

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

COURT-V

I.A. NO.4149/2024

IN

CP IB NO. 259/(ND)/2024

IN THE MATTER OF:

IKSHAVAKU SOFTWARE VENTURES INDIA PRIVATE LIMITED

.....PETITIONER/FINANCIAL CREDITOR

VERSUS

MR. RAHUL GAGERNA

....RESPONDENT/PERSONAL GUARANTOR

IN THE MATTER OF:

AKHIL CHADHA

....RESOLUTION PROFESSIONAL

Order Pronounced On: 14.10.2026

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**MS. REENA SINHA PURI,
HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For the Applicant : Ms. Ritwika Nanda, Ms. Saumya Verma, Advs.

For the Respondent : Mr. Rajnish Ranjan, Adv.

For the RP : Mr. Karan Malhotra, Mr. Anant Shankar Tripathi, Mr. Anant Sharma, Mr. Sarvesh Kumar, Advs., Mr. Akhil Chadha, RP in person

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ORDER

1. This Application contains Report under Section 99 of the IBC¹ by Mr. Akhil Chadha, Resolution Professional in the insolvency resolution process of Mr. Rahul Gagera, Personal Guarantor to Boutique Spirit Brands Private Limited, Corporate Debtor, brought by Ikshavaku Software Ventures India Private Limited, the Financial Creditor.
2. This Adjudicating Authority, vide order dated 11.07.2024 passed in CP (IB)-259/2024, appointed the Resolution Professional and directed him to file a report in terms of Section 99 of the IBC. The Resolution Professional has filed the said Report in IA-4149/2024.

Report of the RP:

3. The Resolution Professional has examined the application under Section 95 of the IBC and the details furnished by the Financial Creditor. He has recorded that the application satisfies the requirements of Section 95 of the Code read with the Rules², and has recommended admission of the application.
4. As per the Report, the Financial Creditor, Ikshavaku Software Ventures India Private Limited, operates an online technology platform for invoice discounting under the tradename viz. "TradeCred". The Corporate Debtor, Boutique Spirit Brands Private Limited, had entered into a Master Sale Agreement and other transaction documents with the Financial Creditor

¹ Insolvency and Bankruptcy Code, 2016

² Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019

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in the year 2020 for raising trade finance through the sale of invoices raised on its customers. The Personal Guarantor, being the Managing Director and Promoter of the Corporate Debtor, executed a Deed of Personal Guarantee dated 16.09.2020 in favour of the Financial Creditor. The Corporate Debtor had also executed various security documents, including a Deed of Hypothecation, Hypothecation Power of Attorney, Share Pledge Agreement and Pledge Power of Attorney all dated 21.05.2021. Further, in relation to the aforesaid transaction, Credas Trusteeship Services Private Limited was appointed as the "Security Trustee" through security trustee agreement dated 21.05.2021.

5. The Corporate Debtor discounted invoices to the extent of Rs. 40,00,00,000/-, which could not be realised from the customers, resulting in default in depositing the amounts in the Seller Escrow Account on the relevant Settlement Dates. Upon occurrence of the default, the Security Trustee issued a Notice of Default dated 31.03.2023 to the Corporate Debtor and the Personal Guarantor. The Personal Guarantor, by email dated 05.04.2023, acknowledged the Notice of Default and sought accommodation for payment until 30.04.2023.
6. As the outstanding amounts remained unpaid, the Security Trustee issued a Notice of Sale dated 05.05.2023 and thereafter invoked the pledged shares, realising an amount of Rs. 17,32,10,296/-. The Corporate Debtor subsequently acknowledged and confirmed an outstanding balance of Rs. 55,96,17,450/- as on 06.07.2023. Demand Notices were thereafter issued to the Corporate Debtor and the Personal Guarantor,

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including the statutory Demand Notice dated 22.02.2024 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.

7. The Resolution Professional has concluded that the outstanding debt of Rs. 55,96,17,450/- is evidenced by the Balance Confirmation issued by the Corporate Debtor and the Statement of Accounts filed by the Financial Creditor. It has further been recorded that the Deed of Personal Guarantee was executed by the Personal Guarantor, the guarantee was invoked, and the statutory Demand Notice dated 22.02.2024 was duly served upon the Personal Guarantor.
8. Further, the RP, in its Report, has stated that the S.99 Report was effectively served upon the Personal Guarantor. However, no reply was received from the Personal Guarantor, and no proof of repayment of the outstanding amount, or any part thereof, has been placed on record by the Personal Guarantor. The Resolution Professional has accordingly concluded that the requirements of Section 95 of the IBC are satisfied and has recommended that the application under Section 95(1) be accepted by the Tribunal.

ANALYSIS AND FINDINGS

9. We have heard the arguments submitted on behalf of the Resolution Professional as well as the Creditor.
10. The Ld. Counsel appearing for the Resolution Professional has taken us through the report as well as the relevant documents based on which the

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Resolution Professional has recommended for initiation of Personal Insolvency Resolution process against the Personal Guarantor.

11. As per the recitals of the Agreement of Guarantee dated 16.09.2020, particularly Clause 16 thereof, the guarantee is a continuing guarantee, and the liability of the Personal Guarantor continues to subsist until the outstanding debt is duly discharged. The Personal Guarantor has neither discharged the outstanding liability nor refused or repudiated his obligations under the Guarantee Deed. Further, the Demand Notice expressly stipulates in Point 6 thereof that the guarantee would stand invoked upon expiry of the period of seven days from the date of service of the Demand Notice. Accordingly, the guarantee stood invoked on 07.04.2023, upon expiry of the said seven-day period, and the limitation period against the Personal Guarantor would commence from the said date of invocation. Since the present application has been filed on 03.04.2024, i.e., within one year from the date of invocation of the guarantee, the present application is well within the prescribed period of limitation and is, therefore, maintainable within limitation.
12. The Personal Guarantor did not raise any objection to the report submitted by the Resolution Professional.
13. We therefore, accept the report of the Resolution Professional and admit the present Application filed under Section 95 of the Code, 2016 and initiate the Personal Insolvency Resolution Process against the Respondent-Personal Guarantor.

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14. The Personal Insolvency Resolution Process is initiated against the Respondent-Personal Guarantor. Resultantly, the moratorium begins on the date of this order and shall cease to have effect at the end of 180 days from the date of this order, as provided under Section 101 of the Code. During the moratorium period, the following provisions shall be in effect:
- a) Any pending action or legal 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 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.
15. The Resolution Professional is directed to cause a public notice to be published within 7 days of uploading this order on the website of this Adjudicating Authority for inviting claims from all the Creditors, who shall register their claims as provided under Section 103 of the Code within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102(2) of the Code.
16. The publication of the notice shall be made in newspapers, one in English and other in Vernacular which have wide circulation in the state.
17. The Resolution Professional in exercise of the powers conferred under Section 104 of the Code shall prepare a list of creditors within 30 days

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from the date of the notice. The Debtor shall prepare a repayment plan in consultation with the Resolution Professional as provided under Section 105 of the Code 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 Adjudicating Authority within a period of 21 days from the last date of submission of claims as provided under Section 106 of the Code.

18. In case the Resolution Professional recommends that meeting of the creditors is not required to be summoned, he shall record the reasons thereof. If the Resolution Professional is of the opinion that the meeting of creditors should be summoned, he shall specify the details as provided under Section 106(3) of the Code. 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 Section 106(1) of the Code, 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.
19. The meeting of the Creditors shall be conducted in accordance with Sections 108, 109, 110 and 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 of the Code and submit the same to this Adjudicating Authority, copies of which shall be provided to the debtor and the creditors.

20. The Resolution Professional shall be paid an amount of Rs. 2,00,000/- (Rupees Two Lakhs only) by the Financial Creditor to undertake further proceedings as per the Code. In addition, the public notice as envisaged under Section 102 of the Code shall be issued by the Resolution Professional on behalf of the Adjudicating Authority inviting claims. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under the Code.
21. Accordingly, the petition **CP (IB)-259 (ND)/2024** filed under Section 95 of the Code and **IA-4149/2024** stands **disposed of** in terms of the above directions.

Sd/-
(REENA SINHA PURI)
MEMBER (TECHNICAL)

Sd/-
(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (JUDICIAL)