NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)573(ND)2022

IN THE MATTER OF :

INDIAN BANK
SAM Large Branch
17, First Floor, Parliament Street,
New Delhi- 110001

...Applicant/Creditor

Versus

Shri Rakesh Jolly
B-39, Shankar Garden
Vikaspuri, New Delhi- 110018

...Respondent/Personal Guarantor

Order Delivered on: 12.09.2022

SECTION: 95(1) of IBC 2016

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)
SH. L.N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Adv. Amod K. Dalela
For the Respondent : None

ORDER

PER SHRI L.N. GUPTA, MEMBER (T)

Indian Bank **(the "Applicant/ Creditor")** has filed the present Application under Section 95(1) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for IRP for Personal Guarantors to Corporate Debtor) Rules, 2019 for initiating the Insolvency Resolution Process **(the "IR Process")** against Sh. Rakesh Jolly (hereinafter, referred to as **"Personal Guarantor/Debtor"),** who is the Guarantor of M/s Aravali Infra Power Limited **(the "Corporate Debtor").**

2. It is stated by the Applicant that M/s Aravali Infra Power Limited (**Borrower/Corporate Debtor or CD**), which was already having a Facility granted by the consortium of banks, applied for restructuring of Working Capital Facilities to the Indian Bank (**hereinafter referred to as "Applicant Bank"**). It is further stated by the Applicant that the Bank, vide its letter No. NDM/CDR/2012-13 dated 31.10.2012, sanctioned the following Corporate Debt Restructuring facilities to M/s Aravali Infra Power Limited.

a. Working Capital Term Loan = Rs. 44.84 Crore
b. Funded Interest Term Loan (WC) = Rs. 4.66 Crore
c. Funded Interest Term Loan (WCTL) = Rs. 8.85 Crore
d. Bank Guarantee

3. It is further submitted by the Applicant that the Corporate Debtor M/s Aravali Infra Power Ltd. is an unlisted Company. Shri Rakesh Jolly (with DIN 00533817) is the Director of the Corporate Debtor since the inception of the Company. It is further submitted by the Applicant that the Director Sh. Rakesh Jolly stood as a Personal Guarantor for the Corporate Debtor M/s Aravali Infra Power Limited and executed a Deed of Guarantee on 13.02.2013 and agreed to an unconditional and irrevocable guarantee for repayment of the amounts a due to the banks/lenders, together with interest and other charges.

4. It is stated by the Applicant that the Corporate Debtor has defaulted in the repayment to the Applicant Bank i.e. Indian Bank and its accounts have become NPA on 29.10.2012. The applicant Bank has staked the claim and since the borrower Company has got liquidated, the applicant bank is applying to the Adjudicating Authority under the provisions of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.

5. That the Applicant/Creditor has detailed the transaction in Part III of its Application, pursuant to which it has claimed a total debt of Rs. 200,90,24,191.19/- as on 29.10.2012. The scanned copy of the Part III of the Application is reproduced overleaf :

Part-III

PARTICULARS OF DEBT		
1.	Total debt (including any interest or penalties as on 09.05.2022)	Rs. 200,90,24,191.19
2.	Amount in default	Rs. 200,90,24,191.19
3.	Date on which debt was due	29.10.2012 (Date of NPA)
4.	Date on which default occurred	29.10.2012 (Date of NPA)
5.	Nature of the debt	1. Cash Credit : Rs. 22.33 Cr. 2. WCTL: Rs. 41.92 Cr. 3. FITL-WC. Rs. 4.51 Cr. 4. FITL-WCTL: Rs. 8.57 Cr. 5. BG Limit: Rs.25.38 Cr. 6. LC DP/DA: Rs. 4.56 Cr.
6.	Secured debt including particulars of security held, the date of its creation, its estimated value as per the creditor (as applicable)	Rs.200,90,24,191.19 (Rs. Two Hundred Crore Ninety Lakhs Twenty Four Thousand One Hundred Ninety One and Paisa Nineteen only) As On 09.05.2022. PRIMARY SECURITY: First Pari Passu Charge on the entire current assets of the Company. COLLATERAL SECURITY: 1. First Pari Passu Charge on entire fixed assets of the Company's Kathua unit including equitable mortgage of factory land and building at 92,/93/112/113 at SICOP Industrial Area, Kathua, Jammu & Kashmir, measuring 4 Kanal. 2. Second Pari Passu Charge on the entire fixed assets of the company including the Sitarganj Unit

		located at D-7, Eldeco, SIDCUL Industrial Park, Sitarganj, Uttarakhand; The Dera Bassi Unit of the Company located at Tehsil Dera Bassi, Mohali, Punjab and 5 MW solar project of the Company located at District Upleta, Gujarat, excluding assets exclusively charged with Term Lenders. 3. First Pari Passu charge by way of equitable mortgage over- (I) Residential Property at Flat No. B-39, Shankar Garden, Vikaspuri, New Delhi measuring 2200 Sq. Ft. on Plot area 333 Sq. Yds in the name of Shri Rakesh Jolly. (ii) Residential Flat No. 514, 1st Floor, GH-13, Paschim Vihar, New Delhi measuring 1100 Sq. ft (aaprox.) in the name of Shri Rakesh Jolly (Sold by OL) (iii) Commercial Office at BG-8/201, Second Floor, Paschim Vihar, New Delhi measuring 950 Sq. Ft. in the name of Sh. Rakesh Jolly (Sold by OL). (iv) Commercial Office at BG-8/207, Second Floor, Paschim Vihar, New Delhi masuring 989 Sq. Ft. in the name of Shri Rakesh Jolly (Sold by OL). 4. Pari Passu negative lien on two agricultural properties at Bahadurgarh and Lalru. 5. Guaratntees: (i) Unconditional and Irrevocable Personal Guarantee of Mr. Rakesh Jolly (CMD of the Company) (ii) Corporate Guarantee of the Promoter Group Companies:

		a) M/s Aravali Infra Assets Pvt Ltd. b) M/s Sreedeb Commercial Pvt. Ltd. c) M/s Aravali Smelters Pvt. Ltd. d) M/s Shivalik Organics Pvt. Ltd.
7.	Unsecured debt (as applicable)	NA
8.	Details of retention of title arrangements (if any) in respect of goods to which the debt refers (attach a copy)	NA
9.	Details of any mutual credit, mutual debts, or other mutual dealings between the guarantor and the creditor, which may be set-off against the claim (attach proof)	NA
10.	Particulars of an order of a court, tribunal or arbitral panel adjudicating on the default, if any (attach a copy of the order)	NA
11.	Record of default with the information utility, if any (attach a copy)	CIBIL/ CRILIC PORTAL
12.	Details of succession certificate, or probate of a will, or letter of administration, or court decree (as may be applicable), under the Indian Succession Act, 1925 (10 of 1925) (attach a copy)	NA
13.	Provision of law, contract or other document under which debt has become due (attach a copy)	Sanction Letter bearing Ref. No. NDM/CDR/2012-13 dated 31.10.2012
14.	A statement of bank account where deposits are made or credits received normally by the creditor in	1. CC A/c No. 6092543593 2. WCTL A/c No. 6091888267

	respect of the debt of the corporate debtor, from the date on which the debt was incurred (attach a copy)	3. FITL-WC A/c No. 6091902237 4. FITL-WCTL A/c No. 6091904121 5. LC A/c No. 6324470806 6. BG A/c No. 6338300270
15.	List of documents attached to this application in order to prove the existence of debt and the amount in default	1. Sanction Letter No. NDM/CDR/2012-13 dated 31.10.2012. 2. Account Statements & Closure Balance in respect of- a) CC A/c No. 6092543593 b) WCTL A/c No. 6091888267 c) FITL-WC A/c No. 6091902237 d) FITL-WCTL A/c No. 6091904121 e) LC A/c No. 6324470806 f) BG A/c No. 6338300270 3. Guarantee Agreement dated 13th Feb 2013 executed by Sh Rakesh Jolly.
16.	Statement by creditor in respect of excluded debts	I, Kunwar Jeetendra Singh, Chief Manager, Indian Bank SAM Large Branch Delhi, hereby state that the debt(s) for which the insolvency resolution process application is filed does not include any- (i) Liability to pay fine imposed by a court or tribunal. (ii) Liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligations; (iii) Liability to pay maintenance to any person under any law for

6. It is averred by the Applicant that it had sent and served the Demand Notice dated 10.05.2022 via Speed Post [in Form B under Rule 7(1) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019] to the Personal Guarantor Sh. Rakesh Jolly, demanding payment of total outstanding amount of Rs. 200,90,24,191.19/-. The tracking report in support of delivery of the Demand Notice has been placed at page no. 89 of the application.

7. The Applicant has also served the advance copy of this Application to the Respondent/ Personal Guarantor vide email on 19.07.2022 in compliance of the requirement under Section 95(5) of IBC.

8. It is submitted by the Applicant that Personal Guarantor/Debtor has committed default in making repayment of the loan along with the interest to the Applicant.

9. Vide order dated 03.08.2022, this Adjudicating Authority had issued notice to the Personal Guarantor and pursuant to the notice, the Ld. Counsel for the Personal Guarantor has appeared on 05.09.2022.

10. With the filing of the present Application, the interim-moratorium has already commenced as stipulated under Section 96 (1) (a) in relation to all the debts of the Personal Guarantor. During the interim- moratorium period, the following are prohibited:

(a) Any pending legal action or proceeding in respect of any debt of the personal guarantor shall be deemed to have been stayed; and

(b) The Creditors of the personal guarantor shall not initiate any legal action or proceedings in respect of any debt.

This shall, however, not apply to such transactions as notified, if any, by the Central Government in consultation with any Financial Sector Regulator.

11. The Applicant has not proposed the name of any Resolution Professional therefore, from the panel of IPs suggested by the IBBI, **this Bench appoints Mr. Rakesh Mishra IP having its registration no. IBBI/IPA-001/IP-P01676/2019-20/12719, Mob. 9810002662 and email id <rakeshmishranr@hotmail.com> as Resolution Professional** in the present matter subject to filing of an affidavit within seven days by him that there is no disciplinary proceeding pending against him.

12. The Resolution Professional Mr. Rakesh Mishra shall exercise all the powers as enumerated under Section 99 of the IBC, 2016 read with the Rules made there under. **He is directed to examine the Application and make the recommendations along with the reasons in writing for acceptance or rejection of this Application, within the stipulated time as envisaged under the provisions of Section 99 of the IBC, 2016.** The RP shall give a copy of the report under Section 99(7) to the Applicant/Creditor as soon as the same is filed before this Adjudicating Authority.

13. The Applicant and his Counsel and the Court Officer are directed to serve the copy of this Order along with copy of the Application and documents on the abovenamed Resolution Professional immediately by all modes for information and compliance of the order.

14. List the matter on 29.09.2022.

(L. N. GUPTA)
MEMBER (T)

(DHARMINDER SINGH)
MEMBER (J)