

BEFORE THE DEBTS RECOVERY TRIBUNAL-III KOLKATA
PRESENT: -SRI ANIL KUMAR CHATURVEDI.

PRESIDING OFFICER.

IBC No. 03 OF 2022

DATE OF DELIVERY OF ORDER : 29/03/2022



Aditya Birla Finance Limited, Room No. 401, 4th Floor, Camac Square,
 Camac Street, Kolkata-700016

... **Applicant**

- Versus -

Sushmita Dutta Dey, Personal Guarantor of the Corporate Debtor being
 P C Dey & Sons, Habra, North 24 Parganas, West Bengal -743263.

... **Respondent**

Counsel for the Applicant : - Mr. Amit Kumar Nag, Advocate
 Counsel for the Defendant:- None

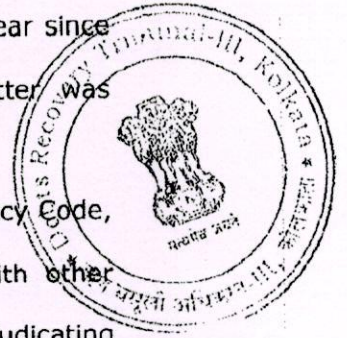
ORDER

1. Applicant has filed an application for initiating Insolvency Resolution Process under Section 95 of the Insolvency and Bankruptcy Code, 2016 against the Respondent Ms Sushmita Dutta Dey. Applicant has filed Affidavit of Service on 21st February, 2022. The Respondent has caused appearance through Mr. A Dalay, Advocate, who has filed Vakalatnama on 23.02.2022. As such service is complete.
2. On 24.02.2022 Ld Advocate Mr. A Dalay appeared for Ms. Sushmita Dutta Dey, who contended that the Tribunal has no jurisdiction to entertain the application filed by the Applicant. That day Applicant was directed to serve copy upon the Respondent Counsel along with

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supplementary Affidavit which has been filed. When the matter was taken up on 10.03.2022, Respondent had chosen not to appear since no one was present. After hearing the Counsel the matter was reserved for order.

3. As provided under Section 95 of the Insolvency and Bankruptcy Code, 2016 a creditor may apply either by himself or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this Section by submitting an application. It is also provided in the Act that when an application is filed as per provision contained under Section 94 or Section 95 of the IBC Code 2016 an interim moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application. It is also provided in the Act that during the interim moratorium period any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed and the creditors or the debtor shall not initiate any legal action or proceedings in respect of any debt. It is further provided in the Act that if the application is filed through Resolution Professional, the Adjudicating Authority shall direct the Board within seven days of the date of the application to confirm that there are no disciplinary proceedings pending against the resolution professional.
4. The Board shall within seven days of receipt of directions under Sub-Section (1) communicate to the Adjudicating Authority in writing either confirming the appointment of the resolution professional, or rejecting the appointment of the resolution professional and nominating another resolution professional for the insolvency resolution process.
5. Where an application under section 94 or 95 is filed by the debtor or the creditor himself, as the case may be, and not through the



resolution professional, the Adjudicating Authority shall direct the Board (IBC), within seven days of the filing of such application, to nominate a resolution professional for the insolvency resolution process. The Board shall nominate a resolution professional within ten days of receiving the direction issued by the Adjudicating Authority or the Adjudicating Authority shall by an order appoint the resolution professional. In the present matter it is informed to this Tribunal that the Adjudicatory power conferred with the Central Government who has authorized the Tribunal to exercise such power in respect of following hearing vide Notification dated 15th November, 2019:

Notification



S.O. 4126(E). – In exercise of the powers conferred by the subsection (3) of Section 1 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby appoints the 1st day of December, 2019 as the date on which the following provisions of the said Code only in so far as they relate to personal guarantors to corporate debtors, shall come into force –

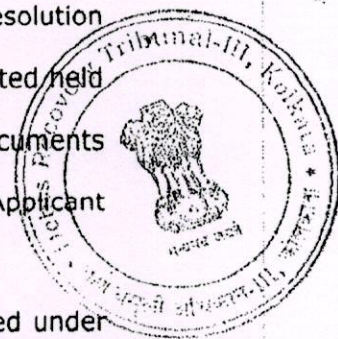
- (1) Clause (e) of section 2;
- (2) Section 78 (except with regard to fresh start process) and section 79;
- (3) Sections 94 to 187 (both inclusive);
- (4) Clause (g) to Clause (i) of sub-section (2) of section 239;
- (5) Clause (m) to Clause (zc) of subsection (2) of section 239;
- (6) Clause (zn) to Clause (zs) of sub-section (2) of section 240; and
- (7) Section 249.

6. The application filed by the Applicant is perused. As also confirmed from the Insolvency and Bankruptcy Board of India who as shared on their Website and list of the resolution professional confirming a panel

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which was approved and verified by the Board in accordance with Insolvency Professionals to act as Interim Resolution Professional, Liquidator, Resolution Professionals and Bankruptcy Trustees (Recommendation) (Second) Guidelines, 2021. The list was published on 1.1.2022 and validated till 30.06.2022 for Kolkata Zone.

7. The Applicant's case is Respondent Ms. Sushmita Dutta Dey whose details are in Part (2) of the petition filed before the Tribunal at page 2 adjudicated the personal guarantee. Corporate Debtor P C Dey and Sons Distributors Private Limited. The Corporate Debtor held a debt of Rs. 15,10,84,283.82/- as on 19.04.2020. The amount in default is Rs. 15,10,84,283.82/- and the date on which debt was due – 19.04.2020 and the debt on which default occurred – 15.10.2021.
8. The Applicant has also appended a certified true copy of the Resolution passed by the Finance Committee of Aditya Birla Finance Limited held on August 4, 2021. Applicant has also enclosed the list of documents and statement of Accounts as required under the statute. The Applicant has prayed for appointment of Resolution Professional.
9. Prima-facie this Tribunal is satisfied and being power so vested under section 95 of the Insolvency and Bankruptcy Code 2016 and other section 94-187, the Tribunal admits the petition for adjudication and as such the following orders are passed.
10. As per list provided by the Insolvency and Bankruptcy Board of India from the panel this Tribunal appoints **Mr. Vijay Kumar Goel, Regn No. IBBI/IPA-001/IP-PO2554/2021-22/13957, e-mail ID – goelkumarvijay@gmail.com (Mobile No. 9051422333), State – West Bengal, Zone – Kolkata**, as Resolution Professional whose remuneration will be settled on the next date of hearing. The Applicant is directed to obtain the notice of appointment of Interim Resolution Professional from the Registry as per usual practice and appear before the Registrar on 08/04/2022.



11. Registry is directed to issue notice of appointment of Insolvency Resolution Professional in respect of Mr. Vijay Kumar Goel. Applicant is directed to serve a copy of the application upon the Insolvency Resolution Professional along with Supplementary Affidavit and annexure and documents.
12. Since no one is present for the Respondent, a copy of the order be served upon the Respondent Ms. Sushmita Dutta Dey. Insolvency Resolution Professional is directed to prepare a report within a period of 10 days as provided under the statute and submit the report before this Tribunal on the next date of hearing. The remuneration of Resolution Professional will be settled at the next date of hearing in the presence of the Debtor and Guarantor.

List on 25/04/2022 before this Tribunal.

Copy of the Order be uploaded in the Tribunal's website.

(Dictated to Steno, transcribed by him, corrected, signed and pronounced by me in the Virtual Court on this 29th Day of March, 2022)



A. K. Chaturvedi
(ANIL KUMAR CHATURVEDI)
PRESIDING OFFICER

**Order Sheet
(Continuation)**

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