IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

CP (IB) NO.10/ALD/2024 IA No 362/2024

(An application under Section 95(1) of the Insolvency and Bankruptcy Code, 2016, read with Rule 7(2) of the Insolvency and Bankruptcy Rules, 2019 and admission of the said application under Section 100 of the Insolvency and Bankruptcy Code, 2016).

IN THE MATTER OF:

Stressed Assets Stabilisation Fund (SASF)

Having its Principal office at 3rd floor, IDBI Tower, World Trade Centre, Cuffe Parade, Mumbai- 400005

.....Applicant

Versus

Sh. Anil Rai

12, Aurangzeb Lane, New Delhi

Personal Guarantor of Malvika Steels Ltd.

Regd. Address at Usha Puram, UPSIDC Industrial Estate, Jagdishpur, Dist. : Sultanpur, U.P.

..... Respondent

Order pronounced on: 20th November, 2024

Coram:

Mr. Praveen Gupta : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Sandeep Kumar Bhatt with : For the Resolution Professional

Sh. Kamal Deep Tyagi, CMAs

-Sd-

-Sd-

Ms. Srishty Kaul with : For Res./ Personal Guarantor

Sh. Harish Nadda, Sh. Kumar Shashank,

Sh. Vikalp Singh & Ms. Ankita Chaurasiya, Advs

ORDER

1. This application was filed on 28.03.2023 by the Stressed Assets Stabilization Fund (hereinafter referred to as the "***Applicant/Financial Creditor***") under Section 95 of Insolvency and Bankruptcy Code (hereinafter referred to as the "***IBC***") read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019 (hereinafter referred as "***PG Rules, 2019***"). The prayer made is to initiate the Insolvency Resolution Process against the Respondent/ Personal Guarantor Mr. Anil Rai who stood as Personal Guarantor to the various credit facilities availed by the ***Corporate Debtor*** namely, Malvika Steel Ltd. ("Borrower") for total outstanding debt of Rs. 3962,20,53,128/- (Rupees Three Thousand Nine Hundred Sixty Two Crore Twenty Lakh Fifty Three Thousand One Hundred Twenty Eight only) as on February 1, 2023

calculated as per Recovery Certificate dated 28.11.2014 issued by the Debt Recovery Tribunal (hereinafter referred as "***DRT***") with interest @12% p.a. from 01.02.2023 till the date of realization. The date of default is 19.07.2016.

2. It is stated in Part-III of the Application that the Respondent/Personal Guarantor provided personal guarantee to the Rupee Term Loan and Foreign Currency Term Loan granted to Malvika Steel Ltd. ("Principal Borrower/Corporate Debtor") during the year 1994-1999 by the IDBI, which after becoming NPA in the books of IDBI, was acquired by Stressed Assets Stablisation Fund (SASF), the Applicant in the present Application. SASF is a Special Purpose Vehicle (SPV) constituted by the Government of India in the form of Trust vide Trust Deed dated 24.09.2004 with the object of acquiring the Stressed Assets.

3. For the purpose of providing guarantee to various loans taken by the Corporate Debtor, M/s Malvika Steel Ltd., the Respondent executed Personal Guarantee vide Agreements dated 23.09.1994, 21.09.1996, 09.01.1998 & 18.11.1999, guaranteeing for the repayment of loan amounts availed by the Corporate Debtor

4. The Corporate Debtor failed to repay the outstanding loan amount as a consequence of which the Applicant issued loan recall notice dated 02.07.2002 to the Respondent and then initiated recovery proceedings against the Corporate Debtor by filing application i.e O.A. No. 106/2005 on 24.10.2005 before the Debt Recovery Tribunal, New Delhi.

5. The DRT vide Judgment dated 28.11.2014 directed for recovery of a sum of Rs.1443,51,86,438/- for which the Demand Notice dated 04.07.2016 of Rs. 1288,85,59,320/- was issued by the Ld. Recovery Officer, DRT in RC No. 156/2014.

6. Even after the issuance of Recovery Certificate by the DRT, the Corporate Debtor didn't make any repayment of the outstanding loan amount. Therefore, the applicant issued demand Notice under Form-B dated 10.09.2020 to the Respondent/Personal Guarantor requiring him to pay the outstanding demand due from the Corporate Debtor as per the Guarantee Agreement. This Notice was duly served to the Respondent/Personal Guarantor but he did not make the payment within 14 days from the date of receipt of the said notice. Therefore, the present Application u/s 95 has been

filed seeking starting of the Personal Insolvency Resolution Process (hereinafter referred as "***PIRP***") against the Respondent/Personal Guarantor.

REPORT OF RP UNDER SECTION 99 OF IBC AND RECOMMENDATION THEREIN

7. This tribunal vide order dated 07.06.2024 appoint Mr. Suman Kumar Verma as the RP in this matter. In compliance with Section 99 of the IBC, 2016, RP has filed report on 08.07.2024 which has been taken on record.

8. It is stated in the Report that Respondent is a Personal Guarantor of all the three companies of Usha Group i.e Malvika Steels Ltd., Usha India Ltd and Usha Ispat Ltd. No CIRP is initiated against the Malvika Steels Ltd. The registered address of the Malvika Steel India Ltd is Usha Puram, UPSIDC, Industrial Estate, Jagdishpura, Dist:, Sultanpur, U.P.

9. As per the RBI Guidelines, the date of declaration of account of Malvika Steels Ltd. as NPA is 02.07.2002. Thereafter, an OA was filed in DRT on 24.10.2005 and consequent to that DRT passed order on 28.11.2014 disposing off the OA and directing the Corporate Debtor and the Respondent to pay the

outstanding debt, failing which a recovery certificate was issued on 04.07.2016

10. The Recovery Certificate bearing No. 156 of 2014 issued by the DRT, Mumbai for a sum of Rs.1288,85,59,320/- required the repayment to be made within the period of 15 days. The Corporate Debtor failed to repay the debt within the said period. Thus, the date on which debt became due is 19.07.2016.

11. In terms of the Recovery Certificate dated 04.07.2016 issued by the Debt Recovery Tribunal, the total amount of default as on 01.02.2023 is Rs.3962,20,53,128 (Rupees Three Thousand Nine Hundred Sixty-Two Crore Twenty Lakh Fifty Three Thousand One Hundred Twenty- Eight only) including interest.

12. Demand notice under PIRP was issued on 10.09.2020 and was duly delivered giving time to pay within 14 days i.e. 24.09.2020. As no payment was made, application to start PIRP was filed by SASF on 28.03.2023.

13. On issuing notice u/s 99(2) to the Personal Guarantor, no proof of payment of outstanding debt was produced rather certain objections have been filed by the Personal Guarantor

against the notice sent by the RP u/s 99 disputing the demand raised against him contending it to be hopelessly time barred and the same has been dealt in the report of the RP.

14. After dealing with all the objections of the Personal Guarantor in the report, the RP has recommended to pass an order to initiate Personal Insolvency Proceedings against the Personal Guarantor Mr. Anil Rai as per section 100 of the IBC providing following details:

i. That RP has obtained all the information and explanation which to the best of his knowledge and belief were necessary to frame his opinion for the recommendations for acceptance or rejection of the application by the Hon'ble Adjudicating Authority.

ii. On examination of the application and as submitted above, the debt is proved and complies with the requirements set out as per Sec 95 of the IB Code, 2016 because of following reasons:

a) That the debt is proved to the tune Rs.3962,20,53,128/-.

b) The debt is owed by the Corporate Debtor of which the personal guarantee is executed by the guarantor i.e., Mr. Anil Rai and the debt is duly acknowledged by the Corporate Debtor and the Personal Guarantor;

c) That the default is continuing in nature subject to examination by the Hon'ble Tribunal based on merits;

d) That the guarantor has failed to repay the debt within 14 days of the service of notice of demand;

e) That the details of documents and evidences in support of the claim by the applicant has been enclosed in the application;

iii. Based upon the above analysis and as per section 99(1) of the IB Code, 2016, the RP hereby recommends for the approval of the application filed by the SASF u/s 95 of the IB Code subject to adjudication by the Hon'ble Tribunal.

iv. The debt is registered on the Information Utility, hence by virtue of Sec 99(3) of the IB Code, 2016, the debtor shall not be entitled to dispute the validity of such debt.

v. Accordingly, it is prayed to initiate Insolvency against the Personal Guarantor as per section 100 of the IB Code as the parameters set out in section 99 of the IB Code are complied with.

REPLY ON BEHALF OF THE RESPONDENT

15. In the Reply filed by the Respondent/ Personal Guarantor, it has been averred that there has been no invocation of Personal Guarantee within the period of limitation. The Deeds of Guarantee dated 23.09.1994, 21.09.1996, 18.11.1999

executed by the parties clearly states in clause 3 that it shall be payable on demand. The invocation of Personal Guarantee shall only arise on the demand made by the Applicant. The demand notice dated 10.09.2020 was issued to the Principal Borrower and to all the Guarantors.

16. The Demand notice under Form –B was issued on 10.09.2020 wherein the date of default is mentioned as 19.7.2016 which makes this application time barred. The date of filing of this application is 14.3.2023(as per the date of Affidavit) which is beyond the period of three years as per Article 137 of the Limitation Act, 1963.

17. The Hon'ble Supreme Court in B.K. Educational Services Private Limited Vs. Parag Gupta and Associates [Civil Appeal 436/2018, 3137/2018, No.23988 Of 2017 And 439/2018, 4979/2018, 5819/2018, 7286/2018] and other cases had clarified that the period of limitation for filing applications for initiation of insolvency proceedings would be three years from the date of default, with Article 137 of the Limitation Act being applicable in case of Applications.

18. Further, the Coordinating NCLT, Ahmedabad Bench vide order dated 19.02.2024 in ***Indian Bank versus Ajay***

Radheyshyam Goenka – CP (IB) No. 55/AHM/2023 held as under;

> "*It is observed from the documents submitted that the period of recall notice/date of Recovery Certificate of DRT (10.01.2019) and the date of issue of further demand notice have exceeded the period of 3 years of limitation under 137 of Limitation Act 1963 (36 of 1963). As the application has not been filed within 3 years of issue of Recovery Certificate by DRT (further allowing a period of 90 days) when the debt was recognised and finalised for recovery (10.01.2019), the applicant approached this Tribunal on 17.02.2023, which exceeds the period prescribed in Sec 238(A) of IBC 2016.*
>
> *The Hon'ble Supreme Court in Dena Bank (Now Bank of Baroda)' versus 'C. Shivakumar Reddy & Anr. (2021) 10 SCC 330 while discussing at length Sections 14 & 18 of the Limitation Act, it was held that the Judgment and/or decree for money in favour of the 'Financial Creditor', passed by DRT, or any other Tribunal or Court, or the issuance of a certificate of recovery in favour of the 'Financial Creditor', would give rise to a fresh cause of action for the 'Financial Creditor', to initiate proceedings under Section 7 of the Code, if the dues of the 'Corporate Debtor' under the Judgment/decree or any part thereof remained unpaid.*
>
> *On the similar lines, there is also decision of the* ***Hon'ble Supreme Court in Asset Reconstruction Company***

Ltd. versus. Hotel Pooja International Pvt. Ltd. (2021)7 SCC 352. *In view of the decision in Dena Bank (Now Bank of Baroda)' and Asset Reconstruction Company Ltd supra, the date of issuance of certificate would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under the IBC.*

The Applicant was required to approach this forum before 08.01.2022 with a grace period of 90 days from 01.03.2022 (i.e. 29 May 2022). This application was filed on 17.02.2023.

Without prejudice to the orders for recovery passed by DRT, for the purpose of admission of the application filed under IBC, in view of the facts mentioned above, the application filed is time barred by Limitation and hence not allowed."

19. It is further averred in the reply that RP has wrongly interpreted the judgement of the Hon'ble Supreme Court by stating that the limitation period in the instant case is available for 12 years from date of the issuance of Recovery Certificate by DRT. In this regard, Respondent states that a comprehensive reading of the judgment laid down by the Hon'ble Supreme Court in ***Tottempudi Salalith v State Bank of India (CA No. 2348 of 2021)*** would reveal that the Hon'ble Supreme Court has nowhere distinguished the

judgment laid down in B.K. Educational Services. In this regard, the following paragraphs of the judgment are reproduced below,

> *"…*
> *We have already referred to the provision of Section 19(22A) of the 1993 Act. This Court has construed the purpose of the said provision to include bringing an action under the IBC on the strength of Section 19(22) and (22A) of the 1993 Act. In the said provision, however, so far as bringing a winding up action is concerned, the right of a recovery certificate holder as a deemed decree holder has been confined to companies registered under the Companies Act, 2013 and certain other entities with which we are not concerned here.*
>
> *But in relation to initiating proceeding under the IBC or making a claim under the said Code, the restriction does not remain confined to the Companies Act, 2013. The corporate debtor in this proceeding was incorporated under the Companies Act, 1956. In the case of Kotak Mahindra I (supra), credit facilities were extended to the borrower entities in the years 1993-94. It is obvious that the three corporate entities involved in that case were incorporated under the Companies Act that prevailed prior to coming into operation of 2013 Act.*
>
> *The position of law to guide the subject proceeding should be the same. In the event a financial creditor wants to*

pursue a recovery certificate as a deemed decree, he would get twelve years' time. We are of this view as the extent of operation of a recovery certificate has been construed by this Court in Kotak Mahindra I (supra) to go beyond filing of winding up petition alone. It would retain the character of a decree to lodge a claim in an IBC proceeding. But this point has not been examined by the Appellate Tribunal.

We have already expressed our opinion on the reasons that weighed with the Appellate Tribunal as also the NCLT in entertaining the application. But since the first two fora did not test the legality of the 2015 certificate as a deemed decree, we are of the opinion that this question also ought to be addressed by the Appellate Tribunal. We are otherwise not satisfied with the argument of the appellant about maintainability of the application out of which this appeal arises on the ground of the application being barred under limitation.

The application with respect to the two recovery certificates issued in the year 2017 is maintainable. In the event the Appellate Tribunal is of opinion that the CIRP could not lie so far as the recovery certificate of 2015 is concerned, as the decree would be still alive, the claim based on the said recovery certificate could be segregated from the composite claim and the Committee of Creditors shall, in that event, treat the sum reflected in the said recovery certificate as part of the claims made in pursuance of the public announcement. This direction we

are issuing in exercise of our jurisdiction under Article 142 of the Constitution of India.

16. With these observations and directions, the appeal is dismissed. Interim orders, if any, shall stand dissolved.

17. Pending application(s), if any, shall stand disposed of.

18. There shall be no order as to costs. "(emphasis supplied)

20. Citing the excerpts from the above decision of the Hon'ble Supreme Court in the case of *Tottempudi (supra)*, the Personal Guarantor in his Reply argued that the decree shall be alive for a period of 12 years where from "claim" in IBC proceedings can be lodged by the Financial Creditor. It is for this very reason that the Hon'ble Supreme Court allowed the division of the composite claim and filing of claim pursuant to the public notice in case the Hon'ble NCLAT holds that CIRP did not lie from the 2015 certificate. Had the Hon'ble Apex Court held that the limitation period for filing of an application was 12 years, then it could have safely concluded that CIRP from the 2015 decree/recovery certificate was also *maintainable.*

21. The Personal Guarantor pointed out that the aforesaid judgment relies on the judgment of ***Kotak Mahindra Bank Limited vs. A Balakrishnan and Anr. (2022) 9 SCC 186,***

wherein a three judge bench (larger bench than the bench that passed the Tottempudi judgment) held as under;

> *"86. To conclude, we hold that a liability in respect of a claim arising out of a recovery certificate would be a "financial debt" within the meaning of clause (8) of Section 5 IBC. Consequently, the holder of the recovery certificate would be a financial creditor within the meaning of clause (7) of Section 5 IBC. As such, the holder of such certificate would be entitled to initiate CIRP, if initiated within a period of three years from the date of issuance of the recovery certificate." (emphasis supplied).*

22. As argued by the Personal Guarantor in his Reply that it is settled position of law that the majority decision of Bench of a larger strength would prevail over the decision of a Bench of lesser strength. Thus, the ratio laid down in Tottempudi judgment cannot be said to have overruled the judgment in Kotak Mahindra case (cited supra), the latter belonging to a three judge bench.

23. Furthermore, it is also pointed out in the reply that in the instant case, the alleged personal guarantees create a limitation of liability.

a. Clause 19 of the personal guarantee dated 18.11.1999 limits the liability of the Personal Guarantor to a sum of Rs.23 Crore

b. Clause 19 of the personal guarantee dated 23.09.1994 limits the liability of the Guarantors Rs.2000 Lakh and 5000 Lakh

c. Clause 19 of the personal guarantee dated 21.09.1996 limits the liability of the Personal Guarantor to a sum of Rs.50 Crore.

24. Respondent/Personal Guarantor also contends that the amount of debt stated in Part-III of the Application is baseless. The liability of the of the Respondent - Mr. Anil Rai could not be more than what was stipulated in the alleged Deed of Personal Guarantees and which is jointly shared by Mr. Anil Rai and Mr. Vinay Rai (the co-guarantor in the Agreement). Reliance in this regard is placed upon the Judgment of Hon'ble NÇLAT in Pooja Ramesh Singh (supra) which categorically states that

> *"It is well settled that the loan agreement with the Principal Borrower and the Bank as well as Deed of Guarantee between the Bank and the Guarantor are two different transactions and the Guarantor's liability has to be read from the Deed of Guarantee."*

25. It is also argued by the Respondent/Personal Guarantor that the Ld. Resolution Professional made a clear error in failing to assess that the Respondent's culpability was confined to the amounts specified above. The RP claimed that the DRT

issued a recovery certificate, and the SASF estimated its dues until 01.02.2023 based on it. However, it is claimed that the Hon'ble DRT issued a Recovery Certificate in respect of both the Principal Borrower and the Guarantors.

26. It is further argued by the Respondent on the territorial jurisdiction that this tribunal does not have the territorial jurisdiction to try and entertain the present Application as the Personal Guarantor resides in Delhi at 12, Aurangzeb Lane, New Delhi-110001. No loan was disbursed in U.P. The SASF (IDBI) is having its registered office in Mumbai. No cause of action arose within the jurisdiction of this Tribunal. Thus, the application ought to have been filed before the NCLT Delhi.

27. Raising various objections in the Reply on maintainability as well on merit of the Application filed u/s 95 and also pointing out that the report of RP having not been made properly dealing with all the points raised by the Personal Guarantor in a submission made before him, it is prayed that the Report of the Ld. Resolution Professional recommending approval of application filed by SASF u/s 95 of the IBC be dismissed.

REJOINDER ON BEHALF OF THE APPLICANT

28. In response to the reply filed by the Respondent/Personal Guarantor as discussed in aforesaid paras, the RP has filed rejoinder vide dairy no. 1553 dated 07.8.2024 in support of his report wherein the following averments have been made;

i. The first demand notice with invocation of Personal Guarantee was issued on 27.12.2002. Copy of the first demand notice has been annexed as Annexure-I with the Rejoinder.

ii. The second demand notice to pay the outstanding dues was issued by the DRT to the personal Guarantor on 04.07.2016 giving time to pay the dues in 15 days, hence the last occurrence of default happened on 19.07.2016.

iii. The third demand Notice was issued on 10.09.2020 as per PIRP provisions giving time to pay the dues within 14 days ending on 24.09.2020 which was duly delivered. (Petition Page no 437-478)

iv. The application to start the PIRP was filed on 28.03.2023 well within limitation of the demand notice issued in PIRP.

29. As per the RP, the claim of the Respondent that there was no invocation of Personal Guarantee after the issue of the RC by the DRT is misconceived. Actually, the personal guarantee was invoked on 27.12.2002 and there is no need to issue

notice invoking personal guarantee again and again as per Judgement dated 22.07.2024 of the Hon'ble NCLAT, Delhi in ***Comp. App. (AT) (Ins) No. 1099 of 2024 in the matter of K.M. Sebastine (Kalarithara Michael Sebastine) Personal Guarantor of Schifflies India Ltd. Vs State Bank of India & Anr.*** However, the further notices of demand have also been issued as narrated in above paragraphs.

30. The RP has also countered the contention of the Respondent about the application to initiate the Personal Insolvency is barred by Limitation and not relying on the Judgement of Hon'ble Supreme court in the Tottempudi Judgement to deal with the aspect of limitation which is narrated by the RP in his report based on Legal opinion.

31. In this connection, following important aspects are being brought to the notice of this Hon'ble Tribunal, which were advanced during arguments.

a. The guarantee is a continuing guarantee and is payable on demand as per terms of the Guarantee deeds. The last deed of Guarantee was executed on 18.11.1999.

Reliance is placed on the Judgement passed in the matter of ***K. Raja Rao vs A.P. Industrial Development*** on 4 January, 2013, the Supreme Court held that the

limitation as to guarantor's liability depends on the terms and conditions of contract and limitation starts running only when actually a demand for payment is made and it was refused by guarantors. "Limitation against a guarantor under a continuing Guarantee (which specified that the liability of the guarantor is pay on demand) would not run from the date of each advance, but only run from the time when the balance was constituted and a demand was made for payment thereof.

> *"In a case where the guarantor liable to pay on demand the limitation begins to run when demand is made and the guarantor commits breach by not complying with the demand"*

b. The Hon'ble Appellate Tribunal in the matter of ***Pooja Ramesh Singh vs State Bank of India and Anr. on 28 April, 2023 Company Appeal (AT) Insolvency No. 329 of 2023***, held that limitation of Guarantor shall come to play only when a demand notice is issued. The extract of Judgment is as under: -

> *"…*
> ***Issue No. II:*** *The Deed of Guarantee dated 17.05.2019 is guarantee on demand and the limitation of Guarantor shall ensue only when demand is made to the Guarantor.*
>
> ***Issue No. III:*** *The Notice dated 01.10.2020 issued by the State Bank of India to Guarantor has to be treated to be notice on demand as contemplated in the guarantee and the default on the part of the Guarantor shall be only after notice dated 01.10.2020 i.e. during period of Section 10A of the IB Code, 2016.*
> *…"*

c. It is averred by the Applicant, it can file claim within 12 years from passing of the decree hence, claim is live as per the judgement of Tottempudi(supra).

d. The Applicant has placed reliance judgement passed in the matter of ***E.M Najeeb Ellias Mohammed vs Union Bank of India Limited on 26 February, 2024 IN COMPANY APPEAL (AT) (CH) (Ins.) No. 08 of 2024,*** the Hon'ble NCLAT held that…

> *"The Learned Counsel for the Appellant points out the decision of the Hon'ble Supreme Court in 'Syndicate Bank vs. Chinnaveerappa Beleri & Ors.' (2006) 11 SCC 506 and contends that the Limitation with respect to the 'guarantee' will run from the date, creditor had made a demand against the guarantor and further the 'agreement' and 'incidents' from the 'guarantee agreement' being distinct and independent, the limitation against the 'guarantor' will start running once the guarantee is invoked and demand is raised…"*

32. Applicant further averred that even date of default is taken as 19.07.2016 as per the DRT Notice and demand in Form-B under PIRP was made on 10.09.2020 giving time to pay the dues till 24.09.2020. The PIRP legislation was brought into enforcement on 20.11.2019. Hence, the contention of the

Respondent that the Limitation has already expired on 19.07.2019 before enactment of the PIRP Law is not sustainable.

33. It is also stated by the RP that the Hon'ble Supreme Court has extended the Limitation w.e.f. 15.03.2020 to 28.02.2022 in all cases due to COVID Pandemic. Therefore, by issuing the demand notice on 10.9.2020 and proceedings with the filing of this application under section 95 on 28.03.2023 brings this case within the period of limitation.

34. Further, reliance is also placed on the judgment passed by the Hon'ble Supreme Court in the ***SPECIAL LEAVE PETITION (CIVIL) NO. 31248 OF 2018 PATHAPATI SUBBA REDDY (DIED) BY L.Rs. & ORS. VERSUS THE SPECIAL DEPUTY COLLECTOR (LA)*** held as under: -

> *"We are concerned only with the exception contained in Section 5 which empowers the courts to admit an appeal even if it is preferred after the prescribed period provided the proposed appellant gives 'sufficient cause' for not preferring the appeal within the period prescribed. In other words, the courts are conferred with discretionary powers to admit an appeal even after the expiry of the prescribed period provided the proposed appellant is able to establish 'sufficient cause' for not filing it within time"*

35. As regards the merit of the case, it is pointed out by the RP in the Rejoinder that there are different guarantee agreements and the loan agreements signed by the Respondent. The Respondent is referring to the Last Guarantee deed dated 18.11.1999 only, which limits the Liability to Rs. 23 Cr wherein there are different sets of Loan agreements with different sets of Guarantee deed as per details given in para 4 of the Reply of RP. The entire loan has been crystalized based on the DRT-RC dated 28.11.2014 and the claim has been filed accordingly, the guarantee was invoked on 27.12.2002 for all loans with further demand notice was issued.

FINDINGS AND ORDER UNDER SECTION 100

36. We have heard the Ld. Counsels of Financial Creditor, Resolution Professional and Personal Guarantor and perused the documents submitted on record including exhibits/annexures and written submissions filed by the respective parties.

37. The Ld. Counsel representing the Respondent/Personal Guarantor has mainly raised two objections that are:

(1) This tribunal does not have the territorial jurisdiction to try and entertain the present Application as the Personal Guarantor resides in Delhi at 12, Aurangzeb Lane, New Delhi-110001. No loan was disbursed in U.P. The SASF (IDBI) is having its registered office in Mumbai. No cause of action arose within the jurisdiction of this Tribunal as neither any CIRP nor any liquidation proceeding was initiated against the Corporate Debtor, M/s Malvika Steel Ltd. Thus, the present application should not have been filed before the NCLT Allahabad but ought to have been filed before the NCLT Delhi; and

(2) The present application is barred by limitation.

38. As far as the first issue relating to territorial jurisdiction of this tribunal over the present case is concerned, the Ld. Counsel of the Respondent/Personal Guarantor during the course of advancement of the arguments and making of submission before us by the Ld. Counsels of parties, has fairly conceded on the issue of this tribunal having jurisdiction over the present case in view of the Corporate Debtor i.e. M/s Malvika Steel Ltd. to which the Respondent stood guarantor for the loan taken by it from the Financial Creditor, is having registered office at Usha Puram , UPSIDC Industrial Area, Jagdishpur, Sultanpur (UP) which falls within the jurisdiction of this tribunal and Section 60(1) of

the Code providing that the Adjudicating Authority in relation to insolvency resolution and liquidation for corporate persons including **corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate persons is located**.

As per Section 60(1) of IBC, the NCLT with territorial jurisdiction over the Corporate Debtor's registered office is the adjudicating authority for insolvency of its personal guarantors also. As the registered office of the Corporate Debtor under consideration in present application falls within the jurisdiction of NCLT Allahabad, and therefore as per section 60(1) of IBC, the jurisdiction of the Respondent/Personal Guarantor of the Corporate Debtor herein will also lie with NCLT Allahabad.

39. While dealing with the Scheme of Section 60, interplay between Section 60(1) and 60(2) of the Code has been very clearly explained in a judgment by the Hon'ble NCLAT in ***Company Appeal (AT) (Insolvency) No.60 of 2022 – State Bank of India, Stressed Asset Management Branch vs. Mahendra Kumar Jajodia, Personal Guarantor to***

Corporate Debtor, holding that as per section 60(1), an application u/s 95 against the Personal Guarantor can be filed before the NCLT having territorial jurisdiction over the Corporate Debtor to which it stood as guarantor if no CIRP/Liquidation is pending against the Corporate Debtor and if CIRP/Liquidation is pending against the Corporate Debtor before a NCLT , application u/s 95 against its Personal Guarantor is to be filed before such NCLT where CIRP/Liquidation against the Corporate Debtor is pending. Relevant Part of this decision of the Hon'ble NCLAT is reproduced as under: -

> *"7. Sub-Section 1 of Section 60 provides that Adjudicating Authority for the corporate persons including corporate debtors and personal guarantors shall be the NCLT. The Sub-Section 2 of Section 60 requires that where a CIRP or Liquidation Process of the Corporate Debtor is pending before 'a' National Company Law Tribunal the application relating to CIRP of the Corporate Guarantor or Personal Guarantor as the case may be of such Corporate Debtor shall be filed before 'such' National Company Law Tribunal. The purpose and object of the sub-section 2 of Section 60 of the Code is that when proceedings are pending in 'a' National Company Law Tribunal, any proceeding against Corporate Guarantor should also be*

filed before 'such' National Company Law Tribunal. The idea is that both proceedings be entertained by one and the same NCLT. The sub-section 2 of Section 60 does not in any way prohibit filing of proceedings under Section 95 of the Code even if no proceeding are pending before NCLT.

8. The use of words 'a' and 'such' before National Company Law Tribunal clearly indicates that Section 60(2) was applicable only when a CIRP or Liquidation Proceeding of a Corporate Debtor is pending before NCLT. The object is that when a CIRP or Liquidation Proceeding of a Corporate Debtor is pending before 'a' NCLT the application relating to Insolvency Process of a Corporate Guarantor or Personal Guarantor should be filed before the same NCLT. This was to avoid two different NCLT to take up CIRP of Corporate Guarantor. Section 60(2) is applicable only when CIRP or Liquidation Proceeding of a Corporate Debtor is pending, when CIRP or Liquidation Proceeding are not pending with regard to the Corporate Debtor there is no applicability of Section 60(2).

9. Section 60(2) begins with expression 'Without prejudice to sub-section (1)' thus provision of Section 60(2) are without prejudice to Section 60(1) and are supplemental to sub-section (1) of Section 60.

10. Sub-Section 1 of Section 60 provides that Adjudicating Authority in relation to Insolvency or Liquidation for Corporate Debtor including Corporate Guarantor or

Personal Guarantor shall be the NCLT having territorial jurisdiction over the place where the Registered Office of the Corporate Person is located. ***The substantive provision for an Adjudicating Authority is Section 60, sub-Section (1), when a particular case is not covered under Section 60(2) the Application as referred to in sub-section (1) of Section 60 can be very well filed in the NCLT having territorial jurisdiction over the place where the Registered Office of corporate Person is located.****"*

[Emphasis Supplied]

40. Civil Appeal No(s). 1871-1872 of 2022 filed against the above judgment of Hon'ble NCLAT has been dismissed by Hon'ble Supreme Court vide order dated 06.05.2022, which is to the following effect

"We have heard learned Solicitor General and learned senior counsel for the parties and perused the record. We do not see any cogent reason to entertain the Appeals. The judgment impugned does not warrant any interference.

The Appeals are dismissed."

41. Thus, the above judgment of Hon'ble NCLAT has reached finality and application against the Personal Guarantor u/s 95 can be very well filed before the NCLT having territorial jurisdiction over the place where the Registered Office of the Corporate Debtor is located. The above decision of the Hon'ble

NCLAT has been followed in its subsequent decision in Company ***Appeal (AT) (Insolvency) No. 58 of 2023 in the matter of Ankit Miglani vs State Bank of India dated 19.04.2023*** in which also , it has been held that application u/s 95 against the Personal Guarantor can be filed before NCLT Chandigarh under whose jurisdiction the registered office of the Corporate Debtor existed though CIRP against the Corporate Debtor was completed before NCLT Mumbai but at the time of filing of application u/s 95 against the Personal Guarantor , no CIRP against the Corporate Debtor was pending. The relevant part of this decision of Hon'ble NCLAT is reproduced as under:

> *"11. From the facts which have been brought on record by the State Bank of India, it is clear that on the date when Section 95 Application was filed before the Adjudicating Authority, i.e., 23.06.2021, no insolvency resolution was pending against the Corporate Debtor before NCLT Mumbai. Hence, Section 60 sub-section (2) could not have been invoked.*
>
> *12. In view of the foregoing discussions, we are of the view that NCLT Mumbai Bench had no territorial jurisdiction to entertain Section 95 Application filed by the State Bank of India against the Appellant. The jurisdiction to entertain Section 95, sub-section (1) Application was*

only before the NCLT under whose jurisdiction the registered office of the Corporate Debtor is situated, which in the present case happens to be NCLT Chandigarh. In the result, we allow the Appeal, set aside the order dated 01.12.2022 passed by the Adjudicating Authority and dismiss the C.P.(IB)/ 359(MB)2022 filed under Section 95 sub-section (1) due to lack of territorial jurisdiction. We make it clear that dismissal of Application C.P.(IB)/ 359(MB)2022 shall not preclude the Respondent to file an Application before the appropriate Forum."

42. From the Scheme of Section 60 as analysed and adjudicated upon in the above judicial pronouncements, it is clear that application u/s 95 can be filed against the Personal Guarantor even when no CIRP or Liquidation is pending against the corresponding Corporate Debtor and such application can be filed only before the NCLT that has territorial jurisdiction over the corresponding Corporate Debtor. In view of this judicial position as settled at the higher judicial forum, the first objection relating to territorial jurisdiction of this tribunal over the present case as raised by the Ld. Counsel of the Respondent/Personal Guarantor deserves to be rejected though she conceded during the

argument stage and did not press for this objection, hence this objection is rejected.

43. As regards the second objection raised on the present application being barred by limitation, it needs to be examined as to when the guarantee was invoked against the Personal Guarantor demanding from him to make payment of unpaid debt in default pertaining to the Corporate Debtor as guaranteed by him as per the guarantee agreement and when default has occurred in respect of the personal guarantor after invoking the guarantee and subsequently when the application u/s 95 was filed after fulfilling the requirement of section 95(4)(b) and whether these actions taken by the Applicant Financial Creditor was within the limitation period as per the Limitation Act 1961 or not.

44. The Hon'ble Apex Court in ***Syndicate Bank versus Channaveerappa Beleri & ors – (2006) 11 SCC 506*** has clarified that the liability to pay would arise on the guarantors only when a demand is made and , however, if the debt had already become time-barred against the principal debtor, the question of creditor demanding payment thereafter, for the first time, against the guarantor would not arise but when

the demand is made against the guarantor, if the claim is a live claim (that is, a claim which is not barred) against the principal debtor, limitation in respect of the guarantor will run from the date of such demand and refusal/non-compliance. Where guarantor becomes liable in pursuance of a demand validly made in time, the creditor can sue the guarantor within three years, even if the claim against the principal debtor gets subsequently time-barred. The relevant paras of this judgment are reproduced below: -

*"…**13.** What then is the meaning of the said words used in the guarantee bonds in question? The guarantee bond states that the guarantors agree to pay and satisfy the Bank "on demand". It specifically provides that the liability to pay interest would arise upon the guarantor only from the date of demand by the Bank for payment. It also provides that the guarantee shall be a continuing guarantee for payment of the ultimate balance to become due to the Bank by the borrower. The terms of guarantee, thus, make it clear that the liability to pay would arise on the guarantors only when a demand is made. Article 55 provides that the time will begin to run when the contract is "broken". Even if Article 113 is to be applied, the time begins to run only when the right to sue accrues. In this case, the contract was broken and the right to sue accrued only when a demand for payment was made by*

the Bank and it was refused by the guarantors. When a demand is made requiring payment within a stipulated period, say 15 days, the breach occurs or right to sue accrues, if payment is not made or is refused within 15 days. If while making the demand for payment, no period is stipulated within which the payment should be made, the breach occurs or right to sue accrues, when the demand is served on the guarantor.

14. *We have to, however, enter a caveat here. When the demand is made by the creditor on the guarantor, under a guarantee which requires a demand, as a condition precedent for the liability of the guarantor, such demand should be for payment of a sum which is legally due and recoverable from the principal debtor. If the debt had already become time-barred against the principal debtor, the question of creditor demanding payment thereafter, for the first time, against the guarantor would not arise. When the demand is made against the guarantor, if the claim is a live claim (that is, a claim which is not barred) against the principal debtor, limitation in respect of the guarantor will run from the date of such demand and refusal/ non-compliance. Where guarantor becomes liable in pursuance of a demand validly made in time, the creditor can sue the guarantor within three years, even if the claim against the principal debtor gets subsequently time-barred. To clarify the above, the following illustration may be useful:*

Let us say that a creditor makes some advances to a borrower between 10-4-1991 and 1-6-1991 and the repayment thereof is guaranteed by the guarantor undertaking to pay on demand by the creditor, under a continuing guarantee dated 1-4-1991. Let us further say a demand is made by the creditor against the guarantor for payment on 1-3-1993. Though the limitation against the principal debtor may expire on 1-6-1994, as the demand was made on 1-3-1993 when the claim was "live" against the principal debtor, the limitation as against the guarantor would be 3 years from 1-3-1993.

On the other hand, if the creditor does not make a demand at all against the guarantor till 1-6-1994 when the claims against the principal debtor get time-barred, any demand against the guarantor made thereafter say on 15-9-1994 would not be valid or enforceable.

..."

45. In the matter under consideration, the Respondent/Personal Guarantor provided personal guarantee to various Rupee Term Loan and Foreign Currency Term Loan granted to Malvika Steel Ltd. ("Principal Borrower/Corporate Debtor") during the year 1994-1999 by the IDBI, which after becoming NPA in the books of IDBI, was acquired by Stressed Assets Stablisation Fund (SASF), the Applicant in the present Application. For this purpose, the Respondent executed Personal Guarantees vide Agreements dated 23.09.1994,

21.09.1996, 09.01.1998 & 18.11.1999, guaranteeing for the repayment of loan amounts availed by the Corporate Debtor. We have gone through the latest guarantee agreement dated 18.11.1999 and following clauses of the guarantee agreement are noted with respect to liability of the Personal Guarantor providing guarantee for payment of unpaid debt of the Corporate Debtor in case of default by the Corporate Debtor to pay the debt.

"In consideration of the premises, the Guarantors hereby unconditionally, absolutely and irrevocably guarantee to and agree with each of the Lenders as follows:

.....

2. The Borrower shall duly and punctually repay the Loans together with all interest, additional interest, liquidated damages, and other monies in accordance with the Loan Agreement and perform and comply with all other terms, conditions and covenants contained in the Loan Agreement.

3. ***In the event of any default on the part of the Borrower in payment/repayment of any of the monies referred to above, or in the event of any default on the part of the Borrower to comply with or perform any of the terms. conditions and covenants contained in the Loan Agreement, the***

Guarantors shall, upon demand, forthwith pay to the Lenders *without demur all the amounts payable by the Borrower under the Loan Agreement.*

……

7. This Guarantee shall be enforceable against the Guarantors notwithstanding that any security or securities comprised in any instrument(s) executed or to be executed by the Borrower in favour of the Lenders shall, at the time when the proceedings are taken against the Guarantors on this Guarantee, be outstanding or unrealised or lost.

……

14. A certificate in writing signed by a duly authorised official of the Lenders shall be conclusive evidence against the Guarantors of the amount for the time being due to the Lenders from the Borrower in any action or proceeding brought on this Guarantee against the guarantors.

15. ***This Guarantee shall not be wholly or partially satisfied or exhausted by any payments made to or settled with the Lenders by the Borrower and shall be valid and binding on the Guarantors and operative until repayment in full of all monies due to the Lenders under the Loan Agreement****.*

16. This Guarantee shall be irrevocable and the obligations of the Guarantors hereunder shall not be

discharged except by performance and then only to the extent of such performance, such obligation shall not be conditional on the receipt of any prior notice by the Guarantors or by the Borrower and the demand or notice by the Lenders, as provided in Clause 20 hereof shall be sufficient notice to or demand on the guarantors.

17. The liability of the Guarantors under this Guarantee shall not be affected by; -

i) any change in the constitution or winding up of the Borrower or any absorption, merger or amalgamation of the Borrower with any other Company, Corporation or concern: or

ii) any change in the management of the Borrower or takeover of' the management of the Borrower by 9entra! or State Government or by any other authority; or

iii) acquisition or nationalisation of the Borrower and/or of any of its undertaking(s) pursuant to any law; or

iv) MY change in the constitution of the Lenders; or

v) the insolvency or death of the Guarantors or any or any of the them.

18. ***This Guarantee shall be a continuing one and shall remain in full force and effect till such time the Borrower repays in full the Loans together with all interest, liquidated damages, costs, charges and all other monies that may from time to time become***

due and payable and remain unpaid to the Lenders under the Loan Agreement.

.....

20. 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 his/their personal representative(s) as the case may be, such demand or notice is to be made or given, and shall be assumed to have reached the addressee in the course of post, if given by post; and no period of limitation shall commence to run in favour of the Guarantors until after demand for payment in writing shall have been made or given as aforesaid and in proving such notice when sent by post it shall be sufficiently proved that the envelope containing the notice was posted and a certificate by any of the responsible officers of the· Lenders that to the best of his knowledge and belief, the envelope containing the said notice was so posted shall be conclusive as against the Guarantors, even though it was returned unserved on a9eount of refusal of the Guarantors or otherwise.

21. The Guarantors agree and declare that the rights and powers conferred on the Lenders by these presents shall be joint and several and shall be deemed always to be so and they may be exercised by the Lenders accordingly.

46. The Corporate Debtor/Borrower defaulted on repayment of loan, and hence the outstanding loan in the books of IDBI

(the lender that disbursed the loan) became NPA on 02.07.2002. Consequently, a demand notice dated 27.12.2002 was earlier issued to the Personal Guarantor invoking the guarantee in terms of all the guarantee agreements the said guarantee however, in the nature of continuing guarantee as per Clause 18 of the Deed of guarantee as mentioned in para 45 above and the personal guarantor has been demanded to pay Rs.745,10,78,041 together with interest.

47. As the Corporate Debtor/Borrower defaulted on payment of debt as well as the Personal Guarantor has also not made the payment of the unpaid debt despite issuing of above mentioned demand notice, an OA was filed in Debt Recovery Tribunal (DRT) on 24.10.2005 by SASF after taking over the stressed assets from IDBI. This OA has been filed against the Corporate Debtor as well as the Personal Guarantor. This OA has been allowed by the DRT vide order dated 28.11.2014 directing the Corporate Debtor as well as the Personal Guarantor jointly and severally to pay the Applicant herein Rs.1443,51,86,438/- and if they fail to pay this amount, the same shall be recovered by selling the hypothecated

properties and mortgaged properties as described in the said order. As the full amount of the debt could not be recovered even after the above order of the DRT and default continued, a demand notice dated 04.07.2016 of Rs.1288,85,59,320/- was issued by the Recovery Officer, DRT in RC No. 156/2014 giving 15 days to pay the dues. As the demand raised in the RC has not been paid within 15 days, the default by the Corporate Debtor occurred on 19.07.2016 (15 days after issuance of RC). This default date on which the Corporate Debtor defaulted on repayment of debt after the order of DRT and resulting into subsequent issuance of RC, is taken by the Applicant as date of default in the demand notice issued by the Applicant u/s 95(4)(b) of IBC and subsequent application filed u/s 95 due to non-payment of debt by the Personal Guarantor in compliance to notice issued u/s 95(4)(b). As compliance of this RC is still pending and last compliance order was passed on 29.09.2023, the default by the Corporate Debtor in not paying the demand is still continuing.

48. As default by the Corporate Debtor in not paying the debt was continuing even after issuance of RC by the Recovery Officer of DRT, the Applicant SASF further made claim from the

Personal Guarantor invoking the provision of section 95(4)(b) after the notification for enactment of Personal Insolvency Resolution Process under Insolvency & Bankruptcy Code , 2016, is issued by the Central Government on 20.11.2019, by issuing a notice under Form B under Rule 7(2) of IBBI (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rule 2019. For making claim from the Personal Guarantor under the Code to pay the outstanding demand of the Corporate Debtor on the basis of the RC issued by the DRT, reliance has been placed on the decision of the Hon'ble Supreme Court in the case of ***Tottempudi Salalith vs State Bank of India and Ors. (Civil Appeal O.2348 of 2021)*** holding that "In ***the event a financial creditor wants to pursue a recovery certificate as deemed decree, he would get twelve years' time***"

49. In the above judgment of the Hon'ble Supreme Court, it has been held as regards the nature of a Recovery Certificate and the limitation period involved with respect to making a claim for payment of debt under the IBC as per the Article 136 of the Schedule of the Limitation Act, 1961, as under: -

"13. What has been filed before the NCLT is a composite application based on three recovery certificates, two of which have been instituted within the three year period as postulated in Article 137 of the Limitation Act. The third recovery certificate was issued in the year 2015. Thus, there is more than three years gap between the date of issue thereof and the date of filing of the application before the NCLT. ***But a recovery certificate under the 1993 Act is also clothed with the character of a deemed decree.***

The provisions of Section 19 (22A) of the 1993 Act specifies :

"Section 19 Application to the Tribunal: .....

(22A) Any recovery certificate issued by the Presiding Officer under subsection (22) shall be deemed to be decree or order of the Court for the purposes of initiation of winding up proceedings against a company registered under the Companies Act, 2013 (18 of 2013) or Limited Liability Partnership registered under the Limited Liability Partnership Act, 2008 (6 of 2009) or insolvency proceedings against any individual or partnership firm under any law for the time being in force, as the case may be.]" Life of a decree is twelve years for enforcement as per Article 136 of the schedule of Limitation Act. The said provision stipulates: "Description of Period of Time from which period application limitation begins to run

136. For the execution Twelve years. When the decree or of any decree order becomes (other than an enforceable or where decree granting a the decree or any mandatory subsequent order injunction) or directs any payment of order of any civil money or the delivery court. of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place: Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation"

14. There is authority for the proposition that the time for computing limitation period for filing an application under Section 7 of the IBC would be guided by Article 137 of the Limitation Act.

That is the ratio of this Court in the case of Kotak Mahindra I (supra). The same authority has also analysed the position of a recovery certificate as a deemed decree. It has been, interalia, held in this judgment: "79. From the plain and simple interpretation of the words used in subsection (22A) of Section 19 of the Debts Recovery Act, it would be amply clear that the legislature provided that for the purposes of winding up proceedings against a company, etc. a recovery certificate issued by the Presiding Officer under subsection (22) of Section 19 of the Debts Recovery Act shall be deemed to be a decree or order of the Court. It is thus clear that once

a recovery certificate is issued by the Presiding Officer under sub section (22) of Section 19 of the Debts Recovery Act, in view of subsection (22A) of Section 19 of the Debts Recovery Act it will be deemed to be a decree or order of the Court for the purposes of initiation of winding up proceedings of a company, etc. However, there is nothing in subsection (22A) of Section 19 of the Debts Recovery Act to imply that the legislature intended to restrict the use of the recovery certificate limited for the purpose of winding up proceedings. The contention of the respondents, if accepted, would be to provide something which is not there in subsection (22A) of Section 19 of the Debts Recovery Act.

80. ***In any case, when the legislature itself has provided that any recovery certificate issued under subsection (22) of Section 19 of the Debts Recovery Act will be deemed to be a decree or order of the court for initiation of winding up proceedings, which proceedings are much severe in nature, it will be difficult to accept that the legislature intended that such a recovery certificate could not be used for initiation of CIRP, which would enable the corporate debtor to continue as an ongoing concern and, at the same time, pay the dues of the creditors to the maximum. We, therefore, find no substance*** *in the said submission."*

15. We have already referred to the provision of Section 19(22A) of the 1993 Act. This Court has construed the purpose of the said provision to include bringing an action under the IBC on the strength of Section 19(22) and (22A) of the 1993 Act. In the said provision, however, so far as bringing a winding up action is concerned, the right of a recovery certificate holder as a deemed decree holder has been confined to companies registered under the Companies Act, 2013 and certain other entities with which we are not concerned here. But in relation to initiating proceeding under the IBC or making a claim under the said Code, the restriction does not remain confined to the Companies Act, 2013. The corporate debtor in this proceeding was incorporated under the Companies Act, 1956. In the case of Kotak Mahindra, I (supra), credit facilities were extended to the borrower entities in the years 1993-94. It is obvious that the three corporate entities involved in that case were incorporated under the Companies Act that prevailed prior to coming into operation of 2013 Act. The position of law to guide the subject proceeding should be the same.

In the event a financial creditor wants to pursue a recovery certificate as a deemed decree, he would get twelve years' time. We are of this view as the extent of operation of a recovery certificate has been construed by this Court in Kotak Mahindra I (supra) to go beyond filing of winding up petition

alone. It would retain the character of a decree to lodge a claim in an IBC proceeding. But this point has not been examined by the Appellate Tribunal. We have already expressed our opinion on the reasons that weighed with the Appellate Tribunal as also the NCLT in entertaining the application. But since the first two fora did not test the legality of the 2015 certificate as a deemed decree, we are of the opinion that this question also ought to be addressed by the Appellate Tribunal.

We are otherwise not satisfied with the argument of the appellant about maintainability of the application out of which this appeal arises on the ground of the application being barred under limitation. The application with respect to the two recovery certificates issued in the year 2017 is maintainable. In the event the Appellate Tribunal is of opinion that the CIRP could not lie so far as the recovery certificate of 2015 is concerned, as the decree would be still alive, the claim based on the said recovery certificate could be segregated from the composite claim and the Committee of Creditors shall, in that event, treat the sum reflected in the said recovery certificate as part of the claims made in pursuance of the public announcement. This direction we are issuing in exercise of our jurisdiction under Article 142 of the Constitution of India."

50. From the above decision of the Hon'ble Supreme Court in case of ***Tottempudi (supra)***, it is clear that the Recovery Certificate issued against the Corporate Debtor by the DRT would have the character of a decree to lodge a claim in an IBC proceeding and based on this Recovery Certificate though CIRP against the Corporate Debtor could be filed within three years only from the date of issuance of Recovery Certificate as held by the Hon'ble Supreme Court in case of ***Kotak Mahindra Bank Limited vs A Balakrishnan and Anr. (2022) 9 SCC 186*** but the decree would be still alive and the claim based on the such recovery certificate can be filed within 12 years from the date of issuance of Recovery Certificate. In case of *Kotak Mahindra Bank Limited vs. A Balakrishnan (supra)*, the Hon'ble Supreme Court has also held that "***We hold that a liability in respect of a claim arising out of a recovery certificate would be a "financial debt" within the meaning of clause (8) of Section 5 of IBC. Consequently, the holder of the recovery certificate would be a financial creditor within the meaning of clause (7) of Section 5 of IBC***"

51. Considering the above judicial pronouncements made by the Hon'ble Supreme Court, we find that though in the present case , guarantee against the Personal Guarantor was invoked by issuing a demand notice on 27.12.2002 after the financial debt due from the Corporate Debtor became NPA on 02.07.2002, thus the invocation of guarantee against the Personal Guarantor is made in terms of various guarantee deeds dated 23.09.1994, 21.09.1996, 09.01.1998 & 18.11.1999 executed with the Personal Guarantor within the limitation period. Thereafter, on default of the Personal Guarantor of not complying with demand notice dated 27.12.2002 issued to him, action has been taken by the Applicant SASF herein (who acquired the debt from the lender) against the Corporate Debtor as well as the Personal Guarantor by filing OA in DRT on 24.10.2005 and such action is also taken within limitation period. However, after passing of order dated 28.11.2014 by the DRT for payment of outstanding debt when an RC dated 04.07.2016 has been issued due to continuance of default in payment of debt by the Corporate Debtor, a "financial debt" within the meaning of clause (8) of Section 5 of IBC has arisen as held by the

Hon'ble Supreme Court in case of ***Kotak Mahindra Bank Limited vs A Balakrishnan (supra)***. Consequently, the holder of the recovery certificate i.e. SASF in the present case would be a Financial Creditor within the meaning of clause (7) of Section 5 of IBC. As 15 days time was given to the Corporate Debtor to pay the debt as per the RC dated 04.07.2016, default has occurred on 19.07.2016. After such default committed by the Corporate Debtor, the Financial Creditor i.e. SASF is very well entitled to make claim from the Personal Guarantor for payment of default amount as the guarantee against the Personal Guarantor has already been invoked by issuing of demand notice dated 02.07.2002 in terms of the guarantee deeds executed with the personal guarantor. As already discussed above that in case of ***Tottempudi (supra)***, the Hon'ble Supreme Court has held that the Recovery Certificate issued against the Corporate Debtor by the DRT would have the character of a decree to lodge a claim in an IBC proceeding and based on this Recovery Certificate though CIRP against the Corporate Debtor could be filed within three years only from the date of issuance of Recovery Certificate but the decree would be still

alive and the claim based on the such recovery certificate can be filed within 12 years from the date of issuance of Recovery Certificate. Moreover, it is also worth to note that RC issued by the DRT has still not been complied with and default is still continuing as per the last Compliance Order passed by the DRT vide order dated 29.09.2023. It is noteworthy that as per clause 18 of the Deed of Guarantee, it is a continuing guarantee unless discharged.

Dealing with the issue of limitation in taking action against the Personal Guarantor in case of ***Syndicate Bank vs Channaveerappa Baleri (supra)***, the Hon'ble Supreme Court has held that "***If the debt had already become time-barred against the principal debtor, the question of creditor demanding payment thereafter, for the first time, against the guarantor would not arise. When the demand is made against the guarantor, if the claim is a live claim (that is, a claim which is not barred) against the principal debtor, limitation in respect of the guarantor will run from the date of such demand and refusal/non-compliance. Where guarantor becomes liable in pursuance of a demand validly made in time, the creditor***

can sue the guarantor within three years, even if the claim against the principal debtor gets subsequently time-barred*."* In the present case , the Debt outstanding from the Corporate Debtor has still not become time-barred and default is continuing after issuing of RC dated 04.07.2016 by DRT for which compliance proceeding in DRT is still under progress , and therefore the demand notice dated 10.09.2020 served by the Financial Creditor SASF in terms of section 95(4)(b) of IBC under Rule 7(1) of IBBI(Application to Adjudicating Authority For Insolvency Resolution Process For Personal Guarantors To Corporate Debtors) Rules 2019 has been found to be well within the limitation period and it is a valid notice issued to the Personal Guarantor who is covered by the definition of "Guarantor" as provided under Rule 3(1)(e) of PG Rules , 2019 to whom guarantee has been invoked vide notice dated 02.07.2002 as we have already discussed and the debt is still not fully paid. As we have found that the Applicant being a Financial Creditor within the meaning of Section 5(7) of the IBC as discussed above, can take action against the Personal Guarantor within three years of issuing of demand notice by filing an Application under section 95 of the IBC. In

the present case, the demand notice has been issued on 10.09.2020 and Application u/s 95 has been filed on 28.03.2023, which is within the limitation period of three years. Therefore, we find that the present application has been filed within the limitation period, and hence the objection raised by the Personal Guarantor about the present Application being time barred is rejected.

52. As all the points raised by the Personal Guarantor in its reply dated 24.07.2024 filed against the report of the RP has already been dealt with in respect of guarantee being not invoked, arguments raised on the application being time barred by taking a view that the decision in case of *Tottempudi (supra)* will not apply in the present case, and hence to avoid any repetition, we have separately not dealt with these objections. Other decisions cited by the Personal Guarantor *viz* B.K. Educational Services Private Limited vs Parag Gupta and Associated and other case laws are in respect of filing of application against the Corporate Debtor u/s 7/9/10 of IBC for which limitation is counted from the date of default committed by the Corporate Debtor but in case of Personal Guarantor , limitation period starts from the date

of default committed by the Personal Guarantor after demand notice is issued to him as held in various judicial pronouncements as discussed in foregoing paras of this order.

As far as the guaranteed amount is concerned objected by the Personal Guarantor while dealing with the merits of the Application/Report, it is not the subject matter at the stage of the admission of the Application filed u/s 95 in terms section 100 of IBC when it is only to be examined whether there is a debt and default and the amount of the default is above threshold limit . As already discussed in the order, there is debt and default in respect of the Personal Guarantor and the amount of the default is above Rs. 1 crore i.e. above the threshold limit. Therefore, the present Application is liable to be admitted. As far as the decision of the coordinate NCLT Ahmedabad Bench cited by the Personal Guarantor is concerned, it distinguishable on facts and hence, will not apply in the present case.

53. After dealing with the objections of the Personal Guarantor in the present matter as discussed above, we find that despite issuing of demand notice in Form B, no payment was received

towards the outstanding amount of Rs.3962,20,53,128/- as of 01.02.2023, plus applicable interest, charges etc. up to filing of the present Application. As mentioned by the RP in his report dated 08.07.2024 also that no evidence was submitted by the Personal Guarantor after he issued notice u/s 99(2), and hence the default is still continuing and the Personal Guarantor has not discharged his liability towards the unpaid debts as per the Guarantee Deeds dated 23.09.1994, 21.09.1996, 09.01.1998 & 18.11.1999. The findings in the RP's report submitted u/s 99 further make it evident that:

i. The present application has been filed within the limitation period.

ii. The Insolvency Petition satisfies the requirement of Section 95 of IBC, 2016 and has been filed in the requisite form under Rule 7(2) and complying with Rule 7(1) of the PG Rules, 2019, supported by requisite fee and documents.

iii. The Respondent Personal Guarantor after being duly served with demand notice dated 10.09.2020 has committed default in not paying the debt within a period of 14 days of the service of the notice of demand; therefore, the requirement as set out under Section 95(4) is satisfied.

iv. That the debts mentioned in the application are fully recoverable from the personal guarantor as per the guarantee deeds dated 23.09.1994, 21.09.1996, 09.01.1998 & 18.11.1999 and it is not excluded debt.

v. That the Personal Guarantor is not eligible for a fresh start process provided under Chapter II of IBC, 2016.

54. Considering the above facts and circumstances and upon perusal of the documents on record and further analysing them to satisfy ourselves that the present Application has been filed within limitation period also to the correct jurisdiction which falls under this tribunal, the CP (IB) No.10/ALD/2024 filed under Section 95 of the IBC, 2016 is **hereby Admitted** in accordance with the provision of Section 100 of the Code and accordingly, the Insolvency Resolution Process stands is initiated against Mr. Anil Rai viz. the Respondent herein. We hereby direct as hereinafter:

I. Initiate Insolvency Resolution Process against the Respondent/Personal Guarantor and moratorium in relation to all the debts is declared, from today i.e. date of admission of the application, and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on the repayment plan under Section 114 whichever is earlier as provided

under Sec 101 of IBC, 2016. During the moratorium period,

a. Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed, and

b. The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and

c. The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;

d. The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

II. The Resolution Professional viz. Mr. Suman Kumar Verma Insolvency Resolution Professional, having Registration No. IBBI/IPA-003/IP-N00342/2021-2022/13657 having his address at Plot No. WZ-D-9, KH NO. 83/14, Gali No. 5 , Mahaveer Enclave , Sulabh International , South West , Delhi 110045, [email: ipskverma@gmail.com] and holding valid authorization till 30.06.2025, is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Allahabad Bench, inviting claims from all Creditors, within 21 days of such issue. The

notice under Sub Section (1) of Section 102(2) shall include: -

a. Details of the order admitting the application;

b. Particulars of the resolution professional with whom the claims are to be registered; and

c. The last date for submission of claims.

III. The publication of notice shall be made in two newspapers, one in English and other in Vernacular, which have wide circulation in the State where the Corporate Debtor and Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.

IV. The Resolution Professional, in exercise of the powers conferred under Section 104, shall prepare a list of creditors on the basis of:

a. The information disclosed in the application filed by the debtor under Sections 94 or 95, as the case may be, and

b. Claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice. The debtor shall prepare a repayment plan under Section 105, in consultation with the Resolution Professional, containing a proposal to the Creditors for restructuring of his debts or affairs.

V. The repayment plan may authorize or require the Resolution Professional to:

a. Carry on the debtor's business or trade on his behalf or in his name: or

b. Realise the assets of the debtor; or

c. Administers or dispose of any funds of the debtor.

VI. The repayment plan shall include the following, namely:

a. Justification for preparation of such repayment plan and reasons based on which the creditors may agree upon the plan;

b. Provision for payment of fee to the Resolution Professional;

c. Such other matters as may be specified.

VII. The Resolution Professional shall submit the repayment plan along with his report on the plan to this Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106.

VIII. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons thereof. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of IBC, 2016. The date of meeting should not be less than 14 days or more than 28 days from the date of submission of the Report under sub- section (1) of Section 106 of IBC, 2016, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by

all modes. Such notice must contain the details as provided under the provisions of Section 107 of IBC, 2016.

IX. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of IBC, 2016 and submit the same to this Tribunal, copies of which shall be provided to the Debtor and the Creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of IBC, 2016.

X. The Resolution Professional shall submit his periodic reports before this Tribunal, every 30 days.

XI. The Applicant is directed to deposit INR 3,00,000/- (Three lakh rupees) to the bank account of the Resolution Professional within one week, towards his fees. This shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.

XII. The Registry is directed to communicate a copy of order, report and application within seven working days and upload the same on the website immediately after the pronouncement of order.

-Sd-

-Sd-

55. **CP No.10/ALD/2024** stands admitted and **IA 362/2024** stands disposed off.

56. List the matter on 20.12.2024 for further proceedings.

-Sd-	***-Sd-***
(Ashish Verma)	**(Praveen Gupta)**
Member (Technical)	**Member (Judicial)**

Date: 20th November, 2024