IN THE NATIONAL COMPANY LAW TRIBUNAL

DIVISION BENCH (COURT NO.-II)

KOLKATA

I.A (IB) No. 887/KB/2024

In

C.P (IB) No. 260/KB/2023

An application under Section 95(1) of the Insolvency and Bankruptcy 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 Debtor) Rules, 2019.

IN THE MATTER OF:

STATE BANK OF INDIA

...Financial Creditor

-VERSUS-

RAJESH SONTHALIA

...Personal Guarantor

-AND-

An Application under Section 99 of the Insolvency and Bankruptcy Code, 2016.

IN THE MATTER OF:

DAULAT RESOLUTION SERVICES PRIVATE LIMITED, Resolution Professional of Rajesh Sonthalia, having registered office at 33, Shakespeare Sarani, Kolkata-700017.

...Resolution Professional / Applicant

Coram:

Shri. Labh Singh, Member (Judicial)

Ms. Rekha Kantilal Shah, Member (Technical)

Appearances: (via Physical / Hybrid Mode):

For the Financial Creditor:

Ms. Aparajita Rao, Adv.

Ms. Nabanita Dutta, Adv.

For the Personal Guarantor:

Mr. Pankaj Agarwal, Adv.

Mr. Soham Saha, Adv.

For the Resolution Professional:

Mr. Snehasish Chakraborty, Adv.

Date of Pronouncement: 03.11.2026

O R D E R

Per: Ms. Rekha Kantilal Shah, Member (Technical)

1. The Court convened through Hybrid/physical mode.

2. Both the petition and application are being considered together through this common order.

I.A. (IB) No. 887/KB/2024

3. This application has been filed by the Resolution Professional ("RP") *inter alia* seeking following reliefs:

I. To take on record the report u/s 99(1);

II. To pass any such further order/ orders as this Hon'ble Bench deems fit and proper in the interest;

4. **BACKGROUND OF THE CASE:**

I. The Applicant has been appointed as the RP in the Insolvency Resolution Process of the Personal Guarantor by an order dated 11.03.2024[1] passed by this Adjudicating Authority in C.P (IB) No. 260/KB/2023.

II. The Applicant seeks to bring on record the Report[2] of RP under Section 99(7) of the Insolvency and Bankruptcy Code, 2016 ("IBC") prepared by the Applicant in respect of the Insolvency Resolution Process of the Personal Guarantor.

5. **ORDER**

I. We are inclined to take on record the Report under Section 99(7) of IBC, 2016, filed by the RP in the Insolvency Resolution Process of the Personal Guarantor, Mr. Rajesh Sonthalia.

II. Accordingly, **I.A. (IB) No. 887/KB/2024** is **allowed** and **disposed of**.

[1] Page No: 31-32
[2] Annexure: A (Page No: 16-30)

C.P (IB) No. 260/KB/2023

1. This Company Petition has been preferred by the **State Bank of India** through its authorized Representative Mr. Gunadhar Saha[3] (Assistant General Manager) to seek initiation of Insolvency Resolution Process against **Mr. Rajesh Sonthalia** (herein referred to as 'Respondent') Personal Guarantor of **M/s Enfield Solar Energy Private Limited** (herein referred to as 'Principal Borrower') under Section 95(1) of the IBC, 2016, read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019 (herein referred to as "PG Rules, 2019").
2. The amount in debt as mentioned in Part-III of the petition is **Rs. 97.28 Crores** (Principal: **Rs. 49.38 Crore** and Accrued interest of **Rs. 47.90 Crore**) as on 31.05.2025 plus future interest and charges.
3. The Financial Creditor have proposed the name of Mr. Daulat Ram Jain for appointment as RP. This Adjudicating Authority vide order dated 11.03.2024 observed that Mr. Daulat Ram Jain has crossed the age of 70 years and is not eligible for taking up assignments as RP and appointed Insolvency Professional Entity **"Daulat Resolution Services Private Limited"** having IBBI

[3] Page No: 163-164

Registration No. IBBI/IPE-0156/IPA-1/2023-24/50062 as RP and to file the report in terms of Section 97 within ten (10) days.

4. The RP had filed an application **I.A (IB) No. 887/KB/2024** on 15.04.2024 to take on record the Report under Section 99(7) of IBC, 2016 and which is taken on record through this common order.

5. The RP has vide her report dated 07.04.2024 which is attached at Pages No. 16-30 in I.A. (IB) No. 887/KB/2024 recommended the following:

BRIEF SUMMARY OF THE SECTION 99 REPORT OF THE RP

Name of the Resolution Professional (RP)	Daulat Resolution Services Pvt Ltd. (Insolvency Professional Entity)
Name of the Debtor (i.e., Personal Guarantor to Corporate Debtor)	**Sri Rajesh Sonthalia S/o Late Satyadeo Sonthalia**
Name of the Applicant (creditor)	State Bank of India
Date of Application filed by the Applicant with the NCLT	15.09.2023
Date of the order of Hon'ble NCLT for appointment of RP	Order date 11.03.2024 Order received on 21.03.2024
Name of the Corporate Debtor for whose loans the Debtor has given Personal Guarantee	**M/s. Enfield Solar Energy Ltd.**
Nature of Transaction between the Applicant and the Corporate Debtor	Loan given by the Applicant to the Corporate Debtor for which Debtor has given Personal Guarantee
IBC Status of the	Sold as a going concern in

Corporate Debtor (CD)	liquidation
Whether personal guarantor is a Resident Indian	Yes
Whether Debtor is Director of the Corporate Debtor	Personal Guarantor was director of the corporate debtor at all the relevant time but resigned from the directorship on 29/05/2018
Amount of Default of the Corporate Debtor as per the application filed/ Demand Notice	Total outstanding Rs.132.03 crore as per Demand notice. The financial creditor did not received any amount after filing this application.
Annual Income of the Debtor in last years as per the application filed before the Hon'ble NCLT	Not Known
Summary of Assets and Liabilities of the Debtor as per the Application Filed	Not provided in the Application
Whether the application filed under Section 95 of the Code is complete	Yes, the application filed by the Creditor under Section 95 of the Code, 2016 is complete.
Whether Form B was sent to the Debtor required by the Law	Yes the Demand Notice was sent to all the known addresses of the personal guarantor but each and every notice was returned undelivered. Copy of Demand Notice in Form B along with postal track record is enclosed as Appendix 2.
Date when RP sought Information/Clarifications from the Debtor	Yes. The communication was sent to last known addresses of the debtor but returned undelivered. The email also not delivered. Copy of communications sent to the personal guarantor along with postal track record is enclosed as Appendix 3.
Whether Debtor has	Not yet

Questioned /Challenged the application filed by the Creditor	
Whether Debtor is eligible for Fresh Start Process	No
Recommendations of the RP	**Recommended to Admit the Application**

6. After the appointment of the RP the following actions were taken. The extract text are reproduced herein below:

PROCEDURE PERFORMED

S.No.	Activity	Procedures Performed
1.	Examination/ Review of Section 95 Application filed by Creditor to initiate the insolvency resolution process of the Debtor who is Personal Guarantor of Corporate Debtor.	Copy of the Application (as provided by the counsel of the applicant) filed by the creditor before the Hon'ble National Company Law Tribunal has been examined by the RP to reach a conclusion for giving necessary recommendations to the Hon'ble NCLT.
2.	Information/documents and clarification from the creditor and/or the Debtor.	A communication was sent by RP to the Debtor and the Creditor to seek information/ clarifications.
3.	Review of the information and documents provided by the creditor and debtor	The communications was sent by the RP to the addresses provided in the application.
4.	Conclusion and recommendation by the RP.	Based on the above steps the report is concluded and an opinion is formed by the RP

S.No.	Activity	Procedures Performed
		whether to recommend acceptance or rejection of the application in this report.

7. The RP has vide his report dated 07.04.2024 has recommended admission of the personal guarantor into the Insolvency resolution process. The relevant portion of his report has been extracted and appended below for the sake of convenience.

"6. OPINION

Given the above, I, the undersigned Resolution Professional appointed by the Hon'ble Adjudicating Authority for Insolvency Resolution Process of the Debtor who is Personal Guarantor of the Corporate Debtor, hereby confirm that I have perused/examined the application filed by the Creditor, State Bank of India under Section 95 of the Code, 2016 along with all the underlying documents and annexures and have formed the opinion to recommend the same for its admission under sub section (7) of Section 99 of the IBC. My recommendation for admission of the application before the Hon'ble Adjudicating Authority is based on the following grounds:

a) The Insolvency Application has been filed to initiate the Insolvency Resolution Process of Sri Rajesh Sonthalia, in the requisite form, Form C, in terms of the Sub Rule 2 of Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, supported by requisite fee and documents.

b) The debtors and creditors relationship is established on the basis of agreements/ deed executed by M/s Enfield Solar Energy Ltd, the Corporate Debtor and by Mr. Rajesh Sonthalia, the Personal Guarantor.

c) The Guarantor, Mr. Rajesh Sonthalia is personally liable to pay the debt in default of Corporate Debtor M/s Enfield Solar Energy Ltd.

d) A notice in Form B as per Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 which was sent by the Creditor to the Debtor before filing the application.

e) The application for initiating Insolvency Resolution Process of Personal Guarantors to Corporate Debtors satisfies the requirements set out in Section 95 of the Code and information asked from the creditors has been provided by them.

f) The Debtor/ Personal Guarantor, is not eligible for the fresh start Process under Chapter II of Part III of the Code.

7. RECOMMENDATION

In view of the above and the fact that the application filed by the Creditor complies with the requirement of Section 95 and the debtor has not made repayment of the debt as per documents available, the undersigned RP hereby recommend to admit the application under Section 100 of the IBC.”

8. **REPLY AFFIDAVIT ON BEHALF OF THE PERSONAL GUARANTOR TO THE REPORT FILED BY THE RP UNDER SECTION 99 OF THE CODE**

I. Learned Counsel appearing on behalf of the Personal Guarantor submitted that the application filed by the State Bank of India under Section 95 of the Code is misconceived, devoid of merit and hopelessly barred by limitation, and is, therefore, liable to be dismissed in limine.

II. It was submitted that the principal borrower, M/s Enfield Solar Energy Limited, had availed a term loan of ₹20 crore and a Letter of Credit facility of ₹12 crore, sanctioned on 6 September 2010. Learned Counsel contended that the deed of guarantee was executed subsequently on 8 November 2010 and that the subsequent execution of the guarantee, allegedly without consideration, could not bind the Personal Guarantor in respect of the facilities already sanctioned.

III. Learned Counsel further submitted that additional credit facilities sanctioned in November 2010, on 24 August 2011 and on 10 August 2012 were not secured by corresponding deeds of guarantee executed contemporaneously with the respective sanctions. It was contended that the subsequent deeds of guarantee could not extend the Personal Guarantor’s liability to such additional facilities and that the enhancement of credit limits without his consent constituted a variation of

the contractual terms, thereby discharging him from liability in respect of the additional facilities.

IV. It was further contended that the credit facilities were restructured pursuant to agreements dated 28 January 2013 and 14 August 2013 without the consent of the Personal Guarantor and without execution of corresponding deeds of guarantee contemporaneously with the restructuring. Learned Counsel submitted that the deed of guarantee dated 30 March 2013 was executed subsequent to the restructuring agreement dated 28 January 2013 and allegedly without consideration. It was, therefore, contended that the Personal Guarantor stood discharged from liability in respect of the restructured facilities.

V. On the question of limitation, Learned Counsel submitted that the loan account of the principal borrower was classified as a Non-Performing Asset (NPA) on 31 January 2013, while reference was also made to 28 August 2014 as the date of NPA classification. Relying upon the balance confirmation dated 31 March 2014, it was contended that the application, having been filed in 2023, was beyond the prescribed period of limitation. It was further submitted that the admission of the principal borrower into insolvency on 27 June 2019 did not, by itself, extend the period of limitation against the Personal Guarantor.

VI. Learned Counsel further pointed out that the Applicant Bank had earlier instituted Company Petition No. CP (IB) 33 of 2022, which was withdrawn on 19 May 2022, and thereafter filed the present petition. It was contended that the withdrawal of the earlier petition did not cure the alleged defect of limitation and that the present application was consequently barred by limitation.

VII. Learned Counsel also submitted that the application did not adequately disclose the invocation of the guarantee and that the guarantee had not been duly invoked. It was further contended that the application suffered from deficiencies in material particulars and documentary support, including defects in Form B, and that the Applicant Bank was not entitled to the interim moratorium as claimed.

VIII. In view of the aforesaid submissions, Learned Counsel appearing on behalf of the Personal Guarantor prayed that the application filed by the State Bank of India under Section 95 of the Code be dismissed as misconceived, not maintainable and barred by limitation.

9. **REJOINDER ON BEHALF OF THE RESOLUTION PROFESSIONAL**

The Resolution Professional, in her rejoinder to the affidavit in opposition filed by the Personal Guarantor, denied the allegations and contentions raised therein, save and except

those admitted or forming part of the record, and submitted as follows:

I. **On limitation**, it was submitted that the date of default of the principal borrower does not necessarily determine the date of default of the Personal Guarantor, as the same depends upon the terms of the deed of guarantee. Reliance was placed upon Syndicate Bank v. Channaveerappa Beleri & Ors. It was further contended that, after excluding the period from 15 March 2020 to 28 February 2022 in terms of the directions of the Hon'ble Supreme Court, the claim could not be held to be barred by limitation.

II. It was further submitted that the earlier Company Petition No. CP (IB) 33 of 2022 was withdrawn on account of technical defects and not limitation, with liberty to file a fresh petition pursuant to the order dated 19 May 2022.

III. **Regarding the deeds of guarantee**, the Resolution Professional contended that the credit facilities were extended for the business requirements of the principal borrower and constituted sufficient consideration. It was further submitted that the Personal Guarantor, being a Director of the principal borrower, was aware of the credit facilities and their subsequent enhancement and restructuring. Reliance was also placed upon the pledge of 64,30,000 equity shares of the principal borrower in favour of SBI as security for repayment of the facilities.

IV. It was further submitted that the Personal Guarantor had executed deeds of guarantee dated 8 November 2010, 30 December 2010, 11 August 2012, 30 March 2013 and 14 August 2013. In particular, reliance was placed upon the deed of guarantee dated 14 August 2013, executed in connection with the Master Restructuring Agreement of the same date, and Clause 23 thereof, which provides for a continuing guarantee covering the restructured facilities and related dues.

V. **Regarding invocation of the guarantee,** the Resolution Professional submitted that a demand notice in Form B for payment of outstanding dues of ₹132.03 crore was issued on 25 May 2022. Reliance was placed upon Clause 25 of the deed of guarantee to contend that limitation was to be reckoned from the written demand made upon the Personal Guarantor.

VI. The Resolution Professional further denied that Form B was defective, contending that the Personal Guarantor had failed to establish any specific defect therein. The entitlement of the Financial Creditor to seek an interim moratorium in the proceedings under Section 95 of the Code was also asserted.

VII. Accordingly, the Resolution Professional prayed for rejection of the objections raised by the Personal Guarantor and for admission of the proceedings initiated under Section 95 of the IBC.

10. **ANALYSIS AND FINDINGS**

I. We have considered the submissions of the Applicant and perused the Report received under Section 99 of IBC, 2016 submitted by the RP recommending admission of the Section 95 Application and initiation of the insolvency resolution process against the Personal Guarantor and also considered the submissions made by the Personal Guarantor and heard the Ld. Counsels of the respective parties.

II. During the course of the hearing, maintainability of the present Application has been challenged by the Personal Guarantor claiming that the guarantee against him was never invoked in terms of the Deed of Guarantee, and therefore the proceeding initiated against him under section 95(1) of the IBC, 2016 is not maintainable.

III. The RP and Financial Creditor contents that demand notice issued in Form-B shall be treated as Invocation of Guarantee in terms of Clause-23 and 25 of the Deed of Guarantee dated 14.08.2013[4].

IV. The primary argument as raised by the Learned Counsel for the Respondent before us is on the maintainability of the present Application under section 95 of the IBC as discussed in previous para, we decided to deal with this point of maintainability before deciding other issues involved on

[4] Annexure-B at Pages: 69-83 of RP's Rejoinder

admission of the present Application for the initiation of insolvency resolution process of the Respondent/Personal Guarantor

V. It is noted that Mr. Rajesh Sonthalia executed deeds of guarantee dated 08.11.2010, 30.12.2010, 03.12.2011, 11.08.2012 and 30.03.2013 in respect of various credit facilities sanctioned to the Corporate Debtor, M/s Enfield Solar Energy Limited, under sanction letters dated 06.09.2010, 20.10.2010, 24.08.2011, 01.12.2011 and 28.01.2013. The Corporate Debtor committed default in repayment of the said credit facilities on 31.03.2013.

VI. Thereafter, the State Bank of India filed Original Application No. 565 of 2015 under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993, before the DRT, Kolkata Bench-I, which remains pending adjudication. Subsequently, the Corporate Debtor was admitted into CIRP under Section 7 of the Code vide order dated 27.06.2019 in C.P. (IB) No. 354/KB/2018. Upon failure to receive any resolution plan, this Adjudicating Authority ordered liquidation of the Corporate Debtor on 10.01.2020, and the Corporate Debtor was thereafter sold as a going concern in liquidation vide order dated 22.10.2021.

VII. Subsequently, the Financial Creditor issued a demand notice in Form B dated 25.05.2022 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, and thereafter filed the present application under Section 95 of the Code on 15.09.2023.

VIII. In the foregoing factual backdrop, it is necessary to examine the relevant provisions of the IBC and PG Rules, 2019, particularly section 95 of the IBC, Rule 3(1) (e) and Rule 7(1) of the PG Rules, 2019. The relevant provision is reproduced below for ready reference-

"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 as it thinks 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 may be specified.

Rule 7. Application by creditor. –

(1) A demand notice under clause (b) of subsection (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.

Rule 3(1)(e)- *"guarantor" means a debtor who is a personal guarantor to a corporate debtor and in respect of whom guarantee has been invoked by the creditor and remains unpaid in full or part;"*

IX. In accordance with the above provisions, for initiating proceeding against the Personal Guarantor under Section 95(1) of the IBC, the conditions enumerated in its sub-section (4) is to be fulfilled, which includes in its sub-clause(b) as regards the failure of the Personal Guarantor being a debtor to pay the debt within a period of fourteen days of the service of the notice of demand that is issued under Rule 7(1) as per which is issued to the Guarantor as defined under Rule 3(1)(e). Rule 3(1)(e) provides that that "guarantor" means a debtor who is a personal guarantor to a corporate debtor and in respect of whom guarantee has been invoked by the creditor and remains unpaid in full or part. Therefore, for the guarantor to whom notice under Rule 7(1) can be issued, two conditions have to be satisfied, first he should be a personal guarantor to the corporate debtor, and second in respect of whom guarantee has been invoked by the creditor and remains unpaid in full or part. Thus, invocation of the guarantee is a mandatory requirement against the personal guarantor before issuing of notice in Form B under Rule 7(1), and only after such invocation can the statutory requirement of serving the demand

notice arise in Form B under Rule 7(1) before filing of Application under Section 95(1).

X. Reliance is placed on the order of the Hon'ble NCLAT in ***State Bank of India Vs. Deepak Kumar Singhania***, dated 28.02.2025, reported at **(2025) ibclaw.in 153 NCLAT**, wherein the Hon'ble Appellate Tribunal held that demand notice under Rule 7(1) of the PG Rules, 2019, cannot be treated as notice invoking the guarantee. Relevant para of the order is extracted below-

> *"27. In view of the foregoing discussion, we are not persuaded to accept the submission of the Appellant that Notice under Rule 7 (1) issued in Form-B to the Guarantor, demanding repayment of the default amount, has to be treated as Notice for invoking guarantee. Default before issuance of Notice under Rule 7(1), must exist on the part of the Guarantor. Hence, we reject the submission of the Appellant that Notice under Rule 7, sub-rule (1) is a Notice, invoking the guarantee. We, thus, do not find any error in the order of the Adjudicating Authority, rejecting Section 95 Application filed by the SBI....."*
>
> **(Emphasis Added)**

XI. Further reliance is placed upon Co-ordinate Bench of NCLT Hyderabad in the case of ***Union Bank of India Vs. Smt. K. Sridevi***, dated 13.08.2024, reported at **(2024) ibclaw.in 722 NCLT**, wherein the bench held that "due invocation" of the personal guarantee and due service of the demand notice are prerequisites for initiation of proceedings under Section 95. Relevant Para of the order is extracted below-

> ***"13.*** *Therefore, unhesitatingly, the* sine qua non*, for initiation of insolvency resolution under section 95 IB Code 2016 is the* 'due invocation' *of the personal guarantee executed by the respondent/ guarantor. The 'burden' lies on the applicant/creditor to establish that the subject general form of guarantee dated 04.05.2015 and guarantee dated 27.06.2017 executed by K.Sridevi along with other Personal Guarantors has been duly invoked,* lest *the "debt" under the guarantee payable by the guarantor will not exist and the application under section 95 of I&B Code, 2016 will be liable for* rejection.*"*
>
> **(Emphasis Added)**

XII. Agreeing with the above judicial pronouncements and also taking into account the relevant provisions, we are also of the view that before initiating action under the IBC, 2016 against the Personal Guarantor, invoking of guarantee against the Personal Guarantor as per the terms of the Deed of Guarantee is a mandatory requirement.

XIII. The Applicant Bank could not produce any such notice issued by it to the Personal Guarantor vide which it invoked the guarantee against the Personal Guarantor.

XIV. Now coming to the contention of the RP that demand notice in Form-B dated 25.05.2022 constitute invocation of guarantee and fulfill the requirement of Clause-25 of the deed of guarantee dated 14.08.2013.

XV. For a ready reference, the Clause (2) and clause (25) of the Deed of Guarantee regarding invocation of guarantee and service of the notice of guarantee, is also reproduced as under :-

> ***"Clause 2:*** *In the event of any default on the part of the Borrower in payment/repayment of any of the monies referred to above, or in the event of any default on the part of the Borrower to comply with or perform any of the terms, conditions and covenants contained in the said Loan Agreements and or the Master Restructuring Agreement, the Guarantors shall, upon demand by the Lenders / Monitoring Institution, forthwith pay to the Lenders without demur all the amounts payable by the Borrower under the Loan Agreements /Master Restructuring Agreement/ Restructuring package.*
>
> ***Clause 25:*** *Any demand for payment or notice under this Guarantee shall be sufficiently given if sent by post to or left at the last known address of the Guarantors or his/their personal representative(s) as the case may be, and it shall be assumed to have reached the addressee in the course of post, if given by post, and no period of limitation shall commence to run in favour of the Guarantors until after demand for payment in writing shall have been made or given as aforesaid and in proving such notice when sent by post it shall be sufficiently proved that the envelope containing the notice was posted and a certificate by any of the responsible officers of the Lenders that to the best of his knowledge and belief, the envelope containing the said notice was so posted shall be conclusive as against the Guarantors, even though it was returned unserved on account of refusal of the Guarantors or otherwise."*

XVI. The demand notice in Form-B dated 25.05.2022 cannot be said to be demand notice by any stretch of imagination as such form are issued for the compliance under the IBC. The word "any" used in clause 25 is with respect to service of any such demand notice issued in terms of clause 2 thus Form-B cannot be said to be any demand notice issued as contemplated in clause 2 of the Deed of the Guarantee.

XVII. In view of our above findings, we are of the considered opinion that the Applicant has failed to comply with Clause 2 of the deed of guarantee dated 14.08.2013 executed by it with the Personal Guarantor, which specifically states that in the event of any default on the part of the Borrower, Respondent/Personal Guarantor shall upon demand, forthwith pay to the Lender without demur all the amounts payable by the Borrower to it under the said credit facilities.

XVIII. Now we place our reliance on ***Archana Deepak Wani Vs. Indian Bank and Anr***., dated 26.04.2023, reported at **(2023) ibclaw.in 287 NCLAT**, wherein Hon'ble NCLAT held that liability of the Guarantor must be determined strictly in terms of the Deed of Guarantee. In paragraph 26, following has been laid down:

> *"26 The scheme of I&B Code clearly indicate that both the Principal Borrower and the Guarantor become liable to pay the amount when the default is committed. When default is committed by the Principal Borrower the amount becomes due not only against the Principal Borrower but also against*

the Corporate Guarantor, which is the scheme of the I&B Code. When we read with as is delineated by Section 3(11) of the Code, debt becomes due both on Principal Borrower and the Guarantor, as noted above. The definition of default under Section 3(12) in addition to expression 'due' occurring in Section 3(11) uses two additional expressions i.e "payable" and "is not paid by the debtor or corporate debtor". The expression 'is not paid by the debtor' has to be given some meaning. As laid down by the Hon'ble Supreme Court in ***"Syndicate Bank vs. Channaveerappa Beleri & Ors." (supra),*** *a guarantor's liability depends on terms of his contract. There can be default by the Principal Borrower and the Guarantor on the same date or date of default for both may be different depending on the terms of contract of guarantee. It is well settled that the loan agreement with the Principal Borrower and the Bank as well as Deed of Guarantee between the Bank and the Guarantor are two different transactions and the Guarantor's liability has to be read from the Deed of Guarantee."*

(Emphasis Added)

XIX. In light of the aforementioned ruling, in the present case, as the guarantee was not invoked in accordance with the applicable provisions by issuing demand notice in terms of clause 2 of the Deed of Guarantee to the Personal Guarantor after default is committed by the Corporate Debtor in repayment of its debt, it is quite clear that no unpaid debt remains in default in respect of the Personal Guarantor due to being unpaid in full or part. Therefore, the Respondent as defined in Rule 3(1) (e)

would not be a Guarantor to whom notice under Rule 7(1) can be issued.

XX. According to above discussions, we are satisfied that the Respondent shall not fall within the definition of **"Guarantor"** as defined in Rule 3(1) (e) of the PG Rules, 2019 as the Applicant has failed to invoke the guarantee on the default of the Corporate Debtor in paying the outstanding debt, thus, the present application does not satisfy the mandatory prerequisites under Section 95 of the IBC.

11. Therefore, the **CP (IB) No. 260/KB/2023** filed under Section 95 of the IBC, 2016 is **not maintainable** and is hereby **dismissed.**

12. As the present Application has not been found maintainable on the preliminary issue of the validity of issuance of notice under Rule 7(1), other issues raised on admission of the Application have not been dealt with by us for adjudication.

13. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

14. Certified copy of the order may be issued, if applied for, upon compliance of all requisite formalities.

(Rekha Kantilal Shah)
Member (Technical)

(Labh Singh)
Member (Judicial)

Order signed on the 3rd day of November, 2026.

S.T. (LRA)