

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 2038 of 2024 & I.A. No. 738 of 2025

(Arising out of the Order dated 23.10.2024 passed by the National Company Law Tribunal, Ahmedabad Bench, in Company Petition (IB) No. (IB)/200(AHM) 2024 with IA/1072(AHM)2024) and Company Petition (IB)/199(AHM) 2024 with IA/1068(AHM)2024

IN THE MATTER OF:

Amit Bhatnagar

S/O Sh. Suresh Narain Bhatnagar,
Aged Around 42 Years, R/O 6 Green Park,
Nizampura, Vadodara, Gujarat 380005

...Appellant

Versus

1. UCO Bank

Having Its Branch Office At:

Mid Corporate Branch, 14-17 Earth Complex, Akshar
Chowk, Old Padra Road, Vadodara 390020
Through Authorized Representative,
Vishal Dileep Rao Niam

...Respondent No. 1

2. CS & IP Amrish Gandhi

Resolution Professional 504, Shivalik Abaise,
Nr. Anand Nagar Bus Stand,
Opp Shell Petrol Pump Anand Nagar Road,
Satellite, Ahmedabad 380015

...Respondent No. 2

3. Indian Overseas Bank

Having its Registered Office:

At 703, Anna Salai,
Chennai-600002

Having its Branch Office at: -

Asset Recovery Management Branch,
Ground Floor, Sharad shopping, opp.

Handloom House Chinubhai tower centre Chinubhai
tower Road, Ashram Road, Ahmedabad - 380009

... Intervenor

Present

For Appellants: Mr. Malak Bhatt, Ms. Neeha Nagpal & Ms. Sukanya Joshi, Advocates.

For Respondents: Mr. Amrish Gandhi, Advocate for RP
Mr. Jaimohan, Mr. Aayush Gupta, Advocates for R-1
Ms. Swati Sood, Advocate

With

Comp. App. (AT) (Ins) No. 2039 of 2024 & I.A. No. 740 of 2025

IN THE MATTER OF:

Sumit Bhatnagar

S/O Sh. Suresh Narain Bhatnagar, Aged Around 42
Years, R/O 6 Green Park, Nizampura,
Vadodara, Gujarat 380005

...Appellant

Versus

1. UCO Bank

Having Its Branch Office At:

Mid Corporate Branch, 14-17 Earth Complex, Akshar
Chowk, Old Padra Road, Vadodara 390020
Through Authorized Representative,
Vishal Dileep Rao Niam

...Respondent No. 1

2. CS & IP Amrish Gandhi

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For Appellants: Mr. Malak Bhatt, Ms. Neeha Nagpal & Ms. Sukanya Joshi, Advocates.

For Respondents: Mr. Amrish Gandhi, Advocate for RP
Mr. Jaimohan, Mr. Aayush Gupta, Advocates for R-1
Ms. Swati Sood, Advocate

J U D G E M E N T

(12 .05.2026)

NARESH SALECHA, MEMBER (TECHNICAL)

1. There are two appeals in the present case. We are taking both the appeals together. The appeals have been filed by the Appellants i.e., Amit Bhatnagar and Sumit Bhatnagar, who are the Personal Guarantors of M/s Diamond Power Transformers Ltd. (**“Corporate Debtor”**), under Section 61 of the Insolvency and Bankruptcy Code, 2016 (**‘Code’**) against the Order dated 23.10.2024 ("Impugned Order") passed by the National Company Law Tribunal, Ahmedabad Bench (**"Adjudicating Authority"**) in Company Petition (IB) No. Company

Petition (IB) No. (IB)/200(AHM) 2024 with IA/1072(AHM)2024 and Company Petition (IB)/199(AHM) 2024 with IA/1068(AHM)2024.

UCO Bank, who is the Financial Creditor of the Corporate Debtor, is the Respondent No.1/Respondent Bank, herein.

CS & IP Amrish Gandhi, who is the Resolution Professional of Mr. Amit Bhatnagar and Mr. Sumit Bhatnagar, is Respondent No. 2, herein.

Indian Overseas Bank, who was the other Financial Creditor of the Corporate Debtor in addition to Respondent No.1 /UCO Bank, is the Intervenor in both the appeals.

2. We will refer both UCO Bank- Respondent No. 1 and Indian Overseas Bank-Intervenor, as “Consortium Banks”, since their cause and grounds are same, hereinafter.

3. The Appellants submitted that the Consortium Banks extended a credit facility of Rs. 40 crores to the Corporate Debtor (DPTL) on 15.10.2011, which was renewed on 29.06.2013. Pursuant thereto, a Consortium Agreement dated 31.03.2015 was executed for an aggregate credit facility of Rs. 114.60 crores. The Appellants contended that despite the explicit terms of the said Consortium Agreement, the Consortium Banks failed to disburse Rs. 24 crores to the Corporate Debtor (DPTL). This non-disbursement amounted to a unilateral variation in the essential terms of the Consortium Agreement and a breach of the obligations assumed by the Consortium Banks thereunder.

4. The Appellants submitted that the Deed of Guarantee dated 31.03.2015 executed by the Appellants and Diamond Power Infrastructure Ltd. (DPIL) (Corporate Guarantor) in favour of the Consortium Banks was predicated entirely upon the Consortium Agreement and the promised disbursement of the full Rs. 114.60 crores. The Appellants contended that the failure to disburse Rs. 24 crores constituted a material alteration in the terms of the contract between the creditor and the principal debtor without the consent of the sureties. Consequently, the Appellants stands fully discharged from all liability under the Deed of Guarantee in terms of Section 133 of the Indian Contract Act, 1872, and the Adjudicating Authority was duty-bound to recognise the same while examining the petition under Section 95 of the Code.

5. The Appellants submitted that the account of the Corporate Debtor (DPTL) was declared NPA on 30.07.2016, leading to admission of Company Petition (IB) No. 28 of 2017 under Section 10 of the Code on 06.07.2017 and subsequent order of liquidation dated 19.03.2018 in IA No. 92 of 2018. Separately, the lead bank of the Consortium (Bank of India) initiated proceedings under Section 7 against the Corporate Guarantor (DPIL), resulting in admission into CIRP on 24.08.2018. The Appellants contended that the Consortium Banks filed its claim before the Resolution Professional of DPIL, which was accepted and crystallised on the strength of the corporate guarantee furnished by DPIL for the dues of the Corporate Debtor (DPTL). The said claim were dealt with and satisfied in full under the approved Resolution Plan.

6. The Appellants submitted that the Resolution Plan of the Corporate Guarantor (DPIL) was approved by the Committee of Creditors on 06.01.2022 with 89.46% voting share and thereafter allowed by the Adjudicating Authority on 20.06.2022 in CP (IB) No. 137 of 2018. The Consortium Banks, being a member of the Committee of Creditors, actively participated and accorded its consent to the Resolution Plan, which expressly dealt with and extinguished its entire claim. The Appellants contended that the Successful Resolution Applicant took over management of DPIL and made upfront cash payments as well as deferred payments to all financial creditors, including the Respondent Bank, and issued Bond Certificate No. 17 dated 17.09.2022 bearing face value of Rs. 49,96,91,500/- in favour of the Respondent Bank. Thereafter, the Successful Resolution Applicant repurchased the said bonds from the Respondent Bank under the Bond Repurchase Agreement dated 07.10.2022 executed with M/s Gomax. The Respondent Bank further issued an Acknowledgement Letter dated 07.10.2022 to the Successful Resolution Applicant (Consortium of GSEC Ltd. with Rakesh Shah) expressly accepting the treatment of its claims under the approved Resolution Plan as full and final settlement.

7. The Appellants submitted that the dues of the Consortium Banks stood completely extinguished and satisfied in accordance with the approved Resolution Plan of the Corporate Guarantor (DPIL), which is binding on all stakeholders under Section 31 of the Code. The Appellants contended that after a lapse of more than two years from the date of full satisfaction and

acknowledgement, the Consortium Banks issued Demand Notice dated 25.01.2024 claiming an amount of Rs. 116,15,08,125/- towards purported outstanding liability and interest and thereafter filed Company Petition (IB) No. 200 of 2024 under Section 95 of the Code seeking initiation of insolvency resolution against the Appellants as personal guarantors while claiming an aggregate sum of Rs. 116.40 crores. The Appellants submitted that no debt or liability whatsoever survives against the Appellants in view of the complete extinguishment of the underlying debt through the CIRP of the Corporate Guarantor (DPIL).

8. The Appellants contended that the Resolution Professional (Respondent No. 2) filed a Report dated 06.07.2024 under Section 99 of the Code mechanically confirming a default of Rs. 122.19 crores without any independent scrutiny of documents, without examining the discharge of the guarantee under Section 133 of the Contract Act, 1872, without considering the approved Resolution Plan of DPIL, and without addressing the issue of limitation. The Report is a verbatim reproduction of the petition filed by the Respondent Bank and discloses no application of mind. The Appellants submitted that the Resolution Professional failed to discharge the statutory duty cast under Section 99(2) of the Code to examine whether the application satisfies the requirements of Section 95(4), including existence of a debt, occurrence of default, and production of relevant evidence of non-repayment.

9. The Appellants contended that the petition under Section 95 of the Code does not fulfil the mandatory criteria prescribed under Section 95(4) inasmuch as there is no debt owed by the Appellants to the Respondent Bank after full satisfaction under the DPIL Resolution Plan, there has been no failure to pay any subsisting debt within fourteen days of demand, and no credible evidence of any default has been produced. The Appellants submitted that in the absence of any existing debt or default, the petition was not maintainable and ought to have been rejected at the threshold.

10. The Appellants submitted that the claim are barred by limitation. The NPA date is 30.07.2016, the liquidation order records default as on 19.03.2018, and the Demand Notice was issued only on 25.01.2024. The Appellants contended that the Consortium Banks failed to demonstrate any acknowledgment of debt or any continuous cause of action that could extend the period of limitation under the Limitation Act, 1963. The proceedings under Section 95 are thus barred by time and the Adjudicating Authority erred in not dismissing the petition on this ground alone.

11. The Appellants contended that the Resolution Professional (Respondent No. 2) had itself issued a No Dues Certificate confirming complete settlement of all dues of the Corporate Guarantor (DPIL) and had also ensured deletion of the name of DPIL from the list of defaulters. Having accepted full and final payment under the Resolution Plan, the Consortium Banks have no locus to pursue any further claim against the Appellants/personal guarantors. The Appellants

submitted that once the corporate guarantor's liability has been discharged and the debt extinguished, no residual or balance claim can be enforced against the Appellants under the principle of co-extensiveness of guarantees and the doctrine of discharge by performance.

12. The Appellants submitted that the impugned order dated 23.10.2024 passed by the Adjudicating Authority in Company Petition (IB) No. 200 of 2024 and Company Petition (IB) No. 199 of 2024 are perverse, passed in a callous and casual manner without appreciation of facts or law, and is contrary to the scheme and object of the Code. The Appellants alleged that the Adjudicating Authority failed to consider the discharge of the guarantee, the binding nature of the approved Resolution Plan of DPIL, the acknowledgement of full settlement by the Respondent Bank, the absence of any subsisting debt, and the bar of limitation. The order merely reiterates the erroneous Report of the Resolution Professional without independent application of mind.

13. The Appellants contended that the entire proceedings initiated by the Respondent Banks are an afterthought and an attempt at unjust enrichment and extortion in flagrant violation of the provisions of the Code and settled principles of law. The Appellants submitted that the present appeal have been preferred bona fide and in the interest of justice.

14. Concluding their arguments, the Appellants requested this Appellate Tribunal to set aside the Impugned Orders and allow both appeals.

15. Per contra, the Consortium Banks denied all averments made by the Appellants as misleading and baseless.

16. The intervenor (Indian Overseas Bank) submitted that it has been impleaded as a party to the present appeal in view of its significant financial interest in the outcome of the proceedings. The intervenor contended that the Applicant/Respondent Bank holds substantial outstanding dues aggregating to Rs. 273.34 crores as on 23.10.2024, recoverable from Diamond Power Transformers Ltd. (DPTL) and Diamond Power Infrastructure Ltd. (DPIL), and the adjudication of the present appeal directly impacts the rights and remedies available to the intervenor in respect of the said dues.

17. The Consortium Banks contended that the debts owed by the Appellants as personal guarantors have not been settled or extinguished in terms of the Resolution Plan dated 20.06.2022 approved in the CIRP of the corporate guarantor (DPIL). The Consortium Banks submitted that the acknowledgement letter dated 07.10.2022 and the treatment of its claim under the said Resolution Plan were limited to the amount crystallised and admitted in the CIRP of DPIL and do not operate as a discharge or waiver of the remaining unpaid dues of the Consortium Banks recoverable from the Appellants under the personal guarantee and the final adjudication made by DRT-II, Ahmedabad vide judgment and Recovery Certificate dated 06.02.2020 in OA No. 436 of 2018.

18. The Consortium Banks contended that they had extended a credit facility of Rs. 40,00,00,000/- as part of the consortium arrangement. The total sanctioned

limit under the Consortium Agreement dated 31.03.2015 was Rs. 114,60,00,000/- (Rs. 40 crores by the Respondent No. 1 + Rs. 50.60 crores by Indian Overseas Bank + additional Rs. 24 crores). The Consortium Banks submitted that the plea of alleged non-disbursement of Rs. 24,00,00,000/- is wholly misconceived, non-jurisdictional under the code, and in any event stands finally adjudicated and rejected by the DRT in the above-referred recovery proceedings. The Consortium Banks contended that the liabilities of the Appellants have been conclusively determined by the DRT for a sum of Rs. 109,11,40,210.00 together with interest at 14.25% p.a. and penal interest at 2% p.a. with effect from 12.04.2018, which adjudication has attained finality.

19. The Consortium Banks submitted that there was never any unilateral variation in the terms of the loan or the Deed of Guarantee dated 31.03.2015 executed by one of the Appellant, Sumit Bhatnagar and DPIL. The Consortium Banks contended that the plea of discharge of the guarantee under Section 133 of the Indian Contract Act, 1872 is completely misconceived and ill-founded, inasmuch as the alleged non-disbursement (if any) of part of the limit does not constitute a material alteration that discharges the personal guarantor, more particularly when the entire matter has been adjudicated by the DRT and the Recovery Certificate has been issued. The Consortium Banks submitted that the said plea is hit by the principles of res judicata and is non-est in proceedings under the Code.

20. The Consortium Banks contended that the CIRP proceedings initiated by Bank of India (Lead Bank of Consortium of Banks) against DPIL (corporate guarantor) under Section 7 of the Code were in respect of an independent lending transaction and have no bearing on the separate and distinct rights of the Consortium Banks to recover their own dues from the Appellants as personal guarantors. The Consortium Banks submitted that although claims were filed by the Consortium Banks in the CIRP of DPIL, the law is well-settled that recovery proceedings can validly continue against non-CIRP obligants, including personal guarantors.

21. The Consortium Banks submitted that the approval of the Resolution Plan of DPIL on 20.06.2022 and the subsequent compliance thereof by the Successful Resolution Applicant (including upfront cash payments, deferred payments and issuance/repurchase of Bond Certificate No. 17 dated 17.09.2022 for face value of Rs. 49,96,91,500/-) do not absolve the Appellants of their independent and co-extensive liability as personal guarantors. The Consortium Banks contended that the said Resolution Plan neither limits nor extinguishes the right of the Consortium Banks to claim the remaining unpaid debts from the Appellants.

22. The Consortium Banks submitted that the claims filed by them in the CIRP of DPIL were updated only up to the date of admission of that petition and did not include future accruals of interest or other charges as per the contractual terms and the DRT decree. The unpaid balance therefore continues to remain recoverable from the Appellants.

23. The Consortium Banks contended that the Demand Notice dated 25.01.2024 was issued strictly in terms of the outstanding dues crystallised under the Recovery Certificate dated 06.02.2020 for the remaining unpaid amount of Rs. 1,16,15,08,125/-. The Consortium Banks submitted that the Appellants' failure to pay the said amount despite receipt of the demand notice gave a fresh and valid cause of action to initiate proceedings under Section 95(1) of the Code. The Consortium Banks contended that the petition under Section 95 of the Code satisfies all criteria under Section 95(4) of the Code, including the existence of a debt, occurrence of default, and production of relevant evidence in the form of the DRT judgment, Recovery Certificate and the Deed of Guarantee by the Appellant.

24. The Consortium Banks submitted that the Resolution Professional (Respondent No. 2) submitted its report dated 06.07.2024 filed under Section 99 of the Code, based on due consideration of all facts, claims and documents on record and is not a mechanical reproduction of the petition. The Consortium Banks contended that the Resolution Professional has rightly confirmed the debt and the default amounting to Rs. 122.19 crores after independent scrutiny.

25. The Consortium Banks submitted that their claims are well within the period of limitation. The Consortium Banks contended that the date of default recorded in the liquidation order of the corporate debtor, i.e. 19.03.2018 does not bar the present proceedings, more particularly when the dues have been finally adjudicated by the DRT on 06.02.2020 and the Demand Notice was issued on

25.01.2024, taking into account Suo-moto judgement of Hon'ble Supreme Court of India extended the period of limitation. The Consortium Banks submitted that the cause of action is continuous in nature and the proceedings under Section 95 of the code are not barred by limitation.

26. The Consortium Banks contended that the plea of unjust enrichment or lack of locus is wholly untenable. The Consortium Banks submitted that they have claimed only their legitimate dues as per the contractual relationship, the personal guarantees and the binding DRT adjudication. The threshold limit under the code is duly satisfied. The Consortium Banks contended that the issuance of any No Dues Certificate or deletion of DPIL's name from the list of defaulters in the CIRP of the corporate guarantor has no effect on the independent liability of the Appellants as personal guarantors.

27. The Consortium Banks submitted that the impugned order dated 23.10.2024 has been passed after complete application of mind, due consideration of all rival pleadings, written submissions, additional written submissions, rejoinders and documents placed on record. The Consortium Banks contended that the Adjudicating Authority has rightly admitted the petition under Section 95 of the Code and the present appeals are devoid of any merit. The Consortium Banks submitted that the both appeals have been preferred malafide and are not in the interest of justice. The Consortium Banks contended that the Appellant are merely attempting to evade their admitted and adjudicated liabilities as personal guarantors.

28. Concluding arguments, the Consortium Banks requested this Appellate Tribunal to dismiss both the appeals with cost.

29. The Respondent No. 2/ Resolution Professional submitted that he does not want to file any reply as recorded vide this Appellate Tribunal's order dated 16.01.2025.

Findings

30. We note that two Company Petitions i.e. CP(IB)/200(AHM)2024 and CP(IB)/199(AHM)2024 were filed on 21.05.2024 under Section 95(1) of the Code by the Respondent Banks seeking initiation of Insolvency Resolution Process against Mr. Amit Bhatnagar and Mr. Sumit Bhatnagar respectively (hereinafter referred to as "Personal Guarantors") for default amount of Rs.122.19 Crores in respect of Deed of Guarantee dated 31.03.2015 executed in favour of the Consortium Bank. We note that Diamond Power Transformers Limited ("DPTL") is the Corporate Debtor and Diamond Power Infrastructure Limited ("DPIL") is Corporate Guarantor to the Corporate Debtor. In respect of the guarantee issued by the Appellants as Personal Guarantors for DPTL, the Consortium Banks have invoked guarantee vide letter dated 06.04.2018.

31. We also take into consideration that the Consortium Banks granted aggregate facility of Rs. 40.00 Crores to the Corporate Debtor DPTL (Under Liquidation) vide sanction letter dated 15.10.2011 which was renewed vide Sanction Letter dated 29.06.2013 & 31.03.2015 at the request of the Corporate

Debtor. The Consortium Banks had sanctioned Working Capital facilities vide Consortium Agreement entered with the Corporate Debtor for financial facility of Rs 114.60 Crores. The Corporate Debtor ("DPTL") and others executed various loan/security documents in favour of the Banks from time to time. Similarly, the Appellants as Personal Guarantors also executed Deed of Guarantee on 31.03.2015 in favour of the Consortium Banks to secure the Credit Facilities granted to the Corporate Debtor. We note that the loan accounts of the Corporate Debtor ("DPTL") were classified as NPA on 30.07.2016. Meanwhile, the Corporate Debtor ("DPTL") itself filed CP (IB) No. 28/10/NCLT/AHM/2017 under Section 10 of the Code seeking CIRP against itself before the Adjudicating Authority and vide order dated 06.06.2017, the Corporate Debtor was admitted into the CIRP and later an order of liquidation was passed on 19.03.2018 in IA No. 92 of 2018 by the Adjudicating Authority.

32. We note that the Consortium Banks invoked personal guarantees executed by the Appellants as personal guarantors in its favour through Notice of Invocation of Guarantee dated 06.04.2018. The Consortium Banks also filed O.A. No. 436 of 2018 on 12.04.2018 before DRT Ahmedabad which was allowed and Recovery Certificate was issued vide DRT order dated 06.02.2020 against the Corporate Debtor ("DPTL") as well as the Appellants/Personal Guarantors.

33. It has been empathetically pleaded by the Consortium Banks that the personal guarantees extended for the Corporate Debtor ("DPTL") nowhere mentioned/dealt in the Resolution Plan of the Corporate Guarantor ("DPIL").

Thus, the Consortium Banks have retained their right to initiate actions under the joint and several personal guarantees of the Corporate Debtor ("DPTL") for the balance amounts due to them against the Appellants as personal guarantors.

34. It has been pleaded by the Consortium Banks that the pay-out by the Successful Resolution Applicant of the Corporate Guarantor ("DPIL") was based upon the admitted claim of Rs.52.00 Crores exclusive of the interest amounts payable by the Corporate Debtor ("DPTL") and subsequently awarded by the DRT, Ahmedabad and the interest receivable by the Banks still remain outstanding.

35. We also note that the Interim Resolution Professional filed the report dated 06.07.2024 through IA/1072(AHM)2024 dated 08.07.2024 recommending the admission of the application filed under Section 95 of the Code against the Appellants.

36. It is the case of the Consortium Banks that the settlement with the Corporate Guarantor does not automatically extinguish the liability of the Personal Guarantors, unless specifically stated in the Resolution Plan and further submitted that, after reviewing the documents, no evidence was found suggesting that the Appellant's liability as personal guarantor had been fully discharged.

37. We also take into consideration that the liability of the Personal Guarantor has been calculated to the extent of Rs.122,19,18,337.07 as on 31.03.2024, based upon the Judgment dated 06.02.2020 passed by the DRT, Ahmedabad.

38. After noting rival contentions and going through the facts in the appeals, we find that basically there are only two issues which have been raised by the Appellants in both the appeals i.e., the claims of the Consortium Banks are barred by law of limitation and further entire payment of all creditors including Consortium Banks have fully been paid by the SRA as per approved Resolution Plan, which stand implemented.

39. We shall take first issue of limitation raised by the Appellants

(a) It is the case of the Appellants that the Corporate Debtor was declared NPA way back on 30.07.2016 and Consortium Banks invoked personal guarantees against the Appellants on 06.04.2018. The Appellants empathetically pleaded that the Consortium Banks have consistently treated this date of 30.07.2016 as the date of default w.r.t. the Appellants as personal guarantors and the same has been reflected in demand notice issued under Rule 7 dated 25.01.2024 and in the Section 95 application filed by the Consortium Banks before the Adjudicating Authority. The Appellants also submitted that the personal guarantees against the Appellants involved on 06.04.2018 therefore, according to Consortium Banks own case, the last possible date for the purpose of limitation could be computed w.r.t 06.04.2018 and thus, even taking this date, the limitation would have expired on 06.04.2021 whereas the application under Section 95 against the Appellants were filed much after expiry of this limitation

period of 06.04.2021 and indeed the application under Section 95 was filed by the Consortium Banks on 18.05.2024.

(b) The Appellants stated that this clearly proves that the applications of the Consortium Banks under Section 95 were completely barred by the limitation Act and therefore, the impugned orders are perverse and contrary to established fact and settled laws and therefore, on this ground alone the impugned orders need to be set aside.

(c) In this connection, we note that the CIRP was initiated against the Corporate Guarantor (“DPIL”) 24.08.2018 and subsequently the Bank filed an OA 436 of 2018 before the DRT, Ahmedabad, which gave its judgement on 06.02.2020 and recovery certificate was issued in favour of Consortium Banks.

(d) We would also take into consideration that the Hon’ble Supreme Court of India in Suo-moto case as noted earlier, had extended the limitation period due to Covid for all cases and as such, the law of limitation for all case got extended between 15.03.2020 to 28.02.2022. Thus, the decree of DRT and further taking into consideration Suo-moto judgment of the Hon’ble Supreme Court of India extended the limitation period for the Consortium Banks in the present case.

(e) We reiterate that the loan accounts of the Corporate Debtor (“DPTL”) were classified as NPA on 31.07.2016, and as per NeSL records, the date of default of the Corporate Debtor (“DPTL”) is recorded as 30.07.2016.

Initially, joint Notice of Innovation of Guarantee dated 06.04.2018 were issued and served by the Banks upon the Appellants/Personal Guarantors with in three years of limitation period from the date of default. Thus, in terms of Notice of Invocation of Guarantee dated 06.04.2018, three years of limitation period for filing the Petition U/s 95(1) of the Code, was available to the Respondent Banks till 06.04.2021, however, in view of the order dated 06.02.2020 passed by the DRT, Ahmedabad in O.A. No. 436 of 2018, the debt liability of the Appellants/Personal Guarantors were crystalized by giving them two-month period to pay the same from the date of order. Thus, the period of Limitation stood extended for three years w.e.f. order dated 06.02.2020 to 05.02.2023 in terms of section 18 of the Limitation Act, 1963. The decree of guarantee by DRT, Ahmedabad gives a fresh lease to the limitation and a new cause of action to the Applicant.

(f) We also note that the Deed of Guarantee were again involved by the Consortium Banks on 25.01.2024, whereas the present applications under Section 95 were filed on 18.05.2024 before the Adjudicating Authority. Thus, we do not find any merit in the contentions of the Appellant w.r.t. limitation, as, the limitation is clearly covered by the series of events and judicial pronouncements as discussed above.

40. Now, we shall deal with another issue raised by the Appellants/Personal Guarantors qua the absolver of the liability from Personal Guarantee, in view of the Resolution Plan approved by the Adjudicating Authority in respect of the

Corporate Debtor (“DPIL”) M/s. Diamond Power Infrastructure Limited. During hearing, the Consortium Banks categorically stated that the personal guarantees extended for the Corporate Debtor (“DPTL”) nowhere mentioned/dealt in the Resolution Plan of the Corporate Guarantor (“DPIL”), thus, the Consortium Banks retained their rights to initiate actions under the joint and several personal guarantees of the Corporate Debtor (“DPTL”) for the balance amounts due to them. It has been brought out during hearings that the pay-out by the successful resolution applicant of the corporate Guarantor (“DPIL”) was based upon the admitted claim of Rs.52 Crores, exclusive of the interest amounts payable by the Corporate Debtor (“DPTL”) and subsequently awarded by the DRT, Ahmedabad. The approval of Resolution Plan for the Corporate Guarantor (“DPIL”) (Diamond Power Infrastructure Limited) to the Corporate Debtor (Diamond Power Transformers Limited) has no bearing on the rights of the banks against the Appellants as no resolution plan has even been approved for the Corporate Debtor/DPTL and the Corporate Debtor is under liquidation. The interest receivable by the banks still remain outstanding, hence, the Consortium Banks issued demand notice on 25.01.2024 to the Appellants/Personal Guarantors in Form-B under Rule 7(1) of the I&B Consortium Banks to recover the outstanding interest amounts from the Respondent/Personal Guarantor. The total debt owed to the Banks as per DRT Judgment as on 31.03.2024 under the personal guarantee is Rs. 122,19,18,337.07 which comprises of interest and penal interest.

41. We observe that it is a settled position of law that the liability of the personal guarantor remains co-extensive with that of the principal debtor and is not extinguished merely by reason of the approval of a Resolution Plan in the insolvency proceedings of the corporate debtor or the corporate guarantor.

42. We also note that the Hon'ble Supreme Court in ***Lalit Kumar Jain v. Union of India & Ors.*** [(2021) 9 SCC 321] has held that the approval of a Resolution Plan under Section 31 of the Code does not operate as a discharge of the guarantor's liability and that the liability of the guarantor continues to remain co-extensive with that of the principal debtor. The said judgment applies to the facts of the present case and completely negates the Appellant's contention that the debt stands extinguished upon approval of the Resolution Plan.

43. This Appellate Tribunal, in case of ***Roshan Lal Mittal & Ors. v. Rishabh Jain & Ors.***, *Company Appeal (AT) (Insolvency) No. 1558 of 2023*, has reiterated that a Resolution Plan does not absolve personal guarantors and that their liability continues notwithstanding the approval of the Resolution Plan. Similarly, the Hon'ble Calcutta High Court in ***Gouri Shankar Jain v. Punjab National Bank***, *W.P. No. 10147(W) of 2019* has held that the approval of a Resolution Plan and the acceptance of a haircut by the financial creditors does not impair or extinguish the creditor's right to recover the balance amount from the guarantor. The Appellant's plea that the entire debt stands extinguished subsequent to approval of Resolution Plan is therefore is not sustainable.

44. We also take into consideration that under Section 128 of the Indian Contract Act, 1872, the liability of the guarantor is co-extensive with that of the principal debtor. The Hon'ble Supreme Court in **BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd.**, Civil Appeal No. 4565 of 2021 has held that recovery of part of the debt or settlement with one obligant does not extinguish the liability of the other obligants and that the creditor retains the full right to recover the balance debt from the remaining obligants, including the personal guarantor. Thus, even where a Resolution Plan results in partial recovery, the remaining unpaid debts survive and the guarantors continue to remain liable for the unpaid portion as applicable in the present case

45. We observe that proceedings under Section 95(1) of the Code against personal guarantors are fully maintainable even after or during the CIRP of the corporate debtor or the corporate guarantor and the Respondent Banks are therefore entitled to proceed against the Appellant for recovery of the unpaid debt under the personal guarantee. The filing and admission of claims in the CIRP of the corporate guarantor does not amount to full satisfaction of the debt and does not bar the recovery of the remaining dues from other obligants, including the personal guarantors. It is well settled that recovery proceedings can validly continue against the personal guarantors for the unpaid amount.

46. The Appellants pleaded that the total claims w.r.t. all Secured Financial Creditors of the Corporate Debtor were Rs. 2833.62 Crores and total amount admitted for all Secured financial Creditor was Rs. 2372.87 Crores. The

Appellants submitted that the entire claim of Indian Overseas Bank was of Rs 1195.46 Crores which was admitted whereas UCO Bank's claim of Rs. 52.01 Crores was admitted at Rs. 52 Crores. The Appellants submitted that approved Resolution Plan has dealt the claims of the Consortium Banks in full. In this connection, the Appellants in his written submissions dated 15.04.2026 has given a table which, we reproduce as under, for sake of convenience: -

The Plan dealt with payment as follows:

S.No	Stakeholders	Claims Admitted	Proposed Payment	Tenure
1.	CIRP Cost at actuals		20.00 or Actual CIRP Cost	Upfront on trigger date
2.	Workmen and employee dues	4.79	2.40 crores	Upfront on trigger date
3.	Related party employees	NA	Nil	NA
4.	Operational Creditors	900.74	5.00 crores	Upfront on trigger date
5.	Secured Financial Creditors In addition to the cash (upfront + deferred) payment offered to Secured FCs – RA proposes addl shares in CD as below:	2372.87	42.60 431.00	Upfront payment as per point No. 3.4.1(5) Deferred payment as per 3.5.1

	Equity shares of face value Rs.10 of corporate debtor which will be held by Secured FCs post cap reductino		New Equity Shares 21,92,112	within 5 years Upfront on trigger date
6.	Related Party	28.07	Nil	NA
7.	Other claims	2.41	Nil	NA
8.	Equity Shares of face value of Rs. 10 of CD which will be held by existing shareholders other than secured FCs		New equity shares 5,04,994	Upfront on trigger date
	Total Resolution plan amount offered to various class of creditors		501.00 crores	
9.	Startup and pending capex to be contributed		150.00	As and when required
10.	Working capital to be contributed		150.00	As per the requirements of the business
11.	Total Fund outlay in the resolution plan equalling Rs. 1900 crores		801.0 crores	

47. From above, we note that against the claims of Operational Creditors of Rs. 900.74 Crores, Rs. 5 Crores has been provided by SRA. Similarly, again the admitted claims of all Secured Financial Creditors including Consortium Banks were of Rs. 2372.87 Crores whereas Rs. 42.60 Crores were made as upfront payment. Further, the approved Resolution Plan provided for payment of Rs. 431 Crores in favour of Secured Financial Creditors as deferred payment and also 21,92,112 new equity shares in the Corporate Debtor of Rs. 10 each, post capital redemption by the Corporate debtor.

48. During hearing, the Appellants emphasising submitted that SRA proposed issuance of Unsecured redeemable bond aggregating Rs. 1900 Crores carrying zero coupon rates for a period of thirty years, as such the combined values of cash payments, deferred payments, equity shares and bonds, equal to total admitted debts of unsecured Financial Creditors. On the face of it, the arguments of the Appellants sound quite attractive. However, the fact remains that the payment to the Consortium Banks are not fully covered especially interest and do not cover due amount as awarded by DRT Ahmedabad. We reiterate that due to failure of the Appellants for failure to repay the amount due to the Consortium Banks on account of its personal guarantees extended by the Appellants, the Consortium Banks issued demand notice and also filed OA before the DRT Ahmedabad, which has gone into all aspects and crystallised the liabilities against the Corporate Guarantor and the Appellants as Personal Guarantors at Rs. 109.11 Crore along with interest @ 14.25% and penal interest of @ 2% w.rt. 12.04.2018.

49. We also take into consideration the DRT Ahmedabad's order has not been challenged by the Appellants, thus, the DRT's order has attained finality based on which the Consortium Banks invoked Section 95 applications before the Adjudicating Authority. The Adjudicating Authority, in the impugned order, after going through all the facts and law, concluded that the petitions under Section 95, based on the report of the Interim Resolution Professional, submitted subsequently under Section 99 of the Code, fully satisfy the requirements of the Code. The Adjudicating Authority thus, after recording comprehensive findings,

admitted the applications against the Appellants. We also find merit in the Consortium Banks submissions that their claims are still outstanding. We do not find any merit in the contentions of the Appellants on this point that the claims of the Consortium Banks stand settled in view of approved Resolution Plan.

50. In view of above detailed examinations of facts and law, we reject both the grounds of the Appellants i.e., limitation as well as full discharge of claims of the Consortium Banks.

51. We do not find any error in the impugned orders. Both the appeals fail and stand rejected. No cost. I.A.'s, if any, are closed.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

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