

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 1702 of 2024

[Arising out of order dated 27.06.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench– I in C.P/IB/205/AHM/2022)]

IN THE MATTER OF:

Mavjibhai Nagarbhai Patel

R/o Gopal Society, Mahendranagar Road,
Morbi- 363 642 Gujarat

...Appellant

Versus

1. State Bank of India

Having its office at:
Stressed Assets Management Branch,
Pramsiddhi Complex, 2nd Floor,
Opp. V.S. Hospital, Ellisbridge,
Ahmedabad- 380 006

...Respondent No. 1

2. Dharit K. Shah,

Resolution Professional
Registration No. IBBI/IPA-001/IP-P00993/2017-
2018/11640
Having its office at:
302, Centre Point, RC Dutt Road, Alkapuri,
Vadodra, Gujarat- 390 007

...Respondent No. 2

Present:

For Appellant : Mr. Mansumyer Singh, Advocate.

**For Respondents : Mr. Siddharth Sangal, Mr. Chirag Sharma, Ms. Richa Mishra and Ms. Hashita Agarwal, Advocates for R-1.
Mr. Atul Sharma, Advocates for R-2.**

WITH

Company Appeal (AT) (Insolvency) No. 1711 of 2024

[Arising out of order dated 27.06.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench–I in C.P/IB/206/AHM/2022)]

IN THE MATTER OF:

Jayantibhai Nagarbhai Patel

R/o Gopal Society, Mahendranagar Road,
Morbi- 363 642 Gujarat

... Appellant

Versus

1. State Bank of India

Having its office at:
Stressed Assets Management Branch,
Pransiddhi Complex, 2nd Floor,
Opp. V.S. Hospital, Ellisbridge,
Ahmedabad- 380 006

...Respondent No. 1

2. Dharit K. Shah,

Resolution Professional
Registration No. IBBI/IPA-001/IP-P00993/2017-
2018/11640
Having its office at:
302, Centre Point, RC Dutt Road, Alkapuri,
Vadodra, Gujarat- 390 007

...Respondent No. 2

Present:

For Appellant : Mr. Mansumyer Singh, Advocate.

For Respondents : Mr. Siddharth Sangal, Mr. Chirag Sharma, Ms. Richa Mishra and Ms. Hashita Agarwal, Advocates for R-1.

Mr. Atul Sharma, Advocates for R-2.

WITH

Company Appeal (AT) (Insolvency) No. 1712 of 2024

[Arising out of order dated 27.06.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench- I in C.P/IB/215/AHM/2022)]

IN THE MATTER OF:

Narayanbhai N. Patel

R/o Gopal Society, Mahendranagar Road,
Morbi- 363 642 Gujarat

... Appellant

Versus

1. State Bank of India

Having its office at:

Stressed Assets Management Branch,
Pransiddhi Complex, 2nd Floor,
Opp. V.S. Hospital, Ellisbridge,
Ahmedabad- 380 006

...Respondent No. 1

2. Dharit K. Shah,

Resolution Professional

Registration No. IBBI/IPA-001/IP-P00993/2017-
2018/11640

Having its office at:

302, Centre Point, RC Dutt Road, Alkapuri,
Vadodra, Gujarat- 390 007

...Respondent No. 2

Present:

For Appellant : Mr. Mansumyer Singh, Advocate.

For Respondents : Mr. Siddharth Sangal, Mr. Chirag Sharma, Ms. Richa Mishra and Ms. Hashita Agarwal, Advocates for R-1.

Mr. Atul Sharma, Advocates for R-2.

J U D G M E N T

(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61(1) of Insolvency and Bankruptcy Code 2016 ('**IBC**' in short) by the Appellant arises out of the Order dated 27.06.2024 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench-I) in C.P/IB/205/AHM/2022, C.P/IB/206/AHM/2022 and C.P/IB/215/AHM/2022 respectively. By the impugned order, the Adjudicating Authority has admitted the

application filed by the Respondent No.1- State Bank of India under Section 95(1) of IBC initiating insolvency resolution process of the Appellant- Mavjibhai Nagarbhai Patel being the Personal Guarantor of the Corporate Debtor. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant.

2. The significant dates and sequence of events which require to be noticed for deciding the matter at hand are as placed below:

- The Corporate Debtor-Vrundavan Ceramic Pvt. Ltd. had been sanctioned loan facilities by the Respondent No.1- Bank. The Personal Guarantor-Appellant had executed a Deed of Guarantee dated 09.04.2005 followed by Supplemental Deeds of Guarantees until 2010 in respect of credit facilities extended by the Respondent No. 1-Bank to the Corporate Debtor.
- The Loan Account of the Corporate Debtor was declared as Non-Performing Asset (“**NPA**” in short) on 31.07.2013 and recalled by the Respondent No. 1-Bank due to failure to repay as per schedule of payment. The Financial Creditor-Respondent No.1-Bank had filed a Section 7 application under the IBC against the Corporate Debtor.
- The Corporate Debtor was admitted into Corporate Insolvency Regulation Process (“**CIRP**” in short) on 21.01.2020.
- Demand Notice dated 04.06.2021 under Section 13(2) of SARFAESI Act was issued by the Respondent No. 1 Bank calling upon the Borrowers and the Guarantors to make the outstanding payment amounting to Rs

32.60 Cr. This Demand Notice dated 04.06.2021 notified repayment of debt by 04.08.2021 by the Appellant-Personal Guarantor also.

- The Respondent No. 1 Bank issued a Rule 7(1) Demand Notice of the Insolvency and Bankruptcy (Application to Adjudicating Authority for initiation of Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, (hereinafter refer to as **“the said Rules”**) under Section 95 of the IBC on the Appellant-Personal Guarantor on 28.09.2021.
 - The Respondent No.1 Bank, not having received repayment of debt proceeded to file Section 95 application against the Appellant-Personal Guarantor on 18.06.2022.
 - The Adjudicating Authority appointed the Resolution Professional (**“RP”** in short) to carry out the insolvency resolution process of the Personal Guarantor and with direction to send report under section 99 of the IBC.
 - The RP recommended the admission of the application filed under Section 95 of the IBC.
 - The Adjudicating Authority thereafter vide impugned order ordered the initiation of insolvency resolution process of the Personal Guarantor.
 - Aggrieved by the impugned order, the present appeal has been preferred by the Personal Guarantor.
- 3.** Two similar appeals have been filed by Narayanbhai N. Patel vide Company Appeal No. 1712 of 2024 and by Jayantibhai Nagarbhai Patel vide Company Appeal No. 1711 of 2024. The appeal filed by Narayanbhai N. Patel is against impugned order dated 27.06.2024 in CP(IB) No. 215/AHM of 2022

while the appeal filed by Jayantibhai Nagarbhai Patel is against impugned order dated 27.06.2024 in CP(IB) No. 206/AHM of 2022. In both these appeals, the above two Appellants have assailed the impugned order admitting the Section 95(1) applications filed by the Respondent No.1- State Bank of India allowing initiation of their insolvency resolution process. Since, the grounds on which the Section 95 application has been admitted by the Adjudicating Authority in these two cases are predicated on the same facts and grounds as in the case of Mavjibhai Nagarbhai Patel, we have chosen to confine ourselves to the pleadings made in Company Appeal No. 1702 of 2024 to decide these three Appeals at hand.

4. Making his submissions, the Learned Counsel for the Appellant-Personal Guarantor stated that the Adjudicating Authority had erroneously passed the impugned order allowing the Section 95 application even though it was badly time-barred. Since the date of default mentioned by the Respondent No.1 Bank in Form-C of the Section 95 application is 31.07.2013, the three-year period of limitation expired in 2016. Hence, the application under Section 95 of IBC filed in June 2022 by the Respondent No.1 Bank seeking insolvency resolution of the Appellant was grossly time-barred. Submission was pressed by the Appellant that the Respondent No. 1 had relied on a letter dated 11.01.2022 to claim that the Section 95 application was filed within the limitation period. It was pointed out that when the three-year period of limitation stood expired in 2016, the letter of 11.01.2022 could not have revived or extended the limitation period since any acknowledgment of debt made after expiry of the limitation period does not have the effect of extending the limitation period.

5. It was strenuously contended that even the claim made by the Respondent No.1 Bank that the debt qua the personal guarantor was due on 04.06.2021 being the date of Demand Notice under Section 13(2) of the SARFAESI Act is frivolous as the Section 95 application filed by the Respondent No.1 Bank states the date of default qua the Appellant to be 31.07.2013. Thus, the date of default in the Section 95 application is sacrosanct and cannot be changed by the Respondent No.1 Bank at its own will and fancy to suit its convenience.

6. It is also asserted that the Adjudicating Authority in the impugned order has wrongly relied on two revival letters dated 30.12.2015 and 31.03.2017 to hold that the Corporate Debtor and the Personal Guarantor had signed and confirmed the balance confirmation in these letters and in treating these letters as letters of acknowledgement of liability by the Appellant. Denying that these letters were never signed by the Appellant it cannot be viewed as admission of their liability. It was further submitted that though these two letters figure in the impugned order, these letters are actually non-existent. To substantiate their argument, it is stated that these letters have neither been placed on record with the application under Section 95 filed by Respondent No. 1 nor do the letters figure in the report of Respondent No.2-RP. It has been vehemently contended by the Ld. Counsel for the Appellant that the impugned order therefore wrongly relied on the non-existent letters dated 30.12.2015 and 31.03.2017 to claim that the Section 95 application is filed within the limitation period.

7. The second limb of argument of the Appellant is that the application under Section 95 was defective as it has been signed and filed by an Assistant

General Manager (“**AGM**” in short) of the Respondent No. 1 Bank and therefore not instituted by any authorised person. It was stated that as per Form-C of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, (hereinafter refer to as “**the said Rules**”) any person authorized to act on behalf of the Creditor is required to enclose the authorization document in that regard. It was submitted that the Adjudicating Authority failed to consider that the Section 95 application did not disclose the authority under which the AGM had signed the application on behalf of the Respondent No.1 Bank. The stand-alone purported Authority Letter signed by a Deputy General Manager in favour of an AGM without the backing of a resolution by the Central Board of Directors of the Respondent No.1 Bank in favour of the said signatory was not sufficient to meet the criteria of disclosure of authorisation as required under Form-C of the said rules. Since this was not a valid authorization, the application under Section 95 was defective and liable to be dismissed on this ground alone.

8. Refuting the contentions made by the Appellant, the Ld Counsels for the Respondents submitted that the Personal Guarantor-Appellant had executed a Deed of Guarantee dated 09.04.2005 followed by Supplemental Deeds of Guarantees in respect of credit facilities extended by the Respondent No. 1-Bank to the Corporate Debtor. The clauses of the Deed of Guarantee clearly stated that the guarantee was in the nature of a continuing guarantee and the date of default would be as stipulated in the Deed of Guarantee. In the present case, the Personal Guarantee was invoked by the Respondent No.1 Bank through Demand Notice dated 04.06.2021 under Section 13(2) of the

SARFAESI Act which called upon both the Borrowers and the Guarantors to make payment of the amount of Rs 32.60 Cr. within 60 days. As the Personal Guarantor did not make the payment as demanded in the Demand Notice dated 04.06.2021, the Respondent No. 1 Bank issued Demand Notice dated 28.09.2021 under Rule 7(1) of the said rules. Since the Appellant-Personal Guarantor did not repay the debt within 14 days from Rule 7(1) Notice, the Respondent No.1 proceeded to file the Section 95 application on 18.06.2022 which was within the limitation period as Personal Guarantee had been invoked by demand notice dated 04.06.2021.

9. On the plea raised by the Appellant that the Section 95 application was not filed by a person competent to do so, this argument was strongly rebutted by the Ld. Counsel for Respondent No.1 Bank by contending that the Authority Letter authorising the AGM to file the Section 95 application was signed by the Deputy General Manager in terms of Gazette Notification dated 02.05.1987 issued in pursuance of Regulations 76(1) of the State Bank of India General Regulations, 1955 framed under Section 50 of the State Bank of India Act, 1955. Hence the contention of the Appellant that the Section 95 application was filed by an unauthorized person is not a valid submission and lacks merit.

10. We have duly considered the arguments advanced by the Learned Counsel for both the parties and perused the records carefully.

11. The two short issues for consideration are whether the Section 95 application filed by the Respondent No. 1 Bank was time-barred or not and whether the Section 95 application was filed by a duly authorized person.

12. It is the case of the Appellant that the stand taken by the Respondent No.1 that the date of default was 04.06.2021 as shown in the notice under Section 13(2) of the SARFAESI Act cannot be accepted in view of the fact that the Respondent No.1 Bank has held the date of default qua the Corporate Debtor-Guarantors to be 31.06.2013. Hence, the Respondent No.1 Bank cannot read the date of default on the part of the Personal Guarantor to be 04.06.2021 at a time when the date of default on the part of the Corporate Debtor was 31.07.2013.

13. Before we dwell upon the issues delineated by us at para 11 above, at the very outset, we would like to advert attention to the judgement of this Tribunal in ***Pooja Ramesh Singh Vs. State Bank of India*** in ***CA(AT) (Insolvency) No.329 of 2023*** wherein it has been held that the liability of a borrower and guarantor is co-extensive but the liability of a Guarantor stems from the contract of guarantee and therefore the date of default in the case of the guarantor depends on the terms of contract of guarantee. The date of default for the principal borrower and the guarantor can be different depending on the terms of the Contract of Guarantee in terms of this judgment. The relevant excerpts of the judgment are extracted as below:

24. *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.

(Emphasis supplied)

14. In the present factual matrix, it is an undisputed fact that the Personal Guarantor-Appellant had executed a Deed of Guarantee dated 09.04.2005 followed by Supplemental Deeds of Guarantees until 2010 in respect of credit facilities extended by the Respondent No. 1- Bank to the Corporate Debtor. It may therefore be relevant to peruse the guarantee deed to find out the treatment of date of default in respect of the Guarantors.

15. When we look at the relevant clauses of the guarantee deed, we notice that the clauses spell out the co-extensive liability of the principal borrower and the guarantor qua the credit facility extended by the Respondent No.1 Bank as well as the event of default which are as reproduced below:

"6. The Guarantee herein contained shall be enforceable against the Guarantors notwithstanding the securities aforesaid or any other collateral securities that the Bank may have obtained or may obtain from the Borrower or any other person shall at the time when proceedings are taken against the Guarantors hereunder be outstanding and/or not enforce and or remain unrealised.

7. In order to give effect to the Guarantee herein contained the Bank shall be entitled to act as if the Guarantors were principal debtors to the Bank for all payments guaranteed by them as aforesaid to the Bank.

8. The guarantee herein contained is a continuing one for all amounts advanced by the Bank to the Borrower in respect of or under the aforesaid

credit facilities as also for all costs and other monies which may from time to time become due and remain unpaid to the Bank thereunder....

12. 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 authorised agent of the Borrower to the Bank 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.

13. The Guarantors shall forthwith on demand made by the Bank deposit with the Bank such sum or security or further sum or security as the Bank may from time to time specify as security for the due fulfillment of their obligations under this Guarantee....

20. The Guarantors agree that amount due under or in respect of the aforesaid credit facilities and hereby guaranteed shall be payable to the Bank on the Bank serving the Guarantors with a notice requiring payment of the amount ...

(Emphasis supplied)

16. The liability of the guarantor has to be read from the Deed of Guarantee. Further, the terms of the Deed of Guarantee are extremely material as the invocation of the guarantee was to be purely in accordance with the terms of guarantee. Having looked at the relevant clauses of the Deed of Guarantee in the preceding paragraph, we are of the considered view that the Deed of Guarantee entered between the Respondent No.1 Bank and Personal Guarantor is an independent, distinct and a special contract which has to be construed on its own terms. It is clear from the reading of the clauses in the Deed of Guarantee that guarantee was given by the Personal Guarantor in unequivocal terms and the guarantee amount was to be paid by the guarantor once the guarantee was invoked.

17. When we look at the specific Clauses of the Deed of Guarantee, it clearly states that the guarantee was in the nature of a continuing guarantee. The Guarantor had agreed that any admission on acknowledgement in writing

signed by the Borrower shall also be binding on the Guarantor. Further, the Guarantor had agreed that the amount due under or in respect of the credit facilities to be payable to the creditor bank will be payable by the guarantor on a notice requiring payment of the amount.

18. In the present case, after the Corporate Debtor was admitted into CIRP on 21.01.2020 and the Personal Guarantee was invoked by the Respondent No.1 Bank through Demand Notice dated 04.06.2021 under Section 13(2) of the SARFAESI Act which called upon both the Borrowers and the Guarantors to make payment of the amount of Rs 32.60 Cr. as on 30.04.2021 within 60 days. The Section 13(2) Notice which was sent to the Corporate Debtor was also forwarded to the Guarantor with the specific demand to make payment of the amount mentioned in the notice in terms of the guarantee. This Section 13(2) Notice was indisputably also sent to the Personal Guarantors separately and independently. When we see the Section 13(2) notice under SARFAESI Act as placed at pages 549 to 551 of Appeal Paper Book (“**APB**” in short) we find that there is clear indication of the names of all the Personal Guarantors therein which includes the present Appellant (and also the other two Appellants whose appeals are also under consideration before us). Para 11 of the Section 13(2) SARFAESI addressed to the Corporate Debtor notice which was also forwarded to the personal guarantors including the Appellant is relevant to be noticed which is as extracted below:

“11. Further we are also forwarding the copy of this notice to personal guarantor who are liable to pay the aforesaid outstanding amount. This notice is without prejudice to the Bank's right to initiate such other actions or legal proceedings as it deems necessary under any other applicable provisions of Law. This notice is in supersession of our

earlier notices sent to you vide our letter no. SAMB/GRJ/2018-19/2002 dated 16.02.2019 which stands withdrawn.

Copy forwarded to:

Jayantibhai Pragjibhai Patel, C/O Jayantilal Bhorania, Gopal Society, Mahendranagar Road, , Morbi, Gujarat-363642	Babubhai Khimjibhai Patel, C/O Patel Timber Company, 7 Lati Plot, Morbi, Gujarat-363641
Bhagwanbhai Talsibhai Bhoraniya Gopal Society, Mahendranagar Road, Morbi, Gujarat-363642	Mavjibhai Nagarbhai Patel, Gopal Co-operative housing society, Mahendranagar road, Morbi- Gujarat- 363642
Jayantibhai Nagarbhai Patel, Gopal Co-operative housing society, Mahendranagar road, Morbi-Gujarat-363642.	Jasuben Odhavjibhai Bhoraniya, Legal heir of Late Odhavji 'Talsibhai Bhoraniya, Gopal Co-operative housing society, Mahendranagar road, Morbi- Gujarat-363642.
Narayanbhai N Patel, Gopal Co-operative housing society, Mahendranagar road, Morbi-Gujarat-363642	Pragjibhai T Bhoraniya, Gopal Co-operative housing society, Mahendranagar road, Morbi-Gujarat-363642
Pravinkumar Chandulal Patel, Street No.4 Kayaji Plot, Near Narmada Bunglow, Near Sardarbaug, Morbi- Gujarat-363641	Vithalbhai Manjibhai Patel, Street No.4 Kayaji Plot, Near Narmada Bunglow Near Sardarbaug, Morbi- Gujarat-363641
Rameshbhai Tapubhai Bhoraniya, Gopal Co-operative housing society, Mahendranagar road, Morbi-Gujarat-363642	Vraj Ceramic Pvt Ltd, Survey No 126/P, National Highway 8-A, At Village: Dhuwa, Tal : Wakanaer, Gujarat-363622
Damjibhai T Bhoraniya(Patel) 7, Royal Park, Univercity Road, Indira Chowk, Rajkot, Gujarat-360004	Nitalben Vinodkumar Kaila, Legal heir of Late Odhavji Talsibhai Bhoraniya, Darpan Society, Ravapar Road, Morbi-363641.

You are requested to make the payment of the amount mentioned in the notice in terms of the guarantees executed by you.”

(Emphasis supplied)

19. The Appellant-Personal Guarantor did not make the payment as demanded by the Section 13(2) Notice dated 04.06.2021. Thereafter, the Respondent No. 1 Bank issued Demand Notice dated 28.09.2021 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for initiation of Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 as below:

FORM-B

(FORM OF DEMAND NOTICE)

[Under rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019]

3.	Date when the debt was due	04.06.2021								
4.	Date when the default occurred	04.08.2021								
5.	Nature of debt	<table border="1"><thead><tr><th>S.No.</th><th>Facility</th></tr></thead><tbody><tr><td>1</td><td>Cash Credit</td></tr><tr><td>2</td><td>Working Capital Team Loan</td></tr><tr><td>3</td><td>FITL</td></tr></tbody></table> <p>The guarantor has guaranteed repayment of dues by executing personal guarantees for securing the financial facilities granted by the bank to the Corporate Debtor</p>	S.No.	Facility	1	Cash Credit	2	Working Capital Team Loan	3	FITL
S.No.	Facility									
1	Cash Credit									
2	Working Capital Team Loan									
3	FITL									
12.	Provision of law, contract or other document under which debt has become due	<p>i. Indian Contract Act, 1892</p> <p>ii. Copy of Sanction Letter dated 02.04.2005</p> <p>.....</p> <p>xxviii. Copy of notice u/s 13(2) dated 04.06.2021.</p>								

The above Demand Notice under Rule 7(1) clearly stipulated that the debt was due on 04.06.2021 being the date of Demand Notice under Section 13(2) of the SARFAESI Act. The date of default in the Rule 7(1) notice was clearly shown as 04.08.2021 being 60 days from 04.06.2021. The Section 13(2) Notice was also attached with the Rule 7(1) Notice.

20. Since the guarantee deed specifically mentioned that the guarantee was in the nature of an on-demand guarantee, the default was to arise on the part of the Guarantor only when the Demand Notice was issued as contemplated in the Deed of Guarantee. Thus, the period of limitation of the Personal Guarantor was to commence once the demand was made on the Guarantor by the Respondent No.1 Bank. Hence, the Notice dated 04.06.2021 issued by the Respondent No.1 Bank to the Personal Guarantor has to be treated to be Notice on Demand as contemplated in the Deed of Guarantee. The Rule 7(1) Notice dated 28.06.2021 had therefore rightly recorded that the debt was due on 04.06.2021 being the date of Demand Notice under Section 13(2) of the SARFAESI Act and that the date of default occurred on 04.08.2021 on the expiry of 60 days from 04.06.2021.

21. Further, when we look at the Form-C of Section 95 application filed by Respondent No. 1 Bank, we find that the date of default in respect of the Personal Guarantor has been explained in Part-II at column No. 4 as follows:

“On 28.9.2021, Demand Notice was issued under section 95(4)(b) of the IB Code 2016, read with rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personnel Guarantors to Corporate Persons) Rules, 2019 on the Respondent- personal guarantors demanding the Payment of the unpaid debt in default amounting to Rs.

33,51,62,406.00/- which was successfully severed to respondent-personal guarantor.”

We also find that the Section 95 application shows that the Respondent No.1 Bank besides relying on the Demand Notice dated 04.06.2021 also relied on other documents and guarantees including the Rule 7(1) Demand Notice; Deed of Guarantee dated 09.04.2005; Demand Notice dated 04.06.2021; Settlement Proposal dated 11.01.2022 etc.

22. Given this backdrop, to answer the first question before us, the Section 95 petition which was filed on 18.06.2022 was very much within the limitation period since the Personal Guarantee had been invoked on 04.06.2021 and demand qua the Personal Guarantor arose on the expiry of the period specified in the Demand Notice. When the Respondent No.1 Bank has given time to the Guarantor to make payment by 04.08.2021 in terms of the Notice dated 04.06.2021, there can be no default on the part of the Guarantor on any earlier date.

23. This brings us to the second question on whether the Section 95 application has been validly filed. It is an admitted fact that the Authority Letter authorising the AGM to file the Section 95 application was signed by the Deputy General Manager. It was clarified by the Ld. Counsel for the Respondent No.1 Bank during the oral submissions that the AGM of the Respondent No1 Bank being SMGS-V was statutorily competent to sign any petition by virtue of The Gazette of India Notification dated 02.05.1987 which notified that in pursuance of Regulations 76(1) of the State Bank of India General Regulations, 1955 framed under Section 50 of the State Bank of India Act, 1955 the Executive Committee of the Central Board of the State Bank of

India authorized all Officers in the Grade of SMGS-IV and above to exercise Signing Power in respect of documents connected with the current or authorized business of the Bank. Since the Gazette of India Notification lies in the public domain and is subsisting, we are not impressed by the plea raised by the Appellant that the Section 95 application signed by an AGM level Officer of the Respondent No.1 Bank to be unauthorized. Thus, to reply to the second question, we are of the considered view that the Section 95 application filed by the Respondent No.1 Bank is valid and therefore reject this technical plea raised by the Appellant.

24. For the forgoing reasons, we are of the considered opinion that all the three impugned orders therefore do not warrant any interference. The Appeals filed by all the three Appellants are devoid of merit and therefore dismissed. No costs.

**[Justice Ashok Bhushan]
Chairperson**

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

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

**Place: New Delhi
Date: 18.12.2024**

Abdul/Harleen