



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **30.01.2025** THROUGH VIDEO CONFERENCE

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Application No : -
Petition No : IBA/711/2020
Name of Petitioner : State Bank of India
& Vs
Name of Respondent : Ajay Agarwal
Section : 95(1) of IBC 2016

ORDER

IBA/711/2020

Present: Mr. M.L.Ganesh, Ld. Counsel for Applicant.
Ms. Kifif Tonna Sharon, Ld. Counsel for Personal Guarantor.

Vide separate Order pronounced in the open Court, the Petition / Application is held to be within limitation.

Mr. T.R.Ravichandran is appointed as an IRP to give his report under Section 99 of IBC, 2016.

At this stage, it is pointed out by Ld. Counsel for Respondent/Personal Guarantor that in another Petition filed vide CP/230/2024 by Satya Logistics, under Section 95 of IBC, 2016, Court No.II Chennai has appointed Ms. Anjali Nirav Choksi as the IRP vide an Order dated 16.12.2024 to collate all the facts relevant to the examination of the Application for the commencement of the insolvency resolution process in respect of the Personal Guarantor for the Corporate Debtor i.e. M/s. Ankit Ispat Pvt. Ltd and listed the Application for report / hearing on 19.02.2025.

The copy of the Order has been placed before us.



--2--

We find that CP/230/2024 was filed in the year 2024, however, the Application in the present case has been filed in 2020. As per the provisions of Section 96 of IBC, 2016, the interim moratorium comes into effect immediately on the date the Application has been filed meaning thereby that the interim moratorium was already in force, when the Application CP/230/2024 was filed.

Since in the present case, we have appointed the IRP Mr. T.R.Ravichandran to collate all the facts relevant to the examination of the Application, which is in respect of initiation of insolvency proceedings against the Personal Guarantor for the Corporate Debtor i.e. Ashok Magnetics Ltd, we continue with the appointment of Mr. T.R.Ravichandran as the IRP appointed in the present Application.

He is directed to collate all the facts relevant to the examination of the Application for the commencement of insolvency resolution process in respect of the Personal Guarantor.

List the Application for report / hearing on **07.03.2025**.

-sd-

**[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)**

MS

-sd-

**[SANJIV JAIN]
MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IBA/711/2020

*(filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016,
In the matter of*

The Assistant Manager,
State Bank of India,
SAM Branch,
No.32, Second Floor, Red Cross Building,
Montieth Road, Egmore,
Chennai – 600 008

... Applicant / Financial Creditor

-Vs-

Mr. Ajay Agarwal,
S/o. Mr. Gouri Shankar Agarwal,
No.145, Devcharshan Apartments,
1, Barnaby Road, Kilpauk,
Chennai-600 010

... Respondent / Guarantor

Present:

For Applicant

:M.L. Ganesh, Advocate

For Respondent

:Jayesh B Dolia, Senior Advocate

Order Pronounced on 30th January, 2025

CORAM:

**SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

ORDER

(Heard through Hybrid Mode)

1. The State Bank of India, the Financial Creditor / Applicant herein has filed the application under Rule 7(2) of the Insolvency and Bankruptcy (application to Adjudicating Authority for Insolvency and Resolution Process for Personal Guarantors to Corporate Debtors)



Rules 2019 and Section 95(1) of Insolvency and Bankruptcy Code for initiating insolvency proceedings against Mr. Ajay Agarwal / Personal Guarantor of the Corporate Debtor M/s. Ashok Magnetics Limited, Respondent herein.

2. Part-I of the application sets out the details of the Financial Creditor i.e. State Bank of India, (Stressed Asset Management Branch), having its office at Red Cross Building, Egmore, Chennai. Part-II of the petition sets out the details of the Personal Guarantor namely Ajay Agarwal having address at No.145, Devcharshan Apartments, Barnaby Road, Kilpauk, Chennai – 600 010, within the jurisdiction of this Tribunal. Part-III of the application sets out the particulars of debt i.e. total debt including interest / penalties as on 30.09.2020 as Rs. 60,09,76,978.61, dates of default as 17.01.2015 and 15.07.2017, details of properties in the name of the Corporate Debtor, details of the O.A. No. 152 of 2016 pending in DRT-II, (Chennai) against the Corporate Debtor and the proceedings pending under IBC against the Corporate Debtor vide C.P. No. 551(IB) of 2017.

3. Briefly the facts are that the Corporate Debtor M/s. Ashok Magnetics Limited which was initially incorporated in the name of M/s. AML Steel Limited vide incorporation dated 01.08.2005 and later incorporated in the name of M/s. Ashok Magnetics Limited on 27.04.2015, had approached the Financial Creditor for seeking term loan facility for purchase of 6 seater air craft. The Financial Creditor sanctioned the term loan of Rs. 1.10 Crore vide letter dated 07.12.2007 against the security of the air craft and the personal guarantee of



Ashok Agarwal and Anita Agarwal, Managing Director and Director of the Company and the Corporate Guarantor of M/s. Ashok Memory (India) Private Limited. The Corporate Debtor at the time of availing term loan had executed the following documents.

- a) Agreement of loan for overall limit dated 08.12.2007.
- b) Agreement of hypothecation of goods and assets dated 08.12.2007.
- c) Agreement of pledge of goods and assets dated 08.12.2007.
- d) Deed of Guarantee by Mr. Ashok Agarwal and Mrs. Anitha Agarwal dated 08.12.2007.
- e) Deed of Guarantee by M/s.Ashok Memory (India) Pvt Ltd dated 08.12.2007.
- f) Letter regarding grant of individual limits within overall limits dated 08.12.2007 executed by the Corporate Guarantor.

4. The Corporate Debtor further approached the Financial Creditor seeking renewal cum enhancement of credit facilities and the Financial creditor sanctioned the limits of Rs. 25.77 Crores vide letter dated 18.11.2009. The Corporate Debtor and the Guarantor accepted the terms and conditions and executed the following documents on 19.11.2009.

- i. Supplemental Agreement of loan for increase in the overall limit dated 19.11.2009 executed by the Corporate Debtor. (Form. C.1-A)



- ii. Supplemental Agreement of Hypothecation of Goods and Assets dated 19.11.2009 executed by the Corporate Debtor (Form C.2 - A)
- iii. Supplemental Agreement of Pledge of Goods and Assets dated 19.11.2009 executed by the Corporate Debtor. (Form.C.3-A)
- iv. Supplemental Deed of Guarantee for Overall limit dated 19.11.2009 executed by the Guarantors (Form. C.4-A).
- v. Supplemental Deed of Guarantee for Overall limit dated 19.11.2009 executed by M/s. Ashok Memory (India) Pvt Ltd (Form. C.4-A).
- vi. Letter regarding the grant of individual limits within the overall limit dated 19.11.2009 executed by the Corporate Debtor.(Form. C.5).
- vii. Confirmation of balance in term loan dated 01.04.2009.
- viii. Revival letter dated 01.11.2010

5. It is stated that the sanction letter dated 18.11.2009 inter alia stipulated the terms and conditions such as interest payable on the loan amount and security to be provided by way of primary and collateral to be shared on pari-passu basis by the Financial Creditor with Central Bank of India, Federal Bank forming a consortium. The above credit facilities were renewed vide letter dated 04.01.2011. The Corporate Debtor also executed the confirmation of balance dated 10.04.2012 confirming the balances in the credit facilities as on 31.03.2012.



6. It is stated that in consideration of granting the credit facilities to the Corporate Debtor, the Guarantors / Directors namely Ashok Agarwal, Anitha Agarwal, Ajay Agarwal and Ankit Agarwal executed the continuing guarantee agreements on 19.11.2009 and 18.09.2012 for a sum of Rs. 25.0 Crores guaranteeing jointly and severally for the amounts due to the Financial Creditors in the above facilities availed by the Corporate Debtor from time to time and also agreed that their guarantee shall be continuing until notice in writing, that the same is discharged, is given by the Financial Creditors to them.

7. It is stated that since the Corporate Debtor defaulted in repayment of the loan amount, the loan account was classified / treated as NPA on 17.01.2015. The outstanding liability as on 30.09.2020 in respect of cash credit account including undebited interest became Rs. 60,09,76,978.61. The Financial Creditor filed O.A. No. 152 /2016 before DRT Chennai for recovery of the outstanding loan amount which is pending adjudication. It is stated that on an application filed by Central Bank of India and State Bank of India vide CP/551/IB/CB/2017, the Corporate Debtor was admitted into CIRP vide order dated 04.09.2017. Since no resolution plan was approved by the CoC, an order for liquidation was passed on 09.11.2018.

8. It is stated that the Corporate Debtor had given an OTS letter dated 15.07.2017 to the Financial Creditor offering to pay a sum of Rs. 10.50 Crores as full and final settlement which was rejected by the Financial Creditor vide letter dated 18.07.2017. Thereafter the Financial Creditor caused a demand notice on 11.02.2020 against the



Personal Guarantors, but despite that, the Guarantors did not make the payment which made the Financial Creditor file the application under Section 95 of IBC against the Personal Guarantors including the Respondent Ajay Agarwal.

9. The Guarantors namely Ankit Agarwal, Anitha Agarwal and Ajay Agarwal filed the writ petitions No. 17587, 17592 & 17595 of 2020 against the Financial Creditor before Hon'ble High Court of Judicature at Madras raising the issue of limitation and the Hon'ble High Court after hearing the parties permitted the Guarantors to raise the plea of limitation by putting Bank / Financial Creditor on notice and requested the Tribunal to decide on the basis of the materials placed, as to the maintainability of the application specially in the light of the plea taken by the writ petitioner / Corporate Debtor with regard to the bar of limitation and decide the same in accordance with law.

10. The Respondent filed the Reply / Counter Affidavit alleging that the petition is barred by limitation. It is stated that as per the petition, the date of default in respect of the guarantee is 17.01.2015, however the petition has been filed on 05.11.2020. The Respondent however admitted that the Corporate Debtor had borrowed a sum of Rs. 25.0 Crores (Rs. 20 Crores as fund based Cash Credit and Rs. 5 Crores as non-fund based Letter of Credit) from the Financial Creditor, State Bank of India for which the Respondent had stood as personal guarantor vide deed of guarantee dated 19.11.2009. It is stated that owing to slowdown in the Steel Industry, the Company could not sustain its business profitably and began to default in respect of the



dues owed to its Creditors including the Petitioner / Financial Creditor which led to filing of Section 7 petition against the Corporate Debtor by the Financial Creditor on which CIRP was initiated vide order dated 04.09.2017.

11. It is stated that it is trite in law that the liability of principal borrower and guarantor is co-extensive and the liability of the guarantor is both joint and several to the principal borrower. Given the nature of liability cast upon the guarantor, where the Creditor fails to exercise its right against the guarantor even whilst exercising the same against the principal borrower within the period of limitation, the creditor is not permitted to exercise any right to enforce the guarantee after the prescribed period of three years from the date of default. Reference is made of the case *State Bank of India Vs. Saksaria Sugar Mills (1986) 2 SCC 145* to state that as per Section 128 of the Indian Contract Act, the cause of action for the creditor commences on the date of default of the principal borrower and the Creditor in furtherance to the joint and several liability cast upon the Guarantor is free to proceed against the principal guarantor or both i.e. once the default occurs, the creditor has right to elect and when it elects to sue the principal borrower and not the guarantor despite the cause of action against the Guarantor commences co-extensively with that of principal borrower, upon the expiry of the period of limitation for suing the Guarantor, no proceedings can be maintained against the Guarantor.



12. It is stated that the debt of Guarantor i.e. the obligation of the Guarantor is independent to that of the principal borrower and merely because the debts are being recovered from the principal borrower, it will not result in any liability upon the Guarantor where the claim against the Guarantor is time barred which proposition has been also recognised by Hon'ble Supreme Court in the case of *Syndicate Bank Vs. ChannaveeerappaBeleri & Ors (2006) 11 SCC 506*. It is stated that the proceedings under the IBC are not the debt recovery proceedings and Article 137 of the Limitation Act, 1963 is applicable. In the present case, the debt of default is 17.01.2015 when the account of the Corporate Debtor was declared NPA and as such application is barred by limitation.

13. It is stated that the OTS letter dated 15.07.2017 given by the Corporate Debtor was without prejudice to its rights and defences and therefore the OTS letter cannot fasten the liability on the personal guarantor. Further, the OTS was rejected on 18.07.2017.

14. During the pendency of the application, the Applicant / Financial Creditor filed IA/1889/2024 seeking permission to file the guarantee agreements dated 08.12.2007, 19.11.2009 and 18.09.2012 executed by the Guarantor which application was allowed vide order dated 02.12.2024 and the guarantee agreements were taken on record with liberty to the Respondent to file objections if any.

15. The Respondent filed the objections alleging that the supplementary / subsequent guarantee agreements do not bear the signature of attesting witnesses nor the agreements are registered /



notarized. The agreement even does not bear the common seal of the Company and several columns in the agreements are incomplete / unfilled.

16. We have heard Ld. Counsels for the parties.

17. Ld. Counsel appearing for the Respondent vehemently argued that the account of the Corporate Debtor had become NPA on 17.01.2015 which fact has also been stated in the application taking the date of 17.01.2015 as the date of default. Ld. Counsel submits that the Applicant has mentioned two dates of defaults which is completely erroneous as there cannot be two dates of default. The second date of 15.07.2017 given by the applicant is with a malafide intention to bring its case within the limitation of three years. Ld. Counsel submits that in the present case, the limitation expired on 16.01.2018 and as such the application is barred by limitation. Ld. Counsel submits that the demand notice under SARFAESI Act was issued on 19.10.2015 directing the Respondent to discharge in full, the liabilities as Guarantor. Second notice was issued on 22.08.2016. Another notice dated 14.02.2020 was issued before filing this application. Ld. Counsel submits that the first date of default is the date to be taken into account for the purpose of limitation. Reference is placed on the case of *Piramal Capital and Housing Finance Limited Vs. Township Developers India Limited*, CP(IB) No. 556/MB/2023. Ld. Counsel further argued that liability of the borrower and guarantor is co-extensive and as soon as the account becomes NPA, the bank / Financial Creditor is free to initiate proceedings against the Principal Borrower / Guarantor



simultaneously or can choose against any of the above. In the present case, the Corporate Debtor is already under insolvency and the IBC did not bar the applicant from filing the application against the Guarantor / Respondent as soon as the account became the NPA.

18. Ld. Counsel submits that the reliance placed by the applicant on the case of *Laxmi Pat Surana Vs. Union Bank of India & Anr. In Civil Appeal No. 2734 of 2020* that OTS letter dated 15.07.2017 issued by the Corporate Debtor amounts to an acknowledgment of liability by the Respondent and the limitation will start from 15.07.2017 does not hold merit. Ld. Counsel submits that in the case supra, the principal borrower was a firm and the guarantor was the Corporate Debtor. The acknowledgment was made by the Corporate Guarantor against whom the petition was filed and acknowledgment of debt was made by the principal borrower. In the present case, there is no acknowledgment of debt by the Personal Guarantor. The Corporate Debtor is the principal borrower which had acknowledged the debt alone and as such the acknowledgment made by the Corporate Debtor / Principal Borrower will not bind the Personal Guarantor / Respondent.

19. In support of his contentions, Ld. Counsel referred the cases (i). *K. Paramasivam Vs. The Karur Vysya Bank Ltd. & Anr. in Civil Appeal No. 9286 of 2019*; (ii) *M/s. Reliance Asset Reconstruction Company Ltd. Vs. M/s. Hotel Poonja International Pvt. Ltd in Civil Appeal No. 4221of 2020*; (iii). *Laxmi Pat Surana, Promoter / Director and Shareholder of Surana Metals Limited Vs. Union Bank of India & Anr. in Company Appeal (AT)(Ins) No. 77 of 2020*; (iv). *Union Bank of India Vs. M/s. Surana Metals Limited in*



CP(IB)No. 346/KB/2019; (v). *Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr. in Civil Appeal No. 6347 of 2019;* (vi). *Bimalkumar Manubhai Savalia Vs. Bank of India & Chandra Prakash Jain in Company Appeal (AT) (Ins) No. 1166 of 2019;* (vii). *B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta and Associates in Civil Appeal No. 23988 of 2017;* (viii). *Lakshmi Ratan Cotton Mills Co. Ltd. Vs. Aluminium Corporation of India Ltd (1967)37 COMPCAS586(ALL).*

20. Ld. Counsel further argued that OTS letter was signed by one of the Directors of the Corporate Debtor on behalf of the Corporate Debtor and not on behalf of the Guarantors. There was no instruction from the Guarantors whatsoever to give the said letter on their behalf as there is no communication to this effect. No Board Resolution has been placed to show the authority given by the Board of Directors to the Director to give the OTS letter. Ld. Counsel submits that the OTS letter in no way can extend the limitation. Reliance is placed on the case *M/s. Reliance Asset Reconstruction Company Ltd. Vs. M/s. Hotel Poonja International Pvt. Ltd. in Civil Appeal No. 4221 of 2020 and Lakshmi Ratan Cotton Mills Co. Ltd. Vs. Aluminium Corporation of India Ltd., (1967)37 COMPCAS586(ALL).* Ld. Counsel further argued that the OTS letter was issued without prejudice and has not been accepted. Even the amount of outstanding has not been acknowledged. Hon'ble NCLAT in the case of *Bimalkumar Manubhai Savalia Vs. Bank of India & Chandra Prakash Jain in Company Appeal (AT) (Ins) No. 1166 of 2019* on the similar issue has held that OTS letter if not accepted cannot be treated as acknowledgment of debt. Ld. Counsel submits that the acknowledgment made by the Principal Borrower can only extend the



limitation period against the Principal Borrower or its assignee and the same cannot be stretched for the purpose of making such acknowledgment binding on the other persons like the Respondent or the Personal Guarantor. Ld. Counsel submits that the liability of the Guarantor always flows only on the basis of the terms and conditions of the guarantee deed and not on the basis of the acknowledgment made by the principal borrower. Ld. Counsel submits that no doubt, the obligation of the Guarantor is co-extensive and co-terminus with that of the principal borrower to defray the debt, as explained in Section 128 of the Contract act, but the liability of the principal debtor and surety are separate although arising out of the same transaction. Ld. Counsel submits that irrespective of fact that the liability being coextensive with the principal borrower and guarantor, the liability of the guarantor would not depend on the acknowledgment of the Corporate Debtor. On the contrary it will only depend on the guarantee deed.

21. **Ld. Counsel for the Applicant** argued on the lines of the application and contended that one of the directors of the Corporate Debtor had signed the OTS letter on 15.07.2017 offering to pay a sum of Rs. 10.50 Crores as full and final settlement which was rejected by the Applicant / Financial Creditor on 18.07.2017. The application has been filed within three years from the date of OTS letter excluding the Covid affected period. In support of his contentions, Ld. Counsel referred the case of *Laxmi Pat Surana Vs. Union Bank of India & Ors* MANU/SC/0221/2021 where it was held as under.



"The appellant was at pains to persuade us that the intention behind the communication dated 08.12.2018 sent to the financial creditor by the corporate guarantor (corporate debtor) is a triable matter, as it was sent without prejudice. We are not impressed by this submission. The fact that the principal borrower had availed of credit/loan and committed default and that the (corporate) guarantor / corporate debtor had offered guarantee in respect of the loan account is not disputed. What is urged by the appellant is that the acknowledgment of liability to pay the amount in question was by the principal borrower and that acknowledgment cannot be the basis to proceed against the corporate guarantor (corporate debtor). Section 18 of the Limitation Act, however, posits that a fresh period of limitation shall be computed from the time when the party against whom the right is claimed acknowledges its liability. The financial creditor has not only the right to recover the outstanding dues by filing a suit, but also has a right to initiate resolution process against the corporate person (being a corporate debtor) whose liability is coextensive with that of the principal borrower and more so when it activates from the written acknowledgment of liability and failure of both to discharge that liability".

Ld. Counsel submits that in the aforesaid case, the date of default was 30.01.2010, and the application was filed on 13.02.2019 based on the acknowledgment of liability letter executed on 08.12.2018. Ld. Counsel submits that Section 18 of the Limitation Act is applicable to the proceedings under IBC. If there is an acknowledgment of debt in the balance sheets or the OTS proposal, the period of limitation would get extended if the acknowledgment is made before the expiry period of limitation which was also held in the case of *Yogeshkumar Jashwantlal Thakkar Vs. IOB MANU/NL/0341/2020*. Ld. Counsel submits that any acknowledgment in writing given by the Borrower shall be binding on the Guarantors in terms of the guarantee agreement. Ld. Counsel also referred the cases of (i). *Sesh Nath Singh & Anr Vs. Baidyabati Sheoraphuli Co-operative Bank Ltd & Anr in Civil Appeal No. 9198 of 2019*; (ii).



Kishanlal Likhmichand Bothra Vs. Canara Bank in Company Appeal (AT) (Ins) No. 704 of 2020; (iii). Yogeshkumar Jashwantlal Thakkar Vs. IOB & Anr. in Company Appeal (AT) (Ins) No. 236 of 2020; (iv). Punjab National Bank Vs. Jain Wool House in S.B. Civil Regular First Appeal No. 304 of 2023; (v). Asset Reconstruction Company (India) Ltd Vs. Bishal Jaiswal & Ors in the Apex Court in Civil Appeal No. 323 of 2021, 3228, 3765 of 2020, 3 of 2021 and Civil Appeal No. 1569 of 2021 (Arising out of SLP No. 1168 of 2021); (vi). Dilip Ramchandra Mohite Vs. Edelweiss Asset Reconstruction Company Ltd & Ors in Company Appeal (AT) (Ins) No. 860 of 2021 and (vii). State Bank of India Vs. Thota Chandrakanth & Ors in CP(IB) No. 285/95/HDB/2021

22. We have given thoughtful consideration to the rival contentions, the case laws referred by the Counsels for the parties as well as the written submissions.

23. A perusal of the application and the documents reveals that the Corporate Debtor had availed a term loan of Rs. 1.10 Crores vide letter of sanction dated 07.12.2007. Mr. Ashok Agarwal, and Ms. Anitha Agarwal, stood as Guarantor and signed the guarantee deed on 08.12.2007. Relevant terms and conditions of the guarantee deed are reproduced as under.

1. If at any time default shall be made by the Borrower in payment of the principal sum (not exceeding Rs. ~~1000000~~) together with interest, costs, charges, expenses and/or other monies for the time being due to the Bank in respect of or under the aforesaid credit facilities or any of them the Guarantors shall forthwith on demand pay to the Bank the whole of such principal sum (not exceeding Rs. ~~1000000~~) together with interest, costs, charges, expenses and/or any other monies as maybe then due to the Bank in respect of the aforesaid credit facilities and shall indemnify and keep indemnified the Bank against all losses of the said principal sum, interest or other monies due and all costs charges and expenses whatsoever which the Bank may incur by reason of any default on the part of the Borrower.



6. The Guarantee herein contained shall be enforceable against the Guarantors notwithstanding the securities aforesaid or any of the them or any other collateral securities that the Bank may have obtained or may obtain from the Borrower or any other person shall at the time when proceedings are taken against the Guarantors hereunder be outstanding and/or not enforced and or remain unrealised.

7. In order to give effect to the Guarantee herein contained the Bank shall be entitled to act as if the Guarantors were principal debtors to the Bank for all payments guaranteed by them as aforesaid to the Bank.

8. The guarantee herein contained is a continuing one for all amounts advanced by the Bank to the Borrower in respect of or under the aforesaid credit facilities as also for all interest costs and other monies which may from time to time become due and remain unpaid to the Bank thereunder and shall not be determined or in any way be affected by any account or accounts opened or to be opened by the Bank becoming nil or coming into credit at any time or from time to time or by reason of the said account or accounts being closed and fresh account or accounts being opened in respect of fresh facilities being granted within the overall limit sanctioned to the Borrower.

11. The Guarantee shall be irrevocable and enforceable against the Guarantors notwithstanding any dispute between the Bank and the Borrower.

12. The Guarantors affirm confirm and declare that any balance confirmation and/or acknowledgment of debt 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.

15. The Guarantors hereby agree and confirm that the Bank shall be entitled to adjust appropriate or set-off all monies held by the Bank to the credit of or for the benefit of the Guarantors on any account or otherwise howsoever towards the discharge and satisfaction of the liability of the Guarantors under these presents.

16. The Guarantors agree that notwithstanding the Bank for any reason whatsoever losing and/or parting with any of the securities given by the Borrower, the Guarantors shall not be released or discharged of their obligations under this Guarantee and in the event of the Bank so losing or parting with the security the Guarantors shall be deemed to have consented to or acquiesced in the same.



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 Principal, sum hereby guaranteed or any judgement, award or order obtained by the 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 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 acknowledgement or making a payment the Borrower shall in addition to his personal capacity be deemed to act as the Guarantors duly authorised agent in that behalf for the purposes of Sections 18 and 19 of the Limitation Act of 1963.

20. The Guarantors agree that 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 give 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.

24. The credit facilities were renewed / enhanced. The Financial Creditor / State Bank of India sanctioned the limits of Rs. 25.77 Crores vide letter dated 18.11.2009. All the four directors namely Ashok Agarwal, Anitha Agarwal, Ajay Agarwal and Ankit Agarwal signed the supplemental deed of guarantee for increase in overall limits on 19.11.2009 in favour of the Financial Creditor / State Bank of India. The relevant terms of the deed of guarantee are reproduced as under:



* AML Steel :

Limited, a company within the meaning of the Companies Act, 1956, and having its registered office at** 4, AML Towers, No.9, 6th Street, Gopalapuram, Chennai

(hereinafter referred to as "the Borrower" which expression shall unless repugnant to the context or meaning thereof be deemed to include its successors and permitted assigns) by agreeing to grant to the borrower all or some or any of the credit facilities by way of overdrafts, cash credits, term loans, pre-shipment and post-shipment credits, opening of letters of credit, issuing of guarantees including deferred payment guarantees and indemnities, negotiation and discounting of bills and cheques, inland as well as foreign, and such other facilities as may be agreed upon from time to time between the Bank and the Borrower for sums not exceeding in the aggregate at any one time the sum of Rs 25,77,00,000 /-(Rupees Twenty five crore and ^{seventy seven} lakh only)

(hereinafter referred to as the "aforesaid credit facilities") covenanted and agreed jointly and severally to pay to the Bank on demand upon default made by the Borrower the whole of such principal amount of Rs 25,77,00,000/ together with interest costs charges expenses and/or other monies as may then be due to the Bank and also agreed to indemnify and keep indemnified the Bank against all loss of principal, interests and other monies due, and all costs (as between advocate and client) charges and expenses whatsoever which the Bank may incur by reason of any default on the part of the Borrower.

AND WHEREAS the Bank has at the request of the Borrower and the Guarantors agreed to increase the aggregate sum limit of the aforesaid credit facilities from Rs. 1,10,00,000 /- to Rs. 25,77,00,000 /- on the condition that the Guarantors extend their liability under the Principal Deed of Guarantee from Rs. 1,10,00,000 /- to Rs. 25,77,00,000/ - which the Guarantors have agreed so to do.

AND WHEREAS the parties are desirous of modifying and altering the Principal Deed of Guarantee in the manner hereinafter appearing.

NOW this Agreement Witnesseth and it is hereby covenanted and agreed (the Guarantors covenanting and agreeing jointly and severally) as follows:

1. The words "Rupees" "wherever appearing shall be deemed to be" deleted and the words "Rupees" shall be deemed to be substituted in their respective places in the Principal Deed of Guarantee.
2. The Principal Deed of Guarantee as hereby varied shall remain in full force and shall be carried into effect in the same manner as if the provisions of this Agreement have been incorporated therein.



25. It is seen that, the Supplemental Deed of guarantee dated 19.11.2009 refers and modifies the Principal deed of guarantee.

26. The credit facilities were renewed from time to time and the Corporate Debtor also confirmed the renewal as well as enhancement of credit facilities accorded by the financial creditor.

27. The Corporate Debtor defaulted in repayment of the loan amount and its account was classified as NPA on 17.01.2015. In the application also, the Applicant has stated the date of NPA as 17.01.2015. The Liquidation proceedings are pending against the Corporate Debtor.

28. In the instant case, the Corporate Debtor had given an OTS letter on 15.07.2017 which is reproduced as under.



40

ASHOK MAGNETICS LIMITED

15.07.2017

The Assistant General Manager,
 Central Bank of India,
 Lead Bank
 Consortium Lenders
 M/s. Central Bank of India,
 State Bank of India
 And
 Federal Bank.
 Asset Recovery Branch,
 Chennai.



WITHOUT PREJUDICE TO OUR RIGHTS AND DEFENCES

Sir,

Sub: A/c. M/S. ASHOK MAGNETICS LIMITED, - One Time Settlement
 Proposal - reg;
 Ref :- Your letter ARB/CHEN/2017-18-89 Dated 01-07-2017.

We are grateful for the courtesy extended to us when we met on 19th June, 2017 and after detailed discussions; we wish to submit as follows:

You are well aware that we are engaged in manufacturing of TMT bars MS ingots . We availed loan facilities from the consortium and were servicing interest regularly till 2015. Subsequently due to bad market condition, except few all the steel manufacturing units incurred huge loss and our company was also one of the victim in which we incurred huge losses which made us from not servicing interest to the Bank coupled with the demonitisation problem which crippled all industries.

AML Towers, No. 9, 6th Street, Gopalapuram.
 Chennai - 600 086, India
 Registered Address : B-73, Sipcot Industrial Complex,
 Gummidipoondi - 601201.

CIN : L30007TN1993PLC024842
 Ph : 91-44-39170000
 Fax No. : 044-39170012/39170033

E-mail : corporate@amsteel.in
 www.amsteel.in



4/1

ASHOK MAGNETICS LIMITED

Since 2015, we were doing the business in small scale in order to keep the machineries in running condition. We are making every effort to come out of the present situation however we are not in a position to regularize the account.

The machineries are required to be serviced, overhaul and replacement if necessary to bring it to back to working condition and we need to pay suppliers, creditors and also workmen dues and statutory dues. Therefore we have scouted an investor who is willing to pump in money towards his share of capital so as to revive the industry. It may take atleast six months to start commercial production and taking into account the present market condition and the demand for supply being low, they require sufficient time to settle the dues of the Bank.

In order to purchase peace and to settle the account in total, the identified one investor assured to help us to come out of the present situation. Based on the assurances of the investor, we hereby make our offer towards for one time settlement amount as follows:

Keeping the present market situation and our financial sources, we hereby give our offer of Rs.10.50 crores towards full and final settlement as against all the dues of the consortium members, i.e., Central Bank of India,

AML Towers, No. 9, 6th Street, Gopalapuram,
Chennai - 600 086, India
Registered Address : B-73, SIPCOT Industrial Complex,
Gummidipoondi - 601201.

CIN : L30007TN1993PLC024842
Ph : 91-44-39170000
Fax No. : 044-39170012/39170033

E-mail : corporate@amlsteel.in
www.amlsteel.in



42

ASHOK MAGNETICS LIMITED

State Bank of India and Federal Bank. We are ready pay a sum of Rs.1.05 crores immediately on confirmation of accepting the one time settlement offer and pay a sum of Rs.17.50 lakhs every month for 18 months and on 19th month we will pay the balance one time settlement amount of Rs.6.30 crores.

Further the Bank has to take in to consideration that the Bank had earned huge sum towards substantial interest serviced by us. Therefore we request you to accept our OTS offer.

Looking forward to your positive reply.

Thanking You,

Yours faithfully,

For Ashok Magnetics Limited.

Director.

CC:

General Manager, Recovery, Mumbai. CBI
Assistant General Manager, recovery, Chennai, SBI
Assistant General Manager, Recovery, Chennai, Fedral Bank.

AML Towers, No. 9, 6th Street, Gopalapuram,
Chennai - 600 086, India
Registered Address : B-73, Sipcot Industrial Complex,
Gummidipoondi - 601201.

CIN : L30007TN1993PLC024642
Ph : 91-44-39170000
Fax No. : 044-39170012/39170033

E-mail : corporate@amlsteel.in
www.amlsteel.in



29. On a conjoint reading of the terms and conditions of the deed of guarantee and the OTS letter dated 15.07.2017, we find that in case of default made by the Borrower / Corporate Debtor in payment of the principal sum together with interest under the credit facilities, the Guarantors shall forfeit on demand paid to the Bank such principal sum together with interest and the guarantee shall be enforceable against the Guarantors. The Bank shall be entitled to act as if the Guarantors were the principal debtors to the Bank. The guarantee is a continuing one for the amounts advanced by the Bank to the Borrower which shall be irrevocable and enforceable against the Guarantors. The terms and conditions also find mention that any balance confirmation and / or acknowledgment of debt and / or admission of liability given or promise or part payment made by 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. The Guarantors shall not be released or discharged of their obligations under the guarantee until the discharge of full liability by the Borrower. Clause 19 of the agreement specifically provided that any admission or acknowledgment in writing signed by the Borrower of the liability in relation to the credit facilities, shall be binding on the Guarantors and the Guarantors shall accept the correctness of any statement of account that may be served on the Borrower. It is also mentioned that any acknowledgment by the Borrower shall in addition to his personal capacity be deemed to act as the Guarantors duly authorized agent for the purposes of Section 18 and 19 of the Limitation Act, 1963.



30. In the supplemental guarantee which is for an amount of Rs. 25.77 Crores, all the Guarantors including the Respondent had agreed jointly or severally to pay to the Bank on demand upon default made by the Borrower the whole of the principal amount together with interest which was increased on their request from Rs. 1.10 Crore to Rs. 25.77 Crores.

31. In the instant case, the account of the Corporate Debtor was declared as NPA on 17.01.2015. After the account was declared as NPA, the Bank issued the SARFAESI notices and initiated the proceedings before the DRT, Chennai, but the Corporate Debtor in order to settle with the Financial Creditor gave a one time settlement proposal dated 15.07.2017 i.e. within the period of three years from the date of the account becoming NPA acknowledging availing of loan facilities from the consortium and servicing interest regularly till 2015. It had expressed their financial constrains and submitted that it has scouted an investor who is willing to pump in money so as to revive the Company. In order to purchase peace and settle the account in total, it gives offer of Rs. 10.50 Crores towards full and final settlement as against all the dues of the consortium members. The said OTS letter / acknowledgment is unequivocal and unconditional.

32. The terms and conditions of the guarantee deeds as referred above and the OTS letter clearly amount to acknowledgment in writing by the Borrower which also bind the Guarantors for the purposes of Section 18 and 19 of the Limitation Act. The guarantee is an irrevocable and continuing guarantee which is enforceable against the



Guarantors on demand. It is true that the account of the Corporate Debtor was declared as NPA on 17.01.2015 and thereafter SARFAESI proceedings were initiated against the Corporate Debtor including filing of O.A. before the DRT, Chennai and initiating CIRP proceedings against the Corporate Debtor and the present application against the Guarantor has been filed on 05.11.2020 but by virtue of the OTS / acknowledgment dated 15.07.2017, the limitation for filing the petition under Section 95 against the Personal Guarantor will start w.e.f. 15.07.2017, on which date the debt was acknowledged within the period of three years from the date the account of the Corporate Debtor was declared as NPA by virtue of Section 18 of the Limitation Act, 1963. Even if the CIRP was initiated in the year 2018, the application against the Personal Guarantor could be filed in the year 2020 because of the fact that the guarantee of the Borrower is continuing and co-extensive on demand.

33. Although the Respondent has raised objection that the guarantee deed do not bear the signatures of attesting witness or the agreement is not registered or notarized, but no such objection was raised at the time of signing of deeds of guarantee. It is not the case that deeds of guarantee have not been signed or executed by the Guarantors including the Respondent. In these circumstances, no much emphasis can be given on this contention when there is clear admission of debt and default.

34. As regards contention that the OTS letter does not bear the signature of all the four guarantors or no Board Resolution was



enclosed authorizing the Director to submit the OTS letter to the Bank, but the same cannot be construed that there was no consent from the Corporate Debtor to give this OTS letter. It is not the case that no OTS letter was given by the Corporate Debtor. Not placing the board resolution does not prove fatal to the case.

35. In the present case, there is nothing on record to indicate that the Guarantors at any time after signing of the OTS letter by the Director of the Corporate Debtor had retracted that no consent was taken from them while submitting the OTS letter with the Bank. Rather the said letter in clear terms binds the Guarantors in view of the guarantee deeds placed above and they are liable to repay the debt of the Banks jointly and severally with the Corporate Debtor.

36. It is true that in the present case, two dates of default have been given i.e. 17.01.2015 when the account of the Corporate Debtor was declared as NPA and 15.07.2017 when the OTS letter was given by the Corporate Debtor, but it is seen from the correspondences and the documents that for calculating the period of limitation, the Bank has placed reliance only on the date of default as 15.07.2017 when the OTS proposal was given by the Corporate Debtor. It is also true that the Bank during the said period after the account became NPA issued the SARFAESI notices as well as the notice on 11.02.2020 before filing the application but no such emphasis was given on the same in the application. It has been held in catena of judgments as referred above, that the date of default will be the date when the account turned into NPA. Since in the present case, there is an OTS proposal within the



period of three years from the date the account was declared NPA, the period of limitation will start from the date 15.07.2017 in view of the provisions contained under Section 18 of the Limitation Act which is applicable in the proceedings under IBC as held in the case of *B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta and Associates in Civil Appeal No. 23988 of 2017*. Thus, we find that the applicant for the sake of information had given the date of NPA as the date of default but has placed reliance mainly on the date when the OTS letter was given for the purposes of limitation for filing the petition.

37. Admittedly, the initial deed of guarantee dated 08.12.2007 has been signed by two Directors i.e. Ashok Agarwal and Anitha Agarwal but supplemental deed of guarantee dated 19.11.2009 has been signed by all the Directors i.e. Ashok Agarwal, Anitha Agarwal, Ajay Agarwal and Ankit Agarwal acknowledging the debt on the basis of which the application has been filed. The Supplemental Deed of Guarantee refers to the Principal Deed of Guarantee and thus modifies the Principal Deed of Guarantee. The debt was renewed from time to time which is also not in dispute.

38. In the case of *Laxmi Pat Surana supra*, the principal Borrower had availed of credit / loan and committed default and the Corporate Debtor had offered guarantee in respect of the loan account which fact was not disputed. There was an acknowledgment of liability by the principal Borrower to pay the amount in question. The question before Hon'ble Supreme Court was whether the acknowledgment can be the basis to proceed against the Corporate Guarantor (Corporate Debtor).



It was held that Section 18 of the Limitation Act posits that a fresh period of limitation shall be computed from the time when the party against whom the right is claimed acknowledges its liability. The Financial Creditor has not only the right to recover its outstanding dues by filing a suit but also initiate resolution process against the corporate person (being a Corporate Debtor) whose liability is co-extensive with that of the principal borrower and more so when it activates from the written acknowledgment of liability and failure of both to discharge that liability. It was held that fresh period of limitation is required to be computed from the date of acknowledgment of debt by the principal borrower from time to time and in particular the Corporate Guarantor / Corporate Debtor vide last communication dated 08.12.2018. The fact that acknowledgment within the limitation was only by the Principal Borrower and not by the Guarantor would not absolve the Guarantor of its liability flowing from the letter of guarantee and memorandum of mortgage. The liability of the Guarantor being co-extensive with the Principal Borrower under Section 128 of the Contract Act, triggers the moment the Principal Borrower commits default in paying the acknowledged debt. This is a legal fiction. Such liability of the Guarantor flows from the guarantee deed and memorandum of mortgage unless it expressly provides to the contrary.

39. In the present case also the liability of the Borrower / Respondent is co-extensive with the principal borrower. There is an OTS letter given by the principal borrower acknowledging the debt



and the liability and its failure to discharge the liability. In terms of the guarantee deed / agreement which is a continuing guarantee, the OTS letter is also binding on the Guarantors and the limitation of filing the petition under Section 95 of IBC will start from the date the OTS letter was given. It is immaterial whether OTS was accepted or rejected as for computing the period of limitation, the acknowledgment of debt is to be seen which in the present case was on 15.07.2017. That being the position the petition is within the period of limitation.

40. There is no quarrel on the legal proposition that for maintaining a petition, the date of default has to be calculated from the date of first invocation notice but at the same time if there is an acknowledgment of debt by the Corporate Debtor which in terms of the guarantee agreement binds the Guarantors, the date of acknowledgment will be the date for calculating the period of limitation for filing the application. Since the liability of the Borrower and the Guarantor is co-extensive and as soon as the account becomes NPA, the Bank / Financial Creditor can initiate proceedings against the principal borrower / Guarantor simultaneously or can choose against any of the above. In the present case, the Financial Creditor initiated CIRP against the Corporate Debtor first in the year 2018 and thereafter filed the petition against the Personal Guarantor / Respondent in 2020 which is maintainable.

41. In the present case, the debt amount is more than the threshold limit required for initiating insolvency proceedings against the Personal Guarantor, Ajay Agarwal. The date of default is reckoned as



15.07.2017 i.e. when the OTS letter was given. This Application has been filed on 21.10.2020. The Applicant is entitled to a benefit of limitation from 15.03.2020 to 28.02.2022 as extended by *Hon'ble Supreme Court in Suo Moto W.P. (Civil) No. 3 of 2020*. Thus we are of the opinion that, the application is within limitation.

42. Considering the above facts and the case supra, we appoint the Resolution Professional who will collate all the facts relevant to the examination of the application for the commencement of the Insolvency Resolution Process in respect of the Personal Guarantor.

43. In the instant case, the Applicant has proposed the name of the Resolution Professional as **Tharuvai Ramachandran Ravichandran (IBBI/IPA-002/IP-N00241/2017-18/10692)**. We therefore, upon verification of disciplinary status with the IBBI portal, appoint **Tharuvai Ramachandran Ravichandran (IBBI/IPA-002/IP-N00241/2017-18/10692) (with AFA 31.12.2025)** with *Reg. No. IBBI/IPA-002/IP-N00330/2017-2018/10935* as Interim Resolution Professional in respect of the Personal Guarantor/Respondent.

44. The Resolution Professional is directed to examine the application as set out in Section 97(6) of IBC, 2016 who after examining, may recommend for the acceptance / rejection of the application as provided under Section 97(6) of IBC, 2016, **within a period of 10 days** as contemplated under Section 99(1) of IBC, 2016.

45. The Applicant is directed to serve copy of the application and the order on the Interim Resolution Professional.



46. List this application for report / hearing on 07.03.2025.

-Sd-

VENKATARAMAN SUBRAMANIAM
Member (Technical)

-Sd-

SANJIV JAIN
Member (Judicial)