IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.P.(IB)/386(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:
State Bank of India

...Applicant

-Versus-

Smt. Niharika Devi Dinodiya

...Respondent

Order Reserved on: 30/03/2022

Order Pronounced on: 21/04/2022

Coram:

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

Appearances (through video conferencing)

For Financial Creditor	:	Mr. Debasish Chakrabarti, Adv.
For Respondent-Guarantor	:	Mr. Ankan Rai, Adv. Ms. Vipra Gang, Adv. Ms. Kirti Dadheech, Adv. Mr. S. N. Pandey, Adv. Ms. Ankita Singh, Adv.

O R D E R

Per: Harish Chunder Suri, Member (Technical)

1. The Court convened via video conference.

2. Under consideration is an Application **C.P.(IB)/386/KB/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")** for initiating the Insolvency Resolution Process (hereinafter referred to as "**IR Process**") against personal guarantor, viz., **Smt. Niharika Devi Dinodiya**, Personal Guarantor for **Rythem Overseas Trade Limited. (CIN :U51109WB1981PLC034241)** (hereinafter referred to as **"ROTL"**).

3. The factual matrix of the case is that the Applicant is a banking company established pursuant to the State Bank of India Act, 1955, incorporated on 1st July,1955 vide Notification No. S.R.O.1077, dated 14th May, 1955.

4. The Principal Borrower **"ROTL"** and guarantor had approached the applicant seeking grant of various Credit Facilities. On the representations made by the **"ROTL",** the Applicant extended various Credit facilities from time to time for its business purpose. As per the Credit Facilities, **"ROTL"** 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 Guarantees were 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, lastly on 30/03/2013. The **"ROTL"** 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 account, the said loan accounts have been classified as NPA on 15/12/2013.

5. The applicant had filed an original application in the year 2013 against the guarantors before the Debts Recovery Tribunal-I, Kolkata. The Financial Creditor has also proceeded under the SARFAESI Act, 2002 and has issued Notice upon the Guarantors under section 13(2) and 13(4) of the said Act, of 2002. Meanwhile, **"ROTL" (**Corporate Debtor) was admitted under CIRP by the National Company Law Tribunal, Kolkata Bench vide order dated 07/11/2019 passed in **CP(IB)/230(KB)2019 (State Bank of India -vs- M/s. Rythem Overseas Trade Limited).** On finding no feasible resolution for the said Corporate Debtor in the CIRP process, an Order for Liquidation of the Corporate Debtor was passed on 06/01/2021.

6. The personal guarantor viz Smt. Niharika Devi Dinodiya, has executed personal guarantee from time to time, lastly on 31/03/2013 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 **"ROTL"** in respect of the Facility Agreements. The Applicant has issued a Demand Notice in **Form B** on 06/07/2021 under Rule 7(1)

of the IB Rules, 2019. However, the respondent-Personal Guarantor has not paid the amount recalled by the applicant/Financial Creditor as set out in the demand notice dated 06/07/2021.

7. In this factual conspectus, the applicant prays for initiation of insolvency resolution process, against the respondent/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. Neeraj Kumar Sureka**,** an Insolvency Professional, having Registration No. IBBI/IPA-001/IP-P01539/2019-2020/12517, of "Central Plaza", 6th Floor, Room No. H, 41, B. B. Ganguly Street, Kolkata 700012, West Bengal for appointment as Resolution Professional. We, therefore, appoint Mr. Neeraj Kumar Sureka, as Resolution Professional, who has given his consent in Form – A along with Authorisation for Assignment. The Resolution Professional is directed to file declaration within seven 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 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 06/06/2022.

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, the 21st day of April, 2022.

hb.