NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.202
C.P.(IB)/54(MP)2021

Order under Section 95 IBC

IN THE MATTER OF:

State Bank of India ....**Applicant**
V/s
Shri Carnet Elias Fernandes ....**Respondent**

Coram:

Hon'ble Shri Brajendra Mani Tripathi, Member (J)
Hon'ble Shri Man Mohan Gupta Member (T)

PRONOUNCEMENT OF ORDER
Delivered on 01/09/2026

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/- Sd/-

MAN MOHAN GUPTA
MEMBER (TECHNICAL)

BRAJENDRA MANI TRIPATHI
MEMBER (JUDICIAL)

Tomar

IN THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT INDORE

CP(IB) No. 54 of 2021

State Bank of India
Stressed Assets Management Branch,
1st Floor, SBI Building, Plot No. 1,
Arera Hills, Near Old Jail Road,
Bhopal, M.P. 462011
Through the Assistant General Manger **... Financial Creditor**

Versus

Shri Carnet Elias Fernandes,
Flat No. B-302, Eden Park, Near Hotel Mark
Misrod, Bhopal (M.P.)-462047 **... Personal Guarantor**

C O R A M:

HON'BLE SH. BRAJENDRA MANI TRIPATHI, MEMBER (J)

HON'BLE SH. MAN MOHAN GUPTA, MEMBER (T)

Pronounced on: 01.09.2026

Appearance:

For the Applicant : Mr. Mandeep Singh Saluja, Adv

For the Respondent : Mr. Shantnu Chourasia, Adv

ORDER

The present Company Petition bearing **CP (IB) No. 54(MP) of 2021** ("Petition") has been filed by **State Bank of India** ("Financial Creditor"/"Applicant") under Section 95 of the Insolvency and Bankruptcy Code, 2016 ("IBC"/"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 ("Personal Guarantors Rules"), seeking initiation of the Personal Insolvency Resolution Process ("PIRP") against **Shri Carnet Elias Fernandes** ("Personal Guarantor"/"Respondent"), who is the personal guarantor of M/s GEI Industrial Systems Limited ("Corporate Debtor").

BRIEF FACTS OF THE CASE:

a) The Corporate Debtor, M/s GEI Industrial Systems Ltd., was incorporated with the Registrar of Companies, Gwalior, on 28.12.1993.

b) The Corporate Debtor approached the Applicant, along with six other consortium banks, seeking sanction of credit facilities. On **24.03.2009**, a loan agreement was executed between the Corporate Debtor and the Applicant. On the same date, the Respondent along with Shri Bernard John and Smt. Everlyn Fernandes, executed a Deed of Guarantee in favour of the Applicant, undertaking personal liability for repayment of the sanctioned facilities.

c) The consortium extended further credit facilities to the Corporate Debtor on **30.08.2010**. The Corporate Debtor executed a Supplemental Joint Working Capital Consortium Agreement, and the Respondent simultaneously executed a supplemental deed of guarantee confirming his continuing personal liability.

d) A fresh deed of guarantee was executed on **23.08.2011** jointly by the Respondent, Mr. Bernard John and Smt. Everlyn Fernandes, reaffirming their obligations as personal guarantors to the consortium.

e) The credit facilities were further enhanced in 2015. Accordingly, a new loan agreement was executed on **31.03.2015** between the Corporate Debtor and the lenders, and to secure repayment, the Respondent executed a Form C-4 – Deed of Guarantee for Overall Limit dated **31.03.2015** (Annexure A/23) ("Deed of Guarantee") in favour of the Applicant and the consortium banks.

f) Due to financial difficulties, the account of the Corporate Debtor was classified as a Non-Performing Asset ("NPA") on **28.05.2016**, with outstanding dues of Rs. 35,13,03,151/-.

g) Following the NPA classification, the Applicant issued a Demand-cum-Recall Notice dated **30.09.2016** to the Corporate Debtor and to the personal guarantors – the Respondent, Mr. Bernerd John and Mrs. Evelyn Fernandes – invoking the personal guarantees and calling upon them to discharge the outstanding dues within seven days. The stipulated period expired on **07.10.2016** without any repayment, constituting default on the part of the Respondent as well.

h) ICICI Bank, as lead bank of the consortium, filed a recovery suit before the Debts Recovery Tribunal on 14.03.2017 for a total sum of Rs. 219,01,93,898.92/-, of which the dues of the Applicant alone amounted to Rs. 38,02,35,194.11/-. On 19.05.2017, ICICI Bank also issued a notice under Section 13(2) of the SARFAESI Act, 2002, demanding Rs. 253,10,02,396.38/-.

i) Insolvency proceedings were initiated against the Corporate Debtor on the petition of M/s Beeta Kone Tools, an Operational Creditor, under Section 9 of the Code, which was admitted by the NCLT, Ahmedabad Bench, on **20.07.2017** in C.P. (IB) No. 35/9/NCLT/AHM/2017, and CIRP was initiated against the Corporate Debtor.

j) Pursuant to the public announcement made by the Interim Resolution Professional, the Applicant filed its claim of Rs. 43,83,49,733.24/- with the Resolution Professional of the Corporate Debtor on 14.08.2017.

k) The balance sheets of the Corporate Debtor for the financial years 2016-17, 2017-18, 2018-19 and 2019-20, prepared by M/s Shikha Tiwari & Associates, reflected and acknowledged the outstanding dues owed to the Applicant and the other consortium lenders.

l) As the default continued, the Applicant issued a Demand Notice dated **21.01.2021** under Rule 7(1) of the Personal Guarantors Rules, demanding Rs. 78,94,45,334.12/- from the Respondent in his capacity as personal guarantor. The Respondent did not reply to the said notice.

m) The Applicant thereafter filed the present Petition under Section 95 of the Code against the Respondent, which was registered as C.P. (IB) No. 54(MP)/2021.

<u>SUBMISSIONS OF THE APPLICANT</u>

a) The Applicant submitted that, in CP(IB) No. 53 of 2021, arising out of the same Corporate Debtor and concerning another Personal Guarantor under the same set of guarantee arrangements, the application was dismissed by the Hon'ble Adjudicating Authority on the ground of limitation. Aggrieved thereby, the Petitioner preferred an appeal before the Hon'ble National Company Law Appellate Tribunal, being Company Appeal (AT) (Ins.) No. 1742 of 2024, wherein the Hon'ble NCLAT, by its judgment dated 17.10.2025, specifically considered and adjudicated the issues relating to limitation as well as invocation of the Personal Guarantee. The factual matrix, pleadings and the relevant contractual arrangements in the present proceedings arise out of the same credit facilities extended to the same Corporate Debtor and the same course of transactions and enforcement proceedings. It is submitted that the findings recorded by the Hon'ble NCLAT are, therefore, directly applicable and govern the issues arising for consideration in the present case.

b) The Hon'ble NCLAT, vide its Judgment dated **17.10.2025**, framed the following issues for determination: (i) whether the Petition was barred by limitation; (ii) whether the balance sheets of the Corporate Debtor for FY 2016-17 onwards were legally valid, and whether the acknowledgment of debt contained therein bound the Respondent under Section 128 of the Indian Contract Act, 1872; and (iii) whether the personal guarantee had been validly invoked by the Applicant.

c) After detailed consideration of the Deed of Guarantee dated 31.03.2015 (including Clauses 8, 12 and 19 thereof), the Demand-cum-Recall Notice dated 30.09.2016, the balance sheets of the Corporate Debtor and the applicable law – including *Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal*, (2021) 6 SCC 366; *Dena Bank v. C. Shivakumar Reddy*, (2021) 10 SCC 330; *Syndicate Bank v. Channaveerappa Beleri*, (2006) 11 SCC 506; and *State Bank of India v. Indexport Registered*, (1992) 3 SCC 159 – the Hon'ble NCLAT held and found as follows:

  i. The Demand-cum-Recall Notice dated 30.09.2016, addressed to the Corporate Debtor and to the personal guarantors including the Respondent, constituted a valid and unequivocal invocation of the Deed of Guarantee, and default crystallised on 07.10.2016 upon expiry of the seven-day notice period;

  ii. the balance sheets of the Corporate Debtor for FY 2016-17 to FY 2019-20 contained clear and unequivocal acknowledgment of the debt owed to the Applicant, and remained valid notwithstanding that they were signed by suspended directors during CIRP, since the statutory obligation to sign financial statements under Sections 129 and 134 of the Companies Act, 2013 survives suspension of the Board's powers under Section 17(1)(b) of the Code;

iii. by virtue of Section 128 of the Indian Contract Act, 1872 and Clauses 12 and 19 of the Deed of Guarantee dated 31.03.2015 (which deem any acknowledgment by the borrower to be binding upon, and made on behalf of, the guarantor), the acknowledgments in the Corporate Debtor's balance sheets validly extended limitation as against the Respondent as well;

iv. the exclusion of the period from 15.03.2020 to 28.02.2022 pursuant to the Hon'ble Supreme Court's Suo Motu orders in *In Re: Cognizance for Extension of Limitation, Suo Motu W.P. (C) No. 3 of 2020*, further extended limitation, and the Petition, filed in October 2021, was well within limitation; and

v. the Demand-cum-Recall Notice dated 30.09.2016 also constituted valid invocation of the personal guarantee of the Respondent, and the decision in *State Bank of India v. Deepak Kumar Singhania*, Company Appeal (AT) (Insolvency) No. 191 of 2025, relied upon by the Respondent, was distinguishable and inapplicable to the facts of the present case.

d) Accordingly, the Hon'ble NCLAT allowed the appeal, set aside the order dated 16.07.2024 passed by this Adjudicating Authority.

e) Pursuant to the aforesaid observation made by Hon’ble NCLAT, and following the dismissal of the further challenge preferred by the Respondent against the said Judgment before the Hon'ble Supreme Court of India – as recorded in the Applicant's written submissions and not controverted by the Respondent – the findings of the Hon'ble NCLAT on limitation and invocation of the personal guarantee have attained finality between the parties.

f) Ld. Counsel for the Applicant submits that the questions of limitation and invocation of the personal guarantee no longer survive for consideration before this Tribunal, having been conclusively determined by the Hon'ble NCLAT vide Judgment dated 17.10.2025, which findings have since attained finality upon dismissal of the Respondent's challenge before the Hon'ble Supreme Court, and that the said findings constitute the ratio decidendi of the NCLAT's Judgment and bind the parties in these proceedings.

g) Ld. Counsel submits that the RP, after due examination, has recommended admission of the Petition in his Report; and that the Petition, being within limitation, supported by a valid invocation of the guarantee, and the Report of the RP, and unrebutted on the merits of debt and default, satisfies all requirements for admission under Section 100 of the Code. It is accordingly prayed that the Petition be admitted, a Resolution Professional confirmed under Section 97 of the Code, and such further orders passed as this Tribunal may deem fit.

SUBMISSIONS OF THE RESPONDENT

a) After the filing of the RP's Report, the Respondent, for the first time, contested the proceedings, without reiterating the issues of limitation and invocation of guarantee – which stand concluded by the Hon'ble

NCLAT – has pressed the following objections by way of affidavit in reply dated **24.02.2022**, raising, inter alia, the following objections

i. The Respondent states that the Corporate Debtor has been undergoing Corporate Insolvency Resolution Process ("CIRP") since 20 July 2017 pursuant to an order passed by the Adjudicating Authority under Section 9 of the IBC in C.P. (I.B.) No. 35/9/NCLT/AHM/2017, Beeta Kone Tools v. GEI Industrial Systems Ltd. He further states that he is the sole Resolution Applicant and has submitted Resolution Plans dated 3rd December 2019, 31st January 2020 and 31st August 2020, with the latter being under consideration, although further progress has been stalled on account of a technical issue pending before the Hon'ble NCLAT.

ii. According to the Respondent, the Section 95 application pertains only to the personal guarantee furnished by him in relation to the loan provided by the Applicant to the Corporate Debtor, and he claims that he has not availed any other loan or facility from the Applicant. He further states that he is more than eighty years of age, has no present source of income and has no assets except equity shares of the Corporate Debtor and debts owed to him by the Corporate Debtor. According to him, such shares and debts presently have no realizable value as they are non-transferable and their value depends upon the outcome of the CIRP.

iii. The Respondent contends that the issue concerning his guarantee would be resolved if the Resolution Plan submitted by him is approved by the Committee of Creditors, of which the Applicant is a member. He submits that admission of the Section 95 application under Section 100 of the IBC would result in the collapse of his Resolution Plan and adversely affect the revival of the Corporate Debtor, which, according to him, is a potentially viable MSME capable of employing approximately 500 persons and producing equipment for critical sectors of the Indian economy.

iv. The Respondent further alleges that the application has not been filed in accordance with prudent business considerations and has been moved with an ulterior and malicious intent to cause him hardship and to frustrate the Resolution Plan. He submits that the Applicant would derive no benefit from his insolvency, particularly when other financial creditors have substantially larger exposures to the Corporate Debtor. He therefore alleges that the Applicant is misusing the process under the IBC while his Resolution Plan remains under consideration before the Committee of Creditors.

v. The Respondent also relies upon the objectives of the IBC, contending that the Code is intended, inter alia, to maximise the value of assets, promote entrepreneurship and balance the interests of stakeholders. He submits that admission of the application at this stage would not achieve these objectives and would instead result in no return or benefit to the Applicant or other creditors, while adversely affecting the prospects of resolution of the Corporate Debtor. He further contends that the

Adjudicating Authority has discretion under Section 100 to admit or reject an application under Section 95 and that such discretion should be exercised having regard to the objectives of the Code, public policy and national interest, particularly in relation to the revival of MSMEs.

vi. The Respondent additionally contends that an order under Section 100 would result in various legal disabilities, including those contemplated under Section 29A of the IBC, which according to him would affect his fundamental rights under Article 19(1)(g) of the Constitution. He asserts that the Applicant, being “the State” under Article 12 of the Constitution, ought to act prudently and judiciously and that, in the circumstances pleaded by him, initiation of proceedings under Section 95 is unjustified and contrary to constitutional principles.

vii. In view of the aforesaid circumstances, the Respondent has prayed that the Section 95 application be kept in abeyance until conclusion of the CIRP of the Corporate Debtor, or alternatively, that the Applicant be advised to withdraw the application on grounds of business prudence and in conformity with the objectives and spirit of the IBC.

REPORT OF THE RESOLUTION PROFESSIONAL

a) Vide order dated **25.11.2021**, this Adjudicating Authority appointed Mr. Rahul Anand as the Resolution Professional (“RP”). The RP issued a notice on 27.11.2021 to the Respondent through e-mail and speed post, seeking details and relevant documents. The Resolution Professional has submitted that he received a telephone call from Mr. C. Fernandes, the Respondent, during which the Respondent acknowledged the debt. The Respondent further stated that he had no means to make payment and that all the attached properties had already been sold by the lenders. However, the Respondent has not submitted any proof or evidence demonstrating that the debt in default, either in whole or in part, has been repaid by him, whether in person, through e-mail, or by post.

b) The RP thereafter examined the Petition and the material on record, including the Deed of Guarantee dated 31.03.2015, the Demand-cum-Recall Notice dated 30.09.2016, and the balance sheets of the Corporate Debtor for FY 2016-17 to 2019-20 acknowledging the debt due to the Applicant, and submitted his Report dated **06.12.2021** under Section 99 of the Code, recommending that the Petition be admitted under Section 100 of the Code, having found that the requirements of Sections 95 and 99 of the Code stood satisfied and that the Respondent had furnished no proof of repayment of the debt claimed.

OBSERVATION AND ANALYSIS

a) We have heard Ld. Counsel for the Applicant and Ld. Counsel for the Respondent, and have perused the pleadings, the written submissions filed by the parties, the Report of the Resolution

Professional, and the Judgment of the Hon'ble NCLAT dated 17.10.2025 in Company Appeal (AT) (Ins.) No. 1742 of 2024.

b) At the outset, we note that the matter concerning another personal guarantor of the same corporate debtor was decided by Hon'ble NCLAT vide its Judgment dated 17.10.2025, whereby the earlier order of this Tribunal dated 16.07.2024 was set aside. The Hon'ble NCLAT, upon due consideration of the rival contentions and the material on record, categorically held that: (i) the Petition is within limitation, and (ii) the personal guarantee of the Respondent stands validly invoked. These findings, having attained finality upon dismissal of the Respondent's further challenge before the Hon'ble Supreme Court, are binding upon this Adjudicating Authority and cannot be reopened or re-agitated in these proceedings. We respectfully adopt and follow the said findings.

c) Consequently, we hold that:

   i. the demand-cum-recall notice dated 30.09.2016 crystallised the default of the Respondent on 07.10.2016;

   ii. the balance sheets of the Corporate Debtor for FY 2016-17 to FY 2019-20 contain valid and binding acknowledgments of the debt as against the Respondent, in terms of Section 18 of the Limitation Act, 1963, read with Clauses 12 and 19 of the Deed of Guarantee dated 31.03.2015 and Section 128 of the Indian Contract Act, 1872;

   iii. the period from 15.03.2020 to 28.02.2022 stands excluded in computing limitation, in terms of the Hon'ble Supreme Court's

Suo Motu orders in Re: Cognizance for Extension of Limitation, Suo Motu W.P. (C) No. 3 of 2020, and the Petition, filed in October 2021, is well within limitation; and

iv. the demand-cum-recall notice dated 30.09.2016 constitutes valid invocation of the personal guarantee of the Respondent.

d) We now examine the remaining objections raised by the Respondent, which were not the subject matter of adjudication before the Hon'ble NCLAT.

Effect of the Respondent's own acknowledgment of debt:

i. We further note, and consider it significant, that the Respondent has himself acknowledged the debt in question. As recorded in the Affidavit in reply dated 24.02.2022 filed by the respondent and the Report of the Resolution Professional, the Respondent, in the course of a telephonic conversation with the Resolution Professional, admitted the debt and stated that he had no means to make payment, and that the properties attached had already been sold by the lenders. The Respondent has, at no stage — whether in person, by e-mail, or by post — furnished any proof or evidence that the debt in default, in whole or in part, has been repaid by him. Nor has the Respondent, in his reply by way of affidavit dated 24.02.2022, retracted or disputed this acknowledgment.

ii. This admission is of material consequence. The Respondent's objections, as noted above, are confined to (i) the consequences that admission would have on his Resolution Plan and the CIRP of the Corporate Debtor, and (ii) broader submissions grounded in public policy and constitutional provisions. At no point does the Respondent traverse or deny the existence of the debt, the fact of default, or his liability as guarantor thereunder. Where a guarantor himself admits the debt and his own inability to discharge it, objections directed only at the consequences of admission — rather than at the existence of the debt itself — cannot furnish a ground to withhold relief that the Applicant is otherwise entitled to under Section 100 of the Code. The admission independently reinforces the findings of the Hon'ble NCLAT on debt and default, and forecloses any residual factual dispute on the point.

e) We further note that the Report of the Resolution Professional dated 06.12.2021, after due examination of the Petition in terms of Sections 95 and 99 of the Code, recommends admission of the Petition, having found the requirements of the Code satisfied and the Respondent to have furnished no proof of repayment despite notice. This recommendation stands fortified by the Respondent's own acknowledgment of the debt as noted above. We find no reason to disagree with the recommendation of the Resolution Professional.

f) Accordingly, having regard to (i) the binding findings of the Hon'ble NCLAT on limitation and invocation of the personal guarantee, (ii) the Respondent's own acknowledgment of the debt and his admitted inability to repay, (iii) rejection of the Respondent's remaining objection for the reasons recorded above, and (iv) the Report of the Resolution Professional recommending admission, we are satisfied that the Petition is complete in all respects and that the requirements of Section 100 of the Insolvency and Bankruptcy Code, 2016 stand fulfilled. The Petition is fit for admission. Ordered accordingly.

O R D E R

In view of the aforesaid findings, and upon being fully satisfied that the requirements of Section 100 of the Insolvency and Bankruptcy Code, 2016 stand fulfilled in the present proceedings, this Adjudicating Authority hereby passes the following Order:

a. The Petition bearing **CP (IB) No. 54(MP) of 2021**, filed under Section 95 of the Insolvency and Bankruptcy Code, 2016, is hereby **ADMITTED** under Section 100 of the IBC.

b. The Personal Insolvency Resolution Process (PIRP) in respect of **Shri Carnet Elias Fernandes**, the Respondent/Personal Guarantor herein, is hereby **initiated** with effect from the date of this Order.

c. Mr. Rahul Anand, Resolution Professional (already appointed vide order of this Tribunal dated 25.11.2021)(AFA valid till 31st December 2026), is hereby **confirmed as the Resolution Professional** for the conduct of the PIRP of the Respondent, with directions to carry out all functions, duties and responsibilities assigned under the Code, the Personal Guarantors Rules, and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.

d. The **moratorium** under Section 101 of the IBC shall come into effect from the date of this Order and shall remain operative for the period of the PIRP, subject to the conditions and exceptions provided under the Code, and shall cease to have effect at the end of the period of one hundred and eighty days beginning with the date of admission of the Petition, or on the date this Adjudicating Authority passes an order on the repayment plan under Section 114 of the Code, whichever is earlier.

e. The Resolution Professional shall cause a **public announcement** of the initiation of the PIRP in terms of Section 102 of the IBC and Regulation 6 of the PIRP Regulations, within three (3) days from the date of this Order.

f. The Applicant is directed to deposit a sum of Rs. 50,000/- (Rupees Fifty Thousands only), towards his fees and expenses, within one week of this Order, subject to adjustment/reimbursement in accordance with the Code and the Regulations framed thereunder.

g. The Respondent/Personal Guarantor shall, upon receipt of the public announcement, submit a **Statement of Affairs** to the Resolution Professional within the period prescribed under the Code and the Regulations.

h. The Resolution Professional is directed to submit a **status report** to this Tribunal on the progress of the PIRP within thirty (30) days of this Order.

i. A copy of this Order shall be communicated to the Resolution Professional, the Applicant/Financial Creditor, and the Respondent/Personal Guarantor forthwith.

Accordingly, **CP (IB) No. 54(MP) of 2021** filed under Section 95 of the IBC, 2016 is **ADMITTED**, and the Personal Insolvency Resolution Process stands initiated against the Respondent/Personal Guarantor.

Sd/-	Sd/-
MAN MOHAN GUPTA	**BRAJENDRA MANI TRIPATHI**
(MEMBER TECHNICAL)	**(MEMBER JUDICIAL)**

Vanshika-LRA