



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I**

C.P. (IB) NO. 48 /MB/2025

Under Section 95(1) of the
Insolvency & Bankruptcy
Code, 2016 *r/w* Rule 7(2) of the
Insolvency and Bankruptcy
(Application to the
Adjudicating Authority for
Insolvency Resolution Process
for Personal Guarantors to
Corporate Debtors), Rules,
2019.

In the matter of

Canara Bank Limited

...Applicant/Financial Creditor

Versus

Sujay Uday Desai

...Respondent/Personal Guarantor

Order pronounced on 07.10.2025

Coram:

Sh. Prabhat Kumar
Hon'ble Member (Technical)

Sh. Sushil Mahadeorao Kochey
Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor

: Adv. Anup Khaitan a/w
Harsh Gutka i/b Anup Khaitan
& Co.

For the Personal Guarantor

: Adv. Srishty Jaura, Adv. Nalin
Bajaj, Adv. Priyavansh
Kaushik



ORDER

Brief Facts:-

1. The present Petition is filed u/s 95(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC**”) r/w Rule 7 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 by **Canara Bank Limited** (hereinafter referred to as “**Financial Creditor**”) for the purpose for initiating Insolvency Resolution Process against **Sujay Uday Desai** (hereinafter referred to as “**Personal Guarantor**”) for default of Rs. 671,56,76,843.68/- (Rupees Six Hundred and Seventy-One Crore Fifty Six Lakhs Seventy Six Thousands Eight Hundred and Forty Three and Sixty – Eight Paise Only). The Date of Default as specified in Part III of the present Petition is 17.04.2018 for the Personal Guarantor. The present Petition is filed on 08.11.2024.
2. The Financial Creditor Canara Bank Limited having its office at Stressed Asset Management Branch, Canara Bank Building B Wing C-14 G Block Bandra Kurla Complex Bandra East Mumbai – 400051. The present Petition has been filed through its Authorized Signatory Mr. Anchu Chacko.
3. The Personal Guarantor, viz. **Sujay Uday Desai** having his address at 3A/90 Azad Nagar Kanpur - 208002 is the Personal Guarantor for **Frost International Limited** (hereinafter referred to as the “**Corporate Debtor**”) who stood as Personal Guarantor for the loan facility extended to the Corporate Debtor.



4. The Corporate Debtor Frost International Limited is a public limited company bearing CIN U05001MH1995PLC243081, incorporated on 17.05.1995 and having its registered office at 709 C wing, One BKC, near Indian Oil Petrol Pump Bandra Kurla Complex, Bandra East Mumbai - 400051. It has authorized share capital of Rs.1,00,00,00,000/- & paid-up share capital of Rs.74,92,62,120/-.

Submission by the Financial Creditor.

5. The Financial Creditor had sanction credit facilities for Fresh Fund Based Working Capital Limit of Rs. 5 Crore and Non-Fund Based Working Capital Limits of Rs. 150 Crores on 07.01.2014 bearing reference no. PCB/I/CR-249/S-1/2014/AJ. In addition, the Financial Creditor vide sanction letter dated 21.07.2014 bearing reference no. 1042/5020/SL/FROST/2014 had sanctioned amount of Rs. 130 Crore towards the working capital.
6. Further, the supplemental working capital consortium agreement dated 12.05.2014 and supplemental joint deed of hypothecation dated 12.05.2014 was executed between the parties. The repayment of the aforesaid facilities was secured *inter alia* amongst other securities by the Personal Guarantor(s) (i) Mr. Uday J. Desai, (ii) Suman Jayant Desai, (iii) Nilima Uday Desai, (iv) Sunil Verma, (v) Rita Sunil Verma, (vi) Anoop Wadhwa, (vii) Sujay Uday Desai, (viii) Sanjana Uday Desai, (ix) Nipun Sunil Verma, (x) Ankush Wadhwa and (xi) Poonam Wadhwa. The Personal Guarantor(s) agreed to stand as a guarantor for the said facilities. Based on this representation, the Financial Creditor extended the financial assistance. These credit facilities are



secured by the hypothecation of stock and book debts, plant and machinery, and by the mortgage of immovable properties. Accordingly, the Personal Guarantor(s) have jointly executed the deed of guarantee (hereinafter referred to as “**Deed of Guarantee**”) dated 12.05.2014.

7. Accordingly, a notice dated 21.09.2019 under Section 13 (2) of the Securitization & Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (“**SARFAESI**”) was issued upon the Corporate Debtor and Personal Guarantor(s) calling upon each one of them to pay the loan amount due under the facilities.
8. A demand notice dated 01.12.2023 was issued by the Financial Creditor upon the Personal Guarantor(s) under the provisions of the Code, read with Rule 7 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rule, 2019.
9. Since the Personal Guarantor has not repaid the default amount within fourteen days of receipt of the demand notice, the present Petition is being filed by the Financial Creditor seeking the initiation of insolvency resolution process against the Personal Guarantor.

Submission of the Resolution Professional:

10. The Tribunal appointed the Resolution Professional Mr. Pramod Kumar Ramesh Ladda vide order dated 17.01.2025 and directed him to file his report under Section 99 of the Code within 10 days.



The Resolution Professional has filed IA (I.B.C)/2058/MB/2025 thereby placing his report cum application on record recommending the admission of the present application.

11. It is submitted that the Resolution Professional had sent an email dated 04.02.2025 to the Personal Guarantor seeking information/documents for any repayment made for the debt claimed as unpaid by the creditor. In response to the aforesaid email the counsel for the Personal Guarantor asserted that the Petition is not maintainable under the Limitation Act, claiming its time barred. Furthermore, the RP communicated the response of the Personal Guarantor to the Financial Creditor and thus, the Financial Creditor provided the notice dated 21.01.2019 issued under Section 13(2) of the SARFAESI.
12. It is further submitted by the RP in the report, that the present petition has been filed in terms of the requirement of the applicable Sections from Section 99(1) to Section 99(10) of the Code and is fit for admission by the Tribunal under Section 100 of the Code. The relevant portion of the RP report has been reproduced be :

Recommendation :

After examination of the application under sub section (6) of section 99, I hereby recommend for acceptance of the application filed U/S 95 of the Insolvency & Bankruptcy Code, 2016 for commencement of Insolvency Resolution Process against Mr. Sujay Uday Desai Personal Guarantor of Corporate Debtor Frost International Limited (Under CIRP).

Submission by the Personal Guarantor/Resolution Professional.



13. The Personal Guarantor has filed rely to the Resolution Professional's report objecting to the maintainability of the Petition on the basis that the Petition is filed beyond the period prescribed under the Limitation Act, 1963.

14. At the outset, the Personal Guarantor had raised a preliminary objection that the Petition is not maintainable *inter alia* on the grounds of the suppression of the material facts. It is specifically stated as under:-
 - a. The Financial Creditor has invoked the guarantee vide demand notice dated 01.09.2018 (hereinafter referred to as the "**First Invocation Notice**") under Section 13(2) of the SARFAESI Act, 2002, however the Financial Creditor has relied upon the notice dated 21.01.2019 (hereinafter referred to as the "**Second Invocation Notice**") which was never served upon the Personal Guarantor.

 - b. Consequently, the limitation period has to be computed from the First Invocation Notice and the date of default must be reckoned from the said invocation. However, the Financial Creditor has reliance on the Second Invocation Notice with the *mala fide* attempt to suppress the facts and revive a time barred claim, which is impermissible in law. The Personal Guarantor has relied on the following Judgement in case of *Oswal Fats and Oils Limited v. Additional Commissioner (Administration) Bareilly Divison, Bareilly and Ors (2010) 4 SCC 728*, *Mr. A Rajendra v. Mr. Gonugunta Madhusudhan Rao and Ors (2024 SCC Online NCLAT 106)* and *Nagina Ramsagar Choube & Ors. v. Ajay*



Mohan & Ors, (Interim Application no. 2143 of 2025 In Suit No. 130 of 2025) to contend that a person who approaches the court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case;

- c. There is gap of more than six years between the alleged date of default i.e., 17.7.2018 as stated in Part III of Form C and the date of Demand Notice dated 01.12.2023 under Form B of the Code rendering the Demand Notice barred by limitation;
- d. The Resolution Professional has conveniently ignored the First Invocation Notice from giving any specific observations as to how the same cannot be treated as the date of invocation of personal guarantee.
- e. The Personal Guarantor has relied on decision in case of *Laxmi Pat Surana v. Union Bank of India, (2021) 8 SCC 481* to contend that there can be only one date of default and once such default occurred, the limitation period begins to run from the date. She has also relied upon the decision rendered by this Bench in *IDBI Bank Limited v. Sodhamti R. Gutte, C.P. (IB) No. 871/MB/2023* wherein it was held that the issuance of the subsequent Demand Notice dated 03.05.2023 does not constitute a fresh cause of action.

Findings and Analysis



15. We have heard the learned counsel for both the parties and have duly perused the documents on record as well as the report of the Resolution Professional.
16. On perusal of Deed of Guarantee dated 12.05.2014, we find that the Personal Guarantor along with the other guarantor(s) had stood guarantor for a sum not exceeding in the aggregate the sum of Rs. 3236 crores with interest at the rate mentioned in the Deed of Guarantee.
17. The clause 1 of the Deed of Guarantee dated 12.05.2014 as under:-

.....

1. If at any time default shall be made by the Borrower in payment of the principal sum (not exceeding Rs 3236 crores. (Rupees Three thousand two hundred and thirty six crores only) together with interest, costs, charges, expenses and/or other money for the time being due to the Lead Bank in respect of of under the abovementioned credit facilities or any of them the Guarantors shall forthwith on demand pay to the Lead Bank the whole of such principal sum (not exceeding Rs 3236 crores. (Rupees three thousand two hundred and thirty six crores only) together with interest, cost, charges, expenses and/or any other money as may be then due to the Lead Bank in respect of the abovementioned credit facilities and shall indemnify and keep Indemnified the Lead Bank against all losses of the said principal sum, interest or other money due and all costs, charges and expenses whatsoever which the Lead Bank may incur by reason of any default on the part of the Borrower.

.....



18. In terms of the aforesaid clause, the said guarantee(s) is an on-demand guarantee and the obligation of guarantor arises on demand from the lender calling upon the Guarantor to pay. It is pertinent to note that, the Financial Creditor invoked Guarantee vide First Invocation Notice dated 01.09.2018 issued under Section 13(2) of the SARFAESI Act requiring the Corporate Debtor and the Personal Guarantor(s), including the Personal Guarantor herein, to pay the outstanding dues within 5 days from the date of receiving said notice. It is not in dispute that the amount in default as stated in the notice was not paid by the noticee(s) and the amount stated in the present Petition is still due from the Corporate Debtor as well as the Personal Guarantor(s). Accordingly, the default qua the Personal Guarantor occurred on expiry of 5 days from the date of receipt of notice dated 01.09.2018, which is stated to have been received on 4.09.2018 as per speed post tracking report. Hence, the date of default shall be 10.09.2018.
19. The Financial Creditor has filed this Petition on the basis of default said to have occurred on 17.7.2018, which appears to be date of classification of account of principal borrower as NPA. The date of default qua corporate debtor is distinct than the date of default qua personal guarantor in case of on demand guarantee as the default qua personal guarantor occurs upon expiry of period stated in the notice calling upon the personal guarantor to pay in terms of the personal guarantee, which in present case is first Invocation Notice dated 01.09.2018 issued under Section 13(2) of the SARFAESI Act requiring the Corporate Debtor and the Personal Guarantor(s), including the Personal Guarantor herein, to pay the outstanding dues within 5 days of receipt of



said notice.

20. It is well settled that an invocation of an on-demand guarantee, once made in accordance with the terms therefore, imposes an immediate and binding liability on the guarantor to pay the outstanding dues on demand. The subsequent Second Invocation Notice serves only as a reiteration of the demand and does not alter the validity of the First Invocation Notice.
21. In terms of notice dated 01.09.2018 the limitation period starts from the expiry of the 60 days period i.e., 10.09.2018. The three years limitation for filing the captioned Petition ends on 09.09.2021. The period from 15.03.2020 to 28.02.2022 is to be excluded in view of decision in the case of *Suo Moto WP (Civil) No. 3 of 2020*, as further explained in the decision in case of *M/s Arif Azim Co. Ltd. Vs M/s Aptech Ltd. (2004) 3 S.c.R. 73: 2004 INSC 155, holding at Para 84 that* “the effect of the above-referred order of this Court in the fact of the present case is that the balance limitation left on 15.03.2020 would become available w.e.f. 01.03.2022. The balance period of limitation remaining on 15.03.2020 can be calculated by computing the number of days between 15.03.2020 and 27.03.2021, which is the day when the limitation period would have come to an end under ordinary circumstances. The balance period thus comes to 1 year to 13 days. This period of 1 year 13 days become available to the Petitioner from 01.03.2022, thereby meaning that the limitation period available to the petitioner for invoking arbitration proceedings would have come to an end on 13.03.2023”. In other words, the limitation period would stop to run from 15.3.2020 and shall again start running from 1.3.2022. Accordingly, the balance period of 17 months 26 days available on 15.3.2020 shall start from 1.3.2022,



which takes the limitation to 26.8.2023. This Petition has been filed on 8.11.2024.

22. The Financial Creditor has contended that its claim was admitted in the CIRP of the Corporate Debtor and recent NCLAT judgement in *Gourishankar Poddar (Comp. App. (AT) (Ins.) Nos. 689 & 663 of 2024)*, (i) treats the date of demand/invocation upon the guarantor as the accrual point under Article 137; (ii) recognises the admission of the corporate debtor's CIRP and claims as showing acknowledgment and subsistence of liability; (iii) notes COVID-19 exclusion; and (iv) accepts that a Rule 7(1) notice is a valid trigger for Section 95 computation, even where there had been prior recall/communications.
23. In case of *State Bank of India v. Gourishankar Poddar (Comp. App. (AT) (Ins.) Nos. 689 & 663 of 2024)* also reported in (2025) *ibclaw.in 17*, the Hon'ble NCLAT noted that "51. A CIRP petition bearing CP (IB) No. 350/7/NCLT/AHM/2019 was filed against the Corporate Debtor M/s Raj Rayon Industries Ltd. by the appellant on 20.05.2019 and the same was admitted on 23.01.2020. While admitting the petition adjudicating Authority took cognizance of balance confirmation letter issued by M/s Raj Rayon Industries on 08.08.2016 to the appellant in this case (SBI). The last transaction in the account was on 03.02.2017 and therefore the Adjudicating Authority held that was filed well within statutory period of limitation of three years from the date of last transaction i.e. before 02.02.2020." It is in this context that the Hon'ble NCLAT at para 56 held that "As the guarantee is a continuing one, the guarantor liabilities continues still such time entire outstanding amount is paid as provided by Clause 26 of 2014 agreement. This aspect has also been endorsed by Hon'ble Courts as seen in previous paragraphs. The



Guarantor issued the demand notice after the CIRP proceeding against CD was admitted on 23.01.2020. This meant that the concerned Court has acknowledged the debt. Thereafter, a specific demand notice in terms of provisions of IBC was issued on 08.03.2021 which was well within the limitation period. The appellant filed petition under Section 95 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtor) Rules, 2019 on 24.03.2021". In the present case, the CIRP in case of Corporate Debtor commenced on 9.2.2023 pursuant to an application filed by Bank of India and not the financial creditor petitioner herein. However, we note that the claim of the financial creditor herein was verified by the Resolution Professional in CIRP of Corporate Debtor and was admitted. It follows therefrom that the claim of the financial creditor herein was found acknowledged in the books of the Corporate Debtor by the Resolution Professional of Corporate Debtor. Now the question arises whether the acceptance of the claim of the financial creditor herein in CIRP of Corporate Debtor can further extend the period of limitation. It is trite law that the liability of guarantor is co-extensive with the liability of the principal borrower as is also explicitly provided in clause 7 of the Guarantee deed stating that *"In order to give effect to the Guarantee herein contained the Lead Bank shall be entitled to act as if the Guarantors were principal debtors to the Lead bank for all payments guaranteed by them as aforesaid to the Lead Bank."* The Guarantee executed by the Personal Guarantor in the present case is continuing guarantee as clearly provided in clause 8 of said guarantee which states that *"The Guarantee herein contained is a continuing one for all amounts advanced by the Lead Bank to the Borrower"* Any liability acknowledged in the Books of Account of the Corporate Debtor constitute



valid acknowledgement for extending the limitation as held in case of Asset Reconstruction Company (India) Ltd. v. Tulip Star Hotels Ltd. & Ors., (2022) ibclaw.in 94 SC at para 85 that It is well settled that entries in books of accounts and/or balance sheets of a Corporate Debtor would amount to an acknowledgment under Section 18 of the Limitation Act. Accordingly, we are of considered view that the liability due to the financial creditor having been verified by the RP of the Corporate Debtor in its CIRP as within limitation in itself constitutes acknowledgement by the Corporate Debtor and binds the Guarantor as well thereby further extending the period of limitation. Accordingly, we are of considered view that the present petition is within limitation period and is maintainable.

24. As regards allegation of the Personal Guarantor in relation to suppression of the invocation notice dated 1.9.2018 by the Financial Creditor, it was stated by the Financial Creditor that, due to inadvertence, the notice issued under Section 13(2) of the SARFAESI Act could not be produced along with the initial pleadings, however, the said notice was subsequently placed on record by the Respondent themselves, through the reply filed by the Personal Guarantor. It is pertinent to note here that the proceedings before this Tribunal in an application for insolvency resolution are beneficial proceedings qua the affairs of the person whose insolvency resolution is being sought by the said application and that person is to be heard before deciding on the admission of that person in the Insolvency Resolution. Further, the aspect of default is to be independently ascertained by this Tribunal after appreciation of facts and evidences placed by both the parties on record. Accordingly, we are of considered view that alleged suppression can not said to be arising from the malicious



intent to save the case, which even on the basis of earlier invocation notice has been found to be maintainable.

25. Further, the statutory demand notice can be issued at any time within the limitation period and limitation runs from the date of default and the Application seeking admission into Insolvency Resolution is to be filed within limitation period, accordingly, the statutory demand notice has to precede such filing. There is no provision in the law which vitiates the proceedings if the statutory demand notice is issued after gap of years so long as the filing of Application consequent thereto is found within the limitation period.
26. As regards non application of mind by the Resolution Professional by not considering the submission of the Respondent in relation to invocation notice dated 1.9.2018, we find merit in the submission of the Respondent and cautions the Resolution Professional to be vigilant and give due consideration to the objections raised by the Personal Guarantor while finalising their report u/s 99 of the Code. As the report of Resolution Professional is recommendatory in nature and is not binding on this Tribunal, we are of the considered view that non consideration of invocation notice dated 1.9.2018 does not vitiate the present proceedings.
27. The Financial Creditor issued a Demand notice dated 01.12.2023 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 calling upon the Personal Guarantor(s) to pay the unpaid debt in default.



28. Upon perusal of the documents on record, it is clearly established that the Corporate Debtor has committed default in repayment of loan amount granted by the Financial Creditor. Personal Guarantor(s) of Frost International Limited has also committed default in repayment of the loan demanded by the Financial Creditor after invocation of Personal Guarantee. The Petition filed by the Financial Creditor satisfies the requirement as set out in Section 95 of the Code.

Order

29. Considering the above facts and circumstances and upon perusal of the documents on record, the C.P. (IB) / 48 / MB /2025 filed under Section 95 of the Code, hereby **Admitted** and the Insolvency Resolution Process stands initiated against Sujay Uday Desai viz. the Personal Guarantor herein. We hereby direct as hereinafter :

- I. Initiate Insolvency Resolution Process against the Respondent/Personal Guarantor and moratorium in relation to all the debts is declared, from today *i.e.* date of admission of the application, and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on the repayment plan under Section 114 whichever is earlier as provided under Section 101 of IBC, 2016. During the moratorium period,
 - a. Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed, and
 - b. The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and



- c. The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his 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.
- II. The Resolution Professional *viz.* **Mr. Pramod Kumar Ramesh Ladda** Insolvency Professional, having Registration No. **IBBI/IPA-02/IP-N00694/2018-2019/12148**, having address at 106, B wing Sr. No. 55 Sukhniwas 15th August Chowk Mangalwar Peth Pune 411011, Maharashtra E-Mail: info@csladda.com , csladdaji@gmail.com , mobile no. **9595271145, 7972422151** is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Mumbai Bench, inviting claims from all Creditors, within 21 days of such publication. The Resolution Professional shall discharge the functions/duties casted upon him under the provisions of the Code in this relation within time bound manner and shall be empowered to exercise the powers vested in him for discharge of such functions/duties.
- III. The Resolution Professional shall submit his periodic reports before this Tribunal as required under the IB Code or Regulations made thereunder.
- IV. The Applicant is directed to deposit **INR 2,00,000/-**



(Indian Rupees Two lakhs) to the bank account of the Resolution Professional within **one week**, towards his fees and out of pocket expenses to be incurred in relation to the process, however, the fees and such out of pocket expenses shall be such as is mutually agreed with the Creditor. Needless to say, this shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.

- V. The Registry is directed to communicate a copy of order to the Resolution Professional immediately after the pronouncement of order, and upload the same on the website within **seven** working days after the pronouncement of order.

30. Ordered accordingly.

Sd/-

Prabhat Kumar

Member (Technical)

Drupa

Sd/-

Sushil Mahadeorao Kochey

Member (Judicial)