NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 494 of 2024

[Arising out of the Common Order dated 27.02.2024, passed by the 'Adjudicating Authority' (National Company Law Tribunal, New Delhi Bench in IA No. 593/ND/2023 in CP(IB) No. 769/2022]

IN THE MATTER OF:

Nakul Gupta
Erstwhile Director of Technofab Engineering Limited
S-481, Greater Kailash II, **...Appellant**
New Delhi 110048
Versus

1. **State Bank of India**
   State Bank Bhawan, Madame Cama Road,
   Nariman Point, Mumbai – 400021

   And Local Head Offices at:
   11, Parliament Street, New Delhi-110001

   And one of its Branches at:
   Stressed Assets Management
   Branch-I, at 12th Floor,
   Jawahar Vyapar Bhawan, STC,
   Building, 1 Tolstoy Marg, Janpath Road,
   New Delhi – 110001 **...Respondent No.1**

2. **Mr. Rajesh Mittal**
   Resolution Professional
   IN CP (IB) 769/2022, NCLT DELHI
   IBBI/IPA-001/IP-P01114/2018-19/11816
   C56 Ground Floor, Soami Nagar
   Delhi – 110017 **...Respondent No.2**

Present:

For Appellant : Mr. Gaurav Mitra, Mr. Abhirup Dasgupta, Mr. Shreesh Chadha, Ms. Vagisha Tiwari, Ms. Aishwarya Modi and Mr. Joby P.V., Advocates.

For Respondent : Mr. Bheem S., Advocate for SBI.
Mr. Kunwarpreet Singh, Advocate for R-2
PCS Prakul Khadi, Advocate.

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

[Per: Arun Baroka, Member (Technical)]

This is an Appeal against the initiation of personal insolvency proceedings against the Appellant - Nakul Gupta in the default and repayment of credit facilities by Techno Fab Engineering Limited -CD in the judgment and final order dated 27.02.2024 passed by the Ld. NCLT, New Delhi in CP (IB) No.769/2022 whereby the Ld. NCLT admitted the application filed by Respondent No.1 bank seeking personal insolvency resolution process against the Appellant Nakul Gupta on the report filed by Respondent No.2 RP under Section 99 of IBC, 2016.

Submissions of the Appellant

2. Respondent No.1- SBI has been granting various loan/credit facilities to the Corporate Debtor from 17.04.2009. On 11.10.2017 as part of Bank of India (hereinafter referred to as "BoI" i.e. the lead bank) consortium, credit facilities for a total amount of ₹907/- Crore was sanctioned in favour of Corporate Debtor by the BOI consortium with BOI being the lead bank.

3. The Respondent No.1 bank joined the BOI consortium and renewed its credit facility for an amount of ₹17/- Crore out of the total consortium amount of ₹907/- Crore in favour of the Corporate Debtor. These 'facilities' are working capital facilities and do not operate like 'term loans'.

4. The facility availed by Corporate Debtor from Respondent No.1 bank as part of BOI Consortium from 2017 was a renewal of the credit facilities which were being availed by the Corporate Debtor.

5. In consideration to the credit facilities granted to the Corporate Debtor by BOI consortium, including the renewal sanctioned by Respondent No.1, the Corporate Debtor, its then directors Arjun Gupta, Avinash Chander Gupta and Nakul Gupta executed Working Capital Consortium Agreement, Joint deed of hypothecation, deeds of guarantee and other contemporaneous documents all dated 17.10.2017 favouring the BOI consortium.

6. The Appellant Nakul Gupta resigned as a director from the Corporate Debtor on 08.03.2018 and the said fact is duly conveyed to the consortium member by the Corporate Debtor.

7. After the Appellant resigned as a director, the credit facilities availed by Corporate Debtor in the year 2017, which was part of the working capital consortium agreement dated 17.10.2017 with Bank of India (BOI) (lead bank) came up for renewal in October 2018. The lead bank, i.e. Bank of India by its of its sanction letter dated 24.10.2018 renewed the credit facilities in favour of the Corporate Debtor.

8. Subsequently, the Respondent No.1 bank also by way of its sanction letter dated 01.01.2019 renewed the working capital facilities in favour of the Corporate Debtor with effect from 14.12.2018. The security for the renewal dated 01.01.2019 granted by the Respondent No.1 included personal guarantee of the Appellant Nakul Gupta as well. However, the same was never given by the Appellant, nor he ever consented for the renewal. However, despite there being no consent/guarantee towards security given by the Appellant, Respondent No.1 as well as the lead bank BOI renewed the

facilities granted to the Corporate Debtor and the BOI consortium even enhanced the total amount from ₹907/- Crore to ₹1078/- Crore.

9. Before renewing the credit facilities, with enhancement, in favour of the Corporate Debtor, it was incumbent upon the Banks and more specifically Respondent No.1 to take the consent of the Appellant for his guarantee. Since the consent was not given, either the guarantee of the Appellant should have been replaced or the credit facilities granted in favour of the Corporate Debtor should have been recalled as the term for the previous working capital limit had expired. However, Respondent No.1 bank renewed the credit facilities to the tune of ₹117/- Crore in favour of the Corporate Debtor for a further period of 1 year till 13.12.2019 and thereby with effect from 14.12.2018, it is submitted that the Corporate Debtor had been availing credit facilities to the tune of ₹117/- Crore from Respondent No.1 under the new contract which was the sanction letter dated 01.01.2019 with varied terms and conditions and not in terms of the working capital consortium agreement dated 17.10.2017. It is a matter of record that till 14.12.2018 there was no default on the part of the Corporate Debtor and the same is also evident from the Information Utility documents filed by the Respondent No.1 bank. Subsequently, Corporate Debtor allegedly defaulted in its repayment and the account turned NPA on 27.06.2019.

10. Despite the Appellant not being party to the credit facilities availed by Corporate Debtor after 14.12.2018, to which it was in default, Respondent No.1 initiated proceedings under IBC against the Appellant as well and filed application under Section 95, IBC, 2016.

11. Since with effect from 14.12.2018, credit facilities to the tune of ₹117/- Crore granted by Respondent No.1 bank to the Corporate Debtor was under the new renewal sanction dated 01.01.2019, Respondent No.1 bank never disclosed the fact of renewal dated 01.01.2019 in its application filed under Section 95 IBC, 2016. Further, the RP in its report filed under Section 99 also did not disclose the correct facts before the adjudicating authority. Both the bank and RP concealed this material fact from the Ld. Adjudicating Authority. Since Appellant had left Corporate Debtor in March 2018, and the Corporate Debtor itself was admitted into insolvency by NCLT, Delhi by way of its order dated 02.11.2022, the Appellant didn't have any access to the documents of the Corporate Debtor to find out about the renewal of the credit facilities granted in favour of the Corporate Debtor after he left the Corporate Debtor. Thus, the Appellant moved an application being I.A No.3895/ND/2023 in CP (IB) 681/2022 seeking production of documents from the IRP of the Corporate Debtor pertaining to the credit facility renewals granted in favour of the Corporate Debtor. On 09.01.2024, the Ld. NCLT directed the IRP of the Corporate Debtor to provide documents as sought by way of I.A No.3895/2023 and listed the matter for final arguments on 16.01.2024, with liberty to add submissions pertaining to the new documents supplied by IRP in the Written Submissions of the Appellant. It is submitted that I.A No.3895/2023 was finally disposed of by NCLT by way of its order dated 26.02.2024. Thus, the fact regarding the renewal of credit facilities through sanction dated 24.10.2018 and 01.01.2019, which were concealed by Respondent No.1 and Respondent No.2 RP from the Ld. Adjudicating Authority were disclosed by the Appellant for the first time in his written

submissions which were filed hurriedly within the timeline allowed by the Ld. Tribunal.

12. For the first time, in the present appeal, in the Replies filed by Respondents before this Appellate Tribunal, it has been admitted that the credit facilities were renewed by Respondent No.1 bank by way of sanction dated 01.01.2019. *D*espite specific and categorical admission in the replies filed in the present appeal before this Hon'ble Appellate Tribunal, the Respondents made an oral submission to the effect that the sanction dated 01.01.2019 was never given effect to. There is no dispute with regards to the fact that the Sanction Letter dated 01.01.2019 was acted upon by the Respondent No. 1 bank. The same has been admitted on Affidavit in the Reply filed before this Hon'ble Tribunal in this Appeal. The Respondent No. 1 bank has categorically pleaded that the letter dated 01.01.2019 was acted upon. The oral submissions by the Respondent No. 1 bank that the letter dated 01.01.2019 was not acted upon is contrary to their own pleadings before this Hon'ble Tribunal. Further, it is submitted that Respondent No.2 RP had also admitted in his reply that the credit facilities were renewed by Respondent No.1 by way of sanction dated 01.01.2019.

13. Even in the Impugned Judgment of the Ld. Adjudicating Authority dated 27.02.2024 categorically renders a finding to the effect that a renewal has been given effect to after 2018 and the Corporate Debtor was in default of the credit facilities granted under the renewed sanction there has been a renewal of sanction letters by the Respondent No. 1 bank. Thus, a specific finding has been returned by the Ld. NCLT that the corporate debtor was in

default for the facilities availed by it under the renewed sanction, and the Appellant Nakul Gupta had neither consented for it, nor gave any personal guarantee. This finding of the Ld. Adjudicating Authority in this regard, has not been challenged by the Respondent No. 1 bank. Thus, the letter dated 01.01.2019 was an ACCEPTANCE of an OFFER made by the Corporate Debtor- resulting in a concluded contract.

14. The Respondent No. 1 bank classified the account of the Corporate Debtor as NPA only on 27.06.2019 and the first loan recall notice was issued only in November 2021. It is the case of the Respondent No. 1 bank itself that the 'DATE OF DEFAULT' was 27.06.2019 as mentioned in their Petition under Section 95, IBC. Thus, as per the Respondent No. 1 itself, the date of classification of NPA of the Corporate Debtor is the date of default. Considering that this is subsequent to the renewed Sanction Letter dated 01.01.2019 having taken effect, it is submitted that the 'DEFAULT' occurred after the discharge of the Appellant's personal guarantee to the Corporate Debtor. The Appellant cannot be held liable for any 'DEFAULT' occurred after discharge from his personal guarantee. As per the records submitted by the Respondent No. 1 bank with the Information Utility *(placed on record before the Ld. Adjudicating Authority)* the Corporate Debtor was not even in default under the previous sanction letter dated 11.10.2017. The first entry of any 'amount overdue' as per the Respondent No. 1 bank itself is 22.05.2019. Thereafter, the Corporate Debtor was deemed to be in 'default' only after 27.06.2019. Prior to 22.05.2019, as per the record submitted by the Respondent No. 1 bank itself, there was no 'amount due' only. By that time,

the RENEWED, REVISED and VARIED Sanction Letter dated 01.01.2019 had been issued by the Respondent No. 1 bank and given effect to. Therefore, there has been no DEFAULT in terms of Section 3(12), IBC until 04.07.2019 as per the record of the Information Utility submitted by the Respondent No. 1 itself. The RENEWED, REVISED and VARIED Sanction Letter dated 01.01.2019 was given effect to and the Appellant had not issued any 'Revival Letter' for his guarantee. The Appellant stood discharged latest on 01.01.2019 upon the issuance of the RENEWED, REVISED and VARIED Sanction Letter dated 01.01.2019 and all 'Default' of the Corporate Debtor has occurred only thereafter as per the Respondent No. 1 bank itself. It is reiterated herein that with effect from 14.12.2018, the credit facilities of ₹117/- Crore availed by the Corporate Debtor from Respondent No.1 bank was under the new renewal sanction letter dated 01.01.2019 and the said facilities were provided by Respondent No.1 to Corporate Debtor without the knowledge and consent of the Appellant, and hence Appellant cannot be held liable for any dues arising thereunder. The Ld. Adjudicating Authority in the Impugned Judgment dated 27.02.2024 records that the Appellant would only be liable in case of any 'Default' in the repayment of the credit facilities prior to the RENEWED Sanction Letter dated 01.01.2019. However, there is no finding or any sort of adjudication on the DATE OF DEFAULT by the Corporate Debtor so as to fasten the liability on the Appellant. As per the Respondent No. 1 bank itself, there was no 'DEFAULT' of payment until 27.06.2019 and there was no overdue 'DEBT' until 22.05.2019. Despite holding that there has been a variance and renewal in the credit facilities after 2018, the Impugned Judgment is completely silent on what the 'DATE OF DEFAULT' is in the

present case. For this reason alone, the Impugned Judgment is bad in law and warrants to be set aside. It is pertinent to note that the Appellant had resigned and had completely disassociated from the Corporate Debtor by 08.03.2018. Thereafter, the lead bank of the Consortium had issued letter dated 24.10.2018 which recorded enhancement of total credit facilities from ₹907/- Crores to ₹1075/- Crores, which was duly accepted by the Corporate Debtor on 22.11.2018. Further, the Respondent No. 1 bank also issued a Sanction Letter dated 01.01.2019 which contained material variances regarding the terms and conditions and also recorded enhancement of credit facilities. After all of this, the guarantee of the Appellant had been discharged. It is only thereafter that the 'debt' of the Corporate Debtor became overdue and a 'default' was committed by the Corporate Debtor.

15. The appellant cannot be held to be personal guarantor of the corporate debtor- Technofab Engineering Limited as the deed of guarantee dated 17.10.2017 stands varied and novated by the issuance of subsequent sanction letter dated 24.10.2018 by the consortium and sanction letter dated 01.01.2019. *Firstly,* the Deed of Guarantee dated 17.10.2017 itself did not extend to the Sanction Letter(s) dated 24.10.2018 and Sanction Letter dated 01.01.2019. The Deed of Guarantee was executed to secure the credit facilities granted and covered under the Working Capital Consortium Agreement dated 17th October 2017, which along with the joint deed of hypothecation has been defined as 'said agreement of loan' in this deed of guarantee. The same is also for credit facility of aggregate sum of ₹907/- Crores and the Deed of Guarantee dated 17.10.2017 was issued by

the Guarantors for a sum NOT EXCEEDING ₹907/- Crores. The Working Capital Consortium Agreement dated 17th October 2017 under Article 1 specifically states that the credit facilities granted under the Working Capital Consortium Agreement shall be governed by the terms and conditions as set out in the Letters of sanction of member banks of BOI Consortium including the Letter of Sanction/Letter of arrangement dated 11.10.2017 being CBND/AMT-II/2017-18 issued by Respondent No.1 which specifically and categorically provided that the working capital facility is valid only upto 04.10.2018. The Sanction Letter dated 11.10.2017 issued by the Respondent No. 1 bank was categorically the subject matter of the Deed of Guarantee. It is submitted that there is no separate Deed of Guarantee executed by the Appellant for any subsequent Sanction Letter apart from those defined in the Working Capital Consortium Agreement 17.10.2017 mentioned in the Deed of Guarantee dated 17.10.2017. Further, as stated above the previous sanction dated 11.10.2017, which formed basis of the working capital consortium agreement dated 17.10.2017 qua Respondent No 1 was valid only from 05.10.2017 for a period of 12 months. Subsequently the credit facilities were renewed by Respondent No.1 bank for an amount of ₹117/- Crore for a further period of one year by way of its fresh contract/sanction dated 01.01.2019 with effect from 14.12.2018. Thus, for the credit facilities availed by Corporate Debtor, as rightly held by the Ld. Adjudicating Authority, after 2018 under the renewed sanction, to which Appellant had neither consented, nor given his guarantee, he cannot be held liable. As stated above, it is a matter of record that there was no default under the credit facilities provided in terms of sanction dated 11.10.2017.

16. *Secondly,* there is a material variance in the terms of the Sanction Letter dated 11.10.2017 issued by the Respondent No. 1 bank as compared to the subsequent Sanction Letter dated 01.01.2019 issued by the Respondent No. 1 bank. The Terms of the Letter dated 01.01.2019 are materially different from the original sanction letter dated 11.10.2017 issued by the Respondent No. 1 bank. Due to the fact that there were material variances in the old sanction letter dated 11.10.2017 and new sanction letter dated 01.01.2019 and no fresh document was executed by the Appellant as guarantee under the new Sanction Letter dated 01.01.2019, the lead bank of the Consortium categorically sought written renewal and revival confirmation from the Appellant of his personal guarantee on 06.06.2020. It is undisputed that this letter was never signed by the Appellant, rather, the Appellant had objected to the very issuance of this letter on 26.06.2020. It is submitted that if there had been no material variance in the terms of the new sanction letter dated 01.01.2019, there would have been no need for the consortium of banks to seek a 'REVIVAL LETTER' from the Appellant.

17. The impugned judgment completely misinterprets the clause on 'continuing guarantee' in the deed of guarantee dated 17.10.2017. The clause on 'Continuing Guarantee' in the Deed of Guarantee dated 17.10.2017 does not cover the present situation where a new, revised, renewed, varied Sanction Letter has been issued by the Consortium of Banks vide letter dated 24.10.2018 and the Respondent No. 1 vide letter dated 01.01.2019). *Firstly,* the continuing guarantee clause would NOT APPLY IN THE CASE OF ENHANCEMENT beyond the original sum of credit facilities. *Secondly,* the

continuing guarantee clause under the deed of guarantee was restricted to the credit facilities termed as 'abovementioned credit facility'. The term 'abovementioned credit facility' has been defined under the deed of guarantee as those credit facilities which have been granted in terms of the working capital consortium agreement, joint deed of hypothecation dated 17.10.2017, which were defined as 'said agreements of loan'. As stated above, Article 1 of the Working Capital Consortium Agreement dated 17.10.2017 specifically states that the credit facilities granted under the Working Capital Consortium Agreement shall be governed by the terms and conditions as set out in the Letters of sanction of member banks of BOI Consortium including the Letter of Sanction/Letter of arrangement dated 11.10.2017 being CBND/AMT-II/2017-18 issued by Respondent No.1. *Thus, with respect to Respondent No.1 bank, the continuing guarantee as provided in the deed of guarantee was limited to the facilities granted in terms of the sanction/renewal dated 11.10.2017 and cannot under any circumstances be extended to sanction letters/renewals issued subsequent on its expiry.* In the present case, it is apparent that there has been an enhancement of sums from ₹907/- Crores to ₹1075/- Crores on the basis of fresh sanction letter issued by the lead bank of the Consortium on 24.10.2018 which recorded enhancement of total credit facilities from ₹907/- Crores to ₹1075/- Crores, which was duly accepted by the Corporate Debtor on 22.11.2018 and the letter dated 01.01.2019 issued by the Respondent No. 1 bank. In addition to 'enhancement', there has also been a 'RENEWAL' of credit facilities on completely new and varied terms by the letter dated 01.01.2019 issued by the Respondent No. 1 bank- which is undisputedly not covered by the Deed of Guarantee dated 17.10.2017.

Therefore, the 'Continuing Guarantee' clause is completely inapplicable to the present facts and circumstances. On the one hand, the Impugned Judgment holds that the limits of the Credit Facilities were 'enhanced', while on the other hand, the Ld. Adjudicating Authority also states that the term in the Deed of Guarantee qua 'Continuing Guarantee' would apply. It is submitted that these findings are completely contradictory. These findings are completely contrary to one another and results from a complete misreading of Clause 8 of the Deed of. The finding of 'enhancement' as adjudicated in the Impugned Judgment is unchallenged by the Respondents. It is apparent from a bare reading of the 'Continuing Guarantee' clause that the same only applied for facilities being granted 'within the overall limit'. In the present case, the Ld. Adjudicating Authority itself observed that there has been an enhancement of the 'overall limit', whereas, contrarily, the Ld. Adjudicating Authority has also stated that the 'Continuing Guarantee' clause would apply, resulting in blatantly contrary findings. For this reason itself, the Impugned Judgment warrants to be set aside.

18. The impugned judgment proceeds on mutually destructive findings which cannot stand together in law. The Adjudicating Authority records, as a matter of categorical fact in para 10 of the Impugned Judgment, that the credit facilities of the Corporate Debtor were renewed and enhanced pursuant to the sanction letter dated 24.10.2018 issued by the lead bank and the subsequent sanction letter dated 01.01.2019 issued by Respondent No. 1. The Impugned judgment further records that these renewed and enhanced facilities—raising the consortium limit from ₹907/- crores to ₹1075/-crores—

were availed by the Corporate Debtor after 2018, and that the default occurred in respect of these renewed facilities. The Adjudicating Authority also records that the renewed sanction expressly provided for a guarantee of the Appellant, but that the Appellant admittedly did not sign or consent to such guarantee. These findings are clear, unequivocal, and unchallenged by the Respondents. Having recorded these findings, the Adjudicating Authority nevertheless proceeds, in the very next breath, to hold that the Appellant continues to remain liable under the original guarantee dated 17.10.2017, on the basis that the guarantee was a "continuing guarantee" and that the Appellant would remain liable for the "initial amount" of ₹907/- crores "which existed prior to its variance." This reasoning is fundamentally contradictory to the earlier finding that the default itself arose only under the renewed and varied sanction terms of 2018–2019, to which the Appellant never consented. The impugned order therefore simultaneously holds that (i) the default occurred under the renewed sanction, and (ii) the Appellant is liable under the original sanction—two conclusions that cannot coexist. The contradiction becomes starker when the statutory framework is applied. Section 133 of the Indian Contract Act mandates that any variance in the terms of the contract between the principal debtor and the creditor, made without the surety's consent, discharges the surety as to all transactions subsequent to the variance. The Adjudicating Authority itself records that there was a variance—indeed, a complete renewal—of the credit facilities after 2018, and that the Appellant did not sign or consent to the renewed terms. Once this finding is recorded, the legal consequence under Section 133 is automatic. The Appellant stands discharged for all transactions subsequent to the variance.

The impugned order, however, contradicts this statutory mandate by simultaneously acknowledging the variance and yet refusing to give effect to the discharge. The contradiction is further compounded by the fact that the Adjudicating Authority does not render any finding whatsoever on the date of default, despite the Respondent Bank's own pleadings that the account was classified as NPA only on 27.06.2019. The Information Utility records placed by the Respondent Bank show that until 22.05.2019 there was no overdue amount, and that the first default entry appears only thereafter. By this time, the renewed sanction letter dated 01.01.2019 had already taken effect. Thus, even on the Respondent Bank's own case, the default occurred only under the renewed and varied sanction terms, and not under the original sanction of 11.10.2017 for which the Appellant had furnished the guarantee. The impugned order, however, fails to reconcile this admitted factual position with its conclusion fastening liability on the Appellant. The Ld. Adjudicating Authority in the concluding lines of para 12 of the Impugned Judgment holds that even if there is increase in the sanction limit/variance, the Guarantor shall still be liable for 'debt' that existed prior to its variance. It is submitted that the term 'debt' has been defined in Section 3 (11), IBC which says that debt is a liability or obligation in respect of a claim which is DUE from any person. It is a matter of record as per Information Utility record that prior to the variance, there was admittedly no 'DEBT'. Without any finding of the existence of any 'DEBT' prior to variance, held the Appellant liable, which is unsustainable.

19. There has been a violation of principals of natural justice by the ld. Adjudicating authority as there has been no opportunity to be heard on the documents concealed by the respondents before the ld. Adjudicating authority. The Respondent No. 1 and Respondent No. 2 have categorically admitted to the issuance and effect of the renewed sanction letter dated 01.01.2019 before this Hon'ble Tribunal. However, it is pertinent to note, that both the Respondents were completely silent on the issuance of this letter in their pleadings before the Ld. Adjudicating Authority. The Respondents concealed the issuance of fresh sanction letters by the lead bank and the Respondent No. 1 before the Ld. Adjudicating Authority. The Appellant had to run from pillar to post to obtain the letters dated 24.10.2018 issued by lead Bank of the Consortium of banks and letter dated 01.01.2019 issued by the Respondent No. 1 bank. The Appellant had filed an application (IA 3895/2023) in the CIRP proceedings of the Corporate Debtor to seek copies of these letters and other documents pertaining to issuance of fresh sanction letters after the resignation of the Appellant from the Corporate Debtor. On 09.01.2024, the Ld. Adjudicating Authority in the present proceedings directed the RP of the Corporate Debtor to provide the documents requested by the Appellant. Thereafter on 16.01.2024, the Appellant sought time to place the documents, particularly letters dated 24.10.2018 issued by lead Bank of the Consortium of banks and letter dated 01.01.2019 issued by the Respondent No. 1 bank on record which was denied by the Ld. Adjudicating Authority by directing that written submissions may be filed by the Appellant. There has been no oral hearing by the Ld. Adjudicating Authority on these documents which form crux of the case of the Appellant herein. The

application (IA 3895/2023) in the CIRP proceedings of the Corporate Debtor filed by the Appellant came to be disposed of on 26.02.2024 and the very next day, the Impugned Judgment came to be passed i.e. on 27.02.2024. It is submitted that adjudication on the documents, particularly letters dated 24.10.2018 issued by lead Bank of the Consortium of banks and letter dated 01.01.2019 issued by the Respondent No. 1 bank is happening for the first time at the Appellate stage without granting an opportunity to be heard to the Appellant before the Ld. Adjudicating Authority, which is impermissible in law.

20. In view of these contradictions, omissions, and violations, the impugned judgement is unsustainable. The findings in para 10 and the subsequent reasoning cannot stand together. The admitted variance and renewal of the sanction terms, the admitted absence of consent of the Appellant, the admitted date of default under the renewed sanction, and the statutory mandate of Section 133 collectively establish that the Appellant stood discharged from the guarantee prior to the occurrence of any default. The impugned order, having failed to apply these principles consistently, warrants interference. The denial of a fair opportunity to be heard on crucial documents, coupled with the concealment of material facts by the Respondents, has also resulted in a grave violation of the principles of natural justice. Accordingly, the present case merits reconsideration and the setting aside of the Impugned Judgment, in the interests of justice and equity.

Submissions of the Respondent-SBI

21. Primarily, the Appellant has assailed the impugned order on two grounds. Firstly, even before classification of account of Corporate Debtor as

NPA on 27.06.2019, the Appellant had already resigned from Directorship of the Corporate Debtor on 08.03.2018 and hence his guarantee stood revoked. Secondly, there were variation of terms of contract after the resignation of the Appellant from Directorship of the Corporate Debtor on 08.03.2018 since thereafter the facilities stood enhanced by the lenders including Bank of India, as stated by the Corporate Debtor in its letter dated 22.11.2018. Thus, the contract stood novated and Appellant stood discharged.

22. Insofar as the claim of the Appellant of discharge in view of resignation from Corporate Debtor is concerned, it would be appropriate to refer to the terms of Deed of Guarantee dated 17.10.2017. A perusal of Clause Nos. 1, 3, 6 to 8, 11, 12, 14 and 19 of the principal Deed of Guarantee dated 17.10.2017 would reveal the following:

- Liability of the Guarantor was payable on demand (Clause 1).
- For the purpose of enforcement of the Guarantee, the Guarantors shall be deemed to the principal debtor (Clause 7).
- Guarantee is continuing in nature and is irrevocable. Guarantee is enforceable against the Guarantor irrespective of dispute between the Bank & borrower (Clause Nos. 8 & 11).
- Guarantee shall not be affected by any variation of terms of contract in future (Clause 3 & 14).
- Guarantee expressly waived his right to claim discharge under any provision of Contract Act on any ground (Clause 18).
- All admissions & acknowledgments of debt/balance confirmations, part payments etc. by the principal debtor shall be binding on the Guarantor (Clause 12 & 19).

23. Under Section 129 of the Indian Contract Act, 1872 a continuing guarantee is defined as a guarantee which, extends to a series of transactions and the same can be revoked under Section 130 of the Act only qua the future transactions and that is by way of notice to the creditor.

24. However, in the present case, no notice of revocation was ever issued by the Appellant to the Creditor i.e. Respondent/SBI and the request for release to UBI/BOI was accepted by the lenders. Therefore, in view of the aforesaid clauses of the Deed of Guarantee, the resignation of the Appellant from the Corporate Debtor shall not discharge him from the continuing and irrevocable Guarantee admittedly executed by him in favour of the Respondent Bank and other lenders. Therefore, Appellant cannot claim revocation of the continuing guarantee under Section 130 of the Act which mandatorily requires a notice of revocation and such revocation operates only qua future transaction, as per Section 130 of the Act.

25. Reliance in this regard, is placed on the judgment of the Hon'ble Apex Court passed in the case of **Sita Ram Gupta vs PNB [2008 (5) SCC 711]**. In the said case, the Hon'ble Apex Court in the background of similar contractual clauses (para 4 of judgment), rejected an identical defense of revocation and discharge of guarantee (para Nos. 5 to 7). Judgment in the case of **Sita Ram Gupta (supra)** has been again cited with approval by the Hon'ble Apex Court in the judgment of **H.R. Basavraj vs. Canara Bank [2010 (2) SCC 458]**.

26. Insofar as the claim of the Appellant of discharge in view of variation of

terms of contract and alleged novation is concerned, it is submitted that after the grant of credit facility for an amount of ₹117.00 crores (constituted of fund based facilities of ₹10.00 crores and non-fund based facilities of ₹107.00 crores) to the Corporate Debtor vide Letter of Arrangement dated 11.10.2017, there had never been any further variation or enhancement by the Respondent/SBI. Renewal of facilities would not amount to variation. This fact can be ascertained from the Renewal letter dated 01.01.2019 and subsequent notices including Loan Recall and Demand Notice dated 15.11.2021 and OA No. 556 of 2022 titled "SBI vs. Technofab Engineering Limited & Ors." filed before the DRT-I, New Delhi.

27. As per Section 133 of the Act, any variance made without the surety's consent, in the terms of the contract between the principal-debtor and the creditor, discharges the surety as only qua the transactions subsequent to the variance. The surety continues to be liable for transactions effected before such variation.

28. This position stands fortified by the recent pronouncements of this Hon'ble Tribunal in the cases of:

- **SBI Vs. Gourishankar Poddar & Anr [2024 SCC Online NCLAT 2014] – para Nos. 26, 30, 32, 36, 40 to 42 & 46-47.**

- **Sri Vibu Venkatsubramanian vs. State Bank of India & Anr. [Company Appeal (AT) (Insolvency) No. 1228 of 2024 dated 26.02.2026].**

29. In the aforesaid facts and circumstances there being no dispute to the grant of loan facility and execution of loan and security documents including the guarantee deeds and the defaults by the Corporate Debtor and the failure

of repayment also being not in dispute, the present appeal is liable to be dismissed.

Appraisal

30. We have heard the counsels of both sides and also perused the material placed on record.

31. The Appellant, along with his brother, Mr. Arjun Gupta, and father Mr. Avinash Chander Gupta, were the Directors of Technofab Engineering Limited (TEL). TEL was engaged in the business of providing engineering, procurement, and construction services. TEL availed of credit facilities from banks and financial institutions, which used to be renewed and extended from time to time. On 17th October 2017, TEL was offered and accepted a total credit limit of ₹907/- crores, comprising ₹117/- crores of fund-based facilities and ₹792/- crores of non-fund-based facilities by a consortium of six banks, including Respondent No. 1, that is, State Bank of India. Respondent No. 1 extended total facilities of ₹117/- crores, comprising ₹107/- crores as non-fund-based facilities and ₹10/- crores as fund-based facilities. With respect to the aggregate credit facility limit of ₹907/- crores from the consortium of Banks to TEL, the appellant, along with his brother and father, namely Mr. Arjun Gupta and Mr. Avinash Chander Gupta, on 17th October 2017 stood as guarantors by way of a deed of guarantee.

32. The Appellant claims that it had resigned as a director from TEL on 8th March 2018, and thereafter he was not involved in the day-to-day operations of TEL. The Appellant also claims that TEL wrote to the United Bank of India,

as a member of the consortium of banks, informing them of the resignation of the Appellant from the post of Director of TEL.

33. The Appellant claims that on 24 October 2018, the consortium of banks led by Bank of India revised the aggregate limit of credit facilities from Rs 907 crores to ₹1075/- crores. But this was done without the involvement, consent, or knowledge of the Appellant. It is also claimed by the Appellant that on 22 November 2018, this was accepted by TEL, and TEL also reiterated that the Appellant has resigned from the company and brought to their notice the impact of him leaving the company. The Appellant further claims that on 21st January 2019, TEL issued another letter to the lead bank of the consortium, i.e., Bank of India, with regards to the resignation of the Appellant from TEL. TEL further requested the consortium to replace the personal guarantee of the Appellant with that of his mother, a person of equal net worth. However, on 27th June 2019, TEL was declared as an NPA (non-performing asset) by the Respondent No.1 that is, State Bank of India. On 31 May 2020, the Appellant wrote a letter to the lead Bank of the Consortium, i.e., Bank of India, regarding multiple communications of TEL regarding the revocation of his personal guarantee on account of his dissociation with TEL from 8 March 2018 onwards. The lead member, that is, Bank of India, on 6th June 2020 wrote a communication to Mr. Arjun Gupta and the Appellant with regards to the renewal of their personal guarantees towards credit facilities for TEL. It is also brought to our notice that, by this time, that is, 6th June 2020, one of the directors, that is, Mr. Avinash Chander Gupta, had passed away. Mr. Arjun Gupta had accepted the renewal of his personal guarantee towards credit

facilities for TEL by 26 June 2020. However, the Appellant had refused to renew it and addressed a separate communication to Bank of India regarding release of his personal guarantee.

34. On 13 May 2022, Respondent No.1, that is, State Bank of India, sent a demand notice to the Appellant invoking the deed of guarantee dated 17 October 2017 on the basis of an acknowledgement by Arjun Gupta dated 19 June 2020. On 30 May 2022, the Appellant replied to R1's demand notice dated 13 May 2022, denying any demand or invocation of personal guarantee. On 18 November 2022, Corporate Insolvency Resolution Process proceedings commenced against TEL, the Corporate Debtor, which was initiated by the R1- Bank as per the orders of the NCLT, New Delhi, in CP(IB) No. 681 of 2022. On 26.12.2022, the RP in the present proceedings submitted his recommendations under Section 99 of the Code and vide IA No. 593/ND/2023, recommended the initiation of personal insolvency proceedings against the Appellant. In these proceedings, the Appellant filed a reply to the report of the RP dated 26.12.2023 denying the contents of the report of the RP. The Appellant also filed an Application IA 3895/2023 in CP (IB) No. 681 of 2022, seeking the production of documents pertaining to the alteration of credit facilities by the consortium of banks vide sanction letter dated 24 October 2018. This IA was disposed of vide order dated 26 February 2024. The judgement in the application which was filed by the RP in the present proceedings bearing number IA No. 593/ND/2023 was pronounced on 16 January 2021 and which is being challenged by the Appellant.

35. The Appellant has raised the issue whether the extension of aggregate credit facilities by the consortium of banks from ₹907 crores to ₹1,075 crore amounts to 'variance' in terms of Section 133 of the Indian Contract Act, 1872, or not. Appellant also claims that after the corporate debtor and the consortium of banks had extended the revised credit facilities, there had been a novation of contract. The Appellant also raises the issue that extension of aggregate credit facilities without the knowledge of the Appellant would entail the discharge of the Appellant as personal guarantor of the corporate debt. The Appellant had not signed the renewal of the deed of guarantee, and the Adjudicating Authority had erred in ignoring the effect of non-renewal of the deed of guarantee by the Appellant. The Appellant claims that at the time of providing the guarantee in October 2017, the guarantee was towards total credit facilities of ₹907/- crore. Subsequently, the Appellant had resigned as a Director of PEL. Later on, the credit limits were increased from ₹907/- crores to ₹1075/- crores, which would entail a higher liability for the Appellant as a surety. The said increase was agreed to between the consortium of banks, as evidenced by the sanction letter dated 24.10.2018 issued by the lead bank, State Bank of India, and the sanction letter dated 01.01.2019 by the R1 bank, without the knowledge, consent, or involvement of the Appellant. Therefore, this falls within the meaning of a subsequent variance to the Deed of Guarantee under Section 133 of the Indian Contract Act, 1872. The Appellant further claims that the deed of guarantee dated 17.10.2017 does not contemplate the continuation of guarantee in case of increase in overall limits. Appellant also claims that Clause 8 of the deed of the guarantee has been incorrectly interpreted by the Adjudicating Authority. It is the claim of the

Appellant that the Adjudicating Authority has incorrectly held that if there is any increase in the sanction limit without the consent of the guarantor, then also he shall still be liable for the debt which existed prior to its variance. The Appellant also claims that when a fresh sanction letter dated 24.10.2018 was issued, whereby the overall limits were enhanced by almost ₹168/- crores, it would be a novation of contract as per Section 62 of the Indian Contract Act, 1872. The Appellant claims that there had been an offer and acceptance of a new credit facility limit, which clearly amounts to a novation of contract in which the Appellant was not privy. Moreover, after the resignation of the Appellant from TEL – the CD as a Director, the Appellant cannot be held liable for the personal guarantee, as there has been a novation of the contract. Appellant claims that due to the fact that the Appellant had ceased to be associated with TEL-CD in any capacity from 08.03.2018, which was duly informed to the consortium of banks by the Appellant and TEL. Furthermore, the consortium of banks enhanced the overall credit facility limit from ₹907/- crores to ₹107/- crores for financial year 2018-19, and which was accepted by TEL. Also, the father of the Appellant had passed away in 2019. And lastly, after the enhancement of credit facilities, it was only Mr. Arun Gupta, another director and brother of the Appellant, who had signed the renewal of personal guarantees in June 2020, and not the Appellant. Therefore, in such situation, there have been material alterations and novation leading to an abandonment of the deed of guarantee dated 17th October 2017.

36. The Appellant also contends that the sanction letters dated 11.10.2017 and the revised sanction letter dated 01.01.2019, issued by R1-SBI, are

markedly different in terms of their conditions. Furthermore, the sanction letters were valid only for a period of 12 months and were required to be renewed. The new sanction letter was never renewed by the Appellant herein. Therefore, the terms of the sanction of the R1 bank themselves were altered, thereby implying that the present case falls squarely within sections 62 and 63 of the Indian Contract Act 1872.

37. The Appellant also claims that the corporate debtor TEL had addressed communications, inter alia, dated 09/02/2018, 21/11/2018, and 21/12/2013 to the consortium of banks regarding the resignation of the appellant as a Director of TEL and release of his guarantee. The appellant had also addressed multiple communications, dated 31.05.2020 and 26.06.2020, to the consortium of banks regarding the release and revocation of his guarantee. Thus, the continuing guarantee, if any, of the appellant has to be deemed to be revoked under Section 130 of the Indian Contract Act, 1872.

38. Appellant also claims that it had not only refused to renew the guarantee, but had also addressed a communication dated 26.06.2020 to the consortium of banks regarding revocation and release of his personal guarantee. Despite which the Respondent Bank had initiated frivolous proceedings against the Appellant in relation to a non-existent personal guarantee.

39. The Appellant has also relied on the judgment of the Hon'ble Supreme Court in **DILIP B Jiwrajka v. Union of India & Ors., WP (C) 1281 of 2021**, whereby the Hon'ble Supreme Court had directed the Adjudicating Authorities

to deal with the objections of the personal guarantors in an independent manner and not mechanically agree with the report of the Resolution Professional. In the present case, there has been no independent assessment of the objections of the Appellant, and the commencement of the personal insolvency proceedings against the Appellant has been directed solely on the basis of the report of the Resolution Professional.

40. Briefly speaking the Appellant argues that when a fresh sanction letter dated 24.10.2018 was issued, whereby the overall limits were enhanced by almost ₹168/- crores, it would be a novation of contract as per Section 62 of the Indian Contract Act, 1872. The Appellant claims that there had been an offer and acceptance of a new credit facility limit, which clearly amounts to a novation of contract in which the Appellant was not privy. Moreover, after the resignation of the Appellant from TEL – the CD as a Director, the Appellant cannot be held liable for the personal guarantee, as there has been a novation of the contract.

41. Since the appellant has relied extensively on the provisions of the deed of guarantee and also Indian Contract Act 1872 relating to the provisions for novation and revocation of the continuing guarantee and discharge of surety due to variance in terms of the personal guarantee/contract extended by the appellant, these provisions are being discussed separately hereinafter.

42. For the sake of convenience, we are extracting the relevant provisions relating to Indian Contract Act 1872 herein as below:

"Section 62. Effect of novation, rescission, and alteration of contract.

If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract, need not be performed.

129. "Continuing guarantee".—A guarantee which extends to a series of transactions, is called a "continuing guarantee".

130. Revocation of continuing guarantee.—
A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.

133. Discharge of surety by variance in terms of contract.—
Any variance, made without the surety's consent, in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance.

43. First we look into the argument of the plan that it had ceased to be associated with TEL-CD in any capacity from 08.03.2018, which was duly informed to the consortium of banks by the Appellant and TEL. The Appellant claims that it had resigned as a director from TEL on 8th March 2018, and thereafter he was not involved in the day-to-day operations of TEL. Furthermore, the consortium of banks enhanced the overall credit facility limit from ₹907/- crores to ₹107/- crores for financial year 2018-19, and which was accepted by TEL. The Appellant also claims that when a fresh sanction letter dated 24.10.2018 was issued, whereby the overall limits were enhanced by almost ₹168/- crores, it would be a novation of contract as per Section 62 of the Indian Contract Act, 1872. The Appellant claims that there had been an offer and acceptance of a new credit facility limit, which clearly amounts to a novation of contract in which the Appellant was not privy. Moreover, after the resignation of the Appellant from TEL – the CD as a Director, the Appellant cannot be held liable for the personal guarantee, as there has been a novation of the contract. Also, the father of the Appellant

had passed away in 2019. And lastly, after the enhancement of credit facilities, it was only Mr. Arun Gupta, another director and brother of the Appellant, who had signed the renewal of personal guarantees in June 2020, and not the Appellant. Therefore, in such situation, there have been material alterations and novation leading to an abandonment of the deed of guarantee dated 17th October 2017.

44. We find that such an argument of the appellant is not sustainable. As noted by us here in separately, the Appellant had signed a deed of guarantee, which does not stand revoked by the resignation of the Appellant from the directorship of the corporate debtor. Furthermore, we have also noted separately herein that there is no novation of the contract. Therefore, both these grounds cannot be sustained. We also observe that notice u/s 13(2) dated 17.11.2021 that the debt claimed and guarantees invoked in the same, were only in respect to the limits granted under the documents executed on 17.10.2017 ['Schedule A' of the said notice u/s 13(2)]. Even Loan Recall Notice dt. 15.11.2022 and Original Applicant bearing OA No. 484 of 2022, filed before DRT-I, New Delhi don't show any reference to Renewal Sanction Letter dt. 01.01.2019.

45. We find that, with respect to the claim of the Appellant that, in view of his resignation from CD, he is discharged, is not borne out as per the terms of the deed of guarantee dated 17.10.2017. A plain reading of the various clauses, particularly Clause Nos. 1, 3, 6 to 8, 11, 12, 14 and 19 of the principal Deed of Guarantee dated 17.10.2017, would reveal that the liability of the guarantor was payable on demand. For the purpose of enforcement of the

guarantee, the guarantor shall be deemed to be the principal debtor. Guarantee is continuing in nature and is irrevocable. Guarantee is enforceable against the guarantor irrespective of dispute between the bank and the borrower. Guarantee shall not be affected by any variation of terms of contract in future. Guarantee expressly waived his right to claim discharge under any provision of contract on any ground. All admissions and acknowledgements of debt, obligation, balance confirmations, part payments etc. by the principal debtor shall be binding on the guarantor. Thus, in view of the provisions as contained in the deed of guarantee, the Appellant's claim that it stands discharged in view of the resignation is not at all tenable.

46. Since clauses 3 and 8 of the Deed of Guarantee have been extensively relied upon by both sides, we are delving into herein after.

47. The Appellant relies on clause 3 of the Deed of Guarantee which is extracted as below:

> "3. The Lead Bank shall have the fullest liberty without affecting, this Guarantee to vary the amounts of the Individual limits of the above mentioned credit facilities as may be agreed upon from time to time between the Lead Bank and the Borrower subject to the aggregate thereof not exceeding the principal sum and/or to postpone for any time or from time to time enforce or forbear to enforce any remedies or securities available to the Lead Bank AND the Guarantors shall not be released by any exercise by the Lead Bank of its liberty with reference to the matters aforesaid or any of them or by reason of time being given to the Borrower or of any other forbearance act or omission on the part of the Lead Bank or any other indulgence by the Lead Bank to the Borrower or by any other matters or things whatsoever which under the law relating to sureties would but for this provision have the effect of so releasing the Guarantors."

48. However, from a plain reading of this clause, it is clear that only a change within the existing overall limits of the credit facilities was contemplated, which would not have the impact of releasing a personal guarantor from their liability. However, in the present case, it is not where the internal limit has been enhanced or varied within the overall limits. Thus, the deed of guarantee itself implies that if in case there is an enhancement of overall credit facilities, the personal guarantor would be deemed to be discharged. The Appellant claims that in this case there has been *variance*, as there has been an increase in the overall limits of almost ₹168 crores, which materially impacts the liability of the sureties. Therefore, such variance would necessarily be considered as *material*, warranting a complete discharge of the guarantor.

49. Vehemently countering this argument Respondent SBI brings to our notice that the renewal of Sanction Letter dt. 01.01.2019, even if assumed to have been put in effect, did not cause any enhancement of facilities by the SBI which continued to remain @ ₹117/- crores. Various clauses of deed of guarantee dated 17.10.2017 including the Clause Nos. 8, 11 and 14 per which guarantees were continuing and any modification or variation to the terms of loan would not affect the liability of the Appellant to the extent of limits secured under the said deed of Guarantee Deed dated 17.10.2017 i.e. ₹907/- crores qua the consortium and ₹117/- crores qua the SBI. Even otherwise the respondent SBI never enhanced the loan facilities thereby varying the total liability of the Appellant against the SBI.

50. Qua the claim of the Appellant of discharge in view of variation of terms of contract and alleged novation, we observe that after the grant of credit facility for an amount of ₹117/- crores (constituted of fund based facilities of ₹10.00 crores and non-fund based facilities of ₹107.00 crores) to the CD vide Letter of Arrangement dated 11.10.2017, there had never been any further variation or enhancement by the Respondent/SBI. We further observe that the renewal of facilities would not amount to variation. This is clear from the Renewal letter dated 01.01.2019 and subsequent notices including Loan Recall and Demand Notice dt. 15.11.2021 and OA No. 556 of 2022 titled **"SBI vs. Technofab Engineering Limited & Ors.**" filed before the DRT-I, New Delhi.

51. Now we briefly delve into the issue of the appellants' claim that Clause 8 of the deed of the guarantee has been incorrectly interpreted by the Adjudicating Authority. The clause 8 is extracted as below:

> "8. The Guarantee herein contained is a continuing one for all amounts advanced by the Lead Bank to the Borrower in respect of or under the abovementioned credit facilities as also for all interest, costs and other money which may from time to time become due and remain unpaid to the Lead Bank thereunder and shall not be determined or in any way be affected by any account or accounts opened or to be opened by the Lead Bank becoming nil or coming into credit at any time or from time to time or by reason of the said account or accounts being closed and fresh account or accounts being opened in respect of fresh facilities being granted within the overall limit sanctioned to the Borrower."

52. We note that Clause 8 clearly states *that "the guarantee herein contained is a continuing one for all amounts advanced by the lead bank to the borrower in respect of or under the above-mentioned credit facilities, as also of all interest, commission and other money which may from time to time become*

due and remain unpaid to the lead bank thereunder....". We note that the guarantee, as in the present Deed of Guarantee, is a continuing one and cannot be discharged by the resignation of the director from the Corporate Debtor and the argument of the Appellant that the adjudicating authority has incorrectly interpreted Clause 8 of the Deed of Guarantee is not sustainable. Therefore, the argument of the Appellant that, in terms of the Deed of Guarantee which contemplates revisions and modifications within the first facility limit of ₹907/- crores, is entitled to a discharge of his personal guarantee is not tenable. Thus, we do not find any infirmity in the order of the adjudicating authority that if there is any increase in the sanction limit without the consent of the guarantor, then also he shall still be liable for the debt which existed prior to its variance.

53. With respect to the applicability of Section 129[1] of the Indian Contract Act, 1872, a continuing guarantee is defined as a guarantee which extends to a series of transactions. The Appellant claims that it had resigned from the directorship of the corporate debtor and the CD had addressed multiple communications to the consortium of banks regarding the resignation of the Appellant as Director of the CD and release of his guarantee. Thus, the continuing guarantee, if any, of the Appellant has to be deemed to be revoked under Section 130 of the Indian Contract Act, 1872. However, a plain reading of Section 130 of the Indian Contract Act indicates that, the same can be revoked only qua the future transactions, and that is by way of notice to the

[1] **129. "Continuing guarantee".**—A guarantee which extends to a series of transactions, is called a "continuing guarantee".

creditor. However, in the present case, no notice of revocation was ever issued by the Appellant to the creditor, that is, the respondent State Bank of India and the request for release to United Bank of India or Bank of India was accepted by the lenders.

54. Therefore, in view of the aforesaid clauses of the Deed of Guarantee, the resignation of the Appellant from the Corporate Debtor shall not discharge him from the continuing and irrevocable guarantee admittedly executed by him in favor of the Respondent Bank and other lenders. Therefore, the Appellant cannot claim revocation of the continuing guarantee under Section 130 of the Act, which mandatorily requires a notice of revocation, and such revocation operates only qua future transactions as per Section 130 of the Act.

55. With reference to the argument of the Appellant that it stands discharged in view of the variation of the terms of contract and alleged novation[2], we note that after the grant of credit facility for an amount of ₹117/- crores to the CD with a letter of arrangement dated 11.10.2017, there had never been any further variation or enhancement by the Respondent/SBI. Moreover, as per sanction letter dated 01.01.2019, which was renewal of working capital, the terms of this letter were to be accepted by the borrowers/guarantors – which was not done by the borrower or guarantor.

[2] **Section 62. Effect of novation, rescission, and alteration of contract.**

If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract, need not be performed.

including the Appellant. So the same was never put into effect. Thus, we agree with the submission of the Respondent that renewal of facilities would not amount to variation.

56. The Respondent has placed its reliance on the judgment of the Honorable Supreme Court of India in **HR Basavraj versus Canara Bank [2010 (2) SCC 458)** which has also cited the position as was in **Sitaram Gupta versus PNB [2008 (5) SCC 711]**. The relevant paras 16, 17, 18, 19 of this judgment are extracted as below:

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> 16. On the principles of continuing guarantee, the position was cleared by a decision of this Court in Sita Ram Gupta v. Punjab National Bank whereby it was held that it was not open to a party to revoke a guarantee when he had agreed to it being a continuing one and thus would be bound by the terms and conditions of the agreement executed at the time of entering into the guarantee. In the present facts and circumstances, we, therefore, do not find any difficulty in affirming the concurrent findings of the High Court and of the trial court on the point that the agreement executed for the purpose of a continuing liability despite the variation of terms of the contract and in the absence of a specific written document by Basavaraj (since deceased) revoking the guarantee, the guarantee stands and the legal representatives of the deceased are liable to repay the loan.
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> 17. With regard to the second issue, the learned counsel for the appellants contended that the contract between JKNP, the Bank and the guarantor Basavaraj had been substituted by a fresh contract by which LST was required to liquidate the amount outstanding. The learned counsel based this on two facts mainly. One was the transfer of the loan accounts from JKNP to LST and the other factor was the deposit of amounts by the Receivers appointed by the court in OS No. 4 of 1977 for liquidation of outstanding amounts of money indeed gives rise to substitution by a new contract. The respondents on the other hand contended that substitution of an old contract by a new one under Section 62 of the Act would require the express consent on behalf of both the parties.

18. Now let us examine Section 62 of the Act which reads as follows: "62. Effect of novation, rescission and alteration of contract. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed."
This section gives statutory form to the common law principle of novation. The basic principle behind the concept of novation is the substitution of a contract by a new one only through the consent of both the parties to the same. Such consent may be expressed as in written agreements or implied through their actions or conduct. It was defined thus by the House of Lords in Scarf v. Jardine: (AC p. 351)

> "... that there being a contract in existence, some new contract is substituted for it, either between the same parties (for that might be) or between different parties; the consideration mutually being the discharge of the old contract."

19. It might be useful at this juncture to turn to the decision of this Court in Lata Construction v. Dr. Rameshchandra Ramniklal Shah whereby this Court held that if the rights under the old contract were kept alive even after the second agreement and rights under the first agreement had not been rescinded, then there was no substitution of contracts and, hence, no novation.

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The above judgments fully support the arguments of Respondent – SBI. From the above judgements, we note that the principles governing the continuing guarantee and revocation. A continuing guarantee would mean that it is not open to a party to revoke a guarantee when he had agreed to it being a continuing one. He would thus be bound by the terms and conditions of the agreement executed at the time of entering into the guarantee. Novation is the substitution of a contract by a new one only through the consent of both parties to the same. It can happen only through the mutual consent of both parties. Consent may be expressed, as in written agreements, or implied through actions or conduct.

57. We further note that, as per Section 133 of the Indian Contract Act 1872, any variance made without the surety's consent, in terms of the contract between the principal debtor and the creditor, discharges the surety as only qua the transactions subsequent to the variance. The surety continues to be liable for transactions affected before such variation. Such a position has been held in the pronouncements of this Appellate Tribunal in various cases as noted herein under:

- **SBI Vs. Guourishankar Poddar & Anr [2024 SCC Online NCLAT 2014] - para Nos. 26, 30, 32, 36, 40 to 42 & 46-47.**
- **Sri Vibu Venkatsubramanian vs. State Bank of India & Anr. [Company Appeal (AT) (Insolvency) No. 1228 of 2024 dt. 26.02.2026]**"

58. With reference to registration of debt with NeSL (i.e. information utility) is concerned the argument of the appellant that the amount overdue is indicated 0.00 is misconceived. The debt registration commenced from March 2018 (after disbursement is in pursuance to loan and guarantee document dated 17.10.2017). Till 30.04.2019 the amount overdue is indicated 0.00 since the account was either running regular or had only slipped in the category of SMA-0 with default up to 30 days in April 2019. Thereafter the account having slipped in the category of SMA1 & 2, the amount overdue is indicated to be ₹2,72,00,999.00 and after NPA classification on 27.06.20219, the defaulted amount is indicated as ₹15,61,66,989.00. Nowhere it indicates that there was a fresh debt in pursuance to the Renewal Letter dated 01.01.2019, not guaranteed by the Appellant. Thus, the debt, as claimed by the SBI was only emanating from the loan documents executed on 17.10.2017.

Conclusions

59. In the facts and circumstances of the case, we find that the Appellant has assailed the impugned order mainly on two grounds.

60. Firstly, on the claims that even before the classification of the account of the Corporate Debtor as NPA on 26.06.2019, the Appellant had already resigned from directorship of the CD on 08.03.2018, we are not satisfied with the argument of the appellant that his guarantee cannot be revoked.

61. Perusal of deed of Guarantee dated 17.10.2017 signed by the appellant would reveal the that the Liability of the Guarantor was payable on demand (Clause 1); for the purpose of enforcement of the Guarantee, the Guarantors shall be deemed to the principal debtor (Clause 7); Guarantee is continuing in nature and is irrevocable; Guarantee is enforceable against the Guarantor irrespective of dispute between the Bank & borrower (Clause Nos. 8 & 11); Guarantee shall not be affected by any variation of terms of contract in future (Clause 3 & 14); Guarantee expressly waived his right to claim discharge under any provision of Contract Act on any ground (Clause 18); all admissions & acknowledgments of debt/balance confirmations, part payments etc. by the principal debtor shall be binding on the Guarantor (Clause 12 & 19).

62. Appellant's extensive reliance on the Indian Contract Act 1872, particularly on the provisions relating to novation (Section 62), continuing guarantee (Section 129), revocation of continuing guarantee (Section130) and discharge of the guarantor (Section 133) is misplaced. Even under Section 129 of the Indian Contract Act, 1872 a continuing guarantee is defined as

a guarantee which, extends to a series of transactions and the same can be revoked under Section 130 of the Act only qua the future transactions.

63. On the second ground that there were variations in the terms of the contract after the resignation of the Appellant from directorship of the CD on 08.03.2018, we do not find any novation of the contract per Section 62 of the Indian Contract Act in 1872[3] as there had never been any further variation or enhancement by the Respondent/SBI. We further conclude that the renewal of facilities would not amount to variation. The arguments of the appellant that since, the facilities stood enhanced by the lenders, including Bank of India, therefore, the contract stood novated, and the Appellant stood discharged. We find that the Appellant had signed a deed of guarantee which does not stand revoked by the resignation of the Appellant from the directorship of the Corporate Debtor. Therefore, both these grounds cannot be sustained.

64. We further observe that the Respondent SBI gets full assistance from the judgment of Hon'ble Supreme Court of India in **HR Basavraj versus Canara Bank 2010 (2) SCC 458)** and **Sitaram Gupta versus PNB [2008 (5) SCC 711]**.

65. We also observe that the reliance placed by the appellant on the judgment of the Honorable Supreme Court in Dilip B Jirajka (supra) is

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Section 62. Effect of novation, rescission, and alteration of contract.

If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract, need not be performed.

misplaced as all the objections of the personal guarantors have been noted by the Adjudicating Authority and it has not mechanically agreed with the report of the Resolution Professional. We do not agree with the arguments of the Appellant that there has been no independent assessment of the objections of the appellant and we cannot dismiss the commencement of personal insolvency proceedings against the appellant on this ground.

Order

66. Based on the above analysis we find that there is no justification in the arguments of the appellant and therefore we are inclined to dismiss the appeal. Accordingly, the Appeal is dismissed. All related IAs are also dismissed. No orders as to costs.

[Justice N Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi.
July 06, 2026.

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