

NATIONAL COMPANY LAW TRIBUNAL
INDORE SPECIAL BENCH
COURT NO. 1

ITEM No.121-CP(IB)/55(MP)2024

Proceedings under Section 95 IBC

IN THE MATTER OF:

IDBI Bank Ltd
V/s
Hemangi Patel

.....Applicant

.....Respondent

Order delivered on 05/05/2025

Coram:

Shammi Khan, Hon'ble Member(J)
Sanjeev Kumar Sharma, Hon'ble Member(T)

PRESENT:

For the Applicant : Mr. Devavrat Paresh Joshi, Adv
For the Respondent :

ORDER

1. This application is filed on 02.09.2024 by IDBI Bank Limited (hereinafter referred to as the "Creditor") under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code"), seeking initiation of the insolvency resolution process against Ms. Hemangi Patel (hereinafter referred to as the "Personal Guarantor") in respect of a guarantee provided for credit facilities availed by The Great Logistic and Parking Services Pvt. Ltd. (hereinafter referred to as the "Corporate Debtor").
2. The chronology of events, as presented by the Creditor, indicates that a Guarantee Agreement was executed by the Personal Guarantor in favour of the Creditor on 28.10.2010. The Corporate Debtor defaulted on the repayment of the cash credit facility of Rs. 5.50 Crore on 31.03.2016, leading to the classification of the account as a Non-Performing Asset (NPA). Subsequently, the Creditor issued a Guarantee Invocation Notice to the Personal Guarantor on 24.10.2016.



An Original Application was filed before the Hon'ble Debt Recovery Tribunal (DRT), Jabalpur, on 31.03.2017, and a Recovery Certificate was issued in favor of the Creditor on 25.01.2019. A Demand Notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019, was issued to the Personal Guarantor on 19.03.2024. The present petition was filed before this Tribunal on 02.09.2024.

4. The primary issue for consideration is whether the present application is barred by limitation under the provisions of the Code, particularly in light of the invocation of the personal guarantee and the subsequent legal proceedings.
5. In the present case, the Guarantee Invocation Notice was issued on 24.10.2016, clearly establishing the Creditor's right to enforce the guarantee. The limitation period of three years from this date would expire on 24.10.2019. Alternatively, even if the issuance of the Recovery Certificate on 25.01.2019 is considered the starting point (as it crystallized the liability), the limitation period would extend to 25.01.2022.
6. The Hon'ble Supreme Court, in its orders dated 23.03.2020, 08.03.2021, and 10.01.2022 in ***Suo Moto WP (Civil) No. 3 of 2022 in Re: Cognizance for Extension of Limitation***, excluded the period from 15.03.2020 to 28.02.2022 for the computation of limitation due to the COVID-19 pandemic. This exclusion effectively adds approximately 714 days (from 15.03.2020 to 28.02.2022) to the limitation period.
 - o Taking 24.10.2016 as the starting point, the limitation period would extend to approximately 04.10.2021 (24.10.2019 + 714 days).
 - o Taking 25.01.2019 as the starting point, the limitation period would extend to approximately **11.01.2024** (25.01.2022 + 714 days).
7. The present application, filed on 02.09.2024, is beyond both extended limitation periods. The issuance of the Demand Notice dated 19.03.2024 in **Form-B** U/s 95(4)(b) of the IBC, 2016 r.w. Rule 7(1) of the I&B (AAA for IRP



for PGCD) Rules, 2019 does not create a fresh cause of action, as it is merely a procedural step under the Insolvency and Bankruptcy Rules, 2019 as held by Hon'ble NCLAT in the matter of ***State Bank of India Vs Mr. Deepak Kumar Singhania [Company Appeal (AT) (Insolvency) No.191 of 2025]***.

8. The present application, filed on 02.09.2024, is barred by limitation, as it was filed beyond the three-year period prescribed under Article 137 of the Limitation Act, 1963, even after accounting for the COVID-19 exclusion period as per the Hon'ble Supreme Court's orders. The invocation of the guarantee on 24.10.2016, and at the latest, the issuance of the Recovery Certificate on 25.01.2019, triggered the limitation period, which has since lapsed.
9. In view of the above, **CP(IB)/54(MP)2024** filed by IDBI Bank Limited under Section 95 of the Insolvency and Bankruptcy Code, 2016, is dismissed as barred by limitation.

-Sd-

SANJEEV KUMAR SHARMA
MEMBER (TECHNICAL)

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-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)