

NATIONAL COMPANY LAW TRIBUNAL
INDORE SPECIAL BENCH
COURT NO. 1



Item No.301-CP(IB)/56(MP)2024

Item No. 302-IA/107(MP)2025

Order under Section 95 IBC

IN THE MATTER OF:

Canara Bank
V/s
Ramgopal Agrawal

.....Applicant

.....Respondent

Order delivered on 23/04/2025

Coram:

Shammi Khan, Hon'ble Member(J)
Sanjeev Kumar Sharma, Hon'ble Member(T)

ORDER

(Hybrid Mode)

CP(IB)/56(MP)2024 & IA/107(MP)2025

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

SANJEEV KUMAR SHARMA
MEMBER (TECHNICAL)

Neeraj

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE SPECIAL BENCH, AT INDORE**

**CP/IB/56/NCLT/MP/2024
WITH
I.A. No.107/NCLT/MP/2025**

[Application under Section 95(1) of the Insolvency & Bankruptcy Code, 2016 r.w. Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019]

*In the matter of **Mr. Ramgopal Agrawal***

Canara Bank

Head Office at:

112, JC Road, Bangalore – 560002

Branch Office at:

SPLSD ARM Branch, Bhopal,
Near Gate no. 4 AIIMS Saket Nagar,
PSP Area, 3rd Floor, Canara Bank,
Circle Office, Bhopal - 462026

...Applicant/Financial Creditor

VERSUS

Ramgopal Agrawal

S/o Sh. Girdharilal Agrawal,

(Personal Guarantor to Girdharilal Sugar & Allied Inds. Ltd.)

Residing at- 7-A Shri Nagar Annex

Indore, Madhya Pradesh - 452001

.... Respondent/Personal Guarantor

Order pronounced on 23.04.2025



C O R A M:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SANJEEV KUMAR SHARMA, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For Applicant/
Financial Creditor : Mr. Hitesh Sachar, Advocate

O R D E R

Per: Bench

1. This Application has been filed on **21.09.2024** under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred 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 Applicant - Canara Bank (herein after referred to as "Financial Creditor") for the purpose of initiating of insolvency process against **Mr. Ramgopal Agrawal** (hereinafter referred to as "Personal Guarantor") for a default amount of Rs.20,44,73,086.85ps. in respect of Deed of Guarantee dated 11.03.2014 executed in favour of Applicant Bank/Financial Creditor.



2. The Applicant submits that it had sanctioned a Cash Credit Limit Facility of Rs. 8,55,00,000/- to the Corporate Debtor- **Girdharilal Sugar & Allied Industries Limited** vide sanction letter dated 29.01.2014. The Respondent executed a Deed of Personal Guarantee on 11.03.2014 in favour of the Applicant to secure the said facility. In terms of the Deed of Guarantee, the Respondent irrevocably and unconditionally agreed to personally repay the outstanding amount on demand from the Applicant Bank, in the event of any default by the Corporate Debtor

3. However, the Corporate Debtor defaulted in repayment, and its loan account was classified as a Non-Performing Asset (**NPA**) on 28.12.2017. Subsequently, Recall Notice dated 01.01.2018 (Annexure A-10) was issued and recalled the entire facility advance given to the Corporate Debtor. Further, a Demand Notice dated 11.09.2018 (Annexure A-11) U/s 13(2) of the SARFAESI Act was also issued to the principal borrower



and its directors for the payment of the amount due within 60 days.

- 4.** Thereafter, by order dated 17.08.2021, the Corporate Debtor- Girdharilal Sugar & Allied Industries Limited was admitted under CIRP and order of moratorium was passed by the Hon'ble Adjudicating Authority in CP (IB) No. 591 of 2019.
- 5.** Thereafter, on 15.06.2024, the Applicant also issued a Demand Notice in Form B 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 (hereinafter "PGIRP Rules, 2019"), demanding Rs.20,44,73,086.85ps from the Respondent as of 03.04.2024 which was delivered to the Respondent/Personal Guarantor.
- 6.** Due to non-payment of the amount by the Corporate Debtor as well as Personal Guarantors, on 21.09.2024 the Applicant Bank/Financial Creditor has filed this application for



initiation of Insolvency Resolution Process against the Respondent/Personal Guarantor in 'Form-C' under Section 95 of the IB Code, 2016 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.

7. We have heard the learned counsel for the applicant/ Financial Creditor and perused the documents on record.
8. **Rule 3(1)(e)** of the I&B (AAA for IRP for PGCD) Rules, 2019 defines a "**Guarantor**" as a **debtor** who is a personal guarantor to a corporate debtor and in respect of whom the guarantee has been invoked by the creditor and remains unpaid in full or part. The use of "and" indicates both conditions must be satisfied.
9. **Section 3(11)** of the IBC, 2016 defines "**debt**" as a liability or obligation in respect of a claim due from any person.



- 10.** **Section 3(12)** of the IBC, 2016 defines "**default**" as non-payment of a such debt when it becomes due.

- 11.** Hence, a Personal Guarantor becomes a Debtor only upon invocation of the guarantee, making the debt due (Section 126, Indian Contract Act, 1872).

- 12.** Further, **Rule 7(1)** of the I&B (AAA for IRP for PGCD) Rules, 2019, read with Section 95(4)(b) of the IBC, 2016, mandates a Demand Notice in **Form B** to be served on the guarantor, demanding payment of the defaulted amount. This notice presupposes an existing default by the guarantor, which arises only after invocation of the guarantee.

- 13.** In ***Edelweiss Asset Reconstruction Company Vs. Orissa Manganese and Minerals Ltd. [(2019) ibclaw.in 308 NCLAT]***, the Hon'ble NCLAT held that "a contract of guarantee matures into a binding obligation only upon invocation," and the guarantor's liability must be proved separately.



14. Further, in ***State Bank of India Vs. Deepak Kumar Singhania [(2025) ibclaw.in 153 NCLAT]***, the Hon'ble NCLAT reiterated:

- i. A personal guarantor's liability arises only upon invocation of the guarantee as per the Deed of Guarantee.
- ii. The Demand Notice under Rule 7(1) is a statutory step, not an invocation of the guarantee.
- iii. Both conditions under Rule 3(1)(e) must be fulfilled for the guarantor to be liable.

15. In ***Axis Bank Vs. SBS Organics Pvt. Ltd. [(2017) ibclaw.in 61 SC]***: Clarified that notices under Section 13(2) of the SARFAESI Act are for enforcing security interest, not invoking personal liability under a guarantee. The court noted:

"21. ... the purpose of the SARFAESI Act is different, it is meant only for speedy recovery of the dues, and the scheme under Section 13(4) of the Act, permits the secured creditor to proceed only against the secured assets. Of course, the secured creditor is free to proceed against the guarantors ... notwithstanding the steps under Section 13(4) and without first exhausting the recovery as against secured assets referred to in the notice under Section 13(2)."

16. In ***Amanjyot Singh Vs. Navneet Kumar Jain & Ors. [Company Appeal (AT) (Insolvency) No. 961 of 2022]***: The Hon'ble NCLAT held that a notice under Section 13(2) of the



SARFAESI Act does not constitute invocation of a personal guarantee, as it pertains to enforcement of security interest, not contractual liability under the guarantee.

- 17.** In the present case, The Applicant relies on Recall Notice dated 01.01.2018 as well as Demand Notice dated 11.09.2018 issued U/s 13(2) of the SARFAESI Act, 2002 issued to the principal borrower and its directors. However, these notices neither mentions invocation of the guarantee, nor is proof of delivery to the Respondent annexed to the petition.
- 18.** Further, this Tribunal finds that this Demand Notice dated 11.09.2028 does not constitute invocation of the personal guarantee, as it pertains to enforcement of security interest rather than contractual liability under the Deed of Guarantee.
- 19.** The Applicant has not provided any evidence of a specific invocation of the guarantee as per its terms, a requirement underscored in ***Edelweiss Asset Reconstruction Company Vs. Orissa Manganese and Minerals Ltd.***



20. The Demand Notice in **Form B** issued on 15.06.2024 is a procedural step under the IBC and does not substitute for contractual invocation of the guarantee as held in ***State Bank of India Vs. Deepak Kumar Singhania, (2025) ibclaw.in 153 NCLAT.***

21. The Applicant has failed to establish compliance with Rule 3(1)(e) of the I&B (AAA for IRP for PGCD) Rules, 2019, which mandates that the guarantee be invoked and the debt remain unpaid. As such, the "debt" claimed under the impugned Guarantee Agreement does not "exist" as of the date of filing this application.

22. Therefore, without valid invocation, the Respondent's liability has not crystallized, rendering the application premature and defective.

23. Accordingly, **CP/IB/56/NCLT/MP/2024** filed under Section 95 (1) of the IBC, 2016 is **dismissed** being premature & defective.



- 24.** Further, **I.A. No.107/NCLT/MP/2025** filed by the Applicant seeking urgent hearing, adjudication and disposal of CP/IB/56/NCLT/MP/2024 stands disposed of. There shall be no order as to costs.
- 25.** The moratorium commenced under Section 96(1) of the IBC in relation to all debts, legal actions, or proceedings against the Respondent/Personal Guarantor shall cease to have effect from the date of this order.

Sd/-
SANJEEV KUMAR SHARMA
MEMBER (TECHNICAL)

Sd/-
SHAMMI KHAN
MEMBER (JUDICIAL)

Ritika