IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-V

I.A. NO.4290/2024
IN
Restored CP IB NO. 10/(ND)/2023

IN THE MATTER OF:

STATE BANK OF INDIA

.....PETITIONER/CREDITOR

VERSUS

SMT. NEENA MITTAL

....RESPONDENT/PERSONAL GUARANTOR

IN THE MATTER OF:

DEEPAK MITTAL

....RESOLUTION PROFESSIONAL

Order Delivered On: 13.08.2026

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)

MS. REENA SINHA PURI,
HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant :

For the Respondent :

For the RP : Mr. Rajdeep Saraf, Mr. Chaitanya Dixit, Mr. Deepak Mittal, Advs., Adv. Kavita

For SBI : Adv. Prafful Saini, Adv. Harshit Khare

ORDER

1. The present application has been filed by State Bank of India under Section 95(1) of the IBC[1], read with Rule 7(2) of the Rules[2] for insolvency resolution process for personal guarantors against Smt. Neena Mittal, the Personal Guarantor for the total outstanding default amount of Rs. 72,72,56,271/- as on 08.02.2019.

2. The Applicant, State Bank of India had extended loan facilities to M/s Santosh Overseas Limited from the year 2015. The said loan facilities were renewed/enhanced from time to time and were secured, inter alia, by the personal guarantee of Smt. Neena Mittal. It is stated that the borrower company as well as the personal guarantors failed to adhere to the financial terms and conditions, whereupon the account was classified as NPA on 31.03.2017.

3. The Applicant issued a demand notice dated 29.06.2021. Despite issuance of the said notice, the guarantors failed to discharge the outstanding dues. Accordingly, State Bank of India filed the present application under Section 95(1) of the IBC, read with Rule 7(2) of the aforesaid Rules for initiation of the insolvency resolution process against the Personal Guarantor.

[1] Insolvency and Bankruptcy Code, 2016
[2] Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution process for Personal Guarantors to Corporate Debtors) rules 2019

4. This Adjudicating Authority vide order dated 30.07.2024 appointed Mr. Deepak Mittal, having Registration No. IBBI/IPA-001/IP-P-02096/2020-2021/13264 as the Resolution Professional and directed him to file a report in terms of Section 99 of IBC. The Resolution Professional submitted his report under Section 99, vide IA-4290/2024. A copy of the Report along with the application was served upon the Financial Creditor as well as the Personal Guarantor. The Personal Guarantor appeared through his counsel and filed a detailed reply to the Report submitted by the Resolution Professional.

RECOMMENDATIONS OF THE RESOLUTION PROFESSIONAL:

5. The Resolution Professional has, inter alia, made the following recommendations:

   i. The Application filed by the Creditor satisfies the requirements prescribed under Section 95 of the IBC.

   ii. The Corporate Debtor, being the principal borrower, and the Personal Guarantor have committed default in repayment of the loan facilities availed from State Bank of India.

   iii. The Agreement of Guarantee executed by the Personal Guarantor is in the nature of a continuing guarantee.

   iv. In view of the facts and circumstances, and upon consideration of the requirements for admission under the IBC, the insolvency resolution process against Smt. Neena Mittal, Personal Guarantor be initiated by admitting admission of the present Application filed by State Bank of India

REPLY/OBJECTIONS FILED ON BEHALF OF THE PERSONAL GUARANTOR

6. The Personal Guarantor has stated that the Application filed under section 95 of the IBC is deceptive, distorted, evasive, fictitious and unsanctioned. The date of default mentioned in the present Application is contrary to the date of default mentioned in the notice under section 13(2) of the SARFAESI Act. The averments and imputations made in the demand notice are contrary to and inconsistent with the record. The provisions contained in Part III of the IBC, including Section 95, 99 and 100, along with the applicable Rules and Regulations, are manifestly arbitrary, illegal and unconstitutional, being violative of fundamental rights.

7. It is contended that the consortium failed to implement the sanctioned package. The Applicant has acted illegally, invalidly, arbitrarily and vexatiously, inasmuch as, on the one hand, it participated in the resolution process of the Corporate Debtor as a member of the Committee of Creditors, and on the other hand it continued to pursue proceedings OA filed against the Personal Guarantors along with other banks before the Debts Recovery Tribunal, Delhi.

8. It is further submitted that upon conclusion of insolvency proceedings against the principal debtor, all claims against the principal debtor stand

extinguished and, consequently, the guarantor also stands discharged. The present Application is barred by limitation and the Applicant Bank has failed to furnish proper calculation of the amount claimed. The Applicant is not entitled to recovery any amount from the Personal Guarantor.

ANALYSIS AND FINDINGS

9. We have heard learned counsels appearing for the Resolution Professional, the Financial Creditor and the Personal Guarantor, and have perused the material placed on record.

10. Learned Counsel appearing for the Resolution Professional has taken us through the report filed under Section 99 of the Code as well as the relevant documents on the basis of which the Resolution Professional has recommended initiation of the insolvency resolution process against the Personal Guarantor.

11. One of the principal objections raised by the Personal Guarantor is that the present Application under Section 95 of the IBC is barred by limitation, and that the date of default mentioned in the present Application differs from the date mentioned in the notice issued under Section 13(2) of the SARFAESI Act. We are unable to accept the aforesaid objection.

12. In the present case, the liability of the principal borrower and that of the Personal Guarantor arise from distinct legal obligations. The period of

limitation in respect of the Personal Guarantor is to be examined with reference to the guarantee obligations and the demand raised upon the guarantor. As per Clause 8 of the Agreement of Guarantee[3] dated 10.07.2015, the guarantee is in the nature of a continuing guarantee. The liability of the guarantor continues so long as the debt remains unpaid and there is no discharge of the guarantee in accordance with law. The limitation against the Personal Guarantor would, therefore, commence upon failure to comply with the demand raised under the guarantee. In the case at hand, the demand notice was issued on 29.06.2021. The Personal Guarantor failed to discharge the liability within the time stipulated therein. The present Application was filed on 27.08.2021. Therefore, the Application is within the prescribed period of limitation.

13. The next objection raised by the Personal Guarantor is that the Applicant cannot independently initiate proceedings and that any action for recovery must be undertaken only through the lead bank. The said contention is misconceived and contrary to the statutory framework under Section 95 of the IBC. Section 95 permits a creditor to file an application either by itself, jointly with other creditors, or through a resolution professional. The provision does not require all consortium lenders to collectively institute proceedings against a personal guarantor. In *Dheeraj Wadhawan v. Union Bank of India & Anr.*[4], decided on

[3] Page 86 of the Petition
[4] Company Appeal (AT) (Ins.) Nos. 863 of 2024 & 1135 of 2024

14.08.2024, the Hon'ble NCLAT, while considering initiation of proceedings under Section 95 of the IBC by a consortium lender, observed in Para 25 as under:

As far as Section 95 is concerned, it is categorically provided that applicant can file either by himself, or jointly with other creditors, or through a resolution professional but it is nowhere provided that if there are more financial creditors then all have to file the same collectively.

14. The same position was reiterated by the Hon'ble NCLAT in *Amit Dineshchandra Patel v. State Bank of India & Anr.*[5], decided on 03.01.2025, wherein it was held in para 19 as under:

...Further, from the statutory construct point of view also, Section 95 of IBC clearly provides that a Section 95 application can be filed by a creditor in his individual capacity or jointly with other creditors or through a RP. It nowhere lays down any prescription that if the credit facility has been extended by more than one financial creditor, the Section 95 application is required to be filed collectively.

15. In view of the aforesaid statutory position and the decisions of the Hon'ble NCLAT, we hold that an individual consortium lender is competent to file an application under Section 95 of the Code. The

[5] Company Appeal (AT) (Ins.) Nos. 1826 & 1827 of 2024

objection raised by the Personal Guarantor on this ground is accordingly rejected.

16. The Personal Guarantor has further contended that since insolvency/liquidation proceedings in respect of the Corporate Debtor have concluded or are continuing, the Personal Guarantor stands discharged from liability. This contention is also untenable. The liability of a guarantor is co-extensive with that of the principal debtor, unless otherwise provided by the contract. The liquidation, resolution or discharge of the principal debtor by operation of law does not automatically discharge the guarantor from liability under a valid and subsisting guarantee.

17. In *Anirudhan v. Thomco's Bank Ltd.*[6], the Hon'ble Supreme Court held that the liability of a guarantor continues so long as the underlying debt remains unpaid. Further, in *Maharashtra State Electricity Board v. Official Liquidator*[7], the Hon'ble Supreme Court held that the discharge of the principal debtor by operation of law does not absolve the guarantor of liability. In the present case, the Deed of Guarantee expressly provides that it shall remain binding until the entire debt of the Corporate Debtor is repaid in full. Therefore, the obligations of the Personal Guarantor continue notwithstanding the liquidation or insolvency proceedings concerning the Corporate Debtor.

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[6] AIR 1963 SC 746

[7] (1982) 3 SCC 358

18. We also note that there is no specific allegation of violation of principles of natural justice in the submission of the report by the Resolution Professional under Section 99 of the Code. The record reflects that the report was served upon the Financial Creditor and the Personal Guarantor, and the Personal Guarantor was afforded an opportunity to file a reply thereto. The remaining objections raised by the Personal Guarantor do not dislodge the existence of debt, default or the continuing guarantee. The objections are insufficient to absolve the Personal Guarantor from his liability under the guarantee documents.

19. In view of the foregoing discussion, we accept the report filed by the Resolution Professional under Section 99 of the IBC and admit the present Application filed under Section 95 of the IBC. Accordingly, the insolvency resolution process is initiated against Smt. Neena Mittal, Personal Guarantor to the Corporate Debtor.

20. Resultantly, the moratorium under Section 101 of the Code shall commence from the date of this order and shall cease to have effect at the end of 180 days from the date of this order, as provided under Section 101 of the IBC. During the moratorium period:

    a. Any pending action or legal 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;

c. the debtor shall not transfer, alienate, encumber, or dispose of any of his assets or legal rights or beneficial interest therein; and

d. the provisions of Section 101 shall not apply to such transactions as may be notified by the Central Government in consultation with any Financial Sector regulator.

21. The Resolution Professional is directed to cause a public notice to be published within 7 days from the date of uploading of this order on the website of this Adjudicating Authority, inviting claims from all creditors. The creditors shall register their claims in accordance with Section 103 of the IBC within 21 days from the date of issuance of such notice. The notice shall contain the necessary particulars as prescribed under Section 102(2) of the IBC.

22. The publication of the notice shall be made in two newspapers, one in English and one in vernacular language, having wide circulation in the State.

23. The Resolution Professional shall, in exercise of powers under Section 104 of the IBC, prepare a list of creditors within 30 days from the date of the notice.

24. The debtor shall prepare a repayment plan in consultation with the Resolution Professional, as provided under Section 105 of the IBC. The repayment plan shall include provision for payment of fee to the Resolution Professional.

25. The Resolution Professional shall submit the repayment plan, along with his report thereon, to this Adjudicating Authority within 21 days from the last date for submission of claims, as provided under Section 106 of the IBC. In case the Resolution Professional recommends that a meeting of creditors is not required to be summoned, he shall record reasons for the same. If the Resolution Professional is of the opinion that a meeting of creditors should be summoned, he shall specify the details as provided under Section 106(3) of the IBC.

26. The date of the meeting of creditors shall not be less than 14 days and not more than 28 days from the date of submission of the report under Section 106(1) of the IBC. At least 14 days' notice shall be issued to the creditors, as per the list prepared, through all relevant and feasible modes. Such notice shall contain the particulars prescribed under Section 107 of the IBC. The meeting of creditors shall be conducted in accordance with Sections 108, 109, 110 and 111 of the IBC. The Resolution Professional shall prepare a report of the meeting of creditors on the repayment plan, containing the particulars provided under Section 112 of the Code, and submit the same to this Adjudicating Authority. Copies thereof shall be provided to the debtor and the creditors.

27. The Resolution Professional shall be paid an amount of Rs. 2,00,000 by the Financial Creditor to undertake further proceedings in accordance with the IBC. The public notice contemplated under Section 102 of the

IBC shall be issued by the Resolution Professional on behalf of this Adjudicating Authority inviting claims. The Resolution Professional shall discharge his functions and duties in compliance with the IBC and the Code of Conduct applicable to insolvency professionals.

28. Accordingly, the petition **Restored CP (IB)-10/(ND)/2023** filed under Section 95 of the IBC and **IA-4290/2024** stand disposed of in terms of the above directions.

Sd/-	**Sd/-**
(REENA SINHA PURI) **MEMBER (TECHNICAL)**	**(MANNI SANKARIAH SHANMUGA SUNDARAM)** **MEMBER (JUDICIAL)**