



IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI - BENCH-VI

CP (IB) No. 875/MB/2023

CP (IB) No. 876/MB/2023

CP (IB) No. 904/MB/2023

[Under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 7(2) of the Insolvency and Bankruptcy (Application to the Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019]

IN THE MATTER OF:

CP (IB) No. 875/MB/2023

BANK OF MAHARASHTRA LIMITED ...Applicant/Financial Creditor

Vs.

MS. SHEETAL THAKUR ...Respondent/Personal Guarantor

CP (IB) No. 876/MB/2023

BANK OF MAHARASHTRA LIMITED ...Applicant/Financial Creditor

Vs.

MS. AARTI THAKUR ...Respondent/Personal Guarantor

CP (IB) No. 876/MB/2023

BANK OF MAHARASHTRA LIMITED ...Applicant/Financial Creditor

Vs.

MR. SIDHANT THAKUR ...Respondent/Personal Guarantor

Pronounced: 29.10.2024

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Hearing: Hybrid

Appearances:

Financial Creditor: Adv. Abhishek Sawant a/w Adv. Gaurav Sansare

Personal Guarantor: None

Resolution Professional: Adv. Harshvardhan G. Khambete



COMMON ORDER

[PER: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

1. BACKGROUND

1.1 The facts and contentions in these three Company Petitions **CP (IB) No. 875/MB/2023; CP (IB) No. 876/MB/2023; and CP (IB) No. 904/MB/2023** (Applications) are identical, and therefore, they are being dealt with together in this Common Order.

1.2 The Applications i.e., **CP (IB) No. 875/MB/2023 & CP (IB) No. 876/MB/2023** were filed on 21.08.2023 while **CP (IB) No. 904/MB/2023** was filed on 18.08.2023 under Section 95 of the Insolvency and Bankruptcy Code, 2016 (IBC) 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 (PG to CD Rules) by Bank of Maharashtra Limited [Applicant/Financial Creditor (FC)] through Mr. Santosh Kajale, authorised officer of the Applicant *vide* Letter of Authority dated 10.08.2023 for the purpose of initiating insolvency resolution process against **Ms. Sheetal Thakur, Ms. Aarti Thakur and Mr. Sidhant Thakur** (Respondent/Personal Guarantors (PGs) to 'Anmol Rice Mill Private Limited', the Corporate Debtor (CD/Principal Borrower), for a default of Rs.22,92,71,428.90/- (Twenty-Two Crore Ninety-Two Lakh Seventy-One Thousand Four Hundred and Twenty-Eight Rupees and Ninety Paisa) as on 25.07.2023. The alleged debt fell due was on 15.07.2013 while the dates of default as per Part-III of the three Applications is 22.10.2014.



1.3 The Applicant/FC is a Banking Company, incorporated on 16.09.1935 (CIN-U99999MH1935PTC002399), having its Branch Office at Stressed Assets Management Branch (SAMB), Janmangal, 4th Floor, 45/47, Mumbai Samachar Marg, Fort, Mumbai - 400001, Maharashtra.

1.4 The Respondents/PGs in the Applications are the directors as well as guarantors to the CD (CIN U15312MH2004PTC146453), a company incorporated on 21.05.2004, having its registered office at D-2, Benmar Apartments, Hill Road, Bandra (West), Mumbai – 400050, Maharashtra and are within the jurisdiction of this Tribunal. The registered offices of both the Applicants/FC and the PGs are within the jurisdiction of this Tribunal.

2. CONTENTIONS OF APPLICANT/FC

2.1 For the purpose of working capital as well as purchase and installation of new machinery, the CD sought credit facilities from the FC for which it obtained loan of Rs.9,50,00,000/- (Nine Crore Fifty Lakh Rupees) from the FC and executed several documents for securing the same.

2.2 The FC disbursed Rs. 2,00,00,000/- (Two Crore Rupees) as Term Loan facility and Rs. 7,50,00,000/- (Seven Crore Fifty Lakh Rupees) as Cash Credit facility to the CD upon its request, *vide* Sanction Letter dated 14.03.2013.

2.3 The FC relied upon the following documents:

- a) CD's Board resolution dated 21.03.2013 giving Mr. Sidhant Thakur (Director of the CD) the authority to comply with banking norms and ensure proper execution of documents for availing credit facilities;



b) Letters dated 25.03.2013 from the CD to the FC seeking Term Loan and Cash Credit facilities;

c) Demand promissory note issued by the CD dated 25.03.2013;

d) Composite Deed of Hypothecation dated 25.03.2013;

e) Deed for Guarantee dated 25.03.2013 for credit facilities except agricultural facilities, executed by the directors of the CD including the Respondent/PGs in favour of the FC.

2.4 The Respondent/PGs herein executed personal guarantees as against the financial facilities, thereby guaranteeing the debt arising under the same. Owing to non-payment of amounts due under the same, the loan account of the CD was classified as Non-Performing Asset (NPA) on 22.10.2014.

2.5 It is submitted that the FC initiated proceedings under the Recovery of Debts Due to Banks and Financial Institution Act, 1993, by filing OA No. 318/2016 on 27.08.2015 before the Ld. Debt Recovery Tribunal-II, Mumbai (DRT). The Ld. Counsel for the Applicants/FC submitted that the said OA is still pending before the DRT.

2.6 The Ld. Counsel for the Applicant submits that the FC invoked the guarantee against the Respondents/PGs by issuing demand notices dated 17.11.2022 under Rule 7(1) of PG to CD Rules in form B for Rs. 10,98,04,334/- including interest. The demand notices were sent to the Respondents/PGs at their registered addresses in Mumbai but were returned unclaimed with "Left without instructions" as postal remarks.

2.7 It is further submitted that the guarantees against the Respondents/PGs is continuing in nature as evident from Clause 6 of the Deed of Guarantee dated



25.03.2013, which explicitly stated that the guarantees remain in effect until all obligations owed to the FC by the borrowers are fully discharged, regardless of the utilisation or repayment status of the credit facilities. It is emphasised that this guarantee persists even in scenarios where the FC's claim against the principal borrowers becomes time-barred and unenforceable through legal means against the borrowers. A sample Clause of the Deed of Guarantee is reproduced as under :-

“This guarantee shall not be revoked by the guarantors and shall remain in force till all the amounts due and payable to the Bank by the borrowers in respect of the said credit facilities are paid in full inclusive of interest and other charges payable by the borrowers. The guarantors further specifically agree that this guarantee shall continue to remain in force and the guarantors shall continue to be liable thereunder for all amount due and payable to the Bank by the borrowers even though some of the credit facilities may have been unutilised or utilised and then repaid in full, so long as the credit facility is continued by the bank to the borrower. This guarantee shall be in full force even though the borrowers have not renewed the documents and even though the claim of the bank for the amounts due from the borrowers get time barred and the bank cannot recover the same from the borrowers by filing a suit or any legal proceedings against the borrowers.”

2.8 The Ld. Counsel for the Applicant submits that the total outstanding amount including interest and penal interests upon the loan accounts of the CD comes to Rs.22,92,71,428.93/- as on 25.07.2023 and the Respondent, being



the PGs to CD are personally liable to pay the said outstanding dues. The Applicant placed the statement of the CD's loan account Nos. 60128637914 and 60132071735 from 01.09.2013 to 25.07.2023 on record along with the Deed of Guarantee dated 25.03.2013 binding the Respondents/PGs to highlight the acknowledgment of the Respondents/PGs for the repayment of the outstanding dues to the Applicant/FC.


3. CONTENTIONS OF RESPONDENTS/PGs TO CD

3.1 Despite service of the Applications to the Respondents/PGs to CD by the Applicant *vide* email dated 17.08.2023 and notice dated 07.12.2023 served by this Tribunal, the Respondents/PGs to CD have neither appeared till date nor filed and placed on record any Affidavit in Reply.

3.2 The service of notice as well as Application was made to the email ID and the registered addresses of the Respondents/PGs, who are the directors of the CD, as verified from the Master Data of the CD.

4. RECOMMENDATIONS OF RP

4.1 This Bench appointed Mr. Gaurang Chhotalal Shah, a registered Insolvency Professional to act as Resolution Professional (RP) *vide* Order dated 04.12.2023 in the aforesaid Applications and directed the RP to prepare and file Report under Section 99 of the IBC and the same has been taken on record on 06.02.2024 in the following IAs, filed by the RP in the said Applications:



Sl. No.	Company Petition u/s 95 of IBC	IA No for filing report
1.	CP (IB) No. 875/MB/2023	IA (I.B.C) No. 406/MB/2024
2.	CP (IB) No. 876/MB/2023	IA (I.B.C) No. 404/MB/2024
3.	CP (IB) No. 904/MB/2023	IA (I.B.C) No. 405/MB/2024

4.2 The RP, *vide* his Report *dated* 17.01.2024, after due examination of the application, documents filed along with the same, in addition to the compliance of Clauses (1) to (10) of Section 99 of the IBC, recommended admission of the Applications. One such sample of recommendation is as under:-

“i. Upon perusal of the documents attached alongwith the petition filed the Applicants, the Personal Guarantor has committed a default in honouring the Deed of Guarantee dated 25th March 2013.

ii. Therefore, I hereby recommend that the present Application/Petition be ADMITTED by the Hon'ble NCLT.”

4.3 The Ld. Counsel for the RP submits that neither the CD nor the Respondents/PGs gave any reply to the RP despite service of intimation dated 30.12.2023 which got returned with remarks “Not delivered Addressee Left without instructions” and the email dated 02.01.2024 sent to the email ID of the CD.



5. ANALYSIS AND FINDINGS

5.1 We have perused all the documents and pleadings and heard both the Ld. Counsel for the Applicant/FC and the Ld. Counsel for the RP.

5.2 Upon perusal of the documents on record, it is established that the CD has committed default in repayment of loan amount granted by the FC. Ms. Sheetal Thakur, Ms. Aarti Thakur and Mr. Sidhant Thakur, being the PGs to CD and directors of the CD have not made repayment of loan facility demanded by the FC pursuant to the demand notice dated 17.11.2022 issued under Rule 7(1) of the PG to CD Rules by the FC to the Respondents/PGs to CD.

5.3 On perusal of the Report of the RP dated 17.01.2024, we find that the RP has given reasonable opportunity following the principles of natural justice and has taken into consideration various documents and come to the conclusion that insolvency resolution process should be initiated against the PGs.

5.4 The main issue in the present Applications is determination of limitation of filing the Application. Though the date of default, specifically mentioned by the Applicant/FC is 22.10.2014 in the Application, the said date pertains to the default qua the Principal Borrower, the CD, viz. , Anmol Rice Mill Private Limited. The default in the case of Respondents/PGs to CD would arise when the guarantees are invoked making them liable to pay the debt. Generally, the default date of the principal borrower is the date of default for the guarantor. However, it is not always necessary that the date of default should be the same, rather it depends on the nature and contents of the Deed of



Guarantee executed by the guarantor. In *Syndicate Bank Vs. Channaveerappa Belari and Ors.*, [Civil Appeal No. 6894 of 1997], the Hon'ble Supreme Court clearly held that a claim may be even time-barred against the principal debtor, but still enforceable against the guarantor. The parties may agree that the liability of a guarantor shall arise at a later point of time than that of the principal debtor. In this case, the Ld. Counsel for the Applicant argued that the guarantee against the Respondents/PGs as regards the outstanding dues arose on 17.11.2022 when Demand Notice was issued to them.

5.5 However, upon perusal of available documents, we find that the Applicant/FC might have sent a notice on 14.11.2014 to the CD as well as its directors under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) Act. Although it has been pleaded by the Applicant/FC that SARFAESI notice was issued, the said notice does not form part of the documents made available to us. However, we find from the DRT records in OA 318/2016 that SARFAESI action was already taken against both the CD/Principal Borrower and the Respondents/PGs as evident from the case status of the said OA from the website of the DRT. The Respondents/PGs herein are arrayed as Additional Parties to the said proceeding before the DRT. Contrary to the Ld. Counsel for the Applicant's contention regarding pendency of legal proceedings before DRT, we find that the said OA was disposed of on 19.01.2018. Recovery Certificate No. 77/2018 was also issued in the matter. However, all these details were not brought to our notice by the Applicant/FC.



Further, the Respondents/PGs were also not available to file reply or clarify the position.

5.6 Further, it is on record that the last payment was made to the Applicant/FC by the CD on 10.03.2017. Accordingly, even if we consider that the limitation gets extended by such part-payment made by the CD/Principal Borrower, the fresh period of limitation shall start running from 10.03.2017. The aforesaid Applications have been filed on 18.08.2023 and 21.08.2023 respectively, which are beyond the period of three years from the said date and, therefore, these Applications are hit by the law of limitation and cannot be maintained.

5.7 The reliance placed by the Applicant/FC on Clause 6 of the Deed of Guarantee is misplaced. The said clause providing for continuance of guarantee is relevant till the point the guarantee is not invoked calling upon the Respondents/PGs therein to pay the guaranteed amount. In this case, guarantees were invoked, presumably on 14.11.2014 while SARFAESI notice was issued to the Principal Borrower/CD and the PGs, calling upon them to pay the amount due. The Applicant/FC has suppressed this fact from us and that is precisely the reason for their not producing the copy of SARFAESI notice along with these Applications. The Applicant/FC appears to have issued another notice on 17.11.2022. There is nothing to show that the said notice has been served on them. Be that as it may, after already invoking the guarantees way back in 2014, issuing another letter for invocation in 2022 would not help the case of the Applicant/FC. Rather, it would only amount to misleading of facts. A Guarantee can be invoked only once. In view of the above, we do not find any force in the argument of the



Ld. Counsel for the Applicant/FC that the Deed of Guarantee indicates irrevocable commitments of the PGs and continuing responsibility for any outstanding amounts owed to the FC by the Principal Borrower/CD. Especially when we do not have any material on record evidencing invocation of guarantees against the Respondents/PGs to CD, within the period of limitation before filing the present Applications under Section 238A of the IBC and the Limitation Act, 1963.

ORDER

In the result, these three Applications, **CP (IB) No. 875/MB/2023; 876/MB/2023; and 904/MB/2023** filed under Section 95(1) of the IBC, by Bank of Maharashtra, the Applicant/FC, for initiating insolvency resolution process against Ms. Sheetal Thakur, Ms. Aarti Thakur and Mr. Sidhant Thakur, the Respondent/PGs are hereby **rejected and disposed of accordingly.**

**Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)**

**Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)**

//Tanmay Jain//