



**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-II), CHANDIGARH**

CP (IB) No. 65 /Chd/Pb/2023

Under Section 95 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7(2) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019

IN THE MATTER OF:

Bank of Maharashtra

having its Head office at
Lokmangal, 1501, Shivaji Nagar,
Pune-411005

Also at-

Branch Office:

Asset Recovery Branch
SCO 120-122, 1st Floor, Sector-17C,
Chandigarh-160017

Filed Through

Proposed Resolution Professional

Mr. Nitin Narang, IP

IBBI/IPA-002/IP-N00828/2019-2020/12629

Having its office at

Shop No. 19, Vijay Nagar, Single Story,
Near SBI & PNB Branches, New Delhi, 110009.

...Applicant/ Creditor

Versus

Sh. Abhishek Kansal

S/o Sh. Anish Kansal,

(Personal Guarantor of M/s Genex Industries Limited)

House No. 259 L, Model Town

Ludhiana, Punjab 141002

...Respondent/ Guarantor

Judgment delivered on: 14.10.2024



**Coram: HON'BLE SH. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE DR. V.G. VENKATA CHALAPATHY, MEMBER (TECHNICAL)**

PRESENT:

For the Applicant/ Creditor : Mr. Viren Sharma and Mr. Pradeep Singh,
Advocates

For the Personal Guarantor : Proceeded Ex Parte vide order dated 16.07.2024

**PER: SH. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
Dr. V.G. VENKATA CHALAPATHY, MEMBER (TECHNICAL)**

ORDER

The present Application has been filed by Bank of Maharashtra (hereinafter referred to as the "Applicant" or "Creditor") through its Proposed Resolution Professional, Mr. Nitin Narang, who is duly authorized by the bank through authorisation letter dated 01.12.2022, under Section 95 and other applicable provisions of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "IBC") read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 (hereinafter referred to as the "Rules") seeking to initiate Personal Insolvency Resolution Process against Sh. Abhishek Kansal (hereinafter referred to as the "Respondent" or "Personal Guarantor"), who executed a personal guarantee to secure the repayment of financial assistance availed by M/s. Genex Industries Limited (hereinafter referred to as the "Corporate Debtor" or "Principal Borrower") from the Creditor.



2. The Applicant stated that the registered office of the Corporate Debtor is situated within the territorial jurisdiction of this tribunal and therefore, the present Application is filed before this Bench.

FACTS OF THE CASE

3. The brief facts of the case, as stated in the Application, are as below: -

(i) The Corporate Debtor M/s Genex Industries Limited (earlier Known as “M/s B.R. Spinners Private Limited”) (hereinafter referred to as the “Principal Borrower”) had approached the Applicant Bank for the cash credit facilities under the Consortium of United Bank of India (Lead Bank) and the Applicant duly sanctioned the cash credit facilities under the consortium. The copy of the sanction letter dated 07.04.2012 is attached as Annexure A-3 of the Application.

(ii) The Applicant bank entered into a term loan consortium agreement and a Joint Deed of Hypothecation with the Principal Borrower. The Applicant Bank also entered into a Working Capital Consortium Agreement with the Principal Borrower, hence in order to avail the financial facilities from the Applicant Bank, the then directors of the Principal Borrower namely Mr. Kailash Aggarwal, Mrs. Rajni Aggarwal and Mr. Anubhav Aggarwal also gave their personal guarantee in favor of the Applicant Bank. It was agreed that if at anytime the default made by the Principal Borrower in payment of the principal sum together with interest, costs, charges in respect of credit facilities, then the Guarantors shall forthwith on demand pay to the Bank the whole of such principal sum together with interest, cost, charges, expenses. The Principal Borrower and Guarantors had entered



into equitable mortgage of the properties in Form No. D17 A. The copy of the term loan agreement, Joint deed of hypothecation, working capital consortium agreement and deed of guarantee dated 15.06.2012 are attached as Annexure A-4, A-5, A-6 and A-7 respectively of the Application.

(iii) Thereafter on 10.06.2015 some of the documents were renewed/ executed between the then directors of the Principal Borrower and they entered into a Joint Deed of Hypothecation and the present directors of the Principal Borrower namely Mr. Kailash Aggarwal, Mrs. Rajni Aggarwal and Mr. Abhishek Kansal entered into a deed of guarantee with the Applicant Bank. Copy of the Joint deed of Hypothecation, Working Capital Consortium Agreement, deed of Guarantee dated 10.06.2015 are attached as Annexure A-8, A-9 and A-10 respectively of the Application.

(iv) The Principal Borrower failed to repay the debt owed to the lenders including the Applicant Bank and was classified as a Non-performing asset on 29.06.2016. Consequently, the Applicant bank issued a demand notice dated 22.08.2017 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to the Principal Borrower. The Applicant filed an Original Application bearing O.A. 1714/2018 before the Debt Recovery Tribunal, Chandigarh Bench ("DRT") on default made by the Principal Borrower in repayment of the debt which is pending before the Hon'ble DRT. A copy of demand notice dated 22.08.2017 is attached as annexure A-11 of the application.



(v) Thereafter, the Applicant bank invoked guarantee by issuing a demand notice in prescribed Form-B under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Principal Borrower) Rules, 2019 on 20.08.2022 via Speed Post. However, the same could not be served and was returned. Thereafter on 15.11.2022, the Applicant Bank in compliance with Rule 3(g) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Principal Borrower) Rules, 2019 has affixed the demand notice outside the house where respondent ordinarily resides. A copy of demand notice dated 20.08.2022 alongwith speed post receipt and tracking report is attached as Annexure A-13 (Colly) of the Application. However, the personal guarantor failed to honor its liability in terms of Demand notice issued by the Applicant Bank.

(vi) The Applicant in its application placed reliance on the decision of Hon'ble Supreme Court in the matter of **Lalit Kumar Jain v. Union of India, (2021) 9 SCC 321** whereby it was held that the liability of the principal borrower (i.e. Corporate Debtor) and personal guarantor (i.e. Respondent) is co-extensive and therefore, there is no bar or prohibition for the Applicant Bank to initiate proceedings for recovery of its dues (excluding the amount, which is as per approved resolution plan) from the Personal Guarantor i.e. the Respondent.

(vii) With regard to the limitation, the Applicant stated that although the Principal Borrower committed default in repayment and was declared as a Non-performing Asset on 29.06.2016, the present petition falls within limitation in



view of acknowledgement of debt in the financial statements of the Principal Borrower. The Applicant also placed reliance on recent judgments of the Hon'ble Supreme Court in the matters of **Asset Reconstruction Company (India) Limited Vs. Bishal Jaiswal & Anr in Civil Appeal No. 323 of 2021** and **Dena Bank v. C. Shivakumar Reddy & Anr in Civil Appeal 1650 of 2020** wherein it was held that the admission in the balance sheets amounts to the acknowledgement of debt and extends the period of limitation.

(viii) The amount of debt and default mentioned in the Part-III of Form C of the application is as below:

1.	TOTAL DEBT (INCLUDING ANY INTEREST OR PENALTIES)	Total outstanding debt: Rs. 25,33,10,028.00/- (Rupees Twenty Five Crore Thirty Three Lacs Ten Thousand Twenty Eight only) as on 05.08.2022 and with interest and expenses thereon w.e.f. 06.08.2022
2.	AMOUNT IN DEFAULT	Total outstanding debt: Rs. 25,33,10,028.00/- (Rupees Twenty Five Crore Thirty Three Lacs Ten Thousand Twenty Eight only) as on 05.08.2022 and with interest and expenses thereon w.e.f. 06.08.2022
3.	DATE ON WHICH DEBT WAS DUE	29.06.2016 (Date of NPA Declaration of the account of the Corporate Debtor) It is submitted that the debt falls within the period of limitation in terms of the Limitation Act, 1963, in view of the Acknowledgement in the financial statements for the financial year 2021-2022



(ix) In addition to the above mentioned documents, the Applicant also attached with the application copy of the fresh certificate of incorporation consequent upon the change of the name, copy of the Master data pertaining to the respondent from the MCA website, summary of balance outstanding with the Applicant bank, copy of statement of accounts as annexure A-2, A-15, A-16 and A-17 respectively of the Application.

4. The Applicant in Part-IV of his Application has proposed Mr. Nitin Narang as Resolution Professional (hereinafter referred to as the “RP”) in the matter. This Adjudicating Authority after getting the credentials of the proposed RP verified through the Registry that no adverse remarks have been passed against the RP, appointed Mr. Nitin Narang, having Registration No.IBBI/IPA-002/IP-N00828/2019-2020/12629, Phone No. 9899358800, and Email: advocatenitinnarang@gmail.com, as RP, vide Order dated 12.04.2023 under section 97 of the Code with a direction to submit his report within two weeks. Vide the same order, the applicant was directed to issue limited notice of this petition to the respondent personal guarantor and file an affidavit to that effect.

REPORT OF RESOLUTION PROFESSIONAL

5. The RP filed IA No.1484/2023 for placing on record its report, vide diary no. 01604 dated 26.05.2023, which was taken on record vide order dated 22.02.2024. Thus, IA No.1484/2023 was disposed of with a direction to tag the same with the main Petition. Vide the same order, the Counsel for the Applicant was also directed to supply the copy of the RP report to the opposite counsel and file an affidavit of service within



one week and Counsel for the Personal Guarantor was directed to file objections, if any, to the report within one week.

6. The brief contents of the RP report are summarized below-

- (i) The Resolution Professional submitted that on perusal of the application filed by creditor, RP on 28.04.2023 sent a letter/notice through speed post and courier to the respondent requesting to submit the proof of payment and details thereto made by the respondent. The said notice alongwith postal and courier receipts of the above mentioned notice are attached as Annexure-B of the report. The abovementioned notice/letter sent by RP to the respondent has been returned undelivered. Copy of track report is attached as Annexure C of the report.
- (ii) Thereafter RP has sent an email requiring confirmation from the applicant bank to provide evidence in support of the debt being claimed. The applicant bank vide email dated May 08, 2023 has provided a statement of account of Principal Borrower, on perusal of the said statement of account it was observed that the said debt against the CD is outstanding and payments were not made by the Personal Guarantor. A copy of the email communication and statement of account is attached as Annexure D of the report.
- (iii) The RP in its report further stated the details of the compliances of section 95 and 99 of the code.
- (iv) The grounds for admission of the Application, as recorded in the RP report are as below:



"In view of the above, I, Nitin Narang, the appointed Resolution Professional vide Hon'ble NCLT order dated April 12, 2023 in CP (IB) No.65/Chd/Pb/2023, do hereby confirm that I have perused and examined the application filed by the applicant under Section 95 of the Code along with all the underlying documents and annexures and have formed the opinion to recommend the initiation of insolvency proceeding against the respondent/guarantor by Adjudicating Authority, based on following grounds: -

- A. The Application has been filed in Form C, in terms of Rule 7 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for the Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019, supported by requisite fee and documents.*
- B. The application satisfies the requirements set out in section 95 of the Code.*
- C. The Personal Guarantor was duly served with demand notice dated August 20, 2022 by the Financial Creditor for repayment of the debt owed by him to the Financial Creditor in terms of the provisions of the Code prior to filing the Insolvency Application, but the Personal Guarantor failed to repay the same.*
- D. The undersigned has also sent a communication to the Personal Guarantor, vide e-letter dated April 28, 2023, in terms of Section 99(2) of the Code, asking the Personal Guarantor to prove repayment of debt claimed as unpaid by the Financial Creditor. Till now no response has been received from the respondent.*
- E. The application does not relate to "excluded debts" as defined under Section 79(15) of the Code.*
- F. The Debtor, Personal Guarantor, is not eligible for fresh start under Chapter II of the Code.*
- G. The undersigned, however, is further making endeavours to trace out whereabouts of the Personal Guarantor or his death."*

7. The Counsel for the Applicant filed Affidavit of service in compliance of order dated 22.02.2024 vide diary no. 03104/01 dated 04.04.2024 alongwith copy of notice and speed post and tracking receipts.



8. Further vide order dated 10.06.2024, personal guarantor was given last opportunity to file his objections. However, the respondent neither appeared nor filed his objections. Therefore, the personal guarantor was proceeded as ex parte vide order dated 16.08.2024.

9. Thereafter, the Resolution Professional filed an I.A. no. 2161/2024 vide diary no. 03006 dated 27.09.2024 to place on record Financial Statements of the Principal Borrower for the financial year 2018-19, 2019-20, 2020-21, 2021-22 and 2022-23 for proper adjudication of the petition filed against the personal guarantors of the Principal Borrower. The said I.A. was allowed vide order dated 30.09.2024 with direction to tag the same with the main petition for future reference.

ANALYSIS AND FINDINGS

10. We have heard the submissions of RP and pursued the report filed by him under Section 99 and the Application filed by the Applicant under Section 95 of IBC, 2016.

11. The first issue that arises for adjudication before this Tribunal is ***“Whether the present petition is within the period of limitation or not”***.

A. The Principal Borrower has acknowledged the debt in its audited balance sheets as at 31.03.2019 (page 43 of I.A), as at 31.03.2020 (Page 134 of I.A), as at 31.03.2021 (Page 236 of I.A) and as at 31.03.2022 (page 303 of I.A), which would be deemed as acknowledgement of debt by the Personal Guarantor. With regard to the issue of limitation, the Applicant Bank has also placed reliance on the decision of Hon’ble Supreme Court in the matter of **“Laxmi Pat Surana vs.**



Union Bank of India and another (2021) 8 Supreme Court Cases 481”

wherein the Hon’ble Apex court has held below-

“37. Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action under Section 7 of the Code. However, Section 7 comes into play when the corporate debtor commits “default”. Section 7, consciously uses the expression “default” — not the date of notifying the loan account of the corporate person as NPA. Further, the expression “default” has been defined in Section 3(12) to mean non-payment of “debt” when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. In cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to non-payment of debt. Thus, when the principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of NPA but before the expiration of three years there from including the fresh period of limitation due to (successive) acknowledgments, it is not possible to extricate them from the renewed limitation accruing due to the effect of Section 18 of the Limitation Act. Section 18 of the Limitation Act gets attracted the moment acknowledgment in writing signed by the party against whom such right to initiate resolution process under Section 7 of the Code enures. Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (corporate debtor), as the case may be, acknowledge their liability to pay the debt. Such acknowledgment, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgment of the debt, from time to time, for institution of the proceedings under Section 7 of the Code. Further, the acknowledgment must be of a liability in respect of which the financial creditor can initiate action under Section 7 of the Code.”



The Principal Borrower in its balance sheets as at 31.03.2019, 31.03.2020, 31.03.2021 and 31.03.2022 acknowledged the debt and thereafter, the Applicant bank invoked the personal guarantee vide demand notice dated 20.08.2022 under rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019. Upon Invocation of guarantee on 20.08.2022, the personal guarantor failed to honor its liability and Consequently, the present application was filed on 24.01.2023. Hence, the present Petition is filed within the prescribed Limitation period of three years.

11 The Creditor in its Application has stated to have annexed the Deed of Personal Guarantee dated 15.06.2012 and renewed personal guarantee dated 10.06.2015 at Annexure A-7 and A-10 of the Application. The next issue that arises for adjudication before this Tribunal is ***“Whether the Personal Guarantor is liable by virtue of Deeds of Personal Guarantee signed by him”***.

The relevant clauses of the deed of guarantee dated 10.06.2015 signed by the Personal Guarantor in respect of credit facilities granted to the Principal Borrower have been summarised below:

- (i) *As per clause 1, if at any time default shall be made by the Borrower in payment of the Principal sum (not exceeding Rs. 47,25,00,000/- together with interest, costs, charges, expenses and/or other money for the time being due to the Lead Bank In respect of or under the above mentioned credit facilities or any of them the Guarantors shall forthwith on demand pay to the Lead Bank the whole of such principal sum (not exceeding Rs. 47,25,00,000/-) together with Interest, cost, charges, expenses and/or any other money as may be then due to the Lead Bank In respect of the above mentioned credit facilities and shall Indemnify and keep Indemnified the lead Bank against all losses of the said principal*



sum, Interest or other money due and all costs, charges and expenses whatsoever which the Lead Bank may Incur by reason of any default on the part of the Borrower.

- (ii) As per clause 2, the guarantors agreed and confirmed that interest shall be charged upon the outstandings.*
- (iii) As per clause 6, the guarantee shall be enforceable against the guarantors notwithstanding the securities aforesaid or any of them or any other collateral security that the lead bank may obtain or obtain form the borrowers or any other person shall at the time when proceedings are taken against the guarantor hereunder be outstanding and /or not enforced and/or remain unrealized.*
- (iv) As per clause 7, lead bank shall be entitled to act as if the guarantors were principal debtors to the lead bank .*
- (v) As per clause 8 & 11, the guarantee is a continuing one for all amounts and shall be irrevocable and enforceable against the guarantors.*
- (vi) As per clause 19, the guarantors agreed that any admission or acknowledgement in writing signed by the borrower of the liability or indebtedness of the borrower or otherwise in relation to the above mentioned credit facilities shall be binding on the guarantors and the guarantors accepts the correctness of any statement of accounts and same shall be binding and conclusive as against the guarantors also.”*

It is noted from the clause 8 and 11 of the Deed of Guarantee dated 10.06.2015, that the guarantee is continuing and irrevocable and therefore, we are of the considered view that the personal guarantor remains liable in respect of the credit facilities granted to the Principal Borrower.

12 While considering the application under Section 99(7) of IBC, 2016, we need to refer to the report/ recommendation by the RP. In the present case, the RP in his report filed under Section 99 of IBC has recommended for admission of the present application for Personal Insolvency Resolution Process against the Personal Guarantor, Sh. Abhishek Kansal, as there is existence of debt; there is default by Principal Borrower and the amount has not been repaid by the Principal Borrower, the Guarantee



Agreement exists and the Personal Guarantor has not paid the debt due to the Creditor. Further the application filed by the Applicant, Bank of Maharashtra is in compliance with section 95 of the Code and is complete.

13 In terms of the provisions of Section 100 of IBC, 2016, while considering the admission of an application filed under Section 95(1) of IBC, 2016, this Adjudicating Authority needs to satisfy itself regarding the acceptability of the report filed under Section 99 of IBC, 2016. In the present case, the Learned Counsel for the Personal Guarantor has not filed any objection to the report of RP. In view of the above, we are of the considered view that this Application needs to be admitted. Hence, CP(IB) No. 65/Chd/Pb/2023 is allowed.

14 In consequence of admission of the present Application, the Interim Moratorium, which had kicked in as per Section 96 of the IBC shall cease and a fresh moratorium will begin in terms of Section 101 of the IBC in relation to all the debts of the Respondent. During the moratorium period – (a) any pending legal action or proceedings in respect of any debt qua the Respondent shall be deemed to have been stayed; (b) the Creditors shall not initiate any legal action or legal proceedings in respect of any debt qua the Respondent; and (c) the personal guarantor shall not transfer, alienate, encumber or dispose of any of the assets or his legal right or beneficiary interest therein. The moratorium shall cease to have effect at the end of a period of 180 days.

15 The public notice as envisaged under Section 102 of the IBC shall be issued by the RP, on behalf of the Adjudicating Authority, within seven days of passing of this



Order, inviting claim from all creditors within 21 days of such notice. The notice shall include details of the present order, particulars of the RP with whom the claims have to be registered and the last date for the submission of the claims. The notice shall be –

(a) published in English and one Vernacular Language newspaper which are in circulation in the State, where the Personal Guarantor resides as well as where the registered office of the Corporate Debtor is situated; (b) affixed in the premises of this Adjudicating Authority; and (c) placed on the website of the Adjudicating Authority.

16 The RP in exercise of the powers conferred under Section 104 shall prepare a list of creditors within 30 days from the date of the notice as provided under Section 105, the Personal Guarantor shall, in consultation with the RP, prepare a repayment plan containing a proposal to the creditors for restructuring of his debts or affairs, which besides other things, shall also include the provisions for payment of fee to the RP. The RP shall submit the repayment plan along with his report on the plan to this Adjudicating Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106.

17 In case the RP recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof. If the RP is of the opinion that the meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3). The date of 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, for which at least 14 days' notice to the Creditors (as per list prepared) shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107.



18 The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 and 111. The RP shall prepare a report of the meeting of the Creditors on repayment plan with all details as provided under Section 112 and submit the same to this Adjudicating Authority, copies of which shall be provided to the Personal Guarantor and all the Creditors. It is made clear that the RP shall perform its functions and duties in compliance with the code of conduct provided under Section 208 of the IBC, 2016.

19 A copy of this Order along with a copy of the Application and also the Report of the RP shall be provided to the Applicant, Personal Guarantor and IBBI by the Registry/ Court Master within 7 days from today by email.

20 It goes without saying that whatever amount is paid to the Creditor by the Principal Borrower (Corporate Debtor) and other guarantors, the same would be deducted from the liability of the Personal Guarantor to repay.

21 To come up for consideration of Status Report to be filed by RP, within 8 weeks.

Sd/-
(V.G. Venkata Chalapathy)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

October 14, 2024
Vansh