

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
Company Appeal (AT) (CH) (Ins) No.360/2024

In the matter of:

State Bank of India

Through Resolution Professional Shri Chillale Rajesh,

SAMB – II Tulsiani Chambers, 1st Floor,

Free Press Journal Marg, Nariman Point

Mumbai – 400021

... Appellant

V

Dr. Jitendra Das Maganti,

S/o Late Madhusudhana Rao,

Aged 64 Years, R/O. 26, Balaji Baymount,

Tarakarama Layout, Pedda Rushikonda,

Vishakhapatnam – 530045

...Respondent No. 1

M/s Seven Hills Health Care Pvt Ltd,

Rockdale Layout, Waltair Main Road,

Visakhapatnam – 530 002, A.P.

...Respondent No. 2

WITH

Company Appeal (AT) (CH) (Ins) No.361/2024

In the matter of:

State Bank of India

Through Resolution Professional Shri Chillale Rajesh,

SAMB – II Tulsiani Chambers, 1st Floor,

Free Press Journal Marg, Nariman Point

Mumbai – 400021

... Appellant

V

Dr. Renuka Rani Maganti,

II.No. 36, Balaji Baymount,

Tarakarama Layout, Pedda Rushikonda,

Vishakhapatnam 530 045, A.P.

Also at, 28, Kirlampudi Layout, Door No. 7-23-7,

Sanjeevayya Nagar, Vishakhapatnam – 530 023, A.P.

...Respondent No. 1

M/s Seven Hills Health Care Pvt Ltd,

Rockdale Layout, Waltair Main Road,

Visakhapatnam – 530 002, A.P.

...Respondent No. 2

Present :

For Appellant : Mr. Pranava Charan, Advocate

For Respondent : Mr. Dwarakesh Prabhakaran, Advocate for R1

J U D G M E N T
(Hybrid Mode)

Per : Justice Sharad Kumar Sharma, Member (Judicial):

1. These two Company Appeals, being Company Appeal (AT) (CH) (INS) No. 360 / 2024 & Company Appeal (AT) (CH) (INS) No. 361 / 2024. As they are based upon a common question of fact and law, for the purpose of brevity, they are being decided together.

2. The **Company Appeal (AT) (CH) (INS) No. 360 / 2024**, has been preferred by the Appellant, being aggrieved as against the order dated 22.07.2024, which has been passed by the Ld. Adjudicating Authority in CP (IB) / 49 / 95 / AMR / 2022.

The consequential effect of the impugned order under challenge has been, that, the application preferred by the appellant, State bank of India (the financial creditor) under Section 95 of I & B Code as against the respondent, Dr Jitendra Das Maganti has been rejected.

3. Similarly, in other **Company Appeal (AT) (CH) (INS) No. 361 / 2024**, the challenge is given by the Appellant to the impugned order of 22.07.2024, that was rendered by the Ld. NCLT, Amaravati Bench in CP (IB) / 50 / 95 / AMR /

2022, where, by virtue of the impugned order under challenge, the application filed under Section 95 of I & B Code by the appellant, State Bank of India as against the respondent Dr. Renuka Rani Maganti, has been rejected.

4. In these two Company Appeals, the Appellant, the Financial Creditor challenges the inference drawn by the Ld. Adjudicating Authority while rejecting the Application, which is that in the absence of there being any demand notice issued as per the provisions contained under Section 95 (4) of the I & B Code, and in the absence of non-service of the Demand Notice dated 17.08.2021 on the respective personal guarantors, the entire proceedings initiated under section 95 of I & B Code, 2016, would be vitiated.

5. The Ld. Counsel for the Financial Creditor, in these two Company Appeals contends that, (a) in a proceedings under Section 95 of the I & B Code, which has been initiated against the Personal Guarantors, no notice as such is required to be issued under Section 95 (4) of the Code in the light of the provisions contained under Section 95 itself, (b) even though there is no requirement to issue a demand notice, he has issued a demand notice and served the same in the address given as per the Aadhaar card of the respondents and therefore it has to be considered as a valid demand notice and (c) the personal guarantors have acknowledged the receipt of notice dated 17.08.2021 in their pleadings contained in the writ petition filed by them before the Honourable Apex court and therefore rejection of his

application under Section 95 of I & B Code, 2016 by the Adjudicating Authority is not correct. We will examine the contentions of the appellant one by one.

6. To decide on the first contention of the Appellant that the issuance of demand notice as provided under section 95(4)(b) of the code is only directory and not mandatory, we have to examine the provisions of section 95 threadbare.

Section 95 is extracted hereunder:

section 95. Application by creditor to initiate insolvency resolution process.-

(1) A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.

(2) a creditor may apply under sub-section (1) in relation to any partnership debt owed to him for initiating an insolvency resolution process against- (a) any one or more partners of the firm; or (b) the firm.

(3) where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the adjudicating authority in which the first mentioned application is pending for adjudication and such adjudicating authority may give such directions for consolidating the proceedings under the applications just.

(4) An application under sub-section (1) 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.

(5) The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.

(6) The application referred to in sub-section (1) shall be in such form and manner, and accompanied by such fee as may be prescribed.

(7) the details and documents required to be submitted under sub-section (4) shall be such as maybe specified. ''

7. Ld. Counsel for the Financial Creditor, i.e. the Appellant herein, submits that, in fact, as per the language that has been used under Sub-Section (4) of Section 95, it only prescribes for, as to what would be the necessary documents, which would accompany the application being preferred under Section 95 of the Code by the Creditor/ Creditors, in context of the debt that is owed by the Debtor to such Creditor or Creditors as on the date of the application and that it does not automatically follow that a notice of demand has to be served on the debtor / personal guarantor prior to initiation of proceedings under section 95 merely because there is a reference of service of notice of demand under sub-clause (1)(b) of sub-section (4) of Section 95 of I&B Code.

8. He further contends that unlike the provisions of section 8 of the Code where there is an explicit direction to the operational creditor to deliver a demand notice on the occurrence of a default prior to filing of the application under section 9 of the Code, there is no such explicit direction for serving a demand notice under the provisions of section 95(4) and therefore, service of the notice of demand prior to filing of the application under section 95(1) is only directory in nature and not mandatory.

9. He has further stated that though in Rule 7(1) of Insolvency and Bankruptcy (application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, it has been made mandatory that a demand notice under clause (b) of sub-section (4) of section 95 shall be served on the guarantor demanding payment of the amount of default, in Form B, such rules are sub-ordinate legislations and therefore, the provisions contained in the aforesaid Rule will not override the provisions of the Code. The aforesaid Rule 7 is extracted here under:

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

(2) *The application under sub-section (1) of section 95 shall be submitted in Form C, along with a fee of two thousand rupees.*

(3) *The creditor shall serve forthwith a copy of the application referred to in sub-rule (2) to the guarantor and the corporate debtor for whom the guarantor is a personal guarantor.*

(4) In case of a joint application, the creditors may nominate one amongst themselves to act on behalf of all the creditors. ’’

10. It is to be noted that under Section 239(1) of I & B Code, the power to make rules by notification, for carrying out the provisions of I&B Code has been vested with the Central Government (in this case, Govt. of India). Sub-section (2) of section 239 outlines the ambit and scope of rule-making power and specifically deals with the instant subject of insolvency resolution process under clause (n) of the said sub-section. Clause (n) of section 239(2) reads as under:

“(n) the form, the manner and the fee for making application for initiating the insolvency resolution process by the creditor under sub-section (6) of section 95. ’’

11. The counsel for the Appellant submits that the sub-clause (n) of sub-section (2) of Section 239 of I & B Code only permits making of Rules to prescribe the form, the manner and the fee for making application for initiating the IRP process by the Creditor under Section 95 of I & B Code and that it does not speak about making of the rules for the purposes of service of demand notice which is referred to under sub-section (4) of Section 95 and therefore, the ambit of rule-making powers will be limited to what has been prescribed under sub-clause (n) of sub-section (2) of Section 239, and since section 239(2)(n) does not explicitly mention service of demand notice, the prescription of Rule 7(1) that the demand notice

shall be served on the guarantor will only be directory in nature, being a provision that has not been explicitly provided in the Code.

12. But, as far as Section 95 of I & B Code is concerned, sub-section (6) of Section 95 unequivocally stipulates that the application to be made under section 95(1) shall be in such form and in such manner as may be prescribed and accordingly the necessary prescription has been made by way of Rule 7(1) of Insolvency and Bankruptcy (application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. In Rule 7(1) of the said Rules it has been prescribed that demand notice shall have to be served on the guarantor demanding payment of the amount in default in Form B, which is the format of the demand notice to be issued under Rule 7(1), is extracted hereunder: -

FORM B

[See rule 7(1)]

FORM OF DEMAND NOTICE

[Under rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019]

[Date]

To

[Name and address of the guarantor]

From

[Name and address of the creditor]

Subject: Demand notice in respect of unpaid debt in default due from [corporate debtor] under the Code.

Madam/Sir,

1. This letter is a demand notice of unpaid debt in default due from [name of corporate debtor].

2. Please find particulars of the unpaid debt in default below:

PARTICULARS OF DEBT		
1.	Total outstanding debt (including any interest or penalties)	
2.	Amount of debt in default	
3.	Date when the debt was due	
4.	Date when the default occurred	
5.	Nature of the debt	
6.	Secured debt including particulars of security held, the date of its creation, its estimated value as per the creditor (as applicable), and details of securities	
7.	Unsecured debt (as applicable)	
8.	Details of retention of title arrangements (if any) in respect of goods to which the debt refers (attach a copy)	
9.	Particulars of an order of a court, tribunal or arbitral panel adjudicating on the default, if any (attach a copy of the order)	
10.	Record of default with the information utility, if any (attach a copy)	
11.	Details of succession certificate, or probate of a WILL, or letter of administration, or court decree (as may be applicable), under the Indian Succession Act, 1925 (10 of 1925) (attach a copy)	
12.	Provision of law, contract or other document under which debt has become due (attach a copy)	
13.	A statement of bank account where deposits are made or credits received normally by the creditor in respect of the debt of the corporate debtor, from the date on which the debt was incurred	
14.	List of documents attached to this notice in order to prove the existence of debt and the amount in default	

3. If you believe that the debt has been repaid before the receipt of this notice, please demonstrate such repayment by sending to us, within fourteen days of receipt of this notice, the following:--

(a) an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the guarantor; or

(b) evidence of encashment of cheque for the unpaid amount issued by the guarantor; or

(c) an attested copy of any record that [name of the creditor] has received the payment.

4. The undersigned request you to unconditionally pay the unpaid debt in default in full within fourteen days from the receipt of this letter failing which insolvency resolution process, under the Code, shall be initiated against you

Yours sincerely,

Signature of creditor/person authorised to act on behalf of the creditor [Please enclose the authorisation document if this notice is being issued on behalf of the creditor]
--

Name in block letters

Address of person signing

Instructions

1. Please serve a copy of this notice on the guarantor, fourteen days in advance of filing an application under section 95 of the Code.

2. Please attach a copy of such served notice with the application made by the creditor to the Adjudicating Authority.

13. If the entire set of contents of the demand notice as provided under Form B as above is taken into consideration, they show that service of the demand notice as prescribed in Rule 7(1) of the said Rules is an essential pre-requisite for initiating IRP proceedings under section 95 of the Code. For instance, the set of instructions, given in the concluding part of the Form – B, prescribe for serving a copy of the demand notice on the Guarantor, fourteen days in advance of filing

of an Application under Section 95 of the Code and for attaching a copy of such **served notice** with the application made by the Creditor to the Adjudicating Authority.

14. We are of the view that there has to be a harmonious interpretation of the role and purpose of the demand notice as set down under Section 95(4)(b) of the Code with the prescriptions made under Rule 7(1) of the said Rules as framed under Section 239 of I&B Code and that, if both are read conjointly, it emerges that in accordance with sub-section (4) of Section 95, a document recording failure by the debtor to pay the debt within 14 days of the service of the demand notice has to accompany the application to be filed under section 95(1), that as per Rule 7(1) of Insolvency and Bankruptcy (application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, the said demand notice under section 95(4)(b) shall be served on the guarantor in Form B and that as per the instruction contained in Form B, such demand notice may be served 14 days in advance of filing of the application under section 95. This makes the service of notice of demand a condition precedent, for initiation of Insolvency resolution process (IRP) under Section 95(1) of I & B Code by filing an Application under Section 95. Since the Rules framed and the format of service of notice (Form B) forms part of the sub-ordinate legislation and they are in consonance with the I&B Code, service of notice of demand under Rule 7(1) becomes mandatory for the purpose

of initiating IRP and not directory as contended by the Ld. Counsel for the Appellant.

15. Accordingly, the argument that has been extended to the contrary at the behest of the Appellant from the point of view, that for the purposes of initiation of IRP under Section 95, no demand notice is required to be served is not acceptable by us, and is turned down.

16. The second contention of Ld. Counsel for the Appellant is that even though there is no requirement to issue a demand notice, he has issued a demand notice and served the same in the address given as per the Aadhaar card of the respondents and therefore it has to be considered as a due service of the demand notice as contemplated under section 95(4)(b). Ld. Adjudicating Authority as held to the contrary that the address to which the demand notice dated 17.08.2021 was delivered, is not the address that is mentioned in the guarantee agreement and that the proof of sending the demand notice to the above address also has not been filed by the creditor. Ld. Counsel for the Appellant has contended that, Section 95 proceedings could not have been dismissed, merely on the ground that there was no due service of demand notice on the Respondent i.e. the Personal Guarantor as he has produced the necessary documents including postal receipts to prove the drawing up of the demand notice dated 17.08.2021 and its dispatch on 03.09.2021.

17. For the purposes of convenience, the appellant pleadings are extracted hereunder:

7.	17.08.2021	<i>Demand notice (with incorrect address) filed along with proof of delivery in Annexure F - (Internal page 24 of Section 95 application).</i>
8	17.08.2021	<i>Demand Notice (with correct address) issued under Rule 7(1) of Insolvency and Bankruptcy (application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. (filed along with additional documents application).</i>
9	03.09.2021	<i>Postal receipt available proving the dispatch of the Notice (internal page 26 of Section 95 application) Renuka Rani Maganti – (RM720292576IN) Dr. Jitendra Das Maganti – RM720292580IN</i>

18. There has been various controversies as argued by both the Counsels pertaining to the reference of addresses mainly given in the demand notice of 17.08.2021. The Appellant has contended that he has served the demand notice on the address as given in the Aadhar Card of the personal guarantors. The Respondent had attempted to prove it otherwise contending thereof, that, the address of the Respondent as given in various documents and correspondences which has been referred to by the Appellant vary from document to document, which will substantiate their stand that the notice purportedly issued on 17.08.2021 was not served. The Respondent has attempted to draw an inference by his arguments that, it cannot be said that there had been a satisfactory service

of the demand notice in itself, owing to the variance of addresses, particularly in context of the ``Pin Code`` that is given in the Guarantee Agreement and in the delivery address of the demand notice of 17.08.2021. He has further argued that since there was no clarity in the service of demand notice, due to variance of address and Pin Code, the entire proceedings under Section 95 of the Code would be vitiated, because, the Appellant has failed to establish 'due' service of the demand notice and has failed to comply with the prescribed parameters provided under sub-clause (b) of sub-section (4) of Section 95.

19. Ld. Adjudicating Authority has tended to agree with the contention of the Respondent that there is no 'due' service of the notice of demand. But, the admitted fact remains, that there were the Writ proceedings, being Writ Petition (C) No. 843 / 2022 (Dr. Jitendra Das Maganti V. Union of India) and Writ Petition No. 941 / 2022 (Dr. Renuka Rani Maganti V. Union of India) respectively which were preferred by the Respondents before the Hon'ble Apex Court under Article 32 of the Constitution of India, challenging the constitutional validity of Sections 95 – 100 of I & B Code, 2016, that the pleading raised by them in the said Writ Petitions were their own case, in which the Appellant had no role in raising pleadings and that the said Writ Petitions were preferred before the Hon'ble Apex Court in September 2022, meaning thereby, by that point of time, the aspect pertaining to the service of notice of 17.08.2021, was already an issue which stood concluded.

20. The Respondents had preferred the above Writ Petitions, under Article 32 of the Constitution of India, before Hon'ble Apex Court praying for the reliefs as extracted below:

W.P. No. 843 / 2022 , W.P. No. 941 / 2022:

`i) to issue any appropriate writ(s), order(s) or direction(s) under Article 32 of the Constitution of India declaring Sections 95, 96, 97, 99 and 100 of the IBC as being ultra vires under Articles 14, 19 (1) (g) and 21 of the Constitution of India, illegal, void and arbitrary and to set aside the same;

ii) to issue an appropriate writ(s), order(s) or direction(s) in the nature of prohibition restraining the respondents from proceedings restraining the respondents from proceedings with the Insolvency Resolution Process with respect to the Application filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 against the petitioner before the Hon'ble National Company Law Tribunal, Amaravati Bench at Hyderabad;

iii) to restrain the respondents from proceeding further with any of the processes as provided under Sections 95, 97, 99 and 100 of the Insolvency and Bankruptcy Code, 2016;

iv) pass such other order or orders as this Hon'ble Court may deem fit to grant in the circumstances of the case.

AND FOR WHICH ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVERY PRAY. ''

A number of Writ Petitions with similar prayer were also filed and after hearing the parties in detail, Hon'ble Apex Court upheld the vires of Section 95 holding to be the intra-vires, thereby permitting the creditors to take recourse to the provisions section 95 of the Code to initiate IRP against the personal guarantors. Hence, so far as the provisions contained under Section 95 of I & B

Code, 2016, is concerned which is inclusive of sub-section (4) of Section 95 had been held to be constitutionally valid in the eyes of law.

21. In the proceedings before the Hon'ble Apex Court, the Respondents herein, in their own pleading as raised in Para 7 of the Writ Petitions, had raised the following pleadings:

“(xiii) That the Financial Creditor-State Bank of India on 04.08.2021 has appointed Mr. Chillale Rajesh as its Insolvency Professional for taking up individual insolvency assignment against the personal guarantors in respect of Corporate Debtor-M/s. Sevenhills Healthcare Pvt. Ltd.

(xiv) That the Financial Creditor-State Bank of India issued demand notice to the petitioner-Personal Guarantor in respect of unpaid debt in default due from M/s. Sevenhills Health Care Pvt. Ltd.-Corporate Debtor for an Amount of Rs.129,58,95,550.79/- on 17.08.2021.

(xv) That the Financial Creditor-State Bank of India through its Resolution Professional Mr. Chillale Rajesh has instituted an Application under Section 95 read with 7 (2) of Insolvency & Bankruptcy Code, 2016 (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtors) Rules, 2019 in Form-C before the Hon'ble National Company Law Tribunal, Amaravati Bench at Hyderabad to initiate Insolvency Resolution Process against the Personal Guarantor on 07.04.2022.”

22. It can be seen that as per Para 7 (XIV) of their Writ Petition the Respondents themselves have come up with the case that, the Financial Creditor, the Appellant herein, had issued demand notice to the Petitioner / Personal Guarantor on 17.08.2021, in respect of the unpaid debt amounting to Rs.129,58,95,550.79. This reference to the notice of demand for payment of the

unpaid debt amounts to admission of receipt of the demand notice and thus service of the demand notice remains a fact, which stands admitted by the Respondents.

23. It might be that the Writ Petitions were decided limited to the reliefs sought for, for the purposes of determining the Constitutional validity of Section 95 of I & B Code, 2016, but the fact remains that on account of the pleadings raised thereof, it is an admitted case of the Respondents before the Hon'ble Apex Court that, there was a demand notice of 17.08.2021, that the demand notice was served upon the Respondents and that they were in the knowledge of the said demand notice and that, it is only because of knowledge of the said demand notice, it found reference in the pleadings raised by the Respondents. This fact has not been denied by the Respondents so far.

24. Under any legal procedure, admission of a particular fact is the best evidence. All those technical arguments that has been extended by the Ld. Counsel for the Respondents on the basis of variance in the description of addresses as contained in various documents, which the Respondents have referred to during the course of argument will be of no avail, in getting a relief from the proceedings under Section 95 of I & B Code, particularly when the service of notice of demand is a fact which stands admitted by the Respondents in their own pleadings before none other than the Hon'ble Apex Court and that too in a proceedings under Article 32 of the Constitution of India. Hence, they

now cannot rescind from their own admission of knowledge and service of notice as provided under Section 95 (4) of I & B Code.

25. Ld. Adjudicating Authority has placed excessive reliance on the concept of 'due' service of the demand notice as laid down in the statute and the documents including the guarantee agreement. It must be kept in mind that service of the demand notice at the correct address is mandated to ensure that the Personal Guarantor is imparted with the knowledge about the impending proceedings which are being initiated. In this case the Respondents have been imparted with the knowledge and that is why they had been able to file the Writ Petition before Hon'ble Apex Court. In that eventuality, when knowledge is already imparted and it is fully evident, harping on technicalities of service of the demand notice appears to be too hyper-technical and redundant, especially when seen from the context and the objective of I&B Code.

26. As far as the arguments pertaining to the contents of the notice, the amount of default and the recoveries sought to be made is concerned, it is not a fact disputed by the Respondent and even if it is, then too that has to be considered by the Ld. Adjudicating Authority based on merits, after giving opportunity of hearing to both the parties.

27. In that eventuality, the plea of alleged non-service of demand notice is absolutely contrary to the own case of the Respondents, when, in the Writ Petitions preferred by them in September 2022 before the Hon'ble Apex Court

immediately after service of notice of demand dated 17.08.2021, the Respondents had admitted in their pleadings that, notice was served upon them and if that be so, the finding recorded by the Ld. Tribunal qua the service of demand notice and its knowledge, can be said to be faulted, and contrary to the admitted case of the Respondents.

28. Thus, the very finding on the basis of which the conclusion has been drawn by the Ld. Tribunal that, there was no service of demand notice on the Respondents and hence, the proceedings under Section 95 of I & B Code, 2016, would be vitiated, is unfounded and amounts to incorrect interpretation of the entire records, which were there before the Ld. Tribunal and particularly in context of the admission, by way of pleading made by the Respondents.

29. On this short premise itself, the impugned order would stand quashed. The presumption would be that, the notice of demand / default under clause (b) of sub-section (4) of Section 95 of I & B Code, 2016, has been admittedly served upon the Respondents. Hence, the proceedings under Section 95 of I & B Code, 2016, cannot be said to have been vitiated in any manner on the grounds that, notice of demand was not served, because in the finding recorded by us, we have concluded that, the demand notice was served upon the Respondents in accordance with their own case.

30. Hence, the impugned orders are quashed and the proceedings are remanded back to the Ld. Adjudicating Authority, to be proceeded further in accordance

with law and to be decided on merits. All pending Interlocutory Applications, if any, would stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

24/10/2025

SR/YS/MS/AK