



**Application Under Section 95 Of Ibc
Cannot Be Rejected Solely On The Grounds
Of Non Stamping Or Insufficient Stamping
Of Deed Of Guarantee When The Default
Had Been Satisfactorily Established.**



INSOLVENCY & BANKRUPTCY

Application Under Section 95 Of IBC Cannot Be Rejected Solely On The Grounds Of Non Stamping Or Insufficient Stamping Of Deed Of Guarantee When The Default Had Been Satisfactorily Established.

AUTHOR Shradha Patil

PUBLISHED 3 August 2024

Introduction

In the case of **State Bank of India v. Mamta Kishore Apparao**^[i], the Hon'ble NCLT held that the defect as to insufficient/non-stamping of Guarantee Deeds is a curable defect and thus cannot be a sole ground for rejection of application under Section 95 of the Code.

Brief Facts

State Bank of India (Petitioner) filed an application under Section 95 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 ('PG AAA Rules') for initiating Personal Guarantor's Insolvency Resolution Process ('PGIRP') against Mamta Apparao (Respondent).

Petitioner granted cash credit facility and various term loans to TAG Offshore Limited (Corporate Debtor) who is engaged into business activities pertaining to travel industry. The Respondent executed various deeds of guarantee in favour of the Applicant qua the cash credit facility and various other term loans availed by the Corporate Debtor.

On account of failure of Corporate Debtor to comply with the obligations towards the credit facility, the Petitioner issued a legal notice dated 06.03.20219 and invoked the guarantees issued by the Respondent. Despite invoking guarantee, the Respondent failed to comply with the demands and continued to remain in default. Thus, this application was filed by the Petitioner under Section 95 of the Insolvency & Bankruptcy Code.

Contentions of both Parties

The Petitioner's Counsel submitted that despite the invocation of personal guarantee, the Respondent failed to honour its guarantee obligation and continued to remain in default. Counsel for Petitioner while relying on the Resolution Professional's report submitted that despite the intimation given by RP to show the proof of payment made, the Respondent had failed to rebut the factum of default. The learned RP had recommended for acceptance of his report under Section 99 of the Code.

The Respondent's Counsel in his reply contested Petition as well as Report of the RP. The Respondent pleaded that the Deed of Guarantees were either not stamped or insufficiently and inadequately stamped therefore, are inadmissible in evidence as per Section 34 or the Maharashtra Stamps Act, 1958. The Respondent relied on the judgement of **N.N. Global Mercantile Private Limited v. Indo Unique Flame Ltd & Ors.**^[ii], where it was held that agreements lacking proper stamping or inadequate stamping are deemed to be inadmissible in evidence as per section 35 of Indian Stamp Act. The Respondent further pleaded that Respondent being a suspended director has no access to the details of repayment of alleged outstanding dues, therefore not being in a position to ascertain the status of loan in question.

Decision of NCLT :-

The Hon'ble NCLT observed that the Deed of Guarantee prove the existence of debt and the guarantee obligation of the Respondent towards Petitioner regarding debt owned by the Corporate Debtor.

The Hon'ble NCLT dismissed the Respondent's contentions that the deed of guarantees were unstamped or insufficiently stamped, making them inadmissible under Section 34 of the Maharashtra Stamp Act, 1958 and further observed that the liability to pay the stamp duty on the Deed of Guarantees shall be borne by person executing the instrument. If the Respondent has not paid the sufficient stamp duty cannot now resist the Petition. The Hon'ble NCLT further observed that the proceedings before Adjudicating Authority were of summary in nature, and as the IBC, 2016 is a complete code in itself, the provisions of the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872 does not strictly apply to the proceedings.

The Hon'ble NCLT referred to the judgement of **Innoventive Industries Ltd. v. ICICI Bank & Anr.**^[iii], and noted in the context of the present case that, the issue of debt being due and payable is not interdicted by any law, but only a technical defect of non-stamping or insufficient stamping has been raised which can be cured. Thus, this petition could not be rejected solely on the grounds of insufficient stamping when the default had been satisfactorily established.

The Hon'ble NCLT further observed that the Hon'ble Apex Court in **N.N. Global Mercantile Private Limited** (Supra) held that agreements which are not stamped or inadequately stamped are void, but further held that non-stamping or inadequate stamping

is a curable defect.

Thereby, Hon'ble NCLT admitted the Petition and initiated the Insolvency Resolution process against the Personal Guarantor.

[i] CP (IB) No. 101/MB/2021 and IA No. 762 of 2022.

[ii] 2023 SCCOnLine SC 1666

[iii] (2018) 1 SCC 407