



**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, Court-II CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

IA No. 2727/2023, IA No. 2974/2023
&
CP (IB) No. 158/Chd/Hry/2023

**Under Section 95 of Insolvency and
Bankruptcy Code, 2016**

**(Report under Section 99-100, Read
with Rule 7(2) of the Insolvency and
Bankruptcy Code, 2016)**

IN THE MATTER OF CP (IB) No. 158/Chd/Hry/2023:

1. Punjab National Bank

Having its Branch Office at:
Zonal SASTRA Centre
SCO 60-61, Sector 17-B
Chandigarh

2. Indian Bank

Having its Branch Office at:
Sector-8, Madhya Marg
Chandigarh

... Financial Creditor/Applicant

Vs.

Mohita Indrayan

r/o B3-1801
The World Spa, Sector-30
Gurgaon, Haryana- 122001

... Personal Guarantor/Respondent

IN THE MATTER OF IA No. 2726/2023:

Mohita Indrayan

r/o B3-1801
The World Spa, Sector-30
Gurgaon, Haryana- 122001



Vs.

1. **Punjab National Bank**

Having its Branch Office at:
Zonal SASTRA Centre
SCO 60-61, Sector 17-B
Chandigarh

2. **Indian Bank**

Having its Branch Office at:
SAM Branch, SCO 49-50
Sector-17-B, Chandigarh

...Respondents/Financial Creditors

And In The Matter of I.A. No. 2973/2023

Navneet Gupta

1598, Level-1
Sector- 22B, Chandigarh- 160022

... Resolution Professional/Applicant

Vs.

Mohita Indrayan

Personal Guarantor of Indian Clothing League Private Limited
r/o House No. B3, 1801,
The World Spa, Sector-30
Gurugram, Haryana- 122001

...Personal Guarantor/Respondent

Section: 95 of the Insolvency and Bankruptcy Code, 2016

Judgment delivered on: 12.08.2024

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. ASHISH VERMA, MEMBER (TECHNICAL)**

Present:

For the Petitioner : Mr. Arpit Chawla and Mr. Rajan Chawla,
Punjab National Bank Advocates

For the RP : Mr. Arora Vishwas Kumar, Advocate

For the Respondent/ : Mr. Vaibhav Sharma, Advocate
Personal Guarantor



Per: Mr. Harnam Singh Thakur, Member (Judicial)
Mr. Ashish Verma, Member (Technical)

IA No. 2974/2023

1. The present application is a Report filed by Resolution Professional under Section 99 of the Insolvency and Bankruptcy Code, 2016 recommending the admission of the application filed under Section 95 of the IBC, 2016. The report is taken on record and hence, the application is disposed of accordingly.

IA No. 2727/2023

2. The present application is filed by Mohita Indrayan, the Personal Guarantor Applicant, seeking dismissal of the application bearing CP (IB) No. 158/Chd/Hry/2023 filed under Section 95 of the IBC, 2016, by Punjab National Bank and Indian Bank, the Financial Creditor Respondents.
3. The brief facts of the application are:
 - i. The Applicant is a Personal Guarantor to M/s Indian Clothing League Private Limited (the Corporate Debtor) for the cash credit facilities to the tune of Rs. 20 crore and Rs. 15 crore from the Punjab National Bank and Allahabad Bank, respectively.
 - ii. The Corporate Debtor defaulted in the repayments and the account of the Corporate Debtor was declared as a Non-Performing Asset (NPA) in March/May 2021. The creditors were, namely, Punjab National Bank, Indian Bank, and Shriram City Union Finance Limited. The total amount of debt in default is mentioned as Rs. 57.93 crore.



- iii. The Applicant filed a petition under Section 94 of the Code on 01.09.2022, which was registered as CP (IB) No.260/Chd/Hry/2022 on 28.09.2022 and as per Section 96(1)(a) of the Code, an Interim Moratorium commenced on the date of filing of the Section 94 petition in relation to all debts of the Applicant.
 - iv. Thereafter, Punjab National Bank and Indian Bank filed a separate Section 95 petition against the Applicant on 20.05.2023, i.e., after the interim moratorium had already commenced against the Applicant as on 01.09.2022 on account of the Section 94 petition filed by the Applicant. Thus, the Section 95 petition is pleaded to be dismissed, as it is barred under Section 96(1)(b)(ii) of the Code.
 - v. Reliance is placed upon the Hon'ble NCLAT's judgment dated 07.02.2023 in ***Company Appeal (AT) (Insolvency) No. 923 of 2022 titled as Bhavesh Gandhi vs. Central Bank of India, reported as [2023] 177 SCL 564.***
4. The Respondents filed their reply dated 21.01.2024 vide diary no. 03656/01 wherein it is submitted that the Applicant has no *locus standi* to challenge the petition filed under Section 95 of the Code. Despite filing an application under Section 94 of the Code, the Applicant only took adjournments to dodge the recovery process initiated by the Bank under the SARFAESI Act, 2002 and the RDB Act, 1993. It was only when the Resolution Professional was appointed by this Adjudicating Authority vide order dated 15.06.2023, the Applicant filed this present application. Further, the authority (*supra*)



relied upon by the Applicant is not applicable to the facts and circumstances of the case as in that matter, two Resolution Professionals were simultaneously appointed in two separate insolvency applications filed by the State Bank of India and the Central Bank of India, whereas in the present case, only one Insolvency Professional has been appointed.

CP (IB) No. 158/Chd/Hry/2023

5. The brief facts of the petition are:

- i. The present petition is filed by Punjab National Bank and Indian Bank, (hereinafter referred to as **“Petitioners”**) under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **“the Code”**) 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 (hereinafter referred to as **“Personal Guarantors Insolvency Rules”**) against Ms. Mohita Indrayan (hereinafter referred to as **“Respondent”**), seeking an order for initiation of the Insolvency Resolution Process (**“IR Process”**) against the respondent, who is the Personal Guarantor to M/s Indian Clothing League Private Limited (**“Corporate Debtor/Principal Borrower”**) and has extended personal guarantee to the tune of Rs. 45,37,73,821.67 to the Petitioners.
- ii. The Corporate Debtor defaulted in the repayment of debt and the account of Corporate Debtor was classified as NPA on 31.03.2021 and thereafter , the Personal Guarantor also defaulted on discharging the



guarantee given by her to repay the debt and therefore, the Personal Guarantor herself filed the petition u/s 94 of the Code, as discussed in para 3 of this order.

iii. It is worthwhile to note that an application under Section 94 of the Code was filed by the Personal Guarantor on 01.09.2022 and was registered on 28.09.2022, whereas the present petition was filed by the Financial Creditors on 20.05.2023 and registered on 13.06.2023, as per the report of the Registry (attached).

6. In terms of the Section 96 of the Code, an interim moratorium commences when an application is filed under Section 94 or 95 of the Code. Section 96 is reproduced hereunder for ready reference:

96. Interim- moratorium. - (1) When an application is filed under section 94 or section 95 –

- (a) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and*
- (b) during the interim-moratorium period -*
 - (i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and*
 - (ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.*

(2) Where the application has been made in relation to a firm, the interim moratorium under sub-section (1) shall operate against all the partners of the firm as on the date of the application.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

7. After considering the facts and circumstances of the case and considering the provisions of Section 96, we find that despite an application under Section 94 of the Code had been filed by the



Personal Guarantor prior to the Application under Section 95 was filed by the Financial Creditors, no efforts were put in by the Personal Guarantor to proceed with the application filed under Section 94 of the Code, which is clear from the fact that repeated adjournments were sought after filing of the petition u/s 94, resulting into that no RP could be appointed yet in the Section 94 petition. Therefore, from the conduct of the personal Guarantor, it is clear that he has not come before us with clean hands for his insolvency resolution but to stall the proceedings if any initiated by the Financial Creditor banks to take any action against him for the default committed by him for which he himself had moved the petition u/s 94 of the Code.

8. Contrary to delay caused in appointing RP in petition filed under section 94, Mr. Naveen Gupta has been appointed as the Resolution Professional in the Section 95 application and has submitted his report on 19.12.2023 under Section 99 of the Code, vide an I.A No. 2974 of 2023 recommending the admission of the Section 95 application, the details of which is stated below:-

COMPLIANCE IN TERMS OF SECTION 95 OF THE CODE READ WITH SECTION 99(6)(a) OF THE CODE

PROVISIONS	COMPLIANCES
A creditor may apply either by Himself, or jointly with other creditors or through resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.	The Application has been jointly filed by the creditors, Punjab National Bank and order creditors, or through a Indian Bank (Erstwhile Allahabad Bank).
<u>Section 95(4)(a) of the Code:</u> Details and documents relating to the debts owed by the debtor to the creditor or creditors	From a perusal and examination of the Application, it is found that the application is accompanied with details and various documents relating to debts



submitting the application for Insolvency Resolution Process as on the date of application ;	owed by the debtor to the creditor being the applicant herein, i.e. PunjabNational Bank and Indian Bank (Erstwhile Allahabad Bank); The said details and documents are provided in Part III of the application i.e. particulars of debt, the same have been scrutinized and found to be correct and in order.
<u>Section 95(4)(b) of the Code:</u> Details and documents relating to the failure by the debtor to pay the debt within period of fourteen days of the service of demand notice;	The Applicant Banks have served Demand Notices dated 07.03.2023 under debtor to pay the debt within rule 7(1) Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules 2019 on the personal Guarantor/ Respondent demanding the payment of the unpaid debt in default in respect of M/s Indian Clothing League Pvt. Ltd. However, the Respondent/Personal Guarantor has failed to repay the unpaid debt or provide any evidence of repayment within the prescribed 14 days or thereafter.
<u>Section 95 (4)(c) of the Code:</u> Details of the documents relating to relevant evidence of such default or non-payment of debt.	That M/ s Indian Clothing League Pvt. Ltd. was declared as a Non-Performing Asset in March/May 2021. The Financial Creditors i.e. Punjab National Bank and Indian Bank issued Demand Notices under Section 13(2) of the SARFAESI Act, 2002 to Ml s Indian Clothing League Private Limited. Punjab National Bank issued demand notice on 19.05.2021 whereas, Indian bank (Erstwhile Allahabad Bank) issued the same on 10.06.2021. The Personal Guarantor also was served with Demand Notice on 07.03.2023 by the Financial Creditor under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019 for repayment of the debt owed by him to the Financial Creditor in terms of the provisions of the Code prior to filing the Insolvency Application, but the Personal Guarantor has neither



	repaid the outstanding nor provided any evidence of repayment of debt.
Section 95(5) of the Code The Creditor shall also send a copy of the application made under sub-section(1) to the debtor.	As per the Proof of Service email attached in the main petition, the counsel for the Financial Creditor has duly sent the copy of the Application to the Personal Guarantor vide email dated 18.05.2023.

COMPLIANCE IN TERMS OF SECTION 95 OF THE CODE READ WITH SECTION 99(6) (a) OF THE CODE

PROVISIONS	COMPLIANCES
Section 99(2) of the Code: 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 Creditors.	<p>The Personal Guarantor was already in receipt of various demand notices issued by the Creditors and subsequent Application under Section 95 of the 2016 filed by the Creditors.</p> <p>The Resolution Professional has also addressed email dated 16.10.2023 to the Personal Guarantor. In addition to the aforesaid, a letter/notice was also sent through speed post to the Personal Guarantor on 19.10.2023.</p> <p>The guarantor was duly made aware of fact that the referred matter i.e C.P. (IB) No. i.e. 157/Chd/Hry/2023 is coming up before the Hon'ble NCLT, Chandigarh Bench and that he may ensure presence in person or through counsel on the said date.</p> <p>The Resolution Professional has issued various communications to the Personal Guarantor including but not limited to email dated 16.10.2023, letter dated 19.10.2023, emails dated 28.10.2023, 30.10.2023 and 27.11.2023 to prove repayment of the debt claimed as unpaid by the Applicant Bank/Creditor in accordance with Section 99(2) of the Code.</p> <p>However, the Respondent/Personal Guarantor has failed to prove any repayment of the debt claimed as unpaid by the creditor.</p>
Section 99(3) of the Code: Where the debt for which an application has been filed by a creditor is registered with the information	The actions of the Respondent/Personal Guarantor in support of aforementioned claim are as follows:



<p>utility, the debtor shall not be entitled to dispute the validity of such debt.</p>	<p>a. The Director and authorized signatory of the Corporate Debtor i.e. Indian Clothing League Private Limited, in reply to the Section 7 Application had deposed that he has no objection if the present application filed under Section 7 is admitted and CIRP is initiated qua the Corporate Debtor. Subsequently, vide Order dated 02.05.2023 CIRP has been initiated against M/s Indian Clothing League Pvt. Ltd.</p> <p>b. The Respondent/Personal Guarantor, Mr. Manu Indrayan had also filed an Application under Section 94 of the IBC, 2016 before this Hon'ble Tribunal on 01.09.2022 which is registered as C.P. (IB) No. 259 of 2022, wherein debt and default towards the creditors has been admitted. Therefore, it can be concluded that the debtor is not disputing the validity of such debt.</p>
<p><u>Section 99(4) of the Code read with Section 99 (6)(b)</u></p>	<p>The information provided by the Financial Creditors along with the Application filed under Section 95 of the 2016 is Exhaustive and accompanied by relevant documents & Annexures/proof in support thereof. Further, the Financial Creditors have provided the information and given the explanation sought by the Resolution Professional.</p>

9. Finally, RP in his report has made recommendation for initiation of insolvency resolution process submitting as below in the report: -

16. That in view of the facts, events, and circumstances as mentioned above, I, Navneet Gupta, Resolution Professional appointed by this Hon'ble Adjudicating Authority, NCLT Chandigarh Bench, vide order dated 15.06.2023 in CP (IB) 158/Chd/Hry/2023, hereby confirm that I have perused and examined the Application filed by the Creditors under Section 95 of the Code along with all the underlying documents, annexures and response given by the Respondent herein and have formed an opinion to recommend the same for approval to the Hon'ble Adjudicating Authority based on the following grounds:-

- a. The Insolvency Application has been filed in the requisite Form C, in terms of Rules 7(2) of the Insolvency and Bankruptcy*



(Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 and is supported by requisite fee and documents.

b. The Insolvency Application satisfies the requirements set out in Section 95 of the Code.

c. The Personal Guarantor was served with Demand Notice on 07.03.2023 by the Financial Creditor under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019 for repayment of the debt owed by him to the Financial Creditor in terms of the provisions of the Code prior to filing the Insolvency Application. The Personal Guarantor has neither repaid the outstanding nor provided any evidence of repayment of debt.

d. In terms of Section 99(2) of the Code the Resolution Professional has issued various communications to the Personal Guarantor including but not limited to email dated 16.10.2023, letter dated 19.10.2023, emails dated 28.10.2023, 30.10.2023 and 27.11.2023 to prove repayment of the debt claimed as unpaid by the Applicant Bank/Creditor in accordance with Section 99(2) of the Code. However, the Respondent/Personal Guarantor has failed to prove any repayment of the debt claimed as unpaid by the creditor.

e. The Insolvency Application does not relate to "excluded assets" as defined under Section 79(15) of the I & B Code, 2016.

f. The Debtor/Personal Guarantor is not eligible for fresh start under Chapter II of the Code.

10. After considering the entire facts of the present case and taking into account the above report of RP, we find that an interim moratorium as envisaged in terms of Section 96 (1)(b)(ii) preventing any legal action or proceedings against the Personal Guarantor on filing of petition u/s 94 by him does not mean to give undue advantage to the Personal Guarantors to defeat the very purpose of IBC, 2016 for which it has been enacted , which provides for resolving the insolvency in a time bound manner for maximization of assets of the person concerned against whom proceedings under IBC is initiated, which in the present



case is Personal Guarantor. If an application is filed under Section 94 by the Personal Guarantor himself, prior to any application being filed under Section 95 of the Code by the Financial Creditor and it appears to the Adjudicating Authority that the Section 94 Application is mere a shield to avoid or dodge the insolvency process which has been initiated by the Financial Creditors, the Personal Guarantor cannot be granted the benefit of an interim moratorium under Section 96 of the Code in the interest of justice. Therefore, we are of the considered opinion that the moratorium u/s 96 claimed by Personal Guarantor against the initiation of insolvency resolution on account of the filing of petition u/s 95 by banks would not come to his rescue, when he herself has admitted to be in default as per petition filed by her u/s 94 of the Code.

11. It is significant to note that the Personal Guarantor had herself admitted that a default had occurred in the repayment of the debt amount and has filed a petition u/s 94 to initiate the Insolvency Resolution Process against herself and the same is further supported with another petition filed under Section 95 of the Code , which also seeks to initiate the Insolvency Resolution Process against the Personal Guarantor. Therefore, in the interest of justice, application filed under Section 95 of the Code has to be proceeded with as both the applications filed aim to initiate the Insolvency Resolution Process against the Personal Guarantor. Since the Report has been filed by the Resolution Professional in the Section 95 Petition and all the



proceedings in respect of this Petition are completed, on the other hand, no Resolution Professional has been appointed in the Section 94 Petition so far, it would be expedient to proceed with the Section 95 Petition to take it to its logical conclusion instead of waiting for the proceeding in Petition filed under Section 94 of the Code to get completed, in which no Resolution Professional has been appointed till now

12. After satisfying ourselves that the present application has been filed within the limitation period, we have examined the report of RP submitted before us on 19.12.2023 vide I.A No. 2974/2023 wherein starting of insolvency resolution process against the Respondent/Personal Guarantor has been recommended. We have also considered all the facts and circumstances of the case and upon perusal of the documents on record, the CP (IB) No.158/Chd/Hry/2023 filed under Section 95 of the IBC, 2016 and not finding any force in the objections raised by the Respondent/Personal Guarantor against the said Petition filed by the Financial Creditor Bank and fully agreeing with the report of RP, we hereby admit the said application u/s 95 in accordance with the provisions of Section 100 of the Code, 2016 and accordingly, the Insolvency Resolution Process stands initiated against Ms. Mohita Indrayan, viz. the Respondent herein. We hereby direct as hereinafter:-



- i. Initiate Insolvency Resolution Process against the Respondent/Personal Guarantor and moratorium in relation to all the debts is declared, under section 100 from today i.e. date of admission of the application.
- ii. During the moratorium period as provided U/s 101, following restrictions would remain in effect :-
 - a) Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed, and
 - 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;
 - d) 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.
- iii. The Resolution Professional viz. Mr. Navneet Gupta Insolvency Resolution Professional, having Registration No. IBBI/IPA-001/IP-P000361/2017- 2018/10619 having his address at H.NO. 1598, First Floor, Sector 22-B, ,Chandigarh, Chandigarh ,160022 [E-Mail: navguptaca@gmail.com, is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on



the website of the NCLT Chandigarh 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.
- iv. the said notice shall be published in English and on Vernacular Language newspaper which is in circulation in the State where the debtor resides;
- a. affixed in the premises of this Adjudicating Authority; and
 - b. placed on the website of the Adjudicating Authority.
- v. The RP shall discharge all such duties as are incumbent upon him in terms of the provisions of Sections 104, 105, 106, 107, 108, 112 and 113 of the IBC, 2016, with due deference to the procedure enshrined in Regulation 5, 1, 8, 9, 11, 12, 13, 14, 15 and 17 of IBBI (Insolvency Resolution Process for Personal Guarantor to Corporate Debtors) Regulations, 2019 and also in terms of the other extent provisions of the aforementioned code/regulations and/or any other provisions of law applicable to him, in the discharge of his duties as RP.
- vi. The Resolution Professional, in exercise of the powers conferred under 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 or 95, as the case may be, and b. claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice. 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.

vii. The repayment plan may authorize or require the Resolution Professional to:

- a) carry on the debtor, 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. 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.

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, 2016. 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, 2016, 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 IBC, 2016.

- x. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC, 2016. 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 IBC, 2016 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 IBC, 2016.
- xi. The Resolution Professional shall submit his periodic reports before this Tribunal, every 30 days.
- xii. The Applicant is directed to deposit INR 1,00,000/- (Indian Rupees One Lakh) to the bank account of the Resolution Professional within one week, towards his fees. This shall be



subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.

- xiii. The Registry is directed to communicate a copy of order, report and application within seven working days and upload the same on the website immediately after the pronouncement of order.
13. To come up for consideration of Status Report to be filed by Rp, within 8 weeks.
14. Consequent to our above decision, **I.A. No. 2727/2023 is dismissed, and the petition bearing CP (IB) No. 158/Chd/Hry/2023 filed under the provisions of Section 95 of the IBC, 2016, by the financial creditors is allowed accordingly.**

Sd/-

(Ashish Verma)
Member (Technical)

August 12, 2024
ASG

Sd/-

(Harnam Singh Thakur)
Member (Judicial)