



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT – II)**

**I.A. No. 426 of 2023**  
**IN**  
**C.P. (IB) NO. 791/ND/2022**

**IN THE MATTER OF:**

**Canara Bank**

**... Applicant/  
Financial Creditor**

**Versus**

**Rajneesh Nagar**

**... Respondent/  
Personal Guarantor**

**AND IN THE MATTER OF I.A. NO. 426/2023**

**Sandeep Kr Bhatt,  
Resolution Professional**  
83B, Pocket- IV, Mayur Vihar- I,  
Delhi- 110091

**... Applicant**

**Versus**

**Canara Bank**  
**Stressed Assets Management Branch,**  
C-34, 3<sup>rd</sup> Floor, DDA Office Cum Shopping Complex,  
Defence Colony, Delhi- 110024

**... Respondent No.1**

**Rajneesh Nagar**  
H. No. 648, 2<sup>nd</sup> Floor, Sector- 5,  
Vishali, Ghaziabad

**... Respondent No.2**

**Under Section: 99 r/w 95 of IBC, 2016**

**Order delivered on 05.11.2024**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)**  
**SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)**



**PRESENT:**

**For the Applicant** : Adv. Saurabh Kushawaha, Adv. Rohit Arya  
**For the RP** : Adv. Sumesh Dhawan, Adv. Vatsala Kak, Adv. Shaurya Shyam, Adv. Sagar Thakkar  
**For the Respondent** : Adv. Rachit Ranjan

**ORDER**

**IA-426/2023**

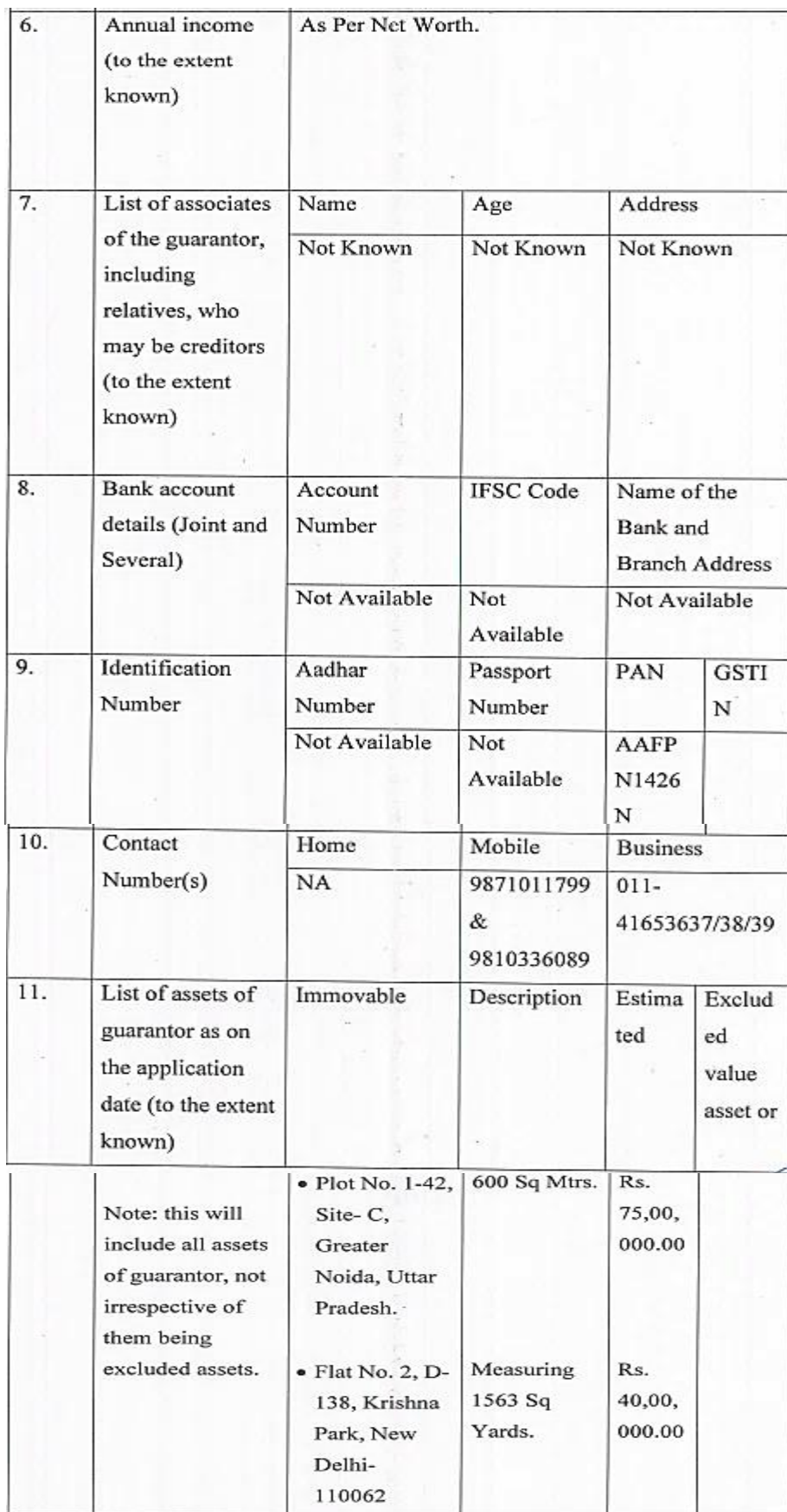
The CP-IB/791/ND/2022 was preferred under Section 95 of IBC, 2016. Stating Succinctly, put the Financial Creditor had extended a loan facility to the Corporate Debtor viz. Bulland Buildtech Private Limited (hereinafter, “Corporate Debtor”). Mr. Rajneesh Nagar (hereinafter, “Respondent/ Personal Guarantor”) stood as Personal Guarantor for the aforesaid financial facility and executed a deed of guarantee, thereby undertaking to repay the amount payable by the Corporate Debtor to the Financial Creditor. Particulars of the debt has been stated in Part -III of CP-IB/791/ND/2022 and the relevant excerpt of the same is reproduced herein below: -

Part- III		
PARTICULARS OF DEBT		
1.	Total debt (including any interest or penalties)	Rs. 489,452,162.90
2.	Amount in default	Rs. 29,14,98,274.75/- as on date of NPA.
3.	Date on which debt was due	30.06.2018
4.	Date on which default occurred	29.06.2018
5.	Nature of the debt	Term Loan
6.	Secured debt including particulars of security held, the date of its creation, its estimated value as per the creditor (as applicable)	An irrevocable deed of guarantee was executed by Mr. Rajneesh Nagar (“Personal Guarantor”) along with other personal guarantor to secure the credit facilities availed by the corporate Debtor on 08.08.2016.



2. Further, the particulars of the Personal Guarantor has been provided in Part – II of the CP-IB/791/ND/2022, which reads thus: -

Part – II				
PARTICULARS OF THE GUARANTOR				
1.	Title and full name	Mr. Rajneesh Nagar		
2.	Date of birth and e-mail address (to the extent known)	07/05/1974 <a href="mailto:info@bullandindia.com">info@bullandindia.com</a>		
3.	Any other name by which the guarantor is or has been known (as applicable) (to the extent known)			
4.	Address	Present	Permanent	Business
		M/s Bulland Buildtech Pvt LTD, A-2, Bulland House, Khanpur Extn, New Delhi-110080	House No. A20, Bara Mohalla, Khanpur Extension, South Delhi, Delhi-110062	M/s Bulland Buildtech Pvt LTD, A-2, Bulland House, Khanpur Extn, New Delhi-110080
5.	Occupation/ Business/ Profession	Business		





		Movable	Description	Estimated Value	Excluded Asset or not
		•SNB Leasing & Finance Ltd	Equity Share	Rs. 2,50,00,000.	
		•Bulland Buildtech Pvt Ltd.	27,50,000 equity shares of Rs. 10 each. including friends and relatives.	Rs. 2,75,00,000.	
		•Gold	25500@725 Gms	Rs. 18,48,750.00	
		•Cash & Bank		Rs. 5,72,300.00	
		•LIC Surrender Value		Rs. 9,11,854.00	
		True Copy of the net worth certificate of Mr. Rajneesh Nagar as on 30.09.2016 is attached. <b>ANNEXURE 1</b>			
12.	Number of directorships held in the preceding three years (along with name of company in which directorship is held) and CIN of such companies	Director at Bulland Buildtech Pvt Ltd. CIN- U45201DL2003PTC122459.			



13.	Marital status (single, married, divorced, widowed, co-habiting, separated, or specify any other) (to the extent known)	Married and two boys.
14.	Details regarding personal guarantor (in addition to information in serial numbers 1-13 of this part) -	
	Name of corporate debtor for which guarantee is given	M/s Bulland Buildtech Pvt Ltd (Under Liquidation)
	Any current or past position held in the corporate debtor (to the extent known)	Director
	Identification number of the corporate debtor	DIN 00165748
	Whether corporate debtor is an associate (to the extent known)	No.
	Any securities held in corporate debtor for whom guarantee is given	NA
	Where the guarantor is not resident in India, the name and address of person resident in India authorised to accept the service of process on guarantor's behalf	NA

3. The Guarantee Deed dated 08.08.2016 executed between the Applicant Bank and the Respondent/ PG has been annexed with the petition bearing no.





CP-IB/791/ND/2022 as Annexure- A8 and relevant extract of the same is reproduced here below:

In consideration of Syndicate Bank ~~Mid Corporate~~ Branch, here-in-after called the Bank, which expression wherever it occurs shall be deemed to include their successors and assigns where the context so requires, making or continuing to make advances or otherwise giving credit or financial accommodation or affording banking facilities for as long as the Bank may think fit to or granting extension of time for repayment or deferring the filing of suit for recovery against MS Bulland Buildtech Pvt. Ltd. having its regd. office at A-2 Bulland House, Khampur Extn, New Delhi - 110080 represented by its director Mr. Rajneesh Nagar S/o. Sh. Suraj Bham Nagar (hereinafter called the "Borrower") which expression shall where the context so admits include his heirs, legal representative, administrators, executors and the like, the undersigned Mr. Rajneesh Nagar S/o. Sh. Suraj Bham Nagar aged about 42 years R/o H. No. A-20, Bara Mohila, Khampur Extn, South Delhi, Delhi - 110062

..... (hereinafter referred to as the "Guarantor") hereby agree to pay and satisfy to the Bank, all and every sum and sums of money which are now or shall at any time be owing to the Bank in any of its offices on any account whatsoever whether from the Borrower solely or from the Borrower jointly with any other person or persons, whether as principal or surety or otherwise and whether such liabilities are due or not and whether they are absolute or contingent including all liabilities in respect of advances, letter of credit, cheques, Hundies, Bills, Notes, Drafts and other negotiable or non-negotiable instruments drawn, accepted, endorsed or guaranteed by the Borrower and in respect of interest and the Bank's Current Rate with monthly/quarterly rests, commission and charges and in respect of all costs, charges and expenses which the Bank may incur in paying any rent, rates, duties, calls, instalments, legal and other professional charges or other outgoing whether on insurance, repair, maintenance, management, realisation or otherwise in respect of any property movable or immovable or any chattels or actionable claims or scrip, securities or title deeds pledged mortgaged or assigned to or deposited with the Bank as security for the due payment and discharge of the Borrower's liability to the Bank.

4. The Demand Notice dated 18.07.2022 issued by the Applicant Bank to the Respondent/ PG under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 has been placed on record as Annexure- A12 of the captioned petition.



5. This Adjudicating Authority *vide* order dated 07.12.2022 appointed Mr. Sandeep Kumar Bhatt as the Resolution Professional. Relevant excerpt of the order reads thus: -

*“This is an application filed by Canara Bank under Section 95 of the IBC, 2016 with a prayer to initiate IR Process against the Personal Guarantor Rajneesh Nagar and appoint an RP. Ld. Counsel appearing for the Applicant stated that the guarantee given by the Applicant herein was invoked vide letter dated 30.06.2018 issued by the Syndicate Bank known as Canara Bank, which is annexed at page No. 107 of the application.*

*As per the provisions of the Law, on filing of this application, the interim moratorium has already commenced as stipulated under Section 96(1)(a) in relation of all debts of the Personal Guarantor.*

*As proposed by the Applicant/ Guarantor, this Bench appoints Mr. Sandeep Kumar Bhatt (Email ID [skbmica@gmail.com](mailto:skbmica@gmail.com)) as Resolution Professional, whose details are given overleaf:*

<b>IBBI Registration No.</b>	:	IBBI/IPA-002/IP-N010064-C01/2017-2018/10298
<b>E-mail Address</b>	:	<a href="mailto:skbmica@gmail.com">skbmica@gmail.com</a>
<b>Contact Number</b>	:	9971066266, 011-43011782

*The Resolution Professional Mr. Sandeep Kumar Bhatt shall exercise all the powers as stipulated under Section 99 of IBC, 2016 read with Rules made thereunder. He is directed to examine the application and make recommendation with reasons in writing for acceptance or rejection of the present application within the time stipulated under Section 99 of IBC, 2016.”*

6. In compliance of the aforementioned order, the RP submitted its report dated 14.01.2023 under Section 99 of the Code by way of IA- 426/2023 wherein he recommended the admission of CP-IB/791/ND/2022 filed by the Financial





Creditor under Section 95 of the Code and to initiate IR process against the Respondent/ PG.

7. In the report, the RP has stated that enquiries with the PG were made through emails dated 16.12.2022, 21.12.2022, 23.12.2022 and 02.01.2023 and that in response to these enquiries, the Respondent/ PG filed his objections on 02.01.2023. The objections raised by the Respondent/ PG and the response of the RP to the same has been stated at paragraph 7 of the Report, which reads thus: -

**1) That the Authorization of the RP is not valid and the application is not maintainable on this ground.**

**Verdict of the RP**

The respondent is misconceived. The application u/s 95 was filed on 11.10.2022. At the time of filing of application, the AFA issued by the Institute of the Company Secretaries of India was totally valid till 16.12.2022. The AFA is issued annually and the same is again renewed on 14.11.2022 and is valid up to 13.11.2023.

The copies of old AFA and new AFA are enclosed and marked as **Annexure-V. (Page No 38-39.)**

**2) That the application is barred by the Limitation as the cause of action arose on 29.06.2018 and the application is filed on 11.10.2022 i.e., after elapsed of four years and four months, hence not maintainable.**

**Verdict of the RP**

The loan was sanctioned on 01.07.2016. The date of NPA is 29.06.2018. The director being the respondent in the case gave OTS proposal to the applicant Bank on 15.09.2020. The present application was filed on 11.10.2022. Moreover, as per clause 3 of the guarantee deed, the guarantee is a continuing guarantee till the default is cleared. Moreover, as per clause 2 of the guarantee deed dated 08.08.2016, the respondent no 2



has committed to repay the dues of Rs 37.80 Cr with interest on that amount at such rates as applicable to the borrower from time-to-time compounded calendar monthly, other charges...etc. from the date of demand till payment.

This objection has no legal basis. The deed of guarantee is dated 08.08.2016 and is a continuing guarantee payable on demand (as per Clause 3 of the deed). The cause of action will start only when a demand is made to the personal guarantors in pursuance of the deed of guarantee. The first demand notice was served in SARFAESI Act on 30.06.2018 and 60 days time was given for payment. The second demand notice u/r 7(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 on 18.07.2022 but the respondent failed to pay. Admittedly, the director being the respondent in the case gave OTS proposal to the applicant Bank on 15.09.2020 admitting debt and default. The present application was filed on 11.10.2022. Accordingly, the period of limitation will start from 15.09.2020 i.e., upon OTS proposal sent to the applicant Bank, and the 3 years period will end on 14.09.2023. The application under section 95 has been filed within the limitation period as mentioned earlier.

Moreover, the limitation is continuing in nature as the claim of the applicant Bank has been admitted by the RP of the CD on the Insolvency commencement date i.e., 22.03.2021.

Hence, in terms of above, the application is well within the limitation period.

**3) The claimed amount against the guarantor is Rs 48.94 Cr whereas in CIRP, the amount claimed is Rs 32.88 Cr, hence the amount is freezed on CIRP commencement date i.e., 22.03.2021 and further claim cannot be raised.**



#### **Verdict of the RP**

The respondent is misconceived. The claim of the applicant as on CIRP commencement date is freezed against the CD and not against the guarantor. The interest and penal interest shall continue to occur till it is paid fully. Whatsoever amount realized from the CD, shall be adjusted against the dues of guarantor. As per clause 2 of the guarantee deed, the guarantor is required to pay the principal amount with interest on that amount at such rates as applicable to the borrower from time-to-time compounded calendar monthly, other charges...etc. from the date of demand till payment. Moreover, the amount claimed is not freezed at any date till it is paid in full. Accordingly, interest will continue to occur till paid as per Guarantee deed.

Hence, the version of respondent no 2 is not admissible.

- 4) That the resolution plan of the CD is already approved by the CoC and the same is not disclosed by the applicant Bank in the application. The amount claimed shall reduce with the amount received/ recoverable in the resolution plan.**

#### **Verdict of the RP**

The respondent failed to understand that the resolution plan shall be approved/ disapproved by this Hon'ble Tribunal only. ~~As on date, no recovery is made against the resolution plan.~~  
The plan will be implemented only after approval of the Hon'ble Tribunal. The present application is filed for the amount due against the respondent till 30.06.2022 and the same shall accrue further till paid. At the time of final settlement/ payment of the dues, the final amount shall be worked out and whatsoever recovery is made from any source shall be adjusted and shall be filed to this Hon'ble Tribunal only. Further, the respondent can give a complete repayment proposal as envisaged u/s 105 of the IB Code, 2016 considering all factors, hence the objection raised has no merit.

- 5) That the respondent never executed any personal guarantee. He is not the member of the CoC, hence not aware of the resolution plan and amount proposed by the resolution Applicant to Financial creditors/ applicant Bank is not known to him.**



### **Verdict of the RP**

The respondent is questioning the legal documentation, he has executed. He has signed the guarantee deed on 08.08.2016 **(Page no 90-94 of the application)** and the clause 2 specifically mentions the amount of guarantee to Rs 37.80 Cr plus interest till the date of payment, hence the objection raised is baseless.

The director being respondent in this case, is always invitee to the CoC meetings though he doesn't have right to vote. The director is aware of all the facts. Moreover, he can cover up all these aspects in his repayment plan and can take details from the RP at that time. This objection has no legal base.

8. Further, in term of Section 99(1) of the Code, the RP in his report has recommended that the captioned petition be admitted by this Adjudicating Authority. Relevant excerpt of the same reads thus: -

#### ***"8) THE RECOMMENDATION OF THE RP BEFORE THE HON'BLE TRIBUNAL***

*Based upon the above analysis and considering the legal provisions, the RP presents his final report to the Hon'ble Adjudicating Authority as under:*

- i. That RP has obtained all the information and explanations which to the best of his knowledge and belief were necessary to frame his opinion for the recommendations for acceptance or rejection of the application by the Hon'ble Adjudicating Authority.*
- ii. On examination of the application and as submitted above, the debt is proved and complies the requirements set out as per Sec 95 of the IB Code, 2016 because of the following reasons:*
  - a) That the debt is proved*
  - b) The debt is owed by the CD of which personal guarantee is executed by the guarantor i.e., Rajneesh Nagar and the debt is duly acknowledged by the CD and the Guarantor;*
  - c) The dues with interest calculation are given by the applicant till 30.06.2022 amounting to Rs. 48.94 Cr;*
  - d) That the guarantor has failed to repay the debt within 14 days of the service of notice of demand;*



- e) That the details of documents and evidences in support of the claim by the applicant has been enclosed in the application;
- f) That the application is well within the limitation period;
- iii. Based on the above analysis and as per section 99(1) of the IB Code, 2016, the RP hereby recommends for the admission of the application filed by the Canara Bank u/s 95 of the IB Code subject to final amount of recovery from the Guarantor which is to be adjudicated by the Hon'ble Tribunal.
- iv. Accordingly, the Hon'ble Adjudicating Authority is prayed to order to initiate Insolvency against the Personal Guarantor as per section 100 of the IB Code as parameters set out as per section 99 of the IB Code are complied with. Submitted for Kind Consideration of the Hon'ble Tribunal.”

9. It is pertinent to mention that subsequent to the filing of the aforementioned report by the RP, Mr. Sanjiv Kumar Bhatt, an application bearing IA No. 1240/2024 was preferred by the Applicant Bank for replacement of the RP in view of the suspension order passed by the IBBI. The said IA was allowed by this Adjudicating Authority *vide* order dated 11.07.2024 and Mr. Rajesh Kumar Parakh was appointed as the RP. Relevant excerpt of the said order reads thus:

**“IA-1240/2024:** The Ld. Counsel for the Petitioner submitted that since the IBBI has passed an order placing Mr. Sandeep Kumar Bhatt under suspension, the applicant bank may be allowed to replace him.

At this stage the RP has already filed his report in terms of the provisions of Section 99 of IBC, 2016 and the requirement of RP would be there, if the petition is admitted and further process is required to be conducted. Nevertheless, in terms of the provisions of Section 98 of IBC, 2016, the creditor can seek replacement of the RP. The provisions of Section 98 reads thus:-

**“98. Replacement of Resolution Professional-** (1) Where the debtor or the creditor is of the opinion that the resolution professional





*appointed under section 97 is required to be replaced, he may apply to the Adjudicating Authority for the replacement of the such resolution professional.*

*(2) The Adjudicating Authority shall within seven days of the receipt of the application under sub-section (1) make a reference to the Board for replacement of the resolution professional.*

*(3) The Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (2), recommend the name of the resolution professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.*

*(4) Without prejudice to the provisions contained in sub-section (1), the creditors may apply to the Adjudicating Authority for replacement of the resolution professional where it has been decided in the meeting of the creditors, to replace the resolution professional with a new resolution professional for implementation of the repayment plan.*

*(5) Where the Adjudicating Authority admits an application made under sub-section (1) or sub-section (4), it shall direct the Board to confirm that there are no disciplinary proceedings pending against the proposed resolution professional.*

*(6) The Board shall send a communication within ten days of receipt of the direction under sub-section (5) either—*

*(a) confirming appointment of the nominated resolution professional; or*

*(b) rejecting appointment of the nominated resolution professional and recommend a new resolution professional.*

*(7) On the basis of the communication of the Board under sub-section (3) or sub-section (6), the Adjudicating Authority shall pass an order appointing a new resolution professional.*

*(8) The Adjudicating Authority may give directions to the resolution professional replaced under sub-section (7)—*



- (a) to share all information with the new resolution professional in respect of the insolvency resolution process; and
- (b) to co-operate with the new resolution professional in such matters as may be required.”

*In the wake, the prayer made in the application is allowed and the present RP is replaced with Mr. Rajesh Kumar Parakh (Email ID- parakh.rajesh@gmail.com) as Resolution Professional, whose details are given below:*

**IBBI Registration No.** : IBBI/IPA-001/IP-P00272/2017- 18/10516

**E-mail Address** : [parakh.rajesh@gmail.com](mailto:parakh.rajesh@gmail.com)

**Contact Number** : 9811350848

*As far as the grievance raised by Mr. Sandeep Kumar Bhatt regarding the IRP cost and his fee is concerned. It would be open to him to move separate application.*

**IA stands disposed of.”**

**10.** On behalf of the Respondent/ PG, an objection was filed to the aforementioned report of the RP wherein the following submissions were made: -

- i. The report filed by the RP is not maintainable as the said RP has been suspended by IBBI for a period of two years w.e.f. 01.12.2023.
- ii. The Financial Creditor has submitted its claim under Form C to the tune of Rs. 41,61,01,637/- before the RP with regard to the loan facility extended to Corporate Debtor i.e. Bulland Buildtech Private Limited in CP(IB) No. 1744/2019, and despite the same, the Financial Creditor is agitating the same debt against the Respondent/ PG.



- iii. That unless a certificate under clause 11 of the guarantee deed indicating the quantified amount payable by the PG is issued, the guarantee cannot be stated to have been invoked qua him. Further, the demand notice dated 18.07.2022 as issued by the Applicant Bank is not in confirmation of the terms of the Guarantee Deed as executed between the Respondent and the Applicant Bank.
- iv. The alleged debt is barred by limitation as the admitted date as stated by the Financial Creditor is 29.06.2018 whereas the demand notice to the Respondent/ PG was issued on 18.07.2022 and the captioned petition was filed on 12.10.2022, both of which are much after the prescribed period of limitation i.e., 3 years from the date of default.
- v. The reliance placed by the RP on the OTS proposal dated 15.09.2020 for determining the limitation period is misconceived as the OTS was given by the Company and not the Respondent/ PG in his personal capacity.
- vi. It is an admitted fact that the Resolution Plan for the CD, for which the Respondent stood as Personal Guarantor, has already been approved by the CoC of the CD and the same is pending final adjudication of this Adjudicating Authority. The said resolution plan squarely covers the debt for which the repayment has been sought in the present petition and that approaching this Tribunal for the same debt shall cause double jeopardy to the Respondent/ PG.
- vii. The report filed by the RP is not in compliance of Section 99(6) and 99(9) of the Code. A bare perusal of the report shows that no reasons have been



recorded by the RP to substantiate its recommendation for the acceptance of the captioned petition under Section 95 of the Code. Further, the RP has alleged an uncrystallized and overboard amount as debt due from Respondent/ PG as the said debt has already been settled in terms of the approved plan of the CD.

**11.** In response to the aforesaid objections raised by the Respondent/ PG, a rejoinder was filed on behalf of the RP wherein the following submissions were made: -

- i. With regard to the contention that the report of the RP was not maintainable in view of his suspension by the IBBI, it is submitted that the suspension of the erstwhile RP by the IBBI does not affect the continuance of the present case. Moreover, the IA- 1240/2024 filed by the Applicant Bank for replacement of RP has already been allowed by this Tribunal *vide* order dated 11.07.2024.
- ii. With regard to the contention that CIRP against the CD in relation to the same debt was undergoing and hence proceeding against the PG is not tenable, it is submitted that the Hon'ble Apex Court has already settled the law regarding the co-extensive liability of the Principal Borrower as well as the Guarantor and that insolvency proceedings against both can continue simultaneously.
- iii. With regard to the contention of the Respondent/ PG that guarantee was not invoked properly in terms of clause 11 of the Guarantee Deed as it was



not done under the signature of the Manager, Sub/ Asst. Manager or other officer of the Bank but an 'authorized signatory', it is submitted that the authorized signatory falls within the expression "in other person" under clause 11 of the Guarantee Deed.

- iv. With regard to the contention that the OTS proposal was given by the Principal Borrower and not the Respondent/ PG, it is submitted that the same ground has not merit as per law settled by the Hon'ble Supreme Court and the terms of the Guarantee Deed as the liability is co-extensive and that any document signed by the Principal Borrower is equally applicable on the Guarantor as per the terms of the Guarantee Deed.
- v. With regard to the contention that the debt in question is already covered under the resolution plan of the Corporate Debtor, it is submitted that whatever shall be recovered under the resolution plan, the same will be well covered in the repayment plan.

#### **ANALYSIS AND FINDINGS:**

**12.** We have perused the aforementioned submissions made on behalf of the RP as well as the Respondent/ PG.

**13.** At the outset, this Adjudicating Authority will consider the contention raised by the Respondent/ PG that since CIRP qua the Corporate Debtor is already pending, parallel proceedings under the Code could not be instituted against the Personal Guarantor. The Respondent/ PG has further espoused that since a resolution plan qua the CD has been approved by the CoC, a petition





instituted against the PG concerning the same debt i.e., debt defaulted by the CD, is not maintainable.

**14.** It is a settled law that when a resolution plan for a CD is approved, all liabilities/ claims/ dues for pre- CIRP period stands extinguished for the CD. However, this discharge is restricted to the Corporate Debtor only and does not release the personal guarantors from their obligation to make payments to the creditors as stipulated in the terms of the contract they have entered into.

**15.** In ***State Bank of India v. V. Ramakrishnan*** [(2018) 17 SCC 394], the Hon'ble Supreme Court held that the moratorium stipulated under the Code with respect to legal proceedings against a CD does not cover within its ambit initiation of proceedings against a Personal Guarantor. Relevant excerpt of the aforementioned judgment reads thus: -

*“26. We are also of the opinion that Sections 96 and 101, when contrasted with Section 14, would show that Section 14 cannot possibly apply to a personal guarantor. When an application is filed under Part III, an interim-moratorium or a moratorium is applicable in respect of any debt due. First and foremost, this is a separate moratorium, applicable separately in the case of personal guarantors against whom insolvency resolution processes may be initiated under Part III. Secondly, the protection of the moratorium under these sections is far greater than that of Section 14 in that pending legal proceedings in respect of the debt and not the debtor are stayed. The difference in language between Sections 14 and 101 is for a reason.*

*“26.1. Section 14 refers only to debts due by corporate debtors, who are limited liability companies, and it is clear that in the vast majority of cases, personal guarantees are given by Directors who are in management of the*



companies. The object of the Code is not to allow such guarantors to escape from an independent and co-extensive liability to pay off the entire outstanding debt, which is why Section 14 is not applied to them. However, insofar as firms and individuals are concerned, guarantees are given in respect of individual debts by persons who have unlimited liability to pay them. And such guarantors may be complete strangers to the debtor — often it could be a personal friend. It is for this reason that the moratorium mentioned in Section 101 would cover such persons, as such moratorium is in relation to the debt and not the debtor.

[...]

**31.** *The Insolvency Law Committee, appointed by the Ministry of Corporate Affairs, by its Report dated 26-3-2018, made certain key recommendations, one of which was:*

*“(iv) to clear the confusion regarding treatment of assets of guarantors of the corporate debtor vis-à-vis the moratorium on the assets of the corporate debtor, it has been recommended to clarify by way of an explanation that all assets of such guarantors to the corporate debtor shall be outside scope of moratorium imposed under the Code;”*

**32.** *The Committee insofar as the moratorium under Section 14 is concerned, went on to find:*

*“5.5. Section 14 provides for a moratorium or a stay on institution or continuation of proceeding, suits, etc. against the corporate debtor and its assets. There have been contradicting views on the scope of moratorium regarding its application to third parties affected by the debt of the corporate debtor, like guarantors or sureties. While some courts have taken the view that Section 14 may be interpreted literally to mean that it only restricts actions against the assets of the corporate debtor, a few others have taken an interpretation that the stay applies*



*on enforcement of guarantee as well, if a CIRP is going on against the corporate debtor.”*

*\*\*\**

*“5.7. The Allahabad High Court subsequently took a differing view in Sanjeev Shriya v. SBI [Sanjeev Shriya v. SBI, 2017 SCC OnLine All 2717 : (2018) 2 All LJ 769 : (2017) 9 ADJ 723] , by applying moratorium to enforcement of guarantee against personal guarantor to the debt. The rationale being that if a CIRP is going on against the corporate debtor, then the debt owed by the corporate debtor is not final till the resolution plan is approved, and thus the liability of the surety would also be unclear. The Court took the view that until debt of the corporate debtor is crystallised, the guarantor's liability may not be triggered. The Committee deliberated and noted that this would mean that surety's liabilities are put on hold if a CIRP is going on against the corporate debtor, and such an interpretation may lead to the contracts of guarantee being infructuous, and not serving the purpose for which they have been entered into.*

*5.8. In SBI v. V. Ramakrishnan [SBI v. V. Ramakrishnan, 2018 SCC OnLine Nclat 384] , Nclat took a broad interpretation of Section 14 and held that it would bar proceedings or actions against sureties. While doing so, it did not refer to any of the above judgments but instead held that proceedings against guarantors would affect the CIRP and may thus be barred by moratorium. The Committee felt that such a broad interpretation of the moratorium may curtail significant rights of the creditor which are intrinsic to a contract of guarantee.*

*5.9. A contract of guarantee is between the creditor, the principal debtor and the surety, whereunder the creditor has a remedy in relation to his debt against both the principal debtor and the surety (National Project Construction Corpn. Ltd. v. Sadhu and Co. [National*



*Project Construction Corpn. Ltd. v. Sadhu and Co., 1989 SCC OnLine P&H 1069 : AIR 1990 P&H 300] ). The surety here may be a corporate or a natural person and the liability of such person goes as far the liability of the principal debtor. As per Section 128 of the Contract Act, 1872, the liability of the surety is co-extensive with that of the principal debtor and the creditor may go against either the principal debtor, or the surety, or both, in no particular sequence (Chokalinga Chettiar v. Dandayuthapani Chettiar [Chokalinga Chettiar v. Dandayuthapani Chettiar, 1928 SCC OnLine Mad 236 : AIR 1928 Mad 1262] ). Though this may be limited by the terms of the contract of guarantee, the general principle of such contracts is that the liability of the principal debtor and the surety is co-extensive and is joint and several (Bank of Bihar Ltd. v. Damodar Prasad [Bank of Bihar Ltd. v. Damodar Prasad, AIR 1969 SC 297] ). The Committee noted that this characteristic of such contracts i.e. of having remedy against both the surety and the corporate debtor, without the obligation to exhaust the remedy against one of the parties before proceeding against the other, is of utmost importance for the creditor and is the hallmark of a guarantee contract, and the availability of such remedy is in most cases the basis on which the loan may have been extended.*

*5.10. The Committee further noted that a literal interpretation of Section 14 is prudent, and a broader interpretation may not be necessary in the above context. The assets of the surety are separate from those of the corporate debtor, and proceedings against the corporate debtor may not be seriously impacted by the actions against assets of third parties like sureties. Additionally, enforcement of guarantee may not have a significant impact on the debt of the corporate debtor as the right of the creditor against the principal debtor is merely shifted to the surety, to the extent of payment by the surety. Thus, contractual principles of guarantee require being respected even*



during a moratorium and an alternate interpretation may not have been the intention of the Code, as is clear from a plain reading of Section 14.

5.11. Further, since many guarantees for loans of corporates are given by its promoters in the form of personal guarantees, if there is a stay on actions against their assets during a CIRP, such promoters (who are also corporate applicants) may file frivolous applications to merely take advantage of the stay and guard their assets. In the judgments analysed in this relation, many have been filed by the corporate applicant under Section 10 of the Code and this may corroborate the above apprehension of abuse of the moratorium provision. The Committee concluded that Section 14 does not intend to bar actions against assets of guarantors to the debts of the corporate debtor and recommended that an explanation to clarify this may be inserted in Section 14 of the Code. The scope of the moratorium may be restricted to the assets of the corporate debtor only.”

**33.** *The Report of the said Committee makes it clear that the object of the amendment was to clarify and set at rest what the Committee thought was an overbroad interpretation of Section 14 [...]*

(Emphasis Supplied)

**16.** In **Lalit Kumar Jain v. Union of India** [(2021) 9 SCC 321], the Hon’ble Supreme Court *inter alia* placed reliance on the judgment of *State Bank of India v. V. Ramakrishnan* (supra) and categorically held that approval of resolution plan of CD does not *ipso facto* results in discharge of Personal Guarantor of CD from his liabilities. Relevant excerpt of the aforementioned judgment reads thus:

**“122.** *It is therefore, clear that the sanction of a resolution plan and finality imparted to it by Section 31 does not per se operate as a discharge of the*





*guarantor's liability. As to the nature and extent of the liability, much would depend on the terms of the guarantee itself. However, this Court has indicated, time and again, that an involuntary act of the principal debtor leading to loss of security, would not absolve a guarantor of its liability. In Maharashtra SEB [Maharashtra SEB v. Official Liquidator, (1982) 3 SCC 358] the liability of the guarantor (in a case where liability of the principal debtor was discharged under the Insolvency law or the Company law), was considered. It was held that in view of the unequivocal guarantee, such liability of the guarantor continues and the creditor can realise the same from the guarantor in view of the language of Section 128 of the Contract Act, 1872 as there is no discharge under Section 134 of that Act [...]"*

*“125. In view of the above discussion, it is held that approval of a resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under the contract of guarantee. As held by this Court, 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.”*

**17.** In view of the aforesaid judgments of the Hon’ble Supreme Court, it is now a settled law that when CIRP against a CD is initiated, simultaneous proceedings against the PG can also be initiated under the Code. Further, approval of a resolution plan against the CD does not ipso facto results in the discharge of Personal Guarantor of the CD from his liabilities to the financial creditor of the CD.

**18.** The next issue to be considered by this Adjudicating Authority is whether the present petition was barred by limitation. On behalf of the Respondent/ PG,



it has been contended that the default in repayment of debt had occurred on 29.06.2018, whereas the demand notice to the Respondent/ PG was issued on 18.07.2022 and the captioned petition was filed on 12.10.2022, and thus, both of which were filed much after the prescribed period of limitation i.e., 3 years from the date of default. On behalf of the RP, it was contended that since the OTS proposal was given by the CD to the Financial Creditor on 15.09.2020, the period of limitation should be computed from such date and that the present petition was filed within three years from such date.

**19.** It is now a settled legal principle that Section 18 of the Limitation Act, 1963 is applicable to the proceedings under the Code and thus, a fresh period of limitation commences when, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed. The said provision reads thus: -

***“18. Effect of acknowledgment in writing.—(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.”***

**20.** In ***Laxmi Pat Surana v. Union Bank of India*** [(2021) 8 SCC 481], the Hon’ble Supreme Court had held that Section 18 of the Limitation Act would



come into play every time the Corporate Debtor/Corporate Guarantor acknowledge their liability to pay the debt before the expiry of the prescribed period of limitation. Relevant excerpt of the aforementioned judgment reads thus:

*“43. Ordinarily, upon declaration of the loan account/ debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action under Section 7 IBC. However, Section 7 comes into play when the corporate debtor commits “default”. Section 7, consciously uses the expression “default” — not the date of notifying the loan account of the corporate person as NPA. Further, the expression “default” has been defined in Section 3(12) to mean non-payment of “debt” when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. In cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to non-payment of debt. Thus, when the principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of NPA but before the expiration of three years therefrom including the fresh period of limitation due to (successive) acknowledgments, it is not possible to extricate them from the renewed limitation accruing due to the effect of Section 18 of the Limitation Act. Section 18 of the Limitation Act gets attracted the moment acknowledgment in writing signed by the party against whom such right to initiate resolution process under Section 7 IBC enures. Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (corporate debtor), as the case may be, acknowledge their liability to pay the debt. Such acknowledgment, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgment of the debt, from time to time, for institution of the proceedings under Section 7 IBC. Further, the*



acknowledgment must be of a liability in respect of which the financial creditor can initiate action under Section 7 IBC.”

(Emphasis Supplied)

**21.** In the present case, it is an undisputed fact that the Corporate Debtor had submitted an OTS proposal to the Financial Creditor on 15.09.2020 and thus, in terms of Section 18 of the Limitation Act, 1963, a fresh period of limitation commenced from the said date with respect to the default in repayment of debt by the Corporate Debtor.

**22.** On behalf of the Respondent/ PG, it has been contended that even if a fresh period of limitation is taken to have commenced from the date of submission of OTS proposal on 15.09.2020, such OTS was given by the CD and not the PG in his personal capacity and thus, institution of present proceedings against the Respondent/ PG was barred by limitation. In this regard, this Adjudicating Authority is of the view that since the liability of the PG is co-extensive with that of the CD, an acknowledgment of the debt by the CD, in terms of Section 18 of the Limitation Act, would be equally applicable on the Personal Guarantor of the CD. Further, it is not the case that the PG was detached from the aforementioned OTS proposal since it was clearly mentioned in the proposal that the Respondent was leading the CD and takes the call for OTS. Relevant extract of the OTS proposal is reproduced here below:



**6 .NAME/S OF PROPRIETOR/PARTNERS/DIRECTORS/GUARANTORS AND THEIR NETWORK**

Name/s of Borrowers# /Guarantors/ Co-obligants	Net Worth* (Amt. in Cr)		Indicate reasons for wide variation in net worth, if any
	As on 28.09.2017	At present	
<b>A. Directors</b>			*Mr. Kishan Pal Singh and Ramkesh Basist has resigned from the company as per party letter dated 05.10.2019 and their present NW not available. Mr. Rajneesh Nagar who leads the company takes a call for OTS. However their guarantee is in force able. Mr. Rajneesh Nagar also informed that there is some dispute among the directors and hopeful to resolve the matter earliest.
Rajneesh Nagar**	5.87	3.12	
Kishan Pal Singh	7.39*	Not available	
Ramkesh Basist	7.51*	-do-	
<b>Total</b>	<b>20.77</b>	<b>3.12</b>	
<b>B. Guarantors/Co-obligants:</b>			
Rajneesh Nagar**	5.87	3.12	
Kishan Pal Singh	7.39*	Not available	
Ramkesh Basist	7.51*	-do-	
<b>Total</b>	<b>20.77</b>	<b>3.12</b>	

**23.** Further, the Respondent/ PG, by way of the Guarantee Deed, agreed to pay the defaulted amount to the Financial Creditor in the event of default by the Principal Borrower i.e. the CD. The said guarantee is a continuing one and hence, if there is any acknowledgment by the CD of the debt, then such acknowledgment shall be deemed to be made by the Personal Guarantor as well, more so when it is the PG himself who is running the CD. As a result, this Adjudicating Authority is of the view that the present petition filed against the Respondent/ PG was not barred by limitation.

**24.** The last issue to be considered by us is whether the guarantee was properly invoked under the Guarantee Deed against the Respondent/ PG. On behalf of the Respondent/ PG, reference has been made to clause 11 of the Guarantee Deed to espouse that the invocation was not done under the signature of the Manager, Sub/ Asst. Manager or other officer of the Bank but by an 'authorized signatory' and thus, the invocation of the guarantee was not proper. On the other





hand, on behalf of the RP, it was submitted that the authorized signatory falls within the expression “in other person” under clause 11 of the Guarantee Deed.

**25.** To appreciate the contentions raised by the parties, it is apt to refer to clause 11 of the guarantee deed, which reads thus: -

*“11. A CERTIFICATE in writing under the hand of the Manager, Sub/Asst. Manager or the other Officer of the Bank stating the amount at any particular time due and payable to it under the guarantee shall be conclusive evidence as against the guarantors, each of them and their respective representative and estates.”*

**26.** It is pertinent to mention that when the demand notice dated 18.07.2022 was made by the Financial Creditor, a reply dated 01.08.2022 was provided to the said demand notice by the Respondent/ PG and the said reply is enclosed as Annexure- A13 of petition bearing no. CP-IB/791/ND/2022. A perusal of the aforementioned reply shows that no such objection was raised by the Respondent/ PG that the demand notice was defective in terms of clause 11 of the guarantee deed. Furthermore, a reading of the said clause also shows that a certificate of demand notice could have been made under the hand of ‘*Manager, Sub/Asst. Manager or the other Officer of the Bank*’. We agree with the submission made on behalf of the RP that the expression ‘other officer of the Bank’ included authorized signatory. In view of the above, this Adjudicating Authority is of the view that the demand notice made by the Financial Creditor did not suffer from the defect as pointed by the Respondent/ PG.



**27. In the wake, the application filed by the Financial Creditor by way of CP-IB/791/ND/2022 is admitted.**

**28.** As a sequel of admission of the present application, a moratorium shall commence in relation to all the debts of the Respondent/ PG. During the moratorium period – (a) any pending legal action or proceedings in respect of any debt qua the Respondent/ PG shall be deemed to have been stayed; (b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt qua the Respondent/ PG; and (c) the debtors shall not transfer, alienate, encumber or dispose of any of the assets or his legal right or beneficiary interest therein. The moratorium shall cease to have effect at the end of period of 180 days.

**29.** A public notice shall be issued by the RP within seven days of passing of this order, inviting claim from all creditors within 21 days of such notice. The notice shall include details of the present order, particulars of the Resolution Professional with whom the claims have to be registered and the last date for the submission of the claims. The notice shall be – (a) published in English and one Vernacular Language newspaper which is in circulation in the State where the debtor resides; (b) affixed in the premises of this Adjudicating Authority; and (c) placed on the website of the Adjudicating Authority.

**30.** We are sanguine that the RP shall discharge all such duties as are incumbent upon him in terms of the provisions of Sections 104, 105, 106 , 107, 108, 112 and 113 of IBC, 2016, with the due deference of the procedure



enshrined in Regulations 5, 7, 8, 9, 11, 12, 13, 14, 15 and 17 of IBBI (Insolvency Resolution Process for Personal Guarantor to Corporate Debtors) Regulations, 2019 and also in terms of the other extent provisions of the aforementioned code/ regulations and/or any other provisions of law applicable to him, in discharge of his duties as RP.

**31.** A copy of this order along with the copy of the application as also the report of Resolution Professional shall be provided to the Applicant (RP), Personal Guarantor and IBBI, by the Registry/Court Master within 7 days from today by email.

**32. IA-426/2023 stands disposed of. To come up for consideration of Status Report to be filed by RP, within 8 weeks.** Irrespective of the progress in respect of the CIRP to be conducted by the RP, the moratorium shall culminate on the expiry of 180 days from the date of this order. Accordingly, the application stands disposed of.

**Sd/-**  
**(SUBRATA KUMAR DASH)**  
**MEMBER (T)**

**Sd/-**  
**(ASHOK KUMAR BHARDWAJ)**  
**MEMBER (J)**