

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**CORAM: SHRI DEEP CHANDRA JOSHI,  
HON'BLE JUDICIAL MEMBER  
SHRI RAJEEV MEHROTRA,  
HON'BLE TECHNICAL MEMBER**

**CP No. (IB)- 67/94/JPR/2022**

**IN THE MATTER OF:**

**SHIV KUMAR**

...Applicant

**VERSUS**

**KOTAK MAHINDRA BANK & ORS.**

...Respondent

**MEMO OF PARTIES**

**SHIV KUMAR PERSONAL GUARANTOR**

*of Ambition Indo Steel LLP*  
103/66, Kumbha Marg, Sector- 10,  
Pratap Nagar, Sanganer, Jaipur-  
302033

...Applicant

**VERSUS**

**KOTAK MAHINDRA BANK LIMITED**

27 BKC, C 27, G Block, Bandra Kurla  
Complex, Bandra (E), Mumbai,  
Maharashtra.

...Respondent No. 1

**IDFC FIRST BANK LIMITED**

KRM Tower, 7<sup>th</sup> Floor, No. 1,  
Harrington Road, Chetpet,  
Chennai, Tamil Nadu- 600031

...Respondent No. 2

**LENDINGKART FINANCE LIMITED**

R/o: A-303/304, Citi Point, Andheri- Kurla  
Road, Andheri (East), Mumbai- 400059

***Corporate Office:***

B Block, 6<sup>th</sup> Floor, The First, The First  
Avenue Road, Behind Keshavbaug  
Party Plot, Vastrapur, Ahmedabad-  
380015 (Gujarat)

...Respondent No. 3

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**AXIS FINANCE LIMITED**

Axis House, Ground Floor, Wadia  
International Centre, Worli Mumbai,  
Maharashtra- 400025

...Respondent No. 4

**ADITYA BIRLA FINANCE LIMITED**

R/o: Indian Rayon Compound,  
Veraval, Gujarat- 362266

**Corporate Office:**

R-Tech Park, Floor- 10, Nirlon  
Compound, Near Hub Mall off  
Western Express Highway, Goregaon  
East, Mumbai- 400063 (Maharashtra)

...Respondent No. 5

**HERO FINCORP LIMITED**

R/o 34, Community Centre, Basant  
Lok Vasant Vihar, New Delhi-  
110057

**Corporate Office:**

9, Community Centre, Basant Lok  
Vasant Vihar, New Delhi- 110057

...Respondent No. 6

**POONAWALLA FINCORP LIMITED**

R/o 601, 6<sup>th</sup> Floor, Zero One IT Park,  
Survey No. 79/1, Ghorpadi,  
Mundhwa Road, Pune- 411036  
(Maharashtra)

**Corporate Office:**

Ecospace Business Park, Premises  
No. 501, Block 4A, 5<sup>th</sup> Floor, New  
Town, Rajarhat Kolkata- 700160  
(West Bengal)

...Respondent No. 7

**FOR THE APPLICANT(S)** : Dheeraj Garg, Adv.  
**FOR THE RESPONDENT(S)** : Abu John Mathew, Adv.  
Avinash Kumbhaj, Adv.

**Order Pronounced On: 28.03.2024**

**ORDER**

**Per: Shri Deep Chandra Joshi, Judicial Member**

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1. The present application is filed under Section 94 of the Insolvency and Bankruptcy Code, 2016 ('Code'/ 'IBC') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 ('Rules') by the Applicant/ Personal Guarantor namely *Shri Shiv Kumar*. The Applicant has prayed to initiate the Insolvency Resolution Process in respect of *Shri Shiv Kumar*, being the Personal Guarantor for *M/s Ambition Indo Steel LLP* ('Corporate Debtor'/ 'Company'). The Corporate Debtor is Limited Liability Partnership registered on 01.09.2015 having LLPIN AAE-6767; the same has been verified from the online database maintained by the Ministry of Corporate Affairs.
2. It is submitted that the Corporate Debtor availed credit facilities from various creditors in the nature of Secured and Unsecured Loans. Due to unprecedented surges in steel, the Corporate Debtor could not make repayment to the Financial Creditors which resulted in default. As on date of the Application, the Corporate Debtor has defaulted in repayment to the following seven creditors:

<b>S. No.</b>	<b>Name</b>	<b>Amount in Default</b>
1.	<i>Kotak Mahindra Bank Ltd.</i>	17,21,829/-
2.	<i>IDFC First Bank Ltd.</i>	7,36,825/-
3.	<i>Lendingkart Finance Ltd.</i>	38,430/-
4.	<i>Axis Finance Ltd.</i>	22,36,433/-
5.	<i>Aditya Birla Finance Ltd.</i>	87,893/-
6.	<i>Hero Fincorp Ltd.</i>	92,573/-
7.	<i>Poonawalla Fincorp Ltd.</i>	73,117/-
	<b>TOTAL</b>	<b>49,87,100/-</b>

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3. In part III of the Application, the Applicant has mentioned the amount of debt which is pending against various creditors, the same has already been mentioned in the above table. It is seen that the date of default is also mentioned when the debt of the Creditors became due. Further, the Applicant has mentioned particular amounts in PART III of the Application against the total debt due, amount of debt in default and Interest or penalties, if any.
4. As per Rule 6(2) of the Rules, the Guarantor has served a copy of this Application to every Financial Creditor and the Corporate Debtor for whom the Guarantor is a Personal Guarantor. It is seen that the Guarantor has annexed proof of service to the Creditors and Corporate Debtor in form of postal slips.
5. The *Axis Finance Limited*, being the Respondent No. 4 preferred objections vide Diary No. 1196/2023 dated 11.05.2023 stating that a loan of Rs. 25,08,413 (Rs. Twenty- Five Lakhs Eight Thousand Four Hundred and Thirteen Only) @ 17% per annum was sanctioned which was payable monthly along with principal amount in 36 equal monthly instalments and a business loan agreement was executed on 25.10.2021. However, later the borrower and its obligors failed to comply with the terms and conditions of the loan agreement and defaulted in repayment of the amount. The answering Respondent issued a loan recall notice 28.07.2022 calling upon the defaulters to make payment of Rs. 22,36,433/- (Rs. Twenty-Two Lakhs



Thirty- Six Thousand Four Hundred and Thirty- Three Only). A complaint was also filed under Section 138 of the NI Act before Chief Metropolitan Magistrate, South District, Saket, Delhi and the same was pending consideration as on date of filing of this reply. The loan account of borrower was declared as NPA on 03.09.2022. It is contended that the entire process has been initiated to create an embargo on the ongoing proceedings initiated against the borrower.

6. The *Poonawalla Fincorp Limited*, being the Respondent No. 7 has filed objections/reply by vide Diary No. 868/2023 dated 05.04.2003 stating that the Applicant is a partner in the Corporate Debtor and after availing loan facilities, it committed default in payment of due instalments and cheques were dishonoured. Hence, the Applicant owes a total amount of Rs. 20,15,456/- (Rs. Twenty Lakhs Fifteen Thousand Four Hundred Fifty- Six Only). It was also mentioned that complaints have been filed against the Applicant regarding the ACH bounced in furtherance of payment of monthly instalment of Rs. 73,107/- (Rs. Seventy- Three Thousand One Hundred and Seven Only). Moreover, legal proceedings before the Chief Metropolitan Magistrate at Kolkata under Section 25 read with of the Payment and Settlement Systems Act, 2007 are also pending and the initiation of insolvency against the Applicant would lead to stay in the above said proceedings. Therefore, in order to escape its liability, the present application has been filed.

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7. The Application has been filed in respect of debts which are not excluded debts as enumerated under Section 79(15)(e) of the Code. The Applicant has filed an affidavit stating that he is not barred in terms of Section 94(4) of the Code. The Application under consideration is in a Form-A format and accompanied with the required fees as prescribed and contains the required details. Thus, prima facie the requirements of Section 94 of the Code are fulfilled. It is noted that no affidavit has been filed with respect to application under Chapter III of Part III of the Code admitted before this Adjudicating Authority in respect of the Applicant/Debtor during twelve months preceding the date of submission of the instant Application, therefore, the Applicant is directed to file an Affidavit confirming the same within 10 days from the date of this Order.
8. As stipulated under Section 96(1) of the Code interim moratorium commences from the date of filing of the Application under Section 94 or 95. Accordingly, in the instant matter interim moratorium commences from 07.09.2022 i.e., from the date of filing of the instant Application, concerning all the debts, and interim moratorium shall cease to have effect from the date of admission of the Application. During the interim-moratorium period- (i) any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and (ii) the creditors of the Applicant/debtor shall not initiate any legal action or proceedings in respect of any debt. As per Section 96(3) of the Code, provisions of sub-section

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96(1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

9. It shall be noted that the appointment of the Resolution Professional under Section 97 of the Code is critical and essential for the Creditor but also relevant to safeguard the assets of the Personal Guarantor in terms of the provisions of the Code. The Applicant may propose the name of a Resolution Professional to be appointed as Resolution Professional ('RP'), but it is not obliged to do so. In the instant case, the Applicant has not proposed the name of any person to be appointed as RP. Hence, this bench will appoint the RP from the pool of RPs empanelled with the IBBI.
10. Therefore, the Bench is appointing *Mr. Vishnu Upadhyay* duly registered with the IBBI having Registration No. *IBBI/IPA-003/IP-N000153/2018-19/11843* (email: [ipvishnu.upadhyay@gmail.com](mailto:ipvishnu.upadhyay@gmail.com)), as the Resolution Professional. The said RP is directed to file the written consent to act as Resolution Professional in Form – 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016.
11. In this matter, the Resolution Professional appointed herein, *Mr. Vishnu Upadhyay*, shall exercise all the powers as enumerated under Section 99 of the Code read with Rules made thereunder. The RP is directed to re-check availability of all information as per the relevant Rules & Forms. The RP is also directed to make recommendations with reasons in writing for acceptance or rejection of this Application within the stipulated time as

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envisaged under the provisions of Section 99 of the Code. The Resolution Professional shall provide a copy of the report under sub-section 7 of Section 99 to the Applicant / Debtor, all the Financial Creditors and related Corporate Debtors for whom the Applicant is a Personal Guarantor as soon as the same is filed before this Adjudicating Authority. The Applicant shall provide a copy of the Application, if not provided already, along with this order to IBBI for its records.

12. A Copy of this order be supplied to the Applicant. The Applicant and his counsel are directed to serve a copy of this order along with a copy of the Application and documents on the Resolution Professional by all modes for information. Further, the Applicant is directed to deposit Rs. 1,00,0000/- (Rs. One Lakh Only) to the bank account of the Resolution Professional within one week, towards his fees and expenses. This shall be subject to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.
13. The Registry is directed to immediately send a soft copy of the instant Application along with this order to the RP nominated herein on his e-mail id. In the circumstances, prayer for appointment of RP is allowed.



Sd/-

**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**



Sd/-

**RAJEEV MEHROTRA,  
TECHNICAL MEMBER**