

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

**C.P. (IB)/253(KB)2023  
In  
IA (I.B.C)/344(KB)2024**

*An Application under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 read  
with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating  
Authority for Insolvency Resolution Process for Personal Guarantors to Corporate  
Debtors) Rules, 2019*

In the matter of:

Assets Care & Reconstruction Enterprise Limited

...FINANCIAL CREDITOR

Versus

Mr. Sarita Patni

...RESPONDENT/PERSONAL GUARANTOR

**Date of pronouncement: 05.07.2024**

**CORAM:**

**Smt. Bidisha Banerjee, Member (Judicial)**

**Shri Balraj Joshi, Member (Technical)**

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

**For the Financial Creditor**

**Mr. Soorjya Ganguli, Adv.**

**Ms. Kiran Sharma, Adv.**

**Ms. Akshita Bothra, Adv.**

**For the RP**

**Mr. Sidhartha Sharma, Adv.**

**Mr. Rishav Dutt, Adv.**

**Mr. Aman Kataruka, Adv.**

**Mr. Aditya Tibrewal, RP in person**

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**ORDER**

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

1. The Court Convened in a hybrid mode.
2. This C.P. (IB)/253(KB)2023 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.22,13,81,08,600/- (Rupees Two Thousand Two Hundred and Thirteen Crores Eighty-One Lakhs Eight Thousand and Six Hundred 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*

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*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*
- iii. *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;*
- iv. *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;*
- v. *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;*
- vi. *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;*
- vii. *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;*

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- viii. *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*
- ix. *The purpose of the interim moratorium under Section 96 is to protect the debtor from further legal proceedings; and*
- x. *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. Aditya Kumar Tibrewal, IBBI Registration No. IBBI/IPA-001/IP-P00743/2017-2018/11249, email ID: [adityatibre@gmail.com](mailto:adityatibre@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. Aditya Kumar Tibrewal, has vide his report dated 05/02/2024 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.

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ANNEXURE – "A"

**REPORT / RECOMMENDATION BY RESOLUTION**  
**PROFESSIONAL**

1. In exercise of the powers conferred under section 99(6) of the I & B Code, 2016 I hereby certify the following:
  - a. The application has been filed in due compliance of the requirements envisaged under section 95 of the I & B Code viz:
    - (i) The details and debt owed by the debtor to the creditor submitting the application as on the date of the application has been mentioned.
    - (ii) There is a failure by the debtor to pay the debt within a period of fourteen days of the service of demand and
    - (iii) Relevant evidence of such default and non-payment of the debt has been mentioned.
  - b. The Creditor has provided the copy of the application made under sub-section 95(1) to the debtor.
  - c. The application filed is in prescribed form under Rules 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy process for Personal Guarantors to Corporate Debtors) Rules 2019, and also accompanied with prescribed fee of Rs 2000/-.



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d. The details and documents required under section 95(4) are also annexed with the application to prove the default and non-payment of the same.

e. After examination of the aforesaid facts, the undersigned in view of the powers conferred under section 99(2) thought it fit to ask the debtor to prove repayment of debt claimed as unpaid by the creditor by furnishing—

- (i) Evidence of electronic transfer of the unpaid amount from the bank account of the debtor;
- (ii) Evidence of encashment of a cheque issued by the debtor; or
- (iii) Signed acknowledgement by the creditor accepting receipt of dues.

Such information was asked by me vide my letter sent to the debtor through speed post on 16.01.2024 and on 31.01.2024. Copy of the letter and speed post postal receipt are annexed hereto and marked as Annexure "X1" Collectively. Such letter was received by the debtor on 18.01.2024 & 01.02.2024, a copy of tracking report obtained from website of the Indian Postal Authority ([www.indiapost.gov.in](http://www.indiapost.gov.in)) is annexed hereto and marked as Annexure "X2" .

e) After receiving such letter, the debtor has not disputed the debt and have not sent any reply to provide any proof of the repayment of debt claimed as unpaid by the creditor.

2. In view of the aforesaid facts stated herein above, I am satisfied that the amount claimed by the creditor in its application are



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due and payable by the debtor and the debtor has failed to remit/repay the dues to the creditor and therefore I hereby **recommend** that the application filed by the creditor be accepted and necessary further proceedings under the relevant provisions of the I & B Code 2016 and Regulations/Rules made thereunder should be initiated.

3. I undertake that I shall give a copy of this report to the creditor in compliance with sub -section 7 of Section 99 of I & B Code, 2016 forthwith.

The aforesaid is my report in compliance of directions contained in the order dated 8<sup>th</sup> January, 2024.

**Resolution Professional**

*Aditya K. Tibrewal*

**Aditya Kumar Tibrewal**

**Registration number: IBBI/IPA-001/IP-PO0743/2017-2018/11249**

Place: Kolkata

Date: 05.02.2024

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9. Vide order dated 21<sup>st</sup> June 2024, despite repeated opportunities, reply affidavit has not been filed and the cost has also not been paid by the Personal Guarantor. It appears that the Personal Guarantor is not interested to raise objections to the report.
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.*

(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;



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- (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:**

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(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;

(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)/253 (KB)20223 is, thus, **admitted**.
- 14.** Certified copy of this order shall be issued by the Registry upon request and further upon fulfilment of all laid down procedural requirements.
- 15.** The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 16.** List this matter for consideration on \_\_\_\_\_

**Balraj Joshi**  
**Member (Technical)**

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

Order signed on this 5<sup>th</sup> day of July 2024.

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