



IN THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH

CP (IBC)/1/KOB/2025

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CP (IBC)/2/KOB/2025

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CP (IBC)/3/KOB/2025

(Under Section 95(1) of the IBC, 2016 read with Rule 7(2) of IBBI (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019)

In the matter of: Canara Bank vs.

Valsala T S

CP (IBC)/1/KOB/2025

MEMO OF PARTIES:

CANARA BANK

2nd Floor Canara Bank Building, Chitoor Road, Ernakulam South, Kerala 682016(ARM Branch)

... Petitioner/Creditor

-Vs--

SMT. VALSALA T S

Vani Nilayam, Kokkode, Maharaja Garden House No.54 Kowdiyar Post, Trivandrum-695.

... Respondent/Personal Guarantor

&

In the matter of: Canara Bank vs. Stephen Logan



CP (IBC)/2/KOB/2025

MEMO OF PARTIES:

CANARA BANK

2nd Floor, Canara Bank Building, Chittoor
Road, Ernakulam South, Kerala
682016(ARM Branch)

... Petitioner/Creditor

-Vs-

MR. STEPHEN LOGAN

5, Wynfort Lodge, Moira, Craigraron,
United Kingdom

... Respondent/Personal Guarantor

&

**In the matter of: Canara Bank vs. P A
Nazeeb**

CP (IBC)/3/KOB/2025

MEMO OF PARTIES:

CANARA BANK

2nd Floor Canara Bank Building, Chittoor
Road, Ernakulam South, Kerala
682016(ARM Branch)

... Petitioner/Creditor

-Vs-

MR. P A NAZEEB

43/2291, PeediyakkalPeediyakkal Road,
Trikkannarvattom, Ernakulam North Post -
682 018...

Respondent/Personal Guarantor



Order delivered on: 09.07.2025.

Coram:

Smt. Madhu Sinha

Shri. Vinay Goel

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances:

CP (IBC)/1/KOB/2025

For the Petitioner : Mr. Akhil Suresh.

For the Respondent : Ms. Ammu Charles.

Resolution Professional : Mr. Balakrishnan Baburajan

CP (IBC)/2/KOB/2025

For the Petitioner : Mr. Akhil Suresh.

For the Respondent : Ms. Ammu Charles (respondent set ex-parte).

Resolution Professional : Mr. Balakrishnan Baburajan

CP (IBC)/3/KOB/2025

For the Petitioner : Mr. Akhil Suresh.

For the Respondent : Ms. Liza Meghan Cyriac.

Resolution Professional : Mr. Balakrishnan Baburajan

ORDER

Per Coram:

1. All three captioned Company Petitions have been filed by the same financial creditor against three different individuals, each accepted personal guarantees for the same debt of the same Corporate Debtor. Given that the legal and factual issues in these cases are identical, they have been heard together, and a common order is being passed.



2. These Company Petitions are filed by the Financial Creditor, **Canara Bank, Asset-Recovery Management Branch** under Section 95 of the Insolvency & Bankruptcy Code, 2016 (hereinafter 'the Code') read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, to initiate the insolvency resolution process in respect of **Smt. Valsala T S, Mr. Stephen Logan and Mr. P A Nazeeb**, Personal Guarantors to M/s Savute Textiles Private Limited, the Corporate Debtor, for default of a debt amounting to **Rs. 43,68,79,602/-** plus further interest thereon from 01.01.2024. The date of default is stated to be 14.06.2019.

The brief facts of the case, as mentioned in the Petitions, are as follows:

3. M/s Savute Textiles Private Limited, the Corporate Debtor, availed OD and PC/FDB/FDE Limit of Rs 20 Crores on various dates from 30.06.2014 to 31.01.2018. Total Amount of debt is a sum of Rs. 43,68,79,602/- (as on 31.12.2023) plus further interest from 01.01.2024 [OD Amount Rs. 37,04,36,657/- plus interest from 01.01.2024 and PC Amount Rs. 6,64,42,945/- plus interest from 01.01.2024].
4. The Petitioner has produced the following documents in support of these petitions, coincidentally, the numbering of all annexures in all three Petitioners are same:
- i. **Annexure A1, A5, A7, A12, A17** - Common Hypothecation Agreement and various Supplemental Agreements with Corporate Debtor dated



30.06.2014, 11.10.2014, 25.02.2015, 10.08.2016,
07.07.2017 respectively.

ii. **Annexure A25** - Deed of Guarantees

5. The Applicant submits that the Corporate Debtor defaulted on repayment of the credit facilities and was declared as a Non-Performing Asset (NPA) on 14.06.2019.
6. Subsequent to the account becoming NPA, recovery actions were initiated against the borrower. The Creditor filed an Original Application bearing no. OA NO. 309/2021 before the DRT-1, Ernakulam.
7. The Creditor submits that the Corporate Debtor has further acknowledged their liability to the debts on 01.03.2017 & 21.01.2020.
8. Thereafter, a petition under section 9 of IBC, 2016, was filed by M/s. Sulpa International against the Corporate Debtor for defaulting payments was initiated, and this Tribunal was admitted the same vide order dated 11.03.2022, and Corporate Insolvency Resolution Process was initiated against the Corporate Debtor. Financial Creditor consequently filed their claim against the principal borrower with the Resolution Professional, and the same was admitted by the Resolution Professional. Subsequently, the Corporate Debtor was put into liquidation by this Tribunal vide its order dated 06.07.2023. The amounts to be paid to the Financial Creditor is reflected in the balance sheet of the Corporate Debtor.
9. Due to non-payment of the default amount by the Corporate Debtor and in view of the co-extensive liability of the guarantors (respondents herein) under the Contract of guarantee, the Financial Creditor has filed



these Company Petitions for initiation of Insolvency Resolution Process against the Guarantors under Section 95(1) of IBC, 2016.

10. Originally, the Creditor failed to produce the Notice of Invocation of Guarantee along with these Company Petitions filed under Section 95 of IBC, 2016 and pursuant to the direction of this Tribunal and imposition of cost vide order dated 30.05.2025, the Creditor filed the Notice of Invocation of Guarantee dated 29.01.2024 against the guarantors, for the default of Rs. 43,68,79,602/-plus further interest thereon from 01.01.2024. The said Notice of Invocation of Guarantee and Proof of service of this notice was produced by way of a memo dated 03.06.2025.
11. It is submitted that the creditor served demand notices on the guarantors in Form B dated 11.03.2024 as required under Section 95(4)(b) of the Code read with Rule 7(1) of the Rules. The said demand notice was duly delivered to the Respondents, and proof of service of the demand notice is produced along with these Petitions.
12. On presentation of the Petitions by the Financial Creditor, this Tribunal vide order its dated 09.04.2025 appointed Mr. Balakrishnan Baburajan, Insolvency Resolution Professional having Registration No: IBBI/IPA-002/IPN00544/2017-2018/11691, as the Resolution Professional (hereinafter referred to as "RP") under Section 97 of the Code to carry out the insolvency resolution process of **(1) Smt. Valsala T S, (2) Mr. Stephen Logan, and (3) Mr. P A Nazeeb**, , Personal Guarantors to the Corporate Debtor.
13. This Tribunal directed the so-appointed RP to file his report within 10 days from the date of his appointment as RP of the Personal Guarantors.



The Resolution Professional has filed the report before this Tribunal on 24.04.2025, recommending the acceptance of these petitions filed under Section 95 of IBC, 2016. The key findings and observations of the RP in each Petition are as follows:

RP's findings in CP (IBC)/1/KOB/2025

- i. As per the **Guarantee Agreement executed on 31.01.2018**, PG has given a guarantee to the Financial Creditor to pay the debts of the Corporate Debtor, to the extent of the Guarantee provided by her. The total liability enforceable against Mrs. Valsala TS is **Rs. 1,50,00,000/- (Indian Rupees One Crore Fifty Lakh Only)** plus interest thereon compounded monthly and expenses, charges, penal interest, etc.
- ii. No reply was received from the Personal Guarantor for the notice issued by the Resolution Professional requesting her to furnish details of repayment of the debt claimed as unpaid by the Creditor.
- iii. Financial Creditor demanded **Rs. 43,68,79,602/-** plus further interest thereon from 01.01.2024, through the Demand Notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of the Personal Guarantors to Corporate Debtors) Rules, 2019. As per the Guarantee Agreement executed by the PG, her liability is limited to Rs. 1,50,00,000/- plus applicable charges. Financial Creditor has not produced any



statement/document showing liability of the Personal Guarantor based on the amount guaranteed by PG. As per the terms of the Guarantee Agreement, this personal guarantee is irrevocable.

- iv. Application filed against the PG is not barred by limitation.
- v. Corporate Debtor is now under Liquidation and as per the information received from the liquidator, the liquidation value of assets of the Corporate Debtor is Rs. 31,32,000/- only.

RP's findings in CP (IBC)/2/KOB/2025

- i. RP has similar findings as in CP (IBC)/2/KOB/2025 and have stated that Financial Creditor demanded **Rs. 43,68,79,602/-** plus further interest thereon from 01.01.2024, through the Demand Notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of the Personal Guarantors to Corporate Debtors) Rules, 2019. As per the **Guarantee Agreement dated 31.01.2018** executed by the PG, liability is limited to Rs. 1,50,00,000/- plus applicable charges. Financial Creditor has not produced any statement/document showing liability of the Personal Guarantor based on the amount guaranteed by PG. As per the terms of the Guarantee Agreement, this personal guarantee is irrevocable.



RP's findings in CP (IBC)/3/KOB/2025

- i. As per the **Guarantee Agreement executed on 19.07.2017**, PG has given a guarantee to the Financial Creditor to pay the debts of the Corporate Debtor, to the extent of the Guarantee provided by her. The total liability enforceable against the Personal Guarantor is **Rs. 18,50,00,000/- (Indian Rupees Eighteen Crore Fifty Lakh Only)** plus interest thereon compounded monthly and expenses, charges, penal interest, etc.
- ii. PG sent an unsigned PDF reply in response to the notice issued by the Resolution Professional requesting to furnish details of repayment of the debt claimed as unpaid by the Creditor. PG denied his liability to pay the debt as a Personal Guarantor
- iii. RP has made similar findings as in CP (IBC)/1/KOB/2025 and CP (IBC)/2/KOB/2025 and has stated that Financial Creditor demanded **Rs. 43,68,79,602/-** plus further interest thereon from 01.01.2024, through the Demand Notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of the Personal Guarantors to Corporate Debtors) Rules, 2019. As per the Guarantee Agreement executed by the PG, liability is limited to Rs. 18,50,00,000/- plus applicable charges. Financial Creditor has not produced any statement/document



showing liability of the Personal Guarantor based on the amount guaranteed by PG. As per the terms of the Guarantee Agreement, this personal guarantee is irrevocable.

ii. All other findings by the RP are similar to those in other applications.

14. Thus, the Resolution Professional, through his reports filed under Section 99 of IBC, 2016, in all the captioned Company Petitions, had recommended acceptance of the application filed under Section 95 of IBC.

15. **Reply in CP (IBC)/1/KOB/2025**

The facts as explained by the Counsel for the Respondent and as narrated in their reply affidavit and response to the Resolution Professional's Report and written submissions are summarized hereunder:

- 1) The respondent had executed a guarantee agreement on 31.01.2018 to the Petitioner to pay the debts of the Corporate Debtor to the extent of guarantee provided, which is Rs. 1,50,00,000/- (Indian Rupees One Crore Fifty Lakhs Only), plus interest, expenses, charges etc.
- 2) The Respondent submitted that she had not received any service of the Company Petition, as the Financial Creditor had sent it to an address that had already been auctioned by the Financial Creditor itself. The said property, originally mortgaged by the Respondent as security for a loan to the Corporate Debtor, was no longer in the Respondent's



possession, a fact well known to the Financial Creditor. Nevertheless, the application was served at the old address, resulting in the Respondent not receiving notice and being unable to appear before this Tribunal. Consequently, the matter proceeded ex parte against the Respondent on 08.05.2025. Thereafter, the Respondent filed IA(IBC)/214/KOB/2025 seeking to set aside the ex parte order, and the application was allowed by this Tribunal on 06.06.2025.

- 3) The Form B demand notice and Form C application are defective, as the entire default amount has been demanded instead of the limited liability of the PG. This constitutes a material defect that strikes at the root of the application. Furthermore, the acknowledgment of debt by the borrower has not been co-signed or accepted by the Respondent/Personal Guarantor, making the demand untenable.
- 4) The Financial Creditor issued a demand notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 to the respondent without first invoking the personal guarantee provided by the respondent, which is a prerequisite for initiating insolvency proceedings against a personal guarantor. As held in ***State Bank of India v. Deepak Kumar Singhania*** (NCLAT, 28.02.2025), a



statutory demand notice under Rule 7(1) does not amount to the invocation of the guarantee, which must be done separately in accordance with the terms of the guarantee deed. Since no such invocation has been made or evidenced, the application is premature and not maintainable. Thus, the application filed is against the judicial dictum, and the demand made is incorrect, and RP has failed to point out the same.

- 5) It is submitted that the date of default mentioned in the Section 95 Application and Form B Demand Notice is stated as the date of NPA, i.e., 14.06.2019. However, it is a well-settled legal principle that a guarantor's liability arises only upon invocation of the guarantee through a formal demand. Therefore, the date of NPA cannot be treated as the date of default for the guarantor. This constitutes a material defect that affects the very basis of the Application, rendering it liable to be dismissed.
- 6) The Respondent submitted that the Financial Creditor has failed to provide a reasonable explanation for not invoking the guarantees of the other guarantors. Furthermore, the Application and the remedy sought are time-barred.
- 7) It is submitted that insolvency proceedings against personal guarantor can impose significant liabilities that may severely impact the daily life of an otherwise indisposed individual. In the present case, the respondent is a 67-year-old woman suffering from multiple health issues.



- 8) It is submitted that Report of the Resolution Professional is made without appreciating the facts and is in contradiction of law or principles of guarantee and needs to be set aside. The resolution professional must remain impartial and cannot merely reproduce the financial creditor's statement. They are obligated to independently assess and verify the creditor's claim.

Proceedings in CP (IBC)/2/KOB/2025

16. The respondent in this case was proceeded *ex parte* vide order dated 08.05.2025. Subsequently, on 16.06.2025, learned counsel, Ms. Ammu Charles, appeared and submitted across the bar that she had received instructions to appear on behalf of the respondent in this matter. No formal application for setting aside the *ex parte* order was filed. However, in the interests of justice, learned counsel Ms. Ammu Charles was permitted to join the proceedings, subject to the clear condition that the respondent would remain liable to face the consequences of the *ex parte* order. Counsel submitted a written Memo of Appearance on behalf of the Respondent. Nevertheless, the respondent had been allowed to participate in the proceedings and raise any legal issues. However, it appears from records that no Vakkalath or reply on behalf of the PG has been filed.
17. The contentions and facts raised in this application are similar to those raised in CP (IBC)/1/KOB/2025.

Reply in CP (IBC)/3/KOB/2025

18. Respondent submitted that this application is barred by limitation and that only this Tribunal has the power to arrive at a finding on the



limitation, and RP has no power to decide on limitation, and RP should have referred the issue of limitation for the consideration of this Tribunal.

19. Respondent alleged that the Demand Notice dated 29.01.2024 for invocation of guarantee dated 29.01.2024 filed belatedly before this Tribunal by way of memo is illegal. Respondent has objected to taking the same on record. Respondent submitted that as per Rule 40 of the National Company Law Tribunal Rules 2016 ("NCLT Rules 2016"), which is given under Part IV of the Rules dealing with "General Procedure", states that parties to a proceeding shall not be entitled to produce before the Bench additional evidence, either oral or documentary. Further the action of the Applicant contravenes the procedural requirement under Section 95(4) of the IBC read with Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, which require the application in Form C to be accompanied by evidence of debt and default, such as the guarantee agreement or invocation notice. Further, no explanation has been provided on why they failed to produce it at the first instance. Respondent also alleged that the annexures in the memo are wrongly marked. Admitting the disputed evidence at this stage would cause grave prejudice to the Respondent, and the belated submission violates natural justice.
20. Notice of Invocation is illegal and arbitrary as the Financial Creditor has already issued another notice of invocation through Section 13(2) Notice issued by the Financial Creditor to the respondent dated



- 02.03.2021. It is alleged that the Financial Creditor began issuing notices in February 2021, using a fraudulent guarantee agreement to all alleged guarantors. As evident, the respondent has attached a guarantee invocation sent on the same date to the respondent's mother. Consequently, the deadline for the applicant to file this application has been running since February 2021.
21. It is alleged that the Creditor's reliance on the invocation notice dated 29.01.2024 is misplaced, as the enforceability of the alleged guarantee lapsed prior to 2024. This is due to the Applicant's prior knowledge of the default and failure to act within the limitation period. The loan account of Corporate Debtor was classified as a Non-Performing Asset (NPA) before 2021, as shown by the Section 13(2) notice under the SARFAESI Act, 2002, issued by the Applicant in 2021.
 22. Respondent submitted that the acknowledgment of debt in the Balance Sheet by the Directors of the Corporate Debtor cannot be considered here as the respondent was never a Director of the CD. The acknowledgment, if it is given, is given personally by the Directors who have signed the Balance Sheet and further submitted that mere acknowledgment of debt in the Balance sheet is not sufficient for the purpose of Limitation, as admission of debt should be clear, unambiguous, unqualified, and unequivocal.
 23. It is submitted that an Adjudicating Authority under the IBC is not a substitute forum for a collection of debt in the sense that it cannot reopen debts which are barred by law, or debts, recovery whereof have become time-barred.



24. The Demand Notice issued is for the entire default amount. No demand notice for an amount of Rs 18.50 Crores has been sent by the Financial Creditor. If the amount stated as the defaulted amount is double than what the respondent has allegedly guaranteed; the demand notice which is a statutory requirement fails and all consequent insolvency proceedings fails. The insolvency proceedings could be initiated only upon failure to comply with a proper and legal demand notice. If the demand notice is illegal and defective, there is no fault with the Respondent in not complying with the same.
25. Annexure R2 Demand Notice lacks supporting account statements to explain the increase in debt from 18 crores to 43 crores, even while considering interest or penalties. The Resolution Professional has also not verified these figures through the account statements. As a result, the claimed debt remains unverified, hypothetical, and disputed. The debt is unquantified as the Financial Creditor has failed to establish the precise amount enforceable against the respondent. There is no clarification as to how the excess amount demanded applies to the respondent. The debt is hypothetical as the excess loans beyond the amount mentioned in the alleged guarantee agreement is not justified, as there is no consent from the respondent.
26. The Applicant Financial Creditor has submitted a Guarantee document dated 19.07.2017, allegedly signed by the respondent, for a loan of Rs. 18.5 crores. However, it is evident that the Applicant FC continued to extend further financial credit to the Corporate Debtor beyond 2017, up to 2023. The respondent is not a party or privy to that. In another proceeding, the Applicant FC itself produced documents showing the



continued disbursement of debt. Since the respondent was neither a party to nor privy to these subsequent transactions, and such extensions of credit were made beyond the scope of the original guarantee, the same are not binding on the respondent. Therefore, as per established principles of guarantee law, any additional debt extended without the guarantor's consent releases the guarantor from liability, even assuming the guarantee was validly executed.

27. Respondent submitted that the debt itself is not disputed on multiple grounds. Respondent alleges fraud, forgery, and misrepresentation, and submits the police complaint filed with Kochi Police Station supports their arguments. Respondent further alleged that the mail received from Mr. Logan admits the respondent's directorship was a legal fiction to use his mother's property, confirming fraudulent misrepresentation.
28. The Applicant previously submitted an "Indemnity cum Affidavit" dated 28.03. 2015, signed by the Respondent's mother, before another forum to support a loan application. In that affidavit, the mother is listed as a borrower, not a guarantor. This further calls into question the legitimacy of the underlying debt.
29. The Financial Creditor and RP have not explained the reasons for non-initiation of insolvency proceedings against other guarantors.
30. Respondent alleges that the procedure is vitiated by fraud. It is further submitted that the Resolution Professional has omitted some material facts while recommending admissions of this application and has blindly followed the documents handed over by the Financial Creditor.



31. Respondent is not liable for any debts of the Corporate Debtor and submits that loan limits were enhanced without considering due diligence. The Financial Creditor for namesake has executed hypothecation agreements; however, none have been acted upon. The Financial Creditor's negligence prejudices the Respondent, as the escalation of the alleged debt to Rs. 50 Crores is partly attributable to the Applicant's failure to monitor the CD's operations and assets, which could have mitigated losses.
32. Respondent alleges that the Financial Creditor, in collusion with the Corporate Debtor, represented by Mr. Vinesan and Mr. Stephen Logan, the erstwhile Managing Director and Director respectively, unlawfully and through misrepresentation induced the respondent to sign the guarantee documents for an amount of Rs. 18.50 crores, if indeed such documents were signed by him and alleged that the Petitioner bank misrepresented and committed fraud against the respondent to sign alleged guarantee agreements.
33. It is submitted that the officials of the Financial Creditor misrepresented to the respondent that the signatures are required for pledging the property of the mother of the respondent. The fact that the respondent, who was never a related party, was made personally liable for the millions of rupees of loan taken by the CD was concealed from the respondent when he was made to sign on some papers.
34. It is alleged that there was collusion between the Financial Creditor, and Corporate Debtor. The Resolution Professional has not considered or answered this allegation.



35. Respondent submits that no demand notice was issued to them for an amount of Rs. 18.50 crores. The demand notice issued is for the entire default amount. The liability as per the alleged guarantee agreement is limited to Rs. 18.50 crores; however, the Financial Creditor has extended further loans, without the consent of the Respondent, as is evidenced by the lack of any amended guarantee agreement. Hence, the said notice is defective and non-compliant with the procedural requirements of the Rules.

Findings and Analysis

36. We have heard both sides at length and have also gone through the material available on record. For fair and judicious adjudication of the captioned cases, we would like to refer to the guarantee agreements executed by individual guarantors/respondents in each case. The relevant portion of the guarantee agreements dated 31.01.2018 in CP(IBC)/01/KOB/2025 & CP(IBC)/02/KOB/2025 is against the personal guarantors, Smt. Valsala T S and Mr. Stephen Logan are reproduced as under:

*“.....and **CANARA BANK**, a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, having its Head Office at Jayachamarajendra Road, Bangalore and among others an office at Kanjikode, and represented by their Manager and duly constituted Attorney Suresh Kumar KG herein after termed the ‘Bank’ which expression shall be deemed to include their assigns, successors and attorneys witnesseth*
*.....The total liability enforceable against the guarantor/s under this agreement shall not exceed a sum of **Rs 1,50,00,000** (Rupees One crore Fifty lakhs Only) Plus interest thereon at 5.50 % per annum above the Marginal Cost of Funds based Lending Rate (MCLR) with a minimum of 13.90% per annum compounded monthly/quarterly/half yearly from the date of demand by the Bank upon the guarantor/s for payment and expenses, charges, penal interest, etc, debited in the account from time to time as may be specified by the Bank. The Guarantor/s further agree/s that*



*the above amount of **Rs 1,50,00,000/- (Rupees One Crore Fifty lakhs Only)**. is exclusive of interest, penal interest, expenses, charges etc, debited in the account from time to time and the demand made by the bank in this regard shall be binding on the guarantor/s.....”*

37. Guarantee Agreement dated 19.07.2017 between the Corporate Debtor & Mr. P A Nazeeb, Personal Guarantor in CP(IBC)/03/KOB/2025 is as below:

*“.....The total liability enforceable against the guarantor/s under this agreement shall not exceed a sum of **Rs 18,50,00,000 (Rupees Eighteen crores Fifty lakhs Only)** Plus interest thereon at 5.50 % per annum above the Marginal Cost of Funds based Lending Rate (MCLR) with a minimum of 13.90% per annum compounded monthly/quarterly/half yearly from the date of demand by the Bank upon the guarantor/s for payment and expenses, charges, penal interest, etc, debited in the account from time to time as may be specified by the Bank. The Guarantor/s further agree/s that the above amount of **Rs 18,50,00,000/- (Rupees Eighteen Crores Fifty lakhs Only)**. is exclusive of interest, penal interest, expenses, charges etc, debited in the account from time to time and the demand made by the bank in this regard shall be binding on the guarantor/s.....”*

38. The relevant portion of the Letter of **invocation of guarantee** dated 29.01.2024 submitted subsequently by way of memo in CP(IBC)/01/KOB/2025 and CP(IBC)/02/KOB/2025 is reproduced hereinbelow:

*“Ref: OD and PC/FDB/FDE Limit sanctioned to M/s Savute Textiles Private Limited on various dates from 30.06.2014 to 31.01.2018. Present liability: **Rs.43,68,79,602/-** plus interest thereon from 01.01.2024 up to the date of realization of the amounts due. (for OD account Rs.37,04,36,657/ plus interest @ 17.95% & for PC account Rs. 6,64,42,945/- plus interest @ 13.90%)
Please refer to the unconditional and irrevocable **guarantee dated 13.07.2017** executed by you in favour of Canara Bank by way of security for the OD and PC/FDB/FDE Limit sanctioned to M/s Savute Textiles Private Limited on various dates.....
.....**Under these circumstances, we hereby invoke the guarantee issued by you.***



*We call upon you to remit an amount of **Rs.43,68,79,602/-** (Rupees. Forty Three Crore Sixty Eight Lakhs Seventy Nine Thousand Six Hundred and Two only) Plus applicable interest thereon from 01.01.2024 within 7 days of receipt of this letter, failing which we will be constrained to legal measures to recover the amount due.”*

39. The relevant portion of the Letter of **invocation of guarantee** dated 29.01.2024 submitted subsequently by way of memo in CP(IBC)/03/KOB/2025 is as follows:

*“.....Please refer to the unconditional and irrevocable **guarantee dated 19.07.2017** executed by you in favour of Canara Bank by way of security for the OD and PC/FDB/FDE Limit sanctioned to M/s Savute Textiles Private Limited on various dates..... **Under these circumstances, we hereby invoke the guarantee issued by you.***

*We call upon you to remit an amount of **Rs.43,68,79,602/-** (Rupees. Forty Three Crore Sixty Eight Lakhs Seventy Nine Thousand Six Hundred and Two only) Plus applicable interest thereon from 01.01.2024 within 7 days of receipt of this letter, failing which we will be constrained to legal measures to recover the amount due.”*

40. The relevant portion of the demand made by the Petitioner against all Personal Guarantors as per the Form B Demand notices issued against the Respondents is as follows:

*This letter is a demand notice of unpaid debt in default due from
..... (Personal Guarantor)*

Please find particulars of the unpaid debt in default below:

PARTICULARS OF DEBT		
1	<i>Total Outstanding debt (including an Interest or penalties)</i>	<i>Rs.43,68,79,602/- with further interest thereon from 01.01.2024.</i>
2	<i>Amount of debt in default</i>	<i>Rs.43,68,79,602/- with further interest thereon from 01.01.2024.</i>
3	<i>Date when the debt was due</i>	<i>Canara Bank had extended OD and PC/FDB/FDE Limit Rs. 20 Crores to M/s Savute Textiles Private Limited on various dates from 30.06.2014 to 31.01.2018</i>



41. So, in all the captioned cases, the demand of Rs. 43,68,79,602/-plus further interest thereon has been raised by the Petitioner Bank against the individual guarantors, whereas as per the above-reproduced guarantee Agreements, the liability of Smt. Valsala TS (Respondent in CP(IBC)01/KOB/2025), Mr. Stephen Logan (Respondent in CP(IBC)02/KOB/2025), and Mr. P A Nazeeb (Respondent in CP(IBC)03/KOB/2025), was limited to the extent of Rs. 1,50,00,000/-, Rs. 1,50,00,000/- & Rs. 18,50,00,000/- respectively.
42. Counsel for the Petitioner bank submitted that as the amount claimed in the Demand Notice is more than the threshold limit so it would not affect the guarantor in any manner and the Petition on that account is not defective.
43. Having heard both sides, we are of the opinion that the insolvency and bankruptcy process under the Insolvency and Bankruptcy Code, 2016, has serious ramifications on individual guarantors, against whom such process has been initiated. It affects not only those persons but their families and all other persons with whom the guarantors have financial dealings. Once the process under the Insolvency and Bankruptcy Code has been triggered against a person, the other third parties would have no other option but to participate in such process or to relinquish their alleged rights. So, the proceedings have their effects and consequences *in rem*, though at initiation proceedings are *in personam*. So, the guarantors as well as creditors must be very conscious and vigilant about the steps taken by either side.



44. Guarantee Agreement is a tripartite agreement wherein a person accepts its liability for some other person who is the real beneficiary of such agreement. The guarantor usually would not be the beneficiary of the loan for which he has given his guarantee and would be bound by the terms of the guarantee, though there is a legally recognised and enforceable right of subrogation, i.e., the right to recover from the principal borrower. But somehow, upon invocation of the guarantee as per the contract, the guarantor is bound to oblige such demand; otherwise would become liable to face legal consequences. So, Demand Notice and invocation of guarantee is a crucial document which, at first, triggers the guarantee clause in operation and reminds a guarantor that borrower has committed default and now it is the guarantor's turn to repay the loan and secondly, Demand Notice is an opportunity for the guarantor to repay the dues to avoid legal action. So, there should be a legal and valid demand in the Guarantee Agreement.

45. Section 128 of the Indian Contract Act, 1872 reads as under:

128. Surety's liability. —The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract

46. As per the above section, the terms of guarantee would govern the extent of liability, and further liability of the guarantor can be limited or varied with the principal borrower. The liability of the guarantor and principal borrower does not always need to be the same. The liability of the guarantor can be limited, and even the guarantee can be continuing or otherwise. So, the terms of the guarantee would be the access to determine the extent of liability of the guarantor.



47. In this case, all communications from the bank to the guarantor mention a demand of Rs. 43,68,79,602/- against a credit facility of Rs. 20,00,00,000/-. However, as per the guarantee agreement, the liability is limited to Rs. 1,50,00,000/- each for Smt. Valsala T. S. and Mr. Stephen Logan, and Rs. 18,50,00,000/- for Mr. P. A. Nazeeb, who are the personal guarantors.
48. Therefore, in the demand itself, the bank should have specified the extent of each guarantor's liability. The bank has erred in claiming the entire amount from the personal guarantors, contrary to the terms of the guarantee. Alternatively, it would be appropriate to state that the bank has failed to produce any evidence on record to show that the guarantor ever executed or accepted liability for the credit facility of Rs. 20,00,00,000/- as claimed in the demand notice.
49. The Demand Notice as issued contains some other credit facilities also for which the guarantor did not agree to accept his guarantee. Further, there is no stipulation in the Demand Notice about the limited liability of the guarantors, nor is there any indication that guarantors would be liable to pay only to the extent of their guarantee, though the borrower is liable to pay the entire sum due. In the absence of any such stipulation or clarification, it cannot be said that there was a valid demand.
50. The Petitioner being a premier leading banking institution having its own legal department, such type of patent error/mistake from their part would render the entire process invalid and it would affect the rights, peace of mind and financial dealings of other third parties who have no connection with the mistake committed by the Petitioner Bank.



51. Even in case Nos. CP (IBC)/1/KOB/2025 & CP (IBC)/2/KOB/2025, the date of the Guarantee Agreement has been stated as 31.01.2018, whereas with Notice of invocation of guarantee, dated 29.01.2024, subsequently produced by way of memo, refers to a different date. So, even otherwise, that invocation of guarantee is defective.
52. There should be synchronization between the guarantee agreement and the demand notice or the invocation notice. Any variation or inconsistency would render the demands invalid. Such a material defect in the demand notice/invocation notice would bar the initiation of any process under Section 95 of the IBC, 2016.
53. Further, Respondent in CP(IBC)/3/KOB/2025 has made certain allegations of fraud and collusion between the Financial Creditor and Corporate Debtor. However, the respondent has not placed on record any material to demonstrate that this issue was ever raised during the currency of the loan or prior to the filing of the captioned Company Petition. Therefore, such objections are not tenable
54. It is the duty of the Resolution Professional to prima facie consider the limitation aspect. Though the Resolution Professional has no right to decide the limitation of a matter, certainly, it is his duty to apprise the Adjudicating Authority about the aspect of limitation involved in a given matter.
55. During the pendency of the captioned Company Petitions, Counsel for the Financial Creditor submitted that he intends to produce the Guarantee Agreement subsequently executed by the Guarantors for enhanced credit facilities. Such documents, however, were neither produced before the Resolution Professional nor at the time of filing of



these Petitions under Section 95 of the IBC,2016, nor even at a later stage.

56. Despite providing ample opportunity, the Petitioner bank has failed to satisfy the bench on the amount mentioned in the demand notice (Rs. 43,68,79,602/-) in all the cases. The computation of the amount claimed in all three demand notices was never explained. It is quite apparent that while the guarantors in all the cases mentioned a limiting amount of the guarantor's liability, the bank has simply demanded from them the amount of the loan outstanding in the principal borrower's account. This makes the demand invalid and inadmissible.
57. So, we feel it judicious and fair to dismiss the captioned Company Petitions with clear observations that if the Financial Creditor intends to move afresh, they will be able to do the same in accordance with law and would be bound to face all legal and factual consequences on account of limitation, etc in accordance with law.
58. The Petitioner is allowed to approach this Tribunal after raising a valid demand through fresh Demand Notices in accordance with law in its own discretion and subject to the Limitation Act provisions.
59. Having regard to the conspectus of facts of the captioned Company Petitions and the issues discussed above, this Adjudicating Authority is of the considered view that the present Company Petitions deserve to be dismissed and are accordingly **dismissed**.
60. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsels for information and for taking necessary steps.



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61. Let the certified copy of the order be issued upon compliance with requisite formalities.
62. File be consigned to records.

SD/-
MADHU SINHA
(MEMBER TECHNICAL)

SD/-
VINAY GOEL
(MEMBER JUDICIAL)

Signed on this the 9th day of July, 2025.

Adarsh

Arun