

**IN THE NATIONAL COMPANY LAW TRIBUNAL,**  
**PRAYAGRAJ**

**IA NO.438/2022IN**  
**CP (IB) NO.51/ALD/2022**

*Under Section 95, 96, 99 & 100 of the Insolvency  
and Bankruptcy Code, 2016 r/w Rule 7(2) of the  
Insolvency and Bankruptcy  
(Application to Adjudicating Authority for Insolvency  
Resolution Process for Personal Guarantor to the  
Corporate Debtors) Rules, 2019.*

**IN THE MATTER OF**

State Bank of India  
Having its office at:  
Stressed Assets Management Branch-I,  
12<sup>th</sup> Floor, Jawahar Vyapar Bhawan,  
STC Building, 1, Tolstoy Marg,  
Janpath, New Delhi - 110001

.... Petitioner /Financial Creditor

**VERSUS**

Shri S. Visvanathan  
S/o Late Shri K.S. Iyer  
R/o A-139, Block-A,  
Anand Vihar, New Delhi – 110092

.... Respondent/Personal Guarantor

**AND**

Mr. Manish Agarwal  
R/o 707, Saket, Opp. Rohtash Sweets,  
Meerut, Uttar Pradesh - 250001

.... Applicant/ Resolution Professional

**Order Pronounced on: 25.04.2024**

**SH. PRAVEEN GUPTA,  
HON'BLE (MEMBER JUDICIAL)**

**SH. ASHISH VERMA,  
HON'BLE MEMBER (TECHNICAL)**

Sh. Karan Kohli with  
Sh. Abhishek Anand, Advs.

: *For the RP*

**ORDER**

1. This is an application filed by State Bank of India under Section 95 of Insolvency and Bankruptcy Code (*hereinafter referred to as the Code*) r /w Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019. The prayer made is to initiate the Insolvency Resolution Process against the Respondent/ Guarantor Sh. S. Visvanathan, who stood as Personal Guarantor to the various credit facilities availed by the Corporate Debtor namely M/s K K Milk Fresh India Limited for total outstanding debt of Rs.159,99,19,229.90/-.
2. On presentation of the application, this Tribunal vide order dated 07.09.2022 appointed the Resolution Professional Mr. Manish Agarwal, to file report

under Section 99 of the Code, which has been filed through IA No.438/2022 in CP (IB) No.51/ALD/2022.

- 3.** The applicant/ State Bank of India in its application under Section 95 has submitted that the applicant/ financial creditor first sanctioned financial assistance to the extent of Rs.50 Crores vide Sanction Letter dated 15.03.2013 to the Corporate Debtor M/s K K Milk Fresh India Limited and Rs.45 Crores was disbursed. This was reviewed/ enhanced from time to time by executing loan and security documents under consortium arrangement and the last loan sanction was on 16.09.2015 of Rs.75 crores. Accordingly, the loan and security documents were executed on 08.07.2014 and on the same date the deed of guarantee were last executed by the guarantor. The Corporate Debtor failed to maintain financial discipline and the account was classified as Non-Performing Assets (NPA).
- 4.** The applicant bank issued a legal Demand Notice dated 10.10.2017 to the Principal Borrower

alongwith Respondent/ Guarantor calling upon them to repay the outstanding amount about Rs.1,11,89,59,417.52 crores as on 30.09.2017 payable by the Principal Borrowers and Guarantors. However, despite receipt of the said notice, the Respondents failed to pay the outstanding amount.

5. It is further submitted that application under Section 9 of the IB Code filed by Smt. Anuradha Devi for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor M/s K K Milk Fresh India Limited was admitted by the Hon'ble NCLT on 24.09.2019, and the same is pending consideration under liquidation before the Adjudicating Authority.
6. Further by virtue of deed of guarantee duly executed by Respondent/ Guarantor Mr. S. Visvanathan in order to secure the facility sanctioned and granted to the Corporate Debtor M/s K K Milk Fresh India Limited, the guarantor Mr. S. Visvanathan is jointly and severally liable for the dues of the Corporate Debtor.

7. It is further submitted that the said guarantee was invoked by the State Bank of India against the Personal Guarantor/ Respondent vide issuance of Demand Notice dated 28.10.2020 under clause (b) of Section 95(4) issued in Form-B, under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019.
8. Since the debt still stands due, the Financial Creditor has filed the present petition u/s 95 of the Code r/w rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019.
9. Vide order dated 07.09.2022, this bench had appointed Mr. Manish Agarwal, as Resolution Professional having Registration No.IBBI/IPA-002/IP-N00223/2017-2018/10904 having his address at 707, Saket, Opps. Rohtash Sweets Meerut – 250001, Uttar Pradesh to examine the petition and file his report at least two weeks before the next date of hearing.

**10.** The Resolution Professional has filed an Interlocutory Application being IA No.438 of 2022 for submitting report u/s 99(1) of the Code on record. The same was taken on record and the said Interlocutory Application is pending adjudication.

**11.** The Respondent has neither appeared nor has filed and placed on record Affidavit in Reply to the main Company Petition. However, vide our order dated 16.01.2024, it was observed as under :-

*“2. As per the previous order dated 21st December, 2023, we have recorded vide para no.2 that there was no representation on behalf of the Respondent/Personal Guarantor and the last opportunity of two weeks was granted to the Respondent/Personal Guarantor to file reply, if any, with advance copy to be supplied to the other side.*

*3. There is no representation today, on behalf of the Respondent/Personal Guarantor, nor any reply has been filed so far.*

*4. In view of the aforesaid position, the right to file reply is struck off.”*

**12.** The RP/Applicant has further stated that it has made the following compliances in terms of Section 99 of IBC, 2016.

**COMPLIANCE OF TERMS OF SECTION 99 OF THE CODE**

<b>PROVISIONS</b>	<b>COMPLIANCES</b>
<b>Section 99 (2) of the Code:</b> Where the	In compliance of Section 99(2) of the Code, the undersigned has informed the Guarantor vide Letter dated 23.09.2022

<p>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</p>	<p>about the initiation of Corporate Insolvency Resolution Process and further directed to submit clarification/ objection if any.</p>
<p><b>Section 99 (3) of the Code:</b> 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</p>	<p>On 08.11.2022, the undersigned sent an email to State Bank of India intimating about the initiation of insolvency resolution process of the Personal Guarantor and requested to inform the undersigned in terms of Section 99(3), (4) and (5) of IBC, 2016 whether the debt due from M/s K K Milk Fresh India Limited/ Personal Guarantors in terms of Section 99(3),(4) and (5) is registered with the Information Utility i.e. National E-Governance Services Limited. That the Applicant Bank informed the undersigned informing that they are confirming whether debt is registered with the National E-Governance Services Limited (NeSL). However, no reply has been received.</p>
<p><b>Section 99(4) of the Code read with Section 99(6)(b)</b></p>	<p>The information provided by the Financial Creditor along with the Insolvency Application was exhaustive. Accordingly, the Financial Creditor has provided the information and / or given the explanation sought by the Resolution Professional.</p>

**13.** The ground(s) for admission of the present application, as

recorded in the said RP report, are reproduced in-verbatim as hereinafter :-

I, Manish Agarwal, the Resolution Professional appointed by this Hon'ble Adjudicating Authority, National Company Law Tribunal, Allahabad Bench *vide* order dated 07.09.2022 in Company (IB) Petition No.51 of 2022, hereby confirm that I have perused/examined the Insolvency Application filed by the Financial Creditor under Section 95 of the Code along with all the underlying documents and annexures and have formed the opinion to recommend the same for approval to this Hon'ble Adjudicating Authority, based on following grounds:-

- a.** The Insolvency Application has been filed in the requisite form, Form C, in terms of Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019, supported by requisite fee and documents.
- b.** The Insolvency Application satisfies the requirements set out in Section 95 of the Code.
- c.** The Personal Guarantor was duly served with demand

notice dated 09.11.2022 by the Financial Creditor for repayment of the debt owed by him to the Financial Creditor in terms of the provisions of the Code prior to filing the Insolvency Application, but the Personal Guarantor failed to repay the same.

- d.** The undersigned has also sent a communication to the Personal Guarantor, vide letter dated 20.09.2022, immediately on receipt of aforesaid order of this Hon'ble Adjudicating Authority, dated 07.09.2022, in terms of Section 99(2) of the Code, asking her to prove repayment of debt claimed as unpaid by the Financial Creditor. Undersigned has not received any response from Shri S. Visvanathan being a one of the personal guarantor.
- e.** The Insolvency Application does not relate to "*excluded debts*" as defined under Section 79(15) of the Code.
- f.** The Debtor, Personal Guarantor, is not eligible for fresh start under Chapter II of the Code.

**14.** We heard the submissions of the Applicant and perused the Report received under Section 99 of IBC, 2016 by the Applicant/RP recommending admission of the Section 95 Application and initiation of the IR process against the

Personal Guarantor. Since the right to file reply of Respondent/ Personal Guarantor is struck off, therefore, it is presumed that it has nothing to say/respond to in the matter.

**15.** The Resolution Professional has stated that the application filed by the Financial Creditor is within limitation as Hon'ble Supreme Court (in suo moto writ petition 3/2020) *vide* order dated 10.01.2022 has excluded the period from 15.03.2020 till 28.02.2022 for the purposes of limitation.

**16.** Considering the above facts and circumstances and upon perusal of the documents on record, the CP (IB) No.51/ALD/2022 filed under Section 95 of the IBC, 2016 is hereby Admitted and the Insolvency Resolution Process stands initiated against Mr. S. Visvanathan viz. the Respondent herein. We hereby direct as hereinafter:

*I. Initiate Insolvency Resolution Process against the Respondent/Personal Guarantor and moratorium in relation to all the debts is declared, from today i.e. date of admission of the application, and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on the repayment plan under Section 114 whichever is earlier as provided under Sec 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.*

II. *The Resolution Professional viz. Mr. Manish Agarwal Insolvency Resolution Professional, having Registration No.IBBI/IPA-002/IP-N00223/2017-2018/10904 having his address at 707, Saket, Opps. Rohtash Sweets Meerut – 250001, Uttar Pradesh [E-Mail: [manishfcs@gmail.com](mailto:manishfcs@gmail.com), Mobile no.9412705345] is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Allahabad Bench, inviting claims from all Creditors, within 21 days of such issue. The notice under Sub Section (1) of Section 102(2) shall include :-*

- a.** *details of the order admitting the application;*
- b.** *particulars of the resolution professional with whom the claims are to be registered; and*
- c.** *the last date for submission of claims.*

III. *The publication of notice shall be made in two newspapers, one in English and other in Vernacular,*

*which have wide circulation in the State where the Corporate Debtor and Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.*

*IV. The Resolution Professional, in exercise of the powers conferred under Section 104, shall prepare a list of creditors on the basis of:*

*a. the information disclosed in the application filed by the debtor under Sections 94 or 95, as the case may be, and*

*b. claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice. The debtor shall prepare a repayment plan under Section 105, in consultation with the Resolution Professional, containing a proposal to the Creditors for restructuring of his debts or affairs.*

*The repayment plan may authorize or require the Resolution Professional to:*

*a. carry on the debtor, business or trade on his behalf or in his name: or*

*b. realise the assets of the debtor; or*

*c. administers or dispose of any funds of the debtor.*

*The repayment plan shall include the following, namely;*

*a. justification for preparation of such repayment plan and reasons based on which the creditors may agree upon the plan;*

- b. provision for payment of fee to the Resolution Professional;*
- c. such other matters as may be specified.*
- V. *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.*
- VI. *In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons thereof. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of IBC, 2016. 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 of IBC, 2016, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of IBC, 2016.*
- VII. *The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of IBC, 2016 and submit the same to this Tribunal, 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 IBC, 2016.*

- VIII. *The Resolution Professional shall submit his periodic reports before this Tribunal, every 30 days.*
- IX. *The Applicant is directed to deposit **INR 1,00,000/- (Indian Rupees One Lakh)** to the bank account of the Resolution Professional within one week, towards his fees. This shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.*
- X. *The Registry is directed to communicate a copy of order, report and application within seven working days and upload the same on the website immediately after the pronouncement of order.*

**17. IA No.438/2022 stands disposed off accordingly.**

**18.** The main matter to come up for consideration of Status Report to be filed by RP, within 8 weeks, 3<sup>rd</sup> July, 2024.

Sd/-

**(Ashish Verma)  
Member (Technical)**

Sd/-

**(Praveen Gupta)  
Member (Judicial)**

**25<sup>th</sup> April, 2024**