

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH- I
KOLKATA**

IA(IB)No.1203/KB/2024

In

Company Petition (IB) No. 119 of 2024

In the matter of:

An application under Section 99 of the Insolvency and Bankruptcy Code;

Read with

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 Debtors) Rules, 2019]

In the matter of:

Indian Bank

...FINANCIAL CREDITOR

Versus

Mr. Aditya Vikram Agarwal

...RESPONDENT/PERSONAL GUARANTOR

Versus

Mr. Ram Ratan Modi

...RESOLUTION PROFESSIONAL/APPLICANT

Date of Pronouncement of Order: 14.05.2026

CORAM:

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

CMDE SIDDHARTH MISHRA, HON'BLE MEMBER (TECHNICAL)

Appearances (via video conferencing/physically):

Mr. Santosh Kr. Ray, Adv.] For the Financial Creditor

Ms. Zeba Khan, Adv.]

Ms. Muskan Saha, Adv.]

Ms. Ashmita Lohia, Adv.]

Mr. Mohit Sharma, Adv.] For the Resolution Professional

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O R D E R

Per: Siddharth Mishra, Member (Technical)

1. The Court Convened in a hybrid mode.
2. This IA(IB)No. 1203/KB/2024 in CP (IB) No.113/KB/2024 has been preferred by the Resolution Professional and the Financial Creditor to seek initiation of Insolvency Process against the Respondent Personal Guarantor to Corporate Debtor Under Section 99 and Section 95(1) of IBC read with Rule 7(2) of IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 ('Personal Guarantors Regulations').
3. The amount in default is Rs.30,52,47,034.04p/- (Rupees Thirty Crores Fifty Two lakhs Fourty Seven Thousand Thirty Four and Four Paisa Only). Date on debt & default was due is 30.11.2023 and Date on debt & default occurred is 28.02.2018.
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 V/s 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*

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- 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*

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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.

- 6.** The Applicant had not proposed the name of the Insolvency Professional for appointment as Resolution Professional. In view of the above, Mr. Ram Ratan Modi, IBBI Registration No. IBBI/IPA-001/IP-P-00051/2017-2018/10125, email ID: **rrmodi@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 99 in two weeks.
- 8.** The Resolution Professional Mr. Ram Ratan Modi has vide his report dated 21.06.2024 suggested/stated as extracted hereunder:

Report by Resolution Professional u/s 99 of IBC, 2016

1) The Hon'ble National Company Law Tribunal, Kolkata Bench, Kolkata, in CP(IB)/119 (KB) 2024 vide its order dated 06 May, 2024 appointed Mr. Ram Ratan Modi, IBBI Registration No. IBBI/IPA-001/IP-P-00051/2017-2018/10125 as Resolution Professional (RP), in exercise of the power conferred under Section 97 of IBC, 2016. As per the said order, RP was directed to file his report in terms of the section 99 of the IBC within a period of Ten days. The said order was received by the RP on 14th May 2024 by an e-mail communication from SKR ADVOCATE on behalf of Indian Bank. The copy of the said e-mail is enclosed herewith and marked as Annexure "R1".

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2) As per the said order RP was asked to file his declaration to the affect that he fulfils all the requirement for being appointed as Resolution Professional in the matter. The RP has filed with the IBBI the relevant Form No. 2 for his consent in this regard. A copy of the same is also enclosed herewith and marked as Annexure "R2(colly)". It is to be noted that the consent has also been sent by email to registry of NCLT on 12th June, 2024. Copy of the email is enclosed with the above Annexure "R2".

3) The Resolution Professional requested the registry, NCLT Kolkata to add the above stated assignment in the ID of RP on NCLT e-filing portal by email on 14.05.2024 and again on 12.06.2024.

4) In view of the above the RP could not submit his report within the stipulated time and the RP hereby most humbly request for condonation of delay thus arising in filing this report.

Relevant details from the application filed by the creditor:

5) Indian Bank through its concerned branch at Stressed Asset Management Branch, large corporate branch, 14, India Exchange Place, 1st Floor, Kolkata 700001 is the creditor in the instant case.

6) Indian Bank is the applicant in the above-mentioned CP (IB)/119(KB)2024. The Allahabad Bank through it's the then Gariahat Branch, Kolkata, which is now known as the Indian bank after its amalgamation on March 04, 2020, the applicant herein, has given cash credit facility of Rs. 15 Crores in favour of M/S Vineet Oils Private Limited (Corporate Debtor) vide last Sanction letter No. GHT/ADV/2015-16/426 dated 06.11.2015. As per the Sanction Letter,

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the non-funded facility of Letter of Credit was within the sublimit of Cash Credit facility. The sanction letter is found enclosed with the application as annexure A2.

7) The general letter of Hypothecation dated 17.12.2015 found annexed to the application as A3, Copy of Demand Promissory Note dated 17.12.2015 found annexed with the application as A4, copy of letter confirming deposit of title of title deeds found annexed to the application as A5 are perused.

8) For the purposes of securing credit facilities, the Respondent in the said application, Mr Aditya Vikram Agarwal, executed letter of guarantee on 17.12.2015 which was found annexed with application as A6. It is to be noted that there are three personal / Corporate guarantor as per the sanction letter. The other guarantors are Ms Shreya Agarwal and a partnership firm named M/S VOC International.

9) Due to the failure in meeting the repayment obligation as per the terms, the corporate debtor was classified as NPA as on 28.02.2018.

10) The copy of notice u/s 13(2) & 13(4) of SARFAESI Act found annexed as A7 & A8 respectively with the application in Form 'C' were also perused by me.

11) The Respondent, being one of the Personal Guarantor to the Corporate debtor, was duly served by the applicant, a statutory demand notice dated 01.12.2023, being Form B under Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of the Personal Guarantors to Corporate debtor)

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Rules, 2019, requesting him to unconditionally pay the unpaid debt in default in full within fourteen days from the receipt of the said demand notice. As per Demand notice in Form 'B', the amount of debt in default is Rs. 30,52,47,034.04 as on 30.11.2023 (Principal Rs. 13,12,55,526.50 and interest Rs. 17,39,91,507.50). On receipt of the demand notice, the Respondent sent a reply to the Indian Bank on 19th February, 2024 stating that the loan account of the principal borrower was classified as NPA on 28.02.2018 and the demand notice was issued much beyond 3 years and hence the claim was barred by limitation. The personal guarantor has claimed that the demand notice is barred by limitation. Thus, the guarantor failed to pay the above amount. The Applicant under such circumstances filed the application u/s 95 of IBC seeking insolvency resolution process against the respondent who is the personal guarantor to the Corporate Debtor. The guarantor's reply dated 19.02.2024 to the demand notice in Form 'B' is not found in the application. However, the same was shared with the RP by the guarantor concerned and the same is enclosed herewith and marked as Annexure "R3",

12) The Respondent guarantor also did not pay the above dues of the corporate debtor in spite of the demand notice in Form 'B' being served upon him.

13) The said application was filed in Form C under rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019.

Detail of the Demand Notice issued to Personal Guarantor:

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14) Mr. Aditya Vikram Agarwal of 222, A.J.C Bose Road, 3rd Floor, Suit 3 E, Circular Mansion, Kolkata 700017, is one of the Personal Guarantor to the Corporate debtor M/S Vineet Oils Private Limited.

15) Indian Bank, Creditor herein issued a demand notice in Form B on 01.12.2023 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 for an outstanding debt (including any interest or penalty) 30,52,47,034.04 as on 30.11.2023. Rs.

16) The said debt was due since 28.02.2018 and the default occurred on 28.02.2018 as per the detail given in Form B.

17) By the above demand notice, the Personal Guarantor was requested to pay the above unpaid debt in default in full within 14 days from the date of its receipt.

18) The said demand notice was received by the debtor which is evidenced from the fact that he has submitted his response to the same on 19.02.2024.

Observations by the RP:

19) In the demand notice, the outstanding debts in respect of the unpaid debt of the Corporate Debtor as on 30.11.2023 is shown as Rs. 30,52,47,034.04 which is same as in Part III of the application u/s 95 in FormC.

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20) It is mentioned in S.No.9 of Form B (Form of Demand Notice dated 01.12.2023) that the CIR Process of the Corporate Debtor was ordered vide order dated 17.02.2022 in CP/(IB) No. 696/KB/2020. However, no such information is found mentioned in the Application in Form C. It was ascertained by RP from NCLT website that above stated CIR Process is not in connection with the Corporate Debtor i.e., Vineet Oils Private Limited. An email was sent by RP to the applicant creditor on 17.05.2024 seeking clarification for the above. In the said email RP raised some other queries also. The copy of the said email is enclosed herewith and marked as Annexure "R4".

21) The applicant creditor responded to the above email of RP and clarified that the detail of the CIR process mentioned in the demand notice in Form B was wrong. They further clarified that the Corporate Debtor has not been subjected to any CIRP/Liquidation. This reply email dated 29.05.2024 by the Applicant creditor is enclosed herewith and marked as Annexure "R5".

22) The RP sent another email to the Applicant creditor on 12.06.2024 regarding a query for disposal of a property. No reply/response against the same has been received so far. The copy of this email is enclosed herewith and marked as Annexure "R6".

23) It is further noticed that the proof of service to the Personal Guarantor of demand notice dated 01.12.2023 is not attached with the application. However, the Applicant creditor in its reply to the RP's email dated 29.05.2024 has attached the copies of representation in respect of the demand notice issued to the borrower/guarantor.

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24) The Resolution Professional has also gone through the other documents attached with the application like notices issued under SARFEASI Act.

25) In terms of section 99(1) of the IBC, 2016, the Personal Guarantor Mr Aditya Vikram Agarwal was given opportunity by RP and an email dated 17.05.2024 was sent by the RP to the Personal Guarantor along with full copy of application. The said email is enclosed herewith & marked as Annexure "R7". The Personal Guarantor stated in his reply that, the reply submitted by him to the Applicant on 19.02.2024 against the demand notice dated 01.12.2023 was not mentioned in the application filed with the Adjudicating Authority by the Indian Bank and also the amount claimed in the application is inflated. The Personal Guarantor further stated that the demand notice issued by the Indian Bank is beyond 3 years from the date of default and hence the same is barred by limitation. The reply from the Personal Guarantor received by the RP is attached herewith and marked as Annexure "R8".

26) It is seen that the documents mentioned in Serial No. 15 of Part III of Form-C are all attached with the application.

27) Interest Calculation sheet (from page no. 77, 78 and 78 of Form-C) along with the statement in support of the principal amount due (page no. 72-76 of Form -C) has been furnished in the Application.

28) No information is available with Information Utility under section 99(3) of the IBC, 2016.

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29) Since the application is filed by the creditor, no further information or explanation is sought from the debtor, except as mentioned above, or from any other person. Therefore, section 99(5) is not applicable.

30) Section 99(8) of IBC, 2016 regarding fresh start is not applicable in the instant case.

31) The copy of the report has been given to the debtor and creditor both in terms of section 99(10) of IBC, 2016.

Discrepancies and Explanations:

32) It is observed that no evidence is attached of the Proof of Service of the demand notice on the Personal Guarantor. But the proof of the same having been served upon the guarantor is evidenced by a reply/response given by the guarantor on 19.02.2024.

33) There was a wrong mention of CIR process against the Corporate Debtor which is revealed from S.No.9 of Form B (Form of Demand Notice dated 01.12.2023). However the same was admitted to be an inadvertent mistake by the Applicant Creditor vide their reply to the query raised by the RP.

34) It is noticed by RP in Form-C that one property comprising of Ground Floor and First Floor aggregating to 1674 Sq. Ft. situated at 22 Shib Thakur Lane, P.S- Posta, P.O- Burrabazar, Kolkata 700007 together with the undivided share in the common area and facilities, standing in the name of Corporate Debtor has been given as collateral security. It was not clear from Form-C whether the same have been sold

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by the Applicant or not. The RP raised a query through an email dated 12.06.2024. However the same is still remaining unresponded.

35) As mentioned in Para 25 above, the guarantor has disputed the debt and the default as highly inflated and has alleged that the issue of the statutory notice in Form-B is time barred. It is stated by the guarantor that the issuance of the notice dated 01.12.2023 much after expiry of three years from the date of issuance of recall notice dated 25.01.2018 is not maintainable since the same is barred by limitation.

36) It is further alleged by the guarantor that the copy of the impugned application in Form-C filed with the Adjudicating Authority was not served upon him. In this regard, it is found by RP that the said application was sent by the Indian Bank on a wrong email id c@gmail.com, which have been claimed as never belonging to the guarantor. It is stated by RP that the service of the said application was made to guarantor only at the above-mentioned email address.

37) It appears that the applicant Banker has neither attached the response of the guarantor to the demand notice in Form-B nor has dealt with such response in any way in Form-C.

9. Recommendation are as under:

In view of and subject to the above observations, discrepancies and explanations and because of

a) The debtor herein has committed default in repayment of his liabilities in terms of the debt arising on account of invocation of personal guarantee in Form 'B' given by the creditor (Indian Bank).

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b) The said application has been filed by the creditor in compliance to section 95 of the IBC, 2016 and is accompanied by the documents as mentioned in section 95(4) subject to above observations.

c) The copy of application has been served on the debtor as stipulated in section 95(5) of IBC, 2016 which can be evidenced from the response submitted by the guarantor to the demand notice.

d) The application preferred in section 95(1) of IBC, 2016 is in Form 'C' and is accompanied by the requisite fee as prescribed.

e) The application subject to observation stated hereinabove satisfies the requirements set out in section 95 of IBC, 2016.

The Resolution Professional is hereby, recommending for approval of the application u/s 99(7).

10. In the order dated 10th September, 2025 this Tribunal asked for some clarification from the Resolution Professional, by way of a supplementary affidavit dated 22nd September, 2025 the RP replied to the clarification which the Tribunal have asked and which is as under:

SL. No.	HEAD	PARTICULARS
1.	Date of Default	28 th February, 2018
2.	Date of Invocation.	A. The date of invocation has been taken as the date of issuance of notice dated 08 th March, 2018 to the Principal Borrower (Vineet Oils Private Limited) with a copy to the Personal Guarantor herein, under Section 13(2) of the SARFAESI Act, 2002. The Principal Borrower was called upon to discharge the entire liability as on the date of said

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		<p>notice within 60 days from the date of the said notice. The said notice was copied to the Personal Guarantor herein, inter alia others.</p> <p>B. The other important dates in this regard are as below:</p> <p>(i) Recall Notice by Indian Bank on 25th January, 2018</p> <p>(ii) The clause 11 of the Deed of Guarantee dated 17th December, 2015 of the main petition is relevant and is reproduced below:</p> <p>“A statement or demand signed by the bank or its manager or its any other authorized official including an Authorised Officer under SARFAESI Act, 2002, showing that any sum is due and payable to the bank hereunder shall be conclusive evidence that such sum is in fact due and any demand or legal proceedings shall be sufficiently served if send by prepaid post to my/our address last known to the bank or stated herein and shall be deemed to have reached me/us in course of post.”</p> <p>(iii) Demand Notice dated 01st December, 2023 under Rule 7(1) of IBBI Rules has been issued.</p>
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3.	Whether the petition is barred by Limitation	<p>The instant petition was filed on 30th March, 2024 whereas a demand notice dated 01st December, 2023 in Form B under Rule 7(1) of IBBI Rules, 2019, was issued to the Personal Guarantor herein. However, if the date of invocation of the guarantee is taken as the date of issue of notice under Section 13(2) of the SARFAESI Act, 2002, the filing of the instant petition by Indian Bank can be held to be time barred in terms of the ratio laid down by Hon'ble NCLAT Principal Bench, New Delhi in Company Appeal (AT) (Insolvency) No. 84 of 2025 & I.A. NO. 334 of 2025 vide their order dated 15th May, 2025 in Asha Basantilal Surana Vs. State Bank of India & Ors.</p> <p>Otherwise also, even if it is held that there is no explicit invocation of guarantee in the above stated notice under Section 13(2) of the SARFAESI Act, 2002, no other notice of invocation of guarantee appears on record except the demand notice in Form B under Rule 7(1) of the IBBI Rules.</p>
4.	When or at which date the Form B Notice was served.	It has been reported by the Resolution Professional in the report dated 14 th June, 2024 of the RP's report, "That no evidence is attached of the proof of service of demand notice on the Personal Guarantor. But the

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		proof of the same having been served upon the guarantor is evidenced by a reply/response given by the Guarantor on 19.02.2024". the said reply of the Guarantor can be found.
5.	Proof of service of Notice.	As stated in the point no.4 above, no Proof of service of Notice under Rule 7(1) of IBBI Rules have been attached with the Petition filed by the Indian Bank.

- 11.** The Personal Guarantor has neither entered appearance nor refuted the statements in the Resolution Professional report.
- 12.** We have considered the report and perused the details of claim indicated therein.
- 13.** In view of the above and upon perusal of the clarification affidavit the report of the Resolution Professional clearly says that the Petition is barred by Limitation and that no evidence is attached of the proof of service of demand notice on the Personal Guarantor.
- 14.** Therefore, in view of the above report placed by the RP by way of clarification affidavit this **Company Petition No. 119 of 2024** stands **Dismissed**. IA(I.B.C)1203(KB)/2024 is **disposed of**.
- 15.** 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.

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

**Siddharth Mishra
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

Signed on this, the **14th May, 2026.**

S. Ghose, (Steno)