

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH- I
KOLKATA**

IA(IB)No.1585/KB/2025

In

Company Petition (IB) No. 155 of 2024

In the matter of:

An Application under Section 114 of the Insolvency and Bankruptcy Code, 2016;

In the matter of:

Indian Bank

...FINANCIAL CREDITOR

Versus

Mr. Raghabendra Majumdar

...RESPONDENT/PERSONAL GUARANTOR

Versus

Mr. Sanjai Kumar Gupta

...RESOLUTION PROFESSIONAL/APPLICANT

Date of Pronouncement of Order: 13.10.2025

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

MS. REKHA KANTILAL SHAH, HON'BLE MEMBER (TECHNICAL)

Appearances (via video conferencing/physically):

Mr. S.K. Ray, Adv.	] For the Financial Creditor
Ms. Ashmita Lohia, Adv.	]
Ms. Varsha Khowala, Adv.	]
Ms. Ritika Prasad, Adv.	]

Ms. Pallavi Ray, Adv.	] For the Resolution Professional
Mr. Rahul Sharma, Adv.	]

O R D E R

Per: Bidisha Banerjee, Member (Judicial)

1. The Court Convened in a hybrid mode.

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- 2.** That this application has been filed under Section 112 seeking for the following reliefs:
- (i) *“To take on record the Report under Section 112 of the Insolvency and Bankruptcy Code, 2016 prepared in respect of the insolvency resolution process of the Personal Guarantor;*
 - (ii) *An order declaring the Insolvency Resolution Process of the Personal Guarantor being Raghavendra Mazumdar as failed;*
 - (iii) *Any other or further orders(s) as this Learned Tribunal may deem fit and proper.”*
- 3.** That by an order dated 11th June, 2024 this Tribunal in CP(IB)155/KB/2024 filed under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 by the Financial Creditor for initiating Insolvency Resolution Process against the Personal Guarantor and appointed the Applicant/RP and directed him to exercise his powers under Section 99 of IBC read with the Rules made there under. The copy of the order dated 11th June, 2024 is annexed as **Annexure “A”**.
- 4.** That the order passed by the Tribunal and requirements of the Code and related regulations, the RP prepared the Report under Section 99(1) before this Tribunal. The RP recommended that insolvency resolution Process be initiated against the Personal Guarantor herein for the loans granted to the principal borrower being M/s B. M. Advertising Private Limited.
- 5.** That by an order dated 03rd July, 2025 this Tribunal was pleased to accept the recommendation of the RP and admitted the application filed under Section 95 of the Code, thereby initiating insolvency resolution process against the Personal Guarantor under Section 100 of the Insolvency and Bankruptcy Code, 2016.

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6. That the order of admission as aforesaid was passed, public notice under Regulation 102 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Persons) Regulations, 2019, was issued by Resolution Professional in newspapers Business Standard (English) and Aajkal (Bengali) on 9th July, 2025 requesting the creditors to submit their claim by 30th July, 2025.
7. The applicant submits that under Section 104 of Insolvency and Bankruptcy Code, 2016 read with Regulation 7(5), 7(6) and 7(8) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Persons) Regulations, 2019, a list of creditors along with amount claimed, claims admitted, security interest in respect of claims was prepared by the RP on 06th August, 2025.
8. That on 19th July, 2025 the applicant sent a letter followed by an email on 10th August, 2025 intimating about the initiation of PIRP and requesting the Personal Guarantor to submit a Repayment Plan. In response, the Personal Guarantor, by an communication dated 11th August, 2025 refused to submit a repayment plan, stating that he does not possess any assets. Thereafter the communication was brought to the attention of the CoC, which subsequently directed the RP to appoint an Asset Tracing Agency to investigate and trace any assets belonging to the Personal Guarantor. The Asset Tracing Agency submitted its report stating and confirming that no attachable property was found in the name of the Personal Guarantor.
9. That the applicant conducted the first meeting of the CoC comprising Indian Bank on 15th September wherein the RP asked the CoC to deliberate on whether an application for bankruptcy should be filed

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against the Personal Guarantor as no repayment plan has been submitted by the Personal Guarantor. The CoC resolved to file necessary application for closure of the PIRP before the Adjudicating Authority. Copy of the minutes of the first meeting of the CoC is annexed with the Report under Section 112.

- 10.** That the applicant has thus prepared a report of the meeting of the Creditors on repayment plan under Section 112 of the Insolvency and Bankruptcy Code, 2016. The said report under Section 112 of the Insolvency and Bankruptcy Code, 2016 is annexed herewith and marked as **Annexure 'B'**.

11. Submission of Learned Counsel for the Resolution Professional:

Ld. Counsel appearing on behalf of the Resolution Professional would submit that this Adjudicating Authority in absence of any repayment plan or the rejection of a repayment plan as the case may be, has the power as envisaged under Section 114(1) and 115(2) of the IBC to direct the debtor and the creditor to file an application for bankruptcy under Chapter IV of the Code.

- 12.** We have noted the arguments advanced by the Ld. Counsel appearing on behalf of the Resolution Professional.

- 13.** The Section 114(1) of the Code envisages the following:

Section 114: Order of Adjudicating Authority on repayment plan.

“114. (1) The Adjudicating Authority shall by an order approve or reject the repayment plan on the basis of the report of the meeting of the creditors submitted by the resolution professional under section 112:

.....”

- 14.** The Section 115 (2) and 115(3) of the code envisages that:

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“.....

(2) Where the Adjudicating Authority rejects the repayment plan under Section 114, the debtor and the creditors shall be entitled to file an application for bankruptcy under Chapter IV.

(3) A copy of the order passed by the Adjudicating Authority under sub-section (2) shall be provided to the Board, for the purpose of recording an entry in the register referred to in Section 196.”

- 15.** The bare perusal of Section 115 of the Code indicates that the debtor and the creditor shall be entitled to prefer an application for bankruptcy under Chapter IV in a case where the Adjudicating Authority has rejected the repayment plan under Section 114 of the Code.
- 16.** In the present case, despite a plethora of intimation regarding the claims of the creditor as well as request to submit a repayment plan, the Personal Guarantor has neither responded nor furnished any repayment plan till date.
- 17.** We would note that the IBC code did not clarify what steps to be taken where no repayment plan was forthcoming from a Personal Guarantor. However, the recent amendments to the provisions introducing sub-Section 1A to Section 106, inserted by Act No.6 of 2026 dated 06.04.2026 effected from 26.05.2026 reads as under:

Section 106 (1A): Report of resolution professional on repayment plan:

XXX XXX XXX

“(1A) Where no repayment plan is submitted within the period stipulated under sub-section (1), the resolution professional shall submit a report to the

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Adjudicating Authority, and the Adjudicating Authority shall pass an order terminating the insolvency resolution process of the debtor and the debtor or the creditors shall be entitled to file an application for bankruptcy under Chapter IV.”

- 18.** The report under Section 112 of the Insolvency and Bankruptcy Code, 2016 no repayment plan from the PG, therefore, is taken on record.
- 19.** Accordingly, this interlocutory application being IA(IB) No.1585/KB/2025 is **disposed of**.

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- 1.** The Company Petition is now taken up for consideration for appropriate order. We note as follows:

a. Termination of Insolvency Resolution Process of Personal Guarantor:

- (i)** We would note from the above that in absence of any repayment plan from the Personal Guarantor, the Insolvency Resolution Process the debtor/Personal Guarantor needs to be terminated. Hence, we terminate the present Insolvency resolution process initiated against the Personal Guarantor.

b. Discharge of Personal Guarantor (PG in short):

- (i)** Section 119 of the code calls for discharge order under Chapter III, depending upon the acceptance of the repayment plan, the provisions under Section 119 is extracted hereunder:

** **119.** (1) On the basis of the repayment plan, the resolution professional shall apply to the Adjudicating Authority for a discharge order*

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in relation to the debts mentioned in the repayment plan and the Adjudicating Authority may pass such discharge order.

(2) The repayment plan may provide for—

(a) early discharge; or

(b) discharge on complete implementation of the repayment plan.

(3) The discharge order shall be forwarded to the Board, for the purpose of recording entries in the register referred to in [section 196](#).

(4) The discharge order under sub-section (3) shall not discharge any other person from any liability in respect of his debt.

- (ii) In view of the above termination of the Insolvency Resolution Process in terms of Section 119 under Chapter III of IBC, as ordered earlier but having noted the absence of repayment plan from the PG, we do not discharge him from the liability in respect of his debt. Thus the Personal Guarantor continues to be liable in respect of his debt.

c. Initiation of Bankruptcy Process:

- (i) Section 121 of the IBC** envisages provisions for seeking bankruptcy of a debtor/Personal Guarantor and reads as under:

Section 121: Application for bankruptcy.

“121. (1) *An application for bankruptcy of a debtor may be made, by a creditor individually or jointly with other creditors or by a debtor, to the Adjudicating Authority in the following circumstances, namely; —*

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(a) where an order has been passed by an Adjudicating Authority under sub-section 4 of [section 100](#); or

(b) where an order has been passed by an Adjudicating Authority under sub-section 2 of [section 115](#); or

(c) where an order has been passed by an Adjudicating Authority under sub-section 3 of [section 118](#).

(2) An application for bankruptcy shall be filed within a period of three months of the date of the order passed by the Adjudicating Authority under the sections referred to in sub-section (1).

(3) Where the debtor is a firm, the application under sub-section (1) may be filed by any of its partners.”

The recent amendments to the provision inserting Section 121(1)(d) by Act No.6 dated 06th April, 2026 effective from 26.05.2026, reads as under:

“Section 121: Application for bankruptcy:

(1) *An application for bankruptcy of a debtor may be made, by a creditor individually or jointly with other creditors or by a debtor, to the Adjudicating Authority in the following circumstances, namely;—*

.....

(d) *where an order has been passed by an Adjudicating Authority under sub-section (1A) of [section 106](#).”*

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(ii) Since no repayment plan has been received from the Personal Guarantor, and the insolvency process of the Personal Guarantor had to be terminated in terms of Section 106(1A) extracted supra, the insolvency resolution process of the Personal Guarantor stands terminated as ordered above but as already indicated above, the Personal Guarantor is not discharged of his liability in respect of his debt.

(iii) Accordingly, considering the prayer that has been made to permit invocation of the provision under Section 121(1)(d) of the code extracted supra, for application for bankruptcy to be filed, we permit the creditor to take a pragmatic and holistic view for preferring an application to initiate bankruptcy process under Chapter IV of the Insolvency and Bankruptcy Code, keeping in view the provisions under Section 121(1)(d) as noted above.

d. Consequential Directions:

- (i)** The C.P. (IB)155(KB)2024 is **disposed of** with liberty to the Financial Creditor to come up afresh to seek bankruptcy of the Personal Guarantor.
- (ii)** The Resolution Professional is discharged from his duties under the Code.
- (iii)** The Creditor is directed to clear all the remuneration of the RP that is due.
- (iv)** A copy of this Order be forwarded to the Board in terms of Section 115(3) of the Code.

- 2.** The Registry of this Adjudicating Authority is directed to receive Email copy of the order forthwith to all the parties and their Ld. Counsels for information and for taking necessary steps.

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- 3.** Certified copy of the order may be issued, if applied for, upon compliance of all requisite formalities.

**Rekha Kantilal Shah
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

Signed on this, the **13th October, 2026.**

S. Ghose, (Steno)