NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 636 of 2025

[(Arising out of the Impugned Order dated 04.02.2025 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Mumbai Bench-IV in C.P. (IB) No. 808/MB/2023)]

IN THE MATTER OF:

Ravindra Gopalkrishan Agarwal
Central Hanuman, Azad Chowk,
Latur – 413512 **...Appellant**

Versus

Jankalyan Sahakari Bank Ltd.
(A body corporate registered under the
Maharashtra Co-operative Societies Act, 1960)
Vivek Darshan, 140 Sindhi Society
Chembur, Mumbai
Maharashtra – 400071
Through Resolution Professional
M/s MVK IPE LLP
Reg No.: IBBI/IPE-0134/IPA-1/2022-23/50028
Represented by Designated Partner.
Mangesh V. Kehre
607-A, Chetak Centre, RNT Marg, Near Hotel
Shreemaya, Indore
Madhya Pradesh – 452001 **...Respondent**

With
Company Appeal (AT) (Insolvency) No. 637 of 2025

[(Arising out of the Impugned Order dated 04.02.2025 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Mumbai Bench-IV in C.P. (IB) No. 817/MB/2023)]

IN THE MATTER OF:

Sunita Jayprakash Chitkote
24-3/28. Chitkote Chambers,
Chandra Nagar, Ukka Marg Near Old Shahu College, **...Appellant**
Latur - 413512, Maharashtra.

Versus

Jankalyan Sahakari Bank Ltd.

(A body corporate registered under the
Maharashtra Co-operative Societies Act, 1960)
Vivek Darshan, 140 Sindhi Society
Chembur, Mumbai
Maharashtra – 400071
Through Resolution Professional
M/s MVK IPE LLP
Reg No.: IBBI/IPE-0134/IPA-1/2022-23/50028
Represented by Designated Partner,
Mangesh V. Kehre
607-A, Chetak Centre, RNT Marg,
Near Hotel Shreemaya, Indore
Madhya Pradesh – 452001 **...Respondent**

With
Company Appeal (AT) (Insolvency) No. 638 of 2025

[(Arising out of the Impugned Order dated 04.02.2025 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Mumbai Bench-IV in C.P. (IB) No. 836/MB/2023)]

IN THE MATTER OF:

Vijaykumar Ramgopal Gilda
Ram-Lakhan Shivajinagar,
Near Udyog Bhavan, Latur - 413512 Maharashtra **...Appellant**

Versus

Jankalyan Sahakari Bank Ltd.
(A body corporate registered under the
Maharashtra Co-operative Societies Act, 1960)
Vivek Darshan, 140 Sindhi Society
Chembur, Mumbai
Maharashtra – 400071
Through Resolution Professional
M/s MVK IPE LLP
Reg No.: IBBI/IPE-0134/IPA-1/2022-23/50028
Represented by Designated Partner,
Mangesh V. Kehre
607-A, Chetak Centre, RNT Marg,
Near Hotel Shreemaya, Indore
Madhya Pradesh – 452001 **...Respondent**

With
Company Appeal (AT) (Insolvency) No. 696 of 2025

[(Arising out of the Impugned Order dated 04.02.2025 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Mumbai Bench-IV in C.P. (IB) No. 816/MB/2023)]

IN THE MATTER OF:

Ramnivas Vishnudas Agarwal
Shantiniwas, Mayurban Road
Near COSCIT College Girls Hostel
Ambejogai Road Latur - 413512, Maharashtra **...Appellant**

Versus

Jankalyan Sahakari Bank Ltd.
(A body corporate registered under the
Maharashtra Co-operative Societies Act, 1960)
Vivek Darshan, 140 Sindhi Society
Chembur, Mumbai
Maharashtra – 400071
Through Resolution Professional
M/s MVK IPE LLP
Reg No.: IBBI/IPE-0134/IPA-1/2022-23/50028
Represented by Designated Partner,
Mangesh V. Kehre
607-A, Chetak Centre, RNT Marg,
Near Hotel Shreemaya, Indore
Madhya Pradesh – 452001 **...Respondent**

Present:

For Appellant	:	Mr. Pallav Mongia, Ms. Ishita Nayak and Ms. Kashish Lalwani, Advocates.
For Respondent	:	Ms. Soumya Dhawan, Advocate. CA Ayushi Patidar

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

[Per: Arun Baroka, Member (Technical)]

The present Appeal has been preferred invoking Section 61(1) of the Insolvency and Bankruptcy Code, 2016, aggrieved by the order dated 04.02.2025 passed by the Hon'ble National Company Law Tribunal Bench-IV, at Mumbai in C.P. (IB) NO. 808/MB/2023 titled as *'Janakalyan Sahakari Bank Limited v. Ravindra Gopalkrishan Agarwal',* wherein the Hon'ble NCLT has admitted the petition of the financial creditor under Section 95 of the IBC, thereby initiating the Personal Insolvency Resolution Process, against the personal guarantor, i.e., the Appellant herein.

<u>Brief facts of the case</u>

2. Respondent-Janakalyan Sahakari Bank Ltd through Resolution Professional. The Corporate Debtor - Oasis Alcohol Limited was granted credit facilities by a consortium of lenders, being co-operative banks, in the year 2010. The consortium involved 11 member banks namely;

1) Janata Sahakari Bank Ltd., Pune [Lead Bank]
2) TJSB Sahakari Bank Ltd.
3) Solapur Janata Sahakari Bank Ltd.
4) The Vaidyanath Urban Co-operative Bank Ltd.
5) Nagpur Nagarik Sahakari Bank Ltd.
6) SVC Co-operative Bank Ltd.
7) Janakalyan Sahakari Bank Ltd. [present Respondent]
8) Janaseva Sahakari Bank (Borivli) Ltd
9) Poornawadi Nagarik Sahakari Bank Ltd.
10) Deogiri Nagari Sahakari Bank Ltd.
11) Bhagyalaxmi Mahila Sahakari Bank Ltd.

The member banks [1-6] assigned their share of financial assistance to CFM Asset Reconstruction Pvt. Ltd. ["ARC"] whereas the present Respondent including 04 other member banks did not assign their share to any ARC. The Appellant including 10 other individuals provided their personal guarantee to the loans availed by the Corporate Debtor from these member banks.

3. The present Respondent has filed applications under Section 95 of IBC, 2016 against all the Personal Guarantors of this CD, including Appellant before Hon'ble NCLT, Mumbai Bench for initiating insolvency resolution process against all the personal guarantors. The Hon'ble NCLT, Mumbai Bench - IV vide order dated 04.02.2025 passed the order under Section 100 of the Insolvency and Bankruptcy Code, 2016 (Code), wherein petition filed under Section 95 of the code bearing No. C.P. (IB) No. 808/MB/2023 was admitted and the Insolvency Resolution Process against present Appellant i.e. Mr. Ravindra Gopalkrishan Agarwal commenced. Pursuant to admission of the application, Resolution Professional made a Public Announcement u/s 102 of code to invite the claim from the stakeholders of the applicant. The last date for receipt of claim was 01.03.2025. The claims were duly submitted and a list of creditors has already been issued by the Resolution Professional appointed. It is stated that the present <u>Appellants despite repeated communications has admittedly not submitted repayment plan</u>.

<u>Submissions of the Appellant/PG- Ravindra Gopikrishan Agarwal</u>

4. M/s Oasis Alcohol ("Company") availed various credit facilities to the tune of ₹ 6.5 crores and 2.50 crores from the Respondent since 2010. The Appellants have executed Personal Guarantee Deeds on 20.03.2010 and 08.08.2011 in favour of the Respondent. A supplementary inter-se agreement was too executed between the lending institutions recognising Janata Sahakari Bank ("lead bank") as the lead bank of the Janata Consortium, in respect of various credit facilities those were extended by them to M/s Oasis Alcohol Ltd. The account of the Company was declared NPA on 30.09.2013

and a demand notice under S. 13(2) of the SARFAESI, was issued to the Company on 13.06.2016.

5. On 22.02.2017, the Respondent and other consortium members entered into consent terms with the company, ultimately culminating in an arbitral award dated 23.03.2017, whereby the Appellant became jointly and severally liable to pay under reference by the Award. Subsequently, the Company executed a MOU and lease agreement dated 16.12.2017 with M/s Rajlakshmi Petrochem Pvt. Ltd. ("Corporate Guarantor"), transferring its properties thereto, with the Corporate Guarantor undertaking to settle all liabilities. The said arrangement was thereafter acknowledged by the lead bank too in its sanction letter dated 05.06.2018, whereby the Corporate Guarantor was obligated to abide by the terms agreed between the parties. Hon'ble NCLT admitted the Section 7 Petition [CP(IB)-3619/I&BP/MB/2018], initiating CIRP against the Company on 06.03.2019. Further, **O.A. No. 132/2017** filed by the Respondent before the DRT, Pune was dismissed for want of evidence on 12.07.2019. Notably, on 21.08.2020, the Respondent unconditionally assigned the loans and underlying security interest to M/s CFM Asset Reconstruction Pvt. Ltd. ("Assignee"), a material fact, which was withheld and suppressed by the Respondent before the Tribunal, having vital bearing. The said assignment also stands duly recorded in the order dated 01.12.2022 that was passed by the Hon'ble NCLT, whereby the CIRP against the Company was withdrawn on account of irregularities in procedural compliance by the RP. On 04.08.2021, the property offered as security by the Appellant in his capacity as personal guarantor was sold by the assignee for

a sum of ₹1,25,00,000/. Another demand notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 was issued by the Respondent on 01.09.2021, to which the Appellant filed a detailed reply. Thereafter, on 09.05.2023, the Respondent filed C.P. (IB) No. 808/MB/2023 under Section 95 of the IBC against the Appellant for an alleged debt of ₹22,42,01,475.68/- as due on 25.03.2023. Vide Impugned Order dated 04.02.2025, the Hon'ble NCLT admitted the petition and initiated personal insolvency proceedings against the Appellant, giving rise to the present Appeal.

6. <u>The Appellant contends that the arbitral award dated 23.03.2017 has altered the legal position of the parties from being a guarantor to a co-borrower</u>. Pursuant to the passing of the arbitral award, the relationship between the parties underwent a material alteration. The Appellant, who was earlier a guarantor to the loan transaction, stood converted into a co-debtor/co-borrower by virtue of the express terms of the consent award itself. In particular, Clause 7 of the arbitral award dated 23.03.2017, expressly records that the opponents (including the Appellant) shall pay *"jointly and severally"* to the lead bank for itself and on behalf of all other consortium banks including the Respondent. This unequivocally establishes that both parties were thereafter jointly and severally liable for the entire outstanding amount. Unlike a guarantor, whose liability arises only upon the default of the principal debtor, a co-borrower's liability is immediate and primary, independent of any default by another. The Appellant claims that the above

position finds direct support from two judicial pronouncements. In ***Vyravan Chettiar v. Official Assignee of Madras, ILR (1932) 55 Mad 949,*** the Hon'ble Madras High Court categorically held that a contract of guarantee under Section 126 of the Indian Contract Act is strictly confined to cases where one party agrees with the creditor to discharge the liability of a third person upon the latter's default, and that persons who are jointly and severally liable for the same debt, equally owed by both, they do not fall within the definition of a contract of guarantee. This position is further fortified by ***Lima Leitao and Co. Ltd. v. Union of India, MANU/GO/0034/1967,*** where the Hon'ble High Court of Bombay at Goa, held that the liability of a guarantor is inherently secondary and contingent, presupposing the existence of an independent liability of the principal debtor. Since Clause 7 of the arbitral award expressly imposes joint and several liabilities upon all opponents including the Appellant too, the Appellant's obligation is no longer secondary or contingent but primary with that of the principal borrowers. Further, the Respondent's contention that the arbitral award did not alter the terms of the original guarantee is explicitly negated by the letter dated 12.02.2021 issued by the lead bank, wherein it was categorically recorded that the arbitral award had finally and conclusively determined all rights and liabilities of all signatories, and that as a consequence thereof, all earlier documents had lost their significance and stood crystallised in the form of the consent award. The Respondent cannot therefore contend that the guarantee remains of a subsisting nature. This position is further reinforced by the express terms of the arbitral award itself, which stipulate that *"in the event of any default for any reason whatsoever, in payment of the agreed sum, in the agreed time limit,* *by the Opponents....the concession or relaxation in payment of the dues under Clause No. 5 and 7 shall stand automatically cancelled..."* **.** Such a stipulation necessarily presupposes that the prior liabilities stood extinguished and regularised by virtue of the award. Furthermore, that the award contained no provision, express or implied, contemplating a reversion to the original guarantee arrangement in the event of default by the Appellant. Had the parties ever intended for the original guarantee obligations to survive or be restored upon default, such an intention would necessarily have found explicit expression in the award. The deliberate absence of any such provision, in the award leads to the irresistible conclusion that neither party ever intended for the original guarantee agreement to be revived or for the Appellant to be restored to the position of a guarantor.

7. <u>The Appellant also claims that the Respondent lacked locus standi to initiate proceedings under section 95 of the IBC.</u> Record itself reveals that, vide sanction letter dated 11.03.2010, the company had availed credit facility of ₹ 6.5 Crores from Respondent, in pursuance whereof an irrevocable Power of Attorney was executed by the directors and mortgagors of the Company in favour of the officers of the Respondent Bank, empowering them to execute and register the mortgage deeds in respect of the properties offered as security. Further, by virtue of the Inter se Agreement dated 21.06.2010, Janata Sahakari Bank was designated as the lead bank amongst the consortium of cooperative lenders, in respect of the total credit facility availed by the Company. In the present case, <u>the entire debt of the Company along with all underlying security interests stood unconditionally assigned to the</u>

assignee, which is not merely an assertion, but rather a matter of record, as reflected in the Order dated 01.12.2022 and the letter dated 12.02.2021 issued on behalf of the lead bank, which categorically states: *"...all the debts availed of by M/s Oasis Alcohol Ltd. are assigned and transferred to the ARC..."* It is further fortified by the fact that the Assignee sold the very property mortgaged in favour of the Respondent as security for the said credit facility, being land admeasuring 3252.66 sq. mtrs., Gata No. 36/2/B/1, Village Khadgaon, Latur vide Sale Certificate dated 04.08.2021. The sale of the mortgaged property by the assignee in itself is a conclusive proof that the debt, together with all underlying security interests, had validly vested in the assignee prior to such sale, for it is only upon a valid and subsisting assignment of the debt and the accompanying security that the assignee could have assumed the power to sell the said mortgaged property. The Respondent's contention that it did not assign its debt to the Assignee and that no Assignment Agreement was executed by it is directly contradicted by the documents on record which have a precedentary evidentiary value. It is further pertinent to note that the Respondent has failed to produce or place on record the deed of assignment before this Hon'ble Tribunal. In the absence of the deed of assignment, an adverse inference must be drawn against the Respondent, and it must be presumed that the debt, along with the corresponding rights under the guarantee, stood assigned to the assignee, which could be governed by the binding terms of assignment deed. Consequently, only the assignee could have maintained proceedings against the Appellant as personal guarantor, and the Respondent lacked the locus standi to initiate proceedings under Section 95. Accordingly, the Impugned Order deserves to be set aside.

8. It is contended by the appellant that the debt of the Company was assigned in favour of CFM Asset Reconstruction Pvt. Ltd and thereafter the loan was restructured by the assignee. In the present case, the assignment of debt in favour of the assignee and the subsequent restructuring thereof amounts to variation in the terms of the contract, thereby discharging the guarantor from all liability under Section 133 of the Indian Contract Act, 1872.

9. The liability of the Appellant also stood discharged pursuant to the MOU dated 16.12.2017, whereby the Company entered into a lease agreement with the Corporate Guarantor, transferring all its moveable and immovable properties, and with the Corporate Guarantor expressly undertaking to settle all prior liabilities of the Company. The said arrangement was duly acknowledged by the lead bank vide sanction letter dated 05.06.2018. Pursuant to the aforesaid arrangement, the Corporate Guarantor repaid 11 instalments aggregating to ₹ 6,30,63,689/-, which were accepted without objection by the consortium banks, including the Respondent. The acceptance of such payments under the revised arrangement clearly evidences that the liabilities stood assumed by the Corporate Guarantor, thereby discharging the Appellant from his obligations as Personal Guarantor.

10. The Appellant further claims that the assignment of debt is a material fact, the omission of which vitiates the proceedings. The appellant further

contends that the Respondent has suppressed the material fact that by assignment agreement dated 21.08.2020, the debt of the Company along with the underlying securities have been assigned to the assignee. The existence of such an agreement is duly recorded by the Hon'ble NCLT in its Order dated 01.12.2022. However, no such agreement has been placed on record before the Hon'ble NCLT in the impugned proceedings. It is submitted that the Respondent's attempt to disown the assignment of debt and underlying securities to the assignee on the ground that it did not itself execute such assignment and that the assignment agreement was entered into between the lead bank and the assignee is a deliberate misdirection. The consortium of lenders acted as a collective body under the Inter-Se Agreement dated 21.06.2010 and any enforcement of rights by any one consortium member through CFM Asset Reconstruction Pvt. Ltd. necessarily affects the composite debt and corresponding guarantees in their entirety. It is respectfully submitted that the assignment of debt without the consent of the personal guarantor, fundamentally altered the rights and liabilities of the parties and thereby amounted to a novation of contract as per Section 62 of the Indian Contract Act, 1872. It is further submitted that the Appellant's secured property was sold by CFM Asset Reconstruction Pvt. Ltd. as assignee of the debt of the consortium members, vide Sale Certificate dated 4th August 2021 and the proceeds thereof have already extinguished the secured liability. The Respondent cannot be permitted to ignore the benefit derived from such recovery while simultaneously initiating further insolvency proceedings against the Appellant. Moreover, the failure to disclose the assignment agreement and the benefit of recovery derived from the sale of the Appellant's mortgaged property constitutes a material omission that strikes at the very root of the Section 95 proceedings and vitiates the same in their entirety.

11. The Appellant contends that the liability of the appellant cannot in any case exceed the contractual cap and cannot result in unjust enrichment. Even if the guarantee continues to subsist, it is submitted that the liability of the Appellant cannot in any event exceed the contractual cap expressly prescribed in the respective guarantee agreements. In terms of the guarantee agreement dated 20.03.2010, the liability of the Appellant is capped at ₹ 6.5 crores, and in terms of the guarantee agreement dated 08.08.2011, the same is capped at ₹ 2.5 crores. Therefore, any claim preferred by the Respondent in excess of such contractual cap would result in unjust enrichment of the Respondent at the expense of the Appellant. In the instant case, the property mortgaged by way of security has been disposed of and the proceeds have been applied in furtherance of the debt. No adjustment has been made in order to reflect the payments already made by co-sureties through the sale of mortgaged property. The Respondent, therefore, cannot seek recovery in excess of its proportionate contractual entitlement, as that would amount to unjust enrichment.

12. The Appellant also contends that the petition is barred by limitation. *Firstly,* the arbitral award dated 23.03.2017, having been entered into with the mutual consent of all concerned parties, constituted a novation of the pre-existing contractual arrangement within the meaning of Section 62 of the Indian Contract Act, 1872. Consequently, all alleged prior defaults stood regularised under the terms of the said Award. In such circumstances, the

Respondent's assertion that the date of default is 31.07.2015 is ex facie erroneous and misconceived. *Secondly,* the period of limitation in respect of a personal guarantor under an on-demand guarantee commences from the date of demand made upon the guarantor under Section 13(2) of the SARFAESI. In the present case, the guarantee was first invoked on 13.06.2016 by issuance of a notice under Section 13(2) of the SARFAESI. Thereafter, the debt was regularised by the arbitral award dated 23.03.2017, by virtue of which the Appellant's liability novated from that of a "guarantor" to a "co-debtor. Accordingly, any default subsisting prior to the arbitral award stands extinguished and regularised by virtue thereof, and the period of limitation must therefore be computed from the date of default, if any, under the arbitral award alone, and not from any prior date. *Thirdly,* the payments made by the Appellant/Corporate Debtor pursuant to the arbitral award cannot be construed as an acknowledgment of debt so as to extend the period of limitation under Section 19 of the Limitation Act, 1963. Explanation (b) to Section 19 categorically provides that payment made on account of a decree or order of a court does not extend the period of limitation. The arbitral award, being in the nature of a deemed decree, falls squarely within the purview of the said explanation, and any payments made pursuant thereto cannot operate to extend the period of limitation against the Appellant. *Fourthly,* the Respondent's belated attempt to shift the date of default to '13.09.2020' is equally untenable. The mere issuance of a demand notice under Section 13(2) of the SARFAESI does not extend limitation or give rise to a fresh cause of action under Article 137 of the Limitation Act, 1963. Consequently, the Respondent's reliance upon the subsequent notice dated 16.07.2020 as constituting a fresh cause of action is wholly misplaced. *Lastly,* the demand notice in Form-B dated 01.09.2021 issued under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 does not constitute an acknowledgment of debt within the meaning of Section 18 of the Limitation Act, 1963. Section 18 specifically requires that the *"acknowledgment be in writing and signed by the party against whom the right is claimed,"* which necessarily implies that such acknowledgment must emanate from the debtor himself. A unilateral demand notice issued by the creditor, therefore, cannot amount to an acknowledgment so as to extend or revive the period of limitation. In view of the above, the Respondent cannot allege that their petition was within limitation.

Submissions of the Respondent

13. The applicant contends that by virtue of the arbitral award dated 23.03.2017, which was based on a settlement, the legal relationship between the parties changed - from guarantor to co-debtor. The applicant argues that the original default date of 31.07.2015 was regularised and replaced by new obligations. It is further claimed that the co-debtors made payments under the award, affecting both limitation and the outstanding debt quantum, and that the impugned order erroneously recorded the date of default, which should render it liable to be set aside.

14. On the changing the legal relationship between the parties from guarantor to co-debtor after rendering of the arbitral award on 23.03.2017, the Respondent being a multi-state cooperative bank is governed by the provisions of The Multi-State Co-Operative Societies Act, 2002 ["MSCS Act"].

The provisions of Section 84 of MSCS Act, empowers the bank to refer the dispute to arbitration. Accordingly, the majority of the member banks decided to refer the matter related to default of loan by CD and its PGs to Arbitration proceedings. As a result of such proceedings, an arbitral award dated 23.03.2017 was delivered in terms of consented terms settled between the parties. This arbitral award has not, in any manner, extinguished or altered the terms of original loan agreement and has neither altered the original contract of guarantee executed by the applicant nor his status as "Personal Guarantor". The award simply provided for a fresh repayment structure/timeline towards the debt already due and under default. The applicant's claim that they ceased to be a guarantor and became a co-debtor is not supported either by the terms of the award or by law. The arbitral award clearly stipulates *"that in the event of any default..................... , the Opponents personally and their properties and their legal heirs, legal representatives, ... etc. shall be liable to pay the entire amount...... "*. Moreso, neither any fresh loan documentation as such was required as a result of this award or was entered into with or by either party. The appellant did not bother to annexe the arbitral award along with its appeal, but the same was placed on record by the respondent. Furthermore, the contention regarding incorrect calculation of quantum of debt is absurd and clearly unwarranted. The loan account statements forming part of Section 95 petition filed by the Respondent clearly demonstrates that the amount under default is beyond the threshold prescribed under I&B Code, even after duly factoring the payments made pursuant to arbitral award delivered in March 2017 and hence, does not require detailed explanation on the part of present Respondent.

15. The Appellant argues that the assignment of the Corporate Debtor's debt and its underlying securities to CFM Asset Reconstruction Pvt. Ltd. under an Assignment Agreement dated 21.08.2020. The failure to disclose such a pivotal information is a material omission goes into the root of the matter. The assignee has disposed of the properties of personal guarantor, thus discharging the guarantees. Such suppression of material facts renders the adjudication procedurally flawed, and the impugned order deserves to be set aside on this ground alone. The Respondent Bank submits that the allegation made by the applicant regarding non-disclosure of the assignment of debt to CFM Asset Reconstruction Pvt. Ltd. (CFM ARC) by the respondent is factually incorrect and misleading. In fact, such an allegation is completely baseless that even the Appellant could not support this allegation with documentary evidence. It is clarified that various member banks in the consortium have independently assigned their debt to CFM ARC. However, the present Respondent did not assign its debt and has therefore, not executed any assignment agreement dated 21.08.2020 with CFM ARC as alleged by the Appellant. In fact, the assignment agreement which the appellant purports to, is between Janata Sahakari Bank Ltd., Pune [Another bank in consortium] and CFM ARC. In case, if the Appellant is in possession of any such an agreement which suggests assignment of debt by the present Respondent, he should have brought the same before this Hon'ble AA in his appeal. Therefore, this allegation by the Appellant is nothing but a blatant lie,

in order to disrupt the smooth conduct of insolvency resolution proceeding and appeal deserves to be dismissed on this very ground. Moreover, the appellant's assertion that the personal guarantors' liabilities stand discharged due to enforcement actions by CFM ARC is factually and legally untenable because neither the Respondent has assigned the debt to CFM ARC nor is in line with the provisions of Section 128 of the Indian Contract Act, 1872 which states that, the liability of a guarantor is co-extensive with that of the principal debtor unless the entire debt is satisfied. Mere sale of assets by an assignee of another loan does not, in itself, extinguish the guarantee. Therefore, no procedural irregularity or suppression of material facts can be attributed to the Respondent, and there is no ground to set aside the impugned order. Additionally, the fact that the Assignment Agreement dated 21.08.2020 was not brought on record by the Respondent is irrelevant, as the Respondent is not a party to that agreement. The agreement relates to the assignment between other lender in consortium and CFM ARC. As such, the question of concealment or suppression of that document by the Respondent does not arise.

16. On the argument of the appellant that there was a restructuring of the loan by the assignee i.e. M/s CFM ARC without the personal guarantor's consent and appellants 'claims that constitutes a material variation in terms of the original contract for which the guarantee was executed, and thereby discharges the guarantor from liability under Section 133 of the Indian Contract Act, the Respondent denies the allegation that any restructuring of the loan or alteration of contractual terms was carried out by it. The Appellant

is grossly misinformed and hence, making false accusations. It is reiterated that the Respondent has never assigned its debt to CFM Asset Reconstruction Pvt. Ltd., has not entered into restructuring as alleged by the Appellant and hence, there arises no question of variance in terms and discharging of surety from the liabilities, as a result of restructuring by Assignee. As such, the question of variation of contract terms by the Respondent does not arise, and Section 133 of the Indian Contract Act, 1872, which discharges a surety upon material variation of the contract without their consent, is wholly inapplicable in the present case. Since there is no assignment, and absolutely no restructuring on the part of Respondent, thus, there cannot be novation or alteration to the original loan contract executed between the Corporate Debtor, the Respondent and Personal Guarantor/Appellant. Consequently, the applicant's status as guarantor vis-a-vis the Respondent's debt remains unaffected. Furthermore, Section 133 only discharges a guarantor where a valid and binding variation of contract terms takes place between the principal debtor and the creditor. In this case, the Respondent has neither made any such variation or modification nor has ever been party to the alleged restructuring done by the Assignee. It is also significant that the applicant has failed to produce any specific evidence or documentation which suggests that Respondent was a party to such alleged variation resulting in novation in the terms of contract. Accordingly, the applicant's claim that they are discharged from their guarantee on the basis of Section 133 of the Indian Contract Act, 1872, is not just legally untenable but factually baseless so far as the Respondent's claim is concerned. This sets out another ground for outright rejection of the present appeal without getting into other allegations raised by the Appellant.

17. With respect to the contention of the Appellant that the Liability of Appellant cannot exceed the contractual obligations, the Respondent opposes it and brings to our notice that the contention advanced by the Appellant is factually incorrect and contrary to the express terms of the guarantee agreements. The liability of the guarantors is not confined merely to the principal loan amount as erroneously alleged by the Appellant. Because under the terms of Clause 19 of the Guarantee Agreements dated 20.03.2010 and 08.08.2011, the guarantors have undertaken liability not only towards repayment of the disbursed loan amount, but also towards accrued interest, liquidated damages, costs, charges, expenses, and all other consequential liabilities arising therefrom. Accordingly, the Appellant's attempt to restrict the scope of liability is untenable and contrary to the contractual stipulations binding upon the parties. *[Clause 19 of Guarantee Agreements, Annexure R/2 – relevant page no. 40 to 46].*

18. On the contention of the appellant that the petition is time barred, the respondent brings to our notice that after a careful reading of the various assertions made by the Appellant shows that the appellant is clearly confused as to its status as "Guarantor" or "Co-debtor" and further, as to the fact that when has default actually taken place. On one hand, he has claimed that the debt was regularized as a consequence of an arbitral award whereas on the other hand, claiming that the petition is filed beyond 8 years of the alleged date of default. Going by the appellant's view, the default stood regularised in

March 2017 [due to arbitral award], therefore, the subsequent default occurred only when the CD/Guarantors could not abide by the repayment schedule agreed upon in the arbitration proceedings. Without getting into further averments of the appellant particularly in reference to limitation/time barred debt, the Respondent has presented herein a breakdown of the timeline in order to substantiate the validity/limitation in the matter:

Date	Particulars
13.06.2016	Issuance of notice u/s 13(2) of SARFAESI Act, as also acknowledged in arbitral award and subsequent notice u/s 13(2).
23.03.2017	Matter was referred by member banks of consortium to Arbitration and passing of Arbitral Award, thereby, Restructuring/Revival of the debt.
March 2017 – March 2019	Repayment by borrower [as also evident in loan account statements]
16.07.2020	Issuance of Demand Notice u/s 13(2) of SARFAESI upon Borrower as well as Guarantors, including Appellant demanding payment within 60 days.
13.09.2020	Debt remained unpaid despite demand from the borrower as well as Guarantors, constituting "Date of Default".
01.09.2021	Demand Notice under Form B [Rule 7(1)] issued by the Respondent-Bank.
19.05.2023	Filing of Petition under section 95 of IBC, 2016 by the Respondent-Bank, within a limitation period of 03 years from the default pursuant to demand notice dated 16.07.2020.

19. Given these timelines of events, the application filed in May 2023 is clearly within the permissible time frame and the impugned order is indisputable. These facts were also brought to the attention of Hon'ble NCLT

by way of an additional affidavit dated 13.11.2024 [e-filed on 15.11.2024] and presented during the course of adjudication/arguments upon S.95 petition. Hon'ble Adjudicating Authority has taken due cognizance of the same in their admission order dated 04.02.2025. It is pertinent to mention here that the Guarantee given by the Appellant was in the nature of an on-demand guarantee [clause 3 of guarantee agreement], and the notice u/s 13(2) of SARFAESI Act dated 16.07.2020, addressed to Appellant also as Guarantor demanding dues, was issued only after default was committed in repayment of dues ensuing arbitral award. For the sake of easy reference, a copy of guarantee agreement and notice dated 16.07.2020 are annexed hereto as "Annexure - R/2 and Annexure - R/3" respectively. Reliance is also placed on the judgement of this Hon'ble Appellate Tribunal in the matter of **"Asha Basantilal Surana vs State Bank of India & Ors. [Company Appeal (AT) (Ins.) No. 84/2025]"**, as also in the matter of **"Mavjibhai Nagarbhai Patel vs State Bank of India & Ors [Company Appeal (AT) (Insolvency) No. 1702 of 2024)"**. Another averment of the Appellant [i.e. Hon'ble NCLT erred in not considering whether payments made towards the arbitral award could be construed as an acknowledgement of debt under Section 19 of Limitation Act, 1963, particularly with reference to Explanation 2 under Section 19], is answered under this ground only as it is in reference to the repayments mentioned in the table above. It is submitted that an arbitral award is not a "decree or order of a court" for the purpose of Explanation (b) to Section 19 of the Limitation Act. A decree is an adjudication by a "Court" within the meaning of the CPC, whereas an arbitral award is rendered by a private arbitral tribunal based on a contractual agreement.

The respondent has relied on the following judgments to press upon the point relating to the arbitral award:

- ***Paramjeet Singh Patheja v. ICDS Ltd. (AIR 2007 SC 168):*** The Hon'ble Supreme Court unequivocally held that an arbitral award is not a decree as defined under Section 2(2) of the CPC. It can be enforced under Section 36 of the 1996 Act read with the CPC, but it doesn't become a decree in itself.

- ***State of U.P. and Ors. v. Shri Raj Veer Singh (Allahabad High Court, 2024):*** This case further reinforced the distinction, stating that while an arbitral award is to be enforced "as if it were" a decree, it is not actually a decree, and objections under Section 47 of CPC are not permissible.

20. Consequently, the exclusion in Explanation (b) to Section 19 of the Limitation Act, which refers to "money payable under a decree or order of a court," does not apply to an arbitral award. Since an arbitral award does not originate from a "court" in the traditional sense, payments made towards it are not payments made towards a "decree or order of a court" as contemplated by that Explanation.

Analysis and findings.

21. We have heard the submissions of both sides and have carefully perused the material placed on record. The issues raised by the Appellant are interrelated and can conveniently be summarised under the following heads:

(i) Whether the petition filed by the Financial Creditor against the Personal Guarantor under Section 95 of the Insolvency and Bankruptcy Code, 2016 is maintainable?

(ii) Whether the arbitral award dated 23.03.2017 altered the status of the Appellant from a Personal Guarantor to a co-borrower or co-debtor?

(iii) Whether the alleged assignment of debt and the sale of the Appellant's property by CFM Asset Reconstruction Pvt. Ltd. discharged the Appellant or deprived the Respondent of locus standi?

(iv) Whether any restructuring or variation discharged the Appellant under Section 133 of the Indian Contract Act, 1872?

(v) Whether the Section 95 petition is barred by limitation? and

(vi) Whether the liability of the Appellant is confined to the amounts stated by him as the contractual cap?

22. At the outset, we note that the present appeal arises from the order dated 04.02.2025 that was passed by the Ld. Adjudicating Authority, whereby CP (IB) No. 808/MB/2023 filed under Section 95 of the Code against the Appellant was admitted. The Insolvency Resolution Process against the Appellant was consequently commenced. The question before us is whether the impugned order suffers from any error of law or material irregularity warranting interference by this Appellate Tribunal.

Arbitral award dated 23.03.2017 and vis-à-vis status of the Appellant

23. The Appellant strongly argues that, as per the arbitral award dated 23.03.2017, the relationship between the parties underwent a material alteration. The Appellant, who was earlier a guarantor to the loan transaction,

stood converted into a co-debtor/co-borrower as per the express terms of the consent award itself. The Appellant has relied on Clause 7 of the arbitral award, which provides that the opponents, including the Appellant, shall pay, "jointly and severally", to the lead bank for itself and on behalf of all the consortium banks, including the Respondent.

24. We are unable to accept this contention. The use of the expression "jointly and severally" in the arbitral award does not, by itself, establish that the original contract of guarantee was extinguished. It also does not establish that the Appellant acquired the legal status of a co-borrower. Because the consent award, will not alter the status of Appellant acquired under uncontroverted and subsisting contract of guarantee which was still binding the contracting parties, unless rescinded by law.

25. The Award was passed in proceedings under Section 84 of the Multi-State Co-operative Societies Act, 2002. The Award provided a revised manner and schedule for payment of the existing liability. There is no fresh loan documentation or other document placed on record which establishes that the original guarantee was cancelled and substituted by a new borrowing arrangement. Hence legally deed of guarantee is still alive under law.

26. The terms of the Award are also significant. The Award expressly provides:

> "in the event of default for any reason whatsoever…., the concession or relaxation in payment of dues under clause 5 & 7 of consent terms shall stand automatically cancelled and the opponents personally, and their

> properties and legal heirs.....etc., shall be liable to pay the entire amount.....".
>
> [Clause vi of Arbitral Award].

27. The above stipulation is clearly inconsistent with the Appellant's contention that the original guarantee stood extinguished. There cannot be an automatic extinguishment of contract i.e. deed of guarantee, only by way of inference assigned to it by the consenting award. The Award contemplated continued liability in the event of default. It therefore cannot be read as creating a new relationship which completely displaced the original contract of guarantee.

28. Particularly when the original guarantee also contains a specific provision dealing with variations and alterations and that has not been invoked, the deed under law will still continue to exist in the eyes of law. It states:

> ".. The guarantor/s agree that the liability under this guarantee shall in no manner be affected by any such variations, alterations, modifications, waiver, dispensation with or release of security and that no further consent of the guarantors is required for giving effect to any such variations, alterations, modification, waiver, dispensation with or release of security."

29. Furthermore, in Clause 16 of the Guarantee Agreement expressly stipulates that the guarantee is continuing and irrevocable in nature and shall remain valid and binding until all loans and monies due and payable by the borrower are fully repaid to the Bank hence, such a deed will fall under Section 129 of the Contract Act. The Clause is extracted as below:

> "16. The guarantee shall be irrevocable and the obligations of the guarantor/s hereunder shall not be conditional on the receipt of any prior notice by the guarantor or by the borrower. The demand or notice by the bank, as provided in clause 20 hereof, shall be sufficient notice to or demand on the guarantor/s."

30. These provisions are important for reference here because they demonstrate the intention of the parties that the guarantee would continue until the secured dues were fully discharged. There is no material on record to show that the Respondent expressly released the Appellant from the guarantee or entered into a substituted contract with him.

31. The Appellant has placed reliance on two judgments which are being discussed herein. The Appellant claims that in **Vyravan Chettiar v. Official Assignee of Madras, ILR (1932) 55 Mad 949, the Hon'ble Madras High Court** categorically held that a contract of guarantee under Section 126 of the Indian Contract Act is strictly confined to cases where one party agrees with the creditor to discharge the liability of a third person upon the latter's default, and that persons who are jointly and severally liable for the same debt, equally owed by both, do not fall within the definition of a contract of guarantee. This position is further fortified by **Lima Leitao and Co. Ltd. v. Union of India, MANU/GO/0034/1967, where the Hon'ble High Court of Bombay at Goa**, held that the liability of a guarantor is inherently secondary and contingent, presupposing the existence of an independent liability of the principal debtor.

32. The aforesaid judgments do not assist the Appellant under the facts of the present case. The question before us is not merely whether a person who

is jointly and severally liable can, in law, be a guarantor. The question is whether the documents executed between these parties show that the original guarantee was extinguished and replaced by a new contract. The material on record does not establish such novation, ventured to be placed before us, it remained unsubstantiated.

33. The arbitral award did not contain any clause exonerating the Appellant from his existing guarantee. On the contrary, it contemplated consequences in an event of default and preserved the liability of the parties. No fresh loan documentation or subsequent agreement or even a guarantee was ever executed so as to extinguish or alter the pre-existing guarantee. Earlier dues continue to exist, undeterred by the arbitral award. We therefore hold that the Appellant continued to remain a Personal Guarantor.

Locus of the Respondent under Section 95 and alleged assignment

34. The Appellant contends that the entire debt of the Company, along with the underlying securities, was assigned to CFM Asset Reconstruction Pvt. Ltd. and that, consequently, the Respondent ceased to have any right to proceed against the Appellant.

35. The material on record does not support this contention.

36. The consortium consisted of eleven member banks. The record shows that member banks at serial numbers 1 to 6 assigned their share to CFM Asset Reconstruction Pvt. Ltd., whereas the present Respondent did not assign its share. The Appellant has relied upon the Assignment Agreement dated 21.08.2020. However, the Respondent has specifically stated that it was

not a party to that agreement and that the agreement was between Janata Sahakari Bank Ltd., Pune and CFM ARC.

37. The Appellant, who asserts that the Respondent assigned its debt, was required to place material establishing such assignment. No assignment deed executed by the Respondent has been shown to us. The existence of an assignment between another consortium lender and CFM ARC cannot, by itself, establish assignment of the Respondent's independent debt.

38. The fact that CFM ARC sold the property of the Appellant also does not within itself lead to a different conclusion. The sale could have been pursuant to the rights acquired by CFM ARC from the lender or lenders whose debt was assigned to it. Such sale does not, without further evidence, establish that the Respondent assigned its own debt or the rights arising under its guarantee.

39. The Appellant has also relied upon the MOU dated 16.12.2017 and the payments made by the Corporate Guarantor. Even assuming that the Corporate Guarantor undertook to discharge the liabilities of the Corporate Debtor, such an arrangement does not automatically by itself amount to a release of the Personal Guarantor by the Financial Creditor.

40. There is no material before us showing that the Respondent expressly by executing any document had released the Appellant from his continuing guarantee or accepted a substituted contract in its place. The payments made under the revised arrangement are relevant for determining the amount outstanding. They do not, however, extinguish the existing unrescinded

guarantee unless the secured liability has been fully discharged or the guarantor has otherwise been expressly released.

41. The Respondent has correctly relied upon Section 128 of the Indian Contract Act, 1872. The liability of the guarantor is co-extensive with that of the principal debtor unless the contractual terms provide otherwise. The enforcement of a security by another creditor or assignee does not, by itself, extinguish the liability towards a creditor whose debt has not been assigned.

42. As has been submitted by the Respondent:

> "Moreover, the disposal of properties of PG by assignee does not ipso facto discharge the guarantors. Also, neither the Respondent has assigned the debt to CFM ARC nor it is in line with the provisions of Section 128 of the Indian Contract Act, 1872 which states, that the liability of a guarantor is co-extensive with that of the principal debtor unless the entire debt is satisfied. Mere sale of assets by an assignee of another loan does not, in itself, extinguish the guarantee."

43. We find substance in the above submission. The Appellant has failed to establish that the Respondent assigned its debt or that the entire liability owed to the Respondent stood discharged.

44. Consequently, the Respondent continued to have locus standi to invoke the guarantee and to file the application under Section 95 of the Code.

Section 133 of the Indian Contract Act, 1872

45. The Appellant further contends that the restructuring of the debt by CFM ARC amounted to a material variation without his consent and discharged him under Section 133 of the Indian Contract Act, 1872.

This submission also cannot be accepted.

46. For Section 133 to apply, there must be a variation in the contract between the principal debtor and the creditor without the consent of the surety. In the present case, there is no material to establish that the Respondent itself entered into such a variation with the Corporate Debtor.

47. The alleged restructuring by CFM ARC relates to the debt which was assigned to CFM ARC by other consortium lender(s). The Appellant has not established that the Respondent was a party to such restructuring or that the Respondent altered the terms of its own contract with the Appellant.

48. There is also a specific clause in the guarantee as noted herein earlier in para 28 providing that the liability of the guarantor would not be affected by variations, alterations, modifications, waiver, dispensation with or release of security. In the absence of proof that the Respondent released the Appellant or entered into a substituted contract, the plea under Section 133 cannot succeed.

Whether the petition was time-barred

49. The Appellant contends that the petition is barred by limitation. According to the Appellant, the original default occurred much earlier and the arbitral award dated 23.03.2017 could not create a fresh period of limitation.

50. The Respondent, on the other hand, relies upon the subsequent repayment arrangement, the demand notice dated 16.07.2020 and the default which occurred after expiry of the period granted under that notice. The relevant chronology appearing from the record is as follows:

Date	Particulars
13.06.2016	Invocation of guarantee by issuance of 13(2) demand notice under SARFAESI Act, as also acknowledged in Arbitral Award.
23.03.2017	Passing of Arbitral Award, thereby, restructuring/reviving the debt.
March 2017–2019	Repayment by the borrower [reflecting in loan a/c statements].
16.07.2020	Demand notice u/s 13(2) of SARFAESI used upon Borrower & PGs, with 60 days' timeline for payment [Guarantee of PG was on-demand guarantee, as referred to in clause 3 of the guarantee agreement (Relevant clause at Page No. 37 & 43 of Reply)]
13.09.2020	Date of default, considering expiry of 60 days' timeline for payment
05.05.2023	Filing of petition u/s 95 of IBC, 2016

51. The above chronology is material. The petition was filed in May 2023, within three years from 13.09.2020, which is the subsequent date of default relied upon by the Respondent.

52. The Appellant has argued that payments made pursuant to the arbitral award cannot be treated as acknowledgment of debt under Section 19 of the Limitation Act, 1963. Explanation (b) to Section 19 categorically provides that

payment made on account of a decree or order of a court does not extend the period of limitation. The arbitral award, being in the nature of a deemed decree, falls squarely within the purview of the said explanation, and any payments made pursuant thereto cannot operate to extend the period of limitation against the Appellant. However, in the facts of the present case, it is not necessary to determine the limitation issue only on the basis of such payments. The Respondent relies upon the subsequent default dated 13.09.2020. The Section 95 petition was filed within three years from that date. The Appellant has not established that the subsequent repayment arrangement had permanently extinguished the Respondent's rights or that the continuing guarantee ceased to operate.

53. Strongly refuting, the respondent brings to our notice that an arbitral award does not partake the character of a decree passed by a civil court and, therefore, the bar contemplated under Section 19 is inapplicable to such payments. Consequently, payments made towards satisfaction of the arbitral award constitute valid acknowledgment and extension of limitation in law. The Respondent relies on the judgments of Hon'ble Supreme Court and the Hon'ble High Court and claims that aforesaid position stands fortified through the judgment of the Hon'ble Supreme Court in **Paramjeet Singh Patheja vs ICDS Ltd., 13 SCC 322 [Case No. Appeal (Civil) 4130 of 2006],** as well as the decision of the **Hon'ble Allahabad High Court, in State of UP vs Shri Rajveer Singh [2024:AHC:66171]**, delivered on 18.03.2024. Thus, the Appellant's contention that payments made pursuant to the Arbitral Award

cannot constitute acknowledgment of debt in view of Explanation 2 to Section 19 of the Limitation Act, 1963 is therefore dismissed.

54. In view of the subsequent default relied upon by the Respondent and the filing of the petition in May 2023, we find no merit in the plea that the Section 95 petition was barred by limitation.

Liability of the Appellant and alleged contractual cap

55. The Appellant contends that his liability is capped at ₹ 6.5 crores under the guarantee dated 20.03.2010 and at ₹ 2.5 crores under the guarantee dated 08.08.2011. The Respondent disputes this interpretation and relies upon Clause 19 of the Guarantee Agreements.

56. The liability of the guarantor has to be determined from the terms of the guarantee documents. The Respondent has specifically relied upon Clause 19, under which the guarantors have undertaken liability not only towards repayment of the disbursed loan amount but also towards accrued interest, liquidated damages, costs, charges, expenses, and other consequential liabilities arising therefrom.

57. The Appellant has not demonstrated that the claim made by the Respondent is contrary to the express terms of the guarantee. At the stage of considering the maintainability of the Section 95 petition, the mere dispute regarding computation of the amount does not invalidate the proceedings when the existence of the debt and default is otherwise established.

58. It is also necessary to clarify that the insolvency process cannot result in double recovery. Any amount recovered from the Corporate Debtor, co-

sureties, enforcement of securities or any other source has to be duly accounted for while determining the amount ultimately payable. Such accounting, however, does not invalidate the initiation of insolvency proceedings against the Personal Guarantor.

59. The Appellant's contention regarding unjust enrichment, therefore, does not furnish a ground for setting aside the impugned order.

Effect of the MOU dated 16.12.2017

60. The Appellant has also relied upon the MOU dated 16.12.2017 and the alleged sanction letter dated 05.06.2018 to contend that the Corporate Guarantor had undertaken the liabilities of the Corporate Debtor and that the Appellant was consequently discharged.

61. We are unable to accept this contention. Even assuming that the Corporate Guarantor agreed to discharge the liabilities of the Corporate Debtor, there is no sufficient material to establish that the Respondent expressly released the Appellant from his continuing and irrevocable guarantee.

62. The mere assumption of liability by a third party does not, in the absence of a binding release or novation by the creditor, extinguish the existing guarantee. The payments relied upon by the Appellant also do not establish complete satisfaction of the Respondent's debt.

63. The guarantee documents continued to remain in force. In the absence of proof of full satisfaction of the secured liability or an express release by the

Respondent, the Appellant cannot claim discharge merely on the basis of the MOU or the payments made pursuant thereto.

Overall findings

64. On a consideration of the entire material placed on record, we find that the Respondent continued to be a creditor in respect of its share of the consortium debt. It also continued to have the contractual right to invoke the Appellant's continuing guarantee.

65. The Appellant has failed to establish that the Respondent assigned its debt to CFM ARC. The assignment relied upon by the Appellant relates to another consortium lender or lenders. The sale of the Appellant's property by CFM ARC does not, by itself, establish that the Respondent's debt or its rights under the guarantee were assigned.

66. We further find that the arbitral award dated 23.03.2017 did not novate or extinguish the original guarantee. The Award provided a repayment arrangement and expressly contemplated continuing liability in the event of default. There is no material to establish that the Respondent released the Appellant from the guarantee or substituted the guarantee with a new contract.

67. There is also no material to establish a variation by the Respondent which could attract Section 133 of the Indian Contract Act, 1872. The guarantee itself contains provisions relating to variations and continuing liability.

68. The petition under Section 95 was filed within the period of limitation on the basis of the subsequent default dated 13.09.2020 relied upon by the Respondent. The plea of limitation, therefore, has no merit.

69. The objection regarding the extent of liability also does not render the Section 95 petition non-maintainable. The amount ultimately payable has to be determined in accordance with the guarantee documents and after giving due credit for all recoveries.

70. We therefore find that the Adjudicating Authority has rightly admitted the Section 95 petition. No jurisdictional error, material irregularity or perversity has been demonstrated in the impugned order. There is consequently no ground for interference by this Appellate Tribunal.

<u>Conclusions</u>

71. In view of the foregoing discussion, we hold that:

(i) the Respondent had locus standi to initiate proceedings under Section 95 of the Code;

(ii) the arbitral award dated 23.03.2017 did not alter the status of the Appellant from Personal Guarantor to co-borrower;

(iii) the Appellant has failed to establish that the Respondent assigned its debt, along with the underlying rights under the guarantee, to CFM Asset Reconstruction Pvt. Ltd.;

(iv) the assignment by other consortium lender(s), and the subsequent sale of the Appellant's property by CFM ARC, do not by themselves extinguish the Respondent's rights against the Appellant;

(v) the Appellant has failed to establish any variation or novation by the Respondent so as to attract Section 133 of the Indian Contract Act, 1872;

(vi) the petition filed under Section 95 of the Code is not barred by limitation; and

(vii) the dispute regarding the extent of liability or contractual cap does not furnish any ground to set aside the order admitting the Section 95 petition.

Accordingly, we find no merit in the present Appeal.

Orders

72. The Appeal is dismissed. All connected IAs, if any, are also disposed of accordingly. The interim order, if any, stands vacated. The insolvency resolution process against the Appellant shall proceed in accordance with law. The parties shall bear their own costs.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

New Delhi.
September 17, 2026.

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