

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH- (Court I)
KOLKATA**

C.P. (IB) No. 237/KB/2023

IA(IB) No. 313/KB/2024

In the matter of:

An application to Initiate Insolvency Resolution Process in respect of Mr. Rohit Kumar Under Section 95 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Indian Bank

...FINANCIAL CREDITOR

Versus

Mr. Rohit Kumar

...RESPONDENT

Date of Pronouncement of Order: **23.07.2024**

Appearances (via video conferencing/physically):

For the Personal Guarantor

Ms. Urmila Chakraborty, Adv.

Mr. A. Sarkar, Adv.

For the Financial Creditor

Ms. Sanjana Nandi, Adv.

For RP

Mr. Rahul Parasrampur, Adv.

O R D E R

Per: Bidisha Banerjee , Member (Judicial)

1. The Court Convened in a hybrid mode.
2. Learned Counsels were heard.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH- I
KOLKATA**

C.P. (IB) No. 237/KB/2023

IA(IB) No. 313/KB/2024

3. This matter has been preferred by the Applicant Indian Bank being the Financial Creditor of Vedant Bottlers Pvt. Ltd the Corporate Debtor under Section 95 of the Insolvency and Bankruptcy Code, 2016 to initiate Insolvency Resolution Process against Rohit Kumar, the Personal Guarantor/Respondent of Vedant Bottlers Pvt. Ltd. under Section 95 of the Insolvency and Bankruptcy Code, 2016.

4. Facts Pleaded:

4.1. The Corporate Debtor Vedant Bottlers Pvt. Ltd. had approached the petitioner bank vide application for Credit Facility to the tune of Rs. 2,50,00,000/- (Rupees Two Crore Fifty Lakh Only). The said amount sanctioned by the Financial Creditor to the Corporate Debtor vide Sanction Letter dated 09.11.2017. The Corporate Debtor executed various documents in favour of the Financial Creditor on 09.11.2017- Demand Promissory Note, Agreement of Guarantee, Agreement of Hypothecation of Movables, Agreement for Open Cash Credit (Stocks/Book Debts), Letter of Continuity. To collaterally secure the entire aforesaid credit facility sanctioned/accorded by the petitioner Bank, the one of the Directors of the Borrower Company created charge of the immovable property by way of deposit of Title Deeds of property in favour of the Bank for repayment of all dues remaining unpaid to the Bank.

4.3. The Corporate Debtor started defaulting in the repayment of the credit facilities and failed to adhere to the terms and conditions of the sanction letter and could not maintain the accounts as regular, as such the accounts of the Corporate Debtor was classified as non-performing asset (NPA) on 31.10.2018, in compliance with guidelines as framed by the RBI.

4.4. The Financial Creditor/Applicant issued demand notice to the guarantor on 10.10.2023 in Form B in accordance with the

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH- I
KOLKATA**

C.P. (IB) No. 237/KB/2023

IA(IB) No. 313/KB/2024

relevant provisions of the Insolvency & Bankruptcy Code, 2016 (as (amended) read with Insolvency & Bankruptcy Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors)Rules 2019, to the respondent . Despite receipt of the said demand notice, the respondent has neither made any payment nor has replied thereto.

- 4.5.** The Financial Creditor that is Indian Bank also filed Original Application (O.A.) bearing OA No. 588 of 2021 under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993, before the learned Debts Recovery Tribunal-I, Mumbai for recovery of the outstanding dues for a sum of Rs.3.28 cr. with further interest and costs and expenses till repayment in full from the guarantors and Mr. Rohit Kumar.
- 4.6.** That the guarantor is jointly and severally liable as that of the Borrower Company/Corporate Debtor pursuant to the letter of guarantee executed by the Guarantor and the respondent herein and as per Section 128 of the Indian Contract Act, 1872 the guarantor and the respondent herein is liable to pay the total outstanding dues together with further interest, liquidated damages and outstanding interest of the principal borrower if the borrower fails to pay the same. Copy of NeSL report on record of default.
- 4.7.** The Petitioner bank has been maintaining books of account of borrower wherein all transactions of the borrower have been duly entered, which are regularly maintained in the regular and ordinary course of business in accordance with Banking Law and Practice.

5. Per Contra, the Respondent/Personal Guarantor would aver that:

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH- I
KOLKATA**

C.P. (IB) No. 237/KB/2023

IA(IB) No. 313/KB/2024

- 5.1.** C.P. (IB)/237(KB)2023 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 B demand notice was not served upon the respondent herein and no proof of service of demand notice/Form B is attached to the petition.
- 5.2.** Under Section 95(4)(b) of the Insolvency Bankruptcy Code, 2016 read with Rule 7(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, Form B demand notice must be mandatorily served upon the respondent before filing of any application under Section 95 of IBC.
- 5.3.** Although in the order dated 09.05.2024 Ld. Counsel for the Financial Creditor seeks to file a supplementary affidavit to bring on record the postal receipts proving the service of Form-B.
- 5.4.** *Supplementary affidavit is taken on record But the Financial Creditor has failed to prove service of notice in terms of Rule -7 under Form-B to the Personal Guarantor. Ld. Counsel Ms. Urmila Chakraborty appearing for the Personal Guarantor brings to our notice an order dated 25th June, 2024 in CP- 178(KB)/2022 passed by NCLT, Kolkata Bench -II. The same has been recorded in the order dated 01.07.2024.*
- 6.** We have considered the rival claims and perused records.
- 7.** The Financial Creditor could not produce any proof of Service of demand notice.
- 8.** 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.
- 9.** Having noted the glaring defect as above we have no alternative but to dismiss the present petition.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH- I
KOLKATA**

C.P. (IB) No. 237/KB/2023

IA(IB) No. 313/KB/2024

- 10.** Hence, C.P. (IB)/237(KB)20223 is dismissed with no costs.
- 11.** 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.
- 12.** Certified copy of the order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 23rd day of July, 2024

MB