

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 2053 of 2024

**[Arising out of the Order dated September 19, 2024, passed by
the 'Adjudicating Authority' (National Company Law Tribunal,
New Delhi Bench, Court-III) in CP (IB) No. 655(ND)/2022]**

IN THE MATTER OF:

Paresh Rastogi

14/1, Jopling Road
Lucknow – 226001

...Appellant

Versus

1. M/Omkara Assets Reconstruction Pvt. Ltd.

No.9, M.P. Nagar First, Street,
Kongu Nagar Extension, Tirupur
Tamilnadu, India – 641607

...Respondent No.1

2. Mr. Umesh Gupta

Resolution Professional
221-A/19, Ground Floor
Onkar Nagar – B, Tri Nagar
New Delhi – 110035

...Respondent No.2

With

Company Appeal (AT) (Insolvency) No. 2054 of 2024

IN THE MATTER OF:

Piyush Rastogi

14/1, Jopling Road
Lucknow - 226001

...Appellant

Versus

1. M/Omkara Assets Reconstruction Pvt. Ltd.

No.9, M.P. Nagar First, Street,
Kongu Nagar Extension, Tirupur
Tamilnadu, India – 641607

...Respondent No.1

2. Mr. Umesh Gupta

Resolution Professional
221-A/19, Ground Floor
Onkar Nagar – B, Tri Nagar
New Delhi – 110035

...Respondent No.2

With
Company Appeal (AT) (Insolvency) No. 2117 of 2024

IN THE MATTER OF:

Deepak Rastogi

27/18, Raja Ram Mohan Roy Marg
Lucknow – 226001

...Appellant

Versus

1. M/Omkara Assets Reconstruction Pvt. Ltd.

No.9, M.P. Nagar First, Street,
Kongu Nagar Extension, Tirupur
Tamilnadu, India – 641607

...Respondent No.1

2. Mr. Umesh Gupta

Resolution Professional
221-A/19, Ground Floor
Onkar Nagar – B, Tri Nagar
New Delhi – 110035

...Respondent No.2

Present:

For Appellant : Mr. Sumesh Dhawan, Ms. Swastika Kumari and Mr. Sagar Thhakar, Advocates

For Respondent : Mr. Satendra Rai and Mr. Pareesh Virmani, Advocates for R-1. Mr. Vishal Ganda, Ms. Charmi Khurana, Mr. Anshit Aggarwal and Mr. Umesh Gupta, Advocates for RP.

ORDER
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

The present Appeal is filed challenging Orders dated 19th September, 2024 passed by the ‘Adjudicating Authority’ (AA¹) (National Company Law Tribunal, New Delhi Bench, Court-III) in CP (IB) No. IB-655(ND)/2022 and IA-319/2024 by which initiation of Personal Insolvency Resolution Process(PIRP)

¹ AA- Adjudicating Authority

it has been ordered against the Appellant. Similar PIRP² has been ordered by the AA in CP (IB) No. IB-656(ND)/2022 and IA-521/2024 against which appeal CA (AT) (Ins.) 2054/2024 has been filed and for PIRP ordered by the AA in CP (IB) No. IB-652(ND)/2022 and IA-335/2024 appeal in CA (AT) (Ins.) 2117/2024 has been filed.

Brief facts relevant for the Appeal

2. Facts necessary to be noticed for deciding this appeal are:

Sanction Letter- issued in favour of Andes Town Sept. 10, 2014
Planners Pvt. Ltd (“Corporate Debtor”) and
Rohtas Projects Ltd (“Co- Borrower”) for a project
loan of Rs. 90 crores by Omkara Assets
Reconstruction Private Limited “Financial
Creditor” or “Respondent No.1” - earlier Dewan
Housing Finance Corporation Ltd.-DHFL and
subsequently Piramal Capital & Housing Finance
Limited.

The Loan was secured by way of irrevocable
personal guarantees.

Following documents exchanged between the Sept. 29, 2014
Corporate Debtor, the Co-borrower and the
Financial Creditor:

a. Hypothecation Deed- charge created on all
receivables from sale of units in Rohtas Plumeria
& Summit.

² PIRP-Personal Insolvency Resolution Process

- b. Pledge Letter- for 99.99% shares of the Corporate Debtor
- c. Loan Agreement – for Rs. 90 Crores
- d. Escrow Agreement
- e. Deed of Guarantee- executed by Mr. Paresh Rastogi and Mr. Piyush Rastogi both being directors of Corporate Debtor along with Mr. Pankaj Rastogi and Mr Deepak Rastogi in favour of Respondent No. 1- Omkara.

Date of Default- the Corporate Debtor along with the Co-borrower committed default in repaying the loan. May 2018

Recall Notice- was issued by the Respondent No.1 to all four guarantors wherein the Deed of Guarantee was invoked by the Respondent No. 1 and further called upon the guarantors to pay the outstanding amount of Rs. 108,19,72,155/- as on December 30, 2019, within 15 days. Jan. 2, 2020

Notice invoking Guarantee on the last known address- by the Respondent No.1 for Rs. 133,14,26,737/- as on January 31, 2021. Feb. 15, 2021

Record of Default- submitted by the Respondent No. 1 to National E-Governance Services Limited (“NESL”). March 11, 2022

Demand Notice- issued under Section 95(4)(b)³ of the Code by the Respondent No. 1 to all the guarantors via courier, on the last known address and email for Rs. 161,92,58,947/- as on May 9, 2022

May 10, 2022

Company Petition (IB) No. 655/ND/2022 (“Company Petition”), filed before the Adjudicating Authority under Section 95 of the Code.

July 18, 2022

Limited Notice of Company Petition- issued by the Adjudicating Authority.

Sept. 7, 2022

Affidavit of service- filed by the Respondent No. 1 stating: Speed Post: Petition not delivered as “Addressee left without instructions”. E-mail: Petition delivered vide e-mail dated September 26, 2022.

Sept. 27, 2022

Section 7 against the Corporate Debtor- admitted by the Adjudicating Authority.

March 2, 2023

³ **Section 95-Application by creditor to initiate insolvency resolution process.**

“.....

(4) An application under sub-section (1) shall be accompanied with details and documents relating to-

(a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;
(b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and..”

Appointment of Resolution Professional- by the Adjudicating Authority. Respondent No. 2 was appointed as RP. Dec. 13, 2023

Report under Section 99⁴ of the Code- filed by the Respondent No.2 recommending the initiation of Insolvency Process. Jan. 16, 2024

Reply by the Appellant – raising objections related to delivery of demand notice, recall notice, etc: Feb. 13, 2024

- The Recall Notice, Invocation Notice and Demand Notice, was not delivered on the Appellant;
- There were various discrepancies in the report filed by the RP u/s 99 of the Code.
- The Appellant had not acknowledged the liability to pay the debt;
- Corporate Debtor is already undergoing CIRP, wherein resolution plan is being considered by the members of the committee of creditors.

Adjudicating Authority passed the Impugned Order. Sept. 19, 2024

Submissions of the Appellant - Personal Guarantor:

3. DHFL issued a notice dated 02.01.2020 inter alia, to the Corporate Debtor, Co-Borrower and the Appellant to re-pay the alleged outstanding

⁴ **Section 99(1) in Insolvency and Bankruptcy Code, 2016**

The resolution professional shall examine the application referred to in section 94 or section 95, as the case may be, within ten days of his appointment, and submit a report to the Adjudicating Authority recommending for approval or rejection of the application.

amount of Rs. 108,19,72,155/-, as on 30.12.2019, within 15 days. Pertinently, the said notice was not received by the Appellant. That the Loan Recall Notice, purportedly dated 02.01.2020, was never served upon the Appellant-PG. Respondent No. 1-FC has failed to provide any proof of service of this notice within the petition. The absence of a delivery receipt or any other credible evidence confirming its service indicates that the appellant was not notified of the Loan Recall Notice and, therefore, was deprived of the opportunity to respond or take any necessary action in relation to the same.

4. DHFL issued a purported notice dated 15.02.2021 for invocation of the Guarantee Deed, calling upon, the Appellant to re-pay the alleged outstanding amount of Rs. 133,14,26,737/-, as on 31.01.2021, within 15 days. Pertinently, the said notice was not received by the Appellant. The Invocation of Guarantee Notice, dated 15.02.2021, was submitted via an additional affidavit, accompanied by a photocopy of the alleged speed post receipt. However, no delivery report has been provided as evidence. Merely producing a speed post receipt does not suffice to establish proper service without the corresponding proof of delivery. The absence of such a delivery report demonstrate that the appellant never received the notice.

5. DHFL was merged into Piramal with effect from 30.09.2021. On 03.11.2021, the name of DHFL was changed to 'Piramal Capital and Housing Finance Limited'. On 10.05.2022, alleged demand notice ("Demand Notice") under Section 95(4)(b) of the IBC was issued by Piramal inter-alia calling upon

the Appellant to pay an amount Rs. 161,92,58,947/- outstanding as on 09.05.2022. Admittedly, the purported demand notice was returned with remark "addressee shifted from given address". The alleged Demand Notice, dated 10.05.2022, issued under Section 95(4)(b) of the IBC, 2016, was purportedly sent via Blue Dart courier, with the courier receipt and tracking details submitted through an additional affidavit. However, a review of the tracking information reveals that the notice was never delivered to the appellant. This failure to deliver the demand notice represents a critical lapse in fulfilling the procedural requirements under the IBC, 2016, as it deprived the appellant of the opportunity to respond or address the matter prior to the filing of the petition.

6. On 18.07.2022, the Petition was filed by Piramal under Section 95(1) of IBC, 2016 seeking initiation of Insolvency Resolution Process against the Appellant for the alleged default of an amount of Rs. 1,619,258,947/- as on 09.05.2022. That The petition itself, filed on 18.07.2022, was also not served on the appellant. The tracking report for the service of the petition indicates "address left without instruction", which confirms that the appellant did not receive a copy of the petition. That the Counsel of the appellant has informed him that one matter is filed against him as she found in the cause list of the Hon'ble NCLT and thereafter on instruction she has appeared and the copy of petition was served on her email by the counsel of the RP on 8th February, 2024. That it is evident from the above this lack of service further compounds

the appellant's inability to participate in the proceedings in a fair and informed manner, violating the principles of natural justice.

7. The Appellant filed its objections to the report filed by the Resolution Professional: (a) The Recall Notice, Invocation Notice and Demand Notice, was not delivered on the Appellant; (b) There were various discrepancies in the report filed by the RP u/s 99 of the Code.; (c) The Appellant had not acknowledged the liability to pay the debt; (d) Corporate Debtor is already undergoing CIRP, wherein resolution plan is being considered by the members of the committee of creditors.

8. It is contended that the Adjudicating Authority erroneously issued the Impugned Order on 19.09.2024 without considering settled legal principles and in contravention of the mandatory provisions of Section 95⁷ of the Code. This includes improper service of the demand notice on the Appellant and an inaccurate report filed by the Resolution Professional (RP) under Section 99 of the Code, read with Rule 7 (1)⁵ of IRPPG Rules⁶. The Appellant contends that the Impugned Order was issued without due consideration of established legal principles and in violation of Section 95 of the Code. Specifically, the demand notice was not properly served on the Appellant, as required under

⁵ **7. Application by Creditor.-** (1) A demand notice under clause (b) of sub-section (4) of section 95 shall be served on the guarantor demanding payment of the amount of default, in Form B.

⁶ **IRPPG Rules :** The Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019

Section 95(4)(b)⁷ of the Code, read with Rule 7(1) of the IRPPG Rules. The Respondent has failed to provide any documentary evidence proving that the alleged demand notice was ever served upon the Appellant. In the absence of such proof, the Petition is not maintainable, as it does not satisfy the fundamental requirement of Section 95(4)(b) of the IBC, which mandates the issuance of a demand notice in Form B.

9. Furthermore, there is no record substantiating the issuance of the demand notice. Although Respondents No. 1 and No. 2 (RP) referred to a purported demand notice dated 10.05.2022, allegedly sent via email and courier (as mentioned in Para 3.4 of the RP's report), no supporting documents or proof of service have been provided. Since it is evident that no demand notice was issued to the Appellant, the Petition filed by the Respondent is legally unsustainable. Additionally, the alleged notice was sent to an email ID, rahulk@rohtasprojects.com, which does not belong to the Appellant, rendering the service of notice legally ineffective.

10. The Petition is also not maintainable as Respondent No. 1 never invoked the guarantee. There is no evidence on record to establish that the

⁷ **Section 95-Application by creditor to initiate insolvency resolution process.**

“.....

(4) An application under sub-section (1) shall be accompanied with details and documents relating to-

(a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;
(b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and..”

Appellant received the alleged demand notices/letters dated 02.01.2020 and 15.02.2021, purportedly issued to invoke the guarantee. In the absence of such invocation, no default arises on the part of the Appellant, and he cannot be held liable for the demand raised by Respondent No. 1 concerning the guarantee extended to the Corporate Debtor. As per Rule 3(1)(e) of the IRPPG Rules⁸, a guarantee must be invoked for an individual to qualify as a guarantor and be subjected to insolvency proceedings. In this case, no personal guarantee has been invoked, and there is no evidence of delivery of the alleged demand/guarantee invocation notice dated 02.01.2020. A guarantee constitutes a debt only when it is invoked, making the guarantor liable thereafter. In this regard, reliance is placed on ***Edelweiss Asset Reconstruction Company v. Orissa Manganese and Minerals Limited & Others (Company Appeal No. 437/2018)***, wherein it was held that "... the admission of the principal debtor to CIRP does not mean that the debt stands proved as against the Guarantor in a Section 7 proceeding against the Corporate Guarantor automatically...". The Respondent has, therefore, failed in establishing compliance of subsection (4)(a) and (b) of section 95 I&B Code, 2016. As such the "debt" as claimed under the Guarantee Deed does not "exist" as on the date of filing of the Petition under Section 95 of IBC.

⁸ **Rule 3(1)(e) of The Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019** provides that "guarantor" means a debtor who is a personal guarantor to a corporate debtor and in respect of whom guarantee has been invoked by the creditor and remains unpaid in full or part;

11. In light of the foregoing, it is evident that essential documents—including the alleged Loan Recall Notice, Invocation of Guarantee Notice, Demand Notice under Section 95(4)(b) of the IBC, 2016, and the petition itself—were either not served on the Appellant or their service has not been adequately proven. The lack of clear evidence of service for these crucial documents deprived the Appellant of a fair and reasonable opportunity to respond. This procedural lapse raises serious concerns regarding compliance with the mandatory requirements of the IBC, 2016, and undermines the Appellant's right to participate in the proceedings.

12. The presumption of service under Section 27 of the General Clauses Act applies only when the notice is dispatched via registered post. In the present case, since the alleged demand notice was not sent through registered post, no such presumption of service can be drawn against the Appellant.

13. The Adjudicating Authority's conclusion in the Impugned Order—that the alleged non-service of the demand notice does not absolve the Personal Guarantor from liability under the Deed of Guarantee—is contrary to well-settled legal principles and violates the mandatory provisions of Section 95 of the Code.

Submissions of the Respondent No. 1- Omkara Assets Reconstruction Pvt Ltd

14. The Recall Notice, Invocation Notice, and Demand Notice were issued to the last known address of the Appellant - Personal Guarantor as per the

terms of the Guarantee Deed. The Appellant - Personal Guarantor had provided its address in the Guarantee Deed as 803, Rohtas Court, Lucknow ("Given Address"). Since the Appellant - Personal Guarantor never updated its address with the Respondent No. 1 (or Piramal or DHFL), this remained the last known address. Clause 22 of the Guarantee Deed explicitly states that all communications, including a Notice of Demand, sent to the address provided in the Guarantee Deed or the last known address shall be considered sufficient service. Therefore, by agreeing to Clause 22, the Respondent acknowledged that service of any communication or Notice of Demand at the Given Address or last known address would be deemed valid, allowing the Applicant to proceed accordingly. In compliance with this, the Respondent No.1 - Omkara sent the Recall Notice, Invocation Notice, and Demand Notice to the Given Address, which remained the last known address of the Appellant - Personal Guarantor as per the Guarantee Deed. Notably, the Given Address appears to have been used by the Appellant - Personal Guarantor for transactions with other banking and financial institutions as well. Even in the Objections, the Appellant - Personal Guarantor has not claimed that the Given Address does not belong to them or that any updated address was provided to the Respondent No. 1 (or Piramal or DHFL). Furthermore, the address mentioned in the affidavit supporting the Objections is not that of the Appellant - Personal Guarantor but rather of the Borrower, who is undergoing CIRP under the IBC.

15. Furthermore, a First Information Report (FIR No. RC0062022A0014) dated 11.04.2022 was registered by police station ACB, Lucknow, based on a complaint filed by Canara Bank, Lucknow, wherein the Appellant - Personal Guarantor's address was recorded as 803, Rohtas Road, Lucknow—the Given Address.

16. Thus, the issuance of the Recall Notice, Invocation Notice, and Demand Notice to the Given Address constitutes valid service in accordance with the Guarantee Deed. Consequently, the Appellant - Personal Guarantor's objections regarding non-service of the notices are baseless, contradict the terms of the Guarantee Deed, and should be rejected outright.

17. Respondent No. 1 - Omkara asserts that sending the Recall Notice, Invocation Notice, and Demand Notice to the last known address constitutes valid service. As previously stated, these notices were sent to the Given Address, as recorded in the Guarantee Deed. It is well settled in law that service of notice at a party's last known address is deemed valid.

18. Pursuant to the Adjudicating Authority's directions, a copy of the Petition was also sent to the Appellant - Personal Guarantor via email on 26.09.2022 and by speed post to the Given Address. The speed post was undelivered with the remark "addressee left without instructions," but the Petition was successfully served via email. Despite receiving the Petition, the Respondent has not made any payment towards the outstanding dues.

19. The Hon'ble High Court of Madras in ***St. Alfred Education Trust Vs. Kone Elevator India Pvt. Ltd.***, ***MANU/TN/7775/2023***, held that if the notice is sent to the correct and last known address of the defendant, the same has to be deemed to be served, whether it is actually served or not. The Hon'ble Supreme Court in ***Alavi Haji v. Palapetty Muhammed***, ***[(2007) 6 SCC 555]*** **(Para 14)**, also made similar observations.

20. In this case, the Demand Notice was sent to the Given Address, as per the Guarantee Deed, which was also the last known address. Although the postal service returned the notice with remarks "addressee shifted from the given address," it was also sent via email. Hence, in light of established legal principles, the Demand Notice is deemed to have been served on the Appellant - Personal Guarantor.

21. Respondent No. 1 - Omkara further contends that the Personal Guarantor never notified any change of address. The Appellant - Personal Guarantor has not asserted any change in the Given Address or that they had moved. If the Given Address had changed, the Appellant - Personal Guarantor was responsible for informing the Applicant. Since no such intimation or updated address was provided, the Appellant - Personal Guarantor cannot now claim that the Recall Notice, Invocation Notice, or Demand Notice was not delivered when they were sent to the Given Address.

22. The Appellant has not acknowledged liability for the debt and asserts that they are not obligated to pay. However, the Appellant has not denied executing the Guarantee Deed, which secures the repayment obligations of the Borrower and Co-Borrower. Clause 1 of the Guarantee Deed clearly states that in the event of default by the Borrower or Co-Borrower, the Appellant shall be liable to pay the defaulted amount. Therefore, the Appellant's claim of non-liability is baseless and should be dismissed.

23. The Borrower is already undergoing CIRP, with a resolution plan under consideration by the Committee of Creditors (CoC). The Appellant - PG's argument that the ongoing CIRP should bar the Petition is without merit and contradicts settled legal principles. This is settled by Hon'ble Supreme Court in ***Lalit Kumar Jain v. Union of India*, [(2021) 9 SCC 321]** wherein it was held that approval of a resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under the contract of guarantee. Further, the National Company Law Appellate Tribunal, New Delhi, in the matter of ***Mohan Kumar Garg vs. Omkara Assets Reconstruction Pvt. Ltd. & Anr. being Company Appeal (AT) (Insolvency) No.993 of 2023***, had held that the simultaneous proceedings in respect of the guarantor as well as the borrower can be proceeded with.

24. Hence, it is a settled principle of law that simultaneous proceedings can be initiated against the borrower as well as the guarantor. Furthermore, it is submitted that the Respondent No1- Omkara has not received the

outstanding amount, either in part or in full. Hence, the contention of the that since borrower is already undergoing CIRP, wherein resolution plan is being considered by the members of the COC, the Petition ought not be proceeded with, is contrary to the settled principles of law.

Submissions of Respondent No. 2-Resolution Professional (R2-RP)

25. With respect to the objections raised by the Appellant – PG on non-service of statutory demand notice, the Respondent No. 2-RP has examined the demand notice dated May 10, 2022, attached to the Company Petition, which was sent to the Appellant’s last known address. The same address was used to serve the order and report by the Respondent No. 2, leading to the Appellant’s appearance before the Adjudicating Authority. During the due diligence, the Respondent No. 2 confirmed that this address was provided by Respondent No. 1-FC for Know Your Customer (“KYC”) purposes, establishing it as the correct address.

26. Furthermore, it is submitted that Respondent No. 1 filed an affidavit of compliance pursuant to the order of the Adjudicating Authority dated September 7, 2022, placing on record the tracking receipt of the demand letter.

27. The law pertaining to the service on the address i.e., Last Known Address, of the Respondent being a valid service has been upheld by ***Hon’ble Supreme Court of India- Alavi Haji v. Palapetty Muhammed [(2007) 6***

SCC 555] and also by ***Hon'ble High Court of Madras- St. Alfred Education Trust Vs. Kone Elevator India Pvt. Ltd. [OSA No. 251 of 2020]***.

28. The Appellant had raised objections on the Report sent to the same Last Known Address used for the demand notice. Therefore, the Appellant cannot approbate and reprobate for the same, accordingly, the claim that Respondent No. 1 did not invoke the guarantee is baseless and frivolous. Therefore, they cannot claim improper service while acknowledging receipt of other documents. As per Clause 22 of the Guarantee Deed, Respondent No. 1 was required to serve the demand notice to the address provided by the Appellant or the last known address, which was duly complied. However, it is settled law that any address change must be communicated by the Appellant, which was not in the present case. Therefore, the objection raised by the Appellant that all requirements for filing of the Section 99 Report has not been satisfied is completely baseless and frivolous.

29. The debt was due, and the Appellant's failure to pay led to the initiation of the petition under Section 95 of the Code. Respondent No. 2 - Resolution Professional, filed a report under Section 99 of the Code recommending acceptance of the petition. The report was prepared in compliance with Section 99, ensuring the Company Petition was examined in accordance with the law under Sections 95 and 99(6)(a) of the Code.

30. Regarding the Appellant's claim that Section 95 requirements were not met, Respondent No. 2 reviewed all documents, including those submitted via email on January 3, 2024. Despite multiple attempts to engage the Appellant, they remained unresponsive and only raised objections later, causing unnecessary delays. The Appellant has not disputed the debt, the guarantee, or the last known address but only alleged non-delivery of the demand notice, which is unfounded.

31. Respondent No. 2- RP ensured to serve the copy of the order requesting the Appellant to put forward his case, objection and contentions to substantiate their case. However, there was no response. The contents of the objections filed by the Appellant has not denied the due debt amount. Therefore, the statement that the acknowledgement has not been given is untenable in the eyes of the law. The averment made by the Appellant regarding the same is unacceptable.

32. Respondent No. 2- RP has verified the documents pertaining to the NESL report wherein the default has been recorded in respect of the Corporate Debtor, co-borrower(s) and other co-guarantors. It is pertinent to mention that the law in case of personal guarantor is clear that there is no pre-requisite of filing of record of default in respect of the personal guarantor with the information utility. The said requisite is only present in case of the Corporate Insolvency Resolution Process i.e., at the time of filing of the petitions under Section 7, Section 9 and Section 10 of the Code, as per the

circular bearing no. “No. “IBBI/IU/59/2023” dated June 16, 2024, by the IBBI. Therefore, the contentions raised by Appellant pertaining to the record of default is not acceptable and is frivolous in nature.

33. Further Respondent No. 2- RP has filed **I.A No. 283 of 2025** under Section 114(1), read with Sections 115(2) and 106 of the Code, before the Adjudicating Authority, seeking termination of the Appellant’s Insolvency Resolution Process, liberty for creditors to file a bankruptcy application under Chapter IV of the Code, and discharge from duties due to following reasons:

i) Absence of a viable repayment plan under Section 105 of the Code, which constitutes rejection under Section 114(1). The **NCLAT in Sudip Dutta v. Prashant Jain (Company Appeal (AT) (Ins) No. 1494 of 2024)** held: *“No Repayment Plan having been submitted, the Adjudicating Authority rightly granted creditors liberty to file a Bankruptcy Application under Section 115(2).”*

ii) The Appellant’s failure to present a repayment plan or relevant details prevented Respondent No. 2 from submitting a report under Section 106 of the Code.

34. The Termination Application was listed before the Adjudicating Authority on **January 17, 2025**, which issued the following directions:

“Issue notice to the Respondents. Learned Counsel appearing for the Respondent No. 2 accepts notice and seeks time to file objections. One week time granted. The Applicant is directed to serve notice along with a copy of this application to the Respondent No. 1 by all modes and file proof and affidavit of service, within one week. The Respondent No. 1 is directed to file reply affidavit, within one week after receipt of the notice. List the matter on 19.02.2025.”

Appraisal

35. Heard all sides and perused the materials on record.

36. A Loan Agreement dated September 29, 2014, was entered into between M/s. Andes Town Planners Pvt. Ltd. ("Borrower/Corporate Debtor"), M/s. Rohtas Projects Ltd. ("Co-Borrower") and M/s. Dewan Housing Finance Corporation Limited. ["Financial Creditor" or "Respondent No.1" being Omkara Assets Reconstruction Private Limited which was earlier Dewan Housing Finance Corporation Ltd. and subsequently Piramal Capital & Housing Finance Limited]. Further to the sanction letter dated September 10, 2014 a loan of Rs. 90 crores which was approved and sanctioned to the Corporate Debtor. The Loan was secured by way of irrevocable personal guarantees. A deed of guarantee dated 29/09/2014 ("Deed of Guarantee") was issued by Mr. Paresh Rastogi, Mr. Piyush Rastogi, Mr. Pankaj Rastogi, Mr. Deepak Rastogi in favour of DHFL, giving an unconditional and irrevocable guarantee to jointly and severally repay on demand, all amounts that are due and payable under the facility, including interest, default/penal interest and all other charges, expenses and monies payable under the Loan Agreement.

37. Prayers sought in CA (AT) (Insol) 2053/2024 are:

- "a) Allow the present appeal;
- b) Set aside the Impugned Order dated 19.09.2024 passed by the Ld. Adjudicating Authority initiating Personal Insolvency Process against the Appellant.

c) Pass such other or further order(s)/ direction (s) as the Hon'ble Appellate Authority deems fit in the facts and circumstances of the case.”

Since the facts and issues are similar in CA (AT) (Ins.) 2053/2024, CA (AT) (Ins.) 2054/2024 and CA (AT) (Ins.) 2117/2024, they are being taken up together with facts of the CA (AT) (Ins.) No. 2053/2024 being the lead matter. Same prayers are made in the other two appeals and the Appellants in three appeals are severally and jointly personal guarantors for the loan to the CD, therefore, this analysis will apply to three appeals; so we are dealing them together.

38. In short, it is claimed by the Appellant that the report filed by the Resolution Professional under Section 99 of the Insolvency and Bankruptcy Code, 2016 (IBC) has not considered the following:

- “(a) That the Recall Notice, Invocation Notice and Demand Notice, was not delivered upon the Appellant;
- (b) There were various discrepancies in the report filed by the RP u/s 99 of the Code.
- (c) The Appellant had not acknowledged the liability to pay the debt;
- (d) Corporate Debtor is already undergoing CIRP, wherein resolution plan is being considered by the members of the committee of creditors.”

39. Appellant-PG contends that the rationale behind Section 95(4)(a) of the IBC mandates the submission of documents establishing: (a) the debts owed

by the debtor to the applying creditor(s) as of the application date; (b) the debtor's failure to repay the debt within fourteen days of being served with the demand notice; and (c) relevant evidence substantiating such default or non-repayment. It is claimed that the essential documents—including the alleged Loan Recall Notice, Invocation of Guarantee Notice, Demand Notice under Section 95(4)(b) of the IBC, 2016, and the petition itself—were either not served on the Appellant or their service has not been adequately proven. The lack of clear evidence of service for these crucial documents deprived the Appellant of a fair and reasonable opportunity to respond. This procedural lapse raises serious concerns regarding compliance with the mandatory requirements of the IBC, 2016, and undermines the Appellant's right to participate in the proceedings.

40. From the materials on record the issues which emerge in the case are:

- a.** whether there was valid service of Loan Recall Notice, Invocation Notice, and Demand Notice
- b.** whether statutory requirements under various sections of the Code particularly Sections 95 and 99 have been complied or not
- c.** whether invocation of the Guarantee has happened or not in the instant case which would have made the proceedings against the Appellants non-maintainable.

41. We first delve into the issue of Validity of Service of Notices. From the materials on record we find that the Respondents had sent the Loan Recall Notice, Invocation Notice, and Demand Notice to the Given Address recorded in the Guarantee Deed. Appellant contends that the notices were either not served or not adequately proven to be served. Clause 22 of the Guarantee Deed explicitly states that all communications, including a Notice of Demand, sent to the address provided in the Guarantee Deed or the last known address shall be considered sufficient service. The relevant clause is reiterated below:

"22. The Guarantors agree that all the communications including a Notice of Demand posted under the Certificate of Posting at the above stated or last known address of the Guarantors shall be sufficient service of such communication on or Notice of Demand on him and DHFL shall be entitled to proceed on the basis that the said communication or Notice of Demand Posted under the Certificate of Posting has been duly received by the Guarantor at the end of the normal period after which such communication or Notice of Demand be ordinarily delivered by Postal Authorities."

42. Now we note the addresses as contained in the Guarantee deed as APB page 233 which is extracted as below:

THIS DEED of GUARANTEE executed at Lucknow on this 29 day of September in the year 2014 by:-

1. **Mr. Paresh Rastogi** s/o _mr laxmi chand rastogi, age _52 years, residing at 803 Rohtas Court Lucknow
 2. **Mr. Piyush Rastogi** s/o Mr Laxmi Chand Rastogi, age 50 years, residing at 14-1, Jopling Road Lucknow
 3. **Mr. Pankaj Rastogi** s/o Jawahar Lal Rastogi, age 56 years, residing at 14-1, Jopling Road , Lucknow
 4. **Mr. Deepak Rastogi** s/o Late Sri N K Rastogi, age 44 years, residing at 14-1 , Jopling Road , Lucknow
- hereinafter called as **"the Guarantors"** (which expression shall

43. Therefore, by signing the guarantee deed, the Appellants-PG had agreed to Clause 22, and they had acknowledged that service of any communication or Notice of Demand at the Given Address or last known address would be deemed valid.

44. Further, it is to be noted that the Appellant/Personal Guarantor has been using 3 different addresses, which are as follows:

Before Hon'ble NCLT	Before Hon'ble NCLAT	
Reply	Appeal	Rejoinder
27/18, Raja Ram Mohan Roy Marg, Lucknow – 2226001 (Pg. 858 of Appeal)	14/1, Jopling Road, Lucknow – 226001 (Pg. 34 of Appeal)	803, Rohtas Court, Lucknow – 2226001 (Pg. 1 of Rejoinder)

And the Respondents had served on the last known addresses. Under these circumstances, these appeals don't commend us on the count of validity of service.

45. The ***Hon’ble Supreme Court of India- CC Alavi Haji v. Palapetty Muhammed (supra)*** has held that-

“14. This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement "refused" or "not available in the house" or "house locked" or "shop closed" or "addressee not in station", due service has to be presumed. ...”

[emphasis supplied]

46. In another judgment of Hon’ble Apex Court in ***Greater Mohali Area Development Authority and Ors. Vs. Manju Jain and Ors. (2010) 9 SCC 157*** the Hon’ble Apex Court held as under:

“...

a. In *C.C. Alavi Haji v. Palapetty Muhammed* [(2007) 6 SCC 555; (2007) 3 SCC (Cri) 236] this Court reiterated a similar view that Section 27 of the General Clauses Act, 1897 and Section 114 Illustration (f) of the Evidence Act, give rise to a presumption that the service of a notice has been effected when it is sent to the correct address by registered post. This Court held as under: (SCC p. 564, para 14)

“14. Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. ... Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business.”

b. This Court has reiterated a similar view in *Gujarat Electricity Board v. Atmaram Sungomal Poshani* [(1989) 2 SCC 602 : 1989 SCC (L&S) 393 : (1989) 10 ATC 396 : AIR 1989 SC 1433] , *CIT v. V.K.*

Gururaj [(1996) 7 SCC 275: 1996 SCC (L&S) 579: (1996) 33 ATC 269] , Poonam Verma v. DDA [(2007) 13 SCC 154], Sarav Investment & Financial Consultancy (P) Ltd. v. Llyods Register of Shipping Indian Office Staff Provident Fund [(2007) 14 SCC 753: (2009) 1 SCC (Cri) 935], Union of India v. S.P. Singh [(2008) 5 SCC 438 : (2008) 2 SCC (L&S) 1] , Municipal Corpn., Ludhiana v. Inderjit Singh [(2008) 13 SCC 506] and V.N. Bharat v. DDA [(2008) 17 SCC 321: AIR 2009 SC 1233]”

[Emphasis Supplied]

47. Such like situations have been noted in the legal precedents—including ***St. Alfred Education Trust v. Kone Elevator India Pvt. Ltd. (supra)*** and ***Alavi Haji v. Palapetty Muhammed (supra)*** — which have been relied upon by the Respondents. The Hon’ble High Court of Madras herein ***St. Alfred Education Trust (supra)*** held:

"21. In the light of the communications exchanged between the parties, the aforesaid conclusion reached by the learned Judge, in our view, is perfectly correct. In the suit, the respondent/plaintiff has taken all efforts to serve summons on the appellant/defendant. It is settled law that if the notice is sent to the correct and last known address of the defendant, the same has to be deemed to be served, whether it is actually served or not. In the present case, summons have been served to the correct and last known address of the appellant. It is not the case of the appellant that summons have been sent to a wrong address. Further, the appellant has not informed about their change of business place. In such circumstances, it can be inferred that summons have been duly served on the appellant, but they failed to contest the suit. Therefore, the application filed by the appellant in the year 2019 to set aside the ex parte decree dated 24.04.2009,

after a decade, was rightly dismissed by the learned Judge, by the order impugned herein, which need not be interfered with, at the hands of this court."

[Emphasis Supplied]

48. In another case the **Hon'ble High Court of Delhi** in **Ajay Ahuja v. Subhiksha Trading Services Ltd., [reported at 2011 (121) DRJ 137]** provides us guidance. Even though this was a case of Transfer of Property Act, 1882 - being similar to Rule 3(g) of the PG Application Rules. Herein, while examining Section 106(4) of the Transfer of Property Act, 1882, viz. the requirement of affixing the notice in case the same was not served, held that by sending the notice on the correct address, which was returned back with remarks "shifted", and "left without instructions" the requirement of Section 106 of the Transfer of Property Act, 1882 was met. The relevant paragraphs are:

"14. The next question which comes up for consideration in this case is as to whether the notice, whereby the tenancy of the defendant was sought to be terminated by the plaintiffs, can be said to have been duly issued to/served on them. Admittedly, the notice was not actually received by the defendant-company either at its corporate of L; at the suit premises. The notice sent by courier was received back with the remarks "shifted", whereas the notice sent by registered post at the suit premises was received back with the remarks "on repeated visits premises found locked". As noted earlier, the notice sent at the registered office of defendant-company was also sent with the remarks 'left without instructions'.

15. The contention of the learned counsel for the plaintiff is that the plaintiffs did whatever they could possibly have done to serve the notice upon the defendants and if the defendants chose to lock the suit premises and either shift its registered office or altogether stop its functioning and close down its operations and its registered office, without any intimation to the plaintiffs, that would amount to deliberate avoidance to receive the notice and consequently constitute a valid service.

19. In the case before this Court also, it was for the defendant-company, if it decided to lock the suit premises which it had been taken on rent from the plaintiffs, to make necessary arrangements for service of the letters, etc that could be sent to it, either by instructing the postal authorities to re-direct those letters to another address or to make some other arrangement for receipt of letters, etc. on its behalf. Same would be the position with respect to the registered office of the defendant-company, if it had decided to change its registered office or to altogether close down its operations as well as its registered office, without shifting the same to another place, (though as long as a company exists, it must have a registered office), it ought to have either provided an alternative address to the postal authorities for re-directing its. letter to that address or should have made some alternative arrangement for receipt of letters, etc. sent to its registered office. Another option available to the defendant-company was to give public notice communicating its new address to the public at large and/or to all those with whom it had transacted any business, including its debtors and creditors as well as the landlords of the premises which it had taken on rent. If the defendant-company decided not to adopt any of these courses available to it, the plaintiffs cannot be blamed for non-receipt of the notice by the defendant-company. The plaintiffs did the best they could have done by

sending notice by registered post not only at the suit premises, but also at the registered office of the defendant-company and in these circumstances, the statutory presumption under Section 27 of General Clauses Act with respect to service of notice sent by registered post cannot be denied to the plaintiffs.

20. I, therefore, have no hesitation in holding that by sending the notice dated 11th November, 2009 which was returned back with the remarks "shifted" "on repeated visits premises found locked" and "left without instructions" the plaintiffs have duly complied with the requirement of Section 106 of Transfer of Property Act."

[emphasis supplied]

49. Pertinently, the term 'post', as entailed in Section 27 of the General Clauses Act, has been enlarged to include 'speed post' and 'courier' as well.

The said position of law has been enunciated by the ***Hon'ble High Court of Jharkhand in Milan Poddar v. CIT***, reported at (2013) 357 ITR 619. The relevant paragraphs are as follows:

"19. In *SIL Import, USA v. Exim Aides Silk Exporters* (1999) 97 Comp Cas 575 (SC); AIR 1999 SC 1609, it was contended in the context of section 138 of the Negotiable Instruments Act that notice by fax was not valid. Rejecting the aforesaid contention, the hon'ble Supreme Court has held as under:

'Francis Bennion in *Statutory Interpretation* has stressed the need to interpret a statute by giving "allowances for any relevant changes that occurred, since the Act's passing, in law, social conditions, technology, the meaning of words, and other matters".

For the need to update legislations, the courts have the duty to use interpretative process to the fullest extent permissible

by the enactment. The following passage at page 167 of the above book has been quoted with approval by a three-judge Bench of this court in *State v. S. J. Choudhary* (1996) 2 SCC 428:

It is presumed that Parliament intends the court to apply to on ongoing Act a construction that continuously updates its wording to allow for changes since the Act was initially framed (an updating construction). While it remains law, it is to be treated as always speaking. This means that in its application on any date, the language of the Act, though necessarily embedded in its own time, is nevertheless to be construed in accordance with the need to treat it as current law."

So, if the notice envisaged in clause (b) of the proviso to section 138 was transmitted by fax it would be compliance with the legal requirement'.

.....

a. In view of the aforesaid principles, the phrase 'registered post' appearing in section 27 of the General Clauses Act needs to be construed on a construction that continuously updates its sweep to allow for changes after the said Act: was passed. It has been observed at page 99 of Maxwell on The Interpretation of Statutes (supra) that 'Provisions regarding the giving of notice often receive a liberal interpretation'. The aforesaid observations have been cited, with approval, by the hon'ble Supreme Court in *V. Raja Kumari v. Subbarama Naidu* [2005] AIR 2005 SC 109. We, therefore, hold that the phrase 'registered post' " in the said section 27 would take within its sweep not only 'speed post' but also all other mails forming part of established system of mails in which their receipt and movement are recorded to assure their safe delivery. So, if a notice envisaged in section 143(2) of the Income-tax Act or for

that matter in any other section is posted well in time by 'speed post', it would be sufficient compliance with the legal requirement of sending it by 'registered post' and its service would be deemed to be effected at the time at which the letter would be delivered in the ordinary course of post.”

[Emphasis Supplied]

50. Basis Section 27 of General Clauses Act, 1897, the service of the notice gets affected when it is sent to the correct address by registered post. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. Under these conditions the arguments of the Appellant-PG cannot be accepted that service of demand notice was not affected.

51. All above judgments support the case of the Respondents that support the proposition that notice served to the last known or registered address is deemed effective even if the recipient does not physically receive it. The Appellant’s failure to update his address cannot now be used to invalidate such service.

52. We may also note the meaning of service in Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, which is provided at Rule 3(g):

“...

3(g). “serve” means sending any communication by any means, including registered post, speed post, courier or

electronic form, which is capable of producing or generating an acknowledgement of receipt of such communication:

Provided that where a document cannot be served in any of the modes, it shall be affixed at the outer door or some other conspicuous part of the house or building in which the addressee ordinarily resides or carries on business or personally works for gain;”

53. Further the Respondent No.1- Omkara had sent the Recall Notice, Invocation Notice and Demand Notice to the Appellant on the address provided in the Guarantee Deed, being the last known address provided by the Appellant in terms of Clause 22 of the Guarantee Deed. The Appellant has not claimed that the address on which the Recall Notice, the Invocation Notice and the Demand Notice were sent was incorrect or does not belong to the Appellant. Also, the Appellant has not claimed that any fresh address was provided to the Respondent No.1 (or Piramal or DHFL), hence the address mentioned in the Guarantee Deed remained the last known address of the Appellant as provided to the Respondent No.1. It is also noted that address on the memo of parties is the same which was in the invocation notice and also the demand notice. This was the last known address as provided in the Guarantee Deed and shall be deemed to have been served as per Section 27 of the General Clauses Act,

1897⁹. It is claimed by the Appellant-PG that Section 27 of the General Clauses Act, 1897, creates a presumption that a notice properly addressed, prepaid, and sent via registered post is deemed to be served at the time it would ordinarily be delivered. It contends that the presumption under Section 27 is rebuttable and not conclusive. If the addressee provides credible evidence of non-receipt or non-delivery, the presumption can be displaced. The absence of a postal acknowledgment receipt or tracking information indicating non-delivery. But in the facts and circumstances of the case this rebuttal is not credible and is without merit and cannot be accepted.

54. The claim of the Appellant that the Since the invocation notice and the demand notice were issued in accordance with the provisions of the Guarantee Deed and which constitutes a separate contract between the parties; therefore, the claim of the Appellant-PG is not maintainable.

55. Therefore, the grounds raised by the Appellant- PG on validity of service are without merits and are not acceptable and doesn't provide any support to the Appeal. Accordingly, the arguments of the Appellant that service of various notices have not been done cannot be accepted.

⁹ **27. Meaning of service by post.**—Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression “serve” or either of the expressions “give” or “send” or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

56. Now we delve into the issue of Compliance with Statutory Requirements as contained in the code along with Rules. It is to be noted that Respondent No. 2 - Resolution Professional, filed a report under Section 99 of the Code recommending acceptance of the petition and this report was prepared in compliance with Section 99. From the material on record we find that the Company Petition was examined in accordance with the law under Sections 95 and 99(6)(a) of the Code. The RP has listed the compliance of various provisions which are once again reproduced for clarity as follows:

Provisions	Compliances
Section 95(4)(a) of the Code: Details and documents relating to the debts owed by the debtor to the creditor or creditors submitting the application	Respondent No. 2 duly verified the following documents: 1. Demand Notice - dated May 10, 2022, issued by Respondent No.1 2. Loan Agreement- dated September 29, 2014. 3. Deed of Guarantee- signed by the Appellant.
Section 95(4)(b) of the Code: Details and documents relating to the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand	Respondent No.1 served the Demand Notice in Form B, upon the Appellant in terms of Rule 3(g) proviso of the Personal Insolvency Rules which was duly received by the Appellant. Neither any reply was received by Respondent No.1 to the said Demand Notice within 14 days as per the Regulations mentioned in the Code nor any repayment was made by the Appellant.
Section 95(4)(c) of the Code: Details and documents relating to relevant evidence of such default or non-repayment of debt	1. Demand Notice - dated May 10, 2022, issued by Respondent No.1. 2. Loan recall notice- dated January 02, 2020, issued by the Respondent No. 1 to the Corporate Debtor and Appellant. 3. Loan Agreement- dated September 29, 2014 4. Loan Agreement- dated September 29, 2014.

	5. Deed of Guarantee- signed by the Appellant.
Section 95(5) of the Code: The creditor shall also provide a copy of the application made under sub-section (1) to the debtor	Basis a perusal of the Company Petition, it was understood that a copy of the Company Petition was sent to Appellant vide an e-mail. Further it is submitted that from the perusal of the order dated September 7, 2022, passed by this Adjudicating Authority, it appears that a limited notice was issued to the Appeal.
Section 99 (2) of the Code: the debtor to prove repayment of the debt claimed as unpaid by the creditor.	Respondent No. 2 informed the Appellant via: a) Letter dated December 23, 2023 and the tracking report of the said letter. b) E-mails dated December 28, 2023, and January 04, 2024, apprising Appellant about the initiation of IR Process against him and further called upon to prove the repayment of debt claimed as unpaid by the Respondent No.1.
Section 99 (3) of the Code: Where the debt is registered with the IU, the debtor shall not be entitled to dispute the validity of such debt.	From the perusal of the Petition, it was observed that debt due i.e., recoverable from the Appellant is registered with the NeSL.
Section 99 (4) of the Code read with Section 99(6)(b).	The information provided by Respondent No. 1 along with the Petition was exhaustive. Moreover, Respondent No. 1 provided the information and / or given the explanation sought by the Respondent No. 2.
Circular bearing no. "No. "IBBI/II/66/2024" dated February 12, 2024	The Respondent No. 2 has duly complied with the circular and served the copy of the Report on the debtor as well as the creditors.

57. From the materials on record, we find that the despite multiple attempts to engage with the Appellant, they remained unresponsive and only raised objections later which appear more to cause delays rather participating

in resolution process. Respondent No. 2- RP ensured the Appellant- PG was given an opportunity to present their case, but no response was received. The Appellant has not disputed the debt, the guarantee, or the last known address but only alleged non-delivery of the demand notice, which is unfounded. Only claim of lack of acknowledgment of notices etc is legally untenable and unacceptable. As noted earlier it was the duty of the Appellant to notify any change in their address, if any. Regarding the Appellant's claim that Section 95 requirements were not met, Respondent No. 2 reviewed all documents, including those submitted via email on January 3, 2024.

58. We also note that the Respondent No.1 - Omkara had sent the Recall Notice, Invocation Notice, and Demand Notice to the Given Address, which remained the last known address of the Appellant-PG as per the Guarantee Deed. It is to be noted that the same address was used by the Appellant-PG for transactions with other banking and financial institutions as well. Even in the Objections, the Appellant-PG had not claimed that the same address does not belong to them or that any updated address was provided to the Respondent No.1-FC (or Piramal or DHFL). Furthermore, the address mentioned in the affidavit supporting the Objections is not that of the Appellant-PG but rather of the Borrower, who is undergoing CIRP under the IBC. Furthermore, a first information report (FIR No. RC0062022A0014) dated 11.04.2022 was registered by police station ACB, Lucknow, based on a complaint filed by Canara Bank, Lucknow, wherein the Appellant-PG's

address was recorded as 803, Rohtas Road, Lucknow—the Given Address. Thus, the issuance of the Recall Notice, Invocation Notice, and Demand Notice to the Given Address constitutes valid service in accordance with the Guarantee Deed. Consequently, the Respondent's objections regarding non-service of the notices are found to be contradict the terms of the Guarantee Deed, and cannot be accepted.

59. Furthermore, it is to be noted that pursuant to the directions of the Adjudicating Authority a copy of the Petition was also sent to the Appellant via email on 26.09.2022 and by speed post to the Given Address. The speed post was undelivered with the remark "addressee left without instructions," but the Petition was successfully served via email. Despite receiving the Petition, the Respondent has not made any payment towards the outstanding dues.

60. It is also noted that all notices issued by the Respondent No.2 – RP have been sent by speed post and undelivered with the remark "addressee left without instructions". The Appellant has not claimed that this address does not belong to them or they have changed the address but the only ground which has been taken is that the loan recall notice, invocation of guarantee notice, demand notice and petition itself were either not served on the appellant or their service has not been satisfactorily proven. It also claims that there is absence of clear evidence of service of these essential documents. So, the Appellant did not a fair and reasonable opportunity to respond these

notices. In the facts and circumstances of the case, we find that Appellant has not disputed the address and not claimed that he has updated his address. Furthermore, as per Clause 22 of the Guarantee Deed, it was sufficient service at the last known address. It is to be noted that same address was being used for various other communications like FIR filed by Canara Bank against the Appellant and even in the affidavit filed in this appeal at page 10 of APB the address is noted to be the same as on which all the correspondence has been happening. This address of 803, Rohtas Court, Lucknow – 226001 has also been noted in various places in the APB [e.g. page 269 in CA (AT) (Ins.) No. 2053/2024].

61. From the materials on record, we find that the Resolution Professional's report, prepared under Section 99 of the IBC, substantiates that the procedural requirements under Section 95—specifically the issuance and service of the Demand Notice in the prescribed manner—have been met. The evidence of service, including speed post receipts and email transmissions, supports the contention that the statutory process was duly followed. The Appellant's argument that the non-receipt of the notices undermines the proceedings is not borne out by the documentary record.

62. In the above background, the contentions of the Appellant-PG for non-compliance of statutory requirements are devoid of merits and are rejected.

63. Now we delve into the issue of Invocation of the Guarantee and Liability of the Appellant. It is claimed by the Appellant that the guarantee was not properly invoked. The Guarantee Deed provides that liability arises upon the occurrence of default by the borrower, and the subsequent actions taken by the financial institution were in line with the contractual obligations. It is claimed that the guarantee becomes a debt once the said guarantee is invoked, wherein after the guarantor becomes liable. The Appellant has placed reliance upon ***Edelweiss Asset Reconstruction Company v Orissa Manganese and Minerals Limited and others (supra)*** wherein it has been held that:

"A contract of guarantee matures in to a binding obligation only upon its invocation. Contract of Guarantee is an autonomous contract and the admission of the principal debtor to CIRP does not mean that the debt stands proved as against the Guarantor in a Section 7 proceeding against the Corporate Guarantor automatically. The guarantee has to be invoked and the debt and default proved separately in the proceeding against the Guarantor."

(Emphasis is supplied)

The Appellant does not get any support from *Edelweiss Asset Reconstruction Co. v. Orissa Manganese and Minerals Ltd.* (supra), as the existence of a Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor does not preclude the initiation or continuation of proceedings against the Personal Guarantor. This principle has been upheld in decisions such as ***Lalit Kumar Jain v. Union of India (supra)*** by the Hon'ble Apex Court, wherein it was held that even if the resolution plan is approved, the same

does not discharge the personal guarantor. The relevant portion of the judgement is reiterated hereunder:

"125. In view of the above discussion, it is held that approval of a resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under the contract of guarantee. As held by this Court, the release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process i.e. by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability, which arises out of an independent contract."

(Emphasis is supplied)

64. Further, this Tribunal in the matter of **Mohan Kumar Garg vs. Omkara Assets Reconstruction Pvt. Ltd. & Anr (supra)**, had held that the simultaneous proceedings in respect of the guarantor as well as the borrower can be proceeded with. The relevant portion of the judgment is reiterated hereunder:

"8. Insofar as submission of the Appellant that simultaneous proceeding cannot be initiated against the Principal Borrower and the Corporate Guarantee, the Adjudicating Authority has adequately answered the said issue and referred to relevant judgments. Learned counsel for the Respondent has relied on subsequent judgment of this Tribunal in "Edelweiss Asset Reconstruction Co. Ltd. vs. Gwalior Bypass Projects Ltd., Company Appeal (AT) (Ins.) No. 1186 of 2019", "State Bank of India vs. Mr. Animesh Mukhopadhyay, Company Appeal (AT) (Ins.) No. 186 of 2021" and "Kanwar Raj Bhagat vs. Gujarat Hydrocarbons and Power SEZ Ltd. & Anr., Company Appeal (AT) (Ins.) No. 1096 of 2020" taking the view that simultaneous proceedings against the Principal Borrower and the Corporate Guarantor can be Initiated.

9. We are of the view that law is well settled that proceeding under Section 7 can be initiated against both the Principal Borrower and Corporate Guarantor and there is no inhibition in proceeding against the Corporate Guarantor although proceeding against Principal Borrower under Section 7 was admitted. We are of the view that no error has been committed by the Adjudicating Authority in admitting Section 7 application against the Corporate Guarantor. There is no merit in the Appeal. Appeal is dismissed."

(emphasis supplied)

65. Therefore, it is a settled position of law that simultaneous proceedings can be initiated against the borrower as well as the guarantor. As the Respondent No1- Omkara has not received the outstanding amount, either in part or in full, hence, the contention of that since borrower is already undergoing CIRP, wherein resolution plan is being considered by the members of the COC, the Petition ought not be proceeded with, is bereft of any justification and needs to be rejected.

66. Basis the material on record the AA has come to the conclusion that the Objections raised by the Personal Guarantor are not tenable and AA was satisfied with the grounds/reasons given by the Resolution Professional the initiation of the Personal Insolvency Resolution Process against the Personal Guarantor. The relevant portion of the order is being reproduced as follows:

"17. The Ld. Counsel for the Personal Guarantor submitted that service of demand notice is mandatory and is a pre-requisite for filing application under Section 95(1) of the IBC, 2016 and in the present case, the Applicant/Financial Creditor claimed to serve the demand notice to the Respondent in Form B however, no notice has been served to the Respondent/Personal Guarantor and therefore the present Application is liable to be dismissed.

18. The Ld. Counsel for the Resolution Professional submitted that the Applicant/Financial Creditor served the demand notice at the documents available with the Applicant/Financial Creditor and therefore it cannot be said that the demand notice was not served at all. However, neither any reply was received by the Financial Creditor to the said notice within 14 days as per the Regulations mentioned in the Code nor any repayment was made by the Personal Guarantor. Hence, the Financial Creditor was constrained to file the present application against the Personal Guarantor.

19. On 07.09.2022, this Adjudicating Authority was pleased to issue limited notice in the present application filed against the Personal Guarantor, in view of the judgment of Hon'ble NCLAT dated 12.08.2021 in the matter of **Mr. Ravi Ajit Kulkarni Vs. State Bank of India (Company Appeal (AT) (Insolvency) No. 316 of 2021**. The Applicant/Financial Creditor duly complied the order dated 07.09.2022 and filed the proof and Affidavit of service dated 03.10.2022

20. Further, the Resolution Professional took step to inform the Personal Guarantor to furnish necessary information/ documents with regard to repayment of debt. Thereafter, the Resolution Professional obtained the latest information of the Personal Guarantor through the applicant/Financial Creditor. The Resolution Professional sent a letter dated 23.12.2023 to Personal Guarantor on 26.12.2023. However, the letter sent on 26.12.2023 has been returned with the remarks 'Addressee left without instructions'.

21. Be that as it may the Personal Guarantor has not denied that pursuant to the Sanction of the credit facilities by the Applicant/Financial Creditor in favour of the Corporate Debtor, the Personal Guarantor executed the various documents which were duly accepted by the Corporate Debtor and the Personal Guarantor.

22. We have also noticed that the Personal Guarantor has not raised any objection with regard to non-compliance of Principles of Natural Justice by the Resolution Professional while submitting the report in terms of Section 99 of the Code, 2016.

23. We are therefore of the considered view that the non-service of demand notice as alleged by the Personal Guarantor will not absolve

the Personal Guarantor from discharging its liability under the Deed of Guarantee.

24. We are therefore not inclined to accept the submissions made by Ld. Counsel appearing for the Personal Guarantor that non-service of demand notice would result in the dismissal of the application filed under Section 95 of the Code, 2016.

25. We find that the Notices were issued to the Personal Guarantor as well as the Financial Creditor and the report was served by the Resolution Professional. On a perusal of the report, we find that the Resolution Professional has given reasonable opportunity following the principle of Natural Justice and has taken into consideration the various documents and has come to a conclusion that the Personal Insolvency Resolution Process be initiated against the Personal Guarantor....”

[Emphasis Supplied]

67. The Appellant questions the finding of the Adjudicating Authority in the Impugned Order that the non-service of demand notice as alleged by the Personal Guarantor will not absolve the Personal Guarantor from discharging its liability under the Deed of Guarantee. In the facts and circumstances of the case, we find that both Respondents have taken all steps to ensure that sufficient opportunity is provided to them. The Appellant-PG has not acknowledged liability for the debt and asserts that they are not obligated to pay. Facts and materials on record reveal that, the Appellant-PG has not denied executing the Guarantee Deed, which binds him with joint and severe responsibility of repayment, in case of non-payment by the Borrower and Co-Borrower. Clause 1 of the Guarantee Deed clearly states that in the event of default by the Borrower or Co-Borrower, the Appellant-PG shall be liable to pay the defaulted amount. Therefore, the Appellant’s claim of non-liability is

without merit and is dismissed. Further Appellant-PG has also been participating in the proceedings for resolution under the Code. It had sufficient opportunity to submit the repayment plan, but it did not file any Repayment plan. Respondent No.2-RP was, therefore, constrained to file I.A No. 283 of 2025 under Section 114(1) (“Termination Application”) read with Sections 115(2) and 106 of the Code, before the Adjudicating Authority, seeking the closure of the Insolvency Resolution Process of the Appellant, liberty for creditors to file a bankruptcy application under Chapter IV of the Code, and discharge from duties as there was absence of a viable repayment plan under Section 105 of the Code from the Appellant tantamount to rejection of repayment plan under Section 114(1) of the Code. In view of the non-presentation of the Repayment Plan or any relevant details by the Appellant, the Respondent No.2 was constrained from submitting its report under Section 106 of the Code. Termination Application is pending before the Adjudicating Authority.

Conclusion

68. In view of the above, it we conclude that:

- The notices in question were sent to the last known address as stipulated in the Guarantee Deed, and such service is deemed valid under established legal principles.
- The Resolution Professional has satisfactorily demonstrated compliance with the requirements of Sections 95 and 99 of the IBC.

- The Appellant's contentions regarding non-service and the alleged deficiencies in the report are without merit, as the burden of updating one's address lies with the Appellant.
- The simultaneous CIRP against the Corporate Debtor does not interfere with the obligations of the Personal Guarantor under the Guarantee Deed.

Orders

69. For the reasons stated above, we don't find any infirmity in the orders of the Adjudicating Authority and the Appeals CA (AT) (Ins.) No. 2053/2024, CA (AT) (Ins.) No. 2054/2024 and CA (AT) (Ins.) No. 2117/2024 are dismissed. The impugned Order dated 19th September 2024 is hereby upheld, and the Insolvency Resolution Process against the Appellant shall proceed accordingly. No orders as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

New Delhi.
March 18, 2025.

Pawan