NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1058 of 2026
&
I.A. No. 4167, 4168, 4169, 4477 of 2026

IN THE MATTER OF:

Kanta Gupta **...Appellant(s)**

Versus

Bank of India & Ors. **...Respondent(s)**

Present:

For Appellant	**:**	Mr. Krishnendu Datta & Mr. Neeraj Malhotra, Sr. Advocates along with Mr. Nipun Gautam & Mr. Harsh, Advocates.
For Respondents	**:**	Mr. Vadlamani Seshagiri, Mr. Christy Nameirakpam, Mr. Ananya Kukreti & Ms. Deepanshi Kaushik, Advocates for R-1. Ms. Eshna Kumar & Ms. Astha Agrawal, Advocates for R-4. Mr. Sandeep Bajaj, Mr. Akshit Awasthi, Mr. Mayank Biyani & Ms. Tanishka Kapoor, Advocates for R-5.

O R D E R
(Hybrid Mode)

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

The instant appeal has been filed by the Appellant, who is the personal guarantor of the principal borrower, against the impugned order dated 26-05-2026 passed by the Ld. National Company Law Tribunal, Chandigarh Bench (Adjudicating Authority) in CP No. 295 of 2025, whereby the petition filed by the Appellant under Section 94 of the Insolvency and Bankruptcy Code, 2016 (Code) was dismissed on the grounds that the same is barred by limitation.

2. During the pendency of the instant appeal the Liquidator has issued an auction notice for the purpose of inviting bids for the auction of the

leasehold rights in the subject property, along with the building constructed thereon, at a reserve price of Rs. 49 Crores 50 Lakhs. The Appellant has also moved IA No. 4477 of 2026 challenging the said auction notice.

3. Brief facts necessary for the disposal of this appeal appears to be that the appellant is the personal guarantor of the loan made available to the corporate debtor, namely M/s OSIL Exports Limited, which had availed credit facilities from five banks under a consortium arrangement, namely:

- Bank of India, being the lead bank
- State Bank of India
- State Bank of Bikaner and Jaipur
- State Bank of Patiala
- Oriental Bank of Commerce

Appellant had extended personal guarantees, which is evident from the deeds of guarantee dated 21-05-2014 and 21-02-2015. On the happening of the default, Bank of India had filed a petition under Section 7 of the Code against the corporate debtor, being CP No. 128/2017, titled Bank of India vs. OSIL Exports Limited, which was admitted by the Ld. Adjudicating Authority by order dated 31/01/2018.

4. It is also reflected that as no viable Resolution Plan was accepted by the CoC, and the Resolution Professional filed IA No. 526 of 2018 under Section 33 of the Code seeking liquidation of the CD and by order dated 17-10-2019, the liquidation process was commenced against the principal borrower/CD.

5. It is further reflected that on 10-9-2019, Bank of India issued notice under Section 13(2) of the SARFAESI Act, 2002, to the Appellant and thereby invoked her personal guarantee. The Bank of India, being the lead bank, also issued notice under Section 13 (4) of the SARFAESI Act, which included the outstanding amount of all the 5 banks and took symbolic possession of the assets of the personal guarantor.

6. It is also reflected that on 16/04/21, a one-time settlement proposal was submitted by all guarantors, including the appellant, requesting the financial creditor to consider the OTS on behalf of the corporate debtor. The guarantors offered Rs. 22 Crore to settle the dispute. The revised OTS proposal was also submitted by the Appellant on 03/04/2023.

7. It is further reflected that the appellant filed CP No. 295/2025 under Section 94 of the IBC before the Ld. Adjudicating Authority on 18-12-25 and vide order dated 20-01-2026, the Ld. Adjudicating Authority appointed Resolution Professional, who submitted his report recommending admission of the petition and observing that the debt was within limitation. The Bank of India, however, filed objections with regard to the report of the Resolution Professional, and Appellant also filed objections to the response. The petition filed by Appellant under Section 94 of the Code was dismissed by the Ld. Adjudicating Authority by passing impugned order dated 26/05/2026.

8. We have heard the Ld. Counsels for the parties and have perused the record.

9. Ld. Sr. Counsel appearing for the Appellant submits that the Ld. Adjudicating Authority has committed an illegality in dismissing the petition

filed by the appellant under Section 94 of the Code, as the last milestone for expiry of limitation period has not yet happened, as the recovery certificate was not issued. Elaborating further, it is submitted that the limitation for taking proceedings under Section 94 would commence from the cause of action. However, the cause of action in this case has arisen on 27/6/2016, when Section 13(2) notice was issued and ultimately a recovery certificate was issued on 18/2/2019. Thereafter, the OTS proposals was submitted to the creditors, and having regard to Section 18 of the Limitation Act, the acknowledgement made by way of these OTS proposals had extended the limitation period for another three years.

10. It is further submitted that the DRT proceedings are still pending against the Appellant, which has not culminated till date, and therefore the underlying borrower's guaranteed debt is still subsisting and enforceable. Therefore, the rejection of the Section 94 petition by the Ld. Adjudicating Authority is erroneous on the score that:

- the underlying debt recovery is still underway and pending
- the recovery certificate has still not been issued
- the corporate debtor is still continuing in liquidation, of which the residual debt is liable to be paid by the personal guarantor, i.e. the Appellant

Elaborating further, it is submitted that the CD is under liquidation, and the liquidation process has still not culminated, therefore, the debt is still enforceable, and therefore the petition filed by the Appellant under Section 94 of the Code may not be said to be barred by limitation.

11. It is further submitted that Section 18 of the Limitation Act does not distinguish between a creditor and debtor, and it will apply with equal force to the debtor as well as to the creditor. Therefore, the approach of the Ld. Tribunal is erroneous.

12. It is further submitted that in the present case, Section 13 (2) notice was issued on 10-09-2019, and the expiry of 60 days mentioned therein constituted the date of default, i.e., 10-11-2019. However, the date of default only indicates the first trigger for limitation. Therefore, it was imperative that further acts or causes of action would renew the period of limitation, and this aspect of the matter has been ignored by the Ld. Adjudicating Authority.

13. It is vehemently submitted that when a creditor can use the acknowledgements made by the debtor under Section 18 of the Limitation Act, why the same acknowledgements could not be used by the debtor? It is submitted that, at the cost of repetition, it is to be highlighted that Section 94 does not trigger on the first cause of action and allows the debtor to submit itself to the jurisdiction of the Ld. Adjudicating Authority thereafter at any date where the settlement of the dues may be in sight.

14. It is further submitted that the petition filed by the Appellant was within time, as the liquidation process was pending against the CD and the debt was enforceable. Moreover, Section 18 provides a new cause of action has arisen due to the proposals made by the Appellant in the form of OTS.

15. Learned counsel for the Respondent No. 1, however, submits that the Ld. Adjudicating Authority has correctly dismissed the application moved by the appellant under Section 94 of the code as the appellant, in its own application, admits that the cause of action is the invocation of the guarantee by notice dated 10/09/2019 and thereafter, the limitation would be available only till 10/09/2022, as specified under Article 137 of the Limitation. It is highlighted that this Appellate Tribunal in ***Suyog Jain v. Aravind Kumar 2025 SCC Online NCLAT 1354*** has held that the limitation for the sake of filing an application under Section 94 of the Code has to be filed within a period of 3 years of the commencement of default (i.e., from the invocation of guarantee).

16. It is further submitted that this contention of the Appellant is patently wrong that, by virtue of the OTS proposals proposed by Appellant and rejected by the Bank, the same would result in extension of limitation under Section 18 of the Limitation Act. The law is well settled that once limitation starts, it runs continuously and cannot be stopped. Further, the appellant cannot seek any benefit under Section 18 of the Limitation Act by way of its own acknowledgment, which has been disputed by the respondent, against whom such right is being claimed. It is also highlighted that Section 18 categorically states that the acknowledgement of liability has to be signed by the party against whom such right is being claimed. While there is no such signed document available with the Appellant, which may extend the limitation under Section 18 of the Limitation Act.

17. It is further submitted that Section 94 application was moved to abuse the process of law. This Appellate Tribunal in ***Ashwani Kumar Oberoi versus SBI 2026 SCC Online Nclat 595 and in Rojina firoz Hajiani versus Union of India 2026 267 COMP CAS 82*** has held that the provision of 94 IBC is being broadly misused by the guarantors to delay the proceedings of SARAFAESI Act, 2002.

18. It is further submitted that by moving IA No. 4477 of 2026, the Appellant has sought the stay of auction notice dated 30 June 2026 issued by the Respondent Bank, however the relief sought is beyond the jurisdiction of this appellate tribunal, as the auction notice has been issued under SARAFAESI Act, 2002 and the jurisdiction with regard to the said notice lies with the DRT.

19. It is further submitted that the judgment passed by the Learned Adjudicating Authority is a well-reasoned judgment, and no interference is required therein. The Appellant has sat quietly for a period of over six years since the issuance of Demand Notice, which has been issued under Section 13(2) of the SARAFAESI Act, 2002 by the Respondent Bank. The Appellant has only instituted the present proceedings with the objective of claiming the benefit of moratorium under Section 96 of the Code, which has subsequently been amended to not apply to applications for personal insolvency (owing to its flagrant misuse to stall the execution of remedies available to banks and financial institutions under the SARAFAESI Act, 2002). Thus, the appeal is liable to be dismissed.

20. Ld. Counsel for the appellant has relied on the law laid down by this appellate tribunal in ***Suyog Jain v. Arvind Kumar, 2025 SCC online NCLAT 1354, Ashwani Kumar Oberoi v. SBI, 2026 SCC online NCLAT 595, and Rozina Feroz Hajiani Vs Union of India, (2026) 267 Comp Cas 82***.

21. Learned counsel for the respondent No. 5 - liquidator submits that OSIL Exports Limited (CD) availed various financial facilities in 2014, and the appellant and her husband, being the suspended directors of the CD, executed personal guarantees in favour of the lenders. Upon default by the CD, the loan account was classified as December 2015.

22. It is further submitted that Respondent No. 1, Bank of India, initiated CIRP against the CD under Section 7 of the IBC, which was admitted by the Ld. Adjudicating Authority on 31stJanuary 2018. As no resolution plan was received, the CD was ordered into liquidation vide order dated 17th October 2019, and the answering respondent was appointed as the liquidator for the purpose of conducting the liquidation process.

23. It is further submitted that during the liquidation process, the Respondent initiated proceedings under the SARAFAESI Act, 2002 by issuing the demand notice under Section 13(2) of SARFAESI Act on 10/09/2019, and a possession notice under Section 13(4) in respect of the subject property was also given. It was during the pendency of this liquidation proceedings Appellant filed an application under Section 94 of the Code on 3rd December 2025, consequently RP was appointed by the Ld. Adjudicating Authority under Section 97 of the Code, who submitted report

under Section 99 recommending admission of the application on the ground that the Appellant's OTS proposal dated 16 April 2021 and 3rd April 2023 extended limitation under Section 18 of the Limitation Act. Respondent bank has taken objection that the application is barred by limitation and also that there is no valid acknowledgement. Accordingly, the application filed by the appellant under Section 94 of the Code was dismissed by passing the impugned order on the ground of being barred by limitation. The liquidator in terms of liquidation regulations, published an auction notice on June 30, 2026, inviting bidders for the auction of the leasehold rights of the subject property along with the building constructed thereon at a reserve price of Rs. 49,50,00,000/- and the appellant has also challenged auction notice by moving an application being IA No. 4477 of 2026.

24. Ld. Counsel for the Liquidator submits that the above sequence of events clearly demonstrates that the application under Section 94 of the Code was not a bona fide invocation of the insolvency process but a calculated attempt to obstruct realization of assets by the Banks. Elaborating further, it is submitted that the Respondent-Liquidator convened the 20th Meeting of the SCC on 3rd December 2025, wherein a proposal for joint auction of the assets of the CD and of the Personal Guarantor was under consideration. It is on the same day that the Appellant hurriedly filed the application under Section 94 of the Code to trigger the interim moratorium under Section 96 and thus the proceedings have been filed only for the purpose of stalling the proposed auction.

25. It is further submitted that joint auction of assets is permissible for the purpose of value maximization. In this regard, the learned counsel for the Appellant has relied on the law laid down by this Appellate Tribunal in ***Ayaan Malik v. Pratim Bayal Company (A-T) (I-N-S) No. 456 of 2022 and Mr. Pratik Gupta and others v. Kotak Mahindra Bank Limited and another, Company Appeal (AT) (Ins) No. 147 of 2022***.

26. It is also submitted that the application being IA No. 4477 of 2026, filed under Rules 31 and 11 of the NCLT Rules, 2016, seeking stay of the Option Notice dated 30 June 2026, is not maintainable. Rule 31 is merely procedural and cannot enlarge the appellate jurisdiction of this appellate tribunal to stay an independent statutory action of the liquidator.

27. It is further submitted that by notice dated 30th June 2026, only the leasehold rights are being proposed to be auctioned in view of the lease deed dated 15th October 2010, and it has been specified in the auction notice clearly. Highlighting Section 36(3)(d) and Section 3(27) of the IBC, it is submitted that these sections expressly include contractual rights and every description of proprietary interest within the liquidation estate which may be sold by the liquidator in order to maximize the value. In this regard, the law laid down by the Hon'ble Supreme Court in ***Victory Iron Works Limited v. Jitender Lohia and others, (2023) 7 SCC 227***, has been relied.

28. Before proceeding further, it is clarified that on 31st July 2026, we have noted that the Respondent No. 1 has filed the reply. It was also informed that the Respondent No. 1 is the lead bank, while Respondent No. 2 and 3 are members of the consortium. Therefore, the reply filed by the

Respondent No. 1 may also be deemed to be the reply filed by the respondent No. 2 and 3. In this regard, the statement made by the counsel for respondent No. 1 was recorded. We have to place on record that, vide order dated 22nd July 2026, we permitted the appellant to file amended memo of parties, which has been filed. Now, having regard to the amended memo of parties, the Bank of India, Punjab National Bank, Rare Assets Reconstruction Limited, Mr. Diwan Asparan Nabi, and OSIL Exports Limited have been arrayed as Respondent No. 1 to 5, respectively.

29. We also place on record that on 31st July 2026, we have heard the submissions made by Ld. Counsel for the Appellant as well as Ld. Counsel appearing for the respondents No. 1, 4 and 5.

30. Having heard the learned counsel for the parties and having perused the record, we notice that there are certain facts in the instant appeal which are admitted to the Appellant. In view of the facts stated by the appellant in the memo of appeal and in the list of dates and events, it appears to be admitted to the appellant that he had executed deeds of personal guarantee in favour of the consortium lenders in respect of credit facilities availed by OSIL exports Limited vide guarantee deeds dated 21st May 2014 and 21st February 2015. The loan account of the CD was classified as a Non-Performing Asset (NPA) on 31st Dec 2015.

31. It is also admitted to the Appellant that the Respondent No. 1, Bank of India, filed a petition under Section 7 of the Code against the CD on 29/11/2017, and the Learned Adjudicating Authority vide Order dated 31/01/2018 initiated the CIRP against the CD.

32. It is also admitted to the Appellant that vide notice issued under Section 13 of the SARAFAESI Act, 2002 on 10/09/2019, the personal guarantee was invoked against the Appellant and also that in absence of any viable Resolution Plan, the Ld. Adjudicating Authority has directed the initiation of liquidation proceedings against the CD on 17th October 2019.

33. It is also admitted to the Appellant that the Respondent No. 1, Bank of India, issued possession notice under Section 13(4) of the SARAFAESI Act, 2002, and took symbolic possession of assets of the Appellant on 25-11-2019.

34. It is further stated by the appellant that the appellant submitted one-time settlement proposal on 16-04-2021 and a revised OTS proposal on 03-04-2023. Petition under Section 94 of the IBC was filed by the Appellant on 18th December 2025, whereon, the Ld. Adjudicating Authority appointed a Resolution Professional on 20th January 2026, who submitted his report on 05/02/2026 in favour of the Appellant. However, Bank of India filed objections to this report, contending that the application is beyond limitation and also that the recovery proceedings had already been initiated. The Appellant also filed a reply to the objections of the Bank of India, however, the Ld. Adjudicating Authority dismissed the Section 94 petition by passing the impugned order.

35. The main thrust of the submissions advanced by Ld. Counsel for the appellant is on the fact that by submitting OTS proposals dated 16-04-2021 and revised proposal on 03-04-2023 within the period of limitation of three years since invocation of guarantee on 10.09.2019, the same would

constitute valid acknowledgement of liability under Section 18 of the Limitation Act, 1963 and a fresh period of three years would commence from such acknowledgement in writing and thus period till 03.04.2026 was available to the guarantor to file petition.

36. Ld. Counsels for the Respondents have contended that Section 94 application was moved with mala fide intent and was not a bona fide invocation of the insolvency process and it is a calculated attempt to obstruct realization of assets by the banks. It is highlighted that 20th meeting of the SCC was held on 03/12/2025, wherein a proposal for joint auction of the assets of the CD and of the personal guarantor was under consideration. On the very same day, the appellant hurriedly filed the application under Section 94 of the code only for the purpose of triggering the interim moratorium under Section 96 and it was not a sincere effort for submitting any repayment plan.

37. It was also highlighted that the guarantee was invoked in the year 2019, and the petition under Section 94 was filed after six years, which itself shows that the same has not been filed with any bona fide intention. It is also the case of the respondents that by moving any OTS, the appellant cannot invoke Section 18 of the Indian Limitation Act for the purpose of extension of limitation.

38. We also notice that the Ld. Adjudicating Authority in the impugned order has given following reasons for dismissing the application filed by the Appellant under Section 94 of the Code: -

"5. We have heard the Learned Counsel for the Creditor and the RP. As can be seen from the provisions of Section 18 of the Limitation Act, where before the expiration of the prescribed period of limitation for a suit or application in respect of any property or right an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed. Section 18(1) of the Limitation Act reads thus:

> *"Section 18(1) of the Limitation Act, 1963 (India) deals with the effect of acknowledgment in writing. It provides:*
>
> *Where, before the expiration of the prescribed limitation period for a suit or application relating to any property or right, an acknowledgment of liability regarding that property or right is made in writing and signed by the party against whom the right is claimed (or by a person through whom he derives title or liability), a fresh period of limitation shall be computed from the date on which the acknowledgment was signed".*

6. From the aforementioned provisions, it is clear that the acknowledgment should be made by the parties against whom the right is claimed. In the present case, when the debtor has initiated the process to offer repayment plan to creditors, the Bank of India as one of the creditor has opposed the report of RP. To take the benefit of Section 18 of the Limitation Act, the RP need to show the acknowledgment from the Bank of India, which has actively opposed the admission of the present petition. The RP/debtor cannot seek the benefit of the act of debtor. If an acknowledgment by the party pursuing the cause is relied upon to give benefit of Section 18 of the Limitation Act, the provision could be widely abused. It could be different issue if the creditor i.e. Bank of India, had accepted the proposal and then the debtor/PG subsequently committed default in repaying the amount of debt (settled amount). However, such is not the position in the present case. Indubitably, Account of the principal debtor was declared as NPA on 31.12.2015 and the notice under Section 13(2) of SARFAESI Act, 2002 was issued on 10.09.2019, thus the debtor had period of limitation available to him to file petition under Section 94 of IBC, 2016 till 09.09.2022. The petition preferred under Section 94 of the Code in the year 2025, is barred by limitation and deserves to be rejected. In the wake, the

> *recommendation/report given by the RP as annexed and the petition preferred under Section 94 of IBC are rejected. IA(IBC)/195(CH) 2026 and CP(IB) No.295/Chd/Hry/2025 are accordingly **disposed of**".*

39. We at the outset record that the view adopted by Ld. Adjudicating Authority is in accordance with law and in our considered opinion also, the appellant by any unilateral act cannot enhance or extend the limitation.

> *Section 18 (1) of the Limitation Act, 1963, provides as under:*
>
> *"Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed".*

The principle which is enshrined under Section 18 of the Limitation Act, 1963, is pertaining to getting the benefit of the acknowledgement made in writing by the opposite party against whom some right is being claimed, however, the same could not be claimed by the person on the basis of his own act. In simple words, if the acknowledgement has been made by the opposite party in writing against whom any right is being asserted, the same acknowledgement may enhance the period of limitation. However, a party, by making any document, himself, cannot extend the period of limitation by invoking section 18 of the Indian Limitation Act. In this regard the law laid down by this appellate tribunal in ***Zameer Pawan Kumar Agarwal v. Pankaj Prabhudayal Goenka (RP) and Ors., (2025) ibclaw.in 1044 NCLAT may be recalled.***

40. In fact, Zamir Pawan Kumar Agarwal (supra) was cited by Ld. Senior Counsel, appearing for the Appellant, in order to project that the limitation period would start from the date when the recovery certificate has been issued. However, we are of the considered view that the limitation period, so far as the guarantor is concerned, would commence from the date of invocation of the guarantee. In the aforesaid case of Zamir Pawan Kumar Agarwal, a coordinate branch of this Appellate Tribunal has categorically held that the mere fact that the Appellant gave an OTS proposal to the bank shall not give any benefit under Section 18 of the Indian Limitation Act to the Appellant for completing the limitation period.

41. This Appellate Tribunal, in ***Yogesh Kumar Thakkar vs Indian Overseas Banks and Others (2026) ibclaw.in 655 NCLAT***, categorically held that for Section 94 application, the limitation would start running against the personal guarantor for initiating proceeding under Section 94 of the Code from the cause of action which according to the Tribunal occurred in that case on 27/06/2016 when the notice under Section 13(2) of the SARAFAESI Act, 2002, was issued, and thereafter, when recovery certificate was issued on 18/02/2019. Thus the cause of action would accrue from invocation of guarantee.

42. This may be viewed from another angle. An OTS, which has been moved by the guarantor, is nothing but an admission of liability. Having regard to the general principles of admissions, a party making an admission cannot use the same for his own benefit. Rather, the admission made by a party can be proved against him by the other party. The OTS, which has

been moved by the Appellant as a personal guarantor, could be used by the bank for invoking Section 18 of the Limitation Act, but the same could not be used by the Appellant/Guarantor himself in order to extend the limitation.

43. Thus, if we exclude the period which has been included by the appellant in view of Section 18 of the Indian Limitation Act, it would emerge that the three-year period provided under Section 137 of the Indian Limitation Act has expired much before the institution of the proceeding by the appellant, under Section 94 of the Code, on 18-12-2025. Thus, the petition filed by the appellant under Section 94 of the Code was clearly barred by limitation.

44. Since we have found that the petition filed by the Appellant under Section 94 of the Code is barred by limitation, we are not commenting on the timing of filing the Section 94 petition by the Appellant as highlighted by the Respondent and suffice it is to say that by passing the impugned order, no illegality appears to have been committed by Ld. Adjudicating Authority.

45. Thus, for the reasons given here in before, we do not find any merit in the appeal filed by the appellant, therefore the appeal as well as the IA No. 4477 of 2026 filed by the appellant is hereby **dismissed.**

46. There is no order as to costs.

47. Pending I.A.’s, if any, is also disposed of.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

New Delhi
21.08.2026
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