

IN THE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD  
DIVISION BENCH  
COURT - 1



ITEM No.306  
C.P.(IB)/151(AHM)2025

Order under Section 95 IBC

IN THE MATTER OF:

Omkara Assets Reconstruction Pvt. Ltd  
V/s  
Smt. Kirandevi Agrawal

.....Applicant  
.....Respondent

Order delivered on: 08/04/2025

Coram:

Mr. Shammi Khan, Hon'ble Member(J)  
Mr. Sanjeev Kumar Sharma, Hon'ble Member(T)

ORDER  
(Hybrid Mode)

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

Sd/-

SANJEEV KUMAR SHARMA  
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN  
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT-1, AHMEDABAD**

**CP (IB) No. 151/NCLT/AHM/2025**

*(Company Petition under Section 95 of the IBC, 2016 r.w.  
Rule 7(2) of the I&B (AAA for IRP for PGCD) Rules, 2019)*

In the matter of **Kirandevi Agrawal**

**Omkara Assets Reconstruction Pvt. Ltd**

Having addressed at:  
Kohinoor Square  
47<sup>th</sup> Floor, NC Kelkar Marg,  
R G Gadkari Chowk,  
Dadar (West), Mumbai - 40028

.....**Applicant/Financial Creditor**

**Versus**

**Ms. Kirandevi Agrawal**

Having Addressed at:  
Y-9, Sujata flats,  
Opp. Rajasthan Hospital,  
Shahibaugh, Ahmedabad.

.....**Respondent/Personal Guarantor**

**Order pronounced on 08.04.2025**

**CORAM:**

**SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)**  
**SH. SANJEEV KUMAR SHARMA, HON'BLE MEMBER (TECHNICAL)**

For the Applicant/FC : Mr. Nipun Singhvi, Advocate

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## O R D E R

1. The Present Company Petition is filed on 28.03.2025 through e-mode and through physical mode on 01.04.2025 under Section 95(1) of the Insolvency and Bankruptcy Code 2016, (hereinafter referred to as IBC, 2016") read with Rule 7(2) of the I&B (AAA for IRP for PGCD) Rules, 2019 by Applicant Company (hereinafter referred to as "Financial Creditor") for seeking initiation of Insolvency Resolution Process against **Ms. Kirandevi Agrawal** (hereinafter referred to as "Personal Guarantor") for a default amount of **Rs.224,78,37,463.24/-** as on 28.02.2025 in respect of Deed of Guarantee dated 17.09.2010 and 01.10.2012 executed in favour of the Bank. The date of default as stated in the petition is 24.10.2024.
2. It is stated in the Petition that State Bank of India had granted various Credit Facilities to the tune of Rs. 38.56 Crores to the Corporate Debtor **M/s Ashmita Papers Pvt. Ltd.** under Fund Based Working Capital Limits and Term Loans which were renewed from time to time vide



Sanction Letter dated 14.09.2010 & 28.09.2012 at the request of the Corporate Debtor which are enclosed along with the Petition as **Annexure – B Colly**.

3. However, after availing the Loan/Credit Facilities, the Corporate Debtor failed to maintain financial discipline as per terms and conditions of the loan agreement due to which loan account became irregular and committed default. Consequently, the said loan accounts of the Corporate Debtor were classified as **NPA** on 01.01.2013 and recalled by the State Bank of India vide Demand Notice u/s 13(2) of the SARFAESI Act, 2002 dated 04.03.2013 and asked the Corporate Debtor and the Respondent/Personal Guarantor to repay the amount of Rs.42,03,29.897.83 plus interest thereon.
4. Subsequently, the State Bank of India on 09.07.2013 filed Original Application (OA) No. 138 of 2013 before the Debts Recovery Tribunal, Ahmedabad, against the Corporate Debtor as well as the guarantors, for recovery of its outstanding dues of Rs. 42,03,29.897.83 plus interest thereon from the date of filing of Original



Application, which is pending for adjudication which is enclosed along with the Petition as **Annexure-G**.

5. Thereafter, the State Bank of India entered into an Assignment Agreement with the Applicant Company on 07.09.2018 for the assignment of debt from SBI to the applicant company, which is annexed as **Annexure - D** to this petition.
6. Further, it is stated by the applicant that, on 15.05.2019, 01.09.2019 and 05.07.2022 the Corporate Debtor and the Respondent submitted OTS proposal to the applicant company. Further, one of the Personal Guarantors of the Corporate Debtor also submitted an OTS proposal dated 22.07.2021, proposing to settle the dues by 31.12.2021. There are OTS proposals submitted by the Corporate Debtor to the applicant company dated 15.05.2019, 01.09.2019 and 05.07.2022 which are appended in the company petition as Annexure-H & I

**Page 183 to 185.**

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 7. Thereafter, Applicant Company invoked the personal guarantee by issuing **Legal Notice** to the Personal Guarantors vide letter dated 24.10.2024 demanding Rs.210,27,02,403.98 within seven days followed by a Demand Notice in **Form-B** dated 13.11.2024 under Section 95(4)(b) of the IBC, 2016 r.w. Rule 7(1) of the I&B (AAA for IRP for PGCD) Rules, 2019. However, no proof of delivery is enclosed with the Petition. The copy of Legal Notice dated 24.10.2024 along-with proof dispatch without proof of delivery and Demand Notice in **Form-B** dated 13.11.2024 along-with proof dispatch & delivery are enclosed along-with the Petition as **Annexure-F & J.**

8. However, due to non-payment of the amount by the Corporate Debtor as well as the Personal Guarantors, the Applicant Company filed this Company Petition on 28.03.2025 for initiation of Insolvency Resolution Process against the Personal Guarantor in **Form-C** under Section 95 of IBC, 2016 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating

Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. The present petition was filed on 28.03.2025, following the dismissal of an earlier petition (C.P. (IB) No. 65/2025) on 05.02.2025, and the withdrawal of a restoration application on 24.02.2025.

9. We have heard the learned counsel for the Applicant Company and perused the documents on record.
10. The Applicant in order to prove the invocation of the Personal Guarantee dated 17.09.2010 and 01.10.2012 within three years limitation has given the series of event which have taken place as follows: the loan account of the Corporate Debtor was declared NPA on 01.01.2013; thereafter, a Demand Notice dated 04.03.2013 under Section 13(2) of the SARFAESI Act, 2002 was issued to the Corporate Debtor and Personal Guarantor; on 09.07.2013, SBI filed O.A. No. 138 of 2013 before DRT-I, Ahmedabad against the Corporate Debtor and guarantors; subsequently, the debt was assigned to the Applicant Company via Assignment Agreement dated

07.09.2018; OTS proposals were submitted by the Corporate Debtor on 15.05.2019, 01.09.2019 and 05.07.2022, and by one of the Personal Guarantors on 22.07.2021; thereafter, the Personal Guarantee was invoked through Legal Notice dated 24.10.2024, followed by issuance of Form-B Demand Notice dated 13.11.2024 under Section 95(4)(b) of the IBC, 2016 r.w. Rule 7(1) of the I&B (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019; and finally, the present Petition was filed on 28.03.2025 through e-mode and physically on 28.03.2025 under Section 95(1) of the IBC, 2016.

11. Notably, the Applicant has not annexed any document evidencing a specific invocation of the Respondent's guarantee within three years of 01.01.2013, nor any acknowledgment of debt by the Principal Borrower or the Respondent within that period. The Tribunal must evaluate whether the actions cited—Section 13(2) notice, DRT proceedings, and subsequent notices—suffice to



preserve the Applicant's claim within the limitation period.

**12.** Limitation under the IBC: Section 95 of the IBC, effective from 01.12.2019 (Notification No. S.O. 4126(E), dated November 15, 2019), enables creditors to initiate insolvency proceedings against personal guarantors. Section 238A of the IBC applies the Limitation Act, 1963, to such proceedings, rendering limitation a jurisdictional prerequisite.

**13.** Article 55 of the Limitation Act, 1963 provides that for enforcing a contract of guarantee, Article 55 prescribes a three-year limitation period from the date of breach—i.e., when the principal debtor defaults or, if the guarantee requires a demand, from the date of such demand. Absent invocation, limitation runs from the default.

**14.** Further, in terms of Section 18 of the Limitation Act, 1963, a fresh limitation period commences upon a written, signed acknowledgment of liability by the debtor





or their agent, provided it is made before the original limitation period expires.

**15.** Section 238A of the IBC stipulates: -

***“Limitation -- The provision of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings or appeal before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be.”***

**16.** The Hon'ble Supreme Court Hon'ble Supreme Court

***“B.K. Educational Services (P) Limited Vs. Parag Gupta & Associates”*** in Civil Appeal No. 23988 of 2017 held that as under:-

*“It is thus clear that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. “The right to sue”, therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application.”*



17. In light of the judgment of Hon'ble Supreme Court **B.K.**

***Educational Services (P) Limited Vs. Parag Gupta & Associates***” in Civil Appeal No. 23988 of 2017 and Section 238A of the IBC, 2016, the Limitation Act, 1963 applies to all proceedings under the IBC, including Section 95. The relevant limitation period for filing a claim against the personal guarantor is three years from the date the right to sue accrues, as per Article 137 of the Limitation Act, 1963.

18. Though the provision of Section 95 of the IBC, 2016 relating to insolvency resolution for individuals was introduced and became applicable w.e.f. 01.12.2019. However, this provision does not retroactively revive debts that were already time-barred under the Limitation Act.

19. Further, proceedings initiated or pending in DRT, either initiated under SARFAESI Act, 2002 or through O.A. under the RBDBFI, Act, 1993 can- not be taken into account for the purpose of limitation under section 18 of

 the Limitation Act, 1963. In the matter of **Hon'ble NCLAT** in the matter of ***Bimalkumar Manubhai Savalia Vs. Bank of India and Ors.*** Company Appeal (AT)(Insolvency) No. 1166 of 2019 wherein it has been inter-alia held as follows:- (Para no.9; page 07):

*"We are of the view that the SARFAESI and DRT proceedings are independent and as per section 238 of IBC, the Insolvency and Bankruptcy Code is a complete code and will have an overriding effect on other laws. Therefore, the proceedings initiated or pending in DRT, either initiated under SARFAESI or under Debts due to the Banks and Financial Institutions can- not be taken into account for the purpose of limitation."*

20. The **Supreme Court of India** in Civil Appeal No. 2988 of 2020 titled ***Bank of India Vs Bimalkumar Manubhai Savalia*** decided on 14.03.2023 also upheld that the proceedings under the SARFAESI Act and the DRT Act would not extend the period of limitation. Therefore, the contention of the Applicant/Financial Creditor for extension of limitation due to filing of the application by the Respondent before DRT U/s 17 of the SARFAESI Act,



2002 as well as by the Applicant U/s 19 of the RDB Act, 1993 does not hold water in view of the above judgment.

**21.** Further, it is to be noted that no documents were produced before this Tribunal either with Petition, in relation to any proceedings pending before the Ld. DRT to suffice that the Corporate Debtor or the Personal Guarantor had acknowledged to the debt due to the Applicant/Financial Creditor or to the erstwhile original lender in the midst of the ongoing proceedings before the Ld. DRT, Ahmedabad. Hence this Tribunal is of the opinion that there is no document on record to suggest that there was an acknowledgement of the debt by the Corporate Debtor or the Personal Guarantor within the limitation period in terms of section 18 of the Limitation Act, 1963.

**22.** The following is provided by the **Hon'ble Supreme Court** in the matter of ***Laxmi Pat Surana Vs. Union Bank of India*** (Civil Appeal No. 2734 of 2020):

*“Section 18 of Limitation Act gets attracted the moment acknowledgement in writing signed by the*



*party against whom such right to initiate resolution process under Section 7 of the code enures. Section 18 of limitation act would come into play every time when the principle borrower and/or the Personal Guarantor (corporate debtor), as the case may be, acknowledge their liability to pay the debt. Such acknowledgement, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgement of the debt, from time to time, for institution of the proceedings under section 7 of the code.”*

**23.** Further, the assignment of debt to the Applicant on 07.09.2018, also does not reset limitation. An assignee inherits the assignor's rights as they stood, subject to any existing bar (Section 3, Limitation Act), the right to invoke the guarantee had lapsed. The notices of 24.10.2024, and 13.11.2024, issued over 11 years post-default, are belated. In ***KM Sebastine Vs. SBI (supra)***, Hon'ble NCLAT held that invocation triggers limitation, not subsequent demands; here, no timely invocation occurred.

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 24. By applying these aforementioned judgments, this Tribunal is of the opinion that the benefit under section 18 of the Limitation Act, 1963 which provides for granting of fresh limitation period from the acknowledgement of the debt/default will not be available to the Applicant/Financial Creditor herein. The import of the judgments, the interpretation, and the reasoning adopted by Hon'ble Supreme Court are indicative of the intent behind the introduction of Section 238A of IBC and so the same should be followed in its letter and spirit.

25. In ***Edelweiss Asset Reconstruction Company v. Orissa Manganese and Minerals Ltd. (2019) ibclaw.in 308 NCLAT***, it was held that “a contract of guarantee matures into a binding obligation only upon its invocation. Contract of Guarantee is an autonomous contract... the debt and default [must be] proved separately in the proceeding against the Guarantor.” Thus, a guarantee becomes a debt only when invoked,

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and the guarantor's liability is not automatically triggered by the principal debtor's default.

**26.** No doubt, the liability of the Personal Guarantor starts from the date of invocation of Bank Guarantee. The judgments relied as referred above are of the said-ratio. However, it is not the case of Applicant/Financial Creditor that Personal Guarantee was invoked within 3 years from the date of default or classifying the account as NPA. As no material is placed on record to show that after execution of the last Deed of Guarantee dated 01.10.2012 any further acknowledgement was taken from either from the principal borrower or from the personal guarantor within three years of from date of NPA/default committed by the Principal Borrower/Corporate Debtor in terms of section 18 of the Limitation Act, 1963.

**27.** The Applicant relies on the Section 13(2) notice of 04.03.2013, as an action against the guarantors. This Tribunal finds that this notice does not constitute



invocation of the Respondent's guarantee. Issued under the SARFAESI Act, 2002, it is a statutory demand aimed at enforcing security interest (e.g., mortgaged properties) rather than a contractual demand under the guarantee agreement. The **Hon'ble Supreme Court** in **Axis Bank Vs. SBS Organics Pvt. Ltd. and Anr (2017) ibclaw.in**

**61 SC** distinguished such notices as steps toward security enforcement, not personal liability enforcement.

The relevant extract of the judgment is as under: -

**“21. .... the purpose of the SARFAESI Act is different, it is meant only for speedy recovery of the dues, and the scheme under Section 13(4) of the Act, permits the secured creditor to proceed only against the secured assets. Of course, the secured creditor is free to proceed against the guarantors and the pledged assets, notwithstanding the steps under Section 13(4) and without first exhausting the recovery as against secured assets referred to in the notice under Section 13(2). But such guarantor, if aggrieved, is not entitled to approach DRT under Section 17. That right is restricted only to persons aggrieved by steps under**





Section 13(4) proceeding for recovery against the secured assets."

**28.** Moreover, Demand Notice dated 04.03.2013 issued U/s 13(2) of the SARFAESI Act, 2002 whereby the Respondent/Guarantor was also asked to make the payment of dues cannot be considered as invocation of Personal Guarantee in view of judgment of **Hon'ble NCLAT** in the matter of ***Amanjyot Singh Vs. Navneet Kumar Jain & Ors. (Company Appeal (AT) (Insolvency) No. 961 of 2022.***

**29.** No evidence of a separate, specific demand invoking the Respondent's guarantee within three years of 01.01.2013, is annexed or pleaded. The first explicit demand appears in the legal notice of 24.10.2024—over 11 years after the default. Applying Article 55 of the Limitation Act, 1963, the three-year period to invoke the guarantee commenced on 01.01.2013 (date of default/NPA), and expired on 01.01.2016, absent invocation. Since, no debt matured against the Respondent without invocation (**per Edelweiss**), the

 Applicant's right to enforce the guarantee lapsed by 01.01.2016.

**30.** Though, the present Company Petition has been filed on 28.03.2025 within three years of issuing Legal Notice dated 24.10.2024 and Demand Notice dated 13.11.2024 in **Form-B** of invocation of the Personal Guarantee Section 95(4)(b) of the IBC, 2016 r.w. Rule 7(1) of the I&B (AAA for IRP for PGCD) Rules, 2019. However, in view of above discussions, Personal Guarantee was not invoked within three years of date of default or NPA i.e. before expiration of the prescribed period in terms of even Section 18 of the Limitation Act, 1963.

**31.** In the present case, the Applicant/Financial Creditor has invoked the Personal Guarantee against personal guarantor vide Legal Notice dated 24.10.2024 which is after lapse of **almost 11 years** from the date of default/NPA.

**32.** Hence, the present Petition filed by the Applicant/Financial Creditor against the Respondent/



Personal Guarantor is not maintainable as Personal Guarantee was not invoked with three years of limitation period from the date of classifying the account as NPA/default.

33. In terms of the above, **CP(IB)/151/(AHM)/2025** filed under Section 95 of the IBC, 2016 is **dismissed** as hit by the period of limitation. No order as to cost.

Sd/-

**SAJVEER KUMAR SHARMA**  
**MEMBER (TECHNICAL)**

Sd/-

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**