

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

Company Petition No. (IB)-411(ND)2021

IN THE MATTER OF :

**State Bank of India
14th Floor, Madame Cama Road,
Nariman Point, Mumbai,
Maharashtra-400021**

...Applicant

Versus

**Ms. Jaya Singh
(Personal Guarantor of M/s. Energo Engineering
Projects Limited)
Flat No. 204, Building/Tower No. 12,
1st Floor, Commonwealth Games Village,
Near Akshardham Temple,
New Delhi-110092**

...Personal Guarantor

Order Delivered on: 16.08.2021

SECTION: 95(1) of IBC 2016

CORAM:

SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Mr. Amrendra Kumar Singh, Advocate

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

Under consideration is the Application preferred by State Bank of India **(the ‘Applicant/Financial Creditor’)**, under Section 95(1) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for IRP for Personal Guarantors to Corporate Debtor) Rules, 2019. The Application is filed by the SBI for initiating the Insolvency Resolution Process **(the “IR Process”)** against Ms. Jaya Singh (hereinafter, referred to as **Personal Guarantor/Debtor**), who is the Guarantor of M/s Energo Engineering Projects Limited **(the ‘Corporate Debtor’)**.

2. It is stated that the Applicant through its subsidiary erstwhile State Bank of Mysore (“SBM”) in consortium with Punjab National Bank, erstwhile State Bank of Hyderabad **(“SBH”)**, erstwhile State Bank of Bikaner & Jaipur **(“SBBJ”)** and erstwhile State Bank of Travancore **(“SBT”)**, which have merged with the Applicant vide Gazette Notification dated 22.02.2017, together had disbursed credit facilities to the tune of Rs.747.50 crore to the Corporate Debtor in terms of the Working Capital Consortium agreements. The total dues of the Applicant Creditor as on 15.12.2018 for the credit facilities granted to the Corporate Debtor, as mentioned in the Part III of the Application stood at Rs. 794,00,32,924.21, the scanned details of which are reproduced overleaf :

Total dues of the Applicant Creditor as on 15.12.2018 for the Credit facilities granted to the Corporate Debtor are as follows: -

Sr. No.	Facility	Total dues as on 15.12.2018 (in Rupees)
1	Cash Credit (erstwhile State Bank of Mysore) A/c No. 64016944548	439,12,24,041.27
2	Cash Credit (erstwhile State Bank of Bikaner & Jaipur) A/c No. 61402561655	208,43,52,282.66
3	Cash Credit (erstwhile State Bank of Hyderabad) A/c No. 62269557237	107,95,50,134.09
4	Cash Credit (erstwhile State Bank of Travancore) A/c No. 67308916472	38,49,06,476.19
	Total	794,00,32,924.21

3. It is contended by the Applicant that Ms. Jaya Singh executed the Deeds of Personal Guarantee dated 02.03.2013, 11.06.2014, 22.11.2014 and 08.01.2015 in the capacity of a Personal Guarantor in favour of the Applicant, thereby guaranteeing payment of all the debts (in respect of the underlying Loan Agreements) due and payable by the Borrower/Corporate Debtor to the Applicant in case of default by the Corporate Debtor.

4. It is submitted by the Applicant that the Corporate Debtor has failed to repay the said loans and therefore, it has invoked the guarantee by sending a recall notice dated 24.12.2018 to the Corporate Debtor as well as the Personal Guarantor.

5. It is further submitted by the Applicant that the Principal Bench of this Adjudicating Authority vide Order dated 21.08.2018 in IB-160/ND/2017 in the matter of M/s. Levon Valves Pvt. Ltd. Vs. Energo Engineering Projects Ltd. has initiated Liquidation proceedings under IBC 2016, against the Corporate Debtor.

6. It is averred by the Applicant that it had sent a Notice dated 29.06.2021 in Form B under Rule 7(1) of Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 to the Personal Guarantor, demanding payment of total outstanding amount of Rs.794,00,32,924.21/-.

7. It is on account of this default in discharging its repayment obligations by the Personal Guarantor, the Applicant/Personal Guarantor has preferred the present Application under Section 95 read with Section 60(2) of the Code.

8. We have heard the Ld. Counsel for the Applicant on 09.08.2021 and gone through the averments made in the Application.

9. While going through the Petition, we find that the Notice of Demand as required to be served to Personal Guarantor under Section 95(4)(b) of IBC 2016, has been sent by the Applicant to one Mr. Dinesh B. Singh, who is not a party to the present case. Further no Notice of Demand has been placed on record which has been served to Ms. Jaya Singh, the Respondent/Personal Guarantor herein. The scanned copy of the Demand Notice sent by the Applicant in Form B is annexed with the Petition (Page 466-475) is reproduced below:



भारतीय स्टेट बैंक
State Bank of India

FORM B

[See rule 7(1)]

FORM OF DEMAND NOTICE

[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]

Dated: - 29.06.2021

Reference No. - SAMB-II/2021-22/286

To

1. SHRI DINESH B SINGH,
S/O LATE SH. T P SINGH,
(GUARANTOR),
R/O, FLAT NO. 204,
BUILDING / TOWER NO. 12, 1ST FLOOR,
COMMONWEALTH GAMES VILLAGE,
(NEAR AKSHARDHAM TEMPLE)
DELHI-110092.

From

STATE BANK OF INDIA,
STRESSED ASSETS MANAGEMENT BRANCH-II,
11th FLOOR, JAWAHAR VYAPAR BHAWAN,
1, TOLSTOY MARG,
NEW DELHI - 110001

Subject: Demand notice in respect of unpaid debt in default due from M/s Energo Engineering Projects Ltd. under the Code.

Madam/Sir,

1. This letter is a demand notice of unpaid debt in default due from M/s Energo Engineering Projects Ltd.

2. Please find particulars of the unpaid debt in default below

PARTICULARS OF DEBT	
1. Total outstanding debt (including any interest or penalties)	Rs. 794,00,32,924.21 [Rs. Seven hundred Ninety-four Crores thirty-two thousand Nine hundred twenty-four and Paise twenty-one only] as on 24.12.2018 payable by the personal Guarantor, Mr. Dinesh Behadur Singh, (Personal Guarantors to the CD) to the Bank (Creditor) together with future interest applicable including penal interest and charges on actual basis.

bank.sbi
011-23701238
011-23701209
sbi.92250@sbi.co.in

एनएसएम ब्रंच-II
जवाहर व्यापार भवन,
1 टॉलस्टोय मार्ग,
नई दिल्ली-110001

Stressed Assets Management Branch
11th Floor, STC Building
1 Tolstoy Marg, Jangpeth
New Delhi-110001



		[As per the Deed of Guarantee executed on 02.02.2013, 11.06.2014, 22.11.2014 & 08.01.2015]																		
2.	Amount of debt in default	Rs. 794,00,32,924.21 (Rs. Seven hundred Ninety-four Crores thirty-two thousand Nine hundred twenty-four and Paise twenty-one only) as on 24.12.2018 payable by the personal Guarantor, Mr. Dinash Bahadur Singh, (Personal Guarantors to the CD) to the Bank (Creditor) together with future interest applicable including penal interest and charges on actual basis. [As per the Deed of Guarantee executed on 02.02.2013, 11.06.2014, 22.11.2014 & 08.01.2015]																		
3.	Date when the debt was due	24.12.2018																		
4.	Date when the default occurred	04.01.2019																		
5.	Nature of the debt	<p>Following facilities have been provided by the Bank to the Corporate Debtor.</p> <table border="1"> <thead> <tr> <th>Sr. No.</th> <th>Facility</th> <th>Total dues as on 15.12.2018 (in Rupees)</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>Cash Credit (eSBM) A/c No. 64016944548</td> <td>439,12,24,041.27</td> </tr> <tr> <td>2.</td> <td>Cash Credit (eSBM) A/c No. 61402561655</td> <td>208,43,52,282.66</td> </tr> <tr> <td>3.</td> <td>Cash Credit (eSBH) A/c No. 62269557237</td> <td>107,95,50,134.09</td> </tr> <tr> <td>4.</td> <td>Cash Credit (eSBT) A/c No. 67308916472</td> <td>38,49,06,476.19</td> </tr> <tr> <td colspan="2">Total</td> <td>794,00,32,924.21</td> </tr> </tbody> </table> <p>(Rupees Seven Hundred Ninety-Four Crores Thirty-Two Thousand Nine Hundred Twenty-Four and Paise Twenty-One Only)</p>	Sr. No.	Facility	Total dues as on 15.12.2018 (in Rupees)	1.	Cash Credit (eSBM) A/c No. 64016944548	439,12,24,041.27	2.	Cash Credit (eSBM) A/c No. 61402561655	208,43,52,282.66	3.	Cash Credit (eSBH) A/c No. 62269557237	107,95,50,134.09	4.	Cash Credit (eSBT) A/c No. 67308916472	38,49,06,476.19	Total		794,00,32,924.21
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Total		794,00,32,924.21																		
6.	Secured debt including particulars of security held, the date of its creation, its estimated value as per the creditor (as applicable), and details of securities	As regards the Guarantor the Secured debt is Nil																		



		<p><u>Valuation</u></p> <p>Valuation of the Hypothecation charge on stocks, stores, receivables, and other current assets (both present & future) including mortgaged properties of the Corporate Debtor in terms of the Valuation Report dated 01.12.2017 is Rs.61.43 crore (SBI Share)</p>
7.	Unsecured debt (as applicable)	Rs. 794,00,32,924.21 (Rs. Seven hundred Ninety-four Crores thirty-two thousand Nine hundred twenty-four and Paise twenty-one only) as on 15.12.2018 payable by the personal Guarantor, Mr. Dinash Bahadur Singh (Personal Guarantors to the CD) to the Bank (Creditor) together with future interest applicable including penal interest and charges on actual basis.
8.	Details of retention of title arrangements (if any) in respect of goods to which the debt refers (attach a copy)	None
9.	Particulars of an order of a court, tribunal or arbitral panel adjudicating on the default, if any (attach a copy of the order)	<ol style="list-style-type: none"> Interim Order dated 29.05.2019 passed by the Ld. Debts Recovery Tribunal-II, Delhi in OA No. 485/2019. Order dated 05.09.2017 passed by the special bench of the National Company Law Tribunal, Delhi in (IB)-130 (PB) /2017 appointing CIRP. Order dated 21.08.2018 passed by the principal bench of the National Company Law Tribunal, Delhi in CA-743(PB)/2018 in (IB)-160 (ND) /2017 appointing a Liquidator for the Corporate Debtor.
10.	Record of default with the information utility, if any (attach a copy)	Record of Default of Corporate Debtor with IU attached.
11.	Details of succession certificate, or probate of a Will, or letter of administration, or court decree (as may be applicable), under the Indian Succession Act, 1925 (10 of 1925) (attach a copy)	Not Applicable.

	<p>However, the debt to Corporate Debtor is secured as under:-</p> <ol style="list-style-type: none"> 1. First pari-passu charge on all present and future fixed assets of the Corporate Debtor. 2. First pari-passu charge on all present and future current assets of the Corporate Debtor. <p>Personal Guarantees of Mr. Dinesh Bahadur Singh for the Credit facilities availed by the Corporate Debtor from eSBM, eSBI, eSBH & eSST.</p> <p>Security creation date by the Corporate Debtor in favour of the Working Capital Consortium including the Creditor/Bank:-</p> <ol style="list-style-type: none"> 1. Working Capital Consortium Agreement dated 02.02.2013. 2. Joint Deed of Hypothecation dated 02.02.2013. 3. Deed of Hypothecation of movable assets forming part of fixed / block assets dated 02.02.2013. 4. Deed of Guarantee dated 02.02.2013 executed by Sh. Dinesh B Singh & Jaya Singh in favour of the Working Capital Consortium/Bank. 5. Working Capital Consortium Agreement dated 11.06.2014. 6. Joint Deed of Hypothecation dated 11.06.2014. 7. Deed of Hypothecation of movable assets forming part of fixed / block assets dated 11.06.2014. 8. Deed of Guarantee dated 11.06.2014 executed by Sh. Dinesh B Singh & Jaya Singh in favour of the Working Capital Consortium/Bank. 9. Deed of Guarantee dated 22.11.2014. 10. Working Capital Consortium Agreement dated 08.01.2015. 11. Joint Deed of Hypothecation dated 08.01.2015. 12. Deed of Guarantee dated 08.01.2015 executed by Sh. Dinesh B Singh & Jaya Singh in favour of the Working Capital Consortium/Bank. 13. Revival Letter dated 02.01.2018. 14. Balance Confirmation dated 31.03.2016 & 31.03.2017. 15. Demand Notice dated 24.12.2019 issued by the Bank.
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12. Provision of law, contract or other document under which debt has become due (attach a copy)	Indian Contract Act, 1872 and other applicable provisions of the law governing liabilities of a Guarantor. As per Documents mentioned under item No. 14 below.
13. A statement of bank account where deposits are made or credits received normally by the creditor in respect of the debt of the corporate debtor, from the date on which the debt was incurred	Account statements enclosed.
14. List of documents attached to this notice in order to prove the existence of debt and the amount in default	Copy of the Documents as mentioned hereinbelow enclosed:- 1. Working Capital Consortium Agreement dated 02.02.2013. 2. Joint Deed of Hypothecation dated 02.02.2013. 3. Deed of Hypothecation of movable assets forming part of fixed / block assets dated 02.02.2013. 4. Deed of Guarantee dated 02.02.2013 executed by Sh. Dinesh B Singh & Jaya Singh in favour of the Working Capital Consortium/Bank. 5. Working Capital Consortium Agreement dated 11.06.2014. 6. Joint Deed of Hypothecation dated 11.06.2014. 7. Deed of Hypothecation of movable assets forming part of fixed / block assets dated 11.06.2014. 8. Deed of Guarantee dated 11.06.2014 executed by Sh. Dinesh B Singh & Jaya Singh in favour of the Working Capital Consortium/Bank. 9. Deed of Guarantee dated 22.11.2014. 10. Working Capital Consortium Agreement dated 08.01.2015. 11. Joint Deed of Hypothecation dated 08.01.2015. 12. Deed of Guarantee dated 08.01.2015 executed by Sh. Dinesh B Singh in favour of the Working Capital Consortium/Bank. 13. Revival Letter dated 02.01.2018. 14. Balance Confirmation dated 31.03.2016 & 31.03.2017.

	<p>15. Demand Notice dated 24.12.2019 issued by the Bank.</p> <p>16. Order dated 21.08.2018 passed by the principal bench of the National Company Law Tribunal, Delhi in CA-746 (PB)/2018 in (IB)-160 (ND)/2017 appointing a Liquidator for the Corporate Debtor</p> <p>17. Interim Order dated 29.05.2019 passed by the Id. Debts Recovery Tribunal-II, Delhi in DA No. 485/2019</p> <p>18. Record of Default issued by the Information Utility recording default of debt committed by the Corporate Debtor.</p> <p>19. Record of Default issued by the Information Utility recording default of debt committed by the Guarantor.</p>
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3. If you believe that the debt has been repaid before the receipt of this notice, please demonstrate such repayment by sending to us, within fourteen days of receipt of this notice, the following: -

(a) an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the guarantor; or

(b) evidence of encashment of cheque for the unpaid amount issued by the guarantor;

or (c) an attested copy of any record that State Bank of India has received the payment.

4. The undersigned request you to unconditionally pay the unpaid debt in default in full within fourteen days from the receipt of this letter failing which insolvency resolution process, under the Code, shall be initiated against you

Yours faithfully,
For State Bank of India


Signature of  to act on behalf of the Creditor (State Bank of India)

NAME- MR. VINOD KUMAR,
(ASSISTANT GENERAL MANAGER)
ADDRESS-

STATE BANK OF INDIA, STRESSED ASSETS MANAGEMENT (BRANCH-I), 11th FLOOR, JAWAHAR VYAPAR BHAWAN, 1, TOLSTOY MARG, NEW DELHI - 110001



10. Here, it is worthwhile to refer to the contents of the Rule 7 (1) of the (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019, which reads as below :

“7. Application by creditor.- (1) A demand notice under clause (b) of sub-section (4) of section 95 shall be served on the guarantor demanding payment of the amount of default, in Form B.”

11. Since the Applicant has not served the Demand Notice to the Personal Guarantor, as required mandatorily under Section 95(4)(b) of IBC 2016 read with Rule 7 (1) of the (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019, we are not inclined to proceed further in the matter.

12. That we also observe that the facts in the synopsis written at Page 1-2 of the Application are at variance with the facts mentioned in the Part III of the Application. Further, the date of NPA has also not been disclosed by the Applicant. Overall, the Application lacks material pleadings as to how the debt has become due and payable.

13. That we are constrained to observe that the Application has been filed in a casual manner by the Applicant Bank. The Applicant should have been diligent enough in filing the Application under Section 95 of IBC 201, since under this section the moment the Application is filed, interim moratorium under Section 96(1)(a) of IBC 2016 gets triggered, which could cause prejudice to other creditors of the Corporate Debtor.

14. In the light of the reason detailed in the para 10 above, **the Petition is Dismissed.**

15. However, liberty is granted to the Applicant to file a fresh Application on the same cause of action, after duly serving the Demand Notice to the Personal Guarantor concerned.

Sd/-
(L. N. Gupta)
Member (T)

Sd/-
(Abni Ranjan Kumar Sinha)
Member (J)