

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

**C.P. (IB) No. 871/MB/2023**

Under Section **95(1)** of the Insolvency & Bankruptcy Code, 2016 *r/w* Rule **7** of the Insolvency and Bankruptcy (Application to the Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), Rules, 2019.

**In the matter of**

IDBI Bank Limited

**... Financial Creditor**

*Versus*

Sodhamti R Gutte

**... Personal Guarantor**

**Order delivered on: 29.04.2024**

***Coram:***

Hon'ble Member (Judicial) : Sh. Virendra Singh G. Bisht (Retd. Justice)

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

***Appearances:***

For the Financial Creditor : Mr. Ali, Advocate

For the Respondent : Mr. Aniruth Purusothaman, Advocate

**ORDER**

***Per:*** V.G. Bisht (Retd. Justice)

1. The present petition is filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") *r/w* Rule 7 of the Insolvency and

Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 by IDBI Bank Limited (“**Financial Creditor / Applicant**”) for the purpose of initiating insolvency resolution process against **Mr. Sodhamati R Gutte** (“**Personal Guarantor / Respondent**”) who is the Personal Guarantor of the Corporate Debtor, **Sunil Hitech Engineers Limited**.

2. The total debt amounting to INR 288,53,80,787/- (Rupees Two Hundred and Eighty-Eight Crore Fifty-Three Lakhs Eighty Thousand Seven Hundred and Eighty-Seven Only) including any interest or penalties as on 31.03.2023. The Date on which the Guarantee was invoked on 06.09.2018.
3. The Account of Corporate Debtor was classified as Non-Performing Assets (NPA) on 30.06.2018.
4. The record of default in NESL is issued to the Financial Creditor after the completing the Authentication on 27.04.2023, from the records the NESL date of default is on **30.06.2018**.
5. The Deed of Guarantee was executed on 13.06.2016 by the Personal Guarantor on 13.06.2016.
6. That Counsel for the Petitioner also invited the attention of this bench vide order dated 20.12.2023 to **the Demand Notice dt. 03.05.2023, sent to the Respondent for invoking Personal Guarantee as per the Deed of Guarantee dt. 13.06.2016**, invoking Personal Guarantee in respect of unpaid debt owed to Sunil Hitech Engineers Limited, against the Corporate Debtor.

**Submission on Behalf of the Financial Creditor/Petitioner**

7. The Company has executed the following security documents in favour of applicant/Financial Creditor against the loan Facilities granted:
  - i.** Deed of Guarantee
  - ii.** Supplemental Consortium Joint Deeds of Hypothecation on all movable assets
  - iii.** Supplemental Deed of Working Capital Agreement
8. It is submitted that the Financial Creditor have granted loan to the Personal Guarantor under consortium banking arrangement with UCO Bank as the lead bank and the Petitioner Bank (IDBI). The working capital limits aggregating to Rs. 1,99,74,00,000/- comprising fund-based limits of Rs. 28,54,00,000/- and non-fund-based limits of Rs. 171,20,22,001/-, for the purpose of meeting working capital requirements vide various sanction letters from 2006 to 2017.
9. The Financial Creditor herein submits that the Personal Guarantor/Respondent had availed various financial facilities in the form of working capital from the Petitioner which was interalia secured by the way of personal guarantee.
10. The Financial Creditor submits that this Hon'ble Adjudicating Authority, Mumbai vide dated 10.09 2018, in C.P. (I.B.) No. 2295 of 2018 admitted the application u/s 7 of Insolvency and Bankruptcy Code, 2016 ("**Code**") filed by the Petitioner/Financial Creditor against the Corporate Debtor and Corporate Insolvency Resolution Process ("**CIRP**") initiated against the Corporate Debtor. Further, on 25.06.2019, the Hon'ble Tribunal passed an Order for Liquidation of the Corporate Debtor.

11. Pursuant to the Notice dated 06.09.2018 addressed to Corporate Debtor and its Guarantors, The Petitioner/Financial Creditor has already initiated Recovery proceedings against the Corporate Debtor and its Guarantors before the Hon'ble Debt Recovery Tribunal- II, Delhi with UCO Bank ("lead Bank") being Original Application No. OA No. 491/2019, *inter alia*, seeking issuance of recovery certificate in respect of the outstanding amount to the tune of Rs.1709,44,30,205/-(Rupees Seventeen Hundred and Nine Crores Forty-Four Lakhs Thirty Thousand and Two Hundred Five Only) along with interest due payable to all consortium members and out of which the claim of Rs. 182,46,53,214.82/- (Rupees One Hundred and Eighty-Two Crores Forty-Six Lakhs Fifty-Three Thousand Two Hundred Fourteen and Eight Two Paise) as on 28.09.2019 is payable to the Petitioner/Financial Creditor.
12. The Financial Creditor submits that on account of the failure of the Personal Guarantor to repay the outstanding amount, the Petitioner issued a Demand notice under Form-B Rule 7(1) on 03.05.2023, calling upon the Personal Guarantor to pay the outstanding dues within fourteen days from the receipt of the Demand Notice. The Respondent has failed to clear the said outstanding debt till date, despite being in receipt of the said demand notice.
13. The Financial Creditor submits that after compliance of pre-requisite Demand Notice to Personal Guarantor before initiation of Insolvency Process against the Personal Guarantor, the Personal Guarantor failed to discharge his liabilities within a statutory period of 14 days from the date of Demand Notice. Therefore, the Petitioner/Financial Creditor compelled to file present Petition before this Hon'ble Tribunal in accordance with the provisions of Section 95 of the Code read with the Rule 7 of the Code with the intention to initiate insolvency resolution process against the Respondent/Personal Guarantor to meet the end of justice.

14. This Bench had appointed the **Mr. Mahesh Kumar Gupta**, Insolvency Resolution Professional (“RP”) *vide* Order dated 20.12.2023 in the captioned petition and had thereby directed the Applicant to prepare and file a Report *u/s.* 99 of the IBC, 2016. The RP *via* his Report was taken on record by a virtue of I.A.953 of 2023 dated 07.03.2024, after due examination of the application, documents filed along with the application, in addition to the requirements as mandated under of Section 99 of the IBC, 2016, has recommended to “..Admitting the present application filed by IDBI limited through the RP in CP(IB)/871(MB)/2023 after deciding by the adjudicating authority about the objection raised by the Personal Guarantor regarding the limitation period and thereafter declare Moratorium under Section 101 of the code and issue Public Notice for inviting the claims under section 102 of the code and may pass such orders as this Hon’ble NCLT deem necessary. It is further submitted that delay of 6 days in submitting the report after getting the order on 10<sup>th</sup> January ,2024 should be condoned which took place in getting the information from both Creditor & Debtor and also due to holidays”.

**Affidavit of Reply/Objections under this code filed by the Respondent/Personal Guarantor:**

15. The Personal Guarantor denies all the averments made in the Company Petition (IB) and contends that the Application should be dismissed with cost at the very instance.

16. The Corporate Debtor submitted that their objections are in two-folds:

- Company Petition is barred by Limitation
- Objection regarding the act of concealment and misrepresentation of facts.

17. The Personal Guarantor submits that their account was declared NPA on 30.06.2018 and further from the perusal of documents, it has come to the notice of the Personal Guarantor that the Applicant invoked its guarantee via notice to Guarantor dated 06.09.2018

under subsection (2) of section 13 of the SARFAESI Act, 2002. The same notice has not been annexed to this Petition which indicates that the Financial Creditor has suppressed material facts in the matter.

18. The Personal Guarantor submits that the Financial Creditor in order to extend the limitation has purposely relied upon a new demand notice dated 03.05.2023.
19. The Personal Guarantor submits that the limitation as it is concerned, for the first-time cause of action arose on 30.06.2018 when the account of the Corporate Debtor was declared NPA. Further Financial Creditor contends that in accordance with Section 18 of Limitation Act, 1963, a fresh period of limitation starts from 06.09.2018.
20. The Personal Guarantor has emphasized the significance of the Demand Notice dated 03.05.2023, contending that it should be considered an extension of the period of limitation. However, it is worth noting that issuing the notice beyond the limitation period does not, in fact, extend said period. The present Petition, initiated by the Financial Creditor on 18.08.2023, which is contended by the Personal Guarantor that this Petition falls outside the limitation period. The Personal Guarantor further submits that the expiration occurred three years from the date of the initial invocation of guarantee on 06.09.2018 and by this eventually the limitation will be expired on 06.09.2021. Consequently, the petition is deemed barred by limitation.
21. The Personal Guarantor submits that the act of Financial Creditor constitutes to concealment and misrepresentation of facts when it comes to determining the date of Default. The Personal Guarantor

Further submits that the Part III of Form-C (Application to Adjudicating authority) of the petition where the Date of Default is

extremely important to determine the limitation period. On a perusal of the above reproduction of the relevant portion of item No.3&4 of Part-III, it is noticed that the date on which debt fell due i.e. Date of Default has specifically been mentioned by the Applicant as 03.05.2023 and on the other side there is also Exhibit A of this Petition where there is an indication about the total amount in default and initial dates of default. Form-B item number (3) of this Petition, the date of Default is mentioned as 06.09.2018, and against item No.-4 the date when the debt occurred is specifically mentioned as 30.06.2018.

22. The Personal Guarantor submits that in the Petition Exhibit B, the Financial Creditor has himself relied upon Part-D of the NeSL Report, where the date of default is recorded as on 30.06.2018.
23. The Personal Guarantor has relied on a certain purported letter dated 06.09.2018 by the virtue of which Petitioner has allegedly invoked the personal guarantee, however the said letter is not annexed to the instant Company Petition and therefore on this count alone, this Petition must be dismissed in limine.

**Findings**

24. We have heard the learned counsel for both the parties and have duly perused the documents on record.
25. The Deed of Guarantee was executed on 13.06.2016 and was invoked pursuant to the Guarantee Invocation Notice to the Personal Guarantor dated 06.09.2018. Subsequently, another Demand notice was served upon the Personal Guarantor on 03.05.2023 under Rule 7(1) of the Insolvency and Bankruptcy (Application to the Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), Rules, 2019.
26. We also take note of the fact that the Financial Creditor has relied

on the NeSL Report, wherein the date of default is recorded as 30.06.2018.

27. We observe that Part III of Form-C (Application) annexed to the Petition highlights the significance of the Date of Default in determining the limitation period and the Applicant has explicitly stated 03.05.2023, as the date on which the debt fell due. However, Exhibit A of this Petition i.e. Form-B (Demand Notice) states that the date when debt became due is stated as 06.09.2018 and the date of default is stated as 30.06.2018.
28. The Financial Creditor has contended that the computation of limitation would begin afresh from 03.05.2023, i.e. from the date of the second Demand Notice, which would imply that the present Petition is not barred by limitation. Per contra, it is the Personal Guarantor's case that since the Guarantee was invoked vide Guarantee Invocation Notice dated 06.09.2018, the computation of limitation would begin from 06.09.2018 and would last until 06.09.2021, which would result in the present Petition being barred by limitation.
29. The Counsel for the Financial Creditor has brought to our notice that there is a pending proceeding before the learned DRT Presiding Officer, New Delhi-3, being **Original Application No. OA No. 491/2019**, *inter alia*, seeking issuance of recovery certificate in respect of the outstanding amount to the tune of Rs.1709,44,30,205/- (Rupees Seventeen Hundred and Nine Crores Forty-Four Lakhs Thirty Thousand and Two Hundred Five Only) along with interest due payable to all consortium members. Out of the total outstanding amount, Rs. 182,46,53,214.82/- (Rupees One Hundred and Eighty-Two Crores Forty-Six Lakhs Fifty-Three Thousand Two Hundred Fourteen and Eight Two Paise) is payable to the Petitioner/Financial Creditor as on 28.09.2019. We take note that there is no Recovery Certificate placed before this Bench



and the matter is still pending before the learned Presiding Officer, DRT. The Applicant has contended that the above-mentioned DRT proceedings would constitute a fresh cause of action by relying on the precedent laid down in the decision of the Hon'ble Supreme Court of India in the case of *Tottempudi Salalith vs. State bank of India [Civil Appeal No. 2348 of 2021]*.

30. In light of the above, we have no hesitation to hold that present Petition is barred by limitation on the following grounds:

a) The issuance of the subsequent Demand Notice dated 03.05.2023 does not constitute a fresh cause of action and hence the limitation will not begin afresh from 03.05.2023. The limitation period had begun from 06.09.2018 and ended on 06.09.2021.

b) The Personal Guarantor's reliance on *Tottempudi Salalith vs. State bank of India* is misplaced as in that Recovery Certificate was issued, which resulted in a fresh cause of action. However, in the present case, no Recovery Certificate has been placed on record. In addition, the National Company Law Appellate Tribunal ("NCLAT") in the case of *Gulabchand Jain V/s Punjab National Bank and Anr.* passed in Company Appeal (AT) (Insolvency) No. 416 of 2020, has held as under:

*"The benefit of Section 14 can be availed by a person when the proceedings which was filed before the earlier forum suffers from lack of jurisdiction or other similar cause. In the present case, it cannot be said that the proceedings before the DRT were suffering from any lack of jurisdiction. Hence, submission of counsel of the Respondent for extension of limitation on the basis of Section 14 cannot be accepted."*

Hence, such an exclusion in terms of Section 14 of the Limitation Act, 1963 cannot be granted in the present case as the proceedings pending before the DRT do not suffer from any lack of jurisdiction.

31. Moreover, in light of the fact that the date of default falls during the Covid-19 period, we have to take cognizance of the Hon'ble Supreme Court's decision in Suo Motu Writ Petition No. 03 of 2020. In the Present matter, the date of Default is 06.09.2018, therefore the limitation period comes to an end on 06.09.2021. In view of the aforesaid decision of the Hon'ble Supreme Court iterated herein above, the Applicant was entitled to a further period of 90 days, to file the Petition. The said period of 90 days comes to an end on 31.05.2022, however the date of filing the Petition is 18.08.2023. Hence, the present Petition is not maintainable as it is absolutely barred by limitation.
32. Accordingly, C.P. (IB) No. 871/MB/2023 is hereby **dismissed and disposed of.**

Sd/-  
**Prabhat Kumar**  
Member (Technical)

Sd/-  
**Justice V. G. Bisht**  
Member (Judicial)