

201

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH - II, CHENNAI**

**IBA/763/2020**

*(filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 and Rule 7(2) of the Insolvency and Bankruptcy [Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor], Rules, 2019)*

In the matter of **Nathella Sampath Chetty & Co.**

**State Bank of India,**  
Represented by,  
Assistant General Manager,  
Stressed Asset Management Branch,  
Red Cross Building, 2nd Floor,  
Montieth Road,  
Chennai – 600 008.

... Applicant

Vs.

**Nathella Sampath Chetty & Co,**  
Rep. by its Partners,  
Mr.Ranganatha Guptha, Mr.Prapanna Kumar  
and Mr.Prasanna Kumar,  
123, NSC Bose Road,  
Chennai – 600 001.

... Respondent

*Order Pronounced on 01<sup>st</sup> June 2022*

CORAM:

**Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)  
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Applicant : Mr.K.Chandrasekaran, Advocate  
Ms.Lekha Chandrasekar, Advocate*

*For Respondent: None*

ORDER

**Per: Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)**

Under Consideration is an Application filed under Section 95  
(1) of the Insolvency and Bankruptcy Code, 2016 against the

personal guarantor **Nathella Sampath Chetty & Co** of **Nathella Sampath Jewellery Private Limited**, the Corporate Debtor which is under CIRP. In so far Nathella Sampath Jewellery Private Limited is concerned, an order was passed for liquidation by this Adjudicating Authority on 03.01.2020 in MA/1147/2019 & MA/547/2018 in CP/129/IB/CB/2018.

2. The present application is filed by the Financial Creditor, State Bank of India against the personal guarantors of the Corporate Debtor.

3. The date of default as stated in the Application is 04.02.2018. The Agreements of Guarantee executed by the Personal Guarantor are placed at page 95 and 101 in the typed set filed along with the application.

4. It is averred in the application that the Demand Notice issued under Section 13(2) of the SARFAESI Act to the Respondent dated 28.08.2020 is placed in the typed set filed along with the application and the Demand Notice issued under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, was mentioned in the index of the typed set filed along with the application but not there in the application. Hence, on this term, the present Petition is filed to

initiate a proceeding in terms of Section 95 (1) of the IBC, 2016, against the Respondent herein.

5. It was submitted by the Learned Counsel for the Respondent contended that the Applicant had not served the proper demand notice under IBC and had only sent demand notice under Section 13(2) of the SARFAESI Act and it could not be considered as a notice for invocation of guarantee. In addition to that, it was contended that the properties of the Applicant were only offered as the collateral security to the Respondent. In order to suit the policy of the Bank the transaction was formulated as the deed of guarantee and pleaded that the said transaction could not be treated as a guarantee and sought dismissal of this Application.

6. Heard the Learned Counsel for both the parties and perused all the documents placed on record. Before parting with the case we see that this application was filed against the partnership firm, here it is needful to refer relevant provision of the Insolvency and Bankruptcy Code, 2016

**Section 60. Adjudicating authority for corporate persons.—**

*(1) The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located.*



*(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or 1[liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor] shall be filed before such National Company Law Tribunal.*

*(3) An insolvency resolution process or 1[liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of the corporate debtor] pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.*

...

**Section 5: Definitions:**

...

*(22) "personal guarantor" means an individual who is the surety in a contract of guarantee to a corporate debtor;*

...

**Section 79: Definitions:**

...

*(16) "firm" means a body of individuals carrying on business in partnership whether or not registered under section 59 of the Indian Partnership Act, 1932 (9 of 1932);*

...

Combined reading of Section 60(5) and 5(22) makes clear that to file the application against the Personal Guarantors of the Corporate Debtor before this Adjudicating Authority; the Personal Guarantor must be an individual. Moreover, the definition of 'firm' in Section 79(16) clarifies that a firm is a body of individual, which

implies the expression 'individual' does not include partnership firm.

7. It can be seen that the deeds of guarantee dated 25.02.2013 and 12.10.2015, have been executed between the Applicant and **Nathella Sampath Chetty & Co**, Respondent herein who is a partnership firm.

8. From the above discussions, it is clear that the Respondent who is a guarantor of the Corporate Debtor is a partnership firm and this application is not under the purview of this Adjudicating Authority. Further, the provisions relating to partnership firm is yet to come into force. Hence, the present is application filed by the Applicant is misconceived.

9. In view of the above, the application stands **dismissed**.

-Sd-  
**ANIL KUMAR B.**  
MEMBER (TECHNICAL)

-Sd-  
**JUSTICE (RETD.) S. RAMATHILAGAM**  
MEMBER (JUDICIAL)

Gopishankar D