S.No.3

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSCIAL (HYBRID) MODE

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
08-07-2024 AT **10:30 AM**

CP (IB) No. 03/95/HDB/2022
AND
IA (IBC) 166 & 168/2024 in CP (IB) No. 03/95/HDB/2022
u/s. 95 of IBC, 2016

IN THE MATTER OF:

Central Bank of India **…Petitioner**

AND

Mr. P K Iyer & Deccan Chronicle Holdings Ltd **…Respondent**

C O R A M:-
DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

O R D E R

CP (IB) No. 03/95/HDB/2022

Orders pronounced. In the result, **this Company Petition is rejected. No costs**.

IA (IBC) 166 /2024

As company petition is disposed of, no separate order is required in this application. **Hence the same is disposed of.**

IA (IBC) 168 /2024

As company petition is disposed of, no separate order is required in this application. **Hence the same is disposed of.**

Sd/- Sd/-
MEMBER (T) **MEMBER (J)**

Swapna

NATIONAL COMPANY LAW TRIBUNAL
BENCH-1, HYDERABAD

CP (IB) No. 3/95 of IBC/HDB/2022

Petition under Section 95 of IBC, 2016, R/w Rule 7(2) of I & B (Application to Adjudicating Authority for Insolvency Process for Personal Guarantors to Corporate Debtor) Rules, 2019

In the matter of

Central Bank of India
Stressed Assets Management Branch
Red Cross Building
32, Montieth Road, Egmore
Chennai – 600 008 ....Petitioner

VERSUS

1. Mr. P.K. Iyer ...Respondent No.1/ Personal Guarantor

2. Deccan Chronicle Holdings Limited ...Respondent No.2/ Corporate Debtor

Date of order: 08.07.2024

Coram:

Dr. N. Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)
Shri Charan Singh, Hon'ble Member (Technical)

Appearance:

For the Petitioner: Mr. V.V.S.N. Raju, Advocate
For Respondent: Mr. Amir Bavani and Mr. Anirban Aly Mandal, Advocates

PER: BENCH

ORDER

1. This petition is filed by the **Central Bank of India** (Financial Creditor) under Section 95 of Insolvency of Bankruptcy Code, 2016 (herein after referred as Code) read with Rule 7 (2) of the Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 (herein after referred to as **Personal Guarantors Insolvency Rules, 2019),** seeking an order for initiation of the Insolvency Resolution Process ("IR Process") against **Shri P.K. Iyer/Debtor** who is the **Personal Guarantor** of **Deccan Chronicle Holdings Limited/ Respondent.1** herein.

2. The gist apropos to the case of the Petitioner is that the Respondent No. 2/Deccan Chronicle Holdings Limited (Corporate Debtor) had availed various credit facilities since 2011 in the form of Fund Based limits which include Working Capital Demand Loan of Rs. 50 crores, after executing necessary documents, from the Financial Creditor to meet its business needs. Pursuant thereto, Respondent No.1 along with others, executed Form Deed of Guarantee dated 29.09.2011 guaranteeing the repayment of the said facilities.

3. It is stated that the Corporate Debtor is the Principal Borrower and Personal Guarantor, stood as guarantors in order to secure the repayment of the financial assistance availed by the Corporate Debtor. The guarantor further undertook to indemnify and keep the lenders indemnified against all loses, damages, costs, claims and expenses whatsoever, which the lenders may suffer, pay or incur by reason of or in connection with any default on the part of the Corporate Debtor.

4. The Financial Creditor annexed the following documents to prove the existence of debt and amount in *default:* -

(a) Copy of Sanction Letter dated 29.09.2011 – Annexure-B

(b) Form of Guarantee for advances and credits Generally dated 29.09.2011.

(c) Demand Notice dated 17.09.2020 under Section 25 to 28 under the RDB Act, 1993.

(d) Demand Notice dated 15.12.2020.

(e) Copy of the final order dated 27.04.2017 by Hon'ble DRT in OA No. 505 of 2017.

(f) Copy of Recovery Certificate No. RC/471/2020.

5. The accounts of the Corporate Debtor were classified as Non-Performing Asset (NPA) on 28.11.2012. It is further stated that the loan accounts of the Corporate Debtor were transferred to the SAM-V Branch for recovery of the dues as per the Petitioner's Bank policy, following classification of accounts as NPA on 28.11.2012,

6. The Financial Creditor has exercised its rights and remedies against the Corporate Debtor under SARFAESI Act, 2002 vide OA No.505 of 2017 (old OA No. 615/2013) before the Debt Recovery Tribunal, Hyderabad for recovery of the total dues amounting to Rs. 56,46,62,314.28 from Corporate Debtor and Guarantors. It is further stated that the said OA was disposed of on 25.04.2017 in favour of the Financial Creditor and Recovery Certificate bearing R.C. No. 471 of 2020 dated 27.08.2020 amounting to Rs. 79,18,92,485.18 along with Rs. 1,50,000/- towards expenses and future interest @ 10.25% w.e.f 24.05.2013. As such a sum of Rs. 159,91,10,414,00 is due and payable by the Respondents to the Financial Creditor as on 15.12.2021.

7. Later, the Financial Creditor also filed a company petition before this Tribunal under Section 7 of the Code to initiate CIRP against the Corporate Debtor vide CP (IB) No. 41/07/2017. The petition was admitted by this Tribunal on 19.07.2017.

8. Pursuant to framing of I & B (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 which came into effect from 01.12.2019, permitting the Financial Creditor to institute insolvency resolution process against personal guarantors, the Financial Creditor had issued two demand notices dated 15.12.2020 and 16.10.2021 on the Personal Guarantor i.e. P.K. Iyer demanding payment of the amount in default, and the second demand notice dated 16.10.2021 was served upon the Personal Guarantor on 22.10.2021.

9. The Petitioner further stated that the petition is well within the period of limitation as the cause of action is still subsisting and continuing, as under: -

28.11.2012	Accounts of CD were classified as NPA
24.12.2012	When the Petitioner Bank issued demand notice to the Respondents
24.05.2013	When the Petitioner bank filed OA before the DRT-II Hyderabad
27.08.2020	DRT issued Recovery Certificate in f/o the Petitioner
17.09.2020	Recovery Officer issued Demand Notice u/s 25 to 28 of the RDB Act, 1993
15.12.2020	Petitioner issued Form-B Demand Notice under Rule 7(1)

10. The Petitioner further relied on the ruling of Hon'ble Supreme Court re: Cognizance for extension of Limitation (MA No. 665 of 2021 in SMW(C) No.3/2020, has observed that *"(i) in computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2021, if any, shall become available with effect from 03.10.2021, (ii) In cases where the limitation would have expired during the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. In the event the actual balance period of limitation remaining, with effect from 03.10.2021, is greater than 90 days, that longer period shall apply"*. Thus, the Petitioner submits that after excluding the said period, the Petition is filed within 3 years from the date of course of action as per Article 137 of the Limitation Act.

11. On presentation of the petition, this Tribunal on 05.01.2022 granted has appointed Shri P. Siva Rama Prasad as Interim Resolution Professional, directing him to file his report within 10 days of his appointment, in terms of Section 99 of the Code and further directed to serve notice on the Personal Guarantor, which has been complied by the Petitioner and memo dated 05.02.2022 to that effect has been filed with this Tribunal.

RP's REPORT

12. Accordingly, the RP has filed his report on 04.02.2022, has recommended the admission of the petition filed under Section 95 of the Code. The grounds for admission of the petition recorded in the report is that the Personal Guarantor was served with Demand Notice on 15.12.2020 and

16.10.2021 issued by the Financial Creditor demanding payment of the dues to the extent of Rs. 177,00,51,261.91 as claimed by the Petitioner. demanding repayment of debt as claimed by the Financial Creditor. The IRP has placed Central Bank of India letter No. SAM HYD:2021-22:549 dated 03.02.2022 to substantiate default and debt due to the Financial Creditor.

13. This Tribunal vide his order dated 21.02.2022, 23.03.2022 and 11.04.2022 directed the Petitioner to serve notice on the personal guarantor through speed post/registered post and directed the IRP to serve a copy of report of the IRP on the Respondents.

14. The Respondent/Personal Guarantor, filed counter, *inter-alia,* contending as under: -

(a) That the Petitioner failed to serve the demand notice in Form-B as required under Section 95(4)(b), r/w Regulation 7(1) of Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, thus depriving the Personal Guarantor to properly represent itself before this Tribunal to present his case.

(b) That the Personal Guarantor was unaware of the DRT proceedings, and that he came to know about it through the annexures placed before this Tribunal in the instant case, as such this petition is not maintainable before this Tribunal. Further according to Respondent No.1, it is in violation of *audi alteram partem,* as not only the IRP was appointed but his report was submitted without affording an opportunity to Respondent No.1.

(c) According to Respondent No.1. the Form of Guarantee for Advance and Credits, is a bond (as per Section 2(5) of the Indian Stamp Act, 1899) entered into between the Petitioner and 1st Respondent and cannot be considered as evidence as per Section 35 of the Indian Stamp Act, 1899.

(d) Though the Petitioner claims to have granted various credit facilities from time to time, in the form of fund-based limits to the 2nd Respondent since 2011, the Petitioner has submitted only the sanction letter dated 29.09.2011 and letter of acceptance for a working capital requirement of Rs. 50 crores.

(e) According to Respondent No.1, there is no continuous cause of action as claimed by the Petitioner, since the guarantee provided by 1st Respondent is in the nature of standalone guarantee for the repayment of working capital loan and that the petition is barred by limitation. the limitation period would start running when a demand was made for payment of guaranteed amount. Further, according to the 1st Respondent the debt became due on 27.11.2012 as per the repayment term in the letter of acceptance of sanction and not 25.04.2017 as claimed by the Petitioner. The 1st Respondent further contends that even assuming but not conceding to the position that the cause of action arose on 27.11.2012 itself, the Guarantee Agreement was invoked on a later date i.e. vide demand notice dated 24.12.2012 and by virtue of this invocation, limitation period of 3 years commenced from the said date and the Petitioner could not have availed the remedies under the IBC, as the Code did not come into effect then and submits that present application is barred by limitation as the same is not filed within 03 years of declaration of NPA or default.

(d) It is contended that the Petitioner has exhausted its remedy to the cause of action, pursuant to the decree passed by the DRT under the RBD Act, 1993 against the Respondents on 25.04.2017 and that the Petitioner cannot be permitted to initiate fresh proceedings in NCLT, when it has already been decided before the DRT.

(e) It is the contention of the 1st Respondent that the inflated claim presented by the Petitioner is in the nature of damages and included other costs and thus, are excluded debts within the purview of Section 79(15)(b) of the Code. It is further contended that the guarantee agreement nowhere stipulates future interest @ 10.25% simple interest yearly wef 24.05.2013, in addition to the interest chargeable @ 13.75% during the 'bullet repayment period of 364 days' as agreed by the parties in the letter of acceptance of sanction.

15. In the light of the context as aforementioned, the point for our consideration is;

Whether the present petition for initiation of Insolvency Resolution Process against the *Personal Guarantor* at the behest of the financial creditor deserves admission or rejection?

16. We have heard Mr. VVSN Raju, Ld. Advocate for the Petitioner and Mr. D.V. Sitaram Murthy, Ld. Senior Advocate for Mr. Amir Bavani, Ld. Advocate on record for the Personal Guarantor, perused the record, the written submissions and the case laws.

Point

Whether the present petition for initiation of Insolvency Resolution Process against the Personal Guarantor at the behest of the financial creditor deserves admission or rejection?

17. Before we proceed to decide the point, we feel it is appropriate to refer to the ruling of Hon'ble Supreme Court of India, in **Dilip B Jiwrajka Vs Union of India and Ors** Writ Petition (Civil) No. 1281 of 2021 decided on 09.11.2023, wherein Hon'ble Supreme Court, explained the role of the Adjudicating Authority while deciding a petition filed under sections 94 & 95 of IBC,

> "Section 100(1) stipulates that the adjudicating authority must issue an order within fourteen days of receiving the report, either admitting or rejecting the application filed under Sections 94 or 95, depending on the circumstances. <u>Importantly, the adjudicating authority does not mechanically accept or reject applications based solely on the resolution professional's report. Instead, it must actively engage in a fair process, affording the debtor a fair opportunity to present their case. The adjudicating authority arrives at its determination by considering arguments supported by relevant material particulars. In essence, the adjudicating authority conducts an independent assessment, not solely relying on the resolution professional's report, to decide the fate of applications under Section 94 or 95 of the IBC</u>". (Emphasis is ours)

18. Now we shall refer to section 100 of IB Code, which is as below.

Section 100: **Admission or rejection of application**.

*100. (1) The Adjudicating Authority shall, within fourteen days from the date of submission of the report under section 99 pass an order either admitting or rejecting the application referred to in section 94 or 95, as the case may be.

(2) Where the Adjudicating Authority admits an application under sub-section (1), it may, on the request of the resolution professional, issue instructions for the purpose of conducting negotiations between the debtor and creditors and for arriving at a repayment plan.

(3) The Adjudicating Authority shall provide a copy of the order passed under sub-section (1) along with the report of the resolution professional and the application referred to in section 94, or 95, as the case may be, to the creditors within seven days from the date of the said order.

(4) If the application referred to in section 94, or 95, as the case may be, is rejected by the Adjudicating Authority on the basis of report submitted by the resolution professional or that the application was made with the intention to defraud his creditors or the resolution professional, the order under sub-section (1) shall record that the creditor is entitled to file for a bankruptcy order under Chapter IV.

19. It is clear from the above section that the Adjudicating Authority, *shall* within 14 days from the submission of the report under Section 99, pass an order either *admitting or rejecting* the petition referred to in Section 94 or 95 as the case may be.

20. In so far as the reliance on the report submitted in terms of Section 99 by the resolution professional is concerned, Hon'ble Supreme Court of India, in re, **Dilip B Jiwrajka** *supra,* made it clear that the report of the Resolution Professional submitted in terms of Section 97 of IBC, *is not binding on the Adjudicating Authority*.

21. Therefore, the sum and substance of the above portion of the ruling and the provision is that, the Adjudicating Authority within 14 days from the date of submission of report under Section 99 by the Resolution Professional, *shall* take a decision on whether to *admit* or *reject* the petition filed under Section 94 and 95 of IBC, and it is not necessary for the adjudicating authority to rely *solely* on the resolution professional's report while deciding the fate of applications under Section 94 or 95 of the IBC and it can conduct its own independent assessment.

22. We therefore on the basis of the above stated *legal frame* and on the *factual matrix* of this case, proceed to decide the point.

23. Admittedly, this Tribunal on 05.01.2022 appointed a Resolution Professional and directed him to file his report in terms of Section 99 of IBC, within 10 days from the date of the said order. Subsequently, the Resolution Professional filed his report, inter-alia, recommending for admission of the Petition. Pursuant thereto this Tribunal ordered the resolution professional to furnish a copy of the said report to the personal guarantor and granted opportunity to the personal guarantor to file his *objections* if any, to the report. In response, the Personal Guarantor filed his objections contending, *inter-alia*, that the report as filed by the Resolution Professional does not satisfy the requirements envisaged under Section 99 of IBC, *besides* that the Resolution Professional failed even to verify whether the financial creditor had filed any document evidencing compliance of *sub section* 4 (b) of Section 95 IBC. According to the personal guarantor he was not served with ***notice of demand,*** mandated under subsection 4 (b) of section 95 IBC by the financial creditor before initiating the present insolvency resolution process against him.

24. Ld. Senior Counsel for the Personal Guarantor placing reliance on the objections filed besides the record submitted by the financial creditor regarding 'service' of demand notice by the financial creditor on the personal guarantor, strongly contended that no demand notice much less the demand notice dated 16.10.2021 has been served on the personal guarantor and in the absence of service of demand notice mandated under sub-section (4) (b) of Section 95 of IBC on the personal guarantor, the present company Petition is liable to be dismissed. Dwelling further on the aspect of non service of demand notice on the personal guarantor, Ld.

Sr. Counsel stated that the *service of demand notice in Form-B is required for entertaining an application under Section 95 of IBC, 2016 and is of utmost significance for taking measures in good faith. Such service of notice in a particular prescribed format is mandated by law to make sure that the respondent is adequately informed of the claims, thereby, enabling it to properly represent itself before this Hon'ble Tribunal. Therefore, the Ld. Sr. Counsel further states that, when demand notice is not served, the Application is liable to be rejected on this ground alone, otherwise, it would create a bad precedent for parties to act in bad faith and render the mandatory provisions of service of notice nugatory.*

25. Refuting the above submission, Ld. Counsel for the financial creditor contends that the Guarantee Agreement was invoked by the Bank vide its Demand Notice dated 24.12.2012. However, the borrower as well as the Respondent/Personal Guarantor failed to make the payment as demanded in the notice, hence, the Creditor Bank filed OA No. 505 of 2017 (old O.A. No. 615 of 2013) before DRT-II, Hyderabad on 24.05.2013 against the Corporate Debtor and the Personal Guarantor herein for recovery of the total dues amounting to Rs. 56,46,62,314.28, and the said OA was disposed of on 25.04.2017 in favour of the Financial Creditor and a Recovery Certificate bearing RC No. 471/202 dated 27.08.2020 also has been issued for a sum of Rs. 79,18,92,485.18, along with costs of Rs. 1,50,000/- towards expenses and future interest. Thus, a total of Rs. 159,91,10,414/- became due and payable by the Corporate Debtor to the Financial Creditor as on 15.12.2021.

26. The Ld. Counsel would further contend that the Demand Notice, dated 15.12.2020 demanding payment of Rs. 159,91,10,414/- has been issued to the Respondent /Personal Guarantor herein, but the Respondents failed to repay the same. Thereafter, the Financial Creditor issued another Demand Notice dated 16.10.2021 to Respondent/Personal Guarantor, which according to the Financial Creditor was duly "served" upon the Respondent /Personal Guarantor, however, no reply has been received from Respondent/Personal Guarantor. Therefore, the contention that the Respondent/Personal Guarantor was served with demand notice in terms of sub-section 4(b) of Section 95 of IBC is not correct. Hence, the present petition is filed.

27. For proper appreciation of the above contentions, we usefully refer herein to Section 95 of IBC.

> (1) A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.
>
> (2) A creditor may apply under sub-section (1) in relation to any partnership debt owed to him for initiating an insolvency resolution process against—
> (a) any one or more partners of the firm; or
> (b) the firm.
> (3) Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the Adjudicating Authority in which the first mentioned application is pending for adjudication and such Adjudicating Authority may give such directions for consolidating the proceedings under the applications as it thinks just.
>
> **(4) An application under sub-section (1) shall be accompanied with details and documents relating to—**
>
> **(a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;**

(b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and

(c) relevant evidence of such default or non-repayment of debt.

(5) The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.

(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.

(7) The details and documents required to be submitted under sub-section (4) shall be such as may be specified.

28. A bare perusal of *subsection* 1 of Section 99 of IBC, which says, that *"The resolution* professional *shall examine the application referred to in section 94 or section 95, as the case may be, within ten days of his appointment, and submit a report to the Adjudicating Authority recommending for approval or rejection of the application*". discloses that the 'duty' to 'examine' the petition filed under Section 95 of IBC, within 10 days of his *appointment* by the resolution professional ***and to submit*** a report to the Adjudicating Authority recommending for *approval or rejection* of the Petition, imposed on the Resolution Professional by the legislature is to avoid frivolous petitions. In our considered view, the said 'duty' is not a 'mere' formality/procedural but a legal obligation to verify the due compliances/ requirements by the creditor which are mandated in terms of sections 95 to 97 of IBC, *more particularly the compliance of sub-section 4 (b) & (c) of Section 95 IBC.* Thus, the recommendation of the resolution professional for admission or rejection of the creditor's petition for triggering insolvency resolution process against the personal guarantor

must invariably precede the compliance of due verification of the petition filed by the creditor, by the Resolution Professional.

29. In the case on hand since the Ld. Sr. Counsel for the personal guarantor has been vehemently contending that the personal guarantor was not served with the **notice of demand** *mandated* under subsection 4 (b) of section 95 IBC, *supra*, as such the present company Petition is liable to be dismissed, we bestow our attention on finding whether the present company petition contained the details/documents relating to the compliance of sub section 4 (b) & (c) of section 95 of IBC, by the financial creditor, and what the resolution professional had said in this regard, in his report.

30. As already stated supra, subsection (4) (b) & (c) of section 95 IBC, mandates that an application under sub-section (1) of section 95 IBC by the creditor, shall be accompanied with details and documents relating to—

(a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;
(b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and
(c) relevant evidence of such default or non-repayment of debt.

31. The Company Petitioner on the aspect compliance of *service of notice of demand* on the Personal Guarantor, in its synopsis of submissions has stated that, "*the Financial Creditor was constrained to issue another Demand Notice dated 16.10.2021 to the Respondent No.1 in terms of Rule 7 (1) of Insolvency and Bankruptcy (Application to the Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to*

Corporate Debtors) Rules, 2019 and the said demand notice dated 16.10.2021 was duly served upon Respondent No.1, however, he failed to reply to the said Notice”.

32. In support of this plea, the petitioner relied on Annexure-L of the company petition , namely, the postal track report for the postal cover whereunder the petitioner claimed to have sent the demand noticeto the respondent/personal guarantor.

33. We have carefully perused said Annexure, which is at pages 61 to 66 of the Company Petition. On the Demand Notice (Form ‘B’) dated 16.10.2021 the address of the Personal Guarantor is stated as below.

Plot No.2, House No.8-2-283/5, Road No.3,
Banjara Hills, Hyderabad – 34.

34. The Postal Slip issued by the Postal Authorities for the cover purportedly containing the Demand Notice, discloses that the same was tendered at the post office on 18.10.2021 for despatch to the addressee. The Postal Consignment Track Report at page 66 of the Company Petition, discloses that the above postal consignment has been ***returned to the addressee*** with an endorsement dated 20.10.2021 “left without instructions” and the returned cover has been ***delivered to the addressee on 22.10.2021*** itself. Thus, the Postal Consignment Track Report clearly falsifies the contention of the Financial Creditor that second Demand Notice dated 16.10.2021 has been ***served*** on the Personal Guarantor.

35. There is yet another version of the Company Petitioner in para 10 of the Company Petition as well as in para 3 of Written Submissions filed by the Company Petitioner/ Financial Creditor, wherein it has been contended that the first Demand Notice sent through Speed Post has been avoided by the Personal Guarantor. However, no record to that effect has been placed. Be it as it may, it is clearer than crystal, that there was no service of either first or the second Demand Notice dated 16.10.2021 on the Personal Guarantor/ 2nd respondent even as per the record relied on by the Petitioner.

36. We have also examined the Report filed by the Resolution Professional more particularly on the aspect of service of Demand Notices dated 15.12.2020 and 16.10.2021 purportedly issued by the Company Petitioner/ Financial Creditor to the Personal Guarantor. Admittedly, no proof of service in respect of purported Demand Notice dated 15.12.2020 has been filed by the Financial Creditor and the resolution professional also did not mention about any document confirming service of the said notice. Insofar as the Demand Notice dated 16.10.2021 is concerned, the Resolution Professional in his report filed under section 99(1) of the I&B Code, 2016 had stated as below:

"99. Submission of report by Resolution Professional:

"(1)	The resolution professional shall examine the application referred to in section 94 or section 95, as the case may be, within ten days of his appointment, and submit a report to the Adjudicating Authority recommending for approval or rejection of the application.	Application filed under section 95 has been examined and the report referred to herein is being submitted within the time stipulated therefor.

(2)	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 – (a) evidence of electronic transfer of the unpaid amount from the bank account of the debtor; (b) evidence of encashment of a cheque issued by the debtor; or (c) a signed acknowledgment by the creditor accepting receipt of dues.	The debtor/ Personal Guarantor has not submitted any evidence having paid the debt claimed as unpaid by the creditor. The debtor/ Personal Guarantor has not responded to the Notice dated 15.12.2020 and also to the Notice dated 16.10.2021. Hence it is concluded that the debt claimed by the creditor remains unpaid.”

37. It is thus, clear from the above observations of the Resolution Professional that the Resolution Professional did not even undertake the simple exercise of finding whether second Demand Notice dated 16.10.2021 has been served or not on the Personal Guarantor, before concluding that the debt as claimed by the creditor remain unpaid. Therefore, it is a classic case of absolute ‘non-application of mind’ by the Resolution Professional in carrying out the important ‘duty’ of verifying the statutory compliances by the Financial Creditor.

38. Here it is also pertinent to note that even while it is the case of the Financial Creditor that the property bearing the “address” to which the purported Demand Notice has been sent was t*aken delivery* by the Creditor, through the proceedings initiated under section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) ***much prior to sending the demand notice dated 16.10.2021***, strangely, the Financial Creditor chose to send the

Demand Notice dated 16.10.2021in the name of the personal guarantor to the very same address, which has been returned with an endorsement that '*no such addressee'*. Thus, the creditor herein reduced the compliance of an important statutory requirement in to a *mockery*. Yet another, undeniable fact is that even in the in the recovery proceedings initiated before the Ld. Debt Recovery Tribunal (DRT) by the creditor against the principal borrower and the guarantor herein, the service of notice on the personal guarantor was by way of publication and there was no service of notice as is evident from the copy of the order in OA No.505 of 2017 dated 27th August 2020**.** Moreover, the contention of the Personal Guarantor that the Personal Guarantor was not served with any notice of institution of recovery proceedings before the Ld. DRT, Hyderabad, by the Financial Creditor and the Personal Guarantor came to know about the said proceedings only when copies of the same were enclosed to this Company Petition and immediately thereupon the Personal Guarantor approached the Ld. DRT for appropriate reliefs, has not been denied by the Financial Creditor.

39. Needless to say, that in terms of *subsection* 4 (c) of section 95 of the I&B Code, 2016, the cause of action to proceed against the Personal Guarantor arises, only upon the failure by the debtor to pay the debt within a period of fourteen days of the ***service of the notice of demand.*** As already stated in the instant case, even as per the material placed by the Financial Creditor second Demand Notice dated 16.10.2021 to the Personal Guarantor *returned unserved*. So much so, the present application being *without cause of action* is not maintainable. As already stated the Report submitted by the Resolution Professional is unreliable.

40. Therefore, viewed from all angles the present application is thoroughly misconceived, devoid of merit, besides contrary to the provisions of the I&B Code, 2016. Therefore, the same is liable to be **rejected**. *Accordingly,* the present Company Petition is hereby rejected, however, in the circumstances, without costs.

41. In the result, Company Petition No.3/95/HDB/2022 is rejected without costs.

SD/-	SD/-
(Charan Singh) Member (Technical)	(Dr. N.Venkata Ramakrishna Badarinath) Member (Judicial)

Binnu