



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP (IB) No.55/ALD/2023

In the matter of:

An application by Creditor to initiate Insolvency Resolution Process (Under Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019).

In the matter of:

HDFC BANK LIMITED,

Department of Special Operations, First Floor,
HDFC Bank Ltd., Pranay Tower,
Darbari Lal Sharma Marg,

Also at :

Department of Special Operations,
5th Floor, Ansal Classique Tower,
J Block, Plot No.1,
Near Community Centre, Rajouri Garden,
New Delhi - 110027

...Applicant

Versus

HIMANSHU SINGH

B-2019, B-Block, Indira Nagar,
Lucknow – 226016

Having business at :

Vedang Tower, Amrapali Bazaar,
Sector-22, Indira Nagar,
Lucknow, Uttar Pradesh – 226020

...Respondent/ Guarantor

Coram:

Shri Praveen Gupta : Member (Judicial)

Shri Ashish Verma : Member (Technical)



Order pronounced on: 16th February, 2024

Appearances (through video conference):

Ms. Surabhi Sinha, Adv. : For the HDFC Bank Ltd.
Sh. Saurabh Kalia, along with : For the Personal Guarantor
Sh. Harish Taneja, Adv.

1. Under consideration is an Application CP (IB) No.55/ALD/2023 filed under section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “IBC, 2016”) r/w 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 personal guarantor, *viz.*, Mr. Himanshu Singh, one of the promoter of M/s Kriti Prakashan Pvt. Ltd.
2. It is submitted by the Financial Creditor that the factual matrix of the case is that the guarantor had executed deeds of guarantees in respect of the facilities entered into between HDFC Bank Limited and the Corporate Debtor i.e. M/s Kriti Prakashan Pvt. Ltd. and the total maximum debt sanctioned under the working capital facilities was Rs.13 Crore. It is further submitted that in terms of the facility agreement and deed of guarantee, “M/s Kriti Prakashan Pvt. Ltd.” and the



guarantor had failed and/or neglected to make payment above debt as per terms of the said Facility Agreements and deed of guarantee respectively.

3. The personal guarantor viz. Mr. Himanshu Singh has executed personal guarantee on 18.07.2018 in favour of the Applicant to secure the repayment of the principal amount of the Facilities alongwith interest payable by “M/s Kriti Prakashan Pvt. Ltd.” in respect of the Facility Agreement. The Applicant has issued a Demand Notice in Form B on 27.08.2022 under Rule 7(1) of the IB Rules, 2019 but no response has been received.
4. It is however submitted by the Ld. Counsel representing the Personal Guarantor that CIRP petition against the principal corporate debtor namely M/s Kriti Prakashan Pvt. Ltd. was filed by SIDBI against which a **Company Appeal (AT) (Insolvency) No.708/2022** has been filed by the present Personal Guarantor in the capacity of being the Ex-Director of the Corporate Debtor against which the CIRP was initiated vide order dated 13.06.2022 passed by this Adjudicating Authority.
5. It was further submitted by him that the said appeal has been disposed off for moving an appropriate application for withdrawal of the CIRP by the Financial Creditor namely SIDBI.
6. It is also averred that the CIRP against the Corporate Debtor, which was pending adjudication in CP (IB) No.33/ALD/2021 titled as Small Industries Development Bank of India v/s Kriti



Prakashan Limited, was stayed by the Hon'ble NCAT dated 18.09.2023 in Company Appeal (AT) (Ins.) No.1256/2023 as the debt against the primary Financial Creditor SIDBI was settled by way of settlement and the SIDBI was pleased to provide no dues certificate to the Corporate Debtor on 23.06.2022. Further, in pursuance of settlement having been reached interse between the parties, an application bearing IA No.182/2022 was filed by the Petitioner/ SIDBI U/s 12A for withdrawal of the CIRP. However, the present Financial Creditor/ HDFC Bank Limited moved an application bearing IA No.200/2022 objecting the withdrawal application filed by the IRP.

7. It is also submitted that in the present matter since the CIRP of the Corporate Debtor was stayed by the Hon'ble NCLAT on the ground that the debt was settled by the Corporate Debtor, the present insolvency proceedings may also be stayed.
8. The application filed by the SIDBI U/s 12A for withdrawal of the petition is pending consideration by this Adjudicating Authority, in which the HDFC Bank which is also stated to be one of the Financial Creditors has raised the objections against withdrawal of the said petition.
9. We have considered the contentions raised by the Ld. Counsel representing the Personal Guarantor against the present petition not being maintainable on the ground of the CIRP having already been initiated against the Corporate Debtor itself and not inclined to accept the same as at this stage the matter before us is for appointment of the



Resolution Professional for seeking his report to be filed U/s 99 without going into merits of the case, and thereafter, only initiating further proceedings if any, U/s 100 after receiving the report of the RP.

10. We have perused the record and the submissions made by the Ld. Counsel representing the Financial Creditor and are satisfied that RP is required to be appointed in the present matter. In compliance of the previous order dated 08.01.2024, the certificate of Authorization for Assignment (AFA) has been filed for the proposed RP Mr. Mukesh Kumar Jain, according to which the AFA is valid till 11.06.2024. The said AFA has been filed on e-portal of this Tribunal. Accordingly, we pass the following order:-

- I.** It is made known to everyone that on filing of this Application by the Applicant/Creditor the interim-moratorium commences in terms of section 96(1)(a) of IBC, 2016.
- II.** The Applicant/Creditor has proposed the name of Mr. Mukesh Kumar Jain, Insolvency Professional in the present application to be appointed as Resolution Professional. Upon verification of the said RP from the website of IBBI, carried out by Law Research Associate of this Tribunal, Sarim Husain, it is found that there is no proceeding pending against the RP and the RP holds valid authorization till 11.06.2024. Therefore, this Adjudicating Authority appoints Mr. Mukesh Kumar Jain, IBBI Registration No.IBBI/IPA-001/IP-P-



01960/2020-2021/13089, email: fcacfs@gmail.com, is hereby appointed as Resolution Professional in exercise of the power conferred under section 97(5) of the IBC, 2016 on this Authority. The Resolution Professional is directed to file declaration within seven days from the date of receiving of this Order to the effect that he fulfils all the requirements for being appointed as Resolution Professional in the matter.

- III.** The Resolution Professional shall exercise all the powers as enumerated under section 99 of the IBC, 2016 read with the Rules made there under. He is directed to make the recommendations for acceptance or rejection of this Application within a period of ten days as stipulated and 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 Authority.
- IV.** 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.
- V.** Let the main matter be adjourned for further hearing on 15th March, 2024.



- VI.** The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsels for information and for taking necessary steps.
- VII.** Certified Copy of this order be issued, if applied for, upon compliance of all requisite formalities.

-Sd-

(Ashish Verma)
Member (Technical)

-Sd-

(Praveen Gupta)
Member (Judicial)

16th February, 2024

Kavya Prakash Srivastava
(Stenographer)