

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1443 of 2024**

[Arising out of Order dated 04.06.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-I in C.P. (IB) No.1195/MB/2020]

**IN THE MATTER OF:**

**RAJKUMAR NANDLAL DHOOT**

Dhoot Bungalow, Station Road,  
Aurangabad, Maharashtra

**...Appellant**

**Versus**

**State Bank of India**

through Mr. Asish Narayan  
the Resolution Professional,  
having an address at 11A/504,  
Spring Leaf Lokhandwala,  
Kandivali East Mumbai 400101  
Email:agm1others2.sarg@sbi.co.in

**...Respondent**

**Present:**

**For Appellant:**

**Mr. Amar Dave, Sr. Advocate with, Mr. Sandeep S. Ladda, Mr. Devesh Mohan, Mr. Gyanendra Shukla, Mr. Yashvardhan and Mr. Pranav Das, Advocates.**

**For Respondents:**

**Mr. Sunil Fernandes, Sr. Advocates with Mr. Madhav Kanoria, Ms. Srideepa Bhattacharyya, Ms. Neha Shivhare and Ms. Aparajita, Advocates.**

**With**

**Company Appeal (AT) (Insolvency) No. 1444 of 2024**

[Arising out of Order dated 14.06.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-I in C.P. (IB) No.1198/MB/2020]

*Cont'd.../*

**IN THE MATTER OF:****PRADEEP NANDLAL DHOOT**

Dhoot Bunglow, Station Road,  
Aurangabad, Maharashtra

**...Appellant****Versus****State Bank of India**

through Mr. Asish Narayan  
the Resolution Professional,  
having an address at 11A/504,  
Spring Leaf Lokhandwala,  
Kandivali East Mumbai 400101  
Email:agm1others2.sarg@sbi.co.in

**...Respondent****Present:**

**For Appellant:** Mr. Amar Dave, Sr. Advocate with, Mr. Sandeep S. Ladda, Mr. Devesh Mohan, Mr. Gyanendra Shukla, Mr. Yashvardhan and Mr. Pranav Das, Advocates.

**For Respondents:** Mr. Sunil Fernandes, Sr. Advocates with Mr. Madhav Kanoria, Ms. Srideepa Bhattacharyya, Ms. Neha Shivhare and Ms. Aparajita, Advocates.

**J U D G M E N T****Ashok Bhushan, J.**

These two appeals have been filed by the Personal Guarantors of the Corporate Debtor challenging two orders of the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench – I dated 04.06.2024 and 14.06.2024, respectively. Company Appeal (AT) (Ins.) No.1443 of 2024 has been filed challenging order passed by NCLT, Mumbai Bench – I dated 04.06.2024 in C.P. (IB) No.1195/MB/2020 by which order application under Section 95 filed by the State Bank of India against the Appellant – Rajkumar

Nandlal Dhoot, Personal Guarantor has been admitted. Company Appeal (AT) (Ins.) No.1444 of 2024 has been filed challenging order dated 14.06.2024 passed by NCLT, Mumbai Bench - I in C.P. (IB) No.1198/MB/2020 by which order Section 95 application filed by the State Bank of India against the Appellant - Pradeep Nandlal Dhoot, Personal Guarantor has been admitted. These two appeals were heard together and are being decided by this common judgment.

2. Both the appeals arise out of similar facts and raises common question of facts and law. Brief background facts necessary to be noticed for deciding these appeals are:

- (i) The Corporate Debtor – Videocon Industries Ltd. availed Rupee Term Loan facilities from the State Bank of India on 31.05.2010. The Rupee facilities agreement, Supplemental Working Capital Consortium Agreement dated 25.05.2012 were executed. The Personal Guarantors had guaranteed due repayment of facilities vide Deed of Guarantee dated 08.08.2012. Rajkumar Nandlal Dhoot as well as Pradeep Nandlal Dhoot executed Personal Guarantee Deed on 08.08.2012 and Fourth Supplemental Joint Deed of Guarantee dated 25.05.2012.
- (ii) State Bank of India vide notice dated 05.03.2016 demanded the Principal Borrower – Videocon Industries Ltd. to pay amount due under RTL agreement and Working Capital Facility Agreement.

Default was committed by the Principal Borrower – Videocon Industries Ltd. The State Bank of India issued demand notice to the Principal Borrower on 18.01.2018 with regard to RTL facility and on 23.01.2018 in respect of working capital facility. The application under section 7 was filed against the Principal Borrower - Videocon Industries Ltd. CIRP against the Videocon Industries Ltd. commenced on 06.06.2018.

- (iii) Demand Certificates were issued on 02.02.2018, which demand certificate were issued to both the Appellants demanding payment of dues. In the demand notice dated 02.02.2018, an amount of Rs.3171.37 Crores was demanded with respect to obligation made as per Rupee Term Loan Agreement. By another demand notice dated 20.02.2018 issued to both Appellants herein a demand was made with regard to Working Capital Consortium Agreement. An amount of Rs.795.57 Crore was claimed to be in default.
- (iv) On 23.07.2020 notice in Form B under Rule 7(1) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 was issued to the Appellant – Mr. Rajkumar Nandlal Dhoot claiming payments of Rs.53,53,78,13,936/- as on 14.05.2020 and similarly a demand notice dated 23.07.2020 was issued to Mr. Pradeep Nandlal Dhoot in Form B.

- (v) Appellants having not made payment, application C.P. (IB) No.1195/MB/2020 was filed under Section 95 by the State Bank of India against Rajkumar Nandlal Dhoot whereas State Bank of India filed application C.P. (IB) No.1198/MB/2020 against Pradeep Nandlal Dhoot.
- (vi) The Adjudicating Authority appointed the Resolution Professional and directed him to submit report under Section 99. The Resolution Professional submitted its report under Section 99(1) recommending initiation of personal insolvency resolution process with respect to both the Appellants.
- (vii) On the report submitted by the Resolution Professional, the Adjudicating Authority heard the parties and by order dated 04.06.2024 and 14.06.2024, respectively, admitted Section 95 application filed by the State Bank of India. Aggrieved by which orders, these appeals have been filed.
3. Both appeals came to be heard on 29.07.2024 on which date following order was passed:

**“O R D E R**  
**(Hybrid Mode)**

**29.07.2024:** *Learned counsel for Appellant challenging the order admitting Section 95 application submits that objection was raised with regard to application being barred by time and judgment of*

*Hon'ble Supreme Court in Laxmi Pat Surana vs. Union of India & Anr., (2021) 8 SCC 481 was also relied, however, the Adjudicating Authority has not adverted to said judgment in its order and has overruled the question of limitation. Shri Sunil Fernandes, learned counsel appearing for the Respondent submits that the application was well within limitation since the limitation against the Personal Guarantor shall commence when the guarantee is invoked and all facts are mentioned in the Section 95 application. Submissions raised by the parties require consideration.*

*Issue notice. Let Reply be filed within two weeks. Rejoinder be filed within one week thereafter.*

*List this Appeal on 02.09.2024.*

*In the meantime, in pursuance of the impugned order process may go on but no Resolution Plan shall be finalised/ approved.*

*Learned counsel for the Respondent submits that Appellant is not extending his cooperation in the process. Let Respondent inform the Appellant of the relevant documents and materials required from the Appellant.”*

4. In the appeal the State Bank of India has filed its reply to which rejoinder has also been filed. We have heard Shri Amar Dave, learned counsel appearing with Mr. Sandeep S. Laddha, Advocate for the Appellant

and Shri Sunil Fernandes, learned senior counsel has appeared for the State Bank of India.

5. Learned counsel for the Appellant challenging the impugned order submits that application which was filed by the State Bank of India against the Personal Guarantors were barred by time. It is submitted that the notice dated 05.03.2016 was issued by the State Bank of India to the Principal Borrower for payment of its dues. Default was committed by the Principal Borrower on 05.03.2016, hence, the cause of action arose against the Personal Guarantors i.e. Appellants herein on 05.03.2016 whereas the Section 95 petitions have been filed by the State Bank of India on 31.08.2020, which is much beyond the period of limitation. Learned counsel for the Appellant relying on the judgment of Hon'ble Supreme Court in "**Laxmi Pat Surana vs. Union Bank of India & Anr., (2021) 8 SCC 481**" submits that the Hon'ble Supreme Court laid down that the moment the Principal Borrower commits default in payment of debt, the liability of Guarantor comes into play and hence, cause of action for proceeding against the Appellants arose on 05.03.2016. The application under Section 95 filed much beyond period of three years was barred by limitation and ought to have been rejected. It is submitted that said issue was raised before the Adjudicating Authority, which submission was rejected without appropriate consideration of the submission raised. Learned counsel for the Appellant further submitted that the clauses of Deed of Guarantee govern the rights and liabilities between the Appellant and the Respondent. The breach prima

facie arises upon default by the Principal Borrower. It is submitted that impugned order does not deal with the submissions of the Appellant and there is no independent discussion or reasoning in the impugned order. It is submitted that terms of the Guarantee Deed specifically provide for an obligation on the part of the Guarantors to ensure that the Principal Borrower discharges its obligations including payment of its dues to the lender. Hence, if the Principal Borrower has defaulted on payments under the main agreement there is a consequential and automatic default on part of the guarantor under the subject deeds.

6. Shri Sunil Fernandes, learned counsel appearing for the Respondent refuting the submission of learned counsel for the Appellant submits that as per the Guarantee Deed executed by the Appellant dated 08.08.012 and joint deed of guarantee dated 25.05.2012, limitation for initiating proceeding against the Personal Guarantor shall commence when demand notice is issued by the Bank as per Deed of Guarantee. As per Deed of Guarantee, demand notices were issued for payment of amount on 02.02.2018 and 20.02.2018. The period of limitation, thus, commences from the notice date and application which was filed on 31.08.2021 was well within three years' period and cannot be held to be barred by time. It is submitted that the guarantee was invoked during the period when claim was alive against the Principal Borrower. Notice in Form B was issued on 23.07.2020 to Mr. Rajkumar Nandlal Dhoot for Rs.5353 Crores and demand notice dated 23.07.2020 was issued against Mr. Pradeep Nandlal Dhoot for Rs.6157

Crores and after issuance of demand notice, when application under Section 95 was filed on 31.08.2021, application was well within time. The judgment of Hon'ble Supreme Court in **Laxmi Pat Surana**, relied by the Appellant, does not support the case of the Appellant. The Hon'ble Supreme Court in **Laxmi Pat Surana** was considering limitation for initiating Section 7 proceeding against a Corporate Guarantor, which judgment has no application. Learned counsel for the Respondent has placed reliance on judgment of the Hon'ble Supreme Court in **"Syndicate Bank vs. Channaveerappa Beleri, (2006) 11 SCC 504"** and Judgment of this Appellate Tribunal in **"Pooja Ramesh Singh vs. State Bank of India, Company Appeal (AT) (Ins.) No.329 of 2023"** to support his contention the limitation for taking proceeding against the Personal Guarantor arises as per terms of the Deed only when demand notice is issued by the Bank.

7. We have considered the submissions of learned counsel for the parties and perused the record.

8. The submission which has been pressed in this appeal by the Appellant is that application under Section 95 filed by the State Bank of India was barred by time. Copy of the application filed under Section 95 has been brought on the record as Annexure A-2 to the respective appeals. Application filed under Section 95 by the State Bank of India against the Appellant are based on same facts and averments, thus, it shall be sufficient to notice application at Annexure A-2 in Company Appeal (AT) (Ins.) No.1443 of 2024. In Part-III of the application which deals with 'Particulars of Debt'

details of facilities, RTL Agreement, Working Capital Agreement, details of Deed of Guarantee have been mentioned. Deed of Guarantee dated 08.08.2012, Supplemental Joint Deed of Guarantee dated 25.05.2012 are annexed with the application. Application also has given details of CIRP process against the Principal Borrower. Under the column Item No.2- 'Amount in Default', details of demand notice, certificate issued to the Personal Guarantor have been mentioned. It is useful to notice Item 2 in Part III, which is as follows:

2.	<i>Amount in default</i>	<p><i>Upon occurrence of 'events of default' under the VIL Facility Agreements, SBI issued separate demand notices to VIL under each of the RTL Facility Agreement and the Working Capital Agreement, calling upon VIL to satisfy its obligations under the VIL Facility Agreements, pursuant to the following demand notices:</i></p> <p><i>1. Demand notice dated January 18, 2018 issued to inter alia, VIL, calling upon, inter alia, VIL to pay the outstanding amounts in relation to the RTL Facilities under the RTL Agreement;</i></p> <p><i>2. Demand notice dated January 23, 2018, calling upon, inter alia, VIL to pay the outstanding amounts in relation to the Working Capital Facilities under the Working Capital Agreement.</i></p> <p><i>Copies of the abovementioned demand notices to VIL are collectively annexed hereto as Exhibit-8 Colly.</i></p> <p><i>SBI issued demand notices to the Personal Guarantor under the Working Capital Agreement, demanding the</i></p>
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	<p><i>Personal Guarantor to pay the outstanding amounts under the relevant Facilities. Similarly, the Security Trustee issued a demand notice to the Personal Guarantor under RTL Facility Agreement, demanding the Personal Guarantor to pay the outstanding amounts under the RTL Facility Agreement. The details of the demand notices issued to the Personal Guarantor are set out below:</i></p> <ol style="list-style-type: none"> <li><i>1. Demand certificate dated February 2, 2018, issued by the Security Trustee under the RTL Deed of Guarantee ("RTL Demand Notice") calling upon the Personal Guarantor to pay forthwith, an amount of INR 3171.37 Crores (Indian Rupees Three Thousand One Hundred Seventy One Crores and Thirty Seven Lakhs Only) (along with interest at the Default Rate (as defined in the RTL Agreement) all costs, expense and fees under the Financing Documents (as defined under the RTL Agreement)), which was due and payable to SBI as on December 31, 2017;</i></li> <li><i>2. Demand notice dated February 20, 2018, issued by SBI under the WC Deed of Guarantee ("WC Demand Notice") calling upon the Personal Guarantor to pay forthwith an amount of INR 795.57 Crores (Indian Rupees Seven Hundred and Ninety Five Crores and Fifty Seven Lakhs Only) (along with accrued interest, all costs, expenses, fees, interest at the default rate, under and pursuant to the Working Capital Agreement) which was due as on December 27, 2017.</i></li> </ol> <p><i>The RTL Demand Notice and the WC Demand Notice are collectively</i></p>
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	<p><i>referred to as the "Demand Notices".</i></p> <p><i>Copies of the Demand Notices sent to the Personal Guarantor are collectively annexed herewith as Exhibit - 9 Colly.</i></p> <p><i>However, the amounts demanded under the Demand Notices continue to be in default and have not been paid by the Personal Guarantor. Therefore, the total amount in default is INR 3966.94 Crores (Indian Rupees Three Thousand Nine Hundred Sixty Six Crores Ninety Four Lakhs Only) as on December 31, 2017 under the RTL Demand Notice and as on December 27, 2017 under the WC Demand Notice.</i></p> <p><i>Further, the Personal Guarantor is liable to make payments of interest, default interest, liquidated damages, fees, charges or any other amounts as per the terms of the Facilities until the date of payment by the Personal Guarantor. It must be noted that recovery proceedings have been initiated against the Personal Guarantor before the Hon'ble Debts Recovery Tribunal, New Delhi on account of failure to pay the Default Amounts. The aforesaid proceedings are presently pending.</i></p> <p><i>SBI reserves its rights in relation any other liability or debt owed by Personal Guarantor, whether or not invoked/demanded other than as set out in herein, which is due under the Facilities and/or Deeds of Guarantees.</i></p> <p><i>Further, a Demand Notice dated July 23, 2020 ("IBC Demand Notice") was issued by SBI under Rule 7 of the Insolvency and Bankruptcy</i></p>
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	<p><i>(Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 ("PG AAA Rules") and in the format prescribed in Form B of the PG AAA Rules, calling upon the Personal Guarantor to pay forthwith an amount of INR 53,53,78,13,936.69 (Indian Rupees Five Thousand Three Hundred Fifty Three Crore Seventy Eight Lakh Thirteen thousand Nine Hundred Thirty Six Paise Sixty Nine Only) ("Default Amount").</i></p> <p><i>A copy of the IBC Demand Notice sent to the Personal Guarantor (along with the copy of the email dated July 24, 2020 and the postal slips in respect of the registered post sent to the Personal Guarantor) is annexed herewith as Exhibit - 10. It is clarified that the IBC Demand Notice was sent to the Personal Guarantor by SBI via email dated July 24, 2020 and vide registered post.</i></p> <p><i>This Default Amount as demanded under the IBC Demand notice has not been repaid by the Personal Guarantor within fourteen days of receipt of the IBC Demand Notice</i></p>
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9. The Deed of Guarantee which has been relied in the application need to be noticed first. The Deed of Guarantee dated 08.08.2012 Clause 8 contains unconditional guarantee of the Personal Guarantor to make payment on demand being made relying upon guarantee. Clause 8 of the Deed of Guarantee is as follows:

*"8. The Guarantor shall unconditionally render any payment or performance guaranteed hereunder*

*immediately on demand being made relying upon this Guarantee by issuance of the Demand Certificate. Without prejudice to any other provision of this Guarantee, to the extent that the Guarantor has or may have any reason to contest the claim made by the Onshore Security Trustee, the Guarantor shall first pay and then pursue any such claim.”*

10. Supplemental Joint Deed of Guarantee dated 25.05.2012 has also been brought on the record. Clause 2 of which provides as follows:

**“2. GUARANTEE**

*2.1 The Guarantors hereby irrevocably, absolutely and unconditionally guarantee unto the Secured Parties that:*

*(i) the Borrower shall duly and punctually pay the Guaranteed Obligations together with interest, additional interest, default interest, costs, charges, expenses and/or other money stipulated in or payable in accordance with the terms and conditions of the Fourth Supplemental Working Capital Consortium Agreement and other Financing Documents; and*

*(ii) if at any time, default is made by the Borrower in payment of the Guaranteed Obligations, the Guarantors shall forthwith on demand pay to the SBI Consortium, without demur or protest or without the right of any set off and/or deductions and/or adjustments of any kind whatsoever, the whole of such Guaranteed Obligations and shall indemnify*

*and keep indemnified the Secured Parties against all losses with respect to the said Guaranteed Obligations, interest, additional interest, default interest or other money due and all costs, charges and expenses whatsoever which the Secured Parties may incur by reason of any default on the part of the Borrower or as a result of the Guaranteed Obligations being or becoming void, voidable, unenforceable or ineffective as against the Borrower for any reason whatsoever irrespective of whether such reason or any related fact or circumstance was known or ought to have been known to the Secured Parties or any their officers, employees, agents or advisers.*

*2.2 The Borrower shall repay the Facilities at the applicable Interest Rate and that the SBI Consortium may at its discretion levy additional interest or default interest in respect thereof in accordance with the terms and conditions of the Fourth Supplemental Working Capital Consortium Agreement. The levy of such enhanced rate of additional interest or default interest shall be without prejudice to the SBI Consortium's other rights and remedies.*

*2.3 The Guarantors shall have no right to terminate their obligations under this Guarantee and any such right is explicitly excluded. The Guarantors hereby jointly and severally agree and undertake that the Secured Parties shall have the sole discretion to provide the Facilities at such time and on such conditions as are contained in the Fourth*

*Supplemental Working Capital Consortium Agreement and the other Financing Documents. The Guarantors hereby confirm and consent to the terms of the Fourth Supplemental Working Capital Consortium Agreement and the other Financing Documents including the financial covenants (to the extent applicable to it) and the representations and warranties (to the extent applicable to it) as contained therein.*

*2.4 Any demand by the SBI Consortium to the Guarantors shall be conclusive evidence that the Guarantors liability hereunder has accrued and that the extent of the Guarantors' liability is the amount shown therein.”*

11. The Deed of Guarantee, thus, contemplate discharge of liability by the Personal Guarantor on receiving demand. Demand Certificate dated 02.02.2018 has also been brought on the record, which is in reference to Guarantee Deed dated 08.08.2012. It is useful to notice Demand Certificate dated 02.02.2018 addressed to the Appellant, Shri R N Dhoot, which is as follows:

*“Ref. No.3651/SBICTCL/LEGAL/DJ/ST/2017-18*

*Date: 2 February, 2018*

***DEMAND CERTIFICATE***

***TO: Shri R.N. Dhoot***

*Dhoot Bunglow*

*Station Road*

*Aurangabad-431005*

*Maharashtra*

*(as the "Guarantor")*

***CC:***

***1. STATE BANK OF INDIA***

*CAG Branch at Neville House,  
J.N. Heredia Marg, Ballard Estate,  
Mumbai-400001 (as the "Facility Agent")*

*2. STATE BANK OF INDIA  
CAG Branch at Neville House,  
J.N. Heredia Marg. Ballard Estate,  
Mumbai-400001 (the "Lender")*

*Dear Sirs,*

***RE: Guarantee dated August 8, 2012 (the "Deed of Guarantee") executed by the Guarantor in favour of the Onshore Security Trustee.***

*The lender has, pursuant to the terms of the Rupee Term Loan Agreement dated August 8, 2012, advanced rupee term loan to the Obligors, on a joint and several basis.*

*The Obligors have not fulfilled their obligations under the Rupee Term Loan Agreement and an amount of Rs. 3171.37 crores (Rupees Three Thousand One Hundred Seventy One Crores and Thirty Seven Lacs only) (details of which are set out in the Schedule 1) is due and payable by the Obligors to the Lender as on 31.12.2017 and the Obligors are liable to pay the said amount together with interest at the Default Rate, along with all costs, expenses and fees under the Financing Documents, and as specified in the notice dated 18<sup>th</sup> January 2018 issued by the Lender. Accordingly, we hereby issue the demand notice pursuant to Section 4 of the Guarantee, calling upon you to pay the aforesaid amounts forthwith.*

*Capitalised terms used herein shall have the meaning given to them in the Deed of Guarantee and the Rupee Term Loan Agreement.*

*Yours faithfully.*

***SBICAP Trustee Company Limited  
as the Onshore Security Trustee***

12. Demand Notice dated 20.02.2018 is addressed to both the Appellants, where an amount of Rs.795.57 Crores have been demanded. The sheet anchor of learned counsel for the Appellant is judgment of Hon'ble Supreme Court in ***Laxmi Pat Surana (Supra)***. We first need to notice the judgment of Hon'ble Supreme Court in ***Laxmi Pat Surana***. In the case before the Hon'ble Supreme Court, appeal was filed challenging the order of this Appellate Tribunal dated 19.03.2020, which appeal filed challenging the order of the NCLT admitting Section 7 application was dismissed. Two questions came for consideration before the Hon'ble Supreme Court which have been noticed in Para 1.1 and 1.2 of the judgment in following manner:

*“1.1. (i) Whether an action under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short “the Code”) can be initiated by the financial creditor (Bank) against a corporate person (being a corporate debtor) concerning guarantee offered by it in respect of a loan account of the principal borrower, who had committed default and is not a “corporate person” within the meaning of the Code?*

**1.2.** (ii) *Whether an application under Section 7 IBC filed after three years from the date of declaration of the loan account as non-performing asset (for short “NPA”), being the date of default, is not barred by limitation?”*

13. In the above case, M/s Mahaveer Construction was the Principal Borrower which was a proprietary firm of the Appellant Laxmi Pat Surana. M/s Surana Metals Ltd. was guarantor of two loans. The account of the Principal Borrower was declared NPA on 13.01.2010 and Recall Notice to the Principal Borrower and the Corporate Guarantor was issued on 19.02.2010. Section 7 application was filed against the Corporate Guarantor, which was admitted. Objection was raised by the Appellant that Principal Borrower being not a corporate person, the proceeding under Section 7 cannot lay against the Corporate Guarantor. The said issue was noticed in Para 1.1, as above and the Hon’ble Supreme Court has answered the said issued holding that Section 7 application was maintainable. While examining the said issued in Paras 23, 25, 31 and 32, following was laid down:

**“23.** *Indubitably, a right or cause of action would enure to the lender (financial creditor) to proceed against the principal borrower, as well as the guarantor in equal measure in case they commit default in repayment of the amount of debt acting jointly and severally. It would still be a case of default committed by the guarantor itself, if and when the principal borrower fails to discharge his obligation in respect of amount of debt. For, the obligation of the*

*guarantor is coextensive and coterminous with that of the principal borrower to defray the debt, as predicated in Section 128 of the Contract Act. As a consequence of such default, the status of the guarantor metamorphoses into a debtor or a corporate debtor if it happens to be a corporate person, within the meaning of Section 3(8) IBC. For, as aforesaid, the expression “default” has also been defined in Section 3(12) IBC to mean non-payment of debt when whole or any part or instalment of the amount of debt has become due or payable and is not paid by the debtor or the corporate debtor, as the case may be.*

**25.** *It may be useful to also advert to the generic provision contained in Section 3(37). It postulates that the words and expressions used and not defined in the Code, but defined in enactments referred to therein, shall have the meanings respectively assigned to them in those Acts. Drawing support from this provision, it must follow that the lender would be a financial creditor within the meaning of the Code. The principal borrower may or may not be a corporate person, but if a corporate person extends guarantee for the loan transaction concerning a principal borrower not being a corporate person, it would still be covered within the meaning of the expression “corporate debtor” in Section 3(8) IBC.*

**31.** *In law, the status of the guarantor, who is a corporate person, metamorphoses into corporate debtor, the moment principal borrower (regardless of not being a corporate person) commits default in*

*payment of debt which had become due and payable. Thus, action under Section 7 IBC could be legitimately invoked even against a (corporate) guarantor being a corporate debtor. The definition of “corporate guarantor” in Section 5(5-A) IBC needs to be so understood.*

**32.** *A priori, we find no substance in the argument advanced before us that since the loan was offered to a proprietary firm (not a corporate person), action under Section 7 IBC cannot be initiated against the corporate person even though it had offered guarantee in respect of that transaction. Whereas, upon default committed by the principal borrower, the liability of the company (corporate person), being the guarantor, instantly triggers the right of the financial creditor to proceed against the corporate person (being a corporate debtor). Hence, the first question stands answered against the appellant.”*

14. Hon’ble Supreme Court in the above case observed that right or cause of action would enure to the lender to proceed against the principal borrower, as well as the guarantor in equal measure in case they commit default in repayment of the amount of debt acting jointly and severally. It was observed that the status of the guarantor, who is a corporate person, metamorphoses into corporate debtor, the moment principal borrower commits default. There can be no dispute to the proposition laid down by the Hon’ble Supreme court in the above case. When the Principal Borrower

commits default, cause of action indubitably arises for lender to take action against the Personal Guarantor.

15. In the present case, we have noticed the Deed of Guarantee which was executed by the Appellant, which Deed of Guarantee contains specific clause guarantying obligation of the Guarantor for making payment on demand.

16. The judgment of the Hon'ble Supreme Court in **Syndicate Bank vs. Channaveerappa Beleri (Supra)** has laid down that demand is made against a Guarantor if the claim is live claim against the Principal Borrower and the limitation against the Guarantor shall run from the date of such demand. In Para 14 of the judgment following has been laid down:

*“14. ....If the debt had already become time-barred against the principal debtor, the question of creditor demanding payment thereafter, for the first time, against the guarantor would not arise. When the demand is made against the guarantor, if the claim is a live claim (that is, a claim which is not barred) against the principal debtor, limitation in respect of the guarantor will run from the date of such demand and refusal/non-compliance. Where guarantor becomes liable in pursuance of a demand validly made in time, the creditor can sue the guarantor within three years, even if the claim against the principal debtor gets subsequently time-barred.”*

17. Judgment of this Tribunal in **Pooja Ramesh Singh vs. State Bank of India (Supra)** also relying on the judgment of Hon'ble Supreme Court in

**Syndicate Bank vs. Channaveerappa Beleri** reiterate the same proposition. In Paras 24, 29 and 32(i) following was laid down:

*“24. The scheme of 1&6 Code clearly indicate that both the Principal Borrower and the Guarantor become liable to pay the amount when the default is committed. When default is committed by the Principal Borrower the amount becomes due not only against the Principal Borrower but also against the Corporate Guarantor, which is the scheme of the 1&6 Code. When we read with as is delineated by Section 3(11) of the Code, debt becomes due both on Principal Borrower and the Guarantor, as noted above. The definition of default under Section 3 (12) in addition to expression 'due' occurring in Section 3(11) uses two additional expressions i.e "payable" and "is not paid by the debtor or corporate debtor". The expression 'is not paid by the debtor' has to be given some meaning. As laid down by the Hon'ble Supreme Court in "Syndicate Bank v. Channaveerappa Beier!" (supra), a guarantor's liability depends on terms of his contract. There can be default by the Principal Borrower and the Guarantor on the same date or date of default for both may be different depending on the terms of contract of guarantee. It is well settled that the loan agreement with the Principal Borrower and the Bank as well as Deed of Guarantee between the Bank and the Guarantor are two different transactions and the Guarantor's liability has to be read from the Deed of Guarantee.*

29. *The notice dated 01.10.2020, thus, has been issued invoking the grantee which expression is used in Para 12 above. When the Bank has given time to the Guarantor to make payment on 01.10.2020, there can be no default on part of the Guarantor on any earlier date. The default on part of the Guarantor thus has to be subsequent to the notice dated 01.10.2020 i.e. Non-payment within seven days as required.*

32. *In view of the foregoing discussion, we arrive at following conclusions:*

*(i) The Corporate Guarantee Deed dated 17.05.2019 is on demand guarantee deed and the default shall arise on the part of the Guarantor only when demand notice is issued as contemplated in the Deed of Guarantee. When the State Bank of India invoked the guarantee vide notice dated 01.10.2020, demand on the part of the Corporate Guarantee shall arise only subsequent to the notice dated 01.10.2020 i.e. non-payment of the amount within seven days i.e. default arise on 08.10.2020.”*

18. The above judgment thus, clearly lays down the running of period of limitation against a Personal Guarantor, which period commences when demand notice is issued to the Personal Guarantor. There can be no doubt that the moment Principal Borrower committed default, right of lender to take proceeding commences. The limitation for taking action against the Personal Guarantor shall be as per the Deed of Guarantee and in case where Deed of Guarantee contemplates issuance of demand notice by the Lender,

after giving such demand notice, lender can initiate proceeding within three years from the date of default by the Guarantor.

19. In the present case, demand notice was issued to the Personal Guarantor on 02.02.2018 and application under Section 95 having been filed on 31.08.2020 was well within the period of three years and submission of the Appellant that application was barred by time has no merit.

20. In so far submission of learned counsel for the Appellant that rights and liabilities of the parties shall be govern by the Deed of Guarantee, there can be no two opinions about the said submission. The Personal Guarantor who has executed the Deed of Guarantee, as noted above, was fully bound by the terms and conditions. When the clauses of the Deed of Guarantee, as noticed above, provided for payment by Guarantor on demand, the cause of action against the Guarantor shall commence when the notice of demand is issued i.e. guarantee is invoked against the Guarantor.

21. The submission of the Appellant that impugned order has not considered the submissions of the Personal Guarantor is not correct. The impugned order has noticed the submissions of behalf of the Personal Guarantors in Para 38 to 41. The Adjudicating Authority has given its reasons and finding under the heading 'Findings'. The argument that application is barred by limitation was dealt with in Para 2. The Adjudicating Authority having satisfied that Corporate Debtor has

committed default in repayment of loan amount granted by the Financial Creditor and Personal Guarantors have committed default in repayment of the loan facility demanded by demand notice invoking guarantee, application under Section 95 has been admitted.

22. We, thus, do not find any good ground to interfere with the impugned order dated 04.06.2024 and 14.06.2024 impugned in the present appeals. Both the appeals are dismissed.

**[Justice Ashok Bhushan]  
Chairperson**

**[Barun Mitra]  
Member (Technical)**

**NEW DELHI**

**25<sup>th</sup> February, 2026**

*Archana*