



NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH
(through web-based video conferencing platform)

Item No. 112
CP No. (IB)- 43/95/JPR/2023
Under Section 95 of IBC, 2016

In the matter of:

Omkara Assets Reconstruction Pvt. Ltd. ... Applicant/Creditor

Versus

Shailendra Tewari (PG to CD- Ace Laboratories Ltd.)
... Respondent/Personal Guarantor

Coram: HON'BLE MS. REETA KOHLI, JUDICIAL MEMBER
HON'BLE MS. KAVITA BHATNAGAR, TECHNICAL MEMBER

PRESENT:-

For the Applicant : Lalit Kishore Joshi, Adv.
Arvind Gupta, Adv.
For the Respondent : Sagar Pathak, Adv.
Pulkit Arora, Adv.

ORDER

Ld. counsel for the petitioner states that in the present case there are various deeds of guarantees dated 01.12.1994, 01.01.1996, 15.04.1997 & 01.01.1998. The counsel states that the date of default in the present case is 31.12.2001 and the demand notice was sent on 14.07.2021. The counsel states that the demand notice has been sent within a period of 12 years from the date of Recovery Certificate which is 07.05.2012. The counsel contends that present petition was filed on 16.07.2023 thus within a period of 12 years of the date of Recovery Certificate and within 3 years from the date of demand notice i.e. 14.07.2021. Hence, the counsel contends that the petition is within limitation. On perusal of Form C annexed with petition it is evident that in the Part III the date of default is stated to be 22.09.2012 (after serving demand notice dated 13.08.2012). The

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counsel has not made any reference to demand notice on 13.08.2012 otherwise also the contention of the counsel is that the date of default is the date of default of the principal borrowers as the guarantor is jointly and severally liable. We are unable to appreciate the contention of the ld. Counsel. The petition is being preferred against the PG. Firstly without invoking the guarantee agreement there cannot be stated to be any default on the part of the personal guarantor. Secondly even if the demand notice is taken as invocation of guarantee, then the date of default has to be subsequent to the demand notice whereas in the present case the date of default is stated to be 22.09.2012 which is a decade prior to the demand notice. Therefore keeping in view, the totality of arguments advanced we are unable to appreciate the contentions of Ld. Counsel for the petitioner. Hence the CP is dismissed. Otherwise also there is anomaly even the date of default mentioned in Part III and contention of the ld. Counsel. The limitation and the demand notice are also at variant. CP disposed off.

(Kavita Bhatnagar)
Technical Member

(Reeta Kohli)
Judicial Member

October 07, 2025