

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 84 of 2025  
& I.A. No. 334 of 2025**

[Arising out of Order dated 04.12.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad, Special Bench, Court-2 in C.P. (IB)/317(AHM)2024]

**IN THE MATTER OF:**

**Asha Basantilal Surana**

**...Appellant**

**Versus**

**State Bank of India & Ors.**

**...Respondents**

**Present:**

**For Appellant: Mr. Abhishek Naik, Ms. Gulafsha Kureshi, Ms. Deepsikha Mishra and Mr. Palak Zaidi, Advocates**

**For Respondents: Mr. Siddharth Singal, Ms. Richa Mishra, Ms. Harshita Agrawal, Ms. Mushkan Mangla and Mr. Akash Chatarjee, Advocates for R-2.  
Mr. Yash Sikka, Advocate for R-3.**

**J U D G M E N T**  
**(15<sup>th</sup> May, 2025)**

**Ashok Bhushan, J.**

This Appeal by a Personal Guarantor has been filed challenging the order dated 04.12.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad, Special Bench, Court-2 rejecting the application under Section 94 filed by the Appellant. Aggrieved by the order rejecting the Application, this Appeal has been filed.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:-

2.1. The Principal Borrower- 'M/s. Surana Metacast (India) Private Limited' obtained various credit facilities for the business purposes from the State Bank of India and other Financial Creditors i.e. Respondents herein. Appellant executed Deed of Personal Guarantee dated 12.11.2021 in relation to the credit facilities availed by the Principal Borrower. The loan account of the principal borrower was declared NPA on 01.05.2023. A notice under Section 13(2) of the SARFAESI Act, 2002 was issued on 09.10.2023 to the principal borrower as well as to the Appellant personal guarantor demanding repayment of Rs.28,56,64,336.06/- as on 07.10.2023 with interest. Respondent Nos.2 and 3 similarly issued notice under Section 13(2) of the SARFAESI Act, 2002 and demanded amount from the Appellant. State Bank of India obtained an order on 06.04.2024 under Section 14 of the SARFAESI Act, 2002 for taking possession of the secured assets. On 05.08.2024, CIRP commenced against the principal borrower. State Bank of India also issued sale notice under Section 13(4) of the SARFAESI Act, 2002 for the some of secured assets. On 22.08.2024, Appellant filed the application under Section 94(1) of the IBC to initiate personal insolvency against the Appellant, the personal guarantor.

2.2. The Adjudicating Authority after hearing the Learned Counsel for the Appellant by impugned order dated 04.12.2024 rejected Section 94(1) application holding that the Application under Section 94(1) has been filed by the Appellant without any cause and is premature. Adjudicating Authority took the view that apart from Section 13(2) notice, no other notice was issued to the Appellant, hence, the application is premature. Challenging the above order dated 04.12.2024, this Appeal has been filed.

3. We have heard Shri Abhishek Naik, Learned Counsel for the Appellant, Shri Siddharth Singal, Learned Counsel for the State Bank of India and Shri Akash Chatterjee, Learned Counsel for the Respondent No.2.

4. Learned Counsel for the Appellant challenging the order submits that the State Bank of India vide its notice dated 09.10.2023 issued under Section 13(2) has invoked the personal guarantee of the Appellant where it demanded the payment of Rs.28,56,64,336.06/-. The observation of the Adjudicating Authority that there is no cause of action to the Appellant is wholly erroneous. The personal guarantee having been invoked by the State Bank of India, Appellant has every right to file an application under Section 94(1) for commencement of personal insolvency against the Appellant. It is further submitted that the Adjudicating Authority committed error in rejecting the application without appointing a Resolution Professional and without obtaining a report under Section 99 of the IBC.

5. Learned Counsel appearing for the State Bank of India refuting the submissions of the Counsel for the Appellant submits that Section 94(1) application has been filed by the Appellant to scuttle the process of realization of security interest by Respondent No.1 from the secured assets mortgaged by the Appellant in favour of the Bank. It is submitted that the notice under Section 13(2) dated 09.10.2023 was issued seeking enforcement of security interest. State Bank of India has taken possession of secured assets and has issued sale notice on 07.08.2024 thereafter this application has been filed on 22.08.2024. It is submitted that the Adjudicating Authority has rightly dismissed Section 94(1) application. It is

submitted that the notice under Section 13(2) dated 09.10.2023 to the Appellant was for the purposes of enforcement of security interest and the said notice cannot give any cause of action to the Appellant to file application under Section 94(1).

6. We have considered the submissions of the Counsel for the parties and perused the record.

7. The Adjudicating Authority by the impugned order after referring to notice under Section 13(2) dated 09.10.2023 issued by the State Bank of India held that Section 94(1) application has been filed without any cause of action and is premature. The finding of the Adjudicating Authority in paragraph 13 of the impugned order is as follows:-

*“13. Therefore, by looking at the facts of the present case and relying on the decision of Hon'ble NCLAT supra we are of the view that the present Petition is filed without any cause and is premature. Hence, CP/IB/317/AHM/2024 stands dismissed.”*

8. The first question which has arisen for consideration in the Appeal is as to whether notice dated 09.10.2023 issued under Section 13(2) of the SARFAESI Act, 2002 which was addressed to the Appellant gives any cause of action to file application under Section 94(1). The Appellant had executed the Guarantee Agreement dated 12.11.2021 copy of which has been filed as Annexure A-2. Clause 7 of the Guarantee Agreement requires the Guarantors shall forthwith on demand made by the Bank deposit such sum or security as the Bank may specify for the due fulfilment of their obligations. Clause 7 of the Guarantee Agreement is as follows:-

*“7. The Guarantors shall forthwith on demand made by the Bank deposit such sum or security as the Bank may specify for the due fulfillment of their obligations hereunder and the Bank shall have the liberty to sell any security so deposited with the Bank in or towards the satisfaction or non-fulfillment of the said obligations by the Guarantors.”*

9. Notice under Section 13(2) dated 09.10.2023 has been filed as Annexure A3. The Notice contained a heading “Notice to Guarantor” and the Notice has been addressed to the Appellant. Clauses 4, 5 and 9 of the Notice provides as follows:-

*“4. Therefore, the Bank hereby calls upon you u/s 13(2) of the said Act by issuing this notice to discharge in full your Liabilities stated hereunder to the Bank within 60 days from the date of this notice. Your outstanding liabilities (in aggregate) due and owing to the Banks is the sum of Rs.28,56,64,336.06/- (Rupees Twenty Eight Crores Fifty Six Lakhs Sixty Four Thousand Three Hundred and Thirty Six Rupees and Six paisa only) as on 07.10.2023. You are also liable to pay future interest at the contractual rate on the aforesaid amount together with incidental expenses, costs, charges, etc.*

*5. If you fail to repay to the Bank the aforesaid sum Rs.28,56,64,336.06/- (Rupees Twenty Eight Crores Fifty Six Lakhs Sixty Four Thousand Three Hundred and Thirty Six Rupees and Six paisa only) as on 07.10.2023 with further interest and incidental expenses, costs as stated above in terms of this notice*

*u/s 13(2) of the Act, the Bank will exercise all or any of the rights detailed under Sub-Section (4) of Section 13 and under other applicable provisions of the said Act.*

*9. This notice is without prejudice to the Bank's right to initiate such other actions or legal proceedings as it deems necessary under any other applicable provisions of Law.”*

10. When we look into Clause 7 of the Guarantee Agreement, it requires demand made by the Bank. Notice under Section 13(2) which was addressed to the Guarantor i.e. Appellant clearly required Appellant to discharge liabilities within 60 days from the date of the Notice. The amount to be paid has also been mentioned as Rs.28,56,64,336.06/-. It is true that the Notice also mentioned to take steps under Section 13(4) of the SARFAESI Act, 2002. The question to be answered is as to whether the above notice had invoked the personal guarantee given by the Appellant or not. Adjudicating Authority in the impugned order has relied on judgment of this Tribunal in **“Amanjyot Singh vs. Navneet Kumar Jain & Ors.- Company Appeal (AT) (Insolvency) No.961 of 2022”** where this Tribunal has rejected Section 94 application filed by the personal guarantor relying on Section 13(2) notice. Adjudicating Authority relied on paragraphs 8 and 12 of the judgment which is as follows:-

*“8. The definition of 'borrower given in SARFAESI Act under Section-2 (f) is wide enough to include a Guarantor also. Section 13 is for enforcement of security interest. The borrower within the meaning of Section 13, sub-section (2) shall obviously include the Guarantor also.*

*12. We, thus, are satisfied that foundation which was laid down by the Appellant for initiating the CIRP against the Appellant, was not sufficient to admit Section 94 Application and initiate the CIRP against the Appellant. We may further notice that Section 10 Application against the Corporate Debtor has already been admitted and CIRP against the Corporate Debtor had been initiated. The case taken up by the Bank being categorical and clear that no steps have been taken by the Bank against the Appellant, there is no cause for the Appellant to pray for initiation of CIRP against the Appellant - the Personal Guarantor. We, thus, do not find any good ground to interfere with the impugned order in this Appeal. The Appeal is accordingly dismissed. No costs."*

11. The above judgment cannot be read to mean that this Tribunal has held that the personal guarantee can never be invoked by notice under Section 13(2). This Tribunal held in the above case that the Bank has taken a categorical case that no steps have been taken against the Appellant, hence, there is no cause for the Appellant to pray for initiation of the CIRP against the Appellant, the personal guarantor. In the above case, notice under Section 13(2) was issued on 04.10.2013 and application was filed after 7 years. Reasons for rejecting the application had been mentioned in paragraphs 11 and 12 which are as follows:-

*"11. In its reply, the Bank has submitted that although after sale of the mortgaged asset, part of the facility was realized, but no steps have been taken by the Bank against the Appellant for recovery*

*of any dues. The notice, which is the basis of the Application, was issued on 04.10.2013. Nine years have been passed from issuance of the notice and no steps have been taken by the Bank so far for recovery of any amount from the Appellant. Default, which is claimed by the Appellant, at best can be said to be a technical default and when substantially, no steps have been taken by the Bank and the Bank's categorical case is that guarantee of the Appellant has not been invoked, it is the Bank, who after invoking the guarantee shall proceed against the Appellant.*

*12. We, thus, are satisfied that foundation which was laid down by the Appellant for initiating the CIRP against the Appellant, was not sufficient to admit Section 94 Application and initiate the CIRP against the Appellant. We may further notice that Section 10 Application against the Corporate Debtor has already been admitted and CIRP against the Corporate Debtor had been initiated. The case taken up by the Bank being categorical and clear that no steps have been taken by the Bank against the Appellant, there is no cause for the Appellant to pray for initiation of CIRP against the Appellant – the Personal Guarantor. We, thus, do not find any good ground to interfere with the impugned order in this Appeal. The Appeal is accordingly dismissed. No costs.”*

12. Thus, the dismissal of the Appeal in the **Amanjyot Singh's** case was on the facts of the said case and has no application in the facts of the present case. The invocation of personal guarantee has to be in accordance with the terms of the Guarantee Agreement which is a settled law. Clause 7



of the Guarantee Agreement does not require any particular mode and manner of the demand notice. When demand notice is issued against the personal guarantor asking the personal guarantor to discharge its liabilities, the guarantee stands invoked. Whether notice under Section 13(2) in a particular case invoked the guarantee or not depends on the words and intent of the notice. For finding out as to whether Notice under Section 13(2) invoked the personal guarantee, the letters and words of the Notice has to be looked into to come to any conclusion that whether personal guarantor has been asked to discharge its liabilities or not. In the facts of the present case, we are of the considered opinion that the Notice under Section 13(2) issued by the State Bank of India is a clear demand notice from the Appellant to pay the amount of Rs.28,56,64,336.06/-.

13. Counsel for the Appellant has placed reliance on the judgment of this Tribunal in ***“Maujibhai Nagarbhai Patel vs. State Bank of India & Anr.- Company Appeal (AT) (Insolvency) No. 1702 of 2024”***. In the above case also, Notice under Section 13(2) was issued to the Appellant, the personal guarantor and application under Section 95(1) was filed by the State Bank of India which was admitted by the Adjudicating Authority which order was challenged by the personal guarantor. In the above case, the Bank has pleaded that the deed of personal guarantee was invoked by the Bank vide demand notice dated 04.06.2021 issued under Section 13(2) of the SARFAESI Act, 2002. This Tribunal has noticed Section 13(2) Notice and held that Notice under Section 13(2) dated 04.05.2021 has to be held notice of demand as per guarantee. In paragraphs 18 and 20, following was held:-

*“18. In the present case, after the Corporate Debtor was admitted into CIRP on 21.01.2020 and the Personal Guarantee was invoked by the Respondent No.1 Bank through Demand Notice dated 04.06.2021 under Section 13(2) of the SARFAESI Act which called upon both the Borrowers and the Guarantors to make payment of the amount of Rs 32.60 Cr. as on 30.04.2021 within 60 days. The Section 13(2) Notice which was sent to the Corporate Debtor was also forwarded to the Guarantor with the specific demand to make payment of the amount mentioned in the notice in terms of the guarantee. This Section 13(2) Notice was indisputably also sent to the Personal Guarantors separately and independently. When we see the Section 13(2) notice under SARFAESI Act as placed at pages 549 to 551 of Appeal Paper Book (“APB” in short) we find that there is clear indication of the names of all the Personal Guarantors therein which includes the present Appellant (and also the other two Appellants whose appeals are also under consideration before us). Para 11 of the Section 13(2) SARFAESI addressed to the Corporate Debtor notice which was also forwarded to the personal guarantors including the Appellant is relevant to be noticed which is as extracted below:*

*“11. Further we are also forwarding the copy of this notice to personal guarantor who are liable to pay the aforesaid outstanding amount. This notice is without prejudice to the Bank's right to initiate such other actions or legal proceedings as it deems necessary under any other applicable provisions of Law. This notice is in supersession of our earlier notices sent to you vide our letter no.*

SAMB/GRJ/2018-19/2002 dated 16.02.2019

which stands withdrawn.

Copy forwarded to:

Jayantibhai Pragjibhai Patel, C/O Jayantilal Bhorania, Gopal Society, Mahendranagar Road, , Morbi, Gujarat-363642	Babubhai Khimjibhai Patel, C/O Patel Timber Company, 7 Lati Plot, Morbi, Gujarat-363641
Bhagwanbhai Talsibhai Bhoraniya Gopal Society, Mahendranagar Road, Morbi, Gujarat-363642	<b>Mavjibhai Nagarbhai Patel,</b> Gopal Co-operative housing society, Mahendranagar road, Morbi-Gujarat- 363642
<b>Jayantibhai Nagarbhai Patel,</b> Gopal Co-operative housing society, Mahendranagar road, Morbi-Gujarat-363642.	Jasuben Odhavjibhai Bhoraniya, Legal heir of Late Odhavji 'Talsibhai Bhoraniya, Gopal Co-operative housing society, Mahendranagar road, Morbi-Gujarat-363642.
<b>Narayanbhai N Patel,</b> Gopal Co-operative housing society, Mahendranagar road, Morbi-Gujarat-363642	Pragjibhai T Bhoraniya, Gopal Co-operative housing society, Mahendranagar road, Morbi-Gujarat-363642
Pravinkumar Chandulal Patel, Street No.4 Kayaji Plot, Near Narmada Bunglow, Near Sardarbaug, Morbi-Gujarat- 363641	Vithalbhai Manjibhai Patel, Street No.4 Kayaji Plot, Near Narmada Bunglow Near Sardarbaug, Morbi-Gujarat-363641
Rameshbhai Tapubhai Bhoraniya, Gopal Co-operative housing society, Mahendranagar road, Morbi-Gujarat-363642	Vraj Ceramic Pvt Ltd, Survey No 126/P, National Highway 8-A, At Village: Dhuwa,Tal : Wakanaer, Gujarat-363622
Damjibhai T Bhoraniya(Patel) 7, Royal Park,Univercity Road, Indira Chowk,	Nitalben Vinodkumar Kaila, Legal heir of Late Odhavji Talsibhai

Rajkot, Gujarat-360004	Bhoraniya, Darpan Society, Ravapar Road, Morbi-363641.
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*20. Since the guarantee deed specifically mentioned that the guarantee was in the nature of an on-demand guarantee, the default was to arise on the part of the Guarantor only when the Demand Notice was issued as contemplated in the Deed of Guarantee. Thus, the period of limitation of the Personal Guarantor was to commence once the demand was made on the Guarantor by the Respondent No.1 Bank. Hence, the Notice dated 04.06.2021 issued by the Respondent No.1 Bank to the Personal Guarantor has to be treated to be Notice on Demand as contemplated in the Deed of Guarantee. The Rule 7(1) Notice dated 28.06.2021 had therefore rightly recorded that the debt was due on 04.06.2021 being the date of Demand Notice under Section 13(2) of the SARFAESI Act and that the date of default occurred on 04.08.2021 on the expiry of 60 days from 04.06.2021.”*

14. The above judgment, thus, clearly holds that in a case where Notice under Section 13(2) makes a demand as per the Guarantee Agreement between the parties, the Notice has to be treated as notice for invocation of Bank Guarantee. We, thus, are of the view that the observation of the Adjudicating Authority made in paragraph 13 of the impugned order that application has been filed without any cause of action and is premature are unsustainable.

15. Counsel for the Appellant has also made a submission that the Adjudicating Authority committed error in rejecting Section 94 application without appointing a Resolution Professional and without obtaining a Report. We having held that very basis of the order of the Adjudicating Authority being unfounded, it is not necessary to enter into other submissions for the purposes of this case.

16. In view of the above discussions and conclusions, we are of the view that the order of the Adjudicating Authority rejecting application under Section 94(1) cannot be sustained.

17. In result, the Appeal is allowed. The order dated 04.12.2024 is set aside. Section 9 application being C.P.(IB) 317(AHM) 2024 is revived before the Adjudicating Authority to be heard and decided in accordance with law.

**[Justice Ashok Bhushan]**  
**Chairperson**

**[Barun Mitra]**  
**Member (Technical)**

**[Arun Baroka]**  
**Member (Technical)**

**New Delhi**  
Anjali