

**THE NATIONAL LAW TRIBUNAL
MUMBAI BENCH-I**

C.P. (IB)/1075(MB)2025

Section 95(1) of the Insolvency and Bankruptcy Code,
2016

CANARA BANK

...Petitioner

V/s

MR. RAJIV PRASAD

...Respondent

Order delivered on: 23.04.2026

Coram:

Shri Prabhat Kumar

Hon'ble Member (Technical)

Shri Sushil Mahadeorao Kochey

Hon'ble Member (Judicial)

Appearances:

For the Applicant : Adv. Sonam Chandwni

For the Respondent : Sr. Adv. Umesh Shetty, Adv. R. M. Pande a/w Adv. Shivani A. Halwai

For the RP : Adv. Pooja Saraswat

ORDER

1. The present petition CP (IB) 1075 of 2025 has been preferred by Canara Bank (“Applicant / Creditor”) under Section 95 of the Insolvency and Bankruptcy Code, 2016 seeking initiation of insolvency resolution proceedings against the Respondent, Mr. Rajiv Prasad (“Respondent / Personal Guarantor”), the personal guarantor in respect of the credit facilities extended by the Applicant to the Corporate Debtor, M/s Ultra Drytech Engineering Ltd.
2. It is stated that, in order to secure the repayment of the Credit facilities extended to the Principal Borrower/Corporate Debtor, the Respondent executed a Deed of Guarantee dated 29.11.2014, thereby undertaking to be jointly and severally liable for the dues of the Corporate Debtor. The Applicant/Creditor issued a statutory demand notice in Form B on 30.08.2025.
3. This Tribunal observed that the Applicant has not placed on record a Notice of invocation of Guarantee along with the Petition. Accordingly, the Applicant was directed to place on record Notice of invocation of guarantee prior to the issuance of statutory demand notice, which was placed by the Applicant vide additional affidavit dt. 11.11.2025. On perusal of the said Affidavit, it is noticed that the liability of the Respondent in terms of the guarantee was invoked vide notice dt. 07.08.2025, upon failure of the Corporate Debtor to discharge its obligations, stating that “The Financial creditor through this notice brings to your attention that the Corporate Debtor has failed and neglected to repay the dues/ outstanding liabilities and hence hereby demand you under the provisions of IBC, by issuing this notice to discharge in full the liabilities of the Corporate Debtor as stated in Schedule A hereunder to the secured creditor within 07 days from the date of receipt of this notice. Further, it is brought to your notice that you are also liable to pay future interest at the rate of 12.95 % per year together with all costs, charges, expenses and incidental expenses with respect to the proceedings undertaken by the Financial Creditor in recovering its dues. The said notice was served by Speed Post dated 18.08.2025, thus the said notice is presumed to have been delivered within 48 hours i.e. on 20.08.2025. Accordingly, the period specified in the said notice expires on 26.08.2025
4. The Applicant issued a demand notice in Form B dt 30.08.2025 upon the Respondent requiring him to pay the outstanding debt, if not paid earlier, within 14 days from receipt

of demand notice. Along with this Petition, and has also placed on record the sanction letter, loan agreement, deed of guarantee, bank statements, NeSL record of default and proof of service.

5. It is stated that, as on 31.07.2025, the total outstanding debt recoverable from the Respondent is Rs. 42,00,53,235.02/- (Rupees Forty-Two Crore Fifty-Three Thousand Two Hundred Thirty-Five and Two Paise only), which has remained in default since 30.06.2016, and despite repeated reminders and demands, the Respondent has failed to clear the said dues.
6. This Tribunal appointed MR. Kamal Kumar Jadwani, as the Resolution Professional vide order dated 25.11.2025 requiring him to examine the Company Petition and file the report within 10 days from the date of receipt of this order. The Resolution Professional filed his report dated 10.12.2025 vide IA (IBC) 5854 of 2025 recommending the admission of present petition. It is also stated in the said report that *“In response to the letter served upon the Personal Guarantor, the Resolution Professional received an email dated 05.12.2025 from the Advocates representing the Personal Guarantor, alleging suppression of pending DRT proceedings by the Financial Creditor before this Hon’ble Tribunal, indicating that the Personal Guarantor would move an appropriate application, and asserting that the Personal Guarantor has no assets”*.
7. The Respondent Personal Guarantor filed his reply dated 04.02.2025 stated that the present petition is barred by limitation as the Applicant, as back as on 25 January 2017, herein had demanded the alleged outstanding dues in the sum of Rs. 9,94,34,018.20(Rupees Nine Crores Ninety Four Lacs Thirty four Thousand Eighteen and Paise Twenty Only) from the Respondent in its alleged capacity as guarantor (under the alleged guarantee dated 29/11/2014 claimed to have been executed by the Respondent in favor of Applicant. It is further stated that the Respondent however, has only an incomplete copy of the said letter of demand dated 25" January 2017, (which is annexed as an exhibit “OO” to OA No.1109 of 2024 filed by the Applicant against the Respondent in DRT) whereby the Applicant had made the aforesaid demand in the sum of Rs. 9,94,34,018.20(Rupees Nine Crores Ninety Four Lacs Thirty four Thousand Eighteen and Paise Twenty Only) on the Respondent in his alleged capacity of guarantor of the said corporate debtor Ultra Dry tech Engineering Limited. It is further stated that the debts of the Corporate debtor having been extinguished with effect from

the date of its dissolution on 21.8.2024, the alleged liability of the Respondent herein as guarantor of corporate debtor (as claimed by Applicant), being co-extensive with the debt of the said corporate debtor, has also extinguished and come to an end on 21.8.2024. The Respondent has also submitted that the demand notice dated 27.08.2024 was not served upon him.

8. We have heard the learned Counsel and perused the material on record.
9. The Respondent Personal Guarantor has challenged this petition on the ground of extinguishment of liability of Corporate Debtor consequent to its dissolution thus discharging the Personal Guarantor herein as well from his obligation under the deed of guarantee executed to secure the debt owed by the Corporate Debtor to the Applicant creditor; Non service of demand notice dated 27.08.2024; and on limitation ground stating that the guarantee came to be invoked in terms of notice dated 25.01.2017 as per own admission of the Applicant in the proceedings filed before the Debt Recovery Tribunal (DRT).
10. Indubitably, the Principal Borrower/Corporate Debtor was liquidated and after distribution of the liquidation proceeds, the claim of the Applicant Creditor against the Corporate Debtor remained unsatisfied, and consequent to the liquidation the Corporate Debtor was dissolved. It is noted that the executed deed of guarantee states that “.....*The guarantor also agrees that the Guarantor shall not be discharged from his liability by the Bank's releasing the Borrower or by any act or omission of the Bank legal consequence of which may be to discharge Borrower or by any act of the bank which would, but for this present provision, be inconsistent with the Guarantor's right as surety or by the Bank's omission to do any act which, but for this present provision, the Bank's duty to the Guarantor would have required the Bank to do. Though as between the Borrower and the Guarantor, the Guarantor is surety only, the guarantor agrees that as between the Bank and the Guarantor, the Guarantor is the principle debtor, jointly with the Borrower and accordingly the Guarantor shall not be entitled to any of the rights conferred as surety by Section 133, 134, 135, 139 and 141 or any other relevant provision of the Contract Act.*” In terms of aforesaid specific averment, the release of borrower consequent to its liquidation does not discharge the Personal Guarantor herein and the Personal Guarantor remains liable for the unsatisfied debt owed to the Applicant Creditor by the dissolved corporate debtor. Hence, the personal

guarantor remains liable for the unsatisfied debt and does not get discharged on the ground of discharge of corporate debtor consequent to its dissolution.

11. It is further noted that the Applicant has pleaded service of the demand notice dated 27.08.2024, however, as per Annexure E attached to the Petition the said notice is dated 30.08.2025. It appears to us that this typographical error in the pleading is inconsistent with the copy of the demand notice in Form B dated 30.08.2025 attached with the Petition. The relevant document i.e. demand notice in Form B dated 30.08.2025 shall prevail over the pleadings, which is sufficient compliance of the provisions of IBC. In our considered view, the substance has to prevail over the form, hence, we do not find any merit in this ground.
12. On perusal of the notice dated 25.01.2017 placed as Exhibit B to the reply by the personal guarantor, it is noted that the said notice was issued by the Applicant Creditor to the Principal Borrower as well as Personal Guarantors, including the personal guarantor herein requiring them to pay the debt due. The relevant part of the said notice reads as *“We hereby finally call upon you to pay the said sum of Rs.9,94,34,018.20(Rupees Nine Crores Ninety Four Lacs Thirty four Thousand Eighteen and paise Twenty only) with Interest at 18.35% (Inclusive of 2% penal interest) compounded monthly from 26.01.2017 till payment within 7 days from the date of receipt hereof”*. Indubitably, the said notice is address to the personal guarantor as well in his capacity as personal guarantor which is evident from the description of the noticee i.e. *“Mr.Rajeev Prasad {Managing Director / Guarantor}”*. The Respondent personal guarantor has relied upon the said notice in his defence thus it is presumed that the receipt thereof is not challenged by him. It is further noted that the corporate debtor was admitted into the CIRP on 30.03.2017 in terms of C.P. No. 29/2017.
13. The Applicant Creditor in its rejoinder has stated that *Even assuming, without admitting, that the letter dated 25th January 2017 constituted an invocation of the guarantee, it is well established in law that a creditor may at any time thereafter issue a fresh demand upon the guarantor, which constitutes a fresh invocation of the guarantee and gives rise to a fresh cause of action”*. It is further stated by the Applicant that *“it is the demand that specifically invokes the personal guarantee in the context of IBC proceedings, i.e., the demand notices of 2024 and 2025. The 2017 letter was issued in a different context and under a different legal framework, and any limitation period*

computed from the said date is irrelevant for proceedings under Section 95(1) of the IBC, for the reasons elaborated in detail hereunder”.

14. It is trite that a demand upon the personal guarantor to pay the outstanding due from the Principal Borrower constitutes the invocation of the personal guarantee executed by the personal guarantor and the limitation runs from the expiry of period specified in the first demand notice. Further, any subsequent demands after first notice of demand are not relevant for the purpose of determination of limitation. It is noted that the notice dated 25.01.2017 forms part of the application filed by the Applicant Creditor herein before DRT, which constitutes admission on part of the Applicant Creditor before a Court of Law as to the genuineness, including its contents, of the said document as well as its due service upon the notice(s) and such admission binds the applicant creditor. Accordingly, in our considered view, the limitation starts running from the expiry of 7 days from the date of receipt of said notice. Accordingly, after taken into consideration some period for the delivery of the said notice, the limitation shall start to run from from first week of February, 2017 and the period of three years shall expire in first week of February, 2020. The present petition having filed on 30.09.2025, is beyond the limitation period.
15. Accordingly, CP (IB) 1075 of 2025 is dismissed and disposed of.

-Sd/-
Prabhat Kumar
Member (Technical)

-Sd/-
Sushil Mahadeorao Kochey
Member (Judicial)