



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

CP (IB) No. 221/MB/2021

Under Section 95 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.

In the matter of:

HDFC Bank Limited

Having its address at: HDFC Bank House,
Senapati Bapat Marg, Lower Parel (West),
Mumbai-400013.

..... Applicant/Creditor

Versus

Mrs. Neelam Chandra Parkash

Residing at: - Flat No. A-0102, 01st Floor,
Lodha Bellissimo, Apollo Mills Compound,
N.M. Joshi Marg, Mahalaxmi, Mumbai,
Maharashtra- 400 011.

..... Personal Guarantor/Respondent

Order Delivered on :- 23.09.2024.

Coram:

Shri. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)



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Appearances (in Physical mode):

For the Petitioner : Narpat Singh a/w Samuel Abraham.

For the Personal Guarantor : Mr. C.K. Parkash, husband of
Respondent, present in person.

ORDER

Per: - Coram.

1. This is an application filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (‘AAA IRP for PG to CD Rules’) by **HDFC Bank Ltd.**, (hereinafter referred to as “the Petitioner” or “the Financial Creditor”) for initiating the Personal Guarantor’s Insolvency Resolution Process (‘PGIRP’) against **Mrs. Neelam Chandra Parkash** (hereinafter referred to as "Personal Guarantor"). As stated in Part III of the Petition, the date on which default occurred is March 24, 2017 and the amount in default is INR 1,01,82,322.34/- (Rupees One Crore, One Lakh, Eight-Two Thousand, Three Hundred and Twenty-Two, and thirty-four paise only).

Case of the Applicant (in brief):

2. The Applicant granted credit facility vide sanction letter dated 23.05.2014 to Esskay Motors Pvt Ltd (i.e. the Corporate Debtor for



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whom the personal guarantee was furnished by the Respondent herein) pursuant to which the Applicant had entered into Loan Agreement dated 12.07.2014. Thereafter, the Guarantor executed the Letter of Continuing Guarantee dated 12.07.2014 in favour of the Applicant undertaking due repayment of all amounts, including principal and the interest thereof whatsoever nature incurred by the Applicant.

3. The Applicant invoked the personal guarantee furnished by the Personal Guarantor, vide Letter dated 04.05.2016, for making payment of Rs. 1,24,80,816.60/- being the outstanding debt as on 05.04.2016 along with further interest@ 24% p.a. till payment or realization.
4. The Company Petition bearing no. 1076/I&BP/2017 filed by the Applicant under Section 7 against Esskay Motors Ltd was admitted by this Tribunal, Mumbai vide Order dated 29.06.2017. Thereafter, order dated 08.01.2018, for liquidation of the Corporate Debtor was passed under Section 33(1) of the Code.
5. The Applicant sent Demand Notice dated 09.01.2020, under Rule 7 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtor) Rules, 2019 to the Guarantor. The Personal Guarantor sent a Reply dated 20.01.2020 to the said demand notice issued by the Applicant.
6. As the debt remains undischarged despite service of demand notice, the Applicant has preferred the instant application against the Respondent seeking initiation of PGIRP. The Personal Guarantor is liable for an amount of Rs.3,10,37,320.80/- as on 22nd January, 2021 along with further interest thereon at the rate of 18% p.a. from 23rd January, 2021 till payment and/ or realization.



Report of the Resolution Professional u/s 99 of the Code

7. It is pertinent to note that the above-captioned Petition was filed by the Petitioner through the Resolution Professional ('RP'), namely, Mr. Pramodkumar Ramesh Ladda. As the above-named RP expressed his unwillingness to continue as RP, hence, this Tribunal vide Order dated 29.08.2023, ordered that the above-named RP be substituted with Ms. Pooja Damir Miglani. The substituted RP has placed on record her Report dated 29th February, 2024 filed u/s 99 of the Code. The said Report has recommended for admitting the Respondent-Personal Guarantor into PGIRP. The observations made by the Ld. RP in her report are reproduced hereinbelow:
- i. The Personal Guarantors of the Corporate Debtor had executed Settlement Deed dated 10th March 2017, thereby admitting the outstanding debt payable to the Financial Creditor and agreed to repay the debt in four instalments through post-dated cheques. As per the terms of the said Settlement Deed, the first instalment was due on 24th March 2017. The post-dated cheque issued towards payment of the first instalment, upon presentation was dishonoured vide bank memo dated 24th March 2017. Therefore, the date of default in the matter would be 24.03.2017 and a period of three years thereon was to expire on 24.03.2020.
 - ii. The Hon'ble Supreme Court vide its Order dated 10.01.2022 due to outbreak of Covid-19 pandemic, excluded the period from 15th March 2020 to 28th February 2022 for the purposes of limitation. As such, the above-captioned Company Petition filed on 07th February, 2021 is well within the limitation.



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- iii. The Demand Notice was sent to the Personal Guarantor on 09.01.2020 and no amount was received on repayment within a period of 14 days of issue of demand notice and even till date.
- iv. In Compliance to the provisions u/ s 99(2) of the IBC,2016 the Resolution Professional (RP) had sent an email dated 21.2.2024 to Mr. C.K. Parkash, the representative of Mrs. Neelam Chandra Parkash, seeking the information/documents for any repayment made for the debt claimed as unpaid by the creditor. Reply has been received by the Resolution Professional from Mr. C.K. Prakash on behalf of Mrs. Neelam Chandra Parkash that no payment has been made by her until now.
- v. RP submits that the present application satisfies the requirements of provisions of section 95 as examined under section 99(6) of the Code whereby the RP recommends admission of the personal guarantor into insolvency resolution process. The learned RP submits that the Applicant is not eligible for fresh start u/s 99(8) of the Code.

8. Reply of the Respondent/Personal Guarantor to this Petition:

Despite being served with the notice; the Respondent has not filed her reply. Hence, the averments made by the Petitioner/Creditor in the application filed against the Respondent u/s 95 of the Code, are taken to be admitted by the Respondent/Personal Guarantor.



FINDINGS

9. We have heard the learned counsels for the Petitioner and the Respondent/Personal Guarantor and we have also perused the records.
10. On perusal of records, we find that the Loan Agreement dated 12.07.2014, was executed between the Corporate Debtor i.e. Esskay Motors Pvt Ltd., and the Creditor herein i.e. HDFC Bank Ltd for a loan facility of INR 3,00,00,000/- (Rupees Three Crores Only). The said loan facility was secured by the Letter of Continuing Guarantee dated 12.07.2014, which was executed by the Personal Guarantor, along with other guarantors, in favour of the Creditor. The liability of the guarantors under the aforesaid letter of guarantee was joint and several. Hence, the existence of guarantee obligation on the part of the Respondent with respect to the financial debt owed by the Corporate Debtor to the Creditor stands proven on record.
11. 1. Clause 5 of the Settlement Agreement dated 10th March, 2017 executed between the Creditor, the Corporate Debtor (referred to as “the Company” in the Settlement Agreement) and the Guarantors including the Respondent herein, is reproduced hereunder:
- “5. The Company availed and utilized the said Facility for its benefit but failed to repay the amounts due and payable under the said Facility and committed continuous defaults in the payment of the installments/interest/principal due as stipulated in the terms and conditions of the Loan Agreement.”*
- 11.2. Thus, the above-referred settlement agreement confirms the factum of default which was committed by the Corporate Debtor in repayment of debt to the Creditor. The default on the part of the



Corporate Debtor gave rise to a cause of action to the Creditor for invocation of personal guarantee furnished by the Respondent.

12. Owing to the default committed by the Corporate Debtor in repayment of debt, we find that the Creditor invoked the personal guarantee furnished by the Respondent vide Notice dated 04th May, 2016. However, since the default persisted despite invocation of personal guarantee, the Applicant herein issued a Demand Notice dated 09.01.2020, 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. The Respondent replied to the aforementioned Demand Notice vide Letter dated 20.01.2020. Thus, the service of Demand Notice stands proven on record. The learned RP in her report u/s 99 has confirmed that the guarantee obligation has not been discharged even after the expiry of 14 days from the date of service of demand notice. Further, we find that the Resolution Professional (RP) sent an email dated 21.02.2024 to Mr. C.K. Parkash, the representative of Mrs. Neelam Chandra Parkash, seeking the information/documents for any repayment made for the debt claimed as unpaid by the creditor. Reply was received by the Resolution Professional from Mr. C.K. Parkash on behalf of Mrs. Neelam Chandra Parkash, vide email dated 22.02.2024. We have perused the copy of the aforesaid email at Annexure 5 to I.A. No. 1641/2024 in the above-captioned Company Petition. On perusal of the email dated 22.02.2024, we observe that Mr. C.K. Parkash (on behalf of the Respondent) stated as follows: "*No repayment has been made.*" Thus, in view of above narrated facts, the default on the part of the Respondent in honouring her personal guarantee obligations



towards the Applicant/Creditor in respect of the debts owed by the Corporate Debtor stands satisfactorily proven on record.

13. 1. As regards the issue of limitation, we find that the personal guarantee furnished by the Respondent was invoked vide Notice dated 04th May, 2016. In the said notice, the Respondent was given seven days' time from the date of receipt of notice to make payment of overdue amounts of IINR 1,24,80,816.60/-. Thus, the cause of action had arisen somewhere in May, 2016. We further take notice of the fact that the Settlement Agreement dated 10.03.2017 was executed between the Creditor, Corporate Debtor and Guarantors including the Respondent; and in pursuance of the aforesaid settlement agreement, a Cheque dated 24.03.2017, for an amount of INR 33,00,000/- was issued by the Corporate Debtor which returned dishonoured vide Cheque Return Memo dated 24.03.2017, due to insufficiency of funds.

13.2. It is now a settled position in law that any request by Borrower for one-time settlement tantamount to acknowledgement under Section 18 of the Limitation Act and an acknowledgement u/s 18 of the Limitation Act, 1963 made by the principal borrower (i.e. the Corporate Debtor in the instant case) is equally binding on the guarantor, as the liability of the guarantor is co-extensive with the principal borrower u/s 128 of the Indian Contract Act, 1872. Therefore, the Settlement Agreement dated 10.03.2017 and the Cheque dated 24.03.2017 issued by the Corporate Debtor are nothing but an acknowledgment of debt u/s 18 and 19 of the Limitation Act, 1963 respectively and hence, a fresh period of limitation would be computed from 24.03.2017 as per the provisions of the Limitation Act, 1963 referred-to-hereinabove. Therefore, as such, the present Petition should



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have been filed within three years from 24.03.2017 i.e. on or before 24.03.2020.

13.3. However, the Hon'ble Supreme Court of India in M.A. No. 21 of 2022 in Suo-Motu Writ Petition (Civil) No. 03 of 2020, vide Order dated January 10, 2022 has extended the period of limitation at Para 5 of the aforesaid Order in following terms:

“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.”

13.4. Therefore, if the above-quoted Order of the Hon'ble Apex Court is applied, then period of limitation would run after 90 days from 01.03.2022. Since the present petition is filed on 07.02.2021, it is well within the period of limitation and thus, we hold that instant petition has been filed within the period of limitation as prescribed under Article 137 of the Schedule to the Limitation Act, 1963.

14. 1. Though the Respondent has not filed her reply on record; however, while responding to the Demand Notice dated 09.01.2020 through her letter dated 20.01.2020, the Respondent contended that since the Corporate Debtor is under liquidation, the right of subrogation which was available to her as a personal guarantor has been extinguished upon the liquidation of the Corporate Debtor and therefore, she stood discharged from her guarantee obligations.



14.2. We have carefully considered and examined the aforesaid contention.

14.3. The issue of whether insolvency resolution or liquidation of the Corporate Debtor discharges/absolves the surety of his or her liability is no more res-integra, as the Hon'ble Supreme Court of India in Lalit Kumar Jain v/s. Union of India (Citation: [2021] 3 S.C.R. 1075) has held, *inter-alia*, that approval of a resolution plan relating to a corporate debtor does not ipso facto discharge a personal guarantor (of the corporate debtor) of his liabilities under the contract of guarantee. The Hon'ble Apex Court further held that the release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process, i.e. by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability, which arises out of an independent contract. Hence, in view of the judgment of Hon'ble Apex Court in Lalit Kumar Jain (supra), the contention of the Respondent that on account of liquidation of the Corporate Debtor she stands discharged, cannot be appreciated and is accordingly being hereby rejected.

15. There is no other issue which remains to be addressed.

16. In view of the foregoing analysis and discussions, we are satisfied that the existence of guarantee and its invocation as well as the factum of default on the part of the Respondent have been satisfactorily established from the records. Therefore, the petition deserves to be admitted. It is ordered accordingly in the following terms:



ORDER

- I. Initiate Insolvency Resolution Process against the Respondent/Personal Guarantor named **Mrs. Neelam Chandra Parkash** 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 against the Respondent/Personal Guarantor in respect of any debt shall be deemed to have been stayed; b) The creditors of the personal guarantor shall not initiate any legal action or proceedings in respect of any debt; and c) The Personal Guarantor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein.
- II. The Resolution Professional viz., **Ms. Pooja Damir Miglani** (having Registration No. **IBBI/IPA-002/IP-N01189/2021-22/13994** email: ipcspdm@gmail.com), who was appointed vide Order dated 29.08.2023, is directed to cause a public notice to be published on behalf of the Adjudicating Authority within 7 days of uploading of this order on the website of NCLT, 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



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- c) the last date for submission of claims.
- III. The Petitioner is directed to deposit an advance payment of INR **3,00,000/- (Rupees Three Lakhs only)** to the bank account of Resolution Professional within one week, so as to initiate the process. This shall be adjusted towards the fee and expenses payable to the Resolution Professional.
- IV. The publication of notice shall be made in two newspapers, one in English and other in Vernacular, which are in circulation in the state where the Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.
- V. 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 Petitioner under Section 95 and
 - b. claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice.
- VI. The Personal Guarantor 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 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.



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- 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 Registry is directed to communicate a copy of order to the Petitioner, the Respondent and the Resolution Professional within three working days from the date of this order.
- IX. In terms of the above, **CP(IB) No. 221/MB/2021** filed under Section 95 of the IBC, 2016 **is hereby admitted** and the Insolvency Resolution Process stands initiated against the Personal Guarantor.

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)