NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

COMPANY APPEAL (AT)(INS) NO.489/2026

(Arising out of judgement and order dated 03.02.2026 passed in CP(IB) No.184MB/2025 by National Company Law Tribunal, Mumbai)

In the matter of:

Asif Ahmed Siddique
Personal Guarantor of the Corporate Debtor,
Nyka Steel Private Limited.
Residing at Pathik Bungalow,
Ground Floor, Plot 72, Sector 21,
Nerul,
Navi Mumbai, 400020.

Also, at:

89/90, 2nd Floor, Dilsukh Mahl Building,
Shaida Marg,
Dongri Musjid Bunder
West, Mumbai – 400009 ...Appellant

VERSUS

1. **UCO Bank**
   A Banking Company established under the
   Banking Companies (Acquisition and Transfer of
   Companies) Act, 1970 And;
   Represented by Mr. Meenor Bhivgade
   Chief Manager,
   Asset Management Branch
   4th Floor,
   UCO Bank Building,
   Dr. D.N. Road,
   Fort Mumbai – 400001 ...Respondent No.1
   mumamb@ucobank.co.in

2. **MR. ATUL NARAYAN NAIK**
   Resolution Professional,
   IBBI No. IBBI/IPA-003/ICAI-N-0385/2021-2022/14011,
   Residing at A 1201,

Dosti Pine,
Dosti West County,
Balkum, Thane - West , Thane,
Maharashtra, 400608.
E-mail address : annaik129@gmail.com ...Respondent No.2

3. **MR. AVIL JEROME MENEZES**
Resolution Professional of Nyka Steel Private Limited
(Corporate Debtor)
IBBI/IPA-001/IP-P00017/2016-2017/10041
106, 1st Floor,
Kanakia Atrium
2 ,Cross Road A,
Behind Courtyard Marriott,
Chakala, Andheri East,
Mumbai City,
Maharashtra, 400093.
Email address: avi@caavi.com ...Respondent No.3

For Appellant: Mr. Anuj Tiwari, Mr Shivendra Nath Mishra, Mr Sameer Mishra, Mr. Vaibhav Vats, Advocates.

For Respondent:

ORDER

JUSTICE YOGESH KHANNA, OFFICIATING CHAIRPERSON

The present Appeal is being preferred under Section 61 of the Insolvency and Bankruptcy Code, 2016 ("Code"), against an impugned order dated *03.02.2026* passed by the Ld. National Company Law Tribunal, Mumbai Bench-I ("Ld. Adjudicating Authority") in C.P.(IB)/184(MB)/2025. By the Impugned Order, the Ld. Adjudicating Authority admitted the Application filed by UCO Bank ("Respondent No. 1 / Financial Creditor") under Section 95 read with Section 60(2) of the Code read with Rule 7(2) of the Insolvency and Bankruptcy

(Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 ("Rules"), and initiated the Insolvency Resolution Process against the Appellant herein, who is the Personal Guarantor of Nyka Steels Private Limited ("Corporate Debtor / Principal Borrower"). Pursuant thereto, the Ld. Adjudicating Authority declared a moratorium under Section 101 of the Code and appointed Mr. Atul Narayan Naik as the Resolution Professional ("Respondent No. 2"). The Ld. Adjudicating Authority passed the Impugned Order while relying on a report filed by Respondent No. 2 under Section 99 of the Code.

2. It was argued by the appellant, the Respondent No. 1 *vide* Sanction Letter dated 12.04.2018, approved renewal and enhancement of credit facilities to the Corporate Debtor but no fresh Deed of Personal Guarantee was ever executed pursuant to the Sanction Letter dated 12.04.2018. Though the Respondent No. 1 rather alleged the account was classified as Non Performing Asset ("NPA") on 18.01.2020 with effect from 30.09.2019, but the statement of account reflect continued servicing, charging and collection of interest and payments even after 30.09.2019. It is argued the part-payments were made up to July 2020 and that the classification of the account as NPA has been back dated and retrospectively projected despite continued operation of the account. It was argued in absence of an existing default, classification as NPA was legally untenable. It was also urged that on 18.01.2020, recall notice was issued invoking the personal guarantee, whereas the outstanding amount was within sanctioned limits and the account was being serviced but despite the same, the Respondent proceeded

to issue demand notices dated 12.09.2023 and 27.11.2024 allegedly invoking personal guarantee and raising demands of ₹51,76,09,050.43 and ₹96,23,11,185.08 respectively. It is argued the demand notices referred to Sanction Letter dated 12.04.2018 to invoke alleged guarantee dated 12.12.2017 erroneously as it is pertinent to note no personal guarantee was ever executed in respect of Sanction Letter dated 12.04.2018. Even otherwise, the contractual exposure under the Deeds of Guarantee was expressly capped at ₹*40* Crores and liability of the guarantor could not have been enlarged beyond the terms of the contract.

3. It was argued 22.12.2024, Respondent No. 1 filed an application under Section *95* read with Section *60(2)* of the Code, seeking initiation of Insolvency Resolution Process against the Appellant. Vide order dated 26.03.2025, Respondent No. 2 was appointed as a Resolution Professional under Section 97 of the Code, without issuance of notice to the Appellant. Vide the Impugned Order dated 03.02.2026, the Ld. Adjudicating Authority admitted the Application under Section *95* of the Code and accepted the report of the Resolution Professional under Section *99* of the Code without properly adjudicating the objections raised by the Appellant and without recording independent satisfaction under Section *100* of the Code. It is argued the Impugned Order failed to consider that there exist no legally enforceable guarantee in respect of Sanction dated 12.04.2018 and liability could not have been extended beyond ₹40 Crores; that NPA classification being erroneous and back dated and that the proceedings under Section *95* of the Code cannot be used as a recovery

mechanism in absence of a valid and enforceable contract of guarantee and crystallised default. Further, the Impugned Order is contrary to the material on record; suffers from non-consideration of objections, mechanical acceptance of the report under Section 99 of the Code and is liable to be set aside.

4. Heard

5. The Ld. NCLT had passed the following order:-

> *13. The Corporate Debtor is already undergoing CIRP before this Tribunal. In view of Section 60(2), proceedings against the Personal Guarantor must lie before the same Adjudicating Authority. Also, the Petition has been filed in the prescribed Form C, accompanied by requisite documents, and the Resolution Professional has submitted a report under Section 99 recommending admission. Accordingly, the Petition is maintainable.*
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> *14. It is contended by the Respondent that the financial creditor has not followed RBI master circular dated 17.03.2016 to provide timely rehabilitation/provisions before classifying the account of principal borrower as NPA, however, It can also not be said that even if a lender fails to take recourse to Notification dated 29.5.2015, the existence of default vanishes and it is precluded from initiating Insolvency Resolution process in terms of provisions of IB Code. Further, the restructuring contemplated in para 5(4) of the notification is another mode for revival and rehabilitation of the MSME Corporate Persons in addition to IB Code and it can not be argued that it is incumbent on the Banking companies to first exhaust the avenue of revival under the Notification before proceeding to file an application u/s 7 of IB Code for the resolution of financial defaults under the Code. Nonetheless, it can not be said that the default qua corporate debtor vanishes in absence of steps being taken in terms of said notification/master circular as the lender is entitled to invoke the guarantee of the guarantor on occurrence of default dehors its declaration as NPA report under Section 99 recommending admission. Accordingly, the Petition is maintainable. 14. It is contended by the Respondent that the financial creditor has not followed RBI master circular dated 17.03.2016 to provide timely rehabilitation/provisions before*

classifying the account of principal borrower as NPA, however, It can also not be said that even if a lender fails to take recourse to Notification dated 29.5.2015, the existence of default vanishes and it is precluded from initiating Insolvency Resolution process in terms of provisions of IB Code. Further, the restructuring contemplated in para 5(4) of the notification is another mode for revival and rehabilitation of the MSME Corporate Persons in addition to IB Code and it can not be argued that it is incumbent on the Banking companies to first exhaust the avenue of revival under the Notification before proceeding to file an application u/s 7 of IB Code for the resolution of financial defaults under the Code. Nonetheless, it can not be said that the default qua corporate debtor vanishes in absence of steps being taken in terms of said notification/master circular as the lender is entitled to invoke the guarantee of the guarantor on occurrence of default dehors its declaration as NPA.

17. It is also contended that there is lack of proper invocation of guarantee due to absence or proof of service of recall notice dated 18.01.2020. It noted that the Recall Notice dated 18.01.2020 was dispatched to the Respondent's recorded addresses and there is no communication from the respondent on record notifying change in his address. Proof of dispatch has been produced with the Rejoinder and clearly shows the despatch of notice on the said address.

18. Since, the guarantee was invoked in terms of recall notice dated 18.1.2020, the issuance of subsequent notice dated 31.8.2024 u/s 13(2) of SARFAESI Act is not of much importance. Nonetheless, if the respondent's contention of non-service of recall notice is accepted at its face, the said notice in itself constitutes valid invocation of guarantee and the issuance of such notice without restoration of possession of properties to the corporate debtor in terms of order dated 24.11.2022 passed by DRT-2, Mumbai, in SA No. 21 of 2022, quashing the first notice dated 29.01.2020 issued under Section 13(2) of the SARFAESI Act, 2002 does not vitiate the said notice qua him as both the proceedings are distinct and independent. Further, the issuance of notice dated 20.08.2020 under Section 13(4) of the SARFAESI Act, 2002, is irrelevant to the present petition, as these proceedings are dependent merely on existence of a debt and default in payment thereof, while section 13(4) notice seeks possession of mortgaged properties.

19. No provision in the code invalidates an application filed under section 95 merely because prior to said filing, two *demand notices were sent by the Applicant under Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 the first dated 12.09.2023 and the second dated 27.11.2024. Nonetheless, the respondent has himself pleaded that no service of demand notice dated 27.11.2024 has been placed on record; thus effectively has denied issuance of such notice.*

20. It is also contended that the present petition is barred by limitation since the date of default is stated to be 28.01.2020 whereas the filing date is 22.12.2024, which is beyond the period of limitation. The period of limitation expires on 27.1.2023.

22. Further, Proceedings under SARFAESI Act and IBC operate in distinct fields. Adjudication of SARFAESI actions does not bar insolvency proceedings. Section 10A applies only to defaults occurring on or after 25.03.2020. The present default is prior thereto. The judgment in State Bank of India v. V. Ramakrishnan (2018) 17 SCC 394 clarifies that moratorium under Section 14 does not extend to personal guarantors. Hence, proceedings before SARFAESI/DRT do not bar admission of the present Petition. Also, approval or abeyance of the Resolution Plan does not extinguish the liability of the Personal Guarantor. The Hon'ble Supreme Court in Lalit Kumar Jain v. Union of India (2021) 9 SCC 321 has conclusively held that liability of personal guarantors survives approval of a resolution plan. Also, pending NCLAT proceedings do not impede this Petition.

23. The Deed of Guarantee dated 12.12.2017 expressly records the extent of liability undertaken by the Respondent as guarantor. For ease of reference, the relevant extract of the Deed of Guarantee is reproduced hereinbelow:

"PROVIDED NEVERTHELESS that my / our liability and the liability of each of us under these present shall not exceed in the aggregate the sum of Rupees Forty crores only and interest thereon at the rate of 12. 70 per cent per annum or at such rates or rate of interest which may be notified from time to time by the Bank to my / us from the date on which demand for payment thereof shall have been made by the Bank upon me / us. " It is further stated that :

> *" AND I/WE FURTHER AGREE as follows:*
>
> *(i) My /* ***our liability under these presents is a continuing one for all sums***

> ***whatsoever which may at any time be or become payable by the Customers to the Bank on any account whatsoever with interest and all costs and charges and expenses and shall remain in full force until three calendar months*** *after I/We shall have given or sent to the Bank notice in writing of my / our Intention to discontinue and determine these present and shall have paid to the Bank all moneys upto the limit of my / our liability due, at the expiration of such notice and in the event of my / all or any of us dying or being under any legal disability the liability of the survivors or survivor of us and of the estate(s) and executors, administrators or legal representatives of the deceased guarantor shall continue until the expiry of three calendar months' notice in writing given to the Bank by such survivors or survivor and the executors, administrators, or legal representatives of such deceased guarantor to determine these presents and payment of all moneys due to the Bank and the Bank shall be at liberty on receipt of such notice at any time within the said period of three calendar months to open a fresh account."*
>
> *Hence, the said guarantee is a continuing one.*

6. We have also gone through the arguments advanced by both the parties and have also perused the report of the Resolution Professional. During the course of arguments mainly two contentions were raised by the appellant before us *viz* ***a)*** he never extended deed of guarantee to term loan No.3 dated 12.04.2018 as his deed of guarantee was specified to term loans sanctioned in the year 2013 and 2017 only and ***b)*** his liability could not have been extended beyond an amount of Rs.40 crores.

7. We have examined the submissions made, the impugned order and the deed of guarantee dated 12.02.2017 annexed at Page 408 of the Appeal Paper Book which duly records though the guarantee is to an extent of Rs.*40* crores but it also carries an interest @ *12.70%* per annum or at such rate or rate of interest which may be notified from time to time by the bank to the guarantor/appellant from the date on which the demand for payment there of shall have been made by the Bank upon him, hence the appellant cannot urge that his liability was only limited to Rs.40 crores and not above.

8. We have also perused the report of the Resolution Professional, annexed at Page *608* of the appeal paper book which records as under: -

> ***b) Initiation of Insolvency Against Personal Guarantor (Asif Ahmed Siddique)***
> *UCO Bank filed an application under Section 95 read with Section 60(2) of the IBC to initiate the personal insolvency resolution process against Mr. Asif Ahmed Siddique, who had executed guarantees for the loans sanctioned to Nyka Steels Pvt. Ltd. As per the Company Petition, the total debt under the personal guarantee amounts to Rs. 96.23 Crores. However, as per the guarantee deed dated 15.07.2013 along with the confirmation letter dated 15.07.2013, the Personal Guarantor confirmed having extended the guarantee to the extent of ?40,00,00,000/- (Rupees Forty Crores Only) along with interest thereon at the rate of 12.70% per annum, or such other rate of interest as may be notified by the Bank from time, from the date of demand for payment. Additionally, M/s. Nyka Engineering Co., wherein the Personal Guarantor is a partner, extended a guarantee to the extent of Rs.40,00,00,000/- (Rupees Forty Crores Only) along with interest thereon at the rate of 12.70%. per annum, or such other rate of interest as may be notified by the Bank from time to time, from the date of demand for payment, as per the guarantee deed dated 12.12.2017 and confirmed by 12.12.2017, arising from the working capital facilities sanctioned. A copy of the deed of guarantee alongwith*

> *the related documents is attached herewith and marked as Annexure A.*
> *The corporate debtor's loan account was declared NPA on 13.01.2020.(w.e.f. 30.09.2019), and a recall notice was issued to the personal guarantors on 18.01.2020.*

9. We have also perused Deed of Guarantee dated 12.12.2017. Such guarantee is a continuing guarantee till the dues are paid as noted in para 23 of the impugned order. Further the renewal of the credit facility at the existing level was rather signed by the appellant even on 12.04.2018, hence it cannot be urged the guarantee was not beyond 2017 or would never cover Sanction Letter dated 12.04.2018. In view of the above, no interference is called for to take a different view than that of the Ld. NCLT in its impugned order. The appeal has no merits and is accordingly dismissed without issuance of any formal notice.

10. Pending applications, if any, are disposed of.

(Justice Yogesh Khanna)
Officiating Chairperson

(Mr. Ajai Das Mehrotra)
Member (Technical)

Dsted: 13-8-2026
Bm