



NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)
IN
(IB)-108/ND/2025

IN THE MATTER OF:

Central Bank of India

Stressed Assets Management Branch,
5 Jeevan Tara Building,
Parliament Street,
New Delhi-110001

... Applicant/Financial Creditor

VERSUS

M/s Worlds Window Exim Pvt. Ltd.

Having registered office at :
Plot No. 25, DSIIDC Shed,
Scheme-II, Basement,
Okhla Industrial Area,
Okhla Industrial Estate, Phase-II,
South District,
New Delhi - 110020

... Respondent/Corporate Guarantor

Section: 7 of the IBC, 2016

Order Delivered on: 16.05.2025

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

MS. REENA SINHA PURI, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. R.K. Srivastava, & Adv. I.P.S. Oberoi

For the Respondent : Adv. Raghav Marwaha

ORDER



PER: MS. REENA SINHA PURI, MEMBER (T)

This Application has been filed by the Central Bank of India (hereinafter referred to as the Financial Creditor or **FC/Petitioner**) against M/s Worlds Window Exim Pvt Ltd (hereinafter referred to as the Corporate Guarantor or **CG/Respondent**), seeking initiation of CIRP¹ under section 7 of IBC².

Application

2. It is submitted that the Respondent had executed the guarantee³ on 09.07.2015 to secure the credit facilities availed by the CD, M/s Magnifico Minerals Pvt Ltd⁴ (hereinafter referred to as the Principal Borrower or **PB**), amounting to Rs 100 crores from a consortium of banks including the Petitioner, with the Bank of India being the lead bank. One of the terms agreed by the Respondent was its affirmation, confirmation and declaration that any balance confirmation, acknowledgement of debt and admission of liability given or promise or part payment made by the PB would be deemed to have been made or given by or on behalf of the Guarantors and would be binding on each of them.

3. The PB submitted its 'Balance Confirmation' of outstanding dues of Rs 107,94,29,655.06 in favour of the FC on 12.04.2017. The terms and conditions of the credit facilities were accepted by the CG on 04.10.2017. Later, as per the date of default recorded with NeSL on 02.05.2019, the PB defaulted in the repayment of the loan. The account of the PB was declared as NPA on the same day. The FC recalled the loan from the PB and also the

¹ Corporate Resolution Insolvency Process

² Insolvency and Bankruptcy Code, 2016

³ Pages 69-92 of the Application

⁴ Earlier known as Magnifico Traders Pvt Ltd



CG by notice⁵ dated 03.08.2019 under section 13(2) of the SARFAESI⁶ Act. Thereafter, on 18.01.2021, the FC along with other consortium lenders filed an application before the Debts Recovery Tribunal (DRT), Delhi, for recovery of the debt from the PB and the Guarantors.

4. The PB submitted a settlement proposal⁷ on 07.03.2022, but this did not fructify. The Petitioner proceeded to notify the debt to NeSL on 01.02.2024, which was authenticated on 18.02.2024. Default was also recorded with the CRILC⁸. The debt was finally quantified at Rs 175,96,47,674 on 23.03.2024.

5. The PB failed to discharge the outstanding liabilities, leading to the filing of the Application⁹ under section 7 of the IBC against the PB, which stood admitted by this Authority on 07.08.2024. Since the CG also failed to honour its payment obligations in terms of the loan documents executed by it, the FC filed this application on 02.01.2025.

6. The FC has prayed that the CG be placed under CIRP. It is stated that the CG has its registered office within the territorial jurisdiction of this Adjudicating Authority and the petition is within the limitation period. The acknowledgement of debt and default by the PB is evident from the OTS proposal¹⁰ dated 07.03.2022. The debt of Rs 175,96,47,674 is authenticated in the Record of Default with the Information Utility¹¹ also.

⁵ Page 402-413 of the Application

⁶ Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

⁷ Page 396-400 of the Application

⁸ Central Repository of Information on large Credits- page 176-177 of the Application

⁹ CP (IB) 230/2024

¹⁰ One Time Settlement proposal at Pages 396-400 of the Application

¹¹ Pages 168-175 of the Application



Counter

7. In its reply, the CG has questioned the maintainability of the Application, contending that only Bank of India, as the lead bank, had the authority to initiate proceedings against it, which the FC was not competent to do.

8. The CG has claimed that the Application is hit by limitation since the date of default relied upon by the FC was 03.03.2019 recorded with CRILC or 02.05.2019 recorded with NeSL, whereas the Application had been filed on or after 02.01.2025 which is beyond 15.05.2024, the date calculated after excluding the period in terms of the suo moto order of the Hon'ble Supreme Court.

9. Emphasizing the independent nature of the deed of guarantee, the CG has claimed that the limitation period applicable to it would be distinct from that for the PB. Additionally, the CG has submitted that the FC had referred to multiple dates as the date of default, which is contrary to the provisions of the IBC.

10. It is further submitted that the deed of guarantee, being an independent contract distinct from the main loan agreement, required invocation to establish a date of default—an event which had not occurred. The CG has also asserted that a separate notice to it was mandatory and could only be issued after default by the PB. It is contended that no recall notice had been served on the PB, and in the absence of invocation of the guarantee, no default could be attributed to the CG. The CG has argued that reliance by the FC on the OTS dated 07.03.2022 to demonstrate the existence and quantum of



financial debt, was misplaced as both the settlement proposal and the balance confirmation were issued by the PB and not by the CG.

11. The CG has also sought dismissal of the Application on technical grounds, including non-filing of the original deed of guarantee, inadequate stamping of the document, and the existence of parallel proceedings before the Debt Recovery Tribunal (DRT).

12. The CG has attributed the PB's financial difficulties and subsequent classification of its account as a NPA to the freezing of its bank account and asserted that efforts had been made to settle the outstanding dues. Given that CIRP had already been initiated against the PB, the CG has contended that there were sufficient opportunities available to recover the outstanding amounts, and therefore, the proceedings against the CG are unwarranted.

13. It is finally prayed that the present Application be dismissed, or in the alternative, the insolvency proceedings against the CG be kept in abeyance until the CIRP proceedings against the PB are concluded.

Rejoinder

14. Assailing the contentions of the CG, the FC has prayed for admitting the Application for CIRP. On the issue whether notice issued under SARFAESI Act can be treated as recall notice in case of the CG, replying in the affirmative, the FC has referred to the order of the Hon'ble NCLAT in *Mavjibhai Nagarbhai Patel Vs State Bank of India*¹²:

"...we would like to advert attention to the judgement of this Tribunal in Pooja Ramesh Singh Vs. State Bank of India in CA(AT) (Insolvency) No.329 of 2023 wherein it has been held that the liability of a

¹² Company Appeal (AT) (Insolvency) No. 1702 of 2024 dated 18.12.2024



borrower and guarantor is co-extensive but the liability of a Guarantor stems from the contract of guarantee and therefore the date of default in the case of the guarantor depends on the terms of contract of guarantee. The date of default for the principal borrower and the guarantor can be different depending on the terms of the Contract of Guarantee in terms of this judgment. The relevant excerpts of the judgment are extracted as below:

24. The scheme of I&B Code clearly indicate that both the Principal Borrower and the Guarantor become liable to pay the amount when the default is committed. When default is committed by the Principal Borrower the amount becomes due not only against the Principal Borrower but also against the Corporate Guarantor, which is the scheme of the I&B Code. When we read with as is delineated by Section 3(11) of the Code, debt becomes due both on Principal Borrower and the Guarantor, as noted above. The definition of default under Section 3(12) in addition to expression 'due' occurring in Section 3(11) uses two additional expressions i.e. "payable" and "is not paid by the debtor or corporate debtor". The expression 'is not paid by the debtor' has to be given some meaning. As laid down by the Hon'ble Supreme Court in "Syndicate Bank vs. Channaveerappa Beleri & Ors." (supra), a guarantor's liability depends on terms of his contract. There can be default by the Principal Borrower and the Guarantor on the same date or date of default for both may be different depending on the terms of contract of guarantee. It is well settled that the loan agreement with the Principal Borrower and the Bank as well as Deed of Guarantee between the Bank and the Guarantor are two different transactions and the Guarantor's liability has to be read from the Deed of Guarantee."

15. On the issue whether a settlement proposal from the CD would extend the limitation against the CG, reference is made to the Hon'ble NCLAT Delhi's judgment in *State Bank of India Vs Gourishankar Poddar*¹³, where it was held:

48. The last issue relates to the limitation in filing the CIRP petition. In this regard it is a settled law that the liability of the Corporate Debtor

¹³ Company Appeal (AT) (Ins.) No. 689 of 2024 and 663 of 2024 dated 06.01.2025



and the guarantor being Respondent No. 1 are co-terminus. Thus, liability for Respondent No. 1 would arise only when amounts became and went due by the Corporate Debtor. Consequently, any acknowledgement of debt by the principal borrower is also considered an acknowledgement by the guarantor under the Act of 1963. This position has been upheld by this Appellate Tribunal in *E.M. Najeeb Ellias Mohammed, Promoter of Air Travel Enterprises India Ltd. v. Union Bank of India* [MANU/NL/0139/2024]. Relevant paras 65 to 67 are extracted below:

"65. An Acknowledgment for liability itself is sufficient and it need not necessarily be accompanied by a promise to pay as per decision in Hetal Enterprises v. New India Assurance Company Ltd. MANU/MH/1276/2011: 2012(1) CCC 458 Born). Further, an acknowledgment under Section 18 of the Limitation Act, 1963 can be with respect to not only the property or Right, but it can be even in regard to the Liability.

66. An Acknowledgment of a liability made by the Principal Borrower should be considered as an acknowledgment of liability, on behalf of Guarantor.

67. A Revival Letter/an acknowledgment, executed by the Principal Borrower on the authorization binds the Guarantor."

16. On the issue whether only lead bank could initiate proceedings, it is submitted that each individual financial creditor of the consortium could initiate proceedings against the CG, as the corporate guarantee is executed in favour of the FC also. It is also stated that proceedings against the CG can be initiated during the ongoing CIRP proceedings against the CD as well. This is evident from the judgment of the Hon'ble Supreme Court in *Laxmi Pat Surana*¹⁴, where it was held:

"23. Indubitably, a right or cause of action would enure to the lender (financial creditor) to proceed against the principal borrower, as well

¹⁴ *Laxmi Pat Surana vs. Union of India & Anr.*, (2021) 8 sec 481



as the guarantor in equal measure in case they commit default in repayment of the amount of debt acting jointly and severally. It would still be a case of default committed by the guarantor itself, if and when the principal borrower fails to discharge his obligation in respect of amount of debt. For, the obligation of the guarantor is coextensive and coterminous with that of the principal borrower to defray the debt, as predicated in Section 128 of the Contract Act. As a consequence of such default, the status of the guarantor metamorphoses into a debtor or a corporate debtor if it happens to be a corporate person, within the meaning of Section 3(8) of the Code. For, as aforesaid, expression "default" has also been defined in Section 3(12) of the Code to mean non-payment of debt when whole or any part or instalment of the amount of debt has become due or payable and is not paid by the debtor or the corporate debtor, as the case may be."

17. The contention of the CG that proceedings under IBC cannot be initiated when there was pendency of proceedings before the DRT is also assailed by placing reliance on the judgment of Hon'ble NCLAT in *Amar Vora v City Union Bank Ltd*¹⁵, where this issue was examined and held that in terms of section 238 of the IBC, the Code overrides all other laws. Section 238 reads thus:

"The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

Decision

18. The submissions of the parties were heard and records carefully perused. The objections raised by the CG are effectively countered by the FC.

¹⁵ Company Appeal 130 of 2022



The loan amount is duly reflected in the Banker's book and also in the Financial Statements of the PB from FY 2013-2014 onwards, making it an acknowledged and continuing debt.

19. It is a matter of record that the CG stood guarantee in respect of the amounts availed in CC/OD account and ILC/FLC/BG/ LOU-LOC by the PB. The default of debt has continued throughout – the loan account was declared as NPA on 02.05.2021; the loan was recalled from the PB and the CG by notice dated 03.08.2019 under the SARFAESI Act; application before the DRT was filed by the FC on 18.01.2021 against the PB and the CG; the OTS proposal, submitted by the PB on 07.03.2022, referred to the CG and proposed release of the guarantee upon acceptance of the OTS by the FC; the debt was notified to NeSL on 01.02.2024 which was authenticated on 18.02.2024.

20. Furthermore, the continuing debt in case of the PB applies to the CG as well. This is evident from clause 12 of the Deed of Guarantee¹⁶:

*12. The Guarantors affirm, confirm and declare that **any balance confirmation and/or acknowledgement 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. (emphasis supplied)*

21. The contention of the CG that only the lead bank could initiate proceedings against it is not correct. Page 2 of the Deed of Guarantee¹⁷, after referring to all the seven lending Banks states:

¹⁶ Page 75 and 87 of the Application

¹⁷ Page 71 and Page 83 of the Application



*‘(All of which BOI and Others (2nd part to Eighth part) are hereinafter collectively referred to “the said BANKS” OR “BOI Consortium” which expression shall, unless it be repugnant to the subject or context thereof, **include each of them** or anyone or more of them their respective successors and assigns).’ (emphasis supplied)*

Further, clause 9 of the Deed of Guarantee¹⁸ reads thus:

*9. Notwithstanding the Lead Bank’s rights under any security which the Lead Bank may have obtained or may obtain, **the Bank shall have fullest liberty to call upon the Guarantors to pay** the principal sum(emphasis supplied)*

And, clause 21 of the Deed of Guarantee¹⁹ reads thus:

*21. It is expressly agreed and the Guarantor hereby confirms that the **Guarantor is jointly & severally liable to the BOI Consortium** as mentioned in Working Capital Agreement..... (emphasis supplied)*

Thus, each Bank by virtue of inclusion in the consortium has identical right to proceed against the guarantor.

22. The case of the CD that the Application is barred by limitation has no merit. Reference is made to the judgment of the Hon’ble Supreme Court in *Dena Bank (now Bank of Baroda) vs C Shivkumar Reddy and Anr*²⁰ , where this issue was discussed in detail and explained thus:

*113. As per Section 18 of Limitation Act, **an acknowledgement of present subsisting liability**, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, **has the effect of commencing a fresh period of limitation from the date on which the acknowledgement is signed**. Such acknowledgement need not be accompanied by a promise to pay expressly or even by implication. However, the*

¹⁸ Page 74 and 86 of the Application

¹⁹ Page 77 and 89 of the Application

²⁰ Civil Appeal No. 1650 of 2020 dated 04.08.2021



acknowledgement must be made before the relevant period of limitation has expired.

....

118. It is well settled that entries in books of accounts and/or balance sheets of a Corporate Debtor would amount to an acknowledgment under Section 18 of the Limitation Act. In *Asset Reconstruction Company (India) Limited v. Bishal Jaiswall and Anr. (supra)* authored by Nariman, J. this Court quoted with approval the judgments, inter alia, of *Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff*, [“Bengal Silk Mills”] and in *Re Pandem Tea Co. Ltd.*, the judgment of the Delhi High Court in *South Asia Industries (P) Ltd. v. General Krishna Shamsheer Jung Bahadur Rana* and the judgment of Karnataka High Court in *Hegde Golay Ltd. v. State Bank of India* and held that an acknowledgement of liability that is made in a balance sheet can amount to an acknowledgement of debt.

...

141. Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. **This Court sees no reason why an offer of One Time Settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act. ...**

142. To sum up, in our considered opinion an application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years. (emphasis supplied)



23. Reference is also made to the judgment of Hon'ble Supreme Court in *Laxmi Pat Surana*²¹, where it was held that Section 18 of the Limitation Act would come into play every time the Corporate Debtor/Corporate Guarantor acknowledge their liability to pay the debt before the expiry of the prescribed period of limitation. Relevant excerpt of the aforementioned judgment reads thus:

*“43. Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action under Section 7 IBC. However, Section 7 comes into play when the corporate debtor commits “default”. Section 7, consciously uses the expression “default” — not the date of notifying the loan account of the corporate person as NPA. Further, the expression “default” has been defined in Section 3(12) to mean non-payment of “debt” when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. **In cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to non-payment of debt.** Thus, when the principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of NPA but before the expiration of three years therefrom including the fresh period of limitation due to (successive) acknowledgments, it is not possible to extricate them from the renewed limitation accruing due to the effect of Section 18 of the Limitation Act. Section 18 of the Limitation Act gets attracted the moment acknowledgment in writing signed by the party against whom such right to initiate resolution process under Section 7*

²¹ *Laxmi Pat Surana v Union Bank of India* (2021) 8 SCC 481



*IBC ensures. **Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (corporate debtor), as the case may be, acknowledge their liability to pay the debt.** Such acknowledgment, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgment of the debt, from time to time, for institution of the proceedings under Section 7 IBC. Further, the acknowledgment must be of a liability in respect of which the financial creditor can initiate action under Section 7 IBC.” (emphasis supplied)*

24. Thus, in the case at hand, since the liability of the CG is co-extensive with that of the PB, acknowledgment of debt by the PB in its Financial Statements, entries in the Banker’s Book, and the OTS proposal presented to the FC, resulted in each instance in creation of a fresh acknowledgement of debt, leading to commencement of a fresh period of limitation for the CG as well.

25. Further reliance is placed on the judgment of the Hon’ble Supreme Court in *K. Parmasivam v. The Karur Vysya Bank Ltd*²², wherein it was held that a financial creditor is entitled to proceed against both the principal borrower and the guarantor, jointly and severally, in the event of default. The Hon’ble Court observed that, upon such default, the guarantor assumes the status of a debtor, or if it is a corporate entity, a corporate debtor within the meaning of Section 3(8) of the IBC.

26. In view of the above, since there is an admitted debt and continuing default, (as evidenced by the Banker’s Book, Financial Statements of the PB,

²² K. Parmasivam v. The Karur Vysya Bank Ltd : (2022) SCC Online SC 1163



OTS proposal and the Deed of Guarantee), which led to the filing of this petition well within the limitation period, we consider CP (IB)-108/ND/2025 a fit case for directing CIRP against the Corporate Guarantor.

27. Hence, in view of the admitted debt and default, the application is allowed with the following directions:

ORDER

28. The Application is admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process, which shall ordinarily be completed within the timelines stipulated in the Code, 2016 (as amended), reckoning from the date on which this order is passed.

29. The Applicant has proposed the name of Sh Umesh Garg as the Interim Resolution Professional (hereinafter referred to as the 'IRP'). The declaration under Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by way of Form 2 indicates that no disciplinary proceedings are pending against him, and he is eligible to be appointed as IRP qua the CD²³. Accordingly, this Adjudicating Authority appoints Sh Umesh Garg, Registration Number: IBBI/IPA-001/IP-P-00135/2017-2018/10277, whose Authorization for Assignment is valid up to 30.06.2025 as per the IBBI IPs Registered List on the website. The IRP is directed to file Authorization for Assignment within three days from the date of this order.

30. The IRP is directed to take charge of the management of the Corporate Debtor, immediately. He is also directed to cause public announcement as prescribed under Section 15 of the Code, 2016, within three days from the

²³ Page 57-60 of the Application



date of receipt of this order, and call for submissions of claims in the manner as prescribed.

31. Moratorium is, hereby, declared and shall have effect from the date of this order till the completion of the CIRP, for the purposes referred to in Section 14 of the IBC.

32. It is hereby ordered that all of the following are prohibited:

- a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court or law, tribunal arbitration panel or other authority;
- b) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal rights or beneficial interest therein;
- c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

33. Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license,



permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

34. The supply of essential goods or services to the Corporate Debtor shall not be terminated, suspended or interrupted during the moratorium period. Further, if the IRP considers supply of any goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period.

35. Furthermore, the provisions of Sub-section (1) of Section 14 of the IBC shall not apply to such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority; and to a surety in a contract of guarantee to a corporate debtor.

36. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the IBC. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and co-operation to the IRP as stipulated under Section 19 of the IBC for discharging his functions under Section 20 of the IBC.

37. The Corporate Debtor as well as the Registry is directed to send the copy of this Order to the IRP, to enable him to take charge of the assets etc. of the Corporate Debtor and comply with this order as per the provisions of the IBC.



38. The Registry is directed to communicate this Order to the Corporate Applicant.

39. The Registry shall also communicate this Order to the Registrar of Companies, for updating the status of the Corporate Debtor on the website of the Ministry of Corporate Affairs.

Accordingly, this Company Petition (IB)-108/ND/2025 is allowed.

**Sd/-
(REENA SINHA PURI)
MEMBER (T)**

**Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)**