NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-II), CHANDIGARH

CP(IB) No.286/CH/HRY/2022

(An Application Under Sub-Section (1) of Section 95 of the Insolvency and Bankruptcy Code, 2016, read with Sub-Rule (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019)

<u>IN THE MATTER OF</u>:

Indian Bank (E-Allahabad Bank)
Corporate Office :
254-260, Avvai Shanmugam Salai,
Royapettah, Chennai 600014, Tamil Nadu, India
and SAM Branch: SCO 49-50, 3rd Floor,
Bank Square, Sector-17B, Chandigarh-160017,

..Applicant/Creditor

Versus

Smt. Parkash Devi W/o Sh. Lajpat Rai,
R/o: Old Anaj Mandi, Nissing, Distt Karnal, Haryana- 132024,
2nd Address: C/O Lilu Ram Rajpat Rai, Nissing, Distt Karnal, Haryana-132024,
3rd Address: Kothi No 611, Sector 7, Karnal, Haryana-132001,
Personal Guarantor for
Ganeshom Cereals Pvt Ltd,
Gonder Road, Nissing,
Distt. Karnal, Haryana-132024.

...Respondent/ Personal Guarantor/Debtor

Order delivered on: 18.07.2025

CORAM: MR. KHETRABASI BISWAL, MEMBER (JUDICIAL)
MR. KAUSHALENDRA KUMAR SINGH, MEMBER (TECHNICAL)

<u>Present:</u>

For the Applicant/RP	:	**Mr. Dharam Paul Garg, Advocate with Mr. Vivek Bansal, RP via video conferencing.**
For the Respondent	:	**Ex parte** (Vide Order Dated 17.12.2024)

ORDER

1. The present Application has been filed by **Indian Bank (E-Allahabad Bank)** (hereinafter referred to as "Applicant/Financial Creditor") under sub-section (1) of section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "Code") sub-rule (2) of Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 to initiate Personal Insolvency Resolution Process against **Smt. Parkash Devi W/o Sh. Lajpat Rai**, (hereinafter referred to as "Respondent"), who is the Personal Guarantor of the Corporate Debtor, namely **Ganeshom Cereals Pvt Ltd**, for default of an amount of Rs. 160,94,16,076/-.The Applicant has prayed for the following reliefs:-

(a) To pass an order for initiating the Insolvency Resolution Process under Section 95 of the Insolvency & Bankruptcy Code, 2016.

(b) To cause a public announcement of the initiation of the Insolvency Resolution Process & calling for submission of claims under Section 102 of the Code; and

(c) To declare an Interim Moratorium in terms of Section 96 and, after admission, to declare a Moratorium under Section 101 of the Code.

2. The averments made by the Applicant in its Application and presented/argued by the learned counsel for the Applicant are summarized hereunder:

(i) The Applicant advanced/ restructured the Cash Credit Limits, Working Capital Term Loan, and Packing Credit Limits to Ganeshom Cereals Pvt Ltd of a total amount of Rs. 143.76 crores from the Applicant Bank vide sanctioned letter dated 28.06.2014.

(ii) The loan has not been paid regularly, and the Applicant classified and declared the account of Ganeshom Cereals Pvt Ltd as Non-Performing Assets, and a recall notice dated 02.12.2014 was issued by the Applicant.

(iii) The Respondent stood as guarantor for the Cash Credit Limits, WCTL, and Packing Credit Limits and executed Guarantee Agreements dated 05.05.2012 & 24.03.2014. The liability of the surety is co-extensive with that of the principal borrower unless it is otherwise provided by the contract, as stated in Section 128 of the Indian Contract Act, 1872. The liability of the guarantors so long as the debt is live.

(iv) The Corporate Debtor, Ganeshom Cereals Pvt Ltd, defaulted in payments, and the loan was recalled and guarantees were invoked vide Notice dated 02.12.2014.

(v) The Applicant initiated the CIRP process against the Corporate Debtor vide CP (IB) No.45/Chd/Hry/2018 under section 7 of the Insolvency and Bankruptcy Code, 2016, which was admitted on 13.12.2018 by the Tribunal, and the CIRP process was initiated w.e.f. 19.12.2018.

(vi) The Resolution Plan submitted by Devki Retails Private Limited has been approved by the CoC under sub-section (4) of Section 30 of the Code and then approved by the Tribunal vide Order dated 18.05.2020. The amount of default was crystallized after receipt of the amount of Rs. 1,00,00,000/- (One crore only) as paid by the Resolution Applicant on 21.08.2020 under the Resolution Plan, and the Respondent is liable to pay the balance amount of default in accordance with the Guarantee Agreement.

(vii) The Application is within the period of limitation as the acknowledgment of debt has been made continuously by the Principal Borrower, Ganeshom Cereals Pvt Ltd, by way of submission of the audited balance sheets and has been acknowledging the debt in these Financial Statements. The latest Audited Balance Sheet for the year ended as on 31.03.2019 has been signed on 26.09.2019, and the acknowledgment made by the Principal Borrower is binding on the Guarantor. Thus, this Application is within limitations.

(viii) The Applicant invoked the personal guarantee and issued a demand notice to the Respondent on 30.04.2022 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. However, the Demand Notices were undelivered from all addresses and returned back to the branch. Publication was also made in two newspapers (in English and a local language newspaper) to complete the service of the above notices. But no response was received from the Respondent.

(ix) In support of the claim, the Applicant has annexed various documentary evidence, including sanction letters, promissory notes, hypothecation agreements, personal guarantee agreements, demand notices, the NCLT's resolution plan approval order, audited balance sheets of the Corporate Debtor, and proof of service of the demand notice.

3. This Adjudicating Authority vide Order dated 26.02.2024, appointed Mr. Vivek Bansal, Insolvency Professional, bearing Registration No. IBBI/IPA-001/IPP01475/2018-2019/12249 as a Resolution Professional under section 97 of the Code. Accordingly, the Resolution Professional filed its report vide Diary No. 00846 dated 14.03.2024.

4. The Tribunal vide Order dated 25.04.2024, directed the Resolution Professional to communicate the next date of hearing to the Personal Guarantor. In compliance with the same, an Affidavit of Service vide Diary No. 02276/3 dated 27.05.2024 was filed, wherein it was stated that the notice could not be served through registered post as the same has been returned with a remark that they are residing at some other address in Karnal.

4.1 The Tribunal vide Order dated 09.07.2024, noted that the Respondents are appearing in some other cases in DRT Delhi; therefore, the Tribunal directed the Resolution Professional to take the Dasti Notice and get the same served upon the personal guarantor in DRT Delhi on the next date of hearing. The Tribunal also noted that in case the service of Dasti Notice on the personal guarantor is not affected, the Resolution Professional shall adopt the mode of substituted service, and the notice of hearing shall be advertised in two daily newspapers (one English and one Hindi) having wide circulation in the area of Karnal.

4.2 In compliance with the same, an Affidavit vide Diary No. 02276/4 dated 29.08.2024 and refiled on 03.09.2024 was filed, wherein an officer was deputed to Delhi on 05.08.2024 to deliver the summons to the Advocate representing the Respondent in a pending case in DRT filed by the Applicant, Indian Bank. However, the Advocate representing the Respondent was not available in the DRT on that day. It is noted that a copy of the RP Report has been sent by email and registered post to the Counsel for the Respondent in DRT, and the same has been annexed as Annexure A-1 to the Affidavit. Since the Notice could not be served dasti, hence Notice was published on 21.08.2024 in two newspapers as per Order dated 09.07.2024. A copy of the Publication in newspapers has been attached as Annexure A-2 to the Affidavit.

4.3 Since there was no representation on behalf of the Personal Guarantor, despite substituted service through newspaper publication, this Tribunal vide Order dated 17.12.2024, decided to proceed as ex parte.

5. On perusal of the report of the Resolution Professional, it is observed that he has examined various documents, including the deed of guarantee, copies of loan documents, sanctioned letter dated 28.06.2014, etc. The Resolution Professional sent notice on 27.02.2024 through email and

demanded details as well as documents from the Personal Guarantor. However, no response was received from the Personal Guarantor. The report of the Resolution Professional states that he had not received any communication or evidence of repayment of the debt from the Personal Guarantor. The Resolution Professional has also asked the Financial Creditor to confirm the non-repayment and continuity of the default through email dated 27.02.2024, and the same was confirmed by the Applicant through email dated 01.03.2024. The Financial Creditor statement also shows that no payment was received either from the Corporate debtor or from the Personal Guarantor. Therefore, the Resolution Professional recommended admitting the present Application.

6. We have heard the learned counsel of the Applicant and Resolution Professional and have perused the material available on record.

7. It is noted that the Applicant (Financial Creditor) has enclosed the deed of guarantee dated 05.05.2012 and 24.03.2014, signed by Smt. Parkash Devi W/o Sh. Lajpat Rai (Respondent Personal Guarantor). The Respondent stood as guarantor for the Cash Credit Limits, WCTL, and Packing Credit Limits and executed Guarantee Agreements dated 05.05.2012 & 24.03.2014, for the Corporate Debtor, who was admitted to CIRP on 13.12.2018. The Applicant classified and declared the account of Ganeshom Cereals Pvt Ltd as NPA, and a recall notice dated 02.12.2014 was issued by the Applicant. The demand notice to the Respondent Personal Guarantor was issued on 30.04.2022. It is further stated that the Corporate Debtor has acknowledged the debt in its audited balance sheet for the year

ended as on 31.03.2019, which was signed on 26.09.2019 by the two Directors of the Company, namely, Lajpath Rai and Amar Nath.

8. The present Application was filed on 15.09.2022, the acknowledgment of debt has been made by the Principal Borrower, Ganeshom Cereals Pvt Ltd, by way of the Audited Balance Sheet for the year ended as on 31.03.2019, which has been signed on 26.09.2019 by the Directors of the Company. The acknowledgment made by the Principal Borrower is binding on the Guarantor. The Hon'ble Supreme Court in the matter of ***Laxmi Pat Surana v. Union Bank of India [(2021) 8 SCC 481]*** has held that if the principal borrower acknowledges its debt in writing within the limitation period and subsequently fails to pay, this acknowledgment also activates the corporate guarantor's (herein Personal Guarantor) liability and then, the financial creditor has a renewed right to initiate legal action within three years from the date of such acknowledgment. Thus, this Application is within the limitation period.

9. In this context, we have also pursued the guarantee deed executed by the respondent to ascertain whether the liability to pay the debt by the guarantor is co-extensive with that of the principal borrower. In the deed of guarantee executed by this respondent along with others, clauses 2, 3 & 4 read as follows:

> *"2. I/We declare that my/our liability under this guarantee shall be limited and restricted to the sum of Rs 162,00,00,000/- (Rupees ONE HUNDRED SIXTY TWO CRORES) with interest at the rate aforesaid but subject to such limit shall nevertheless be a Continuing guarantee to the Bank as hereinafter specified for all sums whatsoever which may at any time be or become payable by the principal to the Bank with*

interest at the rate aforesaid till repayment together with commission. Bank charges, legal and other expenses which the Bank may incur in enforcing or seeking to enforce any security for or obtaining or seeking to obtain payment of all or any part or the money hereby guaranted or otherwise in respect of the agreement.

3. I/We further declare that this guarantee subject to the provision of clause 2 hereof shall be extended in the event of any acknowledgement of debt and/or part payment of capital and/or payment of Interest or any part thereof made by the principal within the meaning of Sections 18 and 19 of the limitation Act 1963 and such acknowledgement and/or part payment of capital or payment of interest shall be deemed to have been made for the principal and also by me/us as agent for and on behalf of the principal and for this purpose this guarantee shall not be treated as discharging me/us from liability under this guarantee but subject to the said clause 2 hereof shall be a continuing guarantee to the Bank.

4. I/We further declare that upon any acknowledgement of debt and/or part payment of the capital and/or payment of interest or any part thereof this guarantee shall be deemed to have commenced a fresh starting point for limitation against me/ us from the date of said acknowledgement and/or payment and for that the relation of principal and guarantor would give rise to an implied authority on the part of the principal to make payment on my/our behalf."

10. Thus, we find that as per the recitals of the Guarantee deed dated 05.05.2012 and 24.03.2014, the guarantee is co-extensive and a continuing guarantee, and as such, the Application filed by the Applicant is well within the limitation.

11. After considering the facts of the case, as well as the Report of the Resolution Professional, we are of the considered view that it is a fit case for admission to proceed against the Personal Guarantor for initiating the Insolvency Resolution Process. Hence, we pass the following Order:

(i) The Application CP (IB) No.286/Chd/Hry/2022 is allowed.

(ii) Initiate Insolvency Resolution Process against the Respondent and moratorium in relation to all the debts is declared, from today i.e. date of admission of the Application and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on the repayment plan under Section 114 whichever is earlier as provided under Sec 101 of 1BC, 2016. During the moratorium period;

(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; and

(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., Mr. Vivek Bansal, bearing Registration No. IBBI/IPA-001/IPP01475/2018-2019/12249, appointed vide Order dated 26.02.2024, is directed to cause a public notice to be published on behalf of the Adjudicating Authority within 10 days of passing this Order, inviting claims from all Creditors, within 21 days of such Issue. The notice under Sub-Section (1) of Section 102(2) shall include: -

(a) Details of the order admitting the application;

(b) Particulars of the resolution professional with whom the claims are to be registered; and

(c) The last date for submission of claims.

(iv) The publication of notice shall be made in two newspapers, one in English and the other in the Vernacular language having wide circulation in the State where the Corporate Debtor and Personal Guarantor reside. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.

(v) The Resolution Professional, in the exercise of the powers conferred under Section 104, shall prepare a list of creditors based on:

(a) The information disclosed in the application filed by the debtor under Section 95, and

(b) claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice.

The debtor shall prepare a repayment plan under Section 105, in consultation with the Resolution Professional, containing a proposal to the Creditors for restructuring of his debts or affairs. The repayment plan may authorize or require the Resolution Professional to:

(a) carry on the debtor's business or trade on his behalf or in his name; or

(b) realise the assets of the debtor; or

(c) administer or dispose of any funds of the debtor.

The repayment plan shall include the following, namely:

(a) Justification for the preparation of such repayment plan and reasons based on which the creditors may agree upon the plan;

(b) Provision for payment of the fee to the Resolution Professional;

(vi) 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 of the Code.

(vii) In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons thereof. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of the Code. The date of the 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 of the Code, for which at least 14 days' notice to the creditors as per the list prepared shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of the Code.

(viii) The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on the repayment plan with all details as provided under Section 112 of

IBC, 2016, and submit the same to this Tribunal, 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 IBC, 2016.

(ix) The Resolution Professional shall submit his periodic reports before this Tribunal every 30 days.

12. As a result, the Company Petition CP(IB)No.286/Chd/Hry/2022 stands allowed and disposed of.

Sd/-

Kaushalendra Kumar Singh
Member (Technical)

Sd/-

Khetrabasi Biswal
Member (Judicial)

Gitesh