NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

17.07.2026

Present: JUSTICE N. SESHASAYEE, MEMBER (JUDICIAL)

INDEVAR PANDEY, MEMBER (TECHNICAL)

Company Appeal (AT) (Ins) No.264 of 2025

Mrs. Arvinder Kaur ...Appellant

Vs

1. Mr. Santanu Kumar Samanta ...Respondent No.1

2. M/s Bank of Maharashtra ...Respondent No.2

(Arising out of Order dated 19.11.2024 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench) in Interlocutory Application No. 1551 of 2024 in Company Petition (IB) No. 658/ND/2023)

For Appellant:	Mr. Aman Raj Singh, Advocate
For Respondent:	Mr. Gautam Singhal, Mr. Rajat Chaudhary, Ms. Anjali Maurya, Ms. Suraksha Mandhyan, Advocates for R-1 Mr. Nishant Awana, Mr. Suraj Kundu, Advocates for R-2

JUDGEMENT

Per Justice N. Seshasayee, Member (Judicial)

Facts:

1. This appeal is directed by the personal guarantor challenging an order admitting the petition filed by the respondent under section 95 IBC.

2. The scope of this appeal falls within a narrow campus. The respondent bank had advanced a loan of Rs.1.0 Crore to the Corporate Debtor for the purchase of plant and machinery, construction of factory building, and also cash credit facility to the tune of Rs. 1.5 crore. Subsequently, certain additional loan facilities were also extended to the Corporate Debtor. Other relevant facts are:

a) Vide Deed of Guarantee dated 24.04.2010, the appellant herein gave a personal guarantee for the aforesaid loan advanced to the Corporate Debtor. Thereafter, some additional loan towards the purchase of a vehicle was extended, for which a Deed of Guarantee dated 10.09.2010 was obtained.

b) Be that as it may, the Corporate Debtor did not make any loan repayment consequent to which the loan advanced to the Corporate Debtor was classified as NPA on 24.04.2012. Following the same, the respondent bank had issued notice dated 31.05.2012 to Corporate Debtor and eventually sold the security properties in auction.

c) Besides, the respondent had also instituted O.A. No. 226 of 2013 before DRT–III, New Delhi, for recovery of approximately ₹.5.52 Crores. On 28.01.2015 and 27.06.2015, the respondent had issued notices recalling the loan facilities to the corporate debtor as well as the appellant herein. However, neither made any payment.

d) While so, the corporate debtor, through the appellant, issued a letter dated 05.01.2016 offering a One Time Settlement, but subsequently withdrew the same. Again, on 28.04.2016, a proposal was made on behalf of the corporate debtor to the respondent herein for settling the outstanding dues. However, nothing came of it. A similar exercise was undertaken once again when a fresh proposal was made on 28.08.2020; however, the said proposal also failed.

e) As these proceedings and events were pending, a payment was made to the respondent-bank on 03.02.2021. The respondent-bank thereafter issued a demand notice dated 26.11.2022, which was subsequently withdrawn. Thereafter, on 01.09.2023, the bank issued a notice to the Personal Guarantor under Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. The said statutory notice did not evoke any response from the appellant. In these circumstances, the respondent-bank instituted a petition under Section 95 of the IBC, 2016 against the appellant seeking initiation of the Personal Insolvency Resolution Process (PIRP).

f) The appellant entered appearance before the Adjudicating Authority. On 17.01.2024, the Adjudicating Authority appointed the Resolution Professional as contemplated under section 99 of IBC. The RP filed his report dated 21.03.2024 vide IA 1551 of 2024. In his report, the RP has recommended commencement of personal Insolvency proceedings against the appellant. It may be noted that the resolution professional has recorded in his report that despite issuing notice to the appellant herein she had not chosen to respond.

g) On 02.04.2024, the RP's report was taken on record by the Adjudicating Authority, and it issued notice to the Appellant. Initially, the Tribunal had some difficulty in serving the notice and, therefore, caused publication of notice by way of substituted service. Eventually, the appellant entered appearance through counsel on 14.08.2024 and sought time for filing objections. Time was further extended to 18.09.2024, but no reply was filed, as a result of which the Adjudicating Authority closed the Appellant's right to file a reply.

h) On 25.10.2024, another counsel entered appearance for the appellant and again sought time to file the reply, perhaps without realizing the facts that the opportunity to file the reply had already been closed. The Tribunal eventually heard the respondent's counsel. This order is now under challenge.

i) When the matter was taken up for final hearing on 15.09.2025, we heard the learned counsel for the appellant briefly and on that day, and we passed the following Order:

> *"…2. On fact, the appellant has been served with a notice through speed post that she has first appeared on 14.08.2024, from which date the matter stood over to 04.09.2024 and eventually to 18.09.2024. And between these days, the appellant was granted time to file her reply and since the reply was not so filed, the Adjudicating Authority closed the opportunity to defend the petition or the Financial Creditor under Sec. 95 of the IBC. 3. The learned counsel for the appellant initially harped much on wrong email ID and mobile number of the appellant*

> *but inasmuch a notice had been served on her through speed post and that she indeed had appeared through her counsel those issues have zero consequence now. So far as not filing of the reply, the learned counsel tries to make out the case that it was owing to certain some special reasons, which reasons he has not made clear…"*

j) On 22.09.2025, the appellant was required to file an affidavit, and on 30.09.2025, the appellant filed its affidavit. The relevant paragraphs are para 3 & 4, and they read:

> *"3. It is the case of the Appellant that the reply could not be preferred before the Hon'ble Adjudicating Authority due to the issue of security code which could not be generated by the Appellant as the phone number and email Id attached to the Appellant in the Section 95 petition was wrong and the Appellant could not generate security code on time.*
>
> *4. That the Appellant approached the Registry of the Hon'ble Adjudicating Authority for changing the number and the email id to receive the security code but before the same could be done, the order against the Appellant was passed by the Hon'ble Authority and hence the present appeal was preferred."*

Plainly we were not satisfied with the quality of the reasons stated in that affidavit (extracted above). In this backdrop, the learned counsel for the appellant made a statement that he would confine his argument only to the point of limitation, and this we recorded.

3. The principal question, which falls for consideration is whether the application filed under Section 95 of the IBC was within limitation. The contention of the appellant is that the application under Sec. 95 of the Code was instituted on 28.09.2023, is barred by limitation, since the account of the corporate debtor was classified as NPA as early as on 24.04.2012 and the credit facilities were recalled in the year 2015. According to the appellant, even if the settlement proposals dated 05.01.2016 and 28.04.2016 are treated as acknowledgements of liability, limitation stood extended only by three years and up to 28.04.2019, and hence the institution of the petition under Sec.95 in 2023 are therefore beyond time. And, the alleged proposal for settlement in 2020 and the alleged part payment of the debt made on 03.02.2021 do not constitute valid acknowledgements and is not capable of extending limitation. This apart, even O.A. No. 226 of 2013 which the respondent has instituted was dismissed on 31.05.2018.

4. Per contra, the learned counsel for the respondent-bank refuted the appellant's contentions and pitched its argument on the settlement proposals made on behalf of the corporate debtor and emphasised more on the part-payment of debt made by it on 03.02.2021 towards the outstanding dues. It is further submitted that under the terms of the deed of guarantee, any acknowledgement in writing or part-payment made by the borrower is binding on the guarantor as well. Accordingly the application filed on 28.09.2023 is within limitation. Turning to the

dismissal of O.A. No. 226 of 2013, it was dismissed only for default, and not on merit of the claim.

Discussion & Decision

5. We have considered the rival submissions. The appellant's challenge rests entirely on limitation. According to her, the account having been classified as NPA on 24.04.2012 and the facilities having been recalled in the year 2015, the application instituted under Section 95 on 28.09.2023 is barred by limitation. The submission proceeds on the basis that even if the settlement proposals of the year 2016 are treated as acknowledgements, limitation could survive only till the year 2019.

6. We are unable to agree with the contention of the appellant, and our reasons are:

The respondent does not rest its case merely on the NPA classification or the settlement proposals of 2016. It specifically relies on the part payment of debt made on 03.02.2021 by the corporate debtor. Here, the appellant disputes only its effect, but not its existence. The deed of guarantee which the appellant has executed inter alia provides that any part-payment made by the borrower will bind the guarantor. Therefore, the payment relied upon by the respondent cannot be ignored while examining limitation against the appellant. And given the fact that the liability of the guarantor is co-extensive with the principal borrower, the appellant cannot escape liability, and the plea of the appellant appears to be a desperate effort in defending the action.

7. The appellant's reliance on the dismissal of O.A. No. 226 of 2013 before the Debt Recovery Tribunal is equally misplaced. Dismissal of a recovery proceeding for default does not extinguish the debt, nor does it render a proceeding under Section 95 of the Code non-maintainable.

8. We therefore find no reason to interfere with the impugned order. The appeal is dismissed. All pending IAs, if any, stand disposed of. No order as to costs.

[Justice N. Seshasayee]
Member (Judicial)

[Indevar Pandey]
Member (Technical)

rs/beena