

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
Company Appeal (AT) (CH) (Ins) No. 256/2025
(IA Nos.725 & 726/2025)

In the matter of:

MR. M CHANDRA BUSHANASWAMY REDDY,
S/o Mr M Pedda Yella Reddy,
H.No.8-2-293/NL/188, Road No.10C,
MLA-MP Colony, Jubilee Hills,
Hyderabad-500033, Telangana State

...APPELLANT

V

**NATIONAL BANK OF AGRICULTURE AND
RURAL DEVELOPMENT (NABARD),**

Having its Karnataka Regional Office at
NABARD Tower,46, Kempe Gowda Road, P.B.No. 9944,
Bengaluru-560009

...RESPONDENT NO.1

CHAKILAM NAGARJUNA RAO,

Insolvency Professional
Flat No.202, JS Leela Narsing Residency,
H.No.12-5-55/3/1/A, Vijayapuri, Tarnaka ,
Near SBI, North Lallaguda Branch,
Hyderabad, Telangana ,500017

...RESPONDENT NO.2

Present :

For Appellant : Mr. S. Ravi, Senior Advocate
For Mr. Rohan Aloor, Advocate
For Respondents : Mr. T. Ravichandran, Advocate for R1

JUDGMENT
(Hybrid Mode)

[Per: Justice Sharad Kumar Sharma, Member (Judicial)]

The Appellant is the Personal Guarantor, who seeks redressal of his grievances being aggrieved as against the impugned order of 20.02.2025,

(Amended on 24.02.2025), as it was passed in CP (IB)NO. 83/95/HDB/2023, consequentially resulting into admission of the process of IRP against the Appellant under Section 95 of the I & B Code. Looking to the tenacity of argument of the Ld. Counsel for the parties, we are not required rather were not even called upon to venture into a very detailed elaboration of the factual backdrop of the instant company appeal under which the dispute is arising, except for dealing with the issue of limitation, as to whether the IRP proceedings initiated under 95 of the I & B Code, are barred by limitation.

2. The Appellant contends that, he is a Non-Executive Director of the M/s. Smaat India Pvt. Ltd. (formerly known as M/s. Smaat Aqua Technologies Pvt. Ltd., CD) and also a Personal Guarantor of Corporate Debtor. A proceeding in the shape of Section 95 of the I & B Code stood initiated by the National Bank for Agriculture and Rural Development (NABARD), (hereinafter to be called as Creditor), as against the present Appellant, the Personal Guarantor, of the Corporate Debtor, who was the Principal Borrower of the financial assistance. The proceedings were initiated for the purposes of recovery of the outstanding amount of Rs. 6,24,89,526/-.

3. The Creditor had extended the financial assistance with the sanction of loan of Rs. 6.39 crores vide loan sanction letter dated 26.12.2012, consequent to which the loan was guaranteed under the Personal Guarantee Deed that was got executed by the Appellant and such four other persons by executing the same on 11.01.2013.

However, immediately after executing the Guarantee Agreement, the Appellant claims to have resigned from the directorship of the Corporate Debtor on 01.04.2013. But his resignation as a Director from the Corporate Debtor doesn't absolve him of his status of still continuing to be the Personal Guarantor of the financial assistance extended to the Corporate Debtor by the Creditor, under the terms of loan agreement of 26.12.2012, which was assured by the Personal Guarantee Deed of 11.01.2013. That, there was a default by the Corporate Debtor in re-paying the debt, that there was a debt due to be paid, that the Appellant was the Personal Guarantor, are the facts which are not denied.

4. The Ld. Senior Counsel for the Appellant has only confined his argument from the perspective that, the entire proceedings are barred by limitation, since having been initiated, after the lapse of more than three years from the actual date of default, the same couldn't have been permitted to be taken on record, to be proceeded to be adjudicated on merits, and it deserved dismissal on this limited ground itself. In order to substantiate his argument, the Ld. Senior Counsel for the Appellant had drawn the attention of this Appellate Tribunal to certain documents, contending thereof that the entire proceedings would be barred by limitation.

5(A). In relation thereto, the Ld. Senior Counsel for the Appellant, has referred to the first communication that, was made on 29.01.2016 by way of a Reference No. NB.KN./UPNRM-12-SMAAT/993/2015-16. This letter was addressed to Mr. M. Karunakara Reddy, the Managing Director of the Corporate Debtor. We make

it clear at this juncture, that it was not a communication, that was made to the Appellant in the capacity of the Personal Guarantor. Apart from it, if the said communication itself is taken on into consideration, which the Ld. Senior Counsel for the Appellant has projected, as if, it was a loan recall notice, that argument may not be acceptable to be appreciated by this Appellate Tribunal for the reason that, as per the contents of para 3 of the said letter, which is extracted hereunder: -

"3. As per the terms and conditions of the Sanction Letter and Loan Agreement read with the NABARD Act, NABARD is entitled to recall the entire outstanding amount for breach of the terms and conditions under Clause 2(g) of the Loan Agreement dated 11 January 2013 as well as Section 34 of the NABARD Act for the reasons mentioned above."

6. After referring to the conditions of sanction of loan, and referring to the default committed by the Corporate Debtor to whom the letter was addressed, the Creditor observed that, "**the Creditor is entitled to recall**". Meaning thereby this expression given in the letter itself may not be treated as to be a recalling of the loan for the purposes of determining the cut-off of limitation rather it only expressed an intention for recall. For the reason being that,

- i. It was addressed to the corporate debtor,
- ii. That it was only showing an expression of default.
- iii. It only gave an expression of the Creditor's right to recall the loan.
- iv. Making the corporate Debtor conscious of the Creditor's right to recall the loan, by the communication of 29.01.2016.

7. We are of the view that, correspondence in itself may not be treated as to be a loan recall notice, since, this letter has been misread by the Appellant and therefore it will be of no relevance for the purposes of the instant proceedings of admission of Section 95 application. Even otherwise also, as per the said letter itself, the copy, the letter dated 29.01.2016 was not independently sent to the Appellant and only a copy was, vide a letter bearing a distinct number being 993-2015-16, was sent to him. Therefore, this communication dated 29.01.2016, since not being a direct address to the Personal Guarantor by the Creditor, cannot be treated as to be a recall for the purposes to take the date of 29.01.2016, as to be the cut-off date to determine the aspect of limitation. This communication was also sent to other Guarantors & Directors by letter dated 27.01.2016 bearing Nos. 994-998.

8.(B). The Ld. Senior Counsel for the Appellant had submitted that there was a 2nd invocation that was made on 30.11.2018, which he contends that it could too be taken as to be the basis to determine the limitation for the reason that it was in the manner of a demand notice. If we refer to the said communication bearing No. NB.KA/UPNRM-12-SMAAT-3232-2018-19 dated 30.11.2018 (Page 11 to the Rejoinder), it was a letter which was addressed by the Creditor, to the Appellant wherein, it was once again in the shape of an intimation that if the amount was not paid as it was assured to be paid under the Guarantee Agreement dated 11.01.2013, legal action will be taken as permissible under law. This correspondence of

30.11.2018 too was yet again neither a loan recall notice, nor it was a notice as contemplated under Section 95 (4) (b) of the I & B Code, which can be taken to be in form of a notice of demand issued to satisfy the ingredients for the purposes of initiation of the proceedings under Section 95, which is a condition precedent under law, prior to filing of an application under Section 95. Further, since the said communication was not falling within an ambit under Section 95 (4) (b) of the I & B Code, it cannot be treated as to be a loan invocation notice or even a notice to Appellant as argued by the Ld. Senior Counsel for the Appellant to support his argument that the initiation of proceedings under Section 95 was barred by limitation.

9.(C). Lastly and more importantly, the Ld. Senior Counsel for the Appellant himself has drawn the attention of this Appellate Tribunal, to yet another correspondence of 03.08.2020, which was addressed to the Appellant by the Creditor by way of a correspondence number NB.KA(UPNRM-Smaat)-/715/2020-21 dated 03.08.2020. This correspondence, which was being addressed to the Personal Guarantor had made a specific reference to the earlier communication as referred to by this Appellate Tribunal in Clause (A) of this judgment pertaining to the Communication No. 994 dated 27.01.2016, which found a reference in the said letter of 03.08.2020. In fact, it is this letter by virtue of which the Creditor has expressed his clear intention to invoke the aforesaid guarantee dated 11.01.2013, owing to the default committed by the Corporate Debtor. The Clause (4) of the said

letter, which specifically gives an expression of revocation of the guarantee, is extracted hereunder: -

*"4. We regret to advise that **despite adequate notice** having been given under intimation to you, M/s Smaat Aqua Technologies Private Limited has failed to clear the dues to NABARD amounting to Rs.5,57,47,862/- (Rupees Five Crore Fifty Seven lakh Forty seven thousand Eight Hundred and Sixty Two Only). **We therefore, hereby invoke the aforesaid guarantee dated 11.01.2013**, executed by you and call upon you to pay to NABARD entire principal sum outstanding of Rs.3,18,12,594 /-as on date, defaulted interest of Rs. 2,39,35,268/- as on 04:08.2020, immediately, failing which NABARD would be constrained to take appropriate legal action in this regard."*

10. Now, the question that falls for consideration is as to, whether argument of Ld. Senior Counsel for the Appellant in context of the communication of 29.01.2016 and of 30.11.2018 in the light what we have observed above, could at all be taken as to be a loan recall notice or whether it could at all be taken as to be a notice required to be issued prior to the initiation of proceedings under Section 95 of the I & B Code. Our answer would be that on a composite reading of these two communications, which were issued by the Creditor, it only intimated a particular situation of default and the intention of the Creditor intending to initiate a proceedings, and that it never intended to immediately recall the guarantee or to act as a notice to initiate Section 95 of the I & B Code. Hence, the dates given therein, i.e., 29.01.2016 and 30.11.2018, cannot be taken as to be the cut-off for the purposes of determining the aspect of limitation for initiation of the proceedings

under Section 95 of the I & B Code, which stood initiated on 09.02.2023 (as provided by the Appellants in the company appeal).

11. The Ld. Counsel for the Respondent observed that, the interpretation that had been given by Ld. Senior Counsel for the Appellant qua the correspondences, which has been referred to by this Appellate Tribunal in the above paragraphs is absolutely a misnomer as those communications never had an intention to recall the loan, nor were in the shape of a notice for initiation of proceedings under Section 95 of the I & B Code. In that eventuality, he argues that the start-date of limitation period as contemplated under Article 137 of the Limitation Act cannot be determined on the basis of the letters dated 29.01.2016 and 30.11.2018.

12. He submits that, and rightly so, that as a matter of fact, the actual recall has taken place when the guarantee was actually invoked by the correspondence of 03.08.2020, the relevant para 4 of which has been extracted above. By the said correspondence, the Creditor has given a definite expression that, he hereby invokes the aforesaid guarantee of 11.01.2013, meaning thereby, the invocation of the guarantee had actually and effectively taken place on 03.08.2020, and if the said letter is taken as to be the notice for initiation of proceedings under Section 95 of the I & B Code, the initiation of Section 95 proceedings on 09.02.2023, would be well within the period prescribed under Article 137 of the Limitation Act, and it will not be barred by limitation.

13. Besides this no other point/issue was pressed by the Ld. Senior Counsel for the Appellant. We see no logical reasons to accept the argument extended by the Ld. Senior Counsel for the Appellant that limitation should be determined from either 29.01.2016 or 30.11.2018, because the communications made on those dates were only normal communications and they never intended to recall the loan or invoke the Personal Guarantee. Since the actual revocation of the Personal Guarantee has taken place on 03.08.2020 and the proceedings under Section 95 of the I & B Code was initiated on 09.07.2023, the proceedings cannot be said to be barred by limitation, which was a short question argued by the Ld. Senior Counsel for the Appellant, which is answered accordingly against him.

14. Consequently, the 'company appeal' lacks 'merit', and the same is 'dismissed'. All pending interlocutory applications would stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

09/04/2026
SN/MS/AK