

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 1826 of 2024

**[Arising out of the Impugned Order dated 17.05.2024 passed by the
Adjudicating Authority, National Company Law Tribunal, Ahmedabad
Bench in CP (IB) No. 76 (AHM) of 2021]**

In the matter of:

Amit Dineshchandra Patel,
Vrindavan, Nr. Manali Apartment
Behind Apang Manav Mandal
Dr. V.S. Road, Vastrapur,
Ahmedabad, Gujarat- 380054

...Appellant

Versus

- 1. State Bank of India**
Stressed Assets Management Branch
2nd Floor, Paramsiddhi Complex,
Opp. V.S. Hospital,
Ellisbridge, Ahmedabad,
Gujarat- 380006.
- 2. Mr. Sunil Kumar Kabra,**
303, 3rd Floor, Reegus Business Centre,
Above Mercedes Benz Showroom,
New Citylight Road, Bharathana- Vesu
Surat- 3950007.

...Respondents

Present:

For Appellant : Mr. Arjun Sheth, Ms. Kriti Kothari, Ms. Henna George,
Advocates.

For Respondent : Mr. Prateek Kumar, Ms. Raveena Rai, Mr. Siddhant
Grover, Advocates for R-1.

Mr. Karan Valecha, Advocate for R-2.

WITH

Company Appeal (AT) (Insolvency) No. 1827 of 2024

**[Arising out of the Impugned Order dated 17.05.2024 passed by the
Adjudicating Authority, National Company Law Tribunal, Ahmedabad
Bench in CP (IB) No. 77 (AHM) of 2021]**

In the matter of:

Rahul Arunprasad Patel,

At-Vrindavan, Nr. Manali Apartment
Behind Apang Manav Mandal Work Shop,
Dr. V.S. Road, Vastrapur,
Ahmedabad, Gujarat- 380054

...Appellant

Versus

1. State Bank of India

Stressed Assets Management Branch
2nd Floor, Paramsiddhi Complex,
Opp. V.S. Hospital,
Ellisbridge, Ahmedabad,
Gujarat- 380006.

2. Mr. Sunil Kumar Kabra,

303, 3rd Floor, Reegus Business Centre,
Above Mercedes Benz Showroom,
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Surat- 3950007.

...Respondents

Present:

For Appellant : Mr. Arjun Sheth, Ms. Kriti Kothari, Ms. Henna George,
Advocates.

For Respondent : Mr. Prateek Kumar, Ms. Raveena Rai, Mr. Siddhant
Grover, Advocates for R-1.

Mr. Karan Valecha, Advocate for R-2.

J U D G M E N T

(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

Present is a set of two similar appeals filed by Shri Amit Dineshchandra Patel vide Company Appeal No. 1826 of 2024 and Shri Rahul Arunprasad Patel vide Company Appeal No. 1827 of 2024. The appeal filed by Amit Dineshchandra Patel is against the impugned order dated 17.05.2024 in

CP/IB/76/NCLT/AHM/2021 while the appeal filed by Rahul Arunprasad Patel is against the impugned order dated 17.05.2024 in CP/IB/77/AHM/2021. In both these appeals the above two Appellants have assailed the impugned order admitting the Section 95(1) application filed by the Respondent No.1-State Bank of India allowing initiation of insolvency resolution process of the Appellants-Personal Guarantors. Since, the facts and the grounds on which both the appeals have been premised are common, it would suffice to confine ourselves to the pleadings made in Company Appeal No. 1826 of 2024 to decide both these appeals at hand.

2. The facts in both these appeals being largely identical, the same are conjointly outlined as below:

- On 09.02.2016 SBI-the Respondent No.1 Bank along with two other consortium lenders i.e. Bank of Baroda and IDBI Bank entered into COR Common Loan Agreement ("**CORLA**" in short) with the principal borrower-Shirpur Power Private Limited for financing under COR Facility Agreement.
- By virtue of a Security Trustee Agreement dated 21.09.2015, the lenders had appointed SBI Cap as their Security Trustee for the purpose of holding and dealing with the security including the guarantee contemplated under the Guarantee Agreement for the benefit of COR Lenders.
- A Personal Guarantee Agreement ("**PGA**" in short) was signed by both the Appellants-Personal Guarantors with SBI Cap as Security Trustee on 09.02.2016.

- The account of the principal borrower was declared as NPA on 29.11.2017 by the Respondent No.1 Bank on failure to repay the loan. On 10.05.2018, Respondent No.1 Bank recalled the loan amounts advanced under the CORLA.
- On 02.06.2018, the Respondent No.1 Bank as the 'Lender's Agent invoked the personal guarantee of the Appellants and issued demand certificate for payment of due amount under COR Facility Agreement within 7 days.
- On 04.03.2020, the Respondent No.1 Bank initiated proceedings under Section 7 following which the principal borrower was admitted into CIRP.
- Respondent No.1 Bank invoked the personal guarantees and issued a demand notice dated 20.10.2020 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 to the Appellant.
- On 29.04.2021, Respondent No.1 Bank filed Section 95 application before the Adjudicating Authority for the initiation of insolvency resolution process against the Appellants under Section 95 of the IB Code vide CP (IB) No. 76 of 2021.
- Respondent No.2-RP submitted its report on 12.09.2021 before the Adjudicating Authority recommending admission of the insolvency against the Appellants.

- The Adjudicating Authority passed the impugned order on 17.05.2024 initiating the insolvency proceedings against the Appellant by admitting the Section 95 petition.
- Aggrieved by the impugned order, the present appeals have been preferred.

3. Assailing the impugned order, Shri Arjun Sheth, Ld. Counsel for the Appellant submitted that the Adjudicating Authority had passed a non-speaking and unreasoned order while admitting the Section 95 application. It was contended that the personal guarantee given by the Appellant-Personal guarantor was in favour of the SBI Trustee Cap ("**SBI Cap**" in short) as the Security Trustee. This guarantee was not given in favour of any individual lender. Hence the Respondent No.1 Bank could not have invoked the personal guarantee in their individual capacity. Neither the PGA nor the CORLA empowered any of the individual lenders to invoke the personal guarantee on their own. When the COR lenders had collectively appointed SBI Cap as the Security Trustee, the Respondent No.1 Bank in their individual capacity could not have initiated personal insolvency proceedings against the Personal guarantor. There was no request which flowed from the guarantor for release of loan in favour of the borrower and the guarantor is also not party to the CORLA. Moreover, the PGA is not a tripartite agreement between the Borrower, Lender and the Guarantor and hence the Section 95 application was not maintainable. Submission was pressed that the Adjudicating Authority while passing the impugned order had missed these vital nuances of the PGA and CORLA. Yet another contention made was that the insolvency petition was

defective because it was filed by a person who was not in possession of valid authority to do so. Also the application was not accompanied by an affidavit and vakalatnama on behalf of Respondent No.2-Resolution Professional (“**RP**” in short). Hence the Section 95 application was not maintainable.

4. Refuting the submissions made by the Appellant, Shri Prateek Kumar, Ld. Counsel for the Respondent No.1 Bank submitted that the guarantor, at the request of the principal borrower and in consideration of the COR facility granted to the principal borrower, had agreed to execute a personal guarantee in favour of the COR Security Trustee for the benefit of the COR lenders. In terms of the Security Trustee Agreement dated 21.09.2015, the lenders had appointed SBI Cap as their Security Trustee for the purpose of holding and dealing with the security including the guarantee contemplated under the PGA for the benefit of COR Lenders. The fact that the personal guarantee was issued by the guarantors to the Security Trustee and not to the lenders cannot come to the rescue of the Appellant-Personal Guarantor as the personal guarantee was given under the CORLA expressly for the benefit of COR Lenders. Once the principal borrower had defaulted in repaying the loan account and was declared an NPA on 29.11.2017, the Respondent No.1 Bank was well within its rights to invoke the personal guarantee. The Respondent No.1 Bank had therefore invoked the Demand Notice on the personal guarantor by signing as the “Lender’s Agent” which is in the manner prescribed under Annexure-1 of the PGA. It was therefore contended that there was no infirmity in the impugned order and the contentions raised by the Appellant are misconceived and only a ruse to escape the liability of

making good the liability of the principal borrower. It was also asserted that Section 95 application was filed by a duly authorised person as the conjoint reading of Section 50 of the State Bank of India Act, 1955 read with Regulations 76 and 77 of State Bank of India General Regulations, 1955 and Gazette Notification dated 02.05.1987 clearly specifies that officers in the Grade of SMGS-V were authorized to sign all documents and hence Mr Nitin Kumar Chauhan, the signatory was a duly authorized person. It was also contended that in terms of Section 95 of the IBC, the petition could always have been filed by the Respondent No.1 Bank.

5. We have duly considered the arguments advanced by both the parties and perused the records carefully.

6. The short issue before us for our determination is whether the Respondent No.1 Bank was entitled to invoke the personal guarantee in the facts of the present case and whether the Section 95 application was filed on behalf of Respondent No.1 Bank by a person having valid authority to do so.

7. On the issue whether Respondent No.1 Bank was entitled to invoke the personal guarantee, it is the case of the Appellant that the determining factors are the PGA which stipulated that the personal guarantor shall execute the guarantee in favour of the SBI Cap-Security Trustee for the benefit of all COR Lenders read with Schedule-1 of the CORLA which specified the Banks which collectively formed the part of COR Lenders. It was further stressed that all the Banks viz SBI, Bank of Baroda and IDBI are collectively referred to as “COR Lenders” in the CORLA and the same agreement also refers to the individual banks as “COR Lender”. Since the clauses of the CORLA clearly makes a

distinction between “COR Lenders” and “COR Lender”, the two terms cannot be used interchangeably. Thus, SBI Cap having been appointed by “COR Lenders” to secure the COR facility collectively and to protect the collective interest of all COR Lenders, no individual “COR Lender” had the power to invoke the alleged personal guarantee. Attention was also adverted to the manner in which the demand could be placed before the personal guarantors. It was submitted that the demand certificate in which demand was to be made by COR Security Trustee/COR Lenders is at Annexure-1 of the PGA which provided that demand is to be made by the authorised signatory of the COR Security Trustee. There is no provision in the PGA or CORLA which gives power to any individual lender to invoke the alleged personal guarantee. It was emphasised that if at all the personal guarantee could have been invoked it could be invoked either by SBI Cap as the Security Trustee or the COR Lenders collectively but not by Respondent No.1 Bank. The associated limb of argument taken by the Appellant is that there was no privity of contract of guarantee between the Respondent No.1 Bank and the Appellant as Personal Guarantor. The alleged Guarantee Agreement was in favour of SBI Cap and not in favour of any of the individual lenders and hence the Respondent No.1 Bank could not have invoked the guarantee. When the COR lenders had collectively appointed SBI Cap as the Security Trustee, the Respondent No.1 Bank in their individual capacity could not have initiated insolvency proceedings.

8. Per contra, it is the rival contention of the Respondent No.1 Bank that once the principal borrower had defaulted in repaying the loan account and was declared an NPA and subsequently admitted into CIRP, the Respondent No.1

Bank was well within its rights to invoke the personal guarantee against the personal guarantors. The definition clause under CORLA clearly defined the “Personal Guarantors” to collectively include the Appellants, Shri Amit Dineshchandra Patel and Shri Rahul Arunprasad Patel. Furthermore, it was pointed out that CORLA clearly laid down that the personal guarantor shall execute an unconditional and irrevocable continuing guarantee for the repayment of all amounts as may be outstanding from time to time in respect of the COR facility in favour of the COR Security Trustee for the benefit of COR Lenders. Hence the Appellant was clearly liable for the liability of the principal borrower. It was also pointed out that the clauses contained in CORLA under the heading “Manner of Demand” authorised the SBI to invoke the guarantee, as in terms of these clauses, the COR Lenders were also authorized to claim the demand under the guarantee and the Demand Notice issued on the personal guarantor was therefore pretty much in conformity with the manner prescribed in the PGA.

9. To analyse the tenability of the rival submissions, it may be useful to weigh their contentions in the light of the relevant clauses of the CORLA and PGA. From the material on record, at the outset, we would like to observe that it is an indisputable fact that both the CORLA and the PGA were signed on the same date and the terms and conditions are integral and relatable to each other. The CORLA was signed amongst Shirpur Power Private Limited (As Borrower) and the Banks set forth in Part-A of Schedule I (as COR Lenders); the State Bank of India (as COR Lenders' Agent) and SBICAP Trustee Company Limited (as COR Security Trustee) as maybe seen at page 312 of Appeal Paper Book (“**APB**” in

short). Coming to the signatories of the PGA, we find that it was signed between the Appellant, Amit Dinesh Patel as one of the Guarantors and SBICAP Trustee Company Limited in its capacity as Security Trustee for the COR Lenders (as "COR Security Trustee") as maybe seen at page 518 of APB.

10. Having noted the signatories of the CORLA and PGA, we now proceed to glance through the relevant provisions of the CORLA and the PGA before returning our findings on the rival contentions raised by the two parties.

11. The relevant clauses (*with emphasis placed*) in CORLA clarifies the following:

"COR Lender" or "COR Lenders" shall mean each of the COR Lenders as listed in Schedule I Part A and any other bank or financial institution that may accede to this Agreement as Acceding COR Lender by executing an Accession Deed and the other relevant COR Financing Documents in relation to any financial assistance provided to the Project.

SCHEDULE I - PART A

PARTICULARS OF COR LENDERS

SBI, Bank of Baroda, and IDBI BANK, (each of SBI, IDBI Bank and BOB are individually referred to as the "COR Lender" and are collectively referred to as the "COR Lenders" which expression shall include all or any one or more of them and/or their respective successors, assigns, transferees and novatees, as the context may require or admit).

"COR Secured Obligations" shall mean the Borrower's obligation to pay, repay or reimburse, as the case may be, the Loans, interest, additional interest, default interest, liquidated damages, up-front fee, commitment charges, LC Commission, BG Commission and all other commissions, all costs, charges and expenses and other monies owing by, and all other present and future obligations and liabilities of the Borrower to the COR Lenders under the COR Finance Documents, all costs, charges and expenses, the costs, legal expenses and costs of preserving the Security and / or enforcement thereof, incurred by the COR Lenders.

"COR Security Documents" shall mean all documents executed or obtained in favour of/for the benefit of COR Lenders/Lenders, as the case may be and/or COR Security Trustee/Security Trustee for the benefit of

the COR Lenders/Lenders and delivered or deposited with the COR Lenders / COR Lenders Agent / COR Security Trustee/Lenders Agent/Security Trustee for creation or effecting creation of Security and for perfecting and maintaining the Security including the Indenture of Mortgage, Deed of Pledge, Personal Guarantee and the COR Security Trustee Agreement.

“Guarantees” shall mean the guarantees to be issued or, as the case maybe, confirmed by COR lenders on behalf of the Borrower or caused to be issued or confirmed by any bank on its behalf under the Non-Fund based facility, as mentioned in Schedule 1-Part B of this Agreement issued or to be issued as sub-limit to the respective loan granted or to be granted by the COR Lenders to the Borrower.

“Personal guarantors” shall collectively mean (a) Shri Amit Dineshchandra Patel... and (b) Shri Rahul Arunprasad Patel...

“2.2 NATURE OF RIGHTS AND OBLIGATIONS OF COR LENDERS

The obligations of each COR Lender hereunder are several. No COR Lender shall be responsible for the obligations of any other COR Lender. Any COR Lender may separately enforce any of its rights arising out of any of the COR Finance Documents

The rights of each COR Lender under the COR Finance Documents are separate and independent. Any COR Lender may separately enforce any of its rights arising out of any of the COR Finance Documents, except as otherwise stated in the COR Finance Documents.”

We also take note that the CORLA at Clause 7.2 provides for “**Consequences of Default**” which at Clause 7.2 (iii) further clarifies that the COR Lenders on the occurrence of the event of default can enforce security interest under the COR Security Documents.

12. Coming to the relevant recitals and clauses of the PGA (*with emphasis placed*) which are necessary to be noticed include Recitals E and F and sub-clauses 2.1 and 4 under clause 2 captioned as “Obligations of the Borrower” which reads as follows:

Recitals

E. One of the conditions of the COR Agreement is that the Guarantor shall execute in favour of the COR Security Trustee for the benefit of COR Lenders an unconditional and irrevocable continuing guarantee for the repayment of all amounts as may be outstanding from time to time under or in respect of the COR Facility....

F. The Guarantor at the request of the Borrower and in consideration of the COR Lenders having agreed to grant the COR Facility to the Borrower, has agreed to execute this Guarantee in favour of the COR Security Trustee, acting for the benefit of the COR Lenders, for guaranteeing the Outstanding Sum (as defined below) and any other amounts and dues payable in accordance with the COR Finance Documents in the terms and in the manner hereinafter appearing in this Guarantee."

2. Obligations of the Borrower

2.1 In the event of the Borrower not performing or observing any of the terms and conditions of the COR Agreement and/or the other COR Finance Documents, or if the Borrower commits any breach of any of the terms and conditions thereof or if the Borrower commits any default in timely payment of the COR Secured Obligations and/or other amounts due and payable by the Borrower in accordance with the terms of the COR Agreement and/or the other COR Finance Documents until (a) the completion of one year beginning from Commercial Operation Date, then and in that event and without prejudice to any other rights and remedies of the COR Security Trustee/COR Lenders to take any other action, the Guarantor hereby unconditionally, irrevocably and without any qualifications whatsoever, without any demur or protest and notwithstanding any intimation and or direction by the Borrower to the contrary, the Guarantor hereby guarantees and covenants to pay to the COR Security Trustee/COR Lenders, the COR Secured Obligations and/or other amounts and monies.....

4. In accordance with the terms of this Guarantee, if at any time, the Borrower defaults in payment of the Outstanding Sum or any other amounts payable in respect of the COR Facility or fails to perform its obligations under the COR Finance Documents, the Guarantor shall forthwith on demand pay to the COR Security Trustee/COR Lenders the whole of such Outstanding Sum and shall indemnify and keep indemnified the COR Security Trustee/COR Lenders against all losses, costs, charges and expenses whatsoever which COR Security Trustee/COR Lenders may incur by reason of any default on the part of the Borrower.

26 “Manner of Demand”

29.1 Any demand made by the COR Security trustee/COR lenders upon the Guarantor during the subsistence of this Guarantee in accordance with its terms, pursuant to a Demand Certificate (herein below defined), shall be conclusive evidence that:

(a) the Guarantor’s liability hereunder has accrued; and

(b) the extent of the Guarantor’s liability is the amount shown in such Demand Certificate.

29.2 The Demand Certificate shall be conclusive evidence against the Guarantor of the amount for the time being due to the COR Security Trustee/COR Lenders from the Borrower/Guarantor in any action or proceeding brought on this Guarantee against the Guarantor during the subsistence of this Guarantee and in accordance with the terms of this Guarantee.”

29.3 Any demand made under this Guarantee, shall be deemed to have been duly given to the Guarantor by the COR Security Trustee/COR Lenders, by sending the same substantially in the form of the demand certificate annexed at Annexure-I (hereinafter referred to as the “Demand Certificate”).”

13. It is an admitted fact that the Corporate Debtor had not performed its obligation of debt repayment and its account was declared NPA and was later admitted into CIRP. It is a settled position in law that under Section 128 of the Indian Contract Act, 1872 the liability of the surety is coextensive with that of principal debtor unless it is otherwise provided by the contract. The same coextensive liability applies in the case of the personal guarantors. Once the principal borrower fails to discharge the debt, the liability of the personal guarantor gets triggered on the invocation of guarantee.

14. When we look at the impugned order, we find that the Adjudicating Authority has relied on the provisions of the Indian Contract Act, 1872 and on the findings

of the RP that the Section 95 application was maintainable since the Appellant had executed a Guarantee Agreement and the debt remained un-serviced. The relevant excerpts of the impugned order are as reproduced below:

“23. *It is also noted under section 128 of Indian Contract Act, 1872 that when a default is committed the Principal Borrower and Surety are jointly and severally liable to Creditor and Creditor has the right to recover its dues from either of them or from both of them simultaneously. For benevolent reference, the said section of the Contract Act, 1872 is reproduced below:*

“The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.”

24. *Moreover, from the report of IRP, it is clear to us that:*

- i. IRP has recommended to accept the application for the reason as stated in the report dated 13.09.2021.*
- ii. The Respondent has admitted to have executed the Guarantee Agreement on 09.02.2016 in favour of Applicant Bank/Financial Creditor. Hence, the Petition is very much maintainable.*
- iii. The Applicant has demanded the amount outstanding from the Respondent initially vide Demand Notice dated 10.05.2018, 02.06.2018 and 20.10.2020.*
- iv. Resolution Professional report states that no evidence was placed before him by the Respondent having paid the amount demanded by the Applicant and as such in over view entire amount demanded is unserviced as on the date of order.*
- v. In our view the application is not hit by Limitation.”*

15. Coming to our analysis, in the present factual matrix, in terms of the PGA, the Appellant as personal guarantor was mandatorily obliged to honour its guarantee keeping in view that PGA provided for an unconditional, irrevocable and continuing guarantee to the COR Security Trustee/COR Lenders in respect of the COR Secured Obligations and credit facilities secured by the principal borrower. Recital F of the PGA makes it clear that the Personal Guarantor at the request of the Borrower and in consideration of the COR Lenders having agreed

to grant the COR Facility to the Borrower, had agreed to execute this Guarantee in favour of the COR Security Trustee, acting for the benefit of the COR Lenders, for guaranteeing the outstanding sum. It is clear from the reading of the terms of the PGA at Clause 26 that if the Borrower failed to perform its obligations under the COR Finance Documents, it was incumbent on the Personal Guarantor to forthwith pay on demand to the COR Security Trustee/COR Lenders the whole of such outstanding sum. Hence there is no merit in the plea taken by the Appellant that since no request was made by them as guarantor for release of loan in favour of the borrower, the personal guarantee could not have been invoked.

16. Besides being signatory to the PGA, we also take note that the Personal Guarantors have also been categorically defined in the CORLA. As per this definition, the “Personal Guarantor” term clearly included the Appellant. Further the CORLA at Clause 7.2 clearly provides that in the event of a default, the COR Lenders may enforce the security interest under the COR Security Documents. The COR Security Documents as per the definition clause of CORLA included the personal guarantee given by the Appellant. It is equally significant to note that Respondent No. 1 Bank clearly enjoyed the status of COR Lenders' Agent in the CORLA as is borne out by the CORLA at page 312 of APB. In any case, Clause 2.2 of CORLA clearly enunciate that the COR Lenders can also separately enforce any of their rights arising from the COR Finance Documents and COR Security Documents.

17. The Corporate Debtor had defaulted in repaying the loan account and the loan account of the Corporate Debtor was classified as NPA on 29.11.2017. On 10.05.2018, the Respondent No. 1 Bank had recalled the loan amounts advanced under the CORLA and COR Facility. Subsequently on 02.06.2018 the Respondent No. 1 Bank invoked the Personal Guarantee as the Lenders Agent under the CORLA. Eventually when the Corporate Debtor was admitted into CIRP on 04.02.2020, a Demand Notice dated 20.10.2020 was 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 invoking Personal Guarantee was issued. It is the assertion of the Respondent No.1 Bank that the two sub-clauses 29.1 and 29.3 under Clause 26 of CORLA captioned as “Manner of Demand” clearly show that the SBI could also invoke the guarantee as the COR Lenders were also authorized to claim the demand under the guarantee. The Respondent No.1 Bank had therefore invoked the Demand Notice on the personal guarantor which is in conformity with the manner prescribed under Annexure-1 of the PGA.

18. The above invocation of the personal guarantee and signing of the invocation in the capacity of “COR Lenders Agent” by Respondent No. 1 Bank has been questioned by the Appellant. We are dissuaded from agreeing with the Appellant since the Respondent No. 1 Bank had signed the CORLA wherein it had been clearly designated as COR Lenders' Agent. Moreover, though the lenders had appointed SBI Cap as their Security Trustee, in the Security Trustee Agreement dated 21.09.2015, Clause 8.12 stated that any duty or the obligation of the Security Trustee may be performed by the COR Lenders and any such

performance shall not be construed as a revocation of the trusts or agency created thereby.

19. This now brings us to the argument canvassed by the Appellant that in ***Rakshit Dhirajlal Joshi vs IDBI Bank Ltd 2022 SCC Online NCLAT 4524*** it had been held by this Tribunal that if the Security Trustee Agreement had laid down that the lenders shall act collectively, then an individual bank without obtaining formal consent of the other lenders cannot substitute itself in place of the Security trustee. The reliance placed by the Appellant on the decision of this Tribunal in ***Rakshit Dhirajlal*** judgment is not applicable in the present case since in this case there is no dispute *inter se* between the members of the consortium which had joined hands in signing the Security Trustee Agreement. None of the members of the consortium have raised any objection on the authority of the Respondent No.1 Bank to file the Section 95 application. Clearly therefore this judgement does not come to the rescue of the Appellants. Further, from the statutory construct point of view also, Section 95 of IBC clearly provides that a Section 95 application can be filed by a creditor in his individual capacity or jointly with other creditors or through a RP. It nowhere lays down any prescription that if the credit facility has been extended by more than one financial creditor, the Section 95 application is required to be filed collectively. Hence, we do not find any irregularity in the invocation of the personal guarantee by the Respondent No. 1 Bank on these counts either.

20. This brings us to another technical ground raised by the Appellant in claiming that the Section 95 application had been filed without any authority. It has been pointed out that the Respondent No.1 Bank has placed a reliance

upon a Letter of Authority dated 15.04.2021 issued by the Deputy General Manager in favour of Assistant General Manager to file the Section 95 application. The Appellant has claimed that the signing power given to any particular officer is not the decision-making power given to any particular officer of State Bank of India. Decisions have to be taken at the board level for initiating any legal proceedings and only thereafter authority is given to any particular officer to sign pleadings. No such authority had been delegated by the Executive Committee of the Central Board to initiate legal proceedings in the present case thereby rendering the Section 95 application not maintainable. The Respondent No.1 has repelled this argument by placing reliance upon a Gazette notification dated 27.03.1987 issued pursuant to Regulation 76 of the State Bank of India General Regulations, 1955 read with Section 50 of the State Bank of India Act, 1955 to contend that the signatory of the application, Shri Nitin Chauhan was duly authorised to file the Section 95 application.

21. This matter has already been decided in a recent judgment of this Tribunal in ***Mavjibhai Nagarbhai Patel Vs State Bank of India*** in ***CA(AT)(Ins) No. 1702 of 2024*** wherein a similar contention raising objections to the validity of a Section 95 application of IBC having been filed by an Assistant General Manager of State Bank of India above the level of SMGS-IV was repelled. The relevant excerpts of the said judgment is as reproduced below:

“23. This brings us to the second question on whether the Section 95 application has been validly filed. It is an admitted fact that the Authority Letter authorising the AGM to file the Section 95 application was signed by the Deputy General Manager. It was clarified by the Ld.

Counsel for the Respondent No.1 Bank during the oral submissions that the AGM of the Respondent No1 Bank being SMGS-V was statutorily competent to sign any petition by virtue of The Gazette of India Notification dated 02.05.1987 which notified that in pursuance of Regulations 76(1) of the State Bank of India General Regulations, 1955 framed under Section 50 of the State Bank of India Act, 1955 the Executive Committee of the Central Board of the State Bank of India authorized all Officers in the Grade of SMGS-IV and above to exercise Signing Power in respect of documents connected with the current or authorized business of the Bank. Since the Gazette of India Notification lies in the public domain and is subsisting, we are not impressed by the plea raised by the Appellant that the Section 95 application signed by an AGM level Officer of the Respondent No.1 Bank to be unauthorized. Thus, to reply to the second question, we are of the considered view that the Section 95 application filed by the Respondent No.1 Bank is valid and therefore reject this technical plea raised by the Appellant.”

In view of the above, we reject the contention of the Appellant that the Section 95 petition was not signed by a validly authorised person.

22. In sum, we do not find any merit in both the Appeals to interfere with the impugned order. Both the Appeals therefore fail and stand dismissed. No costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

Place: New Delhi
Date: 03.01.2025
Abdul/ Harleen