

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

**CP (IB) No. 181/KB/2021**

*In the matter of:*

A petition under section 95 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

**ICICI Bank Limited**

*... Petitioner*

*Versus*

**Prashant Bothra**

*...Personal Guarantor*

Order reserved on: 12 January, 2022

Order pronounced on: 24 March, 2022

**Coram:**

**Shri Rajasekhar V.K.** : **Member (Judicial)**

**Shri Balraj Joshi** : **Member (Technical)**

***Appearances (through video conference)***

For the Petitioner : 1. Mr. Soorjya Ganguli, Advocate  
2. Ms. Pooja Chakrabarti, Advocate  
3. Ms. Kiran Sharma, Advocate  
4. Mr. Prithwish Roy Chowdhury, Advocate

For the Respondent/Personal Guarantor : 1. Ms. Debaleena Ganguly, Advocate  
2. Ms. B. Gayatri, Advocate

**ORDER**

**Rajasekhar V.K., Member (Judicial)**

1. This Court convened through videoconferencing.
2. The Company Petition has been filed under section 95(1) of the Insolvency and Bankruptcy Code, 2016 (“Code”) 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 (“IRP

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Rules”) and regulation 4(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (“IRP Regulations”) by ICICI Bank Limited, represented by Ms. Ayesha Das, seeking to initiate Insolvency Resolution Process (“IRP”) against Prashant Bothra, the Personal Guarantor of Kohinoor Paper and Newsprint Private Limited (“KPNPL”).

**Brief facts of the case**

3. The Petitioner had given various loan facilities to KPNPL *vide* Facility Agreements dated 24 June 2011 extended credit facility to KPNPL. The credit facility was restructured from time to time. The Deed of Guarantees were executed on 30 March 2015. KPNPL and the Personal Guarantor failed to make payment as per the terms of the Facility Agreement of Rs.34,30,33,697.19 (Rupees Thirty Four Crore Thirty Lakh Thirty-Three Thousand and Six Hundred and Ninety Seven and Nineteen paise).
4. The default of KPNPL was adjudicated *vide* an order dated 18 June 2019 passed by the learned DRT-III, Kolkata in O.A. 275/2019 filed by ICICI Bank Limited against KPNPL and the guarantor of the KPNPL.
5. KPNPL was admitted under Corporate Insolvency Resolution Process (“CIRP”) by this Adjudicating Authority *vide* order dated 26 September 2019 on a petition filed by Sendoz Commercials Private Limited and registered as C.P. (IB) No. 1694/KB/2018.
6. The Personal Guarantor had executed two personal guarantees<sup>1</sup> on 30 March 2015 in favour of ICICI Bank Limited to secure the loan facility given to KPNPL.
7. The Petitioner issued a Demand Notice in Form B in 18 March 2021 under rule 7(1) of the IRP Rules but no reply was received from the Personal Guarantor.

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<sup>1</sup> Annexure E-40 and Annexure E-41

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8. *Vide* an order dated 16 September 2021. this Adjudicating Authority appointed Mr. Supdipta Ghosh as the Interim Resolution Professional under section 97 of the IBC, 2016 on this Authority subject to the regulation 4(1) and (2) of the IRP Regulations and directed the Interim Resolution Professional to make the recommendations with the reasons in writing for acceptance or rejection of this Petition and file a report.

**Report of the Resolution Professional**

9. The Resolution Professional submitted his report on 01 November 2021. The IRP requested the Personal Guarantor to provide documents to prove that the Personal Guarantor had made payment to ICICI Bank Limited but the IRP did not receive any reply from the Personal Guarantor.
10. The Resolution Professional has recommended the acceptance of the Petition filed by ICICI Bank Limited under section 95(1) of the Code for the following reasons:
- a. the debts owned by KPNPL was guaranteed by Mr. Prashant Bothra;
  - b. Mr. Prashant Bothra has failed to pay the debts within fourteen days of the service of the notice of demand sent by ICICI Bank Limited;
11. In view of the above circumstances, the present petition made by the Petitioner is complete in all respect as required by law. We accept the Report of the Resolution Professional that the Personal Guarantor is in default of a debt due and payable.
12. It is, accordingly, hereby ordered as follows:-
- a. The application bearing CP (IB) No. 181/KB/2021 filed by ICICI Bank Limited, the Petitioner, under section 95 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate

Debtors) Rules, 2019 for initiating IRP against Prashant Bothra, the Personal Guarantor, is **admitted**.

- b. There shall be a moratorium under section 101 of the Code.
- c. The moratorium shall have effect from the date of this order till the completion of the IRP or until this Adjudicating Authority approves the repayment plan under sub-section (1) of section 114 of the Code.
- d. Public announcement of the IRP shall be made immediately as specified under section 102 of the Code.
- e. Mr. Sudipta Ghosh, registration number IBBI/IPA-001/IP-P00484/2017-18/10872, email: [sudipta\\_ghosh08@yahoo.com](mailto:sudipta_ghosh08@yahoo.com) is hereby appointed as Resolution Professional (RP) of the Personal Guarantor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The RP shall carry out his functions as contemplated by sections 107, 108, 112, 113 of the Code.
- f. During the IRP period, the assets of the Personal Guarantor shall vest in the RP. The Personal Guarantor shall provide all documents in their possession and furnish every information in their knowledge to the RP within one week from the date of receipt of this Order, in default of which coercive steps will follow.
- g. The RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the IRP in respect of the Personal Guarantor.

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- h. The Petitioner shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakh only) with the RP to meet the expenses arising out of issuing public notice and inviting claims.
- i. The Court Officer of this Court is hereby directed to communicate this Order to the Petitioner, the Personal Guarantor and the RP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- j. Additionally, a copy of the Petition, report of the Interim Resolution Professional and this order shall be served on the creditors within seven days from the date of this order.
13. **CP (IB) No. 181/KB/2021** to come up on 08 June 2022 for filing the periodical report.
14. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**BALRA** Digitally signed  
by BALRAJ JOSHI  
**J JOSHI** Date: 2022.03.24  
19:00:48 +05'30'

Balraj Joshi  
Member (Technical)

GGRB(LRA)

Rajasekhar V.K.  
Member (Judicial)  
24<sup>th</sup> March, 2022