

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.302- C.P.(IB)/21(AHM)2024

with

ITEM No. 303-IA/763(AHM)2024

Order under Section 95 IBC

IN THE MATTER OF:

State Bank of India

V/s

Mr.Hiren Patel

.....Applicant

.....Respondent

Order delivered on: 05/11/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Sameer Kakar, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

-sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-sd-

SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I, AHMEDABAD**

**CP (IB) No.21/NCLT/AHM/2024
With
I.A. No.763/NCLT/AHM/2024**

[Company Petition under Section 95 of the Insolvency and Bankruptcy Code, 2016 r.w.Rule7 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019]

*In the matter of **Shri Hiren Patel***

CP (IB) No.21/NCLT/AHM/2024

State Bank of India

SAM (Stressed Asset Management) Branch,
Paramsiddhi Complex, 2nd Floor,
Ellisbridge, Ahmedabad - 380006 .

.....Applicant/FC

VERSUS

Mr. Hiren Patel

2, Somvilla Bunglow,
B/H Jalsa Party Plot,
Thaltej, Ahmedabad.

.... Respondent /PG

I.A. No.763/NCLT/AHM/2024

Prawincharan P Dwary

Resolution Professional of Hiren Patel
Having Address at: 407, Akchhat Tower,
Pakwan Cross Road S.G. Highway,
Bodakdev,
Ahmadabad-380 015.

... Applicant /RP

VERSUS



Hiren Patel

Personal Guarantor to M/s. Archon Engicon Limited

Having address at: 2, Somvilla Bunglow,

B/H Jalsa Party Plot,

Taltej, Ahmedabad

... Respondent/PG

Order pronounced on 05.11.2024

CORAM:

MR. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

MR. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

For Applicant : Mr. Atul Sharma, Advocate

For the FC : Mr. Aishwarya Reddy, Advocate a/w.

: Mr. Nisarg Bhardwaj, Advocate

For PG : Mr. Arpit Singhvi, Advocate

ORDER

Per: Bench

1. The Present Company Petition i.e. CP(IB)/21(AHM)2024 is filed on 26.12.2023 under Section 95 of the Insolvency and Bankruptcy Code 2016, (IBC, 2016) read with Rule 7(2) of the I&B (AAA for IRP for PGCD) Rules, 2019 by the Applicant Bank (Financial Creditor) seeking initiation of Insolvency Resolution Process against **Mr. Hiren Patel** (Personal Guarantor) for a default amount of Rs.341,71,10,539/- in respect of Deed of Guarantee



dated 02.07.2015 executed in favour of the Applicant Bank.

2. In so far as the Personal Guarantor to Corporate Debtor is concerned, the Hon'ble Supreme Court of India in the matter of **Lalit Kumar Jain vs. Union of India & Ors.** in the Transferred Case (Civil) No.245/2020 has upheld the vires of the notification issued by the Central Government vide S.O. 4126(E) dated 15.11.2019, in so far as it relates to coming into force of Insolvency and Bankruptcy Process of Personal Guarantors to Corporate Debtor. Thus, when a Corporate Insolvency Resolution Process in relation to Corporate Debtor is pending before this Adjudicating Authority, then as per Section 60(2) of IBC, 2016 the NCLT would be competent forum to file an Application for Personal Guarantor in relation to such Corporate Debtor.

3. It is stated that Corporate Debtor – M/s. Archon Engicon Limited being principal borrower applied for Loan facilities for its operations which was approved ✓



by the Applicant/Financial Creditor. The Respondent was being Director executed various loan security documents in favour of the Applicant Bank/Financial Creditor. The respondent also stood as personal guarantor of the Corporate Debtor in personal capacity and executed Deed of Guarantee dated 02.07.2015 in favour of Applicant Bank/Financial Creditor.

4. However, after availing the Loan/Credit Facilities, the Corporate Debtor failed to maintain financial discipline as per terms and conditions of the loan agreement due to which loan account became irregular and committed default. Consequently, O.A. No. 83 of 2017 was filed in DRT Ahmedabad which was allowed and Recovery Certificate was issued vide order dated 03.08.2021 against the Corporate Debtor as well as the Respondent/Personal Guarantor and others.
5. Thereafter, by order dated 07.09.2021, the Corporate Debtor - M/s. Archon Engicon Limited was admitted



and order of moratorium was passed by the Hon'ble Adjudicating Authority in CP (IB) No. 211/7/NCLT/AHM/2020.

6. Thereafter, Applicant Bank/Financial Creditor invoked the personal guarantee and issued Demand Notice to the Respondent/Personal Guarantor on 15.12.2021 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 which was replied by the Respondent/Personal Guarantor vide reply dated on 04.01.2022.
7. Due to non-payment of the amount by the Corporate Debtor as well as Personal Guarantors, on 26.12.2023 the Applicant Bank/Financial Creditor has filed this application for initiation of Insolvency Resolution Process against the Respondent/Personal Guarantor in 'Form-C' under Section 95 of the IB Code, 2016 read with rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency



Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.

8. On presentation of the application by the Applicant/Financial Creditor, this Tribunal vide order dated 02.04.2024 appointed Interim Resolution Professional (hereinafter referred to as "IRP") as suggested by the Financial Creditors viz. **Mr. Prawincharan Prafulcharan Dwary** to carry out Insolvency Resolution Process of the Personal Guarantor as per section 97(3) of IBC, 2016, with a direction to submit the report under Section 99 of IB Code, 2016, within ten days. The IRP is also directed to file its report through separate IA.
9. The Interim Resolution Professional has filed the report through IA/763(AHM)2024 dated 02.05.2024 vide Inward No. E 1083 recommending the admission of the application filed under Section 95 of IBC, 2016. The summary of grounds for admission of the application as per the Report are as follows:-

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- i. The Interim Resolution Professional examined the Application under Section 95 of IBC, along with documents annexed thereto.
- ii. Response is not yet received from the Personal Guarantor.
- iii. The said debt for which an application has been filed by the creditor is registered with National E-Governance Services Limited ("NESL").
- iv. The Interim Resolution Professional had sent intimation under Section 99(2) of IBC to the Personal Guarantor by E-mail and letter on 10.04.2024 requiring to prove repayment of the debt as mentioned in captioned Application the said letter and email along with the RPAD is enclosed as Annexure-A2. No reply is received in that regard from the Personal Guarantor.
The RP also gave intimation to the Appellant Bank, State Bank of India on 10.04.2024 by email and letter seeking details of any loan repayment by the PG against the outstanding debt. Copy of the email and letter is enclosed as Annexure-A3.
Reply received in that regard from the Respondent Bank on 18.04.2024 is enclosed as Annexure -A4 and Annexure - A4.1 respectively.
- v. The applicant Bank has provided a suitable reply to the information sought but no response is received from the Personal Guarantor till date.



- vi. The Interim Resolution Professional has examined the application and ascertained that the application satisfies the requirements set out in Section 95 of the IBC.
- vii. Upon examination of the Application and Annexures by the Interim Resolution Professional, it is recommended that the application may be accepted.
- viii. The Interim Resolution Professional based on the application and supporting documents finds that the debtor is not eligible for a Fresh Start under Chapter II of IBC, 2016.
- ix. The Interim Resolution Professional examined the Application, supporting documents and reply received from the Personal Guarantors and record the following reasons for the acceptance of the Application:
 - a. The Personal Guarantor has executed a deed of Guarantee in favour of the bank for the Corporate Guarantor.
 - b. The Corporate Debtors and Personal Guarantor have defaulted in the repayment of debt and demand notice issued by the bank.
 - c. Other supporting documents like Order dated 03.08.2021 passed O.A. No. 83 of 2017 by Hon'ble Debts Recovery Tribunal-1, Ahmedabad, Demand notice dated 15.12.2021 addressed by the Applicant to the Respondent, Personal



Guarantor's Reply to the Demand Notice and Form-D, Record of Default with the Information Utility NESL have been relied upon.

d. Email from the State Bank of India depicting the recovery of INR 95,93,595/- through Liquidation of Archon Engicon Limited vide email dated 18.04.2024.

x. Thus, in view of the aforesaid, IRP recommend the acceptance of the captioned application filed under Section 95 of IBC, 2016.

10. After Issuance of notice in I.A., the Respondent/Personal Guarantor appeared and filed an affidavit in reply dated 12.08.2024 under Diary No. D 6308 and raised following objections to the Application as well as report filed by the RP as under:

- a) It is stated and submitted that the Respondent has not been served with the demand notice under Section 95 of the Code r/w Rule 7 of the said Rules. It is stated and submitted that the Applicant has enclosed demand notice addressed to one Mrs. Nehal C. Panchal and not to the Respondent. It is submitted that in absence of service of demand notice invoking guarantee, the present petition deserves to be dismissed on the said ground alone.
- b) It is pertinent to note that the Hon'ble NCLT at New Delhi in the matter of State Bank of India vs. Ms.




Jaya Singh (Company Petition No. 411 of 2021) has inter alia held as follows:

"11. 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, we are not inclined to proceed further in the matter. 12. That we also observe that the facts in the synopsis written at Page 1-2 of the Application are at variance with the facts mentioned in the Part III of the Application. Further, the date of NPA has also not been disclosed by the Applicant. Overall, the Application lacks material pleadings as to how the debt has become due and payable.


13. That we are constrained to observe that the Application has been filed in a casual manner by the Applicant Bank. The Applicant should have been diligent enough in filing the Application under Section 95 of IBC 201, since under this section the moment the Application is filed, interim moratorium under Section 96(1)(a) of IBC 2016 gets triggered, which could cause prejudice to other creditors of the Corporate Debtor."

- c) It is submitted that the said Petition is filed inter alia invoking the guarantees given by the Respondent in respect of M/s. Archon Engicon Ltd. (hereinafter



referred to as "Corporate Debtor"). It is submitted that as per the Applicant's own case, the said account of the Corporate Debtor is claimed to have been declared as a NPA with effect from 31.03.2015, whereas, the present petition is filed only on 11.01.2024. It is stated and submitted that the present petition has been filed after a period of more than 3 years from the date of the NPA and that too without invocation of guarantee and service of demand notice and hence is barred by law of limitation. Further, it is stated and submitted that as per the records of the Information Utility also the date of default is 01.01.2015. It is submitted that as per the Applicant's own FIR, the Applicant has stated that the account of the Borrower was declared as NPA w.e.f. 31.03.2015.

- d) Further, the Respondent denies that the alleged debt has been acknowledged by the Debtor from time to time by OTS offers. It is denied that in light of letters dated 31.03.2018 and 08.01.2018, the amount of debt has been acknowledged by the Debtor and hence the debt can be recovered from the guarantor. At the outset, it is submitted that there is no acknowledgment of debt as claimed by the Applicant. Further, it is submitted that the Respondent is not aware of any such alleged letters dated 31.03.2018 and 08.01.2018 and the Applicant



has not produced the same. Further, the Respondent was not even a party to the said alleged letters.

- e) It is submitted that even if the borrower has executed such letters, the same would not extend the period of limitation in terms of Section 135 of the Contract Act, 1872. For the sake of convenience, Section 135 of the Contract Act, 1872 is re-produced herein below:

"Section 135: Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor-A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract. "It is submitted that as the Respondent's consent was not taken prior to executing such alleged OTS letters, the Respondent is discharged as a surety.

- f) It is submitted that the Appellant's reliance on order dated 03.08.2021 passed by the Hon'ble DRT in OA 83 of 2017 is misplaced and the same does not extend the period of limitation. It is a well settled law and has been reiterated by the Hon'ble NCLAT in *Bimalkumar Manubhai Savalia v. Bank of India and Ors.* CA(AT) (Ins.) No. 1166 of 2019 that the proceedings under SARFAESI Act and DRT proceedings does not extend the period of limitation.



- g) It is submitted that the guarantee is void under law as the same is without consideration. It is submitted that Section 127 of the Contract Act, 1872, provides that the guarantee without consideration is void. It is submitted that there is no consideration and hence petition deserves to be dismissed.
- h) It is stated and submitted that as the effect of the account being declared as NPA was with effect from 31.03.2015, no new guarantee could have been executed on 02.07.2015. It is submitted that the operation of such guarantee would cease and such guarantee would become void after the account has been declared as NPA. Further, it is submitted that even as per Section 133 of the Contract Act, 1872, the guarantor is discharged from the all the subsequent variance in terms of the contract entered into without the consent of the guarantor. It is submitted that as the account of the guarantor was already declared as NPA w.e.f. 31.03.2015 and the Guarantee Agreement came into effect on 02.07.2015, the subsequent variance is void as per Section 133 of the Contract Act, 1872.
- i) It is submitted that the present application has not been filed in accordance with the Code and the said Rules. It is submitted that Section 95 of the Code requires that the Application shall be accompanied with details and documents relating to-



(a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;

(b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and

(c) relevant evidence of such default or non-repayment of debt.

j) It is submitted that the Appellant has failed to comply the aforesaid requirements. Further, it is submitted that the Applicant has filed the case in its individual capacity but has claimed the total amount of Rs. 341.71 crore which is the amount claimed by the consortium of banks including IDBI, UBI and Bank of Baroda. It is submitted that the Applicant has failed to specify the debt due to the Applicant and in absence of such details, the captioned application deserves to be dismissed.

k) Further, it is submitted that the appellant has not followed the terms and conditions of the sanction letter dated 05.03.2014 and has not taken mortgage of the following properties.

(i) Sector 2/D, Plot No. 1074 (Shri Hari Park Society) Nr. Swaminarayan Mandir, Gandhinagar (Gujarat). Land admeasuring 330 sq. mtrs. and construction of 205.80 sqr. Mtrs.

(ii) Land at Plot No. 17, Pushpak Co-Operative Housing Society Limited, Opposite Rudra




Appartment, Behind Central Bank, Navsari
admeasuring 180.20 sqr. Mtrs.

(iii) Land at Plot No. 18, Pushpak Co-Operative
Housing Society Limited, Opposite Rudra
Appartment, Behind Central Bank, Navsari
admeasuring 180.20 sqr. Mtrs.

l) It is stated and submitted that the Petitioner has
filed the Petition by suppressing material facts and
without placing on record any document to prove the
debt and default. It is stated and submitted that no
amounts is due and payable by the Respondent. It is
stated and submitted that the Petitioner's claim is
wholly untenable. It is submitted that the
Respondent does not owe any amount as debt or
otherwise to the Petitioner so as to make them liable
for an action under the IBC. It is submitted that no
alleged dues are outstanding. It is submitted that the
Petitioner's sole motive is to pressurize the
Respondent so as to extort money out of the
Respondent. It is further stated and submitted that
the guarantee is without consideration and hence
void. It is submitted that the Respondent is
discharged and absolved from the guarantee under
law. It is further submitted that any and all variance
in terms of the contract without the consent of the
surety is void.

m) That the Respondent denies any liability for the sum
as claimed in the petition or any part thereof. It is



denied that there are any dues outstanding from Respondent as suggested by the Petitioner. The alleged dues claimed by State Bank of India are false. Without prejudice to the submission that no amount is due and payable by the Respondent, it is stated and submitted that interest has been claimed in an absolutely illegal manner and in a manner contrary to the provisions of law. It is stated and submitted that the Applicant has not even taken as mortgage all the properties as securities as mentioned in the sanction letter. Further, the Applicant has chosen to file the present petition without realizing the securities of the borrower.

11. In response to the reply of the Personal Guarantor, the Applicant Bank/Financial Creditor i.e. State Bank of India has filed rejoinder through E-mode on 06.09.2024. However, physical copy is not filed till date. The contentions raised by the Applicant in rejoinder are as under:-

- a) At the outset, the Financial Creditor would like to address the contention of the Respondent Personal Guarantor that they have not been served with the Demand Notice issued by SBI as per Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal



Guarantors to Corporate Debtors) Rules, 2019. It is submitted that the same is false. The Personal Guarantor has intentionally suppressed the facts of receipt of the Demand Notice dt. 15.12.2021, issued under under FORM-B. The said notice was replied to by the Respondent Personal Guarantor as well. That the notice attached in the Main Application is the one issued to Ms. Nehal Panchal, who, along with the present Respondent, is one of the Personal Guarantors of the Corporate Debtor. It is submitted that it is trite law that a substantive right accrued to a litigant should not be defeated citing procedural defects capable of being cured. Reliance is placed on (Ramnath Exports (P) Ltd. v. Vinita Mehta, (2022) 7 SCC 678) by the Financial Creditor. The Respondent Personal Guarantor already has a copy of the said notice in their possession which is quite evident from the fact that the Respondent Personal Guarantor replied to the same vide its letter dt. 04.01.2022. In spite of the same, the Respondent Personal Guarantor has stated on oath that they have not been served with the Demand Notice which is clear suppression of facts. We are now placing the concerned notice dt. 15.12.2021 issued to Mr. Hiren Patel and the Reply dt. 04.01.2022 issued



by Mr. Hiren Patel to SBI with the purpose to correct the record of the Ld. NCLT.

b) Furthermore, the present Respondent, Hiren Patel, and their Reply dt. 04.01.2022 to the Demand Notice dt. 15.12.2021, had responded as below: -

5.1. Referring to section 127 of the Indian Contract Act, 1872; it was contended that the Deed of Guarantee is void as the same is bereft of any consideration towards the personal guarantor. Unless the Applicant has done something at the desire of the purported guarantor, there is no consideration and therefore the Deed of Guarantee does not acquire the status of binding contract.

5.2. The date of default as mentioned in the Demand Notice is 01.02.2016, and Insolvency and Bankruptcy Code, 2016 provides a 3-year time period from the due date of the debt to initiate the proceedings under it. Therefore, no proceedings under the Code can be initiated.

5.3. Liabilities of the personal guarantor are co-extensive with that of the Borrower. CIRP against the Corporate Debtor is ongoing and if the debt owed by Corporate Debtor gets approved, then the debt is settled, i.e.,



in case of successful resolution, there is a chance that any purported debt of the personal guarantor may get extinguished/resolved.

5.4. Demand notice is not as per the mandatory format under Form B under Rule 7(1) of the Insolvency Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution process of Personal Guarantor to Corporate Debtors) Rules, 2019, i.e., no authorisation document for the signatory has been enclosed.

c) That the Financial Creditor SBI submits that all the contentions made by the Respondent Personal Guarantor in their Reply dt. 04.01.2022 are denied and states as under: -

6.1. The Deed of Guarantee is in compliance with section 127 of the Indian Contract Act, 1872 and is not barred under the same Inasmuch as in contracts of guarantees, the issue of consideration does not arise since the point of extending credit facilities to the Borrower/Corporate Debtor is itself the consideration. The credit facilities had been forwarded to the Corporate Debtor in the present case.

6.2. The Applicant can initiate proceedings against the personal guarantor. That a



fresh cause of action arose in favour of Financial Creditor by way of the DRT Order dt. 03.08.2021 in OA No. 83 of 2017 wherein the Respondent had participated in the said proceedings. Therefore, the proceedings are not barred by limitation.

6.3. It is a settled principal of law that liability of the guarantor is co-extensive to that of the Corporate Debtor as provided under section 128 of the Indian Contract Act, 1872. Therefore, the Applicant can simultaneously initiate proceedings against the personal guarantor whilst the CIRP of the Corporate Debtor is ongoing.

6.4. Lastly, the Demand Notice is issued in the prescribed format under the Code and is valid.

d) The Application filed u/s. 95, IBC by State Bank of India is not barred by limitation and is maintainable in nature. It is submitted that the account of the Corporate Debtor, M/s. Archon Engicon was declared an NPA by SBI on 01.02.2016. That SBI, along with other Creditor Banks initiated proceedings before Ld. Debts Recovery Tribunal against the Corporate Debtor and the Personal Guarantors including the Respondent, well within the three (3) year limitation period, on 14.02.2017. That the Ld.



DRT passed an order in favour of the Financial Creditors directing the Corporate Debtor and the Personal Guarantors including the Respondent to pay SBI Rs. Rs. 195,24,46,964.66 (including Rs. 45,98,34,721.74 to be paid to erstwhile State Bank of Patiala (now State Bank of India)) along with pendent lite interest and future interest due @12% per annum along with penal interest @2% penal interest, vide Order dt. 03.08.2021. It is submitted that the said order created a new cause of action in favour of the SBL. That it is settled law that the order of Debts Recovery Tribunal gives a fresh cause of action to the Financial Creditor to file an Application under IBC. (Dena Bank (now Bank of Baroda) v. C. Shivakumar Reddy, (2021) 10 SCC 330 para no. 133). Therefore in pursuance of the same, SBI invoked the guarantee vide Notice dt. 15.12.2021 thereby calling upon the Respondent Personal Guarantor to repay the debt within 14 days of the receipt of the notice. That the 14-day period 7 concluded on 29.12.2021 and the Respondent failed to repay the debt thus the date of default was considered to be 29.12.2021. Considering 29.12.2021 to be the date of default, the Main Application filed on 23.12.2023 is well-within the three-year limitation period under Art. 137, Limitation Act, 1963. Even other- wise, it is



submitted that the Main Application. was filed within the date of the DRT Order i.e. 03.08.2021, through which a fresh cause of action had arisen in favour of SBI.

- e) To enlarge upon the submission made above, it is submitted that the Corporate Debtor, M/s. Archon Engicon had been availing financial assistance from the State Bank of India since 2011 which was renewed from time to time. That the Respondent Personal Guarantor along with other Personal Guarantors, entered into a deed of Guarantee on 02.07.2015 for the credit facilities granted to the Corporate Debtor by the Consortium of Banks led by State. Bank of India. That the debt as against the Corporate Debtor fell due on 01.02.2016 when the account of the Corporate Debtor was classified as an NPA.
- f) That the State Bank of India along with other financial creditors initiated proceedings /s. 19 of the Recovery of Debts & Bankruptcy Act, 1993 bearing O.A. No. 83 of 2017 on 14.02.2017. before the Ld. Debts Recovery Tribunal. In the meanwhile, the debt owed to the State Bank of India was also acknowledged vide letter dt. 31.03.2018. That the Ld. Debts Recovery Tribunal passed an order dt. 03.08.2021 in favour of the financial creditors directing the Defendants, including the Respondent Personal




Guarantor to pay the dues to the Financial Creditors within 2 months.

- g) Thereafter, the State Bank of India issued a demand notice to the Respondent Personal Guarantor as per Rule 7(1) of the IBC (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 on 15.12.2021 thereby asking the Personal Guarantor to repay the debt within 14 days of receipt of the Notice failing which insolvency resolution process under IBC would be initiated against the Personal Guarantor. That the 14-day period from 15.12.2021 ended on 29.12.2021 when the default occurred as per the Demand Notice issued by State Bank of India.
- h) That in lieu of the settled law in place, the Financial Creditor could file the Application u/s. 95, IBC within three years of the date when default occurred vide Art. 137, Limitation Act, 1963 ie, three years from 29.12.2021. Besides, the Order dt. 03.08.2021 where the Personal Guarantor is the Defendant no. 5, gave a fresh cause of action in favour of SBI by which SBI could file an Application under s. 95, IBC within three (3) years ie. 03.08.2024. That therefore the present Main Application u/s. 95, IBC was filed



on 23.12.2023 which is well-within the period of limitation u/Art. 137, Limitation Act, 1963.

12. We have heard the learned counsel for the parties and perused the documents on record. We have also gone through the report dated 02.05.2024 filed by the IRP. A written submissions has been filed by the State Bank of India vide Inward No. D 8107 on 25.10.2024 and personal guarantor vide inward diary No. 8103 on 25.10.2024.
13. It is seen from the petition that the present application is filed on 26.12.2023 within the period of limitation as Demand Notice dated 15.12.2021 invoking Personal Guarantee within the period of limitation, was served upon the Respondent.
14. Further, it is noted under section 128 of Indian Contract Act, 1872 that when a default is committed the Principal Borrower and Surety are jointly and severally liable to Creditor and Creditor has the right to recover its dues from either of them or from both of them simultaneously. For benevolent reference, the



said section of the Contract Act, 1872 is reproduced below:

"The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract."

- 15.** Moreover, From the report of IRP, it is clear to us that:
- i. IRP has recommended to accept the application for the reason as stated in the report dated 02.05.2024.
 - ii. The Respondent has admitted to have executed the Guarantee Agreement.
 - iii. Hon'ble DRT vide order dated 03.08.2021 passed in O.A. No. 83 of 2017 has confirmed the amount and issued recovery certificate against the Respondent/Guarantor and others after considering the loan/security documents as well as guarantee agreement in question and the said action has assumed finality.
 - iv. The Applicant has demanded the amount outstanding from the Respondent vide Demand Notice dated 15.12.2021.



- v. Decree of Hon'ble DRT has given a fresh cause of action to the Applicant.
- vi. The copy of the petition and the report was duly served upon the Corporate Debtor in terms Rule 7(3) which is under liquidation as confirmed by the counsel appearing for the liquidator of the Corporate Debtor.
- vii. Resolution Professional report states that no evidence was placed before him by the Respondent having paid the amount demanded by the Applicant and as such in over view entire amount demanded is un-serviced as on the date of order.

16. In our view the application is also not hit by Limitation or qua limited liability as claimed by the Respondent/Guarantor.

17. In view of the foregoing we are left with no other choice but to order as under: -

- I. Initiate Insolvency Resolution Process against the Respondent/Personal Guarantor and moratorium in relation to all the debts is declared, from today i.e. ✓



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 plan under Section 114 whichever is earlier as provided under Sec 101 of IBC, 2016. During the moratorium period,

a) Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed, and

b) The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and

c) The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein:

d) 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.

II. The Resolution Professional viz., **Mr. Pravincharan Prafulcharan Dwary**, having Registration No: IBBI/IPA-002/IP-N00331/2017-2018/10937 having address at: 407, Akchhat Tower, Pakwan Cross



Road, S. G. Highway, Bodakdev, Ahmedabad - 380 015, (E-mail ID: dwaryprawin@gmail.com] who was appointed when the Section 97 application was allowed vide Order dated 02.04.2024, is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Ahmedabad Bench, inviting claims from all Creditors, within 21 days of such issue. The notice under Sub Section (1) of Section 102(2) 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.

III. The publication of notice shall be made in two newspapers, one in English and other in Vernacular which have wide circulation in the State where the Corporate Debtor and Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.

IV. The Resolution Professional in the exercise of the powers conferred under Section 104 shall prepare a list of creditors on the basis of



a) the information disclosed in the application filed by the debtor under Sections 94 or 95 as the case may be, and

b) Claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice.

The debtor shall prepare a repayment plan under Section 105, in consultation with the Resolution Professional, containing a proposal to the Creditors for restructuring of his debts or affairs.

V. The repayment plan may authorize or require the Resolution Professional to:

a) Carry on the debtor's business or trade on his behalf or in his name; or

b) Realise the assets of the debtor; or

c) Administer or dispose of any funds of the debtor.

The repayment plan shall include the following, namely; -

a) Justification for preparation of such repayment plan and reasons based on which the creditors may agree upon the plan;

b) Provision for payment of fee to the Resolution Professional;



c) Such other matters as may be specified.

VI. The Resolution Professional shall submit the repayment plan along with his report on the plan to this Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106.

VII. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons therefor. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of IBC, 2016. The date of meeting should not be less than 14 day or more than 28 days from the date of submission of the Report under sub-section (1) of Section 106 of IBC, 2016, for which at least 14 days' notice to the creditors (as per the list prepared shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of IBC, 2016.

VIII. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC, 2016. The Resolution Professional shall prepare



a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of IBC, 2016 and submit the same to this Tribunal, copies of which shall be provided to the Debtor and the Creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of IBC, 2016.

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

X. The Registry is directed to communicate a copy of order, report and application within seven working days and upload the same on the website immediately after the pronouncement of order.

18. In terms of the above, **CP (IB)/21(AHM)2024** filed under Section 95 (1) of the IBC, 2016 is admitted and the Insolvency Resolution Process stands initiated against the Respondent/Personal Guarantor.

19. Accordingly, **IA/763(AHM)2024** stands disposed of.

SAMEER KAKAR
MEMBER (TECHNICAL)

MD

SHAMMI KHAN
MEMBER (JUDICIAL)