

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI
COURT - IV

C.P. (IB) No. 902/MB/2021

[Under Section 95(1) of the Insolvency & Bankruptcy Code, 2016 r/w Rule 7(2) 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:

State Bank of India

Through Mr. Ashutosh Agarwala, IP

... Financial Creditor

V/s.

Mr. Vaibhav Lodha

(PAN: ABWFL5148B)

... Personal Guarantor

Pronounced: 06.07.2026

CORAM:

ANIL RAJ CHELLAN

HON'BLE MEMBER (TECHNICAL)

K.R. SAJI KUMAR

HON'BLE MEMBER (JUDICIAL)

Appearances: Hybrid

For the Financial Creditor

:

Adv. Pulkitesh Dutt Tiwari a/w.
Adv. Anjali Chauhan i/b.
Menon & Mankava.

For Personal Guarantor

:

Adv. Mahak Guru a/w. Adv.
Yash Jariwala.

ORDER

1. This Application is filed under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 (Code) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to the Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, by State Bank of India (Financial Creditor / Applicant) through Mr. Ashutosh Agarwala, Resolution Professional (RP), seeking initiation of Insolvency Resolution Process against Mr. Vaibhav Lodha (Personal Guarantor). The total debt claimed by the Financial Creditor is ₹1076.34 Crore as on 31.05.2021. The Date of Default, mentioned in Part III of the Application, is 01.12.2024.

2. **Submissions of Financial Creditor**

2.1 The Financial Creditor submits that Topworth Pipes & Tubes Pvt. Ltd., viz., the Corporate Debtor, availed various credit facilities in the form of term loans and working capital facilities from the Financial Creditor and other consortium lenders, dating back to the year 2008. As against the same, the Personal Guarantor executed a Deed of Guarantee dated 30.03.2015 in favour of the consortium of lenders (including the Applicant/Financial Creditor), guaranteeing due payment and discharge of the dues towards the said term loans and working capital facilities due and payable to the Financial Creditor, in the event of a default committed by the Corporate Debtor in repaying the same.

2.2 The Financial Creditor states that this Adjudicating Authority (AA), *vide* its Order dated 11.12.2018 in CP 1239/I&B/NCLT/MAH/2018, admitted the Corporate Debtor into Corporate Insolvency Resolution Process (CIRP) on account of default under various facilities availed by it under Section 7 of the Code. The Corporate Debtor was subsequently liquidated by this AA *vide* Order dated 12.06.2020 under Section 33 of the Code. Pursuant to the same, the Financial Creditor herein filed its claim with the Liquidator of the Corporate Debtor, and the same was

accepted and led to the recovery of a sum of ₹ 27.40 Crore to the benefit of the Financial Creditor.

2.3 The Financial Creditor submits that on account of the failure of the Corporate Debtor to service the outstanding amounts, a Demand Notice in Form B dated 21.06.2021 was issued to the Personal Guarantor herein, in terms of Section 95(4)(b) of the Code. It is stated that despite the same, the Personal Guarantor has failed to clear the said outstanding debt as on 31.05.2021, within fourteen days of the service of the demand notice. The breakdown of the default claimed by the Financial Creditor is as follows:

Break up of the dues (as on 31.05.2021)					
ACCOUNT NO	OUTSTANDING	Interest	Penal Interest	TOTAL INTEREST	TOTAL DUES
65096236088	19,88,14,934.92	1,07,17,04,225.04	13,14,97,450.92	1,20,32,01,675.96	1,40,20,16,610.88
62378648133	41,33,38,497.00	65,61,63,767.72	8,05,10,891.74	73,66,74,659.46	1,15,00,13,156.46
31567688229	4,61,32,100.00	1,10,22,57,137.55	13,52,46,274.55	1,23,75,03,412.10	1,28,36,35,512.10
34836328155	16,85,99,181.00	31,46,57,839.09	3,86,08,323.81	35,32,66,162.90	52,18,65,343.90
34836959792	1,70,81,453.00	3,18,79,237.71	39,11,562.91	3,57,90,800.62	5,28,72,253.62
37175008665	56,80,88,274.00	67,69,92,114.22	8,30,66,517.08	76,00,58,631.31	1,32,81,46,905.31
65276670422	1,34,78,00,000.00	1,40,86,52,666.96	17,28,40,818.03	1,58,14,93,485.00	2,92,92,93,485.00
36363615234	91,30,14,009.85	85,59,62,191.93	11,27,18,693.31	96,86,80,885.24	1,88,16,94,895.09
37362369891	8,47,67,900.00	4,78,49,042.45	58,71,048.15	5,37,20,090.60	13,84,87,990.60
37362502494	4,61,32,100.00	2,60,40,244.79	31,95,122.06	2,92,35,366.85	7,53,67,466.85
TOTAL	3,80,37,68,449.77	6,19,21,58,467.46	76,74,66,702.58	6,95,96,25,170.04	10,76,33,93,619.81

2.4 Pursuant to this AA's Order dated 11.06.2024, the Financial Creditor has filed an Additional Affidavit dated 14.10.2024, thereby furnishing copies of the Loan Agreement executed between the consortium of Lenders and the Corporate Debtor dated 27.04.2011, the Sanction Letter of Financial Creditor dated 30.03.2015, and the Recall Notice dated 01.02.2016 issued to the Corporate Debtor. The Financial Creditor has further filed Additional Affidavits to place on record a copy of the recovery application filed by a consortium lender (O.A. No. 67/2016) and also the financial statements of the Corporate Debtor for the financial year 2018, to establish that the debt is within the period of limitation. It is thus stated

that in the extant circumstances, Insolvency Resolution Process may be initiated against the Personal Guarantor herein.

3. Report of Resolution Professional (RP)

3.1 The RP appointed in the case examined the Application and filed his report stating as under:

“The RP has examined the Application and is satisfied that the requirements set out in Section 95 of the Code have been fulfilled. Further, the RP is also satisfied that the Financial Creditor has provided the necessary information and satisfactory explanation, as sought by the RP in relation to the Application.

In light of the above, the RP hereby recommends that the said Application under Section 95 of the Code should be accepted.”

4. Analysis and Findings

4.1. We have heard the Ld. Counsel appearing for the Financial Creditor and perused the records, including the report of the RP. The Personal Guarantor was issued court notice; however, he did not appear.

4.2. The present Application has been filed by the Applicant / Financial Creditor stating that various financial facilities were availed by the Corporate Debtor from a consortium of lending banks, which included the Financial Creditor herein. These facilities were subsequently restructured, as shown by the letter dated 30.03.2015. As security for the restructured facilities, the Corporate Debtor executed a Deed of Hypothecation dated 30.03.2015 in favor of Punjab National Bank, acting as Security Trustee, for the benefit of all lenders, more particularly mentioned in Schedule 1 thereof. The restructured facilities were also secured by the personal guarantee executed by the Personal Guarantor dated 30.03.2015. The Corporate Debtor defaulted in payment of dues in respect of the various facilities availed by it, resulting in the issuance of a recall notice dated 01.02.2016, followed by a demand notice dated

21.06.2021, to the Personal Guarantor. Following the initiation of CIRP against the Corporate Debtor and the liquidation of the assets of the Corporate Debtor, the Financial Creditor has filed the present Application to initiate Insolvency Resolution process against the Personal Guarantor.

- 4.3. It is observed that, despite granting multiple opportunities, the Respondent/Personal Guarantor has not entered appearance, and his right to file a reply was forfeited by this Tribunal vide order dated 26.04.2024. Nevertheless, it has been observed that the Respondent/Personal Guarantor did respond to the statutory demand notice dated 21.06.2021 issued by the Financial Creditor through his advocate's reply letter dated 01.07.2021. In this reply, the Respondent contests the claim of the Financial Creditor, asserting that it is neither due in law and/or in fact, and that he is not a guarantor after the date of discharge. It is further contended that the date of default, as per the bank notice, is 01.12.2014. The Financial Creditor subsequently filed an application under Section 7 of the Code, which was admitted, thereby initiating insolvency resolution process against the Corporate Debtor by order dated 11.12.2018. As no resolution plan was approved by the Committee of Creditors (CoC), the Corporate Debtor was ordered to be liquidated on 12.06.2020. In the liquidation process, the Corporate Debtor was sold as a going concern, and the sale proceeds were distributed by the liquidator among the creditors in proportion to their claims, thus settling those claims. Having accepted the recovery amount in the Corporate Debtor's liquidation process, the Financial Creditor is estopped from raising any further demand against the Respondent. Thus, the claims are fully discharged, and nothing remains due and payable under the guarantee deed.
- 4.4. Although no formal reply is filed by the Personal Guarantor in the present Application, we consider it appropriate to examine the contentions raised by him in the reply given to the Financial Creditor.

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- 4.5. It is pertinent to observe that the Financial Creditor has relied on the Deed of Guarantee dated 30.03.2015, executed by the Respondent in favour of Punjab National Bank acting for the Lenders as more particularly mentioned in the Common Debt Restructuring Agreement dated 30.03.2015. However, the Financial Creditor has not produced a copy of the Common Debt Restructuring Agreement to identify the beneficiaries of the Deed of Guarantee. It is, however, observed from the Supplemental Deed of Hypothecation executed on the same day that the Financial Creditor is among the various Lenders participating in the consortium arrangement. Furthermore, the reply given by the Respondent has not contested the execution/furnishing of the Guarantee in favour of the Financial Creditor to secure the facilities granted to the Corporate Debtor. In the circumstances, the Personal Guarantor can reasonably be regarded as one of the guarantors to the Corporate Debtor in relation to the Applicant.
- 4.6. As the Financial Creditor has relied on the Deed of Guarantee dated 30.03.2015, we may notice the relevant provision in the Deed of Guarantee regarding the invocation of the guarantee:

“3.1 In the event of any default on the part of the Borrower in payment/repayment or reimbursement of any of the moneys referred to in Section 2 above (whether at stated maturity, upon acceleration or otherwise), or in the event of any default on the part of the Borrower to comply with or perform any of the terms, conditions and covenants contained in the Restructuring Agreement, the Guarantor shall, upon demand, in writing, forthwith pay to the Lenders without demur, all the amounts payable by the Borrower under the Restructuring Agreement and any other agreements. Any such demand made by any of the Lenders on the Guarantor shall be final, conclusive and binding notwithstanding any difference or any dispute between the Lenders and the Borrower or the Lenders and the Guarantor or the Borrower and the Guarantor or the Borrower and

any other Person, and/or any other legal proceedings, pending before any court, tribunal, arbitrator or any other authority”.

- 4.7. The Applicant asserts that a recall notice was issued on 01.02.2016 calling upon the Corporate Debtor to pay the outstanding sum of Rs.188.15 Crore as on 31.01.2016, with further interest to be charged from that date till payment within 7 days from the receipt of the notice. A copy of the said recall notice was marked to the Guarantors, including the Respondent/Personal Guarantor herein, thereby constituting an invocation of the guarantee. It is further submitted that, the principle laid down in the judgment rendered by the Hon'ble NCLAT in Mrs. Asha Basantilal Surana v. State Bank of India & Ors [(2025) ibclaw.in 359 NCLAT] that Section 13(2) SARFAESI notice with specific demand also addressed to the personal guarantor is sufficient to constitute invocation of guarantee, supports the Applicant's case.
- 4.8. However, in the case on hand, it is noteworthy that the recall notice, though copied to the Respondent, does not refer to any deed of guarantee nor does it include a demand directed at the Respondent/Personal Guarantor. It remains ambiguous whether the copy was sent to the Respondent in his capacity as director or as guarantor. Furthermore, clause 3.1 of the Deed of Guarantee stipulates that in the event of default by the Corporate Debtor/principal borrower, the Lender is required to call upon the Respondent/Guarantor in writing to make the payment under the Deed of Guarantee. Until a demand for payment of the defaulted amount is issued to the Personal Guarantor, it cannot be construed that the guarantee has been duly invoked. In the case of Mrs. Asha Basantilal Surana (supra), the Adjudicating Authority took the view that, apart from the Section 13(2) notice under the SARFAESI Act, 2002, no other notice was issued to the personal guarantor; hence, the application was premature. The Hon'ble NCLAT, in reversing the order of the Adjudicating Authority, held that if the notice issued under Section 13(2) makes a demand as per the guarantee agreement between the parties, the notice should be treated as a notice

for the invocation of the guarantee. However, the above judgment cannot be read to mean that no demand on the guarantor is required for the invocation of the guarantee. In the present case, the notice dated 01.02.2016 is addressed to the Corporate Debtor, calling upon it to make the payment. Merely marking a copy of the recall notice to the guarantor cannot be considered a proper invocation of the guarantee as per the terms of the Deed of Guarantee. Hence, we are of the view that the Financial Creditor has not produced any invocation of the guarantee against the Personal Guarantor.

- 4.9. This takes us to the question of whether the statutory notice in Form B issued on 21.06.2021 can be treated as a proper invocation of the guarantee, as the Personal Guarantor has acknowledged the notice and replied to the same. The Hon'ble NCLAT in *State Bank of India v. Mr. Deepak Kumar Singhania* [(2025) ibclaw.in 153 NCLAT] examined this issue and held as under:

“27. In view of the forgoing discussion, we are not persuaded to accept the submission of the Appellant that Notice under Rule 7 (i) issued in Form-B to the Guarantor, demanding repayment of the default amount, has to be treated as Notice for invoking guarantee. Default before issuance of Notice under Rule 7(1), must exist on the part of the Guarantor. Hence, we reject the submission of the Appellant that Notice under Rule 7, sub rule (i) is a Notice, invoking the guarantee. We, thus, do not find any error in the order of the Adjudicating Authority, rejecting Section 95 application filed by the SBI. There is no merit in the Appeal. The Appeal is dismissed. There shall be no order as to costs.”

- 4.10. Thus, the notice issued under Rule 7 in Form B cannot be regarded as an invocation of guarantee in terms of the Deed of Guarantee.
- 4.11. In view of the above discussions and based on the decision in *Mr. Deepak Kumar Singhania* (supra), we conclude that the Financial Creditor has not established a cause of action to file an application under

Section 95 of the Code. Hence, the question of considering the limitation raised by the Respondent in the reply notice does not arise.

4.12. As a result, C.P.(IB) No. 902/MB/2021 filed by the Financial Creditor under Section 95 of the Code is **rejected**. No order as to costs.

Sd/-

ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Sd/-

K. R. SAJI KUMAR
MEMBER (JUDICIAL)