IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.P.(IB)/120(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/Financial Creditor

-Versus-

Mr. ASHOKE KUMAR KHARKIA

...Respondent/Guarantor

Order Reserved on: 10/06/2022

Order Pronounced on: 11/07/2022

Coram:

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

Appearances (through video conferencing)

For FC	:	Mr. Ramesh Ch. Prusti, Adv. Ms. Mahuya Ghosh, Adv.
For Applicant	:	Mr. Kuldip Mallik, Adv. Mr. Sayantak Das, Adv.

O R D E R

Per: Harish Chander Suri, Member (Technical)

1. The Court convened via video conference.

2. Under consideration is an Application **C.P.(IB)/120/KB/2022** filed 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 personal guarantor, viz., **Mr. Ashoke Kumar Kharkia**, Personal Guarantor of the Principal Borrower/Corporate Debtor, **M/s Kharkia Steels Private Limited (CIN: U27109WB2006PTC107052)** (hereinafter referred to as **"KSPL"**).

3. The Applicant is a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertaking) 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. **"KSPL"** had availed various credit facilities from the Applicant bank on the basis of sanctioned, enhanced and renewed from time to time on 12.12.2007, 23.07.2009 & 06.03.2012. At the time of availing the said credit facilities several other documents were also executed by the borrower and guarantors individually, jointly and severally in favour of the applicant for availing the said Credit Facilities, the personal guarantor of **"KSPL"** had executed various bank guarantees.

5. **"KSPL"** started defaulting in the repayment of the credit facilities and failed to adhere to the terms and conditions of the sanction letter and could not maintain the accounts as regular, as such the accounts of the Corporate Debtor was classified as non-performing asset (**NPA)** on **31.08.2013.**

6. The Financial Creditor through their Advocate had issued a letter demanding outstanding dues to the tune of Rs. 14,50,89,908.33/- to the Guarantor/Respondent on 16.05.2014. The Financial Creditor had issued statutory Demand Notice dated 14.08.2014 under section 13(2) of the SARFAESI Act, 2002 to the **"KSPL"** and the Guarantors including **Mr. Ashoke Kumar Kharkia** one of the Personal Guarantors, the Respondent herein. The Applicant bank along with other consortium banks filed an Original Application (O.A.) bearing OA No. 682 of 2014 under section 19 of the Recovery of Debts and Bankruptcy Act, 1993, before the Debts Recovery Tribunal II, Kolkata for the recovery of the outstanding dues for a sum of Rs. 18,17,44,861.53 as on 15.05.2014 till the date of repayment in full form the Corporate Debtor and guarantors. Meanwhile CIRP Was initiated against the **"KSPL"** vide order dated 21.09.2020 passed by the NCLT, Kolkata Bench, Kolkata an order of Approval of Resolution plan.

7. The Personal Guarantor, viz., **Mr. Ashoke Kumar Kharkia** had executed the personal guarantee on several dates i.e., 02.01.2010 & 16.06.2011, in favour of the Applicant to secure the repayment of the principal amount of the Cash 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 by **"KSPL"** in respect of the facility agreement. The applicant has issued a Demand Notice in **Form B** on **20.10.2020** under Rule 7(1) of the IB Rules, 2019 but no response.

8. In this factual conspectus, the applicant prays for initiation of insolvency resolution process, against the respondent/guarantor.

9. 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.

10. The Applicant/Creditor has proposed name of **Mr. Mahesh Chand Gupta**, an Insolvency Professional for appointment as Resolution Professional. We, therefore, appoint **Mr. Mahesh Chand Gupta** having IBBI Registration No. **IBBI/IPA-001/IP-P-01489/2018-19/12304**, e-mail; mcgupta90@gmail.com , 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.

11. 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 Authority.

12. 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.

13. List this matter on **25/08/2022,** for further consideration.

14. 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.

15. 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, 11th day of July, 2022.

Kundan Kr.