

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**Interlocutory Application No. 423 of 2024
In
Company Petition (IB) No. 174/KB/2023**

A 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 15.12.2023.

**IN THE MATTER OF:
Akash Patni**

... Personal Guarantor

And

**IN THE MATTER OF:
Manmohan Jhawar, Resolution Professional**

... Applicant

Date of Pronouncement: 5th June, 2024

CORAM:

SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)

SHRI. D. ARVIND, MEMBER (TECHNICAL)

APPEARANCE:

Mr. Yash Dalmia, Adv.] For the Personal Guarantor

**Mr. Mohit Sharma, Adv,] For Mr. Manmohan Jhawar,
Resolution Professional**

Mr. Akash Patni

Mr. Vikash Patni

Mr. Vimal Kumar Patni

ORDER

Per: Bidisha Banerjee, Member (Judicial):

- 1. The Court congregated through hybrid mode.**
- 2. Heard Ld. Counsels for the parties.**

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*I. A. No. 423/KB of 2024
C.P. (IB) No. 174/KB/2023*

3. This application has been filed under Section 99 of the Insolvency and Bankruptcy Code, 2016 by **Mr. Manmohan Jhawar** (hereinafter referred as **“Applicant”**) as Resolution Professional for submission of report of Insolvency Resolution Process for personal guarantor to corporate debtor pursuant to the Order dated 15.12.2023, passed by the Hon’ble NCLT, Kolkata Bench. In this application the applicant herein seeking following reliefs:

“a) To be pleased to take on record the preliminary report filed by the Applicant herein;

b) To be pleased to accept the application filed u/s 94(1) of the Insolvency & Bankruptcy Code, 2016 for commencement of Insolvency Resolution Process against Personal Guarantor;”

4. There is no financial creditor in CP(IB)No. 174/KB/2023. Mr. Akash Patni, Personal Guarantor of Vikash Metal and Power Limited, Vikash Smelters and Alloys Limited and Sahyogi Distributors Limited filed a petition u/s 94(1) of the Insolvency and Bankruptcy Code, 2016.
5. The applicant is the Resolution Professional (RP) namely, Mr. Manmohan Jhawar, IBBI Registration No. IBBI/IPA-001/IP-P00334/2017-18/10604, e-mail ID: manmohanjhawar@yahoo.co.in, residing at 203 Mahatma Gandhi Road, 1st Floor, Kolkata, West Bengal, 700007 appointed by this Tribunal *vide* Order dated 15.12.2023, for submission of report of the Insolvency Resolution Process under Section 99 of the Insolvency and Bankruptcy Code, 2016.
6. The company petition being CP (IB) No. 174/KB/2023 was filed under Section 94(1) of the Insolvency and Bankruptcy Code, 2016
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*I. A. No. 423/KB of 2024
C.P. (IB) No. 174/KB/2023*

for initiating Insolvency Resolution Process on Mr. Akash Patni, Personal Guarantor of Vikash Metal and Power Limited, Vikash Smelters and Alloys Limited and Sahyogi Distributors Limited.

7. Pursuant to the Order dated 15.12.2023, passed by this Tribunal, the applicant herein was appointed as Resolution Professional (RP) for submission of report under Section 99 of the IBC, 2016. On 23.01.2024 the applicant herein sent e-mail to Mr. Akash Patni for submission of repayment proof/schedule. Copy of the e-mail dated 23.01.2024, is annexed with the application and marked as **“Annexure-B”**.
8. As per the directions of this Tribunal, the applicant herein submits its report as stated hereunder:

| | | |
|------|---|--|
| i. | Application filed by | Akash Patni u/s 94(1) of the Insolvency and Bankruptcy Code, 2016. |
| ii. | Amount of debt in default | 488.23 crores. |
| iii. | Date of AA order for Preliminary Report & appointment of Insolvency Professional. | 15.12.2023 |
| iv. | Date of service of order on IP by way of e-mail by Hon'ble Bench. | 16.01.2024 |
| v. | Date when the debt was due. | NA |
| vi. | Interest since | NA |
| vii. | Date when the debt was due. | NA |

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C.P. (IB) No. 174/KB/2023*

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| viii. | Documents in support of the petition filed by the applicant. | i. List in which guarantee is given by the applicant. ii. List of assets of guarantor and immediate family. iii. Number of directorships held in companies for last 3 years. iv. Copy of Income Tax returns with computation for previous three years. v. Copy of financial statement for the year ended 31.03.2023. |
|-------|--|--|

- 9.** The resolution professional, the applicant herein relies on the documents in which:
- i.** Guarantee is given by the applicant.
 - ii.** List of assets of guarantor and immediate family.
 - iii.** Number of directorships held in companies for last 3 years.
 - iv.** Copy of Income Tax returns with computation for previous three years.
 - v.** Copy of financial statement for the year ended 31.03.2023.
- 10.** After examination of the application as per Sub-section (6) of Section 99 of the Insolvency and Bankruptcy Code, 2016, the resolution professional and the applicant herein recommended acceptance of the application filed under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 for commencement of Insolvency Resolution Process against the personal guarantor.

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C.P. (IB) No. 174/KB/2023*

11. Therefore, in view of the above, we are of the considered opinion that a fit case for admission and proceed against the Personal Guarantor and initiate Insolvency Resolution Process. Hence, we admit CP(IB)No. 174/KB of 2023 filed under the provisions of section 94 of IBC, 2016 under Section 100 of the IBC, 2016 by following order:

a) Initiate Insolvency Resolution Process against the personal guarantor and moratorium in relation to all the debts is declared, from today i.e. the 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 under Section 114 whichever is earlier as provided under Section 101 of IBC, 2016, during the moratorium period.

i. Any pending legal action of proceedings in respect of any debt shall be deemed to have been stayed; and

ii. The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;

iii. 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.

b) 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.

c) The Resolution Professional shall submit his periodic reports before this Tribunal every 30 days.

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C.P. (IB) No. 174/KB/2023*

- d)** In terms of the above, **CP(IB)No. 174/KB/2023** filed under Section 94 (1) of the IBC, 2016 is **admitted** and **the Insolvency Resolution Process stands initiated** against the Personal Guarantor.
- e)** Accordingly, **I.A. No. 423/KB/2024** stands **disposed of** and the main Company Petition being **C.P.(IB) No. 174/KB/2023** will be listed on **02.08.2024** for reporting progress.
- 12.** Certified copy of this order, if applied for with the Registry be supplied to the parties in compliance with all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 5th day of June, 2024.

PH(PS)