

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

Company Appeal (AT) (Insolvency) No. 1788 of 2025

[Arising out of Order dated 14.10.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court Room No. I in IA(IBC)/3880(MB)2025 in CP (IB)/452(MB)2022]

IN THE MATTER OF:

Saranga A. Aggarwal

Through Power of Attorney
Mr. Gokul Anil A Aggarwal,
Having residence at 601, Khatau Condominium,
JM Mehta Road, Malabar Hill,
Mumbai – 400 006.

...Appellant

Versus

1. State Bank of India

Stressed Assets Resolution Group,
Commercial 1 Branch, 1st Floor,
112 tom115, Plot No.212, West Wing,
Tulsiani Chambers, Free Press Journal Marg,
Nariman Point, Mumbai-400021.

2.Ajit Kumar, Resolution Professional

1A, Sanskriti Apartment, GH 22
Sector 56, Gurugram,
Haryana-122011.

...Respondents

Present:

For Appellant: Mr. Arvind Nayar, Sr. Advocate with Mr. J. Rajesh, Mr. Aniruth Prushottam, Md. Arsalan Ahmed, Mr. Yashwardhan Agarwal, Advocates.

For Respondents: Mr. Harshit Khare, Mr. Prafful Saini, Mr. Ayuj Agrawal, Advocates for R-1.

Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Palak Kalra, Advocates for R-2.

Cont'd.../

J U D G M E N T

Ashok Bhushan, J.

This appeal by the Personal Guarantor of the Corporate Debtor – A A Estates Pvt. Ltd. has been filed challenging the order dated 14.10.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court Room No. I by which IA(IBC)/3880(MB)2025 filed by the State Bank of India praying for change of date of default and consequential modification by way of amendment in the Company Petition No.413 of 2022 filed under Section 95, has been allowed. The Personal Guarantor aggrieved by the order has come up in this appeal.

2. Brief facts of the case necessary to be noticed for deciding this appeal are:

2.1 The State Bank of India extended credit facilities to AA Estates Private Limited. Appellant along with other Personal Guarantors jointly executed Guarantee Agreement dated 18.02.2012.

2.2 The Corporate Debtor defaulted in payment of debt. The account of the Corporate Debtor declared NPA on 27.02.2015 on continued failure in maintaining the account.

2.3 A Notice under Section 13(2) of the SARFAESI Act was issued on 02.03.2015 to the Corporate Debtor and Guarantor for recalling total

outstanding liability. The Personal Guarantor acknowledged the liability by letter dated 31.01.2018.

2.4 Corporate Debtor further issued a proposal for settlement on 05.02.2018.

2.5 A notice under Form B was issued by the State Bank of India to the Appellant on 11.02.2021 and Section 95 application was filed in January, 2022.

2.6 Resolution Professional was appointed by the Adjudicating Authority who was permitted to submit a report under Section 99. Appellant filed its reply and raised objection. The State Bank of India also filed its rejoinder. The Adjudicating Authority allowed the State Bank of India to file an Additional Affidavit.

2.7 The Adjudicating Authority, on 09.07.2025, observed that the State Bank of India could not trace proof of delivery of Section 13(2) and given liberty to file additional document.

2.8 State Bank of India filed application IA(IBC)/3880(MB)2025 seeking amendment in Section 95 petition to change the date of default which application was objected by the Appellant.

2.9 The Adjudicating Authority heard both the parties and by the impugned order allowed the amendment application permitting the

State Bank of India to change the date of default from 02.03.2015 to 05.04.2016. Aggrieved by the said order this appeal has been filed.

3. We have heard Shri Arvind Nayar, learned senior counsel with Shri J. Rajesh, learned counsel for the Appellant. Shri Harshit Khare, learned counsel has appeared for the State Bank of India and Shri Abhishek Anand, learned counsel has appeared for the Interim Resolution Professional.

4. Learned counsel for the Appellant challenging the impugned order submits that amendment vide IA(IBC)/3880(MB)2025 introduced time barred cause of action based on the loan recall notice dated 05.04.2016 which is not permissible. It is submitted that in the application filed under Section 95, the Bank has only relied on the notice under Section 13(2) dated 02.03.2015 and the application was heard on several occasions and despite of time granted by the Adjudicating Authority to file additional documents, no proof of service of notice could be filed by the Bank and thereafter as an afterthought amendment application has been filed when the matter was being heard. Time barred claim cannot be entertained and Appellant had available limitation defence. The State Bank of India filed Amendment Application on 05.08.2025 relying on loan recall noticed dated 05.04.2016. When the petition was pending for last more than three years and limitation has already expired, date of default which is an essential ingredient, by introducing an amendment on 05.08.2025, the State Bank of India could not file company petition afresh based on new cause of action, which has not been contemplated earlier. Had the State Bank of India filed Company

Petition on 05.08.2025 based on the loan recall notice dated 05.04.2016, it will be clearly time barred which amendment could not be allowed. No reasons have been provided by the State Bank of India for amending the petition after three years. Amendment of the Company Petition takes away the valid defence of non-invocation of personal guarantee by the Appellant. It is well settled principle of law that by amendment no time barred debt can be permitted to be introduced. The amendment which changes the earlier case of the Bank could not be allowed.

5. Learned counsel for the State Bank of India refuting the submission of learned counsel for the Appellant submits that by amendment application, the State Bank of India has not changed its case. The application for amendment of date of default has to be made by the State Bank of India since contention was raised by the Appellant of non-service of Section 13(2) notice under SARFAESI Act when the matter was heard on 29.04.2025. Impugned order itself amply safeguards the Appellant's rights and Appellant has been allowed to file reply to the amended petition. Issue of limitation is to be determined during adjudication of the amended petition. Amendment in no manner prejudice the rights of the Appellant and Appellant could raise all pleadings including plea of limitation. The correct invocation date of guarantee is necessary for deciding proceeding of personal insolvency.

6. Learned counsel for the parties have placed reliance on various judgment of this Tribunal and Hon'ble Supreme Court which shall be referred hereinafter.

7. In the amendment application which has been filed by the State Bank of India, in heading IV has given brief facts leading to filing of the application. As noted above, Bank has come up with the case in the application that 13(2) notice was issued which were duly received by the Corporate Debtor and Personal Guarantor and the Bank proceeded to take steps under the SARFAESI act for enforcement of the security interest. It was further pleaded that the Corporate Debtor and the Co-guarantors has acknowledged the debt from time to time. In Para 8 to 11 of the application following has been pleaded:

“8. Upon the default committed by the Corporate Debtor in repayment of its dues, the Applicant issued a Demand Notice dated 27.02.2015 to the Corporate Debtor as well as to all the Personal Guarantors, including the Respondent, under Section 13(2) of the SARFAEST Act, calling upon them to discharge the total liability due to the Applicant, amounting to Rs. 61,50,02,691/- (Rupees Sixty-One Crores Fifty Lakhs Two Thousand Six Hundred Ninety-One Only), within 60 days from the date of receipt of the said notice. However, as both the Corporate Debtor and the Respondent failed to repay the outstanding dues, the Applicant proceeded to initiate steps under the SARFAESI Act for enforcement of the security interest created in its favour, in respect of which various statutory notices were duly received by both the Corporate Debtor and the Respondent. The Applicant craves leave to refer to and rely upon the documents annexed to the Petition and the Additional Affidavits

filed by the Applicant in the captioned Company Petition, as and when required.

9. Since the Corporate Debtor and the Respondent failed to clear the debt of the Applicant and continued to remain in default, the Applicant, through its Advocate, issued a Recall Notice dated 05.04.2016, recalling the entire outstanding amount of Rs. 72,00,86,423.79 (Rupees Seventy- Two Crores Eighty Lakhs Eighty-Six Thousand Four Hundred Twenty-Three and Paise Seventy-Nine Only), along with interest at the rate of 15.25% per annum with monthly rests and penal interest at the rate of 1% per annum on a simple interest basis, with effect from 01.04.2016, till the date of payment. The notice called upon the Corporate Debtor and the Respondent to clear the said dues within seven (7) days from the date of receipt of the notice. However, despite due receipt of the Recall Notice, neither the Corporate Debtor nor the Respondent repaid the amounts due to the Applicant. The Applicant craves leave to refer to and rely upon the documents annexed to the Petition and the Additional Affidavits filed by the Applicant in the captioned Company Petition, as and when required.

10. The Applicant states that the Corporate Debtor and the co-guarantors of the Respondent, in their capacity as Directors, from time to time acknowledged their liability to repay the debt including during the period from 2021 onwards. Such acknowledgments are binding on the Respondent in terms of the Guarantee Agreement executed by her as a Personal

Guarantor. The Corporate Debtor acknowledged its liability in its audited Financial Statements for the Financial Year 2019-2020, which were signed on August 27, 2021. The Applicant craves leave to refer to and rely upon the documents annexed to the Petition and the Additional Affidavits filed by the Applicant in the captioned Company Petition, as and when required.

11. Further, the Applicant in continuation of the Demand Notice dated 02.03.2015 and the Recall Notice dated 05.04.2016, the statutory demand notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, in Form B, was issued by the Petitioner to the Respondent on 11.10.2021, prior to the filing of the captioned Petition.”

8. In the Schedule of Amendment annexed to the Amendment Application, date 02.03.2015 has been prayed to be substituted with 05.04.2016. Notice dated 05.04.2016 is the notice which has been filed along with the Amendment Application which was notice recalling entire outstanding amount of Rs.72,00,86,423/-. The submission which has been much pressed by the Appellant is that the amendment sought to be introduced is a time barred amendment and could not be allowed since in event fresh Company Petition is filed on the date when amendment application was filed, the same shall be clearly barred by time i.e. on 05.08.2025. Present is a case where the cause of action which is sought to

be introduced by amendment can be said to be barred by time if the same is barred by time when application was filed. It is well settled that in application under Section 7 and 95, amendment could be permitted to be made by the Applicant in the pleadings. The judgment of the Hon'ble Supreme Court in **“Dena Bank vs. C. Shivakumar Reddy & Ors.”** has been relied by the learned counsel for the Respondent, where the Hon'ble Supreme Court has held that at any stage of the proceeding amendments could be permitted. In Paras 91 and 137 following was laid down:

“91. On a careful reading of the provisions of the IBC and in particular the provisions of Section 7(2) to (5) of the IBC read with the 2016 Adjudicating Authority Rules there is no bar to the filing of documents at any time until a final order either admitting or dismissing the application has been passed.

137. Even assuming that documents were brought on record at a later stage, as argued by Mr. Shivshankar, the Adjudicating Authority was not precluded from considering the same. The documents were brought on record before any final decision was taken in the Petition Under Section 7 of IBC.”

9. The above observations were made by the Hon'ble Supreme Court with regard to filing of document at any stage. The said is also true for filing application for amendment in pleadings. The Adjudicating Authority in the impugned order has relied on the judgment of this Tribunal in **“Sanjeeb Ranjeet Das Vs. Punjab National Bank and Another, 2024 SCC Online**

NCLAT 887” which was also a case where amendment in the date of default was permitted in Section 95 application.

10. Learned counsel for the Appellant has relied on the judgment of Hon’ble Supreme Court in **“Life Insurance Corporation of India Limited vs. Sanjeev Builders Private Limited & Anr., (2022) 16 SCC 1”** wherein the Hon’ble Supreme Court laid down various principles with regard to Order 6 Rule 17 i.e. allowing amendment of the pleadings. In para 71 final conclusion have been given by the Hon’ble Supreme Court. Para 71.1 to 71.11 are detailed conclusion, which are as follows:

“71. *Our final conclusions may be summed up thus:*

71.1. *Order 2 Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order 2 Rule 2 CPC is, thus, misconceived and hence negatived.*

71.2. *All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order 6 Rule 17 CPC.*

71.3. *The prayer for amendment is to be allowed:*

71.3.1. *If the amendment is required for effective and proper adjudication of the controversy between the parties.*

71.3.2. *To avoid multiplicity of proceedings, provided*

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment do not seek to withdraw any clear admission made by the party which confers a right on the other side, and

(c) the amendment does not raise a time-barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

71.4. *A prayer for amendment is generally required to be allowed unless:*

71.4.1. *By the amendment, a time-barred claim is sought to be introduced, in which case the fact that the claim would be time-barred becomes a relevant factor for consideration.*

71.4.2. *The amendment changes the nature of the suit.*

71.4.3. *The prayer for amendment is mala fide, or*

71.4.4. *By the amendment, the other side loses a valid defence.*

71.5. *In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical*

approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

71.6. *Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.*

71.7. *Where the amendment merely sought to introduce an additional or a new approach without introducing a time-barred cause of action, the amendment is liable to be allowed even after expiry of limitation.*

71.8. *Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.*

71.9. *Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.*

71.10. *Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.*

71.11. *Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi, 2022 SCC OnLine Del 1897.)”*

11. The above judgment of Hon’ble Supreme Court contains several principles while allowing amendment or rejecting amendment. It is true that one of the principle is that by the amendment if a time barred claim is sought to be introduced, the fact that claim is time barred becomes relevant factor for consideration. Present is a case where Section 95 proceeding was filed by the Financial Creditor by filing an application on 20.01.2022. An amendment application has been filed as per the Appellant on 05.08.2025. the submission of the Appellant is that cause of action which is sought to be now introduced will be barred by time if a fresh application is filed under Section 95 on 05.08.2025.

12. The question to be considered is with regard to limitation. As to whether the date of default which is sought to be amended to 05.04.2016, if

the said date of default is taken into consideration and Court is satisfied that that is the date when guarantee was invoked, whether application is held to be barred by time or not. This is the question which can be open to be canvassed by the Appellant when the application under Section 95 is heard on merits. As noted above, the Adjudicating Authority has already granted liberty to the Appellant to file a reply to the amended petition within two weeks. The observation of the Adjudicating Authority and liberty to file reply is contained in Para 13 of the impugned order, which is as follows:

“13. We do not find merit in the contention of the Respondent as the Respondent’s case is that the Applicant has failed to prove service of Section 13(2) notice, which is claimed to have invoked the guarantee and the Applicant is placing on record a subsequent legal notice to prove the invocation of guarantee. Admittedly the cause of action in the present proceedings arises from invocation of guarantee, which if amendment is permitted shall further advance the default date. However, it is also relevant to note that if Section 13(2) notice service is not proved, the subsequent communication calling the guarantor shall constitute invocation of guarantee and the Respondent shall have opportunity to explain their case on that basis. Further, the amendment in date of default has been upheld by Hon’ble NCLAT in Sanjeeb Das (Supra) and there is no dispute that additional documents can be accepted before conclusion of proceedings. Accordingly, we consider it appropriate to allow the applicant to carry out the proposed amendments as such amendment shall be

necessary or effective and proper adjudication of the controversy between the parties in relation to occurrence of default. Needless to say, the applicant shall serve a copy of amended petition to the Respondent, who shall be at liberty to file their reply to the amended petition within two weeks after receipt of the amended petition.”

13. As noted above, learned counsel for the Appellant has contended that when the application was heard on several occasion and Bank failed to bring material to prove service of notice under section 13(2), the amendment application has been filed. A reply has been filed by the Personal Guarantor in Section 95 application objecting to the amendment, which reply has been referred by the Adjudicating Authority in the impugned order. In Para 23 (viii) of the reply, the submission of the Bank was noticed that that pursuant to Section 13(2) notice proceedings, steps in terms of Section 13(4) was taken against all three guarantors and the properties of those Guarantors mortgaged to the Bank were auctioned.

14. Present is a case where since the Bank could not bring on record any proof of service of notice under Section 13(2) on the Appellant, recall notice dated 05.04.2016 is sought to be added. Whether the notice by which entire loan is claimed to be recalled is the notice which is barred by time is the question which need to be considered while hearing the application by the Adjudicating Authority. The Appellant shall be free to file a reply to the amendments allowed and raise all contentions with respect to the amended pleadings. By allowing the amendment, the Adjudicating Authority could

not be said to be expressing any opinion on merits of the pleadings and those are issues which need to be gone into at the time of hearing of the application on merits.

15. Learned counsel for the Appellant in support of his submission that time barred claim could not be introduced for the first time has further relied on judgment of the Hon'ble Supreme Court in "**Shiv Gopal Sahu vs. Sita Ram Suraugi, (2007) 14 SCC 120**", where in Para 11 and 12 following has been laid down:

"11. We have gone through the amendment application carefully where we do not find any explanation whatsoever for this towering delay. We would expect some explanation, at least regarding the delay since the delay was e very substantial. The whole amendment application, when carefully scanned, does not show any explanation whatsoever. This negligent complacency on the part of the plaintiffs would not permit them to amend the plaint, more particularly when the claim has, apparently, become barred by time.

12. It is quite true that this Court in a number of decisions, has allowed by way of an amendment even the claims which were barred by time, f However, for that there had to be a valid basis made out in the application and first of all there had to be bona fides on the part of the plaintiffs and a reasonable explanation for the delay. It is also true that the amendments can be introduced at any stage

of the suit, however, when by that amendment an apparently time-barred claim is being introduced for the first time, there would have to be some explanation and secondly, the plaintiff would have to show his bona fides, particularly because such claims by way of an amendment would have the effect of defeating the rights created in the defendant by the lapse of time. When we see the present facts, it is clear that no such attempt is made by the plaintiffs anywhere more particularly in the amendment application.”

16. Judgment of Hon’ble Supreme Court in **“Patasibai vs. Ratanlal, (1990) 2 SCC 42”** and judgment of High Court of Madhya Pradesh, Division Bench in **“Kanhaiyalal Vishwamberdayal Agarwal vs. Muktilal Rameshwardas Naredi, AIR 2007 MP 1 (DB)”** are to the same effect.

17. It is further submitted that amendment could not be allowed where the amendment takes away a valid defence or has effect of withdrawing the admission. Present is a case where Appellant is not withdrawing its admission in respect of issuance of notice under section 13(2). Appellant’s case is that subsequent to the said notice another loan recall notice was issued on 05.04.2016, which date is sought to be changed as date of default. By introducing the date of default as 05.04.2016 no defence is being taken away nor any admission of the Bank is being withdrawn. It is open for the Appellant to raise all valid defences.

18. Learned counsel for the Appellant has also placed reliance on judgment of the Hon'ble Supreme Court and two cases of this Tribunal to support his submission that absence of written invocation of the deed of guarantee, the liability does not crystallise and further un-invoked guarantee cannot be considered a matured claim. Reliance has been placed on judgment of Hon'ble Supreme Court in **"Ghanshyam Mishra and Sons Private Limited vs. Edeliweiss Asset Reconstruction Company Limited, (2021) 9 SCC 657"**.

19. There can be no dispute to the proposition laid down by the Hon'ble Supreme Court in the above case. Learned counsel for the Appellant has also relied on the judgments of this Tribunal in **"IDBI Trusteeship Services Ltd. vs. Mr. Abhinav Mukherji and Ors., Company Appeal (AT) (Ins.) NO.356 of 2022"** and **"Pooja Ramesh Singh vs. State Bank of India, Company Appeal (AT) (Ins.) No.329 of 2023"**. This Tribunal in the judgment of **Pooja Ramesh Singh (supra)** has laid down following in Para 32:

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

- (i) The Corporate Guarantee Deed dated 17.05.2019 is on demand guarantee deed and the default shall arise on the part of the Guarantor only when demand notice is issued as contemplated in the Deed of Guarantee.*

When the State Bank of India invoked the guarantee vide notice dated 01.10.2020, demand on the part of the Corporate Guarantee shall arise only subsequent to the notice dated 01.10.2020 i.e. non-payment of the amount within seven days i.e. default arise on 08.10.2020.

(ii) Default on the part of the Guarantor having arisen on 08.10.2020 i.e. within the period which is covered as prohibited period under Section 10A, application under Section 7 was clearly barred by Section 10A. Issues No. II, III and IV are answered accordingly.

(iii) The Adjudicating Authority in the impugned order has not adverted to the relevant clauses of the Deed of Guarantee as noted above. The date of default on part of the Guarantor being subsequent to 01.10.2020 when guarantee was invoked, the application was barred by Section 10A and the Adjudicating Authority committed error in admitting the Section 7 application.”

20. Law is well settled that without invocation of deed of guarantee of the Personal Guarantor no proceeding under Section 95 can be initiated. It is also well settled that invocation of guarantee has to be precede service of notice by the Financial Creditor in Form B.

21. Coming back to the facts of the present case, we are of the view that by permitting amendment of date of default as 05.04.2016 the Adjudicating

Authority has not committed any error and we do not find any error in the order allowing the amendments. The Adjudicating Authority having granted time to the Appellant to file reply to the amended petition, it is open for the Appellant to raise all its objections including the question for invocation of guarantee as claimed by the State Bank of India on 05.04.2016 as barred by time. We do not find any ground to interfere with the impugned order. With observations made above, the appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

19th December, 2025

Archana