



**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – I**

CP (IB) No.203/95/HDB/2021

(Under Section 60(2) and Section 95 of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy (Application to the Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to the Corporate Debtors) Rules, 2019.

**IN THE MATTER OF MR. K. SHASHIDHAR (PERSONAL
GUARANTOR TO M/S. KAMINENI STEEL AND POWER INDIA
LIMITED)**

Between:

Central Bank of India

A Banking Institution established under the Banking Companies (Acquisitions and Transfer of Undertakings) Act, 1970, having its registered office at Chandramukhi building, Nariman point, Mumbai and a branch inter alia called as SAM-V Branch, Hyderabad, Telangana State. Represented by its Chief Manager/Authorized Representative Mr. K. Navajeevan.

... Petitioner/Financial Creditor

A N D

1. Mr. K. Shashidhar,
S/o. K.Suryanarayana, R/o. Kamineni House,
King Koti road, Hyderabad – 500 001.

... Respondent No.1/Personal Guarantor

2. M/s. Kamineni Steel and Power India Limited
A company incorporated under the provisions of the Companies Act, 1956 having its registered office at Kamineni House, 4th Floor, King Koti,
Hyderabad – 500 001.

... Respondent No.2/Corporate Debtor

DATE OF ORDER: 29.01.2025



CORAM:

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA,
HON'BLE MEMBER (JUDICIAL)
SHRI. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

Appearance: -

For Petitioner/Creditor : Mr. VVSN Raju, Counsel
For Personal Guarantor/R1 : Mr.P.Vikram, Senior Counsel with
Mr. B.Nitish, Counsel
Resolution Professional : Mr.Madasa Kumar, Resolution Professional
For Resolution Professional : Mr.Ch.Srinivasulu, Counsel

PER: BENCH

1. This instant petition is filed by the Financial Creditor Central Bank of India under Section 95 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 60(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 (hereinafter referred to as Personal Guarantors Insolvency Rules, 2019), for initiation of insolvency resolution process in respect of the Personal Guarantor to the CD i.e. the Respondent No.1 herein before this Hon’ble Tribunal under the provisions of the IBC, 2016.
2. **The averments of the Petition in brief as follows:**
 - 2.1 It is averred that the Respondent No. 2, namely, Kamineni Steel and Power India Limited (“Corporate Debtor” or “CD”), had been granted, from time



to time, various credit facilities, since 2011, in the form of Fund based limits by the Company Petitioner (“Financial Creditor” or “FC”) herein along with other consortium member banks to meet its business needs. The Respondent No.1 herein executed Deed of Guarantee dated 24.12.2014 guaranteeing the repayment of the said credit facilities.

2.2 It is averred that the share of the Applicant Bank in the said facilities sanctioned by the consortium banks under the leadership of Indian Bank is Rs.156.16 Cr. The Respondents herein, who are the borrower and the guarantor for the said credit facilities, executed necessary documentation on 11.02.2015, thereby securing the total amount of Rs. 1322.91 Crore sanctioned by the consortium to the CD and further executed revival letter dated 31.01.2015 and 04.05.2015.

2.3 It is averred that the Respondent No. 1/Personal Guarantor herein executed a Deed of Guarantee dated 24.12.2014 under which he undertook:

“In the event of any default on the part of the Borrower, in payment/ repayment of any moneys referred to clause 2 above, or in the event of any default on the part of the Borrower to comply with or perform any of the terms, conditions and covenants contained in the Facility Agreement and the other Transaction Documents, the Guarantors shall, upon demand, forthwith pay to the lenders without demur all the amounts payable by the Borrower under the Transaction Documents. Any such demand made by the Lenders on the Guarantors shall be final, conclusive and binding notwithstanding any difference or any dispute between the Lenders on the Guarantors shall be final, conclusive and binding notwithstanding any difference or any dispute between the Lenders and the Borrower/arbitration or other legal proceedings, pending before any court, tribunal, arbitrator or any other authority.”



- 2.4 It is averred that an amount of Rs. 287.64 Cr is due and payable by the CD to the FC herein as on 14.12.2020. Statement of Accounts with bifurcation of Credit Facilities showing the outstanding debit balance are enclosed to the Application. After classification of accounts as NPA on 31.12.2015 the loan accounts of the CD were transferred to the Petitioner Branch for recovery of the dues as per the Petitioner Bank's policy.
- 2.5 It is averred that the said Guarantee Agreement was invoked by the Bank vide its Demand Notice dated 21.01.2017. However, the Respondents failed to make the payment as demanded in the notice. The Bank filed OA. No. 742/2018 on the file of the DRT - II Hyderabad on 23.12.2017 against the CD and the Guarantors including the Respondent No. 1 for recovery of total dues amounting to Rs.197.28 Cr as on the date of the suit and it is pending.
- 2.6 That the CD was referred to Hon'ble National Company Law Tribunal referred by Indian Bank under the Insolvency and Bankruptcy Code, 2016 for initiating CIRP vide CP (IB): 11/10/HDB/2017 dated 26.10.2018. As there has been no resolution plan, the CD was ordered for liquidation and the process is going on. Therefore, this Application is filed before this Hon'ble Tribunal in terms of the provisions of Section 60(2) of the Code.



2.7 It is averred that the Respondent No. 1 was issued a demand notice on 15.12.2020 date demanding an amount of Rs. 287,63,91,873.00/- in terms of the Regulation, rule 7 (1) of the Insolvency and Bankruptcy (Application to the Adjudicating Authority for insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019. However, the Respondent No.1 did not pay the amount despite service of notice. That Cause of Action for this arose on 21.01.2017 when the guarantee was invoked by the Bank. As the Respondent herein failed to pay the amount the cause of action is continuing. The same was elaborately explained by the Hon'ble Supreme Court in the matter of *Margaret Lalita Samuel vs Indo Commercial Bank Ltd.* Hence the cause of action arose on the said date mentioned hereinabove and it is continuing till date.

2.8 It is averred that due to outbreak of the COVID-19 and the consequent lockdown imposed by Central as well as State Governments commencing from 25.03.2020 to 31.05.2020, which was lifted in a phased manner, the Petitioner Bank could not initiate action for filing this Application. Therefore, a separate application for condonation of the delay of 201 days in filing this application is also filed simultaneously. It is also submitted that as per the Order dated 23.03.2020 of the Hon'ble Supreme Court in the matter of SUO MOTU PETITION (CIVIL) NO. 3/2020 period shall stand



extended with effect from 15.03.2020 till further orders. Therefore, after excluding a period of 201 days, this Application is filed within 3 years from the date of cause of action as per Article 137 of the Limitation Act.

3. Report dated 27.08.2021 is filed by the Resolution Professional under Section 99 of the Insolvency and Bankruptcy Code, 2016, stating that:

3.1 The Resolution Professional having been appointed by this Tribunal vide orders dated 13.08.2021, filed report reiterating the facts of the Petition stated that he had sent a letter to the Personal Guarantor on 23.08.2021 to clarify as to whether any payment has been made to the creditor in the interim i.e., after issuance of demand notice within one week. Upon enquiry and verification of the statement of account of the creditor, it is observed that no payment has been made by the Guarantor/ Debtor to the Creditor.

3.2 The Resolution Professional in his report stated that he had examined the matter under sections 99(1), 99(2), 99(3), 99(4), 99(5), 99(6)(a), 95(1), 95(4), 95(5), 95(6), 95(7), 99(6)(b), 99(7), 99(9) and 99(10) of the Insolvency & Bankruptcy Code, 2016, and observed that all the requirements enjoined in the above sections are fulfilled hence is of the opinion that it is just and equitable to initiate insolvency resolution process hence recommended for admission of this Company Petition against the Personal Guarantor.



4. The Respondent No.1/Personal Guarantor filed counter/ objections on 02.12.2021 to the Petition and the report, stating that:

4.1 It is averred that the Financial Creditor has filed an interim application on 19.08.2021 under section 5 of the limitation act seeking condonation of 201 days delay in the filing the present Company Petition. A bare perusal of the interim application would show that the Financial Creditor has issued an invocation notice on 21.01.2017 alleging that Personal Guarantor failed to make payment after 21.01.2017 and period of limitation for filing any case ends on 21.01.2020. The present Company Petition admittedly is filed on 27.07.2021 after period of limitation. The judgment relied by the creditor to save limitation are with effect from 25.03.2020 and does not save limitation before the said period. Therefore, the company petition filed after period of limitation is not maintainable and liable to be dismissed. It is not out of place to submit that when the condone delay application is pending interim moratorium order passed on 13.08.2021 is also not maintainable and whole procedure may be kept in abeyance till condone delay application is adjudicated by this Hon'ble Tribunal.

4.2 It is averred that the Financial Creditor has stated in their Company Petition (page no.4) that cause of auction arose on 21.01.2017 when the guarantee was invoked by the Financial Creditor. However, a copy of the notice dated



21.01.2017 is not filed along with other documents filed along with the Company Petition.

4.3 It is averred that the notice was issued to Personal Guarantor for the full loan amount given to the Corporate Debtor for which personal guarantee was not given by him. Hence the demand notice issued by the bank to Personal Guarantor on 21.01.2017 under SARFAESI for the full loan amount is not tenable and hence illegal. In view of the above fact, the Financial Creditor has deliberately not filed the demand notice dated 21.01.2017 along with other documents filed with the Company Petition. Additional to the above, it can observe the three-year period expired on 21.01.2020 as per the Limitation Act, 1972.

4.4 It is averred that the Lead bank/Indian Bank during March, 2016 had suddenly informed the Corporate Debtor and all other banks of the consortium vide their letter dated 10.03.2016 that the Corporate Debtor's loan account status has been marked as NPA with effect from 01.11.2014 on certain technical grounds. In response to above communication of Indian Bank/ Lead bank, the Corporate Debtor has given a detailed reply vide letter dated 02.04.2016, to the Lead bank Indian Bank with a copy to all member banks of the consortium. A copy of letter dated 10.03.2016 is filed herewith



as **Annexure-9**. A copy of reply dated 02.04.2016 is filed herewith as **Annexure-10**.

4.5 It is submitted that as can be observed from lead bank/ Indian Bank's letter dated 10.03.2016, nowhere it was mentioned that the account had become NPA because of non-payment of interest or instalment by the Corporate Debtor and was only due to Date of Commercial Commencement of Operation ("DCCO") issue which is more of a technical nature.

4.6 It is averred that the Financial Creditor/Petitioner had issued a demand notice on 15.12.2020 for which a reply was given by the personal guarantor on 29.12.2020 disputing the debt in default demanded by the Financial Creditor. The Petitioner along with other two banks i.e., Indian Overseas Bank & Bank of Maharashtra have filed an Original Application vide OA. No.742/2018 on 22.12.2017 against the Personal Guarantor before the DRT-II Hyderabad while the Corporate Debtor was under CIRP. It is submitted that the Personal Guarantor had filed a detailed counter to OA before the DRT on 23.12.2019. Copy of the OA No.742/2018 filed by Financial Creditor and two other banks and the counter dated 23.12.2019 filed by the guarantor are filed herewith as **Annexure-11 & 12**.



- 4.7 It is submitted that Indian Bank along with three banks i.e., Oriental Bank of Commerce, Andhra Bank & JM Financial Asset Reconstruction Company Limited have filed an Original Application against the guarantor before DRT-I Hyderabad i.e., OA No.582/2019 on 27.06.2019 while the Corporate Debtor undergoing CIRP. The personal guarantor had filed a detailed counter on 16.11.2019. Copy of OA.No.582/2019 and counter are filed herewith as **Annexure-13 & 14**.
- 4.8 It is further submitted that the Allahabad Bank had filed an original Application against the guarantor before DRT-I Hyderabad i.e., OA No.1149/2016 on 31.08.2016. The personal guarantor had filed a detailed counter on 29.10.2018 while the Corporate Debtor was under CIRP. Copy of OA No.1149/2016 and counter are filed herewith as **Annexure-15 & 16**.
- 4.9 In view of the objections not being considered, the personal guarantor filed a Writ Petition No.26258 of 2019 for stay on the proceedings at DRT, Hyderabad in IA No.1149/2016 pending disposal of the Writ Petition. The Hon'ble High Court was pleased to grant a stay of DRT proceedings vide its order dated 27.11.2019. Copy of the writ petition and the interim order are filed herewith as **Annexure-17 & 18**.



4.10 It is averred that the Resolution Professional filed an Affidavit in CP(IB) 11/10/HDB/2017 before this Adjudicating Authority on 03.11.2017 stating that the Resolution Plan considered on 27.10.2017 by the 9th CoC meeting be approved by the NCLT under provisions of the IBC, 2016. The NCLT, Hyderabad vide judgment dated 27.11.2017, in exercise of the powers conferred upon the Adjudicating Authority, under Section 31(1) of IBC, 2016, allowed the Company Petition of the Corporate Debtor in CP(IB) 11/10/HDB/2017. This Hon'ble Tribunal approved the Resolution plan/Revised OTS scheme of Rs.600 Crores as submitted by the Resolution Professional vide Affidavit dated 03.11.2017.

4.11 Aggrieved by the order dated 27.11.2017, passed by the National Company Law Tribunal, Hyderabad Bench at Hyderabad in CP(IB) 11/10/HDB/2017, three of the financial creditors, members of the CoC, namely Indian Overseas Bank, Central Bank of India and Bank of Maharashtra, filed Company Appeal under Section-61 of the IBC, 2016, being Company Appeal (AT) (INS) No. 335 of 2017, before the National Company Law Appellate Tribunal ("NCLAT") at New Delhi on 21.12.2017. The question of law raised by them was as to whether the Adjudicating Authority was empowered to accept the Resolution Plan, which has not been approved by not less than 75% of voting share of Financial Creditors.



4.12 Aggrieved by the Orders of Hon'ble NCLAT, New Delhi dated 06.09.2018, the Corporate Debtor had filed a civil appeal against the common impugned final order and judgment dated 06.09.2018 passed by the Hon'ble National Company Law Appellate Tribunal, New Delhi in Company Appeal (AT) (Insolvency) No. 335 of 2017, before the Hon'ble Supreme Court on 13.10.2018.

4.13 The Hon'ble Supreme Court vide Judgment dated 05.02.2019 disposed off the company appeal and dismissed the same. The Appeal dealt with a common question of law pertaining to the interpretation and mandate of Section-30(4) of the IBC 2016 in relation to the requisite percentage of vote of the voting share of the financial creditors to approve a resolution plan. The relevant part of judgment is given hereunder

“The learned counsel for the resolution applicant and other stakeholders supporting the resolution plan of the concerned creditors, next relied upon the amendment to Section 30(4) which has come into force w.e.f. 6th day of June, 2018 vide the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 (No.8 of 2018). Vide section 23(iii)(a) of the said amendment Act, the word “seventy five” in subsection (4) of Section 30 has been substituted by the word “sixty six”. Taking clue from this amendment, it was argued that since the amendment substitutes the threshold requirement of 75% to 66% and since the same has been brought into force when appeals were pending, the NCLAT was obliged to consider its effect on the present cases. Further, being substitution, it must be assumed that the amended provision was always there from the beginning of the Code.”

“The counsel appearing for the resolution applicant and the stakeholders supporting the resolution plan were at pains to persuade us to exercise powers under Article 142 of the Constitution of India in as much as, in both



the cases, the vote of approval exceeded more than 66% of the voting share of the financial creditors and yet the benefit of the amended provision could not be availed, as it came only during the pendency of the appeal before the NCLAT. The submission is that this Court may set aside the order passed by the Tribunal and relegate the parties in both the cases, before the NCLT for considering the proceedings afresh in light of the amended provision reducing the threshold requirement of percent of voting share of financial creditors to 66%. We are afraid, it is not possible for us to exercise powers under Article 142 of the Constitution which will result in issuing directions in the teeth of the provisions as applicable to the cases on hand. We, therefore, decline to accede to this request. Having answered the core issues and to avoid prolixity, we do not wish to dilate on the exposition in other reported decisions relied upon by the counsel.”

4.14 The Respondent No.1/Personal Guarantor was also filed reply to the Report of Resolution Professional, inter-alia stating that:

- a. It is submitted that the personal guarantee said to have been obtained for Central Bank of India for steel division was for Rs. 69.71 Crores only. It is surprise to note that Central Bank of India now made a claim of Rs. 287.63 Crores as debt in default which is wrongly claimed and filed the application before NCLT, Hyderabad u/s 95 of IBC code on 27.07.2021 against the guarantor. Demand notice of the bank dated 15.12.2020 also states it is only for Rs. 133.14 Crores only. The bank has not provided full working sheet from the date of advance till date, for this amount of Rs. 287.63 Crores. Hence this claim amount/amount of default of Rs. 287,63,91,873/- is wrong and hence hereby disputed.
- b. It is submitted that the Resolution Professional has not verified the documents filed with company petition by Central Bank of India on 27.07.2021 and 19.08.2021 under IBC Code with regard to correctness



of the amount of default and the amount claimed from the personal guarantor. The Resolution Professional has also not verified the correctness of the amount claimed in the demand notice dated 15.12.2020 and with that of the amount claimed under section 60(2) and 95 of IBC.

c. In the report filed under section 99, Resolution Professional simply stated that he has verified the documents and found correct and requested to approve the Company Petition filed by the bank under section 95. Due to several infirmities and non-compliance of Code and rules by the Resolution Professional, the report needs to be rejected.

5. **Rejoinder filed by the Petitioner on 16.03.2022 to the objections filed by the Respondent No.1, inter-alia stating that:**

5.1 The Petitioner in its rejoinder has submitted para wise reply to the counter/reply filed by the Respondent No.1. That the Financial Creditor denies each and every averment, contention and allegation made by Respondent No.1 in the Preliminary Counter that is contrary to and/or inconsistent with what is averred herein though not specifically denied.

5.2 It is submitted that the said Demand Notice dated 20.01.2017, inter alia, called upon Respondent No. 1 herein to repay the dues within 60 (sixty) days from the date of Notice. In view of the same, the period of limitation would begin to run from 21st day of March 2017 when the default occurred



and not from 20.01.2017 when the demand was made. It is further submitted that computing the period of limitation from the said date of default the limitation would have expired on 21.03.2020. Further the Hon'ble Supreme Court in *Re: Cognizance for extension of Limitation (M.A. No. 665 of 2021 in SMW(C) No. 3 of 2020)* was pleased to further extend the period of limitation till 02.10.2021 holding that *"In computing the period of limitation for any suit appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining ax on 15.03 2021. if any, shall become available with effect from 03.10.2021 (Para 8.1)"*.

5.3 It is submitted that the Company Petition vide CP(IB) No. 203/95/HDB/2021 is well within the period of limitation. Moreover, interim application filed vide IA. No. 492 of 2021 (filed by the FC seeking condonation of delay) have become infructuous in view of the decision of Hon'ble Supreme Court in the above relied Suo Motu petition and as such the Doctrine of Stare Decisis has found application in the facts of the instant petition. Therefore, this Hon'ble Tribunal may be pleased to declare the said I.A. No. 492 of 2021 as infructuous and further admit Respondent No. 1 to the Insolvency Resolution Process.



5.4 Without prejudicing and in addition to the above it is also submitted that the Corporate Debtor has also submitted an OTS Letter dated 28.08.2021 to the Financial Creditor herein, in addition to other consortium members, acknowledging their liability. Hence in view of the same, it is totally contradictory for the Personal Guarantor to plead the limitation. In this regard reliance is placed upon the decision of the Hon'ble NCLAT in the matter of *Ishita Halder vs Siba Kumar Mohapatra and another (Company Appeal (AT) (Insolvency) No. 282 of 2021)* dated 18.08.2021, wherein it categorically held that

“It is clear that offer of OTS can be relied on for the purpose of considering acknowledgement under Section 18 of Limitation Act. Issue of Recovery Certificate by DRT also is relevant for the purpose of calculating limitation. [Para 15]”.

Hence in view of the same a fresh period of limitation would begin to run from the date of OTS by the Corporate Debtor and accordingly the instant company petition is well within the period of limitation. Hence this Hon'ble Tribunal may be pleased to commit the Personal Guarantor i.e., Respondent No. 1 to Insolvency Resolution Process.

5.5 With reference to the reply to report of Resolution Professional, the Financial Creditor has no direct involvement in the preparation and submission of the IRP Report. Hence, the contents of the said paras are denied accordingly.



6. **The written submissions filed by the counsel for the Petitioner/Financial Creditor, by re-iterating the submissions of Petition and Rejoinder, apart from that:**

6.1 It is averred that in the additional documents that were taken on record by this Hon'ble Adjudicating Authority vide I.A No. 1250 of 2022, it is pertinent herein to bring to the kind attention of this Hon'ble Adjudicating Authority AOC-4 and all the necessary attachments in the form of audited balance sheets and financial statements of the Respondent No.2/Corporate Debtor for the period between 01.04.2017 to 31.03.2018, wherein the debt was duly acknowledged by the Corporate Debtor (from page no. 161 to 340 of IA No. 1250 of 2022). Therefore, consequent upon the acknowledgement of the debt by the Corporate Debtor in the balance sheets, the period of limitation is extended by a period of three years from 31.03.2018.

6.2 Further, it is submitted that a similar question of treatment of SARFAESI Notice as demand to pay under the personal guarantee fell for consideration before the Hon'ble Adjudicating Authority, Mumbai Bench in the matter of ***Bank of Maharashtra v/s. Mr.Anand Ghadigaonkar***, while considering the matter the Hon'ble Mumbai Bench held that the demand notice issued under Section 13(2) of the SARFAESI Act, is a valid invocation of personal guarantee. The Relevant portion of the judgment is extracted below:



“28.....Accordingly, the guarantee in question was invoked on 31.10.2014 Pursuant to notice under section 13(2) of the SARFAESI act and the respondent guarantors was also called upon to pay the amount claimed to be in default in the said notice”.

6.3 It is submitted that, notice issued under 13(2) of the SARFAESI Act, 2002 is liable to be treated as valid invocation of personal guarantee, in this regard, based on the order of the Hon’ble Adjudicating Authority, New Delhi Bench in the matter of ***Bank of Baroda Vs. Mr. Yogesh Maheshwari***, held the following:

“26. Particularly, in view of the fact that the Personal Guarantor has not denied the execution of the Personal Guarantee and service of the notice under 13(2) the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

27. We are therefore not inclined to accept the submissions made by Ld. Counsel appearing for the Personal Guarantor that non-service of demand notice would render the application filed under Section 95 of the Code, 2016 liable to be dismissed.

28. We therefore hold that the Applicant has established the case of date of default and the Respondent is liable for the same. We, therefore, accept the report of the Resolution Professional, and admit the present application filed under Section 95 of the Code, 2016 and initiate the Personal Insolvency Resolution Process against the Respondent-Personal Guarantor.”

6.4 Hon’ble Supreme Court in the matter of ***Bishan Dass and others vs. Union Territory of J&K and others*** held that

“21.2) If from the facts it can be inferred that a party knew about the subject matter of the notice, knowledge is imputed by implied notice. For example, if the purpose of the notice is to require a party to appear before an authority on a particular date, even though such a notice is not personally served on him, if the person appears before the authority on that date or participates in the subsequent proceedings, then the person can be said to have implied notice.”



Further, Hon'ble Supreme Court in the matter of ***Special Deputy Collector Vs. J. Shivaprakashan*** held that if the third party knew about the subject matter of the notice, Knowledge is imputed by implied notice. The relevant portion of the judgment is extracted below for the ready reference:

"2. If from the facts it can be inferred that a party knew about the subject-matter of the notice, knowledge is imputed by implied notice. For example, if the purpose of the notice is to require a party to appear before an authority on a particular date, even though such a notice is not personally served on him, if the person appears before the authority on that date or participates in the subsequent proceedings, then the person can be said to have implied notice.

3. Notice arising by presumption of law from the existence of certain specified facts and circumstances is constructive or deemed notice. For example, any person purchasing or obtaining a transfer of an immovable property is deemed to have notice of all transactions relating to such property effected by registered instruments till the date of his acquisition. Or, where the statute provides for publication of the notification relating to a proposed acquisition of lands in the gazette and newspapers and by causing public notice of the substance of the notification at convenient places in the locality, but does not provide for actual direct notice, then such provision provides for constructive notice; and on fulfilment of those requirements, all persons interested in the lands proposed for acquisition are deemed to have notice of the proposal regarding acquisition."

6.5 It is submitted that once the demand notice under Section 13(2) of the SARFAESI Act, is served upon the Corporate Debtor and personal Guarantor, upon failure to comply with the said demand notice Applicant herein is entitled to initiate proceedings against the Personal Guarantor (Respondent No. 1). In the matter of ***K.M. Sebastine (Kalarithara Michael Sebastine) Personal Guarantor of Schiffli's India Ltd. vs. State Bank of India and Ors.*** Hon'ble court held as follows:

"7. The above pleadings made by the State Bank of India clearly contains the extension of limitation under Section 18 of the Limitation Act when the pleadings



are on the record which provide for extension of limitation no error can be said to be committed by Adjudicating Authority in admitting Section 95 application against the personal guarantor. We are satisfied that application filed under Section 95 was not barred by limitation and on this ground no error can be found.

9. There can be no dispute that after default is committed by borrower notice of demand has to be given. In the present case notice of demand was given on 26.08.2014 which has already been brought on record which notice was addressed to the appellant.

10. Thus the notice of demand was clearly given to the Personal Guarantor. The submission of the Appellant that after the said notice further fresh notices were required for filing Section 95 application does not appeal to us. When by the notice guarantee was invoked by the bank, bank was entitled to initiate proceedings and present is the case where bank is claiming extension of limitation under Section 18 thus we are not satisfied that invocation of guarantee was to be repeatedly done by the bank before filing the application under Section 95. When the application under Section 95 is well within time the said ground cannot be a ground to interfere with order impugned. We thus do not find any error in order of Adjudicating Authority admitting Section 95 of the application. The Appeal is dismissed."

6.6 It is necessary to mention that the liability of the surety is co-extensive with that of the principal debtor as per Section 128 of the Indian Contract Act, 1872 and the same was reiterated by the Hon'ble Supreme Court in a catena of cases including ***Industrial Investment Bank of India Ltd v. Biswanth Jhunjunwala (para 21, 24-25) ([2017] ibclaw.in 24 SC)***.

The relevant portion of the Judgment is extracted below:

"21. The term "co-extensive" has been defined in the celebrated book of Pollock & Mulla on Indian Contract and Specific Relief Act. Tenth Edition, at page 728 as under:

"Co-extensive. Surety's liability is co-extensive with that of the principal debtor. A surety's liability to pay the debt is not removed by reason of the creditor's omission to sue the principal debtor. The creditor is not bound to exhaust his remedy against the principal before suing the surety, and a suit may be maintained against the surety though the principal has not been sued."



24. A Division Bench of the Bombay High Court in *Jagannath Ganeshram Agarwala v. Shivnarayan Bhagirath and Ors.* AIR 1940 Bombay 247 held that the liability of the surety is co-extensive, but is not in the alternative. Both the principal debtor and the surety are liable at the same time to the creditors.

25. A Division Bench of the High Court of Karnataka, in *The Hukumchand Insurance Co. Ltd. v. The Bank of Baroda & Others* AIR 1977 Kant 204 had an occasion to consider the question of liability of the surety vis-a-vis the principal debtor. The court held as under:

"The question as to the liability of the surety, its extent and the manner of its enforcement have to be decided on first principles as to the nature and incidents of suretyship. The liability of a principal debtor and the liability of a surety which is coextensive with that of the former are really separate liabilities, although arising out of the same transaction. Notwithstanding the fact that they may stem from the same transaction, the two liabilities are distinct. The liability of the surety does not also, in all cases, arise simultaneously."

- 6.7 It is submitted that the Hon'ble Supreme Court in the matter of ***Sabarmati Gas Limited Vs Shah Alloys Limited (2023) ibclaw.in 02 SC***, wherein it was held that the period of limitation is three years from the right to apply accrues. The relevant para from the judgment is extracted below:

"21. The decision in B.K. Educational Services Private Limited (supra) would thus reveal that Articles 137 and 5 of the Limitation Act, 1963 are applicable to applications filed under Sections 7 and 9 of IBC. It be so, the position is that the period of limitation is three years from the right to apply accrues..."

7. **The written submissions filed by the counsel for the Personal Guarantor/Respondent No.1, by re-iterating the submissions of counter/reply, apart from that:**

- 7.1 It is averred that a guarantee may be invoked only in the mode and manner as prescribed/stipulated in the deed of guarantee and liability in an 'on demand' guarantee shall arise only when the guarantee has been invoked/payment under the guarantee is demanded. Thus, the right to sue accrues only when the Deed of Guarantee is invoked by the



Financial Creditor. [Reliance in this regard is placed on *Syndicate Bank vs. Channaveerappa Beleri & Ors., (2006) 11 SCC 506 Paragraph Nos. 9 and 12* and *Pooja Ramesh Singh v. State Bank of India and Anr., 2023 SCC OnLine NCLAT 193*].

7.2 It is further submitted that the principle that the liability of the Personal Guarantor is co-extensive with that of the Corporate Debtor only pertains to the “quantum of principal debt” and cannot be interpreted to mean that the date on which the Corporate Debtor defaults in repayment or the date on which the Corporate Debtor acknowledges the debt, is also binding on the Personal Guarantor. [*S. Elangovan v. ASERC (India) Lid and Another, Company Appeal (AT) (CH) (INS) No. 102 of 2022*].

8. In view of the rival contentions made by both the parties the following point arises for our consideration :

Whether there is no valid invocation of the Guarantee of the Personal Guarantor, by the creditor if so, whether the present Application for enforcement of the Personal Guarantee is maintainable?

9. We have heard Learned Counsel Mr. VVSN Raju, Counsel for the Petitioner/ Creditor, Learned Senior Counsel Mr.P.Vikram and Learned Counsel Mr.B.Nitish for the Respondent No.1/Personal Guarantor, Learned



Resolution Professional Mr.Madasa Kumar and Learned Counsel Mr.Ch.Srinivasulu for the Resolution Professional and perused the record.

Point:

Whether there is no valid invocation of the Guarantee of the Personal Guarantor, by the creditor if so, whether the present Application or enforcement of the Personal Guarantee is maintainable?

THE SUBMISSIONS:

10. The Learned Counsel for the Applicant submits that Personal Guarantor executed a deed of guarantee dated 24.12.2014, guaranteeing the repayment by the Corporate Debtor. Since accounts of the Corporate Debtor were classified as NPA on 31.12.2015 the said guarantee was invoked by the Applicant bank vide its demand notice dated 21.01.2017.
11. The Learned Counsel for the Applicant further submits that again the demand notice was issued on 15.12.2020 demanding an amount of Rs.287,63,91,873/- in terms of Rule 7(1) of Insolvency and Bankruptcy Code, 2016. However, the Respondent No.1 did not pay the amount despite service of the notice.
12. Learned Counsel further submitted that because of outbreak of the COVID-19 and the consequent lockdown imposed by Central as well as State Governments the Petitioner Bank could not take appropriate measures for



filing this application within time. Accordingly, a separate application for condonation of delay of 201 days has been filed. Learned Counsel also referred to Hon'ble Supreme Court order dated 20.03.2020 passed in SUO MOTU PETITION (CIVIL) NO. 3/2020 extending limitation period from 15.03.2020 till 28.02.2022.

13. Learned Counsel further submitted that the Resolution Professional appointed by this Tribunal vide orders dated 13.08.2021 has also recommended for admission of Petition against the Personal Guarantor under the order and directions of this Tribunal.
14. Learned Counsel for the Creditor further submitted that the Demand Notice dated 21.01.2017, inter-alia called upon Respondent No.1 herein to repay the dues within 60 days from the date of notice. In view of the same, the period of limitation would begin to run from 21.03.2017 when the default occurred and not from 21.01.2017. Learned Counsel submitted that in view of the same this Company Petition is well within the period of limitation.
15. Learned Counsel further referred about the additional documents that were taken on record by this Adjudicating Authority vide IA.No.1250/2022 and submitted that the debt is duly acknowledged in the audited balance sheet and financial statement of the Corporate Debtor for the period between



01.04.2017 to 31.03.2018. Therefore, consequent upon the acknowledgement of the debt by the Corporate Debtor in the balance sheet the period of limitation is extended for a period of 3 years from 31.03.2018.

16. Learned Counsel submitted that the question of treatment of SARFAESI Notice as demand to pay under the personal guarantee fell for consideration before the NCLT, Mumbai Bench in the matter of ***Bank of Maharashtra v/s. Mr. Anand Ghadigaonkar***, while considering the matter the Hon'ble Mumbai Bench, held that the demand notice issued under Section 13(2) of the SARFAESI Act, is a valid invocation of personal guarantee.
17. Learned Counsel further submitted that the NCLT, New Delhi Bench in the matter of ***Bank of Baroda Vs. Mr. Yogesh Maheshwari***, also held that service of the notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 may be considered as a service of demand notice on the Personal Guarantor. Learned Counsel also referred few of the cases to rely upon that demand notice under section 13(2) of the SARFAESI Act, 2002 can be considered as invocation of guarantee.
18. ***Per contra*** Learned Senior Counsel for Personal Guarantor submitted that as per Financial Creditor it has issued invocation notice on 21.01.2017 and



therefore period for filing a case ends on 20.01.2020. Since, the present Company Petition has been filed on 22.07.2021, the same is beyond limitation. Learned Counsel further contended that the Hon'ble Supreme Court order dated 20.03.2020 says limitation starts from 15.03.2020 onwards but there is no explanation for limitation period between 20.01.2020 till 14.03.2020. Hence, the Company Petition is barred by limitation and not maintainable.

19. Learned Counsel also disputed the invocation notice issued on 21.01.2017 and submitted that it was a notice issued under SARFAESI Act and it was issued for the full loan amount given to the Corporate Debtor and not for the amount guaranteed by the Personal Guarantor. Learned Counsel also submitted that it is clearly mentioned in the lead banks letter dated 10.03.2016 that Corporate Debtor's account became NPA only because of non-complaining that the Date of Commercial Commencement of Operation ("DCCO") which is merely a technical nature and not because of non-payment of interest or instalment.
20. Learned Counsel further submitted that Petitioner bank along with 2 other banks have also filed an OA.No.742/2018 on 22.12.2017 against the Personal Guarantor before DRT-II, Hyderabad while the Corporate Debtor was under CIRP. Learned Counsel further submits that one more OA.No.



582/2019 has been filed by the Petitioner bank on 27.06.2019 before DRT-I, Hyderabad. Learned Counsel further stated that the Personal Guarantor has given guarantee only for Rs.69.71 Crores for steel division of Corporate Debtor but surprisingly the bank has now filed a claim of Rs.287.63 Crores.

21. Learned Counsel submitted that even the demand notice dated 15.12.2020 also states that the amount of Rs.133.14 Crores. In view of the above Learned Counsel submitted that the amount of default as stated is wrong and also disputed. Learned Counsel submitted that Resolution Professional has not verified the documents with Central Bank of India and correctness of the amount claimed as default amount is challenged by the Personal Guarantor.

22. Learned Counsel for the Personal Guarantor further submitted that a guarantee may be invoked only in the mode and manner as prescribed/stipulated in the deed of guarantee and liability in an 'on demand' guarantee shall arise only when the guarantee has been invoked/payment under the guarantee is demanded.

OUR FINDINGS & ANALYSIS

23. It is trite law that unless the Personal Guarantee executed by the Guarantor is validly invoked, the liability to pay the amount under the said guarantee by the Guarantor does not arise. The case on hand involves invocation of



Personal Guarantee on two occasions by the creditor. On 21.01.2017 after the account of the borrower has been classified as NPA, by way of demand notice issued under Section 13(2) of SARFAESI Act, the creditor invoked the personal guarantee. Again, by way of demand notice for payment of the outstanding amount has been issued on 15.12.2020 demanding an amount of Rs. 287,63,91,873/- in terms of Rule 7 of Insolvency and Bankruptcy Code, 2016. While the Learned Senior Counsel for the Personal Guarantor would contend that the demand notice issued under Section 13(2) of SARFAESI Act, cannot be treated as a valid notice of demand for the payment of the amount due under Guarantee. In so far as, the notice dated 21.01.2017, i.e. the 2nd demand notice issued on 15.12.2020 under Rule 7(1) of Insolvency and Bankruptcy Code, 2016 is concerned, according to the Ld. Sr. counsel, as there is discrepancy in the amounts claimed in the two notices, the same is also not maintainable. Ld. Sr. Counsel also pleaded limitation which we have answered vide IA No. IA (IBC) 492/2021 dated 24.08.2021.

24. It is no doubt true that the Creditor had issued notice under Section 13(2) of SARFAESI Act to the borrowers and also to the Personal Guarantor demanding payment of the amount and later issued yet another demand notice dated 15.12.2020 under Rule 7(1) of Insolvency and Bankruptcy



Code, 2016. But it is pertinent to note that the present proceedings are initiated basing on the demand notice issued on 15.12.2020. It is also on record that action against the borrowers and the Personal Guarantor pursuant to notice issued under Section 13(2) SARFAESI Act has been issued before the concerned Learned DRT. The Personal Guarantor in his reply to the demand notice dated 15.12.2020 reiterated the said facts and contended that the 2nd demand notice dated 15.12.2020 under the circumstances, is not sustainable. A bare perusal of the terms of the deed of guarantee dated 24.12.2024 clearly discloses that the Personal Guarantor is liable to honor the guarantee on demand. The proceedings before Learned DRT are recovery proceedings unlike the present proceeding which are for initiation of insolvency proceedings against the Personal Guarantor. Thus, both these proceedings operates independently and on different lines. For initiation of insolvency resolution process, a notice in terms of Rule 7(1) of Insolvency and Bankruptcy Code, 2016 is essential and the said requirement has been satisfied. The guarantor reply and resistance to honor the bank guarantee was on the sole ground that having issued demand notice under Section 13(2) of SARFAESI Act, followed up by filing recovery proceedings before the concerned Learned DRT the present proceedings against the Personal Guarantor is not maintainable. We failed to understand under what law the creditor is prevented from proceeding against the



Personal Guarantor for insolvency resolution pursuant to service of demand notice issued under Section 7(1) of Insolvency and Bankruptcy Code, 2016. The Personal Guarantor had not placed any ruling which prevents the creditor from initiating action against the Personal Guarantor of serving the demand notice, even while the proceedings before learned DRT against the same Personal Guarantor is pending. We therefore, do not find any force in the submission of Learned Senior Counsel that the present proceedings based on demand notice dated 15.12.2020 which was admittedly served are not maintainable.

25. Therefore, the present Company Petition, filed on the strength of demand notice dated 15.12.2020 whereunder also the Creditor had demanded payment of the amount payable under the Guarantee, has been demanded, it cannot be said that there is no valid invocation of the Personal Guarantee admittedly executed by the Personal Guarantor.
26. That apart, the Personal Guarantor deed dated 24.12.2014, the due execution of which is not in dispute, is payable on demand, as stated herein below;

“In the event of any default on the part of the Borrower, in payment/ repayment of any moneys referred to clause 2 above, or in the event of any default on the part of the Borrower to comply with or perform any of the terms, conditions and covenants contained in the Facility Agreement and the other Transaction Documents, the Guarantors shall, upon demand, forthwith pay to



the lenders without demur all the amounts payable by the Borrower under the Transaction Documents. Any such demand made by the Lenders on the Guarantors shall be final, conclusive and binding notwithstanding any difference or any dispute between the Lenders on the Guarantors shall be final, conclusive and binding notwithstanding any difference or any dispute between the Lenders and the Borrower/arbitration or other legal proceedings, pending before any court, tribunal, arbitrator or any other authority.”

27. Hon’ble Supreme Court in the matter of *Special Deputy Collector Vs. J. Shivaprakashan* held that if party knew about the subject matter of the notice, Knowledge is imputed by implied notice. The relevant portion of the judgment is extracted below for the ready reference:

“2. If from the facts it can be inferred that a party knew about the subject-matter of the notice, knowledge is imputed by implied notice. For example, if the purpose of the notice is to require a party to appear before an authority on a particular date, even though such a notice is not personally served on him, if the person appears before the authority on that date or participates in the subsequent proceedings, then the person can be said to have implied notice.

3. Notice arising by presumption of law from the existence of certain specified facts and circumstances is constructive or deemed notice. For example, any person purchasing or obtaining a transfer of an immovable property is deemed to have notice of all transactions relating to such property effected by registered instruments till the date of his acquisition. Or, where the statute provides for publication of the notification relating to a proposed acquisition of lands in the gazette and newspapers and by causing public notice of the substance of the notification at convenient places in the locality, but does not provide for actual direct notice, then such provision provides for constructive notice; and on fulfilment of those requirements, all persons interested in the lands proposed for acquisition are deemed to have notice of the proposal regarding acquisition.”

28. Except the above, no other contention worth, has been raised before us.
29. Therefore, in the light of our discussions as above, and based on facts, records and case laws, we consider that it is a fit case to order insolvency resolution process against Respondent No.1/Personal Guarantor.



30. Hence, the instant Company Petition vide CP (IB) No. 203/95/HDB/2021 filed under the provisions of Section 95 of Code, 2016 is hereby admitted under the provisions of Section 100 of the Code, 2016 and Insolvency Resolution Process is initiated against Mr. K. Shashidhar, the Personal Guarantor, and moratorium is declared in relation to all debts, which begins from the date of admission of the instant petition and shall cease to have effect at the end of the period of 180 days, as provided under Section 101 of the Code, 2016. During the moratorium period-

- a) Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;
- b) The Creditors shall not initiate any legal action or legal proceedings in respect of any debt; and
- c) The debtor shall not transfer, alienate, encumber or dispose of any of her assets or her legal rights or beneficial interest therein;
- d) The provisions of this Section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- e) The Resolution Professional has filed memo along with written consent in Form-A dated 23.08.2021 i.e., Mr. Madasa Kumar, having Registration



No. IBBI/IPA-001/IP-P01590/2019-2020/12465 insolvency Professional to act as Resolution Professional. Hence, this Tribunal appoints: **Mr. Madasa Kumar**, having Registration No. IBBI/IPA-001/IP-P01590/2019-2020/12465, Address at Plot No.48, 4th Floor, Road No.4, Pet Basheerabad (V), Quthbullapur (M), Medchal-Malkajgiri District, Hyderabad – 500067, email id: kumarmadas@gmail.com, Mobile No.: 9866512519.

- f) The Resolution Professional is directed to cause public notice published on behalf of the Adjudicating Authority within 7 days from the date of uploading of this order on the website of NCLT, Hyderabad, inviting the claims from all creditors, who shall register their claims as provided under Section 103 of the Code within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102(2) of the Code. The publication of notice shall be made in newspapers, one in English and other in vernacular (Telugu) which have wide circulation in the State where the Personal Guarantor and Corporate Debtor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry. One shall be placed on our website by the Registry and the other shall be affixed in the premises of this Adjudicating Authority.



- g) The Resolution Professional in exercise of the powers conferred under the Section 104 of the Code shall prepare a list of creditors within 30 days from the date of the notice. The Personal Guarantor shall prepare, in consultation with the Resolution professional, a repayment plan containing a proposal to the creditors for restructuring of her debts or affairs as provided under Section 105 which shall include the provisions for payment of fee to the Resolution Professional. The Resolution Professional shall submit the repayment plan along with his report on the plan to this Adjudicating Authority within a period of 21 days from the last date of submission of claims as provided under Section 106 of the Code.
- h) In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof. If the Resolution Professional is of the opinion that the meeting of creditors should be summoned., he shall specify the details as provided under Section 106(3) of the Code. The date of meeting shall not be less than fourteen days or more than 28 days from the date of submission of the Report under Sub-section (1) of Section 106 of the Code, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by



all modes. Such notice must contain the details as provided under the provisions of Section 107 of the Code.

- i) The meeting of the creditors shall be conducted in accordance with the provisions Sections 109, 110 and 111 of the Code. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of the Code and submit the same to the Authority, copies of which shall be provided to the guarantor and the creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of the Code.
- j) The Petitioner is directed to communicate this order to the Resolution Professional appointed in the instant Company Petition immediately.

Sd/-

Charan Singh
Member Technical

Sd/-

Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

Sridher