

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD (COURT - II)**

**CP(IB) No. 158 / NCLT / AHM / 2021**

(Filed under Section 95 of the Insolvency & Bankruptcy Code, 2016)

State Bank of India  
Through Mr Ashutosh Agarwala (RP)  
Stressed Assets Management Branch-1,  
Mumbai, 2<sup>nd</sup> Floor, Arcade,  
World Trade Centre,  
Mumbai-400005.

... Financial Creditor

Versus

Abhay Narendra Lodha  
502, 602, 603, Vaitarna Building,  
Sir Pokhanwala Road, Worli Sea Face,  
Worli, Mumbai-400018.

... Personal Guarantor

Order pronounced on 14.12.2023

**Coram:**

**MRS. CHITRA HANKARE  
HON'BLE MEMBER (JUDICIAL)**

**MR. VELAMUR G VENKATA CHALAPATHY  
HON'BLE MEMBER (TECHNICAL)**

**Present:**

For the Applicant : Mr. Pulkitesh Dutt Tiwari, Adv. a.w  
Ms. Bency Ramakrishnan, Adv.

For the Respondent : Mr. Priyank Dave Adv, for Jaimin Dave, Adv.

**JUDGEMENT**

1. The State Bank of India, has filed an Application through the RP Shri Ashutosh Agarwala, under Section 95 of the IBC r/w Section 96,97, 99 and 100 of the IBC Code r/w rule 6 of IBC (for initiating Insolvency Resolution Process against Personal Guarantors to Corporate Debtor). This Tribunal has vide its order dated 20 September, 2021 appointed Resolution Professional. The RP has filed his report on 18.10.2021 under Sec 99 of the IBC 2016.
  
2. The amount of Debt of the Corporate Debtor has been submitted as Rs.118.66 Crore and the date of default is as on 28.11.2016. The Corporate Debtor was brought under CIRP u/s 7 of the IBC vide order dated 30.11.2017 and is presently under liquidation since 16.09.2019. Guaranteed the loan granted to the CD by the applicant, being one of the Directors of the CD and in various other companies. The guarantor has executed a deed dated 23.11.2010, letter of guarantee dated 02.03.2015 and a guarantee agreement dated 14.08.2015. The applicant had issued a Demand Notice in For B under Rule 7(1) of IB Rules 2016 to the Personal Guarantor on 22.06.2021
  
3. In compliance with the provisions of Section 99(2) read with Section 95 of the Code, the RP called upon the Personal Guarantor vide Letter dated 22.09.2021 to prove repayment of the debt claimed as unpaid by the Financial Creditor by furnishing any of the following:
  - (a) evidence of electronic transfer of the unpaid amount from his bank account;
  - (b) evidence of encashment of a cheque issued by him; or

- (c) a signed acknowledgment by the creditor accepting receipt of dues.
4. The Personal Guarantor responded to the RP vide his Letter dated 29.09.2021, but failed to furnish any proof of repayment of the Debt, as required under Section 99(2) of the Code. Therefore, the Personal Guarantor has failed to provide necessary information/evidence in relation to repayment of the Debt.
  5. Additionally, the RP vide his Letter dated 22.09.2021 also enquired from the Financial Creditor the status of the repayment of debt claimed as unpaid by them along with the necessary information and documents. The RP also requested the Financial Creditor to share updates in relation to the Corporate Insolvency Resolution Process (“CIRP”) of the Corporate Debtor (whose debts were personally guaranteed by the Personal Guarantor), along with the current status of approval of the resolution plan for the said Corporate Debtor. The Financial Creditor responded to the RP vide his Letter dated 27.09.2021 stating the following:
    - a. That the Personal Guarantor has till date not repaid the debt;
    - b. That the CIRP of the Corporate Debtor has ended and the Liquidation Order dated 16.09.2019 has been passed by the Hon’ble NCLT, Ahmedabad;
    - c. That basis the discussions held with Stakeholder Consultation Committee on 13.09.2021, the Liquidator of the Corporate Debtor has filed an application before the NCLT, Ahmedabad Bench, seeking directions for public auction for selling the Corporate Debtor as a going concern pursuant to Regulation

32(e) of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016;

6. The applicant has submitted a detailed set of documents as schedules which includes the assets guaranteed by the respondent (PG). The RP has by affidavit stated that he has examined the Application and is satisfied that the requirements set out in Section 95 of the Code have been fulfilled. Further, the RP is also satisfied that the Financial Creditor has provided the necessary information and satisfactory explanation, as sought by the RP in relation to the Application. In view of the same the RP had vide his affidavit submitted in terms of the orders of this Tribunal and Sec 99 of the code recommended the said application under Sec 95 of the Code should be accepted.
7. Heard both the counsels and the written submissions made by both the applicant and respondent.
8. The respondent Personal Guarantor (PG) had vide his letter dated 29.09.2021 stated that.
  1. Demand notice of the bank for an amount of Rs 118.66 crore from self as guarantor of the company was incorrect and claim is barred by limitation. The time period of filing an application was time barred under Sec 238 A of the Code read with Article 137 to Schedule I of the Limitations Act, 1963.
  2. Another financial creditor (e Allahabad Bank) had filed an application under Sec 7 of the IBC 2016 before this Tribunal (CP(IB)166/2017) against the CD. The liquidator appointed

made a public announcement and invited claims from creditors and the applicant (bank) submitted the entire claim before the liquidator. An auction notice was issued by the liquidator with a reserve price, but as per public information, 9 auctions (attempts) for sale of asset of CD had failed. There is value erosion of CD due to non approval of resolution plan.

9. The points observed from the submissions of the applicant are:
- a) The PG had not brought on record a single document denying or disputing the invocation of his personal guarantee vide invocation letter dated 21.02.2018 issued by advocates of the financial creditor (lead bank of consortium including SBI) i.e. Allahabad bank.
  - b) As regards the point raised that debt was time barred, he has stated that CD has repeatedly acknowledged its debt, thereby extending the limitation period. There is an acknowledgment in the balance sheet.
  - c) The claim of the applicant against CD has been admitted by the Liquidator as a secured creditor which is further acknowledgment of debt.
  - d) The respondent PG had not denied the debt and raised issue of limitation.
  - e) The Hon'ble SC has in cognizance of limitation (In Re (2022) 3 SCC 177) directed that the period from 15.03.2020 to 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

- f) In case of Laxmi Pat Surana V UBI & Anr (2021) the Hon'ble SC held that "Sec 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (corporate debt), as the case may be, acknowledge their liability to pay the debt...
  - g) The liability of the guarantor being coextensive with the principal borrower under sec 128 of the Contract Act, it triggers the moment principal borrower commits default in paying the acknowledged debt.
10. The respondent PG filed a written submission and pointed out the following issues:
- a) The debt is time barred which expired on 28.11.2019 (date of default being 28.11.2016). Even if the date of invocation of guarantee is reckoned as 21.02.2018, then also the limitation will expire on 21.02.2021
  - b) When the applicant had filed petition against the CD in the year 2017, it had not against the corporate debtor.
  - c) The re-cognizance of extension of limitation passed by Hon'ble Supreme Court (referred) on 10.01.2022 was for the purpose of parties who were not able to initiate proceedings on account of COVID 19 pandemic who could not initiate proceedings.
  - d) There is no averments to the effect that there is acknowledgment of debt by Respondent - PG after 28.11.2019 i.e. expiry of period of limitation.
  - e) The respondent has claim a default of Rs.118.56 crores debt

which has been contested as only a portion of the loans extended to the CD were guaranteed. He had only guaranteed to the tune of Rs.19.50 crore of the Working Capital facility and not to the entire facility.

- f) No documents were produced that Deed of Guarantee dated 28.11.2016 was invoked as only Allahabad Bank has invoked the letter of guarantee dated 02.03.2015. There is no document to prove that the guarantee was invoked by SBI.
- g) Additionally, the copy of registration of RP (by IBBI) has not been placed on record which is mandatory.
- h) Certain documents like income tax returns of the guarantor, documents evidencing assets, liabilities, income and other relevant documents were not produced. A copy of judgment in case of Rupesh Anand v Anup Tripathi reported in (2023) 151 Taxmann.com 128 (NCLAT-Chennai) is enclosed.
- i) The PG had guaranteed only a loan of working capital of Rs 19.50 crores, and the liquidator has recovered in the liquidation process of CD an amount of Rs 65.00 crores.

**Observations:**

- 11. The report of RP show that The debt has not been registered with the information utility. The applicant and the respondent have furnished necessary observations/ information before this tribunal which is taken on record as compliance under Sec 99(4). The RP has recorded reasons for recommendation under Sec

99(10) and given a copy to the respondent under Sub Section 99(7).

12. It is observed from the additional affidavit filed by the applicant that the Corporate Debtor has acknowledged in the balance sheet the debt as on 31.03.2018 and signed on 29.05.2018 that there are term loans from SBI, Dena Bank, IDBI Bank and Bank of India wherein the Respondent Personal Guarantor has provided the guarantee on both the primary and collateral security. The Balance sheet and financial statements as on 31.03.2018 have been signed by the Personal Guarantor in his capacity as Director of the company. In effect he has performed a twin role having given his Personal Guarantee to the Corporate Debt that has been raised from various financial creditors. The balance sheet is audited and certified by H R Agarwal & Associates.
13. A Legal notice was issued on 21.02.2018 by the Legal Counsel for Allahabad Bank representing the financial creditors financed under consortium arrangement wherein it is mentioned that a total aggregating credit facilities amounting to Rs 210 crores were sanctioned to the CORPORATE DEBTOR and the PG respondent had signed separate Guarantee Agreements dated 02.03.2015, 19.05.2015 respectively. It is also stated that it is a continuing guarantee, notwithstanding any dispute between the lenders and the borrower. It is also specifically stated that this notice will be treated as invocation of Agreement of Guarantee/Demand as per clause 20 of the said agreement/undertaking and non – compliance thereof was conveyed to the PG.
14. Subsequently the SBI has filed a Form B on 22.06.2021 was



served on the respondent. It is noted that the Guarantee has been invoked by the representative Bank (Allahabad Bank) the leader of the consortium banks with a demand to pay an amount of Rs 331.13 crores (which includes principal and interest, costs and other charges). The Guarantee is invoked within the period of limitation. The applicant in his affidavit dated 20.06.2022 had filed his claim before the corporate debtor and had realized Rs.34.95 crore towards the principal outstanding claim.

15. The RP has in his report given a detailed comment on the matter of limitation objected by the CORPORATE DEBTOR. He has stated that as per balance sheet the limitation expires on 29.05.2021, however on account of Hon'ble Supreme Court's directions limited period is extended due to outbreak of the COVID 19 pandemic.
16. From the report there does not appear any request of the Resolution Professional for issuance of the instructions for the purpose of conducting negotiations between the debtor and creditors for arriving at a repayment plan. Therefore Insolvency Resolution Process is to be initiated against Personal Guarantor, we pass the following order.

### **ORDER**

- i) Application is allowed.
- ii) Insolvency Resolution Process is initiated against Respondent/Personal Guarantor and moratorium is declared, which begins with the date of admission of the application and shall cease to have effect at the end of the period of 180 days, as provided under Section 101 of IBC. During the moratorium period inter-alia the

following provisions shall be in effect;

- 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.
- iii) The Resolution Professional viz., Shri Ashutosh Agarwala, who has been appointed under Section 97 vide order dated, is directed to cause a public notice to be published on behalf of the Adjudicating Authority within 7 days of uploading of this order on the website of NCLT. inviting claims from all Creditors, who shall register their claims as provided under Section 103 within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102(2) of IBC. The publication of the notice shall be made in newspapers, one in English and the other in Vernacular which have wide circulation in the state where the debtor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry. One shall be placed by the Registry on our website and the other shall be affixed in the premises of this Authority.
- iv) The Resolution Professional in exercise of the powers conferred under Section 104 shall prepare a list of creditors within 30 days from the date of the notice. The debtor shall prepare a repayment plan in

consultation with the Resolution Professional as provided under Section 105 which shall include the provisions for payment of fee to the Resolution Professional. 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.

- v) In case the resolution professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof. If the resolution professional is of the opinion that the meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3). 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, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all relevant/feasible modes. Such notice must contain the details as provided under the provisions of Section 107.
- vi) The meeting of the creditors shall be conducted in accordance with sections 108, 109, 110 & 111. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 and submit the same to this Authority, 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 the IBC, 2016.
- vii) The applicant is directed to deposit Rs.2 lakh to the bank account of RP within one week, towards his fees. This shall be subjected to the

rules and regulations under the provisions of IBC, 2016.

viii) The Registry is directed to communicate a copy of order, report and application within seven working days.

Accordingly, CP(IB) 158 of 2021 Disposed off.

-SD-

**DR.V. G. VENKATA CHALAPATHY**  
**MEMBER (TECHNICAL)**

-SD-

**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**