

**NATIONAL COMPANY LAW TRIBUNAL**  
**INDORE SPECIAL BENCH**  
**COURT NO. 1**

ITEM No.303  
CP(IB)/71(MP)2022

**Order under Section 94 IBC**

**IN THE MATTER OF:**

Prashant Kumar Gupta

.....Applicant

**Order delivered on 23/06/2025**

**Coram:**

Shammi Khan, Hon'ble Member(J)  
Sanjeev Kumar Sharma, Hon'ble Member(T)

**ORDER**  
**(Hybrid Mode)**

The case is fixed for pronouncement of the order. The order is pronounced in open Court *vide* separate sheet.

Sd/-

**SANJEEV KUMAR SHARMA**  
**MEMBER (TECHNICAL)**

Neeraj

Sd/-

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
SPECIAL BENCH, COURT-I, AT INDORE**

**CP(IB)/71(MP)/2022**

*(Filed under Section 94(1) of the Insolvency & Bankruptcy Code, 2016 r.w. Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019)*

*In the matter of **Prashant Kumar Gupta***

**PRASHANT KUMAR GUPTA**

S/o Late Shri Kedar Nath Gupta  
Permanent Residential Address:  
House No. 8 Pebble Bay Dream Villa  
Phase IV, Village Katra  
Ward No. 85, Gram Panchayat  
Rapadiya, Tehsil Huzur,  
District Bhopal, Madhya Pradesh

**... Applicant/Personal Guarantor**

**VERSUS**

**PUNJAB NATIONAL BANK**

Mid Corp Centre  
B-21 Shapura, BHOPAL BRANCH  
Bhopal 462016 Madhya Pradesh.

**... Respondents/Financial Creditor**

**Order Pronounced on: 23.06.2025**

**C O R A M :**

**SH. SHAMMI KHAN, HON'BLE MEMBER JUDICIAL**

**SH. SANJEEV KUMAR SHARMA, HON'BLE MEMBER (TECHNICAL)**

**A P P E A R A N C E:**

For the Applicant/PG : Mr. Akshat Agrawal, Adv  
For the RP : Mr. Pratul Kumar Singh, (RP in person)  
For the Respondent : Ms. Aashi Gupta, Adv

**O R D E R**  
***Per: Bench***

1. The present Company Petition was filed on 22.10.2022 through E-filing mode by the Personal Guarantor under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred a "IBC, 2016") r/w Rule 6 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtor) Rules, 2019 to initiate the Insolvency Resolution Process (hereinafter referred to as "IR Process") against the Applicant/Debtor who is the Personal Guarantor of **M/s P K Global Power Private Limited** for a default amount of **Rs. 14,46,65,767.26 ps.** as on 30.09.2021 in relation to the Credit Facilities extended by the Punjab National Bank.
2. The case of the Applicant/ Personal Guarantor is that the Applicant as Personal Guarantor had given a personal

guarantee on 24.06.2020 (**Annexure P/3**) in respect of Credit Facilities of Rs. 14,21,00,000/- granted in favour of Corporate Debtor **-M/s P K Global Power Private Limited** by the Respondent Bank/Punjab National Bank. for which various loan/security documents were executed in favour of the Respondent Bank/Punjab National Bank, which are annexed as **Annexure P/2 Colly**.

- 3.** However, after availing the aforesaid Loan/Credit Facilities, the Corporate Debtor failed to maintain financial discipline as per terms and conditions of the loan agreement due to which loan account became irregular and Corporate Debtor defaulted in repayment of dues. Accordingly, the debt was classified as Non-Performing Asset by the Respondent Bank/Punjab National Bank on 28.09.2021.
- 4.** Thereafter, Demand Notice dated 18.10.2021 was issued by the Respondent Bank/Punjab National Bank U/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, calling upon the borrower **M/s P K Global Power Private**

**Limited** as well as the Applicant and others to repay the amount mentioned in the Demand Notice with further interest and other incidental charges which is annexed as **Annexure P/1**.

5. The Applicant/Personal Guarantor has filed this petition in prescribed FORM-A on 22.10.2022 under Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019 before this Adjudicating Authority for initiation of Insolvency Resolution Process.
6. On presentation of the application by the Applicant/Debtor, this Authority vide order dated **17.05.2024** has appointed the Resolution Professional viz, **Pratul Kumar Singh**, having Registration No. IBBI/IPA-003/435/2023-2024/14284 as IRP to file a report under Section 99 of the Insolvency and Bankruptcy Code, which has been filed on 02.08.2024 recommending the admission of the application filed under Section 94 of IBC, 2016. The IRP recorded in the report that:-

- (i) Mr. Prashant Kumar Gupta filed for insolvency due to unpaid debts of M/s PK Global Power Pvt. Ltd., guaranteed by him, amounting to Rs. 14,46,65,767.26 as per a SARFAESI notice dated 18.10.2021.
  - (ii) The IRP who was appointed on 17.05.2024, faced delays in filing due to information-gathering challenges.
  - (iii) The RP notified Punjab National Bank and the guarantor on 03.06.2024, seeking details. The bank provided statements confirming unpaid dues; the guarantor did not respond.
  - (iv) The Corporate Debtor defaulted on RS. 1571 lacs in credit facilities, declared NPA on 28.09.2021. The guarantee agreement (24.06.2020) confirms Mr. Gupta's liability, with no evidence of repayment post-petition.
  - (v) The RP recommends admitting the application under Section 94 to initiate insolvency proceedings, as it complies with IBC requirements.
  - (vi) To accept the report, initiate the process under Section 100, and condone the filing delay.
- 7.** After issuance of notice Personal Guarantor, as well as the Financial Creditors i.e. Punjab National Bank, appeared through their Counsel. However, no reply/objection on the matter was filed by them.
- 8.** We have heard the Ld. Counsel for the IRP, Ld. Counsel for the Personal Guarantor as well as Ld. Counsel for the Financial Creditors viz. Punjab National Bank and perused the records as well as the Report of IRP.

9. The primary issues for determination before this Tribunal are:\_
- a). Whether the application under **Section 94 of IBC** is maintainable?
  - b). Whether the **Personal Guarantor has committed a default**, justifying admission of the insolvency petition?
  - d). Whether the conditions under **Section 100 of the IBC** for initiation of the Insolvency Resolution Process (IRP) against the Personal Guarantor are met?
10. Admittedly, the Applicant/ Personal Guarantor had given a **Personal Guarantee on 24.06.2020** in respect of **Credit Facilities of** Rs. 14,21,00,000/- granted in favour of Corporate Debtor - **M/s P K Global Power Private Limited** by the Respondent/Punjab National Bank.
11. However, after availing the aforesaid Loan/Credit Facilities, the Corporate Debtor defaulted in repayment of dues, and on 28.09.2021, the debt was classified as Non-Performing Asset by the Respondent Bank/Punjab National Bank.
12. Thereafter, the Respondent Bank/Punjab National Bank recalled the loan accounts and invoked the Personal Guarantee by serving a Demand Notice dated 18.10.2021

calling upon the borrower **M/s P K Global Power Private Limited** as well as the Applicant and others to repay the amount mentioned in the Demand Notice with further interest and other incidental charges.

- 13.** The Personal Guarantor's liability arises from the execution of the personal guarantee, making him co-extensively liable with the Corporate Debtor. **The default on the part of the Corporate Debtor triggers the liability of the Personal Guarantor as per Sections 126 to 128 of the Indian Contract Act, 1872**, and the Financial Creditor has the right to invoke the guarantee.
- 14.** In the present case Personal Guarantor's liability **crystallized upon invocation of the guarantee on 18.10.2021** by the Respondent Bank/Punjab National Bank, irrespective of whether CIRP or Liquidation proceedings were pending or not.
- 15.** The IRP, after examining the material on record, concluded that the debt is due and payable, and the Personal Guarantor has defaulted in payment. **No valid**

**objections were raised** against the IRP's findings that would justify rejecting the application under **Section 99(5) of the IBC**. The IRP's report confirms the existence of debt and default, further justifying the admission of the petition.

- 16.** Therefore, the petition filed by the Applicant /Personal Guarantor on 22.10.2022 under Section 94 of the seeking initiation of Insolvency Resolution Process in terms of in terms of Rule 6 of the IB (AAA for IRP for PGCD) Rules, 2019 is considered maintainable as the petition meets all procedural and substantive requirements under the IBC.
- 17.** It is also noted under section 128 of Indian Contract Act, 1872 that when a default is committed, the Principal Borrower and Surety are jointly and severally liable to Creditor and Creditor has the right to recover its dues from either of them or both of them simultaneously. For benevolent reference, the said section of Indian Contract Act, 1872 is reproduced below: -

“The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.”

**18.** The Hon'ble Supreme Court in the judgement of **Dilip B. Jiwrajka V/s Union of India & Ors.** in **WP(civil)No. 1281 of 2021** dated **09.11.2023** upheld the Constitutional Validity of Sections 94 to 100.

**19.** From the report of IRP, it is clear to us that: -

- i. IRP has recommended accepting the application for the reason as stated in the report dated 02.08.2024.
- ii. Resolution Professional report states that no evidence was placed before her that Personal Guarantor paid the amount demanded by the Financial Creditors and as such in over view demanded amount is un-serviced as on the date of order.
- iii. The IRP had not received any document whereby the personal Guarantee related agreement was cancelled by the guarantor and any of the Financial Creditors.
- iv. Demand Notice dated 18.10.2021 was issued by the Respondent/Punjab National Bank u/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 for invocation of Guarantee against the Applicant/Personal Guarantor, which has not been withdrawn to date.

- v. It is stated in the report that the Applicant is eligible under Section 94(4) of the IBC, 2016.
  - vi. It is stated in the said report that all the documents required under Rule 6, along with the Form-A of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor have been filed.
- 20.** Therefore, considering the totality of the facts and circumstances of the case, considering the IRP's submission of challenges in gathering information, the delay in filing the Report under Section 99 of the IBC, 2016, from the expected timeline of 10 days post-appointment on 17.05.2024 to 02.08.2024, is condoned.
- 21.** Further, in view of the foregoing, we are left with no other choice but to order as under: -
- I. Initiate Insolvency Resolution Process against the Applicant/Personal Guarantor and moratorium in relation to all the debts is declared, from today i.e. date of admission of the application and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on the repayment plan under Section 114 whichever is earlier as provided under Sec 101 of IBC, 2016. During the moratorium period; -

- a) Any pending legal action of proceeding in respect of any debt shall be deemed to have been stayed: and
- b) The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and
- c) The debtor shall not transfer, alienate, encumber, of dispose of any of his assets or his legal rights or beneficial interest therein;
- d) 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, if any.

II. Though the Applicant/Personal Guarantor has proposed the name of an Insolvency Professional as the Resolution Professional, who was earlier appointed as IRP in the same matter when the Section 97 application was allowed vide Order dated **17.05.2024**. However, we are not inclined to re-appoint the same IP as the Resolution Professional. Accordingly, we hereby appoint another IP from the list provided by the IBBI which is valid for the period 01.01.2025 to 30.06.2025. Hence, we appoint **Mr. Piyush Kumar Kapoor**, Registration No. IBBI/ IPA-001 / IP-P-02083/ 2020-

2021/13216, E-mail: [capiyushkapoor@yahoo.com](mailto:capiyushkapoor@yahoo.com),  
Mobile No.99938 44411 as Resolution Professional in  
the matter subject to filing written consent and  
declaration within three days with the Adjudicating  
Authority.

- III. The newly appointed RP is directed to cause a public notice to be published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the **NCLT Indore Bench**, inviting claims from all Creditors, within 21 days of such Issue. The notice under Sub Section (1) of Section 102(2) shall include: -
- a) details of the order admitting the application;
  - b) particulars of the resolution professional with whom the claims are to be registered; and
  - c) the last date for submission of claims.
- IV. The publication of notice shall be made in two newspapers, one in English and other in Vernacular which have wide circulation in the State where the Corporate Debtor and Personal Guarantor situated/resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.

- V. The Resolution Professional in exercise of the powers conferred under Section 104 shall prepare a list of creditors on the basis of:
- a. the information disclosed in the application filed by the debtor under Sections 94 or 95, as the case may be, and
  - b. claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice.
- VI. The debtor shall prepare a repayment plan under Section 105, in consultation with the Resolution Professional, containing a proposal to the Creditors for restructuring of his debts or affairs. The repayment plan may authorize or require the Resolution Professional to: -
- a) carry on the debtor's business or trade on his behalf or in his name or
  - b) realise the assets of the debtor, or
  - c) administer or dispose of any funds of the debtor.
- VII. The repayment plan shall include the following, namely: -
- a) justification for preparation of such repayment plan and reasons on the basis of which the creditors may agree upon the plan;
  - b) provision for payment of fee to the Resolution Professional.

- VIII. 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.
- IX. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons therefor. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of IBC, 2016. The date of meeting should not be less than 14 day 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 and the debtor shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of IBC, 2016.
- X. 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 the same to this Tribunal, 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 IBC, 2016, including maintaining independence, confidentiality, and impartiality in all actions.

- XI. The Resolution Professional shall submit his periodic reports before this Tribunal every 30 days.
- 22.** In terms of the above, **CP(IB)/71(MP)/2022** filed under Section 94(1) of the IBC, 2016 is admitted and the Insolvency Resolution Process stands initiated against the Applicant/Personal Guarantor.

Sd/-  
**SANJEEV KUMAR SHARMA**  
**MEMBER (TECHNICAL)**

*Abhijit*

Sd/-  
**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**