NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 2203 of 2024

IN THE MATTER OF:

Vijender Antil **...Appellant(s)**
(Personal guarantor of Jungrele Info Solutions Pvt. Ltd.)

Versus

Phoenix ARC Pvt. Ltd. & Ors. **...Respondent(s)**

Present:

For Appellant **:** Mr. Ompal, Advocate.
For Respondents **:**

O R D E R
(Hybrid Mode)

02.01.2025: This appeal is directed against the order dated 10.09.2024 passed by National Company Law Tribunal, New Delhi Bench, Court-IV by which the application bearing IA No. 6697/ND/2023 was allowed and CP (IB) No. 1129 (ND)/2020 and IA No. 5335/ND/2022 were rejected.

2. The brief facts of this case are that the appellant stood as Personal Guarantor of Jungrele Info Solutions Pvt. Ltd. (Corporate Debtor) in respect of an unsecured loan of Rs. 10,00,000/-availed by the corporate debtor from Barclays Bank (for short 'the bank') on 09.08.2008. The said loan was assigned by the Bank to the present Respondent i.e. Phoenix ARC Pvt. Ltd. vide an assignment deed dated 06.11.2012.

3. The assignee/Respondent herein filed an O.A. No. 36/2016 before the DRT. The DRT vide its order dated 18.11.2015 fixed the liability of the Corporate Debtor assessing the amount of Rs. 13,68,593/- with 13% interest p.a. A recall notice was issued on 24.11.2015.

4. The appellant filed an application under Section 94 of the IBC, 2016 (for short 'Code') which was assigned CP (IB) No. 1129(ND)/2020 and was placed before the National Company Law Tribunal, New Delhi Bench, Court –IV. The application was filed on Form A in terms of Rule 6(1) of the Insolvency Resolution Process for Personal Guarantors to Corporate Debtors Rule, 2019 (for short 'Rules').

5. The Tribunal, vide its order dated 05.08.2022, appointed Shri Suresh Kumar Mittal as the Resolution Professional who was directed to exercise the powers as provided in Section 99 (4) of the IBC, 2016 and the Rules to examine to application and make recommendations along with the reasons in writing for acceptance or rejection of the application within the stipulated time.

6. The Resolution Professional submitted report dated 29.09.2022. The relevant part of the said report read as under:

> *Conclusion*
> *"22. That in view of the aforementioned, the Resolution Professional recommends the acceptance of the captioned Petition for the following reasons:*
> *a.The captioned Petition meets all essentials stipulated under the Insolvency and Bankruptcy Code, 2016.*
> *b.Taking into account the financial position and the statement of affairs of the Guarantor, it is apparent that the Guarantor is not in a position to repay the debt in question due to the Financial Creditor.*

c.In terms of the Information received from the concerned parties, it appears that the captioned Petition is bona fide and not filed with the intention of defrauding any creditor of the Guarantor or the Resolution Professional.
d.There is no possibility of any settlement between the Financial Creditor and the Guarantor".

<u>Prayer</u>
In the facts and circumstances of the present matter, as elucidated hereinabove, the humble Resolution Professional prays that this Hon'ble Tribunal be pleased to:

a. Take on record the present Report under Section 99 of the Insolvency and Bankruptcy Code, 2016;

b. Condone the delay of 48 days in filing of the present Report; and

c. Pass any other such orders or directions as this Hon'ble Tribunal may deem fit in the Interest of justice.

ALL OF WHICH IS MOST HUMBLY PRAYED".

7. The Resolution Professional further filed an application bearing IA No. 5335/ND/2022 on 06.10.2022 on the basis of the aforesaid report.

8. During the pendency of the said application, the Resolution Professional submitted an addendum report, under Section 99 of the IBC, 2016 itself. In the said report the following observations were made by him:-

"4. That the RP has discussed the matter of Personal Insolvency with the Debtor and the Creditor and upon discussion have observed the following:

a.The Debtor is not in capacity to bear the expenses of Insolvency Resolution Process including the expenses of Newspaper Publication for Public Notice, Cost of Verification of Claims, Fee of the Resolution Professional, Fee of the Legal Professionals, and other expenses.

b. The creditor is also not willing to bear expenses of the Insolvency Resolution Process of the Debtor.

c. Debtor is not in a financial position to submit any repayment plan.
d. Debtor and Creditor are not willing to arrive at any Settlement Plan, Debtor has no funds or assets as such to revive himself from the state of insolvency.

5.That the tone and the texture of Insolvency Resolution Process of the Debtor is to resolve situation of Insolvency by way of a Repayment Plan which is submitted by the Debtor under Section 105. However, admission of the Application filed by the Debtor in this case may not yield any results as the Debtor is not in a position to give any Repayment Plan.

6.If the application is admitted under section 100, the same shall lead to rejection by the Creditor under section 112, as the debtor will not be able to make any payment to the creditor.

7.The debtor will not get discharge order, and the entire exercise will be ineffective.

8. In view of the above submissions the RP is of view that the application filed by the Debtor should be rejected by the Hon'ble NCLT.

Prayer
It is, therefore, humbly prayed that for the reasons as aforementioned:
a) Dismiss the Company petition no. IB-1129/ND/2020.
b) If the Hon'ble Court admits the application and appoints RP in this matter, provision to be made for cost as may be directed by this Hon'ble NCLT.
c) Pass such necessary orders as may be deemed fit in the matter by Hon'ble NCLT".

9. This report has been placed on record by the RP vide IA No. 6697/ND/2023.

10. The Ld. Tribunal, after taking into consideration the second report dated 12.12.2023, which has been submitted through IA No. 6697/2023 passed the impugned order with the following observations:

"6.We have heard the submissions of the parties and have perused the application, reports of the Resolution Professional and reply of the Personal Guarantor. It appears from the report of the RP and the reply of Personal Guarantor that the debtor was unable to pay his debts and ultimately the RP has recommended for acceptance of the report i.e. IA-6697 of 2023.

7.It appears to us that the sole intention of the debtor herein is to enjoy the moratorium as contemplated under Section 96 of the IBC, 2016 which commences from the date of the application is declared defect free by the Registry of this Tribunal. The second reason which comes to our mind at this stage is the order under Section 94 (1) of the IBC, 2016 was issued by this Tribunal on 30.05.2022. Approximately one and half years have passed in further proceedings in the matter due to the stay by Hon'ble Supreme Court in the matter of IB ***Dilip B. Jiwarjka vs. Union of India &Ors., in WP (Civil) No. 1281 of 2021*** *and in case the debtor was inclined towards any settlement of his debt with the creditor, he had enough time to pay by way of restructuring plans, or otherwise, if any.*

8.Thus, IA-6697 of 2023, prayer (a) is hereby allowed and the present application is disposed of with the above direction and the CP (IB) No. 1129/ND/2020 and IA-5335 of 2022 are hereby rejected and disposed of and in terms of Section 100 (4) of the Code, the Creditors of the Personal Guarantor are entitled to file for a bankruptcy order under Chapter IV of the Code".

11. Aggrieved against the aforesaid order, the present appeal has been filed. Counsel for the appellant, during the course of the hearing has fairly conceded that the appellant does not have a single penny to pay to its creditors. However, he has tried to argue about the violation of Section 100 (4) and 122 of the Code.

12. We have heard Counsel for the Appellant.

13. In case the application is admitted then the moratorium is imposed under Section 100 (1) of the Code and the adjudicating authority will initiate

the process of providing claim from all the creditors. After registration of the claim of the creditors and preparation of their list as envisaged under Section 103 and 104 of the Code, the debtor has to prepare a repayment plan in consultation with the RP containing a proposal to the creditors for restructuring of his debts or affairs.

14. However, in the present case, the RP in his addendum report, found that the appellant is not in a position to bear the expenses of the insolvency resolution process including the expenses of newspaper publication from public notice, cost of verification of claims, fee of the Resolution Professional, fee of the legal professionals and other expenses and is also not willing to bear the expenses of the insolvency resolution process and is not in a financial position to submit any repayment plan, therefore, the Tribunal has rightly rejected the application filed by the appellant on the report submitted by the RP under Section 99 of the Code.

15. Section 100 (4) talks of a situation where the application is under Section 94 and 95 is rejected by the Adjudicating Authority on the basis of report submitted by the RP that the application was made with intention to defraud the creditors or the Resolution Professional then an order under Section 100 (1) is required to be recorded that the creditors is entitled to file for the bankruptcy under Chapter IV which is not the position in the present case.

16. Similarly, Section 122, relied upon by the appellant is a part of Chapter IV which deals with bankruptcy order for individual and

partnership firms which is not applicable to the facts of the present case because it arises only after an order is passed under Chapter III of the Code.

17. Thus looking from any angle, we do not find any merit in the present appeal for interference in the impugned order. As the appeal is found to be without any merit, hence the same is hereby dismissed, though without any order as to costs.

18. IA if any, pending is hereby closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

sr/rr