

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court-II)  
KOLKATA**

**C.P. (IB)/74(KB)2022**

*Report under Section 99 (1) of the Insolvency and Bankruptcy Code,  
2016 read with applicable Regulation of the Insolvency and Bankruptcy  
Board of India (Insolvency Resolution Process for Personal Guarantors to  
Corporate Debtors), 2016 as amended and Hon'ble NCLT order dated  
15<sup>th</sup> December, 2023.*

In the matter of:

State Bank of India

...Financial Creditor

Versus

Prannay Sureka

...Personal Guarantor

**Date of pronouncement: 05.06.2024**

**CORAM:**

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)**

**SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

**Appearance (via video conferencing/physically)**

Ms. Shreya Chaudhary, Adv. ] For the RP

Mr. Manish Jain, RP ]

Ms. Urmila Chakraborty, Adv. ] For the Respondent

Mr. A. Agarwal, Adv. ]

Ms. V. Khaitan, Adv. ]

Mr. D. Chakraborti, Adv. ] For the Financial Creditor

Mr. S. Chakraborty, Adv. ]

**O R D E R**

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**Per: Bidisha Banerjee, Member (Judicial)**

1. The Court Convened in a hybrid mode.
2. This C.P. (IB)/74(KB)2022 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’) in terms of Section 99 (1) of the Insolvency and Bankruptcy Code, 2016 read with applicable Regulation of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), 2016.
3. The amount in default is Rs.25,05,78,059.60/- (Rupees Twenty Five Crores Five lakhs Seventy Eighty Thousand Fifty Nine hundred and Paise Sixty only).
4. 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.
5. It is to be noted that Hon’ble Supreme Court in the judgment of **Dilip B. Jiwrajka vs. Union of India & Ors. In WP (Civil) No. 1281 of 2021** dated 09.11.2023 has upheld the Constitutional

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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*

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- 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;*
- CP/IB/337/AHM/2020 13 of 17*
- viii. The purpose of the interim moratorium under Section 96 is to protect the debtor from further legal proceedings; and*

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

- 6.** The Applicant had proposed the name of the Insolvency Professional for appointment as Resolution Professional. In view of the above, Mr. Manish Jain, IBBI Registration No. IBBI/IPA-001/IP-P00582/2017-2018/11023, email ID: **ipcamanishjain@gmail.com**; Mobile No. 9830248684, 8582806221 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.
- 7.** 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 which he has given, and to file his report in terms of Section 97 in two weeks.
- 8.** The Resolution Professional Mr. Vishal Shekhar has vide his report dated 22<sup>nd</sup> February, 2024 has recommended admission of the personal guarantor in to the Insolvency resolution process. The relevant portion of his report has been extracted and appended below for the sake of convenience.

**D. REASONS FOR ACCEPTING THE APPLICATION AND INITIATING THE  
INSOLVENCY PROCEEDING AGAINST MR. RAJESH PANDEY**

1. That the RP has gone through the contents of the main Application and it confirms that the default has been made by the debtor who is a Personal Guarantor to the Corporate Debtor.
2. That the Debtor despite several requests has not replied to the queries of RP relating to debt and thereon preferred to ignore the reminders given by the RP seeking information.

Hence, the RP considering the requirements of the admission of Personal Guarantee as stipulated in the Code opines and confirms that Insolvency Resolution Process for personal Guarantor, Mr. PRANNAY SUREKA, Personal

guarantor for M/S. ALEX GREEN ENERGY PRIVATE LIMITED should be initiated and the Application filed by the Applicant State Bank of India who is the Creditor should be admitted.

9. The Personal Guarantor by way of his reply has refuted/contradicted the statements of the RP in the following manner:

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- i. That a sanction letter dated October 3, 2013, the Petitioner had sanctioned additional credit facilities to the tune of Rs.29.50 Crore to the said Corporate Debtor.
- ii. That the Petitioner being in dominant position demanded the Respondent to provide a personal guarantee, despite knowing that the Respondent was only an employee of the Corporate Debtor and his financial capacity and net worth even at that time was approximately Rs.12.33 lakhs.
- iii. That by a deed of Personal Guarantee dated October 22, 2013, the Respondent was coerced and intimidated by the Petitioner and the promoters of the Corporate Debtor to give a guarantee in favour of SBICAP Trustee Company Limited, which has never been invoked.
- iv. That there is no privity of contract between the Petitioner and the Respondent.
- v. That the term 'Rupee Lender' referred to in the said deed of guarantee was not named nor did the Petitioner disclose any loan agreement or any security trustee agreement in the Petition as alleged. The Resolution Professional also has not enquired into the same and has blindly prepared his Report on the basis of the Petition.
- vi. That it appears from the Petition and also from the Report of the Resolution Professional that by a letter dated June 04, 201,

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there has been a variance in the terms of the contract between the Petitioner and the Corporate Debtor in view of restructuring/revival of loan.

vii. That the Petitioner has recovered a sum of Rs.1012.51 lakhs (approximately) from the successful resolution Applicant under the approved Resolution Plan. In so far, the Respondent has been able to ascertain, the said sum was recovered by the Petitioner.

viii. That in the Resolution Plan, which was approved by the Petitioner and accepted by this Tribunal, has been stated in Chapter C clause 12 thereof, as follows:

“On and with effect from the Effective Date, all the outstanding negotiable instruments issued by the Corporate Debtor or by any Person on behalf of the Corporate Debtor including demand promissory notes, post-dated cheques and letters of credit, shall stand terminated and the Corporate Debtor’s liability under such instruments shall stand extinguished and shall not be deemed as operative document before any Court of Law.”

ix. That there has been no invocation of guarantee whatsoever. It has been alleged that by a Notice dated March 13, 2018, guarantee has been invoked by the Petitioner which is not a notice invoking the Personal Guarantee.

x. That the Respondent has ceased to be a director of the Corporate Debtor on and from August 10, 2015, much prior to the loan



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becoming a Non-performing Asset (“NPA”) on 22<sup>nd</sup> September, 2017 or the CIRP commencement date i.e. 18<sup>th</sup> February, 2019.

xi. That the Petition as well as in the purported Report the petitioner as well as the Resolution Professional have contended that a demand notice in Form-B dated July 15, 2021, was served upon the Respondent. I say that such contention is completely misconceived, false and frivolous.

- 10.** We have considered the report and perused the details of claim indicated therein.
- 11.** We are satisfied with the recommendation of the Resolution professional to admit the application.
- 12.** In absence of any dispute or controversion by the Personal Guarantor, this application is admitted with the following directions:

- (1) Since the application is **admitted under Section 100**;
- (2) **In terms of Section 101 :**

When the application is 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.

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**(3) 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 initiate any legal action or legal 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;

(4) 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.

(5) 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.

(6) IRP is directed to cause a public notice on behalf of the Adjudicating Authority and Act in terms of Section 102, 103, 104 of the Code, to cause public notice, invite claims from creditors, list of creditors etc and hold regular meeting.

**102. Public notice and claims from creditors:**

(1) The Adjudicating Authority shall issue a public notice within seven days of passing the order under section 100 inviting claims from all creditors within twenty-one days of such issue.

(2) The notice under sub-section (1) 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.

(3) The notice shall be—

(a) published in at least one English and one vernacular newspaper which is in circulation in the state where the debtor resides

(b) affixed in the premises of the Adjudicating Authority; and

(c) placed on the website of the Adjudicating Authority.

**103. Registering of claims by creditors:**

(1) The creditors shall register claims with the resolution professional by sending details of the claims by way of electronic communications or through courier, speed post or registered letter.

(2) In addition to the claims referred to in sub-section (1), the creditor shall provide to the resolution professional, personal information and such particulars as may be prescribed.

**104. Preparation of list of creditors:**

(1) The resolution professional shall prepare a list of creditors on the basis of—

(a) the information disclosed in the application filed by the debtor under section 94 or 95, as the case may be;

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(b) claims received by the resolution professional under section 102.

(2) The resolution professional shall prepare the list mentioned in sub-section (1) within thirty days from the date of the notice

**13.** In terms of the above, C.P. (IB)/74(KB)2022 is, thus, **admitted**.

**14.** List this matter for consideration on **18.07.2024**

**D. Arvind**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

**This Order signed on this, the 05<sup>th</sup> day of June, 2024.**