



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I**

C.P. (IB) NO. 1285/MB/2022

Under Section 100 *r/w*
Section 95 of the Insolvency
& Bankruptcy Code, 2016
r/w Rule 7 (2) of the
Insolvency and Bankruptcy
(Application to the
Adjudicating Authority for
Insolvency Resolution
Process for Personal
Guarantors to Corporate
Debtors), Rules, 2019.

In the matter of

Punjab National Bank
...Applicant/Financial
Creditor

Versus

Sanjeeb Ranjeet Das
...Respondent/Personal
Guarantor

Order pronounced on 03.10.2024

Coram:

Hon'ble Member (Judicial) : Justice V. G. Bisht (Retd.)
Hon'ble Member (Technical) : Sh. Prabhat Kumar



Appearances:

For the Applicant/
Financial Creditor : Ms. Ruchita Jain a/w Yash
Dhruva i/b MDP &
Partners

For the Resolution
Professional : Mr. Abhishek Thoke,
Advocate

For the Respondent : Mr. Amey Hadwale,
Advocate

ORDER

Per: Justice V. G. Bisht (Retd.), Member (Judicial)

Brief facts:

1. The present petition is filed *u/s.* 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “IBC, 2016”) *r/w.* Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 by **Punjab National Bank** (“hereinafter referred to as Applicant/Financial Creditor”) for the purpose of initiating insolvency process against **Mr. Sanjeeb Ranjeet Das** (“hereinafter referred to as Personal Guarantor/Respondent”) for recovery of INR 192,59,70,919.51/- as on 30.04.2022 along with interest at applicable rate, costs, dues, and expenses that may accrue from 01.05.2022 till total repayment and settlement of dues by the Corporate Debtor. The Date of Default, as specified in Part-III of the present petition is 01.12.2015.
2. The Applicant was incorporated under the Banking Companies (Acquisition and Transfer of Undertakings) Act V of 1970 bearing CIN L65922DL1988PLC033856 having its present



address at Punjab National Bank, Zonal SASTRA Centre, Mumbai 181-A1, 18th Floor, Maker Tower- E wing, Cuffe Parade, Mumbai – 400005 and permanent address at Corporate Office at Plot No.4, Sector-10, Dwarka, New Delhi - 110075.

3. The Personal Guarantor, viz. Mr. Sanjeeb Ranjeet Das having his address at Flat No.57, 604, 6th Floor, Godrej Prime, Shankar Nagar, Road No.1, Shell Colony, Chembur (East), Mumbai – 400071 is the Personal Guarantor for M/s Poscho Steels Private Limited (hereinafter referred to as the “Corporate Debtor”) who stood as Personal Guarantor for the credit facilities extended to the Corporate Debtor.
4. The Corporate Debtor bearing CIN U51100MH1999PTC121425 was incorporated on 23.08.1999 and has its registered office at 308, 3rd floor, Ceejay House, Dr. A. B. Road, Worli, Mumbai- 400018. It has authorized capital of Rs. 80000000 and paid up share capital of Rs.75000000/-.

Submissions of the Applicant:

5. Deed of Guarantee dated 22.06.2011 was executed by the above-named Respondent, under which the debt of the Personal Guarantor has fallen due, pursuant to the Notice dated 19.01.2022 under Section 13(2) of SARFAESI Act, 2002.
6. Thereafter, Demand Notice [Form B] to the Personal Guarantor in Form B 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 was duly issued on 10.05.2022 to the Personal Guarantor and successfully delivered on 11.05.2022.
7. Therefore, the total amount in default is INR 192,59,70,919.51



(Indian Rupees One Ninety Two Crores, Fifty-Nine Lakh, Seventy Thousand Nine Hundred and Nineteen and Paise Fifty One only) as at 30.04.2022, together with interest, cost, charges, expenses and/or any other money as per the deed of guarantee dated 22.06.2011.

8. Since the debt still stands due, the Financial Creditor has filed the present petition u/s 95 of the Code r/w rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019.
9. Vide order dated 31.07.2023, this bench appointed **Mr. Manoj Mainkar**, as Resolution Professional having Registration No. IBBI/IPA-001/IP-P01221/2018-2019/11926 to examine the petition and file his report within 10 days from the date of communication of the said order.
10. Further, the Resolution Professional had filed IA 4181/2023 to place the report on record. Accordingly, the report was submitted and taken on record. Hence, vide order dated 13.09.2023, the said IA was allowed and disposed of.
11. The Respondent thereafter filed its Reply and raised the plea of limitation in its defence with few other defences.
12. After perusing the reply the Petitioner sought leave of this Bench to file a Rejoinder. The Petitioner filed its Rejoinder on 27.02.2024. Upon perusal of the Rejoinder, the Respondent noticed that the Petitioner had completely abrogated its stand as set up in the main Company Petition and set up a completely new case in its Rejoinder. Amid various other things, the Petitioner for the first time in its rejoinder has come up with a



new Form B- demand notice dated 22nd December 2021 and tried to change the default to 22nd December 2021. Contrary to what was stated in the main Company petition, the Petitioner in its rejoinder also averred that the Personal guarantee of Respondent was invoked vide the newly placed Form B-demand notice dated 22nd December 2021.

13. Alarmed by the illegality, the Respondent sought leave of this Bench to file a Sur-Rejoinder. This Bench vide its order dated 20.03.2024 permitted the Respondent to file its Sur-Rejoinder. The Respondent in its Sur Rejoinder vehemently objected to the petitioners attempt to shift the date of default. The Respondent also contended that the Petitioner cannot enlarge the scope of a petition by adding a new ground/ document in the rejoinder in abrogation to the stand taken in the main petition.

14. The matter was listed before this Bench on 03.05.2024. After hearing the arguments put forth by the Respondent, the petitioner made an oral request to amend the main Company Petition and change the date of default.

15. Petitioner has amended the following:

Particulars	Pleaded in Company Petition filed on 29.11.2022	Amendments carried out in the Company Petition and served on 22.05.2024
Date on which debt fell due	31.08.2015	22.12.2021 (i.e. when the Demand Notice was sent to the Personal Guarantor by which guarantee was invoked



Date on which default occurred	01.12.2015 (NPA date of the Corporate Debtor)	05.01.2022 (i.e. 14 days from the Demand Notice dt. 22.12.2021)
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Submissions of the Resolution Professional:

16. The ground(s) for admission of the present application, as recorded in the said RP report, are reproduced in-verbatim as hereinafter:

“4. Recommendation by the Resolution Professional

After due examination as per the requirement under subsection 6 and 7 of Section 99 of the Code, the information/documents provided, the Resolution Professional recommends acceptance of the application filed in CP(IB) NO. 1285 (MB)/ 2022, for the recorded herein below:

1. The agreement of Guarantee which has been signed and accepted by Mr. Sanjeeb Ranjeet Das is irrevocable and continuing guarantee.

2. The Resignation from the post of Directorship of the Company does not absolve the personal guarantor from its contractual agreement and is liable in his personal capacity as Guarantor for the repayment of the debt of the Corporate Debtor as per the agreement of guarantee.

3. The personal guarantor vide its reply received by the Resolution Professional on August 21, 2023 refuted his liability in existence as per the agreement of guarantee and failed to provide any Evidence of electronic transfer of the unpaid amount from the bank account of the debtor/Evidence of encashment of a cheque issued by the debtor; or A signed acknowledgment by the creditor accepting receipt of dues.

4. For the reasons foregoing and examination of the application as per the provisions of sub section 6 of Section 99 of the Insolvency and



Bankruptcy Code 2016, the Resolution Professional have ascertained that:

- a. The application satisfies the requirements set out in Section 95*
- b. The applicant has provided information and given explanation sought by the Resolution Professional under Section 99(4) of the Code.*

Submissions of the Petitioner vide Rejoinder:

17. Following are the submissions of the Petitioner:

- A. The Personal Guarantee of the Respondent has been duly invoked.
- B. The present petition is well within Limitation-
 - i. The guarantee agreement was invoked on 22.12.2021, when the demand notice dated 22.12.2021 was served upon the respondent calling upon the respondent, in his capacity as guarantor, to make payment of the amounts due and payable to the Petitioner. Thus the liability of the Guarantor arose on 22.12.2021, which is the date of default in respect of the Personal Guarantor. Since the present petition is filed on 28.11.2022, the present petition is within the period of limitation.
 - ii. Initially, the Petitioner had mistakenly put the date of default in the Petition as 01.12.2015, which was actually the date of default of the borrower. It is submitted that it is settled law that the liability of a guarantor only arises upon demand/invocation, and not before. Hence, the date of default could never have been 01.12.2015 since there was no invocation at that



time. The Petitioner has relied upon the decision given by Hon'ble NCLAT in the case of *IDBI Trusteeship Services Limited v. Direct Media Distribution Ventures Private Limited 2023 SCC Online NCLAT 619*.

- C. The Claim of the Petitioner is part of the Liquidation Process in case of the Principal Borrower.
- D. The Respondent's liability under the Guarantee Agreement is not extinguished, merely because he has ceased to be a director.
- E. Petitioner has not invoked the guarantee in 2016 as contended by the Respondent.
- F. Petitioner is not bound by date of default mentioned in the form B notice – the petitioner has relied upon the decision given by Hon'ble NCLAT in the case of *Bank of India v. coastal Oil Gas infrastructure Pvt. Ltd. Company Appeal (AT) (Ins) no. 1448 of 2017* and *PHL Fininvest Private Limited v. Kay Jay Leasing limited (2023) ibclaw.in 973 NCLT*

Submissions of the Respondent vide reply and sur-rejoinder:

- 18. The Respondent has contested the present petition on the following grounds:
 - A. Date of default cannot be changed – the Respondent has relied upon the judgement dated 09.02.2021 in *Ramesh Kymal vs. M/s Siemens Ganantee Renewable Power Ltd (2021) 3 SCC 224* that the date of default should be taken as mentioned in the IBC demand notice. The demand notice triggers further actions which are adopted towards the initiation of the insolvency resolution process, hence the respondent states that the petitioner having specified the



date of default as 1st December 2015 in demand notice and the petition, the case must proceed on that basis.

- B. Amended date of default is false and incorrect.
- C. Amendment cannot be allowed at the belated stage.
- D. Petition is barred by Limitation - Petitioner in its demand notice Form B and in the Petition in Form C has mentioned the date of default as 1st December 2015. However, the petition is filed on 29.11.2022, rather the demand notice annexed with the petition is dated 10.05.2022 both being outside the limitation period of 3 years. Further, the Petitioner with the sole aim of getting rid of the clutches of limitation and to suit its convenience, has come with a demand notice dated 22.12.2021 in its rejoinder and trying to shift the date of default to 22.12.2021/05.01.2022 which clearly is impermissible. The Respondent has relied upon the decision given by Hon'ble NCLAT in *Company Appeal No.1285 of 2022 Ramdas Datta vs IDBI Bank Limited* NCLAT-Delhi to substantiate the same. Moreover, basis the date of default 01.12.2015 the petitioner had filed an Original Application ("OA") against the guarantor before DRT -I, Mumbai on the 22.08. 2016 (OA 167 of 2020)
- E. Petitioner cannot change its stance in the rejoinder – the Respondent has relied upon the judgment dated 4th Oct 2023 passed by Ho'nble NCLAT in *Company Appeal (AT) (CH) (Ins) No.87/2023 (IA Nos.310 & 309/2023) State Bank of India vs India Power Corporation Limited*.

Findings:

19. Heard learned counsel for the Applicant & Respondent and perused the documents on record.



20. In this case the Petitioner had stated originally the date of default as 01.12.2015 and had stated similarly in Form B issued under Rule 7(1) of the IBBI (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 We note that this date of default is the date on which the Principal Borrower had committed the default and the Petitioner submitted the correct date of default vide its rejoinder and also amended its Petition stating its date of default as 05.01.2022, determined with reference to the demand notice in Form B dated 22.12.2021. We note that the Petitioner had issued a notice dated 04.04.2016 under S.13(2) of the SARFAESI Act to the Principal Borrower as well as the Guarantors, however, the said notice does not mandate the Guarantors to pay the amount of loan in default from the Principal Borrower. Accordingly, no invocation took place qua this notice.
21. Upon perusal of the documents produced on record, we are of the considered view that the amendment of date of default in the petition was carried out to correctly state the date of default qua Guarantor instead of date of default qua Principal Borrower stated earlier. The date of limitation would commence from the date of invocation of guarantee, which is 22.12.2021, when the demand notice dated 22.12.2021 was served upon the respondent calling upon the respondent, in his capacity as guarantor, to make payment of the amounts due and payable to the Petitioner. Thus the liability of the Guarantor arose on 22.12.2021, which is the date of default in respect of the Personal Guarantor. Since the present petition is filed on 28.11.2022, the present petition is within the period of limitation.
22. It is settled law that the liability of a guarantor only arises upon



demand/invocation, and not before. Hence, the date of default could never have been 01.12.2015 since there was no invocation at that time against the Respondent. Also, the contention of the Respondent that the date of default cannot be amended is also not tenable as has been reiterated by the Hon'ble NCLAT in the case of *Bank of India v. Coastal Oil Gas Infrastructure Pvt. Ltd. Company Appeal (AT) (Ins) No. 1448 of 2019* wherein NCLAT has recognised the right of a Petitioner to rectify the date of default in the case of a discrepancy:

"29. In case there is any discrepancy found in the application relating to the date of default being wrongly pleaded by the financial creditors as contended by the Corporate Debtor. The Adjudicating Authority may ask the financial Creditors to rectify the same. The limitation is mixed question of law and facts therefore, unless it becomes apparent from the reading of the company petition that the same is barred by limitation the petition should not be rejected by selectively considering the documents on record. We are of the view that the application filed by the Corporate Debtor under Section 7 was required to be admitted by the Adjudicating Authority, but the Adjudicating Authority failed to consider the matter in proper perspective." (emphasis supplied).

23. It is trite in law that liability of the Personal Guarantor is co-extensive with that of the Principal Borrower. Upon perusal of the documents on record, it is clear that the Corporate Debtor has defaulted in payment. Hence, the present petition is liable to be admitted.
24. In terms of the above, the C.P. (IB)/1285/MB/2022 filed under Section 95 of the IBC, 2016 is hereby **Admitted** and the Insolvency Resolution Process stands initiated against Sanjeeb Ranjeet Das *viz.* the Respondent herein. We hereby direct as



hereinafter:

- 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. Manoj Anant Mainkar**, Insolvency Resolution Professional, having Registration No. IBBI/IPA-001/IP-01221/2018-2019/11926, having registered address at B203, Durvankur Coop. Hsg. Socy. Sant Janabai Road, Vile Parle (East), Mumbai - 400057 [E-Mail: manojmmainkar@yahoo.com, Mobile no: +91-9833854335] 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 Mumbai 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 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.

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

- a.* carry on the debtor, business or trade on his behalf



or in his name: or

b. realize the assets of the debtor; or

c. administers 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.

V. 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.

VI. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons thereof. 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 days 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.

VII. 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.

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

IX. The Applicant is directed to deposit **INR 2,00,000/-** (Indian Rupees Two lakhs) to the bank account of the Resolution Professional within **one week**, towards his fees. This shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.

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.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
MK

Sd/-

JUSTICE V. G. BISHT
MEMBER (JUDICIAL)