



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

A Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016, read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

**IN THE MATTER OF:
UNION BANK OF INDIA**

... Petitioner/ Financial Creditor.

Versus

BENGAL SHELTER HOUSING DEVELOPMENT LIMITED

... Respondent/ Corporate Debtor.

Date of Pronouncement: August 29, 2025.

CORAM:

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL),
CMDE. SIDDHARTH MISHRA, HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For the Petitioner:

**Mr. Krishnaraj Thaker, Sr. Adv.
Ms. Sreenita Thaker, Adv.
Ms. Sneha Singhania, Adv.**

For the Respondent:

**Ms. Manju Bhuteria, Sr. Adv.
Ms. Rashmi Singhee, Adv.
Ms. Jayati Chowdhury, Adv.
Ms. Mandobi Chowdhury, Adv.**

Table of Contents

| | |
|---|-----------|
| Case of the Financial Creditor:..... | 2 |
| Arguments advanced by the Petitioner:..... | 5 |
| Reply by the Respondent:..... | 10 |
| <i>Analysis and Findings:</i>..... | 15 |
| <i>Conclusion and Directions:</i>..... | 41 |



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

ORDER

Per Bidisha Banerjee, Member (Judicial):

1. The Court congregated through a hybrid mode.
2. We have heard the Ld. Sr. Counsels for both parties at length.
3. Union Bank of India, hereinafter referred to as “Petitioner”/ “Financial Creditor”, has preferred this petition under Section 7 of the Insolvency and Bankruptcy Code, 2016, for brevity “I&B Code”, against Bengal Shelter Housing Development Ltd., hereinafter referred to as “Respondent”/ “Corporate Debtor”, praying for admission of the Corporate Debtor into Corporate Insolvency Resolution Process, in short “CIR Process”.
4. The corporate debtor Bengal Shelter is the corporate guarantor to the principal borrower M/s. Barnaparichay Book Mall Private Limited.
5. The total amount claimed to be in default is Rs. 103,52,61,481.58/- as on 09.08.2019, which includes principal dues of Rs. 102,52,52,919/- on account of the credit facilities extended to the corporate debtor, and the unpaid interest dues of Rs. 1,00,08,562.58/-. The number of days of default is claimed as 3242 commencing from 12.07.2013, when the loan was recalled, till 27.05.2022.

Case of the Financial Creditor:

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

6. The corporate debtor herein namely Bengal Shelter Housing Development Limited entered into a development agreement on 17.11.2007 with Kolkata Municipal Corporation, hereinafter referred to as “KMC”, wherein the corporate debtor agreed to develop and improve the College Street Market premises to a comprehensive market complex.

7. By way of a Board Resolution on 27.12.2007, the corporate debtor resolved to promote a 100% subsidiary to act as a Special Purpose Vehicle/ entity for carrying out the construction in terms of the corporate debtor’s Development Agreement with KMC on 17.11.2007.

8. At the Board Meeting held on 27.12.2007, it was further resolved that the Corporate Debtor will *inter alia* extend its corporate guarantee for the loans obtained by the principal borrower, namely M/s. Barnaparichay Book Mall Private Limited to carry out the construction works. On 02.03.2008, the corporate debtor and the borrower entered into an Arrangement Agreement, to carry out the construction of the College Street Market, and in this regard, the borrower approached the Corporation Bank (Erstwhile Bank) and the other banks for terms loans to financial the cost of the constructions under the consortium banking arrangement led by the State Bank of India (Lead bank) and by way of a letter issued on 20.06.2008, the Corporation Bank sanctioned a term loan of Rs. 32 Crore.

9. On 14.07.2008, Bengal Shelter, the corporate debtor (corporate guarantor) executed a Deed of Guarantee in favour of the erstwhile bank for the due performance of the obligation by M/s.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

Square Feet Furnishers Private Limited and guaranteed the repayment of all present and future indebtedness and liabilities of M/s. Square Feet Furnishers Private Limited towards the financial creditor. Several deeds of guarantee were executed on 03.07.2008, 05.07.2008 and 08.07.2008 by the corporate debtor in favour of the financial creditor.

10. On 02.09.2008, M/s. Square Feet Furnishers Private Limited changed its name to M/s. Barnaparichay Book Mall Private Limited. M/s. Barnaparichay Book Mall Private Limited (principal borrower) defaulted in repayment and consequently, the loan account of the borrower became NPA on 31.12.2010.

11. The Corporation Bank on 25.04.2011, issued a demand notice under Section 13(2) read with Section 13(3) of the SARFAESI Act, 2002 to the borrower, and on 10.04.2013, the Corporation Bank enforced its securities and took possession of the secured assets of the borrower and issued a notice under Section 13(4) read with Rule 9 of the SARFAESI Act, 2002.

12. The Corporation Bank further instituted a proceeding before the DRT, Kolkata, Court III, by way of an original application bearing no. O.A. No. 248 of 2013 against the principal borrower and the corporate debtor (corporate guarantor) on 12.09.2013 for recovery of an amount of Rs. 41,69,78,383 as on 30.06.2013.

13. Against the principal borrower, M/s. Barnaparichay Book Mall Private Limited, a petition being C.P. (IB) No. 1219/KB/2018 under Section 7 of the I&B Code, has been preferred by Asset Reconstruction Company Limited, before this Adjudicating Authority, which was admitted on 09.08.2019. During the pendency

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

of the proceedings before the DRT Kolkata, the principal borrower – M/s. Barnaparichay Book Mall Private Limited by way of a letter dated 30.06.2018 submitted a proposal for repayment of its outstanding and enclosed a cheque of Rs. 50 Lakh as part of the advance to such OTS. The Corporation Bank, on 21.07.2018, by way of a letter, declined to accept the OTS proposal dated 10.07.2018.

14. The Corporation Bank submitted its claim of Rs. 103,52,61,431.58/- through Form C under Regulation 8 of the IBBI (CIRP) Regulations 2016 with the IRP of M/s. Barnaparichay Book Mall Private Limited on 23.08.2019, which was accepted by the IRP.

15. By virtue of a scheme of amalgamation, the Corporation Bank merged with the petitioner Union Bank of India on and from 01.04.2020, accordingly, all the rights, interest and liability of the erstwhile bank stood vested in terms of Section 232(4) of the Companies Act, 2013, upon the Union Bank of India, Petitioner herein.

16. The Union Bank of India on 21.05.2022 invoked the deeds of guarantee executed on 30.06.2008 and 14.07.2008 between the erstwhile bank and the corporate debtor for repayment of Rs. 103,52,61,481.58/-, however, no payment has been made by the corporate debtor.

Arguments advanced by the Petitioner:

17. Mr. Krishnaraj Thaker, Learned Senior Counsel appearing on behalf of the Petitioner, Union Bank of India, would submit that the Corporation Bank sanctioned a term loan in favour

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

of M/s. Barnaparichay Book Mall Private Limited on 20.06.2008, the sanction letter is annexed at page 39 to the petition. It is submitted that one of the conditions of the term loan was that the corporate debtor – Bengal Shelter Housing Development Limited, who is the promoter company of the principal borrower – M/s. Barnaparichay Book Mall Private Limited, would stand as a guarantor for repayment of such loan.

18. By way of a board resolution dated 25.06.2008, annexed at page 10 to the Supplementary Affidavit dated 16.04.2024, the corporate debtor authorised Mr. Samar Nag, the Promoter, to sign the deed of guarantee. The Deed of Guarantee was executed on 30.06.2008, annexed at pages 6-9 to the Supplementary Affidavit dated 16.04.2024, by the corporate debtor through Samar Nag in favour of the consortium of lenders, including the Corporate Bank.

19. On 14.07.2008, Samar Nag, on behalf of the corporate debtor – Bengal Shelter Housing Development Limited, executed the Deed of Corporate Guarantee in favour of the principal borrower - M/s. Barnaparichay Book Mall Private Limited, as annexed at pages 48-60 to the petition.

20. Mr. Thaker would submit that in terms of Clause 29 of the Deed of Corporate Guarantee dated 03.08.2009, as annexed at pages 11-33 to the Supplementary Affidavit dated 16.04.2024, the corporate guarantee of the corporate debtor could be enforced by the lenders jointly and severally. It is submitted that the loan account of the principal borrower - M/s. Barnaparichay Book Mall Private Limited was declared NPA on 31.12.2010, and that the corporate debtor (corporate guarantor) – Bengal Shelter Housing Development

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

Limited executed a revival letter acknowledging its liabilities on 30.13.2012. On 12.07.2013 (date of default), the corporate debtor (corporate guarantor) Bengal Shelter's guarantee was invoked and was called upon to repay the loan.

21. It is submitted that on 12.09.2013, the DRT proceedings against the principal borrower – M/s. Barnaparichay Book Mall Private Limited and the corporate debtor – Bengal Shelter were instituted. The borrower as well as the corporate debtor acknowledged their liability to the petitioner in their audited balance sheets for the financial years as on 01.04.2013 – 31.03.2014, 01.04.2014 – 31.03.2015, 01.04.2015 – 31.03.2016.

22. Further, the borrower submitted its OTS proposal with Rs. 50 Lakh as part payment, which was rejected by the erstwhile bank on 21.07.2018. It is argued that acknowledgement of Liability/offer of OTS by the principal borrower amounts to an acknowledgement within Section 18 of the Limitation Act, qua the guarantor, and Section 7 application filed within 3 years from the date thereof against the guarantor is valid. Ld. Sr. Counsel relied on the following case laws to fortify his case:

- a) ***Laxmi Pat Surana v. Union of India & Anr.*** reported in (2021) 8 SCC 481, Para 43, 48 and 49.
- b) ***Bijay Kumar Agarwal v. State Bank of India and Ors.*** in Company Appeal (AT) No. 105 of 2022, Para 21-27.
- c) ***Tejas Khandhar v. Bank of Baroda***, reported in 2022 SCC Online NCLAT 3927 para 12 & 14.



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

- d) ***Vidyasagar Prasad v. Uco Bank & Anr***, in Civil Appeal No. 1031 of 2022, Para – 7, 7.1, 7.2, 8.1, 9, 10, 11, 12 and 13.
- e) ***Stressed Assets Stabilization Fund (SASF) Vs. Mr. D. Srinivas Rao*** in Company Appeal IB/314/2022, Paras 11,12,17,18,26,30,31,34 & 35.
- f) ***Dena Bank Vs. Shiv Kumar Reddy***, reported in (2021) 10 SCC 330.

23. Ld. Sr. Counsel would further argue that acknowledgement made in writing within the period of limitation extends the period of limitation. The entries made in the Balance Sheet is an acknowledgement which has to be read along with Directors' and Auditors' report, relying on the following decisions:

- a. ***Asset Reconstruction Company (India) Ltd v. Bishal Jaiswal & Anr.*** reported in (2021) 6 SCC 366, Para 14 & 24.
- b. ***In re Pandan Tea Co. Ltd.*** reported in AIR 1974 Cal 170, Para 4 and Para 6.
- c. ***Axis Bank Ltd. v. Naren Sheth & Anr.*** in Civil Appeal No. 2085 of 2022.

24. To contend that even if an acknowledgement does not specify the exact nature of liability but indicates jural relationship between the creditor and the debtor such acknowledgement shall attract Section 18 of the Limitation Act, Ld. Sr. Counsel would rely

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

upon the judgment of the Hon'ble NCLAT in **Vidyasagar Prasad Vs. Uco Bank & Anr.**, reported in 2021 SCC Online NCLAT 2486, Para 11.

25. It was argued that if the Adjudicating Authority is of the opinion that default has occurred, then it has to admit the application, reliance to that effect was placed on the judgment of the Hon'ble Apex Court in **Innoventive Industries Ltd v. ICICI Bank & Anr.**, reported in (2018) 1 SCC 407 (Paras 28 and 30).

26. Further, to urge that there is no ground available to reject an application under Section 7 of the I&B code except when the NCLT finds that debt has not become due and payable, reliance is placed on **M. Suresh Kumar Reddy v. Canara Bank** in Civil Appeal No. 7121 of 2022, (Paras 8-10).

27. Mr. Thaker, Ld. Sr. Counsel would assert that the petition is well within the prescribed limitation period for the period from 15.03.2020 to 28.02.2022 shall be excluded for the purpose of computing limitation as per the order of the Hon'ble Apex Court on 10.01.2022, in Suo Moto Writ Petition (C) No. 3 of 2022. Further that the DRT proceedings have been instituted on 12.09.2013, and the proceedings are still pending as on the date of filing this petition, i.e., on 28.05.2022. Thus, it is submitted that the period from 12.09.2013 till the date of filing this petition would be excluded while computing the period of limitation by virtue of the judgment of **Sesh Nath Singh and Ors. vs. Baidyabati Sheoraphuli Co-operative Bank Ltd. and Ors.** reported in MANU/SC/0205/2021.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

Reply by the Respondent:

28. Ms. Manju Bhuteria, Learned Senior Counsel appearing on behalf of the corporate debtor, would vehemently oppose the admission on the ground that the petition is barred by limitation as the date of default has been claimed on and from 12.07.2013, when the loan was recalled, whereas the present petition has been preferred on 28.05.2022, after a long 9 years.

29. Mr. Bhuteria, Ld. Sr. Counsel would submit that the guarantee was invoked on 12.07.2013, however, the corporate debtor has not acknowledged any liability. Reliance is placed on a decision of this Tribunal in ***UCO Bank v. Suanvi Trading & Investment Company Limited***, in C.P. (IB) No. 44/KB/2023 on 16.07.2024, that the limitation period would commence from the date of invocation of guarantee and the present petition has been filed long after three years from the invocation of guarantee.

30. It is submitted that the corporate debtor has not acknowledged its liability in its balance sheets. It is urged that the amount under the corporate guarantee has been mentioned under the heading of "contingent liability", in the balance sheets of the corporate debtor for the financial year 2014-15, annexed at page 64 of the I.A. 1396 of 2022 and for the financial year 2015-16, annexed at page 74 of the I.A. 1396 of 2022, and presuming the said balance sheets would amount to an acknowledgement of liability on the part of the corporate debtor still, the alleged claim is barred by limitation on 31.03.2019.

31. It is further submitted that the OTS proposal given on 30.06.2018 (annexed at page 66 to the petition) was purported by

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

the borrower Barnaparichay, the corporate debtor was not a party, and thus, the said OTS proposal cannot bind the present corporate debtor. Reliance is placed on **State Bank of India v. Mr. P. V. Bhaskara Rao** in C.P. (IB) No. 52/95/AMR/2022, order dated 22.10.2022, passed by the NCLT, Amravati.

32. Ms. Bhuteria, Ld. Sr. Counsel would argue that the ratio of **Laxmi Pat Surana (Supra)** will not apply herein as in the said case, there was an acknowledgment by the corporate guarantor itself who was the corporate debtor. Arguably, in the present case, the acknowledgment was made by the principal borrower and the corporate debtor, who is a guarantor, was neither a party to the OTS proposal dated 30.06.2018, of the principal borrower nor acknowledged its liability in its balance sheet as the liability is mentioned in the corporate debtor's balance sheet as 'contingent liability'.

33. Ms. Bhuteria, Ld. Sr. Counsel would further argue that the decisions relied by the petitioner would not apply having been rendered on different facts and circumstances.

34. We have considered the rival contentions and perused the documents carefully.

35. **Discernible facts:**

35.1. The Corporate Debtor Bengal Shelter by way of a board resolution dated 27.12.2007, annexed at page 29 to the petition, resolved to promote its 100% subsidiary to act as a special purpose vehicle to take M/s. Square Feet Furnishers Pvt. Ltd., being an

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

existing dormant company of Shelter group of companies, to implement the entire project “Barnaparichay” at College Street Municipal Market, Kolkata.

35.2. The board further resolved that the corporate debtor herein being Bengal Shelter would extend a corporate guarantee as well as the equitable mortgage for and on behalf of the SPV company viz., Square Feet Furnishers for availing the financial assistance from the banks/ financial institutions.

35.3. On 02.03.2008, an arrangement agreement (annexed at page 30-38 to the petition) was executed between the corporate debtor (corporate guarantor) and Square Feet Furnishers (principal borrower) to carry out the construction and development of Barnaparichay project at College Street.

35.4. On 20.06.2008, the Corporation Bank (erstwhile bank) sanctioned a term loan amounting to Rs. 32 Crore, by way of a Sanction Letter (annexed at pages 39-47 to the petition). It is evident from the “Other Terms & Conditions” (page 43 therein), that the present corporate debtor Bengal Shelter stood a guarantor for an amount of Rs. 5.81 Crore. On 30.06.2008, a Deed of Guarantee was executed in favour of the consortium of lenders by the corporate debtor – guarantor (annexed at pages 6-10 to the Supplementary Affidavit dated 16.04.2024).

35.5. Bengal Shelter, the corporate debtor – guarantor further by way of a board resolution on 25.06.2008, resolved to provide a corporate guarantee for the loan sanctioned in favour of Square Feet Furnishers, the principal borrower by the Consortium of Banks wherein the erstwhile bank was a member.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

35.6. On 14.07.2008, Bengal Shelter – the corporate debtor (guarantor) executed a Deed of Guarantee (as annexed at pages 48-60 to the petition), which explicitly stipulates that *“If at any time default shall be made by the Borrower in payment of the principal sum (not exceeding Rs. 58,00,00,000/- 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. 58,00,00,000/- 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.”*

35.7. Several deeds of guarantee were executed by Bengal Shelter – corporate debtor herein (corporate guarantor) for the principal borrower – Square Feet Furnishers Pvt. Ltd./ Barnaparichay Book Mall Private Limited.

35.8. On 03.08.2009, the corporate debtor again executed another Deed of Guarantee in favour the Consortium of Banks, including the erstwhile bank, annexed at page 11-33 to the Supplementary Affidavit dated 16.04.2024.

35.9. On and from 02.09.2008, Square Feet Furnishers Pvt. Ltd. came to be known as Barnaparichay Book Mall Private Limited.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

35.10. Loan account of the principal borrower was declared NPA on 31.12.2010.

35.11. The Corporate Debtor – corporate guarantor on 30.03.2012 issued a Revival letter to the Consortium of Banks acknowledging its liabilities towards the lead bank and its member. The Revival Letter dated 30.03.2012, is annexed at page 7 to I.A. (IB) No. 1396/KB/2022 which has been disposed of on 21.11.2022 by this Bench. Hence, the acknowledgment of liability of the present corporate debtor is loud and clear, that too within 3 years of NPA.

35.12. On 12.07.2013, the Consortium of Bank through SBI issued a letter, annexed at page 75-80 to I.A. (IB) No. 1396/KB/2022, to the principal borrower - Barnaparichay Book Mall Private Limited and its guarantors for calling upon to repay the outstanding dues arising out of the consortium credit assistance and invoking the guarantee given by all the guarantors including the corporate debtor. The date of invocation which is 12.07.2013 is claimed to be the date of default.

35.13. It is also evident that the DRT proceedings were instituted against the principal borrower and corporate debtor on 12.09.2013, by Invent Assets Securitisation and Reconstruction Pvt Ltd., and evidently, the matter is pending hearing before the Learned DRT, Kolkata (III) till date.

35.14. Irrefutably and inarguably, the principal borrower and its corporate guarantor – the present corporate debtor have acknowledged their liability towards the banks in the audited balance sheet for respective financial years of 2013-2014, 2014-2015, and

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

2015-2016, annexed at pages 8-74 to I.A. (IB) No. 1396/KB/2022.
Hence, the limitation got extended till March 2019.

35.15. Further, the Principal Borrower Barnaparichay Book Mall Pvt. Limited even proposed an OTS on 30.06.2018 and provided a cheque of an amount of Rs. 50 Lakh as an advance and a part of the OTS amount, which was however rejected by the erstwhile bank on 21.07.2018.

Analysis and Findings:

36. **Applicable Legal Provisions:**

36.1. Section 18 of the Limitation Act, 1936, stipulates as under:

18. Effect of acknowledgment in writing. —

(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

Explanation. — For the purposes of this section, —

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,

(b) the word “signed” means signed either personally or by an agent duly authorised in this behalf, and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

Thus, any acknowledgment of liability in writing by a party against whom such acknowledgment would be used, if made before expiry of the limitation will extend the limitation to a further period of 3 years.

37. Acknowledgement of Liability:

To understand what constitutes acknowledgment of liability, and the effect of such acknowledgment it would be apt to refer to the following:

37.1. Statement of liability in the balance sheet of the corporate debtor constitutes an acknowledgment of liability.

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA

Company Petition (IB) No. 173/KB/2022

a. In ***Jones v. Bellgrove Properties Ltd.***, reported in (1949) 2 KB 700: (1949) 2 All ER 198 (CA), it was held that **a statement in a balance sheet of a company presented to a creditor shareholder of the company and duly signed by the Directors constitutes an acknowledgment of the debt.**

b. In ***Mahabir Cold Storage v. CIT***, reported in 1991 Supp (1) SCC 402, the Hon'ble Apex Court held that:

"12. The entries in the books of accounts of the appellant would amount to an acknowledgment of the liability to Messrs. Prayagchand Hanumanmal within the meaning of Section 18 of the Limitation Act, 1963, and extend the period of limitation for the discharge of the liability as debt."

(Emphasis Added)

c. In ***Larsen & Toubro Ltd. v. Commercial Electric Works***, reported in 1997 SCC OnLine Del 144: (1997) 67 DLT 387, it is well settled that **a balance sheet of a company, where the defendants had shown a particular amount as due to the plaintiff, would constitute an acknowledgment within the meaning of Section 18 of the Limitation Act.**

37.2. Acknowledgment of liability by the corporate debtor in its balance sheets binds its guarantors too and extends limitation under Section 18 of the Limitation Act, 1963.

Further, on the proposition that the acknowledgment in the balance sheets of a debt and liability by the company is sufficient

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA

Company Petition (IB) No. 173/KB/2022

to attract the provisions and extend the limitation under Section 18 of the Limitation Act, 1963, we would rely on the ratio held in:

a. In ***Shahi Exports (P) Ltd. v. CMD Buildtech (P) Ltd.*** reported in 2013 SCC OnLine Del 2535: (2013) 202 DLT 735, the Court held as follows:

“7. It is hardly necessary to cite authorities in support of the well-established position that an entry made in the company's balance sheet amounts to an acknowledgment of the debt and has the effect of extending the period of limitation under Section 18 of the Limitation Act, 1963.”

(Emphasis Added)

b. In ***CIT v. Shri Vardhman Overseas Ltd.*** reported in 2011 SCC OnLine Del 5599: (2012) 343 ITR 408, the Hon'ble Delhi High Court held **“The assessee being a limited company, this amounted to acknowledging the debts in favour of the creditors. Section 18 of the Limitation Act, 1963 provides for effect of acknowledgment in writing.”**

c. In ***Dena Bank vs. C. Shivakumar Reddy and Ors.*** reported in MANU/SC/0502/2021, it has been held that:

“118. It is well settled that entries in books of accounts and/or balance sheets of a Corporate Debtor would amount to an acknowledgment Under Section 18 of the Limitation Act.”

(Emphasis Added)



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA

Company Petition (IB) No. 173/KB/2022

d. **Asset Reconstruction Co. (India) Ltd. v. Bishal Jaiswal**, reported at (2021) 6 SCC 366, that:

“6. [...] the acknowledgment of the debt in the balance sheet extends the period of limitation. The acknowledgment is as on 31-3-2015. This suit is filed in 2017. The suit is clearly within limitation. The present application is allowed.”

(Emphasis Added)

e. In **Vidyasagar Prasad v. UCO Bank and Anr.**, reported in (2024) ibclaw.in 274 SC, the Hon’ble Apex Court held that:

“10.1 Following the principles as expounded in the case of **Bishal Jaiswal (Supra), the Adjudicating Authority as well as the NCLAT have examined the case in detail and **have come to the conclusion that the entry made in the balance sheet coupled with the note of the auditor of the appellant clearly amounts to acknowledgement of the liability. We see no reason whatsoever to take a different view of the matter. Their findings are fortified when we examine the matter from another perspective.”****

(Emphasis Added)

37.3. **Acknowledgment of liability by the corporate debtor binds its guarantors too.**

a. **Syndicate Bank vs. Channaveerappa Beleri and Ors.** reported in MANU/SC/2032/2006, the Hon’ble Apex Court held that:

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA

Company Petition (IB) No. 173/KB/2022

“9. A guarantor's liability depends upon the terms of his contract. A 'continuing guarantee' is different from an ordinary guarantee. There is also a difference between a guarantee which stipulates that the guarantor is liable to pay only on a demand by the creditor, and a guarantee which does not contain such a condition. Further, depending on the terms of guarantee, the liability of a guarantor may be limited to a particular sum, instead of the liability being to the same extent as that of the principal debtor. The liability to pay may arise, on the principal debtor and guarantor, at the same time or at different points of time. A claim may be even time-barred against the principal debtor, but still enforceable against the guarantor. The parties may agree that the liability of a guarantor shall arise at a later point of time than that of the principal debtor. We have referred to these aspects only to underline the fact that the extent of liability under a guarantee as also the question as to when the liability of a guarantor will arise, would depend purely on the terms of the contract.”

(Emphasis Added)

b. It is a settled principle of law that acknowledgment made by the principal borrower shall be tantamount to acknowledgment made by the corporate guarantor and shall extend the period of limitation under Section 18 of the Limitation Act, 1963. In ***Laxmi Pat Surana v. Union Bank of India***, reported in (2021) 8 SCC 481: 2021 SCC OnLine SC 267 at page 504:

“44. *In the present case, NCLT as well as NCLAT have adverted to the acknowledgments by the principal*

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA

Company Petition (IB) No. 173/KB/2022

*borrower as well as the corporate guarantor-corporate debtor after declaration of NPA from time to time and lastly on 8-12-2018. **The fact that acknowledgment within the limitation period was only by the principal borrower and not 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 coextensive with the principal borrower under Section 128 of the Contract Act, it triggers the moment principal borrower commits default in paying the acknowledged debt. This is a legal fiction. Such liability of the guarantor would flow from the guarantee deed and memorandum of mortgage, unless it expressly provides to the contrary.”*

(Emphasis Added)

c. In ***E.M. Najeeb Ellias Mohammed, Promoter of Air Travel Enterprises India Ltd. v. Union Bank of India***, reported in 2024 SCC OnLine NCLAT 254, the Hon'ble NCLAT held that:

*“65. An Acknowledgment for liability itself is sufficient and it need not necessarily be accompanied by a promise to pay as per decision in **Hetal Enterprises v. New India Assurance Company Ltd. 2012 (1CCC 458 Bom)**. Further, an acknowledgment under Section 18 of the Limitation Act, 1963 can be with respect to not only the property or Right, but it can be even in regard to the Liability.*

*66. **An Acknowledgment of a liability made by the Principal Borrower should be considered as***

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA

Company Petition (IB) No. 173/KB/2022

an acknowledgment of liability, on behalf of Guarantor.

67. A Revival Letter/ an acknowledgment, executed by the Principal Borrower on the authorization binds the Guarantor.”

(Emphasis Added)

d. In ***Pooja Ramesh Singh v. SBI***, in **Company Appeal (AT) (Insolvency) No.329 of 2023**, the Hon’ble NCLAT observed that:

“24. The scheme of I&B Code clearly indicate that both the Principal Borrower and the Guarantor become liable to pay the amount when the default is committed. When default is committed by the Principal Borrower the amount becomes due not only against the Principal Borrower but also against the Corporate Guarantor, which is the scheme of the I&B Code. When we read with as is delineated by Section 3(11) of the Code, debt becomes due both on Principal Borrower and the Guarantor, as noted above. The definition of default under Section 3(12) in addition to expression ‘due’ occurring in Section 3(11) uses two additional expressions i.e “payable” and “is not paid by the debtor or corporate debtor”. The expression ‘is not paid by the debtor’ has to be given some meaning. As laid down by the Hon’ble Supreme Court in “Syndicate Bank vs. Channaveerappa Beleri & Ors.”

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA

Company Petition (IB) No. 173/KB/2022

(supra), a guarantor's liability depends on terms of his contract.

There can be default by the Principal Borrower and the Guarantor on the same date or date of default for both may be different depending on the terms of contract of guarantee. It is well settled that the loan agreement with the Principal Borrower and the Bank as well as Deed of Guarantee between the Bank and the Guarantor are two different transactions and the Guarantor's liability has to be read from the Deed of Guarantee."

(Emphasis Added)

e. Again, in **State Bank of India v. Gourishankar Poddar & Ors.**, reported in (2025) ibclaw.in 17 NCLAT, Hon'ble NCLAT laid down that:

*"48. The last issue relates to the limitation in filing the CIRP petition. In this regard it is a settled law that the liability of the Corporate Debtor and the guarantor being Respondent No. 1 are co-terminus. Thus, liability for Respondent No. 1 would arise only when amounts became and went due by the Corporate Debtor. **Consequently, any acknowledgement of debt by the principal borrower is also considered an acknowledgement by the guarantor under the Act of 1963.** This position has been upheld by this Appellate Tribunal in **E.M. Najeeb Ellias Mohammed, Promoter of Air Travel Enterprises India Ltd. v. Union Bank of India** [2024 SCC*

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA

Company Petition (IB) No. 173/KB/2022

*OnLine NCLAT 254]. Relevant paras 65
to 67 are extracted below:"*

(Emphasis Added)

37.4. **The Acknowledgment in the One Time Settlement Offer would attract the benefit of Section 18 of the Limitation by way of extension of limitation:**

a. In ***Dena Bank (Supra)***, it has been laid down that:

"Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. This Court sees no reason why an offer of One Time Settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act.

In Gaurav Hargovindbhai Dave (supra) cited by Mr. Shivshankar, this Court had no occasion to consider any proposal for one time settlement. Be that as it may, the Balance Sheets and Financial Statements of the Corporate Debtor for 2016-2017, as observed above, constitute acknowledgement of liability which extended the limitation by three years, apart from the fact that a Certificate of Recovery was issued in favour of the Appellant Bank in May 2017. The NCLT rightly admitted the application by its order dated 21st March, 2019."

(Emphasis Added)

b. Further, ***Vidyasagar Prasad (Supra)***, the Hon'ble Apex Court has further held that:



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

“12. Both these factors, acknowledgment of debt in the balance sheet as well as in the OTS proposal, have been considered by NCLAT while dismissing the appeal. [...]

13. Having examined the matter in detail, we are of the opinion that the findings arrived at by the Adjudicating Authority and NCLAT are correct in law and fact. We find no merit in the appeal. [...]
(Emphasis Added)

38. Financial Debt:

38.1. What constitutes a financial debt:

38.1.1. Section 5(8) of the I&B Code defines “financial debt” as

a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its dematerialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on non-recourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

[Explanation. -For the purposes of this sub-clause,-

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

*(h) any counter-indemnity obligation in respect of a **guarantee**, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*

*(i) **the amount of any liability in respect of any of the guarantee** or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

38.2. Section 126 of the Contract Act, 1872, deals with the provision of “*Contract of guarantee*”, “*surety*”, “*principal debtor*” and “*creditor*” that:

A “contract of guarantee” is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the “surety”; the person in respect of whose default the guarantee is given is called the “principal debtor”, and the person to whom the guarantee is given is called the “creditor”. A guarantee may be either oral or written.

38.3. Further, Section 127 of the Contract Act, envisages the provision relating to the “*Consideration for guarantee*” as “*anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.*”

38.4. Further, Section 128 of the Contract Act, provides the “*Surety’s liability*” that “*the liability of the surety is co- extensive with that of the principal debtor, unless it is otherwise provided by the contract.*”

38.5. The Hon’ble Apex Court has defined “Financial Debt” to initiate Corporate Insolvency Resolution process as under:

a. In ***Pioneer Urban Land and Infrastructure Ltd. v. Union of India reported in (2019) 8 SCC 416***, it was held that:

“any debt to be treated as *financial debt*, there must happen disbursal of money to the borrower for utilization by the borrower and that the disbursal must be



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA

Company Petition (IB) No. 173/KB/2022

against consideration for time value of money.”

(Emphasis added)

b. In ***Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Limited reported in (2020) 8 SCC 401***, it was held that:

*“the essential condition of financial debt is **disbursement against the consideration for time value of money.**”*

(Emphasis added)

c. In ***Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund reported in (2021) 6 SCC 436: MANU/SC/0231/2021 (para 14)*** it was held that:

“14. ... in order to trigger an application, there should be in existence four factors: (i) there should be a 'debt' (ii) 'default' should have occurred (iii) debt should be due to 'financial creditor' and (iv) such default which has occurred should be by a 'corporate debtor...”

(Emphasis added)

d. In ***Innoventive Industries Ltd. v. ICICI Bank reported in (2018) 1 SCC 407: MANU/SC/1063/2017***, it was held that:

“27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. ...”

“28. ... the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA

Company Petition (IB) No. 173/KB/2022

claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, ...”

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“30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, *the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e., payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.*

(Emphasis added)

38.6. Further, the Hon’ble Apex Court in ***Laxmi Pat Surana (Supra)*** while considering the issue that whether an action Under Section 7 of the I&B Code can be initiated by the financial creditor (Bank) against a corporate debtor concerning guarantee offered by it in respect of a loan account of the principal borrower, who had committed default and is not a “corporate person” within the meaning of the Code, has held that:

“16. Section 7 of the Code propounds the manner in which corporate insolvency

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

resolution process (CIRP) may be initiated by the "financial creditor" against a "corporate person being the corporate debtor". It predicates that a financial creditor either by itself or jointly with other financial creditors or any other person on behalf of the financial creditor, as may be notified by the Central Government, may file an application for initiating CIRP against a corporate debtor before the Adjudicating Authority when a default is committed by it. The expression "default" is expounded in Section 3(12) to mean non-payment of debt which had become due and payable and is not paid by the debtor or the corporate debtor, as the case may be.

17. Section 7 is an enabling provision, which permits the financial creditor to initiate CIRP against a corporate debtor. The corporate debtor can be the principal borrower. It can also be a corporate person assuming the status of corporate debtor having offered guarantee, if and when the principal borrower/debtor (be it a corporate person or otherwise) commits default in payment of its debt.

*18. The term "financial creditor" has been defined in Section 5(7) read with expression "Creditor" in Section 3(10) of the Code to mean a person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to. This means that the Applicant should be a person to whom a financial debt is owed. The expression "financial debt" has been defined in Section 5(8). Amongst other categories specified therein, **it could be a debt along with interest, which is disbursed against the consideration for the time value of money and would include the amount of any liability in respect of any of the guarantee or***

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA

Company Petition (IB) No. 173/KB/2022

indemnity for any of the items referred to in Sub-clauses (a) to (h) of the same clause. It is so provided in Sub-clause (i) of Section 5(8) of the Code to take within its ambit a liability in relation to a guarantee offered by the corporate person as a result of the default committed by the principal borrower. The expression "debt" has been defined separately in the Code in Section 3(11) to mean a liability or obligation in respect of "a claim" which is due from any person and includes a financial debt and operational debt. The expression "claim" would certainly cover the right of the financial creditor to proceed against the corporate person being a guarantor due to the default committed by the principal borrower. The expression "claim" has been defined in Section 3(6), which means a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured. It also means a right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment in respect of specified matters.

19. Indubitably, a right or cause of action would enure to the lender (financial creditor) to proceed against the principal borrower, as well as the guarantor in equal measure in case they commit default in repayment of the amount of debt acting jointly and severally. It would still be a case of default committed by the guarantor itself, if and when the principal borrower fails to discharge his obligation in respect of amount of debt. For, the obligation of the guarantor is coextensive and coterminous with that of the principal borrower to defray the debt, as predicated in Section 128 of the Contract Act. As a

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

consequence of such default, the status of the guarantor metamorphoses into a debtor or a corporate debtor if it happens to be a corporate person, within the meaning of Section 3(8) of the Code. For, as aforesaid, expression "default" has also been defined in Section 3(12) of the Code to mean non-payment of debt when whole or any part or instalment of the amount of debt has become due or payable and is not paid by the debtor or the corporate debtor, as the case may be.

20. A priori, in the context of the provisions of the Code, if the guarantor is a corporate person (as defined in Section 3(7) of the Code), it would come within the purview of expression "corporate debtor", within the meaning of Section 3(8) of the Code.

21. It may be useful to also advert to the generic provision contained in Section 3(37). It postulates that the words and expressions used and not defined in the Code, but defined in enactments referred to therein, shall have the meanings respectively assigned to them in those Acts. Drawing support from this provision, it must follow that the lender would be a financial creditor within the meaning of the Code. The principal borrower may or may not be a corporate person, but if a corporate person extends guarantee for the loan transaction concerning a principal borrower not being a corporate person, it would still be covered within the meaning of expression "corporate debtor" in Section 3(8) of the Code.

22. Thus understood, it is not possible to countenance the argument of the Appellant that as the principal borrower is not a corporate person, the financial creditor could not have invoked remedy Under Section 7 of the Code against the corporate person who

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

*had merely offered guarantee for such loan account. That action can still proceed against the guarantor being a corporate debtor, consequent to the default committed by the principal borrower. **There is no reason to limit the width of Section 7 of the Code despite law permitting initiation of CIRP against the corporate debtor, if and when default is committed by the principal borrower. For, the liability and obligation of the guarantor to pay the outstanding dues would get triggered coextensively.***

23. To get over this position, much reliance was placed on Section 5(5A) of the Code, which defines the expression "corporate guarantor" to mean a corporate person, who is the surety in a contract of guarantee to a Corporate debtor. This definition has been inserted by way of an amendment, which has come into force on 6.6.2018. This provision, as rightly urged by the Respondents, is essentially in the context of a corporate debtor against whom CIRP is to be initiated in terms of the amended Section 60 of the Code, which amendment is introduced by the same Amendment Act of 2018. This change was to empower NCLT to deal with the insolvency resolution or liquidation processes of the corporate debtor and its corporate guarantor in the same Tribunal pertaining to same transaction, which has territorial jurisdiction over the place where the registered office of the corporate debtor is located. That does not mean that proceedings Under Section 7 of the Code cannot be initiated against a corporate person in respect of guarantee to the loan amount secured by person not being a corporate person, in case of default in payment of such a debt.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

24. Accepting the aforementioned argument of the Appellant would result in diluting or constricting the expression "corporate debtor" occurring in Section 7 of the Code, which means a corporate person, who owes a debt to any person. The "debt" of a corporate person would mean a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt. **The expression "debt" in Section 3(11) is wide enough to include liability of a corporate person on account of guarantee given by it in relation to a loan account of any person including not being a corporate person in the event of default committed by the latter. It would still be a "financial debt" of the corporate person, arising from the guarantee given by it, within the meaning of Section 5(8) of the Code.**

25. Notably, the expression "corporate guarantee" is not defined in the Code. Whereas, expression "corporate guarantor" is defined in Section 5(5A) of the Code. If the legislature intended to exclude a corporate person offering guarantee in respect of a loan secured by a person not being a corporate person, from the expression "corporate debtor" occurring in Section 7, it would have so provided in the Code (at least when Section 5(5A) came to be inserted defining expression "corporate guarantor"). It was also open to the legislature to amend Section 7 of the Code and replace the expression "corporate debtor" by a suitable expression. It could have even amended Section 3(8) to exclude liability arising from a guarantee given for the loan account of an entity not being a corporate person. Similarly, it could have also amended expression "financial debt" in Section 5(8) of the Code, "claim" in Section 3(6), "debt" in Section 3(11) and "default" in Section 3(12). There is no

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

indication to that effect in the contemporaneous legislative changes brought about.

26. The expression "corporate debtor" is defined in Section 3(8) which applies to the Code as a whole. Whereas, expression "corporate guarantor" in Section 5(5A), applies only to Part II of the Code. Upon harmonious and purposive construction of the governing provisions, it is not possible to extricate the corporate person from the liability (of being a corporate debtor) arising on account of the guarantee given by it in respect of loan given to a person other than corporate person. **The liability of the guarantor is coextensive with that of the principal borrower. The remedy Under Section 7 is not for recovery of the amount, but is for reorganisation and insolvency resolution of the corporate debtor who is not in a position to pay its debt and commits default in that regard.** It is open to the corporate debtor to pay off the debt, which had become due and payable and is not paid by the principal borrower, to avoid the rigours of Chapter II of the Code in general and Section 7 in particular.

27. In law, the status of the guarantor, who is a corporate person, metamorphoses into corporate debtor, the moment principal borrower (regardless of not being a corporate person) commits default in payment of debt which had become due and payable. Thus, action Under Section 7 of the Code could be legitimately invoked even against a (corporate) guarantor being a corporate debtor. The definition of "corporate guarantor" in Section 5(5A) of the Code needs to be so understood.



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA

Company Petition (IB) No. 173/KB/2022

28. A priori, we find no substance in the argument advanced before us that since the loan was offered to a proprietary firm (not a corporate person), action Under Section 7 of the Code cannot be initiated against the corporate person even though it had offered guarantee in respect of that transaction. Whereas, upon default committed by the principal borrower, the liability of the company (corporate person), being the guarantor, instantly triggers the right of the financial creditor to proceed against the corporate person (being a corporate debtor). Hence, the first question stands answered against the Appellant.”

(Emphasis Added)

38.7. Further, in ***K. Paramasivam vs. The Karur Vysya Bank Ltd. and Ors.*** reported in MANU/SC/1108/2022: [2022] 18 SCR 100, the Hon’ble Apex Court has laid down that:

“13. Under Section 7 of the IBC, CIRP can be initiated against a Corporate entity who has given a guarantee to secure the dues of a non-corporate entity as a financial debt accrues to the corporate person, in respect of the guarantee given by it, once the borrower commits default. The guarantor is then, the Corporate Debtor.”

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“16. The issues raised in this appeal are settled by this Court in *Laxmi Pat Surana (supra)*. As held by this Court in *Laxmi Pat Surana (supra)*, the liability of the guarantor is co-extensive with that of the Principal Borrower. The judgment in *Laxmi Pat Surana (supra)*, rendered by a three-Judge Bench of this Court is binding on this Bench. It was open to the Financial



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

**Creditor to proceed against the
guarantor without first suing the
Principal Borrower.**

(Emphasis Added)

Thus, the liability of the guarantor is co-extensive with the principal borrower, and it is open to the financial creditor to proceed against the corporate guarantor of its principal borrower, and CIR Process can be initiated against a corporate entity who has given a guarantee to secure the dues of a non-corporate entity as a financial debt accrues to the corporate person.

In the present case, having noted the default being in nature of failure to repay the loan (with interest) amount, the acknowledgment of liability in the balance sheets of the Corporate Debtor (Principal Borrower) and the Corporate Guarantor (the Corporate Debtor herein) all the attributes of “financial debt” are satisfied.

39. **On Limitation:**

39.1. It is discerned that the loan account of the principal borrower Barnaparichay Book Mall Private Limited was declared NPA on 31.12.2010.

39.2. A Revival letter with reference to the Term Loan Consortium Agreement dated 03.08.2009, was issued to the consortium of banks on 30.03.2012, by the corporate guarantor – the corporate debtor herein whereby it has acknowledged its liability towards the lead bank and its member, and confirmed that all the security document executed by the corporate debtor herein in favour of the consortium of banks in respect of such facilities are

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

subsisting, valid and effective and are fully enforceable against the corporate debtor.

39.3. On 12.07.2013, the consortium of banks through SBI issued a loan recall notice to the principal borrower – Barnaparichay Book Mall Private Limited wherein it invoked the guarantee given by all the guarantors including the corporate debtor herein, and accordingly, 12.07.2013 – date of invocation of guarantee is claimed to be the date of default.

39.4. We have noted that the principal borrower itself and on behalf of its corporate guarantor (the corporate debtor herein) have acknowledged their liability towards the banks in the audited balance sheet for the respective financial years of 2013-2014, 2014-2015 and 2015-2016, annexed at pages 8-74 to I.A. (IB) No. 1396/KB/2022. The relevant pages of the audited balance sheets for the respective financial years of 2013-2014, 2014-2015 and 2015-2016, are as under:

- i. Balance Sheet for the financial years of 2013-2014: Relevant Pages 48, 49 and 52 of I.A. (IB) No. 1396/KB/2022.
- ii. Balance Sheet for the financial years of 2014-2015: Relevant Pages 59 and 64 of I.A. (IB) No. 1396/KB/2022.
- iii. Balance Sheet for the financial years of 2015-2016: Relevant Pages 72 and 74 of I.A. (IB) No. 1396/KB/2022.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

39.5. It is settled law as discussed hereinabove that the liability of the corporate guarantor is co-extensive with the principal borrower, and accordingly, both the principal borrower and corporate guarantor are equally liable for the default.

39.6. Thus, the limitation got extended till March 2019, by virtue of the acknowledgement of liabilities towards banks in the audited balance sheets for the respective financial years of 2013-2014, 2014-2015 and 2015-2016.

39.7. Notably, the Principal Borrower Barnaparichay Book Mall Pvt. Limited even proposed an OTS on 30.06.2018 and provided a cheque of an amount of Rs. 50 Lakh as an advance and a part of the OTS amount, which was however rejected by the erstwhile bank on 21.07.2018.

39.8. Thus, in terms of the OTS proposal dated 30.06.2018 (annexed at page 66 to the petition) and its rejection letter dated 21.07.2018 (annexed at page 67 to the petition), the limitation got extended up to 29.06.2021.

39.9. We find that by virtue of Order passed by the Hon'ble Apex Court ***in Re: Cognizance for Extension of Limitation*** (in Suo Moto Writ Petition (C) No. 3 of 2022) reported in (2022) 3 SCC 117 dated 10.01.2022, the period, from 15.03.2020 to 28.02.2022, of 715 days would stand excluded from the period of 30.06.2018 to 29.06.2021, and to a further period of 90 days from 01.03.2022 which takes us to **30.05.2022**, as was allowed by the Hon'ble Apex Court where the limitation period would have expired during the period of 15.03.2020 to 28.02.2022. The extract of the order dated 10.01.2022 is reproduced verbatim as under:



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

“I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.”

(Emphasis Added)

39.10. Thus, we would note that the limitation to file this present petition that would have expired on 29.06.2021, by virtue of Sua Moto extension will expire after 90 days from 01.03.2022, which is on 30.05.2022.

39.11. Accordingly, we would hold that this petition filed by Union Bank of India, the financial creditor herein on 28.05.2022, is well within the limitation.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

Conclusion and Directions:

40. Thus, in terms of the above discussions, we are of the view that the present petition is complete in all respect and is not barred by limitation. Further, the amount claimed to be in default is far excess of the threshold limit as prescribed under Section 4 of the I&B Code.

41. In terms of the foregoing discussions, we **ALLOW** the application bearing **Company Petition (IB) No. 173/KB/2022** filed under **Section 7 of the I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIR Process)** in respect of the Corporate Debtor by the following **Orders**:

- i.** The Application filed by **UNION BANK OF INDIA (Financial Creditors)**, under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **ADMITTED** for initiating the **Corporate Insolvency Resolution Process** in respect of **M/S. BENGAL SHELTER HOUSING DEVELOPMENT LIMITED (Corporate Debtor)**.
- ii.** As a consequence of this Application being admitted in terms of Section 7 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
- iii.** Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

- 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 asset 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*
- d)** *The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.*

[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

- iv.** The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- v.** The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

Government in consultation with any financial sector regulator.

- vi. The Applicant has proposed the name of **“Mr. Mahesh Chandra Gupta”**, Address: FE-202, SALT LAKE CITY, SECTOR -III, 1ST FLOOR, Kolkata, West Bengal, 700106, Registration no. IBBI/IPA-001/IP-P-01489/2018-2019/12304, Email id. mcgupta90@gmail.com, as the “IRP”. We have perused that there is a written communication and consent of IRP in Form 2 with Affidavit, annexed as Annexure “E” at pages 21-28 to the petition, as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or IIP of ICAI. In addition, further necessary disclosures have been made by **“Mr. Mahesh Chandra Gupta”** as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7(3)(b) of the code. Hence, we appoint **“Mr. Mahesh Chandra Gupta”** as the **Interim Resolution Professional** (IRP) of the Corporate Debtor to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.

- vii.** In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the Code and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- viii.** During the CIR Process period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the I&B Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- ix.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned **Police Authorities** and/or the **Officer-in-Charge** of Local Police Station(s) to

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

render all assistance as may be required by the Interim Resolution Professional in this regard.

- x.** The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIR Process in respect of the Corporate Debtor.
- xi.** The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).
- xii.** In terms of sections 7(5) and 7(7) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (RoC), to whom the company is registered with, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 173/KB/2022

this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

- xiv.** The Resolution Professional shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIR Process in respect of the Corporate Debtor to this Adjudicating Authority from time to time.
- xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.

42. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

43. Post the Company Petition on **07/ 10/ 2025** for filing the Periodical Progress Report by the IRP/RP as appointed herein.

**Cmde. Siddharth Mishra
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order is signed on 29th Day of August 2025.

Bose, R. K. [LRA]