

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT – II)**

**Item No. 104**  
**(IB)- 872/ND/2020**  
**IA-5805/2021**

**IN THE MATTER OF:**

**State Bank of India**

**... Applicant**

**Versus**

**Sh. Sunil Sharma**

**... Respondent**

**AND IN THE MATTER OF IA-5805/2021:**

**Manish Gupta**

Kallisto Town Home No. TNH00TH082

Jaypee Greens Wish Town, Sector-128,

Noida, Uttar Pradesh-201304

**... Applicant/Resolution Professional**

**Under Section: 99 r/w 95(1) of IBC 2016**

**Order delivered on 26.04.2024**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)**

**SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)**

**PRESENT:**

**For the Applicant :**

**For the Respondent :**

**HYBRID HEARING (PHYSICAL & VC)**

**ORAL ORDER**

As can be seen in the application filed under Section 95 of IBC, 2016, the Applicant Bank (erstwhile State Bank of Patiala) at the request of Corporate Debtor/Borrower (Benlon India Limited) and the Personal Guarantor sanctioned Term Loan-I of Rs. 7,00,00,000/- (Seven crores) vide sanction letter dated 18.03.2011, to Benlon India Limited. It is not in dispute that the loan/security document qua Term Loan-I were executed on 04.04.2011. The Respondent

herein before us also executed the Deed of Guarantee along with other guarantors in favour of the Creditor i.e. Applicant Bank on 04.04.2011.

2. Yet again, the Creditor i.e. the Applicant Bank before us sanctioned Term Loan-II for an amount of Rs. 21.75 crores in favour of the Principal Borrower vide sanction letter dated 07.03.2012. The Respondent before us executed the Deed of Guarantee dated 24.03.2012 for the benefit of the Creditor and in respect of the Principal Borrower. Further in the year 2013, the Creditor at the request made by the Principal Borrower and the Personal Guarantor including the Respondent sanctioned Term Loan-III to the Principal Borrower i.e. of an amount Rs. 13.25 Crores vide sanction letter dated 02.04.2013. In respect of the third term loan also the Respondent before us stood as guarantor for the benefit of the Creditor and in respect of the Principal Borrower.

3. Subsequently, the Creditor sanctioned Term Loan-IV & V in favour of the Principal Borrower. Qua such Term Loan also, the Respondent inter alia stood as Personal Guarantors. Thereafter, the Principal Borrower availed the Financial Facility of Working Capital from the Creditor. The facility was granted in the year 2017. The financial facilities in the form of Term Loan as also Working Capital have been enumerated in the list of dates filed along with the IB-872/ND/2020. The relevant excerpt of the list of dates and events reads thus:-

10.03.2014	The Applicant Bank (erstwhile State Bank of Patiala) at the request of the Corporate Debtor and Personal Guarantors sanctioned/granted Term Loan - IV of Rs. 9.50 Crores vide its sanction letter dated 10.03.2014 to Benlon India Ltd.
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10.03.2014	The Applicant Bank (erstwhile State Bank of Patiala) at the request of the Corporate Debtor and Personal Guarantors sanctioned/granted Term Loan - IV of Rs. 9.50 Crores vide its sanction letter dated 10.03.2014 to Benlon India Ltd.
12.03.2014	Loan/Security documents of Term Loan - IV were executed on 12.03.2014. Deed of Personal Guarantee was also executed by Mr. Sunil Sharma along with other guarantors in favour of the Applicant Bank on 12.03.2014.
19.05.2015	The Applicant Bank (erstwhile State Bank of Patiala) at the request of the Corporate Debtor and Personal Guarantors sanctioned/granted Term Loan - V of Rs. 15 Crores vide its sanction letter dated 19.05.2015 to Benlon India Limited.
25.05.2015	Loan/Security documents of Term Loan - V were executed on 25.05.2015. Deed of Personal Guarantee was also executed by Mr. Sunil Sharma along with other guarantors in favour of the Applicant Bank on 25.05.2015. The Mortgage was created with the Deposit of Title Deeds. Mr. Balbir Sharma executed and submitted to the Applicant Bank the Declaration from time to time and also on 25.05.2015.
16.01.2017	The Corporate Debtor availed the Working Capital Facilities of Rs. 375 crores under Consortium Banking Arrangement. That out of Rs. 375 crores the Applicant Bank sanctioned and granted Rs.193.50 Crores, vide sanction letter dated 27.06.2015 (erstwhile SBoP) and 03.08.2016 (erstwhile SBBJ). The Working Capital Facilities were secured by the equitable mortgage of the properties of the Corporate Debtor and of the personal guarantor Mr. Balbir Sharma. The Credit facilities were also secured by the personal guarantees of Mr. Sunil Sharma along with other guarantors.
03.11.2017	The Applicant Bank vide its sanction letter enhanced the Working Capital facilities from Rs. 193.50 crores to Rs. 213.50 crores. The Consortium of Banks enhanced the Working Capital Facilities of Rs. 375 Crores to Rs. 430 Crores.

4. One of the Operational Creditor qua the Principal Borrower (Benlon India Limited) preferred Insolvency application under Section 9 of IBC, 2016 and this Adjudicating Authority vide order dated 19.12.2018 ordered the commencement of CIRP in respect of the Principal Borrower. As has been mentioned in the list of dates and events filed along with the application by the Creditor, the Loan Account of Corporate Debtor/Principal Borrower/Benlon India Limited was classified as Non-Performing Assets (NPA) on 15.12.2018 & on 21.10.2019 the Principal Borrower acknowledged the liability in its Annual Balance Sheet.

5. The Creditor that is the Applicant before us preferred Original Applications i.e., OA No. 999 of 2019 and OA No. 1020/2019 before the DRT for recovery of dues. The applications was preferred on 24.10.2019. The notice issued by DRT in both the applications were served upon the Respondent before us namely Mr. Sunil Sharma (PG) on 27.01.2020. The DRT issued notice in terms of the order dated 18.12.2019. The Creditor served notice under Rule 7(1) of I&B (Application to Adjudicating Authority for Insolvency Resolution of Personal Guarantor) Rules, 2019 in Form-B upon Personal Guarantor.

6. Regarding the CIRP in respect of the Principal Borrower, the concerned Resolution Professional preferred CA No. 1519 of 2020 in CP(IB)-1612/ND/2018 for approval of the resolution plan. As the Principal Borrower as also the Guarantors failed to repay the amount of debt in full, the Creditor i.e. State Bank of India has sought initiation of IRP qua the Respondent. The particulars of debt and the date of default are mentioned in the demand notice dated 27.01.2020, issued by the Applicant Bank. The details are also mentioned in Part III of the application i.e. IB-872/ND/2020 which reads thus:-

IA-5805/2021 in CP(IB)-872/(ND)/2020  
State Bank of India vs. Sunil Sharma

**PART III**

<b>PARTICULARS OF DEBT</b>		
1	Total debt (including any interest or penalties)	Rs. <b>284,84,08,879/-</b> (As on 30.06.2020)
2	Amount in default	Rs. <b>284,84,08,879/-</b> (As on 30.06.2020)
3	Date on which debt was due	16.09.2018; 15.12.2018 (Date of NPA)
4	Date on which default occurred	16.09.2018
5	Nature of the debt	Cash Credit, Term Loan, Letter of Credit and Bank Guarantee
6	Secured debt including particulars of security held, the date of its creation, its estimated value as per the creditor (as applicable)	<p>Rs. 95,13,588,032/-</p> <p>Immovable Property of Noble Hoisery (sole proprietorship concern of Mr. Balbir Sharma) is at A-68, Group Industrial Area, Wazirpur, Delhi-110052 together with plant and machinery (the plant &amp; machinery is hypothecated by the Corporate Debtor being the owner), its realizable value as on 03.04.2019 is Rs. 8,56,80,000/- . The Applicant Bank has 1<sup>st</sup> pari-passu charge over immovable property and 1<sup>st</sup> charge over the plant &amp; machinery there at. The Share in realization of the immovable property of the Applicant Bank is 49.49%.</p> <p>and</p> <p>immovable properties of the Corporate Debtor are at</p> <p>(1) Industrial plot measuring 1800 sq. mtrs bearing plot no. 506, HSIIDC, Ph-IV, Kundli Distt. Sonipat, Haryana together with plant and machinery, its realizable value as on 03.04.2019 is Rs. 8,42,35,000/- . The Applicant Bank has 1<sup>st</sup> charge over the immovable property along with plant &amp; machinery.</p> <p>(2) Industrial plot measuring 3037.50 sq. mtrs bearing plot no. 508, 509 &amp; 510, HSIIDC, Ph-IV, Kundli Distt. Sonipat, Haryana together with plant and machinery, its realizable value as on 03.04.2019 is Rs. 14,45,00,000/- . The Applicant Bank has 1<sup>st</sup> charge over the immovable property along with plant &amp; machinery.</p> <p>(3) Industrial plot measuring 4050 sq. mtrs bearing plot no. 123 Sector 53, HSIIDC, Ph-IV, Kundli Distt. Sonipat, Haryana together with plant and machinery. The Applicant Bank has 1<sup>st</sup> charge over the immovable property along with plant &amp; machinery, &amp;</p>

		<p>(4) Industrial plot measuring 4050 sq. mtrs bearing plot no. 122 &amp; 124 Sector 53, HSIIDC, Ph-IV, Kundli Distt. Sonapat, Haryana, together with plant and machinery, The Applicant Bank has 1<sup>st</sup> charge over the immovable property along with plant &amp; machinery. The valuation of Plot No. 122, 123 &amp; 124 together is Rs. 48,21,20,000/-.</p> <p>The Valuation of the fixed assets (plant &amp; Machinery) of the Corporate Debtor at all the above mentioned immovable properties is Rs. 19.81 Crores.</p> <p>The Security was created by deposit of Title Deeds on 19.07.2008 by Mr. Balbir Sharma &amp; the Corporate Debtor and was extended, by executing Declaration in favour of the Applicant on 25.05.2015 &amp; 13.08.2018.</p>
7	Unsecured debt (as applicable)	<p>A] Unsecured Debt Vis-à-vis the Corporate Debtor is Rs. 193,94,53,879/-</p> <p>B] Unsecured Debt Vis-à-vis the Guarantor against whom application is filed is Rs. 284,84,08,879/-</p>
8	Details of retention of title arrangements (if any) in respect of goods to which the debt refers (attach a copy)	-NA-
9	Details of any mutual credit, mutual debts, or other mutual dealings between the guarantor and the creditor, which may be set-off against the claim (attach proof)	-Not Known-
10	Particulars of an order of a court, tribunal or arbitral panel adjudicating on the default, if any (attach a copy of the order)	<p>1. One of the Operational Creditor of the Corporate Debtor filed the insolvency Application u/s 9 of the IBC and the Hon'ble NCLT vide its Order dated 19.12.2018, invoked the provisions of the Insolvency and Bankruptcy Code, 2016 against Corporate Debtor (Benlon India Limited) and initiated the process of CIRP against the Corporate Debtor. (Certified Copy of this Order is enclosed with the Application)</p> <p>2. The Applicant Bank has filed 2 Original Applications (OA No. 999 of 2019 and OA No. 1020 of 2019) against the Guarantors which are pending before the Debt Recovery Tribunal-2, Delhi,</p>

		<p>for recovery of its dues in the Loan account of Benlon India Limited (Corporate Debtor). The Ld. DRT issued Notice in both the OA, vide its separate orders, both dated 18.12.2019. (Certified Copies of both the Orders dated 18.12.2019 are enclosed with the Application)</p> <p>3. The Resolution Professional of the Corporate Debtor has filed CA No. 1519 of 2020 in IB-1612/ND/2018 on 25.02.2020 u/s 30(6) and 31 of the IBC thereby submitting the Resolution Plan approved by the CoC, for Adjudication by the Hon'ble NCLT. This CA is yet to be heard by the Hon'ble NCLT. As evident from the Order dated 04.03.2020 passed by the NCLT, Delhi. (Certified Copy of this Order is enclosed with the Application)</p>
11.	Record of default with the information utility, if any (attach a copy)	Copy of Information Utility, in which all the Financial information including record of Default of the Corporate Debtor is provided for, is enclosed.
12.	Details of succession certificate, or probate of a will, or letter of administration, or court decree (as may be applicable), under the Indian Succession Act, 1925 (10 of 1925) (attach a copy)	-NA-
13.	Provision of law, contract or other document under which debt has become due (attach a copy)	<p>i. The Loan for overall limit agreement dated 04.04.2011 (Term Loan – I) and</p> <p>ii. Deed of Guarantee dated 04.04.2011 executed by Guarantor along with two other guarantors in favour of the Applicant.</p> <p>iii. The Loan for overall limit agreement dated 24.03.2012 (Term Loan – II) and</p> <p>iv. Deed of Guarantee dated 24.03.2012 executed by Guarantor along with two other guarantors in favour of the Applicant.</p> <p>v. The Loan for overall limit agreement dated 04.04.2013 (Term Loan – III) and</p>

		<p>vii. The Loan for overall limit agreement dated 12.03.2014 (Term Loan – IV) and</p> <p>viii. Deed of Guarantee dated 12.03.2014 executed by Guarantor along with two other guarantors in favour of the Applicant.</p> <p>ix. The Loan for overall limit agreement dated 25.05.2015 (Term Loan – V) and</p> <p>x. Deed of Guarantee dated 25.05.2015 executed by Guarantor along with two other guarantors in favour of the Applicant.</p> <p>xi. Working Capital Consortium Agreement dated 27.07.2018 &amp;</p> <p>xii. Deed of Guarantee dated 27.07.2018 executed by Guarantor along with other guarantors in favour of the Applicant.</p> <p>xiii. The applicant would rely on the provisions of Indian Contract Act, 1872, The Transfer of Property Act, 1882, Insolvency and Bankruptcy Code, 2016 and other applicable provisions of Law.</p>
14.	A statement of bank account where deposits are made or credits received normally by the creditor in respect of the debt of the corporate debtor, from the date on which the debt was incurred (attach a copy)	As per attachment
15.	List of documents attached to this application in order to prove the existence of debt and the amount in default	<p><b>S Description of Document No.</b></p> <p>1. <b>Annexure-1</b> True copy of the Order dated 19.12.2018 passed by the Hon'ble NCLT, Delhi.</p> <p>2. <b>Annexure-2</b> True copies of the Orders dated 18.12.2019 passed by Hon'ble Debt Recovery Tribunal in OA. No. 999 of 2019 &amp; 1020 of 2019.</p>



3. **Annexure-3** True copy of the Order dated 04.03.2020, passed by the Hon'ble NCLT, Delhi.
4. **Annexure-4** True Copy of Information Utility, in which all the Financial information including record of Default of the Corporate Debtor is provided for.
5. **Annexure-5** True copy of the O.A. No. 999 of 2019, filed by the Applicant, before the Hon'ble DRT.
6. **Annexure-6** True copy of the O.A. No. 1020 of 2019, filed by the Applicant, before the Hon'ble DRT.
7. **Annexure-7** True Copy of sanction letter dated 18.03.2011 of the Applicant.
8. **Annexure-8** True Copy of Board Resolution dated 19.03.2011 of the Corporate Debtor.
9. **Annexure-9** True Copy of Agreement of Loan for Overall limit dated 04.04.2011 executed by the Corporate Debtor.
10. **Annexure-10** True Copy of Deed of Hypothecation dated 04.04.2011 executed by the Corporate Debtor.
11. **Annexure-11** True Copy of Deed of Guarantee dated 04.04.2011 executed by the Guarantors.
12. **Annexure-12** True Copy of Letter Regarding the grant of Individual Limits dated 04.04.2011.
13. **Annexure-13** True Copy of sanction letter dated 07.03.2012 of the Applicant.

14. **Annexure-14** True Copy of Board Resolution dated 09.03.2012 of the Corporate Debtor.
15. **Annexure-15** True Copy of Agreement of Loan for Overall limit dated 24.03.2012 executed by the Corporate Debtor.
16. **Annexure-16** True Copy of Deed of Hypothecation dated 24.03.2012 executed by the Corporate Debtor.
17. **Annexure-17** True Copy of Deed of Guarantee dated 24.03.2012 executed by the Guarantors.
18. **Annexure-18** True Copy of Letter Regarding the grant of Individual Limits dated 24.03.2012.
19. **Annexure-19** True Copy of sanction letter dated 02.04.2013 of the Applicant.
20. **Annexure-20** True Copy of Board Resolution dated 26.03.2013 of the Corporate Debtor.
21. **Annexure-21** True Copy of Agreement of Loan for Overall limit dated 04.04.2013 executed the Corporate Debtor.
22. **Annexure-22** True Copy of Deed of Hypothecation dated 04.04.2013 executed by the Corporate Debtor.
23. **Annexure-23** True Copy of Deed of Guarantee dated 04.04.2013 executed by the Guarantor, Mr. Balbir Sharma.
24. **Annexure-24** True Copy of Deed of Guarantee dated 04.04.2013 executed by the Guarantor, Mr. Sunil Sharma.

25. **Annexure-25** True Copy of Deed of Guarantee dated 04.04.2013 executed by the Guarantor, Ms. Sudesh Sharma.
26. **Annexure-26** True Copy of Letter Regarding the grant of Individual Limits dated 04.04.2013.
27. **Annexure-27** True Copy of Board Resolution dated 12.03.2014 of the Corporate Debtor.
28. **Annexure 28** True Copy of Agreement of Loan for Overall limit dated 12.03.2014 executed by the Corporate Debtor.
29. **Annexure-29** True Copy of Deed of Hypothecation dated 12.03.2014 executed by the Corporate Debtor.
30. **Annexure-30** True Copy of Deed of Guarantee dated 12.03.2014 executed by the Guarantors.
31. **Annexure-31** True Copy of Letter Regarding the grant of Individual Limits dated 12.03.2014.
32. **Annexure-32** True Copy of Affidavit of assets of the Guarantor, Mr. Balbir Sharma dated 12.03.2014.
33. **Annexure-33** True Copy of Affidavit of assets of, the Guarantor, Mr. Sunil Sharma dated 12.03.2014.
34. **Annexure-34** True Copy of Affidavit of assets of the Guarantor, Ms. Sudesh Sharma dated 12.03.2014.
35. **Annexure-35** True Copy of sanction letter dated 19.05.2015 of the Applicant.

36. **Annexure-36** True Copy of Board Resolution dated 22.04.2015 of the Corporate Debtor.
37. **Annexure-37** True Copy of Agreement of Loan for Overall limit dated 25.05.2015 executed by the Corporate Debtor.
38. **Annexure-38** True Copy of Deed of Hypothecation dated 25.05.2015 executed by the Corporate Debtor.
39. **Annexure-39** True Copy of Deed of Guarantee dated 25.05.2015 executed by the Guarantors.
40. **Annexure-40** True Copy of Letter Regarding the grant of Individual Limits dated 25.05.2015
41. **Annexure-41** True Copy of declaration dated 25.05.2015 executed the Guarantor, Mr. Balbir Sharma.
42. **Annexure-42** True Copy of sanction letter dated 03.11.2017 of the Applicant Bank.
43. **Annexure-43** True Copy of Board Resolution passed in the meeting of Board of Directors of the Corporate Debtor held on 26.07.2018.
44. **Annexure-44** True Copy of Working Capital Consortium Agreement dated 27.07.2018 executed by the Corporate Debtor.
45. **Annexure-45** True Copy of Deed of Hypothecation dated 27.07.2018 executed by the Corporate Debtor.
46. **Annexure-46** True Copy of Deed of Guarantee dated 27.07.2018 executed by the Guarantors.

47. **Annexure-47** True Copy of Agreement-Cum-Indemnity dated 27.07.2018 executed by the Corporate Debtor.
48. **Annexure-48** True Copy of Omnibus Counter Guarantee dated 27.07.2018 executed by the Corporate Debtor.
49. **Annexure-49** True Copy of Declaration dated 13.08.2018 executed the Guarantor, Mr. Balbir Sharma.
50. **Annexure-50** True Copy of balance confirmation letter dated 31.03.2018 executed by the Corporate Debtor.
51. **Annexure-51** True Copy of Valuation Report of the Immovable Property bearing No. 506 HSIIDC, Ph-IV, Kundli Distt. Sonipat, dated 02.04.2019.
52. **Annexure-52** True Copy of Valuation Report of the Immovable property bearing plot no. 508, 509 & 510, HSIIDC, Ph-IV, Kundli Distt. Sonipat, Haryana, dated 02.04.2019.
53. **Annexure-53** True Copy of Valuation Report of the Immovable Property bearing plot No. A-68, Group Industrial Area, Wazirpur, Delhi-110052, dated 03.04.2019.
54. **Annexure-54** True Copy of Valuation Report of the Immovable Property bearing plot no. 122, 123 & 124 Sector 53, HSIIDC, Ph-IV, Kundli Distt. Sonipat, Haryana, dated 03.04.2019.
55. **Annexure-55** True Copy of Valuation Report of all the Plant & Machinery of the Corporate Debtor, dated 03.04.2019.

		<p>56. <b>Annexure-56</b> True Copy of Valuation Report of all the Plant &amp; Machinery of the Corporate Debtor, dated 02.04.2019.</p> <p>57. <b>Annexure-57</b> True Copy of Annual Balance sheet of the Corporate Debtor for the Financial Year 2018-19, dated 21.10.2019.</p> <p>58. <b>Annexure-58</b> Statement of Accounts</p> <p>59. <b>Annexure-59</b> Certificate u/s 2 A (b) &amp; 2 A (c) of the Banker's Book Evidence Act, 1891.</p> <p>60. <b>Annexure-60</b> True Copy of Copy of State Bank of India General Regulation, 1955.</p> <p>61. Vakalatnama.</p>
16.	Statement by creditor in respect of excluded debts	<p>I, Vikash Kumar, being the Chief Manager and duly authorized person on behalf of the Applicant Bank, hereby state that the debt(s) for which the insolvency resolution process application is filed does not include any-</p> <p>(i) Liability to pay fine imposed by a court or tribunal;</p> <p>(ii) Liability to pay damages for negligence, nuisance or breach of statutory, contractual or other legal obligation;</p> <p>(iii) Liability to pay maintenance to any person under any law for the time being in force;</p> <p>(iv) Liability in relation to a student loan;</p> <p>(v) Any other debt prescribed under section 79(15)(e) of the Code.</p>
17.	If you are a secured creditor, tick the applicable box in the right column relating to forfeiture of right to enforce security during the period of the repayment plan, which will determine the voting share as per section 110 of the code:	<p><b>- NOT APPLICABLE -</b></p>

7. In terms of the detailed order dated 06.10.2021, this Adjudicating Authority appointed Mr. Mohit Gupta as RP, in terms of the provisions of Section 97 of IBC, 2016. The RP filed his report under Section 99 of IBC, 2016 and recommended the initiation of CIRP qua the Respondent (PG).

8. Mr. Rajat Sinha, Ld. Counsel for the PG opposed both the CP(IB)-872/(ND)/2020 as also IA-5805/ 2021, by submitting that:-

i. No demand notice was ever issued to the Respondent (PG) and he could know about the pendency of the present proceedings only after filing of report of RP.

ii. No notice invoking bank guarantee was ever issued to the PG.

iii. The demand notice placed on record at page 9 of the application is only in draft notice.

iv. The date of debt and default mentioned in the application and demand notice differ from each other. According to him when at page 20 of the paper book of the application, the dates of NPA and default mentioned are 15.12.2018 & 16.09.2018, the same mentioned in demand notice are 16.09.2019 and 23.09.2019.

v. Mr. Vikas Kumar, Manager SBI is not authorised to file the present application. The Personal Guarantor cannot be said to have committed the default unless the notice invoking Bank guarantee is served upon him.

9. As far as the first and fourth submission made by Mr. Rajat Sinha are concerned, the same are self-contradictory. When on the one hand the Ld. Counsel submitted that the demand notice was never issued to the PG, he also

submitted that the notice dated 27.01.2020 served upon the PG was only a draft notice, which contained such date of debt and default, which are contrary to the dates mentioned in the application filed before this Tribunal. The contradiction in the submission made on behalf of the PG in itself is/can be a sufficient ground to reject both the contentions. Nevertheless, we deemed it appropriate to refer to the relevant clauses in the demand notice as also in the application. It can be seen from page 9 of the application referred by the Creditor viz. the demand notice dated 27.01.2020, the dates 16.09.2019 & 23.09.2019 are the dates of when the amount of debt fell due and the date when the default occurred. The dates mentioned in the application at page 20 of the applications are the dates on which the debt was due, the date of NPA and the date of default. It's seen that there is typographical error occurred in the application where the dates of debt and default are mentioned. Such is also the submission of Mr. Datta, the Ld. Counsel for the Creditor. In any case irrespective of the dates of debt and default, it is not in dispute that the Respondent before us stood as Personal Guarantor for the benefit of the Creditor and in respect of the Principal Borrower and there is default in repayment of the financial facility/amount of loan.

10. In the wake, we do not find any substance in the argument raised on behalf of the Personal Guarantor that no demand notice was ever served and the dates of debt and default mentioned in the demand notice as also the application filed before us are at variance. Such plea cannot be a ground sufficient enough to reject the application.

11. Even, otherwise also we may not be oblivious of the fact that while passing the order under Section 100 of IBC, 2016, we need to rely upon the report of RP



and to oppose the admission of the application, the Personal Guarantor should show the proof of repayment of the amount of debt. Regarding the plea of the PG being aware about the filing of the present proceedings only after submission of the report of RP, we may make a reference to our order dated 06.10.2021, wherein it has been specifically noted that the Respondent preferred an application dated 15.12.2020 before DRT, apprising it about the pendency of IB-872/ND/2020. Para 13 of the order reads thus:-

*“13. It has been stated by the Applicant in its Additional Affidavit as well as during the course of hearing that the Personal Guarantor is having knowledge of the Application filed against it under Section 95. To support its contention, the Applicant has annexed with its additional affidavit, a Copy of the Application filed by Mr. Sunil Sharma, Personal Guarantor before the DRT- II, New Delhi for stay of the proceedings at DRT, in view of the initiation of Interim Moratorium since the date of filing of the Application herein before this Adjudicating Authority under Section 95 of IBC, 2016. The scanned copy of the Application filed by Mr. Sunil Sharma, Personal Guarantor before the DRT-II, New Delhi is reproduced below:*

**BEFORE THE DEBT RECOVERY TRIBUNAL-II, DELHI, 4<sup>TH</sup> FLOOR,  
JEEVAN TARA BUILDING, P. STREET, NEW DELHI-110001**

OA/999/2019

IN THE MATTER OF:-

State Bank of India

...Applicant

Versus

Benlon India Ltd. & Ors.

...Defendants

15.12.2020  
N.D.O.H.:07.10.2020

**APPLICATION UNDER SECTION 96 (1) OF THE INSOLVENCY AND  
BANKRUPTCY CODE, 2016 ON BEHALF OF THE DEFENDANT NO. 3  
FOR STAYING THE PROCEEDINGS OF THE PRESENT MATTER IN  
VIEW OF FILING OF AN APPLICATION UNDER SECTION 95 OF THE  
INSOLVENCY AND BANKRUPTCY CODE, 2016 BY THE APPLICANT  
BANK BEFORE THE HON'BLE NATIONAL COMPANY LAW  
TRIBUNAL, NEW DELHI**

**MOST RESPECTFULLY SHOWETH:-**

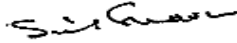
1. That the aforesaid matter is pending adjudication before this Hon'ble Tribunal and the same is listed on 07.10.2020 for hearing.
2. That the applicant bank after filing of the present OA before this Hon'ble Tribunal had also filed an application U/S 95 of I & B Code, 2016 for initiation of the insolvency proceedings against the applicant/ respondent no 3 and the same was registered as C.P. (IB)/872/2020 by the registry of Hon'ble NCLT, New Delhi.
3. That as per the provisions of section 96 (1) of the I & B Code, 2016 an interim moratorium shall commence on the date of application in relation to all the debts and shall cease to have effect on the date of admission of such application; and during the interim moratorium period, any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed.
4. That in view of the aforesaid provisions of section 96 (1) of the I & B Code, 2016, the present proceedings cannot be continued. Hence, this application.

**PRAYER:-**

In view of the aforesaid submissions, it is humbly prayed that this Hon'ble Tribunal may kindly be pleased to stay the present proceedings, in the interest of justice.

Delhi

Dated:-13/10/2020

  
(Sunil Sharma)

Applicant/Respondent no. 3

12. In the wake of the aforementioned, we are really dismayed with the stand taken on behalf of the Personal Guarantor that he could know about the present proceedings only after filing the report of Resolution Professional. Nevertheless, without commenting any further about the conduct of the Respondent, we believe that the filing of the application (date 13.10.2020) by the Personal Guarantor before DRT, which has been reproduced in Para 13 of our dated 06.10.2021 is a reason sufficient enough to reject the plea of the PG that he could acquire knowledge about the present proceedings only after filing of report by the RP.

13. As far as the issue of invocation of bank guarantee is concerned, for the purpose of present application, we need to refer to Rule 7 of I & B (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, and satisfy myself about his debt, the amount of financial facility/loan qua which the Respondent stood as Personal Guarantor was demanded from him. It is apparent from the demand notice dated 27.01.2020 that the Creditor had demanded the amount of loan/debt from the Personal Guarantor. It is the submission of the Applicant of the Ld. Counsel for the PG himself that the Creditor had also issued legal notice dated 16.09.2019 to the Personal Guarantor demanding the amount of loan. Regarding the authorisation in favour of Mr. Vikas Kumar, the Manager of the concerned Branch of State Bank, Mr. Datta could draw our attention to page 985-987 of the application. As can be seen from the State Bank of India General Regulations, 1955 (as amended by the SBI General (Amendment) Regulations, 2013), the plaints, written statements, petitions and applications may be signed and verified by any Officer or employee empowered under Regulations 76 to sign the documents for on behalf of the State Bank. The Regulation 76 of the aforementioned Regulations specifically provides that the Managing Directors, Deputy Managing Directors, the Chief General Managers and such other Officers and employees of the State Bank as the Central Board or Executive Committee may authorise in this behalf by notification in the Gazette of India to such extent and subject to such limitation if any, as the Central Board or the Executive Committee may specify or impose in so authorizing are empowered for and on behalf of the State Bank to sign all documents, instruments, accounts, receipts,

letters and advices connected with the current or authorized business of the State Bank. The Regulations 76(1) & 77 of the aforementioned Regulations i.e. State Bank of India General Regulations, 1955 are placed on record as Annexure-60 to the application which reads thus:-

**“76. Accounts receipts and documents of State Bank by whom to be signed.-** (1) [The managing directors,] (the deputy managing directors), the (chief general managers) and such other officers and employees of the State Bank as the Central Board or the Executive Committee may authorise in this behalf by notification in the Gazette of India, to such extent and subject to such limitation if any, as the Central Board or the Executive Committee may specify or impose in so authorising, are hereby severally empowered, for and on behalf of the State Bank, to sign all documents, instruments, accounts, receipts, letters and advices connected with the current or authorised business of the State Bank and, in particular and without prejudice to the generality of the foregoing powers, to endorse and transfer promissory notes, stock receipts, stock debentures, shares, securities and documents of title to goods, standing in the name of or held by or on behalf of the State Bank or, in the absence of any agreement to the contrary, standing in the name of or held by or on behalf of any person, firm, company or corporation for or on behalf of which person, firm, company or corporation the State Bank has been constituted as attorneys, to draw, accept and endorses bills of exchange and cheques, to issue, confirm and transfer letters of credit and to sign guarantees and indemnities.]

**X X X**

**77. Plaints, etc., by whom to be signed.-** Plaints, written statements, petitions, and applications may be signed and verified, affidavits may be sworn or affirmed, bonds may be signed, sealed and delivered, and generally all other documents connected with legal proceedings whether contentious or non-contentious may be made and completed on behalf of the State Bank by the chairman or by any officer or employee empowered

*by or under regulation 76 to sign documents for and on behalf of the State Bank.”*

14. From the aforementioned, it is clear that for the purpose of instituting the proceedings and signing the pleadings to be filed before the Court/Tribunal, no specific Board resolution is required to be passed and such Officers who are empowered under Regulation 76 to sign the documents for and on behalf of the State Bank can also sign the pleadings to be filed before the Court/Tribunal. It is not the case of the Personal Guarantor/Respondent that the Assistant General Manager is not one of the Officer authorized in terms of the Regulations to file the present application. The plea raised by him is that no Board Resolution could be passed by the State Bank of India in favour of Mr. Vikas Kumar (Manager for filing the present application). In the wake, we are not inclined to accept the plea regarding authority of Mr. Vikas Kumar for filing the present application. The plea is rejected.

15. Finally, the Ld. Counsel for the PG referred to the Bank Guarantee available on record along with IA-5805/2021 to submit that unless the guarantee given by the Respondent is invoked, the present application would not be maintainable. The plea is noted only to be rejected, for the simple reason that the Ld. Counsel for the PG himself could make reference to the demand notice served upon the Personal Guarantor in Form-B to the relevant rules. For the purpose of the maintainability of an application under Section 95(1) of IBC, 2016, we need to refer to the relevant rules. What is the requirement of Rule 7 of I & B (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, is that the Creditor

is required to serve a demand notice upon the Personal Guarantor before filing the application before this Tribunal. Admittedly, the Creditor issued such notice dated 27.01.2020 to the Personal Guarantor.

16. As has been noted hereinabove while considering an application filed under Section 95(1) of IBC, 2016, we need to satisfy ourselves as to whether there is debt payable by the Personal Guarantor, he defaulted in payment of the same and also failed to repay the same even after service of demand notice. As can be seen from Para 4 to 6 of the report of RP, the Respondent/Personal Guarantor defaulted in repaying the amount of debt. The paras reads thus:-

*“4. That the Deed of Guarantee dated 27.7.2018 was executed by the Respondent herein, Mr. Balbir Sharma and Mrs. Sudesh Sharma in the favour of the consortium of Banks including the Applicant/SBI, for securing the credit facilities sanctioned/granted by the consortium of banks to the Corporate Debtor/Benion India Limited. The said Deed of Guarantee is attached with this Report and marked as **Annexure-C**.*

*The Applicant has annexed the documents evidencing the debts owned by the Debtor Respondent to the Creditor SBI and the same is attached with the main Application.*

*5. In accordance with Section 95 (4)(b) of the Code, the application is required to be accompanied with details and documents evidencing the failure by the debtor to pay the debt within a period of fourteen days of service of the notice of the Demand. The Applicant has served a Demand Notice wherein the SBI has demanded to pay off the debts invoking the Deed of Guarantee dated 27.07.2018. The Demand Notice and the proof of service of the Demand Notice are attached with the main Application and marked as Form-B at Page No 9-12 and Page No 989 respectively.*

6. *In accordance with Section 95 (4) (c) of the Code, the application is required to be accompanied with details and documents evidencing the default or non- repayment of debt. The Applicant has annexed the statement of accounts of the loan accounts which establishes that no payment of debt has been made after the Demand Notice has been served which is annexed with the main application and marked as Annexure A- 58.”*

17. We also find from Para 7 of the report that the Applicant had served the advance copy of the application filed under Section 95(5) of IBC, 2016 upon the Respondent/Personal Guarantor. The para 7 of the report reads thus:-

*“7. In accordance with Section 95 (5) of the Code, the copy of application filled by the Applicant is required to be sent to the Debtor.*

*The Applicant has serviced the advance copy of the Application and the proof of service is attached with the main application at page no. 989 of the main application.”*

18. Para 8 of the report reflect that the RP had taken steps to find out information from the Personal Guarantor regarding repayment of the amount of financial facility/debt, but the Respondent could not furnish any such evidence which was required to be furnished by him in terms of the provisions of Section 99(2) of IBC, 2016 to prove the repayment of debt. In terms of the context of said para, the RP has specifically recommended the admission of the petition filed under Section 95 of IBC 2016. The Para 8 of the IA/Report reads thus:-

*“8. In accordance with Section 95 (6) of the Code, the Application should be in such form and manner and accompanied by such fee as prescribed.*

*The Application is filed in the prescribed form i.e. Form-C as per Rule 7(2) of The Insolvency and Bankruptcy Board of India (Application to*

*Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. The fee of Rs. 2,000 (Rupees Two- Thousand only) has been duly paid and the same is declared by the Applicant on Page no. 16 of the main application.*

**b) Examination of the Application as required under Section 99 (6)(b) of the Code**

*The RP sought the information and explanation from the Applicant/SBI in this matter for which the RP has received requisite answers.*

**c) Examination of the Application as required under Section 99 (4) of the Code:**

*The debt is unpaid and the Applicant who is a Creditor has provided relevant proof which is annexed with the main application and marked as Annexure A-58 to the main application. The Applicant/SBI has further through its mail dated 21.10.2021, submitted confirmed to the RP, that No Payment has been received by it from the Respondent, Mr. Sunil Sharma (copy of the email dated 21.10.2021 is annexed as **Annexure - F**).*

**d) Examination of the Application as required under Section 99 (2) of the Code:**

- The RP has sought information from the debtor which requires following confirmation/documents and the subsequent reply by the Debtor is as follows:*

<b>Queries by the Resolution Professional</b>	<b>Reply by Personal Guarantor</b>
<i>The amount of default as claimed by the Creditor i.e. SBI as on 30.06.2020 is Rs. 284,84,08,879/- (Rupees two</i>	<i>Vide the mail dated October 12, 2021, the RP has sought the information from the Debtor/Respondent and No</i>



<p>hundred &amp; eighty four crores eighty four lakhs eight thousand eight hundred &amp; seventy nine only). Please confirm if there is any repayment of the debt as claimed by the Creditor. In case there is any repayment done, kindly provide us the following:</p> <ul style="list-style-type: none"> <li>- evidence of electronic transfer of the unpaid amount from the bank account of the debtor;</li> <li>- evidence of encashment of a cheque issued by the debtor; or</li> <li>- a signed acknowledgment by the creditor accepting receipt of dues.</li> </ul>	<p>Reply has been received from the Debtor/Respondent.</p>
<p>The assets which are mortgage with the Creditors against the Guarantee, if any</p>	<p>There are no properties mortgaged by the Respondent/ Debtor/ Guarantor with the Creditor/SBI.</p>
<p>The Net Worth of the debtor</p>	<p>The Net Worth of the Guarantor is Rs. 10.91 crores as on 31.12.2015. As per the main Application filed by the Applicant (Refer Annexure- E, Affidavit of Assets dated 02.07.2016).</p>

19. In terms of the provisions of Section 99(2) of IBC, 2016, the RP need to find out as to whether the Personal Guarantor has repaid the amount of loan and there is any evidence in the form of electronic transfer, encashment of cheque or any other acknowledgement to prove such repayment. The Section 99(2) of the Code reads thus:-

**“99. Submission of report by resolution professional.**

...

*(2) Where the application has been filed under section 95, the resolution professional may require the debtor to prove 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.”*

20. In the present case, it is not even the plea raised on behalf of the Respondent before us that the amount of financial facility/loan/debt is repaid either by the Respondent or the Principal Borrower or any other Personal Guarantor. On the contrary, the Applicant (Creditor) has submitted that the Principal Borrower defaulted in repayment of the debt and CIRP could be ordered qua it.

21. In terms of the provisions of Section 100 of IBC, 2016, while considering the admission of an application filed under Section 95(1) of IBC, 2016, this Tribunal need to satisfy itself regarding the acceptability of the report filed under Section 99 of IBC, 2016. In the present case, the Ld. Counsel for the Personal Guarantor could not produce any material before us, on the basis of which we

could be persuaded to arrive at a conclusion that the report of RP that there is no evidence of repayment of the amount of debt can be nixed. **In view of the aforementioned, we are left with no option but to admit the IB-872/ND/2020. Ordered accordingly.**

22. There is no request by the RP for the purpose of conducting negotiation between the debtor and the creditors. As a sequel of admission of the present application, a moratorium shall commence in relation to all the debts of the Respondent. During the moratorium period – (a) any pending legal action or proceedings in respect of any debt qua the Respondent shall be deemed to have been stayed; (b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt qua the Respondent; and (c) the debtors shall not transfer, alienate, encumber or dispose of any of the assets or his legal right or beneficiary interest therein. The moratorium shall cease to have effect at the end of period of 180 days.

23. A public notice shall be issued by the RP within seven days of passing of this order, inviting claim from all creditors within 21 days of such notice. The notice shall include details of the present order, particulars of the Resolution Professional with whom the claims have to be registered and the last date for the submission of the claims. The notice shall be – (a) published in English and one Vernacular Language newspaper which is in circulation 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.

24. We are sanguine that 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 IBC, 2016, with the due deference of the procedure enshrined in Regulations 5, 7, 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 discharge of his duties as RP.

25. A copy of this order along with the copy of the application as also the report of Resolution Professional shall be provided to the Creditor (Applicant), Personal Guarantor (Respondent) and IBBI, by the Registry/Court Master within 7 days from today by email.

26. It goes without saying that whatever amount is paid to the creditor by the principal borrower (corporate debtor) and other guarantors would be deducted from the liability of the Respondents to repay.

**27. IA-5805/2021 stands disposed of. To come up for consideration of Status Report to be filed by RP, within 8 weeks.**

**Sd/-  
(SUBRATA KUMAR DASH)  
MEMBER (T)**

**Sd/-  
(ASHOK KUMAR BHARDWAJ)  
MEMBER (J)**

*Deep Chand/Ruchita*