

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 689 of 2024

(Arising against the impugned order dated 23.02.2024 passed by the National Company Law Tribunal, Ahmedabad Bench in CP (IB) No. 80 (AHM) 2021)

IN THE MATTER OF:

State Bank of India

Through its Chief Manager: Bishwajeet B Mitra
Add:- State Bank Bhavan, Madame Cama Road,
Nariman Point, Mumbai, Maharashtra- 400021.

...Appellant

Versus

1. Gourishankar Poddar

Add:- Sunville Apartment, 2nd Floor, Plot No. 80,
N S Road No. 8, JVPD Scheme, Vile Parle (W)
Mumbai- 400049.
Email: poddares@smail.corn

...Respondent No.1

**2. Ms. Vineeta Maheshwari (Resolution Professional for
Raj Rayon Industries Limited)**

Add:-M-19, Metro Tower, Ring Road,
Surat- 395002.
Email : ipvineetak@gmail.com

...Respondent No.2

Present:

For Appellant : Mr. Asav Rajan & Ms. Charu Trivedi, Advocates.

**For Respondents : Mr. Karan Valecha, for R-2. Mr. Deep Roy & Mr. Amay,
for R-1.**

With

Company Appeal (AT) (Ins.) No. 663 of 2024

(Arising against the impugned order dated 23.02.2024 passed by the National Company Law Tribunal, Ahmedabad Bench in CP (IB) No. 80 (AHM) 2021)

IN THE MATTER OF:

Vineeta Maheshwari

Erstwhile Resolution Professional of Personal Guarantor

Cont'd..../

Gaurishankar Poddar

Add:- 301, 3rd Floor,

Reegus Business Centre, Above Mercedes Benz Showroom,

New Citylight Road, Bharthana-Vesu,

Surat-395007, Gujarat.

Email: iirp.riril@gmail.com

...Appellant

Versus

State Bank of India

Add:- Stressed Assets Management Branch,

2nd Floor, the Arcade, World Trade Center,

Cuffe Parade, Maharashtra-400005.

Email: team1clo.sammum1@sbi.co.in

Gaurishankar Poddar

Add:- Sunville Apartment, 2nd Floor, Plot No.80,

N.S. Road No.8, JVPD Scheme, Ville Parle (W),

Mumbai-400049.

Email:poddargs@gmail.com

...Respondents

Present:

For Appellant : Mr. Navin Pahwa, Sr. Advocate along with Mr. Karan Valecha.

For Respondents : Mr. Asav Rajan & Ms. Charu Trivedi, for R-1.

J U D G M E N T
(6th January, 2025)

INDEVAR PANDEY, MEMBER (T)

This order will dispose of two appeals bearing Company Appeal (AT) (Ins.) No. 689 of 2024 titled as State Bank of India Vs. Gourishankar Poddar & Anr. (hereinafter referred to as the **first appeal**) and Company Appeal (AT) (Ins.) No. 663 of 2024 titled as Vineeta Maheshwari Vs. State Bank of India & Anr. (hereinafter referred to as the **second appeal**). Both these appeals arise

from the common order passed by the National Company Law Tribunal, Ahmedabad Bench (hereinafter to as the “**Adjudicating Authority**”) on **23.02.2024** in CP (IB) No. 80 (AHM) 2021.

2. The first appeal has been filed under Section 61(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**the Code**”), and challenges the order dated **23.02.2024**, passed by the Adjudicating Authority in CP (IB) No. 80 (AHM) 2021. The appeal has been filed by the **State Bank of India** (SBI), the Financial Creditor, (hereinafter referred to as the “**Appellant**”) against Mr. Gourishankar Poddar (hereinafter referred to as “**Respondent No. 1**”) and Ms. Vineeta Maheshwari, the Resolution Professional (hereinafter referred to as “**Respondent No. 2**”). The case pertains to Respondent No. 1’s liability as a personal guarantor for **Raj Rayon Industries Limited** (hereinafter referred to as “**Corporate Debtor**”).

The appeal challenges the dismissal of the Appellant’s petition under Section 95 of the Code, which sought to initiate insolvency proceedings against Respondent No. 1. The Adjudicating Authority dismissed the petition on the grounds that the guarantees were either unenforceable or time-barred. The Appellant argues that the Adjudicating Authority failed to appreciate the facts, evidence, and binding legal principles, especially regarding the continuous and irrevocable nature of the personal guarantees.

3. The second appeal has been filed under Section 61(1) of the Code, and challenges the same order dated 23.02.2024 in CP (IB) No. 80 (AHM) 2021. The appeal has been filed by Ms. Vineeta Maheshwari the Resolution Professional (hereinafter referred to as “**Appellant**”), against **State Bank of**

India, (hereinafter referred to as the “**Respondent No.1**”) and Mr. Gourishankar Poddar, Personal Guarantor of Corporate Debtor M/s Raj Rayon Industries Limited (hereinafter referred to as “**Respondent No. 2**”). The case pertains to observations made by Adjudicating Authority against the appellant. The Adjudicating Authority also held that the conduct of Appellant/Resolution Professional needs to be enquired by IBBI. This appeal has a limited scope as the appellant herein has sought quashing of the adverse observations or expunging of adverse observations made against the appellant in para 13 (k) of the impugned order.

4. We would decide both the cases vide this order as the facts of the case for both the appeals are same and both appeals arise from the same impugned order. Matter relating to both the appeals would be examined separately on merits in each case and appropriate orders would be passed disposing both the appeals.

5. The brief facts of the case are as follows:

(i) In 1999, Raj Rayon Industries Limited- the Corporate Debtor, availed financial assistance from the State Bank of India in the form of term loans and working capital loans. These loans were secured through an agreement executed on 06.12.2005. A Working Capital Consortium Agreement was signed between the Corporate Debtor and the SBI, detailing the terms and conditions for these facilities. Additionally, a Joint Deed of Hypothecation was executed to secure the financial facilities.

(ii) The aforesaid financial arrangement underwent several amendments:

26.02.2007: The First Supplemental Working Capital Consortium Agreement and the First Supplemental Joint Deed of Hypothecation were executed.

28.12.2007: The Second Supplemental Agreements were signed, increasing the loan amount.

25.11.2010: The Third Supplemental Agreements were executed, modifying the terms and increasing the facility.

05.07.2011: The Fourth Supplemental Agreements introduced further enhancements to the loan facilities.

(iii) On 10.07.2013, Mr. Gourishankar Poddar, in his capacity as a director of the Corporate Debtor, executed a Deed of Guarantee ("2013 Guarantee") in favor of the SBI. This guarantee secured an increased loan amount of **₹292 crores**, as agreed under the Sixth Supplemental Working Capital Consortium Agreement. The guarantee explicitly stated that it was:

- **Irrevocable:** It could not be withdrawn or revoked by Respondent No. 1.
- **Unconditional:** The guarantee was not contingent upon any specific conditions or disputes.
- **Continuous:** It covered all present and future financial obligations of the Corporate Debtor.

(iv) The Corporate Debtor began defaulting on its repayment obligations in 2013. As a result, its account was classified as a Non-Performing Asset (NPA) on **30.11.2013**. This classification indicated the Corporate

Debtor's inability to service its debt, triggering the SBI's right to enforce its security and guarantees.

(v) Mr. Gourishankar Poddar submitted his resignation as a director of the Corporate Debtor on 06.03.2014. This resignation was formally accepted by the Corporate Debtor's board of directors on 18.03.2014. Despite his resignation, Respondent No. 1 continued to remain liable under the 2013 Guarantee, as it was executed in his personal capacity, independent of his position as a director.

(vi) Even after submitting his resignation, Mr. Gourishankar Poddar executed another Deed of Guarantee on 29.03.2014 ("2014 Guarantee"). This guarantee reaffirmed his liability as a personal guarantor and provided for:

- **Continuous Coverage:** It applied to all past and future liabilities of the Corporate Debtor.
- **Waiver of Rights:** Mr. Gourishankar Poddar explicitly waived his protections under Section 133 of the Indian Contract Act, 1872, against material variations in the loan terms.

By letters dated 24.03.2014 and 01.04.2014 the respondent No. 1 wrote to the appellant revoking the guarantees. This was further followed by subsequent letters in this regard. The Appellant/SBI however, in its response to Respondent's letter of intimation of resignation, had clearly stated that the guarantee is irrevocable and the Respondent no. 1 continues to be liable for repayment.

- (vii) The Seventh Supplemental Working Capital Consortium Agreement was executed, increasing the facilities from ₹292 crores to ₹398.64 crores on 25.07.2014. A Sanction Renewal Letter dated 19-01-2015 further extended the loan facilities. A Revival Letter dated 06.02.2016 acknowledged the outstanding liabilities of the Corporate Debtor. The Revival Letter also referenced both the 2013 and 2014 Guarantees, reaffirming their validity and applicability.
- (viii) The SBI issued a Recall Notice to the Corporate Debtor and its guarantors, including Mr. Gourishankar Poddar on 18.01.2018. The notice demanded payment of **₹998.52 crores**, including accrued interest as of **31.12.2017**, and warned of legal consequences in the event of non-compliance.
- (ix) On 08.03.2021, the SBI issued a Demand Notice to Mr. Gourishankar Poddar under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors) Rules, 2019. The notice sought payment of Rs 1854 crore, inclusive of interest, and was issued in compliance with the procedural requirements of the Code.
- (x) Not receiving a satisfactory response to the Demand Notice, the SBI filed a petition under Section 95 of the Code on 23.04.2021, seeking to initiate insolvency proceedings against Mr. Gourishankar Poddar as a personal guarantor. The petition outlined Mr. Gourishankar Poddar's obligations under the guarantees and the outstanding debt owed by the Corporate Debtor.

- (xi) The Adjudicating Authority dismissed the SBI's Section 95 petition on citing alleged revocation of the guarantees by Mr. Gourishankar Poddar and further invocation of the guarantees being time-barred.
- (xii) The SBI has therefore filed the first appeal bearing Company Appeal (AT) (Ins.) No. 689 of 2024 seeking quashing of impugned order.
- (xiii) The Adjudicating Authority in the para 13 (k) of the impugned order observed the following:

“k. On perusing the revival letter, it appears that it was signed by Ms. Rajkumari Kanodia and Mr. Sushil Kumar Kanodia. When the RP is appointed regarding insolvency proceedings of guarantor Mr. Gourishankar Poddar it is his duty to specifically mention whether this guarantor has signed revival letter or not. This guarantor has not at all signed revival letter but an absolutely false statement is made by the RP that the guarantor has signed. Being an officer of the Court, it is very serious on the part of the RP to make such vague statement in the report, which is to be taken into consideration while deciding the application. This act of RP needs to be inquired into by IBBI.”

- (xiv) Ms. Vineeta Maheshwari, Resolution Professional has filed the second appeal bearing Company Appeal (AT) (Ins.) No. 663 of 2024 seeking quashing/expunging of the adverse observations made by the Tribunal in Para 13 (k) of the impugned order.

Company Appeal (AT) (Ins.) No. 689 of 2024

6. We now take up the first appeal bearing Company Appeal (AT) (Ins.) No. 689 of 2024.

Submissions of the Appellant

7. The Ld. Counsel for the appellant stated that the present appeal raises critical questions regarding the enforceability of a personal guarantee under the Code, especially in a situation where a resolution plan has been approved for the Corporate Debtor. The appellant submits that the guarantee executed by Respondent No. 1 is an independent contract, unaffected by the resolution of the principal debt. Furthermore, the appellant contends that Respondent No. 1's purported revocation of the guarantee in 2014 is legally unsustainable.

8. The counsel for appellant submits that the guarantee executed by Respondent No. 1 on 10.07.2013 and reaffirmed on 29.03.2014 is an independent and irrevocable contract. The Deeds of Guarantee explicitly state that the liability of Respondent No. 1 as a personal guarantor is unconditional, continuous, and binding until the entire debt owed by the Corporate Debtor is discharged. The Hon'ble Supreme Court, in ***Industrial Finance Corporation of India Ltd. v. Cannanore Spinning and Weaving Mills Ltd. [(2002) 5 SCC 54]***, has unequivocally held that a contract of guarantee is distinct from the principal transaction and creates independent obligations for the guarantor. The clauses in the Deeds of Guarantee further establish that any variation in the terms of the principal contract does not discharge the guarantor's liability, ensuring the appellant's ability to enforce

the guarantee against Respondent No. 1 irrespective of subsequent developments.

9. The appellant further contends that the approval of the resolution plan for the Corporate Debtor on 05.10.2021 does not, by itself, discharge the liability of Respondent No. 1 as a personal guarantor. The Hon'ble Supreme Court, in ***State Bank of India v. V. Ramakrishnan* [(2018) 17 SCC 394]**, clarified that Section 31 of the Code, which provides for the binding nature of a resolution plan on all stakeholders, does not extinguish the liabilities of personal guarantors. Moreover, the resolution plan approved in the present case explicitly preserves the rights of the appellant to proceed against the personal guarantors for any remaining dues. This principle is supported by the Judgment of Hon'ble Supreme Court in ***Maharashtra State Electricity Board v. Official Liquidator* [1982) 3 SCC 358]**, wherein it was held that the discharge of the principal debtor by operation of law does not absolve the guarantor of liability.

10. The Counsel for appellant submitted that Respondent No. 1's attempts to revoke the guarantee through letters dated 24.03.2014 and 01.04.2014 are legally unsustainable. Under Section 130 of the Indian Contract Act, 1872, revocation of a guarantee is permissible only for future transactions. Since the guarantees in the present case were irrevocable and unconditional, they cannot be unilaterally revoked by the guarantor, without the consent of the appellant. The appellant invited our attention to the Judgment of Hon'ble Bombay High Court, in ***Allahabad Bank, Nagpur v. Hemantkumar* (Civil Revision Application No. 43 of 2016)**, which held that a personal guarantee,

once issued, remains in force, unless explicitly released by the creditor. In the present case, Respondent No. 1's liability under the guarantees executed in 2013 and 2014 remains binding, as no such release was granted by the appellant.

11. The appellant contended that the proceedings initiated against Respondent No. 1 are well within the limitation period. The demand notice issued on 08.03.2021 constitutes the starting point for the limitation period, as established in Judgment of this Appellate Tribunal in the case of **Pooja Ramesh Singh v. State Bank of India [2023 SCC OnLine NCLAT 193]**, where it was held that limitation against a guarantor commences only upon the issuance of a demand notice. Furthermore, the Revival Letter dated 06.02.2016, executed by the Corporate Debtor, constitutes an acknowledgment of debt under Section 18 of the Limitation Act, 1963, thereby extending the limitation period. The Hon'ble Supreme Court, in **Laxmi Pat Surana v. Union Bank of India [(2021) 8 SCC 481]**, has affirmed that an acknowledgment of debt by the principal debtor extends the limitation period for actions against the guarantor as well.

12. The Ld. counsel for appellant submitted that any variations in the terms of the financial facilities granted to the Corporate Debtor do not discharge the liability of Respondent No. 1. Both the 2013 Guarantee and the 2014 Guarantee contain clauses wherein Respondent No. 1 explicitly waived his rights under Section 133 of the Indian Contract Act, 1872, which provides for the discharge of a guarantor in cases of material alteration of the principal contract. The Ld. Counsel invited our attention to Judgment of Hon'ble

Supreme Court in **BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd.** [2024 SCC OnLine SC 1767], wherein it was held that such waivers in a deed of guarantee are enforceable and binding. In the present case, any alleged variation in the terms of the credit facilities was undertaken with the knowledge and consent of Respondent No. 1 and does not absolve him of his obligations.

13. Finally, the appellant submits that the guarantees executed by Respondent No. 1 are in the nature of **continuing guarantees**, as defined under Clause 26 of the 2014 Deed of Guarantee. A continuing guarantee, by its very nature, remains in force until the obligations guaranteed are fully discharged. Ld. Counsel for the appellant cited the decision of Hon'ble Supreme Court, in **Anirudhan v. Thomco's Bank Ltd.** [AIR 1963 SC 746], wherein it was held that a guarantor's liability persists as long as the underlying debt remains unpaid. In the present case, the Deeds of Guarantee explicitly states that they will remain binding, until the entire debt owed by the Corporate Debtor is repaid in full. Consequently, Respondent No. 1's obligations under the guarantees continue unabated.

14. In light of the above submissions, the Ld. Counsel for appellant prays that this Tribunal be pleased to:

- a) Set aside the impugned order dated 23.02.2024 passed by the Hon'ble NCLT, Ahmedabad, in CP (IB) No. 80 (AHM) of 2021.
- b) Allow the application under Section 95 of the Code against Respondent No. 1.

- c) Grant such other and further reliefs as may be deemed fit and proper in the interest of justice.

Submission of Respondent No. 1

15. Ld. Counsel for the Personal Guarantor /Respondent No. 1 stated that he is the only contesting respondent in this case. The Respondent Gourishankar Poddar served as a director of Raj Rayon Industries Limited/ Corporate Debtor for six years, from 2009 to his resignation on 06.03.2014. At the time of resignation, he sold his entire shareholding and formally disassociated himself from all management, operations, and decision-making activities of the Company. He informed the Financial Creditor and other relevant parties of his resignation. Despite these notifications, the Financial Creditor continued to treat the Guarantor as a director and promoter, even presenting him as such to the Corporate Debt Restructuring (“CDR”) Cell. This misrepresentation of his role and status forms a critical aspect of the Respondent’s defense.

16. The counsel for respondent submitted that the Financial Creditor coerced the Guarantor into signing the Deed of Guarantee dated 29.03.2014 (“2014 Guarantee”) under duress, despite his disassociation from the Company. The 2014 Guarantee document is incomplete, contains unfilled sections, and is unstamped, which raises serious concerns regarding its enforceability. Additionally, the Financial Creditor misrepresented the Guarantor’s resignation to obtain the guarantee. This invalidates the 2014 Guarantee under Section 142 of the Indian Contract Act, 1872, which states that guarantees procured through misrepresentation are void.

17. The counsel submitted that Independent forensic audits conducted by Deloitte Touche Tohmatsu India Private Limited conclusively established that the Guarantor was no longer involved in the affairs of the Company post-resignation. The reports further revealed that several defaults and malpractices, including diversion of funds and asset sales, occurred after the Guarantor's exit and were entirely outside his knowledge and control.

18. The Ld. Counsel further submitted that the Guarantor formally revoked his guarantees through letters dated 24.03.2014, 01.04.2014, 02.04.2014, and 21.04.2014. These communications explicitly informed the Financial Creditor of the Guarantor's intention to terminate his liability for future transactions. The law under Section 130 of the Indian Contract Act, 1872 allows for the revocation of continuing guarantees, and the Hon'ble Supreme Court in *Margaret Lalita v. Indo Commercial Bank Limited* [AIR 1979 SC 102] has upheld that such revocations relieve guarantors of future obligations. The Financial Creditor's failure to respond does not invalidate the Guarantor's right to revoke the guarantees, effectively terminating any future liability.

19. The counsel for the Respondent submitted that the Financial Creditor's claims are barred by limitation. As per **Article 55 of the Limitation Act, 1963**, the limitation period for enforcing a guarantee is three years from the date of breach or revocation. Here, the guarantees were revoked on **24.03.2014**, starting the limitation period. The limitation period commenced on **24.03.2014** and expired on **24.03.2017**. The Financial Creditor initiated proceedings on **09.04.2021**, well beyond the prescribed period, making their claims legally untenable. The Hon'ble Supreme Court in *Margaret Lalita v.*

Indo Commercial Bank Limited [AIR 1979 SC 102] ruled that such limitation periods are strictly enforceable.

20. It is the submission of the Respondent that the 2014 Guarantee is invalid because it was procured through misrepresentation and coercion. The Financial Creditor failed to disclose material facts, including the Guarantor's resignation and dissociation from the Company. Under Section 142 of the Indian Contract Act, 1872, any guarantee obtained through material misrepresentation is void. Furthermore, the document is incomplete and unstamped, making it unenforceable as per Hon'ble SC's Judgement in ***M/s NN Global Mercantile Pvt. Ltd. v. M/s Indo Unique Flame Ltd.* [2023 SCC OnLine SC 495]**, wherein the Court held that unstamped agreements are non-existent in law until duly stamped.

21. The Respondent No. 1 further argued that the Financial Creditor unilaterally amended the terms of the loan facilities, including changes to interest rates and the addition of guarantors, without the Guarantor's consent. Such variations violate Section 133 of the Indian Contract Act, 1872, which discharges a guarantor from liability for any subsequent transactions. The Hon'ble Bombay High Court in ***Keshavlal Hari Lal Setalvad v. Pratapsingh Moholalbhair Sheth* [ILR 1932 56 Bom 101]** held that material changes to the original terms of a contract release the guarantor from their obligations.

22. The respondent further submits that despite being alerted to malpractices by the Company through letters dated 04.05.2016 and 29.06.2018, the Financial Creditor failed to act and continued extending

facilities to the Company. Such negligent conduct impaired the Guarantor's remedies against the Company and discharged his liability under Section 139 of the Indian Contract Act, 1872. He cites the judgement of Hon'ble SC in the *State Bank of India v. Indexport Registered* [(1992) 3 SCC 159], wherein it was held that acts inconsistent with the rights of the guarantor discharge the guarantor from liability.

23. The counsel submitted that the Financial Creditor failed to serve a valid demand notice invoking the 2014 Guarantee. The NCLT, Hyderabad Bench, in *Union Bank of India v. Smt. K. Sridevi*, ruled that the absence of a demand notice precludes the existence of a debt under insolvency proceedings. Here, the demand notice referenced only the 2013 Guarantee, further undermining the enforceability of the 2014 Guarantee.

24. In view of the above submissions, The Ld. Counsel for the Respondent prays that this Tribunal be pleased to:

- a) Dismiss the appeal filed by the Financial Creditor on the grounds that the claims are barred by limitation and invalid under applicable law.
- b) Declare the 2014 Guarantee as unenforceable due to misrepresentation, coercion, and procedural irregularities.

Analysis and Findings

25. We have heard the learned counsels of both the sides in detail and examined the documents on record. The parties have also submitted their written submission which have been duly considered.

26. The key issues to be decided in the instant matter relates to:

- (i) Whether revocation of guarantee by the personal guarantor is valid?
- (ii) Whether changes in terms and conditions of the guarantee if any, would lead to novation?
- (iii) Whether the CIRP proceedings against the guarantor are maintainable on the grounds of limitation?

We examine these issues one by one.

27. Regarding the first issue, Adjudicating Authority has held that the Respondent No.1 has resigned from the position of the Director of the CD on 06.03.2014 which was accepted by the Board on 18.03.2014. He wrote to the SBI and its groups of Banks stating that he has resigned seeking relief of guarantee. The first letter in this regard was written by Respondent No.1 on 06.03.2014 to the banks. In reply, SBI (Financial Creditor), vide its letter dated 12.03.2014 informed the Respondent No.1 that his resignation would not absolve him as personal guarantor of his liabilities to the bank.

28. It is seen that the Respondent No. 1 had signed second personal guarantee document on 29.03.2014 i.e. after his resignation was accepted by the board. Subsequently, he had written a letter on 01.04.2014 to the Financial Creditor seeking release of guarantee. Adjudicating Authority decided that as per Section 130 of Contract Act, he cannot be liable for future contracts. Adjudicating Authority also observed that in view of subsequent agreements by bank with Corporate Debtor, the guarantors had executed guarantor revival letter dated 06.02.2016. This letter was signed by Ms. Rajkumari Kanodia and Mr. Sushil Kumar Kanodia. Respondent No.1 had not signed the guarantor revival letter dated 06.02.2016 and therefore the

Adjudicating Authority held that respondent who had not signed cannot be held liable as per the provisions of Contract Act. The Adjudicating Authority also held that the application by Financial Creditor against personal guarantor was also time barred. Accordingly, Adjudicating Authority dismissed the CP (IB) No. 80 (AHM) 2021 on 23.02.2024.

29. We now examine the relevant clauses of deed of guarantees executed in 2013 and 2014 to ascertain the liabilities of the guarantor. The relevant clauses of 2013 Guarantee are as follows:

- (i) On 10.07.2013, Respondent No. 1 executed a Deed of Guarantee ("2013 Guarantee") in favour of the Appellant in support of the Supplemental Deed which bears mention to all previous financial facilities. Respondent No. 1 provided an unconditional, irrevocable, continuous guarantee in favour of the Appellant.
- (ii) Clause 2 of the 2013 Guarantee specifically states that the guarantee is irrevocable and unconditional and may be enforced by the Appellant at per its own wishes. Clause 2 reads as follows:

"One of the conditions specified and contained in the said Agreement is that the Borrower shall procure and furnish to the said Banks as an irrevocable and unconditional guarantee guaranteeing due payment by the Borrower..."
- (iii) Clause 8 of the 2013 Guarantee further specifies that the guarantee is continuous in nature for all present and future transactions and hence attracts applicability of Section 129 and 130 of the Act of 1872. Clause 8 reads as follows:

"The Guarantee herein contained is a continuing one for all amounts advanced. To be advanced by the said Banks to the Borrowers in respect of or under the said Facilities as also for all interest, costs and other money which from time to time become due and payable..."

(iv) Clause 11 reiterates the irrevocability and enforceability of the guarantee by stating as follows:

"The Guarantee shall be irrevocable and enforceable against the Guarantors notwithstanding any dispute between the said Banks and the Borrower."

(v) Clause 12 of the 2013 Guarantee further provides that any acknowledgment of debt by the Corporate Debtor shall be considered to be an acknowledgment by Respondent No. 1 and other guarantors.

Clause 12 reads as follows:

"The Guarantors affirm, confirm and declare that any balance confirmation and/or acknowledgment of debt and/or admission of liability given or promise or part payment made by the Borrower or the authorized agent of the Borrower to the said Banks shall be deemed to have been made and/or given by or on behalf of the Guarantors themselves and shall be binding upon each of them."

(vi) Respondent No. 1 further by terms of Clause 14 of the 2013 Guarantee waived off the right in terms of variation in any future version of the agreement between the parties as is protected under Section 133 of the Act of 1872. The relevant portion of Clause 14 is extracted below:

"... the Guarantors shall not be released or discharged of their obligation under this Guarantee provided that in the event of any such variation or composition or agreement the liability of the Guarantors shall notwithstanding anything contained be deemed to have accrued ...

(vii) Clause 19 of the 2013 Guarantee further provides that the acknowledgment of debt on part of the Corporate Debtor shall be considered binding on Respondent No. 1 for the purposes of Section 18 and 19 of the Limitation Act, 1963 ("Act of 1963"). Clause 19 reads as follows:

"The Guarantors agree that any admission or acknowledgment in writing signed by the Borrower of the liability or indebtedness of the Borrower or otherwise in relation the said Facilities and/or any part payment as may be made by the Borrower towards the principal sum thereby guaranteed or any judgment, award or order obtained by the said Banks against the Borrower shall be binding on the Guarantors and the Guarantors accept the correctness of any statement of account that may be

served on the Borrower which is duly certified by any officer of the said Banks and same shall be binding and conclusive as against the Guarantors also and the Guarantors further agree that in the Borrower making an acknowledgment or making a payment, the Borrower shall in addition to his personal capacity be deemed to act as the Guarantors' duly authorized agent in that behalf for the purposes of Section 18 and 19 of the Limitation Act of 1963."

(viii) Clause 26 of the 2013 Guarantee, provides that Guarantor has waived his right to be granted any notice of extension/ enhancement of the facilities availed by the Corporate Debtor. The implication thus is clear that as the guarantor was not required to even be issued a notice of enhancement, the question of executing the same would not arise and the Deeds of Guarantee executed previously would be deemed to continue. Clause 26 of the 2013 Guarantee reads as under:

"26. The Guarantors agree that the said Banks shall be at liberty to enhance the limits under the said facilities offered now/ sanctioned and /or extended further financial assistance to the borrower from time to time, without notice to the Guarantor(s) and all the terms and conditions stated herein shall continue to be applicable for such enhanced/ further limits and this guarantee shall remain a continuing one for all the amounts due and will not be affected or vitiated in any way whatsoever but will remain in full force and effect and binding on the Guarantors. "

30. We note from the aforesaid clauses of the 2013 Guarantee that:

- a. The guarantee is irrevocable, unconditional and continuous;
- b. Respondent No. I would be liable for all present and future transactions between Appellant and Corporate Debtor irrespective of any variation; and
- c. Any acknowledgment of debt on part of the Corporate Debtor shall be considered an acknowledgment of debt on part of Respondent No. 1 for the purposes of Section 18 and 19 of the Act of 1963.

31. On 29.03.2014, Respondent No. I executed another Deed of Guarantee ('2014 Guarantee'). The relevant clauses of the Guarantee are extracted below:

- (i) Clause 5 of the 2014 Guarantee permits the Lenders to vary, alter or modify the terms and conditions of any of the restructuring documents, yet again waiving the right of a surety under Section 133 of the Act of 1872. Relevant portion of Clause 5 is extracted below:

"The Guarantors hereby agree that without the concurrence of the Guarantors, the Borrower and the Lenders shall be at liberty to vary, alter or modify the terms and conditions of the Restructuring Documents and of the security created and of the Security Documents executed by the Borrower in favour of the Lenders...."

- (ii) Clause 14 of the 2014 Guarantee further reiterates the continuous nature of guarantee provided by Guarantor by reading as follows:

"The Guarantors hereby agree and declare that the Borrower will be free to avail of further loans or other facilities from the Lenders or any other financial institution or bank in addition to the Restructured Facilities and/or to secure the same during the subsistence of this guarantee and in that event the guarantee herein contained will not be affected or vitiated in any way whatsoever but will remain in force and effect and binding on the guarantors."

32. From the plain reading of these clauses, we can see that:

*"a. The guarantee is unconditional, irrevocable and continuous;
b. Respondent No. 1 has waived any protection from variation in terms of Section 133 of the Act of 1872; and
c. The guarantee of Respondent No. 1 is effective and enforceable in cases of all future transactions."*

33. The counsel for Respondent No. 1 has taken a plea that the said guarantee of 2014 was executed under duress. He was coerced by banks to sign the guarantee to facilitate restructuring facilities. We have already noticed that the Respondent No.1 has already resigned and his resignation was accepted by the Board well before he signed the 2014 guarantee deed on 29.03.2014. The plea of coercion and duress in signing of guarantee document does not hold water as post resignation he was not bound to sign any such guarantee. It is also seen that parallelly, he was also writing to bank to revoke the existing guarantee. The respondent was free to take legal

recourse for revocation of guarantees if the same was executed under duress. The plea of duress was only taken in the year of 2021 when the question of enforceability of the 2014 Guarantee came into question.

34. We also note that the Respondent No.1 sent a letter dated 06.03.2014 to the appellant informing his decision to resign from the position of Chairman/ Managing Director to be effective from 31.03.2014. In response to the aforementioned letter, the Appellant sent a communication dated 12.03.2014 to Respondent No. 1 contesting the resignation of the Respondent No. 1 as the same constituted a breach of the undertaking dated 07.11.2013 issued to the CDR Cell. Relevant portion of the said Letter reads as under:

"2. Your liability as a personal Guarantor will continue and as per the terms of Deed of Guarantee executed by you on various dates, in favour of the Consortium lenders, with State Bank of India as lead Bank...

3. Please note that the said Company's account is NPA as on 30.11.2013 and restructuring under CDR Mechanism is under process. As on 31.12.2013, the exposure to the Consortium stands at Rs. 600 crores (Approximately). Resignation from the post of Chairman and Managing Director does not absolve you of your liabilities as a personal Guarantor and the Bank at its discretion may initiate any suitable action against you, if the situation warrants so."

(Emphasis supplied)

35. The Appellant explicitly notified Respondent No. 1 that his liability as a personal guarantor would not be absolved and would continue to exist as per the terms of the executed Deeds of Guarantee. Nevertheless, Respondent No.

1 conveniently requested the release of his personal guarantee from the Appellant and other consortium of lenders through letters dated 24.03.2014, 01.04.2014, 02.04.2014, and 24.04.2014.

36. It is noted that said revocation of personal guarantee has not been accepted by the Appellant at any point in time. In this regard, our attention has been invited to the decision of Hon'ble Bombay High Court in Civil Revision Application No. 43 of 2016 titled *Allahbad Bank, Nagpur v. Hemantkumar (supra)* wherein the court held as under in para 28:

"...28....even if it is accepted that respondent nos. 1 and 2 had resigned from the post of Directors of the Company and they had also intimated about the same to the petitioner bank and also to the Registrar of the Companies, the fact remains that though the petitioner bank has acknowledged those various letters, the Bank had not released their guarantee. There is not a single document produced on record by the respondents to show that bank has accepted the fact of their resignation from the Company and released them from their personal guarantees towards the repayment of financial assistance availed by the Company. Therefore, merely because the bank has received those letters, it cannot be accepted that the bank had released respondent nos. 1 and 2 from their liability as personal guarantors to the loan availed by the Company. It was a unilateral act on the part of respondent no. 1 and 2 to resign from the Company but by such unilateral act, unless it was accepted or acted upon by the bank, respondent nos. 1 and 2 cannot contend that as they have resigned from the post of Directors, they should also be absolved from the liability of

dues which were outstanding against the Company. Their act of resignation being unilateral, so far as their liability towards the repayment of dues from the Company is concerned, as their guarantee was never released by the bank, they continue to be liable to the bank for repayment of the amount which was due to the bank. Hence, this contention about their resignation and hence release from bank guarantee cannot be accepted."

(Emphasis supplied)

37. The appellant has submitted that it is a well-established legal principle that a guarantor's liability, including its extent and the conditions under which it arises, is entirely governed by the terms stipulated in the contract of guarantee. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in **Syndicate Bank v. Channaveerappa Beleri and others [(2006)11 SCC 506]**, relevant para 9 is extracted below:

"9. A guarantor's liability depends upon the terms of his contract. A "continuing guarantee" is different from an ordinary guarantee. There is also a difference between a guarantee which stipulates that the guarantor is liable to pay only on a demand by the creditor, and a guarantee which does not contain such a condition. Further, depending on the terms of guarantee, the liability of a guarantor may be limited to a particular sum, instead of the liability being to the same extent as that of the principal debtor. The liability to pay may arise, on the principal debtor and guarantor, at the same time or at different points of time. A claim may even be time-barred against the principal debtor, but still enforceable against the guarantor. The parties may agree that the liability of a

guarantor shall arise at a later point of time than that of the principal debtor. We have referred to these aspects only to underline the fact that the extent of liability under a guarantee as also the question as to when the liability of a guarantor will arise, would depend purely on the terms of the contract."

(Emphasis supplied)

38. The contention of appellant is further supported by Judgments of Hon'ble Supreme Court in ***Maharashtra State Electricity Board, Bombay vs. Official Liquidator, High Court, Ernakulam and Ors.*** [(1982) 3 SCC 358], relevant para 7 is extracted below:

" 7. Under the bank guarantee in question the Bank has undertaken to pay the Electricity Board any sum up to Rs. 50,000/- and in order to realise it all that the Electricity Board has to do is to make a demand. Within forty-eight hours of such demand the Bank has to pay the amount to the Electricity Board which is not under any obligation to prove any default on the part of the Company in liquidation before the amount demanded is paid. The Bank cannot raise the plea that it is liable only to the extent of any loss that may have been sustained by the Electricity Board owing to any default on the part of the supplier of goods i.e. the Company in liquidation. The liability is absolute and unconditional. The fact that the Company in liquidation i.e. the principal debtor has gone into liquidation also would not have any effect on the liability of the Bank i.e. the guarantor. Under Section 128 of the Indian Contract Act, the liability of the surety is

coextensive with that of the principal debtor unless it is otherwise provided by the contract. A surety is no doubt discharged under Section 134 of the Indian Contract Act 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. But a discharge which the principal debtor may secure by operation of law in bankruptcy (or in liquidation proceedings in the case of a company) does not absolve the surety of his liability.

(Emphasis supplied)

It is clear from the above that the approval of resolution plan of Raj Rayon Ltd/ Corporate Debtor on 5.10.2021 in the CIRP proceeding does not discharge the liability of personal guarantor. This has been one of the contentions of respondent No. 1.

39. The Respondent No.1 on the other hand has relied upon the Judgment of Hon'ble Supreme Court in the case of **Margaret Lalita v. Indo Commercial Bank Limited** [AIR 1979 SC 102]. It is the argument of the Respondent that as decided in the aforesaid case the liability of the guarantor is limited to transactions prior to the revocation of the guarantee. This case emphasized that a guarantor can revoke a continuing guarantee for future transactions, but remains liable for those prior to revocation. However, in the present case, the respondent executed a subsequent irrevocable and unconditional guarantee on 29.03.2014, superseding the earlier guarantee. This 2014 Guarantee clearly waived any right to unilateral revocation, binding the guarantor until all liabilities of the corporate debtor were settled. The

aforesaid precedent is distinguishable because the 2014 Guarantee is irrevocable and such right has been explicitly granted by the Respondent No.1.

40. We note that the guarantee as is evident from Clause 2, 8, 11 and 12 of the 2013 Guarantee and Clause 5 and 14 of the 2014 Guarantee was intended to be irrevocable and continuous in nature and thus in accordance with the Syndicate Bank Judgment, the guarantee was intended to be applicable to all subsequent transactions as well.

41. It is clear from the above that unilateral revocation of guarantee by the Respondent No.1 does not absolve him from his obligations under the guarantee agreement as the Financial Creditor has not agreed to such revocation. The terms of contract agreement also clearly show that the contract was irrevocable. The legal precedent clearly supports the case of appellant.

42. We now take up the second issue relating to variation in terms & conditions of the contract. The Respondent No.1 has submitted that subsequent to 2014 guaranteed deed there have been new agreements between CD and appellant and these have led to change in terms and conditions of the contract which therefore attracts Section 133 of the Indian Contract Act. In particular he has invited out attention to revival letter dated 06.02.2016, which was executed by the Corporate Debtor, but which does not have his signature as guarantor in the documents. The counsel for the appellant on the other hand has argued that the Respondent No.1 has explicitly waived his rights under Section 133 of Indian Contract Act of 1872 in terms of 2013 guarantee deed and 2014 guarantee deed.

43. The counsel for appellant has submitted that all the relevant documents and agreements bear reference to the same transaction and there is no variation in the terms and conditions of the agreement between the CD and appellant. Further, in view of Respondent No.1 waiving his rights under Section 133 of the Contracts Act. The relevant clauses of the contract agreement would prevail.

44. We have gone through the relevant clauses 3,14,16 and 26 of 2013 Agreement and clauses 5,13 and 14 of 2014 Guarantee which clearly state that Respondent No.1 would not be discharged of his liabilities even if there is any variation in terms of contract or security documents.

45. In this regard, we have also seen the Judgment of Hon'ble Supreme Court in ***BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd. & Anr.*** [Civil Appeal No. 4565 of 2021]. The relevant para 14 of the Judgment is extracted below:

“LIABILITY OF GUARANTOR / SURETY

14. As far as the guarantee is concerned, the law is very well settled. The liability of the surety and the principal debtor is co-extensive. The creditor has remedies available to recover the amount payable by the principal borrower by proceeding against both or any of them. The creditor can proceed against the guarantor first without exhausting its remedies against the principal borrower. Chapter VIII of the Contract Act contains provisions regarding indemnity and guarantee. Section 126 is relevant for our purposes, which 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.”

A surety is also known as a guarantor. Section 128 reads thus:

“128. Surety’s liability. — The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.”

It lays down the fundamental principle that the liability of the surety is co-extensive with that of the principal debtor unless otherwise provided by the contract. Sections 133 to 139 deal with the discharge of surety, which read thus:

“133. Discharge of surety by variance in terms of contract. — Any variance, made without the surety’s consent, in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance.

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.

135. Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor. — A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.

136. Surety not discharged when agreement made with third person to give time to principal debtor. — Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

137. Creditor's forbearance to sue does not discharge surety. — Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

139. Discharge of surety by creditor's act or omission impairing surety's eventual remedy. — If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.”

Thus, the law provides that if any variance is made without surety's consent in the terms of the contract between the principal debtor and the creditor, it amounts to discharge of the surety as to the transactions subsequent to the variance. Under the provisions of Section 133, surety can be discharged only when there is a variance made in the terms of the contract between the principal debtor and the creditor. Section 134 contemplates a situation where the principal debtor is released by a contract between the creditor and the principal debtor. In such a case, the surety is discharged. If by any act or omission on the part of the creditor, the legal consequence of which is the discharge of the principal debtor, the surety stands discharged. Section 135 is based on the same principle on which Section 133 is based. If there is a contract between the creditor and the principal

debtor by which the creditor makes a composition or promise with the principal debtor, or gives time to the principal debtor or agrees not to sue the principal debtor, it amounts to discharge of the surety provided the surety has not assented to such a contract. If the creditor contracts with a third party to give time to the principal debtor, and when the principal debtor is not a party to such a contract, the surety is not discharged. Section 137 lays down a settled principle that it is not necessary for the creditor to first sue the principal debtor or adopt a remedy against him. If the creditor omits to do that, unless there is a contract to the contrary, it will not amount to discharge of the surety. This means that without proceeding to recover the debt against the principal debtor, the creditor can proceed against the surety unless there is a contract to the contrary. Even if the creditor discharges one surety, it will not amount to the discharge of the other surety.....”

(Emphasis supplied)

46. In the present case both deed of guarantees grant waiver from Section 133 in case of variance, hence, such variance would not lead to discharge of the surety, but it would only be to the extent of any variance with respect to transactions subsequent to variance. The 7th working capital consortium dated 25.07.2014 reduced the existing facilities of the CD from Rs. 292 crores to Rs. 106.64 crores. The aforesaid agreement therefore benefitted both Corporate Debtor as well as Respondent No.1.

47. In view of position explained above, we hold that liability of the Respondent No.1 due to subsequent amendments, if any, to the agreement to the extent they are beneficial to the Respondent No.1 would remain. The Respondent No.1 would continue to be liable for outstanding amount as per

the guarantee agreement or subsequent amendments, whichever is lower, but it would not lead to discharge of his liability.

48. The last issue relates to the limitation in filing the CIRP petition. In this regard it is a settled law that the liability of the Corporate Debtor and the guarantor being Respondent No. 1 are co-terminus. Thus, liability for Respondent No. 1 would arise only when amounts became and went due by the Corporate Debtor. Consequently, any acknowledgement of debt by the principal borrower is also considered an acknowledgement by the guarantor under the Act of 1963. This position has been upheld by this Appellate Tribunal in ***E.M. Najeeb Ellias Mohammed, Promoter of Air Travel Enterprises India Ltd. v. Union Bank of India [2024 SCC OnLine NCLAT 254]***. Relevant paras 65 to 67 are extracted below:

"65. An Acknowledgment for liability itself is sufficient and it need not necessarily be accompanied by a promise to pay as per decision in Hetal Enterprises v. New India Assurance Company Ltd. 2012 (1CCC 458 Bom). Further, an acknowledgment under Section 18 of the Limitation Act, 1963 can be with respect to not only the property or Right, but it can be even in regard to the Liability.

66. An Acknowledgment of a liability made by the Principal Borrower should be considered as an acknowledgment of liability, on behalf of Guarantor.

67. A Revival Letter/ an acknowledgment, executed by the Principal Borrower on the authorization binds the Guarantor."

49. The Appellant invoked guarantee vide Notice dated 18.01.2018 against the Guarantor for making payment of Rs. 998.52 crores including interest as

on 31.12.2017 and further interest, penal interest plus costs etc. from 01.01.2018 within 7 days from the date of the notice. The default occurred on 25.01.2018 i.e. 7 days from the date of notice.

50. Thereafter, the Appellant had on 15.02.2018, merely a month after the amounts became due filed Original Application No. 185 of 2018 titled State Bank of India v. M/s Raj Rayon Industries & Ors. before the Hon'ble Debt Recovery Tribunal-II, Ahmedabad, which is still pending adjudication. Thus, in accordance with Section 14 of the Limitation Act, 1963, the time spent in pursuing the said bona fide proceedings would be excluded at the time of computation of limitation.

51. A CIRP petition bearing CP (IB) No. 350/7/NCLT/AHM/2019 was filed against the Corporate Debtor M/s Raj Rayon Industries Ltd. by the appellant on 20.05.2019 and the same was admitted on 23.01.2020. While admitting the petition adjudicating Authority took cognizance of balance confirmation letter issued by M/s Raj Rayon Industries on 08.08.2016 to the appellant in this case (SBI). The last transaction in the account was on 03.02.2017 and therefore the Adjudicating Authority held that was filed well within statutory period of limitation of three years from the date of last transaction i.e. before 02.02.2020.

52. Clause 12 and Clause 19 of the 2013 Guarantee explicitly provides that any acknowledgement of liability on the part of the Corporate Debtor shall be treated as acknowledgement on the part of Respondent No. 1, thus restarting limitation in accordance with Section 18 of the Limitation Act, 1963.

53. Additionally, the Revival Letter dated 06.12.2016 explicitly state that it shall serve as an acknowledgement of debt under Sections 18 and 19 of the

Limitation Act, 1963. Section 18 of the Act has been held to be applicable to proceedings under the Code, by the Hon'ble Supreme Court in *Laxmi Pat Surana v. Union Bank of India & Anr.* (2021) 8 SCC 481 thus allowing extension of limitation upon acknowledgment of debt.

54. The Applicant sent Demand Notice dated 08.03.2021 under rule 7(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process Guarantors to Corporate Debtor) Rules, 2019 to the Guarantor. The Guarantor had sent Reply dated 25.03.2021 to the Demand Notice issued by the Applicant. Appellant filed Application under section 95 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtor) Rules, 2019 on 24.03.2021.

55. The guarantee provided by respondent No.1 is in the nature of a Continuing Guarantee. Clause 8 of the 2013 Guarantee and Clause 26 of the 2014 Guarantee explicitly states that the Guarantees executed shall be a continuing one and shall remain in full force until the amount owed to the creditor remains unpaid. The relevant clause 26 of the 2014 Guarantee is extracted below:

“26. This Guarantee shall be a continuing one and shall remain in full force and effect till such, time the Borrower repays/redeems in full the Restructured, Facilities together with all Interest, liquidated damages, commitment charges, costs, charges and all other monies that may from time to time become due and payable and remain unpaid to the Lenders under the Restructuring Documents.”

56. The limitation aspect can be seen in two ways. As the guarantee is a continuing one, the guarantor liabilities continues till such time entire outstanding amount is paid as provided by Clause 26 of 2014 agreement. This aspect has also been endorsed by Hon'ble Courts as seen in previous paragraphs. The Guarantor issued the demand notice after the CIRP proceeding against CD was admitted on 23.01.2020. This meant that the concerned Court has acknowledged the debt. Thereafter, a specific demand notice in terms of provisions of IBC was issued on 08.03.2021 which was well within the limitation period. The appellant filed petition under Section 95 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtor) Rules, 2019 on 24.03.2021.

57. We further note that the period of limitation against the guarantor starts only when a demand is raised from the guarantor specifically. In case of continued payments by a principal borrower, no demand would be raised against a guarantor and thus limitation does not commence. Reliance is placed on the judgment of this Appellate Tribunal in **Pooja Ramesh Singh v. State Bank of India and Anr. 2023 SCC OnLine NCLAT 193** and in **Archana Deepak Wani vs Allahabad Bank 2023 SCC OnLine NCLAT 192** whereby it has been held that limitation against guarantor commences after demand, i.e., after failure to pay the dues post-issuance of demand notice.

58. The limitation period, if seen from another angle based on the date of default 25.01.2018 would end on 24.01.2021. However, the said date falls within Covid exemption period as decided by Hon'ble Supreme Court in suo

moto writ petition (c) No. 3 of 2020 The relevant extracts of the order are given below:

“III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

Since the last date of filing in the present case falls within the Covid exemption period, taking the exemption allowed by Hon'ble SC the present CIRP petition has been filed well within the exempted period.

59. It is therefore clear that the application for initiating CIRP proceedings against the Respondent No.1 was filed well in time and is maintainable. The Adjudicating Authority without going into the merits of the case had decided that the application was time barred.

60. On the basis of our findings on issues framed, we hold that contention of appellant has merit. The Adjudicating Authority has failed to comprehensively deal with the issues and the application has been rejected without examining the issues in detail.

Company Appeal (AT) (Ins.) No. 663 of 2024

Submissions of the appellant

61. The counsel for appellant submits that the instant Appeal is preferred against the Impugned Order dated 23.02.2024 passed by the Hon'ble National Company Law Tribunal, Ahmedabad Bench, Ahmedabad in CP (IB) No. 80/AHM/2021, whereby the Hon'ble Adjudicating Authority while rejecting the petition filed by Respondent No.1 has made adverse observations, against the Appellant and held that the conduct of the Appellant as Resolution Professional needs to be inquired by IBBI [Para 13(k)], as being bad in law. The Appellant therefore challenges the impugned order only to the extent of making adverse observations against the Appellant and holding that the conduct of Appellant as Resolution Professional needs to be inquired.

62. The counsel further submitted that in furtherance of the observations made by the Hon'ble Adjudicating Authority, the Appellant has not received any notice from IBBI.

63. It is the submission of the Appellant that Hon'ble Adjudicating Authority has erred in making adverse observations against the Appellant by holding that the conduct of Appellant as Resolution Professional needs to be inquired, without hearing the Resolution Professional and without calling for the explanation from the Resolution Professional. The impugned order to that extent therefore is liable to be quashed and set aside on this ground alone.

64. The Appellant submits that the principles of natural justice were not followed by the Adjudicating Authority while passing the Impugned Order, as no explanation was sought from the Appellant and without hearing the Appellant on the issue, adverse observations were made against the Appellant

and that too in haste. The impugned order to the extent making adverse observations and holding that inquiry needs to be held against appellant is illegal and liable to be quashed and set aside.

65. The counsel for appellant submitted that there was no deficiency in the report submitted by the Appellant and as such the same was in due compliance of the provisions of the Code which detailed the conduct of the Appellant in performing her duties as the Resolution Professional. That the Appellant duly submitted the report within time provided i.e. on 19.10.2021 and as such the adverse observation made by the Adjudicating Authority shall prejudice the Appellant.

66. The counsel further submitted that the Hon'ble Adjudicating Authority has failed to appreciate that the dates and events as mentioned in the report by the Appellant were reproduced from the application filed by Respondent No.1-State Bank of India. The said typographical error at the behest of Respondent No.1 was duly acknowledged by its counsel during the course of arguments concluded on 19.11.2024 before this Hon'ble Tribunal.

67. Furthermore, the dates and events pointed-out in the report were followed by a disclaimer that the event list has been framed as per the information available in the application filed by the State Bank of India. Despite the disclaimer, the Hon'ble Adjudicating Authority proceeded to make adverse observations against the Appellant.

68. The Ld. Counsel for the appellant vehemently argued that the adverse observations made by the Adjudicating Authority in the Impugned Order would cause serious prejudice and hardships to the Appellant. Therefore, the Appellant submits a compassionate view be taken on the remarks and it

would be in the interest of justice to expunge the remarks/ observations made against the Appellant in the impugned order.

69. The Ld. Counsel for appellant has cited two cases of this Appellate Tribunal in support of their contention in '**Rathin Amishbhai Majmudar vs. M/s Kirtanlal & Sons. & Anr**' in **Comp. App. (AT) (Ins.) No. 546, 550 of 2024** and '**Deepika Bhugra Prasad vs. Rabindra Kumar Mintri**' in **Comp. App. (AT) (Ins.) No. 88 of 2024**. In both these cases this Appellate Tribunal expunged the remarks against the RP wherein the Adjudicating Authority had not taken into consideration the submissions of RP and passed the orders with adverse remarks.

Submissions of Respondent

70. The counsel for Respondent No.1 submitted at the outset, that he is not contesting the appeal to the extent of the observations made against the Appellant and issuance of directions to the IBBI as the captioned appeal is not adversarial and is between the Hon'ble Tribunal and the Appellant.

71. The counsel submitted that he needs to clarify the Respondent No. 1's position with respect to the non-signing of the Revival Letter dated 06.02.2016. In accordance with Clause 26 of the 2013 Guarantee, Respondent No. 2 has waived his right to be granted any notice of extension/ enhancement of the facilities availed by the Corporate Debtor. The implication thus is clear that as the guarantor was not required to even be issued a notice of enhancement, the question of executing the same would not arise and the Deeds of Guarantee executed previously would be deemed to continue. Clause 26 of the 2013 Guarantee reads as under:

"26. The Guarantors agree that the said Banks shall be at liberty to enhance the limits under the said facilities offered now/ sanctioned and /or extended further financial assistance to the borrower from time to time, without notice to the Guarantor(s) and all the terms and conditions stated herein shall continue to be applicable for such enhanced/ further limits and this guarantee shall remain a continuing one for all the amounts due and will not be affected or vitiated in any way whatsoever but will remain in full force and effect and binding on the Guarantors. "

72. The Counsel further submitted that Respondent No.1 in its list of dates filed along with the application under Section 95 of the Code had made an error in stating that Mr. Gourishankar Poddar ("Respondent No. 2") executed the revival letter dated 06.02.2016. The Appellant in its Report under Section 99 of the Code reproduced the list dates filed by Respondent No.1. The Appellant had put a disclaimer that the list of dates and events was framed as per the information available in the application filed by Respondent No.1.

73. The counsel for Respondent No.1 tendered an apology to the Appellate Tribunal for the error in its list of dates and events in the Application filed under Section.

Analysis and findings

74. The observations of Adjudicating Authority in this case are solely based upon a table with list of dates which is part of the report of RP dated 19.10.2021 submitted to the Adjudicating Authority. The relevant table at page no. 5 of RP's report is extracted below:

	In order to avail the aforesaid credit facility, M/s. Raj Rayon Industries Limited and the guarantors had executed / submitted several documents with / and in favour of the applicant.	385
10.07.2013	The Guarantor executed deed of guarantee dated 10.07.2013 in favour of the applicant.	
10.07.2013	The sixth supplemental joint deed of hypothecation dated 10.07.2013 was executed by Raj Rayon Industries Limited in favour of the applicant.	
30.11.2013	Raj Rayon Industries Limited had failed to fulfil their financial obligation towards the applicant and their account had become irregular and eventually had been classified as NPA w.e.f 30.11.2013 (We could not obtained any document for the same).	
29.03.2014	The guarantor executed deed of guarantee dated 29.03.2014 in favour of the Applicant.	
25.07.2014	The applicant entered into seventh supplemental working capital consortium agreement dated 25.07.2014 with Raj Rayon Industries Limited	
19.01.2015	Raj Rayon Industries Limited had approached the applicant again for sanction / enhancement/ renewal of various financial facilities and same were granted vide renewal sanction letter dated 19.01.2015.	
06.02.2016	The guarantor executed a revival letter dated 06.02.2016 in favour of the applicant.	
26.10.2015 and 08.08.2016	Balance confirmation cum acknowledgement of security letter dated 26.10.2015 and 08.08.2016 was executed by Raj Rayon Industries Limited.	
18.01.2018	The applicant had invoked guarantee vide notice dated 18.01.2018 against the guarantor for making payment of Rs. 998.52 crores including interest as on 31.12.2017 and further interest, penal interest plus cost etc. from 01.01.2018 within 7 days from the date of the notice.	
15.02.2018	The applicant filed an original application bearing no. 185 of 2018 before Debt Recovery Tribunal II Ahmedabad.	
23.01.2020	The company petition bearing no. 350/NCLT/AHM/2019 filed by the applicant under section 7 against Raj Rayon Industries Limited was admitted by Hon'ble National Company Law Tribunal, Ahmedabad vide order dated 23.01.2020.	
08.03.2021	The applicant sent demand notice dated 08.03.2021 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtor) Rules, 2019 to the guarantor.	
25.03.2021	The guarantor had sent reply dated 25.03.2021 to the demand notice issued by the applicant.	
	The guarantor is liable for an amount of Rs. 18, 54, 00, 57.143/- (Rupees one thousand eight hundred fifty four crores fifty seven thousand one hundred forty three only) as on 28.02.2021.	
23.04.2021	Therefore, the applicant has filed the present application under section 95 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtor) Rules, 2019 filed by State Bank of India to the Hon'ble National Company Law Tribunal, Ahmedabad Bench.	
05.10.2021	Order of Hon. NCLT, Ahmedabad Bench in respect of declaration of Interim Moratorium from the date of application i.e., 23/04/2021 and submission of report of Resolution Professional u/s 99 of IBC, 2016 within 10 days.	

This event list has been framed as per the information available in application filed dated 23rd April 2021, under section 95 read with Rule 7(2) of the Insolvency and Bankruptcy



75. The findings of Adjudicating Authority are based on revocation of guarantee letters sent by the Personal Guarantor/Respondent No. 2 and the revival letter dated 06.02.2016. In the list of events above the following is recorded against 06.02.2016:

“The guarantor executed a revival letter dated 06.02.2016 in favour of the applicant.”

The guarantor referred to here is Respondent no. 2/ Gaurishankar Poddar and applicant being State Bank of India.

76. It's an admitted fact that the revival letter was never signed by Respondent No. 2. The adverse remarks of Adjudicating Authority are entirely based on this error by the Appellant/RP.

77. The Respondent No.1 has accepted that the error in the table has taken place due to a mistake on their part for which he has tendered his apology to this Appellate Tribunal. At the same time, they have pleaded that in terms of clause 26 of the 2013 agreement the aforesaid letter is valid even without intimation to guarantor. There is no requirement of signature in terms of the guarantee agreement.

78. We note from the aforesaid event list that the appellant has given categorical disclaimer that the aforesaid table is based on the documents submitted by State Bank of India/ Respondent No. 1, but no cognizance of the disclaimer was taken by the Adjudicating Authority.

79. We have also noted that the Adjudicating Authority did not give any opportunity to the appellant to clarify the position. The principles of natural justice were not followed by the Adjudicating Authority in this case and very critical comments were made against the RP, which would seriously hamper her career progression as RP. Further, the comments were communicated to the IBBI for taking further action against the appellant.

80. Based on the above we are of the view that the mistake, if any on part of RP was not deliberate or malafide. The Appellant has copied the list of events from the application filed by the SBI with given due disclaimer in the table giving the source of information. The Adjudicating Authority was free to

seek clarifications from appellant regarding 06.02.2016 letter, which was not done. Without her version the Adjudicating Authority went ahead made adverse comments against the conduct of Appellant which clearly violates principles of natural justice.

81. In view of these facts and circumstances, we agree with the contention of appellant in the second appeal.

82. In view of the findings in respective appeals, we hold the following:

- (i) In the first appeal i.e. Company Appeal (AT) (Ins.) No. 689 of 2024 the impugned order is set aside. The appeal is allowed. CP (IB) No. 80 (AHM) 2021 is restored. Parties are directed to appear before the Tribunal on 16.01.2025.

Pending I.A.s if any are closed. No order as to costs.

- (ii) The second appeal i.e. Company Appeal (AT) (Ins.) No. 663 of 2024 is allowed. All adverse remarks against the appellant in Para 13 (k) of the impugned order are expunged.

Registry is directed to send a copy of this order to IBBI not to proceed with the enquiry against the appellant.

Pending I.A.s if any are closed. No order as to costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indavar Pandey]
Member (Technical)

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