DIVISION BENCH S-5

NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.P. (IB)/185(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

Name of the Company	CENTRAL BANK OF INDIA Vs. MR. HIMANSHU GOYAL
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. Pankaj Agarwal, Adv. - For the Guarantor/Respondent
2. Mr. Suryaneel Das, Adv.

O R D E R

1. Ld. Counsel for the Guarantor/Respondent present.
2. Under consideration is an Application CP(IB)/185(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. Himanshu Goyal**, one of the directors M/s BRG Iron & Steel Co. Pvt. Ltd. **(CIN: L27101WB2002PTC095499)** (hereinafter referred to as **" BRG "**).
3. The factual matrix of the case is that the Applicant is a statutory body Corporate constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act ,1970 .The applicant is one of the members of consortium finance account termed as UCO Bank Consortium . **" BRG "** had requested the applicant vide a letter dated 10.07.2012 for granting Non- Fund based Credit Facilities in the nature of Fund Based and Non Fund Based for its business purpose . Upon receipt of the said letter the

applicant had granted loans and various credit facilities to " BRG" (Corporate Debtor) and numerous documents pertaining to the same had been executed since the date of sanction.

4. Subsequent thereto the consortium of Banks including the applicant herein which initially rendered financial assistance to Golden Management Pvt. Ltd., which has later taken over and merged with "BRG" the Principal Debtor in respect of which the Respondent stood as personal guarantor entered to a Master Restructure Agreement dated 21.07.2014 as a result of a LOA dated 30.10.2014 issued by the Corporate Debt Restructuring Cell whereby all parties to agree that the existing loan facility to stand restructured as per clause no. 2.4 therein. Pursuant thereto the various documents were further executed among the parties eg. Joint deed of Hypothecation dated 21.07.2014, working Capital Consortium Agreement dated 21.07.2014, Inter se agreement dated 21.07.2014,Facility Agreement dated 21.07.2014 and Letter of Undertaking dated 21.07.2014.

5. It is further stated that though the said letter of undertaking dated 21.07.2014 as well as Deed of Guarantee, Mr. Anjani Kumar Goyal, Mr. Sandeep Goyal, Mr. Jai Kumar Goyal and Mr. Himanshu Goyal who include the Respondent herein undertook as a personal guarantors with joint and several liability to meet the cash flow for the purpose of repayment of debt and its interest as accured from time to time and personally repay or redeem restructured loan facilities in the event of default by the borrower i.e. M/s BRG Iron & Steel Co.Pvt. Ltd. The said restructured term loan was further reviewed and renewed for further enhancement of working capital of Fund based of Rs. 107.03 Crore and Non Fund based working capital Limit to Rs. 15.65 Crore with sub limit of CC for Rs. 56.08 Crore by the applicant by its Sanction/Approval letter dated 28.12.2015.Soon thereafter on 08.03.2016 the Respondent along with other three persons as named above executed another Deed of Guarantee in favour of the Applicant to repay the loan once the Borrower namely M/s BRG Iron & Steel Co.Pvt. Ltd. defaults in paying the same.

6. Since M/s BRG Iron & Steel Co. Pvt.Ltd. has failed to make payment of its dues and finally the account was declared as Non-Performing Asset on 23.08.2016.

7. The Applicant against the guarantors of the Principal Debtor has already initiated action under Recovery of Debts Due to Banks and Financial Institutions Act, 1993, which is presently pending before the Ld. Debt Recovery Tribunal-I Kolkata being OA No. 31/2020. One of the Financial Creditor initiated IBC application against the

said Principal Debtor under section 7 of the IBC, 2016 before this Adjudicating Authority bearing C.P.(IB) No. 513/2018. *Vide* order dated 03/02/2020, this Adjudicating Authority had admitted the Corporate Debtor under CIRP. Since there is no Resolution Plan was forthcoming the Principal Debtor is put to Liquidation and the same is still pending. Presently the Corporate Debtor is undergoing Liquidation process.

8. The applicant sent the statutory notice in Form-B under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 to the respondent herein on 25/02/2021 but no response.
9. The personal guarantor, viz., **Mr. Himanshu Goyal** has executed personal guarantee in favour of the Applicant to secure the repayment of the principal amount together with all interest, additional interest, liquidated damages, premium on prepayments, reimbursement of all costs, charges and expenses and all other obligations payable by M/s BRG Iron & Steel Co. Pvt.Ltd in respect of the term loan. The Applicant has issued a demand notice on 16/02/2019 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 **Exhibit "N" (Pages 366 to 369 of the petition).**
10. In this factual conspectus, the applicant prays for initiation of insolvency resolution process.
11. 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 M/s BRG Iron & Steel Co. Pvt.Ltd.
12. 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:
    1. Any pending legal action or proceeding in respect of any debt of the personal guarantor shall be deemed to have been stayed; and
    2. The Creditors of the personal guarantor shall not initiate any legal action or proceedings in respect of any debt.

3. 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.

13. The Applicant/Creditor has not proposed name of Insolvency Professional for appointment as Resolution Professional. Therefore, **Mr.Rajesh Keshri** of West Bengal, Kolkata, IBBI Registration No. **IBBI/IPA-001/IP-P00490/2017-18/10878** e-mail: keshri.co(@ gmail. 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.

14. 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.

15. 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.

16. List this matter on 01/11/2021.

17. 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.

18. 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