



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (Court-I)
KOLKATA**

C.P. (IB)/116(KB)2021

***An application under Section 99 (1) of the Insolvency and Bankruptcy
Code, 2016***

And

***An application under Section 95(1) of the Insolvency and Bankruptcy
Code, 2016 and Under Rule 7(2) of the Insolvency Resolution Process
for Personal Guarantors to Corporate Debtors) Rule, 2019.***

In the matter of:

INDIAN BANK

...Financial Creditor

Versus

VAREZ KARSI DADINA

...Personal Guarantor

And

SANJIT KUMAR NAYAK

...Applicant/Resolution Professional

Date of pronouncement: **07.04.2026**

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

CMDE SIDDHARTH MISHRA, HON'BLE MEMBER (TECHNICAL)

Appearance (via video conferencing/physically)

Mr. Santosh Kumar Ray, Adv.] For the Financial Creditor

Ms. Zeba Khan, Adv.]

Ms. Ashmita Lohia, Adv.]

Ms. Utkarshika, Adv.]

Ms. Urmila Chakraborty, Adv.] For the Personal Guarantor

Mr. M. Kejriwal, Adv.]

Mr. Sanjit Kumar Nayak, RP] RP-in person



O R D E R

Per: Bidisha Banerjee, Member (Judicial)

1. The Court Convened in a hybrid mode.
2. This I.A. (IB)/232(KB)2024 in C.P.(IB)/218(KB)2022 has been preferred by the Financial Creditor to seek initiation of Insolvency Regulation Process against the Respondent Personal Guarantor to Corporate Debtor Rule, 2019 (“Personal Guarantors Rules”) and Regulation 4(2) of IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (‘Personal Guarantors Regulations’) in terms of Section 99 (1) of the Insolvency and Bankruptcy Code, 2016 read with applicable Regulation of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), 2016.
3. The amount in default is Rs.34,61,90,604.17/- (Rupees Thirty Four Crores Sixty One lakhs Ninety Thousand Six hundred Four and Paise Seventeen only) as on 30.04.2022.
4. The application is complete as required under Section 95 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019.
5. The Applicant had proposed the name of the Insolvency Professional for appointment as Resolution Professional. In view of the above, Mr. Sanjit Kumar Nayak, IBBI Registration No. IBBI/IPA-003/IP-N00079/2017-2018/10702, email ID: **Sknayak31@gmail.com**; was appointed as



Resolution Professional, subject to his possessing a valid AFA, in exercise of the power conferred under Section 97 of the IBC, 2016 on this Authority.

6. The Resolution Professional was directed to file declaration within seven days to the effect that he fulfils all the requirements for being appointed as Resolution Professional in the matter which he has given, and to file his report in terms of Section 97 in two weeks.
7. The Resolution Professional Mr. Sanjit Kumar Nayak has vide his report dated 16.11.2021 suggested/stated as extracted hereunder:

Brief of the Application filed by Indian Bank (FC)

The Applicant Indian Bank, a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.

M/s. KND Engineering Technologies Limited (Corporate Debtor) [CIN: U74210WB1982PLC034947] had availed the Credit from time to time from the Applicant Bank for its business purpose in the form of loan with sanction limit of Rs.55 crores in or about 2010. The credit facility was enhanced from time to time and as on 13/10/2020, the debt outstanding and uncharged interest is Rs.61,49,71,280.62 (Cash Credit facility Rs.43,46,76,782.51 and Bank Guarantee Rs.53,42,375.00). The date on which default occurred was 02/05/2018. On 13/10/2020, the Applicant issued demand notice as the Personal Guarantor has failed to pay unpaid debt in default being Rs.62,03,13,655.62.

In order to secure the aforesaid Credit facilities granted to M/s. KND Engineering Technologies Limited, Ms. Varez Kersi Dadina, i.e., the Respondent herein, had furnished Personal Guarantee towards security for due repayment of the loans and advances granted with interest, cost and expenses to the Principal Debtor i.e., M/s. KND Engineering Technologies Limited. The Corporate Debtor although enjoyed the entire loan limit but failed to serve the interest in the loan account as per the terms of the sanction.

Due to non payment of the amount due and the Corporate Debtor has failed to maintain the account as per terms & conditions, the account of Corporate Debtor has been clarified as Non Performing Asset (NPA) on 02/05/2018.

On 13/10/2020, when a demand notice issued by the Financial Creditor under Rule 7(1) of Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantor to Corporate Debtor) Rules, 2019, Ms. Varez Kersi Dadina, the Personal Guarantor has failed to pay the unpaid debt in default being Rs.62,03,13,655.12 as on 13/10/2020. The financial debt consisting of various fund based and non fund based facilities granted by Indian Bank, the Financial Creditor to M/s. KND Engineering Technologies Limited (Corporate Debtor).

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (Court-I)
KOLKATA

C.P. (IB)/116(KB)2021

At the request of the Principal Debtors, aforesaid Credit facilities were enhanced from time to time by the Applicant Bank and the Respondent herein had also executed from time to time Personal Guarantees on 12/07/2012, 28/03/2012, 29/03/2014 and 03/10/2016 respectively.

The Corporate Debtor failed to operate the accounts in accordance with the terms and conditions on which the said credit facilities were granted and the account of the Corporate Debtor was finally classified as Non Performing Asset (NPA) on 2nd May, 2018.

Ms. Varez Kersi Dadina, residing at 20, Palace Court, 1, Kyd Street, Kolkata-700016, E-mail: varez@kndetl.com, pnd@kndetl.com and kndetl.ho@kndetl.com, Phone No. 9831409009 / 9433091112, Personal Guarantor to M/s. KND Engineering Technologies Limited [CIN:U74210WB1982PLC034947] (Corporate Debtor) the Respondent herein, was duly served by the Applicant a statutory notice dated 13/10/2020 vide Form B, under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors), Rules, 2019, requesting him to make the requisite payment to the Applicant Bank. A copy of the Demand Notice along with its annexures has been annexed to the application as Annexure "I-R" (Page 197 to 236 of the application). The Personal Guarantor has failed to pay the unpaid debt in default being Rs.62,03,13,655.62 (Rupees Sixty-two crores three lakhs thirteen thousands six hundred fifty five & paise sixty two only) as on 13/10/2020.

The Personal Guarantor, viz., Ms. Varez Kersi Dadina has executed Personal Guarantees in favour of the Applicant to secure the repayment of the principal amount together with all interest, additional interest, liquidated damages, premium on prepayments, reimbursement of all costs, charges and expenses and all other obligations payable by M/s. KND Engineering Technologies Limited (CD) in respect of the credit facilities. The applicant has clearly brought it out in its application coupled with admissible evidence that the Personal Guarantor has committed default in making payment of the credit facility along with interest to the Applicant for which she

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (Court-I)
KOLKATA

C.P. (IB)/116(KB)2021




has given the personal guarantee to the Applicant on behalf of M/s. KND Engineering Technologies Limited (CD).

After hearing the applicant and considering the materials / papers filed by the Applicant on record, the Application filed under Section 95 of IBC is found to be complete for the purpose of appointing the Resolution Professional under Section 97 of IBC, 2016. Accordingly, Hon'ble NCLT, Kolkata Bench has appointed Sanjit Kumar Nayak, IBBI Registration No. IBBI/IPA-003/IP-N00079/2017-18/10702 as Resolution Professional under Section 97 of IBC, 2016 and directed to make the recommendations with the reasons in writing for acceptance or rejection of this application within stipulated time as envisaged under the provisions of Section 99 of the IBC, 2016. The appointment is subject to regulation 4(1) and (2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019. The Resolution Professional has already submitted the same to applicant and in turn the same was filed before Hon'ble NCLT, Kolkata Bench along with the application. However, once again the consent along with AFA are attached and collectively marked as **[Annexure-A]**.

As directed, the Resolution Professional has sent letter dated 25/10/2021 through e-mail on 26/10/2021 informing Ms. Varez Kersi Dadina to respond on urgent basis stating that Hon'ble NCLT, Kolkata Bench, Kolkata vide Order No. CP (IB) No. 116/KB/2021 dated 07/09/2021 has ordered the initiation of Insolvency Resolution Process against Ms. Varez Kersi Dadina, and Sanjit Kumar Nayak (IBBI Registration No. IBBI/IPA-003/IP-N00079/2017-18/10702) has been appointed as Resolution Professional (RP) by the said order under Section 97 of IBC, 2016 to conduct and complete the Insolvency Resolution Process in a time bound manner. The copy of the letter has also been sent through speed post. A copy of the letter sent to Ms. Varez Kersi Dadina, PG to Corporate Debtor along with the e-mails and track report are attached and collectively marked as **[Annexure – B]**.

Sanjit Kumar Nayak
SANJIT KUMAR NAYAK



Ms. Varez Kersi Dadina was not responding though the track report confirms delivery of the letter to Ms. Varez Kersi Dadina. The Resolution Professional has again sent two reminders through e-mail dated 03/11/2021 and 05/11/2021 respectively and requested to send the information mentioned in the letter dated 26/10/2021. The copy of the e-mail dated 03/11/2021 and 05/11/2021 is attached and marked as **[Annexure-C]**.

The Applicant Bank, Indian Bank applied through Resolution Professional to the Hon'ble NCLT, Kolkata Bench for initiating an Insolvency Resolution Process under Section 95 (1) of IBC, 2016 by submitting an application. The Applicant Bank as mentioned in the application filed, had granted loan facility in the form of Cash Credit and also Bank Guarantee and the position of debt outstanding and uncharged interest as on 13/10/2020 was Rs.61,49,71,280.62 (Rupees Sixty one Crores forty nine lakhs seventy one thousand two hundred eighty and paise sixty two only. The amount of BG of Rs.53,42,375.00 (Rupees Fifty Three lakhs forty-two thousand three hundred and seventy five only) included in above is yet to invoke by the beneficiary. The Applicant Bank has mentioned in the particulars of debt that on 02/05/2018 Loan amount has been declared as NPA. For confirmation and examination, the Resolution Professional has also sent e-mail along with the letter to furnish the followings by the applicant i.e., India Bank:

- (1) Whether the debt for which the application has been filed by you is registered with the Information Utility.
- (2) Proof of payment received, if any, from Ms. VarezKersiDadina, Perosnal Guarantor to M/s. KND Engineering Technologies Limited (Corporate Debtor).

Indian Bank has confirmed through e-mail dated 28/10/2021 that the Bank has not received any payments from them yet, also the information is not updated by them in information utility. Due to absence of login user id and password, they are unable to verify whether any details are uploaded / available in the portal of information utility. Copy of the letter sent to Indian Bank and reply of the Applicant Bank dated 28/10/2021 are attached and collectively marked as

[Annexure-D]

Sanjeev K. Nayak

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (Court-I)
KOLKATA

C.P. (IB)/116(KB)2021



For the purpose of securing the credit facilities, the Respondent, herein, Ms. Varez Kersi Dadina, Personal Guarantor executed letters of guarantees, on different dates i.e, on 12/07/2010, 28/03/2012, 29/03/2014 and on 03/10/2016. The amount of guarantee given by the Guarantor in the guarantee agreement dated 03/10/2016 covers the amount claimed by the applicant in the Demand Notice dated 13/10/2020. The applicant Bank has also confirmed vide e-mail dated 28/10/2021 that they have not received any payment from Ms. Varez Kersi Dadina, the Personal Guarantor. Copy of the Guarantee executed by Ms. Varez Kersi Dadina dated 12/07/2010, 28/03/2012, 29/03/2014 and on 03/10/2016 are attached and collectively marked as **[Annexure-E]**

After appointment, the Resolution Professional (RP) has tried to communicate by sending letter through speed post, through e-mail and noted that the Ms. Varez Kersi Dadina, PG has been trying to avoid meeting. The followings have been observed by the Resolution Professional:

- (1) The Respondent, Ms. Varez Kersi Dadina has committed default in repayment of his debts as stated by the Applicant in their application.
- (2) For the purpose of securing the credit facilities, the Respondent, herein, Ms. Varez Kersi Dadina has executed letters of guarantees dated 12/07/2010, 28/03/2012, 29/03/2014 and on 03/10/2016.
- (3) An order of 'Corporate Insolvency Resolution Process' (CIRP) was passed by this Bench against M/s. KND Engineering Technologies Limited(Corporate Debtor) on 30/08/2018 in which the Respondent is a Personal Guarantor.
- (4) The Personal Guarantor to the Corporate Debtor, including the Respondent herein, was duly served by the Applicant a statutory notice dated 13/10/2020 vide Form B, under the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019, requesting him to make the requisite payment to the Applicant Bank. According to applicant, despite receipt of notice, the Respondent has neither made any payment nor reverted to the same.

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IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (Court-I)
KOLKATA

C.P. (IB)/116(KB)2021



(5) The Resolution Professional has also tried to get the present status from the Respondent by sending letter through speed post, through e-mail.

In reply to the request of the Resolution Professional, Mr. Pessi Nanabhoy Dadina, another Personal Guarantor visited the office of the Resolution Professional on 8/11/2021 and assured co-operation including the other two Personal Guarantors to the Corporate Debtor. He has sent an e-mail on 08/11/2021 and informed that the copy of e-mail has been forwarded to Senior Counsel who unfortunately lost his mother recently. However the reply is under process and very shortly the reply will be sent. A copy of the said e-mail is attached and marked as [Annexure- F].

(6) The Respondent has given Personal Guarantee of Rs.70.00 Crores to the Applicant, Indian Bank.

(7) The Resolution Professional has sent a letter through e-mail on 25/10/2021 asking the Respondent to prove repayment of the debt claimed as unpaid by the Creditor by furnishing;

- (a) Evidence of electronic transfer of the unpaid amount from the bank account of the debtor;
- (b) Evidence of encashment of a cheque issued by the debtor, or
- (c) A signed acknowledgement by the creditor accepting receipt of dues.

The Resolution Professional sent the letter through speed post also and the track report shows that the letter has been delivered.

(8) Respondent has not replied to the queries of the Resolution Professional and has not mentioned anything regarding payment to the Applicant, Indian Bank.

(9) The Applicant has stated in their application in respect of excluded debts as follows:

The Insolvency Resolution Process application is filed does not include any:

- (i) Liability to pay fine imposed by a Court or tribunal
- (ii) Liability to pay damages for negligence, nuisance or breach of statutory or contractual or other legal obligation;

Sanjit Kumar Nayak

SANJIT KUMAR NAYAK



- (iii) Liability to pay maintenance to any person under any law for the time being in force;
- (iv) Liability in relation to a student loan;
- (v) Any other debt prescribed under Section 79(15)(e) of the Code.

(11) The Creditor has confirmed vide e-mail dated 28/10/2021 as under:

- (i) There is no record of default with the Information Utility
- (ii) The Guarantor has not made any payment in connection with the loan accounts of Corporate Debtor M/s. KND Engineering Ventures Limited.

The Resolution Professional examined the application referred to in Section 95, and tried to get information from the Respondent i.e. the Personal Guarantor but could not get any co-operation from the Respondent despite all efforts by the Resolution Professional.

Keeping the above in view, the Resolution Professional states that


- (a) The application satisfies the requirements set out in Section 95
- (b) The Applicant has provided information and given explanation sought by the Resolution Professional under Section 99(4) and

Recommends acceptance of the application filed by the Applicant.

8. **Submission of the Financial Creditor:**

8.1. The respondent namely Mr. Varez Karsi Dadina (hereinafter referred to as "Respondent"), is the Director and Personal Guarantor to the Principal Borrower i.e. M/S KND Engineering Technologies Ltd. (hereinafter referred to as "Corporate Debtor"). M/S KND Engineering Technologies Ltd.


8.2. On or about early 2018 one Subrata Sarkar, an Operational Creditor filed an application under Section 9 of the Insolvency and Bankruptcy Code against the Principal Borrower KND in which one resolution plan was accepted and approved by the Adjudicating



Authority vide Order dated 04.06.2019 under Section 31 of the Insolvency and Bankruptcy Code.

- 8.3. On failure of implementation of such plan, the Financial Creditor took steps and initiated an application against the Principal Borrower and its guarantors under Section 19 of the Recovery of Debts and Bankruptcy Act being O.A. No. 668 of 2019 on 16.10.2019 before the Learned Debts Recovery Tribunal-III, Kolkata. The said application is pending for adjudication.
- 8.4. The Financial Creditor also issued a Demand Notice in Form B under Rule 7(1) of the IBBI (Application to Adjudicating for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 dated 13.10.2020 to the Respondent herein. The demand Notice was duly served to the Guarantor herein.
- 8.5. On failure to make payments, the present proceedings under Section 95 of the Code, were initiated by the Financial Creditor seeking to initiate Insolvency Resolution Process of the Personal Guarantor herein on 26.03.2021.
- 8.6. It is well-settled position of law that date of declaration of the loan account/debt as NPA can be reckoned as the date of default for initiation of CIRP under Section 7 & 9 of the IBC Code. **In Jagadish Prasad Sarada v. Allahabad Bank, (2021) 15 Comp Cas-OL 697** it has been held that date of non-performing assets is to be treated as date of default. Reference to that effect is made to as under:

“10. The Hon'ble Supreme Court has already observed in Civil Appeal Nos. 439, 436, 3137, 4979, 5819 and 7289 of 2018 in B. K. Educational Services P. Ltd. v. Parag Gupta and Associates (2019) 212 Comp Cas 1 (SC), dated October 11, 2019 that the limitation period for application under section 7 of the Code is 3 years as provided by article 137 of the Limitation Act, 1963 which commences from the date of default and is extendable only by application of section 5 of the Limitation Act, 1963 if any case for condonation of delay is made out. The view taken by the Hon'ble



Apex Court in B. K. Educational Services P. Ltd. v. Parag Gupta and Associates (2019) 212 Comp Cas 1 (SC) that the limitation period for application under section 7 of the I and B Code is three years as provided by article 137 of the Limitation Act, which commences from the date of default and is extendable only by application of section 5 of the Limitation Act, 1963 if any case for condonation of delay is carved out, has again been reiterated in the latest pronouncement of the hon'ble apex court in Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries P. Ltd. (Civil Appeal No. 6347 of 2019, decided on August 14, 2020) (2020) 222 Comp Cas 115 (SC).”

It is therefore manifestly clear that date of default will be the date of declaration of account as NPA and such date of default would not shift.

- 8.7. In regard to validity of last sanction letter dated 30.03.2017, since additional guarantee deed was not executed the guarantee deeds executed by the Respondent time to time is unequivocally a continuing guarantee. Hence, the Respondent's contention that the last sanction letter dated 30.03.2017 was not validly executed on the ground that no corresponding guarantee deed was executed is wholly untenable in law and contrary to the explicit terms of the multiple guarantee agreements executed on previous occasions.
- 8.8. Further, that the term “continuing guarantee” under Section 129 of Contracts Act, 1872 entails “A guarantee which extends to a series of transactions”.
- 8.9. That, as per Clause 5 of the Guarantee deed the Respondent has undertaken to not revoke the Guarantee without the Bank's written consent. As such, a guarantee deed was neither denied, disputed nor revoked by the Personal Guarantor or the Corporate Debtor. As such, as per the aforementioned clause 2, the guarantee deed executed on 03.10.2016 is an absolute continuing guarantee which acts as security against the sanction letter dated 30.03.2017.



8.10. With regard to invocation of guarantee it is submitted that prior to filing of this application by the Financial Creditor, a Demand letter under Section 13(2) of the SARFAESI Act, 2002 dated 02.05.2018 along with the Demand Notice issued in Form B under Rule 7(1) on 13.10.2020 was addressed to the Respondent which constitutes a valid and effective invocation of the Personal Guarantee executed by the Respondent/Guarantor in favour of the Applicant-Financial Creditor. The judgements relied on by the respondents being pronounced in the year of 2025, while the Section 7 application for initiation of CIRP being filed on 16.03.2021 by the Financial Creditor, the Demand Notice issued in Form B under Rule 7(1) on 13.10.2020 should be treated as a proof for invocation of guarantee. The letter unequivocally call upon the Respondent to discharge the liability under the Personal guarantee executed by him in favour of the Financial Creditor and reads as under:

“7.By this notice, you are hereby called upon to discharge the entire liability as on date and also future interest thereon, along with cost, charges and expense, to us as secured creditor within 60 days from the date of this notice,...”

That the demand notice u/s 13(2) of the SARFAESI Act, 2002 on 02.05.2018 to the Principal Borrower as well as to the Personal Guarantors was duly served.

8.11. That the Guarantee deed specifically mentions that the guarantee was in the nature of an on-demand guarantee, the default was to arise on the part of the Guarantor when the Demand Notice was issued as contemplated in the Deed of Guarantee. Thus, a demand notice duly signed by the Bank's addressed to the Guarantor for invoking the Guarantee will suffice. The co-extensive nature of the guarantor's liability, he is equally responsible for the outstanding amount owed by the principal borrower. Reliance is placed on Hon'ble NCLAT's decision in Mavjibhai Nagarbhai Patel vs. SBI & ors CA(AT)(INS)No.1702 of 2024 in support.



9. Per Contra, the Personal Guarantor would submit as under:

- 9.1. C.P.(I.B.) No. 116/KB/2021 is a petition under section 95 of IBC. The said petition is not maintainable as there is no invocation of the guarantee by the Financial Creditor (“FC”).
- 9.2. In the petition, the FC has not disclosed any demand notice apart from the Form B demand notice dated 13.10.2020 [pg 197 of CP].
- 9.3. FC has given the date of default taking into consideration the date of the Form B demand notice [pg 14 pr 4 of CP; pg 20 pr 16 of CP].
- 9.4. Form B demand notice issued under Rule 7(1) of the 2019 Rules cannot be construed or treated to be a notice invoking guarantee for the purposes of filing of section 95 petition under IBC in terms of:
 - a) The judgment of the Hon’ble NCLAT in **State Bank of India vs Mr. Deepak Kumar Singhania** passed in Company Appeal (AT) (Ins) No.191 of 2025 dated 28.02.2025 at paragraphs 7, 17, 26, 27
 - b) The judgment of the Hon’ble NCLAT in **Canara Bank vs Babulal Gumanlal Jain** passed in Company Appeal (AT) (Ins) No. 297 of 2025 dated 12.03.2025 at paragraphs 1, 6
- 9.5. It is stated that when this was pointed out to this Hon’ble Tribunal on 23.09.2025, the Ld. Advocate for the FC submitted that she would obtain instruction in this matter, and the matter was adjourned to 07.11.2025.
- 9.6. When the matter was taken up on 07.11.2025 the FC submitted that they will disclose alleged notices issued under Section 13(2) of the SARFAESI Act, 2002. However, no such notices under section 13 (2) of the SARFAESI act, 2002 were served upon the respondent.
- 9.7. In any event, it is well settled proposition of law that even notice under Section 13(2) of the SARFAESI Act, 2002 is not an invocation of guarantee unless invocation is done as per the guarantee agreement in support the following decisions are relied upon:
 - a) Judgment of the Hon’ble NCLAT, Principal Bench in **Asha Basantilal Surana vs State Bank of India & Ors.** Company Appeal (AT) (Ins) No. 84 of 2025 dated 15.05.2025

b) **Amanjyot Singh vs Navneet Kumar Jain & Ors. – Company Appeal (AT) (Ins) No. 961 of 2022** (paras 8 and 12)

9.8. Thus it is asserted that the respondent is not a guarantor under the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 as there is no invocation of the guarantee by the Bank. Without invocation of guarantee, right to payment does not even accrue in favour of the Bank. It is stated that this point is categorically taken by the respondent in its Additional reply affidavit affirmed on 08.04.2024 at page 5 para 9. Despite receipt of the said affidavit, no rejoinder has been filed by the FC. As such, the statements made by the respondent are uncontroverted and undisputed.

10. **We discern as under:**

10.1. In **State Bank of India Vs. Mr. Deepak Kumar Singhania Hon'ble NCLAT** noted the following decisions:

a. **Hon'ble Supreme Court in Syndicate Bank vs. Channaveerappa Beleri and Ors. – (2006) 11 SCC 506**, where **Hon'ble Supreme Court** at Paragraph 9 has held:

“9. A guarantor's liability depends upon the terms of his contract. A “continuing guarantee” is different from an ordinary guarantee.”

b. **Archana Deepak Wani vs. Indian Bank – Company Appeal (AT) (Ins.) No.301 of 2023** where Hon'ble NCLAT has held that liability of the Guarantor must be determined strictly in terms of the Deed of Guarantee.

c. **Pooja Ramesh Singh vs. State Bank of India – Company Appeal (AT) (Ins.) No.329 of 2023** where Hon'ble NCLAT noted and held that default in the guarantee arises only after the guarantee has been invoked.



(i) Having noted thus, Hon'ble NCLAT in Deepak Singhania has succinctly observed and held as under:

“default shall arise on the part of Guarantor only when Demand Notice is issued, as contemplated in the Deed of Guarantee.”

(ii) Having noted that, Rule 7, sub-Rule (1) contemplate service of demand notice under clause (b) of Sub Section (4) on the Guarantor, demanding payment of the amount of default in Form B, it was held:

“we are not persuaded to accept the submission of the Appellant that Notice under Rule 7 (1) issued in Form B to the Guarantor, demanding repayment of the default amount has to be treated as Notice for invoking guarantee.”

(iii) While rejecting the contention of the Appellant *“that Notice under Rule 7, sub-rule (1) is a Notice, invoking the guarantee.”*

Hon'ble NCLAT has held:

“Default before issuance of Notice under Rule 7(1), must exist on the part of the Guarantor”.

10.2. In a similar case, in **Canara Bank Vs. Babulal Gumanlal Jain**, Hon'ble **NCLAT** has held that the issue which is sought to be raised by the Appellant has already been considered and decided by this Tribunal in *“Company Appeal (AT) (Ins.) No.191 of 2025, State Bank of India vs. Mr. Deepak Kumar Singhania”* decided on 28.02.2025 and dismissed the appeals.



10.3. In a recent decision rendered on 07.01.2026 the Hon'ble Principal Bench of NCLAT in **Ujwal Gupta Vs. Union Bank of India** noted and found as follows:

(a) In CA (AT) (Ins) No.961 of 2022, **Amanjyot Singh vs. Navneet Kumar Jain**, Resolution Professional & Ors. having noted that “although after sale of the mortgaged asset, part of the facility was realized, but no steps have been taken by the Bank against the Appellant for recovery of any dues”, “the notice, which is the basis of the Application, was issued on 04.10.2013, and that “nine years have been passed from issuance of the notice and no steps have been taken by the Bank for recovery of any amount from the Appellant”, Hon'ble NCLAT held as follows:

“12. We, thus, are satisfied that foundation which was laid down by the Appellant for initiating the CIRP against the Appellant, was not sufficient to admit Section 94 Application and initiate the CIRP against the Appellant. We may further notice that Section 10 Application against the Corporate Debtor has already been admitted and CIRP against the Corporate Debtor had been initiated. The case taken up by the Bank being categorical and clear that no steps have been taken by the Bank against the Appellant, there is no cause for the Appellant to pray for initiation of CIRP against the Appellant – the Personal Guarantor. We, thus, do not find any good ground to interfere



with the impugned order in this Appeal. The Appeal is accordingly dismissed. No costs.”

- (b) In CA (AT) (Ins) Nos. 1702 of 2024, 1711 of 2024, 1712 of 2024, **Mavjibhai Nagarbhai Patel vs. State Bank of India and Anr., Jayantibhai Nagarbhai Patel vs. State Bank of India and Anr., Narayanbhai N. Patel vs. State Bank of India and Anr.,** Hon’ble Appellate Tribunal had noted that:

“16. The liability of the guarantor has to be read from the Deed of Guarantee.

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“It is clear from the reading of the clauses in the Deed of Guarantee that guarantee was given by the Personal Guarantor in unequivocal terms and the guarantee amount was to be paid by the guarantor once the guarantee was invoked.”

“17. When we look at the specific Clauses of the Deed of Guarantee, it clearly states that the guarantee was in the nature of a continuing guarantee.”

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“The Section 13(2) Notice which was sent to the Corporate Debtor was also forwarded to the Guarantor with the specific demand to make payment of the amount mentioned in the notice in terms of the guarantee. This Section 13(2) Notice was indisputably also sent to the Personal Guarantors separately and independently. When we see the



Section 13(2) notice under SARFAESI Act as placed at pages 549 to 551 of Appeal Paper Book (“APB” in short) we find that there is clear indication of the names of all the Personal Guarantors therein which includes the present Appellant (and also the other two Appellants whose appeals are also under consideration before us).”

- (c) The Hon’ble Appellate Tribunal also noted the clear intention of the bank to initiate any nature of legal proceedings as evident from the following notice :

*“Copy of this notice to personal guarantor who are liable to pay the aforesaid outstanding amount. This notice is **without prejudice to the Bank’s right to initiate such other actions** or legal proceedings as it deems necessary under any other applicable provisions of Law.”*

Having noted the above Hon’ble Tribunal held that:


“20. Since the guarantee deed specifically mentioned that the guarantee was in the nature of an on-demand guarantee, the default was to arise on the part of the Guarantor only when the Demand Notice was issued as contemplated in the Deed of Guarantee. Thus, the period of limitation of the Personal Guarantor was to commence once the demand was made on the



Guarantor by the Respondent No.1 Bank. Hence, the Notice dated 04.06.2021 issued by the Respondent No.1 Bank to the Personal Guarantor has to be treated to be Notice on Demand as Contemplated in the Deed of Guarantee.”

(d) Hon’ble Appellate Tribunal Further considered the decision in CA (AT) (Ins) No. 1609 of 2024, Shantanu Prakash vs. State Bank of India and Anr. where it had noted and held as under:


“while notice was issued under Section 13(2) of the SARFAESI Act, which has also specifically called upon the Appellant to discharge in full the borrower liability stated there in within 60 days of the notice. Thus, the notice fulfils all the condition stipulated under personal guarantee and can be treated as valid invocation. On this issue, the Adjudicating Authority has also held that the demand notice issued by the Respondent No.1 under Rule 7(1) of the I&B (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 as valid. Thus, we do not find any error in the Impugned error in the Impugned Order on this account.”

- 
- (e) Hon'ble Appellate Tribunal in **Ujwal Gupta vs. Union Bank of India** while considering the ratio of **CA (AT) (Ins) No. 191 of 2025, State Bank of India vs. Mr. Deepak Kumar Singhania**, as discussed above, found that:

“the factual matrix of this case, however, is different than the facts of the instant case as in this case notice was issued under Rule 7(1) in Form-B and it was being impressed to be taken as the notice of invocation of guarantee, which is not a case in the case at hand.”


27. Thus, in our considered opinion, it was a crystal-clear communication not only to the Appellant but to all the addressees to discharge their liability with regard to the credit facilities extended to CD by the Financial Creditor and there appears no ambiguity in this. Since the appellant has extended guarantee by executing a deed and the principal borrower/CD failed to pay the amount of credit facilities extended by the Financial Creditor and the liability of the principal borrower and guarantor is coextensive, this demand notice was sufficient communication to the appellant to discharge his liability under the guarantee deed towards the credit facility extended by the creditor to the CD and is sufficient invocation of guarantee.”

In the above backdrop it also noted that Hon'ble NCLAT in **Asha Basantilal Surana (Supra)**, which is a three member's decision,



after considering **Amanjyot Singh (Supra)** and **Mavjibhai Nagarbhai Patel (Supra)** clearly holds that “in a case where notice under Section 13(2) makes a demand as per the guarantee agreement between the parties, the notice has to be treated as a notice for invocation of bank guarantee.” The Appellate Tribunal in the above case has also distinguished the law laid down earlier in **Amanjyot Singh (Supra)**, as case confined to its own facts, by observing in para 12 of the judgment, that the dismissal of the appeal in **Amanjyot Singh** case was on the facts of the said case and has no application in the facts of the case under scrutiny and also that the invocation of personal guarantee has to be in accordance with the terms of the guarantee agreement. We reproduce the para no. 12 of the aforesaid judgment (**Asha Basantilal Surana) (Supra)** for convenience herein below:-

“12. Thus, the dismissal of the Appeal in the Amanjyot Singh's case was on the facts of the said case and has no application in the facts of the present case. The invocation of personal guarantee has to be in accordance with the terms of the Guarantee Agreement which is a settled law. Clause 7 of the Guarantee Agreement does not require any particular mode and manner of the demand notice. When demand notice is issued against the personal guarantor asking the personal guarantor to discharge its liabilities, the guarantee stands invoked. Whether notice under Section 13(2) in a particular case invoked the guarantee or not depends on the words and intent of the notice. For finding out as to whether Notice under Section 13(2) invoked the personal guarantee, the letters and words of the Notice has to be



looked into to come to any conclusion that whether personal guarantor has been asked to discharge its liabilities or not. In the facts of the present case, we are of the considered opinion that the Notice under Section 13(2) issued by the State Bank of India is a clear demand notice from the Appellant to pay the amount of Rs. 28,56,64,336.06/-."

(Emphasis Supplied)

Hon'ble NCLAT in **Ujwal Gupta** (supra) has finally ruled as follows:

*"32. Thus, what has been highlighted by the aforesaid judgment is that it would be the terms and conditions of the agreement executed between the parties with regard to the guarantee which would be relevant to assess as to whether the guarantee has been sufficiently invoked or not. Therefore, whether a guarantee may be invoked by giving notice under Section 13(2) of the SARFAESI Act depends on the terms of the guarantee and the **content of the notice**. If the notice clearly demands payment from the personal guarantor in terms of the guarantee, it can be treated as an invocation of the guarantee. The facts and the wording of the notice are crucial in this determination."*

11. We have considered the rival contentions perused records and considered the implications of the decisions cited.
12. In the present case the FC asserts that Section 13(2) notice is a notice invoking guarantee, it is thus extracted verbatim hereinbelow for clarity:

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (Court-I)
KOLKATA

C.P. (IB)/116(KB)2021

इलाहाबाद बैंक
विश्वास की परंपरा

ALLAHABAD BANK
A tradition of trust

www.allahabadbank.in

INDUSTRIAL FINANCE BRANCH - KOLKATA
Kishore Bhavan, 4th Floor, 17, R.N. Mukherjee Road, Kolkata - 700001
Phone: (033) 2213-1006/7/8, Fax: (033) 2213 1004, E-mail: br.ifbkolkata@allahabadbank.in

IFB/KOL/GR-II/KND/2018-19/116

Regd. Post/ Speed Post with AD

Date 02.05.2018

M/s. KND Engineering Technologies Ltd. (Borrower)
7A Hospital Street, Second Floor, Kolkata - 700072
(Registered Office)

10-Raja Subodh Mullick Square, 5th Floor, Kolkata 700 013
(Corporate Office)

Mr. Pessi Nanabhoy Dadina (Director and Guarantor) 20 Palace Court, 1 Kyd Street Kolkata - 700 016
Mr. Navzer Kersi Dadina (Director and Guarantor) 5-2, Spenta Apartment, B. G. Kher Road, Malabar Hills, Mumbai 400 006
Ms. Varez Kersi Dadina (Director and Guarantor) 20 Palace Court, 1 Kyd Street Kolkata - 700 016
Ms. Zarine P Dadina (Guarantor) 20 Palace Court, 1 Kyd Street Kolkata - 700 016

Dear Sir,

Sub: Notice Issued under Section 13 (2) of the Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002.
A/c: M/S KND Engineering Technologies Ltd.

- The undersigned being the Authorized Officer of Allahabad Bank, Industrial Finance Branch, Kolkata, appointed / designated under the Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (hereinafter referred as the "Act") do hereby issue this notice to you as under:
- That you have availed the following Credit Facilities from our Bank through our Industrial Finance Branch, Kishore Bhavan, 4th Floor, 17, R N Mukherjee Road, Kolkata 700 001 from time to time in the above account and now the outstanding dues is as under:

Facility	Limit (Rs. lakh)	Outstanding (As on date of classification of NPA i.e. 01.05.2018)	Outstanding (with interest up to 01.05.2018)
1 Cash Credit	1500.00	19,79,09,037.51	19,79,09,037.51
2 Bank Guarantee	5500.00	38,88,32,772.00	38,88,32,772.00
TOTAL O/S		58,67,41,809.51	58,67,41,809.51

In consideration of the Credit Facilities availed by you in the above account and to secure repayments of the said loans/ credit facilities availed, you have executed various documents whereby and where under you have created charge/ mortgage / hypothecation / assignment over your company's movable / immovable properties assets in favour of the Bank in the above account.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (Court-I)
KOLKATA**


C.P. (IB)/116(KB)2021

The details of the assets / properties hypothecated/ assigned/ charged/ mortgaged in favour of the Bank are mentioned in below:

- i. Exclusive hypothecation charge over entire stocks, book debts and other current assets of the company both present and future.
 - ii. Hypothecation charge over fixed assets of the company, both present & future other than those specifically charged to other lender.
 - iii. Equitable mortgage over Office Space at 6A, Rampart House, 22-26, Dubash Marg, Mumbai – 400023 having saleable area of Rs 986.52 sq.ft (approx).
 - iv. Equitable mortgage of flat at 4th Floor at 10, Raja Subodh Mullick Square, Kolkata – 700013 measuring 3576 sq.-ft along with 2 no. of car parking admeasuring appx 200 sq-ft.
 - v. Equitable mortgage of flat at 5th Floor at 10, Raja Subodh Mullick Square, Kolkata – 700013 measuring 3576 sq.-ft along with 2 no.s of car parking of admeasuring 200 sq-ft.
 - vi. Equitable mortgage of Unit No. 39/4, Vedic Village, Shikharpur, PS- Rajarhat, under Chandpur Gram Panchayat, Kolkata – 700 135, Dist : 24 Parganas(North) measuring 23.604 Kotthas with duplex building (4320 sq.ft more or less) & Servant quarters (295 sq.ft more or less).
 - vii. Equitable mortgage of apartment no. 16D having super built area of 2913 sq.ft on the 16th floor at Tower I in "Rosedale Garden Complex" constructed on the land within Block Plot No. AA-III/BLK-3 in New Town, Mouza Patharghata, J.L. no.36, P.S. Rajarhat, Dist: 24 Parganas (North), West Bengal along with 1 covered car parking space
 - viii. Registered mortgage of Industrial Land admeasuring 302 Decimals or 181.20 Kottah (more or less) at JL No 24, Touzi no 93. RS No 107, at Gazipur, 24 Parganas (South) and construction thereon in the name of M/s KND Engineering Technologies (P) Ltd
4. Though the said loan is already due for repayment, you have failed and / or neglected to repay the outstanding dues or regularize the above account/s in spite of our repeated requests.
5. You have violated the terms of sanction and also made the account irregular and as a consequence the account has become **Non Performing Assets** and has been classified by our Banks as such, as per RBI guidelines on 01.05.2018. The aggregate outstanding balance in the accounts, as on 01.05.2018 (Date of classification as NPA) was Rs. 58,67,41,809.51 (Rupees Fifty Eight Crores Sixty Seven Lacs Forty One Thousand Eight Hundred and Nine and paise Fifty One only).
6. A sum of Rs. 58,67,41,809.51 (Rupees Fifty Eight Crores Sixty Seven Lacs Forty One Thousand Eight Hundred and Nine and paise Fifty One only) has become due and outstanding as on 01.05.2018 in the above account, along with future interest costs, charges and expenses.
7. By this notice, you are hereby called upon to discharge the entire liability as on date and also future interest thereon, along with cost, charges and expense, to us as secured creditor within 60 days from the date of this notice, failing which the Banks shall be constrained to exercise all or any of our right (s) conferred under Sec 13(4) and other provisions of the above Act.
8. Please take notice that in terms of Section 13 (13) of the said Act, you shall not after receipt of this notice, transfer by way of sale/ lease or otherwise, any of the secured assets above referred to, without prior written consent of Bank. You are also put on notice that any contravention of the injunction/ restraint as provided under the said Act is an offence.
9. This notice is issued without prejudice to any other rights available to the Bank under the above Act and /or any other Law in force.

A bare reading of the notice would indicate that the notice was not intended for invoking guarantee for the purpose of filing application against the Personal Guarantor under IBC. It is clearly for the purpose of enforcement of security, unlike the notice under Section 13(2) of SARFAESI Act in **Mavjibhai** (supra) which read as under:

this notice to personal guarantor who are liable to pay the aforesaid outstanding amount. This



notice is without prejudice to the Bank's right to initiate such other actions or legal proceedings as it deems necessary under **any other applicable provisions** of Law. This notice is in supersession of our earlier notices sent to you vide our letter no. SAMB/GRJ/2018-19/2002 dated 16.02.2019 which stands withdrawn.

Having noted the language as above, in **Mavjibhai** (supra) was satisfied that the 13(2) notice was meant to be noticed not only for proceedings under SARFAESI Act but also for other provisions of law Hon'ble NCLAT observed:

Notice under Section 13(2) was issued to the Appellant, the personal guarantor and application under Section 95(1) was filed by the State Bank of India which was admitted by the Adjudicating Authority which order was challenged by the personal guarantor. In the above case, the Bank has pleaded that the deed of personal guarantee was invoked by the Bank vide demand notice dated 04.06.2021 issued under Section 13(2) of the SARFAESI Act, 2002.

Thus, the Section 13(2) Notice was held to be notice of demand as per guarantee.

Hon'ble Tribunal held that :

"20. Since the guarantee deed specifically mentioned that the guarantee was in the

nature of an on-demand guarantee, the default was to arise on the part of the Guarantor only when the Demand Notice was issued as contemplated in the Deed of Guarantee. Thus, the period of limitation of the Personal Guarantor was to commence once the demand was made on the Guarantor by the Respondent No. 1 Bank. Hence, the Notice dated 04.06.2021 issued by the Respondent No.1 Bank to the Personal Guarantor has to be treated to be Notice on Demand as contemplated in the Deed of Guarantee. The Rule 7(1) Notice dated 28.06.2021 had therefore rightly recorded that the debt was due on 04.06.2021 being the date of Demand Notice under Section 13(2) of the SARFAESI Act and that the date of default occurred on 04.08.2021 on the expiry of 60 days from 04.06.2021."

13. In the present case we have noted Section 13(2) notice was not for any other purpose but for SARFAESI action and, therefore, we clearly observe absence of prior invocation of guarantee, before issuance of Form B notice on 13.10.2020. Thus "default before issuance of Notice under Rule 7(1)" (as held in Pooja Ramesh Singh supra) is not noted.
14. In view of the above settled position having noted absence of prior invocation of guarantee before issuance of demand notice under Rule 7(1) we have no hesitation to dismiss the Section 95(1) Petition against the Personal Guarantor.
15. Accordingly, C.P. (IB)/116(KB) 2021 is **dismissed**.

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (Court-I)
KOLKATA

C.P. (IB)/116(KB)2021

16. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
17. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Siddharth Mishra
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order signed on this, the 07th April, 2026.

S. Ghose (Steno)