

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-IV**

**IA-3063/2022
IN
CP (IB)-187/ND/2022**

*[Under 96, 97, 99 & 100 of IBC, 2016 r/w Rule 6 (1) of the IB
(Application to Adjudicating Authority for IRP for Personal
Guarantors to CD) Rules, 2019.]*

IN THE MATTER OF:

Bank of Baroda Petitioner

Versus

Mr. Hari Singh Thakur Personal Guarantor

AND IN THE MATTER OF

**Mr. Sandeep Kumar Bhatt
Resolution Professional of
Mr. Hari Singh Thakur**

*..... Resolution Professional/
Applicant*

CORAM:

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**DR.SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on: 28.02.2024

Present:

For the Applicant/RP : Mr. Mohit Nandwani, Adv

ORDER

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1. Under consideration is an application filed under section 95 read with section 99 of the Insolvency and Bankruptcy Code, 2016 bearing IA-3063/2022, which is a report filed by the Resolution Professional namely Mr. Sandeep Kumar Bhatt, who was duly appointed by this Tribunal vide order dated 29.03.2022, in IB/187/ND/2022, an application filed by Bank of Baroda under Section 95 of the Code, 2016.

2. The present report has been filed in accordance with Section 99 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as IBC, 2016 / Code). Originally, one of the Financial Creditor , namely, Bank of Baroda, had filed a petition under Section 95 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 7 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 (hereinafter referred to as the Rules, 2019), against Mr. Hari Singh Thakur, who is the personal guarantor in relation to the credit facility availed by M/s. Aastha Surgimed Limited (hereinafter referred to as Corporate Debtor) for a total outstanding amount of Rs. 5,21,91,526.47/- as on 31.08.2021. The Report under Section 99 of IBC, 2016 has been filed by Mr.Sandeep Kumar Bhatt, Resolution Professional through IA-3063/2022 in CP(IB)187/ND/2022, recommending the admission of the application filed under section 95 of IBC, 2016 as per Section 99(7) of the Code.

In terms of section 99(9), the reasons for admission of the application recorded in the Report are as follows: -

- a) That RP has obtained all the information and explanation which to the best of his knowledge and belief were necessary to frame his opinion for the recommendations for acceptance or rejection of the application by the Hon'ble Adjudicating Authority
- b) On examination of the application and as submitted above, the debt is proved and complies the requirements set out as per Sec 95 of the IB Code, 2016 because of following reasons:
 - That the debt is proved
 - The debt is owed by the CD of which personal guarantee is executed by the guarantor i.e., Hari Singh Thakur and the debt is duly acknowledged by the CD and the Guarantor;
 - That the guarantor has failed to repay the debt within 14 days of the service of notice of demand;

3. We have heard the learned counsel for the parties and perused the report and the documents placed on record.

4. From the records, this Adjudicating Authority observe that vide order date 21.09.2022, one last opportunity was granted to the respondent to argue the matter subject to payment of costs of Rs. 20,000/- which was to be deposited in Prime Minister's Relief Fund. The said order was modified by order dated 11.10.2022 by taking into consideration, the above costs of Rs. 20,000/- was decreased to Rs. 10,000/-. However, the said order is not complied till the date of final hearing of the matter. Hence, this Adjudicating Authority had

proceeded to hear the matter.

5. From the report there does not appear, any request of the Resolution Professional for issuance of the instructions for the purpose of conducting negotiations between the debtor and creditors for arriving at a repayment plan.
6. Based on the above and the reasons recorded in the report submitted by the Resolution Professional, and after going through all the documents on record, this Adjudicating Authority hereby allow IA (IBC)No.3063/2022 filed under Section 99 of the Code, 2016 and consequently the Petition i.e., IB - 187/ND/2022, filed under the provisions of Section 95 of IBC, 2016 is hereby **admitted** under section 100 of the IBC, 2016. The Resolution Professional Mr. Sandeep Kumar Bhatt, who has been proposed by Applicant was appointed under Section 95 vide Order dated 29.03.2022, The Applicant i.e., Bank of Baroda is directed to deposit Rs. 2,00,000/- (Rupees Two Lakh Only) to the bank account of the Resolution Professional within one week to meet the expenses to perform the functions assigned to him and this shall be subject to the rules and regulations made under the provisions of the Code.
7. The Insolvency Resolution Process is initiated against the Personal Guarantor namely Mr. Hari Singh Thakur and moratorium is declared, from the date of admission of the Petition i.e. date of this Order and shall cease to have effect at the end of the period of 180 days, as provided under Sec 101 of IBC, 2016. During the moratorium period;

- 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.

8. The Resolution Professional is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of uploading of this Order on the website of the NCLT Delhi, inviting claims from all Creditors, who shall register their claims as provided under Section 103 within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102 (2) of IBC, 2016. The publication of notice shall be made in newspapers, one in English and other in Vernacular which have wide circulation in the State where the Personal Guarantor resides.

9. The Resolution Professional in exercise of the powers conferred under Section 104 of IBC, 2016, shall prepare a list of creditors within 30 days from the date of the notice. The debtor 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 his report on the plan to this Adjudicating Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106 of IBC, 2016.

10. In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof. If the Resolution Professional *is of the* opinion that the meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3). 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 the 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 the IBC, 2016
11. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of the IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on the Repayment Plan with all details as provided under Section 112 of the IBC, 2016 and submit the same to this Adjudicating Authority, 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 the IBC, 2016.

12. In terms of the above, **CP(IB)-187/ND/2022**, filed under Section 94 (1) of the IBC, 2016 is **admitted** and the Insolvency Resolution Process stands initiated against the Personal Guarantor i.e., Mr. Hari Singh Thakur.

Sd/-

**DR. SANJEEV RANJAN
MEMBER (TECHNICAL)**

Sd/-

**MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)**