



NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.203
CP(IB)/62(MP)2023

Proceedings under Section 95 IBC

IN THE MATTER OF:

Small Industries Development Bank of India through RP,
Megha Jain

.....Applicant

V/s

Krishnakant Bagree
(Personal Guarantor of M/s Bagree Alloys Ltd)

.....Respondent

Coram:

Hon'ble Shri Brajendra Mani Tripathi, Member (J)
Hon'ble Shri Man Mohan Gupta Member (T)

ORDER

Delivered on 29/10/2025

The case is fixed for pronouncement of the order. The order is pronounced in open Court *vide* separate sheet.

Sd/-

**MAN MOHAN GUPTA
MEMBER (TECHNICAL)**

Tomar

Sd/-

**BRAJENDRA MANI TRIPATHI
MEMBER (JUDICIAL)**



IN THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT INDORE

CP(IB) No. 62 of 2023

Small Industries Development Bank of India

Having its registered office at:

SIDBI Tower, 15 Ashok Marg,
Lucknow-226001, Uttar Pradesh

Through Resolution Professional

Megha Jain

Insolvency Professional

IBBI/IPA-001/IP-P-02466/2021-2022/13857

20 Palash Palace Colony, Bicholi Road,

Near Bengali Square, Indore, M.P.-452016 ... **Financial Creditor**

Versus

Sh. Krishnakant Bagree

Having address at:

10/1, New Palasia, Sterling Heights,
Indore (M.P.)-452001

... **Personal Guarantor**

C O R A M:

HON'BLE SH. BRAJENDRA MANI TRIPATHI, MEMBER (J)

HON'BLE SH. MAN MOHAN GUPTA, MEMBER (T)



Pronounced on: 29.10.2025

Appearance:

For the Applicant : Ms. Bharti Nawlani, Adv.

For the PG : Mr. G. Adhin, Adv.

J U D G E M E N T

1. The Present Application is filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 (Herein referred to as “IBC, 2016”) r/w. Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate debtor) Rules, 2019 by Small Industries Development Bank of India (“Financial Creditor”) for the purpose of initiating Personal Insolvency Resolution Process against Sh. Krishnakant Bagree, Personal Guarantor to Bagree Alloys Limited for default of an amount of Rs. 13,55,61,322.44/-.

2. The Applicant/Financial Creditor herein submits that at the request of the Corporate Debtor, the Applicant/Financial Creditor had sanctioned credit facilities to the Corporate Debtor for an amount of Rs.440 Lakhs. As against the said facilities other security documents were executed subject to the terms and conditions thereto. Pursuant to which, the Personal Guarantor viz. Respondent herein was one of the executors of the Personal Guarantee Deed dated 22.12.2008, 03.11.2009 and 22.06.2010 (Anx. 6 colly) thereby guaranteeing the debt.



3. On account of Corporate Debtor's successive defaults in re-payment of the outstanding amount disbursed under the afore-stated facility, consequently, the Financial Creditor classified the loan account of corporate debtor as Non-Performing Assets (NPA) on 08.06.2013.

4. The Applicant submits that on 12.03.2014, the Applicant issued a notice under Section 13(2) of the SARFAESI Act (Anx. 7) to the Corporate Debtor and all the Guarantors of Corporate Debtor (including the Personal Guarantor herein) seeking forthwith repayment of the outstanding amount along with the interest and accrued charges.

5. The Applicant respectfully submits that a Notice dated 25.08.2015 (Anx. 8) was issued to the Personal Guarantor invoking the personal guarantee and demanding payment of the outstanding dues. Thereafter, the Applicant issued Demand Notice dated 20.08.2022 (Anx. 9) to the Personal Guarantor in Form B, in accordance with Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. However, the debtor has not paid dues to the applicant despite the notices.

6. It was submitted on 16.03.2023 the applicant received One-time settlement letter from the Corporate Debtor (Anx.10) whereby



the Corporate Debtor acknowledges the debt and extends the period of limitation for filing the present application.

7. This Tribunal Vide order dated 22.02.2024 appointed the resolution professional Ms. Megha Jain having registration No. IBBI/IPA-001/IP-P-02466/2021-2022/ 13857 to submit a report u/s 99 of the IBC 2016.

8. The Resolution Professional has submitted his report under Section 99 of the Insolvency and Bankruptcy Code, 2016 on 20.04.2024, recommending admission of the application filed under Section 95 of the Code. In the said report, the Resolution Professional has stated that no evidence of repayment of the debt by the Personal Guarantor was received. Furthermore, the Resolution Professional, vide letter dated 29.2.2024 sent through speed post, intimating the Personal Guarantor about his appointment and requested submission of proof of payment of the outstanding debt. However, it got returned with the remark “addressee left without instructions”.

9. The Respondent had filed reply dated 02.09.2024, submits that the application is devoid of merit and not eligible to be considered. It is contended that the Application is a mischievous attempt by the Applicant/Financial Creditor to misuse the process of law and waste the valuable time of the Adjudicating Authority, further alleging that the Report of RP improperly supports the malicious intent underlying the Application.



10. The respondent has submitted that the Corporate Debtor is a registered unit of Micro, Small and Medium Enterprises (MSME). The applicant has without complying the instructions for Revival and Rehabilitation of MSME made under the provisions of Micro Small and Medium Enterprises Development (MSMED) Act, 2006 declared the accounts of CD as Non-Performing Assets (NPA).

11. The respondent has submitted that the applicant has coercively obtained the OTS letter dated 16.6.23 from Corporate Debtor and it was neither accepted or acted upon by applicant. The applicant has also filed false complaint with Central Bureau of Investigation – Anti-Corruption Bureau (CBI-ACB), Bhopal, MP on 24.06.2023 against Corporate Debtor and its Directors under sections 120(B), 406, 420 of IPC and Section 13(2) & 13(1)(d) of Prevention of Corruption Act (PCA).

12. It was submitted that the applicant has also initiated proceedings under SARFAESI Act being SA No. 87 of 2014 and OA No. 413 of 2016 before Hon'ble DRT, Jabalpur which is pending on the date of filing of reply in present proceeding. The Bank of India being a co-lender also filed separate OA No. 561 of 2016 before Hon'ble DRT, Jabalpur.

13. It was submitted that on 17.1.2017 the lease of secured immovable assets being plot no. 72A-73A and Plot no 72C- 72D Industrial Area Dewas no.1 of DIC, AB Road, Dewas (MP) expired by efflux of time and forfeited by lessor. The possession of factory premises was taken over by Commercial Tax Department,



Employees Provident Fund Organisation and the Applicant/ FC resulting as quite valuable movables were stolen and the Corporate Debtor was forced-to stop business operations.

14. Respondent has submitted that the present application is filed after 10 years from the date of default and therefore barred by limitation. The demand notice dated 23.08.2022 was never served upon the respondent.

15. The learned counsel for the Respondent submits vide written submission dated 23.09.2025, that an application was filed by the applicant to initiate CIRP under Section 7 of IBC 2016 against the CD in CP (IB) 60 of 2023. The Adjudicating Authority vide order dated 04.06.2025 dismissed it as being barred by limitation and found that the application was filed beyond the three-year period from the date of default, 08.06.2013, without any valid acknowledgment of debt within the prescribed period. Consequently, the liability of the respondent, being co-extensive under section 128 of the Indian Contract Act, also stands extinguished.

Analysis and Observation

16. We have heard the arguments advanced by Ld. Counsel and have meticulously perused the records placed before us.

17. We have noted that the primary issues for consideration are:
i) Whether the present application is maintainable under the provisions of the code, particularly in the light of the



limitation period prescribed under the Limitation Act 1963, as made applicable to proceedings under the code by virtue of Section 238A?

ii) Whether a proposal for OTS begins limitation afresh?

18. As per Article 137 of the Limitation Act, 1963, the limitation period for filing an application under Section 95 of the IBC is three years from the date of default. The Hon'ble Supreme Court in **B.K. Educational Services Pvt. Ltd. v. Parag Gupta & Associates (2019) 11 SCC 633**, held that the limitation period for filing an insolvency application under the Code is governed by Article 137 and begins from the date of default.

19. In present case, the Corporate Guarantee was invoked in 25.08.2015 whereas the present petition filed on 21.08.2023 which is well beyond the period of limitation. In the interregnum, no proceedings have been instituted against the corporate guarantor under the IB code, 2016.

20. The Honourable Supreme Court in Civil Appeal: 6894 of 1997 in the case of **Syndicate Bank V Channaverrapa Beleri – 2006 (11) SCC 506**, had held that “where the guarantee is payable on demand, the limitation begins to run when the demand is made and the guarantor commits breach by not complying with the demand”. In other words, the limitation period will commence from the date of demand/ invocation of guarantee. In the case in hand, in terms of Clause 23 of the deed of Guarantee executed, the guarantors are liable to pay the amount defaulted by the principal borrower, on demand and demand has been made in 25.08.2015



whereas the instant petition has been filed on 21.08.2023 which is beyond three (3) years from the date of invocation.

21. We have noted that the Applicant has attempted to rely on the One-Time Settlement (OTS) offer dated 16.06.2023 as an acknowledgment to extend limitation. However, as held **in Jignesh Shah & Anr. v. Union of India (2019) 10 SCC 750**, a mere proposal for settlement without acceptance does not amount to acknowledgment of debt under Section 18 of the Limitation Act, 1963. Further, **in M/s. State Bank of India v. M/s. Hackbridge Hewittic and Easun Limited (2023), the NCLT Chennai Bench**, held that submitting an OTS proposal within the limitation period constitutes an acknowledgment of debt. Similarly, **in Dena Bank v. C. Shivakumar Reddy (2021) 10 SCC 330**, the Hon'ble Supreme Court held that an offer of One Time Settlement of a live claim, made within the period of limitation, can be construed as an acknowledgment to attract Section 18 of the Limitation Act.

22. Section 18 of the Limitation Act, 1963, stipulates that a fresh period of limitation commences from the date when party against whom the payment is sought to be recovered makes an acknowledgment in writing and signs it. However, Section 18 categorically clarifies that it only extends the period limitation provided the acknowledgement is made within the already subsisting period of limitation. If a party makes an acknowledgment in terms of Section 18 beyond the period of limitation, then such a case would not be covered by Section 18, and the debt would be time-barred. Similarly, in the case of **Sri**



Kapaleswarar Temple v. T. Tirunavukarasu (AIR 1975 MADRAS 164, 1987 MADLW 647), it was observed that an acknowledgement under Section 18 of the Limitation Act must be made on or before the date of expiry of the limitation period to give effect to a fresh lease of life to the enforceability of the debt. The relevant extract of Section 18 is below:

18. Effect of acknowledgment in writing.

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

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

Explanation.—For the purposes of this section,—

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

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

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

The Hon'ble Supreme Court in "**Sampuran Singh and Ors. v. Niranjana Kaur and Ors. (1999) 2 SCC 6798**", observed that the



acknowledgment, if any, has to be prior to the expiration of the prescribed period for filing the suit, failing which it shall not lead to a fresh trigger of limitation period.

23. In the present case, it is observed that the said proposal was made approximately seven years after the date of demand/invoke of guarantee, i.e., 25.08.2015. Thus it falls beyond the prescribed statutory period of limitation. As far as the proposal to pay the loan in OTS dated 16.06.2023 is also beyond the period of limitation as discussed in the foregoing paragraph, thus we are convinced that the loan in question is hopelessly time barred, both the points of issues for consideration liable to be decided in negative. Consequently, it cannot be construed to extend the limitation period. Hence, the contention of the Applicant on this ground is untenable, and the present application is accordingly held to be barred by limitation.

Order

24. Accordingly, the Company Petition CP(IB) 62 of 2023, **stands dismissed**, being barred by limitation.

Sd/-

Sd/-

MAN MOHAN GUPTA
(MEMBER TECHNICAL)

BRAJENDRA MANI TRIPATHI
(MEMBER JUDICIAL)

Vanshika-LRA