

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH - 1

KOLKATA

C.P. No. 185/KB/2021

In the matter of:

An application under Section 95 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to the Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.

And

In the matter of:

Central Bank of India, Stressed Asset Management Branch (SAMB); Central Bank Building (2nd Floor) 33, Netaji Subhas Road, Kolkata 700001.

... Applicant/Financial Creditor

Versus

In the matter of

1. **Himanshu Goyal**, of M/s. BRG Iron and Steel Co.(P) Ltd., Godrej Waterside Suite 402/403/404, Plot No.2, Block DP, Sector V,, Salt Lake City, Kolkata 700091.

... Personal Guarantor

Coram :

Shri Rajasekhar V.K. : Member (Judicial)
Shri Balraj Joshi : Member (Technical)

Appearances (through video conferencing):

Mr. Devajyoti Barman, Advocate] For Central Bank of India
Mr. Sudhir K. Senapati, Advocate]
Mr. Rajesh Keshri, RP] In person

Date of hearing: 19/04/2022

Date of pronouncement: 26/04/2022

ORDER

Rajasekhar V.K., Member (Judicial)

1. This Court convened through videoconferencing.
2. The Company Petition **CP(IB) 185/KB/2021** has been filed under section 95(1) of the Insolvency and Bankruptcy Code, 2016 (“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 (**IRP Rules**”) and regulation 4(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (“IRP Regulations”) by Mr. **Dashrath Pandurang Sadaye, Chief Manager in Central Bank of India**, Stressed Asset Management Branch (SAMB), the petitioner(‘Creditor’) against **Mr., Himanshu Goyal** (‘Personal Guarantor’) of **BRG Iron and Steel Co.(P) Ltd.** (Corporate Debtor).

Brief facts of the case

3. The Petitioner had given various loan facilities to BRG Iron and Steel Co.(P) Ltd., Godrej Waterside, Suite 402/403/404, Plot No.5, Block DP, Sector V, Salt Lake City, Kolkata 700091, *vide Deed of Guarantee dated 21.07.2014 & 08.03.2016.* BRG Iron & Steel Co. (P) Ltd. and the Personal Guarantor failed to make payment as per the terms of the Agreement a sum of **Rs.271.79 Crore** (Rupees Two Hundred Seventy One Crore and Seventy Nine Lakh Only) as on 03.02.2020 along with further interest..
4. The default of BRG Iron & Steel Co.(P) Ltd. was adjudicated *vide* notice of invocation made by the financial creditor on 25.02.2021.

5. BRG Iron & Steel Co.(P) Ltd was admitted under Corporate Insolvency Resolution Process (“CIRP”) by this Adjudicating Authority *vide* order dated **03/02/2020** on a petition filed under Section 7 in **CP(IB) No.513/KB/2018**, by one of the Financial Creditor. Since there is no Resolution Plan was forthcoming the Principal Debtor is put to Liquidation and the same is still pending and the Corporate Debtor is undergoing Liquidation process.
6. The applicant against the guarantors of the Principal Debtor has already initiated action under Recovery of Debts due to Banks and Financial Institutions Act, 1993, which is presently pending before the **Ld. Debt Recovery Tribunal-I, Kolkata being OA No.31/2020**.
7. The Petitioner issued a Demand Notice in Form B on 25/02/2021 under rule 7(1) of the IRP Rules but no response. Copy of the demand notice is annexed as **Annexure ‘C’** to the petition.
8. *Vide* an **order dated 16/09/2021**. this Adjudicating Authority appointed **Mr. Rajesh Keshri** as the Interim Resolution Professional under section 97 of the IBC, 2016 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. and directed the Interim Resolution Professional to file declaration within 7 days from the date of receiving the order to the effect that he fulfils all the requirements for being appointed as Resolution Professional in the matter and make the recommendations with the reasons in writing for acceptance or rejection of this Petition and file a report.

Report of the Resolution Professional

9. The Resolution Professional submitted his report on 29/11/2021. The IRP requested the Personal Guarantor vide his letter dated 29.10.2021 to furnish the following information/evidences to prove the repayment of the debt claimed as unpaid by Central Bank of India within seven days:-
- (a) Evidence of electronic transfer of the unpaid amount from his bank account;
 - (b) Evidence of encashment of a cheque issued by him; or
 - (c) A signed acknowledgement by Central Bank of India accepting receipt of dues;
 - (d) Copy of the document whereby the Personal Guarantee agreement dated 08 March, 2016 was cancelled by both parties, if any;
 - (e) Copy of the order of the court or any other forum whereby the personal guarantee agreement dated 08 March, 2016 was cancelled or set aside, if any.
10. The personal guarantor replied the above queries vide his letter dated 3rd November, 2021, which are as follows:-
- (a) He has not made any payment to Central Bank of India against the unpaid amount;
 - (b) Since he has not paid any amount, there is no evidence of any cheque issued to them by him;
 - (c) Since no amount is paid by him, there is no acknowledgement by Central Bank of India to this effect;
 - (d) The personal guarantee agreement referred by the Resolution Professional has not been cancelled by both the parties;
 - (e) The personal guarantee agreement has neither being cancelled nor has been set aside by any court or any other forum.

11. The Resolution Professional has recommended the acceptance of the Petition filed by Central Bank of India under section 95(1) of the Code for the following reasons:

- a. The default has been made by the debtor who is a personal guarantor to the Corporate Debtor;
- b. The debtor who is personal guarantor of Corporate Debtor has confirmed the Non-payment of the claim amount of creditor (vide letter dated 03.11.2021 in response to letter dated 29.10.2021 of RP. The said letters are attached with the report of the RP marked as **Annexure 'D'**).

12. In view of the above circumstances, the present petition made by the Petitioner is complete in all respects as required by law. We accept the Report of the Resolution Professional that the Personal Guarantor is in default of a debt due and payable.

13. It is, accordingly, hereby ordered as follows:-

- a. The application bearing **CP (IB) No. 185/KB/2021** filed by Central Bank of India, the Petitioner, under section 95 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 for initiating IRP against **Mr. Himanshu Goyal**, the Personal Guarantor, is **admitted**.
- b. There shall be a moratorium under section 101 of the Code, which will have effect from the date of this order till the end of 180 days or until this Adjudicating Authority approves the repayment plan under sub-section (1) of section 114 of the Code whichever is

earlier. The interim moratorium in terms of Section 96 of the Code shall cease to have effect from today.

- c. Public announcement of the IRP shall be made immediately as specified under section 102 of the Code.
- d. **Mr. Kanakabha Ray**, registration number **IBBI/IPA-003/IP-N00204/2018-2019/12456**, email id: kanak1686@gmail.com is hereby appointed as Resolution Professional (RP) of the Personal Guarantor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The RP shall carry out his functions as contemplated in sections 107, 108, 112, 113 of the Code.
- e. During the IRP period, the assets of the Personal Guarantor shall vest in the RP. The Personal Guarantor shall provide all documents in his/her possession and furnish every information in his/her knowledge to the RP within one week from the date of receipt of this Order, in default of which coercive steps will follow.
- f. The RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the IRP in respect of the Personal Guarantor.
- g. The Petitioner shall deposit a sum of **Rs.3,00,000/-** (Rupees three lakh only) with the RP to meet the expenses arising out of issuing public notice and inviting claims.

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- h. The Court Officer of this Court is hereby directed to communicate this Order to the Petitioner, the Personal Guarantor and the RP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- i. Additionally, a copy of the Petition, report of the Resolution Professional and this order shall be served on the creditors within seven days from the date of this order.

14. **CP (IB) No. 185/KB/2021** to come up on **28.07.2022** for filing the periodical report.

15. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

BALRA
J JOSHI
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by BALRAJ JOSHI
Date: 2022.04.26
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Balraj Joshi
Member (Technical)

Rajasekhar
V K
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Date: 2022.04.26
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Rajasekhar V.K.
Member (Judicial)

Order signed on 26th April, 2022

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