IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.P.(IB)/46(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:
Central Bank of India

...Applicant

-Versus-

Mr. Bipin Kumar Vohra

...Respondent

Order Reserved on: 22/03/2022

Order Pronounced on: 01/04/2022

Coram:

Shri Rohit Kapoor	**: Member (Judicial)**
Shri Harish Chander Suri	**: Member (Technical)**

Appearances (through video conferencing)

For Financial Creditor	:	Mr. Devajyoti Barman, Adv. Mr. Sudhir Kr. Senapati, Adv.
For Respondent-Guarantor	:	Ms. Urmila Chakraborty Adv. Ms. Shivangi Thard, Adv.

O R D E R

Per: Harish Chander Suri, Member (Technical)

1. The Court convened via video conference.

2. Under consideration is an Application **C.P.(IB)/46KB/2021** filed 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")** filed by Central Bank of India, Stressed Asset Management Branch ("**SAMB**"), a banking company constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, for initiating the Insolvency Resolution Process (hereinafter referred to as "**IR Process**") against personal guarantor, viz., Mr. Bipin Kumar Vohra, Personal Guarantor for **Bengal India Global Infrastructure Limited (CIN: U70101WB2002PLC095018)** (hereinafter referred to as **"BIGIL"**).

3. The factual matrix of the case is that the Applicant is a banking company constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. The Principal Borrower "**BIGIL**" **a**nd the guarantor had approached the applicant seeking grant of various Credit Facilities. On the representations made by the **"BIGIL",** the Applicant extended various Credit facilities on 11/09/2006, which was modified on 23/11/2006. The aforesaid loan facilities were revised, reviewed and enhanced and/or renewed from time to time on 20/05/2011, 19/03/2012 and 01/10/2012 respectively. As per the Credit Facility, **"BIGIL"** was obliged to repay the principal sum of loan along with interest thereon in accordance with repayment schedule as set out in the agreement. The Letter of Guarantee/Supplemental Letter of Guarantee were executed by the respondent-personal guarantor on 12/12/2006, 22/08/2011, 22/03/2012 and 10/10/2012 respectively. The **"BIGIL"** and the respondent/guarantor had failed and/or neglected to make payment as per terms of the said Facility Agreement.

4. Thereafter, the principal borrower **"BIGIL"** was repeatedly called on to regularize and remove all irregularities from the accounts. Ultimately, on 28/08/2013 the account of the principal borrower **"BIGIL"** was classified as Non-Performing Assets **("NPA")**

5. The applicant had initiated proceeding under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 before the Debt Recovery Tribunal-I, Kolkata being OA No. 357 of 2014 and the said proceedings are pending before the DRT-I. Meanwhile, **"BIGIL" (**Corporate Debtor) was admitted under CIRP by the National Company Law Tribunal, Kolkata Bench *vide* order dated 17/05/2019 passed in **CP(IB)/516(KB)2018 (Jai Balaji Industries Ltd. -vs- Bengal India Global Infrastructure Limited)** and the Corporate Debtor is undergoing liquidation process.

6. The personal guarantor, viz., Mr. Bipin Kumar Vohra has executed personal guarantee from time to time on 12/12/2006, 22/08/2011, 22/03/2012 and 10/10/2012 respectively, 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 **"BIGIL"** in respect of the Facility Agreement. The Applicant through Mr. Sudhir Kumar Senapati, Advocate has issued a Demand Notice in **Form B** to personal guarantor on 10/12/2020 under Rule 7(1) of the IB Rules, 2019, but no response. Since the liability of personal guarantor and principal borrower (Corporate Debtor) is co-extensive, the applicant (Financial Creditor) has filed the instant petition, being CP(IB)/46(KB)2021 u/s. 95(1) of the Code consequent upon the amendment of the Code for recovery of the dues.

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, in relaltion to all the debts and during the interim-moratorium period, the following is prohibited:

(a) *Any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and*

(b) *The creditors of the debtor 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. We have heard the Ld. Counsel appearing on behalf of the Applicant (Financial Creditor) and the Ld. Counsel appearing for the Respondent (Personal Guarantor) and perused the records.

10. It is pertinent to mention that as per Annexure "A" the Applicant (Financial Creditor) has executed a Power of Attorney in the name of Mr. Dashrath Pandurang Sadaye to appear and to cause any proceeding against any person, firm, society, company, corporation, association or body corporate for adjudication as insolvent or bankrupt or for winding up. However, the Letter of Authority dated 10/12/2020 authorising Mr. Sudhir Kumar Senapati, Advocate to act on behalf of the Financial Creditor has been signed by one Mr. R. L.. Chauhan, Deputy General Manager, SAMB. Kolkata. It is not clear as to who is the Authorized Representative for the Financial Creditor. The affidavit filed in support of the CP(IB)/46(KB)2021 is signed by Mr. Dashrath Pandurang Sadaye, whereas the authorization given to the Ld. Counsel is by another person. Hence, this Petition lacks proper authorisation from the Financial Creditor.

11. Further, Part – III, Point – 16 of the petition does not divulge the name of the person, who under the post of Chief Manager, Central Bank of India, Stressed Asset

Management Branch acknowledges the exclusive debt. It is also seen that the applicant has not clearly filled in the details required to be submitted as per Form – C.

12. Since the Application is incomplete, we do not wish to call for the Resolution Professionals' Report in this matter at this stage. In taking the decision, we are also conscious of the fact that the Interim Moratorium in case of section 95 application kicks in from the date of the filing of the application. It should not appear that an incomplete application can also ensure that the interim moratorium should kick in from the date of filing, else wrong signals could be sent out to others.

13. **In view of the above the CP(IB)/46(KB)2021 stands dismissed**.

14. Liberty is, however, granted to file a fresh application in accordance with law. The interim moratorium shall cease.

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.

15. File be consigned to the records.

Harish Chander Suri
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed this, 01st day of April, 2022.

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