

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)

IA No.871/2026

in

Company Appeal (AT) (CH) (Ins) No.307/2026

In the matter of:

G. Thiyagarajan

... Appellant

V

**Aditya Birla Finance Limited, Rep by its
Authorized Rep, Sujit Ganesh & Anr.**

... Respondents

Present :

For Appellant : Mr. S. Satish, Advocate

For Respondent : Ms. Aparajitha Viswanath, Advocate for R1
Mr. Ravindra Beleyur, RP for R2

ORDER
(Hybrid Mode)

[Per: Jatindranath Swain, Member (Technical)]

The instant company appeal has been filed by the Appellant, Mr. G.Thiyagarajan, the personal guarantor of M/s. Velohar Infra Private Limited, challenging the impugned order dated 09.06.2026 in CP(IB)/43(CHE)/2024, by Ld. NCLT, Division Bench – I, Chennai. By virtue of the said impugned order the Ld. NCLT had admitted the aforesaid petition, filed under Section 95 of the I & B Code, 2016, and directed for commencement of Insolvency Resolution Process against the Appellant / personal guarantor.

2. The Appellant states that, the Corporate Debtor, M/s. Velohar Infra Private Limited, had availed loan facility from Respondent No.1, M/s. Aditya

Birla Private Limited, and lieu thereof executed a loan agreement dated 24.01.2014 under which working capital of Rs.298 lakhs and over draft for Rs.52 lakhs, were extended to the Corporate Debtor and that the repayment towards this loan was guaranteed by the Appellant himself along with Mrs. Vijayalakshmi Subburaj, by executing the deed of guarantee dated 24.01.2014. Subsequently, the Corporate Debtor defaulted in repayment of the loan resulting in the loan becoming NPA on 01.11.2017, consequent to which a notice under Section 13(2) of the SARFAESI Act was served upon the Corporate Debtor and Mrs. Vijayalakshmi Subburaj. Further, on 29.08.2018, the Corporate Debtor was admitted into CIRP.

3. The Appellant further states that, Respondent No.1 (Financial Creditor) also initiated steps to recover the amount from the Appellant, in his capacity as the personal guarantor and sent a legal notice on 20.09.2022, and thereafter yet another legal notice was issued on 17.10.2022 invoking the personal guarantee. The Appellant claims that, the demand notice to be 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, was issued on 04.03.2023 and after receiving his reply, Respondent No.1 is shown to have filed the application under Section 95 of the I & B Code, 2016, on 21.03.2024, praying for initiation of Personal Insolvency Resolution Process against the Appellant. The Ld. NCLT after hearing the reply of the Appellant (Respondent in the company petition) and the report of the

Resolution Professional filed under Section 99 of the Code, has admitted the company petition by passing the impugned order under Section 100 of the Code.

4. The Appellant contends that, the Section 95 application is time barred because admittedly, the date of default as apparent from the records is 01.11.2017 and the notice invoking the personal guarantee was sent on 17.10.2022, nearly 5 years after the date of default. He has further contended that, the invocation of guarantee as against the personal guarantor should have happened when the claims was “live” against the principal debtor and since the guarantee has been invoked after the 3 years limitation period that was commencing from 01.11.2017, the application is barred by limitation and ought not to have been admitted by Ld. NCLT. He has further contended that, Ld. NCLT has admitted the application on the premise that, the deed of guarantee was a continuing guarantee and as per the clauses 3, 12 & 30 of the deed, the guarantee, being a continuing guarantee, can be invoked at any stage.

5. The Appellant has contended that, the impugned order of the Ld. NCLT is contrary to the ratio laid down by Hon’ble Supreme Court in the matter of **Syndicate Bank vs Channaveerappa Beleri & Ors., Civil Appeal No.6894 of 1997**, where it has been clearly held that, any demand against the guarantor made after the expiry of limitation period for raising claims against the principal borrower would not be valid or enforceable. The Ld. Counsel for the

Respondents have vehemently objected to the contentions of the Appellant submitting that, continuing guarantee can still be invoked at any stage, including the stage after expiry of limitation period in respect of the principal borrower.

6. Matter requires scrutiny.

7. The Respondents are directed to file their respective counter affidavit within a period of three weeks from today.

8. The Appellant has argued that, irreversible loss will be caused to him if the impugned order is not stayed until the disposal of the Appeal, but no prejudice would be caused to Respondent No.1, if the impugned order is stayed till the disposal of the Appeal on merits. Taking cognizance of the same, we are of the view that, the effect and operation of the impugned order may be kept in abeyance till the next date of hearing.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

08 / 07 / 2026

AR/MS/AK