

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 865 of 2024
& I.A. No. 3125 of 2024

(Arising out of Order dated 07.03.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad (Court-II) in C.P.(IB) No.236/NCLT/AHM/2022)

IN THE MATTER OF:

State Bank of India ...Appellant

Versus

Anopsingh Kiritsinh Sarvaiya ...Respondent

Present:

For Appellant : Mr. Siddharth Sangal, Ms. Mrinalini Tandon, Ms. Richa Mishra, Mr. Kashish, Advocates.

For Respondents : Mr. Shubhanshu Tiwari, Advocate.

With

Company Appeal (AT) (Insolvency) No. 866 of 2024 &
I.A. No. 3128 of 2024

(Arising out of Order dated 07.03.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad (Court-II) in C.P.(IB) No.174/NCLT/AHM/2023)

IN THE MATTER OF:

State Bank of India ...Appellant

Versus

Devendrasinh Ranjitsinh Jadeja ...Respondent

Present:

For Appellant : Mr. Siddharth Sangal, Ms. Mrinalini Tandon, Ms. Richa Mishra, Mr. Kashish, Advocates.

For Respondents : Mr. Shubhanshu Tiwari, Advocate.

With

Company Appeal (AT) (Insolvency) No. 868 of 2024
& I.A. No. 3129 of 2024

(Arising out of Order dated 07.03.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad (Court-II) in C.P.(IB) No.237/NCLT/AHM/2022)

IN THE MATTER OF:

State Bank of India ...Appellant

Versus

Kuldipsinh Anopsinh Chudasma ...Respondent

Present:

For Appellant : Mr. Siddharth Sangal, Ms. Mrinalini Tandon, Ms. Richa Mishra, Mr. Kashish, Advocates.

For Respondents : Mr. Shubhanshu Tiwari, Advocate.

With

Company Appeal (AT) (Insolvency) No. 869 of 2024 & I.A. No. 3136 of 2024

(Arising out of Order dated 07.03.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad (Court-II) in C.P.(IB) No.171/NCLT/AHM/2023)

IN THE MATTER OF:

State Bank of India ...Appellant

Versus

Aliben Shamlabhai Movaniya ...Respondent

Present:

For Appellant : Mr. Siddharth Sangal, Ms. Mrinalini Tandon, Ms. Richa Mishra, Mr. Kashish, Advocates.

For Respondents : Mr. Moonaal Davawala, Advocate.

With

Company Appeal (AT) (Insolvency) No. 870 of 2024 & I.A. No. 3140 of 2024

(Arising out of Order dated 07.03.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad (Court-II) in C.P.(IB) No.42/NCLT/AHM/2023)

IN THE MATTER OF:

Company Appeal (AT) (Ins.) Nos.865, 866, 868, 869, 870, 871, 872, 873 & 874 of 2024

State Bank of India ...Appellant

Versus

Lakhmaben Kimabhai Monaviya ...Respondent

Present:

For Appellant : Mr. Siddharth Sangal, Ms. Mrinalini Tandon, Ms. Richa Mishra, Mr. Kashish, Advocates.

For Respondents : Mr. Moonaal Davawala, Advocate.

With

Company Appeal (AT) (Insolvency) No. 871 of 2024 &

I.A. No. 3143 of 2024

(Arising out of Order dated 07.03.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad (Court-II) in C.P.(IB) No.169/NCLT/AHM/2023)

IN THE MATTER OF:

State Bank of India ...Appellant

Versus

Shamlabhai Momaiyabhai Monaviya ...Respondent

Present:

For Appellant : Mr. Siddharth Sangal, Ms. Mrinalini Tandon, Ms. Richa Mishra, Mr. Kashish, Advocates.

For Respondents : Mr. Moonaal Davawala, Advocate.

With

Company Appeal (AT) (Insolvency) No. 872 of 2024 &

I.A. No. 3146 of 2024

(Arising out of Order dated 07.03.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad (Court-II) in C.P.(IB) No.173/NCLT/AHM/2023)

IN THE MATTER OF:

State Bank of India ...Appellant

Versus

Kimabhai Momaiyabhai Monaviya ...Respondent

Present:

For Appellant : Mr. Siddharth Sangal, Ms. Mrinalini Tandon, Ms. Richa Mishra, Mr. Kashish, Advocates.

For Respondents : Mr. Moonaal Davawala, Advocate.

With

Company Appeal (AT) (Insolvency) No. 873 of 2024 & I.A. No. 3149 of 2024

(Arising out of Order dated 07.03.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad (Court-II) in C.P.(IB) No.172/NCLT/AHM/2023)

IN THE MATTER OF:

State Bank of India ...Appellant

Versus

Dhirajlal Girdharbhai Chaniyara ...Respondent

Present:

For Appellant : Mr. Siddharth Sangal, Ms. Mrinalini Tandon, Ms. Richa Mishra, Mr. Kashish, Advocates.

For Respondents : Mr. Shubhanshu Tiwari, Advocate.

With

Company Appeal (AT) (Insolvency) No. 874 of 2024 & I.A. No. 3152 of 2024

(Arising out of Order dated 07.03.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad (Court-II) in C.P.(IB) No.170/NCLT/AHM/2023)

IN THE MATTER OF:

State Bank of India ...Appellant

Versus

Ansuyaben Mansukhlal Chaniyara ...Respondent

Present:

For Appellant : Mr. Siddharth Sangal, Ms. Mrinalini Tandon, Ms. Richa Mishra, Mr. Kashish, Advocates.

For Respondents : Mr. Shubhanshu Tiwari, Advocate.

J U D G M E N T

ASHOK BHUSHAN, J.

All these Appeal(s) have been filed by the State Bank of India (“**SBI**”) challenging the order dated 07.03.2024 passed by National Company Law Tribunal, Ahmedabad (Court-III) dismissing application filed by the SBI under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IBC**”) against the Respondents to the Appeals – the Personal Guarantors of the Corporate Debtor (“**CD**”) – M/s Yogiraj Ginning and Oil Industries Pvt. Ltd.

2. Separate Company Petitions were filed against each of the Respondent(s) in these Appeal(s), for example Company Appeal (AT) (Ins.) No.865 of 2024 has been filed against the order dated 07.03.2024 in CP(IB)No.236/NCLT/AHM/2022, which was filed by SBI against Mr. Anopsingh Kiritsinh Sarvaiya; similarly different Company Petitions under Section 95 were filed by SBI against other Personal Guarantors, who are Respondents in the above Appeal(s). All the applications filed by SBI have been rejected by separate orders passed on 07.03.2024 in different Company Petitions. All the Appeal(s) raises common questions of facts and law and have been heard together and are being decided by this common judgment. It shall be sufficient to refer to pleadings in Company Appeal (AT) (Ins.) No.865 of 2024 for deciding all the Appeal(s).

3. Brief facts of the case giving rise to these Appeal(s) are:

- (i) The SBI sanctioned credit facilities in the year 2012 to M/s Yogiraj Ginning and Oil Industries Pvt. Ltd. The facilities were renewed, enhanced on 26.04.2017 and 06.06.2018.
- (ii) The Respondent(s), i.e. Personal Guarantors executed personal guarantees. The last guarantee issued was on 24.03.2015, i.e. for credit facility aggregating to Rs.19.65 crores. The Personal Guarantors also claimed to have issued revival letter on 19.09.2017.
- (iii) The CD defaulted in repayment on 13.06.2018, hence, account of the CD was declared as NPA on 27.09.2018. Notices under Section 13, sub-section (2) of the SARFAESI Act, 2002 were issued to the CD and the Personal Guarantors to pay the outstanding liabilities of Rs.18,15,08,035/-. Another notice under Section 13, sub-section (2) was issued on 25.10.2019 to the CD and Personal Guarantors, demanding an amount of Rs.19,00,36,798/- as on 22.10.2019. Noticee(s) were asked to pay the amount within 60 days from the date of the notice. The Bank also filed an application before the Debts Recovery Tribunal (“**DRT**”) for recovery of the amount of Rs.19,00,36,798/-.
- (iv) An application under Section 7 was also filed by SBI against the CD. A Demand Notice under Rule 7 sub-rule (2) of the Insolvency and Bankruptcy (Application to Adjudicating

Authority for Insolvency Resolution Process for Guarantors to Corporate Debtor) Rules, 2019 (“**2019 Rules**”) for initiating proceedings under Section 95 was also issued. Notice of demand mentions the outstanding debt as Rs.24,41,53,898/- The date of default was mentioned as 24.12.2019. Noticee(s) were required to discharge the debt within 14 days from the receipt of the letter. No payments having been made by the Personal Guarantors, Company Petitions under Section 95 dated 31.03.2022 was filed against the Personal Guarantors. CP(IB)No.236/NCLT/AHM/2022 was filed against Anopsingh Kiritsinh Sarvaiya. Similarly, C.P.(IB) No.174/NCLT/AHM/2023 filed against Devendrasinh Ranjitsinh Jadeja; C.P.(IB) No.237/NCLT/AHM/2022 against Kuldipsinh Anopsinh Chudasma; C.P.(IB) No.171/NCLT/AHM/2023 against Aliben Shamlabhai Movaniya; C.P.(IB) No.42/NCLT/AHM/2023 against Lakhmaben Kimabhai Monaviya; C.P.(IB) No.169/NCLT/AHM/2023 against Shamlabhai Momaiyabhai Monaviya; C.P.(IB) No.173/NCLT/AHM/2023 against Kimabhai Momaiyabhai Monaviya; C.P.(IB) No.172/NCLT/AHM/2023 against Dhirajlal Girdharbhai Chaniyara; and C.P.(IB) No.170/NCLT/AHM/2023 against Ansuyaben Mansukhlal Chaniyara.

- (v) The Adjudicating Authority appointed RP in the application, directing him to submit a Report under Section 99. The RP submitted a Report recommending initiation of proceedings under Section 95. The Personal Guarantors in their objection claimed that revival letter dated 19.09.2017 has not been produced along with the application. It was pleaded that date of default according to NeSL was 30.06.2018 from which date, the application is filed beyond two years. The limitation for filing an application as per judgment of the Hon'ble Supreme Court in ***Suo Motu Writ Petition (Civil) No.3 of 2020*** shall be only 90 days, which is not applicable in the present case. In the application date of default is mentioned as 24.12.2019. Notice under Section 13 sub-section (2) of the SARFAESI Act, 2002 cannot be considered as notice invoking guarantee under Section 95 of the Code.
- (vi) Adjudicating Authority heard the parties and by the order dated 07.03.2024 rejected application under Section 95 filed by the SBI against the Personal Guarantors. The Adjudicating Authority rejected the application on two grounds – (1) application is not within the period of limitation and the Applicant did not enclose letter dated 19.09.2017; (2) there is no explanation as to how the date of default has been changed from 30.06.2018 to 24.12.2019. The notice dated 14.06.2019 cannot be said to be invocation of guarantee and

if we consider the date of default 24.12.2019, no further notice for invoking guarantee was issued. It appears that guarantee is not invoked when the default occurred so the petition is liable to be dismissed.

(vii) Reasons for rejections are mentioned in Paragraph-18 of the impugned order dated 07.03.2024 (in C.P.(IB) No.236(AHM)/2022 giving rise to Company Appeal (AT) (Ins.) No.865 of 2024), which is as follows:

“18. The case in hand, the date of default mentioned is 30.06.2018 and the date of demand notice is 14.06.2019. When a limitation period is expired during the period between 15.03.2020 to 28.02.2022 the directions are specifically given in para-III of the order. The directions clearly give 90 days further period from 01.03.2022. It is also mentioned that in the event of actual balance period of limitation remains is greater than 90 days from 01.03.2022 in that case longer period shall apply. So if the date of default is taken into consideration as 30.06.2018 the applicant will have only 90 days limitation period to file an application. If the date of notice is considered, i.e. 14.06.2019. If date of default as per application as 24.12.2019 is considered there is no invocation of guarantee. The strange thing is that the applicant has given different dates of default, the dates and notice are not co-relating to each other. It shows that the applicant itself is not sure that when there was default. The correct procedure is not followed to invoke guarantee.”

(viii) For rejecting the application filed against other Personal Guarantors, in separate orders, the same reasoning has been adopted by the Adjudicating Authority, i.e., the application is beyond limitation and there is no appropriate invocation of the personal guarantee.

4. We have heard learned Counsel appearing for the Appellant and learned Counsel appearing for the Respondents.

5. Learned Counsel for the Appellant challenging the order passed by the Adjudicating Authority submits that applications under Section 95 were filed on 31.03.2022 and date of default was mentioned in Section 95 application was 24.12.2019. The applications were well within the period of limitation. It is submitted that personal guarantee was invoked by letter dated 25.10.2019, which letter clearly invoked the personal guarantee and demanded payment within 60 days. The Demand Notice under Rule 7 of 2019 Rules was issued thereafter on 21.10.2021 as required by Rules and thereafter application under Section 95 was filed on 31.03.2022, which was well within time. Learned Counsel for the Appellant submitted that with respect to the limitation for filing an application under Section 95, this Tribunal specially with respect to extending the benefit of order of the Hon'ble Supreme Court in ***Suo Motu Writ Petition (Civil) No.3 of 2020*** has decided an Appeal on 12.03.2026 i.e. ***Company Appeal (AT) (Ins.) No.893 of 2024 in State Bank of vs. Sanjay Baleshwar Rai and other connected Appeal(s)***, where this Tribunal has held that when the period of three years is expiring during

the period from 15.03.2022 to 28.02.2022, the entire period needs to be excluded from 28.02.2022, if it is more than 90 days. From 01.03.2022, if the balance period is much more than 90 days, after excluding the period between 15.03.2020 to 28.02.2022, higher balance period of limitation would apply. It is submitted that 30.06.2018 was the date of default qua the CD and the date of default against the Personal Guarantors are the date on which personal Guarantees were invoked and they fail to make payments within the time allowed. In the present case, personal guarantees were invoked by letter dated 25.10.2019 and 60 days period expired on 24.12.2019, which was mentioned as date of default. The observation with respect to non-filing of the revival letter has no relevance. The limitation is to be counted from the date of default, i.e. 24.12.2019, which was subsequent to the revival letter dated 19.09.2017. There was no error in mentioning the date of default in Section 95 application. The Adjudicating Authority erred in observing that the application is defective and different dates of default are mentioned, which is not correct.

6. Learned Counsel appearing for the Personal Guarantors refuting the submissions of learned Counsel for the Appellant(s) submits that the revival letter dated 19.09.2017, which was claimed to have been made by the Personal Guarantors was not filed along with the application under Section 95 and the same is also not mentioned in the list of documents. Revival letter not being filed along with the application the SBI was not entitled to take the benefit of limitation from the said date i.e. 19.09.2017.

It is submitted that the Adjudicating Authority has rightly come to the conclusion that different dates of default are mentioned by the SBI. The NeSL certificate mentions date of default as 30.06.2018, whereas SBI claims date of default as 24.12.2019. The notice issued under Section 13, sub-section (2) of the SARFAESI Act on 14.06.2019 as well as 25.10.2019 cannot be said to be notice invoking the personal guarantee. Hence, the period of limitation cannot be counted from the said date. The Adjudicating Authority has rightly observed that application is defective. Observation of Adjudicating Authority that if date of notice is considered, the date of default as per application is 24.12.2019, there is no invocation of guarantee. The Adjudicating Authority has rightly observed that the Applicant itself is not sure that when there was date of default.

7. We have considered the submissions of learned Counsel for the parties and have perused the records.

8. From the facts as noted above, there is no dispute that CD - M/s Yogiraj Ginning and Oil Industries Pvt. Ltd. was sanctioned credit facilities by the SBI. Personal guarantees were executed by the Personal Guarantors [the Respondent(s) herein]. The personal guarantee dated 24.03.2015 has been brought on record as Annexure A-3 in Company Appeal (AT) (Ins.) No.865 of 2024, which mentions name of 11 Personal Guarantors and the amount of guarantee was Rs.19.65 crores and the CD was borrower. Clause-1 of the Guarantee Deed states as follows:

“1. If at anytime default shall be made by the Borrower(s) in payment of the principal sum and / or other monies for the time

being due to the Bank in respect of or under the said facilities, the Guarantors shall forthwith pay unconditionally to the Bank merely on demand by the Bank, the whole of such principal sum together with interest, costs, charges, expenses, fees, commission and or any other monies as may be then due to the Bank without any demur or protest or contestation and without reference to the Borrower(s), irrespective of any dispute or difference with the Borrower(s) in any proceedings and shall indemnify and keep indemnified the Bank against all losses of the said principal sum, interest or other monies due and all costs, charges and expenses whatsoever which the Bank may incur by reason of any default on the part of the Borrower(s).”

9. Copy of the application filed under Section 95 by the SBI has been brought on record in each of the Appeal(s). In Company Appeal (AT) (Ins.) No.865 of 2024, copy of the CP(IB)No.236/NCLT/AHM/2022 filed against Anopsingh Kiritsinh Sarvaiya has been brought on record. It is useful to notice Part-III of Form-C, which gives the particulars of date. Part-III of the application (as filed in Company Appeal (AT) (Ins.) No.865 of 2024), is as follows:

“PARTICULARS OF DEBT		
1.	Total outstanding debt (including any interest or panalties)	INR 24,41,53,898.12 as on 30-09-2021 which consists of a) Principal O/S Rs.15,49,98,684.40 b) Accrued interest not applied in the accounts Rs.7,88,02,606.56 c) Penal Interest @5% simple Rs.1,03,52,607.16 (Less) Recovery after NPA Rs. NIL Total Debt Rs. 24,41,53,898.12 -Together with further interest at applicable rate, costs, dues, and

		expenses that may accrue after 30-09-2021 from time to time till total repayment and settlement of dues by the Corporate Debtor.”
2.	Amount in default	INR 24,41,53,898.12 as on 30-09-2021 together with further interest at applicable rate, costs, dues, and expenses that may accrue after 30-09-2021 from time to time till total repayment and settlement of dues by the Corporate Debtor (it includes the principal outstanding of Rs. 15,49,98,684.40 plus unapplied interest of Rs. 7,88,02,606.56 and unapplied penal interest of Rs. 1,03,52,607.16)
3.	Date on which debt was due	25-10-2019
4.	Date on which default occurred.	24-12-2019”

10. As noted above, the first reason given by Adjudicating Authority for rejecting the application is that the application is filed beyond limitation. The said observations are made on the basis that the revival letter dated 19.09.2017, not filed along with the application, hence, the limitation cannot be counted from 19.09.2017. In Paragraph-10 of the impugned order (Company Appeal (AT) (Ins.) No.865 of 2024), following has been observed:

“10. The revival letter as well as acknowledgement of service of notice was not filed along with application. No reason given for not filing the same. Those were filed later-on, which creates doubt of their genuineness. Hence, the application is not within the period of limitation without revival letter. However, it will be in the interest of justice to decide the matter on other aspects so as to avoid remand of matter.”

11. The order of the Adjudicating Authority itself notices that although revival letter dated 19.09.2017 was not filed along with the application, but the said letter was subsequently filed. Filing or non-filing of revival letter dated 19.09.2017 has no relevance in the facts of the present case. We have extracted Part-III of Section 95 application, where two dates have been given by the SBI, i.e. date on which debt was due, i.e. 25.10.2019 and second date on which default occurred i.e. 24.12.2019. It is well settled that limitation for initiating proceeding against Personal Guarantors shall arise when Demand Notice is issued by the Bank. We have also noticed the relevant Clause of the Personal Guarantee, which required issuance of Demand Notice. The Adjudicating Authority in the order has also observed that date of default mentioned in NeSL certificate is 30.06.2018 and from which date, the limitation would have expired in June 2021. The Adjudicating Authority, however, has also noticed the judgment of the Hon'ble Supreme Court in *Suo Motu Writ Petition (Civil) No.3 of 2020* in Paragraphs 16-17, which are as follows (*Company Appeal (AT) (Ins.) No.865 of 2024*):

“16. If we consider another contingency that the date of default mentioned in NeSL as 30.06.2018, the period of limitation would have expired in June 2021. According to the applicant, they are covered by the judgment of Hon'ble Supreme Court in *Suo Motu Writ Petition i.e., MA 29 of 2022* in *MA 665 of 2021* in *Suo Motu Writ Petition (C) No.3 of 2020*. Hon'ble Supreme Court has given directions regarding excluding limitation period, which are as under:-

- (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 28.02.2020 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, that longer period shall apply.*
- (IV) *.....”*

17. In short, in para-I, it is directed that the period the from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation in respect of proceedings and balance period, if any, available from 03.10.2021 will be available from 01.03.2022. It is also directed that in cases where the limitation would have expired in between 15.03.2020 & 28.02.2022, irrespective of actual balance period the persons shall have limitation period of 90 days from 01.03.2022 and so on. Thus, it is clear that when the limitation period expired during 15.03.2020 till 28.02.2022, the directions in Para-III will be applicable.”

12. The view taken in Paragraph-18 of the impugned order by the Adjudicating Authority is that if the date of default is taken into consideration as 30.06.2018, the actual balance period of limitation remains is grater than 90 days from 01.03.2022 shall apply. The observations made in Paragraph-18 of the order are as follows:

“18. The case in hand, the date of default mentioned is 30.06.2018 and the date of demand notice is 14.06.2019. When a limitation period is expired during the period between 15.03.2020 to 28.02.2022 the directions are specifically given in para-III of the order. The directions clearly give 90 days further period from 01.03.2022. It is also mentioned that in the event of actual balance period of limitation remains is greater than 90 days from 01.03.2022 in that case longer period shall apply. So if the date of default is taken into consideration as 30.06.2018 the applicant will have only 90 days limitation period to file an application. If the date of notice is considered, i.e. 14.06.2019. If date of default as per application as 24.12.2019 is considered there is no invocation of guarantee. The strange thing is that the applicant has given different dates of default, the dates and notice are not co-relating to each other. It shows that the applicant itself is not sure that when there was default. The correct procedure is not followed to invoke guarantee.”

13. There is no dispute that application was filed under Section 95 on 31.03.2022 with respect to all the Personal Guarantors, who are Respondent(s) herein. Applications mention date of default as 24.12.2019, hence, there was no question of applications being barred by time. In the judgment passed by this Tribunal in **State Bank of vs. Sanjay Baleshwar Rai** and other connected Appeal(s) decided on 13.03.2026 (supra), we have noticed in detail order passed by Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No.3 of 2020 and subsequent orders of the Hon'ble Supreme Court. Interpreting the said order, in the above case, the application filed by SBI on 24.01.2023 was held within time. Default in the above case against the Personal

Guarantors was claimed on the basis of Decree dated 25.06.2018 passed by DRT, it was held that computing limitation from 25.06.2018, applications filed on 24.01.2023 was not barred by time and the view taken by the Adjudicating Authority, was set aside. In any view of the matter, from the facts of the present case, it cannot be held that application was filed beyond the period of limitation. Applications were filed on 31.03.2022 and it was well within limitation. When date of default as claimed is 24.12.2019 in Section 95 application, as noted above, the revival letter claimed by the SBI dated 19.09.2017 and its filing or non-filing, is irrelevant as the limitation against the Personal Guarantors shall commence only when Demand Notice is issued.

14. Now coming to the second ground taken by the Adjudicating Authority is that different dates of default have been given by the Applicant in Section 95 applications. It is noticed that NeSL mentions date of default as 30.06.2018. The date of default 30.06.2018 is the date of default qua the CD, since the account of the CD was declared as NPA on 24.09.2018.

15. We have noticed above that in the application, the date of default mentioned as 24.12.2019 on the basis of notice under Section 13, sub-section (2) of the SARFAESI Act, 2002 dated 25.10.2019. Copy of the notice dated 25.10.2019 has been brought on the record as Annexure A-4. Both the notice dated 14.06.2019 and 25.10.2019 were issued under Section 13, sub-section (2) of the SARFAESI Act, 2002 have been brought on record. The SBI having relied on notice dated 25.10.2019, we need to

notice contents of the said notice. The Adjudicating Authority has further observed that there is no invocation of guarantee after notice dated 14.06.2019 and 25.10.2019, hence the said issue also needs to be considered. The notice dated 25.10.2019 has been sent to the Personal Guarantors of the CD (Respondents herein) mentions the name of all the Personal Guarantors. Notice mentions that facilities granted has become irregular and account was classified as NPA from 27.09.2018. The names of Personal Guarantors are also mentioned in the notice. It is useful to notice Paragraphs 4 and 5 of the notice, which are as follows:

“4. You have also acknowledged subsistence of the liability in respect of the aforesaid. Credit facilities by executing confirmation of balances and revival letters and other documents from time to time. The operation and conduct of the above said financial assistance / credit facilities have become Irregular and the debt has been classified as non-performing assets with effect from 27.09.2018 in accordance with the directives / guidelines relating to asset classification issued by the Reserve Bank of India consequent to the default committed by you in repayment of principal debt and Interest thereon.

thereon.

5. The said financial assistance is also secured by the Personal Guarantees of

- (1) Shri Kuldeepsinh Anopsinh Chudasma
- (2) Shri Puspajiraj Anopsinh Chudasma
- (3) Shri Prafulkumar Girdharbhai
- (4) Shri Dhirajlal Girdharbhai
- (5) Shri Khimabhai Momaiyabhai
- (6) Shri Devendrasinh Ranjitsinh Jadoja
- (7) Shri Anopsinh Kiritsinh Sarvaiya.
- (8) Shri Shamlabhai Momaiyabhai Movaniya

- (9) Smt Aliben Shamlabhai Movaniya
(10) Smt Lakhmaben Khimabhai Movaniya.
(1.1) Smt Ansuyaben Mansukhlal Chaniyara”

16. By the notice dated 25.10.2019, all the Personal Guarantors were asked to pay the outstanding amount of Rs.19,00,36,798/- within 60 days from the date of notice. In Paragraphs 6 and 7 of the notice, following was stated:

“6. Therefore, the Bank hereby calls upon all of you u/s 13 (2) of the SARFAESI 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 Bank is in the sum of Rs. 19,00,36,798.08 (Rupees Nineteen Crores Thirty Six Thousand Seven Hundred Ninety Eight and Paise Eight Only) as on 22.10.2019. You are also liable to pay future interest at the contractual rate on the aforesaid amount together with incidental expenses, cost, charges, etc. Penal Interest has been applied at Simple Rate, penal interest has not been compounded. The calculation sheets of the interest accrued on various facilities are enclosed herewith.

7. If you fail to repay to the Bank the aforesaid sum of Rs. 19,00,36,798.08 (Rupees Nineteen Crores Thirty Six Thousand Seven Hundred Ninety Eight and Paise Eight Only) as on 22.10.2019 with further Interest and incidental expenses, costs as stated above in terms of this notice u/s 13 (2) of the act within 60 days from the date of notice, the Bank will exercise all or any of the rights as detailed under Sub-Section (4) of Section 13 and under other applicable provisions of the SARFAESI Act.”

17. The above statement in the notice clearly demands the payment from the Personal Guarantors. Paragraph-6 mentions “*Therefore, the Bank hereby calls upon all of you to discharge in full your liabilities within 60*

days". Thus, the notice dated 25.10.2019 is notice clearly invoking the personal guarantee of the CD and observation of the Adjudicating Authority that personal guarantee was not invoked after 14.06.2019, is incorrect and not according to the record. The Demand Notice under Rule 7 of 2019 Rules was issued on 21.10.2021, in which also the date when default occurred was mentioned as 24.12.2019. Along with the Demand Notice dated 21.10.2021, the recall notice dated 25.10.2019 issued by the Bank was also annexed. It is useful to notice Paragraph-2, Item No.14 of the Demand Notice, which reads as follows:

"14.	List of documents attached to this notice in order to prove the existence of debt and the amount in default	<ul style="list-style-type: none"> i. Copy of statement of accounts as on 30.09.2021. ii. Personal Guarantee Agreement dated 24.03.2015 executed by Shri Anopsinh Kiritsinh Sarvaiya for securing the debt allowed by the Bank to the Corporate Debtor. iii. Demand Notice / Recall Notice dated 25.10.2019 issued by the Bank."
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18. It is, thus, clear that Bank in both of its Demand Notice dated 21.10.2021 as well as Section 95 application has claimed the date of default as 24.10.2019. We, thus, are satisfied that Bank has successfully proved that date of default occurred on 24.12.2019 and by notice dated 25.10.2019, personal guarantee was invoked and observation of the Adjudicating Authority that different dates of default have been mentioned, is also incorrect. The date 30.06.2018, which was mentioned in the NeSL certificate was the date of default committed by the CD,

whose account was declared as NPA on 27.09.2018, which is also mentioned in notice dated 25.10.2019, as noted above. The observation of the Adjudicating Authority, thus, that petition itself is defective and barred by time, since revival letter dated 19.09.2017 was not filed along with the application, cannot be sustained. Order dated 07.03.2024 passed by NCLT, Ahmedabad, Court-II in C.P.(IB) No.236(AHM)/2022 and other CP (IBs) as challenged in these Appeal(s) are unsustainable.

19. In result, all the Appeal(s) are allowed. Order dated 07.03.2024 challenged in these Appeal(s) are set-aside. Company Petitions filed under Section 95 by the SBI, are revived before the Adjudicating Authority for passing a fresh order under Section 100 of the IBC in accordance with law. Parties shall bear their own costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Indevar Pandey]
Member (Technical)**

NEW DELHI

16th April, 2026

Ashwani