NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Ins) No. 2001 of 2024

[Arising out of the Order dated 10.09.2024, passed by the 'Adjudicating Authority' (National Company Law Tribunal, New Bench – III, in CP(IB) No.26/ND/2024 and I.A. No. 2253/2024]

IN THE MATTER OF:

1. **UJWAL GUPTA**
   S/o Radha Raman Gupta, R/o H.No. I-61, South City, Gurugram, Haryana – 122001
   Email: ujwal.rcbm@gmail.com **...Appellant**

Versus

1. **UNION BANK OF INDIA**
   (through its authorized signatory)
   Having its office at:
   Stressed Asset Management Branch,
   Delhi Unit No. 603 B, Konnectus Tower, Bhav Bhuti Marg, Opposite New Delhi Railway Station,
   Ajmeri Gate Side, New Delhi – 110001
   Email: hgupta466@gmail.com **...Respondent No.1**
2. **MR. VIMAL KUMAR**
   (Resolution Professional)
   Having its office at:
   V 1104, The Hyde Park, Sector 78, Noida, Uttar Pradesh – 201301
   Email: maidvimal@rediff.com **...Respondent No.2**

Present:

For Appellant : Mr. Palash S. Singhai, Ms. Sonam Sharma, Mr. Harshal Sareen, Advocates

For Respondent : Mr. Viren Sharma, Mr. Yash Srivastava, Ms. Naveli Garg, Advocates for R-1.
Mr. Shivam Gautam, Advocate for R-2.

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

[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]

Instant appeal has been preferred by the Appellant (Personal Guarantor) under Section 61 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') assailing the order dated 10.09.2024 (impugned order) passed by the NCLT, New Delhi, Bench –III (Adjudicating Authority) whereby I.A No. 2253 of 2024 filed by the RP/Respondent No. 2 was disposed of and CP (IB) No. 26 of 2024 filed by the Union Bank of India (Financial Creditor) under Section 95 of the Code was admitted and personal insolvency was initiated against the Appellant/Personal Guarantor.

2. It is to be recalled that the Financial Creditor, namely, Union Bank of India, during the pendency of this appeal, vide assignment agreement dated 07.10.2024 assigned its debt due from the Corporate Debtor along with the guarantors including the Appellant to the Respondent No. 1 i.e M/s CFM Asset Reconstruction Pvt. Ltd. and in this regard an application bearing I.A No. 259 of 2025 was filed by M/s CFM Asset Reconstruction Pvt. Ltd. seeking replacement of it with the financial creditor and vide order dated 15.01.2025 of this Appellate Tribunal the erstwhile financial creditor, namely, Union Bank of India was replaced with M/s CFM Asset Reconstruction Pvt. Ltd./R1.

3. The brief factual matrix giving rise to the instant appeal is in terms that the CD i.e M/s Green World International Pvt. Ltd. availed credit facilities from the erstwhile Financial Creditor - Union Bank of India vide

sanction letter dated 19.02.2013 and subsequently the loan facility was restructured as per the restructuring sanction letter dated 13.03.2015.

4. It is further reflected that on 01.03.2013 a deed of guarantee was executed by the Appellant, namely, Mr. Ujwal Gupta jointly and severally, in favour of the Union Bank of India for the aforesaid credit facilities availed by the CD. The CD failed to fulfil the terms and conditions of the loan restructuring sanction letter dated 13.03.2015 and consequently on 30.01.2016 the loan account of the CD was classified as Non-Performing Asset (NPA).

5. It is also reflected from the record that on 29.02.2016 the loan was recalled by the financial creditor by issuing notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) to the CD and all the guarantors to the CD and in addition to it a notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to the CD) Rules, 2019 (in short 'Insolvency Resolution Process of Personal Guarantors to the CD Rules, 2019') was given to the guarantor to the CD on 14.06.2021.

6. It is also reflected that the CD had also proposed onetime settlement offer (OTS) to the financial creditor many times for its approval. Ultimately, the financial creditor issued a demand notice in Form B dated 14.06.2021 to the Appellant – Personal Guarantor under the Insolvency Resolution Process of Personal Guarantors to the CD Rules, 2019 for discharge in full the outstanding liabilities towards the financial creditor.

7. On a petition moved by the financial creditor under Section 95 of the Code, the Adjudicating Authority appointed the RP/Respondent No. 2 under Section 97 of the Code to submit its report under Section 99 of the Code and in compliance of the same, the RP submitted its report with an application bearing I.A No. 2253 of 2024. The objection to this report was filed by the Appellant, however, by passing the impugned order dated 10.09.2024 the petition filed by the financial creditor was admitted and the insolvency process was initiated against the Appellant and being aggrieved by the same the instant appeal has been preferred by the Appellant/Personal Guarantor.

8. Ld. Counsel for the Appellant submits that the Adjudicating Authority without appreciating the fact that the Personal Guarantee issued by the Appellant was payable on demand and no demand has been made to the Appellant, as a guarantor, has passed the impugned order which could not be sustained.

9. It is further submitted that the issue of invocation of personal guarantee through notice under Section 13(2) of the SARFAESI Act though was not pleaded specifically before the Adjudicating Authority, however, the same being a legal issue is being raised before this Appellate Tribunal and perusal of the notice given under Section 13(2) of the SARFAESI Act to the Appellant would clearly reveal that the notice has been addressed to the CD and its directors and mortgagers whereby the CD has been called upon to make the payment and in the same notice the Appellant has been addressed as 'Director' of the CD and not as a 'personal guarantor', therefore, there is no invocation of guarantee and consequently the same could not be enforced.

10. It is also submitted that the said demand notice dated 29.02.2016 does not even mention about the personal guarantee of the Appellant and therefore, the same could not be treated to have invoked the personal guarantee and in this regard, the relevant clause of the guarantee deed executed by the Appellant may be looked into wherein a specific procedure has been provided for giving of such notice to the guarantor.

11. It is further submitted that the demand notice under Section 13(2) of the SARFAESI Act cannot be construed as invocation notice having regard to the law laid down by this Appellate Tribunal in ***Amanjyot Singh Vs. Navneet Kumar Jain & Ors. passed in CA (AT) (Ins) No. 961 of 2022***.

12. While referring to the law laid down by this Appellate Tribunal in ***Asha Basantilal Surana Vs. State Bank of India & Ors., CA (AT) (Ins) No. 84 of 2025,*** in paras no. 7 to 12, it is submitted that a notice issued under Section 13(2) SARFAESI Act can only be treated as notice invoking personal guarantee if it is specifically addressed to the guarantors in their capacity as such and a demand has been specifically made from the guarantors.

13. Ld. Counsel for the Appellant has also relied on ***Shantanu Jagdish Prakash Vs. State Bank of India & Anr., 2025 SCC OnLine NCLAT 117*** as well as on ***Mavjibhai Nagarbhai Patel Vs. State Bank of India & Anr. (2024) SCC OnLine NCLAT 2014*** in order to show that the contents of the notice under Section 13(2) of the SARFAESI Act should be explicitly addressed to the guarantor for the demand and in absence of the same the said cannot be termed as invocation.

14. It is also submitted that the notice given under Rule 7(1) of the Insolvency Resolution Process for Personal Guarantors to the CD Rules, 2019 could never be treated as a notice for invocation of guarantee. In this regard, reliance has been placed on ***State Bank of India Vs. Mr. Deepak Kumar Singhania, CA (AT) (Ins) No. 191 of 2025***.

15. Ld. Counsel for the Appellant further submits that the petition filed by the Appellant under Section 95 of the Code was itself defective as the same was suffering from incurable defects and procedural irregularities and the same was filed by the Union Bank of India without any valid authorisation and in absence of the same the petition could not be entertained and therefore the Tribunal has also committed a illegality in this regard and thus for the defects and illegality aforesaid the impugned order may not sustain and is liable to be set aside.

16. Ld. Counsel for the Respondent No. 1 i.e. financial creditor submits that there is no illegality or to say any irregularity in the impugned order passed by the Adjudicating Authority as the Appellant had executed a letter of guarantee in favour of the financial creditor on 01.03.2013 wherein the Appellant had specifically agreed to discharge jointly and severally any liability of the CD and it was specifically mentioned therein that any notice by way of request, demand or otherwise may be given by the Bank to the guarantor or any of them personally or may be left in the manner as shown in the guarantee deed, therefore, the notice given by the financial creditor on 29.02.2016 under Section 13(2) of the SARFAESI Act is perfectly in terms of the stipulations made in the guarantee deed dated 01.03.2013 and through the said demand notice the Appellant has been called upon to

pay the outstanding liability within 60 days from the receipt of the notice and therefore, the same is sufficient invocation of personal guarantee.

17. It is also submitted that the said demand notice was also served on the co-guarantors of the CD and Mr. Radha Raman Gupta, father of the Appellant/Co-guarantor, had also filed a petition under Section 94 of the Code seeking commencement of insolvency resolution process upon the personal guarantor on the basis of this demand notice dated 29.02.2016 claiming it to be an invocation of guarantee by the creditor and therefore the same admission is binding on other co-guarantors including appellant.

18. It is further highlighted that the Adjudicating Authority vide order dated 17.10.2025 passed in CP (IB) No. 631 of 2023 admitted the petition and initiated the insolvency resolution process against Mr. Radha Raman Gupta on the basis of demand notice dated 29.02.2016 as a valid invocation of guarantee.

19. Ld. Counsel for the Respondent No. 1 also highlighted the law laid down by this Appellate Tribunal in ***Asha Basantilal Surana (Supra) and Mavjibhai Nagarbhai Patel (Supra)*** in order to show that giving of a demand notice under Section 13(2) of the SARFAESI Act is a valid notice of demand/invocation of guarantee. Reference is also given of the law laid down by the Hon'ble Apex Court in ***Kotak Mahindra Bank Vs. A Balakrishnan & Anr. 2022 (9) SCC 186***.

20. It is further submitted that so far as the defect in giving authority to the petitioner in filing the petition before the Tribunal is concerned, a hyper technical objection was taken by the Appellant which has been rightly

negated by the Adjudicating Authority and it is a law settled that a litigant cannot be denied justice on the basis of hyper technical grounds which are easily rectifiable. In this regard, the law laid down by the Hon'ble Madras High Court in ***Spicejet Ltd. Vs. Credit Sussie AG, MANU/TN/0539/2022 and K. Santhanam Vs. S. Kavith, 2010 SCC Online Mad 6009*** and law laid down by the Hon'ble Kerela High Court in ***Deepu Vs. Abdul Rasheed, 2012 SCC OnLine Ker 6554 and Gopinath Vs. K.N. Ravichandran, 2011 SCC OnLine Ker 4129*** has been relied.

21. It is submitted that there is no error in invocation of the guarantee and since there is no dispute with respect to debt or default, no illegality has been committed by the Adjudicating Authority.

22. We have heard Ld. Counsel for the parties and perused the record. The question which has arisen for consideration in this Appeal is as to whether notice dated 29.02.2016 issued under Section 13(2) of the SARFAESI Act, 2002 which was addressed to the Appellant is sufficient to invoke guarantee and gives any cause of action to the financial creditor to file application under Section 95 of the Code.

23. At this juncture, it would be fruitful to have a glance on some of the cases relied on by Ld. Counsel for the appellant.

In ***CA (AT) (Ins) No. 961 of 2022, Amanjyot Singh vs. Navneet Kumar Jain, Resolution Professional & Ors.*** in paragraph no. 11 and 12 this appellate tribunal held as under:

> *"11. In its reply, the Bank has submitted that although after sale of the mortgaged asset, part of the facility was realized, but no steps have been taken by the Bank against the Appellant for recovery of any dues. The notice, which is the basis of the Application, was issued on 04.10.2013. Nine years have been passed from issuance*

of the notice and no steps have been taken by the Bank so far for recovery of any amount from the Appellant. Default, which is claimed by the Appellant, at best can be said to be a technical default and when substantially, no steps have been taken by the Bank and the Bank's categorical case is that guarantee of the Appellant has not been invoked, it is the Bank, who after invoking the guarantee shall proceed against the Appellant.

12. We, thus, are satisfied that foundation which was laid down by the Appellant for initiating the CIRP against the Appellant, was not sufficient to admit Section 94 Application and initiate the CIRP against the Appellant. We may further notice that Section 10 Application against the Corporate Debtor has already been admitted and CIRP against the Corporate Debtor had been initiated. The case taken up by the Bank being categorical and clear that no steps have been taken by the Bank against the Appellant, there is no cause for the Appellant to pray for initiation of CIRP against the Appellant – the Personal Guarantor. We, thus, do not find any good ground to interfere with the impugned order in this Appeal. The Appeal is accordingly dismissed. No costs".

In ***CA (AT) (Ins) Nos. 1702 of 2024, 1711 of 2024, 1712 of 2024, Mavjibhai Nagarbhai Patel vs. State Bank of India and Anr., Jayantibhai Nagarbhai Patel vs. State Bank of India and Anr., Narayanbhai N. Patel vs. State Bank of India and Anr.*** in paragraph nos. 16,17,18,20 this appellate tribunal opined are as under:

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

was to be paid by the guarantor once the guarantee was invoked.

17. When we look at the specific Clauses of the Deed of Guarantee, it clearly states that the guarantee was in the nature of a continuing guarantee. The Guarantor had agreed that any admission on acknowledgement in writing signed by the Borrower shall also be binding on the Guarantor. Further, the Guarantor had agreed that the amount due under or in respect of the credit facilities to be payable to the creditor bank will be payable by the guarantor on a notice requiring payment of the amount.

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

> *"11. Further we are also forwarding the copy of this notice to personal guarantor who are liable to pay the aforesaid outstanding amount. This notice is without prejudice to the Bank's right to initiate such other actions or legal proceedings as it deems necessary under any other applicable provisions of Law. This notice is in supersession of our earlier notices sent to you vide our letter no. SAMB/GRJ/2018-19/2002 dated 16.02.2019 which stands withdrawn.*
>
> *Copy forwarded to:*
> *You are requested to make the payment of the amount mentioned in the notice in terms of the guarantees executed by you."*

(emphasis supplied)

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

In ***CA (AT) (Ins) No. 1609 of 2024, Shantanu Prakash vs. State Bank of India and Anr.*** this appellate tribunal in paragraph nos. 31 and 46 are as under:

> *"31. The Respondent No.1 submitted that on 22.06.2018, Respondent No. 1 issued a demand notice under Section 13(2) of the SARFAESI Act to the Appellant, invoking the Personal Guarantee and requesting repayment of the outstanding amount. The Appellant failed to discharge the outstanding dues within the stipulated 60 days, constituting a default. Subsequently, on 05.11.2020, Respondent No. 1 issued another demand notice under Rule 7(1) of the Insolvency and Bankruptcy Rules, 2019, demanding payment of Rs. 532,99,88,089.76 as of 28.02.2021. In response, the Appellant admitted the execution of the Personal Guarantee and its failure to pay the debt due in its reply to Respondent No. 1's demand notice dated 18.11.2020. Despite this admission, neither the Corporate Debtor nor the Appellant has cleared the outstanding dues or accrued interest. As a result, Respondent No. 1 filed the Company Petition on 01.04.2021.*
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> *46. We shall also deal some other points which have been raised by the Appellant. The Appellant contended that the notice of demand dated 22.06.2018 under Section 13(2) of*

the SARFAESI Act is not an invocation of personal guarantee and therefore present petition cannot be invoked in absence of proper invocation of property. On this point we note that the Respondent No. 1 has issued notice to the Appellant specifically mentioning the personal guarantee dated 03.06.2018 which clearly stipulated that "The said financial assistance is also secured by the personal guarantee of Sh. Shantanu Prakash & Sh.Jagdish Prakash & corporate guarantee of Edu Smart Services Pvt limited for consortium advance." It has further brought to our notice that while notice was issued under Section 13(2) of the SARFAESI Act, which has also specifically called upon the Appellant to discharge in full the borrower liability stated therein within 60 days of the notice. Thus, the notice fulfils all the condition stipulated under personal guarantee and can be treated as valid invocation. On this issue, the Adjudicating Authority has also held that the demand notice issued by the Respondent No. 1 under Rule 7(1) of the I&B (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 as valid. Thus, we do not find any error in the Impugned Order on this account".

In ***CA (AT) (Ins) No. 191 of 2025, State Bank of India vs. Mr. Deepak Kumar Singhania,*** in paragraph nos. 23, 24, 27 this tribunal held as under:

"23. Learned Counsel for the Respondent has relied on the judgment of the Hon'ble Supreme Court in ***Syndicate Bank vs. Channaveerappa Beleri and Ors. – (2006) 11 SCC 506,*** *where Hon'ble Supreme Court in paragraph 9 had held that Guarantor's liability depends upon the terms of his contract. In paragraph 9, following has been held:*

> ***"9.*** *A guarantor's liability depends upon the terms of his contract. A "continuing guarantee" is different from an ordinary guarantee. There is also a difference between a guarantee which stipulates that the guarantor is liable to pay only on a demand by the creditor, and a guarantee which does not contain such a condition. Further, depending on the terms of guarantee, the liability of a guarantor may be limited to a particular sum, instead of the liability being to the same extent as that of the principal debtor. The liability to pay may arise, on the principal debtor and guarantor, at the same time or at different points of*

time. A claim may even be time-barred against the principal debtor, but still enforceable against the guarantor. The parties may agree that the liability of a guarantor shall arise at a later point of time than that of the principal debtor. We have referred to these aspects only to underline the fact that the extent of liability under a guarantee as also the question as to when the liability of a guarantor will arise, would depend purely on the terms of the contract."

24. This Tribunal in Archana Deepak Wani vs. Indian Bank – Company Appeal (AT) (Ins.) No.301 of 2023 has also held that liability of the Guarantor must be determined strictly in terms of the Deed of Guarantee. In paragraph 26, following has been laid down:

"26. The scheme of I&B Code clearly indicate that both the Principal Borrower and the Guarantor become liable to pay the amount when the default is committed. When default is committed by the Principal Borrower the amount becomes due not only against the Principal Borrower but also against the Corporate Guarantor, which is the scheme of the I&B Code. When we read with as is delineated by Section 3(11) of the Code, debt becomes due both on Principal Borrower and the Guarantor, as noted above. The definition of default under Section 3(12) in addition to expression 'due' occurring in Section 3(11) uses two additional expressions i.e "payable" and "is not paid by the debtor or corporate debtor". The expression 'is not paid by the debtor' has to be given some meaning. As laid down by the Hon'ble Supreme Court in ***"Syndicate Bank vs. Channaveerappa Beleri & Ors." (supra)****, a guarantor's liability depends on terms of his contract. There can be default by the Principal Borrower and the Guarantor on the same date or date of default for both may be different depending on the terms of contract of guarantee. It is well settled that the loan agreement with the Principal Borrower and the Bank as well as Deed of Guarantee between the Bank and the Guarantor are two different transactions and the Guarantor's liability has to be read from the Deed of Guarantee."*

27. In view of the foregoing discussion, we are not persuaded to accept the submission of the Appellant that Notice under Rule 7 (1) issued in Form-B to the

> *Guarantor, demanding repayment of the default amount, has to be treated as Notice for invoking guarantee. Default before issuance of Notice under Rule 7(1), must exist on the part of the Guarantor. Hence, we reject the submission of the Appellant that Notice under Rule 7, sub-rule (1) is a Notice, invoking the guarantee.*

The factual matrix of this case however is different than the facts of the instant case as in this case notice was issued under Rule 7(1) in Form-B and it was being impressed to be taken as the notice of invocation of guarantee, which is not a case in the case at hand.

24. We find that the financial creditor is claiming to have invoked the personal guarantee given by the Appellant on the basis of a notice given under Section 13(2) of the SARFAESI Act on 29.02.2016. A copy of the said notice has been made available at Pg. No. 144 of the appeal paper book and perusal of the same would reveal that name of the Appellant is emerging therein at serial no. 2 as Mr. Ujwal Gupta (Director) Property, South City, Phase – I, Gurgaon along with other director and mortgagors /directors.

25. Perusal of this notice would further reveal that in this notice clear averments have been made with regard to the credit facilities given by the financial creditor to CD and also statement that despite several demands the outstanding amount has not been paid and liability has not been discharged. It is also stated therein that by giving this notice the addressees have been called upon to pay sum of Rs. 9,85,41,628.10 together with interest @ BR+5.50% p.a. in case of cash credit account and BR+ 6% in case of Term loan account with monthly rest / as per the terms and conditions of loan documents and further to discharge the liabilities in full within 60 days from the date of receipt of this notice, failing which the sender would be

constrained to enforce the securities created by addressees in favour of the Bank by exercising any or all of the rights given under this act.

26. The language and phraseology used in this notice would clearly demonstrate that it has been clearly communicated by the financial creditor, by this notice, that the addressees will have to discharge their liability in connection with CD within 60 days of receipt of this notice, pertaining to the credit facilities extended to the CD for the amount which has been mentioned in the notice.

27. Thus, in our considered opinion, it was a crystal clear communication not only to the Appellant but to all the addressees to discharge their liability with regard to the credit facilities extended to CD by the financial creditor and there appears no ambiguity in this. Since the appellant has extended guarantee by executing a deed and the principal borrower/ CD failed to pay the amount of credit facilities extended by the Financial Creditor and the liability of the principal borrower and guarantor is coextensive, this demand notice was sufficient communication to the appellant to discharge his liability under the guarantee deed towards the credit facility extended by the creditor to the CD and is sufficient invocation of guarantee.

28. Keeping in view the submissions made by Ld. Counsel for the Appellant that notice has not been served as per the terms and conditions of the guarantee, we perused the guarantee given by the Appellant, a copy of which has been placed at pg. 135 of the appeal paper book and the relevant extract of the same is reproduced as under: -

> *"IN CONSIDERATION OF Union Bank of India (hereafter the bank which expression shall include its successors and assigns) giving credit or accommodation of granting facilities by making or continuing advances or otherwise at*

my/our request to M/s Green World International Pvt. Ltd. (hereinafter called the Principal)? We jointly and guarantee to the Bank due payment and discharge two days after demand of all present and future advances, liabilities, bills and promissory notes whether made, incurred or before or after the date for the principal either alone or jointly with any other person or persons and also of bills, promissory notes of guarantees held by the Bank from time to time in any manner together with all relative interest commission and other banking charges including legal charges and expenses.

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It is also agreed that any admission or acknowledgement in writing by the principal debtor of the amount of indebtedness of the principal debtor or otherwise as in relation of the subject matter of this guarantee, shall be binding on me/us and I/We accept the correctness of any statement of account served on the principal debtor which is duty certified by any manager or officer of the bank and the same shall be binding and conclusive as against me / us also, and I /We further agree that in making an acknowledgement or

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Any notice by way of request, demand or otherwise hereunder may be given by the Bank to me/us or any of us personally or may be left at then or last known place of business or residence in India of me / us or any of us addressed as aforesaid to me/us or may be sent by post to me/us any of us addressed as aforesaid and if sent by post it shall be deemed to have been given at the time when it would be delivered in due course of post and shall be sufficient to prove that the envelope containing the notice was posted if by reason of absence from India or otherwise, I/ We or any of us cannot be given any such notice the same if Inserted once as an advertisement in a newspaper circulating in the town mentioned at the commencement of this Guarantee, shall be deemed to have been effectively given and received on the day which such advertisement appears"

29. A careful reading of above clauses would demonstrate that it was agreed by the Appellant that any notice by way of request, demand or

otherwise hereunder may be given by the Bank to him/us or any of us personally or may be left at the last known place of business or residence in India of guarantor or may also be sent by post.

30. Thus, the requirement of only sending a notice was contemplated in the guarantee deed and no specific or particular process or the format of notice or formality was stipulated therein. To our understanding if nothing special or specific has been given under the terms of the guarantee, the sending of notice to the guarantor specifically demanding outstanding payment within specific time frame, would be sufficient, in so far as invocation of guarantee is concerned, if it sufficiently demonstrate the liability of the guarantor and also having a clause for discharge of its liability for the credit facilities extended to the CD.

31. This Appellate Tribunal in ***Asha Basantilal Surana (Supra)***, which is a three member's decision, after considering ***Amanjyot Singh (Supra)*** and Mavjibhai Nagarbhai Patel (Supra) clearly holds that in a case where notice under Section 13(2) makes a demand as per the guarantee agreement between the parties, the notice has to be treated as a notice for invocation of bank guarantee. This appellate Tribunal in the above case has also distinguished the law laid down by this Appellate Tribunal earlier in ***Amanjyot Singh (Supra)***, to be a case confined to its own facts, by observing in para 12 of the judgment, that the dismissal of the appeal in ***Amanjyot Singh*** case was on the facts of the said case and has no application in the facts of the case under scrutiny and also that the invocation of personal guarantee has to be in accordance with the terms of

the guarantee agreement. We reproduce the para no. 12 of the aforesaid judgment **(*Asha Basantilal Surana) (Supra)*** for convenience herein below:-

> *"**12.** Thus, the dismissal of the Appeal in the **Amanjyot Singh's** case was on the facts of the said case and has no application in the facts of the present case. The invocation of personal guarantee has to be in accordance with the terms of the Guarantee Agreement which is a settled law. Clause 7 of the Guarantee Agreement does not require any particular mode and manner of the demand notice. When demand notice is issued against the personal guarantor asking the personal guarantor to discharge its liabilities, the guarantee stands invoked. Whether notice under Section 13(2) in a particular case invoked the guarantee or not depends on the words and intent of the notice. For finding out as to whether Notice under Section 13(2) invoked the personal guarantee, the letters and words of the Notice has to be looked into to come to any conclusion that whether personal guarantor has been asked to discharge its liabilities or not. In the facts of the present case, we are of the considered opinion that the Notice under Section 13(2) issued by the State Bank of India is a clear demand notice from the Appellant to pay the amount of Rs.28,56,64,336.06/-."*
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> *(Emphasis Supplied)*

32. Thus, what has been highlighted by the aforesaid judgment is that it would be the terms and conditions of the agreement executed between the parties with regard to the guarantee which would be relevant to assess as to whether the guarantee has been sufficiently invoked or not. Therefore, whether a guarantee may be invoked by giving notice under Section 13(2) of the SARFAESI Act depends on the terms of the guarantee and the content of the notice. If the notice clearly demands payment from the personal guarantor in terms of the guarantee, it can be treated as an invocation of the guarantee. The facts and the wording of the notice are crucial in this determination.

33. We have already observed herein before that notice dated 29.02.2016, given by the financial creditor under Section 13(2) of the SARFAESI Act has

sufficiently indicated the Appellant to discharge his liability for the amount mentioned in the notice of which the credit facilities were extended to the CD and simply by the fact that word 'director' has been suffixed after the name of the Appellant/Personal Guarantor, the same will not be sufficient to change the character of the Appellant from the guarantor of the CD and therefore, in our considered opinion, the personal guarantee has been rightly considered by the Tribunal to have been invoked by issuance of this notice given under Section 13(2) of the SARFAESI Act and we do not find any illegality therein.

34. So far as the submissions of the Ld. Counsel for the Appellant, with regard to some defects arisen in not filing any authorisation letter or the affidavit before the Tribunal, is concerned, we are of the firm view that hyper technicalities so far as the procedure is concerned, should not come in the way of imparting substantial justice between the parties, more so when there is no conflict between the financial creditor and his agent, who has filed the petition before the Tribunal, the petition could not be rejected/ dismissed only on this hyper technical ground. Therefore, we also do not find any illegality in the approach of the Tribunal in dealing with this objection of the Appellant.

35. Keeping in view all the facts and circumstances of the case and for the reasons given above, we are of the considered opinion that there is no good ground exists on the basis of which any interference may be made in the impugned judgment and resultantly, the appeal lacks merit and is **dismissed** as such. No order as to costs.

36. Pending I.A.s, if any are also closed.

[Justice Mohd. Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

New Delhi.
07.01.2026

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