IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-II
KOLKATA

C.P. (IB) No.350/KB/2024
Date of Hearing: 13.01.2026
Date of Order:03.09.2026

In the Matter of:

Kotak Mahindra Bank Limited (CIN: L65110MH1985PLC038137) a company incorporated under the Companies Act, 1956, having its registered office at 27 BKC, C 27, G Block Bandra Kurla Complex, Bandra (E), Mumbai City, Mumbai, Maharashtra, India, 400051 and its branch office at 22, Camac Street, Block - A, 4th Floor, Kolkata - 700016

APPLICANT/FINANCIAL CREDITOR

Versus

Akul Industries Private Limited, (CIN: U00074BR2000PTC009369) a company incorporated under the Companies Act, 1956, having its registered office at 137, S.K. Nagar, P.S- Budh Colony, Patna -800 001, Bihar, India also having its offices at J.L. No. 124, D,H. Road, P.O.- Banganagar, Falta, South 24 Parganas- 743513 and at 76WW+729, Banganagar, West Bengal- 743513.

RESPONDENT/CORPORATE DEBTOR

Coram: **Labh Singh Hon'ble Member(Judicial)**
Rekha Kantilal Shah Hon'ble Member(Technical)

Present:

For the applicant	**Mr. Aman Agarwal Ld. Advocate** **Mr. Rupal Singh Ld. Advocate** **Mr. Ashok Kumar Singh Ld. Advocate**
For the respondent	**Mr. Shounak Mitra Ld. Advocate** **Mr. S. Raja Ld. Advocate**

O R D E R

Labh Singh Member(Judicial)

1. The Kotak Mahindra Bank has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter to be referred as "the IBC Code") read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Company Akul Industries Private Limited, (hereinafter to be referred to as "the corporate debtor").

2. It is appropriate to mention that the applicant Kotak Mahindra Bank Limited, is a Banking Company incorporated on 21.11.1995, having its Registered Office at 27 BKC, C 27, G Block Bandra Kurla Complex, Bandra (E), Mumbai City, Mumbai,

Maharashtra, India, 400051 and one of its Branch Office at 22, Camac Street, Block-A, 4th Floor, Kolkata-700016.

2.1. Mr. Rudra Narayan Roychowdhuri, Deputy Manager, Kotak Mahindra Bank Limited, 22, Camac Street, Block No. A, 4th Floor, Kolkata, West Bengal-7000016 duly authorized on behalf of applicant, has preferred the present application on behalf of the applicant Bank for initiation of insolvency resolution process against the respondent under the IBC Code. A copy of the Authority Letter dated 01.04.2023 has been placed on record by way of supplementary affidavit.

2.2. The Respondent Company Akul Industries Private Limited against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 28.07.2000 having its registered office situated at 137, S.K Nagar, P.S Budh Colony Patna, Bihar. Since the registered office of the respondent corporate debtor is situated at Patna, Bihar, this Tribunal having territorial jurisdiction over the State of Bihar is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

2.3. Briefly stated the facts of the applicant case is that the applicant Bank/ Financial Creditor, upon request of the borrower namely Mr. Alok Kumar, Mrs. Tulika Kumar, Ms.

Shrimayi Kumar and MS. Anushree Kumar, sanctioned a loan amount of Rs. Rs. 8,41,00,000/ (Rupees Eight Crores Forty One Lakhs Only) vide sanction letter dated August 25, 2021. The borrower executed loan agreement dated 25.04.2019 for Loan Account No. LAP18406717 wherein the corporate debtor stood as Guarantor and executed Guarantee Deed dated 25.04.2019 to secure repayment of loan amount.

2.4. Thus, the instant liability of the corporate debtor arises out of a deed of guarantee dated 25.04.2019 with respect to loan account no. LAP18025885 disbursed in favour of the borrowers being Mr. Alok Kumar, Mrs. Tulika Kumar, Ms. Shrimayi Kumar and Ms. of Anushree Kumar.

2.5. In view of the COVID-19 pandemic and a complete nationwide lockdown on the economy, the parties hereto agreed for restructuring of the aforesaid loan facilities. Therefore, due to prevailing covid-19 situation, the existing loan account was restructured for an amount of Rs. 7,99,31,000 (Rupees Seven Crores Ninety-Nine Lakhs Thirty One Thousand Only). The parties executed a new loan agreement dated 25.08.2021. The loan against property LAP18406717 was sanctioned for an amount of Rs. 7,99,31,000/- vide sanction letter dated 25.08.2021. The corporate debtor executed another Guarantee Deed dated 28.09.2021. The tenure of the loan was extended to another 24 months with revised rate of interest at the rate of 7.25% consisting of REPO rate at the rate of 4% spread at the rate of 11.25%.

2.6. The total outstanding amount as on 18.10.2013 is Rs. 8,50,40,814.71/-. Thus, the amount of default under the credit facilities as on 18.10.2023 is Rs. 8,50,40,814.71/-(Rupes Eight Crores Fifty Lakhs Forty Thousands Eight Hundred Fourteen and paisa Seventy One Only) and the date of default is 06.04.2024 when the said accounts have been classified as Non Performing Asset(NPA).

2.7. Therefore, as per part IV of the application, it is claimed that as on 18.10.2023 a sum of Rs. 8,50,40,814.71/- is due and payable by the respondent company.

2.8. Sub-section (3)(b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Ram Ratan Modi, for appointment as Interim Resolution Professional having registration number IBBI/IPA-001/IP-P00051/2017-18/10125 resident of 166B, S.P Mukharjee Road, Merlin Links, Room No. 1E, Kolkata-700026 with email-id: rrmodi@gmail.com. Mr. Ram Ratan Modi has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Ram Ratan Modi as per the requirement of the IBBI Regulations. Accordingly, it is seen that the requirement of Section 7(3)(b) of the Code has been satisfied.

2.9. The applicant, in order to prove its case, has placed the documents which are annexed with the present application and supplementary affidavit. The loan documents executed by the Corporate Debtor, Other Co-Borrowers and the Financial Creditor are Annexure ‘C-1’, ‘C-2’, ‘D-1’ and ‘D-2’ respectively. The details of computation of amount of default and days of default have been annexed as Annexure ‘E’. A copy of the NeSL. Form C dated 09.10.2024 is Annexure 'F'. A copy of the Statement of Accounts signed by the Applicant Bank's competent officer and duly certified under the Banker's Books Evidence Act, 1891 is annexed as Annexure 'G'. A copy of Demand Notice dated 01.10.2024 annexed is as Annexures’'.

3. The respondent corporate debtor has filed its reply raising preliminary objection that the present application has been filed without proper authorisation. The present application is not in proper form and not in accordance with the

regulations of this Tribunal and therefore deserves to be dismissed on this score alone.

3.1. It has further been replied that the Financial Creditor has failed to establish the existence of a "financial debt" as defined under Section 5(8) of the Code, and the alleged default is not in accordance with the provisions of the Code. The Financial Creditor has not followed mandatory pre-requisites under the Code, including the issuance of a valid demand notice. The demand notice dated October 1, 2024, issued by the Financial Creditor under Section 8 of the Code is defective and does not comply with the mandatory requirements of the Code.

3.2. The Financial Creditor has failed to provide sufficient evidence to prove the existence of a financial debt and the occurrence of a default in respect of the Corporate Debtor. The documents annexed with the present application, including the loan agreements and guarantee deeds, do not conclusively establish that the Corporate Debtor is liable for the alleged default.

3.3. The present application has been filed on the basis of alleged Guarantee Agreement of the Corporate Debtor which has been signed by only one director of the Corporate Debtor, without any valid Board of Resolution from all the Directors of the Corporate Debtor, empowering the said director from signing the said purported deed of guarantee on behalf of the Corporate Debtor. A director's capacity to bind the company is derived from any relevant board resolutions or authorizations, and the lack of a board resolution declares the act as void. A director acting outside these powers, by failing to seek or obtain a board resolution is considered to have acted without proper authority and non-compliance with these statutory requirements renders the guarantee void or voidable and the absence of internal approval, invalidates the act, rendering the guarantee non-binding on the company. There is no evidence of any board resolution, minutes of meetings, or conduct of the company that could prove expressive ratification of the said purported agreement. The Financial Creditor had got the purported agreement signed by the said Director solely without any Board of Resolution and failed to verify the authority of the director to execute the purported Guarantee Agreement.

3.4. The Financial Creditor classified the account of the alleged Borrower as a Non-Performing Asset (NPA) on April 6, 2024 but the classification of the account as an NPA is arbitrary and without proper justification. The Corporate Debtor had came to know that the borrower had been making regular payments, and the alleged default is a result of the

Financial Creditor's unilateral actions, including the restructuring of the loan without the consent of the Corporate Debtor.

3.5. The purported guarantee had never been invoked by the Financial Creditor. The Reserve Bank of India mandates that an account can only be classified as an NPA if payments remain overdue for a period exceeding 90 days. In this case, it appears that the Borrower, in respect of Corporate Debtor, has continually made payment obligations within that timeframe, which raises questions about the bank's grounds for this classification.

3.6. There is a pre-existing dispute between the borrower and the Financial Creditor herein, regarding the terms of the loan agreement and the alleged default. The Borrower has consistently disputed the Financial Creditor's claims, and the matter is already sub-judice before the Debts Recovery Tribunal. The existence of a pre-existing dispute itself is a ground on which the said purported application under Section 7 of the Code should be rejected. Therefore, the liability of a guarantor is contingent upon the default of the principal borrower.

3.7. The Financial Creditor procured signatures on blank documents and as a result, the Borrower and/or the purported guarantor remained uninformed about the actual contents of the documents. The date of default is disputed which is a matter of adjudication before a separate Tribunal.

3.8. The borrower was making all the payments of the EMIs regularly with all the penalties (if any) and the last payment made by the Borrower was on February 29, 2024. Therefore, questions of classification of the account of the borrower as a Non-Performing Asset (NPA) on April 6, 2024, does not arise in 37 days. The penalty on delayed payment was charged and made by the borrowers. Moreover, once the bank charges a penalty on delayed payment and the penalty is paid.

3.9. The demand notice alleges a default date of April 6, 2024; however, Demand notice under Section 13(2) of the SARFEASI Act 2022 was issued on April 29, 2024. According to the Reserve Bank of India's guidelines, an account is classified as a Non- Performing Asset (NPA) if it remains overdue for more than 90 days. The demand notice has been issued under Section 13(2) notice within 23 days contrary to guidelines issued by RBI.

3.10. The Financial Creditor has claimed an uncrystallised, absurd, baseless and unjustified amount in the present application filed under Section 7 of the IB Code, 2016.

3.11. The respondent, while replying to the content of the petition para wise, has denied each and every content of the present application. It is denied that the loan agreement and deed of guarantee were executed between the parties for facilitating the alleged loan for a sum of Rs. 8,41,00,000/- on April 4, 2019. It is also denied that the accounts of the Corporate Debtor were classified as Non-Performing Assets on April 6, 2024. It is also denied that the corporate debtor ever executed another Guarantee Deed dated 28.09.2021 in favour of the borrowers. It is further denied that after taking into consideration and credit payment received from the borrowers a sum of Rs. 8,50,40,814.71/- (Rupees Eight Crores Fifty Lakhs Forty Thousand Eight Hundred and Fourteen and Seventy One Paise Only), remains due and payable as on 18.10.2024. It is denied that the borrowers failed or neglected to make payment of the said outstanding amount in spite of the repeated demands made by the Financial creditor and as such, the accounts were declared as NPA on 06.04.2024. It has been submitted that the present application lacks merits and hence, the same requires to be dismissed with cost.

4. The applicant Company filed its rejoinder denying the averment made in the reply and reiterating the facts as pleaded in the present petition which are not reproduced here in entirety for sake of brevity. It has been replied in rejoinder to reply to the affidavit that the affidavit is

frivolous, misconceived and baseless. The reply affidavit suffers from gross suppression and misrepresentation of material facts. The reply affidavit fails to answer the material allegations in the petition. The averments of reply affidavit and documents are beyond the scope of the pleadings in the petition filed by the Financial Creditor under section 7 of the Code and is liable to be rejected on such ground. The applicant Bank also filed a supplementary affidavit to place on record a copy of Authority Letter dated 1.04.2023.

5. Based on pleading of the parties and the rival contentions raised by the Ld. Counsels for both the parties, the following points have arisen for determination:

    i. Whether the present application has been filed by an unauthorised person on behalf of the applicant Bank?

    ii. Whether the proceeding under Section 7 of IBC 2016 is maintainable against the respondent who is the corporate guarantor to the individual borrower?

    iii. Whether there is debt and default as defined in the Code?

    iv. Relief, to which the applicant is entitled?

6. We have gone through the case file carefully and perused the pleadings of the parties and documents placed on record by the parties and heard the arguments put forth by learned

Counsels for the parties; and after hearing the learned counsels for the parties, we shall now proceed to consider the present petition on its merits, specifically within the ambit of points involved in the instant application.

Issue No. (i)

7. Mr. Rudra Narayan Roychowdhuri, Deputy Manager of the applicant Bank stated by way of supplementary affidavit that his authority flows from a Letter of Authority dated April 1, 2023, issued by Mr. Brijesh Singh, Senior Vice President of Kotak Mahindra Bank Limited, which authorised him to file the present petition and represent the Bank during proceedings initiated under the Insolvency and Bankruptcy Code, 2016. He further submitted that Mr. Brijesh Singh has been authorised to execute the said letter of authority in his favour pursuant to the Resolution passed by the Share Transfer and Other Matters Committee (Delegated) of Kotak Mahindra Bank on June 11, 2022. Therefore, he is fully competent to institute and proceed with the instant petition before this Tribunal. He has relied on the copy of the Authority Letter dated 1.04.2023 which Annexure “A”.

8. A perusal of Letter of Authority dated April 1, 2023, issued by Mr. Brijesh Singh, Senior Vice President of Kotak Mahindra Bank Limited, pursuant to the Resolution passed by the Share Transfer and Other Matters Committee (Delegated)

of Kotak Mahindra Bank reveals that it was executed on June 11, 2022 and valid up to March 31, 2025. After expiry of the said authority, a fresh Letter of Authority dated April 1, 2025, has been issued in favour Mr. Rudra Narayan Roychowdhuri, Deputy Manager by Mr. Prashant Sood, Senior Executive Vice President of Kotak Mahindra Bank Limited, in terms of the Resolution passed by the Share Transfer and Other Matters Committee (Delegated) of Kotak Mahindra Bank on December 11, 2024. The said Authority Letter authorised Mr. Rudra Narayan Roychowdhuri, Deputy Manager to file the present proceedings under Section 7 of Code and represent Kotak Mahindra Bank Limited in proceedings under the Insolvency and Bankruptcy Code, 2016.

9. Thus, Mr. Rudra Narayan Roychowdhuri, Deputy Manager was fully competent to file the present application and continue to proceed with the instant petition before this Tribunal. Therefore, the plea of the respondent that the present petition has been filed by an unauthorised person on behalf of the applicant bank is not tenable at law.

Question No. (ii)

10. The Corporate Debtor has taken a plea that the proceeding under Section 7 of IBC is maintainable when the Corporate Guarantor has given guarantee for the loan advanced to Corporate Debtor. The principal borrower in the present case

is an individual and not the Corporate Debtor. The question arises whether such a guarantee executed to secure loan advanced to individual borrowers can be invoked to initiate proceeding under Section 7 of the Code. In order to decide this question, it would be relevant to refer provision of Sub-Section 5A of Section 5; and Sub-Section 7 and 8 of Section 3 of the Code which is as under:

> "3(7) "corporate person" means a company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013), a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider".
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> "3(8) "corporate debtor" means a corporate person who owes a debt to any person".
>
> "5(5A). "corporate guarantor" means a corporate person who is the surety in a contract of guarantee to a corporate debtor".

11. Mr. Shounak Mitra Learned Advocate for the Corporate Debtor argued that after reading of Section 5(5A), Section 3(7) and Section 3(8) of the IBC, it is apparent that a Corporate Guarantor should be surety in a contract of guarantee to a Corporate Debtor. The borrower, in the present case, is the

individual and not the Corporate Debtor; and hence, Akul Industries Private Limited is not a Corporate Guarantor as defined in Section 5(5A) of the Code.

12. On this aspect, it is pertinent to place reliance on judgment passed by Hon'ble Supreme Court in case of **Laxmi Pat Surana Versus Union Bank of India & Anothers (2021) 8 SCC 481**, wherein Hon'ble Apex Court held: –

> "19. It is no more res integra that the Code is a complete code – provisioning for actions and proceedings relating to, amongst others, reorganisation and insolvency resolution of corporate persons in a time bound manner for maximisation of value of assets of such persons, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.
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> 22. The term "financial creditor" has been defined in Section 5(7) read with expression "creditor" in Section 3(10) IBC to mean a person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or

transferred to. This means that the applicant should be a person to whom a financial debt is owed. The expression "financial debt" has been defined in Section 5(8). Amongst other categories specified therein, it could be a debt along with interest, which is disbursed against the consideration for the time value of money and would include the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of the same clause. It is so provided in sub-clause (i) of Section 5(8) IBC to take within its ambit a liability in relation to a guarantee offered by the corporate person as a result of the default committed by the principal borrower. The expression "debt" has been defined separately in the Code in Section 3(11) to mean a liability or obligation in respect of "a claim" which is due from any person and includes a financial debt and operational debt. The expression "claim" would certainly cover the right of the financial creditor to proceed against the corporate person being a guarantor due to the default committed by the principal borrower. The expression "claim" has been defined in Section

3(6), which means a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured. It also means a right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment in respect of specified matters.

23. Indubitably, a right or cause of action would enure to the lender (financial creditor) to proceed against the principal borrower, as well as the guarantor in equal measure in case they commit default in repayment of the amount of debt acting jointly and severally. It would still be a case of default committed by the guarantor itself, if and when the principal borrower fails to discharge his obligation in respect of amount of debt. For, the obligation of the guarantor is coextensive and coterminous with that of the principal borrower to defray the debt, as predicated in Section 128 of the Contract Act. As a consequence of such default, the status of the guarantor metamorphoses into a debtor or a corporate debtor if it happens to be a corporate person, within the meaning of Section 3(8) IBC. For, as aforesaid, the expression

"default" has also been defined in Section 3(12) IBC to mean non-payment of debt when whole or any part or instalment of the amount of debt has become due or payable and is not paid by the debtor or the corporate debtor, as the case may be.

24. A priori, in the context of the provisions of the Code, if the guarantor is a corporate person [as defined in Section 3(7) IBC], it would come within the purview of the expression "corporate debtor", within the meaning of Section 3(8) IBC.

25. It may be useful to also advert to the generic provision contained in Section 3(37). It postulates that the words and expressions used and not defined in the Code, but defined in enactments referred to therein, shall have the meanings respectively assigned to them in those Acts. Drawing support from this provision, it must follow that the lender would be a financial creditor within the meaning of the Code. The principal borrower may or may not be a corporate person, but if a corporate person extends guarantee for the loan transaction concerning a principal borrower not being a corporate person, it would still be covered within

the meaning of the expression “corporate debtor” in Section 3(8) IBC.

26. Thus understood, it is not possible to countenance the argument of the appellant that as the principal borrower is not a corporate person, the financial creditor could not have invoked remedy under Section 7 IBC against the corporate person who had merely offered guarantee for such loan account. That action can still proceed against the guarantor being a corporate debtor, consequent to the default committed by the principal borrower. There is no reason to limit the width of Section 7 IBC despite law permitting initiation of CIRP against the corporate debtor, if and when default is committed by the principal borrower. For, the liability and obligation of the guarantor to pay the outstanding dues would get triggered coextensively.

27. To get over this position, much reliance was placed on Section 5(5-A) IBC, which defines the expression “corporate guarantor” to mean a corporate person, who is the surety in a contract of guarantee to a corporate debtor. This definition has been inserted by way of an amendment, which has

come into force on 6-6-2018. This provision, as rightly urged by the respondents, is essentially in the context of a corporate debtor against whom CIRP is to be initiated in terms of the amended Section 60 IBC, which amendment is introduced by the same Amendment Act of 2018. This change was to empower NCLT to deal with the insolvency resolution or liquidation processes of the corporate debtor and its corporate guarantor in the same Tribunal pertaining to same transaction, which has territorial jurisdiction over the place where the registered office of the corporate debtor is located. That does not mean that proceedings under Section 7 IBC cannot be initiated against a corporate person in respect of guarantee to the loan amount secured by person not being a corporate person, in case of default in payment of such a debt.

28. Accepting the aforementioned argument of the appellant would result in diluting or constricting the expression “corporate debtor” occurring in Section 7 IBC, which means a corporate person, who owes a debt to any person. The “debt” of a corporate person would mean a liability or

obligation in respect of a claim which is due from any person and includes a financial debt and operational debt. The expression “debt” in Section 3(11) is wide enough to include liability of a corporate person on account of guarantee given by it in relation to a loan account of any person including not being a corporate person in the event of default committed by the latter. It would still be a “financial debt” of the corporate person, arising from the guarantee given by it, within the meaning of Section 5(8) IBC.

29. Notably, the expression “corporate guarantee” is not defined in the Code. Whereas, expression “corporate guarantor” is defined in Section 5(5-A) IBC. If the legislature intended to exclude a corporate person offering guarantee in respect of a loan secured by a person not being a corporate person, from the expression “corporate debtor” occurring in Section 7, it would have so provided in the Code [at least when Section 5(5-A) came to be inserted defining expression “corporate guarantor”]. It was also open to the legislature to amend Section 7 IBC and replace the expression “corporate debtor” by a suitable expression. It

could have even amended Section 3(8) to exclude liability arising from a guarantee given for the loan account of an entity not being a corporate person. Similarly, it could have also amended the expression “financial debt” in Section 5(8) IBC, “claim” in Section 3(6), “debt” in Section 3(11) and “default” in Section 3(12). There is no indication to that effect in the contemporaneous legislative changes brought about.

30. The expression “corporate debtor” is defined in Section 3(8) which applies to the Code as a whole. Whereas, expression “corporate guarantor” in Section 5(5- A), applies only to Part II IBC. Upon harmonious and purposive construction of the governing provisions, it is not possible to extricate the corporate person from the liability (of being a corporate debtor) arising on account of the guarantee given by it in respect of loan given to a person other than corporate person. The liability of the guarantor is coextensive with that of the principal borrower. The remedy under Section 7 is not for recovery of the amount, but is for reorganisation and insolvency resolution of the corporate debtor who is not in a position to pay

its debt and commits default in that regard. It is open to the corporate debtor to pay off the debt, which had become due and payable and is not paid by the principal borrower, to avoid the rigours of Chapter II IBC in general and Section 7 in particular."

13. Hon'ble Supreme Court in case of **K Paramasivam Versus The Karur Vysya Bank Limited & Anrs 2022 ibclaw.in 108 SC** while relying on its own judgment in case of **Laxmi Pat Surana(Supra)** held:

    "13. Under Section 7 of the IBC, CIRP can be initiated against a Corporate entity who has given a guarantee to secure the dues of a non-corporate entity as a financial debt accrues to the corporate person, in respect of the guarantee given by it, once the borrower commits default. The guarantor is then, the Corporate Debtor".

14. Therefore, in view of our discussion and law applicable thereon, the argument advanced by Learned Counsel for the Corporate Debtor that the present application is not maintainable at law is devoid of merits. The present application against the Corporate Debtor(Corporate Guarantor) who has guaranteed loan advanced to the individual borrowers is maintainable at law.

Issue No. (iii)

15. An application under Section 7 of the IBC Code is acceptable so long as the debt is proved to be due and there has been occurrence or existence of default. What is material is that the default is for at least Rs. 1 crore. In view of the Section 4 of the Code, the moment default is for rupees one crore more, the application to trigger Corporate Insolvency Resolution Process under the Code is maintainable.

16. The material placed on record confirms that the Financial Creditor, upon request of Mr. Alok Kumar, the individual borrower, sanctioned a loan amount of Rs. Rs. 8,41,00,000/ (Rupees Eight Crores Forty One Lakhs Only) vide sanction letter dated April 25, 2021. The borrower executed a loan agreement dated 25.04.2019 for Loan Account No. LAP18406717 wherein the Corporate Debtor stood as Guarantor and executed Deed of Guarantee dated 25.04.2019 to secure the repayment of loan advanced to the borrower.

17. Due to COVID-19 pandemic, the existing loan account was restructured for an amount of Rs. 7,99,31,000 (Rupees Seven Crores Ninety-Nine Lakhs Thirty One Thousand Only). The parties executed a new loan agreement dated 25.08.2021. The loan against property LAP18406717 was sanctioned for an amount of Rs. 7,99,31,000/- vide sanction letter dated 25.08.2021. The Corporate Debtor(Corporate Guarantor)

executed another Guarantee Deed dated 28.09.2021. The tenure of the loan was extended for another 24 months with revised rate of interest.

18. Learned Counsel for the respondent argued that the alleged Guarantee Agreement of the Corporate Debtor has been signed by only one of the directors of the Corporate Debtor. There is no valid Board of Resolution from all the Directors of the Corporate Debtor empowering the said director to sign the said purported deed of Guarantee on behalf of the Corporate Debtor.

19. Learned Counsel for the Corporate Debtor further argued that a Director's capacity to bind the Company is not derived from any relevant board resolutions or authorizations. A director acting outside the powers, by failing to seek or obtain a board resolution is considered to have acted without proper authority. The non-compliance with such statutory requirements renders the guarantee agreement void or voidable. There is no evidence of any board resolution, minutes of meetings, or conduct on the part of the company that could prove expressive ratification of the said purported agreement.

20. In this regard, we have to refer to the Guarantee Agreement dated 25.04.2019. A perusal of Schedule-I of the Guarantee Agreement dated 25.04.2019 reveals that the guarantee

agreement has been executed and singed by Alok Kumar being director the Company, AKul Industries Private Limited to secure repayment of loan amount of Rs. 8,41,00,000/- advanced to the individual borrowers, Mr. Alok Kumar, Mrs. Tulika Kumar, Ms. Shrimayi Kumar and Ms. Anushree Kumar. Consequent upon restructuring of the loan account, a fresh Guarantee Agreement dated 28.09.2021 was furnished to secure loan amount of Rs. 7,99,81,000/- payable by the individual borrower, Mr. Alok Kumar.

21. It is pertinent to note that the applicant has placed on record duly attested certified copy of Board Resolution dated 24.08.2021 and 15.09.2021. A perusal of Board Resolution dated 24.08.2021 reveals that the Mr. Alok Kumar and/or Tulika Kumar were authorised to furnish guarantee on behalf of the Corporate Debtor for repayment of finance of Rs. 7,99,31,000/- along with availed from Kotak Mahindra Bank. A perusal of Board Resolution darted 15.09.2021 also reveals that Mr. Alok Kumar was authorised to furnish guarantee by the Corporate Debtor in respect of GECL loan facility of Rs. 1,61,17,000/- availed by Mr. Alok Kumar from Kotak Mahindra Bank. Thus, Mr. Alok Kumar was authorised by Board Resolution dated 15.09.2021 to furnish guarantee by the Corporate Debtor. Thus, it is not in dispute that the Corporate Guarantee was executed on 25.04.2019 and

25.08.2021; and since then the said corporate guarantee has not been challenged by any of the Shareholder/Director of the Corporate Debtor before any competent Authority or Court of Law.

22. Therefore, in view of these circumstances, it is not open to the Corporate Debtor(Guarantor) to raise such issue in the present application filed under Section 7 of the Code, as this Adjudicating Authority has no jurisdiction to decide the question of legality and propriety of the Corporate Guarantee executed by the Corporate Debtor.

23. The next contention raised by the Corporate Debtor is that the demand notice dated October 01, 2024 issued by the Financial Creditor is defective and does not comply with the mandatory requirements of the Code. The demand notice dated 01.10.2024 was issued by the applicant/Financial Creditor to the Corporate Debtor demanding payment of unpaid financial debt due in the account of Mr. Alok Kumar, the borrower. The demand notice has been issued with respect to guarantee deed dated 28.09.2021. The details of the amount payable is Rs. 7,92,27,727.76 outstanding in the loan account no. LAP18406717 as on 03.05.2024. The date of default as claimed in the demand notice and the present application is 06.04.2024. The respondent has requested the Corporate Debtor to unconditionally repay the unpaid financial debt

(in default) fully within ten days from the receipt of the demand notice failing which the Financial Creditor shall initiate CIRP process against the respondent.

24. Learned Counsel for the Corporate Debtor argued that there is no proof of service of demand notice upon the respondent/Corporate Guarantor. The applicant Bank has placed on record a copy of demand notice dated 01.10.2024 and proof of dispatch of demand notice upon correct address of the respondent/Corporate Guarantor through speed post. However, there is no track report or letter of acknowledgment of the said speed post letter by which demand notice was sent.

25. Before entering upon this question, it is pertinent to note here that the plea taken by Corporate Debtor(Corporate Guarantor) that demand notice issued under Section 8 of the Code is defective and does not satisfy the requirement of Code is beyond imagination. There is no requirement of issuance of demand notice under Section 8 for filing an application under Section 7 of the Code; however, the demand notice dated 01.10.2024 is for making demand as per clause 3 of the Guarantee Deed dated 25.08.2021.

26. Insofar as service of demand notice is concerned, it is pertinent to refer to relevant clause of the Guarantee Deed dated 28.09.2021 wherein it has been provided in clause 36

that the Bank(the applicant) may send any notice to the party(ies) of the other part or to any person concerned in any manner as it may decide at its sole discretion provided that all such notices shall be in writing, however the parties of the other part shall send any notice to the Bank either through hand delivery or through Registered Ad. Post only.

27. It is also provided in Clause 37 of the Guarantee Agreement that that the Notice shall be deemed to have been received by the Guarantor, if given by post on the expiration of 3 days after the same shall have been delivered to the post office, if given by telegram, on the expiration of 24 hours after the telegram shall have been delivered to the telegraph office and if delivered personally, when left at the address of the Guarantor as aforesaid, and a certificate by an officer of the Bank who sent such notice that the same was so sent shall be final and conclusive. Any notice or request by the Guarantor shall be deemed to have been received by the Bank only on actual receipt thereof by the Bank.

28. On this aspect, it is relevant to refer to the provision of Section 27 of the General Clause Act 1897 which provides that when a letter is sent by post on the correct address, it would be deemed to have been served unless contrary is

proved. The provision of Section 27 of the General Clauses Act 1897 are reproduced as under:

> "27. Meaning of service by post.—Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post".

29. Section 14 of the Bharatiya Sakshya Adhiniyam 2023 which came into effect on 01.07.2024 and applicable to the facts and circumstances of the present case provides that when there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact. The illustration (b) to Section 14 provides that the question whether a particular letter reached to addressee, the fact that it was posted in due course and was not returned through the Return Letter Office is a relevant fact.

30. Thus, according to Section 14 of the Bharatiya Sakshya Adhiniyam 2023, read with illustration (b) thereunder, when the court has to ascertain whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, will be a relevant fact. The illustration (b) to Section 14 provides that the question whether a particular letter reached to addressee, the fact that it was posted in due course and was not returned through the Return Letter Office is a relevant fact. However, the presumption that is raised under Section 27 of the General Clauses Act 1897 is a much stronger presumption which provides that where any Central Act or Regulation made after the commencement of General Clauses Act 1897 authorizes or requires any document to be served by post, the letter containing the document will be deemed to have been served when it is properly stamped and posted by registered post unless contrary is proved by which the service was effected.

31. Thus, the burden was on the corporate debtor to prove to the contrary that the letter had not reached either due to disruption of communication services in the particular area where the letter was posted and sent. There was a strike or otherwise of postal employees to deliver the postal articles or other natural calamities in that particular locality at

that particular time which might have affected timely delivery such as in case of covid time.

32. Apart from above demand notice, the Financial Creditor has filed supplementary affidavit dated 08.05.2026 whereby demand notice dated 06.05.2024 issued under Section 13(2) of the SARFAESI Act 2002 sent upon the borrower and guarantor has been placed on record. The Corporate Debtor(Guarantor) is addressee no. 5 in the said demand notice. The Financial Creditor has also placed on record track report of India Post to prove service of demand notice dated 06.05.2024. As per track report, the demand notice was delivered upon the Corporate Debtor(Guarantor) on 09.05.2024. Therefore, is specific demand made upon the Corporate Guarantor in its capacity as guarantor.

33. Therefore, this plea of the corporate debtor that there is no proof of service of demand notice is devoid of merits. The Corporate guarantee has been invoked by issuing demand notice dated 01.10.2024.

34. The next question arises whether the default has occurred on the part of the Corporate Debtor on 06.04.2024. The provisions of the Code provides that upon default in payment of debt, both the Principal Borrower and the Guarantor become liable to pay the outstanding dues. Consequent upon default committed by the Principal Borrower, apart from the

principal borrower, the guarantor is also duty bound to pay the outstanding amount.

35. The provision of Section 3(11) of the Code defines "debt" as a liability or obligation regarding a claim that is due from any person. This clearly indicates that both the Principal Borrower and the Guarantor have to pay the debt due and payable by them. Section 3(12) of the Code defines "default" as the non-payment of a debt, in whole or in part, when it has become due and payable by a debtor or corporate debtor. This provision triggers initiation of insolvency proceedings under the Code.

36. Hon'ble Supreme Court in case of "**Syndicate Bank vs. Channaveerappa Beleri & Ors., (2006) 11 SCC 506**" held that the guarantor's liability depends on terms of his contract. Hon'ble Apex court in Para 9, 10 and 11 held that:

> "9. A guarantor's liability depends upon the terms of his contract. A 'continuing guarantee' is different from an ordinary guarantee. There is also a difference between a guarantee which stipulates that the guarantor is liable to pay only on a demand by the creditor, and a guarantee which does not contain such a condition. Further, depending on the terms of guarantee, the liability of a guarantor may be limited to a particular sum,

instead of the liability being to the same extent as that of the principal debtor. The liability to pay may arise, on the principal debtor and guarantor, at the same time or at different points of time. A claim may be even time-barred against the principal debtor, but still enforceable against the guarantor. The parties may agree that the liability of a guarantor shall arise at a later point of time than that of the principal debtor. We have referred to these aspects only to underline the fact that the extent of liability under a guarantee as also the question as to when the liability of a guarantor will arise, would depend purely on the terms of the contract.

10. Samuel (supra), no doubt, dealt with a continuing guarantee. But the continuing guarantee considered by it, did not provide that the guarantor shall make payment on demand by the Bank. The continuing guarantee considered by it merely recited that the surety guaranteed to the Bank, the repayment of all money which shall at any time be due to the Bank from the borrower on the general balance of their accounts with the Bank, and that the guarantee shall be a continuing guarantee to an

extent of Rs.10 lakhs. Interpreting the said continuing guarantee, this Court held that so long as the account is a live account in the sense that it is not settled and there is no refusal on the part of the guarantor to carry out the obligation, the period of limitation could not be said to have commenced running.

11. But in the case on hand, the guarantee deeds specifically state that the guarantors agree to pay and satisfy the bank on demand and interest will be payable by the guarantors only from the date of demand. In a case where the guarantee is payable on demand, as held in the case of Bradford (supra) and Hartland (supra), the limitation begins to run when the demand is made and the guarantor commits breach by not complying with the demand."

37. Thus, there can be default by the Principal Borrower and the Guarantor on the same date or date of default for both may be different depending on the terms of contract of guarantee. It is a settled proposition of law that the loan agreement and Deed of Guarantee are different transections entered between the parties to respective documents. The Guarantor's liability has to be read from the Deed of Guarantee itself.

38. In the present case, the Corporate Debtor has executed the Deed of Guarantee dated 28.09.2021 to secure the loan advanced by the borrower. It is relevant to refer to relevant clause (3) of the Deed of Guarantee to ascertain the nature of the guarantee. The relevant clause 3 is reproduced verbatim as under:

> "The Guarantor hereby unconditionally and irrevocably agrees and undertakes that in the event of default by the Borrowers in making payments of the Dues or in discharge of any obligations of the Loan Agreement, the Guarantor shall forthwith and within 7 days, of demand by the Bank, upon intimation of the Bank about such default, make payment of all amounts payable by the Borrower(s) under the Loan Agreement in full, without delay, demur or protest together with additional substitute interest and all other sums payable upto the date of payment. The said payment shall be made notwithstanding any protestations from the Borrower(s). Liability of the Guarantor shall be irrespective of any dispute between the Bank and the Borrower".

39. It is crystal clear from clause 3 of the Deed of Guarantee dated 25.08.2021 that the guarantee furnished by the

Corporate Debtor is on demand guarantees and upon default committed by the principal borrower, the applicant bank shall issue demand notice as contemplated in the Deed of Guarantee. A further perusal of Clause 3 of the Guarantee Deed dated 28.09.2021 reveals that the Guarantor has unconditionally agreed and undertaken that in case of default of payment of dues by the borrower, the Guarantor, upon intimation of default by the borrower, shall make payment of all dues within seven days of demand by the applicant bank.

40. Therefore, there is default has occurred on the part of the Corporate Debtor on 06.05.2024 when demand notice under Section 13(2) of the SARFAESI Act 2002 for repayment of dues in its capacity as guarantor and secondly, on 01.10.2024 when a specific demand was raised vide demand notice dated 01.10.2024(Annexure-H) for proof of dispatch of the same has been placed at page no. 133 of the present application.

41. On a bare perusal of Form - I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same. It is also seen that there is no disciplinary proceeding pending against the proposed Interim Resolution Professional.

42. We are satisfied that the present application is complete in all respects and the applicant financial creditor is

entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.

43. As a sequel to the above discussion and in terms of Section 7(5)(a) of the Code, the present application is admitted.

44. Mr. Ram Ratan Modi, having registration number IBBI/IPA-001/IP-P00051/2017-18/10125 resident of 116B, S.P Mukherjee Road, Merlin Links, Room No. 1E, Kolkata-700026having email Id: rrmodi@gmail.com is appointed as an Interim Resolution Professional for the corporate debtor.

45. In pursuance of Section 13(2) of the Code, We direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency and Bankruptcy Code, 2016.

46. We direct the applicant Financial Creditor to deposit a sum of Rs. Three Lakhs with the Interim Resolution Professional namely Mr. Ram Ratan Modi to meet out the expenses to perform the functions/duties assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The needful shall be done within three

days from the date of receipt of this order by the Financial Creditor. The said amount however be subject to adjustment towards Resolution Process cost as per applicable rules.

47. The moratorium is declared in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14(1)(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

"(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor."

48. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14(3)(b) of the Code.

49. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the exmanagement or any tainted/illegal transaction by ex-directors or anyone

else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

50. The Registry is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, West Bengal at the earliest possible but not later than three days from today.

51. Consequently in view of our aforesaid observation, the IA(IBC) No. 1205/KB/2025 stands dismissed as being devoid of merits.

Rekha Kantilal Shah
Member(Technical)

Labh Singh
Member(Judicial)