NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 492 of 2025

(Arising out of order dated 22.01.2025 passed by the National Company Law Tribunal, Principal Bench, in Company Petition (IB) No. 216/(PB)/2021).

In the matter of:

Parveen Gupta,
S/o. Jai Singh Goel,
R/o. 1007A, Aralias Apartment,
Golf Course Road, Gurugram, Haryana

...Appellant

Vs.

1. **Bank of India,**
   New Delhi Large Corporate Branch,
   10th Floor, Chanderlok Building,
   Janpath, Near Tolstoy Marg,
   Opposite Hotel Imperial,
   New Delhi-110001

2. **Mr. Anil Kohli,**
   Resolution Professional,
   Flat No. 409, 4th Floor,
   Ansal Bhawan, 16,
   Kasturba Gandhi Marg,
   Connaught Place,
   New Delhi-110001

...Respondents

Present:

For Appellant: **Mr. Gaurav Mitra, Sr. Advocate with Mr. Siddharth Arora, Ms. Jasleen Kaur, Ms. Aarushi, Mr. Abhishek Arora, Advocates.**

For Respondents: **Mr. Karan Gandhi, Mr. Sikhar Tiwari, Advocates for R-1.**

Ms. Honey Satpal, Mr. Akash Agarwalla, Mr. Aman, Ms. Tanya Gupta, Advocates for R-2/RP.

J U D G M E N T

(30th October, 2026)

Indevar Pandey, Member (T)

The present appeal has been filed by **Parveen Gupta (Appellant**) against **Bank of India (Respondent No. 1/Financial Creditor)** and **Mr. Anil Kohli, Resolution Professional (Respondent No. 2)** under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **Code**), challenging the order dated 22.01.2025 passed by the Adjudicating Authority (National Company Law Tribunal, Principal Bench, New Delhi) in Company Petition No.(IB)-216(PB)/2021. By the impugned order, the Adjudicating Authority admitted the application filed by Bank of India under Section 95(1) of the Code against Appellant in his capacity as a **Personal Guarantor** in relation to credit facilities extended to **Shree Raj Mahal Jewellers Private Limited (Corporate Debtor**), thereby initiating insolvency resolution proceedings against him under Section 100(1) of the Code.

BRIEF FACTS OF THE CASE

2. Facts of the case are given below :-

(i) Shree Raj Mahal Jewellers Private Limited/ Corporate Debtor (CD) was incorporated on 12.05.2009. Parveen Gupta became an Additional Director of the Corporate Debtor around 2009–2010. Pradeep Goel

another Director of the CD was associated with the company's management and banking documentation.

(ii) Bank of India sanctioned credit facilities of Rs. 45 crores on 28.04.2010 to the Corporate Debtor, followed by execution of a hypothecation agreement and deed of guarantee on 01.05.2010.

(iii) A further sanction letter was issued on 17.04.2013, followed by execution of consortium-related documents, including a deed of guarantee, on 17.09.2013. The bank's records also refer to a visit on 19.09.2013.

(iv) On 19.05.2014, a Working Capital Consortium Agreement, deed of guarantee, joint hypothecation agreement and revival letter were executed in connection with the credit facilities.

(v) Parveen Gupta resigned as a director of the Corporate Debtor on 01.10.2014, and the relevant company filings, including Form DIR-12, were placed on record. The banking relationship between the Corporate Debtor and the Respondent continued thereafter.

(vi) The Corporate Debtor sought an ad hoc facility of Rs. 4 crore on 24.12.2014, which was sanctioned on 26.12.2014. A supplemental hypothecation agreement, acknowledgment of debt and securities dated 27.12.2014, and a deed of guarantee dated 27.12.2014 were subsequently placed on record. The acknowledgment recorded indebtedness of approximately Rs. 44.99 crore as of 26.12.2014.

(vii) A sanction letter dated 23.01.2015 provided revised terms, including an interest @4.20% over Base Rate, revised EPC limit and service tax on commitment charges. Both signed and unsigned copies of the sanction letter were subsequently placed before the NCLT.

(viii) The Corporate Debtor's account was classified as an NPA on 30.06.2015. The Respondent thereafter issued a notice under Section 13(2) of the SARFAESI Act on 08.04.2016, followed by a legal notice dated 01.04.2017 on behalf of Bank of India, Federal Bank, Central Bank of India and Corporation Bank through S.V. Tyagi & Associates.

(ix) An OTS proposal dated 23.03.2018 was rejected on 28.03.2018. Meanwhile, proceedings under Section 7 of the IBC against the Corporate Debtor were admitted on 24.04.2019. The Respondent lodged a claim of approximately Rs. 90 crore during CIRP. Following the liquidation order dated 08.09.2020, its claim during liquidation was approximately Rs. 110 crore.

(x) Ashok Goel, a personal guarantor and suspended director of the Corporate Debtor, submitted an OTS proposal for Rs. 7.5 crore on 05.01.2021, which was rejected on 20.01.2021.

(xi) The Respondent issued a notice dated 17.02.2021 to the Appellant under Section 95(4)(b) of the IBC read with Rule 7(1) of the applicable Rules, seeking payment of approximately Rs. 113.83 crore.

(xii) On 06.04.2021, the Respondent filed an application under Section 95(1) of the IBC against the Appellant before the NCLT, Principal Bench, New Delhi, registered as Company Petition No. (IB)-216(PB)/2021. An interim moratorium commenced on 07.04.2021 under Section 96 of the IBC.

(xiii) Anil Kohli was appointed as the Resolution Professional on 30.09.2021. By letter dated 04.10.2021, he sought documents relating to repayment of the dues. The Resolution Professional submitted a report under Section 99 on 14.10.2021, recommending admission of the application, which was taken on record by the NCLT on 01.11.2021. The Appellant subsequently filed objections and interlocutory applications.

(xiv) Writ Petition (Civil) No. 716 of 2022, titled Praveen Gupta v. Union of India & Ors., was filed before the Supreme Court on 22.08.2022 concerning the constitutional validity of provisions of the IBC.

(xv) In the CIRP Proceedings on 14.12.2023, the Appellant filed I.A. No. 6731 of 2023 to place on record his resignation letter and an unsigned copy of the sanction letter dated 23.01.2015. On 06.01.2024, he filed I.A. No. 115 of 2024 seeking dismissal of Company Petition No. (IB)-216(PB)/2021.

(xvi) On 30.07.2024, the Resolution Professional filed I.A. No. 3978 of 2024 to place on record a signed copy of the sanction letter. A forensic

report dated 06.08.2024 issued by the private forensic expert concerning signatures was also brought on record by the Appellant.

(xvii) Civil Suit No. 815 of 2024 was instituted through a plaint dated 23.08.2024 seeking reliefs relating to cancellation, declaration and injunction.

(xviii) During the hearing on 26.11.2024, the Resolution Professional stated that the Respondent Bank should respond regarding the sanction letter. By an affidavit dated 09.12.2024, the Respondent placed attendance records on record, reflecting the Appellant's visits on 28.12.2012, 19.09.2013 and 19.05.2014, but not on 27.12.2014 or 23.01.2015.

(xix) By order dated 22.01.2025, the NCLT accepted the Resolution Professional's report and admitted the application under Section 95(1) of the IBC against the Appellant under Section 100(1).

(xx) The NCLT directed the Resolution Professional to proceed under Chapter III of Part III of the IBC, including issuing a public notice under Section 102 and inviting claims from creditors. It vacated the interim moratorium, brought the moratorium under Section 101 into effect and disposed of the interlocutory applications.

(xxi) The Appellant filed the present appeal challenging the impugned order dated 22.01.2025 passed by the Adjudicating Authority.

Submissions of Appellant

3. Mr. Gaurav Mitra Ld. Sr. Counsel appearing for the Appellant submits that the present appeal challenges the order dated 22.01.2025 passed by Ld. Adjudicating Authority, in Company Petition No. (IB)-216(PB)/2021, titled *Bank of India v. Parveen Gupta*, whereby the petition filed under Section 95 of the Code was admitted under Section 100(1) of the Code, accepting the report of the Resolution Professional. The Appellant challenges the impugned order on the grounds of limitation, novation and discharge of surety, forgery of the guarantee documents and failure of the creditor to enforce the available collateral securities.

4. Ld. Counsel submits that the Adjudicating Authority erroneously rejected the objection that the petition under Section 95 of the IBC was barred by limitation, relying upon the rejection of the settlement proposal dated 05.01.2021 submitted by another guarantor, Ashok Goel. It is contended that the said proposal was neither made by the Appellant nor on his behalf and, therefore, could not extend or revive the limitation period applicable to proceedings against him. The Appellant further submits that the NCLT incorrectly rejected his plea of novation and discharge of surety by relying upon the alleged Deed of Guarantee dated 27.12.2014 and Sanction Letter dated 23.01.2015, despite his specific denial of the signatures appearing thereon and the absence of any record establishing his presence at the bank on the relevant dates.

5. He submits that the Appellant was appointed as an Additional Director of Shree Raj Mahal Jewellers ("SRM") during 2009–2010 and resigned on 01.10.2014, as evidenced by Annexure A21, page 363 of the Appeal Paper Book (**'APB'** in short). All legal and procedural formalities relating to his cessation were completed with the Ministry of Corporate Affairs. During his tenure, the Appellant had executed Deeds of Guarantee dated 01.05.2010, 17.09.2013 (signed on 19.09.2013) and 19.05.2014 by personally visiting the office of Respondent No. 1. His presence on those occasions is recorded in the bank's attendance registers placed at Annexure 52, page 764; Annexure 53, page 776; and Annexure 54, page 791 of the APB.

6. It is submitted that, after the Appellant's resignation, SRM requested an ad-hoc credit limit of Rs. 4 crores vide letter dated 24.12.2014, which was sanctioned by Respondent No. 1 on 26.12.2014. Neither document bears the Appellant's name or signature. According to the Appellant, the grant of the ad-hoc facility and the subsequent enhancement and revision of the credit arrangements constituted novation of the earlier contractual arrangements, including the last guarantee dated 19.05.2014. Reliance is placed upon Section 62 of the Indian Contract Act, 1872 ("ICA"), and the judgment of the Hon'ble Delhi High Court in ***Rajan Malhotra v. Union Bank of India*, (2019) DLT 277 (DB)**, in support of the contention that substitution of a new contract discharges the earlier contractual obligations.

7. Ld. Counsel submits that Respondent No. 1 relies upon an alleged Deed of Guarantee dated 27.12.2014, which the Appellant specifically alleges to be

forged and fabricated. There is no record of his presence at the bank on that date, and he contends that there was no plausible reason for him to execute further security documents after resigning from SRM. Similarly, the Sanction Letter dated 23.01.2015 revised the credit facility by increasing the interest rate to 4.20%, revising the EPC limit and making service tax applicable to commitment charges. Although the sanction required signed acceptance by the directors and guarantors, the Appellant maintains that he neither signed nor accepted it. He submits that these subsequent arrangements were entered into after his resignation and without his consent, and could not automatically continue his liability under the earlier guarantee.

8. He further submits that the Appellant filed IA No. 115/2024 before the NCLT on 06.01.2024, seeking dismissal of the Section 95 petition on grounds of fraud, forgery and novation, and placed on record an unsigned copy of the Sanction Letter dated 23.01.2015 (Annexure A28, page 394). No reply was filed by the Respondents to the said application. Subsequently, on 30.07.2024, Respondent No. 2 filed IA No. 3978/2024 to introduce an alleged signed copy of the same Sanction Letter (Annexure A44, page 581), which, according to the Appellant, had not been disclosed or referred to in the original Section 95 petition. The Appellant disputed the signatures and sought a forensic examination, relying upon ***Channel Foods Pvt. Ltd. & Ors. v. A.K. Nowshad*, 2022 SCC OnLine NCLAT 4443**, stated to have been upheld by the Hon'ble Supreme Court on 05.04.2023.

9. The Appellant obtained a detailed Forensic Report dated 06.08.2024 (Annexure A45, page 590), from the expert which, according to him, identifies significant variations in the signatures appearing on the disputed documents. He thereafter instituted a civil suit seeking cancellation, declaration and permanent injunction, which is pending before the competent Civil Court. The Appellant contends that the authenticity of the documents forming the basis of the alleged guarantee is directly relevant to his liability and cannot be disregarded while admitting him into the insolvency resolution process. The NCLT's observation that the signature dispute should be established in appropriate proceedings is challenged on the ground that allowing the insolvency process to proceed meanwhile may render the civil suit ineffective and reduce any eventual decree to a mere "paper decree". The Appellant accordingly seeks dismissal or, alternatively, stay of the Section 95 proceedings pending adjudication of the disputed documents.

10. Ld. Counsel submits that SRM's account was declared a Non-Performing Asset ("NPA") on 30.06.2015, and Respondent No. 1 issued a notice under Section 13(2) of the SARFAESI Act on 08.04.2016. However, the petition under Section 95 of the IBC was filed only on 06.04.2021. The Appellant contends that the limitation period for enforcement of the guarantee was three years and that the right to initiate proceedings had expired in April 2019. He further submits that Respondent No. 1 expressly identified 30.06.2015 as the date of default in its Section 95 petition, and, on that basis, limitation expired on 30.06.2018. According to the Appellant, the creditor

cannot rely upon different dates of convenience to overcome limitation, and a subsequent notice or communication in 2021 cannot revive a time-barred claim. He also contends that the continuing nature of the guarantee is lost once it has been invoked.

11. He further submits that Section 18 of the Limitation Act, 1963, is inapplicable to the settlement proposal dated 05.01.2021 because it was submitted by Ashok Goel, another guarantor, and not by the Appellant or the borrower, SRM. In any event, the proposal was made after the original limitation period had expired and could not revive a time-barred debt. Similarly, the settlement proposal dated 23.03.2018 was issued by SRM's management after the Appellant's resignation, without his participation. The proposal expressly stated that it was "without prejudice", did not constitute an admission of liability and was intended solely for resolution; it was rejected on 28.03.2018. The Appellant submits that neither proposal can constitute an acknowledgment attributable to him for extending limitation. He further states that he has never submitted any settlement proposal to Respondent No. 1.

12. Summing up, Ld. Counsel submits that Respondent No. 1 failed to take action under the SARFAESI Act against the collateral securities of SRM, allegedly worth approximately Rs. 100 crores. Relying upon Sections 134 and 139 of the Indian Contract Act, the Appellant contends that the creditor's failure to enforce the available collateral securities constitutes an act or omission affecting his rights as surety and furnishes an additional ground for

his discharge from the alleged liability. In view of the aforesaid submissions, he prays for allowing the appeal and setting aside the impugned order dated 22.01.2025 passed by Ld. Adjudicating Authority.

Submissions of Respondent No.1/ Bank of India

13. Ld. Counsel submits that the Corporate Debtor's account was classified as NPA on 03.06.2015, and the Appellant's personal guarantee was invoked on 08.04.2016 under Section 13(2) of the SARFAESI Act, 2002. A demand notice was subsequently issued on 01.04.2017. The Corporate Debtor's OTS proposal dated 23.03.2018 was rejected on 28.03.2018. The Corporate Debtor was admitted into CIRP on 24.04.2019 and ordered into liquidation on 08.09.2020.

14. It is further submitted that an OTS proposal for Rs.7.5 crore was submitted on 05.01.2021 by Mr. Ashok Goel, a Director of the suspended Board of management on behalf of Corporate Debtor, and the same was rejected on 20.01.2021. Respondent No.1 issued a demand notice to the Appellant on 17.02.2021 and filed the petition under Section 95 on 06.04.2021. The Resolution Professional recommended admission under Section 99, and the Adjudicating Authority admitted the petition on 22.01.2025.

15. Ld. Counsel submits that the Section 95 petition is within limitation. The Appellant's guarantee was invoked on 08.04.2016; thereafter, the Corporate Debtor submitted an OTS proposal on 23.03.2018 acknowledging the outstanding liability. The Respondent contends that this acknowledgment

extended limitation under Section 18 of the Limitation Act, 1963, notwithstanding rejection of the proposal on 28.03.2018.

16. He further submits that the OTS proposal dated 05.01.2021 for Rs.7.5 crore, submitted by Mr. Ashok Goel in his capacity as Director of the suspended management, constituted a further acknowledgment of the Corporate Debtor's outstanding debt. The Respondent disputes the Appellant's contention that the proposal cannot be relied upon because it was not submitted directly by the Corporate Debtor. It is submitted that the proposal contemplated withdrawal of proceedings before the NCLT upon acceptance by the Bank and the Resolution Professional.

17. Ld. Counsel submits that Clause 12 of the Deed of Guarantee dated 19.05.2014 expressly provides that any acknowledgment of debt, admission of liability, promise or part-payment made by the borrower or its authorised agent shall be deemed to have been made on behalf of the guarantors and shall bind them. Clause 8 describes the guarantee as a continuing guarantee covering the amounts advanced, together with interest, costs and other dues. The Respondent therefore contends that the subsequent acknowledgment is binding upon the Appellant under the contractual terms.

18. Ld. Counsel relies upon Section 128 of the Indian Contract Act, 1872, and the judgments of Hon'ble SC in ***Laxmi Pat Surana v. Union of India & Anr.*, (2021) 8 SCC 481**, and this Appellate Tribunal in ***Pooja Ramesh Singh v. State Bank of India*, Company Appeal (AT) (Insolvency) No. 329 of 2023**, in support of the submissions concerning the liability of a guarantor

and limitation. It is submitted that the provisions of Part III of the Code came into force on 15.11.2019 and the petition was filed thereafter, on 06.04.2021. Accordingly, the Respondent maintains that the proceedings are maintainable and the limitation objection deserves rejection.

19. Ld. Counsel submits that the second contention of the Appellant regarding his resignation from the Corporate Debtor on 01.10.2014, does not discharge his liability under the Deed of Guarantee, which was executed in his personal capacity and is independent of his position as Director. It is contended that the guarantee has not been shown to have been revoked or discharged by Respondent No.1.

20. In support, Ld. Counsel relies upon ***Central Bank of India v. Kailash Chandra Gaur, Writ Petition Nos. 9590 of 2006,*** wherein the Hon'ble High Court of Karnataka is stated to have held that resignation does not absolve a guarantor unless the Bank discharges him. Reliance is also placed upon the judgemnt of Hon'ble Supreme Court in ***BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd. & Anr., Civil Appeal No. 4565 of 2021***, concerning the co-extensive liability of a surety under Section 128 of the Indian Contract Act, 1872.

21. He further submits that, under Section 137 of the Indian Contract Act, mere forbearance by the creditor to sue the principal debtor does not discharge the surety. The Appellant's resignation, therefore, cannot by itself extinguish his contractual obligations under the guarantee.

22. Regarding the third contention of the Appellant about his forged signature, Ld. Counsel submits that the Appellant's allegation that his signatures on the documents dated 27.12.2014 and 23.01.2015 are forged is disputed. The Respondent contends that variations in the Appellant's signatures over time may be demonstrated from documents filed by him in other proceedings and that such variations alone do not establish forgery.

23. Ld. Counsel points out that the Bank's notice dated 08.04.2016 under Section 13(2) of the SARFAESI Act referred to credit facilities aggregating Rs.49 crore, including an ad hoc limit of Rs.4 crore, and to guarantee letters allegedly executed by the Appellant on 01.05.2010, 17.09.2013, 19.05.2014, 27.12.2014 and 23.01.2015. The Respondent submits that the Appellant did not raise an objection regarding the alleged forgery at that stage. The civil suit challenging the documents was instituted only in 2024, whereas the Section 95 petition had been filed in 2021 and included the guarantee dated 27.12.2014.

24. He further submits that the MCA's Master Data records shows Appellant's association with PLB Infrastructure Private Limited until 01.04.2024 as Director of the Company. PLB Infrastructure was also one of the Corporate Guarantors of the CD and had signed the Deed of Guarantee dated 27.12.2024 and Sanction Letter dated 27.01.2015. The Respondent also relies upon this record to dispute the Appellant's plea of ignorance regarding subsequent sanctions and points out that the Section 95 petition was filed before the recorded cessation of his directorship in that company.

25. Ld. Counsel submits that the Appellant voluntarily proposed a repayment plan to the Resolution Professional, as recorded in his rejoinder dated 26.05.2025. The Respondent contends that the Appellant's participation in the repayment process, followed by his challenge to the same proceedings, is inconsistent and attracts the doctrine of approbate and reprobate. Reliance is placed upon ***Union of India and Ors. v. N. Murugesan and Ors., (2022) 2 SCC 25***, wherein the Hon'ble Supreme Court explained that a party cannot accept and reject the same thing. The Respondent accordingly submits that the Appellant's conduct and the circumstances surrounding the belated forgery allegation do not warrant interference with the impugned order. Summing up, Ld. Counsel submits that in view of the foregoing submissions, Ld. Counsel prays for the dismissal of the appeal.

Submissions of Respondent No.2

26. Ld. Counsel submits that Respondent No.2 was appointed as the Resolution Professional for the Appellant/Personal Guarantor, Shri Parveen Gupta, vide order dated 30.09.2021 passed by the Ld. Adjudicating Authority in CP (IB) No. 216/PB/2021.

27. She submits that the Corporate Debtor, M/s. Raj Mahal Jewellers Private Limited, had availed credit facilities of Rs. 49 Crores from a consortium of banks, including Respondent No. 1, Bank of India. Its account was declared NPA on 30.06.2015, and the application under Section 7 of the

Code was admitted on 24.04.2019. As no Resolution Plan was approved, liquidation proceedings commenced vide order dated 08.09.2020.

28. It is submitted that Respondent No. 2 filed a report under Section 99 of the Code, bearing I.A. No. 4948 of 2021, recommending initiation of the Insolvency Resolution Process against the Appellant under Section 100 of the Code. The proceedings were admitted by the Ld. Adjudicating Authority on 22.01.2025.

29. Ld. Counsel states that four other Personal Guarantors of the same Corporate Debtor were also undergoing PIRPs. Considering their interlinked liabilities, guarantees and common creditors, the creditors initially contemplated a collective Repayment Plan. Respondent No. 2 admitted claims aggregating to Rs.1102 crores, representing 100% of the voting share of the creditors listed in the Appellant's PIRP.

30. She submits that, during the second Meeting of Creditors, the creditors requested the Appellant's counsel to seek leave of the Hon'ble Appellate Tribunal for consideration of the Appellant's Repayment Plan alongside those of the other Personal Guarantors. Although the counsel agreed, individual Repayment Plans were subsequently submitted by all five Personal Guarantors.

31. It is further submitted that Respondent No. 2 received the Appellant's Repayment Plan on 21.05.2025, one day before expiry of the 120-day period. Accordingly, the report under Section 106 of the Code was filed on

22.05.2025, bearing I.A. No. 2599/PB/2025. The Appellant had also failed to furnish the requisite documents for preparation of the Statement of Affairs under Section 107(3)(b) of the Code read with Regulation 10(1) of the PG Regulations.

32. Ld. Counsel states that the Appellant submitted a revised Repayment Plan on 26.05.2025, offering Rs. 4.80 Crores against total outstanding debt of approximately Rs. 1,102 Crores. At the second Meeting of Creditors held on 28.05.2025, the creditors expressed their willingness to consider the Repayment Plans collectively. However, the order dated 27.03.2025 passed by the Hon'ble Appellate Tribunal, staying finalisation of the Appellant's Repayment Plan, prevented such consideration.

33. Ld. Counsel submits that, in the absence of an application by the Appellant seeking leave for consideration of his Repayment Plan and owing to the impending expiry of the other Personal Guarantors' PIRP periods, their Repayment Plans were put to vote on 26.06.2025 and rejected in their respective proceedings.

34. It is further submitted that Respondent No. 2 received a copy of the Appellant's application seeking leave for consideration of his Repayment Plan on 07.07.2025. During the third Meeting of Creditors held on 16.07.2025, the creditors were informed that the Appellant's PIRP period would expire on 21.07.2025. After considering and negotiating the revised Repayment Plan, the creditors declined to seek an extension of the PIRP period, as the amount offered was significantly lower than the current value of the secured property

and the total outstanding debt. They consequently decided not to relinquish their security interest under Section 110 of the Code and to conclude/close the Appellant's PIRP.

35. Ld. Counsel further submits that Respondent No. 2 has not filed a report under Section 112 of the Code in view of the stay granted by the Hon'ble Appellate Tribunal.

36. Ld. Counsel submits that the principal grounds raised by the Appellant concern alleged forgery of signatures on the Loan Sanctioning Agreements and Deeds of Guarantee executed between Respondent No.1 and the Directors of the Corporate Debtor. Respondent No.2's report under Section 99 was prepared on the basis of the data and information furnished by Respondent No.1.

37. She further submits that paragraphs 11 and 12 of the Impugned Order contain categorical findings on the allegation of forgery. The Ld. Adjudicating Authority rightly observed that the aggrieved person ought to take prompt action regarding such allegations. Despite the Section 95 petition having been filed in 2021, the Appellant raised the issue only in 2024, which Respondent No.2 contends was an afterthought intended to evade liability.

38. It is further submitted that the Appellant did not dispute the alleged forged signatures upon receipt of the demand notice dated 08.04.2016 issued under the SARFAESI framework, the legal notice dated 01.04.2017, or in his objections dated 31.01.2022 to the report under Section 99 of the Code.

Respondent No. 2 relies upon these omissions to contend that the allegation was belatedly raised.

39. Ld. Counsel submits that the liability under the Deed of Guarantee is co-extensive with that of the principal debtor, unless otherwise provided in the contract. In view of the aforesaid submissions, Ld. Counsel submits that the appeal is devoid of merit and deserves to be dismissed.

Analysis and Findings

40. We have heard the Ld. Counsels and perused the records. The present appeal challenges the order dated 22.01.2025 passed by the Ld. Adjudicating Authority in CP (IB) No. 216(PB)/2021, whereby the application filed by Bank of India under Section 95 of the Code was admitted under Section 100(1) against the Appellant, Parveen Gupta, as a personal guarantor of Shree Raj Mahal Jewellers Private Limited ("Corporate Debtor"). The Resolution Professional, Mr. Anil Kohli, had submitted a report dated 14.10.2021 under Section 99 recommending admission of the application. The Appellant challenges the admission primarily on four grounds: limitation, novation of the earlier guarantees following his resignation, forgery of the signatures on subsequent documents, and discharge of his liability owing to the Bank's alleged failure to enforce collateral securities.

41. The Appellant submits that he resigned as a director of the Corporate Debtor on 01.10.2014 and completed the requisite formalities with the Ministry of Corporate Affairs. He admits executing guarantees dated

01.05.2010, 17.09.2013 and 19.05.2014 during his association with the company. However, he denies executing the Deed of Guarantee dated 27.12.2014 and disputes the signatures attributed to him on the Sanction Letter dated 23.01.2015. He contends that the subsequent credit arrangements, including the sanction of an ad-hoc facility of Rs. 4 Crores after his resignation, altered the earlier contractual arrangements and discharged him from liability. He further relies upon the absence of his name from the Bank's attendance records for 27.12.2014 and 23.01.2015, a forensic report dated 06.08.2024 identifying variations in the disputed signatures, and Civil Suit No. 815/2024 filed for cancellation, declaration and permanent injunction concerning the disputed documents.

42. The Appellant also contends that the Corporate Debtor's account was declared a non-performing asset in June 2015 and that the Bank invoked his guarantee by notice dated 08.04.2016. According to him, the application filed on 06.04.2021 was beyond the prescribed three-year limitation period. He disputes the Bank's reliance upon the OTS proposals dated 23.03.2018 and 05.01.2021, particularly because the latter was submitted by Ashok Goel and not by the Appellant. The Bank, on the other hand, submits that the proposal dated 23.03.2018 acknowledged the outstanding debt of the Corporate Debtor and that the proposal dated 05.01.2021, submitted by Ashok Goel in his capacity as a director of the suspended management, further acknowledged the liability. It relies upon Clause 12 of the guarantee dated 19.05.2014, which provides that acknowledgments of debt by the borrower or its

authorised agent shall bind the guarantors. The Bank also contends that the earlier guarantees remained enforceable, that the disputed signatures have not been proved to be forged, and that the Appellant has not established discharge under Sections 134 and 139 of the Indian Contract Act, 1872.

43. On the first issue of limitation, we note that the Bank issued a notice dated 08.04.2016 under Section 13(2) of the SARFAESI Act, 2002, invoking the guarantee and demanding repayment within 60 days from the date of issue of the notice. The date of default in this case would, therefore be on 07.06.2016. The period of limitation would end 3 years after the date of Default i.e. on 07.06.2019. The Corporate Debtor submitted an OTS proposal on 23.03.2018, which the Bank rejected on 28.03.2018. Thereafter, the application under Section 7 of the IBC against the Corporate Debtor was admitted on 24.04.2019, and liquidation commenced on 08.09.2020. In this case the acknowledgement by the Corporate Debtor or its representative on 23.03.2018 would further restart the limitation period from this date. It would further extend the limitation period upto 22.03.2021. Even before the expiry of this period, on 05.01.2021, Ashok Goel a Member of Suspended Board of Directors submitted a further OTS proposal on behalf of the Corporate Debtor of Rs. 7.5 Crores on behalf of the promoters/guarantors. This acceptance of the debt and default by the Corporate Debtor on 05.01.2021 through the OTS proposal, would have the further effect of extending the limitation period by another 3 years upto 05.01.2024. The Bank rejected the revised OTS proposal on 20.01.2021. The Bank states that its claim had increased to approximately Rs. 90 Crores as on commencement of

the Corporate Insolvency Resolution Process and to approximately Rs. 110 Crores as on commencement of liquidation. The Bank then issued a demand notice dated 17.02.2021 under Section 95(4)(b) read with Rule 7(1) of the applicable Rules, demanding approximately Rs. 113.83 Crores, and filed the Section 95 application on 06.04.2021.

44. The Appellant submits that the right to initiate proceedings had already become time-barred, contending that the limitation period expired in 2018 or, at the latest, in 2019, depending upon the relevant date of default. He argues that the Bank cannot rely upon subsequent events merely to revive a claim that had already become time-barred. The Bank relies upon Section 18 of the Limitation Act, 1963, and submits that the OTS proposal dated 23.03.2018 acknowledged the outstanding liability within the original limitation period, while the proposal dated 05.01.2021 was made before expiry of the period running from the earlier acknowledgment.

45. We are of the view that the limitation objection must be examined by distinguishing the date of default from a subsequent acknowledgment of liability. Under Section 18 of the Limitation Act, a written acknowledgment of a subsisting liability made before expiry of the prescribed period gives rise to a fresh period of limitation, provided the statutory requirements are satisfied. The fact that an OTS proposal was rejected does not, by itself, negate an acknowledgment contained in it. The record also refers to the date of NPA classification as both 03.06.2015 and 30.06.2015 in different places. We do not treat these dates as interchangeable, and the limitation finding must

ultimately rest upon the legally relevant date of default and the effect of the subsequent acknowledgments.

46. In the present case, the OTS proposal dated 23.03.2018 was made within three years of the guarantee invocation dated 08.04.2016. The Bank relies upon the proposal as an acknowledgment of the Corporate Debtor's outstanding liability. It further relies upon Clause 12 of the guarantee dated 19.05.2014, under which an acknowledgment of debt or admission of liability by the borrower or its authorised agent is deemed to bind the guarantors. The subsequent proposal dated 05.01.2021 was submitted by Ashok Goel for Rs. 7.5 Crores, and the Bank maintains that he acted in his capacity as a director of the suspended management of the Corporate Debtor. The Appellant disputes that this proposal could extend limitation against him because he did not personally make it.

47. In this regard, we take note of Section 128 of Indian Contracts Act, 1872 which is extracted below:-

> ***Section 128. Surety's liability***
> *"The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract."*

This Section allows the Financial Creditors to prosecute the Personal Guarantor in parallel proceedings along with Corporate Debtor. This Appellate Tribunal had held in the matter of ***"Pooja Ramesh Singh vs. State Bank of India in Company Appeal (AT) (Ins) No. 329 of 2023"*** that

limitation for filing application under Section 95 of the Code against the guarantor shall commence when a demand is made to the guarantor. In this case Section 13(2) notice under 'SARFAESI Act' invoking the guarantee and demanding the payment was issued by the bank on 08.04.2016 given the guarantor 60 days time to make the repayment. So, the period of limitation in this case would commence from 08.04.2016. The relevant para 32(i) of the judgment is extracted below: -

> *"32. In view of the foregoing discussion, we arrive at following conclusions:*
>
> *(i) The Corporate Guarantee Deed dated 17.05.2019 is on demand guarantee deed and the default shall arise on the part of the Guarantor only when demand notice is issued as contemplated in the Deed of Guarantee. When the State Bank of India invoked the guarantee vide notice dated 01.10.2020, demand on the part of the Corporate Guarantee shall arise only subsequent to the notice dated 01.10.2020 i.e. non-payment of the amount within seven days i.e. default arise on 08.10.2020.*

48. We further take note of Clauses 12 and 14 of the Deed of Guarantee dated 19.05.2014, which are extracted below:-

> **"***12. The Guarantors affirm, confirm and declare that any balance confirmation and/or acknowledgment of debt and/or admission of liability given or promise or part payment made by the Borrower or the authorised agent of the borrower to the Lead Bank shall be deemed to have been made and/or given*

by or on behalf of the Guarantors themselves and shall be binding upon each of them.

14. The Guarantors hereby agree that notwithstanding any variation made in terms of the said Agreement of Loan and/or any of the said Security documents inter-alia including variation in the rate of interest, extension of the date for payment of the instalments, if any, or any composition made between the Lead Bank and the Borrower to give time to or not to sue the Borrower, the Guarantors shall not be released or discharged of their obligation under this Guarantee provided that in the event of any such variation or composition or agreement the liability of the Guarantor shall be deemed to have become liable hereunder on the date or dates on which the Borrower shall become liable to pay the amount/amounts due under the said Agreement for Loan and/or any of the said security documents as a result of such variation or composition of agreement. **"**

49. We note from the above that the Deed of Guarantee entered between the Respondent No.1 and Appellant is an independent, distinct and a special contract which has to be construed on its own terms. Clause 12 clearly provides that any acknowledgement/ confirmation of debt or admission of liability or part payment made by the borrower or the authorised agent to the lead bank shall be deemed to have been made or given by guarantors themselves and shall be binding upon them.

50. Clause 14 of the guarantee further provides that any amendments/ variations to the loan agreement would not allow the discharge of guarantors

from the said agreement and the liability of guarantor shall be same as that of the borrower from the dates of such amendments.

51. We have noted earlier that the OTS offer made by Corporate Debtor on 23.08.2018 and subsequent OTS application dated 05.01.2021 would have the effect of extending the limitation period till 05.01.2024, in accordance with Section 18 of Limitation Act, 1963. The Hon'ble Supreme Court in ***Laxmi Pat Surana v. Union Bank of India*** in ***Civil Appeal No. 2372 of 2020***, has affirmed than an acknowledgment of debt by the principal debtor extends the limitation period for actions against the guarantor as well. In view of the above, we find no merit in the limitation objection.

52. We next examine the plea of novation and discharge. The Appellant relies upon his resignation dated 01.10.2014 and the subsequent credit arrangements. The record shows that the Corporate Debtor sought an ad-hoc credit facility of Rs. 4 Crores by letter dated 24.12.2014, which was sanctioned on 26.12.2014. The Bank's case is that the additional facility was secured by guarantees executed by the relevant guarantors, including the disputed Deed of Guarantee dated 27.12.2014. The impugned order also records that the indebtedness of approximately Rs. 44.99 Crores was acknowledged as on 26.12.2014. Subsequently, on 23.01.2015, the Bank reviewed the credit facilities and revised certain terms, including the rate of interest, service tax and commitment charges. The Appellant contends that these changes replaced the earlier contractual arrangements and discharged him from liability under the guarantee dated 19.05.2014.

53. Section 62 of the Indian Contract Act, 1872 provides that where the parties agree to substitute a new contract for an existing contract, the original contract need not be performed. Section 133 provides for discharge of a surety, to the extent contemplated by that provision, where the terms of the contract between the creditor and principal debtor are varied without the surety's consent. As we have noted from the Clause 14 of the Guarantee Agreement (extracted earlier) that any subsequent variation of amendment to loan agreement or security documents between the lead bank and borrower shall not lead to release/ discharge of the guarantor. The guarantors shall be deemed to be liable on the date or dates on which the borrower becomes liable to pay under such revised Loan/ Security Agreement.

54. In view of the aforesaid contractual arrangement, the Appellant's resignation as director did not, by itself, terminate the contractual obligations already undertaken under the earlier guarantees. Rather it keeps the contractual obligations of the Appellant intact under the guarantee, till the same is released or discharged by the borrower, which is not the case here. Similarly, the sanction of an additional facility or revision of the terms of existing facilities does not automatically establish that all previous guarantees stood extinguished, rather the Clause 14 specifically preserves the obligations of the guarantor post amendment/ variation of loan/security agreement. It is clear in this case that the obligations of the guarantor have not been released or discharged by the borrower. The reliance on Section 133 of the Contract Act does not help the cause of the appellant.

55. The Appellant relies upon the decision of Hon'ble Delhi High Court in ***Rajan Malhotra v. Union Bank of India, (2019) 277 DLT (DB),*** to support his contention that the subsequent contract discharged the earlier obligations. However, the effect of novation depends upon the terms of the original and subsequent agreements and the intention of the parties. In the present case, the Appellant admits executing the guarantee dated 19.05.2014, while the Bank relies upon its continuing nature and the clauses governing variations and fresh facilities within the sanctioned limits. We find that the Appellant has not established, merely by relying upon his resignation and the subsequent revision of credit facilities, that the earlier guarantee was wholly substituted or discharged. It required a specific release or discharged from the guarantee by the financial creditor which is not the case here. We, therefore, find no merit in contention of the Appellant that the said guarantee has been discharged by novation of the contract.

56. The Appellant also alleges fraud and forgery in his signatures on the Deed of Guarantee dated 27.12.2024 and the sanction letter dated 23.01.2015. The Appellant filed IA No. 6731/2023 to place additional documents on record, including his resignation letter and an unsigned copy of the Sanction Letter dated 23.01.2015. On 06.01.2024, he filed IA No. 115/2024 seeking dismissal of the Section 95 application on grounds of forgery and novation. On 30.07.2024, the Resolution Professional filed IA No. 3978/2024 to place on record an alleged signed copy of the Sanction Letter dated 23.01.2015. The Appellant disputed the signatures on that document

and relied upon a private forensic report dated 06.08.2024, which, according to him, identified significant variations in his signatures. He subsequently instituted Civil Suit No. 815/2024 on 23.08.2024 for cancellation, declaration and permanent injunction concerning the disputed documents, and sought an opinion from the Central Forensic Science Laboratory.

57. The Appellant claims that he could not have signed the documents as he did not visit the Bank on either 27.12.2014 or 23.01.2015. The Bank placed an affidavit and attendance register on record in December 2024. The record reflects the Appellant's presence on 19.09.2013 and 19.05.2014, when earlier guarantee documents were executed, but does not record his presence on 27.12.2014 or 23.01.2015. The Respondent1/Bank explains that attendance was recorded on days when a person visited for mortgage-related work. For any other work the person concerned need not visit the branch and the signatures on the papers can be taken at his place of business or home. The Bank contends that the signatures on the documents are genuine and that the challenge was raised belatedly, several years after the Section 95 proceedings commenced.

58. The absence of attendance entries on the disputed dates is a relevant circumstance, but its weight depends upon the purpose and manner in which the Bank maintained those records. We have no reason to disbelieve a Public Sector Bank's statement in this regard, that such documents do not require the presence of the person at the bank and the Appellant has signed the relevant documents. The burden of proof in this regard is on the Appellant in

such allegations of forgery. The report of a private forensic expert prepared at the behest of Appellant has no evidentiary value. We also note that the impugned order observed that the Appellant's signatures varied over time, that the disputed documents had been part of earlier proceedings, and at that time there was no demur disputing his signature. It noted that any plea on forged signature should have been noted at the earliest. The decisions on the question of forgery required proof in appropriate proceedings. The proceedings under the code are summary proceedings and we cannot go into allegations of the forgery, for which the appellant should have gone to appropriate judicial forum.

59. The Appellant admits executing the earlier guarantees dated 01.05.2010, 17.09.2013 and 19.05.2014. His challenge to the documents dated 27.12.2014 and 23.01.2015 does not, by itself, establish that the earlier guarantees were forged or that all liability arising under them had ceased to exist. Even without considering these documents the debt and default is clearly established. We also note from the documents on the record that the Appellant has been a signatory of relevant documents including personal guarantee and corporate guarantee. The signatures were done in the capacity of director of corporate guarantor, which is a related party of the Corporate Debtor. The personal guarantor himself is a related party of a Corporate Debtor. The Appellant being a relative of the directors of the Corporate Debtor as well as being a director of the Corporate Guarantor has signed these Deeds of Personal & Corporate Guarantees in question. The objections on the ground

of forgery and fraud in this forum where the proceedings are summary in nature are nothing but attempts to derail the personal insolvency.

60. The Appellant has also contended that the Bank's failure to enforce collateral securities, stated to be worth approximately Rs. 100 Crores, discharged him from liability under Sections 134 and 139 of the Indian Contract Act. Section 134 deals with discharge of a surety in specified circumstances, including release of the principal debtor, while Section 139 applies where the creditor's act or omission is inconsistent with the rights of the surety or impairs the surety's eventual remedy against the principal debtor. The Bank submits that the existence of collateral security does not require it to exhaust that remedy before proceeding against the guarantor.

61. We note that the mere existence of collateral securities or the Bank's failure to enforce them does not automatically discharge a guarantor. The Appellant must establish that the Bank's conduct satisfies the statutory conditions for discharge, including release of the principal debtor or impairment of the Appellant's remedies. The material referred to before us does not sufficiently establish that the Bank released the principal debtor or that the securities were lost, surrendered or impaired in a manner attracting Sections 134 or 139. The alleged value of the collateral, without proof of the necessary legal consequences, is insufficient to establish discharge. We therefore find no merit in this objection.

62. Upon considering the rival submissions and the material collectively, we find that the Appellant has not established sufficient grounds for

interference under Section 61 of the IBC. The limitation objection does not warrant reversal on the basis of the acknowledgments relied upon by the Bank; the plea of novation is not established merely by the Appellant's resignation and the subsequent changes in credit facilities; the allegations of forgery are disputed and the requirements for discharge under Sections 134 and 139 of the Indian Contract Act have not been demonstrated.

63. Accordingly, we find no grounds to interfere with the impugned order dated 22.01.2025. The appeal is dismissed. Pending IAs, if any, are closed. No order as to cost.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

Place: New Delhi

Harleen/
Pragya (LRA)