NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 772 of 2025

(Arising against the impugned order dated 13.02.2025 passed by the National Company Law Tribunal, Allahabad Bench in Company Petition IB No. 50/ALD/2023.

IN THE MATTER OF:

Vijay Pandey
S/o Shri Hari Narayan Pandey
R/o 645 A/57, P-15, Sector-I
Janki Vihar, Near Capital Convent School
Lucknow, Uttar Pradesh-226021 **...Appellant**

Versus

1. **Small Industries Development Bank of India**
   Swavlamban Bhavan, Avenue 3, Lane 2
   Bandra Kurla Complex, Bandra East, Mumbai
   Maharshtra- 400051.

2. **Rakesh Kumar Jindal**
   House No. 3656/6, Gali No.6
   Narang Colony, Tri Nagar, Near Rose Garden
   New Delhi- 110035

...Respondents

Present:

For Appellant: **Mr. Sabhay Choudhary, Advocate.**

For Respondent: **Mr. Shubham Raghuwanshi, Mr. Sujoy Dutta, Mr. NPS Chawla, Ms. Mahima Shekhawat and Mr. Surekh Kant B., Advocates for R-1.**

Ms. Pinki, Advocate for R-2.

WITH
Company Appeal (AT) (Ins.) No. 773 of 2025

(Arising against the impugned order dated 13.02.2025 passed by the National Company Law Tribunal, Allahabad Bench in Company Petition IB No. 51/ALD/2023.

IN THE MATTER OF:

Maya Pandey
W/o Sh. Vijay Pandey
R/o 645 A/57, P-15, Sector-I
Janki Vihar, Near Capital Convent School,
Lucknow, Uttar Pradesh-226021 **...Appellant**

Versus

1. **Small Industries Development Bank of India**
Swavlamban Bhavan, Avenue 3, Lane 2
Bandra Kurla Complex, Bandra East, Mumbai
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2. **Rakesh Kumar Jindal**
House No. 3656/6, Gali No.6
Narang Colony, Tri Nagar, Near Rose Garden
New Delhi- 110035 **...Respondents**

Present:

For Appellant:	**Mr. Sabhay Choudhary, Advocate.**
For Respondent:	**Mr. Shubham Raghuwanshi, Mr. Sujoy Dutta, Mr. NPS Chawla, Ms. Mahima Shekhawat and Mr. Surekh Kant B., Advocates for R-1.**
	Ms. Pinki, Advocate for R-2.

J U D G M E N T

(30th June, 2026)

INDEVAR PANDEY, MEMBER (T)

CA AT (Ins) No. 772 of 2025

The present/first appeal has been preferred by the **Appellant- Vijay Pandey**, against the impugned order dated 13.02.2025 passed by the Ld. Adjudicating Authority (National Company Law Tribunal, Allahabad Bench)

in Company Petition No. CP (IB) No. 50/ALD/2023 in the matter of *Small Industries Development Bank of India vs. Vijay Pandey*, whereby the application filed by **Respondent No. 1/ Small Industries Development Bank of India (SIDBI)**, under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 (herein after referred as **'Code'**) came to be allowed and the Personal Insolvency Resolution Process (PIRP) was initiated against the Appellant on the basis of the report submitted by **Mr. Rakesh Kumar Jindal/Respondent No. 2, the Resolution Professional,** under Section 99 of the Code.

Company Appeal AT (Ins) No. 773/2025

2. The second appeal has been filed by the **Appellant- Maya Pandey**, against the impugned order dated 13.02.2025 passed by the Ld. Adjudicating Authority (National Company Law Tribunal, Allahabad Bench) in Company Petition No. CP (IB) No. 51/ALD/2023 in the matter of *Small Industries Development Bank of India vs. Maya Pandey*, whereby the application filed by Financial Creditor-**Small Industries Development Bank of India (SIDBI)/ Respondent No.1,** under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 was allowed, and the Personal Insolvency Resolution Process (PIRP) was initiated against the Appellant on the basis of the report submitted by **Mr. Rakesh Kumar Jindal/Respondent No. 2, the Resolution Professional,** under Section 99 of the Code.

3. Both the first and second appeals arise from the same loan transaction and involve identical facts and issues. The appellant in first appeal Shri Vijay

Pandey is the husband of Smt. Maya Pandey who is the Appellant in the second appeal. Both the Appellants are Personal Guarantors to the Corporate Debtor and have executed the same Deed of Guarantee dated 22.09.2017 in favour of the financial creditor. Since both appeals arise from the same transaction and involved identical facts and issues, they are taken up together for disposal.

Facts of the Case

4. The brief facts relevant to deciding the present appeals are as given below:-

i. Small Industries Development Bank of India, the Financial Creditor and Respondent No.1 had sanctioned a loan facility to the corporate debtor "M/s Bhartiya Micro Credit" vide sanction letter bearing no. 2018 May23/ L3144068, which was issued on 23.05.2017, thereby establishing the initial financial relationship between the lender and the borrower.

ii. Pursuant to the sanction of the said facility, the financial creditor had granted a term loan amounting to Rs. 2,00,00,000/- (Rupees Two Crores) to the corporate debtor through a loan agreement executed on 22.09.2017, thereby crystallizing the financial obligations of the borrower towards the creditor.

iii. In furtherance of securing the said financial assistance, the directors of the corporate debtor, Shri Vijay Pandey and Smt. Maya Pandey who are the Appellants herein, had executed a Deed of Guarantee on

22.09.2017 in favour of the financial creditor, wherein the guarantors undertook to secure repayment of the loan. The Clause 03 of the said Deed specifically stipulated that the guarantor would be liable to pay the outstanding dues only upon demand being made by the financial creditor, thereby making invocation of guarantee contingent upon issuance of demand notice.

iv. The account of the corporate debtor was classified as a Non-Performing Asset (NPA) on 12.12.2019 by the financial creditor, indicating default in repayment of the loan obligations. Subsequently, the loan together with the interest and other charges was recalled by Respondent No.1 on 01.06.2021 on Corporate Debtor. Thereafter, the Respondent No.1 also invoked the personal guarantees of the Guarantors to the Corporate Debtor on 26.11.2021.

v. The Respondent No.1 also filed an application under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 being OA No. 264 of 2022 before the Ld. Debts Recovery Tribunal, Lucknow Bench on 05.03.2022.

vi. While the DRT Proceedings were going on, the Financial Creditor SIDBI issued a demand notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 on 20.12.2022 to the guarantors including the appellants, calling upon them to pay an amount of Rs.1,27,53,256/- within a period of ten

days from receipt thereof, failing which insolvency proceedings were to be initiated. The Appellants did not reply to the aforesaid demand notice issued by Respondent No.1.

vii. Thereafter, the financial creditor proceeded to file an application under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 on 22.06.2023 before the Adjudicating Authority seeking initiation of Personal Insolvency Resolution Process against the appellant, which application forms the foundation of the present proceedings.

viii. The Ld. Adjudicating Authority, vide order dated 17.01.2024, appointed Respondent No. 2, namely Mr. Rakesh Kumar Jindal, as the Resolution Professional for conducting the insolvency process in respect of the appellant. Pursuant thereto, the Resolution Professional submitted his report under Section 99 of the Code on 15.09.2024 recommending admission of the application filed by the financial creditor.

ix. The record further reveals that the Resolution Professional had filed a rejoinder to the objections of the appellant, wherein a letter dated 26.11.2021 was sought to be relied upon as evidence of invocation of personal guarantee.

x. The Ld. Adjudicating Authority, after considering the material placed on record, passed identical impugned orders dated 13.02.2025 whereby the application filed under Section 95(1) of the Code was allowed and the Personal Insolvency Resolution Process was initiated against the appellants.

xi. Aggrieved by the impugned orders dated 13.02.2025 in both appeals, the Appellants have preferred these appeals before this Appellate Tribunal under Section 61(1) of the Code.

Submissions of the Appellants

5. Ld. Counsel for the Appellants submits that Respondent No. 1 had extended a term loan of Rs. 2,00,00,000/- to the Corporate Debtor, namely M/s Bhartiya Micro Credit, pursuant to a loan agreement dated 22.09.2017. On the same date, an Agreement of Guarantee was executed between Respondent No. 1 and the Appellant. Clause 03 of the said Agreement specifically stipulates that in the event of default by the borrower, the guarantor shall, upon demand, pay all amounts due to the financial creditor.

6. He submits that after the account of the Corporate Debtor was declared as Non-Performing Asset (NPA); Respondent No. 1, without first invoking the personal guarantee in terms of the Agreement or issuing any prior demand notice as required under Clause 03 of the Deed of Guarantee, directly proceeded to initiate insolvency proceedings against the Appellant by issuing a demand notice under Rule 7(1) of the IBC (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors) Rules, 2019.

7. It is further submitted that Respondent No. 1 filed an application under Section 95(1) of the Code seeking initiation of PIRP against the Appellant, wherein Respondent No. 2 was appointed as Resolution Professional. The Resolution Professional submitted his report under Section 99 recommending

admission of the application, without appreciating the fundamental fact that no valid demand notice had been issued by Respondent No. 1 prior to initiation of insolvency proceedings.

8. Ld. Counsel submits that Respondent No. 1 has failed to comply with Clause 03 of the Deed of Guarantee dated 22.09.2017. The said clause unequivocally provides that upon default by the borrower, the guarantor becomes liable only "upon demand" made by the financial creditor. Therefore, the liability of the personal guarantor, i.e., the Appellant, does not arise automatically upon default by the borrower, but only upon a valid and specific demand being raised by Respondent No. 1. In absence of such demand, no enforceable debt can be said to have arisen against the Appellant.

9. He further submits that Respondent No.1, without invoking the personal guarantee in terms of Clause 03 and without issuing any demand notice thereunder, directly issued a demand notice dated 20.12.2022 under Section 95(3) of the Code calling upon the Appellant to pay Rs.1,27,53,256/- The Learned Adjudicating Authority erred in holding that the liability of the guarantor is co-extensive with that of the borrower. While Section 128 of the Indian Contract Act provides that the liability of the surety is co-extensive, the same is expressly subject to the terms of the contract. In the present case, Clause 03 clearly modifies this position by requiring a prior demand. Hence, the finding of the Adjudicating Authority is contrary to the contractual stipulation governing the parties.

10. It is the submission of the Ld. Counsel that the alleged letter dated 26.11.2021, relied upon by Respondent No. 1, was produced only at the stage

of rejoinder before the Adjudicating Authority, without any proof of service. In absence of proof of delivery, the said letter cannot be treated as a valid demand in terms of Clause 03 of the Deed of Guarantee and, therefore, cannot give rise to liability on the part of the Appellant.

11. He further submits that Respondent No. 1 has sought to rely upon Clause 23 of the Personal Guarantee Agreement to contend that service of the letter dated 26.11.2021 stands completed. However, Respondent No. 1 has failed to produce any documentary evidence such as the envelope, postal receipt, or certificate evidencing dispatch of the said notice, either before the Adjudicating Authority or before this Hon'ble Tribunal. In absence of such foundational proof, the deeming fiction under Clause 23 cannot be invoked, and therefore, the alleged service cannot be presumed.

12. It is submitted that Respondent No. 1 has also placed reliance upon a legal notice dated 04.02.2022, allegedly issued to the Appellant. However, this document was never brought on record along with the Section 95 application filed before the Adjudicating Authority in the year 2024. The said document is being introduced for the first time at the appellate stage, which is impermissible in law. Reliance is placed on the judgment in **"*Lawrence v. Renahan Vamakesan (Civil Appeal No. 377/2023)*",** wherein it has been held that documents not produced before the Adjudicating Authority cannot be entertained at the appellate stage unless they fall within the limited exceptions under Order XLI Rule 27 CPC. The present case does not satisfy any such exception.

13. Ld. Counsel further submits that Respondent No. 1 has contended that the letter dated 26.11.2021 formed part of the Original Application (O.A.) filed before the Debt Recovery Tribunal and that the Appellant was served in those proceedings and proceeded ex parte. However, it is submitted that the Appellant was proceeded ex parte only on account of publication of notice of hearing, and not on account of service of the alleged demand letter dated 26.11.2021. Mere publication of notice for appearance in DRT proceedings cannot be equated with valid service of demand under Clause 03 of the Deed of Guarantee.

14. Ld. Counsel submits that the legal position regarding invocation of guarantee and existence of default stands settled by this Appellate Tribunal in ***"SBI vs. Deepak Kumar Singhania (CA (AT) (Insolvency) No. 191 of 2025)",*** wherein it has been held that default on the part of the guarantor must exist on the date of issuance of notice under Rule 7(1), and that a personal guarantor becomes a debtor only upon invocation of the guarantee. In the present case, since no valid invocation of guarantee was made prior to issuance of notice, no default can be said to have arisen on the part of the Appellant.

15. It is his submission that the entire initiation of insolvency proceedings against the Appellant is vitiated on account of non-compliance with the mandatory contractual and legal requirements, and the impugned order deserves to be set aside.

Submissions of the Respondent No. 1/Financial Creditor (SIDBI)

16. The Ld. Counsel for Respondent No. 1 submits that the present Appeals arise from a fundamentally misconceived and factually incorrect premise advanced by the Appellants, namely that the Personal Guarantees executed by them were neither invoked nor served prior to issuance of the demand notice under Form B. It is respectfully submitted that this contention is entirely contrary to the material available on record and has been raised in an attempt to evade liability.

17. He submits that the short and central issue which arises for consideration before this Hon'ble Tribunal is whether the Personal Guarantees executed by the Appellants were validly invoked and duly served in accordance with the contractual stipulations contained in Clause 3 and Clause 23 of the Deed of Guarantee. The Appellants have sought to contend that the Learned Adjudicating Authority erred in relying upon the invocation letter dated 26.11.2021 on the ground that no proof of service was annexed thereto, and consequently, no default could be said to have arisen.

18. It is submitted that this contention is not only factually incorrect but is also contrary to the documentary record. The invocation of the Personal Guarantee is not dependent on a singular act but stands established through a series of independent, cumulative and corroborative actions undertaken by Respondent No.1, each of which satisfies the contractual and legal requirements of invocation and service.

19. Ld. Counsel submits that the Personal Guarantee executed by the Appellant was duly and unequivocally invoked by way of letter dated 26.11.2021, issued strictly in terms of Clause 3 of the Deed of Guarantee. The said clause expressly mandates that upon occurrence of default, the guarantor is liable to make payment "upon demand," and the invocation letter clearly constitutes such a demand.

20. It is submitted that the invocation letter dated 26.11.2021 was not only issued but also duly served upon the Appellant. The said invocation was further reiterated and recorded in the statutory demand notice dated 20.12.2022 issued under Rule 7(1), wherein the invocation letter was annexed. Additionally, the same formed part of the pleadings in the proceedings before the Debts Recovery Tribunal (OA No. 264/2022), which were duly served upon the Appellant.

21. Ld. Counsel further submits that Clause 23 of the Deed of Guarantee governs the mode and proof of service and clearly stipulates that service shall be deemed sufficient if the notice is dispatched to the last known address of the guarantor. The clause further provides that a certificate issued by a responsible officer of SIDBI confirming dispatch shall constitute conclusive proof of service, irrespective of whether the notice is actually received or returned.

22. It is his submission that in the present case, this contractual requirement stands fully satisfied. Respondent No. 1 has placed on record multiple affidavits by its authorised officer confirming dispatch of the invocation letter, recall notice, and demand notice. These affidavits include

those filed with the Section 95 application, in the DRT proceedings, and along with the reply in the present appeal. Each of these independently certifies that the notices were duly issued and dispatched to the Appellant.

23. He submits that in view of the express contractual stipulation under Clause 23, such certification constitutes conclusive and binding proof of service. The Appellant cannot now be permitted to go behind the agreed contractual mechanism and raise a plea of non-service, particularly in the absence of any rebuttal evidence.

24. He further submits that the address used for service is the same as that provided by the Appellant in the Deed of Guarantee and has never been disputed. Therefore, service at such address is legally valid, and any failure to update or challenge the address lies solely with the Appellant.

25. It is also submitted that the Appellant did not raise any objection regarding invocation or service at any stage prior to the proceedings before the Learned NCLT, including during receipt of the demand notice or during DRT proceedings. The present plea is therefore clearly an afterthought and liable to be rejected.

26. He submits without prejudice, that even assuming further proof was required, the invocation stands independently established through subsequent communications including the recall notice and DRT proceedings, each of which satisfies the requirement of demand under Clause 3.

27. Ld. Counsel submits that, without prejudice to the formal invocation effected by letter dated 26.11.2021, the requirement of demand under Clause 3 stands independently fulfilled through the loan recall notice dated

04.02.2022. It is submitted that the recall notice unequivocally called upon the Appellant to discharge the outstanding dues and clearly manifested the intention of Respondent No.1 to enforce the Personal Guarantee. Such a communication, in terms of Clause 3, constitutes a valid and sufficient demand.

28. He submits that the statutory demand notice dated 20.12.2022 further reinforces this position by specifically recording that the Personal Guarantee had already been invoked vide letter dated 26.11.2021, and by annexing the said invocation letter. The demand notice was duly served and remained uncontroverted at the relevant stage.

29. It is submitted that the recall notice dated 04.02.2022, issued through counsel, independently satisfies the requirement of demand and triggers the liability of the guarantor. No additional formality is required once such demand is made.

30. The counsel submits that each of these communications—namely the invocation letter, recall notice, and statutory demand notice—individually and collectively establish that the Personal Guarantee was invoked repeatedly and consistently, leaving no scope for dispute on this aspect.

31. The Ld. Counsel further submits that the initiation of proceedings before the Debts Recovery Tribunal, Lucknow in OA No. 264 of 2022 constitutes independent and conclusive evidence of invocation, service and default. The said proceedings were instituted against both the Principal Borrower and the Appellant in her capacity as Personal Guarantor and were based on the same loan transaction and Deed of Guarantee. The invocation

letter and recall notice were annexed to the pleadings in the DRT proceedings, which were duly served upon the Appellant.

32. It is further submitted that the Learned DRT, being satisfied with service, proceeded ex parte against the Appellant by order dated 20.02.2023. Subsequently, the DRT passed judgment dated 17.07.2023 and issued a Recovery Certificate. The judgment specifically records the invocation notices, service of pleadings, and the existence of debt and default.

33. The Ld. Counsel submits that despite due service, the Appellant chose not to appear or contest the proceedings, thereby allowing them to attain finality. Having failed to raise any objection at that stage, the Appellant is now estopped from raising such pleas in the present proceedings.

34. It is his submission that the DRT proceedings conclusively establish (i) invocation of the guarantee, (ii) service of notices, and (iii) existence of debt and default. These issues cannot be re-agitated in collateral proceedings under the IBC.

35. Ld. Counsel submits that the Appellant has, in its rejoinder, expressly admitted the foundational facts relating to invocation and service, thereby eliminating any factual dispute. It is submitted that the Appellant has admitted paragraphs 4.5, 4.6 and 4.7 of the Reply filed by Respondent No.1. These paragraphs clearly record that the Personal Guarantee was invoked vide letter dated 26.11.2021, that the recall notice was issued and served, and that DRT proceedings were initiated with the relevant notices annexed and served. By admitting these paragraphs, the Appellant has unequivocally

admitted the invocation of the guarantee, issuance and service of recall notice, and service of DRT proceedings.

36. The Ld. Counsel submits that in light of these clear admissions, the Appellant is precluded from contending otherwise. It is a settled principle of law that admitted facts need not be proved, and a party cannot be permitted to approbate and reprobate by taking contradictory stands.

37. The Ld. Counsel submits that all relevant documents evidencing invocation and service were duly placed on record before the Learned NCLT and were considered while passing the Impugned Order. These documents included the invocation letter dated 26.11.2021, recall notice dated 04.02.2022, statutory demand notice dated 20.12.2022, and records of the DRT proceedings. These documents were not only part of the record but were also relied upon in pleadings and formed the basis of the decision.

38. It is submitted that the Ld. NCLT has categorically recorded in the Impugned Order that the Personal Guarantee was invoked and thereafter admitted the application under Section 95 upon being satisfied that all statutory requirements were fulfilled.

39. He further submits that the law in this regard is well settled, that the purpose of service is to ensure knowledge. In the present case, the Appellant had complete knowledge of the invocation and proceedings, as evident from demand notices, DRT proceedings, and its own pleadings. Therefore, the objection regarding service is hyper-technical and untenable.

40. In his final submission, Ld. Counsel states that the invocation of the Personal Guarantee stands conclusively established through multiple independent evidences, the requirement of service stands satisfied both contractually and legally, and the Appellant's objections are devoid of merit. The Impugned Orders therefore warrant no interference and the Appeals are liable to be dismissed.

Submissions of the Respondent No.2/ Resolution Professional

41. Ld. Counsel for Respondent No.2/ Resolution Professional submits that her submission herein are confined to the statutory role and actions undertaken by the Resolution Professional in discharge of duties under the Code, and are intended to assist this Hon'ble Tribunal in adjudicating the present appeal on the basis of correct facts and settled legal principles.

42. She submits that the Resolution Professional (R2), who has been appointed under Section 97 of the Insolvency and Bankruptcy Code, 2016, is an independent statutory authority and has no personal or pecuniary interest in the outcome of the present proceedings. The Resolution Professional has merely discharged his statutory duties in accordance with Sections 99 and 100 of the Code, and his actions are confined strictly within the framework of law. There is no basis whatsoever for attributing any bias or partiality to the Resolution Professional.

43. It is submitted that the contentions by the Appellant whereby the liability of the Personal Guarantor is sought to be questioned on the basis of Clause 03 of the Deed of Guarantee dated 22.09.2017, are wholly erroneous

and misconceived. A plain reading of Clause 03 of the said Deed of Guarantee clearly stipulates that in the event of default by the borrower/Corporate Debtor, the guarantor(s) shall, upon demand, pay to the Financial Creditor all sums payable under the Loan Agreement. The legal position is well settled that the liability of the guarantor is co-extensive with that of the principal borrower as per Section 128 of the Indian Contract Act, 1872. The Hon'ble Supreme Court in ***"Laxmi Pat Surana vs Union Bank of India & Anr., Civil Appeal No. 2734 of 2020"*** has categorically held that the liability of the guarantor arises immediately upon default by the principal borrower and is co-extensive in nature. Thus, the attempt of the Appellant to evade liability is contrary to both contractual stipulations and settled law.

44. She submits that the allegation by the Appellant that no demand notice was issued by the Financial Creditor prior to the notice dated 20.12.2022, is factually incorrect and misleading. The Financial Creditor had already invoked the Deed of Guarantee by issuing an invocation notice dated 26.11.2021 to the Personal Guarantors, including the present Appellant.

45. She further submitted that the invocation notice dated 26.11.2021 clearly constitutes a valid and binding demand upon the Personal Guarantor. The issuance of this notice establishes beyond doubt that the liability of the guarantor had already been invoked prior to the subsequent notice dated 20.12.2022. Therefore, the allegation of the Appellant that no prior demand was ever raised is false, misleading, and liable to be rejected.

46. It is submitted that the Financial Creditor had also issued a Loan Recall Notice dated 01.06.2021 to the Corporate Debtor, whereby the entire outstanding loan facilities were recalled and the Corporate Debtor was called upon to repay the dues forthwith. The Appellant's contention to the contrary is not only incorrect, but amounts to a deliberate attempt to mislead this Hon'ble Tribunal.

47. Ld. Counsel further submitted that the report prepared and submitted by the Resolution Professional under Section 99 of the Insolvency and Bankruptcy Code, 2016 is purely statutory in nature and forms part of the procedural mechanism under the Code. The said report is prepared in an objective and independent manner and cannot, by any stretch of imagination, be construed as being in favour of or prejudicial to any party.

48. It is further submitted that the contention of the Appellant alleging that the Invocation Letter dated 26.11.2021 was not produced before the Adjudicating Authority, is wholly incorrect and misleading. The said Invocation Letter was duly placed on record before the Adjudicating Authority by Respondent No. 2 along with the Rejoinder. Furthermore, the same has also been annexed in the present Appeal as Annexure-6 at Pages 251–271.

49. The Resolution Professional respectfully submitted that the Ld. Adjudicating Authority has passed a detailed and well-reasoned order dated 13.02.2025 after duly appreciating the facts of the case and the settled position of law. The order admitting the application under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 and initiating the Personal Insolvency

Resolution Process against the Appellant does not suffer from any error, illegality, or infirmity. The present Appeal is founded on incorrect and misleading assertions and is devoid of merit. It results in unnecessary consumption of valuable judicial time and is liable to be dismissed in limine.

Analysis and Findings

50. We have gone through the records of the case including the written submissions filed by the parties and heard the parties in detail.

51. The only issue to be determined in these appeals is whether the Personal Guarantee executed by the Appellants were validly invoked before initiation of proceedings under Section 95 of the Insolvency and Bankruptcy Code, 2016, and whether the Adjudicating Authority rightly admitted the application against the Appellant-Personal Guarantor.

52. The principal argument advanced by the Appellant is that Clause 3 of the Deed of Guarantee dated 22.09.2017 specifically provides that in the event of default by the borrower, the guarantor shall "upon demand" pay the amounts due to the Financial Creditor. According to the Appellant, the liability of the guarantor does not arise automatically upon default by the Corporate Debtor and can arise only after a separate demand is made upon the guarantor. It has been contended that no such demand notice was ever served upon them prior to issuance of the statutory demand notice dated 20.12.2022 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. It is their submission that

notice invoking the guarantee dated 26.11.2021 was never issued and served upon them. It was only placed before Ld. Adjudicating Authority through the rejoinder to the objection filed by the financial creditor in its application u/s 95 of the Code. It has also been alleged that there is no proof of service of the alleged invocation letter dated 26.11.2021. It has also been alleged that the Respondent no.1 had sent a copy of legal notice dated 04.02.2022 to the Appellants. It is their submissions that the same was not brought on record by the Respondent No.1 along with its application filed under Section 95 of the Code. On this basis, it has been argued that no debt or default existed against the Appellant on the date of initiation of proceedings under Section 95 of the Code.

53. On the other hand, Respondent No.1/ SIDBI has contended that the Personal Guarantee was specifically invoked through a letter dated 26.11.2021. It has further been submitted that the said invocation was followed by a loan recall notice dated 04.02.2022 and subsequently the statutory demand notice dated 20.12.2022. The financial creditor also initiated recovery proceedings before the Debts Recovery Tribunal where the guarantee invocation letter dated 26.11.2021 was also placed on record. The Respondent No.1 has stated that the Appellant has in its rejoinder filed in this appeal in paragraph-13 has expressly admitted the contents of para-4.5, 4.6 & 4.7 of the reply filed by the Respondent No.1. Paragraph- 4.5 of the reply specifically records that the personal guarantee was invoked vide letter dated 26.11.2021 and duly served upon the Appellant. Paragraph- 4.6 records that the loan recall notice dated 04.02.2022 was issued and served and paragraph-

4.7 records that the DRT proceedings (OA No. 264/2022) were initiated with the invocation and recall notices annexed thereto and that the said proceedings were duly served upon the Appellants. According to the Respondents, these documents and proceedings clearly establish that the guarantor was called upon to discharge the liability arising under the guarantee and therefore the requirement contained in Clause 3 stood fully satisfied.

54. At the outset, we find that there is no dispute regarding the fundamental facts of the transaction. The facts regarding sanction of the loan in favour of the Corporate Debtor; the execution of the Deed of Guarantee dated 22.09.2017 by the personal guarantors; the default by the Corporate Debtor and classification of loan account as NPA; and recall of the said loan vide loan recall notice dated 01.06.2021 wherein the entire outstanding facilities were recalled and the Corporate Debtor was called upon to forthwith repay the dues, are not disputed. The challenge raised in the present Appeal is confined to the question whether the guarantee was validly invoked before commencement of proceedings under Part III of the Code.

55. We find that the controversy is not whether invocation of guarantee was necessary. Both sides proceed on the basis that Clause 3 contemplates a demand being made upon the guarantor. The real question, therefore, is whether such demand was in fact made in the present case.

56. We note that prior to the initiation of the proceedings u/s 95 of the Code, an application U/s 19 of the recovery of Debts Due to Banks and

Financial Institutions Act, 1993 being OA. No. 264 of 2022, was filed before the debt Recovery Tribunal, Lucknow Bench on 5.03.2022, against the Corporate Debtor as well as the Appellants in their capacity of Personal Guarantor for the recovery of the loan amount of Rs.1,11,82,009/-along with costs and interests from the personal guarantors. The invocation letter and recall notice formed part of the proceedings before the DRT. The relevant portions of para-5 of the Application filed by the Financial Creditor are extracted below:

> *"5.....*
>
> *k) That the applicant bank has sent several letter and reminder on 01.06.2021 with demand of outstanding amount but the defendants did not pay any head after receive the said letter. That ultimately the applicant bank has again sent a notice dated 26.11.2021 but fail to receive any amount. The said negligent and inattentive behaviour put the applicant in loss.*
>
> *n) The cause of action arose on 23.05.2017 when the applicant sanctioned and granted Term Loan/ Credit Facility of credit facilities/ Term Loan of Rs.2,00,00,000/- (Rupees Two Crore Only) and it further arose on 22.09.2017 when the Defendants executed loan documents in favour of the applicant bank. The cause of action arose subsequently on various date when the default in payment have been made by the defendant or deposit were made or letter/notice were sent by the defendant and when the account of the defendant was classified as non-performing assets and balance confirmation except by defendant dated 22.08.2019 and reminder notice sent by applicant dated 01.06.2021 and 26.11.2021 also legal notice on 04.02.2022, when the applicant bank sent a legal notice through its counsel Shri Gaurav Kumar Srivastava, Advocate and is subsisting till the full outstanding amount is paid along with interest and cost to the applicant bank by the defendant."*

57. It is clear from the Records that the Respondent No.1 has been relying upon the Invocation letter 26.11.2021 in terms of Guarantee Agreement, well before initiation of the proceedings under 95 before Ld. Adjudicating authority. This fact was also noted by Ld. DRT in its judgment dated 17.10.2023, wherein it issued. The Recovery Certificate for recovery from the Corporate Debtor and personal guarantors. Relevant extracts of the judgement are extracted below:

> *"5. After availing the credit facility, defendants fails to maintain financial discipline and also failed to comply with the terms and conditions of the loan agreement as required in the matter, the applicant bank made all possible efforts by notices, several applications on various occasions, dates and through oral persuasions regarding irregularities in the said loan account, but defendants on committed regular defaults, did not make any efforts regarding payment to the dues, due to non-deposits of amounts or to adjust/regularise the loan account despite giving various assurances the loan account still remained irregular, consequently, the said loan account of defendants classified as NPA on 23.10.2017 as per RBI Guidelines through issued certificate dated 25.02.2022 (Exhibit No. A-12), availing the credit facility defendants signed and executed the letter of acknowledgment of debts on 13.05.2019 on the applied rate of interest as on 31.03.2019 (Exhibit No. A-13), therefore applicant bank issued and served recall notices on 01.06.2021 and to the guarantors in respect of invocation of guarantee on 26.11.2021 and finally wait a while issued legal notice on 04.02.2022 (Exhibit No. A-14, A-15 & A-16) to the defendants but the defendants did make alacrity to liquidate the dues, hence this original application has been instituted.*

8. The summons were served to the defendants through registered post as well as paper publications, the defendants opted not to contest the case before this Tribunal, hence the matter proceeded against the defendants.

9. From the perusal of the record, it is evident that the defendants were provided with fair opportunities to contest the claim of the bank, as the defendants opted not to contest the case, so only point of consideration before this Tribunal is as to whether bank is legally entitled to the amount as claimed in original application on the basis of documents and pleadings submitted by it."

58. What comes out very clearly from the DRT proceedings that the financial creditor/SIDBI submitted all documents showing debt, default and invocation of guarantee before the Ld. DRT, but the defendants, corporate debtor and the personal guarantors, who are appellant in that proceeding did not choose to appear before the Ld. DRT despite service of summons through all modes. We also note that Ld. DRT allowed the original application against the defendants viz. CD and Personal Guarantors herein and allowed the bank to recover the amount of loan.

59. We also note that in the demand Notice issued by the Respondent No.1 in Form-B on 20.12.2022 under Rule 7(1) of the IB Rules 2019 also the Invocation Notice is clearly mentioned. The relevant item no.14 of the Form-B wherein the notice invoking the guarantee is mentioned at Srl. No.6 is extracted below: -

14.	*List of documents attached to this notice in order to prove the existence of debt and the amount in default*	*6. Copy of Notice dated 26 November 2021 bearing reference no. 2022NOV26/LOO1250473/BMC issued upon Personal Guarantor Shri Vijay Pandey and Smt. Maya Pandey for invoking the guarantee of Guarantor with respect to Term Loan of Rs.2 crore (Two Crore Only) is annexed hereto and marked as **"Annexure-9"**.*

We also note in this regard that the appellants did not reply to the notice in Form-B to the Financial Creditor/ Respondent No.1.

60. The procedure for invocation of personal guarantee has been provided in the Clause 23 of the Deed of Guarantee and the same is extracted below: -

> ***"CLAUSE 23 of PERSONAL GUARANTEE***
>
> *"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 Guarantors or their personal representatives, such demand or notice is to be made or given and shall he assumed to have reached the addressee(s) in the course of post, if given by post, and no period of limitation shall commence to run in favour of the Guarantors until after demand for the payment in writing shall have been made or given as aforesaid and in proving such notice which sent by post it shall be sufficiently proved that the envelope containing the notice was posted and a Certificate by any of the responsible officer of SIDBI that to the best of his knowledge and belief, the envelope containing the said notice was so posted shall be conclusive as against the Guarantors/s even though it was returned unserved on account of refusal of the Guarantors/s or otherwise."*

61. Clause 23 specifically governs the mode of service of notices between the parties. The clause provides that any demand or notice shall be deemed to be sufficiently served if sent to the last known address of the guarantor. It

further provides that certification by a responsible officer of SIDBI regarding dispatch of such notice would constitute proof of service. The Appellants have argued that the Respondent No.1 has not attached the envelope or the postal receipts showing that the guarantee invocation letter dated 26.11.2021 has been posted to the address of Appellants on record. The Appellants have argued on this basis that guarantee has never been invoked.

62. The significance of this clause lies in the fact that it represents the contractual arrangement voluntarily agreed upon between the parties. Once the parties have agreed to a particular mode of service and a particular method of proving such service, the issue cannot be examined in disregard of those contractual terms. The Respondents have placed on record affidavits affirming dispatch of the invocation notice and subsequent communications and proceedings which clearly indicate that the Appellants were in know of such notice. Therefore, the contention that invocation must fail solely because postal acknowledgments or envelopes have not been produced cannot be accepted in isolation from the contractual framework governing the parties.

63. Further in this regard, we take a look at the demand letter dated 04.02.2022 which has been issued by the Ld. Counsel of R1 to CD and the Appellants. It is seen from records that the proof of the dispatch of the said letter by speed post has been placed on record. These documents have been duly certified by the competent authority of the Respondent No.1 which thereby fully meets the criteria of invocation. Thereafter, a statutory demand notice dated 20.12.2022 was issued, which specifically referred to the earlier invocation of the guarantee.

64. These events are not isolated or disconnected acts. Rather, they constitute a continuous chain of actions undertaken by the Financial Creditor for enforcement of the guarantee. We note from the records that the invocation letter was issued on 26.11.2021 followed by issuance of the recall notice dated 04.02.2022 calling upon the appellant to clear the outstanding dues. Thereafter on 05.03.2022 the financial creditor initiated OA No. 264 of 2022 before the DRT, Lucknow against the CDs as well as the Appellants in their capacity of personal guarantor. When viewed collectively, they indicate that the Financial Creditor had unequivocally called upon the Appellant to discharge the liability arising under the guarantee.

65. The Appellant has argued that the invocation letter was not originally filed along with the application under Section 95 and was subsequently brought on record through the rejoinder. Even assuming this factual contention to be correct, the question before us is whether the relevant material was available before the Adjudicating Authority when the matter was finally decided. The record indicates that the invocation letter, recall notice and related documents had been brought before the Adjudicating Authority and formed part of the material considered while passing the Impugned Order. Therefore, it cannot be said that the finding regarding invocation was recorded in the absence of supporting material.

66. We also find it significant that the Appellant has not disputed the correctness of the address mentioned in the Deed of Guarantee. The Respondents have specifically contended that the notices were sent to the address provided by the Appellant and that no change of address was ever

communicated. In such circumstances, the contractual presumption regarding service under Clause 23 assumes importance and cannot be lightly disregarded.

67. We also note from the records in these appellate proceedings that the appellant has in its rejoinder expressly admitted to the facts relating to the invocation and service in para- 13 of the rejoinder which is extracted below: -

> *"13. That the contents of para no.1-4.13 of the reply are matter of record."*

68. It is seen from the records that the Appellant has admitted the facts stated by the Respondent No.1 in paragraphs 4.5, 4.6 & 4.7 of the reply. The aforesaid paras are extracted below:-

> ***"4.5*** *In view of the continuing default by the principal borrower, the Answering Respondent issued an invocation of the Guarantee Notice dated 26.11.2021 to the Appellant and as well as to the other personal guarantor, Mr. Vijay Pandey calling upon the guarantors / Appellant to honour the obligations under the Deed of Guarantee, which was duly served to the Appellant. True copy of the Invocation of Guarantee Notice dated 26.11.2021 is annexed herewith as Annexure R-2.*
>
> ***4.6*** *In continuation of the earlier demands and reminders, Answering Respondent through its Advocates issued a formal recall legal notice dated 04.02.2022 to the Principal Borrower as well as the guarantors, including the Appellant herein, thereby recalling the entire outstanding loan amount and calling upon them to make immediate payment of the dues. The said recall notice unequivocally demanded repayment of the outstanding principal, interest, and other charges due under the loan facility and also made it clear that in the event of failure to pay, Answering Respondent would be constrained to initiate appropriate legal proceedings. True copy of the Recall legal notice dated 04.02.2022 is annexed herewith as Annexure R-3.*

> ***4.7*** *It is pertinent to mention that owing to the persistent default and non-clearance of dues, the Answering Respondent has also initiated recovery proceedings before the Debts Recovery Tribunal, Lucknow, by filing Original Application No. 264 of 2022 ("**OA**") against the Principal Borrower, the Appellant, and other co-borrowers/guarantors for recovery of a sum of INR 1,11,82,009/- along with interest. It is pertinent to mention that the notice invoking the guarantee dated 26.11.2021 was duly annexed to the said OA."*

69. The admission of the Appellants to the aforesaid paragraphs 4.5 to 4.7 as above amounts to admission of the following:

a. Invocation of the personal guarantee vide letter dated 26.11.2021;
b. Issuance and service of recall notice dated 04.02.2022; and
c. Service of DRT proceedings including the notice invoking guarantee dated 26.11.2021.

70. Another aspect which requires consideration is that the Appellant seeks to challenge the insolvency proceedings solely on the ground that the invocation letter was not served in the manner suggested by the Appellant. However, the surrounding circumstances demonstrate that the Appellant had knowledge of the recovery actions initiated by the Financial Creditor. The statutory demand notice, the DRT proceedings and the subsequent enforcement actions all indicate that the Financial Creditor had consistently asserted its rights under the guarantee. The objection raised by the Appellant is therefore essentially technical in nature and does not dislodge the substantive fact that the guarantee had been enforced by the creditor.

71. In this regard, we take a note of judgment of this Appellate Tribunal in ***"State Bank of India vs. Dr. Jitendra Das Maganti & Anr., CA (AT) (CH) (Ins) No. 360/2024".*** In paras 24 & 25 it has been held:

> *"24. Under any legal procedure, admission of a particular fact is the best evidence. All those technical arguments that has been extended by the Ld. Counsel for the Respondents on the basis of variance in the description of addresses as contained in various documents, which the Respondents have referred to during the course of argument will be of no avail, in getting a relief from the proceedings under Section 95 of I & B Code, particularly when the service of notice of demand is a fact which stands admitted by the Respondents in their own pleadings before none other than the Hon'ble Apex Court and that too in a proceedings under Article 32 of the Constitution of India. Hence, they now cannot rescind from their own admission of knowledge and service of notice as provided under Section 95 (4) of I & B Code.*
>
> *25. Ld. Adjudicating Authority has placed excessive reliance on the concept of 'due' service of the demand notice as laid down in the statute and the documents including the guarantee agreement. It must be kept in mind that service of the demand notice at the correct address is mandated to ensure that the Personal Guarantor is imparted with the knowledge about the impending proceedings which are being initiated. In this case the Respondents have been imparted with the knowledge and that is why they had been able to file the Writ Petition before Hon'ble Apex Court. In that eventuality, when knowledge is already imparted and it is fully evident, harping on technicalities of service of the demand notice appears to be too hyper-technical and redundant, especially when seen from the context and the objective of I&B Code."*

72. In the present case we have seen that the Appellants have been served with invocation of Guarantee through several distinct notices; in different manners and in different proceedings. The reliance on non-production of postal receipts for the notice dated 26.11.2021 is the only defence pleaded by the Appellants to argue that the notice invoking guarantee has not been served upon them before initiating Section 95 proceedings and therefore no debt and default could be proved against them. The ratio of the aforesaid judgement is clearly against their contention.

73. The Appellant has relied upon the judgment of this Appellate Tribunal in ***"SBI v. Deepak Kumar Singhania, Company Appeal (AT) (Insolvency) No. 191 of 2025",*** wherein it was held that a Personal Guarantor becomes liable only after invocation of the guarantee and that the statutory demand notice under Rule 7(1) cannot itself be treated as a notice invoking the guarantee. In the present case, however, the Respondent has relied upon the invocation letter dated 26.11.2021, which was issued prior to the statutory demand notice dated 20.12.2022. The Respondent has also relied upon the subsequent recall notice and DRT proceeding to establish invocation of the guarantee. Thus, the decision in *SBI (supra)* does not help the case of the Appellants.

74. We are also unable to accept the submission of the Appellant that the Resolution Professional mechanically recommended admission of the application. The statutory scheme of Sections 99 and 100 of the Code makes it clear that the report of the Resolution Professional is recommendatory in nature. The final satisfaction regarding admission or rejection of the

application rests with the Adjudicating Authority. The Impugned Order reflects that the Adjudicating Authority considered the report of the Resolution Professional, the objections filed by the Appellant and the documents placed on record before arriving at its conclusion. Once the requirement of invocation under Clause 3 of the guarantee stood satisfied, the liability of the Appellant as Personal Guarantor became enforceable. Consequently, the contention that no debt or default existed against the Appellant on the date of initiation of proceedings under Section 95 cannot be accepted. Therefore, the admission of the application cannot be faulted merely because the Appellant disagrees with the recommendation made by the Resolution Professional.

75. We also note that the Adjudicating Authority had the benefit of considering all relevant materials before arriving at its satisfaction under Section 100 of the Code. The findings recorded in the Impugned Order are supported by the record and cannot be said to be contrary to law. We do not find any error in the approach adopted by the Adjudicating Authority.

76. After considering the entire factual background, the contractual clauses governing the parties and the documents relied upon by both sides, we are of the view that the material placed on record sufficiently establishes that Respondent No. 1 had invoked the Personal Guarantee and had called upon the Appellants to discharge the liability arising thereunder. The invocation letter dated 26.11.2021, the recall notice dated 04.02.2022, the statutory demand notice dated 20.12.2022 and the recovery proceedings before the

DRT, when read together, clearly demonstrate that the Financial Creditor had taken consistent steps to enforce the guarantee.

77. In view of the findings above, we do not find any infirmity in the Impugned Orders. Both the Appeals are accordingly, dismissed. Pending IAs, if any, are closed. There would be no order as to costs.

Justice N. Seshasayee
Member (Judicial)

Arun Baroka
Member (Technical)

Indevar Pandey
Member (Technical)

Place: New Delhi

Harleen/
Pragya (LRA)