NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 1742 of 2024

(Arising against the impugned order dated 16.07.2024 passed by the Hon'ble National Company Law Tribunal, Indore Bench-I, in C.P. (IB) No. 53(MP)/2021)

IN THE MATTER OF:

State Bank of India,
Add: SAMB-II, Raheja Chambers,
Nariman Point, Mumbai, **...Appellant**
presently ZT Bhopal, Madhya Pradesh.

Versus

Shri Bernard John, Personal Guarantor of
GEI Industrial Systems Ltd.,
residing at Plot No. E-4, Arera Colony,
Bhopal, Madhya Pradesh. **...Respondent**

Present:

For Appellant:	**Mr. Harshit Khare, Mr. Praful Saini, Mr. Ajay Agrawal, Advocates.**
For Respondents:	**Mr. Vijayesh Atre, Ms. Aarya Chhangani, Advocates.**

J U D G M E N T
(17th October, 2025)

INDEVAR PANDEY, MEMBER (T)

The present appeal has been filed by the State Bank of India (Financial Creditor) against the order dated 16.07.2024 passed by the Hon'ble National Company Law Tribunal, Indore Bench-I (Adjudicating Authority), in C.P. (IB) No. 53(MP)/2021. By the said impugned order, the application of the

Cont'd..../

Appellant under Section 95 of the Insolvency and Bankruptcy Code, 2016 (Code), for initiation of insolvency resolution process against the personal guarantor, Shri Bernard John, was dismissed on the ground that the petition was barred by limitation, since the balance sheets relied upon as acknowledgment of debt were not signed by the guarantor himself. The Appellant, being aggrieved by the impugned order, has therefore approached this Tribunal under Section 61 of the Code.

Brief facts of the Case

2. The brief facts of the case are as given below:

i. M/s GEI Industrial Systems Ltd., (Corporate Debtor) was incorporated with the Registrar of Companies, Gwalior, on 28.12.1993.

ii. The Corporate Debtor approached State Bank of India and other consortium banks with an application seeking sanction of various credit facilities. The Appellant, along with six other consortium banks, sanctioned the loan facilities, and on 24.03.2009 a loan agreement was executed between the Corporate Debtor and the Appellant. On the very same date, the Respondent, Shri Bernard John, who was at that time the Whole-time Director of the Corporate Debtor, along with the Managing Director, Mr. C.E. Fernandes, executed a deed of guarantee in favour of the Appellant, thereby undertaking personal liability for repayment of the sanctioned facilities.

iii. Subsequently, the consortium extended further credit facilities to the Corporate Debtor on 30.08.2010. The Corporate debtor executed a

Supplemental Joint Working Capital Consortium Agreement; and simultaneously the Respondent once again executed a supplemental deed of guarantee in favour of the lenders, confirming his continuing personal liability.

iv. A fresh deed of guarantee was executed on 23.08.2011 jointly by the Respondent and Mr. C.E. Fernandes, reaffirming their obligations as personal guarantors to the consortium.

v. The Credit facilities were again enhanced in the year 2015, when on 20.03.2015 and 31.03.2015. Accordingly, on 31.03.2015, a new loan agreement was executed between the Corporate Debtor and the lenders, and in order to secure repayment, the Respondent once again signed a deed of guarantee in favour of the Appellant and the consortium banks.

vi. However, due to Financial difficulties the account of the Corporate Debtor was classified as a Non-Performing Asset (NPA) on 28.05.2016 with outstanding dues of INR 35,13,03,151/-.

vii. Following the NPA classification, the Appellant issued a demand-cum-recall notice dated 30.09.2016, to the Corporate Debtor and invoking the personal guarantees and demanding repayment of dues from both the Corporate Debtor and the guarantors, including the Respondent. The seven-day period for compliance expired on 07.10.2016 without any repayment, thereby constituting a default on the part of the Respondent as well.

viii. The ICICI Bank, as lead bank of the consortium, filed a recovery suit on 14.03.2017 before the Debts Recovery Tribunal for a total sum of INR 219,01,93,898.92/-, out of which the dues of the Appellant alone amounted to INR 38,02,35,194.11/-. Further, on 19.05.2017, ICICI Bank also issued a notice under Section 13(2) of the SARFAESI Act, 2002, demanding repayment of INR 253,10,02,396.38/-.

ix. Around the same time, insolvency proceedings were initiated against the Corporate Debtor by M/s Beeta Kone Tools, an Operational Creditor, who filed a petition under Section 9 of the Code. The said petition was admitted by NCLT, Ahmedabad on 20.07.2017, vide the C.P. (IB) No.35/9/NCLT/AHM/2017 and the Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor.

x. Pursuant to the public announcement made by the Interim Resolution Professional, the Appellant, on 14.08.2017, filed its claim amounting to INR 43,83,49,733.24/- with the Resolution Professional of the Corporate Debtor.

xi. The balance sheets of the Corporate Debtor for the financial years 2016-17, 2017-18, 2018-19, and 2019-20, prepared by M/s Shikha Tiwari & Associates, reflected and acknowledged the outstanding dues owed to the Appellant and other consortium lenders.

xii. As the default continued, the Appellant issued a demand notice dated 21.01.2021 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process

for Personal Guarantors to Corporate Debtors) Rules, 2019, demanding an amount of INR 78,94,45,334.12/- from the Respondent in his capacity as personal guarantor. The Respondent did not reply to the aforesaid demand notice.

xiii. The Appellant thereafter, filed a petition under Section 95 of the Code against the Respondent for initiation of personal insolvency resolution process, which was registered as C.P. (IB) No. 53(MP)/2021.

xiv. By an order dated 25.11.2021, the Adjudicating Authority appointed Mr. Rahul Anand as the Resolution Professional (RP). The Resolution Professional issued notice on 27.11.2021, to the Respondent through e-mail and speed post seeking details and relevant documents. However, the Respondent refused delivery, and the notice was returned on 02.12.2021 with the endorsement "refused," thereby leaving the Resolution Professional without any response or evidence of repayment.

xv. Relying upon the documents provided by the Appellant, particularly the balance sheets of the Corporate Debtor acknowledging the debt for the financial years 2016-17, 2017-18, 2018-19 and 2019-20, the Resolution Professional submitted his report on 06.12.2021 recommending the admission of petition under Section 95 of the Code against the Respondent.

xvi. After the filing of the report, the Respondent, for the first time, contested the proceedings and filed a reply by way of affidavit dated 08.03.2022. In this affidavit, the Respondent raised multiple objections, including

that the petition was barred by limitation, since the NPA classification had occurred on 28.05.2016; that no balance confirmation had been signed by him beyond 31.03.2012; that the guarantee had not been revived after 31.03.2012; that the guarantee deeds were inadequately stamped; that the petition was not supported by proper affidavits; that the banker's book evidence was not in accordance with law; and that no valid notice had been served upon him by the Resolution Professional.

xvii. In response, the Appellant filed a rejoinder on 22.04.2022, emphasizing that all documents annexed were duly verified with originals; that the objections raised were merely technical; that the execution of the loan agreements, deeds of guarantee, and existence of default were undisputed; that the petition had been validly signed by a duly authorized officer of the bank as per Gazette Notification dated 02.05.1987; and that due service of notice had been effected by speed post, e-mail and even WhatsApp, but was deliberately refused by the Respondent. The Appellant further highlighted that the balance sheets of the Corporate Debtor up to the financial year 2019-20 continued to acknowledge liability towards the Appellant, which, in terms of the clauses of the guarantee deeds, was binding upon the guarantors.

xviii. The Adjudicating Authority vide its order dated 16.07.2024, dismissed the Section 95 petition, holding that the same was barred by limitation. The Adjudicating Authority further held that the balance sheets relied

upon were not signed by the Respondent, the same were signed by CE Fernandes another Director on behalf of the Board of Directors.

xix. Aggrieved by the impugned order, the Appellant has preferred the present appeal before this Appellate Tribunal seeking to set aside the impugned order and to revive the petition filed under Section 95 of the Code.

Submission of the appellant

3. Ld. counsel for the Appellant submits that a new case has been set-up before this appellate tribunal, for the first time. The Respondent/Personal Guarantor has raised a new plea that the personal guarantee was never invoked by the Appellant and that the acknowledgments of debt contained in the Balance Sheets signed during the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor are invalid and cannot bind the Respondent.

4. He contended that this argument constitutes a completely new case sought to be introduced at the appellate stage, which was neither raised nor argued before the Learned Adjudicating Authority. Further, the impugned order also does not record any adjudication on such issue. Therefore, the Respondent is precluded from raising fresh grounds that were never urged before the Adjudicating Authority. The reply earlier filed by the Respondent before the Adjudicating Authority, annexed at pages 686–702 of the appeal paper book, clearly demonstrates the absence of any such contention.

5. Ld. Counsel for the Appellant submits that the account of the Corporate Debtor was classified as Non-Performing Asset (NPA) on 28.05.2016 in accordance with Reserve Bank of India (RBI) guidelines. The default by the principal borrower had, in fact, commenced in February 2016, and after the expiry of 90 days of continuous non-payment, the account was duly categorized as NPA on 28.05.2016.

6. Ld. Counsel submitted that following such default, and in the absence of repayment of the loan amounts due, the Appellant invoked the personal guarantee executed by the Respondent and raised a formal demand on 30.09.2016, calling upon the guarantors to discharge their liability within seven days, i.e., by 07.10.2016.

7. Ld. Counsel for the Appellant has placed reliance on the decision of this Appellate Tribunal in *Mavjibhai Nagarbhai Patel vs. State Bank of India & Anr.* [Company Appeal (AT) (Insolvency) No. 1702 of 2024], particularly paragraphs 16, 17, 18, and 22 of the said judgment in support of the legality and validity of the invocation of guarantee. The Judgment conclusively affirms the principles governing invocation and continuing liability of personal guarantors in similar circumstances.

8. Ld. Counsel submitted that although the default occurred on 07.10.2016 (the expiry date of repayment period after invocation), the Section 95 application filed by the Appellant is well within limitation, as there existed continuous acknowledgment of debt in the financial statements of the Corporate Debtor.

9. Ld. Counsel further submitted that the Balance Sheet of the Corporate Debtor for the financial year 2015–16, duly signed by the directors, was uploaded on the MCA portal on 23.02.2017—prior to admission of the Corporate Debtor into CIRP on 20.07.2017. The said Balance Sheet reflected an outstanding long-term borrowing of INR 15,20,32,214 owed to the Appellant Bank, thereby constituting acknowledgment of debt under Section 18 of the Limitation Act, 1963. Subsequently, the same amount continued to be reflected in the Balance Sheets for the financial years 2016–17, 2017–18, 2018–19, and 2019–20, which were duly signed by the then directors (whose powers stood suspended under the IBC). This continuous reflection of liability in successive financial statements unequivocally establishes acknowledgment of debt at each interval.

10. The Counsel submitted that as per settled judicial law, acknowledgment of liability in duly signed Balance Sheets constitutes a valid acknowledgment under Section 18 of the Limitation Act, thereby extending the period of limitation with each such acknowledgment. He stated that as per records, the limitation chronology is as follows:

- February 2016 – Default by the Corporate Debtor
- 28.05.2016 – NPA Date
- 30.09.2016 – Guarantee Invoked/Demand Raised
- 07.10.2016 – Date of Default for Guarantor
- 23.02.2017 – Signed Balance Sheet (FY 2015–16) uploaded on MCA
- 02.08.2017 – Corporate Debtor admitted into CIRP

- 27.10.2017 – Balance Sheet (FY 2016–17) signed acknowledging dues of SBI. Followed by Balance Sheets of FY 2017–18, 2018–19, 2019–20 signed acknowledging dues of SBI
- 15.03.2020–28.02.2022 – Limitation period excluded under *Suo Motu* extension order of Hon'ble Supreme Court in *SMW (C) No. 3/2020*
- October 2021 – Section 95 Petition filed

11. The counsel further stated that the Guarantee Agreement dated 31.03.2015 explicitly provides for the continuing nature of the guarantee. He invited the attention to different clauses of the Guarantee Document. Clause 8 of the Guarantee Agreement declares the guarantee to remain valid for all amounts due and payable; Clause 12 affirms that any acknowledgment of debt by the principal borrower shall bind the guarantor; and Clause 19 deems acknowledgment by the borrower as acknowledgment on behalf of the guarantor, thus extending limitation under Sections 18 of the Limitation Act.

12. Accordingly, the Ld. Counsel for the Appellant submits that the Section 95 petition was well within the period of limitation, and the Adjudicating Authority erred in dismissing it solely on the ground that the Respondent had not personally signed the Balance Sheets, ignoring the deemed acknowledgment by the Corporate Debtor and the binding effect thereof on the guarantor under Section 128 of the Contract Act, 1872.

13. The Appellant further submits that, in law, the signing of Balance Sheets by any authorized person or suspended director on behalf of the Corporate Debtor constitutes valid acknowledgment of debt. Even after

commencement of CIRP, the suspended directors remain under a statutory duty under the Companies Act to sign and authenticate financial statements, as the company continues to exist as a legal entity.

14. Ld. Counsel stated that the Corporate Debtor was admitted into CIRP on 02.08.2017. The Balance Sheet for FY 2016–17 as on 31.03.2017 was signed by then directors Mr. C.E. Fernandes and Mr. Robinson Fernandes, as on the date of balance sheet they were the Directors of the Corporate Debtor. Their powers stood suspended from 02.08.2017, which was subsequent to the date of balance sheet i.e., 31.03.2017. Such acknowledgment made in balance sheet as on 31.03.2017 extended limitation period until 31.03.2020. Further, in view of the *Suo Motu* limitation exemption order passed by the Hon'ble Supreme Court on 10.01.2022 in *SMW (C) No. 3 of 2020*, the limitation period in this case got extended up to 31.05.2022. The petition under Section 95 was filed in October, 2021, well within the limitation period.

15. Ld. Counsel submitted that the suspension of directors under Section 17(1)(b) of the IBC does not nullify the legal effect of Balance Sheets duly signed and filed on behalf of the company. These constitute valid acknowledgments of liability under Section 18 of the Limitation Act.

16. Ld. Counsel further submitted that Section 130(1) of the Companies Act, 2013 stipulates that if financial statements are alleged to be fraudulent or unreliable, the aggrieved person may seek reopening of accounts before the NCLT. However, no such application was ever filed by the Respondent challenging the authenticity or correctness of the Balance Sheets.

17. The Counsel stated that the Respondent himself continued to be a director of the Corporate Debtor till 25.02.2019, during which period several financial statements acknowledging dues to the Appellant were signed, and no objection was ever raised by him.

18. Ld. Counsel submitted that as per Clauses 12 and 19 of the Guarantee Agreement dated 31.03.2015, any acknowledgment made by the Corporate Debtor is binding on the guarantor. Therefore, the Balance Sheets signed by the directors, even with suspended powers, constitute valid acknowledgments of debt enforceable against both the Corporate Debtor and the Respondent.

19. Summing up his arguments Ld. Counsel stated in view of above submissions this Tribunal be pleased to allow the present appeal and set aside the impugned order dated 16.07.2024 passed by the Learned Adjudicating Authority.

Submissions of the Respondent

20. In his opening remarks Ld. Counsel for the respondent submitted that the facts of the case are undisputed. The Appellant Bank claims to have secured a Deed of Guarantee dated 31.03.2015, which was admittedly defective and contained several unfilled blanks. After this defective execution, no subsequent deed of guarantee was ever executed. *The* Corporate Debtor's account was classified as Non-Performing Asset (NPA) on 28.05.2016 by Standard Chartered Bank, and subsequently, the loan account was recalled on 30.09.2016. Thus, the Respondent submits that all these facts clearly

establish that no enforceable and valid personal guarantee was ever in existence or invoked thereafter.

21. The counsel for the Respondent submits that the alleged Section 9 application referred to by the Appellant was not even filed by the Appellant Bank. It was filed by M/s Beeta Kone Tools on 29.05.2017, and the said application culminated in an order of admission on 20.07.2017. It is the specific and categorical case of the Respondent that the Appellant Bank, at no point of time, invoked the personal guarantee of the Respondent.

22. Ld. Counsel further stated that the record relied upon by the Appellant merely shows that a notice under Rule 7(1) of the 2019 Rules was allegedly issued on 21.01.2019, long after the initiation of the CIRP against the Corporate Debtor. However, it is emphasized that the said notice cannot be treated as an invocation of personal guarantee, because no such invocation was ever made as per the contractual terms of the Deed of Guarantee.

23. He further submitted that the loan recall notice dated 30.09.2016 also cannot be treated as an invocation of the guarantee. The said notice merely directed the Corporate Debtor and the guarantors to make payment of the outstanding amounts and stated that the guarantors "shall be liable to pay the outstanding Bank Guarantee along with charges, if any, in case of invocation in future." The counsel submits that this very language conclusively proves that no invocation of the guarantee had taken place at that point. The guarantee invocation is a distinct legal act that must explicitly communicate the invocation of the guarantee obligation; such invocation

never occurred in the present case. Hence, the personal guarantee of the Respondent was never invoked in accordance with law.

24. The counsel for the Respondent submits that the account of the Corporate Debtor was classified as NPA on 28.05.2016. Subsequently, the loan was recalled on 30.09.2016, directing both the Corporate Debtor and the guarantors to clear the outstanding within seven days from receipt of the notice. Therefore, in terms of Section 3(12) of the Insolvency and Bankruptcy Code, the "default" occurred on 07.10.2016.

25. It is the submission of the Respondent that the Appellant's application under Section 95 was filed on 06.10.2021, that is, almost five years after the date of default. Thus, the application is hopelessly barred by limitation. No fresh cause of action arose in the interim, nor was any valid acknowledgment of debt made within the prescribed limitation period. Hence, the Adjudicating Authority rightly rejected the Section 95 application as being time-barred.

26. The counsel for the Respondent submitted that one of the main grounds urged by the Appellant for extending the period of limitation is that the balance sheets of the Corporate Debtor from the financial year 2016–17 onwards allegedly constitute acknowledgment of debt. This contention, however, is erroneous, misconceived, and unsustainable in law, for the following detailed reasons:

a. The Section 9 application against the Corporate Debtor was filed by M/s Beeta Kone Tools on 29.05.2017, and not by the Appellant Bank, as

alleged. The order of admission under Sections 9 and 14 of the Code was passed on 20.07.2017.

b. The balance sheet as on 31.03.2017 was allegedly signed by the suspended directors on 27.10.2017. The balance sheet as on 31.03.2018 was signed by the suspended directors on 31.10.2018. The balance sheet as on 31.03.2019 was signed by one suspended director on 31.10.2019. The balance sheet as on 31.03.2020 was signed by one suspended director on 31.12.2020.

c. Section 17(1)(b) of the Code explicitly suspends the powers of the Board of Directors once the Corporate Insolvency Resolution Process (CIRP) is initiated. Therefore, after 20.07.2017, none of the suspended directors had any legal authority to sign any balance sheet on behalf of the company.

d. The Master Data of M/o Corporate Affairs confirms that the last validly adopted balance sheet of the company was for the financial year ending 31.03.2015, which was duly taken on record by the shareholders on 28.09.2015. No subsequent balance sheet was either approved by the Board or adopted by shareholders. Hence, all balance sheets from FY 2016–17 to FY 2019–20 are invalid, unapproved, and legally non-existent in the eyes of law, being in violation of Section 134 of the Companies Act, 2013.

e. The alleged balance sheets are mere photocopies of unknown origin. Their authenticity and source are unverifiable, and they cannot be relied upon for any legal purpose.

f. The provisions of Section 136 of the Companies Act, 2013, which mandate shareholder approval of financial statements, have been blatantly ignored. The alleged balance sheets have not been signed by any statutory auditor as required under Section 139 of the Companies Act, 2013.

g. The "Limited Review Report" attached with such balance sheets is purportedly signed by an unauthorized Chartered Accountant, who was never appointed as the company's statutory auditor.

h. There exists no provision under the Companies Act allowing one or two suspended directors to sign balance sheets *"for and on behalf of the Board of Directors"* without valid approval of the Board. Hence, the statement that these documents were signed *"for and on behalf of the Board"* is false and misleading.

i. The execution of such balance sheets after the commencement of CIRP is directly in conflict with Section 17(1)(b) read with Section 238 of the Code, which has overriding effect. It is further submitted that the IBC is a complete Code in itself and operates independently; it cannot be subordinated to the Companies Act, 2013.

j. None of these alleged balance sheets are filed or available with any statutory authority or public record such as MCA.

k. Finally, the Code nowhere permits suspended directors to sign or approve balance sheets, not even with the permission of the Adjudicating Authority. Therefore, these fabricated balance sheets cannot, in any circumstance, constitute acknowledgment of debt under Section 18 of the Limitation Act, 1963.

27. He therefore submits that for the reasons mentioned above, the reliance placed by the Appellant upon such unverified and illegally executed balance sheets to extend limitation is wholly misplaced and untenable.

28. Summing up his arguments Ld. counsel for the Respondent submits that the Adjudicating Authority rightly held the application filed by the Appellant under Section 95 of the Code to be barred by limitation, non-maintainable for want of invocation of the personal guarantee, and unsupported by any legally valid acknowledgment of debt. The findings of the Adjudicating Authority are fully consistent with the ratio laid down by the Hon'ble NCLAT in '*State Bank of India v. Deepak Kumar Singhania*, Co. [Comp. App. (AT) (Ins.) No. 191 of 2025]'.

29. Accordingly, the Respondent prays that this Hon'ble Tribunal be pleased to dismiss the Appeal as devoid of merit, and affirm the impugned order dated 16.07.2024 passed by the Hon'ble NCLT, Indore Bench.

Analysis and findings:

30. We have gone through the documents on record, heard the Ld. Counsels in detail and have gone through their written submissions. Upon careful consideration of the matter, the following issues arise for determination:

i. Whether the application filed under Section 95 of the Insolvency and Bankruptcy Code, 2016, by the Appellant–State Bank of India, was barred by limitation.

ii. Whether Balance Sheets of the CD from FY 2016-17 are legally valid under the Code and if so, Whether the acknowledgment of debt in the Corporate Debtor's balance sheets binds the Personal Guarantor under Section 128 of the Indian Contract Act, 1872.

iii. Whether the Personal Guarantee was invoked by the appellant against the Respondent.

31. The first two issues are also inextricably linked as a proper acknowledgement in Balance Sheet also has the effect of extending the limitation period. We would therefore, examine these two issues together.

32. The Adjudicating Authority (NCLT, Indore Bench), by its order dated 16.07.2024, dismissed the petition in C.P. (IB) No. 53(MP)/2021, holding that it was time-barred, since the limitation period, reckoned from the default date of 07.10.2016, had expired by 07.10.2019, and that the balance sheets relied upon by the Bank did not amount to valid acknowledgment as they were not signed by the Personal Guarantor.

33. The Appellant argued that the loan account of the Corporate Debtor—M/s GEI Industrial Systems Ltd.—was declared Non-Performing Asset (NPA) on 28.05.2016, and the demand-cum-recall notice dated 30.09.2016 was duly issued to both the Corporate Debtor and its personal guarantors, including the present Respondent. This notice demanded payment of the outstanding dues within seven days and simultaneously invoked the deeds of guarantee. The default accordingly crystallized on 07.10.2016, upon non-payment by the borrower and guarantors.

34. The appellant has further submitted that the balance sheets of the Corporate Debtor for the financial years 2016–17, 2017–18, 2018–19, and 2019–20, signed by the Directors of the CD and auditors, consistently recorded the outstanding liability owed to SBI and other consortium lenders. These acknowledgments, it was contended, operated to extend limitation under Section 18 of the Limitation Act, 1963, not only for the borrower, but also for the guarantor, given the co-extensive liability under Section 128 of the Indian Contract Act, 1872.

35. He placed reliance on Clauses 12 and 19 of the Deed of Guarantee dated 31.03.2015, which expressly provide that any admission, acknowledgment, or statement made by the principal borrower in respect of the debt "shall be binding on the guarantor and shall operate as an acknowledgment on his behalf." Thus, even if the Respondent did not personally sign the balance sheets, acknowledgment made by the Corporate Debtor squarely extended limitation against him.

36. It was also submitted by the appellant that the period from 15.03.2020 to 28.02.2022 stood excluded pursuant to the Supreme Court's suo motu orders in *In Re: Cognizance for Extension of Limitation*, Suo Motu W.P. (C) No. 3 of 2020. Taking these exclusions into account, the Section 95 petition filed in October 2021 was well within the extended limitation period.

37. Finally, the Appellant contended that the Adjudicating Authority's finding that the balance sheets were "invalid" as they were signed by suspended directors was legally untenable, since the signing of balance sheets even during CIRP is a statutory obligation under the Companies Act, 2013, and does not constitute an exercise of management control. Hence, such acknowledgments were valid and binding.

38. The Respondent, on the other hand, submits that the limitation period commenced from 07.10.2016, being the date of default, and expired three years thereafter, on 07.10.2019. He argued that the Section 95 petition filed in 2021 was clearly time-barred, as there was no valid acknowledgment of debt after October 2016.

39. It was further argued by the respondent that the balance sheets relied upon by the Appellant could not constitute acknowledgment under Section 18 of the Limitation Act, because they were signed by suspended directors during the Corporate Debtor's CIRP, after the order of admission dated 20.07.2017 in *Beeta Kone Tools v. GEI Industrial Systems Ltd.*, C.P. (IB) No. 35/9/NCLT/AHM/2017. Under Section 17(1)(b) of the IBC, upon commencement of CIRP, the powers of the board of directors are suspended and vest in the IRP/RP. Therefore, any balance sheet signed by suspended

directors was ultra vires and could not bind either the Corporate Debtor or the guarantor.

40. The Respondent also claimed that these balance sheets were not filed with the Registrar of Companies nor approved by shareholders and were prepared mechanically by accountants to satisfy procedural formalities. Consequently, they lacked evidentiary sanctity and could not extend limitation. The Respondent further argued that since he had not signed or authorized any acknowledgment, no acknowledgment could operate against him personally.

41. The starting point of limitation in this case is undisputed — the account of the Corporate Debtor was declared NPA on 28.05.2016, and the demand-cum-recall notice dated 30.09.2016 was duly issued to both the Corporate Debtor and its guarantors, invoking the guarantees and demanding repayment.

42. We now have a look at the demand-cum-recall notice dated 30.09.2016. Same has been extracted below:

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भारतीय स्टेट बैंक
STATE BANK OF INDIA

वाणिज्यिक शाखा
Commercial Branch,
[illegible]
I/HO Complex, Hoshangabad Road
[illegible] – 462 011
BHOPAL – 462 011.
कोड नं. / Code No. : T920
दूरभाष नं./ Tel. No. : 4288081-4288690
फैक्स नं. / Fax No. : 0255 – 2764098

The Managing Director,
GEI Industrial Systems Ltd.,
[illegible]
25-A, Industrial Area,
Govindpura,
Bhopal, (M.P.)

No. CB/BPL/ADV/SO-1/2016-17/147A | Date: 30.06.2016

Dear Sir,

<u>Your Loan Account Nos : Cash Credit (Hyp.) 30198882733 WCTL : 34841988344</u>
<u>Recall of the Advance</u>

We advise that the Bank had sanctioned various credit facilities to you (M/s GEI Industrial Systems Ltd) for the working capital needs for smooth running of your business.

Further, despite your repeated default in meeting out the financial obligations of the credit facilities and non-compliance of the terms of sanction, the bank had restructured the credit facilities, on your request, to help you come out of the financial stress.

We regret to advise that despite your written consent and our repeated reminders through letters, e-mails and during various meetings at bank and your office, you did not comply with the terms of restructuring. The account finally became NPA on 28.05.2016. The position of the account as on as on the date of this letter is as under:-

Credit Facility	Limit	DP	Outstanding as on 30.06.2016*
Cash Credit (Hyp.)	Rs. 8,50,00,000.00	Nil	Rs. 16,75,59,324.94@
WCTL	Rs. 15,00,00,000.00	Nil	Rs. 16,00,00,000.00
	Total		Rs. 34,75,59,324.94

*excluding interest applied from February 2016 onwards.
@plus outstanding amount of USD 2,38,000/- due to invocation of BG issued to Al Hassan, Muscat.

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3. The Bank has, therefore, no other option but to recall the advance and advise you to pay Rs. 31,76,59,224.94 plus interest at contractual rate w.e.f. 01.02.2016 plus expenses and other charges within 7 days from the date of receipt of this letter otherwise the Bank will be free to take appropriate action against the borrower/guarantors. Additionally, you will also be liable to pay the outstanding of existing Bank Guarantees of Rs. 7,76,77,676.00 along with the charges, if any, in case of their invocation/extension in future.

Yours faithfully,

(Ashish Patni)
Relationship Manager
0755-4288881

Copy forwarded to the following guarantors with request to please look into the matter and arrange for payment of Bank's dues as detailed above within aforesaid period, failing which the Bank will have no option but to take appropriate action against them (the guarantors/corporate guarantors) also:-

1. Mr. C.E.Fernandes,
VEMALAYAM,
397 Gram Bawaria Kalan,
Hoshangabad Road,
Bhopal (M.P.)

2. Mr. Bernard John
E-4/156, Arera Colony,
Bhopal (M.P.)

3. Mrs. Evelyn Fernandes,
VEMALAYAM,
397 Gram Bawaria Kalan,
Hoshangabad Road,
Bhopal (M.P.)

Relationship Manager

43. We note that the Demand-cum-Recall Notice dated 30.09.2016 addressed both the Corporate Debtor and the Personal Guarantor. This unequivocal demand clearly invoked the Deed of Guarantee and upon expiry of the seven-day notice period on 07.10.2016, the default stood crystallized. The limitation period of three years under Article 137 of the Limitation Act would, in the ordinary course, expire on 07.10.2019 unless extended by acknowledgment under Section 18 of the Limitation Act.

44. The record clearly demonstrates that the Corporate Debtor, through its duly prepared and signed balance sheets for FY 2015–16 (signed on 23.02.2017) and for each subsequent financial year up to 2019–20, consistently reflected the dues owed to the Appellant Bank under the same loan accounts. These balance sheets specifically mentioned the debt as "secured borrowing from State Bank of India," thereby acknowledging the subsisting liability.

45. The Respondent's objection that balance sheets signed by "suspended directors" during CIRP cannot amount to acknowledgment is unsustainable. The Companies Act, 2013, particularly Sections 134 and 137, imposes a statutory obligation upon directors to approve and sign annual financial statements for each financial year. The signing of balance sheets for statutory compliance cannot be equated with management functions. Even where CIRP is ongoing, the Corporate Debtor continues as a legal person, and preparation of financial statements remains mandatory. The suspended directors, while

not controlling management, continue to discharge residual statutory duties under the Act.

46. Further, even if the balance sheets were signed by the Resolution Professional or other authorized representatives, the acknowledgment thereby made on behalf of the Corporate Debtor remains valid, as Section 18 does not require acknowledgment to be made by the debtor personally, but by any authorized person acting for and on behalf of the debtor.

47. In this regard, we take note of the decision of this Appellate Tribunal in Comp. App. (AT) (Ins.) No. 452 of 2021 in the matter of *'Mr. Mukund Choudhary vs. Mr. Subhash Kumar Kundra'* the relevant paragraph 9 & 10 are extracted below:

> *"9. At the outset, we address to the contention of the Appellants that it is the RP who has to sign the Financial Statement and not the Appellants who are the suspended directors of the Corporate Debtor company. This Tribunal is of the considered view that the Court does not release the directors of the Corporate Debtor company from their duties, but only suspends their power as directors and appoints a RP for managing the company. At this juncture, we find it pertinent to reproduce Sections 129 and 134 of the Companies Act, 2013 which read as hereunder:*
>
> *"**Section 129: Financial statement**.*
>
> *129. (1) The financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III:*
>
> *Provided that the items contained in such financial statements shall be in accordance with the accounting standards:*
>
> *Provided further that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the*

generation or supply of electricity, or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company:

Provided also that the financial statements shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by reason of the fact that they do not disclose—-

(a) in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938, or the Insurance Regulatory and Development Authority Act, 1999;

(b) in the case of a banking company, any matters which are not required to be disclosed by the Banking Regulation Act, 1949;

(c) in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by the Electricity Act, 2003;

(d) in the case of a company governed by any other law for the time being in force, any matters which are not required to be disclosed by that law.

(2) At every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year.

(3) Where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under subsection (2):

Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries and associate company or companies in such form as may be prescribed:

Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed.

(4) The provisions of this Act applicable to the preparation, adoption and audit of the financial statements of a holding company shall, mutatis mutandis, apply to the consolidated financial statements referred to in sub-section (3).

(5) Without prejudice to sub-section (1), where the financial statements of a company do not comply with the accounting standards referred to

in sub-section (1), the company shall disclose in its financial statements, the deviation from the accounting standards, the reasons for such deviation and the financial effects, if any, arising out of such deviation.

(6) The Central Government may, on its own or on an application by a class or classes of companies, by notification, exempt any class or classes of companies from complying with any of the requirements of this section or the rules made thereunder, if it is considered necessary to grant such exemption in the public interest and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.

(7) If a company contravenes the provisions of this section, the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

Explanation.—For the purposes of this section, except where the context otherwise requires, any reference to the financial statement shall include any notes annexed to or forming part of such financial statement, giving information required to be given and allowed to be given in the form of such notes under this Act.

Section 134. Financial statement, Board's report, etc.

1. The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the Company Secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.

(2) The auditors' report shall be attached to every financial statement.

(3) There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include—

(a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;

(b) number of meetings of the Board;

(c) Directors' Responsibility Statement;

(ca) details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government;

(d) a statement on declaration given by independent directors under sub-section (6) of section 149;

(e) in case of a company covered under sub-section (1) of section 178, company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178;

(f) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made—

(i) by the auditor in his report; and

(ii) by the company secretary in practice in his secretarial audit report;

(g) particulars of loans, guarantees or investments under section 186;

(h) particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the prescribed form;

(i) the state of the company's affairs;

(j) the amounts, if any, which it proposes to carry to any reserves;

(k) the amount, if any, which it recommends should be paid by way of dividend;

(l) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report;

(m) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed;

(n) a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;

(o) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year;

(p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which

formalannual evaluation of the performance of the Board, its Committees and of individual directors has been made;

(q) such other matters as may be prescribed.

Provided that where disclosures referred to in this subsection have been included in the financial statements, such disclosures shall be referred to instead of being repeated in the Board's report:

Provided further that where the policy referred to in clause (e) or clause (o) is made available on company's website, if any, it shall be sufficient compliance of the requirements under such clauses if the salient features of the policy and any change therein are specified in brief in the Board's report and the web-address is indicated therein at which the complete policy is available.

Provided that in case of a Specified IFSC public company, if any information listed in this sub-section is provided in the financial statement, the company may not include such information in the report of the Board of Directors.

Provided that in case of a Specified IFSC private company, if any information listed in this sub-section is provided in the financial statement, the company may not include such information in the report of the Board of Directors.

(3A) The Central Government may prescribe an abridged Board's report, for the purpose of compliance with this section by One Person Company or small company.

(4) The report of the Board of Directors to be attached to the financial statement under this section shall, in case of a One Person Company, mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.

(5) The Directors' Responsibility Statement referred to in clause (c) of sub-section (3) shall state that—

(a) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;

(b) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;

(c) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;

(d) the directors had prepared the annual accounts on a going concern basis; and

(e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

Explanation.—For the purposes of this clause, the term "internal financial controls" means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

(f) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

(6) The Board's report and any annexures thereto under sub-section (3) shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.

(7) A signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of—

(a) any notes annexed to or forming part of such financial statement;

(b) the auditor's report; and

(c) the Board's report referred to in sub-section (3).

(8) If a company is in default in complying with the provisions of this section, the company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees."

10. The submissions of the Learned Counsel for the Appellants that it is the RP who has to sign Financial Statement is untenable, keeping in view the facts and circumstances of the attendant case as it is not disputed that the Appellants had signed the first three quarters of the Financial Year and are now objecting to sign the last quarter raising

some clarifications which have already been addressed to by the RP and the Statutory Auditor (who is the same auditor who had audited the Financial Statements/Accounts for the past three years of the Corporate Debtor company). Section 19(2) of the Code clearly specified that the personnel of the Corporate Debtor, as promotors or any other persons are required to assist the RP failing which an Application can be filed before the Adjudicating Authority seeking direction for co-operation. This Tribunal is of the considered view that the circular dated 06.03.2020 relied upon by the Appellants provides only for the procedure of filing the Forms. The circular does not anywhere specify that the Financial Statement are not to be signed by the Directors as required in the Companies Act, 2013. The emails and the communications on record evidence that the RP and the statutory auditor had prepared all the information as demanded time and again by the Appellants, requesting them to sign the Financial Statements in order to enable the RP to proceed in accordance with law. The impugned order dated 01.06.2021, whereby two weeks' time was granted to the Appellants herein to co-operate and sign the Financial Statements was not complied with causing further delay. We do not see any illegality in the well reasoned order of the Adjudicating Authority as we do not find it a fit case, in the interest of justice and to avoid any further delay in this time bound proceedings, in remitting the matter to the Adjudicating Authority. At the cost of repetition, we observe that it is the duty of the Appellants to cooperate and sign the Financial Statements which is in terms of the provisions of the Code as well as in compliance of the Companies Act, 2013."

48. It is clear from the aforesaid Judgment of this Tribunal that the mere fact of a company going in insolvency does not take away the responsibility of the Suspended Directors to perform their statutory duties including the duty to sign financial statements under Sections 129 and 134 of the Companies Act, 2013. This ruling affirms that balance sheets signed by suspended

directors remain valid and constitute binding acknowledgments of liability, supporting the Appellant's case that limitation stood duly extended.

49. We note that in the present case also all the balance sheets up to 2019-20 are duly signed by the Directors of the company and we find no reason to question the authenticity of the same.

50. We now have a look at the Guarantee Agreement dated 31.03.2015. The Clause 8 of the Agreement is extracted below:

> *"Clause 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 Interest costs and other monies which may from time to time become dus and remain unpaid to the Bank thereunder and shall not be determined or in any way be affected by any account or accounts opened or to be opened by the Bank becoming nil or coming into credit at any time or from time to time or by reason of the said account or accounts being closed and fresh account or accounts being opened in respect of fresh facilities being granted within the overall limit sanctioned to the Borrower."*

51. This Clause affirms that the aforesaid Personal Guarantee furnished by the Respondent is a continuing guarantee and such guarantees remain valid till the same is revoked by the bank.

52. Clauses 12 and 19 of the Deed of Guarantee dated 31.03.2015.

> *"Clause 12*
> *The Guarantors affirm, confirm and declare that any balance confirmation and/or acknowledgement 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.

Clause 19

The Guarantors agree that any admission or acknowledgement in writing signed by the Borrower of the llability or indebtedness of the Borrower or otherwise in relation to the abovementioned credit facilities and or any part payment as may be made by the Borrower towards the Principal, sum hereby guaranteed or any judgement, award or order obtained by the Bank against the Borrower shall be binding on the Guarantors and the Gurantors accept the correctness of any statement of account that may be served on the Borrower which is duly certified by any officer of the Bank and the same shall be binding and conclusive as against the Guarantors also and the Guarantors further agree that in the Borrower making an acknowledgement or making a payment the Borrower shall in addition to his personal capacity be deemed to act as the Guarantors duly authorised agent in that behalf for the purposes of Sections 18 and 19 of the Limitation Act of 1963."

53. The aforesaid clauses of the Guarantee Agreement create a contractual bridge between the borrower's acknowledgment and the guarantor's liability, stipulating that any admission or acknowledgment by the principal borrower "shall bind the guarantor and be deemed made on his behalf." This clause, read in conjunction with Section 128 of the Contract Act, which renders the guarantor's liability co-extensive with that of the principal debtor, unequivocally extends the effect of acknowledgment to the guarantor as well.

54. The Adjudicating Authority in the impugned order took the view that since the balance sheets containing the acknowledgment were not signed by the Personal Guarantor, they could not be treated as his acknowledgment under Section 18 of the Limitation Act. This interpretation effectively treated the guarantor's liability as separate and distinct for limitation purposes, which is contrary to the scheme of Sec 128 of the Contract Act and the clauses of the Guarantee Agreement.

55. Even without considering subsequent acknowledgments, the limitation that began on 07.10.2016 was extended successively until at least 2020. The period from 15.03.2020 to 28.02.2022 stood excluded due to the Supreme Court's Suo Motu Extension Orders in *'Re: Cognizance for Extension of Limitation, Suo Motu W.P. (C) No. 3 of 2020'*. When this exclusion is applied, the effective limitation end date moves well beyond October 2021. The Section 95 petition, filed in October 2021, was thus clearly within the limitation period.

56. Even if we consider Balance sheet of the Corporate Debtor for the financial year 2016-17 (as on 31.03.2017), which relate to the period prior to admission of CD in CIRP i.e. on 20.07.2017, the acknowledgement of liabilities in the said balance sheet would extend the limitation period upto 31.03.2020. Applying the Hon'ble SC's exemption period in *suo-motu* case (supra), the limitation would extend beyond 28.02.2022. The Section 95 petition in this case was filed in October 2021 and the same is well within the limitation period.

57. We also note that the Hon'ble Supreme Court in *Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal*, (2021) 6 SCC 366, decisively held that an acknowledgment of liability in a company's balance sheet constitutes acknowledgment under Section 18 of the Limitation Act, thereby restarting limitation. This principle was reaffirmed in *Dena Bank v. C. Shivakumar Reddy*, (2021) 10 SCC 330, where the Court observed that acknowledgment in a balance sheet or in a one-time settlement proposal renews the period of limitation for the purpose of proceedings under the IBC.

58. Therefore, each and every acknowledgment or the debt by the Corporate Debtor in the balance sheet up to FY 2019–20 has the effect of extending the limitation period.

59. The Adjudicating Authority, in dismissing the petition, appears to have proceeded on an erroneous assumption that acknowledgment must be personally made by the guarantor and that balance sheets signed during CIRP are invalid. Both assumptions stand contrary to the settled position of law. The former overlooks the co-extensive nature of guarantor liability, while the later disregards the statutory continuity of acknowledgment through financial statements mandated by the Companies Act.

60. Based on the above discussion, we conclude that:

i. The Corporate Debtor's balance sheets for FY 2016–17 to FY 2019–20 contained clear and unequivocal acknowledgment of debt towards the Appellant Bank.

ii. These acknowledgments, by virtue of both Section 18 of the Limitation Act and Clauses 12 & 19 of the Deed of Guarantee, validly extended limitation against the Personal Guarantor.

iii. The statutory exclusion of limitation from 15.03.2020 to 28.02.2022 further renders the Section 95 application, filed in October 2021, well within limitation.

61. We therefore are of the view that the Adjudicating Authority's finding that the petition was time-barred suffers from a clear error of law and based upon incorrect appreciation of facts. The application under Section 95 filed by the Appellant was well within the limitation period.

62. Regarding the respondent's liability for repayment based on the acknowledgment in balance sheet, the Appellant highlighted the Clauses 12 and 19 of the Deed of Guarantee dated 31.03.2015, executed by the Respondent in favour of the Bank, which specifically stipulate that any acknowledgment, admission, or statement made by the principal borrower in respect of the debt "shall be binding on the guarantor and shall be deemed to have been made on his behalf." Therefore, acknowledgment of liability made by the Corporate Debtor in its financial statements has the effect of acknowledgment by the guarantor himself for purposes of limitation.

63. The Appellant further submitted that the guarantor's liability arises simultaneously with that of the principal borrower, and the creditor is not required to exhaust remedies against the borrower before proceeding against the guarantor. Reliance in this regard was placed on the judgments of the Hon'ble Supreme Court in *State Bank of India v. Indexport Registered*, (1992)

3 SCC 159, and *Syndicate Bank v. Channaveerappa Beleri*, (2006) 11 SCC 506, to support this proposition.

64. It was further argued that once acknowledgment of liability is made by the principal debtor, it necessarily extends limitation for the guarantor as well, since their obligations under the guarantee contract are indivisible and concurrent. To hold otherwise would result in an anomalous situation where the same debt is considered subsisting for one debtor (the company), but time-barred for another (the guarantor), a proposition contrary to the settled law and to the intent of Section 128.

65. On the contrary the Respondent argued that the acknowledgment of debt, if any, made by the Corporate Debtor in its balance sheets cannot bind him, since he was not a party to such acknowledgment. He contended that Section 18 of the Limitation Act requires acknowledgment to be made by the person against whom the right is claimed, or by an agent duly authorized in that behalf. Since the Respondent neither signed nor authorized anyone to acknowledge debt on his behalf, the balance sheets of the Corporate Debtor could not operate as acknowledgment against him.

66. The Respondent further relied upon the distinction between the Corporate Debtor's separate legal personality and his individual capacity as guarantor. It was argued that the Corporate Debtor is an independent juristic entity, and its acknowledgments or admissions cannot automatically bind third parties, even if they are guarantors. The Respondent therefore maintained that the limitation against him must be computed independently

from the date of invocation of the guarantee, and that the absence of any personal acknowledgment rendered the Section 95 application time-barred.

67. He also asserted that the contractual clauses cited by the Bank could not override the statutory requirement of acknowledgment under Section 18, which is personal in nature, and that the guarantee deed cannot substitute or waive the statutory necessity of acknowledgment made by the guarantor himself.

68. The question as to whether acknowledgment of debt by a principal borrower extends limitation against the guarantor has been the subject of consistent judicial interpretation. The statutory scheme under Section 128 of the Indian Contract Act provides that "the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract." This co-extensiveness implies that both the borrower and the guarantor are liable for the same debt, at the same time, and to the same extent, unless expressly limited by contract.

69. The Deed of Guarantee dated 31.03.2015 executed by the Respondent contains Clauses 12 and 19, reinforce this legal position. Clause 12 provides that any admission, acknowledgment, or statement made by the borrower regarding the amount due or the nature of the liability shall be binding upon the guarantor and shall be deemed to have been made on his behalf. Clause 19 further clarifies that acknowledgment or payment by the borrower shall be deemed acknowledgment or payment by the guarantor for purposes of limitation or otherwise. These clauses leave no scope for ambiguity—the

parties expressly contracted that acknowledgment by the borrower would have binding effect upon the guarantor.

70. The contention of the Respondent that acknowledgment must be personally signed by him overlooks the fundamental principle that under a contract of guarantee, the guarantor's obligations are derivative in nature, flowing directly from the borrower's default and acknowledgment of the same. The liability of the guarantor, though secondary in origin, becomes immediate and absolute upon default of the borrower. Therefore, acknowledgment by the borrower, particularly where the contract so provides, operates against the guarantor by necessary implication.

71. We also note that the Respondent voluntarily executed the guarantee deed containing the very clauses which make borrower's acknowledgment binding upon him. He cannot now seek to invalidate the contractual effect of those clauses to evade liability. The argument that the Deed of Guarantee cannot override the Limitation Act is misplaced; the guarantee does not alter the statutory scheme, but merely identifies the borrower's acknowledgment as one made "on behalf of" the guarantor, precisely as contemplated under Section 18(1) of the Limitation Act, which allows acknowledgment by "the party or any person through whom he derives title or liability." The borrower in this case clearly falls within the latter category.

72. Therefore, both on principle and on precedent, acknowledgment of liability in the Corporate Debtor's balance sheets extends limitation against the Respondent Personal Guarantor. To hold otherwise would create an absurd inconsistency whereby the same debt remains enforceable against the

borrower but becomes time-barred against the guarantor, despite their liabilities being concurrent and co-extensive.

73. It is well settled that such contractual stipulations are enforceable and consistent with Section 128 of the Contract Act. In *Syndicate Bank v. Channaveerappa Beleri*, (2006) 11 SCC 506, the Hon'ble Supreme Court observed that acknowledgment made by the principal debtor extends limitation as against the guarantor as well, as their liability is concurrent. The Court held that where acknowledgment is made by the debtor before expiry of limitation, it renews the limitation period against both the debtor and the surety.

74. Similarly, in *State Bank of India v. Indexport Registered*, (1992) 3 SCC 159, Hon'ble Supreme Court held that the creditor may proceed against the guarantor immediately upon default, without first exhausting remedies against the borrower, since both are equally and simultaneously liable. The Court emphasized that acknowledgment of debt by one, in the context of a continuing obligation and a co-extensive guarantee, necessarily renews the limitation against the other.

75. Applying the ratio of the aforesaid Judgments Syndicate Bank (supra) and State Bank of India (supra) to the present case, we hold that acknowledgment of liability made by the Corporate Debtor in its balance sheets for FY 2016–17 to 2019–20 constitutes valid acknowledgment not only for the borrower but also for the guarantor. This is for three reasons:

a) Section 128 of the Contract Act makes the guarantor's liability co-extensive, meaning that the same acknowledgment of the same debt that renews limitation for the borrower equally applies to the guarantor, since their liabilities are inseparable.

b) Clauses 12 and 19 of the Deed of Guarantee expressly deem acknowledgment by the borrower to be acknowledgment by the guarantor. The guarantor, having agreed to this term at the time of executing the guarantee, is estopped from denying its effect.

c) The ratio in *Syndicate Bank v. Channaveerappa Beleri* (supra) and *State Bank of India v. Indexport Registered* (supra) highlights the concept that acknowledgment in balance sheet made by the principal debtor extends limitation to the guarantor as well.

76. The third issue in this case relates to invocation of the guarantee by the appellant. We note that the contention that the personal guarantee was never invoked was never raised before the Learned Adjudicating Authority at the time of hearing of the Section 95 petition. The pleadings and the impugned order dated 16.07.2024 shows that the Adjudicating Authority dealt only with the question of limitation and did not record any argument or finding regarding invocation of the personal guarantee. The Respondent did not raise any such objection in his reply or at the time of submissions before the Adjudicating Authority. It is therefore clear that this ground has been taken for the first time in appeal. Normally the appellate forum ordinarily does not consider new factual pleas that were never pleaded before the lower authority,

be that it may be, to ensure complete adjudication of issues, we have taken up this issue also.

77. The record demonstrates that the Demand-cum-Recall Notice dated 30.09.2016, issued by the Appellant–State Bank of India, was addressed to both the Corporate Debtor and its guarantors, including the present Respondent. This notice specifically required them to repay the entire outstanding dues within seven days and warned that failure to do so would result in enforcement of the guarantees. The language of this notice leaves no doubt that the guarantee stood invoked on 30.09.2016 itself. The portion related to Personal Guarantors is extracted below:

> *"Copy forwarded to the following guarantors with request to please look into the matter and arrange for payment of Bank's dues as detailed above within aforesaid period, failing which the Bank will have no option but to take appropriate action against them (the guarantors/corporate guarantors) also:-*
>
> 1. *Mr. C.E. Fernandes*
> 2. *Mr. Bernard John*
> 3. *Mrs. Everlyn Fernandes"*

78. The Respondent in his submission has stated that at no point of time the Personal Guarantee was invoked by the bank and the notice recalling the advance dated 30.09.2016 cannot be considered as notice for invocation of guarantee because it nowhere says that guarantee is invoked. It is their submission that notice dated 30.09.2016 says that the guarantors shall be liable to pay the outstanding bank guarantee along with charges if any in case of their invocation in future.

79. The above submission of the respondent is factually incorrect, as the endorsement portion of letter dated 30.09.2016 which has been addressed to the Personal Guarantors is the one extracted in paragraph 77 above, which clearly states that if the payment of bank dues is not made within the stipulated period i.e. within 07 days then bank will not have any option but to take appropriate action against them (the guarantors/corporate guarantors) also.

80. This makes it absolutely clear that the guarantee has been invoked vide this letter and in case payment was not received within 07 days i.e. 07.10.2016, then guarantors become liable for appropriate legal action by the bank, which would inter alia mean filing of petition under Section 95 of the Code in this case.

81. The plea that there was no invocation of the guarantee is, therefore, factually incorrect. Moreover, under the Deed of Guarantee dated 31.03.2015, particularly Clauses 12 and 19, any acknowledgment or admission of liability by the borrower is made binding upon the guarantor, and any acknowledgment by the borrower is treated as acknowledgment by the guarantor for purposes of limitation or enforcement. In view of these clauses, the guarantee stood validly invoked, and the liability of the Respondent arose simultaneously with that of the Corporate Debtor.

82. The Respondent has further relied on the decision of this Appellate Tribunal in *State Bank of India v. Deepak Kumar Singhania*, Company Appeal (AT) (Insolvency) No. 191 of 2025, decided on 28.02.2025, to argue that the Section 95 application was not maintainable for want of valid invocation of

the personal guarantee. In the fact of case cited, no recall or demand notice was sent to the guarantor, before the Section 95 filing, and the Tribunal held that the first notice under Rule 7(1) could not by itself amount to invocation.

83. The present case stands on a completely different footing. Here, the Demand-cum-Recall Notice dated 30.09.2016 was issued by the Appellant–State Bank of India to both the Corporate Debtor and the Respondent Guarantor, demanding payment within seven days and warning that the guarantee would be enforced on default. This notice clearly fulfils the requirement of invocation well before the initiation of the Section 95 proceedings. Hence, the ratio in *Deepak Kumar Singhania*—which turned solely on the absence of any prior invocation—does not apply to the present facts. We, therefore, hold that the guarantee has been properly invoked by the appellant.

84. In view of the findings above, the appeal is allowed. The order passed by the Adjudicating Authority in C.P. (IB) No. 53(MP)/2021 is set aside. The parties are directed to appear before the Adjudicating Authority on 28.10.2025. Pending I.As, if any, are also closed. There is no order as to costs.

[Justice Yogesh Khanna]
Member (Judicial)

[Mr. Indevar Pandey]
Member (Technical)

SA/Pragya (LRA)