



**NATIONAL COMPANY LAW TRIBUNAL**  
**INDORE BENCH**  
**COURT NO. 1**

ITEM No.202  
**CP(IB)/78(MP)2023**

**Order under Section 95 IBC**

**IN THE MATTER OF:**

Punjab National Bank through RP, Teena Saraswat Pandey .....**Applicant**

V/s

Akhilesh Argal S/o Late Mathura Prasad Argal .....**Respondent**

**Coram:**

Hon'ble Shri Brajendra Mani Tripathi, Member (J)

Hon'ble Shri Man Mohan Gupta Member (T)

**PRONOUNCEMENT OF ORDER**  
**Delivered on 13/04/2026**

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

**MAN MOHAN GUPTA**  
**MEMBER (TECHNICAL)**

Tomar

Sd/-

**BRAJENDRA MANI TRIPATHI**  
**MEMBER (JUDICIAL)**

**THE NATIONAL COMPANY LAW TRIBUNAL  
INDORE BENCH  
CP(IB) 78 OF 2023**

*(Under Section 95 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 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:**

**Punjab National Bank**

Zonal SASTRA Centre,  
Zonal Office, 1st Floor,  
PNB Building, Arera Hills,  
Bhopal (M. P) -462011

.....Applicant

**Versus**

**Mr. Akhilesh Argal**

E-5/68 Arera colony Bhopal  
M.P. 462016 IN

.....Respondent

**CORAM:**

**Shri. Brajendra Mani Tripathi, HON'BLE MEMBER (J)**

**Shri. Man Mohan Gupta, HON'BLE MEMBER (T)**

**APPEARANCE:**

**For the Applicant:** Mr. Madhav Lahoti, Adv.

**For the RP** : Ms. Teena Saraswat Pandey.

**For the Respondent** : Mr. Pratik Thakkar, Adv.



## JUDGEMENT

1. The present application has been filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**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 by Punjab National Bank through RP, Teena Saraswat Pandey (hereinafter referred to as “**Financial Creditor**”/“**Applicant**”) for the purpose of initiating insolvency resolution process against Mr. Akhilesh Argal (hereinafter referred to as “**Respondent/Personal Guarantor**”), Personal Guarantor of the M/s.Vindhya Cereals Private Limited (hereinafter referred to as “**Corporate Debtor**”) having Corporate Identification Number (CIN): U01403MP2009PTC022226 for default of an amount of **Rs. 89,68,29, 970.69/-**.and the date of default is stated to be **28.09.2016**.
2. The said amount comprises principal amount of Rs. 35,55,15,630.00, interest amount of Rs. 54,69,04,643.99, less recovery post NPA amounting to Rs. 55,90,303.30,

thereby resulting in total outstanding of Rs. 89,68,29,970.69  
as on 30.06.2023.

**Submissions by the Applicant/Financial Creditor:**


3. The averments made by the Financial Creditor in its Application and argued by the learned counsel for the Applicant are summarized hereunder:
4. That the applicant is a Banking Institution and body corporate constituted under the Banking Companies (Acquisition and transfer of undertakings) Act, 1970 having its head office at 7, Bhikaji Cama Place, New Delhi-110607. A Circle office at Bhopal and branches among others at New Market Branch, Bhopal, situated at opposite T.T Nagar Police Station, New Market, Bhopal, 462003 (M.P).
5. The applicant states that on **30.03.2012, 17.08.2012, 19.03.2013** and **27.06.2014** one of the Guarantor Mr. Akhilesh Argal executed a Deed of Guarantee and thereby guaranteed that if at any time default be made by the Corporate Debtor M/s. Vindhya Cereals Pvt Ltd. in payment of the principal of Rs. 38,83,45,000, (Thirty-Eight Crores Eighty-Three Lakhs Forty-Five Thousand only) sum together with interest of, costs, charges, expenses and/or other money



due to applicant in respect of or under the said credit facilities or any of them the Guarantor shall forthwith on demand pay to the applicant the whole of the said principal sum. The copy of the said Deed of Guarantee are annexed as Annexure A-1, A-2, A-3 and A-4.

6. The Applicant has further stated that the Corporate Debtor availed the aforesaid credit facilities and in that regard executed the following documents:

- Loan Application dated 31.03.2012
- Sanction Letter dated 30.03.2012
- Resolution dated 30.03.2012
- Agreement of Hypothecation of Goods dated 30.03.2012
- Term Loan Agreement dated 30.03.2012
- Agreement of Hypothecation of Movable Assets dated 30.03.2012
- Hypothecation of assets to secure term loan
- Letters of Undertaking and Declaration dated 30.03.2012
- Master Agreement dated 30.03.2012
- Agreement of Guarantee dated 30.03.2012
- Documents in respect of equitable mortgage
- Application dated 07.07.2012
- Sanction Letter dated 06.08.2012
- Resolution dated 15.07.2012
- Term Loan Agreement dated 17.08.2012
- Hypothecation of assets dated 17.08.2012
- Agreement of Guarantee dated 17.08.2012
- Documents relating to extension of equitable mortgage dated 18.08.2012
- Further documents executed subsequently include:
- Letter of Undertaking dated 19.03.2013
- Agreement of Guarantee dated 19.03.2013

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- Documents relating to extension of equitable mortgage dated 20.03.2013
  - Agreement of Guarantee dated 21.02.2014
  - Sanction Letter dated 19.06.2014
  - Resolution dated 22.03.2014
  - Agreement of Hypothecation of Goods and Book Debts dated 27.06.2014
  - Letter of Undertaking dated 27.06.2014
  - Agreement of Guarantee dated 27.06.2014
  - Documents relating to extension and creation of equitable mortgage dated 27.06.2014
  - Documents relating to charge creation
  - Balance and Security Confirmation Letter dated 26.04.2013
  - Balance and Security Confirmation Letter dated 04.03.2016
  - Regularization of Loan and Submission of Stock Details dated 27.12.2016
  - Notice under Section 13(2) of SARFAESI Act dated 03.01.2017 and 29.05.2017

All the aforesaid documents are collectively annexed as


**Annexure B (Colly).**

7. It is submitted that liquidation order was passed by this Tribunal vide order dated **18.03.2021**, and Mr. Sajjan Kumar Dokania was appointed as Liquidator. Copy of the said order is annexed as **Annexure C.**

8. The Applicant has filed its claim of **Rs. 69,83,85,977.19/-** before the Liquidator in Form D under Regulation 18 of the IBBI (Liquidation Process) Regulations, 2016 on 28.12.2021, which is annexed as **Annexure D.**



9. It is submitted that the loan account of the Corporate Debtor was classified as NPA on 29.12.2016, and the Applicant recalled the loan and invoked the guarantee. However, neither the Corporate Debtor nor the personal guarantor repaid the dues.
10. The Applicant issued a demand notice in Form B dated **17.07.2023** to the Respondent/Guarantor through Speed Post. The said notice along with postal receipt and delivery report is annexed as **Annexure E (Colly)**.
11. The Applicant has also placed on record the Information Utility report evidencing the occurrence of default, which is annexed as **Annexure M**.
12. It is further submitted that the credit facilities were secured by creation of various securities, details whereof are placed on record as **Annexure J**. The registration and modification of charges are reflected in the records of the Registrar of Companies, annexed as Annexure K, and the valuation of the secured assets is supported by the valuation report annexed as **Annexure L**.
13. The applicant submits that the Corporate Debtor utilized the credit facilities but failed to adhere to the repayment terms,



and despite repeated requests, did not clear the outstanding dues. The account remained irregular and the transactions were acknowledged from time to time.

14. The Applicant has maintained the statement of account of the Corporate Debtor in the ordinary course of banking business, along with certificate under the Bankers' Books Evidence Act, which evidences the debt and is annexed as **Annexure F**.

**Appointment of Resolution Professional:**

15. On presentation of the application by the Applicant, this Adjudicating Authority Vide order dated **04.01.2024** appointed **Ms Teena Saraswat Pandey** having registration no. IBBI PA-001/IP-P00652/2017-18/11126 as Resolution professional to examine the application filed by the Personal Guarantor and submit a report under section 99 of the code. The order of the appointment was received by the Resolution Professional on 10.01.2024 and pursuant thereto, she has filed her report dated 23.01.2024 recommending admission of the application under section 95 of IBC, 2016. The written consent of Ms. Teena Saraswat Pandey to act as Resolution Professional (Annexure N) is on Record.



16. **Report of Resolution professional:** The RP has recorded in the Report that:

(i) The Resolution Professional has stated that information under Section 99(4) of the Code was sought from the liquidator and the details of stakeholders were made available. The liquidation order and email communication have been placed on record as **Annexure A** and **Annexure B**.

(ii) Further, information was sought from Punjab National Bank and their reply has been placed on record as **Annexure-C** as per the material on record, no payment has been received from the date of NPA with respect to the respondent. The outstanding amount as on 31.12.2023 is stated to be Rs.97,62,52,665.69, comprising of: Cash Credit: Rs. 89,39,83,938.69, Term Loan: Rs.1,55,16,529.00, Term Loan: Rs.6,67,52,198.00. the said figures have been placed on record.

(iii) It is further stated that no recovery or repayment has been made after filing of the Application.

(iv) The Resolution Professional has further stated that notice was issued to the Personal Guarantor seeking information and explanation under Sections 99(2) and 99(4) of the Code;



however, no response was received within the stipulated time as prescribed under Section 99(5) of the Code.

(v) The Resolution Professional has also stated that efforts were made to collect information from the Personal Guarantor as well as from sources available in the public domain; however, no sufficient information was made available, and therefore the assets and liabilities of the Personal Guarantor could not be quantified.

(vi) It is observed from the report that the Personal Guarantor has given personal guarantee in respect of credit facilities granted by Punjab National Bank to the Corporate Debtor, and the said facilities were sanctioned and enhanced from time to time.

(vii) The Resolution Professional has recorded that the Corporate Debtor has committed default in repayment of dues, and the amount of default as stated in the Application is **Rs.89,68,29,970.69**.

(viii) It is further noted that the Applicant Bank has invoked the personal guarantee and initiated proceedings before the Debts Recovery Tribunal, Jabalpur. It is also stated that an

FIR has been lodged with CBI and investigation is in progress

**(Annexure-F).**

(ix) The Resolution Professional has also noted that demand notice in prescribed Form B dated 17.07.2023 was issued to the Personal Guarantor, which was returned as “unclaimed”. Relying on judicial precedents including the case of Priyanka Kumari v. Shailendra Kumar, the Supreme Court's ruling firmly establishes that a notice returned as 'unclaimed' should be considered as served upon the addressee, constituting proper service, provided it was sent to the correct address. This precedent sets a clear framework for legal interpretation concerning notices returned as 'unclaimed' and their implications in cases where addressees fail to respond or appear. The Supreme Court referred to previous decisions, such as K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another (1999), Ajeet Seeds Limited Vs. K. Gopala Krishnaiah (2014) to support its stance. According to these precedents, when a notice is sent it is stated that such notice is deemed to be duly served. Copy of judgment relied upon is placed on record as **Annexure G.**



(x) It is further recorded that objections were received from the Personal Guarantor via email dated 28.01.2024 which are placed as **Annexure-H** however, no documentary or legal evidence has been furnished in support of such objections.

(xi) It is further observed that the guarantee furnished by the Personal Guarantor is a continuing guarantee, and reliance has been placed on the judgment of Hon'ble NCLT Cuttack Bench in CP(IB) No. 9/CB/2022, which is placed on record as **Annexure G**. The liability of the guarantor is co-extensive with that of the principal debtor in terms of Section 128 of the Indian Contract Act, 1872.

(xii) The Resolution Professional has stated that the debts do not fall within the category of excluded debts under Section 79(15) of the Code.

(xiii) It is also recorded that The Application has been filed by the Creditor under Section 95(1) of the Code in the prescribed Form Requisite fee has been paid, Necessary documents as required under Section 95(4), Copy of the Application has been served upon the Personal Guarantor and proof thereof has been furnished in terms of Section 95(5)



No application under Chapter III of the Code has been admitted in respect of the Personal Guarantor during the period of twelve months preceding the present Application.

The Application is made against the Personal Guarantor in his individual capacity.


(xiv) It is also noted that the Corporate Debtor, Vindhya Cereals Private Limited, is under liquidation vide order dated 18.03.2021.

(xv) Based on the above examination, the Resolution Professional has concluded that the debt is due and payable, default has been committed, and the Application satisfies the requirements of Section 95 of the Code.

(xvi) Accordingly, the Resolution Professional has recommended admission of the Application under Section 95(1) of the Code.


**17. Reply by Respondent:**


- i. The Respondent is the Personal Guarantor in the present Petition, is well conversant with the facts of the case and is competent to file the present reply. The Respondent denies each and every averment made in the Company Petition as well as in the Report of the



Resolution Professional, except those specifically admitted herein. Any non-traversal shall not be construed as admission.


- ii. The present Petition has been filed by the Financial Creditor under Section 95 of the Insolvency and Bankruptcy Code, 2016 alleging non-payment of debts of M/s Vindhya Cereals Private Limited.
- iii. The Petition is replete with factual and legal infirmities, contains incorrect and misconceived submissions, and presents a distorted factual picture. The same is not maintainable either in law or on facts, is devoid of particulars, lacks merit and amounts to abuse of process of law.
- iv. The Petition is coercive in nature and has been filed with the intent to extract money and exert unlawful pressure on the Personal Guarantor.
- v. The amount claimed i.e. Rs.89,68,29,970.69 is prima facie incorrect, being a consolidated/clubbed claim without any explanation of its basis, and the demand is imaginary, illusory and based on false assertions.


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- vi. The alleged guarantee deed is not admissible in evidence as the same is insufficiently stamped and is barred by limitation.
  - vii. The documents relied upon are not validly executed and are neither properly stamped/registered nor renewed within limitation and therefore cannot be read in evidence.
  - viii. In absence of valid and admissible documents, initiation of proceedings against the Personal Guarantor is not maintainable.
  - ix. The present Petition is barred by limitation. As per Form C, the date of default is 28.09.2016 and as per NESL, 29.12.2016, whereas the Petition has been filed on 05.09.2023.
  - x. The personal guarantee was already invoked in the year 2017 through notices dated 03.01.2017, 29.05.2017 and 07.07.2017 (Annexure R/1 Colly), and therefore re-invocation is not maintainable.
  - xi. The Petitioner has suppressed the material fact of prior invocation of guarantee in 2017. Limitation against the guarantor runs from the date of demand and refusal,



i.e., 2017, and even as per the Petitioner's own case, the claim is barred by limitation.

- xii. The Application is defective as Form-C has not been filed in accordance with law. Though filed through the Resolution Professional, it is signed by the Financial Creditor.
- xiii. In view of the judgment of Hon'ble NCLAT in Rahul Arunprasad Patel vs State Bank of India, such defect renders the Application liable to be dismissed.
- xiv. The Financial Creditor has fraudulently registered the debt with NESL by mentioning an incorrect email ID of the Respondent, thereby misleading this Adjudicating Authority.
- xv. The contention of the Resolution Professional that the guarantee is a continuing guarantee is incorrect. Limitation runs from the date of breach/demand, which in the present case is 2017.
- xvi. The reliance placed by the Resolution Professional on judgments regarding continuing guarantee is distinguishable on facts.


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- xvii. There is no proper averment explaining limitation except a bald assertion of continuing guarantee.
- xviii. There is suppression of proceedings before the Hon'ble Debt Recovery Tribunal wherein the Respondent has been impleaded on the basis of personal guarantee.
- xix. The alleged claim is not a "debt" within the meaning of the Code and lies outside the purview of the Insolvency and Bankruptcy Code, 2016.
- xx. The authorization defect goes to the root of the matter and is not curable.
- xxi. The demand notice under Form B has not been served upon the Personal Guarantor and the alleged service is improper and ineffective. Service of demand notice is sine qua non for initiation of proceedings under the Code.
- xxii. The respondent submits that the Written objections dated 22.02.2024 were filed before the Insolvency Professional (Annexure R/2), raising disputes and seeking documents.
- xxiii. The Insolvency Professional failed to rebut the objections and failed to provide documents, thereby



vitiating the process. Initiation without furnishing basic documents relating to invocation of guarantee is illegal and bad in law and the Personal Guarantor/Respondent is not liable for the claimed amount or interest.


18. **Rejoinder by applicant:**


- i. It is submitted that all the contentions and averments raised in the reply are denied.
- ii. It is submitted that the Non-Applicant is liable to pay the outstanding dues. The Non-Applicant, being the Personal Guarantor, has executed the Deed of Guarantee. The Deed of Guarantee provides that in the event of default by the Corporate Debtor, namely M/s Vindhya Cereals Private Limited, in repayment of the principal amount together with interest, costs, charges and expenses, the guarantor shall forthwith, on demand, pay the entire amount to the Applicant. The signature of the Non-Applicant establishes knowledge of the guarantee. It is further submitted that the Deed of Guarantee specifically provides that the guarantors are jointly and severally liable to pay all amounts due to the



Bank. Though the Non-Applicant has raised certain technical objections with respect to documents, the execution of the guarantee agreement has not been denied.


- iii. It is submitted that the amount claimed in the Application filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 in Form C 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 is accurate and duly substantiated by evidence. As on 30.06.2023, the total outstanding amount is Rs. 89,78,30,970.99, comprising principal amount of Rs.35,55,15,630.00 and accrued interest of Rs.54,69,04,643.99, after adjustment of the recovered amount of Rs. 5,590,303.30 post NPA. The computation correctly reflects the liability of the Non-Applicant under the personal guarantee. It is further submitted that there is no dispute regarding the quantum of the amount claimed and any contention to the contrary is devoid of merit.

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- iv. It is submitted that Mr. Amitesh Argal on behalf of the suspended Directors and Personal Guarantors wrote a letter dated 15.02.2021 to the Applicant Bank for OTS proposal showing acknowledgement of debt and fresh cause of action for the Applicant Bank to file this application. A copy of the OTS letter dated 15.02.2021 is marked and annexed herewith as Annexure P/1.
- v. It is submitted that the allegation regarding insufficiency of stamping of the guarantee agreement is denied. The guarantee agreement has been duly executed and is in compliance with the provisions of the Indian Stamp Act, 1899. It is further submitted that the report of the Resolution Professional records that stamp duty of Rs.250/- was paid at the time of execution in accordance with applicable law. Therefore, the objection regarding stamping does not affect the enforceability of the guarantee or the maintainability of the Application.
- vi. It is submitted that the contention regarding prior invocation of the personal guarantee does not bar the present Application. The guarantee is a continuing guarantee and remains effective until discharge of the



guaranteed obligations. It is submitted that invocation of the guarantee is a contractual remedy and is independent of the statutory remedy under the Insolvency and Bankruptcy Code, 2016. It is further submitted that the fact of prior invocation has been disclosed in the Application and there is no suppression of material facts.

- vii. It is submitted that the Application filed in Form C is in compliance with the prescribed format under the applicable Rules. It is specifically provided in Part IV of Form C that the signature of the Resolution Professional is required. It is submitted that the Application also bears the signature of the Financial Creditor on every page and the objection raised in this regard is misconceived.
- viii. It is submitted that the allegation of fraud in registration of the debt with the Information Utility, namely National E-Governance Services Limited (NESL), is denied. The registration has been carried out in good faith and in accordance with law. It is submitted that the email ID of the Corporate Debtor reflects delivery of the



information to the addressee and therefore the allegation of fraudulent registration is baseless.


- ix. It is submitted that the demand notice in Form B was duly issued and served upon the Non-Applicant in accordance with law. It is submitted that the demand notice dated 17.07.2023 was returned as “unclaimed”, which amounts to deemed service. It is submitted that in terms of Section 27 of the General Clauses Act, 1897 and the law laid down by the Hon’ble Supreme Court in *K. Bhaskaran v. Sankaran Vaidhyan Balan & Anr.*, (1999) 7 SCC 510, a notice returned as unclaimed is deemed to have been duly served. It is submitted that the Non-Applicant cannot rely on such contention to avoid liability in the present proceedings.
- x. It is submitted that the pendency of proceedings before the Hon’ble Debt Recovery Tribunal does not bar initiation of proceedings under Section 95 of the Code. It is submitted that the provisions of the Code have overriding effect in terms of Section 238 and the Applicant is entitled to invoke the remedy under the Code.





xi. It is submitted that the Resolution Professional has submitted the report dated 23.01.2024 in compliance with the provisions of Section 99 of the Code. It is submitted that the Resolution Professional has examined the Application and afforded an opportunity to the Non-Applicant to furnish documents and objections, which were duly considered. It is submitted that pursuant to the order dated 09.02.2024 passed by this Tribunal, the report has been submitted within the stipulated period. It is further submitted that where the debt is registered with the Information Utility, the same cannot be disputed by the debtor.

19. **Analysis and Observation:**

i. We have heard the submissions made by the Learned Counsel for the Applicant and the Respondent and have perused the material available on record, including the Application filed under Section 95 of the Insolvency and Bankruptcy Code, 2016, the report submitted by the Resolution Professional under Section 99 of the Code, the reply filed by the Respondent and the rejoinder filed by the Applicant.

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- ii. The present Application has been filed under Section 95 of the Code seeking initiation of insolvency resolution process against the Respondent in his capacity as Personal Guarantor to the Corporate Debtor, namely M/s Vindhya Cereals Private Limited.
  - iii. From the material on record, it is observed that the Corporate Debtor had availed various credit facilities from the Applicant Bank and the Respondent had executed Deeds of Guarantee securing the said facilities. The Respondent has not specifically denied execution of the guarantee, though objections have been raised regarding admissibility, stamping and limitation.
  - iv. It is further noted that the loan account of the Corporate Debtor was classified as NPA on 29.12.2016 and the personal guarantee was invoked. The statement of account and Information Utility record reflect the prima facie existence of debt and default. The Resolution Professional, in his report, has also concluded that default has been committed and the debt is due and payable.

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- v. The Respondent/Personal guarantor has raised various objections including limitation, improper service of demand notice, inadmissibility of guarantee on account of insufficient stamping, defect in filing of Form C, incorrect computation of claim, pendency of proceedings before DRT, and alleged defects in registration with Information Utility.
- vi. Insofar as service of demand notice is concerned, it is noted that notice in Form B dated 17.07.2023 was issued and returned as “unclaimed”. The Applicant has relied upon Section 27 of the General Clauses Act, 1897 and judicial precedents to contend that such notice amounts to deemed service. The Respondent has not produced any material to establish that the notice was sent to an incorrect address. Accordingly, the contention regarding non-service does not merit acceptance.
- vii. With respect to limitation, the Respondent has contended that that the present Application filed on 05.09.2023 is barred by limitation. however, the Applicant has submitted that the guarantee is a




continuing guarantee and the liability of the Personal Guarantor is co-extensive with that of the principal borrower. It is further submitted that there have been acknowledgments of debt, including an OTS proposal dated 15.02.2021.

viii. For the purpose of examining the issue of limitation, the relevant dates are set out below:

1. Date of default | 28.09.2016 |
2. Account classified as NPA | 29.12.2016 |
3. Notice under Section 13(2), SARFAESI Act | 03.01.2017 |
4. Subsequent notice under Section 13(2), SARFAESI Act | 29.05.2017 |
5. Demand notice invoking personal guarantee | 07.07.2017 |
6. OTS proposal (acknowledgment of debt) | 15.02.2021  
Period excluded (Hon'ble Supreme Court suo motu orders) | 15.03.2020 to 28.02.2022 |
7. Date of filing of present Application | 05.09.2023 |

ix. On perusal of the material on record and the chronology set out hereinabove, it is noted that the account was




classified as NPA on 29.12.2016 and thereafter, steps were taken by the Financial Creditor by issuing notices under Section 13(2) of the SARFAESI Act as well as demand notice invoking the personal guarantee. The said actions indicate that the creditor had initiated recovery proceedings in respect of the outstanding debt.

- x. It is observed that the record reflects subsequent correspondence, including an OTS proposal dated **15.02.2021**, which prima facie indicates acknowledgment of liability. Additionally, the period from 15.03.2020 to 28.02.2022 is liable to be excluded for the purpose of limitation in view of suo motu order passed by the Hon'ble supreme court. It is further noted that the present Application has been filed on 05.09.2023. The Respondent has contended in the reply that the principal borrower, while submitting the OTS proposal, had endorsed that the said proposal shall not be treated as an acknowledgment of debt and shall not be relied upon in legal proceedings, and on that basis it has been argued that the OTS proposal cannot be construed as an acknowledgment of debt.




- xi.* However, the said contention does not merit acceptance at this stage. The stipulation contained in the OTS proposal does not, prima facie, take away the effect of acknowledgment of liability for the purposes of proceedings under Section 95 of the Code and cannot be disregarded while considering the issue of limitation. In this regard, it is pertinent to note that the Hon'ble NCLAT in **Bank of India vs. Multi ARC Coating and Straps Limited (Company Appeal (AT) (Insolvency) No. 891 of 2019)** *has held that merely because a document contains a "without prejudice" clause, the same would not lose its character as an acknowledgment of debt, if from the contents thereof the liability is otherwise admitted.* Therefore, the contention of the Respondent that the OTS proposal cannot be treated as an acknowledgment is not sustainable.
- xii.* The aforesaid position also finds support from the judgment of the Hon'ble Supreme Court in **ITC Limited vs. Blue Coast Hotels Ltd.**, *wherein it has been observed that the mere use of the expression "without prejudice" would not, by itself, render the document*




*inadmissible as an acknowledgment of liability, if the contents thereof otherwise indicate admission of debt.*

- xiii. It is well settled that the liability of the guarantor is co-extensive with that of the principal borrower. On perusal of the guarantee deed placed on record, it is observed that the said guarantee has been described as a continuing guarantee. The said aspect along with the OTS proposal dated 15.02.2021 forms part of the record and is required to be taken into consideration while examining limitation.
- xiv. At this stage of consideration under Section 95 of the Code, and on the basis of the material placed on record, it cannot be conclusively held that the Application is barred by limitation. Accordingly, the objection raised by the Respondent does not merit acceptance.
- xv. The objection regarding insufficiency of stamping of the guarantee agreement has also been raised. However, it is noted from the record, including the report of the Resolution Professional, that stamp duty was paid at the time of execution. In any case, such objection relates to admissibility of evidence and cannot be conclusively



determined at this stage of proceedings under Section 95 of the Code, which are summary in nature.

- xvi. In relation to the contention that the Application is defective on account of Form C, it is observed that the Application has been filed under Section 95(1) in the prescribed form, requisite fee has been paid and necessary documents as required under Section 95(4) have been furnished. The Application bears signatures and has been processed through the Resolution Professional. The objection is therefore not fatal.
- xvii. As regards the allegation of fraudulent registration with the Information Utility, it is noted that the Applicant has placed reliance on IU records and has denied any fraud. No material has been placed by the Respondent to substantiate the allegation. Hence, the said objection does not merit acceptance.
- xviii. The contention regarding pendency of proceedings before the Debts Recovery Tribunal is also not sustainable in view of Section 238 of the Code, which gives overriding effect to the provisions of the Code. The remedies under the Code are independent and can be



invoked notwithstanding pendency of other proceedings.

- xix. With regard to the quantum of claim, it is observed that the Applicant has furnished detailed computation supported by documents. The Resolution Professional has examined the same and recorded the amount of default. The Respondent has not produce any material to rebut the computation except making general assertions. Accordingly, the objection regarding incorrect computation does not merit acceptance.
- xx. It is further noted that the Resolution Professional has submitted his report dated 23.01.2024 within the stipulated time in compliance with Section 99 of the Code and has afforded opportunity to the Respondent to submit objections, which have been duly considered.
- xxi. Upon consideration of the entire material on record, this Adjudicating Authority is satisfied that the debt exists, default has been committed, and the Application is complete and in compliance with the provisions of Section 95 of the Code.




**ORDER**

20. In view of the above, the petition deserves admission, and we pass the following order:

- I. The present Application CP/IB/78/2023 is hereby **ADMITTED** under Section 100 of the Code and the Insolvency Resolution Process stands initiated against the **Personal Guarantor i.e. Mr. Akhilesh Argal.**
- II. The moratorium begun on the date of admission of the application shall cease to have effect at the end of the period of 180 days from the date of this order. During the moratorium period, the following provisions shall be in effect:
- III. Any pending legal action or proceeding in respect of any debt be deemed to have been stayed; and
- IV. The creditors of the Personal Guarantor shall not initiate any legal action or proceedings in respect of any debt; and
- V. The Personal Guarantor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;



- VI. The provisions of this Section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- VII. The Resolution Professional Ms. Teena Saraswat Pandey, Insolvency Professional having Registration No. IBBI/IPA-001/IP-P00652/2017-2018/11126, who was appointed as the Resolution Professional vide order dated **04.01.2024**, is hereby appointed as Resolution Professional for conducting the Insolvency Resolution Process of the Personal Guarantor.
- VIII. The Resolution Professional is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of uploading of this Order on the website of the NCLT, inviting claims from all Creditors, who shall register their claims as provided under Section 103 within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102 (2) of IBC, 2016. The publication of notice shall be made in newspapers, one in English and other in Vernacular which have wide circulation in the State where the Personal Guarantor resides. The Resolution Professional shall



furnish two spare copies of the notice to the Registry. One shall be placed by the Registry on our website and the other shall be affixed in the premises of this Authority.

IX. The Resolution Professional shall prepare a list of creditors under Section 104 of the Code on the basis of:

a. information disclosed in the Application filed under Section 95, and

b. claims received under Section 102, within 30 days from the date of publication of notice.

X. The Personal Guarantor shall prepare a Repayment Plan under Section 105, in consultation with the Resolution Professional, containing a proposal for restructuring of his debts.

XI. The Repayment Plan may authorize or require the Resolution Professional to:


a. carry on the debtor's business or trade on his behalf or in his name; or

b. realize the assets of the debtor; or


c. administer or dispose of any funds of the debtor.

**The Plan shall include:**

a. justification for preparation of such plan;

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- b. payment of fee to the Resolution Professional;
  - c. any other matter as may be specified.

- XII. The Resolution Professional shall submit the Repayment Plan to this Authority along with his report within 21 days from the last date of submission of claims, in terms of Section 106 of the Code.
- XIII. In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof. If the resolution professional is of the opinion that the meeting of the creditors should be summoned, she shall specify the details as provided under Section 106(3). The date of meeting should not be less than 14 days or more than 28 days from the date of submission of the report under subsection (1) of Section 106, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all relevant/feasible modes. Such notice must contain the details as provided under the provisions of Section 107.
- XIV. The meeting of the creditors shall be conducted in accordance with sections 108, 109, 110 & 111. The Resolution Professional shall prepare a report of the



meeting of the creditors on repayment plan with all details as provided under Section 112 and submit the same to this Authority, copies of which shall be provided to the Personal Guarantor and the creditors. It is made clear that the resolution professional shall perform his function and duties in compliance with the code of Conduct provided under section 208 of the Code.

XV. The Applicant/financial creditor is directed to deposit Rs. 50,000/- (Rupees Fifty Thousand Only) to the bank account of Resolution Professional within one week, from the date of this order towards his fees. This shall be subjected to the Rules and Regulations under the provisions of IBC, 2016, including maintaining independence, confidentiality, and impartiality in all actions.

XVI. The Resolution Professional is directed to strictly abide by the provisions of IBC 2016 and complete the process of insolvency in a time bound manner after constitution of the committee of creditors.



21. Accordingly, **CP(IB)/78(MP)/2023** filed under section 95 of IBC, 2016 is **admitted** and the Insolvency Resolution process stands initiated against the Respondent/Personal Guarantor.

Sd/-

**MAN MOHAN GUPTA**  
**(MEMBER TECHNICAL)**

Deepti-LRA

Sd/-

**BRAJENDRA MANI TRIPATHI**  
**(MEMBER JUDICIAL)**