IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 207
IB-547/ND/2022
IA-4445/2022

IN THE MATTER OF:

IDBI Bank Limited ... **Applicant/Petitioner**

Versus

Smt. Seema Gupta ... **Respondent**

Under Section: 95(1) of IBC, 2016

Order delivered on 01.03.2023

CORAM:
SHRI. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SHRI. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:
For the RP : Mr. Anik Kumar Mittal, Adv. Mayank Jain, Adv. Sanjay Bajaj
For the Respondent : Ms. Pratiti Rungta for Personal Guarantor

ORDER

IA-4445/2022: In terms of the order dated 09.09.2022, we appointed IP Mr. Anil Kumar Mittal as Resolution Professional in the matter. The RP has filed its report dated 01.09.2022. As can be seen from the report, the RP has categorically stated that there is no proof of repayment of the amount of debt by the Personal Guarantor to the Applicant herein i.e., the Creditor. The RP has also recommended the admission of the Application. Relevant excerpts of the Report of the RP reads thus:

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Sr No.	Requirements under the relevant provisions of section 99 of the Code	Submissions of the RP	Compliance with requirements of section 99 of the Code (Yes / No / Not Applicable)
		under sub-section (1) to the debtor. The RP submits that the above sub-section has been complied with as the copy of application was made available to debtor as per affidavit filed on 08.08.2022. **(Copy is Annexed as Annexure-J)** That the Section 95 (6) states that *The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.* The RP submits that the above sub-section has been complied with as the application is correctly filed in Form C and fee of Rs. 2000/- deposited on 06.07.2022.	

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Sr No.	Requirements under the relevant provisions of section 99 of the Code	Submissions of the RP	Compliance with requirements of section 99 of the Code (Yes / No / Not Applicable)
		(Copy of receipt dated 06.07.2022 annexed as Annexure-K) That the Section 95 (7) states that: *The details and documents required to be submitted under sub-section (4) shall be such as may be specified.* The RP submits that the above sub-section has been complied with as the documents as obtained from the borrower of the credit facilities have been annexed with application as **Annexure- L**	
7)	Section 99(7): After examination of the application under sub-section (6), he may recommend acceptance or rejection of the application in his report.	RP submits that the present application satisfies the requirements of provisions of section 95. Further the RP submits that based on his examination of existence of debt, default by debtor and non-payment of the debt, the present application deserves to	Yes The RP submits that based on his examination the present application deserves to be admitted under section 100 of the Code and this Hon'ble

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Sr No.	Requirements under the relevant provisions of section 99 of the Code	Submissions of the RP	Compliance with requirements of section 99 of the Code (Yes / No / Not Applicable)
		be admitted under section 100 of the Code and this Hon'ble NCLT may pass appropriate orders in this regard.	NCLT may pass appropriate orders in this regard.
8)	Section 99(8): Where the resolution professional finds that the debtor is eligible for a fresh start under Chapter II, the resolution professional shall submit a report recommending that the application by the debtor under section 94 be treated as an application under section 81 by the Adjudicating Authority.	RP submits that the debtor has not replied to the letter of RP and considering the facts of the case and the debtor/ Personal Guarantor does not satisfy the requirements under section 80(2) and hence is not eligible for a "fresh start" under Chapter II.	**Not applicable** The RP submits that the provisions of section 99(8) of the Code does not apply to the present matter.
9)	Section 99(9): The resolution professional shall record the reasons for recommending the acceptance or rejection of the application in the report under sub-section (7).	RP submits that the present report is being presented under section 99(7) of the Code to this Hon'ble NCLT with a recommendation of accepting the present application as the Personal Guarantor has not repaid the debt due to the Creditor. There is existence of debt, there is default by debtor and the amount has not been repaid by the debtor. The	**Yes** The RP submits that the present report prepared under section 99(7) of the Code records the reasons for recommending acceptance of the present application filed by IDBI for further orders under

Sr No.	Requirements under the relevant provisions of section 99 of the Code	Submissions of the RP	Compliance with requirements of section 99 of the Code (Yes / No / Not Applicable)
		application is filed by the Financial Creditor, IDBI Bank in compliance of section 95 of the Code, Hence recommended for acceptance of the application for personal insolvency resolution against the debtor, Ms Seema Gupta.	section 100 of the Code.
10)	Section 99(10): The resolution professional shall give a copy of the report under sub-section (7) to the debtor or the creditor, as the case may be.	RP submits that he is complying with the requirement of filing a copy of this report prepared under section 99(7) of the Code to the Creditor and the debtor	Yes A copy of the present report prepared under section 99(7) of the Code is being shared with the Creditor i.e. IDBI and debtor in compliance with provisions of section 99(10) of the Code.

PRAYER

It is therefore respectfully prayed that as the present application meets the requirements of the Code this Hon'ble Tribunal may be pleased to:

- Pass an order under Section 100 of the Code, admitting the present application.
- Declare a Moratorium under Section 101 of the Code.
- Issue public notice under Section 102 of the Code.
- Pass such orders as may deems necessary as per the Hon'ble NCLT.

On the other hand, Ld. Counsel for the Respondent could draw our attention to para 13 of the reply of the Personal Guarantor to espouse that there is discrepancy in the amount of debt. The Para 13 reads thus:

> *"13) That in reply to Para (12) of the Report it is submitted that answering respondent is not liable to pay the claimed debt of Rs. 15, 19,84,972.42 as has been mentioned by the applicant bank*

in $ its application filed under Section 95 of the Code. It is submitted that applicant bank has charged exorbitant rate of interest and has compounded interest against the principles enunciated by the Hon'ble Apex Court in the matter titled as Central Bank of India v Ravindra &Ors. It is further submitted that qua the corporate debtor i.e. Savemax Club Private Ltd. IRP was appointed by the Hon'ble NCLT vide order dated 28/03/2018 and the applicant bank had filed its claim of Rs. 7,31,81,470.96 plus interest on 01/05/2018 with the said IRP and therefore, by no stretch of imagination the answering respondent in the year 2022 be liable to pay a sum of Rs. 15,19,84,972.42 to the applicant bank. It is also submitted that the applicant bank had also filed Original Application being OA No. 1062/2019 before Hon'ble DRT-III, Delhi seeking recovery of Rs. 9,93,37,298.96 outstanding as on 01/09/2019 alongwith interest @ contracted rates p.a. with monthly rests in cash credit account and 18.50% p.a. with monthly rests in expense account to the applicant and the answering respondent has filed its written statement to the said original application disputing the said amount. Therefore, it is submitted that the answering respondent cannot be held liable to pay a sum of Rs. 15,19,84,972.42 to the applicant bank. (Copy of the written statement filed before Hon'ble DRT-III is attached herewith and marked as ANNEXURE-A)"

We have heard the Ld. Counsels for the parties and perused the RP's report. While admitting a Petition, we need to examine the report of RP and the recommendation made by him. As can be seen from the recommendation made by the RP (ibid), no payment has been made by Personal Guarantor to Financial Creditor and no proof in this regard could be shown and we also find that the amount of default is more than Rs. one crore i.e., more than the threshold amount. **In the circumstances, the petition is admitted.**

There is no request by the RP for the purpose of conducting negotiation between the debtor and the creditors. As a sequel of admission of the present application, a moratorium shall commence in relation to all the debts of the Respondent, subject to the order to be passed by Hon'ble Supreme Court in W.P.C. No. 307/2022. The moratorium shall cease to have effect at the end of period of 180 days. The present order shall remain subject to the order to be passed by the Hon'ble Supreme Court in W.P.C. No. 307/2022. 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; (c) and the debtors shall not transfer, alienate, encumber or dispose of any of the assets or his legal right or beneficiary interest therein. A public notice shall be issued by the RP within seven days of passing of the order of Hon'ble Supreme Court (ibid), depending upon the ramification of the same, inviting claim 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 English and one Vernacular Language newspaper which is 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. We are sanguine the RP shall discharge all such duties as are incumbent upon him in terms of the provisions of Sections 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. A copy of this order along with the copy of the application as also the report of Resolution Professional shall be provided to the Creditor (Applicant), Personal Guarantor IA. No. 2976/ND/2022 in (IB)-111/(ND)/2022 State Bank of India Vs. Sh. Krishan Kumar Basia Page 15 of 15 (Respondent) and IBBI, by the Registry/Court Master within 7 days from today by email.

To come up for consideration of status report to be filed by RP, within 8 weeks.

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(L. N. GUPTA)
MEMBER (T)

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(ASHOK KUMAR BHARDWAJ)
MEMBER (J)

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