

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT – II)**

**IA-1331/2022 in CP(IB)-489(PB)/2021**  
**IA-2121/2022 in CP(IB)-490(PB)/2021**

**IN THE MATTER OF CP(IB)-489(PB)/2021:**

**State Bank of India**

**... Applicant/Creditor**

**Versus**

**Vibu Venkatsubramanian**

**... Respondent/Guarantor**

**AND IN THE MATTER OF IA-1331/2022 in (IB)-489(PB)/2021:**

**Chanchal Dua**

**(Resolution Professional)**

409, 4<sup>th</sup> Floor, Ansal Bhawan,  
16 K.G. Marg, Cannought Place,  
New Delhi-110001

**... Applicant**

**IN THE MATTER OF (IB)- 490(PB)/2021:**

**State Bank of India**

**... Applicant/Creditor**

**Versus**

**V. Muthuchandrasekar**

**... Respondent/Guarantor**

**AND IN THE MATTER OF IA-2121/2022 in (IB)-490(PB)/2021:**

**Chanchal Dua**

**(Resolution Professional)**

409, 4<sup>th</sup> Floor, Ansal Bhawan,  
16 K.G. Marg, Cannought Place,  
New Delhi-110001

**... Applicant**

**Under Section: 99 r/w 95(1) of IBC, 2016**

**Order delivered on 22.03.2024**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)**

**SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)**

**PRESENT:**

**For the Applicant : Adv Siddharth Singh**

IA-1331/2022 in (IB)-489(PB)/2021  
IA-2121/2022 in (IB)-490(PB)/2021

**For the Respondent** : Adv. Pooja M. Saigal, Adv. Nikhil Sabri, Adv. Ishank Jha  
**For the RP** : Ms. Chanchal Dua, Adv. Bheem Sain Jain, Adv. Himanshu, Adv. Deobansh Roy

## **ORDER**

The present IA No. 1331 of 2022 has been filed by Ms. Chanchal Dua (hereinafter referred to as the '**RP**'), qua Personal Guarantor Vibu Venkatsubramanian (hereinafter referred to as the '**Respondent/Personal Guarantor**') enclosing therewith the Report prepared by him under Section 99 of IBC, 2016.

2. Stating succinctly, the underlying main Petition CP (IB)- 489/ND/2021 was filed by SBI (hereinafter referred to as "Creditor") against the Personal Guarantor Mr. Vibu Venkatsubramanian, under Section 95 of IBC 2016, to initiate the IR process. Vide order dated 23.02.2022, this Adjudicating Authority had appointed Ms. Chanchal Dua as a Resolution Professional (RP) of the Personal Guarantor and directed her to file its Report under Section 99 of IBC, 2016.

3. The present IA-1331/ND/2022 has been filed by RP enclosing therewith the Report prepared in terms of the provisions of Section 99 of IBC 2016, recommending admission of the Application viz. IB- 489/ND/2021 in respect of the Personal Guarantor.

4. The conclusive recommendation made by the RP reads thus:

*“5. That after going through record as available and the documents filed by the Financial Creditor in the captioned Application, the Applicant/Resolution Professional prepared the report as directed by this Hon’ble Tribunal vide order dated 23.02.2022 thereby recommending the approval of the captioned Application. Report of the Applicant/Resolution Professional is being placed on record by way of the present application and it is prayed that the same may be taken on record by this Hon’ble Tribunal....”*

5. While making its recommendation for admission of the Application filed qua the Personal Guarantor, under Section 95 of IBC, 2016 the RP has given the Report in terms of the provisions of Section 99 of IBC, 2016 providing the following:-

- “a. The Insolvency Application has been filed in the requisite form, [Form C] prescribed under Rule 7 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019, supported by requisite fee and documents.*
- b. The Insolvency Application satisfies the requirements set out in Section 95 of the Code.*
- c. The Personal Guarantor was duly served with demand notice dated 24.06.2021 by the Financial Creditor for repayment of the debt owed by him to the Financial Creditor in terms of the provisions of the Code prior to filing the Insolvency Application, but the Personal Guarantor failed to repay the same.*
- d. The RP had also sent a communication to the Personal Guarantor, vide letter dated 02.03.2022, immediately on receipt of aforesaid order of this Hon’ble Adjudicating Authority, dated 23.02.2022, in terms of Section 99(2) of the Code, asking personal Guarantor to*

*prove repayment of debt claimed as unpaid by the Financial Creditor. However, the reply received from the Personal Guarantor vide e-mail dated 09.03.2022 denying the debt to the Applicant, do not seems to be in line of the facts & evidence of the case and no proof of repayment of debt was produced / provided to the RP.*

- e. The Insolvency Application does not relate to “excluded debts” as defined under Section 79(15) of the Code.*
- f. The Debtor, Personal Guarantor, is not eligible for fresh start under Chapter II of the Code.”*

6. The description of the transaction entered between the parties i.e., M/s Global Infonet Distribution Private Limited (Principal Borrower), Creditor and Personal Guarantor was duly noted in the order dated 23.02.2022 passed by this Adjudicating Authority. The contents of which reads thus:

*“2. The Ld. Counsel for the Applicant states that the CD availed various credit/ loan facilities, to the tune of Rs.42 crores, on 07.11.2013, for availing the said credit facilities, the CD and its guarantors had executed various loan and security documents with the FC on 25.09.2012. That on 06.04.2018, the SBI, for the purposes of renewal of credit facilities, prepared fresh sanction letter and called upon the CD to accept the same for availing the drawing powers, on 26.04.2018, the CD admitted its liability towards the Applicant Bank and acknowledged its debt by executing a revival letter. Further, pursuant to default in payment of debt by the CD, towards one other FC's, namely M/s. IBM India Private Limited, an application under Section 7 of the I & B Code, 2016, was filed and the same was admitted by this Hon'ble Adjudicating Authority ("AA"), vide its order dated 03.03.2020 and CIRP was initiated against the CD in C.P. (IB)-712(PB) of 2019.*

3. *While availing the aforesaid loan/ credit facilities, the CD did not maintain financial discipline and failed to adhere to the terms and conditions laid out in the Sanction Letter/ Facility Agreement. As a result, the account of CD declared as NPA on 28.10.2018.*

4. *The Ld. Counsel for the applicant further submitted that a Demand Notice in Form B, under rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtor) Rules, 2019, was issued by the Financial Creditor, i.e., State Bank of India, on 24.06.2021, to the Personal Guarantor, in respect of the unpaid debt due from M/ s. Global Infonet Distribution Private Limited (Corporate Debtor). The Applicant had received a reply dated 09.07.2021, from the Personal Guarantor, being Mr. Vibu Venkat Subramanian, to the Demand Notice dated 24.06.2021. However, despite receipt of the notice dated 24.06.2021, the Personal Guarantor failed to make payment within 14 days from the date of receipt of the Demand Notice which falls on 12.07.2021.”*

7. On issuance of notice the Respondent has filed its Reply and has put forth his submissions seeking rejection of the Application. He saliently submitted:

7.1 The Demand notice dated 24.06.2021 issued by the Creditor in Form-B was duly replied by the Respondent, wherein he had denied the liability.

7.2 The Respondent is not a ‘debtor’ within the meaning of Chapter-III of Insolvency and Bankruptcy Code,2016 (“Code”) which includes Section 95 of the Code.

7.3 The fresh and new sanction letter bearing Nos. SME/RMME/AL/2016-17/159 dated 20.12.2016 was not covered under the above stated Agreement of Loan. In respect of the said sanction letter dated 20.12.2016 no personal guarantee of whatsoever nature has been provided by the Respondent.

7.4 The Respondent may have furnished personal guarantee only in relation to the Agreement of Loan dated 25.12.2012 and a revival letter in relation to the said Agreement of Loan dated 25.12.2012 was issued on 15.12.2015. Neither the said fresh and new sanction of the Financial Facilities by the Applicant vide its sanction letter dated 20.12.2016 was covered under the previous Agreement of Loan nor any personal guarantee of whatsoever nature was given by the Respondent in relation to the said sanction letter dated 20.12.2016.

7.5 Agreement of Loan dated 25.09.2012 and 15.12.2015 stood barred by limitation.

7.6 The Bank has indulged in multiple forum-shopping since it has already proceeded against the other guarantors before the DRT by filing Original Application. Further, it had invoked the SARFAESI Proceedings against the guarantors of the CD. Both the proceedings are under challenge and the present proceedings are initiated to defeat the rights of the Respondents in those proceedings.

7.7 The Applicant has deliberately not made any reference of the said sanction letter of State Bank of Mysore dated 15.02.2017 in the Application similarly, the RP has not mentioned about it in its Report.

7.8 The demand made by the SBI is inflated.

8. The RP filed its Written Submissions, rebutting to the objections raised by the Respondent. The plea espoused by the RP in the written synopsis reads thus:-

8.1 Vide Deeds of Guarantee dated 25.09.2012 and 15.12.2015 Respondent provided for a continuing, irrevocable and enforceable guarantee for all the amounts advanced by the Applicant to the CD in respect of the credit facilities as mentioned therein which stood renewed from time to time. In terms of the clause Nos. 3, 7, 8, 10, 11,12, 14 and 19 of the deed of Guarantee, any acknowledgment of debt made by the principal borrower shall be deemed to have been made by the Respondent herein which is binding on him. Thus, acceptance of the renewal of credit facilities vide sanction letters dated 20.12.2016 and 15.02.2017 by CD, was deemed acceptance on the part of the Respondent herein.

8.2 Sanction Letter dated 20.12.2016 would reveal that the facilities were subject to periodical review and scrutiny which forms the basis for further renewal/grant of financial facilities. The facilities were renewed for Rs. 40 crores vide sanction/renewal letters dated 07.11.2013. Credit facilities for Rs. 40.00 crores stood renewed vide Sanction Letter dated 04.12.2014 as also vide sanction letter dated 20.12.2016. The sanction letters including the sanction letter dated 20.12.2016 are in respect of the same credit facilities granted to the CD. Further, vide Sanction Letter dated 15.02.2017, credit facilities of Rs. 25.00 crores (as granted vide Sanction Letter dated 13.11.2015) stood renewed for the same

amount. Thus, it is not a novation or variation of contract but a mere renewal of existing facilities for which the Respondent herein has admittedly stood as guarantor.

8.3 The claim of the Applicant is within the Limitation period,

8.4 IBC, 2016 is having overriding effect over the other laws viz SARFAESI Act, 2002 and RDDFI Act 1993.

8.5 With regard to inflated amount Applicant Bank, along with captioned petition has filed account statements for the two accounts maintained by the FC with respect to the above listed credit facilities granted to CD.

9. We have heard the submission of both the parties and have perused the application, report and Reply filed by the parties. The Respondent has objected the admission of the application inter alia on the ground that the present Application is barred by Limitation.

10. To buttress the plea of limitation, the Respondent had contended that the Agreement of Loan were executed on 25.09.2012 and 15.12.2015, therefore the petition is barred by limitation. In order to resolve the controversy, we would like to visit the relevant clauses of the Guarantee Deed dated 25.09.2012. The relevant excerpts of the same reads thus:



फार्म सी.4  
FORM C.4

This Agreement form an integral part  
of Non Judicial Paper No. K.6.63761 for  
Rs. 100.00. Executed by M. S. K. Venkatesh  
On 27.09.2012 at Guwahati

समग्र सीमा के लिए गारंटी का विलेख  
(DEED OF GUARANTEE FOR OVERALL  
LIMIT)

(अनुप्रमाणित न किया जाए )  
(अनुबन्ध की तरह स्टाम्पित किया  
जाए)  
(NOT TO BE ATTESTED)  
(To be stamped as an Agreement)

\*कृपया गारंटीकर्ताओं  
के नाम और पते लिखें

गारंटी का यह विलेख के  
को निम्नलिखित ने  
(1) श्री/श्रीमती/कुमारी \* घर का पता  
(2) श्री/श्रीमती/कुमारी \* घर का पता  
(3) श्री/श्रीमती/कुमारी \* घर का पता  
(4)

THIS DEED OF GUARANTEE made the  
25th day of September '2012 One thousand  
nine hundred

\* Please insert the  
names and address of  
guarantors

BY  
(1) Shri/Smt./Kum.\* Muthu Chandrasekhar residing at  
(2) Shri/Smt./Kum.\* Vibu Venkateshbramanian residing at 11, Thiru Vengadam Street  
(3) Shri/Smt./Kum.\* - residing at Mandaveli, Chennai - 600028  
(4)

\*\*कृपया पंजीकृत  
कार्यालय का पता लिखें

\*कृपया प्रधान  
कार्यालय का पूर्ण पता  
लिखें

\*\* कृपया शाखा का  
पूर्ण पता लिखें

लिमिटेड जो कम्पनी अधिनियम, 1956 के अंतर्गत  
कम्पनी है और जिसका पंजीकृत कार्यालय\* पर है जिन्हें  
इसके परचात जब तक कि विशेष रूप से उनको अन्यथा पद नाम बना दिया जाये, "   
गारंटीकर्ता " कहा गया है और जब तक यह शब्द संदर्भ के या अर्थ के प्रतिकूल न हो तब  
तक इसमें जहां तक कम्पनी का संबंध है, उसके उत्तराधिकारी और अनुमत समनुदेशिती  
और जहां तक अन्यो का संबंध है, उनके वारिस निष्पादकर्ता प्रशासक और कानूनी  
प्रतिनिधि ने भारतीय स्टेट बैंक के पक्ष में निष्पादित किया है जो भारतीय स्टेट बैंक  
अधिनियम, 1955 के अंतर्गत निर्मित एक निगम है और जिसका स्थानीय मुख्य कार्यालय\*  
पर और जिसकी एक शाखा अन्य स्थानों के अलावा\*\*  
पर है (इसे जब तक कि विशेष रूप से अन्यथा पद का नाम न दिया गया हो, इसके परचात  
" बैंक " कहा गया है। और जब तक यह शब्द संदर्भ के या अर्थ के प्रतिकूल न हो तब तक  
इसमें बैंक के उत्तराधिकारी और समनुदेशिती भी सम्मिलित समझे जायेंगे)

\*\* Please insert the  
address of registered  
office

\* Please insert full  
address of the Head  
Office

\*\* Please insert full  
address of the Branch

Limited, a company within the meaning  
of the Companies Act, 1956 and having its registered office at \*\*

(hereinafter unless otherwise specifically  
designated/referred to as "the Guarantors" which expression shall unless repugnant  
to the context or meaning thereof be deemed to include in so far as the company is  
concerned its successors and permitted assigns and in so far as the others are  
concerned their respective heirs, executors, administrators and legal representatives)  
in favour of STATE BANK OF INDIA a Corporation constituted by the State Bank  
of India Act, 1955 and having one of its Local Head Office at \*11, Parliament Street New  
Delhi and among other places a branch at \*\* Commercial Branch Guwahati  
(hereinafter unless otherwise specifically designated referred to as "the Bank" which  
expression shall unless repugnant to the context or meaning thereof be deemed to  
include its successors and assigns).

1 true copy

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guarantee guaranteeing due payment by the Borrower of the said sum of Rs. 42,00,00,000/- (Rupees Forty-two Crores only) (hereinafter for the sake of brevity referred to as "the principal sum") together with interest costs charges expenses and/or other monies due to the Bank in respect of or under the aforesaid credit facilities or any of them on demand by the Bank.

और चूंकि गारंटी कर्ताओं ने अपनी की प्रार्थना पर और इस प्रतिफल के कारण कि बैंक ने उपरोक्त ऋण सुविधाओं अपनी को दे दी है या देना स्वीकार कर लिया है, गारंटी कर्ताओं ने बैंक के फंड में इस गारंटी पर निव्वदन करना स्वीकार कर लिया है और इसकी शर्तों का धर्मेत इसमें इसके पश्चात् किया गया है।

AND WHEREAS the Guarantors at the request of the Borrower and in consideration of the Bank having agreed to grant or granted at the request of the Guarantors the aforesaid credit facilities to the Borrower have agreed to execute this Guarantee in favour of the Bank on the terms and in the manner hereinafter appearing.

यह विशेष इस बात का सबूत है कि उपरोक्त शर्तों को ध्यान में रखते हुए निम्नलिखित प्रसंविदा और अनुबन्ध किया जाता है (गारंटीकर्ता संयुक्त रूप से और अलग-अलग व्यक्तिगत रूप से प्रसंविदाबद्ध और सहमत हुए हैं) :-

NOW THIS INDENTURE WITNESSETH that in consideration of the above premises it is hereby covenanted and agreed (the Guarantors covenanting and agreeing jointly and severally) as follows :

1. यदि किसी भी समय अपनी उपरोक्त ऋण सुविधाओं या उनमें से किसी एक के अंतर्गत मूलधन (जो  $\text{Rs. } 42,00,00,000/-$  (रुपये ) से अधिक नहीं होगा) ब्याज, लागतें, शुल्क, खर्च और/या अन्य राशियों को उस समय बैंक को देय हों, के भुगतान में चूक करता है तो गारंटीकर्ता मौन करने पर तुरंत बैंक को उपरोक्त पूर्ण मूलधन (जो  $\text{Rs. } 42,00,00,000/-$  (रुपये से अधिक नहीं होगा) ब्याज, लागतें, शुल्क खर्च और/या अन्य राशियों को उपरोक्त ऋण सुविधाओं के संदर्भ में बैंक को देय हों वह भुगतान करेगा और उपरोक्त मूलधन, ब्याज या अन्य देय राशियों और सभी लागतें शुल्कों और खर्चों के लिए जो बैंक को इसलिए करना पड़े कि अपनी की ओर से भुगतान में चूक हुई है बैंक को क्षतिपूर्ति देने और क्षतिपूर्ति की दिश्विती करे मन्वार रखेगा

1. If at any time default shall be made by the Borrower in payment of the principal sum (not exceeding Rs. 42,00,00,000/-) together with interest, costs, charges, expenses and/or other monies for the time being due to the Bank in respect of or under the aforesaid credit facilities or any of them the Guarantors shall forthwith on demand pay to the Bank the whole of such principal sum (not exceeding Rs. 42,00,00,000/-) together with interest, costs, charges, expenses and/or any other monies as may be then due to the Bank in respect of the aforesaid credit facilities and shall indemnify and keep indemnified the Bank against all losses of the said principal sum, interest or other monies due and all costs charges and expenses whatsoever which the Bank may incur by reason of any default on the part of the Borrower.

2. गारंटीकर्ता इस बात को स्वीकार करते हैं और यह पुष्टि करते हैं कि उपरोक्त ऋण सुविधाओं के अंतर्गत खोले गये खाते/खातों में शेष राशियों पर उस दर/दरों पर ब्याज किया जायिगा जिसका निर्धारण बैंक समय-समय पर करेगा. और यदि इस दर का संबंध स्टैट्यू बैंक अधिनियम से हो तो स्टैट्यू बैंक अधिनियम दर में परिवर्तन के कारण उस परिवर्तन को तत्पश्चात् बैंक अधिनियम की शर्तों की शेष राशियों पर ब्याज की प्रभावी दर अनुसार बदल जायेगी। ब्याज का आंकलन ऐसे खातों की दैनिक शेष राशि पर किया जायेगा और वह राशि बैंक में प्रचलन के अनुसार मास के अंतिम कार्य दिवस या तिमाही के अंतिम कार्य दिवस को उस

खते/खतों के नामे खल दी जायेगी। बैंक को यह भी अधिकार होगा कि वह अपने विलेकधिकार से ऐसे खतों पर या तो सारी शेष राशियों के योग पर या उनके किसी अंश पर ऐसी बंदी हुई दर से ब्याज ले जिसका निर्धारण वह किसी अनियमितता के लिए करेगा और इस दर पर ब्याज उस अवधि के लिए लिया जायेगा जिसमें यह अनियमितता जारी रहती है या जिस अवधि के लिए बैंक ऐसा करना आवश्यक समझता है। इस संबंध में बैंक इस बात का ध्यान रखेगा कि अनियमितता का स्वरूप क्या था, बंदी हुई दर पर ब्याज लेने का यह अर्थ नहीं होना कि ऐसा कर लेने से बैंक के अन्य अधिकार और उपचार किसी प्रकार से प्रभावित होंगे।

2. The Guarantors agree and confirm that interest shall be charged on the outstandings in the account(s) opened in respect of the aforesaid credit facilities at such rate(s) as may be determined by the Bank from time to time and in such rate is linked to the State Bank Advance Rate obtaining at the particular time, any revision in the State Bank Advance Rate shall correspondingly change the effective rate of interest on such account from the date of such revision. Interest shall be calculated respectively on the daily balance of such account(s) and be debited thereto on the last working day of the month or quarter according to the practice of the Bank. The Bank shall also be entitled to charge as its own discretion such enhanced rates of interest on the account(s) either on the entire outstanding or on a portion thereof as it may fix for any irregularity and for such period as the irregularity continues or for such time as Bank deems it necessary regard being had to the nature of the irregularity and the charging of such enhanced rate of interest shall be without prejudice to the Bank's other rights and remedies.

3. बैंक को इस बात की पूरी हकीकत होगी कि वह इस शर्तों पर प्रभाव डाले बिना उपरोक्त खल सुविधाओं के बारे में अलग-अलग सीमाओं की राशियों में केरबदल कर दे जैसी समय-समय पर बैंक और शर्तों के बीच सहमति हो जाए लेकिन यहाँ यह है कि इन सीमाओं पर कोई जोड़ मूलधन से अधिक नहीं होगा और यह बैंक किसी समय-समय के लिए या समय-समय पर उपरोक्त मामलों के संबंध में उसे उपलब्ध प्रतिभूतियों के उपचारों को लागू न करने इन्हें स्थगित करने का भी अधिकार होगा या वह अपनी को कोई समय की छूट देने से या देखा हो जाने पर कि बैंक कोई कार्यवाही नहीं करता या उसमें कुछ अंतर है या शर्तों के प्रति कुछ पूर्वक कोई और फोन करता है या अन्य मामलों या अन्य बातों के प्रभाव से प्रतिभूति प्रकृति नियमों के अंतर्गत कोई ऐसी कार्यवाही करता है जिसके प्रभाव से यह प्राप्त न होने की दशा में शर्तों की इस उपबंध के अंतर्गत अपने दायित्वों से मुक्त हो सकते थे, मुक्त नहीं होंगे।

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

4. बैंक उपरोक्त खल सुविधाओं को और प्रतिभूत करने के संबंध में शर्तों की वहल संपरितियों का आडमान और/या संभक किया गया है और/या अपनी अचल संपरितियों के बारे में अलग से संभक संबंधी अलग-अलग प्रतिभूति के दस्तावेजों का निष्पादन किया है और उनमें ऐसी शर्तें हैं कि बीमे की पोलिसियों बैंक के नाम की जाएं और बैंक को भेज दी जाएं, संपरितियों पर नार्मिन या सूट्य बनाये दशा जाएं और बैंक को समय-समय पर विभिन्न विवरण दिए जाएं, इसके लिए शर्तों में यह स्वीकार करते हैं कि ऐसी प्रतिभूति की अपेक्षा करने या उसे प्राप्त करने या प्रतिभूति की दस्तावेजों की शर्तें

के पालन या निष्पादन में असफलता या इस बारे में बैंक की चूक कि वह उपरोक्त शर्तों का पालन न कर सका का अर्थ यह नहीं होगा कि इस अनुबन्ध के अंतर्गत गारंटीकर्ता अपने दायित्व से मुक्त हो गए हों या उनका दायित्व किसी प्रकार कम या समाप्त हो गया है।

4. As the aforesaid credit facilities have been further secured by hypothecation and / or pledge of the Borrower's movable properties and / or mortgage of the Borrower's immovable properties under separate security documents executed by the Borrower with the Bank which security documents would contain stipulations as to insurance assignment and delivery of Insurance Policy to the Bank the margin or value of properties to be maintained and the periodical furnishing of different statements to the Bank and other matter the Guarantor agree that no failure in requiring or obtaining such security or in the observance or performance of any of the stipulations or terms of the said security documents and no default of the Bank in requiring or enforcing the observance or performance of any of the said stipulations or terms shall have the effect or releasing or discharging or in any manner affecting the liability of the Guarantors under these presents.

5. बैंक को इस बात की स्वतंत्रता होगी कि वह उपरोक्त ऋण सुविधाओं या उनमें से किसी एक या उसके किसी अंश के संबंध में अन्य प्रतिभूतियों ले और इन प्रतिभूतियों के अंतर्गत या किसी संपारिर्वक प्रतिभूति या उन प्रतिभूतियों से जो बैंक के पास हैं ऋणी को मुक्त कर दे या उनके अंतर्गत किसी उपय को लागू न करे तो इसका अर्थ यह नहीं लिया जायेगा कि इस गारंटी के अंतर्गत गारंटीकर्ताओं को तब तक उपरोक्त प्रतिभूति और/या किसी अन्य प्रतिभूति का लाभ प्राप्त करने का अधिकार प्राप्त नहीं होगा जब तक कि ऋणी पर उपरोक्त ऋण सुविधाओं के संबंध में बैंक के सारे दावे और किसी अन्य आधार पर ऋणी के विरुद्ध बैंक के सारे या कोई अन्य दावे पूरे नहीं हो जाते और जहां तक ऐसी किसी प्रतिभूति का संबंध है, उसके अंतर्गत बैंक के दावों की राशि का भुगतान नहीं कर दिया जाय तब तक किसी गारंटीकर्ता को या अन्य व्यक्तियों को ऐसी प्रतिभूतियों का लाभ प्राप्त नहीं होगा.

5. The Bank shall be at liberty to take in addition to the subsisting securities any other securities for the aforesaid credit facilities or any of them or any part thereof and to release or forbear to enforce all or any of the remedies upon or under such securities and any collateral security or securities now held by the Bank and that no such release or forbearance as aforesaid shall have the effect of releasing or discharging or in any manner affecting the liability of the Guarantors under the Guarantee and that the Guarantors shall have no right to the benefit of the said security and / or any other security that may be held by the Bank until the claims of the Bank against the Borrower in respect of the aforesaid credit facilities and of all (if any) other claims of the Bank against the Borrowers on any other account whatsoever shall have been fully satisfied and then in so far only as such security shall not have been exhausted for the purpose of realising the amount of the Bank's claims and ratable only with other Guarantor or other persons (if any) entitled to the benefit of such securities respectively.

6. इस अनुबन्ध में जो गारंटी दी गई है उसके आधार पर गारंटीकर्ताओं के विरुद्ध कार्रवाही की जा सकेगी और इस बात से कोई भेद नहीं पड़ेगा कि उपरोक्त प्रतिभूतियां या उनमें से कोई प्रतिभूति या अन्य संपारिर्वक प्रतिभूतियां जो बैंक ने ऋणी से प्राप्त की हों या ऋणी से या किसी अन्य व्यक्ति से उस समय प्राप्त करे जब इस अनुबन्ध के अंतर्गत गारंटीकर्ताओं के विरुद्ध कार्रवाही करे, वे पूरी नहीं हुई और/या उन्हें लागू नहीं किया गया और/या उनकी राशियां वसूल नहीं हुई.

6. The Guarantee herein contained shall be enforceable against the Guarantors notwithstanding the securities aforesaid or any of the them or any other collateral securities that the Bank may have obtained or may obtain from the Borrower or any other person shall at the time when proceedings are taken against the Guarantors hereunder be outstanding and/or not enforced and/or remain unrealised.

7. इस करार में जो गारंटी दी गई है उसे कार्यान्वित करने के लिए बैंक को इस प्रकार कार्रवाही करने का अधिकार होगा मानों कि गारंटी दाताओं ने वे सारी राशियाँ मुख्य ऋणीयों के रूप में स्वयं बैंक से ली हों, जिनका उल्लेख ऊपर किया गया है।

7. In order to give effect to the Guarantee herein contained the Bank shall be entitled to act as if the Guarantors were principal debtors to the Bank for all payments guaranteed by them as aforesaid to the Bank.

8. इस अनुबन्ध के अंतर्गत दी गयी गारंटी अविरत गारंटी है जो उन सभी राशियों पर लागू होगी जो उपरोक्त ऋण सुविधाओं के अनुरूप या उनके अंतर्गत बैंक ने ऋणी को दी है। यह गारंटी उस सारे ब्याज, लागतों और अन्य राशियों पर भी लागू होगी जो समय-समय पर देय हो जायें और बैंक को चुकायी न गई हों। बैंक द्वारा खोले गये या खोले जाने वाले किसी खाते या खातों में शेष राशि न रहने या समय-समय पर उनमें राशियाँ जमा होने या उन खाते या खातों के बंद किये जाने और नया खाता या खाते खोले जाने से इस गारंटी पर कोई प्रभाव नहीं पड़ेगा जो ऋणी को दी गई समग्र सीमा के अंतर्गत नयी सुविधाओं के लिए खोले जायेंगे।

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

9. इस बात के होते हुए भी कि किसी प्रतिभूति के अंतर्गत जो बैंक ने प्राप्त की हो या वह आगे प्राप्त कर सकता है बैंक को जो अधिकार प्राप्त हैं उसके अंतर्गत बैंक को इस बात की पूरी स्वतंत्रता होगी कि वह गारंटीकर्ताओं से अधिक से अधिक (रुपये )

तक मूलधन के अलावा ब्याज और अन्य लागतें (जैसे कि कोई मुवक्किल अपने वकील को देता है) शुल्क और खर्च और/या अन्य राशियाँ जो उपरोक्त ऋण सुविधाओं के कारण या उनके अंतर्गत बैंक को देय हो गयी हों के भुगतान के लिए कहे और बैंक के लिए यह आवश्यक नहीं होगा कि वह ऋणी से ही उपरोक्त ऋण सुविधाओं के अंतर्गत राशियाँ पहले वसूल करे और/या बैंक के लिए यह अनिवार्य नहीं होगा कि वह उन उपचारों या प्रतिभूतियों का सहारा ले जो उसके पास हैं।

9. Notwithstanding the Bank's rights under any security which the Bank may have obtained or may obtain the Bank shall have fullest liberty to call upon the Guarantors to pay the principal sum not exceeding Rs. 42,00,00,000 (Rupees Forty two crore only) together with interest as well as the costs (as between advocate and client) charges and expenses, and /or other monies for the time being due to the Bank in respect of or under the above mentioned credit facilities or any of them without requiring the Bank to realise from the Borrower the amount due to the Bank in respect of the above mentioned credit facilities and /or requiring the Bank to enforce any remedies or securities available to the Bank.

10. इस अनुबन्ध में दी गई गारंटी पर इस बात से कोई प्रभाव या प्रतिकूल प्रभाव नहीं पड़ेगा कि बैंक का या बैंक द्वारा कोई विलय किया गया है, बल्कि ये सुनिश्चित किया जायेगा कि यह गारंटी विलयकर्ता बैंक या सामामेलित बैंक या संगठन को उपलब्ध हो सके।

10. The Guarantee herein contained shall not be determined or in any way prejudiced by any absorption of or by Bank or by any amalgamation thereof or



therewith but shall ensure and be available for and by the absorbing or amalgamated Bank or concern.

11. यह गारंटी अविनश्यनी होगी और बैंक तथा ऋणी के बीच किसी वियाद के होते हुए भी गारंटीकर्ताओं के विरुद्ध इसे लागू किया जा सकेगा।

11. The Guarantee shall be irrevocable and enforceable against the Guarantors notwithstanding any dispute between the Bank and the Borrower.

12. गारंटीकर्ता प्रतिज्ञान करते हैं पुष्टि करते हैं और यह घोषणा करते हैं कि ऋणी द्वारा देय किसी ऋण राशि की पुष्टि और/या स्वीकृति और/या देयता की स्विकारोक्ति या वचन या ऋणी अथवा उसके प्राधिकृत एजेंट द्वारा बैंक को किये गये आंशिक भुगतान के बारे में यह मान लिया जायेगा कि यह स्वयं गारंटीकर्ताओं ने किया है या उनकी ओर से किया गया है और यह बात उनमें से प्रत्येक गारंटीकर्ता पर लागू होगी।

12. The Guarantors affirm confirm and declare that any balance confirmation and/or acknowledgment of debt and /or admission of liability given or promise or part payment made by the Borrower or the authorised agent of the Borrower to the Bank shall be deemed to have been made and /or given by or on behalf of the Guarantors themselves and shall be binding upon each of them.

13. गारंटीकर्ता बैंक की मांग पर तुरंत बैंक के पास राशि या प्रतिभूति या और राशि या प्रतिभूति जमा करायेंगे, जिसके बारे में बैंक समय-समय पर यह कहे कि उस प्रतिभूति का जमा कराना इस गारंटी के अंतर्गत उनके दायित्व को पूरा करने के लिए आवश्यक है और बैंक के पास जमा कराई गई कोई भी प्रतिभूति बैंक द्वारा बेची जा सकती है। उसके लिए बैंक गारंटीकर्ताओं को बिजली की उचित सूचना देगा और प्रतिभूतियों की बिजली से प्राप्त राशि बैंक द्वारा उपर्युक्त दायित्व को पूरा करने के लिए और उस देयता को पूरा करने के लिए विनियोजित की जायेगी जो गारंटीदाताओं द्वारा गारंटी पूरी न करने के परिणामस्वरूप उत्पन्न हुई हो।

13. The Guarantors shall forthwith on demand made by the Bank deposit with the Bank such sum or security or further sum or security as the Bank may from time to time specify as security for the due fulfillment of their obligations under this Guarantee and any security of deposited with the Bank may be sold by the Bank after giving to the Guarantors a reasonable notice of sales and the said sum or the proceeds of sale of the securities may be appropriated by the Bank in or towards satisfaction of the said obligations and any liability arising out of non-fulfillment thereof by the Guarantors.

14. गारंटीकर्ता इस बात को स्वीकार करते हैं कि उपर्युक्त ऋण अनुबन्ध और/या उपर्युक्त प्रतिभूति दस्तावेजों में, जिनमें मूलधन के अंतर्गत अलग-अलग सीमाओं के फिर से आवंटन/आपसी बदलाव, ब्याज दर में परिवर्तन, किस्तों यदि हो तो उनकी भुगतान तिथि का बढ़ाया जाना या बैंक और ऋणी के बीच इस बारे में हुआ समझौता शामिल है के संबंध में ऋणी को और समय दिया जाए या बैंक उस पर मुकद्दमा न चलाये या बैंक ऋणी द्वारा दी गई किसी प्रतिभूति को छोड़ दे या नहीं इन सबका प्रभाव गारंटी कर्ताओं के इस गारंटी के अंतर्गत दायित्व को समाप्त नहीं करेगा और न यह माना जायेगा कि वे इस दायित्व से मुक्त हो गये हैं, लेकिन शर्त यह है कि ऐसे किसी फेर-बदल या समझौते की दशा में गारंटीकर्ताओं का दायित्व इस अनुबन्ध में किसी बात के होते हुए भी लागू रहेगा और यह मान लिया जायेगा कि जिस तिथि या तिथियों पर ऋणी उपरोक्त ऋण अनुबन्ध और/या उपर्युक्त किसी प्रतिभूति के दस्तावेजों के अंतर्गत ऐसे किसी परिवर्तन या समझौते के कारण अद्यतनी के लिए उत्तरदायी हो गया है, उसी तिथि से उसके लिए गारंटीकर्ता भी स्वयं उत्तरदायी हो जायेंगे।

14. The Guarantors hereby agree that notwithstanding any variation made in the



terms of the said Agreement of Loan and/or any of the said security documents including reallocation/interchange of the individual limits within the principal sum variation in the rate of interest, extension of the date for payment of the installments, if any, or any composition made between the Bank and Borrower to give time to or not to sue the Borrower, or the Bank parting with any of the securities given by the Borrower, the Guarantors shall not be released or discharged of their obligation under this Guarantee provided that in the event of any such variation or composition or agreement the liability of the Guarantors shall notwithstanding anything herein contained be deemed to have accrued and the Guarantors shall be deemed to have become liable hereunder on the date or dates on which the Borrower shall become liable to pay the amount/amounts due under the said Agreement of Loan and/or any of the said security documents as a result of such variation or composition or agreement.

15. गारंटीकर्ता इस बात को स्वीकार करते हैं और इसकी पुष्टि करते हैं कि बैंक को यह अधिकार होगा कि बैंक के पास जो राशियाँ पड़ी हों वह उनका सामाजिक, वित्तीय या प्रयोग उन उद्देश्यों के लिए कर सकता है जिससे कि इस अनुबन्ध के अंतर्गत गारंटीकर्ताओं के दायित्व को पूरा किया जा सके।

15. The Guarantors hereby agree and confirm that the Bank shall be entitled to adjust appropriate or set-off all monies held by the Bank to the credit of or for the benefit of the Guarantors on any account or otherwise howsoever towards the discharge and satisfaction of the liability of the Guarantors under these presents.

16. गारंटीकर्ता इस बात को स्वीकार करते हैं कि इस बात के होते हुए भी कि बैंक किसी कारण से ऋणी द्वारा दी गई प्रतिभूतियों को खो बैठता है और/या छोड़ देता है, गारंटीकर्ता इस गारंटी के अंतर्गत अपने दायित्वों से मुक्त नहीं हो पायेंगे और न यह माना जाएगा कि वे मुक्त हो गये हैं और यदि बैंक इस प्रकार इन प्रतिभूतियों को खो बैठे या उनका परित्याग कर दे तो यह माना जायेगा कि गारंटीकर्ताओं ने इस बात की अनुमति दे दी है और वे इससे सहमत हैं।

16. The Guarantors agree that notwithstanding the Bank for any reason whatsoever losing and/or parting with any of the securities given by the Borrower the Guarantors shall not be released or discharged of their obligations under this Guarantee and in the event of the Bank so losing or parting with the security the Guarantors shall be deemed to have consented to or acquiesced in the same.

17. गारंटीकर्ता इस बात को स्वीकार करते हैं कि यदि ऋणी जो एक व्यक्ति है और दिवालिया हो जाता है या कंपनी होने की दशा में यदि उसका परिसमापन या समापन कर दिया जाता है (यह अनविर्य हो या उसकी इच्छानुसार) या ऋणी के उद्यम के प्रबंध का किसी कानून के अंतर्गत अधिग्रहण कर लिया जाता है या ऋणी और/या उसके उद्यम का किसी कानून के अंतर्गत राष्ट्रीयकरण कर दिया जाता है या वह अपने लेनदारों के साथ कोई समझौता कर लेता है तो बैंक (इस बात के होते हुए भी कि गारंटीकर्ताओं या किसी अन्य व्यक्ति ने बैंक को इस अनुबन्ध के अंतर्गत प्रतिभूत राशि का सारा का सारा या उसके किसी अंश का भुगतान कर दिया है) लेनदार माना जाएगा और वह ऋणी की सारी संपत्ति के विरुद्ध अपने दावों की पूरी राशि का दावा कर सकेगा या उसके बारे में किसी प्रकार का समझौता करना स्वीकार कर लेगा या समझौते की स्वीकृति दे देगा और बैंक सारे लामेंडा, समझौते के अंतर्गत प्राप्त राशि या अन्य सभी भुगतान ले सकेगा और तब तक गारंटीकर्ता बैंक के साथ प्रतिस्पर्धा की स्थिति में नहीं होंगे जब तक कि बैंक के सारे दावे पूरे नहीं कर दिए जाते और गारंटीकर्ता उन द्वारा देय राशियों का भुगतान नहीं करेंगे और न ऋणी की संपत्ति पर तब तक कोई दावा करेंगे जब तक कि ऋणी के विरुद्ध बैंक के सारे दावे पूरे नहीं हो जाते। बैंक गारंटीकर्ताओं से उन द्वारा देय सारी राशियों का भुगतान प्राप्त कर सकेगा और इस बात से कोई भेद नहीं पड़ेगा कि उपरोक्त धन से संबंधित कोई समझौता हो गया है या बैंक के दावे प्रमाणित हो गये हैं। उपरोक्त घटनाओं में से कोई भी घटना घट जाए तो गारंटीकर्ता उसकी सूचना लिखित रूप से तुरंत बैंक को देंगे।

17. The Guarantors agree that if the Borrower being an individual becomes an insolvent or being a company enters into liquidation or winding up (whether compulsory or voluntary) or if the management of the undertaking of the Borrower is taken over under any law or if the Borrower and/or the undertaking of the Borrower is nationalised under any law or make any arrangement or composition with creditors the Bank may (notwithstanding payment to the Bank by the Guarantors or any other person of the whole or any part of the amount hereby secured) rank as creditor and prove against the estate of the Borrower for the full amount of all the Bank's claims against the borrower or agree to and accept any composition in respect thereof and the Bank may receive and retain the whole of the dividends, composition or other payments thereon to the exclusion of all the rights of the Guarantors in competition with Bank until all the Bank's claims are fully satisfied and the Guarantors will not be paying off the amounts payable by them or any part thereof or otherwise prove or claim against the estate of the Borrower until the whole of the Bank's claims against the Borrower have been satisfied and the Bank may enforce and recover payment from the Guarantors of the full amount payable by the Guarantors notwithstanding any such proof or composition as aforesaid. On the happening of any of the aforesaid events, the Guarantors shall forthwith inform the Bank in writing of the same.

XXX

Shri MUKESH Chandrasekar

Shri Vibu Venkatesubramanian and

Shri

लिमिटेड

की सामान्य मुहर \*  
इस संबंध में मास के दिन  
वर्ष एक हजार नौ सौ को पारित किए  
गए निदेशक मंडल के संकल्प के अनुसार

VML 25/9/2012  
V.Vib 25/9/2012

(i)

और

(ii)

की उपस्थिति में लगाई गई ।

COMMON SEAL \* OF

Limited

was hereunto affixed pursuant to the resolution of the Board of Directors passed in that behalf on

day of 19

in the presence of

(i)

and

(ii)

From a perusal of Clause 8 of the Guarantee Deed (ibid) it is clear that the Guarantee Deed is continuing in nature. To determine the triggering point of



Limitation a reference may be made to the Judgement passed by Hon'ble NCLAT in the matter of Pooja Ramesh Singh vs. State Bank of India in Company Appeal (AT) (Ins.) No.329 of 2023" dated 28.04.2023, wherein the following was held:

*"5. We have heard learned counsel for the parties and perused the record. From the submission of learned counsel for the parties and materials on record following issues arise for consideration:*

*I. Whether default in payment of guaranteed amount by the Corporate Debtor is the same default as is committed by the Principal Borrower and the period of limitation for both the Principal Borrower and the Corporate Guarantor shall be same for the purposes of filing Section 7 application for the Bank?*

*II. Whether the Deed of Guarantee dated 17.05.2019 is guarantee on demand and the limitation of Guarantor shall ensue only when demand is made to the Guarantor?*

....

....

*33. In view of the foregoing discussion and conclusions, we answer Issues No. II, III and IV in following manner:*

.....

***Issue No. II: The Deed of Guarantee dated 17.05.2019 is guarantee on demand and the limitation of Guarantor shall ensue only when demand is made to the Guarantor.***

***(Emphasis added)***

11. Though, the aforesaid view was taken by the Hon'ble NCLAT in the context of the Corporate Guarantor, however, we see no reason as to why the

observations cannot be applied also to the case of the Personal Guarantor. Since the date of default in the captioned petition would be the date of invocation of guarantee and not the date of Loan Agreement.

12. In the instant case the Guarantee was invoked when SBI had issued notice under Section 13(2) of SARFAESI Act i.e., 09.11.2018. The present Application was filed on 11.08.2021 i.e. within three years from the date of invocation of guarantee. Hence, we find no merit in the plea of limitation raised on behalf of the Respondent.

13. The next objection raised by the Respondent is that Principal Borrower was lastly enjoying the said alleged credit facilities extended by the Applicant in terms of the sanction letter bearing Nos. SME/RMME/AL/2016-17/159 dated 20.12.2016, which was a new and fresh sanction. In relation to the said sanction letter dated 20.12.2016, the Respondent has not provided any guarantee which is alive and subsisting.

14. Per Contra the Applicant contended that the sanction Letter dated 20.12.2016 would reveal that the facilities were subject to periodic review and scrutiny which forms the basis for further renewal/grant. The facilities were renewed for Rs. 40 crores vide sanction/renewal letters dated 07.11.2013. Credit facilities for Rs. 40.00 stood further renewed vide Sanction Letter dated 04.12.2014 and lastly vide sanction letter dated 20.12.2016. The sanction letters including the sanction letter dated 20.12.2016 are in respect of the same credit facilities granted to the CD. Further, vide Sanction Letter dated 15.02.2017,

credit facilities of Rs. 25.00 crores (as granted vide Sanction Letter dated 13.11.2015) stood renewed for the same amount. Thus, it is not a novation or variation of contract but a mere renewal of existing facilities for which the Respondent herein has admittedly stood as guarantor. Further reliance was placed on the Judgement of Hon'ble Supreme Court in the matter of Sita Ram Gupta Vs Punjab National Bank & Ors (2008) 5 SCC 711. The relevant excerpts of the same reads thus:

*"4. In order to decide the question raised by the learned counsel for the appellant, we may look into the agreement of guarantee entered into by the Bank with the appellant as guarantor, which reads as under:*

*"The guarantors hereby guarantee jointly and severally to pay the Bank on demand all principal, interest, costs, charges and expenses due and which may at any time become due to the Bank from the borrower, on the accounts opened in respect of the said limits (hereinafter called 'the said accounts') down to the date of payment and also all loss or damages, costs, charges and expenses and in the case of legal costs, costs as between attorney and client occasioned to the Bank by reason of omission, failure or default temporary or otherwise in such payment by the borrower or by the guarantors or any of them including costs (as aforesaid) of enforcement or attempted enforcement of payment by suit or otherwise or by a sale or realisation or attempted sale or realisation of any security for the said indebtedness or otherwise howsoever or any costs (which costs to be as aforesaid) charges or expenses which the Bank may incur by being joined in any proceeding to which the Bank may be made or may make itself party either with or*

*without others in connection with any such securities or any proceeds thereof.*

*The guarantors hereby declare that this guarantee shall be a continuing guarantee and shall not be considered as cancelled or in any way affected by the fact that at any time the said accounts may show no liability against the borrower or may even show a credit in his favour but shall continue to be guarantee and remain in operation in respect of all subsequent transactions."*

*(emphasis supplied)*

*5. Keeping the agreement of guarantee, as noted hereinabove, in mind, let us now look into the facts of the present case. It is an admitted position that the guarantee issued by the appellant to the Bank was subsequently cancelled by his letter dated 31-7-1980 written to the Manager of the Bank and in that view of the matter, the appellant sought to substantiate his case that since his guarantee had stood revoked before the loan was in fact taken by the defendants from the Bank, in view of Section 130 of the Act, he was not liable to pay the loan taken by the defendants in respect of which the appellant was a guarantor. The trial court, as noted hereinabove, dismissed the suit against the appellant and in appeal by the Bank, the High Court had reversed the decree passed by the trial court and granted decree in favour of the Bank and against the appellant. Subsequent to the revocation of guarantee by the appellant, there were transactions in respect of the loan between Defendants 1 to 4 and 6 and the Bank. The suit was filed for recovery of loan by the Bank against the appellant as well as the other Defendants 1 to 4 and 6.*

..

*7. We have carefully examined the submissions made on behalf of the parties and also the relevant clauses in the agreement of guarantee. In our view, the High Court was perfectly justified in holding that the appellant was liable to pay the decretal amount to the Bank in view of the clause, as mentioned hereinafter, in the agreement of guarantee itself. The agreement of guarantee clearly provides that the guarantee shall be a continuing guarantee and shall not be considered as cancelled or in any way affected by the fact that at any time, the said accounts may show no liability against the borrower or may even show a credit in his favour but shall continue to be a guarantee and remain in operation in respect of all subsequent transactions. This was an agreement entered into by the appellant with the Bank, which is binding on him. Therefore, the question arises whether the statutory provision under Section 130 of the Act shall override the agreement of guarantee. In our view, the agreement cannot be said to be unlawful nor the parties have alleged that it was unlawful either before the trial court or before the High Court. Let us, therefore, keep in mind that the agreement of guarantee entered into by the appellant with the Bank was lawful.”*

15. In terms of clause 14 of the Guarantee Deed (ibid) the guarantors had agreed that any variation made in terms of the Agreement of Loan and/or any of the security documents including reallocation/interchange of individual limits within the principal sum or variation in the rate of interest, extension of the date for payment will not affect their liability. In the wake, we reject the contention raised by the Respondent.

16. The next objection raised by the Respondent is that Bank has filed multiple proceedings against the Respondent under SARFAESI Act, 2002 before DRT. Per

Contra, the RP has stated that in terms of the provisions of Section 238 of IBC 2016, the IBC is having over-riding effect over other laws. In our view there is no bar in filing Section 95 Application during the pendency of the proceedings under SARFAESI Act, 2002. Thus, we find no force in the contention raised by the Respondent.

17. With respect to objection pertaining to inflated claim we are of the view that this Adjudicating Authority is not required to compute the debt and what it need to satisfy itself about is that the threshold limit is met. In the present case, the amount of debt is more than Rs. 1000/- thus, the threshold limit is met.

18. The Respondent also filed additional reply dated 25.01.2024 wherein it has been stated that the RP has acted as Adjudicator, which act of his contrary to the view taken by Hon'ble Supreme Court in Dilip B. Jiwrajka Vs. Union of India & Ors. [2023 SCC OnLine SC 1530]. In our view the RP has acted as a facilitator only and has given his recommendation based on the documents available on record such as Guarantee Deed, Demand Notice, Loan Sanction Letter etc. The relevant excerpts of the Judgement of Hon'ble Supreme Court (ibid) reads thus:

*“86. We summarise the conclusion of this judgment below:*

*(i)...*

*...*

*(iv) The resolution professional may exercise the powers vested under Section 99(4) of the IBC for the purpose of examining the application for insolvency resolution and to seek information on matters relevant to the application in order to facilitate the submission of the report recommending the acceptance or rejection of the application;”*

Hence we find no force in the contention of the Respondent.

19. The Demand Notice in Form-B was issued by the Applicant to the Respondent on 24.06.2021. The service of the notice has not been denied by the Respondent, rather Respondent has replied to the same in terms of the missive dated 20.07.2021.

20. The Applicant has annexed the Guarantee Deed dated 25.09.2012 issued by the Respondent/Guarantor to secure the debt for M/s Global Infonet Distribution Pvt. Ltd.

21. The Guarantee was invoked by SBI by issuing notice under Section 13(2) of SARFAESI Act dated 09.11.2018.

22. In the sequel to the aforesaid circumstances, the Creditor has been able to establish the 'debt' and 'default' beyond doubt qua which the Respondent stood as Personal Guarantor. Hence, we have no reason to disagree with the recommendation given by the RP for admitting the Application. Ergo, we accept the report of the RP given by him in terms of the provisions of Section 99 of the IBC, 2016, and admit the CP (IB)-498/PB/2021 filed by the Creditor.

**Accordingly, we order the initiation of the IR process in respect of Mr. Vibu Venkatsubramanian, Respondent/Personal Guarantor with immediate effect.**

23. It goes without saying that during the IRP, (Insolvency Resolution Process) the RP shall give an opportunity to personal guarantor to submit her repayment

plan. Nevertheless, before that the RP shall also carry the exercise in terms of the provisions of Section 100(2) of IBC 2016. For such purpose it would be open to the Respondents to appear before RP within 1 week from today.

24. There is no request by the RP for the purpose of conducting negotiation between the debtor and the creditors. As a sequel of admission of the present application, a moratorium shall commence in relation to all the debts of the Respondent. During the moratorium period – (a) any pending legal action or proceedings in respect of any debt qua the Respondent shall be deemed to have been stayed; (b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt qua the Respondent; and (c) the debtors shall not transfer, alienate, encumber or dispose of any of the assets or his legal right or beneficiary interest therein. The moratorium shall cease to have effect at the end of period of 180 days.

25. A public notice shall be issued by the RP within seven days of passing of this order, inviting claim from all creditors within 21 days of such notice. The notice shall include details of the present order, particulars of the Resolution Professional with whom the claims have to be registered and the last date for the submission of the claims. The notice shall be – (a) published in two National Newspapers, one in English and other one Vernacular Language, in circulation in the State where the debtor resides; (b) affixed in the premises of this Adjudicating Authority; and (c) placed on the website of the Adjudicating Authority.



26. We are sanguine that the RP shall discharge all such duties as are incumbent upon him in terms of the provisions of Sections 102, 103, 104, 105, 106 , 107, 108, 112 and 113 of IBC, 2016, with the due deference of the procedure enshrined in Regulations 5, 7, 8, 9, 11, 12, 13, 14, 15 and 17 of IBBI (Insolvency Resolution Process for Personal Guarantor to Corporate Debtors) Regulations, 2019 and also in terms of the other extent provisions of the aforementioned code/ regulations and/or any other provisions of law applicable to him, in discharge of his duties as RP.

27. A copy of this order along with the copy of the application as also the report of Resolution Professional shall be provided to the Creditor (Applicant), Personal Guarantor (Respondent) and IBBI, by the Registry/Court Master within 7 days from today by email.

28. It goes without saying that whatever amount is paid to the creditor by the principal borrower (corporate debtor) and other guarantors would be deducted from the liability of the Respondent to repay.

29. **IA-1331/2022 is disposed of accordingly. To come up for consideration of Status Report to be filed by RP, within 8 weeks.**

**IA-2121/2022 in CP(IB)-490/(ND)/2021:** The present IA also arises out of the transaction referred to in IA-1331/2022 (ibid). The RP appointed qua the PG in IA-1331/2022 as also qua PG in present application i.e. IA-2121/2022, is also same. The PG could not adduce any evidence in terms of the provisions of Section

99(2) of IBC, 2016, to prove the repayment of loan. Section 99(2) of IBC, 2016, reads thus:

**“99. Submission of report by resolution professional.**

...

*(2) Where the application has been filed under section 95, the resolution professional may require the debtor to prove repayment of the debt claimed as unpaid by the creditor by furnishing—*

*(a) evidence of electronic transfer of the unpaid amount from the bank account of the debtor;*

*(b) evidence of encashment of a cheque issued by the debtor; or*

*(c) a signed acknowledgment by the creditor accepting receipt of dues.”*

2. The recommendation made in the report of RP filed in terms of the present application reads thus:

*5. That after going through record as available and the documents filed by the Financial Creditor in the captioned Application, the Applicant/Resolution Professional prepared the report as directed by this Hon’ble Tribunal vide order dated 23.03.2022 thereby recommending the approval of the captioned Application. Report of the Applicant/Resolution Professional is being placed on record by way of the present application and it is prayed that the same may be taken on record by this Hon’ble Tribunal. ....”*

3. In the view of analysis given in IA-1496/2023 and the recommendation as above, **we are left with no option but to admit IB-490(PB)-2021 Ordered accordingly.**

4. It goes without saying that during the IRP, (Insolvency Resolution Process) the RP shall give an opportunity to personal guarantor to submit her repayment plan. Nevertheless, before that the RP shall also carry the exercise in terms of the provisions of Section 100(2) of IBC 2016. For such purpose it would be open to the Respondents to appear before RP within 1 week from today.

5. There is no request by the RP for the purpose of conducting negotiation between the debtor and the creditors. As a sequel of admission of the present application, a moratorium shall commence in relation to all the debts of the Respondent. During the moratorium period – (a) any pending legal action or proceedings in respect of any debt qua the Respondent shall be deemed to have been stayed; (b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt qua the Respondent; and (c) the debtors shall not transfer, alienate, encumber or dispose of any of the assets or his legal right or beneficiary interest therein. The moratorium shall cease to have effect at the end of period of 180 days.

6. A public notice shall be issued by the RP within seven days of passing of this order, inviting claim from all creditors within 21 days of such notice. The notice shall include details of the present order, particulars of the Resolution Professional with whom the claims have to be registered and the last date for the submission of the claims. The notice shall be – (a) published in two National Newspapers, one in English and other one Vernacular Language, in circulation in the State where the debtor resides; (b) affixed in the premises of this

Adjudicating Authority; and (c) placed on the website of the Adjudicating Authority.

7. We are sanguine that the RP shall discharge all such duties as are incumbent upon him in terms of the provisions of Sections 102, 103, 104, 105, 106 , 107, 108, 112 and 113 of IBC, 2016, with the due deference of the procedure enshrined in Regulations 5, 7, 8, 9, 11, 12, 13, 14, 15 and 17 of IBBI (Insolvency Resolution Process for Personal Guarantor to Corporate Debtors) Regulations, 2019 and also in terms of the other extent provisions of the aforementioned code/ regulations and/or any other provisions of law applicable to him, in discharge of his duties as RP.

8. A copy of this order along with the copy of the application as also the report of Resolution Professional shall be provided to the Creditor (Applicant), Personal Guarantor (Respondent) and IBBI, by the Registry/Court Master within 7 days from today by email.

9. It goes without saying that whatever amount is paid to the creditor by the principal borrower (corporate debtor) and other guarantors would be deducted from the liability of the Respondent to repay.

**10. IA-2121/ND/2022 is disposed of accordingly. To come up for consideration of Status Report to be filed by RP, within 8 weeks.**

**Sd/-  
(SUBRATA KUMAR DASH)  
MEMBER (T)**

**Sd/-  
(ASHOK KUMAR BHARDWAJ)  
MEMBER (J)**