NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No. 1988 of 2024

(Arising out of the Order dated 04.09.2024 passed by the National Company Law Tribunal, Ahmedabad, Court-2 in C.P.(IB)/268 (AHM) 2024)

IN THE MATTER OF:

Divyang Soni
S/o Gopalbhai Soni
Flat No. 1, Subhashish Apartment,
1st Floor, Near Ishwar Bhuvan Road,
Navrangpura, Ahmedabad,
Gujarat **…Appellant**

Versus

Bank of Baroda
Zosarmb Branch,
Suraj Plaza-3, Sayajigunj,
Vadodara- 390020, Gujarat **…Respondent**

Present

For Appellants: Mr. Manu Aggarwal, Mr. Shubham Budhiraja, Ms. Jagriti Singh & Mr. Shivang Singhal, Advocates.

For Respondents: None.

J U D G E M E N T

(02.05.2025)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal has been filed by the Appellant i.e. Divyang Gopalbhai Soni under Section 61 of the Insolvency and Bankruptcy Code, 2016 (‘**Code**’), challenging the Impugned Order dated 04.09.2024 passed by the National

Company Law Tribunal, Ahmedabad, Court-2 (**Adjudicating Authority**) in C.P.(IB)/ 268 (AHM) 2024.

2. Bank of Baroda who is the financial creditor is the Respondent herein.

3. The appellant has challenged the Impugned Order dated 04.09.2024 passed by the Adjudicating Authority, in C.P.(IB)/268(AHM)2024, which dismissed the Appellant's application under Section 94(1) of the Code as not maintainable. The Appellant contended that the Adjudicating Authority passed the Impugned Order dated 04.09.2024 without considering arguments, facts, or circumstances, and asserts that the Impugned Order is a non-speaking order, legally unsustainable, and unsupported by the facts and merits of the case.

4. It is the case of the Appellant that the Corporate Debtor despite this recovery, the Appellant’s application under Section 94(1) of the Code was dismissed by the Adjudicating Authority as "not maintainable" without addressing whether the Respondent’s claims persisted post-auction or evaluating compliance with Code’s procedural mandates for personal guarantor insolvency. The Appellant submitted that the order fails to consider the legal effect of recoveries made during the DRT proceedings on the limitation period and does not address the applicability of the Limitation Act and 238A of the Code.

5. The Appellant submitted that by virtue of the payments credited by the Corporate Debtor, the limitation period has been revived under Section 19 of the Limitation Act, 1963, thereby enabling the filing of the present application within the prescribed time. The Appellant submitted that his application was well within the limitation period as prescribed under the Code, which mandates computation of limitation from the date of default or the date of last acknowledgment or credit, whichever is later. The Appellant stated that in the present case, the last credit was made on 14.02.2024. The Appellant relies on the judgment of the Hon'ble Supreme Court in ***Dena Bank v. C. Shivakumar Reddy*** *[(2021) 10 SCC 330]*, wherein it was held that the decree/order of the Debt Recovery Tribunal constitutes a fresh cause of action, thereby extending the limitation period by three years from the date of the last credit. The Appellant argued that since the present petition CP(IB)/268(AHM)/2024 was filed on 06.08.2024 and registered on 03.09.2024, it was within the limitation period, and the dismissal on limitation grounds is therefore unsustainable.

6. The Appellant contends that the Adjudicating Authority exhibited a prejudiced mindset when passing the Impugned Order dated 04.09.2024, failing to adequately consider the Appellant's submissions and rushing to a decision. The Appellant alleged that Adjudicating Authority, overlooked vital aspects and ignored compelling evidence, disposing of the petition in the Impugned Order dated 04.09.2024 despite the Appellant demonstrating the existence of ongoing proceedings. The Appellant requested this Appellate Tribunal to set aside the Impugned Order.

7. It is noted that M/s Shree Mukt Jewellers Baroda Pvt Ltd (hereinafter referred to as the Corporate Debtor) had approached Bank of Baroda (the Financial Creditor/ Respondent) to avail credit facilities. The Financial Creditor sanctioned certain credit facilities to the Corporate Debtor, and the Appellant, as a personal guarantor, executed a Guarantee Agreement dated 28.09.2013 in favor of the Respondent, guaranteeing the total sanctioned amount of Rs. 201 Crores in respect of the cash credit facilities availed by the Corporate Debtor.

8. It is also taken into account that the Corporate Debtor was classified as a Non-Performing Asset (NPA) by the Respondent on 27.02.2016. Subsequently, the Respondent issued a Demand Notice dated 06.08.2016 and invoked the personal guarantee furnished by the Appellant. The invocation of the personal guarantee was effected through the said notice dated 06.08.2016, read in conjunction with the terms and conditions of the Guarantee Agreement executed by the Appellant. This invocation was consequent to the default by the Corporate Debtor in repayment of the sanctioned cash credit facilities guaranteed by the Appellant.

9. We note that in order to recover the outstanding dues from the Corporate Debtor, the Respondent filed Original Application No. 551/2016 before the Debt Recovery Tribunal-II, Ahmedabad, which was allowed by way of a decree/order dated 09.01.2017. Subsequently, Recovery Certificate No. 14/2017 was issued, now recorded as TRP No. 02/2023. In the said Recovery Proceedings, the DRT scheduled the auction of the mortgaged property on 30.01.2024, which was successfully conducted with the Respondent Bank receiving a highest bid of Rs. 22.42 Cr. for the property in question. Further, as per the Statement of Account filed by the Respondent Bank in TRP No. 02/2023, the highest bidder has deposited the entire sale consideration, thereby completing the auction process in accordance with the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

10. We note that the Adjudicating Authority by its order dated 04.09.2024, dismissed the petition filed by the Appellant as not maintainable, holding that recoveries made from the auction of mortgaged properties pursuant to a recovery certificate do not constitute repayment by the principal borrower or guarantor and, therefore, cannot extend the limitation period for the personal guarantor in terms of the Limitation Act, 1963. The Adjudicating Authority further observed that the petition, filed on 06.08.2024, was beyond the prescribed period of limitation and did not comply with Section 238A of the Code, and accordingly disposed of the matter as not maintainable.

11. The facts regarding the loan given by the Financial Creditor to M/s Shree Mukt Jewellers Baroda Pvt. Ltd. as Corporate Debtor has not been disputed by the Appellant. Similarly, the Appellant did not dispute that he has signed the guarantee agreement dated 28.09.2013 in favour of the Respondent for Rs. 201 Crores in respect of cash credit facilities available by the Corporate Debtor. Hence, these facts are being taken as undisputed facts.

12. At this stage, we take into consideration the guarantee agreement dated 28.09.2013, which reads as under :-

BANK OF BARODA
VADODARA
GUJ/SOS/AUTH/FP/51/2004

भारत INDIA
STAMP DUTY
Rs.=0000100
561324
गुजरात
28.9.2013
00119
GUJARAT

LDOC 33

(33)

GENERAL FORM OF GUARANTEE

Place : Baroda
Date : 28.09.2013

Bank of Baroda,
Corporate Financial Services,
Baroda Branch

In consideration of Bank of Baroda (hereinafter called "the Bank") giving credit or accommodation or granting facilities to **M/s. Shree Mukt Jewellers Baroda Private Limited** by making/opening /continuing a Loan/Overdraft/Cash Credit account or by discounting purchasing and/or negotiating bills with or without security and /or by giving Trust Receipt facility and / or Opening Letter of Credit/ issuing Guarantees, on terms and conditions that may be settled between the Bank and the said **M/s. Shree Mukt Jewellers Baroda Private Limited** at any time or from time to time without reference to me, I/we (1)**Mr. Gopalbhai Shankarlal Soni**, (2)**Mrs. Jyotiben Gopalbhai Soni**,(3)**Mr. Harshbhai Gopalbhai Soni**, (4)**Mrs. Pinkal Harshbhai Soni** and (5)**Mr. Divyang Gopalbhai Soni** jointly and severally hereby agree with and guarantee to the Bank the due payment and discharge on demand of all amounts due and payable to the Bank by **M/s. Shree Mukt Jewellers Baroda Private Limited** (hereinafter called The "Principal") at any time and also of all bills, promissory notes or guarantees held by the Bank bearing the Principal's signature in respect of the said facilities together with interest, banking and other charges that the Bank may in course of its business charge against the Principal together with all relative cost (as between attorney, advocate and client) and expenses Provided Nevertheless that our liability under this Guarantee shall not exceed in the whole the sum of **Rs.201.00 crores (Rupees Two Hundred One Crores Only)** apart from and in addition to all interest, banking, law and other charges, costs, and expenses above referred to.

For the consideration aforesaid I jointly and severally further agree as follow:

1. This guarantee shall be continuing security binding me and my personal representative until the expiration of three calendar months from the receipt by the Bank of a notice in writing to discontinue and notwithstanding the discontinuance by or any release or granting of time or indulgence to any one or more of us this guarantee shall remain a continuing security as to the others and if discontinued by notice this guarantee shall nevertheless as to the party or parties giving such notice continue to be available (subject to the aforesaid limit of total amount) for and shall extend to all indebtedness and liabilities of the Principal to the Bank at the date of receipt of such notice whether then certain or contingent and whether then payable forthwith or at some future time or times and also for and to all credits then established by the Bank for the Principal and for and to all credit facilities granted and to all cheques, drafts, bills, notes and negotiable instruments drawn by or for the account of Principal on the Bank and dated or purporting to be dated on or before such date although presented to or paid by the Bank after such date and

Page 1 of 7

TRUE COPY

all guarantees signed by the Principal and delivered to the Bank on or before such date and that in the event of my or any of us dying or becoming under disability the liability of the executors, administrators or legal representative of such person so dying and of his estate shall continue until the expiration of three calendar months from the receipt by the Bank of a written notice given by such legal representative (or the survivors or survivor of me) to determine this guarantee. The Bank shall be at liberty on receipt of any such notice as contemplated in this clause at any time within the three calendar months to open a fresh account and/or to grant fresh facilities to the Principal and to appropriate thereto all payments subsequently made to the Bank by the Principal and not expressly appropriated to the old account without prejudice to my estates liability to the extent aforesaid. I shall not be released from my liability in respect of the loan limit / B.P. limit of Rs.____________ covered by this guarantee in the event of any omission delay or default in presentation of bill or in the issue of notices of dishonour on the part of the Bank.

2. This guarantee is additional and without prejudice to any securities or obligation which the Bank may now or hereafter have from me, from the Principal or from any one else in respect of any indebtedness or liabilities hereby guaranteed and all rights and remedies in respect thereof are reserved.

3. This guarantee shall be a continuing guarantee and shall not be considered as wholly or partially satisfied or exhausted by any payments from time to time made to the Bank or any settlement of any account or by reason of the account being brought to a credit at any time or from time to time or its being drawn upto the full extent or exceeding the full extent of the limit from time to time and its being reduced or extinguished and thereafter re-opened. The Guarantee shall continue in force notwithstanding the discharge of the Principal by operation of law or my death or of any one of us and shall cease only on payment of the amount guaranteed hereunder either by me or any of us.

4. I expressly agree that the Bank shall have full discretionary power, without my further assent or knowledge and without discharging or in any way affecting my liability under this guarantee from time to time AND at any time to negotiate with the Principal and settle and or alter the terms and conditions, to promise, to grant time or indulgence to or not to sue the Principal or any person/s liable with or for Principal, whether as guarentor or otherwise or make any other arrangement with the Principal or any person/s so liable with or for the Principal as the Bank may think fit and to hold over, renew, vary, exchange or release in whole or in part and from time to time any securities held or to be held by the Bank for or on account of the moneys and liabilities intended to be hereby secured or any part thereof. I also agree that I shall not be discharged from my liability by the Bank releasing the Principal debtor or by any of its act or omission the legal consequence of which may be to discharge the Principal debtor or which would, but for this present provision, be inconsistent with my rights as surety or by the Bank's omitting to do any act, which but for this present provision its duty to me would have required the Bank to do. I hereby consent to each and every of the acts mentioned above as the Bank may think fit. Moreover though as between the Principal debtor and me I am sureties only, I agree that as between the Bank and me, I am Principal debtor(s) jointly with him and accordingly I shall not be entitled to any of the rights conferred on sureties by Sections 133, 134, 135, 139 and 141 of the Indian Contract Act. And I/we further expressly agree that the Bank shall also have discretionary power without my/our further assent or knowledge or without discharging or in any way affecting my/our liability under the Guarantee from time to time and at any time to agree to the variations of

TRUE COPY

TRUE COPY

Page 2 of 2

the terms and conditions of any Letter of Credit that has been and/or may be opened for the benefit of the Principal, to convert a documentary Letter of Credit into clean or open Letter of Credit and vice versa, to convert a revocable Letter of Credit into irrevocable one and vice versa, to vary or alter the other terms, as to the nature and amount of credit, war risk, as regards the conditions of advance, the nature of the documents to be tendered, the names of the beneficiaries, the nature, quality, quantity of goods, the country of origin and the conditions regarding port of shipment, certificates of country of origin, nature, quality, quantity, weight or otherwise, the terms of shipment such as F.O.B / C.I.F/ C.F.A S/C.I.F / C.F.R as regards shipments by installments or to convert a contract for shipment by installment into shipment by one lot, the terms of draft as to insurance and the terms thereof, the terms regarding payment and to part with the shipping documents and/or goods covered by such shipping documents negotiated under the said Letter of Credit or a Trust Receipt of the principal or otherwise, and other conditions as may be comprised in the Letter of Credit within the limit of Rs. _______________ referred to in clause. 1 hereof and to release or vary any security granted therefor and for the purpose aforesaid to settle and or alter the terms and conditions to grant time or indulgence to Principal or any person/ s liable with or for the Principal whether as Guarantor or otherwise or compound or make any other arrangement with the Principal or any other person so liable with or for the Principal as the Bank may think fit and to hold over, renew, vary, exchange or release in whole or in part and from time to time any securities held or to be held by the Bank for/or on account of the moneys and liabilities intended to be secured hereby or any part thereof. And for all purposes of this claim the Principal is empowered to give consent on my behalf and any consent given by the Principal shall be deemed to have been given by me and shall bind me in all respects as if the same had been expressly given by me in writing. The Principal is also hereby empowered to acknowledge the debt/s and/or security/ies for and on behalf of me and the said acknowledgment of debt and/or the security/ies shall be valid as against me as though they were executed by me.

5. The Bank may recover against me to the extent herein before mentioned notwithstanding that the Principal or his agents, partners, directors or officers may have exceeded his or their powers or that the arrangements with the Bank may have been ultra vires and without being bound to enforce its claim against the Principal or any other person/s or other security held by the Bank. The Bank shall not be bound to inquire into powers of the Principal or his agents or partners, directors or officers purporting to act on behalf of the Principal and all moneys due or liabilities incurred shall be deemed to form part of the present guarantee notwithstanding that the Principal or his agents, partners, directors and officers may have exceeded his or their power or the arrangement with the Bank may have been *ultra vires*.

6. I waive in the Bank's favour all or any of my rights against the Bank or the Principal as may be necessary to give effect to any of the provisions of this guarantee.

7. I declare that I have not received any security from the Principal for the giving of this guarantee and I agree that I will not so long as any moneys remain owing by the Principal to the Bank or any liability incurred by the Bank remains outstanding, take any security in respect of my liability hereunder without first obtaining the Bank's written consent and I agree that in the event of my taking any such security, the amount for which I am to be liable under this guarantee shall be increased by the amount by which dividend payable by the Principal to the Bank on a winding up is thereby diminished. I have not received any consideration by way of

TRUE COPY

Page 3 of 7

TRUE COPY

commission or otherwise for giving this guarantee; nor shall I receive any consideration for my standing as guarantor/s to the facility/ies above mentioned.

8. I further agree that in respect of my liability hereunder the Bank shall have a lien on all securities belonging to me now or hereafter held by the Bank and all moneys now or hereafter standing to my credit with the Bank on my current or any other account.

9. And this guarantee shall be applicable to the ultimate balance that may become due to the Bank from the Principal and until repayment of such balance the Bank shall be entitled to retain, realize, or otherwise dispose of in such manner as the Bank may think fit any securities now or hereafter held by the Bank and without any liability to account to me for my any portion of such securities or of the proceeds thereof until all your claims have been fully satisfied, and in the meantime I will not take any steps to enforce any right or claim against the Principal in respect of any moneys paid by me to the Bank hereunder. And further that if the Bank should receive payment from the Principal or any person/s on behalf of the Principal or from any security held by the Bank, or if the Principal shall become insolvent or go into liquidation or compound with his creditors, the Bank shall be at liberty, without discharging my liability, to make or assent to any compromises, compositions or arrangements or to prove and to rank as creditor in respect of the amount claimable by the Bank or any items thereof, and to receive dividends thereupon and all such payments and dividends received shall be treated as payments in gross and my liability shall extend to the ultimate balance after deducting such payments and to the entire exclusion and surrender of all my rights as sureties in competition with the Bank, any rule of law or equity to the contrary notwithstanding. And I shall not be paying off the sum guaranteed or any part thereof or upon any ground prove or claim to prove in respect of the sum guaranteed or any part thereof or take advantage of any securities held by the Bank until the whole of your claim against the Principal has been satisfied.

10. A demand in writing shall be deemed to have been duly given to me or my heirs or assigns by leaving the same at my last known address hereunder written and shall be effectual notwithstanding any change of address or notwithstanding notice thereof to the Bank, and such demand if sent by post shall be deemed to be received by me or my heirs, assigns 24 hours after posting thereof and shall be sufficient if signed by any officer of the Bank and in proving such service it shall be sufficient to prove that the letter containing the demand was properly addressed and put into the Post.

11. In the event of this guarantee being determined either by notice by me or by demand in writing by the Bank, it shall be lawful for the Bank to continue them account of the Principal notwithstanding such determination and my liability for the moneys advanced or paid or agreed to be advanced or paid and liabilities or obligations incurred by the Bank at the date when the guarantee is so determined shall remain, notwithstanding any subsequent payment into or out of the cash credit account by or on behalf of the Principal, upto the limit aforesaid.

12. This guarantee shall not affect or be affected by any other or further securities taken or held by the Bank or by any loss of any collateral or other security nor by the Bank failing to recover by the realization of

TRUE COPY

Page 4 of 17

TRUE COPY

collateral securities or otherwise any such sum or sums due from the Principal or any other person/s, or any leaches on the Bank's part, nor shall the Bank be responsible to me for any such loss or leaches.

13. Any account settled or stated between the Bank and the Principal or admitted by the Principal shall be accepted by me as conclusive evidence. A certificate in writing signed by any officer of the Bank stating the amount at any particular time payable under this guarantee shall be conclusive evidence against me.

14. This guarantee shall be enforceable notwithstanding any change in the name of the Bank and it shall ensure for the benefit of any banking company with which the Bank may become amalgamated or to which the Bank shall assign it.

15. Should the Principal be a limited company, corporate or unincorporated body, committee, firm, partnership, trustees or debtors on a joint account, the provisions herein before contained shall be construed and take effect where necessary as if words importing the singular number included, also the plural number. This guarantee shall remain effective notwithstanding any death, retirement, change, accession, or addition, as fully as if the person or persons constituting or trading or acting as such body, committee, firm, partnership, trustees or debtor on joint account at the date of the Principal's default or at any time previously was or were the same as the date hereof.

16. I further agree, declare, undertake, assure and confirm that the following is the exhaustive list of my legal heirs with their full address, and the said list is furnished to enable the Bank to take steps for recovery of its dues from any one/some all of them in the event of my demise, or of any or some or all of us during the currency/pendency of such credit facility extended by the Bank to pendency of such credit facility extended by the Bank to M/s Shree Mukt Jewellers Baroda Private Ltd.

Name of the Borrower / Guarantor/s	Age	Names of Legal Heirs	Age	Relationship with the Borrower/ Guarantor	Address/ es	Occupation/ Vocation of Legal Heirs
Mr. Gopalbhai Shankarlal Soni	57	Jyoti Soni	53	Wife	C-3 Indrapuri Co. Hsg. Soc., Sangam-Rupam Main Road, Harni, Vadodara	Housewife
		Divyang Soni	22	Son		Studying
Mrs. Jyotiben Gopalbhai Soni	53	Gopalbhai Soni	57	Husband	C-3 Indrapuri Co. Hsg. Soc., Sangam-Rupam Main Road, Harni, Vadodara	Business
		Divyang Soni	22	Son		Studying

Page 5 of 7

TRUE COPY

TRUE COPY

Mr. Harshbhai Gopalbhai Soni	34	Pinkal Soni	32	Wife	C-3 Indrapuri Co. Hsg. Soc., Sangam-Rupam Main Road, Harni, Vadodara	Housewife
		Aarsh Soni	9	Son		Studying
		Shrey Soni	12	Son		Studying
Mrs. Pinkal Harshbhai Soni	32	Harsh Soni	34	Husband	C-3 Indrapuri Co. Hsg. Soc., Sangam-Rupam Main Road, Harni, Vadodara	Business
		Aarsh Soni	9	Son		Studying
		Shrey Soni	12	Son		Studying
Mr. Divyang Gopalbhai Soni	22		NA		C-3 Indrapuri Co. Hsg. Soc., Sangam-Rupam Main Road, Harni, Vadodara	Studying

I further agree, undertake and assure that I shall promptly inform you in writing of any change in the above particulars of my legal heirs that may be occasioned by birth, death, marriage etc and / or that may be caused by any amendment / change in my personal law/s and / or on account of any amendment / change in the general status / law of the country.

17 I also give hereunder particulars of immovable properties belonging to me, which have not been charged to the Bank as also not charged to any Bank / Financial Institution / Creditors as security for financial assistance granted to me.

Item No.	Particulars of immovable properties with full address (where situated etc.)	In whose names the property	Present encumbrance	Whether leasehold or ownership	Present market value (Rs. in lacs.)
		NIL			

TRUE COPY

18 In the event of there being more than one guarantor the liability of the remaining guarantors shall not be affected or released or given up by time or other indulgence to one or more of the guarantors nor by the death of any one or more of the guarantors until notice shall have been given to the Bank as provided in Clause 1 hereof.

19. The Bank shall be entitled to fix with the Principal a period for such Loan, Overdraft/Cash-Credit account facility and to alter or extend such a period from time to time. The Bank shall be entitled from time to time to take renewals of hundies, promissory notes or other documents and securities from the Principal. The Bank shall be entitled to take one hundi or promissory note or other documents for the whole amount hereby guaranteed or to split up the amount and take separate documents for each part and take any such documents from the Principal alone or from the Principal and other person/s whose identity may vary from time to time. My liability under this guarantee shall not be discharged or affected in any way by reason of any such or similar acts or dealings.

(1)Mr. Gopalbhai Shankarlal Soni

(2)Mrs. Jyotiben Gopalbhai Soni

(3)Mr. Harshbhai Gopalbhai Soni

(4)Mrs. Pinkal Harshbhai Soni

(5)Mr. Divyang Gopalbhai Soni

1544 18/04/2024
Divyang Soni
230/- (Pages 46)
Deposited Rs 100/-
Deficit Rs 130/- dtd. 14/05/2024
Prepared dtd 13/05/2024

This annexure is the true copy the original document.

09/08/2016

Certified to be True Copy
14/05/24
Assistant Registrar
DEBTS RECOVERY TRIBUNAL-II

TRUE COPY

13. Thus, we take into account the fact that the guarantee agreement dated 23.09.2013 is stated to be continuing and binding personal guarantee on the part of the Appellant in favour of the Respondent. The guarantee agreement, clause 2, further stated that the guarantee is an additional and without prejudice for any security for application which bank may have from the personal guarantor on the principal borrower and for which of rights and remedies in respect of are reserved. The Clause 3 of the guarantee deed categorically mentioned that the guarantee shall be continuing guarantee and shall not be considered as wholly or partially satisfied or exhausted by any payment from time to time made to the bank or any statement of any account or reason of account being created or any other at any time or from time to time. This clause 3 further states that guarantee shall continue in force notwithstanding the discharge of the principals by operation of law. We note that similar rights have been accrued in favour of the Respondent bank in clause 4, 5, 6 etc.

14. From this, it becomes very clear that the Respondent has absolute right to invoke the guarantee agreement signed by the Appellant despite any operation of law and other factors as discussed above.

15. The only point raised by the Appellant is regarding limitation based on which application was filed by the Appellant under Section 94 of the Code which had been dismissed by the Adjudicating Authority. In this connection, we note that the Respondent has invoked the guarantee of the Appellant vide notice dated 06.08.2016, therefore, the filing of appeal against the same should have been done by 05.08.2019 whereas the application was indeed filed under Section 94 of the Code by the Appellant before the Adjudicating Authority vide C.P.(IB)/268 (AHM) 2024 on 04.09.2024, which is apparently much beyond the limitation period.

16. The Appellant has made out the case that the Respondent has filed Original Application No. 551/2016 before the Debt Recovery Tribunal-II, Ahmedabad, which was allowed by way of a decree/ order dated 09.01.2017 and decree passed Recovery Certificate No. 14/2017 was issued, which is now recorded das TRP No. 02/2023. The Appellant submitted as per auction of the mortgaged property the Respondent Bank has received Rs. 22.42 Crores qua the property in question. It is the case of the Appellant that since the bank has received the amount on 30.01.2024, hence, the law of limitation in respect of his application filed under Section 94 of the Code before the Adjudicating Authority should have been counted from 30.01.2024 rather than from 06.08.2016.

17. The Appellant also cited the judgement of ***Dena Bank (Supra)***, where in the Hon’ble Apex Court held that the judgment and order/ decree of the DRT gave a fresh cause of action and therefore there is an extension of three years from the last credit, i.e., 14.02.2024, as the C.P.(IB)/268 (AHM) 2024 was filed on 06.08.2024 and the same was registered on 03.09.2024, hence the said petition was well within the limitation period.

18. In this regard, we take into account the relevant para of ***Dena Bank (Supra)*** which reads as under :-

> *"It is well settled that entries in books of accounts and/or balance sheets of a Corporate Debtor would amount to an acknowledgement under Section 18 of the Limitation Act."*

From above, it is noted that the judgment of ***Dena Bank (Supra)*** was w.r.t., entries in the books of accounts of the Corporate Debtor w.r.t., acknowledgement under Section 18 of Limitation Act.

19. In this regard, we have also taken into account Section 19 of the Limitation Act, 1963 which reads as under :-

> *"**Section 19. Effect of payment on account of debt or of interest on legacy**.*
> *Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed **period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf,** a fresh period of limitation shall be computed from the time when the payment was made:*
> *Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.*
> *Explanation.—For the purposes of this section,—*
> *(a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;*

(b) "debt" does not include money payable under a decree or order of a court.

(Emphasis Supplied)

20. We would also like to see old provision for same as contained in the Section 20 of the Limitation Act,1908 which reads as under:

> *"Effect of payment on account of debt or of interest on legacy.— [(1) Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy, or by his duly authorised agent, a fresh period of limitation shall be computed from the time when the payment was made:]*
>
> *[Provided that * * * an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.]*
>
> *(2) Effect to receipt of procedure of mortgaged land. Where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment for the purpose of sub-section (1).*
>
> *Explanation.--Debt includes money payable under a decree or order of Court."*

(Emphasis Supplied)

21. Section 19 of the Limitation Act, 1963, and Section 20 of the Limitation Act, 1908, differ in scope, structure, and applicability. The 1963 Act's Section 19 specifically governs payments toward debt or interest on a legacy, resetting the limitation period if made by the debtor or their authorized agent, provided the payment is acknowledged in writing (except for pre-1928 interest payments). The Limitation Act,1963 explicitly excludes money payable under court decrees from the definition of "debt," narrowing its application to non-adjudicated liabilities. In contrast, Section 20 of the 1908 Act broadly covered interest and part-payments of principal, requiring acknowledgment for all payments and including court-decreed debts. Structurally, the 1963 Act introduced a streamlined format with a proviso and explanatory clauses. Additionally, the 1963 Act’s exemption for pre-1928 interest payments reflects legislative intent to address historical liabilities pragmatically, whereas the 1908 Act imposed uniform acknowledgment rules. These distinctions highlight the 1963 Act’s focus on clarity and procedural precision, particularly in segregating court-decreed obligations from ordinary debts.

22. We would like to go in detail on the Explanation (b) of Section 19 of the Limitation Act,1963 states *“debt” does not include money payable under a decree or order of a court.* Thus, we note that the term “debt” in the context of Section 19 of the Limitation Act ,1963 specifically excludes any money that is payable under a decree or order of a court. In other words, if a court has already passed a decree or order directing the payment of a certain amount, such an amount is not considered a “debt” for the purposes of Section 19 of the Limitation Act,1963. This means that if a payment is made towards satisfying a court decree or order, such payment will not result in the computation of a fresh limitation period under Section 19 of the Limitation Act,1963. The benefit of extending the limitation period through part payment is only available for debts that are not yet decreed by a court. We may see implication by a hypothetical situation. For instance in case, A owes B Rs.1 Cr. and makes a part payment before B files a suit and obtains a decree, the limitation period for B to file a suit can be extended as per Section 19 of the Limitation Act,1963.However, if B has already obtained a court decree for Rs.1 Cr. against A, any payment made by A towards this decreed amount will not extend the limitation period for execution of the decree under Section 19 of the Limitation Act.1963.

23. In this backdrop, we note that in appeal before us, the amount was recovered by the Respondent Bank due to auction of mortgaged property as a result of decree passed by Debt Recovery Tribunal-II, Ahmedabad. Thus, in terms of Explanation (b) of Section 19 of the Limitation Act ,1963, this recovery would not considered as Debt and therefore does not impact/enhance limitation period as pleaded by the Appellant. In fact, this goes against the cause of the Appellant.

24. From above, it is noted that payment on account of debt is required to be made by the person liable to pay for getting fresh period of limitation which be computed from the time of the payment was made. In this connection, we observe that no payment was made by the Corporate Debtor or the personal guarantor for the outstanding loan of Rs. 201 Crores. It is only on the sale of the mortgaged property by the Respondent Bank based on the decree of the DRT in his favour which was done in January, 2024 which has nothing to do with the payment which should have been made by the Corporate Debtor or the personal guarantor to take the benefit of the Section 19 of the Code.

25. In this connection, we also note Section 238 A of the Code which reads as under :-

> *"**Section 238A**: The provisions of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be."*
>
> *(Emphasis Supplied)*

26. The aforesaid Section 238A of the Code stipulates that the provisions of the Limitation Act shall be applicable to the proceedings before the Adjudicating Authority. The same has also been taken into consideration by the Adjudicating Authority in the Impugned Order.

27. At this stage, it will be worthwhile to take into consideration the order passed by the Adjudicating Authority dated 04.09.2024 where the issue of limitation raised by the Appellant has been dealt and the application of the Appellant was rejected. The order reads as under :-

> *"Heard the Ld Counsel for the applicant. This application has been filed under sec 94 of IBC 2016 with a further affidavit on 06.08.2024. The applicant had executed a guarantee on 28.09.2013 for Rs 201.00 crores to the financial creditor (Bank of Baroda) to enable the Corporate Debtor Shree Mukt Jewellers Baroda P Ltd to obtain certain*

facilities and also mortgaged his property in favour of the financial creditor. The account was classified as NPA and a demand notice was issued on 06.08.2016 recalling the loan and invoking the guarantee and an application was filed before the DRT Ahmedabad. The DRT passed an order decreeing the debt due and payable on the Corporate Debtor and the guarantors vide its order dated 09.01.2017 and recovery certificate was issued. It is further observed that the <u>financial creditor has been executing the order and auctioning the properties of the mortgaged properties and other assets. Such receipts of recoveries do not pertain to the repayment of the principal borrower or guarantor/s and is out of the mortgaged properties on which a recovery certificate has been issued, cannot extend the limitation period for the personal guarantor who is not complying with the provisions</u> of Sec 36 of Limitation Act 1963.

Further, <u>this petition has been filed on 06.08.2024 which is beyond the period of limitation and does not comply with Sec 238 A of the IBC 2016. In view of the same, CP(IB) 268 of 2024 stands disposed of as not maintainable.</u>"

(Emphasis Supplied)

28. To recapitulate, we observe that the default by the Corporate Debtor and subsequently notice to Appellant invoking the bank guarantee are undisputed. We also note that the bank has issued guarantee which is in nature of continuing and unconditional guarantee which has been legally invoked by the Respondent Bank. We further observe that the DRT proceedings are under the Recovery of Debts and Bankruptcy Act, 1993. It is reiterated that the action based on to decree passed by the DRT was in respect of the mortgaged property held by the Respondent. Hence, it cannot be case of the Appellant that such recovery shall extend the limitation for personal guarantee given by the Appellant. The argument therefore submitted by the Appellant are not tenable.

29. In conclusion, we do not find any error in the Impugned Order. The Appeal devoid of any merit stand rejected. No cost. I.A., if any, are closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indevar Pandey]
Member (Technical)

Sim