IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)
IA-5539/ND/2024
IN
Company Petition No. (IB) 375/ND/2024

IN THE MATTER OF CP (IB) 375/ND/2024:
(Under Section 95 of the IBC, 2016)

Central Bank of India **... Applicant**

Versus

Mr. K. Gnyandeep Kantipadi **... Respondent**

IN THE MATTER OF IA-5697/ND/2025:

(Under Section: 95 of the IBC, 2016)

Santosh Sharma
Resolution Professional
Mr. K. Gnyandeep Kantipadi (Under IRP for PG to CD)
First Floor, House No. 17/7, Ashok Nagar,
NCT of Delhi - 110018, India
Phone No. 91- 8269470812 **... Applicant/RP**

Order delivered on 22.10.2026

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. ATUL CHATURVEDI, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Brijesh Kumar Tamber, Adv. Vaibhav Krishan Dayma

For the Respondent : Adv. Shruti M., Adv. Gurnehar Singh in IA-5539/2024

ORDER

PER: ASHOK KUMAR BHARDWAJ, MEMBER (J)

The prayers made in the present application preferred under Section 99(7) of IBC, 2016 reads thus:-

1. *"Condone the delay in filing the Present Report as the order dated 04.09.2024 passed by this Hon'ble Adjudicating Authority was received by the RP on 22.10.2024 from third party sources.*
2. *Take the present application/report under Section 99 of IBC on record and pass such order as the Hon'ble Adjudicating Authority deem fit including but not limited to an admission order under Section 100 of Insolvency & Bankruptcy Code, 2016;*
3. *Fix the Fee/Remuneration of RP, Legal and other Expenses incurred by the RP till the date of filing of this application and also fix the Fee/Remuneration of RP, Legal and other Expenses to be incurred post admission of the Application;*
4. *Pass such other further order / order(s) as may be deemed fit and proper in the facts and circumstances of the case."*

2. While Considering the application, viz. CP (IB) No. 375/ND/2024, this Tribunal passed the order under Section 97 of the IBC, 2016 and appointed Mr. Santosh Sharma, RP, as Resolution Professional qua the Respondent, namely Mr. K. Gnyandeep Kantipadi. The Resolution Professional so appointed has filed the report under Section 99(7) of IBC, 2016 in respect of the Debtor/Personal Guarantor and has recommended for the admission of the application under Section 95 of the Code. The relevant excerpts of the report reads thus:-

22. In view of the above I, Santosh Sharma , Resolution Professional appointed by this Hon'ble Adjudicating Authority, National Company Law Tribunal, New Delhi Bench, Court-II vide order dated 04.09.2024 (the same was communicated to the RP through a third party on 22.10.2024) in (IB) - 375/ND/2024, hereby confirm that I have perused/examined the Insolvency Application filed by the Financial Creditor under Section 95 of the Code along with all the underlying documents and annexure and have formed an opinion to recommend the same for approval to this Hon'ble Adjudicating Authority based on the following grounds:-

a. The Insolvency Application has been filed in the requisite form i.e. Form C, in terms of Rule 7(2) 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 Personal Guarantor was duly served with demand notice dated 11.03.2024 by the Financial Creditor for repayment of the debt owed by him to the Financial Creditor in terms of the provisions of the Code prior to filing the Insolvency Application, but the Personal Guarantor neither repaid the outstanding dues nor provided any evidence of repayment of debt.

c. That the detailed bifurcation of Claim Amount as ascertained and deemed from the limited information received from the Financial Creditor is as follows:

Sr. No.	Particulars	Amount Due (In Rs.)
1.	OD Facility *(Refer **Annexure A-5 (Colly)**)*	3,43,61,033.62/-
2.	BG Facility (Admitted by the Guarantor in his OTS proposal dated 22.06.2021) *(Refer Page 69 of the Application)*	2,72,27,890.00/-
Total		6,15,88,923.62/-

Note: Due to non-receipt of the complete information from the Financial Creditor as well as the Guarantor, it is assumed that the balance claim amount may be on account of the interest charged by the Financial Creditor.

d. In terms of Section 99(2) of the Code the undersigned informed the Respondent/Personal Guarantor vide email dated 23.10.2024 about the passing of order dated 04.09.2024 and further requested the Respondent/Personal Guarantor to provide the proof of the repayment of debt claimed as unpaid by the Applicant Financial Creditor. Till the date of filing of this report RP have not receive any response/reply from the Personal Guarantor.

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

f. The Debtor, Personal Guarantor, in not eligible for fresh start under Chapter II of the Code.

g. That it is the submission of the Applicant/RP that the application under Section 95 as filed by the Financial Creditor is liable to be admitted for an amount of Rs. 6,15,88,923.62/- as against the claimed amount of Rs. 6,21,75,418/-.

3. As can be seen from the aforementioned report, the Resolution Professional was satisfied with the requirements of the provisions of Section 99(2) of IBC, 2016. The Resolution Professional has also depicted the satisfaction of requirement for admission of the application preferred under Section 95(1) of the Code by presenting a tabular chart viz.

COMPLIANCE IN TERMS OF SECTION 95 OF THE CODE

PROVISIONS	COMPLIANCES
Section 95(4)(a) of the Code: Details and documents relating to the debts owed by the debtor to the creditor or creditors submitting the application for Insolvency Resolution Process as on the date of application	From a perusal of the Application, it is evident that the following documents are placed on record in relation to the credit facilities granted by the Applicant Financial Creditor to the Corporate Debtor and Personal Guarantee given by the Respondent/Personal Guarantor:

	a) Copy of Sanction Letter dated 17.03.2016; b) Copy of Guarantee Agreement dated 18.04.2016; c) Copy of the statement of current account of the Corporate Debtor maintained with the Financial Creditor

Section 95(4)(b) of the Code: Details and documents relating to the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand.	The Applicant Financial Creditor issued a Demand Notice dated 11.03.2024 under Section 95(4)(b) of the IB Code, read with Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Persons) Rules, 2019 on the Respondent demanding the Payment of the unpaid debt in default amounting to Rs. 6,21,75,418/-. However, the Applicant Financial Creditor has received the reply from the Respondent/Personal Guarantor where the Respondent/Personal Guarantor has not filed any document to show payment of debt and claimed the discharge of his liability as personal Guarantor.
Section 95(4)(c) of the Code: Details and documents relating to relevant evidence of such default or non-repayment of debt	Statement of account of the Corporate Debtor depicting the outstanding dues is annexed herewith and marked as **ANNEXURE A- 5(Colly)**
Section 95(5) of the Code: The creditor shall also send a copy of the application made under sub-section (1) to the debtor	On perusal of the Hon'ble Adjudicating Authority order dated 17.10.2024, it seems that the Financial Creditor has already served the copy of Application to the Personal Guarantor.

COMPLIANCE IN TERMS OF SECTION 99 OF THE CODE

PROVISIONS	COMPLIANCES
Section 99(2) of the Code: Where the application has been filed under section 95, the resolution professional may require the debtor to prove repayment of the debt claimed as unpaid by the credit	That vide email dated 23.10.2024 the RP informed the Personal Guarantor about the passing of order dated 04.09.2024 and further vide its E-mail dated 25.10.2024 also requested the Personal Guarantor to provide the proof of the repayment of debt claimed as unpaid by the Financial Creditor Till the date of filing of this report no reply has been received from the Personal Guarantor.

Section 99(3) of the Code: Where the debt for which an application has been filed by a creditor is registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt	The RP sent an email dated 25.10.2024 and 01.11.2024 to the Financial Creditors of the Corporate Debtor thereby informed them about his appointment as RP and also sought from them various documents, information and clarification so that the RP could file its report with the Hon'ble Adjudicating Authority in timely manner. That the Applicant has received a partial clarification from the Financial Creditor vide their Email dated 03.11.2024. However, the clarification with respect to the registration of the debt with the Information Utility is yet to be received from the Financial Creditor.
Section 99(4) of the Code read with Section 99(6)(b)	However, the Financial Creditor is yet to provide the complete information/ explanation sought by the Resolution Professional, still in the professional view of the RP, the information already provided by the Financial Creditor along with the Copy of Application was enough to prepare the present report.

4. As can be seen from the provisions of Section 100 of IBC, 2016, this Tribunal need to pass an order in the applications preferred under Section 95(1) of IBC, 2016, in due consideration of the recommendation made by the Resolution Professional.

5. In the reply filed on behalf of the PG/Respondent, the admission of the application is opposed on the grounds:-

i. The applicant offered settlement to the creditor.

ii. The petition is barred by limitation.

6. As far as first issue is concerned, as can be seen from the provisions contained in Section 105 of the Code, the debtor is required to prepare in consultation with the Resolution Professional a repayment plan containing a proposal to the creditors for restructuring of his debts or affairs. Besides, Section 100(2) of the Code provides that where the Adjudicating Authority admits an application under Section 100(1) of the Code, it may on request of the RP issue instructions for the purpose of conducting negotiations between the debtors and the creditors for arriving at a repayment plan. Thus, in a way, the process of PIRP is there to facilitate the Debtor/PG to enter into settlement with all of his creditors. Therefore, if intention of the PG is to enter into settlement, the PIRP would be facilitating in the direction.

7. Regarding issue of limitation, as per the stand taken on behalf of the Applicant, the loan account of Principal Debtor was declared as NPA only on 01.09.2020. As can be seen from the ruling given by the Hon'ble Supreme Court in ***Suo Motu Writ Petition (C) No. 3 of 2020***, in such cases where limitation could expire between 15.03.2020 to 28.02.2022, the parties had benefit of period of 716 days.

8. In ***IL & FS Financial Services Ltd. v. Adhunik Meghalaya Steels (P) Ltd. (supra),*** Hon'ble Supreme Court ruled that the entire period between 15.03.2020 to 28.02.2022 need to be excluded from the period of limitation. Relevant excerpt of the judgment reads thus:-

> *"46. We have no manner of doubt that sub-Para 1 of Para 5 of the order of this Court dated 10.01.2022 would apply and the entire period from 15.03.2020 to 28.02.2022 would stand excluded, which would mean*

that the limitation would, reckoning the acknowledgment of 12.08.2020, commence on 01.03.2022 and continue till 28.02.2025. Since the application has been filed on 15.01.2024 the same is within time. Limitation, in view of the acknowledgment as found above, having commenced only on 12.08.2020, the question of limitation expiring between 15.03.2022 and 28.02.2022 cannot arise. Hence, Para 5(III) of the order of this Court dated 10.01.2022, has no application to the facts of this case."

9. In view of the aforementioned in such cases where the period of limitation expired between 15.03.2020 and 28.02.2022 the total period of 716 days need to be added to the time limit prescribed for filing petition under Section 95 of IBC, 2016 before this Tribunal or the same has to be excluded from the prescribed period of limitation. In the present case, the addition of 716 days to 14.08.2023 would take the time limit to 30.07.2025. Thus, the application being preferred in the year 2024 is within the prescribed period of limitation.

10. Even otherwise also, the PG/Debtor had offered One-Time Settlement to the creditor on 22.06.2021. The offer of settlement amounts to acknowledgment of debt. Thus, the application preferred under Section 95(1) of IBC, 2016 on 21.05.2024 is within prescribed period of limitation. Again, the demand notice served by the creditor upon the PG/Debtor under Rule 7(1) of I&B (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtors) Rules, 2019 being dated 11.03.2024 the present application filed within 03 years of such demand is within limitation. ***Indian Bank vs. Sh. Rakesh Jolly***, in ***IA No. 4675 of 2022 in Company Petition No. (IB)-573/(ND)/2022,*** this Tribunal viewed that the limitation should

commence from the date of first demand notice. The view was upheld by Hon'ble NCLAT in ***Shri Rakesh Jolly vs. Indian Bank and Others (Company Appeal (AT) (Ins.) No. 1267 of 2023***.

11. In view of the aforementioned, accepting the recommendation made by the Resolution Professional in respect of the Personal Guarantor/Debtor, who extended the guarantee in respect of the financial facility provided by the applicant**, we allow the IA-5539/ND/2024 and admit IB-375/ND/2024.**

12. It goes without saying that during the Insolvency Resolution Process, the RP shall give an opportunity to the Personal Guarantor to submit his repayment plan. Nevertheless, before that, the RP shall also carry out the exercise in terms of the provisions of Section 100(2) of IBC 2016. For such purpose, it would be open to the Respondent to appear before the RP within one week from today.

13. There is no request by the RP for the purpose of conducting negotiations between the debtor and the creditor. As a sequel to the admission of the present application, a moratorium shall commence in relation to all the debts of the Respondent. During the moratorium period – (a) any pending legal action or proceedings in respect of any debt qua the Respondent shall be deemed to have been stayed; (b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt qua the Respondent; and (c) the debtors shall not transfer, alienate, encumber or dispose of any of the assets or their legal right or beneficiary interest therein. The moratorium shall cease to have effect at the end of the period of 180 days.

14. A public notice shall be issued by the RP within seven days of passing of this order, inviting claims from all creditors within 21 days of such notice. The notice shall include details of the present order, particulars of the Resolution Professional with whom the claims have to be registered and the last date for the submission of the claims. The notice shall be – (a) published in two National Newspapers, one in English and the other in a Vernacular Language, in circulation in the State where the debtor resides; (b) affixed in the premises of this Adjudicating Authority; and (c) placed on the website of the Adjudicating Authority.

15. We are sanguine that the RP shall discharge all such duties as are incumbent upon him in terms of the provisions of Sections 102, 103, 104, 105, 106, 107, 108, 112 and 113 of IBC, 2016, with the due deference of the procedure enshrined in Regulations 5, 7, 8, 9, 11, 12, 13, 14, 15 and 17 of IBBI (Insolvency Resolution Process for Personal Guarantor to Corporate Debtors) Regulations, 2019 and also in terms of the other extent provisions of the aforementioned code/ regulations and/or any other provisions of law applicable to him, in discharge of his duties as RP.

16. A copy of this order, along with the copy of the application as well as the report of the Resolution Professional, shall be provided to the Creditor (Applicant), Personal Guarantor (Respondent) and IBBI, by the Registry/Court Master within 7 days from today by email.

17. The IA-5539/ND/2024 and IB-375/ND/2024 stand admitted**. To come up for consideration of the Status Report to be filed by the RP within 8 weeks.**

18. It goes without saying that whatever amount is paid to the creditor by the Principal Borrower (Corporate Debtor) and other guarantors would be deducted from the liability of the Respondent/PG to repay.

Sd/-
(ATUL CHATURVEDI)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)