

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI
COURT – IV

C.P. (IB) NO. 1172/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

State Bank of India through Resolution Professional. Mr. Indrajit Mukherjee

... Applicant / Financial Creditor

V/s.

Mr. Rajesh Gaurishankar Poddar

... Personal Guarantor

Pronounced: 13.01.2026

CORAM:

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

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

Appearances:

Hybrid

For the Applicant/ RP

: Adv. Indrajit Mukherjee.

For the Personal Guarantor

: Adv. Niyati Merchand, Adv. Sanjay Bidwe

i/b MDP Legal.

ORDER

1. The captioned Application has been filed on 16.07.2021 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 State Bank of India, through the Resolution Professional, Mr. Indrajit Mukherjee (Applicant), for the purpose of initiating the insolvency resolution process against Mr. Rajesh Gaurishankar Poddar (Respondent/Personal Guarantor). The date of default, as per Part III of the present Application, is 28.02.2017.
2. The Financial Creditor herein is a body corporate constituted under the State Bank of India Act, 1955, having an office at Stressed Asset Management Branch-I, The Arcade, 2nd Floor, World Trade Centre, Cuff Parade, Mumbai-400005. The Financial Creditor is represented through its Resolution Professional, Mr. Indrajit Mukherjee. A copy of the written consent has been annexed to the present Application.

Submissions of the Financial Creditor/Applicant

3. The Applicant/Financial Creditor states that *M/s Loha Ispaat Limited* (Corporate Debtor) has availed various credit facilities from the Financial Creditor. As security for the credit facilities, the Respondent/Personal Guarantor executed a deed of Personal Guarantee, which has been amended from time to time by executing supplemental deeds of guarantee to secure enhancements to the credit facilities granted by the Financial Creditor.
4. It is submitted that the Respondent/Personal Guarantor guaranteed the due repayment of the principal amount together with all interest, costs, charges, expenses, and all other monies due to the Financial Creditor on demand upon default made by the Corporate Debtor.

5. The Applicant/Financial Creditor submits that due to irregularities in making payments by the Corporate Debtor, the Financial Creditor classified the Corporate Debtor's account as a Non-Performing Asset (NPA) on 28.08.2014.
6. Subsequently, the Financial Creditor, through its advocate, recalled and invoked the guarantee *vide* notice dated 13.02.2017, demanding payment of Rs. 287,30,52,226/- as on 31.05.2021, within 15 days from the date of the notice. Accordingly, the due date for making payment under the guarantee is 28.02.2017.
7. The Corporate Debtor was admitted into the Corporate Insolvency Resolution Process *vide* order dated 28.04.2017 and later liquidation was initiated *vide* order dated 26.04.2018.
8. The Applicant/Financial Creditor further submits that in view of the defaults in honouring the guarantee executed by the Personal Guarantor, the Financial Creditor issued a Demand Notice in Form B, as per Sub Rule (1) of Rule 7 Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 on 28.06.2021 demanding payments forthwith of its dues of Rs.599,47,70,690 within 14 days. The notice was duly served upon the Personal Guarantor. Though the Personal Guarantor submitted a reply dated 12.07.2021 through his Advocate, he failed to make the payments. Hence, the present Application.

Report of the Resolution Professional

9. This Tribunal *vide* order dated March 08, 2022, appointed Mr. Indrajit Mukherjee as Resolution Professional to examine the Application against the Personal Guarantor and to submit a report within 10 days. After examination of the application and other documents, the Resolution Professional recommended admission of the Application filed under Section 95 of the Code for commencement of the Insolvency Resolution Process against the Personal Guarantor.

Affidavit of Reply/Objections filed by the Respondent/Personal Guarantor

10. The Respondent/Personal Guarantor filed his reply affidavit denying the averments made in the Company Petition and sought dismissal of the Application with costs.
11. The Respondent/Personal Guarantor submits that the present Application filed by the Financial Creditor is time-barred and thus needs to be rejected. It is submitted that the date of default as mentioned in Part III of the Application is 13.03.2017, and the default occurred on 28.02.2017, where the 3-year time window to file the Application expired on 27.02.2020. Thus, the Application is liable to be dismissed. It is further submitted that the Demand Notice dated 28.06.2021 and the filing of the Company Petition on 15.07.2021 are explicitly after the period of limitation.
12. The Respondent/Personal Guarantor further submits that the account of the Corporate Debtor was stated to be classified as NPA on 28.09.2014. However, there is no supporting document showing that the Applicant classified the Corporate Debtor's account as NPA on the aforementioned date. Further, it is contended that the Applicant never demanded any amount from the Respondent. There are no corroborating records showing that the Applicant sent a Recall Notice demanding payment of the purported/alleged sum. Even if a Recall Notice dated 13.02.2017 demanding the payment was issued by the consortium of banks, the said notice is irrelevant as the Financial Creditor is not a party to the consortium.
13. It is submitted that the Financial Creditor never issued any demand notice before abruptly sending a demand Notice dated 28.06.2021. Since there is no supporting information about the date of invocation of the guarantee, no default has occurred as alleged in the Application.
14. The Respondent/Personal Guarantor submits that there are no supporting papers/documents which demonstrate that the alleged claim amount is genuine, and the amount claimed is completely confusing and vague. It is also

contended that the Applicant has not placed on record the mandatory documents, such as a Record of Default with information utility supporting the Applicant's alleged claim. It is asserted that the Applicant does not have sufficient evidence to substantiate its claim.

Analysis and Findings

15. We have heard both the Ld. Counsel for the Applicant/Financial Creditor and the Respondent/Personal Guarantor, and perused the documents on record.
16. It is an established fact that the Personal Guarantor has furnished personal guarantees to secure various credit facilities granted by the Financial Creditor to the Corporate Debtor. Nevertheless, the Personal Guarantor has contested the admission of this Application on the basis of several arguments, including the grounds of limitation, the non-invocation of the guarantee, the insufficiency of documents to substantiate the date of default, the genuineness of the claimed amount, and the absence of the record of default filed with the information utility.
17. The case of the Applicant is that the guarantees executed by the Personal Guarantor were invoked by the Applicant by notice dated 13.02.2017. The postal receipt evidencing the issuance of notice is also attached to the Application. However, it is observed that the Advocate issued the aforesaid notice on behalf of a consortium of banks, of which the Applicant is not a member. Further, despite being afforded multiple opportunities, the Applicant has not brought on record the principal deed of guarantee but relied on various supplemental deeds of guarantee executed by the Personal Guarantor in favour of the Applicant. In the circumstances, the Applicant has failed to establish the terms of the guarantee and has not furnished other documents to substantiate the invocation of the guarantee as per the terms of the guarantee.
18. Even otherwise, it is pertinent to observe that the limitation period of three years from the date of default stated in the Application, i.e., 28.02.2017, expires on 27.02.2020 unless extended otherwise. However, the Application was filed only on 16.07.2021. The Applicant has not produced any document or

evidence to establish that the Application was filed within the period of limitation. In the circumstances, we come to the conclusion that the present Application is barred by limitation.

19. Since we have concluded that the Application is barred by limitation, we do not consider it necessary to deal with other contentions raised by the Personal Guarantor.
20. In view of the foregoing, we are of the considered view that the captioned Company Petition is liable to be dismissed as it is barred by limitation. Ordered accordingly.

ORDER

21. In terms of the above, the application for initiation of insolvency resolution process against Mr. Rajesh Gaurishankar Poddar, viz., the Respondent/Personal Guarantor to the Corporate Debtor, is hereby **rejected**. Consequently, the interim moratorium shall cease to operate against the Personal Guarantor. Accordingly, **C.P. (IB) No. 1172/MB/2021** filed under Section 95 of the Code is **disposed of**. File be consigned to records.

Sd/-
ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Sanika, LRA

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