

**IA. NO. 158/ND/2023**  
**IN**  
**Company Petition No. (IB)-488(ND)/2022**

Page **1** of **11**

## **ORDER**

The present IA No. 158 of 2023 has been filed by Mr. Virender Sharma (from now on referred to as the **'RP'**), qua Personal Guarantor Mr. Jai Bhagwan Bindal (hereinafter referred to as the **'Respondent'/'Personal Guarantor'**) enclosing therewith therewith the Report prepared by him under Section 99 of IBC, 2016.

2. To put the facts succinctly, the underlying main Petition CP (IB)-488/ND/2022 was filed by State Bank of India against the Personal Guarantor Mr. Jai Bhagwan Bindal under Section 95 of IBC 2016, to initiate the IR process. Vide order dated 20.12.2022, this Adjudicating Authority had appointed Mr. Vijender Sharma as a Resolution Professional (RP) of the Personal Guarantor and directed him to file its Report under Section 99 of IBC, 2016.

3. In compliance with the order dated 20.12.2022 passed by this Adjudicating Authority, the present IA-158/2023 has been filed by RP enclosing therewith the Report prepared in terms of the provisions of Section 99 of IBC 2016, recommending admission of the Application viz. IB- 488/ND/2022 in respect of the Personal Guarantor.

4. The conclusive recommendation made by the RP reads thus:

*"I, Vijender Sharma, an Insolvency Professional having IP reg. no. IBBI/IPA-003/IP-N00003/2016-2017 /10022, appointed as Resolution Professional under sub section (5) of Section 97 vide order dated 20.12.2022, in connection with the proposed insolvency resolution process of Mr. Jai Bhagwan Bindal, (Personal Guarantor): CP- (IB)-488/ND/2022, hereby, on the basis of the gathered facts and figure is of the view that the*

*application of creditor (State Bank of India} satisfies all the requirements u/ s 95 of IB Code read with PG Rules, 2019.*

*In such premises it is just and equitable that insolvency process be initiated against the debtor under the orders and direction of this Hon'ble Tribunal.”*

5. While making its recommendation for admission of the Application filed qua the Personal Guarantor, under Section 95 of IBC, 2016 the RP has given the Report as required under Section 99 of IBC, 2016 providing that:

5.1. Mr. Jai Bhagwan Bindal, who stood as a personal guarantor to the credit facility availed by the Principal Borrower viz M/ s JV Strips Limited, to the extent of Rs. 75,64,88,743.33/- (Rupees seventy-five crore sixty-four lakh eighty-eight thousand seven hundred and forty-three and three paise only) including interest and penalties as on 30.04.2022.

5.2. From the records put before the Resolution Professional due to default and delays on the part of the corporate debtor in making the payments that had become due and payable, the financial creditor had classified the corporate debtor's account as Non-Performing Asset as on 25.07.2018.

5.3 State Bank of India invoked the personal guarantee qua the personal guarantors of M/s JV Strips Limited (Corporate Debtor), by sending the notices for invocation of personal guarantee by the SBI, for the recovery of their loan amount from respondent as under: -

- i. Loan recall cum demand notice dated 29.07.2019.
- ii. Notice under rule 7(1) of the IBBI (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 dated 23.08.2021.

5.4 The Creditor has claimed the service of the Demand Notice upon the Personal Guarantor under Rule 7(1) of Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019

5.5 The debtor is unable to pay off his debts, which are not excluded debts falls under Section 79(15) of IB Code. The debt amount is registered with the Information Utility, therefore, pursuant to Section 99(3) of IBC, 2016, the debtor is not entitled to dispute the validity of such debt.

5.6 Mr. Jai Bhagwan Bindal also failed to prove, as sought by the RP via mail dated 21.12.2022, 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 receipts of dues.

6. On issuance of notice the Respondent has filed its Written Submissions and has put forth his submissions espousing for seeking rejection of the Application. He saliently espoused:

6.1 Application is not filed by an Authorized Person. There is no document such as any attorney, document or board resolution which could depict that the Authority has been granted to the RP to file the present Application.

6.2. The Application is time barred. The account of the CD was classified as NPA on 25.07.2018. The same was not mentioned in the statutory demand

notice.

6.3 It is also contended that the Creditor has invoked the guarantee after 9 years and same could not have been invoked, when the liquidation process had commenced in the matter of Power2SME Vs J. V. Strips, CP IE 452(ND) 2017.

6.3 The date of default finds no source as to how and when it was determined to be as 29.07.2019.

6.4 The debt of the Creditor is not crystallized since the Creditor has filed proceedings before the Ld. DRT, which are pending for adjudication and the Respondent had disputed the debt. In the absence of any crystalized debt the Bank is not entitled to invoke provisions of Section 95 of IBC, 2016.

7. The Respondent relied upon the following Judgements of Hon'ble Supreme Court to demonstrate that the Application is liable to be dismissed if it is time barred: -

(i) Noharlal Verma Vs District Cooperative Central Bank Limited, Jagdalpur

(ii) Laxmi Pat Surana vs. Union Bank of India & Anr.

(iii) Sesh Nath Singh v Baidyabati Sheoraphuli Co-operative Bank Ltd., Civil Appeal No. 9198 of 2019 (decided on 22.03.2021).

8. We have heard the submission of both the parties and have perused the application, report, Reply and Written Submissions filed by the parties. The Creditor has placed on record, the Guarantee Deeds dated 11.12.2012 and 28.01.2014, in terms of which the Personal Guarantor Mr. Jai Bhagwan Bindal stood as guarantor for repayment of credit facilities granted by the SBI to the Principal Borrower/ JV Strips Limited.

9. It is seen from the record that the aforesaid guarantee was invoked by the Creditor SBI by issuing loan recall notice dated 29.07.2019.

10 Further, the Creditor sent the Demand Notice dated 23.08.2021 in Form B under Rule 7(1) of Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 to the Personal Guarantor. The service of notice is not disputed by the Respondent.

11. The Respondent opposed the admission of the Application mainly on the ground that the Application is time barred. To buttress the plea the Respondent had relied upon the date of NPA i.e., 25.07.2018. It is the contention of the Respondent that the Application has not been filed within 3 years from 25.07.2018. Further the date of default mentioned in the demand notice as 29.07.2019 has no basis.

12. In the wake we examined the contention raised by the Respondent to find out as to whether the Application is time barred? . We are sanguine that the criteria for examining the date of default for the purpose of limitation for the Corporate Debtor and Personal Guarantor are not the same. In the present case what need to be seen is that, when the debt became due and payable by the Personal Guarantor. In this regard a reference can be made to the Guarantee Deed annexed at page 138 of the Application. The relevant excerpts of the same reads thus:

OR

Jyoti Singh Limited a company within the meaning of the Companies Act, 1956, and having its registered office at 227 Post Floor, Dha Mandi, Narayan Ne (hereinafter referred to as "the Borrower" which expression shall unless repugnant to the context or meaning thereof be deemed to include its successors and permitted assigns) by agreeing to grant to the borrower all or some or any of the credit facilities by way of overdrafts, cash credits, term loans, pre-shipment and post-shipment credits, opening of letters of credit, issuing of guarantees including deferred payment guarantees and indemnities, negotiation and discounting of bills and cheques, inland as well as foreign, and such other facilities as may be agreed upon from time to time between the Bank as the Borrower for sums not exceeding in the aggregate at any one time the sum of Rs. 64.52 cr. (Rupees Sixty Four Crore only). hereinafter referred to as the "aforesaid credit facilities") covenanted and agreed jointly and severally to pay to the Bank on demand upon default made by the Borrower the whole of such principal amount of Rs. 64.52 cr. together with interest, costs, charges, expenses and/or other monies as may then be due to the Bank and also agreed indemnify and keep indemnified the Bank against all loss of principal, interests and other monies due, and all costs (as between advocate and client) charges and expenses whatsoever which the Bank may incur by reason of any default on the part of the Borrower.

13. From a perusal of the Guarantee Deed, it can be inferred that the Debt against Personal Guarantor became due and payable when the Creditor called upon the Guarantor to pay the amount. Hence, it won't wrong to be say that the period of limitation shall begin to run from the date when the Creditor had called upon the Personal Guarantor to pay the amount. In other words the date when guarantee is invoked by the Creditor is the date of commencement of period of Limitation for filing Application under Section 95 of IBC, 2016.

14. At this juncture, we may refer refer to the Judgement passed by Hon'ble NCLAT in the matter of "**Pooja Ramesh Singh vs. State Bank of India in**

**Company Appeal (AT) (Ins.) No.329 of 2023” dated 28.04.2023**, wherein it was held:

*“5. We have heard learned counsel for the parties and perused the record. From the submission of learned counsel for the parties and materials on record following issues arise for consideration:*

*I. Whether default in payment of guaranteed amount by the Corporate Debtor is the same default as is committed by the Principal Borrower and the period of limitation for both the Principal Borrower and the Corporate Guarantor shall be same for the purposes of filing Section 7 application for the Bank?*

*II. Whether the Deed of Guarantee dated 17.05.2019 is guarantee on demand and the limitation of Guarantor shall ensue only when demand is made to the Guarantor?*

....

*33. In view of the foregoing discussion and conclusions, we answer Issues No. II, III and IV in following manner:*

.....

***Issue No. II: The Deed of Guarantee dated 17.05.2019 is guarantee on demand and the limitation of Guarantor shall ensue only when demand is made to the Guarantor.***

***(Emphasis added)***

15. We are not oblivious that the aforesaid finding was made by the Hon’ble NCLAT in the context of the Corporate Guarantor, however, we see no reason as to why the ratio laid down by Hon’ble NCLAT (ibid) cannot be applied to the case of the Personal Guarantor. Since the date of default in the captioned petition would be the date of invocation of guarantee and not the date of NPA therefore, the Judgements relied upon by the Respondent which are noted in Para 7 above, are not applicable to the facts of the case.



16. The Guarantee in the captioned application was invoked on 29.07.2019, i.e., within 3 years form the date of filing of Application i.e., 27.05.2022. Hence the Application is not time barred. Further we find no infirmity in the submission put forth by the Applicant, while relying upon the date of Loan recall notice as the date of default.

17. On merits, the Respondent has disputed his liability to repay the debt to the Applicant. It is contended by the Respondent that Creditor had filed Original Application before the DRT for adjudication of the debt where the Respondent has disputed the debt in its Written Statement. In our view there is sufficient material on record which proves existence of debt and commission of default made by the Respondent. Further the adjudication of debt before DRT is not a *sine qua non* for filing an Application under Section 95 before this Adjudicating Authority.

18. The Respondent further contended that in view of the pendency of Liquidation proceedings against the Principal Borrower, the guarantee could not have been invoked by the Creditor. Nevertheless, Respondent had failed to point out any legal provision which support this contention. In the wake the objection is noted only to be rejected. Further no cogent reason has been given by the Respondent that as to why the IR Process should not be initiated against him.

19. In the sequel to the aforesaid discussion, the Creditor has been able to establish the 'debt' and 'default' beyond doubt in respect of the Guarantee given by the Respondent/Personal Guarantor. Hence, we have no reason to disagree with the recommendation given by the RP for admitting the Application. Thus, we accept the report of the RP given by him in terms of the provisions of Section

99 of the IBC, 2016, and admit the CP (IB)-488/ND/2022 filed by the Creditor. Ergo we order the initiation of the IR process in respect of Mr. Jai Bhagwan Bindal, Respondent/Personal Guarantor with immediate effect.

20. As a sequel of admission of the present application, **a moratorium under Section 101 of IBC, 2016 shall commence in relation to all the debts of the Respondent/Personal Guarantor.** 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 Respondent 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 the period of 180 days.

21. A public notice shall be issued by the RP, within seven days of passing of this order, inviting claims 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 said 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.

22. 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 due deference to 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 the discharge of his duties as RP.

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

24. IA 158/ND/2023 is disposed of accordingly. 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)**