NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 731 of 2025

[Arising out of the Impugned Order dated 29.04.2025 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench, Court-V in I.A. No. 4194 of 2024 in C.P. (IB) No. 119/MB/2021]

In the matter of:

ICICI Bank Ltd.
ICICI Bank Tower,
Near Chakli Circle, Old Padra Road,
Vadodara, Gujarat – 390007
Registered office at ICICI Bank,
Towers, Bandra Kurla Complex,
Mumbai, Maharashtra – 400051.

...Appellant

Versus

1. **Seeta Neeraj Shah**
   375 A, Vidhut Building, 1st Floor,
   Room No. 1A, Girgaum,
   Chira Bazar, Mumbai – 400 002

   ...Respondent No.1

2. **Mr. Trupalkumar Patel**
   Resolution Professional of
   Ushdev Engitech Limited
   C/505, The First, B/h ITC Narmada,
   Near Kechav Baug Party Plot,
   Vastrapur, Ahmedabad

   ...Respondent No.2

Present:

For Appellant : Mr. Krishnendu Dutta, Sr. Advocate with Mr. Prakshal Jain, Mr. Arnav Doshi, Mr. Siddharth Ranade and Mr. Shankh Sengupta, Advocates.

For Respondent : Mr. Ramji Srinivasan, Sr. Advocate with Mr. Kumar Anurag Singh, Mr. Zain A. Khan, Mr. Vijay Mathur, Mohd. Abran Khan, Ms. Shefali Munde and Mr. Arjun Bhatia, Advocates for R-1.

Ms. Pooja Mahajan, Mr. Savar Mahajan and Mr. Srivastava Beerapalli, Advocates for RP.

Mr. Tirth Nayak and Mr. Palash S. Singhai, Advocates for SRA.

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('**IBC**' in short) by the Appellant arises out of the Order dated 29.04.2025 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-V) in I.A. No.4194 of 2024 in C.P.(IB) No. 119/MB/2021. By the impugned order, the Adjudicating Authority has allowed I.A. No.4194 of 2024 to hold the liability of Respondent No. 1 to Rs. 25 crore under the Guarantee Deed of 10.08.2016. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant-ICICI Bank.

2. The brief facts required to be noticed in deciding the matter are as follows:

- ICICI Bank extended credit facility to Ushdev International Ltd. (**"UIL"** in short) on 24.12.2014 and a Credit Arrangement Letter was executed.
- Ushdev Engitech Ltd. (**"UEL"** in short) issued a Corporate Guarantee in favour of Appellant-ICICI Bank for the loan facility advanced to UIL. This Corporate Guarantee was entered into on 10.08.2016.
- On 16.10.2017, ICICI Bank invoked the Corporate Guarantee due to failure on part of UIL to repay the outstanding dues.

- ICICI Bank filed an insolvency application against UEL which was admitted on 26.04.2023. The CIRP admission order was affirmed by this Tribunal on 02.07.2024 and by the Hon'ble High Court on 29.07.2024.
- On 10.05.2023, ICICI Bank filed its initial Claim Form with the Resolution Professional (**"RP"** in short). The RP had admitted the principal component of Rs 25 Cr. raised in the claim of ICICI Bank while keeping the default interest amount charged by the ICICI Bank under verification.
- After exchange of several communications between the ICICI Bank and the RP, a revised Claim Form was submitted by ICICI Bank on 24.06.2024.
- On 02.07.2024, the RP after due verification admitted ICICI Bank's claim to the extent of Rs 67.98 Cr. with Rs 25 Cr. being the principal guarantee amount and interest of Rs 42.98 Cr. being default interest amount.
- M/s Seeta Neeraj Shah, Ex-Director of UEL- Respondent No.1 filed a Writ Petition before the Hon'ble Delhi High Court to decide on the revised claim of Rs 67.98 Cr. submitted by ICICI Bank. The Delhi High Court on 13.08.2024 directed the Adjudicating Authority to decide on the issue of the claim amount following which IA No. 4194 was filed by Respondent No.1 seeking a declaration that the liability of UEL be capped at Rs 25 Cr. only.

- The Adjudicating Authority after considering the matter passed the impugned order capping the liability of UEL to Rs 25 Cr. Aggrieved by the impugned order, the present appeal has been preferred by the ICICI Bank-Appellant.

3. Making his submissions on behalf of the Appellant, Shri Krishnendu Datta, Ld. Sr. Counsel for the Appellant assailing the impugned order submitted that the Adjudicating Authority had wrongly construed the terms of the Guarantee deed to allow the application filed by the Respondent No.1 for capping the limit of the entire liability of the guarantor including default interest for delayed discharge of guarantee obligations to Rs 25 Cr. by falling back on Clause 33 of the Corporate Guarantee. It was contended that the Adjudicating Authority had failed to appreciate that the Corporate Guarantee also contained a specific clause viz. Clause 3 which provided for liability on the part of the UEL to pay default interest. Thus, while Clause 33 operates in respect of liability of UEL for amounts owed by UIL, Clause 3 deals with the liability on the part of the UEL to pay interest arising out of their own default in discharging their liability towards the guarantee undertaken by them. When the two parties provided for a remedy in case of non-payment or delayed payment by the guarantor, the same remedy cannot be rendered obsolete or otiose by applying the cap in Clause 33 to apply to default interest as provided in Clause 3. It was therefore pointed out that there is a need to harmoniously read the provisions of Clause 3 and Clause 33 of the Corporate Guarantee which are operable in separate domains. Since there was no conflict in the operation of these two clauses as they work and operate in two entirely

different spheres, the non-obstante clause contained in Clause 33 does not come into play in the present factual matrix. It is also submitted that the Adjudicating Authority failed to follow the settled principle of law that any commercial document or contract needs to be interpreted in a manner that it conforms to business common sense. It was vehemently contended that if the interpretation given in the impugned order is allowed to hold ground it would lead to unreasonable consequences and have wide ramifications of dis-incentivising payment of dues in a timely manner and foster an unhealthy trend of encouraging non-payment of dues on time and create a climate where wrong-doers who default in discharging their payment obligations take undue advantage of their default. It was therefore submitted that the Adjudicating Authority had wrongly held that charging default interest over and above Rs 25 Cr. was against the agreed terms of the Corporate Guarantee as contemplated in Clause 33.

4. The Ld. Counsel for the RP-Respondent No.2, Ms. Pooja Mahajan making her submissions contended that the RP had rightly admitted the interest claim of ICICI Bank after doing due diligence in terms of the Corporate Guarantee. Clause 3(a) of the Guarantee Document clearly provided that the guarantor upon demand made to it shall forthwith pay to the bank the amounts demanded by the bank as payable under the Facility Agreement. Clause 3 on the other hand entitled ICICI Bank to charge interest if the guarantor failed to pay the guaranteed amount within the cure period which amount stood covered under Section 5(8)(h) of IBC. Contending that the Adjudicating Authority incorrectly held that as per Clause 33, the claim of

ICICI Bank cannot exceed Rs 25 Cr., she also endorsed and supported the contentions made by the Appellant-ICICI Bank that Clause 3 and Clause 33 of the Corporate Guarantee has to be read in harmonious conjunction in the absence of any direct conflict between them and by doing so the RP had correctly admitted the revised claim of Rs 67.98 Cr. of ICICI which revised claim was in accordance with law.

5. Rebutting the arguments made by the ICICI Bank-Appellant and RP, Shri Ramji Srinivasan, Ld. Sr. Counsel for Respondent No.-1 submitted that it is the cardinal rule of construction of any Guarantee Agreement that a guarantor cannot be made liable beyond the terms of his engagement. It was submitted that Clause 33 of the Agreement contained a "notwithstanding" proviso which proviso had been deliberately and intentionally inserted by the parties in the Guarantee Agreement setting a cap on the overall liability of the Guarantor. In such circumstances, any liability beyond Rs 25 Cr. could not have been permitted by the Adjudicating Authority as it would have otherwise rendered nugatory the non-obstante provision. The Adjudicating Authority had correctly appreciated that the non-obstante clause prevailed over all other clauses of the Guarantee Contract. It is settled law that when a transaction is entered into between two parties with open eyes and with a clear understanding about the nature of the contract, no party can claim anything more than what is covered by the terms of the contract. Thus, the liability of the UEL would depend purely on the terms of the Corporate Guarantee. It was further pointed out that Section 128 of the Indian Contract Act, 1872 clearly lays down that the liability of the surety is co-extensive with that of the

principal debtor unless it is otherwise provided. Hence, in terms of Section 128 of the Contract Act, no interpretation that disregards the clearly defined contractual limitation of Rs 25 Cr. as the maximum liability of the Respondent No. 1 can be permitted.

6. We have duly considered the arguments advanced by the Ld. Counsel for the parties and perused the records carefully. We also notice that the Ld. Counsels have relied on various judgments of this Tribunal, High Courts and the Hon'ble Supreme Court which we shall refer to while considering the submissions in details.

7. The short point for consideration is whether or not the overall quantum of liability of the guarantor in terms of the Contract for Guarantee was only Rs 25 Cr. inclusive of both principal guarantee amount as well as the default interest payable by the guarantor on the delay in the discharge of the guarantee obligations.

8. Before we make our analysis and return our findings on the rival contentions raised by the parties, we would like to take note of the relevant provisions of the Guarantee Agreement which determine the guarantee obligations including the terms of payment. The relevant provisions are as reproduced below:

> *(1b)(A) The expression **"Guarantors"** means the persons named in the Schedule 1 hereof; the expression **"Guarantors"** shall, unless it be repugnant to the subject or as the context may permit or require….*
>
> *(1b)(B) The expression **"this Guarantee"** shall mean and include this guarantee, the documents in relation to security if any required to be created by the Guarantors, all other related documents; such*

expression shall also include all amendments made thereto from time to time.

(1b)(C) All applications, facility agreement, and the other Transaction Documents are hereinafter referred to as the ***"Facility Documents****"; such expression shall include all amendments made thereto from time to time.*

….

3.(a) In the event of any default on the part of the Borrower in payment/repayment of any of the moneys referred to Clause 2 above, or in the event of any default on the part of the Borrower to comply with or perform any of the terms, conditions and covenants contained in the Facility Documents, the Guarantors shall, upon demand to the Guarantors, forthwith pay to the Bank without demur all/part of the amounts as demanded by the Bank payable by the Borrower under the Facility Documents. Any such demand made by the Bank on the Guarantors shall be final, conclusive and binding notwithstanding any difference or any dispute between the Bank and the Borrower/arbitration or any other legal proceedings, pending before any court, tribunal, arbitrator or any other authority. The enforcement of this Guarantee in part by the Bank, for any reason whatsoever, shall not amount to discharge of the obligations of the Guarantor under this Guarantee to the extent of the balance (unenforced) amount(s) of the Guarantee.

3. In the event of failure by the Guarantors to make payment as stated above, the Guarantors shall pay default interest at the same rate/s as specified in relation to the Facilities for the Borrower till receipt of the aforesaid amounts by the Bank to its satisfaction.

….

33. Notwithstanding anything herein above stated our liability under this guarantee shall not exceed Rs. 250 Million. This Guarantee will fall off in the event the outstanding of Borrower is less than or aggregate of Rs. 2,180 Million out of Rs. 2,500 Million (due as on date with ICICI Bank Limited under various facilities provided to the Borrower).

9. Having noted the relevant clauses of the Guarantee document, we may now notice the findings returned by the Adjudicating Authority before we dwell upon the rival contention of both parties.

10. When we look at the impugned order, we notice that the Adjudicating Authority has endeavoured to decide and determine whether the Guarantor under the deed of guarantee was liable only to the extent of the cap of Rs. 25 Cr. inspite of the deed of guarantee stipulating payment of default interest in the event of failure by the Guarantor to discharge the guarantee obligations. Relying on the judgment of this Tribunal in ***Shitanshu Bipin Vora Vs Shree Hari Yarns Pvt. Ltd. (2025 SCC Online NCLAT 694)*** the Adjudicating Authority has observed that it did not have the power to interpret the terms of the Corporate Guarantee and that a plain and simple meaning based on the express terms of the Guarantee Contract is required to be applied in the present case. The Adjudicating Authority has come to the finding that if the simple and plain meaning is to be followed, since both the parties have consciously executed the deed of guarantee by inserting Clause 33 which starts with a non-obstante provision, the Guarantor would be liable only to the extent of Rs. 25 Cr cap laid down in Clause 33. It was held that any other interpretation would be interpreting the document against the agreed terms of contract between the parties as any other interpretation would "in a way insert something which is not expressly agreed upon by the parties to the deed of guarantee."

11. In the first place, it would be appropriate for us to examine as to what was the guarantee liability of Respondent No.1 qua the liability of UIL to the Appellant bank and whether the claim of the Appellant bank filed before the RP in respect of liability of principal borrower was in conformity with the terms outlined in the Guarantee Document.

12. It is contended by the Respondent No.1 that admittedly the loan given to the principal borrower by the Appellant bank was far above Rs 25 cr. However, the Appellant Bank by its volition had chosen to secure the loan facility extended to the principal borrower for a much lower amount of Rs 25 Cr. Once the Appellant Bank had opted for a security amount lower than the facility extended, and this security amount had been agreed to with open eyes by both parties, the terms of the contract became binding on both parties and they had no option but to give effect to the contract. Reliance has also been placed upon judgment of the Hon'ble Supreme Court in ***Syndicate Bank Vs Channaveerappa Beleri and Ors. (2006) 11 SCC 506*** wherein it has been laid down that the liability of a Guarantor will depend purely on the terms of contract of guarantee. Reference has also been made to the judgment of the Hon'ble Supreme Court in ***State of Maharashtra Vs Dr. M.N. Kaul AIR 1967 SC 1634*** which held that the cardinal rule is that the guarantor must not be made liable beyond the terms of his engagement.

13. It is the case of the Appellant that Section 126 of the Indian Contract Act, 1872 envisages a contract to perform the promise, or discharge the liability, of a third person in case of his default which is what is applicable in the present case. Further, it was admitted that it is undisputable that Clause 3(a) of the Guarantee Agreement spells out the nexus between the guarantee liability given by UEL qua the principal debt of UIL. It is also not contested that the terms of a Guarantee Contract can always restrict the liability of the guarantor to an amount which is less than what was the liability of the principal borrower to pay and that Clause 33 of the Guarantee Agreement

provided that notwithstanding anything to the contrary, the liability of UEL under this guarantee was not to exceed Rs 25 Cr.. In this backdrop, it was therefore contended that the Appellant Bank by claiming Rs. 25 Cr towards liability of principal borrower clearly did not breach Clause 3(a) of the Guarantee Document as it had restricted the guarantee liability amount to Rs 25 Cr. which amount fell within the cap limit set by Clause 33.

14. When we see the material on record, we find that it has not been controverted by either Respondent No.1 or the RP that the Appellant while submitting their claim in Form-C had claimed the guarantee liability amount to be Rs 25 Cr. as liability of UIL to the Appellant Bank. In other words, the Appellant had crystallised the guarantee liability at Rs 25 Cr. on the invocation of guarantee in terms of Clause 3(a) of the Deed of Guarantee. We do not find any flaw in the quantum of guarantee liability claimed by the Appellant bank qua the liability of the principal borrower. This amount was in accordance with Clause 3(a) of the Guarantee document which amount the Appellant Bank had opted as security amount. Furthermore, this guarantee liability amount of Rs. 25 Cr. claimed by the Appellant Bank was pretty much in conformity with the cap laid down under Clause 33. Having said that, we observe that we do not find any violation of the ratios laid down in the judgments of the Hon'ble Supreme Court in ***Syndicate Bank judgment*** or the ***M.N. Kaul judgement*** since the liability amount claimed qua the debt of the principal borrower does not exceed Rs. 25 cr. which amount was within the terms of the Guarantee Document.

15. A perusal of Clause 3(a) reveals that it required UEL to discharge this liability of UIL within the cure period once the guarantee stood invoked and until the expiry of cure period, payment of this guarantee amount was to be made without payment of interest on account of delayed payment. This therefore brings us to other related issue as to whether the Guarantee Deed apart from the Rs. 25 Cr guarantee liability also provided for liability on the part of Respondent No.1 for delayed payment of guarantee obligations beyond the cure period.

16. The Appellant asserted that their claim of Rs 25 Cr. was only in respect of the liability guaranteed by UEL in respect of amounts which are due from UIL to the Appellant Bank without embracing default interest in its fold. However, they were entitled to make further claim for default interest incurred by Respondent No.1 for delayed payment of guarantee liability of Rs 25 Cr. beyond the cure period. Amplifying their case further, it was contended by the Appellant that Clause 3 makes out a separate, distinct and direct obligation of UEL to pay interest in case UEL failed to comply with its own obligations to pay the guarantee amount. The default interest burden was in respect of default committed by the Guarantor on their part for not discharging their guarantee liability on time and hence this liability had nothing to do with UIL's default as principal borrower. The Adjudicating Authority had however erred as it failed to appreciate that the default interest amount clearly assumed the colour of being UEL's own obligation as different from the liability of UIL and hence not covered by the ceiling of Rs 25 Cr. contemplated under Clause 33. Per contra, it is the case of the Respondent No.1 that even though the

Guarantee document provided for both the guarantee liability of the principal borrower and default interest for delayed payment, however, the Appellant Bank cannot claim anything more than what is covered by the terms of contract which has hemmed these liabilities with an overall cap of Rs. 25 Cr.

17. When we look at the construct of the Deed of Guarantee, we find that Clause 3 clearly stipulates that if the liability is not discharged by the Guarantor within the cure period, the Appellant became entitled to charge default interest on the outstanding guarantee liability of UEL. As per scheme of the Guarantee Deed, Clause 3(a) is immediately followed by Clause 3 which expressly provides that if the guarantor fails to pay the guarantee amount demanded by the Appellant Bank under Clause 3(a), then interest on the said amount would become payable by UEL to Appellant Bank. Thus, both these liabilities were independent liabilities though coming under the rubric of the same Deed of Guarantee. One liability that UEL had undertaken to discharge was the guarantee liability upon occurrence of default on the part of UIL which was stipulated in Clause 3(a) for an amount of Rs 25 Cr. The other liability stood triggered under Clause 3 which was not attributable to any default on the part of UIL but was an independent liability arising out of failure on the part of UEL to discharge the guarantee obligation laid down in Clause 3(a).

18. Now that we have noted that there were two clear, distinct and independent obligations cast on Respondent No.1 for discharge of their obligations arising out of the same Deed of Guarantee, we come to the main issue which we have outlined for our consideration as to whether the overall

liability in respect of both these obligations was capped to Rs. 25 Cr by Clause 33 of the terms of the Guarantee agreement or could have been added by the Appellant bank to claim Rs. 67.98 Cr.

19. It is the case of the Appellant that in the present factual matrix, the default interest was a different liability provided for under Clause 3 of the present Deed of Guarantee which cannot be rendered meaningless by mere reference to a cap on liability imposed under Clause 33. It was pointed out by the Ld. Counsel of the Appellant that in ***Topalsson GmBH Vs Rolls Royce Motors Car Ltd.*** of the Court of Appeal Civil Division of England and Wales, it was held that where the agreement contained a clause capping liability as well as a separate clause providing for default interest, the Court held that capping of a liability cannot restrict a party from charging default interest since default interest is an independent and self-standing liability which is separately provided for in the Guarantee Agreement. Clause 33 cannot be read to put an embargo on the liability of the guarantor for committing a default in the discharge of the guarantee obligations on time.

20. On the other hand, the Respondent No.1 has emphatically asserted that Clause 33 being a non-obstante provision, this Clause must be given its full legal effect. The claim of the Appellant Bank cannot exceed Rs 25 Cr. including both the liability of the principal borrower and default interest for delayed payment. It was contended by the Ld. Counsel for Respondent No.1 that the reliance placed on the judgment in ***Topalsson case*** is misplaced since the facts in that case was distinguishable as it was in the context of a Services

Agreement as distinctive from that of a Guarantee Agreement. Moreover, the clause restricting liability in ***Topalsson case*** had employed the phrase "subject to" which is distinct from the term "notwithstanding" used in Clause 33. It was further pointed that it has also been clarified by the Hon'ble Supreme Court in ***Chandavarkar Sita Ratna Rao Vs Ashalata Guram (1986) 4 SCC 447*** that the terms "subject to" indicates a provision that yields to another, whereas "notwithstanding" signifies the overriding effect of the clause it introduces.

21. Much emphasis was placed by Respondent No.1 on the words "*notwithstanding anything hereinabove stated*" in Clause 33 to contend that as this clause commences with a non-obstante provision, it embraced the entire basket of liabilities including the principal, interest, charges and even default interest. Thus, even if Clause 3 gives benefit of the operation of interest clause, it was well understood by both parties that the operation of the interest clause would also be covered by the overall cap of Rs 25 Cr. under Clause 33. It was contended that since Clause 33 follows Clause 3, it is implicit that Clause 33 was formulated with due awareness on part of both parties of the existence of Clause 3. Further, Clause 33 looks at the contract of guarantee as a singular, composite, complete and comprehensive standalone document dealing with the entire liability of the guarantor inclusive of both the liability of the principal borrower and default interest. Moreover, as the non-obstante clause is the last provision in the Guarantee Agreement, it must prevail overall other clauses of the Guarantee Contract. It is a classic non-obstante provision which confers overriding effect of this clause over all other clauses in the

Corporate Guarantee thereby putting a lid on any attempt to impose additional or extended liability. The purpose of non-obstante clause was for the parties to agree upon a fixed and maximum liability and therefore for the Appellant bank to now suggest that this cap should be disregarded in respect of default interest would tantamount to undermining the fundamental principle of upholding of contractual agreements. It was vehemently contended that the parties having freely negotiated the liability cap, default interest payment claim raised under Clause 3 is required to operate within the confines of the liability limitation of Rs 25 Cr. placed by Clause 33.

22. Repelling the contention of the Respondent No.1, it is the contention of the Appellant bank that any non-obstante clause comes into operation only when there is clear and direct conflict between provisions. It is ordinarily expected for any court to read the provisions of any agreement holistically and harmoniously so that all the provisions contained therein enjoy full legal effect. In the present factual matrix, Clause 3 and Clause 33 operate in their own respective spheres with no conflict between the two. A harmonious reading of the two clauses was therefore imperative in the absence of any conflict between them.

23. The Appellant has also relied on the judgment of ***Radha Sundar Datta Vs Mohd. Jahadur Rahim AIR 1959 SC 24*** in which it has been held that where two constructions of a document are admissible, then the one which will give effect to all the clauses in the document should be adopted as against the construction which renders one or more Clauses to be nugatory. Hence, it

was contended that Clause 33 cannot be considered in isolation. It has to be read harmoniously with Clause 3 which undisputedly provided for default interest. When the parties have consensually provided a remedy for non-payment or delayed payment by the guarantor by way of providing for payment of default interest, this cannot be rendered obsolete and redundant by reading the cap in Clause 33 to apply to default interest also. A non-obstante clause can have over-riding effect only in case of conflict between clauses and not otherwise. Hence, interpretation of these clauses in any other manner which lets one provision of the Deed of Guarantee to dilute or negate the effect of another provision is not tenable. It is therefore canvassed by the Appellant that Clause 3 of the Guarantee Agreement which deals with default interest was not obviated by Clause 33 of the Agreement.

24. To appreciate the facts at hand better, we may focus our attention on the use of the word 'liability" in Clause 33. When we look at the phraseology of Clause 33, we have no doubt that the expression "liability" has been used to specify that the said "liability" was capped at Rs 25 Cr. Be that as it may, it is also pertinent to note from the construction of Clause 33 that the latter part of Clause 33 states that the guarantee would stand terminated or slip into abeyance if the debt of UIL fell below Rs 218 Cr. However nowhere does it mention that default interest amount payable in terms of Clause 3 of the Guarantee document is to be factorised while computing the threshold limit of Rs 218 Cr. This clearly shows that Clause 33 was referring only to the guarantee liability of Respondent No.1 as pegged to the liability of principal borrower-UIL in respect of the amount payable by them under the Facility

Documents. It is also noticed that Clause 3 mentions of a rate of interest. Though this rate of interest under Clause 3 is the same rate as the interest rate in respect of the facility granted to the principal borrower, the very fact that it adverts attention to rate of interest independently sans any nexus with the computation of interest on the principal amount indicates the clear intent of both parties that repayment of guarantee liability obligation by the guarantor had its own interest liability as distinct from default interest arising out of delay in discharging guarantee liability obligations entailed a separate set of interest liability being an independent obligation of UEL. This makes it clear that Clause 3 dealt with default of guarantor in contra-distinction to Clause 33 which dealt with cap on default amount of the principal borrower under Clause3(a). Both defaults operate in different fields.

25. We are inclined to agree with the Appellant that there is a need for a harmonious reading of Clause 33 and Clause 3 of the Guarantee Agreement. It is a standard rule of interpretation of contracts that the various clauses are to be read harmoniously so that no clause is rendered otiose or irrelevant. The purpose of a non-obstante clause is to ensure its supremacy in the event of any conflict with the other provisions. Unless it is established that there is a conflict between the clauses of the Guarantee document, the over-riding effect of a non-obstante clause cannot be pressed into action. In the present case, when the Respondent No.1 has not been able to establish any conflict between Clauses 3 and 33, there is no scope for any argument that Clause 33 by virtue of being a non-obstante clause will prevail and supervene to restrict the entire liability of the guarantor to a maximum of Rs 25 Cr. towards meeting both the

liability of UIL arising out of terms of Clause 3(a) and default interest payable by the guarantor for delay in discharging the guarantee obligation arising out of Clause 3.

26. We are also inclined to agree with the principles enunciated in the ***Topalsson judgment*** that when a clause is present in the Guarantee Contract for levy of interest on late payment, this substantial remedy cannot be circumvented by falling back on the liability cap with respect to principal amount as this would amount to denial of the benefit of the remedy for late payment which is integral part of the present Deed of Guarantee. Even if the ***Topalsson case*** was in the context of a Services Agreement, the applicability of the legal principles laid down in the above judgment cannot be lost sight of. These principles would be equally applicable to a Services Agreement and a Contract of Guarantee.

27. Payment of default interest by Respondent No.1 cannot be mixed up with the discharge of liability of the principal borrower. Discharge of the liability of principal borrower is a different obligation from the obligation of the guarantor to pay interest on failure on their part to discharge the obligations of the guarantee on invocation. Since the liability of Rs 25 Cr. had not been discharged by UEL within the cure period in terms of Clause 3(a), the Appellant Bank became entitled to charge default interest as provided by Clause 3. Thus, we do not see any infirmity on the part of the RP to have allowed this default interest liability to be added with guarantee liability in the claim filed by the Appellant bank. Hence, claim of default interest payment

over and above Rs. 25 Cr. has been misconstrued by the Adjudicating Authority as a breach of Clause 33.

28. Another line of argument taken by the Appellant is that the guarantee document is a commercial document and courts must strive to interpret a commercial document in a manner which furthers the business efficacy of the contract. Reference was made to three judgments in this regard which are as follows:

(a) ***Nabha Power Ltd. Vs Punjab State Power Corporation Ltd. (2018) 11 SCC 508***

(b) ***International Fina Services A.G. Vs Katrina Shipping Ltd. & Tonen, Tanker Kabushiki Kaisha. (1995 WL 1083974)***

(c) ***Antaios Compania Naviera S.A. Vs Salen Rederierna A.B. (1985) A.C. 191.***

Elaborating further, it was added that the clauses of the Contract Agreement have to be interpreted in a manner that it appeals to business common sense. In the commercial and financial world, where time value for money is well recognised, prudent business sense would warrant the levy of default interest in case of non-payment or delayed repayment. Absence of the levy of default interest would disincentivise timely non-discharge of guarantee obligations fostering a climate of wilful default by any errant guarantor.

29. Payment of default interest quintessentially forms the substratum of any lending by any financial institution. We therefore tend to agree that in the present case, where the dues have not been paid for nearly eight years, the clauses of the guarantee document ought to have been viewed from the

perspective of business common sense as any other perspective unless clearly spelt out in the Guarantee document would imply denial of an obvious right which accrues to any party to claim interest upon default in payment.

30. By taking the cover that the Adjudicating Authority is not empowered to interpret a contractual document, the Adjudicating Authority cannot absolve themselves from not endeavouring to undertake a harmonious reading of all the clauses in the Guarantee deed or in finding out whether the clauses 3(a), 3 and 33 have any inter se conflict. This has led to a situation where the Adjudicating Authority has ended up viewing the clauses of the Deed of Guarantee in a skewed and fragmented manner leading to an absurd situation which could never have been contemplated between parties. Mere presence of a non-obstante provision cannot be sufficient ground for putting a fetter on the operation of another *sui generis* clause. No clause can be obliterated and its intent obfuscated if the clause is not in conflict with the overall construct and objective of the Deed of Guarantee as otherwise it would tantamount to deviating from the intended meaning of these clauses leading to inconsistent outcome and unintended consequences which does not meet with our countenance.

31. We have no doubts in our mind that Clause 33 of the Guarantee Agreement unequivocally and incontrovertibly limits the liability of Respondent No.1 to Rs 25 Cr. At the same time, we cannot ignore the fact that Clause 3 had been also inserted by both the parties wilfully which signified the express intent of both parties to provide for default interest on delayed payment in the discharge of the guarantee liability of the principal borrower.

Clause 3 having no bearing on liability of Respondent No.1 for the amount owed by UIL as a principal borrower, this clause cannot be said to be in conflict with Clause 33. Clause 33 cannot be read so as to extinguish or put fetters on the guarantor's default. Hence, the amount triggered by Clause 3 does not get covered by the cap laid down in Clause 33.

32. Therefore, in fine, to answer the question we have framed for our consideration at para 7 above, we are of the considered opinion that Clause 33 cannot be read to place an all pervasive limit of Rs. 25 cr. to cover both the liability of the principal borrower guaranteed by UEL and the liability of UEL towards default interest payment for delay in discharge of guarantee obligations on their part. In effect, Appellant Bank's submission of claim of Rs.67,98,65,048/- was not in violation of Clause 33 of the guarantee document.

33. The non-obstante clause in Clause 33 has been applied mechanically by the Adjudicating Authority without placing it in juxtaposition to Clause 3 which clearly dealt with the liability of UEL to pay interest on its own default which is fallacious. Thus, the Adjudicating Authority has wrongly come to the conclusion that charging of default interest over and above the cap of Rs 25 Cr. goes against the tenor and spirit of the Deed of Guarantee and violates Clause 33. Such a narrow construction cannot be commended in the absence of the clear wordings to that effect. Hence, we are not able to sustain the findings returned by the Adjudicating Authority in upholding the liability limitation of Respondent No. 1 to Rs 25 Cr.

34. For the reasons discussed above, we find merit in the Appeal. The Appeal is allowed. The directions of the Adjudicating Authority contained in the impugned order that Clause 33 of the Guarantee Agreement dated 10.08.2016 caps the entire liability of Respondent No. 1 to Rs. 25 crore cannot be sustained. The impugned order is accordingly set aside. No order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi

Date: 03.09.2025

Abdul/ Harleen