



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP (IB) NO.55/ALD/2023 WITH IA NO.159/2024

(An application under Section 95(1) of the Insolvency and bankruptcy Code, 2016, read with Rule 7(2) of the Insolvency and Bankruptcy Rules, 2019) and order passed u/s 100 of the Insolvency and Bankruptcy Code 2016.

IN THE MATTER OF:

HDFC BANK LTD

Having Its Office At:

Department of Special Operations, 1st Floor,
HDFC Bank Ltd, Pranay Tower,
Drabari Lal Sharma Marg, Lucknow-226001.
Ph. No.9999706063, 7880450409
Jogendra.Singh@hdfcbank.com
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Also At:

Department of Special Operations,
5th Floor Ansal Classique Tower,
J Block, Plot No.1, Near Community Centre,
Rajouri Garden, New Delhi- 110027.

.....FINANCIAL CREDITOR

Versus

MR. HIMANSHU SINGH

B-2009, B-Block, Indira Nagar,
Lucknow- 226016.

Having Its Business At:

Vedang Tower, Amrapali Bazar,
Sector- 22, Indira Nagar, Lucknow,
Uttar Pradesh- 226020
Ph. No.0522 2350903
contact@kritiprakashan.com

.....PERSONAL GUARANTOR



AND IN THE MATTER OF:

HDFC BANK LTD

.....APPLICANT

Versus

MR. HIMANSHU SINGH

.....RESPONDENT

Order pronounced on: 08th November, 2024

Coram:

Mr. Praveen Gupta : Member (Judicial)
Mr. Ashish Verma : Member (Technical)

Appearances:

Ms. Surbhi Sinha, Adv. : For the FC/HDFC Bank Ltd.
Ms. Udit Singh, Adv. : For the RP, Sh. Mukesh
Kumar Jain present in person
Sh. Harish Taneja with : For the Personal Guarantor
Ms. Parul &
Sh. Prashant Chauhan, Adv.

ORDER

1. This is an application filed by HDFC Bank Ltd (hereinafter referred to as the Applicant/Financial Creditor/Applicant Bank) under Section 95 of the Insolvency and Bankruptcy Code (hereinafter referred to as the Code) r/w Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019. The prayer made is to initiate the Insolvency Resolution Process against the



Respondent/ Personal Guarantor, Mr. Himanshu Singh who stood as Personal Guarantor to the credit facilities availed by the Corporate Debtor i.e., M/s Kriti Prakashan Pvt. Ltd.

2. On presentation of the application, this Tribunal vide order dated 16.02.2024 appointed the Resolution Professional Mr. Mukesh Kumar Jain to file report under Section 99 of the Code, which has been filed on 11.03.2024.
3. The Applicant, in its application under Section 95 of the Code, has submitted that a cash credit facility amounting to Rs. 13 Crores was granted to the Corporate Debtor, as per a sanction letter dated 18.07.2018, and was secured by a deed of hypothecation dated 18.07.2018. The cash credit facility is secured by an equitable mortgage over immovable properties. In addition, the said credit facility is further secured by cross-collateralization involving fixed assets of two companies, namely, Spond Publishers Pvt. Ltd. and 5e Education Pvt. Ltd., wherein the Respondent/Personal Guarantor serves as one of the Directors.
4. The Applicant further asserts that the guarantor executed a letter of continuing guarantee on 18.07.2018 in relation to the aforementioned facility extended between HDFC Bank Ltd. and



the Corporate Debtor, M/s Kriti Prakashan Pvt. Ltd. Additionally, under Clause 7 of the said letter dated 18.07.2018, the guarantee remains in full force and effect until the Borrower is fully discharged of all liabilities under the credit facility by the Bank and such discharge is confirmed in writing by the Bank.

5. However, after availing the aforesaid Credit facility, the Principal Borrower failed to maintain the financial discipline as per the terms and conditions of the sanction letter dated 18.07.2018 to which the facility became irregular. The Corporate Debtor after being unable to meet its repayment obligations was classified as NPA on 28.09.2019.
6. Subsequently, the Applicant/Financial Creditor filed an application bearing OA No. 1740 of 2019 with the Debts Recovery Tribunal, Lucknow, on 19.12.2019, which is pending adjudication.
7. It is submitted that the letter of Continuing Guarantee dated 18.07.2018 provides that, in the event of default by the Borrower in repaying the dues to the Applicant Bank or in discharging its liabilities under the facility, the Guarantor(s) shall, upon the first demand by the Applicant Bank,



immediately pay the said dues. The decision of the Applicant Bank regarding such default or failure by the Borrower, and the amount claimed, shall be final, conclusive, and binding on the Guarantor(s).

8. Following the classification of the Corporate Debtor as a Non-Performing Asset (NPA) on 28.09.2019, the Applicant/Financial Creditor issued a Recall Notice cum Invocation of Guarantee dated 03.12.2019, demanding repayment of the total outstanding loan amount of Rs. 8,63,15,671.18/- as of 31.10.2019, with further interest accruing from 01.11.2019. The notice called upon the Corporate Debtor and the Personal Guarantors to repay the outstanding dues within 7 days of the notice. However, no payment was made in response to the demand.
9. The Applicant/Financial Creditor served a demand notice on 27.08.2022 upon the Respondent/Personal Guarantor under Form-B in terms of Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtor) Rules, 2019 (hereinafter referred to as 'AA Rules, 2019') demanding payment of Rs. 8,63,15,671.18/- as on



31.10.2019 along with interest, penal interest and other charges.

10. However, the Respondent/ Personal Guarantor failed to repay the outstanding debt within 14 days from the receipt of the demand notice to the Applicant Bank as per the provisions of the Code. In response, the Respondent/Personal Guarantor, through a letter dated 22.09.2022, denied the allegations made in the demand notice, claiming it to be incomplete and fraudulently constructed. The Respondent/Personal Guarantor further requested the invocation of the arbitration clause for a fair and amicable resolution of the present dispute.
11. In the case of the Corporate Debtor, a Corporate Insolvency Resolution Process (CIRP) was filed before this Tribunal in C.P. (IB) No. 33/2021, filed by the Small Industries Development Bank of India (SIDBI) against M/s Kriti Prakashan Pvt. Ltd/Corporate Debtor. However, by way of an order dated 18.09.2023 in Company Appeal (AT) (Ins) No. 708/2022, the Hon'ble NCLAT stayed the CIRP since the settlement of the debt with the Primary Financial Creditor/SIDBI had been made, and an withdrawal application under Section 12A of the Code was filed by SIDBI before this Tribunal. The Applicant,



however, has filed an objection to the withdrawal application, which is currently pending adjudication.

- 12.** Since the entire amount of debt is still not realized, the Applicant/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 on 11.08.2023.
- 13.** This Tribunal vide order dated 16.02.2024, had appointed Mr. Mukesh Kumar Jain as Resolution Professional having Registration No. IBBI/IPA-001/IP-P-01960/2020-2021/13089 having his address T-1, 3rd Floor, Pankaj Arcade, Plot No. 16 , Sector-5, Dwarka, Delhi-110075 to examine the petition and file his report, having AFA valid upto 30.06.2025.
- 14.** The Resolution Professional has filed the report u/s 99(1) of the Code on 11.03.2024 before this Tribunal.
- 15.** This report has been prepared by the Resolution Professional in compliance to our order dated 16.02.2024 after giving opportunity to the Respondent/Personal Guarantor vide the letter dated 20.02.2024 issued by him to the Respondent/Personal Guarantor to explain and provide the



details of repayment along with the proof of repayment and other details as required by him. After examining and analyzing all the details collected from the Applicant/Financial Creditor as well as the Respondent/Personal Guarantor, the Resolution Professional submitted the report under section 99(1) of the Code recommending for admission of this application u/s 100 of the Code to start the Insolvency Resolution Process against the Respondent/Personal Guarantor.

- 16.** The ground(s) for the admission of the present application as provided in the said report are reproduced verbatim as follows:

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*“In view of the above, I Mukesh Kumar Jain, the Resolution Professional appointed by this Hon'ble Adjudicating Authority, National Company Law Tribunal Allahabad Bench, Prayagraj vide order dated 16.02.2024 in C.P. (IB)No.55/ALD/2023, hereby confirm that I have perused/examined the Insolvency Application filed by the Financial Creditor under Section 95 of the Code along with all the underlying documents and annexures and have formed the opinion to **recommend the same for acceptance** to this Hon'ble Adjudicating Authority under sec 99 (7) based on recording of following reasons u/s 99(9) to the best of my knowledge & belief: -*

- 1. Debtor has not repaid the debt of Rs.8.63,15,671.18/- plus interest, penal interest (if any) as per sec 99 (2).*



2. The debt of Rs. Rs.8,63,15,671.18/- is registered with the Information Utility as per sec 99 (3).

3. The application satisfies the requirements of sec 99 (6) (a) as the application is filed in the requisite 'Form C' in terms of Rule 7 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019, supported by requisite fee and documents. Examined the application as filled u/s 95 & state that

3.1. It fulfils the requirements of sec 95 as asked in Sec 99 (6) (a) of the Code.

3.2. Creditor (Applicant) has provided the information and given explanation as sought by RP in compliance of Sec 99 (6) (b) of the Code.

4. Despite More than **10 opportunities** provided via E-Mail/ Normal calls, PG didn't provide any reply.

5. RP **recommends acceptance of application** in the report as per Sec 99 (7) of the Code.

6. RP finds that Debtor is not eligible for yet to be notified fresh start provisions u/s 80 to 93 as per Chapter II Part III of the Code. Here it is pertinent to note that these provisions are applicable only for persons having annual income upto Rs 60,000/- & debtor has provided no details of his income despite repeated reminders as stated at paragraph no.5.

7. RP hereby records all above stated reasons for **recommendation of acceptance of the application** after examination in terms of sec 99 (7) in compliance of Sec 99 (9) of the Code.



8. *RP has sent the true copy of this report to Debtor and Creditor in compliance of Sec 99 (10) of the Code as on 11.03.2024."*

REPLY FILED BY THE RESPONDENT/PERSONAL GUARANTOR

17. The Personal Guarantor/Respondent had filed a reply against the recommendations made in the report under section 99 of the IBC on the following grounds:-

- a.** The Respondent contends that the report submitted under Section 99 of the Code is time-barred, as Section 99(1) requires the Resolution Professional (RP) to submit the report "within ten days of his appointment." However, the RP filed the report in compliance with the Tribunal's order dated 16.02.2024 on 11.03.2024. Therefore, the report should be rejected for violating the statutory requirement under Section 99(1) of the IBC, 2016, with regard to the filing timeline.
- b.** The Respondent further contends that the present application is not maintainable because the demand notice was issued and signed by the Applicant's Advocate, Ms. Shreya Chaudhary. The notice lacks any supporting resolution or authority letter from the Applicant Bank authorizing Ms. Chaudhary to issue the demand notice in Form-B. The Respondent relies on *Senthil Kumar Karmegam vs. Dolphin Offshore Enterprises (Mauritius) Pvt. Ltd.* [Company Appeal AT (Insolvency) No. 154 of 2017], which held that an insolvency resolution process cannot be initiated based on a demand notice sent by an advocate of the operational creditor without evidence that the advocate



holds any position with or in relation to the operational creditor.

- c. The Respondent argues that there is no existing contract of guarantee between the parties, and the nature of the guarantee must be determined through the clauses of the deed of guarantee, rather than by the letter of continuing guarantee dated 18.07.2018. Furthermore, the Respondent submits that the Applicant/ Financial Creditor has failed to provide any documentation demonstrating how the guarantee was invoked, which would establish the liability of the Respondent/Personal Guarantor in the present proceedings.
- d. The Respondent contends that the terms of the contract of guarantee have not been complied with by the Applicant/Financial Creditor; therefore, no amount is due and payable to the Applicant/Financial Creditor by the Respondent/ Personal Guarantor. As a result, the application filed is liable to be rejected.
- e. The Respondent further contends that the application is barred by limitation, as the three-year limitation period commences from the date of default. In this instance, the date of default specified in the demand notice (Form-B) dated 27.08.2022 is 28.09.2019 and the application filed under Section 95 of the Code is on 11.08.2023, thereby exceeding the prescribed limitation period. The Respondent relies on *Mr. CL Sharma v. Bank of Maharashtra and Anr*, NCLAT New Delhi, *Company Appeal (AT) (Insolvency) No. 316 of 2024 with Company Appeal (AT) (Insolvency) No. 317 of 2024*, and *Bank*



of *Baroda v. Rajiv Rai* (CP/89/IB/2021), NCLT Chennai. Furthermore, the Respondent/Personal Guarantor submits that the Applicant failed to demonstrate any acknowledgment of debt by the Respondent/Personal Guarantor in the present proceedings.

- f.** The Respondent submits that the vakalatnama filed in the application is defective, as it lacks the requisite court fees and welfare stamps. Additionally, the authorization for assignment submitted by the Resolution Professional has also expired.
- g.** The Respondent also emphasizes that they proposed a one-time settlement offer to the Applicant on behalf of the Corporate Debtor.

REJOINDER FILED BY THE RESOLUTION PROFESSIONAL

18. A Rejoinder has been filed by the Resolution Professional on 24.07.2024 countering all the contentions raised in the Reply of the Respondent/Personal Guarantor. The Resolution Professional has made the following averments in the Rejoinder:

- a.** It is submitted that the argument raised by the Respondent/Personal Guarantor regarding the failure to submit the report within the 10-day timeline specified in Section 99(1) of the Code is a mere façade, as the alleged delay was caused by the Respondent/Personal Guarantor's non-cooperation in providing the necessary information. Pursuant to the order dated 16.02.2024, the Resolution Professional requested relevant information



required for the report under Section 99 of the Code through various emails dated 20.02.2024, 26.02.2024, and 05.03.2024, but received no response. Thus, the Respondent/Personal Guarantor cannot take undue advantage of its own wrongful actions to evade the provisions of the Code.

- b.** It is also submitted that it is a well-established principle of construction that the contract must be read as a whole, and the parties' intentions should be derived from the language used within the contract, rather than its title. Therefore, the letter of continuing guarantee dated 18.07.2018 can be termed as a Contract of guarantee and consequently, by virtue of the said letter dated 18.07.2018, the Respondent/Personal Guarantor has explicitly bound himself to the terms of the agreement and agreed to remain liable for the dues owed by the Principal Borrower.
- c.** It is further submitted that the Applicant/Financial Creditor initially invoked the guarantee through a recall notice dated 03.12.2019 for the payment of an outstanding amount of Rs. 8,63,15,671/-, which is still yet to be paid. Therefore, the contention raised by the Respondent/Personal Guarantor that the guarantee has not been invoked by the Applicant/Financial Creditor is erroneous.
- d.** The Resolution Professional further states that, according to the judgment passed by the Hon'ble Supreme Court on 10.01.2022 in *Re: Cognizance for Extension of Limitation*



(*Suo Moto Writ Petition (C) No. 3 of 2020*), the period from 15.03.2020 to 25.03.2022 has been excluded, thus rendering the present petition filed by the Applicant/Financial Creditor within the limitation period and maintainable.

- e. With regards to the Respondent's contention of clear establishment of debt and default, it is strongly submitted that the liability of the Guarantor is co-extensive with that of the Principal Borrower. Since the debt and default by the Principal Borrower are duly admitted and undisputed, the Respondent/Personal Guarantor cannot evade liability to the Applicant/Financial Creditor.

19. In Pursuance of the directions passed by this tribunal vide order dated 08.10.2024, the Personal Guarantor/Respondent of the Corporate Debtor has submitted his written submission which has been duly recorded under Dairy no. 2247 on 25.10.2024 and has been taken into consideration.

WRITTEN SUBMISSION FILED IN COMPLIANCE OF THE ORDER

DATED 30.01.2024 ON BEHALF OF THE
RESPONDENT/PERSONAL GUARANTOR

20. The Personal Guarantor/Respondent had also filed a written submission in compliance with order dated 30.01.2024 and made submissions against the application filed under section 95 of the Code on the following grounds:-



- b.** The Respondent submits that the application under Section 95 is not maintainable, as there is no ongoing CIRP against the Corporate Debtor. In the absence of such proceedings, the application against the Respondent/Personal Guarantor is barred under Section 60(2) of the IBC. Further, the Respondent asserts that the present proceedings constitute harassment, as no recovery steps have been initiated by the Applicant/Financial Creditor against the Corporate Debtor, the primary debtor.
- c.** The Respondent further submits that this Tribunal lacks jurisdiction over the present application, asserting that the appropriate forum is either the Civil Court or the Debt Recovery Tribunal (DRT). Additionally, since the Applicant/Financial Creditor has already initiated recovery proceedings before the DRT in Lucknow, which is pending adjudication, the present application violates the interest of justice and should be immediately stayed.

FINDINGS AND ORDER UNDER SECTION 100

- 21.** We have heard the submissions of the Applicant/Financial Creditor and perused the Report received under Section 99 of IBC, 2016 filed by the RP recommending admission of the Section 95 Application and initiation of the IR process against the Personal Guarantor for the purpose of passing of order u/s 100 of the Code.



- 22.** After perusing the record, concerning the present petition filed by the Financial Creditor U/s 95 of the Code. We find that the personal guarantor, Mr. Himanshu Singh, executed a letter of continuing guarantee on 18.07.2018, in favor of the Applicant/Financial Creditor to secure the repayment of the principal amount of the cash credit facility for Rs. 13 crores, along with interest, payable by M/s Kriti Prakashan Pvt. Limited in relation to the sanction letter dated 18.07.2018. The terms of the guarantee clearly indicate that it is irrevocable, the Guarantors' obligations are unconditional, and the guarantor shall pay the Applicant/Financial Creditor on its first demand. Additionally, the guarantee remains valid until the borrower has fully repaid the loan.
- 23.** Further, it is to be noted that, in compliance with the order dated 16.02.2024, the RP submitted a report u/s 99 of the Code with recommendations for admitting the present matter and initiating the insolvency resolution process against the Personal Guarantor.
- 24.** In the present case, the personal guarantee of the Corporate Debtor was invoked through a letter dated 03.12.2019. Further, a demand notice under Form-B, in accordance with



Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtor) Rules, 2019, was duly served on the Personal Guarantor on 27.08.2022. The Respondent acknowledged receipt of this notice by responding on 22.09.2022, and subsequently on non-payment of the outstanding dues, the application under Section 95 of the Code was filed by the applicant on 11.08.2023. After considering the above details and taking into account the invocation of the guarantee against the Personal Guarantor and its subsequent acknowledgement, we find that the present Application has been filed within the limitation period after considering the exclusion period as provided in the judgement passed by the Hon'ble Apex Court in *SUO MOTU WRIT PETITION (C) NO. 3 OF 2020* titled *IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION* for calculating the limitation.

- 25.** It is stated in para 5 of the judgement that the Hon'ble Supreme Court directs that the period between 15.03.2020 till 28.02.2022, shall be excluded for the purpose of limitation.

The relevant paragraph is reproduced below: -



“.....

- I) *The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings.*
- II) *Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*
- III) *In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.*

...”

26. If limitation as pleaded by the Personal Guarantor starts from 28.09.2019 which is mentioned as the date of default in Form B, the Application should have been filed within three years from that date i.e. by 27.09.2022. However, before this date, covid pandemic started and certain period falling within covid period has been excluded by the Suo Moto order of the Hon’ble Supreme Court, which is reproduced in above para.

27. Keeping in view the above details of the limitation period exclusion/extension as ordered in the Suo Moto Order of the Hon’ble Supreme Court, if limitation is counted from 28.09.2019, the total 169 days would have expired by 15.03.2020 and 927 days would have remained out of total period of 3 years 1096 days. Thus, total limitation period as



per Sua Moto Order of the Hon'ble Supreme Court, would get extended by 927 days for invoking the guarantee against the personal guarantor by virtue of aforesaid judgement. The period of limitation would again commence from 28.02.2022 till 13.09.2024 for the purpose of invoking the guarantee. The Applicant invoked the guarantee on 27.08.2022 and the application is filed on 11.08.2023. Thus, it is clearly established that the guarantee against the Personal Guarantor was invoked well within limitation period on 27.08.2022 by issuing notice in Form B and thereafter, this application is filed on 11.08.2023 which is also well within the period of limitation. Upon the borrower's failure to repay the debt, the Applicant issued a Demand Notice in Form B on 27.08.2022 under Rule 7(1) of the Insolvency and Bankruptcy Rules, 2019. However, no payment was received towards the outstanding amount of Rs. 8,63,15,671.18/- as on 31.10.2019 including till date interest, penal interest, and other charges.

- 28.** With respect to the jurisdiction, Personal Guarantor took the plea that this application filed under section 95 is not maintainable as there is no ongoing CIRP proceeding against the Corporate Debtor and hence in the absence of such



proceeding, the application against the Respondent/Personal Guarantor is barred under Section 60(2) of the IBC. As per the Ld. Counsel of the Respondent/Personal Guarantor, the jurisdiction for this case is with the Debt Recovery Tribunal (hereinafter referred to as “DRT”) or Civil Court, and since an application has already been filed before the DRT Lucknow, the present application filed before this tribunal violates the interest of justice. In view of the said contention raised by the Respondent/Personal Guarantor, it has been observed that as per section 60(1) of the Code, the Adjudicating Authority in relation to insolvency resolution and liquidation for corporate persons including **corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate persons is located**. As the registered office of the Corporate Debtor i.e. M/s Kriti Prakashan Private Limited is VEDANG TOWER, AMRAPALI BAZAR, SECTOR-22, INDIRA NAGAR, LUCKNOW, 226020, Uttar Pradesh, India, it falls within the jurisdiction of NCLT Allahabad, and therefore as per section 60(1) of the Code, the jurisdiction of the Personal Guarantor of this



Corporate Debtor will also lie with NCLT Allahabad. Moreover, it is also important to note that a CIR Process was filed before this Tribunal in C.P. (IB) No. 33/2021, by the Small Industries Development Bank of India (SIDBI) against the Corporate Debtor. However, by way of an order dated 18.09.2023 in Company Appeal (AT) (Ins) No. 708/2022, the Hon'ble NCLAT stayed the CIRP since the settlement of the debt with the Primary Financial Creditor i.e., SIDBI had been made, and subsequently, a withdrawal application under Section 12A of the Code was filed by SIDBI, which is still pending for adjudication before this Tribunal. Further the initiation of insolvency against the Personal Guarantor was started by issuing notice in Form B when the CIR Process against the Corporate Debtor was going on. Therefore, once the process u/s 95 for initiation of insolvency against the Personal Guarantor has started during the pendency of the CIR Process against the Corporate Debtor for which he has given guarantee, subsequently application u/s 95 can be very well filed against that Personal Guarantor in the same NCLT in which the CIR Process against the Corporate Debtor was going on at the time of issuance of notice under Form B, if he does



not make payment of unpaid debt in default demanded in the said notice. Therefore, we find that the Application under section 95 against the Personal Guarantor under consideration in this order, has been correctly filed before this NCLT that has jurisdiction over the Corporate Debtor for which this Personal Guarantor has given guarantee, whether her jurisdictional authority is considered as per the provision of section 60(1) or section 60(2) of the Code.

- 29.** This issue is also covered by an order passed by the Hon'ble NCLAT, Chennai in the matter of ***Mahendra Kumar Agarwal versus PTC India Financial Services Ltd. & Ors. -Company Appeal (AT) (CH) (INS.) No. 8 of 2023.*** In this order ,the Hon'ble NCLAT was dealing with the appeal filed by a Personal Guarantor of GATI Infrastructure Bhasmeyer Power Pvt Ltd. challenging the order dated 21.02.2022 passed u/s 100 admitting the Personal Guarantor under PIRP by NCLT Hyderabad, on the ground that the impugned order was passed without any jurisdiction and in an erroneous manner as at the time of passing of the impugned order , no CIRP or liquidation process against the Principal Borrower /Corporate Debtor was going on at the time of filing of application seeking



to initiate PIRP against the Personal Guarantor. The relevant paras of the said order dated 21.07.2022 of the coordinate bench NCLT Hyderabad is reproduced as under: -

“16. `A plain reading of Section 179 supra, reveals that Section 179 itself is “subject to Section 60” and DRT is the Adjudicating Authority for insolvency resolution for all other categories of individuals and partnership firms.

17. That apart Hon’ble Supreme Court of India in re: Lalit Kumar Jain vs Union of India & Ors has categorically held as under:- “There is sufficient indication in the Code- by Section 2(e), Section 5(22), Section 60 and Section 179 indicating that personal guarantors, though forming part of the larger grouping of individuals, were to be, in view of their intrinsic connection with corporate debtors, dealt with differently, through the same adjudicatory process and by the same forum (though not insolvency provisions) as such corporate debtors”.

18. In so far as the Ld. Counsel for the Personal Guarantor that by virtue of Sub-Section (4) of Section 60 of IBC, 2016, the jurisdiction of the NCLT in respect of matters relating to the Personal Guarantors has been ousted, the same nothing but farfetched. Sub-Section (4) of Section 60 neither expressly nor impliedly taken away the Jurisdiction of NCLT, for the purpose of insolvency resolution and liquidation of Corporate Persons including Corporate Debtors and Personal Guarantors as provided under sub-section (1) of Section 60. What sub-section (4) of Section 60 of IBC states is that the NCLT shall be vested with all the powers of DRT as contemplated in part-III of the Code for the purpose of sub-section (2).

19. Ld. Counsel for Personal Guarantor relied on Ebix Singapore Pvt Ltd Vs CoC of Educomp Solutions Ltd & Anr. While fully agreeing with the dictum laid down in the above ruling by the Hon’ble Supreme Court of India, approving the ruling in Laxmi Pat Surana Vs Union Bank of India 2020 SCC Online SC 1187, Hon’ble Supreme Court, held that “That importing principles of any other law or statue like the Contract Act into IBC regime would introduce necessary complexity into the working of the IBC and may lead to protracted litigation on considerations that



are alien to IBC”. “Remedies that are specific to the Contract Act cannot be applied, dehors the overriding principles of the IBC”.

20. We may state herein that for the purpose of deciding the jurisdiction of this Tribunal in the case on hand, it is not required for us to place any reliance on the provisions of Indian Contract Act nor the parties have placed any reliance on this. We therefore hold that the above ruling on facts is not applicable to the case on hand.”

- 30.** The Hon’ble NCLAT after considering the above findings of the order of the NCLT Hyderabad and hearing to the arguments of the Ld. Counsels of the Appellant Personal Guarantor and Respondent Financial Creditor and Resolution Professional, upheld the order dated 21.07.2022 of the Coordinating bench NCLT- HYD passed in CP (IB) No. 335 / 95 / HDB / 2020, holding as under: -

“79. Be that as it may, in view of the detailed foregoing qualitative discussions, this ‘Tribunal’, keeping in mind the respective contentions advanced on either side, and considering the facts and circumstances of the instant case, in a conspectus manner, comes to a resultant conclusion that the ‘Adjudicating Authority’ / ‘Tribunal’, has ‘jurisdiction’, to ‘entertain’/ ‘initiate’, the ‘Insolvency Proceedings’ of the ‘Personal Guarantors’, even when ‘no Corporate Insolvency Resolution Process’ proceedings, is ‘pending’, against the ‘Corporate Debtor’, and in any event, the ‘Corporate Insolvency Resolution Process’ proceedings, is pending, and continued to be pending, against the ‘Corporate Debtor’.

- 31.** We also placed our reliance on the judgment passed by the Hon’ble Apex Court in ***Lalit Kumar v. Union of India & Ors., reported in (2021) 9 SCC***, wherein it was held as follows:-



“.....Section 179, which defines what the adjudicating authority is for individuals is “subject to” Section 60. Section 60(2) is without prejudice to Section 60(1) and notwithstanding anything to the contrary contained in the Code, thus giving overriding effect to Section 60(2) as far as it provides that the application relating to insolvency resolution, liquidation or bankruptcy of personal guarantors of such corporate debtors shall be filed before NCLT where proceedings relating to corporate debtors are pending. Furthermore, Section 60(3) provides for transfer of proceedings relating to personal guarantors to that NCLT which is dealing with the proceedings against corporate debtors. After providing for a common adjudicating forum, Section 60(4) vests NCLT “with all the powers of the DRT as contemplated under Part III of this Code for the purpose of sub-section (2)”. Section 60(4) thus (a) vests all the powers of DRT with NCLT and (b) also vests NCLT with powers under Part III. Parliament therefore merged the provisions of Part III with the process undertaken against the corporate debtors under Part II, for the purpose of Section 60(2) i.e. proceedings against personal guarantors along with corporate debtors. Section 179 is the corresponding provision in Part III. It is “subject to the provisions of Section 60”. Section 60(4) clearly incorporates the provisions of Part III in relation to proceedings before NCLT against personal guarantors.

113. It is clear from the above analysis that Parliamentary intent was to treat personal guarantors differently from other categories of individuals. The intimate connection between such individuals and corporate entities to whom they stood guarantee, as well as the possibility of two separate processes being carried on in different forums, with its attendant uncertain outcomes, led to carving out personal guarantors as a separate species of individuals, for whom the adjudicating authority was common with the corporate debtor to whom they had stood guarantee. The fact that the process of insolvency in Part III is to be applied to individuals, whereas the process in relation to corporate debtors, set out in Part II is to be applied to such corporate persons, does not lead to incongruity. On the other hand, there appear to be sound reasons why the forum for adjudicating insolvency processes – the provisions of which are disparate — is to be common, i.e through NCLT. As was emphasised during the hearing, NCLT would be able to consider the whole picture, as it were, about the nature of the assets



available, either during the corporate debtor's insolvency process, or even later; this would facilitate the CoC in framing realistic plans, keeping in mind the prospect of realising some part of the creditors' dues from personal guarantors."

32. Further, one of the contentions raised by the Ld. Counsel for the Personal Guarantor/ Respondent was that the present application is not maintainable as the demand notice was issued and signed by the Applicant's Advocate, Ms. Shreya Chaudhary and therefore the said demand notice cannot be considered to be validly issued. The Ld. Counsel for RP had submitted that as per the prescribed format for issuance of Form-B the said form can be signed by the creditor or the person authorized on his behalf. It has been observed that the petition filed under section 95 of the Code has been based upon the Form-B signed by Ms. Shreya Chaudhary (Applicant's Advocate) and this petition is duly signed by the Applicant/ Financial Creditor. Therefore, we don't see any substantial ground in the contention raised by the Personal Guarantor/ Respondent.

33. Ld. Counsel for the Personal Guarantor/ Respondent, further argued that the report under Section 99 was not filed within the required ten-day period following the appointment of the Resolution Professional. It is observed that the Resolution



Professional, in their report dated 11.03.2024, indicated that despite providing the Respondent with more than ten opportunities to supply the necessary information as mandated by Section 99(6) of the Code, no response was received. The Resolution Professional's rejoinder, dated 24.07.2024, further affirms that the delay was due to non-cooperation by the Respondent/Personal Guarantor. Accordingly, as submitted by the Resolution Professional, the delay in submitting the report within the mandated 10-day period is attributable to the Respondent/Personal Guarantor, himself. Ld. Counsel for the Resolution Professional has argued that the Respondent/Personal Guarantor cannot be permitted to take advantage of his own wrong. The Respondent's objection in this regard is therefore legally untenable. The delay in filing the report by RP was due to the Respondent's actions and lack of cooperation; thus, this objection cannot be considered.

- 34.** As previously mentioned, the RP has submitted a report dated 11.03.2024, under Section 99 of the Code. The findings in the RP's report make it evident that:



- i.** The present application has been filed within the limitation period.
 - ii.** The Insolvency Petition satisfies the requirement of Section 95 of IBC, 2016 and has been filed in the requisite form, in terms of Rule 7(1) of the Rules, 2019, supported by requisite fee and documents.
 - iii.** The Respondent Guarantor after being duly served with demand notice dated 27.08.2022 has committed default in not paying the debt within a period of 14 days of the service of the notice of demand; therefore, the requirement as set out under Section 95(4) is satisfied.
 - iv.** That the debts mentioned in the application are fully recoverable from the personal guarantor as per the guarantee deed and it is not excluded debt.
 - v.** That the Personal Guarantor is not eligible for a fresh start process provided under Chapter II of IBC, 2016.
- 35.** Considering the above facts and circumstances and upon perusal of the documents on record, the CP (IB) No.55/ALD/2023 filed under Section 95 of the IBC, 2016 is **hereby Admitted** in accordance with the provision of Section 100 of the Code and accordingly, the Insolvency Resolution Process stands initiated against Mr. Himanshu Singh viz. the Respondent/Personal Guarantor 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. Mukesh Kumar Jain Insolvency Resolution Professional, having Registration No. IBBI/IPA-001/IP-P-01960/2020-2021/13089 having his address T-1, 3rd Floor, Pankaj Arcade, Plot No. 16, Sector-5, Dwarka, Delhi-110075 [email: fcafcs19@gmail.com] and holding valid authorization till 30.06.2025, 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



Allahabad 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.

V. 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.** Realise the assets of the debtor; or
 - c.** Administers or dispose of any funds of the debtor.
- VI.** 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.
- VII.** 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.
- VIII.** 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.



- IX.** 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.
- X.** The Resolution Professional shall submit his periodic reports before this Tribunal, every 30 days.
- XI.** The Applicant is directed to deposit INR 1,00,000/- (One lakh rupees) 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.
- XII.** 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.
- 36. CP (IB) No.55/ALD/2023** filed under Section 95 of the IBC, 2016 is admitted in accordance with Section 100 of the Code and the Insolvency Resolution Process stands initiated against the Respondent/Personal Guarantor.



37. List the matter on 10.12.2024 for further proceedings.

**-Sd-
(Ashish Verma)
Member (Technical)**

**-Sd-
(Praveen Gupta)
Member (Judicial)**

Date: 08th November, 2024