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Survival of Personal Guarantors' Liability Post-Corporate Resolution Plan: An Analysis of the NCLAT Ruling in Amit Bhatnagar v. UCO Bank

Personal guarantee enforcement and corporate insolvency resolution continues to generate significant judicial discourse under the Insolvency and Bankruptcy Code, 2016. A recent pronouncement by the National Company Law Appellate Tribunal, Principal Bench, New Delhi, in Amit Bhatnagar v. UCO Bank and Ors., Comp. App. (AT) (Ins) No. 2038 of 2024 and Comp. App. (AT) (Ins) […]

AUTHOR Shrishail Kittad, Rahul Sundaram
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Personal guarantee enforcement and corporate insolvency resolution continues to generate significant judicial discourse under the Insolvency and Bankruptcy Code, 2016. A recent pronouncement by the National Company Law Appellate Tribunal, Principal Bench, New Delhi, in Amit Bhatnagar v. UCO Bank and Ors., Comp. App. (AT) (Ins) No. 2038 of 2024 and Comp. App. (AT) (Ins) No. 2039 of 2024, decided on 12 May 2026 by a Division Bench comprising Justice Mohammad Faiz Alam Khan and Mr. Naresh Salecha, provides critical clarity on the maintainability of Section 95 proceedings against personal guarantors notwithstanding the approval of a resolution plan concerning the corporate guarantor. The judgment addresses two pivotal questions: whether such claims are barred by limitation, and whether the approval of a resolution plan for the corporate guarantor extinguishes the independent liability of personal guarantors.

The factual matrix traces its origin to a consortium lending arrangement entered into in 2011, whereby UCO Bank and Indian Overseas Bank, collectively referred to as the Consortium Banks, extended credit facilities to M/s Diamond Power Transformers Ltd., the Corporate Debtor. The facilities were renewed in 2013, and subsequently, a Consortium Agreement dated 31 March 2015 was executed sanctioning an aggregate facility of Rs. 114.60 crores. On the same date, the Appellants, Mr. Amit Bhatnagar and Mr. Sumit Bhatnagar, executed a Deed of Guarantee in favour of the Consortium Banks to secure the obligations of the Corporate Debtor. Diamond Power Infrastructure Ltd. also provided a corporate guarantee for the same facilities. The loan accounts of the Corporate Debtor were classified as non-performing assets on 30 July 2016. The Corporate Debtor itself initiated corporate insolvency resolution proceedings under Section 10 of the Code, was admitted into CIRP on 6 July 2017, and eventually faced an order of liquidation on 19 March 2018.

Following the default, the Consortium Banks invoked the personal guarantees on 6 April 2018 and simultaneously filed Original Application No. 436 of 2018 before the Debt Recovery Tribunal-II, Ahmedabad. The DRT passed a comprehensive judgment and issued a Recovery Certificate on 6 February 2020, crystallising the liability of the Corporate Debtor as well as the personal guarantors at Rs. 109,11,40,210/- along with interest at 14.25 per cent per annum and penal interest at 2 per cent per annum from 12 April 2018. Significantly, the Appellants never challenged the DRT decree, which thereby attained finality. In parallel, the corporate guarantor, Diamond Power Infrastructure Ltd., was admitted into CIRP on 24 August 2018 upon an application by Bank of India. The Consortium Banks filed their claims in the CIRP of the corporate guarantor, and a resolution plan was approved by the Committee of Creditors on 6 January 2022 and sanctioned by the Adjudicating Authority on 20 June 2022.

Under the approved resolution plan, the Successful Resolution Applicant made upfront and deferred payments to financial creditors, issued Bond Certificate No. 17 dated 17 September 2022 for Rs. 49,96,91,500/- in favour of UCO Bank, and subsequently repurchased the bonds under a Bond Repurchase Agreement dated 7 October 2022. UCO Bank issued an Acknowledgement Letter on the same date accepting the treatment of its claims under the resolution plan as full and final. However, more than two years thereafter, on 25 January 2024, the Consortium Banks issued a Demand Notice under Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors of Corporate Debtor) Rules, 2019, claiming Rs. 116,15,08,125/- as outstanding under the personal guarantees. On 21 May 2024, the Consortium Banks filed petitions under Section 95 of the Code against the Appellants before the NCLT, Ahmedabad, which were admitted by the impugned order dated 23 October 2024.

The Appellants challenged the admission before the NCLAT on multiple grounds. They contended that the non-disbursement of Rs. 24 crores by the Consortium Banks constituted a material alteration of the Consortium Agreement without their consent, thereby discharging them from liability under Section 133 of the Indian Contract Act, 1872. They further argued that the underlying debt stood completely extinguished through the approved resolution plan of the corporate guarantor, which was binding on all stakeholders under Section 31 of the Code. The Appellants emphasised that the Acknowledgement Letter dated 7 October 2022 confirmed full and final settlement, and consequently, no subsisting debt remained to support Section 95 proceedings. They also raised the plea of limitation, asserting that the date of default was 30 July 2016, the guarantee was invoked on 6 April 2018, and the petitions filed in May 2024 were barred by time. Additionally, they criticised the Resolution Professional's report under Section 99 as a mechanical reproduction of the bank's petition, devoid of independent scrutiny.

Per contra, the Consortium Banks and the Intervenor, Indian Overseas Bank, refuted these submissions. They maintained that the personal guarantees extended for the Corporate Debtor were never mentioned or dealt with in the resolution plan of the corporate guarantor. The settlement under the resolution plan, they argued, was limited to the admitted claim of approximately Rs. 52 crores and did not cover the interest component adjudicated by the DRT. They relied upon the principle of co-extensive liability under Section 128 of the Indian Contract Act and cited settled law that recovery proceedings against personal guarantors can continue independently even after the CIRP of the corporate debtor or corporate guarantor. On limitation, they contended

that the DRT decree dated 6 February 2020 crystallised the liability and gave a fresh cause of action under Section 18 of the Limitation Act, 1963, which was further extended by the Supreme Court's Suo-moto order accounting for the COVID-19 pandemic period from 15 March 2020 to 28 February 2022. They asserted that the Demand Notice dated 25 January 2024 and the subsequent petitions filed in May 2024 were well within the prescribed limitation.

The NCLAT meticulously examined both issues. On limitation, the Tribunal held that the DRT decree dated 6 February 2020 operated as an acknowledgment of debt and furnished a fresh cause of action, extending limitation by three years. The Suo-moto extension granted by the Supreme Court further preserved the banks' right to initiate proceedings. The Tribunal found that the Demand Notice issued on 25 January 2024 and the petitions filed on 21 May 2024 were squarely within the permissible period. Regarding the discharge of personal guarantors, the NCLAT placed heavy reliance upon the Supreme Court's judgment in Lalit Kumar Jain v. Union of India & Ors., wherein it was held that approval of a resolution plan under Section 31 does not discharge a guarantor's liability. The Tribunal also cited BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd., to reaffirm that recovery of part of the debt or settlement with one obligant does not extinguish the liability of the remaining obligants, including personal guarantors. The NCLAT's own precedent in Roshan Lal Mittal & Ors. v. ishabh Jain & Ors.,and the Calcutta High Court ruling in Gouri Shankar Jain v. Punjab National Bank, were invoked to fortify the position that a resolution plan does not absolve personal guarantors of their unpaid liability.

The Tribunal observed that the total debt owed by the Appellants as on 31 March 2024, computed in accordance with the DRT decree, stood at Rs. 122,19,18,337.07, comprising interest and penal interest. It noted that the claims filed in the CIRP of the corporate guarantor were restricted to the amounts admitted therein and did not encompass the future accruals or the full adjudicated dues. The NCLAT further held that the plea of discharge under Section 133 of the Indian Contract Act was non-est in the instant proceedings, having been finally adjudicated by the DRT and never challenged by the Appellants. The Resolution Professional's report under Section 99 was found to be based on due consideration of the DRT decree and relevant documents, and not a mechanical reproduction as alleged.

In conclusion, the NCLAT dismissed both appeals and upheld the impugned order dated 23 October 2024 passed by the NCLT, Ahmedabad. The Tribunal held that the petitions under Section 95 were fully maintainable, the claims were not barred by limitation, and the personal guarantors were not discharged by the approval of the resolution plan of the corporate guarantor. The judgment reinforces the principle that the liability of personal guarantors remains co-extensive with that of the principal debtor, and creditors retain the independent right to recover unpaid balances from guarantors even after partial settlement through a corporate resolution plan. This ruling serves as a significant precedent highlighting the distinct and surviving nature of personal guarantee enforcement within the insolvency framework.

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