

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 2169 of 2024

**[Arising out of the Order dated 12.09.2024, passed by the
'Adjudicating Authority' (National Company Law Tribunal,
Chandigarh Bench), Court-II in CP (IB) No. 104/CHD/PB/2023]**

IN THE MATTER OF:

Sh. Sumeet Juneja

S/o Late Sh. Gurubachan Juneja,
R/o H.No. 293, Jalandhar Kunj, Kapurthala Road,
Jalandhar-144002, Punjab, Personal Guarantor of
M/s Krishna Engineering Work Limited
Email: sumeetnai@yahoo.com,
Phone No. 9815022159

...Appellant

Versus

1. Stressed Assets Stabilisation Fund (SASF)
Having its Principal Office at:
3rd Floor, IDBI Tower, WTC Complex, Cuffe
Parade, Mumbai-400005
Through its authorized representative i.e.
Shri Senapati Nag
Email: n.senapati@idbi.co.in
Contract: 022-6655 2214

...Respondent No.1

2. Sh. Rajender Kumar Jain,
Resolution Professional bearing
registration No.
IBBI/IPA-001/IP-P00543/2017-2018/10968,
C/o SCO No. 818, 1st Floor, above Yes Bank,
NAC Manimajra, Sector 13,
Chandigarh – 160101
Email: Krishnaengpgp@gmail.com
Phone no. +91-98759-21490

...Respondent No.2

Present:

For Appellant : Mr. Pulkit Goyal, Advocate

For Respondent : Mr. Nitin Kant Setia, Advocate for R-1.
Mr. Viren Sharma and Mr. Yash Srivastava,
Advocates for R-2.

J U D G M E N T

(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

Introduction

This is an Appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 read with Rule 19 of the National Company Law Appellate Tribunal Rules, 2016 against the impugned order dated 12.09.2024 passed by the Hon'ble NCLT, Chandigarh in the above noted main Company Petition i.e. CP (IB) 104/CHD/PB/2023 filed by the Creditor/ Respondent u/s 95 of IBC, 2016 against the Appellant/Personal Guarantor vide which the Appellant/Personal Guarantor was proceeded ex-parte and the subsequently the admission order dated passed against the appellant/personal guarantor.

Brief facts of the matter:

2. The present appeal arises from the Impugned Order dated 12.09.2024 passed by NCLT, Chandigarh Bench, whereby the application bearing CP(IB) No. 104/CHD/PB/2023 filed by Respondent No. 1–Stressed Assets Stabilisation Fund (SASF)–against the Appellant/Personal Guarantor of M/s Krishan Engineering Works Ltd. was admitted. The Respondent No. 1 contended that the borrower company had availed financial facilities from it, for which the Appellant had executed a guarantee agreement dated 28.10.1994. Upon default by the borrower, the account was declared NPA on 31.10.1998. Thereafter, Respondent No. 1 filed OA No. 2777 of 2017 before DRT-I, Chandigarh against both the borrower and the Personal Guarantor, which was allowed and a recovery certificate was issued on 23.01.2019. As the decretal amount remained unpaid, a demand notice dated 29.03.2022

was issued, followed by initiation of proceedings under Section 95 of the IBC by way of CP(IB) No. 104/CHD/PB/2023. The NCLT, vide order dated 06.02.2024, admitted the application and appointed Respondent No. 2 as the Resolution Professional (RP). The RP filed IA No. 559(CH)/2024 to place on record his report, which was disposed of on 18.03.2024 with a direction to file an affidavit confirming service of the report to both parties. Accordingly, Respondent No. 2 filed an affidavit dated 24.04.2024 affirming service to both the Creditor and the Appellant. As the Appellant failed to appear, he was proceeded ex-parte on 30.07.2024, arguments were heard, and the application was subsequently admitted vide the Impugned Order, giving rise to the present appeal.

Submissions of the Appellant-PG-Sumeet Juneja

3. The grouse of the Appellant/Personal Guarantor is that he was completely unaware about the pendency of the aforesaid Application i.e. CP(IB) No. 104/CHD/PB/2023 before the Hon'ble NCLT, Bench Chandigarh and no notice was ever served to the Appellant/Personal Guarantor at any stage either by the Respondent No.1 – Creditor or by the Respondent No.2 i.e. Resolution Professional and as such the impugned order is bad in the eyes of law and as such required to be set aside.

No Invocation of Guarantee-

4. It would be worthwhile here to mention that as per Clause 20 of guarantee agreement dated 30.12.1996, the guarantee is payable on demand. However, the respondent creditor failed to make any demand prior to the filing to the filing of petition u/s 95 of IBC, 2016. Therefore, the primary requisite

for filing the petition was not fulfilled. Further Rule 3(e) of I&B Rules, 2019 laid down as under:

3(e) "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 remained unpaid in full or part"

5. No document was placed on record by the creditor to substantiate the fact that any demand was ever raised by the creditor towards the Applicant/ Personal Guarantor and as such the Application filed by the Respondent No.1 was premature and such impugned order is liable to be recalled. The NCLAT in the matter of ***State Bank of India V. Deepak Kumar Singhania*** has clearly laid down that:

- Guarantee invocation is a mandatory precondition for personal insolvency proceedings.
- Demand notices under Rule 7(1) do not replace the requirement of guarantee invocation.
- The definition of "guarantor" under Rule 3(1)(e) requires both conditions (being a guarantor AND an invoked guarantee) to be fulfilled.

6. Further, it would be worthwhile here to mention that the in OA 2777 of 2017, an ex-parte order was passed and respondent had no knowledge of the said matter. Moreover, as per the terms of guarantee agreement (Page no.86), the recovery certificate in itself is not sufficient for invocation of guarantee. In ***Syndicate Bank v. Channaveerappa Beleri (2006)***, the Hon'ble Supreme Court has held that a guarantor's liability arises only upon proper invocation as per the terms of the contract.

No demand notice was ever served to the appellant-

7. As per the provisions of Section 95 (4) (b) of IBC, 2016 the service of the 14 days' demand notice is pre-requisite for filing the petition under Section

95 of IBC, 2016. Rule 7 (1) of the Insolvency and Bankruptcy (Application to The Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to The Corporate Debtors) Rules, 2016 laid down that the creditor shall serve on the guarantor a demand notice under Section 95 (4) (b) of IBC, 2016 demanding the payment of amount of default in form B. However, in the case in hand no such demand notice was ever served upon the Appellant. The Appellant is stating so on the following basis:

- No Postal or email delivery proof was appended with the application u/s 95.
- Wrong address of appellant was given in the demand notice. In fact, the address on which demand notice was alleged to be served was sold by one of the creditor few years back.
- The correct address of the appellant was in the knowledge of the creditor, which is evident from the affidavit dated 20.06.2022 submitted by the Creditor in RC No.444/2019 before the Hon'ble DRT.
- It would be pertinent here to mention that the appellant only came to know when the resolution professional had sent a copy of impugned order dated 12.09.2024 on the correct address of the appellant after one month of passing the order.

8. The NCLAT in the matter of ***Central Bank of India v. Mr. P.K. Iyer and Anr*** has upheld the decision of NCLT, Hyderabad, whereby the NCLT has:

- Rejected the petition, stating that it lacked the necessary legal foundation for admission due to the failure to comply with the mandatory statutory requirement of serving a demand notice under s. 95(4)(b) of the IBC. Although the petitioner claimed to have issued a demand notice to the Respondent, the postal tracking report revealed that the notice was returned, indicating that the notice remained unserved. The RP failed to verify if the notice was served and concluded that the debt remained unpaid.

- Furthermore, as per s.95 (4)(c) of the IBC, the cause of action to proceed against the PG arises only if the CD fails to pay the debt within 14 days of service of the demand notice. In this case, since the demand notice was never served, the present application was left without a cause of action as non-maintainable.

[Emphasis supplied]

9. Further, Hon'ble NCLAT had noted that procedural mandates is not just a formality but a substantive requirement that safeguards the integrity of the CIRP.

10. **No copy of the petition was ever served upon the appellant/personal guarantor** as required under Rule 7- As per this Rule 7 (3), the copy of the application is required to be served upon the personal guarantor and the corporate debtor; however, the case in hand no copy was ever served upon the appellant/personal guarantor. The appellant is stating so on the following basis:

- The copy of the application u/s 95 was served on dormant e-mail address i.e. krishnaengineeringworksltd@yahoo.co.in
- This is further substantiated from the letter dated 19.10.2024 (Annexure A- 5, Page no.345-346), sent by the respondent no.2/resolution professional stating that he tried to contact the appellant by the aforesaid email id but the email bounced back every time.

11. **Shortcomings of Report u/s 99 of IBC, 2016**- Resolution Professional failed to consider the fact that:

- i) No invocation of guarantee had taken place,
- ii) The demand notice was never served upon the applicant
- iii) No notice of the application filed by the creditor under section 95 of IBC, 2016

12. Wrong affidavit of service was filed by the Respondent No.2 – Resolution Professional. In the service affidavit, the Respondent no. 2/ Resolution Professional had stated that the report under Section 99 has been served upon the applicant whereas no such service report was ever served upon the applicant as:

- The applicant resigned from the directorship of the CD in the year 1998 and CD was not a going concern and as such e-mail id was dormant since long.
- The address of the applicant, which was shown as postal address of the applicant had been auctioned by one of the creditor around 4 years back under the provisions of SARFAESI Act, 2002.
- Further on perusal of the WhatsApp communication as alleged by the respondent no.2, it is evident that the said communication was also qua the appointment of resolution professional in the matter of SASF v. Krishna Engg Works and nothing was mentioned with respect to pendency of any proceedings qua the appellant. Therefore, the respondent no.2 has wrongly stated that the appellant has been served.
- No affixation of any notice as per Rule 3 (g) of the of I&B Rules, 2019 for personal guarantors was done.

13. **Respondent Creditor had No Locus Standi to pursue/continue the application after assignment of debt on w.e.f. 31.08.2024-** During the pendency of the above mention application filed u/s95 of IBC, 2016, the respondent creditor had assigned the debt due towards M/s Krishna Engineering Works Private Limited and its guarantors in favour of one Asset Reconstruction company i.e. Omkara Asset Reconstruction Private Limited.

- Assignment deed dated 31.08.2024, was executed during the pendency of the petition when the order was reserved by the NCLT.

- Respondent failed to file any application for substituting the name of assignee.
- Respondent was not entitled to receive any order for the debt which had already been assigned to third party and the respondent SASF had no interest in the same.
- It would be worthwhile here to mention that Privy Council in the matter of 'Monghibai v. Cooverji Umersey' has observed that once the assignment deed has been executed, the assignee alone was entitled to recover and receive a decree in his favour.

14. **Appeal and Recall are Concurrent Remedies:** It is respectfully submitted that appeal and recall are concurrent remedies, and the appellant, acting under bona fide intent, has availed both. However, in light of the fact that the Hon'ble NCLAT has already taken cognizance of the appeal and granted interim relief, the Appellant is not presently pursuing the recall application before the NCLT. This course of action finds support in the judgment of the Hon'ble Supreme Court in ***The Koushik Mutually Aided Cooperative Housing Society v. Ameena Begum & Anr. (Civil Appeal No. 7903 of 2023)***, wherein it was held that a litigant may file both recall and appeal proceedings concurrently, though the pursuit of both is not mandatory. However, if the present appeal is dismissed, appellant won't be able to pursue the recall application.

15. Nobody should be condemned unheard and both the parties must be heard before passing the final order. This is the basic concept of rule of law and the most fundamental and foundational concept of fairness justice in human society. However, in the case in hand this basic concept was completely ignored by the respondents and on the basis of misrepresentation

before the NCLT, Chandigarh Bench, the Respondents managed to get the impugned order.

Submissions of R1-SASF

16. The Respondent No. 1 is competent to file the present reply as the debt involved in the present case has been assigned by SASF to the Omkara Assets Reconstruction Private Limited vide assignment dated 31.08.2024. The copy of the assignment forms part of the appeal. SASF was created by the Government of India and as per available information, it is in the process of being wound up. Therefore, the present reply is being filed by the Omkara Assets Reconstruction Private Limited in view of the assignment dated 31.08.2024.

17. The Appellant avers that he was not aware of the proceedings but the same is belied from the fact that he was in active contact with the Resolution Professional and had even replied to the message sent by the RP informing about the pendency of the proceedings. The Appellant was well aware about the pendency of the proceedings as far back as 20.02.2024 and had read and replied to the message sent by the Resolution Professional. He let the grass grow under his feet and did not join the proceedings before the NCLT. At this stage it is ex-facie wrong and illegal to state that he was not aware of the proceedings before the NCLT, Chandigarh Bench.

18. The present appeal is not maintainable as the appellant has failed to implead Omkara Assets Reconstruction Private Limited despite being aware that the debt has been assigned and Omkara Assets Reconstruction Private Limited is a necessary and proper party to the present proceedings.

19. A person who approaches a court of law with unclean hands does not deserve any relief. The Appellant admittedly was a guarantor for the loan secured by Krishna Engineering Works Limited, Jalandhar and there is an outstanding of a huge sum of 780,21,90,384/- (Seven Hundred Eighty Crore Twenty-One Lakh Ninty Thousand Three Hundred and Eighty-Four Rupee only).

20. In the relationship of Borrowers-Creditors-Guarantors it is an obligation of the Borrower/Guarantor to keep the creditor updated and fully informed with their current addresses and in case there is a change in the address of the Borrower/guarantor they are under an obligation to inform the creditor about such change. In absence of information to the creditor about the change in address the borrower/guarantor cannot take benefit or claim non-delivery of letters/notices sent by the creditor. In the present case the appellant has been playing hide & seek with the bank and has gone incognito by changing the address without any information to its creditors. In such events the guarantor has no right to take the defence of non-delivery of demand notice sent by the answering respondent.

21. It is submitted that it is undisputed:

- The appellant is a guarantor;
- The Borrower as well as the Guarantor has failed to repay the debt;
- That there is a decree as well as a recovery certificate issued by DRT against the appellant as well as the Borrower.
- That the debt and default is recorded with the information utility (National E-governance Services Limited);
- The debt has not been repaid and the amount overdue is Rs.

780,21,90,384 (Seven Hundred Eighty Crores Twenty-One Lakh Ninety Thousand Three Hundred Eighty-Four Only)

22. The Appellant has approached this Hon'ble Tribunal by concealing and misrepresented critical facts about his knowledge about pendency of the proceedings before the NCLT. From the record of the present matter, it is abundantly clear the Appellant was aware of the proceedings under Section 95 and therefore, the present Appellant based on alleged non-delivery of demand notice or the report under Section 99 is not maintainable. The Appellant is estopped from raising any issue related to non-delivery of demand notice or the report under Section 99 submitted by the respondent no. 2 as during the pendency of the proceedings, despite knowledge, he chose to remain away from the proceedings and the present appeal is only an afterthought. The law bars him to turn around and say that there were procedural lapses in the original application. It's a malicious attempt by the personal guarantor to cause obstruction in carrying out the Personal Insolvency Resolution Process under the Code.

23. The Appeal is based on false and concocted facts with a sole intent to mislead the Hon'ble Tribunal. The Appellant owes a huge amount of 780 Crore and has been evading the process of law. The Appellant was aware of the proceedings before the Tribunal below and is trying to find non-existent grounds for challenging the order admitting him to Personal Insolvency Resolution Process. It is submitted that it is clear from the record that a public notice of the proceedings was published on 12.04.2024 and the Appellant was aware of the proceedings as he had also replied to the WhatsApp message

sent by the Respondent No. 2 on 20.02.2024 intimating about the proceedings. Having not joined the proceedings despite being aware of the same disentitles him from raising any issue after the proceedings have concluded. It is a malicious attempt to stall the proceedings and cause further delay in the matter. The true copy of the Screen Shot of communication between the RP and Appellant dated 20.02.2024 is placed on record. The true copy of the Public Notice dated 12.04.2024 is placed on record.

24. There is overwhelming material available on record which unequivocally establishes that he was aware about the pendency of the proceedings and voluntarily chose not to file any objection at the relevant time. After the proceedings have concluded the Applicant cannot raise this ground for the first time in an appeal. In the entire Application the applicant has failed to raise this ground that he was prevented by a sufficient cause in not filing the objections in the original proceedings. The entire Application is based on falsehood that he was not aware of the proceedings which is contrary to the documentary evidence available on record.

25. The record of the original proceedings reveal that the RP had issued a public notice and had telephonically conversed with the applicant and had also received a reply from the Applicant to a WhatsApp message sent by the RP to the applicant about PIRP proceedings. In this backdrop, the, Applicant, is estopped from raising issues about non-service of demand notice etc. in the present appeal. The law is for the vigilant and for persons who come to Court with clean hands. The applicant has suppressed material facts about his

interaction with the RP during the pendency of the proceedings and before reserving of the judgment by the NCLT.

26. The Appellant avers that the loan was assigned by SASF to Omkara Asset Reconstruction Private Limited and therefore SASF was not competent to pursue the proceedings against the Appellant before NCLT. The appellant is trying to mislead this Hon'ble Tribunal by twisting the facts in question. The matter was heard and reserved on 30.07.2024 and the assignment in question was done on 31.08.2024 when the matter was lying reserved and the appellant has failed to point out any provision of law which provides for supplying fresh information after the matter has been resolved by the concerned court.

27. The Appellant next contends that he was never served the copy of the petition filed by Respondent No. 1 before the NCLT. However, it is clear from the record of the NCLT that an email was sent at the address given by the borrower and the guarantor who served as a director of the borrower company. The Appellant has failed to demonstrate that the said email address was not a valid address and not linked to him. There is no material on record produced by the Appellant to show that the email address was ever changed and any such information supplied to Respondent no.1 about the said changed email address. The Appellant cannot be permitted to hoodwink the creditors and disappear with large sum of Rs. 780 Crore which was the public money in the hands of the creditors. Such unscrupulous persons deserve no protection or sympathy from the courts should be dealt strictly in accordance with law.

28. In view of above it is most respectfully submitted that the present appeal, being devoid of merits, be dismissed with exemplary cost.

Submissions of R2-RP

29. The correct factual matrix relevant for the adjudication of the present Appeal filed by the Appellant which is detailed hereinafter.

- R2 was appointed as the Resolution Professional under Section 97 of the Code in the Personal Insolvency Resolution Process of the Appellant, vide an Order dated 06.02.2024, in C.P. (IB) No. 104/Chd/Pb/2023.
- Subsequently, the R2 sent emails dated 08.02.2024, 10.02.2024, and 12.02.2024 to the Appellant at the email ID mentioned in the Application filed by the Respondent No. 1 under Section 95 of the Code, before the Adjudicating Authority. These communications were sent to inform the Appellant about the appointment of the Resolution Professional and to request the necessary information for preparing the report under Section 99 of the Code, which was to be submitted before the Adjudicating Authority. However, the Appellant failed to provide the required information and did not raise any objections. Copies of email dated 08.02.2024, 10.02.2024, 12.02.2024 sent by Respondent No. 2 are on record in the reply
- Additionally, the R2 directly contacted the Appellant and had a telephonic conversation and intimated them about the appointment of the Resolution Professional by the Adjudicating Authority pursuant to the Application filed by Respondent No. 1. During this

conversation, the Answering Respondent also apprised the Appellant of the emails previously sent to the Appellant, vide which he was requested to provide the necessary information for the preparation of the report under Section 99 of the Code. Furthermore, on 10.02.2024, the Answering Respondent sent a WhatsApp message to the Appellant, reiterating the appointment of the Resolution Professional by the Adjudicating Authority and providing details of the scheduled meeting dated 12.02.2024 at 5 PM. In response, the Appellant sent a message on 21.02.2024, simply confirming that the Appellant was active on the provided number and fully aware of the ongoing insolvency proceedings. Despite this, the Appellant failed to take any action to provide the necessary information or records, nor did the Appellant raise any objections at that time.

- Thereafter, in compliance with the directions of the Adjudicating Authority and the provisions of Section 99 of the Code, the R2 submitted its Report under Section 99 through Application bearing I.A. No. 559/CH/2024 on 17.02.2024, recommending the commencement of Insolvency Proceedings against the Appellant. The said report was duly taken on record by the Adjudicating Authority vide its order dated 18.03.2024. Furthermore, through the same Order, the Adjudicating Authority directed the R2 to serve a copy of the report to the Appellant and Respondent No. 1 and to file an affidavit of service.

- Pursuant to the above, the R2 served a copy of the Report under Section 99 of the Code to the Petitioner-Financial Creditor and the Personal Guarantor through email and Speed Post at their respective designated addresses. An affidavit of service was subsequently filed before the Adjudicating Authority vide Diary No. 00371/2 dated 24.04.2024. While service to Respondent No. 1 was duly completed, service to the Appellant could not be affected due to an insufficient address. Consequently, the Resolution Professional served notice to the Appellant through substituted means by publishing it in the Two (2) Newspapers Financial Express (English) and Punjab Jagran (Punjabi) on 12.04.2024. The affidavit of service was thereafter taken on record by the Adjudicating Authority vide its Order dated 30.07.2024.

- The Appellant has falsely claimed to be unaware of the pending proceedings and has incorrectly stated that they were only informed on 21.10.2024. Contrary to this assertion, the Appellant was duly notified but failed to appear before the Adjudicating Authority despite repeated attempts to contact the Appellant. Consequently, the Adjudicating Authority proceeded ex-parte against the Appellant and, after hearing the matter, reserved its Order in the Application under Section 95 of the Code on 30.07.2024. The said Application was subsequently allowed vide the impugned Order dated 12.09.2024.

30. The Application under Section 95 of the Code has been filed by the Financial Creditor for a default of amount of Rs. 780.22 Crores as on 23.01.2019 (Page 59 of Appeal) in terms of default by the Personal Guarantor on 23.01.2019. That the Personal Guarantee was entered into on 30.12.1996 (Page 86 of the Appeal). The submission of the Appellant with regard to the Petition being barred by limitation is wrong and misconceived. It is submitted that the Recovery Certificate was issued by the Hon'ble DRT on 23.01.2019 (Page 72 of Appeal) thereby seeking repayment of dues from the Personal Guarantor. Moreover, subsequently the Financial Creditor issued demand notice dated 28.07.2021 (Page 307 of the Appeal) seeking repayment of the outstanding dues from the Appellant being the Personal Guarantor. However, the Respondent failed to pay the legitimate dues of Financial Creditor. That the ground taken by the Appellant with regard to no invocation of guarantee by the creditor is misconceived and wrong in view of demand notice and Recovery Certificate demanding repayment of outstanding dues.

31. Furthermore, the Financial Creditor has annexed demand notice dated 29.03.2022 (Page 77 of Appeal) issued under Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtor) Rules, 2019. Moreover, the debt has been registered with information utility namely NESL in Form C (Page 81 of the Appeal).

32. The entire Appeal has been filed on the basis that the Appellant was not aware about the proceedings under Section 95 of the Code being pending before the NCLT which is demolished from the fact that the Respondent No. 2

had discussed the appointment of Resolution Professional by the NCLT on call and sent a message on WhatsApp which has been duly acknowledged by the Appellant. The number on which the message has been sent by the Respondent No. 2 – “+91-9815022159” is the number of the Appellant as can be seen from Page 15 of the Appeal.

33. It is further submitted that the Respondent No. 2 sent emails for intimation about proceedings under Section 95 of the Code and appointment of RP under Section 97 of the Code at the registered email of the Corporate Debtor as shown on master data and part of MCA records. If the said email is “defunct” as claimed by the Appellant then it was the bounden duty of the Appellant to update the registered office/ email with the MCA records as per Section 12(4) of the Companies Act within 30 days of such change so that it is capable of receiving/ acknowledging communications and notices addressed to it as per Section 12(1) of the Companies Act.

34. The Appellant has stated that the address on which service was effected is not his address which is contrary to the record. Interestingly, the affidavit in support of the present Appeal filed before this Hon’ble Appellate Authority provides the address of the Appellant as “EH-58, Ladowali Road, Jalandhar - 144001, Punjab” (Page 30E of Appeal) which is the same address on which speed post was sent to the Appellant (Notice at Pg 366 of Appeal). Accordingly, the contention of the Appellant that service is being effected at wrong address is only to mislead this Hon’ble Appellate Authority to obtain favourable orders. The Appellant in the Affidavit also mentions the address of the Corporate Debtor at “B1, Focal Point Extension, Ladowali Road, Jalandhar -144001,

Punjab” which is the same address on which notice was issued to the Corporate Debtor. The Appellant had stated during arguments that the Affidavit in support of the Appeal has a typographical error on which ground alone the Appeal is liable to be rejected. From the above, it is apparent that the Appellant purposely did not participate in the proceedings and such a person should not be given to any shelter/ Relief. Despite being aware about the proceedings, the Appellant chose to not participate in the proceedings before the NCLT and has intentionally refrained from providing the requested information or cooperate with the R2 or appear before the NCLT. The Appellant was provided with multiple opportunities to appear before the NCLT but Appellant deliberately with malicious intent chose not to appear before the NCLT. The negligence on the part of the Appellant cannot be given any benefit/ relief. The Appellant is trying to evade payment of dues to the Financial Creditor to the tune of Rs. 780.22 Crores as on 23.01.2019.

35. The submission that the debt was assigned by the SASF to Omkara Asset Reconstruction Private Limited (“Omkara”), and that Omkara could not have pursued the Application under Section 95 is wrong, misconceived and untenable. That in terms of Section 5(3) of SARFAESI Act, the assignee steps into the shoes of the assignor and acquires all rights/ interests qua the debt. Moreover, it is not the case of the Appellant that SASF has been pursuing the Application under Section 95 of the Code even after assignment, since the debt was assigned after reserving of orders by the NCLT in the Application.

36. It is further apposite to mention that the Appellant has also filed an Application bearing I.A. No. 2414/2024 before the NCLT seeking recall of

Order dated 12.09.2024 on the same grounds as are being raised in the present Appeal. The matter is being heard by NCLT. This conduct of the Appellant constitutes forum shopping and involves misrepresentation of facts thereby rendering the present Appeal liable to be dismissed.

37. It is worthwhile to mention here that the R2 was eventually able to identify the Appellant's workplace, i.e., Nangli Auto Industries, Village Wariana, Kapurthala Road, Jalandhar-144001, Punjab, which was made available to the Resolution Professional by the Creditor. Thereafter, the Answering Respondent sent another intimation letter dated 19.10.2024 to the Personal Guarantor at this Address. Thereafter, on 23.10.2024, the Appellant visited the office of the Respondent and unequivocally assured full cooperation in the matter at hand. Furthermore, the Appellant, vide email dated 24th October 2024, undertook reproduced as below to submit the requisite documents within one week and reiterated his availability for any further clarifications or cooperation as may be required:

“Re: KEW: Intimation of Admission Order Passed by Hon’ble NCLT Admitting the Personal Insolvency of Mr. Sumeet Juneja (Personal Guarantor to M/s Krishna Engineering Works Limited) Under Section 102 of IBC, 2016

Sumeet Juneja sumeetnai@yahoo.com Thu, Oct 24, 2024 at 8:43 PM

To: KrishnaEngg PG <krishnaenggpg@gmail.com>

Kind attention Mr Rk Jain
Dear Sir

I wish to inform that I have gone through the documents provided to me by your office during my visit yesterday and are working on the same. I shall submit the details of my statement of affairs within a week's time and keep in touch with your office for any clarifications during this period. I have given my phone number and my personal mail id for further correspondence and I shall be accessible as and when required.

Further I understand that the next date at NCLT is on Monday (28/10/2024). I request your goodself to take a week's time upto

05/11/2024 from the Hon'ble Tribunal for submission of the required documents.

Regards

Sumeet Juneja”

38. Pursuant to the above, the Appellant has filed the present Appeal before this Hon'ble Appellate Authority on 27.10.2024 seeking setting aside of Impugned Order on the grounds that the Appellant was unaware about the pendency of the proceedings under Section 95 of the Code before the Adjudicating Authority and the Appellant was proceeded ex-parte by the Adjudicating Authority without issuance of Notice on the Appellant. These statements made by the Appellant are factually wrong and misleading as the Adjudicating Authority had issued Notice on the Appellant vide Order dated 18.03.2024 and the R2 had also filed an Affidavit of Service in compliance with the directions passed by the Adjudicating Authority.

39. The Appellant's address, i.e., EH-58, Ladowal Road, Jalandhar, and email ID: krishnaengineeringworksltd@yahoo.co.in, which were used by the Answering Respondent for serving the letter intimating the initiation of proceedings against the Appellant and the Report under Section 99 of the Code, were provided by the Financial Creditor, as set forth in the Petition filed before the Adjudicating Authority and relied upon by the Answering Respondent. The address of the Appellant was further obtained from the following documents:

- Copy of Recovery Certificate issued by the Presiding Officer of DRT-1, Chandigarh dated 23.01.2019 annexed as Annexure- 2T of the Report
- Demand Notices u/s 13(2) of the SARFAESI Act, 2002 dated 28.07.2021 and 29.02.2022 annexed as Annexure- 2U and 2V of the Report respectively.

40. Despite being specifically asked by the Resolution Professional, the Appellant never mentioned that the address provided by the Financial Creditor in the application was incorrect or that the email ID was inoperative. Instead, the Appellant has attempted to mislead the Court by twisting facts and presenting false information. In fact, the response of the Appellant via WhatsApp, itself corroborates that he was fully aware of the pending proceedings. Therefore, the Appellant cannot now claim that he was unaware of the proceedings or lacked information about the matter.

Appraisal

41. We have carefully perused materials placed on record and heard learned counsel for both sides. The Appellant, Mr. Sumeet Juneja, Personal Guarantor to M/s Krishna Engineering Works Limited (“Corporate Debtor”), seeks to challenge the Impugned Order dated 12.09.2024 passed by the Adjudicating Authority whereby the Application under Section 95 of the Insolvency and Bankruptcy Code, 2016 (“the Code”), filed by Stressed Assets Stabilisation Fund (“Respondent No. 1”), was admitted, thereby initiating insolvency resolution proceedings against the Personal Guarantor.

42. For better appreciation of the case the facts are recapitulated herein as follows:

	The Respondent No. 1/Creditor filed Application bearing CP(IB)104/CHD/PB/2023 before the NCLT, Chandigarh Bench against the present Appellant/Personal Guarantor in the loan account of M/S Krishan Engineering Works Ltd.
28.10.1994	As per the pleadings of the Respondent No. 1, it was contended that the borrower company ie Krishna Engineering Works Ltd had availed financial facilities from Financial Creditor/Respondent ie Stressed Assets, Stabilisation Fund (SASF) and for availing the aforesaid financial facilities the Appellant/Personal

	Guarantor had executed a guarantee agreement dated 28.10.1994.
31.10.1998	It was further contended that the aforesaid borrower could not maintain the financial discipline and as such the account of the borrower was declared NPA on 31.10.1998.
	Respondent No. 1/Creditor had filed one OA No. 2777 of 2017 before the DRT-I, Chandigarh against the borrower company ie Krishna Engineering Works Ltd as well as against the Appellant/Personal Guarantor.
23.01.2019	The aforesaid OA No. 2777 of 2017 was allowed and recovery certificate was issued on 23.01.2019.
29.03.2022	The borrower/Personal Guarantor failed to repay the decretal amount and as such Demand Notice was issued on 29.03.2022.
31.01.2023	Section 95 petition filed by SASF on account of default in repayment of loan to the tune of Rs. 780.22 Crores as on 23.01.2019 plus interest thereon.
06.02.2024	NCLT appointed R2 as the Resolution Professional in the matter of Personal Guarantor under Section 97 of the Code with direction to file report under Section 99 of the Code
08.02.2024 10.02.2024 12.02.2024	<u>R2 intimated the Appellant vide email about the appointment and sought information for forming an opinion and filing a report under Section 99 of the Code in terms of the provisions and directions passed by the NCLT</u> Email was provided by the Financial Creditor in the Petition and is also registered email as per MCA Records.
10.02.2024	Appellant failed to respond on email, hence <u>R2 was constrained to send a message on WhatsApp</u> to which was duly delivered.
17.02.2024	<u>R2 filed report u/s 99 of the Code</u> vide Application bearing IA 559/2024 in compliance with provisions and directions passed by the NCLT
18.03.2024	NCLT took the report on record and directed RP to serve on Appellant and file affidavit of Service
19.04.2024	<u>R2 served through email and speed post. Since the speed post was returned, R2 in accordance with Rule 38 of NCLT rules, served notice on Appellant through publication and filed Affidavit of Service</u> Address was obtained from the petition filed by the Financial Creditor, Recovery Certificate issued by DRT and Demand Notice sent by Financial Creditor.

30.07.2024	NCLT proceeded <u>exparte</u> and reserved the Company Petition filed by R1 under Section 95 of the Code.
31.08.2024	Assignment of Debt by SASF to Omkara ARC.
12.09.2024	NCLT admitted the Petition and passed impugned Order u/s 100 of the Code.
19.10.2024	R2 sent Letter on the Appellant at an alternate Address.
24.10.2024	Appellant agreed to cooperate and provide information to R2.
27.10.2025	Appellant filed the present Appeal.
30.10.2024	Appellant filed a similar Application bearing I.A. 2414/2024 seeking recall of impugned Order on the same grounds as taken in the present Appeal.

43. The undisputed factual matrix is that the Appellant executed a personal guarantee; that both the Borrower and the Guarantor defaulted; that a decree and Recovery Certificate were issued by the DRT; and that the debt and default stand recorded with the Information Utility (NESL). The admitted liability is to the tune of Rs. 780,21,90,384/-.

44. The main contention of the appellant is that he was unaware of the proceedings before the adjudicating authority because he was not served any of the notices.

45. The Appellant contends that no valid invocation of the guarantee took place, that demand notice under Section 95(4)(b) was never served, that the application under Section 95 was premature, and that the Resolution Professional filed an incorrect affidavit of service. He also argues that, after the assignment of debt on 31.08.2024 in favour of Omkara ARC, Respondent No. 1 had no locus to pursue the proceedings, and that the petition was barred by limitation.

46. We note that the Application under Section 95 of the Code has been filed by the financial creditor for a default of amount of Rs. 780.22 Crores as on 23.01.2019 (Page 59 of Appeal) in terms of default by the Personal Guarantor on 23.01.2019. Personal Guarantee was entered into on 30.12.1996 (Page 86 of the Appeal). The claim of the Appellant with regard to the Petition being barred by limitation is wrong and misconceived as we note that the Recovery Certificate was issued by the Hon'ble DRT on 23.01.2019 (Page 72 of Appeal) thereby seeking repayment of dues from the personal guarantor. Subsequently the financial creditor issued demand notice dated 28.07.2021 (Page 307 of the Appeal) seeking repayment of the outstanding dues from the Appellant being the Personal Guarantor. However, the Respondent failed to pay the dues of Financial Creditor. Therefore, the ground taken by the Appellant with regard to no invocation of guarantee by the creditor is misconceived and wrong in view of demand notice and Recovery Certificate demanding repayment of outstanding dues.

47. The Financial Creditor has also annexed demand notice dated 29.03.2022 (Page 77 of Appeal) issued under Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtor) Rules, 2019. Moreover, the debt has been registered with information utility namely NESL in Form C (Page 81 of the Appeal).

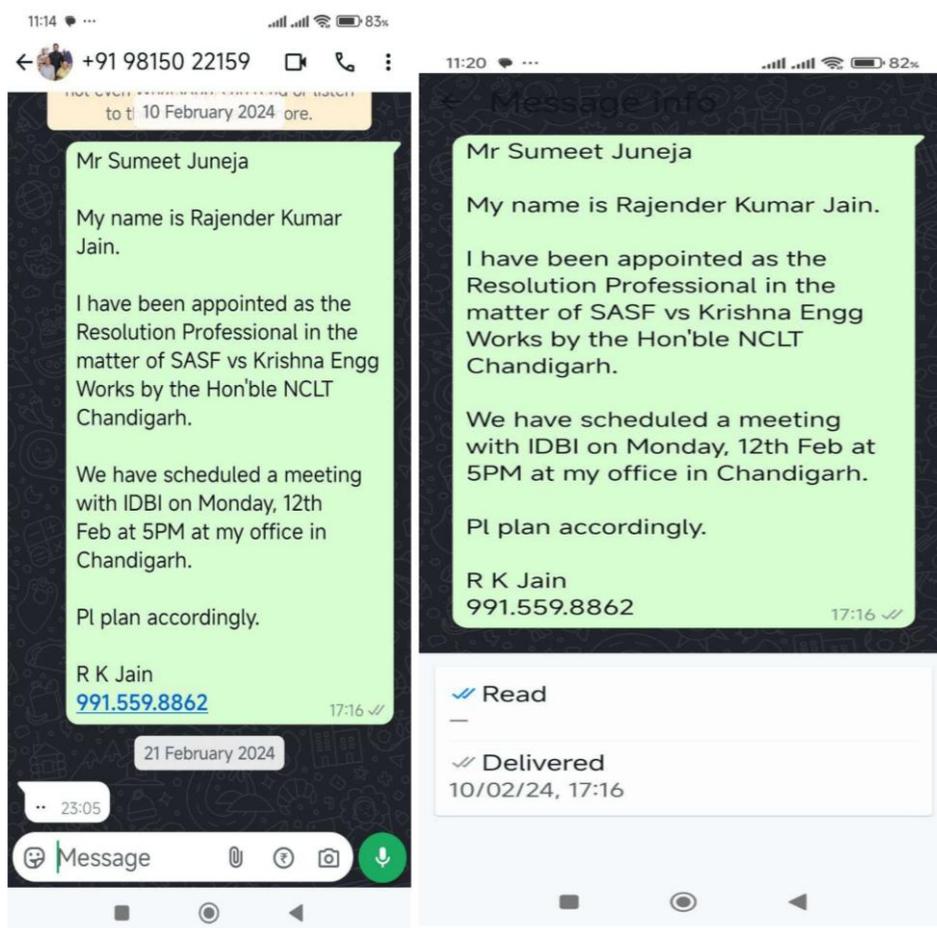
48. The entire Appeal has been filed on the basis that the Appellant was not aware about the proceedings under Section 95 of the Code being pending before the NCLT which is demolished from the fact that the Respondent No. 2

had discussed the appointment of Resolution Professional by the NCLT on call and sent a message on WhatsApp which has been duly acknowledged by the Appellant. The number on which the message has been sent by the Respondent No. 2 – “+91-9815022159” is the number of the Appellant as can be seen from Page 15 of the Appeal.

49. We also agree with the arguments of the Respondents that it is an obligation of the Borrower/Guarantor to keep the creditor updated and fully informed with their current addresses and in case there is a change in the address of the Borrower/guarantor they are under an obligation to inform the creditor about such change. In the absence of information to the creditor about the change in address the borrower/guarantor cannot take benefit or claim non-delivery of letters/notices sent by the creditor. In the present case the appellant has been playing hide & seek with the bank and has gone incognito by changing the address without any information to its creditors. In such events the guarantor has no right to take the defence of non-delivery of demand notice sent by the answering respondent.

50. We also note that R2-RP had sent emails dated 08.02.2024, 10.02.2024, and 12.02.2024 to the Appellant at the email ID mentioned in the Application filed by the Respondent No. 1 under Section 95 of the Code, before the Adjudicating Authority. Additionally, the R2-RP directly contacted the Appellant and had a telephonic conversation and intimated them about the appointment of the Resolution Professional by the Adjudicating Authority pursuant to the Application filed by Respondent No. 1. During this conversation, the Answering Respondent also apprised the Appellant of the

emails previously sent to the Appellant, vide which he was requested to provide the necessary information for the preparation of the report under Section 99 of the Code. Furthermore, on 10.02.2024, the Answering Respondent sent a WhatsApp message to the Appellant, reiterating the appointment of the Resolution Professional by the Adjudicating Authority and providing details of the scheduled meeting dated 12.02.2024 at 5 PM. These messages are captured herein:



51. Respondent No. 2 – RP submitted its Report under Section 99 on 17.02.2024, recommending the commencement of Insolvency Proceedings against the Appellant. The said report was duly taken on record by the Adjudicating Authority vide its order dated 18.03.2024. Furthermore, through the same Order, the Adjudicating Authority directed the R2 to serve a copy of

the report to the Appellant and Respondent No. 1 and to file an affidavit of service. Pursuant to the above, the R2 served a copy of the Report under Section 99 of the Code to the Petitioner-Financial Creditor and the Personal Guarantor through email and Speed Post at their respective designated addresses. An affidavit of service was subsequently filed before the Adjudicating Authority. While service to Respondent No. 1 was duly completed, service to the Appellant could not be affected due to an insufficient address. Consequently, the Resolution Professional served notice to the Appellant through substituted means by publishing it in the Two (2) Newspapers Financial Express (English) and Punjab Jagran (Punjabi) on 12.04.2024, which is also reproduced as follows:

Financial Express 12.04.2024
FRIDAY, APRIL 12, 2024

15

PUBLIC NOTICE

Pursuant to Hon'ble NCLT, Chandigarh Bench order dated 18.03.2024, In the matter of
STRESSED ASSETS STABILISATION FUND
V/s
SH. SUMEET JUNEJA (Personal Guarantor, M/s Krishna Engineering Works Limited)
IN CP (IB) No. 104(CH)2023
Next date: **30.04.2024**

Publication is being issued to respondent as per the directions of Hon'ble NCLT, Chandigarh Bench in CP (IB) No. 104(CH)2023.
Respondent:

Name of the Respondent	Addresses available with RP
Mr. Sumeet Juneja	1. H.No. EH-58, Ladowali Road, Jalandhar-144001, Punjab 2. B-3, Focal Point, Ladowali Road, Jalandhar-144001, Punjab

In the above titled case, RP is directed to file an affidavit of service stating after serving copy of the report to Mr. Sumeet Juneja (herein Personal Guarantor). However, the respondent could not be served Copy of Report and NCLT order dated 18.03.2024 through speed post at his available addresses. Therefore, RP is seeking mode of Public Announcement to serve notice of Next Date of Hearing to Mr. Sumeet Juneja (Personal Guarantor to M/s Krishna Engineering Works Limited).
Orders dated 18.03.2024 passed in CP (IB) No. 104(CH)2023, in the matter **STRESSED ASSETS STABILISATION FUND v/s Mr. Sumeet Juneja**, can be referred at the link given below:-
https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/0404114004902023/04/Order-Challenge/04_order-Challenge_004_171214677378943845660d49593bc01.pdf
The undersigned can be contacted for any clarification and seeking Copy of report filed under section 99 of the IBC, 2016.

Sd/-
Rajender Kumar Jain
(Regn No. IBBI/IPA-001/IP-P00543/2017-18/10968)
Resolution Professional in the matter of
PG to Krishna Engg. Works Limited
Email id: KRISHNAENGGPG@GMAIL.COM
Mobile Number: 9875921490

Date: 12.04.2024
Place: Chandigarh

ਜਨਤਕ ਸੂਚਨਾ

ਮਾਨਯੋਗ ਐਨਸੀਐਲਟੀ, ਚੰਡੀਗੜ੍ਹ ਬੈਂਚ ਦੇ ਮਿਤੀ 18.03.2024 ਦੇ ਹੁਕਮ ਦੀ ਪਾਲਣਾ ਕਰਦੇ ਹੋਏ
ਸਟ੍ਰੈੱਸਡ ਐਸਟਸ ਸਟੇਬਲਾਈਜ਼ੇਸ਼ਨ ਫੰਡ
ਬਨਾਮ
ਸ਼੍ਰੀ ਸੁਮੀਤ ਜੁਨੇਜਾ (ਵਿਅਕਤੀਗਤ ਗਾਰੰਟਰ, ਮੈਸ. ਕ੍ਰਿਸ਼ਨਾ ਇੰਜੀਨੀਅਰਿੰਗ ਵਰਕਜ਼ ਲਿਮਟਡ) ਦੇ ਮਾਮਲੇ ਵਿੱਚ
ਸੀਪੀ (ਆਈਬੀ) ਨੰ. 104(38)2023 ਵਿੱਚ
ਅਗਲੀ ਤਰੀਕ : 30.04.2024
ਸੀਪੀ (ਆਈਬੀ) ਨੰ. 104(38)2023 ਵਿੱਚ ਮਾਨਯੋਗ ਐਨਸੀਐਲਟੀ, ਚੰਡੀਗੜ੍ਹ ਬੈਂਚ ਦੀਆਂ ਹਦਾਇਤਾਂ
ਅਨੁਸਾਰ ਜਵਾਬਪੱਖ ਨੂੰ ਪ੍ਰਕਾਸ਼ਨਾ ਜਾਰੀ ਕੀਤੀ ਜਾਂਦੀ ਹੈ।
ਜਵਾਬਪੱਖ :

ਜਵਾਬਪੱਖ ਦਾ ਨਾਮ	ਆਰਪੀ ਕੋਲ ਉਪਲਬਧ ਪਤੇ
ਸ਼੍ਰੀ ਸੁਮੀਤ ਜੁਨੇਜਾ	1. ਮਕਾਨ ਨੰ. ਈਐੱਚ-58, ਲਾਡੋਵਾਲੀ ਰੋਡ, ਜਲੰਧਰ-144001, ਪੰਜਾਬ 2. ਬੀ-3, ਫੈਕਲ ਪੁਆਇੰਟ, ਲਾਡੋਵਾਲੀ ਰੋਡ, ਜਲੰਧਰ-144001, ਪੰਜਾਬ

ਉਪਰੋਕਤ ਦਰਸਾਏ ਮਾਮਲੇ ਵਿੱਚ ਆਰਪੀ ਨੂੰ ਸ਼੍ਰੀ ਸੁਮੀਤ ਜੁਨੇਜਾ (ਇੱਥੇ ਵਿਅਕਤੀਗਤ ਗਾਰੰਟਰ) ਨੂੰ ਰਿਪੋਰਟ
ਦੀ ਨਕਲ ਭੇਜਣ ਤੋਂ ਬਾਅਦ ਸੇਵਾ ਦਾ ਇਕ ਹਲਫ਼ਨਾਮਾ ਦਰਜ ਕਰਨ ਦਾ ਨਿਰਦੇਸ਼ ਦਿੱਤਾ ਜਾਂਦਾ ਹੈ। ਕਿਉਂਕਿ,
ਜਵਾਬਪੱਖ ਨੂੰ ਰਿਪੋਰਟ ਦੀ ਨਕਲ ਅਤੇ ਐਨਸੀਐਲਟੀ ਦੇ ਮਿਤੀ 18.03.2024 ਦੇ ਹੁਕਮ ਨੂੰ ਸਪੀਡ ਪੋਸਟ
ਰਾਹੀਂ ਉਨ੍ਹਾਂ ਦੇ ਉਪਲਬਧ ਪਤਿਆਂ ਤੇ ਨਹੀਂ ਭੇਜਿਆ ਜਾ ਸਕਦਾ। ਇਸ ਲਈ, ਆਰਪੀ ਨੇ ਸ਼੍ਰੀ ਸੁਮੀਤ ਜੁਨੇਜਾ
(ਮੈਸ. ਕ੍ਰਿਸ਼ਨਾ ਇੰਜੀਨੀਅਰਿੰਗ ਵਰਕਜ਼ ਲਿਮਟਡ ਦੇ ਵਿਅਕਤੀਗਤ ਗਾਰੰਟਰ) ਨੂੰ ਸੁਣਵਾਈ ਦੀ ਅਗਲੀ
ਤਰੀਕ ਦੀ ਸੂਚਨਾ ਦੇਣ ਲਈ ਜਨਤਕ ਘੋਸ਼ਣਾ ਦੇ ਤਰੀਕੇ ਦੀ ਵਰਤੋਂ ਕੀਤੀ ਹੈ।
ਸਟ੍ਰੈੱਸਡ ਐਸਟਸ ਸਟੇਬਲਾਈਜ਼ੇਸ਼ਨ ਫੰਡ ਬਨਾਮ ਸ਼੍ਰੀ ਸੁਮੀਤ ਜੁਨੇਜਾ ਦੇ ਮਾਮਲੇ ਵਿੱਚ ਸੀਪੀ (ਆਈਬੀ) ਨੰ.
104(38)2023 ਵਿੱਚ ਮਿਤੀ 18.03.2024 ਦੇ ਜਾਰੀ ਹੁਕਮ ਦਾ ਹਵਾਲਾ ਹੇਠਾਂ ਦਿੱਤੇ ਲਿੰਕ ਤੋਂ ਲਿਆ ਜਾ ਸਕਦਾ ਹੈ :-
https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/0404114004902023/04/Order-Challenge/04_order-Challange_004_1712146777378943845660d49593bc01.pdf
ਕਿਸੇ ਵੀ ਤਰ੍ਹਾਂ ਦੇ ਸਪੱਸ਼ਟੀਕਰਨ ਅਤੇ ਆਈਬੀਸੀ, 2016 ਦੇ ਸੈਕਸ਼ਨ 99 ਅਧੀਨ ਦਰਜ ਰਿਪੋਰਟ ਦੀ ਨਕਲ
ਪ੍ਰਾਪਤ ਕਰਨ ਲਈ ਨਿਮਨਹਸਤਾਖਰੀ ਨਾਲ ਸੰਪਰਕ ਕੀਤਾ ਜਾ ਸਕਦਾ ਹੈ।

ਸਹੀ/-
ਰਾਜੇਂਦਰ ਕੁਮਾਰ ਜੈਨ
(ਰਜਿ. ਨੰ. IBB/IPA-001/IP-P00543/2017-18/10968)
ਕ੍ਰਿਸ਼ਨਾ ਇੰਜ. ਵਰਕਜ਼ ਲਿਮਟਡ ਦੇ ਪੀਜੀ ਦੇ ਮਾਮਲੇ ਵਿੱਚ
ਚੈਂਜ਼ੇਲਿਊਸ਼ਨ ਪ੍ਰੋਫੈਸ਼ਨਲ

ਮਿਤੀ: 12.04.2024
ਸਥਾਨ : ਚੰਡੀਗੜ੍ਹ

ਈ-ਮੇਲ ਆਈਡੀ: KRISHNAENGGPG@GMAIL.COM
ਮੋਬਾਇਲ ਨੰਬਰ: 9875921490

Punjab Jagran 12.04.2024

52. The affidavit of service was thereafter taken on record by the Adjudicating Authority vide its Order dated 30.07.2024.

53. From the materials placed on record we note that the Appellant has falsely claimed to be unaware of the pending proceedings and has incorrectly stated that they were only informed on 21.10.2024. Contrary to this assertion, the Appellant was duly notified but failed to appear before the Adjudicating Authority despite repeated attempts to contact the Appellant. Consequently,

the Adjudicating Authority proceeded ex-parte against the Appellant and, after hearing the matter, reserved its Order in the Application under Section 95 of the Code on 30.07.2024. The said Application was subsequently allowed vide the impugned Order dated 12.09.2024.

54. Bases the material placed on record and also the submissions of both respondents i.e. Onkara and also the RP we find that R2 has taken steps to serve notice and seek information both at the time of filing of report and subsequent to passing of the Impugned Order. These steps included serving notice to the available addresses, via email, publication in newspapers, and through phone/ WhatsApp messages to the Appellant. We find that the Appellant has been negligent and has intentionally refrained from providing the requested information to the R2 or appearing before the Adjudicating Authority. The Appellant cannot be allowed to seek benefit of its own negligence and failing to appear before the Adjudicating Authority.

55. The arguments of the Appellant that the debt was assigned by the SASF to Omkara Asset Reconstruction Private Limited (“Omkara”), and that Omkara could not have pursued the Application under Section 95 is wrong, misconceived and untenable. We note that in terms of Section 5(3) of SARFAESI Act, the assignee steps into the shoes of the assignor and acquires all rights/ interests qua the debt. Moreover, it is not the case of the Appellant that SASF has been pursuing the Application under Section 95 of the Code even after assignment, since the debt was assigned after reserving of orders by the NCLT in the Application.

56. Such an argument cannot be accepted and therefore doesn't deserve any further discussion.

57. We also note that the address at which the R2 attempted service of notice is the same address as mentioned in the Affidavit of the Appeal filed by the appellant, at Page No. 30E. Also R2 contacted the Appellant at the mobile number – “9815022159” as provided by the Respondent No. 1 in its Application filed under Section 95 of the Code, before the Adjudicating Authority. It is noted that the mobile number of the Appellant is the same as the one provided by the Appellant in its Appeal at Page No.15.

58. The facts and circumstances compel us to come to the conclusion that the Appellant has been deliberately and with malicious intent chose not to appear before the NCLT. The negligence on the part of the Appellant cannot be given any benefit/ relief. The Appellant is trying to evade payment of dues to the Financial Creditor to the tune of Rs. 780.22 Crores.

59. Further it is pertinent to mention that the Appellant has filed an Application bearing I.A. No. 2414 of 2024 before the Adjudicating Authority seeking recall of the same impugned Order date 12.09.2024. That the Appellant cannot be allowed to approach two forums seeking the same relief.

60. We find that the Respondents demonstrated that demand notices dated 28.07.2021 and 29.03.2022 were issued; that the Recovery Certificate dated 23.01.2019 itself constituted a valid demand; that the guarantee stood invoked; and that service was affected through multiple modes including email, speed post, publication, and even WhatsApp messages duly

acknowledged by the Appellant. The contention that SASF lost locus after assignment is misplaced. Under Section 5(3) of the SARFAESI Act, the assignee steps into the shoes of the assignor and acquires all rights qua the debt. Moreover, the assignment occurred only after the matter was reserved for orders by the NCLT. We also find merit in the submission that a guarantor cannot escape liability by merely shifting addresses without informing the creditor. The obligation lies on the guarantor to keep the creditor informed. In the present case, the Resolution Professional attempted service at the addresses and emails available on record, followed by publication in two newspapers. The Appellant's plea of ignorance is, therefore, untenable. The record further establishes that the Appellant deliberately refrained from participating despite due notice, and later filed both recall and appeal proceedings on the same grounds. Such conduct amounts to forum shopping and is designed to obstruct the insolvency process.

61. There is overwhelming material available on record which unequivocally establishes that Appellant was aware about the pendency of the proceedings and voluntarily chose not to file any objection at the relevant time. After the proceedings have concluded he cannot raise this ground for the first time in an appeal. In the entire application the applicant has failed to raise this ground that he was prevented by a sufficient cause in not filing the objections in the original proceedings. We find that the entire application is based on falsehood that he was not aware of the proceedings which is contrary to the documentary evidence available on record. The appeal is based on false and concocted facts with a sole intent to mislead the Hon'ble Tribunal. The

appellant owes a huge amount of 780 Crore and has been evading the process of law.

62. In the facts and circumstances of the case we find that the Appellant as a personal guarantor, has been deliberately avoiding participation in the Section 95 proceedings and has falsely claimed to be unaware of the pending proceedings. Appellant has also filed an Application before the Adjudicating Authority seeking recall of the same impugned Order date 12.09.2024. Appellant is approaching multiple fora to delay the proceedings against him and doesn't deserve any relief. By such actions he is hindering the process of personal insolvency process and exemplary cost should be imposed on him.

Conclusions and Order

63. On a cumulative appraisal of facts, documents, and submissions, we find that:

- a) The Appellant, being a Personal Guarantor, is liable for the outstanding debt of Rs. 780.22 Crores.
- b) Demand notices and Recovery Certificate validly invoked the guarantee and the petition under Section 95 was maintainable.
- c) Service was duly affected through multiple permissible modes, including email, postal delivery, publication (substituted service), and electronic messaging. The Appellant was aware of the proceedings but chose not to participate.
- d) The plea of limitation is untenable in light of the Recovery Certificate dated 23.01.2019 and subsequent demand notices.

- e) The assignment of debt to Omkara ARC does not vitiate the proceedings, as rights seamlessly pass to the assignee under Section 5(3) of the SARFAESI Act.
- f) The Appellant's claim of non-service and ignorance is contrary to the documentary record and appears to be a deliberate attempt to evade liability.

Accordingly, the Appeal is dismissed. Given the Appellant's conduct in suppressing material facts, raising false pleas of non-service, and pursuing parallel proceedings, we find it appropriate to impose exemplary costs. The Appeal is dismissed with costs of Rs. 5,00,000/- (Rupees Five Lakhs), to be deposited in the Prime Minister's Relief Fund within four weeks. All pending IAs also stand disposed of.

[Justice N. Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi.
August 25, 2025.

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