

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AY CHENNAI
(APPELLATE JURISDICTION)
Company Appeal (AT) (CH) (Ins) No. 400/2024
(IA No. 1089 / 2024)

In the matter of :

MR. RAIZ BASHIRUDEEN

Opp. BARC Hospital Bungalow, No. 2,
Zenith Park, Deonan, Mumbai – 400 088

... APPELLANT

V

TATA CAPITAL FINANCIAL SERVICES LIMITED

Tower A, 11th Floor, 1101, Peninsula
Business Park, Ganpatrao Kadam
Marg, Lower Parel, Mumbai – 400 013

... RESPONDENT

Present:

For Appellant : Mr. Pradeep Joy, Advocate

For Respondent : Mr. Chandapillai Abraham, Advocate

ORDER
(Hybrid Mode)

[ORAL JUDGMENT: Justice Sharad Kumar Sharma, Member (Judicial)]

02.06.2026:

The challenge in the instant company appeal as preferred by the Appellant, invoking Section 61 of the I & B Code, 2016, is to the impugned order of 01.08.2024, as it stood rendered in CP (IBC)/31/KOB/2023. By virtue of the impugned order, the proceeding of Section 95 of the I & B Code, 2016, has been directed to be admitted as against the present Appellant for initiation of the Insolvency Resolution Process in the capacity of being the Personal Guarantor, to Corporate Debtor, M/s. Furnace Fabrica (India) Limited.

2. There are various facets of the controversy at hand. And more importantly, what is being primarily argued by the Ld. Counsel for the Appellant, is that, the entire proceedings of admission of the application filed under Section 95 of the Code, would be vitiated because the deed of guarantee dated 30.05.2019 of the Appellant and that of the other Co-Guarantor were not placed on record. And furthermore, that the entire proceedings have been carried on the basis of letter of guarantee.

3. The facts that could be culled out from the records of the company appeal are that, M/s. Furnace Fabrica (India) Limited, the Corporate Debtor, is a company engaged in the manufacture of structural metal products, tanks, reservoirs and steam generators. In order to continue with their business and to augment the same, admittedly, the Corporate Debtor had approached the Respondent/Financial Creditor in 2019 for availing of the financial assistance, to the tune of Rs. 36,00,00,000/- (Rupees Thirty-Six Crores only) in the shape of a term loan and working capital facility and thereafter an additional amount of Rs. 3,60,00,000/- (Rupees Three Crore Sixty Lakhs Only), totalling to Rs. 39,60,00,000/- (Rupees Thirty-Nine Crore Sixty Lakhs Only).

4. It's not a dispute or a controversy that, the aforesaid sanction of the term loan and the working capital in the year 2019 stood sanctioned by the letter as recorded by the Respondent on 30.05.2019 and the financial assistance was availed under the terms and conditions of the loan agreement that, was executed

inter se between the parties on 30.05.2019, acting as to be read as a security for the financial assistance extended by the Respondent to the Corporate Debtor.

5. The factum of the default having been committed by the Corporate Debtor is a fact admitted by the account of the Corporate Debtor being declared NPA. The Respondent / Financial Creditor had issued a demand notice on 19.12.2022, which was followed by a loan recall notice dated 10.01.2023. Subsequently, on 14.02.2023, a demand notice in the shape of Form B as required under Section 95(4)(b) was issued raising a demand of the outstanding amount payable along with the interest payable on it, amounting to Rs. 18,95,48,246.53/-.

6. In an independent proceeding, the Corporate Debtor, has already been directed to be admitted into the CIRP process by an order passed on 01.11.2023 in CP(IB)/14/KOB/2023, consequent to which an application under Section 95 of the Code, for initiation of the Insolvency Resolution Process was filed against the Appellant / the Personal Guarantor which was registered as CP (IBC)/31/KOB/2023. The proceedings before the Ld. Tribunal was contested by the Appellant by filing the written submissions as well as the objection, primarily concentrating their argument from the perspective that, the entire proceedings would be vitiated for the reason being that in the absence of the guarantee deed dated 30.05.2019 having not been placed on record and in the absence of the terms of guarantee having been established, no proceedings could have been drawn against the Appellant.

7. The Ld. Counsel for the Appellant had restricted to press his grounds only from the perspective that, whether the proceedings under Section 95 of the Code, could not have been initiated in the absence of the security for the loan in the shape of a Guarantee Deed dated 30.05.2019, having been placed on record before the Ld. Tribunal, which alone would have established the extent of liability of the Personal Guarantors. He has also contended that in the absence of the Guarantee Deed being on record, the Appellant could not have at all been determined as to be a Personal Guarantor to the Corporate Debtor.

8. In response, it was submitted by the Respondent herein that, non-production of the Guarantee Deed of 30.05.2019 will not have any adverse bearing on the proceedings under Section 95 of the Code, owing to the peculiar circumstances of the instant case, where it has already been admitted by the Appellant, of his status of being the Personal Guarantor herein and when admittedly he was the signatory to the term loan agreement dated 30.05.2019 in the capacity of being the Personal Guarantor.

9. Hence, irrespective of whether there happens to be any independent Guarantee Agreement on record or not, the same will not override the admission made by the Appellant as regards his status as a guarantor when he himself was the executant of the loan agreement, having signed the same in the capacity of being the Personal Guarantor. The facts pertaining to the terms of the loan agreement, the existence of signatures, the extension of the financial assistance and the description of his status as a Personal Guarantor, were the facts which

have not been disputed or raised as a controversy by the Appellant at any stage of the proceedings, either before the Ld. NCLT or even before this Appellate Tribunal.

10. Accordingly, taking a contrary stand now, that he has not executed the contract or guarantee, runs contrary to the facts, which has been pleaded on record, and established before the Ld. NCLT also, when the Appellant admits that there had been a Deed of Guarantee too dated 30.05.2019.

11. We are of the view that, the underlying and fundamental principles are that a Guarantor's liability is determined by the deed of guarantees. But we cannot be oblivious and ignorant too of the fact that though the loan agreement between the Financial Creditor and the borrower and the deed of guarantee, are the two independent documents, the relevance of the deed of guarantee is only for the purposes of an assurance of extension of security for loan extended to the Corporate Debtor as given by the Guarantor to the Financial Creditor. Therefore, in case under the given circumstances the very tenements of the deed of guarantee, and the purpose for which it is executed (that is to secure a loan), stands satisfied by the contents of the loan agreement itself, that itself will meet the object and the purpose of execution of the deed of guarantee, which is the case in the instant appeal where guarantor himself is the signatory to the loan agreement.

12. It had never been the case for the Appellant, at any point of time that there was no deed of guarantee executed. The only exception that was being

attempted to be carved out by the Appellant during the course of argument in the instant company appeal is that, the deed of guarantee was not placed on record. Although the ratio propounded by the superior courts do lay down a principle that a separate guarantee contract is necessary to establish a guarantor's liability, but that in itself exclusively cannot be taken as to be the basis to hold the proceedings to be vitiated, because by taking into consideration the contents of the loan agreement itself, when the execution is admitted by the Appellant and particularly when it is admitted by the Appellant that they were the signatories to it, the purpose to establish the execution of deed of guarantee stands satisfied, when the germane document contains the signature of the Appellant as a guarantor.

13. The purpose of the deed of guarantee is to establish a liability, which will be restricted by the terms of the contract in an event of default by the principal borrower. But once the status of the Personal Guarantor itself is a fact, which stands determined and settled by the own conduct of the Personal Guarantor having signed the loan agreement, that itself will meet the object and the necessity of execution of the deed of guarantee.

14. The argument of the Ld. Counsel for the Appellant is, that the proceedings are vitiated due to non-production of the deed of guarantee executed by the Respondent/Financial Creditor for the purposes to determine the Appellant's status as to be a Personal Guarantor. We could have a reference to the definition

of “Personal Guarantor” as given under Section 5(22) of the Code, which reads as under: -

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

15. The legislature has contemplated that the Personal Guarantor is an individual who is the “**surety in a contract of guarantee to the Corporate Debtor**”. Thus, it has to be examined as to whether the same is satisfied in the documents filed by the Financial Creditor. It is a fact that, the Appellant has not denied that the letter of guarantee was executed. Further, the clauses pertaining to the loan agreement itself, also describe the Appellant as a Guarantor. The same is extracted hereunder: -

<i>Signed and delivered by the within named GUARANTOR – 1 for self or through the hands of A. Basheruddin its Authorised Signatory/s.</i>	<i>GUARANTOR – 1 SIGNATURE</i>
<i>Signed and delivered by the within named GUARANTOR – 2 for self or through the hands of Raiz Basheeruddin its Authorised Signatory/s.</i>	<i>GUARANTOR – 2 SIGNATURE</i>

16. A similar case, where the Personal Guarantor had been the signatory to a loan agreement, but no guarantee agreement was executed, came up for consideration before the Hon’ble High Court of Kerala, as to whether at all, the said Personal Guarantor could be saddled with the liability in the absence of the

guarantee agreement having been signed. The Hon'ble High Court of Kerala, in the matter of ***PJ Rajappan vs Associated Industries Private Limited (06.11.1989-KERHC)***, took the following view: -

*"4. A contract of guarantee is a tripartite agreement involving the principal debtor, surety and creditor. In a case where there is evidence of the involvement of a guarantor, the mere failure on his part in not signing the agreement is not sufficient to demolish otherwise acceptable evidence of his involvement in the transaction leading to the conclusion that he guaranteed the due performance of the contract by the principal debtor. When a Court has to decide whether a person has really guaranteed the due performance of the contract by the principal debtor, **all the circumstances concerning the transaction will have to be necessarily considered. Court cannot adopt a hyper technical attitude that the guarantor has not signed the agreement and so he cannot be saddled with the liability.** Due regard has to be given to the relative position of the contracting parties and to the entire circumstances which led to the contract."*

17. Owing to the aforesaid, we need to find out whether the Personal Guarantor had, in fact, really guaranteed the due performance of the contract loan agreement by the Corporate Debtor, and this fact is borne out from his signing the letter of guarantee, from his own admission, during the course of argument and also by way of pleadings and by the contents of the document itself. When there is no plea of fraud ever raised in relation to the signature of the Applicant in the status of Personal Guarantor, appearing in the loan agreement itself, the Appellant now cannot deny the liability of his status as that being of a Personal Guarantor.

18. This could be further confirmed from the audited books of accounts of the Corporate Debtor, which show the existence of loan and from the clauses of the agreement of the term loan dated 30.05.2019 which records the status of the Appellant being the Guarantor for the loan facility being extended loan to the borrower as per the terms and conditions appearing in the agreement, in which the Appellant as a Guarantor has guaranteed by affixing his signature to the said document, the extension of financial assistance and the discharge of its obligations. The relevant extract from the loan agreement dated 30.09.2019 is given hereunder: -

8. Guarantee

a) In consideration of the Lender, at the request of the Guarantor, granting the facility to the Borrower on the terms and conditions appearing in the T&Cs and this Agreement, the Guarantor, hereby guarantees the due payment and discharge of all the Obligors' liabilities to the Lender and performance of the obligations of them Obligors under this Facility Documents, whether such liability is incurred before or after the date hereof, and whether incurred by the Obligors alone or jointly with other(s), and in whatever capacity whether as Obligor or surety or otherwise and whether such liabilities have matured or not, and whether they are absolute or contingent, including al liabilities in respect of advances, letters of credit, cheques, hundis, bills, notes, drafts and other negotiable or non-negotiable instruments drawn, accepted, endorsed or guaranteed by the Obligors, and in respect of interest with monthly/quarterly rests, commission and other usual or reasonable banking charges and in respect of all

costs, charges and expenses which the Lender may incur in paying any rents, rates, taxes, duties, calls, instalments, legal or other professional charges, or other outgoings whether for insurance, repairs maintenance, management, realization or otherwise in respect of the Secured Assets or any other property, movable or immovable or any chattels or actionable claims of scrip securities or title deeds pledged, mortgaged or assigned to or deposited with the Lender as security for the due payment and discharge of the Obligators liability to the Lender.

b) The Guarantor hereby undertakes and covenants to abide and comply with the Guarantor's undertaking as more particularly given in the T & Cs.

19. Owing to the above, the contentions of the Ld. Counsel for the Appellant, that the letter of guarantee may not be construed as to be a deed of guarantee for the purposes of invocation of Section 95 of the Code, does not appeal to this Appellate Tribunal. If we consider the contents of the letter of guarantee, the execution of which has been admitted by the Appellant, the said contents go in consonance to the ratio propounded by the judgment of the Hon'ble High Court of Kerala, that the substantive purpose is to establish a security having been extended by the Guarantors towards the loan extended to the Corporate Debtor.

20. Owing to the above, we are of the view that, even if the deed of guarantee was not on record, because the Appellant, in the capacity of the Personal Guarantor, admits the execution of the letter of guarantee by him, which in itself contains the details of the liability of the Guarantors towards the loan extended to the Corporate Debtor, the said letter of guarantee in itself would suffice the

purpose to establish the status of the Appellant as to be the Personal Guarantor as defined under I & B Code 2016, and also the extent of his liability.

21. More particularly, when under the given set of circumstances and in order to meet out the principles as propounded by the court of law that strict determination is not required to be made by virtue of an interpretation to be given to the contents of the contract of guarantee, and when the purpose of the same is served by reading other correlated documents, which establish the acceptance of guarantee by the Personal Guarantor, which in this case could be culled out from the loan agreement letter of guarantee, itself, the execution of which has been admitted, where the Appellant is also one of the signatory, having accepted his status of being that of the Personal Guarantor, in that eventuality, the very purpose stands achieved. It would not vitiate the proceeding under Section 95 of the Code. Hence, the initiation of the IRP against the Appellant, Personal Guarantor herein, by the impugned order is not vitiated in the eyes of law.

22. Thus, the ‘company appeal’ lacks ‘merit’ and the same is accordingly ‘dismissed’.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)