



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA

I.A.(IB)No.1890/KB/2024
I.A. No.497/KB/2022
IN
C.P. (IB)/297(KB)2022

An application under 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Section 99 of the Insolvency and Bankruptcy Board of India, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016;

And

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016;

In the matter of:

Bank of Baroda

...Financial Creditor

Versus

Narain Hari Gupta

...Personal Guarantor

And

Kannan Tiruvengadam

...Resolution Professional/Applicant

Date of pronouncement:**02.05.2025**

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

CMDE SIDDHARTH MISHRA, HON'BLE MEMBER (TECHNICAL)

Appearance (via video conferencing/physically)

Mr. Avik Chaudhuri, Adv.

] For the Resolution Professional

O R D E R



Per: Cmde Siddharth Mishra, Member (Technical)

1. The Court Convened in a hybrid mode.
2. This I.A.(IB)No.1890/KB/2024 in C.P.(IB)/230(KB)2022 has been preferred by the Financial Creditor to seek initiation of Insolvency Regulation Process against the Respondent Personal Guarantor to Corporate Debtor Rule, 2019 (“Personal Guarantors Rules”) and Regulation 4(2) of IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (‘Personal Guarantors Regulations’) in terms of Section 99 (1) of the Insolvency and Bankruptcy Code, 2016 read with applicable Regulation of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), 2016.
3. The amount in Debt & Default is Rs.107,47,90,505.84/- (Rupees One Hundred Seven Crores Forty-Seven Lakhs Ninety Thousand Five Hundred Five and paise Eighty-Four only). Default occurred from 01.05.2013
4. The application is complete as required under Section 95 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.
5. It is to be noted that Hon’ble Supreme Court in the judgment of **Dilip B. Jiwrajka vs. Union of India & Ors. In WP (Civil) No. 1281 of 2021** dated 09.11.2023 has upheld the Constitutional Validity of the Sections



94 to 100 and the propositions that can be culled out from the Judgments inter-alia are as follows:

- “i. No judicial adjudication is involved at the stages envisaged in Sections 95 to Section 99 of the IBC;*
- ii. The Resolution Professional appointed under Section 97 serves a facilitative role of collating all the facts relevant to the examination of the application for the commencement of the insolvency resolution process which has been preferred under Section 94 or Section 95. The report to be submitted to the adjudicatory authority is recommendatory in nature on whether to accept or reject the application;*
- iii. No adjudicatory function of Adjudicating Authority is contemplated at the admission stage. To read in such a requirement at that stage would be to rewrite the statute which is impermissible in the exercise of judicial review;*
- iv. The resolution professional may exercise the powers vested under Section 99(4) of the IBC for the purpose of examining the application for insolvency resolution and CP/IB/337/AHM/2020 12 of 17 to seek information on matters relevant to the application in*

order to facilitate the submission of the report recommending the acceptance or rejection of the application;

- v. There is no violation of natural justice under Section 95 to Section 100 of the IBC as the debtor is not deprived of an opportunity to participate in the process of the examination of the application by the resolution professional;*
 - vi. No judicial determination takes place until the adjudicating authority decides under Section 100 whether to accept or reject the application. The report of the resolution professional is only recommendatory in nature and hence does not bind the adjudicatory authority when it exercises its jurisdiction under Section 100;*
 - vii. The adjudicatory authority must observe the principles of natural justice when it exercises jurisdiction under Section 100 to determine whether to accept or reject the application;*
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- viii. *The purpose of the interim moratorium under Section 96 is to protect the debtor from further legal proceedings; and*
- ix. *The provisions of Section 95 to Section 100 of the IBC are not unconstitutional as they do not violate Article 14 and A.”*

6. The Applicant had not proposed the name of the Insolvency Professional for appointment as Resolution Professional. In view of the above, Mr. Kannan Tiruvengadam, IBBI Registration No. IBBI/IPA-001/IP-P00253/2017-2018/10482, email ID: calkannan@gmail.com; was appointed as Resolution Professional, subject to his possessing a valid AFA, in exercise of the power conferred under Section 97 of the IBC, 2016 on this Authority.
7. The Resolution Professional was directed to file declaration within seven days to the effect that he fulfils all the requirements for being appointed as Resolution Professional in the matter which he has given, and to file his report in terms of Section 97 in two weeks.
8. The Resolution Professional Mr. Kannan Tiruvengadam has vide his report dated 10.09.2024 suggested/stated as extracted hereunder:

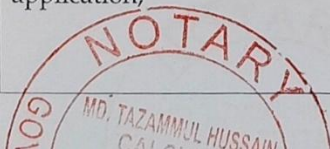
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Findings on Meeting Eligibility Criteria under Section 95 of IBC 2016

It is submitted that the Application u/s 95 (1) of IBC, 2016 has been filed by the Creditor Bank of Baroda, I have examined the application for submission of report u/s 99 if IBC 2016 and ascertained the Satisfaction of requirements set out in Section 95 of IBC 2016 as under:

Section		Observation of the Resolution Professional
95(1)	A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.	The Financial creditor through the resolution professional (CA. Kannan Tiruvengadam) has submitted the application to the Adjudicating Authority for initiating an insolvency resolution process under this section for initiation of the process.
95(2)	A creditor may apply under sub-section (1) in relation to any partnership debt owed to him for initiating an insolvency resolution process against— a. any one or more partners of the firm; or b. The firm.	Not applicable.
95(3)	Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the Adjudicating Authority in which the first mentioned application is pending for adjudication and such Adjudicating Authority may give such directions for consolidating the proceedings under the applications as it thinks just.	Not Applicable.
95(4)	An application under sub-section (1) shall be accompanied with details and documents relating to—	
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;	Total debt owed by the debtor to the creditor Bank of Baroda to the tune of Rs Rs.107,47,90,505.84 (Rupees One Hundred and Seven Crores Forty-Seven Lakhs Ninety Thousand Five Hundred Five and paise Eighty-Four Only) plus unapplied interests, and other charges and costs till repayment in full (as evident from the application filed by the Financial Creditor.



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95(4)(b)	Failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand.	Refer to Clause 5(a) below for observations by the Resolution Professional under Section 95(4)(b)
95(4)(c)	Relevant Evidence of such default or non-payment debt	Refer Clause 5(b) below for observations by the Resolution Professional under Section 95(4)(c)
95(5)	The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.	The Applicant has shared the proof of service document with the RP. It has been observed that the application has been served with the personal guarantor via email dated: 24th September 2021 in the below mentioned email address:nhgupta1966@gmail.com. However, proof of acknowledgement in support of the communication made with the personal guarantor as per Section 95(5) of the Code has not been enclosed Further, we have not noticed any instances wherein it has been proved that the hard copy of the application has been couriered to the personal guarantor residential/office addresses. The undersigned has requested the bank to share the same. Also, we requested the bank to confirm to us whether the application has been served to his residential, office or business addresses, if not kindly state the reason for the same. If the same has been communicated to their residential, office or business addresses, kindly share the tracking receipt copies. However, the same has not been shared. Therefore, in absence of the email acknowledgement or the delivery report we cannot comment whether the application has been actually received by the personal guarantor or not. Refer Annexure 1
95(6)	The application referred to in subsection (1) shall be in such form and manner and accompanied by such fee as may be prescribed.	Yes Complied
95(7)	The details and documents required to be submitted under sub-section (4) shall be such as may be specified.	Refer Clause 5(c) for details

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5(a) Key observations on failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand as per Section 95(4)(b)

Mr. Narain Hari Gupta was one of the personal guarantors for the credit facilities sanctioned to the corporate debtor M/s. Shri Badrinarain Alloys & Steels Limited by Bank of Baroda.

A deed of guarantee was executed by him on 29.03.2014 and 07.04.2016 jointly with other guarantors to guarantee repayment of debts owed by the corporate debtor to Bank of Baroda, wherein Mr. Narain Hari Gupta is liable to repay the above debts owed by the corporate debtor in terms of the deed of guarantee executed by him. Refer to page no. 57 to 79 (Annexure D) of the application which has been filed by the applicant bank (Bank of Baroda).

The Guarantor Mr. Narain Hari Gupta being the respondent herein guaranteed due repayment and discharge of all the dues payable by the Corporate Debtor with interest, costs, charges, expenses due to applicant in respect of or under the said credit facilities or any demand by the applicant bank and for that purpose Mr. Narain Hari Gupta being the guarantor in the instant matter executed Deed of Guarantee whereby and where under the guaranteed the repayment and discharge of all the dues and liabilities to be payable by the Corporate Debtor with interest, costs, charges, expenses and/or other money which is due to applicant in respect of or under the said credit facilities or any of them. The guarantee document executed by the guarantor on 29.03.2014 and 07.04.2016.

That at the time of availing the said Credit facilities several other documents (viz. acceptance notice, promissory notes, and updated repayment schedule etc.) were also executed by the borrower and guarantors individually, jointly and severally in favour of the applicant for availing the said Credit facilities.

Despite availing the various existing credit facilities, the Principal Borrower and its guarantors failed to operate the account and began to default in repaying Principal and interest amount as well.

The Corporate Debtor started defaulting in the repayment of the credit facilities and failed to adhere to the terms and conditions of the sanction letter and could not maintain the accounts as regular, as such the accounts of the Corporate Debtor was classified as non-performing asset [NPA] on 15.08.2016 w.e.f .01.05.2013 (cutoff date of CDR Restructure] in compliance with guidelines as framed by the RBI.

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The applicant/Financial Creditor by issuing a notice dated 09.10.2019 under Section 13(2) of the SARFAESI Act, 2002 to the principal borrower as well as Guarantors including Mr. Narain Hari Gupta, one of the Personal Guarantors and Respondent herein demanded a sum Rs. 107,47,90,505.84 (Rupees One Hundred Seven Crores Forty-Seven Lakhs Ninety Thousand Five Hundred Five and paise Eighty-Four Only) plus unapplied interest, other charges and costs till repayment in full but in spite of said notice neither the principal borrower nor the Guarantors including Mr. Narain Hari Gupta one of the personal Guarantors and respondent herein paid the dues of the Applicant/Financial Creditor. 39

The applicant has not enclosed the courier receipt through which it can be established that the SARFAESI demand notice was delivered to the personal guarantor.

The CIRP was initiated by Bank of Baroda against the Corporate Debtor M/s. Badrinarain Alloys & Steels Limited, which was admitted in the Hon'ble National Company Law Tribunal, Kolkata Bench on 05.12.2018. Later on, on 06.09.2019 the Account was gone for Liquidation. Liquidation Commencement date was 06.09.2019 and the matter is now under liquidation as appeared from the RoC records.

Further the applicant Bank and other consortium member bank was constrained to issue Demand notice dated 01.09.2020 in Form-B under Rule 7(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 to the personal Guarantor by Post, demanding Rs.107,47,90,505.84 (Rupees One Hundred and Seven Crores Forty Seven Lakhs Ninety Thousands Five Hundred Five and paise Eighty Four Only) plus unapplied interests, and other charges and costs till repayment in full.

However, whether the demand notice was delivered or not to the personal guarantor, the same cannot be confirmed as the tracking report has not been enclosed with the application copy.

Therefore, the RP sought confirmation on this matter and requested a copy of such communications and tracking report copies as they were not included in the application. However, that information was not shared till now. The bank vide email dated: 29th July 2024, has replied that they are searching the documents from their records and once it is available the same will be available to us.

Accordingly, the RP is unable to comment whether the demand notice was finally delivered to the Personal Guarantor or not through email communication or any by other mode.

Therefore, to prove the existence of the debt, the RP in accordance with section 99(2) of IBC requested confirmation (along with evidence) on 03.07.2024 from Mr.Narain Hari Gupta as to whether the debt of Rs. Rs.107,47,90,505.84 as claimed by Bank of Baroda was repaid or not.

The email was sent to the following email address: nhgupta1966@gmail.com

In response to the email the Personal Guarantor shared with us 5 years ITR returns and financial statements.

The personal guarantor vide email dated: 30th July 2024, has confirmed that he has not repaid the debt owed to Bank of Baroda, nor he has provided any proof of payment evidencing that the payment has been done. Given this situation wherein the personal guarantor himself has confirmed/stated that the outstanding dues to Bank of Baroda have not been repaid by the guarantor. Refer annexure 2

NOTAR

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5(b) Relevant evidence of such default or non-payment of debt as per Section 95(4)(c) of the IBC 2016:

The non-payment of debt can be proved from the following observations exhibited below:

To prove the existence of the debt, the RP in accordance with section 99(2) of IBC requested confirmation (along with evidence) on 03.07.2024 from Mr. Narain Hari Gupta as to whether the debt of Rs. Rs.107,47,90,505.84 as claimed by Bank of Baroda was repaid or not.

The email was sent to the following email address: nhgupta1966@gmail.com

In response to the email the Personal Guarantor shared with us 5 years ITR returns and financial statements.

The personal guarantor vide email dated: 30th July 2024, has confirmed that he has not repaid the debt owed to Bank of Baroda, nor he has provided any proof of payment evidencing that the payment has been done. Given this situation wherein the personal guarantor himself has confirmed/stated that the outstanding dues to Bank of Baroda have not been repaid by the guarantor.

Therefore, it is an established fact that the claim which has been raised by the Bank has not been paid by the personal guarantor.

Further here it is to be noted that, through the liquidation process, the financial creditor Bank of Baroda has received partial outstanding amount. During the liquidation process, the bank has submitted a claim of Rs.107,47,90,505.84; out of which the bank has recovered only a sum of Rs. 11,04,62,393/-.

Therefore, the balance amount which has not been recovered from the liquidation process, the bank is liable to recover the amount from the personal guarantor in addition with unapplied interest and other costs.

Furthermore, the Personal guarantor jointly with other guarantors is legally entitled for repayment of debts owed by the corporate debtor to Bank of Baroda as he has provided a guarantee to repay the debt by executing the deed of guarantee on 29.03.2014 and 07.04.2016. Refer to page no. 57 to 79 (Annexure D) of the application which has been filed by the applicant bank (Bank of Baroda).

Thus, based on these facts, the entire outstanding amount of the corporate debtor, including interest, penal interest, and other charges, will be collectively paid by both the other personal and corporate guarantors. This obligation is consistent with the terms outlined in the personal guarantee agreement dated: 29.03.2014 & 07.04.2016.

5(c) As per Section 95(7) of the IBC 2016, the following observation can be made from the documents:

Section 95(7) requires particulars of personal guarantor to be filed with the application in a specified format.

The application contains Form C which provides details of the personal guarantor like name, address, occupation etc. in the format prescribed under Insolvency and Bankruptcy

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Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.

So the requirement of Section 95(6) of filing particulars of the personal guarantor with the application in the specified format has been complied with as the necessary details have been included in Form C attached with the present application.

In the application, the following details have been provided regarding the proposed insolvency professional Mr. Kannan Tiruvengadam:

Registration no. with IBBI is IBBI/IPA-001/IP-P00253/2017-18/10482.

In Mr. Kannan Tiruvengadam's consent letter, there are no disciplinary proceedings pending against him.

No evidence of any disciplinary proceedings has been found in the documents.

Therefore, it can be seen that the requirement under Section 95(7) has been fulfilled as there is no disciplinary proceedings pending against the proposed insolvency professional has been satisfied based on the details filed.

The application satisfies the criteria mentioned under Section 95(7) regarding the proposed insolvency professional.

Therefore, it can be observed from the documents submitted that the provisions of Section 95(7) have been duly followed in the present application against the personal guarantor.

Compliance U/S 99 OF IBC.

Section	Observation of the Resolution Professional
99(2) 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— (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) A signed acknowledgment by the creditor accepting receipt of dues.	To prove the existence of the debt, the RP in accordance with section 99(2) of IBC requested confirmation (along with evidence) on 03.07.2024 from Mr. Narain Hari Gupta as to whether the debt of Rs. Rs.107,47,90,505.84 as claimed by Bank of Baroda was repaid or not. The email was sent to the following email address: nhgupta1966@gmail.com In response to the email the Personal Guarantor shared with us 5 years ITR returns and financial statements. The personal guarantor vide email dated: 30th July 2024, has confirmed that he has not repaid the debt owed to Bank of Baroda, nor he has provided any proof of payment evidencing that the payment has been done. Given this situation wherein the personal guarantor himself has confirmed/stated that the outstanding dues to Bank of Baroda have not been repaid by the guarantor. Therefore, it is an established fact that the claim which has been raised by the Bank has not been paid by the personal guarantor. Further here it is to be noted that, through the

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	liquidation process, the financial creditor Bank of Baroda has received partial outstanding amount. During the liquidation process, the bank has submitted a claim of Rs.107,47,90,505.84; out of which the bank has recovered only a sum of Rs. 11,04,62,393/-. Therefore, the balance amount which has not been recovered from the liquidation process, the bank is liable to recover the amount from the personal guarantor in addition with unapplied interest and other costs.
99(3) 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.	Based on the information provided in the application, there is no indication that the debt for which the application has been filed by the creditor against the personal guarantor is registered with an information utility. <u>The key points to note regarding information utility records in the given documents:</u> - In Part III point 11 of the application, the record of default with the information utility: The applicant has mentioned NOT APPLICABLE. Since Application does not state that this debt is registered with an information utility, and explicitly mentions that such records are not available or have not been provided, we could not find any indication that this debt is registered with an information utility based on the given information. The application does not provide any details of the debt being registered with an information utility. The RP has sought the relevant details from the creditor seeking the above information, however, the creditor has not replied to the same.
99(6) 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 sought by the resolution professional under sub-section (4).	Compliance with respect to 99(6)(a) is discussed in point no. 5(a), 5(b) and 5(c). Compliance with respect to 99(6)(b): It is submitted that, as provided in Section 99(6)(b) of IBC 2016, the applicant has provided the information and explanation as sought by me u/s 99(4). Refer Annexure 3

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6. Date of invocation of personal guarantee by Financial Creditor:

The Financial Creditor classified the account of the Corporate Debtor as non-performing asset [NPA] on 15.08.2016 w.e.f .01.05.2013 (cutoff date of CDR Restructure] in compliance with guidelines as framed by the RBI.

The applicant/Financial Creditor by issuing a notice dated 09.10.2019 under Section 13(2) of the SARFAESI Act, 2002 to the principal borrower as well as Guarantors including Mr. Narain Hari Gupta, one of the Personal Guarantors and Respondent herein demanded a sum Rs. 107,47,90,505.84 (Rupees One Hundred Seven Crores Forty-Seven Lakhs Ninety Thousand Five Hundred Five and paise Eighty-Four Only) plus unapplied interest, other charges and costs till repayment in full but in spite of said notice neither the principal borrower nor the Guarantors including Mr. Narain Hari Gupta one of the personal Guarantors and respondent herein paid the dues of the Applicant/Financial Creditor.

That subsequently, the CIRP was initiated by Bank of Baroda against the Corporate Debtor M/s. Badrinarain Alloys & Steels Limited, which was admitted in the Hon'ble National Company Law Tribunal, Kolkata Bench on 05.12.2018. Later on, on 06.09.2019 the Account was gone for Liquidation. Liquidation Commencement date was 06.09.2019 and the matter is now under liquidation as appeared from the RoC records.

Further the applicant Bank and other consortium member bank was constrained to issue Demand notice dated 01.09.2020 in Form-B under Rule 7(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 to the personal Guarantor by Post, demanding Rs.107,47,90,505.84 (Rupees One Hundred and Seven Crores Forty Seven Lakhs Ninety Thousands Five Hundred Five and paise Eighty Four Only) plus unapplied interests, and other charges and costs till repayment in full.

However, the undersigned has categorically asked the financial creditor to confirm the date of invocation, but in reply they have stated that in the Joint Lenders Meeting (JLM) held on 05-07-2021 decided to invoke the PG of the guarantors.

7. Date of filing Petition under section 94/95 of IBC:

The application was filed with the Adjudicating Authority on 25.09.2021, C.P. (IB)/297(KB)2021.

8. Amount in default by Corporate Debtor to the Applicant at the time of commencement of CIRP: Rupees: 85,39,37,792.00 the amount which is in Default by corporate debtor at the time of commencement of CIRP.

9. Amount provided in the resolution plan, if any, against the claim of the applicant:

Nothing has been provided in the resolution plan as the corporate debtor was admitted into the Liquidation on 06.09.2019. Further here it is to be noted that, through the liquidation process, the financial creditor Bank of Baroda has received partial outstanding amount. During the liquidation process, the bank has submitted a claim of Rs.107,47,90,505.84/- out of which the bank has recovered only a sum of Rs. 11,04,62,393/-

Kaman Tiruvengadam

10. Balance due from personal guarantor:

As mentioned in the application Rs.107,47,90,505.84 is outstanding debt due to the personal guarantor.

11. Net worth of personal guarantor as on date of the report:

The financial statements are enclosed herewith.

12. Copies of past 5 years balance sheet and Income Tax Return of personal guarantor:

The details were sought from the personal guarantor as well as from the financial creditor, the personal guarantor has shared with us the 5 years financial statement and Income Tax Returns vide email dated: 30th July 2024.

13. Details of actions taken by Applicant or any other Financial Creditor against Personal Guarantor under any other Act in respect of debt owed by Corporate Debtor:

The undersigned has requested the details from the financial creditor, the bank has confirmed that they have initiated insolvency resolution process against the other personal guarantor Mr. Avinash Chandra Gupta.

In addition to it, the bank has also realized certain proceeds from the corporate guarantor of M/s Vrindalspat during liquidation. However, the recovery amount has not been stated.

9. The Resolution Professional Mr. Kannan Tiruvengadam has vide his report dated 10th September, 2024 has recommended admission of the personal guarantor in to the Insolvency resolution process. The relevant portion of his report has been extracted and appended below for the sake of convenience.

It is submitted that, in view of the above facts and reasons recorded below, I hereby recommend acceptance of the application No. C.P (IB)/297(KB)2021 filed u/s 95(1) of the IBC 2016 by the Creditor to initiate Insolvency Resolution Process against Personal Guarantor and the Adjudicating Authority may appropriate order u/s 100 of IBC, 2016 for admission of the application.

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Further the detailed reasons for recommendation for acceptance of the application is as under:

Detailed Reasons for Recommendations:

1) Compliance with Section 95: The application filed by Bank of Baroda against Mr. Narain Hari Gupta as personal guarantor meets the requirements of Section 95(1) of the Insolvency and Bankruptcy Code, 2016, and relevant rules. The application contains the necessary details and documents as required under Section 95(4), including information about the debt owed and evidence of default.

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- 2) Substantial evidence supports the existence of debt and default:
 - A default of Rs Rs.107,47,90,505.84 is claimed against the personal guarantor.
 - Relevant loan documents including sanction letters dated 30.09.2015 have been submitted as evidence.
 - Agreements of personal guarantee was executed by Mr. Gupta on 29.03.2014 and 07.04.2016, making him liable for the corporate debtor's debts.
- 3) Attempts to contact the personal guarantor have been successful by email, however wherein he has confirmed that due which has been claimed in the application has not been repaid by him.
- 4) Status of Corporate Debtor: The partial realization of debt through the sale of the corporate debtor's assets during liquidation indicates that the personal guarantor remains liable for the remaining debt under the terms of the guarantee agreements.
- 5) Lack of Contestation: The personal guarantor has not contested the application filed by Bank of Baroda moreover he has made acknowledgment of the debt.

6) Demand Notices:

The applicant Bank and other consortium member bank was constrained to issue Demand notice dated 01.09.2020 in Form-B under Rule 7(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 to the personal Guarantor by Post, demanding Rs.107,47,90,505.84 (Rupees One Hundred and Seven Crores Forty Seven Lakhs Ninety Thousands Five Hundred Five and paise Eighty Four Only) plus unapplied interests, and other charges and costs till repayment in full.

However, whether the demand notice was delivered or not to the personal guarantor, the same cannot be confirmed as the tracking report has not been enclosed with the application copy.

7. Information Utility:

While the debt is not registered with an information utility, this does not invalidate the application under Section 99(3) of the IBC.

8. Compliance with Section 99:

The Resolution Professional has examined the application as required by Section 99(6)(a) and confirms that the applicant has provided all requested information as per Section 99(6)(b).

Therefore, considering these facts, the total outstanding amount of the corporate debtor, encompassing interest, penal interest, and additional charges, will be jointly and severally settled by the remaining personal and corporate guarantors. This responsibility aligns with the provisions specified in the personal guarantee agreement

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I.A.(IB)No.1890/KB/2024
I.A. No.497/KB/2022
IN
C.P. (IB)/297(KB)2022

dated: 29.03.2014 & 07.04.2016, and is substantiated through the confirmation receive from the personal guarantor.

In light of the above reasons, I recommend acceptance of the application C.P. (IB)/297(KB)2021 under Section 95(1) against the personal guarantor Mr. Narain Hari Gupta. The Adjudicating Authority may admit it and commence insolvency resolution process under Section 100 of IBC, 2016.

These recommendations are made considering the evidence of debt, the default by the personal guarantor, and the compliance of the application with the requirements of the Insolvency and Bankruptcy Code, 2016.

10. The Personal Guarantor has entered appearance but not refuted the statements in the report of Resolution Professional.
11. We have considered the report and perused the details of claim indicated therein.
12. We are satisfied with the recommendation of the Resolution professional to admit the application.
13. In absence of any dispute or controversion by the Personal Guarantor, this application is admitted with the following directions:

(1) Since the application is **admitted under Section 100;**

(2) **In terms of Section 101 :**

When the application is admitted under section 100, a moratorium shall commence in relation to all the debts and shall cease to have effect at the end of the period of one hundred and eighty days beginning with the date of admission of the application or on the



date the Adjudicating Authority passes an order on the repayment plan under section 114, whichever is earlier.

(3) During the moratorium period—

- (a) any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;
 - (b) the creditors shall not initiate any legal action or legal 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;
- (4) Where an order admitting the application under section 96 has been made in relation to a firm, the moratorium under sub-section (1) shall operate against all the partners of the firm.
- (5) 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.
- (6) IRP is directed to cause a public notice on behalf of the Adjudicating Authority and Act in terms of Section 102, 103, 104 of the Code, to cause public notice, invite claims from creditors, list of creditors etc and hold regular meeting.

102. Public notice and claims from creditors:

- (1) The Adjudicating Authority shall issue a public notice within seven days of passing the order under section 100 inviting claims from all creditors within twenty-one days of such issue.



(2) The notice under sub-section (1) shall include—

- (a) details of the order admitting the application;
- (b) particulars of the resolution professional with whom the claims are to be registered; and
- (c) the last date for submission of claims.

(3) The notice shall be—

- (a) published in at least one English and one vernacular newspaper which is in circulation in the state where the debtor resides
- (b) affixed in the premises of the Adjudicating Authority; and
- (c) placed on the website of the Adjudicating Authority.

103. Registering of claims by creditors:

(1) The creditors shall register claims with the resolution professional by sending details of the claims by way of electronic communications or through courier, speed post or registered letter.

(2) In addition to the claims referred to in sub-section (1), the creditor shall provide to the resolution professional, personal information and such particulars as may be prescribed.

104. Preparation of list of creditors:

(1) The resolution professional shall prepare a list of creditors on the basis of—

- (a) the information disclosed in the application filed by the debtor under section 94 or 95, as the case may be;
- (b) claims received by the resolution professional under section 102.



(2) The resolution professional shall prepare the list mentioned in sub-section (1) within thirty days from the date of the notice

I.A. No. 497/KB/2022

- 14.** This application has been filed by the Financial Creditor for the following reliefs:
- a) *To allow the instant application by accepting the Demand Notice in Form "B" at 01.09.2020 in respect of Mr. Narain Hari Gupta which shall be integral part of Section 95 application being CP (IB) No.297/KB/2021.*
 - b) *And to also pass appropriate order/orders in respect of the instant application.*
 - c) *To pass such other and/or further order or orders or directions as this Hon'ble Tribunal may deem fit and proper in view of the aforesaid facts and circumstances.*
- 15.** That this application has been filed to bring on record the Demand Notice in Form B dated 01.09.2020 which was inadvertently not Annexed with the Company Petition.
- 16.** That on 13.12.2021 it was found by this Adjudicating Authority that a wrong Demand Notice in Form B dated 01.09.2020 of Mr. Avinash Chandra Gupta was annexed in place of Mr. Narin Hari Gupta.
- 17.** That the Demand Notice in Form B dated 01.09.2020 issued to Mr. Avinash Chandra Gupta was mistakenly annexed in place of Mr. Narain Hari Gupta since both the persons are Personal Guarantor of Corporate

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Debtor i.e. M/s. Shri Badrinarain Alloys and Steel Ltd. Ltd. Advocate on record for the Financial Creditor prayed liberty to file an appropriate application to place on record the Demand Notice in Form-B of Narain Hari Gupta dated 01.09.2020 in CP (IB) No.297/KB/2021.

18. Form B Demand Notice in **I.A. No. 497/KB/2022** is taken on record.
19. Report under Section 99(1) is taken on record.
20. The RP appointed in the matter is directed to issue a public notice as envisaged in Section 102, on behalf of the Adjudicating Authority and invite claims from creditors, list of creditors etc and hold regular meeting and conduct the entire IR process as per Chapter-III of IBC 2016 read with the IBBI regulations cited above. Meanwhile he is directed to obtain Net worth certificate & last 5 years balancesheet and Income Tax returns of the Personal Guarantor, failing which Personal Guarantor is directed to be present on the next date of hearing.
21. The Financial creditor shall deposit **Rs 1,00,000/- {Rupees One Lakh}** with the RP for meeting all initial expenses. These expenses have to be adjusted in the final account to be rendered by the RP against remuneration and other expenses and is subject to final approval by the Financial Creditor /Creditors as the case may be.
22. As **Company Petition No. 297 of 2022** stands **admitted**.
I.A.(IB)No.1890/KB/2024 & I.A. No.497/KB/2022 is **disposed of**.
23. Next date for consideration would be **28.07.2025**.

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- 24.** The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel in terms of Section 100(3) of the Code for information and for taking necessary steps.
- 25.** Certified copy of the order may be issued, if applied for, upon compliance of all requisite formalities.

**Cmde Siddharth Mishra
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order signed on this, the 02nd May, 2025.

S. Ghose (Steno)