

Case Citation: (2026) ibclaw.in 2372 NCLT

I.A(IBC) No. 1791/(KB)/2024

In

C.P. (I.B.) 220(KB)2024

NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH-II

KOLKATA

I.A(IBC) No. 1791/(KB)/2024

In

C.P. (I.B.) 220(KB)2024

IN THE MATTER OF:

INDIAN BANK,

having its Stressed Asset

Management Branch (SAM LARGE),

14,India Exchange Place,

1st Floor, Kolkata-700 001.

...Financial Creditor

Versus

Rachna Surekha ,

Personal Guarantor of M/s CMG Ductitles Ltd

At 28/1, Shakespeare Sarani,

Kolkata-700 017,

.....Personal Guarantor

And

IN THE MATTER OF :

Rachna Surekha ,

Personal Guarantor of M/s CMG Ductitles Ltd

At 28/1, Shakespeare Sarani,

Kolkata-700 017,

.... Applicant /Personal Guarantor

Versus

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INDIAN BANK,
having its Stressed Asset
Management Branch (SAM LARGE) 14,
India Exchange Place,
1st Floor, Kolkata-700 001

... Financial Creditor/Respondent

AN APPLICATION FILED BY THE APPLICANT UNDER SECTION
60(5) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016
READ WITH RULE 11 OF THE NATIONAL COMPANY LAW
TRIBUNAL RULES, 2016.

**Coram: Labh Singh, Hon'ble Member (Judicial)
Rekha Kantilal Shah, Hon'ble Member (Technical)**

Present:

For the applicant: Mr. Dipak Dey Ld. Advocate
For the respondent: Mr Santosh Kr Ray, Ld. Advocate
Ms Rituparna Sanyal, Ld. Advocate
Ms. Zeba Khan, Ld. Advocate
Ms. Muskan Saha, Ld. Advocate

Date of Order: 22.6.2026

O R D E R

1. The present application has been filed by the personal guarantor, the applicant, herein with prayers to recall and set aside order dated 08th July, 2024 passed in C.P. (IB)

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No. 220/KB/2024 (Indian Bank vs. Rachna Sureka); to stay of operation of the order dated 08th July, 2024 passed in C.P. (IB) No. 220/KB/2024 (Indian Bank vs. Rachna Sureka; interim order be passed staying all the further proceedings in C.P. (IB) No. 220/KB/2024 (Indian Bank vs. Rachna Sureka) till the disposal of the present application; to award Costs of and incidental to this application borne by the applicant; and to pass such further or other order or orders as this Tribunal deem fit and proper.

2. The applicant submits that the order dated 8th July, 2024 is liable to be recalled and/or set aside and/or quashed in view of the facts that on 08th July, 2023 the Advocate-on-Record who usually represents the Company, M/s CMG Ductiles Ltd. found that the three matters were appearing in the cause list in the name of the said company; however, such matters were with respect to personal guarantee against alleged personal guarantors of the M/s. CMG Ductiles Ltd.
3. The instant C.P.(IB)/220/KB/2024 (Indian Bank Vs Rachna Kayal) appeared before this Bench of the Tribunal and C.P. (IB)/221/KB/2024 (Indian Bank Vs Shri Sanjay Surekha) appeared before Bench-I of this Tribunal.
4. The Learned Advocate-on-Record could not obtain any written instructions or Vakala Nama from the Applicant/Personal Guarantor. The Company, M/s. CMG Ductiles Ltd. informed the

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Advocate-on-Record that they have no information in this regard and will contact the Personal Guarantor involved with the Learned Advocate for instructions. In view of this, the Learned Advocate-on-record appeared on 08th July, 2024 and requested time to file Vakala Nama and also prayed for a copy of the application to be served upon him.

5. Despite the said prayer being made, it appears that impugned order dated 08th July, 2024 has been passed. The said order is liable to be set aside and/or vacated and/or quashed for the following reasons-

- a) No copy of the application was served to the applicant/alleged personal guarantor in violation of Section 95(5) of the Insolvency and Bankruptcy Code, 2016 (in short IBC, 2016).
- b) The order does not record that any service affidavit was filed by creditor in compliance with Rule 7(3) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors.
- c) the impugned order could not have been passed unless the creditor satisfied the Tribunal that effective service has been made upon the Applicant.
- d) The applicant states and submits that impugned order may have been passed inadvertently by ignoring the submission of Learned Advocate and is accordingly liable to be

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recalled and/or set aside and an opportunity must be given to the applicant to be heard after service of the petition upon them.

- e) The applicant states that the Creditor has never served a copy of the petition herein filed under Section 95 of the Insolvency and Bankruptcy code, 2016 upon the applicant/personal guarantor. There has been a clear, unambiguous violation of a statutory provision laid down under Section 95(5) of the Insolvency and Bankruptcy Code, 2016 which itself makes the instant petition not maintainable and liable to be dismissed.
6. It has further been submitted that no communication regarding pendency of any proceedings under section 95 of the Insolvency and Bankruptcy Code, 2016 has ever been received by the applicant. The matter was filed on 02nd July, 2024 and on the first day without any service, the order dated 08th July, 2024 came to be passed. A status of report showing date of filing of the proceeding by Indian Bank on 02.07.2024 is annexed hereto and marked with the Letter "C".
7. Moreover, the applicant states that Pursuant to Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for personal guarantors to Corporate Debtors) Rules, 2019, a demand notice should be served by the creditor on the personal

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guarantor demanding the payment of amount in default and such demand notice shall be served on the personal guarantor in Form 'B'. In the present case, no such demand notice was ever served upon the applicant/ personal guarantor.

8. Therefore, the order dated 08th July, 2024 requires to be recalled and/or set aside and/or vacated.
9. Respondent appeared in pursuance of notice issued by this Tribunal and filed its reply stating therein that upon filing of C.P No (IB). 220/KB/2024 under Section 95 of the IBC 2016, this Tribunal passed an order of admission dated 08.07.2024 and Mr. Rakesh Prasad was appointed as the Interim Resolution Professional and was directed to file his report in terms of Section 99 of the IBC. Furthermore, vide the same order interim moratorium in terms of Section 96 of the IBC commenced. Subsequently, the IRP has filed his report in terms of Section 99 of the IBC.
10. On merits, it has been replied that the content of para no. 1 and 2 are wrong and hence denied. The content of para no. 3 and 4 are matter of record and requires no reply. The content of para no.5 (a to c) & 6 of the said reply affidavit are denied and disputed. The Financial Creditor has followed all the procedure laid down under the Insolvency and Bankruptcy Code. It is stated that without proof of service, the instant petition wouldn't have been

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filed at the first stage and hence, the submission made by the Personal Guarantor is absolute vague and bad in Law.

11. The content of para no.7 to 9 of the application are wrong and denied. The Financial Creditor had also issued Demand Notice in Form B under Rule 7(1) of the IBBI (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 dated 26.03.2024 to the guarantors of the Corporate Debtor. It is submitted that the Form B Notice dated 26.03.2024 was returned with the remark "left without instruction".
12. A statement or demand signed by the Bank or its Manager or its any other authorised official including an Authorised Officer under SARFAESI Act, 2002, showing that any sum is due and payable to the Bank hereunder shall be conclusive evidence that such sum is in fact due and any demand or legal proceedings shall be sufficiently served if sent by prepaid post to my/our address last known to the Bank or stated herein and shall be deemed to have reached me/us in course of post...
13. Moreso, in the matter of Hon'ble Supreme Court while interpreting the Section 27 of the General Clauses Act in C.C. Alavi Hazi vs. Palapetty Mohammed has held: "That Section 27 gives rise to presumption that Service of Notice has been affected when it is sent to the correct address by Registered Post. In view of the said presumption, when

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stating that a notice has been sent by Registered Post to the address of the drawer it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have the knowledge of the notice. Unless and until the contrary is proved by the addressee, service of Notice is deemed to have been affected at the time at which the letter would have been delivered in the ordinary course of business."

14. Thereafter, the Hon'ble Supreme Court in the said case further adds that when a notice is sent by Registered Post and is returned with postal endorsement "refused" "not available in the house" or "house locked" or "shop closed" or "addressee not in station" even then due service is to be presumed.

15. With reference to paragraphs no. 10 to 14 of the said application, save and except what are matters of record and those admitted herein, each and every allegation is denied and disputed.

16. The instant Interlocutory Application filed by the Applicant Personal Guarantor requires to be dismissed in limine.

17. Heard Learned Counsel appearing for the applicant and respondent. We have gone through pleading and documents placed on record in the present application. We have

considered law applicable on the facts and circumstances of the present case.

18. The applicant has submitted in the present application that no copy of the application was made over to the applicant in violation of Section 95(5) of the IBC 2016. The order dated 08.07.2024 does not record that any service affidavit was filed by the Financial Creditor in compliance of Rule 7(3) of the IBBI(Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules 2019. Hence, the impugned order could not have been passed without satisfaction qua effective service.

19. It is pertinent to refer provision of Section 95 of IBC 2016 which read as under:

“95. Application by creditor to initiate insolvency resolution process.—

(1) A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.

(2) A creditor may apply under sub-section (1) in relation to any partnership debt owed to him for initiating an insolvency resolution process against—

(a) any one or more partners of the firm; or

(b) the firm.

(3) Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the Adjudicating Authority in which the first mentioned application is pending for adjudication and such Adjudicating Authority may give such directions for consolidating the proceedings under the applications as it thinks just.

(4) An application under sub-section (1) shall be accompanied with details and documents relating to—

(a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;

(b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and

(c) relevant evidence of such default or non-repayment of debt.

(5) The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.

(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.

(7) The details and documents required to be submitted under sub-section (4) shall be such as may be specified.

20. The provision of Rule 7(3) of the IBBI (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules 2019 provide

for service of copy of petition upon the guarantor. The Rule 7 read as under:

“7. Application by creditor.—

(1) A demand notice under clause (b) of sub-section (4) of section 95 shall be served on the guarantor demanding payment of the amount of default, in Form B.

(2) The application under sub-section (1) of section 95 shall be submitted in Form C, along with a fee of two thousand rupees.

(3) The creditor shall serve forthwith a copy of the application referred to in sub-rule (2) to the guarantor and the corporate debtor for whom the guarantor is a personal guarantor.

(4) In case of a joint application, the creditors may nominate one amongst themselves to act on behalf of all the creditors.

21. It is pertinent to note here that order dated 08.07.2024 has been passed by the Tribunal in presence of Mr. Dipak Dey and Mr. Aniket Jha Learned Advocates appearing for the applicant/Personal Guarantor. It has specifically been record that the Learned Counsel for Personal Guarantor is present. This fact has not been denied by the applicant/Personal Guarantor. There is nothing in order dated 08.07.2024 that there was an such objection by Learned Counsel for the applicant that no copy of petition has been served upon the Personal Guarantor/applicant.

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22. The Financial Creditor through its Assistant General Manager has filed an affidavit of service wherein it has been submitted that a copy of application was duly sent upon the personal guarantor by electronic mail dated 01.07.2024. The copy of email dated 01.07.2024 has been annexed as Annexure-X-1 with the affidavit of service filed with Company Petition.
23. A perusal of Annexure-X-1 reveals that Learned Advocate for the Financial Creditor on behalf of Financial Creditor forward an advance scanned copy of Company Petition filed under Section 95 of IBC before NCLT Kolkata Bench with attached pdf to Corporate Debtor and Personal Guarantor on email address "cmgductiles21@gmail.com. The applicant has not denied receipt of this email in its entire application. Thus, there is sufficient compliance of provision of Section 95(5) of IBC 2016 and Rule 7(3) of the IBBI(Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules 2019.
24. The respondent has served demand notice dated 31.11.2018 upon personal guarantor by way of speed post. The copy of demand notice dated 31.11.2018 with postal dispatch receipt has been placed on record of CP No. 220/KB/2024 at page no. 100 to 107. The demand notice in Form 'B' along with postal receipt has also been placed on record of CP No. 220/KB/2024 at page no. 401 to 407.

25. Hon'ble Supreme Court in case *of Madan & Co. (Supra)* held that if a registered letter addressed to a person at his residential address does not get served in the normal course and is returned, it can only be attributed to the addressee's own conduct. The relevant observation of Hon'ble Apex Court as follow:

“We are of opinion that the conclusion arrived at by the courts below is correct and should be upheld. It is true that the proviso to (i) of section 11(1) and the proviso to section 12(3) are intended for the protection of the tenant. Nevertheless it will be easy to see that too strict and literal a compliance of their language would be impractical and unworkable. The proviso insists that before any amount of rent can be said to be in arrears, a notice has to be served through posts. All that a landlord can do to comply with this provision is to post a prepaid registered letter (acknowledgement due or otherwise) containing the tenant's correct address. Once he does this and the letter is delivered to the post office, he has no control over it. It is then presumed to have been delivered to the addressee under s. 27 of the General Clauses Act. Under the rules of the post office, the letter is to be delivered to the addressee or a person authorised by him. Such a person may either accept the letter or decline to accept it. In either case, there is no difficulty, for the acceptance or refusal can be treated as a service on, and receipt by, the addressee. The difficulty is where the postman calls at the

address mentioned and is unable to contact the addressee or a person authorised to receive the letter. All that he can then do is to return it to the sender. The Indian Post Office Rules do not prescribe any detailed procedure regarding the delivery of such registered letters. When the postman is unable to deliver it on his first visit, the general practice is for the postman to attempt to deliver it on the next one or two days also before returning it to the sender. However, he has neither the power nor the time to make enquiries regarding the whereabouts of the addressee; he is not expected to detain the letter until the addressee chooses to return and accept it; and he is not authorised to affix the letter on the premises because of the assessee's absence. His responsibilities cannot, therefore, be equated to those of a process server entrusted with the responsibilities of serving the summons of a Court under Order V of the C.P.C. The statutory provision has to be interpreted in the context of this difficulty and in the light of the very limited role that the post office can play in such a task. If we interpret the provision as requiring that the letter must have been actually delivered to the addressee, we would be virtually rendering it a dead letter. The letter cannot be served where, as in this case, the tenant is away from the premises for some considerable time. Also, an addressee can easily avoid receiving the letter addressed to him without specifically refusing to receive it. He can so manipulate matters that it gets returned to

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of 8 the sender with vague endorsements such as "not found", "not in station", "addressee has left" and so on. It is suggested that a landlord, knowing that the tenant is away from station for some reasons, could go through the motions of posting a letter to him which he knows will not be served. Such a possibility cannot be excluded. But, as against this, if a registered letter addressed to a person at his residential address does not get served in the normal course and is returned, it can only be attributed to the addressee's own conduct. If he is staying in the premises, there is no reason why it should not be served on him. If he is compelled to be away for some time, all that he has to do is to leave necessary instructions with the postal authorities either to detain the letters addressed to him for some time until he returns or to forward them to the address where he has gone or to deliver them to some other person authorised by him. In this situation, we have to choose the more reasonable, effective, equitable and practical interpretation and that would be to read the words "served" as "sent by post", correctly and properly addressed to the tenant, and the word "receipt" as the tender of the letter by the postal peon at the address mentioned in the letter. No other interpretation, we think, will fit the situation as it is simply not possible for a landlord to ensure that a registered letter sent by him gets served on, or is received by, the tenant".

26. It is sufficiently proved that the Demand Notice dated 31.11.2018 and Form 'B' has been sent to the

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Respondent/Personal Guarantor as the same have been properly addressed, posted and pre-paid which is distinctly evident as per the records maintained by Financial Creditor while executing the Deed of Guarantee of the Respondent and attached with main petition. The submission of the Personal Guarantor is absolutely unreasonable and unfounded and the same could be understood from the relevant part from the Demand notices shown below.

27. Therefore, in view of our aforesaid observation and law applicable thereon, we do not found any merit in the present application and the same is hereby dismissed being devoid of merits.

28. Consequently, the present application stands disposed of with no order as to cost.

Rekha Kantilal Shah
Member(Technical)

Labh Singh
Member(Judicial)