

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH, COURT-II

Company Petition (IB) No.184/KB/2021

An application 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 Debtors) Rules, 2019]

In the matter of:

CENTRAL BANK OF INDIA

...FINANCIAL CREDITOR

Versus

JAI KUMAR GOYEL

...RESPONDENT/PERSONAL GUARANTOR

Coram

Smt. Bidisha Banerjee, Member (Judicial)

Shri. D. Arvind, Member (Technical)

Date of Pronouncement: 14/05/2024

Appearance (via Hybrid Mode)

Sudhir Kumar Senapati, Adv

] For the Financial Creditor

D. Barman, Adv

Rajesh Keshri, RP

] For the RP

ORDER

Per: D. Arvind, Member (Technical)

1. The court is convened through hybrid mode.
2. Learned counsel appearing for the parties were heard in extenso.
3. The application has been preferred to seek following relief:
The Central Bank Of India being Financial Creditor as per section 5(7) of the Insolvency and Bankruptcy Code, 2016 (“code”) requests that the Tribunal under section 95(1) of the Insolvency and Bankruptcy Code, 2016 read with rule7(2) of the Insolvency and Bankruptcy (application to Adjudicating Authority for insolvency Resolution Personal Guarantor to Corporate Debtor) Rules, 2019 to initiate insolvency Resolution process in respect of the Personal Guarantor of **BRG Iron & Steel Co. Private Limited, JAI KUMAR GOYEL.**
4. The CP (IB) No. 184/KB/2021 has been filed under section 95 of the IBC, 2016 by CENTRAL BANK OF INDIA for Initiating Insolvency Resolution Process of **JAI KUMAR GOYEL**, the Personal Guarantor to Corporate Debtor.
5. **Facts in a Nutshell:-**
 - 5.1 The Corporate Debtor is **BRG Iron & Steel Co. Private Limited** in **CP (IB) No. 513/KB/2018** under section 7 of the IBC filed by **UCO Bank** against **BRG Iron & Steel Co. Private Limited. JAI KUMAR GOYEL** is the Personal Guarantor of **BRG Iron & Steel Co. Private limited**
 - 5.2 This Adjudicating Authority was pleased to pass interim order moratorium against **JAI KUMAR GOYEL** in CP (IB) No. 184/KB/2021 on 21/04/2022.
 - 5.3 **Mr. Rajesh Keshri** was appointed as RP to file its report under section 99(7) of the IBC , 2016.
6. The Contentions are noted.
7. A Report under section 99 of the code has been prepared and filed by the RP. As per RP report the default amount as on date of filing application is Rs 271.79 crore.

8. The RP has examined the following:-
- a. Master Re- Structuring agreement between Corporate Debtor with number of Banks including the applicant.
 - b. Deed of guarantee executed by the Personal Guarantor in favour of the applicant.
 - c. Joint Deed of Hypothecation executed by Corporate Debtor in favour of Consortium of Bank including applicant.
 - d. The Working Capital consortium agreement executed by Corporate Debtor in favour of number of banks including applicant bank.
 - e. Facility agreement for consortium term loan executed by Corporate Debtor in favour of number of banks including applicant bank.
 - f. Letter of undertaking for restructuring package sanction by the lenders executed by Personal Guarantor.
 - g. Revival Letter issued by Corporate Debtor.
 - h. Demand Notice issued to Corporate Debtor on behalf of applicant bank
 - i. Form of guarantee for advances and credits executed by Personal Guarantor in favour of applicant bank.
 - j. Order of DRT dated 12.02.2021 in OA No.31 of 2021.
 - k. Liquidation order of NCLT passed in CP (IB) No. 513/KB/2013.
9. The RP has sent a Notice/letter dated 29.10.2021 enquiring under section 99(2) of IBC , with regard to payment if any made to Financial Creditor. (**Annexure “D” of the report**). The RP did received reply from the Personal Guarantor i.e JAI KUMAR GOYEL . **In the said reply the Personal Guarantor, i.e JAI KUMAR GOYEL** has denied making payment to Central bank of India. Further, the Personal Guarantor has

not filed reply affidavit before this Adjudicating Authority despite of his appearance before the Adjudicating Authority lastly on 17th October 2023.

10. Reasons for recommendation by RP:

- a. The application CP (IB) No. 184/KB/2021 is found to be satisfying all the ingredients of section 95 of IBC, 2016.
- b. No evidence of repayment of debt claimed in section 95 application from JAI KUMAR GOYEL has been received.
- c. No document whereby the personal guarantee agreement dated 21.07.2014 & 08.03.2016 was cancelled by both parties.
- d. No order of court or any other forum whereby the personal guarantee agreement dated 21.07.2014 & 08.03.2016 was cancelled or set aside.

11. Approval of Liquidation Order:

- 11.1 This Adjudicating Authority in CP (IB) No. 513/KB/2018 admitted Corporate Debtor into Liquidation.

12. Analysis and Finding

12.1 We have heard the learned counsel and perused the record.

12.2 The personal guarantee was invoked on by applicant/Financial Creditor on 16.02.2019 and the application was filed on 17.07.2021. Hence, application is filed within the period of Limitation.

We rely on the judgement of **Hon'ble NCLAT in Pooja Ramesh Singh vs SBI Company Appeal (AT)(insolvency) No. 329 of 2023**, wherein Appellant Tribunal has held that the date of Notice to guarantor for repayment has to be treated as notice of default on receipt of such notice the date of default is established. In this case, considering the above judgement of Hon'ble NCLAT this application has been filed within the 3

years from date of the notice and hence not barred by limitation.

12.3 Accordingly, it is **admitted invoking power u/s. 100 of IBC.**

13. We have noted that Hon'ble Supreme Court in the judgment of Dilip B.Jiwrajka V/s Union of India & amp; Ors. In WP (civil) No. 1281 of 2021 dated 09.11.2023 has upheld the Constitutional Validity of the Sections 94 to 100 and the propositions that can be culled out from the Judgments inter-alia are as follows: -

- I. No judicial adjudication is involved at the stages envisaged in Sections 95 to Section 99 of the IBC;
- II. The Resolution Professional appointed under Section 97 serves a facilitative role of collating all the facts relevant to the examination of the application for the commencement of the insolvency resolution process which has been preferred under Section 94 or Section 95. The report to be submitted to the adjudicatory authority is recommendatory in nature on whether to accept or reject the application;
- III. No adjudicatory function of Adjudicating Authority is contemplated at the admission stage. To read in such a requirement at that stage would be to rewrite the statue which is impermissible in the exercise of judicial review;
- IV. The resolution professional may exercise the powers vested under Section 99(4) of the IBC for the purpose of examining the application for insolvency resolution and to seek information on matters relevant to the application in order to facilitate the submission of the report recommending the acceptance or rejection of the application;
- V. There is no violation of natural justice under Section 95 to Section 100 of the IBC as the debtor is not deprived of an

opportunity to participate in the process of the examination of the application by the resolution professional;

- VI. No judicial determination takes place until the adjudicating authority decides under Section 100 whether to accept or reject the application. The report of the resolution professional is only recommendatory in nature and hence does not bind the adjudicatory authority when it exercises its jurisdiction under Section 100;
- VII. The adjudicatory authority must observe the principles of natural justice when it exercises jurisdiction under Section 100 to determine whether to accept or reject the application;
- VIII. The purpose of the interim moratorium under Section 96 is to protect the debtor from further legal proceedings; and
- IX. The provisions of Section 95 to Section 100 of the IBC are not unconstitutional as they do not violate Article 14 and Article 21 of the Constitution.

14. Accordingly, the provisions of Section 100 will come into play.

- I. When the application is admitted under Section 100, a moratorium shall commence in relation to all the debts and shall cease to have effect at the end of the period of one hundred and eighty days beginning with the date of admission of the application or on the date the Adjudicating Authority passes an order on the repayment plan under Section 114, whichever is earlier.
- II. During the moratorium period: -
 - a. Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;
 - b. The creditors shall not transfer, alienate, encumber or dispose of any of his assets or his legal rights or beneficial interest therein;

- III. Where an order admitting the application under Section 96 has been made in relation to a firm, the moratorium under Sub-Section (1) shall operate against all the partners of the firm.
- IV. The provisions of this Section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
15. List the main **CP (IB) No. 184/KB/2021** for progress report on **01.07.2024 and**
16. The Registry is directed to send e-mail copies of the order forthwith to the Board and all the parties and their Ld. Counsel for information and for taking necessary steps.
17. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed this, on the 14th day of May 2024

NKS(LRA)