

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court- 1)  
KOLKATA**

**C.P.(IB) No. 305/KB/2021**

In the matter of:

*An application under section 95(1) of the Insolvency and Bankruptcy Code, 2016  
("Code") read with Rule 7(2) of the Insolvency and Bankruptcy (Application to  
Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to  
Corporate Debtors) Rule, 2019).*

**And**

*In the matter of:*

**State Bank of India**

Versus

**... Financial Creditor**

**Pankaj Lohariwal .**

**... Personal Guarantor**

***Coram :***

**Shri Rohit Kapoor** : **Member (Judicial)**

**Shri Balraj Joshi** : **Member (Technical)**

***Appearances (through video conferencing):***

Mr. Debasish Chakraborty, Advocate ] For Financial CreditorMr.

Mr.Snehasish Chakraborty, Advocate ]

**Date of pronouncement: 24/04/2024**

**ORDER**

**Per: Balraj Joshi, Member (Technical)**

1. This Court convened through videoconferencing.
2. The Company Petition has been filed under section 95(1) of the Insolvency and Bankruptcy Code, 2016 (“Code”) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 (“IRP Rules”) and regulation 4(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (“IRP Regulations”) by SBI, seeking to initiate Insolvency Resolution Process (“IRP”) against **Pankaj Lohariwal**, the **Personal Guarantor** of M/s Hanumanta Engineering Private Limited (**CIN: U27109WB1998PTC087433**) (hereinafter referred to as “**Corporate Debtor**”) for debt amounting to Rs. 234,88,25,747.74(Rupees Two Hundred and Thirty Four Crores Eighty Lacs Twenty Five Thousand Seven Hundred and forty Seven and Seventy Four paise only).

**Brief facts of the case**

3. The Financial Creditor had given various loan facilities to M/s Hanumanta Engineering Private Limited and **Personal guarantor**, M/s Hanumanta Engineering Private Limited and the **Personal Guarantor** failed to make payment as per the terms of the Facility Agreement a sum of Rs. 234,88,25,747.74(Rupees Two Hundred and Thirty-Four Crores Eighty Lacs Twenty-Five Thousand Seven Hundred and forty-Seven and Seventy Four paise only) as on 15.10.2007 along with further interest.
4. The default of M/s Hanumanta Engineering Private Limited was adjudicated *vide* notice of invocation made by the financial creditor on 10.01.2013.
5. M/s Hanumanta Engineering Private Limited was admitted under

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Corporate Insolvency Resolution Process (“CIRP”) by this Adjudicating Authority *vide* order dated 19<sup>th</sup> August, 2019 on a petition filed under Section 7 in CP(IB) No.1111/KB/2018, filed by Financial Creditor.

6. The Financial Creditor issued a Demand Notice in Form B on 05.07.2021 under rule 7(1) of the IRP Rules and the Personal Guarantor filed his reply affidavit. Copy of the demand notice is annexed with the petition as **Annexure – 2-0.**
  
7. *Vide* an order dated 08/12/2021, this Adjudicating Authority appointed Mr. Daulat Ram Jain, as the Interim Resolution Professional under section 97 of the IBC, 2016 on this Authority subject to the regulation 4(1)and (2) of the IRP Regulations and directed the Interim Resolution Professional to make the recommendations with the reasons in writing for acceptance or rejection of this Petition and file a report.

#### **Report of the Resolution Professional**

The Resolution Professional submitted his report on 26.12.2021. The IRP requested the Personal Guarantor to provide documents to explore if the Personal Guarantor had made payment to State Bank of India but the IRP did not receive any reply from the Personal Guarantor. The IRP had also requested the Personal Guarantor to provide details of the assets including the bank accounts, shares, lockers and other such information at page no. 15 of the report under Section 99. However no response whatsoever was received by the IRP. The report also contains the following averments.

*32. That in the year 2018 State Bank of India, as a financial creditor of M/s Hanumanta Engineering Private Limited filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 before the Hon'ble National Company Law Tribunal , Kolkata bench against Principal Borrower Company M/s Hanumanta Engineering Private Limited and the same has been registered as CP(IB) No.1111/KB/2018 (State Bank of India –Versus- M/s Hanumanta Engineering Private*

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Limited). The said application has been admitted on 19 th August, 2019.

33. Thereafter in the year 2020, on finding no feasible resolution for the said corporate debtor in the CIR Process, an order for liquidation of the corporate debtor has been passed by the Hon'ble Adjudicatory Authority dated 20.02.2020.

34. **That the Financial Creditor on 05/06/2021 through notice/ letter being No. SAMB- II/KOL/BR/CLO –V /KB/ 246, has issued demand notice upon the Guarantor under Rule 7(1) of the Insolvency and Bankruptcy (Application to Personal Guarantor to corporate Debtor) Rule, 2019, wherein requesting the Guarantor to pay the unpaid debt in default being a sum of Rs.234,88,25,747.74(Rupee Two Hundred and Thirty Four Crores Eighty Eight Lacs Twenty Five Thousand Seven Hundred and Forty Seven and paise Seventy Four) inclusive of interest calculated upto 30.06.2021 together with further interest at the contractual rate from 01/07/2021 with monthly rests till realization in full within fourteen days from the receipt of this Letter, failing which the insolvency resolution process, under the code, shall be initiated against the Guarantor.**

35. That the personal guarantor herein namely Shri Pankaj Lohariwal through its Learned Advocate has given a reply by way of a letter dated 20/07/2021 to the aforesaid demand notice provided under rule 7(1) of the insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 to the said personal Guarantor. The financial creditor has given a rejoinder to the reply through its Learned Advocate by way of a letter dated 11.08.2021.

36. The present valuation of the secured properties is Rs.5,96,00,000/- as assessed by the Ld.Valuer in its valuation report dated 30.09.2015. Rs. 58,49,70,519.79P (Rupee fifty-eight crore forty nine lakhs seventy thousand five hundred and nineteen and paise seventy nine) and unsecured dues is Rs. 228,92,25,747.74 (Rupee Two Hundred and twenty eight crore ninety two lakhs twenty five thousand seven hundred and

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*forty seven and paise seventy four only).*

8. The Resolution Professional has accordingly recommended the acceptance of the Petition filed by State Bank of India under section 95(1) of the Code for the following reasons:
  - a. The debts owned by M/s Hanumanta Engineering Private Limited were guaranteed by **Pankaj Lohariwal**.
  - b. **Pankaj Lohariwal** has failed to pay the debts within Fourteen days of the service of the notice of demand sent by State Bank of India.
  - c. Though opportunities were granted to the Personal Guarantor for appearance and to have his say in the matter, no appearance was put in. It, therefore, appears that the Personal Guarantor has nothing to say in his defence, and that he accepts his liability.
9. While this report of the IRP was under consideration by this Adjudicating Authority, the vires of Section 95- 100 came to be challenged by way of a number of WPs before Hon'ble Supreme Court, who vide the judgement in the matter 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 as such there is no impediment in considering the admission of this PG to the Insolvency resolution Process.
10. Even though the Corporate Debtor was already put under Liquidation as brought out above, it has been held in a catena of judgments that the liability of the Corporate debtor and the guarantor is co-extensive and as such the present petition is maintainable. Further, the guarantee being a continuing guarantee, the demand notice has been sent on 5/06/21, followed by filing of the petition on 5-10-2021, as such the same is within the limitation period prescribed under law.

11. In view of the above circumstances, the present petition made by the Petitioner is complete in all respect as required by law. We accept the Report of the Resolution Professional that the Personal Guarantor is in default of a debt due and payable.

12. It is, accordingly, hereby ordered as follows:-

- a. The application bearing CP (IB) No. 305/KB/2021 filed by SBI , the Financial Creditor, under section 95 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 for initiating Insolvency Resolution Process “IRP” against **Pankaj Lohariwal**, the Personal Guarantor, is **admitted**.
- b. There shall be a moratorium under section 101 of the Code.
- c. The moratorium shall have effect from the date of this order till the completion of the IRP or until this Adjudicating Authority approves the repayment plan under sub-section (1) of section 114 of the Code.
- d. Public announcement of the IRP shall be made immediately as specified under section 102 of the Code.
- e. **Mr. Daulat Ram Jain**, IBBI Registration No. **IBBI/IPA-001/IP-P00945/2017-2018/11565** email- **daulatjain @rediffmail. com**, Mobile No. 9830059845 is hereby appointed as Resolution Professional (RP) of the Personal Guarantor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to the RP shall be compliant with such Regulations, Circulars and Directions as

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may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The RP shall carry out his functions as contemplated by sections 107, 108, 112, 113 of the Code and conduct the process as per Chapter III of Part III of the code read with relevant regulations.

- f. During the IRP period, the assets of the Personal Guarantor shall vest in the RP. The Personal Guarantor shall provide all documents in their possession and furnish every information in their knowledge to the RP within one week from the date of receipt of this Order, in default of which coercive steps will follow.
- g. The RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the IRP in respect of the Personal Guarantor.
- h. The Petitioner shall deposit a sum of **Rs.2,00,000/- (Rupees Two Lakh Only)** with the RP to meet the expenses arising out of issuing public notice and inviting claims.
- i. The Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Personal Guarantor and the RP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- j. Additionally, a copy of the Petition, report of the Resolution Professional and this order shall be served on the creditors within seven days from the date of this order.

13. **CP (IB) No. 305/KB/2021** to come up on **11/06/2024** for filing of periodical report.

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14. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Rohit Kapoor**  
**Member (Judicial)**

Order signed on 24/04/2024

*PJ*