

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 2238 of 2024

(Arising against the Impugned order dated 21.08.2024, passed by the Hon'ble National Company Law Tribunal, New Delhi Bench-II in IA-2827/ND/2022 and CP(IB)-363/ND/2022)

IN THE MATTER OF:

Upkar Kaur

Personal Guarantor to M/s Jagtar Singh & Sons
Hydraulics Pvt. Ltd.

Add: C1/B, Mansarovar Garden, New Delhi-110042

Email: hardeep.singh@jssi.com

...Appellant

Versus

Mr. Gagan Gulati, Resolution Professional

Having its office at: A-179, First Floor,

Sudarshan Park, New Delhi-110015.

Email:- advocategulati@gmail.com

...Respondent No.1

M/s Intec Capital Limited Financial Creditor

Add: 708, Manjusha Building, 57,

Nehru Place, New Delhi- 110019

Email: ibc@inteccapital.com

Phone: 9582555722

...Respondent No.2

Present:

For Appellant : Mr. Rakesh K. Bajaj, Mr. Hitesh Chopra, Advocates.

For Respondents : Mr. Manish Kumar, Advocate for R-2.

**Mr. Jasmeet Singh & Mr. Nitin Kumar, Advocates
for R-1.**

J U D G M E N T
(27th November, 2025)

INDEVAR PANDEY, MEMBER (T)

The present appeal arises from the order dated 21.08.2024 passed by the National Company Law Tribunal, New Delhi Bench-II (**Adjudicating Authority**) in IA-2827/ND/2022 and CP(IB)-363/ND/2022, wherein the Adjudicating Authority initiated the *Personal Insolvency Resolution Process (PIRP)* against Ms. Upkar Kaur, Personal Guarantor to M/s Jagtar Singh & Sons Hydraulics Pvt. Ltd. (**Corporate Debtor**) for the default of a total amount of Rs. 4,00,76,605/- (Rupees Four Crore Seventy-Six Thousand Six Hundred Five only) as on 01.12.2021, under Section 95 of the Insolvency and Bankruptcy Code, 2016,(hereinafter referred to as '**Code**'). **Shri Gagan Gulati** was appointed as **Resolution Professional (RP)** by the Adjudicating Authority. Resolution Professional is arrayed as **Respondent No.1** in this appeal.

2. The appeal has been filed by **Ms. Upkar Kaur (Appellant)** impugning the order of Adjudicating Authority (AA) on the grounds that the AA has passed the order, solely on the basis of the Resolution Professional's report without examining or adjudicating upon the detailed objections she had raised regarding limitation; incorrect computation of claim; discharge of guarantee due to the 2019 settlement; the legal effect of her resignation; and revocation of guarantee. Feeling aggrieved by the non-speaking and mechanically passed order, and asserting that the initiation of PIRP is

contrary to the mandate of law, barred by limitation, and based on an incorrect appreciation of facts, she has approached this Appellate Tribunal seeking the setting aside of the impugned order.

Brief facts of the case

3. The brief facts of the case are as given below:

- i. M/s Jagtar Singh & Sons Hydraulics Pvt. Ltd., (Corporate Debtor), approached **M/s Intec Capital Limited/ Financial Creditor and Respondent No.2** in this appeal, for availing the credit facility for a sum of Rs. 3,18,00,000/- which was sanctioned by Financial Creditor vide sanction letter dated 22.03.2013. Pursuant to the sanction, a loan agreement bearing No. 012/920 dated 28.03.2013/ Loan Account No. LNPIT00712-130002234 was executed between the Corporate Debtor and the Financial Creditor along with Personal Guarantor, Ms. Upkar Kaur. The Appellant, who was neither a director nor a shareholder of the Corporate Debtor, signed the Deed of Guarantee being a family member of the promoters.
- ii. The Corporate Debtor again approached the Financial Creditor for another credit facility for a sum of Rs. 41,32,383/- which was sanctioned vide letter dated 31.05.2016 and a second loan agreement with reference to Loan Account No. LNIPT03516-170006753 was executed between the parties. The second loan facility carried an interest rate of 13%, and it was repayable in 36 monthly instalments of Rs. 1.57 lakhs each. The Corporate Debtor serviced approximately 36

instalments of this loan before financial circumstances hindered further payments.

- iii. Instalments under the 2013 loan were paid regularly until the SBI account of the Corporate Debtor was frozen in July 2016 due to classification of CD's account as NPA, leading to disruption in EMI payments.
- iv. The Corporate Debtor communicated with Financial Creditor/ Respondent-2 through emails during mid-2016 requesting alteration of EMI cheque particulars due to the freezing of its SBI account. However, before such changes could be affected, cheques were dishonoured, prompting the Respondent 2 to initiate proceedings under Section 138 NI Act.
- v. A loan recall notice cum Arbitration Notice was issued for the first time by the Respondent 2 to the Corporate Debtor for the Loan Account No. LNPIT00712-130002234 on 18.07.2017 and the same was duly served upon the Appellant on 26.07.2017. Arbitration Award was passed in the favour of the Respondent 2 on 28.08.2018.
- vi. The Financial Creditor also initiated CIRP proceedings against the Corporate Debtor by filing a petition under Section 7 of the Code which was listed as CP(IB)-619/ND/2018, and admitted by Ld. Adjudicating Authority on 03.09.2019.
- vii. An appeal was filed before this Appellate Tribunal by the Corporate Debtor bearing No. Company Appeal (AT) (Ins) No. 968 of 2019, wherein a settlement was reached between the parties and Justice (retd.) A.K. Sikri of Hon'ble SC of India was appointed as Mediator. His mediation

led to signing of a comprehensive Settlement Agreement on 02.12.2019 between the Financial Creditor and the Corporate Debtor.

- viii. Under the settlement, the first Loan Account No. LNPIT00712-130002234 stood restructured into a full and final settlement amount of Rs. 1.20 crore, payable in six instalments of Rs. 20 lakhs each between March 2020 and August 2020. The second Loan Account No. LNIPT03516-170006753 stood fully settled for a lump sum of Rs. 5 lakhs, and post-dated cheques were accordingly issued.
- ix. Several instalments were honoured by the Corporate Debtor, including the entire settlement of Rs. 5 lakhs towards the second loan, but the national lockdown imposed during March 2020 due to COVID-19 caused absolute disruption of business operations, impacting the repayment capability.
- x. The last repayment made by the Corporate Debtor to the FC in the loan Account No. LNIPT03516-170006753 was Rs. 1,00,000/- on 11.09.2020. The last of such repayment in the Loan Account no. LNPIT00712-130002234 of Rs 1,00,000/- was made on 29.04.2021. The Corporate Debtor and the Personal Guarantor failed to make the full payment under the terms of settlement agreement dated 02.12.2019.
- xi. In terms of the order dated 06.12.2019 passed by this Tribunal, a revival application was filed by the Financial Creditor before the NCLT for the initiation of the CIRP process, which was allowed on 23.11.2021. The initiation of CIRP proceedings eventually led to liquidation of the Corporate Debtor.

- xii. A Demand Notice (Form-B) dated 25.01.2022 was issued to the Appellant as Personal Guarantor, which she received on 28.01.2022, wherein the Financial Creditor demanded payment of dues.
- xiii. An application under Section 95 IBC was thereafter filed by the Financial Creditor before NCLT, which was registered as CP(IB)-363/ND/2022, and Mr. Gagan Gulati was appointed as Resolution Professional and was directed to submit a report under Section 99 of the Code.
- xiv. The Resolution Professional submitted his report vide I.A No. 2827 of 2022 under Section 99 of the Code, recommending initiation of the Personal Insolvency Resolution Process against the Personal Guarantor/ Appellant. The Adjudicating Authority on 21.08.2024 accepted the Resolution Professional's recommendation and initiated the Personal Insolvency Resolution Process against the Appellant. Aggrieved by the aforesaid order of the Adjudicating Authority the Appellant/ Personal Guarantor has filed this appeal.

Submissions of the Appellant

4. Ld. Counsel for the Appellant submits that the dispute arises from a series of financial transactions undertaken between the Financial Creditor, M/s. Intec Capital Limited and the Corporate Debtor, M/s Jagtar Singh & Sons Hydraulics Pvt. Ltd., in which the Appellant was not a director or shareholder at any point of time. The Appellant, being only a family member of the Directors of the Corporate Debtor, had signed certain documents solely

as a Personal Guarantor for one of the loan accounts, and even that guarantee was subsequently substituted by a later settlement agreement.

5. Ld. Counsel submits that a Deed of Guarantee dated 28.03.2013 was executed in respect of Loan Account No. LNPIT00712-1300002234, under which the Appellant acted as guarantor. The Financial Creditor thereafter, in March 2016, disbursed a loan amount of Rs. 3,18,00,000/- to the Corporate Debtor.

6. Ld. Counsel further submits that in May 2016, the Financial Creditor disbursed another loan for Rs. 41,32,383/- under Loan Account No. LNPIT03516-170006753, for which no deed of guarantee was executed by the Appellant. The Appellant had no privity of contract in respect of this second loan. Despite this, the Financial Creditor later sought to invoke liability of the Appellant for both loans indistinguishably.

7. It is submitted by Ld. Counsel that due to business stress and lack of working capital, the Corporate Debtor eventually defaulted in timely repayment as per agreed terms. As a consequence, the Financial Creditor issued a Notice of Termination and Reference to Arbitration dated 18.07.2017.

8. It is further submitted by the Ld. counsel for the appellant that the Applicant/Creditor had 3 years' period of Limitation, available in terms of Section 238A of IB Code read with Article 137 of the Limitation Act, 1963. The period of Limitation for filing the present application has already expired on 17.07.2020. The Applicant/Financial Creditor issued Demand Notice dated 25.01.2022, which was received by the Respondent on 28.01.2022, i.e. 17

months after the period of 3 years from the date of default. Therefore, application of the Applicant/ Creditor is barred by time.

9. Thereafter, the Financial Creditor initiated CIRP against the Corporate Debtor by filing CP (IB) No. 619 (ND)/2018, which was admitted on 03.09.2019. The said order of admission was challenged before this Appellate Tribunal, wherein the Corporate Debtor sought settlement of the creditor's claims. This Tribunal vide order dated 06.12.2019, permitted settlement subject to revival of CIRP in case of default. In consequence, the parties executed a Mediation Settlement Agreement dated 02.12.2019, under the aegis of Hon'ble Mr. Justice A.K. Sikri (Retd.), where the loan dues of both loan accounts were finally quantified and settled.

10. Ld. Counsel submits that as per the Settlement Agreement:

- a) The first Loan Account No. LNPIT00712-1300002234 was settled for Rs.1,20,00,000/-.
- b) The second Loan Account No. LNPIT03516-170006753 was settled for Rs. 5,00,000/-.

11. It is the submission of Ld. Counsel that partial payments were indeed made under the settlement, and the second loan was fully adjusted. Thereafter, unprecedented circumstances due to the Covid-19 pandemic prevented further payments. Further, one of the directors, Mr. Sukhwant Singh, passed away due to Covid, and the other director, Mr. Jagtar Singh, aged about 86 years, was not in a position to attend to business affairs.

Consequently, the Financial Creditor sought revival of CIRP, which was allowed on 23.11.2021 resulting in liquidation proceedings.

12. Ld. Counsel further submits that it was the obligation of the Corporate Debtor, and not the Appellant to honour these settlements through post-dated cheques issued by the directors.

13. He submits that subsequently, the Financial Creditor filed an application under Section 95 of the IBC, 2016 before NCLT against the Appellant as Personal Guarantor. The IRP submitted a report under Section 99, which the Appellant opposed. However, the NCLT, Delhi Bench-III passed a non-speaking order, mechanically initiating the Personal Insolvency Resolution Process against the Appellant, without considering the objections raised. Aggrieved by the impugned order the Appellant has preferred the present appeal.

14. The first contention of the Appellant is that she is not guarantor in the second loan given to corporate debtor and in the settlement deed entered between financial creditor and corporate debtor. Ld. Counsel submits that the Appellant had executed a deed of guarantee, only for Loan Account LNPIT00712-1300002234 under the Deed of Guarantee dated 28.03.2013. The Appellant never signed any guarantee for Loan Account LNPIT03516-170006753, and therefore cannot be made liable for the second loan under any circumstances.

15. Ld. Counsel further submits that Clause 8 of the Deed of Guarantee, relied on by the Financial Creditor, merely speaks of continuity of guarantee in respect of a series of transactions under the same agreement. As per

Section 129 of the Indian Contract Act, a continuing guarantee applies only to transactions under the same contract, and does not extend to new or independent contracts, such as the second loan agreement dated 31.05.2016. Therefore, the second loan is outside the guarantee framework.

16. Further, Ld. Counsel submits that the Mediation Settlement Agreement, particularly Clause (j), explicitly records that Mr. Jagtar Singh and Mr. Sukhwant Singh agreed to provide their personal guarantees for fulfilment of obligations under the settlement. Thus, the parties expressly substituted the earlier contractual arrangement by introducing new guarantors. As per Section 62 of the Indian Contract Act, a substituted agreement dispenses with the original contract, including any earlier guarantee. Therefore, the Appellant's original guarantee stands revoked and cannot be pressed into service.

17. Ld. Counsel further submits that the Financial Creditor's actions are vitiated by several procedural defects. Firstly, the Notice of Termination and Reference to Arbitration was wrongly addressed to the Appellant in the capacity of "Director", even though the Appellant was not a director of the Corporate Debtor at that point of time. Misaddressed notices violate principles of natural justice and statutory compliance. Reliance is placed on '**Mathew Varghese v. M. Amritha Kumar, [(2014) 5 SCC 610]**' where the Hon'ble Supreme Court emphasised correct service on the correct legal capacity.

18. Secondly, Ld. Counsel submits that the termination notice was issued only for the first loan of 28.03.2013, and no termination notice was ever

served for the second loan dated 31.05.2016, thereby rendering any action under the second loan ex facie illegal.

19. Thirdly, Section 95(5) of the IBC mandates that a creditor must serve a copy of the Section 95 application not only on the debtor, but also on the Corporate Debtor, where applicable. In the present case, the Financial Creditor failed to supply a copy of the Section 95 application to the Corporate Debtor, rendering the filing non-compliant.

20. Fourthly, Section 99(6) imposes a duty on the Resolution Professional to ensure that the Section 95 application satisfies statutory requirements before recommending admission. However, in this case, the RP failed to discharge this statutory obligation and mechanically submitted the report ignoring multiple legal defects. Therefore, the order based on such report is unsustainable.

21. In his next submission Ld. Counsel for Appellant states that the Financial Creditor has deliberately misrepresented the outstanding dues. The demand raised is artificially inflated by ignoring the Settlement Agreement dated 02.12.2019, wherein the entire loan liabilities were crystallized and reduced to a mutually agreed settlement figure. As per the settlement agreement:

- Rs. 1.20 crore was agreed as full and final settlement of Loan Account LNPIT00712-1300002234.
- Rs. 5 lakhs was agreed as full and final settlement of Loan Account LNPIT03516-170006753.

22. It is the submission of Ld. Counsel that the Corporate Debtor paid the full amount of the second loan under settlement terms. Further, before repayment of the first loan could commence in accordance with the schedule, the Covid-19 pandemic struck, paralyzing business operations and causing the death of one director (Mr. Sukhwant Singh) while the surviving elderly director (Mr. Jagtar Singh, aged 86) was incapable of managing affairs.

23. Ld. Counsel further submits that Clause (k) of the Settlement Agreement only provides that the unpaid amount under the settlement shall be treated as admitted debt for limited purposes of filing a Section 7 petition. It does not revive the original loan amounts, nor does it impose liability on the Appellant as guarantor under the earlier guarantee deed, which already stood superseded.

24. Therefore, the only amount legally due is Rs. 1,20,00,000/-, i.e., the unpaid portion of the first loan settlement, and even that is the liability of the Corporate Debtor and not of the Appellant, whose guarantee stood substituted.

25. In light of the above submissions, facts, and legal principles, counsel for the Appellant most respectfully prays that this Hon'ble Tribunal may be pleased to allow the Appeal, and Set aside the impugned order admitting the Section 95 application, and pass such other or further orders as may be deemed fit in the interest of justice.

Submission of Respondent No.2/ M/s INTEC CAPITAL LIMITED

26. The learned counsel for Respondent No.2/ M/s. Intec Capital Limited/ Financial Creditor, respectfully submitted that Respondent No.2, being the Financial Creditor, has throughout acted in accordance with law and the various directions of the Adjudicating Authority as well as this Hon'ble Tribunal. It is his submission, that the impugned order dated 21.08.2024, initiating PIRP of the Personal Guarantor/Appellant under Section 100 of the IBC, is absolutely correct, justified, and liable to be upheld.

27. The learned counsel submits that the present appeal has been filed by the Appellant/Personal Guarantor challenging the correctness of the impugned order dated 21.08.2024, whereby the Adjudicating Authority has rightly admitted the application filed under Section 95 of the Insolvency and Bankruptcy Code, 2016. It is submitted that the Appellant has attempted to raise grounds that are neither supported by facts nor sustainable in law. The Respondent submits that the present proceedings pertain to the liabilities arising out of the personal guarantee executed by the Appellant towards the credit facilities extended to the Corporate Debtor and the default thereof. The impugned order is based on a correct appreciation of material facts, chronology of default, and the continuous non-compliance by the Appellant and the promoters of the Corporate Debtor. Thus, no interference is warranted by this Hon'ble Tribunal.

28. The Learned Counsel submits that the Appellant has challenged the impugned order primarily on two grounds, both of which are wholly misconceived and contrary to the record.

29. The learned counsel submits that the entire plea of limitation raised by the Appellant is baseless and contrary to the clear factual record. Respondent No.2 places a detailed chronology of recurring and continuing defaults, each of which independently constitutes a fresh cause of action.

30. It is submitted that the first default occurred on 18.07.2017, when Respondent No.2 issued a Loan Recall Notice (LRN)-cum-Arbitration Notice to the Corporate Debtor in relation to Loan Account No. LNPIT00712-130002234, which was duly served upon the appellant on 26.07.2017. The Corporate Debtor failed to regularize the account despite service, thereby constituting a clear default in terms of the loan agreement. This notice marks the first crystallized date of default.

31. The Respondent submits that an Arbitration Award was passed on 28.12.2018 in favour of the Financial Creditor (Respondent No.2), confirming the outstanding dues. The Award conclusively acknowledges the debt and default, thereby extending the limitation period under settled jurisprudence.

32. Ld. Counsel submits that on 03.09.2019, the Hon'ble NCLT admitted the Section 7 Petition filed by Respondent No.2 against the Corporate Debtor in CP (IB) 619(ND)/2018, Intec Capital Ltd. v. Jagtar Singh & Sons Hydraulics Pvt. Ltd. The admission of the petition, based on continued default, once again constitutes a fresh acknowledgment of liability and extends limitation under Section 18 of the Limitation Act.

33. It is the submission of Respondent no. 2 that the Corporate Debtor came to the Hon'ble NCLAT with a settlement proposal, which led to an order dated 06.12.2019, wherein a settlement was recorded. However, the

Corporate Debtor subsequently failed to honour the settlement terms, rendering the arrangement infructuous. The settlement and its breach reaffirm the continuing default.

34. Ld. Counsel submitted that the Corporate Debtor made a payment of INR 1,00,000/- on 11.09.2020 via Instrument No. SBIN220255518010 towards second Loan Account LNPIT03516-170006753. This payment constitutes a clear acknowledgment of debt under Section 18 of the Limitation Act, providing a fresh period of limitation.

35. He submits that another payment of Rs. 1,00,000/- was received on 29.04.2021 by NEFT (Instrument No. 108917554718) in first Loan Account LNPIT00712-130002234, which again extends the limitation period.

36. Ld. Counsel for Respondent 2 submits that on 25.01.2022, a Form-B Demand Notice was issued to the Personal Guarantor (Appellant), demanding discharge of liabilities arising under the Deed of Guarantee. The Appellant did not respond or repay any amount, thereby admitting default.

37. It is submission of Ld. Counsel that the Section 95 Application filed on 03.05.2022 is well within limitation, taking into account the series of acknowledgements and last payments made as late as 29.04.2021. Hence, the Appellant's plea is untenable. He submits that the application is squarely within limitation and is legally maintainable.

38. The Learned Counsel for Respondent No.2 submits that the second contention of the Appellant that the settlement is a bar to PIRP proceedings is misplaced, unfounded, and contrary to the actual facts and binding orders of this Hon'ble Tribunal.

39. Respondent No.2 submits that proceedings under Section 7 of the IBC were duly initiated against the Corporate Debtor in '*Intec Capital Ltd. v. Jagtar Singh & Sons Hydraulics Pvt. Ltd., CP (IB) 619(ND)/2018*'. Upon admission of the petition on 03.09.2019, the promoters of the Corporate Debtor approached this Appellate Tribunal seeking a settlement. Respondent No.2 further submits that an appeal was filed by the promoters titled '*Parvinder Singh v. Intec Capital Ltd., Comp. App. (AT)(Ins.) No. 968 of 2019*', wherein this Hon'ble Tribunal, at the request of the promoters, appointed Hon'ble Mr. Justice (Retd.) A.K. Sikri, Former Judge of the Supreme Court of India, as Mediator.

40. The learned counsel submits that the mediation resulted in a detailed Settlement Agreement dated 02.12.2019, under which:

- Loan Account No. LNPIT00712-130002234 was settled for INR 1,20,00,000.
- Loan Account No. LNPIT03516-170006753 was settled for INR 5,00,000.

As part of the settlement, the Corporate Debtor issued post-dated cheques. However, the Corporate Debtor failed to comply with the settlement terms, several cheques were dishonoured, and only partial payments were made. This non-compliance resulted in the settlement becoming unworkable.

41. Ld. Counsel for Respondent No.2 submits that Para K of the settlement categorically stipulates that the default in the first instalment or any two consecutive instalments would constitute default and entitle the Financial

Creditor to file a fresh Section 7 petition, which the NCLT shall admit forthwith. The Corporate Debtor failed repeatedly, thereby triggering the consequences of Para K. The Para K of the agreement is extracted below:

“k. It is agreed between the parties that on the recording of this settlement by the Hon'ble NCLAT. IBC Petitions filed by the Financial Creditors before the NCLT shall be disposed of on the aforesaid terms. It is also agreed between the parties that in case of default of first instalment or any two consecutive instalments thereafter in respect of the main loan, it will be treated as default on the part of the Corporate Debtor and the unpaid amount shall also be treated as admitted debt, entitling to the Financial Creditor to file fresh petition under Section 7 of the IBC, which shall be admitted by the NCLT forthwith.”

42. Ld. Counsel for Respondent No.2 submits that the promoters Mr. Jagtar Singh and Mr. Sukhwant Singh gave an undertaking before this Appellate Tribunal which are reflected in Clause (i) and (j) of the Settlement Agreement. These clauses are extracted below:

“(i) Insofar as Mediation proceedings are concerned, Mr. Hardeep Singh attended the proceedings, representing Mr. Jagtar Singh and Mr. Sukhwant Singh, the erstwhile Directors, who have given Letter of Authority in his favour. In order to bind the company, the Hon'ble NCLAT may pass appropriate Orders.

(j) Both Mr. Jagtar Singh and Mr. Sukhwant Singh are ready to give undertaking and assurance to the NCLAT in the form of Affidavits to the effect that they would honour the terms of this settlement and ensure that all cheques (PDCs) are encashed on

presentation. They have also agreed to give undertaking to the Hon'ble NCLAT in this behalf with the stipulation that in case of breach of the Agreement, they would personally liable for the consequences, including contempt of Court. They have also agreed to give their personal guarantee for fulfilment of the obligations under the Agreement.”

43. It is clear from the above that the undertaking given by Mr. Jagtar Singh and Mr. Sukhwant Singh before the Mediator and this Appellate Tribunal entailed the following:

- They would honour the settlement terms.
- They would ensure all PDCs are honoured.
- They would be personally liable, even to the extent of contempt, in case of breach.
- They would furnish personal guarantees for fulfilment of obligations.

However, subsequently, they could not honour these undertakings.

44. The Learned Counsel points out that by order dated 06.12.2019, this Hon'ble Tribunal made the settlement terms part of its binding directions. However, the promoters, including the Personal Guarantor (Appellant herein), failed to comply. In case of failure of the agreement, this Appellate Tribunal directed that the order setting aside the impugned order dated 3rd September, 2019 shall stand recalled and the Corporate Insolvency Resolution Process will continue. Thus, the breach is not merely of a private settlement but of the binding orders of this Hon'ble Tribunal.

45. The Respondent No. 2 submits that this Hon'ble Tribunal vide order dated 15.03.2021 again modified the terms and allowed the promoters to clear 50% dues by March 2021 and the remaining by June 2021. Even these revised conditions were breached due to failure of the Appellant and other promoters.

46. Respondent No.2 submits that the settlement dated 02.12.2019, being executed under express directions of this Hon'ble Tribunal, cannot be treated as a fresh, novated contract under Section 62 of the Contract Act. Non-compliance of the settlement revived the original liability under the loan agreement, making both the Corporate Debtor and the Personal Guarantor jointly and severally liable.

47. In view of the above submissions, the Ld. Counsel for Respondent No.2 prays that this Hon'ble Tribunal may be pleased to dismiss the present appeal with costs, as the Appellant has failed to make out any ground for interference with the impugned order dated 21.08.2024; and Pass any further orders deemed fit in the interest of justice.

Analysis and findings

48. We have heard the learned counsel for the parties and examined the material placed on record. The counsels for appellant and respondent No.2 have also submitted their written submissions.

49. Based on the record and submissions, the following two issues arise for consideration:

ISSUE I: Whether the application filed under Section 95 of the Insolvency and Bankruptcy Code, 2016, against the Appellant–Personal Guarantor, was within limitation?

ISSUE II: Whether the guarantee executed by the Appellant continued to bind her, or whether it stood extinguished or substituted because of the later settlement and undertakings given by the Corporate Debtor’s promoters?

50. We first take the issue of limitation argued by the appellant. Ld. Counsel for the Appellant argues that the creditor’s Section 95 application is barred by limitation. Ld. Counsel submits that the first and only relevant default took place on 18.07.2017 when the loan recall notice was issued. He submits that since Section 95 was notified on 01.12.2019, the creditor had three years from the date of default to file the application, which period expired in July 2020. He therefore says that the filing of the application in May 2022 is hopelessly delayed and that the Adjudicating Authority wrongly ignored this primary defence.

51. The Respondent’s case is that the debt did not stop or end in 2017. According to him, the Corporate Debtor continued to deal with the creditor even after 2017, including entering into a settlement in December 2019 before this Appellate Tribunal, making part-payments in 2020 and 2021, and defaulting again when cheques issued under the settlement were dishonoured. The Respondent submits that these later payments amount to acknowledgements under Section 19 of the Limitation Act and therefore extend the limitation period. It also maintains that the guarantee is a

continuing one and that the default continued until the demand notice was issued to the guarantor on 25.01.2022.

52. We have carefully examined the material placed before us. The question of limitation in this case cannot be decided by treating the loan recall notice of 18.07.2017 as the only event that matters. The relationship between the creditor and the Corporate Debtor continued far beyond this date. The Corporate Debtor participated in arbitration proceedings, faced admission of CIRP in 2019, and then approached this Appellate Tribunal with an offer of settlement. At that stage, on the request of the parties, mediation was conducted under the leadership of a former Judge of the Supreme Court, and the settlement dated 02.12.2019 came into existence. This settlement was not merely a private compromise between the debtor and creditor; it was placed before us in the appellate proceedings; agreed to by the parties; and expressly recorded in an order of this Tribunal dated 06.12.2019. Therefore, the obligations arising from the settlement were backed by judicial authority and carried legal sanctity.

53. The relevant portion of the order of this Tribunal dated 06.12.2019 as recorded in paragraph 11 is extracted below:

“06.12.2019:

11. Terms of Settlement as recorded by the Hon’ble Mediator should be treated to be order and direction of this Appellate Tribunal to be complied by all the parties including the Promoters of ‘M/s Jagtar Singh and Sons Hydraulics Private Limited’ (Corporate Debtor); Parvinder Singh, Authorized Representative; Intec Capital Ltd. And Interim Resolution Professional. In the

present, whole process practically stands suspended for compliance of the Terms of Settlement. The Corporate Insolvency Resolution Process can be revived by the Petitioner in case of breach of Terms of Settlement or default of any post-dated cheque. On completion of compliance of terms and conditions, the application under Section 7 will be deemed to have been withdrawn by Intec Capital Ltd.’, otherwise the order setting aside the impugned order dated 3rd September, 2019 shall stand recalled and the Corporate Insolvency Resolution Process will continue. The Interim Resolution Professional may allow the Promoters/ Board of Directors to run the Corporate Debtor through Board of Directors. However, the Appellant, the Corporate Debtor, its Directors, Officers, Employees will not sell, alienate, transfer or create third party encumbrance on any of the movable or immovable property of the Corporate Debtor during the period Terms of Settlement are complied.”

(Emphasis supplied)

54. The order recorded the binding nature of the settlement and consequences of the failure of the settlement. The settlement fixed a schedule of instalments and required the Corporate Debtor to honour post-dated cheques. Importantly, the parties agreed that if the Corporate Debtor defaulted even in the first instalment or two consecutive instalments thereafter, the entire unpaid amount would become the admitted debt of the Corporate Debtor. This clause is extremely significant because it shows that the original debt did not vanish. Instead, the settlement placed the original

debt in a suspended state, with a clear provision that the entire liability would spring back into effect if the debtor failed to perform the settlement terms. When the Corporate Debtor later failed to honour the cheques issued under the settlement, it is clear that this clause was triggered. In such a situation, the debt stood revived and re-acknowledged.

55. The directions of this Appellate Tribunal given in para 11 of the order dated 06.12.2019 was reiterated by this Tribunal in para 4 of the order dated 15.03.2021. Same has been extracted below :

“15.03.2021:

4. After hearing learned counsel for the parties and going through the records, we are of the view that it would be conducive to interest of justice to allow the Appellant to pay 50% of the balance amount by the end of March, 2021 and remaining amount by the end of June, 2021, failing which Respondent No.1 shall be entitled to approach the Adjudicating Authority to seek revival of CIRP proceedings against the Corporate Debtor for breach of Terms of Settlement recorded by this Appellate Tribunal in terms of para 11 of the order dated 6th December, 2019 treating it to be an order and direction of this Appellate Tribunal to be complied by the parties. In the event of nonadherence to this revised schedule, in whole or in part, order passed in appeal dated 6th December, 2019 shall stand recalled in terms of para 11 and CIRP revived. CIRP costs including the fees of the Interim Resolution Professional, in such eventuality shall be addressed by the Adjudicating Authority.

I.A. Nos.1071 & 2218 of 2020 stands disposed off.

(Emphasis supplied)

56. We also find that the Corporate Debtor made payments on 11.09.2020 and again on 29.04.2021. These payments are admitted and have not been disputed by the Appellant. Under Section 19 of the Limitation Act, even a small part-payment renews the limitation period. It is well settled that an acknowledgment or part-payment by the principal debtor extends limitation against the guarantor also, unless the guarantee has been expressly revoked or the creditor has agreed to treat the guarantor differently. No such revocation or release is shown here. As long as the principal debtor continues to acknowledge the debt, the guarantor remains equally bound. Therefore, the payments of September 2020 and April 2021 extend the limitation period at least till April 2024. Another important aspect is that the creditor issued a fresh demand notice to the guarantor on 25.01.2022. A demand on the guarantor is legally meaningful because the guarantor's liability is co-extensive with that of the principal debtor unless the agreement specifically says otherwise. Once the guarantor received the demand notice in January 2022, the default clearly stood crystallised as against her. The Section 95 application filed on 03.05.2022 was therefore well within the extended limitation period.

57. In assessing limitation, we also cannot ignore the fact that the corporate insolvency process itself was revived by the Adjudicating Authority on 23.11.2021, after finding that the Corporate Debtor had breached the settlement as endorsed by this Appellate Tribunal vide the aforesaid orders dated 06.03.2019 and 15.03.2021, which provided for re-initiation of CIRP proceedings. A revived CIRP on the basis of the same debt necessarily signifies

that the debt was still subsisting and that the breach of settlement had reopened the underlying liability. This is an objective judicial fact that directly contradicts the argument that the debt had become time-barred long ago.

58. When we consider all these circumstances together - the judicially recorded settlement, the part-payments of 2020 and 2021, the dishonour of settlement cheques, the revival of CIRP, the fresh demand notice to the guarantor, and the continuing guarantee, we are satisfied that the creditor's Section 95 application was well within limitation. The Appellant's argument relies on treating only the 2017 recall notice as relevant, but the subsequent events show that the debt was repeatedly acknowledged and revived. Limitation law does not permit us to ignore such acknowledgements merely because the guarantor herself did not sign them, especially when her guarantee continued to operate for the entire duration.

59. For these reasons, we hold that the Adjudicating Authority was correct in rejecting the limitation objection and in admitting the Section 95 application. The challenge on the ground of limitation therefore fails.

ISSUE II: *Whether the guarantee executed by the Appellant continued to bind her, or whether it stood extinguished or substituted because of the later settlement and undertakings given by the Corporate Debtor's promoters?*

60. We now take up the issue related to validity of guarantee extended by the appellant. Ld. Counsel for the Appellant argues that her personal guarantee related only to the first loan of March 2013 and not to the second

loan granted in May 2016. She claims that when the Corporate Debtor and the creditor entered into a settlement in December 2019, a new contract came into existence between them. She says that under this settlement only the two promoters, Jagtar Singh and Sukhwant Singh, gave personal undertakings, and therefore only they became liable. She submits that since she was not a party to the settlement and since the terms of the debt changed in that settlement, her earlier guarantee stood discharged under Sections 62 and 133 of the Contract Act.

61. The Respondent, on the other hand, asserts that the guarantee signed by the Appellant is a continuing guarantee and covers the dues under the main loan agreement, until they are fully cleared. According to the Respondent, the settlement did not replace or cancel the original contract; it only gave the Corporate Debtor an opportunity to pay in instalments. It is further said that when the debtor defaulted on those instalments, the full debt revived automatically because the settlement itself provided for such revival. The Respondent argues that since the creditor never agreed to release the Appellant from her guarantee, she continues to remain liable.

62. It is stated that the Corporate Debtor had availed two loan facilities— Loan Account LNPIT00712-130002234 and Loan Account LNPIT03516-170006753- and that the second loan sanctioned on 31.05.2016 was granted specifically to regularise the existing account and therefore formed part of the same continuing financial relationship. This can be seen from the submission of the appellant in para 8 page 26 of facts of the case in memo of appeal. An identical clause is reflected in the Settlement Agreement finalized under the

aegis of Justice (Retd.) A.K. Sikri in para 6 of the agreement. The same has been extracted below:

“6. AND WHEREAS, in order to regularise the aforesaid account, the Financial Creditor agreed advance another sum of Rs.41,32,383 (hereinafter referred to as the second loan) to Corporate Debtor which carried interest @ 13% on 31.05.2016 and this loan was to be repaid in 36 instalments of Rs. 1.57 lakhs each.”

63. Clause 15 of the Guarantee Agreement expressly states that the guarantee remains valid even for an enhanced loan limit with or without informing the guarantor, to show that the Appellant’s guarantee automatically applied to the second loan as well, which in effect was a continuation of first loan, as admitted by the appellant. The clause 15 is extracted below:

“15. In event of enhancement of the LOAN provided by INTEC CAPITAL LTD with or without informing the Guarantor, this guarantee shall remain valid for such enhanced limit also.”

We also note that the Corporate Debtor continued making payments in both loan accounts even in 2020 and 2021, which clearly demonstrates that both loans were treated as part of one composite financial obligation and would be covered by the same guarantee in terms of Clause 15 above.

64. We now have a look at the relevant clauses 8, 10, 14 and 19 of the Guarantee Agreement, which are extracted below:

“8. The Guarantee shall be a continuing till such time INTEC CAPITAL LTD may have any claim against the Borrower under

the Agreement and all dues are discharged completely to the satisfaction of INTEC CAPITAL LTD.

10. *Any novation/variation of the Agreement and for concessions acquiescence made by INTEC CAPITAL LTD to the Borrower with/ without informing/ notifying the Guarantor shall not discharge the Guarantee The Guarantor further agrees that any concession or indulgence granted to the Borrower in respect of the terms and conditions either in releasing or returning the security (ies), after taking possession of it or in any other manner, shall not prejudice INTEC CAPITAL LTD's right against him or relieve him from his/her guarantees. It shall not be necessary for INTEC CAPITAL LTD to give any notice to the Guarantor in the event any such novation, variation etc."*

14. *The Guarantor confirms and accepts that any default by the Borrower under the Agreement. On such termination the entire sum of money due and outstanding under the agreement shall become payable forthwith.*

19. *This Guarantee is unconditional and irrevocable and shall remain so till such time INTEC CAPITAL LTD discharges this Guarantee by issuing a letter in this behalf."*

65. When we examine the clauses of the Guarantee Agreement, each one shows that the Appellant's liability was meant to continue without interruption. Clause 8 states that the guarantee will remain in force until all dues are fully paid, meaning her liability continues until the entire debt is cleared. Clause 10 explains that even if the creditor changes the loan terms or gives concessions to the borrower, without informing the guarantor, the guarantee still remains valid; this means she cannot claim discharge because of any variation or settlement. Clause 14 provides that if the borrower defaults, the entire outstanding amount becomes immediately payable,

showing that the guarantor's liability becomes absolute, the moment a default occurs. Finally, Clause 19 declares the guarantee to be unconditional and irrevocable, which means it stays in force unless the creditor formally releases her. Together, these clauses show that the guarantee was designed to survive all changes, defaults, and concessions, and therefore the Appellant's liability never came to an end. The Appellant has not been able to point out any such document showing release from the guarantee.

66. The next question is whether the 2019 settlement constituted a new contract which replaced the old one under Section 62 of the Contract Act. For a novation to occur, the original contract must be expressly substituted or extinguished by the new one. That is not the case here. The settlement did not cancel the original loan or the rights of the creditor. Instead, it only set out a payment schedule and stated that if the Corporate Debtor honoured those instalments, the original dues would stand satisfied. The settlement was meant to give the debtor a concession, not to erase or supersede the creditor's original rights. More importantly, the settlement also contained a very clear clause that if the Corporate Debtor defaulted even in the first instalment or in two consecutive instalments, the entire unpaid amount would automatically become the admitted debt. This clause, by itself, shows that the original rights of the creditor were never surrendered. A contract cannot be said to be substituted when the old obligations spring back into force the moment the new arrangement is breached.

67. It is also important to keep in mind that the settlement was not a private arrangement between the Corporate Debtor and the creditor. It formed part

of judicial orders of this Appellate Tribunal dated 06.12.2019 and 15.03.2021. When a settlement is recorded by a court or tribunal, it does not become a new and independent contract replacing the earlier one unless such intention is clearly recorded. In this case, the orders recorded the agreement of the parties and gave them an opportunity to settle the dues. At the same time, it was recorded that in case of failure to abide by the agreement, it would result in failure of the mediation agreement and thereby leading to re-initiation of CIRP. It is therefore clear that after the failure of terms of settlement under the mediation agreement, the original loan agreement and the guarantee remained in place.

68. Coming to the Appellant's argument that she was not a party to the settlement; this fact alone does not help her. A guarantor is not discharged merely because the principal debtor enters into a settlement or compromise with the creditor. The law is clear that the guarantor is discharged only if the creditor grants the debtor some benefit or makes some change in the contract that prejudices the guarantor. Further in this case, the settlement did not put any new burden on the guarantor. If anything, it reduced the liability by allowing the debtor to pay a smaller amount than originally owed. A concession given to the debtor cannot be described as a variation that harms the guarantor. Therefore, the guarantor cannot claim discharge under Section 133.

69. The Appellant also contends that since the promoters gave personal undertakings, her guarantee automatically stood cancelled. This reasoning cannot stand. When two individuals give a personal undertaking, it does not

mean the earlier guarantor has been released. A creditor is free to have more than one guarantor. The creditor may take personal undertakings from several persons without releasing the earlier surety. A release or waiver must be explicit and agreed to by the creditor. Clause 19 of the Guarantee agreement clearly shows that the guarantee is unconditional and irrevocable by the guarantor. He or She can only be released from the guarantee only by the Financial Creditor. No such release was ever granted to the Appellant.

70. We are also conscious of the fact that the Corporate Debtor later defaulted on the settlement terms, the post-dated cheques were dishonoured. Consequent to the failure of the settlement in accordance with orders of this Appellate Tribunal in Comp. App. (AT) (Ins.) No. 968 of 2019 dated 06.12.2019 and 15.03.2021, the creditor revived the CIRP against the Corporate Debtor, which was allowed by Adjudicating Authority on 23.11.2021. The revival of CIRP makes it clear that the debtor remained liable for the debt. If the principal debtor continued to remain liable, the guarantor necessarily remained liable as well, because the guarantor's liability is co-extensive with that of the debtor. Nothing has been placed before us to show that the creditor ever agreed to treat the Appellant differently.

71. In view of these considerations, we are satisfied that the guarantee executed by the Appellant was never extinguished, substituted, or discharged. The settlement of 2019 did not cancel the old contract, nor did it release the guarantor. Instead, the breach of the settlement caused the full liability to revive. Therefore, the Adjudicating Authority was right in holding that the

Appellant continued to be liable as personal guarantor and that the creditor was entitled to proceed under Section 95.

72. We also take a look at the case the Appellant has referred to '*Mathew Varghese v. M. Amritha Kumar*, [(2014) 5 SCC 610]', to argue that a notice addressed in the wrong capacity affects the rights of the person receiving it. That judgment by Hon'ble Supreme Court, dealt with the strict procedural requirements under the SARFAESI Act for enforcing security over immovable property, where it was held that the statutory notice must comply with Section 13(2) before a secured asset can be sold. The present case is entirely different: it concerns a contractual guarantee under the IBC, where liability flows from an unconditional and continuing guarantee, and where the statute prescribes service of notice in a particular form before filing a Section 95 petition. The appellant had duly received the notice under section 95 and replied to the same. Therefore, the principle in *Mathew Varghese* does not assist the Appellant.

73. In view of the above findings, we do not find any infirmity in the impugned order. The Appeal is accordingly dismissed. Pending IAs, if any, are closed. No order as to costs.

[Justice N Seshasayee]
Member (Judicial)

[Mr. Arun Baroka]
Member (Technical)

[Mr. Indavar Pandey]
Member (Technical)

SA/Pragya (LRA)