IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – III

C.P. No. 185/MB/C-III/2023

Under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2019

IN THE MATTER OF

Bank of Maharashtra
Stressed Asset Management Bank
Through Mr. Umesh Kumar
Having registered address at
Janmangal, 4th Floor, 45/47,
Mumbai Samachar Marg,
Fort, Mumbai – 400001.

...Applicant/Creditor

Versus

Ms. Nita Kamal Jajoo
R/at: Jaihind Esatate,
Dr. A.B. Road, Bhuleshwar,
Mumbai – 400002.

....Respondent/Guarantor

Order pronounced on: 12.12.2024

Coram:

SHRI CHARANJEET SINGH GULATI	**SMT LAKSHMI GURUNG**
HON'BLE MEMBER (T)	**HON'BLE MEMBER (J)**

Appearances:
For the Applicant: Adv. Revati S Nansi i/b KayLegal & Associates LLP
For the Personal Guarantor: Adv. Vinod Kothari a/w. Adv. Chinmay Bhojane, Adv. Joshna Samuel i/b Apex Law Partners

Per: - Shri CHARANJEET SINGH GULATI, MEMBER (TECHNICAL)

ORDER

1. The Present Company Petition has been filed under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 ("IBC,2016") by **Bank of Maharashtra (Applicant/Creditor)** for initiating Insolvency Resolution Process against **Ms. Nita Kamal Jajoo ("Respondent/Personal Guarantor")**.

2. Bank of Maharashtra sanctioned a credit facility for a sum of Rs.10 Crores and Term Loan for Rs.1 Crore to M/s Jajoo Enterprises Ltd. vide Sanction Letter No. AF61/SB 106/2012-13/34 dated 30.06.2012 and Sanction Letter No. AF61/SB/2012-13 dated 10.01.2013 respectively.

3. A Deed of Guarantee dated 04.07.2012 was executed by Ms. Nita Kamal Jajoo and Shri. Kamal Satyaprakash (the Guarantors) and Bank of Maharashtra in which the credit facility of Rs. 10 Crores was sanctioned in favour of M/s. Jajoo Enterprises Limited (Borrower), having its registered office at Guru Aashish, Shop No. 3, Building 3/C, Jaihind Estate, Dr. Atmaram Merchant Road, Bhuleshwar, Mumbai-400002. Another Deed of Guarantee dated 16.01.2013 was executed by Ms. Nita Kamal Jajoo and Shri. Kamal Satyaprakash Jajoo (the Guarantors) and Bank of Maharashtra in which the credit facility of Rs. 1 Crore was sanctioned in favour of M/s. Jajoo Enterprises Limited (Borrower).

4. The Corporate debtor defaulted in the repayment of the loan which resulted in their account being declared as Non-Performing Asset on

27.09.2013. In the meantime, CIRP Process was initiated against the Corporate Debtor followed by the initiation of liquidation procedure.

5. The Applicant sent a 'Recall Notice' dated 21.08.2017 calling upon the Guarantors and Borrower to repay in full, the outstanding dues: -

Sr. No.	Name and amount of Credit Facility	Present Outstanding (As on 20.08.2017)
1.	Cash Credit Limit of Rs.10 Crores	Rs.7,60,36,643 + Unapplied Interest Rs.5,14,99,034 = Rs.12,75,35,677.
2.	Short Term Loan of Rs.1 Crore	Account Closed 02.07.2013 by adjusting proceeds of term deposits kept as collateral security
	Total	**Rs. 12,75,35,677**

6. The Applicant issued a 'Scheme for One Time Settlement of (MAHAMUKTI-2017-18) letter vide Ref: AF61/JAJOO/17-18 dated 17.01.2018 addressing to Jajoo Enterprises Limited and advising them that their dues to the Bank are eligible for settlement under the **MAHAMUKTI-2017-2018** scheme.

PARTICULARS OF CLAIM (as per the scheme)

Amount due and payable by the defendants	**Rs.7,60,36,643**
Accrued unapplied interest from 01.08.2013 to 31.05.2014	**Rs.1,11,72,959**
Total outstanding as on 02.06.2014	**Rs.8,72,09,602**

7. Therefore, as per Part – III of 'Form C', the Total Outstanding debt including any interest or penalties has been computed as follows: -

Total Outstanding Debt (including any interest or penalties)	:	**Rs.8,72,09,602** (with interest thereon @ 14.90% p.a. monthly rests from 29.06.2014 until payment realization)

8. In view of the aforesaid, the present application has been filed for appointment of Resolution Professional under Section 95(1) r/w Section 60(2) of IBC, 2016.

9. After perusing the petition, we observe that the copy of the petition has been served on the Personal Guarantor via e-mail address *kamaljajoo@yahoo.co.in*.

10. The Personal Guarantor Mrs. Nita Kamal Jajoo filed a reply dated 19.06.2023 and stated the following contentions in their reply: -

    a. <u>Barred by limitation</u>: - The company petition has been filed by the Applicant alleging that the debt was due from 29.06.2013 and the date of default as 27.09.2013 (declaration of NPA). The Respondent further relied on the Hon'ble Supreme Court in the matter of <u>***B.K. Educational Services Private limited v. Parag Gupta and Associates [AIR 2018 SC 5601]***</u> wherein it was held that Article 137 of the Limitation Act, 1963 provides that an application has to be filed within a period of three years.

    b. <u>No demand notice served</u>: - As per the Rule 7 (1) of the Application to Adjudicating Authority for Insolvency Resolution Process of Personal Gurantors to Corporate Debtors) Rules, 2019 (hereinafter referred to as the "Rules"), which reads as below: -

    > *"7. Application by creditor: - (1) A demand notice under clause (b) of sub-section (4) of section 95 <u>shall be served</u> on the guarantor demanding payment of the amount of default, in Form B."*

c. The alleged Demand Notice dated 30th June annexed as 'Annexure-4' to the Company Petition had never been served upon the Respondent.

d. Since the Applicant has not served the Demand Notice to the Personal Guarantor, as required mandatorily under Section 95(4)(b) of IBC, 2016 read with Rule 7(1) of the (Application to Adjudicating Authority for Insolvency Resolution process of Personal Guarantors to Corporate Debtors) Rules, 2019, the Company Petition is incomplete and deserves to be dismissed.

11. In respect of the submission that no Demand Notice was served to the Personal Guarantor, we sought clarification vide Daily Order dated 30.10.2024 regarding proof of service of Demand Notice dated 30.06.2024. Pursuant to this order, the Petitioner filed an affidavit and placed on record the Proof of Service of the Demand Notice and submitted that the present Company Petition was sent to the Respondent's address by way of Registered Post Acknowledgement Due (RPAD) bearing reference no. RM688245727IN on 18.04.2023, and that it shown as delivered as per Track Report annexed with the additional affidavit filed.

12. In regard to the other submissions of Personal Guarantor, reference is made to, the Hon'ble Supreme Court in ***<u>Dilip B Jiwrajka Vs. Union of India & Ors. Writ Petition (Civil) No. 1281 of 2021</u>*** decided on 09.11.2023 where it has been held as follows: -

i. *No judicial adjudication is involved at the stages envisaged in Section 95 to Section 99 of the IBC;*

ii. *The Resolution Professional appointed under Section 97 serves a facilitative role of collating all the facts relevant to the examination of the application for the commencement of the insolvency resolution process which has been preferred under Section 94 or Section 95. The report to be submitted to the*

Adjudicating Authority is recommendatory in nature on whether to accept or reject the application.

Therefore, at this stage no adjudication is required. The petition for initiating insolvency resolution process against Personal Guarantor to the Corporate Debtor is, prima facie, complete in all respect.

13. We also note that the Applicant has proposed the name of **Mr. Fanendra H. Munot** to be appointed as Resolution Professional, therefore, we deem fit to appoint Mr. Fanendra H. Munot bearing IBBI Registration No. IBBI/IPA-001/IP-P00515/2017-18/10916 as Resolution Professional of the Corporate Debtor. The Authorization for Assignment is valid up to 31.12.2025.

14. The fee payable to Resolution Professional (RP) shall be in accordance with the Insolvency and Bankruptcy Board of India (IBBI) Regulations/Circulars/Directions issued in this regard.

15. The Bench directs for immediate adhoc payment of Rs. Rs.1,00,000/- by the Financial Creditor to the Resolution Professional to initiate the process which shall be adjusted towards the fee and expenses payable to the Resolution Professional.

16. The Resolution Professional is directed to examine the application as per the provisions laid down in Section 97(6) of IBC, 2016 including but not limited to issue relating to limitation and invocation of Bank Guarantee of the Respondent by the Petitioner and shall submit his report as provided under Section 99(1) of IBC,2016, **within 10 days** of the receipt of this order.

17. Further, the Registry is hereby directed to communicate this order to both the parties and to RP immediately. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of

India for their record. The Petitioner is also directed to forthwith communicate this order to the Resolution Professional.

18. List the matter for report of the RP as and when the Report is filed by RP by way of an I.A.

Sd/-	**Sd/-**
CHARANJEET SINGH GULATI **(MEMBER TECHNICAL)**	**LAKSHMI GURUNG** **(MEMBER JUDICIAL)**

Vaishnavi, LRA