

**NATIONAL COMPANY LAW TRIBUNAL,**  
**MUMBAI BENCH COURT VI**

Item No. P-1  
C.P. (IB)/595/MB/2025

CORAM:

**SHRI SAMEER KAKAR**  
**HON'BLE MEMBER (TECHNICAL)**

**SHRI NILESH SHARMA**  
**HON'BLE MEMBER (JUDICIAL)**

ORDER SHEET OF HEARING (HYBRID) DATED **08.07.2026**

NAME OF THE PARTIES: **The Canara Bank Limited**

**Vs.**

**Globiz Exim Private Limited**

**Under Section 7 of the IBC, 2016.**

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**ORDER**

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, *vide* separate order. A detailed order is being uploaded on the NCLT portal today.

**Sd/-**  
**NILESH SHARMA**  
**MEMBER (JUDICIAL)**

*//AS//*

**Sd/-**  
**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI**

**C.P. (IB)/595/MB/2025**

*[Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]*

**THE CANARA BANK LIMITED**

[PAN No.: AAACC6106G]

Stressed Assets Management Branch:

Circle Office Building, 8<sup>th</sup> Floor, B Wing

C-14, G-Block, Bandra-Kurla Complex

Bandra East, Mumbai, Maharashtra – 400051.

**...Financial Creditor**

V/s

**GLOBIZ EXIM PRIVATE LIMITED**

[CIN No.: U51109UP2005PTC030368]

402-403 Kalpana Plaza

24/147-B Birhana Road

Kanpur, Uttar Pradesh – 208001.

**...Corporate Debtor**

**Pronounced: 08.07.2026**

**CORAM:**

**HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)**

**HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)**

**Appearances: Hybrid**

For FC: Adv. Parimal Prasad a/w Adv. Tejas Singh

For CD: Adv. Malhar Zatakia, Adv. Vidisha Rohira, Adv. Shrishty Jaura, Adv.

Astitva Skivastava, Adv. Shivam Mishra.

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## **ORDER**

***[PER: CORAM]***

### **1. BACKGROUND**

1.1 This C.P. (IB) No. 595 of 2025 (Application) was filed by The Canara Bank Limited, the Financial Creditor (FC) having PAN No.: AAACC6106G, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Global Exim Private Limited, the Corporate Debtor (CD), having CIN No.: U51109UP2005PTC030368, incorporated on 14.07.2025.

1.2 This Application has been affirmed by one Mrs. Dolly Ahirwar, Manager of Canara Bank SAM Branch, Mumbai. As per Part IV of the Application, the amount claimed to be in default is Rs. 7,42,06,10,813.68/- (Rupees Seven Hundred Forty-Two Crores Six Lakhs Ten Thousand Eight Hundred Thirteen and Paise Six Eight Only) as on 31.03.2025 plus future interest, cost, and charges. The date of default is stated to be 29.01.2025.

1.3 The Applicant has proposed Mr. Mukesh Kumar Grover, having Registration No. IBBI/IPA-001/IP-P0038/2017-2018/10640, to act as the Interim Resolution Professional (IRP) in case the Application is admitted.

### **2. CONTENTIONS OF FC**

2.1 The present Company Petition has been filed by Canara Bank claiming to be financial creditor. This petition was affirmed on 25.07.2025 by one Mrs. Dolly Ahirwar, authorized by a letter of authority dated 24.04.2025.

2.2 It is stated that the Corporate Debtor herein is a Corporate Guarantor w.r.t. one M/s Frost International Ltd., who has availed the credit facilities from financial creditor and Syndicate Bank (now Canara Bank) for the following scheme:-

(Rs. Crores)

Sl. No.	Nature of credit facilities	Canara Bank	E-Syndicate	Total
1	FLC (DA)	150	120	270
2	ILC (DA)	05	Nil	05
	<b>Total</b>	<b>155</b>	<b>120</b>	<b>275</b>

2.3 Amount Claimed to be in Default as on 31.03.2025 is as under :-

a) For Account No. 2630201000196:

*Principal Outstanding:* Rs.1,38,55,19,447.18/-

*Interest and Other Charges:* Rs. 2,90,23,74,610.00/-

b) For Account No. 50201010003421:

*Principal Outstanding:* Rs. 99,60,66,502.83/-

*Interest and Other Charges:* Rs. 2,13,66,50,253.67/-

2.4 Outstanding Amount of Rs. 7,42,06,10,813.68/- as on 31.03.2025 plus future interest, cost and charges.

2.5 Date of Notice for Invocation of Corporate Guarantee is stated as 20.01.2025.

2.6 It is stated that the working capital limits were covered under joint documentation executed by Principal Borrower vide Supplement working Capital limit, Supplement Joint Deed of Hypothecation and other documents on 12.05.2014 and other subsequent supplement documents.

- 2.7 It is stated that the Principal Borrower made request and representation for renewal of existing working capital limit from time to time and the same were sanctioned *vide* sanction letters dated 03.01.2015, 06.06.2016, 15.02.20217 and 16.01.2018.
- 2.8 It is stated that the principal borrower later on defaulted and the account was classified as NPA on 17.07.2018. Therefore, a recall notice dated 01.09.2018 was sent to the Principal Borrower.
- 2.9 It is stated that the Financial Creditor filed recovery proceedings before the Hon'ble Debts Recovery Tribunal, Allahabad on 26.10.2018 and the same is pending for adjudication.
- 2.10 It is stated that following this, one of the creditor banks, Bank of India, filed petition u/s 7 of the IBC, 2016 before NCLT Mumbai against the Principal Borrower, which was admitted *vide* an order dated 09.03.2023; currently the CIRP of the Principal Borrower is under process.
- 2.11 The Financial Creditor issued a notice dated 20.01.2025 for invocation of Corporate Guarantee by way of demand for defaults committed by Principal Borrower along with interest and all other charges. The said notice was duly served, and despite receipt of the same, the CD failed to discharge its legal obligations.
- 2.12 This matter was first listed before this Tribunal on 10.06.2025, whereat this Tribunal directed the Applicant to place on record the Track Consignment report w.r.t. notice of invocation.
- 2.13 In response to the said order, the Applicant filed an additional affidavit dated 07.07.2025, stating that the said notice could not be delivered for reasons attributable to the addressee. The applicant has attached the original

envelope containing notice with the said affidavit. It is seen that the postal authorities have recorded the reasons as “No such firm at the address/Left”.

2.14 Applicant has stated that in view of the legal presumption under Section 27 of the General Clauses Act, 1897, and Section 114 (f) of the Indian Evidence Act, 1872, 119 (f) of Bharatiya Sakshya Adhinyam, 2023, such service should be treated as complete service.

2.15 Applicant has placed reliance on *Mukund Rajhans vs. Rajasthan Patrika Pvt Ltd.* Company Appeal (AT) (INS) 1398 of 2023 of Hon'ble NCLAT, more particularly para 29, to support his contention.

2.16 The Applicant has attached the following supporting documents along with the Application:

- a) Letter of Authority dated 24.04.2025.
- b) Form 2 Under Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 (Written Communication by Proposed Interim Resolution Professional.
- c) Form B- Under Byelaw 12A of the Agency's Bye Law- Authorisation for Assignment.
- d) The Copy of Sanction letter dated 07.01.2014.
- e) The Copy of Sanction letter dated 21.07.2014.
- f) The Copy of Inter Se Agreement dated 12.05.2014 executed between Consortium Members.
- g) The Copy of Supplemental Working Capital Consortium Agreement dated 12.05.2014.
- h) Copy of Supplemental Joint Deed of Hypothecation dated 12.05.2014.
- i) Copy of Omnibus Counter Guarantee for ILC/ FLC Limits-12.05.2014.

- j) Copy of Undertaking dated 12.05.2014 by Principal Borrower.
- k) Copy of Deed of Guarantee dated 12.05.2014
- l) Revival Letter dated 12.05.2014
- m) Copy of Memorandum of Entry executed on 13.05.2014
- n) The Copy abovementioned Deed of Corporate Guarantee dated 12.05.2014
- o) The Copy Sanction letter dated 03.01.2015
- p) The Copy Board Resolution by Principal Borrower and Corporate dated 09.11.2015
- q) The Copy of Inter-Se Agreement dated 26.11.2015.
- r) The Copy of Board Resolution of Principal Borrower dated 09.11.2015
- s) The Copy of Board Resolution of Corporate Debtor on 09.11.2015.
- t) The Copy Supplementary Working Capital Consortium Agreement dated 26.11.2015.
- u) The Copy of Deed of Guarantees dated 26.11.2015 (Personal, HUF and Corporate).
- v) The Copy abovementioned Deed of Corporate Guarantee dated 26.11.2015
- w) The Copy Sanction letter dated 06.06.2016.
- x) The Copy Sanction letter dated 15.02.2017.
- y) The Copy Sanction letter dated 16.01.2018.
- z) The Copy of Certificate of Registration of Charge with ROC
- aa) The Copy of Latest case status extracted from online portal of DRT
- bb) The Copy of Order for admission of CIRP dated 09.03.2023
- cc) The Copy of Invocation cum Demand Notice dated 20.01.2025

- dd) The Copy of Postal Acknowledgement and receipt
- ee) The Copy of Statement of accounts in abovementioned accounts
- ff) The Copy of Record of Default (NeSL-Report)
- gg) The Copy of Details of Corporate Debtor from Ministry of Corporate Affairs (MCA)

### **3. CONTENTIONS OF CD**

- 3.1 Affidavit-in-Reply dated 08.09.2025 was filed by the Corporate Debtor, duly affirmed by one Mr. Arvind Srivastava, stated to be an Authorised Signatory.
- 3.2 It is submitted that the Financial Creditor had invoked the corporate guarantee *vide* a demand notice dated 01.09.2018 ("Original Demand Notice"). The said invocation was clear, categorical, and in accordance with the terms of the guarantee deed and applicable law. The Original Demand Notice remains valid and effective and constitutes the operative invocation of the corporate guarantee for the following reasons:-
  - a. The subject line of the Original Demand Notice specifically records "Invocation of Personal Guarantee and Corporate Guarantee", thereby clearly evidencing the intent to invoke the corporate guarantee.
  - b. The Corporate Guarantor is distinctly named as "Noticee No. 17" in the Original Demand Notice, thereby establishing that the said notice was addressed to it in its capacity as a Corporate Guarantor of the Principal Borrower.
  - c. The Original Demand Notice contains a categorical and unambiguous demand for payment of outstanding dues, calling upon the guarantors to

discharge the debt within a stipulated five-day period. The relevant portion of the Original Demand Notice is reproduced herein below:

*"In these circumstances, the Bank hereby recalls all outstanding dues including the principal, interest, default interest and other amounts due and payable in relation to the credit facilities, in entirety and the Bank is constrained to call upon you all more particularly addressed hereinabove, to forthwith pay to the Bank within a period of 5 (Five days) from the date of receiving this notice, a sum aggregating Rs 138.32 Crores outstanding under the Credit facility as on 31.08.2018. together with applicable interest, default interest, premia, cost, charges etc, thereon at the contractual rates upon the footing of Compound interest per annum at monthly rest until payment realization of loan facility, jointly and severally ("Outstanding Dues "as more particularly detailed in Annexure -III)".*

- d. The specific amount demanded, aggregating to approximately Rs. 138.32 crores as on 31.08.2018, is clearly set out, thereby crystallizing the quantum of liability sought to be enforced under the guarantee against the Corporate Guarantor.
- e. The annexures to the Original Demand Notice also refer to the details of collaterals and securities furnished towards the guarantee obligation,

thereby reinforcing the fact that the liability of the Corporate Guarantor was duly identified and invoked.

- f. The Original Demand Notice also expressly stipulates consequences of default, i.e., the course of action that would be adopted by the Financial Creditor in the event of failure by the Corporate Guarantor to discharge the outstanding dues, thereby satisfying the requirements of a complete and effective invocation.

3.3 It is submitted that no proceedings have been initiated by the Financial Creditor against the Corporate Guarantor before the Hon'ble Debt Recovery Tribunal ("DRT"), to the best of the knowledge and based on the records of the Corporate Guarantor.

3.4 It is respectfully submitted that the Financial Creditor, in a calculated and misleading manner, has suppressed the Original Demand Notice and has only referred to the same as a purported "recall notice to the corporate borrower" in the List of Dates and Events of the Petition (which is neither part of the statutory Form nor the Financial Creditor's Affidavit), thereby clearly demonstrating a mala fide attempt to suppress such material and relevant documents from this Hon'ble Tribunal to obfuscate its true character.

3.5 By its very subject line and contents, the said Notice unequivocally records the invocation of both personal and corporate guarantees and was issued to - and served upon - the Corporate Guarantor. The deliberate and mala fide mischaracterisation of such a notice amounts to misrepresentation intended to mislead this Hon'ble Tribunal and to manipulate computation of limitation. Such conduct strikes at the very root of judicial process and on

this ground alone, the Petition deserves dismissal *in limine*, with exemplary costs.

3.6 It is submitted that even from a bare perusal of the Original Demand Notice, it is clear that it expressly intended to invoke the personal as well as corporate guarantees, including against the Corporate Guarantor.

3.7 Therefore, where the corporate guarantee had already been clearly and categorically invoked on 01.09.2018, there remains no ambiguity whatsoever regarding the factum or date of invocation. It is trite law that limitation commences from the first operative invocation, and any attempt by the Financial Creditor to rely on a subsequent notice to artificially extend or reset limitation is wholly misconceived and untenable.

3.8 That, the Financial Creditor's reliance on a purported subsequent notice dated 20.01.2025 ("Purported Demand Notice") is wholly misconceived, mala fide, and a deliberate attempt to artificially extend limitation. Such conduct not only lacks *bona fides* but also misleads this Hon'ble Tribunal by projecting an erroneous factual narrative. Such a subsequent notice is of no legal consequence and cannot revive or reset a claim that stood invoked in 2018.

3.9 It is respectfully submitted that the Financial Creditor, in its Petition dated 26.04.2025, has deliberately failed to disclose the contents of the Original Demand Notice dated 01.09.2018, which was duly issued to and served upon the Corporate Guarantor. The said concealment cannot be said to be an inadvertent lapse but a conscious suppression of a material fact that goes to the root of the matter, namely, the invocation of the corporate guarantee and the computation of limitation. The doctrine of *suppressio veri*

(suppression of the truth) squarely applies to the conduct of the Financial Creditor, which has chosen to conceal the contents of a critical document that directly impacts the maintainability of the present proceedings.

3.10 That in this regard reliance is placed on ***Oswal Fats and Oils Limited v. Additional Commissioner (Administration) Bareilly Division, Bareilly and Ors.***, (201 OJ 4 SCC 728; wherein the Hon'ble Supreme Court held that any person seeking relief before a court, whether equitable or otherwise, bears a solemn obligation to make full and candid disclosure of all material facts having a bearing on the adjudication of the case. Where a litigant is found guilty of concealing material facts or attempting to pollute the stream of justice, the Court is not only empowered but duty-bound to deny such relief. The relevant portion of the decision is reproduced below:

*"20. It is settled law that a person who approaches the court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. In other words, he owes a duty to the court to bring out all the facts and refrain from concealing/suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person."*

- 3.11 That the Bombay High Court, in ***Nagina Ramsagar Choube & Ors. v. Ajay Mohan & Ors.***, (Interim Application no. 2143 of 2025 In Suit no. 130 of 2025), has unequivocally held that suppression of material facts and gross misrepresentation disentitle a litigant from pursuing relief and justifies outright dismissal of proceedings. The Hon'ble High Court emphasised that 'the obligation of full and fair disclosure is not a matter of formality but goes to the very root of the justice delivery system, for a litigant who suppresses facts pollutes the stream of justice and abuses the process of law. It was observed that when a party is guilty of *suppressio veri* and *suggestio falsi*, the Court would be justified in dismissing the action *in limine* without entering upon the merits.
- 3.12 That Hon'ble Supreme Court in ***Ramjas Foundation and Anr. v. Union of India and Ors.***, (201 OJ 14 SCC 38, categorically held that suppression of material facts disentitles a litigant from any relief, and that a person who does not come to the Court with clean hands cannot claim equitable or discretionary relief.
- 3.13 That in ***Dalip Singh v State of Uttar Pradesh*** (2010) 2 SCC 114, the Hon'ble Supreme Court similarly held that a party who does not approach the Court with clean hands, and resorts to misleading statements, is not entitled to any relief.
- 3.14 That in ***S.P. Chengalvaraya Naidu v. Jagannath***, (1994) 1 Supreme Court Cases 1, the Hon'ble Supreme Court ruled that any judgment obtained by fraud is void and can be set aside in any court, even in collateral proceedings.

- 3.15 That the Hon'ble NCLAT, Chennai Bench in **Mr. A Rajendra, v. Mr. Gonugunta Madhusudhan Rao and Ors.** (2024 SCC OnLine NCLAT 106), held that the appellant was guilty of suppressio veri and suggestio falsi by making incorrect averments, specifically regarding the appeal being within the limitation period as prescribed under Section 61 of the IBC.
- 3.16 It is pertinent to note that the Financial Creditor has not proved service of the Purported Demand Notice on the Corporate Guarantor. Although the Financial Creditor suggests reliance on a tracking report annexed as Exhibit Q at page 335 in Volume 3 of the Petition, no such proof has been revealed even on a bare perusal of the said exhibit. Further, the Compliance Affidavit dated 24.07.2025 annexes only a postal/booking receipt but no tracking report, as has been incorrectly stated in Para 4 of the Compliance Affidavit.
- 3.17 It is stated that the notice issued by this Tribunal was duly served on the same address.
- 3.18 It is trite law that where a demand or recall notice has already been issued and served, any subsequent demand notice for the same debt and default does not constitute a fresh cause of action, nor can it reset the limitation period. In the present case, limitation can only be computed from the date of the Original Demand Notice, i.e., 01.09.2018 (or, at the latest, upon expiry of the demand period stipulated therein). The Purported Demand Notice dated 20.01.2025 is, at best, a reminder in respect of a time-barred debt and cannot revive a cause of action already barred by limitation.
- 3.19 In the present case, Clause 1 of the deed of guarantee dated 12.05.2014 (annexed as Exhibit Fin Volume 2 of the Petition) expressly states that " ... the Guarantors shall forthwith on demand pay to the Lead Bank ... ". This

being an on-demand guarantee, it was first and validly invoked by the Original Demand Notice dated 01.09.2018, which is therefore the legally operative trigger for default/limitation qua the Corporate Guarantor.

3.20 The above principle has also been applied by the Hon'ble NCLAT in ***Shri Mavjibhai Nagarbhai Patel v. State Bank of India***, 2024 SCC OnLine NCLAT 2014, holding that for an on-demand guarantee the default on the part of the guarantor arises when the demand notice contemplated by the deed is issued, and limitation commences from that demand. The Tribunal observed as follows:

*"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."*

3.21 Accordingly, the Original Demand Notice was complete and valid in all respects as it made a clear demand for payment of the outstanding debt and expressly invoked the corporate guarantee. It is an established position in law that issuance of a subsequent notice, by whatever name called, does

not constitute a fresh cause of action and hence limitation will not begin afresh from any such subsequent notice.

3.22 That the Hon'ble Supreme Court in ***Laxmi Pat Surana v. Union Bank of India*** (2021) 8 SCC 481, has held that proceedings against a guarantor must independently satisfy the test of limitation reckoned from the date of invocation of the guarantee or a valid acknowledgement under Section 18 of the Limitation Act, if any, within time. Applying this principle in the present case, the 2025 notice, i.e., the Purported Demand Notice, cannot reset the limitation period. The relevant para of the said case law is as follows:

*"48. Indeed, this communication has been sent without prejudice by the corporate guarantor (corporate debtor). Nevertheless, it does acknowledge the liability of M/s Mahaveer Construction (principal borrower); and of corporate guarantee having been offered by the corporate debtor in that behalf. As aforesaid, the liability of the corporate guarantor (corporate debtor) is coextensive with that of the principal borrower, and it gets triggered the moment the principal borrower commits default in paying the debt when it had become due and payable. The liability of the corporate debtor (corporate guarantor) also triggers when the principal borrower acknowledges its liability in writing within the expiration of prescribed period of limitation, to pay such outstanding dues, and fails to pay the*

*acknowledged debt. Correspondingly, right to initiate action within three years from such acknowledgment of debt accrues to the financial creditor. That however, needs to be exercised within three years when the right to sue/apply accrues, as per Article 137 of the Limitation Act. This is the effect of Section 18 of the Limitation Act. In that, a fresh period of limitation is required to be computed from the time when the acknowledgment was so signed by the principal borrower or the corporate guarantor (corporate debtor), as the case may be, provided the acknowledgment is before expiration of the prescribed period of limitation. Thus, the conclusion reached by NCLT and affirmed by NCLAT on the basis of the assertion in the application under Section 7 IBC, read with the relevant undisputed correspondence, is a possible view.*

*50. Suffice it to conclude that there is no substance even in the second ground urged by the appellant regarding the maintainability of the application filed by the respondent financial creditor under Section 7 IBC on the ground of being barred by limitation. Instead, we affirm the view taken by NCL T and which commended to NCLA T that a fresh period of limitation is required to be computed from the date of*

*acknowledgment of debt by the principal borrower from time to time and in particular the (corporate) guarantor/corporate debtor vide last communication dated 8-12-2018. Thus, the application under Section 7 IBC filed on 13-2-2019 is within limitation."*

3.23 That this position has also been affirmed by Hon'ble NCLT, Mumbai Bench in ***IDBI Bank Limited v. Sodhamti R. Gutte***, C.P. (IB) No. 871/MB/2023, holding that a subsequent demand notice does not furnish a fresh cause of action and limitation runs from the earlier notice or trigger.

3.24 That, by virtue of Section 238A of the IBC, the Limitation Act applies to proceedings under Section 7.

3.25 That, in the present case, the three-year limitation would ordinarily have expired on or about 06.09.2021 (counted conservatively from 01.09.2018 with the five-day demand window in the Date of Original Demand Notice). It is submitted that no application could have been validly filed thereafter unless covered by the exclusion granted in In Re: *Cognizance for Extension of Limitation* (2020) 19 SCC 10.

3.26 That without prejudice to the foregoing, even upon applying the Hon'ble Supreme Court's COVID-19 exclusion, two settled approaches lead to the same outcome.

3.27 The balance limitation available as on 15.03.2020 revives from 01.03.2022.

3.28 The present Petition filed on 26.04.2025 is time-barred and thus not maintainable in law.

3.29 That, notably, the Petition is completely silent as to any reason for the delay in filing the same and therefore, in the absence of pleadings in this regard,

the Petition is liable to be dismissed *in limine* in light of the binding precedents cited above.

3.30 It is legally settled that for admission of a petition under Section 7 of the IBC, the Adjudicating Authority must be satisfied that a financial debt is due to the applicant and that a default has occurred. In the present case, the Financial Creditor pleads a claim of Rs. 742.06 crores with a new default date of the Purported Demand Notice, which is entirely irreconcilable with the contemporaneous invocation in 2018 or with the consortium records pertaining to the Financial Creditor.

3.31 It should be noted that the Original Demand Notice dated 01.09.2018, being the first and complete invocation of the guarantee against the Corporate Guarantor, quantified outstanding dues at Rs. 138.32 crores as on 31.08.2018. No reconciliation is provided explaining the subsequent, vastly different quantum of Rs. 742.06 crores or how they are attributable to the Financial Creditor as opposed to the consortium of banks at large. In the absence of a clear and consistent computation, the alleged "debt due" remains unproven.

3.32 As seen from Exhibits E1 to E4 of the Petition, the consortium sharing pattern/sanctions show the Financial Creditor's (Canara Bank) sanctioned exposure at Rs. 155 crores (Rs. 5 crores fund-based + Rs. 150 crores non-fund-based). The Petition does not demonstrate the legal basis on which the Financial Creditor alone can seek recovery of a consortium-wide figure, if at all. Thus, in the absence of a specific contractual entitlement, the Financial Creditor cannot claim beyond its sanctioned share or attributable exposure by any stretch of imagination or logic.

3.33 It is therefore submitted that no 'debt' can be established without quantification of the debt or with glaringly different figures appearing in the Original Demand Notice (Rs. 138.32 crores) as against those appearing in the Purported Demand Notice (Rs. 742.06 crores). Such starkly divergent figures, without reconciling the total exposure of the Financial Creditor (Rs. 155 crores), cannot amount to satisfying the requirement of establishing an important aspect of 'debt' as per law.

3.34 With regard to 'default', the Petition seeks to derive the date of default from the Purported Demand Notice that remains unserved on the Corporate Guarantor, which is wholly impermissible. Even otherwise, the Corporate Guarantor has adequately discharged its burden to prove that the guarantee which is subject matter of the captioned matter stood expressly invoked on 01.09.2018 and the default, if any, would have crystallised upon expiry of the five-day demand period stipulated therein (i.e., 06.09.2018).

3.35 By virtue of Section 238A of the IBC and Article 137 of the Limitation Act, the three-year period from the actual date of default expired on 06.09.2021. As this date fell within the Hon'ble Supreme Court's excluded window between 15.03.2020 and 28.02.2022, the limitation ran to 90 days from 01.03.2022, which is 30.05.2022. Even from the balance-period approach, days already consumed up to 15.03.2020 were 556 days, and the balance days remaining as on 15.03.2020 were 540 days; the revival date set by the Hon'ble Supreme Court being 01.03.2022, the limitation expired on 22.08.2023.

3.36 Without prejudice to the foregoing preliminary objections, which go to the very root of the present matter, such as limitation,

suppression/misrepresentation, service non-compliance, and maintainability, which warrant adjudication at the very threshold. However, the Corporate Guarantor herein disputes the alleged 'debt' and reserves its right to file additional affidavit(s) on merits at the directions of this Hon'ble Tribunal, after the determination of the preliminary objections raised by the Corporate Guarantor by this Hon'ble Tribunal.

3.37 The Respondent has sought dismissal of the present Application.

#### **4. REJOINDER**

4.1 As per the order dated 10.11.2025, at the request of the Ld. counsel for the Applicant, the right of the Applicant to file a Rejoinder was closed.

#### **5. Written Submissions (FC)**

5.1 Applicant has filed written submissions dated 06.05.2026. The salient points as per the written submissions are as follows:-

- a) Corporate Debtor has executed guarantees in favour of the consortium, which was governed by the consortium agreement and inter-se agreement. The applicant was entitled to act jointly and severally.
- b) Contention of the respondent that the limitation started running from 01.09.2018 (first notice) is misconceived since the said notice was only a recall/recovery notice.
- c) Multiple acknowledgements of debt extend the limitation. Authentication of the NESL record of default on 05.11.2023 by the Principal Borrower further extended the limitation.

- d) The Resolution Professional of CD accepted the claim of the Applicant in the CIRP of the Principal Borrower.
- e) The Applicant has validly served the Demand Notice of 20.01.2025.
- f) Independent right is available to the consortium members to invoke the guarantee.
- g) Applicant has relied on the following judgments:
- State Bank of India vs. Gaurishankar Poddar & Ors. (Comp. App. (AT) (Ins.) Nos. 689 & 663 of 2024)
  - Canara Bank vs. Sanjana Uday Desai ((2025) ibclaw.in 2226 NCLT)
  - Lalit Mishra vs. Sharon Bio Medicine Ltd. (Company Appeal (AT) (Insolvency) No. 164 of 2018)
  - Paresh Rastogi vs. Omkara Assets Reconstruction Pvt. Ltd. and Anr. ((2025) ibclaw.in 194 NCLAT)
  - Rajender Kumar Pahwa vs. Canara Bank & Ors. (2025) ibclaw.in 697 NCLAT
  - Arunkant Rai vs. Allahabad Bank & Anr. (2020) ibclaw.in 194 NCLAT

## **6. Written Submissions (CD)**

6.1 Respondent has filed written submissions dated 12.5.2026. In the written submissions, the Respondent has stated as under:-

- a) Petition is liable to be dismissed at the threshold, as the Petitioner has failed to establish a valid invocation of the Deed of Guarantee.
- b) Petition is also not maintainable as it is founded upon the deliberate suppression of material documents and essential facts by the

Petitioner/Finance Creditor, which are pertinent for fair and proper adjudication of the present proceedings.

- c) Petition is *ex facie* not maintainable, being barred by limitation. The Petitioner has suppressed documents which would render the Petition time barred.
- d) Hon'ble Supreme Court in ***Shankar Khandelwal v. Omkara Asset Reconstruction Pvt. Ltd. & Anr.***, 2026 SCC OnLine SC 743, wherein it has been categorically held that mere admission of a claim by the Resolution Professional cannot be treated as an acknowledgement of debt for the purposes of extending limitation under Section 18 of the Limitation Act, 1963.
- e) It is further submitted that in ***State Bank of India v. Gourishankar Poddar & Ors.*** (Comp. A pp. (AT)(Ins.) Nos. 689 & 663 of 2024), the same Financial Creditor had initiated proceedings against both the Principal Borrower as well as the Personal Guarantor. In contrast, the present case involves distinct Financial Creditors, namely, proceedings against the Principal Borrower having been initiated by Bank of India, whereas the present Petition has been filed by Canara Bank, and pertains to a Corporate Guarantor. Furthermore, in the said case, the acknowledgement of debt was based upon the admission of the debt/claim against the Principal Borrower by the Adjudicating Authority, unlike the present case, where reliance is sought to be placed merely on admission of claims by the Resolution Professional, which lacks adjudicatory sanctity.

## **7. ANALYSIS AND FINDINGS**

7.1 We have perused the documents as placed before us and heard both the Ld. Counsels for the FC and the CD.

7.2 The following facts emerge as undisputed from the pleadings and documents placed on record:

- (i) Respondent has executed a Corporate Guarantee in favour of Consortium of Lenders for borrowings by the Principal Borrower Frost International Ltd. The said corporate guarantee was extended from time to time and the last such extension was on 26.11.2015.
- (ii) Frost International Ltd. defaulted on its loan repayment obligations and its account was declared as NPA on 17.07.2018. Vide an order dated 09.03.2023, Principal Borrower was admitted to CIRP.
- (iii) Financial Creditor filed recovery proceedings before the Hon'ble Debts Recovery Tribunal, Allahabad on 26.10.2018 against the principal borrower and respondent herein. The same is pending for adjudication.
- (iv) The Financial Creditor issued a notice dated 20.01.2025 for invocation of Corporate Guarantee by way of demand.

7.3 The principal disputes in this matter pertain to:

- (i) Whether the guarantee was invoked on 01.09.2018?
- (ii) Whether the second invocation on 20.01.2025 is within limitation and proper?

7.4 On the first issue whether the guarantee was invoked on 01.09.2018, it is noticed that the Applicant has not placed on record the first invocation notice. Respondent has placed the same on record at page 36 to 42 of its Reply; the

said notice is not denied by the applicant. In the said demand notice, Respondent herein was noticee no. 17 in his capacity as a corporate guarantor. The applicant has demanded a payment of Rs. 138.32 crores due as on 31.08.2018 from the Respondent.

7.5 It is seen that the applicant has chosen not to file any rejoinder in the matter. It is stated by the applicant that the same was only a recall notice and not an invocation of guarantee.

7.6 Upon perusal of the said notice dated 01.09.2018, we observe that the Respondent herein is the noticee no. 17 on page 37 of the Reply. On page 39, the Applicant has recalled the loan and made a demand to all the noticees to pay the same within a period of 5 days.

7.7 From the language of the said notice, it is clear to us that the guarantee has been invoked by the Applicant on 01.09.2018.

7.8 The Applicant has not placed the said notice dated 01.09.2018 before us; and that we are of the view that the conduct of the Applicant in this regard is deplorable and as per catena of judgments cited by the respondent, the applicant has not approached this Tribunal with clean hands.

7.9 Coming to the second issue, whether the invocation dated 20.01.2025 is within the limitation, we note that the limitation for filing an application under Section 7 of the Code is three years and is governed by Article 137 of the Limitation Act, 1963.

7.10 The account of the principal borrower was declared NPA on 17.07.2018. The principal borrower has been admitted to CIRP on 09.3.2023.

7.11 The claim of the Applicant herein has been admitted in the CIRP of the Principal Borrower.

7.12 We also note that from 01.09.2018 (first invocation date) till 20.01.2025, no other document has been placed by the Applicant to show how the limitation is extended.

7.13 Applicant has placed the NeSL record of default, which is under “authenticated” status. The said authentication was completed on 05.11.2023. It is the pleaded case of Applicant that authentication in the NeSL record of default extends the limitation. It is noted that at the point of time of authentication, i.e. 05.11.2023, the Principal Borrower was undergoing CIRP and was in control of the IRP/RP.

7.14 As such, a question arises: “Where a demand or recall notice has already been issued and served, whether any subsequent demand notice for the same debt and default can constitute a fresh cause of action or reset the limitation period?”

7.15 The Respondent contends that in the present case, limitation can only be computed from the date of the Original Demand Notice, i.e., 01.09.2018 and considering the extension of limitation as granted by the Hon’ble Supreme Court (Covid extension), the limitation expired on 22.08.2023.

7.16 Respondent has relied upon the judgment of Hon'ble NCLAT in *Shri Mavjibhai Nagarbhai Patel v. State Bank of India*, 2024 SCC OnLine NCLAT 2014, holding that for an on-demand guarantee, the default on the part of the guarantor arises when the demand notice contemplated by the deed is issued, and limitation commences from that demand. The Tribunal observed as follows:

*"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."*

7.17 In answer to the issue no. 1 as above, we have clearly held that the notice dated 01.09.2018 was a notice of demand.

7.18 The other aspect is whether the applicant has placed before us anything asserting that the limitation was extended. When we look at the pleadings, the Applicant has not placed anything on record except to state that the authentication of the debt with NESL dated 05.11.2023 further extends the limitation. This was stated by the Applicant in the written submissions.

7.19 In this regard, we also note that on the said date, the Principal Borrower was already undergoing CIRP *vide* an order dated 09.3.2023 and was in control of the IRP/RP.

7.20 Learned Counsel for the Applicant has placed considerable reliance upon *State Bank of India vs. Gaurishankar Poddar & Ors.*, Company Appeal (AT) (Ins.) Nos. 689 & 663 of 2024, to contend that the present Petition is within limitation and that the subsequent events in the insolvency proceedings of the Principal Borrower preserve the Applicant's right to proceed against the guarantor. In the said decision, the Hon'ble NCLAT was considering the liability of a Personal Guarantor under a continuing guarantee. The Appellate Tribunal observed that where the deed of guarantee expressly provides that acknowledgements made

by the principal borrower shall also bind the guarantor, such acknowledgements can be relied upon for the purposes of Sections 18 and 19 of the Limitation Act.

The Appellate Tribunal further held:

*"...the period of limitation against the guarantor starts only when a demand is raised from the guarantor specifically..."*

The aforesaid judgment, however, does not advance the Applicant's case. On the contrary, it reinforces the principle that limitation against a guarantor commences upon a valid demand. In the present case, this Tribunal has already held that such demand was admittedly made through the notice dated 01.09.2018. Unlike *Gaurishankar Poddar*, the Applicant has failed to produce any acknowledgement satisfying Section 18 of the Limitation Act after the commencement of limitation. The ratio of the said judgment, therefore, is distinguishable on facts.

7.21 The Applicant has also relied upon *Canara Bank vs. Sanjana Uday Desai*, (2025) ibclaw.in 2226 NCLT. The said decision reiterates the settled proposition that insolvency proceedings against a guarantor are maintainable independently of proceedings initiated against the principal borrower and that the creditor is entitled to invoke remedies available under the Code against the guarantor. We respectfully agree with the said proposition. However, the present Petition is not being rejected on the ground that proceedings against the Corporate Guarantor are legally impermissible. The issue before this Tribunal is confined to whether the Petition has been instituted within the period of limitation prescribed under Article 137 of the Limitation Act after invocation of the guarantee. The said judgment does not dispense with the mandatory requirement that every

application under Section 7 must itself be within limitation. The said decision, therefore, does not assist the Applicant in overcoming the bar of limitation.

7.22 Reliance has further been placed on *Lalit Mishra vs. Sharon Bio Medicine Ltd.*, Company Appeal (AT) (Insolvency) No. 164 of 2018. In the said judgment, while discussing the scheme of the IBC, the Hon'ble NCLAT observed that the object of the IBC is the resolution of insolvency and not mere recovery of money. The proposition laid down therein is well settled and requires no elaboration. However, the present controversy does not concern the objectives of the Code but the maintainability of an application under Section 7. Section 238A expressly incorporates the provisions of the Limitation Act into proceedings under the Code. A petition which is otherwise barred by limitation cannot be entertained merely because the Code is intended to facilitate insolvency resolution. The issue before us is one of maintainability on account of limitation and not the underlying objective of the legislation. The ratio of *Lalit Mishra*, therefore, has no bearing on the issue arising for determination.

7.23 Learned Counsel has also relied upon *Paresh Rastogi vs. Omkara Assets Reconstruction Pvt. Ltd. & Anr.*, (2025) ibclaw.in 194 NCLAT, to contend that acknowledgements of liability preserve the creditor's right to initiate proceedings under the Code. There can be no dispute regarding the proposition that a valid acknowledgment made before expiry of limitation would attract Section 18 of the Limitation Act and give rise to a fresh period of limitation. However, the pre-condition is the existence of a legally valid acknowledgment by the person against whom the right is sought to be enforced. In the present case, the Applicant has not produced any acknowledgment executed by the Corporate Guarantor after the invocation dated 01.09.2018. The only circumstance relied

upon is the authentication of the NeSL Record of Default on 05.11.2023, which occurred after the commencement of the CIRP of the Principal Borrower. Such authentication cannot substitute for a statutory acknowledgement of liability so as to confer a fresh period of limitation. Consequently, the ratio of *Paresh Rastogi* is inapplicable to the facts of the present case.

7.24 The Applicant has also relied upon *Rajender Kumar Pahwa vs. Canara Bank & Ors.*, (2025) ibclaw.in 697 NCLAT. The said judgment also proceeds on the existence of legally sustainable material extending limitation or establishing a continuing cause of action. It does not lay down that the issuance of a second demand notice, after limitation has already commenced upon invocation of an on-demand guarantee, creates a fresh cause of action. The facts of the present case are materially different. Once the guarantee stood invoked through the demand notice dated 01.09.2018, limitation commenced upon expiry of the stipulated demand period. In the absence of any valid acknowledgement before expiry thereof, the Applicant cannot avoid the limitation merely by issuing another demand notice in January 2025.

7.25 Learned Counsel has lastly relied upon *Arunkant Rai vs. Allahabad Bank & Anr.*, (2020) ibclaw.in 194 NCLAT. The principles laid down therein regarding the liability of guarantors and the maintainability of proceedings under the Code are not in dispute. However, co-extensive liability under Section 128 of the Contract Act cannot dispense with the requirement that proceedings against the guarantor must themselves be instituted within the prescribed period of limitation. The issue before this Tribunal is not whether the Corporate Guarantor is liable under the deed of guarantee, but whether such liability could still be enforced through an application filed in April 2025 after the guarantee had already been invoked in

September 2018. The said judgment, therefore, has no application to the controversy involved herein.

7.26 Accordingly, none of the authorities relied upon by the Applicant dilute the settled legal principle that, in the case of an on-demand guarantee, limitation commences upon a valid invocation of the guarantee and can thereafter be extended only by a valid acknowledgement in accordance with Section 18 of the Limitation Act. As already observed, the Applicant has failed to establish any such valid acknowledgement after the invocation dated 01.09.2018. The subsequent demand notice dated 20.01.2025 cannot revive a time-barred claim.

7.27 It is important that, as per Clause 1 of the Guarantee Deed dated 12.05.2014, the guarantee executed by the CD is an on-demand guarantee. The relevant paragraph of the Guarantee Deed is reproduced hereunder:

*"1. If at any time default shall be made by the Borrower in payment of the principal sum (not exceeding Rs 3236 crores (Rupees Three thousand two hundred and thirty six crores only) together with interest, costs, charges, expenses and/or other money for the time being due to the Lead Bank in respect of or under the abovementioned credit facilities or any of them the Guarantors shall forthwith on demand pay to the lead Bank the whole of such principal sum (not exceeding Rs 3236 crores. (Rupees three thousand two hundred and thirty-six crores only) together with interest, cost, charges, expenses and/or any other money as may be then due to the Lead Bank in respect of the*

*abovementioned credit facilities and shall indemnify and keep indemnified the Lead Bank against all losses of the said principal sum, interest or other money due and all costs, charges and expenses whatsoever which the Lead Bank may incur by reason of any default on the part of the Borrower.”*

**(Emphasis supplied)**

7.28 Respondent has relied upon the judgment of Hon'ble NCLAT in *Shri Mavjibhai Nagarbhai Patel v. State Bank of India*, 2024 SCC OnLine NCLAT 2014, holding that for an on-demand guarantee, the default on the part of the guarantor arises when the demand notice contemplated by the deed is issued, and limitation commences from that demand. The Hon'ble Appellate Tribunal observed as follows:

*"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."*

7.29 In answer to the issue no. 1 as above, we have clearly held that the notice dated 01.09.2018 was a notice of demand and, therefore, the record of limitation of the Corporate Guarantor/CD had commenced w.e.f. 06.09.2018, i.e., on the expiry of 5 days of notice period from the date of demand notice dated 01.09.2018.

7.30 The other aspect is whether the Applicant has placed before us anything asserting that the limitation was ever extended after it had started to run from 06.09.2018. When we look at the pleadings, the Applicant has not placed anything on record except to state that the authentication of the debt with NeSL dated 05.11.2023 further extended the limitation. This was stated by the Applicant in the written submissions.

7.31 In this regard, we also note that on the said date, the Principal Borrower was already undergoing CIRP *vide* an order dated 09.3.2023 and was in control of the IRP/RP.

7.32 We also rely on the judgment of the Hon'ble Supreme Court in the matter of *Shankar Khandelwal (supra)*, wherein it has been categorically held that mere admission of a claim by the Resolution Professional cannot be treated as an acknowledgement of debt for the purposes of extending limitation under Section 18 of the Limitation Act, 1963. The relevant para of the judgment is reproduced below:

*“16. The third issue pertains to legal character of the admission of a claim by the IRP/RP and whether such admission can be construed as admission of liability so as to extend the period of limitation under Section 18 of the 1963 Act. At the outset, it must be noted that scope and ambit of Section 18 of the 1963 Act are*

*well-settled. For a writing to constitute a valid acknowledgment, it must be made by the party against whom the right is claimed, or by a person duly authorized on its behalf; it must be made before the expiration of the prescribed period of/imitation; and, most importantly, it must evince a conscious and unequivocal intention to admit a subsisting jural relationship and an existing liability. A mere reference to a past transaction or a bald recital of a debt, without an intention to admit liability, would not suffice. The said principle has been authoritatively enunciated by this Court. The provisions of the Code and the Regulations were considered by this court and it has been held that RP has no adjudicatory powers and his role involves collation of claims. RP performs its administrative duties under Section 18 of the Code. **The admission of a claim by RP is merely an administrative/clerical task performed as part of its statutory duties under Section 18 of the Code and, therefore, admission of claim by RP only means induction/entry of a claim. An admission of a claim by RP is akin to mere recital/ reference of debt, which does not amount to an acknowledgment under Section 18 of the 1963 Act. Therefore, IRP's admission of secured***

***financial creditors debt in first CIRP was not an acknowledgement under Section 18 of the 1963 Act. Accordingly, third issue is answered.”***

7.33 In view of the above discussions, we are of the view that the second notice dated 20.01.2025 issued by the Applicant is hopelessly barred by limitation and cannot come to the rescue of the Applicant herein. The second issue is answered accordingly.

7.34 Accordingly, the present Application, being CP(IB)/595/MB/2025 against Global Exim Pvt. Ltd., is hereby **rejected** and is disposed of. No order as to cost.

7.35 A certified copy of this order may be issued by the Registry if applied for expeditiously.

**Sd/-  
NILESH SHARMA  
MEMBER (JUDICIAL)**

//AS//

**Sd/-  
SAMEER KAKAR  
MEMBER (TECHNICAL)**