

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT NO. I**

**I.A (IBC) 1676/KB/2024
IN
Company Petition (IB) No. 231/KB/2022**

***An Application under Section 95 of the Insolvency and
Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and
Bankruptcy (Application to Adjudicating Authority for Insolvency
Resolution Process of Personal Guarantor to Corporate Debtor)
Rules, 2019***

IN THE MATTER OF:

State Bank of India

...Applicant/ Financial creditor

Versus

MR. KAPIL SHROFF

...Personal Guarantor/ Respondent

Coram:

Smt. Bidisha Banerjee :

Member (Judicial)

Smt. Rekha Kantilal Shah:

Member (Technical)

Date of Pronouncement: 19.06.2025

APPEARANCE:

None

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The Court congregated through hybrid mode.

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2. The Present Application has been filed by **State Bank Of India**, the Applicant under Section 95 of Insolvency and Bankruptcy Code, 2016, read with Rule 7(2) of the insolvency and bankruptcy (application to Adjudicating Authority for Personal Insolvency Resolution Process for Personal Guarantor to Corporate Debtor), Rules 2019 for initiation of insolvency resolution process against **Mr. Kapil Shroff**, the Personal Guarantor to the Corporate Debtor, **Space Matrix Limited** of Rs **1,17,50,00,000.00 (Rs One Hundred Seventeen Crore Fifty Lakh Only)** as on **28.02.2022**.
3. The Hon'ble Adjudicating Authority vide order dated **28.08.2019** initiated CIRP of the Corporate Debtor.
4. As on 28.02.2022, an amount of Rs **1,17,50,00,000.00 (Rs One Hundred Seventeen Crore Fifty Lakh Only)** is payable by the Personal Guarantor to the Applicant bank together with future interest including penal interest and charges by virtue of the following documents:-
 - a. Agreement of personal guarantee dated 06.07.2010, 18.06.2011
 - b. Sanction letter dated 15.03.2010, 26.05.2011, 18.06.2011.
5. The recall notice was issued on 26.03.2018.
6. The Personal Guarantee under section 95 of the IBC, 2016 was invoked by the Applicant bank on 05.07.2021.
7. This Adjudicating Authority vide order dated **09.05.2024** appointed **Mr. Neeraj Kumar Surekha**, IBBI Registration No. **(IBBI/IPA-001/IP-P01539/2019-2020/12517)** as the Resolution Professional and the Resolution Professional was directed to submit a report in terms of section 99 of IBC, 2016 within ten days from the date of order.

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8. The Resolution Professional submitted that in accordance with Section 99(2) of the Code, he requested the Personal Guarantor to furnish any document proving repayment of the debt claimed, as unpaid, by the Creditor in its application dated **31.05.2022** within 7 days from the date of email dated **27.06.2024**. Further the RP has received letter from the Personal Guarantor stating that no amount is due and debt is time barred.
9. The Resolution Professional vide **IA(IBC)-1676/KB/2024** dated 20.06.2024 has filed its report before this Adjudicating Authority and after detailed examination of the Application along with the supporting documents thereof. The Resolution Professional has recommend that the Application filed by the creditor, viz., **State Bank Of India**, under Section 95(1) of the Code vide CP (IB) **No. 231/KB/2022** be admitted under Section 100(1) of the Code and the Insolvency Resolution Process be commenced against the Personal Guarantor, viz., **Kapil Shroff**.
10. In Response to the Report filed by the Resolution Professional, the Personal Guarantor filed its reply and raised the following objections on the maintainability of the Petition being time barred:
 - a. The Personal Guarantor did not receive Form B. However, the Personal Guarantor received Form B attached with this application, when the section 95 application was served to the Personal Guarantor.
 - b. The account of the Corporate Debtor, **Space Matrix Limited** turned NPA on 22 September 2017 and the Financial Creditor has issued demand Notice on 26.03.2018. The Present Application is filed on **31.05.2022**. Hence the present application is filed 4 years after the issuance of demand Notice 26.03.2018.

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11. Ld. Counsel for the Financial Creditor negated the Objections raised by the Personal Guarantors that the application is barred by limitation.

FINDING AND ANALYSIS

12. We have heard the learned counsel and perused the record. From the submission of learned counsel for the parties and materials on record following issues arise for consideration:
- I. Whether demand notice 26.03.2018 invoking guarantee was served on the applicant?
 - II. Whether Form B demand notice dated 05.07.2021 was ever served on the personal guarantor?

ISSUE NO. I

13. In the present case, the Applicant has attached only postal receipt of the demand notice 26.03.2018. No proof of service in the form of tracking report has been attached to application. In view of this, it is not clear whether the demand notice invoking personal guarantee was served on the respondent herein. Further, even if it is assumed that the notice was served on the applicant on 26.03.2018 and the present application was filed on 31.05.2022 before the Adjudicating Authority, it is clear that the present application was filed after 3 years from the notice. Hence the present application is barred by limitation.

ISSUE NO. II

14. The demand notice dated 05.07.2021 issued under Form B under rule 7(1) of the insolvency and bankruptcy (Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to

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Corporate Debtors rules ,2019) was not served upon the Respondent herein and no proof of service of Form B is attached to the Petition.

15. Under Rule 3(1)(e) of insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. 'Guarantor' is defined as under: -

“guarantor” means a debtor who is a personal guarantor to a corporate debtor and in respect of whom guarantee has been invoked by the creditor and remains unpaid in full or part;

In absence of valid invocation, application under section 95 is not maintainable.

16. Further, under Section 95(4)(b) of the Insolvency Bankruptcy Code, 2016 read with Rule 7(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, Form B demand notice must be mandatorily served upon the respondent before filing of any application under Section 95 of IBC.
17. The Financial Creditor could not produce any proof of Service of demand notice.
18. We would note that Service of Form B notice upon a Personal Guarantor is *sine qua non* to initiate a proceeding under Section 95 (1) of the IBC.
19. Having noted the glaring defect as above we have no alternative but to dismiss the present petition.
20. Hence, the **I.A (IBC) 1676/KB/2024 along with C.P. (IB)/231(KB)2022 is dismissed** with no costs.

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- 21.** The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 22.** Certified copy of the order may be issued, if applied for, upon compliance of all requisite formalities.

**Rekha Kantilal Shah
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

Signed On 19.06.2026

NKS(LRA)