



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

**CP (IB) No. 50/CB/2022**

In the Matter of:

Under Section 95 of Insolvency and Bankruptcy Code 2016 R/w Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Process for Personal Guarantors to Corporate Debtors) Rules, 2019;

And

In the Matter of:

Punjab National Bank, Zonal sastra Centre, Pokhariput, Jagamara, Bhubaneswar-751030;

**Financial creditor/Petitioner**

Versus

Suryakanta Acharya S/o Late Surendra Kumar Acharya, No.102 Shyamkunj Apartment, Khannagar, Cuttack-753 010.

**Personal Guarantor/Respondent**

**Order reserved on: 24.04.2023  
Order pronounced on: 09.05.2023**

***Coram:***

Shri P. Mohan Raj	:	Member (Judicial)
Shri Satya Ranjan Prasad	:	Member (Technical)

***Appearances***

For the Petitioner	Mr. S. Jena, CA
For the Respondent	Mr. Saswat Kumar Acharya, Adv. Mr. S. Pholgu, Adv. Mr. A. Agarwal, Adv. Mr. J. Sahoo, Adv. Mr. S. Agarwal, Adv.

**ORDER**

*Per P. Mohan Raj, Member (Judicial)*

1. This Application has been filed under section 95 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 by **Punjab National Bank** (herein after called as “Creditor”) for the purpose of initiating the Insolvency Resolution Process against **Mr. Suryakanta Acharya (herein after called as “Personal Guarantor”)**. The Respondent /Personal Guarantor, herein has stood as a Guarantor in respect of the loans availed by the Principal Borrower /Corporate debtor viz **M/s MAADURGA THERMAL POWER COMPANY LIMITED**.

2. The corporate debtor Maa Durga Thermal Power Company Ltd was admitted into Corporate Insolvency Resolution Process on 08.06.2018 under section 7 of IBC 2016 by an application filed by SREI Equipment Finance Limited by NCLT-Kolkata. The corporate debtor was admitted into liquidation on 25.06.2019 by this Adjudicating Authority, then as per Section 60(2) of IBC, 2016 this Authority would be the competent forum to file an Application for Personal Guarantor in relation to such Corporate Debtor.

3. As far as the present Application is concerned, it pertains to the Insolvency Resolution Process of Individuals. Under section 95(1) of IBC postulates that Creditor may either by himself or through a Resolution Professional file an Application for initiating Insolvency Resolution Process against a Personal Guarantor or a Partnership Firm.

4. **M/s Maa Durga Thermal Power Company Ltd.** (hereinafter referred to as “Principal Borrower”) availed financial facility from the Oriental Bank of Commerce, now merged with Punjab National Bank to the extent of Rs.8.57 Crore as fresh Term Loan and reviewed the existing Term Loan of Rs.40.00 Crore vide letter dated 28.09.2013. The personal Guarantor, the promoter of the corporate debtor, gave personal Guarantee as collateral security to secure the loan availed from the bank by the corporate debtor. The Guarantor executed the deed of guarantee in favour of Punjab National Bank and other members of the consortium on 10.03.2010 and 30.09.2013. It was submitted that the principal Borrower has committed default in repayment of the dues and as a result thereof, Non-Performing Asset (NPA) by the creditor on 31.12.2014. It was submitted that



the personal Guarantor has failed to pay the due Amount of Rs.128.53 crores as on 30.11.2021 and the amount has remained unpaid till date.

5. The Creditor Punjab National Bank has issued a demand notice dated 06.08.2022 as provided under Section 95 (4) (b) of IBC 2016 R/w Rule 7 (1) of the Insolvency and Bankruptcy Resolution Process for personal Guarantors to Corporate Debtor) Rule, 2019, calling upon the Personal Guarantor to pay an amount of Rs. 133.11 Crores/- as on 30.06.2022 despite receipt of demand notice dated 06.08.2022, the Personal Guarantor has failed to repay the outstanding dues and continue to commit default till date.

6. Thus, in all respect, this Application filed under section 95 of IBC 2016 is complete. The copy of Application was served on the petitioner/personal Guarantor and the Corporate debtor for whom the guarantor is a personal guarantor as provided under Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules 2019.

7. On the creditor side informed that the account of the principal Borrower was declared as NPA on 31.12.2014. Taking this date, on the respondent/ Personnel Guarantor side advocate made an oral submission that since this petition is filed on 28.10.2022, without filing any document showing acknowledgement of debt made either by the principal borrower or guarantor this petition is barred by limitation hence the petition should be dismissed instantly. In this regard rely upon certain citations, on the petitioner side the representative argued that all the accounts of the principal borrower is available with the petitioner, there the principal borrower acknowledged the debt till the end of financial year 2018 and ready to produce those documents and prayed for time to produce the documents. It is also argued that this is an initial stage, and at this stage the respondent has no locustandi to oppose the petition, if the Resolution professional is appointed, he will take care of entire thing and will submit the report, at that time alone the respondent can file his objection.

8. The contention of the petitioner side is convincing; this is not the stage to decide the maintainability of the petition. However even otherwise the objection raised on the respondent side is not acceptable at this stage on the basis of available



materials. There is no pale of controversy that the liability of the guarantor is co-extensive with the principal debtor. The principal debtor was admitted into CIRP on 08.06.2018 in CP(IB) No.129/KB/2018 by NCLT-Kolkata. The said order copy is filed along with this petition as annexure 4. In the said order the Adjudicating Authority observed in paragraph 9 (*page 69 of petition*) that the corporate debtor admitted the debt due to the financial creditor vide letter dated **31.03.2018**. This finding in the order proves that the debt was acknowledged in writing on 31.03.2018, if it is so the three years period of limitation expires on 31.03.2021. In view of Supreme Court SUO Moto Judgement, order dated 10.01.2022 the period from 15.03.2020 to 28.02.2022 should be excluded from the period of limitation. From 1.04.2018 to 14.03.2020, one year, eleven months and 14 days expired, the remaining available period of limitation is one year, and 16 days. As per SUO-Moto Judgment in a case where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply. In this case remaining balance period is one year and 16 days, so the limitation expires on 16.03.2023, but this petition was filed on 28.10.2022 hence prima facie it is proved that petition is filed in time.

9. In these circumstances the objection raised on the respondent side on the point of limitation is turned down, further the request of the petitioner side to grant time to produce the documents showing the acknowledgement debt also not granted. Both parties may submit their documents and their version before the resolution professional during his examination.

10. After filing this Application, the interim-moratorium commences under section 96 of IBC 2016, in relation to all debts of the personal guarantor and shall cease to have effect on the date of admission of this Application. During this interim-moratorium period any pending legal action or proceeding in respect of any debt of the personal guarantor shall be deemed to have been stayed and the creditors of the personal guarantor shall not initiate any legal action or proceedings in respect of any debt.



11. The Applicant proposed to appoint Mr. Saradindu Jena an insolvency Professional having registration number IBBI/IPA-002/IP-N00520/2017-2018/11622, OU:510, 5<sup>th</sup> Floor, Esplanade One Rasulgarh, Bhubaneswar-751 010. contact No.917894407699. as resolution professional, it is confirmed by the registry from the data base there is no disciplinary proceeding is pending against him. As proposed by the Applicant Mr. Saradindu Jena an insolvency Professional having registration number IBBI/IPA-002/IP-N00520/2017-2018/11622, OU:510, 5<sup>th</sup> Floor, Esplanade One Rasulgarh, Bhubaneswar- 751 010, Contact No. 917894407699, is here by appointed as Resolution Professional, as provided under section 97 of IBC 2016 read with regulation 4(1) and (2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations,2019. The resolution professional has filed his consent dated 13.10.2022.

12. The resolution professional shall exercise the powers as provided in section 99 of IBC 2016 and submit his reasoned report in writing for recommending the acceptance or rejection of the application within ten days into this Tribunal as provided under section 99 of IBC 2016.He is also directed to serve the copy of the report to the Applicant/Creditor as provided under section 99 (10) of IBC 2016. For taking further course of action on the receipt of Resolution professional report list the matter on 30.05.2023.

13. The Registry is directed to send the copy of the order to the parties' concern forthwith.

14. Certified copy of the order be issued on payment of fee if applied for, upon compliance of all requisite formalities.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD  
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**Satya Ranjan Prasad**  
**Member (Technical)**

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PANDIAN MOHAN RAJ  
MOHAN RAJ Date: 2023.05.09  
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**P. Mohan Raj**  
**Member (Judicial)**

Signed on this 09<sup>th</sup> day of May 2023.

Kaushal P.S.