IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT NO. I

I.A(IBC) 1063/KB/2024
IN
Company Petition (IB) No. 331/KB/2022

An Application under Section 95 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantor to Corporate Debtor) Rules, 2019

IN THE MATTER OF:

STATE BANK OF INDIA **...Applicant/ Financial Creditor**

Versus

AMIT RANJAN MUKHERJEE **... Personal Guarantor/ Applicant.**

Date of Pronouncement: 16/12/2024.

CORAM:
SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)
SHRI. BALRAJ JOSHI, MEMBER (TECHNICAL)

APPEARANCE:

For the Financial Creditor: **Santosh Kr.Ray, Adv.**
R. Sanyal, Adv
Zeba Khan, Adv
Muskan Saha, Adv

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The Court congregated through hybrid mode.

2. Heard Ld. Counsels for both the parties.

3. The present Application has been filed by **State Bank Of India** , the applicant under Section 95 of Insolvency and Bankruptcy Code, 2016, read with Rule 7(2) of the insolvency and bankruptcy (application to Adjudicating Authority for personal insolvency resolution process for Personal Guarantor to Corporate Debtor), Rules 2019 for initiation of insolvency resolution process against Ms. **Amit Ranjan Mukherjee**, the Personal Guarantor to the Corporate Debtor, **Andaman Sea Foods Private Limited** of **Rs 37,46,26,232/- crore (Rs Thirty Seven Crores Forty Six Lakh Twenty Six Thousand Two Hundred Thirty Two**) as on **30.06.2022**

4. The Hon'ble Adjudicating Authority vide order dated **24.04.2018** initiated CIRP of the Corporate Debtor.

5. As on **30.06.2022**, an amount of **Rs 37,46,26,232/- crore (Rs Thirty Seven Crores Forty Six Lakh Twenty Six Thousand Two Hundred Thirty Two**) is payable by the Personal Guarantor to the Applicant bank together with future interest including penal interest and charges by virtue of the following documents:-

a. Agreement of personal guarantee dated 16.04.2012
b. Sanction letter in favour of the Corporate Debtor dated 07.11.2001 and 10.04.2022.
c. Notice in form B dated 04.07.2022.

6. The Personal Guarantee under section 95 of the IBC, 2016 was invoked by the applicant bank on 04.07.2022.

7. This Adjudicating Authority vide order dated **Appointed Mahesh Chand Gupta**, IBBI Registration No. (**IBBI/IPA-001/IP-P-01489/2018-2019/12304**) as the Resolution Professional and the

Resolution Professional was directed to submit a report in terms of section 99 of IBC, 2016 within ten days from the date of order.

8. The Resolution Professional submitted that in accordance with Section 99(2) of the Code, he requested the Personal Guarantor to furnish any document proving repayment of the debt claimed, as unpaid, by the Creditor in its application dated 19.11.2022 within 7 days from the date of receipt of Letter dated 01.05.2024 and 29.04.2024 and E-mail dated 29.04.2024. However, Personal Guarantor responded to the RP by confirming the demand amount.

9. The Resolution Professional dated 10.05.2024 has filed its report before this Adjudicating Authority and after detailed examination of the application along with the supporting documents thereof. The Resolution Professional do hereby recommend that the Application filed by the creditor, viz., **STATE BANK OF INDIA** , under Section 95(1) of the Code vide CP (IB) No. **331/KB/2022** be admitted under Section 100(1) of the Code and the Insolvency Resolution Process be commenced against the Personal Guarantor, viz., **AMIT RANJAN MUKHERJEE.**

10. The Personal Guarantor has not appeared before this Adjudicating Authority and has not filed its reply.

11. The applicant has also issued Demand Notice dated 28-09-2015 under section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest, act 2022.

ANALYSIS AND FINDING

12. We have heard the learned counsel and perused the record. From the submission of learned counsel for the parties and materials on record following issues arise for consideration:

I. Whether Notice issued under section 13(2) and 13(4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest, act 2022 is invocation of guarantee?

II. Whether the present application is barred by limitation?

Issue No. I

13. The learned Counsel for the Applicant may be right in his submission that by virtue of Demand Notice dated **28.09.2015** issued U/s 13(2) of the SARFAESI Act, 2002, the Applicant was also asked to make the payment of dues. But there is neither anything on record to show that any other notice has been issued by Applicant Bank to the Applicant in the capacity of Personal Guarantor to invoke the Personal Guarantee nor any steps have been taken by the Applicant Bank to recover the dues from the Respondent by sale of her personal assets.

14. The Hon'ble NCLAT in its decision in the matter of **Amanjyot Singh Vs. Navneet Kumar Jain & Ors.** (Company Appeal (AT) (Insolvency) No. 961 of 2022) has upheld the view taken by NCLT, Delhi dismissing an application filed by the Appellant under section 94. The relevant para of the said order is reproduced below:-

> "7. Notice under Section 13, sub-section (2) is issued by the Bank for enforcing the security interest. Section 13, sub-section (1) and (2) of the SARFAESI Act is as follows:-
>
> "**13. Enforcement of security interest.--(1)** Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may

be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub- section (4).

Provided that—

(i) the requirement of classification of secured debt as non-performing asset under this subsection shall not apply to a borrower who has raised funds through issue of debt securities; and

(ii) in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions security documents executed in favour of the debenture trustee."

8. The definition of 'borrower' given in SARFAESI Act under Section-2 (f) is wide enough to include a Guarantor also. Section 13 is for enforcement of security interest. The borrower within the meaning of Section 13, sub-section (2) shall obviously include the Guarantor also. ....

12. We, thus, are satisfied that foundation which was laid down by the Appellant for initiating the CIRP against the Appellant, was not sufficient to admit Section 94 Application and initiate the CIRP against the Appellant. We may further notice that Section 10 Application against the Corporate Debtor has already been admitted and CIRP against the Corporate Debtor had been initiated. The case taken up by the Bank being categorical and clear that **no steps have been taken by the Bank against the Appellant, there is no cause for the Appellant to pray for initiation of CIRP against the Appellant – the Personal Guarantor**. We, thus, do not find any good ground to interfere with the impugned order in this Appeal. The Appeal is accordingly dismissed. No costs."

Issue No. II

15. In the wake of above, we examined the contention raised by the Respondent to find out as to whether the Application is time barred? We are sanguine that the criteria for examining the date of default for the purpose of limitation for the Corporate Debtor and Personal Guarantor are not the same. In the present case what need to be seen is that, when the debt became due and payable by the Personal Guarantor. In this regard a reference can be made to the Guarantee Deed annexed at page **82-87**, of the Application. The relevant common clauses of the Personal Guarantee are incorporated herein:

(hereinafter referred to as the "aforesaid credit facilities") covenanted and agreed jointly and severally to pay to the bank on demand upon default made by the borrower the whole of such Principal amount of Rs 29,53,00,000/- together with interest costs charges expenses and/or or other monies as may then be due to the

bank and also agreed to indemnify and keep indemnified the bank against all loss of principal, interest and other monies due and all costs (as between advocate and client charges and expenses whatsoever which the bank may incur by reason of any default on the part of the borrower.

16. From a perusal of the Guarantee Deed, it can be inferred that the Debt against Personal Guarantor became due and payable when the Creditor called upon the Guarantor to pay the amount. Hence, it won't wrong to be say that the period of limitation shall begin to run from the date when the Creditor had called upon the Personal Guarantor to pay the amount. In other words the date when guarantee is invoked by the Creditor is the date of commencement of period of Limitation for filing Application under Section 95 of IBC,2016.

17. At this juncture, we may refer to the judgement passed by Hon'ble Supreme Court in the cases of **Syndicate Bank vs. Channaveerappa Beleri & Ors., reported in (2006) 11 SCC 506** and **Margaret Lalita Samuel vs. Indo Commercial Bank Ltd, reported in (1979) 2 SCC 396,** wherein the Hon'ble Supreme Court while considering the provisions of Section 128 and 129 of the Contract Act laid down that the limitation of the guarantor will depend purely on the terms of the contract and the cause of action arises when the contract of continuing guarantee is broken i.e., breach is committed by the Guarantor to the given guarantee.

18. The ratio of the decision in the judgment **of Hon'ble NCLAT in the case of Pooja Ramesh v. SBI** and as held by the **Hon'ble Supreme Court in the cases of Syndicate Bank v. Channaveerappa Beleri & Ors.,** and **Margaret Lalita Samuel vs. Indo Commercial Bank Ltd.,** it is clear that the Date of Default will be the date on which the guarantee was invoked. In the instance case, the guarantee (Form

B) was invoked on **04.07.2022** and the present Application U/s 95 of the Code was filed on **21.11.2022**. We, therefore, have no hesitation to hold the present application is within limitation.

19. On a perusal of the report, we find that the Resolution Professional has given reasonable opportunity following the principle of Natural Justice and has taken into consideration the various documents and has come to a conclusion that the Personal Insolvency Resolution Process be initiated against the Personal Guarantor as the Application filed by the Creditor before this Hon'ble Tribunal is within the limitation period provided under the Limitation Act, 1963.

20. Therefore, in view of the above, we are of the considered opinion that it is a fit case for admission and proceed against the Personal Guarantor and initiate Insolvency Resolution Process. Hence, we admit **C.P.(IB)No.331/KB/2022** filed under the provisions of section 95 of IBC, 2016 and under Section 100 of the IBC, 2016 by following order:

a. Initiate Insolvency Resolution Process against the personal guarantor and moratorium in relation to all the debts is declared, from today i.e., the date of admission of the application and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes Order on the repayment under Section 114 whichever is earlier as provided under Section 101 of IBC, 2016, during the moratorium period.

I. Any pending legal action of proceedings in respect of any debt shall be deemed to have been stayed; and

II. The debtor shall not transfer, alienate, encumber, of dispose of any of his assets or his legal rights or beneficial interest therein;

III. The provisions of this Section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

b. The RP shall act in terms of Section 102, 103, 104 of the Code, to cause public notice, invite claims from creditors, prepare list of creditors, and hold regular meeting as directed hereunder:

(i) In terms of section 102:

1. The Petitioner shall deposit a sum of Rs 1,00,000/- (Rupees One Lakh Only) with the RP to meet the expenses arising out of issuing public notice and inviting claims subject to approval by Creditors.
2. The RP shall act in terms of Section 102, 103, 104 of the Code, to cause public notice, invite claims from creditors, prepare list of creditors, and hold regular meeting as directed hereunder:
3. The notice under sub-section (1) shall include—

   a) Details of the order admitting the application;
   b) Particulars of the resolution professional with whom the claims are to be registered; and
   c) The last date for submission of claims.

4. The notice shall be—
   a. Published in at least one English and one vernacular newspaper which is in circulation in the state where the debtor resides;
   b. placed on the website of the Adjudicating Authority.

(ii) in terms of section 103:

(1). The creditors shall register claims with the resolution professional by sending details of the claims by way of electronic communications or through courier, speed post or registered letter.

(2). In addition to the claims referred to in sub-section (1), the creditor shall provide to the resolution professional, personal information and such particulars as may be prescribed.

(iii) In terms of section 104:

(1) The resolution professional shall, within 30 days from the date of notice prepare a list of creditors on the basis of—

(a) the information disclosed in the application filed by the debtor under section 94 or 95, as the case may be;

(b) claims received by the resolution professional under section 102.

(iv) In terms of section 105:

The Resolution Professional shall assist the debtor in preparing repayment plan containing a proposal to the creditors for restricting of his debts or affairs.

(v) In terms of section 106:

(1) The Resolution Professional shall submit the repayment plan under Section 105 along with his report, within 21 days from the last date of submission of claims under Section 102.

(2) Which report shall include:

(a) That the repayment plan is in compliance with the provisions of any law for the time being in force;

(b) That the repayment plan has a reasonable prospect of being approved and implemented; and

(c) Whether there is a necessity of summoning a meeting of the creditors, if required, to consider the repayment plan:

(3) Meeting of creditors shall be held if necessary, specifying The

(a) Date, Time and Place of meeting after consulting the creditors;

(b) Within 14 to 28 days from submission of its report;

(c) After issuance notice for meeting at least 14 days in advance, to all the creditors mentioned in the list of creditors.

(vi) In terms of section 107:

(1) The resolution professional shall issue a notice calling the meeting of the creditors at least fourteen days before the date fixed for such meeting.

(2) The resolution professional shall send the notice of the meeting to the list of creditors prepared under section 104.

(3) The notice sent under sub-section (1) shall state the address of the Adjudicating Authority to which the repayment plan and report of the resolution professional on the repayment plan has been submitted and shall be accompanied by—

(a) a copy of the repayment plan;

(b) a copy of the statement of affairs of the debtor;

(c) a copy of the said report of the resolution professional; and

(d) forms for proxy voting.

(4) The proxy voting, including electronic proxy voting shall take place in such manner and form as may be specified.

c. Further, the Resolution Professional will act in accordance with Sections 108, 109 and 110 to summon creditors, conduct meeting of creditors, allow them voting rights in accordance with voting share assigned to each, and seek approval of repayment plan if any.

d. The Resolution Professional shall prepare a report of the meeting in accordance with Section 112 and furnish a report to this Adjudicating Authority.

e. The Resolution Professional shall submit his periodic reports before this Tribunal every 30 days.

21. In terms of the above, the main **C.P. (IB) No. 331/KB/2022** filed under Section 95 (1) of the IBC, 2016 is **admitted and I.A (IBC) 1063/KB/2024 stand disposed of**. The Insolvency Resolution Process stands initiated against the Personal Guarantor.

22. Post the matter on **03.02.2025** , for hearing of the Progress Report.

23. Certified copy of this order, if applied for with the Registry be supplied the parties in compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed this Order on 16th day of December, 2024.

NKS[LRA]