

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 340/KB/2022

And

I.A. (IB) No. 316/KB/2024

***A Company Petition under Section 95(1) of the Insolvency and
Bankruptcy Code, 2016, and an Interlocutory Application under
Section 99(1) of the Insolvency and Bankruptcy Code, 2016.***

IN THE MATTER OF:

INDIAN BANK

... Financial Creditor.

Versus

MR. MANISH KUMAR

... Respondent/Personal Guarantor.

And

IN THE MATTER OF:

MS. TRIPTI AGARWAL, the Resolution Professional

... Applicant in I.A. (IB) No. 316/KB/2024.

Date of Pronouncement of Order: 03.07.2024.

CORAM:

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

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

Appearances:

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

Mr. Snehasish Chakraborty, Adv.]

Mr. Dripto Majumdar, Adv.] For the Personal Guarantor.

Mr. Sumit Biswas, Adv.]

Ms. Rajshree Biswas, Adv.]

Mr. Chandan Mohata, Adv.]

Ms. Tripti Agarwal, RP] For the Resolution Professional.

Mr. Riyanshu Agarwal, Adv.]

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O R D E R

Per: D. Arvind, Member (Technical)

1. The Court congregated through hybrid mode.
2. Heard the Learned Counsels appearing on behalf of the Financial Creditor and the Personal Guarantor and the Resolution Professional in person at length.
3. **C.P. (IB) No. 340/KB/2022** has been preferred under Section 95(1) of the Insolvency and Bankruptcy Code, 2016, for brevity “I&B Code” by the Indian Bank, hereinafter referred to the “Financial Creditor”/ “Applicant” against Mr. Manish Kumar, Personal Guarantor of M/s. Aryavrat Trading Pvt. Ltd. (Principal Borrower), hereinafter referred to as “Personal Guarantor”/ “Respondent” seeking to initiate insolvency and bankruptcy process in respect of the Respondent herein.
4. The total amount claimed to be in default is Rs.18,28,47,313/-.
5. The Applicant would submit:
 - a) That, to secure the loan granted to the Principal Borrower M/s. Aryavrat Trading Pvt. Ltd., Shri Manish Kumar (Respondent) had furnished a personal guarantee toward security for due repayment of the loans and advances granted to the principal debtor with interest, cost and expenses.
 - b) That, the Respondent executed a Deed of Guarantee in favour of the Financial Creditor on 16.03.2010.

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- c)** That, the principal debtor has failed and neglected to pay the dues of the financial creditor and as consequence, the account has become N.P.A. on 29.12.2018.
- d)** That, owing to the continuing defaults made by the principal borrower company as well as the personal guarantor, the financial creditor on 26.10.2018, issued a notice under Section 13(2) of the SARFAESI, Act, 2002 to invoke the personal guarantee of Manish Kumar and demanded to pay jointly and severally with other Borrower and other guarantors an aggregate outstanding amount of Rs. 16,65,94,536/- as on 31.12.2018.
- e)** Further, on 01.09.2019, the financial creditor through a legal notice has demanded the outstanding amount from the corporate debtor as well as the personal guarantor to pay jointly and severally with the other borrower and guarantors an aggregated outstanding amount of Rs. 18,84,46,093.45/- as on 31.08.2019.
- f)** That, the Corporate Debtor was admitted for CIRP by this Adjudicating Authority in C.P. (IB) No. 430/KB/2019 on 01.04.2022 and on finding no feasible and viable resolution of the corporate debtor, the liquidation process has been initiated against it on 21.09.2022.
- g)** The Financial Creditor on 04.06.2022 has issued a demand notice to the personal guarantor herein under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating

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Authority for Insolvency Resolution process of Personal Guarantors to Corporate Debtor) Rules, 2019, demanding the unpaid debt claimed to be in default of Rs. 18,28,47,313/- as on 04.06.2022.

6. Pursuant to the instant company petition, we have appointed Ms. Tripti Agarwal as the Resolution Professional on 05.01.2024, in exercise of the power vested under Section 97 of the I&B Code. The Resolution Professional accordingly prefers an application being I.A. (IB) No. 316(KB)2024 on 02.02.2024, wherein she has formed her opinion and recommend the company petition filed by the Indian Bank is liable to be admitted under Section 99(7) of the Code. The report furnished by the Resolution Professional is as under:

BRIEF SUMMARY OF THE SECTION 99 REPORT OF THE RESOLUTION PROFESSIONAL:

Name of the Resolution Professional (RP)	Tripti Agarwal
Name of the Debtor (i.e., Personal Guarantor to Corporate Debtor)	Shri Manish Kumar
Name of the Applicant (creditor)	Indian Bank
Name of the Corporate Debtor for whose loans the Debtor has given Personal Guarantee	M/s Aryavrat Trading Pvt. Ltd.
IBC Status of the Corporate Debtor (CD)	CD is under Liquidation

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Whether Debtor is a Resident Indian	Yes	
Whether Debtor is Director of the Corporate Debtor	Yes	
Annual Income of the Debtor in last years as per the application filed before the Adjudicating Authority	32.38 Lakhs	
Amount of Default of the Corporate Debtor as per the application Filed	<p>Rs.18,28,47,313.00/- as per Section 95 application.</p> <p>The financial creditor received Rs.67,66,207.02 from the sale of assets of Corporate Debtor M/s. Aryavrat Trading Pvt Ltd. on 31.03.2023 during liquidation.</p> <p>Copy of statement of Account enclosed as Appendix 9</p> <p>Therefore, total amount of Rs.17,60,81,105.98/- only is due and payable.</p>	
Summary of Assets and Liabilities of the Debtor as per the Application Filed	Particulars	Amount (Rs.)
	Flat in Kolkata	75,44,624.33
	Investment in shares	142,92,56,277.26
	Flat at 6 th Floor, Crescent Tower - Kolkata	1,57,48,920.00
	Flat at Ground Floor, Crescent Tower Kolkata	2,30,65,471.00

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	Land	31,636.00
	Total Estimated Value of Immovable Property	14756.47 lakhs
	Movable Assets	
	Particulars	Amount (Rs.)
	Jewellery	3,81,484.00
	Furniture	22,60,788.43
	Washing Machine	10,000.00
	Security Deposit	48,376.00
	Ballygunj Residence (Maintenance Deposit)	15,000.00
	Total Estimated Value of Movable Property	27.16 Lakhs
	Fixed Deposit and Cash	
	Particulars	Amount (Rs.)
	Fixed Deposit at HDFC	5091.00
	Cash in HDFC Bank	7,54,994.22
	Cash in Dena Bank	11,795.00
	Cash In Hand	20,000.00
	Total Fixed Deposit and cash	7.92 Lakhs
	Sundry Debtor	
	Castle Suppliers	117,59,992.00
	P.K. Commercial Co.	13,57,131.00
	Manya Kumar	1,000.00
	Total Sundry Creditor	131.18 Lakhs
	Total Assets	14922.73 Lakhs

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Whether the application filed under Section 95 of the Code is complete	Yes, the application filed by the Creditor under Section 95 of the Code, 2016 is complete
Section in which application is filed	Section 95 of the I&B Code
Nature of Transaction between the Applicant and the Corporate Debtor	Loan given by the Applicant to the Corporate Debtor for which Debtor has given Personal Guarantee
Date of Application filed by the Applicant with the NCLT	20.11.2022
Date of the order of Hon'ble NCLT for appointment of RP	05.01.2024 Copy of order enclosed as Appendix 1
Date of Communication of order to the RP	15.01.2024 Copy of email enclosed as Appendix 2
Whether Applicant has complied with the requirements specified in Section 95	Yes
Whether Form B was served on the Debtor required by the Law	Yes
Date of Form B was served on the Debtor	08.06.2022, proof of service on page 345 and 346 of the Section 95 application
Date when RP sought Information/Clarifications from the Debtor	17.01.2024 Copy of letter, email and postal track report showing confirmation of delivery enclosed as Appendix 6
Date When the Debtor provided the clarifications	Nil
Date of communication to the Creditor by the RP to	16.01.2024

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inform appointment of the RP	Copy letter send through email is enclosed as Appendix 3
Whether Debtor has Questioned/Challenged the application filed by the Creditor	No.
Brief summary of the issues raised by the Debtor	NA. Debtor has not replied to the communication sent by the RP.
Whether Debtor is eligible for Fresh Start Process	No
Recommendations of the RP	Recommended to Admit the Application

7. The Personal Guarantor, Manish Kumar has objected the submission made by the financial creditor and refuted the statements in the report of Resolution Professional, as under:

a) The financial creditor has alleged that the date of default is December 29, 2018, when the Corporate Debtor allegedly defaulted in serving the interests in its loan accounts although no particulars or documents substantiating the same has been provided by the Financial Creditor.

b) The notice of invocation of guarantee was issued on September 1, 2019, however, the petition has been filed only on November 20, 2022, i.e., more than three years from the date of invocation of guarantee. Thus, the petition is liable to be dismissed as the same is barred by limitation.

c) The Indian Bank has completely suppressed the fact that on August 5, 2022, it had filed an application under Section 95 of the

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IBC numbered as C.P.(I.B.) No.237/2022 against the Personal Guarantor before this Adjudicating Authority, in respect of pupated defaults in respect of the guarantee given by the respondent for Wearit Global Limited which is also undergoing corporate insolvency resolution process before this Tribunal.

d) Once the same Financial Creditor filed C.P.(IB) No.237/2022 against the Respondent before this Tribunal on August 5, 2022, an interim moratorium in terms of Section 96 of I&B Code came into operation effectively prohibiting continuation of “any legal action or proceeding in respect of any debt” as well as prohibiting “the creditors of the debtor” from initiating/filing “any legal action or proceedings in respect of any debt.” Thus, the Financial Creditor could not have filed the petition in respect of alleged defaults arising from the guarantee given in respect of Aryavrat Trading Private Limited.

e) The report has been prepared without application of mind and without appreciating that the mandatory requirements of Section 95 of the IBC and of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 have not been complied in the present matter.

f) The Financial Creditor has not provided any record of default with any information utility in the petition, however the Resolution Professional (who has herself provided a copy of a purported information utility certificate in her report) has alleged that the

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“application filed by the Creditor under Section 95 of the Code, 2016 is complete.” No explanation has been provided by the Resolution Professional as to how she obtained a copy of the purported information utility certificate.

g) That the purported information utility certificate is defective since:

- i.** The “Debt Contract Date” referred to mentions an alleged contract of March 22, 2010, although no loan agreement or guarantee was executed by the Corporate Debtor or by Personal Guarantor on the said date.
- ii.** The date of default is mentioned as “30.09.2018” which is also contrary to the alleged date of default mentioned in the petition.
- iii.** The purported information utility certificate states that it was submitted on “19.12.2023” that is after issuance of the purported demand notice allegedly issued on June 4, 2022, and pursuant to filing the present petition on November 20, 2022. Thus, it is absurd for the financial creditor to suggest that while on December 19, 2023, the Corporate Debtor owed a sum of Rs.10,19,32,030/- to the Financial Creditor, a sum of Rs.18,28,47,313/- is due and payable by the respondent to the Financial Creditor (as alleged in the said demand notice and the petition) in respect of the same debt.

8. We have duly considered the rival contentions of the parties.

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9. We have noted that vide an order dated 18.01.2024 in C.P. (IB) No. 237/KB/2022, the Personal Guarantor Mr. Manish Kumar has already been admitted by this Adjudicating Authority (Court No. I) upon a petition filed by the Indian Bank who is also the applicant herein. As the interim moratorium has been commenced under Section 96 of the Code, in respect of the personal guarantor herein, all legal actions or proceedings pending in respect of any debt shall be deemed to have been stayed; and the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.

10. We have noted that none for the financial creditor has mentioned before us regarding the admission of the CIRP in respect of the Personal Guarantor and very strangely, the Resolution Professional has recommended this company petition for admission sans the verifying the information properly that the alleged personal guarantor has already been admitted for insolvency and bankruptcy process upon a petition filed by the same financial creditor. We would reiterate the role of the Resolution Professional as a “facilitator” to collate facts as laid down the Hon’ble Apex Court in ***Dilip B. Jiwrajka vs. Union of India***, reported at **MANU/SC/1274/2023** that:

“70. We would also like to deal with the submission that the resolution professional is empowered to direct the personal guarantor and others to disclose sensitive personal information without a prior hearing. This demand for information, lacking an opportunity for the personal guarantor to be heard, raises (according to the Petitioners) concerns about violating the right to privacy. We are of the considered view that the resolution professional, operating under the regulatory oversight of the Board, plays a vital role in the effective functioning of the insolvency process and contributes significantly to its efficiency.”

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Firstly, the resolution professional is only entitled to seek information which is strictly relevant to the examination of the application for IRP; and secondly, Regulation 7(2)(h) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 read with para 21 of the First Schedule, casts an obligation on the resolution professional to ensure confidentiality of all information relating to the insolvency process. The BLRC also acknowledges the information imbalance between debtors and creditors, necessitating the resolution professional's investigative role in individual insolvency. Therefore, Section 99 empowers the resolution professional to seek information.”

(Emphasis Added)

11. We find that this application preferred by the Indian Bank (Applicant) is frivolous one and to dissuade the applicant from coming up with such application, we feel it appropriate to impose a cost by invoking the provisions of Section 65 of the Code, of **Rs. One Lakh** as a penalty upon the Applicant herein.

12. The Applicant is directed to pay the penalty amount to the **“National Defence Fund” (NDF)** within two weeks from the pronouncement of the order. Delaying payment of the penalty amount beyond ten (10) days shall carry a rate of 10% per annum from the date of pronouncement to the date of payment. The Affidavit of Compliance shall be filed within seven (7) days upon the payment of penalty amounts with the Registry of this Adjudicating Authority.

13. The Registry is directed to consign the Affidavit of Compliance to the record.

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14. In terms of view above, the present company petition being **C.P. (IB) No. 340/KB/2022** is **dismissed** with cost and the **I.A. (IB) No. 316/KB/2024** preferred by the Resolution Professional is taken on record and accordingly **disposed of**.

15. The Registry of this Adjudicating Authority is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsel for information and for taking necessary steps. Further, a copy of the order shall be served upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (ROC), West Bengal, Kolkata by all available means.

16. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order is signed on the 03rd Day of July 2024.

Bose, R. K. [LRA]/ S. Ghose, Steno