



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item Nos. 201 & 202

IA -4531/2024 in IB-355/ND/2024,

IA -4548/2024 in IB-360/ND/2024

IN THE MATTER OF IB-355/ND/2024:

UCO Bank

... Applicant/Creditor

Versus

Smt. Nishu Goel

... Respondent/Personal Guarantor

AND IN THE MATTER OF IA No. 4531/2024:

Anurag Nirbhaya

Resolution Professional

... Applicant

IN THE MATTER OF IB-360/ND/2024:

UCO Bank

... Applicant/Creditor

Versus

Sh. Ajay Goel

... Respondent/Personal Guarantor

AND IN THE MATTER OF IA No. 4548/2024:

Anurag Nirbhaya

Resolution Professional

... Applicant

Under Section: 95(1) r/w 99 of IBC, 2016

Order delivered on 18.12.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Brijesh kumar Tamber, Adv. Prateek Kushwaha

For the RP : Adv. Shivani Jaiswal

For the PG : Adv. Mohit Jolly, Shikhar Bhardwaj, Adv. Tushar Anand, Adv. Tanisha Gopal

Hearing Through: VC and Physical (Hybrid) Mode

IA- 4531/2024 in IB No. 355/ND/2024

IA- 4548/2024 in IB No. 360/ND/2024



ORAL ORDER

Smt. Nishu Goel and Mr. Ajay Goel i.e. the Personal Guarantors stood as surety qua the financial facility extended by UCO Bank to the Principal Debtor [i.e. M/s VCRM Petrochemicals Pvt. Ltd. The deed of guarantee is enclosed as Annexure A-7 to the petition. The relevant clause of the guarantee deed in terms of which both the guarantors could undertake to pay and discharge the amount of financial facility extended to the Principal Debtor reads thus: -

of New Delhi
 and undertake on demand to pay and discharge all present and future indebtedness and liabilities of the Customers to the Bank and to save the Bank harmless and keep the Bank indemnified from and against all claims, demands, losses, damages, costs, charges and expenses whatsoever which the Bank may sustain or incur of all moneys already advanced and paid to such Customers and in respect of any liability incurred by the Bank for such Customers or in respect of any moneys the Bank may at any time advance or pay to or any liability the Bank may incur for such Customers whether on current, overdraft, cash credit, demand loan, term loan or any other accounts or by way of opening or continuing any new account, special or otherwise or by opening letters of credit from time to time and negotiating bills thereunder or by way of discount or otherwise in respect of bills of exchange, promissory notes or other negotiable securities drawn, accepted or endorsed by such Customers or under the Guarantee(s) issued by the Bank on behalf of the Customers or otherwise howsoever together with all interest, discount, commission and other banking charges, legal and other costs, charges and expenses which may be or may become payable in connection therewith ~~PROVIDED NEVERTHELESS~~ that my/our liability and the liability of each of us under these presents shall not exceed in the aggregate the sum of Rupees Eleven crore Ninety Two lakh Fourty Thousand only and interest thereon at the rate of 11.75% per cent per annum or at such rate or rates of interest which may be notified from time to time by the Bank to me/us from the date on which demand for payment thereof shall have been made by the Bank upon me/us.

2. The aforementioned deed of guarantee was executed on 31.05.2017. The account of Principal Debtor was declared as NPA on 31.03.2018 and a notice dated 29.10.2018 under Section 13(2) of the SARFAESI Act, 2002 was issued by the Creditor to the Principal Debtor as well as to the two Personal Guarantors. As the sequence of the said notice, the creditor could take possession of assets owned by Smt. Nishu Goel and could sell the same on 15.11.2019.]



3. Thereafter, the Principal Debtor was admitted to CIRP and as no resolution plan was received for revival of same, by Insolvency Resolution Professional (RP), the Corporate Debtor was ordered to be liquidated.] On sale of the assets by the Liquidator, the Creditor could receive certain amount of debt on 05.02.2022, 15.08.2022 & 15.06.2022, in terms of the provisions of Section 53 of the IBC, 2016.

4. Nevertheless, as the entire amount of debt was not satisfied, the Creditor could serve notice dated 02.11.2023, in terms of the provisions of Rule 7(1) of I&B (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules 2019, in the prescribed Form B. However, Mr. Jolly, Ld. Counsel appearing for Personal Guarantors denied having received a copy of the notice. In any case, he accepts that the demand notice was served upon Personal Guarantors on 15.04.2024. As the amount of debt is still outstanding towards the Principal Debtor and Personal Guarantors, the Creditor could file two separate applications i.e. IB-355/ND/2024 & IB-360/ND/2024 for initiating Insolvency Resolution Process qua both the Personal Guarantors. On consideration of the application, this Tribunal appointed Mr. Anurag Nirbhaya as RP qua both the Personal Guarantors, in terms of the order dated 08.07.2024. Though, the order appointing the RP was passed separately but a common RP was appointed qua both the Personal Guarantors.

5. The RP has filed his report by way of IA-4531/2024 & IA-4548/2024. The contents of separate reports filed by the RP are common. For the sake of



convenience, we make reference to the report filed qua Mr. Ajay Goel, the Respondent in IB-360/ND/2024. As can be seen from the report, the RP could complete exercise in terms of the provisions of Section 99 of IBC, 2016 and could find that the requirements of Section 95(4) are satisfied. The RP could further form an opinion that no evidence, as specified in Section 99(2) of IBC, 2016, could be adduced to prove the repayment of debt. Finally, the RP recommended admission of the applications preferred under Section 95 of IBC, 2016 qua Personal Guarantors. For convenience, the relevant excerpt of the report filed by the RP qua Mr. Ajay Goel is reproduced herein below: -

COMPLIANCE OF SECTION 99 (1) & (6) OF IB CODE

12. That, in Compliance of Section 99 (1) & (6) of IB Code, resolution professional has examined the application filed by applicant M/s UCO bank and following are the facts related to the case:

Provision U/s IB Code	Facts of the matter C.P.(IB)NO. 360/ND/2024
Sec 95(4)(a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;	Annexure A - 4 of Petition on Page 48-64A, As per the Sanction Letter annexed to the Petition bearing reference no. UCO/PUNJ/2017-2018/189 dated 31.05.2017 for sanctioning credit facilities to VCRM Petrochemicals Private Ltd. Additionally, as per Annexure-A-7 on page 105-116 of the Petition, Deed of Guarantee executed between the Corporate Debtor, Mr. Ajay Goel, Mr. Raj Kumar, Mr. Ramesh Kumar Pandey and Mrs. Nishu Goel in favour of the applicant bank dated 31.05.2017 is also enclosed with the Petition for repayment of Rs. 11,92,40,000/- (Rupees Eleven Crore Ninety-two lakhs forty thousand Only).



Annexure A-3 of the Petition on Page 39 to 47, Demand Notice dated 02.11.2023 was not served to the personal guarantor as per the tracking report thereafter another attempt was made for the service of the demand notice. The Demand notice was further attempted for the service on 15.04.2024 and the same was successfully served by way of an affixation of notice on the premises of the guarantor for recovery of **Rs. 16,31,76,644.18.00 (Rupees Sixteen Crores Thirty-one Lakhs seventy-six Thousand Six Hundred forty-four rupees and eighteen paise Only)** pursuant to Rule 7(1) of IBBI (Application to Adjudicatory Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules 2019.

Account Statement enclosed with the Petition on Page 121 to 126 of Statement of Account of the of CC Account No. 02340510000748 & 02340610007891 maintained by the Bank and **Interest Calculation Sheet provided by the applicant bank** via email dated 31.07.2024, which shows that the amount due and payable is **Rs. 16,31,76,644.18.00 (Rupees Sixteen Crores Thirty-one Lakhs seventy-six Thousand Six Hundred forty-four rupees and eighteen paise Only).** The Interest calculation sheet received via email dated 31.07.2024 is attached herewith and marked as **Annexure A-5.**

Annexure - IX of Petition on Page 121- 126, Statement of Account [Period 12-10-2017 till 30-05-2024] enclosed, last payment received by creditor was on 10.11.2022.

That, minimum threshold of Rs. 1000/- specified under Section 78 of IB Code is satisfied.



Sec 95(4)(b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand	That, the tracking report of service of demand notice was enclosed at Page No. 43-47 of the application, Service of Demand notice was served by way of an affixation of notice on the premises of the guarantor , fourteen days' time from last delivery expires on 29.04.2024 and as reflecting in loan transaction details only following amount has received by Financial Creditor in Loan Account after delivery of Demand Notice as mentioned in Statement of Account No. 0234051000748 [12.10.2017 till 30.05.2024] and Account No. 02340610007891 [08-06-2017 till 30.05.2024].
Sec 95(4)(c) relevant evidence of such default or non-repayment of debt	That, Statement of Account of the of CC account no 02340510000748 & 02340610007891 maintained by the Bank has been enclosed at Annexure A-9 of Petition on Page 121 to 126 of petition with Statement of Account of the of CC account no 02340510000748 [31.03.2018 till 31.05.2024] & 02340610007891 [31.03.2018 till 31.05.2024] duly shows amount due.
Sec 95(5) The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.	The copy in advance was served on Mr. Ajay Goel vide post-dated 05.06.2024 .
Sec 95(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.	The application filed is in prescribed Format of Form – C accompanied with brief synopsis, dates and events and all relevant documents related to loan accounts. That it is further stated that Court fees of Rs. 2000/- was paid by the Financial Creditor through online mode BharatKosh.



Rule 7(1) of IBBI (Application to Adjudicatory Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules 2019.	Annexure III of the Petition on Page 39 to 47, Demand Notice dated 02.11.2023 served on the Corporate Debtor for recovery of Rs. 16,31,76,644.18 (Rupees Sixteen Crore Thirty-One Lakhs Seventy-Six Thousand Six Hundred Forty-Four Rupees and Eighteen Paise Only).
2019.	That, the tracking report of service of demand notice was enclosed at Page No. 39 to 47 of the application, Service of Demand notice was served by way of an affixation of notice on the premises of the guarantor.

13. Thus, it is most humbly submitted that application Under section 95 filed by Financial Creditor was found to be complete in all context, further upon enquiry the financial creditor was able to produce the proof of service of petition and also apprised about court fees payment.

COMPLIANCE OF SECTION 99 (2) OF IB CODE

14. That, Mr. **Ajay Goel** did not produce any proof of payment stated under Section 99 (2) of IB Code. **Thus, it is submitted that financial debt continues to be due and payable.**

COMPLIANCE OF SECTION 99 (3) OF IB CODE

15. That, the financial creditor in terms of Section 99(3), enclosed the record of default as Statement of Account of the of CC account no 02340510000748 & 02340610007891 and also provided the Interest calculation sheet.



COMPLIANCE OF SECTION 99 (4) OF IB CODE

16. That, in terms of Section 99(4), RP tried to contact with Personal Guarantor **Mr. Ajay Goel through email dated 25.07.2024** and also sent letter through speed post dated **23.07.2024** and further also visited his Residential Address as available on MCA records at **69, Taj Apartment, Sector-15, Rohini, Delhi-110085** on **23.07.2024**. The intimation letter was delivered to Ms. Nishu Goel, who subsequently informed the RP team that Mr. Ajay Goel is ill since past two months. Upon inquiry by the RP team regarding Mr. Ajay Goel's personal email address, Ms. Nishu Goel confirmed that the email address remains as recorded in the MCA records.

17. That, RP has also sent email & letters on 20.07.2024 & 23.07.2023 to Central Depository Services India Limited ("CDSL") and National Securities Depository Limited ("NSDL") to which CDSL informed that no DEMAT account was found out by them while NSDL informed that one demat account is found to be held against PAN of Mr. Ajay Goel. **Copy of emails sent to CDSL & NSDL is attached herewith and marked as Annexure A-6 (Colly).**

COMPLIANCE OF SECTION 99 (5) OF IB CODE

18. That, in terms of Section 99(5), RP has requested **Mr. Ajay Goel** to provide detail of his assets and other aspects in relation to his finances, which as mentioned hereinabove, never shared.



COMPLIANCE OF SECTION 99 (7) & (9) OF IB CODE

19. That, the RP has duly examined the application filed by M/s UCO Bank against Mr. Ajay Goel Under Section 95 of IB Code and found as follows:

- a. The application does satisfies the requirements set-out under Section 95, specifically Section 95 (4) of IB Code.
- b. The applicant was able to satisfy the RP in respect of his various queries specifically in relation to any payment received after delivery of demand notice.
- c. The Personal Guarantor Mr. **Ajay Goel** has not produced any proof of repayment of financial debt due & Payable.

20. It is most humbly submitted that, **C.P.(IB)NO. 360(ND)/2024** is recommended for acceptance.

COMPLIANCE OF SECTION 99 (8) OF IB CODE

21. That, it is most humbly submitted that based on limited information it is hereby submitted that the acts of **Mr. Ajay Goel** are violation of section 99(5) of IBC Code 2016. Thus, the RP is recommending to initiate insolvency proceedings u/s 99 (8) of the IB Code.

COMPLIANCE OF SECTION 99 (10) OF IB CODE

22. Copy of report filed by RP was serviced in advance on Mr. **Ajay Goel & M/s UCO Bank** on 03.09.2024 vide electronic mail in compliance of Section 99(10) of IB Code. **Copy of Proof of service of report filed under Section 99 by RP is attached herewith and marked as Annexure- A-7.**



6. Having indicated that the requirements of Section 95(4) of the Code are satisfied, the RP has left to this Tribunal to issue necessary directions. The para 23 of the report reads thus: -

23. That, it is humbly prayed that the report filed under Section 99 of IB Code, in aforementioned matter be taken on record and necessary directions, if required, be given based on present report in light of equity & Justice.

7. We do not appreciate such nebulous and vague approach of RP. The RP is expected to make positive recommendation, as required under sub-section (7) of Section 99 of the Code. However, in para 20 of the application/report, the RP has made specific recommendation for admission of the Applications preferred under Section 95 of IBC, 2016. The para has already been reproduced hereinabove.

8. Mr. Jolly, Ld. Counsel appearing for the Personal Guarantors could rely upon the judgment of Hon'ble Supreme Court in **B.K. Educational Services Private Limited Vs. Parag Gupta and Associates** (Civil Appeal No. 23988 of 2017) and submitted that the Insolvency Resolution Process qua the Guarantors can be initiated only when there is an amount of debt which is due and payable and the same is defaulted to be paid. To further buttress his plea he placed reliance upon para 22 of the judgment, which reads thus: -

“22. We have already seen from the judgment in V.R. Kallianikutty (supra), that the expression “due” will depend upon the



context in which that word appears. It will be seen from a reading of the definition of “debt” in Section 3(11) of the Code, that “debt” is said to mean a liability or obligation in respect of a claim which is “due” from any person, and includes a financial debt and an operational debt. “Financial debt” is defined in Section 5(8) as follows:

“5. Definitions.—In this Part, unless the context otherwise requires,—

xxx xxx xxx

(8) “financial debt” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on non-recourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;



Explanation.— For the purposes of this sub- clause,— (i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and (ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of Section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;”

Operational debt is defined in Section 5(21) as follows:

“5. Definitions.—In this Part, unless the context otherwise requires,—

xxx xxx xxx

(21) “operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;”

The definition of “default” in Section 3(12) uses the expression “due and payable” followed by the expression “and is not paid by the debtor or the



corporate debtor.....”. “Due and payable” in Section 3(12), therefore, only refers to the whole or part of a debt, which when referring to the date on which it becomes “due and payable”, is not in fact paid by the corporate debtor. The context of this provision is therefore actual non-payment by the corporate debtor when a debt has become due and payable.”

9. Mr. Jolly submitted that once the period of limitation of three years from the date of default has expired, the amount of debt cannot be called as due to the Bank and no default can be alleged against the Personal Guarantors/Respondents in the captioned application preferred under Section 95 of IBC, 2016 read with Section 99 of the Code. He also made reference to Section 19 of the Limitation Act, 1963 and submitted that the extension of limitation should be considered strictly in terms of the said provision.

10. At this stage, he also submitted that the account of a Borrower/Debtor is declared NPA only on expiry of 90 days from the date of default in repayment of debt either in part or full committed by him. Accordingly, he also contended that as has been ruled in para 27 of the aforementioned judgment passed by Hon’ble Supreme Court, the right to sue would accrue only when a default occurs. The para 27 of the judgment reads thus: -

***“27.** It is thus clear that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. “The right to sue”, therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases*



where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application.”

11. In sum and substance, the submission espoused by Mr. Jolly is that at the point of time when the applications under Section 95 of IBC, 2016 were preferred, there was no debt due and recoverable, and thus, no default in repayment of the debt.

12. To deal with the plea raised by Mr. Pratik Kushwaha, Ld. Counsel for the Creditor placed reliance upon the judgment of Hon’ble High Court of Kerala in **CP Sreelal vs. District Collector, Thiruvananthapuram & Ors.** [AIR 2007 KER 131] and submitted that the repayment of amount of debt to Creditor in any situation would amount to payment in terms of the provisions of Section 19 of Limitation Act, 1963. Para 14 of the judgment reads thus: -

“14. The appellant does not have a case that the debt against the principal debtor had become barred at the time when recovery proceedings were initiated against him. Even otherwise, since the compensation amount for acquisition of the property mortgaged by the principal debtor was credited to the loan account with the KFC lastly on 11-6-1996, according to us, this payment would certainly be a payment as contemplated under Section 19 of the Limitation Act, since Section 73(2) of the Transfer of Property Act confers on a mortgagee a right to claim payment of the mortgage money out of the amount due to the mortgagor as compensation.”

13. It is not in dispute that the Creditor could receive the part amount of debt on 15.11.2019, when it could dispose of the assets owned by one of the Personal Guarantors before us namely Smt. Nishu Goel. Further also in the



liquidation process qua Corporate Debtor, the partial amount of debt could be repaid to the Creditor on 05.02.2022, 08.02.2022 & 15.06.2022. The present applications under Section 95 of IBC, 2016 was preferred on 31.05.2024, i.e. within three years from 05.02.2022, 08.02.2022 & 15.06.2022 when the amount of debt was partly repaid to the Creditor. As far as the date 15.11.2019 is concerned i.e. the creditor could recover the partial amount of debt, though the application is not preferred within three years from said date, but if the benefit of Judgment Hon'ble Supreme Court suo moto is given to the Creditor, the application filed on 31.05.2024 would be within prescribed period of limitation. The relevant excerpt of the judgment reads thus: -

“III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.”

14. As far as the plea regarding language of Section 19 of Limitation Act, 1963 is concerned, the provision does not talk of date of default. It simply provides that where payment on account of debt or of interest on legacy is made before the expiration of prescribed period by person liable to pay the debt or legacy or by his duly authorized agent in this behalf, a fresh period of limitation shall be computed from the time when the payment was made. The provision of Section 19 has already been reproduced hereinabove.



15. In the present case apparently, the payments were made by liquidator qua the Principal Debtor on 05.02.2022, 08.02.2022 & 15.06.2022. A perusal of Section 34(2) of IBC, 2016 would show that on the appointment of a Liquidator, all powers of the Board of Directors, key manager personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have an effect and shall be vested in the liquidator. The provision reads thus: -

“34. Appointment of liquidator and fee to be paid-

[...]

(2) On the appointment of a liquidator under this section, all powers of the board of directors, key managerial personnel and the partners of the corporate debtor, as the case may be, shall cease to have effect and shall be vested in the liquidator.”

16. Thus apparently, the Liquidator qua the Principal Debtor had stepped into the shoes of the Management/controller qua the Principal Debtor (Corporate Person) and any act performed/ discharge by him would be deemed as act of the corporate person. Here it would not be out of context to note that a company incorporated in terms of the Companies Act is an independent juristic person and cannot be identified with its management/promoter/director/shareholder. Whosoever discharges function on behalf of the Corporate Persons being duly authorised in terms of an instrument or by operation of statute has to be treated to have performed the function as a corporate person. Thus, we are of the view that the payment of debt to the Creditor by Liquidator on 05.02.2022, 08.02.2022 & 15.06.2022 made within the period of limitation would give rise to



fresh period of limitation from said date. Our view is vindicated by the aforementioned judgment of Hon'ble High Court of Kerala.

17. At this stage, Mr. Jolly submitted has once the payment was not made within the prescribed period of limitation, the benefit of Section 19 cannot be given to the Creditors. We note that the account of the Principal Debtor was declared as NPA on 31.03.2018, thus apparently the default was committed by 01.01.2018. Within three years from said date, on 15.11.2019, the Creditor could recover certain amount of debt by sale of the assets owned by one of the Personal Guarantors. Thus, from the said date, the period of limitation i.e. three years could expire only on 14.11.2022 and before expiry of said period, 05.02.2022, 08.02.2022 & 15.06.2022, the Liquidator could repay the amount of debt to Creditor in terms of the provisions of Section 53 of IBC, 2016.

18. Thus, in our considered view the applications preferred under Section 95 of IBC, 2016 are within the period of limitation. As far as plea raised by Mr. Jolly regarding the amount being not paid by the Debtors not on their own volition, but by operation of legal process would not extend the period of limitation is concerned, as has been noted above, the proposition is covered by aforementioned judgment of Hon'ble High Court of Kerala.

19. As can be seen from Section 100 of IBC, 2016, this Tribunal needs to pass an order with reference to the recommendation made by the RP. Apparently, the RP has made a recommendation for admission of the application. In the absence of there being any material adduced before us, contrary to the report of



RP, we are left with no option but to admit the captioned applications preferred under Section 95 of IBC, 2016. The applications/default preferred under Section 99 of IBC, 2016 are accepted. However, it is made clear that it would be open to both the Personal Guarantors to seek the benefit of the amount of debt already repaid to the Debtor, while submitting the plan in terms of the provisions of Section 105 of IBC, 2016.

20. In view of the aforementioned, **we are left with no option but to admit the present petitions preferred under Section 95 of the Code. Ordered accordingly.**

21. It goes without saying that during the Insolvency Resolution Process, the RP shall give an opportunity to personal guarantors to submit their repayment plans. Nevertheless, before that the RP shall also carry the exercise in terms of the provisions of Section 100(2) of IBC 2016. For such purpose it would be open to the Personal Guarantors to appear before RP within 1 week from today.

22. As a sequel of admission of the present application, a moratorium shall commence in relation to all the debts of the Personal Guarantors. During the moratorium period – (a) any pending legal action or proceedings in respect of any debt qua the Personal Guarantors shall be deemed to have been stayed; (b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt qua the Personal Guarantors; and (c) the debtors shall not transfer, alienate, encumber or dispose of any of the assets or his legal right or beneficiary



interest therein. The moratorium shall cease to have effect at the end of period of 180 days.

23. A public notice shall be issued by the RP within seven days of passing of this order, inviting claim from all creditors within 21 days of such notice. The notice shall include details of the present order, particulars of the Resolution Professional with whom the claims have to be registered and the last date for the submission of the claims. The notice shall be – (a) published in two National Newspapers, one in English and other one Vernacular Language, in circulation in the State where the debtor resides; (b) affixed in the premises of this Adjudicating Authority; and (c) placed on the website of the Adjudicating Authority.

24. We are sanguine that the RP shall discharge all such duties as are incumbent upon him in terms of the provisions of Sections 102, 103, 104, 105, 106 , 107, 108, 112 and 113 of IBC, 2016, with the due deference of the procedure enshrined in Regulations 5, 7, 8, 9, 11, 12, 13, 14, 15 and 17 of IBBI (Insolvency Resolution Process for Personal Guarantor to Corporate Debtors) Regulations, 2019 and also in terms of the other extent provisions of the aforementioned code/ regulations and/or any other provisions of law applicable to him, in discharge of his duties as RP.

25. A copy of this order along with the copy of the application as also the report of Resolution Professional shall be provided to the Creditor, the Personal



Guarantors and IBBI, by the Registry/Court Master within 7 days from today by email.

26. IA-4531/2024 in IB No. 355/ND/2024 and IA- 4548/2024 in IB No. 360/ND/2024 stands disposed of accordingly. To come up for consideration of Status Report to be filed by RP, within 8 weeks.

27. It goes without saying that whatever amount is paid to the creditor by the principal borrower (corporate debtor) and other guarantors would be deducted from the liability of the Respondent to repay.

28. RP would conduct the Insolvency Resolution Process qua both the Personal Guarantors separately. The RP would conduct negotiation with both the Personal Guarantors. Before parting with, we record the submission made by the Ld. Counsel for the Creditor that as per initial report, the date of default occurred on 31.03.2018 which has been authenticated by the Personal Guarantors/Debtors.

**Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)**

**Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)**

Deep Chand/Atul Raj