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Admitted Notice = Valid Notice: NCLAT Restores SBI’s ?130-cr Personal Guarantor Insolvency Resolution Process

AUTHOR Shrishail Kittad, Rahul Sundaram

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Can a personal guarantor deny receipt of a demand notice after expressly acknowledging it in a writ petition before the Supreme Court? The National Company Law Appellate Tribunal (Chennai Bench) says an emphatic “No”. In a crisp 20-page judgment delivered on 24 October 2025, the hybrid bench of Justice Sharad Kumar Sharma (Judicial Member) and Jatindranath Swain (Technical Member) tore apart a hyper-technical plea on “improper address” and restored State Bank of India’s ?129.59 crore insolvency proceedings against two doctors who were personal guarantors to a corporate debtor. The judgment in the Company Appeal once again clarified, that Rule 7 of the Personal Guarantor Rules is not a paper formality but a condition precedent; yet, once the guarantor’s own pleadings admit knowledge, the battle is practically over.

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Background of the controversy

The story begins in 2011 when the financial creditor extended a term loan to the Corporate. Dr. Jitendra Das Maganti and his wife Dr. Renuka Rani Maganti, both residents of Visakhapatnam, executed personal guarantees. The account slipped into default and was declared an NPA. After the usual corporate recovery attempts failed, the bank turned the guns on the guarantors. It appointed Mr. Chillale Rajesh as resolution professional and, exactly a fortnight later, served demand notices claiming ?129.58 crore. One set of notices went to the addresses recorded in the guarantee deed; another set was dispatched to the Aadhaar-linked addresses of the doctors. Postal receipts were preserved and the 14-day cure period was given but no money came.

Instead of paying, the couple rushed to the Supreme Court in September 2022 with Writ Petitions, assailing the constitutional validity of Sections 95-100 of the Insolvency and Bankruptcy Code. Para 7(xiv) of their own pleadings read: “The Financial Creditor issued demand notice to the petitioner-personal guarantor on 17.08.2021…”. Armed with this admission, SBI filed two separate applications under Section 95 before the NCLT, Amaravati Bench, praying for initiation of insolvency resolution against each guarantor.

The tribunal held that because the notices sent to the Aadhaar addresses carried a different pin-code from the guarantee deed, “due service” under Section 95(4)(b) was not established; the entire petition was therefore dismissed. SBI immediately carried the orders in appeal to NCLAT Chennai, arguing that the tribunal had overlooked the guarantors’ categorical admission in the apex court.

Rival contentions before NCLAT

The bank submitted that, unlike Section 9, Section 95 does not expressly mandate a pre-filing notice; sub-section (4)(b) only requires the application to be “accompanied” by evidence that the debtor failed to pay within fourteen days of service. Even if Rule 7(1) of the Personal Guarantor Rules, 2019 is pressed into service, it is merely procedural and cannot override the parent statute. In any event, the appellant had complied postal tracking slips were produced and, more importantly, the respondents themselves had acknowledged receipt in sworn pleadings before the Supreme Court. Relying on judicial precedence , the counsel argued that once knowledge is admitted, microscopic scrutiny of pin-codes becomes hyper-technical.

Advocates for the Personal Guarantors to the Corporate Debtors countered that Rule 7 is mandatory: Form-B must be served at the address mentioned in the guarantee agreement, fourteen clear days before the Form-C application, and a copy of the served notice must be annexed. The Aadhaar address dispatch was a colourable exercise; no proof of actual delivery was forthcoming. The admission in the writ petition, they added, was limited to the constitutional challenge and could not validate a jurisdictionally defective proceeding.

Legal provisions and precedents in the spotlight

The appellate bench waded through Section 95(1), (4)(b) and (6) of the IBC, Section 239(2)(n) (rule-making power) and Rule 7 of the 2019 PG Rules. It also placed reliance on the Supreme Court’s refusal to strike down Section 95 as unconstitutional. The

court emphasised that subordinate legislation framed under Section 239 is intra vires if it fills procedural gaps without contradicting the Code. Form-B, complete with its fourteen-day instruction, was held to be a harmonised gloss on Section 95(4)(b).

Analysis and reasoning

NCLAT began by accepting that service of a demand notice is not an empty ritual; it affords the guarantor a final chance to cure the default and stave off insolvency. Therefore, Rule 7(1) is condition precedent, not directory. However, the bench equally emphasised that "service" is ultimately about knowledge. Once the guarantors, in their own handwriting, admitted the date, amount and existence of the notice, they could not be allowed to blow hot and cold. The court labelled the pin-code quibble "redundant" when admissions on record established that the grievance of the notice had already seeped into their consciousnessso much so that they invoked the Supreme Court's extraordinary jurisdiction within weeks.

The bench also reminded the NCLT that admissions are the best evidence; variance in address descriptions cannot override an explicit plea in an Article 32 petition. Consequently, the finding of non-service was declared "perverse" and "contrary to the admitted case".

Final order

Allowing both appeals, NCLAT quashed the 22 July 2024 orders and remitted the Section 95 petitions back to the NCLT, Amaravati Bench, with a direction to proceed on merits expeditiously. No fresh notice is required; the fact of service stands established by the guarantors' admission. All interlocutory applications were disposed of, giving the respondents a six-week breathing period to file replies before the tribunal.

The judgment is a textbook illustration of the maxim "you can't have your cake and eat it too". By placing evidentiary weight on what the guarantors themselves pleaded at the highest constitutional forum, NCLAT has reinforced that procedural compliance under the IBC, while strict, cannot be allowed to mutate into a weapon of obstruction. Personal guarantors must now think twice before casually admitting notice in one court and denying it in another because admissions, once made, travel with the party. For lenders, the decision is a morale-booster: follow the Rule, preserve the postal proof, but if the opposite side has already accepted the notice in black and white, the finish line is much closer than it seems.

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