IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III

IB-466(ND)/2023
AND
IA-689/2024

Order under Section 100 of the Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF IB-466(ND)/2023:

(Under section 94 of the Insolvency and Bankruptcy Code 2016, read with rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019)

M/s. NATHU MAL GUPTA
S/o Sh. Chunni Lal Gupta
R/o 2063, Park Laureate,
Sector 108, Noida - 201304

... APPLICANT/ GUARANTOR

VERSUS

RBL BANK LIMITED
(Through Its Authorised Officer)
15, Hansalaya Building,
Barakhamba Road, New Delhi – 110001

... RESPONDENT/ CREDITOR

AND IN THE MATTER OF IA-689(ND)/2024:

(Report under Section 99(1) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the National Company Law Tribunal Rules, 2016)

MR. ARVIND MITTAL
Resolution Professional
IBBI Reg no.: *IBBI/IPA-001/IP-P01358/2018-2019/12081*

... APPLICANT

Order Pronounced On: 08.04.2026

CORAM:

SHRI BACHU VENKAT BALARAM DAS,
HON'BLE ACTING PRESIDENT

SHRI RAVINDRA CHATURVEDI,
HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the RP	:	Adv. Atul Bhatia, Mr. Arvind Mittal(RP)
For the PG	:	Mr. Akshay Goel, Mr. Binwant Singh, Mr. Harsh Tandon, Advs.
For RBL Bank Limited		Mr. Namit Suri, Mr. Ravi, Advs.
For Bank of Baroda	:	Ms. Pallavi, Ms. Anjali Jain, Advs. on behalf of Bank of Baroda i/b Areness Law

ORDER

1. The present petition has been under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as Code) read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for IRP for Personal Guarantors to Corporate Debtor) Rules, 2019. The prayer made in the petition is to initiate the Insolvency Resolution Process against the Applicant/Personal Guarantor, Mr. Nathu Mal Gupta, of Gem Batteries Private Limited (hereinafter referred to as the "Corporate Debtor" or CD).

2. This Adjudicating Authority vide order dated 17.01.2024 appointed Mr. Arvind Mittal, bearing registration no. IBBI/IPA001/IP-P01358/2018-2019/12081, email ID: arvindmittal81@yahoo.in, as the Resolution Professional, and directed him to submit a report as per Section 99 of the Code.

3. The Resolution Professional submitted a report under section 99 of the Code through **IA-689/2024**, which also forms a part of the subject matter under consideration in the present adjudication.

BRIEF FACTS OF THE CASE:

As submitted by parties in the pleadings and submissions in the court, the following are the relevant facts of the case: -

4. M/s GEM Batteries Private Limited, i.e. the Corporate Debtor, approached RBL Bank Limited, seeking various credit facilities. RBL Bank Limited sanctioned various credit facilities, which were renewed from time to time.

5. The Credit Facilities of Rs 5,50,00,000/- were granted to the Corporate Debtor by RBL Bank Limited through a sanction letter dated 28.04.2012, which was secured by Mr. Nathu Mal Gupta, the Personal Guarantor herein, Mr. Rahul Gupta, and Ms. Divya Gupta.

6. On 04.05.2012, Personal Guarantee Contract(s) were executed by the Personal Guarantor(s) for securing the Credit Facilities availed by the Corporate Debtor.

7. On 06.02.2014, the credit facilities were enhanced for a sum of Rs. 14,50,00,000/- by RBL Bank Limited. Again, Personal Guarantee Contracts were executed by the Personal Guarantor(s) for securing the Credit Facilities availed by the Corporate Debtor on 26.07.2014.

8. RBL Bank Limited (Creditor No. 1) entered into a consortium with Vijaya Bank, which was later merged into Bank of Baroda (Creditor No. 2), for joint lending, after which fresh loan documents and security documents were executed.

DEFAULT PURSUANT TO THE TRANSACTION

9. It is stated that the Corporate Debtor committed default and the Creditor Bank No. 1 declared the account of the Corporate Debtor as a Non-Performing Asset (NPA) and subsequently issued a loan recall notice dated 07.03.2017 for a sum of Rs. 14,77,02,874.40/-. The Creditor Bank No. 1, vide the said recall notice, had also invoked the personal guarantees.

10. The Creditor Bank No. 1, thereafter, issued a notice dated 01.12.2017 under Section 13(2) of the SARFAESI Act, 2002, calling upon the Corporate Debtor and guarantors to discharge liabilities amounting to ₹15,19,95,147.78 (Rupees Fifteen Crore Nineteen Lacs Ninety Five Thousand One Hundred Forty Seven and Seventy Eight Paise only). Further, it is submitted that the assets of the Guarantor have already been auctioned by the creditor under the provisions of the SARFAESI Act, 2002.

11. This Adjudicating Authority, on an application filed under section 7 by RBL Bank Limited/Creditor Bank No. 1, vide order dated 01.12.2020 in IB-921(ND)/2020 commenced CIRP against the Corporate Debtor, M/s Gem Batteries Private Limited. Thereafter, vide order dated 17.09.2021 in IA-3697/2021 in IB-921(ND)/2020, the Corporate Debtor was put into liquidation.

12. In terms of Section 94 of the Code, the Applicant/Personal Guarantor filed the present Application on 31.07.2023 so as to initiate insolvency proceedings against the Personal Guarantor for a debt due to the tune of Rs. 32,01,38,597/- (Rupees Thirty Two Crores One Lac Thirty Eight Thousand Five Hundred and Ninenty Seven Rupees Only) including any interest or penalties, being the amount of admitted claim against the Corporate Debtor as per the List of Creditors dated 31.03.2023.

REPORT OF THE RESOLUTION PROFESSIONAL

13. Vide order dated 17.01.2024, Mr. Arvind Mittal, was appointed as the Resolution Professional under Section 97 of the Code, and directed to submit a report under Section 99 of the Code. The relevant portion of the order dated 17.01.2024 is reproduced below:

> *"Heard the submissions made by Ld. Counsel. The Applicant has proposed the name of Mr. Arvind Mittal, having IBBI Registration No. IBBI/IPA001/IP-P01358/2018-2019/12081 as the Resolution Professional. We, therefore, appoint Mr. Arvind Mittal as the Resolution Professional and direct him to submit a report as envisaged under Section 99 of IBC."*

14. The Resolution Professional submitted that a copy of the aforesaid order of appointment was received by the Resolution Professional on 24.01.2024 through publication on the website of this Adjudicating Authority, and immediately thereafter, on 25.01.2024, the Resolution Professional addressed emails (i) to the Creditor along with its counsel, (ii) to the counsel for the Guarantor, and (iii) to the Liquidator of the Corporate Debtor, seeking relevant information. That in the absence of any response, the Resolution Professional issued reminders on 29.01.2024 to all the aforesaid recipients.

15. It was further submitted that on 31.01.2024, responses along with relevant information were received from the counsel for the Guarantor and the Liquidator of the Corporate Debtor; however, no response was received from Creditor Bank No. 1, and accordingly, the Resolution Professional again addressed an email to Creditor Bank No. 1 seeking its response, and on the same date, upon receipt of contact details of Bank of Baroda/Creditor Bank No. 2, initiated communication with it.

16. That on 05.02.2024, the Resolution Professional issued further reminders to the Creditor Banks, and on 07.02.2024, a response was received from Bank of Baroda providing details of the debt and default of the Guarantor.

17. That despite multiple communications, no response has been received from Creditor Bank No. 1, and in view of the timelines prescribed under the Code, the Resolution Professional in Compliance of the order of the Adjudicating Authority dated 17.01.2024, has filed a report under section 99 of the Code vide **IA-689/2024**, based on the information available as on the date of filing.

18. The Resolution Professional upon consideration of the facts and circumstances mentioned in its report, has opined that, the present Application under Sec 94 of the Code, satisfies the requirements stipulated by the Code and recommended that the Application filed by the Applicant/Personal Guarantor be admitted under the provisions of Section 100 of the Code. The recommendations of the Resolution Professional are reproduced hereinbelow:

> *"19. In view of the above, I, Arvind Mittal, the Resolution Professional appointed by the Hon'ble Adjudicating Authority vide order dated 17.01.2024 in C.P. (IB) No. 466(ND)/2023, hereby confirm that I have perused/examined the Insolvency Application filed by the applicant/personal guarantor under Section 94 of the Code along with all the underlying documents and annexures and have formed the opinion to recommend the same for approval to this Hon'ble Adjudicating Authority, based on following grounds:-*
>
> *a. The Insolvency Application has been filed in the requisite form, Form A, in terms of Rule 6 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019, supported by requisite fee and documents.*

b. The Insolvency Application satisfies the requirements set out in Section 94 of the Code.

c. The undersigned has also sent a communication to the Personal Guarantor, vide e-mail dated 25.01.2024 and 29.01.2024, in terms of Section 99(4) of the Code, asking the Personal Guarantor to provide information/document pertaining to the application filed u/s 94 of the Code. That vide email dated 31.01.2024, the Personal Guarantor replied to the undersigned's email and the information provided by the applicant along with the Insolvency Application was exhaustive.

d. The Insolvency Application does not relate to "excluded debts" as defined under Section 79(15) of the Code.

e. The Debtor, Personal Guarantor, is not eligible for fresh start under Chapter II of the Code."

REPLY OF CREDITOR BANK NO. 1 (RBL BANK LIMITED)

19. The Creditor Bank No. 1 has filed its reply by way of an affidavit dated 04.04.2024 before this Adjudicating Authority. In addition to the facts pertaining to the loan transaction, subsequent default, initiation of CIRP of the Corporate Debtor, and invocation of the Personal Guarantee, the Creditor Bank No. 1 has made the following submissions:

i. That the Guarantor has failed to disclose his complete assets and the Application under Section 94 of the Code appears to be a deliberate attempt to evade liability towards the Creditor Bank No. 1, which stood at ₹27,66,74,030.68 (Rupees Twenty Seven Crore Sixty Six Lakh Seventy Four Thousand Thirty Only) as on 18.03.2024. It is further submitted that the Creditor Bank No. 1 has a reasonable apprehension that any investigation conducted by the

Resolution Professional appointed by the Personal Guarantor is likely to be biased.

ii. That the Resolution Professional, instead of addressing communications to the correct email address, relied upon a generic email ID sourced from MCA records for seeking information/documents from the Creditor Bank No. 1. It is submitted that had the correct email address been used, the Creditor Bank No. 1 would have duly furnished all requisite information and documents as sought by the Resolution Professional.

iii. That despite the correct email address having been provided by the Liquidator, the Resolution Professional failed to make bona fide and diligent efforts to obtain information from the Creditor Bank No. 1. Instead, the Resolution Professional proceeded to file the present report, erroneously attributing non-cooperation to the Creditor Bank No. 1. Such conduct clearly reflects a lackadaisical and biased approach on part of the Resolution Professional.

iv. That in addition to the above, the Resolution Professional appears to have made no independent efforts to verify the facts and figures, including the assets disclosed in the application.

v. That it is imperative that a detailed and independent investigation be conducted into the affairs of the Personal Guarantor, including but not limited to his movable and immovable assets.

20. Though the Creditor Bank No. 1 has made the foregoing submissions, vide order dated 13.03.2026, it, along with Creditor Bank No. 2, submitted before this Adjudicating Authority that it has no objection in the event the present Application under Section 94 of the Code is admitted. The relevant portion of the order of this Adjudicating Authority dated 13.03.2026 is reproduced hereinbelow:

"Mr. Namit Suri, Ld. Counsel appearing on behalf of RBL Bank, Ms. Pallavi Singh, Ld. Counsel appearing on behalf of Bank of Baroda and Mr. Akshay Goel, Ld. Counsel appearing on behalf of the Personal Guarantor submitted that they have no objections on the admission of this application..."

REPLY OF CREDITOR BANK NO. 2 (BANK OF BARODA)

21. The Creditor Bank No. 2 appeared before this Adjudicating Authority on 30.07.2024 and made a submission stating that it has no objections to the Report of the Resolution Professional. The Creditor Bank No. 2 has filed its reply by way of an affidavit dated 08.08.2024, submitting that in has no objections if the present Application under Section 94 of the Code is admitted.

FINDING AND ANALYSIS:

22. We have perused the material placed on record, considered the submissions made by the Resolution Professional in terms of report under Section 99 of the Code along with the submissions of the Creditor Banks.

23. In terms of Section 100(1) of the Code, for admitting an application for insolvency resolution of a personal guarantor, the Adjudicating Authority must be satisfied that:

    (a) the application under Section 94 of the Code is complete;

    (b) the debt is due and payable by the guarantor; and

    (c) the guarantor has not repaid the debt.

24. In the present case, the Application is found to be complete in all respects. The debt arises from guarantee extended by the Respondent in respect of credit facilities availed by the Corporate Debtor. The debt has become due and remains unpaid, as evidenced by the Default Notice, Personal Guarantee Invocation Notice, and the initiation of proceedings of the Corporate Debtor & Corporate Guarantor. Thus, all conditions under Section 100(1) of the Code stands satisfied.

ORDER:

25. Accordingly, we are of the considered view that the Application under Section 94 bearing ***IB No. 466 of 2023 be admitted***, and the Insolvency Resolution Process against the Personal Guarantor is hereby initiated.

26. Interim Moratorium, which came into effect in terms of Section 96(1) as on the date of filing the Application, shall cease to have effect. A fresh moratorium under Section 101 is declared from today, to be in effect for 180 days or until an order under Section 114 is passed, whichever is earlier. During the moratorium period:

    a) Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and

    b) The creditors of the debtor shall not initiate any legal action or 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;

    d) 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.

27. The Resolution Professional, Mr. Arvind Mittal, who was appointed by this Adjudicating Authority vide order dated 17.01.2024, is hereby directed to take all further steps in accordance with Part III, Chapter – III of the Code including to publish a public notice on behalf of the Adjudicating Authority within 7 days of uploading of this Order on the website of the NCLT Delhi, inviting claims from all Creditors, who shall register their claims as provided under Section 103 within 21 days of such notice. The notice shall contain the necessary information as provided under Section 102 (2) of IBC, 2016. The publication of notice shall be made in newspapers, one in English and the other in the Vernacular Language, which has wide circulation in the State where the Personal Guarantor resides.

28. The Resolution Professional, in exercise of the powers conferred under Section 104 of IBC, 2016, shall prepare a list of creditors within 30 days from the date of the notice. The debtor shall prepare a Repayment Plan in consultation with the Resolution Professional as provided under Section 105, which shall include the provisions for payment of a fee to the Resolution Professional. The Resolution Professional shall submit the Repayment Plan along with his report on the plan to this Adjudicating Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106 of IBC, 2016.

29. In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof. If the Resolution Professional is of the opinion that the meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3). The date of the meeting should not be less than 14 days or more than 28 days from the date of submission of the Report under Sub-section (1) of Section 106 of the IBC, 2016, for which at least 14 days' notice to the creditors shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of the IBC, 2016.

30. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of the IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on the Repayment Plan with all details as provided under Section 112 of the IBC, 2016, and submit the same to this Adjudicating Authority, copies of which shall be provided to the debtor and the creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of the IBC, 2016.

31. The Personal Guarantor/Respondent, is directed to cooperate with the Resolution Professional and provide all requisite information for the purpose of carrying out his duties. He is further directed to submit to the

Resolution Professional, within two weeks from the date of this order, complete details specifically disclosing his assets and liabilities as on the date of this order, as well as on 31.03.2025 and 31.03.2024, duly supported by copies of the corresponding Income Tax Returns for the said two years. Further, in case any assets have been sold during the last two years, complete details thereof, including the nature of the asset, date of sale, consideration received, and mode of transfer, shall also be disclosed.

32. The Applicant/Personal Guarantor & Financial Creditor(s) shall deposit a sum of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand Only) with the Resolution professional to meet the expenses arising out of issuing public notice and inviting claims. This amount shall be adjusted towards the fees and expenses payable to the Resolution professional.

33. RP shall submit a status report every 30 days before this Adjudicating Authority.

34. Registry shall communicate a copy of this order, the report, and the Application to all concerned, including the Applicant/Personal Guarantor, Resolution professional and the Financial Creditor(s) within 7 working days and upload the same immediately.

35. A copy of this order be sent to IBBI by the Registry.

36. The Application under Section 99 of the Code bearing ***IA No. 689/2024 is hereby allowed***, and the Insolvency Resolution Process has been initiated against the Personal Guarantor/Applicant.

37. List the matter for status report by the Resolution professional within four weeks on 12.05.2026.

Sd/-	Sd/-
(RAVINDRA CHATURVEDI)	**(BACHU VENKAT BALARAM DAS)**
MEMBER (TECHNICAL)	**HON'BLE ACTING PRESIDENT**