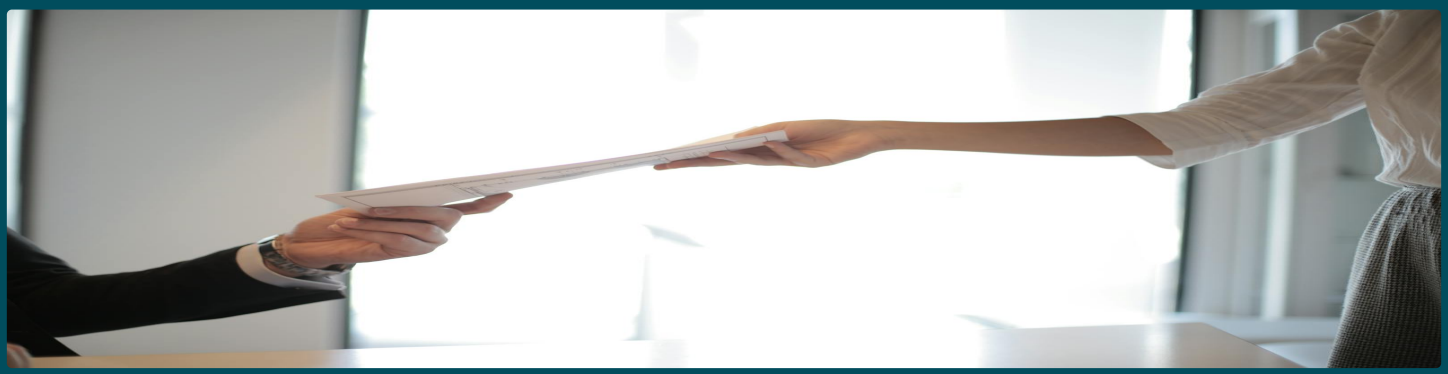
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INSOLVENCY & BANKRUPTCY

Strengthening Creditor Remedies: NCLAT On SARFAESI Notices And Personal Guarantee

AUTHOR Shrishail Kittad, Aryaveer Khanna

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Introduction

This article analyses the decision of the Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi, in Ujwal Gupta v. Union Bank of India & Anr[1]. The appeal arose from an order of the National Company Law Tribunal, New Delhi Bench–III, admitting a petition under Section 95 of the Insolvency and Bankruptcy Code, 2016 ("IBC") and initiating insolvency resolution proceedings against a personal guarantor. The judgment assumes significance for its detailed exposition on whether a SARFAESI notice issued under Section 13(2) can constitute a valid invocation of a personal guarantee, thereby giving rise to a cause of action under Part III of the IBC.

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Factual Matrix

The Corporate Debtor, M/s Green World International Private Limited, had availed credit facilities from the Financial Creditor, Union Bank of India pursuant to a sanction letter dated 19th February, 2013, which were restructured in March 2015. In connection with these facilities, the Appellant, Mr. Ujwal Gupta, executed a deed of personal guarantee on 1st March, 2013, undertaking joint and several liability for the dues of the Corporate Debtor. Following persistent defaults, the loan account was classified as a Non-Performing Asset on 30th January, 2016. The Bank thereafter issued a demand notice dated 29th February, 2016, under Section 13(2) of the SARFAESI Act to the Corporate Debtor and other addressees, including the Appellant. Despite multiple recovery efforts and settlement proposals, the outstanding dues remained unpaid.

The financial creditor filed a petition under Section 95 of the IBC to initiate the insolvency resolution process, against the Appellant in his capacity as a personal guarantor. The Adjudicating Authority admitted the petition leading to initiation of personal insolvency proceedings, which order has been assailed before the NCLAT.

Issues

1. Whether a demand notice issued under Section 13(2) of the SARFAESI Act can amount to valid invocation of personal guarantee.
2. Whether the lack of express reference to the Guarantor as such defeats invocation.
3. Whether procedural objections relating to authorisation and filing could invalidate insolvency proceedings under Section 95 of the IBC.

Parties' Submissions

The Appellant contended that the insolvency proceedings under Section 95 of the IBC were unsustainable as the personal guarantee had never been validly invoked. It was argued that the demand notice issued under Section 13(2) of the SARFAESI Act was addressed to the Appellant in his capacity as a director and not as a personal guarantor and therefore could not trigger guarantor liability. In the absence of a proper demand in terms of the guaranteed deed, no default could be said to have arisen against the Appellant.

The Respondents submitted that the personal guarantee was duly invoked SARFAESI notice, which clearly demanded repayment of the outstanding dues within a stipulated period. Reliance was placed on the terms of the guaranteed deed, which did not prescribe any specific form or manner of invocation and permitted demand by any mode. It was further argued that hyper

technical objections regarding designation or authorisation could not defeat substantive creditor rights under the IBC.

Tribunal's Analysis

The Appellate Tribunal undertook a detailed examination of the deed of guarantee executed by the Appellant. The clauses revealed that the guarantee was continuing and payable "two days after demand", and that no particular form or mode of notice was contractually prescribed. Any demand communicated to the guarantor requiring discharge of liability was sufficient to trigger the obligation.

Applying this contractual standard, the Tribunal scrutinised the Section 13(2) notice dated 29th February, 2016. It found that the notice clearly demanded repayment of the outstanding dues within 60 days and was addressed to all persons liable in respect of the credit facilities, including the Appellant. Merely describing the Appellant as a "director" did not dilute or extinguish his role as a personal guarantor, particularly when liability under the guarantee was co-extensive with that of the principal borrower.

The Tribunal reiterated that whether a SARFAESI notice amounts to invocation of a guarantee depends on its substance, not its label. Where the notice unequivocally calls upon the guarantor to discharge the debt in terms of the guarantee, invocation stands completed.

On procedural objections, the Tribunal declined to interfere, holding that hyper-technical defects relating to authorisation or filing cannot defeat substantive justice, especially where debt and default were undisputed.

Decision and Directions

The NCLAT dismissed the appeal and upheld the order of the Adjudicating Authority admitting the Section 95 application. It conclusively held that:

- The Section 13(2) SARFAESI notice dated 29th February, 2016 constituted a valid invocation of the personal guarantee.
- Insolvency proceedings against the personal guarantor were maintainable. No procedural irregularity existed warranting interference with the impugned order.

All pending applications were disposed of, with no order as to costs.

Conclusion

This judgment reinforces a settled yet often-contested principle in insolvency jurisprudence of the liability of a personal guarantor is governed by the terms of the guarantee contract, not by rigid formalism. By affirming that a SARFAESI demand notice can validly invoke a personal guarantee when it substantively demands payment from the guarantor, the NCLAT has strengthened creditor remedies under the IBC framework. The ruling is a cautionary note to guarantors that designation, nomenclature, or procedural objections cannot obscure contractual obligations, particularly in the context of personal insolvency.

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1. Company Appeal (AT) (Ins) No. 2001 of 2024, [Arising out of the Order dated 10.09.2024, passed by the 'Adjudicating Authority' (National Company Law Tribunal, New Bench – III, in CP(IB) No.26/ND/2024 and I.A. No. 2253/2024] ??

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