

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT-V NEW DELHI BENCH**

**IA. NO. 3421/ND/2022**

**IN**

**COMPANY PETITION NO. (IB)-222(ND)/2022**

**IN THE MATTER OF:**

**IDBI BANK LTD. THROUGH MRS. DEEPIKA BHUGRA PRASAD  
(RESOLUTION PROFESSIONAL)**

**...APPLICANT/CREDITOR**

**VERSUS**

**MR. AVINASH JAIN  
(PERSONAL GUARANTOR OF ARISE INDIA LIMITED)**

**...RESPONDENT/PERSONAL GUARANTOR**

**AND**

**IN THE MATTER OF IA. NO. 3421/ND/2022:**

**DEEPIKA BHUGRA PRASAD  
RESOLUTION PROFESSIONAL  
202, SAMRAT ASHOK ENCLAVE,  
SECTOR-18A, PLOT NO. 6, DWARKA,  
NEW DELHI-110075**

**...APPLICANT**

**Order Delivered on: 13.02.2024**

**CORAM:**

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (J)**

**DR. SANJEEV RANJAN, HON'BLE MEMBER (T)**

**Appearances:**

For the Applicant:

For the Respondent: Mr. Gurcharan Singh, Adv.

For the RP: Mr. Akshay Goel, Adv

## **ORDER**

### **PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)**

1. The present I.A. No. 3421 of 2022 has been filed by Mrs. Deepika Bhugra Prasad (from now on referred to as the 'RP'), qua Personal Guarantor Mr. Avinash Jain (hereinafter referred to as the 'Respondent/Personal Guarantor') enclosing therewith the Report prepared by him under Section 99 of IBC, 2016.
2. To put the facts concisely, the underlying main Petition CP (IB)- 222/ND/2022 was filed by IDBI Bank Ltd. against the Personal Guarantor Mr. Avinash Jain under Section 95 of IBC 2016, to initiate the IR process. Vide order dated 08.06.2022, this Adjudicating Authority had appointed Mrs. Deepika Bhugra Prasad as a Resolution Professional (RP) of the Personal Guarantor and directed him to file its Report under Section 99 of IBC, 2016.
3. In compliance with the order dated 08.06.2022 passed by this Adjudicating Authority, the present IA-3421/ND/2022 has been filed by RP enclosing therewith the Report prepared in terms of the provisions of Section 99 of IBC 2016, recommending admission of the Application viz. IB-222/ND/2022 in respect of the Personal Guarantor.
4. The conclusive recommendation made by the RP reads thus:

*“Hence, the RP considering the requirements of the admission of Personal Guarantee as stipulated in the Code opines and suggests that Insolvency Resolution Process for Personal Guarantor, Mr. Avinash Jain, to the Creditor of Arise India Limited should be initiated and the Application filed by the Applicant who is the Creditor shall be admitted.”*

5. While making its recommendation for admission of the Application filed against the Personal Guarantor under Section 95 of IBC, 2016 the RP has given the Report as required under Section 99 of IBC, 2016 providing that:

- a) The Respondent/Debtor has extended Personal Guarantee vide Deed of Guarantee executed on 11.12.2014.
- b) There is a debt of Rs. 208,56,32,144/- (Rupees Two Hundred Eight Crores Fifty-Six Lakhs Thirty-Two Thousand One Hundred Forty-Four Only) in Part III of Form C shown as outstanding and receivable from the Respondent/Personal Guarantor on account of credit facilities availed by the Principal Borrower/Corporate Debtor, M/s Arise India Ltd.
- c) The Respondent/Debtor has failed to provide any evidence of repayment of the debt claimed as unpaid by the Applicant/ Creditor in the manner as is laid down under clause (a) (b) and (c) of Section 99(2) of the Code.
- d) The Creditor has claimed the service of the Demand Notice dated 13.09.2021 upon the Personal Guarantor under Rule 7(1) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.
- e) The winding up proceedings under Section 433, 434 and 439 has been initiated against the Principal Borrower/Corporate Debtor and same is sub-judice before the Hon'ble Delhi High Court. Further, the Principal Borrower/Corporate Debtor has defaulted the repayment of the Financial Facilities amounting to Rs. 208,56,32,144/- (Rupees Two Hundred Eight Crores Fifty-Six Lakhs Thirty-Two Thousand One Hundred Forty Four Only). In lieu of default in payment against the Credit Facilities, the account of the Corporate Debtor was declared as Non-Performing Asset (NPA) on 30.01.2017.
- f) The default on Credit Facilities committed by the Corporate Debtor also registered with the information utility (CRILC) and the same is attached as Annexure-3 at page no. 146 of the main petition and hence the

Respondent Debtor/Personal Guarantor is not entitled to dispute the validity of such debt as per the provisions of section 99(3) of the Code.

g) As per Section 99(5), the Debtor is obligated to furnish information to the Resolution Professional within 7 days as and when requested by RP under Section 99(4). The RP neither received any information from the Debtor nor received any reply to email dated 14.06.2022. Therefore, the RP made the following opinion on the basis of documents annexed with main application.

<b>Queries by the Resolution Professional</b>	<b>Opinion of Resolution Professional</b>
<i>The amount of default as claimed by the Creditor i.e. IDBI Bank Limited, as on 1<sup>st</sup> September, 2021 is Rs. 208,56,32,144/- (Rupees Two hundred Eight Crore Fifty Six Lakhs Thirty Two Thousand One Hundred forty four only).</i>	<i>Since no reply was received from Debtor hence the RP confirmed the same from Applicant and Statement of Accounts.</i>

<p><i>Please confirm if there is any repayment of the debt as claimed by the Creditor. In case there is any repayment done, kindly provide us the following:</i></p> <p><i>(a) Evidence of electronic transfer of the unpaid amount from the bank account of the debtor;</i></p> <p><i>(b) Evidence of encashment of a cheque issued by the debtor; or</i></p> <p><i>(c) a signed acknowledgment by the creditor accepting receipt of dues.</i></p>	<p><i>As per the documents no amount was paid to IDBI Bank beyond default date.</i></p>
<p><i>Details of assets which are mortgage with the Creditors against the Guarantee, if any</i></p>	<p><i>The assets belonging to individuals were pledged to the bankers at the time of loan sanctioning however as per the assessment of application by the RP no property is in the name of debtor<sup>o</sup>.</i></p>
<p><i>IT returns, Wealth Tax returns, Statement of affairs, GST returns, bank account statements, documentary evidences of the assets etc.</i></p>	<p><i>No income tax return, Wealth Tax returns, Statement of affairs, GST returns, bank account statements, is provided by the debtor.</i></p>

<p style="text-align: center;"><i>The Net Worth of the Debtor</i></p>	<p><i>The net worth of the Debtor is almost NIL as the assets remained pledged to the bankers in companies like Arise India Ltd which all became NPA and all assets taken over by the bankers.*</i></p> <p><i>As per personal information form provided by IDBI Bank dated 31.03.2014 –</i></p> <p><i>Immovable property – NA</i></p> <p><i>Shares, Securities &amp; Deposits- Rs.85.70 Crore</i></p> <p><i>Jewellery Owned- Rs.12.61 Lakhs</i></p>
<p><i>Apart from above, following <b>confirmation</b> is required from you:</i></p> <p><i>a) That your Insolvency is being passed for the first time and it is undergoing a fresh start</i></p> <p><i>b) That you have not undergone an insolvency resolution or bankruptcy process earlier</i></p> <p><i>c) That you are not an undischarged bankrupt</i></p>	<p><i>The RP has conducted the due-diligence and could not find that the debtor has been confirmed as undischarged insolvent</i></p>

h) The RP has examined the application filed by the Creditor under Section 95 as per the proviso of Section 99(6) and same satisfies the requirements put forth in Section 95.

6. On issuance of notice the Respondent has filed its Reply and has put forth his submissions espousing rejection of the Application on the ground being barred from the limitation in terms of the Limitation Act, 1963.

7. We have heard the submission of both the parties and have perused the Application, Report and Reply/Rejoinder filed by the parties. The Creditor has placed on record, the Guarantee Deeds dated 11.12.2014 along with copy of revised Deed of Guarantee dated 11.06.2015 and 26.07.2016, in terms of which the Personal Guarantor Mr. Avinash Jain could stand as guarantor for repayment of credit facilities granted by the IDBI Bank Ltd. to the Principal Borrower/M/s. Arise India Ltd.
8. It is seen from the record that the aforesaid guarantee was invoked by the Creditor IDBI Bank by issuing Personal Guarantee Invocation notice dated 28.08.2017
9. Further, the Creditor sent the Demand Notice dated 13.09.2021 in Form B under Rule 7(1) of Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 to the Personal Guarantor. The service of notice is not disputed by the Respondent.
10. The Respondent opposed the admission of the Application mainly on the ground that the application under Section 95 is barred by limitation as the date of default under Part III is 30.01.2017. Further, the Hon'ble Supreme Court in Mis. Application No. 21/2022 in Mis. Application No. 665/2021 in Suo Moto Writ Petition (c) No. 3/2020, has held as under: -

*“Taking into consideration the arguments advance by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, ye deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions: -*

*I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2022, it is directed that the period from 15.03.2020 till 28.2.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*

*II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*

*III. In cases where the limitation would have expired, during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply."*

Hence, we are of considered view that the present application is well within the limitation period and the aforesaid contention of the Respondent is rejected.

11. In view of the aforesaid discussion, the Creditor has been able to establish the 'debt' and 'default' beyond doubt in respect of the Guarantee given by the Respondent/Personal Guarantor. Hence, we have no reason to disagree with the recommendation given by the RP for admitting the Application. Thus, we accept the report of the RP given by him in terms of the provisions of Section 99 of the IBC, 2016, and **admit the CP (IB)-222/ND/2022** filed by the Creditor. Therefore, we order the initiation of the IR process in respect of Mr. Avinash Jain, Respondent/Personal Guarantor with immediate effect.

12. On the basis of admission of the current application, a moratorium under Section 101 of IBC, 2016 shall commence in relation to all the debts of the Respondent/Personal Guarantor. 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; and
- c) the Respondent shall not transfer, alienate, encumber, or dispose of any of the assets or his legal right or beneficiary interest therein.

The moratorium shall cease to have effect at the end of the period of 180 days.

13. A public notice shall be issued by the RP, within seven days of passing of this order, inviting claims 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 said 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.

14. 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 due deference to 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 the discharge of his duties as RP.

15. A copy of this order along with a copy of the application as also the report of the Resolution Professional shall be provided to the Creditor (Applicant), Respondent/Personal Guarantor, and IBBI, by the Registry/Court Master within 7 days from today by e-mail.

16. **IA-3421/ND/2022 is disposed of** accordingly. To come up for consideration of Status Report to be filed by RP, within 8 weeks.

**Sd/-**  
**(DR. SANJEEV RANJAN)**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**(MAHENDRA KHANDELWAL)**  
**MEMBER (JUDICIAL)**