

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

MA (IBC) No. 03/JPR/2024
In CP No. (IB)- 33/95/JPR/2023

IN THE MATTER OF:

BANK OF BARODA

...Applicant

VERSUS

MR. SAMEER SOMANI

...Respondent

MA (IBC) No. 03/JPR/2024

MEMO OF PARTIES

MS. PRATIBHA KHANDELWAL

Insolvency Professional

IBBI Reg. No.: IBBI/IPA-002/IP-N00031/2016-17/10068

T 5/1001, Rangoli Greens, Maharana

Pratap Marg, Panchyawala,

Vaishali Nagar, Jaipur, Rajasthan, 302021

Email id: cspratibhak@gmail.com

.....Resolution Professional

VERSUS

MR. SAMEER SOMANI

Personal Guarantor M/s Aditya Telelink Limited,

Flat No. 406, Okay Plus Empress, Bani

Park, Jaipur- 302016 (Rajasthan)

...Personal Guarantor

Sdr

Sdr

MA (IBC) No. 03/JPR/2024

In

CP No. (IB)- 33/95/JPR/2023



FOR THE CREDITOR : Anubha Singh, Adv.
FOR THE RESPONDENT : Shashank Bhansali, Adv.
FOR THE RP : Pratibha Khandelwal, In person
 Divanshu Gupta, Adv.

Order Pronounced on: 22.05.2024

ORDER

Per: Shri Rajeev Mehrotra, Technical Member

1. This Application bearing *MA(IBC)No. 03/JPR/2024* has been filed by the Resolution Professional under Section 99(1) read with Section 99(7) of the Insolvency and Bankruptcy Code, 2016 ('Code'/'IBC') recommending the admission of the Application filed by the Creditor i.e. *Bank of Baroda* under Section 95 of the Code wherein it sought commencement of Insolvency Resolution Process ('IRP') against the Personal Guarantor, namely *Mr. Sameer Somani*, of the Corporate Debtor being *M/s Aditya Telelink Limited*.
2. The Creditor had filed the main Application bearing *CP No. (IB)-33/95/JPR/2023* under Section 95 of the Code read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 ('Rules') seeking initiation of IRP against the Personal Guarantor of the Corporate Debtor for an amount of Rs. 10,73,87,620.38/- (Rupees Ten Crores Seventy- Three Lakhs Eighty- Seven Thousand Six Hundred Twenty and Thirty- Eight Paise Only) in relation to the credit facility extended therein. This Authority *vide* Order dated 19.12.2023 had

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appointed *Ms. Pratibha Khandelwal* as the Resolution Professional and directed her to file a report under Section 99 of IBC, 2016 which has been filed by her through *MA(IBC)No. 03/JPR/2023*.

3. Hence, this Application has been filed by the Applicant stating the grounds for admission of the Application, which are as follows:

3.1 That the Application filed by the Financial Creditor in the matter of Personal Guarantor *Mr. Sameer Somani* in *CP No. (IB)-33/95/JPR/2023* falls within the parameters of Section 95(1) of the Code of 2016. The Personal Guarantor has committed default in repayment of his liabilities in terms of debt arising on account of invocation of the personal guarantee towards Corporate Debtor *M/s Aditya Telelink Limited* and the liabilities remained unpaid and accordingly, the requirement set out in Rule 3(e) of Personal Guarantor Rules, 2019 is satisfied.

3.2 That the Personal Guarantor has committed a default in payment of its liabilities and therefore, the requirement set out in section 95(1) of IBC is satisfied.

3.3 That the Application has been filed by the Applicant/ Financial Creditor in compliance with Section 95(6) of the Code of 2016 in 'Form C' in the manner as prescribed under Rule 7 of the Rules of 2019 along with an application fee as prescribed in the Rules of 2019.

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3.4 That the Application filed u/s 95(1) is accompanied with details and documents relating to:

- a) The debts owed by the Personal Guarantor to the Creditor submitting the application for initiation of Insolvency Resolution Process as on the date of Application.
- b) The failure by the Personal Guarantor to pay the debt within a period of 14 days of the service of the notice of demand; and
- c) Relevant evidence of such default or non- repayment of debt.

3.5 That the Personal Guarantor has furnished the information and explanations sought by the Resolution Professional as per Section 99(4) of the Code.

4. The compliance of the relevant sections of the Code is as follows:

<i>Sr. No.</i>	<i>Requirements under Relevant provisions of Section 99 of the Code</i>	<i>Compliance by RP</i>
I.	<i>Section 99(1):</i> The RP shall examine the application referred u/s 94 or 95 within 10 days of appointment and submit a report to Adjudicating Authority for approval/rejection of the application	The RP submitted that the present report is prepared in compliance with the requirements of Section 99(1) of the Code.
II.	<i>Section 99(2):</i> Where the application has been filed under Section 95, the resolution professional may require the debtor to prove repayment of the debt claimed as unpaid by the creditor by furnishing:	YES The RP sought clarification/information from the Personal Guarantor through various E-mails.

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Sr. No.	Requirements under Relevant provisions of Section 99 of the Code	Compliance by RP
	(a) evidence of electronic transfer of the unpaid amount from the bank account of the debtor; (b) evidence of encashment of a cheque issued by the debtor; or (c) signed acknowledgment by the creditor accepting receipt of dues.	
III.	<i>Section 99(3):</i> Where the debt for which an application has been filed by a creditor is registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt.	No such observation has been mentioned in the Report.
IV.	<i>Section 99(4):</i> For the purposes of examining an application, the resolution professional may seek such further information or explanation in connection with the application as may be required from the debtor or the creditor or any other person who, in the opinion of the resolution professional, may provide such information.	YES
V.	<i>Section 99(5):</i> The person from whom information or explanation is sought under sub-section (4) shall furnish such information or explanation within seven days of receipt of the request.	YES E-mails received from the Personal Guarantor to the queries raised by the RP.
VI.	<i>Section 99(6):</i> The Resolution Professional shall examine the application and ascertain that - (a) the application satisfies the requirements set out in Section 94 or 95; (b) the applicant has provided information and given explanation	YES RP has examined the Application under Section 95 and relevant information has been provided.

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<i>Sr. No.</i>	<i>Requirements under Relevant provisions of Section 99 of the Code</i>	<i>Compliance by RP</i>
	sought by the resolution professional under sub-section (4).	
VII.	<i>Section 99(7):</i> After examination of the application under sub-section (6), he may recommend acceptance or rejection of the application in his report.	YES RP has recommend the acceptance in the Report.
VIII.	<i>Section 99(8):</i> Where the resolution professional finds that the debtor is eligible for a fresh start under Chapter II, the resolution professional shall submit a report recommending that the application by the debtor under Section 94 be treated as an application under Section 81 by the Adjudicating Authority.	No such observation has been mentioned in the Report.
IX.	<i>Section 99(9):</i> The Resolution Professional shall record the reasons for recommending the acceptance or rejection of the application in the report under sub-section (7).	YES RP has laid down reasons for the Report.
X.	<i>Section 99(10):</i> The Resolution Professional shall give a copy of the report under sub-section (7) to the debtor or the creditor, as the case may be.	YES RP has filed the Report.

5. Since, the parameters laid down under the provisions of law are satisfied, we are inclined to admit the Application filed by the Creditor against the initiation of the Individual Insolvency Resolution Process of the Personal Guarantor. The Creditor is directed to deposit Rs. 1,00,000/- (Rupees One Lakh Only) to the bank account of the Resolution Professional within one

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week of the passing of the order towards its fees and expenses which shall be subject to the rules and regulations prescribed under law.

6. Resultantly, moratorium is declared as provided under Section 101 of IBC 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 or on the date the Adjudicating Authority passes an order on the repayment plan under Section 114, whichever is earlier. During the moratorium period interalia the following provisions shall be in effect;

- a. Any pending legal action or 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.

7. The Resolution Professional viz., *Ms. Pratibha Khandelwal*, who has been appointed under Section 97 *vide* order dated 19.12.2023, is directed to cause a public notice to be published on behalf of the Adjudicating Authority within 7 days from the date of this Order, inviting claims from all Creditors, who shall register their claims as provided under Section 103 within 21 days

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of such issuance. The notice shall contain the necessary information as provided under Section 102(2) of the IBC. 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 Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry. One shall be placed by the Registry on the website of this Adjudicating Authority and the other shall be affixed in the premises of this Authority.

8. The Resolution Professional in exercise of the powers conferred under Section 104 shall prepare a list of creditors within 30 days from the date of the notice. The Personal Guarantor shall prepare a Repayment Plan in consultation with the Resolution Professional as provided under Section 105 which shall include the provisions for payment of fee to the Resolution Professional. The Resolution Professional shall submit the Repayment Plan along with her 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.
9. In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, she shall record the reasons thereof. If the Resolution Professional is of the opinion that the meeting of the Creditors should be summoned, the same shall be specified in detail as provided under Section 106(3). The meeting shall be held in accordance with Section 107 of the Code.

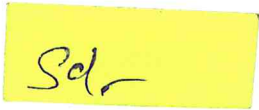
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10. The meeting of the Creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of the Code. The Resolution Professional shall prepare a report in accordance with Section 112 of the Code and submit the same to this Authority and its copies shall be provided to the Personal Guarantor and Creditors. It is made clear that the Resolution Professional shall perform her functions and duties in compliance with the Code of Conduct provided under section 208 of the IBC, 2016.
11. In terms of the above, *CP No. (IB)- 33/95/JPR/2023* filed under Section 95 of the IBC is admitted and the Insolvency Resolution Process stands initiated against the Debtor/Personal Guarantor i.e. *Mr. Sameer Somani*. Accordingly, *MA (IBC) No. 03/JPR/2024* is taken on record and stands disposed of.


**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**


**RAJEEV MEHROTRA,
TECHNICAL MEMBER**