



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH, COURT-III

IA-3964/2024
In
IB-589(PB)/2020

IN THE MATTER OF IB-589(PB)/2020:

Mr. Anil Syal

R/o 117, First Floor, Uday Park
New Delhi-110049.

..... Debtor/Personal Guarantor

AND IN THE MATTER OF IA-3964/2024:

Mr. Anil Syal

..... Applicant

Versus

Mr. Ajay Gupta & Anr.

1. Mr. Ajay Gupta

Bankruptcy Trustee of Mr. Anil Syal

..... Respondent No. 1

2. Union Bank of India

..... Respondent No. 2

Order Pronounced On: 11.02.2025

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)
SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For Applicant : Ms. Prachi Johri, Mr. Abhipsa Sahu, Advs.

For : Mr. Milan Singh Negi, Mr. Nikhil Kumar Jha, Ms. Aakriti
Respondent/BT Gupta, Advs.

For UBI : Mr. Brijesh Kumar Tamber, Mr. Prateek kushwaha, Mr.
Vaibhav Krishan Dayma, Advs.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present application has been filed by Mr. Anil Syal, Debtor/Personal Guarantor, the Applicant under the provisions of Section 138(1)(a) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National



Company Law Tribunal Rules, 2016. The Applicant seeks the following prayers:

- “(i) Pass appropriate orders for discharge of the Applicant from the Bankruptcy Process under Section 138(1)(a) of the IBC;*
- (ii) Pass such other further order or orders as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the case.”*

A. Brief Background of the Case:

- i.** An Application under Section 94(1) read with Sections 96, 97, 99 & 100 of IBC, 2016 read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Personal Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), Rules 2019 was filed by Mr. Anil Syal, the Applicant/Debtor. This Adjudicating Authority vide order dated 18.09.2020 initiated the interim moratorium period in terms of Section 96 of IBC and appointed Mr. Avneesh Srivastava as the Resolution Professional and the Resolution Professional was directed to submit a report in terms of Section 99 of IBC. Accordingly, the Resolution Professional filed a report.
- ii.** This Adjudicating Authority vide order dated 28.10.2022 admitted the application, IB-589(PB)/2020 filed by the Applicant/Debtor under Section 94 of IBC, 2016. Further, this Adjudicating Authority vide order dated 09.06.2022 disposed of IB-589(PB)/2020 with a direction to debtors or creditors to file an application under Chapter-IV of IBC, 2016.
- iii.** In view of the order dated 09.06.2022, Mr. Anil Syal filed an Application under Section 121 read with Section 122 of the IBC, 2016. This Adjudicating Authority vide order dated 30.09.2022 allowed the commencement of the Bankruptcy Process of Mr. Anil Syal and appointed Mr. Ajay Gupta/ Respondent, an Insolvency Professional proposed by the Applicant/ Debtor/ Bankrupt as Bankruptcy Trustee.
- iv.** On 02.06.2023, the Bankruptcy Trustee made a Public announcement in newspapers namely Financial Express and Jansatta inviting the



public to participate in the public auction of the property of the Applicant i.e., 50% rights in the property situated at H. No. 117, First Floor, Uday Park, New Delhi-110049. Mr. Akshat Gupta participated in the auction and bid for the 50% rights. His highest bid, of a sum higher than the reserve price, was found to be the winning bid by the Bankruptcy Trustee. Upon receiving full sale consideration, the Bankruptcy Trustee issued the Sale Certificate to the Successful Auction Purchaser.

v. On 09.07.2023, the Bankruptcy Trustee published a Notice for Dividend in newspapers namely Financial Express and Jansatta giving 08.08.2023 as a Final Dividend disbursal date. On 11.08.2023, the Bankruptcy Trustee completed the disbursement of the Final Dividend, 100% of which went to Union Bank of India. On 21.08.2023, Bankruptcy Trustee presented his Final Report u/s 137 of IBC, 2016 to the CoC members. The Bankruptcy Trustee filed his final report on 08.09.2023.

vi. This Adjudicating Authority vide order dated 04.07.2024 allowed IA-4421/2023 (an application moved by Union Bank of India for seeking setting aside of undervalued sale conducted by the Bankruptcy Trustee) and held that:

“20. We direct the Bankruptcy Trustee to conduct the fresh valuation w.r.t. the sale of the property (50% undivided share in a residential flat which is indivisible) bearing H. No. 117, First Floor, Uday Park, New Delhi-110049. The Applicant Bank is also directed to conduct a fresh valuation w.r.t. the sale of the property (50% undivided share in a residential flat which is indivisible) bearing H. No. 117, First Floor, Uday Park, New Delhi-110049. Thereafter, the Average of both the Valuation will be considered for the fresh auction by the meeting of the Creditors.

21. We further direct the Bankruptcy Trustee to return the e-auction sale proceeds to Mr. Akshat Gupta, Auction Purchaser including EMD, if any and cancel the sale certificate issued to Mr. Akshat Gupta, Auction Purchaser.



22. Accordingly, the IA-4421/2023 is allowed by setting aside the e-auction dated 27.06.2023 conducted by the bankruptcy trustee by directing the bankruptcy trustee to conduct a fresh auction by maintaining at least 30 days' time between the paper publication and the e-auction so as to enable more bidders to participate in the auction for fetching high value of the property. The bankruptcy trustee shall also clearly mention the timings for the inspection of the property in the paper publication.”

- vii.** The Applicant approached the Hon'ble NCLAT by way of Company Appeal (AT) (Insolvency) No. 1437/2024 praying that while the re-auction take place, the Applicant needs to be discharged in view of the time period having lapsed and there being no provisions for extension of Bankruptcy Period. The Bankruptcy Trustee appeared before the Hon'ble NCLAT and submitted that the issue of discharge was not decided in order dated 04.07.2024 and hence could not be prayed for in the appeal. The Hon'ble NCLAT in its Judgment dated 30.07.2024 held that:

“4. Learned counsel appearing for the Bankruptcy Trustee submits that the issue regarding filing of application under Section 138(1)(a) of the Code has to be agitated before the Adjudicating Authority by the Appellant, if any and said issue is not the subject matter of the present appeal.

5. In view of the aforesaid, we are of the view that in so far as present appeal, we do not find any ground to interfere with the order directing for re-auction of the property. We, however, give liberty to the Appellant to make appropriate application before the Adjudicating Authority for raising the issue of discharge of Appellant.

6. Learned counsel for the Appellant submits that although Appellant has no issue with regard to re-auction but the re-auction should be held by some other authority and he may be discharged in the meanwhile. We are unable to accept the submission of the Appellant that re-auction should be held by some other authority.



It is the Bankruptcy Trustee who has to hold the auction as directed by the Adjudicating Authority. Appeal is disposed of accordingly.”

B. Submissions of the Applicant:

2. The Applicant is an individual who, under Section 122 of the Insolvency and Bankruptcy Code, 2016 had himself applied for and is undergoing the bankruptcy process for the personal guarantor of a Corporate Debtor under Part III of the IBC for almost 2 years. After failing to convince Respondent to do his duty in applying for a discharge after the bankruptcy period has ended, the Applicant is aggrieved and is hence filing the present application.
3. It is submitted that the present application is being filed in accordance with the liberty granted to the Applicant by Hon'ble NCLAT vide order dated 30.07.2024 passed in Co. App. (AT)(Insol) No. 1437/2024. Vide order dated 04.07.2024, this Hon'ble Authority had allowed IA No. 4421/2023 filed by Union Bank of India, setting aside auction dated 22.06.2023 and directing re auction of property of the Applicant by Respondent. The Applicant had filed Co. App. (AT) (Insol) No. 1437/2024 praying that while the Applicant would make no prayer against re-auction in accordance with law, however, the Applicant himself should be discharged since the time period for the Bankruptcy process had elapsed and there is no scope for extension thereof.
4. Pursuant to the order dated 30.09.2022 passed by this Adjudicating Authority, the Bankruptcy Trustee appointed an authorized valuer to ascertain the valuation of the Assets in the estate of the Applicant and filed a preliminary report on 23.03.2023 before this Adjudicating Authority, which was also supplied to the Union bank, who never objected to it. The Bankruptcy Trustee/Respondent then proceeded to sell the asset by way of e-auction on the NESL portal. Notice of the said e-auction was published on 02.06.2023. The said e-auction was conducted on 27.06.2023. Upon receipt of full sale consideration from the successful auction bidder, the Bankruptcy Trustee issued the Sale Certificate on 05.07.2023 to the successful auction bidder.



5. In the 4th meeting of the creditors, held on 21.08.2023, the Bankruptcy Trustee presented the 'Final Report on the administration and distribution of assets of the Bankrupt and accordingly requested the creditors to consider the release of the Bankruptcy Trustee upon completion of the Bankruptcy Process.
6. The Respondent then put the agenda items of the 4th meeting of creditors to vote on 08.09.2023 including for discharge of the Applicant. Union Bank of India chose not to vote but the resolution was passed by the other voting creditors. Approval of report is in accordance with Regulation 25(4) of Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2016. Accordingly, the Bankruptcy Trustee moved IA No. 5990/2023 under Section 138(1)(b) of the IBC for discharge of the Applicant. On 06.08.2024, this Adjudicating Authority has dismissed the IA No. 5990/2023 as withdrawn by the Bankruptcy Trustee.
7. It is contended that on 22.12.2023, one year after the Bankruptcy Commencement Date of 23.12.2022, the Bankruptcy Process was completed. There is no provision whatsoever, for extension of the Bankruptcy Period beyond 1 year from the Bankruptcy Commencement Date. The lawmakers were conscious of the rigors of the bankruptcy process and were cognizant of the seriousness and severity of the whole process on the bankrupt person and hence made the Bankruptcy Process strictly time-bound. For instance, the entire estate, including after-acquired assets, of the Bankrupt vests in the Bankruptcy Trustee under Section 128 and Section 159 of the IBC. As a result, the Bankrupt person has no means of survival at his disposal, leaving him at the mercy of the Bankruptcy Trustee.
8. The Respondent completely failed to bring to this Adjudicating Authority's attention that the Applicant meanwhile ought to be discharged. The Respondent failed to bring to the attention of this Adjudicating Authority that the Regulations provide for such a situation where beyond the period of Bankruptcy, the undistributed assets have to be transferred to the



Insolvency and Bankruptcy Fund and the creditors can approach the said fund for its share.

9. The meeting of creditors of the Applicant took place on 30.07.2024, In this meeting, the Bankruptcy Trustee admitted that only 1-year time period is available for the conduct of the process and Section 138, IBC mandates the filing of an application for discharge upon expiry of 1 year and that application for discharge is required to be filed since 1 year is completed from the start of the bankruptcy process. While, the law was clearly stated by the Bankruptcy Trustee, the Union Bank of India sought to defer with the agenda. It is nowhere stated in any provision of the IBC and the Rules and Regulation thereunder, that the Bankruptcy Trustee needs a vote of the creditors for filing an application under Section 138(1)(a), IBC. It is the duty and responsibility of the Bankruptcy Trustee to follow the law.
10. As such, when the one-year period was getting over on 22.12.2023, the Applicant wrote an email dated 24.12.2022 to the Bankruptcy Trustee to file appropriate discharge application under Section 138(1)(a) of the Code. However, the Bankruptcy Trustee has replied that there is no cause for applying Section 138(1)(b). The Applicant again sent an email explaining that the two sub-sections are distinct and the filing of an application under Section 138(1)(a) is not dependent on approval or action by any stakeholder. The Bankruptcy Trustee replied vide email dated 03.01.2024 that he does not think application under Section 138(1)(a) is warranted.

C. Submissions of the Respondent No. 1/Mr. Ajay Gupta, Bankruptcy Trustee of Mr. Anil Syal:

11. The Respondent No. 1 has filed a reply affidavit denying the allegations made by the Applicant and submitted that in his capacity as the Bankruptcy Trustee, the answering respondent has to follow the procedure prescribed under the IBC and the rules & regulations framed thereunder. Based on the understanding of the provisions of Section 138(1)(a) of IBC, the answering Respondent submits that the present application is not maintainable as the Applicant/Bankrupt may not have any locus to file the present application under the law.



12. All the allegations of the Applicant qua the alleged inaction on the part of the Bankruptcy Trustee for filing of discharge application are baseless and untenable. Such application under Section 138(1)(b) of IBC was filed by the Bankruptcy Trustee on 31.10.2023, however, owing to the peculiar circumstances of the present case, the said application became infructuous and the same was withdrawn. As the situation in the present case was peculiar, the Bankruptcy Trustee placed the issue of filing of discharge application in the present case, as per Section 138(1)(a) of IBC, before the creditors in their 5th meeting held on 30.07.2024. The creditors (UBI) were informed that as per Section 138(1)(a) of IBC an application for discharge may have to be filed by the Bankruptcy Trustee since the time period of one year has elapsed in the present case. After much deliberations, UBI requested the Bankruptcy Trustee to defer the said agenda of filing of discharge application for seeking advice of their legal advisor.
13. It is contended that the facts of the present case are extraordinary, being so, the Bankruptcy Trustee has not been in a position to file the application under Section 138(1)(a) of IBC, however, such non-filing of the application would not authorise the Bankrupt to file such application himself, when the Bankrupt has no locus or authority to either file or maintain such application. The liberty granted by the Hon'ble Appellate Tribunal is to apply to raising the issue of discharge of the Bankrupt, therefore, it is appropriate that in these peculiar circumstances, this Adjudicating Authority may kindly decide whether the Bankrupt may be discharged or not and whether the present application is maintainable or not.

D. Submissions of the Respondent No. 2/Union Bank of India:

14. The Respondent No. 2 has filed a reply affidavit denying the allegations made by the Applicant and submitted that the present Application is not maintainable as the same is not filed by the Bankruptcy Trustee in terms of the mandate of the Insolvency and Bankruptcy Code, 2016. Section 138 dealing with discharge order provides that the Bankruptcy Trustee should apply to seek discharge of the Bankrupt before the Adjudicating Authority.



However, in the present case, it is the Bankrupt who has filed for a discharge order.

15. It is contended that the present Application is also not maintainable on the ground that it is a gross abuse of process of law as the Applicant has filed Section 94 application with a motive to enjoy an Interim moratorium to stall SARFAESI Proceedings initiated by the Respondent Bank against the property jointly owned by the Bankrupt and his wife. Moreover, the present Bankruptcy Proceedings is a result of a frivolous Section 94 application filed by the Bankrupt. The present application is also not maintainable because while obtaining the order dated 30.07.2024, the Applicant misled the Hon'ble NCLAT that no application is filed for seeking discharge. The Applicant has not brought to the notice of the Hon'ble NCLAT that the Bankruptcy Trustee has already filed an application being I.A. No. 5990/2023 for seeking discharge order and resolution for seeking discharge has already been failed/ rejected by the creditors.
16. The Respondent Bank is strongly objecting to the captioned discharge application on the ground of questioning on credibility of the bankrupt estate as the mortgaged property is in such a position that it is not likely to be sold off by any means if the Applicant is discharged because the Applicant is holding 50% share in the subject/mortgaged property along with his wife who is not going under any insolvency resolution process or Bankruptcy process as on date of filing of present reply.
17. The intention of the Applicant/Bankrupt is still to stall the action by the Respondent Bank against the mortgaged property as the 50% share is owned by his wife who is also in active connivance with the Applicant. If the Applicant is discharged, then the Applicant will create a hindrance to further action by the Bank on the mortgaged property because for many years the Applicant has been trying to cause more and more financial loss and irreparable injury to the Respondent Bank and the present applicant is filed to achieve the same motive.
18. The Hon'ble NCLAT in Company Appeal (AT) (Ins) No. 1437/2024 raises the point of discharge for every first time. The Hon'ble NCLAT while



dismissing the Appeal filed by the Bankrupt on 30.07.2024 has merely granted a liberty to raise an issue of discharge of the Applicant. It is to be noted that there is no specific direction for the Hon'ble NCLAT to discharge the Applicant in the facts and circumstances of the present case.

19. It is submitted that the present Application is a gross abuse of process of law as the Bankruptcy Trustee who is in connivance with the Bankrupt as stated hereinabove has first withdrawn the application on 06.08.2024 and on the same day the bankruptcy has moved the captioned application for seeking discharge.

E. Analysis and Findings:

20. We have heard the submissions of Ld. Counsel appearing for the Applicant as well as Ld. Counsel appearing for the Respondents. We have also perused the records.
21. The learned counsel for the Applicant has drawn our attention to the judgment dated 30.07.2024 passed by the Hon'ble National Company Law Appellate Tribunal (NCLAT), wherein the Hon'ble NCLAT granted liberty to the Appellant, Mr. Anil Syal, to make an appropriate application before the Adjudicating Authority for raising the issue of his discharge.
22. Consequently, the present application has been filed by Mr. Anil Syal in view of the liberty granted by the Hon'ble NCLAT in its judgment dated 30.07.2024.
23. The Ld. Counsel for the Applicant submitted that the Hon'ble Appellate Tribunal while granting liberty to the Applicant to approach this Adjudicating Authority has directed that the auction of the Applicant's process be carried out by the Bankruptcy Trustee.
As such, the re-auction process may be continued by the Bankruptcy Trustee in accordance with the order of this Adjudicating Authority passed on 04.07 2024, as he already has control over the asset of the Applicant. However, the Applicant may be set free from the rigours of the process. The Applicant has no role to play in the re-auction of the property.
24. The Ld. Counsel for the Applicant argued that under Section 138(1)(a) of IBC, after 1 year of bankruptcy process, the bankrupt person is to be mandatorily discharged. In the present case, vide order dated 20.12.2022



this Adjudicating Authority has fixed the Bankruptcy Commencement Date as 23.12.2022. The one-year time period thus expired on 22.12.2023. Under IBC and its Rules and Regulations, there are no provisions whatsoever for the extension of the Bankruptcy Period beyond 1 year from the Bankruptcy Commencement Date.

- 25.** The Ld. Counsel for the Bankruptcy Trustee submits that the Bankruptcy Trustee is bound to act as per the decision of the CoC and considering the extraordinary facts of the present case, the bankruptcy Trustee has not been in a position to file the application under Section 138(1)(a) of IBC. Be that as it may, such non-filing of the application would not authorize the Bankrupt to file such an application himself, when the Bankrupt has no locus or authority to either file or maintain such an application.
- 26.** The Ld. Counsel for the Union Bank of India contended that in the order dated 04.07.2024, this Adjudicating Authority directed the fresh valuation and accordingly the same was conducted by the Bankruptcy Trustee as well as the Applicant Bank. However, the resolution for the sale of assets has been rejected in the meeting of creditors. In view of the same when the bankruptcy proceedings are at an advanced stage, the Bankrupt cannot be discharged as the Bankrupt is not a person of good means as initially also the Bankrupt has stalled SARFAESI Action.
- 27.** The Ld. Counsel for the Union Bank of India further contended that as on 30.07.2024 i.e., the date of passing of the order by the Hon'ble NCLAT, the discharge application being I.A. No. 5990/2023 was still pending and there was no necessity to file another one. The Applicant has done so because the Respondent Bank has already lifted and unveiled the connivance between the Bankrupt and the Bankruptcy Trustee.
- 28.** The Ld. Counsel for the Applicant/Bankrupt argued that no party will suffer any prejudice whatsoever, if the Bankrupt individual is discharged from the bankruptcy process. The law itself provides for a situation where the Bankrupt individual is discharged upon the expiry of time, yet the process/auction/recovery continues. Further, the Applicant undertakes to cooperate with the Bankruptcy Trustee even after discharge.



29. The Ld. Counsel for the Union Bank of India argued that, if the Applicant/ Bankrupt is discharged under this application then the Bankrupt will again create hindrance at the time of sale of the asset by the Bank as the other 50% is owned by his wife who is also in connivance with the bankrupt.
30. After thoroughly perusing the contents of the Application and considering the rival submissions made by the parties, we have arrived at the conclusion that Section 138(1), which deals with discharge orders, stipulates that the Bankruptcy Trustee should apply for the discharge of the Bankrupt before the Adjudicating Authority. However, in the present case, it is the Bankrupt who has filed for a discharge application.
31. In addition, to better understand the facts, it is pertinent to quote the provision of Section 139 of the IBC, 2016:
- “139. Effect of discharge.—The discharge order under sub-section (2) of section 138 shall release the bankrupt from all the bankruptcy debt:*
- Provided that discharge shall not—*
- (a) affect the functions of the bankruptcy trustee; or*
- (b) affect the operation of the provisions of Chapters IV and V of Part III; or*
- (c) release the bankrupt from any debt incurred by means of fraud or breach of trust to which he was a party; or*
- (d) discharge the bankrupt from any excluded debt.”*
32. Section 139 of the IBC, 2016, addresses the 'Effect of Discharge,' detailing the ramifications of a bankruptcy discharge order issued under Section 138. Section 139 specifies certain exceptions, such as not affecting the duties of the bankruptcy trustee, the application of specific legal provisions, debts arising from fraud or breach of trust, or any debts specifically excluded from discharge.
33. The exception to Section 139 clearly stipulates that the discharge order issued under Section 138(2) shall not affect the functions of the Bankruptcy Trustee and shall not affect the operations of the provision of law as stipulated under IBC. Therefore, in the current situation, it is



evident that discharging the Applicant/Bankrupt will hinder the functioning of the Bankruptcy Trustee.

- 34.** We find force in the submission of the Ld. Counsel for Respondent No. 2, Union Bank of India and we are of the considered view that granting a discharge to the Applicant/Bankrupt through this application may result in further obstruction during the sale of the asset, as the remaining 50% ownership belongs to his wife, who is also complicit with the bankrupt.
- 35.** In view of the above, this Adjudicating Authority believes it is unnecessary to address the present application, as it does not align with the spirit of the Insolvency and Bankruptcy Code (IBC). Moreover, the application seems to have been filed by the Applicant/Bankrupt with the intention of disrupting and derailing the Bankruptcy Process.
- 36.** Having regard to the facts and circumstances of the case, we direct not to discharge the Applicant/Bankrupt from the Bankruptcy Process. Therefore, the present Application ought to be dismissed.
- 37.** It is ordered as follows:
- i.** In view of the reasons mentioned above, the IA-3964/2024 stands **dismissed**.
 - ii.** The Registry is directed to send a copy of this order to the IBBI for their record.
 - iii.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
- No order as to costs.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)