

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 2185 of 2024

**[Arising out of the Order dated 03.09.2024, passed by the
'Adjudicating Authority' (National Company Law Tribunal,
Mumbai Bench in CP (IB) No. 1174/MB/2023]**

IN THE MATTER OF:

Phoenix Arc Private Limited

Trustee of Phoenix Trust FY 19-21 and
Having its registered office at:
3rd Floor, Wallace Tower (Earlier known as Shiv Building),
139/140/B, Crossing of Sahar Road &
Western Express Highway, Vile Parle (E),
Mumbai - 400 057

...Appellant

Versus

Mr. Rajendra Himmatlal Salot

(Personal Guarantor of M/s Raj Poly
Products Limited)
18 Maheshwar Prakash Building, Jain
Derasar Lane Santacruz (W), Mumbai,
Maharashtra - 400054

...Respondent

Present:

For Appellant : Mr. J. Rajesh, Ms. Nandita, Mr. MD. Arsalan Ahmed,
Mr. Yashwardhan Aggarwal & Ms. Rahat Kapadia,
Advocates

For Respondent : Ms. Aakashi Lodha & Ms. Nishtha Jindal, Advocates

With

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139/140/B, Crossing of Sahar Road &
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Mumbai - 400 057

...Appellant

Versus

Mr. Hema Rajendra Salot

(Personal Guarantor of M/s Raj Poly Products Limited)
18 Maheshwar Prakash Building, Jain
Derasar Lane Santacruz (W), Mumbai,
Maharashtra – 400054

...Respondent

Present:

For Appellant : Mr. J. Rajesh, Ms. Nandita, Mr. MD. Arsalan Ahmed,
Mr. Yashwardhan Aggarwal & Ms. Rahat Kapadia,
Advocates

For Respondent : Ms. Aakash Lodha & Ms. Nishtha Jindal, Advocates

J U D G M E N T **(Hybrid Mode)**

[Per: Arun Baroka, Member (Technical)]

Introduction

The present set of appeals have been preferred under Section 61 of the Insolvency and Bankruptcy Code, 2016 (“the Code”) against the Order dated 3rd September 2024 passed by the Hon’ble National Company Law Tribunal, Mumbai bench (“Ld. Adjudicating Authority”) in C.P. No. 1174 of 2023.

2. The Appellant is an Asset Reconstruction Company that was assigned the loan account of M/s Raj Poly Products Limited ("Corporate Debtor") along with all rights, titles, interest, and claims in respect of the loan facility granted by Janata Sahakari Co-operative Bank ("Original Lender") through an assignment agreement ("Assignment Agreement").

3. The Respondent is the personal guarantor in both the Appeals, who had executed a Letter of Guarantee in favour of the Original Lender to secure the loan facility granted to the Corporate Debtor.

Submissions of the Appellant

4. The Appellant contends that the Corporate Debtor needed funds for its working capital. The Original Lender vide a sanction letter dated 27th September 2013 and an agreement dated 19th December 2013 sanctioned a Term Loan/ Cash Credit Facility of Rs. 10,00,00,000/- (Rupees Ten Crores) ("Original Agreement") to the Corporate Debtor.

5. The Appellant contends that on 3rd December 2014, a Letter of Guarantee was executed by Mr. Rajendra Himmatlal Salot, the Respondent herein in the capacity of a Personal Guarantor to the Corporate Debtor in favour of the Original Lender to secure the Original Agreement.

6. The Appellant contends that the facility of Rs. 10,00,00,000/- (Rupees Ten Crores Only) was extended from 19th December 2014 to 18th December 2015. Accordingly, a Supplementary Agreement dated 3rd December 2014 was executed between the Original Lender and the Corporate Debtor.

7. The Appellant states that the Corporate Debtor needed additional funds for working capital and applied for additional Cash Credit Facility of Rs. 4,00,00,000/- (Rupees Four Crores). Accordingly, vide its sanction letter dated 29th September 2014 ("2nd Sanction Letter") and Agreement dated 3rd December 2013, the Original Lender sanction the additional Facility of Rs. 4,00,00,000/- (Rupees Four Crores) on the terms and conditions stated therein.

8. The Appellant states that the Corporate Debtor approached the Original Lender and requested to extend the period of Cash Credit Facility for Rs. 14,00,00,000/- (Rupees Fourteen Crores) ("Cash Credit Facility"). The Original Lender extended the period from 19 December 2015 to 18th December 2016 and a Supplementary Agreement dated 11 March 2016 was executed amongst the Original Lender, Corporate Debtor and the Respondent. It is pertinent to state that the parties to the Supplementary Agreement dated 11th March 2016 categorically and unequivocally agreed that all the terms and conditions of the Original Agreement dated 19th December 2013 and sanction letter dated 20 November 2013 shall remain in force and binding with Mutatis.

9. The Appellant states that the Corporate Debtor approached the Original Lender and requested to extend the period of Cash Credit Facility and subsequently, the Original Lender extended the Cash Credit Facility from 19th December 2016 to 18th December 2017. A Supplementary Agreement dated 31st March 2017 was executed amongst the Original Lender, Corporate Debtor and the Respondent. It is pertinent to state that the parties to the Supplementary Agreement dated 31st March 2017 categorically and unequivocally agreed that all the terms and conditions of the Original Agreement dated 19 December 2013 and sanction letter dated 20th November 2013 shall remain in force and binding with Mutatis.

10. The Appellant states that the promoter of the Corporate Debtor acting through the Respondent mortgaged certain properties in his personal capacity in favour of the Original Lender by executing deed of simple mortgage.

Subsequently, the Corporate Debtor also submitted Affidavit-cum-Indemnity Bond dated 28th July 2017 and Irrevocable Power of Attorney to the Original Lender which were given as collateral to the Original Lender.

11. The Appellant states that the Original Lender vide a recall notice dated 10th April 2018 called upon the Corporate Debtor and the Respondent to make re-payment of outstanding Cash Credit Facility of Rs. 15,37,21,490/- (Rupees Fifteen Crore Thirty Seven Lakh Twenty One Thousand Four Hundred Ninety).

12. The Appellant states that the Original Lender issued demand notice dated 12th April 2018 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act") calling upon the Corporate Debtor to repay the outstanding Cash Credit Facility of 15,37,21,490/- (Rupees Fifteen Crores Thirty-Seven Lakhs Twenty-One Thousand Four Hundred Ninety Only) as on 31 March 2018.

13. The Appellant states that on 18th June 2018, the Original Lender vide a letter of intimation informed the Corporate Debtor that since it failed to make any payments within the statutory period of 60 days, the Original Lender shall proceed with taking possession of the movable and/or immovable property under Section 13(4) of the SARFAESI Act. The Appellant states that pursuant thereto, the Original Application No. (Lodging No. 730/2022) came to be filed against the Corporate Debtor before the Debt Recovery Tribunal I, Mumbai which is pending as on date.

14. The Appellant states that the Original Lender issued a letter dated 5th November 2018 addressed to the Corporate Debtor intimating that the account of default in repayment of loan is classified as "Wilful Defaulter". The Appellant states that the Hon'ble Chief Metropolitan Magistrate, Esplande Court passed an Order dated 13th November 2018 allowing the application bearing C.C. No. 711/SA/2018 of the Original Lender to take control over the possession of secured assets of the Corporate Debtor. Thereafter, the Hon'ble Chief Metropolitan Magistrate, Esplande Court passed another substitution order on 19th August 2018.

15. The Appellant states that on 30th March 2019, the Original Lender by way of the Assignment Agreement assigned all rights, titles, interest and claims in respect of the credit facilities in favour of the Appellant. Pursuant thereto, vide Assignment Intimation Letter dated 24th June 2019, the Appellant informed the Corporate Debtor regarding the assignment of the debt.

16. The Appellant states that the note to financial statements filed with Form No. AOC-4 before the registrar of companies for the year ended 31st March 2020 records acknowledgement of debt by the Corporate Debtor under the heading "8. Short Term Borrowings". It is pertinent to mention that the Independent Auditors Report dated 30th December 2020 categorically under the head "Emphasis of Matters" states that the Corporate Debtor will make future payments in relation to the debt:

"The Company will have to directly deal with Phoenix in relation to debts and make all future payments in relation to the debt and the Company will have to contact Phoenix for all the future correspondences."

17. The Appellant states that on 23rd September 2022, the Appellant addressed a Demand Notice to the Respondent, the Personal Guarantor under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 ("Personal Guarantor Rules") in the manner and form prescribed therein. The Appellant called upon the Respondent to unconditionally pay the unpaid debt in default in full within 14 days from receipt of the demand notice failing which, insolvency resolution process under the Code would be initiated against the Respondent.

18. The Appellant states that the Respondent replied to the Demand Notice vide a letter dated 4th October 2022 raising frivolous averments in the reply. However, the Respondent did not dispute the amount that is due and payable to the Appellant herein.

19. The Appellant states that a Guarantee Invocation Notice dated 14th February 2023 was issued to the Respondent for repayment of outstanding amount to the Appellant. The Respondent replied vide letter dated 17th February 2023 wherein the Respondent did not dispute their liability to the Appellant.

20. The Appellant states that a Demand Notice dated 6th April 2023 under Rule 7 of the Personal Guarantor Rules was issued to the Respondent calling

upon them to repay the unpaid debt in default in full within 10 days from receipt of the demand notice, failing which insolvency resolution process under the Code would be initiated against the Respondent.

21. The Appellant states that the Respondent replied to the Demand Notice vide a letter dated 14th April 2023 raising frivolous averments in the reply. However, the Respondent did not dispute the amount that is due and payable to the Appellant herein.

22. The Appellant states that the Respondent had failed to repay the outstanding amount of Rs. 31,95,58,525.47/- (Rupees Thirty-One Crore Ninety-Five Lakhs Fifty Eight Thousand Five Hundred and Twenty Five) due to the Appellant as on 28th February 2023. Hence, the Appellant was constrained to file the said Petition before the Ld. Adjudicating Authority to initiate insolvency resolution process against the Respondent for the unpaid debt in default due from him in his capacity as a Personal Guarantor of the Corporate Debtor.

23. Adjudicating Authority dismissed the said petition. Being aggrieved by the Impugned Order, the Appellant has preferred the present Appeal.

Submissions of the Respondent

24. The present Insolvency Petition was filed by the Appellant on the basis of purported default on a Letter of Guarantee dated 03.12.2014 executed by the Respondent as Personal Guarantor in favour of the Janata Sahakari Bank (“**Original Lender**”) to secure the cash credit facility extended to M/s Raj Poly Products Ltd. (“**Corporate Debtor**”) on 19.12.2013.

25. As per the Appellant's own case, the Corporate Debtor became a Non-Performing Asset ("**NPA**") on 28.12.2017. Thereafter, a demand notice dated 12.04.2018 was issued by the Original Lender under Section 13(2) of the SARFAESI Act calling upon the Corporate Debtor to repay the outstanding Cash Credit Facility. Notably, the aforesaid demand notice was also addressed to the Respondent herein in his capacity as a Personal Guarantor and a specific demand was made therein to discharge all his liabilities as Guarantor within 60 days of receipt of the demand notice, making it clear that the Respondent's Personal Guarantee was invoked on 12.04.2018.

26. Thereafter the Original Lender initiated Arbitration proceedings against the Corporate Debtor wherein the Respondent was impleaded as Respondent No. 2 in his capacity as Personal Guarantor. As such, at Paragraph 19 of their application under Section 84 of the Multi State Co-Operative Societies Act, 2002, ("**Arbitration Application**") the Original Lender has specifically pleaded that the Respondent and other Guarantors of the Corporate Debtors must be made to discharge their obligations under their respective Guarantees. The Appellant has deliberately suppressed the fact of these proceedings in its Insolvency Petition as well as in the present Appeal since the same unequivocally demonstrates the fact that steps had already been taken by the Original Lender to invoke the Respondent's Guarantee, and thus, the Appellant's Insolvency Petition was barred by limitation.

27. Subsequently, the Appellant claims that the Original Lender allegedly assigned all rights, titles, interest and claims in respect of the Cash Credit

Facility in favour of the Appellant herein vide the purported Assignment Agreement dated 30.03.2019.

28. Thereafter, the Appellant without considering that the Respondent's guarantee was already invoked vide demand notice dated 12.04.2018, issued further demand notices on 23.09.2022 and 14.02.2023 to the Respondent under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 ("**Personal Guarantor Rules**").

29. Consequently, the Appellant filed the Insolvency Petition before the Ld. Adjudicating Authority against the Respondent for repayment of the outstanding amount under the Cash Credit Facility, which was rightly dismissed by the Ld. Adjudicating Authority.

30. The present Appeal has been filed by the Appellant primarily on the erroneous and misconceived ground that a notice under Section 13(2) of the SARFAESI Act cannot be treated as an invocation of guarantee, and thus, the period of limitation cannot be calculated from 12.04.2018. It is claimed that no case is made for this Hon'ble Court to exercise its jurisdiction under Section 61 of the Insolvency and Bankruptcy Code, 2016 ("Code"), for the reasons outlined herein below.

31. Respondent contends that the Adjudicating Authority vide the Impugned Order has rightly dismissed the Insolvency Petition filed by the Appellant and held that the Demand Notice issued by the Appellant on

12.04.2018 u/s 13(2) of the SARFAESI Act will be treated as invocation of the Respondent's Personal Guarantee, thus making the Insolvency Petition barred by limitation.

32. This Hon'ble Appellate Tribunal in **Asha Basantilal Surana v SBI & Ors., C.A. (AT) (INS.) No.84 of 2025** vide judgement and order dated 15.05.2025 has unequivocally held that in a case where the Notice under Section 13(2) of the SARFAESI Act makes a demand as per the Guarantee Agreement between the parties, the Notice has to be treated as notice for invocation of Bank Guarantee.

33. Furthermore, in **Mavjibhai Nagarbhai Patel v SBI & Anr., (2024) SCC OnLine NCLAT 2014**, a three-member bench of this Appellate Tribunal held that:

"18. In the present case, after the Corporate Debtor was admitted into CIRP on 21.01.2020 and the Personal Guarantee was invoked by the Respondent No, 1 Bank through Demand Notice dated 04.06.2021 under Section 13(2) of the SARFAESI Act which called upon both the Borrowers and the Guarantors to make payment of the amount of Rs. 32.60 Cr. as on 30.04.2021 within 60 days. **The Section 13(2) Notice which was sent to the Corporate Debtor was also forwarded to the Guarantor with the specific demand to make payment of the amount mentioned in the notice in terms of the guarantee. This Section 13(2) Notice was indisputably also sent to the Personal Guarantors separately and independently.** When we see the Section 13(2) notice under SARFAESI Act as placed at pages 549 to 551 of Appeal Paper Book ("APB" in short) we find that there is **clear indication of the names of all the Personal Guarantors therein which includes the present Appellant** (and also the other two Appellants whose appeals are also under consideration before us). Para 11 of the Section

13(2) SARFAESI addressed to the Corporate Debtor notice which **was also forwarded to the personal guarantors including the Appellant...**"

"20. Since the guarantee deed specifically mentioned that the guarantee was in the nature of an on-demand guarantee, the default was to arise on the part of the Guarantor only when the Demand Notice was issued as contemplated in the Deed of Guarantee. Thus, the period of limitation of the Personal Guarantor was to commence once the demand was made on the Guarantor by the Respondent No. 1 Bank. **Hence, the Notice dated 04.06.2021 issued by the Respondent No. 1 Bank to the Personal Guarantor has to be treated to be Notice on Demand as contemplated in the Deed of Guarantee. The Rule 7(1) Notice dated 28.06.2021 had therefore rightly recorded that the debt was due on 04.06.2021 being the date of Demand Notice under Section 13(2) of the SARFAESI Act and that the date of default occurred on 04.08.2021 on the expiry of 60 days from 04.06.2021.**"

34. Respondent contends that in the present case as well, the Demand Notice dated 12.04.2018 was also forwarded to the Respondent in his capacity as the Personal Guarantor of the Corporate Debtor. A bare perusal at the aforementioned Demand Notice indicates that the Respondent is addressed therein in his capacity as Guarantor and not as the Director of the Corporate Debtor and the same. Respondent further claims that the Original Lender at Paragraph 8 of the demand notice has specifically demanded the Respondent, in his capacity as a Guarantor, discharge in full his liability within 60 days from the receipt of the aforesaid notice. Additionally, a bare perusal of the Letter of Guarantee and the subsequent Supplementary Agreement executed by the Respondent clearly demonstrates that the guarantee is payable on

demand and that the Respondent is made jointly and severally liable for the repayment of the outstanding amount.

35. Thus, the Demand Notice dated 12.04.2018 was addressed separately to the Respondent in his capacity as a guarantor and that further a specific demand was made therein to the Respondent to discharge his liability in full as a guarantor, bringing the present case squarely within the ratio of **Asha Basantilal Surana (Supra) and Mavjibhai Nagarbhai Patel (Supra)**.

36. Respondent, thus, contends that the Demand Notice dated 12.04.2018 cannot be treated as an invocation of the Respondent's Personal Guarantee is patently false, incorrect, and untenable.

37. Respondent further claims that the reliance placed by the Appellant on the decision of this Hon'ble Court in **Amonjyot Singh v Navneet Kumar Jain & Ors., C.A. (AT) (INS.) No. 961 of 2022** is erroneous and grossly misconceived as the aforementioned decision is inapplicable to the facts of the present case and has been specifically distinguished by this Hon'ble Court in **Asha Basantilal Surana (Supra)** wherein it was held that:

"11. The above judgment [**Amonjyot Singh**] cannot be read to mean that this Tribunal has held that the personal guarantee can never be invoked by notice under Section 13(2). This Tribunal held in the above case that the Bank has taken a categorical case that no steps have been taken against the Appellant, hence, there is no cause for the Appellant to pray for initiation of the CIRP against the Appellant, the personal guarantor. In the above case, notice under Section 13(2) was issued on 04.10.2013 and application was filed after 7 years. Reasons for rejecting the application had been mentioned in paragraphs 11 and 12 which are as follows: -

‘11. In its reply, the Bank has submitted that although after sale of the mortgaged asset, part of the facility was realized, but no steps have been taken by the Bank against the Appellant for recovery of any dues. The notice, which is the basis of the Application, was issued on 04.10.2013. Nine years have been passed from issuance of the notice and no steps have been taken by the Bank so far for recovery of any amount from the Appellant. Default, which is claimed by the Appellant, at best can be said to be a technical default and when substantially, no steps have been taken by the Bank and the Bank’s categorical case is that guarantee of the Appellant has not been invoked, it is the Bank, who after invoking the guarantee shall proceed against the Appellant.

12. We, thus, are satisfied that foundation which was laid down by the Appellant for initiating the CIRP against the Appellant, was not sufficient to admit Section 94 Application and initiate the CIRP against the Appellant. We may further notice that Section 10 Application against the Corporate Debtor has already been admitted and CIRP against the Corporate Debtor had been initiated. The case taken up by the Bank being categorical and clear that no steps have been taken by the Bank against the Appellant, there is no cause for the Appellant to pray for initiation of CIRP against the Appellant – the Personal Guarantor. We, thus, do not find any good ground to interfere with the impugned order in this Appeal. The Appeal is accordingly dismissed. No costs.’

12. Thus, **the dismissal of the Appeal in the Amanjyot Singh’s case was on the facts of the said case and has no application in the facts of the present case. The invocation of personal guarantee has to be in accordance with the terms of the Guarantee Agreement which is a settled law.** Clause 7 of the Guarantee Agreement does not require any particular mode and manner of the demand notice. **When demand notice is issued against the personal guarantor asking the personal guarantor to discharge its liabilities, the guarantee stands invoked.** Whether notice under Section 13(2) in a particular case invoked the guarantee or not depends on the words and intent of the

notice. **For finding out as to whether Notice under Section 13(2) invoked the personal guarantee, the letters and words of the Notice has to be looked into to come to any conclusion that whether personal guarantor has been asked to discharge its liabilities or not.** In the facts of the present case, we are of the considered opinion that the Notice under Section 13(2) issued by the State Bank of India is a clear demand notice from the Appellant to pay the amount of Rs.28,56,64,336.06.”

38. Respondent further contends that unlike the factual situation in **Amonjyot Singh (Supra)**, in the present case pursuant to the Demand Notice dated 12.04.2018, the Original Lender had initiated Arbitration proceedings against the Corporate Debtor and the Guarantors under Section 84 of the Multi State Co-Operative Societies Act, 2002, wherein the Respondent herein was impleaded as Respondent No. 2 in his capacity as guarantor. At Paragraph 19 of the said application the Original Lender has specifically pleaded that the Respondent and other Guarantors of the Corporate Debtors must be made to discharge their obligations under their respective Guarantees. The Appellant has deliberately suppressed the fact of these proceedings in its Insolvency Petition since the same unequivocally demonstrates the fact that steps had already been taken by the Original Lender to invoke the Respondent’s Guarantee, and thus, the Insolvency Petition is barred by limitation.

39. Even if it is assumed but not admitted that the Respondent’s Personal Guarantee was not invoked vide Demand Notice dated 12.04.2018 under Section 13(2) of SARFEASI Act, 2002, the subject Guarantee in any case stood

invoked on July 2018 vide the Arbitration Application preferred by Original Lender against the Respondent.

40. Considering the aforesaid, even after discounting the period to be excluded on account of Covid19, the limitation period for filing the Insolvency Petition u/s 95 of the Code expired in July 2023. The Insolvency Petition however was only filed by the Appellant in October 2023, and as such, the same is barred by limitation and rightly dismissed by the Ld. Adjudicating Authority vide the Impugned Order.

41. The Appellant was well aware of the fact of the Arbitration Proceedings initiated against the Respondent amounting to invocation of his personal guarantee. The Appellant can in no manner claim ignorance of this fact, since the same has clearly been mentioned and elaborated in the purported Assignment Deed dated 30.03.2019 by which the Original Lender allegedly assigned its rights to the Appellant herein. Therefore, from the record of the case it is demonstrably clear that the Appellant was well aware of the Arbitration Application preferred against the Respondent in July 2018. Despite the aforesaid, the Appellant in the Insolvency Petition as well as even in pleadings in the present Appeal has not referred to the arbitral proceedings initiated by the Original Lender. The said document has been filed with the Appeal without any specific reference by the Appellant in the Appeal. The Appellant has approached this Appellate Tribunal, as well as the Adjudicating Authority before it, with unclean hands. The Appellant has suppressed material facts and documents with a view to distort the present case, and

illegally suppress the issue of limitation in its favour. The Appellant thus is clearly guilty of fraud and material suppression and consequently the present Appeal is liable to be dismissed at the very threshold on this ground alone.

Appraisal

42. Heard learned counsel for the Appellant Phoenix ARC and Respondents in both the Appeals and also perused the materials placed on record.

43. The main issue before us is whether mere issuance of notice under Section 13(2) can be considered as an invocation of guarantee and limitation to be calculated from that date of invocation for proceedings under IBC.

44. The Impugned Order made the following observations:

"22. We find that the Personal Guarantors were called upon to pay the amount in default due from the Corporate Debtor first vide notice issued u/s 13(2) of SARFAESI Act on 12.4.2018. This notice was issued to the Corporate Debtor as well as to its Personal Guarantors, which is clear from the first page of the notice itself. Para I of this notice reads that "That you No. 1 Co. through its Directors (i to iii) have been sanctioned and disbursed following Cash Credit at our Girgaon Branch, Mumbai and you No. 2 have stood as Mortgagor/Guarantor and You No. 3 to 5 have stood as Guarantors for the said Credit facility availed by No. I thereby guaranteeing, continuing joint and several liabilities towards payment of the dues." The person at No. 3 in the said notice is the Respondent herein. Para 8 of said notice states that "Therefore, you are hereby called upon u/s 13(2) of "The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002" by this notice to discharge in full your liability stated here under to the Bank within a period of 60 days from the date of receipt of this notice. Your outstanding liability due and owing to the Bank in respect of said Cash Credit facility is outstanding Rs. 15,37,21,490.50 (In

words Rs. Fifteen Crores Thirty Seven Lakhs Twenty One Thousand Four Hundred Ninety and Paise Fifty Only). You are also liable to pay further interest at the contractual rate on the aforesaid amount together with incidental expenses, costs and charges etc." Accordingly, the Personal Guarantors herein committed default in their obligation under the Guarantee after expiry of 60 days from the date of receipt of notice dated 12.04.2018. The said notice is stated to have been served through R.P.A.D/By Hand. The acknowledgement of this notice is evidenced on Page 162 of the Petition, when this notice is stated to have been received on 18.4.2018. Accordingly, the Personal Guarantors committed default on 16.6.2018. The period of 3 years expired on 15.6.2021. However, the Hon'ble Supreme Court, acknowledging the disruption caused by the COVID-19 pandemic, extended the limitation period, allowing an extra 90 days for any deadlines that fell between March 15, 2020, and February 28, 2022. This extended period expires on 29.05.2022. This Petition has been filed on 13.10.2023. Accordingly, this petition is barred by limitation and deserve to be dismissed.

23. In terms of the above, the C.P. (IB)/1175/MB/2023 filed under Section 95 of the IBC, 2016 is hereby dismissed."

Demand notice dated 12th April 2018 u/s 13(2) SARFAESI Act.

45. We note that Section 13 of the SARFAESI Act is a very elaborate section containing the steps which are required to be taken by a financial institution. We note that the Appellant (original lender) on 12th April 2018 had issued a Demand Notice under Section 13(2) of the SARFAESI Act to the Corporate Debtor, the directors of the Corporate Debtor and the Personal Guarantors to the Cash Credit Facility seeking repayment of outstanding amount of Rs. 15,37,21,490.50 (Rupees Fifteen Crores Thirty Seven Lakhs Twenty One

Thousand Four Hundred and Ninety and Paisa Fifty). The Appellant claims that the Section 13(2) notice issued was only to enforce the security interest mortgaged by the Corporate Debtor and the Adjudicating Authority ought to have considered this notice as issued against the borrower and not the personal guarantor. The Section 13 (2) Notice was issued against the Corporate Debtor for the enforcement of security mortgaged in favour of the Original Lender. Further, the Section 13 (2) Notice was also addressed to the Respondent as he was the Director of the Corporate Debtor. Therefore, the Section 13 (2) Notice cannot be in any manner be considered as invocation of guarantee provided by the Respondent. The Appellant contends that the Section 13(2) notice is a statutory requirement to intimate borrowers/guarantors about the default and invoking the security interest, and it is not concerned with the invocation of guarantee. The objective of the Section 13 of the SARFAESI Act is to empower the lenders to recover the outstanding dues from the borrowers by enforcing the security interests created in favour of the lenders. Appellant has further contended that the Adjudicating Authority has erred in calculating the period of limitation from the date of issuance of Section 13(2) Notice, i.e. 12th April 2018, instead of calculating from the date when the guarantee invocation letter was actually issued to the Respondent. Appellant contends that the Adjudicating Authority ought to have calculated the limitation period from the date of issuance of the demand notice invoking the guarantee, i.e. 23rd September 2022.

46. The Appellant further contends that the Respondent is the Personal Guarantor to the Cash Credit Facility availed by the Corporate Debtor. The

Respondent vide letter of guarantee dated 3rd December 2014 is obligated to repay the outstanding dues of the Corporate Debtor. The Appellant had sent demand notices on multiple occasions, more specifically on 23rd September 2022, 14th April 2023 and 6th June 2023 invoking the liability of the Respondent in the capacity of a guarantor to the Cash Credit Facility availed by the Corporate Debtor. The Respondent in response to the above-said demand notices, invoking guarantee, did not dispute the amount due and payable to the Appellant but only raised frivolous contentions to refute their obligation as a guarantor. Appellant, therefore in view of the aforesaid facts, issues and grounds raised, contends that the Impugned Order passed by the Adjudicating Authority is arbitrary, unlawful and defeats the objective of the Code.

47. Appellant further contends that the company petition seeking to initiate insolvency resolution process against the Respondent was filed on 13th October 2023, one year and 20 days from the date of invocation of the guarantee. Therefore, the company petition is not barred by limitation and the Impugned Order passed by the Adjudicating Authority ought to be set aside.

48. We find that the Personal Guarantors were called upon to pay the amount in default due from the Corporate Debtor first vide notice issued u/s 13(2) of SARFAESI Act on 12.4.2018. This notice was issued to the Corporate Debtor as well as to its Personal Guarantors, which is clear from the first page of the notice itself. Para 1 of this notice reads that

"That you No. 1 Co. through its Directors (i to iii) have been sanctioned and disbursed following Cash Credit at our Girgaon Branch, Mumbai and you No. 2 have stood as Mortgagor / Guarantor and You No. 3 to 5 have stood as Guarantors for the said Credit facility availed by No. 1 thereby guaranteeing, continuing joint and several liabilities towards payment of the dues."

49. The person at No. 3 in the said notice is the Respondent herein. Para 8 of said notice states that:

"Therefore, you are hereby called upon u/s 13(2) of "The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002" by this notice to discharge in full your liability stated here under to the Bank within a period of 60 days from the date of receipt of this notice. Your outstanding liability due and owing to the Bank in respect of said Cash Credit facility is outstanding Rs. 15,37,21,490.50 (In words Rs. Fifteen Crores Thirty Seven Lakhs Twenty One Thousand Four Hundred Ninty and Paise Fifty Only). You are also liable to pay further interest at the contractual rate on the aforesaid amount together with incidental expenses, costs and charges etc."

50. We find that the Personal Guarantors herein committed default in their obligation under the Guarantee after expiry of 60 days from the date of receipt of notice dated 12.04.2018 as per SARFAESI Act. Accordingly, the Personal Guarantors committed default on 16.06.2018.

51. The main contention of the Respondent is that the demand notice dated 12.04.2018 under Section 13(2) of the SARFAESI Act was also forwarded to the Respondent in his capacity as the Personal Guarantor of the Corporate Debtor. The demand notice specifically demands the respondent in his

capacity as a guarantor to discharge his liability in full within 60 days from the receipt of this notice. Since this was addressed in his capacity as guarantor and not as the Director of the Corporate Debtor, therefore the personal guarantee stands invoked on 12.04.2018 and the limitation starts from that date onwards. Respondent contends that without considering that the Respondent's guarantee was already invoked vide demand notice dated 12.04.2018, it issued further demand notices on 23.09.2022 and 14.02.2023 to the Respondent under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 ("**Personal Guarantor Rules**"). Respondent argues that even after discounting the period to be excluded on account of Covid19, the limitation period for filing the Insolvency Petition u/s 95 of the Code expired in July 2023 as it was filed by the Appellant in October 2023, and as such, the same is barred by limitation and rightly dismissed by the Adjudicating Authority vide the Impugned Order. Respondent further claims that the original lender i.e. Janta Sahkari Cooperative Bank had also initiated arbitration proceedings against the CD and the Guarantors under Section 84 of the Multi-State Cooperative Societies Act, 2002, wherein the respondent was also implemented as Respondent No.2 in his capacity as a guarantor. This fact has been suppressed by the Appellant. Appellant had issued further demand notices on 23.09.2022 and 14.02.2023 to the Respondent under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution

Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (“Personal Guarantor Rules”).

52. We note that the proceedings under SARFAESI and the proceedings under the IBC Code are independent proceedings and can run concurrently and there is no bar in holding the proceedings against the Personal Guarantor, even if the Personal Guarantor was prosecuted under SARFAESI Act. Furthermore, Section 238 of the Insolvency and Bankruptcy Code, 2016 which is a "non-obstante" clause gives the IBC overriding authority over any other laws or legal instruments that are inconsistent with its provisions. Notice issued under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (“Personal Guarantor Rules”) overrides the invocation of any other guarantee and this is a requirement under the Code and the Appellant could not have relied on the mechanism of SARFAESI Act while pursuing its remedies under the IBC Code.

53. It is claimed by the Appellant that the first notice under Rule 7(1) was issued on 23.09.2022. The respondent replied on 17.02.2023, raising the issue of maintainability of the show cause notice and denying its liability for the payment of the debt. Except for denying the liability generally, denial of the debt and the statements provided by the appellant were not replied by the Respondent. The heading of reply by the Respondent shows the reply is to modify the demand notice for change of the address of the guarantors and was claimed that this is an invalid notice. We find that such a denial is not a

satisfactory and not much credence be given to such a reply. Thereafter, another demand notice under Rule 7(1) was issued by the Appellant on 06.04.2023 which was replied by the Respondent vide letter dated 14.04.2023. However, the Respondent again did not reply satisfactorily but disputed the amount which was due and payable. The respondent acknowledges earlier notices but contends that it is a fraudulent notice, which is in violation of Section 10 of the Civil Procedure Code and raises that he was already being prosecuted by the Appellant under the SARFAESI Act.

54. Respondent has contended that the following cases hold that a notice u/s 13(2), SARFAESI Act, to the Corporate Debtor is also sufficient notice invoking the guarantor's liability, and the limitation period commences thereon:

- a. Asha Basantilal Surana v. State Bank of India & Ors., Judgment dated 15.05.2025 in Company Appeal (AT) (Ins) No. 84 of 2025**
- b. Mavjibhai Nagarbhai Patel v SBI & Anr., (2024) SCC OnLine NCLAT 2014**
- c. Ujwal Gupta v. Union Bank of India & Anr., (2026) SCC OnLine NCLAT 8**

55. Rebutting above arguments the Appellant places its reliance on this Appellate Tribunal's judgement in the case of **Amonjyot Singh v. Navneet Kumar Jain & Ors [C.A.(AT)(Ins.) No. 961 of 2022]** wherein it was held that Section 13(2) notice under the SARFAESI Act cannot be treated as an invocation of guarantee. Since there is acknowledgment by Principal borrower in its books of accounts, therefore it is an acknowledgment by the Principal

borrower and the limitation is extended. On the other hand, Respondent claims that the reliance placed on **Amanjyot Singh (supra)**, is ill-conceived, considering the notice under Section 13(2) of the Act is not an isolated event showing demand of payment from Guarantor and the same was distinguished by this Hon'ble Tribunal in **Asha Basantilal Surana (supra)** as well as **Ujwal Gupta (supra)**.

56. We find that in Asha Basantilal Surana this Appellate Tribunal had held that:

“The invocation of personal guarantee has to be in accordance with the terms of the Guarantee Agreement which is a settled law. Clause 7 of the Guarantee Agreement does not require any particular mode and manner of the demand notice. When demand notice is issued against the personal guarantor asking the personal guarantor to discharge its liabilities, the guarantee stands invoked. Whether notice under Section 13(2) in a particular case invoked the guarantee or not depends on the words and intent of the notice. For finding out as to whether Notice under Section 13(2) invoked the personal guarantee, the letters and words of the Notice has to be looked into to come to any conclusion that whether personal guarantor has been asked to discharge its liabilities or not.”

Similar conclusions have been drawn in **Ujwal Gupta (supra)** that

“The language and phraseology used in this notice would clearly demonstrate that it has been clearly communicated by the financial creditor, by this notice, that the addressees will have to discharge their liability in connection with CD within 60 days of receipt of this notice, pertaining to the credit facilities extended to the CD for the amount which has been mentioned in the notice.”

From the above-noted judgements we find that it is the language used in the Section 13(2) notice to find out whether the personal guarantee has been invoked or not. Herein this case the personal guarantee has been later on

separately invoked and furthermore their exists acknowledgement of debt in the books of accounts of the principal borrower which extends the limitation it for the personal guarantor also. Therefore, the facts of the present case are distinguishable and the above-mentioned judgments do not assist the case of the respondent.

57. Another ground which has been taken by the respondent is that the original lender had initiated arbitration proceedings against the corporate debtor wherein the respondent was also impleaded as a personal guarantor. And in their application under Section 84 of the Multi State Co-Operative Societies Act, 2002, ("**Arbitration Application**") the Original Lender has specifically pleaded that the Respondent and other Guarantors of the Corporate Debtors must be made to discharge their obligations under their respective Guarantees. As we have noted separately, the insolvency proceedings are independent proceedings and there is no bar for the appellant for initiating the proceedings under the code despite initiating arbitration proceedings. Therefore, such an argument come to the assistance of the respondent's case.

Acknowledgment of debt in the Books of Accounts of Principal borrower is acknowledgment by the PG

58. We note that in the Independent Auditor's Report dated 31.12.2020, the Corporate Debtor [M/s Raj Poly Products Limited] has acknowledged the debt against the Bank [Janata Sahakari Co-operative Bank], which was assigned to the Appellant [Phoenix Arc Private Limited]. The Auditor's Report

was attached to Form No. AOC-4 submitted to the Registrar of Companies for the financial year ending 31.03.2020.

59. We note that an acknowledgement made by a company in its balance sheet has the effect of extending the period of limitation for the purpose of Section 18 of the Limitation Act, 1963. And that such a position has been settled in the judgment of the Hon'ble Supreme Court in the matter of **Asset Reconstruction Co. (India) Ltd. v Bishal Jaiswal** (2021) 6 SCC 366. Furthermore, we also note that any acknowledgement made by the principal borrower would be deemed to be an acknowledgement by the guarantors. This Appellate Tribunal in the matter of **UCO Bank v M/s Poddar Mech Tech Services Pvt Ltd. in Company Appeal (AT)(Ins) No. 2157 of 2024** had adjudicated that when the debt was shown by the principal borrower in his financial statements, then acknowledgement made by the principal borrower is as good as the acknowledgement made by the guarantor.

60. The relevant extract of this Appellate Tribunal in **UCO Bank (supra)** reads as follows:

“23. We notice that the principal borrower in its balance sheet for the year ending 2020-2021 and 2021-2022 has acknowledged his liability and the debt towards the appellant (financial creditor). There is no quarrel with the proposition that the acknowledgement made by the principal borrower will tantamount to be an acknowledgment made by the guarantor and any acknowledgement made in writing within the limitation period already existing would further extend the period of limitation under Section 18 of Indian Limitation Act, 1963.”

61. We note clear acknowledgment of the debt in the independent auditor's report of the Corporate Debtor. This report was filed in Form AOC-4 for the Financial Year 2019-20 and was filed on 31.12.2020. This report acknowledges the existence of the debt and the relevant extract is as follows:

"The Company will have to directly deal with Phoenix in relation to debts and make all future payments in relation to the debt and the Company will have to contact Phoenix for all the future correspondences." [pg. 17]

62. Undoubtedly this acknowledgement extends the limitation for the Appellant and there is no satisfactory reply on record on this particular issue.

63. The above judgment of **UCO Bank (supra)** relies upon the judgment of Honorable Supreme Court **A. Navinchandra Steels Private Limited vs. SREI Equipment Finance Limited and Ors. (01.03.2021 - SC)** in which it was noted as follows:

....
A conspectus of the aforesaid authorities would show that a petition either Under Section 7 or Section 9 of the IBC is an independent proceeding which is unaffected by winding up proceedings that may be filed qua the same company. Given the object sought to be achieved by the IBC, it is clear that only where a company in winding up is near corporate death that no transfer of the winding up proceeding would then take place to the NCLT to be tried as a proceeding under the IBC. Short of an irresistible conclusion that corporate death is inevitable, every effort should be made to resuscitate the corporate debtor in the larger public interest, which includes not only the workmen of the corporate debtor, but also its creditors and the goods it produces in the larger interest of the economy of the country.

....

Navinchandra Steels Private Limited vs. SREI Equipment Finance Limited and Ors.: (2021) 4 SCC 435

64. The Respondent had claimed that proceedings for the insolvency of personal guarantors shall be before the Hon'ble DRT because there are prior proceedings pending before the Hon'ble DRT. However, we find that this Appellate Tribunal has settled the law in the **State Bank of India v Abhijeet Ferrotech Ltd. Company Appeal (AT)(Ins) No. 690 of 2024** held that pending proceedings before the Hon'ble DRT shall not bar initiation of CIRP filed under Section 7 of the Code. It was also held that proceedings under the Recovery of Debt and Bankruptcy Act, 1993, for recovery of dues to banks and proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016, are entirely different proceedings with different purposes and objects. Section 238 of the Code, having given overriding effect to the proceedings under Section 7, any order passed by the Hon'ble DRT cannot act as issue estoppel between the parties in reference to Section 7 proceedings.

65. In the above background, we note that in this case also the Independent Auditor's Report acknowledges the Corporate Debtor's debt to the Bank, which was assigned and transferred, with all claims and rights, to the Appellant. Adjudicating Authority mentioned the existence of the Independent Auditor's Report in the impugned order at para 12; but failed to take the same into consideration while calculating the period of limitation.

66. We can thus conclude that the limitation restarts for the personal guarantor from the date of acknowledgement in the CDs books of accounts.

Calculation of limitation

67. We further note that the limitation is the main ground for not admitting the PIRP. We have therefore worked out the limitation applicable in the facts and circumstances of the case, while applying Article 137 of the Limitation Act, 1963, read with the order dated 10.01.2022 passed by the Hon'ble Supreme Court in Suo Moto Writ Petition (C) No. 3 of 2020. We compare our calculation with what has been arrived at by Adjudicating Authority in the table below:

Date	Limitation per Adjudicating Authority	Our calculation of Limitation
12.04.2018	<u>Notice</u> under <u>Section 13(2) of the SARFAESI Act</u> issued to the Corporate Debtor and its Directors, including Respondents.	Default will happen after 60 days as per Section 13(2) of SARFAESI i.e. on 16.06.2018
16.06.2018	Default arose 60 days from the date of receipt of the notice dated 12.04.2018. Notice dated 12.04.2018 was delivered on 18.04.2018.	Date of default as per the Section 13(2) notice i.e. on 16.06.2018.
31.12.2020	Adjudicating Authority did not consider the acknowledgement of debt in the Independent Auditor's Report for the Financial Year 2019-2020	We need to consider the acknowledgment of debt in the Independent Auditor's Report for FY 2019-20. Thus, three years would be available from this day as the CD acknowledges the debt under Section 18 of the Limitation Act, 1963.
15.06.2021	Adjudicating Authority considers 15.06.2021 as the end date of the 3-year period from 16.06.2018.	3-year period would not expire on 15.06.2021 as the CD had acknowledged the debt against the Appellant, which shall have the effect of a fresh period of limitation, and shall be computed from the time when the acknowledgement was signed and as the

		acknowledgement in the audit report for the financial year 2019-2020 was made on 31.12.2020, 3-year period starts from this date.
15.03.2020-28.02.2022	The Limitation would begin on 28.02.2022 and continue for 90 days, ending on 29.05.2022, in terms of Clause 5(iii) of the order dated 10.01.2022 of Hon'ble Supreme Court.	COVID exemption would be applied and the limitation would begin from 01.03.2022 in terms of Clause 5(i) of the order dated 10.01.2022.
29.05.2022	Adjudicating Authority held limitation would expire on this date i.e. 29.05.2022.	The limitation would not expire on this date i.e. 29.05.2022 because the CD Debtor had acknowledged the debt against the Appellant on 31.12.2020, which will extend the period of limitation for three years after the COVID-19 exclusion expires, i.e., three years from 28.02.2022.

68. From the above table, we find that limitation would not expire on 29.05.2022. We further note that the Company Petition Nos. 1175 and 1176 were filed before the Adjudicating Authority on 13.10.2023 and basis above analysis, three years starting from 01.03.2022 would expire on 01.03.2025. Accordingly, we find that this petition is not barred by limitation and deserve to be entertained.

Conclusions

69. In the present case notice under section 13(2) of the SARFAESI Act was issued on 12th April 2018. Keeping that date as the invocation of personal guarantee, the adjudicating authority after taking into account 90 days of the Covid exemption, has concluded that the limitation would expire on 29.5.2022. We find that the Adjudicating Authority did not consider the

acknowledgement of debt in the Independent Auditor's Report for the Financial Year 2019-2020 dated 31.12.2020. We need to consider the acknowledgment of debt in the Independent Auditor's Report for FY 2019-20. Thus, three years would be available from this day as the CD acknowledges the debt under Section 18 of the Limitation Act, 1963. Thus, three years would be available from 31.12.2020, which is the date of acknowledgement in books of accounts of the CD.

70. Adjudicating Authority considers 15.06.2021 as the end date of the 3-year period from 16.06.2018. We find that 3-year period would not expire on 15.06.2021 as the CD had acknowledged the debt against the Appellant, which shall have the effect of a fresh period of limitation, and shall be computed from the time when the acknowledgement was signed and as the acknowledgement in the audit report for the financial year 2019-2020 was made on 31.12.2020, 3-year period starts from this date.

71. The adjudicating authority has come to a conclusion that the limitation would begin on 28.02.2022 and continue for 90 days, ending on 29.05.2022, in terms of Clause 5(iii) of the order dated 10.01.2022 of Hon'ble Supreme Court¹. Thus, limitation would expire on 29.05.2022 as per the conclusions

¹ Hon'ble Supreme Court passed in ***In Re: Cognizance for Extension of Limitation, Writ Petition (Civil) No. 3 of 2020***, it was held as follows:

"1. In March, 2020, this Court took Suo Motu cognizance of the difficulties that might be faced by the litigants in filing petitions/applications/ suits/ appeals/ all other quasi proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central and/or State) due to the outbreak of the COVID-19 pandemic.

2. On 23.03.2020, this Court directed extension of the period of limitation in all proceedings before Courts/Tribunals including this Court w.e.f. 15.03.2020 till further orders. On 08.03.2021, the order

of the AA. We however find that COVID exemption would be applicable and the limitation would begin from 01.03.2022 in terms of Clause 5(i) of the order dated 10.01.2022. Thus, the limitation would not expire on 29.05.2022

dated 23.03.2020 was brought to an end, permitting the relaxation of period of limitation between 15.03.2020 and 14.03.2021. While doing so, it was made clear that the period of limitation would start from 15.03.2021.

3. Thereafter, due to a second surge in COVID-19 cases, the Supreme Court Advocates on Record Association (SCAORA) intervened in the *Suo Motu* proceedings by filing Miscellaneous Application No. 665 of 2021 seeking restoration of the order dated 23.03.2020 relaxing limitation. The aforesaid Miscellaneous Application No.665 of 2021 was disposed of by this Court vide Order dated 23.09.2021, wherein this Court extended the period of limitation in all proceedings before the Courts/Tribunals including this Court w.e.f 15.03.2020 till 02.10.2021.

4. The present Miscellaneous Application has been filed by the Supreme Court Advocates-on-Record Association in the context of the spread of the new variant of the COVID-19 and the drastic surge in the number of COVID cases across the country. Considering the prevailing conditions, the applicants are seeking the following:

- i. allow the present application by restoring the order dated 23.03.2020 passed by this Hon'ble Court in *Suo Motu* Writ Petition (C) NO. 3 of 2020; and
- ii. allow the present application by restoring the order dated 27.04.2021 passed by this Hon'ble Court in M.A. no. 665 of 2021 in *Suo Motu* Writ Petition (C) NO. 3 of 2020; and
- iii. pass such other order or orders as this Hon'ble Court may deem fit and proper.

5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the **M.A. No. 21 of 2022** with the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

because the CD Debtor had acknowledged the debt against the Appellant on 31.12.2020, which will extend the period of limitation for three years after the COVID-19 exclusion expires, i.e., three years from 28.02.2022. Thus, we find that limitation would not expire on 29.05.2022. We further note that the Company Petition Nos. 1175 and 1176 were filed before the Adjudicating Authority on 13.10.2023 and basis above analysis, three years starting from 01.03.2022 would expire on 01.03.2025. Accordingly, we find that this petition is not barred by limitation and deserve to be entertained.

72. We also note that the Appellant's rights under the Code cannot be questioned by the Respondent while replying to the notices issued under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 ("Personal Guarantor Rules"). Had the Appellant not invoked Rule 7(1), the situation would have been different but the Appellant cannot be faulted for proceeding under Rule 7(1) of the Code. We do not therefore find the argument of the Respondent to be convincing that the personal guarantee already stood invoked and while pursuing its remedies under the Insolvency Code, the appellant has to compulsorily rely on the invocation under SARFAESI Act. The respondent doesn't have a right to claim benefit who has not even satisfactorily denied the debt and the default as a personal guarantor.

Orders

73. Basis above analysis we find that the above set of petitions are not barred by limitation. Accordingly, the C.P. (IB)/1174/MB/2023 filed under Section 95 of the IBC, 2016 is hereby allowed.

74. Further the facts in C.P. (IB)/1175(MB)2023 filed to initiate Insolvency Resolution Process against another Personal Guarantor Ms. Hema Rajendra Salot are identical to this case, as she was also Personal Guarantor to the credit facilities extended by the Financial Creditor herein to the Corporate Debtor herein under the same deed of guarantee and she was stated as Person No. 4 in the notice dated 12.04.2018. Accordingly, C.P. (IB)/1175(MB)2023 is also allowed.

75. All IAs are disposed of. No order as to costs.

[Justice Mohd. Faiz Alam Khan]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi.
March 24, 2026.

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