IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI

COURT – IV

C.P. (IB) NO.790/MB/2021

[Under Section 95(1) of the Insolvency and 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

Central Bank of India

... Financial Creditor

V/s.

Mr. Ashok Pranjivan Bosmiya

… Personal Guarantor

Pronounced: 22.07.2026

CORAM:

SHRI ANIL RAJ CHELLAN	**SHRI K. R. SAJI KUMAR**
HON'BLE MEMBER (TECHNICAL)	**HON'BLE MEMBER (JUDICIAL)**

Appearances	***: Hybrid***	
For Financial Creditor	:	Adv. Rohit Giri a/w Adv. Raina Birla, Adv. Henna Jain.
For Personal Guarantor/Respondent	:	Adv. Atishay Jain a/w Adv. Tanushree Sogani i/b Adv. Kunal Kanungo.

For Resolution Professional : Adv. Suraj Chaudhary i/b Adv. Akash Shah.

ORDER

[PER: K. R. SAJI KUMAR, MEMBER (J)]

1. BACKGROUND

1.1. The captioned Application has been filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 (Code/IBC) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (PG to CD Rules) by Central Bank of India, the Applicant/Financial Creditor (FC), for the purpose of initiating insolvency resolution process against Mr. Ashok Pranjivan Bosmiya, the Respondent/Personal Guarantor (PG). The date of default, mentioned in Part III of the Application, is corrected to 11.12.2018 through Rejoinder dated 30.06.2022 filed by the Applicant.

1.2. The total debt mentioned in Part III of the Application is Rs.74,19,85,816/- (Seventy-Four Crore Nineteen Lakh Eighty-Five Thousand Eight Hundred and Sixteen Rupees) as on 31.12.2020. The date on which the personal guarantee was claimed to be invoked by way of Legal Notice to the Respondent/PG is 21.10.2020.

2. SUBMISSIONS OF APPLICANT

2.1. It is submitted that Rashmi Housing Pvt. Ltd., the Corporate Debtor (CD) was sanctioned a Term Loan facility of Rs. 65,00,00,000/- vide Sanction Letter dated 08.03.2020 towards development of a low-cost residential project for Rashmi Heights, (A to D wing), Rashmi Classic (A to K wing) and Rashmi Heights (E to F Wings) situated at Village-Achole, Taluka Vasai, District-Thane, Maharashtra.

2.2. The Sanction Letter was accepted in the Board Resolution of the CD on 14.03.2013 and the Respondent/PG, along with other co-guarantors, executed a 'Form of Guarantee for Advances & Credits Generally' (Form of Guarantee) dated 25.03.2013, with several other documents. The CD failed to pay the said loan amount, and therefore, the account of the CD was declared Non-Performing Asset (NPA) on 29.12.2016.

2.3. Due to the irregularities in repayment of dues, the Applicant/FC was constrained to issue Loan Recall Notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 dated 10.01.2017, calling upon the CD to make the outstanding payment in respect of the default made and in view of its account being classified as NPA.

2.4. It is submitted that the CD was admitted into Corporate Insolvency Resolution Process (CIRP) under Section 7 of the Code vide order dated 14.12.2018 in CP.3119/MB/2018 by NCLT Mumbai Bench. It is further submitted that in view of the subsisting default by the CD, the Applicant/FC issued a Legal Notice dated 21.10.2020 upon the Respondent/PG, invoking the personal guarantee given by him.

2.5. Further, Applicant filed an Original Application before the Debt Recovery Tribunal (DRT) for recovery of the outstanding loan amount payable by the CD in O.A. No. 374 of 2020, and thereafter, issued a Legal Notice dated 14.12.2020 to the Respondent, in Form B under Rule 7(1) of the PG to CD Rules, demanding payment within fourteen days of the Notice. However, the Respondent has failed to reply to the said Notice and also to repay the default amount despite having received the same. In the above background, the Applicant prays that insolvency resolution process be initiated against the Respondent under Section 95 of the IBC.

3. **CONTENTIONS OF RESPONDENT/PG**

3.1. The Respondent/PG submits that the Application is frivolous, false, baseless and is misconceived on several grounds and the Respondent is not liable for any amount wrongly claimed by the Applicant, and hence, it is not maintainable. It is contended that the date of default mentioned in Part III of the Application is 29.12.2016 but the Application is filed on 03.08.2021, hence, it is barred by limitation, as it has been filed beyond the period of 3 years from the date of default. The right to claim and the alleged debt are severely barred by limitation in terms of Section 18 of the Limitation Act,1963 (Limitation Act). The Applicant failed to place on record any acknowledgement of debt for the purpose of renewing or extending the period of limitation as prescribed under Sec 18 of the Limitation Act, and on this ground alone the Application deserves to be dismissed.

3.2. Although the Applicant claims to have issued a Legal Notice dated 21.10.2020, allegedly invoking the personal guarantee furnished by the Respondent, after a period of more than 3 years, yet the Applicant was obligated to serve notice on the Respondent for invoking the guarantee in respect of the Term Loan availed by the CD. The Respondent has never received any such notice from the Applicant. The Applicant failed to issue such notice and neglected to follow its own procedure, and furthermore, failed to mention the same in the Application, which clearly shows their dishonest conduct. Since the Applicant has failed to invoke the guarantee, the Application is liable to be dismissed.

3.3. It is also submitted that the Form B Demand Notice, alleged to have been issued by the Applicant, has never been received by the Respondent. The Applicant has only annexed some postal receipts attempting to prove successful proof of service; however, the same cannot be considered as proof of service as the same is not supported by the tracking report or acknowledgment, and therefore, cannot be relied upon. It is a settled principle of law that without successful service of the Demand Notice in Form B on the personal guarantor, a creditor cannot invoke the personal guarantee. Therefore, the said demand notice is not maintainable in the eyes of law. In view of the factual matrix of the case, the Application only deserves to be dismissed.

4. REJOINDER BY APPLICANT

4.1. The Applicant filed the Rejoinder dated 28.06.2022, explaining that the date of default mentioned in Part III of the Application is to be read as “11.12.2018” instead of “29.12.2026”. The Applicant further submits that the date of default mentioned in Part III of the Application is a typographical error. The correct date of default is 11.12.2018, and the same is also evident from the Demand Notice in Form B dated 14.12.2020, and therefore, the Application is not barred by limitation and is maintainable. The contention of the Respondent is groundless, and the Respondent is causing grave prejudice to the interest of the Applicant by taking recourse to such a contention.

4.2. It is further clarified that the guarantee was invoked vide Legal Notice dated 21.10.2020 by registered post, which was duly received by the Respondent, and in view of which only OA No. 187 of 2021 was filed before the Ld. DRT on 24.11.2020. It is also stated that the Applicant apprehends that the notice was delivered to the Respondent as the Respondent never contested the default committed by him and he also never replied to any of the notices sent by the Applicant, including the Legal Notice and Form B Demand Notice.

4.3. The Applicant further clarifies that the Demand Notice dated 14.12.2020 in Form B was duly served on the Respondent by registered post and the said Notice along with its postal receipts are annexed to the Application, which itself is proof of serving the Demand Notice. In any case, the mere allegation of non-receipt of the Demand Notice does not justify that the Respondent has not defaulted in satisfying the debt guaranteed by him.

5. REPORT OF RP

5.1. This Tribunal vide order dated 12.03.2024, appointed Ms. Palak Swapnil Desai as the Resolution Professional (RP), having Registration No. IBBI/IPA-001/IP-

P01517/2019-2020/12515, to examine the present Application and file her report within 10 days from the date of communication of the said order.

5.2. The RP submitted the report under Section 99 of the Code vide IA No.2699/2024, which was taken on record on 06.09.2024. As per the report, the RP addressed an email dated 30.04.2024, requesting the Respondent to furnish information related to his financial standing and assets owned by him, by 03.05.2024. Further, she sent reminders to the Respondent on 04.05.2024 and 07.05.2024. In reply to the emails sent by the RP, the Respondent submitted his account statement of Bank of Baroda and information relating to certain commercial premises in Thane. It was further informed by the Respondent that he had not filed income tax returns from the financial years 2019 to 2024 due to the ongoing CIRP of the CD. The RP further states that the Respondent also failed to produce any proof of payment. Therefore, RP is of the view that the financial debt continues to be due and payable and that he is in default.

5.3. The RP has stated in her report that she has complied with the requirements of Section 99 of the Code, and hence, the present Application is fit for admission by this Tribunal under Section 100. The relevant portion of the RP's report is reproduced below:

"*<u>RECOMMENDATION BY THE RP FOR ACCEPTING THE PRESENT</u>*
<u>APPLICATION</u>

The RP has duly examined the application filed by Central Bank of India against Mr. Ashok Pranjivan Bosmiya Under Section 95 of IB Code and found as follows:

3.2.1 The application satisfies the requirements set-out under Section 95, specifically Section 95 (4) of IB Code.

3.2.2 The applicant was able to satisfy the RP in respect of his various queries specifically in relation to any payment received after delivery of demand notice.

3.2.3 The Personal Guarantor Mr. Ashok Pranjivan Bosmiya failed to produce any proof of repayment of financial debt due & Payable.

It is most humbly submitted that, C.P. (IB) 790 (MB) 2021 is recommended for acceptance."

6. ANALYSIS AND FINDINGS

6.1. We have heard both the Ld. Counsel for the Applicant/FC and the Respondent/PG and perused the documents on record.

6.2. It is not disputed that the Applicant sanctioned the Term Loan Limit of Rs.65 Crore to Rashmi Housing Private Limited, the CD, towards development of low-cost residential project for Rashmi Heights in Achole Village, Vasai Taluka, Thane District, Maharashtra. Against the Term Loan, an amount of Rs.33,19,15,549/- was disbursed by the Applicant. It is also not disputed that as part of the loan sanction, personal guarantees were provided by three directors of the CD, including the Respondent herein, on 25.03.2013. There is no further dispute as to the default committed by the principal borrower, the CD, in repayment of the Term Loan, and its account was declared NPA on 29.12.2016, resulting in initiation of CIRP in respect of the CD in C.P.(IB) No.3119/MB/2018, by NCLT Mumbai. It has been brought on record that an IA No. 1458 of 2020 has since been filed seeking liquidation of the CD. The main dispute in the present Application revolves around the invocation of guarantee by the Applicant affecting limitation in filing the present Application under Section 95 of the Code. It is submitted by the Applicant that the Legal Notice was issued to the Respondent on 21.10.2020, thereby invoking the personal guarantee executed by the Respondent and the other guarantors, who are directors of the CD. The Applicant filed O.A. No. 374of 2020 before the Ld. DRT for recovery of money. It is submitted by the Applicant that subsequently, the Demand Notice dated 14.12.2020 was issued in Form B, in terms of Rule 7(1) of the PG to CD Rules, and the same was served upon the Respondent by way of speed post, thereby completing the proof of service. Since no reply has been received, the Applicant filed the present Application to initiate the insolvency resolution process against the Respondent.

6.3. The records reveal that the Respondent executed the Form of Guarantee on 25.03.2013, in favour of the Applicant against the financial facility provided to the principal borrower, i.e., the CD, thereby agreeing to pay/perform the obligations in the event of default/breach of terms agreed to by the CD. Further, it is provided in the Form of Guarantee that any demand of payment or notice under the guarantee shall be sufficiently given, if sent by letter, at the address of the Respondent, as specified in Clause 3 of the Form of Guarantee. The Respondent has signed, executed and delivered the Form of Guarantee. All letters relating to sanction of financial facility and renewal of the financial facility, addressed to the Respondent, are produced by the Applicant. The Applicant affirms, by the Legal Notice dated 21.10.2020 addressed to the Respondent, that the guarantee was invoked.

6.4. However, it is the case of the Respondent that (i) the Application is barred by limitation as per Section 18 of the Limitation Act; (ii) the Applicant failed to invoke the guarantee in respect of the Term Loan; and (iii) Form B Demand Notice was not served on him. On examination of Part III of the Application, it is observed that the date of default mentioned is 29.12.2016, which is the date on which the account of the CD was declared as NPA by the Applicant. The present Application was filed on 03.08.2021. Therefore, it is contended by the Respondent that the Application was filed beyond three years from the date of default and is hit by Section 18 of the Limitation Act. According to the Respondent, since the Applicant has not succeeded in producing convincing evidence relating to acknowledgment of debt within the stipulated period under the law, the Application is time-barred. But the Applicant in their Rejoinder dated 28.06.2022, submitted that the correct date of default is 11.12.2018, and not 29.12.2016. According to them, the date of default mentioned in Part III is a typographical error. Hence, it was clarified by the Applicant that the correct date of default is 11.12.2018, as has already been mentioned in Form B Demand Notice dated 14.12.2020, issued under Rule 7(1) of the PG to CD

Rules. The law is settled that a guarantor's liability depends on the terms of the contract of guarantee, and the dates of default of the principal borrower and the guarantor need not be the same. Nevertheless, this has been explained by the Applicant in their Rejoinder by stating that the guarantee was invoked on 21.10.2020, when a Legal Notice was communicated to the Respondent. Therefore, the Applicant affirms that the period of limitation for initiating insolvency process against the Respondent is three years from the invocation of the personal guarantee on 21.10.2020.

6.5. It is also important to consider the relevant Clause relating to invocation of guarantee in terms of the Form of Guarantee. Clause 7 of the Form of Guarantee dated 25.03.2013, provides that it shall be a continuing guarantee, stating that *"…this guarantee shall* ***continue to remain in force*** *and* ***I/we shall continue to liable there under*** *for all the amounts* ***due and payable to you by the principal/s*** *gets and even though the amounts due from the principal/s gets time barred and you cannot recover the same from principal/s by filling a suit or any legal proceedings against the principal/s."* (emphasis supplied).

6.6. The Ld. Counsel for the Applicant submits that the Respondent cannot therefore be absolved from his liability to pay off the debt and default committed by the principal borrower. It is also relevant to consider Clause 3 of the Form of Guarantee:

"3. We agree that the amount hereby guaranteed shall be ***due and payable to you on your serving me/us with notice requiring payment*** *of the amount and such notice shall be* ***deemed to have been served on me/us*** *either by actual delivery thereof to me/us by dispatch thereof to me/us* ***by registered post at*** *my/our address written hereunder* ***or any other address in India****, to which I/We may be written intimation given to the Bank request notices addressed to me/us to be dispatched. Any notice* ***dispatched by the Bank by the registered post to me/us at the address to which it is required to be dispatched*** *by this clause shall* ***be deemed to have been duly served on me/us at the time*** *when the notice would* ***in the ordinary course of post be delivered at the address*** *notwithstanding that* ***the notice may not in fact have been delivered to me****/us*

or that the ***address to which it is dispatched may have ceased to be my/our address****."* (emphasis supplied).

6.7. From the above, it is seen that issuing the notice on Respondent for the amount being due and payable under the guarantee is a pre-condition in terms of the Form of Guarantee. The postal receipt produced by the Applicant as Annexure 2 shows that it was booked on 27.10.2020 to the three addresses of the Respondent, viz, (i) Vasai East, PIN: 401208; (ii) Mira Road PIN 401107; and (iii) Sahar P and T Colony, PIN: 400099. The acknowledgments indicate that the addressee (Respondent herein) received the registered Legal Notice at the two premises, viz., (i) 601-608, Classic Pentagon, Western Express Highway Chikuwadi, Andheri (East) Mumbai-400099; and (ii) B-215, 1st Floor, Shanti Shopping Centre, Opp. Mira Road Railway Station, Mira Road (E), Dist. Thane, PIN: 401107. The registered Legal Notice is seen to have been received by the Respondent on 29.10.2020, two days after it was booked. It is not the defence of the Respondent that no registered Legal Notice was issued by the Applicant invoking the guarantee on 21.10.2020, but he contends that he has not received the Legal Notice. On a perusal of the acknowledgment cards, it is seen that they are acknowledged by the addressee with signatures. The Respondent has no case that any unauthorised person has received the aforesaid registered Legal Notice on his behalf. Even otherwise, as per the terms of guarantee, the amount guaranteed by the Respondent shall be due and payable upon serving of a notice requiring payment and such notice shall be deemed to have been served on the Respondent either by actual delivery or by dispatch by registered post at his address or any other address in India to which the Respondent intimated the Applicant to be dispatched. Further, any notice dispatched by the Applicant by a registered post at the address to which it is required to be dispatched shall be deemed to have been duly served upon the Respondent at the time when notice would in the ordinary course of post be delivered at the address notwithstanding that the notice may not in fact have been delivered to the Respondent or not. In view of the above agreed terms, the Respondent cannot legally take a contention that the Legal Notice invoking guarantee has not been served upon him.

6.8. Furthermore, Paragraph 1 of the Legal Notice dated 21.10.2020 invoking guarantee has clearly mentioned the name of the Respondent, being a director of the CD, along with other guarantors, who guaranteed in his personal capacity the repayment of the entire outstanding due to the Applicant from the principal borrower. The Legal Notice clearly states that the guarantors are jointly and severally liable to pay the entire dues. Under Section 128 of the Indian Contract Act, 1872, the liability of the guarantor is coextensive with that of the principal debtor, unless otherwise stipulated in the contract. Since by the Legal Notice dated 21.10.2020, the Applicant demanded payment of the total outstanding amount of Rs.71,71,56,932.23/- forthwith, the period of limitation to file the present Application would run only from that date. The Application was filed on 03.08.2021, and hence, the same is well within the limitation period. In view of the above, we are satisfied that the Applicant has succeeded in proving the limitation and that the guarantee executed by the Respondent was validly invoked. Hence, they are entitled to file the present Application under Section 95 of the Code.

6.9. The next contention of the Respondent is that he had not received Form B Demand Notice dated 14.12.2020 sent by the Applicant. On examination of the Demand Notice, it is seen that the same was addressed to '1505-1506, Agarwal Residency, Building 2C, Shankar Lane, Near Adarsh Dughdalay, Kandivilli (W), Mumbai- 400067'. The Applicant has produced postal receipts showing that the Demand Notice was booked on 15.12.2020 at the 'Kandivilli (W), Mumbai- 400067' address. The Respondent is shown as the Personal Guarantor to the CD, in his capacity as the director of the CD. The Annexure II-A to the Term Loan produced by the Applicant also contains the same address of the Respondent. In view of the above, we are satisfied that Form B Demand Notice has been validly served on the Respondent. There is nothing to show that the Respondent has repaid the debt within the stipulated period of fourteen days of service of the Demand Notice in terms of Section 96(4)(b) of the IBC read with Rule 7(1) of the PG to CD Rules. Therefore, the contention of the Respondent that the Demand Notice was not served on him is rejected.

6.10. We further note that this Tribunal appointed Ms. Palak Swapnil Desai, as the RP *vide* Order dated 12.03.2024, who was directed to prepare and file the report under Section 99 of the IBC. The RP, after due examination of the Application, has duly complied with Section 99 of the IBC, filed the report dated 06.09.2024, recommending for approval of the present Application under Section 100 of the Code and initiation of insolvency resolution process against the Respondent/PG.

6.11. In view of the foregoing, we are of the considered view that the captioned Company Petition is complete in all aspects, and is fit for admission.

ORDER

In view of the above discussions, **C.P. (IB) No. 790/MB/2021** filed under Section 95 of the Code is **admitted** and the Insolvency Resolution Process stands initiated against **Mr. Ashok Pranjivan Bosmiya**, viz., the Respondent/Personal Guarantor to the Corporate Debtor.

We hereby direct:

I. Initiation of Insolvency Resolution Process against the Respondent/Personal Guarantor and moratorium in relation to all his debts is declared, from today i.e., date of admission of this 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, in terms of Section 101 of the Code. During the moratorium period:

a. Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;

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;

II. The Resolution Professional viz., **Ms. Palak Swapnil Desai,** Insolvency Resolution Professional, having Registration No. IBBI/IPA-001/IP-P-01517/2019-2020/12515, having address at 901, 9th Floor, Park Vistas, Lallubhai Park Road, Near MTNL, Andheri (West), Mmbai-400058, Mumbai City, Maharashtra, 400058 [E-Mail: palakdesai77@gmail.com] is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 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.

III. The publication of notice shall be made in two newspapers, one in English and other in Vernacular, which have wide circulation in the State where the debtor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.

IV. The Resolution Professional, in terms of Section 104, shall prepare a list of creditors on the basis of:

a. the information disclosed in the application filed by the debtor under Sections 94 or 95, as the case may be, and

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

V. 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.

VI. The repayment plan may authorise 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.

VII. The repayment plan shall include the following, namely-

a. justification for preparation of such repayment plan and reasons based on which the creditors may agree upon the plan;

b. provision for payment of fee to the Resolution Professional;

c. such other matters as may be specified.

VIII. The Resolution Professional shall submit the Repayment Plan along with her 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.

IX. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, she shall record the reasons thereof. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, she shall specify the details as provided under Section 106(3) of IBC. The date of 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 IBC, 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 IBC.

X. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 and 111 of IBC. The Resolution Professional shall prepare a report of the meeting of the creditors on Repayment Plan with all details as provided under Section 112 of the IBC, 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 her functions and duties in compliance with the Code of Conduct provided under Section 208 of the IBC.

XI. The Resolution Professional shall submit her periodic reports before this Tribunal, every 30 days.

XII. The Applicant is directed to deposit Rs. 3,00,000/- (Three Lakh Rupees) to the bank account of the Resolution Professional within one week, towards initial expenses. The fee of the Resolution Professional shall be subject to the regulations made by the Insolvency and Bankruptcy Board of India (IBBI).

XIII. The Designated Registrar is directed to communicate a copy of the Order, report, and Application electronically to the IBBI for information and record.

Sd/-
ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)

Sanika, LRA