

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 91 /KB/2022
And
Company Petition (IB) No. 200 /KB/2022

***An Application under Section 7 of the Insolvency and Bankruptcy
Code, 2016, read with Rule 4 of the Insolvency and Bankruptcy
(Application to the Adjudicating Authority) Rules, 2016.***

Company Petition (IB) No. 91 /KB/2022

IN THE MATTER OF:

CFM Asset Reconstruction Pvt. Ltd.

... Financial Creditor/ Applicant.

Versus

Motijug Agencies Limited

... Corporate Debtor/ Respondent.

And

Company Petition (IB) No.200 /KB/2022

IN THE MATTER OF:

Indian Bank

... Financial Creditor/ Applicant.

Versus

Machine Works (International) limited

... Corporate Debtor/ Respondent

Date of Pronouncement: 08.01.2025.

Coram:

SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)

SHRI. D.ARVIND, MEMBER (TECHNICAL)

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Appearance:

For the Financial Creditor

Mr. Siddharth Chatterjee, Adv.

Mr. Pradip Sancheti, Adv.

Ms. Rajshree Kajaria, Adv.

Mr. Abir Lal Ghosh, Adv.

For the Corporate Debtor

Mr. Avishek Guha, Adv.

Ms. Arunika Dutta, Adv.

Ms. Ankita Agrahari, Adv.

Ms. Enakshi Saha, Adv.

ORDER

PER Bidisha Banerjee, Member (Judicial):

1. The Court congregated through hybrid mode.
2. Heard the Learned Senior Counsels and Learned Counsels for the parties at length.
3. Two Company Petitions are dealt with by way of this common order, in view of the identical facts pleaded, identical issues raised, and commonality of admitted facts which are as follows:

- 3.1.** The Company Petitions Nos. CP(IB)91/KB/2022 and CP (IB)No. 200/KB/2022 have been preferred by Indian Bank / Financial Creditor now substituted by CFM Assets Reconstruction Private Limited against Motijug [CP(IB)91/KB/2022] and Machine Work [CP (IB)No. 200/KB/2022] respectively the two Corporate Guarantors of

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the Principal Borrower Ural India Limited (in short UIL) which is now undergoing Liquidation.

3.2. Thus, CP(IB)No. 200/KB/2022 and CP(IB)No. 91/KB/2022 have been preferred by the same Financial Creditor against the two Corporate Guarantors of UIL namely Motijug and Machine Works which are is taken up for consideration by this common order.

3.3. Since both the Company Petitions would be dealt with by this common order per consent of the parties it would be apt to reproduce chart given by the Financial Creditor along with its written notes of arguments to demonstrate and to give a list of dates and events to demonstrate and substantiate its case. The chart is as under:

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Dates	Particulars	Pages of CP/200	Pages of CP/91	Pages of CP/94	Pages of CP/109
15.09.2010	Sanction of Term Loan by Allahabad Bank in favour of Ural India Limited for a sum of 27 crores.	64 to 70 of Vol - I 71 to 73 (Board Resolution)	49 to 60 of Vol - I 61 (Board Resolution)	63 to 69 of Vol - I 71 (Board Resolution)	73 to 79 of Vol - I 81 & 82 (Board Resolution)
12.10.2010	<p>The enhanced credit limits granted to UIL along with future costs, expenses, etc., were secured by way of two personal guarantees and two corporate guarantees executed by J.K Saraff, Anirudh Kanoi, Machineworks (International) Limited and Motijug Agencies Limited.</p> <p>Relevant Clauses:</p> <p>1. <u>Clause 2 & 3</u> : Acknowledgement of Debt or part thereof or any part payment by the principal would be deemed to be an admission made by the Corporate Guarantor and would provide a fresh period of limitation.</p> <p>2. <u>Clauses 6</u> : In the event the principal</p>	74 to 77 of Vol - I	62 to 65 of Vol - I	73 to 76 of Vol - I	83 to 86 of Vol - I

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	<p>goes into insolvency, the guarantor shall be liable to pay the entire amount which remains due.</p> <p>3. Clause 9 : To give effect to the guarantee, the bank will be at liberty to treat MWIL as the principal and MWIL has waived all its rights as a surety.</p>				
12.10.2010	Supplemental Letter of MWIL confirming deposit of Title Deeds to secure the loan of UIL.	78 to 81 of Vol -1	-	-	-
28.06.2012	Restructuring of the loan of UIL by increasing the limit of the Working Capital Term Loan to 21.23 crores.	86 to 91 of Vol - I	70 to 75 of Vol - I	81 to 86 of Vol - I	91 to 96 of Vol - I
28.06.2012	<p>The enhanced credit limits granted to UIL along with future costs, expenses, etc., were secured by way of two personal guarantees and two corporate guarantees executed by J.K Saraff, Anirudh Kanoi, Machineworks (International) Limited and Motijug Agencies Limited.</p> <p>Relevant Clauses:</p>	100 to 103 of Vol - I	78 to 80 of Vol - I	91 to 94 of Vol - I	101 to 104 of Vol - I

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	<p>1. Clauses 2 & 3 : Acknowledgement of Debt or part thereof or any part payment by the principal would be deemed to be an admission made by the Corporate Guarantor and would provide a fresh period of limitation.</p> <p>2. Clauses 6 : In the event the principal goes into insolvency, the guarantor shall be liable to pay the entire amount which remains due.</p> <p>3. Clause 9 : To give effect to the guarantee, the bank will be at liberty to treat MWIL as the principal and MWIL has waived all its rights as a surety.</p>				
12.07.2014	The account of UIL was classified as a non-performing asset (NPA).	119 of Vol - I	81 of Vol - I	95 of Vol - I	105 of Vol - I
31.07.2014	Notice under Section 13(2) of the Sarfaesi Act, 2002 issued on the borrower and the guarantors.	119 to 129 of Vol - I	81 to 91 of Vol - I	95 to 105 of Vol - I	105 to 115 of Vol - I
31.03.2015	Balance sheet for the FY 2014-2015 of UIL acknowledging the debt owed to Indian	-	-	106 of Vol - I to 191 of	116 of Vol - I to 201 of

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	Bank.			Vol - II	Vol - II
24.08.2015	Possession notice issued under Section 13(4) of the Sarfaesi Act, 2002.	130 to 132 of Vol - I	94 to 96 of Vol - I	-	-
31.03.2017	Balance sheet for the FY 2016-2017 of UIL acknowledging the debt owed to Indian Bank.	182 to 322 of Vol - II (Acknowledgement at Pages 211, 232, 248 to 251, and 288 of Vol - II)	99 to 241 of Vol - II (Acknowledgement at Pages 149 of Vol - I, 207, 214, 221 and 228 of Vol - II)	12 to 154 of Supplementary Affidavit of CFM (Acknowledgement at Pages 81, 83 and 120 of Supplementary Affidavit of CFM)	
17.12.2018	OTS proposal by UIL for credit facilities obtained by it and its group companies for a sum of Rs. 35 crores.	4 of Supplementary Affidavit filed by	4 of Supplementary Affidavit filed by	4 of Supplementary Affidavit filed by	-

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	Rejected on 05.02.2019.	CFM Page 6 of Supplemen tary Affidavit filed by CFM	CFM Page 6 of Supplemen tary Affidavit filed by CFM	CFM Page 6 of Supplemen tary Affidavit filed by CFM	
31.03.2019	Balance sheet for the FY 2018-2019 of UIL acknowledging the debt owed to Indian Bank.	323 to 350, Vol - II (Acknowledge ment at Pages 328, 332, 339, 340, 349 & 350 of Vol - II)	242 to 267, Vol - II (Acknowledged gement at Page 265 of Vol - II)	194 to 219, Vol - II (Acknowledge ment at Page 199, 210 and 217 of Vol - II)	204 to 229, Vol - II (Acknowledge ment at Page 209, 220 and 227 of Vol - II)
15.10.2019	Order passed by NCLT, Kolkata admitting UIL to CIRP. <u>Important Paragraphs:</u> 1. <u>Para 5</u> - UIL admitted a debt of Rs. 28.29 crores and offered to pay 22.5	138 to 144 of Vol - I	268 to 274 of Vol - II	220 to 226 of Vol - II	230 to 236 of Vol - II

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	<p>crores by way of settlement which was refused by the bank.</p> <p>2. <u>Para 6</u> - Issue of limitation was considered. The same balance sheets were considered and entries made therein found to be acknowledgement of debts by principal made by UIL in its balance sheets.</p> <p>3. <u>Para 7</u> - The debt and default has been established and accordingly the Section 7 was allowed against UIL.</p>				
17.07.2020	<p>OTS proposal of 15 crores by UIL and its allied companies including MWIL.</p> <p>Proposal rejected on 02.09.2020.</p>	<p>146 of Vol - I</p> <p>(Page 147 of Vol - I)</p>	<p>8 of Supplementary Affidavit filed by CFM</p>	<p>8 of Supplementary Affidavit filed by CFM</p>	-
06.09.2020	<p>Compromise proposal by UIL for credit facilities obtained by it and its group companies for a sum of Rs. 18 crores.</p> <p>Proposal rejected on 10.09.2020.</p>	<p>7 and 8 of Supplementary Affidavit filed by CFM</p>	<p>9 and 10 of Supplementary Affidavit filed by CFM</p>	<p>9 and 10 of Supplementary Affidavit filed by CFM</p>	-

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14.12.2020	Proposal OTS by MWIL on behalf of UIL and other allied companies for Rs. 15 crores.	-	-	11 of Supplementary Affidavit filed by CFM	-
15.01.2021	UIL is ordered into liquidation by NCLT, Kolkata.	148 to 152 of Vol - I	275 to 279 of Vol - II	-	237 to 241 of Vol - II
06.12.2021	FORM B Demand Notice on PGs.	-	-	232 to 277 of Vol - II	242 to 288 of Vol - II
14.07.2022	CIBIL report	351 to 427 of Vol - III (351 to 367 CIBIL report of MWIL)	309 to 312 of Vol - II	278 to 284 of Vol - II	289 to 298 of Vol - II
14.07.2022 (CP/200/2022) and 09.03.2022 (CP/91, 94 & 109/2022)	Date of Filing of CPs	-	-	-	-

4. Admitted facts in CP(IB)No. 200/KB/2022:

- 4.1.** At the request made by the principal borrower company, the financial creditor sanctioned an aggregate limit of Rs. 27 Crores to the Principal borrower company namely M/S Ural India Ltd (UIL in short) on 15.09.2010.

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- 4.2.** The board of directors of the corporate debtor Ural held a meeting on 24.09.2010 wherein it resolved that to avail loan to the extent of Rs. 27 Crores from Financial Creditor, the Corporate Debtor herein as the corporate guarantor of M/S Ural India Limited would accept terms and conditions of the sanction letter dated 15.09.2010 of the financial creditor.
- 4.3.** In consideration thereof of the Financial Creditor having agreed at the request of Principal Borrower Company to grant and/or continuing to grant credit facilities to M/S Ural India Limited, the Corporate Debtor herein guaranteed to the Financial Creditor payment of all present and future indebtedness and liabilities of M/S. Ural India Limited for an overall limit of Rs. 27 Crores along with interest, costs and charges, waived its rights as a surety and agreed that its successors and/or assigns would be liable to pay the financial creditor's claims in terms of the said guarantee.
- 4.4.** On 18.05.2012 M/s. Ural India Ltd by its letter requested the financial creditor to restructure the loan account and the financial creditor restructured and sanctioned an aggregate limit of Rs. 28.31 Crores to M/s. Ural India Ltd.

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- 4.5.** Machine Works being the Corporate Debtor and M/S Motijug the Corporate debtor in CP 91/KB/2022 herein furnished personal guarantee towards security for due repayment of the loans and advances granted to the principal debtor (UIL) with interest, cost and expenses having executed several deeds of guarantee in favour of Financial Creditor and the Corporate Debtor Machine Works and Motijug CP.91/KB/2022 guaranteed to the Financial Creditor payment of all present and future indebtedness and liabilities of M/S Ural India Limited for an overall enhanced limit of Rs. 28.31 Crores.
- 4.6.** When in spite of disbursement of the various amount pursuant to sanction of various credit facilities the said corporate debtor failed and neglected to pay the dues of the financial creditor the loan account of the principal borrower company was classified as NPA on 12.07.2014.
- 4.7.** The Financial Creditor on 31.07.14 issued a statutory notice of demand section 13(2) of SARFAESI Act, 2002 to the principal borrower, whereby the corporate guarantee given by the corporate debtor Machine Works herein also Motijug were invoked demanding payment of Rs. 28, 29, 36,894.28 as on 31.07.2014.

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- 4.8.** Indian Bank filed an Original Application (O.A) being No. 151 of 2017 against Ural India Limited & Ors. Before the Ld. Debts Recovery Tribunal- I, Kolkata whereby the applicant Indian Bank prayed for a certificate of Rs.38,01,00,958.28/.
- 4.9.** On 15.10.2019 that CIRP of the corporate debtor commenced in terms of the admission order passed by this Kolkata Bench. Subsequently on 15.01.2021 liquidation, proceedings commenced against the said corporate debtor.
- 4.10.** After giving due credit to the account of M/S. Ural India Ltd. for all sums paid and/or received on behalf of the said company and after appropriating all items of debit to the items of credit in order of time, there is now due and owing by the Corporate Debtor Machine Works being the corporate guarantor herein to the Financial Creditor, a sum of Rs.69,85,18,842.94 inclusive of interest calculated up to 30.11.2021 together with further interest at the contractual rate from 01.12.2021 with monthly rests till realization the Financial Creditor has filed the application under section 7 of the Insolvency and Bankruptcy Code against the Corporate Guarantor herein for initiation of Corporate Insolvency and Resolution Process.

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5. Principal defence of the Corporate Debtors (Machine Works and Motijug)

- 5.1.** There is no invocation of guarantee without which the present applications cannot be maintained.
- 5.2.** No Demand Notice was ever served.
- 5.3.** The Principal Borrower UIL is under liquidation since 2019.
- 5.4.** The assets of the Ural India value of Rs. 56 Crores has been sold at 1.8 Crores by the RP / Liquidator. In collusion with the Financial Creditor and therefore, the Ural India the principal borrower cannot be made liable to make good the loss.
- 5.5.** Consequently, the Corporate Guarantors of UIL would not be liable to repay.
- 5.6.** Under Section 130 of the Contract Act, the loss that is suffered by the Corporate Guarantor should be set off against the claim of Financial Creditor.
- 5.7.** Notice issued under SARFAESI Section 13(2) does not amount to invocation of guarantee.
- 5.8.** Reliance has been placed on the Judgement of Hon'ble Bombay High Court in **Ram Nagappa Sheety Vs. Syndicate Bank and Ors.,**

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1986 SCC OnLine Bom 149 : (1987) 2 Bom CR 362 : (1986) Bom LR
409 : (1987) 62 Comp Cas 10 where it noted as under:

“13. Mr. Chagla referred to the judgment of the Supreme Court in (Mrs. Margaret Lalita Samuel v. Indo Commercial Bank Ltd.) (1979) S.C. 102. It was there held in the case of a continuing guarantee that so long as the account of the principal debtor was a live account, in the sense that it was not settled, and there was no refusal on the part of the guarantor to carry out his obligation, the period of limitation could not be said to have commence running; limitation would run only from the date of his breach. Mr. Chagla submitted that defendant 1st is account with the plaintiff was not a live account when the suit was filed and, therefore, the period of limitation? Respect of the guarantee dated 22nd 1972, commenced to run from the date of the suit. This argument does not take into account the dual requirement that the Supreme Court has set out, namely, that the principal debtor’s account must have ceased to be a live account and there must be a refusal on the part of the guarantor to carry out his obligations. Only after a demand has been made can there be a refusal. Upon refusal there is a breach and limitation begins to run”.

6. Submissions of Ld. Counsel for the Corporate Debtor in regard to CP(IB)No. 200(KB)2022 and CP(IB)No. 91/KB/2022 and all other CPs. In course of submissions Ld. Counsel Mr. S. Nag vociferously argued on the following:

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6.1 That the Petitions are barred by law of limitation.

i. Ld. Counsel would also point out that the date of default admittedly being 12.07.2014, the application had to be filed within 12.07.2017, whereas the Petition has been preferred in 2022 which is beyond the prescribed period of limitation.

ii. Further that, in absence of any acknowledgement of debt within 12.07.2017, the limitation would run and in terms of Section 18 of Limitation, it cannot be extended beyond 12.07.2017.

6.2 Acknowledgment by principal debtor does not amount to acknowledgement by the Corporate Guarantor / Personal Guarantor.

6.3 That the assets of principal borrower have been mismanaged during the CIR Process and therefore, the loss suffered by the creditor is due to Act of code for which the Guarantors should not be held liable to make good the deficit.

6.4 Property worth Rs.53 Crores being allowed to be stolen the decision of Hon'ble Apex Court in **Bharti Airtel Limited and Another Vs. Vijaykumar V. Iyer** and others would come into play.

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6.5 The assets being stolen, the valuation having down and the entire factory being burnt, the Guarantors cannot be held liable since if entire assets were available, the entire liability would have been discharged.

7. Submissions of Ld. Counsel Mr. Siddhartha Chatterjee for the Financial Creditor on limitation.

Ld. Counsel for the Financial Creditor to counter the allegation of Ld. Counsel for the Guarantor of UIL would submit as under:

7.1 That there is no pleading in the reply regarding non-invocation of Guarantee.

7.2 In fact, the Corporate Guarantors have unequivocally admitted invocation of Guarantee on 13.01.2014 and in absence of any specific format, demand of outstanding payment has made by way of notice under Section 13(2) [as in page 120 of the application numbered CP(IB)200/KB/2022 would itself be an invocation of guarantee.

7.3 Ld. Counsel would further submit that invocation of guarantee has been substantially admitted on 13.01.2014 in the acknowledgment of balance sheet for the year 2016-17, 2017-18 and 2018-19 and further till 2022 which has been recorded in the CIR Process order in the case of Ural India the Principal Borrower.

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7.4 That the acknowledgment would bind the borrower and the guarantors equally and extend the limitation in terms of Section 18 of the Limitation Act.

7.5 Further, the Ld. Counsel would submit that four OTS proposals from the UIL in the year 2018 (17.12.2018), 2019 (05.02.2019), 2020 (06.09.2020 & 17.07.2020) followed by Judgment of Hon'ble Apex Court in Suo Motu Writ Petition, in the Covid scenario, would extend the limitation automatically till May 2022. Hence, the present Petitions are not barred by limitation.

7.6 Ld. Counsel would further assert that no counter claim to the RP of Ural India has been lodged by the Corporate Guarantors and hence at this stage, the Corporate Guarantors cannot seek a set off against the claim of the Creditor. The Corporate Guarantor has in fact has lost its valuable rights.

7.7 Ld. Counsel would further submit that the claim of the Corporate Guarantor, the assets of Ural India Limited being were worth for an amount of Rs. 53 Crores is imaginary since the assets included a piece of land which was leased out to the principal borrower of Ural India and was embroiled in a bunch of litigations.

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7.8 The principal borrower was finally evicted and therefore, the allegation that the assets of the principal borrower Ural India were stolen is not substantiated.

8. We have considered the rival contentions and perused the records.

9. Analysis and findings:

9.1 Admittedly the loan accounts of principal borrower Ural India was declared as NPA and on from 12.07.2014.

9.2 It has been admitted in the Petition numbered CP(IB)No. 200/KB/2022 at para 12 page 14 that the principal borrower (namely Ural India) acknowledged its liabilities by way of Balance Sheets along with Auditor's Report filed for the Financial Year 2015-16 and 2018-19.

9.3 The principal borrower has unequivocally acknowledged its default. The copies of such Balance Sheets have been annexed to the Petition.

9.4 In the reply, at paragraph No. 5, the Corporate Guarantor / Corporate Debtor has emphatically admitted that the principal borrower has acknowledged its liabilities in the Balance Sheets for the Financial Year 2016-17 and 2018-19.

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9.5 Further, the CIR Process order dated 15.10.2019 against the Principal Borrower UIL, demonstrates that in, the Balance Sheets for the Financial year 2016-17, the principal borrower had acknowledged its liabilities for the year 2016-17, the order records as under:

"It is to be seen whether the claim is filed within period of limitation. According to the Bank, default in paying the loan took place on 04.04.2014. This proceeding is filed on 05.04.2018. Apparently, it is filed beyond period of limitation. However, Ld. Counsel for the Operational Creditor brought to our notice to the fact that the Corporate Debtor in its balance sheet for the year 2016-17 admitted and acknowledged this debt. The balance sheet is produced at page no. 248 to this application. We perused the balance sheet. It is stated therein, "from June, 2014, Allahabad Bank Cash Credit A/c whose number is 20087060005 and Allahabad Bank Term Loan Account whose number is 50111058034 has been declared by bank as Non-Performing Assets so not provisions for interest has been made. "In our considered view, this is acknowledgment of the debt by the Corporate Debtor is within meaning of Section 18 of Limitation Act, 1963. This proceeding is filed within 3 years thereafter."

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9.6 In the said matter it was it is argued that the petition was filed in 2018. In the instant matter even if it is believed that after the year 2016-17 there was no acknowledgment by the principal borrower still the limitation will be over by the year 2020. Meanwhile several OTS proposals have been forwarded by the principal borrower between 2018 to 2020 which would amount to acknowledgment of its liabilities towards the creditors and would equally bind its guarantors and would extend the limitation to a further period of three years. The last of such OTS proposals being of 2020. The limitation would get extended in terms of Section 18 of the Limitation Act, 2023, therefore, the petition preferred in 2022 is well within the limitation.

10. The decisions in **Laxmi Pat Surana v. Union of India, (2021) 8 SCC 481, B,K, Educational Services Pvt. Ltd. V. Parag Gupta & Associates (2019) 11 SCC 633** are noted wherein the Hon'ble Supreme Court has held that the period of limitation would begin from the date on which the default occurs and not from the date of declaration of NPA.

11. Further, we would refer the following judgments:

- 1.** In regard to **set off**, we would note that Hon'ble Bombay High Court in **Ram Nagappa Sheety Vs. Syndicate Bank and Ors.,**

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**1986 SCC OnLine Bom 149 : (1987) 2 Bom CR 362 : (1986)
Bom LR 409 : (1987) 62 Comp Cas 10** (supra) at paragraph 13
referred to by the Ld. Counsel for the Corporate Guarantor, has
observed as under:

“13. Mr. Chagla referred to the judgment of the Supreme Court in (Mrs. Margaret Lalita Samuel v. Indo Commercial Bank Ltd.) (1979) S.C. 102. It was there held in the case of a continuing guarantee that so long as the account of the principal debtor was a live account, in the sense that it was not settled, and there was no refusal on the part of the guarantor to carry out his obligation, the period of limitation could not be said to have commence running; limitation would run only from the date of his breach. Mr. Chagla submitted that defendant 1st is account with the plaintiff was not a live account when the suit was filed and, therefore, the period of limitation respect of the guarantee dated 22nd 1972, commenced to run from the date of the suit. This argument does not take into account the dual requirement that the Supreme Court has set out, namely, that the principal debtor’s account must have ceased to be a live account and there must be a refusal on the part of the guarantor to carry out his obligations. Only after a demand has been made can there be a

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refusal. Upon refusal there is a breach and limitation begins to run.”

We fail to comprehend or countenance how this judgment would come to the aid of the Corporate Debtors herein.

- ii. In **Company Appeal (AT) (Insolvency) No. 92 of 2017 in the matter of Ferro Alloys Corporation Ltd. Vs. Rural Electrification Corporation Ltd.** (Supra), another judgment referred to by Ld. Counsel Mr. Nag at the time of hearing, Hon’ble NCLAT as in no uncertain terms declared as under:

“A guarantee becomes a debt or as soon as the guarantee is invoked against it whereinafter a guarantor ('corporate guarantor') becomes a 'corporate debtor' in terms of the I&B Code.”

In fact the said decision would apply on all fours to the present petition under consideration

- iii. In **Bank of Bihar Ltd. vs. Dr. Damodar Prasad 620**, the Hon’ble Apex Court held:

“3. The demand for payment of the liability of the principal debtor was the only condition for the enforcement of the bond. That condition was fulfilled. Neither the principal debtor nor the surety discharged the admitted liability of the principal debtor in spite of demands. Under Section 128 of the Indian

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Contract Act, save as provided in the contract, the liability of the surety is coextensive with that of the principal debtor. The surety became thus liable to pay the entire amount. His liability was immediate. It was not deferred until the creditor exhausted his remedies against the principal debtor.”

- iv.** Hon’ble Apex Court has also referred to the following decisions of Hon’ble Delhi High Court which in turn had relied upon the decision of Hon’ble Supreme Court in **‘Kesoram Mills Case - [(1966) 59 ITR 767]** and held that “under the ‘deed of guarantee’ the liability of the company to pay debt arose when the borrower defaulted in making payments and the creditor sent a demand/notice invoking the guarantee.”

In the present case, the Financial Creditor by way of a letter dated 31.07.2014, issued notice under 13(2) of the SARFAESI Act as would appear from Annexure A-18 at page 119 of the present petition, seeking payment of an amount to INR 28.29 Crores.

- v.** A notice in CP (IB)No.200(KB)2022 reveals that it was issued to both the Corporate Guarantors M/s. **Motijug Agencies Limited** as well as **Machine Works (International) Limited** where it is specifies as under:

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“You have violated the terms of sanction and also made the account irregular and as a consequence the account has become a non-performing asset and has been classified by our Bank as such, as per Reserve Bank of India guidelines on 12.07.2014

By this notice, you are called upon to repay the entire outstanding dues of Rs. 282936894.28 (Rupees Twenty-Eight Crore Twenty Nine Lacs Thirty Six Thousand Eight Hundred Ninety Four and Paise Twenty Eight only) together with interest thereon at applicable rate since 31.07.2014 till repayment of entire outstanding dues.

By this notice, you are hereby called upon to discharge the entire liability as on date and also future interest thereon along with cost, charge and expenses, in the above account to us as Secured Creditor within 60 days from the date of this notice, failing which the Bank shall be constrained to exercise all or any of our right(s) conferred under Section 13(4) and other provisions of the aforesaid Act.”

12. The demand of the Financial Creditor for repayment of amounts and of invocation of guarantee being evident and there is no escape

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from the conclusion that the creditor had duly invoked guarantee against the Corporate Guarantor **Motijug Agencies Limited** as well as **Machine Works (International) Limited** and therefore the contentions of the Corporate Guarantor Motijug Agencies Limited as well as Machine Works (International) Limited of absence of invocation of Guarantee gets diluted in regard to the wastage of assets and set off as claimed by the Corporate Guarantor.

13. Ld. Counsel Mr. Nag referred to the decisions of the Hon'ble NCLT, Allahabad Bench, in Mrs. Laxmidevi Ansukumar Baid v. ICICI Bank (CP(IB)/145(AHM) 2024) and the Hon'ble NCLT, Mumbai Bench, in State Bank of India v. Navjeevan Tyres Private Limited (CP(IB) No. 1282/MB/2022). However, it is observed that the decision in *Mrs. Laxmidevi Ansukumar Baid (*supra*) pertains to proceedings under Section 94(1) of the Insolvency and Bankruptcy Code (IB Code) and is, therefore, not applicable to the present case.

14. We would note that enforcement of Security Interest is a follow up of failure to repay the debt or liability and therefore, only because a notice under Section 13(2) is issued for the purpose of enforcement of security interest, there is no gain saying that it does not amount to invocation of guarantee.

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15. The Corporate Debtor herein has miserably failed to show that the notices above would amount to invocation of guarantee if the 13(2) only if notice a follow up action under 13(4) is there. Furthermore, the said decision refers to invocation of Personal Guarantee and not to Corporate Guarantee. Hence, in our considered opinion, the said decisions would render no assistance to the Corporate Debtors.

15.1 In **Navjeevan Tyres Private Limited** (supra), the Hon'ble NCLT Mumbai Bench noted that the legal notice make no reference to the guarantee agreement executed between the parties and therefore, it cannot be termed as a notice of demand in terms of guarantee agreement, further that there were no proper service of the said notice thereby resulting in non-invocation of guarantee provided by the Corporate Debtor which is not the case here. Hence, the decision will not apply to the present circumstances.

15.2 In regard to the contention of the Corporate Debtor that in loss suffered by the parties would set off against the claim we failed to come across any claim lodged by the Corporate Guarantor before the RP / Liquidator of Ural India, therefore, leaving no chance to set off its claim.

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15.3 Moreover, having considered the submissions of Ld. Counsel appearing for the Financial Creditor that Corporate Debtor has in the meantime already lost its control over the leasehold land and have been evicted, there is no substantiation of the fact that the asset of Corporate Debtor is still worth Rs. 50 Crores or above. The reliance was placed on Bharti Airtel (Supra) where accounts of set off have been explained out of which insolvency set off has been demanded by the Corporate Debtor.

15.4 Insolvency and equitable set off has been demanded the judgment itself explains allegations of the said assets in the following manner:

“48. The second exception will be in the case of "equitable set-off" when the claim and counterclaim in the form of set-off are linked and connected on account of one or more transactions that can be treated as one. The set-off should be genuine and clearly established on facts and in law, so as to make it inequitable and unfair that the debtor be asked to pay money, without adjustment sought that is fully justified and legal. The amount to be adjusted should be quantifiable and unquestionable monetary claim, as the

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corporate insolvency resolution process is a time-bound summary procedure. It is not a civil suit where disputed questions of law and facts are adjudicated after recording evidence. Set-off of this nature does not require legal proceedings. Further, set-off of money is to be given against money alone. It will not apply to assets. Lastly, being an equitable right, it can be denied when grant of relief will defeat equity and justice.

49. We would in fact borrow the term "transactional set-off" instead of equitable set-off, when we describe the second exception. The reason is that the second exception refers to an ascertained amount, which is a requirement for legal set-off under Order 8 Rule 6 CPC and at the same time relies on equitable right when the statute is silent and there is no reason to deny set-off under the common law. It is an equitable right because the transactions are close and connected, harbingering the claim and the counterclaim. It would be manifestly "Unjust to bifurcate the connected transactions to accept and enforce the claim of one party without adjusting the amount due to the second party. This, in our opinion, does not contradict the eclipse by way of moratorium, because the transactions are treated as

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singular and one. When transactions are closely connected,
a claim for transactional set off during the moratorium period
on a claim by the resolution professional, is by way of a
defence to protect the legitimate expectation and respect
legal certainty.

15.5 It clearly indicates that there should be a claim and counter claim and in absence of any counter claim from the Corporate Guarantor, we fail to apply the decision to the present facts and circumstances.

16. In view of the enumerations above and in the backdrop of the above, we deem it appropriate to admit the present Company Petitions.

17. Law is well settled by the Hon'ble Supreme Court of India in ***Innoventive Industries Ltd. v. ICICI Bank*** reported in **(2018) 1 SCC 407: MANU/SC/1063/2017**, wherein the Hon'ble Apex Court has observed that the moment the "debt" is due and "default" on part of the corporate debtor is satisfied, the application must be admitted. The Hon'ble Apex Court has held that:

"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. ..."

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“28. ... the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, ...”

XXX

XXX

XXX

“30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e., payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

(Emphasis added)

18. We are fortified by the views of Hon’ble Apex Court to define “Financial Debt” and initiation of Corporate Insolvency Resolution process as under:

(a) In ***Pioneer Urban Land and Infrastructure Ltd. v. Union of India reported in (2019) 8 SCC 416***, it was held that:

“any debt to be treated as financial debt, there must happen disbursal of money to the borrower for utilization by the borrower and that the disbursal must be against consideration for time value of money.”

(Emphasis added)

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In the present case, “disbursement” against “consideration for time value of money” is adequately found.

(b) In *Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Limited reported in (2020) 8 SCC 401*, it was held that:

“the essential condition of financial debt is disbursement against the consideration for time value of money.”

(Emphasis added)

(c) In *Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund* reported in **(2021) 6 SCC 436: MANU/SC/0231/2021 (para 14)** it was held that:

“14. ... in order to trigger an application, there should be in existence four factors: (i) there should be a 'debt' (ii) 'default' should have occurred (iii) debt should be due to 'financial creditor' and (iv) such default which has occurred should be by a 'corporate debtor...”

(Emphasis added)

As the four factors get satisfied in the present case, we are of the view that the present petition is complete in all respects, and it is evidently not barred by limitation. Further, the amount claimed to be in default is far in excess of the threshold limit as prescribed under Section 4 of the I&B Code.

19. In terms of the foregoing discussions, we **ALLOW** the prayers in application bearing **Company Petition (IB) No. 200/KB/2022** filed

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under **Section 7 of the I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIR Process)** against Machine Works the Corporate Debtor by the following Orders. For identical reason prayer in CP (IB)No. 91/KB/2022 is also allowed to initiate **Corporate Insolvency Resolution Process (CIR Process)** against Motijug Agencies Ltd.

- i. Thus the Petitions preferred by the Financial Creditor against both the Corporate Guarantors of UIL namely **Motijug and Machine Works (Financial Creditors)**, under Section 7 of the Insolvency & Bankruptcy Code, 2016, are hereby, **ADMITTED** for initiating the **Corporate Insolvency Resolution Process** against each.
 - ii. As a consequence of admission of both the Application numbered Company Petition (IB) No. 91/KB/2022 Company Petition (IB) No. 200/KB/2022 in terms of Section 7 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
 - iii. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:
 - a) *The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment decree or order in any court of law, Tribunal, arbitration panel or other authority;*
 - b) *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its asset or any legal right or beneficial interest therein;*

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- c) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*
- d) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.*

[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

- iv.** The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- v.** The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi.** The Petitioner has proposed the name of **“Mr. Arun Kumar Gupta”**, **Address: P-15, Bentinck Street, 3rd Floor Kolkata – 700001, Email guptaarunkumar20001@yahoo.com , Registration No. IBBI/IPA-001/IPP00013/2016-2017/10037**, as the “IRP”. We have perused that there is a written communication and consent of IRP in Form 2 with Affidavit, annexed as Annexure “A-2” at pages 25-27 to the

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petition, as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or Insolvency Professional Agency of the Institute of Cost Accountants of India. In addition, further necessary disclosures have been made by **“Mr. Arun Kumar Gupta”** as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7(3)(b) of the code. Hence, we appoint **“Mr. Arun Kumar Gupta”** as the **Interim Resolution Professional** (IRP) of the Corporate Debtor to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code in regard to both the CP's.

- vii.** In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the Code and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of

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the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- viii.** During the CIR Process period, the management of affairs of the Corporate Debtors shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the I&B Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- ix.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtors there assets and documents without any delay, and this Court hereby directs the concerned **Police Authorities** and/or the **Officer-in-Charge** of Local Police Station(s) to render all assistance as may be required by the Interim Resolution Professional in this regard.
- x.** The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIR Process in respect of the Corporate Debtors.
- xi.** The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).

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- xii.** In terms of sections 7(5) and 7(7) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtors and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (RoC), to whom the company is registered with, by all available means for updating the Master Data of the Corporate Debtors. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
- xiv.** The Resolution Professional shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtors, with regard to the progress of the CIR Process in respect of the Corporate Debtors to this Adjudicating Authority from time to time.
- xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.

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6. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

7. Post the Company Petition on **17/02/2025** for filing the Periodical Progress Report by the IRP/RP as appointed herein.

**D.Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order is signed on the 8th Day of January 2025.

Tiwari. V (LRA)/ M. Jana(P.S.)