

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

C.P. (IB) NO. 126/MB/2022

Under Section 95 of the
Insolvency & Bankruptcy
Code, 2016.

In the matter of

IDBI Bank Limited

...Petitioner/Financial
Creditor

Versus

Mr. Manohar Gopal

Bidaye

...Respondent/Personal
Guarantor

Order pronounced on 23.07.2024

Coram:

Hon'ble Member (Judicial) : Justice V. G. Bisht (Retd.)

Hon'ble Member (Technical) : Sh. Prabhat Kumar

Appearances:

For the Petitioner/Financial Creditor: Mr. Omkar Kelkar, Advocate

For the Respondent : Mr. Aniruth Purusothaman,
Advocate

For the Resolution Professional : Adv Amey

Hadwale a/w
Geeta Lundwani

ORDER

Per: Justice V. G. Bisht (Retd.), Member (Judicial)

Brief facts:

1. The present petition is filed *u/s.* 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “IBC, 2016”) by **IDBI Bank Limited** (hereinafter referred to as “Petitioner/Financial Creditor/Creditor”) for the purpose of initiating insolvency process against **Mr. Manohar Gopal Bidaye** (hereinafter referred to as the “Respondent/Personal Guarantor/Guarantor”) for recovery of Rs. 80, 62, 61, 990.21/- (Rupees Eighty Crores Sixty-Two Lakhs Sixty-One Thousand Nine Hundred and Ninety and Paise Twenty-One only) as on 20.09.2016. The Date of Default, as specified in Part-III of the present petition is 12.08.2016.
2. The Petitioner is a Company incorporated and registered under the Companies Act, 1956, incorporated on 27.09.2004 bearing CIN L65190MH2004GOI148838 having its registered & Head Office at IDBI Tower, WTC Complex, Cuffe Parade, Mumbai – 400 005.
3. The Respondent is an Indian resident having his permanent address at 1901/1902, A Wing, Oberoi Gardens, Thakur Village, Kandivali East, Mumbai - 400101.
4. The Respondent is a personal guarantor for **Zicom Electronic Security Systems Ltd.** (hereinafter referred to as the “Corporate Debtor/borrower”) incorporated on 01.12.1994 having CIN L32109MH1994PLC083391 and having its registered office at 501, Silver Metropolis, Western Express Highway, Goregaon (East), Mumbai - 400063. The respondent holds 4,30,100 no. of shares in the Corporate Debtor, out of which 1,00,000 no. of shares have been pledged by the Guarantor in favour of the

Punjab National Bank.

5. Guarantee Deed dated 06.02.2016 was filed by way of additional affidavit and not along with demand notice at that time. However, the deed validly exists.
6. Counsel for the Respondent informed this Bench that the Resolution Plan in case of the Principal Borrower has been Reserved for Orders by Court Room No. 5, in the Interlocutory Application bearing IA No. 3956 of 2023, which contemplates the substantial recovery in so far as the amount of debt is concerned.

Submissions of the Petitioner:

7. The Financial Creditor vide its Sanction Letter dated 05.10.2015 bearing reference no. 26/IDBI/CBG-Andheri/15-16 had sanctioned various Working Capital Facilities to the Corporate Debtor aggregating to Rs. 76, 00, 00, 000/- (Rupees Seventy-Six Crores only). The said Facilities were due for repayment before 20.09.2016.
8. The Corporate Debtor had executed the necessary facility agreement and security documents in favour of the Bank. The Respondent is a Director of the Corporate Debtor and had also executed Guarantee Agreement in favour of the Petitioner Bank as security for repayment of the facilities granted to the Corporate Debtor.
9. Thereafter, the Corporate Debtor approached the Financial Creditor & other Banks for consortium facilities. Consortium led by IDBI Bank i.e. the Financial Creditor sanctioned additional working capital facilities aggregating to Rs. 195 Crores. The Corporate Debtor has executed the consortium documents in favour of the members. The Consortium approved Strategic Debt Restructuring for the Corporate Debtor.

10. The Corporate Debtor defaulted in repayment of the said facilities from 12.08.2016 and failed to repay the said facilities thereafter. On account of the failure of the Corporate Debtor to repay the said facilities the Financial Creditor declared the account as NPA on 10.11.2016. The Petitioner/Financial Creditor vide its Guarantee Invocation Notice dated 10.05.2018 bearing No. 459/IDBI Bank/MCG/18-19 addressed to the Respondent invoked the Guarantee given by the Respondent herein to pay the outstanding amount under the said facilities. The Petitioner vide its Demand Notice dated 12.07.2021 called upon the Respondent to pay the outstanding amounts under the said facilities.
11. Since no payment was made despite receipt of notice, hence the present Application has been filed under Rule 7 (2) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Process for Personal Guarantors to Corporate Debtors) Rule, 2009.
12. That a Petition under Section 7 was filed by IDBI against the Corporate Debtor. The said petition bearing CP (IB) No. 610/2021 was admitted under Corporate Insolvency Resolution Process ("CIRP") vide order dated 29.07.2022 passed by this Bench.
13. Ld. Counsel for the Financial Creditor submitted that the copy of Demand Notice dated 12.07.2021 was successfully delivered upon the Personal Guarantor to the Corporate Debtor on 14.07.2021 and copy of Petition was also served on their last known correct address and the requirement u/s 95 of the Code is complete. The Petitioner has filed an affidavit dated 26.10.2023, wherein it is stated that the Personal Guarantor replied to the demand notice vide letter 21.07.2021 and requested the financial

creditor to accept the token payment and to release the Respondents from his personal guarantee. However, through this letter the Petitioner did not offer any token amount. Further, vide letter dated 31.07.2021, the Personal Guarantor offered a meagre sum of Rs. 5.00 Lakh as OTS towards his personal guarantee.

14. Vide order dated 30.11.2023, this bench had appointed **Mr. Asish Narayan**, as Resolution Professional having Registration No. IBBI/IPA-002/IP-N00444/2017- 2018/11274 to examine the petition and file his report within 10 days from the date of communication of the said order.

Submissions of the Respondent:

15. The Respondent has mainly contested the present Petition on the following grounds:

- i. **Objection regarding the maintainability of the Petition filed by the Petitioner against the Respondent:**

The Respondent has submitted that the guarantee deed is not duly stamped and registered. The Respondent has relied upon the decision given by Hon'ble Supreme Court in *N.N. Global Mercantile vs Indo Unique Flame & Ors. (Civil Appeal No(s). 3802-3803 of 2020)* decided on 25.04.2023, wherein the Hon'ble Supreme Court has held that unstamped or insufficiently stamped documents cannot be used as evidence.

- ii. **Non-Invocation of Personal Guarantee:**

The Respondent submitted that the Petitioner has not annexed any document to the Petition that shows the invocation of the Personal Guarantee of the Respondent. Moreover, the Petitioner in the Invocation of Guarantee notice dated

10.05.2018 had mentioned invoking the guarantee Agreement dated 06.02.2016 for the repayment of the dues whereas the Petitioner at Annexure A has annexed the Guarantee Agreement dated 15.10.2015 and has failed to invoke the guarantee. Therefore, the guarantee of Respondent has not been invoked by the Petitioner. It is submitted that the Petitioner has failed to invoke the personal guarantee hence the surety has been discharged as per Section 134 of The Indian Contract Act, 1872.

iii. **Petition to be heard before this bench is impermissible in law as per section 60(2):**

The Respondent submitted that as per Section 60(2) of the Code, the CIRP proceedings of the Corporate Debtor (pending before Court – V) and the Personal Guarantor proceedings against the Guarantor of such Corporate Debtor (pending before Court – I), both have to be heard by the same Bench of this Tribunal. The Respondent has relied upon the decisions given in *Schweitzer Systemtek India Pvt. Ltd. v. Phoenix ARC Pvt. Ltd. & Ors., 2017 SCC OnLine NCLAT 235; Monica Jajoo v. PHL Finvest Pvt. Ltd. & Anr., 2023 SCC OnLine NCLAT 348* and the IBBI Discussion Paper dated 27.09.2023 titled as "Discussion paper on the appointment of RP, sharing of report prepared by the RP with the personal guarantor and mandated summoning of the meeting of the creditors"

iv. **Company Petition is Barred by Limitation:**

It is submitted that in Part III of Form-C, the Date on which debt fell due i.e. Date of Default has specifically been mentioned by the Petitioner as 12.08.2016 in the Petition and the same was filed on 14.08.2021 and registered on 03.02.2022

i.e. after a lapse of more than Five-Six years from the apparent date of default. Hence, the Petition is barred by the Law of Limitation. Also, the Petitioner cannot take benefit of the order passed by the Hon'ble Supreme Court of India in the Suo-Moto Writ Petition granting exclusion from 15.03.2020 to 28.02.2022, since the last day to file the Petition was 12.08.2019, much before the exclusion period commenced as per the order passed by the Hon'ble Apex Court in the Suo-Moto Writ Petition.

The Petitioner has relied upon the Demand Notice dated 12.07.2021 for an extension of the period of limitation, which does not in any way extend the period of limitation as it is issued beyond the limitation period. The present Application was filed by the Petitioner on 14.08.2021. The limitation period for filing the Petition expired on 12.08.2019 i.e. Three years from the date of default i.e. 12.08.2016, hence the Petition is barred by the limitation.

Submissions of the Resolution Professional:

16. The Resolution Professional has filed an Interlocutory Application being IA(IBC)/105(MB)2024 for submitting RP report u/s 99(1) of the Code on record. The same was taken on record on 10.01.2024 and the said Interlocutory Application is allowed and disposed of on 30.01.2024.
17. The ground(s) for admission of the present application, as recorded in the said RP report, are reproduced in-verbatim as hereinafter:

“GROUNDS

19) This Hon'ble Court vide its Order dated 30.11.2023 has appointed the Applicant as the RP in respect of the Respondent Guarantor.

20) *In furtherance of the same, the Applicant has sent a request to the Personal Guarantor namely Mr. Manohar Bidaye, requesting to provide a proof and details of repayment, if any, made to the Financial Creditor namely IDBI.*

21) *That the RP while handing over the letter to the Personal Guarantor personally discussed if Mr. Manohar Bidaye had repaid any amount to the IDBI Bank, in response to the same the Personal Guarantor informed the RP that he is in settlement talks with the Banks and that the RP should mention the same in his report.*

22) *That IDBI Bank on the other hand has informed the RP through its letter dated 21.12.2023 that the Personal Guarantor has not repaid any amount to the bank. Further, the letter sent by IDBI Bank nowhere states that the Personal Guarantor and the Bank are in terms of settlement.*

23) *Hence, in view of the above and in compliance of order dated 30.11.2023 passed by this Hon'ble Tribunal and as per Section 99 of the Code, the RP submits this report, recommending for admission of the said application filed by IDBI Bank under section 95 of the Code.*

24) *In view of the above grounds, it is just and equitable that the present Application be taken on record and allowed by this Hon'ble Tribunal.”*

Findings:

18. Heard submissions of learned counsel for the Petitioner and Respondent. Perused records.
19. Upon perusal of the documents on record, it is clearly established that the Corporate Debtor has committed defaults in repayment of loan amount granted by the Financial Creditor. **Mr. Manohar Gopal Bidaye**, Personal Guarantor to **Zicom Electronic Security Systems Ltd.** has also committed default in repayment of loan facility demanded by the Financial Creditor after invocation of Personal Guarantee vide demand notice dated 12.07.2021 issued 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 by the Petitioner to the Respondent. The filing date of the present petition is 14.08.2021. Moreover, the Corporate Debtor and the Respondent have acknowledged the debt vide acknowledgment of debt dated 15.01.2019. Hence, the present Petition is filed within the prescribed Limitation period. The Application filed by the Creditor satisfies the requirement as set out in Section 95 of the Code and has been filed well within the limitation period.

20. Further the contention of the respondent that the present petition needs to be transferred to Court-V of this Bench since CIRP proceedings are being heard in the said court is without merit since it has been held by the Hon'ble Principal bench in ***Bhavesh Harkishandas Mehta vs. Kookmin Bank & Anr. (Company Appeal (AT) (Insolvency) no. 75 of 2024)*** as under:

“40. (i) When an insolvency proceeding is pending in different court room of a particular Bench of the NCLT, the proceedings under Section 95 can be entertained by another court of the same Bench as per general or special order of the President and order passed under Section 95 application by the court different from court where insolvency proceeding is pending, shall not be without jurisdiction.

(ii) Section 60(2) of the IBC contemplate filing of application for personal guarantor before NCLT or its Benches and not to a particular courtroom of NCLT or its benches.”

21. The contention of the Respondent that the guarantee invocation notice dated 10.5.2018 refers to one guarantee dated 6.2.2016 whereas the guarantee in-fact was executed on 15.10.2015 thus implying that the guarantee dated 15.10.2015 was never invoked, is accepted, the Respondent was again called upon to pay the

guaranteed sum by way of demand notice dated 12.7.2021, accordingly such demand notice also constitutes the invocation of guarantee. Nonetheless, the facts stated in the invocation notice dated 10.5.2018 are otherwise pertains to guarantee dated 15.10.2015, we do not find any merit in this argument.

22. The Respondent has pleaded the limitation on the ground that the Date of Default has specifically been mentioned by the Petitioner as 12.08.2016 in the Petition, however the said date pertains to the date of default qua Principal borrower. The default in case of guarantor arises when the guarantee is invoked making the personal guarantor to pay the debt. In this case, the guarantee was invoked on 10.5.2018 and the petition has been filed on 14.8.2021. The Hon'ble Supreme Court had extended the period of limitation in view of COVID 19 pandemic and ordered that in case limitation period expires between 15.3.2020 to 28.2.2022, the litigant will have another 90 days. In this case, the petition has been filed 14.8.2021, is accordingly within the limitation period.

23. As regards validity of the Guarantee Agreement questioned by the Respondent on ground of insufficiency of stamp, we note that the N.N. Global Mercantile vs Indo Unique Flame & Ors. (Civil Appeal No(s). 3802-3803 of 2020) decided on 25.04.2023 was subsequently placed seven member bench of Hon'ble Supreme Court, where it was held that "Section 35 of the Stamp Act is unambiguous. It stipulates, "*No instrument chargeable with duty shall be **admitted in evidence...**" The term "admitted in evidence" refers to the admissibility of the instrument. Sub-section (2) of Section 42, too, states that an instrument in respect of which stamp-duty is paid and which is endorsed as such will be "**admissible in evidence.**" The effect of not paying duty or paying an inadequate amount renders an instrument*

inadmissible and not void. Non-stamping or improper stamping does not result in the instrument becoming invalid. The Stamp Act does not render such an instrument void. The non-payment of stamp duty is accurately characterised as a curable defect. The Stamp Act itself provides for the manner in which the defect may be cured and sets out a detailed procedure for it. It bears mentioning that there is no procedure by which a void agreement can be "cured." In the present case, the guarantee agreement is in place and it has been invoked thus casting an obligation on the Respondent to pay the amount, he is called upon to pay. It is the obligation of the borrower to pay for the stamp duty on the documents executed for the purpose of borrowing, and neither borrower nor the guarantor ever raised any question on this issue. The proceedings under IBC are not intended to enforce the guarantee but are meant for resolution of the insolvency of the personal guarantor. Accordingly, we do not find any merit in this argument as well.

24. Considering the above facts and circumstances and upon perusal of the documents on record viz. the demand notices, guarantee deeds, etc., the C.P. (IB) 126/MB/2022 filed under Section 95 of the IBC, 2016 is hereby **Admitted** and the Insolvency Resolution Process stands initiated against **Mr. Manohar Gopal Bidaye** 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, from today *i.e.* date of admission of the application, and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on the repayment plan under Section 114 whichever is earlier as provided under Sec 101 of IBC, 2016. During the moratorium period,

- 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.

II. The Resolution Professional *viz.* **Mr. Asish Narayan**, having Registration No. IBBI/IPA-002/IP-N00444/2017- 2018/11274, having registered address at Resurgent Resolution Professionals LLP, 11A/504, Springleaf, Lokhandwala, Kandivali East, Mumbai - 400 101 [E-Mail: *cs.asish@gmail.com*, *Mobile no.: 9920299049*] 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 Mumbai Bench, inviting claims from all Creditors, within 21 days of such issue. 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.

III. The publication of notice shall be made in two newspapers, one in English and other in Vernacular, which have wide circulation in the State where the

Corporate Debtor and Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.

IV. 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.

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

a. carry on the debtor's business or trade on his behalf or in his name: or

b. realise the assets of the debtor; or

c. administer or dispose of any funds of the debtor.

The repayment plan shall include the following, namely;

a. justification for preparation of such repayment plan and reasons based on which the creditors may agree upon the plan;

b. provision for payment of fee to the Resolution Professional;

c. such other matters as may be specified.

V. 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.

- VI.* 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.
- VII.* 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.
- VIII.* The Resolution Professional shall submit his periodic reports before this Tribunal, every 30 days.
- IX.* The Petitioner 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.

- X. 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.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

MK

Sd/-

JUSTICE V. G. BISHT
MEMBER (JUDICIAL)