

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH, (COURT NO.-II)

KOLKATA

I.A.(I.B.) No. 1330/KB/2024

In

C.P.(I.B.) No. 138/KB/2024

An application under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 read with rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019.

IN THE MATTER OF:

STATE BANK OF INDIA

...Financial Creditor

Versus

MR. BALKRISHAN DAS MUNDHRA, Personal Guarantor to the Corporate Debtor, SIMPLEX PROJECTS LIMITED.

...Personal Guarantor

AND

**An Application Under Section 99 Of the Insolvency and Bankruptcy
Code, 2016.**

IN THE MATTER OF:

Mr. SANJAI KUMAR GUPTA, Resolution Professional in the matter of State Bank of India Vs. Balakrishna Das Mundhara, Registration No. IBBI/IPA-001/IP-P00592/2017-2018/11045, office at 5A, AKMA, 27A, Bagmari Road, Kolkata - 700054.

...Applicant/Resolution Professional

Coram:

Shri Labh Singh, Member (Judicial)

Ms. Rekha Kantilal Shah, Member (Technical)

Appearances (Via Physical/Hybrid Mode):

For the Financial Creditor

1.Mr. Snehasish Chakraborty, Adv.

For the Personal Guarantor

1.Mr. Shaunak Mitra, Adv.

2.Mr. Saurav Jain, Adv.

For the RP

1.Mr. Rahul Parasrampurua, Adv.

Date of Pronouncement: 22.06.2026

O R D E R

Per: Rekha Kantilal Shah, Member (Technical)

1. Both the petition and application are being considered together through this common order.

I.A. (I.B) No. 1330/KB/2024

2. This application I.A. (I.B.) No. 1330/KB/2024 has been filed by the Resolution Professional (hereinafter being referred to as 'RP') seeking the following reliefs inter alia:

I. *To allow the present application under section 99 of the Insolvency and Bankruptcy Code, 2016 for taking on record Report filled by the Resolution Professional;*

II. *To pass any such further order/orders as this Learned Tribunal may deem fit and proper.*

3. **Background of the case:**

- 3.1. The Applicant, Mr. Sanjai Kumar Gupta, Registration No. IBBI/IPA-001/IP-P00592/2017-2018/11045, has been appointed as the RP in the Insolvency Process of the Personal Guarantor, Mr. Balkrishan Das Mundhra, by an order dated 16.05.2024 passed by this Tribunal in C.P. (I.B.) No. 138/KB/2024. A copy of the order is annexed as **Annexure - B**.

3.2. The Applicant seeks to bring on record the Report of RP under section 99 of the Insolvency and Bankruptcy Code, 2016 (hereinafter being referred to as 'the IBC') prepared by the Applicant on 29.06.2024. A copy of the Report is annexed as **Annexure - A at pages 10 - 22 of the Application.**

4. Order

4.1. We are inclined to take on record the Report under section 99 of the IBC, 2016 filed by the RP in the Insolvency Resolution Process of the Personal Guarantor, Mr. Balkrishan Das Mundhra.

4.2. Accordingly, **I.A. (I.B) No. 1330/KB/2024** is allowed and disposed of.

C.P (I.B.) No. 138/KB/2024

1. This C.P (I.B.) No. 138/KB/2024 has been preferred by the State Bank of India to seek initiation of the Insolvency Resolution Process against Mr. Balkrishan Das Mundhra, Personal Guarantor to the Corporate Debtor under Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019.

2. Mr. Balkrishan Das Mundhra, Personal Guarantor on various occasions executed a Deed of Guarantee and Supplemental Deeds of Guarantee dated 19.12.2007, 19.03.2009, 30.10.2009, 16.09.2010, 23.05.2011, 14.06.2014, 16.12.2014, 20.03.2015, 09.12.2015 to avail credit

line facilities for the Corporate Debtor. On 15.10.2014 and 14.12.2017 the Personal Guarantor executed two agreements for pledge of equity shares and had deposited the same with the Financial Creditor. On 16.11.2017, the Personal Guarantor signed a revival letter for the revival of the guarantee. A copy of the deed of guarantee is annexed as **Annexure - 1-D of the Petition**. The copies of the supplemental deeds of guarantee are annexed as **Annexures - 1-F,H,L,O,S,W,Y**. The copies of the agreements for pledge of shares are annexed as **Annexure - 1-T and 2-B**. A copy of the revival letter for revival of guarantee is annexed as **Annexure - 2-C**.

3. The amount in debt is Rs. 424,44,69,649 (Rupees Four Hundred and Twenty-Four Crores Fourty-Four Lakhs Sixty-Nine Thousand Six Hundred and Forty-Nine only) inclusive of interest calculated as on 31.03.2023.
4. It is to be noted that Hon'ble Supreme Court in the judgment of ***Dilip B. Jiwarkha Vs. Union of India & Ors 2013 SCC OnLine SC 1530*** has upheld the Constitutional Validity of the Sections 94 to 100 and the propositions that can be culled out from the judgment inter-alia is as follows:

“86. We summarise the conclusion of this judgment below:

86.1. No judicial adjudication is involved at the stages envisaged in Section 95 to Section 99 IBC;

86.2. 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;

86.3. 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) 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;

86.4. The resolution professional may exercise the powers vested under Section 99(4) 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;

86.5. There is no violation of natural justice under Section 95 to Section 100 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;

86.6. 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;

86.7. The adjudicatory authority must observe the principles of natural justice when it exercises jurisdiction under Section 100 for the purpose of determining whether to accept or reject the application;

86.8. The purpose of the interim moratorium under Section 96 is to protect the debtor from further legal proceedings; and

86.9. The provisions of Section 95 to Section 100 IBC are not unconstitutional as they do not violate Article 14 and Article 21 of the Constitution.”

5. The Financial Creditor has proposed Mr. Sanjai Kumar Gupta for appointment as the RP. Thus, this Adjudicating Authority vide order appointed Mr. Sanjai Kumar Gupta, IBBI Registration No. IBBI/IPA-001/IP-P00592/2017-2018/11045, email id - casanjaigupta@gmail.com; subject to his possessing a valid AFA, in exercise of the power conferred under Section 97 of the IBC, 2016 on this Authority and to file his report in terms of Section 97 in two weeks.
6. The RP had filed an application I.A (I.B) No. 1330/KB/2024 on 08.07.2024 to take on record the Report under Section 99(7) of the IBC, 2016 and which is taken on record through this common order.
7. The RP, Mr. Sanjai Kumar Gupta has vide his report dated 29.06.2024, performed the following procedures, which are extracted hereunder:

Sl. No	Activity	Remarks
1.	Examination/Review of Section 95 Application filed by the Creditor to initiate the Insolvency Resolution Process of the Debtor who is Personal	<i>Copy of the Application (as provided by the counsel of the applicant) filed by the creditor before the Hon'ble Company Law Tribunal has been examined by the RP to</i>

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	Guarantor of Corporate Debtor.	<i>reach a conclusion for giving necessary recommendation to the Hon'ble NCLT.</i>
2.	Information/Documents and clarification from the Corporate Debtor and/or the Creditor	<i>A communication was sent by the RP to the Debtor and the Creditor to seek information/clarifications.</i>
3.	Review of the information and documents provided by the creditor and debtor	<i>The debtor has not provided information and clarification sought by the RP till the time of signing of this Report.</i>
4.	Conclusion and recommendation by the RP	<i>Based on the above steps the report is concluded and an opinion is formed by the Resolution Professional whether to recommend acceptance or rejection of the application.</i>

8. The RP had issued letter through speed post and email to Mr. Balkrishan Das Mundhra at three addresses as the RP could collate, to prove repayment of debt claimed as unpaid by creditor. It is reported that two of the letters returned undelivered with note "*Addressee Left without Instructions*". Thus, it was concluded by the RP that he had failed to repay the debt. **Annexure - A of the Application, at page 19.**
9. The RP vide his Report has recommended the admission of the PG into the Insolvency Resolution Process. The relevant portion of his report is reproduced herein below for the sake of convenience. **Annexure - A of the Application, at pages 21 - 22.**

Sl. No.	Report under Section 99 of IBC	Remarks
1.	Opinion	<i>Given the above, I, the undersigned Resolution Professional appointed by the Hon'ble Adjudicating Authority for Insolvency Resolution Process of the Debtor who is the Personal Guarantor of the Corporate Debtor, hereby confirm that I have</i>

		<p><i>perused/examined the Insolvency Application filed by the Creditor, i.e., State Bank of India under Section 95 of the Code, 2016, along with all the underlying documents and annexures and have formed the opinion to recommend the same for its admission under sub section 7 of Section 99 of the IBC. My recommendation for admission of the application before the Hon'ble Adjudicating Authority is based on the following grounds:</i></p> <p><i>a. The Insolvency Application has been filed to initiate the Insolvency Resolution Process of Mr. Balkrishna Das Mundhra, in the requisite form in terms of the Sub Rule 2 of Rule 7</i></p>
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		<p><i>of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, supported by requisite fee and documents.</i></p> <p><i>b. A notice in Form B as per Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 which was issued by the Creditor to the Debtor is also attached with the application.</i></p> <p><i>c. The Insolvency Application for</i></p>
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		<p><i>initiating Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 satisfies the requirements set out Section 95 of the Code.</i></p> <p><i>d. The RP had allowed the Debtor concerned to prove repayment of the debt and provide additional documents/information. However, the debtor did not provide the information/clarification sought by the RP till the time of signing of this report.</i></p> <p><i>e. The Debtor, Personal Guarantor, is not eligible for the Fresh Start Process under</i></p>
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		<i>Chapter II of Part III of the Code.</i>
2.	Recommendations	<i>In view of the above and the fact that the application filed by the Creditor complies with the requirement of Section 95 and the debtor has not proved repayment of the debt, the undersigned RP hereby recommend to admit the application filed by the creditor under Section 100 of the IBC.</i>

10. This Adjudicating Authority notes that vide daily order dated 25.06.2025, Ld. Counsel for the PG was present but no reply affidavit was filed. Thus, this Tribunal passed the following order:

“Reply affidavit has not been filed. A last opportunity is granted for filing reply affidavit. Reply affidavit be filed within a period of 15 days from today. If reply affidavit is not filed, the stage for filing reply affidavit will be deemed to be closed. Rejoinder if any

*be filed within next fifteen days. List this matter on
12.08.2025.”*

Despite of such order, the PG has not filed a reply against the present company petition.

11. We observe that owing to the continuing defaults made by the Principal Borrower, the Financial Creditor on 06.07.2018 issued a letter of invocation in respect of the PG's pertaining to the Guarantee Agreement invoking the Personal Guarantee of Mr. Balkrishan Das Mundhra thereby demanding the said PG jointly and severally pay, with other borrowers and other guarantors an aggregate outstanding amount of Rs. 227,98,32,621 (Rupees Two Hundred Twenty-Seven Crores Ninety-Eight Lakhs Thirty-Two Thousand Six Hundred and Twenty-One only.)

12. It is observed that an Original Application before the Ld. DRT, Kolkata, being O.A. No. 237 of 2018 had also been filed by the Financial Creditor. The said O.A. was allowed vide order dated 17.01.2023 and it was directed that a recovery certificate be drawn up in terms of the order for recovery of Rs. 232,70,27,982.40 (Rupees Two Hundred Thirty-Two Seventy Lakhs Seven Thousand Nine Hundred Eighty-Two and Forty paisa) together with interest 12% p.a. with monthly rest from 01.07.2021 till payment realisation.

13. In the case of *Dena Bank v. C. Shivakumar Reddy (2021) 10 SCC 330*, the Hon'ble Supreme Court, in paragraphs 136 and 141 of the judgment has observed as follows:-

“136. A final judgment and order/decreed is binding on the judgment debtor. Once a claim fructifies into a final judgment and order/decreed, upon adjudication, and a certificate of recovery is also issued authorising the creditor to realise its decretal dues, a fresh right accrues to the creditor to recover the amount of the final judgment and/or order/decreed and/or the amount specified in the recovery certificate.

141. Moreover, a judgment and/or decreed for money in favour of the financial creditor, passed by the DRT, or any other tribunal or court, or the issuance of a certificate of recovery in favour of the financial creditor, would give rise to a fresh cause of action for the financial creditor, to initiate proceedings under Section 7 IBC for 21 initiation of the corporate insolvency resolution process, within three years from the date of the judgment and/or decreed or within three years from the date of issuance of the certificate of recovery, if the dues of the corporate debtor to the financial debtor, under the judgment and/or decreed and/or

in terms of the certificate of recovery, or any part thereof remained unpaid.”

14. The Hon'ble Supreme Court in the case of ***Kotak Mahindra Bank v. A. Balakrishnan and Anr. (2022) 9 SCC 186*** affirming the decision passed in *Dena Bank (supra)* held as follows:-

“86. To conclude, we hold that a liability in respect of a claim arising out of a Recovery Certificate would be a “financial debt” within the meaning of clause (8) of Section 5 of the IBC. Consequently, the holder of the Recovery Certificate would be a financial creditor within the meaning of clause (7) of Section 5 of the IBC. As such, the holder of such certificate would be entitled to initiate CIRP, if initiated within a period of three years from the date of issuance of the Recovery Certificate.”

15. Thus, it can be inferred that an order by the Ld. DRT would give rise to a fresh cause of action for the Financial Creditor to initiate proceedings under the IBC within three years from the date of issuance of the order, if the dues to the Financial Creditor or any part thereof remains unpaid. The claim arising out of such an order, would be considered as a ‘financial debt’ within the meaning of Section 5(8) of the IBC. Hence, this claim can be considered to be a financial debt with respect to the Financial Creditor and the PG.

16. In the present case, the order to draw up a recovery certificate by the Ld. DRT, Kolkata is dated 17.01.2023 and the instant Company Petition under Section 95 of the IBC was filed on 13.05.2024, i.e., within limitation period of three years from the date of the Ld. DRT's order. Thus, this petition is well within the prescribed period of limitation.

17. The Financial Creditor issued a demand notice dated 28.04.2023 upon the PG to their address being 126, Southern Avenue, Kolkata, West Bengal - 700029 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019, directing the Guarantor to repay the unpaid debt in default, being a sum of Rs. 424,44,69,649 (Rupees Four Hundred and Twenty-Four Crores Forty-Four Lakhs Sixty-Nine Thousand and Six Hundred Forty-Nine only).

18. Further, the aforesaid demand notice was returned undelivered from the post office with remarks '*left*'. The Applicant after discovering a new address, being S-41, 1st Floor, Panchsheel Park, New Delhi - 110017, served another demand notice which was once again returned undelivered from the post office, marked '*addressee left*'.

19. The present 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.

20. We have considered the Report and perused the details of the claim indicated therein.

21. We are satisfied with the recommendation of the RP to admit the application.

22. In absence of any dispute or controversion by the Personal Guarantor, this application is admitted with the following directions.

23. Hence, we pass the following order:

I. This application is **admitted** under Section 100;

II. **In terms of Section 101:**

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

III. **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;
- d) In relation to a firm, the moratorium under subsection (1) shall operate against all the partners of the firm.
- e) 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.
- f) In absence of any prayers from any quarters against the nominated Resolution Professional, the IRP i.e., **Mr Sanjai Kumar Gupta** will act as the Resolution Professional.
- g) The said RP shall act in terms of Section 102, 103, 104 of the Code, to cause public notice, invite claims from creditors, prepare list of creditors, and hold regular meeting as directed hereunder:

IV. In terms of Section 102:

The Resolution Professional shall cause 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.

- 1) 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.

- 2) 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) placed on the website of the Adjudicating Authority.

V. In terms of Section 103:

a) 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. b) In addition to the claims referred to in subsection (1), the creditor shall provide to the

resolution professional, personal information and such particulars as may be prescribed.

VI. In terms of Section 104:

The resolution professional shall, within 30 days from the date of notice 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; and;
- b) claims received by the resolution professional under section 102.

VII. In terms of Section 105:

The Resolution Professional shall assist the debtor in preparing repayment plan containing a proposal to the creditors for restricting of his debts or affairs.

VIII. In terms of Section 106:

The Resolution Professional shall submit the repayment plan under Section 105 along with his report, within 21 days from the last date of submission of claims under Section 102 specifying.

- a) That the repayment plan is in compliance with the provisions of any law for the time being in force;

b) That the repayment plan has a reasonable prospect of being approved and implemented; and

c) Whether there is a necessity of summoning a meeting of the creditors, if required, to consider the repayment plan:

Meeting of creditors shall be held if necessary, specifying the-

a) Date, Time and Place of meeting after consulting the creditors;

b) Within 14 to 28 days from submission of its report;

c) After issuance notice for meeting at least 14 days in advance, to all the creditors mentioned in the list of creditors.

IX. The Resolution Professional shall prepare a report of the meeting in accordance with Section 112 and furnish a report to this Adjudicating Authority.

24. Thus, we accept the application filed under Section 95(1) of the IBC, 2016 for commencement of Insolvency Resolution Process against the Personal Guarantor. C.P. (I.B.) 138/KB/2024 stands admitted. Let the Company Petition be listed on 06.08.2026 for further consideration.

25.The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

26.Certified copy of the order may be issued, if applied for, upon compliance all requisite formalities.

Rekha Kantilal Shah

Member(Technical)

Labh Singh

Member(Judicial)

Order signed on the 22nd day of June,2026.

T.Roy (LRA)