

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

25.03.2026

Present: JUSTICE N. SESHASAYEE, MEMBER (JUDICIAL)
ARUN BAROKA, MEMBER (TECHNICAL)
INDEVAR PANDEY, MEMBER (TECHNICAL)

Company Appeal (AT) (Ins) No.60 of 2025

Nandani Singh

...Appellant

Vs

1. Sandeep Kr. Bhatt

...Respondent No.1

2. Bank of Baroda

...Respondent No.2

(Arising out of Order dated 04.09.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Bench – V, New Delhi) in CP No. (IB)-188/2022)

For Appellant: Mr. Anup Kumar D. Sayare, Mr. S.N. Gautam,
Advocates

For Respondent: Mr. Ashish Verma, Mr. Nikhil Thakur, Ms. Kriti,
Advocates for R-1.
Mr. Dhruv Gupta, Advocate for R-2

JUDGEMENT

Per Justice N. Seshasayee, Member (Judicial)

This appeal is preferred by a personal guarantor who challenges an Order of the Adjudicating Authority (NCLT– V), New Delhi, dated 04.09.2024, in CP (IB) No. 188 of 2022 under Section 100 of the Insolvency and Bankruptcy Code, 2016.

Brief Facts

2. The material facts are:

- a) From 2006, M/s. Bank of Baroda, the 2nd respondent herein, extended export-linked credit facilities to Theme Exports/Theme Exports Pvt. Ltd. (Corporate debtor) and periodically enhanced, and secured its repayment by equitable mortgage over its Okhla industrial property and hypothecation of movables, with fresh DPNs/hypothecation agreements between 2009–2014. On 06.01.2017, loan facilities were re-sanctioned to about ₹30.12 crore. (and the company acknowledged dues of about ₹27.77 crores)
- b) On 06.01.2017, the appellant, a suspended director of corporate debtor and others executed a stamped Deed of continuing Guarantee and acknowledgment in favour of the Bank.
- c) On 07.01.2019, the loan account of the corporate debtor was classified as NPA. On 27.02.2019, the 2nd respondent issued notice under Sec.13(2) of the SARFAESI to both the principal borrower and guarantors requiring them to repay the debts due within 60 days. The 2nd respondent describes this notice as the first invocation of the guarantee.
- d) While so, an operational creditor of the principal borrower filed a petition against the latter under Sec. 9 IBC petition. By an order dated 29.08.2019, the Adjudicating Authority admitted the principal borrower to CIRP. It was not successful and hence on 29.07.2020, an order for liquidation came to be passed under section 33 IBC,

where the 2nd respondent had preferred its claim for ₹36.93 crores and on 30.07.2020 the same was admitted by the liquidator.

- e) It is in these circumstances, on 04.08.2020, the 2nd respondent issued a personal demand cum recall notice to the personal guarantors and followed it with a notice 27.09,2021 under Rule 7 to the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, claiming about ₹36.93 crore as on 30.07.2020. Meanwhile on 31.01.2021, it also filed O.A.295/2021 before DRT-I for about ₹32.17 crores against the personal guarantor.
- f) While things stood thus, on 30.12.2021, the 2nd respondent filed the present petition under Sec.95 IBC.

3. The respondent in her reply has principally contended that the petition is barred by limitation, that there are certain incongruencies in the amount claimed in the demand notice, in the OA filed against the principal borrower before the DRT and the petition. This apart there are certain allegations are made against the RP and that he acted with bias.

4. Relying on the report of the RP filed under Sec.99 and rejecting the appellant's defence, the Adjudicating Authority chose to admit the petition under Sec.100 IBC. This Order is now under challenge.

Arguments

5. The central plank of appellant's contention is limitation: she contends that the Deed of Guarantee dated 06.01.2017 gave rise to a cause of action

which expired three years later, i.e. by 06.01.2020, and that no valid, proved invocation occurred within this period, so as on 30.12.2021 there was no legally enforceable “debt” for the purposes of IBC section 95(4)(b). The learned counsel for the appellant further submitted:

- a) The second aspect agitated was that the Sec.13(2) notice, dated 27.02.2019 issued under the SARFAESI Act was not originally annexed to the petition under Sec. 95 but was introduced only through the report of the resolution professional, thereby creating a contradiction in the stand of the Respondent as reflected in the Section 95 petition, namely:-

It is thus contended that such inconsistency warrants scrutiny under Section 184(1) of the IBC for alleged false and misleading statements on oath.

- b) The NPA date (07.01.2019) is merely a prudential classification, not the juridical date of default, and NCLT wrongly conflated, or sidestepped this distinction to sustain limitation. Reliance was placed on the ratio in ***Laxmi Pat Surana v. Union Bank of India*** (2021) 8 SCC 481
- c) This apart there are inconsistencies in amounts stated to be in default of ₹36.93 crore (Form D/Form B/liquidation) versus ₹32.17 crore (DRT OA 295/2021 manipulated/incomplete bank ledgers, OCR errors and missing pages, and submits that the Bank has not discharged its evidentiary burden even at the admission stage, despite Bankers’ Books and section 65B certificates.
- d) She challenges the independence of the RP, asserting that he is a director of an IPE empanelled with Bank of Baroda, a circumstance allegedly not disclosed in violation of the IBBI Code of Conduct under the Insolvency

Professionals Regulations, 2016, and that his conduct (very short timelines, apparent alignment with the Bank's narrative) shows bias.

- e) On process, she contends that NCLT mechanically adopted the RP's section 99 report, failed to reason through her detailed written submissions, and effectively relied on a document not on record (the 27.02.2019 notice), violating natural justice and the requirement of a reasoned order under IBC section 100 and the rule of law as emphasised in ***Swiss Ribbons v. Union of India*** (2019) 4 SCC 17.

6. Per contra, the learned counsel for the respondent contended that:

- a) The Deed of Guarantee which the appellant has executed is a continuing guarantee, and becomes enforceable on-demand to perform the contracted obligations. Hence limitation will run not from 06.01.2017, but from 27.02.2019, the date of Sec.13(2) notice issued under the SARFAESI Act and that the default crystallised on 27.04.2019. The petition under Sec.95 was laid on 30.12.2021, which was comfortably within time, with no need to even fall back on the Order of the Hon'ble Supreme Court in Suo Motu Writ Petition (civil) 3 of 2020. The appellant has acknowledged the receipt of the notice dated 27.02.2019, and also the debt vide her replies dated 25.09.2020 and 12.11.2021.
- b) So far as the difference in the value of the debt, ₹32.17 crore in O.A. No. 295 of 2021 and ₹36.93 crore in the Section 95 application / Form B demand notice goes, they essentially reflect different cut-off dates and verification stages (Filing date of OA before the DRT Vs Date of commencement of liquidation of the principal borrower. Indeed, Secs.95

and 100 IBC require proof of existence of a financial debt and default and not final adjudication of the amount due payable. That is the matter which a resolution professional may be concerned with. After all, inasmuch as the principal borrower is in liquidation, the eventual liability of the appellant will be limited to that which is required to be paid after the realization of debt in the liquidation.

- c) They deny any conflict of interest or misconduct by the RP, noting his valid IBBI registration, absence of disciplinary proceedings, his correspondence with both sides, and the fact that NCLT exercised its independent judicial mind.

Discussion and Decision

7. We do not find any merit in the submissions of the appellant. And our reasons are:
 - a) the thrust on the point of limitation appears more as a plea made in desperation. It is far too fundamental a point that where a deed of guarantee provides for its invocation through a demand, then the liability under the same becomes enforceable only on demand. It is admitted that the notice under Sec.13(2) SARFAESI Act was issued on 27.02.2019 and the default commenced 27.04.2019. Necessarily the petition filed under Sec.95 IBC on 30.12.2021 is within time. Indeed, in the petition under Sec.95 IBC, date on which the guarantee was invoked is given as 04.08.2020, which is the notice which the 2nd respondent had issued after the order of liquidation was passed against the principal borrower. However, in the report of the Resolution Professional, reliance is placed on

an earlier demand notice dated 27.02.2019 as the date of invocation of guarantee.

- b) So far as the allegation of financial debt and default, the 2nd respondent has supported its existence with (i) the 06.01.2017 acknowledgment and guarantee, (ii) the corporate debtor's audited balance sheets recognising borrowings (FY 2015–16, 2016–17), and (iii) admission of a claim of ₹36.93 crore in the liquidation proceedings against the principal borrower 30.07.2020. The difference is self-explanatory as have been established by these materials.
- c) Turning to the allegation of RP's conflict of interest, it may, at the best, pave the way for changing the RP, but not for setting aside the Order passed under Sec.100. We however, add that we do not intend to pass any opinion on the merit of the said allegation and it is left open.
8. In conclusion, we find no merit in the appeal and the same is dismissed but without costs.

[Justice N. Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

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