Insolvency and Bankruptcy Code, 2016 ("**Code 2016**") read with Rule 7(2) of the Insolvency and Bankruptcy Code (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019 ("**Rules 2019**") is filed before the Hon'ble National Company Law Tribunal, Bench at New Delhi, to initiate Personal Insolvency Resolution Process as prescribed under the Code-2016 against Shri Viaf Sarkari ("**Personal Guarantor**"/ "**Respondent**") of M/s Great Indian Nautanki Company Private Limited ("**Corporate Debtor**").

2. The Applicant herein is a Company incorporated and registered under the Companies Act 1956 (1 of 1956) and a Banking company within the meaning of Section 5(c) of the Banking Regulation Act 1949.

3. Upon the request of the Corporate Debtor, the Applicant, vide its sanction dated 24.06.2009 sanctioned a financial assistance of Rs.41 Crores. In order to secure the said limit, the Corporate Debtor executed loan and security documents dated 26.06.2009. At the relevant time, the guarantee of Respondent was not offered.

4. Upon further request of the Corporate Debtor, the Applicant vide its sanction dated 24.02.2010, sanctioned credit facilities of Rs.50 Crores. In order to secure the secure the said limits, the Corporate Debtor executed loan and security documents dated 25.02.2010. In order to secure the entire credit facilities of Rs.50 Crores, the Respondent herein executed Guarantee Agreement dated 09.03.2010 in favour of the Applicant.

5. Upon the further request of the Corporate Debtor, the Applicant vide its sanction letter dated 05.07.2012, renewed the existing limit, which was showing the outstanding balance of Rs.36.74 Crores which was duly acknowledged by the Corporate Debtor and the guarantors.

6. Upon further request of the Corporate Debtor, the Applicant vide its sanction dated 28.12.2012, sanctioned credit facilities of Rs.6.70 Crores. In order to secure the said limit, the Corporate Debtor executed Loan Agreement dated 03.01.2013. In order to secure the said limits, the Respondent herein executed Guarantee Agreement dated 03.01.2013 in favour of the Applicant.

7. Due to non-payment/non maintenance of the credit facilities accounts, the account of the Corporate Debtor was declared as NPA on 30.09.2014 as per the guidelines of RBI.

8. The Applicant herein issued with a demand notice bearing Ref. No. IDBI/ CBG-II/ GINCPL/14-15/677 dated 14.11.2014 on the Corporate Debtor.

9. The Applicant also invoked the personal guarantees of the Respondent by issuing the Guarantee Invocation Notice bearing Ref. No.IDBI/ND/CBGII/GINCPL/14-15/ 761 dated 08.12.2014, thereby calling upon the Respondent herein to pay the amount outstanding against the Corporate Debtor.

10. The Corporate Debtor confirmed the balance in its accounts i.e. Term Loan Account-I to be Rs.29,19,78,488.25, Term Loan Account-II to be Rs.10,07,89,461.00 and Cash Credit Account to be Rs.4,46,89,914.00 with interest accounted upto 31.03.2016 and executed Acknowledgement of Debt and Confirmation of Security dated 01.09.2016 in favour of the Financial Creditor. The said acknowledgment of debt was also signed by all the guarantors including the Respondent herein.

11. An Original Application was filed by the Financial Creditor before the Hon'ble DRT-II, New Delhi which is bearing OA No. 848/2017 for recovery of Rs.50,35,05,560.38 (Rupees Fifty Crores Thirty Five Lacs Five Thousand Five Hundred Sixty and Paise Thirty Eight only) on 01.09.2017 filed against the Corporate Debtor including Personal Guarantors and the same is pending before the DRT-I.

12. A Petition under Section 7 of the Code was filed against the Corporate Debtor by Bank of Baroda titled as Bank of Baroda Versus Great Indian Nautanki Company Pvt. Ltd., vide Petition No. CP(IB)-24(PB)/2022 before National Company Law Tribunal, New Delhi Bench, wherein the Corporate Debtor was admitted to Corporate Insolvency Resolution Process ("**CIRP**") in accordance with the terms of the Code-2016 passed by this Hon'ble Tribunal. CIRP in respect of the Corporate Debtor commenced with effect from 21.10.2022.

13. It is submitted that the Financial Creditor had been receiving the amount in the loan accounts of the Corporate Debtor and the Corporate Debtor paid an amount of Rs.11,58,000.00 in account No. 26467320000019 and on 19.08.2022 Rs.11,69,952.00 in account No.04137B000003100 on 24.08.2022, certified copy of which is filed as Annexure A-21 and A-22 respectively hereto.

14. Demand Notice dated 06.01.2023 was issued by the Applicant to the Personal Guarantor under Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.

15. Despite above facts, no payment has been received by the Applicant as on date.

16. Thus, there is an outstanding amount of Rs. 111,41,99,767.75 (Rupees One Hundred Eleven Crores Forty One lakh Ninety Nine Thousand Seven Hundred Sixty Seven and Paise Seventy Five only) as on 30.09.2023 with future interest from 01.10.2023 payable by the Personal Guarantor

HENCE, this petition.

2. The amount shown as repayable by the Respondent and the Date of Default in repayment of the same are mentioned in part-III of the petition filed under Section 95 of IBC, 2016. The Part-III reads thus:

Particulars of Financial Debt		
1.	Total Amount (including any interestof penalties)	Rs.111,41,99,767.75 (Rupees OneHundred ElevenCrores Forty One Lakh Ninety Nine Thousand Seven Hundred Sixty Seven and Paise Seventy Five only) as on 30.09.2023 IDBI Bank reserves the right to file updated claim along with interest, additional/further interest further interest, penal interest, default interest, liquidated damages, fees, charges or any other amounts as per the terms of the financial agreements/contracts at the time of filing of its claim as per the IBC, read with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (as amended) or under any other applicable law, which may become due and payable on such date.
2.	Amount Claimed to be in default	Rs.111,41,99,767.75 (Rupees One Hundred Eleven Crores Forty One Lakh Ninety Nine Thousand Seven Hundred Sixty Seven and Paise Seventy Five only) as on 30.09.2023along with future interest payable from 01.10.2023.
3.	Date on which debt was due	As the account of the Corporate Debtor was declared Non-Performing Assets ('NPA') on 30.09.2014 and on which date, the debt became due. Therefore, the Applicant herein issued with a demand notice bearing Ref. No.IDBI/CBG-II/ GINCPL/14-15/677 dated
		14.11.2014, copy of which was also issued on the Corporate Debtor. Not only this, the personal guarantees of the Respondent herein were also invoked by the Applicant vide Guarantee Invocation Notice bearing Ref. No.IDBI/ND/CBGII/GINCPL/14-15/761dated 08.12.2014, thereby calling upon the Respondent herein to pay the amount outstanding against the Corporate Debtor. The true copies of the above notice dated 30.09.2014 is filed herewith as **Annexure A-2** and notice dated 08.12.2014 along with postal receipts are filed herewith as **and A-3 Colly**. Demand Notice dated 06.01.2023 was issued by the Applicant to the Personal Guarantor under Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 and in the format prescribed in Form B of the said Rules, calling upon the Personal Guarantor to pay forthwith the defaulted amount. The Demand Notice was duly served on the Personal Guarantor, which is evident from the Tracking report procured from internet. True copy of the Demand Notice dated 06.01.2023, postal receipts and tracking are filed herewith as **Annexure A-4 Colly**.
4.	Date on which default occurred.	29.08.2014 the corporate debtor failed to maintain the financial discipline and make payment of the amount as was due.

5.	Nature of debt	The Corporate Debtor from time to time approached the Applicant for sanction of various facilities, which was duly secured by personal guarantee of the Respondent herein, the details of which are as under: (i) Upon the request of the Corporate Debtor, the Applicant, then having its branch office at Videocon Tower, New Delhi vide its sanction bearing Ref. No. IDBI/SME/36/GINCPL dated 24.06.2009 sanctioned a financial assistance of Rs.41 Crores (Rupees Forty One Crores only) comprising of Cash Credit Limit of Rs.2 Crores (Rupees Two Crores only); Term Loan of Rs.35 Crores (Rupees Thirty Five Crores only) and Bank Guarantee of Rs.4 Crores (Rupees Four Crores only). In order to secure the said limit, the Corporate Debtor executed Loan-cum- Hypothecation Agreement dated 26.06.2009. However, at the relevant time, the guarantee of the Respondent herein was not offered. The true copies of the sanction letters and Loan cum Hypothecation Agreement are filed herewith as **Annexure A-5& A-6**. (ii) Upon further request of the Corporate Debtor, the Applicant vide its sanction letter bearing Ref.No.IDBI/SME/150/ GINCPL dated 24.02.2010, sanctioned credit facilities of Rs.50 Crores (Rupees Fifty Crores only) comprising of existing Term Loan of Rs.35 Crores, Cash Credit Limit of Rs. 2 Crores and Bank Guarantee Limit of Rs.1 Crore and Term Loan of Rs.12 Crores (Rupees Twelve Crores only). In order to secure the Existing Limit of Rs.38 Crores, the Corporate Debtor executed Loan-cum-Hypothecation Agreement dated 25.02.2010 and in order to secure the fresh Term Loan of Rs. 12 Crores, the Corporate Debtor also executed Loan-cum-Hypothecation Agreement dated 25.02.2010. In order to secure the entire credit facilities of Rs.50 Crores, the Respondent herein executed Guarantee Agreement dated 09.03.2010 in favour of the Applicant. The true copies of the sanction letter, Loan-cum-Hypothecation Agreements and

		Guarantee Agreement are filed herewith as **Annexure A-7 to A-10**. (iii) That the Corporate Debtor further requested the Financial Creditor for review of the credit facilities being availed by it from the Financial Creditor vide its Sanction Letter bearing Ref. No. IDBI / SME / 547 / GINCPL dated 05.07.2012, renewed/reviewed the existing credit facilities in all aggregating to Rs.36.74 Crores, which was duly accepted by the Corporate Debtors and the guarantors. The true copy of the said Sanction Letter is filed herewith as **Annexure A-11**.
		(iv) Upon further request of the Corporate Debtor, the Applicant vide its sanction letter bearing Ref.No.IDBI/MSE/GINCPL/567 dated 28.12.2012, sanctioned credit facilities of Rs.6.70 Crores (Rupees Six Crores Seventy Lacs only) comprising of Capex/TCBG Limit of Rs.5 Crores and LER Limit of Rs.1.70 Crores. In order to secure the said limit, the Corporate Debtor executed Loan Agreement dated 03.01.2013. In order to secure the said limits, the Respondent herein executed Guarantee Agreement dated 03.01.2013 in favour of the Applicant. The true copies of the sanction letter, Loan Agreement, Deed of Hypothecation and Guarantee Agreement are filed herewith as **Annexure A-12 to A-15**. (v) It is submitted that the Corporate Debtor confirmed the balance in its accounts i.e. Term Loan Account-I to be Rs.29,19,78,488.25, Term Loan Account-II to be Rs.10,07,89,461.00 and Cash Credit Account to be Rs.4,46,89,914.00 with interest accounted upto 31.03.2016 and executed Acknowledgement of Debt and Confirmation of Security dated 01.09.2016 in favour of the Financial Creditor. The said acknowledgment of debt was also signed by all the guarantors including the Respondent herein. That by virtue of the said Acknowledgement of Debt, the Respondent herein acknowledged the said outstanding debt and admitted his liability to pay the amount to the

		Financial Creditor herein. The true copy of the said Acknowledge of Debt and Confirmation of Security is filed herewith as **Annexure A-16**. (vi) It is submitted that the Financial Creditor had been receiving the amount in the loan accounts of the Corporate Debtor and the Corporate Debtor lastly received the amount of Rs.11,58,000.00 in account No. 26467320000019 on 19.08.2022 Rs.11.69,952.00 in account No.041378000003100 on 24.08.2022, certified copies of which are filed as Annexure A-22 and A-23 hereto.
6.	Secured debt including particulars of security held, the date of its creation, its estimated value as per the creditor (as applicable)	No security was furnished by the Personal Guarantor except for Personal Guarantee executed on26.06.2009 and 25.10.2010 as well as 03.01.2013 in favour of the Financial Creditor to secure the liability of the Corporate Debtor is respect of the Credit Facilities of Rs.56.70 Crores sanctioned and availed by the Corporate Debtor. The liability of the said Respondent herein is joint, several and co-extensive with that of the Corporate Debtor. However, The Corporate Debtor created hypothecation of the assets as under: (i) Entire current assets comprising of entire stock of raw materials, finished goods, semi-finished goods, consumable store and spares and such other movable including book debts, bills whether documentary or clean, outstanding monies receivables, (both present and future); (ii) Entire movable fixed assets including without limitation all movable assets including plant machinery (installed/to be installed) together with its accessories, electrical and other installations, computer hardware, computer software, electronics spares machinery spares, tools and accessories (both present and future). (iii) Equitable mortgage with respect to properties belonging to Corporate Debtor.
7.	Unsecured debt (as applicable)	Not Applicable

8.	Details of retention of title arrangements (if any) in respect of goods to which the debt refers (attach a copy)	Not Applicable
9.	Details of any mutual credit, mutual dealings between the guarantor and the creditor, which may be set-off against the claim (attach proof)	Not Applicable
10.	Particulars of an order of a court, tribunal or arbitral panel adjudicating on the default, if any (attach a copy of the order)	No order as of now against the Respondent herein. However, the Corporate Debtor was admitted by NCLT New Delhi Bench vide its order dated 21.10.2022 (received by the IRP on 02.11.2022) for Corporate Insolvency Resolution Process (CIRP) under IBC, on the petition U/s 7 of IBC filed by one of the Financial Creditors namely "Bank of Baroda" vide petition No. IB-24(PB)-2022.That Sh. Sanjay Garg has been appointed as Interim Resolution Professional. The Corporate Debtor is under CIRP Process. An Original Application was filed by the Financial Creditor before the Hon'ble DRT-II, New Delhi which is bearing OA No. 848/2017 for recovery of Rs.50,35,05,560.38 (Rupees Fifty Crores Thirty-Five Lacs Five Thousand Five Hundred Sixty and Paise Thirty Eight only) filed against the Corporate Debtor including Personal Guarantors and the same is pending before the DRT. The true copy of the above order passed by NCLT is filed herewith as **Annexure A-17**.
11.	Record of default with the information utility, if any (attach a copy)	The record of default with the information utility is available on National E-Governance Service Limited dated 29.07.2014 vide Unique Debt Identifier No.AABCI8842G-264673200000028 submitted by the Financial Creditor. True Copy of the Record of default is filed herewith as **Annexure A-18.**

12.	Details of succession certificate, or probate of a will, or letter of administration, or court decree (as may be applicable). Under the Indian Succession Act, 1925 (10 of 1925) (attach a copy)	Not Applicable
13.	Provision of law, contract or other document under which debt has become due (attach a copy)	(i) Sanction bearing Ref. No. IDBI/SME/ 36/GINCPL dated 24.06.2009 for Rs. 41 Crores. (ii) Loan-cum- Hypothecation Agreement dated 26.06.2009 for Rs. 41 Crores; (iii) Sanction letter bearing Ref. No.IDBI/SME/ GINCPL/ 150 dated 24.02.2010 for Rs. 50 Crores. (iv) Loan-cum-Hypothecation Agreement dated 25.02.2010 for existing facility of Rs. 38 Crores. (v) Loan-cum-Hypothecation Agreement dated 25.02.2010 for fresh Term Loan of Rs. 12 Crores (vi) Guarantee Agreement dated 09.03.2010 for Rs. 50 Crores. (vii) Sanction Letter bearing Ref. No. IDBI / SME / 547 / GINCPL dated 05.07.2012 for Rs.36.74 Crores. (viii) Sanction Letter bearing Ref. No.IDBI/MSE/GINCPL/ 567 dated 28.12.2012, for Rs.6.70 Crores. (ix) Loan Agreement dated 03.01.2013 for Rs.6.70 Crores. (x) Deed of Hypothecation dated 03.01.2013 for Rs.6.70 Crores. (xi) Guarantee Agreement dated 03.01.2013 for Rs.6.70 Crores. As per article No. 22 of Guarantee Agreements dated 09.03.2010 &Article 21 of the Guarantee Agreement dated 03.01.2013, the Guarantee shall be continue one and shall remain in full force and effect till such time the Borrower(s) repays in full the Loan together with all interest, liquidated damages, costs, charges and all other monies that may from time to time become due and payable and remain unpaid to the Bank under this Agreement.

		As per section 95 of the Insolvency Bankruptcy Code, 2016 (Amendment 2019), any creditor whose debts are outstanding from the principal borrower can proceed against the personal guarantor to recover the outstanding debt amount under the Insolvency Bankruptcy Code, 2016. Section 126 of the Indian Contract Act defines a contract of guarantees a contract to perform the promise or discharge the liability of a third person in case of his default. Under Section 128 of Indian Contract Act, the liability of surety is co-extensive that of the principal debtor that means the surety is liable to the same extend as the principal debtor. The debt is also due as no repayment has been provided by the Personal Guarantor pursuant to the Invocation cum Demand Notice and the IBC Demand Notice. The Default Amount as demanded under the IBC Demand Notice has not been repaid by the Personal Guarantor within fourteen days of receipt of the IBC Demand Notice.
14.	A statement of the bank account where deposits are made or credits received normally by the creditor in respect of the debt of the corporate debtor, from the date on which the debt was incurred.	The Statements of Accounts relating to all the facilities allowed by the Financial Creditor to the Corporate Debtor are filed herewith as **Annexure A-19 to A-22**. The Certificate relating to Bankers Book of Evidence is annexed as **Annexure A-23**.
15.	List of documents attached to this application in order to prove the existence of debts and the amount in default	(i) Sanction bearing Ref. No. IDBI/SME/ 36/GINCPL dated 24.06.2009 for Rs. 41 Crores. (ii) Loan-cum- Hypothecation Agreement dated 26.06.2009 for Rs. 41 Crores; (iii) sanction letter bearing Ref. No.IDBI/SME/ GINCPL/ 150 dated 24.02.2010 for Rs. 50 Crores. (iv) Loan-cum-Hypothecation Agreement dated 25.02.2010 for existing facility of Rs. 38 Crores.

		(v) Loan-cum-Hypothecation Agreement dated 25.02.2010 for fresh Term Loan of Rs. 12 Crores (vi) Guarantee Agreement dated 09.03.2010 for Rs. 50 Crores. (xii) Sanction Letter bearing Ref. No. IDBI / SME / 547 / GINCPL dated 05.07.2012 for Rs.36.74 Crores. (vii) Sanction Letter bearing Ref. No.IDBI/MSE/ GINCPL/ 567 DATED 28.12.2012, for Rs.6.70 Croers. (viii) Loan Agreement dated 03.01.2013 for Rs.6.70 Crores. (ix) Deed of Hypothecation dated 03.01.2012. (x) Guarantee Agreement dated 03.01.2013 for Rs.6.70 Crores.
		(xi) Recall Notice Ref No IDBI/CBG-II/GINCPL/14-15 dated 14.11.2014. (xii) Notice invoking Personal Guarantee bearing Ref No.IDBI/ND/CBG II/GINCPL/ 14-15/761 dated 08.12.2014 (xiii) Insolvency Demand Notice dated 06.01.2023 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019. (xiv) Record of Default as submitted to and held by the National e-Governance Services Limited
16.	Statement by the creditor in respect of excluded debts	IJai Kishan Teotia, Insolvency Professional, on behalf of IDBI Bank state that the debt(s) for which the insolvency resolution process application is filed does not include any: - (i) liability to pay fine imposed by a court or tribunal; (ii) liable to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation; (iii) liability to pay maintenance to any person under any law for the rime being in force; (iv) liability in relation to a student loan; (v) any other debt prescribed under section 79(15)(e) of the Code.

17.	If you are a secured creditor, tick the applicable box in the right column relating to forfeiture of right to enforce security during the period of the repayment plan, which will determine the voting share as per section 110 of the Code.	The Applicant is not a Secured Creditor of the Respondent herein therefore, the said point is not applicable. ☐ I agree to forfeit my right to enforce my security during the period of the repayment plan. I do not agree to forfeit my right to enforce my security during the period of the repayment plan.

4. Particulars of and declaration by Insolvency Professional is set out herein below: -

3. In terms of the order dated 14.02.2024 we appointed, Mr. Jai Kishan Teotia as RP qua the Personal Guarantor. The RP discharged his functions in terms of the provisions of Section 99 of IBC, 2016 and filed his report by way of IA-1488/2024.

4. As can be seen from the report enclosed as Annexure 1 to the Application, in Part-A thereof, the Applicant has given the details of the principal borrower, and that of Respondent (PG) and the documents enclosed with the application. In clause 5 of the report, the RP has mentioned that his communication with the PG could not fetch any response from him. In clause 6 of the report, the RP has referred to his responsibility and the manner in which he performed the same. In said report the RP has also given the details of the deed of guarantee etc. The clause 1 to 6 of the report reads thus:

1) Brief Facts

Great India Nautanki Company Pvt Limited (hereafter referred to as 'Corporate Debtor') is an entity engaged in the business of entertainment activities on leased premises and Mr. Anu Appiah being R-1 is the Personal Guarantor of the Corporate Debtor at the time of availing the loan facility and has also given his Personal Guarantee in the financial facility availed by the Corporate Debtor. The CD was admitted into CIRP vide order dated 21.10.2022.

Pursuant to discussion between the parties based on the representations made, information provided, documents submitted and assurances given regarding timely repayment of all money due along with agreed interest by Corporate Debtor and its guarantors, Financial Creditor being applicant here agreed to sanction and disburse loan/financial facilities.

Mr. Anu Appiah being R-1 has stood as Personal Guarantor for the financial facilities provided to the Corporate Debtor and further executed a Deed of Guarantee and other relevant documents thereby undertaking to guarantee the repayment of the amount payable by the Borrower/Corporate Debtor and the

due performance of the terms and conditions of the Loan Agreement in the capacity of Guarantor.

2) The CIRP (Corporate Insolvency Resolution Process)

That the CIRP of the Corporate Debtor namely Great India Nautanki Company Pvt Limited was initiated on 21.10.2022 on an application filed by the financial creditor namely Bank of Baroda in IB No 24(PB)/2022.

The copy of the order dated 21.10.2022 of this Hon'ble Tribunal is annexed **at (Page No 168-180 of the Application)**

3) The PIRP (Personal Insolvency Resolution Process)

The application to initiate Personal Insolvency against the guarantor named as Mr. Anu Appiah was filed U/s 95 of the IB Code, 2016 by the IDBI Bank Ltd on 19.12.2023 and was allotted case no CP (IB) No 67/ND/2024. The Hon'ble Tribunal appointed Mr. Jai Kishan Teotia as RP vide order dated 14.02.2024 (Order uploaded to the RP on 26.02.2024).

The copy of the order dated 14.02.2024 of the Hon'ble Tribunal is annexed and is marked as **Annexure-V. (Page No. 22-29 of the RP report)**

4) ANALYSIS OF DOCUMENTS FILED WITH THE APPLICATION

The RP has analysed the following documents enclosed with the application in detail: -

ANNEXURE A- 1 of the application:

Original Authorization Letter dated 08.08.2023 in favour of Shri Jai Kishan Teotia, Insolvency Professional.

ANNEXURE A-2 of the application:

True copy of demand notice bearing Ref. No.IDBI/CBG-II/ GINCPL/14-15/677 dated 14.11.2014 issued by the Applicant to Corporate Debtor..

ANNEXURE A-3 (COLLY) of the application:

True copies of Guarantee Invocation Notice bearing Ref. No. IDBI/ND/CBGII/GINCPL/14-15/ 761 dated 08.12.2014 along with postal receipts.

ANNEXURE A- 4 (COLLY) of the application:

True copy of Demand Notice dated 06.01.2023 issued by the Applicant to the Personal Guarantor under Rule 7 of the Insolvency and Bankruptcy Rules, 2019.

ANNEXURE A-5 of the application:

True copy of sanction bearing Ref. No. IDBI/SME/36/GINCPL dated 24.06.2009 sanctioned a financial assistance of Rs.41 Cr.

ANNEXURE A-6 of the application:

True copy of Loan-cum- Hypothecation Agreement dated 26.06.2009

ANNEXURE A-7 of the application:

True copy of sanction letter bearing Ref. No. IDBI/SME/150/GINCPL dated 24.02.2010, sanctioned credit facilities of Rs.50 Cr

ANNEXURE A-8 of the application:

True copy of Loan-cum-Hypothecation Agreement dated 25.02.2010 for Rs. 38 Cr

ANNEXURE A-9 of the application:

True copy of Loan-cum-Hypothecation Agreement dated 25.02.2010 for Rs.12 Cr.

ANNEXURE A-10 of the application:

True copy of Guarantee Agreement dated 09.03.2010 executed by Respondent.

TRUE COPY

ANNEXURE- 11 of the application:

True copy of sanction letter bearing Ref. No. IDBI/SME / 547 / GINCPL dated 05.07.2012.

ANNEXURE A-12 of the application:

True copy of sanction letter bearing Ref. No. IDBI/MSE/GINCPL/ 567 dated 28.12.2012, sanctioned credit facilities of Rs.6.70 Cr.

ANNEXURE A-13 of the application:

True copy of Loan Agreement dated 03.01.2013.

ANNEXURE A-14 of the application:

True copy of Deed of Hypothecation dated 03.01.2013.

ANNEXURE A- 15 of the application:

True copy of Guarantee Agreement dated 03.01.2013 executed by Respondent herein.

ANNEXURE A-16 of the application:

True copy of Acknowledgement of Debt and Confirmation of Security dated 01.09.2016

ANNEXURE A- 17 of the application:

True copy of order dated 21.10.2022 passed by NCLT New Delhi Bench.

ANNEXURE A- 18 of the application:

True copy of Record of Default.

ANNEXURE A-19 of the application:

Certified copy of Statement of Account pertaining to Loan Account No. 264655100000143.

ANNEXURE A- 20 of the application:

Certified copy of Statement of Account pertaining to Loan Account No. 264673200000028.

ANNEXURE A-21 of the application:

Certified copy of Statement of Account pertaining to Loan Account No. 264673200000019.

ANNEXURE A- 22 of the application:

Certified copy of Statement of Account pertaining to Loan Account No. 041377800000100.

TRUE COPY

ANNEXURE A-23 of the application:

Original Certificate under the Bankers Books Evidence Act dated 19.10.2023 with typed copy.

ANNEXURE A-24 of the application:

True copy of Certificate of Registration of IP.

ANNEXURE A-25 of the application:

True copy of the Company Master Data.

5) EXAMINATION OF THE REPLY FILED BY THE GUARANTOR

The RP shared the copy of application vide mail dated 28.02.2024 to the respondent no 1 with the request to offer his comment/ objection with reminder mail on 05.03.2024 but no revert could be received till date, hence Report is being concluded based on material on record.

6) THE ROLE OF THE RP AS PER SEC 99 OF THE IB CODE, 2016

1) As per section 99 (6) of the IB Code, 2016, the RP shall examine the application and ascertain that:

   a) *The application satisfies the requirements set out in sections 94 or 95;*

   b) *The applicant has provided information and given explanation sought by the resolution professional under*

sub-section (4).

2) As per section 99(3) of the IB Code, 2016-

> *"Where the debt for which an application has been filed by a creditor is registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt."*

TRUE COPY

After analysis of the above, following facts are revealed:

LOAN SANCTION:

a) That the application is complete in all respect and contains all relevant evidences as per provisions of the IB Code,2016.

b) The first loan was sanctioned on 24.06.2009 giving a financial assistance of Rs 41.00 Cr. The loan and security documents were executed on 26.06.2009. There was no guarantee to this loan and the R-1 is not concerned with this credit facility.

The copy of sanction letter dated 24.06.2009 **(Page No 41-51 of the application)**

c) Again on the request of the CD, the loan was sanctioned on 24.02.2010 for credit facilities of Rs 50.00 Cr. The loan and security documents were executed on 25.02.2010 and the respondent guaranteed such loan by executing guarantee agreement on 09.03.2010 in favour of R-2.

The copy of sanction letter dated 24.02.2010 **(Page No 67-74 of the application)**

The copy of guarantee deed dated 09.03.2010 is annexed **(Page No 101-107 of the application)**

d) Upon further request of the CD, the credit facilities were renewed vide sanction letter dated 05.07.2012 showing the outstanding balance of Rs 36.74 Cr and the same was duly acknowledged by the CD and the R-1.

The copy of renewed sanction letter dated 05.07.2012 **(Page No 108-113 of the application)**

e) Upon further request of the CD, the credit facilities were renewed vide sanction letter dated 28.12.2012 sanctioning additional credit facilities of Rs 6.70 Cr. The CD executed loan agreement on 03.01.2013 and R-1 also executed guarantee agreement on 03.01.2013.

The copy of sanction letter dated 28.12.2012 **(Page No 114-125 of the application)**

The copy of guarantee deed dated 03.01.2013 is annexed **(Page No 158-164 of the application)**

NPA DATE

f) Due to non-payment of the credit facilities, the account of the CD was declared as NPA on 30.09.2014 as per RBI guidelines.

SERVICE OF NOTICE

g) The R-2 issued a demand notice on 14.11.2014 to the CD **(Page No 18-29 of the application)** and also invoked the personal guarantee of the R-1 by issuing guarantee

invocation notice on 08.12.2014. **(Page No 30-35 of the application).**

h) The CD confirmed the account balance in its account including interest up to 31.03.2016 as under:

S. No	Particulars	Amount (Rs in Cr)
a)	Term Loan I	29.20
b)	Term Loan II	10.08
c)	CC Limit	4.47
	TOTAL	**43.75**

The above debt was acknowledged by the CD and the R-1 on 01.09.2016. **(Page No 165-167 of the application).**

i) The R-2 filed application before the Hon'ble DRT-I, New Delhi bearing OA No 848/2017 for recovery of Rs 50.35 Cr on 01.09.2017 against the CD and the R-1 and the same is pending before the DRT.

j) The R-2 received the amount in loan account of the CD for Rs 11.58 Lac on 19.08.2022 in A/c no 26467320000019 and Rs 11.70 Lac on 24.08.2022 in A/c no 041378000003100. **(Page no 211 & 214 of the application.)**

k) Demand notice was issued on 06.01.2023 by the R-2 to the R-1 under Rule 7 of the (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to the Corporate Debtors) Rules, 2019 and the same was duly delivered to the R-1. **(Page No 36-40 of the application along with speed post and tracking report)**

l) Accordingly, there is an outstanding amount of Rs 111.42 Cr approx. as on 30.09.2023 with further interest and liability till loan is repaid.

m) The record of default with the Information Utility is available on National E-Governance Services Ltd dated 29.07.2014. **(Annexure A-18 Page no 181-182 of the application)**

n) The personal guarantor being R-1 failed to repay the loan even after such demand notice and recall notice.

o) It is pertinent to mention that guarantee signed by the R-1 is a continuing guarantee in terms of Section 129 of Indian Contract Act, 1872 and also as per Article 21 of the Guarantee Agreements dated 09.03.2010 & Article 22 of the Guarantee Agreements dated 03.01.2013 thus last date of demand is the date of default in respect of financial liability arising out of Deed of Guarantee. The provisions of Sec 126 & 127 of the Indian Contract Act also testify the claim of R-2.

p) The R-2 has also enclosed the account statement relating to all facilities to the CD at **Annexure A-19 to A-22 (Page No 183-215 of the application).** The certificate of Bankers Book of evidence is also enclosed at **Annexure A-23 (Page No 216-216A of the application).**

5. Having analysed the default, the RP has recommended the admission of the application. The Clause 7 and 8 of the report (ibid) reads thus:

7) ANALYSIS OF THE DEFAULT

a) Default firstly occurred when the Corporate Debtor was not able to maintain the financial discipline and made multiple defaults in the repayment schedule as per the loan agreements and the financial creditor being R-2 was constrained to send a loan recall notice on 14.11.2014 and entire loan amount sanctioned to corporate debtor was recalled by financial creditor, despite service of the same, the corporate debtor and the R-2 failed to make the payment of the outstanding amount.

b) That since the Corporate Debtor defaulted in adhering to the repayment schedule, the personal guarantee was also invoked by serving notice on 08.12.2014 which constituted an event of default of the said loan agreements.

c) As guarantee was continuing guarantee in terms of section 129 of Indian Contract Act, 1872 and also as per terms of Guarantee agreement. **(Section 129 of Indian Contract Act, 1872).**

d) The default continued to occur when debt and confirmation of security was executed on 01.09.2016.

e) The demand continued to occur when application for recovery of Rs 50.35 Cr was filed to the DRT-I on 01.09.2017.

f) The default continued to occur when last partial payment to the loan account was made on 19.08.2022 for Rs 11.58 Lac and on 24.08.2022 a sum of Rs 11.70 Lac.

g) The debt was continued in default when the CIRP was initiated against CD vide order dated 21.10.2022.

h) The debt was continued in default when demand notice (Form B) dated **06.01.2023** was issued to the guarantor vide which the financial creditor demanded the financial debt arising out of the deed of guarantee.

- Notice was sent through speed post on 06.01.2023. which was served.

i) The default continued to occur when the respondent failed to make the payment of the outstanding amount on 20.01.2023 **i.e., 14 days** after the acknowledgement of the said demand notices.

j) Default is still persisting as an amount of Rs. 111.42 Cr as on 30.09.2023 is still due and has not been paid by the corporate debtor as well as the personal guarantor.

1. Analysis of the Reply filed by the Guarantor

The guarantor has chosen not to object the application even after supplying him the copy of application on 28.02.2024 with further reminder on 05.03.2024.

8) THE RECOMMENDATION OF THE RP BEFORE THE HON'BLE TRIBUNAL

Based upon the above analysis and considering the legal provisions, the RP presents his final report to the Hon'ble Adjudicating Authority as under:

i. That RP has obtained all the information and explanation which to the best of his knowledge and belief were necessary to frame his opinion for the recommendations for acceptance or rejection of the application by the Hon'ble Adjudicating Authority.

ii. On examination of the application and as submitted above, the debt is proved and complies the requirements set out as per Sec 95 of the IB Code, 2016 because of following reasons:

a) That the debt is proved

b) The debt is owed by the CD of which personal guarantee is executed by the guarantor i.e., Anu Appiah and the debt is duly acknowledged by the CD and the Guarantor;

c) That the guarantor has failed to repay the debt within 14 days of the service of notice of demand;

d) That the details of documents and evidences in support of the claim by the applicant has been enclosed in the application;

iii. Based upon the above analysis and as per section 99(1) of the IB Code, 2016, the RP hereby recommends for the approval of the application filed by the IDBI Bank Ltd u/s 95 of the IB Code subject to final amount of recovery from the Guarantor which is to be adjudicated by the Hon'ble Tribunal.

iv. Accordingly, the Hon'ble Adjudicating Authority is prayed to order to initiate Insolvency against the Personal Guarantor as per section 100 of the IB Code as parameters set out as per section 99 of the IB Code are complied with.

Submitted for Kind Consideration of the Hon'ble Tribunal.

6. Despite service of notice, no one appeared on behalf of the Personal Guarantor, thus in terms of the order dated 22.04.2024, we could set the proceedings as ex parte.

7. As can be seen from Section 95(4) of IBC, 2016, an application under sub-section (1) shall be accompanied with the details and documents relating to the debt owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of the application, the failure by the debtor to pay the debt within a period of 14 days of the service of demand notice and relevant evidence of such default or non-repayment of debt. As can be seen from clause 7 of the report of RP, he has analysed the factual position and the evidence to buttress the liability of the

Respondent to repay the amount of debt, the failures on his part to repay the same. The deed of guarantee, in terms of which the Respondent is liable to repay the amount of debt is enclosed as Annexure 15 to the petition filed under Section 95 of IBC, 2016. The clause 21 of the deed reads thus:

> 21. This Guarantee shall be a continuing one and shall remain in full force and effect till such time the Borrower repays in full the Loan together with all interest, liquidated damages, costs, charges and all other monies including any increase as a result of devaluation/revaluation/fluctuation in the rates of exchange of foreign currencies involved that may from time to time become due and payable and remain unpaid to the Lender under the Loan Agreement.

8. Besides, while performing his duties under Section 99 (2) of IBC, 2016, the RP is needed to require the debtor to prove repayment of the debt claimed as unpaid by the Creditor by furnishing evidence of electronic transfer of unpaid amount from the bank account of the debtor; evidence of encashment of a cheque issued by the creditor and signed acknowledgement by the creditor accepting receipt of dues. Section 99(2) of IBC, 2016 reads thus:

> ***"99. Submission of report by resolution professional. –***
>
> *(2) Where the application has been filed under section 95, the resolution professional may require the debtor to prove repayment of the debt claimed as unpaid by the creditor by furnishing -*
>
> *(a) evidence of electronic transfer of the unpaid amount from the bank account of the debtor;*
>
> *(b) evidence of encashment of a cheque issued by the debtor; or*
>
> *(c) a signed acknowledgment by the creditor accepting receipt of dues."*

9. In the report filed by him, the RP has stated that despite efforts made by him, the Personal Guarantor did not give any response. In clause 7 of the report, the RP could analyse that the PG defaulted in repayment of amount.

10. As can be seen from Section 100 of IBC, 2016, this Adjudicating Authority is expected to pass an order within 14 days from date of filing of report under Section 99 of IBC, 2016, either admitting or rejecting the application. In the present case since no one entered appearance on behalf of the Personal Guarantor, to adduce any material contrary to the conclusion arrived by the RP, in his report (ibid), we are left with no option, but to accept the recommendation of the RP and **admit the present application**. Ordered accordingly.

11. It goes without saying that during the IRP, (Insolvency Resolution Process) the RP shall give an opportunity to Personal Guarantor to submit her repayment plan. Nevertheless, before that the RP shall also carry the exercise in terms of the provisions of Section 100(2) of IBC 2016. For such purpose it would be open to the Respondents to appear before RP within 1 week from today.

12. There is no request by the RP for the purpose of conducting negotiation between the debtor and the creditors. As a sequel of admission of the present application, a moratorium shall commence in relation to all the debts of the Respondent. 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 debtors 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 period of 180 days.

13. A public notice shall be issued by the RP within seven days of passing of this order, inviting claim 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 notice shall be – (a) published in two National Newspapers, one in English and other one Vernacular Language, 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.

14. We are sanguine that the RP shall discharge all such duties as are incumbent upon him in terms of the provisions of Sections 102, 103, 104, 105, 106 , 107, 108, 112 and 113 of IBC, 2016, with the due deference of 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 discharge of his duties as RP.

15. A copy of this order along with the copy of the application as also the report of Resolution Professional shall be provided to the Creditor (Applicant),

Personal Guarantor (Respondent) and IBBI, by the Registry/Court Master within 7 days from today by email.

16. It goes without saying that whatever amount is paid to the creditor by the principal borrower (corporate debtor) and other guarantors would be deducted from the liability of the Respondent to repay.

17. **IA-1488/2024 is disposed of accordingly. To come up for consideration of Status Report to be filed by RP, within 8 weeks.**

Sd/-	**Sd/-**
(SUBRATA KUMAR DASH)	**(ASHOK KUMAR BHARDWAJ)**
MEMBER (T)	**MEMBER (J)**

Satya Prakash/Gaurav Vashisht