

**NATIONAL COMPANY LAW TRIBUNAL**  
**COURT ROOM NO. 1,**  
**MUMBAI BENCH**  
**SINGLE BENCH**

**Item No. 1**

**IA 442 (AHM)/2024 with TCP(IBC)/ 5/(MB)2024 (old C.P.**

**(IB)/279(MB)2022**

CORAM:

**JUSTICE VIRENDRASINGH BISHT (Retd.)**  
**HON'BLE MEMBER (JUDICIAL)**

ORDER SHEET OF THE HEARING ON **11.07.2025**

NAME OF THE PARTIES: **STATE BANK OF INAID V/S**  
**HARSUKHBHAI PARBATBHAI LAKKAD**

Section 95 of Insolvency and Bankruptcy Code, 2016

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**ORDER**

**IA 442 (AHM)/2024 with TCP(IBC)/ 5/(MB)2024 (old C.P.**  
**(IB)/279(MB)2022**

1. Learned Counsel, Jaimin Dave a/w Hirva Dave appeared for the Personal Guarantor. Learned Counsel for the Financial Creditor present through VC but did not mark his appearance in the chat box.
2. This matter is taken for pronouncement of order in respect of IA 442 (AHM)/2024 with TCP(IBC)/ 5/(MB)2024. Order pronounced vide separate sheet.
3. **Company Petition i.e. TCP(IBC)/ 5/(MB)2024 stands dismissed.** Resultantly, **IA 442 (AHM)/2024 stands rejected.**

Sd/-  
**JUSTICE VIRENDRASINGH BISHT**  
**MEMBER (JUDICIAL)**

*Nitesh Puri*



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**IA 442 (AHM) of 2024 with  
TCP(IBC)/5/(MB)2024 (old CP(IB) 279 MB  
2022)**

Under section 95 of the Insolvency and  
Bankruptcy Code, 2016 read with Rule 7(2) of  
the Insolvency and Bankruptcy (Application to  
Adjudicating Authority for Insolvency  
Resolution Process for Guarantors to  
Corporate Debtor) Rules, 2019

**IN THE MATTER OF**

**RAMESH KUMAR TOTLA**

A-1/1007, Rudra Enclave, Althan-Bhimrad  
Road, Althan, Opposite nest Orchid, Surat,  
Gujarat - 395007.

**... Applicant/Resolution Professional**

V/s

**BANK OF BARODA**

Stressed Asset Management Branch  
Kamdhenu Complex, Opp. Polythenic.  
Ambawadi Abad.

**... Respondent**

**IN THE MATTER OF**

**STATE BANK OF INDIA**

Stressed Assets Management Branch, 2<sup>nd</sup> Floor  
Param Siddhi Complex, Opp. V S Hospital,  
Ashram Road, Ellisbridge, Ahmedabad,  
Gujarat - 380006.

**... Financial Creditor**

V/s



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**HARSUKHBHAI                      PARBATBHAI**  
**LAKKAD**

Shivam, 3-Pradhyuman Park, Street No. 3,  
Behind Bazar, Nana Mova, Rajkot.

**... Personal Guarantor**

**Order delivered on :-11.07.2025**

**Coram:**

**Hon'ble Justice Virendrasingh G Bisht, Member (Judicial)**

***Appearances:***

For the Applicant/Financial Creditor       :     Learned Counsel, Biju A Nair  
For the Resolution Professional             :     Learned Counsel, Sumit Parikh  
For the Respondent/Personal Guarantor   :     Learned Counsel, Jaimin Dave

**ORDER**

***Per: - Justice Virendrasingh G Bisht, Member (Judicial)***

1. The present proceeding arises pursuant to the reference u/s 419(5) of the Companies Act, 2013 read with Rule 60(2) and (3) of NCLT Rules, 2016 so as to render an opinion on the points of difference recorded by the learned Members constituting the Bench-II, Ahmedabad that heard the Petition u/s 95 of the Insolvency and Bankruptcy Code, 2016 (“**the Code**”) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Guarantors to Corporate Debtor) Rules, 2019.



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**Facts leading to the reference**

2. The learned Members are divided on the following legal points:
  - a. *Whether the Application is barred by Limitation?*
  - b. *Whether the Application is maintainable?*

**Judgements of the Bench-II, Ahmedabad**

3. Mrs. Chitra Hankare, Member (Judicial), after discussing the material on record and considering the report submitted by Resolution Professional under Section 99 of the Code held that the petition being barred by limitation, rejected the report of the RP recommending the admission of the Petition. Consequently, the learned Member (Judicial) also rejected the Petition.
4. Mr. (Dr.) V. G. Venkata Chalapathy, Member (Technical), on the other hand, concluded that the Petition well being within limitation accepted the report of Resolution Professional, leading to admission of the Company Petition.

**Factual Background**

5. According to Applicant-Bank after the receipt of loan Application from the Corporate Debtor, it sanctioned various credit facilities from time to time which was also renewed from time to time. Necessary documents including the Deed of Guarantees were also executed by the Corporate Debtor to evidence the transaction. The last Guarantee Agreement was executed by the Corporate Debtor on 12.06.2013 in favour of State Bank of India and on 29.10.2023 in favour of erstwhile State Bank of Patiala,



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Personal Guarantor secured credit facilities aggregating to Rs. 34.10 crores. The Corporate Debtor/Personal Guarantor executed revival letter on 05.10.2011 and 17.06.2014 (in favour of State Bank of India) and revival letter dated 17.02.2015 (in favour of State Bank of Patiala).

6. The Applicant-Bank next contends that in the year 2018 it initiated CIRP against the Corporate Debtor under Section 7 of the Code before NCLT, Ahmedabad, which came to be admitted vide an order dated 10.10.2019 and is presently under Liquidation.
7. The erstwhile State Bank of Patiala filed OA No. 07/2018 before learned DRT, Ahmedabad on 29.12.2017 for recovery of an aggregate amount of Rs. 15,10,59,321/-. The Applicant-Bank filed Original Application No. 726/2015 before DRT-II, Ahmedabad on 07.12.2015 for recovery of an aggregate amount of Rs. 17,70,76,794.14/- which is pending for adjudication. Thereafter, erstwhile State Bank of Patiala was amalgamated in to the present Applicant-Bank on 10.06.2015.
8. As per the Applicant-Bank, the demand notice under Section 13(2) of SARFAESI Act. 2002 was issued upon the Corporate Debtor and the Personal Guarantor on 01.10.2015 by State Bank of India. The said notices amounts to invocation of Personal Guarantee. Demand notice in Form-B was issued to Personal Guarantor on 17.03.2022 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority Insolvency Resolution Process for Personal Guarantees to Corporate Debtor) Rules, 2019.



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9. In due course, Resolution Professional filed its report on 11.03.2014 recommending admission of the Application filed under Section 95 of the Code.
10. The Respondent/Personal Guarantor has resisted the present petition by filing its reply. According to Personal Guarantor the present petition is barred by limitation as default occurred on 30.11.2015 and the limitation period for the purpose of filing Application under Section 95 of the Code had already expired on 30.11.2018. Since the present application came to be filed on 21.05.2022, the same is barred by limitation.
11. In response to the reply filed by the Personal Guarantor, the Applicant-Bank Bank filed rejoinder stating that the right of Financial Creditor to prefer an application against the Guarantor is a right conferred by statute i.e. Section 95 of the Code which is brought into force vide notification dated 15.11.2019 in so far as it would be applicable to Personal Guarantor. Therefore, at any rate it cannot be imagined and envisaged that the applicant had right to proceed against the Personal Guarantor under Section 95 of the Code on any date before the aforesaid date. The right of the Petitioner to file the present Petition has arisen only on 15.11.2019. This being so the present petition is well within the period of limitation.

**Rival Submissions:-**

12. Mr. Biju A Nair, learned Counsel for the Financial Creditor (State Bank of India), has filed written submissions/arguments along with citation. Perused.



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13. Mr. Jaimin Dave, learned Counsel for the Personal Guarantor (Mr. Harsukhbhai Parbatbhai Lakkad), has also filed written submissions/arguments along with citation. Perused.

**Findings**

14. The Applicant-Bank has submitted that since the relevant provisions as applicable to Personal Insolvency Resolution of Part-III of the Code has been brought into force only from 15.11.2019 by the Government of India, its cause of action has arisen from the said date i.e. 15.11.2019. Since the Application under Section 95 of the Code is filed on 21.05.2022 the same is within the limitation after considering the exclusion of the period from 15.03.2020 to 28.02.2022 as laid down by the Hon'ble Supreme Court in Suo-Moto WP(Civil) No. 3 of 2022 IN Re: cognizance for extension of limitation.
15. The aforesaid argument does not cut the ice and is beyond acceptance. For the reason that the purpose of the code is not to revive the time-barred debt and/or enforcement of remedy which has become stale. The fact that the alternate/concurrent remedy existed on 15.11.2019 due to enactment/enforcement of certain provisions of the Code, cannot and should not be stretched to meant to give fresh cause of action to anyone who could have availed the remedy but for law of limitation. The Hon'ble Supreme Court in the case of *B K Education Services Private Limited (Supra)* has made it clear that the application filed after the Code has come into force cannot suddenly revive debt/enforcement of the same, which has become time barred.



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16. The Hon'ble Supreme Court in the above noted case made following observations at paragraph 34 which is reproduce as under.

*“It is important to remember that interpretation is the art of matching the text with the contest. In a slightly different contest, under Section 86 of the Electricity Act, this Court, in A.P. Power Coordination Committee v. Lanco Kondapalli Power Ltd., refused to apply the principle of these cases stating: (SCC p. 497, paras 30-31)*

*“.... In the absence of any provision in the Electricity Act creating a new right upon a claimant of claim even monies barred by law of limitation, or taking away a right of the other side to take a lawful defence of limitation, we are persuaded to hold that in the light of nature of judicial power conferred on the Commission, claims coming for adjudication before it cannot be entertained or allowed if it is found illegally not recoverable in a regular suit or any other regular proceeding such as arbitration, on account of law of limitation. We have taken this view not only because it appears to be more just but also because unlike labour laws and the Industrial Disputes Act, the Electricity Act has no peculiar philosophy or inherent underlying reasons enquiring adherence to a contrary view.*

*31. We have taken the aforesaid view to avoid injustice as well as the possibility of discrimination. We have already extracted a part of para 11 of the judgment in State of Kerala v. V.R. Kalliyankutty wherein the Court considered the matter also in the light of Article 14 of the Constitution. In that case the possibility of Article 14 being attracted against the statute was highlighted to justify a particular*



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*interpretation as already noted. It was also observed that it would be ironic if in the name of speedy recovery contemplated by the statute, a creditor is enabled to recover claims beyond the period of limitation. In this contest, it would be fair to infer that the special adjudicatory role envisaged under Section 86(1)(f) also appears to be for speedy resolution so that a vital developmental factor – electricity and its supply is not adversely affected by delay in adjudication of even ordinary civil disputes by the civil court. Evidently, in the absence of any reason or justification the legislature did not contemplate to enable a creditor who has allowed the period of limitation to set in, to recover such delayed claims through the Commission. Hence, we hold that the claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the civil court.”* (emphasis supplied)

*This case is most apposite. As in the present case, and as is reflected in the Insolvency Law Committee Report of March 2018, the legislature did not contemplate enabling a creditor who ha allowed the period of limitation to set in to allow such delayed claims through the mechanism of the Code. The Code cannot be triggered in the year 2017 for a debt which was time-barred, say, in 1990, as that would lead to the absurd and extreme consequence of the Code being triggered by a stale or dead claim, leading to the drastic consequence of instant removal of the present Board of Directors of the Corporate Debtor permanently, and which may ultimately lead to liquidation and, therefore, corporate death. This being the case, the expression*



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*“debt due” in the definition sections of the Code would obviously only refer to debts that are “due and payable” in law i.e. the debts that are not time-barred.*

17. Apart from the above, it is worth noting that there is no provision in the Code which provides that the proceedings pending, on or before the commencement of the Code, before DRT/Civil Court with respect to recovery of any debt can be transferred to Adjudicating Authority. Wherever intended, the Court provides for such transfer such as Sections 225, 239 of the Code read with Section 434 of the Companies Act, 2013.
18. A reference can be made to the other legislation like the Real Estate (Regulation and Development) Act, 2016 (RERA) providing for alternate/concurrent remedies, which specifically provides that the complaints pending before the other forum can be transferred/withdrawn to be filed before learned Authority. Section 71 of RERA provides that complaint which are covered under the RERA and pending before other forum can be withdrawn with permission and filed before learned Authority. It reads as under:

*“71. (1) For the purpose of adjudging compensation under sections [12](#), [14](#), [18](#) and [section 19](#), the Authority shall appoint in consultation with the appropriate Government one or more judicial officer as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard:*



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*Provided that any person whose complaint in respect of matters covered under sections [12](#), [14](#), [18](#) and [section 19](#) is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986, on or before the commencement of this Act, he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act.”*

19. Thus, optimism of Applicant-Bank that the notification dated 15.11.2019 gave rise to fresh cause of action and/or the said be considered as relevant date for computation of limitation period is totally misplaced and misconceived. Therefore, I reject the same.
20. The second contention of the Applicant-Bank that it is entitled to benefit of Section 14 of the limitation Act 1963 (“Limitation Act”) as it was diligently prosecuting proceedings before DRT, Ahmedabad for recovery of the amount due sounds sans merits.
21. The Applicant-Bank has placed reliance in *Shesh Nath Singh and Anr. v. Baidyabati Sheoraphuli Co-operative Bank Ltd. and Anr (2021) 7SCC 313* to advance its case that the benefits under Section 14 of Limitation Act may be given while considering the limitation period for present proceedings.
22. Section 14 of the Limitation Act relates to “exclusion of time of proceedings bona fide in Court without jurisdiction”. There are conditions which have to be complied before such a benefit can be



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granted. The said conditions have also been discussed in *Shesh Nath Singh's* viz.

- i. Earlier proceedings should have been for same relief;
  - ii. The proceedings should have been prosecuted diligently and in good faith; and
  - iii. The proceedings should have been prosecuted in a Forum which from defect of jurisdiction or other cause of a like nature, was unable to entertain it.
23. In the present case, Applicant-Bank has initiated proceeding before DRT, Ahmedabad. DRT, Ahmedabad cannot be considered as a wrong Forum or Forum without jurisdiction. Admittedly the said proceedings are pending and no final decree has been passed.
24. Strictly speaking, even the remedies under the SARFAESI Act, 2002/RDDBFI Act, 1993 are not same as that under Section 95 of the Code. Section 95 of the Code deals with debt resolution through Insolvency Resolution Process and recovery could be one of the by-products of it while DRT is only for recovery of the dues. Even if the said difference is ignored, the very fact that the Applicant-Bank is neither before the wrong Forum (i.e. without jurisdiction) nor has the Forum refused to entertain it, the advantage flowing from Section 14 of the Limitation Act cannot be given. It is worth noting that the case of Applicant-Bank that the Application before DRT was not only admitted but is pending.



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25. The fundamental difference between the facts of *Shesh Nath Sing (Supra)* and the case in hand is thus: in *Shesh Nath Sing* the Financial Creditor was Co-operative Bank. The Hon'ble Calcutta High Court, before whom the SARFAESI Act, 2002 were challenged, was prima facie of the view that a Co-operative Bank could not invoke the provisions of the SARFAESI Act, 2002. Therefore, the proceedings were stayed pending a final decision on the writ petition. The Court also felt that the case was made out for exclusion of time under Section 14 of the Limitation Act. Herein, rather, it is the case of Applicant-Bank that the Application before DRT was admitted and is pending.
26. The reliance by Applicant-Bank in *Jugnesh Shah and Anr. v. Union of India and Anr. (2019) 10 SCC 750* is of no assistance as it only reaffirmed *B. K. Educational Services (P) Limited (Supra)* relied upon by the Respondent/Personal Guarantor.
27. Similarly ratio laid down in the case of *Black Pulse Hotels Private Limited (Supra)* does not come to rescue of Applicant-Bank as the facts therein vis-a-vis case in hand are distinguishable.
28. The law relating to applicability of Section 18 of Limitation Act is fairly well settled. The Applicant-Bank has failed to prove any document before Adjudicating Authority to show any acknowledgment of debt/guarantee by the Respondent/Personal Guarantor within limitation period. It is also not in dispute that no decree or certificate has been issued by the DRT which could have given rise to fresh cause of action. In the absence of any acknowledgment as required under Section 18 of the limitation Act, the limitation expired on 30.11.2018 (i.e. three years



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after the date of default) for filing the Application under Section 95 of the Code.

**Conclusion:-**

29. For the forgoing reasons, I am in agreement with learned Member (Judicial) that the captioned Application under Section 95 of the Code is barred by limitation and as a necessary sequel application/report filed by the Resolution Professional deserves to be rejected. The legal points are thus answered accordingly.
30. In terms of above **TCP(IBC)/5/(MB)2024** filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 is **dismissed** as hit by the period of limitation. No order as to cost.
31. Accordingly, **IA 442(AHM) of 2024** stands **rejected**.
32. Records and proceedings be remitted to Court-II, Ahmedabad Bench.

**Sd/-**  
**VIRENDRASINGH G BISHT**  
**MEMBER (JUDICIAL)**

*ANKIT*