NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P-1

C.P. (IB)/942(MB)2025

CORAM

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING DATED **20.08.2026**

NAME OF THE PARTIES **:** **The Canara Bank Limited**

Vs.

N.S.D. Nirman Private Limited

Under Section 7 of the IBC, 2016.

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate order. Detailed order is being uploaded on the NCLT portal today.

Sd/-

NILESH SHARMA
MEMBER (JUDICIAL)

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

//frk//

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

C.P. (IB)/942/MB/2025

[Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

THE CANARA BANK LIMITED

[PAN No.: AAACC6106G]

Stressed Assets Management Branch:

Circle Office Building, 8th Floor, B Wing

C-14, G-Block, Bandra-Kurla Complex

Bandra East, Mumbai, Maharashtra – 400051. **…Financial Creditor**

V/s

N.S.D. NIRMAN PRIVATE LIMITED

[CIN No.: U45201UP2005PTC030370]

PAN-AACC N1612L

211 And 211-A, Kalpana Plaza

24/147, B, Birhana Road, Kanpur,

Uttar Pradesh,208001. **...Corporate Debtor**

Pronounced: 20.08.2026

CORAM:

HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)

HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

For FC: Adv. Mr. Roshan Gaud i/b Orbit Law Services.

For CD: Adv. Mr. Malhar Zatakia a/w Adv. Ms. Vidisha i/b Adv. Ms. Srishty Jaura, Adv. Mr. Shivam Mishra, Adv. Mr. Darshana Badhera..

ORDER

[PER: CORAM]

1. **BACKGROUND**

1.1 This C.P. (IB) No. 942 of 2025 (Application) was filed by Canara Bank, the Financial Creditor (FC) having PAN No.: AAACC6106G, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency Resolution Process (CIRP) against N.S.D. NIRMAN PRIVATE LIMITED, the Corporate Debtor (CD), having CIN No.: U45201UP2005PTC030370, incorporated on 14.07.2005.

1.2 This Application has been affirmed by one Mrs. Dolly Ahirwar, Manager of Canara Bank SAM Branch, Mumbai. As per Part IV of the Application, the amount claimed to be in default is Rs. 7,42,06,10,813.68/- (Rupees Seven Hundred Forty-Two Crores Six Lakhs Ten Thousand Eight Hundred Thirteen and Paise Six Eight Only) as on 31.03.2025 plus future interest, cost, and charges. The date of default is stated to be 29.01.2025.

1.3 The Applicant has proposed Mr. Anand Sonbhadra, having Registration No. IBBI/IPA-001/IP-P00652/2017-2018/11126, to act as the Interim Resolution Professional (IRP) in case the Application is admitted.

2. **CONTENTIONS OF FC**

2.1 The present Company Petition has been filed by Canara Bank claiming to be financial creditor. This petition was affirmed on 25.07.2025 by one Mrs. Dolly Ahirwar, authorized by a letter of authority dated 24.04.2025.

2.2 It is stated that the Corporate Debtor herein is a Corporate Guarantor w.r.t. one M/s Frost International Ltd. (principal borrower), who has availed the credit facilities from financial creditor and Syndicate Bank (now Canara Bank) for the following scheme:-

(Rs. Crores)

Sl. No.	Nature of credit facilities	Canara Bank	E-Syndicate	Total
1	FLC (DA)	150	120	270
2	ILC (DA)	05	Nil	05
	Total	**155**	**120**	**275**

2.3 Amount Claimed to be in Default as on 31.03.2025 is as under :-

a) For Account No. 2630201000196:

Principal Outstanding: Rs.1,38,55,19,447.18/-

Interest and Other Charges: Rs. 2,90,23,74,610/-

b) For Account No. 50201010003421:

Principal Outstanding: Rs. 99,60,66,502.83/-

Interest and Other Charges: Rs. 2,13,66,50,253.67/-

2.4 Outstanding Amount of Rs. 7,42,06,10,813.68/- as on 31.03.2025 plus future interest, cost and charges.

2.5 Date of Notice for Invocation of Corporate Guarantee is stated as 20.01.2025.

2.6 It is stated that the working capital limits were covered under joint documentation executed by Principal Borrower *vide* Supplement working Capital limit, Supplement Joint Deed of Hypothecation and other documents on 12.05.2014 and other subsequent supplement documents.

2.7 It is stated that the Principal Borrower made request and representation for renewal of existing working capital limit from time to time and the same were sanctioned *vide* sanction letters dated 03.01.2015, 06.06.2016, 15.02.20217 and 16.01.2018.

2.8 It is stated that the principal borrower later on defaulted and the account was classified as NPA on 17.07.2018. Therefore, a recall notice dated 01.09.2018 was sent to the Principal Borrower.

2.9 It is stated that the Financial Creditor filed recovery proceedings before the Hon'ble Debts Recovery Tribunal, Allahabad on 26.10.2018 and the same is pending for adjudication.

2.10 It is stated that following this, one of the creditor banks of the Principal Borrower i.e. Bank of India, filed petition u/s 7 of the IBC, 2016 before NCLT Mumbai against the Principal Borrower, which was admitted *vide* an order dated 09.03.2023; currently the CIRP of the Principal Borrower is under process.

2.11 The Financial Creditor issued a notice dated 20.01.2025 for invocation of Corporate Guarantee by way of demand for defaults committed by Principal Borrower along with interest and all other charges. The said notice was duly served, and despite receipt of the same, the CD failed to discharge its legal obligations.

2.12 This Tribunal on 16.09.2025, directed the Applicant to place on record the Track Consignment report w.r.t. notice of invocation.

2.13 In response to the said order, the Applicant filed an additional affidavit dated 10.10.2025, stating that the said notice could not be delivered for reasons attributable to the addressee. The applicant has attached the original envelope containing notice with the said affidavit. It is seen that the postal authorities have recorded the reasons as "Left".

2.14 Applicant has stated that in view of the legal presumption under Section 27 of the General Clauses Act, 1897, and Section 114 (f) of the Indian Evidence Act, 1872, 119 (f) of Bharatiya Sakshya Adhiniyam, 2023, such service should be treated as complete service.

2.15 Applicant has placed reliance on *Mukund Rajhans vs. Rajasthan Patrika Pvt Ltd.* Company Appeal (AT) (INS) 1398 of 2023 of Hon'ble NCLAT, more particularly para 29, to support his contention.

2.16 The Applicant has attached the following supporting documents along with the Application:

a) Letter of Authority dated 24.04.2025.

b) Form 2 Under Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 (Written Communication by Proposed Interim Resolution Professional.

c) Form B- Under Byelaw 12A of the Agency's Bye Law- Authorisation for Assignment.

d) The Copy of Sanction letter dated 07.01.2014.

e) The Copy of Sanction letter dated 21.07.2014.

f) The Copy of Inter Se Agreement dated 12.05.2014 executed between Consortium Members.

g) The Copy of Supplemental Working Capital Consortium Agreement dated 12.05.2014.

h) Copy of Supplemental Joint Deed of Hypothecation dated 12.05.2014.

i) Copy of Omnibus Counter Guarantee for ILC/ FLC Limits-12.05.2014.

j) Copy of Undertaking dated 12.05.2014 by Principal Borrower.

k) Copy of Deed of Guarantee dated 12.05.2014

l) Revival Letter dated 12.05.2014

m) Copy of Memorandum of Entry executed on 13.05.2014

n) The Copy abovementioned Deed of Corporate Guarantee dated 12.05.2014

o) The Copy Sanction letter dated 03.01.2015

p) The Copy Board Resolution by Principal Borrower and Corporate dated 09.11.2015

q) The Copy of Inter-Se Agreement dated 26.11.2015.

r) The Copy of Board Resolution of Principal Borrower dated 09.11.2015

s) The Copy of Board Resolution of Corporate Debtor on 09.11.2015.

t) The Copy Supplementary Working Capital Consortium Agreement dated 26.11.2015.

u) The Copy of Deed of Guarantees dated 26.11.2015 (Personal, HUF and Corporate).

v) The Copy abovementioned Deed of Corporate Guarantee dated 26.11.2015

w) The Copy Sanction letter dated 06.06.2016.

x) The Copy Sanction letter dated 15.02.2017.

y) The Copy Sanction letter dated 16.01.2018.

z) The Copy of Certificate of Registration of Charge with ROC

aa) The Copy of Latest case status extracted from online portal of DRT

bb) The Copy of Order for admission of CIRP dated 09.03.2023

cc) The Copy of Invocation cum Demand Notice dated 20.01.2025 dd) The Copy of Postal Acknowledgement and receipt

ee) The Copy of Statement of accounts in abovementioned accounts

ff) The Copy of Record of Default (NeSL-Report)

gg) The Copy of Details of Corporate Debtor from Ministry of Corporate Affairs (MCA)

3. Applicant thereafter was directed by an order dated 09.01.2026 to modify the address of the Corporate Debtor which was carried out on 29.01.2026. Ld. Counsel for the Respondent waived notice on 09.01.2026

4. Order of this Tribunal dated 12.02.2026 records that Ld. Counsel for the Respondent stated that they do not wish to file any reply in the matter and vide the same order the opportunity given to the Respondent to file reply was closed.

5. Thereafter both the sides were directed to file their respective written submissions.

6. Vide clarification order dated 03.08.2026, applicant was directed to file a copy of the recall notice dated 01.09.2018, the same was filed by the applicant vide additional affidavit dated 04.08.2026.

7. **<u>Written Submissions (FC)</u>**

7.1 Applicant has filed written submissions dated 06.05.2026. The salient points as per the written submissions are as follows:-

a. The Petitioner/Financial Creditor is a company registered under the Companies Act. 1956 and a banking company within the meaning of the Banking Regulation Act, 1949 and having its registered office as mentioned in the cause title of the Company Petition. The Corporate Debtor M/s NSD Nirman Private Limited ("Corporate Debtor") extended the Corporate Guarantee to the Petition for the financial assistance availed by the M/s Frost International Limited for the purpose of working capital to the company.

b. Further, the present Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("Code") has been validly instituted by the Applicant Financial Creditor against the Corporate Debtor in its capacity as a Corporate Guarantor for the credit facilities availed by the Principal Borrower, namely M/s Frost International Limited.

c. The present proceedings arise out of a structured consortium lending arrangement wherein multiple banks, including the Applicant, extended working capital facilities both fund-based and non-fund-based, to the Principal Borrower. The said facilities were sanctioned in the year 2014 and thereafter renewed periodically, all of which were duly acknowledged by the Principal Borrower from time to time.

d. The Corporate Debtor, along with other guarantors, executed Deeds of Corporate Guarantee securing the said facilities. **These guarantees are part of the consortium framework and are governed by the Consortium Agreement and Inter-Se Agreement, which explicitly provide that the member banks act jointly and severally and are entitled to enforce their rights independently.**

e. It is pertinent to highlight that although the total consortium exposure is Rs. 4018.00/-Crores (Rupees Four Thousand and Eighteen Crores) and the present Financial Creditor is seeking enforcement only to the extent of its own exposure, i.e., Rs. 742,06,10,813.68/- (Rupees Seven Hundred Forty-Two Crores Six Lakhs Ten Thousand Eight Hundred

Thirteen and Paise Six Eight only). This demonstrates that the present proceedings are neither excessive nor duplicative but are confined strictly to the Applicant's legally recoverable dues.

II. <u>THE NOTICE DATED 01.09.2018 IS A RECALL/RECOVERY NOTICE:</u>

f. The primary defense raised by the Corporate Debtor is that the notice dated 01.09.2018 constitutes invocation of the Corporate Guarantee, and therefore limitation ought to run from the said date. This contention is entirely misconceived.

g. A plain reading of the record would demonstrate that the notice dated 01.09.2018 was issued only as a recovery/recall notice to the Principal Borrower in connection with proceedings under the Recovery of Debts and Bankruptcy Act, 1993, pursuant to which Recovery proceedings were initiated before DRT, Allahabad in OA No. 1121 of 2018. It is a settled principle that invocation of a guarantee must be in strict compliance with the terms of the guarantee and must involve a specific demand made upon the guarantor the liability of a guarantor, though co-extensive, does not automatically crystallize for enforcement merely upon default by the principal borrower.

h. In this regard, as stated by the Hon'ble NCLAT in State Bank of India Gaurishankar Poddar & Ors. (Comp. App. (AT) (Ins.) Nos. 689 & 663 of 2024) if the Application"(i) treats the date of demand/invocation upon the guarantor as the accrual point under Article 137; (ii) recognises the admission of the corporate debtor CIRP and claims as showing acknowledgment and subsistence of liability; (iii) notes COVID 19 exclusion, and (iv) accepts that a Rule 7(1) notice is a valid trigger for Section 95 computation, even where there had been prior recall/communications" In the present case, the Corporate Guarantee was invoked for the first time only vide notice dated 20.01.2025, wherein a clear and unequivocal demand was raised upon the Corporate Debtor for payment of Rs. 706,27,63,893.68 within a stipulated period.

i. Therefore, the attempt of the Corporate Debtor to treat the 2018 notice as invocation is legally untenable and is liable to be rejected. Consequently, limitation against the Corporate Guarantor can only commence from the date of invocation, i.e., 20.01.2025.

III. ACKNOWLEDGEMENT OF DEBT AND CONTINUOUS EXTENSION OF LIMITATION

j. It is further submitted that the present application is independently within limitation in view of multiple and continuous acknowledgements of debt.

k. The NeSL records clearly reflect authentication of debt by the Principal Borrower on 05.11.2023, which has not been disputed. Such authentication is a statutorily recognized acknowledgement. Further, the Applicant filed its claim in Form C before the Resolution Professional in the CIRP of the Principal Borrower on 22.02.2023, which was duly verified and admitted and forms part of CIRP records.

l. It is submitted that such admission of claim is not a mere procedural act but constitutes a substantive acknowledgment of liability. In this regard, the Hon'ble NCLT in Canara Bank vs. Sanjana Uday Desai ((2025) ibclaw.in 2226 NCLT) stated that "25. Further, the statutory demand notice can be issued at any time within the limitation period and limitation runs from the date of default and the Application seeking admission into Insolvency Resolution is to be filed within limitation period, accordingly, the statutory demand notice has to precede such filing. There is no provision in the law which vitiates the proceedings if the statutory demand notice is issued after gap of years so long as the filing of Application consequent thereto is found within the limitation period. " It further held that "23. the liability due to the Financial Creditor having been verified by the RP of the Principal Borrower in its CIRP as within limitation in itself constitutes acknowledgement by the Corporate Debtor and binds the Guarantor as well thereby further extending the period of limitation."

m. The Hon'ble NCLAT in State Bank of India vs. Gaurishankar Poddar & Ors. (Comp. App. (AT) (Ins.) Nos. 689 & 663 of 2024) has further clarified that "11. Verification and admission of a financial creditor's claim in CIRP constitutes acknowledgment of debt, thereby extending limitation" It is further submitted that the liability of the Corporate Guarantor is co-extensive with that of the Principal Borrower. Therefore, any acknowledgment by the Principal Borrower extends limitation against the guarantor as well.

n. Section 128 of the Indian Contract Act provides "The liability of the surety is extensive with that of the principal debtor, unless it is otherwise provided by the contract." The guarantee deed in the present case further reinforces that the guarantor shall be treated as principal debtor for all purposes of recovery. Therefore, upon default by the Principal Borrower and invocation of the guarantee, the liability of the Corporate Guarantor becomes immediate, absolute, and enforceable.

o. The Hon'ble NCLAT in Lalit Mishra vs. Sharon Bio Medicine Ltd. (Company Appeal (AT) (Insolvency) No. 164 of 2018) has held: "9. The liability of the Corporate Guarantor is co-extensive with that of the Principal Borrower and proceedings against the guarantor are maintainable even when CIRP against the principal borrower is ongoing.

p. Thus, even assuming limitation were to be reckoned from an earlier date, the same stands validly extended, and the present application filed in 2025 is well within limitation.

IV. VALID SERVICE OF INVOCATION NOTICE AND DEEMED SERVICE

q. The Corporate Debtor has attempted to raise objections regarding service of the invocation notice. The said objections are devoid of merit and are merely an attempt to evade liability. The invocation notice dated 20.01.2025 was duly dispatched by Speed Post to the last known address of the Corporate Debtor as per bank records and the postal endorsement was returned with the remark "No such firm at this address" /"Left".

r. It is a settled principle of law that service affected at the last known address constitutes valid service, and a party cannot take advantage of its own conduct in avoiding service. It is well established that "Where a notice is sent to the correct address and is returned with endorsements such as 'left', 'not found', or 'refused', service is deemed to have been effected."

s. Further, this Hon'ble Tribunal had directed the Financial Creditor to cure defects relating to service, which has been duly complied with by placing on record detailed service reports obtained from the postal authorities along with compliance affidavit.

t. That clause 20 of the Guarantee Deed states that "the Guarantors agree that the loans hereby guaranteed shall be payable to the Lead Bank on the Lead Bank serving the Guarantors with a notice requiring payment of the amount and such notice shall be deemed to have been served on the Guarantors either by actual delivery thereof to the Guarantors address herein given or any other address in India to which, the Guarantors may by written intimation given to the lead bank request the communication addressed to the Guarantors be dispatched. Any notice dispatched by the lead bank by Registered Post or Certificate of Posting to the address to which it is required to be dispatched under this clause shall be deemed to have been duly served on the Guarantors 4 days after the date of posting.

u. Further, in Paresh Rastogi . Omkara Assets Reconstruction Pvt. Ltd. and Anr. ((2025) ibclaw.in 194 NCLAT), "68. The Notices in question were sent to the last known address as stipulated in the Guarantee Deed, and such service is deemed valid under established legal principles. The Appellant's contentions regarding non-service and the alleged deficiencies in the report are without merit, as the burden of updating one's address lies with the Appellant."

v. Therefore, as per the Guarantee Deed, we have served the notice on the address mentioned therein and there is no intimation by the Guarantors regarding change of address. Further, the notice has been dispatched through registered post. Therefore, as per clause 20 r/w the above stated judgement, service made by us is a valid service and the requirement of service stands fully satisfied in law.

V. INDEPENDENT RIGHT OF CONSORTIUM MEMBER TO INITIATE CIRP

w. The Consortium Agreement explicitly provides that all member banks act jointly and severally for themselves and for and on behalf of each other.

x. That the Supplemental Working Capital Consortium Agreement (Exhibit E2 pg. 64) specifically states "All the said Bank of India, Punjab National Bank, United Bank of India, Bank of Baroda, Central Bank of India, UCO Bank, Indian Overseas Bank, Allahabad Bank, Oriental Bank of Commerce, Union Bank of India and Canara Bank are hereinafter collectively called "the said Banks" or "BOI Consortium", which expression shall, wherever the context so permits, mean and include each of them and/or any one or more of them acting jointly and severally for itself and for and on behalf of the others and shall also include the respective successors and assigns of each one or more or all of them."

y. The Deed of Guarantee dated 26.11.2015 (Exhibit-I pg. 241) is executed "in favour of Bank of India, Kanpur Mid-Corporate Branch, Birhana Road. Kanpur being the Lead Bank of "BOI Consortium" as defined in Working Capital Consortium Agreements. (Hereinafter referred to as "Lead Bank" which expression shall unless repugnant to the context or meaning thereof be deemed to include the Bank of India and other consortium member Banks constituting the "BOI Consortium" from time to time or each of them or anyone or more of them and their respective successors and assigns.)"

z. The Hon'ble NCLAT in Rajender Kumar Pahwa vs. Canara Bank & Ors. (2025) ibclaw. in 697 NCLAT has held "64. The statutory right of a financial creditor under Section 7 of the IBC is independent and cannot be restricted by consortium or inter-creditor agreements." Further, the Hon'ble NCLAT in Arunkant Rai vs. Allahabad Bank & Anr. (2020) ibclaw.in 194 NCLAT) has held "9. There is no bar in law for a bank which has declared an account as NPA to proceed under Section 7 of the Code. notwithstanding any consortium agreement between banks." It is further submitted that the existence of pari passu charge does not restrict enforcement rights. Pari passu governs distribution of proceeds and not the right to initiate proceedings. The principle of joint and several liability further entitles each lender to recover the entire debt, and any inter-se adjustments are matters between lenders and cannot be raised by the Corporate Debtor as a defense.

aa. That as the Financial Creditor i.e., declared the account of Principal Borrower as NPA on 17.07.2018, it can proceed with filing Section 7 Application even though not being the Lead Bank, as the Inter-Se agreements do not restrict the right of any individual bank to initiate recovery or insolvency proceedings, but only regulate post-recovery adjustments among lenders. Clause 5 of Inter se Agreement (Exhibit El-Page-54) states as under: "Notwithstanding anything to the contrary contained in the said Consortium Agreement and the Joint Deed of Hypothecation or arising from or by virtue or reason of or implied by the same, all moneys resulting from the enforcement or realization of the said securities by or on behalf of the said Banks and the amounts realized from any policy or policies of insurance in respect of the said securities through payable to the Borrower and any other realization from or out of the said Securities or any part thereof by enforcement of the said securities or by recourse to any special legislation for recovery of dues as may be applicable to otherwise howsoever shall be available for distribution amongst the said Banks inter se in the same proportion to their respective outstanding in the said Facilities, without any preference or priority of one over the other or others for all purposes and to all intents and shall be applied by the Lead Bank with all convenient despatch in the manner herein provided."

bb. In view of the aforesaid facts and settled position of law, it is most respectfully submitted that the present Petition deserves to be admitted forthwith. Accordingly. this Hon'ble Tribunal may be pleased to initiate Corporate Insolvency Resolution Process against the Respondent i.e. Corporate Guarantor in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016.

8. **Written Submissions (CD)**

8.1 Respondent has filed written submissions dated 12.5.2026. In the written submissions, the Respondent has stated as under:-

a) The present petition has been filed against the Corporate Debtor/ Respondent allegedly in its capacity as the Corporate Guarantor under the Deed of Guarantee dated 26.11.2015 (Ex. H at pg. 235 of Petition), in respect of the financial facilities availed by the Principal Borrower, Mis. Frost International Ltd., from time to time.

b) The Respondent most respectfully submits that the present Petition is liable to be dismissed at the threshold, as the Petitioner has failed to establish a valid invocation of the Deed of Guarantee. The Petitioner has failed to prove the service and/or delivery of the notice dated 20.01.2025 ("Alleged Invocation Notice") (Ex. O at pg. 330 of the Petition), which, as per the Petitioner's own case, constitutes the sole notice invoking the guarantee against the Respondent. In the absence of valid invocation, which is a sine qua non for maintaining the present proceedings, the instant Petition is wholly untenable in law.

c) Furthermore, the Petition is also not maintainable as it is founded upon the deliberate suppression of material documents and essential facts by the Petitioner/Finance Creditor, which are pertinent for fair and proper adjudication of the present proceedings. The Petitioner has deliberately misled this Hon'ble Tribunal, and therefore, is not entitled to maintain the present Petition.

d) It is further submitted that the Petition is ex facie not maintainable, being barred by limitation. The Petitioner has suppressed documents which would render the Petition time barred.

A. <u>The petition is not maintainable as the Financial Creditor failed to establish the service and delivery of the Alleged Invocation Notice.</u>

e) The Respondent humbly submits that it is the Petitioner's case that the Alleged Invocation Notice dated 20.01.2025 constitutes the sole and first notice invoking the guarantee against the Respondent, and that the earlier notice dated 01.09.2018 ("Original Demand Notice"), which has deliberately been suppressed by the Petitioner, was merely a "recall notice" qua the Principal Borrower. The Respondent humbly submits that, this being the case, the Financial Creditor cannot be permitted to travel beyond its own pleadings and must establish a valid invocation of the Deed of Guarantee against the Respondent through the Alleged Invocation Notice.

f) In this regard, reliance is placed upon ***Deep Nursing Home v. Manmeet Singh Mattewal & Ors., 2025 SCC Online SC 1934,*** wherein the Hon'ble Supreme Court categorically held that once the case "as pleaded and projected" is not made out, the adjudicating forum cannot build up a new case on behalf of a party or permit a party to travel beyond its pleadings. The relevant extract from the aforesaid judgment is reproduced hereunder:

> *"29. Useful reference may also be made to the observations of this Court in Trojan and Company v. Rm. N.N. Nagappa Chettiar, as long back as in the year 1953, that it is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Again, in Ram Sarup Gupta (Dead) by LRs v. Bishun Narain Inter College, this Court observed that it is well settled that no party should be permitted to travel beyond its pleadings and that all necessary and material facts should be pleaded by a party in support of the case set up by it. It was pointed out that the object and purpose of pleadings is to enable the adversary party to know the case it has to meet as, in order to*

have a fair trial, it is imperative that a party should settle the essential material facts so that the other party may not be taken by surprise.

" [Emphasis added]

g) The said principle has been reiterated in Divyagnakumari Harisinh Parmar v. Union of India, 2025 SCC OnLine SC 2064, wherein it was held that no relief can be granted on a case not founded in the pleadings, since pleadings define the scope of the dispute and crystallize the issues between the parties. The relevant extract from the aforesaid judgment is reproduced hereunder:

18. In this regard, we place our reliance on the well-entrenched principle of/aw that no relief can be granted on a case not founded in the pleadings. This Court cannot entertain an entirely new case at the appellate stage at the behest of either party and is strictly confined to adjudicate the issues arising from the suit as framed by the pleadings of the parties. 19. This rule has been consistently affirmed across time and is rooted in the every purpose o(pleadings-namely, to define the scope of the dispute and enable the court to adjudicate upon the rights of the parties. Pleadings, together with the issues framed thereon, serve to crystallise the points of conflict, ensure that each side is apprised o(the case it has to meet, and afford both parties a fair opportunity to lead evidence and advance submissions. To allow a party to depart from this framework at a belated stage would not only prejudice the opposite. [Emphasis added}.

h) The aforesaid principle has consistently been affirmed in ***Bachhaj Nahar v. Nilima Manda/, (2008) 17 SCC 491; Ram Sarup Gupta v. Bishun Narain Inter College & Ors., (1987) 2 SCC 555,· Kalyan Singh Chouhan v. C.P. Joshi, (2011) 11 SCC 786,· Shri Udhav Singh v. Madhav Rao Scindia, (1977) 1 SCC 511,· and Trojan & Co. v. RM. N.N. Nagappa Chettiar, (1953) 1 SCC 456***.

i) The Respondent humbly submits that no cogent evidence has been placed on record to establish dispatch or delivery of the Alleged Invocation Notice upon the Respondent as the Petitioner has merely relied upon an India Post tracking number annexed as Exhibit P (pg. 332 of the Petition); however, the said tracking number yields no valid tracking result and fails to demonstrate either dispatch or delivery of the notice to the Respondent.

j) It is pertinent to note that it appears that the Petitioner sought to place additional documents on record only after the observations made by this Hon 'ble Tribunal regarding the failure of the Petitioner to demonstrate the service of the Alleged Invocation Notice. Since, it was only by way of the "Compliance Affidavit of Order dated 16.09.2025" filed by the Petitioner on 10.10.2025 that the Petitioner produced certain additional documents purportedly to establish delivery/service of the demand notice. The sequence of events clearly suggests that the said documents were brought on record only subsequent to the observations of this Hon'ble Tribunal regarding the defective and incorrect "Track Consignment Report" initially relied upon by the Petitioner.

k) It is further submitted that this position stands fortified from the proceedings in the connected matter titled *Canara Bank v. Globiz Exim Pvt. Ltd., CP (IB) (IBC) 595 of 2025,* wherein this Hon'ble Tribunal, vide order dated 10.06.2025, specifically observed that the "Track Consignment Report" placed on record was not the correct tracking report, as the same reflected delivery to the addressee itself, namely Canara Bank, which is identical to the Track Consignment Report annexed to the petition in the present case.

l) The Respondent humbly submits that the Petitioner, m the Compliance Affidavit, stated that it has annexed a "detailed service report obtained from the Head Office of the Indian Postal Department along with the postal receipt. " However, a bare perusal of the said affidavit and annexures reveals that no such tracking report has been annexed. Thus, the Petitioner has not only failed to place the requisite proof of delivery of the Alleged Invocation Notice on record, but has further misled this Hon'ble Tribunal by falsely asserting that the same had been annexed.

m) Furthermore, the Compliance Affidavit filed by the Financial Creditor merely encloses an envelope, which, in the absence of any dispatch or delivery confirmation, cannot be construed as proof of service. It is imperative to note that the Financial Creditor has placed reliance on illegible handwriting on the envelope with the address of the Corporate Guarantor to establish valid service which is completely inadmissible and irrelevant under the established principles of evidence law.

n) The Respondent humbly submits that it is a settled position in law that proof of service requires reliable and comprehensive evidence such as

Acknowledgment Due (AD) card duly signed, postal receipt, complete and proper tracking report evidencing delivery or an affidavit/certificate from the postal authorities confirming such dispatch and/or delivery. In the absence of the aforesaid documents, the Financial Creditor cannot be allowed to claim the benefit of a presumption based on a handwritten endorsement on an alleged envelope without actually demonstrating valid and proper service.

o) In this regard, reliance placed on the judgement of the Hon'ble NCLAT in ***Paresh Rastogi v. Omkara Assets Reconstruction Pvt. Ltd., Company Appeal (AT) (Ins.) No. 2053 of 2024,*** is misplaced as the same is clearly distinguishable on facts. It is submitted that the said judgment must be read in the context in which it was rendered, i.e., in relation to a personal guarantor, where considerations of service are materially different. In contrast, in the present case, the Respondent is a corporate guarantor whose registered address is a matter of public record and is readily available. In fact, the Financial Creditor itself has acknowledged and disclosed the correct registered address of the Corporate Guarantor in the present Petition. Further, it is pertinent to note that the aforesaid judgement itself places reliance on the judgment of the Hon'ble Delhi High Court in ***Ajay Ahuja v. Subhiksha Trading Services Ltd., 2011 (121) DRJ 137,*** wherein service of notice was deemed to have been effected only after the plaintiff had undertaken all reasonable and diligent steps to serve the notice not merely at the last known address, but also at other relevant addresses. In the present case, no such bona fide or diligent efforts whatsoever have been demonstrated by the Financial Creditor.

p) Moreover, in the present case, there is admittedly no endorsement or certification from the postman or postal authorities evidencing any attempt at delivery, refusal, or non-service. The Financial Creditor instead seeks to rely on an illegible handwritten marking on an alleged envelope, which cannot form the basis of any legal presumption of service. It is well settled that for invoking the presumption under Section 27 of the General Clauses Act, there must be cogent and reliable evidence of proper dispatch and attempted delivery, which is conspicuously absent in the present case. Accordingly, the mandatory requirements for raising a presumption of service are not satisfied, and no adverse inference can be drawn against the Corporate Guarantor/Respondent.

q) Even otherwise, without prejudice to the aforesaid, any presumption of service is only a rebuttable presumption. In ***V.N. Bharat v. Delhi Development Authority & Anr., (2008) 17 SCC 321,*** the Hon'ble Supreme Court held that where service is asserted only on the basis of the statutory presumption under Section 114 Illustration (f) of the Evidence Act, 1872 and the addressee denies receipt, the onus of proving service shifts back to the sender. The Apex Court specifically held in para 28 that " ... *except for denial there is nothing else that the appellant could have produced to prove a negative fact"* and that on denial of receipt, the addressee discharges his onus, where after the sender must prove service by examining the postal authorities or obtaining a certificate from them showing that the registered article had been delivered to and received by the addressee. Therefore, even assuming that any presumption could arise in the present case, the same stood rebutted once the Corporate Guarantor denied receipt of the alleged invocation notice, and the burden shifted back to the Financial Creditor to demonstrate the actual service through cogent evidence, which it has failed to do.

r) The non-delivery of the alleged invocation notice is further substantiated by a bare perusal of the address mentioned in the Deed of Guarantee dated 26.11.2015, which differs from the address mentioned on the alleged envelope which is being relied upon by the Financial Creditor to claim the benefit of presumption.

s) Therefore, since the presumption of service in the present case cannot arise due to the aforesaid infirmities and, in any event, stands rebutted upon denial of receipt by the Corporate Guarantor, the Financial Creditor has utterly failed to discharge its burden, and the alleged invocation notice cannot be treated as served. Hence, in effect, the guarantee as against the Corporate Guarantor herein has never been invoked.

t) Having thus failed to establish its pleaded case, the Petitioner cannot now be permitted to shift its stand and seek to rely upon the Original Demand Notice dated O 1.09.2018 as constituting invocation of the Corporate Guarantee, particularly when the Petitioner itself has consistently characterised the said notice merely as a "recall notice" qua the Principal Borrower. Such an attempt would not only amount to travelling beyond the pleadings but would also constitute approbating and reprobating simultaneously, which is impermissible in law. Reliance is placed upon ***Union of India & Ors. v. N. Murugesan & Ors., (2022) 2 SCC 2025,*** wherein the Hon'ble Supreme Court held that a party cannot accept and reject the same position at the same time.

u) In view of the foregoing, the present Petition is liable to be dismissed as not maintainable. On the Petitioner's own pleaded case, there is no proof of valid invocation through the Alleged Invocation Notice dated 20.01.2025. If reliance is instead sought to be placed upon the Original Demand Notice dated 01.09.2018, the same is legally impermissible under settled principles governing pleadings and, in any event, renders the Petition hopelessly barred by limitation.

v) Additionally, it is also submitted that the jurisdiction of this Hon'ble Tribunal, in the present matter, is sought to be invoked solely on the premise of the Corporate Debtor acting as a Corporate Guarantor to the Principal Borrower, against whom insolvency proceedings are pending before this Hon'ble Tribunal. However, in the absence of a valid invocation of the guarantee, the jurisdiction will not survive as the registered office of the Corporate Debtor is in Kanpur.

w) In light of the above submissions, it is sufficiently clear that the Financial Creditor has failed to prove service of the notice invoking the guarantee as against the Respondent, thereby rendering the present Petition liable to be dismissed as non-maintainable.

B. Deliberate suppression of material Facts by the Financial Creditor.

x) The Respondent humbly submits that the Financial Creditor had issued the Original Demand Notice dated 01.09 .2018 to the Respondent, which constituted a valid notice invoking the guarantee against the Respondent. However, in the present Petition, the Financial Creditor has deliberately suppressed the said Original Demand Notice with the sole intent of circumventing the bar of limitation. Instead of disclosing its true nature and effect, the Financial Creditor has consistently and misleadingly characterised ed the said notice merely as a "recall notice" issued to the Principal Borrower. Such conduct amounts to suppression of material facts going to the very root of the matter and renders the Petitioner guilty of *suggestio falsi and suppressio veri*.

y) It is further submitted that the deliberate nature of such suppression is evident from the fact that the Financial Creditor neither annexed the Original Demand Notice to the Petition nor disclose ed its contents, thereby consciously attempting to withhold a document material by merely referring it as "rec all notice" to the adjudication of limitation and maintainability.

z) On the contrary, the Financial Creditor has sought to project that the Alleged Invocation Notice is the invocation of the guarantee, thereby advancing a patently misleading narrative before this Hon'ble Tribunal.

aa) In view of the foregoing, the Appellant humbly submits that, at the very least, this Hon'ble Tribunal may be pleas ed to direct the Financial Creditor to produce a copy of the aforesaid document so as to ascertain whether the same constitutes an invocation of the guarantee.

bb) The Respondent humbly submits that it is a settled principle of law that a litigant approaching a judicial forum is bound to make full and fair dis closure of all material facts. The Financial Creditor, by presenting a distorted chronology and suppressing a document has abused the adjudicatory process and is therefore dis entitled from seeking any relief from this Hon'ble Tribunal.

cc) In this regard, reliance is placed upon Oswal Fats and Oils Limited v. Additional Commissioner (Administration), Bareilly Division & Ors., (2010) 4 SCC 728, wherein the Hon'ble Supreme Court held that any person seeking relief before a Court, whether equitable or otherwise, bears a solemn obligation to make full and candid disclosure of all material facts having a bearing on the adjudication. Where a litigant is found guilty of concealing material facts or attempting to pollute the stream of justice, the Court is not only empowered but duty-bound to deny such relief. This position has been consistently affirmed in ***Ramjas Foundation & Anr. v. Union of India & Ors., (2010) 14 SCC 38; Dalip Singh v. State of Uttar Pradesh & Ors., (2010) 2 SCC 114; S.P. Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1; Nagina Ramsagar Choube & Ors. v. Ajay Mohan & Ors., Interim Application No. 2143 of 2025 in Suit No. 130 of 2025; and Mr. A. Rajendra v. Mr. Gonugunta Madhusudhan Rao & Ors., 2024 SCC OnLine NCLAT 106, which attained finality before the Hon 'hie Supreme Court in Civil Appeal Nos. 11070-11071 of 2024.***

dd) In view of the above submissions, the Respondent humbly submits that the Petition is liable to be dismissed at the threshold, as the Financial

Creditor has wilfully suppressed material documents and misrepresented the factual position regarding invocation of the guarantee, which directly impacts the limitation and maintainability of the present proceedings.

C. <u>The present petition is ex facie barred by limitation in light of the invocation of the corporate guarantee vide Original Demand Notice dated 01.09.20 18.</u>

ee) The Respondent humbly submits that even assuming that the Original Demand Notice constituted a valid invocation under the terms of the Guarantee Deed dated 26.11.2015 and the applicable law, the present Petition filed on 26.04.2025 is ex facie barred by limitation under Section 238A of the Insolvency and Bankruptcy Code, 2016 read with Article 13 7 of the Limitation Act, 1963.

ff) The Respondent humbly submits that it is a settled principle of law that where a guarantee is pay able "on demand", limitation against the guarantor commences from the date of such demand. The Hon'ble Supreme Court in ***Syndicate Bank v. Channaveerappa Beleri, (2006) 11 SCC 506,*** affirmed that in an on-demand guarantee, the creditor's cause of action to proceed against the surety arises on the date of demand. It held as follows:

"14. We have to, however, enter a caveat here. When the demand is made by the creditor on the guarantor, under a guarantee which requires a demand, as a condition precedent for the liability of the guarantor, such demand should be for payment of a sum which is legally due and recoverable from the principal debtor. If the debt has already become timebarred against

the principal debtor, the question of creditor demanding payment thereafter, for the first time, against the guarantor would not arise. When the demand is made against the guarantor, if the claim is a live claim (that is, a claim which is not barred) against the principal debtor, ***limitation in respect of the guarantor will run from the date of such demand and refusal/non-compliance, Where guarantor becomes liable in pursuance of a demand validly made in time, the creditor can sue the guarantor within three years,*** *even if the claim against the principal debtor gets subsequently time-barred .*

….[Emphasis added]

gg) In the present case, Clause I of the Deed of Guarantee dated 26.1 1.201 5 (Ex. H at pg. 235 of the Petition) expressly provides that "the Guarantors shall forthwith on demand pay to the Lead Bank ... ". The guarantee in question being an "on demand" guarantee, the same stood first and validly invoked vide the Original Demand Notice dated O 1.09.201 8, which therefore constitutes the legally operative trigger for computation of limitation against the Corporate Guarantor or at the very latest upon expiry of the stipulated five-day period, i.e., 06.09.2018 in the Original Demand Notice.

hh) Without prejudice, even if the benefit of suspension of limitation during the COVID-1 9 period is extended to the Financial Creditor, in light of the judgments passed in ***IDBI Bank Limited v. Sodhamti R Gutte, C.P. (IB) No. 871/MB/2023; Malavika Hegde v. IDBI Trusteeship Services Ltd. , 2025 SCC OnLine NCLA T 422; In Re: Cognizance for Extension of Limitation, (2020) 19 SCC 10; Arif Azim Co. Ltd. v.***

Aptech Ltd. , (2024) 5 SCC 313,· and IL&FS Financial Services v. Adhunik Meghalaya Steels Private Limited, 2025 SCC OnLine NCLAT 569, even then the outermost period for initiation of proceedings expired well prior to the filing of the present Petition on 26.04.2025. Consequently, the present Petition is hopelessly barred by limitation and liable to be dismissed on this ground alone.

A detailed computation of limitation, in light of the applicable judicial precedents, has been annexed hereto as **Annexure-A**.

ii) It is humbly submitted that with a view to circumvent the bar of limitation the Petitioner has sought to contend that since the liability of the Corporate Guarantor is co-extensive with that of the Principal Borrower, the acknowledgment of debt by the Principal Borrower would extend the limitation period against the Corporate Guarantor under Section 18 of the Limitation Act, 1963. In support thereof, reliance has been placed upon the NeSL Report (Ex. R 1, pg. 347 of the Petition) of the Principal Borrower, Mis Frost International Ltd., allegedly reflecting authentication of debt on 05.11.2023, and it has been contended that a fresh period of limitation commenced from the said date, thereby rendering the present Petition within limitation. (Pg. 2 of the Petitioner's Written Submissions dated 25.02 .2026).

jj) In this regard, the Respondent humbly submits that , as it is evident from the detailed computation annexed herein and the settled judicial precedents relied upon therein, the limitation period had already expired on 23.08.2023 and it is a settled principle of law that while Section 18 of the Limitation Act, 1963 provides for commencement of a fresh period of limitation from the date of acknowledgment of debt, it neither revives nor extends a limitation period that has already expired .. The acknowledgment of debt has to occur before the perio d of limitation expires. Reliance in this regard is placed upon ***Sampuran Singh v. Niranjan Kaur, AIR 1999 SC 1047,*** wherein the Hon'ble Supreme Court held as follows: -

> *"9 ... . Section 18, sub-section (]), itself starts with the words "Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made ...". **Thus, the acknowledgement, if anv, has to be prior to the expiration of the prescribed period for filing the suit, in other words, if the limitation has already expired, it would not revive under this Section. It is onlv during subsistence of a period of limitation, if anv, such document is executed, the limitation would be revived afresh from the said date of acknowledgement.** In the present case, admittedly the oral mortgage deed is in March 1893. If the period of limitation for filing suit for redemption is 60 years then limitation for filing a suit would expire in the year 1953. Thus, by the execution of this document dated 1 J f11 January 1960 it cannot be held by virtue of Section 18 that the period of limitation is revived afresh from this date.*
>
> *" [Emphasis added]*

kk) Furthermore, in order to bring its claim within limitation, the Respondent has also relied upon the acceptance / admission of its claim by the

Resolution Professional of the principal borrower, M/s. Frost International Ltd. on 02.03.2023 (pg. 2 of the Petitioner's Written Submissions dated 25.02.2026).

ll) At the outset, the Respondent the Petitioner's reliance upon the alleged acceptance of its cl aim in respect of the Principal Borrower by the Resolution Professional, and the consequent reflection thereof in the list of Se cured Creditors published on the website of the IBBI as on 02.03.2023, for the purpose of asserting revival or ex tension of limitation under Section 18 of the Limitation Act, 1963 is wholly misconceived, legally untenable, and contrary to the settled position of law.

mm) It is humbly submitted that a bare perusal of the said record itself demonstrates that the acceptance of the claim was expressly stated to be provisional and subject to receipt of further material or information affecting the claim amount. The relevant part of the same is reproduced hereinbelow: -

"Acceptance of the claim is subject to receipt of certain documents/clarification from the Financial Creditors in relation to interest, penal charges, agreements, contracts etc. The Analysis and findings delineated in this report are specifically subject to information received upto from OJ March 2023. The same may change subject to any material information received from the creditors affecting the claim amounts"

nn) It is humbly submitted that such conditional and tentative acknowledgment cannot, in law, constitute an unequivocal and unconditional acknowledgment of liability so as to attract Section 18 of the Limitation Act, 1963. It is a settled principle that for extension or revival of limitation, the acknowledgment must be clear, unconditional, and unequivocal, which is conspicuously absent in the present case.

oo) It is further submitted that the Petitioner has erroneously placed reliance upon the judgment in ***State Bank of India v. Gourishankar Poddar & Ors. (Comp. App. (AT)(Ins.) Nos. 689 & 663 of 2024*** to contend that verification or admission of a claim by the Resolution Professional of the Principal Borrower in its CIRP constitutes an acknowledgment of debt, thereby extending the period of limitation against the Corporate Guarantor.

pp) It is humbly submitted that the reliance on the aforementioned case is wholly misconceived and untenable, as the factual matrix of the said case is materially distinct from the present case, rendering the ratio inapplicable herein . Furthermore, in any event, the legal position now stands conclusively settled by the Hon'ble Supreme Court in **Shankar Khandelwal v. Omkara Asset Reconstruction Pvt. Ltd. & Anr., 2026 SCC OnLine SC 743,** wherein it has been categorically held that mere admission of a claim by the Resolution Professional cannot be treated as an acknowledgment of debt for the purposes of extending limitation under Section 18 of the Limitation Act, I 963. The relevant para of the decision of judgment is reproduced hereinbelow: -

> 16. The third issue pertains to legal character of the admission of a claim by the IRPIRP and whether such admission can be construed as admission of liability so as to extend the period of limitation under Section 18 of the 1963 Act. ***<u>At the outset, it must he noted that</u>***

scope and ambit of Section 18 of the 1963 Act are well-settled. For a writing to constitute a valid acknowledgment, it must be made by the party against whom the right is claimed, or by a person duly authorized on its behalf; it must he made before the expiration of the prescribed period of limitation; and, most importantly, it must evince a conscious and unequivocal intention to admit a subsisting iural relationship and an existing liability. A mere reference to a past transaction or a bald recital of a debt, without an intention to admit liability, would not suffice. The said principle has been authoritatively enunciated by this Court. The provisions of the Code and the Regulations were considered by this court and it has been held that RP has no adjudicatory powers and his role involves collation of claims. RP performs its administrative duties under Section 18 o(the Code. The admission of a claim by RP is merely an administrative/clerical task performed as part o{its statutory duties under Section 18 o(the Code and, therefore, admission of claim by RP only means induction/entry of a claim. An admission of a claim by RP is akin to mere recital/reference of debt, which does not amount to an acknowledgment under Section 18 of the 1963 Act. Therefore, IRP's admission of secured financial creditors debt in first CIRP was not an acknowledgement under Section 18 of] 963 Act. Accordingly, third issue is answered.

[Emphasis added]

qq) It is further submitted that in State Bank of India v. Gourishankar Poddar & Ors. (Supra) the same Financial Creditor had initiated proceedings against both the Principal Borrower as well as the Personal Guarantor. In contrast, the present case involves distinct Financial Creditors, namely, proceedings against the Principal Borrower having been initiated by Bank of India, whereas the present Petition has been filed by Canara Bank, and pertains to a Corporate Guarantor. Furthermore, in the said case, the acknowledgment of debt was based upon the admission of the debt/cl aim against the Principal Borrower by the Adjudicating Authority, unlike the present case where reliance is sought to be placed merely on admission of claim s by the Resolution Professional, which lacks adjudicatory sanctity.

rr) It is most respectfully submitted that the Resolution Professional does not exercise adjudicatory powers, and the mere acceptance or collation of claims by the Resolution Professioal cannot be construed as a judicial determination or admission of li ability by the Adjudicating Authority. Reliance in this regard is placed upon Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17, wherein the Hon'ble Supreme Court categorically held that the Resolution Professional does not exercise adjudicatory functions. Consequently, such acceptance of claims cannot constitute a valid acknowledgment of debt so as to extend limitation under Section 18 of the Limitation Act, 1963. Accordingly, the reliance placed by the Petitioner on the aforesaid judgment is wholly misconceived and inapplicable to the facts of the present case.

ss) In view of the foregoing submissions, it is respectfully submitted that the present Petition is fundamentally flawed, being premised on suppression of material facts and an impermissible attempt to circumvent the settled law of limitation. The cause of action, if any, arose upon invocation of the guarantee in 20 18, and the present proceedings, instituted in 2025, are ex-facie barred by limitation.

9. **ANALYSIS AND FINDINGS**

9.1. We have perused the documents as placed before us and heard both the Ld. Counsels for the FC and the CD.

9.2. The following facts emerge as undisputed from the pleadings and documents placed on record:

(i) Respondent has executed a Corporate Guarantee in favour of Consortium of Lenders for borrowings by the Principal Borrower Frost International Ltd. The said corporate guarantee was extended from time to time and the last such extension was on 26.11.2015.

(ii) Frost International Ltd. defaulted on its loan repayment obligations and its account was declared as NPA on 17.07.2018. Vide an order dated 09.03.2023, Principal Borrower was admitted to CIRP.

(iii) Financial Creditor filed recovery proceedings before the Hon'ble Debts Recovery Tribunal, Allahabad on 26.10.2018 against the principal borrower and respondent herein. The same is pending for adjudication.

(iv) The Financial Creditor issued a notice dated 20.01.2025 for invocation of Corporate Guarantee by way of demand.

(v) During the course of hearing on 28.07.2026, this Tribunal heard the learned Counsel appearing for both parties and reserved the Company Petition for Orders.

(vi) This Tribunal thereafter observed that the Applicant in the CP had pleaded that a recall notice dated 01.09.2018 was sent by it to the Corporate Debtor however the said recall notice was not on record.

(vii) Subsequently, upon seeking certain clarifications, this Tribunal vide order dated 03.08.2026 directed the Applicant to place on record the Recall Notice dated 01.09.2018 by way of an Additional Affidavit, as the same had not been produced by either party. Consequently, the matter was de-reserved.

(viii) Pursuant to the aforesaid directions, the Applicant filed an Additional Affidavit dated 04.08.2026 placing on record the Recall Notice dated 01.09.2018. A perusal of the said Recall Notice reveals that it was addressed to the Corporate Debtor at Serial No. 15 therein.

9.3 The principal disputes in this matter pertain to:

(i) Whether the guarantee was invoked on 01.09.2018?

(ii) Whether the second invocation on 20.01.2025 and an Application under Section 7 filed based on the said invocation is within limitation and proper?

9.3 On the first issue whether the guarantee was invoked on 01.09.2018, it is noticed that the Applicant has placed on record the first invocation notice through its additional affidavit dated 04.08.2026. In the said demand notice the applicant has demanded a payment of Rs. 138.32 crores due as on 31.08.2018 from the noticees.

9.4 Upon perusal of the said notice dated 01.09.2018, we observe that the Respondent herein is the noticee no. 15, the Applicant has recalled the loan and made a demand to all the noticees to pay the same within a period of 5 days.

9.5 From the language of the said notice, it is clear to us that the guarantee has been invoked by the Applicant on 01.09.2018.

9.6 Coming to the second issue, whether the invocation dated 20.01.2025 is within the limitation, we note that the limitation for filing an application under Section 7 of the Code is three years and is governed by Article 137 of the Limitation Act, 1963.

9.7 The account of the principal borrower was declared NPA on 17.07.2018. The principal borrower has been admitted to CIRP on 09.3.2023.

9.8 The claim of the Applicant herein has been admitted in the CIRP of the Principal Borrower.

9.9 We also note that from 01.09.2018 (first invocation date) till 20.01.2025, no other document has been placed by the Applicant to show how the limitation is extended.

9.10 Applicant has placed the NeSL record of default, which is under "authenticated" status. The said authentication was completed on 05.11.2023. It is the pleaded case of Applicant that authentication in the NeSL record of default extends the limitation. It is noted that at the point of time of authentication, i.e. 05.11.2023, the Principal Borrower was undergoing CIRP and was in control of the IRP/RP.

9.11 As such, a question arises: "Where a demand or recall notice has already been issued and served, whether any subsequent demand notice for the same debt and default can constitute a fresh cause of action or reset the limitation period?

9.12 The Respondent contends that in the present case, limitation can only be computed from the date of the Original Demand Notice, i.e., 01.09.2018 and considering the extension of limitation as granted by the Hon'ble Supreme Court

***In Re: Cognizance for Extension of Limitation Suo Moto* Writ Petition (Civil No. 3 of 2020,** (Covid extension), the limitation expired on 22.08.2023.

9.13 Respondent has relied upon the judgment of Hon'ble NCLAT in *Shri Mavjibhai Nagarbhai Patel v. State Bank of India*, 2024 SCC OnLine NCLAT 2014, holding that for an on-demand guarantee, the default on the part of the guarantor arises when the demand notice contemplated by the deed is issued, and limitation commences from that demand. The Tribunal observed as follows:

> *"20. Since the guarantee deed specifically mentioned that the guarantee was in the nature of an on-demand guarantee, the default was to arise on the part of the Guarantor only when the Demand Notice was issued as contemplated in the Deed of Guarantee. Thus, the period of limitation of the Personal Guarantor was to commence once the demand was made on the Guarantor by the Respondent No. 1 Bank. Hence, the Notice dated 04.06.2021 issued by the Respondent No. 1 Bank to the Personal Guarantor has to be treated to be Notice on Demand as contemplated in the Deed of Guarantee."*

9.14 In answer to the issue no. 1 as above, we have clearly held that the notice dated 01.09.2018 was a notice of demand.

9.15 The other aspect is whether the applicant has placed before us anything asserting that the limitation was extended. When we look at the pleadings, the Applicant has not placed anything on record except to state that the authentication of the debt with NESL dated 05.11.2023 further extends the limitation. This was stated by the Applicant in the written submissions.

9.16 In this regard, we also note that on the said date, the Principal Borrower was already undergoing CIRP *vide* an order dated 09.3.2023 and was in control of the IRP/RP and, therefore, authentication of debt and default by NeSL authorities was based on admission of the same by the IRP/RP acting on behalf of the principal borrower.

9.17 Learned Counsel for the Applicant has placed considerable reliance upon the Judgment of Hon'ble NCLAT in the matter of *State Bank of India vs. Gaurishankar Poddar & Ors.*, Company Appeal (AT) (Ins.) Nos. 689 & 663 of 2024, to contend that the present Petition is within limitation and that the subsequent events in the insolvency proceedings of the Principal Borrower preserve the Applicant's right to proceed against the guarantor. In the said decision, the Hon'ble NCLAT was considering the liability of a Personal Guarantor under a continuing guarantee. The Appellate Tribunal observed that where the deed of guarantee expressly provides that acknowledgements made by the principal borrower shall also bind the guarantor, such acknowledgements can be relied upon for the purposes of Sections 18 and 19 of the Limitation Act. The Appellate Tribunal further held:

> *"…the period of limitation against the guarantor starts only when a demand is raised from the guarantor specifically…"*

The aforesaid judgment, however, does not advance the Applicant's case. On the contrary, it reinforces the principle that limitation against a guarantor commences upon a valid demand. In the present case, this Tribunal has already held that such demand was admittedly made through the notice dated 01.09.2018. Unlike *Gaurishankar Poddar*, the Applicant has failed to produce any acknowledgement satisfying Section 18 of the Limitation Act after the commencement of limitation. The ratio of the said judgment, therefore, is distinguishable on facts.

9.18 The Applicant has also relied upon the Judgment of Canara Bank vs. Sanjana Uday Desai, (2025) ibclaw.in 2226 NCLT. The said decision reiterates the settled position that insolvency proceedings against a guarantor are maintainable independently of proceedings initiated against the principal borrower and that the creditor is entitled to invoke remedies available under the Code against the guarantor. We respectfully agree with the said proposition. However, the issue before us in the present Petition is not that proceedings against the Corporate Guarantor are legally impermissible. The issue before this Tribunal is confined to whether the Petition has been instituted within the period of limitation prescribed under Article 137 of the Limitation Act after invocation of the guarantee. The said judgment does not dispense with the mandatory requirement that every application under Section 7 must itself be within limitation. The said decision, therefore, does not assist the Applicant in overcoming the bar of limitation.

9.19 Reliance has further been placed on the Judgment of Hon'ble NCLAT in the matter of Lalit *Mishra vs. Sharon Bio Medicine Ltd*., Company Appeal (AT) (Insolvency) No. 164 of 2018. In the said judgment, while discussing the scheme of the IBC, the Hon'ble NCLAT observed that the object of the IBC is the resolution of insolvency and not mere recovery of money. The proposition laid down therein is well settled and requires no elaboration. However, the present controversy does not concern the objectives of the Code but the maintainability of an application under Section

7. Section 238A expressly incorporates the provisions of the Limitation Act into proceedings under the Code. A petition which is otherwise barred by limitation cannot be entertained merely because the Code is intended to facilitate insolvency resolution. The issue before us is one of maintainability on account of limitation and not the underlying objective of the legislation. The ratio of *Lalit Mishra,* therefore, has no bearing on the issue arising for determination.

9.20 Learned Counsel for the Applicant has also relied upon *Paresh Rastogi vs. Omkara Assets Reconstruction Pvt. Ltd. & Anr*., (2025) ibclaw.in 194 NCLAT, to contend that acknowledgements of liability preserve the creditor's right to initiate proceedings under the Code. There can be no dispute regarding the proposition that a valid acknowledgment made before expiry of limitation would attract Section 18 of the Limitation Act and give rise to a fresh period of limitation. However, the pre-condition is the existence of a legally valid acknowledgment by the person against whom the right is sought to be enforced. In the present case, the Applicant has not produced any acknowledgment executed by the Corporate Guarantor after the invocation dated 01.09.2018. The only circumstance relied upon is the authentication of the NeSL Record of Default on 05.11.2023, which occurred after the commencement of the CIRP of the Principal Borrower. Such authentication cannot substitute for a statutory acknowledgement of liability so as to confer a fresh period of limitation. Consequently, the ratio of *Paresh Rastogi* is inapplicable to the facts of the present case.

9.21 The Applicant has also relied upon *Rajender Kumar Pahwa vs. Canara Bank & Ors*., (2025) ibclaw.in 697 NCLAT. The said judgment also proceeds on the existence of legally sustainable material extending limitation for establishing a continuing cause of action. It does not lay down that the issuance of a second demand notice, after limitation has already commenced upon invocation of an on-demand guarantee and has expired, creates a fresh cause of action. The facts of the present case are materially different. Once the guarantee stood invoked through the demand notice dated 01.09.2018, limitation commenced upon expiry of the stipulated demand period. In the absence of any valid acknowledgement before expiry thereof, the Applicant cannot avoid the limitation merely by issuing another demand notice in January 2025.

9.22 Learned Counsel has lastly relied upon *Arunkant Rai vs. Allahabad Bank & Anr*., (2020) ibclaw.in 194 NCLAT. The principles laid down therein regarding the liability of guarantors and the maintainability of proceedings under the Code are not in dispute. However, co-extensive liability under Section 128 of the Contract Act cannot dispense with the requirement that proceedings against the guarantor must themselves be instituted within the prescribed period of limitation. The issue before this Tribunal is not whether the Corporate Guarantor is liable under the deed of guarantee, but whether such liability could still be enforced through an application filed in April 2025 after the guarantee had already been invoked in September 2018. The said judgment, therefore, has no application to the controversy involved herein.

9.23 Accordingly, none of the authorities relied upon by the Applicant dilute the settled legal principle that, in the case of an on-demand guarantee, limitation commences upon a valid invocation of the guarantee and can thereafter be extended only by a valid acknowledgement in accordance with Section 18 of the Limitation Act. As already observed, the Applicant has failed to establish any such valid acknowledgement after the invocation dated 01.09.2018. The subsequent demand notice dated 20.01.2025 cannot revive a time-barred claim.

9.24 It is important that, as per Clause 1 of the Guarantee Deed dated 12.05.2014, the guarantee executed by the CD is an on-demand guarantee. The relevant paragraph of the Guarantee Deed is reproduced hereunder:

> *"1. If at any time default shall be made by the Borrower in payment of the principal sum (not exceeding Rs 3236 crores (Rupees Three thousand two hundred and thirty six crores only) together with interest, costs, charges, expenses and/or other money for the time being due to the Lead Bank in respect of or under the abovementioned credit facilities or any of them <u>the Guarantors shall forthwith on demand pay to the lead Bank the whole of such principal sum (not exceeding Rs 3236 crores. (Rupees three thousand two hundred and thirty-six crores only) together with interest, cost, charges, expenses and/or any other money as may be then due to the Lead Bank</u> in respect of the abovementioned credit facilities and shall indemnify and keep indemnified the Lead Bank against all losses of the said principal sum, interest or other money due and all costs, charges and expenses whatsoever which the Lead Bank may incur by reason of any default on the part of the Borrower."*

(Emphasis supplied)

9.25 Respondent has relied upon the judgment of Hon'ble NCLAT in Shri Mavjibhai Nagarbhai Patel v. State Bank of India, 2024 SCC OnLine NCLAT 2014, holding that for an on-demand guarantee, the default on the part of the guarantor arises when the demand notice contemplated by the deed is issued, and limitation commences from that demand. The Hon'ble Appellate Tribunal observed as follows:

> *"20. Since the guarantee deed specifically mentioned that the guarantee was in the nature of an on-demand guarantee, the default was to arise on the part of the Guarantor only when the Demand Notice was issued as contemplated in the Deed of Guarantee. Thus, the period of limitation of the Personal Guarantor was to commence once the demand was made on the Guarantor by the Respondent No. 1 Bank. Hence, the Notice dated 04.06.2021 issued by the Respondent No. 1 Bank to the Personal Guarantor has to be treated to be Notice on Demand as contemplated in the Deed of Guarantee."*

9.26 In answer to the issue no. 1 as above, we have clearly held that the notice dated 01.09.2018 was a notice of demand and, therefore, the record of limitation of the Corporate Guarantor/CD had commenced w.e.f. 06.09.2018, i.e., on the expiry of 5 days of notice period from the date of demand notice dated 01.09.2018.

9.27 The other aspect is whether the Applicant has placed before us anything asserting that the limitation was ever extended after it had started to run from 06.09.2018. When we look at the pleadings, the Applicant has not placed anything on record except to state that the authentication of the debt with NeSL dated 05.11.2023 further extended the limitation. This was stated by the Applicant in the written submissions.

9.28 In this regard, we also note that on the said date, the Principal Borrower was already undergoing CIRP vide an order dated 09.3.2023 and was in control of the IRP/RP.

9.29 We also rely on the judgment of the Hon'ble Supreme Court in the matter of Shankar Khandelwal (supra), wherein it has been categorically held that mere admission of a claim by the Resolution Professional cannot be treated as an acknowledgement of debt for the purposes of extending limitation under Section 18 of the Limitation Act, 1963. The relevant para of the judgment is reproduced below:

> *"16. The third issue pertains to legal character of the admission of a claim by the IRP/RP and whether such admission can be construed as admission of liability so as to extend the period of limitation under Section 18 of the 1963 Act. At the outset, it must be noted that scope and ambit of Section 18 of the 1963 Act are well-settled. For a writing to constitute a valid acknowledgment, it must be made by the party against whom the right is claimed, or by a person duly authorized on its behalf; it must be made before the expiration of the prescribed period of/imitation; and, most importantly, it must evince a conscious and unequivocal intention to admit a subsisting jural relationship and an existing liability. A mere reference*

to a past transaction or a bald recital of a debt, without an intention to admit liability, would not suffice. The said principle has been authoritatively enunciated by this Court. The provisions of the Code and the Regulations were considered by this court and it has been held that RP has no adjudicatory powers and his role involves collation of claims. RP performs its administrative duties under Section 18 of the Code. ***The admission of a claim by RP is merely an administrative/clerical task performed as part of its statutory duties under Section 18 of the Code and, therefore, admission of claim by RP only means induction/entry of a claim. An admission of a claim by RP is akin to mere recital/ reference of debt, which does not amount to an acknowledgment under Section 18 of the 1963 Act. Therefore, IRP's admission of secured financial creditors debt in first CIRP was not an acknowledgement under Section 18 of the 1963 Act. Accordingly, third issue is answered****."*

9.30 In view of the above discussions, we are of the view that the second notice dated 20.01.2025 issued by the Applicant is hopelessly barred by limitation and cannot come to the rescue of the Applicant herein. The second issue is answered accordingly.

9.31 It will not be out of place to mention here that this Tribunal has rejected another application being CP (IB)/595/MB/2025 filed by the same Applicant, wherein the principal borrower was the same, the notice of invocation as per the applicant were also the same.

9.32 Accordingly, the present Application, being CP(IB)/942/MB/2025 against N. S. D. Nirman Pvt. Ltd., is hereby rejected and is disposed of. No order as to cost.

9.33 A certified copy of this order may be issued by the Registry if applied for expeditiously.

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)