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Demand notice under Rule 7 of personal guarantors rules does not constitute invocation of guarantee

The National Company Law Appellate Tribunal (“NCLAT”), recently in the case of *State Bank of India vs. Mr. Deepak Kumar Singhania*¹, has clarified that a statutory demand notice issued under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (“PG Rules”) does not amount to a valid invocation of the personal guarantee for the purpose of initiating insolvency resolution proceedings under Section 95 of the Insolvency and Bankruptcy Code, 2016 (“IBC”).

Brief facts

The State Bank of India (“**Appellant**”) extended financial facilities to M/s LML Limited (“**Corporate Debtor**”), for which Mr. Deepak Kumar Singhania (“**Respondent**”) and 2 (two) others executed a deed of guarantee and multi-partite agreement to secure the debt in case of default.

On March 23, 2018, the Corporate Debtor was ordered into liquidation.

On April 30, 2022, the Appellant issued a demand notice under Rule 7(1) of the PG Rules, demanding INR 125,05,28,848.56 (Indian Rupees one hundred and twenty-five crore five lakh twenty-eight thousand eight hundred forty-eight and fifty-six paise) from the Respondent. The Appellant subsequently filed an application under Section 95 of the IBC. However, the National Company Law Tribunal, Allahabad Bench, Prayagraj (“**NCLT**”) dismissed the application by order dated November 28, 2024, on the grounds that the Appellant had failed to invoke the guarantee prior to issuing the demand notice, rendering the application non-maintainable. The NCLT also ruled that the Respondent did not qualify as a guarantor under Rule 3(1)(e) of the PG Rules.

The Appellant challenged the decision by filing an appeal before the NCLAT.

Issue

Whether a statutory demand notice issued under Rule 7(1) of the PG Rules constitutes a valid invocation of the personal guarantee for initiating insolvency proceedings under Section 95 of the IBC?

¹ Company Appeal (AT) (Insolvency) No. 191 of 2025, NCLAT

Findings

The NCLAT upheld the NCLT's order and dismissed the appeal. It ruled that the statutory demand notice under Rule 7(1) of the Rules does not qualify as a valid invocation of the personal guarantee. The NCLAT reasoned as follows:

1. **Invocation of guarantee:** The statutory demand notice alone does not invoke the personal guarantee. The NCLAT emphasised that invoking a personal guarantee requires strict adherence to the terms of the deed of guarantee. The NCLAT relied on the decision in the case of *Syndicate Bank vs. Channaveerappa Beleri*² and *Archana Deepak Wani vs. Indian Bank*³, where the courts stressed the importance of complying with the terms of the deed of guarantee. The NCLAT emphasised that the terms of the guarantee agreement take precedence.
2. **Triggering liability:** A personal guarantor's liability arises only upon the formal invocation of the guarantee, as per the contractual agreement. The issuance of a mere statutory notice does not amount to an invocation under the contract.
3. **Debt and default:** According to Section 3(12) of the IBC, default occurs when there is a pre-existing debt under Section 3(11) of the IBC. The guarantor is considered a debtor only after the guarantee is properly invoked.
4. **Definition of guarantor:** Rule 3(1)(e) of the PG Rules defines a 'Guarantor' as a person who has executed a personal guarantee, and the guarantee must have been invoked. The NCLAT rejected the interpretation that 'and' in the definition should be read as 'or', as such an interpretation would undermine the statutory framework.
5. **'Personal Guarantor' under Section 5(22) vs. 'Guarantor' under Rule 3(1)(e):** The NCLAT distinguishes between the definition of 'Personal Guarantor' under Section 5(22) of the IBC and 'Guarantor' under Rule 3(1)(e) of the PG Rules. It concludes that Rule 3(1)(e) applies in cases under Section 95 since both provisions fall under Part III of the IBC, whereas Section 5(22) falls under Part II of the IBC. This distinction is significant because, under Rule 3(1)(e), a 'Guarantor' refers to a debtor who is a personal guarantor to a corporate debtor and whose guarantee has been invoked by the creditor but remains unpaid, either in full or in part.

Conclusion

This NCLAT ruling is a significant clarification in insolvency law, establishing that a statutory demand notice under Rule 7(1) of the PG Rules does not constitute a valid invocation of a personal guarantee under Section 95 of the IBC. The judgment reinforces the principle that creditors must strictly comply with the terms of the Deed of Guarantee before initiating insolvency proceedings against personal guarantors.

This decision carries important implications for creditors and guarantors alike. It emphasises that a mere demand notice is insufficient to trigger a guarantor's liability, reaffirming the necessity of formally invoking the guarantee in accordance with contractual terms and legal provisions. The ruling also strengthens protections for personal guarantors by preventing premature insolvency proceedings where the guarantee has not been properly invoked. Ultimately, it reinforces that liability under a personal guarantee arises only when the creditor adheres to both contractual and statutory requirements, ensuring procedural safeguards are upheld in insolvency proceedings.

² (2006) 11 SCC 506

³ Company Appeal (AT) (Ins.) No.301 of 2023, NCLAT

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