

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

CP (IB) No. 145/MB/2022

AND

I.A. No. 2389 OF 2022

Under Section 95 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.

In the matter of:

State Bank of India

Stressed Assets Management Branch-I, "The Arcade", 02nd Floor, World Trade Centre, Cuffe Parade, Colaba, Mumbai-400 005.

..... Applicant/ Creditor

Versus

Mr. Bhavarlal Mangilal Jain

Having address at: - Flat No. 1006, B-Wing, 10th Floor, Shankar Shet Palace, Nana Chowk, Tardeo, Grant Road (West), Mumbai-400 007.

..... Personal Guarantor/Respondent

Order Delivered on :- 02.05.2024.

Coram:

Shri. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances (in virtual mode):

For the Petitioner : Adv. Kunal Kanungo a/w Tanushree Sogani and Adv. Atishay Jain.

For the Resolution Professional : Adv. Suraj Chaudhary i/b. Adv. Aakash Shah.

For the Personal Guarantor : Adv. Yahya Batatawala a/w Prachi Wazalwar.

ORDER

Per: - Mr. Kuldip Kumar Kareer, Member (Judicial).

1. The present Application is filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as IBC, 2016") read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 ('PG AAA Rules') by State Bank of India (hereinafter referred to as "Financial Creditor" or "SBI" or "Creditor") for initiating the insolvency resolution process of the personal guarantor named Mr. Bhavarlal Mangilal Jain (hereinafter referred to as "Personal Guarantor"), as the Personal Guarantor has committed a default of INR 81,15,74,560.39/- (Rupees Eighty-One Crores, Fifteen Lakhs, Seventy-Four Thousand, Five Hundred and Sixty, and Thirty-Nine Paise only) in principal. The Respondent/ Personal Guarantor had furnished unconditional and irrevocable

Guarantees to SBI towards the Credit Facilities granted to the two Corporate Debtors. In relation to the debts of the Corporate Debtor named Metal Link Alloys Limited (“**Corporate Debtor 1**”), the date of default is stated to be 29th December, 2014 and in relation to the debts of the Corporate Debtor named BM Jain Metallik Private Limited (“**Corporate Debtor 2**”), the date of default is stated to be 18th June, 2015.

Case of the Applicant (in brief):

2. The Corporate Debtor 1 had approached the Petitioner in the year 2004 for availing certain credit facilities which were time and again renewed by Corporate Debtor 1 and pursuantly sanctioned by the Petitioner. However, due to the failure of Corporate Debtor 1 in repayment of the outstanding dues, the loan accounts of the Corporate Debtor 1 were classified as Non-Performing Assets on 28.06.2013. Pursuant thereto, the Corporate Debtor 1 had approached the Petitioner for restructuring of the then existing credit facilities amounting to INR 69,93,00,000/- (Rupees Sixty-Nine Crores and Ninety-Three Lakhs only) and the same was restructured by the Petitioner vide Arrangement Letter dated 05.07.2013. The Petitioner and Corporate Debtor 1 had executed a Restructured Facility Agreement dated 10.12.2013 on the terms and conditions stated therein along with a Supplemental Hypothecation Agreement dated 10.12.2013.
3. The following persons stood as guarantors with respect to the restructured credit facilities amounting to Rs. 69.93 crores:

Guarantors of Corporate Debtor 1:

- a. Mr. Bhavarlal Mangilal Jain (i.e. the Respondent herein);
- b. Mr. Mangilal Gamerilal Jain; and
- c. Mr. Rajmal Mangilal Jain.

4. The Guarantors of Corporate Debtor 1 had executed a Guarantee Agreement with the Petitioner on 10.12.2013 whereby the said guarantors had guaranteed the repayment of the said restructured credit facilities availed by the Corporate Debtor 1. Thereafter, a Memorandum of Entry was also executed in favour of the Petitioner on 10.12.2013 for the purpose of securing the restructured facilities availed by Corporate Debtor 1 wherein title deeds of various properties were deposited with the Petitioner with an intention to create an equitable mortgage.
5. However, despite sanction of the restructured credit facilities, the Corporate Debtor 1 had failed to repay the outstanding dues and subsequently, the Petitioner had sent a Notice dated 29.12.2014 u/s 13(2) of SARFAESI Act to the Corporate Debtor 1 along with its guarantors including the Respondent calling upon them to pay the outstanding amount. Yet, again, the Respondent and Corporate Debtor 1 failed to repay the restructured credit facilities availed by them from the Petitioner.
6. Therefore, after waiting for a considerable period of time, the Petitioner sent a Demand Notice dated 29.06.2021 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 requesting the Respondent to deposit the outstanding dues amounting to INR 154,83,96,757.25/- including the interest and penal interest as on 29.06.2021. The said Demand Notice was delivered to the Respondent by hand and the same has been duly acknowledged by the Respondent on 29.06.2021. Despite service of the aforementioned Demand Notice, the Respondent has miserably failed and neglected to honour his guarantee obligations towards the repayment of debts due by the Respondent to the Petitioner.

7. In respect of Corporate Debtor 2, the Petitioner had sanctioned the credit facilities to the tune of INR 33,00,00,000/- (Rupees Thirty-Three Crores only) and the same was sanctioned vide Sanction Letter dated 15.04.2023. The credit facilities were initially availed by a partnership firm known as M/s. Bhavarlal Mangilal Jain & Co. and the same was converted into a private limited company i.e. the Corporate Debtor 2, in the year 2012 and subsequently, the credit facilities were renewed in the name of Corporate Debtor 2.
8. The following persons stood as guarantors with respect to the enhanced credit facilities availed by the Corporate Debtor 2 in the year 2011:

Guarantors of Corporate Debtor 1:

- a. Mr. Bhavarlal Mangilal Jain (i.e. the Respondent herein);
- b. Mr. Mangilal Gomerilal Jain;
- c. Mr. Rajmal Mangilal Jain;
- d. Mrs. Pushpadevi Jain;
- e. Mr. Dinesh Jain; and
- f. Metal Link Alloys Limited/Corporate Debtor 1.

The Guarantors of Corporate Debtor 2 had executed a Guarantee Agreement with the Petitioner on 20.09.2011 whereby the said guarantors had guaranteed the repayment of the said enhanced credit facilities which were availed by the Corporate Debtor 2. The Corporate Debtor 2 along with its guarantors including the Respondent had executed a Revival Letter dated 18.01.2013 wherein they had acknowledged all the credit facilities availed by the Corporate Debtor 2 from the Petitioner for the purpose of Section 18 of the Limitation Act, 1963.

9. Due to failure of repayment of the outstanding dues, the loan of Corporate Debtor was classified as NPA on 28.05.2013. The Petitioner had thus sent a Notice dated 11.06.2013 u/s 13(2) of the SARFAESI

Act to the Corporate Debtor 2 along with its guarantors including the Respondent herein, calling upon them to pay the outstanding amount.

10. The Petitioner through its advocates had issued a Legal Notice dated 18.06.2015 demanding the Corporate Debtor 2 along with its guarantors including the Respondent, jointly and severally, a sum of Rs. 41,11,81,807.30/- (Rupees Fourty-One Crores, Eleven Lakhs, Eighty-One Thousand, Eight Hundred and Seven, and thirty paise only) including the interest and the penal interest. Yet again, the Corporate Debtor 2 along with its guarantors including the Respondent miserably failed and neglected to repay the outstanding dues and also did not even respond to the said legal notice.
11. After waiting for a considerable period of time, the Petitioner sent a Demand Notice dated 29.06.2021 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 requesting the Respondent to deposit the outstanding dues amounting to INR 90,02,05,244.30/- including the interest and penal interest as on 29.06.2021. The said Demand Notice was delivered to the Respondent by hand and the same has been duly acknowledged by the Respondent on 29.06.2021. Despite service of the aforementioned Demand Notice, the Respondent has miserably failed and neglected to honour his guarantee obligations towards the repayment of debts due by the Respondent to the Petitioner. Hence this petition.

Report of the Resolution Professional u/s 99 of the Code

12. The Resolution Professional has placed on record the Report dated 01.11.2023 u/s 99 of the Code by filing IA No. 646/2024. The IA No. 646/2024 was allowed vide Order dated 23.02.2024 and consequently,

the Report u/s 99 of the Code was taken on record. The said Report has recommended for accepting the present application. The reasons recorded by the Resolution Professional u/s 99(9) of the Code for recommending the acceptance of the application are briefly recapitulated below:

- a. In order to secure the financial facilities availed by M/s. B.M. Jain Metallik Private Limited, Mr. Bhavarlal Mangilal Jain had furnished his unconditional and personal guarantee on 20.09.2011 in favour of the creditor i.e. State Bank of India.
- b. The Deed of Guarantee is continuing, valid, subsisting and binding upon the Personal Guarantor which makes him jointly and severally liable to make payments of the outstanding dues of the Corporate Debtor(s).
- c. The Report further states that the Corporate Debtor i.e. B M Jain Metallik Private Limited was admitted under CIRP by an Order dated 18.10.2017 passed by the Adjudicating Authority i.e. NCLT, Mumbai Bench. Thereafter, the Adjudicating Authority was pleased to commence liquidation process vide Order dated 09.07.2018.
- d. The Applicant herein, vide Notice in Form 'B' dated 29.06.2021 served a Demand Notice on the Personal Guarantor claiming a debt amount of INR 90,02,05,244/-. The said notice was received and acknowledged by Bhavarlal Jain on 29.06.2021. Despite the service of the aforesaid notice, the Personal Guarantor has not paid the claimed debt amount. The Personal Guarantor has not furnished any evidence/proof of payment of the debt claimed despite of notice being sent to him by the RP u/s 99(2) of the Code.

- e. The Application filed by the Applicant is otherwise complete with the relevant information about default by Personal Guarantor and the application was filed within the period of limitation.
- f. Thus, the Resolution Professional ('RP') submits that the present report which is being presented u/s 99(7) of the Code to the Adjudicating Authority with a recommendation of acceptance of the application is based on the reasons recorded above.

Reply of the Respondent/Personal Guarantor: The Respondent has not contested the petition but instead chose to file I.A. No. 2389 of 2022 thereby expressing his willingness to be admitted into the insolvency resolution process u/s 95 read with Section 100 of the Code. The pleadings of the respondent in the above mentioned I.A. are summarily capitulated below:

13. The Applicant states that somewhere in the year 2013, due to the failure of repayment of outstanding dues, the loan account of the Corporate Debtor was declared as Non-Performing Assets. Thus, a Demand Notice dated 29th June, 2021 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 was sent by the Petitioner requesting the Applicant to deposit the outstanding dues along with interest thereon.
14. The Applicant states that he has filed an application u/s 94 of the Code read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. The prayer made therein is similar to the prayer made in the above-captioned company petition to initiate insolvency resolution process with respect to the

Applicant. Hence, the Applicant has no objection to the prayers made in this petition.

15. The Applicant submits that the Applicant is agreeable to submit himself to the insolvency resolution process under the Code as many creditors are approaching the Applicant for payment of debts and the Applicant wants to explore possibility of a settlement with his creditors by going through the insolvency resolution process under the IBC. The Applicant wants a chance to explore possibility of finding a way to give a repayment plan to compromise with his creditors. The Applicant, therefore, prays that the captioned Company Petition be admitted for initiation of insolvency resolution process against the Applicant/Personal Guarantor.

FINDINGS

16. We have heard the learned counsels for the Petitioner, the Respondent/Personal Guarantor and the Resolution Professional, and we have gone through the records and the report of the Resolution Professional.
17. This is an application filed by the Petitioner seeking to invoke personal guarantor's insolvency resolution process against the Respondent u/s 95 of the Code since the Respondent has failed to meet his personal guarantee obligations. The Personal Guarantor herein had executed two guarantee agreements dated 20.09.2011 and 10.12.2013 in respect of the debts due to the Petitioner by the Corporate Debtor 2 (then known as M/s. Bhawarlal Mangilal Jain & Co, which got later converted into a private limited company known as BM Jain Metallik Pvt Ltd) and Corporate Debtor 1 respectively.

18. As far as the Corporate Debtor 1 is concerned, the Corporate Debtor 1 i.e. Metal Link Alloys Limited, has its registered office in the Union Territory of Diu and Daman over which the Adjudicating Authority has no territorial jurisdiction. The Corporate Debtor 1 was admitted into the Corporate Insolvency Resolution Process u/s 10 of the Code vide Order dated 17.08.2017, passed by the Ahmedabad Bench of the National Company Law Tribunal. Further, vide Order dated 11.05.2018, the Ahmedabad Bench of NCLT had passed an Order u/s 33 of the Code directing the liquidation of Corporate Debtor 1. Therefore, in view of the provisions contained in Section 60(1) read with Section 60(2) of the Code, this Bench has no territorial jurisdiction to entertain the Application inasmuch as the personal guarantee of the Respondent in relation to the debts of the Corporate Debtor 1 is concerned and in our view, the appropriate Bench in respect thereof would be the Ahmedabad Bench. Even the learned Resolution Professional has not taken the personal guarantee of the Respondent in relation to the Corporate Debtor 1 into account while submitting his report u/s 99 of the Code. Therefore, this application, inasmuch as the personal guarantee of the Respondent in relation to the debts of the Corporate Debtor 1 is concerned, is not maintainable before this Bench for want of territorial jurisdiction.

19. In respect of the debt due and default committed by Corporate Debtor 2, the Petitioner had issued a Demand Notice u/s 13(2) of the SARFAESI Act, 2002 dated 11.06.2013 and also forwarded its copy to the Respondent and other guarantors with a request to make payment of the amount mentioned in the notice in terms of guarantee executed by the guarantors including the Respondent herein. The amount demanded by the Petitioner jointly and severally from the Corporate

Debtor 2 and its three guarantors including the Respondent vide Demand Notice dated 11.06.2013 was Rs. 30,82,68,358.00/-. Thus, the guarantee given by the Respondent in relation to the debts of Corporate Debtor 2 was first invoked on 11.06.2013.

20. Thereafter, the Petitioner through its advocates addressed another Notice dated 18.06.2015 to the Corporate Debtor 2 and its guarantors including the Respondent herein and Corporate Debtor 1. The Petitioner, *inter-alia*, invoked the personal guarantee of the Respondent, calling upon him to jointly and severally pay the debts owed by them to the Petitioner as on 17.06.2015 amounting to INR 41,11,81,807.30/- towards the Demand Cash Credit Facility within seven days of the receipt of notice. It is pertinent to note that since the Respondent has not contested or denied or disputed the receipt of notice, it shall be taken to be admitted that the Respondent was in receipt of the Notice dated 18.06.2015. Further, there is a presumption of service of notice u/s 27 of the General Clauses Act, 1897 which has not been rebutted by the Respondent.

21. On 29.06.2021, the Petitioner herein had served the Demand Notice on the Respondent by-hand under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 in respect of the debts due by the Corporate Debtor 2. The Respondent had received the said notice by hand delivery and duly acknowledged its receipt on 29.06.2021 by endorsing his signature on the notice. The principal amount of debt in default as per the said notice in relation to the debts due by Corporate Debtor 2 is INR 29,49,21,243.86/-. The date of default stated in the Demand Notice

dated 29.06.2021 is 28.05.2013 and the date when the debt was due is stated therein to be 28.03.2013.

22. Thus, in respect of the debts due by the Corporate Debtor 2, the Personal Guarantor has miserably failed to honour his guarantee obligations despite invocation of personal guarantee by the Petitioner first in the year 2013 and then in 2015. Since the present petition has been filed on 27.10.2021, which is much after three years from the date on which the default occurred, we are of the considered view that the present petition is barred by limitation. Even if the Notice dated 11.06.2013, which was forwarded to the Respondent, is construed not to have invoked his personal guarantee, it can be said in unequivocal terms that the Petitioner herein had invoked the personal guarantee of the Respondent vide Notice dated 18.06.2015. The date of default, as stated in Part-III of the Application in Form 'C' with respect to Corporate Debtor 2, is 18.06.2015; and it is a matter of record that the instant petition has been filed on 27.10.2021. Therefore, even as per the facts narrated by the Applicant, the present application filed by the Applicant u/s 95 of the Code suffers from limitation under Article 137 of the Schedule to the Limitation Act, 1963.

23. Under Section 3(1) of the Limitation Act, 1963 every suit instituted, appeal preferred, and **application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence**. Therefore, even if the Respondent has not contested the petition, he cannot be admitted into the insolvency resolution process under Chapter III, Part III of the Code, when the application u/s 95 of the Code has been filed after the expiry of the prescribed period of limitation.

24. We have perused the Resolution Professional's Report. We are unable to agree with RP's Report in so far as it says that the application was filed within the period of limitation.
25. We have also perused the Guarantee Agreement executed on 20.09.2011 between the Applicant and the Respondent. Clause 1 of the recitals of the Guarantee Agreement states that if at any time default shall be made by the Borrower in payment of principal sum and/or other monies due to the Bank, the Guarantor shall forthwith and unconditionally pay to the Bank merely on demand by the Bank, the whole of such principal sum together with interest, costs, charges and expenses which may be then due to the Bank without any demur or protest or contestation. It is a settled position in law that in a case where the guarantee is payable on demand, the limitation begins to run when the demand is made and the guarantor commits breach by not complying with the demand. In the present case, it cannot be gainsaid that such demand was made by the Petitioner Bank vide Notice to the Respondent dated 18.06.2015 and the Respondent committed its breach by not complying with the demand. Hence, the period of limitation would start running from the date when the guarantor committed breach by not complying with such demand, that is to say somewhere in the month of June/July, 2015 since the Respondent was given seven days' time (from the date of receipt of notice) to make good the default committed by the Borrower/Corporate Debtor 2.
26. Thus, the learned RP has erred in concluding that the present petition was filed within the period of limitation. Thus, we reject the recommendation of the RP's Report as the present application is barred by limitation.

27. In view of the foregoing analysis and discussions, we are left with no other choice but to reject this application on the ground of limitation as well as lack of territorial jurisdiction over Corporate Debtor 1. **Thus, we pass the following orders:**

ORDER

- i. **CP(IB) No. 145(MB)/2022 and I.A. No. 2389/2022 are hereby rejected;**
- ii. Parties to bear their own costs;
- iii. The Applicant shall be at liberty to proceed against the Respondent u/s 95 of the Code in relation to the debts owed and defaulted by Corporate Debtor 1 i.e. Metal Link Alloys Ltd, before the Ahmedabad Bench of the National Company Law Tribunal, in accordance with law;
- iv. The present application u/s 95 of the Code accordingly stands disposed of on above terms.
- v. Let the File be consigned to records;

Sd/-

**ANIL RAJ CHELLAN
(MEMBER TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
(MEMBER JUDICIAL)**