

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

IA No. 841/ND/2024
IN
Company Petition No. (IB)-673(ND)/2023

IN THE MATTER OF:

Central Bank of India

**... Applicant/
Financial Creditor**

Versus

Mrs. Harneet Kaur

**... Respondent/
Personal Guarantor**

AND IN THE MATTER OF IA NO. 841/ND/2024:

Vimal Kumar
(Resolution Professional)
V-1104, The Hyde Park,
Sector-78, Noida-201301, U.P.

... Applicant

Order Delivered on: 15.05.2024

Under Section: 99 r/w 95 of IBC, 2016

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Brijesh Kumar Tamber, Adv. Prateek Kushwala, Adv.
Aniruddha Mukherjee

For the RP : Adv. Shubham Mittal, Adv. Shagun Bharti

ORDER

Stating succinctly the facts of the case derived from the pleadings of the Financial Creditor ('Applicant Bank') is that the CD availed credit facility from it vide Sanction Letters dated 29.09.2010, 22.09.2011, and 05.04.2013. The Corporate Debtor and the Guarantors in consideration of grant of said loan executed security documents on various occasions after the sanction of the said credit facilities. It is the case of the Financial Creditor that the loan was sanctioned in consortium with various other lenders. Personal Guarantor provided Personal Guarantee to the Financial Creditor to secure the loan availed by M/s. Jay Polychem India Limited ('Principal Borrower/Corporate Debtor') on 24.02.2014. The Corporate Debtor failed to repay the dues as also to maintain financial discipline thus, its account was declared as Non-Performing Asset by the Applicant Bank in accordance with guidelines issued by the Reserve Bank of India on 31.03.2015 which was further downgraded by RBI inspection with date of NPA as 22.01.2013. Thereafter, the FC on 24.11.2015 initiated fresh proceedings under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) against the Corporate Debtor and its guarantors including Mrs. Harneet Kaur by issuing demand notice demanding repayment of dues but the Principal Borrower and Guarantors continued to default. The Financial Creditor also filed an Original Application before the Debts Recovery Tribunal-II, New Delhi along with other consortium lenders being OA No. 1029/2016 on 19.12.2016 and received recovery certificate from the DRT on 20.03.2019.

2. It could be seen that the Corporate Debtor was admitted to Corporate Insolvency Resolution Process (CIRP) vide order dated 13.04.2018 passed by this Adjudicating Authority. Copy of which is annexed and marked as Annexure A-7 to the petition. It is further observed that this Adjudicating Authority ordered liquidation of the CD vide its order dated 25.03.2019. Thereafter, the CD was dissolved vide order dated 22.04.2022, copy of which is annexed as Annexure A-9 to the petition.

3. It is seen from the record that a Demand Notice was sent to Guarantor i.e., Harneet Kaur on 14.09.2023 under Rule 7(1) of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantor to Corporate Debtors) Rules, 2019, by the Central Bank of India (FC) seeking repayment of dues along with interest to the tune of Rs. 4,24,09,55,848/- which was duly served on 15.09.2023.

4. It is the case of the Financial Creditor that despite service of demand notice upon the Personal Guarantor, she failed to repay the debt within 14 days of receipt of the notice that expired on 29.09.2023. The copy of Demand Notice dated 14.09.2023 and affidavit of service is on record.

5. In terms of order dated 01.02.2024, Mr. Vimal Kumar, could be appointed as RP. The RP filed his report dated 16.02.2024 in terms of provisions of Section 99 of IBC, 2016. In the said application, notice could be issued to the Personal Guarantor but could not to be served upon her, as she is not staying at any of three addresses available with the RP. The RP has filed proof of service of notice

and report through e-mails attached as Annexure-D to the Report. Nevertheless, the PG never entered appearance in the proceedings. In the wake, in terms of order dated 10.08.2023, the proceedings qua PG could be set ex parte. The order dated 10.08.2023 reads thus:-

“IA-841/2024:- Proof of service has been filed. There is no appearance on behalf of the Respondent despite service of notice. In the wake, the proceedings qua the Respondent are set ex parte.
List on 24.04.2024.”

6. The RP performed his duty in terms of the provisions of Section 99 of IBC, 2016. As can be seen from the contents of the application, the RP took all the steps made incumbent to be taken by him in terms of the provisions of Section 95 and 99 of IBC, 2016.

7. The RP Report has provided the brief background of the matter which reads thus:-

“1.1 The respondent is one of the Personal Guarantor of the Corporate Debtor which was engaged in the business of infrastructure Management Services, Oil & Gas Production, Chemical and Reactive Dyes etc. Now the Company has been dissolved vide order dated **26.04.2022** of Hon'ble NCLT, Bench V, New Delhi.

1.2 It is submitted by the applicant that Guarantee Agreement was executed on 24.02.2014 at Delhi, including the Personal Guarantor in the concerned application, in favour of the applicant thereby guaranteeing credit facilities of Rs. 139 Crores (Rupees One Hundred Thirty-Nine Crore Only) sanctioned to the Corporate Debtor under the agreement of Guarantee. A copy of the said Guarantee

Deed was filed by the applicant along with the application under section 95 as **Annexure A-6**.

- 1.3** Credit Facilities were sanctioned to the Corporate Debtor on 29.09.2010. The said credit facilities were renewed on 22.09.2011 and 05.04.2013. A copy of the sanction letter was filed by the applicant along with the application under section 95 as **Annexure "A-5 (Colly)"** of the application filed by the applicant under Section 95 of the IBC.
- 1.4** Due to default in making payments against the credit facilities availed by the Corporate Debtor, the loan account of the Corporate Debtor became Non-Performing Asset (NPA) on 31.03.2015. As per RBI inspection the account was further downgraded to 22.01.2013.
- 1.5** Thereby the applicant, vide its Notice dated 24.11.2015, invoked the personal guarantee issued to the Corporate Debtor as well as to the Personal Guarantor under the provision of Section 13(2) of SARFAESI Act, 2002.
- 1.6** Subsequently, upon deciding to file an application for initiation of Resolution Process against the Personal Guarantor, the applicant had duly sent a demand notice dated 14.09.2023 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, which was duly served upon the Personal Guarantor. A copy of the demand notice was filed by the applicant along with the application under section 95 of the IBC as **Annexure "A-4 (Colly)"**.
- 1.7** The Resolution Professional could ascertain from the concerned application that the amount of default is Rs 4,24,09,55,848/- (Rs. Four Hundred Twenty-Four Crore Nine Lac Fifty-Five Thousand Eight Hundred Forty-Eight only) as on 14.09.2023.
- 1.8** The relevant list of dates with regard to the default is as follows:

Event	Date
Guarantee Deed, Executed at Delhi	24.02.2014
Sanction Letter of Credit facilities	29.09.2010
Renewal of Credit facilities	22.09.2011 & 05.04.2013
Notice invoking the personal guarantee U/s 13(2) of SARFAESI Act 2002	24.11.2015
Hon'ble NCLT, Bench V, Delhi has passed dissolution order thereby dissolving the Corporate Debtor	26.04.2022
Demand Notice to the Personal Guarantor along with its tracking receipt	14.09.2023

8. The RP further made examination of the application as required under Section 99(6) of the IBC, 2016 which reads thus:-

“2.2.1 Examination of the application as required under Section 99(6)(a) of IBC read with Section 99(4) of IBC

2.2.1.1 *Under the above mentioned provision, the Resolution Professional has to examine whether the requirements for filing the application as set out in Section 95 of the IBC have been complied with.*

2.2.1.2 *Under Section 95(4)(a) of IBC, the application under Section 95(1) shall be accompanied with details and documents relating to the debts owed by the debtor to the creditors as on the date of application submitted for Insolvency Resolution Process.*

2.2.1.3 *The date of filing of application is 30.09.2023. The relevant documents accompanying the application in this regards are as follows: -*

- i.** *The copy of guarantee deed executed on 24.02.2014, being **Annexure A-6** of the Application filed by the applicant under Section 95 of the IBC.*

- ii. The copy of Statement of Account along with Bankers Book of Evidence Act, being **Annexure A-10 (Colly)** of the Application filed by the applicant under Section 95 of the IBC.*
- iii. Under Section 95(4)(b) of IBC, the application should be accompanied with the documents showing the failure of the personal guarantor to pay the debt within a period of fourteen days of the service of the notice of demand sent by the applicant.*

2.2.1.4 *The relevant documents accompanying the application in this regards are as follows: -*

- i. Demand notice under Section 95(4)(b) of the Code, 2016 was issued by the applicant in Form B as per Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules 2019 calling upon the Personal Guarantor to pay Rs. 4,24,09,55,848/- as on 14.09.2023 which was duly served upon the Personal Guarantor by sending the notice by speed post and affixing of demand notice on the premises by the applicant.*
- ii. Tracking report showing delivery of the demand notice in the form of photographs of the premises on 15.09.2023 has been annexed herewith as ANNEXURE-F.*

2.2.1.5 *Under Section 95(4)(c) of IBC, the application should be accompanied with the relevant evidence of such default or non-payment of debt. The relevant documents accompanying the application in this regards are as follows: -*

- i. Statement of loan accounts along with Certificate as per Bankers Book of Evidence Act, being **Annexure A-10***

(Colly) of the application, shows that no payment of debt has been made after the demand notice dated 14.09.2023 has been served on the personal guarantor.

2.2.1.6 *Under Section 95(5) of IBC, the applicant has to provide a copy of the application to the debtor. The applicant has served a copy of the application to the Personal Guarantor, as per proof of service as per page 60 of the application.*

2.2.1.7 *Under Section 95(6) of IBC, the application has to be filed in such form and manner and accompanied by such fee as prescribed. The applicant has filed the application in the prescribed form, being Form C of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules 2019.”*

9. The RP has given the reasons for making recommendation to admit the application as the application filed by the Creditor viz:-

(i) The application has been filed in the prescribed form and manner along with all the details and documents as are required to be submitted as per the provisions of IBC.

(ii) Based on the verification of documents, there is no evidence of repayment of the debt claimed as unpaid by the applicant.

10. Pursuant to the observations enumerated hereinabove, the Resolution Professional is of the opinion that it is a fit case where the application should be admitted.

11. As can be seen from the provisions of Section 99(2) of IBC, 2016, what the RP need to do while preparing his report is to find out as to whether the Personal Guarantor is able to produce any of the evidences referred to in Section 99(2) of IBC, 2016 to prove that the amount of debt has been repaid. In the present case, in Para 2.2.1.5 of the application the RP has specifically averted that the Statement of Loan accounts along with Certificates as per Bankers Book Evidence Act shows no repayment of debt after the demand notice dated 14.09.2023 was served upon the Personal Guarantor. Section 99(2) of IBC 2016 reads thus:-

“99. Submission of report by resolution professional.—

.....

- (2) Where the application has been filed under section 95, the resolution professional may require the debtor to prove repayment of the debt claimed as unpaid by the creditor by furnishing—
- (a) evidence of electronic transfer of the unpaid amount from the bank account of the debtor;
 - (b) evidence of encashment of a cheque issued by the debtor; or
 - (c) a signed acknowledgment by the creditor accepting receipt of dues.”

12. As has been provided in Section 100 of IBC, 2016, the Adjudicating Authority is to pass an order with reference to the report of the RP, after giving opportunity to Personal Guarantor for hearing. In the present case, the Personal Guarantor did not file her reply to the report of the RP and we had proceeded against her ex-parte vide order dated 13.03.2024(ibid).

13. On perusal of documents on record and report of RP, we found that the Applicant/Creditor has been able to establish the ‘debt’ and ‘default’ beyond doubt in respect of the Guarantee given by the Respondent/Personal Guarantor.

In view of the aforementioned, **we are inclined to accept the report of the RP filed by him under Section 99 of the IBC, 2016 and admit the present application filed by the Applicant/Creditor and accordingly, order initiation of the IR process in respect of Mrs. Harneet Kaur, Respondent/Personal Guarantor with immediate effect. Ordered accordingly.**

14. There is no request by the RP for the purpose of conducting negotiation between the debtor and the creditors. As a sequel of admission of the present application, a moratorium shall commence in relation to all the debts of the Respondent. During the moratorium period –

- (a) any pending legal action or proceedings in respect of any debt qua the Respondent shall be deemed to have been stayed;
- (b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt qua the Respondent; and
- (c) the debtors shall not transfer, alienate, encumber or dispose of any of the assets or his legal right or beneficiary interest therein. The moratorium shall cease to have effect at the end of period of 180 days.

15. A public notice shall be issued by the RP within seven days of passing of this order, inviting claim from all creditors within 21 days of such notice. The notice shall include details of the present order, particulars of the Resolution Professional with whom the claims have to be registered and the last date for the submission of the claims. The notice shall be – (a) published in English and one Vernacular Language newspaper which is in circulation in the State where the

debtor resides; (b) affixed in the premises of this Adjudicating Authority; and (c) placed on the website of the Adjudicating Authority.

16. We are sanguine the RP shall discharge all such duties as are incumbent upon him in terms of the provisions of Sections 104, 105, 106 , 107, 108, 112 and 113 of IBC, 2016, with the due deference of the procedure enshrined in Regulations 5, 7, 8, 9, 11, 12, 13, 14, 15 and 17 of IBBI (Insolvency Resolution Process for Personal Guarantor to Corporate Debtors) Regulations, 2019 and also in terms of the other extent provisions of the aforementioned code/ regulations and/or any other provisions of law applicable to him, in discharge of his duties as RP.

17. A copy of this order along with the copy of the application as also the report of Resolution Professional shall be provided to the Creditor (Applicant), Personal Guarantor (Respondent) and IBBI, by the Registry/Court Master within 7 days from today by email.

18. **IA-841/ND/2024 is disposed of accordingly. To come up for consideration of Status Report to be filed by RP, within 8 weeks.**

**Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)**

**Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)**