

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 1267 of 2023

(Arising against the impugned order dated 24.07.2023 passed by the Hon'ble National Company Law Tribunal, New Delhi in IA No. 4675/ND/2022 & CP (IB) No. 573/ND/2022)

IN THE MATTER OF:

Shri Rakesh Jolly

Having Registered office at:
114, G.T. Road, Delhi Gate Ghaziabad, U.P.

...Appellant

Versus

Indian Bank

SAM Large Branch 17, First Floor,
Parliament Street, New Delhi,

...Respondent No. 1

Mr. Rakesh Misra,

Add:- B- 403, Rosewood Apartment,
Mayur Vihar, Phase I Extn.,
Delhi.

...Respondent No. 2

Present:

For Appellant: **Mr. Sunil Fernandes, Sr. Advocate, Mr. Amit Dhall,
Ms. Diksha Dadu, Mr. Rajat Srivastava, Advocates.**

For Respondents: **Mr. Brijesh Kumar Tamber and Mr. Prateek Kushwaha,
Advocates.**

J U D G M E N T
(3rd July, 2025)

INDEVAR PANDEY, MEMBER (T)

The present Appeal has been preferred under Section 61 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as '**Code**') challenging the impugned order dated 24.07.2023 passed by the National Company Law Tribunal (Adjudicating Authority), New Delhi in I.A. No.

Cont'd..../

4675/ND/2022 and CP IB 573/ND/2022. The said order was passed pursuant to an application filed by the **Indian Bank/ Respondent No. 1** herein under Section 95 of the Code, seeking initiation of insolvency resolution process against the Shri **Rakesh Jolly/ Appellant**, in this case, who stood as a personal guarantor to **M/s Aravali Infrapower Ltd./ Principal Borrower**.

2. The Adjudicating Authority admitted the application based on the recommendations of the **Resolution Professional/ Respondent No. 2** herein, under Section 99 of the Code, thereby initiating insolvency proceedings against the Appellant. Aggrieved by the admission of the said application and alleging that it was filed beyond the prescribed limitation period and without proper cause of action, the Appellant has approached this Hon'ble Appellate Tribunal.

Brief facts of the case

3. Brief facts of the case are given below:

- (i) The Indian Bank, Respondent No. 1, sanctioned a credit facility of Rs. 58.35 crores on 31.10.2012 as part of a Corporate Debt Restructuring (CDR) scheme to M/s Aravali Infrapower Ltd., wherein Shri Rakesh Jolly, the Appellant, executed a Deed of Guarantee dated 13.02.2013 in favour of State Bank of India, the lead bank of the lending consortium. The said guarantee had all the members of the consortium as the parties.

- (ii) The account of M/s Aravali Infrapower Ltd. (hereinafter called Principal Borrower) was classified as a Non-Performing Asset (NPA) on 29.10.2012 by the Respondent Bank, citing default in repayment obligations.
- (iii) A Demand Notice under Section 13(2) of the SARFAESI Act was issued by the Indian Bank to the Appellant/Personal Guarantor on 13.06.2016, invoking the personal guarantee and demanding repayment of Rs 109,43,77,905.11 (109.43 Crores).
- (iv) On 11.01.2017, an Original Application (OA No. 07/2017) was filed before the Debt Recovery Tribunal (DRT-II), Delhi by the consortium of banks (including Indian Bank the Respondent 1 here) before DRT-II, Delhi under the RDDBFI Act, 1993, for recovery of dues from the borrower and guarantors.
- (v) The Principal Borrower submitted an OTS proposal to the State Bank of India the lead member of the consortium on 19.03.2018 in view of the failure of the Corporate Debt restructuring of the Principal Borrower M/S Aravali Infrapower Ltd. This proposal however was not accepted by the Consortium of lenders.
- (vi) On 10.05.2022, Indian Bank issued a fresh Demand Notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019, demanding payment of Rs. 200.90 crores as due from the Appellant.

- (vii) The Appellant replied to the Demand Notice on 23.05.2022, denying liability and contending that the claim was time-barred.
- (viii) Subsequently, on 03.08.2022, the Indian Bank filed an application under Section 95(1) of the Code before the NCLT, New Delhi Bench, for initiating insolvency proceedings against the Appellant as a personal guarantor.
- (ix) The NCLT vide its order dated 12.09.2022 admitted the application for examination and appointed Mr. Rakesh Mishra as the Resolution Professional (RP), directing him to submit a report under Section 99 of the Code within 10 days.
- (x) The RP issued notice to the Appellant seeking documentary evidence of repayments and invited submissions under Section 99(2) of the Code.
- (xi) The Appellant submitted a detailed response to the RP on 23.09.2022, denying execution of the guarantee deed knowingly, alleging that it was obtained deceitfully, and reiterating that the claim was barred by limitation. The Appellant in his response further submitted that the Guarantee Deed was not validly invoked, and the cause of action, if any, had already lapsed on 13.06.2019, being three years from the SARFAESI notice date of 13.06.2016.
- (xii) The RP submitted his report vide I.A. No. 4675/ND/2022 on 29.09.2022, recommending the acceptance of the Section 95

application. He rejected the Appellant's limitation objection and upheld the validity and enforceability of the Deed of Guarantee.

(xiii) On 24.07.2023, the NCLT passed the impugned order, accepting the RP's report and admitting the application under Section 95 of the IBC, thereby initiating the insolvency process against the Appellant.

(xiv) The Appellant, aggrieved by this decision, filed the present Appeal before NCLAT on 29.08.2023, asserting that the claim was time-barred, the Guarantee was not validly invoked, and the RP failed to apply the settled legal principles regarding limitation and the date of default.

Submissions of the Appellant

4. Ld. Counsel for the Appellant submitted that the application filed by Indian Bank under Section 95 of the Insolvency and Bankruptcy Code, 2016 (IBC) is completely barred by limitation. The application was filed on 19.07.2022, but the Corporate Debtor's account had been declared as Non-Performing Asset (NPA) way back on 29.10.2012, which was also mentioned by the Bank itself as the date of default in its own Demand Notice dated 10.05.2022. Therefore, the limitation period of three years, as prescribed under Article 137 of the Limitation Act, expired on 29.10.2015. The application is thus grossly delayed and should have been dismissed.

5. Ld. Counsel for the Appellant further submitted that Indian Bank issued a Demand Notice under Section 13(2) of the SARFAESI Act to both the Corporate Debtor and the Appellant, on 13.06.2016 giving 60 days' time for

making payment. Even if, the Guarantee is considered as being invoked on 13.08.2016, still the limitation period of three years would have expired on 13.08.2019. The present Section 95 application filed in July 2022 is, therefore, time-barred even on that basis.

6. Ld. Counsel for the Appellant emphasized that the Adjudicating Authority wrongly ignored the Notice dated 13.06.2016 issued by Indian Bank itself and instead referred to a different notice dated 26.05.2016 issued by State Bank of India, which is not even the party in the present proceedings. The Appellant had placed the correct 13.06.2016 notice on record in the written submissions and the same should have been considered as the relevant invocation of the Guarantee. The Authority's failure to consider this is a serious oversight.

7. Ld. Counsel further pointed out that the NCLT erroneously accepted that the limitation against a personal guarantor starts only from the date of the Demand Notice issued under Rule 7 of the IBBI Rules, which in this case was issued on 10.05.2022. However, the law is clear that limitation begins when the default occurs or when the guarantee is first invoked, not when a Rule 7 notice is issued. The Appellant relied on the decision of the NCLAT in *State Bank of India v. Deepak Kumar Singhania*, where it was held that a notice under Rule 7(1) cannot be treated as a valid invocation of a personal guarantee.

8. Ld. Counsel for the Appellant argued that under Clause 9 of the Guarantee Deed dated 13.02.2013, the Bank had the right to invoke the personal guarantee by making a demand. The Bank exercised this right on

13.06.2016. The next demand was made after six years, on 10.05.2022. Since no steps were taken to keep the claim alive in the interim, the limitation period had already lapsed long before the application was filed under Section 95.

9. It was further argued by the Ld. Counsel that the Resolution Professional (RP)/ Respondent No. 2, submitted a report under Section 99 without properly applying his mind to the objections raised by the Appellant. The RP merely repeated the Bank's assertions without conducting an independent review. This goes against the purpose of a Section 99 report, which requires the RP to verify facts objectively and give reasoned findings.

10. Ld. Counsel for the Appellant further submitted that the Appellant had clearly stated in his reply to the Demand Notice and to the RP that the Guarantee was not enforceable and that the Bank's claim was time-barred. These objections were not properly considered either by the RP or by the Adjudicating Authority. The RP incorrectly concluded that the limitation started afresh from the 2022 demand, which is legally untenable.

11. The Appellant's counsel pointed out that the Bank and the RP have now tried to rely on a One-Time Settlement (OTS) proposal dated 19.03.2018 to claim that the limitation was extended until 19.03.2021. This OTS document was never placed before the NCLT and was introduced for the first time in the appeal proceedings. The OTS was also never accepted by the Bank, and therefore cannot be treated as a valid acknowledgment of debt under Section 18 of the Limitation Act.

12. Ld. Counsel submitted that since the OTS proposal was not a concluded agreement and did not result in any action or payments, it cannot be treated as valid contract, which can be used to extend limitation. Additionally, the fact that this OTS was not relied upon before the NCLT shows that it is an afterthought, and its introduction at the appellate stage is not permissible.

13. Ld. Counsel for the Appellant also submitted that the application under Section 95 was filed not by the Lead Bank (State Bank of India), but by Indian Bank, which was only one of the members of the lending consortium. As per the terms of the CDR and consortium arrangements, enforcement actions against the borrower and guarantors were to be undertaken by the Lead Bank. The unilateral action by Indian Bank is, therefore, contrary to the agreed procedure and not maintainable.

14. The Ld. Counsel for the Appellant further submitted that proceedings in O.A. No. 07/2017 filed before the Debt Recovery Tribunal (DRT) by the lending consortium are still pending. The Bank has already taken action under an alternate legal forum and is now trying to initiate parallel insolvency proceedings after a delay of over five years. This constitutes forum shopping and an abuse of process.

15. Ld. Counsel further argued that the impugned order of the NCLT dated 24.07.2023 does not show proper reasoning. The order fails to deal with the Appellant's detailed objections and does not even mention the crucial 13.06.2016 demand notice from the Indian Bank. It also does not consider the fact that the Rule 7 demand notice issued in 2022 cannot revive a time-barred debt.

16. Summing up his arguments Ld. Counsel for the Appellant submitted that the application under Section 95 was filed after the expiry of limitation, without proper invocation of the guarantee, and without any valid legal basis. The impugned order passed by the NCLT is contrary to facts and settled legal principles and therefore deserves to be set aside.

Submissions of the Respondent No.1

17. The Respondent No.1 Indian Bank is the answering respondent in this case. The Resolution Professional/ Respondent No. 2 is a proforma party.

18. Ld. Counsel for the Respondent No. 1/ Indian Bank Stated that the Adjudicating Authority in the I.A. No. 4675/2022 filed under Section 99 of the Code by the Resolution Professional passed the Impugned Order dated 24.07.2023. The Adjudicating Authority had accepted the report of the Resolution Professional/ Respondent No. 2, which has recommended for the initiation of the insolvency resolution process of the personal guarantor of the Principal Borrower. The said order has been assailed by the Appellant only on the ground that the application filed by the Respondent Bank was barred by limitation. The basis of the objection taken by the Appellant regarding the limitation was on the basis of the date of NPA which is 29.10.2012 and the application was filed on 19.07.2022.

19. Ld. Counsel submitted that the corporate debtor namely M/s Aravali Infra Power Limited was already enjoying the facility granted by the Consortium of Banks including Answering Respondent/ Indian Bank. The Corporate Debtor has failed to maintain the Financial Discipline, the account

of the Corporate Debtor was classified as Non-Performing Asset (NPA) on 29.10.2012. Thereafter, the Corporate Debtor has applied for restructuring of Working Capital facilities. The Answering Respondent, vide its letter no. NDM/CDR/2012-13 dated 31.10.2012, sanctioned the Corporate Debt Restructuring facilities to the Corporate Debtor. Accordingly, Master Debt Restructuring Agreement (MRA) dated 27.12.2012 was executed between the Corporate Debtor and the Consortium of the Lenders lead by State Bank of India and the Indian Bank was one of the members of the Consortium. As per the terms of the sanction and terms of the MRA, the Appellant has secured the loan by way of extending personal guarantee vide Deed of Guarantee dated 13.02.2013. It is submitted that the one of the conditions of the MRA was that the account will be classified into the standard category, and in case the borrower defaults again, the account will be reclassified as NPA w.e.f. 29.10.2012, the original date of default.

20. Ld. Counsel submitted that the Corporate Debtor and the Appellant herein has signed the Acknowledgment of Debt dated 04.12.2014 and Revival Letter dated 21.01.2015. As the Corporate Debtor failed to maintain the financial discipline in terms of the MRA dated 27.12.2012, the account was reclassified as NPA w.e.f. 29.10.2012. Further the legal action was initiated against the borrower as per of the Section 13(2) SARFAESI Act, 2002. A Notice dated 26.05.2016 under Section 13(2) of SARFAESI Act, 2002 was issued by the State Bank of India (SBI), lead member of the consortium. The Respondent Bank issued notice under Section 13(2) of SARFAESI Act, 2002 on 13.06.2016 giving 60 days' time to the Appellant to make payment. Ld. Counsel further

submitted that the guarantee deed dated 13.02.2013 executed by the Appellant was invoked by the said notice.

21. Ld. Counsel stated that pursuant to the invocation of guarantee dated 13.06.2016 the Appellant has failed to make payment within 60 days i.e., by 12.08.2016. Thereafter, the Appellant has approached SBI, the lead member of the consortium of lenders by way of an OTS letter dated 19.03.2018 for the settlement of dues of the Corporate Debtor and thereby has also acknowledged the liability.

22. Ld. Counsel further stated that due to outbreak of Covid 19, the Hon'ble Supreme Court has passed an order dated 10.01.2022 for extending the period of limitation from 15.03.2020 to 31.05.2022 for all purposes. It is submitted by Ld. Counsel that before the expiry of the said period the Respondent Bank has issued the Demand Notice dated 10.05.2022 under Rule 7 (2) of the Insolvency and Bankruptcy (Application of Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. In terms of the Demand notice dated 10.05.2022 the Appellant sent a reply dated 23.05.2022 and has failed to make payment of outstanding debt of Rs. 200,90,24,194.19 (Rupees Two Hundred Crores Ninety Lacs Twenty Four Thousand Two Hundred and Seventy One Only).

23. Ld. Counsel submitted that based on the acknowledgement by the Corporate Debtor on 19.03.2018 the limitation period of three years in terms of Article 137 of the Limitation Act would have ended on 18.03.2021. This date was in the Covid exemption period in terms of Hon'ble Supreme Court's

suo-motu order which extended the Limitation period in such cases. Ld. counsel submitted that the Demand Notice dated 10.05.2022 was sent within the extendable period of Supreme Court *Suo Motu* order i.e., before 31.05.2022. The Respondent Bank was within the period of limitation which provides for the period of limitation of 3 years from the date when the right to apply accrues. The Respondent Bank has filed its application well within 3 years, hence the Application filed by the Bank was well within the period of limitation and in view of the above there is no infirmity in the impugned order.

24. The Ld. Counsel for the Respondent Bank has given a sequence of events to show that the application filed by the Bank was well within the period of limitation. The same is extracted below:

Date	Events
31.10.2012	Sanction of loan to the Corporate Debtor
29.10.2012	Account of the Corporate Debtor was Classified as NPA
31.10.2012	Corporate Debtor restructuring facilities were sanctioned
27.12.2012	Master Debt Restructuring Agreement was executed
13.02.2013	Deed of Guarantee executed by the Appellant
04.12.2014	Debt was Acknowledged by the Corporate Debtor/ Appellant
21.01.2015	Revival letter executed by the Corporate Debtor/ Appellant
13.06.2016	Notice under Section 13(2) was given to the Corporate Debtor as well as to the guarantors
12.08.2016	60 days in terms of notice under Section 13 (2) which will be the default date.
19.03.2018	OTS was proposed by the Appellant to the Consortium of Banks which includes the Indian Bank.
15.03.2020 to 31.05.2022	Limitation period between 15.03.2020 to 31.05.2022 has been excluded by the Hon'ble Supreme Court for all purposes.
10.05.2022	Demand Notice under Rule 7 (2) of the Insolvency and Bankruptcy (Application of Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 was

	served to the Appellant giving a cause for filing of Section 95 Application.
19.07.2022	Application under section 95 was filed by the Indian Bank

25. Ld. Counsel for the respondent submitted that there is no infirmity in the impugned order passed by the Adjudicating Authority and the present appeal is liable to be dismissed in view of these submissions.

Analysis and findings

26. We have gone through the documents on record including the written submission of both the parties and heard the Ld. Counsels at great length.

27. The first issue raised by the Appellant herein is that the Respondent Bank has introduced fresh document viz. the OTS proposal dated 19.03.2018 submitted by the Principal Borrower /Aravali Infrapower Ltd. Their submission is that this document was not produced before the Adjudicating Authority and the same cannot be taken into consideration at the appeal stage. The OTS was also never accepted by the Bank, and therefore cannot be treated as a valid acknowledgment of debt under Section 18 of the Limitation Act. Since the OTS proposal was not a concluded agreement and did not result in any action or payments, it cannot be treated as valid contract which can be used to extend limitation.

28. The Respondents on the contrary submit that this document is very vital to the proceedings as this was submitted by Rakesh Jolly, the Appellant herein, in his capacity as Director of Principal Borrower/ Corporate Debtor, to the lead Member of consortium of lenders (SBI). Appellant is also the

personal guarantor of the Borrower and he cannot deny the submission of the document to the lead member of the consortium SBI.

29. We take a look at the OTS proposal dated 19.03.2018 the relevant pages of the same are extracted below:

19/3/2018

To,

The Assistance General Manager
State Bank of India
Stressed Assets Management Branch,
New Delhi-11001

Subject: - One Time Settlement Proposal (OTS).

Dear Sir,

For the last few years, the company suffered huge losses due to highly competitive market, liquidity crunch, and shortage of skilled manpower, failure of CDR package and termination of the EPC Contracts of about Rs. 2300 Crores. All the manufacturing plants of the company are lying closed for 3-4 years except Solar Power Plant which is working at 25% of its efficiency.

We are keen to co-operate with the Banks to maximize the recovery of the bankers and to this end, we have already made available following properties to the banks.

1. Office No. BG-8/201, Second Floor, DDA LSC Market, Paschim Vihar, New Delhi - 110063.
2. Office No. BG-8/207, Second Floor, DDA LSC Market, Paschim Vihar, New Delhi - 110063.
3. Flat No. 514, 1st Floor, Block GH-13, Paschim Vihar, New Delhi - 110 063.
4. Plot No- 1, Gaurav Row Houses, Gaurav Enclave Mangal Nagar, Village- Mira, Mira Road (East) Distt. Thane, Maharashtra.

Beside this we have also deposited the market value of Rs. 2.20 Crore for one residential property as per the order of Hon'ble DRT.

Under the present circumstances we have worked out the One Time Settlement proposal which we are enclosing herewith for your perusal and kind consideration.

Yours Faithfully

For Aravali Infrapower Limited

(Rakesh Jolly)
Director

1

Aravali Infrapower Limited
Office: G-9, Ground Floor, Gupta Plaza, Plot No. 5, Block - M, Local Shopping Centre, Kirti Nagar, New Delhi - 110018
Email: contact@aipl.in

“OTS Proposal

AIPL is engaged in the manufacturing of Transmission line towers & accessories and Overhead Aluminum Conductors as well as undertaking EPC contracts for transmission and distribution lines, civil infrastructure - roads & bridges on turnkey basis.

AIPL has been in business since 2002 and had been on a successful business model till it entered into EPC segment. Based on the growth prospective contractions of the economy, a large number of companies entered the EPC segment of Infrastructure. The growth prospective did not materialize leading to a highly competitive market, unrealistic tender conditions, extremely delayed payments and lack of skilled & good manpower etc. The EPC segment which was earlier having EBITA margin of 15%-25% had witnessed drastic decline in EBITA margins to 2% 3% mainly due to high level of competition in the segment. Cost escalations and arbitrary deductions led to most contracts becoming losing propositions. Due to intense competition, the margins on the contracts were very low for all the players. Cost of outsourced services or bought out components escalated beyond initial estimates which could not be passed on to the customers leading to losses.

Mos. of the mid-sized companies operating in this sector were running into heavy losses and faced financial instability to unsustainable business conditions namely Jyoti structure Ltd., U.B. Engineering Ltd, ICCOM Power Transmission Ltd., A2Z Infrastructure Limited, Teracom Limited, Hythro Power Corporation Ltd., Era Infrastructure Limited, C & C Construction Company, Aster Transmission Ltd, B.S. Ltd., IVRCL Infrastructure Limited, Ramkey Infrastructure Ltd., Lanco Power Ltd., Vijay Electricals Ltd., Spic Sumo Ltd., Isolux Ltd of Spain,, Suzana Towers Ltd., ICSA Ltd. and Jyoti Power Transmission Pvt. Ltd. etc. etc..

To counter the low margins, the company went for rapid expansion to get buying efficiencies as well as to have the overheads defrayed over higher volume. However, this entailed higher Inventories and receivable levels. This led to higher working capital requirements - which were arranged by high cost borrowing outside the consortium. The debt became unsustainable and company went for CDR in 2012

FAILURE OF CDR

As per CDR scheme, the revival of the company was based on acquisition of new profitable EPC contracts in the power transmission & distribution sector. The company had strong technical qualification coupled with large manufacturing base to bid for high value government contracts in power transmission and distribution sector.

The CDR package had a cut-off date of 31 Dec 2011 but was approved on 07-11-2012 and the legal documentation was completed on 15.03.13 consuming period of 14.5 months from the cut-off date to start of implementation of CDR package. Effective moratorium of only 6-7 months was available for our company as against 24 months as envisaged in the TEV study. To achieve the CDR scheme, the Promoters had arranged the equity of Rs. 26.75 crore in the company as well as gave additional collateral security worth Rs. 5 crore to the consortium.

Que to delay in implementation of the package, the company could not procure new contracts in the years 2012-13 and 2013-14. Finally, during 2014-15, the company obtained new orders for Rs. 1107 crore which would have resulted in profit of Rs. 165 crore. These contracts were funded by the central government public sector undertakings. These were to be completed between December 14 and September 16. At the behest of lenders ITCOT Consultancy and Services Ltd. carried out the viability study of these contracts and concluded that the new contract of Rs. 1107 crore would generate the profit of Rs. 148 crore if the contract were completed on time. As per the terms of these contracts, the

performance guarantees to the tune of Rs 116 crore were required which were not released despite the CDR scheme providing for the same.

In terms of the CDR scheme, non-fund base facilities of Rs. 238 crores were to be released. Despite this, the bid bonds were not made available to the company. As the bonds were not provided to the company, the new contracts of Rs. 1107 crore obtained by the company were terminated resulting in losses to the company as considerable sums had been spent to win these bids as well as in starting up the work. Besides, the company had incurred substantial expenditure in retaining the infrastructure required to bid for new contracts as well as execute the existing and new contracts. This further eroded the company's liquidity and increased losses.

The tight liquidity position, delay in implementation of CDR package and shortage of skilled man power led to termination of old contracts of about Rs. 1200 crore. The company's position deteriorated further as future orders could not be obtained and past orders which were running since 2011 got inordinately delayed due to liquidity crunch. This led to cost overruns and imposition of liquidated damages. Consequently, our receivables became sticky

The net worth of the company got fully eroded in the financial year 14-15 and in accordance with the requirement of section 15(A) of the Sick Industrial Companies (Special Provisions) Act, 1985 the company filed on 20.05.2015 the reference with Board for Industrial and Financial Reconstruction. The BIFR vide its order dated 12.08.15 registered a company under Sick Industrial Companies (Special Provisions) Act. However, the BIFR was abolished on 31.12.16 and consequently the endeavours of the company to rehabilitate itself under the act got abated. Consequent to the failure of CDR package, the CDR EG at the instance of the lenders conformed the exit of the company from the CDR mechanism on 27.01.16. Thereafter the lenders initiated

the recovery proceeding against the company by invoking the provisions SARFAESI Act and filing recovery suits against the company and the promoters.”

(Emphasis supplied)

30. We observe the following from the extracted portion of letter and the attachment:

- (i) The letter is addressed to Asst. General Manager of SBI, which is the lead Bank of a consortium;
- (ii) States that the company is suffering from huge losses from the last three to four years;
- (iii) A detailed OTS proposal is attached with the letter;
- (iv) The letter is signed by Sh. Rakesh Jolly the appellant (personal guarantor herein) in his capacity of Director of the Principal Borrower.
- (v) In the OTS proposal it is stated that net worth of the company was fully eroded in FY 2014-15. The company had filed a petition before BIFR and under Section 15(A) of the Sick Industrial Companies (Special Provisions) Act, 1985;
- (vi) The borrower acknowledges the failure of CDR package, and states that the CDR EG, at the instance of the lenders conformed the exit of the company from the CDR mechanism on 27.01.2016;
- (vii) Thereafter the lenders initiated the recovery proceeding against the company by invoking the provisions SARFAESI Act and filing recovery suits against the company and the promoters.

31. It is a settled principle that proceedings before this Appellate Tribunal in CIRP matters are proceedings in Rem. This principle has been reiterated by Hon'ble Supreme Court in '*GLAS Trust Company LLC vs. BYJU Raveendran & Ors. [Civil Appeal No.9986 of 2024 with SLP(c) No. 21023 of 2024]*'. In this case the OTS proposal given by the Principal Borrower is very important document having material impact on the limitation issue. We are also aware that huge amount of public money more than Rs. 200 Cr is involved in this matter. Such document, which has direct bearing on deliverance of substantive justice cannot be ignored as the proceedings in this Tribunal are proceeding in-rem, a continuation of the proceedings of the Adjudicating Authority.

32. The contention of Appellant that the letter dated 19.03.2018 was only a proposal by the Appellant and the Respondent along with consortium of bankers did not take any action on the aforesaid proposal. We are not able to accept this contention as the letter constitutes an acknowledgment of debt by the Principal Borrower and therefore has the effect of extending the limitation period. It cannot be ignored merely on the ground that there is no contract between the Appellant and Respondent due to such letter. The letter dated 19.03.2018 is by the appellant in his capacity of Director of the borrower is very important to the proceedings as it proposes a OTS; acknowledges the failure of Master Restructuring Agreement; and also acknowledges the proceedings initiated by lenders under SARFAESI Act.

33. We now take up the issue of limitation which is the main contention of Appellant that the petition against the Appellant is barred by limitation. It is his submission that the account of the Principal Borrower became NPA on

29.10.2012 and the demand notice under Rule 7 (2) of the Insolvency and Bankruptcy (Application of Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 was issued to the appellant on 10.05.2022 giving a cause for filing of Section 95 Application.

34. The Appellant has submitted that the findings of the Adjudicating Authority treating 10.05.2022 as the date of invocation of guarantee and consequently the counting of limitation period from that date is not correct and based on the same the appeal needs to be allowed due to such incorrect finding of Adjudicating Authority. The appellant has also relied on the fact that first demand for payment of outstanding debt of Principal Borrower/ CD on him as Personal Guarantor was considered by Adjudicating Authority as 26.05.2016 i.e. the date on which the State Bank of India, the lead member of the consortium issued the notice to him under Section 13 (2) of the SARFESI Act, 2002. The Appellant has stated that a separate notice was issued to him on 13.06.2016 by the respondent bank. The Adjudicating Authority has failed to take the correct notice on record. In view of such patent errors on the part of Adjudicating Authority the Appeal should be allowed.

35. We have seen from the submissions of the Respondent bank that they have relied on their Section 13 (2) notice issued on 13.06.2016 for computation of limitation. A 60 days period was given to the Principal Borrower and the Guarantor to make outstanding payments to the Respondent Bank. The 60 days period ended on 12.08.2016, accordingly the three-year period of limitation starts from 13.08.2016.

36. We have also seen and noted that an OTS was proposed by the Appellant on 19.03.2018 as Director of Principal Borrower to the consortium of banks led by SBI in which Indian Bank was a member. This letter is an acknowledgement of debt by the Principal Borrower. In terms of Clauses 12 & 19 of the Guarantee Agreement, this acknowledgement by the Principal Borrower is deemed to have been made by the Guarantor also. These clauses of the Guarantee Agreement are extracted below:

“12. The Guarantor affirms, 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 Lenders shall be deemed to have been made and/or given by or on behalf of the Guarantor themselves and shall be binding upon each of them.

19. The Guarantor agrees that any admission or acknowledgment in writing signed by the Borrower of the liability or indebtedness of the Borrower or otherwise in relation to the above mentioned Facilities and or any part payment as may be made by the Borrower towards the principal sum of Facilities hereby guaranteed or any judgement, award or order obtained by the Lenders against the Borrower shall be binding on the Guarantor and the Guarantor accepts the correctness of any statement of account that may be served on the Borrower which is duly certified by any Officer of the Lead Bank and the same shall be binding and conclusive as against the Guarantor also and the Guarantor further agree that in the Borrower making as acknowledgment or making a payment the Borrower shall in addition to his personal capacity be deemed to act as the Guarantor's duly authorised agent in the behalf for the purposes of Sections 18 and 19 of the Limitation Act of 1963.”

(Emphasis Supplied)

37. We have noted that the limitation period from 15.03.2020 to 31.05.2022 has been excluded by the Hon'ble Supreme Court for all purposes vide their *suo motu* Writ Petition (C) No.-3 of 2020 vide their Order dated 10.01,2022. The directions of Hon'ble SC in the Suo-Motu case (supra) are extracted below:

"I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

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."

38. The three years limitation period from last date of acknowledgment of debt i.e. 19.03.2018 ends on 18.03.2021 which is within the excluded period specified by Hon'ble SC. The demand notice under Rule 7 (2) of the Insolvency and Bankruptcy (Application of Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 was served to the Appellant on 10.05.2022 this was well within the limitation period. We therefore hold that the application was filed well within the limitation period.

39. In view of the above findings, we find no merit in the appeal. Accordingly, the appeal is dismissed. Pending IAs, 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)

SA/Pragya (LRA)