

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

Company Petition (IB) No. 160 of 2021

In the matter of:

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:

UCO Bank

...FINANCIAL CREDITOR

Versus

Ms. Gunjan Poddar

...RESPONDENT/PERSONAL GUARANTOR

Versus

FCMA Subrata Ghosh

...RESOLUTION PROFESSIONAL/APPLICANT

Date of Pronouncement of Order: 26.04.2024

Appearances (via video conferencing/physically):

Mr. Santosh Kr. Ray, Adv.] For the Financial Creditor

Ms. Rituparna Sanyal, Adv.]

Ms. Zeba Khan, Adv.]

Ms. Muskan Saha, Adv.]

Mr. Subrata Ghosh] RP-in-person

O R D E R

Per: Bidisha Banerjee, Member (Judicial)

1. Heard. Learned Counsel for the Financial Creditor present. Ld. RP in person present.
2. The Court Convened in a hybrid mode.

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

Company Petition (IB) No. 160 of 2021

1. This CP (IB) No.160/KB/2021 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 4(2) of IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 ('Personal Guarantors Regulations').
2. The amount in default is Rs.10,84,69,853.35/-
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;*

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

Company Petition (IB) No. 160 of 2021

- 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;*
 - 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 / not proposed the name of the Insolvency Professional for appointment as Resolution Professional. In view of the above, Mr. Subrata Ghosh, IBBI Registration No. IBBI/IPA-003/IPA ICAI 373/2021-2022/13799, email ID: **subhomusic@gmail.com** Mobile No: **9831048380**, was appointed as Resolution Professional,

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

Company Petition (IB) No. 160 of 2021

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. Subrata Ghosh has vide his report dated 30.01.2024 suggested/stated as extracted hereunder:

BRIEF SUMMARY OF THE SECTION 99 REPORT OF THE RP

Name of the Resolution Professional (RP)	Subrata Ghosh
Name of the Debtor (i.e, Personal Guarantor to Corporate Debtor)	Gunjan Poddar
Name of the Applicant (creditor)	UCO Bank
Name of the Corporate Debtor for whose loans the Debtor has given Personal Gurantee	M/s Limitex Tea and Industries Ltd
IBC Status of the Corporate Debtor(CD)	CD is Active Matter is before Hon'ble NCLAT, New Delhi.
Whether Debtor is a Resident Indian	Yes
Whether Debtor is Director of the Corporate Debtor	Yes
Annual Income of the Debtor in last years as per the application filed before the Hon,ble NCLT	Not Known
Amount of Default of the Corporate Debtor as per the application Filed	Rs. 10,84,69,853.35p (Rupees Ten Crores Eighty Four Lakhs Sixty Nine Thousand Eight Hundred and Fifty Three only) is due and payable including unapplied interest

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

Company Petition (IB) No. 160 of 2021

Summary of Assets and Liabilities of the Debtor as per the Application Filed	Particular(Assets)	Amount
	Total Estimated Value of Immovable Property	Not Known
	Total Estimated Value of Movable Property	Not Known
	Total	Not Known
Whether the application filed under Section 95 of the Code is complete	Yes, the application filed by the Creditor under Section 95 of the Code, 2016 is completed	
Section in which application is filed	Section 95 of the IBC	
Nature of Transaction between the Applicant and the Corporate Debtor	Loan given by the Applicant to the Corporate Debtor for which Debtor has given Personal Guarantee	
Date of Application filed by the Applicant with the NCLT	10.05.2021	
Date of the order of Hon'ble NCLT for appointment of RP	05.12.2023	
Date of Communication of order to the RP	13.01.2024	
Whether Applicant has complied with the requirements specified in Section 95	Yes	
Whether Form B was served on the Debtor required by the Law	Yes	
Date of Form B was served on the Debtor	26.03.2021	
Date when RP sought Information/Clarifications from the Debtor	17.01.2024	
Date When the Debtor provided the clarifications	27.01.2024 & 29.01.2024 by email	
Date of communication to the Creditor by the RP to inform appointment of the RP	17.01.2024	

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

Company Petition (IB) No. 160 of 2021

Whether Debtor has Questioned/Challenged application filed by the Creditor	No, as per the information available with the RP
Brief summary of the issues raised by the Debtor	<p>Limitex Tea & Industries Limited – The Company has a tea garden situated at Vill: Kamargachha P.O: Sujali, Islampur, Dist: Uttardinajpur, Pin: 733207, The secured financial creditors for the company is UCO bank and CFM ARC with CFM Arc having the majority amount in lending.</p> <p>ii) CFM Asset Reconstruction Pvt. Ltd & Uco Bank had sold the following properties of borrowers Limitex Tea & Industries Limited & Limtex (India) Limited (LIL) after filing of application u/s 95(1) under IBC and have distributed the considerations with UCO bank as given below</p> <ul style="list-style-type: none">• Warehouse at Coimbatore of limtex (India) Limited for Rs 12.25 cr and UCO Bank received Rs.1.79 cr as its proportionate share in the same on 17.08.2020• Office at 25A, Shakespeare Sarani, 2nd Floor, Kolkata – 700017 belonging to Limitex (India) Limited for Rs.4.90 cr and Uco Bank received Rs. 73.45 lac as its proportionate share in the same on 11.02.2021• Tea factory along with warehouse located at Vill:

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

Company Petition (IB) No. 160 of 2021

	<p>Muraligaccha, P.O: Bidhannagar, Dist: Darjeeling-734426 belonging to Limtex Tea & Industries Limited (LTIL) for Rs. 18.00 cr and Uco Bank received Rs. 1.85 cr on 06.11.2020 as its proportionate share in the same. (NOC from UCO Bank for sale of the same is attached for your reference).</p> <ul style="list-style-type: none">• Evidence of payment made to UCO bank is with CFM ARC and will be shared once received from them.
Whether Debtor is eligible for Fresh Start Process	No
Recommendations of the RP	Recommended to Admit the Application

8. Recommendation are as under:

To admit the application.

9. The Personal Guarantor has neither entered appearance despite repeated opportunities has 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. 160 of 2021

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

- (1) Since 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.
- (2) 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;
- (3) 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.
- (4) 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.

13. **Company Petition No. 160 of 2021** is thus **admitted**.

14. Next date for consideration would be **13.06.2024**.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 26th April, 2024.