IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.P.(IB)/20(KB)2022

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:

UCO Bank ...*Applicant*

-Versus-

Sri Kapil Mehra ...Respondent

Order Reserved on: 15/06/2022

Order Pronounced on: 11/07/2022

Coram:

Shri Rohit Kapoor	**: Member (Judicial)**
Shri Harish Chander Suri	**: Member (Technical)**

Appearances (through video conferencing)

For Financial Creditor	:	Ms. Rituparna Sanyal, Adv.
For Respondent-Personal Guarantor	:	Mr. Milan Negi, Adv. Mr. Rahul Malhotra, Adv. Syed Nurul Arfin, Adv. Mr. Rahul Singh, Adv.

O R D E R

Per: Harish Chander Suri, Member (Technical)

1. The Court convened via video conference.

2. Under consideration is an Application **C.P.(IB)/20/KB/2022** 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 **Sri Kapil Mehra**, Personal Guarantor for **M/s. Atlantic Projects Limited. (CIN: U45201WB1999PLC090499)** (hereinafter referred to as **"APL"**) demanding total debt of Rs.38,69,67,324.98 as on 31/03/2021.

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 10, B. T. M. Sarani, Kolkata 700001, and having its Flagship Corporate Branch at 2, India Exchange Place Ground Floor, Kolkata 700001.

4. The Principal Borrower **"APL"** and the guarantor had approached the Applicant Bank seeking grant of various types of financial assistance for fund based and non-fund based working capital by way of hypothecation by creating

pari pasu first charge of stock, book debts and all other current assets of the company and stocks covered by unpaid bills under LC of UCO Bank and lien over the 20% of total limit by way of fixed deposit. On the representations made by the **"APL",** the Applicant Bank had extended various Credit Facilities for its business purpose and a composite Deed of Hypothecation[1] was entered between the Applicant Bank and the "**APL**". As per the Credit Facilities, **"APL"** was obliged to repay the principal sum of Credit along with interest thereon in accordance with repayment schedule as set out in the agreement. For the aforesaid Credit facilities, Deed of Guarantee[2] 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 **"APL"** and the respondent/personal guarantor had failed and/or neglected to make payment as per terms of the said Agreement. Due to failure of the Corporate Debtor to comply with the terms and conditions of the loan account, the said loan account has been classified as NPA.

5. Meanwhile, **"APL" (**Corporate Debtor) was admitted under CIRP by the National Company Law Tribunal, Kolkata Bench vide order dated 15/10/2019 passed in **CP(IB)/174(KB)2018 (Oriental Bank of Commerce -vs- M/s. Atlantic Projects Limited)** and *vide* order dated 25/112021 this Adjudicating Authority had approved the Resolution Plan of "APL" (Corporate Debtor). In terms of the Resolution Plan, the Applicant Bank had received a sum of of Rs. 57.02 Lakhs. The Applicant Bank herein has also filed an application before the Debts Recovery Tribunal-I, Kolkata u/s. 19 of the Recovery of Debts and Bankruptcy Act, 1993

[1] Annexure A-2 at pages 44 to 65 of the petition
[2] Annexure A-4 at pages 70 to 80 of the petition

against the **"APL" (**Corporate Debtor) and the guarantor, which was numbered as OA No. 449 of 2019.The said application is pending for hearing.

6. The personal guarantor, viz., Sri Kapil Mehra, had executed deed of guarantee dated 30/03/2016 jointly with Sri Siddharth Mehra and Sri Yaspal Mehra 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 **"APL"** in respect of the Facility Agreements. The Applicant has issued a Demand Notice in **Form B**[3] on 17/04/2021 under Rule 7(1) of the IB Rules, 2019 demanding Rs.38,57,72,561.89 along with unapplied interest, other charges and costs till repayment in full. The said Sri Kapil Mehra *vide* his letter[4] dated 28/07/2021 replied to the said Demand Notice dated 17/04/2021. In its reply the Applicant Bank *vide* its letter[5] dated 12/08/2021 duly replied to the said letter dated 28/07/2021.

7. The respondent-personal guarantor has filed his reply mainly on the following grounds:

(a) Dues of the respondent have been fully settled under the approved resolution plan in accordance with the provisions of the code;

(b) Approved Resolution Plan is binding on all concerned in terms of section 31(1) of the Code;

(c) Claim is barred by limitation.

[3] Annexure A-8 at pages 94 to 101 of the petition
[4] Annexure A-9 at pages 102 to 106 of the petition
[5] Annexure A-10 at pages 107 to 110 of the petition

The reply affidavit filed by the respondent-personal guarantor will be considered after submission of report by the RP to be appointed in this matter.

8. In this factual conspectus, the applicant prays for initiation of insolvency resolution process, against the respondent/personal guarantor.

9. 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.

10. The Applicant Bank/Creditor has not proposed any name of Insolvency Professional. Therefore, we are appointing **Ms. Rachna Jhunjhunwala,** as Resolution Professional having Registration No. **IBBI/IPA-001/IP-P00389/2017-18/10707**, e-mail i.d. jsa.jhunjhunwala@gmail.com, mobile no. 98311 41167 in exercise of the power conferred under section 97 of the IBC, 2016 on this Authority subject, however, to her possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which she 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 in **Form A** along with **Form B** within seven days from the date of receiving this Order to the effect that she fulfils all the requirements for being appointed as Resolution Professional in the matter.

11. 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.

12. 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.

13**.** List this matter on 25/08/2022 for further consideration.

14. 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.

15. 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, 11th day of July , 2022.

hb.