IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.P.(IB)/96(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:
Bank of Baroda

...Applicant

-Versus-

Ramesh Kumar Sarawagi

...Respondent

Order Reserved on: 29/04/2022

Order Pronounced on: 27/06/2022

Coram:

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

Appearances (through video conferencing)

For Financial Creditor	:	Mr. Ramesh Chandra Prusti, Adv.
For Respondent-Personal Guarantor	:	Ms. Swapna Choubey, Adv. Mr. Mohan Ram Goenka, PCS

O R D E R

Per: Rohit Kapoor, Member (Judicial)

1. The Court convened via video conference.

2. Under consideration is an Application **C.P.(IB)/96/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 **Mr. Ramesh Kumar Sarawagi**, Personal Guarantor for **Prithvi Ferro Alloys Private Limited. (CIN: U27100WB2008PTC121962)** (hereinafter referred to as **"PFAPL"**) demanding total debt of Rs.16,89,01,410.32 as on 30/11/2021.

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 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 **"PFAPL"** and guarantor had approached the applicant seeking grant of various Credit Facilities. On the representations made by the **"PFAPL",** the Applicant had extended various Credit facilities from time to time for its business purpose. As per the Credit Facilities, **"PFAPL"** 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 **"PFAPL"** 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 01/12/2016.

5. The applicant had filed an original application in the year 2018 being **O.A. No. 381 of 2018** against the **"PFAPL"** (Corporate Debtor) and the guarantors before the Debts Recovery Tribunal, Kolkata after issuing notice u/s. 13(2) of the SARFAESI Act, 2002, which is pending before the DRT, Kolkata. Meanwhile, **"PFAPL" (**Corporate Debtor) was admitted under CIRP by the National Company Law Tribunal, Kolkata Bench vide order dated 08/08/2019 passed in **CP(IB)/140(KB)2019 (Punjab National Bank -vs- Prithvi Ferro Alloys Private Limited)** and finally vide order dated 03/05/2021 Resolution Plan was approved. The Order of Admission under CIRP dated 08/08/2019 and the Order of Approval of Resolution Plan dated 03/05/2021 are collectively annexed as **Annexure "B"[1].**

6. The personal guarantor, viz., Mr. Ramesh Kumar Sarawagi, had executed personal guarantee[2] dated 25/04/2014 **(Annexure "D")** 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

[1] At pages 46 to 97 of the petition
[2] At pages 124 to 144 of the petition

by **"PFAPL"** in respect of the Facility Agreements. The Applicant has issued a Demand Notice in **Form B**[3] **(Annexure "F")** on 19/10/2020 under Rule 7(1) of the IB Rules, 2019 demanding Rs.62,59,94,939.27 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. Mahesh Chand Gupta,** an Insolvency Professional, having Registration No. **IBBI/IPA-001/IP-P01489/2018-2019/12304**, of FE-202, Salt Lake City, Sector III, 1st Floor, Kolkata 700 106, West Bengal, **e-mail address: mcgupta90@gmail.com**, telephone nos. 9831046652 (Home) and 798044128 (Mobile) for appointment as Resolution Professional. Mr. Mahesh Chand Gupta has given his written consent[4] in **Form A** along with Authorisation for Assignment valid till 30/11/2022 in **Form B** (**Annexure "A").** Therefore, we are appointing Mr. Mahesh Chand Gupta as Resolution Professional in exercise of the power conferred under section 97 of the IBC, 2016 on this Authority. 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.

[3] At pages 147 to 150 of the petition
[4] At pages 39 to 45 of the petition

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 10/08/2022.

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, 27th day of June, 2022.

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