

NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

210. C.P. (IB)/614(MB)2021

IN THE MATTER OF

State Bank of India ... Petitioner

Vs

Rabia Mohammed Iqbal Khan ...Respondent

Section 95(1) of Companies Act, 2013

Order Delivered on 21.06.2024

CORAM:

MS. REETA KOHLI,
MEMBER (J)

MS. MADHU SINHA,
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner: None present

For the Respondent: Adv. Yahya Batatawala (PH)

ORDER

CP(IB)/614(MB)/2021- Learned counsel for the respondent has submitted that respondent died on 06.11.2023. He has placed on record death certificate dated 22.11.2023. The said death certificate is taken on record. In view of the same learned counsel submits that proceedings against the respondent shall stand abated. The learned counsel referred to judgment of Hon'ble Bench NCLT Kolkata in the case view of **Bank of Baroda v. Ms. Divya Jalan**. The Hon'ble Court has been pleased to hold as under:

*“15. Upon perusal of the record, the question arising before this Adjudicating Authority is that ‘**Whether Petitioner is entitled to recover dues of the Corporate Debtor from the legal heirs of the Personal Guarantors**’.*

16. With regard to the above contention it is pertinent to throw light on the following provisions/regulations from the Code:

(a) Firstly, as defined in section 5 (22) – personal guarantor refers to an individual who gives surety in a contract of guarantee on behalf of the Corporate Debtor.

(b) Secondly, as per regulation 3 (1)(a)(e) of Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor Regulation, 2019, clearly defines that a personal guarantor to a Corporate Debtor is a person against whom guarantee has been invoked and there is outstanding dues left, partly or fully. The definition does not include the ‘legal heirs’.

(c) Last but not the least as envisaged in section 238 of the Code and opined by Hon’ble Apex Court in a catena of Judgments. It is apparent that section 238 has overriding effects on laws inconsistent with the Code or any instrument having effect by virtue of such laws.

17. When a section 95 application is filed the assets of the Personal Guarantor is hit by moratorium and if we put the legal heirs of the deceased Personal Guarantor into the shoes of the Personal Guarantor then their personal assets will also get automatically hit by moratorium, which will cause grave prejudice to the rights of the third party. However, there is no provision in the code which envisages that the concept of legal heirs stepping into the shoes of the deceased Personal Guarantor.

18. In this instant case the petitioner can take appropriate steps to recover the guaranteed amount from the assets/estates of the deceased Personal Guarantor rather than the personal assets of the legal heirs of the Personal Guarantor. Further, the legislature is

very much clear in defining the term 'Personal Guarantor', the code talks about the estate/assets of the Personal Guarantor only.

19. Therefore, we hold that the instant application cannot be maintained against the legal heirs of the Personal Guarantor under the Code, and the remedies may lie elsewhere. Hence, clause 21 and clause 24 (k) of the Personal Guarantee Agreements dated 14 January, 2016 and April 24, 2018 is inconsistent with the definitions of the Personal Guarantor as defined in the Code.”

After having appreciated for contention of the learned counsel and also the above stated judgement, we deem it appropriate to dispose of the present company petition, as the CP stands abated. Hence, **CP 614/2021** is **disposed of**.

Sd/-
MADHU SINHA
Member(Technical)

Sd/-
REETA KOHLI
Member(Judicial)

/Manish Tiwari/