

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP (IB) NO.02/ALD/2021

(An application under Section 95 of the Insolvency and bankruptcy Code, 2016, read with Rule 7 of the Insolvency and Bankruptcy Rules, 2019 for passing of the order under section 100 of the Code, 2016.)

IN THE MATTER OF:

STATE BANK OF INDIA

Having Its Office At:

STRESSED ASSETS MANAGEMENT BRANCH-2

11th FLOOR STC BUILDING JAWAHAR VYAPAR BHAWAN

1, TOLSTOY MARG, JANPATH, NEW DELHI-110001.

.....APPLICANT/FINANCIAL CREDITOR

Versus

MR. PAWAN KUMAR AGARWAL

19/X-1, KRISHNAPURAM, GT ROAD,

KANPUR-208007 (UP)

**.....RESPONDENT/PERSONAL GUARANTOR
OF SH. LAKSHMI COTSYN LTD.**

AND

MR. VIJENDER SHARMA

R/O BUILDING NO.11, 3RD FLOOR HARGOVIND ENCLAVE,

VIKAS MARG, DELHI-110092

.....APPLICANT/ RESOLUTION PROFESSIONAL

Order pronounced on 09th July, 2024

Coram:

Mr. Praveen Gupta : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Manish Paliwal with : For the SBI/Financial Creditor
Sh. Harshit Agarwal, Advs.

Ms. Jayashree Shukla : For the Personal Guarantor
Das Gupta with
Ms. Rishika Ahuja, Advs.

Sh. Vijender Sharma : RP present in person

ORDER

1. This is an application filed on 26.11.2020 by the State Bank of India (hereinafter referred to as the Applicant/Applicant Bank) under Section 95 of Insolvency and Bankruptcy Code (hereinafter referred to as the Code) r /w Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019 (hereinafter referred as PG Rules, 2019). The prayer made is to initiate the Insolvency Resolution Process against the Respondent/ Personal Guarantor Mr. Pawan Kumar Agarwal, who stood as Personal Guarantor to the various credit facilities availed by the Corporate Debtor namely, M/s Shri Lakshmi

Cotsyn Limited for total outstanding debt of Rs. 455,26,89,678.60 as on 31.8.2020 which comprises of Principal Amount of Rs. 157,11,60,405.72, Interest Rs. 271,01,42,489.62 and Penalties Charges Rs. 27,13,86,783.26 an appoint Mr. Vijendra Sharma as the Resolution Professional (hereinafter referred to as “RP”) for Proposed Insolvency Resolution Process.

- 2.** The dates on which debt fell due are 08.01.2016, 04.02.2016 and 30.12.2015 as per erstwhile State Bank of Patiala (SBP), State Bank of Mysore (SBM) and State Bank of Bikaner and Jaipur (SBBJ) respectively, are referred here as the notices for invocation of Personal guarantee by the State Bank of India.
- 3.** The Applicant is a statutory body incorporated under the State Bank of India Act, (23 of 1955) vide notification no. S.R.O 1077 dated 14 May 1955). State Bank of Patiala(SBP), State Bank of Mysore (SBM) and State Bank of Bikaner and Jaipur (SBBJ) has been acquired by State Bank of India (SBI) under section 35 of State Bank of India Act, 1955 with effect from 01.04.2017 vide notification no.

GSR 159(E), 158(E) and 156(E) dated 22.02.2017 of the Government of India.

4. It is stated by the Applicant that the Corporate Debtor took various financial facilities from erstwhile State Bank of Patiala, erstwhile State Bank of Mysore and erstwhile State Bank of Bikaner and Jaipur & other banks under consortium banks led by the Central Bank of India.
5. As stated in Master Restructuring Agreement dated 29.06.2013, last sanction of credit facilities was done in the year 2013 in terms of consortium agreement signed and executed between the borrower company and the members of banks consortium.
6. The said facilities were secured by the personal guarantees as well as corporate guarantees. The total outstanding debt as on 31.08.2020 i.e. the date considered while issuing of demand notice, is Rs.455,26,89,678.60 including interest & penalties.
7. According to the Master Restructuring Agreement dated 29.06.2013, the last sanction of credit facilities was done in 2013, as outlined in the consortium agreement executed

between the Corporate Debtor and the member banks. These facilities were secured by both personal and corporate guarantees. As per demand notice, the total outstanding debt including interest and penalties, amounted to Rs. 4,552,689,678.60 as on 31.8.2020. The said credit facilities were duly secured on a pari passu basis with other consortium member banks over the entire current and fixed assets of the Corporate Debtor. This includes the pledge of shares of the Corporate Debtor and its group companies, also on a pari passu basis with the other banks in the consortium.

- 8.** In consideration of the aforementioned loan/credit facilities, the respondent stood as guarantor and signed and executed the various guarantee documents/agreement(s) pertaining to the aforementioned loan/credit facilities, from time to time. As a result, his liability is co-extensive and ongoing, and he is jointly and severally liable to pay the applicant bank's debts, including interest, costs, and other customary/incidental charges to the bank.

- 9.** The respondent agreed to adhere to the terms and conditions of Master Restructuring Agreement and other loan/credit/guarantee documents signed and executed by the Corporate Debtor Company/Guarantor(s) regarding the default(s) in terms and conditions of the sanction and loaning documents.
- 10.** As per the terms of the RBI guidelines, the account of the Corporate Debtor was declared NPA due to default in the repayment of the Bank's dues in the abovementioned loan account/facilities and committing breach of terms and conditions regarding the repayment of the loan agreement and the defaults in making installments. As a consequence of this, a demand notice under section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFESI) Act, 2002, was served to respondent on 08.01.2016 by State Bank of Patiala, on 04.02.2016 by State Bank of Mysore & on 30.12.2015 by the State Bank of Bikaner & Jaipur.
- 11.** It is stated in Part-III of the Application that date of default is 30.05.2018 and the debt is continuing in nature due to pending application i.e OA No. 441 of 2016 filed against

the guarantors. There has been no repayment of debt by the Corporate Debtor or by Respondent/Personal Guarantor, and a total amount of Rs. 455,26,89,678/- is still outstanding.

- 12.** The Corporate Debtor under liquidation has admitted its liability on 02.09.2020. Even Guarantor vide letters dated 23.03.2019, 10.08.2019 & 18.05.2020 offered settlement of debt and also accepted its liability.
- 13.** The Applicant issued demand notice dated 14.09.2020, under rule 7(1) of the PG Rules, 2019. In response to this notice, the respondent has submitted his response but failed to make the payment against the said demand notice and also failed to submit the proof that he has made the payment of the pending dues against the demand notices. Therefore, it is clearly established that the Personal Guarantor does not have any intention to repay the money raised by the Corporate Debtor from the applicant/financial creditor, which is an event of default under section 3(12) of the Insolvency and Bankruptcy Code, 2016.

- 14.** Based on the aforementioned facts, the Applicant asserts that the Respondent/Personal Guarantor is incapable of settling its debts. Consequently, the Applicant prayed before this Tribunal to declare the Respondent/Personal Guarantor insolvent as per I&B Code, 2016.
- 15.** On filing of above petition, vide order dated 11.01.2021, this Tribunal appointed Mr. Vijendra Sharma as Resolution Professional in terms of Section 97 of the Code, 2016. After being appointed as Resolution Professional, Shri Vijendra Sharma examined the above application/petition after calling for further information from the Personal Guarantor and a submitted a Report under Section 99 of the Code, 2016.
- 16.** The Resolution Professional has filed an Interlocutory Application being IA No.43 of 2022 on 19.01.2022 for submitting report u/s 99(1) of the Code recommending insolvency resolution process against the personal Guarantor by submitting the following details:-
- (i)** The debtor is a personal guarantor to a corporate debtor and in respect of whom guarantee has been

invoked by the creditor and remains unpaid in full or part. Hence, the requirement set out in rule 3(e) of PG Rules, 2019 is satisfied.

- (ii)** The creditor has served the guarantor, a demand notice under rule 7(1) of PG rules, 2019 demanding payment of the amount of default which is far more than rupees one thousand, in Form-B.
- (iii)** The debtor has failed to pay the debt within a period of 14 days of the service of the notice of demand. Hence, the requirement as set out u/s 78, 95 of IBC,2016 read with rule 7(1) of PG Rules, 2019, is satisfied.
- (iv)** That all the debts mentioned in the application are not excluded debts.
- (v)** The Debtor/Personal Guarantor is not an undischarged bankrupt, not undergoing fresh start process, not undergoing an insolvency resolution process and/or not undergoing bankruptcy process.

- (vi)** No application under the chapter III has been admitted in respect of debtor/Personal Guarantor during the period of twelve months preceding the date of submission of the application under sec 95.
- (vii)** The application has been duly filed in the prescribed "Form- C" along with requisite fees of Rs. 2000/- and served the copy of the application to the guarantor, corporate debtor for whom the guarantee has been given by the debtor, & also served to the Insolvency & Bankruptcy Board of India (IBBI). Hence the requirement set out u/s 95(6) of IBC,2016 & rule 7(2 & 3) of PG Rules, 2019, is satisfied.
- (viii)** The application filed u/s 95(1) is accompanied with details and documents relating to:
- (a)** The debts owed by the debtor to the creditor submitting the application for insolvency resolution process.

- (b)** The failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and
- (c)** relevant evidence of such default or non-repayment of debt.

Hence the requirement of Sec 95(4) is satisfied.

(ix) Mr. Pawan Kumar Agrawal, also failed to prove, as sought by the RP via mail dated 11.01.2022, 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.

I, Vijender Sharma, an Insolvency Professional having IP reg. no. IBBI/IPA- 003/IP-N00003/2016-2017/10022, appointed as Resolution Professional under sub section (5) of

Section 97 vide order dated 11.01.2022, in connection with the proposed insolvency resolution process of Dr. Pawan Kumar Agarwal, (Personal Guarantor): CP- (IB) 02/ALD/2021, hereby, on the basis of the gathered facts and figure is of the view that the application of creditor(State Bank of India) satisfies all the requirement u/s 95 of IB Code read with PG Rules, 2019.

- a.** The Insolvency Application has been filed in the requisite form, Form C, in terms of Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019, supported by requisite fee and documents.
- b.** The Insolvency Application satisfies the requirements set out in Section 95 of the Code.
- c.** The Personal Guarantor was duly served with demand notice dated 10.10.2020 by the Financial Creditor for repayment of the debt

owed by him to the Financial Creditor in terms of the provisions of the Code prior to filing the Insolvency Application, but the Personal Guarantor failed to repay the same.

- d.** The undersigned has also sent a communication to the Personal Guarantor, vide letter dated 11.01.2022, in terms of Section 99(2) of the Code, asking her to prove repayment of debt claimed as unpaid by the Financial Creditor. Undersigned has not received any response from Shri Pawan Kumar Agarwal being a one of the personal guarantor.
- e.** The Insolvency Application does not relate to "excluded debts" as defined under Section 79(15) of the Code.
- f.** The Debtor, Personal Guarantor, is not eligible for fresh start under Chapter II of the Code.

REPLY ON BEHALF OF THE PERSONAL GUARANTOR

17. In response to the above petition, Respondent has filed its reply wherein he has contended that the present petition filed by the Financial Creditor is barred by limitation. The Applicant has mentioned the alleged date of default as 08.01.2016, 04.02.2016 and 30.12.2015 for Erstwhile State Bank of Patiala, Erstwhile State Bank of Mysore and Erstwhile State Bank of Bikaner and Jaipur respectively in Part-III of the Application. These are the dates when the aforesaid consortium banks issued notice under Section 13(2) of the SARFESI Act, 2002. In column-4, the date of default is mentioned as 30.05.2018. these lenders filed an application under RD&B Act in 2016. If limitation is to be calculated from date of issuance of notice under Section 13(2) then, the present application is already barred by limitation.

18. Further, the date of NPA classification is 29.06.2013 and 16.03.2015 as stated by State Bank of Mysore and State Bank of Bikaner and Jaipur respectively. Now, the period of three years is to be calculated either from the date of NPA or 90 days prior to that when the first default occurred. The present application is filed on 24.11.2020

which is beyond the period of three years as stated under section 137 of the limitation Act, 1963.

19. Furthermore, the Respondent contends that the Letter of Settlement submitted by the Promoters on 23.03.2019, 10.08.2019 and 18.05.2019 were issued in the individual capacity as ex-promoter for settlement of debt of the Corporate Debtor. None of these letters were issued in the capacity of personal guarantor. Moreover, these communications were issued after the expiry of three years from the date of issuance of notice under Section 13(2) of the SARFESI Act, 2002. The Applicant has mentioned date of default as 30.05.2016 without giving any reason of it. Thus, this application deserves to be rejected. The instant Application if filed before this tribunal after the expiration of three years w.e.f 29.06.2013 and 16.03.2015 which is time barred. For this purpose, reliance is placed on the following judgements stated below:-

Jignesh Shah v. Union of India, (2019) 10 SCC 750 : (2020) 1 SCC (Civ) 48 : 2019 SCC OnLine SC 1254

“....

37. In the winding-up petition itself, what is referred to is the fall in the assets of La-Fin to being worth approximately

INR 200 crores as of October 2016, which again does not correlate with 3-11-2015, being the date on which the statutory notice was itself issued. This again is only for the purpose of appointing an officer of the Court as Official Liquidator in order to manage the day-to-day affairs and otherwise secure and safeguard the assets of the respondent Company. There is no averment in the petition that thanks to these or other facts the Company's substratum has disappeared, or that the Company is otherwise commercially insolvent. It is clear therefore that even on facts, the Company's substratum disappearing or the commercial insolvency of the Company has not been pleaded. Whereas, in Form 1, upon transfer of the winding-up proceedings to the NCLT, what is correctly stated is that the date of default is 19-8-2012; making it clear that three-years from that date had long since elapsed when the winding-up petition under Section 433(e) was filed on 21-10-2016.

38. We therefore allow Civil Appeal (Diary No. 16521 of 2019) and dispose of Writ Petition (Civil) No. 455 of 2019 by holding that the winding-up petition filed on 21-10-2016 being beyond the period of three years mentioned in Article 137 of the Limitation Act is time-barred, and cannot therefore be proceeded with any further. Accordingly, the impugned judgment of the Nclat [Pushpa Shah v. IL&FS Financial Services Ltd., 2019 SCC OnLine NCLAT 572] and the judgment of the NCLT [IL&FS Financial Services Ltd. v. La-Fin Financial Services (P) Ltd., 2018 SCC OnLine NCLT 11437] are set aside.

....”

B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates, (2019) 11 SCC 633 : (2018) 5 SCC (Civ) 528 : 2018 SCC OnLine SC 1921

“....

42. *It is thus clear that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. “The right to sue”, therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application.*

43. *In view of our finding that the Limitation Act has in fact been applied from the inception of the Code, it is unnecessary for us to go into the arguments based on the doctrine of laches. The appeals are therefore remanded to NCLAT to decide the appeals afresh in the light of this judgment.*

...”

- 20.** The Respondent has also contended that present application is not in compliance with the Section 95 of the IBC, 2016. As per section 95(4)(a), an application for initiation of insolvency resolution process shall be accompanied with details and documents relating to debts owed by the debtor to the creditor as on the date of filing application. However, in the present case, application was filed on 26.11.2020 and alleged debt of Rs. 455,26,89,60 has been shown as outstanding as on 31.8.2020 which is three months prior to the filing of the Application.

Therefore, the present application deserves to be dismissed on this ground alone.

REJOINDER ON BEHALF OF THE APPLICANT

- 21.** In response to the aforesaid application, Applicant has filed rejoinder wherein he has denied all the allegations raised in reply and contends that the respondent has failed to provide any documentary evidence stating that he had paid the outstanding balance and that the State Bank of India had released him from the personal guarantee.
- 22.** With respect to the report submitted by the RP, Respondent have raised issue with respect to limitation. The aforementioned objection was brought up by the respondent in the SBI's Demand Notice dated 14.09.2020. When preparing his report, the RP gave careful consideration to the submissions made by the respondents. On 19.01.2022, the report was finally submitted.
- 23.** It is stated in the rejoinder that in response to the Application filed under Section 95 of the Insolvency and Bankruptcy Code, 2016, a reply on behalf of the

respondent dated 27.10.2021 has been submitted wherein Respondent has challenged the validity of the application, citing objections related to the alleged violation of the Provision of Section 95(4)(a) of the Insolvency and Bankruptcy Code, 2016 by the creditor, as well as issues concerning the Limitation Period under Article 137 of the Limitation Act, as mentioned in the reply dated 10.10.2020.

24. The Respondent's contention that the financial creditor contravened the Provision of Section 95(4)(a) of the Insolvency and Bankruptcy Code, 2016, based solely on the fact that the Application mentions the debt as of 31.08.2020 while application being filed on 26.11.2020, is not substantial. This discrepancy does not impact the established fact of non-payment of the debt owed by the debtor/personal guarantor to the creditor and is not a valid ground for dismissing the aforementioned application.

25. Another contention of the personal guarantor is that the limitation period should be calculated based on the date when the last demand notice was sent by the applicant to

the respondent, which was between December 2015 and February 2016. In this regard, it is stated that as per Sec-128 of the Contract Act, the liability of the surety is co-extensive with that of the principal Borrower, unless it is otherwise provided by the contract. Further on the basis of provisions of Section 18(1) of The Limitation Act, 1963 if the debtor admitted/acknowledged the dues in writing before the expiration of the limitation period, then a fresh period of limitation starts from the date of signing of that acknowledgement. The relevant text of Section 18(1) is reproduced below for reference:

18. Effect of acknowledgment in writing. —

(1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

- 26.** In this regard, it is stated by the Applicant that Respondent namely, Dr. Pawan Kumar Agarwal, in his capacity as the former Managing Director of the Shri Lakshmi Cotsyn Limited, sent several signed settlement offers at various times, with the most recent being on

18.05.2020, to the Resolution Professional and all members of the Committee of Creditors (including the applicant). These settlement offers from the Debtor are considered equivalent to an acknowledgment of the dues. Reliance is placed on the case of **Babasaheb Sawalaram Chaware v. Punjab National Bank & Anr.**, in which the Hon'ble NCLAT on 02.06.2020 has stated that the Corporate Debtor has time and again admitted and acknowledged its dues and are therefore, not hit by limitation.

- 27.** The guarantee is a continuing guarantee in nature that remains in force and effect against the Guarantor until full payment has been received by the lenders for each and every part of the monies payable or paid by the borrower to the lenders under the Master Restructuring Agreement. The Applicant has not received any document from the respondent demonstrating that the respondent, as surety, been discharged its liability towards the applicant (creditor) or otherwise discharged by the provision of law. Copy of personal guarantee' contract has been annexed as **Annexure-1** with the Rejoinder.

28. Adjudicating Authorities have consistently held in various judgments that the pendency of applications under the SARFAESI Act or the RDB Act does not prevent the filing of an application under the Insolvency and Bankruptcy Code, 2016, particularly in light of Section 238 of the Insolvency and Bankruptcy Code, 2016. Reliance is placed on the case of **Sesh Nath Singh & Anr. v. Baidyabati Sheoraphuli Cooperative Bank Ltd. & Anr. (dt.22.11.19)** in which the Hon'ble NCLAT held that in computing the period of limitation under Section 14(2) of the Limitation Act, 1963, the time during which the respondent has been prosecuted with due diligence under other civil proceedings against the corporate debtor for the same relief, is to be excluded. Thus, the time exhausted in the applicant's bonafide proceeding which was within limitation period under SARFAESI Act was to be excluded when computing the limitation period for the filing of the applicant's application under Section 7 of the Code.

29. The Hon'ble NCLAT's decision in the above-mentioned case was further be manifested and affirmed by the Hon'ble Supreme Court on dated 22.03.2021 by stating that:

"61. The condition precedent for condonation of the delay in filing an application or appeal, is the existence of sufficient cause. Whether the explanation furnished for the delay would constitute 'sufficient cause' or not would depend upon facts of each case. There cannot be any straight jacket formula for accepting or rejecting the explanation furnished by the applicant/appellant for the delay in taking steps. Acceptance of explanation furnished should be the rule and refusal an exception, when no negligence or inaction or want of bona fides can be imputed to the defaulting party.

62. It is true that a valuable right may accrue to the other party by the law of limitation, which should not lightly be defeated by condoning delay in a routine manner. At the same time, when stakes are high, the explanation should not be rejected by taking a pedantic and hyper technical view of the matter, causing thereby irreparable loss and injury to the party against whom the lis terminates. The courts are required to strike a balance between the legitimate rights and interests of the respective parties.

102. In any case, Section 5 and Section 14 of the Limitation Act are not mutually exclusive. Even in a case where Section 14 does not strictly apply, the principles of Section 14 can be invoked to grant relief to an applicant under Section 5 of the Limitation Act by purposively construing 'sufficient cause'. It is well settled that omission to refer to the correct section of a statute does not vitiate an order. At the cost of repetition, it is reiterated that delay can be condoned irrespective of whether there is any formal application, if there are sufficient materials on record disclosing sufficient cause for the delay.

...."

- 30.** The Applicant has also filed written submission on 17.06.2024 wherein similar averments have been made as

it has been already submitted in the rejoinder discussed in foregoing paras.

ORDER UNDER SECTION 100

- 31.** We have heard the Ld. Counsel of both the parties and perused the documents submitted on record. The Applicant has placed on record the Respondent/Personal Guarantee dated 14.03.2013 which was executed by the Personal Guarantor Mr. Pawan Kumar Agarwal as a guarantor for repayment of the debt in favour of the Financial Creditor.
- 32.** The Respondent has taken a plea before this tribunal that present application is barred by limitation by counting the three years from the date of last demand notice i.e 04.02.2016 and the date of filing the present application is 26.11.2020. Therefore, it is pleaded that the present application is to be dismissed on the ground of limitation.
- 33.** On examination of the details and documents available as presented before us, we find that as per the available documents submitted on record the last recall notice issued by the three erstwhile banks, now merged with the

State Bank of India, the Financial Creditor to the Personal Guarantor is on 04.02.2016. Reference is drawn to the judgement passed by the Hon'ble NCLAT in ***Pooja Ramesh Singh vs State Bank of India-Company Appeal (AT)(Ins.) No. 329 of 2023 dated 28.04.2023*** wherein ***it was held that*** “*guarantee on demand and the limitation of Guarantor shall ensue only when demand is made to the Guarantor and there can be no default on part of the Guarantor on any earlier date*”. Therefore, limitation shall ensue only from 04.02.2016.

- 34.** After this notice, borrowers including the Respondent being Managing Director of the Corporate Debtor vide letter dated 23.03.2019 and then on 18.05.2020, offered one-time settlement to the Financial Creditor before the expiry of three years from the date of issuance of the recall notice i.e 04.02.2016. Therefore, as per the provision of Section 18(1) of the Limitation Act, 1963, the fresh date of limitation started from the date of acknowledging of debt i.e 23.3.2019 and thereafter on 18.05.2020, in the one-time-settlement offer filed to the Financial Creditor by the Corporate Debtor and its Managing Director and Directors

who are the Personal Guarantor. Also, the time exhausted in SARFESI proceeding which was initiated within the limitation period under SARFESI Act, is to be exhausted when computing limitation period for filing of the application under I&B Code, 2016.

- 35.** Further, the Creditor also sent the demand notice dated 14.09.2020 in Form B under Rule 7(1) of Insolvency and Bankruptcy (Application to Adjudicating Authority for insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 to Personal Guarantor. The service of notice is not disputed by the Respondent.
- 36.** Taking into account the above facts, the Personal Guarantee being continuing in nature and after being invoked on 04.02.2016, kept on being acknowledged before expiration of limitation period as discussed above, and hence, we find that the application filed on 26.11.2020 is within limitation period.
- 37.** After satisfying ourselves that the present application has been filed within the limitation period, we have examined the report of RP submitted before us on 19.01.2022 vide

I.A No. 43/2022 wherein starting of insolvency resolution process against the Respondent/Personal Guarantor has been recommended. We have also considered all the facts and circumstances of the case and upon perusal of the documents on record, the CP (IB) No.02/ALD/2021 filed under Section 95 of the IBC, 2016 and not finding any force in the objections raised by the Respondent/Personal Guarantor against the Report of RP and fully agreeing with the report of RP, we hereby admit the said application u/s 95 in accordance with the provisions of Section 100 of the Code, 2016 and accordingly, the Insolvency Resolution Process stands initiated against Mr. Pawan Kumar Agarwal viz. the Respondent herein. We hereby direct as hereinafter:-

- (i)** Initiate Insolvency Resolution Process against the Respondent/Personal Guarantor and moratorium in relation to all the debts is declared, under section 100 from today i.e. date of admission of the application.

(ii) During the moratorium period as provided under Section 101, following restrictions would remain in effect :-

a. Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed, and

b. The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and

c. The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;

d. 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.

(iii) The Resolution Professional viz. Mr. Vijendra Sharma Insolvency Resolution Professional, having Registration No.IBBI/IPA-003/IP-N00003/2016-

2017/10022 having his address at Building No.11,
3rd Floor, Hargovind Enclave, Vikas Marg, New
Delhi, National Capital Territory of Delhi, 110092
[E-Mail: vijender@vsa.net.in, Mobile
no.9810166877 is directed to cause a public notice
published on behalf of the Adjudicating Authority
within 7 days of passing this Order on the website
of the NCLT Allahabad Bench, inviting claims from
all Creditors, within 21 days of such issue.

(iv) The notice under Sub Section (1) of Section 102(2)
shall include:-

- a. details of the order admitting the application;
- b. particulars of the resolution professional with
whom the claims are to be registered; and
- c. the last date for submission of claims.

(v) the said notice shall be-

- a. published in English and on Vernacular
Language newspaper which us in circular 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.
- (vi)** 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 the IBC, 2016, with due deference to the procedure enshrined in Regulation 5, 1, 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 the discharge of his duties as RP.
- (vii)** The Resolution Professional, in exercise of the powers conferred under Section 104, shall prepare a list of creditors on the basis of:

- a. the information disclosed in the application filed by the debtor under Sections 94 or 95, as the case may be, and
- b. claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice. The debtor shall prepare a repayment plan under Section 105, in consultation with the Resolution Professional, containing a proposal to the Creditors for restructuring of his debts or affairs.

(viii) The repayment plan may authorize or require the Resolution Professional to:

- a. carry on the debtor, business or trade on his behalf or in his name: or
- b. realise the assets of the debtor; or c. administers or dispose of any funds of the debtor. The repayment plan shall include the following, namely;

- c. justification for preparation of such repayment plan and reasons based on which the creditors may agree upon the plan;
- d. provision for payment of fee to the Resolution Professional; c. such other matters as may be specified.

(ix) The Resolution Professional shall submit the repayment plan along with his report on the plan to this Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106.

(x) In case, the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons thereof. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of IBC, 2016. The date of 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, 2016, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of IBC, 2016.

(xi) The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of IBC, 2016 and submit the same to this Tribunal, copies of which shall be provided to the Debtor and the Creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of IBC, 2016.

(xii) The Resolution Professional shall submit his periodic reports before this Tribunal, every 30 days.

(xiii) The Applicant is directed to deposit INR 2,00,000/- (Indian Rupees Two Lakhs) to the bank account of

the Resolution Professional within one week, towards his fees. This shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.

- 38.** The Registry is directed to communicate a copy of order, report and application within seven working days and upload the same on the website immediately after the pronouncement of order.
- 39.** The next date fixed for further hearing and submission of report is 12.08.2024.

-Sd-
(Ashish Verma)
Member (Technical)

-Sd-
(Praveen Gupta)
Member (Judicial)

Date- 09th July, 2024