IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
18.09.2026 AT 10:30 A.M.

Company Petition (IB) No.166/7/HDB/2023
U/s 7 of IBC

IN THE MATTER OF:
State Bank of India

…Petitioner/s

Vs
Pangea Fabrics India Pvt Ltd **…Respondent**/s

C O R A M:-
SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)
SHRI. SANJAY PURI, HON'BLE MEMBER (TECHNICAL)

O R D E R

Present: Mr. VVSN Raju, Ld. Counsel for the Petitioner.

Ms. Sagarika Koneru, Ld. Counsel for the Respondent.

Orders pronounced, recorded vide separate sheets.

In the result, this petition is admitted.

Sd/-
MEMBER(T)

Sd/-
MEMBER(J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II

CP (IB) No.166/7/HDB/2023
u/s 7 of the IBC, 2016

IN THE MATTER OF M/S PANGEA FABRICS INDIA PRIVATE LIMITED.

BETWEEN:

STATE BANK OF INDIA STRESSED ASSETS MANAGEMENT,
having branches across India and abroad,
with one branch office, inter alia, at SAMB,
Secunderabad, Prabhat Towers, Gunfoundry, Hyderabad–1,
represented by its Assistant General Manager.

...Financial Creditor/Applicant

Vs

M/S PANGEA FABRICS INDIA PRIVATE LIMITED,
having its registered office at 7th Floor,
Surya Towers, 105, S.P. Road,
Secunderabad, Telangana – 500003, India.

...Corporate Debtor/Respondent No. 1

SURYAJYOTI SPINNING MILLS LTD,
having its Registered Office at Burgul Village,
Farooq Nagar Mandal, Mahabubnagar District – 509202, Telangana.

....Principal Borrower/Respondent No.2

Order delivered on: 18.09.2026

CORAM:
Hon'ble Shri Rajeev Bhardwaj, Member (Judicial)
Hon'ble Shri Sanjay Puri, Member (Technical)

COUNSELS PRESENT
For the Financial Creditor: Mr. VVSN Raju, Ms. Aishwarya.
For the Corporate Debtor: Mr. S. Rajagopalan.

1. The Financial Creditor, i.e., State Bank of India Stressed Assets Management, has filed the instant Company Petition under Section 7 of the IBC[1] seeking initiation of the CIRP[2] against the Respondent No. 1/Corporate Debtor, i.e., **M/s Pangea Fabrics India Private Limited**, on account of its alleged default in repayment of financial debt amounting to **Rs. 732,17,43,319/-** as on 09.05.2023.

SUBMISSIONS BY THE APPLICANT

2. The Applicant states that Respondent No.1, M/s Pangea Fabrics India Private Limited, is the Corporate Guarantor, which gave a Corporate Guarantee for the credit facilities granted to Respondent No.2, Suryajyoti Spinning Mills Limited, the Principal Borrower. As the Principal Borrower is under liquidation pursuant to the order dated 18.04.2023, the Applicant filed the present Company Petition under Section 7 of the IBC against Respondent No.1 to initiate the CIRP.

3. It is submitted that the Principal Borrower approached the Financial Creditor for sanction of Rupee Term Loans, Foreign Currency Loans, Corporate Loans and Working Capital facilities, which were sanctioned from time to time. Respondent No.1 stood as the Corporate Guarantor and executed the Corporate Guarantee Agreement dated 27.06.2013 to secure the said facilities. The Principal Borrower failed to adhere to the sanction terms, resulting in irregularities in the loan accounts. At the request of the Principal Borrower and the guarantors, the loan accounts were referred to Corporate Debt Restructuring and, on the recommendations of the CDR Forum, were restructured, pursuant to which the Principal Borrower and the guarantors, including Respondent No.1, executed necessary loan documents.

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[1] Insolvency and Bankruptcy Code, 2016.
[2] Corporate Insolvency Resolution Process.

4. As per Clauses 3 and 4 of the Corporate Guarantee Agreement executed by Respondent No.1, in the event of any default on the part of the Borrower in payment or repayment of the Facilities, interest, costs, expenses and other monies payable, or in complying with the terms, conditions and covenants contained in the Master Restructuring Agreement and other restructuring documents, Respondent No.1 shall, upon demand, pay to the Security Trustee/Lenders all amounts payable by the Borrower and indemnify them against losses, damages, costs, claims and expenses. Further, Clause 12 provides that, in the event of non-payment of dues, the Financial Creditor may act as if Respondent No.1 were the Principal Borrower.

5. It is submitted that the Principal Borrower committed default in repayment of the loan facilities, pursuant to which the loan accounts were classified as NPA. The Applicant Bank filed a recovery suit before the DRT on 01.08.2017 against the other guarantors, including Respondent No.1. Before filing the said proceedings, the Applicant Bank recalled the loan facilities and issued a notice under Section 13(2) of the SARFAESI Act dated 15.03.2017 for an amount of Rs. 186,03,70,537.73 due as on 28.02.2017, which, according to the Applicant, constituted an invocation of the Corporate Guarantee Agreement. The Borrower raised objections to the said notice but acknowledged the loan facilities and liability and executed revival letters dated 31.03.2015 and 09.08.2016.

6. Accordingly, it is submitted that the Principal Borrower failed to repay the amounts and Respondent No.1 also failed to pay the amounts as undertaken in the Corporate Guarantee Agreement. Since the Principal Borrower has been under liquidation, the Applicant has no alternative except to approach the Tribunal for initiating the CIRP in respect of Respondent No.1. The cause of action initially arose on 14.05.2017 and is continuing till date.

7. On the question of limitation, it is submitted that, by virtue of Clause 22 of the Corporate Guarantee Agreement, balance confirmations, OTS proposal, admissions in the balance sheets for the years 2018-2022 and part

payments made on 01.10.2020, 30.04.2021, 05.05.2021 and 25.01.2022 extended the limitation period. Further, the limitation period from 15.03.2020 to 28.02.2022 was suspended by the Hon'ble Supreme Court. As on 09.05.2023, Rs. 732,17,43,319/- is due and payable by Respondent No.1. The Applicant prays for admission of the CP and initiation of the CIRP.

SUBMISSIONS OF THE RESPONDENT THROUGH THE COUNTER

8. The Respondent submits that the instant Petition filed under Section 7 of the IBC for initiation of Insolvency Resolution Process against Respondent No.1 is not maintainable. The Applicant/Bank has no locus standi to file the instant application, as the deed of guarantee was executed in favour of a Security Trustee, who alone, in terms of the Security Trustee Agreement, is entitled to enforce such guarantee for the benefit of all creditors, and no individual lender can enforce such guarantee. The Security Trustee Agreement dated 27.03.2013 has not been filed and has been suppressed by the Applicant. It is also contended that the date of default is 14.05.2017, whereas the Petition dated 26.06.2023 is beyond limitation.

9. In this regard, the deed of guarantee dated 27.06.2013 was executed between Pangea Fabrics India Private Limited and SBICAP Trustee Company Limited pursuant to the Security Trustee Agreement dated 27.03.2013. The Respondent contends that the terms of the deed of guarantee have to be read in conjunction with the Security Trustee Agreement, which was not referred to in the Section 7 application and amounts to suppression of material facts. The said Agreement is placed on record as Annexure R1 to establish that the Applicant has no locus standi to maintain the application in its individual capacity.

10. As per Clauses 2.1.2, 2.2.1, 2.2.2, 2.3(b) and 2.5 of the Security Trustee Agreement, the security, including the guarantee, is held by the Security Trustee for the benefit of all the Lenders, and the Security Trustee is vested with the power to enforce the security on written instructions. Clauses 3.1, 3.3 and 3.4 further provide for the duties of the Security Trustee and the

procedure for enforcement of security. On this basis, the Respondent contends that no individual Lender can enforce the security independently of the Security Trustee Agreement and the Lenders have no direct right.

11. Further, Clause 4.3 provides that the powers conferred in favour of the Security Trustee are cumulative and do not include any individual Lender, while Clause 4.6 provides that the Security Trustee shall not release any part of the security except with the prior consent of all the Lenders. Relying upon the decisions in IDBI Trusteeship Services Ltd. v. Mr. Manoj Gaur and Mr. Rakshit Dhirajlal Doshi v. IDBI Bank Ltd. & 2 Ors., as confirmed by the Hon'ble Supreme Court in IDBI Bank Limited v. Rakshit Dhirajlal Doshi, the Respondent contends that the Applicant has no locus standi and the underlying application deserves to be dismissed.

12. Concerning limitation, the Respondent submits that the present application under Section 7 of the IBC is ex facie barred, as the Applicant has admitted the date of default as 14.05.2017, whereas the application was filed on 26.06.2023. Under Article 137 of the Limitation Act, 1963, as held by the Hon'ble Supreme Court in B.K. Educational Services Pvt. Ltd. v. Parag Gupta & Associates (2019) 17 SCC 633, the limitation period is three years from the date of default and expired on 14.05.2020. Even if 15.03.2017, the date of notice under Section 13(2) of the SARFAESI Act, is considered, the limitation expired on 15.03.2020. Hence, the application is barred by limitation and liable to be dismissed.

WRITTEN SUBMISSIONS OF APPLICANT.

13. The Applicant submits that the present Petition is well within limitation. Clause 22 of the Corporate Guarantee Agreement provides that any balance confirmation, acknowledgement of debt or part-payment made by the Principal Borrower shall be deemed to have been made by or on behalf of the Guarantor and shall be binding upon it. The Principal Borrower acknowledged its liability in its balance sheets for the years 2018 to 2022 and made part-payments on 01.10.2020, 30.04.2021, 05.05.2021 and

25.01.2022, thereby extending limitation qua Respondent No.1. Further, the period from 15.03.2020 to 28.02.2022 stands excluded pursuant to the Hon'ble Supreme Court's order in Suo Motu Writ Petition (Civil) No. 3 of 2020, Miscellaneous Application No. 665 of 2021.

14. In support of its contention, the Applicant relies upon the settled legal position laid down in ***Laxmi Pat Surana v. Union Bank of India & Anr., (2021) 8 SCC 481,*** wherein the Hon'ble Supreme Court held that the liability of a Corporate Guarantor is co-extensive with that of the Principal Borrower, proceedings under Section 7 of the IBC are maintainable against the Corporate Guarantor upon default, and valid acknowledgement gives rise to a fresh period of limitation under Section 18 of the Limitation Act. The said principle was reiterated in ***Manmohan Singh Jain v. State Bank of India, (2021) ibclaw.in 525 NCLAT.***

15. It is further submitted that Clauses 3 and 4 of the Corporate Guarantee Agreement require Respondent No.1, upon default by the Principal Borrower, to pay the Financial Creditor forthwith all amounts payable under the facilities and restructuring documents, upon demand and without demur. The Applicant further submits that such obligation is independent and separate, and was specifically invoked vide notice dated 15.03.2017. The saving of limitation under Clause 22 is without prejudice to such independent invocation. It is also submitted that Section 7 Applications do not require invocation.

16. As regards the contention that the Applicant has no locus standi to file the present Application as the Deed of Guarantee was executed in favour of SBICAP Trustee, the Applicant submits that the said contention is untenable. Clause 12 of the Guarantee Agreement empowers the Security Trustee/Lender to take action for recovery from the Corporate Guarantor. Reliance is placed on the judgment of the Hon'ble NCLAT, Principal Bench, New Delhi in ***Shantanu Jagdish Prakash v. State Bank of India and Anr., (2025) ibclaw.in 73 NCLAT*, Comp. App. (AT) (Ins) No. 1609 of 2024, paragraph 45(C)(ii),** wherein it has been observed:

"***However, by its inherent nature and intent, the lenders or the Financial Creditors are the true beneficiaries of such deed of guarantee.***"

WRITTEN SUBMISSIONS OF THE RESPONDENT

17. The Respondent contends that Clause 3 of the Corporate Guarantee Agreement dated 27.06.2013 stipulates that the Guarantor shall, upon demand from the Security Trustee/Lenders, forthwith pay to them, without demur, all amounts payable by the Borrower under the restructuring documents. Clause 21 further prescribes the manner of giving any demand or notice under the guarantee, including service by post at the last known address of the Guarantor or its representatives. In the present case, the Demand Notice dated 15.03.2017 was not specifically addressed to Respondent No.1, and no postal receipt, postal document or certificate of the responsible officer has been placed on record to establish its posting or service upon the Corporate Guarantor.

18. It is further contended that the footnote/postscript to the Demand Notice dated 15.03.2017 does not suffice as a demand certificate or notice of invocation of the Corporate Guarantee. The Financial Creditor has failed to demonstrate that any demand or notice of invocation was specifically made upon and served on Respondent No.1 in the manner contemplated under Clauses 3 and 21 of the Corporate Guarantee Agreement. It is submitted that the loan agreement with the Principal Borrower and the Deed of Guarantee between the Bank and the Guarantor are two distinct transactions, and the Guarantor's liability must be read from the Deed of Guarantee. Reliance is placed on ***Asha Basantilal Surana v. State Bank of India and Ors.*****, Company Appeal (AT) (Insolvency) No. 84 of 2025 & I.A. No. 334 of 2025, paragraphs 7–12.**

19. On the question of limitation, the Respondent asserts that the date of default relied upon by the Financial Creditor is 14.05.2017 and that the present Petition has been filed after the expiry of the three-year limitation period. The Respondent contends that the date of default, being a definite date, cannot be varied or extended by invoking the theory of continuing

guarantee in the year 2023. Reliance is placed upon ***T. Venkatram Reddy v. L & T Finance Ltd. and Anr.*****, Company Appeal (AT) (CH) (Ins) No.** ***383/2022, paragraphs 56 and 57.***

20. The Respondent contends that the Financial Creditor cannot unilaterally invoke the Corporate Guarantee or initiate proceedings under Section 7 of the IBC when the Corporate Guarantee Agreement provides for enforcement through the Security Trustee. It is further contended that the collective/security-trustee route prescribed under the relevant documents cannot be bypassed by an individual lender relying upon its individual debt and default.

21. It is the specific case of the Respondent that the Corporate Guarantee Agreement was executed in favour of SBICAP Trustee Company Limited and that the enforcement and representation functions are vested in the Security Trustee. Accordingly, it is contended that SBICAP Trustee Company Limited alone has the right to enforce the guarantee, including invocation of the guarantee and filing of a petition under Section 7 of the IBC.

22. In support of the aforesaid contention, reliance is placed upon ***Rakshit Dhirajlal Doshi v. IDBI Bank Ltd.*****, 2022 SCC OnLine NCLAT 4524**, paragraphs 24–29 and 31–33; ***Indian Overseas Bank v. Adilabad Expressway Pvt. Ltd.*****, Company Petition IB/39/2021-NCLT Hyderabad,** paragraphs 8 and 10–14; ***IDBI Bank Ltd. v. Manoj Gaur*****, Company Petition IB 29(PB)/2022-NCLT Special Bench**, paragraphs 10–21; and ***Malavika Hegde v. IDBI Trusteeship Services Ltd.*****, 2025 SCC OnLine NCLAT 422,** paragraphs 107–110.

FINDINGS AND DECISION

23. We have heard the learned Counsel appearing for the Financial Creditor and the Corporate Debtor and perused the averments and documents placed on record by both parties.

24. A bare reading of Section 7 of the IBC shows that, for initiation of CIRP, the Applicant is required to establish the existence of a financial debt and occurrence of default. The Adjudicating Authority is required to satisfy itself, based on the records of the information utility or other evidence produced by the Financial Creditor, as to the occurrence of default before admitting an application under Section 7. Reference is made to ***Innoventive Industries Ltd. v. ICICI Bank and Anr[3] where the Hon'ble Supreme Court held that:***

> *".....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."*

25. Therefore, in the present case, it is necessary to examine whether a financial debt is due and payable and whether a default has occurred in respect thereof.

26. In the present case, the Principal Borrower, Suryajyoti Spinning Mills Limited, availed Rupee Term Loans, Foreign Currency Loans, Corporate Loans and Working Capital facilities from the Financial Creditor. Respondent No.1, M/s Pangea Fabrics India Private Limited, executed the Corporate Guarantee Agreement[4] dated 27.06.2013 in respect of the said

3 (2017) Ibclaw. in 02 SC.
4 Page no 101-117 of the application

facilities. Subsequently, the loan accounts were restructured pursuant to the recommendations of the CDR Forum.

27. The issues that arise for consideration are whether the financial facilities availed by the Principal Borrower constitute a "financial debt" within the meaning of the IBC, whether Respondent No.1 is liable in its capacity as Corporate Guarantor in respect of such financial debt, and whether a default has occurred to warrant initiation of CIRP against Respondent No.1 under Section 7 of the IBC.

28. At the outset, it is appropriate to examine the relevant provisions of the IBC. Section 5(7) of the IBC defines a "Financial Creditor" as any person to whom a financial debt is owed, while Section 5(8)(i) provides that a liability in respect of any guarantee or indemnity for any of the amounts referred to in sub-clauses (a) to (h) constitutes a "financial debt"

29. In the present case, Respondent No.1 executed the Corporate Guarantee Agreement dated 27.06.2013 in favour of the Security Trustee in respect of the financial facilities availed by the Principal Borrower. Under the said Corporate Guarantee Agreement, Respondent No.1 undertook to discharge the amounts payable by the Principal Borrower in the event of default, subject to the terms and conditions contained therein. The execution and subsistence of the Corporate Guarantee Agreement are not disputed by Respondent No.1.

30. The financial facilities availed by the Principal Borrower constitute "financial debt" within the meaning of Section 5(8)(a) of the IBC, as the same arose from the disbursement of amounts against the consideration for the time value of money. The subsequent restructuring of the loan accounts pursuant to the recommendations of the CDR Forum does not alter the nature or character of the underlying financial debt. Accordingly, the financial debt secured by the Corporate Guarantee Agreement dated 27.06.2013 continues to fall within the ambit of Section 5(8) of the IBC.

31. The Principal Borrower committed default in repayment of the financial facilities availed from the Financial Creditor, resulting in classification of the loan accounts as NPA. Thus, the underlying financial debt became due and payable. However, whether such default also constituted a default on the part of Respondent No.1 in its capacity as Corporate Guarantor requires examination with reference to the terms of the Corporate Guarantee Agreement, particularly the requirement of demand stipulated therein.

Whether State Bank of India has the locus standi to independently file and maintain the present Section 7 petition against the Corporate Guarantor, in view of the Security Trustee structure?

32. The Respondent contends that the present Petition filed by State Bank of India Stressed Assets Management under Section 7 of the IBC is not maintainable, as the Corporate Guarantee was executed in favour of the Security Trustee and not in favour of any individual Lender. It is further contended that the Security Trustee alone is entitled to enforce the Corporate Guarantee on behalf of all the Lenders collectively.

33. On examination of the Security Trustee Agreement[5] dated 27.03.2013, it is seen that the security, including the Corporate Guarantee, was created in favour of SBICAP Trustee Company Limited for the benefit of the Lenders. Clauses 2.2.1, 2.2.2, 2.5 and 3.1 provide that the Security Trustee shall act upon the instructions of the Monitoring Institution/Lenders. Thus, the Security Trustee was appointed to hold and enforce the security for the benefit of the Lenders.

34. The Corporate Guarantee Agreement dated 27.06.2013, though executed in favour of the Security Trustee for the benefit of the Lenders, expressly refers to the “Security Trustee/Lenders” and confers rights and powers upon the Lenders. Clause 3 provides for payment by the Guarantor upon demand

[5] page no. 18-67 of the counter.

from the Security Trustee/Lenders, while Clause 12 also refers to the rights of the Security Trustee/Lenders.

35. The Corporate Guarantee Agreement further clarifies that the rights and powers conferred on the Lenders are joint and several, and can be exercised by the Lenders or the Security Trustee for the benefit of all or any of the Lenders. It also specifically provides that all the rights, powers and authorities available to the Security Trustee are equally available to the Lender(s) at their sole and absolute discretion. The extracts of the agreement are as below for reference:

> ***23 "The Guarantor agrees and declares that the rights and powers conferred on the Lenders by these presents be joint and several and shall be deemed always to be so and they may be exercised by the Lenders accordingly."***
>
> ***24. The Guarantor agrees and declares that the rights and powers conferred on the Security Trustee / Lenders by these presents may be exercised by the Lenders or Security Trustee acting for the benefit and on behalf of all or any of the Lenders."***
>
> ***All the rights, powers and authorities that are available to the Security Trustee shall also be made available to the Lender(s) at their sole and absolute discretion.*** *This deed is being executed totally for the benefit of Lender(s) only and no other party to this deed shall be entitled to put up any claim or objection against the Lender(s) in any manner. The borrower or guarantor(s) shall be debarred from using any covenant of this deed with the benefit and to the prejudice of interests of the Lender(s).*

36. A combined reading of the Security Trustee Agreement dated 27.03.2013 and the Corporate Guarantee Agreement dated 27.06.2013 shows that while the Security Trustee holds and primarily enforces the security for the benefit of the Lenders, the Corporate Guarantee itself confers independent rights on the individual Lenders which can be exercised jointly or severally. The existence of a Security Trustee arrangement does not take away an individual Lender of its status as a Financial Creditor under Section 5(7) of the Code, nor does it take away its right to initiate insolvency proceedings under Section 7 when default has occurred. In view of the above, we hold

that State Bank of India has the necessary locus standi to maintain the present petition. The objection regarding lack of locus standi is accordingly rejected.

Whether the SARFAESI Demand Notice dated 15.03.2017 constitutes a valid invocation of the Corporate Guarantee under Clauses 3 and 21 of the Corporate Guarantee Agreement dated 27.06.2013?

37. The Respondent contends that, under Clauses 3 and 21 of the Corporate Guarantee Agreement dated 27.06.2013, its liability arises only upon a written demand sent by post to its last known address and that a certificate of the Bank's responsible officer constitutes conclusive proof of such posting. It is submitted that the Demand Notice dated 15.03.2017 was addressed only to the Principal Borrower, while the Corporate Guarantor was merely shown at Serial No. 10 in the "Copy to" list. According to the Respondent, no postal proof has been produced, and a mere "Copy to" entry does not constitute a valid demand or invocation of the Corporate Guarantee.

38. It is not in dispute that Respondent No.1 executed the Corporate Guarantee Agreement dated 27.06.2013 and that the Demand Notice dated 15.03.2017 was issued under Section 13(2) of the SARFAESI Act. The said notice specifically mentioned Respondent No.1 at Serial No. 10 in the "Copy to" list and expressly called upon the borrowers and guarantors to pay the outstanding amount, jointly or severally, under the respective guarantee agreements. The contents of the notice, therefore, demonstrate that the Applicant intended to enforce the liability of the guarantors under the guarantee agreements.

39. Clause 21 of the Corporate Guarantee Agreement is material in examining the objection raised by the Respondent. The said clause reads as under:

"***21. Any demand for payment or notice under this Guarantee shall be sufficiently given if sent by post to or left at the last***

known address of the Guarantor or their representative(s), such demand or notice is to be made or given, and shall be assumed to have reached the addressee in the course of post, if given by post, and no period of limitation shall commence to run in favour of the Guarantor until after demand for payment in writing shall have been made or given as aforesaid and in proving such notice when sent by post it shall be sufficiently proved that the envelope containing the notice was posted and a certificate by any of the responsible officers of the Security Trustee/Lenders that to the best of his knowledge and belief, the envelope containing the said notice was so posted shall be conclusive as against the Guarantor, even though it was returned unserved on account of refusal of the Guarantor or otherwise."

40. Clause 21 of the Corporate Guarantee Agreement provides that any demand or notice under the Guarantee shall be sufficiently given if sent by post to, or left at, the last known address of the Guarantor or its representative(s). It further provides that, for proving such notice when sent by post, a certificate by any responsible officer of the Security Trustee or Lenders, to the best of his knowledge and belief, that the envelope containing the notice was posted, shall be conclusive against the Guarantor, even if the notice is returned unserved on account of refusal or otherwise.

41. In the present case, the Assistant General Manager of the Applicant, being a responsible officer of the Lender, has verified the application by way of affidavit and affirmed that the contents thereof are true and correct to the best of his knowledge and belief. The application specifically records that the Demand Notice dated 15.03.2017 was sent to the Principal Borrower and the Guarantors, including Respondent No.1/Corporate Debtor. Thus, the assertion regarding posting of the Demand Notice is supported by the verification of the responsible officer of the Lender. In the circumstances, the requirement contemplated under Clause 21 regarding certification of

posting stands satisfied. The absence of a separate postal receipt or acknowledgement cannot, by itself, invalidate the demand.

42. It is further relevant that the address to which the Demand Notice was addressed in respect of the Principal Borrower is the same as the address of Respondent No.1/Corporate Debtor. The record also reflects that the Principal Borrower responded to the said Demand Notice. The fact that the notice was acted upon by the Principal Borrower at the common address, coupled with the specific reference to Respondent No.1 as a guarantor in the notice, lends further support to the Applicant's case that the notice was posted to the address at which the Corporate Debtor was also situated. This circumstance, considered along with the verification of the responsible officer regarding posting of the notice, supports the finding that the demand was made in the manner contemplated under Clause 21.

43. The subsequent conduct of the Principal Borrower, in responding to the Demand Notice at the common address, corroborates the Applicant's case regarding posting of the notice. This circumstance, read with the verification of the responsible officer of the Applicant as contemplated under Clause 21, supports the finding that the Demand Notice was posted in accordance with the contractual requirement.

44. Upon consideration of the contents of the Demand Notice and the requirements under Clauses 3 and 21 of the Corporate Guarantee Agreement, we find that the notice specifically evinced the Applicant's intention to enforce the liability of the guarantors. The contractual requirement regarding proof of posting under Clause 21 having been satisfied, the absence of a separate postal receipt or acknowledgement cannot, by itself, invalidate the demand.

45. Accordingly, the contention that the Corporate Guarantee was not validly invoked merely because Respondent No.1 was shown in the "Copy to" list cannot be accepted. The Demand Notice dated 15.03.2017 constitutes a valid invocation of the Corporate Guarantee Agreement dated 27.06.2013.

Whether Limitation bars the Petition.

46. It is the case of the Respondent that the present Petition is ex facie barred by limitation. The Respondent contends that the date of default pleaded by the Financial Creditor in Part IV of the Application is 14.05.2017, whereas the Petition was filed on 26.06.2023, i.e., after nearly six years. According to the Respondent, the three years prescribed under Article 137 of the Limitation Act, 1963 had expired before the filing of the Petition. It is further contended that the date of default is fixed and cannot be extended by invoking the concept of continuing guarantee.

47. The date of default pleaded by the Financial Creditor is 14.05.2017. Therefore, the question for consideration is whether there was a valid acknowledgment of the subsisting liability within the period of limitation, giving rise to a fresh period of limitation under Section 18 of the Limitation Act, 1963.

48. Clause 22 of the Corporate Guarantee Agreement dated 27.06.2013 is relevant in this regard. The said Clause provides that any balance confirmation, acknowledgment of debt, admission of liability, promise or part-payment made by the Borrower or the authorised trustee of the Borrower to the Lenders shall be deemed to have been made by or on behalf of the Guarantor and shall be binding upon it. The relevant Clause reads as under:

> ***22. The Guarantor affirms, confirms and declares that any balance confirmation and/or acknowledgment of debt and/or admission of liability given or promise or part payment made by the Borrower or the authorised trustee of the Borrower to the Lenders shall be deemed to have been made and/or given by or on behalf of the Guarantor himself and shall be binding upon each of them.***

49. The Balance Sheet of the Principal Borrower, Suryajyoti Spinning Mills Limited, as at 31.03.2019, as well as the subsequent Balance Sheets as at 31.03.2021 and 31.03.2022, reflect the outstanding liabilities towards the Lenders. The said entries acknowledge the subsisting liability of the Principal Borrower towards the Lenders.

50. In ***Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal & Anr.*, [(2021) 6 SCC 366],** the Hon'ble Supreme Court held that an acknowledgment of liability contained in a Balance Sheet may constitute an acknowledgment within the meaning of Section 18 of the Limitation Act, 1963. The Hon'ble Supreme Court further held that the nature of the entry and the circumstances in which it was made must be examined to determine whether it amounts to an acknowledgment of liability. The relevant observation is as under:

> ***22 "...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."***

51. In the present case, the entries in the Balance Sheets referred to above reflect the outstanding liability of the Principal Borrower towards the Lenders. The first such acknowledgment, contained in the Balance Sheet as at 31.03.2019, was made within three years from the date of default, i.e., 14.05.2017. Thus, the acknowledgment was made during the subsistence of the original period of limitation.

52. The effect of such acknowledgment in proceedings under the IBC has been considered by the Hon'ble Supreme Court in ***Dena Bank v. C. Shivakumar Reddy and Anr., [(2021) 10 SCC 330],*** wherein it was held:

142 "To sum up, in our considered opinion an application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years."

53. Applying the aforesaid principle, the acknowledgment made in the Balance Sheet as at 31.03.2019 gave rise to a fresh period of limitation. The subsequent Balance Sheets as at 31.03.2021 and 31.03.2022 also reflect the subsisting liability towards the Lenders. Thus, the subsequent acknowledgments were made during the subsistence of the period of limitation arising from the preceding acknowledgment.

54. The acknowledgments made by the Principal Borrower are also binding upon Respondent No.1. Clause 22 of the Corporate Guarantee Agreement expressly provides that any balance confirmation, acknowledgment of debt, admission of liability, promise or part-payment made by the Borrower to the Lenders shall be deemed to have been made by or on behalf of the Guarantor and shall be binding upon it. Therefore, the acknowledgments of liability recorded in the Balance Sheets of the Principal Borrower are, by virtue of Clause 22, deemed to be acknowledgments made on behalf of Respondent No.1. Such acknowledgments are consequently required to be taken into account while computing the period of limitation against Respondent No.1.

55. The last acknowledgment relied upon by the Financial Creditor is reflected in the Balance Sheet for the financial year ending 31.03.2022. The present Petition was filed on 26.06.2023. Thus, even reckoning the limitation from the said acknowledgment, the Petition was filed well within three years.

56. In view of the foregoing, the original date of default, i.e., 14.05.2017, cannot be considered in isolation for determining limitation. The acknowledgments of the subsisting liability made during the subsistence of the limitation period gave rise to a fresh period of limitation under Section 18 of the Limitation Act, 1963, and, by virtue of Clause 22 of the Corporate Guarantee Agreement, such acknowledgments are binding upon Respondent No.1. Since the present Petition was filed on 26.06.2023, it is within the period of limitation prescribed under Article 137 of the Limitation Act, 1963.

57. In view of the established debt and default, the present petition, CP (IBC) No.166/7/HDB/2023, is allowed with the following order:

ORDER

A. The Application bearing No. CP (IB) No. 166/7/HDB/2023 filed by State Bank of India is admitted, and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process, which shall ordinarily be completed within the timelines stipulated in the Code, 2016 (as amended), reckoning from the date on which this order is passed.

B. The Applicant had proposed the name of **Mr. B. Sivarama Prasad,** Registration Number: **IBBI/IPA-003/IP-N00084/2017-18/10822**, as the Interim Resolution Professional (IRP). However, as his Authorization for Assignment (AFA) has expired, the proposed appointment cannot be given effect to. Accordingly, the Adjudicating Authority appoints **Mr. Kaspa Venu Gopal**, Registration Number: **IBBI/IPA-001/IP-P-01661/2019-2020/12580**, having his address at **201 Vamshi Nivas, KPHB Phase 5, Back Side Malaysian Township, Kukatpally, Telangana – 500072,** E-mail ID: **kaspavenugopal@gmail.com,** as the Interim Resolution Professional (IRP). His AFA is valid up to 30.06.2027. The IRP is directed to file the AFA within three days of the date of this order.

C. The IRP is directed to take immediate charge of the management of the Corporate Debtor. The IRP is also directed to cause a public announcement as prescribed under Section 15 of the Code, 2016, within three days from the date of receipt of this order, and call for submissions of claims in the manner as prescribed.

D. As a consequence of the Application CP (IB) No. 166/7/HDB/2023 being admitted in terms of Section 7 of the Code. A moratorium is hereby declared and shall have effect from the date of this order till the completion of the CIRP, for the purposes referred to in Section 14 of the Code, 2016. It is hereby ordered that all of the following are prohibited:

1. 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 or law, tribunal, arbitration panel, or other authority;
2. Transferring, encumbering, alienating, or disposing of by the Corporate Debtor any of its assets or any legal rights or beneficial interest therein;
3. Any action to foreclose, recover, or enforce any security interest created by the Corporate Debtor in respect of its property, including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
4. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
5. 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, concessions, clearances or a similar grant or right

during the moratorium period.

E. The supply of essential goods or services to the Corporate Debtor shall not be terminated, suspended, or interrupted during the moratorium period. Further, if the IRP considers supply of any goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period. Furthermore, the provisions of Subsection (1) of Section 14 shall not apply to such transactions, agreements, or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or other relevant authorities.

F. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code, 2016. The Directors, Promoters, or any other person associated with the management of the Corporate Debtor are directed to extend all assistance and co-operation to the IRP as stipulated under Section 19 for discharging their functions under Section 20 of the Code, 2016.

G. The Applicant/FC shall deposit a sum of Rs. 3,00,000/- (Rupees Three Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors (CoC).

H. In terms of Section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the Applicant/FC, the Respondent/CD, the IRP and the Registrar of Companies, NCR, New Delhi, by Speed Post and by email, at the earliest but not later than seven days from today.

I. The Registry shall also communicate this Order to the Registrar of Companies, Hyderabad, for updating the status of the Corporate Debtor on the website of the Ministry of Corporate Affairs.

J. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for its record.

K. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Accordingly, this Company Petition is **admitted**.

Sd/-	**Sd/-**
SANJAY PURI	**RAJEEV BHARDWAJ**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**