IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI

COURT – IV

C.P. (IB) NO.174/MB/2022

[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

Solapur Janata Sahakari Bank Ltd

... Financial Creditor

V/s.

Mr. Sopanrao Tukaram Naranvar

… Personal Guarantor

Pronounced: 07.10.2026

CORAM:

SHRI. ANIL RAJ CHELLAN
HON'BLE MEMBER (TECHNICAL)

SHRI. K. R. SAJI KUMAR
HON'BLE MEMBER (JUDICIAL)

Appearances:

Hybrid

For the Financial Creditor:

Adv. Raina Birla. Ld. Counsel for the Applicant.

For the Personal Guarantor: Adv. Jack Thalakottur. Ld. Counsel for the Respondent.

ORDER

1. The captioned Application has been filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 (Code) 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 by Solapur Janata Sahakari Bank Ltd. (Applicant/Financial Creditor) for the purpose of initiating the insolvency resolution process against Mr. Sopanrao Tukaram Naranvar (Personal Guarantor/ Respondent). The Dates of Default, as per Part-III of the present petition, is 31.03.2017 and 13.12.2016.

2. The total debt is Rs. 14,75,26,917/- (Fourteen crore seventy-five lakh twenty-six thousand nine hundred and seventeen Rupees) as on 30.09.2021. The date on which the Guarantee was invoked is on 21.11.2017, by way of Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFESI Act) notice.

Submissions of Applicant/FC

3. It is submitted that 'Shetkari Sakhar Karkhana (Chandrapuri) Limited', the Corporate Debtor (CD), was sanctioned a Short-Term Other Security (STOS) facility amounting to Rs. 6,00,00,000/- *vide* Sanction Letter dated 20.08.2015. Subsequently, FC extended further financial accommodation in the form of Cash Credit (Pledge) Loan amounting to Rs. 9,00,00,000/- by way of Sanction Letter dated 19.03.2016 to the CD.

4. The Personal Guarantor furnished the personal guarantees in respect of the aforesaid Credit Facilities extended by the Financial Creditor to the CD by executing the Guarantee Deed dated 21.09.2015 in respect of the STOS

Facilities, and the Guarantee Deed dated 23.03.2016 in respect of the Cash Credit (Pledge) Loan.

5. Pursuant to the default committed by the CD in repayment of the STOS Facilities, the Financial Creditor issued a notice under Section 13(2) of SARFAESI Act on 21.11.2017, calling upon the CD to repay the outstanding dues. The said notice was also duly addressed to the Directors and Guarantors of CD. Despite issuing such notice, the Financial Creditor did not receive any satisfactory response or reply from the CD or the Guarantors.

6. The Financial Creditor submits that the NCLT, by order dated 14.01.2019, initiated the Corporate Insolvency Resolution Process (CIRP) of the CD. Pursuant thereto, the Financial Creditor initiated the insolvency process against the Personal Guarantor under Section 95 of the Code. A Demand Notice in Form B dated 10.11.2021 was served on the Personal Guarantor, calling upon him to discharge the outstanding dues. The present Application arises from the Personal Guarantor's failure to make such payment.

Report of RP

7. This Bench, *vide* order dated 20.09.2022, has appointed Mr. Nitin Om Kothari as the Resolution Professional (RP), having Registration No. IBBI/IPA-001/IP-P02310/2020-2021/13477 to examine the present Application and file his report within 10 days from the date of communication of the said order.

8. The RP submitted the report under Section 99 of the Code *vide* IA No.3531/2022, which was taken on record on 24.01.2023. As per the report, the RP has issued a letter of intimation dated 10.10.2022 and 09.11.2022 to the Personal Guarantor by speed post.

9. The RP, for the reasons recorded in the Application and vide his report, recommended for admission of the Application.

Contentions of Respondent/PG

10. The Personal Guarantor, through his Reply Affidavit to the Report filed by the RP, submits that the Financial Creditor has approached various forums before the present Application, including the Multi-State Co-operative Societies Act, 2002 *vide* Case No. ARB/MAL/378/2017(2018) and Case No. ARB/MAL/377/2017(2018) before the Court of the Principal District Court, Sholapur, with respect to the same loans in this Application and against the same parties, including the Personal Guarantor in the present Application.

11. Further, the Financial Creditor has enforced their security under the SARFAESI Act with respect to the said loans against certain mortgaged properties of some Guarantors *vide* Possession Notice dated 23.05.2018 and taken over Symbolic/Physical possession. The market value of the mortgaged properties is approximately Rs. 20,00,00,000/-, being majorly commercial properties, which is more than the value of the loans and interest put together. As such, no amount should remain outstanding on account of these loans. Further, another notice under Section 13(2) of the SARFAESI Act has been issued to recover the said amounts.

12. The Personal Guarantor submits that the Financial Creditor is resorting to forum shopping. The facts of the proceedings before another forum with respect to the same loans, between the same parties, have not been disclosed before this Tribunal by the Financial Creditor. The Personal Guarantor also states that the Application is not maintainable under Section 11 of the Civil Procedure Code, 1908, being the principle of 'Res Judicata'.

13. The Personal Guarantor further submits that the RP has submitted the report with a delay and failed to consider the limitation aspect of the present Application. The date of default alleged in the Application is 13.12.2016 and 31.03.2017; the Application was filed on 01.12.2021. Hence, the present Application is barred by limitation.

14. The Personal Guarantor also contends that the personal guarantee was released pursuant to the order dated 22.01.2021, passed in IA no. 2221 of 2020 for the approval of the Resolution Plan of the Corporate Debtor. The relevant extract of the Resolution Plan is reproduced below:

"Note 2: Total outstanding of the secured and unsecured financial creditors shall be settled under the Resolution Plan at a total consideration of Rs.22,48,85,000/- as contemplated in above Table and the same shall be paid to them under the Plan as per their respective ratio of voting in the same class. Upon payment of the amount to the satisfaction of the Financial Creditors all the security interest(primary/collateral) created in favour of the Financial Creditors against their respective claim amounts shall stand cancelled and waived."

15. It is further submitted by the Personal Guarantor that no notice of invocation of the personal guarantee was ever issued to or served upon the Personal Guarantor. In the absence of any formal demand, no liability can be fastened upon the Personal Guarantor, and as such, the present proceedings are not maintainable.

Affidavit of Financial Creditor

16. The Financial Creditor, in its affidavit dated 05.02.2025, submits that even after the issuance of Section 13(2) Notice, when the Guarantors and Mortgagors of the Corporate Debtor failed to repay the outstanding amount, Arbitration proceedings were initiated by the Financial Creditor before the sole Arbitrator against the Guarantors and Mortgagors of the Corporate Debtor. The Arbitration Award was passed on 11.03.2019, whereby in the said Award, the Corporate Debtor, Personal Guarantors, and the Mortgagors of the Corporate Debtor were directed to jointly and severally pay to the Financial Creditor an amount of Rs.7,24,11,423/- together with interest at the rate of 13.25% p.a. from the date 01.11.2017 till repayment or realisation of the entire amount. The Respondents failed to repay the said amount in the Arbitral Award.

Reply to the Affidavit of Financial Creditor by Personal Guarantor

17. The Personal Guarantor, in its reply affidavit dated 06.03.2025 to the Additional Affidavit filed by the Financial Creditor, submits that the Tribunal had directed the Financial Creditor to furnish proof of service of the notice of invocation. However, no document evidencing such service, nor the date of service of the invocation notice, has been annexed or produced with the affidavit. In view of such repeated non-compliance, it is submitted that the present Application is liable to be dismissed.

18. The Personal Guarantor further submits that the notice under Section 13(2) dated 21.11.2017 was addressed to the Corporate Debtor and was issued for the enforcement of the security interest under the SARFAESI Act. The said notice cannot be construed as a notice of invocation of personal guarantee and was never served upon the Personal Guarantor. Moreover, the demand notice dated 10.11.2021, relied upon by the Financial Creditor, does not refer to the Arbitral Award now being claimed.

ANALYSIS AND FINDINGS

19. We have heard both the Ld. Counsel for the Applicant/Financial Creditor and the Respondent/Personal Guarantor and perused the documents on record.

20. The present Application has been filed by the Financial Creditor to initiate the insolvency resolution process against the Personal Guarantor based on the Personal Guarantees dated 21.09.2015 and 23.03.2016 executed by him along with other directors for guaranteeing the due repayment of the credit facilities granted to the CD. Some of the guarantors under the said deed of guarantees also mortgaged their immovable properties as security for the credit facilities granted by the Financial Creditor. Due to the defaults committed by the CD and classification of the accounts of the CD as NPA on 31.12.2016, the Financial Creditor issued a notice under Section 13(2) of the SARFAESI Act, on 21.11.2017 to the CD and guarantors calling upon them to repay in full amount of Rs. 7,24,12,016.00 (Seven Crore Twenty-Four Lakh Twelve Thousand

Sixteen Rupees) plus interest thereon @ 14.25 % on STOS Loan plus 3% additional interest w.e.f. 01.11.2017 within 60 days from the date of this notice.

21. Simultaneously with the issue of notice under the SARFAESI Act, the Financial Creditor raised an arbitral dispute under Section 84 of the Multi-State Cooperative Societies Act, 2002. After due notice to the parties of the arbitral reference, the arbitrator declared that the parties, including the present Personal Guarantor are jointly and severally liable to pay a sum of Rs.7,24,11,423/- (Seven Crore Twenty-Four Lakh, Eleven Thousand Four Hundred Twenty-Three Rupees) together with interest at the rate of 18.25% p.a. from 01.11.2017 till repayment or realisation of the entire amount.

22. As the default was continuing, the Financial Creditor initiated CIRP of the CD on 14.01.2019. Thereafter, a demand notice in Form B was issued on 10.11.2021 as required under the Rules, upon the Personal Guarantor for payment of Rs. Rs.14,75,26,917/- as on 30.09.2021. The Financial Creditor states that the deed of guarantees executed by the Personal Guarantor was invoked through the notice under section 13(2) of the SAFAESI Act.

23. Per contra, the Personal Guarantor denies service of notice issued under Section 12(2) of the SARFAESI Act and contends that this notice cannot be construed as a notice of invocation of the personal guarantee. Hence, no invocation of the personal guarantee was ever issued to or served upon the Personal Guarantor. In the absence of any formal demand, no liability can be fastened upon the Personal Guarantor. Even otherwise, the dates of default mentioned in the application are 13.12.2016 and 31.03.2017, but the present Application is filed only on 26.11.2021 and is therefore barred by limitation.

24. The records annexed to the Application include postal receipt and delivery proof, which sufficiently satisfy the delivery of notice to the Personal Guarantor. However, the primary issue arising for consideration is whether the notice issued under Section 13(2) SARFASI Act can be construed as a valid invocation of personal guarantee.

25. It is observed that the SARFAESI notice dated 21.11.2017 relates to the STOS facilities alone, and the Financial Creditor, in its additional affidavit dated

10.01.2025, confirmed that there is no other recall or legal notice sent to the Personal Guarantor. The specific clauses of the deed of guarantee dated 21.09.2015 provide that the amount guaranteed shall be due and payable by the Guarantors jointly and severally to the Bank two days after demand and without demur, merely upon the Bank sending to the Guarantors a demand. Further, we observe the following from the notice issued under Section 13 (2) of the SARFAESI Act:

(i) The notice addressed to the Corporate Debtor, Guarantors and Mortgagors states-

"That at your request, the following credit facilities had been sanctioned by Solapur Janata Sahakari Bank Ltd. to Borrower Limited Company Shetkari Sakhar Karkhana [Chandapuri] Limited. stood as borrower. Yourself No. 2 to 13 stood as Mortgagor, and Guarantors for repayment of the dues under or in respect of the credit facilities granted to you." (ii) "You have still not repaid the dues of the Bank and hence in exercise of powers conferred on the Bank under the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI) & without prejudice to the rights of the Bank & pending proceeding mentioned above, the Bank hereby call upon you to repay in full amount of Rs. 7,24,12,016.00 (Rs. seven crore twenty-four lakh twelve thousand sixteen only) plus interest thereon @ 14.25 % on STOS Loan plus 3% additional interest w.e.f. 01/11/2017 within 60 days from the date of this notice……."

26. While the notice issued by the Financial Creditor on 21.11.2017 is a statutory notice issued under the SARFAESI Act, it also made a demand on the guarantors by addressing them to make payment within 60 days from the date of notice. A mere demand on the guarantor satisfies the requirement specified in the deed of guarantee. In support of the above, we may usefully refer to the order of the Hon'ble NCLAT in *Shantanu Jagdish Prakash v. State Bank of India and Anr.* [(2025) ibclaw.in 73 NCLAT]. Thus, the notice issued under SARFAESI Act fulfils the condition stipulated under personal guarantee and can be treated as valid invocation.

27. The Personal Guarantor has also raised the issue of limitation, asserting that the Application is barred by limitation as the present application has been filed after three years from the invocation under the SARFAESI Act.

28. It is noticed that the Financial Creditor, along with its affidavit dated 10.01.2025, placed on record the arbitration award dated 11.03.2019 and argued that the arbitration award acts as an acknowledgement of debt. Further, the Arbitration Award clearly states that the Personal Guarantor was represented by an Advocate.

29. In the matter of admission of an application under Section 7 of the Code, the Hon'ble Supreme Court in *Dena Bank v. C. Shivakumar Reddy & Anr.* [(2021) SCC Online SC 543], observed as under:

"132. We see no reason why the principles should not apply to an application under Section 7 of the IBC which enables a financial creditor to file an application initiating the Corporate Insolvency Resolution Process against a Corporate Debtor before the Adjudicating Authority, when a default has occurred. As observed earlier in this judgment, on a conjoint reading of the provisions of the IBC quoted above, it is clear that a final judgment and/or decree of any Court or Tribunal or any Arbitral Award for payment of money, if not satisfied, would fall within the ambit of a financial debt, enabling the creditor to initiate proceedings under Section 7 of the IBC."

30. The Hon'ble NCLAT in *Edelweiss Asset Reconstruction Company Limited v. Perfect Engine Components Pvt. Ltd.* [(2022) ibclaw.in 1065 NCLAT] has made the following observation: -

"We are of the considered view that the issue of Limitation is to be tested on the touchstone of the ratio of the Hon'ble Apex Court in 'Dena Bank (now Bank of Baroda)' v. 'C. Shivakumar Reddy & Anr., wherein the Hon'ble Apex Court has clearly laid down that Judgement/decree for money or Certificate of Recovery or Arbitral Award in favour of the 'Financial Creditor', constitutes an 'acknowledgement of debt' and gives rise to a fresh cause of action, provided it is within three years of the default".

31. In the present case, the Section 13(2) Notice invoking personal guarantee was issued to the Personal Guarantor on 21.11.2017. However, after issuance of the Section 13(2) Notice, when the Corporate Debtor, the Guarantors, and the Mortgagors failed to repay the outstanding amount, the Financial Creditor initiated arbitration proceedings before the Sole Arbitrator against them on 11.12.2017. After hearing the Advocate appearing for the Personal Guarantor, an Arbitration Award was passed on 11.03.2019, whereby the Corporate Debtor, Guarantors, and the Mortgagors were directed to jointly and severally pay to the Financial Creditor an amount of Rs.7,24,11,423/- together with interest at the rate of 18.25% p.a. from 01.11.2017 till repayment or realisation of the entire amount.

32. Since the Award was brought on record before passing an order, the same is required to be taken into consideration while deciding the question of limitation. Given that the Award was passed on 11.03.2019 and the present Application was filed on 01.12.2021, we are of the view that the Application is well within the period of limitation.

33. The Personal Guarantor has also sought to rely on the approval of the Resolution Plan of the Corporate Debtor, claiming discharge from liability. However, the Hon'ble Supreme Court, in *Lalit Kumar Jain v. Union of India & Ors.,* [(2021) SCC Online SC 396], held as under:

"111. In view of the above discussion, it is held that approval of a resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under the contract of guarantee. As held by this court, the release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process, i.e., by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability, which arises out of an independent contract."

34. Based on the above decision, we hold that the contention of the Personal Guarantor that approval of the resolution plan in the case of the Corporate Debtor discharges the Personal Guarantor is untenable in law.

35. For the foregoing reasons, we hold that a valid demand in respect of the deed of guarantee dated 21.09.2015 was made by the Financial Creditor in the notice issued under Section 13(2) of the SARFAESI Act, and the Application has been filed within the period of limitation on account of the Arbitral Award passed on 11.03.2019. A demand notice as per Rule 7(1) of the 2019 Rules has also been duly served upon the Personal Guarantor.

36. Accordingly, we order as follows:

ORDER

37. In terms of the above, **the C.P. (IB) No. 174/MB/2022** filed under Section 95 of the Code is **admitted,** and the Insolvency Resolution Process stands initiated against **Mr. Sopanrao Tukaram Naranvar** viz., the Respondent/Personal Guarantor to the Corporate Debtor.

We hereby direct:

I. Initiation of the Insolvency Resolution Process against the Respondent/Personal Guarantor and moratorium in relation to all the debts is declared, from today, i.e., the date of admission of the application, and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes an order on the repayment plan under Section 114, whichever is earlier, as provided under Sec 101 of 1BC, 2016. During the moratorium period:

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

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. Mr. Nitin Om Kothari, Insolvency Resolution Professional, having Registration No. IBBI/IPA-001/IP-

P02310/2020- 2021/13477, having address 3A-303, Whispering Palms Building no 3 CHS Ltd, Lokhandwala Township, Kandivali (east), Mumbai City ,Maharashtra ,400101, [E-Mail: cakotharico@gmail.com] is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Mumbai Bench, 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 the other in Vernacular, which have wide circulation in the State where the Corporate Debtor and Personal Guarantor reside. 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 his 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, he shall record the reasons thereof. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of IBC. The date of the 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 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 the IBC. The Resolution Professional shall prepare a report of the meeting of the creditors on the 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 his functions and duties in compliance with the Code of Conduct provided under Section 208 of the Code.

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

XII. The Applicant is directed to deposit Rs. 2,00,000/- (Two 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 rules and regulations under the Code.

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

Sd/-
ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

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

Sanika, LRA