

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

C.P.(IB)/33(KB)2021

*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:
UCO Bank

...Applicant

-Versus-

Swaran Kumar Kejriwal

...Respondent

**Order Reserved on: 30/08/2021
Order Pronounced on: 03/11/2021**

Coram:

Shri Rajasekhar V.K.

: Member (Judicial)

Shri Harish Chander Suri

: Member (Technical)

Appearances (through video conferencing)

For the applicant

: Mr. Rahul Auddy, Advocate

For the respondent

: Mr. Sanjib Das, Advocate

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. The Court convened via video conference.
2. Under consideration is an Application CP(IB)/33(KB)2021 filed under section 95(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC, 2016**”) r/w 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 “**IB Rules, 2019**”) and regulation 4(2) of IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (hereinafter referred to as “**IB Regulations, 2019**”) for initiating the Insolvency Resolution Process (hereinafter referred to as “**IR Process**”) against personal guarantor, viz., *Mr. Sarwan Kumar Kejriwal*, one of the directors of **Swati Mining Private Limited (CIN: U14200WB2007PTC114999)**.
3. The factual matrix of the case is that the Applicant is a banking company. Swati International, a partnership firm and the predecessor of Swati Mining Private Limited (Corporate Debtor) was granted credit facilities in 2004 by UCO bank (Financial Creditor) vide letter dated 26th August 2004 for Export Packing Credit (EPC) for a sanctioned limit of Rs. 1.75 crores. The Bank in 2006 had sanctioned an adhoc cash credit facility of Rs. 2.00 Crores. In 2007, the adhoc cash credit was enhanced from Rs. 2 crores to Rs. 2.25 crores and the EPC limit of Rs. 1.75 crores was continued with vide its sanction letter dated 28th March 2007. In the year 2008, Swati Mining Private Limited, being the Corporate Debtor herein took over all the assets and liabilities of the partnership firm Swati International. In the year 2009, the bank issued fresh sanction letter in the name of the Corporate Debtor wherein the existing Cash Credit limit of Rs. 4

crores was confirmed and BG limit of Rs. 0.7273 crores. The Bank revised its sanction vide sanction letter dated 14.12.2011 from Rs. 4 crores to Rs. 5 crores. Further in 2015 the Bank revised its sanction vide sanction letter dated 29.03.2014 from Rs. 5 crores to Rs. 7 crores. The Respondent Guarantor Mr. Sarwan Kumar Kejriwal along with Mr. Ashok Kumar Kejriwal and Mr. Amit Kumar Kejriwal executed the Deed of Guarantee for above sanction *vide* date 1st October 2004, 29th December 2006, 14th June 2007, 12th November 2009, 19th December 2011, 2nd April 2014 and 3rd April 2019. The Corporate Debtor started defaulting in the payment of the credit facilities granted by the Bank. Lastly, the Cash Credit/EPC/FBP was renewed at the existing limit of Rs. 5 crores and WCTL of Rs. 2.24 crores on account of devolved LC, aggregating to Rs. 7.24 Crores by the Bank *vide* its sanction letter dated 02.04.2019. To secure the aforesaid enhanced credit facilities, the Corporate Debtor executed the following documents:-

- (a) Extension of Equitable mortgage dated 3rd April 2019;
- (b) Demand Promissory note dated 3rd April 2019;
- (c) Personal Guarantee executed by Ashok Kumar Kejriwal, Amit Kumar Kejriwal and Sarwan Kumar Kejriwal dated 3rd April 2019;
- (d) Agreement relating to WCTL dated 3rd April 2019;
- (e) Agreement Re: Inland/foreign bills purchased and advances against bills in course of collection dated 3rd April 2019;
- (f) Packing Credit Form dated 3rd April 2019;
- (g) Composite Deed of Hypothecation dated 3rd April 2019;

The Corporate Debtor thereafter started defaulting in the repayment of the credit facilities.

4. Since the Corporate Debtor failed to make payment of its dues and finally the account was declared as Non-Performing Asset on 30/06/2019. The Corporate Debtor was admitted in Corporate Insolvency Resolution Process (CIRP) *vide* order dated 08.07.2019 in CP(IB)No.1161/KB/2018 filed by a partnership firm namely, Sree Bishandas Iron Works.
5. The guarantee of the guarantor is jointly and severally as that of the Corporate Debtor, and the default of the Corporate Debtor is to the sum of Rs. 6,89,92,729.09 (Rupees Six Crore Eighty Nine Lakh Ninety Two Thousand Seven Hundred Twenty Nine and Paise Nine only) as on 08.07.2019 [CIRP commencement date], the guarantor is indebted to the sum of Rs. 6,89,92,729.09 (Rupees Six Crore Eighty Nine Lakh Ninety Two Thousand Seven Hundred Twenty Nine and Paise Nine only) as on 08.07.2019 to the Financial Creditor and a personal guarantee has been given to secure the dues of the said sum. The personal guarantor, viz., Mr. Sarwan Kumar Kejriwal has executed personal guarantee in favour of the Applicant to secure the repayment of the principal amount together with all interest, additional interest, liquidated damages, premium on prepayments, reimbursement of all costs, charges and expenses and all other obligations payable by the Corporate Debtor in respect of the term loan.
6. In this factual conspectus, the applicant prays for initiation of insolvency resolution process.
7. The applicant has clearly brought it out in its application coupled with admissible evidence that the personal guarantor has committed default in making payment of the cash credit facility along with interest to the Applicant for which he has given the personal guarantee to the Applicant on behalf of the Corporate Debtor.

8. It is made known to everyone that on filing this Application by the Applicant/Creditor the interim-moratorium commences under section 96(1)(a) of IBC, 2016 in relation to all the debts of the personal guarantor and shall cease to have effect on the date of admission of this Application and during the interim-moratorium period the following is prohibited:
- (a) Any pending legal action or proceeding in respect of any debt of the personal guarantor shall be deemed to have been stayed; and
 - (b) The Creditors of the personal guarantor shall not initiate any legal action or proceedings in respect of any debt.
 - (c) 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.
9. The Applicant/Creditor has not proposed name of Insolvency Professional for appointment as Resolution Professional. Therefore, Mr. Suresh Kumar Bokaria, Registration NoIBBI/IPA-001/IP-P01625/2019-2020/12573 e-mail ipsurresh@gmail.com, whose name appears in the list of the Insolvency Professionals provided by the IBBI to NCLT, Kolkata is hereby appointed as Resolution Professional in exercise of the power conferred under section 97 of the IBC, 2016 on this Authority subject to the regulation 4(1) and (2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019. The Resolution Professional is directed to file declaration within 7 days from the date of receiving this Order to the effect that he fulfils all the requirements for being appointed as Resolution Professional in the matter.
10. The Resolution Professional shall exercise all the powers as enumerated under section 99 of the IBC, 2016 r/w the Rules made thereunder. He is directed to

make the recommendations with the reasons in writing for acceptance or rejection of this Application within stipulated time as envisaged under the provisions of section 99 of the IBC, 2016. The RP shall give a copy of the report under sub-section (7) of section 99 of IBC, 2016 to the Applicant/Creditor, as soon as the same is filed before this Authority.

11. The Counsel on record for the Applicant is hereby directed to serve the copy of this Order along with copy of the Application and documents on the Resolution Professional by all available modes for information and compliance. Proof of service shall be filed with this Bench for record.
12. List this matter on 23.12.2021.
13. 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.
14. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

Signed this 03.11.2021.

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