

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

IA No. 232/JPR/2021
In CP No. (IB)- 19/95(1)/JPR/2021

IN THE MATTER OF:

STATE BANK OF INDIA

...Creditor

VERSUS

MR. HEMANT BOHRA

...Personal Guarantor

MEMO OF PARTIES

STATE BANK OF INDIA

Stressed Assets Management Branch-II,
11th Floor, STC Building, Jawahar
Vyapar Bhawan, Tolstoy Marg, Janpath,
New Delhi-110001

...Creditor

Through

MR. MANOHAR LAL VIJ

8/28, WEA, 3rd Floor, Abdul Aziz
Road, Karol Bagh, New Delhi-
110001

...Resolution Professional

VERSUS

MR. HEMANT BOHRA

220, Ashok Nagar,
Udaipur- 313001 (Rajasthan)

...Personal Guarantor

FOR THE APPLICANT(S) : Abhishek Devgan, Adv.

Vishal Hirawat, Adv.

FOR THE RESPONDENT(S): Anju Jain, Adv.

Hitesh Sachar, Adv.

Sd/-

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Order Pronounced on: 28.03.2024

ORDER

Per: Shri Deep Chandra Joshi, Judicial Meber

1. This Application bearing *IA(IBC)No. 232/JPR/2021* has been filed by the Resolution Professional under Section 99(1) read with Section 99(7) of the Insolvency and Bankruptcy Code, 2016 ('Code'/'IBC') recommending the admission of the Application filed by the Creditor i.e. *State Bank of India* under Section 95 of the Code wherein it sought commencement of Insolvency Resolution Process ('IRP') against the Personal Guarantor, namely *Mr. Hemant Bohra*, of the Corporate Debtor being *M/s Bohra Industries Limited*.
2. The Creditor had filed the main Application bearing *CP No.(IB)-19/95(1)/JPR/2021* under Section 95 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 ('Rules'), seeking initiation of IRP against the Personal Guarantor of the Corporate Debtor for an amount of Rs. 70,73,95,918.49/- (Rupees Seventy Crores Seventy- Three Lakhs Ninety- Five Thousand Nine Hundred Eighteen and Forty- Nine Paise Only) in relation to the credit facility extended therein. This Authority *vide* Order dated 16.07.2021 had appointed *Mr. Manohar Lal Vij* as the Resolution Professional to file a report under

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Section 99 of IBC, 2016 which has been filed by him through *IA(IBC)No. 232/JPR/2021*.

3. The Report submitted by the Applicant states that Personal Guarantor had provided his personal guarantee to secure the entire credit facilities availed by the Corporate Debtor from the Creditor to the tune of Rs. 68.50 Crores. The Corporate Debtor defaulted on repayment of the availed credit facility and subsequently, the creditor served the Demand Notice dated 09.05.2019 under Section 13 of SARFAESI, 2002 to the Corporate Debtor as well as the Personal Guarantor demanding repayment of Rs. 68.50 Crores with interest.

The details of the sanctioned loan facility have been tabulated below:

#	Facility	Limit (In Crore)
	CC Limit	Rs. 48.00
A	Total Fund Based Limit	Rs. 48.00
	Letter of Credit	Rs. 15.00
	Bank Guarantee	Rs. 5.00
	Forward Contract/ Derivates Limit	Rs. 0.50
B	Total Non-Fund Based Limit	Rs. 20.50
	Total Limits (A+B)	Rs. 68.50

4. The Applicant also mentioned that this Adjudicating Authority vide Order dated 07.08.2019 had admitted the application filed by one of the Creditors of the Corporate Debtor under Section 7 of the Code and the appointed IRP therein i.e. *Mr. Naresh Verma* admitted the claim of the Creditor herein i.e. SBI to the tune of Rs. 70.72 Crores as enshrined in the list of Creditors. The RP also noted that the Creditor issued a Demand Notice dated 25.08.2020 in requisite FORM B in accordance with Rule 7 of the Personal Guarantor

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Rules. The RP, vide e-mail and letter dated 16.07.2021 and 17.07.2021, requested the Personal Guarantor of Corporate Debtor to submit proof of repayment, if any, made to Creditor but the Personal Guarantor, in the virtual meeting scheduled on 19.06.2021, acknowledged the existence of Debt and stated that no payment was made in capacity of guarantor to the Creditor. The details of the net worth as per the affidavit of the Personal Guarantor is also filed by the Applicant, which is as below:

#	<i>Particulars</i>	<i>Amount (Rs. in Lac)</i>
1	Assets	
2	Land and Building	900.00
3	Cash and Cash Balance	13.56
4	FDR in SBI, SME Branch, Udaipur (pledged)	53.50
5	Policies	30.18
6	Investment in Bohra Industries Limited	2428.20
7	Household Goods	16.13
8	Total Assets (A)	3341.57
9	Liabilities (B)	270.00
10	Net worth (A-B)	3071.57


5. Hence, this Application has been filed by the Applicant stating the grounds for admission of the Application, which are as follows:

5.1. The Application filed by the Creditor satisfies the requirement as set out in Section 95 of the Code;

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- 5.2. The Corporate Debtor, *Bohra Industries Limited* has committed default in repayment of Loan Facility granted by the Creditor, *State Bank of India*;
- 5.3. *Mr. Hemant Bohra* being personal guarantor to *Bohra Industries Limited* has also committed default in repayment of Loan Facility demanded by the Creditor *State Bank of India* after invocation of personal guarantee.
- 5.4. *Mr. Hemant Bohra* has not denied the existence of debt and personal guarantee executed in favour of the Creditor.
- 5.5. *Mr. Hemant Bohra* through the reply dated 21.07.2021 has stated that he has not made any repayment to the Creditor i.e. *State Bank of India*, towards the outstanding debt of the Corporate Debtor, *Bohra Industries Limited*;
- 5.6. In light of the above, it is just and equitable that Insolvency Resolution Process be initiated against *Mr. Hemant Bohra*, Personal Guarantor to Corporate Debtor, *Bohra Industries Limited*, under the orders and directions of this Tribunal.
6. The Personal Guarantor has appeared before this Authority in view of the judgment of the Hon'ble NCLAT in the case of *Ravi Ajit Kulkarni vs. State Bank of India [NCLAT Company Appeal (AT) (Insolvency) No. 316 of 2021]*, which inter alia outlined the need to issue limited notice in Section 95 cases for presence of the Personal Guarantors. The Personal Guarantor



has filed its reply vide Diary No. 2638/2021 dated 08.12.2021, stating the following:

- 6.1. The Personal Guarantor submitted that Application filed under Form C and subsequent report of the RP is defective as the same is predicated only on a purported Supplemental Deed of Guarantee which does not qualify as a valid deed of guarantee, since the alleged Original Deed of Guarantee was not produced with the Application and the purported Supplemental Deed of Guarantee is Unstamped. Also, there is a notation of INR 500 of stamp duty having been paid and the same appears to be in connection with some other agreement executed by the Principal Borrower/Corporate Debtor.
- 6.2. The Personal Guarantor has also relied on particular set of facts delineating that since incorporation, the Corporate Debtor availed banking services from Creditor and was engaged in long standing business relationship. However, on and around 2011, when the Corporate Debtor was preparing to obtain a listing on the Indian Stock Exchanges, several misdoings of the Creditor came into light. The Creditor had reported many accounts of the Corporate Debtor to CIBIL under doubtful and/or wilful defaulter categories, which was incorrect. This was brought to the notice of the Creditor by the Corporate Debtor vide letter dated 25.06.2012. Hence, the Creditor was fabricating its own records with the objective of misrepresenting facts.

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- 6.3. Similarly, on various occasions, the Creditor misrepresented creditworthiness of the Corporate Debtor thereby obstructing its ability to avail credit facility from other lending institutions; which was pointed out and objected to by the Personal Guarantor through letter dated 26.10.2013. Again, in September 2014, the Personal Guarantor came to know that Creditor had misrepresented information to CIBIL, which was notified vide letter dated 16.09.2014. Multiple other discrepancies have also been pointed out by the Personal Guarantor owing to which Corporate Debtor's finance credit and market facilities were adversely affected. These had a cascading effect on the business and financial position of the principal borrower which ultimately led to default in and around 07.07.2019.
- 6.4. Additionally, it is submitted that the Creditor in order to commence multiple proceedings filed separate proceedings against Personal Guarantor before Debt Recovery Tribunal II, New Delhi, when the CIRP of the Corporate Debtor was underway. The said proceedings numbered as OA No. 250/2021 were pending on the date of the filing of the reply. The application under Section 95 was filed in the month of March, 2021 and the CIRP of the principal borrower came to an end with the approval of resolution plan *vide* Order dated 13.10.2021. The present application is not maintainable as the Creditor acted in contravention of Section 60(2) of the Code. Also, the Resolution

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Professional failed to consider the response of the Personal Guarantor provided through e-mail dated 21.07.2021.

7. The RP filed Rejoinder vide Diary No. 1376/2022 dated 05.05.2022 stating that via email dated 16.07.2021, the Personal Guarantor intimated about appointment of RP and further sought details pertaining to the Personal Guarantee furnished by him along with its status and proof of repayment of the debt claimed as unpaid by the Creditor, if any. The Personal Guarantor vide email dated 21.07.2021 confirmed his personal guarantee furnished with the Creditor. On examination of the Application along documents, the RP being satisfied that the personal guarantor had given personal guarantee to the guarantor and both the Corporate Debtor along with personal guarantor has failed to repay the facilities sanctioned by the Creditor along with the interest, filed the report under Section 99 recommending IRP of the Personal Guarantor. The RP further relied upon certain judgments to substantiate its stand recommending the IRP of the Personal Guarantors.

8. The Personal Guarantor filed the Convenience Sheet vide Diary No. 3046/2023 dated 21.12.2023 contending as under:

8.1. It has been submitted that the present petition has been filed invoking the Personal Guarantee of the Guarantor towards the facilities availed by Corporate Debtor i.e. *M/s Bohra Industries Limited* from the Creditor i.e. *SBI*. The factual matrix of the CIRP of the Corporate Debtor has been elaborated by the Guarantor in the Convenience Sheet.

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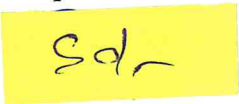
As per the same, the Corporate Debtor had two Financial Creditors (i) *SBI* being the Creditor in the present matter and (ii) *STCI Finance Limited* ('STCI'), initiator of CIRP of the Corporate Debtor as Applicant to the main Petition filed under Section 7 of the Code. It is also mentioned that *M/s Bohra Pratisthan Pvt. Ltd.* ('BPPL') was the Corporate Guarantor towards the facilities advanced to Corporate Debtor. Meanwhile, an application under Section 7 was filed against Corporate Guarantor i.e. *BPPL* numbered as *CP No. 171/JPR/2019* and CIRP was initiated vide Order dated 05.08.2019. Before approval of the Resolution Plan of the Corporate Debtor, *STCI* vide letter dated 15.09.2020 withdrew its claim against the Corporate Debtor on the premise that it would recover the same from the CIRP of *BPPL* and the Personal Guarantor herein.

8.2. Consequently, during the CIRP of *BPPL*, the claim was filed by *STCI* to the tune of Rs. 24 Crores. The said action was challenged by other Financial Creditors of *BPPL* through *IA No. 294/JPR/2020*, which was dismissed vide Order dated 11.12.2020. The order was challenged before the Hon'ble NCLAT but the Appeal was dismissed on 13.07.2021. Thereafter, the said issue was challenged before the Hon'ble Supreme Court wherein vide Order dated 20.10.2021, the CIRP of *BPPL* was stayed.

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- 8.3. An issue has been raised by the Person Guarantor questioning, Whether the Insolvency Petition against Personal Guarantor be admitted when there are issues in dispute with regard to one of the Financial Creditor of Corporate Debtor and the injunction orders subsists as on date with regard to the same. It has been contended that the Personal Guarantor herein is also the Guarantor towards the facilities advanced to *BPPL*. Therefore, when the CIRP of the borrower, in this case the *BPPL*, has been stayed, the Financial Creditor cannot pursue its claim against Personal Guarantor as liability of the borrower is yet to be determined. It is further brought to our notice that simultaneously *STCI* initiated commercial suit proceedings before the High Court of Bombay against the Personal Guarantor wherein ad-interim directions were passed against the personal assets of Personal Guarantors vide order dated 17.12.2019 and 02.03.2020, much prior to filing of this Application.
- 8.4. Moreso, after approval of the Resolution Plan of Corporate Debtor on 13.10.2021, the Corporate Debtor moved an application seeking directions to *STCI* for issuance of no dues certificate; the said application was decided vide order dated 12.04.2023 with the observation that the approval of Resolution Plan does not ipso facto discharge the Guarantor. The said order was challenged before the Hon'ble NCLAT in an appeal and the said appeal is pending

adjudication. Therefore, the liability of the Guarantors is yet to be crystallized.

8.5. Further, the report of the Applicant/ RP only demonstrates the alleged dues of *SBI* and does not take the abovesaid into consideration, having direct bearing on the overall insolvency proceeding as Personal Insolvency is not Creditor specific, once admitted, it is against all the creditors collectively. Reliance was placed on the judgment laid down by the Hon'ble Supreme Court in the matter of *Dilip B Jiwrajka vs. Union of India & Ors., Writ Petition (Civil) No. 1281/2021* to state that it is settled law that at the stage of Section 100(1), the Authority conducts independent assessment and does not solely rely on the report of the RP to decide the fate of the applications under Section 95 and 94 of IBC.

9. The Personal Guarantor has filed Written Submissions vide Diary No. 68/2024 dated 05.01.2024 in addition to the convenience sheet delineating as below:

9.1. It is stated that the Personal Guarantor had extended Personal Guarantee for the working capital facilities and not on any term loan. The term loan availed from Creditor i.e. *SBI* was not outstanding after 2014. The entire fund was extended for various facilities having different time bound recovery and it is the responsibility of the RP who

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took over the Corporate Debtor to recover the said amount from the Debtors of the Company.

9.2. The RP mentioned that Rs. 102 Crore is pending against the Personal Guarantor and it was acknowledged that Rs. 25.21 Crores has been received by sale of Unit to the Creditor i.e. *SBI* in accordance with the Resolution Plan of the Corporate Debtor. Further, the RP has not acknowledged the receipt of Rs. 11 Crores in the month of October 2020 and remaining Rs. 14.21 Crores in the month of November 2022. In the Form C, the liability has been shown as Rs. 70,73,95,918.49/- (Rupees Seventy Crores Seventy- Three Lakhs Ninety- Five Thousand Nine Hundred Eighteen and Forty- Nine Paisa Only) whereas the maximum guarantee limit was Rs. 68.50 Crores, out of which Rs. 25.21 Crores has been admittedly received by *SBI*. The Personal Guarantor had executed the document which entailed the maximum liability to the extent of Rs. 68.50 crores.

9.3. The Personal Guarantor has specified certain transactions which have not been accounted for:

9.3.1. *SBI* did not adjust Rs. 1.37 Crores FD plus interest of Corporate Debtor while making claim in CIRP of Corporate Debtor. This amount should have been deducted from the claim as sought from the personal guarantor.

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9.3.2. Next, an amount of Rs. 0.53 Crores of FD of Personal Guarantor has been lying with SBI at the time of CIRP initiation.

9.3.3. Also, when Corporate Debtor was taken over by its RP, an amount of Rs. 43.47 Lakhs was lying at the bank which has also not been given credit for clearing the net claim from Personal Guarantor.

9.3.4. Lastly, when SBI issued demand notice on 09.05.2019, the SBI was having pledge of 2157800 shares of the Personal Guarantor and the same should have been disposed of as per face value, thereby entitling SBI to recover Rs. 2,15,78,000/- (Rupees Two Crores Fifteen Lakhs Seventy-Eight Thousand Only).

9.4. Also, the RP of Corporate Debtor signed annual report of Corporate Debtor from August 2019 to December 2022 where the dues of Government of India are pending and subsidy of Rs. 11.20 Crores along with refund due to be recovered from GST Authorities is Rs. 3.48 Crores. Without exercising the recovery of this Rs. 14.68 Crores, the burden is being transferred on the Personal Guarantor. Also, in the Corporate Debtor, an amount of Rs. 19 Crores is shown as recoverable from Debtor along with stock of Rs. 2.48 Crores; the said has been accepted as legitimate dues. But, in failure of recover, the Personal guarantor is being penalised.

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- 9.5. It has also been contended that the main CoC member i.e. *SBI* agreed to pay the monthly emoluments of the Personal Guarantor during the CIRP Period and the same can be verified from the minutes of the CoC meeting. A total of 50 months of emoluments of Rs. 3 Lakhs per month, aggregating to Rs. 1.5 Crores is due to be paid to the Personal Guarantor. Additionally, *SBI Udaipur*, has a savings account of where an amount of Rs. 5,84,099.71/- (Rupees Five Lakhs Eighty-Four Thousand Ninety-Nine and Seventy-One Paise) is balanced, out of which Rs. 5 Lakhs was received from SBI Life Insurance on account of lapse of policy for non-payment of premium, and the same is being held by SBI without authority.
- 9.6. The net amount of claim against the personal guarantor has been mentioned in the written submissions and is tabulated as below:

<i>Particulars</i>	<i>Amount (In Cr.)</i>
Claim lodged by SBI	66.67 Crores
Less Amount received from on 07.08.2017 SRP (Success Resolution Applicants)	(25.21 Crores)
Less Subsidy receivable from GOI	(11.20 Crores)
Less GST Refund not claimed by RP	(3.48 Crores)
Less Current a/c balance available	(0.43 Crores)
Less Fixed Deposit With interest of 7 years	(1.37 Crores) (0.55 Crores)
*Less Debtors & Stock	(21.48 Crores)
Less Fixed Deposit of Mr. Bohra	(0.53 Crores)

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Less Saleable Shares not disposed of	(2.15 Crores)
Less Salary/ Emoluments/ Gratuity Not paid despite COC agreed to release	(1.70 Crores)
Less Balance lying with SBI A/c	(0.06 Crores)
Illegally retained and not released	(68.16 Crores)

* Rs. 21.48 Crores includes Debtors of Rs. 19 Crores and Rs. 2.48 Crores Stock lying with the unit which is part of Current Assets.

10. The Creditor i.e. SBI has also preferred written submissions in the matter through Resolution Professional vide Diary No. 92/2024 dated 09.01.2024 wherein it relied upon the judgment of the Hon'ble Supreme Court in *Innoventive Industries Ltd. vs. ICICI Bank, (2018) 1 SCC 407* and judgment of the Hon'ble NCLAT in *Manmohan Gupta vs. MDS Digital Media Pvt. Ltd., Company Appeal (AT)(Insolvency) No. 202 of 2023*. Further, it is mentioned that the Code empowers the Creditor to submit an Application under Section 95 on account of default committed by the Personal Guarantor. It is also mentioned that the threshold for initiating Personal Insolvency is Rs. 1000/- (Rupees One Thousand Only). In the present matter, the total amount outstanding of the Creditor being SBI to be received from the Personal Guarantor is Rs. 102 Crores, which falls over and above the threshold limit.
11. We have heard the submission of the parties in the case and perused the Application, Reply, rejoinder, Convenience Sheet, Written Submissions along with the documents filed therein.

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12. Before determining the issue in question presented before us in the present Application, we must refer to the factual background of the case along with the connected matters. The main application *CP No. (IB)-19/95(1)/JPR/2021*, filed under Section 95 of the Code, was preferred by the Creditor through *Mr. Manohar Lal Vij*, RP stating that (i) the Application satisfies the requirement as set out in Section 95 of the Code; (ii) the Corporate Debtor, *Bohra Industries Limited* has defaulted in repayment of loan facility granted by the Creditor being *SBI*; and (iii) *Mr. Hemant Bohra* being Personal Guarantor to Corporate Debtor has also committed default in repayment of loan facility demanded by the Creditor after invocation of Personal Guarantee. The Resolution Professional was appointed vide Order dated 16.07.2021 under Section 97 of the Code. Consequently, this Application *IA No. 232/JPR/2021* is filed by the Resolution Professional recommending Insolvency Resolution Process of the Personal Guarantor i.e. *Mr. Hemant Bohra* in accordance with Section 99 of the Code. Now, this matter is before us for Orders under Section 100 of the Code for admission or rejection of the Application.
13. Earlier, the CIRP of the Corporate Debtor i.e. *M/s Bohra Industries Limited* was initiated by this Adjudicating Authority in *CP No. IB-157/7/JPR/2019* vide Order dated 07.08.2019 on an Application filed by *STCI Finance Limited* under Section 7 of the Code. The Corporate Debtor i.e. *BIL* had two Financial Creditors, *State Bank of India* and *STCI Finance Limited*. In the

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said CIRP of Corporate Debtor, *STCI* had filed a claim of Rs. 24 Crores and during CIRP, it withdrew the claim from the CIRP of the Corporate Debtor on the premise that it would recover the same from the Corporate Guarantor i.e., *Bohra Pratisthan Private Limited* and Personal Guarantor *Hemant Bohra*. Further, the Resolution Plan in the CIRP of the Corporate Debtor was approved on 13.10.2021. Thereafter, the new management of the Corporate Debtor preferred an Application seeking various directions; this Adjudicating Authority vide Order dated 12.04.2023 held that approval of Resolution Plan does not ipso facto absolve the surety/guarantor of his her liability and further directed *STCI* to return the Post Dated Cheques to the Corporate Debtor. Against the said Order, both the Corporate Debtor and *STCI* filed appeal before the Hon'ble NCLAT which is pending adjudication as on date.

14. Another application under Section 7 of the Code was filed before this Adjudicating Authority numbered as *CP No. 171/JPR/2019* titled as *9M Corporation Vs. Bohra Pratisthan Private Limited*. The same was admitted and CIRP was initiated against *BPPL* vide Order dated 05.08.2019. The claim of *STCI* to the tune of Rs. 24 Crores, as withdrawn from the CIRP of *BIL*, was then filed before the RP of *BPPL*. Other Financial Creditors of *BPPL* challenged the action of *STCI* before this Adjudicating Authority but the same did not sustain and was rejected vide Order dated 11.12.2020. Against the order of this Adjudicating Authority, an Appeal was preferred

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before the Hon'ble NCLAT but the same got dismissed vide order dated 13.07.2021. Against the said Order of NCLAT, an appeal was preferred before the Hon'ble Supreme Court and vide order dated 20.10.2021, the CIRP of *BPPL* was stayed by the Hon'ble Supreme Court.

15. Hence, it is noted that the CIRPs of the Corporate Debtor (*BIL*) as well as the Corporate Guarantor (*BPPL*) were initiated before this Adjudicating Authority vide Order dated 07.08.2019 and 05.08.2019 respectively. Thereafter, the common Financial Creditor *STCI* withdrew from the CIRP of the Corporate Debtor to pursue its claim against the Corporate Guarantors and other Personal Guarantors of the Corporate Debtor; the same was done in accordance with the law prevailing at the relevant time in the case of the Hon'ble NCLAT in *Dr. Vishnu Kumar Agarwal vs. M/s Piramal Enterprise Limited, Company Appeal (AT) (Insolvency) No. 346 and 347 of 2018*. Hence, *STCI* filed its claim to the tune of Rs. 24 Crores approx. before the RP of the Corporate Guarantor i.e. *BPPL*, however, the CIRP of the Corporate Guarantor was stayed by the Hon'ble Supreme Court vide Order dated 20.10.2021.

16. During the pendency of the CIRP of the Corporate Debtor and Corporate Guarantor, *SBI* filed the Application against the Personal Guarantor herein i.e. *Mr. Hemant Bohra* on 09.03.2021, wherein this Adjudicating Authority passed the order for appointment of RP on 16.07.2021. It is noted that at the time of filing of the Petition under Section 95 of the Code, *SBI* has only

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accounted for the default committed by the Corporate Debtor in repayment of its debts which lead to invocation of the Personal Guarantee provided by the Personal Guarantor, which is above and beyond the threshold provided for in the Code under Part III.

17. It has been contended by the Personal Guarantor that the *SBI* had filed proceedings before the Debt Recovery Tribunal II, New Delhi, however, it is seen that the DRT vide Order dated 11.04.2022 had disposed of the OA No. 250/2021. Further, another reference to Commercial Suit preferred by *STCI* against the Personal Guarantor has been annexed vide Diary No. 2860/2023 dated 04.12.2023. The Hon'ble High Court on 17.12.2019 and 02.03.2020 passed ad-interim orders in the said matter. It is pertinent to note that filing a Commercial Suit in Bombay High Court by *STCI* against the Personal Guarantor is non-consequential with regard to pendency of this Application.
18. After having dealt with the various on-going litigations, we delve into the Application filed by the Resolution Professional recommending the Insolvency of the Personal Guarantor. The RP had informed the Personal Guarantor regarding the proceedings initiated under Section 95 of the Code and sought details therein vide e-mail dated 16.07.2021. The Personal Guarantor in the reply e-mail dated 21.07.2021 has provided details of the Personal Guarantee extended in respect of loans availed by the Corporate Debtor, which is tabulated as below:

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<i>Name of Institution</i>	<i>Whether Guarantees have been invoked</i>	<i>Whether any payment has been made against invocation</i>	<i>Amount of payment against the Personal Guarantee</i>	<i>Amount of Default (INR in Crores)</i>
SBI	Yes	No	Nil	80.73
STCI Finance Limited	Yes	No	Nil	24.70

19. It is a matter of fact that the Personal Guarantor had extended his Guarantee towards the loan of Rs. 68.50 Crores availed by the Corporate Debtor from SBI. Hence, the Application was filed under Section 99 of the Code recommending Individual Insolvency of the Personal Guarantor. It is settled law that liability of the surety/guarantor is co-extensive with that of the principal borrower. Mere approval of the Resolution Plan, does not free the surety/guarantor from its liability mentioned therein.
20. The Personal Guarantor has stated a plethora of facts to contend that misreporting the credit worthiness of the Corporate Debtor eventually led to the default in repayment of loan. However, while determining the default of the Personal Guarantors, such facts are of no relevance. The non-payment of its liability by the Corporate Debtor is what lead to invocation of the Personal Guarantee and thereby the default of the Personal Guarantor lead to the invocation of Section 95 by the Creditor.
21. Learned counsel for the Personal Guarantor had submitted that when there are issues in dispute with regard to one of the Financial Creditor i.e. STCI of Corporate Debtor and injunction order of the Hon'ble Supreme Court

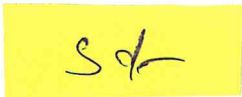
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subsists against the CIRP of *BPPL*, insolvency petition against the Personal Guarantor cannot be admitted. It is reiterated for the sake of clarity that the claim of *STCI*, as withdrawn from the CIRP of Corporate Debtor i.e. *BIL*, was presented in the CIRP of the Corporate Guarantor i.e. *BPPL*; this action was challenged by other Financial Creditors and eventually in appeal, the Hon'ble Supreme Court stayed the CIRP of *BPPL*. In another situation, the order on the Application filed by new management of Corporate Debtor seeking issuance of No Dues Certificate by *STCI*, is challenged and pending adjudication before the Hon'ble NCLAT. Therefore, the question remains that whether in these circumstances, the Individual Insolvency of the Personal Guarantor be ordered under Section 100 of the Code.

22. In this case, the Creditor *SBI*, has filed the main application under Section 95 against the Personal Guarantor of *BIL* since it has admittedly, from the CIRP of the Corporate Debtor, received an amount of Rs. 25.21 Crores against the amount of loan sanctioned and availed by the Corporate Debtor i.e. Rs. 68.50 Crores. The remaining amount of claim of *SBI* still exists against the Personal Guarantor of *BIL*. Therefore, the Application filed under Section 95 of the Code, is a separate transaction from that of the Application filed under Section 7 by *9M Corporation through its proprietor* against *BPPL*.

23. The Creditor in its Written Submissions has mentioned that a total of Rs. 102 Crores is outstanding against the Personal Guarantor. The Personal




Guarantor has stated that the RP has not acknowledged receipt Rs. 11 Crores in the month of October, 2020 and remaining Rs. 14.21 Crores in the month of November, 2022. Further, a list of transactions has been provided by the Personal Guarantor which has allegedly not been accounted. This is a case where the Personal Guarantor has itself acknowledged its Personal Guarantee and default in repayment of loan, therefore, the question of adjusting the alleged transactions at this stage does not arise. The claim of SBI will be determined by the RP after the Order under Section 100 for Individual Insolvency of the Personal Guarantor is passed. The contentions/objections of the Personal Guarantor towards the claim of the Creditor (SBI) is pre-mature at this stage. Moreover, it is a matter of fact that the Application under Section 95 of the Code was filed before the approval of the Resolution Plan in the CIRP of the Corporate Debtor and afterwards SBI has received an amount of Rs. 25.21 Crores from the CIRP of the Corporate Debtor.

24. The compliance of the relevant sections of the Code is as follows:

Sr. No.	Requirements under Relevant provisions of Section 99 of the Code	Compliance by RP
I.	<i>Section 99(1):</i> The RP shall examine the application referred u/s 94 or 95 within 10 days of appointment and submit a report to Adjudicating Authority for approval/rejection of the application	YES The RP has prepared the present report in compliance with the requirements of Section 99(1) of the Code

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Sr. No.	Requirements under Relevant provisions of Section 99 of the Code	Compliance by RP
II.	<p><i>Section 99(2):</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:</p> <p>(a) evidence of electronic transfer of the unpaid amount from the bank account of the debtor;</p> <p>(b) evidence of encashment of a cheque issued by the debtor; or</p> <p>(c) signed acknowledgment by the creditor accepting receipt of dues.</p>	<p>YES</p> <p>The RP had preferred an emails dated 16.07.2021 and 17.07.2021 requiring the Personal Guarantor to prove repayment of debt.</p>
III.	<p><i>Section 99(3):</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.</p>	<p>YES</p> <p>The Debt is registered by the Creditor in the Information Utility (Anx. E)</p>
IV.	<p><i>Section 99(4):</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.</p>	<p>YES</p> <p>The Resolution Professional sought certain details of personal guarantees as invoked by the beneficiaries/financial institutions via emails dated 16.07.2021 and 17.07.2021.</p>
V.	<p><i>Section 99(5):</i> The person from whom information or explanation is sought under sub-section (4) shall furnish such information or explanation within seven days of receipt of the request.</p>	<p>YES</p> <p>E-mail received from the Personal Guarantor on 21.07.2021</p>

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Sr. No.	Requirements under Relevant provisions of Section 99 of the Code	Compliance by RP
VI.	<i>Section 99(6):</i> The Resolution Professional shall examine the application and ascertain that - (a) the application satisfies the requirements set out in Section 94 or 95; (b) the applicant has provided information and given explanation sought by the resolution professional under sub-section (4).	YES RP has examined the Application under Section 95 and relevant information has been provided.
VII.	<i>Section 99(7):</i> After examination of the application under sub-section (6), he may recommend acceptance or rejection of the application in his report.	YES RP has recommend the acceptance in the Report.
VIII.	<i>Section 99(8):</i> 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.	No such observation has been mentioned in the Report.
IX.	<i>Section 99(9):</i> The Resolution Professional shall record the reasons for recommending the acceptance or rejection of the application in the report under sub-section (7).	YES RP has laid down reasons for the Report.
X.	<i>Section 99(10):</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.	YES RP has filed the Report.

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25. Since, the parameters laid down under the provisions of law are met with, we are inclined to admit the Application filed by the Creditor against the initiation of Individual Insolvency Resolution Process of the Personal Guarantor. The Creditor is directed to deposit Rs. 1,00,000/- (Rupees One Lakh Only) to the bank account of the Resolution Professional within one week towards its fees and expenses. This shall be subject to the rules and regulations prescribed under law.
26. Resultantly moratorium is declared as provided under Section 101 of IBC, which begins with the date of admission of the application and shall cease to have effect at the end of the period of 180 days or on the date the Adjudicating Authority passes an order on the repayment plan under Section 114, whichever is earlier. During the moratorium period interalia the following provisions shall be in effect;
- 26.1. Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and
- 26.2. The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and
- 26.3. The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;
- 26.4. The provisions of this Section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.



27. The Resolution Professional viz., *Mr. Manohar Lal Vij*, who has been appointed under Section 97 *vide* order dated 16.07.2021, is directed to cause a public notice to be published on behalf of the Adjudicating Authority within 7 days from the date of this Order, inviting claims from all Creditors, who shall register their claims as provided under Section 103 within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102(2) of IBC. The publication of notice shall be made in 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. One shall be place by the Registry on the website of the Adjudicating Authority and the other shall be affixed in the premises of this Authority.
28. The Resolution Professional in exercise of the powers conferred under Section 104 shall prepare a list of creditors within 30 days from the date of the notice. The Personal Guarantor shall prepare a Repayment Plan in consultation with the Resolution Professional as provided under Section 105 which shall include the provisions for payment of fee to the Resolution Professional. 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.
29. In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof.

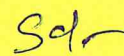
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If the Resolution Professional is of the opinion that the meeting of the Creditors should be summoned, the same shall be specified in detail as provided under Section 106(3). The meeting shall be held in accordance with Section 107 of the Code.

30. The meeting of the Creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of the Code. The Resolution Professional shall prepare a report in accordance with Section 112 of the Code and submit the same to this Authority, copies of which shall be provided to the Personal Guarantor and 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 IBC, 2016.
31. In terms of the above, *CP No. (IB)- 19/95(1)/JPR/2021* filed under Section 95 of the IBC, is admitted and the Insolvency Resolution Process stands initiated against the said Debtor/Personal Guarantor i.e. Mr. *Hemant Bohra*. Accordingly, *IA No. 232/JPR/2021* stands disposed of.



**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**



**RAJEEV MEHROTRA,
TECHNICAL MEMBER**