

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI, Bench – VI

I.A. 1362/2024 along with I.A 2082/2022 and I.A. 2634/2023

in

C.P. (I.B) NO. 514 OF 2020

IN THE MATTER OF:

M/s APOGEE ENTERPRISES PRIVATE LIMITED

(previously known as M/s Apogee Manufacturing Private Limited)

[CIN: U22100DL2011PTC221586]

Having its Registered Office at:

K-1/12, Chittaranjan Park, New Delhi – 110019.

.... PETITIONER/APPLICANT

versus

Late Shri. ANIL NANDA

(DIRECTOR OF M/S AKME PROJECTS LIMITED)

R/o 12-C FRIENDS COLONY (WEST) NEW DELHI, 110065

E-mail: syalandcompany@gmail.com

Also at:

D-20, Kalkaji, New Delhi - 110019

...RESPONDENT

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

I.A. 1362/2024 along with I.A 2082/2022 and I.A. 2634/2023

in

C.P. (I.B) NO. 514 OF 2020

APPEARANCES:

For the Petitioner/Applicant: Ms. Anandana H. Wadhwa, Mr. Keshav Gulati
and Mr. Shashwat Awasthi, Advocates.

For the Respondent/Personal Guarantor: Adv. Arjun Syal.

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

DATE: 03.09.2024

1. This Interim Application (I.A No. 1362/2024) has been filed under Rule 53 r/w Rule 11 of the National Company Law Tribunal Rules 2016 praying for substitution of legal heirs/representatives of the respondent in C.P (IB) No. 514 of 2020.
2. It is the case of the applicant that the applicant has filed C.P. (IB) No. 514 of 2020 under Section 95 of the IBC seeking Insolvency proceedings against the Personal Guarantor. The said Company Petition is pending. However, during the pendency of the said Company Petition, the Personal Guarantor against whom, Insolvency proceeding was filed, has passed away. By way of the Present IA, the applicant has sought substitution of Legal heirs of the personal guarantor, in place of personal guarantor who is no more alive.
3. Heard the Ld. Counsel on behalf of the applicant. We have perused the contents of the application and written submissions filed by the applicant.
4. The issue which arises for our consideration is whether insolvency proceedings under Part III of the IBC abate upon the death of a guarantor

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or can the proceedings continue against the legal representatives of the deceased guarantor?

5. Ld. Counsel on behalf of the applicant has relied upon provisions contained in Section 123(5) and 169 of the IBC. He has also relied upon Section 17 of the Provincial Insolvency Act, 1920 and judgement of the Hon'ble Allahabad High Court in Molhar Singh vs. Raghunath, 1972 SCC OnLine All 42.
6. The issue as to whether t=on death of personal guarantor, proceedings initiated under IBC Part III shall abate or not has been considered previously by NCLT.
7. The Principal Bench of NCLT in Alchemist Asset Reconstruction Company vs Deepak Puri (Company Petition No. IB 438 (PB) of 2021) vide Order dated 18.11.2021 has held as under:

"It has been rightly pointed out that in a case of proceedings under Section 95 of the IBC, 2016, it is case for initiation of Insolvency Resolution Process against the Personal Guarantor and it is not a case for recovery of any amount because that will go contrary to the scheme of IBC, 2016, in such situation on the demise of the Personal Guarantor, an individual who has given his guarantee in the favour of Corporate Debtor, the question of continuing the proceedings against such a dead person will not arise. Since the proceedings abate, the Section 95 also has to be closed."

8. The Kolkata Bench of the NCLT, in the case of Bank of Baroda vs. Ms. Divya Jalan, C.P. (IB) No. 363/KB/2021 has held: -

“17..... However, there is no provision in the code which envisages that the concept of legal heirs’ steps into the shoes of the deceased Personal Guarantor.

18.....

19. Therefore, we hold that the instant application cannot be maintained against the legal heirs of the Personal Guarantors under the Code.”

9. After relying upon the aforementioned judgements, the NCLT, Bench VI of New Delhi in the matter of Bank of Maharashtra vs Mr. Ashok Kumar Bansal, CP (IB) No. 300/ND/2022 in their judgement dated 21.11.2022, dismissed the petition filed under Section 95 on the death of the Personal Guarantor.
10. In the present case in hand, an application under Section 95 has been filed by the applicant for initiation of Insolvency Resolution Process against the Personal Guarantor who is now deceased.
11. The term “personal guarantor” has been defined in Section 5(22) of the IBC. It reads as under: -

“personal guarantor” means an individual who is the surety in a contract of guarantee to a corporate debtor.

12. The Hon’ble Supreme Court of India in the matter of **“Vinayak Purushottam Dube (Deceased), Through Lrs versus Jayashree Padamkar Bhat and Others** (Decided on 1st March, 2024) **2024 SCC Online SC 212**”, has held as under: -

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“40. But in the case of a personal obligation imposed on a person under the contract and on the demise of such person, his estate does not become liable and therefore, the legal representatives who represent the estate of a deceased would obviously not be liable and cannot be directed to discharge the contractual obligations of the deceased.”

13. The applicant, in support of application has also referred to provisions of Sections 123(5) and 169 of the IBC. Section 123 is in Chapter IV of the Code. Chapter IV is for Bankruptcy Order for Individual and Partnership Firms. Application for Bankruptcy as per Section 122 can be filed where Order under Section 100(4), or 115(2) or under 118(3) has been passed by the Adjudicating Authority. In the present case no such order has been passed. Therefore, reliance on Section 123 is misplaced.

14. Further, Section 169 is in Chapter V which deals with administration and distribution of the estate of the bankrupt. Since no order for bankruptcy has been passed in the present case, reliance on Section 169 is also misplaced.

15. The applicant has also relied upon the judgement of the Hon'ble Allahabad High Court in Molhar Singh vs. Raghunath, 1972 SCC OnLine All 42. The said judgement of the Hon'ble Allahabad High Court is in respect of provisions contained in Section 17 of the Provincial Insolvency Act, 1920 and not under the IBC. Therefore, the same is not applicable to the present case in hand.

16. In view of the abovementioned judgments and provisions of law. we do not find any merit in the application for substitution of the Legal

Representatives of the deceased Personal Guarantor in the present proceedings.

17. Thus I.A. No. 1362/2024 in C.P. (IB) No. 514 of 2020 is dismissed without costs.

18. Further in view of the death of the Personal Guarantor, C.P. (IB) No. 514 of 2020 is also closed/dismissed.

19. Accordingly, all other pending Interlocutory Application(s) in C.P. (IB) No. 514 of 2020 stand dismissed as infructuous.

-SD/-

RAHUL BHATNAGAR
MEMBER (TECHNICAL)

-SD/-

MAHENDRA KHANDELWAL
MEMBER (JUDICIAL)

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