

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I**

C.P. (IB) NO. 1195/MB/2020

Under Section 100 *r/w*
Section 95 of the Insolvency
& 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

State Bank of India

through Asish Narayan

...Applicant/Financial
Creditor

Versus

Mr. Rajkumar Nandlal

Dhoot

...Respondent/Personal
Guarantor

Order pronounced on 04.06.2024

Coram:

Hon'ble Member (Judicial) : Justice V. G. Bisht (Retd.)

Hon'ble Member (Technical) : Sh. Prabhat Kumar

Appearances:

For the Applicant/Financial Creditor: Mr. Animesh Bisht, Advocate
a/w Mr. Anush Mathkar,
Advocate a/w Adv. Jeta
Shree, Mr. Vihit Shah,
Advocate i/b Cyril
Amarchand mangaldas

For the Respondent : Mr. Sandeep Ladda, Advocate
a/w Mr. Adnan Ansari,
Advocate

ORDER

Per: Justice V. G. Bisht (Retd.), Member (Judicial)

Brief facts:

1. The present petition is filed *u/s.* 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “IBC, 2016”) *r/w.* 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 **State Bank of India** (hereinafter referred to as “Applicant/Financial Creditor/Creditor”) for the purpose of initiating insolvency process against **Mr. Rajkumar Nandlal Dhoot** (hereinafter referred to as the “Respondent/Personal Guarantor/Guarantor”) for recovery of for recovery of Rs. 53,53,78,13,936.69/-. The Date of Default, as specified in Part-III of the present petition, is 02.02.2018 in terms of the RTL Agreement and 20.02.2018 in terms of WC Demand Notice.
2. The Applicant bearing PAN AAACS8577K has its registered address at Stressed Assets Management Branch-1, II Floor, The

Arcade, World Trade Centre, Cuffe Parade, Colaba, Mumbai - 400005. The present application has been filed through authorized representative of the Applicant viz. Mr. Asish Narayan.

3. The Respondent is an Indian resident having his permanent address at Dhoot Bungalow, Station Road, Aurangabad, Maharashtra and at 221, Fort House, 2nd floor, Dr. D. N. Road, Fort, Mumbai – 400 001, Maharashtra.
4. The Respondent is a personal guarantor for **Videocon Industries Limited** (hereinafter referred to as the “Corporate Debtor/VIL”) having CIN L99999MH1986PLC103624 and having its registered office at 14 K.M. Stone, Aurangabad – Paithan Road, Village Chittegaon, Taluka Paithan, Aurangabad – 431 105 and office at 221, Fort House, 2nd Floor, Dr. D. N. Road, Fort, Mumbai – 400 001.
5. SBI, State Bank of Hyderabad ("SBH"), State Bank of Mysore ("SBM"), State Bank of Travancore ("SBT"), State Bank of Bikaner and Jaipur ("SBBJ") and State Bank of Patiala ("SBP") had provided Facilities to VIL. Vide Gazette Notification dated February 22, 2017, SBH, SBM, SBT, SBBJ and SBP merged into SBI with effect from April 01, 2017. Therefore, for the purposes of this application, considering that all the Facilities were granted and disbursed by SBH, SBM, SBT, SBBJ and SBP prior to the merger, these facilities are considered to have been granted and disbursed by SBI.
6. Pursuant to various loan documents such as the Rupee Term Loan Agreement dated August 8, 2012 and the Fourth Supplemental Working Capital Consortium Agreement dated May 25, 2012 being supplemental to the Working Capital

Agreement dated March 10, 2006, inter alia VIL had availed various Facilities from SBI. The Personal Guarantor had guaranteed due repayment of the Facilities granted vide Deed of Guarantee dated August 8, 2012, and Fourth Supplemental Joint Deed of Guarantee dated May 25, 2012 respectively.

7. Upon occurrence of Events of Default, Demand Notices were issued to VIL in respect of the RTL Facilities on January 18, 2018, and in respect of the Working Capital Facilities on January 23, 2018. Demand certificates were also issued to the Personal Guarantor in respect of the RTL Facilities on February 02, 2018, and in respect of the Working Capital Facilities on February 20, 2018.
8. Due to defaults in repayment of the Facilities granted, SBI filed company petitions under Section 7 of the IBC on various dates inter alia against VIL as well. The company petitions under Section 7 of the IBC against VIL were admitted by this Tribunal.
9. Further, this Tribunal vide order dated August 8, 2019 allowed consolidation of the corporate insolvency resolution process of VIL with 12 other companies namely VTL, Electroworld, Value, Techno Kart, Applicomp, Sky, Techno, Millennium, Century, Evans Fraser, PE and CE India Limited and the corporate insolvency resolution proceedings of the Videocon Group companies is presently pending.
10. A demand notice was issued to the Personal Guarantor under the provisions of the IBC, read with the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 on July 23, 2020 ("IBC Demand Notice"), which is not replied to by the Personal Guarantor till

date. However, since the Personal Guarantor has not paid the Default Amount within fourteen days of receipt of the IBC Demand Notice, the present company petition is being filed by the Applicant, on behalf of SBI.

Submissions of the Applicant:

11. Mr. Rajkumar Nandlal Dhoot has executed Deeds of Guarantees in respect of the Facilities in favour of and for the benefit of SBI. The details in relation to the Facilities including the outstanding debt under the Facilities are set out below:

I. Details of the Facilities

The following facility agreements were entered into between inter alia, SBI and VIL:

1. Rupee Term Loan Agreement dated August 8, 2012 ("RTL Agreement")
2. Fourth Supplemental Working Capital Consortium Agreement dated May 25, 2012 being supplemental to the Working Capital Agreement dated March 10, 2006 ("Working Capital Agreement")

The RTL Agreement and the Working Capital Agreement are collectively referred to as "VIL Facility Agreements".

The details of facilities granted by SBI to VIL under each of the VIL Facility Agreements are as follows:

A. RTL Agreement

1. Rupee term loan to the tune of INR 2072 Crores (Rupees Two Thousand Seventy Two Crores Only) ("SBI RTL") granted by SBI,
2. Rupee term loan to the tune of INR 300 Crores (Rupees Three Hundred Crores Only) ("SBH RTL") granted by SBH,

3. Rupee term loan to the tune of INR 250 Crores (Rupees Two Hundred Fifty Crores Only) ("SBM RTL") granted by SBM,
4. Rupee term loan to the tune of INR 200 Crores (Rupees Two Hundred Crores Only) ("SBT RTL") granted by SBT,
5. Rupee term loan to the tune of INR 100 Crores (Rupees One Hundred Crores Only) ("SBBJ RTL") granted by SBBJ,
6. Rupee term loan to the tune of INR 50 Crores (Rupees Fifty Crores Only) ("SBP RTL") granted by SBP.

(The SBI RTL, SBH RTL, SBM RTL, SBT RTL, SBBJ RTL and SBP RTL are collectively referred to as "RTL Facilities".)

B. Working Capital Agreement

1. A working capital facility to the limit of INR 460 Crores (Rupees Four Hundred and Sixty Crores Only) was made available to VIL by SBI, comprising of fund based facility to the tune of INR 162.50 Crores (Rupees One Hundred and Sixty Two Crores and Fifty Lakhs Only) ("SBI FB") and non-fund based facilities being letter of credit facility of INR 287.50 Crores (Rupees Two Hundred and Eighty Seven Crores and Fifty Lakhs Only) ("SBI LC") and bank guarantee facility of INR 10 Crores (Rupees Ten Crores Only) ("SBI BG and forward contracts/ derivatives facility of INR 60 Crores (Rupees Sixty Crores Only) ("SBI FC/DF).
2. A working capital facility to the limit of INR 83 Crores (Rupees Eighty Three Crores Only) was made available to VIL by SBH, comprising of fund based facility to the tune of INR 29.25 Crores (Rupees Twenty Nine Crores and Twenty Five Lakhs Only) ("SBH FB") and non-fund based facilities being letter of credit facility of INR 51.75 Crores (Rupees Fifty One Crores and Seventy Five Lakhs Only)

("SBH LC") and bank guarantee facility of INR 2 Crores (Rupees Two Crores Only) ("SBH BG").

3. A working capital facility to the limit of INR 92 Crores (Rupees Ninety Two Crores Only) was made available to VIL by SBM, comprising of fund based facility to the tune of INR 32.50 Crores (Rupees Thirty Two Crores and Fifty Lakhs Only) ("SBM FB") and non-fund based facilities being letter of credit facility of INR 57.50 Crores (Rupees Fifty Seven Crores and Fifty Lakhs Only) ("SBM LC") and bank guarantee facility of INR 2 Crores (Rupees Two Crores Only) ("SBM BG").

4. A working capital facility to the limit of INR 85 Crores (Rupees Eighty Five Crores Only) was made available to VIL by SBP, comprising of fund based facility to the tune of INR 31 Crores (Rupees Thirty One Crores Only) ("SBP FB") and non-fund based facilities being letter of credit facility of INR 52 Crores (Rupees Fifty Two Crores Only) ("SBP LC") and bank guarantee facility of INR 2 Crores (Rupees Two Crores Only) ("SBP BG").

(The SBI FB, SBI LC, SBI BG, SBI FC/DF, SBH FB, SBH LC, SBH BG, SBM FB, SBM LC, SBM BG, SBP FB, SBP LC, SBP BG are collectively referred to as "Working Capital Facilities" and the RTL Facilities and the Working Capital Facilities are collectively referred to as the "Facilities".)

Therefore, the total debt sanctioned/made available under the Facilities is INR 3692 Crores (Rupees Three Thousand Six Hundred and Ninety Two Crores Only).

II. Details of the Deeds of Guarantee

In respect of the abovementioned Facilities, the following deeds of personal guarantees have been executed by the Personal Guarantor:

1. Deed of Guarantee dated August 8, 2012 ("RTL Deed of Guarantee") in respect of the RTL Facilities, wherein the Personal Guarantor has irrevocably, absolutely and unconditionally guaranteed, as a continuing guarantee, to SBICap Trustee Company Limited (being the Onshore Security Trustee acting for, and on behalf of the Lenders (including SBI) ("Security Trustee")), inter alia,

(a) the due and punctual performance by the Obligor of each and all of the Obligations, payments, duties, undertaking under and pursuant to the RTL Agreement when due according to the terms of the RTL Agreement;

(b) the due payment and discharge of all such sums of money and liabilities due, owing or incurred or payable and unpaid to the Lenders pursuant to the RTL Agreement or as a result of any breach thereof (including all costs and expenses, including without limitation, legal fees and taxes incurred by the Secured Parties in connection with a Secured Party seeking to enforce or preserve any of its rights), as if he was sole principal debtor and not merely the guarantor; and

(c) unconditionally render any payment or performance guaranteed under the RTL Deed of Guarantee immediately on demand being made pursuant to the RTL Deed of Guarantee upon issuance of the Demand Certificate. Further, to the extent that the Personal Guarantor has a reason to contest the claim of the Security Trustee, it must first pay and then pursue any such claim.

2. Fourth Supplemental Joint Deed of Guarantee dated May 25, 2012, extending the deed of guarantee dated March 10, 2006 ("WC Deed of Guarantee"), in respect of the Working Capital Facilities granted under the Working Capital Agreement, wherein, inter alia, the Personal Guarantor has irrevocably, absolutely and unconditionally guaranteed unto the Secured Parties that:

(a) VIL shall duly and punctually pay the Guaranteed Obligations together with interest, additional interest, default interest, costs, charges, expenses and/or other money stipulated in or payable in accordance with the terms and conditions of the Working Capital Agreement and other Financing Documents; and

(b) if at any time, default is made by the VIL in payment of the Guaranteed Obligations, the Guarantors shall forthwith on demand pay to the SBI Consortium, without demur or protest or without the right of any set off and/or deductions and/or adjustments of any kind whatsoever, the whole of such Guaranteed Obligations and shall indemnify and keep indemnified the Secured Parties against all losses with respect to the said Guaranteed Obligations, interest; additional interest, default interest or other money due and all costs, charges and expenses whatsoever which the Secured Parties may incur by reason of any default on the part of the Borrower or as a result of the Guaranteed Obligations being or becoming void, voidable, unenforceable or ineffective as against VIL for any reason whatsoever irrespective of whether such reason or any related fact or circumstance was known or ought to have been known to the Secured Parties or any their officers, employees, agents or advisers.

Further, in order to give effect to the WC Deed of Guarantee, the Secured Parties shall be entitled to act as if inter alia the Personal Guarantor were a principal debtor to the Secured Parties for all payments guaranteed by them.

The RTL Deed of Guarantee and the WC Deed of Guarantee are collectively referred to herein as "Deeds of Guarantee".

III. Claims by SBI in the corporate insolvency resolution process of VIL

12. Corporate insolvency resolution process in respect of VIL commenced on June 6, 2018. Pursuant to the public announcement made by the interim resolution professional in accordance with the terms of the IBC, SBI had filed claim for an amount of INR 4671.35 Crores (Indian Rupees Four Thousand Six Hundred Seventy One Crores and Thirty Five Lakhs Only) in respect of the VIL Facility Agreements as follows:

S. no.	Facility	Outstanding Debt (INR)
1.	RTL Facility Agreement	3322.34 Crores
2.	Working Capital Agreement	740.51 Crores
Total		4062.85 Crores

IV. Details of the outstanding debt under the Facilities as on May 14, 2020

13. As on May 14, 2020, the total outstanding debt owed to SBI in respect of the Facilities under the VIL Facility Agreements and for which the Personal Guarantor has issued the Deeds of Guarantees is as follows:

S. No.	Facility	Outstanding Debt (INR)
1.	RTL Facility Agreement	43,43,94,95,183.85
2.	Working Capital	10,09,83,18,752.83

	Agreement	
Total		53,53,78,13,936.69

14. Accordingly, the total outstanding debt under the Facilities is INR 53,53,78,13,936.69 (Indian Rupees Five Thousand Three Hundred Fifty Three Crore Seventy Eight Lakh Thirteen thousand Nine Hundred Thirty Six Paise Sixty Nine Only).

15. In light of the obligations set out in the Deeds of Guarantee, as on May 14, 2020, the total amount of outstanding debt for all the Facilities (which the Personal Guarantor has agreed to pay and discharge) is INR 53,53,78,13,936.69 (Indian Rupees Five Thousand Three Hundred Fifty Three Crore Seventy Eight Lakh Thirteen thousand Nine Hundred Thirty Six Paise Sixty Nine Only).

16. Upon occurrence of 'events of default' under the VIL Facility Agreements, SBI issued separate demand notices to VIL under each of the RTL Facility Agreement and the Working Capital Agreement, calling upon VIL to satisfy its obligations under the VIL Facility Agreements, pursuant to the following demand notices:

- i. Demand notice dated January 18, 2018 issued to inter alia, VIL, calling upon, inter alia, VIL to pay the outstanding amounts in relation to the RTL Facilities under the RTL Agreement;
- ii. Demand notice dated January 23, 2018, calling upon, inter alia, VIL to pay the outstanding amounts in relation to the Working Capital Facilities under the Working Capital Agreement.

17. SBI issued demand notices to the Personal Guarantor under the Working Capital Agreement, demanding the Personal

Guarantor to pay the outstanding amounts under the relevant Facilities. Similarly, the Security Trustee issued a demand notice to the Personal Guarantor under RTL Facility Agreement, demanding the Personal Guarantor to pay the outstanding amounts under the RTL Facility Agreement. The details of the demand notices issued to the Personal Guarantor are set out below:

18. Demand certificate dated February 2, 2018, issued by the Security Trustee under the RTL Deed of Guarantee ("RTL Demand Notice") calling upon the Personal Guarantor to pay forthwith, an amount of INR 3171.37 Crores (Indian Rupees Three Thousand One Hundred Seventy One Crores and Thirty Seven Lakhs Only) (along with interest at the Default Rate (as defined in the RTL Agreement) all costs, expense and fees under the Financing Documents (as defined under the RTL Agreement)), which was due and payable to SBI as on December 31, 2017;
19. Demand notice dated February 20, 2018, issued by SBI under the WC Deed of Guarantee ("WC Demand Notice") calling upon the Personal Guarantor to pay forthwith an amount of INR 795.57 Crores (Indian Rupees Seven Hundred and Ninety Five Crores and Fifty Seven Lakhs Only) (along with accrued interest, all costs, expenses, fees, interest at the default rate, under and pursuant to the Working Capital Agreement) which was due as on December 27, 2017.

The RTL Demand Notice and the WC Demand Notice are collectively referred to as the "Demand Notices".

20. However, the amounts demanded under the Demand Notices continue to be in default and have not been paid by the Personal

Guarantor. Therefore, the total amount in default is INR 3966.94 Crores (Indian Rupees Three Thousand Nine Hundred Sixty Six Crores Ninety Four Lakhs Only) as on December 31, 2017 under the RTL Demand Notice and as on December 27, 2017 under the WC Demand Notice.

21. Further, the Personal Guarantor is liable to make payments of interest, default interest, liquidated damages, fees, charges or any other amounts as per the terms of the Facilities until the date of payment by the Personal Guarantor. It must be noted that recovery proceedings have been initiated against the Personal Guarantor before the Hon'ble Debts Recovery Tribunal, New Delhi on account of failure to pay the Default Amounts. The aforesaid proceedings are presently pending.
22. Further, a Demand Notice dated July 23, 2020 ("IBC Demand Notice") was issued by SBI under Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 ("PG AAA Rules") and in the format prescribed in Form B of the PG AAA Rules, calling upon the Personal Guarantor to pay forthwith an amount of INR 53,53,78,13,936.69 (Indian Rupees Five Thousand Three Hundred Fifty Three Crore Seventy Eight Lakh Thirteen thousand Nine Hundred Thirty Six Paise Sixty Nine Only) ("Default Amount").
23. This Default Amount as demanded under the IBC Demand notice has not been repaid by the Personal Guarantor within fourteen days of receipt of the IBC Demand Notice.
24. In terms of the RTL Demand Notice, the debt under the RTL Agreement became due from the Personal Guarantor on the date

of the RTL Demand Notice which was February 2, 2018;

25. In terms of the WC Demand Notice and the WC Deed of Guarantee, the debt under the Working Capital Agreement became due from the Personal Guarantor on the date of the WC Demand Notice, which was February 20, 2018.
26. Further, the Default Amount as demanded under the IBC Demand notice has not been repaid by the Personal Guarantor within fourteen days of receipt of the IBC Demand Notice.
27. In terms of the RTL Demand Notice, the debt under the RTL Agreement became due from the Personal Guarantor on February 2, 2018. Accordingly, the date of which the Personal Guarantor defaulted in his payment obligation under the RTL Deed of Guarantee was February 2, 2018.
28. In terms of the WC Demand Notice and the WC Deed of Guarantee, the debt under the Working Capital Agreement became due from the Personal Guarantor on February 20, 2018. Accordingly, the date of which the Personal Guarantor defaulted in his payment obligation under the WC Deed of Guarantee was February 20, 2018.
29. Further, the Default Amount as demanded under the IBC Demand notice has not been repaid by the Personal Guarantor within fourteen days of receipt of the IBC Demand Notice.
30. Under and in terms of the Deeds of Guarantees as described above, the Personal Guarantor has inter alia guaranteed the financial debt availed by VIL (which is a 'corporate debtor' under the IBC from SBI).
31. By order dated June 6, 2018, the company petition (CP (IB)-02

(MB)/2018) n, ("VIL Company Petition") filed by SBI against VIL under Section 7 of the IBC was admitted by the Hon'ble National Company Law Tribunal ("NCLT") and inter alia the corporate insolvency resolution process was initiated against VIL. Accordingly, the registered valuers appointed by the resolution professional of VIL for the purposes of valuing VIL. The value so derived is presently confidential and is not disclosed to SBI. SBI reserves the right to refer to any rely on any valuation reports which may be disclosed to it by the resolution professional of VIL in the future, if required.

32. As per SBI, the estimated fair market value of the security provided in respect of the Facilities by VIL and certain group companies, at the time of filing the VIL Company Petition was approximately INR 5283.34 Crores (Rupees Five Thousand Two Hundred Eighty Three Crores and Forty Five Lakhs Only). Since the debt still stands due, the Financial Creditor has filed the present petition u/s 95 of the Code r/w rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019.
33. Vide order dated 18.09.2023, this bench had appointed **Mr. Asish Narayan**, as Resolution Professional having Registration No. IBBI/IPA-002/IP-N00444/2017-18/11274 having his permanent address at 11A/504, Springleaf, Lokhandwala, Kandivli (East), Mumbai-400101 and business address at Resurgent Resolution Professionals LLP 303, Central Plaza, 166 CST Road, Kalina, Mumbai - 400098 to examine the petition and file his report within 10 days from the date of communication of the said order.

34. The Applicant had filed IA 1487/2022 for early listing of main Company Petition bearing CP (IB) No. 1195 of 2020 contending that after 19.04.2022, this main CP is not listed for hearing on any date. Accordingly, the Petition was listed on board on 22.07.2022 and the IA was disposed of as allowed.
35. Learned counsel appearing for the Financial Creditor invited the attention of this bench to the demand notice dated 23.07.2020 invoking the guarantee against the respondent and to the proof of the demand notice. The Financial Creditor also invited the attention to the loan cum guarantee agreement deed executed by respondent.

Submissions of the Resolution Professional:

36. The Resolution Professional has filed an Interlocutory Application being IA No. 5323 of 2023 for submitting RP report u/s 99(1) of the Code on record. The same was taken on record and the said Interlocutory Application is allowed and disposed of on 14.12.2023.
37. The ground(s) for admission of the present application, as recorded in the said RP report, are reproduced in-verbatim as hereinafter:

“RECOMMENDATION BY RP FOR ACCEPTING THE PRESENT APPLICATION

It is humbly submitted by the RP that the present application meets the requirements of the Code as is provided in this report and this Hon’ble NCLT may kindly pass appropriate orders under section 100 of the Code, “ADMITTING” the present application filed by SBI through the RP in CP(IB)/1195/MB/2020 and declare “Moratorium” under

Section 101 of the Code and issue “Public notice” for inviting the claims under Section 102 of the Code and may pass such orders as this Hon’ble NCLT deem necessary.”

Submissions of the Respondent:

38. The respondent has contended that the Respondent was never the Director of Videocon Industries Ltd. Though he was nominated as Director in VIL, he had resigned in 2014. Further, a Transfer Petition was filed by the present Respondent before the Hon’ble Principal Bench, inter alia, praying to club to transfer the present Company Petition from this Hon’ble Court to either Bench No.2 or Bench No.5, which is hearing other related connected matters. The Principal Bench was pleased to entertain the Petition and asked the Petitioner to file its say. Accordingly, upon being informed about the pendency of the said transfer petition, this bench deferred the hearing of this Company Petition, pending decision of the Transfer Petition. The Hon’ble Principal Bench is seized with the Transfer Petition for adjudication and it is awaiting the decision.
39. Also, the Respondent has challenged the order of this Bench appointing Resolution Professional before the NCLAT. Hence vide order dated 09.11.2023, this bench had found it fit and appropriate to stand over the matter sine die.
40. The mandatory Demand Notice was never served upon the Respondent. The alleged email address on which the Notice is served is not in use and deactivated since long. The alleged office address on which the Demand Notice is allegedly served that office had already been sold with the consent of the consortium of bank for repayment of the loan, much prior to date of demand notice. Hence, the present Company Petition is not maintainable

and deserves to be dismissed for non-compliance of the provisions of Section 95 of IBC read with the Insolvency and Bankruptcy (Application for adjudicating authority for insolvency resolution process of personal guarantors to Corporate Debtors) Rules, 2019.

41. The alleged debt/ demand against the Respondent is barred by the Law of Limitation since the first cause of action arose to the Petitioner to invoke the Personal Guarantee issued by the Respondent on the first date of default by the principal borrower. The Respondent has relied upon the decision given by the Hon'ble Supreme Court in the case of *Laxmi Pat Surana vs. Union Bank of India & anr.* reported in 2021 SCC Online SC 267.

Submissions of the Applicant vide rejoinder:

42. Vide its rejoinder, the Applicant has contented that the right of the Personal Guarantor to be heard is not violated. The Applicant has relied upon the decision given by the Hon'ble Supreme Court in *Dilip B. Jiwrajka v. Union of India (2023 SCC Online SC 1530)* ("Dilip Jiwrajka Case") wherein it was held that the objections by the personal guarantors can be raised before the resolution professional and the resolution professional shall thereafter, in exercise of its administrative functions, shall place on record the recommendation for approval or rejection of the company petition along with all the material and information for the Adjudicating Authority to decide upon the said issues. Hence, the RP Appointment Order dated September 18, 2023 appointing Mr. Asish Narayan as the Resolution Professional and directing him to submit the report as per Section 99(1) of the Code recommending for approval or rejection of the Application is passed with due consideration of the arguments put forth by

both the parties.

43. The Applicant further submits that the filing of appeal by the Respondent before the Hon'ble NCLAT is merely a delay tactics since the Respondent has been not rectifying the defects in the Appeal and is taking advantage of the pending status of the appeal in the present petition. The Applicant has relied upon Hon'ble Supreme Court's decision in *Atma Ram Properties (P) Ltd. vs. Federal Motors Pvt. Ltd. 2004 SCC OnLine SC 1583* wherein it was held that it is well settled that mere preferring of an appeal does not operate as stay on the decree or order appealed against nor on the proceedings in the court below.
44. The IBC Demand Notice, the Company Petition and the Letter of Examination of the Application have been duly served on the provided address of the Respondent.
45. The Company Petition is not barred by limitation as the cause of action as against the guarantors arises when the guarantee is invoked, i.e., when the demand is made from the guarantor to honor its obligations under the guarantee. Therefore, the limitation period will start running from the said date of demand, i.e. the date of Invocation Notice. The Applicant has relied upon the decision given by the Supreme Court in the matter of *Syndicate Bank v. Channaveerappa Beleri & Ors. ((2006) 11 SCC 506)*, wherein it was held that where the guarantee deeds specifically state that the guarantors agree to pay and satisfy the bank on demand, the limitation begins to run when the demand is made and the guarantor commits breach by not complying with the demand.
46. The Applicant has further referred to clause 8 of the Deed of Guarantee dated 08.08.2012 which states that:

“8. The Guarantor shall unconditionally render any payment or performance guaranteed hereunder immediately on demand being made relying upon this Guarantee by issuance of the Demand Certificate....”

47. Moreover, no proof of repayment of debt has been furnished under Section 99(2) of the Code.

Findings:

1. Heard submissions of learned counsel for the Applicant and Respondent. Perused records.
2. The contention of the respondent that the present Company Petition is barred by Limitation does not have any merit as the default qua Respondent took place when the demand notice by SBI to the Personal Guarantor was issued in July 2020 whereas the present petition was filed in August 2020. We are of considered view that the limitation for the purpose of petition against the Personal Guarantor starts to run from the date when the default is made by the Personal Guarantor in his guarantee obligation and not from the date when the Principal Borrower commits default in payment of debt. Hence, the petition has been filed well within the limitation period.
3. Further, the contention of the Respondent that the demand notice was not served stands rejected since the Respondent has itself admitted the issuance of IBC Demand Notice and has annexed the same with the Writ Petition (Civil) No. 131 of 2021 filed before the Hon’ble Supreme Court. The Company Petition has also been duly served to the Respondent on its email, which has been established by the fact that the Respondent has annexed the same in the aforesaid Writ. Moreover, upon perusal of the

acknowledgement placed on record, the remark 'unclaimed' clearly denotes that the Respondent has voluntarily denied accepting service of the petition. Accordingly, this contention is also not sustainable.

4. Upon perusal of the documents on record, it is clearly established that the Corporate Debtor has committed defaults in repayment of loan amount granted by the Financial Creditor. **Mr. Rajkumar Nandlal Dhoot**, Personal Guarantor to **Videocon Industries Limited** has also committed default in repayment of loan facility demanded by the Financial Creditor after invocation of Personal Guarantee. The Application filed by the Creditor satisfies the requirement as set out in Section 95 of the Code.
5. Considering the above facts and circumstances and upon perusal of the documents on record viz. the demand notices, proof of service, guarantee deeds, joint deed of guarantee, etc., the C.P. (IB) 1195/MB/2020 filed under Section 95 of the IBC, 2016 is hereby **Admitted** and the Insolvency Resolution Process stands initiated against **Mr. Rajkumar Nandlal Dhoot** viz. the Respondent herein. We hereby direct as hereinafter:
 - I. Initiate Insolvency Resolution Process against the Respondent/Personal Guarantor and moratorium in relation to all the debts is declared, from today *i.e.* date of admission of the application, and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on the repayment plan under Section 114 whichever is earlier as provided under Sec 101 of IBC, 2016. During the moratorium period,
 - a. Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed, and

- b.* The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and
 - c.* The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;
 - d.* 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.
- II.** The Resolution Professional *viz.* **Mr. Asish Narayan** Insolvency Resolution Professional, having Registration No. IBBI/IPA-002/IP-N00444/2017-18/11274, having registered address at 11A/504, Springleaf, Lokhandwala, Kandivli (East), Mumbai-400101 and business address at Resurgent Resolution Professionals LLP 303, Central Plaza, 166 CST Road, Kalina, Mumbai - 400098 [E-Mail: *cs.asish@gmail.com*, Mobile no.: 9920299049 and business phone no. 022-67080400] is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Mumbai Bench, inviting claims from all Creditors, within 21 days of such issue. The notice under Sub Section (1) of Section 102(2) shall include: -
- a.* details of the order admitting the application;
 - b.* particulars of the resolution professional with whom the claims are to be registered; and
 - c.* the last date for submission of claims.
- III.** The publication of notice shall be made in two newspapers, one in English and other in Vernacular,

which have wide circulation in the State where the Corporate Debtor and Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.

IV. The Resolution Professional, in exercise of the powers conferred under Section 104, shall prepare a list of creditors on the basis of:

- a.* the information disclosed in the application filed by the debtor under Sections 94 or 95, as the case may be, and
- b.* claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice. The debtor shall prepare a repayment plan under Section 105, in consultation with the Resolution Professional, containing a proposal to the Creditors for restructuring of his debts or affairs.

The 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.* realise the assets of the debtor; or
- c.* administer or dispose of any funds of the debtor.

The repayment plan shall include the following, namely;

- a.* justification for preparation of such repayment plan and reasons based on which the creditors may agree upon the plan;
- b.* provision for payment of fee to the Resolution Professional;
- c.* such other matters as may be specified.

- V.* The Resolution Professional shall submit the repayment plan along with his report on the plan to this Authority within a period of **21 days** from the last date of submission of claims, as provided under Section 106.
- VI.* In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons thereof. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of IBC, 2016. 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 sub-section (1) of Section 106 of IBC, 2016, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of IBC, 2016.
- VII.* The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of IBC, 2016 and submit the same to this Tribunal, copies of which shall be provided to the Debtor and the Creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of IBC, 2016.
- VIII.* The Resolution Professional shall submit his periodic reports before this Tribunal, every 30 days.

- IX.** The Applicant is directed to deposit **INR 2,00,000/-** (Indian Rupees Two lakhs) to the bank account of the Resolution Professional within **one week**, towards his fees. This shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.
- X.** The Registry is directed to communicate a copy of order, report and application within **seven** working days and upload the same on the website immediately after the pronouncement of order.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
MK

Sd/-

JUSTICE V. G. BISHT
MEMBER (JUDICIAL)