IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-V

I.A. NO.885/2023
IN
CP (IB) NO. 629/ND/2022

IN THE MATTER OF:

Mr. Rakesh Gupta

Personal Guarantor Of

M/s Vs Metallic Private Limited

(Through Resolution Professional)

Mr. Rakesh Kumar Jindal

.... Applicant/Personal Guarantor

Versus

Union Bank of India and Ors.

...... Respondent/Creditor

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)

MS. REENA SINHA PURI
HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 23.07.2026

PRESENT:

For the RP	:	Mr. Roshan Kumar, Adv.
For the Respondent	:	Ms. Nishi Chaudhary, Mr. Mayuresh Rishabh, Advs. for Union Bank of India

ORDER

1. The present application contains Report under Section 99 of the IBC[1] filed by Mr. Rakesh Kumar Jindal, Resolution Professional (RP) in the insolvency resolution process of Mr. Rakesh Gupta, Personal Guarantor (PG) in case of M/s VS Metallic Private Limited (Corporate Debtor), brought by the PG, Mr. Rakesh Gupta himself.

2. This Adjudicating Authority appointed Shri Rakesh Kumar Jindal[2], as RP on 01.12.2022 in CP (IB) 629/ND/2022. The Report, in terms of the provisions of Section 99 of IBC, is filed in IA-885 of 2023 by the RP in compliance with the order dated 01.12.2022 passed by this Adjudicating Authority.

3. Stating that the Application of the FC satisfies all the requirements under section 94 of the IBC read with the IBBI (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019, the RP has recommended admission of the Application CP (IB) 629/ND/2022 in respect of the PG.

4. It emanates from the Report that the Applicant, being a Director and Promoter of M/s VS Metallic Private Limited, had executed personal guarantees in favour of Union Bank of India to secure credit facilities of Rs 20 crores extended to the Corporate Debtor, M/s VS Metallic Private Limited and Rs 35 crores extended to M/s Shivam Corporation, his proprietorship concern. Following defaults by the borrowers, both loan

---

[1] Insolvency and Bankruptcy Code, 2016

[2] IBBI Registration No. IBBI/IPA-002/IP-N01148/2021-2022/13963, email: jprakash.jindal@gmail.com ; rakesh@hrpsindia.com

accounts were classified as NPAs in 2017. Despite invocation of the guarantees, proceedings under the SARFAESI Act, and a One-Time Settlement (approved vide letter dated 03.10.2020), the outstanding dues have remained unpaid.

5. In its reply, the Respondent, Union Bank of India, in whose favour the Applicant had executed Deeds of Personal Guarantee dated 13.04.2013 to secure the credit facilities extended to the aforementioned Corporate Debtor and proprietorship concern, stated that the Applicant, along with other guarantors, undertook joint, several, and continuing liability for the dues of the Borrower Company. Since both the Borrowers defaulted, their accounts were classified as Non-Performing Asset (NPA) in 2017. The Bank initiated proceedings under the SARFAESI Act, 2002 and issued demand notice under Section 13(2) dated 06.01.2018 and 27.06.2019 to the Borrowers and its guarantors, including the PG, in respect of the outstanding dues amounting to Rs 20,92,69,338.19 and Rs 38,97,85,231.93 respectively. O.A. No. 320/2018, titled *Union Bank of India v. M/s VS Metallic Pvt. Ltd. & Ors.*, and O.A. No. 690/2014, titled *Union Bank of India v. M/s Shivam Corporation & Ors.*, were also instituted before DRT. During the pendency of the recovery proceedings, the Bank also approved a One-Time Settlement (OTS) on 18.08.2020 for a sum of ₹21 Crores against the total outstanding dues of approximately ₹50.96 Crores, but the OTS failed due to non-compliance of its terms and conditions.

6. The RP has confirmed compliance with all the procedural requirements. Upon examination of the application and the supporting documents, the RP has concluded that the application has been filed in the prescribed form and satisfies the requirements of Section 94 of the IBC. It is submitted that the debts are not "excluded debts" under Section 79(15) and that the Applicant is not eligible for a Fresh Start Process. The RP has stated the application merits admission under Section 100 of the Code.

7. We have heard the Learned Counsel for the parties and perused the report and the documents placed on record. The learned counsel for the Bank, relying on its reply to the RP, has stated that the Bank has no objection to the initiation of the PG into personal insolvency resolution process.

8. On the issue of limitation, we note that the guarantee furnished by the Personal Guarantor was invoked on 06.01.2018. Although the ordinary limitation period would have expired on 05.01.2021, the benefit of the Hon'ble Supreme Court's orders in *In Re: Cognizance for Extension of Limitation Suo Motu Writ Petition (Civil) No. 3 of 2020*, applies, extending limitation until 21.12.2022. Since the application under Section 94 was filed on 16.07.2022, it is within the prescribed period of limitation. Further the debt due to the Union Bank of India stands acknowledged in the Balance Sheet of the Corporate Debtor as on 31.03.2021, which constitutes a valid acknowledgment under Section 18 of the Limitation Act, 1963, thereby extending the period of limitation. Thus, the present

Application under Section 94 of the Insolvency and Bankruptcy Code, 2016, having been filed on 16.07.2022, is within limitation. Reliance is placed on the judgment of the Hon'ble Supreme Court in *Dena Bank v. C. Shivakumar Reddy & Anr.*, Civil Appeal No. 1650 of 2020.

9. Upon considering the RP's report, and the material placed on record, we are satisfied that the Applicant executed personal guarantees for the credit facilities availed by the Corporate Debtor and committed default upon invocation of the guarantees. We find that the Application satisfies the requirements of Section 94 and related rules.

10. Based on the reasons recorded in the report submitted by the Resolution Professional, and after going through all the documents on record, this Adjudicating Authority hereby allows I.A. NO.885/2023 filed under Section 99 of the Code, 2016 and consequently the petition i.e., CP (IB) NO. 629/ND/2022, filed under the provisions of Section 94 of IBC, 2016 is hereby admitted under Section 100 of the IBC, 2016. The Resolution Professional Mr. Rakesh Kumar Jindal, already appointed as Resolution Professional under Section 96 vide order dated 01.12.2022, shall continue as the Resolution Professional.

11. The Applicant is directed to deposit Rs. 2,00,000/- (Rupees Two Lakhs Only) to the bank account of the Resolution Professional within one week, this fee shall be subject to the rules and regulations made under the provisions of the Code.

12. The Insolvency Resolution Process is initiated against the Personal Guarantor namely **Mr. Rakesh Gupta** and moratorium is declared, which shall commence from the date of admission of the Petition i.e. date of this Order, and shall cease to have effect at the end of the period of 180 days, as provided under Section 101 of IBC, 2016. 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 of the debtor shall not initiate any legal action or proceedings in respect of any debt;
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.

13. The Resolution Professional is directed 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 other in Vernacular which have wide circulation in the State where the Personal Guarantor resides.

14. 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 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.

15. 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 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 [as per the list prepared] shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of the IBC, 2016.

16. 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.

17. In terms of the above, I.A. No.885/2023 stands allowed and CP (IB) No. 629/ND/2022, filed under Section 94(1) of the IBC, 2016 is admitted and the Insolvency Resolution Process stands initiated against the Personal Guarantor i.e., Mr. Rakesh Gupta.

Sd/-

REENA SINHA PURI
MEMBER (TECHNICAL)

Sd/-

MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)