

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

C.P. (IB)/154(KB)2011

*An application under Section 95 of the Insolvency and Bankruptcy Code,
2016.*

In the matter of:

Central Bank of India

...Financial Creditor

Versus

Sanjukta Vohra

...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)

Mr. Sudhir Kumar Senapati, Adv.] For the Financial Creditor

Ms. Devajyoti Barman, Adv.]

Ms. Sanjukta Basu Mallick, Adv.]

O R D E R

Per: D. Arvind, Member (Technical)

1. The Court Convened in a hybrid mode.
2. This C.P. (IB)/154(KB)2023 has been preferred by the Financial Creditor to seek initiation of Insolvency Regulation Process against the Respondent under Personal Guarantor to Corporate Debtor Rules, 2019 ("Personal Guarantors Rules") , Regulation 4(2) of IBBI (Insolvency Resolution Process for Personal

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Guarantors to Corporate Debtors) Regulations, 2019 ('Personal Guarantors Regulations') and in terms of Section 99 (1) of the Insolvency and Bankruptcy Code, 2016

3. The amount in default by the Corporate debtor is Rs.715,46,54,593/- (Rupees Seven hundred fifteen crores forty six lakhs fifty four thousand five hundred ninety three 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 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*

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- 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*

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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 A.”*

- 6.** The Applicant had proposed the name of the Insolvency Professional for appointment as Resolution Professional. In view of the above, Mr. Umesh Kumar, IBBI Registration No. IBBI/IPA-001/IP-P01978/2020-2021/113152, email ID: **umeshkr62@yahoo.com**; who 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.

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7. The Resolution Professional Mr. Umesh Kumar has vide his report dated 22nd 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.

**RECOMMENDATION BY RESOLUTION PROFESSIONAL U/S 99(1) & (7)
OF IBC 2016**

I, on the basis of the gathered facts and documents made available by the Applicant I am of the view that there has been a default by Bengal India Global Infrastructure Limited, CD and that Respondent had given her personal guarantee to such Corporate Debtor. I say that the Personal Guarantor has committed default in payment of Rs 7,15,46,54,593 to Central Bank of India. Further I state that the application satisfies all the requirements as set out u/s 95. In such premises it is recommended that the present application be accepted by the Hon'ble Adjudicating Authority and the Insolvency Process be initiated against the Respondent/ Personal Guarantor Ms Sanjukta Vohra under the order and direction of the Hon'ble Adjudicating Authority.

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- 8.** The Personal Guarantor has neither entered appearance despite repeated opportunities nor refuted the statements in the report of Resolution Professional.
- 9.** We have considered the report and perused the details of claim indicated therein.
- 10.** We are satisfied with the recommendation of the Resolution professional to admit the application.
- 11.** 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;**

In terms of Section 101 :

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 of IBC 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 initiate any legal action or legal proceedings in respect of any debt; and

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- (c) the debtor 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.
- (5) Resolution professional 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.
- (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.

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(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;

(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

12. In terms of the above, C.P. (IB)/154(KB)2023 is, thus, **admitted**.

13. List this matter for consideration on **09.07.2024**

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

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

SG,(Steno)