

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**COURT IV, NEW DELHI**

**COMPANY PETITION (IB)-538/ND/2021**

Under Sections 95 of Insolvency and Bankruptcy Code, 2016 r/w Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal guarantors to Corporate Debtor) Rules, 2019.

**IN THE MATTER OF:**

Union Bank of India  
Head Office at:-  
239, Vidhan Bhawan Marg  
Mumbai-400021

.... Applicant/ Financial Creditor

Vs.

Sh. Sanjay Lamba  
Son of Sh. Rajinder Nath Lamba  
D-27, Sarita Vihar  
New Delhi-110044

...Personal Guarantor of M/s. Sainov Spirits Pvt. Ltd  
(Corporate Debtor)

**CORAM:**

**SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

**Order Delivered on: 06.10.2022**

**ORDER**

**Per: PER: SH. DHARMINDER SINGH, MEMBER (JUDICIAL)**

This is an application filed by Union Bank of India (Applicant/Financial Creditor) under Section 95, of Insolvency and Bankruptcy Code, 2016 (IBC, 2016), r/w Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal guarantors to Corporate Debtor) Rules, 2019 (Rules,

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2019), to initiate Insolvency Resolution Process, against Mr. Sanjay Lambha (Personal Guarantor), in respect of the debt disbursed to the borrower, M/s. Sainov Spirits Pvt. Ltd (Corporate Debtor).

2. The reason for which the present application has been filed is stated as follows: -

- a) The Personal Guarantor, Mr. Sanjay Lamba has provided personal guarantee to the Corporate Debtor i.e., M/s. Sainov Spirits Pvt. Ltd. The corporate debtor is currently undergoing the Corporate Insolvency Resolution Process (CIRP) triggered vide Order dated 05.02.2020 passed by National Company Law Tribunal (New Delhi Bench-II), New Delhi in CP (IB) No. 3383 (ND)/2019 titled as Corporation Bank vs. M/s Sainov Spirits Pvt. Ltd. The said resolution process is ongoing at the time of filing of the present application by the Bank.
- b) The Corporate Debtor had executed multiple guarantees in respect of the credit facilities aggregating Rs. 69.49,00.000/. The account of the corporate debtor were classified by the Bank as a Non Performing Asset (NPA)we.f., 30.09.2016.
- c) The said guarantees executed were as under:-
  - a. Guarantee Agreement dated 24.01.2011 executed by M/s Sainov Spirits Pvt. Ltd., Sh. Sanjay Lamba and Sh. Rajesh Kumar Mehta in favour of Corporation Bank (now UBI).
  - b. Deed of Guarantee dated, 12.05.2012 executed by Sh. Sanjay Lamba and Sh. Rajesh Kumar Mehta and M/s Westfield Holdings SA in favour of Corporation Bank (now UBI).
  - c. Guarantee Agreement dated 07.03.2013 executed by M/s Sainov Spirits Pvt. Ltd., Sh. Sanjay Lamba and Sh. Rajesh Kumar Mehta in favour of Corporation Bank (now UBI).
  - d. Guarantee Agreement dated 30.06.2014 executed by M/s Sainov Spirits Pvt. Ltd. and Sh. Sanjay Lamba in favour of Corporation Bank (now UBI).
  - e. Guarantee Agreement dated 30.06.2014 executed by M/s Sainov Spirits Pvt. Ltd. and Sh. Rajesh Kumar Mehta in favour of Corporation Bank (now UBI).
  - f. Deed of Guarantee dated 08.09.2014 executed by Sh. Sanjay Lamba and Sh. Rajesh Kumar Mehta in favour of Corporation Bank (now UBI).

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- g. Guarantee Agreement dated 29.06.2014 executed by M/s Sainov Spirits Pvt. Ltd and Sh. Sanjay Lamba in favour of Corporation Bank (now UBI)
- h. Guarantee Agreement dated 29.06.2014 executed by M/s Sainov Spirits Pvt. Ltd and Sh. Rajesh Kumar Mehta in favour Corporation Bank (now UBI).
- i. Guarantee Agreement dated 29.09.2016 executed by Ms Sainov Spirits Pvt. Ltd. and Sh. Sanjay Lamba in favour of Corporation Bank (now UBI).
- d) That the said guarantees were invoked by the Bank vide issuance of Demand Notice dated 19.10.2020 under Clause B of Sub Section 4 of Section 95 issued in Form B. which was duly served upon the guarantor. The guarantor had replied to the said demand notice by means of Letter dated 31.10.2020 which was received by the Bank on 03.11.2020.
- e) The Civil Suit for recovery of the outstanding dues was filed before the Debts Recovery Tribunal-II, New Delhi by the Bank against the guarantor as well as the corporate debtor on 01.05.2018 vide Diary No. 682/2018. The said Original Application/Civil Suit bearing O.A. No. 1098/2018 is pending before the said Tribunal as on date of filing of the present application.
- f) Despite receipt of the demand notice the guarantor has not paid the outstanding debt and is in default of its debt obligation in terms of the above stated loaning and security documents annexed to this application. The default of the debtor/guarantor is further recorded in the CIBIL records
- g) That, on the basis of the abovementioned facts the Petitioner is eligible to file present application for initiating Insolvency Resolution Process against the Personal Guarantor. That, Part III of Form C states that as on 25.06.2021, the total debt payable by the Personal Guarantor is Rs.74,62,97,989/-

3. The personal guarantor has filed its reply which is listed here:-

- a) It is submitted that considering the fact that the NPA classification/ date of default is 30.06.2016, the limitation would expire three years after the said date. Further submitted that the present application was filed on 07.07.2021 and was registered only on 14.09.2021 (after expiry of two months), thus barred by law of limitation.

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- b) It is stated that the limitation in respect of guarantor starts running from the date of demand and in the present case, the demand was raised by the applicant from the respondent on 07.12.2016, therefore, the limitation with respect to the present claim of the applicant would end after expiry of three years from 07.12.2016, thus barred by law of limitation. Copy of judgment of the Hon'ble Supreme Court in the case of Syndicate Bank Vs. Channaveerappa Beleri and Ors. cited in 2006 11 SCC 506 is annexed alongwith.
- c) It is further submitted that the applicant has attempted to hide the actual date of default and has stated that the date of default is 15.02.2017. The respondent fails to understand as to how the said date has been arrived at, especially, when the applicant has attempted to jump to the said date basis the following submissions in sl. no. 4 of Part III:
- i. The account of the corporate debtor was classified as NPA
  - ii. Thereafter the notice under Section 13(2) of SARFAESI Act was issued on 07.12.2016.
  - iii. OA against the borrower and guarantor was filed before the Ld. DRT on 01.05.2018.
  - iv. Demand notice in Form B was issued on 19.10.2020.
4. The applicant then filed its rejoinder to the reply of the Corporate Debtor which is listed as:-
1. It is submitted that The aforesaid documents and the issue of limitation was accordingly adjudicated upon by the Hon'ble NCLAT vide its Judgment dated 08.04.2021 whereby the Hon'ble Appellate Tribunal was pleased to hold as under:-  
*"10. In view of the aforesaid submission and the Appellant acknowledging the debt on 21.06.2017 itself shifts the 3 years period to June, 2020 whereas the Application before the Adjudicating Authority itself is filed on 22.11.2019. If we consider the part payment which has been made between May, 2019 to June/July, 2019, then naturally the application has been filed within a period of 3 years."*
  2. It is further pertinent to mention that the guarantees issued by the guarantor in favour of the financial creditor are demand guarantees and hence the limitation qua the same commences from the date when the demand is made and the guarantor



commits breach by not complying with the demand. Hence the commencement of limitation against the guarantor can always be at a later point of time than the commencement of limitation qua the principal borrower. Further in the present case the first demand was made against the guarantor by issuance of notice under Section 13 (2) of the SARFAESI Act dated 07.12.2016 (issued by post on 09.12.2016) (served on 17.12.2016). The default qua the guarantor commenced upon the expiry of 60 days from the issuance of notice under Section 13 (2). Hence, the date of default is mentioned as 15.02.2017. It is pertinent to mention that para 9 of its reply the guarantor has itself admitted that the date of limitation against the guarantor commences from date of demand and in the present case the first demand was raised vide notice dated 07.12.2016 issued under Section 13 (2) of SARFAESI Act.

5. This Tribunal heard the arguments advanced by the Ld. Counsel for the Applicant, after giving limited notice to the Guarantor and perused the averments made in the application as well as the documents enclosed with the application.
6. The present application is complete in all respect, the Demand Notice has been duly served on the Respondent's last known address and the Respondent has also appeared through counsel before this Tribunal. In terms of Judgement of Hon'ble NCLAT in *Ravi Ajit Kulkarni v. State Bank of India Company Appeal (AT) (Insolvency) No. 316 of 2021*, the only purpose for issuing limited notice is to secure the presence of the Personal Guarantor. Relevant extract from the judgement is reproduced as under:

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“42. However, considering the judgment of the Hon’ble Supreme Court in the matter of „Swiss Ribbons‘, it appears to us that **keeping principles of natural justice in view, limited notice of the application should be given to the Personal Guarantors of the Corporate Debtors. The limited notice has to be only to secure presence of the Personal Guarantor referring to the Interim Moratorium which has commenced. Before appointment of the Resolution Professional no hearing as such is contemplated and before appointment of the Resolution Professional the Debtor cannot be allowed to raise disputes for which the stage would be Section 100. Under NCLT Rule 11, Adjudicating Authority is duty bound to pass orders to prevent abuse of process. As such, limited notice to appear may be given to the Personal Guarantors so that when Resolution Professional is appointed, he may provide material as per Section 99(2) of IBC. Till the stage of Section 100, the process is of collecting necessary evidence.**”

43. The Appellant is himself criticizing the impugned order claiming that the Adjudicating Authority has already recorded finding that the Personal Guarantor has committed a default and thus the Resolution Professional cannot while examining the application under Section 99 give a contrary opinion. At the same time, the Learned Senior Counsel for the Appellant has tried to submit that before appointment of Resolution Professional the Personal Guarantor should be able to show that the debt is not due or that it is not payable. This is contradiction. **In our view, the stage for examining merits of the Application would be Section 100 of IBC. To prevent abuse of process of double hearings, first on merit before appointment of Resolution Professional and again at the stage of Section 100 which will defeat the objects of IBC by protracted disputes, after limited notice to appear has been issued even if Debtor raises disputes on merit, the same may be adjudicated only after receipt of report from Resolution Professional under Section 99. Before that point of time the process is more of filing of application and collecting of evidence through a professional person like Resolution Professional.**

44. In substance, **once the application is “filed”** (as per Section 95, 96 read with Rule 10) the Adjudicating Authority has to act on it, and **following principles of natural justice, give limited notice to Personal Guarantor to appear** referring to the Interim Moratorium that has commenced as per terms of Section 96. **Then the next stage is of appointing Resolution Professional as per Section 97 read with Rules and Regulations. Third stage will be Resolution Professional acting in terms of Section 99 and submitting Report.** At the



*fourth stage comes in adjudication of the application under Section 100 which ought to be decided by giving hearing to parties keeping in view Application, evidence collected and report under Section 99.*

7. Based on the documents produced and placed on record before this Tribunal and on the submissions made by the Applicant, this Tribunal **“allows”** the application, this Adjudicating Authority appoints Mr. Brijesh Kumar Tamber, Email id: [officeofbrijeshktamber@gmail.com](mailto:officeofbrijeshktamber@gmail.com) Reg No.: IBBI/IPA-002/IP-N00523/2017-18/11593 to act as Interim Resolution professional. He shall take such other and further steps as are required under the statute, and file his report within 10 days before this Bench. He is directed to submit the report in terms of section 99 of IBC read with other relevant rules and regulations.
8. It is made known to everyone that on the date of filing this Application by the Applicant/ Creditor, the interim moratorium has commenced, as stipulated under Section 96(1) (a), in relation to all the debts of the Personal Guarantor and shall cease to have effect on the date of admission of this Application. During the interim-moratorium period, the following were prohibited:
- a. Any pending legal action or proceeding in respect of any debt of the personal guarantor shall be deemed to have been stayed; and
  - b. The Creditors of the personal guarantor shall not initiate any legal action or proceedings in respect of any debt.

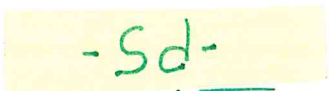
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This shall, however, not apply to such transactions as may be notified by the Central Government, in consultation with any financial sector regulator.

9. In this matter, the Resolution Professional shall exercise all the powers, as enumerated under Section 99 of the Code, read with Rules made there under. He is directed to make the recommendations, along with reasons in writing, for acceptance or rejection of this Application, within the stipulated time, as envisaged under the provisions of Section 99 of the IBC, 2016. The Resolution Professional shall provide a copy of the report under sub-section (7) of Section 99, to the Applicant/Creditor and Personal Guarantor, as soon as the same is filed before this Authority.
10. The Applicant and the Registry are directed to serve copy of this order, along with copy of the Application and documents, immediately on the Resolution Professional so appointed for information and compliance
11. List the matter for further proceedings in the case on 22.11.2022

  
**(DR. BINOD KUMAR SINHA)**  
**MEMBER (TECHNICAL)**

  
**(DHARMINDER SINGH)**  
**MEMBER (JUDICIAL)**