IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.P.(IB)/23(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:

UCO Bank ...*Applicant*

-Versus-

Pramod Kumar Mittal ...Respondent

Order Reserved on: 25/08/2021
Order Pronounced on: 23/09/2021

Coram:

Shri Rajasekhar V.K. : Member (Judicial)
Shri Harish Chander Suri : Member (Technical)

Appearances (through video conferencing)

For the applicant : Mr. Rahul Auddy, Advocate

O R D E R

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

1. The Court convened via video conference.

2. Under consideration is an Application CP(IB)/23(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 Insolvency Resolution Process (hereinafter referred to as "**IR Process**") against personal guarantor, viz., ***Pramod Kumar Mittal***, one of the directors of **Gontermann-Pipers (India) Limited (CIN: L27106WB-1966PLC101410)** (hereinafter referred to as "**GPIL**").

3. The factual matrix of the case is that the Applicant is a body Corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. GPIL (Corporate Debtor) was enjoying credit facilities with the Financial Creditor, inter alia, in the form of Working Capital with sanction limit of Rs. 2.40 Crores in or about 2003. The said credit facility was enhanced from time to time and the Financial Creditor in or about 2011 further sanctioned fund based and non-fund-based Term Loan Facility to the Corporate Debtor with a total exposure of Rs. 93.20 Crores.

4. Thereafter, the Corporate Debtor started defaulting in its repayment obligations of the aforesaid credit facilities. Pursuant to the restructuring package, the Financial Creditor in or about 2013 had restructured and/or renewed the credit facilities sanctioned in favour of the Corporate Debtor through a sanction letter dated 21/01/2013. In pursuance thereof, several

agreements and security documents were entered into by and between GPIL (Corporate Debtor) and the Financial Creditor as well as other Lender Banks.

5. One of the conditions of such restructuring was that the entire facility was to be, inter alia, secured by Personal Guarantee by Pramod Kumar Mittal and Mr. Vinod Kumar Mittal. In accordance with the terms and conditions of such restructuring, a Deed of Personal Guarantee dated 28/05/2013 was executed by Pramod Kumar Mittal and another Deed of Personal Guarantee dated 04/07/2013 was executed by Vinod Kumar Mittal. In such deed of guarantee, the guarantor has agreed that the Guarantee shall be continuing one and shall remain in full force and effect till such time the Borrower repays in full the existing loans together with all interest and all other monies that may from time to time become due and payable and remain unpaid to the Lenders under the Master Restructuring Agreement. However, GPIL (Corporate Debtor) had failed to operate the said accounts in terms of the agreement and/or arrangement and the Corporate Debtor started defaulting in the servicing of interest as well as the principal amount. Thus the accounts had become irregular and declared as Non-Performing Asset (NPA) on 30/09/2015.

6. In view of the failure on the part of the Corporate Debtor and guarantors, the Financial Creditor issued a notice dated 19/09/2019 u/s 13(2) of the SARFAESI Act, 2002. In spite of such demand notice, the Corporate Debtor and the Guarantors have jointly and severally failed to liquidate the outstanding dues in the said accounts. Meanwhile, GPIL (Corporate Debtor) was admitted under CIRP by this Bench *vide* order dated 11/12/2019 passed in **CP(IB) No1542/KB/2018 [Vipul V. Agarwal, HUF carrying on business in trade name of M/s. Balaji Metals -vs- Gontermann – Pipers**

(India) Limited]. Claim form was duly submitted by the applicant before the IRP/RP of the Corporate Debtor, a copy whereof is annexed to the petition as **Annexure – G (PDF pages 112-121 of the petition).**

7. The Applicant has issued a demand notice in Form B on 22/07/2020 under rule 7(1) of the IB Rules, 2019. A copy of the demand notice along with its annexures has been annexed to the petition as **Annexures "E" (PDF Pages 99 to 109 of the petition).**

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 that the personal guarantor has committed default in making payment of the cash credit facility along with interest to the Applicant for which he has given the personal guarantee to the Applicant on behalf of GPIL.

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

(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. Partha Kamal Sen, IBBI Registration No. IBBI/IPA-002/IP-N00022/2016-17/10049, e-mail partha_kamal@yahoo.com, whose name appears in the list of the Insolvency Professionals provided by the IBBI to this Bench, 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 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.

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 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.

14. List this matter on 01/12/2021.

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 23rd day of September, 2021.

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