

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

**I.A.(IB)No.506/KB/2024
IN
C.P. (IB)/142(KB)2022**

*An application under Section 95 read with Section 60(2) of the
Insolvency and Bankruptcy Code, 2016 read with Insolvency and
Bankruptcy (Application to Adjudicating Authority for Insolvency
Resolution Process for Personal Guarantors to Corporate Debtors) Rules,
2019*

In the matter of:

Bank of Baroda

...Financial Creditor

Versus

Arup Thakur

...Personal Guarantor

And

Jaishree Kannan

...Resolution Professional

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. Sanjana Nandi, Adv.] For the Financial Creditor

Mr. Avik Chaudhuri, Adv.] For the Resolution Professional

O R D E R

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Per: D. Arvind, Member (Technical)

1. The Court Convened in a hybrid mode.
2. This I.A.(IB)No.506/KB/2024 in C.P.(IB)/142(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.22,07,71,667/-(Rupees Twenty Two crores Seven lakhs Seventy One thousand Six Hundred and Sixty Seven 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.**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
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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*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
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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;*
- CP/IB/337/AHM/2020 13 of 17*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
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C.P. (IB)/142(KB)2022**

- 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 A.”*

- 6.** The Applicant had not proposed the name of the Insolvency Professional for appointment as Resolution Professional. In view of the above, Mr. Jaishree Kannan, IBBI Registration No. IBBI/IPA-002/IP-N01214/2022-2023/14076, email ID: **caljaishree@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.
- 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. Jaishree Kannan has vide his report dated 06th March, 2024 has recommended admission of the personal guarantor in to the Insolvency resolution process. The

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relevant portion of his report has been extracted and appended below for the sake of convenience.

F. Recommendations of the Resolution Professional along with reasons:

It is submitted that, in view of the above facts and reasons recorded below of this report, I hereby recommend for the acceptance of the application No. C.P. (IB)/142(KB)2022 filed u/s 95(1) of the IBC 2016 by the Creditor Bank of Baroda to initiate Insolvency Resolution Process against Personal Guarantor Mr. Arup Thakur of the Corporate Debtor M/s Pincon Spirits Ltd and the Adjudicating Authority may appropriate order u/s 100 of IBC, 2016 for admission of the application Further the detailed reasons for recommendation for acceptance of the application is as under:

Detailed Reasons for Recommendations:

- a. The application has been filed by Bank of Baroda as a financial creditor of the personal guarantor, Mr. Arup Thakur, under Section 95 read with Section 60(2) of the IBC. The applicant has provided the requisite details as per Form C prescribed under the rules. The summary of the petition establishes that Bank of Baroda has filed this application claiming default of Rs. 22,07,71,667/- (as mentioned in the application) against Mr. Arup Thakur as personal guarantor for credit facilities extended to the corporate debtor. Relevant loan documents have been submitted as evidence.
- b. The applicant has established itself as a financial creditor of the corporate debtor M/s Pincon Spirit Limited by providing a copy of the sanction letter, deed of guarantees by Mr. Arup Thakur, and other loan documents like inter-se agreements, deeds of hypothecation etc.
- c. As per the documents, Mr. Arup Thakur has given personal guarantee for credit facilities of Rs. 15.5 crores granted to M/s Pincon Spirit Limited. The total debt claimed against Mr. Arup Thakur is Rs. 22.07 crores which includes unapplied interest. Hence the outstanding liability can be claimed against the personal guarantor in line with the personal guarantee agreement. Refer point no.4 (ii) of the interim report.
- d. The account of M/s Pincon Spirit Limited was classified as NPA on 20.03.2018 as per RBI guidelines. Liquidation order has been passed against the corporate debtor on 30.09.2019 by NCLT Kolkata bench.
- e. The applicant's claim has also been admitted to the extent of 13.26 crores out of 13.37 crores by the liquidator. Since the Corporate debtor is still under liquidation, RP vide its email dated: 12.02.2024, has asked the liquidator to confirm whether the debt of Bank of Baroda has been repaid or not. However, till the time of filing the application no reply was received from the Liquidator.
- f. A demand notice under IBC has been issued on 10.08.2020 to the personal guarantor Mr. Arup Thakur claiming a total debt of Rs 15,07,35,005/- (Fifteen Crores Seven Lakhs Thirty-Five thousand five only) including any interest or penalties, wherein a period 14 days were given to the Guarantor for repayment of dues.
- g. Further, we have not received any confirmation of payment of the outstanding dues from the personal guarantor (despite our communication) hence, it can be construed that the default in payment/ outstanding dues still exists on the personal guarantor.
- h. Further the debt has also not been disputed by the personal guarantor.
- i. The preliminary study clarifies that the debt is not registered with an information utility based on the application. (Refer to Clause 99(3))
- j. The application satisfies requirements of Section 95(1) and relevant rules. Supporting documents prove existence of debt and default by the corporate debtor as well as guarantor.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
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C.P. (IB)/142(KB)2022**

k. All the requisite documents have been submitted as annexures along with the application as per the checklist. The application meets the requirements of Section 99.

In light of the above reasons, I Jaishree Kannan the Resolution Professional in the matter has recommended the acceptance of the application CP(IB)/230(KB)2022 under Section 95(1) against the personal guarantor Mr. Arup Thakur. The Adjudicating Authority may admit it and commence insolvency resolution process under Section 100 of IBC, 2016.

9. The Personal Guarantor has neither entered appearance despite repeated opportunities has nor refuted the statements in the report of Resolution Professional.
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

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C.P. (IB)/142(KB)2022**

Authority passes an order on the repayment plan under section 114, whichever is earlier.

(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:

**IN THE NATIONAL COMPANY LAW TRIBUNAL
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**I.A.(IB)No.506/KB/2024
IN
C.P. (IB)/142(KB)2022**

(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.

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C.P. (IB)/142(KB)2022**

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;

(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. We direct the Financial Creditor to fix professional fees of the Resolution Professional.

14. In terms of the above, C.P. (IB)/142(KB)2022 is, thus, **admitted**.
I.A.(IB)No.506/KB/2024 is **disposed of**.

15. List this matter for consideration on **16.07.2024**.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order signed on this, the 05th day of June, 2024.

SG (Steno)