IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-VI
(SPECIAL BENCH)

Item No. 617
IB-330/ND/2023
IA-2166/2024

IN THE MATTER OF:

Punjab National Bank **... Petitioner**

VERSUS

Mr. Vinod Jain **... Respondent**

AND IN THE MATTER OF IA-2166/2024:

Punjab National Bank
Plot No 4, Sector-10,
Dwarka, New Delhi - 110075 **... Applicant**

VERSUS

Mr. Vinod Jain
(Personal Guarantor of Corporate Debtor Magppie International Limited)
F-901, Palm Spring, Sector-54,
Golf Course Road, Gurgaon, Haryana **... Respondent**

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

Order delivered on 27.03.2026

CORAM:
SHRI ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (JUDICIAL)
MS. ANU JAGMOHAN SINGH, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the RP : Mr. Pradeep Saraf, Adv. Mr. Deepak Mittal, RP

ORAL ORDER

IA-2166/2024:- The Resolution Professional, appointed in terms of the order dated 08.04.2024, has filed its report as per the provisions of Section 99 of the IBC, 2016. It is seen from the report that the Resolution Professional has complied with the requirements of Section 99 of the IBC, 2016. The relevant excerpts of the report filed in the form of the application read thus:-

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3) In view of the aforementioned provisions of the Code, the RP submits this report, recommending for admission of the said application filed by the Creditor on 12.05.2023 under section 95 of the Code. The details are provided as under:

Sr No.	Requirements under the relevant provisions of section 99 of the Code	Submissions of the RP	Compliance with requirements of section 99 of the Code (Yes / No / Not Applicable)
1)	Section 99(1): The resolution professional shall examine the application referred to in section 94 or section 95, as the case may be, within ten days of his appointment, and submit a report to the Adjudicating Authority recommending for approval or rejection of the application.	The RP submits that the present report is being prepared in compliance with the requirements of section 99(1) of the Code	**Yes** The RP states that the present report is being filed in terms of the requirement of section 99(1) of the Code.
2)	Section 99(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 -	The RP has issued intimation vide letter dated 08.04.2024 under section 99(2) to the Personal Guarantor via speed post on the addresses available with the RP requiring the Personal Guarantor to prove repayment of the debt claimed as unpaid by the Creditor in compliance with provisions of section 99(2) of the Code. **Details of speed post are as follows:-**	**Yes** The RP states that the requirements of section 99(2) of the Code are complied with.

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Sr No.	Requirements under the relevant provisions of section 99 of the Code	Submissions of the RP	Compliance with requirements of section 99 of the Code (Yes / No / Not Applicable)
	(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.	<table><tr><th>Sl. No.</th><th>Address</th><th>Tracking Number</th><th>Status</th></tr><tr><td>1.</td><td>F-901, Palm Spring, Sector-54, Gold Course Road, Gurgaon, Haryana- 122002</td><td>EU181796125IN</td><td>**Delivered on 12.04.2024**</td></tr></table> However, despite of completion of 7 days from the successful delivery of the intimation letter dated 08.04.2024 to the personal guarantor, the RP has not received any proof of	

Sr No.	Requirements under the relevant provisions of section 99 of the Code	Submissions of the RP	Compliance with requirements of section 99 of the Code (Yes / No / Not Applicable)
		repayment of the debt claimed by the Creditor from the personal guarantor. Copy of the said intimation letters dated 08.04.2024 is annexed hereto as **"Annexure 2 ".** A short summary of the details of delivery and copy of the speed post tracking documents evidencing the attempts for delivery made by the RP to the Personal Guarantor is hereto annexed as **"Annexure 3" (Colly).** In respect of the above-mentioned letter, RP did not receive any reply from the Personal Guarantor.	

Sr No.	Requirements under the relevant provisions of section 99 of the Code	Submissions of the RP	Compliance with requirements of section 99 of the Code (Yes / No / Not Applicable)
		In view of above, Personal Guarantor failed to submit any evidence of electronic transfer of the unpaid amount from his bank account; evidence of encashment of a cheque issued by personal Guarantor to Punjab National Bank; or a signed acknowledgment by Punjab National Bank accepting receipt of dues. **Hence, the RP has concluded that the Personal Guarantor has not repaid the debt claimed by the Creditor.**	
3)	Section 99(3):		**Yes**

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Sr No.	Requirements under the relevant provisions of section 99 of the Code	Submissions of the RP	Compliance with requirements of section 99 of the Code (Yes / No / Not Applicable)
	Where the debt for which an application has been filed by a creditor is registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt.	Debt for which an application has been filed by a creditor is not registered with the Information Utility.	The RP states that the requirements of section 99(3) of the Code are complied with.
4)	Section 99(4): For the purposes of examining an application, the resolution professional may seek such further information or	The RP has examined the application filed by the creditor. No further information or explanation in connection with the application is sought from the Creditor.	**Yes**

Sr No.	Requirements under the relevant provisions of section 99 of the Code	Submissions of the RP	Compliance with requirements of section 99 of the Code (Yes / No / Not Applicable)
	explanation in connection with the application as may be required from the debtor or the creditor or any other person who, in the opinion of the resolution professional, may provide such information.	The RP has issued intimation vide letter dated 08.04.2024 under section 99(2) to the Personal Guarantor via speed post on 08.04.2024 on the addresses available with the RP requiring the Personal Guarantor to prove repayment of the debt claimed as unpaid by the Creditor in compliance with provisions of section 99(2) of the Code. Copy of the said intimation letter dated 08.04.2024 is hereto annexed as "Annexure 2 Supra". A short summary of the details of delivery and copy of the speed post tracking documents evidencing the attempts for delivery made by the RP to the Personal Guarantor is hereto annexed as "Annexure 3 (Colly) Supra".	

Sr No.	Requirements under the relevant provisions of section 99 of the Code	Submissions of the RP	Compliance with requirements of section 99 of the Code (Yes / No / Not Applicable)
		In respect of the above-mentioned letter, RP did not receive any reply from the Personal Guarantor	
5)	Section 99(5): The person from whom information or explanation is sought under sub-section (4) shall furnish such information or explanation within seven days of receipt of the request.	In respect of the information sought, RP has not received reply from the Personal Guarantor within seven days. Personal Guarantor failed to submit any evidence of electronic transfer of the unpaid amount from bank account of personal Guarantor; evidence of encashment of a cheque issued by personal Guarantor to Punjab National Bank; or a signed acknowledgment by Punjab National Bank accepting receipt of dues.	**No**

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Sr No.	Requirements under the relevant provisions of section 99 of the Code	Submissions of the RP	Compliance with requirements of section 99 of the Code (Yes / No / Not Applicable)
6)	Section 99(6): The resolution professional shall examine the application and ascertain that - (a) the application satisfies the requirements set out in section 94 or 95; (b) the applicant has provided information and given explanation sought by the	RP submits that the present application satisfies the requirements of provisions of section 95 as has been provided in detail hereinabove in this report.	**Yes** The RP states that the requirements of section 99(6) of the Code are complied with.

Sr No.	Requirements under the relevant provisions of section 99 of the Code	Submissions of the RP	Compliance with requirements of section 99 of the Code (Yes / No / Not Applicable)
	resolution professional under sub-section (4).		
7)	Section 99(7): After examination of the application under sub-section (6), he may recommend acceptance or rejection of the application in his report.	RP submits that the present application satisfies the requirements of provisions of section 95 as is required to be examined under section 99(6) of the Code. The RP submits that based on his examination the present application deserves to be admitted under section 100 of the Code and this Hon'ble NCLT may pass appropriate orders in this regard.	**Yes** The RP submits that based on his examination the present application deserves to be admitted under section 100 of the

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Sr No.	Requirements under the relevant provisions of section 99 of the Code	Submissions of the RP	Compliance with requirements of section 99 of the Code (Yes / No / Not Applicable)
			Code and this Hon'ble NCLT may pass appropriate orders in this regard.
8)	Section 99(8): Where the resolution professional finds that the debtor is eligible for a fresh start under Chapter II, the resolution professional shall submit a report recommending that the application by the debtor under section 94 be treated as an application under section 81 by the Adjudicating Authority.	The RP submits that the provisions of section 99(8) of the Code does not apply to the present case on hand. Application is not filed by the debtor under section 94 of the code. Application has been filed by the creditor under section 95 of the code.	**Not applicable** The RP submits that the provisions of section 99(8) of the Code does not apply to the present case on hand.
9)	Section 99(9): The resolution professional shall record the reasons for recommending the acceptance or rejection of the application	RP submits that the present report is being presented under section 99(7) of the Code to this Hon'ble NCLT with a recommendation of accepting the present application as the	**Yes** The RP submits that the present report prepared under section

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Sr No.	Requirements under the relevant provisions of section 99 of the Code	Submissions of the RP	Compliance with requirements of section 99 of the Code (Yes / No / Not Applicable)
	in the report under sub-section (7).	Personal Guarantor/debtor has not repaid the debt due to the Creditor.	99(7) of the Code records the reasons for recommending acceptance of the present application filed by RP on behalf of the Creditor for further orders under

Sr No.	Requirements under the relevant provisions of section 99 of the Code	Submissions of the RP	Compliance with requirements of section 99 of the Code (Yes / No / Not Applicable)
			section 100 of the Code.
10)	Section 99(10): The resolution professional shall give a copy of the report under sub-section (7) to the debtor or the creditor, as the case may be.	RP submits that he has complied with the requirement of giving a copy of this report prepared under section 99(7) of the Code to the Creditor as well as the Debtor. Copy of the email dated 20.04.2024 serving copy of the Report on the Creditor is attached herewith as **"Annexure 4".**	**Yes** A copy of the present report prepared under section 99(7) of the Code is shared with the Creditor by way of email in compliance with

Sr No.	Requirements under the relevant provisions of section 99 of the Code	Submissions of the RP	Compliance with requirements of section 99 of the Code (Yes / No / Not Applicable)
		Proof of Service for serving copy of report to the Debtor is is attached herewith as **"Annexure 5 ".**	provisions of section 99(10) of the Code.

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2. As can be seen from the reply filed by the Personal Guarantor ("PG"), he has raised the plea that no valid guarantee was executed in favour of the Applicant Bank. According to him, the loan facilities availed by the borrower company were renewed by the Applicant Bank vide Sanction Letter dated 23.04.2019, for which he cannot be held liable. The PG has also raised the plea that the claim of the Bank is barred by limitation. The relevant excerpts of the reply filed by the PG, reads thus:-

> **B. THERE EXISTS NO VALID GUARANTEE IN THE HANDS OF THE APPLICANT BANK IN AS MUCH AS THE ANSWERING RESPONDENT/ PERSONAL GUARANTOR STANDS DISCHARGED OF ITS PERSONAL GUARANTEE**
>
> a) That after the Respondent's exit, the loan facilities availed by the borrower company were renewed by the Applicant Bank vide Sanction Letter dated 23.04.2019. Admittedly, the said Sanction terms were never accepted by the Respondent as falsely projected by the Applicant Bank in the captioned petition. In fact, the said sanction terms do not bear any signature of the Respondent. In view of the abovementioned facts and circumstances, the Respondent is thus discharged from the suretyship obligation imposed upon him under a credit facility granted to Magppie International Limited by the Applicant Bank, by operation of law in terms of Sections 133 to 141 of the Indian Contract Act, 1872.
>
> b) **Reliance may be placed upon:**
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> - ***The Indian Bank Vs. Respondent: S. Krishnaswamy and Ors., Decided On: 15.02.1989, Madras High Court***
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> *"12. ...It seems in November, 1965 there was a shortfall of Rs. 191/2 lakhs in respect of the K.L.C.C. account in respect of securities under the lock and key of the appellant bank. The respondents were not informed about the same. But the appellant bank took additional security by way of second mortgage from Bharathy Mills on 26.11.1965 without the knowledge of the respondents, who were not parties to the arrangement and without informing the respondents about such shortfall. The appellant bank again entered into a fresh*

arrangement with the principal debtor on 7.1.1967 and 23.1.1967 by which all outstanding accounts were adjusted and converted into a term loan for Rs. 35 lakhs. To this arrangement also the respondents were not parties and they did not have the knowledge also about the same. We are of the view that the respondents are only sureties and not principal debtors. ... In our view, the respondents were discharged by virtue of the fresh agreement between the appellant bank and the principal debtor represented by Union of India to which the respondents were neither parties nor were they made aware thereof.

***14.** ...We are of the view that, in any event, there was a fresh arrangement between the appellant bank and the Central Government and it has brought about a new contract whereby the original contract of guarantee stood rescinded. ..."*

- ***Messrs Nuserwanji Cursedji Bhesania and Co. vs.Mahamayi Ammal and Ors., Appeal No. 90 of 1932, Decided on 18.11.1937, Madras High Court***

"1...It is the appellants' case that defendant 6 undertook to guarantee the payment of defendant 1's share of any loss that might result from the business and that the partnership was formed on this basis. ...

3. ... Discussions then took place between him and defendant 1 which resulted in two further vartamanam letters, being executed (Exs. FEE and GGG).

7. Section 133 of the Contract Act says that any variance made without the surety's consent in the terms of the contract between the principal debtor and the creditor discharges the surety as to transactions subsequent to the variance. The contract which the appellants entered into with defendant 1 contemplated the immediate handing over of the assets of the business of Pattiveeranpatti to defendant 1, or at any rate within a reasonable time. It also contemplated the giving of the power of attorney by the appellants to defendant 1 to facilitate his enforcement of rights against the debtors of the partnership. No assets were handed over to defendant 1 until after twelve months from the date of the contract had elapsed and those which were sent to him were only sent after defendant 1 had given notice that he would not be bound by the contract. The same remark applies to the delivery of the power of attorney. The arrangement embodied in Exs. FFP and GGG amounted to a variation of the terms of the contract, because it excused the immediate delivery of the assets to defendant 1 and allowed delivery to be made after more than a year had elapsed.

9. The passage just quoted shows that the provisions of the Contract Act cannot be deemed to be exhaustive. It is clear in this case that the appellants have not shown performance, and, therefore they cannot hold defendant 6 to his promise.
10. ... The contention that defendant 6 fell in with the arrangement made by Jagan Mohan Das and defend, ant 1 at Pattiveeranpatti in July 1928 must therefore be rejected, and we hold that defendant 6 was not a consenting party to the variation of the contract. As the contract was varied without his consent he is discharged from liability ...

11. Appeal dismissed."

Union of India (UOI), Ministry of Food and Agriculture (Dept. of Food), New Delhi Vs. Pearl Hosiery Mills and Ors., First Appeal No. 80 of 1959, Decided On: 24.11.1960, High Court of Punjab

> *"5. On the 10th February, 1958, the plaintiff brought the suit, out of which the present appeal has arisen, for a declaration that the Bank guarantee dated the 19th July, 1954, for Rs. 4,55,500/- furnished by defendant No. 2 to the President of the Union of India for the due performance by defendant No. 1 of the contract dated the 3rd of July, 1954, stands discharged on account of its fulfilment and on account of the expiry of the period of the guarantee and also on account of the variations made in the original contract by defendant No. 3 and defendant No. 1 without reference to the surety (defendant No. 2)*
>
> *25. Moreover, I am of the opinion that the provisions of Section 133 of the Indian Contract Act are not subject to a contract to the contrary between the parties to the contract. This section is in unqualified terms. It was not necessary to put in the words 'notwithstanding any contract to the contrary' in this section, because wherever the legislature wanted that the terms of the contract between the parties should take precedence over the provisions of any section, the words 'in the absence of any contract to the contrary' or 'in the absence of any special contract' have been inserted in that particular section as has been done in Sections 152 and 163 of this Act.*
>
> *34. ...I am of the view that the finding of the trial Court on issue No. 4 is correct, namely, that the surety bond executed by defendant No. 2 in favour of defendant No. 3 stands discharged,*
>
> *because of the variations having been made in the terms of the original contract, dated the 3rd July, 1954, without the consent of the surety (defendant No. 2)."*

C. TIME BARRED ACTION OF BANK

a) As per own showing of the Applicant Bank the date of Default is 11.09.2019 [Reference may be made to Part III of the captioned Company Petition]

b) The law with respect to the application of laws of limitation over Insolvency and Bankruptcy proceedings is settled in terms of various pronouncements of Hon'ble Apex Court, whereby the position emerges as under:

In the matter of ***B.K. Educational Services Pvt Ltd. vs. Parag Gupta & Associates;*** It was held that applications under Section 7 of IBC are governed by Article 137 of the Limitation Act for computation of limitation. Article 137 of the Limitation Act renders the period of limitation in case of "any other application for which no period of limitation is provided elsewhere" as three years from the time when the right to apply accrues. "The right to sue", therefore, emanates when a default occurs.

Further in, ***Sagar Sharma &Anr. vs. Phoenix ARC Pvt. Ltd. &Anr. (Civil Appeal No.7673 of 2019 – (2019) 10 SCC 353);*** Referring to the decision in B.K. Educational Services Private Limited again upheld that for application under Section 7 of the Code, Article 137 of the Limitation Act, 1963 will apply. Article 62, which relates to deed of mortgage executed between the parties, cannot be taken into consideration for counting the period of limitation.

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Similar view is taken in ***Gaurav Hargovindbhai Dave v. Asset Reconstruction Company (India) Ltd. and Another (Civil Appeal No. 4952/2019; SC)*** and ***Vashdeo R Bhojwani vs Abhyudaya Co operative Bank Ltd (Supreme Court; Civil Appeal No. 11020/2018).*** It has been held by Hon'ble Apex Court that the right to sue accrues when a default occurs. If the default has occurred over three years prior to the date of Demand Notice, the application would be barred under Article 137 of the Limitation Act.

c) Thus, limitation started to run from the 'date of default' or from 'enforcement of Guarantee' form the said date which came to an end after expiry of 3 years therefrom i.e. on 11.09.2022. That thereafter, is no fresh cause of action has arisen to serve Demand Notice dated 05.11.2022. This action is barred in law. It is submitted that once limitation to sue started in 2019, it cannot stop in terms of Sec. 9 of the Limitation Act. Sec. 9 of Limitation Act reads as under:

> ***"9. Continuous running of time.—***
> *Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it:."*

d) Period of limitation in present case would fall in Art. 137 of the Limitation Act which reads as below:

137. Any other application for which no period of limitation is provided elsewhere in this Division.	Three years.	When the right to apply accrues.

3. It is also seen from the reply filed by the Personal Guarantor that an objection has been raised regarding the service of notice. It is pleaded that the notice issued under Section 13(2) of the SARFAESI Act does not constitute a valid invocation of the guarantee. The relevant excerpt of the plea reads thus:-

D. **THE APPLICANT BANK/ PUNJAB NATIONAL BANK HAS FAILED TO INVOKE GUARANTEE QUA THE ANSWERING RESPONDENT/ PERSONAL GUARANTOR**

a) It is submitted that present is the case where the bank has invoked the jurisdiction of this Hon'ble Tribunal without invoking guarantee qua the personal guarantor.

b) Upon perusal of the definition of **"debt"** and **"default"** under Section 3(11) and 3(12) of the Insolvency and Bankruptcy Code, 2016, [Hereinafter referred to as 'IBC'], it becomes clear that debt is a liability or obligation in respect of a claim which is due from any person and default is committed when debt which has become **due and payable** and is not paid by the debtor. The guarantee being on demand, the default shall arise only when a demand for payment is made by the Financial Creditor or in other words the deed of guarantee has been invoked.

c) Further, reference may be made to definition of **'guarantor'** under Rule 3(e) of the Personal Guarantor Rules, 2019 as a debtor who is 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.

d) Thus, it is clear that invocation of guarantee in sine qua non for initiating action under Section 95 of the IBC. Reliance is also placed on judgment of the Ld. NCLAT in ***Pooja Ramesh Singh vs. State Bank of India and Anr., Company Appeal (AT) (Ins.) No. 329/ 2023.***

e) In the present case, the Resolution Professional is its mechanical approach has failed to appreciate that the Applicant Bank has failed to place on record any documents evidencing invocation of guarantee qua the answering respondent.

f) It is submitted that the notice under section 13(2) of the SARFAESI cannot constitute the invocation as no mortgage of asset of the personal guarantor was ever created in favour of the Applicant. However, the Applicant Bank has till now not invoked guarantee of the Respondent.

g) The Ld. Adjudicating Authority in ***State Bank of India vs. Shaliwahan Farms Private Limited, CP(IB)-1280(MB)/2022*** categorically held that notice under Section 13(2) of SARFAESI is not a valid invocation of guarantee. Relevant extract from the judgment has been reproduced hereunder for ready reference:-

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"4.1 It is observed from the notice dated 10.4.2019 issued u/s 13(2) of SARFAESI was addressed to principal borrower only calling upon to repay the liability arising under the outstanding bill discounted, bank guarantees and later of credit. A copy of this notice was sent to the Guarantor vide registered ad., however, this was not addressed to the guarantor. This Bench sought specific clarification from the Counsel of the Financial Creditor whether any notice has been issued to the Guarantor invoking its guarantee under Deed of Guarantee in view of clause 1 of the deed of guarantee providing that "the guarantors shall forthwith pay unconditionally to the Bank merely on demand by the Bank". The Counsel confirmed that no notice, other than the notice dated 10.04.2019 addressed to the principal borrower, has been sent to the guarantor/Corporate Debtor.

4.2. We find the Financial Creditor has not made any demand upon the Guarantor. Mere despatch of notice addressed to the Corporate Debtor recalling the facility cannot tantamount to a demand upon the Guarantor made by the Bank. Since the Guarantor has not been asked to pay the amount in default of the Principal Borrower, it cannot be said that guarantor is also in default in payment of debt owed to the Financial Creditor by the principal borrower. Since no default has taken place at the end of the guarantor/Corporate Debtor, the basic condition of default contemplated un/s 7 is not satisfied."

h) Be that as it may, even if it is assumed that issuance of Notice under section 13(2) could result in invocation of guarantee, even then, in the present case the said notice could not result in invocation of the guarantee for the reason that it was never delivered to the Personal Guarantor. The said fact is conspicuous from the fact that the Applicant Bank has not placed on record any document to show the service of notice issued under section 13(2) upon the Personal Guarantor. That without effecting service on the Personal Guarantors there is no question of any liability accruing over the Respondent.

i) It is further submitted that even the issuance of **Demand Notice under Rule 7(1)** of the Personal Guarantor Rules cannot be deemed to be the invocation of guarantee for a default to occur for the reason that the said notice was issued only after the expiry of limitation period of 3 years.

4. We are not oblivious of the fact that a notice issued to the guarantor under Section 13(2) of the SARFAESI Act, 2002 is to be treated as a notice invoking the guarantee. In ***Asha Basantilal Surana v. State Bank of India & Ors., Company Appeal (AT) (Insolvency) No. 84 of 2025 & I.A. No. 334 of 2025***, the Hon'ble NCLAT held that:-

> *"12.....When demand notice is issued against the personal guarantor asking the personal guarantor to discharge its liabilities, the guarantee stands invoked. Whether notice under Section 13(2) in a particular case invoked the guarantee or not depends on the words and intent of the notice. For finding out as to whether Notice under Section 13(2) invoked the personal guarantee, the letters and words of the Notice has to be looked into to come to any conclusion that whether personal guarantor has been asked to discharge its liabilities or not.*
>
> ***XXXX***
>
> ***14. ..... in a case where Notice under Section 13(2) makes a demand as per the Guarantee Agreement between the parties, the Notice has to be treated as notice for invocation of Bank Guarantee.*** *We, thus, are of the view that the observation of the Adjudicating Authority made in paragraph 13 of the impugned order that application has been filed without any cause of action and is premature are unsustainable."*

5. In case of ***Shantanu Jagdish Prakash v. State Bank of India & Anr., (2025) ibclaw.in 73 NCLAT***, the Hon'ble NCLAT held that a notice issued under Section 13(2) of the SARFAESI Act, which fulfils all the conditions stipulated under the personal guarantee, can be treated as a valid invocation thereof. The relevant excerpt of the said order reads thus:-

> *"46. We shall also deal some other points which have been raised by the Appellant. The Appellant contended that the notice of demand dated 22.06.2018 under Section 13(2) of the SARFAESI Act is not an invocation of personal guarantee and therefore present petition cannot be invoked in absence of proper invocation of property. On this point we note that the Respondent No. 1 has issued notice to the Appellant specifically mentioning the personal guarantee dated 03.06.2018 which clearly stipulated that "The said financial*

*assistance is also secured by the personal guarantee of Sh. Shantanu Prakash & Sh. Jagdish Prakash & corporate guarantee of Edu Smart Services Pvt limited for consortium advance." **It has further brought to our notice that while notice was issued under Section 13(2) of the SARFAESI Act, which has also specifically called upon the Appellant to discharge in full the borrower liability stated therein within 60 days of the notice. Thus, the notice fulfils all the condition stipulated under personal guarantee and can be treated as valid invocation.** On this issue, the Adjudicating Authority has also held that the demand notice issued by the Respondent No. 1 under Rule 7(1) of the I&B (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 as valid. Thus, we do not find any error in the Impugned Order on this account."*

6. As can be seen from part-III of the application, upon classification of the account as NPA, the creditor issued a demand notice to the debtor on 05.11.2022. The liability of the guarantor arises upon service of the said demand notice. The relevant excerpt from part-III of the application reads thus:-

4.	Date on which default occurred	• Default occurred in payment of Interest amount on Cash Credit and other loan facilities and account declared NPA on 30.08.2019. • Applicant has issued SARFAESI Notice dated 11.09.2019 to Guarantors of M/s Magppie International Ltd. and recalled entire outstanding. • On 05.11.2022, when a demand notice in terms of requirement of Rule 7(1) of the Insolvency & Bankruptcy (Application to Adjudication Authority for Insolvency resolution process of personal guarantors to corporate debtors) Rules, 2019 was

(Vidya Sagar)

		sent to the personal guarantor followed by Reminder Notice sent on 18.04.2023. The personal guarantor failed to pay the dues within the statutory period of 14 days from the service of the said notice. Copy of the Demand Notice dated 05.11.2022 and reminder notice dated 18.04.2023 along with proof of service is annexed herewith as **ANNEXURE A2(Colly)** No Reply received from the Personal guarantor in response to Demand Notice dated 05.11.2022. followed by Reminder notice sent on 18.04.2023.

7. As can be seen from Clauses 1 to 4 of the Deed of Guarantee dated 07.09.2017, the liability of the guarantor is continuing in nature, and the guarantor cannot be discharged from such liability except with the specific consent of the Bank. No document evidencing any such consent or authority of the Bank permitting discharge of the Respondent/Guarantor from his liability has been placed on record. Even the report of the Resolution Professional does not record any such discharge. On the contrary, the Resolution Professional has recommended admission of the application. During the course of hearing, learned counsel for the creditors specifically emphasised that the debtor before us was never discharged by the Bank from his liability as guarantor.

8. The demand notice served in prescribed form viz., form-B, under Rule 7 of Insolvency and Bankruptcy (Application Adjudicating Authority for Resolution Process for Personal Guarantor to Corporate Debtors) Rules, 2019, enclosed to the petition, read thus:-

(Vidya Sagar)

पंजाब नैशनल बैंक punjab national bank

ZONAL SASTRA CENTRE,1st Floor, Bhikhaji Cama Place,
NEW DELHI-110 066 - E-mail: zs8343@pnb.co.in

FORM-B

[See rule
7(1)]

FORM OF DEMAND NOTICE

[Under rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority

for

InsolvencyResolutionProcessofPersonalGuarantorstoCorporateDebtors) Rules,2019]

Date: 05.11.2022

Mr. Kailash Chand Jain S/o Late Sh. Gopi Ram Jain, Director/Guarantor and Legal heir of Late Sh. Gopi Ram Jain. C-1/701 Waterlily, Adani Shantigram Ahmedabad -382421 **Also at:** Q3/1003, Ushay Tower, Kundli Distt. Sonepat, Haryana.	**Mr. Suresh Chand Jain** S/o Late Sh. Gopi Ram Jain, Director/Guarantor and Legal heir of Late Sh. Gopi Ram Jain, C-1/701 Waterlily, Adani Shantigram Ahmedabad -382421. **Also at:** B4/702, Waterlilly Adani Shantigram, Ahemdabad
Mr. Vinod Jain S/o Sh. Gopi Ram Jain, F-901, Palm Spring, Sector-54, Gold Course Road, Gurgaon, Haryana.	**Mr. Manish Bhaskar S/o Sh. Kanwal Rattan Bhaskar** 248, Bhera Enclave, Paschim Vihar, Delhi – 110087.
Sh. Vikas Jain S/o Sulekh Chand Jain G-18, South City-1, Near Huda City Metro Station, Sector – 41, Gurugram, Haryana – 122001.	**Ms. Rani Jain w/o Sh. Suresh Jain** C-1/701 Waterlily, Adani Shantigram Ahmedabad -382421. **Also at:** B4/702, Waterlilly Adani Shantigram, Ahemdabad
Sh. Kunal Jain S/o Sh. Kailash Chand Jain C-1/701 Waterlily, Adani Shantigram Ahmedabad -382421. **Also at:** Q3/1003, Ushay Tower, Kundli Distt. Sonepat, Haryana.	**Ms. Anuradha Jain w/o Sh. Kailash Jain,** C-1/701 Waterlily, Adani Shantigram Ahmedabad -382421 **Also at:** Q3/1003, Ushay Tower, Kundli Distt. Sonepat, Haryana.

Subject: Demand notice in respect of unpaid debt in default due from [corporate debtor] under the Code.

(Vidya Sagar)

Madam/Sir,

1.This letter is a demand notice of unpaid debt in default due from M/s Magppie International Ltd.

2.Please find particulars of the unpaid debt in default below:

PARTICULARS OF DEBT		
1.	Total outstanding debt(including any interest or penalties)	Total dues as on 31.10.22 Rs. 107,20,73,163.56
2.	Amount of debt in default	Rs. 107,20,73,163.56 as on 31.10.22
3.	Date when the debt was due	30.08.2019 Date of NPA
4.	Date when the default occurred	30.08.2019
5.	Nature of the debt	FB & NFB facilities
6.	Secured debt including particulars of security held, the date of its creation ,its estimated value as per the creditor(as applicable),and details of securities	Hypothecation of entire existing/future fixed assets of the company excluding those specifically charged to other Banks/FIs WDV of fixed assets as on 30.06.19 is Rs. 99.39 crore as per stock & receivable statement dated 30.06.19 and equitable /registered mortgaged of immovable properties in the name of company & guarantors of Rs. 82.02 crore as per last sanction detailed below: 1.Factory land & building at Plot No. 153A, 153B & 153C situated at HSIIDC Industrial Estate, EPIP, Kundli (Sonepat) HR. in the name of M/s Magppie International Ltd. (Under NCLT) 2. Factory land & building at Plot No. 215 situated at HSIIDC Industrial Estate, Kundli (Sonepat), HR in the name of Mr. Sulekh Chand Jain 3. Res property bearing no. MD-25 situated at Pitampura, Delhi Late Gopi Ram Jain. (Sold Under SARFAESI) 4. Two flats bearing no. PD-4A and PD-4B situated at Pitampura, Delhi in the name of Ms. Rani Jain & Ms. Anuradha Jain (Sold Under SARFAESI) 5. Industrial built up property consisted of Kila No. 83, Khatta No. 556, Raqba No-13/3, 20/2(0-9) situated at Kundli, Sonepat in the name of Late Gopi Ram Jain. 6. Property consisted of Commercial Office, bearing no. 206 situated at Jackson Crown Heights, Sector -10, Rohini, Delhi in the name of Ms. Rani Jain (Sold Under SARFAESI)
7.	Unsecured debt(as applicable)	NA

(Vidya Sagar)

8.	Details of retention of title arrangements (if any)in respect of goods to which the debt refers(attach a copy)	NA
9.	Particulars of an order of a court, tribunal or arbitral panel adjudicating on the default, if any(attach a copy of the order)	The company was admitted in NCLT on 16.03.2020 by Mr. Naveen Sachdeva (M/s. Jay Packaging) under section 9 of IBC.
10.	Record of default with the information utility, if any(attach a copy)	NA
11.	Details of succession certificate ,or probate of a WILL, or letter of administration, or court decree (as may be applicable), under the Indian Succession Act, 1925 (10 of 1925) (attach a copy)	NA
12.	Provision of law, contract or other document under which debt has become due(attach a copy)	1. Copy sanction letter dated 07.09.2017. 2. Copy of Demand Notice u/s 13(2) of SARFAESI Act. 3.Agreement of Guarantee of Mr. Kailash Chand Jain 4.Agreement of Guarantee of Mr. Suresh Chand Jain. 5.Agreement of Guarantee of Mr. Vinod Jain. 6.Agreement of Guarantee of Mr. Kunal Jain 7.Agreement of Guarantee of Mr. Vikas Jain 8.Agreement of Guarantee of Late Gopi Ram Jain (Through his legal hair) 9.Agreement of Guarantee of Mr. Manish Bhaskar 10.Agreement of Guarantee of Mrs. Anuradha Jain 11.Agreement of Guarantee of Mrs. Rani Jain 12.Agreement of Guarantee of Mr. Manish Bhaskar 11. Agreement of Guarantee of Mr. Sulekh Chand Jain
13.	A statement of bank account where deposits are made or credits received normally by the creditor in respect of the debt of the corporate debtor, from the date on which the debt was incurred	(Enclosed)
14.	List of documents attached to this notice in order to prove the existence of debt and the amount in default	(as mentioned in the point no. 12)

3. If you believe that the debt has been re paid before the receipt of this notice ,please demonstrate such repayment by sending to us, within fourteen days of receipt of this notice ,the following:--

(a) an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the guarantor; SEC .3(i)]

(b)evidence of encashment of cheque for the unpaid amount issued by the guarantor ;or

(Vidya Sagar)

(c)an attested copy of any record that PUNJAB NATIONAL BANK has received the payment.

4. The undersigned request you to unconditionally pay the unpaid debt in default in full within fourteen days from the receipt of this letter failing which insolvency resolution process, under the Code, shall be initiated against you.

9. It would not be gainsaid that when there is statutory requirements prescribed under the statute and Rules enacted/framed thereunder to regulate a particular subject, any action taken in accordance with such statute cannot be rendered otiose.

10. As per Section 95(4) of the Code, the creditor is required to enclosed to the application the details and documents relating to the debts owed by the debtor, which may include a demand notice. Such notice is necessarily to be construed as a notice in Form B (ibid), as it stipulates a period of 14 days. Section 95(4) reads as follows:-

> *"[…]*
> *(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."*

11. It is stare decisis that the liability of the guarantor is co-extensive with the principal debtor and in the present case, the CIRP against the principal debtor is in progress. In case of ***ICICI Bank Ltd. v. ERA Infrastructure (India) Ltd., (2026) ibclaw.in 107 SC, decided on 26.02.2026***, Hon'ble Supreme Court held that the liability of the Corporate Guarantor is co-extensive with that of the Principal Debtor. The relevant excerpt of the judgment reads thus:

> *73. In cases where the application was rejected, reliance was chiefly placed on Vishnu Kumar Agarwal (supra). The relevant portion from such decision reads thus:*
>
> > *32. There is no bar in the 'I&B Code' for filing simultaneously two applications under Section 7 against the 'Principal Borrower' as well as the 'Corporate Guarantor(s)' or against*

> *both the 'Guarantors'. However, once for same set of claim application under Section 7 filed by the 'Financial Creditor' is admitted against one of the 'Corporate Debtor' ('Principal Borrower' or 'Corporate Guarantor(s)'), second application by the same 'Financial Creditor' for same set of claim and default cannot be admitted against the other 'Corporate Debtor' (the 'Corporate Guarantor(s)' or the 'Principal Borrower'). Further, though there is a provision to file joint application under Section 7 by the 'Financial Creditors', no application can be filed by the 'Financial Creditor' against two or more 'Corporate Debtors' on the ground of joint liability ('Principal Borrower' and one 'Corporate Guarantor', or 'Principal Borrower' or two 'Corporate Guarantors' or one 'Corporate Guarantor' and other 'Corporate Guarantor'), till it is shown that the 'Corporate Debtors' combinedly are joint venture company.*

74. It was, thus, held that once an application stood admitted, either against the principal borrower or the guarantor, no further application could be maintained against the guarantor or co-guarantor or principal borrower. Following this, the impugned orders too, were passed by the respective tribunals, rejecting the initiation of CIRP.

75. An appeal was carried to this Court from Vishnu Kumar Agarwal (supra); however, the parties having reached a settlement, the appeal stood disposed of without expression of any opinion on the merits thereof.

76. Conversely, the impugned order(s) allowing CIRP to be initiated simultaneously placed reliance on a judgment of the NCLAT in Athena Energy Ventures (supra). NCLAT in Athena Energy Ventures (supra) preferred not to follow Vishnu Kumar Agarwal (supra) for the reason as under:

> *19. It is clear that in the matter of guarantee, CIRP can proceed against Principal Borrower as well as Guarantor. The law as laid down by the Hon'ble High Courts for the respective jurisdictions, and law as laid down by the Hon'ble Supreme Court for the whole country is binding. In the matter of Piramal, the Bench of this Appellate Tribunal "interpreted" the law. Ordinarily, we would respect and adopt the interpretation but for the reasons discussed above, we are unable to interpret the law in the manner it was interpreted in the matter of Piramal. For such reasons, we are unable to uphold the Judgement as passed by the Adjudicating Authority.*

*77. **The reasoning against simultaneous proceedings, at first blush, would seem simple: one debt, one proceeding. However,***

this reasoning was considered and negatived by this Court in BRS Ventures (supra), which held as under:

28. Sub-section (2) of Section 60 contemplates separate or simultaneous insolvency proceedings against the corporate debtor and guarantor. Therefore, sub-section (3) of Section 60 provides that if CIRP in respect of the corporate guarantor is pending before an adjudicating authority and if the CIRP against the corporate debtor is pending before another adjudicating authority, CIRP proceedings against the corporate guarantor must be transferred to the adjudicating authority before whom CIRP in respect of the corporate debtor is pending. Thus, consistent with the basic principles of the Contract Act that the liability of the principal borrower and surety is coextensive, the IBC permits separate or simultaneous proceedings to be initiated under Section 7 by a financial creditor against the corporate debtor and the corporate guarantor.

78. ***Thus, the question, whether simultaneous proceedings against the corporate debtor and/or the guarantor(s) can be maintained or not, is no longer res integra.*** *All the arguments that have been canvassed before us, including the interpretation of sub-section (8) of section 5 and sub-section (2) of section 60 of the IBC, as well as regulation 8 of the 2016 Regulations read with Schedule-I, Form C, have been considered by the coordinate bench in BRS Ventures Investments Ltd. (supra).*

12. In ***Laxmi Pat Surana v. Union Bank of India, (2021) ibclaw.in 53 SC,*** the Hon'ble Supreme Court ruled that the Guarantor is even independently liable for the financial facility extended to the Principal Debtor in the event of default committed by him. The relevant excerpt of the judgement reads thus:-

"27. In law, the status of the guarantor, who is a corporate person, metamorphoses into corporate debtor, the moment principal borrower (regardless of not being a corporate person) commits default in payment of debt which had become due and payable. Thus, action under Section 7 of the Code could be legitimately invoked even against a (corporate) guarantor being a corporate debtor. *The definition of "corporate guarantor" in Section 5(5A) of the Code needs to be so understood.*

28. A priori, we find no substance in the argument advanced before us that since the loan was offered to a proprietary firm (not a corporate person), action under Section 7 of the Code cannot be initiated against the corporate person even though it had offered guarantee in respect of that transaction. Whereas, upon default committed by the principal borrower, the liability of the company (corporate person), being the guarantor, instantly triggers the right of the financial creditor to proceed against the corporate person (being a corporate debtor). Hence, the first question stands answered against the appellant."

13. Indubitably, even after service of the notices as above, the guarantor did not discharge the liability in terms of the deed of guarantee. The RP has specifically recorded the finding in the report that the amount of debt is not repaid, and a report in terms of Section 99 of the IBC, 2016, has been filed.

14. In the wake of the report for RP, the contents of the Deed of Guarantee, and the failure to discharge the debt despite service of notice in terms of the prescribed rules, the application under Section 95 of the IBC, 2016 deserves to be admitted. Accordingly, the application filed under Section 95 of the IBC, 2016 is admitted, in terms of the report submitted under Section 99 of the Code.

15. As a sequel of admission of the present application, a moratorium shall commence in relation to all the debts of the Applicant. During the moratorium period – (a) any pending legal action or proceedings in respect of any debt qua the Applicant 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.

16. 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 English and one Vernacular Language newspaper which is 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.

17. We are sanguine that the RP shall discharge all such duties as are incumbent upon him in terms of the provisions of Sections 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.

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

19. IA-2166/2024 stands disposed of. To come up for consideration of Status Report to be filed by RP, within 8 weeks.

Sd/-	**Sd/-**
(Anu Jagmohan Singh)	**(Ashok Kumar Bhardwaj)**
Member (T)	**Member (J)**

(Vidya Sagar)