



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - IV**

C.P. (IB) No. 1043/MB/2022

[Under Section 94(1) of the Insolvency & Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), Rules, 2019]

In the matter of:

Bhavna Ravi Matta

Personal Guarantor to M/s. North American Mercantile India Pvt. Ltd.

(DIN: 00362179)

...Applicant

Pronounced: 29.10.2025

CORAM:

ANIL RAJ CHELLAN

HON'BLE MEMBER (TECHNICAL)

K.R. SAJI KUMAR

HON'BLE MEMBER (JUDICIAL)

Appearances: Hybrid

For the Applicant

Adv. Manoj Kumar Mishra

For the Financial Creditor (Intervenor)

Adv. Ayush Kothari a/w. Adv. Shreyansh Desai i/b. V. Deshpande & Co.



ORDER

1. The instant application has been filed under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 (IBC/ Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 by Ms. Bhavna Ravi Matta (Applicant / Personal Guarantor / PG) for the purpose of initiating insolvency resolution process against herself being the PG to 'North American Mercantile India Pvt. Ltd' (Corporate Debtor / CD). The registered business address of the Applicant is at Gala No. 12, Jamnadas Industrial Estate, Opp. Jawahar Talkies, Mulund -West, Mumbai, Maharashtra -400 080.
2. The Applicant states that the amount in default is Rs. 9,55,69,330.25/- (Nine Crore Fifty-five Lakh, Sixty-nine Thousand Three Hundred and Thirty Rupees and Twenty-Five Paise), inclusive of penal interest. The Date of Default as mentioned in Part-III of the Application is 10.09.2019.

SUBMISSIONS OF APPLICANT

3. The Applicant submits that 'Abhyudaya Co-Operative Bank Limited' (Financial Creditor / FC) sanctioned a loan of Rs. 9.5 Crore, *vide* Sanction Letter dated 07.08.2018 with concessional rate of interest @11.50% p.a. to the CD herein, to which the Applicant had given her personal guarantee along with two other co-guarantors as sureties in Clause (E) of the Sanction Letter. The credit facility was modified by the FC to Rs. 12.83 Crore with floating rate of interest @ 13% p.a., *vide* Sanction Letter dated 30.11.2019, wherein the Applicant gave her personal guarantee as surety in Clause 3 of the said sanction letter.
4. The Applicant submits that since the CD committed default in repayment of its financial obligations, the FC issued a Notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), dated 25.02.2020 to the CD and its sureties (including the Applicant) and its account was declared as Non-performing



Asset (NPA) on 09.12.2019 with a total outstanding amount of Rs.9,55,69,330.25/-, thereby invoking the personal guarantee of the Applicant and calling upon the same to jointly and severally to make the payment within sixty days.

5. The Applicant submits that, on its failure to service the said debt, the loan was transferred/assigned to one 'Asrec (India) Limited' by and under an Assignment Agreement dated 26.08.2020, which issued a Possession Notice to the Applicant on 24.02.2021 under Section 13(4) of the SARFAESI Act. Subsequently, the Court of Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai, *vide* its Order dated 26.07.2022, in Case No. 681/SA/2021 under Section 14 of the SARFAESI Act, directed the authorised officer to take possession of the secured assets of the Applicant on behalf of 'Asrec (India) Limited'.
6. The Applicant states that in its capacity as the PG of the CD, it is willing to undergo personal insolvency to seek an opportunity to offer a repayment plan to the FC. Hence, the present application.
7. The records reflect that 'Asrec (India) Limited' (Intervenor), in its capacity as the secured FC of the Applicant, has filed its Affidavit-in-Reply dated 13.04.2023.
 - 7.1 The Intervenor has opposed the initiation of insolvency process of the Applicant as it contends that the same is being used by the Applicant to circumvent the possession/recovery actions under the SARFAESI Act qua its secured assets.
 - 7.2 The Intervenor submits that, as per the latest valuation report, the value of the immovable properties mortgaged in its favour is a sum of Rs. 8.43 Crore, whereas its claim as on 31.03.2023 is in the sum of Rs.18.96 Crore. The Intervenor thus claims that in the event this Application is admitted, and insolvency resolution process is commenced, the repayment plan that may be received of the Applicant will be much lower than the amount that may be realised by the Intervenor by enforcing the security interest in the



immovable properties mortgaged to it.

7.3 The Intervenor further states that the Applicant has dealt with the hypothecated stock without its permission and has committed breach of the terms of sanction by dissipating the security of the Intervenor. The Intervenor thus prays for dismissal of the present Application.

ANALYSIS AND FINDINGS

6. We have heard the Ld. Counsel appearing for the parties and perused all the documents on record.

7. We note that this Bench appointed Mr. Dinesh Ruparel, Insolvency Resolution Professional, *vide* Order dated 24.04.2023, and thereby directed him to prepare and file a Report under Section 99 of the IBC. The RP, *vide* his Report dated 25.05.2023, after due examination of the Application, and the requirements as mandated under clauses (1) to (10) of Section 99 of the IBC, recommends that the Application deserves to be admitted under Section 100 of the Code and insolvency resolution process against PG be initiated.

7.1. The FC sanctioned a loan credit facility to CD on two instances, to which the Applicant herein stood as one of the sureties. Due to the default committed by the CD, the FC invoked the personal guarantee and called upon the parties (including the Applicant herein) to service the same. The loan account was later assigned to the Intervenor viz., 'Asrec (India) Limited'.

7.2. With regard to the objections raised by the Intervenor to the initiation of insolvency resolution process against the Applicant herein, we find that the same does not warrant any interference by this Tribunal. It is trite law that process under Section 94 of the IBC is independent mechanism in itself, and pendency of proceedings under the SARFAESI Act, cannot inhibit the same. It is also noted that the Applicant has stated that the date of default



as 09.12.2019, which is the date when its account was declared as NPA. However, in the case of personal guarantors, the date of default is the date when the guarantee is invoked. In the present case, the Demand Notice under Section 13(2) of the SARFAESI Act has to be considered for the invocation of guarantee. By the Demand Notice dated 25.02.2020, the Applicant was called upon to make the payment within 60 days. Accordingly, as per the Demand Notice, the date of default would fall on 25.04.2020. There is nothing to suggest that any payment has been made by the borrower or the guarantors. Further, the present Application under section 94 of the Code was filed on 24.09.2022. Therefore, the Application is filed well within the limitation period of three years.

- 7.3. In so far as the Report by RP dated 25.05.2023 and its service to the is concerned, we find that the same has been duly served upon the Applicant and the proof-of-service forms part of the records. The RP has recommended the admission of the Application. The debt in default is more than the threshold limit.
8. Thus, we are of the considered view that the captioned Application is complete in all aspects, and fit for admission.
9. It is also seen from the IBBI website that The Resolution Professional, viz., Mr. Dinesh Ruparel's AFA has expired on 30.06.2025 and the Insolvency Professional has not renewed his AFA subsequent thereto. In the extant circumstances therefore, we deem it fit to appoint a new Resolution Professional for conducting the insolvency resolution process for the PG herein. We hereby appoint **Mr. Kushal Jajodia**, Insolvency Resolution Professional, having Registration No. **IBBI/IPA-001/IP-P-02886/2024-2025/14433**, having address at 5, B Wing, 503, Videocon Tower B Chs Ltd ,Thakur Complex, Kandivali East ,Gokul Hospital ,Mumbai Suburban, Maharashtra - 400101 [E-Mail: ceo@kushaljajodia.com | Mob: 9870033899] as the Resolution Professional for the PG herein.



ORDER

10. In terms of the above, the **C.P. (IB) No. 1043/MB/2022** filed under Section 94 of the IBC is **admitted** and the Insolvency Resolution Process stands initiated against Ms. Bhavna Ravi Mattaviz viz., the Applicant/PG herein.

We hereby direct-

- I. Initiation of Insolvency Resolution Process against the Applicant/Personal Guarantor and moratorium in relation to all the debts is declared, from today i.e., on date of admission of the Application, and the same shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on the repayment plan under Section 114, whichever is earlier as provided under Sec 101 of IBC . During the moratorium:-
 - a. Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;
 - b. The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and
 - c. The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein.

- II. The Resolution Professional, viz. **Mr. Kushal Jajodia** is directed to cause a public notice made on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Mumbai Bench, inviting claims from all Creditors, within 21 days of such issue The notice under Sub Section (1) of Section 102(2) 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.

- III. The publication of notice shall be made in two newspapers, one in English and the other in Vernacular, which have wide circulation in the State where the Corporate Debtor and Personal Guarantor reside. The



Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.

- IV.** The Resolution Professional, in terms of Section 104, shall prepare a list of creditors on the basis of-
- a. the information disclosed in the Application filed by the debtor under Sections 94, and
 - b. claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice.
- V.** The debtor shall prepare a repayment plan under Section 105, in consultation with the Resolution Professional, containing a proposal to the Creditors for restructuring of his debts or affairs.
- VI.** The repayment plan may authorise or require the Resolution Professional to-
- a. carry on the debtor's business or trade on his behalf or in his name;
 - or
 - b. realise the assets of the debtor; or
 - c. administers or dispose of any funds of the debtor.
- VII.** The repayment plan shall include the following, namely-
- a. justification for preparation of such repayment plan and reasons based on which the creditors may agree upon the plan;
 - b. provision for payment of fee to the Resolution Professional;
 - c. such other matters as may be specified.
- VIII.** The Resolution Professional shall submit the Repayment Plan along with his report on the plan to this Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106 of the Code.
- IX.** In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons thereof. If the Resolution Professional is of the opinion that a meeting of the



creditors should be summoned, he shall specify the details as provided under Section 106(3) of IBC. The date of meeting should not be less than 14 days or more than 28 days from the date of submission of the Report under sub- section (1) of Section 106 of IBC, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of the IBC.

- X.** The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 and 111 of IBC. The Resolution Professional shall prepare a report of the meeting of the creditors on Repayment Plan with all details as provided under Section 112 of the IBC, and submit the same to this Tribunal, copies of which shall be provided to the Debtor and the Creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of the Code.
- XI.** The Resolution Professional shall submit his periodic reports before this Tribunal, every 30 days.
- XII.** The Applicant is directed to deposit Rs. 2,00,000/- (Two Lakh Rupees) to the bank account of the Resolution Professional within one week, towards initial expenses. The fee of the Resolution Professional shall be subject to the rules and regulations under the Code.
- XIII.** The Designated Registrar is directed to communicate a copy of the Order, report, and Application electronically to the Insolvency and Bankruptcy Board of India for information and record.

Sd/-

ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

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Sd/-

K. R. SAJI KUMAR
MEMBER (JUDICIAL)