

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.191 of 2025

(Arising out of Order dated 28.11.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench, Prayagraj in CP (IB) No.74/ALD/2022)

IN THE MATTER OF:

State Bank of India
Having its Head Office At
Stressed Assets Management Branch-II
11th Floor STC Building Jawahar Vyapar Bhawan
1, Tolstoy Marg, Janpath,
New Delhi-110001

...Appellant

Versus

Mr. Deepak Kumar Singhania
S/o Late Mr. Sohan Lal Singhania
Personal Guarantor(s) to LML Limited
(Corporate Debtor-Under Liquidation)
R/o Apartment No. A301, 3rd Floor,
The Vilas, Sector-25 Gurgaon-122001, Haryana
Also At:-
7/184, Swaroop Nagar
Kapur, Uttar Pradesh

...Respondent

Present:

**For Appellant : Mr. Brijesh Kumar Tamber, Mr. Vinay Singh Bist,
Mr. Prateek Kushwaha, Ms. Arani Mukherjee, Mr.
Sahas Bhasin and Mr. Yashu Rustagi, Advocates.**

**For Respondents : Mr. Ashish Makhija and Mr. Deep Bisht,
Advocates.**

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by a Creditor has been filed challenging order dated 28.11.2024 passed by National Company Law Tribunal, Allahabad

Bench, Prayagraj by which order, application under Section 95 filed by the State Bank of India has been rejected. Appellant aggrieved by rejection of its application under Section 95 has come up in this Appeal.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:-

- (i) The Corporate Debtor – LML Ltd. was extended Financial Facilities by State Bank of India (“**SBI**”). The Respondent – Deepak Kumar Singhania executed a Deed of Guarantee dated 28.03.2005 along with other two Personal Guarantors in favour of SBI and a Multi-Partite Agreement dated 28.03.2005 was executed. The Guarantor undertook to pay to the Lender in event any default is committed by the Borrower upon demand.
- (ii) The SBI filed application under Section 19 of the Recovery of Debts and Bankruptcy Act 1993 before the Debts Recovery Tribunal, which is pending disposal. With respect to Corporate Debtor an order of liquidation has been passed on 23.03.2018. The SBI issued a Demand Notice under Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (hereinafter referred to as “**2019 Rules**”) upon the Guarantor - Deepak

Kumar Singhania, calling upon the Respondent to make payment of Rs.125,05,28,848.56 as on 30.04.2022.

- (iii) An application under Section 95 has been filed by the Appellant on 28.05.2022. The Adjudicating Authority appointed Resolution Professional (“**RP**”) by order dated 02.01.2024. The application was heard by Adjudicating Authority and orders were reserved on 20.11.2024. On 28.11.2024, the impugned order was passed by the Adjudicating Authority, rejecting Section 95 Application. The Adjudicating Authority held that Applicant having failed to invoke the guarantee, the application filed under Section 95 does not satisfy the mandatory pre-requisite for issuing a legally valid demand notice under Rule 7(1) for filing such application. Application under Section 95 was held as not maintainable and dismissed. It was held that the Respondent is not a Guarantor as defined in Rule 3(1)(e) of 2019 Rules.
- (iv) Aggrieved by the impugned order this Appeal has been filed.

3. We have heard learned Counsel for the Appellant as well as learned Counsel for the Respondent.

4. Learned Counsel for the Appellant challenging the order impugned submits that Notice issued under Rule 7, sub-rule (1) of 2019 Rules has to be considered as Notice for invocation of guarantee for the purposes of

filing Section 95 application. It is submitted that necessary requirements for filing an application under Section 95 were fulfilled by the SBI. All necessary documents as contemplated by Section 95, sub-section (4) were annexed along with the Application. Hence, the application was fully maintainable and could not have been rejected by Adjudicating Authority. The Adjudicating Authority committed error in rejecting the application on the basis of the fact that there was no Notice of invocation of guarantee by the Bank, prior to issuance of Demand Notice under Rule 7(1). Whereas Notice under Rule 7(1) itself is Notice for invoking the guarantee demanding the payment from Personal Guarantor. The definition of 'Personal Guarantor' as provided under Section 5, sub-section (22) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "**IBC**") shall automatically cover the Respondent, irrespective of the fact whether such contract or guarantee is invoked or not. The legislative scheme under Section 95 as well as under 2019 Rules, makes it clear that invocation of guarantee is not made the key ingredients for any individual to fall under definition of Personal Guarantor. It is submitted that although in Form-A under 2019 Rules, which is an application filed by Guarantor under Section 94, the details of invocation of guarantee and proof is asked for at Sl. No.14, however, same requirement is not mandated under Section 95 under Form-C. Instead what is mandated is to enclose along with the application form is copy of Demand Notice served on Guarantor in Form-B. The Adjudicating Authority has returned

incorrect finding with respect to Rule 3(1)(e) of 2019 Rules. The word ‘and’ occurring in definition of ‘Guarantor’ as provided in Rule 3(1)(e) has to be read as ‘or’ to give effect to the manifest intention of the legislature. The literal reading of the word ‘and’ in Rule 3(1)(e) would produce an unintelligible and absurd result. If the word ‘and’ as provided in Rule 3(1)(e) is read as ‘or’, then the IBC can be workable as per the intention of the legislature and unintelligible and absurd result can be avoided. It is reiterated that Notice under Rule 7(1) in Form-B is a Notice, which has to be treated as Notice for invoking the guarantee, since Demand Notice has been issued by the Appellant on 04.05.2022, which required the repayment within 14 days. The order of Adjudicating Authority rejecting the Application is, thus, unsustainable.

5. The submissions advanced by learned Counsel for the Appellant, has been refuted by learned Counsel appearing for the Personal Guarantor. Learned Counsel for the Respondent submits that invocation of personal guarantee and existence of default is a must before any action is contemplated under Section 95 of the IBC. It is submitted that invocation of personal guarantee is to be made as per contractual deed of guarantee. The definition of ‘Guarantor’ under Section 5 (22) of the IBC is not relevant for the purposes of Section 95 and for a person to become a Personal Guarantor, so as to initiate proceedings under Section 95(1). Both conditions as contemplated in Rule 3(1)(e) that guarantor is Personal

Guarantor to a Corporate Debtor and in respect of whom the guarantee has been invoked by the Creditor has to be fulfilled. It is submitted that unless the guarantee is invoked, there shall be no default on the part of the Guarantor, nor there shall be any unpaid debt. The Demand Notice in Form-B, cannot be construed as the invocation of guarantee. Notice under Rule 7(1) is statutory Notice, prior to initiate proceedings under Section 95, which is a statutory pre-requisite for any Creditor intending to initiate Corporate Insolvency Resolution Process (“**CIRP**”) against the Personal Guarantor. The invocation of guarantee is a contractual obligation arising from the terms specified in the Deed of Guarantee. Learned Counsel for the Respondent has referred to Clause 2 and Clause 21 of the Deed of Guarantee, which expressly required that guarantee be invoked through specific demand addressed to the Guarantor. Form-B, which explicitly mandates the mention of the date of default, inherently presuming that a default has already occurred before issuance of Form-B Notice and default can arise only when the personal guarantee has been invoked in accordance with the terms of the Deed and the demand remains unpaid. Learned Counsel for the Respondent has referred to the definition of ‘default’ under Section 3, sub-section (12) of the IBC. The definition clearly establishes that ‘default’ must predate the issuance of statutory notice in Form-B. It is submitted that in the present case, no invocation of personal guarantee was made in the manner prescribed

under Deed of Guarantee. The Adjudicating Authority has rightly rejected Section 95 application filed by the Appellant.

6. We have considered the submissions of learned Counsel for the parties and have perused the record.

7. The only question which has arisen for consideration in the present Appeal is “Whether the Demand Notice issued under Rule 7(1) of the 2019 Rules can be considered as Notice for invocation of guarantee for the purposes of filing Section 95 Application by a Creditor?”

8. While noticing the fact, we have noticed that guarantee was executed by the Personal Guarantor on 28.03.2005. Two Clauses of the Deed of Guarantee need to be noticed, i.e. Clause 2 and Clause 21, which are as follows:

“2. In the event of any default on the part of the Borrower to comply with or perform any of the terms, conditions and covenants contained in the said Multi-Partite Agreement, the Guarantors shall, upon demand, forthwith pay to the Lender without demur all the amounts payable by the Borrower to it under the said Multi-Partite Agreement.

21. Any demand for payment or notice under this Guarantee shall be sufficiently given if sent by post to or left at the last known address of the Guarantors, their respective heirs, executors and administrators, as the case may be, such demand or notice is to be made or given, and shall be assumed to have reached the addressee in the course of post or given by post, and no period of limitation shall commence

to run in favour of the Guarantors until after demand for payment in writing shall have been made or given as aforesaid and in proving such notice when sent by post, it shall be sufficiently proved that the envelope containing the notice was posted and a certificate by any of the responsible officers of the Lender that to the best of his knowledge and belief, the envelope containing the said notice was so posted shall be conclusive as against the Guarantors lien though it was returned un-served on account of refusal of the Guarantors or otherwise.”

9. As per the Appellant’s case in Section 95 application filed before the Adjudicating Authority, Notice for Demand under Rule 7, sub-rule (1) of 2019 Rules was issued by the SBI to the Respondent on 04.05.2022. Section 95 application, which has been filed by the SBI, where date of default has been mentioned as 01.01.2017. The Demand Notice dated 04.05.2022 sent in Form-B was also filed along with Section 95 application. The Appellant in Section 95 application filed before the Adjudicating Authority or in this Appeal has relied on Demand Notice dated 04.05.2022 issued in Form-B under Rule 7, sub-rule (1) of 2019 Rules, as a Notice of Demand, which according to the Appellant is to be treated as Notice for invocation of guarantee. For answering the question, which has arisen in the present Appeal, we need to notice the statutory scheme as delineated under IBC and 2019 Rules.

10. Part-I of the IBC under the heading 'Preliminary', contains definition Clause under Section 3. Section 3, sub-section (11) defines 'debt' in following manner:

“3(11) “debt” means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;”

11. Section 3, sub-section (12), defines 'default' in following manner:

“(12) “default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be;”

12. In Part-II, which is 'Insolvency Resolution and Liquidation for Corporate Persons', there is definition Clause. Section 5, sub-section (22) defines 'Personal Guarantor' in following manner:

“5(22) “personal guarantor” means an individual who is the surety in a contract of guarantee to a corporate debtor;”

13. Application filed by SBI was under Section 95 of the IBC for initiation of insolvency resolution process against the Respondent – Personal Guarantor. Section 95 of the IBC is as follows:

“95. Application by creditor to initiate insolvency resolution process. –

(1) A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.

(2) A creditor may apply under sub-section (1) in relation to any partnership debt owed to him for initiating an insolvency resolution process against- (a) any one or more partners of the firm; or (b) the firm.

(3) Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the Adjudicating Authority in which the first mentioned application is pending for adjudication and such Adjudicating Authority may give such directions for consolidating the proceedings under the applications as it thinks just.

(4) An application under sub-section (1) shall be accompanied with details and documents relating to-

(a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;

(b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and

(c) relevant evidence of such default or non-repayment of debt.

(5) The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.

(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.

(7) The details and documents required to be submitted under sub-section (4) shall be such as may be specified.”

14. Sub-section (4) of Section 95 provides that an application under sub-section (1) shall be accompanied with details and documents as

referred to therein. Sub-section (7) provides that details and documents required to be submitted under sub-section (4) shall be such as may be specified. Rule 2 of 2019 Rules provides that these rules shall apply to insolvency resolution process for personal guarantors to Corporate Debtors. The application under Section 95 has been filed against the Respondent – Personal Guarantor of the Corporate Debtor – LML Ltd. Hence, the application under Section 95 has to be as per 2019 Rules. Rule 3, sub-section (1) (e) defines ‘guarantor’, which is as follows:

“**3(e)** “guarantor” means a debtor who is a personal guarantor to a corporate debtor and in respect of whom guarantee has been invoked by the creditor and remains unpaid in full or part;”

15. The ‘Guarantor’ within the meaning of 2019 Rules, means a Debtor who is a Personal Guarantor to a Corporate Debtor and in respect of whom guarantee has been invoked by the Creditor and remains unpaid in full or part. Learned Counsel for the Appellant has relied on definition of ‘Personal Guarantor’ as contained in Section 5, sub-section (22) of the IBC. Section 5, sub-section (22) of the IBC is in Part-II, whereas Section 95 of the IBC is in Part-III. Hence, the definition of ‘Personal Guarantor’ under Rule 5(22) may not be applicable with regard to initiation of insolvency resolution process against the Personal Guarantor and the definition given in Rule 3, sub-rule (1) (e) of 2019 Rules has to be looked into for the purpose of initiating insolvency resolution process against the

Personal Guarantor. Rule 7, deals with ‘Application by creditor’. Rule 7 of 2019 Rules is as follows:

“7. Application by creditor.— (1) A demand notice under clause (b) of sub-section (4) of section 95 shall be served on the guarantor demanding payment of the amount of default, in Form B.

(2) The application under sub-section (1) of section 95 shall be submitted in Form C, along with a fee of two thousand rupees.

(3) The creditor shall serve forthwith a copy of the application referred to in sub-rule (2) to the guarantor and the corporate debtor for whom the guarantor is a personal guarantor.

(4) In case of a joint application, the creditors may nominate one amongst themselves to act on behalf of all the creditors.

16. Rule 7, sub-rule (1) provides that Demand Notice under Clause (b) of sub-section (4) of Section 95 shall be served on the Guarantor demanding payment of the amount of default, in Form B. Sub-section (4) of Section 95 refers to documents relating to debts owed by the Debtor to the Creditor. Rule 7, sub-rule (1) contemplate service of Demand Notice under Clause (b) of sub-section (4) on the Guarantor, demanding payment of the amount of default in Form B.

17. The Notice, thus, contemplate demanding payment of the amount of default. The above Rule clearly indicate that Demand Notice has to be issued, demanding payment of the amount in default. Thus, the default by Guarantor has to exist on the date when Notice in Form-B is being issued. When we read Section 95, sub-section (4) and Rule 7 of 2019

Rules, the above is the only intendment of the legislative scheme, i.e. default on the part of Guarantor should exist on the date when Notice in Form-B has to be issued. We have noticed the definitions of 'debt' and 'default' in Section 3 (11) and (12) of the IBC. Default shall arise on account of non-payment of debt, when whole or part of it become due. 'Debt' means a liability or obligation in respect of a claim which is due from any person. Thus, for a default, debt has to be due and Debtor shall be only that person, to whom debt is due. A Personal Guarantor becomes a Debtor only when guarantee is invoked, making him liable to make the payment to the Lender. We have noticed Clause 2 and Clause 21 of the Deed of Guarantee in the foregoing paragraphs of this judgment, which clearly contemplate that liability on Guarantor shall arise only when demand is made by the Lender, in event Principal Borrower fails to repay the amount. In the present case, there is no case setup by the Appellant that at any point of time guarantee was invoked, except issuance of Notice in Form-B, which is claimed by the Appellant to be treated as Notice for invocation of guarantee. Further, we have noticed the definition of 'Guarantor' under Rule 3(1)(e), which while defining a 'Guarantor' contain two conditions, i.e. (i) who is a Personal Guarantor to a Corporate Debtor; and (ii) in respect of whom, guarantee has been invoked by the Creditor and remains unpaid in full or part. Learned Counsel for the Appellant has contended that expression 'and' used in Rule 3 (1)(e) needs to be read as 'or' to make the provision workable and to avoid producing an

unintelligible and absurd result. Learned Counsel for the Appellant has relied on two judgments of the Hon'ble Supreme Court in support of the above submission, i.e. **AIR 1968 SC 1450 – Ishwar Singh Bindra and Ors. vs. State of U.P.** The Hon'ble Supreme Court in the above case had occasion to consider the definition of 'drug' contained in Section 3(b)(i) of Drugs Act 1940. Expression 'and' used in Section 3(b)(1) of the Drugs Act was considered in the said case and in paragraph 11 of the judgment, following was laid down:

“11. Now if the expression “substances” is to be taken to mean something other than “medicine” as has been held in our previous decision it becomes difficult to understand how the word “and” as used in the definition of drug in Section 3(b)(i) between “medicines” and “substances” could have been intended to have been used conjunctively. It would be much more appropriate in the context to read it disjunctively. In *Stroud's Judicial Dictionary*, 3rd Edn. it is stated at p. 135 that “and” has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of or. Sometimes, however, even in such a connection, it is, by force of a contexts, read as “or”. Similarly in *Maxwell on Interpretation of Statutes*, 11th Edn., it has been accepted that “to carry out the intention of the legislature it is occasionally found necessary to read the conjunctions ‘or’ and ‘and’ one for the other”.”

18. The above judgment of the Hon'ble Supreme Court citing Stroud's Judicial Dictionary held that 'and' has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and however, by force of a contexts, the 'and' can be read as 'or'.

19. The observation of the Hon'ble Supreme Court in paragraph 11 as noted above were in context in special provision of Section 3(b)(1) of the Drugs Act. The Counsel for the Appellant has further relied on another judgment of the Hon'ble Supreme Court in ***State of Andhra Pradesh vs. Linde India Limited – (2020) 16 SCC 335***, where the Hon'ble Supreme Court has referred to judgment of **Ishwar Singh Bindra**. Following was held by the Hon'ble Supreme Court in paragraph 15, 16, 17, 18 and 19, which are as follows:

“**15.** The learned counsel for the appellants urged that the phrase “intended to be used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder” in Section 3(b)(i) is only applicable to “substances” and not “medicines”. In *Ishwar Singh Bindra v. State of U.P.* [*Ishwar Singh Bindra v. State of U.P.*, (1969) 1 SCR 219 : AIR 1968 SC 1450 : 1969 Cri LJ 19] the central question before a three-Judge Bench of this Court was the interpretation of Section 3(b)(i) of the 1940 Act. This Court held : (AIR p. 1454, para 11)

“11. Now if the expression “substances” is to be taken to mean something other than “medicine” as has been held in our previous decision it becomes difficult to understand how the word “and” as used in the definition of drug in Section 3(b)(i) between “medicines” and “substances” could have been intended to have been used conjunctively. It would be much more appropriate in the context to read it disjunctively. In *Stroud's Judicial Dictionary*, 3rd Edn. it is stated at p. 135 that “and” has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of or. Sometimes,

however, even in such a connection, it is, by force of a contexts, read as “or”. Similarly, in *Maxwell on Interpretation of Statutes*, 11th Edn., it has been accepted that “to carry out the intention of the legislature it is occasionally found necessary to read the conjunctions “or” and “and” one for the other”.

This Court held that as the word “substances” in the clause is used to mean something other than “medicine”, it was not the intention of the legislature that the word “and” was meant to be read conjunctively. Accordingly, this Court held that the two parts of the definitional clause must be read disjunctively.

16. In the above view, Section 3(b)(i) stipulates that medicines or substances used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings, or animals shall be included within the ambit of the definition. It is significant to note the use of the phrase “for or in” in the definitional clause. Section 3(b)(i) includes both medicines or substances used for the diagnosis, treatment, mitigation or prevention of any disease or disorder or in the diagnosis, treatment, mitigation or prevention of any disease or disorder. Where the former highlights the direct use of the product in question in diagnosing, treating, mitigating or preventing a disease or disorder, the latter highlights its instrumental use as a facilitative agent in the diagnosis, treatment, mitigation or prevention of any disease or disorder. The relevant enquiry for this Court is whether Medical Oxygen IP and Nitrous Oxide IP are used in or for any of the purposes specified therein.

17. The term “medicine” is not defined in the 1940 Act. It is a trite principle of interpretation that the words of a statute must be construed according to the plain, literal and grammatical meaning of the words. Justice G.P. Singh in his seminal work *Principles of Statutory Interpretation* states:

“The words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context or in the object of the statute to suggest the contrary ... in the statement of the rule, the epithets ‘natural’, ‘ordinary’, ‘literal’, ‘grammatical’ and ‘popular’ are employed almost interchangeably.

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It is often said that a word, apart from having a natural, ordinary or popular meaning (including other synonyms i.e. literal, grammatical and primary), may have a secondary meaning which is less common e.g. technical or scientific meaning. But once it is accepted that natural, ordinary or popular meaning of the word is derived from its context, the distinction drawn between different meanings loses much of its relevance.”

18. Similarly, Craies on Statute Law states:

“One of the basic principles of interpretation of statutes is to construe them according to plain, literal and grammatical meaning of the words. If that is contrary to, or inconsistent with, any express intention or declared purpose of the statute, or if it would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified, extended or abridged, so far as to avoid such an inconvenience, but no further. The onus of showing that the words do not mean what they say lies heavily on the party who alleges it. He must advance something which clearly shows that the grammatical construction would be repugnant to the intention of the Act or lead to some manifest absurdity.”

19. The words of a statute should be first understood in their natural, ordinary or popular sense and phrases and sentences should be construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context, or in the object of the statute to suggest the contrary. Where a word has a secondary meaning, the assessment is whether the natural, ordinary or popular meaning flows from the context in which the word has been employed. In such cases, the distinction disappears and courts must adopt the meaning which flows as a matter of plain interpretation and the context in which the word appears.”

20. The above judgment reiterates that one of the basic principles of interpretation of statutes is to construe them according to plain, literal and grammatical meaning of the words. When we look into definition of ‘Guarantor’ in Rule 3(1)(e), fulfilment of both the condition that Debtor is a Personal Guarantor to a Corporate Debtor and in respect of whom guarantee has been invoked, has been cumulatively used. The submission of the Appellant that use of the expression ‘and’ has to be read as ‘or’, shall not further the statutory object and purpose. Guarantor with regard to whom guarantee has not been invoked, shall not be a Debtor and no default can be committed by Guarantor, unless guarantee is invoked as per the terms of Deed of Guarantee. Thus, the insolvency resolution process against a Guarantor, against whom debt has not become due, is not understandable. We, thus, reject the submission of the Appellant that word ‘and’ used in Rule 3(1)(e) has to be read as ‘or’. Reading of word ‘or’ in place of ‘and’ shall be not in

accordance with the statutory scheme and shall be against the statutory intendment.

21. Learned Counsel for the Appellant further referred to Form-A, which is a form in which Personal Guarantor shall file an application under Section 94, submits that although at Item No.14, one of the information sought is “*Whether the guarantee has been invoked and proof thereof*”, whereas the said requirement is not mentioned in Form-B. He submits that although invocation of guarantee may be thus, relevant for an application under Section 94, but it is not relevant for Section 95 application. When we look into the Form-B, under which application under Section 95 has to be issued under the heading ‘Particulars of Debt’, at Sl. No.3 and 4, following have been mentioned:

“3.	Date when the debt was due	
4.	Date when the default occurred”	

22. The requirement of date, when the default occurred, itself contemplate the default by Guarantor, when Application is filed against Guarantor. Obviously, the default has to be of the Guarantor and mentioning of date when the default occurred, itself contemplate default on the part of Guarantor, i.e. invocation of guarantee as per Deed of Guarantee. Thus, non-mention of requirement of whether guarantee has

been invoked and proof thereof, is inconsequential, since the date when default occurred is specifically asked for.

23. Learned Counsel for the Respondent has relied on the judgment of the Hon'ble Supreme Court in ***Syndicate Bank vs. Channaveerappa Beleri and Ors. – (2006) 11 SCC 506***, where Hon'ble Supreme Court in paragraph 9 had held that Guarantor's liability depends upon the terms of his contract. In paragraph 9, following has been held:

“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.”

24. This Tribunal in ***Archana Deepak Wani vs. Indian Bank – Company Appeal (AT) (Ins.) No.301 of 2023*** has also held that liability

of the Guarantor must be determined strictly in terms of the Deed of Guarantee. In paragraph 26, following has been laid down:

“**26.** The scheme of I&B Code clearly indicate that both the Principal Borrower and the Guarantor become liable to pay the amount when the default is committed. When default is committed by the Principal Borrower the amount becomes due not only against the Principal Borrower but also against the Corporate Guarantor, which is the scheme of the I&B Code. When we read with as is delineated by Section 3(11) of the Code, debt becomes due both on Principal Borrower and the Guarantor, as noted above. The definition of default under Section 3(12) in addition to expression ‘due’ occurring in Section 3(11) uses two additional expressions i.e “payable” and “is not paid by the debtor or corporate debtor”. The expression ‘is not paid by the debtor’ has to be given some meaning. As laid down by the Hon’ble Supreme Court in “**Syndicate Bank vs. Channaveerappa Beleri & Ors.**” (*supra*), a guarantor’s liability depends on terms of his contract. There can be default by the Principal Borrower and the Guarantor on the same date or date of default for both may be different depending on the terms of contract of guarantee. It is well settled that the loan agreement with the Principal Borrower and the Bank as well as Deed of Guarantee between the Bank and the Guarantor are two different transactions and the Guarantor’s liability has to be read from the Deed of Guarantee.”

25. Another judgment, which has been relied by learned Counsel for the Respondent is judgment of this Tribunal in **Pooja Ramesh Singh vs. State Bank of India – Company Appeal (AT) (Ins.) No.329 of 2023**, where it was held that default in the guarantee arises only when after the guarantee has been invoked. In paragraph 32, following was laid down:

“**32.** In view of the foregoing discussion, we arrive at following conclusions:

- (i) The Corporate Guarantee Deed dated 17.05.2019 is on demand guarantee deed and the default shall arise on the part of the Guarantor only when demand notice is issued as contemplated in the Deed of Guarantee. When the State Bank of India invoked the guarantee vide notice dated 01.10.2020, demand on the part of the Corporate Guarantee shall arise only subsequent to the notice dated 01.10.2020 i.e. non-payment of the amount within seven days i.e. default arise on 08.10.2020.
- (ii) Default on the part of the Guarantor having arisen on 08.10.2020 i.e. within the period which is covered as prohibited period under Section 10A, application under Section 7 was clearly barred by Section 10A. Issues No. II, III and IV are answered accordingly.
- (iii) The Adjudicating Authority in the impugned order has not adverted to the relevant clauses of the Deed of Guarantee as noted above. The date of default on part of the Guarantor being subsequent to 01.10.2020 when guarantee was invoked, the application was barred by Section 10A and the Adjudicating Authority committed error in admitting the Section 7 application.”

26. It was held that default shall arise on the part of Guarantor only when Demand Notice is issued, as contemplated in the Deed of Guarantee.

27. In view of the foregoing discussion, we are not persuaded to accept the submission of the Appellant that Notice under Rule 7 (1) issued in

Form-B to the Guarantor, demanding repayment of the default amount, has to be treated as Notice for invoking guarantee. Default before issuance of Notice under Rule 7(1), must exist on the part of the Guarantor. Hence, we reject the submission of the Appellant that Notice under Rule 7, sub-rule (1) is a Notice, invoking the guarantee. We, thus, do not find any error in the order of the Adjudicating Authority, rejecting Section 95 Application filed by the SBI. There is no merit in the Appeal. The Appeal is dismissed. There shall be no order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

NEW DELHI

28th February, 2025

Ashwani