



**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

ORDER SHEET OF THE HEARING ON 1st JUNE 2026

CP(IB)/13/GB/2025

**Present: 1. Hon'ble Member (Judicial), Shri Rammurti Kushawaha
2. Hon'ble Member (Technical), Shri Yogendra Kumar Singh**

In the Matter of	UCO Bank Vs Mallika Barooah (PG) To <i>M/s Berial Engineers Pvt. Ltd. (CD)</i>
Under Section	U/s 95 of IBC, 2016

Appearances (via video conferencing/physically)

For Petitioner (s) : Mr. S. Chamaria, Adv.
: Mr. M. N. Deka, Adv.

For Respondent (s) : Mr. Y. A. Sarkar, Adv. (Proxy)

ORDER

Order pronounced in open court *vide* separate sheets

Sd/-
Yogendra Kumar Singh
Member (Technical)

Sd/-
Rammurti Kushawaha
Member (Judicial)



**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

CP (IB)/13/GB/2025

*Application under section 95(1) of the Insolvency and Bankruptcy Code, 2016, read with rule 7(2) of
the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution
Process for Personal Guarantors to Corporate Debtor) Rules, 2019*

In the matter of:

UCO Bank, a body corporate duly constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, having its head office at 10, BTM Sarani, Brabourne Road, Kolkata. -700001, in the state of West Bengal and one of its zonal office at Silpukhuri Branch, Silpukhuri, Guwahati-781003, and carrying on the business of banking through diverse branches and in particular a branch named UCO Bank, Silpukhuri Branch, Silpukhuri, Guwahati- 781003, Assam and represented by Sri Abhisekh Kumar, Chief Manager of the said Branch

...Financial Creditor/Applicant

-Versus-

Mrs. Mallika Barooah, wife of Mr. Manas Barooah, resident of Jyotinagar, Noonmati, Guwahati.-781020, Assam.

...Personal Guarantor/Respondent

Coram:

Shri Rammurti Kushawaha	:	Member (Judicial)
Shri Yogendra Kumar Singh	:	Member (Technical)

Appearances (through video conferencing):

For Applicant	:	Mr. S. Chamaria(Adv.)
For Respondent	:	Mr. A. Gautam, Mr. B. Choudhury (Adv.)

Order pronounced on: 01.06.2026



As Per Bench

1. The present petition is filed by UCO bank, Silpukhuri branch (“**Financial Creditor**” or “**Applicant**”) under section 95 of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) for default in the repayment of Rs. **01,48,67,53,983.58/-** (Rupees One Hundred Forty Eight Crore Sixty Seven Lakh Fifty Three Thousand Nine Hundred Eighty Three and Fifty Eight Paisa), as on 20.01.2025., by Mrs. Mallika Barooah (“**Personal Guarantor**” or “**Respondent**”) to M/s Berial Engineers Private Limited (“**Corporate Debtor**”).

2. Submissions of the Applicant/Financial Creditor-

- 2.1. The Corporate Debtor is a private limited company registered under the Companies Act, 1956 (“**Act**”), bearing Corporate Identification Number (**CIN**) U74210AS1998PTC005530, having its registered office at Zoo-Narengi Road, Guwahati. 781024, Assam.
- 2.2. The Corporate Debtor had approached the Financial Creditor several times to apply for cash-credit limit. The Financial Creditor sanctioned them from time to time under various Sanction Letters. In connection thereto, the Personal Guarantor executed Letters of Guarantee securing the repayment obligations of the Corporate Debtor in respect of the said loans. The details of such cash-credit facilities availed by the Corporate Debtor are as follows:
 - a. Cash Credit Limit of Rs. 145 lakhs under retail trade (sale service of Tata Equipments) at 14.00% interest per annum was sanctioned vide Sanction Letter dated 20.05.2008 and executed Letter of Guarantee dated 20.05.2008 *A copy of the Letter of Guarantee is annexed as “Annexure I-K” to the Petition.*
 - b. Enhancement of cash credit limit from Rs. 145 lakhs to 345 lakhs *vide* Sanction Letter dated 01.08.2009 with a renewal of Bank Guarantee of Rs. 5 lakh aggregating Rs. 345 lakhs for interest @ +2% over prevailing Bank Prime Lending Rate (BPLR) i.e., 14.25% per annum. Executed Letter of Guarantee 05.08.2009. *A copy of the Letter of Guarantee is annexed as “Annexure I-T” to the Petition.*



NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

CP (IB)/13/GB/2025

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- c. Enhancement of cash-credit limit of Rs. 345 lakhs to Rs. 650 lakhs for interest @ base rate +7.80%, i.e., 15.80 % per annum *vide* Sanction Letter dated 28.08.2010. Executed Letter of Guarantee dated 28.08.2010. *A copy of the Letter of Guarantee is annexed as "Annexure I-AA" to the Petition.*
- d. Sanction of adhoc limit of Rs. 400 lakhs over and above the limit of Rs. 650 lakhs upto 15.03.2011 with additional interest of 2% for the adhoc limit *vide* Sanction Letter 29.12.2010. Executed Letter of Guarantee dated 29.12.2010. A copy of the Letter of Guarantee is annexed as "*Annexure I-AJ*" to the petition.
- e. Sanctioned a temporary over draft of Rs. 153 lakhs upto 12.03.2011 on additional interest of 2% for the adhoc limit *vide* Sanction Letter 01.03.2011. Executed Letter of Guarantee dated 01.03.2011. *A copy of the Letter of Guarantee is annexed as "Annexure I-AR" to the Petition.*
- 2.3. The Corporate Debtor through its authorized signatories executed the requisite loan security documents which included Demand Promissory Note dated 20.05.2008, Letter of Waiver dated 20.05.2008, Letter of payment of ultimate balance dated 20.05.2008, Hypothecation of Goods to Secure a Demand Cash Credit dated 20.05.2008, and Hypothecation & Book Debts to Secure Demand Cash-Credit dated 20.05.2008.
- 2.4. The authorized signatories of the Corporate Debtor requested the Applicant to honour fifteen cheques which were sanctioned in due course to mitigate their commitments towards the principal supplier. The Applicant issued letters dated 14.07.2011, 22.08.2011 and 06.09.2011 to remind the Respondent and other guarantors to regularize their loan account and to pay their outstanding dues. Subsequently, upon their inaction, the Applicant filed an Original Application bearing O.A. No. 228 of 2011 before the Hon'ble Debt Recovery Tribunal at Guwahati ("**DRT**"), against the Corporate Debtor, Personal Guarantors, as Defendants. Based on a compromise between the parties, the Learned DRT *vide* order dated 02.04.2018 directed the Corporate Debtor to pay the compromised amount, i.e., Rs. 12,65,00,000/- (Rupees Twelve Crore Sixty Five Lacs) as per terms and conditions mentioned in the Joint Petition bearing IA. No. 96/2018 dated 02.04.2018 executed between them. Upon default of such payment, the Corporate Debtor was liable



to pay the entire claimed amount as the settlement would stand cancelled. *A copy of the DRT order is annexed as "Annexure I-AAB" to the Petition.*

- 2.5. Furthermore, it is pertinent to mention that this Tribunal had been earlier approached by M/s Tata Hitachi Construction Co. Pvt. Ltd to hear the matter on C.P. (1.B) No. 14/GB/2021. In its order dated 16.06.2022, this Tribunal passed an order to the effect that "M/s Berial Engineering Pvt. Ltd. is to be dissolved with effect from the date of the said order, i.e., 16.06.2022." *A copy of this NCLT order is annexed as "Annexure I-AAE" to the Petition.*
- 2.6. The Corporate Debtor paid an amount of Rs. 50 lakhs on 21.10.2019 as per the terms of the settlement made on 02.04.2018, and subsequently made no further payment. This Tribunal also failed to recover the liability of the Corporate Debtor as per its order dated 16.06.2022 disposing C.P (IB) No.14/GB/2021. Thereafter from 16.06.2022, the Applicant made repeated requests to the guarantors to square up the liability.
- 2.7. On 09.04.2025, the Applicant issued a demand notice 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 ("**Personal Guarantor Rules**") calling upon the Personal Guarantor to repay the unpaid debt owed to the Applicant. Notice was issued through registered post to her personal address available on Record, concerned registered office of the company, email address of the lead company and also by way of two local leading newspaper publication However, even after service of the demand notice there was no reply or recovery from the Respondent. *A copy of this Demand Notice is annexed as "Annexure I-AAI" to the Petition.*
- 2.8. Moreover, it is submitted that the judgment passed in O.A. Case No. 228/2011 dated 02.04.2018 was passed in terms of the Compromise Proposal made between the parties which contained a phased time limit to be followed while repaying the compromised amount of Rs. 12.65 crore in installments upto June 2020. *A copy of this Compromise Proposal is annexed as "Annexure I-AAA" to the Petition.*
- 2.9. Upon failure of repayment, the guarantors made a representation on 08.06.2020 which was accordingly considered. Again *vide* a Letter dated 07.11.2022, they sought an



extension up to May 2024 to repay the amount due to the Applicant but failed to make any such payment.

Furthermore, the certificate dated 11.04.2018 in R.C.2905/2018 issued for recovery of dues amount in O.A. Case No. 228/2011 by the Recovery Officer of the DRT Guwahati was in continuance process at the time of filing the present petition and any such recovery in furtherance of this matter was still pending. The present petition was filed by the Applicant to initiate Corporate Insolvency Resolution Process (“**CIRP**”) to recover the due amount. *A copy of the Recovery Certificate is annexed as “Annexure I-AAC” to the Petition.*

2.10. The Respondent had a debt of **Rs. 01,48,67,53,983.58/-** (One Hundred Forty Eight Crore Sixty Seven Lakh Fifty Three Thousand Nine Hundred Eighty Three and Fifty Eight Paisa) only as on 20.01.2025 including any interest or penalties owed to the Applicant and as such the Applicant through the statements of accounts of the loan accounts in accordance with the Banker’s Book Evidence Act, 1891, duly proved its claim against the Corporate Debtor. *Copies of the Statement of Account are annexed as “Annexure I-AY” and “Annexure I-AAH” to the Petition.*

2.11. Furthermore, the Applicant submitted that the present Petition has been filed well within the period of limitation period, as recovery proceedings have continued uninterrupted since the issuance of Recovery Certificate R.C. 2905/2018 in OA 228/2011. Limitation runs afresh from May, 2024 in the light of the extension proposal dated 07.11.2022.

2.12. In view of the above, the Applicant prayed that this Tribunal may admit the application under Section 95 of the Code, and pass such further orders as may be deemed fit in the interest of justice.

3. Report by the Resolution Professional:

3.1. The Resolution Professional submitted that vide Order dated 26.08.2025, the Hon’ble National Company Law Tribunal (NCLT), Guwahati, has appointed Ujwal Kumar Kalita as Insolvency Resolution Professional (“**IRP**”) of Mallika Barooah under Section 97 of the Code. The said Order was received on 01.09.2025.

3.2. The Resolution Professional had duly communicated the Respondent vide letter dated 02.09.2025 information about the order dated. 26.08.2025 passed by this Hon’ble



Tribunal in CP(IB)/13/GB/2025, appointment of IRP, and intimation of his duty to submit the report to this Hon'ble Tribunal within 10 days from the date of communication of his appointment as IRP on 01.09.2025 recommending/rejection this application for the Insolvency Resolution Process, intimation about IRP's duty to collect information under Section 99 of the Code from the Applicant and Respondent and any other persons and their obligation to provide the details within 7 days of his request.

- 3.3. The Resolution Professional requested the Respondent to furnish documents and information as per the requirements under Section 99(4) of the Code within 7 days on 02.09.2025. However, the Respondent failed to provide the requisite information.
- 3.4. The Resolution Professional is of the opinion that the Respondent is not liable as Personal Guarantor in respect of financial facilities extended to the Corporate Debtor by the Financial Creditor. It was noted that the Respondent stood as one of the guarantors in terms of sanction letter dated 20.05.2008 but in subsequent sanction letters from 01.08.2009 onwards, she was neither named as a guarantor nor did she sign any of the continuing letters of guarantee. The RP acknowledges that there is a default in payment of demand amount since there is a continuing guarantee that grants the Financial Creditor an outstanding claim against the Corporate Debtor. However the Respondent is not a signatory of the continuing guarantee letter dated 01.08.2009 and subsequent letters.
- 3.5. It is further submitted that the Resolution Professional has perused/examined the Insolvency Application filed by the Applicant/Financial Creditor under Section 95 of the Code along with all the underlying documents and annexures and has formed the opinion to recommend the same for **rejection** to this Hon'ble Adjudicating Authority, based on following grounds:
 - a. Mallika Barooah does not stand as Personal Guarantor with respect to the financial facilities extended to the Corporate Debtor by the Financial Creditor and therefore is not liable as one. The first requirement as set out under Section 95(1) of the Code is not satisfied as **no default in respect of payment of demand exists against the Respondent.**



NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

CP (IB)/13/GB/2025

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- b. Considering the application is made against the Respondent in her personal capacity as a guarantor, Sections 95(2) and 95(3) of the Code are not applicable.
 - c. A Demand Notice was sent as per Section 95(4)(b) of the Code read with Rule 7(1) of the Personal Guarantor Rules. The Applicant had also provided a copy of the application to the Respondent and submitted proof of its service to the Resolution Professional. However, service of these documents is subject to examination by this Hon'ble Tribunal based on merits.
 - d. All debts mentioned in the application are qualifying debts and not excluded debts. The application is accompanied with details and documents as per Section 95(4) of the Code. Further, it has been filled as per the requirements under Section 95(6) of the Code with requisite fees.
 - e. The Respondent is not eligible under Section 80 for a Fresh Start Process as provided under Part III Chapter II of the Code.
 - f. The Corporate Insolvency Resolution Process (CIRP) of Berial Engineers Private Limited was initiated pursuant to the order of this Hon'ble Tribunal and accordingly, it has the jurisdiction to decide this matter under Section 60(1) and (2) of the Code.
 - g. This Application for initiating Insolvency Resolution Process of a Personal Guarantor does not satisfies the requirements set out in Section 95 of the Code.

4. Affidavit-in-Reply of the Applicant/ Financial Creditor against the Report by the Resolution Professional:

- 4.1. The Applicant disputes the views of the IRP in his report, stating them to be “wholly perverse” and incorrect.
- 4.2. The Applicant submits that the status of the Respondent in the filing of O.A. No. 228/2011 before the DRT Guwahati was clearly stated to be that of a “Guarantor” and this was never opposed by the Respondent during the course of the proceedings. *A copy of the written submission by the Applicant is annexed as “Annexure 1” to the Affidavit-in-Reply.*
- 4.3. It was submitted that the Respondent had agreed upon the settlement arrived at on 02.04.2018 as per the DRT order passed in O.A. No. 228/2011. Even the Recovery



Certificate dated 11.04.2018, R.C.2905/2018, which included the Respondent's name in the list of defendants remained undisputed by the Respondent.

- 4.4. The Respondent had never opposed her status as a "Personal Guarantor" upon being served with the demand notice dated 09.04.2025 issued under Rule 7(1) of the Personal Guarantor Rules. It was submitted that she rather "candidly accepted" this status.
- 4.5. It was submitted that during the grant of loan to the Corporate Debtor, the various sets of the document submitted to the Applicant's bank explicitly stated that the Respondent was found to be integral to the matter. The finding of the IRP also seemed prime facie perverse and liable to be rejected in limine

5. Written Objections filed by the Respondent/Personal Guarantor against the Applicant/Financial Creditor's Affidavit-in-Reply:

- 5.1. The Respondent submitted that a liability against a Personal Guarantor only arises upon the issuance of a 'demand-in-writing' when a 'default' occurs by the Financial Creditor invoking the personal guarantee. But no such notice of invocation of personal guarantee as per Section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**SARFAESI Act**"), has been issued under the Respondent's name. The Applicant had only issued a demand notice dated 09.04.2025 under Rule 7(1) of the Code, which cannot even be treated as a notice of invocation of personal guarantee as held by the Hon'ble NCLAT in *State Bank of India v. Deepak Kr. Singhanian*.
- 5.2. The Respondent also submitted that the Applicant had suppressed information about the issuance of a demand notice dated 12.11.2011 under Section 13(2) of the SARFAESI Act in relation to the alleged debt which was not even addressed to the Respondent. This signifies the Applicant's knowledge and understanding that the Respondent is unrelated to the impugned debt. This demand notice was a part of the records of O.A. 228/2011 filed before the DRT, Guwahati but suppressed before this Hon'ble Tribunal. Therefore, the Applicant must be estopped from claiming payment of the concerned debt, adding that the doctrine of waiver and acquiescence is also applicable here. It is further submitted that the Applicant must not be eligible to any relief by the Court upon the grounds of



suppression of information. *A copy of the demand notice dated 12.11.2011 is annexed as "Annexure A" to the Written Objections.*

- 5.3. With reference to the contents of Para 3(I), the Respondent denies all contents to be without merit. The Respondent submitted that the Applicant was attempting to mislead this Hon'ble Tribunal by saddling liability upon her and illegally enriching itself at her cost. She had resigned as a Director of the Corporate Debtor on 31.03.2009 and corresponding that, her resignation was duly uploaded through a Form-32. The Respondent had also appeared in the proceedings for O.A. No. 228/2011 and contested it on merits by filing her written statement. *A copy of Form-32 and the Written Statement dated 28.10.2013 are annexed as "Annexure B" and "Annexure C" to the Written Objections respectively.*
- 5.4. With reference to the contents of Para 3(II), the Respondent denies all claims as the Compromise Approval dated 14.02.2018 issued by the Applicant was never addressed to her but to the Managing Director of Lohit Constructions Pvt. Ltd., Mukul Deka. It also does not bear her signature and she was not privy to the compromise process. Even the Joint Petition I.A. no. 96/2018 dated 02.04.2018 filed before the DRT Guwahati for issuance of Recovery Certificate based on this Compromise Approval was never signed or sworn by the Respondent. It was only signed by Fizur Haque Choudhury on behalf of the Financial Creditor and Satyawar Sarma, Managing Director, on behalf of the Corporate Debtor. The Respondent also stated that the Extension of Repayment dated 25.06.2020 issued by the Applicant reflected Mukul Deka were to clear the dues by selling properties, from receivables from the Government of Assam, from ongoing contractual works and consultancy business. The sub-proposal for revalidation of failed compromise annexed with this extension notice only includes Satyawar Sarma and Mohan Gogoi as 'Guarantors' and does not include the Respondent's name. Respondent was never a part of or privy to the settlement in the Proposal for Revival of the OTS dated 07.11.2022 issued by Mukul Deka and in the letter in reply dated 21.11.2022 issued by the Applicant. Neither of the documents attribute any liability upon the Respondent, establishing that the Applicant was well aware the Respondent's alleged liability stood extinguished upon



her resignation on 31.03.2009 and she was not a party to the settlement process. Further the Applicant itself admitted to the fact that the Respondent was no longer a Guarantor in the aforesaid Extension of Repayment. *Copies of the Extension of Repayment, Revival Proposal, Letter in Reply to said proposal, and Joint Petition I.A 96/2018 are annexed as “Annexure I-AAD”, “Annexure I-AAF”, and “Annexure I-AAG” to the Petition, and “Annexure D” to the Written Objections respectively.*

- 5.5. With reference to the contents of Para 3(III), the Respondent denied it to be false and fabricated as the demand notice dated 09.04.2025 was never served upon her and were returned to the Addressor as evident from the Postal Tracking Report attached with the notice. Notice was also never served to her via email, making her incapable of responding to the impugned demand notice.
- 5.6. The Respondent prayed for this Hon’ble Tribunal to accept the report filed by the IRP under Section 99 of the Code, and to reject the petition filed by the Financial Creditor with exemplary costs imposed.
- 5.7. With reference to the contents of Para 3(IV), the Respondent denied it to be false for the same reasons stated in paras 5.1, 5.2, and 5.4.
6. We have heard the submissions made by the Ld. Counsels and perused the documents on record.
7. The present application has been filed by the Financial Creditor under Section 95 of the Code seeking initiation of Insolvency Resolution Process against Mallika Barooah, Personal Guarantor to the Corporate Debtor, M/s Berial Engineers Private Limited.
8. By virtue of Section 60(2) of the Code, where insolvency resolution or liquidation proceedings of a corporate debtor are pending before the Adjudicating Authority, an application relating to insolvency resolution of a Personal Guarantor to such corporate debtor shall be filed before the same Tribunal. Accordingly, this Bench has jurisdiction to entertain and adjudicate the present application under Section 95 of the Code.
9. The principal issue which falls for consideration before this Tribunal is whether the Respondent can be proceeded against as a “Personal Guarantor” within the meaning of Section 95 of the Code and whether the Applicant has established the existence of a legally enforceable debt and default against the Respondent.



NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

CP (IB)/13/GB/2025

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10. The record reflects that the Demand Notice dated 09.04.2025 under Rule 7(1) of the Personal Guarantor Rules was sent by post to the Personal Guarantor, which was returned unserved. Thereafter, the Applicant published the demand notice in both English and Assamese in two local leading newspapers, The Times of India and Dainik Asom respectively, on 03.05.2025. Sufficient proof of actual service upon the Respondent has been produced before this Tribunal. *A copy of the newspaper publication of the demand notice is annexed as “Annexure I-AAN” to the Petition.*
11. In compliance with Section 97 of the Code, this Tribunal appointed Ujwal Kumar Kalita as Resolution Professional (RP) on 26.08.2025 to examine the application and submit his report under Section 99 of the Code. The Resolution Professional, in the report under Section 99 of the Code, has recommended rejection of the present application under Section 99 of the Code.
12. The RP, in his report dated 11.09.2025 under Section 99 of the Code, has specifically observed that the Respondent does not stand as Personal Guarantor in respect of the financial facilities in question and that no default in respect of any invoked guarantee exists against the Respondent. In the absence of a default, the RP has recommended rejection of the application for consideration by this Tribunal under Section 100 of the Code.
13. This Tribunal has carefully examined the documents relied upon by the Applicant. It is evident from the records that the Respondent admittedly executed a Letter of Guarantee dated 20.05.2008 in connection with sanction of Cash Credit Limit of Rs.145 lakhs. However, the Respondent has specifically denied execution of subsequent guarantee documents pertaining to enhancement and restructuring of the facilities after 31.03.2009.
14. The Respondent has placed on record Form-32 reflecting her resignation from the Directorship of the Corporate Debtor on 31.03.2009. The Applicant has failed to place any cogent material establishing that the Respondent continued to execute guarantee documents or expressly reaffirmed liability after her resignation from the Corporate Debtor.
15. Further, the Compromise Approval dated 14.02.2018, Extension of Repayment dated 25.06.2020, Proposal for Revival of OTS dated 07.11.2022 and corresponding reply dated 21.11.2022 do not contain the Respondent’s signature nor do they attribute any liability upon her. Rather, these documents refer to other guarantors while excluding the Respondent.



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16. This Tribunal further observes that the demand notice dated 12.11.2011 issued under Section 13(2) of the SARFAESI Act, 2002, which forms part of the record, was admittedly not addressed to the present Respondent. The omission of the Respondent's name from the said statutory notice assumes significance in light of the Applicant's present contention that the Respondent continued to remain liable as Personal Guarantor.
17. The aforesaid demand notice clearly states the only personal guarantors liable towards the Applicant's financial facilities are Satyaban Sharma, Himakshi Choudhury Deka, Mohan Gogoi, and Mukul Deka. Even the copy of this demand notice was only forwarded to these four persons.
18. This Tribunal finds merit in the contention raised by the Respondent regarding non-invocation of the guarantee. It is necessary to invoke the guarantee by issuance of a specific demand upon the guarantor before any liability can crystallize against the Personal Guarantor. The Applicant has failed to place on record any specific invocation notice addressed to the Respondent calling upon her to discharge liability under the alleged guarantee. The only notice relied upon by the Applicant is the demand notice dated 09.04.2025 issued under Rule 7(1) of the Personal Guarantor Rules. Rule 7(1) read with Section 95(4)(b) of the Code is simply a procedural prerequisite to the filing of an application under Section 95 that mandates service of a Form B notice on the guarantor demanding payment of the defaulted amount, but does not equate to invoking the guarantee itself, which must be done through a specific contractual demand addressed to the guarantor prior to this stage. In the absence of any such prior invocation of the guarantee deed dated 20.05.2008, no default within the meaning of Section 3(12) of the Code can be said to have arisen against the Respondent.
19. In this regard, this Tribunal relies upon the judgment of the Hon'ble NCLAT in *State Bank of India v. Deepak Kr. Singhania* [Comp. App. (AT) (Ins.) No. 191 of 2025] wherein it was held that issuance of a demand notice under Rule 7(1) of the Personal Guarantor Rules cannot by itself constitute invocation of a personal guarantee. The relevant extract from the judgment is as follows:

"It was held that default shall arise on the part of Guarantor only when Demand Notice is issued, as contemplated in the Deed of Guarantee... We are not persuaded to accept the submission of the Appellant



NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

CP (IB)/13/GB/2025

that Notice under Rule 7(1) issued in Form-B to the Guarantor, demanding repayment of the default amount, has to be treated as Notice for invoking guarantee. Default before issuance of Notice under Rule 7(1), must exist on the part of the Guarantor.”

20. Accordingly, this Demand Notice in Form B dated 09.04.2025 is simply a procedural step and does not substitute for contractual invocation of guarantee. The Applicant has failed to establish compliance with Rule 3(1)(e) of the Personal Guarantor Rules which mandates for guarantee to be invoked and the debt remain unpaid to establish liability as a Personal Guarantor. Therefore, since the Deed of Guarantee of 2008 to which the Respondent was a signatory had not been invoked, no default in terms of Section 3(12) of Code can be said to have occurred.
21. The Applicant has heavily relied upon the proceedings before the Hon'ble DRT including the Recovery Certificate dated 11.04.2018. However, it is evident from the record that the Respondent had contested the DRT proceedings and filed written statement disputing liability. Moreover, the compromise arrangements culminating in the Recovery Certificate were admittedly not signed by the Respondent. *A copy of the Respondent's reply to the DRT proceedings is annexed as "Annexure C" to the Written Objections.*
22. The contention of the Applicant regarding extension of limitation on the basis of compromise proposals and revival arrangements also cannot be accepted insofar as the present Respondent is concerned, since the documents relied upon for acknowledgment of liability were admittedly not executed by the Respondent.
23. This Tribunal also takes note of the judgment in **IDBI Bank Ltd. v. Hemangi Patel**, (2025 SCC OnLine NCLAT 1263) wherein it was held that limitation period to file a petition under the Code is within three years from the issuance of Recovery Certificate. The NCLAT in that judgment also clarified that the Supreme Court's decision in **Tottempudi Salalith v. State Bank of India** [(2024) 1 SCC 24] does not support a 12-year limitation period cited by the appellant for initiating proceedings under Section 95 of the Code but rather speaks upon the enforceability of the certificate as a decree within that period. In the instant case, the Applicant contends that limitation runs afresh from May 2024 on account of the extension proposal dated 07.11.2022. However, as noted above, this document was admittedly not executed by or addressed to the Respondent and cannot therefore constitute an acknowledgment of debt under Section 18 of the



Limitation Act, 1963 so as to extend limitation against her. Even if one were to assume the Respondent was liable to discharge some obligation against the guarantee dated 20.05.2008, the instant proceedings would still be struck by limitation as the last Recovery Certificate addressed to the Respondent was dated 11.04.2018, making the prescribed time limit for filing a petition under Section 95 of the Code to be within three years of such date. Therefore, the limitation for filing this Petition had already been extinguished on 11.04.2021.

24. While this Tribunal broadly concurs with the RP's recommendation for rejection of the instant Application, it is for the additional and independent reasons of limitation and non-invocation of guarantee as elaborated above, rather than the erroneous claim that the Respondent does not stand as a Personal Guarantor at all. From the materials placed on record, it is evident that the Respondent had admittedly executed the Letter of Guarantee dated 20.05.2008 in connection with the initial cash-credit facility extended to the Corporate Debtor. Thus, the status of the Respondent as a guarantor at least in respect of the original facility cannot be completely disputed. However, the subsequent conduct of the parties, the absence of any further acknowledgment or reaffirmation of liability by the Respondent after her resignation on 31.03.2009, and the fact that the last document capable of conferring or evidencing liability against the Respondent is the Recovery Certificate dated 11.04.2018, assume significance for the purposes of limitation. The Applicant has failed to place on record any evidence subsequent to the Recovery Certificate so as to extend limitation against her. Therefore, while the Respondent may originally have stood as a guarantor in respect of the 2008 facility, the present application under Section 95 of the Code against her is barred by limitation.
25. Upon cumulative consideration of the materials available on record, this Tribunal is of the considered opinion that the Applicant has failed to establish: (a) valid invocation of the alleged personal guarantee against the Respondent; (b) existence of legally enforceable default against the Respondent within the meaning of Section 3(12) of the Code; (c) continuation of liability of the Respondent as Personal Guarantor in respect of the subsequent enhanced and restructured credit facilities; and (d) being within the limitation period, the Recovery Certificate having been issued on 11.04.2018 and the prescribed three-year period having expired on 11.04.2021, no valid acknowledgment of debt by the Respondent having been established to extend limitation.



NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

CP (IB)/13/GB/2025

26. Accordingly, this Tribunal broadly concurs with the findings recorded by the Resolution Professional in the report submitted under Section 99 of the Code recommending rejection of the application.
27. Therefore, in light of the foregoing reasons, this Tribunal is not satisfied that the conditions for admission under Section 95 of the Code are met and the application deserves to be **Rejected**.

ORDER

28. In view of the foregoing discussions and findings, this Tribunal is not satisfied that the requirements of Section 95 of the Insolvency and Bankruptcy Code, 2016 have been fulfilled so as to warrant initiation of Insolvency Resolution Process against the Respondent/Personal Guarantor. Consequently, in this context no default can be said to have arisen qua the Personal Guarantor and the application is not maintainable.
29. Accordingly, the application being **CP (IB)/13/GB/2025** filed by the Financial Creditor under Section 95 of the Insolvency and Bankruptcy Code, 2016 stands **REJECTED** under Section 100 of the Code and **DISPOSED OFF** accordingly..
30. Consequently, the interim moratorium, if any, shall cease to have effect forthwith.
31. No order as to costs.
32. The Registry is directed to communicate a copy of this order to the parties and the Resolution Professional forthwith.
33. File be consigned to records.

Sd/-
Yogendra Kumar Singh
Member (Technical)

Sd/-
Rammurti Kushawaha
Member (Judicial)

Signed this on 1st day of June, 2026

Madona Barman (L.R.A.)