



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

C.P. (IB) NO. 306/MB/2022

Under Section 94 of the
Insolvency and Bankruptcy
Code, 2016 r/w rule 6 of the
Insolvency & Bankruptcy
(Application to
Adjudicating Authority for
Insolvency Resolution
Process for Personal
Guarantors to Corporate
Debtors) Rules 2019.

In the matter of

Komal Manoj Beriwal

Personal Guarantor to Shree

Radhe Metaliks Pvt. Ltd. [CIN :

U27310MH2010PTC211440]

.....Personal Guarantor/Petitioner

Order pronounced on 14.11.2024

Coram:

Hon'ble Member (Judicial) : Justice V. G. Bisht (Retd.)

Hon'ble Member (Technical) : Sh. Prabhat Kumar

Appearances:

For the Personal Guarantor : Mr. Manoj Mishra, Advocate

ORDER

Per: Justice V. G. Bisht (Retd.), Member (Judicial)

1.The present Company Petition has been filed by **Mrs. Komal**



Manoj Beriwal (hereinafter referred to as “Personal Guarantor/Petitioner”), Personal Guarantor of the Corporate Debtor, **Shree Radhe Metaliks Pvt. Ltd.** (hereinafter referred to as “Corporate Debtor”), under section 94 of the Insolvency and Bankruptcy Code, 2016 (“the Code”) read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (“IBBI Rules”) seeking to initiate Insolvency Resolution Process against herself being the Personal Guarantor of **Shree Radhe Metaliks Pvt. Ltd.**

Brief facts:

1. The Corporate Debtor herein bears CIN U27310MH2010PTC211440 and has its registered address at 512, Ashirwad Building, 64/E, Ahmedabad Street, Carnac Bunder, Masjid Bunder, East Mumbai, MH – 400009 and is incorporated on 27.12.2010. The Corporate Debtor is in the business of wholesale product of stainless-steel items and steel products of various descriptions.
2. The Petitioner was the director of the Corporate Debtor, however, with the admission of the Corporate Debtor into CIRP on 24.12.2021 in the matter bearing number CP(IB)/MB/292/2021 M/s Ventura Metal and Alloys Vs Shree Radhe Metaliks Private Limited under section 9 of IBC, the Petitioners position is that of a suspended director. The Guarantor has been director in the Corporate Debtor since 01.04.2015. The Petitioner has given Personal Guarantee to the Malad Sahakari Bank Ltd. and Jana Seva Sahakari Bank (borivli) Ltd. with respect to Shree Radhe Metalliks Pvt. Ltd.
3. The Date and the amount of the default occurred by the personal



guarantor is as follows:

Creditors Name	Date of Default	Debt Amount
The Malad Sahakari Bank Ltd	31.12.2021	Rs. 2,30,93,244/-
Jana Seva Sahakari Bank Ltd.	31.12.2021	Rs.76,29,443/-
DHFL	08.02.2016	Rs. 1,55,58,167/-
Manoj Beriwal	31.03.2020	Rs. 2,10,000/-
Har Shree Nath Multi Trade Pvt. Ltd.	30.09.2020	Rs. 31,35,200/-
Total	Rs. 4,96,26,054/- (Rupees Four Crores Ninety Six Lacs Twenty Six Thousand Fifty Four Only)	

4. The amount of debt in default is stated to be Rs. 4,38,49,528/- (Rupees Four Crores Thirty Eight Lacs Forty Nine Thousand Five Hundred Twenty Eight only) and interest claimed is Rs. 57,76,526/- (Rupees Fifty Seven Lacs Seventy Six Thousand Five Hundred Twenty Six only)

5. Vide order dated 03.06.2024, this bench appointed **Mr. Mukesh Kumar Jain**, having Insolvency Registration No. IBBI/IPA-001/IP-P01236/2018-2019/11944, to act as the Resolution Professional in the present matter & directed RP to file report under Section 99 of Insolvency and Bankruptcy Code, 2016. The RP had accordingly filed IA 4833/2024 to place on record the same. The report was taken on record and the IA was allowed and disposed of vide order dated 15.10.2024. Vide the said IA, the RP has recommended admission of the application filed under section 94 of IBC, 2016. The grounds for admission of the application recorded in the Report are as follows: -

“RECOMMENDATION BY RP FOR ACCEPTING THE PRESENT PETITION:

In view of the facts stated in the preceding paras of this report, the default by the Corporate Debtor, the Account having turned NPA and the personal guarantee given by Mrs. Komal Manoj Beriwal, therefore the Resolution Professional most humbly submits that based on the petition filed by the Personal Guarantor/Petitioner, it is recommended that this



is the fit case to commence the personal insolvency resolution process of Mrs. Komal Manoj Beriwal, the Personal Guarantor of Mis. Shree Radhe Metaliks Private Limited, under the orders and directions of this Hon'ble Tribunal. The Hon'ble NCLT thereafter may kindly pass appropriate orders under section 100 of the IBC, 2016/Code, "Admitting" the said petition bearing C.P. (IB) No. 306/2022 and declare "Moratorium" under section 101 of the Code and issue "Public Notice" for inviting the claims under section 102 of the Code and may pass such orders as this Hon'ble NCLT deem necessary against Mrs. Komal Manoj Beriwal."

6. Malad Sahakari Bank Ltd. had filed Intervention Application bearing no. Inv. P. 38 of 2024 which was disposed of vide order dated 24.10.2024 recording the statement of Counsel for the Intervenor informed that she has no objection if the Bench proceeds to pass an appropriate order in terms of Section 112 of the Code stating that their Intervention has become meaningless at this stage.

Findings:

1. Heard submissions of learned counsel for the Petitioner. Perused records. Also perused report placed on record by the Resolution Professional.
2. It may be noted that under section 128 of Indian Contract Act, 1872, 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."



The Hon'ble National Company Law Appellate Tribunal in the matter of *State Bank of India Vs. Athena Energy Venture Private Limited* in *Company Appeal (AT)(Ins) No. 633 of 2020* observed as under: -

“19. It is clear that in the matter of guarantee, CIRP can proceed against Principal Borrower as well as Guarantor.”

3. Therefore, in view of the above averments, we are of the considered opinion that it is a fit case for admission and proceed against the Personal Guarantor/Petitioner and initiate Insolvency Resolution Process. Hence, we admit CP(IB) No. 306 of 2022 filed under the provisions of section 94 of IBC, 2016 under Section 100 of the IBC, 2016 by following order:

- I.* Initiate Insolvency Resolution Process against the Petitioner/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, or 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.

- II.** The Resolution Professional *viz.* **Mr. Mukesh Kumar Jain** Insolvency Resolution Professional, having Registration No. IBBI/IPA-001/IP-P01236/2018-2019/11944, having registered address at C-203, EDGE Commercial, Opposite Maruti Suzuki Arena, Vidhansabha Road, Mova Raipur – 492 007 (Chattisgarh) [E-Mail: *Mkj2822@gmail.com*, *Mobile no.: 9937625943*] is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Mumbai 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.
- III.** 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 resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.
- IV.** 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. 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.

The repayment plan shall include the following, namely;

- a.* justification for preparation of such repayment plan and reasons based on which the creditors may agree upon the plan;
- b.* provision for payment of fee to the Resolution Professional;
- c.* such other matters as may be specified.

V. 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.

VI. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons thereof. 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 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.

- VII.* 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.
- VIII.* The Petitioner is directed to deposit **INR 2,00,000/-** (Indian Rupees Two lakhs) to the bank account of the Resolution Professional within **one week**, towards his fees. This shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.
- IX.* The Registry is directed to communicate a copy of order, report and application within **seven** working days and upload the same on the website immediately after the



pronouncement of order.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

MK

Sd/-

JUSTICE V. G. BISHT
MEMBER (JUDICIAL)