

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 774 of 2026

[Arising out of Orders dated 18.03.2026 passed by the Adjudicating Authority (National Company Law Tribunal, Chandigarh Bench, Court – I, Chandigarh), in C.P. (IB) No.205/CHD/CHD/2021 & C.P. (IB) No.214/CHD/HRY/2021]

IN THE MATTER OF:

Gurmeet Sodhi

...Appellant

Versus

State Bank of India & Anr.

...Respondents

Present:

For Appellant : Mr. Abhijit Sinha, Ms. Neeha Nagpal, Mr. Malak Bhatt, Mr. Ishit Patel, Mr. Rohan Tewari and Mr. Ajatshatrau S. Rawat, Advocates.

For Respondents : Mr. Siddharth Sangal, Ms. Richa Mishra, Ms. Kashish and Ms. Mrinalini Tandon, Advocates for R-1.

Mr. Pulkut Goyal, Advocate for R-2.

WITH

Company Appeal (AT) (Insolvency) No. 776 of 2026

[Arising out of Orders dated 18.03.2026 passed by the Adjudicating Authority (National Company Law Tribunal, Chandigarh Bench, Court – I, Chandigarh), in C.P. (IB) No.205/CHD/CHD/2021 & C.P. (IB) No.214/CHD/HRY/2021]

IN THE MATTER OF:

Jitendra Singh

...Appellant

Versus

State Bank of India & Anr.

...Respondents

Present:

For Appellant : Mr. Abhijit Sinha, Ms. Neeha Nagpal, Mr. Malak Bhatt, Mr. Ishit Patel, Mr. Rohan Tewari and Mr. Ajatshatrau S. Rawat, Advocates.

For Respondents : Mr. Siddharth Sangal, Ms. Richa Mishra, Ms. Kashish and Ms. Mrinalini Tandon, Advocates for R-1.

Mr. Pulkut Goyal, Advocate for R-2.

J U D G M E N T

ASHOK BHUSHAN, J.

These two appeals have been filed by the personal guarantors of the corporate debtor M/s. Kudos Chemie Ltd. challenging the common order dated 18.03.2026 passed by the adjudicating authority (National Company Law Tribunal, Chandigarh Bench, Court – I, Chandigarh) admitting C.P. (IB) No. 214/2021 filed by the State Bank of India (SBI) against Gurmeet Sodhi and C.P. (IB) No.205/2021 filed by the SBI against Jitendra Singh. Adjudicating authority by the impugned order has admitted Section 95 application against both the personal guarantors, aggrieved by which order, these appeals have been filed.

2. Both the appeals having arisen from common facts and events, it shall be sufficient to refer to Comp. App. (AT) (Ins.) No. 774/2026 for deciding both the appeals:

- i. The corporate debtor availed various credit facilities from consortium of lending Banks on 24.04.2014.
- ii. State Bank of India (SBI) issued a sanction letter dated 30.09.2014, for allowing Corporate Debt Restructuring ('CDR') limit of 193.62 crore, the borrower executed various documents on 30.09.2014. Gurmeet Sodhi and Jitendra Singh executed Deed of Guarantee dated 30.09.2014 in

favour of the SBI. In view of the arrangement and restructuring of the amount various loaning documents dated 29.12.2014 were executed. On 29.12.2014, Gurmeet Sodhi and Jitendera Singh have also executed a Deed of Guarantee in favour of the consortium Bank.

- iii. The corporate debtor M/s. Kudos Chemie Ltd. could not maintain its account properly failed, to honour its financial commitment, the account was classified as Non-Performing Asset (NPA) by the SBI on 31.05.2015.
- iv. On 05.11.2016, SBI issued a notice under Section 13(2) of the SARFAESI Act, 2002 (for short 'SARFAESI Act') to the corporate debtor as well as to the personal guarantors, Gurmeet Sodhi and Jitendera Singh demanding an amount of Rs.210,02,71,756.32/- as on 02.11.2016. All the noticee were directed to repay the outstanding liabilities within 60 days from the date of the notice. In Section 13(2) notice, the Guarantee Deed dated 30.09.2014 was relied.
- v. Punjab National (PNB), SBI and 4 other Banks filed an OA No.522/2017 against the personal guarantors under Section 19 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993, for recovery of various loans. SBI in the application relied on Term Loan Agreement dated 30.09.2014 and Guarantee Agreement dated 30.09.2014 as well as notice under Section 13(2) dated 05.11.2016. Debt Recovery Tribunal (DRT) granted decree on 06.01.2020 in favour of the Applicant/Bank. The SBI issued a notice under Rule 7(1) of the of the

Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, (for short the '2019 Rules') to the appellants claiming total outstanding amount of Rs.348,38,57,247.54/- as on 25.05.2021. Date of default was mentioned as 31.05.2015. By subsequent notice 19.07.2021, the Bank in reference to the earlier demand notice dated 29.05.2021 mentioned the date of default. It was mentioned that dates mentioned were default of the corporate debtor but with respect to the guarantors, the date of default is 05.01.2017.

- vi. Section 95 application was filed by the Bank in the year 2021. The adjudicating authority in Section 95 application filed by the SBI has appointed the Resolution Professional (RP) by order dated 25.03.2022.
- vii. There being Interim order by the Hon'ble Supreme Court on Writ Petition filed by the personal guarantors till 09.11.2023, the RP submitted a report dated 12.12.2023 under Section 99 of the Insolvency and Bankruptcy Code 2016 (for short the 'IBC' or the 'Code'). Referring to the demand notice under Section 13(2) dated 05.11.2016, RP observed that in pursuance of demand notice under Rule 7(1) of the 2019 Rules, the personal guarantor failed to make any payment.
- viii. The personal guarantor also filed the objection before the adjudicating authority. Adjudicating authority by the impugned order admitted Section 95 application, aggrieved by which order, these two appeals have been filed.

3. We have heard learned Sr. counsel Mr. Abhijit Sinha appearing for the appellant as well as learned counsels Mr. Siddharth Sanghal and Ms. Richa Mishra appearing for respondents No. 1 and learned counsel Mr. Harsh Garg and Mr. Pulkit Goyal appearing for respondents No. 2.

4. Learned Sr. counsel Mr. Abhijit Sinha appearing for the appellant submits that the personal guarantee given by the appellant was never invoked. It is further submitted that in notice under Section 13(2) of the SARFAESI Act, the only Guarantee Deed was mentioned as 30.09.2014, whereas there was restructuring of the debt and another guarantee was issued on 29.12.2014 by the personal guarantors, after Master Restructuring Agreement (MRA) dated 29.12.2014 and fresh guarantee was executed on 29.12.2014 replacing the earlier guarantee 30.09.2014. Subsequent guarantee dated 29.12.2014 having never been invoked, the entire proceedings is vitiated. It is submitted that no proof has been filed by the Bank that 13(2) notice was served on the personal guarantor. Learned counsel for the appellant further submits that DRT decree dated 06.01.2020 cannot be relied by the Bank. It is submitted that against the corporate debtor, Section 7 application was admitted on 05.07.2019 and moratorium commenced on 05.07.2019 against the corporate debtor hence no decree could have been passed by the DRT. It is submitted that date of default was mentioned as 31.05.2015 which was subsequently corrected as 05.01.2017 which was impermissible. It is submitted that adjudicating authority has

erred in admitting Section 95 application where necessary conditions for admitting application was not made out.

5. Learned counsel for the Bank opposing the submissions of the learned counsel for the appellant submits that there was no error in relying on Guarantee Deed dated 30.09.2014 issued by the appellant in favour of the Bank. It is submitted that although MRA was executed on 29.12.2014 and a Guarantee Deed was also executed on 29.12.2014 but the restructuring having not been honoured by the corporate debtor and corporate debtor having committed default in repayment, bank has rightly declared the account as NPA and issued notice under Section 13(2). Learned counsel submitted that notice under Section 13(2) is a notice invoking the personal guarantee of the appellant which is apparent from the various clauses of the notice itself. It is submitted that notice dated 05.11.2016 was clear invocation of guarantee. It is submitted that decree was passed on 06.01.2020 by the DRT, in which proceedings the same notice 05.11.2016 was relied by the SBI. Decree having been passed against personal guarantor by the DRT, it is not open for the appellant to deny the date of default. It is submitted that notice under Section 13(2) was duly served by the Bank and reply of personal guarantor has not even raised the issue of non-service of notice. Section 95 application was filed on 10.08.2021 after issuing notice under Rule 7 of the 2019 Rules. The corporate debtor in its financial statements has regularly acknowledged the debt in the Balance Sheet of 2015-16 to 2018-19. There being categorical acknowledgment by the corporate debtor in the balance

sheets, the application was well within limitation. Furthermore, from the date of decree 06.01.2020 there shall again be fresh period of limitation. It is submitted that there are no grounds made out to interfere with the impugned order. Adjudicating authority after considering all relevant submissions and facts of the case has rightly admitted Section 95 application.

6. We have considered the submissions of the counsel for the parties and perused the records.

7. The first question which need to be answered is as to whether notice under Section 13(2) dated 05.11.2016 can be said to notice invoking guarantee of personal guarantor or not? Notice dated 05.11.2016 has been filed as Annexure A-28 to the appeal. Notice is addressed to corporate debtor and both the personal guarantors Gurmeet Sodhi and Jitendera Singh, the appellants herein. The notice clearly mentioned that financial assistance is also secured by the personal guarantee of the guarantors, name of both the appellants were mentioned. It is useful to extract the entire notice 05.11.2016 which is as follows:

“Ref.: SAMB/CHD/VK/Telephone: 2545755,2700760

Dated: 05.11.2016

FAX No.: 0172-278441

E-Mail:tb5761@sbp.co.in

Regd.AD

<i>M/s Kudos Chemie Ltd. Vill. Kuranwala, Barwala Road, Tehsil- Derrabassi-140507, Distt. Mohali, Punjab</i>	<i>M/s Kudos Chemie Ltd. Administrative office #622, Sector-33-B Chandigarh</i>	<i>Sh. Jatinder Singh, Managing Director #1620, Sector-18-D, Chandigarh</i>
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Mrs. Gurmeet Sodhi, Director/# 1620, Sector-18-D, Chandigarh	Mr. Kabir Sodhi S/o Shri Jitendra Singh (Guarantor), House No. 1620, Sector 18D, Chandigarh- 160018	Mr. Kirat Sodhi S/o Shri Jitendra Singh (Guarantor), House No. 1620, Sector 180, Chandigarh- 160018
Mrs. Gurmeet Sodhi Wo Shri Jitendra Singh (Guarantor), House No. 1620, Sector 18D, Chandigarh- 160018	Sh. Jatinder Singh S/o Shri Bhupendra Singh (Guarantor), House No. 1620, Sector 180, Chandigarh- 160018	

Dear Sir,

SUB: NOTICE U/S 13(2) OF SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT 2002 (HEREAFTER CALLED THE ACT)

At your request, M/s Kudos Chemie Ltd. have been granted by State Bank of Patiala (Under consortium with Punjab National Bank, Sector-17 C, Chandigarh, UCO Bank, Sector-17 B, Chandigarh, Oriental Bank of Commence, Sector-17 B, Chandigarh, IDBI Bank Ltd. Sector-17 B, Chandigarh, Central Bank of India, Sector-17 B, Chandigarh and Corporation Bank, Sector-17 B, Chandigarh) through its Commercial Branch, Sector 8-C, Chandigarh, from time to time, various credit facilities by way of financial assistance against various assets creating security in favour of the Bank. The relevant particulars of the sale credit facilities and the security agreement(s)/ document(s) executed by you are stated in Schedule 'A' and 'B' respectively excluding pledge of movables. You have availed the financial assistance with an undertaking repayment of the said financial assistance in terms of the said agreement(s)/ document(s).

You have also created mortgage by way of deposit of title deeds creating security interest favour of the

Banks in Consortium arrangement. The documents relating to such mortgage are also stated in Schedule 'B'.

The relevant particulars of the secured assets are specifically stated in Schedule 'C'.

You have also acknowledged subsistence of the liability in respect of the aforesaid credit facilities by executing confirmation of balances and revival letters and other documents from time to time. The operation and conduct of the above said financial assistance/credit facilities have become irregular and the debt has been classified as non-performing asset with effect from 31.05.2015 in accordance with the directives/guidelines relating to asset classifications issued by the Reserve Bank of India consequent to the default committed by you in repayment of principal debt and interest thereon.

The said financial assistance is also secured by the personal guarantees of the Directors:

- 1. Sh Jitendra Singh S/o Sh. Bhupendra Singh*
- 2. Smt Gurmeet Sodhi W/o Sh. Jitendra Singh*
- 3. Mr. Kabir Sodhi S/o Shri Jitendra Singh*
- 4. Mr. Kirat Sodhi S/o Shri Jitendra Singh*

Despite repeated requests, you have failed and neglected to repay the said dues/outstanding liabilities.

Therefore, the Bank hereby calls upon you u/s 13(2) of the said act by issuing this notice to discharge in full your liabilities stated hereunder to the Bank within 60 days from the date of this notice. Your outstanding liabilities (in aggregate) due and owing to the Bank as on 02.11.2015 are in the sum of Rs. 210,02,71,756.32 (Rs. Two hundred ten crores two lacs seventy one thousand seven hundred fifty six and paisa thirty two only). You are also liable to pay unrecovered reversed interest plus future interest and other misc. expenses after the date of NPA at the contractual rate on the aforesaid amount together with incidental expenses, cost charges etc.

If you fail to repay to the Bank the aforesaid sum of Rs. 210,02,71,756.32 (Rs. Two hundred ten crores two

lacs seventy one thousand seven hundred fifty six and paise thirty two only) as on 02.11.2016 and unrecovered reversed interest plus future Interest and Incidental expenses, costs as stated above in terms of this notice u/s 13 (2) of the act, the Bank will exercise all or any of the rights detailed under Sub Section (4) of Section 13 and under other applicable provisions of the said act.

The Bank reserves its rights to call upon you to repay the liabilities that may arise under the outstanding Bills Discounted, Bank Guarantees and Letters of Credit issued and established on your behalf as well as other contingent liabilities.

You are also put on notice that in terms of sub-section 13 of Section 13, you shall not transfer by sale, lease or otherwise the said secured assets detailed in Schedule 'C' of this notice without obtaining written consent of the Bank.

This notice is without prejudice to the Bank's right to Initiate such other actions or legal proceedings, as it deems necessary under any other applicable provisions of Law.

Yours faithfully,”

8. The notice was addressed to personal guarantors whose name were specifically mentioned as those who has given personal guarantee. The Bank by the notice has called upon. Appellants also to make payment of Rs.210,02,71,756.32/- within 60 days from the date of the notice. When we read the notice and its content it is clear that notice invoking the personal guarantee in Schedule B of the notice, Deed of Guarantee dated 30.09.2014 was also clearly mentioned. It is thus clear that notice dated 05.11.2016 was notice invoking personal guarantee of appellant.

9. Learned counsel for the appellant has further submitted that the Bank had not filed any proof of service of notice dated 05.11.2016. We have already

noticed the submission of the counsel for the SBI that appellant never raised any ground of non-service of notice 05.11.2016 in their objection which was filed to the report of RP. When the personal guarantor has not raised any objection regarding non-service of notice dated 05.11.2016, the appellant cannot be allowed to raise the issue of non-service in this appeal.

10. Now we come to the next submission of the counsel for the appellant that there was restructuring of the debt for which MRA dated 29.12.2014 was also executed and fresh guarantee was executed on 29.12.2014, which is neither referred nor relied in notice dated 05.11.2016.

11. In application under Section 95 filed by the Bank against personal guarantors, list of dates and events have been mentioned which clearly mentioned about restructuring on 29.12.2014 and execution of guarantee by the appellant on 29.12.2014 in favour of the consortium of Bank. Further it was clearly pleaded that corporate debtor could not maintain its account properly and same was classified as NPA on 31.05.2015 by the SBI. The declaration of NPA of the account clearly lead to the conclusion that repayment under the restructured debt was not honoured by the appellant. Even though, fresh Guarantee Deed was duly issued on 29.12.2014 consequent to the restructuring of the debt, but the appellant cannot be said to be absolved from their earlier guarantee 30.09.2014 which was a guarantee for repayment by the borrower.

12. Learned counsel for the appellant has also referred to Clause 10.4 of MRA. Clause 10.4 of the MRA provides as follows:

“10.4 Modification of Existing Documents

The provisions of the Existing Documents of each Lender shall, to the extent of any inconsistency between the Restructuring Documents and such Existing Documents, and only to such extent, stand modified, amended, superseded and/or replaced by the relevant terms and conditions of the Restructuring Documents. For the avoidance of doubt, it is hereby clarified that any provisions of the Existing Documents, which are not inconsistent with the provisions of the Restructuring Documents shall continue to be binding on the Borrower, each Lender and the other parties to such Existing Documents. Provided that the determination by the Lenders as to whether a provision of the Existing Documents is Inconsistent with the terms of the Restructuring Documents shall be binding on the Borrower.”

13. The above clause provides that existing document only to such extent stands modified, amended, superseded replaced to the extent of any inconsistency between the restructuring document and existing document. Guarantee given by the appellant dated 30.09.2014 and the guarantee given consequent to MRA 29.12.2014 there cannot be any inconsistency in the guarantee. Appellant stood guarantors to the debt to the financial facilities extended to borrower by Guarantee Deed dated 30.09.2014 and the subsequent deed dated 29.12.2014 was against the guarantee for the restructuring debt. Bank chose to rely on Guarantee Deed dated 30.09.2014 with respect to the appellant in notice under Section 13(2) since the repayment under restructuring debt was not honoured and as submitted by learned counsel for the Bank restructuring could not come into existence due to conditions having not met by the corporate debtor.

14. We thus do not find any substance in the submission of the appellant that non-invocation of the guarantee 29.12.2014 was fatal. We are of the view that guarantee 30.09.2014 was continuing guarantee which clearly bound the appellant to discharge the debt of the borrowers, borrower's account having declared NPA leading the Bank to invoke the guarantee on 05.11.2016.

15. Adjudicating authority also dealt with notice under Section 13(2) and relying on the judgment of this Tribunal has not accepted the submission that notice under Section 13(2) is not a notice invoking the guarantee. In paragraphs 26 & 27, following was held:

“26. *The Hon'ble NCLAT in **Ujwal Gupta v. Union Bank of India and Anr., (2026) ibclaw.in 18 NCLAT**, while dealing with a similar contention, held in paragraph 27 as under:*

"27. Thus, in our considered opinion, it (Demand notice Under Section 13(2) SARFAESI Act) was a crystal-clear communication not only to the Appellant but to all the addressees to discharge their liability with regard to the credit facilities extended to CD by the financial creditor and there appears no ambiguity in this. Since the appellant has extended guarantee by executing a deed and the principal borrower/ CD failed to pay the amount of credit facilities extended by the Financial Creditor and the liability of the principal borrower and guarantor is coextensive, this demand notice was sufficient communication to the appellant to discharge his liability under the guarantee deed towards the credit facility extended by the creditor to the CD and is sufficient invocation of guarantee."

27. *Applying the above principles to the facts of the present case, the notice dated 05.11.2016 clearly demanded payment of the outstanding dues in respect of the credit facilities guaranteed by the Respondents. The notice was served in accordance with the terms of Clause 20. No separate format or independent*

invocation document was required under the Deeds of Guarantee.”

We fully concur with the above view taken by the adjudicating authority.

16. The submission of the appellant that there was no material to prove that notices were sent by Registered AD. The DRT in its decree dated 06.01.2020 has also referred to the notice dated 05.11.2016 under Section 13(2) of the SARFAESI Act. Relying on said notice, decree has been passed against the personal guarantor, personal guarantor being bound by the decree, it is not open for the personal guarantor to contend that guarantee was never invoked.

17. One more submission advanced by the counsel for the appellant need to be considered. Learned counsel for the appellant submits that decree was passed on 06.01.2020 by the DRT, whereas, Corporate Insolvency Resolution Process (CIRP) against the corporate debtor had already commenced on 05.07.2019. The above submission was advanced before the adjudicating authority. Adjudicating authority noted the submission and held that statutory protection of moratorium is confined to the corporate debtor and does not bar proceeding against the personal guarantor. In paragraph 14 of the judgment, adjudicating authority made following observations:

“14. The Respondents have contended that the Recovery Certificate dated 06.01.2020 issued by the Debts Recovery Tribunal is vitiated since CIRP against the Corporate Debtor had already been admitted on 05.07.2019 and therefore the moratorium under Section 14 of the Code was in operation. In this regard,

it is necessary to examine the scope of Section 14 of the Code. Section 14 of the Code provides as follows:

“Section 14: Moratorium:

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(2).....

(2A)...

(3) The provisions of sub-section (1) shall not apply to —

(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

(4).....”

A plain reading of Section 14(3)(b) makes it clear that the moratorium imposed under Section 14(1) does not

extend to a surety in a contract of guarantee to the Corporate Debtor. Hence, the statutory protection of moratorium is confined to the Corporate Debtor and does not bar proceedings against personal guarantors. Consequently, even during the subsistence of CIRP against the Corporate Debtor, the Financial Creditor remains legally entitled to pursue remedies against the Personal Guarantors. Therefore, the contention that the Recovery Certificate dated 06.01.2020 is invalid on account of the moratorium is untenable and liable to be rejected.”

18. Adjudicating authority has also dealt with the limitation aspect and held that application filed by the SBI was well within time. We have noticed that application was filed on 10.08.2021, whereas there was continuous acknowledgment of debt by corporate debtor in its Balance Sheet 2015-16 to 2018-19. In paragraphs 15 & 16 of the judgment, adjudicating authority made following observations:

*“15. Apart from the Recovery Certificate, the Petitioner has placed reliance upon acknowledgments of liability contained in the balance sheets of the Corporate Debtor for financial years 2015–16, 2016–17, 2017–18 and 2018- 19. The Hon’ble Supreme Court in **Asset Reconstruction Company India Limited v. Bishal Jaiswal, (2021) 6 SCC 366** has held that entries in balance sheets constitute acknowledgment under Section 18 of the Limitation Act.*

*16. The Hon’ble NCLAT in **State Bank of India v. Shri Bernard John, Company Appeal (AT) (Ins.) No. 1742 of 2024 decided on 17.10.2025**, has further clarified that acknowledgment in the balance sheets of the Corporate Debtor extends limitation against the personal guarantor as well, particularly where the deed of guarantee provides that acknowledgment by the borrower binds the guarantor. In paragraph 60, the Hon’ble Appellate Tribunal held:*

“60. Based on the above discussion, we conclude that:

i. The Corporate Debtor's balance sheets for FY 2016–17 to FY 2019–20 contained clear and unequivocal acknowledgment of debt towards the Appellant Bank.

ii. These acknowledgments, by virtue of both Section 18 of the Limitation Act and Clauses 12 & 19 of the Deed of Guarantee, validly extended limitation against the Personal Guarantor.”

Adjudicating authority has rightly held that Recovery Certificate dated 06.01.2020 given fresh cause of action. One of the grounds is also raised that Bank has realised certain amount form CIRP of corporate debtor. The question of actual amount due can always be gone into and examined at the stage of preparation of repayment plan by RP.

19. In view of the foregoing discussions, we do not find any good ground to interfere with the impugned order admitting Section 95 application against the personal guarantors. There is no merits in the appeals. Appeals are dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Indevar Pandey]
Member (Technical)**

NEW DELHI

08th May, 2026

himanshu