

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

C.P.(IB)/44(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-

Mr. Dhiraj Pandey

...Respondent

Order Reserved on: 24/05/2022

Order Pronounced on: 27/06/2022

Coram:

Shri Rohit Kapoor

: Member (Judicial)

Shri Harish Chander Suri

: Member (Technical)

Appearances (through video conferencing)

For Financial Creditor

: Ms. Rituparna Sanyal, Adv.

O R D E R

Per: Rohit Kapoor, Member (Judicial)

1. The Court convened through physically/video conference.

2. Under consideration is an Application **C.P.(IB)/44(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 **Mr. Dhiraj Pandey**, Personal Guarantor for **Sri Balaji Logs Products Private Limited** (CIN: **U02001WB1997PTC085858**) (hereinafter referred to as “**SBLPPL**”).

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 SBI SAMB-1, Kolkata, 11 & 13, Shakespeare Sarani, 8th Floor, Nagaland House, Kolkata 700071.

4. The Principal Borrower “**SBLPPL**” and guarantors had approached the applicant seeking grant of various Credit Facilities. On the representations made by the “**SBLPPL**”, the Applicant had extended various Credit facilities from time to time for its business purpose. As per the Credit Facilities, “**SBLPPL**” was obliged to repay the principal sum of Credit along with interest thereon in accordance with repayment schedule as set out in the agreements. For the aforesaid Credit facilities, Deed of Guarantee was executed by the respondent – personal guarantor towards security for due repayment of the loans and advances granted to principal debtor with interest, cost and expenses from time to time. The “**SBLPPL**” and the

respondent/personal guarantor had failed and/or neglected to make payment as per terms of the said Agreements. That due to failure of the Corporate Debtor to comply the terms and conditions of the loan accounts, the said loan accounts have been classified as NPA on 21/12/2013. In view of failure on the part of the Corporate Debtor and/or Guarantors to repay the outstanding dues, notice u/s 13(2) of the SARFAESI Act, 2002 dated 31/05/2016 was sent to the Corporate Debtor and its guarantors demanding payment of the entire outstanding dues. In spite of such demand notice, the Corporate Debtor and the Guarantors have jointly and/or severally failed to pay the outstanding dues of the Applicant.

5. Meanwhile, the Applicant herein has filed an application u/s. 7 of the IBC, 2016 against “SBLPPL” (Corporate Debtor) being **CP(IB) No.662(KB)2018 (State Bank of India -vs- Sri Balaji Logs Products Private Limited)** before the National Company Law Tribunal, Kolkata Bench. *Vide* order¹ dated 17/07/2019 passed by this Adjudicating Authority in **CP(IB) No.662(KB)2018** the Corporate Debtor was admitted under CIRP. The applicant has also filed an application before the DRT-I, Kolkata having OA No. 308 of 2016 wherein several orders have been passed from time to time.

6. The personal guarantor, viz., Mr. Dhiraj Pandey, had executed jointly personal guarantee² dated 31/03/2014 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 “SBLPPL” in respect of the Facility Agreements. The Applicant had issued a Demand Notice in

¹ Annexure A-5 at pages 111-119 of the petition

² Annexure A-3 at pages 65 to 79 of the petition

Form B³ on 09/11/2021 under Rule 7(1) of the IB Rules, 2019 demanding Rs.258,30,28,182.00 along with unapplied interest, other charges and costs till repayment in full.

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

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. Subodh Kumar Agrawal**, an Insolvency Professional, having Registration No. **IBBI/IPA-001/IP-P00087/2017-18/10183**, 3rd Floor, 1, Ganesh Chandra Avenue, Kolkata 700001, West Bengal, **e-mail address:** subodhka@gmail.com, telephone no. 033 25214686 for appointment as Resolution Professional. **Mr. Subodh Kumar Agrawal** has given his written consent⁴ in **Form A** along with Authorisation for Assignment valid till 02/12/2021 in **Form B**. Therefore, we are appointing **Mr. Subodh Kumar Agrawal** 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

³ Annexure A-6 at pages 120 to 126 of the petition

⁴ At pages 154 to 157 of the petition

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.

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 10/08/2022.

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, 27th day of June, 2022.

hb.