

DIVISION BENCH

O-116

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. (IB)/116(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 07th September, 2021,
10:30 A.M**

Name of the Company	INDIAN BANK Vs. VAREZ KARSI DADINA		
Under Section	Section 95(1)		
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

Appearances (via video conference)

Mr. Debasish Chakrabarti, Advocate] For Financial Creditor

ORDER

Ld. Counsel for the Financial Creditor present.

1. **CP (IB) 116/KB/2021.** This is an application filed 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 and Regulation 4(2) of IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 for initiating the Insolvency Resolution Process against personal Guarantor viz., **Ms. Varez Karsi Dadina**, one of the directors of **KND Engineering Technologies Limited** (U74210WB1982PLC034947).

2. The factual matrix of the case is that the applicant Indian Bank, a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. **KND Engineering Technologies Limited** was enjoying credit facilities with the Financial Creditor, inter alia in the form of loan with sanction limit of Rs. 55.00 crores in or about 2010. The said credit facility was enhanced from time to time and as on 13.10.2020 the debt outstanding and uncharged interest is of Rs.62,03,13,655.62 (Cash Credit facility Rs.43,46,76,782.51 and Bank Guarantee Rs.53,42,375.00) To secure the aforesaid loan granted to KND Engineering Technologies Limited, the Guarantor being the Corporate Debtor herein furnished personal guarantee towards security for due repayment of the loans and advances granted with interest, cost and expenses. The Guarantor being the Corporate Debtor executed the Guarantee Agreement time to time. The Corporate Debtor although enjoyed the entire loan limit but failed to serve interest in the loan accounts as per the terms of sanction. Due to failure on the part of the Corporate Debtor to comply the terms and conditions of the loan account, the said loan accounts have been classified as NPA on 02.05.2018. One Subrata Sarkar, an operational creditor filed an application under section 9 of the Insolvency and Bankruptcy Code before this Adjudicating Authority against the principal borrower KND Engineering Technologies Limited and the same was admitted by this Adjudicating Authority vide **order dated 30.08.2018 passed in CP (IB) No. 455/KB/2018 (Subrata Sarkar - vs - KND Engineering Technologies Limited)**. (A copy of the order is annexed marked as **Annexure 1-P pages 95 to 107 of the application**). Subsequently one resolution plan was accepted and approved by this Adjudicating Authority vide order dated 04.06.2019.

3. The Financial Creditor served upon the Guarantor a notice in Form B on 13.10.2020 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 said personal guarantor but till date the said personal guarantor failed to liquidate the dues payable to the Financial Creditor and did not reply to the said notice. (**A copy of the demand notice is annexed marked as Annexure 1-R pages 197 to 200 of the application**)

4. In this factual conspectus, the applicant prays for initiation of insolvency Resolution Process.

5. 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 loans and advances along with interest, cost and expenses to the Applicant for which she has given the personal guarantee to the Applicant on behalf of KND Engineering Technologies Limited.

6. 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:-

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

(b) The Creditors of the personal guarantor 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.

7. The Applicant/Creditor has proposed the name of **Mr. Sanjit Kumar Nayak**, an Interim Resolution Professional, who has given his written consent under Regulation 4(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (**pages 251-252 of the petition**). Therefore, **Mr. Sanjit Kumar Nayak of 30E, Haramohan Ghosh Lane, Flat 2-B, Beliaghata, Kolkata 700085, IBBI Registration No. IBBI/IPA-003/IP-N00079/2017-18/10702; e-mail: Sknayak31@gmail.com; Mobile No. 9932002234** 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.

8. 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 with the reasons in writing for acceptance or rejection of this Application within the 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.

9. 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.

10. List this matter on **16/11/2021**.

11. 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.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

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