

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**KOLKATA BENCH - 1**

**KOLKATA**

**C.P. No. 317/KB/2021**

*In the matter of:*

An application under Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rule, 2019).

**And**

*In the matter of:*

**IFCI Limited**, a Company within the meaning of the Companies Act, 2013 having its Registered Office at IFCI Tower, 61, Nehru Place, New Delhi – 110019 and one of its Regional Office at Chatterjee International Centre (3<sup>rd</sup> Floor), 33-A, Jawaharlal Nehru Road, Kolkata 700071, in the State of West Bengal..

**... Financial Creditor**

**Versus**

**Shri Sunder Lal Dugar**, Son of Late Moti Lal Dugar, residing at 63, Park Street, Kolkata 700016.

**... Personal Guarantor**

*Coram :*

**Shri Rajasekhar V.K.** : **Member (Judicial)**  
**Shri Balraj Joshi** : **Member (Technical)**

*Appearances (through video conferencing):*

**Mr. Om Narayan Rai, Advocate** ] **For Financial Creditor**  
**Mr. Debasish Chakraborty, Advocate** ]  
**Mr. Ashok Kumar Agarwal, Advocate** ] **Resolution Professional**

**Date of hearing: 05/04/2022**

**Date of pronouncement: 18/04/2022**

**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 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 IFCI Limited represented by Shri C.P. Srivastava, Assistant General Manager, seeking to initiate Insolvency Resolution Process (“IRP”) against Shri Sunder Lal Dugar, the Personal Guarantor of EMC Limited.

**Brief facts of the case**

3. The Petitioner had given various loan facilities to EMC Limited, Constantia Office Complex, ‘B’ Wing, 8<sup>th</sup> Floor, 11, Dr. U.N. Brahmachari Street, Kolkata 700017, *vide* Facility Agreements dated 26.09.2014 and 23.03.2015. EMC Limited and the Personal Guarantor failed to make payment as per the terms of the Facility Agreement a sum of Rs.247,50,97,663.26 (Rupees Two Hundred Forty Seven Crore Fifty Lakh Ninety Seven Thousand Six Hundred Sixty Three and Paise Twenty Six only) as on 14.06.2020 along with further interest..

4. The default of EMC Limited was adjudicated *vide* notice of invocation made by the financial creditor on 03.01.2019.
  
5. EMC Limited was admitted under Corporate Insolvency Resolution Process (“CIRP”) by this Adjudicating Authority *vide* order dated 12<sup>th</sup> November, 2018 on a petition filed under Section 9 in CP(IB) No.1237/KB/2018, filed by one Beni Gopal Singhi, an operational creditor of EMC Limited.
  
6. The Petitioner issued a Demand Notice in Form B on 13.07.2020 under rule 7(1) of the IRP Rules and the Personal Guarantor replied *vide* letter dated 01.09.2020. Copy of the demand notice and the reply thereto are annexed with the petition marked as **Annexure ‘IE’ and Annexure – ‘IF’ respectively.**
  
7. *Vide* an order dated 17.02.2022. this Adjudicating Authority appointed Mr. Ashok Kumar Agarwal 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**

8. The Resolution Professional submitted his report on 30<sup>th</sup> March, 2022. The IRP requested the Personal Guarantor to provide documents to prove that the Personal Guarantor had made payment to IFCI Limited but the IRP did not receive any reply from the Personal Guarantor.

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9. The Resolution Professional has recommended the acceptance of the Petition filed by IFCI Limited under section 95(1) of the Code for the following reasons:

- a. The debts owned by EMC Limited was guaranteed by Shri Sunder Lal Dugar.
- b. Mr. Sunder Lal Dugar has failed to pay the debts within Fourteen days of the service of the notice of demand sent by IFCI Limited;
- c. Though opportunities were granted to the Personal Guarantor for appearance and to have his say in the matter, no appearance was put in. It, therefore, appears that the Personal Guarantor has nothing to say in his defence, and that he accepts his liability.

10. 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.

11. It is, accordingly, hereby ordered as follows:-

- a. The application bearing CP (IB) No. 317/KB/2021 filed by IFCI 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 Sunder Lal Dugar, the Personal Guarantor, is **admitted**.
- b. There shall be a moratorium under section 101 of the Code.

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- 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. Ashok Kumar Agarwal**, registration number **IBBI/IPA-002/IP-N00626/2018-2019/11898**, email id: [ashok.agarwal@singhiipsolutions.com](mailto:ashok.agarwal@singhiipsolutions.com), **Mobile No.9831060452** 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.2,00,000/-** (Rupees Two 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 Resolution Professional and this order shall be served on the creditors within seven days from the date of this order.
12. **CP (IB) No. 317/KB/2021** to come up on **15<sup>th</sup> July, 2022** for filing the periodical report.
13. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**BALRAJ  
JOSHI**

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**Balraj Joshi**  
**Member (Technical)**

**Rajasekha  
r V K**

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

Order signed on 18<sup>th</sup> April, 2022

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