

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

IA(I.B.C)/958(KB)2022

In

C.P. (IB)/118(KB)2022

In the matter of:

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 25th July, 2022.

And

In the matter of:

State Bank of India

... .. Financial Creditor

Versus

Mrs. Phalguni Tewary

... .. Personal Guarantor

And

In the matter of:

Mr. Pratim Bayal

... .. Resolution Professional/Applicant

Date of pronouncement: 7th May, 2024.

CORAM:

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

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

Appearance (via video conferencing/physically)

Mr. Debasish Chakraborty, Adv.] For the Financial Creditor

Mr. Snehasish Chakraborty, Adv.]

Mr. Pratim Bayal, RP] For the Resolution Professional

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-II)
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**IA(I.B.C)/958(KB)2022
In
C.P. (IB)/118(KB)2022**

O R D E R

Per: D. Arvind, Member (Technical)

1. The Court Convened in a hybrid mode.

IA(I.B.C)/958(KB)2022

2. This application has been filed by the Resolution Professional to place on record the Preliminary Progress Report, which is placed at page 7 onwards.
3. This application is supported by an affidavit which is placed at page 12 onwards.
4. The Preliminary Progress Report is taken on record.
5. Accordingly, IA(I.B.C)/958(KB)2022 is allowed and disposed of.

C.P. (IB)/118(KB)2022

6. This C.P. (IB)/118(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.
7. The amount in default is Rs.33,43,00,000/- (Rupees Thirty-three crore forty-three lakhs only).
8. The application is complete as required under Section 95 read with Rule 7 of the Insolvency and Bankruptcy (Application to

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

**IA(I.B.C)/958(KB)2022
In
C.P. (IB)/118(KB)2022**

Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019.

9. 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 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*

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

**IA(I.B.C)/958(KB)2022
In
C.P. (IB)/118(KB)2022**

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

- 10.** The Applicant had proposed the name of the Insolvency Professional for appointment as Resolution Professional. In view of the above, Mr. Pritam Bayal, IBBI Registration No. IBBI/IPA-003/IP-N00213/2018-2019/12385, email ID:

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

**IA(I.B.C)/958(KB)2022
In
C.P. (IB)/118(KB)2022**

pratimbayal@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.

- 11.** 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.
- 12.** The Resolution Professional Mr. Pritam Bayal has vide his report dated 5th September, 2022 as extracted hereunder:

i.	Application filed by	State Bank of India
ii.	Amount Claimed	Rs.33,43,00,000 cr.
iii.	Date of AA order for preliminary Report and appointment of Insolvency professional	30 th June, 2022 order received by Resolution professional on 1 st July, 2022.
iv.	Date of service of order on IP by way of e-mail by Hon'ble Bench	3 rd July, 2022
v.	Date when the debt was due	18 th September, 2017
vi.	Interest since	18 th September, 2017
vii.	Documents in support of the demand enclosed in the petition filed by the applicant	Bank statement and interest calculation. Arrangement letter. Deeds of Guarantee. Demand notice dated 23 rd May, 2018.

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

**IA(I.B.C)/958(KB)2022
In
C.P. (IB)/118(KB)2022**

		Order of Hon'ble Adjudicating Authority dated 19 th July, 2019. CIBIL Report. Demand Notice dated 19 th July, 2021.
viii.	Date of issue of demand notice as per the prescribed format as per clause (b) of sub-Section (4) of Section 95 is served on the Guarantor demanding payment of the amount of default, in the Form B under Rule 7 (1) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors for Corporate Debtors) Rules, 2019.	19 th July, 2021.
ix.	Date of the application under sub-Section (1) of the Section 95 in Form C, Rule 7 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority	11 th February, 2022

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

**IA(I.B.C)/958(KB)2022
In
C.P. (IB)/118(KB)2022**

	for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.	
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Conclusion with Recommendation are as under:

- (i) Demand Notice issued is as per the prescribed format;
- (ii) No amount received within a period of 14 days of issue of demand notice nor even till date;
- (iii) The application made is in the prescribed format;
- (iv) The application satisfies the requirements set out in Section 95;
- (v) The applicant has provided information and given explanation sought by me;
- (vi) Guarantor is not eligible for fresh start under Section 99 (8) of the Code.
- (vii) Reply through e-mail was received from Mrs. Phalguni Tewary regarding the above-mentioned claim on 20th July, 2022, she was admitted the liability accepting that there was no repayment.

Recommendation:

After examination of the application under sub-Section (6) of Section 99, and considering the reply of the Guarantor, I, the Resolution Professional and the Applicant in this petition, hereby recommend for acceptance of the application filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 for commencement of Insolvency Resolution Process against the Personal Guarantor.

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

**IA(I.B.C)/958(KB)2022
In
C.P. (IB)/118(KB)2022**

- 13.** The Personal Guarantor has neither entered appearance despite repeated opportunities has nor refuted the statements in the report of Resolution Professional.
- 14.** We have considered the report and perused the details of claim indicated therein.
- 15.** We are satisfied with the recommendation of the Resolution professional to admit the application.
- 16.** In absence of any dispute or controversion by the Personal Guarantor, this application is admitted with the following directions:
 - (i) Since 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.
 - (ii) 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;
 - (iii) 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.

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

IA(I.B.C)/958(KB)2022
In
C.P. (IB)/118(KB)2022

(iv) 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.

17. Accordingly, C.P. (IB)/118(KB)2022 is, thus, admitted.

18. List this matter for consideration on **5th July, 2024**.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order signed on this, the 7th day of May, 2024.

Sayon (Steno)