

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
AT MUMBAI BENCH, C-IV**

**CP (IB) No. 913/MB/2021**

*Under Section 95(1) of the Insolvency & Bankruptcy Code, 2016 r/w Rule 7(2) of the Insolvency and Bankruptcy (Application to the 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*

*Mr. Jatinder Kumar Soni*

*... Personal Guarantor/Respondent.*

**Order delivered on: 07.05.2024**

*Coram:*

Ms. Anu Jagmohan Singh

Mr. Kishore Vemulapalli

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

***Appearances:***

For the Financial Creditor:

Hanspreet Kaur, Ld. Counsel.

For the Respondent/Personal Guarantor:

Mr. Harshit Dave, Ld. Counsel.

For the Resolution Professional:

Mr. Nitin Om Kothari, Ld. Counsel.

ORDER

1. The present petition is filed on 13.10.2021 u/s. 95 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 Debtors) Rules, 2019 by Central Bank Of India ("Financial Creditor / Applicant") for the purpose of initiating insolvency resolution process against Mr. Jatinder Kumar Soni ("Personal Guarantor/ Respondent") for recovery of debt amounting to Rs. 103,05,60,761.42/- (Indian Rupees Two hundred three crores, Five lakhs, Sixty thousand, seven hundred sixty-one and Paise fouty-two only) as on 14.12.2020. The Date of Default, as specified in Part-III of the present petition, is 28.12.2018. The Corporate Debtor was brought under CIRP under Section 7 of the IBC vide order dated 22.07.2019.
2. The Financial Creditor herein submits that M/s. Kalisma Steel Private Limited ("Corporate Debtor") was sanctioned credit facilities vide sanction letter dated 26.09.2012. The same is reproduced below:

Particulars	Amount
Fund Based	100,51,50,011.42
Non-Fund Based	2,49,78,000.00
Other Dues	4,32,750.00
Total	103,05,60,761.42

The said facility was renewed and enhanced from time to time. Pursuant to which, the Personal Guarantor viz. Respondent herein was one of the

executors of the Deed of Guarantee dated 12.01.2016.

3. The Financial Creditor issued a recall Notice dated 28.12.2018 under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 against Corporate Debtor and Personal Guarantors to recall the outstanding debt within 10 days from the date of this notice.
4. The Financial Creditor viz. Applicant herein issued a Demand Notice dated 18.08.2020 in Form-B to the Personal Guarantors including the Respondent herein demanding forthwith payments of its dues. The same was replied vide letter dated 03.09.2020 stating that once a claim of the creditor is admitted in an ongoing CIRP, a creditor is stopped in law to initiate action against a guarantor in respect of the same set of claim.
5. Further, the applicant submits that an IA No. 1078/2020 was filed under liquidation the same IA was allowed by vide order dated 09.03.2021. Hence, the present petition.
6. We note that this Bench had appointed Mr. Nitin Om Kothari, Insolvency Resolution Professional (“RP”) vide Order dated 06.07.2022 in the captioned petition and had thereby directed the Applicant to prepare and file a Report u/s. 99 of the IBC, 2016. The RP via his Report dated 29.09.2022, after due examination of the application, documents filed along with the application, in addition to the requirements as mandated under clauses (1) to (10) of Section 99 of the IBC, 2016, has recommended that

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**RECOMMENDATION BY RP FOR ACCEPTING THE PRESENT APPLICATION**

That in view of the above stated facts and circumstances, as well as analysis of the RP based on the examination of material available on record, the RP recommends that present Application under section 95 (1) of the Code filed by the Creditor **CENTRAL BANK OF INDIA** be admitted under Section 100 of the Code and Insolvency Resolution Process be commenced against Mr. Jatinder Kumar Suri, Personal Guarantors to Kalisma Steel Private Limited for the following reasons as mentioned herein below: -

- a) That the Application filed by the Creditor satisfies the requirement as set out in Section 95 of the Code.
- b) That the Corporate Debtor, Kalisma Steel Private Limited", has committed default in repayment of Loan Facility granted by the Creditor '**CENTRAL BANK OF INDIA**'.
- c) That Mr. Jatinder Kumar Suri, Personal Guarantors to Kalisma Steel Private Limited have also committed default in repayment of Loan Facility demanded by the Creditor '**CENTRAL BANK OF INDIA**'.
- d) That Mr. Jatinder Kumar Suri, have not denied the existence of debt.



*Other*

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7. It is trite in law, that the liability of surety is co-extensive with that of the principal debtor. The proceedings in the present matter were put on hold since the constitutional validity of the Sections 94 to 100 of IBC, 2016, relating to the insolvency of personal guarantor was pending before the Hon'ble Supreme Court in the matter of *Dilip B. Jiwrajka V/s Union of India & Ors. [WP (Civil) No. 1281 of 2021]*.
8. We are of the considered view that the captioned petition is complete in all aspects, and the present case is therefore fit for admission. Ordered accordingly.

**ORDER**

9. We have heard the learned counsel for both the parties and perused the documents on record.

- 9.1. After due perusal of records, we note that the said matter was listed on 18.03.2024 the bench had directed the Personal Guarantor to file reply within 2 weeks from the date of receipt of notice. Despite of the same no reply was filed. At the time of hearing, the counsel for Personal Guarantor/ Respondent was present, he stated that he was not served with the copy of the petition. While going through the records the copy of the petition as well as copy of Court Notice dated 21.10.2021 was sent to the personal guarantor and returned with an endoresement "**Unclaimed**". This bench vide order dated 10.01.2022 directed the petitioner to go for the substituted service and the same was carried out on 14.01.2022. Therefore this bench is of the considered view that requirement u/s 95 of the Code is complied. In the aforesaid peculiar circumstances, we hereby proceed to decide the matter as per the basis material available on record.
10. In terms of the above, CP(IB)/913/MB/2021 filed under Section 95 of the IBC, 2016 is **admitted** and the Insolvency Resolution Process stands initiated against the Applicant/Personal Guarantor.
- I. Initiate Insolvency Resolution Process against the Respondent/Personal Guarantor and moratorium in relation to all the debts is declared, from today i.e. date of admission of the application and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on the repayment plan under Section 114 whichever is earlier as provided under Sec 101 of IBC, 2016. During the moratorium period,
- a. Any pending legal action or proceeding in respect of any

debt shall be deemed to have been stayed, and

- b. The creditors of the debtor shall not initiate any legal action or 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:
- d. 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.

II. The Resolution Professional viz., Mr. Nitin Om Kothari having Registration No. IBBI/IPA-001/IP-P02310/2020-2021/13477, having registered address at 5A/301 Alica Nagar ,Lokhandwala Township, Kandivali (east) ,Mumbai City,Maharashtra ,400101 [cakoatharico@gmail.com]is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Mumbai Bench, inviting claims from all Creditors, within 21 days of such issue The notice under Sub Section (1) of Section 102(2) 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.
- III. The publication of notice shall be made in two newspapers, one in English and other in Vernacular which have wide circulation in the State where the Corporate Debtor and Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.
- IV. The Resolution Professional in exercise of the powers conferred under Section 104 shall prepare a list of creditors on the basis of
- a. the information disclosed in the application filed by the debtor under Sections 94 or 95. as the case may be, and
  - b. claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice. The debtor shall prepare a repayment plan under Section 105, in consultation with the Resolution Professional, containing a proposal to the Creditors for restructuring of his debts or affairs.

The repayment plan may authorize or require the Resolution Professional to:

- a. carry on the debtor's business or trade on his behalf or in his name: or
- b. realise the assets of the debtor; or
- c. administer or dispose of any funds of the debtor.

The repayment plan shall include the following, namely;

- a. justification for preparation of such repayment plan and reasons based on which the creditors may agree upon the plan;
  - b. provision for payment of fee to the Resolution Professional;
  - c. such other matters as may be specified.
- V. The Resolution Professional shall submit the repayment plan along with his report on the plan to this Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106.
- VI. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons thereof. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of IBC, 2016. The date of meeting should not be less than 14 day or more than 28 days from the date of submission of the Report under sub- section (1) of Section 106 of IBC, 2016, for which at least 14 days' notice to the creditors (as per the list prepared shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of IBC, 2016.
- VII. The meeting of the creditors shall be conducted in accordance



with Sections 108, 109, 110 & 111 of IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of IBC, 2016 and submit the same to this Tribunal, copies of which shall be provided to the Debtor and the Creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of IBC, 2016.

- VIII. The Resolution Professional shall submit his periodic reports before this Tribunal, every 30 days.
- IX. The applicant is directed to deposit Rs.2 lakhs to the bank account of the Resolution Professional within one week, towards his fees. This shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.
- X. The Registry is directed to communicate a copy of order, report and application within seven working days and upload the same on the website immediately after the pronouncement of order.

Sd/-

**ANU JAGMOHAN SINGH**  
**MEMBER (TECHNICAL)**  
**07.05.2024.**

Sd/-

**KISHORE VEMULAPALLI**  
**MEMBER (JUDICIAL)**