



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – I**

**IA.No. 492 OF 2021  
IN  
CP (IB) No. 203/95/HDB/2021**

*Under Section 5 of the Limitation Act read with Rule 11 of the National  
Company Law Tribunal Rules, 2016*

**Between:**

Central Bank of India

A Banking Institution established under the  
Banking Companies (Acquisitions and Transfer of  
Undertakings) Act, 1970, having its registered office at  
Chandramukhi building, Nariman point, Mumbai and a  
Branch inter alia called as SAM-V Branch, Hyderabad,  
Telangana State represented by its authorized signatory.

... Applicant/ Financial Creditor

**AND**

1. Mr. K.Shashidhar,  
S/o K. Suryanarayana,  
R/o. Kamineni House,  
King Koti Road, Hyderabad-500001.

...Respondent No.1/Personal Guarantor

2. M/s. Kamineni Steel and Power India Limited  
A company incorporated under the  
Provisions of the Companies Act, 1956  
Having its registered office at Kamineni House,  
4<sup>th</sup> Floor, King Koti, Hyderabad - 500001

... Respondent No.2/ Corporate Debtor

**DATE OF ORDER: 29.01.2025**



**CORAM:-**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA,  
HON'BLE MEMBER (JUDICIAL)  
SHRI. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

**PARTIES/COUNSELS APPEARANCE: -**

For the Applicant : Mr. VVSN Raju, Counsel

For the Respondent No.1 : Mr. P.Vikram, Senior Counsel along with  
Mr.B.Nitish, Counsel

**PER: BENCH**

**ORDER**

1. This application is filed by the Applicant/Financial Creditor under Section 5 of Limitation Act read with Rule 11 of National Company Law Tribunal Rules, 2016 praying to condone the delay of 201 days and allow the Petition under Section 95 against the Respondents for insolvency resolution process, for adjudication.
2. **The averments of the Application in brief as follows:**
  - 2.1 It is averred that the Corporate Debtor who is Respondent No. 2 herein, had been granted, from time to time, various credit facilities, since 2011 in the form of Fund based and non-fund-based limits by the Applicant / Financial Creditor herein to meet its business needs and for its steel plant. The Respondent No.1 herein executed Deed of Guarantee dated 24.12.2014 guaranteeing the repayment of the said credit facilities.



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2.2 It is averred that the share of the Applicant Bank in the said facilities sanctioned by the consortium banks under the leadership of Indian Bank is Rs. Rs 156.16 Cr. After executing necessary documents and securities, the CD availed the credit facilities. The said limits were restructured during 2014, 2015 after taking into consideration the business needs of the CD. The Respondents herein, who are the borrower and the guarantor for the said credit facilities, executed necessary documentation on 11.02.2015, thereby securing the total amount of Rs. Rs. 1322.91 Crore sanctioned by the consortium to the CD and further executed revival letter dated 31.01.2015 and 04.05.2015.

2.3 It is submitted that the Personal Guarantor, Respondent No.1 herein executed a Deed of Guarantee dated 24.12.2014 under which he undertook :

***“In the event of any default on the part of the Borrower, in payment/ repayment of any moneys referred to above, or In the event of default on the part of the Borrower to Comply with or perform any of the terms, conditions and covenants contained in the Facility Agreement and the other Transaction Documents, the Guarantors shall, upon demand, forthwith pay to the lenders without demur all the amounts payable by the Borrower under the Transaction Documents. Any such demand made by the Lenders on the Guarantors shall be final, conclusive and binding notwithstanding any difference or any dispute between the Lenders on the Guarantors shall be final, conclusive and binding notwithstanding any difference or any dispute between the Lenders and the Borrower/arbitration or other legal proceedings, pending before any court, tribunal, arbitrator or any other authority.”***



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2.4 It is averred that the CD and the Respondent No.1 herein failed to comply with the Terms and Conditions of the Loan Documentation as a result the loan accounts became irregular and were classified as NPA on 31.12.2015 as per the guidelines issued by the RBI from time to time in this regard. An amount of Rs.287.64 Cr is due and payable by the CD to the FC herein as on 14.12.2020. That the said Guarantee Agreement was invoked by the Bank vide its Demand Notice dated 21.01.2017. However, the Respondents failed to make the payment as demanded in the notice.

2.5 The Corporate Debtor was referred to this Tribunal vide CP(IB) 11/10/HDB/2017 dated 26.10.2018 under Section 10 of the Insolvency and Bankruptcy Code, 2016. This Tribunal vide its order dated 26.10.2018 initiated Corporate Insolvency Resolution Process against the CD in CP(IB) 11/10/HDB/2017 and as there has been no resolution plan, the CD was ordered for liquidation and liquidation proceedings are pending.

2.6 It is averred that the Respondent No. 1 issued a demand notice on 15.12.2020 date demanding an amount Rs.287,63,91,873 in terms of the Rule 7 (1). However, the Respondent No. 1 did not pay the amount



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despite service of notice. Cause of Action for this arose on 21.01.2017 when the guarantee was invoked by the Bank. As the Respondent herein failed to pay the amount the cause of action is continuing. It is a settled legal position that the cause of action against Guarantors who executed continuing Guarantee arises on the date of demand. The same was elaborately explained by the Hon'ble Supreme Court in the matter of *Margaret Lalita Samuel vs Indo Commercial Bank Ltd.* Hence the cause of action arose on the said date mentioned hereinabove and it is continuing till date.

2.7 It is submitted that due to outbreak of the COVID-19 and the consequent lockdown imposed by Central as well as State Governments commencing from 25.03.2020 to 31.05.2020 the Applicant Bank could not initiate action under Section 95 of the IBC for insolvency resolution of personal guarantor against the Respondent No. 1. The delay of 201 days in filing the said Petition under Section 95 of the IBC, 2016 is due to the prevailing pandemic COVID-2019 and the lockdown imposed by the Governments restricting all activities. Further, the delay occurred due to the circumstances and the reasons that are beyond the control of the Applicant. If the delay of 201 days is not condoned, the Applicant



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Bank which is dealing with the Public Money would suffer irreparable loss. The condonation of delay would not cause any prejudice to the Respondents.

2.8 It is averred that as per the Order dated 23.03.2020 of the Hon'ble Supreme Court in the matter of *SUO MOTU PETITION (CIVIL) NO. 3/2020* the Limitation period shall stand extended with effect from 15.03.2020 till further orders. It is submitted that in view of the above said orders, the Petition would be within the limitation period, however, as a matter of abundant caution, the present Application is filed for condonation of the delay.

2.9 It is further submitted that in the matter of *Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminium Industries Pvt. Ltd. 2020 Ibclaw.in 16 SC*, the Hon'ble Supreme Court while dealing with various provisions of Limitation Act for the purpose of filing applications under the provisions of the IBC, observed that, in appropriate cases applications under Section 5 of the Limitation Act for condonation of delay in filing applications before NCLT under the provisions of IBC could be filed.



**3. Counter filed by the Respondent No.1, inter-alia stating that:**

3.1 It is averred that the Financial Creditor has filed the present application seeking condonation of delay of 201 days in filing the company petition. It is submitted that as per the Financial Creditor, the cause of action arose when Financial Creditor has issued invocation notice dated 21.01.2017. It is submitted in the application that as per Hon'ble Supreme Court order dated 20.03.2020 passed in SUO MOTO PETITION (CIVIL) No. 3/2020, the limitation period from 25.03.2020 till further orders is saved. It is pertinent to note that the Financial Creditor fail to explain as to how the limitation is saved from 27.01.2020 till 15.03.2020 when Hon'ble Supreme Court order states that the limitation is saved only from 15.03.2020. As the Company petition is filed after three years from invocation notice dated 21.01.2017, the same is not maintainable and liable to be dismissed.

3.2 The Respondent in his counter mentioned para wise reply. In reply to para 10, the same is regarding the covid situation prevailing the country and Hon'ble Supreme Court orders and needs no reply. It will suffice to submit that the Hon'ble Supreme Court order would not cover the period before 15.03.2020 and in the present case the three years time is



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completed on 21.01.2020 but the company petition is filed on 27.07.2021. It is submitted that the Financial Creditor under garb of Supreme Court order is seeking to condone the period before lockdown.

3.3 In reply to para 12, it is submitted that position of law laid down the Hon'ble Supreme Court is not disputed but in the present case, for the reasons stated above, the delay filing in the company petition cannot be condoned and company petition is liable to be dismissed. It is submitted that Financial Creditor and other banks have mentioned about the status of the account as NPA as 01.11.2014 itself, therefore Personal Guarantor would not have definitely executed his personal guarantee to the Corporate Debtor loan accounts with the Financial Creditor vide his personal guarantee dated 24.12.2014. Hence, the alleged guarantee relied upon by the Financial Creditor was obtained by suppression of material facts and hence is not enforceable under law.

4. **Counsel for the Applicant/Financial Creditor filed memo dated 13.03.2023 as per the directions of this Tribunal vide order dated 30.01.2023 about the period of limitation, inter-alia stating that:**

4.1 It is submitted that the Application is within the prescribed period of limitation. The same is produced below herewith:-



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Sl.No.	DATE	LIST OF EVENTS
1.	24.12.2014	The Respondent No.1/Personal Guarantor executed a Deed of Guarantee in favour of the Applicant.
2.	07.02.2015	The Respondent No.1/Personal Guarantor executed another Deed of Guarantee in favour of the Applicant.
3.	31.12.2015	Loan Accounts of the Respondent No.2/ Corporate Debtor of the Respondent No.1 by issuing the Demand Notice.
5.	31.03.2018	Date when the Corporate Debtor acknowledged the debt in its audited balance sheets for FY 2017-2018, thereby, extending the period of limitation.
6.	15.12.2020	The Limitation got extended when the Applicant issued Form B demand notice.
7.	15.03.2020- 28.02.2022	Period from 15.03.2020 to 28.02.2022 was excluded from the period of Limitation owing to COVID-19 vide the order of the Hon'ble Supreme Court in Re: Cognizance for extension of Limitation (Miscellaneous Application No.21 of 2022)
8.	27.07.2021	The Applicant herein filed a petition to initiate the Insolvency Resolution Process against the Respondent No.1 vide C.P. (IB) 203/95/HDB/2021.

4.2 It is averred that the Personal Guarantee was invoked on 21.01.2017 and the cause of action arose on that date. Later the Corporate Debtor acknowledged the debt vide its Balance Sheets dated 01.04.2017 to



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31.03.2018, which extended the Limitation by a period of 3 years from the date of such acknowledgement. As per the Clause 19 of the Guarantee Agreement, the Balance Sheets and the financial statements acknowledging the debt shall also extend limitation against the Guarantor.

4.3 It is submitted that the Hon'ble Supreme Court in *Dena Bank Vs. C.Shiva Kumar Reddy* has held that Balance Sheets and Financial Statements of the Corporate Debtor constitute acknowledgment of liability which extends the limitation by 3 years. It is further submitted that the Hon'ble NCLAT in *Arrow Engineering Ltd. Vs. Golden Tobacco Ltd.*, has held that the acknowledgement of debt in the balance sheet triggers a fresh period of limitation on each acknowledgement. Therefore, a fresh period of limitation started from 31.03.2018. Further, the Hon'ble Supreme Court in Re: Cognizance for extension of Limitation (Miscellaneous Application No. 21 of 2022) was pleased to further extend the period of limitation till 28.02.2022.

4.4 The Company Petition against the Personal Guarantor was filed on 27.07.2021. By virtue of the aforesaid acknowledgement, the Company Petition is filed well within the period of 3 years from the date of



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acknowledgement after taking into consideration the dictum of Hon'ble Supreme Court's suspending the limitation period due to COVID-19 from 15.03.2020 till 28.02.2022. Therefore, the Company Petition is well within Limitation period.

**5. Counsel for the Respondent No.1 filed written submissions by reiterating the submissions of the counter, apart from that:**

**A. The Financial Creditor has not invoked the Deed of Guarantee dated 24.12.2012:**

5.1 It is settled law that a guarantee may be invoked only in the mode and manner as prescribed/stipulated in the deed of guarantee and liability in an 'on demand' guarantee shall arise only when the guarantee has been invoked/payment under the guarantee is demanded. Thus, the right to sue accrues only when the Deed of Guarantee is invoked by the Financial Creditor. [Reliance in this regard is placed on *Syndicate Bank vs. Channaveerappa Beleri & Ors., (2006) 11 SCC 506 Paragraph Nos. 9 and 12* and *Pooja Ramesh Singh v. State Bank of India and Anr., 2023 SCC OnLine NCLAT 193*].

5.2 It is submitted that as a matter of fact, the Deed of Guarantee was not invoked by the Financial Creditor herein, no demand was made by the



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Financial Creditor for payment under the guarantee and no invocation notice was issued by the Financial Creditor to the Personal Guarantor herein. During the course of hearing on 05.01.2024, the counsel for the Financial Creditor herein has himself admitted that an invocation notice was not issued, and the notice issued under the SARFAESI Act, 2002, ought to serve as a demand/invocation notice. The said submission is not sustainable in the eyes of law as the notice under the SARFAESI Act, 2002 is a statutory notice and has nothing to do with invocation of an on-demand guarantee.

- 5.3 Therefore, in the absence of express invocation/ demand being made by the Financial Creditor, the Personal Guarantor is not liable to make any payment on behalf of the Corporate Debtor and the present company petition ought to be dismissed. [Reliance placed on *Amanjyot Singh v. Navneet Kumar Jain and 3 others, Company Appeal (AT) (INS) No. 961 of 2022*].

**B. The present Company Petition is barred by limitation:**

- 5.4 It is pertinent to mention that in *Suo Moto Petition (Civil) No. 3 of 2020*, the Hon'ble Apex Court only excluded the period starting from



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15.03.2020. The relevant portion from the final order dated 10.01.2022 is as follows:

*“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.”*

5.5 From the above it emerges that in the present case, as per the submission of the Financial Creditor (i.e., to consider the notice dated 21.01.2017 as an invocation notice) the limitation period to file the Company Petition expired on 21.01.2020 and the same does not fall within the period of limitation excluded by the Hon'ble Apex Court. The Financial Creditor has failed to explain how the three-month period between 21.01.2020 and 15.03.2020 shall be excluded by virtue of the order passed by the Hon'ble Apex Court.

**C. Acknowledgment of the debt by the Corporate Debtor would not amount to acknowledgment of debt by the Personal Guarantor herein:**

5.6 It is further submitted that in order to overcome the obstacle of limitation, the Financial Creditor through a memo dated 17.02.2022 and I.A. No. 1250 of 2022 stated that the Corporate Debtor (from 01.04.2017 to 31.03.2018) acknowledged the debt in its balance sheets. Further, the Financial Creditor placed reliance on Clause 19 of the



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Guarantee Agreement which states that any acknowledgment of debt by Corporate Debtor would amount to acknowledgment by the Guarantor and thus, extend the limitation period of the Personal Guarantor. In view of the same, it has been stated that the limitation period for filing of the Petition would be extended by three (3) years from 31.03.2018.

**D. The Deed of Guarantee dated 24.12.2014 was executed by the Personal Guarantor based on misrepresentations made by the lenders:**

5.7 The Personal Guarantor herein only acquiesced to extend a personal guarantee due to the following representations of the lenders:

- i. As per the bank engineer's valuation report dated 25.08.2014, the value of the immovable assets that on which equitable mortgage was created by the Corporate Debtor and the same was extended as security to the lenders as against the facilities sanctioned by them, was Rs. 1240 crores. The said value was much higher than the total liability of the lenders/ net loan disbursed by the lenders Rs 1192 crores.
- ii. When the guarantee was extended by the Personal Guarantor herein (on 24.12.2014), the account of the Corporate Debtor was a 'standard' account. The same was acknowledged by the lead bank (Indian Bank) even in the sanction letter dated 11.08.2014 and also in sanction letters dated 27.03.2015 and 15.12.2015. The account of Corporate Debtor was also confirmed as being 'standard' as late as 2016 in the consortium meeting of the lenders that was held on 25.02.2016. However, on 10.03.2016, the lenders issued a letter communicating that the loan account of the Corporate Debtor has been classified as a non-performing asset (NPA) with retrospective effect from 01.11.2014.

5.8 Thus, in view of Section 142 and 143 of the Indian Contract Act, 1872 any guarantee obtained by misrepresentation shall be considered invalid



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in the eyes of law. In the present case, the guarantee was obtained through misrepresentation of material information and the same is unenforceable against the Personal Guarantor and the guarantor stands discharged from the same.

6. In view of the rival contentions raised by both the parties, the following point arises for consideration before this Tribunal:

**Whether this Application under Section 5 of Limitation Act can be allowed for considering Petition under Section 95 of IBC against the guarantor?**

7. We have heard Learned Counsel Mr. VVSN Raju for the Applicant/ Financial Creditor and Learned Senior Counsel Mr.P.Vikram along with Counsel Mr.B.Nitish for the Respondent/ Personal Guarantor, perused the record.

**Point:**

**Whether this Application under Section 5 of Limitation Act can be allowed for considering Petition under Section 95 of IBC against the guarantor?**

8. Before we proceed to decide the point, we would like to place on record certain aspects of this case:

- i. On 09.01.2023 this Tribunal passed order in respect of this IA as under:

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*It is not found that post filing of Company Petition u/s 95 of the Code, the present application under Sec 5 of the Limitation Act seeking to condone*



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*the delay in filing the Company Petition has been filed. The procedure required that the delay need to be condoned before registering a Petition u/s 95 of IBC. However, in the instant case, the Petitioner further having got his application filed u/s95 registered filed the present application which in our opinion is not proper.*

*We therefore direct the Financial Creditor to get ready in IA (IBC) 492/2021 and subject to the outcome in this application, the Company Petition u/s 95 IBC which is numbered as Company Petition IB/203/2021 will be taken up. Let the Company Petition IB 203/2021 be kept in abeyance, till the final outcome of the limitation application.*

*For hearing IA (IBC) 492/2021 finally list the matter on 30.01.2023.*

In view of this order the Company Petition was kept in abeyance and hearing was done in this application.

- ii. On 30.01.2023 this Tribunal directed the Applicant to explain by way of memo as to how this application is within the period of limitation. Though this IA was posted for orders on 05.02.2024 but was again reopened for additional clarification on limitation on 30.07.2024. After hearing learned counsel for the Creditor and at request of both sides this Tribunal decided to hear on following aspects:

- A. Whether the demand notice issued under the provisions of the SARFAESI Act which does not contain explicitly, the demand to pay the amount due under the Personal Guarantee, constitute a valid demand notice to the creditor to pay the guarantee amount?**
- B. Whether the acknowledgment of debt in the balance sheet of the Corporate Debtor by the Resolution Professional, can be treated as acknowledgment' within the meaning under section 18 of the Limitation Act? if so, whether such an acknowledgment can bind the personal guarantor?**



*C. When once the guarantee is invoked, can any subsequent acknowledgment of debt by the principal borrower be considered as an acknowledgment under section 18 of the Limitation Act, for the Personal Guarantor?*

Consequently, both sides were heard on these issues and order was reserved on 19.12.2024.

**THE SUBMISSIONS:**

9. The Learned Counsel for the Applicant submits that this IA has been filed by the Applicant/ Financial Creditor under Section 5 of Limitation Act with a prayer to allow the Petition under Section 95 of Insolvency and Bankruptcy Code, 2016 and condone the delay of 201 days in filing the Petition.
10. The Learned Counsel for the Applicant submits that Personal Guarantor executed a deed of guarantee dated 24.12.2014, guaranteeing the repayment by the Corporate Debtor. Since accounts of the Corporate Debtor were classified as NPA on 31.12.2015, the said guarantee was invoked by the Applicant bank vide its demand notice dated 21.01.2017.
11. The Learned Counsel for the Applicant further submits that again the demand notice was issued on 15.12.2020, demanding an amount of Rs.287,63,91,873/- in terms of Rule 7(1) of Insolvency and Bankruptcy



Code, 2016. However, the Respondent No.1 did not pay the amount despite service of the notice.

12. Learned Counsel while submitting on the issues raised by this Tribunal on 30.07.2024, *supra*, submitted as under:

**Issue no.1:** Learned Counsel submitted that the demand notice issued under Section 13(2) of the SARFAESI Act, 2002 is a valid invocation of personal guarantee and the same is valid as per the law as in the said notice, the R1/ Personal Guarantor herein was also specifically called upon to pay the amounts defaulted by the borrower.

13. The Learned Counsel also brought our attention to one para on page 4 of the notice dated 21.01.2017 , wherein the guarantor has been called upon to pay the amount due as on 21.01.2017 amounting to Rs.176,55,60,844.18. Learned Counsel also relied on case laws, ***Bank of Maharashtra V/s. Mr. Anand Ghadigaonkar***, by NCLT, Mumbai Bench, ***Bank of Baroda V/s. Mr. Yogesh Maheshwari***, by NCLT, New Delhi Bench and ***K.M. Sebastine (Kalarithara Michael Sebastine) Personal Guarantor of Schiffli's India Ltd. V/s. State Bank of India and Ors.***, by Hon'ble NCLAT, Principal Bench, New Delhi.



14. The Learned Counsel submitted that on perusal of these case laws and placing reliance on them, it is very much clear that Personal Guarantee was invoked by the Applicant herein against the Respondent No.1 vide demand notice issued dated 21.01.2017 issued under Section 13(2) of SARFAESI Act, wherein the Respondent No.1 was called upon to repay the outstanding dues within 60 days from the date of the said notice. Hence, the limitation will start from the 60<sup>th</sup> day of the demand notice when personal guarantor failed to pay the dues in 60 days.
15. **Issue No.2:** Learned Counsel submitted that the Applicant has filed balance sheet of the Corporate Debtor for the Financial Year 2017-2018 which was signed by the Personal Guarantor in his capacity as Director of the Corporate Debtor. Learned Counsel further submitted that this balance sheet was taken on record in IA.No.1250 of 2022 vide order dated 09.01.2023 of this Tribunal. Learned Counsel submitted that acknowledgement made in the balance sheet extends limitation period by 3 years from the date of the balance sheet. Thus, Petition is filed within the limitation period. Learned Counsel submitted that Personal Guarantor also submitted an OTS letter 23.08.2021 to settle the



outstanding dues which also clearly constituted as an acknowledgement of debt.

16. **Issue No.3:** Learned Counsel submitted on this point that the liability of the surety is co-extensive with that of the principal debtor as per Section 128 of the Indian Contract Act, 1872 which has been reiterated by the Hon'ble Supreme Court in a catena of cases including *Industrial Investment Bank of India Vs. Biswanath Jhunhunwala*. The Learned Counsel placed emphasis on para 21 and paras 24 and 25 of this judgment.
17. Learned Counsel further submitted that relying on the said judgment it is clear that admission or acknowledgement by the Corporate Debtor is a binding on the Personal Guarantors. Learned Counsel submitted that in view of the same, it is clear that the acknowledgement made in the balance sheet by the Corporate Debtor is a valid acknowledgement for Section 18 of the limitation act by the Personal Guarantor. Hence, the case is not barred by law of limitation.
18. The Learned Counsel further submits that delay of 201 days till filing of the said petition is due to the prevailing pandemic COVID-2019 and



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the lockdown imposed by the Government restricting all activities and that is the reason the delay occurred due to the circumstances beyond the control of the Applicant.

19. *Per contra* the Learned Counsel for the Respondent submitted that as per Hon'ble Supreme Court order dated 20.03.2020 passed in *SUO MOTU PETITION (CIVIL) NO. 3/2020* the limitation period from 25.03.2020 is saved and due to the said order of the Hon'ble Supreme Court, the Applicant has already got the relief on account of the COVID-2019.
20. The Learned Counsel submits that the Financial Creditor has failed to explain as to how the limitation is saved from 27.01.2020 to 15.03.2020, when the Hon'ble Supreme Court issued the said order. Learned Counsel further submits that the notice on 21.01.2017 was issued under the SARFAESI Act, 2002 and therefore it has nothing to do with the invocation of a demand guarantee.
21. The Learned Counsel further submits that acknowledgement of debt by the Corporate Debtor through balance sheet dated 31.03.2018 would not amount to acknowledgement by the Personal Guarantor. The



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Learned Counsel also submits that the deed of guarantee dated 24.12.2014 was executed by the Personal Guarantor based on the misrepresentation made by the lenders in terms of value of the immovable assets on which equitable market was created and the representation that account of the Corporate Debtor was standard account on 24.12.2014. However, on 10.03.2016 the lenders issued a letter communicating that the loan account of the Corporate Debtor has been classified as Non-Performing Asset with retrospective effect from 01.11.2014.

22. Learned Counsel submits that thus in view of Section 142 and 143 of the Indian Contract Act, 1872 any guarantee obtained by misrepresentations shall be considered invalid in the eyes of law.

**OUR FINDINGS AND ANALYSIS :**

23. We observe from the submissions of both the counsels and records filed before us that the Application has been filed under Section 5 of Limitation Act, 1963, seeking condonation of delay of 201 days and allow the Petition under Section 95 of Insolvency and Bankruptcy Code, 2016. In view of the same we feel it proper to extract Section 5 of Limitation Act, 1963 which is extracted as below:



*“Section 5 in The Limitation Act, 1963*

*5. Extension of prescribed period in certain cases. —*

*Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.*

*Explanation. —*

*The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”*

24. We observe that though the application has been filed under Section 5 of the Limitation Act for condoning the delay but the main justifications of the Applicant herein are to justify that the Application is well within the limitation period. If that be so, there is no need to file this application for condoning delay. However, since both the parties are contending on the issue of limitation, we find it proper to decide whether the petition is filed within limitation or not.
25. We further find that the first issue of conflict is that whether the demand notice issued under the provisions of the SARFAESI Act constituted a valid demand notice to the Creditor to pay the guarantee amount. We have perused the said demand notice dated 21.01.2017 and usefully would like to extract following paragraphs of the said notice:



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“In spite of repeated demands calling upon you to pay the outstanding dues together with applicable interest, all of you and each of you who are jointly and severally liable have not regularized the limits and have failed and committed default in repaying the amount due and therefore the account was classified as NPA since 31.12.2015, in accordance with the prudential norms/directions/ guidelines relating to asset classification issued by the Reserve Bank of India. Thereby

We inform you that, the outstanding dues payable by you as on 20.01.2017 amounts to Rs.176,55,16,844.18 (Rupees One Hundred and Seventy-Six Crores Fifty-Five Lakhs Sixteen Thousand Eight Hundred Forty-Four and Paise Eighteen Only) plus future interest, charges and cost thereon till the date of repayment, the details of which is given hereunder. You have defaulted in payment of entire amount of Rs.176,55,16,844.18 (Rupees One Hundred and Seventy-Six Crores Fifty-Five Lakhs Sixteen Thousand Eight Hundred Forty-Four and Paise Eighteen Only) (which represents the principle plus interest up to 20.01.2017) plus future interest, charges and cost thereon.

Therefore, all of you and each of you are hereby called upon to pay the amount due as on 20.01.2017 amounting to Rs. 176,55,16,844.18 (Rupees One Hundred and Seventy-Six Crores Fifty-Five Lakhs Sixteen Thousand Eight Hundred Forty-Four and Paise Eighteen Only) together with interest, charges and cost from 20.01.2017 till date of payment within 60 days from the date of this notice issued under Section 13(2), failing which the Bank will be constrained to exercise its rights of enforcement of security interest without any further reference to you under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. If you fail to discharge your liabilities in full within 60 days from the date of the notice, we shall be exercising our enforcement rights under Section 13(4) of the Act, as against the secured assets given in the schedule hereunder.”

On perusal of these paragraphs, it is very much clear that a demand to pay an amount of Rs. 176,55,16,844.18 (Rupees One Hundred and Seventy-Six Crores Fifty-Five Lakhs Sixteen Thousand Eight Hundred Forty-Four and Paise Eighteen Only) was made on 21.01.2017 the personal guarantor who received of the said notice. Though the said notice was issued under Section 13(1) of SARFAESI Act, the personal guarantor cannot take a plea that he was not having information about



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the said demand notice issued on Corporate Debtor and on him as guarantor.

26. Hon'ble Supreme Court in the matter of *Bishan Dass and others Vs.*

*Union Territory of J&K and others* held that:

*“21.2) If from the facts it can be inferred that a party knew about the subject matter of the notice, knowledge is imputed by implied notice. For example, if the purpose of the notice is to require a party to appear before an authority on a particular date, even though such a notice is not personally served on him, if the person appears before the authority on that date of participates in the subsequent proceedings, then the person can be said to have implied notice.”*

27. We have also perused the judgment passed by co-ordinate benches in this regard and relevant portion of the said judgments are extracted as below:

The Mumbai Bench of NCLT in the matter of **Bank of Maharashtra Vs Mr. Anand Ghadigaonkar**, while considering the matter ,held that the demand notice issued under Section 13(2) of the SARFAESI Act, is a valid invocation of personal guarantee. The relevant portion of the judgment is extracted below:

*“28.... Accordingly, the guarantee in question was invoked on 31.10.2014. Pursuant to notice under Section 13(2) of the SARFAESI act and the respondent guarantors was also called upon to pay the amount claimed to be in default in the said notice.”*

New Delhi Bench of NCLT in the matter of **Bank of Baroda Vs Mr. Yogesh Maheshwari**, held the following:



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*“26. Particularly, in view of the fact that the Personal Guarantor has not denied the execution of the Personal Guarantee and service of the notice under 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.”*

28. Thus, relying on the contents of the SARFAESI notice which clearly contains a demand raised on each address of the demand notice including personal guarantor who is respondent in this case, we are of the opinion that this SARFAESI notice issued on 20.01.2017 is a valid invocation of personal guarantee.
29. We further observed that the Respondent’s contention is that even if this notice is considered as a notice of invocation the limitation period available to the Applicant is only up to 20.01.2020 i.e., 3 years from the date of notice i.e., 21.01.2017. Respondents further submits that even if we take into account the period extended through Hon’ble Supreme Court order dated 20.03.2020 which extends limitation period from 15.03.2020 till 28.02.2022, the period from 20.01.2020 to 14.03.2020 is not covered by limitation and hence the petition is barred by limitation. The applicant rejecting the said arguments submits that through its notice 60 days’ time was given for payment of dues from the date of notice and in view of the same the period of limitation would begin to run from 21.03.2017, from the date when the default occurred



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and not from the date of notice i.e., 21.01.2017. Learned Counsel further submitted that though on this account the Petition is filed within the limitation. The applicant submits that though the petition is within limitation on account of 60 days period allowed for payment but even if we do not consider the same, the limitation was also extended through acknowledgement of debt in the balance sheet dated 31.03.2018. Thus, in any case the petition is within limitation.

30. We have perused the said documents filed with IA.No. 1250 of 2022 and find that form No. AOC-4 in respect of financial statement for the year ended 31.03.2018 was filed by the Personal Guarantor, Mr. Shashidhar in his capacity as director of the Corporate Debtor through his digital signature which clearly acknowledges the loans from the banks. In the balance sheets, we also find a mention of the OTS proposal given by the Corporate Debtor to the banks. Therefore, we have no doubt that the limitation period is extended for the Corporate Debtor by 3 years from the date of acknowledgement in the balance sheet i.e., 31.03.2018. Since, we accept extension of limitation period through acknowledgement in the balance sheet, we are not giving any finding on the extension of limitation by 60 days, period for payment of amount



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due. The respondent has also taken a plea that condition of guarantee document being payable on demand this granting of 60 days period cannot be valid as per law. Be it as it may, since we have accepted the contention of the applicant that acknowledgement of debt in the Balance Sheet dated 31.03.2018 has extended limitation period till 30.03.2021, we are not giving any finding on the contention pertaining to extension of 60 days of limitation on account of period allowed for payment of the dues in the demand notice.

31. The last issue which remains to be decided is whether this subsequent acknowledgement of the debt through Balance Sheet, post issuance of invocation notice, be considered as an acknowledgement of the Limitation, on behalf of the Personal Guarantor also. The Applicant to substantiate his point has relied on judgment delivered by Hon'ble Supreme Court in *Industrial Investment Bank of India Ltd. Vs. Biswanath Jhunjunwala* which says that surety's liability is co-extensive with that of the principal debtor. The relevant portion of the Judgement is extracted as below:

*"21. The term "co-extensive" has been defined in the celebrated book of Pollock & Mulla on Indian Contract and Specific Relief Act, Tenth Edition, at page 728 as under:*

*"Co-extensive. – Surety's liability is co-extensive with that of the principal debtor. A surety's liability to pay the debt is not removed by reason of the*



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*creditor's omission to sue the principal debtor. The creditor is not bound to exhaust his remedy against the principal before suing the surety, and a suit may be maintained against the surety though the principal has not been sued."*

*24. A Division Bench of the Bombay High Court in Jagannath Ganeshram Agarwala v. Shivnarayan Bhagirath and Ors. AIR 1940 Bombay 247 held that the liability of the surety is co-extensive, but is not in the alternative. Both the principal debtor and the surety are liable at the same time to the creditors.*

*25. A Division Bench of the High Court of Karnataka, in The Hukumchand Insurance Co. Ltd. v. The Bank of Baroda & Others AIR 1977 Kant 204 had an occasion to consider the question of liability of the surety vis-à-vis the principal debtor. The court held as under:*

*"The question as to the liability of the surety, its extent and the manner of its enforcement have to be decided on first principles as to the nature and incidents of suretyship. The liability of a principal debtor and the liability of a surety which is co-extensive with that of the former are really separate liabilities, although arising out of the same transaction. Notwithstanding the fact that they may stem from the same transaction, the two liabilities are distinct. The liability of the surety does not also, in all cases, arise simultaneously."*

32. In the above factual matrix, we intend to find whether the purported acknowledgement of debt through Balance Sheet dated 31.03.2018 binds the Respondent i.e., Corporate Guarantor in extending the period of limitation, despite the fact that the said guarantee has already been invoked. Thus, the question before us is whether an acknowledgement of debt binding the principal borrower can extricate the guarantor from the renewed limitation accruing under Section 18 of the Limitation Act.
33. This issue is no more res-integra as Hon'ble NCLAT, Principal Bench, New Delhi, in its judgment dated 27.04.2022 in Bijay Kumar Agarwal



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v State Bank of India and another, Company Appeal (AT) (Insolvency)

No. 105 of 2022, held that;

*“26. ‘The above question is no more res-integra. The Hon’ble Supreme Court in Laxmi Pat Surana vs. Union Bank of India and Anr. - (2021) 8 SCC 481 has considered the above submission as advanced by the learned Counsel for the Appellant and held that acknowledgement made by the Principal Borrower is equally binding on the Corporate Guarantor’.*

34. In this regard we profitably, also refer to the ruling of Hon’ble NCLAT, Principal Bench in ***Gouri Shankar Chatterjee vs State Bank of India & others, Company Appeal (AT) (Ins.) No. 695-696 of 2021***, while upholding that entries of the balance sheet of the corporate debtor constitute valid acknowledgment of debt without mentioning of Section 18 of limitation Act, which held that such entries must be ***unambiguous*** as follows:

*“20. The Hon’ble Supreme Court in the matter of Asset Reconstruction Company (India) Limited (supra) considered the question whether an entry made in a balance-sheet of a corporate debtor would amount to an acknowledgment of liability under section 18 of the Limitation Act. The Hon’ble Supreme Court in this case considered this issue and observed as follows: -*

*“14. Several judgments of this Court have indicated that an entry made in the books of accounts, including the balance sheet, can amount to an acknowledgment of liability within the meaning of Section 18 of the Limitation Act.*

*Thus, in Mahabir Cold Storage v. CIT, 1991 Supp (1) SCC 402, this Court held:*

*12. The entries in the books of accounts of the appellant would amount to an acknowledgment of the liability to M/s 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....”*

*21. Thereafter, in the same judgment the Hon’ble Supreme Court held as follows: -*

*“22. A perusal of the aforesaid Sections would show that there is no doubt that the filing of a balance sheet in accordance with the provisions of the Companies Act is mandatory, any transgression of the same being punishable by law. However, what is of importance is that, notes that are annexed to or*



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*forming part of such financial statements expressly recognised by Section 134 (7). Equally, the auditor's report may also enter caveats with regard to acknowledgments made in in the books of accounts including the balance sheet. A perusal of the aforesaid would show that the statement of law contained in Bengal Silk Mills (supra), that there is a compulsion of law to prepare a balance sheet but no compulsion to make any particular admission, is correct in law as it would depend on the facts of each case as to whether an entry made in a balance sheet qua any particular creditor is unequivocal or has been entered into with caveats, which then has to be examined on a case by case basis to establish whether an acknowledgment of liability has, in fact, been made, thereby extending limitation under Section 18 of the Limitation Act." (Emphasis is ours)*

*22. From the above mentioned observations of the Hon'ble Supreme Court in the Asset Reconstruction Company (India) Limited (supra) judgment, we follow that the balance-sheets and the entries regarding the debt recorded therein constitute admission of liability, **but such admission has to be seen along with the caveat which may be entered in the balance-sheet regarding any particular creditor**, which has to be examined on case by case to decide whether an acknowledgment of liability has in fact been made which would qualify for extension of limitation under the Limitation Act. (Emphasis is ours).*

35. Therefore, we sum up our discussion by observing, that in a situation where the principal borrower acknowledges its liability through signing of letter of acknowledgement or otherwise through acknowledging the liability in the Balance Sheet, after declaration of NPA but before the expiration of three years therefrom including the fresh period of limitation due to (successive) acknowledgments, it is not possible to extricate the Personal Guarantor from the renewed limitation accruing due to the effect of Section 18 of the Limitation Act. In the above backdrop, we decide that this application is not barred by limitation and filed within limitation period.



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36. If that be so, this extant IA filed under Section 5 of Limitation Act becomes redundant and infructuous. Accordingly, the point is decided and IA No.492 of 2021 is disposed of as infructuous.

**Sd/-**

Charan Singh  
Member (Technical)

**Sd/-**

Dr.Venkata Ramakrishna Badarinath Nandula  
Member (Judicial)

*Sridher*