

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD



ITEM No.221
C.P.(IB)/170(AHM)2025

Proceedings under Section 95 IBC

IN THE MATTER OF:

Bank Of Baroda

.....Applicant

V/s

Bijal S Shah

.....Respondent

Order delivered on: 23/04/2025

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Sanjeev Kumar Sharma, Hon'ble
Member(T)

PRESENT:

For the Applicant : Mr. Sumit Parikh, Adv.

For the Respondent :

ORDER
(Hybrid Mode)

1. This petition has been filed on 21.03.2025 by Applicant Bank/Financial Creditor U/s 95(1) of Insolvency and Bankruptcy Code, 2016 for initiation of Insolvency Resolution Process in terms of in terms of Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 against the Respondent/Personal Guarantor of corporate debtor, in view of the default an amount of Rs.5.04.06,326/- in respect of Deed of Guarantee dated 06.04.2019 executed in favour of Applicant Bank/Financial Creditor.
2. Ld. Counsel for the Applicant/Financial Creditor had categorically orally submitted that the personal guarantee was



invoked by the Applicant/Financial Creditor through Demand Notice dated 22.05.2023 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"). The copy of the same is annexed as **Annexure M** at pg 129 to 135, The said demand notice was duly served and delivered through RPAD on 23.05.2023.

3. We have heard the learned counsel for the applicant/ Financial Creditor and perused the documents on record.
4. **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.
5. **Section 3(11)** of the IBC, 2016 defines "**debt**" as a liability or obligation in respect of a claim due from any person.
6. **Section 3(12)** of the IBC, 2016 defines "**default**" as non-payment of a such debt when it becomes due.
7. Hence, a Personal Guarantor becomes a Debtor only upon invocation of the guarantee, making the debt due (Section 126, Indian Contract Act, 1872).
8. 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.

9. 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.
10. 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.
11. This Tribunal finds that the Demand Notice dated 22.05.2023 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.
12. 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.***

13. The Demand Notice in **Form B** issued on 22.05.2023 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.***
14. 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.
15. Therefore, without valid invocation of guarantee, the Respondent's liability has not crystallized, rendering the application premature and defective.
16. Accordingly, **CP/IB/170/NCLT/AHM/2025** filed under Section 95 (1) of the IBC, 2016 is **dismissed** being premature.


SANJEEV KUMAR SHARMA
MEMBER (TECHNICAL)


SHAMMI KHAN
MEMBER (JUDICIAL)