

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI - BENCH-VI

CP (IB) No. 733/MB/2023

CP (IB) No. 734/MB/2023

CP (IB) No. 743/MB/2023

&

CP (IB) No. 744/MB/2023

[Under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 7(2) of the Insolvency and Bankruptcy (Application to the Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019]

IN THE MATTER OF:

CP (IB) No. 733/MB/2023

BANK OF MAHARASHTRA LIMITED ...Applicant/Financial Creditor

Vs.

MR. SURAJ BHARATKUMAR PAREKH ...Respondent/Personal Guarantor

CP (IB) No. 734/MB/2023

BANK OF MAHARASHTRA LIMITED ...Applicant/Financial Creditor

Vs.

MS. VRUNDA SURAJ PAREKH ...Respondent/Personal Guarantor

CP (IB) No. 743/MB/2023

BANK OF MAHARASHTRA LIMITED ...Applicant/Financial Creditor

Vs.

MR. SYED ATIF HUSSAIN ...Respondent/Personal Guarantor

&

CP (IB) No. 744/MB/2023

BANK OF MAHARASHTRA LIMITED ...Applicant/Financial Creditor

Vs.

MR. MINTU VASANT SALIYA ...Respondent/Personal Guarantor

Pronounced: 14.01.2025

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Hearing: Hybrid

Appearances:

Financial Creditor: Adv. Abhishek Sawant a/w. Adv. Gaurav Sansare

i/b. Abhishek Sawant and Advocates

Personal Guarantor(s): Adv. Vasantkumar Takke

Resolution Professional: Adv. Prakhar Tandon i/b Adv. Agam H. Maloo

COMMON ORDER

[PER: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

1. BACKGROUND

1.1 The facts and contentions in these four Company Petitions (CPs) bearing **CP (IB) Nos. 733/MB/2023; 734/MB/2023; 743/MB/2023; and 744/MB/2023** (Applications) are identical, and therefore, they are being dealt with and disposed of together by way of this Common Order.

1.2 These Applications were filed on two different dates, viz., 10.08.2023 and 11.08.2023 under Section 95 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (PG to CD Rules) by Bank of Maharashtra Limited [Applicant/Financial Creditor (FC)] through Mr. Santosh Kajale, Senior Manager, Stressed Asset Management Branch of the Applicant

vide Authority Letter dated 24.07.2023, for the purpose of initiating Insolvency Resolution Process against **Mr. Suraj Bhartkumar Parekh, Ms. Vrunda Suraj Parekh, Mr. Syed Atif Hussain and Mr. Mintu Vasant Saliya** (Respondents/Personal Guarantors (PGs) to 'M/s. Macguire Ceramics LLP', the Corporate Debtor (CD/Principal Borrower), for default of Rs. 20,72,62,160.89/- (Twenty Crore Seventy-Two Lakh Sixty-Two Thousand One Hundred and Sixty Rupees and Eighty-Nine Paisa) as on 15.07.2023. The alleged debt fell due on 28.06.2017, while the date of default as per Part-III of the two Applications is 28.09.2017 i.e., the date on which the CD's loan accounts was declared as Non-Performing Asset (NPA) by the Applicant.

1.3 The Applicant is a Banking Company, incorporated on 16.09.1935, bearing CIN-U99999MH1935PTC002399, having its Branch Office at Bank of Maharashtra, Stressed Asset Management Branch, Janmangal, 4th Floor, 45/47, Mumbai Samachar Marg, Mumbai - 400001, Maharashtra.

1.4 The Respondent Nos. 1 and 2 (Mr. Suraj Bhartkumar Parekh and Ms. Vrunda Suraj Parekh respectively) are Indian residents having their permanent address at B-1/37, 2nd Floor, Reserve Bank Employees Snehdhara CHS, Dadabhai Cross Road No. 3, CTS No. 719, Vile Parle (East), Mumbai-40056, Maharashtra. The Respondent Nos. 3 and 4 (Mr. Syed Atif Hussain and Mr. Mintu Vasant Saliya respectively) are also Indian residents and their permanent addresses are 33, New Sujata CHS, Juhu Tara Road, Santacruz (West), Mumbai-40047, Maharashtra (Respondent No. 3) and 8, Ahmed Mansion, 1st Floor, Irla Society Road, Opp. Prime Mall, Vile Parle (West), Mumbai-40056, Maharashtra (Respondent No. 4).

1.5 The Respondents/PGs in the Applications are the PGs to the CD (CIN AAA-8020), an entity incorporated on 16.02.2012 under the Limited Liability Partnership Act, 2008, having its registered office at Ashrav Basement, Prathana Samaj Road, Vile Parle (East), Mumbai-400057, Maharashtra. It is in the business of manufacturing ceramic tiles. The Respondent No. 1 is currently a designated director of the CD while the Respondent No. 3 (Mr. Syed Atif Hussain) is currently a partner of the CD. However, all the Respondents are the PGs to the CD with respect to the credit facilities availed from the Applicant/FC. The registered office of the Applicant/FC and the permanent addresses of the Respondents/PGs are within the jurisdiction of this Tribunal.

2. CONTENTIONS OF APPLICANT/FC

2.1 The CD sought credit facilities from the FC in the year 2012, for the purpose of ensuring proper delivery of services to its customers. Pursuant to this, the FC sanctioned an amount of Rs.8,00,00,000/- (Eight Crore Rupees) in favour of the CD *vide* Sanction Letter dated 11.06.2012. To secure this loan, the CD executed several documents in favour of the Applicant/FC.

2.2 To buttress its case, the Applicant/FC relied upon the following documents:

- a) Sanction Letter dated 11.06.2012;
- b) Deed of Hypothecation for all facilities dated 13.06.2012 & 25.09.2013;
- c) Deed of Guarantee dated 13.06.2012 and 25.09.2013 for all credit facilities except agricultural facilities, executed by the partners of the CD including the Respondents in favour of the FC;

- d) Copy of Balance and Security confirmation dated 09.05.2015 by the CD
and the PGs; and
- e) Sanction Letter dated 10.07.2017 for renewal of CD's credit facilities.
- 2.3 Later, the FC renewed the credit facilities upon the request of the CD and the Respondents *vide* its Sanction Letter dated 10.07.2017. One of the conditions mentioned in the aforesaid Sanction Letter was that the mortgaged flat of the Respondent Nos. 1 and 2 i.e., Flat No. 601, 6th Floor, Albela CHS Ltd, Juhu Lane, Andheri (West), Mumbai-400068, would be released only after the Cash Credit account balance was brought down to Rs. 6,25,00,000/- as well as closure of their Housing Loan Account.
- 2.4 The Respondent/PGs executed personal guarantees as against the credit facilities, thereby guaranteeing the debt arising under it. Owing to non-payment of amounts due under the same, the CD's loan account was classified as NPA on 28.09.2017 which also serves as the default date as per Part-III of the present Applications.
- 2.5 The FC invoked the guarantees against the Respondents by issuing demand notice dated 17.11.2022, under Rule 7(1) of PG to CD Rules, in Form B, for recovering the amount of Rs. 10,04,62,629/-, including interest and other charges, till 18.11.2018. The said demand notices were sent to the Respondents at their registered addresses in Mumbai but all the notices were returned to the Applicant with the remark "Refused" on 23.11.2022 (in case of Respondent Nos. 1 and 2) and "Left" on 22.11.2022 (in case of Respondent Nos. 3 and 4).
- 2.6 The total outstanding amount including interest and penal interest upon the CD's loan account amounts to Rs. 20,72,62,160.89/- as on 15.07.2023, and

the Respondents, being the PGs to the CD, are personally liable to pay the said outstanding dues as tabulated hereinunder:

Sr. No.	Particulars	Amount (In Rs.)
Account No. 60099491553		
a)	Principal Overdue	7,81,30,524.94/-
b)	Unapplied Interest Overdue at the rate of 13.60% per annum (p.a.) as on 15.07.2023	11,28,76,175.51/-
c)	Penal Interest as on 15.07.2023	1,62,55,460.44/-
	Grand Total (A+B+C)	20,72,62,160.89/-

2.7 The Applicant/FC placed on record, the statement of the CD's Loan Account No. 60099491553 from 01.05.2017 to 15.07.2023 to prove liability by the Respondents to repay the outstanding due to the Applicant/FC.

2.8 Due to non-payment of outstanding dues by the CD, the Applicant/FC filed Original Application (OA) (Diary) No. 11700 of 2018 against the CD and its personal guarantors, including the Respondents, on 19.11.2018 before the Ld. Debt Recovery Tribunal-II (DRT) at Mumbai, which is still pending.

2.9 The present Applications were filed on 10.08.2023 and 11.08.2023, which are filed within the limitation period as the guarantees were invoked against the Respondents/PGs *vide* demand notice dated 17.11.2022. In the circumstance, Insolvency Resolution Processes against the Respondents/PGs are only to be initiated.

3. CONTENTIONS OF RESPONDENTS/PGs TO CD

3.1 Upon service of the Applications to the Respondents/PGs by the Applicant through Registered Posts and emails dated 09.08.2023, as well as the Notices dated 08.09.2023 by the Registry, the Respondents/PGs appeared before this Bench through their Counsel on 31.01.2024 and 10.04.2024. It was submitted that the Respondents/PGs have no objection towards admission of the present Applications. The Respondents have neither filed nor placed on record any Affidavit-in-Reply or document to refute the claims of the Applicant/FC.

4. RECOMMENDATIONS OF RP

4.1 This Bench appointed Mr. Nitin Om Kothari, a registered Insolvency Professional to act as Resolution Professional (RP) *vide* Order dated 01.12.2023 and directed him to prepare and file Report under Section 99 of the IBC. The Report submitted by the RP has been taken on record on 01.03.2024; 22.03.2024 and 10.04.2024 in IA (I.B.C) Nos. 473/MB/2024; 474/MB/2024; 1280/MB/2024; and 1027/MB/2024, respectively.

4.2 The RP, *vide* his Report dated 25.01.2024, after due examination of the application, documents filed along with the same, in addition to the compliance of Clauses (1) to (10) of Section 99 of the IBC, recommended admission of these Applications. One sample recommendation is reproduced as under: -

“a) That the Application filed by the Creditor satisfies the requirement as set out in Section 95 of the Code.

b) That the Corporate Debtor, M/s. Macguire Ceramics LLP, has committed default in repayment of Loan Facility granted by the Creditor
‘BANK OF MAHARASHTRA LIMITED’

c) *That Mr. Suraj BharatKumar Parekh, Ms. Vrunda Suraj Parekh, Mr.*

Syed Atif Hussain and Mr. Mintu Vasant Saliya, Personal Guarantors to M/s. Macquire Ceramics LLP have also committed default in repayment of Loan Facility demanded by the Creditor 'BANK OF MAHARASHTRA LIMITED'.

d) *That Mr. Suraj BharatKumar Parekh, Ms. Vrunda Suraj Parekh, Mr.*

Syed Atif Hussain and Mr. Mintu Vasant Saliya, Personal Guarantors to M/s. Macquire Ceramics LLP have not denied the existence of debt.

e) *That, in the light of the above, it is just and equitable that insolvency*

resolution process be initiated against Mr. Suraj BharatKumar Parekh,

Ms. Vrunda Suraj Parekh, Mr. Syed Atif Hussain and Mr. Mintu Vasant

Saliya, Personal Guarantors to M/s. Macquire Ceramics LLP under the

orders and directions of this Hon'ble Tribunal.”

4.3 The RP submitted that neither the CD nor the Respondents/PGs gave any reply to the RP despite issuing intimation on 10.01.2024. This intimation was duly served on the Respondents on 13.01.2024 and 14.01.2024, along with emails dated 10.01.2024 and 25.01.2024, sent to the CD's email address mentioned in its master data. In short, the RP has recommended initiation of Insolvency Resolution Process against the Respondents/PGs.

5. ANALYSIS AND FINDINGS

5.1 We have perused all the documents and pleadings and heard both the Ld. Counsel for the Applicant/FC; Respondents/PGs; and the RP.

5.2 Upon perusal of the documents on record, it is established that the CD has committed default in repayment of loan amount granted by the FC. Mr. Suraj

Bharatkumar Parekh; Ms. Vrunda Suraj Parekh; Mr. Syed Atif Hussain; and Mr. Mintu Vasant Saliya, being the Partners as well as PGs to the CD have also committed default in repayment of loan facility as demanded by the FC after *vide* notice dated 17.11.2022. This aspect has been further corroborated by the contention of the Ld. Counsel for the Respondents/PGs as recorded in our Orders dated 31.01.2024 and 10.04.2024 that they have no objection towards admission of the present Applications.

5.3 We have also gone through the Report dated 25.01.2024, filed by the RP. On a perusal of the Report, we find that the RP has given reasonable opportunity following the principles of natural justice and had taken into consideration various documents and concluded that Insolvency Resolution Process should be initiated against the Respondents/PGs.

5.4 The main issue in the present application is regarding limitation. It is well settled that even if there is no plea raised regarding limitation, the Court is obliged to examine the question of limitation before further proceeding in any matter. Though the date of default, specifically mentioned by the Applicant/FC is 28.09.2017 in the Application, the said date pertains to the date of default qua the Principal Borrower i.e., M/s. Macguire Ceramics LLP, the CD. The default in the case of PGs arises when the guarantees were invoked making them liable to pay the debt. Generally, the default date of the principal borrower is the date of default for the guarantor also. However, it may not always be the same, rather it depends upon the nature and contents of the deed of guarantee executed by the guarantor. In *Syndicate Bank Vs. Channaveerappa Belari and Ors.*, [Civil Appeal No. 6894 of 1997], the Hon'ble Supreme Court categorically held that 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 guarantor shall arise at a later point of time than that of the principal debtor. In the present case, the Ld. Counsel for the Applicant/FC submitted that the date of invocation of guarantee against the Respondents/PGs is 17.11.2022, when the demand notices in Form-B under Rule 7(1) of PG to CD Rules were issued.

5.5 Upon perusal of documents, we find that the Applicant issued the Form-B demand notices on 17.11.2022 to the Respondents/PGs wherein the said demand notices unambiguously call upon the Respondents/PGs to pay the amount of Rs. 10,04,62,629/- within 14 (Fourteen) days from the date of its receipt. In Clause 2 of the Deed of Guarantee, the PGs unequivocally agreed that the amount guaranteed by them shall be due and payable jointly and severally two days after demand notices requiring payment. The demand notices sent by the Applicant/FC to the PGs on 17.11.2022 were either "Refused" or returned undelivered with the remark addressee "Left". Hence, it is deemed that the Respondents/PGs had received the demand notices. Moreover, the Respondents/PGs have appeared through their Counsel and submitted that they do not have any objection in the present Applications being allowed. In view of the foregoing, the notices dated 17.11.2022 have to be treated to be invocation of guarantee as contemplated in the Deed of Guarantee. The Hon'ble NCLAT, New Delhi, in *Mavjibhai Nagarbhai Patel Vs. State Bank of India & Anr.* [Company Appeal (AT) (Ins.) No. 1702 of 2024], held that a deed of guarantee entered between the bank and personal guarantor is an independent, distinct and a special contract, which has to be construed on its own terms. It is pertinent to note that the Respondents/PGs appeared through Counsel on 31.01.2024 and submitted that there was no

objection to proceed with the present Applications. On 10.04.2024, when the matter was heard, the Respondents/PGs reiterated that they did not have any objection if these Applications are proceeded with. Hence, we do not see any valid reason to reject these Applications.

5.6 As far as the liability of paying the debt by the guarantor is concerned, upon perusal of Clauses 6 and 7 of the Deed of Guarantee dated 25.09.2013, we find that it is a continuing guarantee and the Respondents/PGs waived all the rights provided in Sections 140 and 141 of the Indian Contract Act, 1872 (ICA) and the guarantee is payable on demand which was not refuted by the Respondents/PGs till the filing of these Applications. The liability of the guarantor is coextensive with the principal borrower as per section 128 of the ICA. The debt became due when the default was committed by the principal borrower on 28.09.2017 but there was no default on the part of guarantor. The debt is alive as long as the amount is not settled and there is no refusal on the part of the guarantor to carry out the obligation of the guarantee deed. The period of limitation starts only when the guarantor refused or failed to carry out the obligations. In the present matter, the Applicant first invoked the guarantee against the Respondents/PGs by issuing the demand notice on 17.11.2022 in Form-B in terms of Rule 7(1) of PG to CD Rules to the Respondents/PGs. The limitation against the guarantor shall thus start after the expiry of fourteen days from the receipt of the demand notice. Since the demand notices were deemed to have been received by the Respondents on 22.11.2022 and 23.11.2022, so the limitation against the PGs would commence from 06.12.2022 and 07.12.2022 respectively. Hence, these Applications filed on 10.08.2023 and 11.08.2023 are well within the period of limitation and are maintainable. Hence,

it emerges that the Applications stand filed within the prescribed limitation period under law. The Applications satisfy the requirements as set out in Section 95 of the IBC. In view of the above factual and legal considerations, we hold that the Applications filed under Section 95 of the IBC deserve to be admitted.

ORDER

In the result, these four Applications, **CP (IB) No. 733/MB/2023; 734/MB/2023; 743/MB/2023; and 744/MB/2023** filed under Section 95(1) of the IBC, by Bank of Maharashtra, the Applicant/FC, for initiating insolvency resolution process against **Mr. Suraj Bhartkumar Parekh, Ms. Vrunda Suraj Parekh, Mr. Syed Atif Hussain and Mr. Mintu Vasant Saliya**, the Respondent/PGs are hereby **admitted**. We hereby direct that -

- I. Insolvency Resolution Process against the Respondent/PGs be initiated and moratorium in relation to all their debts is declared, from the date of this Order, and shall cease to have effect at the end of the period of 180 days, or when this Tribunal passes order on the repayment plan under Section 114, whichever is earlier, as provided under Section 101 of the IBC. During the moratorium period-
 - a) Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed, and;
 - b) The creditors of the debtors shall not initiate any legal action or proceedings in respect of any debt; and

c) The debtors shall not transfer, alienate, encumber, or dispose of any of their assets or their legal rights or beneficial interests therein;

II. **The RP viz. Mr. Nitin Om Kothari, having Registration No. IBBI/IPA-001/IP-P-02310/2020-2021/13477, having address at 5A/301 Alica Nagar, Lokhandwala Township, Akurli Road, Kandivali (East), Mumbai-400101, Maharashtra, [Email: cakotharico@gmail.com],** who is appointed as RP, is directed to cause public notice made on behalf of this Adjudicating Authority within 7 days of uploading this Order on the website of the NCLT Mumbai Bench, inviting claims from all Creditors, within 21 days of such publication. The notice under Sub Section (1) of Section 102(2) shall include -

- a. details of this Common Order admitting the Applications;
- b. particulars of the RP with whom the claims are to be registered;
and
- c. the last date for submission of claims.

III. The publication of notice shall be made in two newspapers, one in English and other in Vernacular, which have wide circulation in the State where the CD has its registered office and the Respondents/PGs reside. The RP shall furnish two spare copies of the notices to the Registry for record.

IV. The RP, in exercise of the powers conferred under Section 104 of the IBC, shall prepare a list of creditors on the basis of:

- a) the information disclosed in the Applications;
- b) claims received by the RP under Section 102 of the IBC within 30 days from the date of the notices;

- c) The debtors shall prepare repayment plans under Section 105 of the IBC, in consultation with the RP, containing proposals to the creditors for restructuring of their debts or affairs;
 - d) The repayment plans may authorise or require the RP to:
 - (i) carry on the debtors' businesses or trades on their behalf or in their names: or
 - (ii) realise the assets of the debtors; or
 - (iii) administer or dispose of any funds of the debtors
 - e) The repayment plans shall include the following, namely-
 - a) justification for preparation of such repayment plans and reasons based on which the creditors may agree upon the plans;
 - b) provision for payment of fee to the RP;
 - c) such other matters as may be specified.
- V. The RP shall submit the repayment plans along with his Report on the plans to this Tribunal within a period of 21 days from the last date of submission of claims, as provided under Section 106 of the IBC.
- VI. In case the RP recommends that a meeting of the creditors is not required to be called, he shall record the reasons thereof. If the RP is of the opinion that meetings of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of the IBC. The date of meetings should not be less than 14 days or more than 28 days from the date of submission of the Report under sub- section (1) of Section 106 of the IBC, for which at least 14 days' notice to the creditors (as per the list prepared)

shall be issued by all modes. Such notices must contain the details as provided under the provisions of Section 107 of the IBC.

- VII. The meetings of the creditors shall be conducted in accordance with Sections 108, 109, 110 and 111 of the IBC. The RP shall prepare Report of the meetings of the creditors on repayment plans with all details as provided under Section 112 of IBC, and submit the same to this Tribunal, copies of which shall be provided to the debtors and the creditors. It is made clear that the RP shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of the IBC and the Rules and Regulations made thereunder.
- VIII. The RP shall submit his periodic reports before this Tribunal every 30 days.
- IX. In exercise of the powers conferred on this Tribunal under Rule 11 of the NCLT Rules, 2016, the Applicant is directed to deposit Rs. 5,00,000/- (Five Lakh Rupees) to the bank account of the RP within one week, towards his fees.
- X. The designated Registrar is directed to forward electronic version of this Order to the IBBI for information, dissemination for the stakeholders and for maintenance of data.
- XI. The Registry is directed to communicate a copy of this Order, Report and the Applications within seven working days and upload the same on the website immediately after the pronouncement of this Order.

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)

Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)

//LRA-Tanmay Jain//