

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER**

IA(IBC) No. 561/JPR/2023
In CP No. (IB)- 56/94(1)/JPR/2022

IN THE MATTER OF:

MR. JITENDRA SINGH

...Applicant/
Personal Guarantor

IA (IBC) No. 561/JPR/2023

MEMO OF PARTIES

MR. JITENDRA SINGH

Through Mr. Sunil Kumar, RP

Reg. No. IBBI/IPA-001/IP-P-02607/2021-22/14018,
 4/46, KCC Nagar Ajmer Road,
 Hanuman Mandir, Near Sector 4 Park,
 Jaipur- 302021 (Rajasthan)
E-mail-sunilca84@gmail.com

...Applicant/ Personal Guarantor

For the RP	:	Priyanka Tiwari, Adv.
For the Applicant	:	Nitesh Shrivastava, Adv.
For the Respondent	:	Ratnesh Sharma, Adv.

Order Pronounced On: 13.08.2024

ORDER

Per: Shri Rajeev Mehrotra, Technical Member

1. The Applicant, namely *Mr. Jitendra Singh*, had filed an Application bearing *CP No. (IB)-56/94(1)/JPR/2022*, under Section 94(1) of the Insolvency and

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 Bankruptcy Code 2016 (the ‘IBC’ / ‘Code’) r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 (‘Rules’), seeking initiation of Insolvency Resolution Process (‘IRP’) against the Applicant/ Debtor who is the Personal Guarantor of the Corporate Debtor namely, *M/s Neo Aid Communication (India) Private Limited* for an amount of Rs. 2,11,66,191/- (Rupees Two Crores Eleven Lakhs Sixty- Six Thousand One Hundred and Ninety-One Only).

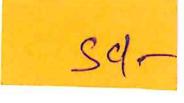
2. On presentation of the Application by the Applicant, this Authority *vide* Order dated 27.09.2023 had appointed *Mr. Sunil Kumar* as Resolution Professional (‘RP’), bearing Registration No. IBBI/IPA-001/IP-P02607/2021-2022/14018. The RP was directed to file a Report under Section 99 of IBC, 2016 which has been filed by him through *IA(IBC)No. 561/JPR/2023*.
3. The Present Application bearing *IA(IBC)No. 561/JPR/2023* has been filed by the RP under Section 99(1) read with Section 99(7) of the Code recommending the admission of the Application filed by the Personal Guarantor under Section 94(1) of the Code seeking commencement of Insolvency Resolution Process against the Debtor/Personal Guarantor, namely, *Mr. Jitendra Singh*. The Resolution Professional herein recommends acceptance of the said Application in accordance with Section



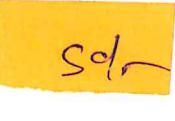

 99(7) of IBC and the reasons for such recommendation as per Section 99(9) of IBC, 2016 are set forth as below:

- 3.1. The Applicant/Personal Guarantor *Mr. Jitendra Singh*, in *CP-(IB)-56/94(1)/JPR/2022* herein falls within the parameters of Section 94(1) of the Code of 2016 as he has committed default in repayment of his liabilities in terms of debt arising on account of invocation of personal guarantee given by him for loan availed by Corporate Debtor *M/s Neo Aid Communications (India) Private Limited* from IndusInd Bank. The guarantee was invoked through a notice issued under Section 13(2) of the SARFAESI Act, 2002, and the liabilities remain unpaid.
- 3.2. The Debtor has committed a default in payment of its liabilities and therefore, the requirement set out in section 94(1) of IBC is satisfied and the Application has been filed in compliance with the provisions of Section 94(3) of the Code of 2016 as the said Application has been submitted only in respect of debts which are not excluded debts as enumerated under Section 79(15) of the Code.
- 3.3. That the Applicant/ Personal Guarantor does not fall under the prohibiting criteria mentioned under the provisions of Section 94(4) of the Code of 2016 and is entitled to file the said application under Section 94 of the Code of 2016 as the Applicant is:

- i. Not an undischarged bankrupt;

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- ii. Not undergoing a fresh start process;
 - iii. Not undergoing an insolvency resolution process; or
 - iv. Not undergoing a bankruptcy process.
- 3.4. That the Applicant is entitled to file the said Application pursuant to the criteria envisaged under Section 94(5) of the Code of 2016 as no application under Chapter III of the Code of 2016 has been admitted in respect of the Applicant/Personal Guarantor during the period of twelve months preceding the date of submission of the said Application under Section 94 of the Code, 2016.
- 3.5. That the said Application has been filed by the Applicant/Personal Guarantor in compliance with Section 94(6) of the Code of 2016 in ‘Form A’ along with an application fee of Rs. 2,000/- (Rupees Two Thousand Only) as prescribed in Rules of 2019 and in the manner as prescribed under Rule 6(1) of Rules of 2019.
- 3.6. That the Application filed u/s 94(1) is accompanied with details and documents relating to:
- a) The debts owed by the Corporate Debtor (for whom the guarantee has been given by the personal guarantor) to the creditors.
 - b) Relevant evidence of such default or non-repayment of debt.

3.7. That the Applicant/Personal Guarantor is not eligible under Section 80 for the fresh start process provided under Chapter II of the Code of 2016.

4. The compliance with the relevant sections of the Code is as follows:

Sr. No.	Requirements under Relevant provisions of Section 99 of the Code	Compliance by RP
i.	Section 99 (1): The RP shall examine the application referred u/s 94 or 95 within 10 days of appointment and submit a report to Adjudicating Authority for approval/rejection of the application	The RP submitted that the present report is prepared in compliance with the requirements of Section 99(1) of the Code.
ii.	Section 99 (2): 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 creditor by furnishing – a) evidence of electronic transfer of the unpaid amount from the bank account of the debtor; b) evidence of encashment of a cheque issued by the debtor; or	Not Applicable

	a signed acknowledgment by the creditor accepting receipt of dues.	
iii.	Section 99(3): Where the debt for which an application has been filed by a creditor is registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt.	Not Applicable
iv.	Section 99(4): For the purposes of examining an application, the resolution professional may seek such further information or explanation in connection with the application as may be required from the debtor or the creditor or any other person who, in the opinion of the resolution professional, may provide such information.	YES The RP sought clarification/information from the Debtor through various E-mails.
v.	Section 99(5): The person from whom information or explanation is sought under sub-section (4) shall furnish such information or explanation within seven days of receipt of the request.	E-mails received from the Debtor to the queries raised by the RP.
vi.	Section 99(6): The resolution professional shall examine	YES

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	<p>the application and ascertain that -</p> <p>(a) the application satisfies the requirements set out in Section 94 or 95;</p> <p>(b) the applicant has provided information and given explanation sought by the resolution professional under subsection (4).</p>	RP has examined the Application under Section 94 and relevant information has been provided.
vii.	<p>Section 99(7):</p> <p>After examination of the application under subsection (6), he may recommend acceptance or rejection of the application in his report.</p>	RP has recommended acceptance in the Report.
viii.	<p>Section 99(8):</p> <p>Where the resolution professional finds that the debtor is eligible for a fresh start under Chapter II, the resolution professional shall submit a report recommending that the application by the debtor under Section 94 be treated as an application under Section 81 by the Adjudicating Authority.</p>	No such observation has been mentioned in the Report.
ix.	<p>Section 99(9):</p> <p>The resolution professional shall record the reasons for recommending the acceptance or rejection of the application in the</p>	YES RP has laid down reasons for the Report.

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	report under sub-section (7).	
x.	Section 99(10): The professional shall give a copy of the report under sub-section (7) to the debtor or the creditor, as the case may be.	YES RP has filed the Report.

5. The sanction letters are attached with respect to loan availed by *M/s Neo Aid Communication (India) Pvt. Ltd.* and the Applicant is shown as Personal Guarantor in loan facilities availed from IndusInd Bank. The Applicant has filed this Application on basis of invocation of personal guarantee by IndusInd Bank on account of default committed by the Applicant in repayment of loan despite of service notice u/s 13(2) of SARFAESI Act, 2002. Therefore, the Applicant is eligible to file the Application u/s 94 of the Code. No document regarding change in debts and liability of the Personal Guarantor since filing of the Application has been brought on record. The Applicant has informed the RP about the change in residence, which is also his personal asset.
6. The Axis Bank Ltd. filed its Reply *vide* Dairy No. 455/2024 dated 23.02.2024 stated that the Axis Bank Ltd. had sanctioned a personal loan of Rs. 3,10,000/- (Rs. Three Lakhs Ten Thousand Only) to the Applicant. The Applicant defaulted, the account was declared as NPA and an amount of Rs. 1,94,659/- (Rs. One Lakh Ninety- Four Thousand Six Hundred and Fifty-

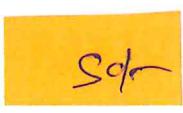
 Nine Only) is due as on 05.08.2022. The Bank is neither the Financial Creditor of the Corporate Debtor nor has sanctioned the above personal loan to the Applicant in capacity as Guarantor of the Corporate Debtor. The Bank has requested that the personal loan, due and payable by the Applicant in an individual capacity, be included in the payment plan of the Resolution Proceedings under this Insolvency Process.

7. The IndiaBulls Asset Reconstruction Company Limited has filed its Reply *vide* Dairy No. 362/2024 dated 08.02.2024, stated the following:

i) In 2016, the Corporate Debtor in the capacity of the borrower along with Personal Guarantors had approached the IndusInd Bank Ltd. for obtaining credit finance facilities. Loan agreements were executed between the parties, and as a result, a cash credit facility of ₹58 lakhs was sanctioned to the Corporate Debtor. The Personal Guarantors executed a letter of continuing guarantee in favour of the Corporate Debtor, thereby becoming jointly and severally liable for the repayment of the credit facilities.

ii) The said agreement in order to secure the Cash Credit, the Applicants specifically agreed to mortgage the property viz:-

“All those piece and parcel of residential flat situated at G-2, Ground Floor, Bhanu Apartment, Plot No. B-2/ 535, Chitrakoot Scheme, Jaipur Owned by Mr. Jitendra Singh measuring 1205 Sq. Ft.”



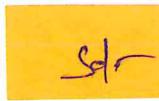
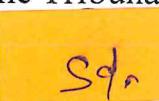
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(hereinafter referred to as “mortgaged property”). It is further stated that therefore first charge over the mortgaged property was created in favour of IndusInd Bank.

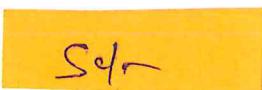
- iii) It is submitted that, by an assignment agreement dated 30.09.2019, the loan account of the Corporate Debtor was assigned by IndusInd Bank to the responding Asset Reconstruction Company. Consequently, all rights and titles to the loan account were transferred to the Asset Reconstruction Company, including the charge over the mortgaged property.
- iv) The loan account was classified as a NPA on 27.09.2018, and subsequently, a demand notice under Section 13(2) of the SARFAESI Act, 2002, dated 26.12.2019, was issued to the Corporate Debtor and the guarantors in relation to the facilities availed by the Corporate Debtor. Although the notice was duly served, the Corporate Debtor and guarantors refused to accept it and have subsequently failed to make the outstanding payment to the Asset Reconstruction Company.
- v) To recover its legitimate dues, the Asset Reconstruction Company filed an Original Application before the Debt Recovery Tribunal, Jaipur, on 01.06.2021. Although the Corporate Debtor and the guarantors were served with summons, they failed to appear before the Tribunal, leading to *ex-parte* proceeding as per the Order dated 23.11.2022. Consequently, a final order was passed on 06.03.2023, and the Tribunal

 issued a Recovery Certificate in favour of the Asset Reconstruction Company.

- vi) The Report of the RP states that the Applicant is only a Personal Guarantor in the facility obtained from the IndusInd Bank. The responding Asset Reconstruction Company holds the first charge over the subject mortgaged property. The guarantee was invoked by IndusInd Bank in relation to the credit facility obtained by the Corporate Debtor. It is further submitted that the present Application was filed by the personal guarantor to thwart the recovery proceedings initiated by the Asset Reconstruction Company. The similar view was taken by the Hon'ble NCLT Ahmedabad in the matter of *Rakesh Rameshkumar Shah* in CP (IB)/125/(AHM)2022 wherein an Application under Section 94(1) of the Code was filed and the same was rejected by the Hon'ble Tribunal *vide* its Order dated 08.01.2024. It is further stated in the Order that "*it appears to us that the sole intention of the debtor herein is to enjoy the moratorium as contemplated under Section 96 of the IBC, 2016 which commences from the date the application is declared defect-free by the Registry of the Tribunal.*"

8. The report submitted by the Resolution Professional, the Application i.e., IA(IBC)No. 561/JPR/2023 filed under the provisions of Section 99 of IBC is taken on record, and the CP No. (IB)- 56/94(1)/JPR/2022 is hereby admitted under Section 100 of the IBC.



9. Resultantly, an Insolvency Resolution Process is initiated against Personal Guarantor, and a moratorium is declared, which begins with the date of admission of the Application and shall cease to have effect at the end of the period of 180 days, as provided under Section 101 of IBC. During the moratorium period *inter-alia*, the following provisions shall be in effect;
 - 9.1 Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and
 - 9.2 The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and
 - 9.3 The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;
 - 9.4 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.

10. The Resolution Professional, *Mr. Sunil Kumar*, who has been appointed under Section 97 *vide* order dated 27.09.2023, is directed to cause a public notice to be published on behalf of the Adjudicating Authority within 7 days of uploading this order on the website of 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. The publication of the notice shall be made in two newspapers, one in English and other in

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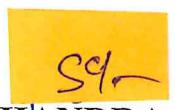
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 Vernacular language having wide circulation in the State where the Debtor resides. The Resolution Professional shall furnish two copies of the notice to the Registry. One shall be placed by the Registry on their website and the other shall be affixed to the premises.

11. The Resolution Professional in exercise of the powers conferred under Section 104 shall prepare a list of creditors within 30 days from the date of the notice. The debtor shall prepare a repayment plan in consultation with the Resolution Professional as provided under Section 105 which shall include the provisions for payment of fee to the Resolution Professional. 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.
12. 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 the 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 of the Code. In case the resolution professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof.




-  13. The meeting of the creditors shall be conducted in accordance with sections 108, 109, 110 & 111 of the Code. The Resolution Professional shall prepare a report of the meeting of the creditors on the repayment plan with all details as provided under Section 112 and submit the same to this Authority, copies of the same shall be provided to the debtor and the creditors. It is made clear that the resolution professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of the IBC, 2016.
14. The Personal Guarantor is directed to deposit Rs. 1,00,000/- (Rupees One Lakh Only) to the bank account of the Resolution Professional within one week towards its fees and expenses. This shall be subject to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.
15. In terms of the above, *CP No. (IB)-56/94(1)/JPR/2022* filed under Section 94 of the IBC, is admitted and the Insolvency Resolution Process stands initiated against the said Debtor/Personal Guarantor *i.e. Mr. Jitendra Singh*. Accordingly, *IA (IBC) No. 561/JPR/2023* stands disposed off.



**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**



**RAJEEV MEHROTRA,
TECHNICAL MEMBER**