IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.P.(IB)/262(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:
Indian Bank

...Applicant

-Versus-

Mr. Prasanna Dugar

...Respondent

Order Reserved on: 20/06/2022

Order Pronounced on: 15/07/2022

Coram:

Shri Rohit Kapoor : Member (Judicial)

Shri Harish Chander Suri : Member (Technical)

Appearances (through hybrid mode)

For Financial Creditor	:	Mr. Ramesh Chandra Prusti, Adv. Mr. Robin Singha, Adv.
RP	:	Ms. Pallavi Ray, Adv. Mr. Tapan Kumar Ray, RP in person

O R D E R

Per: Rohit Kapoor, Member (Judicial)

1. The Court convened via video conference.
2. Under consideration is an Application being CP(IB)/262(KB)2021 filed under section 95(1) read with sections 96, 97, 99 and 100 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**"). The prayer made is to initiate the Insolvency Resolution Process (hereinafter referred to as "**IR Process**") against ***Mr. Prasanna Dugar***, one of the Directors of **Indian Gem & Jewellery Imperial Private Limited**, (hereinafter referred to as **"IG&JIPL"**) having **CIN: U27205WB2006PTC111892**, who is the Personal Guarantor of **Indian Bank** (hereinafter referred to as **"the Bank")** in relation to the credit facilities extended by the Bank in favour of "**IG&JIPL**"**.**
3. On presentation of the application by the applicant Bank, the Adjudicating Authority *vide* order dated **21/02/2022** had appointed the Resolution Professional, viz., **Mr. Tarun Kumar Ray**, **IBBI Registration No. IBBI/IPA-001/IP-P01411/2018-2019/12228, of Flat – 1, Binayak, 28/2B, K. M. Naskar Road, Kolkata 700040** e-mail id: **tarun.ray123@yahoo.com**; Mobile No. 8902759069 to file report u/s.

99 of IBC, 2016, which has been filed by him recommending the admission of the application filed u/s. 95 of the IBC, 2016. The ground for admission of the application recorded in the Report are as follows: -

(a) In terms of the provisions laid down under section 95(4) of IBC, 2016, the said Application was filed accompanied with details along with documents relating to –

(i) The debts owed by IG&J guaranteed by Mr. Prasanna Dugar to Indian Bank;

(ii) The failure of Mr. Prasanna Dugar to pay the said Debts within fourteen days of service of the notice of demand to Indian Bank;

(iii) Relevant evidence of the said default and non-repayment of the debts as aforesaid.

(b) In accordance with the provisions laid down under section 95(5) of IBC, 2016, Indian Bank has provided a copy of the Application as aforesaid to Mr. Prasanna Dugar;

(c) Indian Bank has served Demand Notice in Form B under Section 95(4)(b) of IBC, 2016 read with Rule 7(1) of IB Rules, 2019, to Mr. Prasanna Dugar, demanding payment of the amount of default;

(d) Indian Bank has served a copy of the application referred to in Rule 7(2) of IB Rules, 2019 to Mr. Prasanna Dugar and IG&J, in accordance with Rule 7(3) of IB Rules, 2019;

(e) In accordance with the provision laid down under section 99(2) of IBC 2016, the undersigned has requested Mr. Prasanna Dugar to prove repayment of debt of Indian Bank;

(f) In response to the communication sent to Mr. Prasanna Dugar, reply has been received from Mr. Prasanna Dugar to the effect that the said debt obligation has not been repaid by him vide mail dated 10/03/2022;

(g) In accordance with the provisions laid down under section 99(6) of IBC, 2016, the undersigned has examined the application filed by Indian Bank and ascertained that the said application satisfies the requirements set out in section 95 of IBC 2016;

(h) In terms of provisions under section 99(8) of IBC, 2016, the undersigned submits that the debtor is not eligible for a fresh start under Chapter II owing to overall level of debt to be recovered, being on higher side.

4. The Resolution Professional in his report has recommended u/s. 99(1) & (7) of IBC, 2016 as under:

"In view of the above reasons, the undersigned recommends acceptance of the said application filed by Indian Bank under section 95(1) of IBC, 2016. The undersigned has also recorded the reasons as stated above recommending the acceptance of the said application in accordance with the provision laid down under section 99(9) of the IBC, 2016.".

5. From the report, there does not appear to be any ***request*** of the Resolution Professional for issuance of the instructions for the purpose of conducting negotiations between the debtor and creditors for arriving at the repayment plan. Therefore, based on the reasons recorded in the report submitted by the Resolution Professional, the application, i.e., CP(IB)/262(KB)2021 filed under the provisions of section 95 of the IBC, 2016 is hereby ***admitted*** under section 100 of the IBC, 2016. The Insolvency Resolution Process is initiated against the respondent and the moratorium is declared, which begins with the date of admission of the application and shall cease to have effect at the end of the period of 180 days, as provided u/s. 101 of IBC, 2016 or until this Adjudicating Authority approves the repayment plan under sub-section (1) of section 114 of the Code. During the moratorium period: -

(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; and

(c) The personal guarantor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;

(d) 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.

6. The Resolution Professional, viz., **Mr. Tarun Kumar Ray**, who has been appointed u/s. 97 *vide* order dated 21/02/2022, is directed to cause a public notice published on behalf of the Adjudicating Authority within ***seven days*** of uploading of this Order on the website of the NCLT, Delhi, inviting claims from all Creditors, who shall register their claims as provided u/s. 103 of the IBC, 2016 within ***twenty-one days*** of such issuance. The notice shall contain the necessary information as provided u/s. 102(2) of IBC, 2016. The publication of notice shall be made in two newspapers, once in English Daily and once in Vernacular Daily, which have wide circulation in the State where the Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry, Kolkata Bench. One copy of the notice shall be placed by the Registry on NCLT Website and the other shall be affixed in the premises of this Adjudicating Authority.

7. The Resolution Professional in exercise of the powers conferred u/s. 104 of the IBC, 2016 shall prepare a list of creditors within ***thirty days*** from the date of the notice. The personal guarantor shall prepare a repayment plan in consultation with the Resolution Professional as provided u/s. 105 of the IBC, 2016, which shall include the provisions for payment of fee to the Resolution Professional. The Resolution Professional shall submit the repayment plan along with his report on the plan to this Adjudicating Authority within a period of ***twenty-one days*** from the last date of submission of claims, as provided u/s. 106 of the IBC, 2016.

8. In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons

therefor. If the Resolution Professional ***is of the opinion*** that the meeting of the creditors should be summoned, he shall specify the details as provided u/s. 106(3) of the IBC, 2016. The date of meeting should not be less than **14 days** or more than **28 days** from the date of submission of the Report under sub-section (1) of section 106 of the IBC, 2016, for which at least 14 days' notice to the creditors, as per the list prepared, shall be issued by all modes. Such notice must contain the details as provided under the provisions of section 107 of the IBC, 2016.

9. The meeting of the creditors shall be conducted in accordance with sections 108, 109, 110 and 111 of the IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under section 112 of the IBC, 2016 and submit the same to this Adjudicating Authority, copies of which shall be provided to the personal Guarantor and the Creditors as per section 113 of the IBC, 2016. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided u/s. 208 of the IBC, 2016.

10. In terms of the above, CP(IB)/262(KB)2021 filed u/s. 95 of the IBC, 2016 is admitted and the Insolvency Resolution Process stands initiated against the debtor/Personal Guarantor.

11. List **CP(IB)/262(KB)2021** for filing periodical report on 30/08/2022

12. 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.

13. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Harish Chander Suri
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed this, 15th day of July, 2022.

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