

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH (Court-II)

I.A. (IB) No. 1200/KB/2024

C.P. (IB) 96/KB/2022

A Petition under section 95 of the Insolvency and Bankruptcy Code, 2016;

AND

In the matter of :

An application under rule 11, 13, 32, 34 and 51 of the National Company Law Tribunal Rules 2016;

AND

In the matter of:

Bank of Baroda

Stressed Assets Management Branch

..... Financial Creditor/ Petitioner

-versus

Ramesh Kumar Sarawagi

..... Personal Guarantor/ Applicant

Date of Pronouncement of the order: 19 July 2024.

Coram:

Ms. Bidisha Banerjee, Member (Judicial)

Mr. D. Arvind, Member (Technical)

Appearances (via video conferencing/physical):

For the Personal Guarantor

Ms. Swapna Choubey, Adv.

Mr. Mohan Ram Goenka, CS

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ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Court convened through hybrid mode.
2. Ld. Counsels appearing for the parties were heard in extenso.
3. The application has been preferred to seek the following reliefs, inter alia:-
 - a. *Recall the order dated May 8, 2024, passed in CP(IB)No.96/KB/2022, on the grounds of being barred by Limitation.*
 - b. *Dismiss the petition filed by the Financial Creditor under Section 95(1) of the Insolvency and Bankruptcy Code, 2016, as being non-maintainable.*

4. Facts in Nutshell:-

- 4.1** The Petition being C.P. (IB) 96/KB/2022 was filed under Section 95(1) of the IBC, 2016 by the Bank of Baroda (Financial Creditor) on December 7th, 2021 against Mr. Ramesh Kumar Sarawagi, the alleged personal guarantor of Prithvi Ferro Alloys Private Limited.
- 4.2** This Adjudicating Authority appointed the Resolution Professional Mr. Mahesh Chand Gupta vide an order dated June 27th, 2022, is annexed and marked as “Annexure A”.
- 4.3** The Applicant, Mr. Ramesh Kumar Sarawagi, was the personal guarantor of the Corporate Debtor Company, M/s Prithvi Ferro Alloys Pvt Ltd.
- 4.4** The Company Petition (IB) No. 96/KB/2022 was admitted under Sec 100 of IBC on 8th May 2024 by this Adjudicating Authority.

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Applicant's Submission

- 5.** The Learned Counsel for the Applicant submits that the petition is barred by the laws of limitation as prescribed under the Limitation Act, 1963 as the loan account of the Corporate Debtor turned NPA on December 1st, 2016.

- 6.** It is submitting that on October 19, 2020 the financial Creditor issued a demand notice under Rule 7(10) of the Insolvency and Bankruptcy Code (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate debtors) Rules, 2019.

- 7.** It is submitted that the loan account of the Corporate Debtor turned NPA on December 1st 2016 which is taken as date of default.

- 8.** The demand notice invoking guarantee was sent on October 19, 2020 whereas the date of default was December 1, 2016 thus, the period of 3 years expired on December 1, 2019.

- 9.** That the petition filed under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 is not maintainable as this Adjudicating Authority has committed error in accepting and proceeding with the application filed under Section 95(1) of the Code on order dated May 8th 2024 in CP(IB)No.96/KB/2022 which is annexed and marked as "Annexure B".

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Analysis and Findings

10. We have heard the learned Counsel and perused the record.
11. The personal guarantee was invoked on by applicant/Financial Creditor on 19.10.2020 and the application was filed on 12.12.2021. Hence, application is filed within the period of limitation.
12. We reply on the judgement of **Hon'ble NCLAT in Pooja Ramesh Singh vs. SBI** Company Appeal (AT)(insolvency)No. 329 of 2023, wherein Appellant Tribunal has held that the date of Notice to guarantor for repayment has to be treated as notice of default on receipt of such notice the date of default is established . In this case, considering the above judgement of Hon'ble NCLAT this application has been filed within the 3 years from date of the notice and hence not barred by limitation.

(Emphasis added)

13. The Bank has mentioned the date of default as 19.10.2020 in the affidavit. It has also mentioned the date of NPA as 30.09.2016. It has also been held in the case of **Laxmi Pat Surana, Babulal Vardharji Gurjar , B.K Educational Services Pvt. Ltd. and Jignesh Shah** that the period of limitation would be attracted from the date when the default occurs and not from the date of declaration of NPA. Therefore, the date of NPA cannot be taken to be the date of default for the purpose of limitation.
14. We are conscious of the legal position that the Adjudicating Authority has no inherent power to recall its own order. We would reiterate the ratio as laid down in **Union Bank of India (Erstwhile Corporation Bank) v. Dinkar T. Venkatasubramanian**, reported in (2023) ibclaw.in 382 that

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*“19. From the above judgments of this Tribunal, it is clear that although this Tribunal dealt with both the concepts of review and recall but distinction between review and recall has not been noticed. **There is no dispute to the preposition that no power of review is vested in this Tribunal but power to recall judgment can very well be exercised under Rule 11 in an appropriate case.**”*

15. Thus, this application is not maintainable and accordingly is **dismissed**.

16. The certified copy of this order, if applied or be supplied to the parties, subject to compliance with all requisite formalities.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order is signed on the 19th Day of July, 2024.

Tiwari, V. [LRA]