

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 909 of 2024

(Arising against the impugned order dated 22.03.2024 passed by the Hon'ble National Company Law Tribunal, New Delhi Bench-III, in IA No. 3549/ND/2022 in CP (IB) No. 361/ND/2021)

IN THE MATTER OF:

Sh. Y.Y. Butchi Babu,

Personal Guarantor to the Corporate Debtor
M/s Abir Infrastructure Private Limited,
R/o Flat No. E-1, Trendset Vantage Towers, Road No.
14, Banjara Hills, Hyderabad – 500034.

...Appellant

Versus

State Bank of India,

represented by its Authorized Representative,
with corporate office at
State Bank Bhavan, Madam Cama Road,
Nariman Point, Mumbai – 400021,
and also operating through its
SAMB Branch, Khairatabad, Hyderabad.

...Respondent No.1

M/s Abir Infrastructure Private Limited,

represented by its Authorized Representative,
having registered office at SF-2,
Bikaji Cama Bhawan,
Bhikaji Cama Place,
New Delhi – 110066.

...Respondent No.2

With

Company Appeal (AT) (Ins) No. 936 of 2024

(Arising against the impugned order dated 22.03.2024 passed by the Hon'ble National Company Law Tribunal, New Delhi Bench-III, in IA No. 3548/ND/2022 in CP (IB) No. 303/ND/2021)

IN THE MATTER OF:

Cont'd..../

Sri Surapaneni Ramesh

S/o Sri. Surapaneni Gandhi Personal Guarantor to
Corporate Debtor M/s Abir Infrastructure Private
Limited,

R/o Villa No 17 , Hill County, Nizampet Road,
Bachu pally, Hyderabad - 500090 .

...Appellant

Versus

State Bank of India

Rep. by the Authorized Representative Corporate
Office at State Bank Bhavan, Madam Cama Road,
Nariman Point Mumbai Maharashtra -400021.

And also at :

Interalia a SAMB Branch D. No. 6-2-915,
5th floor, HMWSSB Compound Khairatabad,
Hyderabad-500004.

...Respondent No.1

M/s. Abir Infrastructure Private Limited

Rep. by the Authorized Representative SF-2
Bhikajicama Bhavan, Bhikajicama Palace,
New Delhi -110066.

Email: info.aipl@abir.in

...Respondent No.2

Present:

For Appellant: Mr. S.S. Ray Sr. Advocate, Mr. RS Sravan Kumar,
Mr. Vaibhav, Mr. Shubhankar Ray, Ms. Rakhi Ray,
Advocates.

For Respondents: Mr. Harshit Khare, Advocate for SBI.
Mr. Ayuj Agarwal, Advocate for RP.
Mr. Prafful Saini, Advocate.

J U D G M E N T
(7th January, 2026)

INDEVAR PANDEY, MEMBER (T)

Comp. App. (AT) (Ins.) No. 909 of 2024: First Appeal

1. The Company Appeal No. 909 of 2024 arises pursuant to an order
dated 22.03.2024 passed by the Hon'ble National Company Law Tribunal,

New Delhi Bench-III (Adjudicating Authority) in IA No. 3549/ND/2022 in CP (IB) No. 361/ND/2021 under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter 'Code'), which allowed the initiation of insolvency proceedings against **Mr. Y.Y. Butchi Babu/Appellant**, in his capacity as a Personal Guarantor to the **Corporate Debtor, M/s Abir Infrastructure Private Limited** which is Respondent No.2 in this appeal.

2. The Adjudicating Authority, vide the impugned order, admitted the Section 95 application filed by **State Bank of India /Respondent No.1** and appointed Mr. Rajesh Chillale as Resolution Professional and directed him to file his report under Section 99 of the Code. Appellant asserts that despite production of documents like bank-issued certificates; statutory auditor confirmations; and documentary computations, and that the Bank had already received sums far exceeding the claimed liability and that no debt subsisted as on the date of the Demand Notice. The Appellant, therefore, has filed this appeal under Section 61(1) of the Code, challenging the impugned order.

Brief facts of the case:

3. The brief facts of the case are as given below:

- (i) The Corporate Debtor, M/s Abir Infrastructure Private Limited, was placed in CIRP when the Adjudicating Authority issued an order on 30.01.2019 initiating insolvency proceedings in CP (IB) 893/ND/2018 based on Section 9 petition filed by an Operational Creditor, thereby

triggering statutory moratorium and commencement of the resolution process under the Code.

- (ii) The Corporate Debtor's resolution process concluded with the approval of a Resolution Plan, which was formally taken on record through the NCLT's approval order dated 28.10.2021, followed by a rectification order on 30.11.2021, and subsequent orders dated 09.11.2022 and 18.01.2023, shifting the effective implementation date to 20.09.2022 and recording final implementation w.e.f. 17.12.2022, demonstrating that the Bank was receiving payments under the approved plan.
- (iii) In the Resolution Plan of Corporate Debtor, the Respondent No.1/State Bank of India had filed a total claim of Rs.36,17,70,23,657/- before the RP. The RP admitted an amount of Rs.19,08,69,464/- against the aforesaid total claim filed by SBI. The Resolution Plan of the successful Resolution Applicant approved by Adjudicating Authority vide its order dated 28.10.2021 provided for an amount of Rs.13,80,00,000/-for SBI.
- (iv) State Bank of India issued a Demand Notice on 28.10.2020 under Rule 7(1) of the Insolvency and Bankruptcy (PG to CD) Rules, 2019 to the appellant stating that Rs. 23,37,11,482.86 was due from the Appellant as Personal Guarantor as on 30.09.2020.
- (v) The Appellant responded on 20.11.2020, asserting that the Corporate Debtor and Corporate Guarantors had already deposited substantial amounts reducing or extinguishing liability, and pointed out that another guarantor, Mr. Surapaneni Ramesh, had filed IA 2251/2019

in OA No. 303/2018 before DRT Hyderabad with detailed computations revealing that the Bank's claim of Rs. 110,57,60,684.34 was inflated, and that the correct computation, even with contracted rates of interest and unpaid commission, amounted to only Rs.104,28,20,678/-. The Appellant also highlighted that the Bank had continuously sought adjournments before the DRT for more than 40 months, delaying the filing of its reply to IA 2251/2019, and eventually filed its counter only on 31.10.2022, without disputing computation sheets or the remittances that had been made.

- (vi) The SBI/Financial Creditor/ Respondent No. 1 herein, filed the Section 95 application on 09.02.2021, based on same quantum of debt (Rs.23,37,11,482.86) as shown in the Demand Notice.
- (vii) The Adjudicating Authority admitted the application on 24.05.2022 and appointed Mr. Rajesh Chillale as Resolution Professional; ordered commencement of interim moratorium; directed the RP to examine the debt; and file a report under Section 99 of the Code.
- (viii) The RP thereafter issued a communication dated 27.05.2022, followed by an e-mail dated 30.05.2022, asking the Appellant to disclose details of payments made by the Corporate Debtor or guarantors after issuance of the Demand Notice and to clarify whether any amounts had been paid subsequently, effectively seeking confirmation of liability or absence thereof.
- (ix) The Appellant replied by e-mail on 07.06.2022, enclosing the earlier reply to SBI dated 20.11.2020, and reiterating that IA 2251/2019 filed in DRT contained the correct computation sheets. The Appellant

asserted that no debt was due and further highlighted that substantial sums had been deposited towards reduction of liability prior to and after filing of the DRT OA.

- (x) The RP filed his Section 99 Report to the Adjudicating Authority on 13.06.2022, relying on the Bank's version that only Rs.85,25,00,000/- had been paid since 12.04.2018, and concluding that Rs.23,37,11,482.86 remained due from the Corporate Debtor/ Personal Guarantors.
- (xi) The appellant filed a detailed counter reply to RP's report on 27.08.2022, stating that the total deposits made by Corporate Guarantors amounted to Rs. 127,95,00,000/-, comprising Rs. 41.30 crore deposited between 12.04.2018 and 30.01.2019 and Rs. 86.65 crore deposited thereafter up to 28.10.2019, significantly exceeding the Bank's claimed figure of Rs. 85,25,00,000/-.
- (xii) The appellant, in the counter reply also recorded that SBI was allotted Rs. 13,80,00,000/- under the approved resolution plan in respect of the guaranteed facilities, of which SBI had already received Rs.1,38,00,000/- on 15.12.2022 and Rs.1,97,14,286/- on 06.12.2023 towards redemption of the first tranche of Non-Convertible Debentures.
- (xiii) The Appellant additionally pointed out that a separate deposit of Rs.20,00,00,000/- was made on 10.12.2018 to maintain a 100% cash margin for BG liabilities, and that SBI subsequently released these funds for the Corporate Debtor's operational use without adjusting them toward any alleged outstanding dues.

- (xiv) Two SBI-issued Bank Guarantees—BG No. 0910310BG0000943 dated 26.10.2010 for Rs.2,76,93,930/- and BG No. 0910312BG0000648 dated 18.04.2012 for Rs.2,00,00,000/- were invoked by the beneficiary, M/s Beas Valley Power Corporation Ltd., on 14.05.2018 and 23.05.2018, resulting in an additional liability of Rs.4,76,93,930/- which when calculated with interest @ 12.15% p.a. with monthly rests, amounted to Rs.6,35,42,861/- as on 30.09.2020. Even adding this to the alleged debt, the aggregate liability remained far lower than the amounts deposited by Corporate Guarantors.
- (xv) The Appellant also submitted to Ld. Adjudicating Authority, State Bank's own certificate dated 19.02.2024 (SAMB/SEC/BBR/461), issued upon request of the Corporate Debtor, in which SBI expressly certified receipt of Rs.123,80,00,000/- between 07.09.2018 and 28.10.2019, which contradicted the RP's reliance on the figure of Rs.85,25,00,000/-. SBI's certification also affirmed receipt of plan-amounts Rs.1,38,00,000/- and Rs.1,97,14,286/-, leading to further reduction in liability. The Appellant also enclosed the Statutory Auditor's Certificate (UDIN: 24202352BKBEHF2100) dated 19.02.2024; and the amended Written Statement filed on 07.12.2022 before the DRT. Appellant stated that these documents confirm (a) the total remittances, (b) SBI's acknowledgment thereof, (c) that SBI had not disputed these figures before the DRT, and (d) that there existed no subsisting debt payable by the Personal Guarantor.
- (xvi) The Adjudicating Authority, vide its order dated 22.03.2024, accepted the RP's Report and admitted the Section 95 application, and thereby

initiated the Insolvency Resolution Process against the Personal Guarantor. This impugned order is the subject of the present appeal under Section 61(1) of the Code.

4. The appellant has made the following prayers in his appeal:

- a) Kindly set aside the Impugned Orders dated 22.03.2024 passed by the National Company Law Tribunal, New Delhi III IN CP (IB) NO. 361(ND) 2021.*
- b) Pass an order directing the Adjudicating Authority to consider the relevant material submitted by the Appellant.*
- c) Pass any such other or further order(s) as this Hon'ble Appellate Tribunal may deem fit and proper in the facts and circumstances of the present case.*

Comp. App. (AT) (Ins.) No. 936 of 2024: Second Appeal

5. This appeal has been filed by Mr. Surapaneni Ramesh, against an order passed by Ld. NCLT, New Delhi Bench-III (Adjudicating Authority) on 22.03.2024 in IA No. 3548/ND/2022 in CP (IB) No. 303/ND/2021, starting an insolvency process against him as a Personal Guarantor of Abir Infrastructure Pvt. Ltd.

6. We shall now mention only those factual aspects in this appeal which differ from the facts recorded in Comp. App. (AT) (Ins.) No. 909 of 2024, as all other facts remain common and identical between the two guarantors.

7. In the second appeal, one major difference is that the appellant had filed a writ petition before the Hon'ble Supreme Court under Article 32,

challenging certain provisions of Sections 95 to 100 of the IBC. The writ petition was registered as Diary No. 24816 of 2022. This appeal was disposed in terms of Hon'ble Supreme Court's judgment in '*Dilip B. Jiurajka v. Union of India*' [(2023) SCC OnLine SC 1530] and the stay in proceedings against Personal Guarantors to Corporate Debtors was vacated.

8. Another difference is that, in the in the second appeal, the Amended Written Statement filed in DRT proceedings (OA 303/2018) is specifically mentioned as having been filed after IA 2251/2019 was allowed on 07.12.2022.

9. The appellant has made the following prayers in his appeal:

a) Kindly set aside the Impugned Orders dated 22.03.2024 passed by the National Company Law Tribunal, New Delhi III IN CP (IB) No. 303(ND) 2021.

b) Pass an order directing the Adjudicating Authority to consider the relevant material submitted by the Appellant.

c) Pass any such other or further order(s) as this Hon'ble Appellate Tribunal may deem fit and proper in the facts and circumstances of the present case.

10. Both the appeals Comp. App. (AT) (Ins.) No. 909 of 2024 and Comp. App. (AT) (Ins.) No. 936 of 2024 arise from the insolvency process of Corporate Debtor M/s Abir Infrastructure Private Limited. In both cases the appellants are Personal Guarantors to the same loan of Corporate Debtor (M/s Abir Infrastructure Private Limited). The underlying Loan Agreement
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and Guarantee Agreement are the same. The pleadings of appellants in both the cases are the same and rely upon the pending proceeding in DRT. Accordingly, the Comp. App. (AT) (Ins.) No. 909 of 2024 would be referred to as the first appeal and Comp. App. (AT) (Ins.) No. 936 of 2024 would be referred to as the second appeal for the purpose of disposal of these matters. As the facts in both these appeals are identical and the pleadings for the appellant in first appeal has been adopted for the pleadings of the appellant in the second appeal also, we would dispose of both the appeals by a common order.

Submissions of the appellants

11. Learned counsel for the Appellants respectfully submits that the Appellant, being a Personal Guarantor to the Corporate Debtor, has invoked the appellate jurisdiction of this Hon'ble Tribunal challenging the Impugned Order dated 22.03.2024 passed in CP (IB) No.361 (ND) 2021. The grievance of the appellant is that the said order has been passed solely on the basis of the Resolution Professional's report which, according to the Appellant, is fundamentally erroneous and misleading. The Resolution Professional (hereinafter "RP") has allegedly ignored crucial documents, figures, statements and acknowledgements furnished by the Appellant, thereby rendering the report factually incorrect and incomplete. Counsel submits that the RP failed to observe and discharge his statutory duties under the Code, in particular the duty of conducting an independent verification and due diligence into the debt claimed and instead acted merely as an extended arm of the Bank by unquestioningly accepting the Bank's assertions as

gospel truth without examination or reconciliation of repayments already made.

12. It is further submitted by the appellant that the RP himself has stated in the reply that his report is “not binding”, thereby distancing himself from the consequences flowing from the erroneous findings recorded therein. Counsel submits that this conduct reveals an attempt to shield himself from accountability, while simultaneously permitting an adjudicatory process to be triggered against the Appellant solely on the foundation of such defective material. This Hon’ble Tribunal may appreciate that once a statutory professional submits a report, the natural consequence is that the Adjudicating Authority will rely upon it for drawing conclusions. Hence, washing his hands of responsibility while simultaneously submitting a report that directly prejudices the rights of the Appellant amounts to abdication of duty and is contrary to the scheme and statutory obligations imposed upon a Resolution Professional under the IBC.

13. It is the categorical submission of the Appellant that an amount of Rs.127.95 Crores (and not Rs.85.25 Crores as claimed by the Bank and uncritically accepted by the RP) has been paid since 12.04.2018. Counsel submits that this denial of credit of amounts paid towards satisfaction of dues constitutes a material suppression and has directly resulted in initiation of proceedings against the Personal Guarantors even though repayments far exceeding the bank’s disputed claims had already been made.

14. It is the submission of the appellant that the Bank had instituted O.A. No. 303 of 2018 before DRT Hyderabad claiming Rs.110.57 Crores. Counsel submits that the guarantor, Mr. Ramesh Surapaneni, filed I.A. No.2251 of 2019 seeking amendment to the written statement, wherein it was demonstrated by calculation and ledger reconciliation that the actual payable amount worked out to Rs.104.28 Crores, rather than Rs.110.57 Crores. Counsel further submits that after filing of OA, an additional Rs.37 Crores was credited to the cash credit account, resulting in the liability payable as on 28.02.2019 reducing to Rs.83.87 Crores. These repayment figures, which materially alter the outstanding liability, were ignored by the RP.

15. The Bank issued its demand notice dated 28.10.2020 under Rule 7(1) claiming Rs.23,37,11,482.86 as payable by the guarantor as on 30.09.2020. Counsel submits that during proceedings, the Bank took a shifting stand by claiming that interest continues to accumulate and thereby sought to deflect from the recorded figure in the demand notice itself. This contradicts the Bank's own acknowledgment of outstanding dues at a particular point of time and reflects an attempt to inflate liability contrary to record.

16. Ld. Counsel further submits that detailed objections were filed to the RP's report wherein, it was specifically pointed out that the RP had wrongly stated that Rs.85.25 Crores had been paid after OA filing. The objection clarified that payments aggregating Rs.123.80 Crores had been paid since 12.04.2018, out of which Rs.37.15 Crores was paid between 12.04.2018 and CIRP commencement on 30.01.2019, and a further Rs.86.65 Crores was paid

post 30.01.2019. The detailed loan repayment tables forming Annexure A-8 were placed before the RP and the Adjudicating Authority, but the same were ignored.

17. It is the submission of Ld. Counsel for the Appellants that he also placed on record written submissions before NCLT demonstrating that the Corporate Debtor, at the request of the guarantor, sought creditor confirmation evidencing remittances made. By letter dated 19.02.2024, the Bank issued a certificate acknowledging payments aggregating Rs.123.80 Crores between 10.04.2018 and 20.10.2019 and further acknowledged 100% cash margin of Rs.20 Crores during the period 10.04.2018 – 28.10.2019. Statutory auditors of the Corporate Debtor also issued a certification confirming remittances aggregating Rs.123.80 Crores between 07.09.2018 to 20.10.2019. These confirmations demonstrate beyond doubt that the RP's report did not reflect true figures.

18. Accordingly, Ld. Counsel submits that total repayments of Rs.123,80,00,000/- were received by the Bank and therefore the claimed figure of Rs.85,25,00,000/- is wholly false and fabricated. Thus, no further liability survives against the Appellants and no insolvency trigger threshold exists.

19. Ld. Counsel further submits that the Adjudicating Authority, proceeded solely on the basis of the incorrect RP's report without referring, analysing, or adjudicating upon the detailed documents, objections, repayment confirmations and written submissions that were placed on

record. The failure to examine material and relevant evidence constitutes a patent error and has resulted in grave miscarriage of justice.

20. It is his submission that the statutory scheme of the Code contemplates independent evaluation by the RP of the debt claimed in the demand notice. The RP is obliged to examine documents, records and confirmations produced by the Personal Guarantor and Corporate Debtor and cannot mechanically adopt the creditor's claim. Such independent determination is a mandatory precondition to recommending commencement of PIRP. The RP failed entirely to discharge this statutory obligation.

21. Ld. Counsel submits that once written submissions and documentary evidence were filed before the Adjudicating Authority, it was obligatory for the Adjudicating Authority to evaluate and consider the same prior to passing orders. Counsel submits that the Impugned Order issued directions solely on the erroneous RP report, ignoring writings and records placed on file by the Appellant, thereby vitiating the order.

22. In view of the above submissions, counsel for the Appellant prays that this Hon'ble Tribunal may set aside the Impugned Order dated 22.03.2024 and direct consideration of all material placed on record demonstrating repayment of debt and absence of default.

Submissions of the Respondent No.1 – SBI

23. Ld. Counsel for Respondent No.1 SBI (which is the contesting Respondent) submits that in terms of Clause 19 of the Guarantee Agreement

dated 21.04.2011, the Guarantors expressly agreed that any statement of account duly certified by an authorised officer of the Respondent Bank would be conclusive and binding upon them. The contract consciously creates an obligation upon the Guarantors to accept the correctness of such certified statements, and it also recognises that any acknowledgment, admission or part-payment made by the Borrower shall equally bind the Guarantors.

24. He submits that Clause 19 of the Guarantee specifically stipulates that the Borrower would be deemed to act as the duly authorised agent of the Guarantors for purposes of acknowledgement of debt under Sections 18 and 19 of the Limitation Act, 1963, and further provides that in the event the Bank obtains any judgment, award or order against the Borrower, the same shall be binding against the Guarantors. Thus, by contractual consent, the Guarantors have waived the right to dispute the correctness of bank-certified statement of accounts.

25. It is the submission of Respondent No. 1, that in the light of these contractual terms, the Statement of Account placed on record and certified in terms of the Bankers' Books Evidence Act constitutes valid proof of debt and must be held binding on the Appellants. Any contrary computation subsequently prepared by the Appellants cannot displace the binding contractual effect of the Bank's certified statements.

26. Ld. Counsel further submits that the record shows two parallel statements one produced by the Appellants at page 281 of their appeal and the other prepared and certified by SBI at page nos. 519, 520, 521, 523 and

524 of the reply. In this circumstance, the contractual binding-effect clause squarely applies, and therefore, the Bank's computation must prevail.

27. It was submitted by the Ld. Counsel that the Appellants' unilateral act of preparing a separate computation of dues based upon interest rates assumed on their own is wholly impermissible. The said sheet does not form part of any contractual or statutory requirement and ignores the interest applied uniformly by the Bank in ordinary course of banking. Such self-generated statements cannot override or cast doubt upon the Respondent Bank's certified statement of account, particularly when the Guarantee Agreement itself binds the Guarantors to accept the correctness of the Bank's accounting records.

28. Ld. Counsel submits that the Appellants' argument based on pendency of a DRT application is wholly misconceived as a matter of law. The two fora operate in distinct statutory domains, the DRT adjudicates recovery, whereas proceedings under IBC are for collective insolvency resolution. Pendency of recovery proceedings does not oust or restrict the jurisdiction conferred upon NCLT under Section 95 read with Sections 97–100 of IBC.

29. Ld. Counsel for the SBI submits that the Hon'ble NCLAT in *Mr. G. Sundaravadivelu v. Indian Overseas Bank*, Company Appeal (AT) (CH) (INS) No. 143 of 2022, has categorically held that pendency of DRT proceedings is not a bar for a Financial Creditor to initiate insolvency proceedings and that adjudicating authority need not await DRT outcomes before rendering findings.

30. Ld. Counsel further places reliance on *State Bank of India v. Abhijeet Ferrotech Ltd.*, Company Appeal (AT) (INS) No. 690 of 2023, wherein this Appellate Tribunal reiterated that even if DRT proceedings remain pending and inconclusive, such pendency cannot be invoked as a ground to hold stall IBC proceedings.

31. It is submitted by Ld. Counsel that although aforesaid matters relate to Section 7 proceedings under IBC, the legal principle applies *pari materia* to proceedings under Section 95, since there exists no statutory prohibition restricting initiation of insolvency proceedings against personal guarantors pending recovery actions.

32. He submits that the Appellants have on their own disputed calculations before the DRT. However, pendency of such dispute cannot prevent a Financial Creditor from invoking statutory remedies under IBC. The legislative intent is clear; existence of parallel proceedings does not defeat right to initiate insolvency.

33. Ld. Counsel submits that in CIRP proceedings of the Corporate Debtor (M/s Abir Infrastructure Pvt. Ltd.), the claim of the Respondent Bank as secured creditor was admitted at Rs.19,08,69,464/- out of the total filed claim of Rs.36,17,70,23,657/-. Under the Resolution Plan submitted by SREI Multiple Asset Investment Trust and approved by NCLT, the Respondent Bank was entitled to receive INR 13,80,00,000/- towards partial settlement of the admitted claim.

34. It is the submission of Ld. Counsel that despite payments under the Resolution Plan, a balance sum of INR 5,28,69,464/- remains outstanding, with interest accruing thereafter until payment. As guarantors, the Appellants remain jointly and severally liable to satisfy such unpaid debt.

35. He submitted that the claim admitted in CIRP and the resolution plan approved by NCLT were never challenged by the Appellants or any other stakeholder. Hence, the debt has attained legal finality. The Appellants cannot now dispute unpaid dues or quantum payable in their capacity as guarantors.

36. Ld. Counsel submits that the Bank's letter dated 19.02.2024 relied upon by the Appellants, merely records receipt of Rs.1,23,80,00,000/- and clarifies that a further amount of Rs. 23.37 crores remain pending, for which Section 95 petitions have been filed. The letter nowhere states that entire liability has been satisfied nor does it operate as a release or discharge of the guarantors' continuing liability.

37. Counsel submits that a 'No-Dues Certificate' must expressly acknowledge extinguishment of liability, which is completely absent here. Instead, the letter reaffirms subsistence of outstanding debt.

38. Ld. Counsel therefore prays that this Hon'ble Tribunal be pleased to dismiss the present appeals, uphold the impugned order dated 22.03.2024 passed by the Hon'ble NCLT, and pass such further orders as deemed fit in the interests of justice.

Analysis and findings

39. We have heard the Ld. Counsels for both the parties in detail, gone through the voluminous records of the case, and the written submission of both the Appellants and Respondent No.1/ SBI, the Financial Creditor.

40. We are called upon to determine whether the Adjudicating Authority was justified in admitting the application under Section 95 of the Code by order dated 22.03.2024 against the Appellants, who stood as Personal Guarantors to the Corporate Debtor (M/s Abir Infrastructure Pvt. Ltd). The core question is whether a legally recoverable debt continued to subsist against the Guarantors at the time of filing of Sec 95 petition, or whether the alleged repayments extinguished the debt, thereby removing the jurisdictional foundation for admission. Resolution of this issue requires a careful examination of factual events, documentary record, contractual terms, statutory interpretation, procedural obligations of the Resolution Professional, rights of guarantors, and binding judicial precedent.

41. The Appellants assert that, following the filing of OA No.303/2018 before the DRT on 12.04.2018, the Corporate Debtor and the Corporate Guarantors remitted Rs.123.80 crores between 07.09.2018 and 28.10.2019, besides maintaining a 100% cash margin of Rs.20 crores. To substantiate these payments, they rely on auditor certifications and a letter issued by SBI dated 19.02.2024 acknowledging receipt of amounts. They submit that the Resolution Professional (RP) failed to verify repayment figures and mechanically accepted the Bank's statements, leading to erroneous conclusions in the Section 99 report dated 13.06.2022. They also contend

that computation of outstanding debt is already pending before the DRT in IA No.2251/2019 filed in OA No.303/2018, and therefore insolvency proceedings should not have been initiated until the DRT adjudicated the dispute. It is further alleged that certain notices were not received by the Appellants, thereby violating principles of natural justice.

42. The Bank, in response, submits that liability continued to subsist even after the alleged remittances because contractual interest and other components remained unpaid, and the deposits relied on by the Appellants did not exhaust the admitted liability. It relies on the Guarantee Agreement dated 21.04.2011, wherein Clause 19 expressly stipulates that any certified statement of account issued by the Bank shall be binding and conclusive against guarantors. Clause 19 further provides that any acknowledgment or payment made by the borrower binds the guarantors and that the borrower is deemed to act as agent of the guarantors for purposes of Sections 18 and 19 of the Limitation Act, 1963. The Bank submits that repayments relied on by the Appellants were adjusted as per contractual interest computation, whereas the Appellants prepared unilateral statements applying assumed interest rates inconsistent with the contract. It argues that acknowledgement letters dated 19.02.2024 merely confirm receipt of amounts and cannot be construed as settlement or “No Dues.” The Bank argues that pendency before DRT does not bar proceedings under the IBC, relying on precedents in *Sundaravadivelu v. IOB* (NCLAT, Chennai Bench) and *SBI v. Abhijeet Ferrotech Ltd.*, wherein this Appellate Tribunal held that proceedings under the Code are not suspended by pendency of proceedings before DRT. The Bank submits that notices were issued by the RP and that the Appellants

filed objections to the notice by the RP on 07.06.2022 and later on submitted their written submissions to the notice before Ld. NCLT on 27.08.2022. During the hearing in NCLT they further submitted their written statement on 21.02.2024. All these activities clearly demonstrate the knowledge of proceedings to the appellants at every stage and opportunity provided to them at every stage of proceeding.

43. It is undisputed that the Corporate Debtor was admitted into CIRP on 30.01.2019 in CP (IB) 893/ND/2018. During CIRP, State Bank of India filed its claim to RP as a secured creditor and the claim was admitted for an amount of Rs.19,08,69,464/-. The Adjudicating Authority approved the Resolution Plan on 28.10.2021 and monitored its implementation vide orders dated 30.11.2021, 09.11.2022, and 18.01.2023. Under the approved plan, SBI was allocated Rs.13,80,00,000/-. Thus, based on CIRP records, a balance loan of Rs.5,28,69,464/- remained unpaid by the Corporate Debtor/ Personal Guarantors of CD. This amount excluded contractual interest which continued accruing till the date of payment. Neither the admitted claim amount nor the approved Resolution Plan was challenged before any forum by the CD or the Personal Guarantors. Under Section 31 of the Code, an approved plan binds all stakeholders, and unless it expressly provides for discharge of guarantors, their liability continues for unpaid balances. Consequently, the admitted unpaid portion remains legally recoverable from personal guarantors unless discharged in law.

44. We first evaluate whether the repayment figures relied on by the Appellants establish discharge. The key issue is not merely whether

repayments were made, but whether such repayments exhausted contractual liability. When repayment entries exist alongside continuing ledger debits, it must be shown that the repayments matched or exceeded principal and contractual interest components. The acknowledgement letters dated 19.02.2024 only record receipt and do not state the account is settled, closed, or discharged. Auditor certifications similarly record deposits, but do not certify extinguishment. The computation sheets produced by the Appellants apply interest assumptions inconsistent with contractual terms binding the parties.

45. We note that the Appellants rely on a repayment calculation sheet prepared by themselves. This calculation uses interest rates assumed by the Appellants, which are different from the interest rates applied by the Bank in its certified statement of account. As a result, two different figures are shown in the record, one in the Appellants' calculation at page 281 of the appeal, and the other in the Bank's certified statement at pages 519, 520, 521, 523 and 524 of the Bank's reply. In such a situation, the guarantee agreement becomes important.

46. In this regard, we take a look at the Clause 19 of the Guarantee Agreement which is extracted below:

“Clause 19 of Deed of Guarantee dated 21.04.2011

19. The Guarantors agree that any admission or acknowledgement in writing signed by the Borrower of the liability or indebtedness of the Borrower or otherwise in relation to the above-mentioned credit facilities and or any part payment as may be made by the borrower towards the Principle sum

hereby guaranteed or any judgment, award or order obtained by the Lead Bank against the Borrower shall be binding on the Guarantors and the Guarantors accept the correctness of any statement of account that may be served on the Borrower which is duly certified by any officer of the Lead Bank and the same shall be binding and conclusive as against the Guarantors also and the guarantors further agree that in the borrower making an acknowledgment of making a payment the borrower shall in addition to his personal capacity be deemed to act as the Guarantor's duly authorised agent in that behalf for the purposes of Sections 18 and 19 of the Limitation Act of 1963.”

[Emphasis supplied]

47. We note that the Clause 19 clearly indicate that Bank's certified statements would prevail, when contractual and unilateral calculations diverge. The Bank Statement of the borrower shall be binding upon the guarantors and acknowledgement by the borrower shall be acknowledgement of liability by the guarantor. Clause 19 of the Guarantee Deed clearly states that the Bank's certified statement of account is binding and final against the guarantors. Therefore, the Appellants' self-prepared calculations cannot replace or override the Bank's certified figures. For deciding whether debt remained, the Bank's certified statement has to be accepted.

48. There is no evidence that the Bank accepted the Appellants' method of computation or acknowledged the debt as discharged. No documents like No-Dues Certificate, settlement agreement, accord and satisfaction, waiver, novation, or judicial order which extinguish the liability of the Borrower/Guarantor have been placed on record. The law requires

affirmative proof of settlement to extinguish guarantor liability. Mere deposits, without demonstrated exhaustion of contractual interest burden and principal balance, cannot constitute full discharge.

49. We now consider the admitted debt figures during CIRP and its legal consequences. The admission of debt at Rs.19,08,69,464/- constituted a determination binding upon the parties, and allocation of only Rs.13,80,00,000/- in the approved Resolution Plan signifies that a residual portion remained. Under Section 31 of the Code and Hon'ble Supreme Court's decisions (including *Lalit Kumar Jain v. Union of India TRANSFERRED CASE (CIVIL) NO. 245/2020*), approval of a Resolution Plan does not discharge guarantor liability unless explicitly provided. Section 128 of the Contract Act confirms co-extensive liability. Since the plan payout was less than the admitted debt and the guarantors were not expressly discharged, the remaining debt continued and the guarantor's liability survived. This is fatal to Appellants' case because even if their repayment figures were credited, they failed to show that such repayments satisfied the unpaid balance remaining post-plan allocation.

50. The argument that pendency of computation disputes before the DRT prevents initiation of insolvency proceedings is unsustainable. The CIRP proceedings under the Code are not designed to adjudicate monetary disputes, but to determine insolvency status of the Corporate Debtor. This has been settled by this Appellate Tribunal in '*Mr. G. Sundaravadivelu vs Indian Overseas Bank [Comp. App.(AT) (CH) (Ins.) No. 143 of 2022]*' and '*State Bank of India vs Abhijeet Ferrotech Ltd. [Comp. App. (AT) (Ins.) No. 690 of*

2023]’, that the pendency before DRT does not bar insolvency proceedings, and an Adjudicating Authority under the Code need not await adjudication by DRT. No statutory provision in the Code suspends Section 95 proceedings due to pending debt adjudication elsewhere.

51. It is the contentions of the Appellants that their dispute on interest computation is pending before the DRT and therefore argue that the insolvency proceedings should not have been initiated until that adjudication is concluded. In this context, reference may be made to decision of this Tribunal in Mr. G. Sundaravadivelu v. Indian Overseas Bank (supra). In the aforesaid case, this Tribunal considered whether pendency before the DRT had any bearing on the jurisdiction of the adjudicating authority under the IBC. The Tribunal held that the pendency of proceedings before the Debt Recovery Tribunal is not a bar for a financial creditor to initiate insolvency action, and that the adjudicating authority under the IBC is not required to wait for the DRT to conclude its adjudication before proceeding. Accordingly, the contention based on pendency before the DRT cannot bar initiation of insolvency proceedings.

52. The relevant para 96 of the Judgment in Mr. G. Sundaravadivelu vs Indian Overseas Bank is extracted below:

“96. It is pointed out that the pendency of proceedings before the ‘Debt Recovery Tribunal’, is not a bar, for the ‘Financial Creditor’, to initiate an action against the ‘Corporate Debtor’. That apart, an ‘Adjudicating Authority’, need not wait for the decision of ‘Debt Recovery Tribunal’, while rendering its findings.”

53. The Appellants also placed reliance on the pendency of Section 19 proceedings before the DRT to argue that the Section 95 proceedings should be deferred. In this regard, reference may be made to decision of this Tribunal in *State Bank of India v. Abhijeet Ferrotech Ltd.*, (supra) where the Tribunal examined a question as to whether an application under the IBC could be rejected solely on the ground that DRT proceedings were pending and that the DRT had passed certain orders. The Tribunal held that proceedings under Section 19 which were still inconclusive could not prevent admission of proceedings under the IBC, and that such pendency was not a ground to hold an insolvency application as barred. Thus, pendency of Section 19 proceedings before the DRT cannot, by itself, bar consideration of insolvency proceedings.

54. The relevant extracts from the Judgment in *Abhijeet Ferrotech* (supra) of this Tribunal in para 22 & 23 is extracted below:

“22. One more submission was raised before the Hon’ble Supreme Court in A. Navinchandra Steels Pvt. Ltd. (supra) that pendency of winding up proceedings was not brought into the notice of Adjudicating Authority. In the above reference, the Hon’ble Supreme Court held that Section 7 is an independent proceedings and winding up proceeding would have no effect in deciding Section 7 Application on the basis of provisions contained in IBC. In paragraph 29, following was held:

“29. Dr Singhvi and Shri Ranjit Kumar have vehemently argued that SREI has suppressed the winding-up proceeding in its application under Section 7 IBC before NCLT and has resorted to Section 7 only as a subterfuge to avoid moving a transfer application before the High Court in the pending winding-up proceeding. These

arguments do not avail the appellant for the simple reason that Section 7 is an independent proceeding, as has been held in a catena of judgments of this Court, which has to be tried on its own merits. Any “suppression” of the winding-up proceeding would, therefore, not be of any effect in deciding a Section 7 petition on the basis of the provisions contained in the IBC. Equally, it cannot be said that any subterfuge has been availed of for the same reason that Section 7 is an independent proceeding that stands by itself. As has been correctly pointed out by Shri Sinha, a discretionary jurisdiction under the fifth proviso to Section 434(1)(c) of the Companies Act, 2013 cannot prevail over the undoubted jurisdiction of NCLT under the IBC once the parameters of Section 7 and other provisions of the IBC have been met. For all these reasons, therefore, the appeal is dismissed and the interim order that has been passed by this Court on 18-12-2020 [A. Navinchandra Steels (P) Ltd. v. Srei Equipment Finance Ltd., 2020 SCC OnLine SC 1141] shall stand immediately vacated.”

23. The above judgment of the Hon’ble Supreme Court clearly lays down that proceedings under Section 7 can neither be held to be barred by any order passed by DRT under the 1993 Act, nor pendency of proceedings at DRT (which is now pending at the stage of Calcutta High Court) shall preclude decision on Section 7 Application on merits.”

55. It is clear from the aforesaid Judgments that pendency of a proceeding in DRT is not a bar for initiation of CIRP process under Section 7. Section 7 in case of companies is similar to Section 95 for the Personal Guarantors to the corporates and *pari materia* the same principle applies for the Personal Guarantors.

56. We next address the allegation of non-receipt of notice. The record contains evidence that notices were issued by the Resolution Professional, including notices requiring disclosure of payments. More importantly, the Appellants replied to the notice of the RP; thereafter filed their objections with NCLT; and finally submitted their written statements on 21.02.2024 before the Adjudicating Authority. Their participation in proceedings before the Adjudicating Authority demonstrates knowledge of proceedings. Even assuming some defect in service, procedural irregularity without prejudice is not a ground to set aside admission, where debt and default are established.

57. As regards the allegation that the RP failed to verify payments, we note that Section 99 mandates preparation of a report by the RP, but Section 100 places the ultimate duty upon the Adjudicating Authority to independently satisfy itself regarding debt and default. The Adjudicating Authority considered the pleadings, objections, and documents before passing the Impugned Order. Even assuming some imperfection in the RP's verification, no prejudice is shown because the documentary material relied on by the Appellants is insufficient to establish extinguishment of debt. Insolvency admission cannot be invalidated on procedural grounds, where substantive liability is established.

58. When we look at the issue holistically considering the certified Bank statements binding the guarantors under Clause 19 of the Guarantee deed; the admitted CIRP claim of Rs.19,08,69,464/-; the Resolution Plan allocation of Rs.13,80,00,000/- and the continuing unpaid balance; the absence of any discharge document; the unilateral nature of computation sheets relied upon

by the Appellants; the continuing co-extensive liability of guarantors under Section 128 of the Contract Act; the legal irrelevance of pending DRT proceedings in IBC jurisdiction; the opportunity afforded to the Appellants to submit objections; and the absence of prejudice from alleged notice lapses it becomes clear that the existence of debt and default is established. The Appellants have not discharged the burden of proving full payment or extinguishment.

59. In view of the findings above, we do not find any infirmity in the impugned order. Accordingly, both the appeals are dismissed. Pending IAs, if any, are closed. There would be no order as to costs.

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

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indevar Pandey]
Member (Technical)

SA/Pragya (LRA)