



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH, COURT-III

IA-4749(ND)/2022
and
(IB)-612(ND)/2022

IN THE MATTER OF (IB)-612(ND)/2022:

State Bank of India

Having its registered office at:

Stressed Assets Management Branch-I

12th Floor, Jawahar Vyapar Bhawan, 1, Tolstoy Marg,

New Delhi-110001.

..... Financial Creditor

Versus

M/s. L. R. Builders Private Limited

Having its registered office at:

8233, L. R. Complex, Rani Jhansi Road near Filmistan Cinema,

New Delhi -110006.

..... Corporate Debtor

AND IN THE MATTER OF IA-4749(ND)/2022:

M/s. L. R. Builders Private Limited

..... Applicant

Versus

State Bank of India

..... Respondent

Order Delivered On: 07.10.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

For the Applicant : Mr. Ankur Mittal, Mr. Abhay Gupta,
Mr. Bhaskar, Advs.

For the Respondent : Mr. Maninder Singh, Sr. Adv., Mr. Gaurav
Mitra, Mr. Prabhas Bajaj, Ms. Kanika Singhal,
Ms. Muskan Puri, Ms. Lawanya Pathak,
Mr. Yuvraj Sharma, Mr. Abhishek Mishra, Advs.



COMMON ORDER

PER: BENCH

1. The present Application i.e. (IB)-612(ND)/2022 has been filed by State Bank of India, the Applicant/Financial Creditor before this Adjudicating Authority under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ("Adjudicating Authority Rules"), for initiating the Corporate Insolvency Resolution Process ("CIRP"), against M/s. L. R. Builders Private Limited, the Respondent/Corporate Debtor on the ground that the Corporate Debtor has defaulted to pay the outstanding principal amount of Rs. 70,79,21,383.34/-, interest (till 14.03.2022) amounting to Rs. 127,24,73,499.39/- and penal interest (till 14.03.2022) amounting to Rs. 5,77,43,512.74/-, totalling to Rs. 203,81,38,395.47/-.
2. The Respondent/Corporate Debtor filed a reply affidavit to the Section 7 Application on 29.09.2022 and also filed an application i.e. IA-4749(ND)/2022 under Section 65 of IBC, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 ("NCLT Rules") on the ground that the Applicant Bank/Financial Creditor has filed the Section 7 application for initiating the CIRP fraudulently with malicious intent and therefore sought dismissal of the application filed under Section 7 of the Code.
3. The prayers made in IA-4749(ND)/2022 are as follows:-
 - "A. Allow the present application and dismiss the Petition filed by the Petitioner bank under section 7 of the IBC;*
 - B. Initiate action against the erring officials of the Petitioner Bank including Ms. Uttara Mahto (Chief Manager), Mr. Sudhir Kumar (AGM), Mr. S.V. Sarvanan (Ex-AGM), and other officials involved, under Section 65 of the IBC and all other enabling provisions in this regard for filing the main petition to initiate insolvency resolution process proceedings fraudulently with malicious intent for a purpose other than for the resolution of insolvency and impose exemplary cost/fine as stated therein;*
 - C. Any other order(s) as may be deemed fit in the interest of justice."*



4. The Hon'ble High Court of Delhi vide order dated 12.03.2024 directed this Adjudicating Authority to hear the application filed under Section 65 of the Code prior to the main Section 7 application.

5. For better appreciation of the case in hand, we deem it appropriate to refer to the facts and submissions made by the Applicant as well as the Respondent/Corporate Debtor in the application filed under Section 7 of IBC, 2016 before proceeding to deal with the application filed under Section 65 of the Code.

6. Submissions of the Applicant/Financial Creditor in Section 7 Application:-

The case of the Applicant as stated in the present Section 7 application is as under:-

- I. M/s. L.R. Builders Private Limited, the Corporate Debtor herein having its registered office at 8233, LR Complex, Rani Jhansi Road Near Filmistan Cinema, New Delhi-110006, is a Corporate Guarantor to the facilities availed by P.P. Jewellers (Delhi), the Borrower, from the Applicant Bank. P.P. Jewellers (Delhi) is engaged in the business of manufacture and export of gold jewellery, diamonds, precious metals, stones, gems, etc.
- II. In December 2011, the Borrower namely, PP Jewellers (Delhi) - a partnership firm approached e-SBBJ (since merged with State Bank of India w.e.f 01.04.2017) for credit facility of INR 60 Crores, considering the request, the Applicant acceded to the request of Borrower and sanctioned credit facilities vide, sanction letter dated 20.12.2011.

The credit facility is as follows:

S. No.	Details	Amount Rs. (in Crore)
A	EPC /PCFC/FBP/EBR	30.00
	Fund based Total	30.00
B	SBLC	30.00
	Non-Fund based Total	30.00
	Total Limit (FB + NFB)	60.00



- III. That vide Board Resolution dated 20.12.2011, the Corporate Debtor passed a resolution for providing corporate guarantee and equitable mortgage of its immovable properties in favour of the Applicant bank and authorized its Directors, to execute the requisite documents in favour of the Applicant bank.
- IV. That the Borrower, its partners - Sh. Kamal Kumar Gupta, Sh. Mukesh Gupta, being the personal guarantors along with the Corporate Debtor herein being the corporate guarantor, acknowledged and accepted the terms and conditions as mentioned in the above-stated sanction letter and in lieu and in pursuance of the aforesaid loan facility, executed various loan documents in favour of e-SBBJ (now State Bank of India) vide loan documents dated 31.12.2011 which includes Agreement of Loan dated 31.12.2011.
- V. The said facilities were renewed from time to time vide Sanction Letter dated 05.02.2013, 12.02.2014 and 16.04.2015 of erstwhile State Bank of Bikaner and Jaipur.
- VI. Apart from e-SBBJ, in December 2011 Borrower also approached the Applicant bank for credit facility of INR 40 Crores, considering the request, the financial creditor acceded to the request of Borrower and sanctioned credit facilities vide sanction letter dated 19.12.2011.
- VII. The credit facility is as follows:

S. No.	Details	Amount Rs. (in Crore)
1	EPC/FBP/FBD/Advance Against Bills on collection (Non-LC)	10.00
2	B.G/L.C	30.00
	Total	40.00

- VIII. That vide Board Resolution dated 01.02.2012, the Corporate Debtor passed a resolution for providing corporate guarantee and equitable mortgage of its immovable properties in favour of the Applicant bank and authorized its Director, to execute the requisite documents in favour of the Applicant bank.
- IX. That the Borrower-PP Jewellers (Delhi) and its partners Sh. Kamal Kumar Gupta, Sh. Mukesh Gupta, Smt. Veena Gupta, guarantors along with the Corporate Debtor being the corporate guarantor herein acknowledged and



accepted the terms and conditions as mentioned in the above-stated sanction letter and in lieu and in pursuance of the said loan facility, executed various loan documents in favour of State Bank of India vide loan documents dated 23.02.2012, which includes:

- a) Partnership Letter dated 23.02.2012
- b) Agreement of Loan for Overall Limit dated 23.02.2012
- c) Agreement Cum Indemnity dated 23.02.2012 executed by Borrower
- d) Agreement dated 23.02.2012 for Negotiation/ Purchase/Discount of Bills executed by Borrower.
- e) Agreement dated 23.02.2012 for Shipping Lien executed by Borrower
- f) Letter dated 23.02.2012 regarding the grant of individual limits within the overall limits of Rs. 40 Crores
- g) Undertaking cum Indemnity in respect of facsimile instructions for operation of Accounts dated 23.02.2012 by Borrower
- h) Letter cum Agreement dated 23.02.2012 for Credit Facilities and Execution of Documents by Borrower through its partners Sh. Kamal Kumar Gupta and Sh. Mukesh Gupta
- i) Letter cum Agreement dated 23.02.2012 for Credit Facilities and Execution of Documents by Sh. Mukesh Gupta
- j) Letter cum Agreement dated 23.02.2012 for Credit Facilities and Execution of Documents by Corporate Debtor

X. The said facilities were renewed from time to time vide Sanction Letter dated 31.03.2014 and 27.04.2015 of the State Bank of India.

XI. The Borrower firm through its Partners and the Corporate Debtor through its authorized representatives acknowledged the execution of the aforesaid loan documents and executed various Revival letters on different dates as more particularly detailed hereunder:

- a) Revival letter dated 31.10.2014 in favour of the erstwhile State Bank of Bikaner and Jaipur
- b) Revival letter dated 03.02.2015 in favour of State Bank of India

XII. The Borrower signed Balance Confirmation Letters on different dates as more particularly detailed hereunder;

- a) Balance confirmation letter dated 31.03.2016 in favour of e-SBBJ



b) Balance confirmation letter dated 04.06.2015 and 21.01.2016 in favour of the Applicant bank.

XIII. That the Borrower acknowledged its liability towards the Applicant bank in its balance sheet as on 31.03.2018.

XIV. Thereafter, e-SBBJ merged with the Applicant bank w.e.f. 01.04.2017 vide notification published in the Gazette of India Extraordinary, Part II, Section 3, Sub-section dated 22.02.2017. As per the notification, from the effective date, the undertaking of the transferor banks as it stands immediately before the effective date, shall without any further act, instrument, or deed stand transferred and vested in the transferee bank i.e., State Bank of India. Accordingly, on account of the merger, the loan account of e-SBBJ stood transferred and vested in the Applicant bank.

XV. In June, 2017, M/s. PP Jewellers Pvt. Ltd., and M/s. P.P. Jewellers (Delhi) (Borrower) and M/s P.P. Jeweller (Exports) approached the Applicant bank for a One-Time Settlement ("OTS") of the dues payable by the P.P. Jewellers Group.

XVI. The Applicant bank considered the request of the P.P. Jewellers Group and accepted the OTS vide the letter dated 15.01.2018 for an amount of INR 145 Crores.

XVII. M/s PP Jewellers Pvt. Ltd. passed a Board Resolution in its meeting held on 24.01.2018 resolving therein to accept the OTS.

XVIII. It was further resolved that the Directors of M/s. PP Jewellers Pvt. Ltd. and all the guarantors will sign the said OTS letter. The Corporate Debtor vide its letter dated 23.04.2018 submitted the signed second copy of acceptance of OTS letter, duly accepted by M/s. PP Jewellers Pvt. Ltd. and the guarantors.

XIX. The Corporate Debtor and guarantors did not comply with the terms and conditions of the OTS and failed to make payments as per OTS. In such circumstances, the OTS was cancelled/ withdrawn by the Applicant bank vide its letter dated 19.03.2019.

XX. On the basis of the averments made as stated above, the Applicant/State Bank of India has prayed that CIRP under Section 7 be initiated against the Corporate Debtor.



7. Reply of the Respondent/Corporate Debtor in Section 7 application:-

- I. The Corporate Debtor has filed reply affidavit denying the contentions and allegations raised by the Applicant in the instant application.
- II. The Respondent at the outset submitted that the present application has been filed by the State Bank of India through Ms. Uttara Mahto, Chief Manager, State Bank of India, Stressed Assets Management Branch-1, New Delhi. Ms. Uttara Mahto is an accused in FIR No. 106 dated 26.08.2022 which was registered on the complaint of the Respondent i.e. L.R. Builders Pvt. Ltd. under Sections 409/120-B IPC at P.S. Barakhamba Road, New Delhi and therefore, the present application has been filed as a counterblast. Further, the factum of lodging of the said FIR has been concealed in the present application.
- III. The Respondent categorically submitted that the Respondent is not a guarantor to the purported default of a partnership firm M/s PP Jewellers (Delhi) and the Respondent cannot be said to be a Corporate Debtor.
- IV. It is submitted that Mr. Arjun Kumar, Mr. Kamal Gupta and Mr. Pawan Gupta were close business associates as well as close friends. In December 2004, daughter of Mr. Arjun Kumar namely Mrs. Purnima Gupta and son of Mr. Kamal Gupta namely Mr. Rahul Gupta got married to each other. That out of marriage acrimony Mr Kamal Gupta and Mrs Veena Gupta was inducted as directors in the Petitioner Company. Also the petitioner company extended the corporate guarantee qua the firms PP Jewellers (Exports) and PP Jewellers (Delhi) in view of the family arrangement.
- V. The facts of the case as stated by the Respondent in its reply affidavit are as under: -
 - i. On 19.12.2011, the Petitioner sanctioned the credit facility amounting to Rs. 40 crores to the borrower i.e PP Jewellers (Delhi). All current assets of M/s PP Jewellers (Delhi) were given as primary security along with all the fixed assets as collateral security. The Corporate guarantee was given by P.P. Jewellers (Exports) & M/s. L R Builders Pvt. Ltd with mortgage of its immovable property - Property No. 2, Sector 3 Rohini Delhi.
 - ii. On 20.12.2011, the Petitioner sanctioned the credit facility for a year amounting to Rs. 60 crore to the borrower i.e., PP Jewellers (Delhi).



- iii. On 12.02.2014 and 31.03.2014, Sanction Letters were executed between the Bank & Borrower, where the corporate guarantor/ respondent herein was not shown as a guarantor.
- iv. Thereafter, the loan facilities issued vide sanction letter dated 20.12.2011 was renewed vide letters dated 12.02.2014 and 16.04.2015. Further, the loan facilities issue vide sanction letter dated 19.12.2011 was renewed vide sanction letter dated 31.03.2014 and 27.04.2015 and the Respondent contended that the loan facilities were renewed behind the back of the Respondent without its consent and signatures. Moreover, in the sanction letter dated 16.04.2015, the property of M/s Shree Vishnu Apparels Pvt. Ltd. situated at Bahadurgarh was taken as guarantee from the borrower and the said property was auctioned and the proceeds thereof were adjusted towards the loan.
- v. In the sanction letter dated 27.04.2015, it was stated that there is a change in the partnership, however, no such new partnership deed was brought on record and the signature of the newly inducted partner was taken. The signature of Shri Kamal Kumar Gupta was taken on behalf of M/s. P.P Jewellers (Delhi), whereas he was stated to be exiting from the partnership. Further, the signature on behalf of the LR Builders Private Limited have been made by Mr. Kamal Kumar Gupta, who was not authorized to do so by any Board Resolution. Therefore, in essence the sanction terms have apparently been executed only between the Bank and Sh. Kamal Kumar Gupta exclusively.
- vi. On 31.12.2015, the accounts of the borrower were classified as NPA because of default in repayment of credit facilities. Subsequently, pursuant to One Time Settlement certain payments amounting to Rs. 29 crores are stated to have been made. However, the Corporate Debtor and Guarantors did not comply with the terms and conditions of the OTS and failed to make payments as per OTS. The Respondent/ Corporate Debtor was never part of the OTS and it was executed behind its back. In fact, the said OTS was between the Bank and Shri Kamal Kumar Gupta and further, the Applicant Bank has concealed the fact that a property of M/s. Vishnu Apparels Pvt. Ltd., one of the



Guarantors has been sold and Rs. 7.50 crores approximately were adjusted towards the liability.

- vii. The Applicant/Bank disbursed an amount of Rs. 3.60 crores on 11.01.2016. Rs. 4 crores on 29.01.2016, Rs. 12 crores on 17.02.2016, Rs. 1.85 crores on 24.02.2016, Rs. 1.70 crores on 21.03.2016, Rs. 2.79 crores on 25.05.2016 and Rs. 22.10 crores on 10.11.2016 after the declaration of NPA.
- viii. The Bank filed OA-364/2016 on 10.06.2016 before the Ld. DRT for recovery of outstanding dues of Rs. 21 Crores approximately, against PP Jewellers Delhi (principal borrower), Kamal Gupta (partner/personal guarantor), Mukesh Gupta (partner/personal guarantor), Veena Gupta (personal guarantor), PP Jewellers Export (Guarantor), LR Builders Pvt Ltd (Corporate guarantor).
- ix. The Bank filed OA No. 643/2016 for the recovery of dues with respect to the sanction of credit facilities amounting to Rs. 60 crores to M/s. P.P. Jewellers (Delhi).
- x. On 29.06.2016, a restraint Order dated 29.06.2016 was passed by Ld. DRT in OA 364 of 2016 on assets of the Borrower PP Jewellers (Delhi) worth more than Rs. 200 crores. Despite the restraint order passed by the DRT, Defendant No. 4 misappropriated the property in 2019. No efforts were made by the Bank and their response in the DRT was that it is a Residential Unit & the Borrower is residing there (which is false) and hence, nothing can be done.
- xi. On 22.03.2017, the Applicant/Bank filed OA 298 of 2017 u/s 19 of the Recovery of Debts due to Banks And Financial Institutions Act (now Recovery of Debts and Bankruptcy Act, 1993) of the sum of Rs 21,35,64,326 together with pendente lite and future interest @9.70% and penal interest @2% per annum with monthly and the Hon'ble Tribunal passed a restraint orders on the property in question.
- xii. On June, 2017, PP Jewellers group comprising of Borrower firm along with another Borrowing company M/s PP Jewellers Pvt Ltd & Corporate Guarantor-cum-Borrower firm M/s PP Jewellers (Exports) approached the Petitioner Bank for the settlement of dues payable by the "PP Jewellers group" and submitted a proposal of OTS of Rs. 145 Crores. This OTS proposal was offered at the instance of all three borrowers through Sh. Kamal Kumar Gupta



without the consent & behind the back of the Respondent who had never seen any such document prior to the filing of the present petition.

- xiii. On 15.01.2018, Petitioner Bank accepted the OTS proposal of “PP Jewellers Group” for the amount of Rs. 145 Crores. The said OTS was done without the consent & behind the back of the Respondent. In pursuance of the above OTS, the Petitioner Bank clubbed all accounts of 3 different borrowers and started accepting money from the Borrower in a haphazard manner and started releasing properties at the dictates of the Borrower Sh. Kamal Kumar Gupta.
- xiv. On 23.04.2019, M/s PP Jewellers Pvt. Ltd. [Not the Borrower M/s PP Jewellers (Delhi)] submitted the second signed copy of OTS letter, duly accepted by M/s PP Jewellers Pvt. Ltd and its guarantors. The said document was executed behind the back of the Respondent.
- xv. The PP Jewellers group and its guarantors failed to comply with the terms and conditions of the OTS, the financial creditor was forced to cancel the OTS”. Hence, the OTS was cancelled on 19.03.2019 however, no Application was filed before this Tribunal for years.
- xvi. M/s PP Jewellers Exports, who is also a guarantor to the credit facility sanctioned to PP Jewellers Delhi, had stock of Rs. 200 crores as per their balance sheet dated 31.03.2015, and also supported by mortgage of immovable property of the Respondent company, H-5, Netaji Subhash Place, Pitampura, Delhi, worth Rs. 50 crores approx., whereas the outstanding amount as claimed by the bank in OA was only Rs. 21.73 crores. The bank could have auctioned these mortgaged properties and recovered its loan very easily, however it did not do so. In order to buy its peace and to put an end to harassment & humiliation for the fault of a third party, the Respondent filed an application in OA 298/2017 before the DRT praying for directions to the Bank to auction the property of the Respondent.
- xvii. On 28.09.2019, the said application to auction Respondent’s property came up for hearing before the DRT when in order to obviate, scuttle and avoid any orders to be passed thereupon, a misleading statement was made by the Petitioner Bank that it is taking steps under Section 14 of SARFAESI to take physical possession of the property. However, no such steps were taken for month’s altogether and the real intention was only to delay & derail the



matter. Pertinently, nothing precluded the Bank to 'auction' the property even without taking physical possession thereof.

- xviii. On 07.11.2019, the Respondent sent a Letter to the Petitioner Bank thereby seeking information/update/directions with regard to the proceedings before the DRT in regards to the action taken in respect of property being Plot No. H-5, Block-Y, Wazirpur District Center, NSP Pitampura under SARFEASI Act.
- xix. The Bank Officials namely Ms. Uttara Mahto and others vide letter dated 25.11.2019 informed the Respondent that the Bank can recover the dues under the SARFAESI Act, 2002 and recovery of debts and RDDB Act, 1993. However, the Bank still initiated against the Respondent on the instigation of the borrower initiated to harass the Respondent and settlement of personal scores.
- xx. On 29.11.2019, Ms. Uttara Mahto/ petitioner/ AGM/ other bank officials filed an application u/s 14 of SARFAESI before the Ld. CMM, Rohini, seeking physical possession of one property and jewellery stocks and other current assets namely, (i) Entire current assets, receivables etc. of the Borrower M/s PP Jewellers (Exports) and (ii) Property measuring 640 Sq. Mtrs. bearing No. H-5, Wazirpur, Netaji Subhash Place, Delhi-110034 (physical possession with the borrower group). This action of false statements in communication dated 25.11.2019 sent by the bank in response to the letter of the respondent dated 07.11.2019, substantiates the ulterior motives/collusion of the bank with the borrower. Further the Petitioner bank deliberately served the application to the Respondent guarantor on wrong address.
- xxi. Aggrieved by the inaction of the Bank to take any steps for recovery of their dues, the Respondent was constrained to file yet another application bearing I.A. No. 752 of 2020 before the DRT, praying as under:-
- “Order to sell the mortgaged property of Defendant No. 5 bearing No. H-5, Wazirpur Distt. Centre, Netaji Subhash Place, Pitampura, New Delhi through public auction;
- Direct the Applicant Bank to release property of Defendant No. 5 and remove Defendant No. 5 as a party/corporate guarantor to the present loan transaction and delete the name of the Applicant herein/ Defendant No. 5 from present proceedings...”



- xxii. However, no physical possession thereof has been taken till date as a showroom of M/s PP Jewellers Pvt. Ltd. is being run by the Borrower Sh. Kamal Gupta.
- xxiii. On 08.07.2020, a consolidated proposal for OTS i.e. revision compromise offer of Rs. 107 Crores was made by the Borrower Sh. Kamal Kumar Gupta for settlement of 3 borrower accounts. Such a proposal was neither made with the consent of the Respondent, nor was it brought on the record of the DRT.
- xxiv. On 10.08.2020, the Petitioner-Bank filed reply in I.A. No. 752 of 2020 wherein, it was claimed that the relief sought for by the Respondent herein is contrary to the provisions of the Indian Contract Act. For the first time it was disclosed by the petitioner bank that “the OA Bank has taken the symbolic possession of the mortgaged property of Defendant No. 5 in April 2019.....”
- xxv. The Learned CMM, North West, Rohini Courts, New Delhi, on 19.08.2020 recorded the statement made by the Learned Counsel appearing for the Respondent No. 4 (one of the guarantors) and passed an order on 19.08.2020 stating that the present case is clearly a case of collusion between the concerned Bank officials and the Respondents therein.
- xxvi. OA No. 298/2017, SBI vs. P.P.Jewellers Exports was heard on 02.09.2020. The Respondent strongly urged before the DRT that the Bank has not taken any steps either to auction the property of the Respondent or to take physical possession thereof. It was also urged that the Bank may be directed to file an affidavit with regard to an OTS which according to the Bank is under consideration. The Bank, on 08.09.2020, filed an affidavit stating that the OTS proposal of the Borrower is being examined by the Appropriate/Competent Authority of the Applicant Bank and therefore, no action against the assets of the Borrower and the Guarantors are being taken.
- xxvii. On 20.10.2020, a consolidated OTS of 3 defaulting borrowers was entered into with Sh. Kamal Gupta, Borrower where Petitioner discharged co-guarantor M/s P.P. Jewelers (Exports) from liability of the Borrower P.P. Jewellers (Delhi) and also released another property of a different Borrower M/s P.P. Jewellers Pvt Ltd.



- xxviii. It was stated that the property bearing “H-5, Netaji Subhash Place” although mortgaged exclusively for M/s PP Jewellers (Exports) shall be released after settlement of dues of a different borrower i.e. P.P. Jewellers (Delhi).
- xxix. On 24.11.2020, the Applicant Bank filed OA-643/2016 bearing IA-1260/2020 under Section 19(13)A of the recovery of debts due to Banks and Financial Institutions Act now Recovery of Debts and Bankruptcy Act, 1993 seeking attachment of immovable property being Commercial plot No. H-05 Situated at Wazirpur district Centre, Netaji Subhash Place, Pitampura New Delhi-110034.
- xxx. On 12.04.2021, I.A No. 262 of 2021 came up for hearing when without even serving a copy thereof to the Respondent, the DRT restrained the Respondent from creating third party rights on the property H-5, Wazirpur, District Centre, Netaji Subhash Place, Pitampura, Delhi. Also the order of 16.12.2020 of Ld. DRT on restraint of such extension was ignored and a contradictory order was passed.
- xxxi. On 30.05.2021, the Applicant/LR Builders Pvt. Ltd. filed Contempt Case Civil No. 361/2021 before the Delhi High Court on 21.04.2021 for wilful disobedience of the order dated 05.10.2020 passed by the DRT and consequently the borrower deposited the OTS amount in order to wriggle out the contempt proceedings.
- xxxii. On 14.06.2021, OA No. 298/2007 titled as State Bank of India versus M/s. PP Jewellers (Exports) was withdrawn as settled and the following order was passed:-

“The Ld. Counsel for the applicant bank submits that the matter has been finally settled and the applicant bank has received the OTS amount and nothing balance remains against the defendants. In view of the statement made by the Ld. Counsel for the applicant bank, the present O.A. is disposed of being settled as withdrawn.”

- xxxiii. The Respondent filed an application on 13.07.2021 before the DRT bearing IA No. 992 in OA-364/2016 inter lia prayer as under: -
- “1. Attach the properties bearing No. C-19, Rana Pratap Bagh, Delhi and Property No. 2129-2130 Karol Bagh or any other properties belonging to the Defendant No. 1, 2 & 4 to secure the claim of the Bank;



2. Appoint a receiver to receive, attach and secure the stocks including but not limited to gold and/or diamond and/or silver jewellery whether finished or unfinished, gold bars, silver bars, loose diamonds etc. lying at the business premises of the Defendant No. 1 at Kucha Mahajani, Chandni Chowk, Delhi - 110006 and/or at Gali Number 2, Gurudwara Road Karol Bagh, Delhi 110005

3. Restrain the Defendant No. 1 from transferring the ownership shareholding in companies mentioned at Para AH of the O.A 364 OF 2016;

xxxiv. The Respondent brought on record that the Principal Borrower Sh. Kamal Gupta personally has immovable properties/assets worth Rs. 200 crores apart from business assets & stock worth Rs. 283 Crores as per balance sheets of Borrower M/s PP Jewellers (Delhi) and M/s PP Jewellers (Exports).

xxxv. In IA 993/2021 filed by the respondent, it was prayed to direct the SBI to give the updated account statements of the Borrower. The Applicant also sent emails for providing account of the borrower. The response dated 24.05.2022 of SBI to the said emails is reproduced as under: -

“In this regard we have to advise you to refer to the OA 364 of 2016 filed by SBI and OA 643 of 2016 filed by eSBBJ”. Since the matter is subjudice, accordingly no further information can be furnished to you.

xxxvi. The SBI did not provide any recent bank statements of the Borrower despite repeated requests of the respondent thereby concealing the actual amount in the account of the Borrower from which the said loan can be recovered. Further, the Ld. DRT has not taken any cognizance of such attitude of SBI and has not acted to get the update on record for disposal of application, whereas instead of getting these on record the LD. DRT has put OA on final disposal.

xxxvii. Since the in O.A. 364/2016 was filed for recovery of an amount of Rs. 24 crores and admittedly, the Bank had already recovered Rs. 30 crores (as recorded vide Order dated 06.03.2020 passed by the DRT). It is submitted by the Learned Counsel for the Defendants that they have approached the bank for OTS and also deposited 5% of the amount apart from Rs. 30 crores already paid.



xxxviii. Thereafter, the Bank filed an application under Section 7 of IBC and kept it in defects and a copy of defective application was served on the Respondent on 03.05.2022.

8. The Respondent/LR Builders Pvt. Ltd. on the basis of the pleadings and averments made in the reply as stated above has prayed for dismissal of the Section 7 application.

Having noted the submissions of the Applicant and the Respondent in the Section 7 application, we now proceed to deal with IA-4749/2022 filed under Section 65 of IBC, by LR Builders Pvt Ltd.

IA-4749/2022 filed by the LR Builders Pvt Ltd. under Section 65 of the Code:

9. The Corporate Debtor/LR Builders Pvt Ltd. filed an application under Section 65 of the Code on the ground that Section 7 application has been filed by the State Bank of India fraudulently with malicious intent other than for the Resolution of Insolvency of the Corporate Debtor. The Applicant reiterated the contents of the reply affidavit filed by it in Section 7 application and highlighted several factual and legal issues to demonstrate that the Section 7 application has been filed by the Bank fraudulently with malicious intent for a purpose other than for the resolution of insolvency.
10. The State Bank of India, the Respondent in the present application filed its reply affidavit denying the allegations and averments made by the Applicant.
11. The Applicant/LR Builders Pvt Ltd. has made various allegations and raised contentions to show that there is a collusion between the Bank and Mr. Kamal Kumar Gupta/PP Jewellers (Delhi).

For the sake of convenience and better understanding, we would like to deal with the submissions made by the Applicant and the response given by the State Bank of India/Respondent point wise.

12. It is contended by the Applicant, at the outset, that the application under Section 7 of the Code, has been filed by the officials of the Bank, namely, Ms. Uttara Mahto (Chief Manager), Mr. Sudhir Kumar (Current AGM), Mr. SV Sarvana (Ex AGM), against whom the Applicant/LR Builders Pvt. Ltd. has filed FIR No. 106 dated 26.08.2022, at P.S. Barakhamba Road, New Delhi, under Sections 409/120-B IPC, which shows that the Section 7 application



is fraudulent and with malicious intent for a purpose other than the Resolution of Insolvency.

The Respondent/State Bank of India in response to the above allegation has stated that the Writ Petition Criminal No. 2152/2022 has been filed before the Hon'ble Delhi High Court for quashing the said FIR and the Hon'ble High Court on 12.04.2021, passed an interim order directing that no coercive action shall be taken against the three officials of State Bank of India till the disposal of their application for anticipatory bail before the concerned ASJ.

- 13.** Learned Senior Counsel raised various contentions and arguments to establish the fact that Section 7 application has been initiated by the Bank with fraudulent intent. He submitted that the Deed of Guarantee dated 31.12.2011 executed by LR Builders Pvt Ltd in favour of the PP Jewellers (Delhi) for an amount of Rs. 60 crores was only with respect to the sanction letter dated 20.12.2011. The said deed of guarantee refers to an agreement of loan executed between the borrower and the Bank, which say that the Bank has agreed to finance the business of the borrower by granting all or any of the credit facilities on the terms and conditions specified therein.

Referring to Clause 2 of the said agreement dated 31.12.2011, he submitted that the said Clause stipulates that the credit facilities granted to the borrower shall be governed by the terms and conditions set out in the sanction letter dated 20.12.2011.

Clause 2 of the agreement is extracted below for ready reference.

"The Borrower declares and confirms that the aforesaid credit facilities agreed to be granted to the Borrower shall be governed by the terms and conditions as set out in the sanction/agreement Letter dated 20.12.2011 as also herein contained, as well as those embodied in the relative security documents."

- 14.** The sanction letter dated 20.12.2011 clearly states that the period of credit facilities sanctioned in favour of the borrower will come to an end after 12 months.

The relevant Clause of the sanction letter dated 20.12.2011 is as under:

"With reference to your request for sanction of FBWC and NFBWC limits and subsequent correspondence resting thereon, we are



pleased to convey sanction for working capital limits mentioned here below for a period of 12 months w.e.f. 23.11.2011 on terms and conditions detailed below and as per Annexure enclosed.”

15. He, therefore, contended that as per the above-mentioned Clause of the sanction letter, it is very clear that the Deed of Guarantee dated 31.12.2011 was executed for a limited period of 12 months and it comes to an end w.e.f. 23.11.2011.

16. Learned Counsel for the Applicant/State Bank of India on the contrary submitted that the Clause 8 provides for continuous guarantee and stipulates that all the amounts advanced by the Bank to the borrower in respect of the credit facilities as also for all interests, costs and other moneys. Clause 8 is reproduced for ready reference: -

“The Borrower shall if required, procure irrevocable and unconditional guarantees from its Directors and/or others for the payment and discharge by the Borrower to the Bank of the sum of Rs. 60,00,00,000/- and interest all costs charges and expenses and other monies due and payable by the Borrower to the Bank under or in respect of the aforesaid credit facilities in the form prescribe by the Bank.”

17. Further, as per Clause 9 of the Deed of Guarantee the Bank has the liberty to call upon the guarantors to pay this principal sum together with interest in respect of the credit facilities without requiring the Bank to realise from the borrower or requiring the Bank to enforce any remedies or securities available to the Bank. He further submitted that as per Clause 11 of the Deed of Guarantee, the Guarantee is irrevocable and enforceable against the guarantors notwithstanding any dispute between the Bank and the borrower. He further submitted that the liability of the Corporate Guarantor has been crystallized and such liability is co-extensive, joint and several with that of the borrower and therefore, the Corporate Debtor/Borrower is liable to pay to the Bank the entire sum of debt due.

18. We have perused the Deed of Guarantee, Agreement to Loan, Sanction Letters and the relevant Clauses thereto. The sanction letter clearly stipulates that the sanction for working capital limits is for a period of 12 months. Further,



Learned Counsel for the Respondent/State Bank of India strongly contended that the credit facilities were renewed from time to time vide sanction letter dated 31.03.2014 and 27.04.2015 issued by the Bank in favour of Principal Borrower/LR Builders Pvt. Ltd. and thereby the guarantee given by LR Builders Pvt. Ltd. also stood extended. Learned Senior Counsel for the LR Builders Pvt. Ltd. vehemently objected to the said contention and submitted that the subsequent sanction letters vide which the credit facilities were executed without the knowledge, consent and signatures of the Applicant/LR Builders Pvt. Ltd. and therefore, the Applicant/LR Builders Pvt. Ltd. is not bound by it and the guarantee given by LR Builders Pvt. Ltd. stood expired immediately after 12 months of the date of the initial sanction letters. In this regard, we have perused the sanction letters and found that there are no signatures of any Authorized Representative of the LR Builders Pvt. Ltd. in the said sanction letter. Therefore, we have no hesitation to hold that the renewal of credit facility was done without the consent of the Applicant/LR Builders Pvt. Ltd. and the Applicant/LR Builders Pvt. Ltd. is not bound by the same.

The language used in the Deed of Guarantee and the Agreement of loan is that the term or period of guarantee in question is to be determined on the basis of the terms and conditions mentioned in the sanction letter which inter alia clearly stipulates that the term of the sanction will be for a period of 12 months. Therefore, all the three documents, i.e., Deed of Guarantee, Loan Agreement and the sanction letter have to be read conjointly and not in isolation. Further, where there is clear mention about the period and validity of the Guarantee Deed, there is no scope for drawing any inference to mean that the Deed of Guarantee is a continuous one and the Corporate Debtor/LR Builders Pvt. Ltd. is bound by it, as argued by the Ld. Counsel for the State Bank of India.

- 19.** Learned Counsel for the State Bank of India relying upon the judgment passed by the Hon'ble Supreme Court of India in the case of **Laxmi Pat Surana vs. Union of India & Anr.**, reported in (2021) 8 SCC 481, contended that the liability of the guarantor is co-extensive with that of the Principal Borrower. The relevant paragraph of the said judgment is extracted below: -



“There is no reason to limit the width of Section 7 IBC despite law permitting initiation of CIRP against the Respondent, if and when default is committed by the Principal Borrower. For the liability and obligation of the guarantor to pay the outstanding dues would get triggered co-extensively.”

- 20.** It is settled law that the liability of the guarantor is co-extensive, joint and several with that of the borrower and the guarantor is liable to pay the debt due in case of failure to pay by the Principal Borrower. In the instant case, admittedly as per the records, the credit facilities were granted for a period of 12 months and subsequent renewals do not bear the signature of the Corporate Debtor/LR Builders Pvt Ltd and therefore it is abundantly clear that the said renewals have been obtained without the knowledge and consent of the Corporate Debtor.
- 21.** Learned Senior Counsel for the Applicant/LRB submitted that a consolidated OTS of three separate entities i.e. M/s. P.P. Jewellers (Exports), M/s. P.P. Jewellers Pvt. Ltd. and M/s. P.P. Jewellers (Delhi) was submitted to the Bank behind the back of the Corporate Debtor and payments of Rs. 29-30 crores were made pursuant to the said OTS. The Respondent i.e. M/s. L.R. Builders Pvt. Ltd. was not a party to any of the settlement arrived at between the parties and has not given any consent either express or implied to any OTS offered by the Principal Borrower. However, since, the conditions of the OTS were not complied, the OTS was withdrawn by the Bank.
- 22.** Further, even though the State Bank of India has pleaded that the guarantee is a Continuous Guarantee, it has not placed on record any document which expressly states that the Personal Guarantor has agreed and consented to the renewal and the said Guarantee stands extended or any new deed of guarantee has been executed between the Bank, Principal Borrower and the Personal Guarantor. In the absence of any express document, we are of the view that there is novation of contract and as per provision 62 of Indian Contract Act, the original contract has been novated. We are therefore, of the considered view that the Personal Guarantor cannot be held to be liable to pay the debt.



- 23.** It is submitted that the Corporate Debtor vide its letter dated 23.04.2018 submitted the signed copy of acceptance of OTS letter, duly accepted by M/s. P. P. Jewellers Pvt. Ltd. and the guarantors. However, the Corporate Debtor and guarantors did not comply with the terms and conditions of the OTS and failed to make payments due to which the OTS was cancelled by the Applicant Bank vide letter dated 19.03.2019.
- 24.** The Section 7 Petition filed against M/s. P.P. Jewellers Pvt. Ltd. bearing CP (IB) 670(ND)/2021 vide Order dated 09.01.2023 was withdrawn by the bank on account of OTS. Despite admitting that P.P. Jewellers Pvt. Ltd. has defaulted on making payments to the Bank as per the OTS – the Bank is deliberately not filing any revival application.
- 25.** It is also submitted that in June, 2017, M/s P. P. Jewellers Pvt. Ltd., and M/s. P. P. Jewellers (Delhi) (Borrower) and M/s. P.P. Jeweller (Exports) approached the Applicant bank for one-time settlement of the dues payable by the M/s. P.P. Jewellers Group. The Applicant Bank accepted the OTS vide letter dated 15.01.2018 for amount of INR 145 Crores. M/s P. P. Jewellers Pvt. Ltd. passed a Board Resolution in its meeting held on 24.01.2018 resolving therein to accept the OTS.
- 26.** It is an admitted fact that OTS proposal was entered into between the Bank and M/s. P. P. Jewellers (Exports), M/s. P. P. Jewellers Pvt. Ltd. and M/s. P.P. Jewellers (Delhi) and admittedly, the Respondent/ Corporate Debtor i.e. M/s. L. R. Builders Pvt. Ltd. is not a party to the said OTS proposal. A joint application has been filed by the Bank along with M/s. P. P. Jewellers/Mr. Kamal Kumar Gupta before the DRT for compromise/settlement. In this regard, we may note that the present proceedings filed under Section 7 of IBC and the proceedings pending before the DRT arise out of the same credit facilities extended by the State Bank of India to M/s. P. P. Jewellers, the Principal Borrower.
- 27.** Further, the fact that the State Bank of India and the Principal Borrower have filed a joint application before the DRT praying for a compromise/settlement establishes that M/s. P. P. Jewellers, the Principal Borrowers is no longer in default and therefore, no action against the guarantor can be taken.



28. The Applicant contended that initially the Bank sanctioned credit facilities of Rs. 60 crores on 20.12.2011, wherein only the LR Builders stood as a guarantor with pari pasu charge on the mortgage property situated at Rohini. However, the Bank extended the said credit facility vide sanction letter dated 16.04.2015, showing the property of one M/s. Shree Vishnu Apparels situated at Bahadurgarh as mortgaged along with that of the Applicant, without the knowledge and consent of the Applicant.

a) In response to the above contentions, the Bank in its reply affidavit has not made any specific denial.

29. It is contended that there is apparently a collusion between the Bank Officials and the Principal Borrower, who is represented by Mr. Kamal Kumar Gupta which is evident from the fact that various amounts were debited to the Principal Borrower even after the accounts were declared as NPA, which is indicated in the following table: -

Date	Amount
11.01.2016	Rs. 3,60,00,000/-
29.01.2016	Rs.4,00,00,000/-
17.02.2016	Rs. 7,60,00,000/-
24.02.2016	Rs. 1,85,00,000/-
21.03.2016	Rs. 1,70,00,000/-
25.05.2016	Rs. 2,79,00,000/-
10.11.2016	Rs. 22,10,00,000/-

30. The abovementioned disbursements at the behest of Mr. Kamal Kumar Gupta shows that there is a collusion between the Bank and the Mr. Kamal Kumar Gupta. In response to the above allegations, the Bank in its reply affidavit has stated that the said debit entries were made from the account of erstwhile State Bank of Bikaner and Jaipur after the accounts were declared as NPA which was routine transactions in normal course.



We find from the records that the erstwhile State Bank of Bikaner and Jaipur merged with the Applicant Bank on 01.04.2017. However, the debt entries pertain to a period prior to the said merger. We are, therefore, unable to accept the explanation of the State Bank of India.

- 31.** The Applicant further submitted that it had filed IA-752/2020 seeking a direction to the Bank to sell the property of Defendant No. 5 therein situated at H-5, Wazirpur District, Netaji, Subhash Place, Pitampura, New Delhi, through public auction and to delete the name of Defendant No. 5 from the array of parties. However, no action was taken in this regard.
- 32.** The Bank in its reply affidavit has contended that as per Clause 6 of deed of guarantee for the overall limit dated 31.12.2011, the guarantee shall be enforceable against the guarantors notwithstanding any security or collateral securities at the time when the proceedings are initiated against the guarantors. Further, Clause 9 of the deed of guarantee provided that the Bank has the liberty to call upon the guarantors to pay the principal sum along with the interest as well as costs and other expenses without requiring the Bank to realise from the Borrower the amount due to the Bank or requiring the Bank to enforce any remedies or securities available to the Bank. On the contrary, the Bank has made a statement before the Ld. CMM that an OTS is under process and consideration which was recorded in the order dated 19.08.2020 passed by the Ld. CMM.

This action of the Bank shows that there is nexus between the Bank and the Borrower.

- 33.** Thus, the Applicant/LR Builders Pvt Ltd. has pointed out series of events that have taken place in the proceedings before the Ld. DRT and the Ld. CMM which would show that the officials of the Bank and the Borrower are in collusion and accordingly, the Section 7 application has been filed fraudulently and with malicious intent.
- 34.** The series of events and the facts and circumstances enumerated above would definitely go to show that the officials of the State Bank of India and the Principal Borrower/PP Jewellers (Delhi) and Mr. Kamal Kumar Gupta have connived and colluded and deliberately filed the Section 7 application against the Applicant/LR Builders Pvt. Ltd./Personal Guarantor fraudulently with



malicious intent for the purpose other than the Resolution of Insolvency of the Corporate Debtor.

- 35.** We are therefore, of the considered opinion that the Section 65 application needs to be allowed. Accordingly, we **allow** the application i.e. IA-4749/2022 under Section 65 of the Code.

No order as to costs.

IB-612/ND/2022: -

In view of the order passed in IA-4749/2022, wherein the application filed under Section 65 of the Code by the Respondent/LR Builders Pvt. Ltd. is **allowed**. Consequently, the main petition bearing IB-612/ND/2019 filed under Section 7 of the Code is **dismissed**.

IA-3026/2024 IA-1432/2024 IA-2058/2023 IA-1689/2023 IA-242/2023 IA-5802/2022, IA-4478/2024, IA-4479/2024: -

In view of the order passed in IA-4749/2022 and IB-612/ND/2022, these applications stand **dismissed**.

- 36.** The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India ("IBBI") for their record.
- 37.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-Sd-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-Sd-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**