



SL. No.2

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)

CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 18.11.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/187/2022, IA (IBC)/142/2024 in Company Petition IB/54/95/2022
NAME OF THE COMPANY	
NAME OF THE PETITIONER(S)	Jammu & Kashmir Bank Ltd
NAME OF THE RESPONDENT(S)	Kanumuru Raghu Ram Krishama Raju
UNDER SECTION	95 of IBC

ORDER

Orders pronounced, recorded vide separate sheets. In the result, the Company Petition IB/54/95/2022 is dismissed.

IA(IBC)/187/2022

As the Company Petition IB/54/95/2022 is dismissed, this IA has become infructuous.

IA(IBC)/142/2024

As the Company Petition IB/54/95/2022 is dismissed, this IA has become infructuous.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II**

CP (IB) No.54/95/HDB/2022

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

In the matter of:

Jammu and Kashmir Bank Limited

Regd. Office at Corporate Head Quarters
M.A.Road, Srinagar.

Impaired Assets Recovery Branch
at National business centre, 1st Floor,
Near MMRD Ground BKC, Bandra (East)
Mumbai-400051

... Petitioner/ Financial Creditor

Vs.

Mr. Kanumuru Raghu Rama Krishna Raju

R/o. 4-50/2, Block 4, A1
Bhimavaram, Akividu Mandal
East Godavari District
Andhra Pradesh - 534235

... Respondent/Personal Guarantor

Date of Order: 18.11.2024

CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Sri Sanjay Puri, Hon'ble Member (Technical)

Counsels present:

For the Financial Creditor : Mr. Sriram Reddy, Mr. Dharmesh Jain,
Advocates

For the Personal Guarantor : Mr. Yogesh Jagia, DVAS Ravi Prasad,
Advocates

[PER: BENCH]

ORDER

1. This instant petition is filed by **M/s. Jammu And Kashmir Bank Limited (Financial Creditor/FC/Petitioner)** under Section 95(1) of The Insolvency and Bankruptcy Code, 2016 (**IBC**) r/w Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019, seeking an order for initiation of Personal Insolvency Resolution Process against **Mr. Kanumuru Raghu Rama Krishna Raju**, who is the Personal Guarantor (**Personal Guarantor/PG/Respondent**) of **M/s. Ind-Barath Energy (Utkal) Limited (CD/ Principal Borrower)**.
2. **Petitioner's case:**
 - i. The CD had availed credit facilities of Rs.429.22 Crores (Rupees Four Hundred and Twenty-Nine Crores and Twenty-Two Lakhs Only) from the PNB led Consortium which includes Jammu & Kashmir Bank Ltd., Bank of Baroda, Corporation Bank, Union Bank of India and Karur Vysya Bank under a Working Capital Consortium Agreement dated 03.03.2015. The FC extended an aggregate facility of Rs.55 Crores to the CD under Working Capital Agreement¹.
 - ii. The Personal Guarantor stood as a guarantor to secure the repayment of the financial assistance availed by the CD from the FC. Accordingly, the Personal Guarantor executed a Guarantee Agreement dated 03.03.2015². On the account of default in the repayment of loan (31.12.2014), the Corporate Insolvency Resolution Process (CIRP) was initiated against the Principal Borrower/CD on a

¹ Page 88/Part A First Schedule, of Petition

² Page 24-35 of Petition

petition bearing No. CP(IB) No. 276/7/HDB/2018 filed by one of the Financial Creditors viz., Bank of Baroda on 29.08.2018³ under Section 7 and a moratorium under Section 14 of the IBC was imposed and this Tribunal, vide Order dated 25.07.2022 approved the Resolution Plan of the CD submitted by M/s.JSW Energy Limited.

- iii. The Principal Borrower committed a default in repaying the loan amount to the Petitioner. The last payment as reflected in the Statement of Account of the CD maintained by the Petitioner was on 27.05.2016⁴. The Financial Creditor issued a Demand Notice in Form-B under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019 to the Personal Guarantor on 09.07.2021 requesting to pay the unpaid debt of the CD, amounting to Rs.26,43,82,869/- (Rupees Twenty-Six Crores Forty-Three Lakhs Eighty-Two Thousand Eight Hundred and Sixty-Nine Only) within 14 days from the date of receipt of the notice. In response, the Personal Guarantor issued a letter dated 22.07.2021 stating that the notice is not valid and should be withdrawn because it is barred by limitation, given the timeline of events outlined in Form-B. The Personal Guarantor failed to repay the debt amount to the Financial Creditor within the time specified. Given this default, the Financial Creditor has preferred the instant petition under Section 95(1) of the IBC.
- iv. The Financial Creditor has attached the following documents to prove the existence of debt and default on the part of the Personal Guarantor:

³ Page 182 to 206 of the Petition

⁴ Statement of Account - Page 209 of the Petition

S.No.	Document
1.	Copy of Letter dated 16.01.2014 issued by the FC to the CD.
2.	Copy of the Working Capital Consortium Agreement dated 03.03.2015
3.	Copy of the Demand Notice dated 09.07.2021
4.	Copy of Reply to the Demand Notice dated 22.07.2021
5.	Mr. Machar Rao Meenavalli appointed as Resolution Professional (RP) for M/s.Ind-Barath Energy Utkal Limited/CD, dated 17.02.2022
6.	RP Report dated 03.03.2022
7.	Supplementary RP Report dated 12.03.2022

3. Respondent's Counter:

- i. In the counter, the Respondent has contested the averments made by the Petitioner by submitting:
 - a) That the RP submitted his Report without verifying the facts and further without giving the opportunity to the Personal Guarantor to submit the requisite details and to appear before him.
 - b) RP Report was contrary to the contour of IBC as it was subject to the limitation period and thus barred.
 - c) The Guarantee Agreement itself is not valid as per the Indian Contract Act, as the Agreement dated 03.03.2015 has not been signed by the consortium of bankers.

- d) Invocation of Guarantee is contrary to contract of guarantee as the Guarantee Agreement was executed by the Personal Guarantor collectively in favour of PNB Consortium.
- e) The Resolution Plan of the Corporate Debtor under Section 31 of IBC, 2016 is approved. Then the Guarantee is void on the account of impairment of assets and personal guarantor deserve to be discharged.
- ii. The Respondent strongly relied upon the case of, **B.K EDUCATIONAL SERVICES PRIVATE LIMITED VS PARAG GUPTA AND ASSOCIATES**⁵ wherein at Para 42 the Hon'ble Supreme Court held,
- "It is thus clear that since the Limitation Act is applicable to applications filed under section 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. "The right to sue", therefore, accrues when a default occurs. **If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act**, save and except in those cases, where, in the facts of the case, section 5 of the Limitation Act may be applied to condone the delay in filing such application." (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019".
- iii. By referring to the further remarks of **Syndicate Bank Vs Channaveerapan Beleri & Ors.** ⁶ it is argued that,

"Let us say that a creditor makes some advances to a borrower between 10.4.1991 and 1.6.1991 and the repayment thereof is guaranteed by the guarantor undertaking to pay on demand by the creditor, under a continuing guarantee dated 01.04.1991. Let us further say a demand is made by the creditor against the guarantor for payment on 01.03.1993. Though the limitation against the principal debtor may expire on 01.06.1994, as the demand was made on 01.03.1993 when

⁵ (2019) 11 SCC 633

⁶ [(2006) 11 SCC 506]

the claim was 'live' against the principal debtor, the limitation against the guarantor would be 3 years from 01.03.1993. On the other hand, if the creditor does not make a demand at all against the guarantor till 01.06.1994 when the claims against the principal debtor get time-barred, any demand against the guarantor made thereafter say on 15.09.1994 would not be valid or enforceable.”

- iv. Relying on the above, it was contended that since the demand notice of the creditor was sent to the personal guarantor after the expiry of the Limitation period (calculated from the date of default of the CD), this petition is barred by limitation and thus not maintainable.

4. Report of the RP:

- i. This Adjudicating Authority, vide order dated 17.02.2022 granted interim-moratorium and appointed Mr. Machar Rao Meenavalli, bearing Registration No.IBBI/IPA-001/IP-P00891/2017-2018/11488 to act as Resolution Professional and directed him to file his report within ten days from the date of his appointment, in terms of Section 99 of IBC and further directed the Petitioner to issue Notice to the Personal Guarantor regarding initiation of the present proceedings. Accordingly, the petitioner issued a notice to the PG.
- ii. The Resolution Professional has filed his report which contains as follows:
 - a) The present Petition satisfies all the ingredients of Section 95 of IBC [Report of RP - Page 13]
 - b) The RP sent notice dated 23 February 2022 to the Personal Guarantor seeking details of the repayment of debt. The Personal Guarantor failed to provide any relevant information to the RP in this regard [Report of RP - Page 13]

- c) The RP is not in receipt of any document executed by the parties, nor any order of a court or other forum, whereby the Guarantee Agreement was cancelled or set aside [Report of RP - Page 13].
- d) The Guarantee Agreement is a guarantee "on demand", and the limitation period in respect thereof commences from the date of demand by the Petitioner [Report of RP - Page 14].
- iii. With the above submissions, the RP recommended for admission of the Petition filed by the Financial Creditor against the Personal Guarantor to the Corporate Debtor.
- iv. The RP has also submitted a Supplementary Report dated 14.03.2022 wherein it was stated that "The personal guarantor raised objections, prompting a supplementary report correcting a typographical error regarding the reference to the guarantee agreement which was to be referred to as dated 03-03-2015". It was stated that the Principal Borrower defaulted on 31.12.2014, with next payment due on 30.06.2016. The CIRP was initiated against the Principal Borrower on 29.08.2018 basing on a petition filed by Bank of Baroda under Section 7 of IBC. Further, Resolution Plan of Principal Borrower/Corporate Debtor submitted by M/s.JSW Energy Limited was approved on 25.07.2022. The Resolution Professional also stated that the resolution plan mentioned discussions on impairment loss of assets. It is also mentioned that the RP cannot comment on asset impairment due to lack of access to records of Corporate Debtor. An IA was filed by the Personal Guarantor on 24.02.2022 which led to a hearing on 02.03.2022, preventing him from issuing further notice to the guarantor.

FINDINGS AND DECISION:

5. A Consortium of Banks consisting of Punjab National Bank, Jammu & Kashmir Bank, Bank of Baroda, Corporation Bank, Union Bank of India, Karur Vysya Bank granted credit facility of Rs.429.22 crores to M/s. Ind Barath Energy (Utkal) Ltd, vide Agreement dated 3rd March, 2015. The share of the present Petitioner was Rs.55 crores. The Respondent stood as Guarantor for the repayment of the said loan amount.
6. When the principal borrower failed to pay the loan amount, Bank of Baroda filed CP No.276/7/HDB/2018 under Section 7 of the IBC, 2016 which was admitted, vide order dated 29.08.2018. The Resolution Plan of M/s. JSW Energy Private Limited was approved by this Authority on 25.07.2022.
7. M/s.Jammu and Kashmir Bank Limited, another member of the Consortium invoked the Guarantee Deed by issuing demand notice dated 09.07.2021 and on the failure of the present Respondent to pay the loan amount, the present Petition has been filed.
8. After the approval of the Resolution Plan, the liability of the surety is also supposed to be discharged in view of Section 134 of the Indian Contract Act, as argued by the Learned Counsel for the Respondent by submitting that there are clear terms and conditions in the said Plan, the legal consequences of which are the discharge of the guarantor.
9. The Learned Counsel for the Personal Guarantor contends that after approval of the Resolution plan, the personal guarantee and all securities to secure the debt have been assigned by the assignment to SPVs, and the Financial Creditor was left with no right to continue with the present petition. The Counsel relied on the case of ***Oberoï Forwarding Agency v.***

New India Assurance Co. Ltd & Anr⁷ which states that subrogation and assignment are two different rights.

Para Numbers 2.1.1. (c)(i) and 2.4. (a)(i) of the Executive Summary, Part B Clause No 1.3.14 and Schedule 2 Resolution Plan Steps IV are relevant, which are reproduced below:

2.1.1. (c) the claims filed by the Financial Creditors of the Company with the Resolution Professional aggregate to INR 67,62,54,76,560.52 (Rupees Six Thousand Seven Hundred Sixty Two Crores Fifty Four Lakhs Seventy Six Thousand Five Hundred Sixty and Fifty Two Paise Only) out of which, the Admitted Financial Debt is INR 50,81,54,43,657.36 (Rupees Five Thousand Eighty One Crores Fifty Four Lakhs Forty Three Thousand Six Hundred Fifty Seven and Thirty Six Paise Only) and the break-up of the same is as follows:

2.1.1.(c). (i) the verified and admitted claims of the secured Financial Creditors (the "Secured Financial Creditors") amount to INR 48,93,12,88,587.36 (Rupees Four Thousand Eight Hundred Ninety-Three Crores Twelve Lakh Eighty-Eight Thousand Five Hundred Eighty-Seven and Thirty-Six Paise Only) ("Admitted Secured Financial Debt"), and

2.4.(a).(i) The Admitted Secured Financial Debt shall be assigned / novated to or acquired by the SPV on the existing terms and conditions of such Admitted Secured Financial Debt ("Assignment of Admitted Secured Financial Debt") by payment of an amount equal to INR 1001,00,00,000 (Rupees One Thousand One Crore Only) ("Upfront Payment to Secured Financial Creditors") to the Secured Financial Creditors, provided that any such payment to the Secured Financial Creditors shall be made after payment of unpaid CIRP Costs in full and all payments being made to the Operational Creditors (including payments to workmen and employees) under this Resolution Plan.... Subject to any decision taken by the CoC as per section 2.1.1(e) of the Executive Summary and section 1.3.4 of Part B (Financial Proposal) and the Upfront Payment to Secured Creditors shall be distributed on a pro rata basis to the Admitted Secured Financial Debt being assigned by the Secured Financial Creditors.

⁷ (2002) 2 SCC 407

Part B - 1.3.14 If any person has issued any guarantee, indemnity, letters of comfort, letters of support, credit comforts, sponsor supports or undertaken similar obligations in respect of any debt or other obligation of the Company ("Guarantee Obligations"), **the right of such person ("Third Party Security Provider") relating to subrogation and/ or to claim any amounts in respect of such obligations against the Company, whether claimed or unclaimed, admitted or not, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, disputed or undisputed, present or future, in relation to any period prior to the Insolvency Commencement Date shall be deemed to be permanently extinguished with effect from the NCLT Approval Date**, and all the contracts entered into by the Company with such creditors will be deemed to be terminated without any liabilities, claims or obligations whatsoever arising out of or in relation to such contracts, by virtue of the order of the NCLT approving this Resolution Plan and the Company, the Resolution Applicant, or the SPV shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto.

It is clarified that extinguishment of any subrogation or indemnity rights of any Third-Party Security Provider shall be without prejudice to the rights of the beneficiaries of any Guarantee Obligations to make claims against such Third-Party Security Providers as per applicable law (including for any losses suffered by such beneficiaries in relation to such Guarantee Obligations). It is further clarified that the beneficiaries of any guarantees issued on behalf of the Company and the guarantor thereof shall be under an obligation to do all acts as may be necessary to give effect to the extinguishment of the subrogation rights of such guarantor of the Company upon approval of this Resolution Plan by the NCLT.

IV. STEP 4: ASSIGNMENT/NOVATION OF ADMITTED SECURED FINANCIAL DEBT AND ADMITTED UNSECURED FINANCIAL DEBT; UPFRONT PAYMENT TO SECURED FINANCIAL CREDITORS AND UPFRONT PAYMENT TO UNSECURED FINANCIAL CREDITORS

2. The Admitted Secured Financial Debt shall be assigned or novated to or acquired by the SPV on the existing terms and conditions of the Admitted Secured Financial Debt, along with all encumbrances, mortgages and guarantees to secure such debt, in consideration of an amount equal to INR 1001,00,00,000 (Rupees One Thousand One Crore Only) i.e., Upfront Payment to Secured Financial Creditors. **The Upfront Payment to Secured Financial Creditors shall be deemed to have been made directly by the SPV to the Secured Financial**

Creditors notwithstanding that the payment has been routed through the CIRP Account.

10. We rely on the ***State Bank of India v. Ghanshyam Surajbali Kurmi***⁸, NCLT, Hyderabad stating:

“17.21. We are also of the view that the Financial Creditor is also at liberty to initiate Insolvency Resolution Process against the Personal Guarantor; the resolution plan approved by the Adjudicating Authority is not for recovery but for revival. Further as per Section 134 of the Indian Contract Act, 1872, a guarantor is discharged of its liability towards the creditor only if the creditor on its own instance discharges the principal debtor through voluntary act of the creditor and not due to operation of law.”

11. We may also profitably refer to the decision of the Hon’ble Supreme Court in the matter ***of Lalit Kumar Jain v. Union of India & others***⁹ wherein it was held that:

“108. It is therefore clear that the sanction of a resolution plan and finality imparted to it by Section 31 does not per se operate as a discharge of the guarantor’s liability. As to the nature and extent of the liability, much would depend on the terms of the guarantee itself. However, this court has indicated time and again that an involuntary act of the principal debtor leading to the loss of security would not absolve a guarantor of its liability”.

12. In ***Maharashtra State Electricity Board***¹⁰ the liability of the guarantor (in a case where liability of the principal debtor was discharged under the insolvency law or the company law), was considered, it was held that –

“in view of the unequivocal guarantee, such liability of the guarantor continues and the creditor can realise the same from the guarantor in view of the language of Section 128 of the Contract Act as there is no discharge under Section 134 of that Act.”

⁸ (2022) ibclaw.in 635 NCLT

⁹ SCC OnLine SC396 2021

¹⁰ (2020) 8 SCC 531)

13. Here, we also rely upon the judgement of the Hon'ble National Company Law Appellate Tribunal (NCLAT) in **SVA Family Welfare Trust & Anr. vs. Ujaas Energy Ltd. & Ors**¹¹, where it was held that the security interest of dissenting financial creditors, including personal guarantees, could be addressed within a resolution plan. In **Roshan Lal Mittal and Ors. vs. Rishabh Jain and Ors.**¹² it was affirmed that resolution plans do not automatically absolve personal guarantors of their liabilities.
14. As far as the liability of the Personal Guarantor is concerned, relying on the Indian Contract Act, 1872, the Contract of Guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default. The person who gives the guarantee is called the surety, the person in respect of whose default, the guarantee is given is called the “Principal Debtor” and the person to whom the guarantee is given is called the Creditor.
15. A guarantee may be either oral or written. The provisions of Section 126 of Indian Contract Act, 1872 reads thus:
- “126. “Contract of guarantee”, “surety”, “principal debtor” and “creditor”. —A “contract of guarantee” is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the “surety”; the person in respect of whose default the guarantee is given is called the “principal debtor”, and the person to whom the guarantee is given is called the “creditor”. A guarantee may be either oral or written.”*
16. It is to be noted that the Contract of Guarantee is an independent contract and the liability of the Personal Guarantor is different from that of the Principal Borrower. In terms of provisions of Section 134 of Indian Contract Act, 1872, a surety is discharged by any contract between the creditor and the Principal Debtor by which the Principal Debtor is released

¹¹ (2023) ibclaw.in 546 NCLAT

¹² (2023) ibclaw.in 803 NCLAT

or by any act or omission of the Creditor, the legal consequence of which is the discharge of the Principal Debtor.

Section 134 reads thus:

“134.Discharge of surety by release or discharge of principal debtor. —The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.”

17. **Part B** of the Resolution Plan approved on 25.07.2022, explicitly mentions that –

“it preserves the rights of Financial Creditors (FCs) against personal guarantors. The plan maintains that the Financial Creditor retains their rights over personal guarantees, overriding any conflicting provisions in the resolution plan.”

18. Based on the established precedents and the legal provisions referred above we hold that in the instant case, the liability of the personal guarantor did not extinguish even after the approval of the Resolution Plan, provided that the debt owed to the FC has not been fully paid according to Clause 3 of the Guarantee Deed dated 03.03.2024. Upon the approval of Resolution Plan of the Corporate Debtor, all liabilities, claims, dues, and any waivers, reliefs, or exemptions pertaining to period prior to the approval date shall be deemed extinguished. Notwithstanding the foregoing reference, such discharge shall be limited to the Corporate Debtor and shall not operate to release the persons who have provided guarantees, from their obligations to satisfy any payments to the creditors as mandated by the terms of the relevant contracts to which they are parties.

19. Moreover, the nature and extent of the liability are dictated by the terms of the guarantee. In cases of unequivocal guarantees, the guarantor's liability persists, and in the present case, there is no contract between the FC and the Corporate Debtor that could discharge the guarantor under Section 134 of the Indian Contract Act, 1872.
20. Relying on detailed foregoing qualitative discussions, this Authority keeping in mind the respective contentions of both the parties and considering the facts and circumstances of the instant case hold that there had been no discharge of the Personal Guarantor herein.
21. Coming to the question of Limitation applicable to the PG in respect of the debt owed by the CD for which he had stood as a guarantor, Section 238-A of IBC is relevant, according to which:

Section 238A: Limitation.

[238A. The provisions of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be.]

As per Article 137 of the Limitation Act, 1963 read with Section 238A of IBC the Petition time period for filing the present application is '3 years' from "When the right to apply accrues".¹³

22. **Clause nos. 2, 3, 18 and 21 of the guarantee deed dated 03.03.2015 at Annexure-B** are relevant, which are reproduced below:

"2. The Borrower shall duly and punctually repay the Loan together with all interest, additional interest, liquidated damages, and other monies in accordance with the Working Capital Consortium Agreement and perform and comply with all other terms, conditions and covenants contained in the Working Capital Consortium Agreement.

¹³ Article 137 of the Limitation Act provides the period of limitation in case of "any other application for which no period of limitation is provided elsewhere" as three years from the time when the right to apply accrues. "The right to sue", therefore, accrues when a default occurs.

3. In the **event of any default on the part of the Borrower** in payment/repayment of any of the monies referred to 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 Working Capital Consortium Agreement, the **Guarantor shall, upon demand**, forthwith pay to the PNB Consortium without demur all the amounts payable by the Borrower under the Loan Agreement.

18. This **Guarantee shall be a continuing one and shall remain in full force** and effect till such time the Borrower repays in full the Loan together with all interest, liquidated damages, charges, costs, and all other monies that may from time to time become due and payable and remain unpaid to the PNB Consortium under the Working Capital Consortium Agreement.

21. Any demand for payment or notice under this Guarantee shall be sufficiently given if sent by post to or left at the last known address of the Guarantor or his personal representative(s) as the case may be, such demand or notice is to be made or given, and shall be assumed to have reached the addressee in the course of post, if given. by post, and no period of limitation shall commence to run in favour of the Guarantor until after demand for payment in writing shall have been made or given as above said and in proving such notice when sent by post it shall be sufficiently proved that the envelope containing the notice was posted and a certificate by any of the responsible officers of the PNB Consortium that to the best of his knowledge and belief, the envelope containing the said notice was so posted shall be conclusive as against the Guarantor, even though it was returned unserved on account of refusal of the Guarantor or otherwise.”

23. A perusal of the terms and conditions make it clear that the guarantee is continuous and liability of the guarantor and borrower is coextensive and coterminous. The liability of the Personal Guarantor will arise once demand is made by the lender i.e.FC.

24. Since no particular provisions of the Limitation Act, 1963 apply to the proceedings against the Personal Guarantor, the residuary provisions would apply as explicitly stated by the Limitation Act. **“An application for which no limitation period is provided anywhere else in the Schedule to the Limitation Act is governed by Article 137 of the Schedule to the said Act.”**

25. An application under IBC before this Authority is governed by Article 137 of the Limitation Act, 1963, which prescribes a limitation period of three years from the date the right to apply accrues. In this case, the Corporate Debtor's default date was 31.12.2014, so the Financial Creditor must file the application within three years from the said date of default. The Personal Guarantor should be treated on an equal legal footing with the Corporate Debtor, as it is clearly established by the law that the liability of Corporate Debtor and Personal Guarantor are co-extensive in nature. Therefore, the provisions of the Limitation Act must be applied consistently to both the Corporate Debtor and the Personal Guarantor. The limitation period for both the parties will commence from the same date.
26. Further, taking into consideration if there was any acknowledgment of the liability giving rise to fresh limitation as per Section 18 of the Limitation Act, reliance can be placed upon ***Dena Bank v. C. Shivakumar Reddy***¹⁴, wherein it was held by the Hon'ble Supreme Court that an application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years.
27. We may also profitably refer to the decision of ***Gaurav Hargovindbhai Dave vs. Asset Reconstruction Company (India) Ltd. & Ors.***¹⁵,

¹⁴ (2021) 10 SCC 330

¹⁵ (2019) 10 Supreme Court Cases 572

The essentials under Section 18, are: -

- 1) "An acknowledgment may be sufficient, though it omits to specify the exact nature of the property or right or avers that the time for payment, delivery, performance, or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right.
- 2) The word "signed" means signed either personally or by an agent duly authorised in this behalf.
- 3) An application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.
- 4) The acknowledgment must be made before the relevant period of limitation has expired."

28. In view of the judicial pronouncements referred above, this Authority reviewed the sequence of events related to the Deed of Guarantee dated 03.03.2015. The Principal Borrower defaulted on 31.12.2014, while the notice invoking the Personal Guarantee was issued much later, on 09.07.2021, well beyond the prescribed three-year limitation period. There has been no acknowledgment by the Personal Guarantor of the debt for which the Deed of Guarantee was signed. The lack of acknowledgment bars the fresh limitation period after the default. It was also noted that the approval of the Resolution Plan does not relieve the guarantor of their liability under Section 134 of the Indian Contract Act, 1872. Hence, the Company Petition CP(IB) No.54/95/HDB/2022 filed on 09.02.2022 is barred by limitation under Article 137 of the Limitation Act.

29. Accordingly, Company Petition CP(IB) No.54/95/HDB/2022 is hit by Limitation and therefore dismissed.

Sd/-
(SANJAY PURI)
MEMBER (TECHNICAL)

Sd/-
(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)