

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH, COURT-II

Company Petition (IB) No.12/KB/2022

An application 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]

In the matter of:

State bank of India

...FINANCIAL CREDITOR

Versus

Sri Radha Ballav Singhania ...RESPONDENT/PERSONAL GUARANTOR

Coram

Smt. Bidisha Banerjee, Member (Judicial)

Shri. D. Arvind, Member (Technical)

Date of Pronouncement: 15/07/2024

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The court is convened in a hybrid mode.
2. This matter has been preferred by the Applicant **State Bank of India** being the Financial Creditor of **Technofab Manufacturing Limited** the Corporate Debtor under Section 95 of the Insolvency and Bankruptcy Code, 2016 to initiate Insolvency Resolution Process against Radha Ballav Singhania, the Personal Guarantor/Respondent

of **Technofab Manufacturing limited** under Section 95 of the Insolvency and Bankruptcy Code, 2016.

Submission by applicant:

3. The Corporate Debtor Technofab Manufacturing limited had availed financial (Cash credit and term loans) from Financial Creditor for business Purpose. To secure the loan Radha Ballav Singhania furnished personal guarantee toward the security for due repayment of the loan and advances granted to the principal debtor with interest, cost and expenses.
4. The Personal Guarantor has executed several deeds of guarantee in favour of the Financial Creditor from time to time lastly on 19.11.2014. The Corporate Debtor enjoyed the entire loan limit but failed to serve interest in the loan accounts as per the terms of sanction. Due to failure on the part of the Corporate Debtor to comply the terms and condition of the loan account, the loan account have been classified as NPA on 15.07.2014.
5. In the year 2016, the Financial Creditor filed an original application against guarantor before the Hon'ble Debt Recovery Tribunal-1, Kolkata. However, one of the Financial Creditor of the Technofab Manufacturing finance limited (Corporate Debtor) namely Jaiprakash Overseas finance limited has filed an application under section 7 of the Insolvency and Bankruptcy Code, 2016 before the Hon'ble National Company Law Tribunal, Kolkata Bench and the same has been admitted into CIRP on 06.02.2018.
6. Since no Resolution plan was received by the RP, the Adjudicating Authority Adjudicating Authority Ordered Liquidation on 06.09.2018. Subsequent to Liquidation Order the Financial Creditor on 20.02.2020 issued Demand Notice upon the guarantor under rule (7)1 of insolvency and bankruptcy (Application to Adjudicating Authority for insolvency resolution process of Personal Guarantors to Corporate Debtors) rules, 2019, wherein requesting the guarantor to pay the unpaid debt in

default being sum of Rs 115,75,07,301.58. No payment has been made by Personal Guarantor till date. However, subsequent of the issuance of Demand Notice, the properties of the Corporate Debtor have been sold under Liquidation and Financial Creditor has received a sum of Rs 7.94 crore from the Liquidator.

7. Accordingly to the Financial Creditor after adjustment of the amount received under Liquidation the Corporate Debtor is still liable to pay a sum of Rs 1,80,12,81,704.93 (Rs one hundred and eighty crore twelve lakh eighty one thousand seven hundred four and ninety three paisa) is due and payable as on 30.09.2021. Hence, this application has been filed.

Submission by Respondent:

8. CP (IB) No. 12/KB/2022 filed by the Financial Creditor against the Respondent herein under section 95 of the IBC ,2016 is liable to be dismissed, inter alia, for the reason that form Demand Notice was not served upon the Respondent herein and no proof of service of Demand Notice/Form B is attached with the application.
9. Under section 95 (4)(b) of the IBC, 2016 read with rule 7(1) of the insolvency and bankruptcy (Application to Adjudicating Authority for ins Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, Form B Demand Notice must be mandatorily served upon the Respondent before filing any application under section 95 of IBC.
10. Although the **Form B**, Demand Notice dated **20.02.2020** is annexed as annexure **2-B** to the applicant at page **283-380, Vol III, no proof of service of the purported Notice upon the Respondent has been annexed.**
11. The Respondent has not received any Demand Notice.

Analysis and Finding

12. We have heard the learned counsel and perused the record

13. The Respondent on 30.04.2024 had submitted before this Tribunal that it had not received any demand notice. This Tribunal asked for proof but the petitioner could not show any service of demand notice.
14. We would note that Service of Form B notice upon a Personal Guarantor is sine qua non to initiate a proceeding under Section 95 (1) of the IBC.
15. Having noted the glaring defect as above we have no alternative but to dismiss the present petition. However, liberty is granted for revival of the application/Petition on service of demand notice to the Personal Guarantor accordance with law.
16. Hence, **C.P. (IB)/12 (KB)2022 is dismissed** with no costs. However, liberty is granted to come up afresh if permitted in accordance with law.
17. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
18. Certified copy of the order may be issued, if applied for, upon compliance of all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed this, on the 15th day of July, 2024

NKS(LRA)