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

I.A. NO. 3189/2024
IN
CP IB NO. 904 /2022

IN THE MATTER OF:

M/S INTEC CAPITAL LIMITED

.....APPLICANT/FINANCIAL CREDITOR

VERSUS

MR. KANISHK DUGGAL

....RESPONDENT/PERSONAL GUARANTOR

IN THE MATTER OF:

MR. HARISH TANEJA

....RESOLUTION PROFESSIONAL

Order Delivered On: 21.08.2026

CORAM:

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

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

APPEARANCES:

For the Applicant : Mr. Manish Kumar, Adv.

For the RP : Mr. Harish Taneja in person, Mr. Gaurav Raj Grover, Adv.

ORDER

1. This Application contains Report under Section 99 of the IBC[1] by Mr. Harish Taneja, Resolution Professional in the insolvency resolution process of Mr.

[1] Insolvency and Bankruptcy Code, 2016

Kanishk Duggal, Personal Guarantor to SRD Management Company Private Limited, Corporate Debtor, brought by Intec Capital Limited, the Financial Creditor.

2. This Adjudicating Authority, vide order dated 04.06.2024 passed in CP (IB)-904/2022, appointed the Resolution Professional and directed him to file a report in terms of Section 99 of the IBC. The Resolution Professional has filed the said Report in IA-3189/2024.

Report of the RP

3. The Resolution Professional has examined the application under Section 95 of the IBC and the details furnished by the Financial Creditor. He has recorded that the application satisfies the requirements of Section 95 of the Code read with the Rules[2], and has recommended admission of the application.

4. As per the Report, the Financial Creditor had extended financial facilities aggregating to Rs. 3,14,00,000 to the Corporate Debtor under two loan accounts[3]. The Personal Guarantor is stated to have executed a Deed of Guarantee and also issued security cheques towards repayment.

5. It is further stated that, upon breach of the terms of repayment and default by the Corporate Debtor, the Financial Creditor issued an Arbitration Notice dated 21.07.2012. During pendency of the arbitration proceedings, a settlement was entered into between the Financial Creditor and the Corporate Debtor on 19.12.2012. An arbitral award was thereafter passed on 18.01.2013. The Financial Creditor has also relied upon acknowledgment of debt reflected in the balance sheet for the year ending 31.03.2017. A demand notice under Rule 7(1) of the aforesaid Rules was issued on 05.03.2021 for a default amount of Rs. 12,18,69,945 as on 31.12.2020. Form D, issued by NeSL, the Information Utility, also records the default of the corporate debtor

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[2] Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019

[3] Two loan accounts i.e. LNNHP00112130001959 and LNNHP00112130001960

and the guarantors including the Personal Guarantor under consideration here[4].

6. The Resolution Professional has concluded that the application filed by the Financial Creditor satisfies the requirements of Section 95 of the Code; that the Corporate Debtor committed default in repayment of debt; that the Personal Guarantor has not denied the existence of debt and guarantee; and that no document has been produced to show discharge of the debt. Accordingly, the Resolution Professional has recommended approval/admission of CP (IB) No. 904/ND/2022.

Objections of the Personal Guarantor.

7. The Personal Guarantor has objected to the Report on the ground that there is a material discrepancy between the sanctioned loan amount and the amount actually disbursed. It is submitted that while a sum of Rs. 314 lakh was sanctioned, only Rs. 291.16 lakh was disbursed, leaving a shortfall of Rs. 22.84 lakh. It is further contended that a substantial amount of Rs. 124.80 lakh was retained by the Financial Creditor as collateral without proper authorisation, thereby reducing the effective disbursement to Rs. 166.36 lakh. Despite this, post-dated cheques were obtained and interest was charged on the entire sanctioned amount of Rs. 314 lakh.

8. It is further submitted that the Financial Creditor failed to maintain transparency in its dealings, particularly in relation to calculation and communication of interest. The Financial Creditor is alleged to have deposited post-dated cheques without the consent of the Corporate Debtor, resulting in dishonour and consequent coercive action, including initiation of proceedings and issuance of warrants.

9. The Personal Guarantor has also contended that the rate of interest was unilaterally and arbitrarily enhanced by the Financial Creditor. According to the Personal Guarantor, the original rate of 8.5% per annum was increased to 15.94% per annum in respect of the first loan and 20.04% per annum in respect of the second loan, in the name of restructuring, without the

[4] Annexure 17, Page 304-314 of the Application u/s 95.

knowledge or consent of the Corporate Debtor. Such action is alleged to be contrary to fair lending practices and applicable guidelines.

10. It is further submitted that payments amounting to Rs. 95.84 lakh, allegedly made by the Personal Guarantor between December 2012 and April 2013, were not properly accounted for. No details of appropriation or adjustment of these payments were provided, and the Financial Creditor failed to revise or reconcile the outstanding dues accordingly. It is also alleged that TDS adjustments and collateral-related credits were not disclosed.

11. The Personal Guarantor has further submitted that, during arbitration, the Financial Creditor disclosed the existence of collateral for the first time and issued a certificate in respect thereof only on 17.04.2013. It is also contended that the Arbitrator was appointed unilaterally and that complete particulars of the outstanding debt, interest on collateral, and supporting financial documents were not furnished.

12. The Personal Guarantor has alleged mala fide conduct on the part of the Financial Creditor, including misrepresentation of dues, suppression of material facts, and misuse of proceedings under Section 138 of the Negotiable Instruments Act. It is further contended that coercive and unfair recovery practices were adopted, causing harassment to the Personal Guarantor. The Personal Guarantor denies the occurrence of default and asserts that pre-existing disputes existed between the parties. It is also submitted that the Financial Creditor failed to comply with applicable regulatory guidelines and the requirements of the Code. Accordingly, the Personal Guarantor prays that the petition as well as the Report be rejected.

Rejoinder by Financial Creditor

13. The Financial Creditor has submitted that two loan facilities were sanctioned to the Corporate Debtor in the year 2010, each for Rs. 1.57 crore, aggregating to Rs. 3.14 crore. Under the first loan account, amounts of Rs. 62.85 lakh and Rs. 85.60 lakh were disbursed on 27.03.2010 and 31.03.2010, respectively, aggregating to approximately Rs. 1.48 crore, after standard deductions towards processing fees, ROC charges and advance EMI. Under

the second loan account, Rs. 62.85 lakh was disbursed on 27.03.2010, and a further sum of Rs. 62.85 lakh was disbursed on 01.03.2011 upon rescheduling of the loan. Similar deductions were made from the sanctioned amount. It is further submitted that certain portions of the loan amount were adjusted towards overdue EMIs for the months August 2010 to December 2010 at the request of the Corporate Debtor.

14. The Financial Creditor states that proceedings under Section 138 of the Negotiable Instruments Act, 1881 were initiated on account of dishonour of cheques issued towards repayment of loan EMIs. It is further submitted that the settlement agreement dated 30.10.2020, executed between the Financial Creditor, the Corporate Debtor and the Personal Guarantors, was entered into voluntarily, out of free will and mutual consent, and without any force, coercion or duress.

15. The Financial Creditor has denied receipt of the alleged payment of Rs. 95.84 lakh, as claimed by the Personal Guarantor, towards the loan sanctioned to the Corporate Debtor. It is submitted that the Personal Guarantor has failed to place on record any evidence to substantiate the said claim. Accordingly, the objection raised in this regard is stated to be vague, unsubstantiated and liable to be rejected.

16. The Financial Creditor further submits that the arbitration proceedings initiated under the Loan Agreement were terminated upon settlement between the parties in terms of the Deed of Settlement dated 19.12.2012, recorded before the learned Mediator on 02.01.2013, and that no award was passed on merits. It is also submitted that the Personal Guarantor has not challenged the appointment of the Arbitrator or the order dated 18.01.2013 before any forum. Hence, the objections raised by the Personal Guarantor are stated to be misconceived.

Analysis and Findings

17. We have considered the Report submitted by the Resolution Professional under Section 99 of the Code, the objections raised by the Personal

Guarantor, the rejoinder filed by the Financial Creditor and the submissions advanced by the parties.

18. The CIRP against the corporate Debtor, SRD Management Company Private Limited, was initiated vide order dated 06.03.2023 in CP (IB) No. 1058/PB/2020. The present application under Section 95 of the IBC was filed on 08.11.2022 against the Personal Guarantor.

19. From the Balance Sheet[5] of the corporate debtor as on 31.03.2017, it is seen that the corporate debtor is a family concern, Mr Shiv Raman Duggal and his wife, Mrs Janhavi Duggal as shareholders. The directors of Corporate Debtor are Mr Shiv Raman Duggal and his daughter, Ms Sukruti Duggal. In respect of the loans obtained by the Corporate Debtor, the Financial Creditor has filed Section 95 applications against four personal guarantors, Mr Shiv Raman Duggal; his wife, Mrs Janhavi Duggal; his daughter, Ms Sukruti Duggal; and his son, Mr Kanishk Duggal.

20. The Record of Default[6] in Form D issued by NeSL, records default by the corporate debtor, the aforementioned four personal guarantors including Mr Kanish Duggal and a corporate guarantor, another family concern.

21. The case of the Financial Creditor is that loan facilities were sanctioned to the Corporate Debtor vide sanction letters dated 25.03.2010, pursuant to which loan agreements and deeds of personal guarantee were executed on 27.03.2010. Upon default by the Corporate Debtor, an Addendum-cum Deed of Settlement[7] dated 30.10.2010 was executed, which was also not honoured. This led to issuance of Loan Recall Notice[8] dated 21.07.2012 for initiation of arbitration proceedings, addressed to the corporate debtor and all the guarantors.

22. During the pendency of arbitration proceedings, a settlement deed[9] dated 19.12.2012 was entered into between the corporate debtor and the financial

[5] Annexure 15, Page 266-273 of the Application u/s 95.
[6] Annexure 17, Page 292-314 of the Application u/s 95.
[7] Annexure 10, Page 186-207 of the Application u/s 95.
[8] Annexure 11, Page 208-219 of the Application u/s 95.
[9] Annexure 12, Page 220-237 of the Application u/s 95.

creditor. Under the said arrangement, Mr Kanishk Duggal stood as personal guarantor and hypothecated his insurance policy bearing no. 000488122 having a sum of assured value of Rs 12,00,000 as additional security towards repayment of the loan amount.

23. The corporate debtor thereafter made delayed part payments of only Rs 3,80,000 and Rs 1,90,000 towards the restructured debt, and defaulted in making the remaining payments. The loan accounts of the corporate debtor were declared NPA on 30.05.2015. The debt was acknowledged in the balance sheet of the corporate debtor as on 31.03.2017. Thereafter, another settlement was entered into on 24.09.2018 and part payment of Rs 5,00,000 was made by the corporate debtor on 29.09.2018. Since the corporate debtor defaulted again, demand notice dated 05.03.2021 was issued against the personal guarantors for an outstanding amount of Rs 12,18,69,945.

24. The principal objections raised by the Personal Guarantor relate to the alleged pre-existing dispute between the parties, non-accounting of payments made by the Personal Guarantor, *mala fide* conduct and unilateral appointment of the Arbitrator.

25. The record indicates that the Financial Creditor has relied upon the Statement of Loan Disbursement[10] to rebut the contention of the Personal Guarantor regarding the alleged discrepancy between the sanctioned loan amount and the amount actually disbursed. Upon perusal of the said Statement, it is evident that the disbursements were made in terms of the loan arrangement, subject to applicable deductions and adjustments. Therefore, the objection raised by the Personal Guarantor on this ground is without merit.

26. As regards the alleged payment of Rs. 95.84 lakh, the Financial Creditor has specifically denied receipt of the said amount towards the loan sanctioned to the Corporate Debtor. The Personal Guarantor has failed to place on record any documentary proof evidencing such payment or its appropriation towards

[10] Annexure 9, Page 181 of the Application u/s 95.

the loan account. In the absence of any supporting material, the said contention cannot be accepted.

27. The objection regarding unilateral appointment of the Arbitrator is also without merit. The record indicates that the arbitral proceedings were terminated pursuant to settlement and no award was passed on merits. In any event, the appointment of the Arbitrator or the proceedings in question were not challenged by the Personal Guarantor before any competent forum. Proceedings under Section 95 of the IBC cannot be converted into collateral proceedings to examine such challenges, particularly when the same have not been agitated in accordance with law before the appropriate forum.

28. It is further observed that no contemporaneous complaint, criminal proceedings or independent material has been placed on record to show that the settlement agreements were signed or executed on account of fraud, coercion or pressure exerted by the Financial Creditor.

29. We also note that the signature of the personal guarantor appears on the guarantor form[11], the deed of guarantee[12], the undertaking[13], and the deed of settlement, all dated 19.12.2012. The Deed of Guarantee records that the liability of the guarantor to discharge dues under the agreement shall be joint, several and co-extensive with that of the borrower and other co-guarantors. It further records that upon demand, the guarantor is required to discharge the dues without demur, reservation, contest or protest within seven days of such demand. The Deed of Guarantee further stipulates that the guarantee shall be final and binding notwithstanding any dispute pending between the borrower, guarantor and Financial Creditor, or any proceeding pending before any Court, Arbitral Tribunal or other forum. The liability under the guarantee is stated to be absolute and unequivocal, and the guarantee is recorded as continuing until all dues are discharged to the satisfaction of the Financial Creditor.

[11] Page 160 of the Application u/s 95.
[12] Page 161-162 of the Application u/s 95.
[13] Page 163 of the Application u/s 95.

30. The outstanding debt was acknowledged in the balance sheet[14] of the corporate debtor as on 31.03.2017. Another settlement[15] dated 24.09.2018 was entered into, to which the personal guarantors were also parties. The continuing default led to issuance of demand notice dated 05.03.2021, demanding payment of the outstanding amount of Rs. 12,18,69,945 as on 31.12.2020, which was served upon the Personal Guarantor through Speed Post. Despite service of notice, the Personal Guarantor failed to discharge the debt or place any material to show repayment or satisfaction of the liability.

31. As per the terms of the agreement, the liability of the guarantor is co-extensive with that of the corporate debtor, final and binding, absolute and unequivocal, and continuing until all dues are fully discharged to the satisfaction of the financial creditor. Once the Corporate Debtor committed default and the Financial Creditor invoked the guarantee and demanded payment from the guarantor, his liability stood crystallised. No material has been placed on record to show that the guarantee stood discharged or that the debt owed to the Financial Creditor was satisfied.

32. The Resolution Professional, in his Report under Section 99 of the Code, has examined the application and material furnished by the Financial Creditor and has recommended admission. The Personal Guarantor has not placed any document to show that the debt has been discharged, satisfied or extinguished.

33. We also find no procedural infirmity in the Report submitted by the Resolution Professional. The Personal Guarantor was served with the Report and was afforded an opportunity to file objections, which have been considered herein.

34. At the stage of consideration of an application under Section 100 of the Code, this Adjudicating Authority is required to consider the report of the Resolution Professional and either admit or reject the application. Upon consideration of the material placed on record, we are satisfied that the debt and default stand established, that the Personal Guarantor had executed the guarantee, and

[14] Annexure 15, Page 266-273 of the Application u/s 95.
[15] Annexure 14, Page 260-265 of the Application u/s 95.

that the requirements for admission of the application under Section 95 of the Code are fulfilled.

35. In view of the foregoing discussion, the objections raised by the Personal Guarantor are rejected. The Report submitted by the Resolution Professional under Section 99 of the Code in **IA No. 3189/2024** is **accepted.**

36. Accordingly, the application filed by the Financial Creditor under Section 95 of the Code, being **CP (IB) No. 904/ND/2022**, **is admitted**. The insolvency resolution process is hereby initiated against Mr. Kanishk Duggal, Personal Guarantor to the Corporate Debtor.

37. Consequently, in terms of Section 101 of the Code, moratorium shall commence from the date of this order and shall cease to have effect at the end of 180 days from the date of this order, or earlier as provided under the Code. 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 proceeding in respect of any debt;
    c. the debtor shall not transfer, alienate, encumber or dispose of any of his assets or legal rights or beneficial interest therein; and
    d. the provisions of Section 101 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

38. The Resolution Professional is directed to cause a public notice to be published within seven days from the date of uploading of this order on the website of this Adjudicating Authority, inviting claims from all creditors. The creditors shall register their claims in accordance with Section 103 of the IBC within 21 days from the date of issuance of such notice. The notice shall contain the particulars prescribed under Section 102(2) of the IBC.

39. The publication of the notice shall be made in two newspapers, one in English and one in vernacular language, having wide circulation in the State.

40. The Resolution Professional shall, in exercise of powers under Section 104 of the IBC, prepare a list of creditors within 30 days from the date of the notice.

41. The debtor shall prepare a repayment plan in consultation with the Resolution Professional, as provided under Section 105 of the IBC. The repayment plan shall include provision for payment of fee to the Resolution Professional.

42. The Resolution Professional shall submit the repayment plan, along with his report thereon, to this Adjudicating Authority within 21 days from the last date for submission of claims, as provided under Section 106 of the IBC.

43. In case the Resolution Professional recommends that a meeting of creditors is not required to be summoned, he shall record reasons for the same. If the Resolution Professional is of the opinion that a meeting of creditors should be summoned, he shall specify the details as provided under Section 106(3) of the IBC.

44. The date of the meeting of creditors shall not be less than 14 days and not more than 28 days from the date of submission of the report under Section 106(1) of the IBC. At least 14 days' notice shall be issued to the creditors, as per the list prepared, through all relevant and feasible modes. Such notice shall contain the particulars prescribed under Section 107 of the IBC.

45. The meeting of creditors shall be conducted in accordance with Sections 108, 109, 110 and 111 of the Code. The Resolution Professional shall prepare a report of the meeting of creditors on the repayment plan, containing the particulars provided under Section 112 of the IBC, and submit the same to this Adjudicating Authority. Copies thereof shall be provided to the debtor and the creditors.

46. The Resolution Professional shall be paid an amount of Rs. 2,00,000 by the Financial Creditor to undertake further proceedings in accordance with the IBC. The public notice contemplated under Section 102 of the IBC shall be issued by the Resolution Professional on behalf of this Adjudicating Authority inviting claims. The Resolution Professional shall discharge his functions and duties in compliance with the IBC and the Code of Conduct applicable to insolvency professionals.

47. Accordingly, **IA** No**. 3189/2024 stands allowed** and **CP (IB) No. 904/ND/2022** filed under Section 95 of the Code is admitted and disposed of in terms of the above directions.

Sd/-	Sd/-
(REENA SINHA PURI)	**(MANNI SANKARIAH SHANMUGA SUNDARAM)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**