

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

C.P.(IB)/324(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:
IDBI Bank Limited

...Applicant

-Versus-

Shri Manoj Toshniwal

...Respondent

Order Reserved on: 24/05/2022

Order Pronounced on: 16/06/2022

Coram:

Shri Rohit Kapoor

: Member (Judicial)

Shri Harish Chander Suri

: Member (Technical)

Appearances (through video conferencing)

For Financial Creditor

: Mr. Debasish Chakraborti, Adv.

For Respondent-Personal
Guarantor

: Mr. Mainak Bose, Adv.
Ms. Urmila Chakraborty, Adv.
Mr. Prasun Sharma, Adv.

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. The Court convened through physically / video conference.
2. Under consideration is an Application **C.P.(IB)/324/KB/2021** filed by the Applicant under section 95(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC, 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 (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 **Mr. Shri Manoj Toshniwal**, Personal Guarantor for **EMC Limited [CIN: U31901WB1953PLC021044 (Amalgamated); U70100WB2010PLC151197 (Active)]** (hereinafter referred to as “**EMC**”) demanding total debt of Rs.126,76,18,719.24 as on 01/09/2021.
3. *Vide* order dated 14/01/2022 passed in CP(IB)/210(KB)2021, this Adjudicating Authority has appointed RP u/s. 95(1) of the IBC, 2016 against this very **same respondent-personal guarantor directing to make recommendations for acceptance or rejection of the application**. As per section 96 of the Code, (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.*

In view of this, at this stage, present petition cannot be continued against this respondent-personal guarantor. In the event of final admission of CP(IB)/210(KB)2021, petitioner in this petition shall have to file its claim before the RP appointed in CP(IB)/210(KB)2021. Therefore, the present petition stands dismissed with liberty to make an application for its revival, if CP(IB)/210(KB)2021 is rejected under section 100 of the IBC, 2016.

4. The Registry is hereby 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.

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

Harish Chander Suri
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on this, 16th day of June , 2022.

hb.