

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT-III**

IB-87(ND)/2022

And

IA-1194/2022

**IN THE MATTER OF IB-87(ND)/2022:**

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.

**M/s. BANK OF BARODA**

*Having its Branch Office at:*

Stressed Asset Management Branch,  
4<sup>th</sup> Floor, Rajendra Bhawan,  
Rajendra Place, New Delhi-110008

**..... Applicant/Financial Creditor**

**Versus**

**M/s. PREMJIT SINGH CHADHA**

S/o Kulbhushan Singh Chadha  
3, Hemkunt Colony, Greater Kailash  
New Delhi-110048

Also at

C-501, Caitriona Apartments Ambience Island Gurugram,  
Phase III Gurgaon, Haryana-122010

**..... Respondent/ Personal Guarantor**

**AND IN THE MATTER OF IA-1194/2022:**

Report Under Section 99 (1) of the Insolvency & Bankruptcy Code, 2016

Mr. Deepak Mittal

IBBI Registration: **IBBI/IPA-001/IP-P02096/2020-2021/13264**

**..... Applicant**

**Order Pronounced On: 04.07.2024**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**  
**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For RP : Mr. Lalit Mohan, Mr. Videh Vaish, Ms. Aakansha Advs.

For Respondent : Mr. Giriraj Subramaniam, Mr. Simarpal Singh Sawhney  
Advs.

**ORDER**

**PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

1. The present application has been filed by M/s. Bank of Baroda, the Applicant 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 Personal Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), Rules 2019 for initiation of Insolvency Resolution Process against Mr. Premjit Singh Chadha, the Personal Guarantor to the Corporate Debtor, M/s. ANG Industries Limited for the total debt amount of Rs. 44,94,73,243.31/- (Rupees Forty Four Crore Ninety Four Lakh Seventy Three Thousand Two Hundred Forty Three and Thirty One Paise only) as on 31.10.2019.
2. It is stated that the Corporate Debtor, M/s. ANG Industries Limited filed an application under Section 10 of the Code for initiating the Corporate Insolvency Resolution Process (CIRP) and the said application was admitted vide Order dated 31.08.2017. The Principal Borrower has gone into liquidation vide Order dated 04.02.2019 and the debt of the Applicant Bank is still outstanding, hence the Present Application.
3. As on 31.10.2019, an amount of Rs. 44,94,73,243.31/- (Rupees Forty Four Crore Ninety Four Lakhs Seventy Three Thousands Two Hundred Forty Three and Thirty One Paise) is payable by the Personal Guarantors to the Applicant Bank together with future interest including penal interest and charges by virtue of the following documents: -
  - a) General Form of Guarantee dated 25.06.2013
  - b) Sanction letter dated 24.06.2013 duly accepted by the guarantor

- c) Review of Credit facility letter dated 19.09.2014 duly accepted by the guarantor
  - d) General Form of Guarantee dated 29.01.2015
  - e) Letter of acknowledgement of debts for various credit facility executed by Corporate Debtor as well as Guarantor dated 09.01.2016.
4. The Demand Notice under Section 95 of the Insolvency Code, 2016 was issued by the Applicant bank on 06.10.2021 and was served on 12.10.2021 upon the Respondent.
5. This Adjudicating Authority vide order dated 15.02.2022 appointed Mr. Deepak Mittal (**IBBI/IPA-001/IP-P02096/2020-2021/13264**) as the Resolution Professional and the Resolution Professional was directed to submit a report in terms of Section 99 of the Code within ten days from the date of the Order.
6. The Resolution Professional submitted that in accordance with Section 99(2) of the Code, he requested the Personal Guarantor to furnish any document proving repayment of the debt claimed, as unpaid, by the Creditor in its application dated 03.01.2022 within 7 days from the date of receipt of Letter dated 22.02.2022 and E-mail dated 02.03.2022. However, no response has been received by the Resolution Professional from the Personal Guarantor.
7. The Resolution Professional vide IA-1194/2022 dated 11.03.2022 has filed its report before this Adjudicating Authority and a copy of the said report has been duly served on the Personal Guarantor via E-mail dated 11.03.2022 after detailed examination of the application along with the supporting documents thereof. The Resolution Professional do hereby recommend that the Application filed by the creditor, viz., Bank of Baroda, under Section 95(1) of the Code vide **IB-87/ND/2022** be **admitted** under Section 100(1) of the Code and the Insolvency Resolution Process be commenced against the Personal Guarantor, viz., Mr. Premjit Singh Chadha.

8. In Response to the Report filed by the Resolution Professional, the Personal Guarantor filed its reply and raised the following objections on the maintainability of the Petition being time barred: -
- i. The account of the Corporate Debtor, M/s ANG Industries was declared as Non-Performing Asset on 24.06.2013. In view of Section 238A of the Code r/w Article 137 of the Limitation Act, 1963, the limitation period of 3 years to initiate proceedings against the Personal Guarantors expired on 23.06.2016 and the present application had been filed only on 03.01.2022.
  - ii. The Applicant had wrongly calculated limitation from the date when a demand notice dated 06.10.2021 in terms of requirement of Rule 7(1) of the 2019 Rules was sent to the Personal Guarantor.
  - iii. The Applicant had intentionally not annexed the SARFAESI Notice dated 29.05.2017 issued to Guarantor of M/s. ANG Industries Ltd. Therefore, even if the period of Limitation is calculated from 29.05.2017, the present Petition is hopelessly time barred.
  - iv. The Corporate Debtor and the Personal Guarantor are separate entities, the Personal Guarantor cannot be bound by acknowledgment, if any given by the Corporate Debtor.
9. Ld. Counsel for the Resolution Professional negated the Objections raised by the Personal Guarantors and have submitted that: -
- i. The Deed of Guarantee dated 25.06.2013 and 29.01.2015 executed by the Personal Guarantor was continuing in nature which acted as the continuous security binding upon the Personal Guarantors.
  - ii. The Guarantee deed was an “*On Demand Guarantee Deed*”, therefore, the default shall arise only when Demand Notice is issued to the Personal Guarantor, i.e., 06.10.2021.
  - iii. The Demand notice dated 29.05.2017 under Section 13(2) of the SARFAESI Act,2002 was issued to the Corporate Debtor i.e., the Principal Borrower, not the Guarantor. The Corporate Debtor and the Guarantor are different entities. Therefore, the Demand notice issued to the Corporate Debtor cannot be construed as the Demand from the Guarantor.
  - iv. As per Form No. 4 XBRL, the financial statements for the year 2016-17, signed by the Personal Guarantor and approved by the Board of

Directors on 30.05.2017, clearly shows that the company M/s. ANG Industries Limited wherein the respondent is a personal guarantor, has defaulted in repayment of Bank Dues and entries in the Books of Accounts of Corporate Debtor would amount to acknowledgment.

**10.** We have heard the submissions made by Ld. Counsel for the Applicant, Resolution Professional and Personal Guarantor and perused the report.

**11.** The Ld. Counsel for the Personal Guarantor submitted that it is a trite law that the date of NPA is a crucial date for calculation of period limitation for the applications preferred under the provisions of Insolvency and Bankruptcy Code, 2016. The account of the Corporate Debtor, M/s ANG Industries was declared as Non-Performing Asset on 24.06.2013. In view of Section 238A of IBC, 2016 R/w Article 137 of the Limitation Act, 1963 the limitation period of 3 years expired on 23.06.2016 and the present application had been filed on 03.01.2022. Hence, the present application is hopelessly time barred. Reliance has been placed on Judgments of Hon'ble NCLAT in the cases of **Rajendra Kumar Tekriwal vs. Bank of Baroda**, reported in **2020 SCC OnLine NCLAT 1155** and **Jagdish Prasad Sarada vs. Allahabad Bank**, reported in **2020 SCC OnLine NCLAT 621**.

**12.** On the contrary, the Ld. Counsel for the Resolution Professional submitted that the first Deed of Guarantee was executed by the Respondent on 25.06.2013 after the acceptance of sanction letter dated 24.06.2013, thereafter another Deed of Guarantee was executed by the Respondent on 29.01.2015. The two vital essences of "the Deed of Guarantee" which was duly signed by the parties were:

**a) CONTINUING GUARANTEE** - As per the deed, the Guarantee signed by the Respondent was continuing in nature which acted as the continuous security binding upon the Respondent. The relevant extract from the Deed is provided as under:

*"3. This Guarantee shall be a continuing Guarantee and shall not be considered as wholly or partially satisfied or exhausted by any payment from time to time made to the Bank or any settlement of any account or by reason of the account being brought to a credit at any time or from time to time or its being*

*drawn up to the full extent or extinguished and thereafter reopened. The Guarantee shall continue in force notwithstanding the discharge or the Principal by operation of Law or my death or the death of any one of us and shall cease only on payment of the amount guaranteed hereunder either by me or any of us”.*

**b) PAYABLE ON DEMAND-** As per the Deed, the demands were ought to be discharged on the demand made by the Creditor/Bank. The relevant extract from the deed is provided as under:

*“In consideration of Bank giving credit or accommodation or granting facilities to M/s ANG Industries Ltd. by making/opening/continuing a Cash Credit/ packing Credit/ WCTL/ FITL account by Discounting/ purchasing and/or taking derivative exposure and trust received facilities in favour of M/s ANG industries Ltd on terms and conditions that may be settled between you and decide M/s ANG industries Ltd. at any time or from time to time without reference to me, I, Premjit Singh, S/O, Shri Kulbhushan Singh, Chadda, R/O 3, Hemkunt colony, New Delhi – 110048, jointly and severally hereby agree with and guarantee to you the due payment and discharge on demand of all amount due and payable to you by M/s ANG industries Ltd.....”.*

As the Guarantee Deed is “on demand guarantee Deed”, the default shall arise on part of the Guarantor, only when Demand Notice is issued to the Guarantor 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 on 06.10.2021, determining the date of Default in present case.

**13.** The Ld. Counsel for the Resolution Professional placed reliance on the judgment of Hon’ble NCLAT in the case of **Ms. Pooja Ramesh Singh vs SBI and Anr.**, Company Appeal (AT) (Insolvency) No.329 of 2023, wherein the Hon’ble NCLAT covered all the issues and propositions involved in the present case. The relevant extract from the judgment is as under:

*“31. When the notice dated 01.10.2020 is relied by the Financial Creditor with further stipulation that the Financial Creditor has invoked the corporate guarantee, the default of corporate guarantor has to be subsequent to 01.10.2020.*

*The Deed of Guarantee dated 17.05.2019 is guarantee on demand and the limitation of Guarantor shall ensue only when demand is made to the Guarantor.”*

**14.** The Ld. Counsel for the Resolution Professional has also placed reliance on the judgments of Hon’ble Supreme Court in the cases of **Syndicate Bank vs. Channaveerappa Beleri & Ors.**, reported in (2006) 11 SCC 506 and **Margaret Lalita Samuel vs. Indo Commercial Bank Ltd**, reported in (1979) 2 SCC 396, wherein the Hon’ble Supreme Court while considering the provisions of Section 128 and 129 of the Contract Act laid down that the limitation of the guarantor will depend purely on the terms of the contract and the cause of action arises when the contract of continuing guarantee is broken i.e., breach is committed by the Guarantor to the given guarantee.

**15.** The ratio of the decision in the judgment of Hon’ble NCLAT in the case of **Pooja Ramesh v. SBI** and as held by the Hon’ble Supreme Court in the cases of **Syndicate Bank v. Channaveerappa Beleri & Ors.**, and **Margaret Lalita Samuel vs. Indo Commercial Bank Ltd.**, it is clear that the Date of Default will be the date on which the demand was made. In the instance case, the Demand Notice (Form B) was issued on 06.10.2021 and the present Application U/s 95 of the Code was filed on 03.01.2022. We, therefore, have no hesitation to hold the present application is within limitation.

**16.** On a perusal of the report, we find that the Resolution Professional has given reasonable opportunity following the principle of Natural Justice and has taken into consideration the various documents and has come to a conclusion that the Personal Insolvency Resolution Process be initiated against the Personal Guarantor as the application filed by the Creditor before this Hon’ble Tribunal is within the limitation period provided under the Limitation Act, 1963.

**17.**The Objections raised by the Personal Guarantor are not substantiated with adequate evidence and are not tenable. We are satisfied with the grounds/reasons given by the Resolution Professional for the initiation of the Personal Insolvency Resolution Process against the Personal Guarantor. Having regard to the facts and circumstances of the case, we are of the view that the Personal Insolvency Resolution Process ought to be initiated against the Personal Guarantor. Hence, the Main Petition **IB-87(ND)/2022** is **admitted** and the Personal Insolvency Resolution Process is initiated against the Respondent - Personal Guarantor.

**18.**Resultantly, the moratorium begins on the date of this Order. i.e., Date of Admission of the application and shall cease to have effect at the end of the period of 180 days from the date of this order, as provided under Section 101 of IBC, 2016. During the moratorium period, the following provisions shall be in effect:

- i. Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and
- ii. The Creditors of the Debtor shall not initiate any legal action or proceedings in respect of any debt; and
- iii. The Debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;
- iv. 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.

**19.**The Resolution Professional is directed to cause a public notice to be published within 7 days of uploading this order on the website of this Adjudicating Authority for inviting claims from all Creditors, who shall register their claims as provided under Section 103 of IBC within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102(2) of IBC.

**20.**The publication of the notice shall be made in newspapers, one in English and the other in Vernacular which have wide circulation in the state.

**21.**The Resolution Professional in exercise of the powers conferred under Section 104 of IBC shall prepare a list of creditors within 30 days from the



date of the notice. The Debtor shall prepare a repayment plan in consultation with the Resolution Professional as provided under Section 105 of IBC which shall include the provisions for payment of fee to the Resolution Professional. The Resolution Professional shall submit the repayment plan along with his report on the plan to this Adjudicating Authority within a period of 21 days from the last date of submission of claims as provided under Section 106 of IBC.

**22.** In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof. If the Resolution Professional is of the opinion that the meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of IBC. The date of the meeting should not be less than 14 days or more than 28 days from the date of submission of the report under sub-section (1) of Section 106 of IBC, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all relevant/feasible modes. Such notice must contain the details as provided under the provisions of Section 107 of IBC.

**23.** The meeting of the Creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC. The Resolution Professional shall prepare a report of the meeting of the creditors on the repayment plan with all details as provided under Section 112 of IBC and submit the same to this Adjudicating Authority, copies of which shall be provided to the debtor and the creditors.

**24.** The Applicant is directed to deposit Rs. 2,00,000/- to the bank account of Resolution Professional within one week, towards his fees. This shall be subjected to the rules and regulations under the provisions of IBC, 2016. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under IBC, 2016.

**25.** In view of the above **IA-1194/2022** stands **disposed of**.

**-Sd-**  
**(ATUL CHATURVEDI)**  
**MEMBER (TECHNICAL)**

**-Sd-**  
**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**