

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

C.P.(IB)/135(KB)2021

*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:

State Bank of India

...Applicant

-Versus-

Rohit Patni

...Respondent

**Order Reserved on: 13/08/2021
Order Pronounced on: 21/09/2021**

Coram:

Shri Rajasekhar V.K.

: Member (Judicial)

Shri Harish Chander Suri

: Member (Technical)

Appearances (through video conferencing)

For applicant

: Mr. Jishnu Saha, Sr. Advocate
Ms. Suhani Dwivedi, Advocate
Mr. Deepanjan Dutta Roy, Advocate

For respondent

: Mr. Joy Saha, Sr. Advocate
Mr. Anuj Singh, Advocate
Ms. Rashmi Singhee, Advocate
Mr. Arun Kumar Singh, Advocate

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. The Court convened via video conference.
2. Under consideration is an Application CP(IB)/135(KB)2021 filed under section 95(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC, 2016**”) r/w 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 personal guarantor, viz., **Mr. Rohit Patni**, one of the directors of **Rohit Ferro-Tech Limited (CIN: L27104WB2000PLC091629)** (hereinafter referred to as “**RFTL**”).
3. The factual matrix of the case is that the Applicant is a banking company constituted under the statutory enactment of the State Bank of India Act, 1955. RFTL had approached the applicant seeking grant of various loan facilities amounting to Rs.1269,59,00,000/-. A table listing the accounts with disbursement and amounts due under each Facilities is annexed as **Annexure “E”** to the application at **page 235**. As per the Facility Agreements, RFTL was obliged to repay the principal sum of loan along with interest thereon in accordance with repayment schedule as set out in those agreements. The Deed of Guarantees and a Supplemental Deed of Guarantee were executed on 19/09/2011, 30/03/2013, 25/07/2013 and 29/03/2014 respectively, copies whereof are annexed as **Annexures “K”, (pages 282 to 300) “L”, (pages 301 to 307) “M” (pages 308 to 316) and “N” (pages 317 to 348)** to the application. A deed of Personal Guarantee was executed on 17/09/2014 in

terms of Master Restructuring Agreement dated 17/09/2014, a copy whereof is annexed as **Annexure “O”** to the application at **pages 349 to 361**. The RFTL and the guarantor had failed and/or neglected to make payment as per terms of the said Facility Agreements.

4. The applicant had filed an application before the Debt Recovery Tribunal - 1, Kolkata, being **OA No. 309 of 2018** to realise its dues. Meanwhile, the RFTL (Corporate Debtor) was admitted under CIRP by the National Company Law Tribunal, Kolkata Bench *vide* order dated 07/02/2020 passed in **CP(IB) No.1214/KB/2018 (State Bank of India Vs. Rohit Ferro Tech Limited)**.
5. The personal guarantor, viz., Mr. Rohit Patni has executed personal guarantee on 17/09/2014 in favour of the **SBICAP TRUSTEE COMPANY LIMITED** in its capacity as “**Security Trustee**” acting on behalf of the Banks listed in Schedule – I to the said Personal Guarantee agreement, to secure the repayment of the principal amount of the Facility Agreements together with all interest, additional interest, liquidated damages, premium on prepayments, reimbursement of all costs, charges and expenses and all other obligations payable by RFTL in respect of the Facility Agreements. The Applicant has issued a demand notice on 26/03/2021 under rule 7(1) of the IB Rules, 2019 but no response. A copy of the Demand Notice along with its annexures has been annexed to the application as **Annexures “F” (Colly) at Pages 236 to 269**.
6. Mr. Joy Saha, Learned Senior Counsel appearing for the respondent has raised objection to the present application on the ground that an application for recalling the order of admission in respect of the principal borrower, Rohit Ferro-Tech Limited, is pending for consideration before this Adjudicating Authority.

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7. Even though Mr. Joy Saha, Learned Senior Counsel has registered his objection to the present application on the aforesaid ground, it would be seen that in the matter of *Swiss Ribbons Pvt. Ltd. vs. Union of India*,¹ the Hon'ble Supreme Court had held that limited notice of the application should be given to the Personal Guarantors of the Corporate Debtor only to secure presence of the Personal Guarantors, referring to the Interim Moratorium, which has commenced. It was further directed by the Hon'ble Supreme Court that before appointment of the Resolution Professional, no hearing as such is contemplated and the debtor cannot be allowed to raise dispute for which the stage would be section 100 of the Insolvency & Bankruptcy Code, 2016.
 8. In this factual conspectus, the applicant prays for initiation of insolvency resolution process.
 9. The applicant has clearly brought it out in its application coupled with admissible evidence that the personal guarantor has committed default in making payment of the various loan facility along with interest to the Applicant for which he has given the personal guarantee as above on behalf of RFTL.
 10. It is made known to everyone that on filing this Application by the Applicant/Creditor the interim-moratorium commences under section 96(1)(a) of IBC, 2016 in relation to all the debts of the personal guarantor and shall cease to have effect on the date of admission of this Application and during the interim-moratorium period the following is prohibited:
 - (a) Any pending legal action or proceeding in respect of any debt of the personal guarantor shall be deemed to have been stayed; and

¹ 2019 SCC OnLine SC 73, decided on 25.01.2019

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- (b) The Creditors of the personal guarantor shall not initiate any legal action or proceedings in respect of any debt.
- (c) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
11. The Applicant/Creditor has not proposed name of Insolvency Professional for appointment as Resolution Professional. Therefore, Mr. Daulat Ram Jain, Registration No. IBBI/IPA-001/IP-P00945/2017-2018/11565, e-mail daulatjain@rediffmail.com, whose name appears in the list of the Insolvency Professionals provided by the IBBI to NCLT, Kolkata is hereby appointed as Resolution Professional in exercise of the power conferred under section 97 of the IBC, 2016 on this Authority subject to the 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 is directed to file declaration within 7 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.
12. The Resolution Professional shall exercise all the powers as enumerated under section 99 of the IBC, 2016 r/w the Rules made thereunder. He is directed to make the recommendations with the reasons in writing for acceptance or rejection of this Application within stipulated time as envisaged under the provisions of section 99 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/Creditor, as soon as the same is filed before this Authority.
13. The Applicant/Creditor and his Counsel are hereby directed to serve the copy of this Order along with copy of the Application and documents on the Resolution Professional by all modes for information and compliance.

14. List this matter on 06/12/2021.
15. The Registry is 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.
16. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

Signed this 21st day of September, 2021.

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