

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

Company Petition (IB) No. 244 of 2023

In the matter of:

An application under Section 95 read with Section 60(2) of the Insolvency and Bankruptcy Code, 2016, read with Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019

In the matter of:

Canara Bank

...FINANCIAL CREDITOR

Versus

Mr. Sumit Kumar Dabriwala

...RESPONDENT/PERSONAL GUARANTOR

Date of Pronouncement of Order: **15.07.2024**

Appearances (via video conferencing/physically):

Ms. Sanjana Nandi, Adv.] For the Financial Creditor

Ms. Shreya Bhatia, Adv.]

Mr. Rajarshi Banerjee, Adv.] For the Resolution Professional

O R D E R

Per: D. Arvind, Member (Technical)

1. Heard. Learned Counsel for the Financial Creditor present. Ld. RP in person present.
2. The Court Convened in a hybrid mode.
 1. This CP (IB) No. 244/KB/2023 has been preferred by the Financial Creditor to seek initiation of Insolvency Process against the Respondent Personal Guarantor to Corporate Debtor Under Rule 95(1) of IBC read with Regulation

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

Company Petition (IB) No. 244 of 2023

- 4(2) of IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 ('Personal Guarantors Regulations').
2. The amount in debt is Rs. **197,36,12,442.68/-** as on 14.11.2023. The debt of the Corporate Debtor fell due on 02.12.2019. The amount in default is Rs. **124,34,00.128.62/-**, default occurred on 03.11.2023.
 3. The application is complete as required under Section 95 read with rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019.
 4. It is to be noted that Hon'ble Supreme Court in the judgment of **Dilip B. Jiwrajka V/s Union of India & 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 statute 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 CP/IB/337/AHM/2020 12 of 17 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;*

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

Company Petition (IB) No. 244 of 2023

- 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; CP/IB/337/AHM/2020 13 of 17*
 - 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.*
5. The Applicant had proposed the name of the Insolvency Professional for appointment as Resolution Professional. In view of the above, Mr. Vaibhav Khandelwal, IBBI Registration No. IBBI/IPA-001/IP-P-02157/2020-2021/13348, email ID: **vaaibhavkkhandelwa@gmail.com**, was appointed as Resolution Professional, subject to his possessing a valid AFA, in exercise of the power conferred under Section 97 of the IBC, 2016 on this Authority.
6. The Resolution Professional was directed to file declaration within seven days to the effect that he fulfils all the requirements for being appointed as Resolution Professional in the matter which he has given, and to file his report in terms of Section 97 in two weeks.
7. The Resolution Professional Mr. has vide his report dated 10.01.2024 suggested/stated as extracted hereunder:

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

Company Petition (IB) No. 244 of 2023

4. Report u/s 99(7) of the IBC Code, 2016 :

- a. That the application dated 27th November 2023 filed by the Applicant under section 95(1) of the Insolvency and Bankruptcy Code, 2016 before this Hon'ble National Company Law Tribunal, Kolkata Bench for initiation of Insolvency Resolution Process in respect of Sumit Kumar Dabriwala, one of the Personal Guarantor of BBT Elevated Road Private Limited (Corporate Debtor). I undersigned was appointed as Resolution Professional vide order dated 13th December 2023 in the matter of Sumit Kumar Dabriwala / CP (IB) /244/2023. **Annexure A**
- b. That the Financial Creditor has granted Term Loan of INR 135 crores to the corporate debtor vide sanction letter 17th January 2015. **Annexure B**
- c. As per sanction letter dated 17.01.2015, The term Loan facility of INR 135 crores was secured by personal guarantee of Mr. Sumit Kumar Dabriwala, one of the Director of the Corporate Debtor and Accordingly guarantee Agreement was executed on 19.02.2015 between the Financial Creditor and Sumit Kumar Dabriwala. **Annexure C**
- d. Thereafter the Corporate Debtor and personal guarantor – Sumit Kumar Dabriwala defaulted in their repayment obligations and the account was declared NPA on 31/01/2020.
- e. The Financial Creditor invoked Personal Guarantee provided by Sumit Kumar Dabriwala vide sending Demand notice in Form B dated 20/0/2023 under rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor)



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

Company Petition (IB) No. 244 of 2023

Rules, 2019 demanding Rs 194,90,79,482.06 outstanding as on date. **Annexure D.** However, no response was received by Personal guarantor against the demand notice.

f. The Resolution Professional had an online meeting with the Personal Guarantor – Sumit Kumar Dabriwala on 23rd December on google meet as he was not available physically and also written him email on 25th December, 2023 regarding this application filed by financial creditor enquiring various documents. The Resolution Professional had not received any document denying or disputing the application filed by the Financial Creditor. **Annexure E**

g. Pursuant to section 99 of the Insolvency and Bankruptcy Code, 2016, I, Resolution Professional in the matter of Sumit Kumar Dabriwala hereby state that I have examined the application and have ascertained the following :

I. That the Corporate Debtor has committed the defaults in repayment of its debts as stated by the applicant in their application.

II. For the purposes of securing the credit facilities, Sumit Kumar Dabriwala has provided personal guarantee by executing guarantee agreement dated 19th February, 2015.

III. Sumit Kumar Dabriwala, Personal Guarantor was duly served notice dated 20th October, 2023 vide Form B by the applicant requesting him but no payment was made against the same. Postal receipts and delivery report as per **Annexure D.**

IV. The copy of the detailed calculation of default by the Applicant was examined.

V. The Resolution Professional has examined the application referred to in section 95 and tried to get information from Sumit Kumar Dabriwala, but could not get any response from him.

8. Recommendation are as under:

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

Company Petition (IB) No. 244 of 2023

5. Reason for Recommendation:

The undersigned recommends for acceptance of the application filed by the Applicant under section 95(1) of the IBC Code, 2016 for the following reasons:

- a. In accordance with the provision laid down under section 95(4) of the IBC, Code 2016 the said application was filed accompanied with details along with documents relating to:
 - I. The debts owned by the Corporate Debtor to the Applicant and guaranteed by personal Guarantor Sumit Kumar Dabriwala.
 - II. The failure of Personal Guarantor Sumit Kumar Dabriwala to pay the debts within 14 days of the service of notice of demand by the applicant.
 - III. Relevant evidence of the said default and non-repayment of the debts as aforesaid.
- b. In accordance with provisions laid down under section 95(5) of the IBC Code, 2016 the Learned counsel of the Applicant has sent a copy of the application by speed post to the personal guarantor Sumit Kumar Dabriwala.
- c. In accordance with provision laid down under section 99(2) of the IBC Code, 2016 the Resolution Professional has requested personal guarantor Sumit Kumar Dabriwala to prove repayment of debt. However, Sumit Kumar Dabriwala could not produce any



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

Company Petition (IB) No. 244 of 2023

information/ documents/ evidence in support of either repayment of the said loan or extinguishment of the said liability.

d. In accordance with the provision laid down under section 99(6) of the IBC Code, 2016 the Resolution Professional has examined the application filed by the Applicant and ascertained that the said application satisfies the requirements set out in section 95 of the IBC, Code 2016.

6. Recommendation:

In view of the above-mentioned reasons, the Resolution Professional recommends the acceptance of the said application filed by the Applicant u/s 95(1) of the IBC Code, 2016. The resolution professional has also recorded the reasons as stated above recommending the acceptance of the said application in accordance with the provisions laid down under section 99(9) of the IBC Code, 2016.

9. The Personal Guarantor has neither entered appearance despite repeated opportunities nor refuted the statements in the report of Resolution Professional.
10. We have considered the report and perused the details of claim indicated therein.
11. We are satisfied with the recommendation of the Resolution Professional to admit the application.

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

Company Petition (IB) No. 244 of 2023

12. In absence of any dispute or controversion by the Personal Guarantor, this application is admitted with the following directions:

(1) Since the application is **admitted under Section 100**;

(2) **In terms of Section 101 :**

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.

(3) **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 initiate any legal action or legal proceedings in respect of any debt; and

(c) the debtor shall not transfer, alienate, encumber or dispose of any of his assets or his legal rights or beneficial interest therein;

(4) 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.

(5) 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.

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

Company Petition (IB) No. 244 of 2023

(6) IRP is directed to cause a public notice on behalf of the Adjudicating Authority and Act in terms of Section 102, 103, 104 of the Code, to cause public notice, invite claims from creditors, list of creditors etc and hold regular meeting.

102. Public notice and claims from creditors:

(1) The Adjudicating Authority shall issue a public notice within seven days of passing the order under section 100 inviting claims from all creditors within twenty-one days of such issue.

(2) The notice under sub-section (1) shall include—

(a) details of the order admitting the application;

(b) particulars of the resolution professional with whom the claims are to be registered; and

(c) the last date for submission of claims.

(3) The notice shall be—

(a) published in at least one English and one vernacular newspaper which is in circulation in the state where the debtor resides

(b) affixed in the premises of the Adjudicating Authority; and

(c) placed on the website of the Adjudicating Authority.

103. Registering of claims by creditors:

(1) The creditors shall register claims with the resolution professional by sending details of the claims by way of electronic communications or through courier, speed post or registered letter.

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

Company Petition (IB) No. 244 of 2023

(2) In addition to the claims referred to in sub-section (1), the creditor shall provide to the resolution professional, personal information and such particulars as may be prescribed.

104. Preparation of list of creditors:

(1) The resolution professional shall prepare a list of creditors on the basis of—

(a) the information disclosed in the application filed by the debtor under section 94 or 95, as the case may be;

(b) claims received by the resolution professional under section 102.

(2) The resolution professional shall prepare the list mentioned in sub-section

(1) within thirty days from the date of the notice

13. Company Petition No. 244 of 2023 is thus admitted.

14. Next date for consideration would be 09.09.2024.

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.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

Signed on this, the **15th July, 2024.**

S.Ghose, (Steno)