

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

**CP/89/IB/2021**

*filed under Section 95 of the Insolvency & Bankruptcy Code, 2016*

*In the matter of **Rajiv Rai***

**Bank of Baroda**

Stressed Asset Management Branch  
45, Moore Street,  
JBAS Building, 4<sup>th</sup> Floor,  
Chennai – 600 001

*... Financial Creditor*

-VS-

**Rajiv Rai**

*... Personal Guarantor*

*Order pronounced on **20<sup>th</sup> June 2022***

CORAM:

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

*For Financial Creditor : Nivedita Baskara, Advocate*

*For Personal Guarantor : V. Anil Kumar, Advocate*

**ORDER**

**Per: ANIL KUMAR B, MEMBER (TECHNICAL)**

These applications have been filed under Section 95 (1) of the Insolvency and Bankruptcy Code, 2016 against the personal guarantors of SBQ Steels Limited, the Corporate Debtor. The present application is filed by the Financial Creditor viz. Bank of Baroda against the personal guarantors of the Corporate Debtor.



2. It is stated in Part – III of the Application that the date on which the debt fell due was 31.03.2012 and the date of default is also on 31.03.2012. It is seen that the present Application has been filed before this Tribunal on 10.04.2021.

3. The Respondent has raised a plea of limitation as to the present Application. We have perused the records. From the Form filed by the Applicant it is seen that prima facie, the Applicant, apart from furnishing the name of the Personal Guarantor has failed to furnish his address and other details. It is also seen that the Respondent has entered into a Deed of personal guarantee as early as on 27.03.2012. Thereafter, it is stated in the synopsis filed by the Applicant that a loan recall notice was issued as early as on 06.11.2014 and the Respondent has acknowledged the same. Pursuant, thereto, no documents have been placed on record to show that the debt as claimed by the Applicant falls within the period of limitation.

4. Section 238A of IBC, 2016 applies to the entire provisions of IBC, 2016 and as such Article 136 of the Limitation Act, 1963 also applies to an Application filed under Section 95 of IBC, 2016. In the said circumstances, as per Section 3 of the Limitation Act, 2013, even Court / Tribunal is required to examine the debt on the point




of limitation, eventhough such a defence has not been setup. In the present case, the Respondent has raised a plea of limitation.

5. It was also brought to our knowledge that the Corporate Debtor viz. SBQ Steels Limited has already been dissolved by virtue of the order passed by this Tribunal dated 11.02.2022 in MA/5/2021. In this context, the Learned Counsel for the Respondent has placed reliance on the judgment of the Hon'ble High Court of Madras in the matter of Rohit Nath -Vs- KEB Hana Bank Limited AIR 2021 Mad 241, wherein at para 22 it has been held as follows;

The text of Section 60(2) discloses that Section 60 of the Code would apply to an individual only if there is a corporate insolvency resolution process pertaining to the corporate entity which is the principal debtor, that has been filed or commenced. In other words, in case of company 'A' being the principal debtor and an individual 'P' the guarantor promising repayment of the credit facilities obtained by 'A', if a corporate insolvency resolution process is initiated under the provisions of the Code pertaining to company 'A', the insolvency resolution process pertaining to guarantor 'P' would per force be before the same adjudicating authority, viz., the National Company Law Tribunal. But, where there is no corporate insolvency resolution process initiated in respect of company 'A', insolvency proceedings pertaining to guarantor 'P' must necessarily be carried only to the jurisdictional Debts Recovery Tribunal and not to any other forum. To repeat, the provisions of the Acts of 1909 and 1920 will have no manner of application to guarantors who have furnished guarantees in connection with credit facilities obtained by corporate entities.

(emphasis supplied).

 6. Be that as it may, we are not inclined to give our finding in relation to the issue of jurisdiction, since we have already held in the

paragraph *supra* that the debt as claimed by the Applicant is hopelessly barred by limitation. Under such circumstances, the Applicant as filed by the Financial Creditor stands dismissed. No costs.

-SD-

**ANIL KUMAR B**  
MEMBER (TECHNICAL)

-SD-

**Justice (Retd.) S. RAMATHILAGAM**  
MEMBER (JUDICIAL)

*Raymond*