IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT NO.-I)
KOLKATA

I.A (IB) No. 276/KB/2026
In
C.P (IB) No. 163/KB/2025

An application under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 read with rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019.

IN THE MATTER OF:

UCO BANK

......Financial Creditor

Versus

SMT. SRABONTI KUNDU

......Personal Guarantor

AND

An Application under Section 99 of the Insolvency and Bankruptcy Code, 2016.

IN THE MATTER OF:

MR. SUMIT SHARMA

....Resolution Professional / Applicant

Date of Pronouncement: 22.07.2026

Coram:

Smt. Bidisha Banerjee, Member (Judicial)

Ms. Rekha Kantilal Shah, Member (Technical)

Appearances: (via Physical / Hybrid Mode):

For UCO Bank:

Mr. Rahul Auddy, Adv.

Mr. Aditya Gooptu. Adv.

For Resolution Professional:

Mr. Siddhanth Makkar, Adv.

O R D E R

Per: Bidisha Banerjee, Member (Judicial)

1. The Court convened through hybrid/physical mode.
2. Both the petition and the application are being considered together to be disposed of through this common order.
3. **Brief Facts of the Case**

I. This **C.P.(IB)/163/KB/2025** has been preferred by the **UCO Bank** to seek initiation of Insolvency Regulation Process against **Smt. Srabonti Kundu**, Personal Guarantor under Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019.

II. M/s V.K Inks & Coating Private Limited (herein-after referred to as the "Principal Borrower") availed cash credit and term loan vide sanction letter[1] dated 07.02.2008 for an aggregate sum of Rs 149.27 lakhs.

III. Smt. Srabonti Kundu, Personal Guarantor executed Deed of Guarantee dated 14.02.2008[2], to avail the credit line facilities for **M/s V.K Inks & Coating Private Limited.**

IV. The amount in debt is Rs. 15,89,96,245.24 (Rupees Fifteen Crores Eight-Nine Lakhs Ninty-Six Thousand Two Hundred and Forty-Five

[1] Annexure- A
[2] Annexure- B

and Twenty-Four paise) inclusive of all interest calculated as on 31.08.2024.

V. Due to non-payment of the amount by the Principal Borrower, the Financial Creditor has filed this application for initiation of Insolvency Resolution Process against the Personal Guarantor or PG under Section 95(1) of IBC, 2016.

VI. No Corporate Insolvency Process Resolution Process (herein referred to as "CIRP") has been initiated against the Principal Borrower though.

VII. The Financial Creditor had issued a notice under section 13(2) of SARFAESI Act. 2002 dated 10.02.2011[3] and a demand notice in Form B to the Respondent on 25.09.2024[4] under Rule 7(1) of the Insolvency and Bankruptcy Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.

VIII. The Financial Creditor had proposed the name of Insolvency Professional for appointment as RP and this Adjudicating Authority vide order dated 31.07.2025 appointed Mr. Sumit Sharma, IBBI Registration No. IBBI/IPA-001/IP-P-02945/2025-2026/14529, in exercise of the power conferred under Section 97 of the IBC, 2016 and to file the declaration within seven (7) days from the date of receiving the order. Further, the RP was directed to file his report in terms of Section 99 within ten (10) days.

IX. Pursuant thereto, the RP had filed an application being **I.A(IB) No. 276/KB/2026** on 19.02.2026 to take on record the Report under Section 99(7) of IBC, 2016, which appears at page no. 17 to 63 of the application.

X. The RP had issued a letter and email to Smt. Srabonti Kundu, the PG on 12.02.2026 and requested to provide information about the

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[3] Annexure- C
[4] Annexure- E

proof of repayment but no reply was received as on date of the report. (Page 60 to 63 of RP's Report)

XI. The RP Mr. Sumit Sharma has vide his report dated 19.02.2026 has recommended admission of the personal guarantor in to the Insolvency resolution process. The true copy of RP's report is reproduced herein below for the sake of convenience:-

Sl.No	**Report under Section 99 of the IBC**	**Remarks**
1.		UCO Bank having its registered office at Asset Management Branch: 70A, Block - D, New Alipore, Kolkata - 700 053 represented by Mr. Kamod Kumar Pathak, Assistant General Manager. E-mail Id - arbkol@ucobank.co.in Phone- PAN - AAACU3561B
2.	Particulars of Principal Borrowerunder CIRP	Not Applicable
3.	Date of Commencement of CIRP of Corporate Debtor	Not Applicable
4.	Details of personal guarantee given to Applicant by Personal Guarantor	Smt Srabonti Kundu Date of Birth: 09-08-1970 E-mail - Not Known Address: 37, S.C. Mukherjee Road, Halderpara, Chandannagar, Hooghly 712136 Occupation: Business PAN: AIOPK5246N Mobile - Not Known Guarantee given for the M/s V.K Inks & Coating Pvt Ltd (CIN NoU29130WB1996PTC078378. A copy of the Company Master

		Data of M/s V.K Inks & Coating Pvt Ltd is attached herewith and marked as Exhibit 'A'. Details of Personal Guarantee- The **personal guarantee** was executed by Smt. Srabonti Kundu on **14.02.2008** along with other family members, namely Madan Gopal Kundu, Sanjay Kundu, Sandip Kundu, Smt. Gita Kundu, and Smt. Swapna Kundu. The guarantee was provided in consideration of UCO Bank restructuring the existing credit facilities of M/s V.K. Inks & Coating Pvt. Ltd. vide Sanction Letter dated **07.02.2008**, whereby the aggregate sanctioned limit was enhanced to ₹149.70 Lakhs across Cash Credit and Term Loan accounts. 1) The guarantors, including Smt. Srabonti Kundu, executed a Letter of Guarantee, undertaking to repay all indebtedness and liabilities of the Corporate Debtor. This included principal, interest, costs, charges, and expenses. The liability was expressly stated to be co-extensive with that of the Corporate Debtor, meaning the guarantors were equally responsible for repayment in case of default. 2) The guarantee covered the entire restructured credit facilities, including Cash Credit of ₹110 lakh and Term Loans aggregating ₹39.70 lakh. The guarantors agreed to liquidate the outstanding dues in the event of any default or breach committed by the

		Corporate Debtor. 3) By executing the guarantee, Smt. Srabonti Kundu bound jointly and severally with herself the Principal Borrowerand other guarantors. This created a continuing obligation enforceable by the Financial Creditor against her personal assets, in addition to the securities created by the Corporate Debtor.
5.	Date of invocation of personal guarantee by Financial Creditor	The Principal Borrower defaulted, and its account was declared **NPA** on **31.12.2010**. Subsequently, UCO Bank issued a Notice under **Section 13(2)** of SARFAESI Act, 2002 dated **10.02.2011** to both the Principal Borrowerand guarantors, including Smt. Srabonti Kundu, demanding repayment of the entire outstanding. Later, UCO Bank issued a **Notice in Form B dated 25.09.2024** (Annexure E) under Rule 7(1) of the Insolvency and Bankruptcy Rules, formally invoking the personal guarantee. As of **31.08.2024**, the outstanding dues stood at Rs 15,89,96,245.24. No payment was made by the guarantor despite demand.
6.	Date of filing Petition under section 94/95 of IBC	11.04.2025
7.	Amount in default by Principal Borrowerto the Applicant at the time of commencement of	As per the Application filed the current amount due is Rs. 15,89,96,245.24/- as on 31.08.2024. As per the Demand Notice in Form B issued by the Financial

	CIRP	Creditor the balance due from the Personal Guarantor as on 31.08.2024 was Rs. 15,89,96,245.24/- including interest, charges and costs. No CIRP under IBC has been initiated against the Company.
8.	Amount provided in the resolution plan, if any, against the claim of the applicant	Not applicable as CIRP not filed
9.	Balance due from personal guarantor	As per the Application filed the current amount due is Rs. 15,89,96,245.24/- as on 31.08.2024. As per the Demand Notice in Form B issued by the Financial Creditor the balance due from the Personal Guarantor as on 31.08.2024 was Rs. 15,89,96,245.24/- including interest, charges and costs. The RP had reached out to the Financial Creditor UCO Bank via e-mail dated 12th February, 2026 whether any payment has been received from the Personal Guarantor. On 17th February, 2026 the undersigned had received Bank Statement from the Financial Creditor which reflected that no payment has been received till date. A copy of the e-mail dated 12th February, 2026 and the Bank Statements is annexed herewith and marked as Exhibit 'B'.
10.	Net worth of personal guarantor as on date of the report	Not Available. The RP had reached out to the Principal Borrowervia e-mail dated 12th February, 2026 and Personal Guarantor by letter dated 12th February,

		2026 for certain necessary information needed to complete the report. However, till the date of filing of report no response has been received. A copy of the e-mail dated 12th February, 2026 and letter dated 12th February, 2026 is annexed herewith and marked as Exhibit 'C'.
11.	Copies of past 5 years balance sheet and Income Tax Return of personal guarantor	Not Available. The RP had reached out to the Principal Borrowervia e-mail dated 12th February, 2026 and Personal Guarantor by letter dated 12th February, 2026 for certain necessary information needed to complete the report. However, till the date of filing of report no response has been received.
12.	Details of actions taken by Applicant or any other Financial Creditor against Personal Guarantor under any other Act in respect of debt owed by Corporate Debtor	The Applicant, UCO Bank, has undertaken several statutory and legal measures to enforce recovery of dues against the Corporate Debtor, M/s V.K. Inks & Coating Pvt. Ltd., and its personal guarantors, including Smt. Srabonti Kundu. The sequence of actions is as follows: 1) The Principal Borrower and guarantors defaulted in repayment of the restructured credit facilities. Consequently, the account was declared a Non-Performing Asset (NPA) on 31.12.2010, thereby triggering statutory recovery proceedings under banking laws. 2) On 10.02.2011, the applicant UCO Bank issued a Notice under Section 13(2) of the SARFAESI Act, 2002 to the Principal Borrower and all personal guarantors, including

		Smt. Srabonti Kundu. This notice demanded repayment of the entire outstanding dues and warned of enforcement action against secured assets in case of non-payment. Despite service of this statutory notice, neither the Principal Borrower nor the guarantors made any repayment. 3) The personal guarantee executed by Smt. Srabonti Kundu on 14.02.2008 was formally invoked by the Financial Creditor. Subsequently, a Notice in Form B dated 25.09.2024 was issued under Rule 7(1) of the Insolvency and Bankruptcy Rules, 2019, specifically calling upon the guarantor to discharge her liability. Despite expiry of the statutory period of 14 days, no payment was made by the guarantor. 3) As of 31.08.2024, the outstanding dues payable to the applicant UCO Bank stood at Rs 15,89,96,245.24. The liability of the guarantor is co-extensive with that of the Corporate Debtor, and hence enforceable in full against the personal guarantor.
13.	Recommendation (Admit/Reject)	**Admit** the Application filed u/s 95 of the IBC, 2016.

4. **Contention of the Financial Creditor**

I. The Learned Counsel appearing on behalf of the Financial Creditor submitted that the Principal Borrower had availed various credit facilities from the Financial Creditor. To secure the said credit facilities, the Principal Borrower created security interest in favour of the Financial Creditor by way of hypothecation of its entire stocks, inventories, receivables, bills and other chargeable current assets, both present and future, as the primary security. As collateral security, the Principal Borrower created a charge over land measuring 20.40 cottahs, together with the building, structures and sheds standing thereon, situated at Mouza–Jhanpa, P.O. Mogra, P.S. Polba, District Hooghly, West Bengal, and also created hypothecation over stocks and book debts and assigned certain LIC policies. It was further submitted that all such charges were duly registered with the office of the Registrar of Companies, West Bengal.

II. It was further submitted that the Principal Borrower committed defaults in repayment of the outstanding dues under the credit facilities, including both principal and interest, as a consequence whereof the loan account was classified as a Non-Performing Asset (NPA) on 31.12.2010.

III. Learned Counsel submitted that, despite repeated requests and reminders, the Principal Borrower and the Personal Guarantors failed to regularise the loan account. Consequently, the Financial Creditor recalled the credit facilities and issued a demand notice dated 10.02.2011 under Section 13(2) of the SARFAESI Act, 2002, calling upon the Principal Borrower as well as the Personal Guarantors to pay the entire outstanding dues. It was contended that the said notice also operated as an invocation of the personal guarantee executed by the Respondent.

IV. It was further submitted that notwithstanding the aforesaid demand, neither the Principal Borrower nor the Respondent, being one of the Personal Guarantors, discharged the outstanding liability.

V. According to the Financial Creditor, the total outstanding amount due and payable by the Principal Borrower as on 31.08.2024 stood at Rs.15,89,96,245.24 in respect of the credit facilities extended by the Financial Creditor. It was submitted that the amount in default as on the date of declaration of NPA was Rs.1,27,06,380.88, whereas the outstanding amount of Rs.15,89,96,245.24 as on 31.08.2024 included uncharged interest, additional interest and penal interest accrued till the said date.

VI. The Learned Counsel further submitted that under the Deed of Guarantee executed by the Respondent, the liability of the Personal Guarantor was expressly agreed to be continuing, joint and several, and co-extensive with that of the Corporate Debtor. It was contended that the guarantee was to remain in full force and effect until complete repayment of the entire dues together with interest and all other monies payable to the Financial Creditor. Accordingly, since the Principal Borrower remained liable for Rs.15,89,96,245.24 as on 31.08.2024, the Respondent, being one of the Personal Guarantors, was equally liable for the said amount together with further contractual interest from 01.09.2024 and all costs, charges and expenses until realization.

VII. It was further submitted that the Financial Creditor issued a demand notice in Form B under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, vide notice dated 25.09.2024. Despite expiry of the prescribed period of fourteen days, the Respondent allegedly failed to make any payment towards the outstanding dues.

VIII. On the aforesaid premises, the Learned Counsel for the Financial Creditor submitted that, despite invocation of the personal guarantee and service of the statutory demand notice, the Respondent failed to discharge his co-extensive liability as Personal Guarantor. It was therefore contended that the present application has been instituted within the period of limitation and is liable to be admitted in accordance with law.

5. **Analysis and Findings**

I. We have heard the Learned Counsel for the Financial Creditor and RP and perused the documents on record. We have also gone through the report dated 19.02.2026 filed by the RP in IA (IB) No.276/KB/2026.

II. Before proceeding to examine the merits of the case, it is pertinent to note that despite repeated service of notice and the grant of several opportunities, no one has appeared on behalf of the Personal Guarantor, and no objections to the report have been filed.

III. However, the following timeline are noted in the present matter:

Date	Events
07.02.2008	Credit facilities made availabe to V.K Inks & Coating Pvt. Ltd.
14.02.2008	Deed of Personal Guarantee executed by the Personal Guarantor
31.12.2010	The account of the Principal Borrower turned NPA
10.02.2011	Notice of Invocation of Guarantee under Section 13(2) of SARFAESI Act, 2002, as claimed by the Financial Creditor was issued to the Principal Borrower and Personal Guarantor
25.09.2024	Date of issuance of Form B demand notice
11.04.2025	Date of filing of this present Petition

IV. The Financial Creditor is conspicuous by its silence on the huge gap between the purported date of invocation of guarantee and the issuance of Form B notice for filing the CP. The delay is neither explained by the Financial Creditor nor by the RP in its report submitted under Section 99 of the IBC.

V. We thus note that the present Company Petition is hit by law of limitation under Article 17 of the Limitation Act, 1963, an application has to be filed within three years from the date of default. The three-year period from alleged date of default in the present case has expired on 31.12.2013 and, therefore, this petition filed on 22.04.2025 is hopelessly barred by the laws of limitation.

VI. Now Going by the demand notice under Section 13(2) of the SARFAESI Act, 2002, dated 10.02.2011 calling upon the Principal Borrower as well as the Personal Guarantor to repay the outstanding date and invocation of guarantee, the time to file the Petition has expired on 10.02.2014 itself.

VII. Further, In terms of Section 18 of the Limitation Act, a fresh period of limitation becomes available from the date of acknowledgment of liability, but the Financial Creditor has not disclosed any document which constitutes acknowledgment of liability either by the Principal Borrower or by the Personal Guarantor.

VIII. The Period of Limitation having expired long before the outbreak of Covid-19 so no reliance can be placed on the *suo moto* order of Supreme Court which would have further extended the limitation.

IX. The bank invoked the personal guarantee on **10.02.2011** but issued the **Form B** notice only on **25.09.2024**, almost **thirteen years later**, does not justify or cure the delay in initiating proceedings against the Personal Guarantor.

6. To justify our inference, we propose to rely upon on the following statutory/regulatory definition, provisions and decisions.

A. <u>A Personal Guarantor:</u>

Regulation 3(1)(e) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, defines **"Guarantor"** as follows:

"3(1)(e). "Guarantor" means <u>a debtor</u> who is a personal guarantor to a Corporate Debtor and <u>in respect of whom</u>

guarantee has been invoked by the creditor and remains unpaid in full or part.”

Thus, it is explicit that a Debtor who is a Personal Guarantor to a Corporate Debtor can be termed as a “Guarantor” only in respect of whom guarantee has been already invoked by the Creditor and remains unpaid in full of part.

Thus any notice served under the said Regulation would not amount to invocation of guarantee.

B. Liability of a Personal Guarantor:

i) In **Syndicate Bank vs. Channaveerappa Beleri & Ors**, it was held that *“A guarantor’s liability depends on terms of his contract”*

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“A claim may even be time-barred against the principal debtor, but still enforceable against the guarantor” ***and*** *“The extent of liability under a guarantee as also the question as to when the liability of a guarantor will arise, would depend purely on the terms of the contract”.*

(Emphasis added)

ii) Similarly, in **Archana Deepak Wani vs. Indian Bank [Company Appeal (AT) (Ins.) NO.301 of 2023**, it was held that *“liability of the guarantor must be strictly in terms of the Deed of Guarantee.”*

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“When default is committed by the Principal Borrower, the amount becomes due not only against the Principal Borrower but also against the Corporate Guarantor, which is the scheme of the I&B Code.”

iii) It is not denied that the guarantee would be enforceable on demand:

Thus the default on the part of the guarantor will arise only when Demand Notice is issued as contemplated in the Deed of Guarantee. As noted earlier, the Financial Creditor claimed to have been served

Demand Notice upon the Personal Guarantor in 2011, which shall then be the start point of limitation.

C. Invocation of Guarantee:

i) In **State Bank of India Vs Deepak Kumar Singhania** reported in (2025) ibclaw.in 153 NCLAT, Hon'ble NCLAT noted that:

> *"There is no case set up by the Appellant that at any time guarantee was invoked, except issuance of Notice in Form – B, which is claimed by the Appellant to be treated as Notice for invocation of guarantee".*

The Hon'ble NCLAT, New Delhi, held as under:

> *"We are not persuaded to accept the submission of the Appellant that Notice under Rule 7 (1) issued in Form – B to the Guarantor, demanding of the default amount, has to be treated as Notice for invoking guarantee. Default before issuance of Notice under Rule 7 (1), must exist on the part of the Guarantor. Hence, we reject the submission of the Appellant that Notice under Rule 7, sub-rule (1) is a Notice, invoking the guarantee. We, thus, do not find any error in the order of the Adjudicating Authority, rejecting Section 95 Application filed by the SBI. There is no merit in the Appeal. The Appeal is dismissed. There shall be no order as to costs."*

Thus, Notice in Form – B under Rule 7(1) cannot be deemed to be a notice invoking the guarantee. Hence, notice for repayment or invocation of guarantee is sine qua non to the filing of a petition under Section 95(1) of the I&B Code. Notice in Form B will not amount to invocation unless proceeded by a formal invocation

D. Default of the Personal Guarantor

i) In **Pooja Ramesh Singh vs. State Bank of India [Company Appeal (AT) NO.329 of 2023]**, it was held that *"default in the guarantee arises only when after the guarantee has been invoked."* Hon'ble Court noted the following:

"i. The Corporate Guarantee Deed dated 17.05.2019 is on demand guarantee deed and the default shall arise on the part of the Guarantor only when demand notice is issued as contemplated in the Deed of Guarantee. When the State Bank of India invoked the guarantee vide notice dated 01.10.2020, demand on the part of the Corporate Guarantee shall arise only subsequent to the notice dated 01.10.2020 i.e. non-payment of the amount within seven days i.e. default arise on 08.10.2020. ii. Default on the part of the Guarantor having arisen on 08.10.2020 i.e. within the period which is covered as prohibited period under Section 10A, application under Section 7 was clearly barred by Section 10A. Issues No. II, III and IV are answered accordingly. iii. The Adjudicating Authority in the impugned order has not adverted to the relevant clauses of the Deed of Guarantee as noted above. The date of default on part of Guarantor being subsequent to 01.10.2020 when guarantee was invoked, the application was barred by Section 10A and the Adjudicating Authority committed error in admitting the Section 7 application."

(Emphasis Added)

In the present case the default on the part of the PG arose when it defaulted in payment and notice invoking guarantee was issued on 2011. Hence, the limitation would expire in 2014.

E. Limitation:

i) **IDBI Bank vs. Hemangi Patel [CA(AT) (Insolvency) No.991 of 2025**, it was held that:

"The limitation period for filing Section 95 application is 3 years, the same being governed by Article 137 of the Limitation Act."

As noted earlier, the limitation here has expired in 2014, whereas the Petition has been filed in 2025, hence its hopelessly time barred.

F. <u>Trigger Point for Limitation:</u>

i) **Hon'ble Supreme Court in Sagar Sharma vs. Phoenix Pvt. Ltd. (2019) 10 SCC 353 has held that:**

"The date of coming into force of IBC does not and cannot form a trigger point of limitation for application under the Code".

Hence, there is no gain saying that after promulgation of code, even when there has been a prior invocation, limitation under Section 95(1) will start three years hence, further, there is nothing to bridge the gap between 2011 to 2025."

G. <u>To Summarise:</u>

I. Liability of a guarantor would be strictly in terms of the Deed of Guarantee.

II. If the Deed of Guarantee specifies that the guarantee is payable on demand the Guarantor's liability when the debt that has fallen due on account of Principal Debtor's default, will arise only if a Demand Notice is issued and served upon the Guarantor and the Guarantor defaults in repaying the debt. Hence, there has to be a prior invocation of guarantee.

III. Notice under Section 13(2) of the SARFAESI Act does not amount to an invocation of guarantee for the purpose of a Petition under Section 95(1) of IBC.

IV. Similarly, notice under Form-B, sent under Rule 7 of the IBBI (Insolvency and Bankruptcy Board of India) is not to be treated as a notice invoking guarantee for the purpose of such Petition.

V. The trigger point for limitation under the Code would be in terms of Article 137.

7. The Financial Creditor has not cited any decision to the contrary which would tempt us to take a different view that would extend

limitation for the purpose of the Petition under Section 95(1) of the IBC before this Adjudicating Authority.

8. Having thus noted an inordinate delay in filing of Section 95 Petition, we are of the opinion that the instant petition deserves to be **dismissed**.
9. Accordingly, the **I.A. (IB) No.276/KB/2026** is taken on record and **disposed of** and the **Company Petition (IB)/163/KB/2025** is **dismissed**.
10. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
11. Certified copy of the order may be issued, if applied for, upon compliance of all requisite formalities.

(Rekha Kantilal Shah)	**(Bidisha Banerjee)**
Member (Technical)	**Member (Judicial)**

Order signed on the 22nd day of July, 2026.

S.T. (LRA)