

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)

I.A No. 46 of 2023 in
C.P. (IB) No.184/BB/2022
Under Section 94(1) of the IBC, 2016
R/w Section 100 of IBC, 2016 &
Rule 6(1) 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:

Mrs. Aruna Kanchana

Flat No: 402, A Block,
Manpho Pavilion,
Ranka Colony Road,
Belikahalli, Bannerghatta Main Road
Bangalore 560 076.

... Applicant

VERSUS

1. HDB Financial Services Limited

404, 4th Floor,
Pushpak Landmark Building,
Anandnagar, Satellite Road,
Ahmedabad, Gujarat – 380 015.

... Financial Creditor

2. Coursecube Private Limited

Through RP Manish Kumar Patel
No. 57, 7th Main, NS Palya,
Subharaju Garden,
BTM 2nd Stage,
Bengaluru 560 076.

... Corporate Debtor

Order delivered on: 20th July, 2023

Coram: Hon'ble Justice (Retd) T. Krishnavalli, Member (Judicial)
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the RP : Shri Dhanshyam Patel

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. The present Application is filed on 11.01.2023 by the Resolution Professional, with a prayer to take on record the Report submitted by the RP under section 99 of the Code recommending acceptance of the application filed by the Personal Guarantor under Section 94(1) of the Code.
2. Company Petition, CP (IB) No. 184 of 2022, was filed by Mrs. Aruna Kanchana under section 94(1) of the IBC, 2016, under rule 6 of the I& B (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, seeking to initiate Insolvency Resolution Process in respect of Mrs. Aruna Kanchana (“the Personal Guarantor”), who has given personal guarantee to certain loans availed by the Corporate Debtor (M/s Coursecube Private Limited”).
3. It is submitted in the Petition that the total amount of debt and default committed by the Corporate Debtor is Rs. 2,32,91,743/- for which the applicant is a Guarantor.
4. This Tribunal vide order dated 14.11.2022, has appointed Mr. Dhanshyam Kantilal Patel as the Resolution professional and directed to exercise all the powers as enumerated under Section 99 of the Code, R/w Rules made thereunder. And further directed to make recommendations with reasons in writing for acceptance or rejection of the Company Petition.
5. In compliance to the above direction, the RP has filed the present I.A recommending the acceptance of the Application filed by the Personal Guarantor under Section 94(1) of the Code.
6. The Grounds for admission of the application recorded in the report are as follows:-

- (i) The RP submits that the application filed by the Personal Guarantor satisfies the requirements of Section 94(3), as the debts are not excluded debts.
 - (ii) Further, the Personal Guarantor complies with all the conditions provided in Section 94(4) of the Code.
 - (iii) Personal Guarantor has not submitted any other application u/s 94(1) in the last twelve months.
 - (iv) The Personal Guarantor does not satisfy the requirements of Section 80(2) and hence not eligible for a “fresh start” under Chapter II.
 - (v) It is submitted that the Personal Guarantor has committed default in making good her guarantee given to HDB Financial Services Ltd.
 - (vi) The Application satisfies the requirements of section 94 and recommends that it deserves to be admitted under Section 100 of the Code.
7. From the report of the Resolution Professional there does not appear any request for issuance of any direction for the purpose of conducting negotiations between the Personal Guarantor and the Financial Creditor for arriving at the repayment plan.
8. Heard the Learned Counsel appearing for the RP and pursued the entire case records/documents and have gone through the report dated 11.01.2023 filed by the Resolution Professional. Further, the Personal Guarantor, Mrs. Aruna Kanchana has filed letter dated 30.01.2023 vide diary No. 557 stating that she has no objection to the report dated 11.01.2023 filed by the RP recommending the acceptance of the application filed under section 94(1) of the IBC, 2016 and the same is taken on record.
9. Hence, based on the reasons recorded in the report submitted by the Resolution Professional, the instant **I.A 46 of 2023 is allowed** and the Petition i.e., CP(IB) No 184/BB/2022 filed under Section 94 of IBC, 2016 is hereby admitted under Section 100 of the IBC, 2016. The Insolvency Resolution Process is initiated against the Applicant/ Personal Guarantor and moratorium is declared in place of interim moratorium, which begins with the

date of admission of the application and shall cease to have effect at the end of the period of 180 days, as provided under Sec 101 of IBC, 2016.

10. During the moratorium period;

- (i) Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and
- (ii) The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and
- (iii) The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;
- (iv) The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

11. The Resolution Professional viz., Mr. Dhanshyam Kantilal Patel, who has been appointed under section 97 vide Order dated 14.11.2022, is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of uploading of this Order on the website of the NCLT, Bengaluru inviting claims from all Creditors, who shall register their claims as provided under Section 103 within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102(2) of IBC, 2016. The publication of notice shall be made in newspaper, one in English and other in Vernacular which have wide circulation in the State where the Corporate Debtor and Personal Guarantor resides. The Resolution Professional shall furnish two copies of the notice to the Registry.

12. The Resolution Professional in exercise of the powers conferred under Section 104 of IBC, 2016 shall prepare a list of creditors within 30 days from the date of notice. The debtor shall prepare a repayment plan in consultation with the Resolution Professional as provided under Section 105 of IBC, 2016 which shall include provisions for payment of fee to the Resolution Professional. The Resolution Professional shall submit the repayment plan along with his report

on the plan to this Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106 of IBC, 2016.

13. In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons therefor. If the Resolution Professional is of the opinion that the meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of the IBC, 2016. The date of meeting should not be less than 14 days or more than 28 days from the date of submission of the Report under Sub-Section (1) of Section 106 of IBC, 2016 for which at least 14 days' notice to the creditors [as per the list prepared] shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of IBC, 2016.

14. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of IBC, 2016 and submit to this Authority, copies of which shall be provided to the Debtor and the Creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of the IBC, 2016.

15. In terms of the above, **I.A No. 46 of 2023 is allowed** and CP (IB) No 184/BB/2022 filed under section 94 (1) of the IBC, 2016 is admitted and the Insolvency Resolution Process stands initiated against the Applicant/Debtor.

16. The Resolution Professional shall submit his periodic reports before this Tribunal, as per rules.

-Sd-

**(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)**

-Sd-

**(T. KRISHNAVALLI)
MEMBER (JUDICIAL)**