

Petition u/s 95 of the IBC against the Personal Guarantor is not maintainable in the absence of the invocation of the guarantee prior to the issuance of the demand notice

The NCLT Mumbai, in the case of **Abhyudaya Co-Op. Bank Ltd. vs Ritadevi Devilal Chapagain [C.P. (IB) No. 807(MB)2024]** dated July 08, 2025, has held that a petition under Section 95 of the Insolvency and Bankruptcy Code, 2016 (IBC) against the Personal Guarantor is not maintainable in the absence of invocation of the guarantee prior to the issuance of the demand notice.

The Applicant, a Multi-State Scheduled Bank, had extended various credit facilities to the Corporate Debtor (CD), a company engaged in the marine logistics business, between the period of September 2017 to March 2021, which were granted under distinct sanction arrangements and secured by personal guarantees, hypothecation, and mortgage. Subsequently, due to non-payment of the amount due and despite issuing a demand notice, insolvency proceedings were initiated against the CD by one of its operational creditors, which was admitted by the NCLT, Mumbai, leading to the commencement of the CIRP. Even though a moratorium was declared and the IRP was appointed, no viable resolution plan was approved by the Committee of Creditors (CoC) despite the lapse of the statutory period of the CIRP. Resultantly, the CD failed to undergo any revival. Consequently, the NCLT order for the liquidation. Hence, pleading that the liability of the Personal Guarantor (Ritadevi Devilal Chapagain) subsists independently and unaffected by the liquidation of the CD, the Applicant invoked the personal guarantees furnished by the Respondent and initiated the present proceedings under Section 95 of the IBC against her.

After considering the submissions, the NCLT noted that the RP has issued a notice to the Personal Guarantor under Section 99(2) of IBC requiring her to submit any proof of repayment, to which the Respondent categorically admitted that no payments had been made by her after receipt of the demand notice, and the debt remained due and unpaid as on the date of filing. The RP's report specifically showed that the total amount due and payable by the Personal Guarantor stood at Rs. 50.23 crores along with continuing interest, for which the Respondent had executed multiple Deeds of Guarantee between 2017 and 2021 in favour of the Financial Creditor, securing the various credit facilities extended to the CD.

When the Respondent disputed the RP's findings and alleged coercive lending, mala fide conduct, and financial overreach on the part of the Financial Creditor, the NCLT clarified that the liability of a personal guarantor is co-extensive with that of the principal debtor as per Section 128 of the Indian Contract Act, unless expressly discharged, and no material was placed on record to show that such liability was either extinguished or waived.

The Tribunal also observed that, as per the guarantee agreement, the guarantees are on-demand guarantees, so they can be invoked only after the guarantors raise a demand notice. Further, the Financial Creditor has not placed any notice or letter indicating the demand from the Personal Guarantor for payment of debt due from the Corporate Debtor prior to issuance of the demand notice. Since the Guarantee of the Personal Guarantor came to be invoked pursuant to said demand notice only, and the guarantees were not invoked, the NCLT held that the petition cannot be admitted.