

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P.(IB)/298(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:

Bank of Baroda

...Applicant

-Versus-

Avinash Chandra Gupta

...Respondent

Order Reserved on: 10/05/2022

Order Pronounced on: 15/06/2022

Coram:

Shri Rohit Kapoor

: Member (Judicial)

Shri Harish Chander Suri

: Member (Technical)

Appearances (through video conferencing)

For Financial Creditor : Mr. Ramesh Chandra Prusti, Adv.
Mr. Binay Kumar Upadhyay, Adv.
Ms. Sukriti Dutta, Adv.

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court convened via video conference.
2. Under consideration is an Application **C.P.(IB)/298(KB)2021** filed by the Applicant 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 **Mr. Avinash Chandra Gupta**, Personal Guarantor for **Shri Badrinarain Alloys and Steels Limited. (CIN: L27100WB1983PLC035650)** (hereinafter referred to as “**SBASL**”) demanding total debt of Rs.107,47,90,505.84.
3. The factual matrix of the case is that the Applicant is a body corporate constituted under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, having its Head Office at Baroda Bhavan, R.

C. Dutt Road, Alkapuri, Baroda 390007, Gujarat State and Branch Office amongst other places at Bank of Baroda, Stressed Assets Management Branch, 1st Floor, Avani Heights, 59A, Chowringhee Road, Kolkata 700020.

4. The Principal Borrower “**SBASL**” and guarantor had approached the applicant seeking grant of various Credit Facilities. On the representations made by the “**SBASL**”, the Applicant had extended various Credit facilities from time to time for its business purpose. As per the Credit Facilities, “**SBASL**” 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 Guarantee was 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. The “**SBASL**” 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 accounts, the said loan accounts have been classified as NPA on 15/08/2016 w.e.f. 01/05/2013 (cutoff date of CDR restructure).

5. The applicant had filed an original application in the year 2018 being **O.A. No. 41 of 2019** against the “**SBASL**” (Corporate Debtor) and the guarantors before the Debts Recovery Tribunal-I, Kolkata. Notice u/s. 13(2) of the SARFAESI Act, 2002 was also issued on 09/10/2019 to the principal borrowers as well as guarantors including Mr. Avinash Chandra Gupta. Meanwhile, “**SBASL**” (Corporate Debtor) was admitted under CIRP by the National Company Law Tribunal, Kolkata Bench *vide* order¹ dated 05/12/2018 passed in

¹ Annexure “B” at pages 29 to 33 of the petition

CP(IB)/1370(KB)2018 (Bank of Baroda vs. Shri Badrinarain Alloys & Steels Limited) and finally *vide* order² dated 06/09/2019 liquidation order was passed.

6. The personal guarantor, viz., Mr. Avinash Chandra Gupta, had executed personal guarantees³ dated 29/03/2014 and 07/04/2016 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 “SBASL” in respect of the Facility Agreements. The Applicant has issued a Demand Notice⁴ in **Form B** on 01/09/2020 under Rule 7(1) of the IB Rules, 2019 demanding Rs.107,47,90,505.84 along with unapplied interest, other charges and costs till repayment in full.

7. In this factual conspectus, the applicant prays for initiation of insolvency resolution process, against the respondent/personal 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. Kannan Tiruvengadam**, an Insolvency Professional, having Registration No. **IBBI/IPA-001/IP-P00253/2017-18/10482**, of 18, Karunamoyee Ghat Road, Netaji Subhash Vila, Flat No. 3C, 3rd Floor, Kolkata 700082, West Bengal, **e-mail address:** calkannan@gmail.com, Mobile No. 98369 69699 for appointment as Resolution

² Annexure “B” at pages 34 to 39 of the petition

³ Annexure “D” at pages 55 to 76 of the petition

⁴ Annexure “F” at pages 82 to 84 of the petition

Professional. **Mr. Kannan Tiruvengadam** has given his written consent⁵ in **Form A**. Therefore, we are appointing **Mr. Kannan Tiruvengadam** as Resolution Professional in exercise of the power conferred under section 97 of the IBC, 2016 on this Authority subject, however, to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019. 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 01/08/2022.

⁵ Annexure "A" at page 26 of the petition

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, 15th day of June , 2022.

hb.