

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

**Company Appeal (AT) (Ins) No. 2147 of 2024**

[Arising out of the Order dated 21.10.2024, passed by the 'Adjudicating Authority' (National Company Law Tribunal, DIVISION BENCH, COURT-1, AHMEDABAD), in CP (IB) No.231/NCLT/AHM/2024 With I.A. No.1270/NCLT/AHM/2024.]

**IN THE MATTER OF:**

**1. DINESHBHAI PREMJBHAI LATHIDADIA**

203, Abhushan Apartment,  
Athwalines, Ghoddod Road,  
Parle Point, Surat - 395001  
Email: [palavsyntheticspvtltd@gmail.com](mailto:palavsyntheticspvtltd@gmail.com)  
Dinesh [p025@yahoo.com](mailto:p025@yahoo.com)

**...Appellant**

**Versus**

**1. THE SARVODAYA SAHAKARI BANK LIMITED**

Shree Nidhi, Khand Bazar  
Varacha Road,  
Surat (GJ) – 395006  
Email [nfo@sarvodayabank.com](mailto:nfo@sarvodayabank.com)

**..Respondent No.1**

**2. MR. KAILASH SHAH**

RP of Mr. Dinesh Lathidadia  
505, 21<sup>st</sup> Century Business Centre  
Ring Road, Beside World Trade Centre  
Suraj, Gujarat, 395002  
Email: [ipktshah@gmail.com](mailto:ipktshah@gmail.com)

**..Respondent No.2**

**Present:**

**For Appellant** : Mr. Karan Valecha, Mr. Priyank Dave, Mr. Naman Tandon, Ms. Khushboo S. Khurana, Advocates.  
**For Respondent** : Mr. Ishan Roy Chowdhury & Ms. Muskan Khatanu, Advocates for R-1.  
Ms. Honey Satpal, Mr. Akash Agarwalla, Ms. Pooja Singh & Mr. Aman, Advocates for R-2.

**With**  
**Company Appeal (AT) (Ins) No. 621 of 2025**

**[Arising out of the Order dated 25.02.2024, passed by the ‘Adjudicating Authority’ (National Company Law Tribunal, DIVISION BENCH, COURT-1, AHMEDABAD), in CP (IB) No.249/NCLT/AHM/2024 With I.A. No.1563/NCLT/AHM/2024.]**

**IN THE MATTER OF:**

**1. RASHMIBEN DINESHBHAI LATHIDADIA**

203, Abhushan Apartment,  
Athwalines, Ghoddod Road,  
Parle Point, Surat - 395001  
Email: [palavsyntheticspvtltd@gmail.com](mailto:palavsyntheticspvtltd@gmail.com)  
Dinesh p025@vahoo.com

**..Appellant**

**Versus**

**1. THE SARVODAYA SAHAKARI BANK LIMITED**

Shree Nidhi, Khand Bazar  
Varacha Road,  
Surat (GJ) – 395006

**..Respondent No.1**

**2. MR. KAILASH SHAH**

RP of Mr. Dinesh Lathidadia  
505, 21<sup>st</sup> Century Business Centre  
Ring Road, Beside World Trade Centre  
Suraj, Gujarat, 395002  
Email: [ipktshah@gmail.com](mailto:ipktshah@gmail.com)

**..Respondent No.2**

**Present:**

**For Appellant** : Mr. Karan Valecha, Mr. Priyank Dave, Mr. Naman Tandon, Ms. Khushboo S. Khurana, Advocates.  
**For Respondent** : Mr. Ishan Roy Chowdhury & Ms. Muskan Khatanu, Advocates for R-1.  
Ms. Honey Satpal, Mr. Akash Agarwalla, Ms. Pooja Singh & Mr. Aman, Advocates for R-2.

**J U D G M E N T**  
**(Hybrid Mode)**

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

Both above placed appeals are connected with each other and the issue involved in both the appeals is identical, therefore for the sake of convenience and for the purpose of appreciation of evidence, both these appeals are being disposed of by passing this common judgment.

**Facts of CA (AT) (Ins) No. 621 of 2025-**

2. The instant appeal has been preferred by the appellant who is the personal guarantor to Palavi Synthetics Pvt. Ltd. (Principal Borrower/CD) which had availed various financial facilities from Sarvodaya Sahakari Bank Ltd. (SSBL) against the impugned judgment dated 25.02.2025, passed by the National Company Law Tribunal, Ahmedabad, Bench –I (Adjudicating Authority) in CP (IB) No. 249/AHM/2024 with IA No. 1563 of 2024 whereby the insolvency process has been initiated against the appellant.

3. Factual matrix with regard to this appeal is in terms that Respondent SSBL granted financial facilities to Palavi Synthetics Pvt. Ltd. (CD)/Principal Borrower by entering into various hypothecation agreement for goods against which the appellant extended personal guarantee vide Guarantee Deed dated 05.09.2012, 21.02.2013, 22.10.2013 and 23.04.2015 respectively.

4. It is also evident that the Principal Borrower defaulted in its financial obligations with regard to the loan account which was classified as Non-Performing Asset (NPA) by the Respondent on 30.07.2016 and thereafter on an application filed by an operational creditor the CIRP was initiated against

the Principal Borrower vide order dated 23.01.2020 passed in Insolvency Petition No. 225 of 2019.

5. It is further reflected that since no resolution was achieved with regard to the CD, the liquidation process was initiated against the Principal Borrower/CD vide order dated 13.04.2021 which was followed up by a dissolution order dated 13.07.2022 and the CD stands dissolved.

6. It is also reflected that subsequent to the classification of the loan account of the CD as NPA, Respondent-SSBL invoked the personal guarantee advanced by the appellant on 11.08.2016, and thereafter on 24.10.2016 SSBL filed a Summary Suit No. 144 of 2016 under Section 99 (4) of the Gujarat Co-operative Society Act, 1961 and by way of order passed therein on 15.09.2017 the same was decreed and Ld. Joint Registrar Board of Nominees Surat directed repayment of Rs. 2,88,65,468.35/- with 13% compound interest.

7. It is further reflected that on 01.07.2022, the Respondent-SSBL issued a demand notice (form B) under Section 95 (4) (b) of the Insolvency and Bankruptcy Code, 2016 (Code) read with Rule 7 (1) of the Insolvency and Bankruptcy Code, 2016, (Code) application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to (Corporate Debtor) Rules, 2019 herein after referred to as (PG to CD Rules 2019), seeking payment of Rs. 44,831,658.35/- and thereafter an application under Section 95 of the Code was filed before Ld. Adjudicating Authority for initiation of Insolvency Resolution Process against the appellant and vide order dated 17.09.2024, the Respondent No. 2 was appointed as the IRP who submitted his report on which the impugned order has been passed by the Ld.

Adjudicating Authority and the insolvency resolution process was initiated against the appellant.

**CA (AT) (Ins) No. 2147 of 2024-**

8. The instant appeal has been filed by Dinesh Bhai Premji Bhai Lathidadia (Appellant/Personal Guarantor) against the impugned judgment and order dated 21.10.2024 passed in CP (IB) No. 231/NCLT/AHM/2024 by Ld. National Company Law Tribunal, Ahmedabad Bench (Adjudicating Authority) whereby the application moved by the Respondent under Section 95 of the Code was accepted and the insolvency resolution process was initiated against the appellant.

9. The factual matrix with regard to the instant appeal appears to be that appellant is the Personal Guarantor to Palavi Synthentics Pvt. Ltd. (Principal Borrower/CD) which has availed various financial facilities from Respondent Sarvodaya Sahakari Bank Ltd. (SSBL) and also executed Guarantee Deeds in order to secure the financial facilities extended to the CD.

10. It is also evident that the Principal Borrower defaulted in its financial obligations with regard to the loan account which was classified as Non-Performing Asset (NPA) by the Respondent on 30.07.2016 and thereafter on an application filed by an operational creditor the CIRP was initiated against the Principal Borrower vide order dated 23.01.2020 passed in Insolvency Petition No. 225 of 2019.

11. It is further reflected that since no resolution was achieved with regard to the CD, the liquidation process was initiated against the Principal

Borrower/CD vide order dated 13.04.2021 which was followed up by a dissolution order dated 13.07.2022 and the CD stands dissolved.

12. It is also reflected that subsequent to the classification of the loan account of the CD as NPA, Respondent –SSBL invoked the personal guarantee advanced by the appellant on 11.08.2016, and thereafter on 24.10.2016 SSBL filed a Summary Suit No. 144 of 2016 under Section 99 (4) of the **Gujarat Co-operative Societies Act, 1961** and by way of order passed therein on 15.09.2017, the Ld. Joint Registrar Board of Nominees Surat directed repayment of Rs. 2,88,65,468.35/- with 13% compound interest.

13. It is further reflected that on 01.07.2022, the Respondent-SSBL issued a demand notice (form B) under Section 95 (4) (b) of the Insolvency and Bankruptcy Code, 2016 (Code) read with Rule 7 (1) of the Insolvency and Bankruptcy Code, 2016, (Code) application to adjudicating authority for Insolvency Resolution Process for (Personal Guarantor to Corporate Debtor) Rules, 2019 herein after referred to as (PG to CD Rules 2019), seeking payment of Rs. 44,831,658.35/- and thereafter an application under Section 95 of the Code was filed before Ld. Adjudicating Authority for initiation of Insolvency Resolution Process against the appellant and vide order dated 17.09.2024, the Respondent No. 2 was appointed as the IRP who submitted his report on which the impugned order has been passed by the Ld. Adjudicating Authority and the insolvency resolution process was initiated against the appellant.

### **Submissions by Ld. Counsels for the parties**

14. Ld. Counsel for the appellants in both the appeals submits that the Ld. Adjudicating Authority has passed the impugned order without adverting to the facts that the application filed by the Respondent Financial Creditor was barred by limitation.

15. It is vehemently submitted that the Personal Guarantee advanced by the appellants were invoked by the Respondent on 11.08.2016, and admittedly the application under Section 95 of the Code has been filed by the Respondent after three years and therefore the application was barred by limitation.

16. Elaborating further it is submitted that the Limitation Act, 1963 is applicable to the proceedings under the IBC by virtue of Section 238 A as has been held by the Hon'ble Supreme Court in ***B.K. Educational Services Pvt. Ltd. vs. Parag Gupta and Associates, (2019) 11 SCC 633*** and Article 137 of the Limitation Act provides a limitation of three years for filing of any suit or application from the date when the right to apply accrues and therefore any proceeding under the IBC could only be filed within three years from 11.08.2016, the date on which the guarantee was invoked against the appellant. Reliance in this regard has also been placed on ***Gaurav Hargovindbhai Dave vs. ARC (India) Ltd., (2019) 10 SCC 572, Sagar Sharma and Anr. V. Phoenix ARC Pvt. Ltd. and Anr. (2019) 10 SCC 353.***

17. It is further submitted that the conclusions drawn by the Ld. Adjudicating Authority that Article 136 of the Limitation Act would apply in this case is erroneous as any civil suit filed by the Respondent and the

judgment passed by the Joint Registrar and Member, Board of Nominees Surat under **Gujarat Co-operative Societies Act, 1961** could not provide a fresh cause of action for the purpose of providing a fresh limitation thereafter as the limitation starts from the date of default and not from the date of enactment or the date of passing of any subsequent order by any civil court.

18. It is further submitted that any order passed in summary suit could not extend the limitation prescribed under the Limitation Act as the order passed by the Joint Registrar dated 15.09.2017 merely grants a right to recover which is to be enforced through execution proceedings and could not revive or extend the right to apply under the IBC which is governed by Article 136 of the Limitation Act. Reliance in this regard has been placed on **Jignesh Shah vs. Union of India (2019) SCC Online SC 1254 and Digamber Bhondwe vs. JM Financial Asset Reconstruction Company, CA (AT) (Ins) No. 1379 of 2019.**

19. It is also highlighted that Ld. Adjudicating Authority has also committed mistake in relying on the acknowledgment letters dated 17.03.2022 and 12.07.2022 as the acknowledgment must be given during the commencement of the earlier limitation period and as such having regard to the invocation of guarantee on 11.08.2016 the limitation period had expired on 10.08.2019 the aforesaid acknowledgment is not of any relevancy. Reliance in this regard has been placed on **Vivek Jha vs. Daimler Financial Services India Pvt. Ltd.**

20. It is also submitted that since the Respondent is already having a decree passed by the Joint Registrar under the **Gujarat Co-operative**

**Societies Act, 1961** and could very well be executed under the said Act then the proceedings only for the purpose of recovery of the said amount could not be instituted within the framework of the IBC and where two or more remedies are available the Respondent must elect the one and could not prosecute both the remedies.

21. It is further submitted that the Form B issued under Section 95 (4) (b) of the Insolvency and Bankruptcy Code, 2016 (Code) read with Rule 7 (1) of the Insolvency and Bankruptcy Code, 2016, (Code) application to adjudicating authority for Insolvency Resolution Process for (Personal Guarantor to Corporate Debtor) Rules, 2019 herein after referred to as (PG to CD Rules 2019), cannot be substituted for invocation of guarantee as has been held by this Appellate Tribunal in **SBI vs. Deepak Kumar Singhania, CA (AT) (Ins) No. 191 of 2025** therefore the impugned order is required to be set aside.

22. Ld. Counsel for the Respondent No. 1/Financial Creditor on the other hand submits that there is no illegality or to say any irregularity in the impugned judgment or order passed by Ld. Adjudicating Authority.

23. It is further submitted that from the timeline admitted to the parties the guarantee was invoked on 11.08.2016 and on a suit filed by the Respondent under relevant provisions of **Gujarat Co-operative Societies Act, 1961** a decree was passed against the appellant on 15.09.2017 which has extended the limitation period to 14.09.2020 and at this point, due to the happening of the Covid-19, Suo Motu WP (Civil No. 03 of 2020) In Re: cognizance for extension of limitation order passed by the Hon'ble Supreme Court the limitation period was frozen till 01.03.2022 and during this Suo

Motu extension period the claim of the Respondent was admitted in the CIRP of CD (Principal Borrower) and keeping in view the settled law admission of claim by the RP results in acknowledgment of debt under Section 18 of the Limitation Act which results in further extension of limitation for three years and thereafter on 14.07.2022 the demand notice under Form B was issued and thereafter the application under Section 95 was filed which has rightly been taken by Ld. Adjudicating Authority within prescribed limitation.

24. While relying on the law laid by the Hon'ble Supreme Court in B K Educational Pvt. Ltd. (supra) it is submitted that the law laid down by the Hon'ble Supreme Court in this case is not confined to Section 7 or 9 of the Code but would also be applicable to the instant proceedings and thus Article 137 of the limitation act applies to this case.

25. It is also submitted that the decree passed by the Joint Registrar under the **Gujarat Co-operative Societies Act, 1961** on 15.09.2017 on the suit which was filed on 24.10.2016 would further given limitation period of three years from 15.09.2017 and thereafter on admission of claims in the resolution process of the Principal Borrower/CD would give rise to an acknowledgment of debt and a fresh period of three years would apply thereafter and keeping in view the order passed by the Hon'ble Supreme Court in Suo Motu Writ Petition, the application filed by the Respondent has been rightly treated within time.

26. Ld. Counsel for the Respondent No. 1 has relied on the following table in order to impress that the application filed by the Respondent was within stipulated time.

30.07.2016	Date of default
11.08.2016	Invocation of guarantee
24.10.2016	Summary Suit 144/2016 filed by Answering Respondent
15.09.2017	Decree passed by the Ld. Joint Registrar, thereby giving raise to a fresh limitation period of 3 years ending on 15.09.2020. <b><u>The decree was passed within the original limitation period commencing from 11.08.2016 and therefore, permits the fresh period of limitation of 3 years to commence from the date of the decree.</u></b>
January 2020	Corporate Debtor was admitted into CIRP.
15.03.2020- 01.03.2022	<i>Suo Moto WP (Civil) No. 3 of 2022 in 'Re: Cognizance for Extension of Limitation'</i> thereby providing 90 days limitation commencing on 01.03.2022.
12.01.2021	As per the public records available, <b><u>taking into account the <i>Suo Moto</i> extension provided, the claims of Respondent No. 1 were admitted within the 3 years limitation period commencing from the date of the decree, thereby giving rise to a fresh period of limitation of 3 years to commence from the admission of claims.</u></b>
14.07.2022 and 16.07.2022	The Answering Respondent sent Demand Notices to the Appellant.
14.11.2022	The Answering Respondent filed CP (IB) No. 13 of 2023 before the Ld. Adjudicating Authority.

27. Apart from the above table Ld. Counsel for the Respondent No. 1 has relied on ***Dena Bank vs. C ShivaKumar Reddy and Anr., 2021 (10) SCC 330, Kotak Mahindra Bank Ltd. vs. A Balakrishnan and Anr., 2022 (9) SCC 186, Gulabchand Jain vs. Punjab National Bank and Anr., CA (AT) (Ins) No. 416 of 2020 dated of order 01.02.2022, Digamber Bhondwe (supra), IDBI Bank Ltd. vs. Hemangi Patel, CA (AT) (Ins) No. 991 of 2025, Shankar Khandelwal vs. Omkar Asset Reconstruction Pvt. Ltd. CA (AT) (Ins) No. 294 of 2025 and Asset Reconstruction Company vs. Bishal Jaiswal, 2021 (6) SCC 366.***

28. Ld. Counsel for the Respondent No. 2 i.e. RP has relied on the timeline of the events and submits that the limitation for filing the application commences from 11.08.2016 whereon the guarantee was invoked against the appellants and therefore the limitation was set to expire on 11.08.2019 however in between, within three years of invocation of guarantees on a civil suit filed by the Respondent on 24.10.2016 the judgment therein was

passed on 15.09.2017 decreeing the suit and directing appellants for payment of Rs. 28,865,468.35/- along with 13% compound interest.

29. It is further submitted that the decree of the civil court gives rise to fresh limitation of three years which was to expire on 14.09.2020 and keeping in view the order passed by the Hon'ble Supreme Court in Suo Motu WP (Civil No. 03 of 2020) In Re: Cognizance for extension of limitation, the balance period of limitation existing as on 15.03.2020 was available to the Respondent No. 1 from 01.03.2022. However, before the expiry of the extended period of limitation which was set to expire on 31.08.2022 the appellant sent letter to the Respondent no. 1 on 17.03.2022 promising to pay 70% of the Principal Debt amount and this being an acknowledgment gives rise to further fresh limitation of three years and since the application under Section 95 of the Code has been filed on 14.11.2022 was within the stipulated limitation period and that petition was dismissed as being defective with the liberty to file a fresh application the fresh petition i.e. CP IB No. 231 of 2024 filed on 17.09.2024 would also be within the limitation period.

30. It is further submitted that without prejudice letter dated 17.03.2022 and 12.07.2022 stating unconditional promise to pay the debt owed by the appellant would also give a fresh period of limitation and therefore no illegality has been committed by Ld. Adjudicating Authority in holding the petition to have been filed within stipulated period of limitation.

### **Analysis and Findings**

31. Having heard Ld. Counsel for the parties and having perused the record a short question which arise for adjudicating is as to whether the

application filed by the Respondent no. 1 under Section 95 of the Code was within the limitation period and secondly, as to whether if the civil court has passed a decree during the commencement of the original period of limitation of three years whether the same would provide a fresh cause of action starting the three years' limitation a fresh.

32. We also notice that almost all the facts pertaining to the happening of events appears to be admitted to the parties and in this regard a timeline prepared by the RP and has also been filed through its written submissions appears to be the true depiction of the facts and is reproduced as under for our convenience:

S. No.	Date	Particulars of event	Pg. No. of Appeal
1.	05.09.2012, 21.02.2013, 22.10.2013 & 24.04.2015.	4 Personal Guarantees were executed by Appellant in favor of R1 Bank for as against financial facilities availed by M/s. Pallav Synthetics Pvt. Ltd. (CD).	335-346 / V2 (clear copies)
2.	30.07.2016	CD's account was declared as NPA.	332/V2 or 255/V1

3.	<b>11.08.2016</b>	R1 had sent notice to the Appellant invoking the personal guarantee. No reply was received. Accordingly, Limitation period had commenced.	331 /V2
4.	24.10.2016 (provisions of IBC were not in force till date)	R1 had filed Summary Suit No. 144/2016 against the CD and all the Personal Guarantors including the Appellant herein, before the Ld. Joint Registrar and Member, Board of Nominees, Surat, Gujarat (hereinafter referred to as "JR") u/s 99 (4) of the Gujarat Cooperative Societies Act 1961 ("Act"), for recovery of its debt.	
5.	<b>15.09.2017</b>	JR passed order directing repayment of Rs. 2,88,65,468.35/- along with 13% compound interest thereon, by the CD & all PGs, including Appellant, to the R1 Bank. <u>It categorically extended injunction order till the date of actual payment (Pg. 250-251) and immovable properties of Appellant, i.e. R2 &amp; R4 therein, was attached for recovery of same. (Pg. 252). this order was never complied to by Appellant.</u>	244-254 /V1 (true typed copy @ 248-254)
6.	23.01.2020	Before 15.09.2020, NCLT admitted CP (IB) No. 225/9/NCLT/AHM/2019, filed by OC, i.e. M/s. Balabux Synthetics Pvt. Ltd., against CD thereby initiating the CIRP against CD.	121-131 /V1
7.	02.03.2020	R1 Bank had filed claim form in CIRP and was admitted as the sole secured Financial Creditor in CIRP of CD. Also stated in Liq. Order @ <b>Pg. 36-37 of Reply.</b>	94-95/V2 (CP) Also, 134 (dissol. Order)
8.	<b>15.03.2020</b>	Time period between 15.03.2020 to 28.02.2022 was exempted from limitation computation, by the Hon'ble SC in Suo Moto W.P (C) No. 3/2020, because of Covid 19 pandemic. Balance period of limitation existing as on 15.03.2020, or a period of 90 days, whichever is longer, was made available from 01.03.2022 onwards.	
9.	<b>14.09.2020</b>	The period which was extended from the date of decree was expiring. However, in view of the suo-moto order of Hon'ble SC, period between 15.03.2020 to 14.09.2020 was to be excluded i.e. 184 days. <b>For being more than 90 days, the limitation will expire on 31.08.2022.</b>	
10.	13.04.2021	Liquidation Process qua CD was initiated vide I.A. No.89/2021. <u>Order records that R1 was sole secured Financial Creditor in CIRP of CD.</u>	135-136 (dissol. Order)

11.	17.03.2022	Before expiry of extended period of limitation, Appellant sent letter to R1 unconditionally <u>promising and undertaking</u> (Pg. 263) to pay 70% of the principal debt amount owed by him to R1. This event further gave three years period of limitation. <u>It also, states that R1 had joined as party to CP filed against CD for CIRP. @ Pg. 261.</u>	<b>256-265</b> (True typed copy @ 261-265)
12.	01.07.2022/ 11.07.2022/ 14.07.2022/ 16.07.2022	Demand Notice dtd. 01.07.2022 u/s 95(4)(b) of IBC sent by R1 to Appellant, was delivered on 11.07.2022 but was returned by Appellant. (Pg. 215-217) Accordingly, notice was delivered via emails dated 14.07.2022 & 16.07.2022. (Pg. 218 & 220)	<b>210-220 / V1</b> (notice)
13.	12.07.2022	Appellant sent another letter to R1, <u>unconditionally promising &amp; undertaking</u> (Pg. 269) to pay entire principal debt amount owed by him to R1, as an OTS.	<b>268-269</b> /V1
14.	13.07.2022	Dissolution Order qua CD was passed by NCLT. <u>Order records that Sarvodaya Bank (R1) was sole COC Member @ Pg. 134 and the sole SCC member @ Pg. 136-137</u>	<b>133-138</b> /V1
15.	14.11.2022	R1 had filed CP (IB) No. 13 of 2023 before NCLT, against Appellant u/s 95 of the IBC which was registered on 11.01.2023. <b>Filing details as Annx. - R/2 @ Pg. 44 of Reply</b>	<b>271-295</b> /V1 (CP)
16.	22.12.2023	NCLT dismissed CP (IB) No. 13 of 2023 as being defective, with liberty to file fresh application.	<b>296</b> /V1
17.	05.07.2024 & 09.07.2024	NCLT vide order dated 05.07.2024, r/w corrigendum order dated 09.07.2024, in subject CP (IB) NO. 231/NCLT/AHM/2024 filed by R1 <b>through RP (R2)</b> , appointed R2 as IRP and directed him to submit a report for acceptance or rejection of said application.	<b>303-305</b> /V1 (order) <b>A-2 @ 86-302</b> /V1 (CP)
18.	20.10.2024	NCLT passed Impugned Order initiating Insolvency Resolution Process qua Appellant.	A-1 @ Pg. 46-85

33. We notice that the factual matrix barring some minor facts is admitted to the parties. It appears to be an admitted fact as is also reflected from the petition filed by the Respondent No. 1 under Section 95 of the Code before the Ld. Adjudicating Authority that the guarantee advanced by the appellants was invoked on 11.08.2016 and thereafter on 24.10.2016 a summary suit no. 144 of 2016 was filed under Section 99 (4) of the Gujarat Co-operative Societies Act (Act) before Ld. Joint Registrar and Member, Board of nominees, Surat, Gujarat, JR.

34. It is also an admitted fact that the above mentioned suit was decreed on 15.09.2017 directing repayment of Rs. 28,865,468.35/- along with 13% compound interest thereon payable by the CD and all personal guarantors, including appellants to the Respondent No.1.

35. It also appears to be an admitted fact that no amount after the passing of this decree has been paid by the Appellants to the Respondent Bank.

36. It also appears to be an admitted fact that on 01.07.2022, a demand notice under Section 95 (4) (b) of the Code was issued by the Respondent Bank to the appellants which is stated to have been returned by the appellants and it is claimed by the Respondent Bank that this notice was again delivered to the appellants through email on 14.07.2022 and 16.07.2022.

37. It also appears to be an admitted fact that the Respondent Bank has filed petition under Section 95 of the IBC before the Ld. Adjudicating Authority on 14.11.2022 which was registered on 11.01.2023, however was dismissed on 22.12.2023 as defective with the liberty to file fresh petition and it was thereafter on 18.06.2024, petition under Section 95 of the Code was filed by the Respondent Bank whereon, after appointment of the Resolution Professional and having perused its reports the impugned orders have been passed by the Ld. Adjudicating Authority admitting the petitions filed by the Respondent Bank under Section 95 of the Code.

38. It is to be recalled that part I of the Code is placed under the heading preliminary which contains definition clause and under Section 3, subsection (11) of it the "debt" has been defined as under: -

*(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;*

39. It is also fruitful to mention here the manner in which the "default" has been defined under the Code under Section 3(12) of the Code which is also reproduced as under: -

*(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become*

*due and payable and is not 1[Paid] by the debtor or the corporate debtor, as the case may be;*

40. In part II of the Code which is dedicated to insolvency resolution and liquidation for corporate persons in Section 5(22) "personal guarantor" has been defined as under: -

*(22) "personal guarantor" means an individual who is the surety in a contract of guarantee to a corporate debtor;*

41. Since, the application has been filed by the Respondent No. 1/ Financial Creditor under Section 95 of the code, therefore, the same is also reproduced as under: -

*95. Application by creditor to initiate insolvency resolution process. —*

*(1) A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.*

*(2) A creditor may apply under sub-section (1) in relation to any partnership debt owed to him for initiating an insolvency resolution process against— (a) any one or more partners of the firm; or (b) the firm.*

*(3) Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the Adjudicating Authority in which the first mentioned application is pending for adjudication and such Adjudicating Authority may give such directions for consolidating the proceedings under the applications as it thinks just.*

*(4) An application under sub-section (1) shall be accompanied with details and documents relating to—*

*(a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;*

*(b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and*

(c) relevant evidence of such default or non-repayment of debt.

(5) The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.

(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.

(7) The details and documents required to be submitted under sub-section (4) shall be such as may be specified.

42. This Appellate Tribunal in **IDBI Bank vs. Hemangi Patel 2025 SCC**

**OnLine NCLAT 1263** Opined as under:

**8.** Hon'ble Supreme Court, however, held that claim of acknowledgment under Section 18 on basis of letter dated 29.01.2020 cannot be accepted since the said acknowledgement was subsequent to expiry of 3 years. Hon'ble Supreme Court relied on earlier judgment of Hon'ble Supreme Court in the matter of 'B.K. Educational Services Pvt. Ltd.' v. 'Parag Gupta & Associates', [(2019) 11 SCC 633], where Article 137 of the Limitation Act was held to be applicable and limitation as 3 years. Hon'ble Supreme Court held that recovery certificate will give a fresh cause of action and application brought within 3 years of issue of recovery certificate is well within time. With regard to two recovery certificates, with respect to which Section 7 was initiated within 3 years, Hon'ble Supreme Court held the same to be within limitation relying on Article 137 of the Limitation Act. In the above context, following was laid down in paragraph 24:

"24. What has been filed before NCLT is a composite application based on three recovery certificates, two of which have been instituted within the three-year period as postulated in Article 137 of the Limitation Act. The third recovery certificate was issued in the year 2015. Thus, there is more than three years' gap between the date of issue thereof and the date of filing of the application before NCLT. But a recovery certificate under the 1993 Act is also clothed with the character of a deemed decree. The provisions of Section 19 (22-A) of the 1993 Act specifies:

**"19. Application to the Tribunal.—(1)-(22) \* \* \* (22-A)** Any recovery certificate issued by the Presiding Officer under sub-section (22) shall be deemed to be decree or order of the Court for the purposes of initiation of

winding-up proceedings against a company registered under the Companies Act, 2013 (18 of 2013) or limited liability partnership registered under the Limited Liability Partnership Act, 2008 (6 of 2009) or insolvency proceedings against any individual or partnership firm under any law for the time being in force, as the case may be.”

**10.** From the above it is clear that Hon'ble Supreme Court in the above case which is relied by the appellant relying on the earlier judgment in the matter of 'Kotak Mahindra Bank Ltd.' (Supra) held that limitation for filing Section 7 application is only 3 years as per Article 137. We, thus are of the view that submission of the appellant relying on the above judgment that Hon'ble Supreme Court held that limitation will be 12 years with respect to a decree is wholly incorrect and is not borne out from the judgment.

**13.** We thus do not find any substance in the submission of the counsel for the appellant that for filing an application under IBC 12 years limitation will apply. The judgment relied by the counsel for the appellant in 'Tottempudi Salalith' (Supra) also does not lay down any such proposition as contended by the counsel for the appellant. The adjudicating authority in the impugned order come to the conclusion that Section 95 application filed by the IDBI Bank was filed after expiry of three years period of limitation even after giving the benefit of judgment of the Hon'ble Supreme Court in Suo Motu WP (Civil) No. 3 of 2022 in 'Re: Cognizance for Extension of Limitation'.

**14.** We do not find any error in the order of the adjudicating authority rejecting Section 95 application filed by the appellant as barred by time. There is no merit in the appeals. Both the appeals are dismissed.

43. In **Shankar Khandelwal v. Omkara Asset Reconstruction Pvt. Ltd. and Anr., (2025) ibclaw.in 845 NCLAT**, it is Observed as under:

**19.** There is therefore, little difficulty in holding that the date of admission of a Claim by the IRP grants a fresh date for commencement of limitation and when the Claims are subsequently updated it pushes the date of terminus a quo to that date.

44. In **State Bank of India vs. Gourishankar Poddar & Anr. (2025) ibclaw.in 17 NCLAT** this Appellate Tribunal held as under:

**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 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 [2024 SCC OnLine NCLAT 254]. 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. 2012 (1CCC 458 Bom). 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.”*

45. The Hon’ble Supreme Court again in **Kotak Mahindra Bank Ltd. vs.**

**Key Precision Parts Pvt. Ltd. & Ors. 2022 SCC OnLine SC 978** observed

as under:

**31.** *Under Section 25(3), a debtor can enter into an agreement in writing, to pay the whole or part of a debt, which the creditor might have enforced, but for the limitation of a suit in law. A written promise to pay the barred debt is a valid contract. Such a promise constitutes novation and can form the basis of a suit independent of the original debt, for it is well settled that the debt is not extinguished, the remedy gets barred by passage of time as held by this Court in Bombay Dyeing & Mfg. Co. Ltd. v. State of Bombay.*

**33.** *There is a distinction between acknowledgment under Section 18 of the Limitation Act, 1963 and a promise*

*within the meaning of Section 25 of the Contract Act. Both promise and acknowledgment in writing, signed by a party or its agent authorised in that behalf, have the effect of creating a fresh starting of limitation. The difference is that an acknowledgment under Section 18 of the Limitation Act has to be made within the period of limitation and need not be accompanied by any promise to pay. If an acknowledgment shows existence of jural relationship, it may extend limitation even though there may be a denial to pay. On the other hand, Section 25(3) is only attracted when there is an express promise to pay a debt that is time-barred or any part thereof. Promise to pay can be inferred on scrutinising the document. Only the promise should be clear and unconditional.*

46. The Hon'ble Supreme Court in **Laxmi Pat Surana vs Union Bank of India & Anr. (2021) SCC OnLine SC 267** Opined as under:

**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 IBC enures. 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.*

47. The Hon'ble Supreme Court again in **Order dated 10.01.2022 passed in Suo Motu W.P. (C) No. 03/2020 exempting limitation during Covid-19**. Held as under:

*5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:*

*I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*

*II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*

*III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.*

*IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.*

*As prayed for by learned Senior Counsel, M.A. No. 29 of 2022 is dismissed as withdrawn.*

48. The only issue which has been raised by the appellant in this appeal is pertaining to the fact that both the petitions are barred by limitation. According to the appellants the personal guarantee given by the appellants was invoked on 11.08.2016 and summary suit was filed on 24.10.2016 whereon a decree was passed on 15.09.2017 and the demand notices to the personal guarantors under Form B was issued on 11.07.2022 and 14.07.2022 and the earlier petitions CP (IB) No. 13 of 2023 and CP (IB) No. 11 of 2023 were filed on 14.11.2022 dismissed on 22.12.2023 being defective, with the liberty to file a fresh petitions and thereafter the fresh petitions have been filed whereon the impugned orders have been passed.

49. At this juncture, it is also important to see as to how the Ld. Adjudicating Authority has disposed of the petitions filed by the Respondent Bank and in both the impugned orders the relevant paragraph no. 18 to 22 are identical and therefore reproduced below for the purpose of convenience.

*“18. As regards limitation aspect is concerned, in the present case admittedly Corporate Debtor after availing Credit facilities committed default. Consequently, the loan accounts of the Corporate Debtor were classified as NPA on 30.07.2016. Thereafter, on 24.10.2016 the Applicant Bank filed Summary Suit No.144/2016 U/s 99(4) of the Gujarat Co-Operative Societies Act against the Corporate Debtor, Respondent/PG & others for recovery which was allowed vide order dated 15.09.2017. On non-payment/fresh default, gave fresh cause of auction. Thus, the period of Limitation was stand extended for three years w.e.f. order dated 15.09.2017 to 14.09.2020 in terms of section 18 of the Limitation Act, 1963.*

19. However, in view of the COVID pandemic period, Hon'ble Supreme Court in **Suo Motu WP (Civil) No. 3 of 2022 in Re: Cognizance for Extension of Limitation** as well as in the matter of **M/s Arif Azim Co. Ltd. v. M/s Aptech Ltd. (2024 INSC 155)** dated 01.03.2024 held that the period i.e. 15.03.2020 to 28.02.2022 is liable to be excluded for the purpose of calculating the period of limitation. It is also held that in the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

20. In the present case the said excluded period comes to total number of **531 days**. In ordinary circumstances the limitation period would have come to an end on 14.09.2020. However, after exclusion of **531 days**, the three years' limitation period would come to an end on 16.08.2024. Thereby meaning that the limitation period available to the Applicant Bank for invoking the personal guarantee would come to an end on 16.08.2024.

21. In the present case the Applicant Bank has invoked the personal guarantee by serving **Form-B** being Demand Notice dated 01.07.2022 Section 95(4) (b) of the IBC, 2016 r.w. Rule 7(1) of the I&B (AAA for IRP for PGCD) Rules, 2019 after fresh default in terms of order dated 15.09.2017 passed in the Summary Suit No.144/2016 U/s 99(4) of the Gujarat Co-Operative Societies Act with in period of limitation in terms of section 18 of the Limitation Act, 1963.

22. Hence, in our view, even taking the date of invocation of Guarantee dated 01.07.2022 applying the judgment of Hon'ble Supreme Court in **Suo Motu WP (Civil) No. 3 of 2022 (should be 2020) In Re: Cognizance for Extension of Limitation** as well as in the matter of **M/s Arif Azim Co. Ltd. v. M/s Aptech Ltd. (2024 INSC 155)** dated 01.03.2024, the present Petition filed on 19.06.2024 is very much within limitation as period of limitation for the same is available to the Applicant Bank till 16.08.2024”.

50. Perusal of the impugned orders passed by the Ld. Adjudicating Authority would reveal that Ld. Adjudicating Authority has taken the date i.e. 30.07.2016 as the date on which the loan account of the CD was classified as NPA and thereafter considered the decree passed by the Ld. JR

under the Section 99 (4) of the Act on 15.09.2017 and goes on to hold that non-payment/ fresh default provided fresh cause of action and thus found the period of limitation extended for three years with effect from order of the JR dated 15.09.2017 which is to end on 14.09.2020 and thereafter by the implication of the happening of the Covid Pandemic and in view of the ***Suo Motu- WP (Civil) No. 3 of 2020 In Re: Cognizance for extension of limitation dated 10.01.2022*** as well as the law laid down in ***M/s Arif Azim Company Ltd. vs. M/s Aptech Ltd. (2024 INSC 155)*** dated 01.03.2024 held that the period from 15.03.2020 to 28.02.2022 is liable to be excluded from calculating the period of limitation and that when the actual balance period of limitation is remaining w.e.f. 01.03.2022 is greater than 90 days than longer period shall apply and has calculated that period as of 531 days and found that this period (after exclusion of 531 days) was ending on 16.08.2024 and thus hold that the limitation period available to the applicant bank for invoking the personal guarantee would come to an end on 16.08.2024.

51. It was further held by Ld. Adjudicating Authority that the bank has invoked personal guarantee by serving Form-B (demand notice on 01.07.2022) under Section 95 (4) (b) of the Code read with Rule 7 (1) of the PG to CD Rules, 2019 and found that in terms of decree dated 15.09.2017 passed by the JR the petitions are within limitation.

52. We notice that the Ld. Adjudicating Authority has committed a manifest illegality in taking the guarantee invocation date as 01.07.2022 by issuance of demand notice on 01.07.2022 under Section 95 (4) (b) of the Code read with Rule 7 (1) of the PG to CD Rules, 2019 while the guarantee

had already been invoked by the Respondent Bank admittedly on 11.08.2016. It appears to be a settled law that by issuance of notice under Form-B the guarantee may not be invoked and in this regard the law laid down by a Co-ordinate Bench of this Appellate tribunal in **SBI vs. Deepak Kumar Singhania, (2025) ibclaw.in 153 NCLAT** may be recalled and relevant part of the same is reproduced as under:

*“17. The Notice, thus, contemplate demanding payment of the amount of default. The above Rule clearly indicate that Demand Notice has to be issued, demanding payment of the amount in default. Thus, the default by Guarantor has to exist on the date when Notice in Form-B is being issued. When we read Section 95, sub-section (4) and Rule 7 of 2019 Rules, the above is the only intendment of the legislative scheme, i.e. default on the part of Guarantor should exist on the date when Notice in Form-B has to be issued. We have noticed the definitions of ‘debt’ and ‘default’ in Section 3 (11) and (12) of the IBC. Default shall arise on account of non-payment of debt, when whole or part of it become due. ‘Debt’ means a liability or obligation in respect of a claim which is due from any person. Thus, for a default, debt has to be due and Debtor shall be only that person, to whom debt is due. A Personal Guarantor becomes a Debtor only when guarantee is invoked, making him liable to make the payment to the Lender. We have noticed Clause 2 and Clause 21 of the Deed of Guarantee in the foregoing paragraphs of this judgment, which clearly contemplate that liability on Guarantor shall arise only when demand is made by the Lender, in event Principal Borrower fails to repay the amount. In the present case, there is no case setup by the Appellant that at any point of time guarantee was invoked, except issuance of Notice in Form-B, which is claimed by the Appellant to be treated as Notice for invocation of guarantee. Further, we have noticed the definition of ‘Guarantor’ under Rule 3(1)(e), which while defining a ‘Guarantor’ contain two conditions, i.e. (i) who is a Personal Guarantor to a Corporate Debtor; and (ii) in respect of whom, guarantee has been invoked by the Creditor and remains unpaid in full or part. Learned Counsel for the Appellant has contended that expression ‘and’ used in Rule 3 (1)(e) needs to be read as ‘or’ to make the provision workable and to avoid producing an unintelligible and absurd result. Learned Counsel for the Appellant has relied on two judgments of the Hon’ble Supreme Court in support of the above submission, i.e. AIR*

1968 SC 1450 – *Ishwar Singh Bindra and Ors. vs. State of U.P.* The Hon'ble Supreme Court in the above case had occasion to consider the definition of 'drug' contained in Section 3(b)(i) of Drugs Act 1940. Expression 'and' used in Section 3(b)(1) of the Drugs Act was considered in the said case and in paragraph 11 of the judgment, following was laid down:

“11. Now if the expression “substances” is to be taken to mean something other than “medicine” as has been held in our previous decision it becomes difficult to understand how the word “and” as used in the definition of drug in Section 3(b)(i) between “medicines” and “substances” could have been intended to have been used conjunctively. It would be much more appropriate in the context to read it disjunctively. In Stroud's Judicial Dictionary, 3rd Edn. it is stated at p. 135 that “and” has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of or. Sometimes, however, even in such a connection, it is, by force of a contexts, read as “or”. Similarly, in Maxwell on Interpretation of Statutes, 11th Edn., it has been accepted that “to carry out the intention of the legislature it is occasionally found necessary to read the conjunctions ‘or’ and ‘and’ one for the other”.

The coordinate bench of this Appellate Tribunal in the above noted case further opined as under: -

“20. The above judgment reiterates that one of the basic principles of interpretation of statutes is to construe them according to plain, literal and grammatical meaning of the words. When we look into definition of ‘Guarantor’ in Rule 3(1)(e), fulfilment of both the condition that Debtor is a Personal Guarantor to a Corporate Debtor and in respect of whom guarantee has been invoked, has been cumulatively used. The submission of the Appellant that use of the expression ‘and’ has to be read as ‘or’, shall not further the statutory object and purpose. Guarantor with regard to whom guarantee has not been invoked, shall not be a Debtor and no default can be committed by Guarantor, unless guarantee is invoked as per the terms of Deed of Guarantee. Thus, the insolvency resolution process against a Guarantor, against whom debt has not become due, is not understandable. We, thus, reject the submission of the Appellant that word ‘and’ used in Rule 3(1)(e) has to be read as ‘or’. Reading of word ‘or’ in place of ‘and’ shall be not in accordance with the statutory scheme and shall be against the statutory intendment.

22. The requirement of date, when the default occurred, itself contemplate the default by Guarantor, when Application is filed against Guarantor. Obviously, the default has to be of the Guarantor and mentioning of date when the default occurred, itself contemplate default on the part of Guarantor, i.e. invocation of guarantee as per Deed of Guarantee. Thus, non-mention of requirement of whether guarantee has been invoked and proof thereof, is inconsequential, since the date when default occurred is specifically asked for.

It was further held that default shall arise on the part of Guarantor only when Demand Notice is issued, as contemplated in the Deed of Guarantee in following words:

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“27. In view of the foregoing discussion, we are not persuaded to accept the submission of the Appellant that Notice under Rule 7 (1) issued in Form-B to the Guarantor, demanding repayment of the default amount, has to be treated as Notice for invoking guarantee. Default before issuance of Notice under Rule 7(1), must exist on the part of the Guarantor. Hence, we reject the submission of the Appellant that Notice under Rule 7, sub-rule (1) is a Notice, invoking the guarantee. We, thus, do not find any error in the order of the Adjudicating Authority, rejecting Section 95 Application filed by the SBI. There is no merit in the Appeal. The Appeal is dismissed. There shall be no order as to costs.”

The aforesaid law propounded by a Bench of this Appellate Tribunal comprising three Hon'ble Members has clearly laid down the law that it would be mandatory on the part of the Financial creditor to invoke the guarantee before issuing a notice under Rule 7(1) in Form B of 2019 Rules and also that default before issuance of such notice must exist on the part of the guarantor and has therefore rejected the submissions as canvassed by Ld. Counsel for the Appellant by holding that the notice given under Rule 7(1) of 2019 Rules is not a notice for the purpose of invoking the guarantee.

53. Secondly, we notice that there is no dispute between the parties pertaining to the invocation of guarantee on 11.08.2016, filing of summary suit before the JR on 24.10.2016 and passing of decree by the JR on

15.09.2017 and this period was admittedly expiring on 14.09.2020 and in our considered opinion the decree passed by the JR would provide a fresh cause of action of three years which would conclude in ordinary way on 14.09.2020. In this regard the law laid down by this Appellate tribunal **in IDBI Bank vs. Hemangi Patel (supra)** and by the Hon'ble Supreme Court in **B.K. Educational Services Pvt. Ltd. vs. Parag Gupta and Associates** may be recalled and relevant part of these judgments is reproduced as under:

**41.** *Shri Dholakia argued that the Code being complete in itself, an intruder such as the Limitation Act must be shut out also by application of Section 238 of the Code which provides that, "notwithstanding anything inconsistent therewith contained in any other law for the time being in force", the provisions of the Code would override such laws. In fact, Section 60(6) of the Code specifically states as follows: "60. Adjudicating authority for corporate persons. - (1)- (5) \* \* \* (6) Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963) or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded." This provision would have been wholly unnecessary if the Limitation Act was otherwise excluded either by reason of the Code being complete in itself or by virtue of Section 238 of the Code. Both, Section 433 of the Companies Act as well as Section 238-A of the Code, apply the provisions of the Limitation Act "as far as may be". Obviously, therefore, where periods of limitation have been laid down in the Code, these periods will apply notwithstanding anything to the contrary contained in the Limitation Act. From this, it does not follow that the baby must be thrown out with the bathwater. This argument, therefore, must also be rejected.*

**42.** *It is thus clear that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. "The right to sue", therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article*

*137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application.*

54. In ***Dena Bank vs. C. Shivakumar Reddy (2021) 10 SCC 330***

Hon'ble Supreme Court held as under:

***“141.*** *Moreover, a judgment and/or decree for money in favour of the financial creditor, passed by the DRT, or any other tribunal or court, or the issuance of a certificate of recovery in favour of the financial creditor, would give rise to a fresh cause of action for the financial creditor, to initiate proceedings under Section 7 IBC for initiation of the corporate insolvency resolution process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the certificate of recovery, if the dues of the corporate debtor to the financial debtor, under the judgment and/or decree and/or in terms of the certificate of recovery, or any part thereof remained unpaid”.*

55. Ld. Adjudicating Authority after holding that the period of limitation to file a petition was available till 14.09.2020 calculated that 531 days in view of the judgment of the Hon'ble Supreme Court In Re: Cognizance for extension of limitation dated 10.01.2022, would be excluded from counting the limitation period and in this way the limitation period would come to end on 16.08.2024.

56. We are of the considered view that Ld. Adjudicating authority has also committed patent illegality in computing the period which may be excluded from counting the limitation period as according to the law laid down by the Hon'ble Supreme Court In ***Re: Cognizance for extension of limitation dated 10.01.2022*** and ***M/s Arif Azim Company Ltd. vs. M/s Aptech Ltd. (2024 INSC 155)***, the period from 15.03.2022 to 28.02.2022 could only be excluded however where the limitation period has expired before 28.02.2022

is greater than 90 days that longer period would be available to the petitioner from 01.03.2022.

57. The appellant in their written submissions filed before us has calculated this period from 15.03.2020 to 14.09.2020 as 182 days while the Respondent No. 1 in his written submissions has counted this period from 15.03.2020 to 14.09.2020 (184 days) and by such computation the period was to expire on 31.08.2022 and according to the appellants this period was to expire on 30.08.2022. We are unable to understand as to on what basis Ld. Adjudicating Authority has calculated the period which may be excluded in view of the order of the Hon'ble Supreme Court In ***Re: Cognizance for extension of limitation*** as 531 days, therefore in his regard also Ld. Adjudicating Authority has committed an illegality.

58. Ld. Counsel for the Respondent no. 1 has submitted that even if the period of limitation was to expire on 31.08.2022 but the same has extended first on the score that a letter has been written by the appellants to the Respondent Bank on 17.03.2022 unconditionally promising and undertaking to pay 77% of the principal debt owed to the appellants and by this acknowledgment in writing the period of limitation has further extended for another three years.

59. Secondly, it is also argued by the Respondent Bank that another letter of date 12.07.2022 was send by the appellant to pay entire principal debt amount owed to him which would further extend the limitation period from another three years in view of Section 18 of the Indian Limitation Act and the petitions filed by the Respondent No. 1 on 14.11.2022 and thus the same were within limitation.

60. Another argument which has been taken by the Ld. Counsel for the Respondent No. 1 is in terms that the claim of the Bank was admitted in the CIRP of the CD on 02.03.2020 and keeping in view the law laid down by the Co-ordinate Bench of this Appellate tribunal in Shankar Khandelwal (supra) and SBI vs. Gauri Shankar Poddar it will amount to an acknowledgment by which the limitation has further extended for another three years and since by writing letters dated 17.03.2022, 12.07.2022 unconditional promise to pay the debt has been acknowledged by the appellants the same would amount to acknowledgment in writing under Section 18 of the limitation act and thus the limitation has extended till 12.07.2025. Reliance in this regard has been placed on Kotak Mahindra Bank Ltd. vs. Key Precision(supra).

61. It appears to be prima facie true that since the decree was passed by the JR on 15.09.2017 the limitation period according to this decree which has provided a fresh cause of action would have extended the limitation period till 14.09.2020 and keeping in view the order of the Hon'ble Supreme Court In Re: Cognizance for extension of limitation dated 10.01.2022 the period of 184 days would have been excluded from counting the limitation period and by such exclusion the limitation would have expired on 31.08.2022. Keeping in view the communication of the appellants dated 17.03.2022 and 12.07.2022 a copy of which has been placed at (page no. 256 to 265) (268 to 269) of the appeal paper book of CA (AT) (Ins) No. 2147 of 2024 the same may amount to an acknowledgment in writing and this acknowledgment would have extended the limitation for a further period of three years from such date and the petition appears to have been filed within this period.

62. However, we notice that in none of the impugned order Ld. Adjudicating Authority has discussed anything about the filing of claim by the Respondent Bank before the IRP or the RP in the CIRP of the CD nor any discussion has been made pertaining to the letters dated 17.03.2022 and 12.07.2022 written by the appellants to Respondent No. 1 acknowledging the debt and therefore in absence of the same we are not in a position to dispose of the issue of limitation emerging between the parties and therefore there appears no option before us except to remand the matter again to the Ld. Adjudicating Authority for deciding it afresh.

63. Keeping in view all the facts and circumstances of the case and for the reasons given herein before the impugned order may not with stand the test of law and therefore are set aside.

64. Resultantly, the appeals filed by the appellants are allowed. The matter is remanded back to Ld. Adjudicating Authority for deciding it afresh after providing an opportunity by passing a reasoned order. For this purpose, the CP (IB) No. 249/NCLT/AHM/2024 with I.A. No. 1563/NCLT/AHM/2024 and CP (IB) No. 231/NCLT/AHM/2024 with I.A. No. 1270/NCLT/AHM/2024 is revived on the board of the Ld. Adjudicating Authority.

65. The parties shall appear before Ld. Adjudicating Authority on 12.05.2026. There is no order as to costs.

66. Pending I.A.'s if any is also disposed of.

67. We request the Ld. Adjudicating authority to make all endeavor to dispose of the aforesaid matter afresh within two months from appearance of the party before it.

**[Justice Mohd. Faiz Alam Khan]**  
**Member (Judicial)**

**[Naresh Salecha]**  
**Member (Technical)**

**New Delhi.**  
**24.04.2026.**

*sr*