

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. (IB)/20(KB)2023
IA(I.B.C)/281(KB)2024

**CORAM: 1. HON'BLE MEMBER(J), SMT. BIDISHA BANERJEE
2. HON'BLE MEMBER(T), SHRI D. ARVIND**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 19TH MARCH 2024, 10:30 A.M

IN THE MATTER OF	INDIAN BANK VS SRI TEJINDER SINGH WALIA
UNDER SECTION	SECTION 95(1)

Appearance (via video conferencing/physically)

Mr. Dripto Majumdar, Adv.] For the Resolution Professional
Mr. Patanjali Chattopadhyay, RP]

Mr. Santosh Kumar Ray, Adv.] For the Financial Creditor
Ms. Rituparna Sanyal, Adv.]
Ms. Zeba Khan, Adv.]
Ms. Muskan Saha, Adv.]

ORDER

1. Learned Counsel for the parties present.
2. None appears for the Personal Guarantor, despite repeated opportunities and calls.
3. *This CP (IB) No. 20/KB/2023 has been preferred by the Financial Creditor to seek initiation of Insolvency Regulation Process against the Respondent Personal Guarantor to Corporate Debtor Rule, 2019 ("Personal Guarantors Rules") and regulation 4(2) of IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 ("Personal Guarantors Regulations")*

4. The amount in default is Rs.42,64,70,499.94/- (Rupees Fourty Two Crore Sixty Four Lakhs Seventy Thousand Four Hundred Ninety Nine and Ninety Four Paise).
5. The application is complete as required under Section 95 read with rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019.
6. It is to be noted that Hon'ble Supreme Court in the judgment of Dilip B. Jiwrajka V/s Union of India & Ors. In WP (civil) No. 1281 of 2021 dated 09.11.2023 has upheld the Constitutional Validity of the Sections 94 to 100 and the propositions that can be culled out from the Judgments inter-alia are as follows:
 - i. No judicial adjudication is involved at the stages envisaged in Sections 95 to Section 99 of the IBC;
 - ii. The Resolution Professional appointed under Section 97 serves a facilitative role of collating all the facts relevant to the examination of the application for the commencement of the insolvency resolution process which has been preferred under Section 94 or Section 95. The report to be submitted

- to the adjudicatory authority is recommendatory in nature on whether to accept or reject the application;*
- iii. No adjudicatory function of Adjudicating Authority is contemplated at the admission stage. To read in such a requirement at that stage would be to rewrite the statute which is impermissible in the exercise of judicial review;*
- iv. The resolution professional may exercise the powers vested under Section 99(4) of the IBC for the purpose of examining the application for insolvency resolution and CP/IB/337/AHM/2020 12 of 17 to seek information on matters relevant to the application in order to facilitate the submission of the report recommending the acceptance or rejection of the application;*
- v. There is no violation of natural justice under Section 95 to Section 100 of the IBC as the debtor is not deprived of an opportunity to participate in the process of the examination of the application by the resolution professional;*
- vi. No judicial determination takes place until the adjudicating authority decides under Section 100 whether to accept or reject the application. The report of the resolution professional is only recommendatory in nature and hence*

does not bind the adjudicatory authority when it exercises its jurisdiction under Section 100;

vii. The adjudicatory authority must observe the principles of natural justice when it exercises jurisdiction under Section 100 to determine whether to accept or reject the application;

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viii. The purpose of the interim moratorium under Section 96 is to protect the debtor from further legal proceedings; and

ix. The provisions of Section 95 to Section 100 of the IBC are not unconstitutional as they do not violate Article 14 and Article 21 of the Constitution.

7. The Applicant had not proposed the name of the Insolvency Professional for appointment as Resolution Professional. In view of the above, Mr. Patanjali Chattopadhaya, IBBI Registration No. IBBI/IPA-003/00450/2023-2024/14359, email ID chattopadhaya123@gmail.com was appointed as Resolution Professional, subject to his possessing a valid AFA, in exercise of the power conferred under Section 97 of the IBC, 2016 on this Authority.

8. The Resolution Professional was directed to file declaration within seven days to the effect that he fulfils all the requirements for being appointed as Resolution Professional in the matter and to file his report in terms of Section 97 in two weeks.

9. The Resolution Professional Mr. Patanjali Chattopadhaya has vide his report suggested/stated as extracted hereunder:

**REPORT OF MR. PATANJALI CHATTOPADHAYA,
RESOLUTION PROFESSIONAL IN THE MATTER OF
INSOLVENCY RESOLUTION PROCESS OF: SRI TEJINDER
SINGH WALIA, PERSONAL GUANTOR OF M/S WALLSON
MERCHANTS (PVT) LTD.**

BRIEF SUMMARY OF THE SECTION 99 REPORT OF THE RP

Sl.	Details	Report
a)	Name of the Resolution Professional (RP)	Mr Patanjali Chattopadhaya
b)	Name of the Debtor (i.e., Personal Guarantor to Corporate Debtor)	Sri Tejinder Singh Walia S/O of Late Kishan Singh Walia.
c)	Name of the Applicant (creditor)	Indian Bank, SAM Large Branch
d)	Name of the Corporate Debtor for whose loans the Debtor has given Personal Guarantee	M/S Walson Merchants Pvt Ltd CIN
e)	IBC Status of the Corporate Debtor (CD)	CD is Active Matter is before Hon'ble NCLT Indore Court II
f)	Whether Debtor is a Resident Indian	Yes
g)	Whether Debtor is Director of the Corporate Debtor	Yes
h)	Annual Income of the Debtor in last years as per the application filed before the Hon'ble NCLT	Not known
i)	Amount of Default of the Corporate Debtor as per	Rs.42,64,70,499.94 As on 30/11/22- i.e., Indian Rupees

10. We would note the recommendation of RP as under:

“In view of the above and the fact that the application filed by the Creditor complies with the requirement of Section 95 and the debtor has not proved repayment the “Debt is due and Payable but not paid” of the debt, the undersigned RP hereby recommend to admit the application filed by the creditor under Section 100 of the IBC.”

11. The Personal Guarantor has neither entered appearance despite repeated opportunities nor refuted the statements of the RP.

12. We have considered the details of claim statement as in pages 66 onwards.

13. We are satisfied with the recommendation for admission sought for. Hence, report is taken on record. On the basis of the report and in absence of any controversion or denial of liability by the Personal Guarantor this application is admitted.

14. Following directions are issued:

(1) On the application being admitted under Section 100, a moratorium shall commence in relation to all the debts and shall cease to have effect at the end of the period of one hundred and eighty days beginning with the date of admission of the application or on the date the Adjudicating Authority passes an order on the repayment plan under Section 114, whichever is earlier.

(2) During the moratorium period:-

(a) Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;

(b) The creditors shall not transfer, alienate, encumber or dispose of any of his assets or his legal rights or beneficial interest therein;

(3) Where an order admitting the application under Section 96 has been made in relation to a firm, the moratorium under Sub-Section (1) shall operate against all the partners of the firm.

(4) 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.

15. **IA(I.B.C)/281(KB)2024** is thus **allowed**.

16. Next date of consideration would be **22nd April, 2024**.

17. Meanwhile, the Personal Guarantor is directed not to alienate his assets in any form with immediate effect.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)