

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER**

IA (IBC) No. 375/JPR/2023
IA (IBC) No. 489/JPR/2023
IA(IBC) No. 528/JPR/2023
IA (IBC) No. 536/JPR/2023
In CP No. (IB)- 16/94(1)/JPR/2022

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

IN THE MATTER OF:

MR. ANIL BALDVA

...Applicant/Debtor

MEMO OF PARTIES

IA (IBC) No. 375/JPR/2023
AND IN THE MATTER OF
IA(IBC) No. 489/JPR/2023

Mr. Vishnu Upadhyay Resolution Professional
Of Mr. Anil Baldva, R/o at DWA/G-104,
Dwarka Apartment, Mansarovar, Jaipur-302020.

.... Applicant/Debtor

Vs.

Punjab National Bank,
Gandhinagar Pur Road, Bhilwara-311001.

..... Performa Respondent

IA (IBC) No. 375/JPR/2023
IA (IBC) No. 489/JPR/2023
IA(IBC) No. 528/JPR/2023
IA (IBC) No. 536/JPR/2023
In CP No. (IB)- 16/94(1)/JPR/2022

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AND IN THE MATTER OF**IA(IBC) No. 528/JPR/2023****MEMO OF PARTIES**

MR. ANIL BALDVA
 R/o H. No. 4, Kashipuri,
 Bhilwara - 311001

...Applicant

AND

PUNJAB NATIONAL BANK And Other Creditors
 Circle office, Udaipur

AND

MR. VISHNU UPADHYAY
 DW A/G-104, Dwarka Apartment,
 Mansarovar, Jaipur-302020

..... Resolution Professional

AND IN THE MATTER OF**IA(IBC) No. 536/JPR/2023****MEMO OF PARTIES**

Indiabulls Housing Finance Limited
 Through Authorised Officer Plot No. O 12B,
 Ground Floor, Ashok Marg, C-Scheme, Jaipur-302001.

..... Applicant/Respondent

Vs.

Mr. Vishnu Upadhyay Resolution Professional
 Of Mr. Anil Baldva, R/o at DWA/G-104,
 Dwarka Apartment, Mansarovar, Jaipur-302020.

..... Resolution Professional of Debtor

IA (IBC) No. 375/JPR/2023IA (IBC) No. 489/JPR/2023IA(IBC) No. 528/JPR/2023IA (IBC) No. 536/JPR/2023In CP No. (IB)- 16/94(1)/JPR/2022

Sd-

Sd-

For the Applicant : Anubha Singh, Adv.
Vishnu Upadhyay, RP

For the Respondent : Vikas Jain, Adv. For PNB
Pramod Kumar, Adv.

Order Pronounced On: -08.12.2023

ORDER

Per: Shri Rajeev Mehrotra, Technical Member

1. The Applicant, namely *Mr. Vishnu Upadhyay* ('Resolution Professional'), has filed the present Application under Section 112 of the Insolvency and Bankruptcy Code, 2016 ('Code'/ 'IBC') annexing the Report of the meeting of Creditors on the Repayment Plan for the Insolvency Resolution Process of the Personal Guarantor/Debtor namely, *Mr. Anil Baldva* to the Corporate Debtor *M/s Baldva Textiles Private Limited*.
2. It is seen that the Personal Guarantor/Debtor had filed an application bearing *CP No. (IB)-16/94/JPR/2022*, under section 94(1) of the Code r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 ('Rules'), seeking initiation of Insolvency Resolution Process against the Applicant/ Debtor who is the Personal Guarantor of the Corporate Debtor, namely *M/s Baldva Textiles Private Limited* for an amount of Rs.16,73,10,124/- (Rupees Sixteen Crores Seventy-Three Lakhs Ten Thousand One Hundred and Twenty-Four Only)

IA (IBC) No. 375/JPR/2023
IA (IBC) No. 489/JPR/2023
IA(IBC) No. 528/JPR/2023
IA (IBC) No. 536/JPR/2023
In CP No. (IB)- 16/94(1)/JPR/2022

Sd-

Sd-

in relation to the credit facility extended by the Punjab National Bank ('Bank').

3. Thereafter, *vide* Order dated 30.05.2022 this Adjudicating Authority had appointed *Mr. Vishnu Upadhyay*, bearing Registration No. IBBI/IPA-003/IP-N000153/2018-19/11843 as the Resolution Professional under Section 97 of the Code. Later, *vide* order dated 11.01.2023, this Adjudicating Authority admitted the Application under Section 100 of IBC, 2016 and the Individual Insolvency Resolution Process was admitted against the Personal Guarantor *Mr. Amar Balwa*.
4. In the view of order dated 11.01.2023, the Resolution Professional was directed to publish a public notice within seven days and invite the claims from all the creditors within 21 days of such issuance in the newspaper. The Resolution Professional was also directed to prepare a list of creditors in accordance with the provisions of the Section 104 of IBC, 2016 within 30 days from the date of the notice. Further it was directed that the Debtor shall prepare a Repayment Plan in consultation with the Resolution Professional as provided under Section 105.
5. In compliance of the order dated 11.01.2023, the Resolution Professional issued the public notice on 22.01.2023 in "*Financial Express*" (English) and "*Mahanagar Times*" (Hindi). The copy of public announcement is annexed as Annexure-B. A list of creditors was also prepared and the final

IA (IBC) No. 375/JPR/2023
IA (IBC) No. 489/JPR/2023
IA(IBC) No. 528/JPR/2023
IA (IBC) No. 536/JPR/2023
In CP No. (IB)- 16/94(1)/JPR/2022

Sd-

Sd-

list of Creditors based on claims submitted by the Creditors is annexed as Annexure-C.

6. Further, the Debtor had submitted its repayment plan on 01.03.2023. The said Repayment Plan was put forth before the Creditors for negotiation. The Debtor had submitted multiple Repayment Plans to the Applicant resulting from the negotiations between the Debtor and the Creditors. The Applicant has received all the repayment plans from the debtor and the same is annexed as Annexure-D. The Report under Section 106 of IBC, 2016 was filed by the Resolution Professional dated 14.06.2023 which was taken on record by this Adjudicating Authority vide order dated 14.06.2023
7. Thereafter, as per the provisions of Section 107 of IBC, 2016, the Resolution Professional had summoned four (4) meeting of the Creditors on dated 03.05.2023, 10.05.2023, 04.09.2023 and 08.09.2023 in accordance with provisions of Sections 108, 109, 110 and 111. The copies of the notices and Minutes of meetings ('MOM') dated 08.09.2023 is annexed as Annexure-E.
8. It is submitted that as per the provisions of Section 111 of IBC, 2016, the final Repayment Plan dated 04.09.2023 has been approved by the majority of the creditors. The copy of online voting is annexed as Annexure- F.

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Sd-

9. The Resolution Professional has prepared its Report of the meeting of creditors on repayment plan under Section 112(1) of the IBC, 2016 which is as follows:

a. The Repayment Plan dated 04.09.2023 was approved in the meeting of creditors dated 08.09.2023 through online voting by 89.98% voting shares as follows:

Amount (Rupees in Lakhs)

<i>S. No.</i>	<i>Particulars</i>	<i>Dated 04.09.2023 Approved</i>	<i>Dated 28.07.2023</i>	<i>Dated 10.05.2023</i>	<i>Dated 01.03.2023</i>
1	IIRP Cost	2.00	2.00	6.00	6.00
2	Secured Financial Creditors (PNB and Indiabulls)	264.00	262.00	245.50	265.00
3	Unsecured Creditors	5.00	5.00	1.50	12.00
4	Tax provision on sale of plot	1.00	1.00	0.00	2.00
	Total	272.00	270.00	253.00	285.00

In the final repayment plan dated 04.09.2023 which was approved on 08.09.2023 through online voting 89.98% voting share, Rs. 39.00 Lakhs increased from the original repayment plan dated 01.03.2023 and IIRP Cost reduced by Rs. 4.00 Lakhs without consultation with the Resolution Professional by the Debtor.

IA (IBC) No. 375/JPR/2023
IA (IBC) No. 489/JPR/2023
IA (IBC) No. 528/JPR/2023
IA (IBC) No. 536/JPR/2023
In CP No. (IB)- 16/94(1)/JPR/2022

Sd-

Sd-

- b. The following resolutions were proposed at the meetings and the decision on such resolutions as follows;
- i. *To ratify the expenses towards public announcement for initiation of insolvency resolution process (IIRP);*
 - ii. *To consider and ratify expenses incurred by the Resolution Professional;*
 - iii. *To take note and approve the fee of the Resolution Professional from the date of appointment till execution of Repayment Plan;*
 - iv. *To discuss and approve the repayment plan of the Debtors.*
- c. The meetings of the creditors have dissented to take decision by 89.98% voting share on the ratification of the expenses incurred towards public announcement stating that since application is filed by the Personal Guarantor so all the expense to be paid by the Personal Guarantor.
- d. Pursuant to the provisions of Regulation 17 of the Insolvency and Bankruptcy Board of India (Insolvency Regulation Process for Personal Guarantors) Regulation 2019, the repayment plan has been placed before the creditor and the same was approved.

10. Online voting responses received from the creditors and the list of the creditors who were present or represented at the meeting and submitted their response on the online window for voting are as follows:

S. No.	Name of Creditor	Voting Share%
1	Punjab National Bank	89.98%

List of all the Creditors as follows:

Secured Creditors:

S. No.	Particulars	Amount
1	Punjab National Bank	12,48,75,605.08

Further there are in total 174 Unsecured Creditors which have total claim of Rs. 20,03,13,462/- (Rupees Twenty Crore Three Lakh Thirteen Thousand Four Hundred Sixty-Two Only)

List of Creditors of Debtor (*Anil Baldva PG to Baldva Textiles Pvt. Ltd.*)

<i>S. No.</i>	<i>Name of Creditors</i>	<i>Claim Admitted</i>	<i>Voting Shares %</i>
	Indiabulls Housing Finance Limited (Secured, Rights not forfeited)	52,16,238.91	Secured
1	Punjab National Bank	12,48,75,605.08	89.98%
2	Manoj Somani	10,00,000.00	0.72%

IA (IBC) No. 375/JPR/2023

IA (IBC) No. 489/JPR/2023

IA(IBC) No. 528/JPR/2023

IA (IBC) No. 536/JPR/2023

In CP No. (IB)- 16/94(1)/JPR/2022

Sd-

Sd-

3	Rajeev Sen	10,00,000.00	0.72%
4.	Tarun Kumar Kala	10,00,000.00	0.72%
5.	Vishal Sharda	20,00,000.00	1.44%
6.	Madan Lal Jain	15,00,000.00	1.08%
7.	Ajay Jain	20,00,000.00	1.44%
8.	Shanti Prakash Jain	7,00,000.00	0.50%
9.	Shraddha Swaika	12,00,000.00	0.86%
10.	Balmukund Soni	20,00,000.00	1.44%
11.	Bela Devi Mansinghka	5,00,000.00	0.36%
12.	Ram Krishan Mansinghka	10,00,000.00	0.72%
	Total	13,87,75,605.08	100.00%

11. The provisions of Section 114 of IBC, 2016 are as under:

“114. Order of Adjudicating Authority on repayment plan.

(1) The Adjudicating Authority shall by an order approve or reject the repayment plan on the basis of the report of the meeting of the creditors submitted by the resolution professional under Section 112:

Provided that where a meeting of creditor is not summoned, the Adjudicating Authority shall pass an order on the basis of the report prepared by the resolution professional under Section 106.

(2) The order of the Adjudicating Authority approving the repayment plan may also provide for directions for implementing the repayment plan.

(3) Where the Adjudicating Authority is of the opinion that the repayment plan requires modification, it may direct the resolution professional to reconvene a meeting of the creditors for reconsidering the repayment plan.”

12. The Resolution Professional has filed an IA (IBC) No. 375/JPR/2023 vide Diary No. 1665/2023 dated 07.07.2023 under section 60(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016 for seeking an extension for further 120 days from the date of

IA (IBC) No. 375/JPR/2023

IA (IBC) No. 489/JPR/2023

IA(IBC) No. 528/JPR/2023

IA (IBC) No. 536/JPR/2023

In CP No. (IB)- 16/94(1)/JPR/2022

Sd-

Sd-

admission of the main matter under Section 94(1) of the IBC, 2016 and permission to submit the revised repayment plan.

13. The Applicant/RP states that an Application was filed under Section 94 of the IBC, 2016, and this Adjudicating Authority vide order dated 11.01.2023 has admitted the said Application. Thereafter, in terms of Section 105 of the Code, a repayment plan was prepared on 01.03.2023 and put forth in the meeting of the Creditors. The Creditors have suggested some changes; accordingly, a revised repayment plan has been prepared on 10.05.2023. The revised repayment plan was yet again placed before the creditors and one of the Secured Financial Creditors, i.e., Punjab National Bank, has suggested some amendments to the said revised repayment plan.
14. In the meantime, the period of 180 days as prescribed under Regulation 19 of The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtor Regulation, 2019 has concluded on 09.07.2023. The Applicant further states that a request has been received from the Debtor to re-submit the repayment plan. Hence, the present Application was moved before this Adjudicatory Authority seeking appropriate directions.
15. In the abovesaid facts, it is observed that the date of commencement of insolvency proceedings against the Debtor is 11.01.2023. As per Regulation 19, the period of 180 days comes to an end on 09.07.2023. The

IA (IBC) No. 375/JPR/2023
IA (IBC) No. 489/JPR/2023
IA(IBC) No. 528/JPR/2023
IA (IBC) No. 536/JPR/2023
In CP No. (IB)- 16/94(1)/JPR/2022

Sd-

Sd-

Creditors have not been able to deliberate on the repayment plan on various occasions. However, we cannot let such indecisive conduct come in the way of a successful resolution of the Debtor.

16. The Respondent to IA No. 375/JPR/2023 has filed reply vide diary no. 1898/2023 dated 07.08.2023 and stated that the Insolvency Process is a time bound process and the Applicant/RP failed to conduct the resolution process in the specified time period in the view of Regulation 19 of IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019. Further it submitted that the meetings of creditors shall be conducted in accordance with the provisions of Section 108, 109, 110 and 111 of the IBC, 2016.
17. Thereafter the Applicant has filed its rejoinder to the reply filed by Respondent vide dairy no. 2061/2023 dated 22.08.2023 and stated that the objector/financial institution has no locus to object the present IA for the extension of time period, wherein PNB having voting share of 86.79% and has asked the debtor submit the revised repayment plan. It is pertinent to note that the other guarantors i.e., Mr. Amar Baldva and Mr. Anshul Baldva of the Corporate Debtor vide order dated 13.07.2023 have granted extension of 90 days for submission of the repayment plan.
18. Further the Resolution professional has filed an IA(IBC) No. 489/JPR/2023 vide diary no. 2169/2023 dated 05.09.2023 wherein the

IA (IBC) No. 375/JPR/2023
IA (IBC) No. 489/JPR/2023
IA(IBC) No. 528/JPR/2023
IA (IBC) No. 536/JPR/2023
In CP No. (IB)- 16/94(1)/JPR/2022

Sd-

Sd-

seeking amendment in the prayer clause of IA No. 375/JPR/2023 in terms of liberty granted vide order dated 23.08.2023 wherein liberty has been given for the amendment in the said IA. The Applicant herein states that the prayer *“that the period of insolvency process may be extended for further 120 days from the date of admission of the matter of Mrs. Basanti Devi Baldva filed u/s 94 and be granted to submit the revised repayment plan”* may be amended as *“that the period of insolvency process may be extended for further 120 days to submit the revised repayment plan”*

19. It is observed that this Application was filed on 07.07.2023 seeking extension of 120 days for the insolvency process of the Debtor and while both these IAs were pending, the Applicant filed the repayment plan vide IA No. 528/JPR/2023 dated 20.09.2023. Through the present order we are approving the Repayment Plan, hence there is no need to extend the insolvency period any further. It shall be assumed that the period from when the Insolvency process was ending till the date of filing of the repayment plan i.e., 20.09.2023 shall stand extended in the interest of justice. In the view of forgoing *IA(IBC)No.375/JPR/2023* & *IA(IBC)No.489/JPR/2023* stands disposed off.
20. Further, the secured financial Indiabulls Housing Finance Limited herein referred as IBHL creditor has filed an IA (IBC) No. 536/JPR/2023 vide dairy No. 2349/2023 dated 26.09.2023 for seeking following reliefs:

IA (IBC) No. 375/JPR/2023
IA (IBC) No. 489/JPR/2023
IA(IBC) No. 528/JPR/2023
IA (IBC) No. 536/JPR/2023
In CP No. (IB)- 16/94(1)/JPR/2022

Sd-

Sd-

The Hon'ble Tribunal may please to direct the Debtor to handover the possession of the property mortgaged to the applicant/IHFL or in alternative, the Hon'ble Tribunal may please to permit to Applicant/IHFL to proceed further on the basis of symbolic possession notice dated 25.06.2022 and possession order dated 03.02.2023 passed by Ld. CJM, Bhilwara in Misc. Application No. 67/ 2023 titled as "Indiabulls Housing Finance Ltd. Vs Anil Baldwa & Others"

21. The repayment plan mentions that the source of funds of Rs. 272 Lakhs include (i) Sale proceeds from residential house situated at 4-Kashipuri, Bhilwara amounting to Rs. 262 Lakhs and (ii) Loan from relatives amounting to Rs. 10 Lakhs. Hence the total amount used for the resolution process is Rs. 272 Lakhs. The IA No. 536/JPR/2023 was filed by Indiabulls Housing Finance Limited seeking permission to proceed on the basis of symbolic possession notice dated 25.06.2022 and possession order dated 03.02.2023 towards property situated at 701/702, 8th Floor Balaji Apartment Plot No. 1-2, Pansal Road, Bhilwara, Rajasthan. It is clear that the repayment plan does not in any way mention that the resolution cost of 272 lakhs includes the property mortgaged to IBHL. This Adjudicating Authority does not have the power to permit the Applicant as sought in the prayer therefore the present Application *IA(IBC)No.536/JPR/2023* is being rejected and disposed off. The Applicant may approach the appropriate authority for the relief sought earlier in the Application.

22. Further, Section 114(1) of the IBC, 2016 provides that the Adjudicating Authority shall approve or reject the Repayment Plan on the basis of the

IA (IBC) No. 375/JPR/2023
IA (IBC) No. 489/JPR/2023
IA(IBC) No. 528/JPR/2023
IA (IBC) No. 536/JPR/2023
In CP No. (IB)- 16/94(1)/JPR/2022

Sd/-

Sd/-

meeting of the Creditors submitted by the Resolution Professional under Section 112 of the IBC, 2016, r/w Regulation 19 of IBBI (IRP for Personal Guarantors to Corporate Debtors) Regulations, 2019. We have perused the report of the meeting of the Creditors on the Repayment Plan under Section 112 of the IBC, 2016 and the same is taken on record. The resolution passed in the meeting dated 08.09.2023 has also been considered. According to this report and the resolution, the Creditor have approved the Repayment Plan submitted by the Personal Guarantor.

23. The report has been filed by the RP in compliance with Section 112 of the Code. This Adjudicating Authority is passing this order under Section 114 of the Code, hereby, approving the repayment plan on the basis of the report of the meeting of Creditors submitted by the resolution professional. The directions for implementation of the repayment plan are as follows: -

- I. In accordance with Section 115 of the Code, the repayment plan shall take effect as if proposed by the debtor in the meeting and shall be binding on the Creditors mentioned in the repayment plan and the debtor.
- II. The resolution professional appointed under Section 97/98 shall supervise the implementation of the repayment plan and is at liberty to move an application before this Adjudicating Authority seeking

IA (IBC) No. 375/JPR/2023
IA (IBC) No. 489/JPR/2023
IA(IBC) No. 528/JPR/2023
IA (IBC) No. 536/JPR/2023
In CP No. (IB)- 16/94(1)/JPR/2022

Sd-

Sd-

directions, if any, in relation to any particular matter arising under the repayment plan.

- III. In the present circumstances, as proposed, the Debtor shall disburse total payment of proposed under the repayment plan is Rs. 272.00 Lakhs which shall be arranged by the guarantor by way of selling personal house (Jointly owned with the spouse). The entire payment shall be made within 90 days from the date of this order.
- IV. The term of repayment plan, as proposed, shall be 90 days from the date of this order.
- V. The resolution professional shall within 14 days from the date of completion of the repayment plan, forward to the persons who are bound by the repayment plan under Section 115 the following documents: -
- A. A notice that the repayment plan has been fully implemented.
- B. A copy of a report summarising all receipts and payments made in pursuance of the repayment plan and extent of the implementation of such plan with the repayment plan approved by the meeting of creditors.
- C. The Resolution Professional may apply before this Adjudicating Authority to extend the time mentioned above.

IA (IBC) No. 375/JPR/2023
IA (IBC) No. 489/JPR/2023
IA(IBC) No. 528/JPR/2023
IA (IBC) No. 536/JPR/2023
In CP No. (IB)- 16/94(1)/JPR/2022

Sd-

Sd-

- VI. The Resolution Professional shall file a report before this Adjudicating Authority upon completion of the Repayment Plan specifying the payments made in pursuance of the repayment plan and thereby, seek discharge under Section 119 of the Code.
- VII. If the Repayment Plan is not fully implemented, it shall be deemed to have come to an end prematurely in accordance with Section 118 of the Code and the Resolution Professional shall submit a report under Section 118 of the Code detailing the specifications mentioned therein.
- VIII. The Resolution Professional shall perform its functions and duties in compliance with the code of conduct provided under Section 208 of the Code.
24. Accordingly, the Application filed by the Resolution Professional under Section 112 of the Code numbered as *IA(IBC) No. 528/JPR/2023* is allowed and stands disposed off.



**(DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**



**(RAJEEV MEHROTRA,
TECHNICAL MEMBER**

IA (IBC) No. 375/JPR/2023
IA (IBC) No. 489/JPR/2023
IA(IBC) No. 528/JPR/2023
IA (IBC) No. 536/JPR/2023
In CP No. (IB)- 16/94(1)/JPR/2022