

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

C.P.(IB)/118(KB)2022

*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:

State Bank of India

...Applicant

-Versus-

Ms. Phalguni Tiwary

...Respondent

Order Reserved on: 10/06/2022

Order Pronounced on: 30/06/2022

Coram:

Shri Rohit Kapoor

: Member (Judicial)

Shri Harish Chander Suri

: Member (Technical)

Appearances (through video conferencing)

For Financial Creditor

: Mr. Om Narayan Rai, Adv.

Mr. Sailesh Roy Choudhury, Adv.

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. The Court convened through physically/video conference.
2. Under consideration is an Application **C.P.(IB)/118(KB)2022** 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 the 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 **Smt. Phalguni Tewari**, Personal Guarantor for **United Chloro Paraffins Limited (CIN: U24119WB2003PTC096643)** (hereinafter referred to as “**UCPL**”).
3. The factual matrix of the case is that the Applicant is a statutory body corporate constituted under the State Bank of India Act, 1955, having its Office at State Bank of India, Stressed Asset Management Branch II, Jeevandeep Building (1st Floor), 1, Middleton Street, Kolkata 700071
4. “**UCIL**” Corporate Applicant (Corporate Debtor) had availed various credit facilities from the Applicant Bank. The said Corporate Applicant (Corporate Debtor) had failed to maintain financial discipline and defaulted in repayment of the said credit facilities. Therefore, the loan account of the said Corporate Applicant (Corporate Debtor) had to be classified as a non-performing asset (“**NPA**”) as on 18/12/2017. The applicant Bank took steps for recovery of its dues

by instituting O.A.No. 327 of 2018 before the Debts Recovery Tribunal- I, Kolkata, which is pending before the DRT-I.

5. During the pendency of the O.A., “UCIL”, the Corporate Applicant (Corporate Debtor) had approached this Adjudicating Authority by way of an application, filed u/s. 10 of the IBC, 2016, being CP(IB)/898(KB)2018, which was admitted under CIRP vide order dated 12/10/2018. As no viable resolution plan was received, *vide* order dated 19/07/2019, “UCIL”, the Corporate Applicant (Corporate Debtor) was ordered to be liquidated.

6. The personal guarantor, viz., Mrs. Phalguni Tewary, had executed personal guarantee¹ dated 28/10/2015 in favour of the Applicant to secure the repayment of the principal amount of the Credit Facilities together with all interest, additional interest, liquidated damages, premium on repayments, reimbursement of all costs, charges and expenses and all other obligations payable by “UCPL” in respect of the Facility Agreements. The applicant Bank thereafter issued demand notice² dated 23/05/2018, through its Advocate, Sri Anjan Kumar Paul, recalling the advance, and invoking the guarantee. The Applicant Bank had issued a Demand Notice in **Form B**³ on 19/07/2021 under Rule 7(1) of the IB Rules, 2019 demanding Rs.36,19,25,660.35 along with unapplied interest, other charges and costs till repayment in full. Smt. Phalguni Tewary had replied to the said demand notice dated 19/07/2021 by her letter⁴ dated 28/07/2021.

7. In this factual conspectus, the applicant prays for initiation of insolvency resolution process, against the respondent/personal guarantor.

¹ Annexure “C” at pages 163 to 168 of the petition

² Annexure “L” at pages 217 to 219A of the petition

³ Annexure “O” at pages 233 to 235 of the petition

⁴ Annexure “P” at pages 236 to 242 of the petition

8. It is made known to everyone that on filing this Application by the Applicant/Creditor the interim-moratorium commences in terms of section 96(1)(a) of IBC, 2016.

9. The Applicant/Creditor has proposed name of **Mr. Pratim Bayal**, an Insolvency Professional, having Registration No. **IBBI/IPA-003/IP-N00213/2018-2019/12385**, of 18/1, Tarapur Main Road, Ghosh Para, Agarpara, Kolkata 700109, West Bengal, **e-mail address: pratimbayal@gmail.com**, for appointment as Resolution Professional. **Mr. Pratim Bayal** has given his written consent⁵ in **Form- 'A'**. Therefore, we are appointing **Mr. Pratim Bayal** as Resolution Professional in exercise of the power conferred under section 97 of the IBC, 2016 on this Authority subject, however, to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019. The Resolution Professional is directed to file declaration within seven 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 read with the Rules made thereunder. He is directed to make the recommendations for acceptance or rejection of this Application within the stipulated time as envisaged under section 99(1) 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, as soon as the same is filed before this Adjudicating Authority.

⁵ Annexure "R" at pages 249 of the petition

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 01/08/2022 for further consideration.
13. 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.
14. 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 this, 30th day of June, 2022.

hb.