



**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-I), CHANDIGARH**

**CP (IB) NO. 205/CHD/CHD/2021 &
CP (IB) NO. 214/CHD/HRY/2021**

(Petitions under section 95 of the Insolvency and Bankruptcy Code, 2016 read with rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019)

IN THE MATTER OF CP (IB) NO. 205/CHD/CHD/2021:

STATE BANK OF INDIA

Through its Assistant General Manager

Mr. Kailash Chander

Having its Branch Office at

Stressed Assets Management Branch, S.C.O. 99-107,

Pragati Bhawan, Sector 8-C, Chandigarh- 160019

.... Petitioner/ Financial Creditor

Vs.

JITENDRA SINGH

S/o Mr. Bhupendra Singh,

Residing at H. No. 1620, Sector 18D

Chandigarh

.... Respondent/ Debtor

AND

IN THE MATTER OF CP (IB) NO. 214/CHD/HRY/2021:

STATE BANK OF INDIA

Through its Assistant General Manager

Mr. Kailash Chander

Having its Branch Office at

Stressed Assets Management Branch, S.C.O. 99-107,

Pragati Bhawan, Sector 8-C, Chandigarh- 160019

.... Petitioner/ Financial Creditor

Vs.

GURMEET SODHI

W/o Mr. Jitender Singh,

Residing at H. No. 1620, Sector 18D

Chandigarh

.... Respondent/ Debtor

Order delivered on: 18.03.2026

CORAM: HON'BLE MR. KHETRABASI BISWAL, MEMBER (JUDICIAL)

HON'BLE MR. SHISHIR AGARWAL, MEMBER (TECHNICAL)



Present: -

- For the Petitioner** : Mr. Harsh Garg, Advocate
Mr. Pulkit Goyal, Advocate
- For the RP** : Mr. Ramneek Kaur Mann, Advocate
- For the Respondents** : Mr. Aalok Jagga, Advocate
Mr. Sahil Lohan, Advocate
Mr. APS Madaan, Advocate
Mr. Aryaman Jagga, Advocate
Mr. Madhav Singhal, Advocate

COMMON ORDER

1. Since the subject issue and facts these two Company Petitions arise out of common loan facilities availed by the common Corporate Debtor (M/s Kudos Chemie Ltd.) from the same State Bank of India, both the cases are being disposed of by this common order, for the sake of convenience.
2. The present petitions have been filed on 10.08.2021 by State Bank of India, Stressed Assets Management Branch, Chandigarh, through Mr. Anup Sood (Resolution Professional), under Section 95 of the Insolvency and Bankruptcy Code, 2016 ("Code") read with sub-rule (2) of Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Persons) Rules, 2019 ("Rules") for seeking initiation of Insolvency Resolution Process against Mr. Jitendra Singh and Mrs. Gurmeet Sodhi, Personal Guarantors to the Corporate Debtor, namely M/s Kudos Chemie Ltd., in respect of financial facilities granted to the Corporate Debtor and secured by deeds of personal guarantee executed by the Respondents.



3. The amount claimed to be in default in both the Petitions are Rs.348,38,57,247.54/- as on 29.05.2021. The date of default as stated by the Petitioner is 05.11.2016.

FACTS AND SUBMISSIONS OF THE PETITIONER:

4. The averments made by the Petitioner in its Petition and presented/argued by the learned counsel for the Petitioner are summarized hereunder:

(i) The Petitioner is a member of a consortium of banks which had granted various credit facilities to M/s Kudos Chemie Ltd., the Corporate Debtor. Under the CDR mechanism, the credit facilities were restructured and lastly sanctioned to the tune of Rs. 193.62 crores. In order to secure the said facilities, the Corporate Debtor executed various loan and security documents dated 30.09.2014 and 29.12.2014 in favour of the consortium lenders.

(ii) To secure the repayment of the said facilities, the Respondent executed a Deed of Guarantee dated 30.09.2014 and thereafter a further Deed of Guarantee dated 29.12.2014 in favour of the consortium banks, thereby undertaking personal liability for repayment of the dues of the Corporate Debtor. The liability of the guarantors are co-extensive with that of the principal borrower.

(iii) The Corporate Debtor failed to maintain financial discipline and its account was classified as Non-Performing Asset. Thereafter, the Petitioner issued a demand notice dated 05.11.2016 under Section 13(2) of the SARFAESI Act, 2002 to the Corporate Debtor and to all guarantors including



the present Respondents, thereby invoking the personal guarantees and calling upon them to pay an amount of Rs. 210,02,71,756.32/- as on 02.11.2016.

(iv) The Petitioner filed Original Application No. 5222 of 2017 before the Debts Recovery Tribunal and a Recovery Certificate dated 06.01.2020 was issued against the Corporate Debtor and its guarantors including the present Respondents. It is submitted that issuance of the Recovery Certificate crystallizes the debt and gives rise to a fresh cause of action.

(v) The Corporate Debtor acknowledged its liability towards the Petitioner in its audited balance sheets for the financial years 2015-16, 2016-17, 2017-18 and 2018-19. The said balance sheets are annexed as Annexure-31 to the Petition. It is submitted that in terms of the specific clause contained in the Deeds of Guarantee, any acknowledgment of liability by the borrower is binding upon the guarantors and consequently extends the period of limitation.

(vi) An insolvency petition against the Corporate Debtor being CP IB No. 277/CHD/PB/2018 was admitted by this Adjudicating Authority vide order dated 05.07.2019 and Corporate Insolvency Resolution Process was initiated against the Corporate Debtor. It is submitted that the proceedings against the Personal Guarantors are maintainable and independent in nature.

(vii) The Petitioner issued Demand Notices dated 29.05.2021 under Rule 7(1) of the Insolvency and Bankruptcy Rules, 2019 demanding a sum of Rs. 348,38,57,247.54/- from the Respondents. The said notice was dispatched



on 03.06.2021 and delivered on 04.06.2021. A corrigendum dated 19.07.2021 was also issued to rectify clerical errors without altering the substance of the demand.

(viii) It is submitted that the personal guarantee stood duly invoked by issuance of demand notice dated 05.11.2016 and that an unequivocal demand for payment was made upon the Respondents in their capacity as guarantors.

(x) On the aforesaid grounds, the Petitioner has prayed for admission of the present Petitions under Section 95 of the Code and initiation of Insolvency Resolution Process against the Personal Guarantors.

5. This Adjudicating Authority vide Order dated 21.03.2022 appointed Mr. Anup Sood bearing Registration No. IBBI/IPA-003/IP-N000114/2017-2018/11218 as Resolution Professional and directed him to file the report under section 99 of the Code.

6. Accordingly, the Resolution Professional filed his Reports on 06.01.2024. The observations as made therein by the Resolution Professional are summarised hereunder:

(i) As per the petition, the amount outstanding is Rs. 3,48,38,57,247.54 as on 25.05.2021. The total debt was stated to be Rs. 210,02,71,756.32 as on 02.11.2016. The date on which the debt became due is stated as 05.11.2016 and the date of default as 05.01.2017. Hence, the Petitions under Section 95 were filed on 10.08.2021.



(ii) Upon receipt of the appointment order, the Resolution Professional issued notice dated 25.03.2022 under Section 99(2) of the Code to the Respondents calling upon him to prove repayment of the unpaid debt by furnishing evidence of electronic transfer, encashment of cheque, or signed acknowledgment of receipt by the creditor. The notice was sent through email and speed post and, as per tracking report, was delivered at the residence of the Respondent on 29.03.2022. Despite sufficient time, no reply was received from the Respondents.

(iii) The proceedings against the Personal Guarantors had earlier remained stayed by the Hon'ble Supreme Court and resumed after order dated 09.11.2023, and accordingly sought condonation of delay in filing the report.

(iv) The Resolution Professional observed that the Petitioner satisfy the requirements as specified under Section 95 of the Code and is in compliance with Section 99(6) of the Code. Hence, the Resolution Professional recommended the admission of the present Petitions.

(v) While recommending acceptance of the Petitions under sub-sections (7) and (9) of Section 99 of the Code, the Resolution Professional noted that the Petitioner Bank is a member of a consortium which had sanctioned credit facilities to M/s Kudos Chemie Limited. The Corporate Debtor had submitted Board Resolution dated 27.09.2014 authorising its directors including the present Respondents to execute documents. Credit facilities amounting to Rs. 193.62 crores were sanctioned vide letter dated 30.09.2014 and the Respondents executed personal guarantee deeds dated 30.09.2014.



(vi) The Corporate Debtor further sought restructuring which was approved vide letter dated 18.12.2014 and fresh Board Resolution dated 27.12.2014 was passed authorising execution of documents. In pursuance thereof, the Respondents executed another Deed of Guarantee dated 29.12.2014 securing the restructured facilities.

(vii) The account of the Corporate Debtor was classified as NPA on 31.05.2015. Thereafter, demand notice dated 05.11.2016 under Section 13(2) of the SARFAESI Act was issued to the Corporate Debtor and guarantors including the present Respondent.

(viii) CIRP against the Corporate Debtor was initiated vide order dated 05.07.2019 in CP IB No. 277 CHD PB 2018.

(ix) Demand notices dated 29.05.2021 under Section 95 of the Code read with Rule 7(1) of the 2019 Rules, was sent by speed post on 03.06.2021 and delivered on 04.06.2021 demanding Rs. 3,48,38,57,247.54/- as on 25.05.2021.

(x) The Resolution Professional recorded that the Recovery proceeding being OA No. 5222 of 2017 was filed before DRT-II Chandigarh and Recovery Certificate was issued on 06.01.2020, and recovery proceedings are pending before the Recovery Officer.

(xi) The Resolution Professional further noted that the balance sheets of the Corporate Debtor for the financial years 2015-16, 2016-17, 2017-18 and 2018-19 reflect acknowledgment of the outstanding debt, and reliance was placed on the judgment of the Hon'ble Supreme Court in Asset Reconstruction



Company India Limited versus Bishal Jaiswal (2021) ibclaw.in 55 SC, decided on 15.04.2021, holding that entries in balance sheets constitute acknowledgment under Section 18 of the Limitation Act.

(xii) The Resolution Professional also recorded the orders of the Hon'ble Supreme Court in Suo Motu Writ Petition Civil No. 3 of 2020 dated 08.03.2021 and 27.04.2021 regarding exclusion of limitation period from 15.03.2020 onwards while computing limitation.

(xiii) On the basis of the above material and reasoning, the Resolution Professional concluded that the Petitions are within limitation and recommended that the Petitions under Section 95 of the Code be accepted.

SUBMISSIONS BY THE RESPONDENTS

7. The averments made by the Respondents in their Reply and presented/argued by the learned counsel for the Respondents are summarized hereunder:

(i) The primary objection raised by the Respondents pertains to the incorrect and shifting date of default. It is contended that the initial date of default was 31.05.2015 being the date of classification of the account as NPA. However, by way of corrigendum dated 19.07.2021 to the demand notice dated 29.05.2021, the date of default was altered to 05.01.2017. Such corrigendum is stated to be impermissible under Rule 7 of the 2019 Rules and it is argued that the petition does not provide any justification for the revised date of default.



(ii) The Respondents have further pointed out that different consortium banks have reflected different dates of NPA, namely Central Bank of India on 08.02.2013, IDBI Bank on 31.12.2014, UCO Bank on 31.12.2014, Corporation Bank on 31.03.2015, State Bank of India on 31.05.2015 and Punjab National Bank on 31.03.2016. On the basis of the earliest of these dates, it is contended that the limitation period had expired prior to filing of the present Petitions.

(iii) The Respondents have submitted that the claim is barred by limitation under Article 137 of the Limitation Act. It is submitted that the balance sheets of the Corporate Debtor for the financial years 2015-16, 2016-17, 2017-18 and 2018-19 cannot be treated as acknowledgment of debt against the Personal Guarantor, as Section 18 of the Limitation Act requires acknowledgment by the person against whom liability is sought to be enforced.

(iv) The reliance placed by the Petitioner upon the Recovery Certificate dated 06.01.2020 in OA No. 5222 of 2017 has been challenged. It is submitted that the Corporate Debtor had already been admitted into CIRP on 05.07.2019 and moratorium under Section 14 of the Code was in operation. According to the Respondents, the said fact was not disclosed before the DRT and therefore the decree is vitiated by concealment of material facts and is a nullity. In support of this contention, reliance has been placed on **Surat Singh, now deceased through LR vs. Gram Panchayat of Village Gumar, 2023 4 RCR Civil 618**, wherein it was held that a decree obtained by fraud or concealment is null and void.



(v) The Respondents have also disputed the invocation of the personal guarantee. It is submitted that the demand notice dated 05.11.2016 under Section 13(2) of the SARFAESI Act was issued for enforcement of secured assets and does not constitute a valid invocation of the Deed of Guarantee for the purpose of proceedings under the Code. It is further contended that no independent demand strictly in terms of the guarantee deed was issued prior to initiation of proceedings under Section 95. Reliance has been placed on the judgment of the Hon'ble NCLAT in **Amanjyot v. Navneet Kumar Jain and others, Company Appeal AT Insolvency No. 961 of 2022** decided on 05.01.2023, wherein it was held that in absence of invocation of guarantee and substantive recovery steps, initiation of CIRP against a personal guarantor is not justified. Further reliance has been placed on **Vijyaven Rasikbhai Thumar v. Prem Raj Ram Rattan Laddah, CP IB 72 AHM 2022** decided on 21.03.2024, which followed the aforesaid judgment.

(vi) The Respondents have submitted that the Corporate Debt Restructuring approved vide letter dated 18.12.2014 and agreement dated 29.12.2014 never came into operation, as the pre-condition under Clause 7 requiring infusion of Rs. 63 crores through Kudos Agrohols Limited was not fulfilled. Consequently, it is argued that proceedings founded upon such restructuring are premature.

(vii) It has further been submitted that there was no examination of the possibility of a repayment plan under Section 105 of the Code. According to the Respondents, the object of Chapter III is resolution and fresh start for an individual and not mere recovery of dues.



(viii) The maintainability of the present Petitions at the instance of a single member of the consortium has also been questioned. It is submitted that the guarantee dated 29.12.2014 was executed pursuant to a consortium arrangement of six banks and no consent or authorization from the other consortium members has been placed on record.

(ix) In the reply to the Report under Section 99, the Respondents have further submitted that no record of default registered with an information utility has been produced and that the Resolution Professional did not possess a valid Authorisation for Assignment at the relevant time, thereby rendering the report defective.

ARGUMENTS BY THE PETITIONER:

8. The Petitioner filed their written arguments on 25.02.2026 which are summarized hereunder:

(i) On the issue of limitation, it is contended that the Respondents' plea that the default occurred on 17.12.2016 and that the Petitions filed on 10.08.2021 is barred by limitation is misconceived. Reliance is placed upon the Recovery Certificate No. 481/2020 dated 06.01.2020 issued by the Debts Recovery Tribunal II, Chandigarh in OA No. 5222 of 2017, whereby the debt stood crystallized. Placing reliance upon the judgment of the Hon'ble Supreme Court in **Dena Bank v. C. Shivakumar Reddy and Anr., (2021) 10 SCC 330**, it is submitted that a Recovery Certificate issued by the DRT gives rise to a fresh cause of action to initiate insolvency proceedings. Since the present



Petitions under Section 95 were filed within three years from 06.01.2020, the same is within limitation.

(ii) It is further submitted that the liability of the guarantor is co extensive with that of the principal borrower under Section 128 of the Indian Contract Act, 1872 and that the default is a continuing one. The Respondents, having been a party to OA No. 5222 of 2017, did not challenge the Recovery Certificate and are now estopped from disputing limitation. It is also contended that moratorium under Section 14 of the Code does not extend to personal guarantors in view of Section 14(3)(b) of the Code, and therefore the issuance of Recovery Certificate on 06.01.2020 is not vitiated.

(iii) With regard to acknowledgment of debt, reliance is placed upon the audited balance sheets of the Corporate Debtor for the financial years 2015-16, 2016-17, 2017-18 and 2018-19, wherein the outstanding dues to the Petitioner Bank were reflected. It is submitted that Clause 12 of the Guarantee Agreement dated 30.09.2014 and similar clauses in subsequent guarantee deeds expressly provide that any admission or acknowledgment in writing signed by the borrower shall be binding upon the guarantor. Reliance is placed upon the judgment of the Hon'ble Supreme Court in **Asset Reconstruction Company India Limited v. Bishal Jaiswal and Anr., (2021) 6 SCC 366** holding that acknowledgment in balance sheets constitutes acknowledgment under Section 18 of the Limitation Act.

(iv) Further reliance is placed upon the judgment of the Hon'ble NCLAT in **State Bank of India v. Shri Bernard John, Company Appeal AT Insolvency**



No. 1742 of 2024 decided on 17.10.2025, wherein it has been held that acknowledgment of debt in the balance sheet of the Corporate Debtor extends limitation against the personal guarantor as well, particularly in view of Section 128 of the Indian Contract Act and specific clauses in the guarantee deed binding the guarantor to acknowledgments made by the borrower. Reference has also been made to paragraphs 68, 72 and 75 of the said judgment.

(v) It is submitted that the chronology of events clearly establishes that the default occurred in February 2016, the account was classified as NPA on 28.05.2016, the guarantee was invoked vide demand notice dated 30.09.2016, and the default on the part of the guarantor crystallized on 07.10.2016. Thereafter, continuous acknowledgments in balance sheets extended limitation. Further, the period from 15.03.2020 to 28.02.2022 stood excluded in view of the orders of the Hon'ble Supreme Court in Suo Motu Writ Petition Civil No. 3 of 2020, thereby extending the limitation period. The Petitions were filed in October 2021 is therefore within time.

(vi) On the issue of invocation of guarantee, it is submitted that the demand notice dated 29.05.2021 under Section 95(4)(b) of the Code read with Rule 7 of the Rules and the notice under Section 13(2) of the SARFAESI Act dated 05.11.2016 were expressly addressed to the Respondents as guarantors and demanded payment of the outstanding dues. It is contended that no specific format or magic words are required for invocation of a guarantee and that a clear and unequivocal demand for payment is sufficient. Reliance is placed upon the judgment of the Hon'ble NCLAT in **State Bank of India v. Shri**



Bernard John (2025) ibclaw.in 866 NCLAT, wherein it was held that language requiring the guarantor to pay dues within a stipulated period constitutes valid invocation.

(vii) As regards the corrigendum to the demand notice, it is submitted that the corrigendum dated 19.07.2021 was issued merely to rectify minor clerical or typographical errors and did not alter the substance of the demand. Reliance is placed upon the decision of the DRAT, **Allahabad in Bank of Maharashtra v. Annie Educational and Social Welfare Society (2020) ibclaw.in 158 DRAT, decided on 24.01.2020**, wherein it was held that a corrigendum is legally valid provided it corrects bona fide clerical errors and does not change the substance of the original notice or cause prejudice.

(viii) On the contention regarding absence of possibility of a resolution plan, it is submitted that proceedings against a personal guarantor under Part III of the Code are independent of CIRP against the Corporate Debtor. Reliance is placed upon the judgment of the Hon'ble Supreme Court in **Lalit Kumar Jain v. Union of India, (2021) 9 SCC 321**, wherein it was held that discharge of the Corporate Debtor does not discharge the guarantor and that proceedings against the guarantor are independent.

(ix) With respect to the objection regarding the Report under Section 99, it is submitted that the Resolution Professional has examined the Petitions and relevant records and has submitted a report in compliance with Section 99 of the Code recommending admission for initiation of Personal Insolvency against the Personal Guarantors. It is contended that no specific defect or



violation of statutory requirements has been demonstrated by the Respondents.

ISSUES:

9. We have heard the learned counsels for the Petitioner as well as for the Respondents and perused the material available on record.

10. In view of the rival submissions and material placed on record, the following issues arise for consideration:

A. Whether under the facts of the case, the present Petitions filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 on 10.08.2021 are barred by the period of limitation.

B. Whether the personal guarantees executed by the Respondents vide Deeds of Guarantee dated 30.09.2014 and 29.12.2014 were validly and properly invoked prior to initiation of proceedings under Section 95 of the Code.

OBSERVATIONS AND ANALYSIS:

11. The present Petitions under Section 95 of the Insolvency and Bankruptcy Code, 2016 has been filed by the Petitioner Bank on 10.08.2021 seeking initiation of Insolvency Resolution Process against the Respondent Personal Guarantors, who executed Deeds of Personal Guarantee dated 30.09.2014 and 29.12.2014 in respect of credit facilities sanctioned to M/s Kudos Chemie Ltd. The account of the Corporate Debtor was classified as NPA on 31.05.2015 and demand notice dated 05.11.2016 under Section 13(2) of the SARFAESI Act was issued invoking the personal guarantee and



demanding Rs. 210,02,71,756.32/- as on 02.11.2016. Recovery proceedings were initiated before DRT-II Chandigarh in OA No. 5222 of 2017 culminating in issuance of Recovery Certificate dated 06.01.2020. CIRP against the Corporate Debtor was admitted on 05.07.2019. The Petitioner thereafter issued demand notice dated 29.05.2021 under Rule 7(1) of the Rules claiming Rs. 3,48,38,57,247.54/- as on 25.05.2021. The Resolution Professional appointed on 21.03.2022 submitted a report dated 06.01.2024 recommending admission. The Respondents have opposed the petition primarily on grounds of limitation, alleged non-invocation of guarantee, invalidity of balance sheet as acknowledgments, challenge to the Recovery Certificate and alleged defects in the Report under Section 99 of the Code.

A: Whether the present Petitions are barred by limitation.

12. The present Petitions under Section 95 of the Code have been filed on 10.08.2021. The Respondents have contended that the default occurred in the year 2016 and the Petitions are barred by limitation under Article 137 of the Limitation Act, 1963. The Petitioner, on the other hand, has relied upon (i) the Recovery Certificate dated 06.01.2020 issued by the Debts Recovery Tribunal II, Chandigarh in OA No. 5222 of 2017, (ii) acknowledgments of debt reflected in the balance sheets of the Corporate Debtor for financial years 2015–16 to 2018–19, and (iii) exclusion of limitation pursuant to orders of the Hon'ble Supreme Court in Suo Motu Writ Petition Civil No. 3 of 2020.

13. It is an admitted position that a Recovery Certificate was issued on 06.01.2020 crystallizing the liability of the Corporate Debtor and the guarantors. The Hon'ble Supreme Court in **Dena Bank v. C. Shivakumar**



Reddy and Anr., (2021) 10 SCC 330 has authoritatively held that a Recovery

Certificate gives rise to a fresh cause of action for initiating proceedings under the Code. Paragraph 143 of the said judgment reads as under:

“143. 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 of the 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.”

In the present case, the Recovery Certificate was granted on 06.01.2020 and the present Petitions were filed on 10.08.2021. Hence, the present Petitions are filed well within three years from the date of issuance of the Recovery Certificate and are therefore within limitation on this ground alone.

14. The Respondents have contended that the Recovery Certificate dated 06.01.2020 issued by the Debts Recovery Tribunal is vitiated since CIRP against the Corporate Debtor had already been admitted on 05.07.2019 and therefore the moratorium under Section 14 of the Code was in operation. In this regard, it is necessary to examine the scope of Section 14 of the Code. Section 14 of the Code provides as follows:

“Section 14: Moratorium:

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—

- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(2).....

(2A)...

(3) The provisions of sub-section (1) shall not apply to —

(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

(4).....”

A plain reading of Section 14(3)(b) makes it clear that the moratorium imposed under Section 14(1) does not extend to a surety in a contract of guarantee to the Corporate Debtor. Hence, the statutory protection of moratorium is confined to the Corporate Debtor and does not bar proceedings against personal guarantors. Consequently, even during the subsistence of CIRP against the Corporate Debtor, the Financial Creditor remains legally entitled to pursue remedies against the Personal Guarantors. Therefore, the contention that the Recovery Certificate dated 06.01.2020 is invalid on account of the moratorium is untenable and liable to be rejected.

15. Apart from the Recovery Certificate, the Petitioner has placed reliance upon acknowledgments of liability contained in the balance sheets of the Corporate Debtor for financial years 2015–16, 2016–17, 2017–18 and 2018–19. The Hon’ble Supreme Court in **Asset Reconstruction Company India Limited v. Bishal Jaiswal, (2021) 6 SCC 366** has held that entries in balance sheets constitute acknowledgment under Section 18 of the Limitation Act.

16. The Hon’ble NCLAT in **State Bank of India v. Shri Bernard John, Company Appeal (AT) (Ins.) No. 1742 of 2024 decided on 17.10.2025**, has



further clarified that acknowledgment in the balance sheets of the Corporate Debtor extends limitation against the personal guarantor as well, particularly where the deed of guarantee provides that acknowledgment by the borrower binds the guarantor. In paragraph 60, the Hon'ble Appellate Tribunal held:

"60. Based on the above discussion, we conclude that:

- i. The Corporate Debtor's balance sheets for FY 2016–17 to FY 2019–20 contained clear and unequivocal acknowledgment of debt towards the Appellant Bank.*
- ii. These acknowledgments, by virtue of both Section 18 of the Limitation Act and Clauses 12 & 19 of the Deed of Guarantee, validly extended limitation against the Personal Guarantor."*

17. The said judgment also elaborates upon the co extensive liability of the guarantor under Section 128 of the Indian Contract Act, 1872. Paragraph 68 reads:

"68. The question as to whether acknowledgment of debt by a principal borrower extends limitation against the guarantor has been the subject of consistent judicial interpretation. The statutory scheme under Section 128 of the Indian Contract Act provides that 'the liability of the surety is coextensive with that of the principal debtor, unless it is otherwise provided by the contract.' This co-extensiveness implies that both the borrower and the guarantor are liable for the same debt, at the same time, and to the same extent, unless expressly limited by contract."

Further, paragraph 72 states:

"72. Therefore, both on principle and on precedent, acknowledgment of liability in the Corporate Debtor's balance sheets extends limitation against the Respondent Personal Guarantor. To hold otherwise would create an absurd inconsistency whereby the same debt remains enforceable against the borrower but becomes time-barred against the guarantor, despite their liabilities being concurrent and co-extensive."

Paragraph 75 concludes:

"Applying the ratio of the aforesaid Judgments Syndicate Bank (supra) and State Bank of India (supra) to the present case, we hold that acknowledgment of liability made by the Corporate Debtor in its balance sheets for FY 2016–17 to 2019–20 constitutes valid acknowledgment not only for the borrower but also for the guarantor. This is for three reasons:

a) Section 128 of the Contract Act makes the guarantor's liability coextensive, meaning that the same acknowledgment of the same debt that renews limitation for the borrower equally applies to the guarantor, since their liabilities are inseparable.

b) Clauses 12 and 19 of the Deed of Guarantee expressly deem acknowledgment by the borrower to be acknowledgment by the guarantor. The guarantor, having agreed to this term at the time of executing the guarantee, is estopped from denying its effect.



c) The ratio in Syndicate Bank v. Channaveerappa Beleri (supra) and State Bank of India v. Indexport Registered (supra) highlights the concept that acknowledgment in balance sheet made by the principal debtor extends limitation to the guarantor as well.”

The Hon’ble Tribunal further observed that the statutory exclusion of limitation from 15.03.2020 to 28.02.2022 renders the Section 95 application filed in October 2021 well within limitation.

18. In the present case, the deeds of guarantee dated 30.09.2014 executed by the Respondents contain clauses binding the guarantors to acknowledgments made by the borrower. Clause 12 of the said agreement reads as:

“12. The Guarantors affirm confirm and declare that any balance confirmation and/or acknowledgement or debit and/or admission of liability given or promise or part payment made by the Borrower or the authorised agent of the Borrower to the Bank shall be deemed to have been made and/or given by or on behalf of the Guarantors themselves and shall be binding upon each of them”

In view of the above-mentioned clause and Section 128 of the Indian Contract Act, 1872, no separate acknowledgment by the personal guarantor is required once the principal borrower has acknowledged the debt in its balance sheets within limitation.

19. Additionally, the period from 15.03.2020 to 28.02.2022 stood excluded pursuant to order of the Hon’ble Supreme Court in Suo Motu Writ Petition Civil No. 3 of 2020. Even otherwise, the Petitions filed on 10.08.2021 are within three years from 06.01.2020, the date of issuance of the Recovery Certificate.

20. In view of the Recovery Certificate dated 06.01.2020 giving rise to a fresh cause of action, the continuous acknowledgment of liability in the



balance sheets of the Corporate Debtor, the co-extensive liability of the guarantor under Section 128 of the Indian Contract Act, and the statutory exclusion of limitation during the pandemic period, the present Petitions are held to be within limitation. Issue No. A is accordingly answered in affirmative in favour of the Petitioner.

B. Whether the personal guarantees were validly invoked prior to filing of the present Petitions.

21. Before advertizing further, it is necessary to examine Clause 20 of the Deed of Guarantee dated 30.09.2014 executed by the Respondents, which governs the mode and manner of invocation. Clause 20 reads as under:

“20. The Guarantors agree that the amount due under or in respect of the aforesaid credit facilities and hereby guaranteed shall be payable to the bank on the bank serving the guarantors with a notice requiring payment of the amount and such notice shall be deemed to have been served on the guarantors either by actual delivery thereof to the guarantors or by despatch thereof by Registered Post or Certificate of Posting to the Guarantors address herein given or any other address in India to which the guarantors may by written intimation given to the bank or request that communication addressed to the guarantors be despatched. Any notice despatched by the bank by Registered Post or Certificate of Posting to the address to which it is required to be despatched under this clause shall be deemed to have been duly served on the guarantors four days after the date of posting thereof, and shall be sufficient if signed by any officer of the bank and in proving such service it shall be sufficient if it is established that the envelope containing such notice, communication or demand was properly addressed and put into the Post office.”

22. A careful reading of Clause 20 makes the following aspects clear:

a. The guarantee is payable “on the bank serving the guarantors with a notice requiring payment”. Thus, the liability of the guarantor arises upon service of a demand notice.



b. No specific form, format, nomenclature or separate document styled as “invocation of guarantee” is prescribed. The clause merely requires a notice “requiring payment of the amount”.

c. Service by registered post or certificate of posting is contractually deemed to be valid service. Once such notice is dispatched to the address of the guarantor, it is deemed to have been duly served.

23. Therefore, the contractual scheme itself demonstrates that invocation is a matter of substance and not of form. If a notice clearly calls upon the guarantor to pay the outstanding amount in respect of the credit facilities guaranteed by him, the guarantee stands invoked. The Deed does not require a separate, independent invocation letter distinct from other statutory notices.

24. In the present case, the notice dated 05.11.2016 issued under Section 13(2) of the SARFAESI Act was addressed to the Corporate Debtor and all guarantors including the Respondents. The notice expressly demanded payment of the outstanding dues within 60 days, failing which further action would follow. The demand was in respect of the very credit facilities secured by the Deeds of Guarantee executed by the Respondents. The notice, therefore, satisfies the requirement of Clause 20, namely, a notice “requiring payment of the amount”.

25. The Respondents have argued that since no personal assets of the Respondent were mortgaged, the notice under Section 13(2) of SARFAESI Act, cannot amount to invocation of the personal guarantee. This argument



confuses enforcement of security with invocation of guarantee. Invocation is a contractual act of demand. Enforcement under SARFAESI Act is a statutory remedy against secured assets. The two operate in different domains. The liability of a guarantor under Section 128 of the Indian Contract Act, 1872 is coextensive with that of the principal debtor and arises upon default and demand. It is not conditional upon the existence or mortgage of personal property.

26. The Hon'ble NCLAT in **Ujjwal Gupta v. Union Bank of India and Anr., (2026) ibclaw.in 18 NCLAT**, while dealing with a similar contention, held in paragraph 27 as under:

"27. Thus, in our considered opinion, it (Demand notice Under Section 13(2) SARFAESI Act) was a crystal-clear communication not only to the Appellant but to all the addressees to discharge their liability with regard to the credit facilities extended to CD by the financial creditor and there appears no ambiguity in this. Since the appellant has extended guarantee by executing a deed and the principal borrower/ CD failed to pay the amount of credit facilities extended by the Financial Creditor and the liability of the principal borrower and guarantor is coextensive, this demand notice was sufficient communication to the appellant to discharge his liability under the guarantee deed towards the credit facility extended by the creditor to the CD and is sufficient invocation of guarantee."

27. Applying the above principles to the facts of the present case, the notice dated 05.11.2016 clearly demanded payment of the outstanding dues in respect of the credit facilities guaranteed by the Respondents. The notice was served in accordance with the terms of Clause 20. No separate format or independent invocation document was required under the Deeds of Guarantee.



28. The subsequent notice dated 29.05.2021 under Rule 7(1) of the 2019 Rules was issued only after the earlier demand remained unsatisfied and as a statutory mandate under Section 95 of the Code. The existence of such subsequent notice does not dilute the effect of the earlier demand under Section 13(2) of the SARFAESI Act, which had already triggered the contractual liability of the guarantors.

29. In view of Clause 20 of the Guarantee Deed, the contents of the notice dated 05.11.2016, the coextensive liability under Section 128 of the Indian Contract Act, and the authoritative pronouncement of the Hon'ble NCLAT in Ujjwal Gupta, this Adjudicating Authority holds that the personal guarantee stood validly invoked. No separate or specially formatted invocation was contractually or legally required. Issue No. B is accordingly decided in favour of the Petitioner.

30. After considering the pleadings, documents placed on record, submissions advanced by the learned counsels for the parties and the Report dated 06.01.2024 submitted under Section 99 of the Code, this Adjudicating Authority is of the considered view that the present case warrants admission for initiation of Insolvency Resolution Process against the Respondent Personal Guarantors namely, (i) Jitendra Singh and (ii) Gurmeet Sodhi. Accordingly, the following directions are issued:

- i) The Petitions CP(IB)/205/Chd/Chd/2021 and CP (IB) No. 214/Chd/Hry/2021 are allowed.
- ii) Initiate Insolvency Resolution Process against the Respondents and moratorium in relation to all the debts is declared, from today, i.e. date of



admission of the Petitions and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on the repayment plan under Section 114 of the code whichever is earlier, as provided under Section 101 of the Code.

iii) During the moratorium period:

a. Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;

b. The creditors of the debtors shall not initiate any legal action or proceedings in respect of any debt;

c. The debtors shall not transfer, alienate, encumber or dispose of any of his assets or his legal rights or beneficial interest therein;

d. The provisions of this Section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

iv) The Resolution Professional, namely Mr. Anup Sood, bearing Registration No. IBBI/IPA-003/IP-N000114/2017-2018/11218, appointed vide Order dated 21.03.2022, is directed to cause a public notice to be published on behalf of the Adjudicating Authority within 7 days of this Order, inviting claims from all Creditors, within 21 days from the date of such publication, in terms of Section 102 of the Code. The notice shall contain:

a. details of the order admitting the Petitions;

b. particulars of the Resolution Professional with whom the claims are to be registered.



v) The notice shall be published in two newspapers, one in English and the other in the Vernacular Language having wide circulation in the State(s) where the Corporate Debtor and Personal Guarantors reside. The Resolution Professional shall file two spare copies of the notice to the Registry for the Record.

vi) The Resolution Professional, in the exercise of the powers conferred under Section 104 of the Code, shall prepare a list of creditors based on:

a) the information disclosed in the Petitions filed by the debtors under Section 95 of the Code, and

b) claims received by the Resolution Professional under Section 102 of the code within 30 days from the date of the notice.

vii) The Debtors shall in consultation with the Resolution Professional, prepare a repayment plan(s) under Section 105 of the Code, containing a proposal to the Creditors for restructuring of his debts or affairs. The repayment plan(s) may authorise or require the Resolution Professional to:

a) carry on the debtors' business or trade on his behalf or in his name; or

b) realise the assets of the debtors; or

c) administer or dispose of any funds of the debtors.

viii) The repayment plan(s) shall include, inter alia:

a) justification for preparation of such repayment plan and reasons based on which the creditors may agree upon the plan;

b) provision for payment of fee to the Resolution Professional.



ix) The Resolution Professional shall submit the repayment plan(s) along with his report thereon to this Adjudicating Authority within 21 days from the last date of submission of claims, as provided under Section 106 of the Code.

x) In case the Resolution Professional recommends that a meeting of creditors is not required, he shall record the reasons thereof. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, he shall specify the details as provided under sub-section (3) of Section 106 of the Code. The date of the meeting shall not be less than 14 days or more than 28 days from the date of submission of the Report under sub-section (1) of Section 106 of the Code, for which at least 14 days' notice to the creditors as per the list prepared shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of the Code.

xi) The meeting of creditors shall be conducted in accordance with Sections 108, 109, 110 and 111 of the Code. The Resolution Professional shall prepare a report of the meeting of the creditors on the repayment plan(s) as provided under Section 112 of the Code and submit the same before this Tribunal, copies of which shall be provided to the Personal Guarantor and Creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of the Code.

31. The Resolution Professional shall submit his periodic reports before this Tribunal every 30 days.



32. Accordingly, the Company Petitions bearing **CP(IB) No. 205/Chd/Chd/2021 and CP (IB) No. 214/Chd/Hry/2021** stands **allowed**.

Sd/-
Shishir Agarwal
Member (Technical)

Sd/-
Khetrabasi Biswal
Member (Judicial)
Aakash