**DIVISION BENCH S-3**

**NATIONAL COMPANY LAW TRIBUNAL**
**KOLKATA BENCH**
**KOLKATA**

C.P. (IB)/181(KB)2021

**Present: 1. Hon'ble Member(J), Shri Rajasekhar V.K.**
**2. Hon'ble Member(T), Shri Harish Chander Suri**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 16th September, 2021, 10:30 A.M**

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| Name of the Company | ICICI BANK LIMITED<br>Vs.<br>PRASHANT BOTHRA |
| Under Section | Section 95(1) |

| Sl. No. | Name & Designation of Authorized Representative (IN CAPITAL LETTERS) | Appearing on behalf of | Signature with date |
|---|---|---|---|

Counsels appeared through Video Conference:

1. Mr. Soorjya Ganguli, Adv. - For the Applicant/Financial Creditor
2. Ms.Pooja Chakrabarti, Adv.
3. Ms. Kiran Sharma, Adv.
4. Mr. Prithwish Roy Chowdhury, Adv

1. Ms. Debaleena Ganguly, Adv. - For the Guarantor/Respondent
2. Ms. B.Gayatri, Adv.

**O R D E R**

1. Ld. Counsel on both sides present.
2. Under consideration is an Application **CP(IB)/180(KB)2021** filed under section 95(1) 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. Prashant Bothra***, one of the directors of **Kohinoor Paper and Newsprint Private Limited (CIN: U70101WB2006PTC108307)** (hereinafter referred to as "**KPNPL**").

3. The factual matrix of the case is that the Applicant is a banking company incorporated under the Companies Act, 1994. and "**KPNPL**" and guarantor had approached the applicant seeking grant of various financial facility. On the representations made by the **Kohinoor Paper and Newsprint Private Limited,** the Applicant vide Facility Agreements dated 24/06/2011 executed between the Applicant and "**KPNPL**", has extended credit facility to the borrower. As per the Facility Agreement, "**KPNPL**"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 Deed of Guarantees were executed on 30/03/2015.The "**KPNPL**" and the guarantor had failed and/or neglected to make payment as per terms of the said Facility Agreement. Thereafter, the applicant had classified the account of the "**KPNPL**" (Corporate Debtor) as a non-performing asset.
4. The applicant had filed an application before the Debt Recovery Tribunal-III at Kolkata being OA No. 275/2019 and the judgement was passed vide order dated 18/06/2019. However, the applicant failed to realise its dues. Meanwhile, "**KPNPL**" (Corporate Debtor ) was admitted under CIRP by the National Company Law Tribunal, Kolkata Bench vide order dated 26/09/2019 passed in CP(IB) No. 1694/KB/2018 **( Sendoz Commercials Pvt. Ltd. Vs. Kohinoor Paper and Newsprint Private Limited)**
5. The personal guarantor viz ***Mr. Prashant Bothra*** has executed two personal guarantees on 30/03/2015 in favour of the Applicant to secure the repayment of the principal amount of the Facility Agreements together with all interest, additional interest, liquidated damages, premium on repayments, reimbursement of all costs, charges and expenses and all other obligations payable by "**KPNPL**" in respect of the Facility Agreement. The Applicant has issued a Demand Notice in **Form B** on 18/03/2021 under Rule 7(1) of the IB Rules, 2019 but no response. A copy of the Demand Notice along with its annexures has been annexed to the petition as **Annexure-F** (Page No. 1077 to 1091).

6. In this factual conspectus, the applicant prays for initiation of insolvency resolution process.
7. The applicant has clearly brought it out in its application coupled with admissible evidence that the personal guarantor has committed default in making payment of the cash credit facility along with interest to the Applicant for which he has given the personal guarantee to the Applicant on behalf of "**KPNPL**".
8. It is made known to everyone that on filing this Application by the Applicant/Creditor the interim-moratorium commences under section 96(1)(a) of IBC, 2016 in relation to all the debts of the personal guarantor and shall cease to have effect on the date of admission of this Application and during the interim-moratorium period the following is prohibited:

   (d) Any pending legal action or proceeding in respect of any debt of the personal guarantor shall be deemed to have been stayed; and

   (e) The Creditors of the personal guarantor shall not initiate any legal action or proceedings in respect of any debt.

   (f) 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. The Applicant/Creditor has not proposed name of Insolvency Professional for appointment as Resolution Professional. Therefore, Therefore, **Mr. Sudipta Ghosh** of West Bengal, Kolkata, IBBI Registration No. **IBBI/IPA-001/IP-P00484/2017-18/10872** e-mail: sudipta_ghosh08@yahoo.com whose name appears in the list of the of the Insolvency Professionals provided by the IBBI to NCLT, Kolkata is hereby appointed as Resolution Professional in exercise of the power conferred under section 97 of the IBC, 2016 on this Authority subject to the regulation 4(1) and (2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019. The Resolution Professional is directed to file declaration within 7 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 r/w the Rules made thereunder. He is directed to make the recommendations with the reasons in writing for acceptance or rejection of this Application within stipulated time as envisaged under the provisions of section 99 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/Creditor, as soon as the same is filed before this 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 01/11/2021.
13. The Registry is 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 may be issued, if applied for, upon compliance of all requisite formalities.

**(Harish Chander Suri)**
**Member (Technical)**

**(Rajasekhar V.K.)**
**Member (Judicial)**

PJ