



**NATIONAL COMPANY LAW TRIBUNAL**  
**INDORE BENCH**  
**COURT NO. 1**

ITEM No.201  
**C.P.(IB)/24(MP)2021**

**Order under Section 95 IBC**

**IN THE MATTER OF:**

State Bank of India  
V/s  
Sumit Rajpal

.....**Applicant**

.....**Respondent**

**Coram:**

Hon'ble Shri Brajendra Mani Tripathi, Member (J)  
Hon'ble Shri Man Mohan Gupta Member (T)

**PRONOUNCEMENT ORDER**

**Delivered on 23/02/2026**

The case is fixed for pronouncement of the order. The order is pronounced in open Court *vide* separate sheet.

Sd/-

Sd/-

**MAN MOHAN GUPTA**  
**MEMBER (TECHNICAL)**

**BRAJENDRA MANI TRIPATHI**  
**MEMBER (JUDICIAL)**

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**INDORE BENCH**

**CP/IB/24/2021**

*[Under Section 95 read with Rule 7(2) of the Insolvency and Bankruptcy  
(Application to Adjudicating Authority for Insolvency Resolution Process  
for Personal Guarantor to Corporate Debtor) Rules, 2019]*

**In the matter of:**

**State Bank of India**

Stressed Assets Recovery Branch,  
5, Y.N. Road, 1st floor SBI Zonal Office  
Indore, Madhya Pradesh - 452003  
Email: sbi.10007@sbi.co.in

**...Applicant**

**Versus**

**Mr. Sumit Rajpal**

(Personal Guarantor)  
House No. 9, Triveni Colony,  
Indore, Madhya Pradesh – 452001

**...Respondent**

**Coram:**

**HON'BLE SH. BRAJENDRA MANI TRIPATHI, MEMBER (J)**

**HON'BLE SH. MAN MOHAN GUPTA, MEMBER (T)**

**Order Pronounced on 23.02.2026**

**Appearance:**

**For the Applicant:** Mr. Rohit Dubey, Ld. Advocate

**For the Resolution Professional:** Ms. Teena Saraswat Pandey

**For the Respondent:** Ms. Soumya Dharwa, Ld. Advocate

**JUDGEMENT**



1. The present application has been filed on 19.07.2021 under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**Code**”) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 by State Bank of India (hereinafter referred to as “**Financial Creditor**”/“**Applicant**”) for the purpose of initiating insolvency resolution process against Mr. Sumit Rajpal (hereinafter referred to as “**Respondent/Personal Guarantor**”), Personal Guarantor of the M/s Rajpal Autolink Private Limited (hereinafter referred to as “**Corporate Debtor**”) having Corporate Identification Number (CIN): U50100MP2011PTC026888) for default of an amount of **Rs. 10,19,27,157/-** (Rupees Ten Crores Nineteen Lakhs Twenty-Seven Thousand One Hundred Fifty-Seven Only).

**Submissions by the Applicant/Financial Creditor:**

2. The averments made by the Financial Creditor in its Application and argued by the learned counsel for the Applicant are summarized hereunder:
  - I. The Financial Creditor submitted that the Corporate debtor in its meeting of board of directors on 13.02.2018, resolved to avail



the cash credit limit of Rs. 10,00,00,000/- (Rupees Ten Crores Only) and Line of Credit of Rs. 2,00,00,000/- (Rupees Two Crores Only) aggregating to Rs. 12,00,00,000/- (Rupees Twelve Crores Only). The Financial Creditor agreed to sanction the aggregate credit facilities for which requisite documents were executed by the Corporate Debtor through its Directors and other individual as guarantors in order to secure the repayment of credit facilities on 17.02.2018. The Applicant Bank agreed to enhance credit facilities to Rs. 14,00,00,000/- (Rupees Fourteen Crores Only) after receiving Letter of arrangement for which requisite documents were executed by the Corporate Debtor through its Directors as guarantors in order to secure the repayment of credit facilities on 15.02.2019. On account of financial indiscipline, the account of the Corporate Debtor was classified as **Non-Performing Asset** (hereinafter referred to as “**NPA**”) on **25.02.2020**.

- II. Subsequently, the Financial Creditor initiated recovery proceedings by filing an **Original Application (O.A. no. 1063/2020)** under Section 19(1) of the RDDBFI Act, 1993, before the **Debts Recovery Tribunal (DRT), Jabalpur**, which remains pending for adjudication. Furthermore, the Financial Creditor also issued a statutory **Demand Notice in Form B on 06.08.2020** to the Respondent and other individual



guarantors, demanding the credit facilities. It is also recorded that the **Liquidation Process** for the Corporate Debtor was subsequently initiated vide order dated **23.04.2021** passed by this Adjudicating Authority in **IA No. 7(IND) of 2021 in CP(IB) No. 43/10/NCLT/AHM/2020**, and the Applicant has accordingly submitted its claim in **Form D to the Liquidator on 17.05.2021**. However, the Corporate Debtor took no steps for the settlement of the amount due to the Financial Creditor and also the present Respondent being personal guarantor have not taken any steps for the repayment.

- 3.** The Respondent/Personal Guarantor has not filed any substantive Reply or written objections to the present Application filed under Section 95 of the Code. One of the applications filed by the Respondent was **IA No. 210 of 2021** under Section 98 of the Code seeking replacement of the Resolution Professional Ms. Teena Saraswat Pandey with any other Resolution Professional. In the said application, the Respondent/Personal Guarantor contended that Ms. Teena Saraswat Pandey, who was appointed as Resolution Professional in the instant matter on the recommendation made by the Respondent Bank, was handling various matters before this Hon'ble Tribunal as Resolution Professional in other matters of the Respondent Bank and was also on the panel of insolvency professionals maintained by the Respondent Bank, and therefore,



the Proposed Resolution Professional Ms. Teena Saraswat had intrinsic interest in the matter of the Respondent Bank and would be biased towards the Respondent's personal interest, pursuant to which an effective repayment plan would not be made in a judicious manner, which would not only prejudice the interest of the Applicant but also of the other creditors.

4. Upon hearing the learned counsel as well as the learned Resolution Professional Ms. Teena Saraswat Pandey and upon perusing the reply filed by the State Bank of India — wherein it was stated that since Ms. Teena Saraswat Pandey had been removed from their panel, they also did not want her to continue as Resolution Professional in the matter — this Tribunal **vide order dated 10.05.2024** was of the view that “***this is not an appropriate stage for replacing the Resolution Professional***” and that the matter as regards whether the application filed under Section 95 should be admitted or not would be heard first. It was further held that in case the application gets admitted, then in accordance with Section 98(4) of the Code, an appropriate application can be filed from the side of the Creditors and then the matter can be considered. Accordingly, **IA/210(MP)/2021 was dismissed vide order dated 10.05.2024.** The learned Resolution Professional had also submitted before this Tribunal that she had already filed her Report under Section 99 of the IBC.



**Submissions in Resolution Professional's Report:**

5. This Tribunal vide order dated 25.08.2021 appointed Ms. Teena Saraswat Pandey, Insolvency Professional registered with IIPCAI having IBBI Registration No. IBBI/IPA-001/IP-P00652/2017-2018/11126 as Resolution Professional under sub-section (5) of Section 97 of the Code, in connection with the proposed insolvency resolution process of Mr. Sumit Rajpal, Respondent/Personal Guarantor in C.P.(IB)/24(MP)/2021.
6. In accordance with Section 99 of the Code read with Insolvency Resolution Process for Personal Guarantors to Corporate Debtors Regulations, 2019, the Resolution Professional was required to submit a report within the stipulated time of ten days to the Adjudicating Authority with recommendations to either accept or reject the Application filed under Section 95(1) of the code. Accordingly, the Resolution Professional submitted her Report under Section 99(1) of the Code, having perused and examined the Application together with its annexures filed by the Financial Creditor. The key findings and observations of the Resolution Professional are summarized hereunder:
  - I. The Resolution Professional, in compliance with Section 99(2) of the Code, issued a notice to the Respondent/Personal Guarantor on 31.08.2021 via email and registered speed post,



seeking information and explanations regarding the debt and default mentioned in the application. As per the tracking report of the Department of Posts (Consignment No. EI827927529IN), the notice was duly delivered to the Respondent on 01.09.2021. However, the Resolution Professional has recorded that the Respondent failed to provide any information within the time stipulated under Section 99(5) of the Code.

- II. The Resolution Professional had obtained the List of Stakeholders of the Corporate Debtor from its Liquidator. The report observes that the Applicant Bank is a secured financial creditor of the Corporate Debtor with an admitted claim of Rs. 10,02,09,537/-, representing 83.23% of the total claims admitted in the liquidation proceedings.
- III. The Resolution Professional had also sought information from the Applicant Bank regarding the status of the debt. The Applicant Bank, vide its communication dated 16.09.2021, confirmed that no payments had been received from the date of NPA i.e., 25.02.2020. The Resolution Professional's report records the total outstanding dues as of 16.09.2021 at **Rs. 10,50,06,554.56/-**, comprising the following:

<u>Particulars</u>	<u>Outstanding Amount</u>
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Principal outstanding as on 16.09.2021	Rs. 8,37,67,243.56/-
Unrealised Interest as on 27.11.2019 to 31.01.2020	Rs. 21,43,171.00/-
Accrued Interest as on 01.02.2020 to 16.09.2021	Rs. 1,21,05,622.00/-
Penal Interest as on 01.02.2020 to 16.09.2021	Rs. 69,90,518.00/-
TOTAL DUES as on 16.09.2021	Rs. 10,50,06,554.56/-

- IV. In the legal assessment of the application, the Resolution Professional observed that the liability of the Respondent is co-extensive with that of the Corporate Debtor under Section 128 of the Indian Contract Act, 1872. The Resolution Professional further confirmed that the debt in question is a “financial debt” and does not fall under the category of 'excluded debts' as defined under Section 79(15) of the Code. Furthermore, based on the asset details provided in the application, the Resolution Professional concluded that the Respondent is not eligible for the Fresh Start Process under Section 80 of the Code.
- V. Consequent to the factual findings and legal examination, the Resolution Professional concluded that the application filed by the Financial Creditor satisfies all the procedural and

substantive requirements set out under Section 95 of the Code.

Accordingly, the Resolution Professional recommended the initiation of the Insolvency Resolution Process (IRP) against the Respondent/Personal Guarantor.

**Observation and Analysis:**

7. We have heard the learned counsel appearing on behalf of Applicant and have perused the relevant documents available on record carefully.

8. The **first issue** that arises for consideration before this Tribunal is:

- i. *whether an Insolvency Resolution Process can be initiated against the Personal Guarantor of a Corporate Debtor when the Liquidation Proceedings against the Corporate Debtor are already pending?*

In so far as the Personal Guarantor to Corporate Debtor is concerned, the **Hon'ble Supreme Court of India** in the matter of **Lalit Kumar Jain vs. Union of India & Ors.** in **Transferred Case (Civil) No. 245/2020** has upheld the vires of the notification issued by the Central Government vide S.O. 4126(E) dated 15.11.2019, in so far as it relates to coming into force of Insolvency and Bankruptcy Process of Personal Guarantors to Corporate Debtor. Thus, when a Corporate Insolvency Resolution Process or Liquidation Process in relation to a Corporate Debtor is pending before this Adjudicating Authority, then as per **Section 60(2) of IBC, 2016**, the NCLT would be the



competent forum to file an Application for Personal Guarantor in relation to such Corporate Debtor. The Liquidation Process in respect of **Corporate Debtor** was ordered by this Adjudicating Authority on **23.04.2021** vide order passed in **IA No. 7(IND) of 2021 in CP(IB) No. 43/10/NCLT/AHM/2020**. Hence, the present application in respect of the Insolvency and Bankruptcy proceedings of the Personal Guarantor of the Corporate Debtor is filed by the Creditor before this forum.

Therefore, the above issue is answered in the **affirmative**.

9. The **second issue** that arises for consideration before this Tribunal is: *Whether the present Application filed under Section 95 of the Code is barred by the Law of Limitation?*

This Tribunal notes that the account of the Corporate Debtor was classified as a **NPA on 25.02.2020**. The Financial Creditor issued a statutory Demand Notice in **Form B on 06.08.2020** to the Respondent/Personal Guarantor under Section 95(4)(b) of the Code read with Rule 7(1) of the Rules of 2019, calling upon the Respondent to pay the guaranteed default amount. Thereafter, the present Application under Section 95 of the Code was filed by the Financial Creditor on **19.07.2021**, which is well within the period of three years from the date of NPA, i.e., 25.02.2020. Accordingly, the present Application is not barred by the Law of Limitation.

Therefore, the above issue is answered in the **negative**.



**10.** It is further observed that although the petition was filed in 2021, The proceedings in the present matter was put on hold since the Constitutional Validity of the Sections 94 to 100 relating to the insolvency of personnel Guarantor was pending before the **Hon'ble Supreme Court** in the matter of **Dilip B. Jiwrajka V/s Union of India & Ors. in WP(civil)No. 1281 of 2021.**

**11.** The Hon'ble Supreme Court in the judgement of **Dilip B. Jiwrajka V/s Union of India & Ors. in WP(civil)No. 1281 of 2021** dated 09.11.2023 **upheld** the Constitutional Validity of the Sections 94 to 100 and the Conclusion of the Judgments 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. The submission that a hearing should be conducted by the adjudicatory authority for the purpose of determining 'jurisdictional facts' at the stage when it appoints a resolution professional under Section 97(5) of the IBC is rejected. No such*



*adjudicatory function is contemplated at that 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 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;*



- 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 Article 21 of the Constitution.*

**12.** This Tribunal notes that the Application under Section 95 of the Code against the Personal Guarantor appears to have been filed with requisite diligence and compliance with procedural requirements. The Applicant had granted credit facilities of Rs. 12,00,00,000/- (Rupees Twelve Crores Only) vide Sanction Letter dated 13.02.2018, subsequently enhanced to Rs. 14,00,00,000/- (Rupees Fourteen Crores Only) vide fresh sanction letter dated 15.02.2019, to the Corporate Debtor. Various Loan Documents were executed by the Corporate Debtor in respect of the said loans. For the said facilities, Personal Guarantee was provided by the Respondent by executing the Deed of Guarantee dated 17.02.2018 and 15.02.2019.

**13.** This Tribunal further notes that the Financial Creditor issued a statutory Demand Notice in Form B on 06.08.2020 to the Respondent/Personal Guarantor under Section 95(4)(b) of the Code read with Rule 7(1) of the Rules of 2019, calling upon the Respondent to pay all outstanding amounts within fourteen days of service of the said notice. However, the Respondent failed to respond to the said



notice or make any repayment. The said demand notice was followed by the filing of the present petition on 19.07.2021.

- 14.** It is observed that the Respondent has neither disputed the factum of the personal guarantee executed by him nor has he demonstrated repayment of the outstanding debt. The Respondent/Personal Guarantor failed to respond to the notice issued by the Resolution Professional on 31.08.2021 under Section 99(2) of the Code, which was duly served on him on 01.09.2021 (**Consignment No. EI827927529IN**). No information, explanation, or evidence of repayment was provided by the Respondent within the time stipulated under Section 99(5) of the Code.
- 15.** We have also perused the Guarantee Deeds **executed** by the Respondent **on 17.02.2018** and **15.02.2019** which are placed on record as **Annexure A/12**, to ascertain the nature of the liability. A perusal of the terms of the said Guarantee Agreements (**Form SME-3; page 78 of the petition**) reveals that under **Clause 1**, the Respondent has undertaken to pay the dues of the Corporate Debtor **“unconditionally”**. Further, **Clause 6** of the said agreements expressly stipulates that the guarantee is a **“continuing one”** for all amounts advanced to the Corporate Debtor. These clauses collectively establish that the Respondent has undertaken an unconditional and continuing guarantee to pay the dues of the Corporate Debtor. It is also noted under **Section 128 of Indian**



**Contract Act, 1872** that when a default is committed, the Principal Borrower and Surety are jointly and severally liable to Creditor and Creditor has the right to recover its dues from either of them or from both of them simultaneously. For benevolent reference, the said section of Indian Contract Act, 1872 is reproduced below:

*“The liability of the surety is co- extensive with that of the principal debtor, unless it is otherwise provided by the contract”.*

**16.** Therefore, once a default is committed by the principal borrower, the surety becomes equally liable for the said default. In the present case, the account of the Corporate Debtor was declared as a NPA on 25.02.2020, and no payment has been received from the date of NPA till 16.09.2021, as confirmed by the Applicant Bank vide its communication dated 16.09.2021. The total outstanding dues as on 16.09.2021 aggregate to Rs. 10,50,06,554.56/-, as verified and recorded in the Resolution Professional’s Report. Accordingly, the Respondent, being the Personal Guarantor, is equally and co- extensively liable for the default committed by the Corporate Debtor.

### **ORDER**

**17.** In view of the above, the petition deserves admission, and we pass the following order:

- I. The present Application CP/IB/24/2021 is hereby **ADMITTED** under Section 100 of the Code and the Insolvency Resolution

Process stands initiated against the **Personal Guarantor i.e.**

**Mr. Sumit Rajpal.**

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- II. The moratorium begun on the date of admission of the application shall cease to have effect at the end of the period of 180 days from the date of this order. During the moratorium period, the following provisions shall be in effect:
  - III. Any pending legal action or proceeding in respect of any debt be deemed to have been stayed; and
  - IV. The creditors of the Personal Guarantor shall not initiate any legal action or proceedings in respect of any debt; and
  - V. The Personal Guarantor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;
  - VI. 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.
  - VII. The Resolution Professional Ms. Teena Saraswat Pandey, Insolvency Professional having Registration No. IBBI/IPA-001/IP-P00652/2017-2018/11126, who was appointed as the Resolution Professional vide order dated **25.08.2021**, is hereby appointed as Resolution Professional for conducting the Insolvency Resolution Process of the Personal Guarantor.



- VIII. The Resolution Professional is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of uploading of this Order on the website of the NCLT, inviting claims from all Creditors, who shall register their claims as provided under Section 103 within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102 (2) of IBC, 2016. The publication of notice shall be made in newspapers, one in English and other in Vernacular which have wide circulation in the State where the Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry. One shall be placed by the Registry on our website and the other shall be affixed in the premises of this Authority.
- IX. The Resolution Professional shall prepare a list of creditors under Section 104 of the Code on the basis of:
- a. information disclosed in the Application filed under Section 94, and
  - b. claims received under Section 102, within 30 days from the date of publication of notice.
- X. The Personal Guarantor shall prepare a Repayment Plan under Section 105, in consultation with the Resolution Professional, containing a proposal for restructuring of his debts.



XI. The Repayment Plan may authorize or require the Resolution Professional to:

- a. carry on the debtor's business or trade on his behalf or in his name; or
- b. realize the assets of the debtor; or
- c. administer or dispose of any funds of the debtor.

**The Plan shall include:**

- a. justification for preparation of such plan;
- b. payment of fee to the Resolution Professional;
- c. any other matter as may be specified.

XII. The Resolution Professional shall submit the Repayment Plan to this Authority along with his report within 21 days from the last date of submission of claims, in terms of Section 106 of the Code.

XIII. In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof. If the resolution professional is of the opinion that the meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3). 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, for which at least 14 days' notice



to the creditors (as per the list prepared) shall be issued by all relevant/feasible modes. Such notice must contain the details as provided under the provisions of Section 107.

- XIV. The meeting of the creditors shall be conducted in accordance with sections 108, 109, 110 & 111. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 and submit the same to this Authority, copies of which shall be provided to the Personal Guarantor and the creditors. It is made clear that the resolution professional shall perform his function and duties in compliance with the code of Conduct provided under section 208 of the Code.
- XV. The Applicant/financial creditor is directed to deposit Rs. 50,000/- (Rupees Fifty Thousand Only) to the bank account of Resolution Professional within one week, from the date of this order towards his fees. This shall be subjected to the Rules and Regulations under the provisions of IBC, 2016, including maintaining independence, confidentiality, and impartiality in all actions.
- XVI. The Resolution Professional is directed to strictly abide by the provisions of IBC 2016 and complete the process of insolvency in a time bound manner after constitution of the committee of creditors.



**18.** Accordingly, CP(IB)/24(MP)/2021 filed under section 95 of IBC, 2016 is admitted and the Insolvency Resolution process stands initiated against the Respondent/Personal Guarantor.

Sd/-

Sd/-

**MAN MOHAN GUPTA**  
**(MEMBER TECHNICAL)**

**BRAJENDRA MANI TRIPATHI**  
**(MEMBER JUDICIAL)**

Abhinav Maru-LRA