

NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.203
C.P.(IB)/10(MP)2022

Order under Section 95 IBC

IN THE MATTER OF:

The Cosmos Co-op Bank Ltd
V/s
Subhash Chandra Gupta

.....Applicant

.....Respondent

Coram:

Hon'ble Shri Brajendra Mani Tripathi, Member (J)
Hon'ble Shri Man Mohan Gupta Member (T)

PRONOUNCEMENT OF ORDER
Delivered on 22/06/2026

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

MAN MOHAN GUPTA
MEMBER (TECHNICAL)

Tomar

Sd/

BRAJENDRA MANI TRIPATHI
MEMBER (JUDICIAL)

**THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH**

CP(IB)/10 (MP)/2022

[Under Section 95 read with Rule 7(2) of the Insolvency and Bankruptcy
(Application to Adjudicating Authority for Insolvency Resolution Process
for Personal Guarantors to Corporate Debtors) Rules, 2019]

In the matter of:

The Cosmos Co-Op Bank Ltd.

Cosmos Tower, Plot No. 6, ICS Colony, University Road,
Ganeshkind, Pune – 411007

Email: sanjay.sawant@cosmosbank.in

.....Applicant

VERSUS

Mr. Subhash Chandra Gupta

(Personal Guarantor)

21, Pragati Vihar Colony, Bicholi Mardana,
Indore – 452016

.....Respondent

CORAM:

Hon'ble Shri Brajendra Mani Tripathi, Member (J)

Hon'ble Shri Man Mohan Gupta Member (T)

Order Pronounced on: 22.06.2026

APPEARANCE:

For the Applicant: Mr. Rishabh S. Khemuka, Adv.

For the Respondent: Mr. B.M. Maheshwari, Adv.

J U D G M E N T

1. The present application has been filed on **20.10.2021** under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 by **The Cosmos Co-Op Bank Ltd.** (hereinafter referred to as "Financial Creditor"/"Applicant") for the purpose of initiating insolvency resolution process against **Mr. Subhash Chandra Gupta** (hereinafter referred to as "Respondent"/"Personal Guarantor"), Personal Guarantor of M/s STL Exports Ltd. (hereinafter referred to as "Corporate Debtor"), for default of an amount of Rs. **12,06,01,780.45/-** as on 31.07.2021.

Submissions by the Applicant/Financial Creditor:

2. The averments made by the Financial Creditor in its Application and argued by the learned counsel for the Applicant are summarized hereunder:

i. The Applicant submitted that M/s STL Exports Ltd. (Corporate Debtor) availed credit facilities from the Applicant Bank pursuant to a Loan Agreement dated 15.04.2009, along with a Promissory Note, Letter of Continuing Security, and Letter of Lien and Set-Off, all dated 15.04.2009. A

Deed of Hypothecation and Memorandum of Equitable Mortgage were also executed. The credit facilities were thereafter reviewed and extended from time to time.

ii. The Respondent, Mr. Subhash Chandra Gupta, executed a Deed of Guarantee dated 15.04.2009 [Annexure XII to the petition, in favour of the Applicant Bank, jointly and severally with three other co-guarantors, thereby personally guaranteeing repayment of all amounts due and payable by the Corporate Debtor. The said Deed of Guarantee is a continuing, unconditional, absolutely and irrevocable guarantee for the due payment and discharge on demand of all amounts due and payable to the Bank by the Corporate Debtor.

iii. The Applicant issued a Demand Notice in Form B dated **10.09.2021** [Annexure X] to the Respondent/Personal Guarantor calling upon the Respondent to pay the outstanding dues. The said notice was received by the Respondent on 24.09.2021, as acknowledged in the reply dated 08.10.2021 [Annexure XIII].

iv. It is stated that Liquidation Proceedings in respect of the Corporate Debtor M/s STL Exports Ltd. was passed vide order dated 11.08.2023. The Applicant accordingly pressed the guarantee and preferred the present application. The total outstanding dues of the Respondent as Personal Guarantor, as on 31.07.2021, aggregate to Rs. **12,06,01,780.45/-**.

3. The Respondent, Mr. Subhash Chandra Gupta, filed his reply/objections to the present petition on 07.04.2022, disputing the petition on various grounds. The grounds urged by the Respondent and the Petitioner's response, with relevant case laws, are tabulated below:

Sr.	Respondent's Objection	Petitioner's Rejoinder
1.	<p>Limitation — The present application is barred by limitation under Section 238A of the Code read with the Limitation Act, 1963. According to the Applicant's own averments, the debt became due on 31.05.2015, whereas the application was filed before this Adjudicating Authority on 20.10.2021, i.e., after more than six years from the date of default. Reliance was placed on <i>Babulal Vardharji Gurjar v. Veer Gurjar Aluminum Industries Pvt. Ltd. & Anr.</i> and <i>Ravi Iron Ltd. v. Jia Lal Kishori Lal & Ors. [Comp. App. (AT) (Ins.) No. 122 of 2022]</i>, wherein it was held that where the application itself specifies the date of default and no grounds for extension of limitation are pleaded, limitation commences from the date of default mentioned therein..</p>	<p>The Petitioner submitted that notwithstanding the debt becoming due on 31.05.2015, the petition remains within limitation. It was contended that Arbitration Reference No. 78 of 2016 initiated under the Multi-State Co-operative Societies Act continued from 28.12.2016 till 07.03.2019. During the pendency of the said proceedings, the Respondent filed an application under Section 29A of the Arbitration and Conciliation Act, 1996 on 02.05.2018, which came to be rejected on 05.06.2018, followed by W.P. No. 14668 of 2018 before the Hon'ble High Court of Madhya Pradesh, culminating in the Arbitrator's recusal order dated 07.03.2019. The Petitioner accordingly invoked Section 14 of the Limitation Act and sought exclusion of the period from 28.12.2016 to 07.03.2019. It was further submitted that before appointment of a fresh Arbitrator, CIRP proceedings against STL Exports Ltd. were admitted</p>

		<p>on 07.07.2020, thereby bringing moratorium into operation. The Petitioner also relied upon the orders of the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No. 3 of 2020 excluding the period from 15.03.2020 to 28.02.2022. Additionally, it was submitted that STL Exports Ltd., in its audited financial statements for FY 2017–18, acknowledged its liability towards the Petitioner, thereby attracting Section 18 of the Limitation Act, as recognized in Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal and Another, (2021) 6 SCC 366. It was further contended that the Petitioner's claim had already been admitted in the CIRP of STL Exports Ltd. Consequently, the judgments in Babulal Vardharji Gurjar and Ravi Iron Ltd. were stated to be distinguishable and inapplicable to the facts of the present case.</p>
2.	Alternative Remedy / Multiplicity of Proceedings — Without prejudice, the Respondent submitted that the	The Petitioner submitted that no simultaneous proceedings are pending before any Tribunal except the present

	<p>Applicant could have availed the alternate remedies available to it and ought to have elected one forum so as to avoid ambiguity and multiplicity of civil proceedings in the interest of justice.</p>	<p>company petition and, therefore, the Respondent's objection regarding multiplicity of proceedings is wholly misconceived, frivolous and liable to be rejected</p>
3.	<p>Section 146 of the Indian Contract Act, 1872 — The Respondent contended that claiming one amount from more than one source is in gross contravention of Section 146 of the Indian Contract Act, 1872.</p>	<p>The Petitioner submitted that the Deed of Guarantee clearly provides that the Respondent along with two other persons is liable for the amount due. The question relating to sharing or contribution of liability would be addressed by the Resolution Professional after admission of the petition. Merely because the entire amount has been claimed from the Respondent, it cannot be said that the Petitioner has suppressed any material fact or acted contrary to law. It was further contended that the objection is false, exaggerated and intended only to delay the proceedings.</p>
4.	<p>The Respondent submitted that the present application filed by a Multi-State Co-operative Society is not maintainable, since such society does</p>	<p>The Petitioner submitted that Cosmos Co-operative Bank Ltd. is a registered legal entity established under statute and its Certificate of Registration had been</p>

	<p>not fall within the definition of "person" under Section 3(23) of the Code and, therefore, cannot qualify as a Financial Creditor under Section 5(7) of the Code.</p>	<p>placed on record. Reliance was placed on Section 3(23) of the Code, particularly clause (g) thereof, which includes within the definition of "person" any other entity established under a statute. Accordingly, the Petitioner qualifies as a "person" under the Code and consequently as a Financial Creditor under Section 5(7). The Respondent's objection on maintainability was therefore stated to be baseless and untenable.</p>
5.		<p>Additional submissions of the Petitioner: The Petitioner further submitted that the Respondent, despite being aware of the order dated 07.03.2019 passed by the Sole Arbitrator in Arbitration Reference No. 78 of 2016, suppressed the same and informed this Adjudicating Authority only about the proceedings till the year 2017. Reliance was also placed upon the judgment dated 21.05.2021 in Lalit Kumar Jain v. Union of India & Ors. [Transfer Case (Civil) No. 245 of 2020] to contend that the contract of guarantee is a separate contract and, therefore, the</p>

		Respondent has no right to resist the present proceedings on such grounds.
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Submissions in the Resolution Professional's Report:

4. This Tribunal, vide order dated **07.06.2024** passed under Section 97 of the Code, appointed Ms. Neeraja Kartik Peri, Insolvency Professional, having IBBI Registration No. **IBBI/IPA-001/IP-P01445/2018-2019/12137**, as Resolution Professional in CP(IB)/10 (MP)/2022 for the purposes of examining the application filed under Section 95 of the Code and submitting a report in terms of Section 99. The said order was communicated to the Resolution Professional on 12.06.2024 by email from counsel for the Financial Creditor.

5. The Resolution Professional examined the application under Section 99 of the Code and submitted her Report dated 03.07.2024 to this Tribunal. The Resolution Professional communicated the appointment order to the Personal Guarantor on 20.06.2024 and called upon him to submit necessary documents and clarifications. The Personal Guarantor sent his objections and submissions on 22.06.2024. The Resolution Professional also sought and obtained from the Financial Creditor relevant documents pertaining to the SARFAESI Act proceedings and the arbitration proceedings initiated by the Financial Creditor.

I. **On the question of jurisdiction**, the Resolution Professional found that the present proceedings fall within the appropriate jurisdiction of this Tribunal in view of the Corporate Debtor STL Exports Ltd. having its registered address at Taraganj Industrial Area, A.B. Road, Sarangpur, Rajgarh, Madhya Pradesh and having been admitted into Corporate Insolvency Resolution Process vide order dated 07.07.2020 in T.P. No. 174 of 2019 [CP(IB) No. 426 of 2018, NCLT Indore Bench at

Ahmedabad]. The Resolution Professional found this Tribunal to be the competent forum under Section 60(3) of the Code.

II. **On the question of limitation**, the Resolution Professional, placing reliance on Mr. C.L. Sharma v. Bank of Maharashtra and Anr. [Company Appeal (AT)(Insolvency) No. 316 of 2024 with No. 317 of 2024, NCLAT New Delhi], held that a Resolution Professional is not precluded from commenting on limitation or any other jurisdictional fact. The Resolution Professional found and recorded that the Deed of Guarantee dated 15.04.2009 executed by the Respondent is a continuing, unconditional, absolutely and irrevocable guarantee. Clauses 2, 4 and 7 of the Deed specifically provide that the guarantee is not conditional on any prior notice, is not exhausted by any payment made from time to time, and shall continue in force notwithstanding the discharge of the Borrower by operation of law. Relying on the judgment of the Hon'ble National Company Law Appellate Tribunal in Company Appeal (AT)(Ins) No. 301 of 2023 — **Archana Deepak Wani v. Indian Bank (erstwhile Allahabad Bank) and Others** — which in turn relied upon the Hon'ble Supreme Court in Margaret Lalita Samuel v. Indo Commercial Bank Ltd. (1979) 2 SCC 396 and Syndicate Bank v. Channaveerappa Beleri & Ors. (2006) 11 SCC 506, the Resolution Professional noted that without there being any demand to the Guarantor, the period of limitation against the Guarantor cannot be said to have commenced. The Resolution Professional further relied upon the order of the NCLT, Cuttack Bench in C.P. No. 9 of 2022 — **State Bank of India v. Shri Prahalad Kumar Agarwal** — *to the same effect, noting that the period of limitation against the guarantor starts only when the guarantor refuses or is deemed to have refused to carry out the obligations of the guarantee.*

III. The Resolution Professional further found that the Corporate Debtor STL Exports Ltd. in its audited balance sheet for the financial year 2017–2018,

specifically under Note 3, acknowledged its liability towards the Financial Creditor. The Resolution Professional accordingly invoked Section 18 of the Limitation Act, 1963, relying on the judgment of the Hon'ble Supreme Court in **Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal and Another (2021) 6 SCC 366**, *holding that admission of debt in balance sheets would amount to acknowledgment under Section 18 of the Limitation Act and that this principle is applicable to proceedings under the Code*. Since the liability of the personal guarantor is coterminous and coextensive with that of the principal borrower, the acknowledgment by the Corporate Debtor in its audited balance sheet signed on 31.03.2018 gave a fresh period of limitation from that date. The Resolution Professional found that this fresh period of three years would have expired on 31.03.2021, which falls squarely within the period of exclusion directed by the Hon'ble Supreme Court — 15.03.2020 to 28.02.2022 — vide order dated 10.01.2022 in Miscellaneous Application No. 21 of 2022 in *Suo Motu Writ Petition (C) No. 3 of 2020*. Accordingly, the petition is within limitation.

IV. On examining the compliance with Section 95 of the Code, the Resolution Professional found the following: the application was accompanied by relevant loan documents, Deed of Guarantee, and other requisite documents evidencing the debt and default; the Form B Demand Notice dated 10.09.2021 was served on the Respondent on 24.09.2021; the prescribed fee of Rs. 2,000/- was duly paid;

The application was submitted in the prescribed Form C; and the Respondent failed to repay the outstanding dues within the period of fourteen days of service of the demand notice, instead raising what the Resolution Professional characterized as vexatious contentions going to jurisdiction. The Resolution Professional noted that the Personal Guarantor had not filed any reply in the arbitration proceedings nor denied his obligation as guarantor of the Corporate Debtor STL Exports Ltd. at any

stage. Further, the Financial Creditor had filed its claim before the Liquidator in the liquidation proceedings of STL Exports Ltd. (liquidation order dated 11.08.2023) and had relinquished its rights to enforce the security interest hypothecated to it. The total outstanding dues as verified by the Resolution Professional, as on 31.07.2021, are Rs. 12,06,01,780.45/- (Rupees Twelve Crores Six Lakhs One Thousand Seven Hundred Eighty and Forty-Five Paise Only), comprising principal of Rs. 5,18,50,739.74/-, interest of Rs. 6,87,51,040.71/-, and legal expenses of Rs. 3,190/-

V. On the basis of the aforesaid examination and findings, the Resolution Professional, vide her Report dated 03.07.2024 submitted under Section 99(7) of the Code, recommended that the application bearing CP(IB)/10(MP)/2022 filed by The Cosmos Co-operative Bank Ltd. under Section 95 of the Code deserves to be admitted under Section 100 of the Code, and prayed that this Tribunal may pass appropriate orders initiating the Personal Insolvency Resolution Process against Mr. Subhash Chandra Gupta, Personal Guarantor of STL Exports Ltd.

Submissions by the Respondent's Reply/Objections to the Resolution Professional's Report:

6. The Respondent had filed Reply/Objections to the Report of the Resolution Professional on 06.01.2025 (The grounds urged by the Respondent in the said Reply/Objections are summarized hereunder.

I. On limitation, the Respondent submitted that at Point No. 3 of Part III of the Petition, the date when the debt fell due is recorded as **31.05.2015**, and at Point No. 4, the date of default is likewise recorded as 31.05.2015. The Petition was filed before this Adjudicating Authority on 20.10.2021, that is after a lapse of more than six years from the date of default. The Respondent placed on record, copies of a Demand Notice dated **05.05.2015** and a Final Notice dated 15.05.2015 both issued by the Petitioner Bank from its Indore Branch, addressed inter alia to Mr. Subhash

Chandra Gupta as guarantor of the Corporate Debtor, demanding repayment of the overdue amounts in the Cash Credit Account No. 03660010602, Working Capital Term Loan Account No. 03680180107, and Commercial Machinery Term Loan Account No. 0368018091. The Respondent further placed on record a Call Back Notice dated **16.07.2015** [Annexure R-3] issued by the Petitioner Bank to the Corporate Debtor and all four guarantors including the Respondent, explicitly invoking the guarantee and stating that recovery action including invocation of guarantee under Section 84 of the Multi-State Co-operative Societies Act, 2002 would be initiated. The Respondent submitted that on the strength of the Petitioner's own documents, the guarantee stood invoked as early as 16.07.2015, and the present Petition filed on 20.10.2021 is barred by limitation under Section 238A of the Code read with Article 137 of the Limitation Act, 1963, the prescribed period being three years.

II. The Respondent further submitted that the **Form B Demand Notice** dated **10.09.2021** issued by the Petitioner under Section 95(4)(b) of the Code is, in effect, a second invocation of the personal guarantee, the first invocation having already taken place through the Call Back Notice dated 16.07.2015 and the reference to the Sole Arbitrator on 28.12.2016 under Arbitration Reference No. 78/2016. It was contended that a guarantee can be invoked only once; a second purported invocation notice cannot restart the period of limitation that had already commenced running. Reliance was placed on the order dated 04.04.2024 of the Hon'ble National Company Law Tribunal, Ahmedabad Bench in CP(IB)/238(AHM)/2022 [**J.C. Flower Asset Reconstruction Private Limited v. Mr. Sandeep Vedant**] [**Annexure R-4**], *which held that once a personal guarantee is invoked by a demand notice, limitation runs from that date, and a second notice issued after the expiry of the limitation period cannot revive the claim.* Reliance was also placed on the order

dated 29.10.2024 of the Hon'ble National Company Law Tribunal, Mumbai Bench in CP(IB)/875, 876 and 904/MB/2023 [Bank of Maharashtra Limited v. Ms. Sheetal Thakur and Ors.] [Annexure R-6], wherein it was held that the continuance clause in a guarantee deed is operative only until the guarantee is invoked, and that once invoked, limitation begins to run from the date of invocation.

III. The Respondent challenged the Resolution Professional's reliance on the acknowledgment by the Corporate Debtor in its audited balance sheet for the financial year 2017-18 as a ground to extend limitation against the Respondent. It was submitted that the guarantee had already been invoked by the Petitioner Bank before the said balance sheet was prepared, and an acknowledgment of debt by the principal borrower in its balance sheet cannot operate to give a fresh period of limitation to the Petitioner as against the personal guarantor. It was further submitted that the judgment in **Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal and Another [(2021) 6 SCC 366]**, relied upon by the Resolution Professional, is inapplicable in the present facts since the guarantee had already crystallized prior to any such acknowledgment. Reliance was placed on the order of the Hon'ble National Company Law Appellate Tribunal in **Comp. App. (AT)(Ins.) No. 122 of 2022 [Ravi Iron Limited v. Jia Lal Kishori Lal & Ors., decided on 08.02.2022]** [Annexure R-7], *which held that where an application comes with a prescribed date of default and no reasons for extension are given in the application itself, limitation runs from the date of default stated therein.* Reliance was also placed on Comp. App. (AT)(Ins.) No. 920 of 2023 [Mudhit Madan Lal Gupta v. Supreme Constructions and Developers Pvt. Ltd., decided on 26.07.2023] [Annexure R-8], which held that while the liability of a guarantor is co-extensive with the principal borrower, where the guarantee requires invocation, the date of default for the guarantor is the date on which the guarantee was invoked.

IV. Without prejudice to the above, the Respondent submitted that the Resolution Professional failed to consider that the Petitioner has claimed the entire outstanding amount of Rs. 12,06,01,780.45/- from the Corporate Debtor as well as from each of the personal guarantors individually, whereas under Section 146 of the Indian Contract Act, 1872, co-sureties are liable to contribute equally to the discharge of the debt. The Respondent contended that the claim should have been divided equally among all personal guarantors after deducting any recovery made from the principal borrower, and that the Resolution Professional's Report is unreliable to the extent it accepts the exaggerated and legally unsustainable quantum claimed by the Petitioner.

V. The Respondent further submitted that the Petitioner is registered under the Multi-State Co-operative Societies Act, 2002, and that the loan agreement and guarantee deed specifically provide that all disputes shall be resolved under Section 84 of that Act. The Multi-State Co-operative Societies Act, 2002 being a special statute, its dispute resolution mechanism prevails over any general law. Additionally, the Respondent submitted that the bank account statements filed as Annexure VII to the Petition do not disclose the amount of default claimed by the Petitioner and are also not certified in accordance with the requirements of the Bankers' Books of Evidence Act, 1891 as contemplated under the provisions of the Code. The Resolution Professional was therefore stated to have failed to satisfy herself as to the veracity of the account statements. Reliance was placed on the order dated 16.12.2024 of the Hon'ble National Company Law Tribunal, Kolkata Bench in I.A.(IBC)/1063/KB/2024 in CP(IB)/331/KB/2022 [State Bank of India v. Amit Ranjan Mukherjee], which held that a SARFAESI notice under Section 13(2) of the SARFAESI Act does not amount to invocation of a personal guarantee, and that the period of limitation for filing an application under Section 95 commences from the

date when the guarantee is formally invoked by the creditor calling upon the personal guarantor to pay.

VI. The Respondent submitted that the Petitioner, having initiated arbitration proceedings under the Multi-State Co-operative Societies Act, 2002 against the Respondent and having failed to pursue the same to conclusion, has now invoked the jurisdiction of this Tribunal under the Code with the object of creating a fresh cause of action for a claim that is otherwise hopelessly time-barred. This conduct, it was submitted, amounts to forum shopping. Reliance was placed on the order of the Hon'ble National Company Law Tribunal, New Delhi in CP(IB)/315/2022 [M/s Intec Capital Limited v. Ms. Parul Upadhyay], which rejected a petition for Personal Insolvency Resolution Process on the ground that the applicant had approached multiple forums for the same relief and had not come before the Tribunal with clean hands.

VII. On the basis of the aforesaid grounds, the Respondent prayed that the Report of the Resolution Professional may not be relied upon and that the present Petition may be dismissed as being hopelessly time-barred, with exemplary costs.

10. The Applicant have placed reliance on the following key judicial precedents, **Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal, (2021) 6 SCC 366 (Supreme Court) that** says:

** Entries in balance sheets of corporate debtors constitute valid acknowledgements of debt under Section 18 of the Limitation Act, 1963 for IBC proceedings.*

** Entries in balance-sheets must be examined on a case-by-case basis to determine whether an acknowledgment of liability exists; the auditor's report may also enter caveats with regard to acknowledgments made in the books of account including the balance-sheet.*

** There is no reason to exclude Section 18 of the Limitation Act from IBC proceedings.*

Laxmi Pat Surana v. Union of India and Another, (2021) 8 SCC 481 (Supreme Court) says:

** The liability of the guarantor being co-extensive with the principal borrower under Section 128 of the Indian Contract Act, 1872, it triggers the moment the principal borrower commits default in paying the acknowledged debt.*

** Section 18 of the Limitation Act comes into play every time the principal borrower and/or the corporate guarantor acknowledges their liability to pay the debt; such acknowledgment must be before expiration of the prescribed period of limitation. The fact that acknowledgment within the limitation period was only by the principal borrower and not the guarantor would not absolve the guarantor of its liability flowing from the letter of guarantee; the liability of the guarantor being coextensive with the principal borrower under Section 128 of the Contract Act, it triggers the moment the principal borrower commits default in paying the acknowledged debt*

** This is the primary authority for the Section 128 co-extensiveness argument.*

IL&FS Financial Services Ltd. v. Adhunik Meghalaya Steels Pvt. Ltd., Civil Appeal No. 5787 of 2025 that says:

** Balance sheets of multiple years to be read together.*

** Even where creditor is not named in the latest year, acknowledgement is valid if prior years establish the jural relationship.*

** Para 46: The Covid-19 exclusion order applies to the entire period from 15.03.2020 to 28.02.2022, not merely 90 days.*

Observation&Analysis:

8. We have heard the learned counsel appearing on behalf of the Applicant and the Respondent, perused the pleadings, the Report submitted by the Resolution Professional under Section 99 of the Insolvency and Bankruptcy Code, 2016 ("Code"),

9. The following issues arise for consideration before this Adjudicating Authority:

Issue No. I: Whether this Adjudicating Authority has jurisdiction to entertain the present proceedings despite the provisions of the Multi-State Co-operative Societies Act, 2002 and the arbitration clause contained in the Deed of Guarantee?

The Respondent has contended that in view of Section 84 of the Multi-State Co-operative Societies Act, 2002 and the arbitration clause contained in the Deed of Guarantee, the Applicant ought to have pursued the remedy before the forum contemplated under the said Act and the present proceedings are therefore not maintainable before this Tribunal. We are unable to accept the said contention. It is an admitted position that proceedings concerning the Corporate Debtor, namely STL Exports Limited, were entertained before the competent Adjudicating Authority and liquidation proceedings have commenced. Section 60(2) and Section 60(3) of the Code specifically provide that proceedings relating to Personal Guarantors of Corporate Debtors shall be instituted before the same Adjudicating Authority. Further, Section 238 of the Code confers overriding effect upon its provisions notwithstanding anything inconsistent contained in any other law. Consequently, neither the arbitration clause nor the provisions of the Multi-State Co-operative Societies Act can oust the jurisdiction of this Tribunal. Accordingly, this issue is answered against the Respondent.

Issue No. II: Whether the Applicant Bank is competent to maintain the present application under Section 95 of the Code?

The Respondent has questioned the competency of the Applicant by contending that a Multi-State Co-operative Bank does not fall within the ambit of the expression "person" under the Code. The Applicant is admittedly an entity constituted under the provisions of the Multi-State Co-operative Societies Act, 2002. Section 3(23) of the Code includes within the definition of "person" any entity established under a statute. Therefore, the Applicant answers the description of a "person" and is competent to invoke remedies available to a Financial Creditor under Section 95 of the Code. The objection raised by the Respondent on this count is therefore rejected.

Issue No. III: *Whether the present application is barred by limitation?*

This constitutes the principal objection raised by the Respondent. According to the Respondent, notices dated 05.05.2015 and 15.05.2015 were issued demanding payment of dues, thereafter the account of the Corporate Debtor was classified as NPA on **31.05.2015**, and the guarantee stood recalled through notice dated 16.07.2015. It is further contended that arbitration proceedings against the guarantors were initiated on 28.12.2016 and therefore the present petition instituted in the year 2021 is barred by limitation.

The Applicant, however, submits that even assuming that the guarantee had been invoked in the year 2015, the petition remains within limitation in view of the subsequent acknowledgements of liability contained in the audited financial statements of the Corporate Debtor, which are binding upon the Respondent by virtue of Clause 26 of the Deed of Guarantee. The Applicant further relies upon the co-extensive liability of the guarantor under Section 128 of the Indian Contract Act and the exclusion of limitation granted by the Hon'ble Supreme Court in **Suo Motu W.P. (C) No. 3 of 2020**.

Even if the Respondent's contention regarding invocation of the guarantee in the year 2015 is accepted, the matter does not conclude there. Clause 26 of the Deed of Guarantee *specifically provides that any admission or acknowledgment in writing given or any part payment made by the Borrower in respect of the facilities shall be binding upon the Guarantors and shall be treated as having been made on behalf of the Guarantors also.* Therefore, by the express terms of the contract, acknowledgements made by the Corporate Debtor are attributable to the Respondent himself.

The material on record demonstrates that the Corporate Debtor acknowledged the outstanding dues payable to the Applicant in its audited financial statements for FY 2015-16, FY 2016-17 and FY 2017-18. The Respondent has not disputed the authenticity of these financial statements. The Hon'ble Supreme Court in *Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal* has held that entries in balance sheets constitute acknowledgements under Section 18 of the Limitation Act. Further in *Laxmi Pat Surana v. Union of India*, held that Section 18 of the Limitation Act, 1963 comes into play every time the principal borrower and/or the corporate guarantor acknowledges their liability to pay the debt, and that such acknowledgment must be before the expiration of the prescribed period of limitation; further, the fact that acknowledgment within the limitation period was only by the principal borrower and not the guarantor would not absolve the guarantor of its liability, the liability of the guarantor being coextensive with the principal borrower under Section 128 of the Indian Contract Act, 1872, triggering the moment the principal borrower commits default in paying the acknowledged debt. In the present case, the effect of these principles is reinforced by Clause 26 of the Deed of Guarantee.

By its order dated 10.01.2022 in Suo Motu Writ Petition (C) No. 3 of 2020, the Hon'ble Supreme Court directed that the period from 15.03.2020 to 28.02.2022 shall stand excluded in computing the period of limitation for all judicial and quasi-judicial proceedings. The present petition was filed on 20.10.2021, which falls squarely within the said excluded period, and the period of limitation could not, therefore, run against the petition on the date of its institution. This is in addition to, and independent of, the successive acknowledgements of liability in the audited financial statements of the Corporate Debtor which, by operation of Section 18 of the Limitation Act read with Clause 26 of the Deed of Guarantee, furnished fresh periods of limitation, the last of which, reckoned from the financial statement for FY 2017-18, would in any event have expired on 31.03.2021, itself a date falling within the excluded period. Accordingly, having regard to the successive acknowledgements of liability, the contractual stipulation contained in Clause 26 of the Deed of Guarantee, the co-extensive liability of the Respondent under Section 128 of the Indian Contract Act, 1872 as explained in Laxmi Pat Surana, and the benefit of the exclusion period granted by the Hon'ble Supreme Court, we are unable to hold that the present application is barred by limitation. This issue is therefore answered against the Respondent.

Issue No. IV: Whether the remaining objections raised by the Respondent constitute valid grounds for rejection of the application?

The Respondent has contended that proceedings ought to have been initiated against all co-guarantors and that the Applicant already possesses sufficient security under SARFAESI proceedings. We find no merit in the said objections. The liability of the guarantors under the Deed is joint and several and the right of contribution amongst co-sureties is a matter to be worked out inter se. Likewise, the availability of securities or pendency of recovery proceedings does not preclude initiation of

proceedings against the Personal Guarantor under the Code. The objections relating to authority, vakalatnama and supporting documents do not disclose any jurisdictional defect warranting rejection of the petition. Accordingly, the said objections are rejected.

10. In view of the foregoing discussion, we are satisfied that the Applicant is competent to maintain the present proceedings; the debt and guarantee stand established from the material on record and the present application is not barred by limitation; Consequently, the application filed under Section 95 of the Code is liable to be **admitted** under Section 100 thereof.

ORDER

11. In view of the above, the petition deserves admission, and we pass the following order:

- I. The present Application CP/IB/10/2022 is hereby **ADMITTED** under Section 100 of the Code and the Insolvency Resolution Process stands initiated against the **Personal Guarantor i.e. Mr. Subhash Chandra Gupta**
- II. The moratorium begun on the date of admission of the application shall cease to have effect at the end of the period of 180 days from the date of this order. During the moratorium period, the following provisions shall be in effect:
- III. Any pending legal action or proceeding in respect of any debt be deemed to have been stayed; and

- IV. The creditors of the Personal Guarantor shall not initiate any legal action or proceedings in respect of any debt; and
- V. The Personal Guarantor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;
- VI. The provisions of this Section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- VII. The Resolution Professional Ms. Neeraja Kartik Peri, Insolvency Professional, having IBBI Registration No. **IBBI/IPA-001/IP-P01445/2018-2019/12137**, who was appointed as the Resolution Professional vide order dated **07.06.2024**, is hereby appointed as Resolution Professional for conducting the Insolvency Resolution Process of the Personal Guarantor.
- VIII. The Resolution Professional is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of uploading of this Order on the website of the NCLT, inviting claims from all Creditors, who shall register their claims as provided under Section 103 within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102 (2) of IBC, 2016. The publication of notice shall be made in newspapers, one in English and other in Vernacular

which have wide circulation in the State where the Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry. One shall be placed by the Registry on our website and the other shall be affixed in the premises of this Authority.

- IX. The Resolution Professional shall prepare a list of creditors under Section 104 of the Code on the basis of:
- a. information disclosed in the Application filed under Section 95, and
 - b. claims received under Section 102, within 30 days from the date of publication of notice.
- X. The Personal Guarantor shall prepare a Repayment Plan under Section 105, in consultation with the Resolution Professional, containing a proposal for restructuring of his debts.
- XI. The Repayment Plan may authorize or require the Resolution Professional to:
- a. carry on the debtor's business or trade on his behalf or in his name; or
 - b. realize the assets of the debtor; or
 - c. administer or dispose of any funds of the debtor.

The Plan shall include:

- a. justification for preparation of such plan;
 - b. payment of fee to the Resolution Professional;
 - c. any other matter as may be specified.
- XII. The Resolution Professional shall submit the Repayment Plan to this Authority along with his report within 21 days from the last date of submission of claims, in terms of Section 106 of the Code.
- XIII. In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, she shall record the reasons thereof. If the resolution professional is of the opinion that the meeting of the creditors should be summoned, she shall specify the details as provided under Section 106(3). The date of meeting should not be less than 14 days or more than 28 days from the date of submission of the report under sub-section (1) of Section 106, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all relevant/feasible modes. Such notice must contain the details as provided under the provisions of Section 107.
- XIV. The meeting of the creditors shall be conducted in accordance with sections 108, 109, 110 & 111. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details

as provided under Section 112 and submit the same to this Authority, copies of which shall be provided to the Personal Guarantor and the creditors. It is made clear that the resolution professional shall perform his function and duties in compliance with the code of Conduct provided under section 208 of the Code.

XV. The Applicant/financial creditor is directed to deposit Rs. 50,000/- (Rupees Fifty Thousand Only) to the bank account of Resolution Professional within one week, from the date of this order towards his fees. This shall be subjected to the Rules and Regulations under the provisions of IBC, 2016, including maintaining independence, confidentiality, and impartiality in all actions.

XVI. The Resolution Professional is directed to strictly abide by the provisions of IBC 2016 and complete the process of insolvency in a time bound manner after constitution of the committee of creditors.

12. Accordingly, **CP(IB)/10(MP)/2022** filed under section 95 of IBC, 2016 is **admitted** and the Insolvency Resolution process stands initiated against the Respondent/Personal Guarantor.

Sd/-

MAN MOHAN GUPTA
(MEMBER TECHNICAL)

Deepti-LRA

Sd/-

BRAJENDRA MANI TRIPATHI
(MEMBER JUDICIAL)