

DIVISION BENCH
COURT - II

M-1

(MENTIONING)

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. (IB)/244(KB)2023

**CORAM: 1. HON'BLE MEMBER(J), SMT. BIDISHA BANERJEE
2. HON'BLE MEMBER(T), SHRI D. ARVIND**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 10th JULY 2024

IN THE MATTER OF	THE CANARA BANK LIMITED VS SUMIT KUMAR DABRIWALA
UNDER SECTION	SECTION 95(1)

Appearance (via video conferencing/physically)

C O R R I G E N D U M O R D E R

1. This matter was on Board today.
2. In the order dated 13th December 2023, one line will be included that **“Resolution Professional is directed to pay a remuneration of Rs.75, 000/- as fee for the purpose of preparing his report under Section 99. Let the same be paid at the earliest”**.
3. Rest of the order dated 13th December 2023 will remain unchanged.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

DIVISION BENCH
COURT - II

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**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. (IB)/244(KB)2023

**CORAM: 1. HON'BLE MEMBER(J), SMT. BIDISHA BANERJEE
2. HON'BLE MEMBER(T), SHRI ARVIND DEVANATHAN**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 13TH DECEMBER, 2023, 10:30 A.M

IN THE MATTER OF	THE CANARA BANK LIMITED VS SUMIT KUMAR DABRIWALA
UNDER SECTION	SECTION 95(1)

Counsel/Authorised Representative appeared physically/through video conference:

For FC : Mr. Dipankar Das, Adv.

For respondent-personal guarantor : Mr. Prithwish Ray Chowdhury, Adv.

ORDER

1. Ld. Counsel for the Financial Creditor present. Ld. Counsel for the respondent-personal guarantor present.
2. Ld. Counsel for the Financial Creditor submits that copy of the application has been served on the respondent-personal guarantor and he accepts notice.
3. The Hon'ble Apex Court has upheld the validity of Section 95(1) of the Insolvency and Bankruptcy Code, 2016 ("**Code**") thereby disposed of all the cases before the Hon'ble Apex Court concerning Section 95(1) of the Code. Therefore, there is no impediment to pass appropriate order in this matter.
4. **Brief facts of the case are as follows:** -
 - (a) Canara Bank ("**Financial Creditor**") has filed a petition being CP(IB)/244(KB)2021 under section 95(1) of the Code 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 ("**IB Rules, 2019**")

and regulation 4(2) of IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (“**IB Regulations, 2019**”) for initiating Insolvency Resolution Process (“**IR Process**”) against personal guarantor, viz., **Mr. Sumit Kumar Dabriwala**, one of the directors of **BBT Elevated Road Private Limited (CIN: U45400WB2014PTC200347)** (hereinafter referred to as “**BBT-ERPL**”/“**Corporate Debtor**”).

(b) BBT-ERPL/Corporate Debtor and guarantor had approached the Canara Bank seeking grant of term loan facility to the tune of Rs.135 Crores, which was sanctioned on 17/01/2015. The Corporate Debtor executed various documents for the purposes of availing the loan and mortgaged an immoveable property. Thereafter, the Corporate Debtor and the guarantor defaulted in their repayment obligations and the account was declared as N.P.A. on 31/01/2020. The Financial Creditor issued a recall notice on 03/04/2021 demanding payment of a sum of Rs.148,13,66,687.84 along with interest @13% per annum w.e.f. 01/04/2021. The applicant/Financial Creditor issued a notice intimating initiation of proceeding under section 7 of the Code. Subsequently, by a letter dated 26/10/2022, the Corporate Debtor placed a revised One Time Settlement (“**OTS**”) proposal of Rs.90 Crores, which was rejected by the Financial Creditor vide letter dated 03/11/2022. A Demand Notice in Form B in accordance with relevant provisions of the IBC was issued by the Financial Creditor under rule 7(1) of the IB Rules on 20/10/2023 calling upon the guarantor to pay the amount of Rs.197,36,12,442/- due as on 14/11/2023 and the respondent-personal guarantor failed to do so within the stipulated time.

5. In this factual conspectus, the petitioner prays for initiation of insolvency resolution process against the personal guarantor.

6. It is made known to everyone that on filing this Application by the Petitioner/Financial Creditor the interim-moratorium commences under section 96(1)(a) of the Code 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

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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.

7. The Petitioner/Financial Creditor has not proposed any name of an Insolvency Professional in the petition for appointment as a Resolution Professional. Therefore, we appoint Mr. Vaibhav Khandelwal, an Insolvency Professional having Registration No. IBBI/IPA-001/IP-P-02157/2020-2021/13348 e-mail: vaaibhavkkhandelwal@gmail.com, telephone no. 9331689378, as given at Sl.No. 28 of the Insolvency and Bankruptcy Board of India, Panel for July 1, 2023 to December 31, 2023 – Kolkata Bench, as Resolution Professional in exercise of the power conferred under section 97 of the IBC, 2016 on this Adjudicating 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. His appointment shall be subject to his possessing a valid Authorisation for Assignment (AFA) issued by the Insolvency Professional Agency (IPA) of which he is a professional member, in terms of Regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2019. The Resolution Professional is directed to submit his consent to act as Resolution Professional within 7 days from the date of receipt of this Order.
8. The Resolution Professional shall exercise all the powers as enumerated under section 99 of the Code r/w the Rules made thereunder. He is directed to make the recommendations with the reasons in writing in regard to the preliminary issues of maintainability as well as merit of this Application, within stipulated time as envisaged under the provisions of section 99 of the Code. The RP shall give a copy of the report under sub-section (7) of section 99 of the Code to the Petitioner/Financial Creditor, as soon as the same is filed before this Adjudicating Authority.
9. The Petitioner/Financial Creditor and his Counsel are hereby directed to serve the copy of this Order along with copy of the petition and documents on the Resolution Professional by all modes for information and compliance.

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10. List this matter on **15/01/2024**.
11. 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.
12. Certified Copy of this order may be issued, if applied for, upon compliance of all

requisite formalities.

Arvind Devanathan
Member (Technical)

Bidisha Banerjee
Member (Judicial)