



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH - I**

**C.P. (IB) NO. 1174/MB/2023**

Under Section 100 *r/w*  
Section 95 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*

Phoenix ARC Pvt. Ltd.  
...Applicant/Financial  
Creditor

*Versus*

Rajendra Himmatlal  
Salot

...Respondent/Personal  
Guarantor

AND

*In the matter of*

**C.P. (IB) NO. 1175/MB/2023**

Phoenix ARC Pvt. Ltd.  
...Applicant/Financial  
Creditor

*Versus*



Hema Rajendra Salot

...Respondent/Personal

**Order pronounced on 03.09.2024**

***Coram:***

Hon'ble Member (Judicial) : Justice V. G. Bisht (Retd.)

Hon'ble Member (Technical) : Sh. Prabhat Kumar

***Appearances:***

For the Applicant/  
Financial Creditor : Mr. Gaurav Jain, Advocate

For the Resolution  
Professional : Mr. Saurabh Pandya,  
Advocate

For the Respondent : Mr. Jayesh Mestry,  
Advocates

**ORDER**

Per : Justice V. G. Bisht (Retd.), Member (Judicial)

**Brief facts:**

1. The present petition is filed *u/s.* 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") *r/w.* 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 **Phoenix ARC Pvt. Ltd.** ("hereinafter referred to as Applicant/Financial Creditor") for the purpose of initiating insolvency process against **Rajendra Himmatlal Salot** ("hereinafter referred to as Personal Guarantor/Respondent") for recovery of INR 31,95,58,525.47/- as on 28.02.2023 along with interest at 14% p.a. and penal interest at the rate of 2% p.a.



from the date of default and further interest from 01.03.2023 till its realization. The Date of Default, as specified in Part-III of the present petition, in accordance with facility agreement & supplementary agreement is 28.12.2017 qua Corporate Debtor when the account was classified as NPA. Thereafter, a notice u/s 13(2) of SARFAESI Act was issued on 12.4.2018 calling upon the Corporate Debtor as well as Personal Guarantors and Personal Guarantor committed a default. Thereafter, the defaults were committed by Personal Guarantor pursuant to demand notice under Rule 7(1) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, another Guarantee invocation notice dated 14.02.2023 and second demand notice under Rule 7(1) dated 6.4.2023.

2. The Applicant was incorporated on 02.03.2007 bearing CIN U67190MH2007PTC168303 is registered under the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 having its registered address at 5<sup>th</sup> Floor, Dani Corporate Park 158, CST Road, Kalina, Santacruz (East), Mumbai - 400098.
3. The Personal Guarantor, viz. Mr. Rajendra Himmatlal Salot having his address at 18, Maheshwar Prakash Building, Jain Derasar Lane Santacruz (W), Mumbai, Maharashtra – 400054 is the Personal Guarantor for M/s Raj Poly Products Limited (hereinafter referred to as the “Corporate Debtor”) and is also one of the directors of the Corporate Debtor.
4. The Corporate Debtor bearing CIN U25209MH1992PLC066863 was incorporated on 20.05.1992



and has its registered office at R. No. 3, Rose Theresa Building, Ground Floor, Subhash Road, Vile Parle (East), Mumbai – 400057. It has authorized and paid up share capital of Rs.2,10,00,000/-. It is in the business of manufacturing of polymer/synthetic/PVC water storage tanks and other plastic products.

**Submissions of the Applicant:**

5. In and around September 2013, the Corporate Debtor was in need of funds for its working capital. Accordingly, vide a sanction letter dated 27th September 2013 and an Agreement dated 19th December 2013, Janata Sahakari Bank (hereinafter referred to as the "Original Lender") sanctioned a Term Loan/ Cash Credit Facility of INR 10,00,00,000/- (Indian Rupees Ten Crores Only) to the Corporate Debtor herein. Further, the Personal Guarantor herein to the Corporate Debtor also executed a Letter of Guarantee along with other necessary documents in favour of Original Lender to secure the said loan.
6. The Corporate Debtor thereafter sought various additional facilities from the Original Lender. Subsequently, due to the defaults committed by the Corporate Debtor, on 28th December 2017, the account of the Corporate Debtor was declared a non-performing asset ("NPA").
7. Thereafter, on 12th April 2018, the Corporate Debtor as well as Personal Guarantors were issued a demand notice from the Original Lender under section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to pay an amount of INR 15,37,21,490.50/- as on 31st March 2018 including interest mentioned therein. However, the Corporate Debtor as well as Personal Guarantors



failed to make the said payment and defaulted on the same.

8. Further, on 18th June 2018, the Financial Creditor vide letter of intimation informed the Corporate Debtor that since it has failed to make any payments within the statutory period of 60 days, the Financial Creditor shall proceed with taking possession of the movable and/or immovable property more particularly mentioned herein, under section 13(4) of the SARFAESI Act. Pursuant thereto, Original Application (lodging no. 730/2022) came to be filed against the Corporate Debtor before the Debt Recovery Tribunal.
9. Thereafter, the Original Lender issued a letter dated 05.11.2018 addressed to the Corporate Debtor intimating that the account of the default in repayment of loan is classified as “wilful defaulter”.
10. Further, vide order dated 13.11.2018, Hon’ble Chief Metropolitan Magistrate, Esplanade Court allowed the application C. C. No. 711/SA/2018 of the Original Lender to take control over the possession of secured assets of the Corporate Debtor.
11. As the account of the Corporate Debtor was classified as NPA due to the failure of the Corporate Debtor on repayment terms, vide an Assignment Agreement dated 30th March 2019 the Original Lender had assigned the said account of the Corporate Debtor along with all rights, titles, interest, and claims in respect of the Facility in favour of Phoenix ARC Private Limited, the Applicant herein.
12. Note to Financial Statements filed with form no. AOC-4 before the Registrar of Companies for the year ended 31<sup>st</sup> March 2020 records acknowledgement of debt by the Corporate Debtor under



the heading “8. Short term borrowings’. Also, the Independent Auditors Report dated 30.12.2020 categorically under the head “*emphasis of matters*” states that the Corporate Debtor will make future payments in relation to the debt.

13. On 23rd September 2022, the Applicant herein issued a demand notice to the Personal Guarantor under Rule 7 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 ("Personal Guarantor Rules") to make the payment of the dues. The Personal Guarantor herein, vide a reply dated 4th October 2022, replied to the Demand Notice but did not dispute on the amount that is due and payable to the Petitioner herein and further only raised frivolous averments in the reply. Accordingly, the Personal Guarantor defaulted in making payment hence default occurred on 7th October 2022.

14. On 14th February 2023, the Applicant herein further issued a notice to pay the amount that had become due and payable within 7 days from the date of the Guarantee Invocation Notice. Further, the Personal guarantor had vide a letter dated 17th February 2023 replied to the Guarantee Invocation Notice, however, through the said letter, the Personal Guarantor has not disputed its liability pertaining to the amount due and payable. In light of the same, the Personal Guarantor failed to make any payment and accordingly, default occurred on 21st February 2023.

15. On 6<sup>th</sup> April, 2023, Applicant further issued another demand notice under Rule 7 (1) of the Personal Guarantor Rules calling upon the Personal Guarantor to make payment. However, the



Personal Guarantor defaulted on the same, and accordingly, the default occurred on 20th April 2023. Though the Guarantor had replied to the said demand notice vide a letter dated 14th April 2023, the Guarantor has not disputed the amount that is due and payable, and has further defaulted on its payment obligations.

16. Since the debt still stands due, the Financial Creditor has filed the present petition u/s 95 of the Code r/w rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019.
17. Vide order dated 15.01.2024, this bench appointed Ms. Kanak Jani, as Resolution Professional having Registration No. IBBI/IPA-001/IP-P-01757/2019-2020/12685 to examine the petition and file his report within 10 days from the date of communication of the said order.
18. Further, the Resolution Professional had filed IA 923/2024 to place the report on record. Accordingly, the report was submitted and taken on record. Hence, vide order dated 07.03.2024, the said IA was allowed and disposed of.

**Submissions of the Resolution Professional:**

19. The ground(s) for admission of the present application, as recorded in the said RP report, are reproduced in-verbatim as hereinafter:

<i>Sr.no</i>	<i>Requirements under S.99 of the IBC</i>	<i>Submission of the resolution Professional</i>	<i>Compliance with the requirements under Section 99 of IBC</i>
1.	<i>S.99 (1)</i>	<i>The Resolution Professional examined the</i>	<i>YES</i>



	<p><i>The resolution professional shall examine the application referred to in section 94 or section 95, as the case may be, within ten days of his appointment, and submit a report to the Adjudicating Authority recommending for approval or rejection of the application.</i></p>	<p><i>Application under Section 95 of IBC, along with the documents annexed thereto.</i></p>	<p><i>The present report is being filed by the Resolution Professional within the stipulated time.</i></p>
2.	<p><i>S. 99(2)</i></p> <p><i>Where the application has been filed under section 95, the resolution professional may require the debtor to prove repayment of the debt claimed as unpaid by the creditor by furnishing -</i></p> <p><i>(a) evidence of electronic transfer of the unpaid amount from the bank account of the debtor;</i></p> <p><i>(b) evidence of encashment of a cheque issued by the debtor; or</i></p> <p><i>(c) a signed acknowledgment by the creditor accepting</i></p>	<p><i>The Resolution Professional vide email and letter dated 19.01.2024 gave Intimation/sought information under S.99(2) of IBC, 2016 from the Personal Guarantor (PG) i.e. Rajendra Himmatlal Salot requiring to prove any loan repayment by the Personal Guarantor against outstanding debt. A copy of the email and letter dated 19.01.2024 along with the postal receipts and tracking status is enclosed as "Annexure-2". The Personal Guarantor vide letter dated 26.01.2024 acknowledged the receipt of the intimation letter sent by the Resolution Professional and stated that the said letter was only received by him on 25.01.2024 and sought time to file a reply till 03.02.2024.</i></p>	<p><i>YES</i></p> <p><i>The Resolution Professional sent an intimation letter, requiring to prove any loan repayment, and the Personal Guarantor has replied to the Resolution Professional.</i></p>



	<i>receipt of dues.</i>		
3.	<p><i>S. 99(3)</i></p> <p><i>Where the debt for which an application has been filed by a creditor is registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt.</i></p>	<p><i>The said debt for which an application has been filed by the creditor is registered with NESL on 23.09.2022.</i></p>	<p><i>The said debt for which an application has been filed by the Creditor NESL as per report dated 23.09.2022</i></p>
4.	<p><i>S. 99(4)</i></p> <p><i>For the purposes of examining an application, the resolution professional may seek such further information or explanation in connection with the application as may be required from the debtor or the creditor or any other person who, in the opinion of the resolution professional, may provide such information.</i></p>	<p><i>The Resolution Professional vide email and letter dated 19.01.2024 intimated/sought information from the Financial Creditor of M/s. Raj Poly Products Limited (Corporate Debtor) i.e., Phoenix Arc Private Limited and sought details evidencing proof of any loan repayment by the Personal Guarantor against the outstanding debt and Copy of the Bank Statement or any other document evidencing such payment. A copy of the email and letter dated 19.01.2024 is enclosed as Annexure – 4</i></p> <p><i>The Financial Creditor has replied vide E-mail dated 29.01.2024 stating that the Financial Creditor has not received any payments from Rajendra Salot from the date of NCLT order.</i></p>	<p><i>YES</i></p> <p><i>The Resolution Professional sought information from the Financial Creditor regarding any loan repayment by the PG against the outstanding debt and received a reply for the same.</i></p>
5.	<p><i>S. 99(5)</i></p> <p><i>The person from whom information or explanation is sought under sub-section (4) shall furnish such</i></p>	<p><i>The Resolution Professional vide email and letter dated 19.01.2024 intimated/sought information from the Financial Creditor of M/s. Raj Poly Products Limited (Corporate Debtor) i.e., Phoenix Arc Private Limited and sought details evidencing proof of any loan repayment by the Personal Guarantor against the outstanding debt and Copy of the Bank Statement or any other</i></p>	<p><i>YES</i></p> <p><i>The Personal Guarantor vide letter dated 25.01.2024 acknowledged the receipt of the</i></p>



	<p><i>information or explanation within seven days of receipt of the request.</i></p>	<p><i>document evidencing such payment.</i></p> <p><i>The Financial Creditor has replied vide email dated 29.01.2024 stating that the Financial Creditor has not received any payments from Rajendra Salot from the date of NCLT order.</i></p>	<p><i>intimation letter sent by Resolution Professional but has not furnished any information or explanation as sought by the Resolution Professional.</i></p> <p><i>The Financial Creditor has replied vide E-mail dated 29.01.2024 stating that the Financial Creditor has not received any payments from Rajendra Salot from the NCLT order date .</i></p>
6.	<p><i>S. 99(6)</i></p> <p><i>The resolution professional shall examine the application and ascertain that -</i></p> <p><i>(a) the application satisfies the requirements set out in section 94 or 95;</i></p> <p><i>(b) the applicant has provided information and given explanation sought by the</i></p>	<p><i>The Resolution Professional has examined the Application and ascertained that the application satisfies the requirements set out in S.95 of the IBC.</i></p>	<p><i>YES</i></p> <p><i>The Resolution Professional has examined the application and ascertained that the application satisfies the requirements set out in S.95 of the IBC.</i></p>



	<i>resolution professional under sub-section (4).</i>		
7.	<i>S. 99(7) After examination of the application under sub-section (6), he may recommend acceptance or rejection of the application in his report.</i>	<i>Upon examination of the Application and Annexures by the Resolution Professional, it is recommended that the Application may be accepted.</i>	<i>YES The Resolution Professional recommends the Acceptance of the Application.</i>
8.	<i>S. 99(8) Where the resolution professional finds that the debtor is eligible for a fresh start under Chapter II, the resolution professional shall submit a report recommending that the application by the debtor under section 94 be treated as an application under section 81 by the Adjudicating Authority.</i>	<i>The Application has not been filed under S.94 of IBC.</i>	<i>In the present scenario, this extant provision doesn't apply to the application.</i>
9.	<i>S. 99(9) The resolution professional shall record the reasons for recommending the acceptance or</i>	<i>The Resolution Professional examined the Application and supporting documents and recorded the following reasons for acceptance of the application:  a) That the application filed by the debtor/personal guarantor satisfy the requirement as set out in Section 95 of the Code.</i>	<i>YES Based on the reasons recorded in the Application and the this report, the Resolution</i>



	<i>rejection of the application in the report under sub-section (7).</i>	<p>b) <i>The Corporate Debtors and Personal Guarantors have defaulted in the repayment of debt in the repayment of debt in repayment of loan facility demanded by the creditor on several occasions.</i></p> <p>c) <i>As per Section 95, the Resolution Professional has sought information and explanation from the Personal Guarantor and required to provide evidence of repayment of debt under section 99(2) for which no substantial information/explanation/evidence has been provided by the Personal Guarantor i.e. Rajendra Salot.</i></p>	<i>Professional recommends the acceptance of the Application.</i>
10.	<p>S. 99(10)</p> <p><i>The resolution professional shall give a copy of the report under sub-section (7) to the debtor or the creditor, as the case may be.</i></p>	<p><i>The Resolution Professional shall provide a copy of the Report to the Personal Guarantor and the creditor upon filing.</i></p>	<p>YES</p> <p><i>The Resolution Professional hereby undertakes to provide a copy of the Report to the Personal Guarantor and creditor upon filing.</i></p>

*In view of the aforesaid, the Resolution Professional bases examination of material available on record, recommends the present Application under section 95 (1) of the Code filed by the Financial Creditor Phoenix Arc Private Limited be admitted under Section 100 of the Code against Mr. Rajendra Himmatlal Salaot, Personal Guarantor to M/s. Raj Poly Products Limited.*

**Submissions of the Respondent:**

20. The Respondent has contested the present petition on the following grounds:



- A. The RP suffers from a gross conflict of interest and is not independent. The Advocate for the RP and the financial creditor is the same.
- B. The RP has failed to provide an adequate opportunity of 7 days to the Respondent to reply prior to the finalization of the report as is required under Section 99(5) of the Code.
- C. The Petition is barred by limitation:
- i. JSCB had already initiated arbitration proceedings against the Corporate Debtor and the Personal Guarantor.
  - ii. Alleged Personal Guarantees were invoked by JSCB in 2018 itself and the present Petition has been filed in October 2023.
- D. The Petition deserves to be dismissed on account of the Petitioner's willful suppression of material facts and documents.
- E. The Petition is not maintainable as there is not even a remote possibility of CIRP commencing against the Corporate Debtor.

**Findings:**

21. Heard learned counsel for the Applicant & Respondent and perused the documents on record.
22. We find that the Personal Guarantors were called upon to pay the amount in default due from the Corporate Debtor first vide notice issued u/s 13(2) of SARFAESI Act on 12.4.2018. This notice was issued to the Corporate Debtor as well as to its Personal Guarantors, which is clear from the first page of the



notice itself. Para 1 of this notice reads that “*That you No. 1 Co. through its Directors (i to iii) have been sanctioned and disbursed following Cash Credit at our **Girgaon Branch, Mumbai** and you No. 2 have stood as **Mortgagor / Guarantor** and You No. 3 to 5 have stood as **Guarantors** for the said Credit facility availed by No. 1 thereby guaranteeing, continuing joint and several liabilities towards payment of the dues.*” The person at No. 3 in the said notice is the Respondent herein. Para 8 of said notice states that “*Therefore, you are hereby called upon u/s 13(2) of “The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002” by this notice to discharge in full your liability stated here under to the Bank within a period of 60 days from the date of receipt of this notice. Your outstanding liability due and owing to the Bank in respect of said Cash Credit facility is outstanding Rs. 15,37,21,490.50 (In words Rs. Fifteen Crores Thirty Seven Lakhs Twenty One Thousand Four Hundred Ninty and Paise Fifty Only). You are also liable to pay further interest at the contractual rate on the aforesaid amount together with incidental expenses, costs and charges etc.*” Accordingly, the Personal Guarantors herein committed default in their obligation under the Guarantee after expiry of 60 days from the date of receipt of notice dated 12.04.2018. The said notice is stated to have been served through R.P.A.D/By Hand. The acknowledgement of this notice is evidenced on Page 162 of the Petition, when this notice is stated to have been received on 18.4.2018. Accordingly, the Personal Guarantors committed default on 16.6.2018. The period of 3 years expired on 15.6.2021. However, the Hon’ble Supreme Court, acknowledging the disruption caused by the COVID-19 pandemic, extended the limitation period, allowing an extra 90 days for any deadlines that fell between March 15, 2020, and



February 28, 2022. This extended period expires on 29.05.2022. This Petition has been filed on 13.10.2023. Accordingly, this petition is barred by limitation and deserve to be dismissed.

23. In terms of the above, the C.P. (IB)/1174/MB/2023 filed under Section 95 of the IBC, 2016 is hereby **dismissed**.
24. We note that the facts in **C.P. (IB)/1175(MB)2023** filed to initiate Insolvency Resolution Process against another Guarantor **Ms. Hema Rajendra Salot** are identical to this case, as she was also Personal Guarantor to the credit facilities extended by the Financial Creditor herein to the Corporate Debtor herein under the same deed of guarantee and she was stated as Person No. 4 in the notice dated 12.4.2018. Accordingly, in terms of finding at Para 22 above, **C.P. (IB)/1175(MB)2023** is also **dismissed** as barred by Limitation.

Sd/-

**PRABHAT KUMAR**  
**MEMBER (TECHNICAL)**

MK

Sd/-

**JUSTICE V. G. BISHT**  
**MEMBER (JUDICIAL)**