

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**SPECIAL BENCH**

**KOLKATA, COURT-I**

**I.A. (IB) No. 1664/KB/2025**

**And**

**I.A. (IB) No. 1797/KB/2025**

**Connected with**

**CP (IB) No. 111/KB/2025**

*An application under section 95 of Insolvency & Bankruptcy Code, 2016*

**IN THE MATTER OF:**

UCO BANK

**...APPLICANT/ FINANCIAL CREDITOR**

Versus

MAKHAN LAL SARAF

**...RESPONDENT/ PERSONAL GUARANTOR**

AND

*An application under section 99 of Insolvency & Bankruptcy Code, 2016*

**IN THE MATTER OF:**

MS. SANGEETA PODDAR

**...APPLICANT/ RESOLUTION PROFESSIONAL**

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**CP (IB) No. 111/KB/2025**

**AND**

*An application under Rule 11 of the NCLT Rules, 2016*

**IN THE MATTER OF:**

MAKHAN LAL SARAF

**...APPLICANT**

Versus

UCO BANK

**...RESPONDENT**

**Date of Pronouncement 21.05.2026**

**CORAM:**

Ms. Rekha Kantilal Shah, Member (Technical)

Smt. Bidisha Banerjee, Member (Judicial)

**APPEARANCE:**

Mr. Rahul Auddy, Adv. ] For the Financial Creditor

Mr. Aditya Goptu, Adv. ]

Ms. Meenakshi Manot, Adv. ]For the Personal Guarantor

Mr. A.P. Agarwala, Adv. ]

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**O R D E R**

***Per: Bidisha Banerjee, Member (Judicial)***

1. The Court convened through hybrid mode today.
2. **IA 1664/KB/2025** has been filed by Makhan Lal Saraf, the Personal Guarantor for M/s Navyug Packaging Pvt. Ltd, seeking for the following reliefs:
  - a) C.P.(IB) NO. 111/KB/2025 (hereinafter referred to as 'the said petition') filed by UCO Bank against Makhan Lal Saraf under Section 95(1) of the Insolvency and Bankruptcy Code be dismissed with costs and penalty;
  - b) An order be made staying all further proceedings in C.P. (IB) NO. 111/KB/2025 till the disposal of this application;
  - c) Ad interim orders in terms of the prayer (b) above.

**3. BRIEF BACKGROUND**

- 3.1 M/s Navyug Packaging Pvt. Ltd. (hereinafter referred to as "the Corporate Debtor") was a constituent of UCO Bank, the Financial Creditor, at its Flagship Corporate Branch, 2, India exchange Plance, Kolkata- 700001.
- 3.2 The Financial Creditor on or about 07.07.2006 granted the Corporate Debtor Cash Credit Facilities to the tune of Rs. 1.54 Crore on such terms and conditions as recorded in the letter of sanction bearing Ref: IFB/CAL/CR/789/2006-07 dated 07.07.2006 and as duly accepted by the Corporate Debtor and its Directors/Personal Guarantors.

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- 3.3 The Financial Creditor, in consideration of having agreed to grant the aforesaid credit facility at the request of the Corporate Debtor as aforesaid and the personal guarantors, *inter alia*, obtained Personal Guarantee for repayment of all indebtedness and liabilities of the Corporate Debtor and undertaking to liquidate the outstanding in the credit facilities inclusive of all interest, cost, charges and expenses, in the event of any default or breach committed by the said Corporate Debtor from **Makhan Lal Saraf**, the Applicant in IA (IB) No. 1664/KB/2025, along with **Govinda Ram Saraf and Smt. Renu Devi Kandoi**, who executed Letters of Guarantee to that effect.
- 3.4 Further, at the request of the Corporate Debtor as well as its Directors/ Guarantors, the Financial Creditor on 31.03.2008 renewed/restructured the existing credit facilities enjoyed by the Corporate Debtor from Rs. 1.54 Crore to Rs. 2.19 Crore. To avail of the said credit facilities, the Corporate Debtor as well as the Directors/Guarantors executed various banking documents in favour of the Financial Creditor.
- 3.5 The Corporate Debtor as well as the Directors/person guarantors started defaulting in liquidating the outstanding/dues under the credit facility on account of interest as well as principal amount and the account of the Corporate Debtor was declared as a Non-Performing Asset (NPA) on 22.08.2009.
- 3.6 In view of the failure on the part of the Corporate Debtor and/or the Personal Guarantors to liquidate their dues with the Financial Creditor in spite of repeated alleged requests and reminders, the Financial Creditor was compelled to call up the said credit facilities and **issued Notice dated 24.08.2009** under section 13(2) of the SARFAESI Act, 2002 to the Corporate Debtor as well as the Personal Guarantors demanding payment of the entire outstanding amount.

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- 3.7 In spite of such demand made as aforesaid, the Corporate Debtor and the Applicant of IA 1664/KB/2025, being one of the personal guarantors, allegedly failed to liquidate the outstanding in the said account.
- 3.8 The Respondent filed an application under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act 1993 on September 14, 2011 being O.A. No. 402 of 2011 against the Corporate Debtor, which is pending for disposal.
- 3.9 Thereafter, on 17.10.2024, the Financial Creditor issued a Notice in Form B 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 and the relevant provisions of the Code. Though a period of 14 days has expired, the Personal Guarantor has allegedly not made any payments of any sort.
- 3.10 In pursuance to such non-payment by the Personal Guarantor, the Financial Creditor has filed the said petition being **C.P. (IB) NO. 111/KB/2025** under section 95(1) of the IBC, 2016.
- 3.11 Under section 97 of the IBC, this Tribunal appointed Ms. Sangeeta Poddar as the Resolution Applicant ("RP") on 26.09.2025 and the said RP has filed the application **IA (IB) No. 1797/KB/2025** under section 99 of the Code, submitting her report and seeking the same to be taken on record, wherein the following recommendation is made:

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Recommendation

***I recommend rejecting the application against Personal Guarantor - Makhan Lal Saraf filed by the financial creditor - UCO Bank to initiate the insolvency resolution process.***

Reasoning for such recommendation:

- *I have examined the application CP (IB) No.111/KB/2025, and have observed that the **application does not meet the requirements of Section 95** of the IBC.*
- *I have enquired with the Personal Guarantor with respect to the mentioned debt, and received a reply that **no such debt exists**, or if exists is barred by limitation.*
- *Furthermore, I had requested the Financial Creditor to provide clarification and supporting documents for ascertaining whether such debt occurred in 30.06.2009 falls under the limitation bracket or not.  
However **no satisfactory reply has been received from the end of the Financial Creditor.***
- *Thus, I am of the opinion that if any debt as mentioned exists, such is **time-barred** under the provisions of the Limitation Act, 1963.*

3.12 Since, the report of the RP is in favour of the Personal Guarantor, the Financial Creditor sought time to raise objection, and despite repeated opportunities, the Financial Creditor has failed to raise the same.

4. **IA (IB) 1664/KB/2025**, filed by the Personal Guarantor Makhan Lal Saraf, is the demurrer of the said petition C.P. (IB) NO. 111/KB/2025.

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5. The Learned Counsel for the Personal Guarantor, in IA (IB) 1664/KB/2025 submits that said petition is **ex-facie barred by the laws of limitation** as the Financial Creditor is seeking to sue the Personal Guarantor by filing an application petition in 2025 on the basis of an invocation of guarantee made in 2009.
6. The Learned Counsel for the Financial Creditor denies that the petition is barred by the laws of limitation as proceedings before the DRT proceedings are pending from 2011 till date.

**ANALYSIS AND FINDINGS**

7. We have considered the submissions of Learned Counsels for the parties and have perused the record.
8. The only question which has arisen for consideration in the present Application I.A. (IB) No. 1664/KB/2025 is Whether the C.P.(IB) NO. 111/KB/2025 filed by UCO Bank against Makhan Lal Saraf under Section 95(1) of the said Code is barred by the laws of limitation?

**9. DISCERNIBLE FACTS**

- 9.1 The Financial Creditor has served notices on **24.08.2009** under section 13(2) of the SARFAESI Act, 2002 and on **17.10.2024** in Form B under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process Guarantors to Corporate Debtors) Rules, 2019 to the Personal Guarantors.
- 9.2 The Personal Guarantor denies existence of any debt or default and further argues that, in the event of existence of any such debt, an application made on the basis of the invocation of payment made in

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**24.08.2009** under section 13(2) of the SARFAESI Act, 2002 **is barred by the laws of limitation.**

9.3 The Financial Creditor has relied on the notice issued on **17.10.2024** in Form B under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process Guarantors to Corporate Debtors) Rules, 2019 as invocation of payment.

9.4 Section 95 of the IBC, 2016 reads as under:

*95. Application by creditor to initiate insolvency resolution process:  
(1) A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.*

...

*(4) An application under sub-section (1) shall be accompanied with details and documents relating to—*

*(a) the **debts owed by the debtor** to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;*

*(b) the failure by the **debtor** to pay the debt within a period of fourteen days of the service of the notice of demand; and*

*(c) relevant evidence of such **default** or non-repayment of debt.*

9.5 Following are the notable provisions under the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019:

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Rule 3: Definitions – (1) ...

...

(e) “**guarantor**” means a debtor who is a personal guarantor to a corporate debtor **and** in respect of whom **guarantee has been invoked by the creditor and remains unpaid in full or part;**

Rule 7: Application by creditor –

(1) A demand notice under clause (b) of sub-section (4) of section 95 shall be served on the **guarantor** demanding payment of the amount of **default**, in Form B.

- 9.6 The NCLAT, in **State Bank of India versus Mr. Deepak Kumar Singhania** (Company Appeal (AT) (Insolvency) No.191 of 2025) on 28.02.2025, *inter alia* held that 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 is not an invocation of guarantee, by stating the following:

17. ...the default by Guarantor has to exist on the date when Notice in Form-B is being issued. When we read Section 95, sub-section (4) and Rule 7 of 2019 Rules, the above is the only intendment of the legislative scheme, i.e. **default on the part of Guarantor should exist on the date when Notice in Form-B has to be issued.** We have noticed the definitions of 'debt' and 'default' in Section 3 (11) and (12) of the IBC. Default shall arise on account of non-payment of debt, when whole or part of it become due. 'Debt' means a liability or obligation in respect of a claim which is due from any person. Thus, for a default, **debt has to be due and Debtor shall be only that person, to whom debt is due. A Personal Guarantor becomes a Debtor only when guarantee is invoked,** making him liable to make the payment to the Lender. We have noticed Clause 2 and

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*Clause 21 of the Deed of Guarantee in the foregoing paragraphs of this judgment, which clearly contemplate that **liability on Guarantor shall arise only when demand is made by the Lender**, in event Principal Borrower fails to repay the amount. In the present case, there is **no case setup by the Appellant that at any point of time guarantee was invoked, except issuance of Notice in Form-B, which is claimed by the Appellant to be treated as Notice for invocation of guarantee...***

...

*20. ... **Guarantor with regard to whom guarantee has not been invoked, shall not be a Debtor and no default can be committed by Guarantor, unless guarantee is invoked as per the terms of Deed of Guarantee...***

10. **INFERMENTS:**

**10.1** The pendency of proceeding at the DRT shall not extend or suspend the limitation period that is applicable to this instant petition which is filed under section 95(1) of the Code. We reject any contention made to the contrary.

**10.2** A conjoint reading of Rule 3(1)(e) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, and the above-noted observations of the NCLAT in State Bank of India versus Mr. Deepak Kumar Singhania, establishes that invocation of guarantee is a *sine qua non* for classification of the personal guarantor as the debtor, and only upon non-compliance of such **invoked** guarantee does the default on the part of the guarantor arise. In other words, **requirements under Rule 3 first needs to be satisfied for an application to be made under Rule 7.**

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**10.3** In view of the same, the Financial Creditor's reliance upon on the notice issued on **17.10.2024** in Form B under Rule 7(1) as invocation is rejected by us.

**10.4** Following the principles established in ***Ujwal Gupta vs. Union Bank of India***, a notice under Section 13(2) of the SARFAESI Act constitutes a valid invocation of a guarantee if it clearly communicates a demand for the guarantor to discharge their liability. Accordingly, the invocation made in **24.08.2009** under section 13(2) of the SARFAESI Act, 2002, constitutes a valid invocation as it communicates such demand by stating *inter alia* the following:

*Therefore, the Bank hereby calls upon you u/s 13(2) of the said Act by issuing this notice to discharge in full your liabilities stated hereunder to the Bank within 60 days from the date of the notice. Your outstanding liabilities as guarantor for the above borrower, in aggregate, due and owing to the Bank is to the tune of Rs. 2,04,41,901.63 (Rupees Two Crore, Four Lac fourty one thousand nine hundred one and paise sixty three only) as on 22.08.2009. You are also liable to pay future interest at the contractual rate on the aforesaid amount together with incidental expenses, cost, charges etc.*

**10.5** We rely on the judgment of the Hon'ble Supreme Court, in Civil Appeal No. 6894 of 1997 (**Syndicate Bank vs. Channaverappa Beleri & Ors.**), by an order dated 10.04.2006, where it held that **the limitation period of three years for proceedings against a guarantor begins from the date of expiry of the period stipulated in the invocation of the bank guarantee within which the payment is to be made and not from the date of default of the corporate debtor and a suit filed within such period is timely.**

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**10.6** It is pertinent to note the following provisions of the Limitation Act, 1963:

*Section 3: Bar of limitation.— (1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.*

THE SCHEDULE:

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
<i>55. For compensation for the breach of any contract, express or implied not herein specially provided for</i>	<i>Three years.</i>	<i>When the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs or (where the breach is continuing) when it ceases.</i>
<i>137. Any other application for which no period of limitation is provided elsewhere in this Division</i>	<i>Three years.</i>	<i>When the right to apply accrues.</i>

**10.7** In the present matter, the right to sue accrued, and the limitation period commenced upon the expiry of the notice period of 60 days following the invocation on 24.08.2009. However, **CP (IB) No. 111/KB/2025** was not filed until **04.04.2025**, which is nearly 15 years after the initial default. This significantly exceeds the three-

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year limitation period prescribed under the Limitation Act, 1963, whether calculated under Article 55, or Article 137.

**10.8** Hence, we concur with the Personal Guarantor and the appointed Resolution Professional that CP (IB) No. 111/KB/2025 **is barred by the laws of limitation.**

**11. CONCLUSION**

**11.1** In view of the above noted precedents and statutes and upon the expiry of the prescribed limitation period, the application under section 95 deserves to be dismissed and in such regard, we make the following orders:

- i) **IA (IB) No. 1797/KB/2025 is allowed and disposed off.**
- ii) **C.P.(IB) NO. 111/KB/2025** is hereby **dismissed.**
- iii) Accordingly, **IA 1664/KB/2025** stands **allowed and disposed off.**
- iv) Certified copy of this order, if applied for with the Registry, be supplied to the parties in compliance with all requisite formalities.

**Ms. Rekha Kantilal Shah**  
**Member (Technical)**

**Smt. Bidisha Banerjee**  
**Member (Judicial)**

**Order signed on 21.05.2026**

Bhatt, O. [LRA]