DIVISION BENCH O-111

NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.P. (IB)/110(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 17th September, 2021, 10:30 A.M

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

Counsel / Authorised Representative appeared through video conference:

1. Mr. Debasish Chakrabarti, Advocate] For Financial Creditor
2. Ms. Trisha Mukherjee, Advocate]

1. Mr. Rahul Parasrampuria, PCS] For Respondent

O R D E R

1. Ld. Counsel for the Financial Creditor present. Ld. Authorised Representative for the respondent present.
2. The Court convened via video conference.
3. Under consideration is an Application CP(IB)/110(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. Pessi Nanabhoy Dadina***, one of the directors of **KND Engineering Technologies Limited (CIN: U74210WB1982PLC034947)** (hereinafter referred to as "**KND**").

4. The factual matrix of the case is that the Applicant is a banking company incorporated under the Companies Act and also within the meaning of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970). KND had availed the credit facilities from time to time from the Applicant for its business purpose. In order to secure the aforesaid credit facilities granted to KND, the respondent herein had furnished personal guarantee towards due repayment of the loans and advances granted to the principal debtor ("KND") with interest cost and expenses. At the request of the KND and the guarantor, the aforesaid credit facilities were enhanced/reduced from time to time by the Applicant and the respondent herein had also executed from time-to-time personal guarantees on 12/07/2010, 28/03/2012, 29/03/2014 and 03/10/2016 respectively.

5. Since KND has failed to make payment of its dues as per terms of sanction, finally the account was declared as Non-Performing Asset on 02/05/2018. In the meanwhile, an application, being **CP(IB) No.455(KB)201 (Subrata Sarkar vs. KND Engineering Technologies Limited)**, had been filed u/s. 9 of the IBC 2016. *Vide* order dated 30/08/2018 this Adjudicating Authority had admitted the Corporate Debtor under CIRP. Subsequently, one resolution plan was approved by this Adjudicating Authority. Subsequent thereto the Financial Creditor served upon the guarantor a notice in Form B.

6. The personal guarantor, viz., Mr. Pessi Nanabhoy Dadina has executed personal guarantees 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 KND in respect of the credit facilities. The Applicant has issued a demand notice in Form B on 13/10/2020 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 **Annexures "1-R" (Pages 202 to 239 of the petition).**

7. In this factual conspectus, the applicant prays for initiation of insolvency resolution process.

8. 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

credit facility along with interest to the Applicant for which he has given the personal guarantee to the Applicant on behalf of KND. .

9. 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.

10. The Applicant/Creditor has proposed name of Mr. Sanjit Kumar Nayak an Insolvency Professional for appointment as a 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.

11. Therefore, Mr. Sanjit Kumar Nayak of 30E, Haramohan Ghosh Lane, Flat 2-B, Beliaghata, Kolkata 700085, having IBBI Registration No. IBBI/IPA-003/IP-N00079/2017-18/10702, e-mail i.d. sknayak31@gmail.com, Mobile No. 9932002234 is hereby appointed as Resolution Professional in exercise of the power conferred under section 97 of the Insolvency and Bankruptcy Code, 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.

12. 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.

13. 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.

14. List this matter on 01/12/2021.

15. 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.

16. 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)

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