

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**SINGLE BENCH**

**Under Section 95 IBC**

**IN THE MATTER OF:**

Canara Bank

V/s

Mr.Ashok B.Jiwrajka

ITEM No.301

C.P. (IB)/355(AHM)2024

.....Applicant

.....Respondent

**Under Section 95 IBC**

**IN THE MATTER OF:**

Canara Bank

V/s

Mr.Dilip B.Jiwrajka

ITEM No.302

C.P. (IB)/356(AHM)2024

.....Applicant

.....Respondent

**Under Section 95 IBC**

**IN THE AMTTER OF:**

Canara Bank

V/s.

Mr. Surendra B. Jiwrjaka

ITEM No.303

C.P. (IB)/357(AHM)2024

.....Applicant

.....Respondent

**Coram:**

Mr. Shammi Khan, Hon'ble Member(J)

**Order delivered on: 01/09/2025**

**ORDER**  
**(Hybrid Mode)**

These cases are fixed for pronouncement of orders. The common order is pronounced in the open court, vide separate sheet.

*Sd/-*

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
SINGLE BENCH, AHMEDABAD**

**CP (IB) No.355, 356, 357/NCLT/AHM/2024**

*[Company Petition under Section 95 of the Insolvency and Bankruptcy Code, 2016 r.w.Rule7 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019]*

**In the matter of Mr. ASHOK B. JIWRAJKA, Dilip B. JIWRAJKA & SURENDRA B. JIWRAJKA**

**CP (IB) No.355/NCLT/AHM/2024**

**Canara Bank**

Stressed Assets Management Branch,  
8<sup>th</sup> Floor, B-Wing, C-14, G-Block,  
Canara Bank Building, BKC,  
Mumbai-40051,

In the matter of **Mr. Ashok B. Jiwrajka**

**.....Applicant/Financial Creditor**

**VERSUS**

**Ashok B. Jiwrajka**

Having Address at Flat No.401, Raheja  
Legend, Dr. Annie Besant Road, Worli,  
Mumbai-400018.

**.... Respondent/Personal Guarantor**

**CP (IB) No.356/NCLT/AHM/2024**

**Canara Bank**

Stressed Assets Management Branch,

8<sup>th</sup> Floor, B-Wing, C-14, G-Block,  
Canara Bank Building, BKC,  
Mumbai-40051,  
In the matter of **Mr. Ashok B. Jiwrajka**

.....Applicant/Financial Creditor

**VERSUS**

**Dilip B. Jiwrajka**  
Having Address at Villa Orb,  
15<sup>th</sup> Floor, Opp. Manzoni Showroom,  
Darabshaw Lane, Off N.S.R.D.,  
Mumbai-400006.

.... Respondent/Personal Guarantor

**CP (IB) No.357/NCLT/AHM/2024**

**Canara Bank**  
Stressed Assets Management Branch,  
8<sup>th</sup> Floor, B-Wing, C-14, G-Block,  
Canara Bank Building, BKC,  
Mumbai-40051,  
In the matter of **Mr. Ashok B. Jiwrajka**

.....Applicant/Financial Creditor

**VERSUS**

**Surendra B. Jiwrajka**  
Having Address at Villa Orb,  
15<sup>th</sup> Floor, Opp. Manzoni Showroom,  
Darabshaw Lane, Off N.S.R.D.,  
Mumbai-400006.

.... Respondent/Personal Guarantor

**Order pronounced on 01.09.2025**

**C O R A M:**

**MR. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)**

**A P P E A R A N C E:**

For Applicant/FC : Mr. A.K. Mishra, Advocate.  
For the Respondents : Mr. Saurabh Soparkar, Sr. Advocate  
: a.w. Mr. Sandip Solanki, Advocate  
: Mr. Ritin Rai, Sr. Advocate a.w.  
Mr. Sandip Solanki, Advocate

**C O M M O N O R D E R**

1. The present petitions, CP (IB) No. 355 of 2024, CP (IB) No. 356 of 2024, and CP (IB) No. 357 of 2024, are filed on 09.12.2024 by Canara Bank, the Financial Creditor, under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 (IBC), read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. The petitions seek initiation of the Personal Insolvency Resolution Process (PIRP) against Mr. Ashok B. Jiwrajka, Mr. Dilip B. Jiwrajka, and Mr. Surendra B. Jiwrajka, who are personal guarantors to the Corporate Debtor, Alok Industries Ltd., for Rs. 1,229,15,19,292 as of 30.09.2024 in respect of

Deed of Guarantee dated 11.12.2014, 04.02.2016, 12.08.2016 executed by them in favour of the Applicant Bank. Since the facts and reliefs sought in all three petitions are identical, differing only in the identity of the Respondents guarantors, this Tribunal addresses them through a common order.

2. This matter has been referred by the Hon'ble President, NCLT, New Delhi exercising the power under Section 419(5) of the Companies Act r.w. Rule 60(1)(3) of the NCLT Rules, 2016, to the undersigned as a Single Bench to hear the matter on the difference of opinion, as vide order dated 07.05.2025, Court No. 2 of this Tribunal has given an order in which the Member Judicial has rejected the Company Petition filed under Section 95 of the IBC, 2016, by common order in Company Petition 355 of 2024, Company Petition 356 of 2024, and Company Petition 357 of 2024. However, the Technical Member allowed the petition, directing the appointment of a Resolution Professional (RP) and issuance of notices to lenders.

3. The Judicial Member, Mrs. Chitra Hankare, rejected the petition, holding the guarantees are inadmissible due to impounding for insufficient stamping, it is barred by limitation and the debt was extinguished by assignment under the approved Resolution Plan etc. However, the Technical Member, Dr. V.G. Venkata Chalapathy allowed the petition, finding it within the limitation considering acknowledgments and COVID-19 extensions, stamping defects curable, and the guarantor's liability subsisting despite assignment, as explicitly excluded in the Resolution Plan and Assignment Agreement. The Technical Member directed the appointment of a Resolution Professional (RP) and issuance of notices to lenders, emphasizing the continuing liability of the Respondents/Guarantors and the need for further examination.
4. The briefly stated facts of the case of the Applicant are that the Applicant/Canara Bank, the successor to Syndicate Bank following their merger, extended various credit facilities to Alok Industries Ltd. between 2005 and

2016, as part of a consortium led by the State Bank of India (SBI Consortium). These facilities included term loans, working capital limits, and other credit arrangements, with State Bank of India recognized as the lead bank.

5. The Respondents executed personal guarantees on 11.12.2014 in favor of State Bank of India, and on 04.02.2016 and 12.08.2016 in favour of SBICAP Trustee Company Limited, acting as the security trustee for the lenders, to secure these facilities. These guarantees were continuing in nature, covering the repayment of the credit facilities extended to the Corporate Debtor, including interest, costs, charges, and other expenses. The Applicant claims a default of Rs.1,229,15,19,292 as of 30.09.2024, with the date of default stated as 27.02.2015, when the Corporate Debtor's account was classified as a Non-Performing Asset (NPA) by the Applicant, following persistent defaults in repayment obligations.

6. SBICAP Trustee Company Limited invoked the guarantees dated 04.02.2016 and 12.08.2016 vide notice dated 09.04.2018. The Corporate Debtor underwent the Corporate Insolvency Resolution Process (CIRP), initiated on 18.07.2017 by the NCLT, Ahmedabad Bench. A Resolution Plan submitted by Reliance Industries Limited, JM Financial Asset Reconstruction Company Limited, and JM Finance ARC March 2018 Trust was approved on 08.03.2019 and 26.07.2019. The Applicant and Syndicate Bank (merged with Canara Bank on 04.03.2020) filed claims of Rs. 1,528,76,17,307 in Form C during the CIRP, of which Rs. 254,92,71,811 was paid, and the remaining debt was assigned to ARC Trust under an Assignment Agreement dated 05.03.2020.
7. The applicant-initiated recovery proceedings before the Debt Recovery Tribunal (DRT-II, Ahmedabad) via OA No. 999/2019 (filed 30.08.2019) and OA No. 620/2020 (filed 09.09.2020), claiming Rs. 667.23 crores and Rs. 1,020.08 crores, respectively, against the Respondents and others, based on the same guarantees. The Applicant also issued

a demand notice to the Respondents on 17.11.2023 under Rule 7(1) of the 2019 Rules, demanding repayment of the outstanding amount, to which the Respondents replied on 29.11.2023, disputing the claim on grounds of limitation, assignment, and stamp duty.

8. On presentation of the application by the Applicant Bank, Learned Senior Counsel for the Respondents appeared and filed reply on 10.12.2024, vide inward diary No.D-8879, 8880 & 8881. The Respondents raised several objections, including limitation, the applicant's locus to enforce the guarantees, the inadmissibility of the guarantee deeds due to insufficient stamping, the effect of debt assignment via the Resolution Plan and Assignment Agreement dated 05.03.2020, and allegations of forum shopping due to parallel DRT proceedings. The relevant portion of the same is reproduced as under: -

- I. *The Applicant has sought to rely on the said Guarantees dated 11th December 2014, 04th February 2016 and 12th August 2016 for filing of the present Company Petition under Section 95 of IBC. As mentioned hereinabove, the said Guarantees have been executed by SBI Cap who appears to have been appointed by the Applicant along with other lenders of the principal borrower viz. Alok Industries Limited.*

- II. It is the Applicant's case that the date of purported default insofar as the Respondents is concerned was 27th February, 2015, and hence even prima facie, the captioned Company Petition which is filed nearly 10 years after the alleged date of default, is time barred and not maintainable.
- III. It is pertinent to note that on 18th July, 2017 Corporate Insolvency Resolution Process ("CIRP") was initiated against the Principal Borrower by the Hon'ble National Company Law Tribunal, Ahmedabad ("NCLT"). Further, vide Orders dated 8th March, 2019 and 26th July, 2019, (collectively referred to as the "Plan Approval Orders"), the Hon'ble NCLT was pleased to approve the Resolution Plan dated 12th April, 2018 ("Resolution Plan") submitted by the Resolution Applicants i.e., Reliance Industries Limited, JM Financial Asset Reconstruction Company and JM Financial Asset Reconstruction Company Limited (as trustee to JM Finance ARC March, 2018 Trust) ("ARC Trust") (hereinafter jointly referred to as "Resolution Applicants").  
A copy of the order dated 18th July, 2017 is annexed as Annexure E-1 to the Company Petition. Copies of the Plan Approval Orders are annexed hereto and marked as Exhibit A Colly.  
A copy of the Resolution Plan is annexed hereto and marked as **Exhibit B**.
- IV. The Resolution Plan as part of the Corporate Insolvency Resolution of the Principal Borrower, provided vide clause 1.2 (v) (b), (A) for an amount of Rs.4852,00,00,000/- (Rupees Four Thousand Eight Hundred Fifty-Two Crores only) as the (Financial Creditors Settlement Amount) towards repayment to the Financial Creditors; and (B) an amount of Rs.200,00,00,000/- (Rupees Two Hundred Crores only) to be paid by the ARC Trust (JM Financial Asset Reconstruction Company Limited and JM Finance ARC- March 18 Trust) to the Financial Creditors, for the purchase / assignment of the "Outstanding ARC Debt" as defined in the Resolution Plan.
- V. As part of the implementation of the Resolution Plan, an Assignment Agreement dated 5th March, 2020 ("Assignment Agreement") was executed between the ARC Trust and the Financial Creditors of the Borrower

(including the Applicant herein). It is to be noted that the Applicant has inter alia duly executed the Assignment Agreement in favour of the ARC Trust under which, amongst others, the alleged debt/claim, and the underlying securities have been irrevocably and permanently assigned and transferred to the Resolution Applicants for valuable consideration and accordingly, the Applicant's alleged debt/claim stood settled pursuant to the Assignment Agreement. However, the same has been actively concealed by the Applicants herein, with a view to mislead this Hon'ble Tribunal.

A copy of the Assignment Agreement is annexed hereto and marked as **Exhibit C**.

VI. Furthermore, in the CIRP process of the Principal Borrower, the Applicant and Syndicate Bank (now merged with the Applicant) had filed their claim in Form C with the Resolution Professional of the Principal Borrower for a total amount of Rs.1528,76,17,307/- (Rupees One Thousand Five Hundred Twenty Eight Crores Seventy Six Lakhs Seventeen Thousand Three Hundred Seven only). The Applicant and Syndicate Bank have voted in favour of the Resolution Plan and as per the terms of the approved Resolution Plan, an amount of Rs.254,92,71,811/- (Rupees Two Hundred Fifty Four Crores Ninety Two Lakh Seventy One Thousand Eight Hundred Eleven Only) has been paid to the Applicant towards the amount of the admitted claim, and the entire balance outstanding debt was assigned for valuable consideration, thereby leaving no outstanding amount payable to the Applicant. Details of the Loans assigned by Applicant to the ARC Trust under the Assignment Agreement as per Schedule II of the same is mentioned herein below:

Sr No	Assign or	Facility/Loan Details		Facility Wise Admitted Amount (INR)	Financing Documents
9	Canara Bank	Loan A/c	1942773000015	258,963,804	As set out in the Form C filed
		Loan A/c	1942773000014	102,259,548	
		Loan A/c	1942773000168	655,585,653	
		Loan	1942773000167	2,747,268,	

		A/c		932	by Canara Bank with the Resolution Profes sional
		Loan A/c	1942773000205	1,045,476, 197	
		Loan A/c	1942741000295	1,108,195, 162	
		Loan A/c	1942261005264	1,507,834, 212	
		Loan A/c	1942773000218	40,512,43 6	
		Loan A/c	1942773000220	1,157,329, 753	
3 9	Syn dic ate Ba nk	CC	5000125000032 9	996,720,5 45	
		Loan A/c	0250SLB150900 001	592,949,7 15	
		Loan A/c	0250SLB140800 002	2,303,174, 868	
		Loan A/c	0250SLN061390 001	553,858,2 23	
		Loan A/c	0250SLN052280 001	34,494,63 8	
		Loan A/c	0250SL5161840 001	538,991,6 10	
		Loan A/c	0250SL5161480 001	30,078,81 1	

VII. In the meanwhile, as mentioned hereinabove, pursuant to a notification dated 04th March, 2020 (Exhibit B of the Company Petition), the erstwhile Syndicate Bank was merged into Canara Bank.

VIII. The Applicant and Syndicate Bank separately had issued the No-Objection Certificate ("NOC") vide their emails dated 21st April, 2020 and 21st July, 2020 respectively pursuant to which Charge Satisfaction Certificates were issued by the Ministry of Corporate Affairs, stating that the charges of the Principal Borrower have been satisfied pursuant to Chapter VI of the Companies Act, 2013.

Copies of the email dated 21<sup>st</sup> April, 2020 and 21<sup>st</sup> July, 2020 are annexed hereto and marked as **Exhibit D colly**.

IX. Despite the aforesaid factual scenario, it is surprising to note that even after having voted in favour of the Resolution Plan and the Resolution Plan being approved, the Applicant and Syndicate Bank have also filed separate proceedings against the Respondents before the Debts

Recovery Tribunal, Ahmedabad ("DRT"), being Original Application No. 999 of 2019 titled as Syndicate Bank vs. Ashok Jiwrajka filed on 30th August, 2019 and Ors. and Original Application No. 620 of 2020 titled as Canara Bank vs. Alok Industries Ltd. and Ors filed on 9th September, 2020, for recovery of the same alleged debt. The details of the original applications already filed before the Hon'ble DRT and which are pending adjudication are as follows:

Sr. No.	Particulars	Date of filing	Amount claimed
1.	OA No. 999 of 2019- Syndicate Bank vs Ashok B. Jiwrajka and Ors.	30th August, 2019	Rs. 667.23 Crores
2.	OA No. 620 of 2020-Canara Bank vs Alok Industries Ltd. and Ors.	9th September, 2020	Rs. 1020.08 Crores

- X. Pending the above Original Applications, and despite the claim as filed with the Resolution Professional in Form C having been satisfied in full in terms of the Resolution Plan, the Applicant without disclosing the receipt of the aforementioned amount and the assignment of the entire balance outstanding debt, has proceeded to file the present Company Petition with a view to mislead this Hon'ble Tribunal and therefore, the Company Petition deserves to be dismissed in limine.
- XI. Further, it is also pertinent to note that the Hon'ble Debt Recovery Tribunal, Ahmedabad has vide its order dated 25th October, 2019, passed in Original Application No. 533 of 2019 (case titled as Exim Bank vs. Ashok Jiwarajka and Ors.), impounded inter alia the following documents:
- (i) Deed of personal guarantee dated 04<sup>th</sup> February, 2016 and
- (ii) Deed of personal guarantee dated 12<sup>th</sup> August, 2016.
- The said order dated 25th October, 2019, duly holds that all the deeds of guarantee which have been executed

without paying requisite stamp duty, as has been the case with respect to the deeds of personal guarantee dated 04th February, 2016 and 12th August, 2016, are inadmissible and must be impounded. Based on the aforesaid reason (i.e. inadequate stamp duty), the Respondents has duly challenged the maintainability of various proceedings filed by lenders wherein reliance on these documents had been sought by the respective lenders.

A copy of the order dated 25th October, 2019 is annexed herewith and marked as **Exhibit E**.

XII. The Applicant has also concealed the fact that in light of the payment received under the Resolution Plan and the Assignment Agreement, the Applicant is no longer a lender, and has absolutely no right to recover any amount as on date of filing the Company Petition, or even at the time of issuing the Form B Demand Notice dated 17th November, 2023 and further, the creditor-debtor relationship between the Principal Borrower and the Applicant ceased to exist / came to an end simultaneously with the execution of the Assignment Agreement.

XIII. Pursuant to the Form B Demand Notice dated 17th November, 2023, the Respondents through their Advocates had written to the Applicant on 29th November, 2023 and had provided the abovementioned information in detail and had even informed them about inter alia the following documents:

i. Resolution Plan of the Principal Borrower dated 12th April, 2018

ii. Assignment Agreement dated 5th March, 2020 entered into between the lenders of the Principal Borrower and the ARC Trust

However, the submissions have been completely disregarded and not considered by the Applicant while filing the captioned petition.

A copy of the letter dated 29th November, 2023 is annexed hereto and marked as **Exhibit F**.

XIV. It is repeated and reiterated that the Applicant has stated that the date of purported default insofar as the Respondents is concerned was 27th February, 2015 and it is only on 8th November, 2024 i.e. after a lapse of almost 10(ten) years that the present Petition was filed and thus,

as enumerated herein below, the present petition suffers from delay and laches and is barred under the Limitation Act.

XV. Further, even insofar as the deed of personal guarantee dated 11<sup>th</sup> December 2014, is concerned, clearly the same has been inadequately stamped, since only Rs.100/- has been inadequately stamped, since only Rs.100/- has been paid towards stamp duty for executing the said document. Accordingly, even this deed personal guarantee dated 11<sup>th</sup> December 2014, having been inadequately stamped, is inadmissible in evidence and cannot be considered by this Hon'ble Tribunal.

XVI. Before dealing with the allegations and contentions in the Company Petition and setting out the detailed explanation of the above-mentioned grounds, a brief list of dates and events that are relevant to the present matter is mentioned herein below:-

<i>Date</i>	<i>Particulars/ Events</i>
<i>23<sup>rd</sup> March, 2013</i>	<i>The Applicant (including erstwhile Syndicate Bank) had sanctioned credit facilities to the Principal Borrower ("Facilities").</i>
<i>11<sup>th</sup> December, 2014</i>	<i>As per the terms and conditions of the Facilities, the Respondents herein executed a Deed of Guarantee dated 11<sup>th</sup> December, 2014. It is pertinent to note that no amounts were ever disbursed by the Applicant to the Respondents directly, and the Deed of Guarantee was solely for the purposes of securing the Facilities as extended to the Principal Borrower.</i>
<i>27<sup>th</sup> February, 2015</i>	<i>The Respondents purportedly defaulted in making payment towards personal guarantee obligation.</i>
<i>25<sup>th</sup> June, 2015</i>	<i>Due to continuing defaults, the account of the Principal Borrower was declared as a Non-Performing Asset by the Applicant.</i>
<i>15<sup>th</sup> June, 2017</i>	<i>The Reserve Bank of India ("RBI") identified 12 companies (including the Principal Borrower) and issued a directive to the State Bank of India ("Lead Bank") to commence insolvency resolution proceedings against these companies, in accordance with the Code</i>
<i>18<sup>th</sup> July, 2017</i>	<i>Accordingly, the Lead Bank filed a Company Petition bearing CP (IB) No. 48/7/NCLT/2017 before the NCLT, Ahmedabad for initiating CIRP</i>

	<p>against the Principal Borrower. On 18th July, 2017, the Hon'ble NCLT passed an order admitting the Petition and initiated CIRP against the Principal Borrower. Vide the said order, Hon'ble NCLT also declared a moratorium under Section 14 of the Code, inter alia, on institution of suits or continuation of pending suits or proceedings against the Principal Borrower, transferring, alienating, encumbering assets by the Principal Borrower, etc. Mr. Ajay Joshi was appointed as the Interim Resolution Professional ("IRP").</p> <p>Subsequently, the Committee of Creditor ("CoC") comprising of the Financial Creditors of the Principal Borrower, including the Applicant, was constituted and the IRP was confirmed as the Resolution Professional ("RP") by the CoC.</p>
	The Applicant filed its claim in Form C with the Resolution Professional for an amount of Rs. 1528,76,17,307/-
28 <sup>th</sup> September, 2017	The Resolution Professional published advertisements inviting Expression of Interest from prospective Resolution Applicants and laid down the criteria for the same.
12 <sup>th</sup> April, 2018	<p>The Resolution Applicants submitted the Resolution Plan dated 12 April, 2018. The Resolution Plan in clause 1.2(v)(b) provided the following as part of the corporate resolution steps:</p> <p>(A) for an amount of Rs.4852,00,00,000 (Rupees Four Thousand Eight Fifty-Two Crores) (Upfront Payment) as the Financial Creditors Settlement Amount towards repayment to the Financial Creditors; and</p> <p>(B) an amount of Rs.200,00,00,000 (Rupees Two Hundred Crores) to be paid by the ARC Trust to the Financial Creditors as consideration for the purchase/assignment of the "Outstanding ARC Debt" which was defined in the Resolution Plan.</p>
8 <sup>th</sup> March, 2019	The Resolution Plan was approved by the CoC and was thereafter, submitted before the Hon'ble NCLT. The Hon'ble NCLT approved the Resolution Plan vide Order dated 8th March, 2019.
26 <sup>th</sup> July, 2019	The Hon'ble NCLT further approved certain aspects and modifications of the Resolution Plan.
25 <sup>th</sup>	Order of Hon'ble DRT holding that all the deeds of

October 2019	guarantee which have been executed without paying requisite stamp duty, as has been the case with respect to the deeds of personal guarantee dated 04th February, 2016 and 12th August, 2016, are inadmissible and must be impounded.
4 <sup>th</sup> March 2020	Notification of the erstwhile Syndicate Bank being merged into Canara Bank
5 <sup>th</sup> March, 2020	Pursuant to the Resolution Plan, the lenders of the Principal Borrower including the Applicant herein, and the ARC Trust, entered into the Assignment Agreement dated 5th March, 2020 vide which the balance outstanding debt of the Principal Borrower amounting to Rs.22,682.60 crore was sold and assigned to the ARC Trust for consideration.
21 <sup>st</sup> April, 2020 and 21 <sup>st</sup> July, 2020	The Applicant issued the No-objection Certificate vide their email, pursuant to which Charge Satisfaction Certificates were issued by the Ministry of Corporate Affairs, stating that the charges of the Principal Borrower have been satisfied pursuant to Chapter VI of the Companies Act, 2013
17 <sup>th</sup> November, 2023	The Applicant purported to issue a Form B Demand Notice under the Code in respect of the Deed of Guarantee after 9 years from the alleged date of default.
29 <sup>th</sup> November, 2023	The Respondents through their Advocates challenged and disputed the validity of the Demand Notice and referred to the Resolution Plan, Assignment Agreement and the No Objection Certificate. However, the Applicant has filed the captioned Petition without considering and duly dealing with the information supplied by the Respondents.
8 <sup>th</sup> November, 2024	The Applicant filed the captioned Application seeking recovery of an amount of Rs.12,29,15,19,292/-

XVII. it is submitted that the present Company Petition ought to be dismissed on the following grounds which are in alternative to and without prejudice to each other-

**The Guarantees could not have been enforced by the Applicant:**

1.1 The captioned Insolvency Petition under Section 95 of the IBC has been filed by the Applicant against the Respondents seeking initiation of Insolvency Resolution Process under the Code purportedly on the basis of the

Guarantees, for an amount of Rs.12,29,15,19,292/- (Rupees One Thousand Two Hundred and Twenty Nine Crores Fifteen Lakhs Nineteen Thousand Two Hundred and Ninety Two Only) as on 30<sup>th</sup> September 2024. Before dealing with the contentions and allegations in the company petition, at the outset it is pertinent to state that the Applicant was not even a party to the deed of personal guarantee dated 11th December 2014 [Ex D1 at Pg. 29 Of the Company Petition], and insofar as the deeds of personal guarantee dated 04th February 2016 and 12th August, 2016 [Ex D2 at Pg. 44 and Ex D3 at Pg. 68 respectively of the Company Petition], are concerned, a mere perusal of these documents shows that only SBI Cap was entitled to enforce guarantee obligations under the said documents. In view of the aforesaid, it is clear that the Applicant was never entitled to enforce any obligations under the Guarantees, and it was only SBI Cap that could have enforced obligations under the deeds of guarantee dated 04th February 2016 and 12th August, 2016. The Company Petition ought to be dismissed at the threshold, on this ground alone.

**XVIII. The guarantees relied upon by the applicant are insufficiently stamped and have been impounded by competent court**

2.1 It is also pertinent to note that the Hon'ble Debt Recovery Tribunal, Ahmedabad has vide its order dated 25th October, 2019, passed in Original Application No. 533 of 2019 (case titled as Exim Bank vs. Ashok Jiwarajka and Ors.) has impounded inter alia the following documents:

(iii) Deed of personal guarantee dated 04th February, 2016; and

(iv) Deed of personal guarantee dated 12th August, 2016.

XIX. 2.2 The said order dated 25th October, 2019, duly holds that all the deeds of guarantee which have been executed without paying requisite stamp duty, as has been the case with respect to the deeds of personal guarantee dated 04th February, 2016 and 12th August, 2016, are inadmissible and must be impounded. Based on the aforesaid reason (i.e. inadequate stamp duty), the Respondents has duly challenged the maintainability of various proceedings filed

by lenders wherein reliance on these documents had been sought by the respective lenders.

A copy of the order dated 25<sup>th</sup> October, 2019 is annexed herewith and marked as **Exhibit G**.

XX. 2.3 Further, even insofar as the deed of personal guarantee dated 11th December, 2014, is concerned, clearly the same has been inadequately stamped, since only Rs. 100/- has been paid towards stamp duty for executing the said document. Accordingly, even this deed of personal guarantee dated 11th December 2014, having been inadequately stamped, is inadmissible in evidence and cannot be considered by this Hon'ble Tribunal.

**23.3 The present Company Petition suffers from delay and laches and is barred under the Limitation Act, 1963**

3.1 It is the Applicant's own pleaded case at Part III of the Petition that the alleged default has occurred on 27th February, 2015.

3.2 As per Article 55 of the Limitation Act, 1963, the starting point of limitation is the date of breach of contract and the period of limitation as provided therein is 3 (three) years.

3.3 Therefore, in the present case, the period of limitation commenced on 27th February, 2015, being the date of default and ended on 27th February, 2018, i.e. almost 7 (seven) years prior to the date of filing the Company Petition.

3.4 Further, even the Form B Demand Notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 was addressed to the Respondents only on 17th November, 2023 and thereafter, the captioned Petition was filed by the Applicant only on 8th November, 2024 i.e. almost 10 (ten) years after the default was alleged to have occurred.

3.5 Therefore, in view of the above, the present Company Petition suffers from delay and laches on account of Article

55 of the Limitation Act, 1963 read with Section 238A of the Code and is liable to be dismissed on this ground alone.

**The Applicant is not a Creditor in law and thus, has no locus to file the captioned Petition against the Respondents, thereby making the Petition defective.**

4.1 It is pertinent to note that the scheme of the IBC provides that unless the application under Section 95 is made by a creditor of the Guarantor/ Debtor, the Adjudicating Authority cannot assume jurisdiction and pass any consequential orders under Section 97 of the IBC. The determination of the status and locus of the person filing the application under Section 95 of the IBC therefore assumes the character of a jurisdictional issue, which must be decided at the threshold.

4.2 In view of the Resolution Plan of the Principal Borrower, the Applicant amongst other Financial Creditors of the Principal Borrower had agreed to receive the Upfront Payment (as defined in the Resolution Plan) towards their claim as filed before the Resolution Professional and assign their balance dues including any applicable interest thereon as set out in the Form C, to the ARC Trust.

4.3 The Relevant clauses of the Resolution Plan and the Assignment Agreement are reproduced herein below:

**Resolution Plan:**

"..1.2 (iii) An outlay of Rs.6252,00,00,000 (Rupees Six Thousand Two Hundred Fifty Two Crores) is proposed under this Plan ("Total Financial Outlay") in respect of insolvency resolution of the Company, which will comprise of:

- a) An amount of Rs.5552,00,00,000 (Rupees Five Thousand Five Hundred Fifty Two Crores), arranged by the Resolution Applicants from a third-party lender (being Yes Bank Limited), which will be extended as a loan to the Company ("Bank Loan")..."

*...1.2 (v) (b) Rs.5052,00,00,000 (Rupees Five Thousand Fifty Two Crores), less any Excess CIRP Costs determined as per Section 3.2.2 ("Financial Creditors Settlement Amount"), towards repayment to the Financial Creditors funded as follows:*

*(A) An amount of Rs.4852,00,00,000 (Rupees Four Thousand Eight Hundred Fifty Two Crores) towards repayment to the Financial Creditors, less any amount by which the aggregate of the actual CIRP Costs and the Excess CIRP Costs exceeds Rs.284,00,00,000 (Rupees Two Hundred Eighty Four Crores), from the Bank Loan;...*

*(B) An amount of Rs.200,00,00,000 (Rupees Two Hundred Crores) less the Share Transfer Consideration (if payable in accordance with Section 1.2(x) of this Plan), to be paid by the ARC Trust to the Financial Creditors, for the purchase / assignment of the "Outstanding ARC Debt", being the Outstanding Financial Debt less (a) the amount paid in terms of Section 1.2(v) (b)(A) above; and (b) Share Transfer Consideration (if payable in accordance with Section L2(x) of this Plan), and (c) the amount of unpaid loan to non-resident Financial Creditors that is written back by the Company; along with all subordinated security interests, corporate and / or personal guarantees (including any (x) security interests created by any person other than the Company; and (y) any security interests created exclusively in favour of one or more of the Financial Creditors; and (z) subsisting guarantees issued by the subsidiaries of the Company in favour of the Financial Creditors guaranteeing repayment of all or part of the Outstanding Financial Debt (the "Subsidiary Guarantees")), share pledges and any other rights and claims in relation to the Outstanding ARC Debt, provided that any third party security interests in relation to immovable properties of any person other than the Company of up to an aggregate amount of Rs. 10,00,00,000 (Rupees Ten Crores) in value shall not be assigned to the ARC Trust. Provided further that, any subsisting guarantee(s) that may have been, issue snap*

by all or any of the members of the Existing Promoter Group in favour of the Financial Creditor(s) guaranteeing repayment of all or part of the Outstanding Financial Debt (the "Existing Promoter Guarantees"), shall not be assigned to the ARC Trust...."

"...1.2 (xi) Following completion of the aforesaid steps, the Company will owe to the ARC Trust an amount equal to the Outstanding ARC Debt less the Converted Outstanding ARC Debt less the Transferred Outstanding ARC Debt.

The Bank Loan shall carry an interest at the rate of 9% - 10% (Nine Percent to Ten Percent) per annum.

The principal amount of the Bank Loan shall, unless otherwise agreed between Yes Bank Limited and the Company, be repayable within a maximum period of 8 (Eight) years from the Closing Date with a moratorium of 2 (Two) years from the Closing Date. The terms of the Bank Loan may be varied from time to time by agreement between the Company and Yes Bank Limited. Provided that, the obligations of the Resolution Applicants under the Plan shall not stand diluted as a result of such variation(s).

The Outstanding ARC Debt and/or the Transferred Outstanding ARC Debt shall not carry any interest for the first 8 (Eight) years from the Closing Date, after which the terms of such loans shall be mutually agreed among the Resolution Applicants (as relevant) and the Company. Such dues may be appropriately restructured depending on the cash flows of the Company, as may be mutually agreed among the Resolution Applicants (as relevant) and the Company. The Outstanding ARC Debt and/or the Transferred Outstanding ARC Debt shall be subordinated to the Bank Loan...."

**Assignment Agreement:**

2.1.1 "Subject to the terms and conditions set forth in this Agreement and the Resolution Plan, the Parties hereto acknowledge that provisions of SARFAESI including but not limited to section 5(3) will be applicable thereto and the conditions precedent set forth in Clause 3 of this

Agreement (Conditions Precedent) have been fulfilled by the Assignees and in consideration of the Assignee, paying the Purchase Consideration to the Assignors, and upon the terms and conditions set forth herein, and in the relevant Transaction Documents, the Assignors as the true, legal and beneficial owners of the respective Assigned Loans, hereby unconditionally and irrevocably sell, assign, transfer and release to and unto the Assignee on an "as is where is", "as is what is" and "without recourse" basis all the Assigned Loans forever together with the underlying Security Interest created under the Financing Documents in favour of the Assignee (other than the Specified Third Party Security Interest, the Outstanding Trading Dues, and the Existing Promoter Guarantees (in each case where relevant)), pursuant to Section 5(1)(b) of the SARFAESI and the provisions of the Resolution Plan forever, TO HOLD the same absolutely IN TRUST for the benefit of the holders of the Security Receipts issued by the Assignee pursuant the JMFARC - March 2018 - Trust, and the Deed TO THE END AND INTENT THAT **the Assignee shall hereafter be deemed to be the full and absolute legal owner and the only person legally entitled to the Assigned Loans** or any part thereof free from any or all encumbrances, and to recover and receive all Amounts Due under the Assigned Loans (Other than the 'Specified Third Party Security Interest, the Outstanding Trading Dues and the Existing Promoter Guarantees (in each case where relevant)), including the right to file a suit or institute such other recovery proceedings and take such other recovery proceedings and take such other action as may be required for the purpose of recovery of the Assigned Loans, in its own name and right and as an assignee, and not as a representative or agent of the Assignors and to exercise all other rights of the Assignors in relation thereto."

2.1.2 "The Assignors hereby further assign in favour of the Assignee, all their rights, title and interest in the Financing Documents; all agreements, deeds and documents related thereto and all collateral and underlying Security Interests and/or pledges created to secure, and/or guarantees issued in respect of, the repayment of the Assigned Loans, which the Assignors are entitled to..."

2.1.7 "The payment of the Purchase Consideration, over and above the Upfront Payment as per the Resolution Plan, to the Assignors shall constitute full, final and complete discharge of the obligation of the Assignee with respect to payment of Purchase Consideration for the Assigned Loans and the Assignment stated herein taking effect. The Assignors hereby admit and acknowledge the sufficiency of the Purchase Consideration and that the Assignee and the Borrower shall not be liable to pay any other amounts to the Assignors for the assignment of the Assigned Loans. It is specifically agreed that this Clause shall not in any manner affect or impair the rights of the relevant Assignor in relation to the Specified Third-Party Security Interest, the Outstanding Trading Dues and for the Existing Promoter Guarantees."

2.1.8 "Upon completion of the assignment and receipt of the Purchase Consideration in full to the satisfaction to the Assignors, the Borrower shall have no liability toward any assignor in relation to the Assigned Loans."

2.1.10 "Upon completion of the assignment, the Assignors shall have no rights or claims against the Borrower (including but not limited to, in relation to any past breaches by the Borrower) and all such Claims shall immediately, irrevocably and unconditionally stand extinguished vis-à-vis the Assignors, and all documentation executed in respect of the obligations of the Borrower towards the Assignors (and all the outstanding negotiable instruments issued by the Borrower in this regard, including demand promissory notes, post-dated cheques, ECS and letters of credit) shall immediately, irrevocably and unconditionally stand assigned/transferred to the Assignee in accordance with the Resolution Plan. However, all rights and claims of the Assignors in relation the Specified Third Party Security Interest, the Outstanding Trading Dues and the Existing Promoter Guarantees, shall remain in full force and effect."

23.1.2. Having received payments under the Resolution Plan and also having assigned and sold its outstanding debt to the ARC Trust as enumerated hereinabove, the

*Applicant relinquished its right over the debt/loans previously owed to it by Principal Borrower. The Resolution Applicant has stepped into the shoes of the Applicant in relation to these debts/loans, and hence, the Applicant did not have any legal rights or claims against the Principal Borrower for any dues or amounts as on the date of filing the Company Petition or even at the time of issuing the Form B Demand Notice dated 19th November, 2023.*

*23.1.3 Further, pursuant to the execution of the Assignment Agreement, the Applicant is no longer a lender to the Principal Borrower and the creditor-debtor relationship between the Principal Borrower and the Applicant ceased to exist / came to an end as the debt is now payable by the Principal Borrower to the ARC Trust. As per Clause 2.1 of the Resolution Plan, the Assignees are the true, legal and beneficial owners of the respective assigned loans and the therefore, the only people entitled to recover the debt. Clause 2.1 of the Resolution Plan is reproduced herein below:*

*"...in consideration of the Assignee, paying the Purchase Consideration to the Assignors, and upon the terms and conditions set forth herein and in the relevant Transaction Documents, the Assignors as the true, legal and beneficial owners of the respective Assigned Loans, hereby unconditionally and irrevocably sell, assign, transfer and release to and unto the Assignee on an "as is where is", "as is what is" and "without recourse" basis all the Assigned Loans forever, together with the underlying Security Interest..."*

*23.1.4 The same is also evidenced by the fact that the Assigned Loans continue to be shown as borrowings on the books of the Principal Borrower. A copy of the Annual Report of the Principal Borrower for the FY 2019-20 is annexed hereto and marked at Exhibit H*

*A copy of the Annual Report of the Principal Borrower for the FY 2023-24 is annexed hereto and marked as Exhibit*

*23.1.5 On a conjoint reading of IBC and Sections 126 and 128 of the Indian Contract Act, 1872, the only person*

who can enforce the guarantee is the person against whom the default to repay the debt is committed and who is otherwise entitled to recover the debt. If upon the occurrence of a default, the 'creditor', before the full and final settlement of his claims arising from the default, assigns or sells the debt, only the assignee can enforce the guarantee in respect of such debt. In no circumstances whatsoever, can the 'creditor who has assigned the right to recover the debt including any applicable interest thereon, and has accepted consideration for the same, seek to enforce the guarantee.

23.1.6 A lender therefore cannot resort to invocation of a personal guarantee when such lender has assigned the underlying loan of its own volition for a lesser amount and is now bound by the provisions of Section 31 of IBC.

23.1.7 It is germane to note that the Applicant itself had filed a claim in Form C for an amount of Rs.15,28,76,17,307/- (Rupees One Thousand Five Hundred Twenty Eight Crores Seventy Six Lakhs Seventeen Thousand Three Hundred Seven only) as already mentioned hereinabove. However, surprisingly, the Applicant has preferred a completely misconceived and erroneous Application for an alleged claim of Rs. 1229,15,19,292/- (Rupees One Thousand Two Hundred and Twenty Nine Crores Fifteen Lakhs Nineteen Thousand Two Hundred and Ninety Two Only) without disclosing the receipt of the aforementioned amount and the assignment of the entire balance outstanding debt. This clearly shows that the Company Petition had been filed as a much delayed afterthought by actively concealing the relevant facts and circumstances knowing very well that there exists no claim in favour of the Applicant post the implementation of the Resolution Plan and execution of the Assignment Agreement. Therefore, the present Company Petition deserves to be dismissed on this ground alone.

23.5 The present case is a case of assignment of the debt for valuable consideration and not extinguishment of debt:

23.5.1 It is submitted that with the execution of the Assignment Agreement, the Resolution Applicant stepped into the shoes of the Applicant and the debtor-creditor relationship between the Principal Borrower and the Applicant ceased to exist and therefore, the debt due from the Principal Borrower is no longer due or payable by the Principal Borrower to the Applicant. However, the same is payable by the Principal Borrower to the ARC Trust. It is thus, not a case where the liability of the Principal Borrower to repay the debt has been extinguished by the operation of law, but is a case where the right to recover the debt from the Principal Borrower has been sold for consideration to a third party by operation of contract.

23.5.2 Thus, the Applicant has no right to enforce any Guarantees furnished to them in respect of the debt that has been assigned by the Applicant to the ARC Trust. Any and all rights with respect to such assigned debt stand vested solely with the Resolution Applicants.

23.5.3 Under the Resolution Plan, an amount of Rs.2,54,92,71,811/-(Rupees Two Hundred Fifty Four Crores Ninety Two Lakh Seventy One Thousand Eight Hundred Eleven Only) has been received by the Applicant towards the satisfaction of its claim against the Principal Borrower. The balance loan amount was neither extinguished nor waived, the same was sold/assigned for valuable consideration to the ARC Trust and therefore, the alleged debt which is subject matter of the captioned Petition has been assigned to the ARC Trust and the Applicant by filing the present Company Petition the Applicant is seeking unjust enrich itself.

23.5.4 It is pertinent to note that the Applicant has failed to consider that the assigned loans continue to be shown as borrowings and being owed to the ARC Trust and therefore, the Principal Borrower has not been discharged of its liability to repay the debt. However, the debt has to be (and is, in fact, being) repaid to the ARC Trust, to whom the Applicant has assigned the loans owed to it.

23.5.5 It is further stated that, the assignment of the balance Outstanding ARC Debt by the Financial Creditors

to the ARC Trust as contemplated and approved in the Resolution Plan was given effect to and has been duly acted upon. Under the Resolution Plan, the assignee of the debt had full and unfettered ownership of the debt and the same has been duly reflected in the Assignment Agreement. In fact, the Resolution Plan required the assignee to exercise all rights of the ownership with regards to the debt that was purchased. The ownership rights which were exercised by the ARC Trust included the following:

(i) the transfer and assignment of Rs.5000 crores of Outstanding ARC Debt to RIL, one of the Resolution Applicants and

(ii) the monetisation of the debt in order to purchase equity shares of the Principal Borrower at the market rate (this right was to be exercised through the process of conversion of existing debt into equity).

23.5.6 The Resolution Applicants exercised their right to convert a part of the Transferred Outstanding ARC Debt and Outstanding ARC Debt respectively (as defined in the Approved Resolution Plan) into equity shares of the Principal Borrower such that RIL (115,32,00,000 equity shares) and the ARC Trust (160,14,00,000 equity shares) were allotted equity shares in the Principal Borrower.

23.5.7 The conversion of the aforesaid debt into equity shares has resulted in the total debt of the Principal Borrower to be reduced by an amount of Rs.5240.14 Crores. This is proof of the fact that the ARC Trust is the owner of the debt and that the debt is required to be and is actually being repaid.

5.5.8 It is pertinent to note that though the conversion of debt into equity was contemplated under the Resolution Plan, the same was not at a disadvantage to the Financial Creditors. The clause 1.2 (xii) of the Resolution Plan mandated the conversion to take place at the market rate. The market rate was to be the rate at which the shares of the Principal Borrower were traded on the date immediately preceding the date of conversion. By this

mechanism the Resolution Applicants were required to bring in additional capital for the purpose of ensuring revival of the Principal Borrower. This mechanism recognized the absolute ownership of the Outstanding ARC Debt being vested in the Resolution Applicants and permitted the Resolution Applicants to infuse equity into the Principal Borrower by converting a part of the Outstanding ARC Debt and Transferred Outstanding ARC Debt as defined therein. The net accounting effect of the conversion is duly reflected in the books of the Principal Borrower. This effect is visible at the two places where its effect was intended. Upon the purchase of equity shares by the Resolution Applicants the share capital of the Principal Borrower has proportionately increased. The same is seen by the proportionate increase of 275.46 crores shares reflected in the balance sheet of Principal Borrower. Upon receipt of the money towards the share capital the company has repaid an amount of Rs.5240.14 crores towards the outstanding loan amount which was transferred to RII. under clause 1.2 (ix). This nature of the transaction is duly captured in the audited accounts of the Principal Borrower and same is reflected in the Annual Report where the total outstanding debt stands reduced by an amount of Rs.5240.14 Crores.

23.5.9 This fact is further evidenced in the 2019-2020 Annual Report of the Company which clearly states:

*"in terms of the Approved Resolution Plan, payments to the Financial Creditors has been completed and the balance eligible loans have been assigned to JM Financial Asset Reconstruction Company Limited (acting as Trustees for JM Financial ARC-March-2018 Trust)."*

23.5.10 The following are the relevant provisions of the Annual Report:

*From the Directors Report to the Shareholders;*

*"(v) Assignment of the balance Outstanding Debts by Financial Creditors to JMFARC:*

In accordance with the Approved Resolution Plan, the financial creditors have assigned an amount of Rs. 22,682.60 crore to JMFARC being the balance debt eligible to be assigned. Further as per the Approved Resolution Plan, JMFARC further assigned an amount of Rs.5,000 crores to RIL..."

"...(b) DURING THE FINANCIAL YEAR 2020-21:

**(i) Transfer of Pledged shares held by outgoing Promoters of the Company:**

13,59,11,844 Equity Shares of the Company pledged, by the outgoing promoters of the Company, as security with the Financial Creditors were invoked by the Financial Creditors on behalf of JMFARC (acting in its capacity as Trustee of ARC Trust) and transferred to JMFARC (acting in its capacity as Trustee of ARC Trust).

**(ii) Conversion of debts into Equity share capital of the Company:**

In terms of the Approved Resolution Plan, JMFARC (acting in its capacity as Trustee of ARC Trust) and RIL. have converted such portion of their assigned debt into equity, such that their joint equity holding in the Company is 75%. Pursuant to such conversion, the proportionate reduction in Outstanding ARC Debt as per clause 1.2 (xii) of the Approved Resolution Plan is Rs.5240.14 crore. The price at which the conversion has taken place has been determined in accordance with the Approved Resolution Plan and applicable law and consequently, the difference between the issue of 275.46 crore equity shares at face value and the amount by which the assigned debt has been proportionately reduced as stated above has been recognised as exceptional gain in the statement of profit and loss.

<i>(Rs. In Crore)</i>		
<b>Particulars</b>	<b>As at 31<sup>st</sup> March</b>	<b>As at 31<sup>st</sup> March</b>
	,	,

	2021	2020
<b>Unsecured at amortized cost</b>		
9% optionally Convertible Preference Shares (refer note (i) below)	237.60	237.60
<b>237.60</b>		<b>237.60</b>
<b>Secured term loans at amortised cost</b>		
<i>-Term Loans (Refer (ii), (iii) and (iv) below)</i>		
From banks	5,114.98	5,110.30
From Asset Reconstruction Company (ARC)	14,517.44	22,682.60
From Body Corporate	2,866.58	-
<b>22,499.00</b>		<b>27,792.90</b>
<b>Total</b>	<b>22,736.60</b>	<b>28,030.50</b>

23.5.11 In view of the aforesaid assignment of the Outstanding ARC Debt, there can be no question of the Applicant retaining the right to enforce the Guarantees against the Respondents for recovery of the Outstanding ARC Debt. There is no provision of law under which two

creditors can exist in respect of a single debt. Therefore, the Applicant cannot be permitted to enforce any rights under the Deed of Guarantee against the Respondents, having assigned the principal debt itself, for consideration.

23.5.12 If the Applicant's contention to enforce the Deed Guarantee against the Respondents is accepted, it would result in an anomalous situation where notwithstanding the fact that the debt may have been recovered by the Assignee i.e. the Resolution Applicants from the Principal Borrower, the Assignor i.e. the Applicant, may also recover the same debt from the Respondents herein. There cannot be two persons entitled to recover the amount of the same debt, one from the principal debtor, and so long as the principal debtor was in default, and another from the surety.

23.6 The alleged default by the Principal Borrower has been cured on account of the restructuring and regularization of the Outstanding ARC Debt by the Resolution Applicant.

23.6.1 It is submitted that in any event, the enforcement of the Guarantees would happen as per the terms contained therein and as per the Guarantees, the same was contingent upon a default by the Principal Borrower.

23.6.2 However, as can be evidenced from Clause 1.2 (xi) of the Resolution Plan and as enumerated hereinabove, the Resolution Applicants have regularized and restructured the Outstanding ARC Debt which it took over from the Applicant and other Financial Creditors of the Principal Borrower.

23.6.3 It therefore follows, that even if the absurd situation of the Deed of Guarantee being severed from the underlying debt is allowed to stand no cause of action exists for the Applicant to recover under the Guarantee, since the default by the Principal Borrower has been cured through the restructuring and regularization of the underlying debt by the Resolution Applicant.

23.6.4 Therefore, the Applicant's rights to recover under the Guarantee would only accrue if there occurred a default by the Principal Borrower in repaying the Outstanding ARC Debt assigned to the Resolution Applicant, in any event, since no such default has occurred, and thus the on this ground alone, the Petition deserves to be dismissed.

23.7 The Applicant is indulging in forum shopping and has already filed proceedings before the DRT:

23.7.1 It is an admitted position of the Applicant that there are on-going proceedings filed against the Respondents, before the DRT, being Original Application No. 999 of 2019 titled as Syndicate Bank vs. Ashok Jiwrajka filed on 30th August, 2019 and Ors. and Original Application No. 620 of 2020 titled as Canara Bank vs. Alok Industries Ltd. and Ors filed on 9th September, 2020.

23.7.2 It is pertinent to note that the said proceedings before the DRT are filed on the strength of the same Guarantees in respect of which the present Company Petition has been filed and have been filed for recovery of the same alleged debt amount.

23.7.3 Therefore, pending the adjudication of the said proceedings before the DRT, the present Company Petition is nothing but an attempt at forum shopping by the Applicant for attempting recovery of the debt which it is not entitled to and therefore, this Hon'ble Tribunal ought to take the strictest view thereof and dismiss the Company Petition in limine.

XXI. In view of the facts, statements and submissions set out hereinabove, the Respondents denies each and every allegation and contention of the Applicant in the captioned Company Petition and denies that there is there is any default on behalf of the Respondents as set out in the Part III of the Company Petition. The Respondents craves leave to file any additional pleading to the company petition as may be required.

XXII. It is pertinent to note that in a similar matter in Company Petition No. 135 of 2024 titled as Small Industries

*Development Bank of India vs. Ashok B. Jiwrajka*, this Hon'ble Tribunal was pleased to dismiss the company petition filed by the petitioner therein vide order dated 1<sup>st</sup> May, 2024 where the Petitioner therein also after receipt of its dues and assigning its rights under the Assignment Agreement, had filed a Company Petition under Section 95 against the Respondents herein after gross delay of almost 8 (eight) years. A copy of the order dated 1<sup>st</sup> May, 2024 passed in CP 135 of 2024 is annexed hereto and marked as Exhibit J.

- XXIII. *The Respondents has made out a fair and justifiable case on merits as to why the Deed of Guarantee cannot be enforced and deserves to be set aside.*
- XXIV. *In view of the submissions made hereinabove, it is humbly prayed that this Hon'ble Tribunal be pleased to dismiss the captioned Company Petition with exemplary costs.*
9. The Applicant has filed its Affidavit in rejoinder on 22.01.2025, vide inward diary No.D-397 in C.P (IB) No. 355 (AHM) 2024, and in C.P(IB) 356(AHM) 2025 it was filed on 14.02.2025, vide inward diary No.D-978, and in CP(IB) 357(AHM) 2024 it was filed on 14.02.2025, vide inward diary No. D-979. The relevant portion of the same are reproduced as under:

- I. *The Applicant stated that, it is an admitted position that the corporate debtor, lok Industries Limited has availed various financial assistance to the tune of ₹45140 crores from various Banks and Financial institutions wherein the applicant is one of the lenders. The Respondents are the promoter guarantor. In view of the default committed by the borrower Alok Industries Limited, the account was classified as NPA. State Bank of India (SBI) the lead lender, had filed an application being C.P. No. 48 of 2017 before this Hon'ble Tribunal. Subsequently, by order dated*

18th July 2017, this Hon'ble Tribunal initiated CIRP against the principal borrower Alok Industries. However, lenders have not filed any processing against the Personal Guarantors before this Hon'ble Tribunal, since there is no provision in the IBC for initiating such proceeding. However, the Applicant i.e. Canara Bank & Erstwhile Syndicate Bank filed its respective recovery proceeding before the Debts Recovery Tribunal, Ahmedabad.

- II. During the pendency of the CIRP, the Applicant filed a claim of about ₹1528.76cr. Subsequently, a resolution plan dated 12th April 2018 was filed before this Hon'ble Tribunal for a total sum of ₹5052 crores jointly by Reliance Industries Limited and J M Financial Asset Reconstruction Company Limited. In terms of said plan amount of ₹4852 crore was to be paid by Reliance Industrial Limited for all the assets of the corporate debtor and Rs. 200 Cr. to be paid by the ARC Trust of the J.M. Financial ARC. In the said resolution plan, it has been specifically stated that the personal guarantees of the promoter are excluded from the assignment to the ARC Trust.
- III. In this connection it is pertinent to refer to the relevant portion of the resolution plan which at page number 108 of the reply filed by the Respondents (**Annexure B**) which is reproduced as under;
- IV. The resolution plan was accepted by the adjudicating authority by order 26<sup>th</sup> July 2019. They are relevant for dealing with the subject at Paragraph No. 27 at page no. 52-53 of the order at page reply file by the Respondents, which read as under;  
27. In this regard, this Adjudicating Authority is of the view that **Clause is 3.2.3(lil) at Page No. 19 of the Resolution Plan viz. all legal proceedings Initiated before any forum by or on behalf of the financial creditors to enforce any rights or claims against the Company/Corporate Debtor or enforce or invoke any security, interest and/or guarantee, over the assets of the Company/Corporate Debtor, shall immediately, irrevocably and unconditionally stand withdrawn, abetted, settled and/or extinguished. Provided however any rights or claims of the financial creditors with respect to Existing Promoters Guarantees shall continue**

**against such guarantors**". Approval of the Resolution Plan does not mean automatic waiver or abatement of any legal proceedings which are pending by or against the Company/ Corporate Debtor as those are the subject matter of the concerned Competent authorities having their proper/ own jurisdiction to pass any appropriate order. The Resolution of Applicants on approval of the Plan may approach the Competent Authorities/ Courts/ Legal Forums/Offices - Govt. or Semi Govt. /State or Central Govt. for appropriate relief(s) sought for in Clause No. 3.2.3 (iii) of the Resolution Plan at Page No. 19

V. Further, the Respondents has also reproduced the relevant portion of the assignment agreement dated 5th March 2020 at page number 21, and 22, which is read as under;

"2.1.7. The payment of the Purchase Consideration, over and above the Upfront Payment as per the Resolution Plan, to the Assignors shall constitute full, final and complete discharge of the obligation of the Assignee with respect to payment of Purchase Consideration for the Assigned Loans and the Assignment stated herein taking effect. The Assignors hereby admit and acknowledge the sufficiency of the Purchase Consideration and that the Assignee and the Borrower shall not be liable to pay any other amounts to the Assignors for the assignment of the Assigned Loans.

**It is specifically agreed that this Clause shall not in any manner affect or impair the rights of the relevant assignor in relation to the Specified Third-Party Security Interest, the Outstanding Trading Dues and for the Existing Promoter Guarantees.**"

VI. It is submitted that it is clear from the aforesaid paragraph of the resolution plan, the order of the adjudicating authority and the deed of assignment that rights or claims of the lenders (financial creditors) with respect to existing Promoters Guarantees shall continue against such guarantors and not assigned to the ARC Trust. The personal guarantee of the promoter is not covered in the under the resolution plan and they continue to be liable for the remaining part of the debt. The present application filed by the Applicant only after appropriation of the amount received under the resolution plan, for the balance amount due and payable to the Applicant. The applicant is entitled

to claim the same under the law and the guarantee agreement. Hence the present application has been filed. Respondents is trying to avoid its liability on the ground that the remaining part of the loan along with underlying security, having been transferred and assigned in favour of the ARC Trust, the loan is not in existence and hence application cannot be filed. However, as stated herein above, the claim of the applicant is in line with the resolution plan as approved by this Tribunal, where in the liability of the personal guarantee of the principal debtors has been specifically excluded.

**VII. B. Payments received under the Resolution Plan have not been appropriated.**

It is further submitted that, as already stated herein above after appropriation of the amount received under the resolution plan and applying subsequent interest, the present claim is for rupees Rs.1229,15, 19,292/-calculated as on 30th September 2024, filed by the applicant. It is supported by the statement of account annexed to the Present Company Petition as **Annexure-K**. Hence, the contention and allegations contrary to the statement of accounts are incorrect wrong and made with a view to avoid the claim of the Applicant.

**VIII. C. The allegation regarding forum shopping.**

I say that, it is now the settled principle of law that during the pendency of the proceeding for the recovery of the dues of a bank and finance institution, before any DRT, proceeding under IBC is maintainable and vice-versa. Hence, the allegation and contentions are de-void of any merit.

IX. It is stated that, in terms of Section 31 of the Code, a resolution plan approved by the Adjudicating Authority is binding on all stakeholders including the guarantors, and hence, the release/discharge/ composition or variance of the contract with the principal borrower in terms of a resolution plan, is "statutorily" presumed to be consented by the guarantors in question. Therefore, by way of approval of a resolution plan, any release/discharge secured by the principal borrower or entering a composition with the principal borrower cannot discharge the guarantor in any manner what so ever, even Section 135 of the

Contract Act would not be applicable. In the present case, the Resolution plan specifically excluded the Personal Guarantee of the Respondents being Promoters and provides rights to the lenders to recover its balance due. The SBI Cap Trustee as trustee for the benefit of the financial creditor, issued notice invoking guarantee by its letter dated 9th April 2018 addressed to the Respondents, is annexed hereto, and marked as "Exhibit-A" with a request to request to clear the overdue balance in its respective accounts. However, the Respondents failed to repay the dues as demanded.

- X. I say that, the Principal Debtor/ the primary obligor and a guarantor are liable on account of a single claim, the creditor can assert a claim for the full amount owned against each debtor until the creditor is paid in full. This means that in case a portion of the debt is recovered from one of the entities, either principal borrower or guarantor, the other would be liable for the unsatisfied amount of the claim, the principal borrower being joint and several with the surety. This principle is opposed to the principle prohibiting "double proof" in which the same debt is pursued against the same estate twice, leading to double payment. This right of double dip of a creditor was considered by the Hon'ble High Court of Karnataka in the matter of Pegasus Aviation Finance Company vs. Kingfisher Airlines Limited 2018(17) SCC 394, wherein the decree holders initiated simultaneous execution proceedings against both the principal debtor and the guarantor on the basis of the same decree, and the executing court Suo moto raised the issue of maintainability to hold that both the execution petitions are not simultaneously maintainable. The Hon'ble High Court, disagreed and held that the decree holders cannot be directed to amend their claims in each of the execution petitions to only half the decretal amount.
- XI. It is stated that, in the matter of State Bank of India Vs. V. Ramakrishnan & Ors., the Hon'ble Supreme Court recognized that a guarantor cannot seek a discharge of its liability on account of approval of a resolution plan, and the terms of such a plan can provide for the continuation of the debt of the guarantors. It is submitted that the continuation

of a financial creditor's claim against a guarantor would not lead to double recovery of a claim as the financial creditor would be able to recover only the balance debt which remains outstanding and unrecovered from the principal borrower. There are enough safeguards against double recovery as provided under (a) the settled principle of contract law that simultaneous remedy against the co-obligors does not permit the creditor to recover more than, the total owed to it, and (b) the provisions of the Code itself. The acknowledged practice, known as, the principle of "double dip" or the notion of dual nature of recovery by a creditor for the same debt from two entities – be it principal borrower and guarantor or co-guarantor or co-debtors. When a primary obligor and a guarantor are liable on account of a single claim, the creditor can assert a claim for the full amount owed against each debtor until the creditor is paid in full. This means that in case a portion of debt is recovered from one of the entities, either principal borrower or guarantor, the other would be liable for the unsatisfied amount of the claim, the principal borrower being joint and several with the surety.

- XII. I say that, to avoid liability the Respondents has now taken these types of lame excuses. As such as a guarantor the liability is continuing and ends with the payment of the entire dues. In the matter of *Notional Project Construction Corporation Limited v. Sandhu and Co.*, AIR 1990 P&H 300, it is held that, "A contract of guarantee is between the creditor, the principal debtor, and the surety, where under the creditor has a remedy in relation to his debt against both the principal debtor and the surety. Similarly, Hon'ble Madras High Court in the matter of *Chokolinga Chettiar v. Dandayunthapani Chottior*, AIR 1928 Mad 1262 held that," the surety here may be a corporate or a natural person and the liability of such person goes as for the liability of the principal debtor. As per section 128 of the Indian Contract Act, 1872, the liability of the surety is co-extensive with that of the principal debtor and the creditor may go against either the principal debtor, or the surety, or both, in no particular sequence. Hon'ble Supreme Court in the matter of *Bank v. Damodar Prasad*, AIR 1969 SC 297, laid down

the principle that, the liability of the principal debtor and the surety is co-extensive and is joint and several.

- XIII. It is a settled principle of law that the liability of a guarantor is coextensive, joint and several with that of the principal borrower unless the contrary is provided by the contract. A discharge which a principal borrower may secure by operation of law does not however absolve the surety from its liability. Section 128 of the Indian Contract Act, 1872 ("Contract Act") provides that the liability of a principal debtor and a surety is co-extensive, unless provided to the contrary in the contract. The word "co-extensive" is an objective for the word 'extent' and it can relate only to the quantum of the principal debt. It is submitted that, the creditor also has the liberty to proceed against the principal borrower and all sureties simultaneously. Hence, no court or co-surety can limit such a right. This proposition law has been followed in the matter of *State Bank of India v. Indexport Registered and Industrial Investment Bank of India v. Biswanath Jhunjhunwala*. Hence, until the debt is paid off to the creditor in entirety, the guarantor is not absolved of its joint and several liability to make payment of the amounts outstanding in favour of the creditor.
- XIV. Further, the guarantor's obligations are absolved nor discharged in terms of Sections 133 to 136 of the Indian Contract Act, 1872, on account of release/discharge/composition or variance of contract which a principal borrower may secure by way of operation of law for instance as under the Code. The rights of a creditor against a guarantor continue even in the event of bankruptcy or liquidation. In the matter of *Maharashtra State Electricity Board Bombay v. Official Liquidator, High Court, Ernakulum &Anr.* where this court considered the interplay of Sections 128 and 134 of the Contract Act in the facts of the case. In that case, a company whose advances were secured by a guarantee went into liquidation. The court held that the fact the principal debtor went into liquidation had no effect on the liability of the guarantor, because the discharge secured of the principal borrower was by "operation of law" and involuntary in nature. In the

matter of *Punjab National Bank v. State of UP*, the Hon'ble Supreme Court observed as under:

*"In our opinion, the principle of the aforesaid decision of this court is equally applicable in the present case. The right of the appellant to recover money from Respondents Nos. 1,2 and 3 who stood guarantors arise out of the terms of the deeds of guarantee which are not in any way superseded or brought to a naught merely because the appellant may not be able to recover money from the principal-borrower. It may here be added that even as a result of the Nationalization Act the liability of the principal-borrower does not come to an end. It is only the mode of recovery which is referred to in the said Act."*

XV. *The Hon'ble Calcutta High Court in Gouri Shankar Jain v. Punjab National Bank & Anr. held that none of the obligations of the surety under Section 133 to 139, 141 and 145 of the Contract Act are discharged on account of admission of a Section 7 application. As such, a discharge is on account of a statute and involuntary in nature. Similarly, in terms of Section 31 of the Code, a resolution plan approved by the Adjudicating Authority is binding on all stakeholders including the guarantors.*

XVI. *In the matter of State Bank of India vs. V. Ramakrishnan &Ors. The Hon'ble Supreme Court recognized that a guarantor cannot seek a discharge of its liability on account of approval of a resolution plan, and the terms of such a plan can provide for the continuation of the debt of the guarantors. It was submitted that the continuation of a financial creditor's claim against a guarantor would not lead to double recovery of a claim as the financial creditor would be able to recover only the balance debt which remains outstanding and unrecovered from the principal borrower. There are enough safeguards against double recovery as provided under (a) the settled principle of contract law that simultaneous remedy against the co-obligors does not permit the creditor to recover more than, the total debt owed to it, and (b) the provisions of the Code itself. The acknowledged practice, known as, the principle of "double dip" or the notion of dual nature of recovery by a creditor for the same debt from two entities - be it principal borrower and guarantor or co-guarantors or co-debtors.*

When a primary obligor and a guarantor are liable on account of a single claim, the creditor can assert a claim for the full amount owed against each debtor until the creditor is paid in full. This means that in case a portion of debt is recovered from one of the entities, either principal borrower or guarantor, the other would be liable for the unsatisfied amount of the claim, the principal borrower being joint and several with the surety.

XVII. The relevant paragraph of the judgment in the matter of *State Bank of India vs. Ramakrishnan*, AIR 2018 SC 387 6, paragraph 22 read as under:

"22. Section 31 of the Act was also strongly relied upon by the Respondents. This Section only states that once a Resolution Plan, as approved by the Committee of Creditors, takes effect, it shall be binding on the corporate debtor as well as the guarantor. This is for the reason that otherwise, under Section 133 of the Indian Contract Act, 1872, any change made to the debt owed by the corporate debtor, without the surety's consent, would relieve the guarantor from payment. Section 31 (1), in fact, makes it clear that the guarantor cannot escape payment as the Resolution Plan, which has been approved, may well include provisions as to payments to be made by such guarantor. This is perhaps the reason that Annexure VI(e) to Form 6 contained in the Rules and Regulation 36(2) referred to above, requires information as to personal guarantees that have been given in relation to the debts of the corporate debtor. Far from supporting the stand of the Respondents, it is clear that in point of fact, Section 31 is one more factor in favour of a personal guarantor having to pay for debts due without any moratorium applying to save him."

XVIII. **The deed of guarantee filed in the present processing has been impounded by DRT cannot be relied upon in the present proceeding.**

I say that, the processing before this Hon'ble Tribunal under IBC is not a recovery processing. In this connection, The Hon'ble Supreme Court in the matter of *Mobilox Innovations Pvt Ltd v. Kirusa Software* (2017) Supreme Court, while not directly dealing with stamp duty, emphasized that IBC is not intended to be substitute to a

recovery forum. Procedural defects should not hinder the larger purpose of insolvency resolution.

- XIX. I say that, Hon'ble National Company Law Appellate Tribunal, Principal Bench (NCLAT) through its December 22, 2023 decision in *Hiren Meghji Bharani vs Shankheshwar Properties Pvt. Ltd. & Anr.* [Company Appeal (AT) (Insolvency) No.446 of 2023], held that an application to initiate Corporate Insolvency Resolution Process (CIRP) cannot be held to be unmaintainable merely because of non-stamping. It was held that in such cases, CIRP can be initiated against the corporate debtor based on the other material on record which proves the existence of default. These other documents can be a balance sheet or any other financial document. Hence, if such documents are realised and the unstamped document is not even considered as proof, the mere existence of this document cannot mean to hold the entire CIRP application unmaintainable. In the present case, the debt has been adjudicated by this tribunal against the Principal Debtor. The resolution plan specifically states that the personal guarantee is valid and binding.
- XX. Further, Section 7 and Section 9 of the IBC lay down a clear procedure for the initiation of the CIRP by a financial creditor and an operational creditor respectively. One such provision is to furnish a record of the default with evidence of such default along with the application. In the present case, besides the exclusion of the Personal Guarantee under the resolution plan has not been assigned to the ARC Trust and there exist an acknowledgement of debt in the written statement.
- XXI. The adjudicating authorities have time and again reiterated that the non-stamping of documents will not render the CIRP unmaintainable provided other material exists on record to prove date and the default in its repayment. *Mobilox Innovations vt Ltd v. Kirusa Software* (2017) Supreme Court, while not directly dealing with stamp duty, emphasized that IBC is not intended to be substitute to a recovery forum. Procedural defects should not hinder the larger purpose of insolvency resolution. Similarly in case of the present petition under section 95 of

IBC also the same principle should be applied while initiating CIRP.

XXII. It is submitted that, National Company Law Tribunal (NCLT) time and again have observed that , held that technical defects in documentation should not prevent the admission of legitimate claims. The focus should be on the substance of the debt rather than procedural formalities. The Hon'ble National Company Law Appellate Tribunal, in various cases, has distinguished between procedural defects and substantive issues. IBC proceedings are not affected by the provisions of the Stamp Act. Technical defects in stamping do not vitiate the entire proceedings. Held hat objections regarding stamp duty cannot be grounds for ejecting an application under Section 9 of IBC. As such procedural defects can be cured and should not derail the main proceedings.

**XXIII. The deed guarantee detail 11.12.2014, 4.2.2016 and 12.8.2016 is in favour of SBI Cap Trust Company Limited (SBI Cap,) and the applicant not being signatory to the said date of guarantee cannot file the present company petition.**

It is submitted that, the Principal Borrower- Alok Industries Ltd. availed various credit facility from Banks and Financial Institutions under consortium lending. The Borrower, in terms of the sanction terms, appointed Security viz; SBI Cap Trustee Ltd. for the benefit of the lenders. All the security created for securing the financial assistance was in favour of the Security Trustee. Hence, the Security Trustee are empowered to exercise the right to invoke the guarantee and have done so by their letter dated 9th April 2019 to protect the interest of the lenders who are beneficiary. e lenders can entitled to enforce their right thereby the Trustees re discharged of their obligations.

XXIV. **The claim of the applicant is bad by limitation.**

It is submitted that, the Respondents executed Guarantee Agreements from time to time in correspondence with the numerous financial assistances as sought by the borrower. The subject deed of Personal Guarantee was executed in favour of the Security Trustees for the benefit of the lenders. Alok Industries Ltd. was making payments from

time to time in the said loan accounts, though the amount deposited are not sufficient for debt servicing. Alok Industries Ltd. continued to commit defaults in making the payments and its account was classified as Non-Performing Asset ("NPA") on 27th February, 2015. The Alok Industries Ltd. filed by the State Bank of India. under Section 7 of the Insolvency and Bankruptcy Code, 2016 which was admitted by this Hon'ble National Company Law Tribunal NCLT, Ahmedabad in CP No. 48/7 /NCLT/2017 on 18th July, 2017. The e-SYB filed an Original Application before the Hon'ble Debts Recovery Tribunal- II at Ahmedabad in the October, 2019 having OA No. 999 of 2019 against the Respondents herein after the nonpayment of the amount due. During the pendency of the pendency of the proceeding before the Hon'ble Tribunal the Respondents in their Written Statement on October, 2019. Thereafter, the Financial Creditor filed an Original Application before the Hon'ble Debts Recovery Tribunal Ahmedabad in the 9<sup>th</sup> September, 2020 having OA No.620 against the Respondents and the Respondents filed their Written Statements on 21<sup>st</sup> December, 2020 and other such documents (referred to and lied upon) were filed by both the parties. In the written statement the debt due due was acknowledged, but the liability was not accepted by the Guarantor. As per conditions post the Commencement of CIRP and after the approval of the Resolution Plan dated 8th March, 2019 the Guarantor through its advocate denied the existence of any amount which may be due to the Financial Creditor. The SBI Cap Trustee as trustee for the benefit of the financial creditor, issued notice invoking guarantee by its letter dated 9th April 2019 addressed to the Respondents, is annexed hereto and marked as "Exhibit-A" with a request to request clear the overdue balance in its respective accounts. However, the Respondents failed to repay the dues as demanded. Thereafter, the Financial Creditor issued Demand Notice dated 17<sup>th</sup> November, 2023 (Form-BJ. The - Respondents are the reply dated 29th November, 2023 to the Demand Notice dated 17th November 2023 and debt due was acknowledged, but the liability was not discharged by the

Guarantor. Hence the present application is under limitation under Section 18 of the Limitation Act, 1963

XXV. Section 18 of the Limitation Act, 1963, read as under:

**18. Effect of acknowledgment in writing.**

(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation.-For the purposes of this section,-

(a) **an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,**

(b) the word "signed" means signed either personally or by an agent duly authorized in this behalf, and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

XXVI. In the written statement dated 21st December 2020, though the Respondents agreed regarding the existence of liability as Guarantor but asserted that the same are unenforceable in view of the resolution plan approved by the Hon'ble Tribunal and upon implementation and there is nothing due and payable in view of the fact that the Loan along with underlying security has been transferred to the ARC Trust. Paragraph (w) and (z) of the written statement at page 199 and 200 of the present CP are reproduced for the sake of convenience as under:

*w.* With reference to paragraph no. 5.23, the contents therein are matter of record however, it is admitted by the Applicant itself that the Defendant Nos. 2 to 4 stood guarantors to the facility sanctioned to the Defendant No.1 only to secure the loan and not to repay the same. Furthermore, the debt is prior to the CIRP and the Applicant had received its dues under the approved Resolution Plan. Furtherance, the Applicant has assigned its further dues to the ARC Trust under the Assignment Agreement, and since, the Applicant does not possess the debt or right of the same, hence, the Applicant is in no capacity to file the QA against the Defendant Nos. 2 to 4. Additionally, it is to be noted that the Deed of Guarantee is insufficiently stamped under the applicable stamp duty. Furtherance, the Guarantee is barred by the limitation, as the same was executed in 2013 and now the Applicant cannot come after 5 (five) years have been passed to seek enforcement of the same. Hence, the OA needs to be rejected on grounds of mentioned hereinabove.

*z.* With reference to paragraph no. 5.27, 5.28, 5.29, the contents therein are a matter of evidence as far as the Defendant No. 1 is concerned and is required to be proved by the Applicant. It is to be noted that the Applicant nowhere has mentioned Defendant Nos. 2 to 4 have availed the loan or in any way is liable for the same. Additionally, the guarantees relied by the Applicant are barred by the limitation as same as alleged were executed in 2016 and now the Applicant cannot enforce the same. Furthermore, the debts mentioned therein are prior to the CIRP and the Applicant has received its dues under the approved Plan and has assigned its debt to ARC Trust under the Assignment: Agreement as follows hereunder. Hence, the Applicant does not possess the debt or right of the same of the Defendant No. 1, and thus, the Applicant is in no capacity to file the OA against the Defendant Nos. 2 to 4. Further, the onus is on the Applicant to prove that they still possess any the debts/dues of the Defendant No. 1 despite assigning the same to the ARC Trust and receiving the claims under the Resolution Plan.

XXVII. *The relevant portion of the reply dated 29th November, 2023 to the Demand Notice dated 17th November 2023 by the Respondents read as under:*

*3. The Resolution Plan of the Borrower as approved by the Hon'ble NCLT and your bank, as part of the CoC, provides as part of the Corporate Resolution Steps vide clause 1.2 (v) (b) (A) for an amount of Rs.4852,00,00,000/- (Rupees Four Thousand Eight Hundred Fifty-Two Crores only) as the (Financial Creditors Settlement Amount) towards repayment to the Financial Creditors; and (B) an amount of Rs. 200,00,00,000/- (Rupees Two Hundred Crores only) to be paid by the ARC Trust (JM Financial Asset Reconstruction Company Limited and JM Finance ARC-March 18 Trust) to the Financial Creditors, for the purchase / assignment of the "Outstanding ARC Debt" as defined in the Resolution Plan. Therefore, with respect to any outstanding debt which your bank had, the same has already been assigned for consideration under the Assignment Agreement in accordance with the Resolution Plan.*

*4. As part of the implementation of the Resolution Plan, on 5th March, 2020 an Assignment Agreement was executed between the ARC Trust and the Financial Creditors of the Borrower (including your bank) ("Assignment Agreement"). It is to be noted that your bank has duly executed the Assignment Agreement in favour of the ARC Trust under which, amongst others, the alleged claim, and the underlying securities have been irrevocably and permanently assigned and transferred by your bank to the Resolution Applicants. It is pertinent to note that your bank has duly received payment of its admitted claim against the Assigned Loans as per the terms of the approved Resolution Plan. The Assignment Agreement is a valid and fully executed contract, and your bank admittedly has no legally enforceable claim or right with respect to recovery of the Assigned Loans, including any applicable interest thereon. As on date, all rights with respect to the Assigned Loans rest solely with the Resolution Applicants. Resultantly, your bank is no more a creditor and has no right to enforce any Guarantee/security as furnished by my clients.*

- XXVIII. *It is submitted that, the averment in the written statement as mentioned herein above and the reply dated 29th November 2023 by the Respondents fall squarely under the proviso to section 18 of the Limitation Act, 1963 and hence the documents and claims are not barred by limitation.*
- XXIX. *It is settled principle of law that, a denial of liability coupled with an admission of debt can amount to acknowledgment. The acknowledgment need not admit liability if it admits the underlying jural relationship. What matters is admission of the relationship and not willingness to pay. If the existence of the debt is admitted but the payment is disputed, it's valid acknowledgment. Hence, admission of debt is important and not promise to pay. An acknowledgment can exist even with denial of liability. It consists two steps: a) Is there admission of jural relationship? b) Is there admission of subsisting debt? An admission of debt with dispute about payment terms is acknowledgment - Disputing quantum while admitting the relationship qualifies. A denial must not negate entire relationship. Further, denial of present liability while admitting past debt is acknowledgment. The technical objections to payment do not invalidate acknowledgment. The test is whether jural relationship is acknowledged.*
- XXX. *In the present case though, there is an admission of debt but disputing payment terms or acknowledging relationship as guarantor to the principal debtor but denying current liability in view of the Assignment Agreement as the Respondents claims to have been discharged of his obligation constitutes valid acknowledgment despite denial. It is only a technical objection and not a fundamental denial of the existence of debt.*
- Parawise reply**
- XXXI. *I say that, as regards the statements contained in paragraphs 1 & 3 denied. I say that, the Applicant has a right to proceed against the Respondents under the provisions of IBC.*
- XXXII. *As regards, the statements contained in paragraph nos. 2 & 4 are matter of record and need no reply.*

- XXXIII. *As regards the contention made in paragraph 5 of the reply has been dealt with by my previous paragraphs herein above and need no reply. Any statement and allegation contrary are denied. The statements and allegation content in paragraph 6 of the reply are denied.*
- XXXIV. *The statement paragraph no. 9-16 are matters of record of record and needs no reply. However, the statements contrary to what was stated here in above are denied. it is further submitted that the Respondents is trying to misguide this Tribunal Hon'ble by making incorrect statements recording the passing of the resolution plan and assignment of debt. It is submitted that, as already stated above, the resolution plan was filed jointly by Reliance Industries Limited and JM Financial Asset Reconstruction Company Limited. Reliance Industries Limited has paid a sum of ₹48052 crores for acquiring the assets under the resolution plan and J.M. Financial Asset Reconstruction Company has paid ~200 crore for acquiring the other loan along with the underlying security. However, it has been stated in the resolution plan and the order of the adjudicating Authority that personal guarantee of promoter groups are not to be assigned and they are continued to liable to the lenders. It can be seen from the Assignment Agreement which exclude the assignment of personal guarantee of the Respondents as part of the promoter group. Instead of paying the balance outstanding amount due and payable by the guarantor who are liable to pay the same, the Respondents is trying to make out a story that the personal guarantee has also been assigned in favour of JM Finance Trust and nothing is due and payable by them. This is a fraudulent act on the part of the Respondents which they have done time again as they have taken the same plea before the Hon'ble DRT with an intention to defeat or delay the recovery process of the applicant. The applicant Canara Bank and erstwhile Syndicate Bank, which is now merged with Canara Bank has filed two different original applications before the DRT Ahmedabad against the Respondents and his brothers who are also Respondents in different proceedings pending before this Hon'ble Tribunal. In the DRT proceedings, the Respondents took similar pleas with an ulterior motive, to*

defeat/ delay and defraud the\_ creators. In the above circumstances, the applicant prays that the Company Petition be admitted and CIRP process may be initiated against the Respondents.

- XXXV. As regards the statement and allegation contained in para 17 are concerned, I say that issues pending before the Hon'ble DRT cannot be decided before this Hon'ble Court. As already stated herein the plea being technical in nature as stated above, did not come in the way in deciding the present company petition at the stage of admission and appointment of the Resolution Professional.
- XXXVI. As regards the statements and allegation contain in paragraph no. 18-19 are concerned, I say that, as already stated herein above, the Respondents is trying to misguide this Hon'ble Tribunal with an ulterior motive for evading their liability under the guarantee agreements, resolution plan and the order of this Tribunal. As already stated herein above, the liability of the personal guarantor was never been assigned to the ARC Trust, again and again, the Respondents is raising the issue before various forum to evade his liability as guarantor. The personal guarantee is continuing and in force and enforceable under the law as there is enough evidence to prove the same as explained herein above. All the statements and allegations which are contrary to what has been stated herein above are denied.
- XXXVII. As regards the statement containing in paragraph nos. 20 and 21 of the reply, about the limitation for filing the present company petition are denied. We have specifically dealt with the limitation aspect in pervious paragraphs in detail and I say that the present Company Petition is well within limitation.
- XXXVIII. The statement contained in paragraph no. 22, are matters of record and need no reply.
- XXXIX. The statement allegation in para number 23.1 .1 regarding the capacity of the applicant for filing the present company petition, it is submitted that as already stated herein above that, the ARC Trust was appointed as trustee for the benefit of the lenders and all security documents are executed in favour of the Trustee. Already stated herein above, the Trustee, can only enforce the right conferred therein or the lenders, the beneficiary for whose benefit the

security trustee was appointed. Once the beneficiary exercises, its rights, trustee are discharged of their obligation. Hence, the allegations are incorrect and devoid of any merit.

XL. As regards the allegation in paragraph nos. 23.2, 23.3, I say that, the allegations have been specifically dealt with by the applicant in paragraphs herein above and hence, anything contrary to the same are denied.

XLI. As regards, the contention and allegation contained in para 23.4., I say that, it can be seen from the relevant portion of the resolution plan clause 1 .2-point B last person which read as under;

"Provider further that, any subsisting guarantee(s) that may have been, issued by all or any members of the Existing Promoters Group) in favour of the Financial Creator(s)guaranteeing repayment of all or part of the Outstanding Financial Debt (the" Existing Promoter Guarantee) shall not be assigned to ARC Trust .....

XLII. I say that, the same having been approved by this Tribunal and has been also recorded in the deed of assignment dated March 2020, at 2.1 .7 &2.1.10. which is under;

2.1.7-"..... It is specifically agreed that this Clause shall not in any manner affect or impair the rights of the relevant Assignor in relation to the Specified Third-Party Security Interest, the Outstanding Trading Dues and for the Existing Promoter Guarantees."

2.1.10 "..... However, all rights and claims of the Assignors in relation to the Specified Third-Party Security Interest, the Outstanding Trading Dues and the Existing Promoter Guarantees, shall remain in full force and effect."

XLIII. It is clear from the above that, the personal guarantee of the promoters are excluded from the assignment of debt and existing promoter's guarantee is not extinguished by virtue of the resolution plan or deed of assignment. In the facts enumerated above and the position of law as exist, the dues due under the guarantee obligations are still alive and the applicant is entitled to enforce the same. I say that any contention contrary to the above are mischievous, misleading, and made with an ulterior motive to evade liability.

- XLIV. As regards the contention and allegation contained in para no. 23.5.5, to 23.5.12 with regard to the debt assigned to the ARC Trust, I say that, the Present Company Petition or the Applicant has nothing to do with the status of the debt already assigned to ARC Trust along with underlying security assigned therein which excludes the personal guarantee of the existing promoter group has been dealt with in the manner as may be appropriate to the ARC Trust and the present applicant is not concerned with the same and do not admit the same. Further, I say that the same have no bearing on the payment of the balance amount due which is payable by the existing promoters, the Respondents herein.*
- XLV. As regards the statement and allegation contained in paragraph no. 23.6 I say that the same has been duly replied to in our previous paragraphs and needs no repetition.*
- XLVI. Hence in the above circumstances, I say that, the Company Petition may be admitted and Resolution Professional be appointed for initiating CIRP against the Respondents.*
- XLVII. I said that, the applicant reserve right to file further documents and crave the leave of this Hon'ble Tribunal to file further pleadings in this regard.*

**10.** An additional affidavit on behalf of the Financial Creditor was filed on 27.03.2025, vide inward diary No.D-2045 2046 & 2047. The relevant portion of the same are reproduced as under: -

- I. It is submitted that with regard to the stamping of the documents are concerned, the Respondents has alleged that the guarantee documents are stamped and has been impounded in the processing pending before the Hon'ble Debt Recovery Tribunal. It is submitted that their various bank and finance institutions who had financed Alok industries Limited (the Corporate Debtor) under consortium*

arrangement. The financial assistances by the lenders are secured inter alia, by way of hypothecation of the movable plant & machinery and, book debts, mortgage of the immovable properties of the Corporate Debtor &, group companies, Personal Guarantee of the Promoters/Respondents and Corporate Guarantee or the group companies. In every trench of sanction, fresh documents are executed in favour of the security trustee that is SBI Cap Trustee Company Limited (SBI CAP), who have been appointed as Trustees by the Corporate Debtor, Alok Industries Limited, for the benefit of the lenders. In each trench of sanction, the facility was secured, inter alia, Indenture of mortgage of the Corporate Debtor's immovable property, such documents executed from time to time. The Corporate Debtor also considered as indenture of mortgage as the principal document and accordingly maximum term duty was paid by the Corporate Debtor and stamp duty of Rs.200 /- is paid in all other documents. The last such transaction was for ₹1666.39 cr. and accordingly Supplemental Working Capital Consortium Agreement dated 31st August 2016 was executed pursuant to the said consortium agreement and other documents like Supplemental Deed of Hypothecation, Supplemental Deed of Guarantee was executed by the Alok infrastructure Limited and Alok Knit Exports Private Limited. Pursuant to the sanction terms of the Fifth Supplemental Working Capital Consortium Agreement. In compliance to the sanction terms, an indenture of mortgage was executed by the Corporate Debtor and its group companies was created on 27th December 2016, which of registered to the office of sub registrar assurance, Vapi at serial number BAP-10637-

2016 dated 27th December 2016. In the said indenture of mortgage, a total stamp duty of ₹4,36,83,900/- has been paid and further registration fee of ₹2,04,400/- was also paid by the Borrower Company Alok Industries Limited. A copy of the Indenture of Mortgage dated 27<sup>th</sup> December, 2016 is annexed as Annexure-A.

II. It is further submitted that, the section 4, of the Gujarat Stamp impact stamp act under;

**Section 4: Several instruments used in signal transaction of sale, mortgage or settlement.**

(1) Where, in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I for the conveyance, mortgage or settlement, and each of other instruments shall be chargeable with a duty of one hundred rupees instead of the duty (if any) prescribed for it in that schedule. (2)The parties may determine for themselves which of the instruments so employed shall, for the purposes of sub-section (1), be deemed to the principal instrument:

Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed.

Section 5: Instruments relating to several distinct matters.

Any instrument comprising or relating to several distinct matters or distinct transactions shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters or distinct transactions would be chargeable under this Act.

- III. I say that, in terms of section 4, in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I for the conveyance, mortgage or settlement, and each of other instruments shall be chargeable with a duty of one hundred rupees instead of the duty (if any) prescribed for it in that schedule. Section 4 applies when (i) a single instrument contains multiple distinct transactions (ii) these transactions are separate and not interconnected; (iii) each transaction would have been independently chargeable with stamp duty; (iv) the party may choose one of such documents as Principal Document and (v) The instrument chargeable with maximum stamp duty should be considered as Principal document. Hence in terms of the Gujarat Stamp Act, the indenture of mortgage being the document chargeable with maximum stamp duty has been considered as the principal document and accordingly maximum stamp duty has been paid in indenture of mortgage and Rs.200 /- stamp duty paid in another document.
- IV. Further, I say that, the duty of the payment of duty lies with the mortgager / corporate debtor and they have paid the same and in terms of section 4 of the Gujarat Stamp Act, 1958, the Corporate Debtor has considered the indenture of mortgager as Principal document, wherein the Respondents is the promoters and are in control of the management and aware of the stamping and now taking a wrong stand and trying to misguiding this Hon'ble Tribunal for wrongful gain.
- V. It is further submitted that while filing the recovery application before DRT, Ahmedabad, Canara Bank and

*Syndicate Bank did not enclose any of the document pertaining to the mortgage of the properties of the corporate debtor, since by that time the resolution plan has been approved, and assets of the Corporate Debtor has been transferred to the Resolution Applicant by virtue of implementation resolution plan. This documents has no relevancy in those proceeding hence these documents are not filed along with OA in the DRT, a reply from the bank the Tribunal has referred the matter for impounding of the documents. Since the document was executed in secured Security, trustee and the lender Saab only copy of the documents they file the same before they.*

VI. *It is stated that, the bank has now decided to file an application to recall this order of the Debts Recovery Tribunal and in the event the same is not recalled, it would request the SBICAP to get the document be adjudicated by the stamp authority and certificate may be obtained that no further stamp duty is payable.*

VII. *In the above circumstances, humbly prey that the pleading and the Indenture of Mortgage dated 27th December 2016 be taken on record.*

**11.** Further, a limited affidavit on behalf of the personal guarantors 31.03.2025 was filed. The relevant portion of the same are reproduced as under:

I. *It is submitted that the Applicant vide the Additional Affidavit has sought to place on record a copy of the Indenture of Mortgage dated 27th December, 2016 ("Indenture of Mortgage") inter alia executed by Alok Industries Limited i.e. the Principal Borrower, with a view to controvert the contentions raised by the Respondents herein with respect to impounding of the Deeds of Guarantees dated 4th February, 2016 and 12th August, 2016 ("Deeds*

of Guarantee") by the Hon'ble Debt Recovery Tribunal ("DRT") vide its order dated 25th October, 2019 passed in OA 533 of 2019 ("Impounding Order"). It is to be noted that the Deeds of Guarantee have stood impounded and as on date the Impounding Order has not been challenged by the Financial Creditor/Applicant herein. In fact, the contentions raised by the Financial Creditor/Applicant herein in the Additional Affidavit have no relevance in the current proceedings.

Copy of the order dated 25th October 2019 is annexed and marked as Exhibit E to the Affidavit in Reply.

- II. At the further outset it is submitted that the Indenture of Mortgage was executed by the Principal Borrower and in accordance with Section 31 and Section 32 of the Code, as on date is unenforceable by virtue of the implementation of the Resolution Plan dated 12th April, 2018 ("Resolution Plan") of the Principal Borrower.

A copy of the Resolution Plan is annexed as Exhibit B at Pg. 100 of the Affidavit in Reply.

- III. Vide the order dated 18th July, 2017 passed by this Tribunal, a Corporate Insolvency Resolution Process ("CIRP") was initiated against the Principal Borrower and vide orders dated 8th March, 2019 and 26th July, 2019 respectively, the Resolution Plan submitted by Reliance Industries Limited, JM Financial Asset Reconstruction Company and JM Financial Asset Reconstruction Company Limited (as trustee to JM Finance ARC — March, 2018 Trust) ("ARC Trust") (hereinafter jointly referred to as "Resolution Applicants") was approved by this Hon'ble Tribunal.

Copies of the orders dated 8th March, 2019 and 26th July, 2019 are annexed and marked as Exhibit A Colly in the Affidavit in Reply.

- IV. The Resolution Plan as part of the Corporate Insolvency Resolution of the Principal Borrower, provided vide clause 1.2 (v) (b), (A) for an amount of Rs.4852,00,00,000/- (Rupees Four Thousand Eight Hundred Fifty-Two Crores only) as the (Financial Creditors Settlement Amount) towards repayment to the Financial Creditors; and (B) an amount of Rs.200,00,00,000/- (Rupees Two Hundred Crores only) to be paid by the ARC Trust (JM Financial

Asset Reconstruction Company Limited and JM Finance ARC- March 18 Trust) to the Financial Creditors, for the purchase / assignment of the "Outstanding ARC Debt" as defined in the Resolution Plan.

- V. Pursuant to and as a part of the approved of the Resolution Plan, an Assignment Agreement dated 5th March, 2020 ("Assignment Agreement") was executed between the ARC Trust and the lenders of the Principal Borrower (including the Applicant herein). Under the Assignment Agreement, not only the alleged debt/claim, but even the underlying securities (including the Indenture of Mortgage) have been irrevocably and permanently assigned and transferred to the Resolution Applicants for valuable consideration and accordingly, the Applicant's alleged debt/ claim stood settled pursuant to the Assignment Agreement.

A copy of the Assignment Agreement is annexed and marked as Exhibit C in the Affidavit in Reply.

The relevant clause of the Resolution Plan is reproduced herein below:

**3.2.3. Effect of Payment of the Financial Creditors Settlement Amount**

**Upon completion of the steps outlined in Section 1.2 hereof and payment of the Financial Creditors Settlement Amount, in the manner set forth in this Plan:**

**(ii) (ii) Any and all security interest and guarantees (including: (x) the Subsidiary Guarantees; and (y) any security interests created by any person other than the Company; and (z) any security interests created exclusively in favour of one or more of the Financial Creditors, provided that any third party security interests in relation to immovable properties of any person other than the Company of up to an aggregate amount of Rs.10,00,00,000 (Rupees Ten Crores) in value shall not be assigned to the ARC Trust) created or suffered to exist or where there is a right to create such a security over the assets of the Company, to secure any obligations towards the Financial Creditors (whether by way of hypothecation, pledge, mortgage or otherwise, and including any right of re-compensate that the Financial Creditors may have)**

**including but not limited to the details as specified in Annexure D of the Information Memorandum, shall stand automatically, irrevocably and unconditionally released, discharged and terminated vis-a-vis the Financial Creditors, which security interests shall be created for the benefit of Yes Bank Limited (other than pledges on the Company's shares), and the security interests/guarantees (including: (x) the Subsidiary Guarantees; and (y) any security interests created by any person other than the Company; and (z) any security interests created exclusively in favour of one or more of the Financial Creditors, provided that any third party security interests, in-retatio to immovable properties of any person other to Company of up to an aggregate amount of Rs. 10,044000 (Rupees Ten Crores) in value shall not be assigned to the ARC Trust) shall stand assigned /transferred to the Resolution Applicants (as applicable), in accordance with this Plan, and the Financial Creditors and the Company shall make all necessary filings and notifications required under Applicable Laws to effect the same..**

- VI. By virtue of Clause 3.2.3 and the provisions of the Code, the Deed of Mortgage no longer stands secured in favour of SBICap Trustee Company Limited (the "Security Trustee") on behalf of the Financial Creditor/Applicant herein. Further, pursuant to the approval of the Resolution Plan by this Tribunal, under the provisions of Section 31(1) and 32A of the Code, the provisions of the Resolution Plan became final and binding on all stakeholders of the Principal Borrower, including the Applicant herein.
- VII. Consequently, as already stated hereinabove, all the security documents, including the Indenture of Mortgage sought to be relied upon by the Applicant herein were assigned to the ARC Trust and became unenforceable by the lenders of the Principal Borrower. In fact, this has been confirmed in the Additional Affidavit itself. All the lenders of the Principal Borrower, including the Applicant herein have even granted their No Objection Certificates.

Copies of the emails dated 21' April, 2020 and 21" July, 2020 are annexed and marked as Exhibit D Colly at page 232 of Volume 2 of Affidavit in Reply.

- VIII. Further, as already set out in the Affidavit in Reply the following Deeds of Guarantees have been impounded by the Hon'ble DRT vide its order dated 25th October, 2019 passed in OA 533 of 2019, on the grounds of insufficiency of stamp duty paid on such deeds:

Sr. No.	Deed of Guarantee impounded
1.	Deed of Guarantee dated 4th February, 2016 in favour of SBICap Trustee Company Limited <b>(Exhibit D2 at pg. 44 of CP Volume 1)</b>
2.	Deed of Guarantee dated 12th August, 2016 in favour of SBICap Trustee Company Limited <b>(Exhibit D3 at pg. 68 of CP Volume 1)</b>

- IX. Pertinently, the said Impounding Order has not been challenged by the Applicant herein, despite them being well aware of the same. This belated contention of filing an application to recall the Impounding Order by the Applicant, is also barred by limitation.
- X. Therefore, as it stands today, the Deeds of Guarantees dated 4th February, 2016 and 12t1 August, 2016 respectively, which form the basis of the Company Petition stand impounded and cannot be enforced by the Applicant. The present claim of the Financial Creditor/Applicant is solely on the basis of the Deeds of Guarantee and therefore, without the said Deeds of Guarantee, the Applicant has no other contractual right which can be enforced against the Personal Guarantor and resultanty, the Company Petition ought to be dismissed. Furthermore, as on date, the assignment of the underlying debt by the Applicant/Financial Creditor to ARC Trust belies the ability of the Applicant / Financial Creditor to seek recovery of a debt which it has assigned for consideration. Additionally, it is also pertinent to mention that the Applicant/Financial Creditor has been an assenting creditor in terms of the approval of the approved Resolution Plan and is also a signatory to the Assignment Agreement.

Copy of the voting sheet reflecting the consent of the Applicant to the Resolution Plan is annexed hereto and marked as **Exhibit A**.

XI. In any event, in the instant factual matrix, Section 4 of the Gujarat Stamp Act sought to be relied upon by the Applicant is inapplicable. The section reads as follows:

**"Section 4 - Several instruments used in singal transaction of sale, mortgage or settlement**

**(1) Where, in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I for the conveyance, mortgage or settlement, and each of other instruments shall be chargeable with a duty of one hundred rupees instead of the duty (if any) prescribed for it in that schedule.**

**(2) The parties may determine for themselves which of the instruments so employed shall, for the purposes of subsection (1), be deemed to the principal instrument:**

**Provided that the duty chargeable on the instrument so determined shall be the highest duty whiCh would be chargeable in respect of any of the said instruments employed."**

**As is evident from a bare reading of the provision, it applies only when a single transaction is carried out by means of different instruments.**

XII. .In the present case, the Indenture of Mortgage attached to the Additional Affidavit filed by the Applicant seeks to the secure a series of facility agreements. It is settled law that each such facility agreement (along with ancillary agreements securing such facility, inter alia, mortgage agreement and guarantee agreement) is a different transaction. Therefore, Section 4 of the Gujarat Stamp Act has no application. The Applicant seeks to make over broad submissions which are both factually unsubstantiated and legally untenable.

XIII. In addition to and without prejudice to the above, the Company Petition is also liable to be dismissed on the following grounds which have already been stated in the Affidavit in Reply:

**Company Petition suffers from delay and laches and is barred by limitation:**

- XIV. The Company Petition has been filed after a period of nearly 10 years from 27th February, 2015 i.e. the alleged date of default as pleaded in the Company Petition (Part III at pg 6 of CP) and nearly 6.5 years from 9th April, 2018 i.e. the date of invocation guarantee and therefore, suffers from delay and barred under Article 137 of the Limitation Act, 1963 read with Section 238A of the Code. Copies of the letters dated 9th April, 2018 invoking the Deeds of Guarantees are annexed hereto and marked as **Exhibit B**.
- XV. Further, the Applicant vide their Affidavit in Rejoinder has sought to place reliance on the Written Statements dated 4th October, 2019 and 21st December, 2020 respectively, filed by the Personal Guarantor in OA No. 999 of 2019 (Syndicate Bank vs. Ashok B. Jiwrajka and Ors.) and OA 620 of 2020 (Canara Bank vs. Alok Industries Limited and Ors.) respectively, in order to extend the period of limitation under Section 18 of the Limitation Act, 1963 by falsely contending that the Respondents Personal Guarantor by way of their Written Statements have admitted the debt but denied liability.
- XVI. However, from a bare perusal of the Written Statements, it is manifestly clear that not only has the Personal Guarantor denied the liability to pay, but has even denied the very existence of the debt and challenged the maintainability of the applications on various grounds. In any event, for the purpose of extension of limitation under Section 18 of the Limitation Act, the acknowledgement of debt needs to be absolute and unconditional and therefore, the Written Statements cannot be considered as an acknowledgement of debt, as alleged by the Applicant.
- Applicant is no longer a lender to the Principal Borrower and therefore, could not have filed the Company Petition:**
- XVII. As already stated hereinabove, by virtue of the Resolution Plan, the alleged debt amount i.e. the underlying debt amount for which the Deeds of Guarantees were purportedly executed, itself has been sold and assigned for

valuable consideration to the ARC Trust, almost 4 years prior to filing the captioned Company Petition.

XVIII. Pursuant to the execution of the Assignment Agreement, the ARC Trust stepped into the shoes of the lenders of the Principal Borrower including the Applicant herein. Further, the debt amount continues to reflect on the books of the Principal Borrower as due and payable to the ARC Trust and has not been extinguished.

XIX. Therefore, if the Applicant's contention is accepted and Company Petition is allowed, it would lead to an anomalous situation wherein one debt is being recovered twice, by two different persons, once by the ARC Trust from the Principal Borrower and once by the Applicant from the Personal Guarantor.

2The Applicant has already filed separate proceedings against the Personal Guarantor herein before the DRT, seeking recovery of the same alleged debt for which the present Company Petition has been filed. The details of the proceedings filed before the DRT are as follows:

Sr. No	Particulars	Date of Filing	Amount claimed
1.	OA 999 of 2019- Syndicate Bank vs Ashok B. Jiwarajka and Ors.	30th August, 2019	Rs. 667.23 Crores
2.	OA 620 of 2020- Canara Bank vs Alok Industries Ltd. and Ors.	9th September, 2020	Rs. 1020.08 Crores

XX. Therefore, pending the adjudication of the above proceedings which have been filed prior in time, the present proceedings are nothing more than an attempt at forum shopping by the Applicant.

**The Applicant is not a signatory to the Deeds of Guarantees relied upon by the Applicant for filing the Company Petition as the same were signed by SBICap Trustee Company Limited**

XXI. The Applicant is not a signatory to the Deeds of Guarantees which have been relied upon by the Applicant for the

purpose of filing the present Company Petition and therefore, could not have invoked the Deeds of Guarantees, let alone file the C pang Petition.

XXII. In view of the submissions made hereinabove, it is humbly prayed that this Hon'ble Tribunal be pleased to dismiss the captioned Company Petition with exemplary costs.

12. Vide an order dated 17.07.2025, this Adjudicating authority directed both sides to file consolidated written submissions. However, the Personal Guarantors has filed its written submission on 24.07.2025 and compilation of judgments in support of its contentions in defence. The relevant portion of the same is reproduced as under:

<b>Sr. No.</b>	<b>Findings on</b>	<b>Mrs. Chitra Hankare (Judicial)</b>	<b>Dr. Velamur G Venkata Chalaphthy (Technical)</b>
A.	<b>Limitation</b>	<p>¶27 @ p.23            “The date of default as per the petition is 27.02.2015. Hence, it is barred by limitation. The applicant submitted that the PG in OA No. 999 of 2019 and OA No. 620 of 2020 filed written statement acknowledging the liability. They have also relied upon demand notice dated 17.11.2023.</p> <p>¶31(f) @ p.27</p>	<p>¶8 @ p.44            “...For a Guarantor, the date of invocation of Guarantee is the date when the Default is triggered for invocation.”</p> <p>¶14 @ p.48            “14. Now the question of when the</p>

		<p><i>“Khan Bahadur Shapoor Freedom Mazda Vs. Durga Prosad Chamaria and others, 1961 AIR 1236 Wherein it was held that “The tenor of the letter shows that it is addressed by Respondents 2 as mortgagor to Respondents 1 as puisne mortgagee, it reminds him of his interest as such mortgagee in the property which would be put up for sale by the first mortgagee, and appeals to him to assist the avoidance of sale, and thus acquire the whole of the mortgagee’s interest. It is common ground that no other relationship existed between the parties at the date of this letter, and the only subsisting relationship was that of mortgagee and mortgagor. This letter acknowledges the existence of the said jural relationship and amounts to a clear acknowledgment under art. 19 of the Limitation Act.” This ruling is also relied upon by the Respondents. Further in para. no. 6 it is observed that “The statement on which a plea of acknowledgment is based must relate to a present subsisting liability though the exact nature or the specific character of the said liability may not be indicated in words. Words used in the acknowledgment must,</i></p>	<p><i>Contract (Renewed on restructuring starts) of the Guarantor with the Lender (Applicant) starts for the purpose of Limitation. The guarantee document as not denied by Respondents has started on 12 August 2016. For the purpose of Limitation of the underlying debt, the Corporate CD is stated to have acknowledged the debt on 27 June 2017. The Lenders (One of them) initiated the CIRP by filing the application under Sec 7 of IBC 2016 on June 29, 2017 which was within the period of limitation for the purpose of initiation of CIRP against CD. As per the acknowledgment of debt, the application was to be filed before 26 June 2020. The Respondents CD</i></p>
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		<p>however, indicate the existence of jural relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made with the intention to admit such jural relationship.”</p> <p><b>¶31(h) @ p.28</b>  “State Bank of India Vs. Nikunj Bothra, C.P. (IB)/262(KB)2022, NCLT, Kolkata Bench Wherein it was held that if no CIRP is initiated against principal borrower, the application in respect of Respondents PG under Section 95 of IBC is not maintainable. So, also application was held to be not maintainable on the point of limitation. So, these observations are against the applicant and favouring Respondents. “</p> <p><b>¶31(i) @ p.29</b>  “i. In Tilak Ram and Ors. Vs. Nathu and Ors., AIR 1967 Supreme Court 935 It was observed that: “The words used in the acknowledgment must indicate the jural relationship between the parties and it must appear that such a statement is made with the intention of admitting that jural relationship. Such an intention, no doubt, can be inferred by implication from the nature of the admission and need not be in express words.” It was further observed that “The document thus</p>	<p>appeared before the Tribunal and had no defence and had no funds to pay the debts and hence CIRP was admitted on 18 July 2017. This becomes the trigger of default of a CD who was restructured on a scheme of the regulator and a fresh set of repayment schedule and the guarantor agreement was executed and by law has not repaid the debt and insolvency process has been initiated. “</p> <p><b>(¶16 @ p.49).</b></p> <p>“16. If we hypothetically reckon the date of inability to pay the debt by the CD can be reckoned for the simplicity of invoking the guarantee, the date is 26th July 2019 and within 3 years of limitation (when not specified in the guarantee of its claim period law of limitation</p>
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	<p>cannot be said to be one made with the intention of admitting the jural relationship between him as the successor-in-title of Dharamdas and the successors-in-title of the said Teja."</p> <p>It was further observed that "These statements were clearly made for the purpose of describing his own rights which he was selling under this deed. But there is nothing in this document to show that he referred to the said mortgages with the intention of admitting his jural relationship with his mortgagors and, therefore, of his subsisting liability as the mortgagee thereunder of being redeemed." It was further observed that "The plaint in suit, the statement as to Parmeshwardas having sold his mortgage rights to the plaintiffs was made with a view to trace their own rights as against the defendants and not with any consciousness or intention to admit the jural relationship between them or to admit the fact of the said mortgages being subsisting at the time when the plaint was filed. The statement in the plaint was made not in relation to the said mortgages but with reference to their own rights under the said deed of sale of mortgage rights in their favour. The fourth</p>	<p>sets in) the date of invocation of Guarantee should have been invoked by recalling the unpaid amount by CD on 25 July 2022. "</p> <p><b>¶17 @ p.49</b>  "Now we move to the Suo Motu benefit arrived through the Hon'ble Supreme Court Order for COVID 19 debts due. Whether the Guarantee also becomes a debt due, and the creditor has to claim the amount and guarantor to pay the amount, the date gets extended from 15.3.2020 till 28.02.2022 and is on the affirmative. If we reckon the date from 26th July 2019 (date of approval of resolution plan), this application is filed within limitation. If we reckon the date of approval of resolution plan by CD on 12 April 2018, then</p>
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		<p>document is the written statement in Suit No. 50 of 1903 where the right of the plaintiffs in that suit to redeem has been specifically denied. The statement, therefore, cannot be availed of as an acknowledgment of a subsisting jural relationship or of a subsisting right and a corresponding liability of being redeemed." The said judgment submitted by the petitioner is against the Respondents as the Respondents has clearly denied their liability to pay the guaranteed amount in their written statement before the DRT, Ahmedabad. "</p> <p><b>¶33 @ p.32</b></p> <p>"The Applicant also relied upon Suo Moto judgment of the Hon'ble Supreme Court in Mano. 21 of 2022 in MA NO. 665 of 2021 in SMW© no. 3 of 20 for seeking benefit of extension of limitation available during Covid period, However, the limitation period in this case is expired much prior to covid period, there is no question of extending any benefit to the applicant for covid period"</p> <p><b>¶34 (i and ii) @ p.33 &amp; 34</b></p> <p>" 34 The Respondents also relied upon another two judgments (one is cited supra) which are as under: i. "In River Steamer Co.</p>	<p>the application has not been filed within period of limitation but whether notice was issued to the suspended management who were not discharged under adjudicated under Sec 31 of IBC 2016. If we reckon the date of admitting the CIRP, being 18 July 2017 there was no notice issued to guarantors or the CD was not declared insolvent or suspended management had opportunity to repay its debt. Further the applicant has submitted the Form D, the date of submission being 25.2.2020 which is authenticated and replied by the Respondents as 'disputed' on 4.7.2022. Thereby the applicant has established the debt and default on the guarantor within the period</p>
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		<p>Mitchell's claim – Court of Appeal in Chancery (1871) L.R. 6 Ch. 822 In which it was held that “First of all, beyond all question they do not contain an admission of any debt; on the contrary, it appears to me that they deny that there was any debt.” “It is not the admission which takes a case out of the statute, but the promise to pay, which is implied from an unconditional admission.” ii. In Ghulam Mustafa vs. Fashrunnissa Bibi AIR 1935 ALL 129 It was held that “It is equally necessary that it must be a clear and unambiguous. Acknowledgment specifically admitting liability in respect of the debt sued upon and it must be signed by the party or by his authorised agent. If an admission amounts to such an acknowledgment, then if it is made before the expiry of the period, it is helpful and the suit can be maintained for the recovery of the earlier debt, the time being extended by the acknowledgment.</p> <p><b>¶35 @ p.34</b></p> <p>“In view of the above facts the notice of invocation dated 17.11.2023 is also barred by limitation. In the judgment relied upon by the applicant regarding liability of surety will be co-extensive to the principal debtor, there is</p>	<p>of limitation. “  <b>¶22 @ p.53</b>  “...While, we need not rely on either the mortgage document or the pleadings before another authority like the DRT where the guarantor has accepted that he has executed the guarantee for the liability but states he need not pay on account of various reasons is not the valid evidence to be seen to reckon extension of limitation. Even though it is not produced, one document specifying that the CD had acknowledged the debt on 29 June 2017 and even a balance sheet pertaining to that period, a balance sheet even of subsequent period signed by the RP confirming the balance should be sufficient evidence to be seen whether</p>
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		<p>no dispute regarding this however, it is to be exercised within the period of limitation. So also the applicant relied upon Tilak Ram and Ors. Vs. Nathu and Ors. supra it is clearly mentioned that acknowledgement of debt, must show intention of admitting the jural relationship and his subsisting liability which is missing in the written statement filed by the PG (as discussed above). By no stretch of imagination, written statement filed by PG shows acknowledgment of debt. Thus, the application is filed for guarantee dated 11.12.2014 after initiation of CIRP against CD on 18.07.2017 filing was done by applicant before DRT in the year 2019, without any acknowledgment of debt. Many rulings cited by the applicant are against them and favouring Respondents. Therefore, this application is clearly barred by limitation. "</p>	<p>the CD had acknowledged the Debt and the CIRP was initiated within the period of limitation. " ¶23 @ p.55 "...When the guarantee period is not specified it runs till the Debtor does not pay and the claim is made. On approval of the resolution plan, Guarantors were not let off of their liability, in fact on this date the debtor was under law declared to be freed of his liability, due to inability to pay after which the guarantee was invoked. Even during moratorium, the creditors may not have filed an application against guarantors or issued a legal notice as the CD was admitted to CIRP. The Date of default arrived for allowing the Lender to proceed/ any of</p>
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B.	<p><b>Stamping and Impoundment</b></p>	<p>¶25 @ p.23          “The applicant in additional affidavit dated 25.03.2025 stated that the</p>	<p>his agents/assignee has to be seen from the perspective of what was the type of guarantee signed and its validity for invocation. It is open ended and runs till the attempts on the CD and suspended management are exhausted. Here it could be the sign off, but the guarantee being open ended the limitation could end only after an appropriate period that can be allowed based on the circumstances and the other documents submitted, decided, adjudicating affirming the liability before the legal authority, which in this case is NCLT. “</p> <p>¶13 @ p.47          “It is a different point as to</p>
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		<p>bank has now decided to file an application for recall of the order of DRT and if it is not recall, they would request SBICap to get the duty adjudicated by Stamp Authority. A certificate to that effect may be obtained that no further stamp duty is payable. However, there is nothing on record to show that they have filed any application for recall of order, or that the Stamp Authority had adjudicated into it. The fact remains that the document is yet to be adjudicated as per order of the DRT. As the sufficient stamp duty is not yet paid even after 5 years of impounding the document. The document cannot be relied upon at this stage.</p>	<p>whether this was appropriately stamped which can be ratified and compounded to regularise the defect of payment of stamp duty by appropriate procedure by the Stamp Authority</p>
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C.	<b>Assignment</b>	<p>¶38-42 @ p.38</p> <p>“38. On this point Respondents relied upon following judgments:</p> <p>iii. Hutchens v. Deauville Investments Pvt. Ltd. (1986) 68 ALR 367 iv. Mark Sensing (Aust.) Pvt. Ltd. v. Flammea (2003) VSCA 41 v. Langbein v. Mottershead Investments Pvt. Ltd. (2020) FCA 1790 vi. Property Builders Pvt. Ltd. v. Adelaide Bank Ltd. (2011) NSWCA 266</p> <p>39. The judgments cited by the Respondents were also discussed in the case of Vinit Shroff Vs. Rural Electrification Corporation Limited (2023) IBC Law, 285 HC. Wherein it was held that the judgment of Hutchens cited supra is not restricted to the particular facts of the case but, is a pronouncement on the general law of surety.</p> <p>40. It is mentioned in the assignment deed that the guarantee is excluded and also the resolution plan was sanctioned containing the fact of execution of</p>	<p>¶11 @p46</p> <p>“It appears from the documents submitted that the Resolution Plan was approved for Rs 6,252 crores. The approval of resolution plan was restricted to Sec 31 r/w Sec 30(2) of the code. In Para 27 of the order it clearly mentions that Clause No.3.2.3(iii) at Page 19 of Resolution Plan mentions as “Provided however any</p>

		<p>guarantee. It is a common-sense that once the debt is assigned, the assignee has a right to recover the same. The assignee has started recovery by filing petition and also recovered the debt towards full and final settlement from the resolution applicant. Only, he has right to recover remaining debt, if any, as per their settlement. Once the debt is assigned to any person, the assigner has no right to recover it again for itself or on behalf of assignee. Certainly, if both assigner and assignee starts recovery of debt an anomalous situation of recovery of debt twice would arise. Considering this situation, the applicant being no longer lender of CD can file a petition for recovery of any balance amount.</p> <p><b>41.</b> Ld. Advocate for the Respondents also relied upon order passed by this tribunal against same personal guarantors rejecting the applications which are as under: vii. Order passed in CP 134 of 2024 – SIDBI vs. Surendra Jiwarajka viii. Order passed in CP 135 of 2024 – SIDBI vs. Ashok Jiwarajka ix. Order passed in CP 136 of 2024 – SIDBI vs. Dilip Jiwarajka</p> <p><b>42.</b> Considering the facts and discussion made above, petition is not maintainable. “</p>	<p>rights or claims of the financial creditors with respect to existing Promoters Guarantors shall continue against such guarantors”. Approval of Resolution Plan does not mean automatic waiver or abetment of any legal proceedings which are pending by or against the company/CD as those are the subject matter ..... The Resolution Plan sanctioned discharges the CD and not the Guarantor ¶22 @ p.54</p>
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			<p><i>“It is up to the other lenders to reply to the reply of Respondents who has brought in various factors mainly on limitation, approval of resolution plan and the stated assignment to defend the liability arising out of the guarantee. “</i></p>
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**13.** The Applicant has also filed its written notes of arguments on 25.07.2025 as well as and compilation of judgments in support of its contentions. The relevant portion of the same is reproduced as under:

*I. It is an admitted position that the corporate debtor, Alok Industries Limited has availed various financial assistance to the tune of ₹18500 crores from various Banks and Financial Institutions wherein the applicant is one of the lenders. The Respondents are the promoter guarantors. In view of the default committed by the borrower Alok Industries Limited, the account was classified as NPA. State Bank of India (SBI) the lead lender, had filed an application being C.P. No. 48 of 2017 before this Hon’ble Tribunal.*

Subsequently, by order dated 18<sup>th</sup> July 2019, this Hon'ble Tribunal initiated CIRP against the principal borrower Alok Industries.

- II. During the pendency of the CIRP, the Applicant filed a claim of about T1528.76cr. Subsequently, a resolution plan dated 12<sup>th</sup> April 2018 was filed before this Hon'ble Tribunal for a total sum of ₹ 5052 crores jointly by Reliance Industries Limited and J M Financial Asset Reconstruction Company Limited. In terms of said plan amount of 4852 crore was to be paid by Reliance Industrial Limited for all the assets of the corporate debtor and Rs.200 Cr. to be paid by the ARC Trust of the J.M. Financial ARC. In the said resolution plan, it has been specifically stated that the personal guarantees of the promoter are excluded from the assignment to the ARC Trust.
- III. The Resolution Plan Specifically excluded the Personal Guarantee of the Promoters making the liable for the balance sum due.
- IV. After appropriation of the amount received under the Resolution Plan Rs.1229,15,19,292/- calculated as on 30<sup>th</sup> September 2024 is the claim in the Company Petition.
- V. The Respondents filed their reply taking for dismissal of the CP inter alia on the following grounds:-
  - i) The loan along with the underlying security has been assigned to the JMF ARC under the resolution plan, hence there is no existence of the loan and nothing can be recovered from them on that count. ii) The claim is barred by limitation as after the invocation notice, there is no acknowledgement of the debt as alleged the written statement is not an acknowledgement of debt.

iii) The guarantee agreement relied by the applicants have been impounded by DRT. Hence, the guarantee document cannot be taken into evidence.

iv) In addition to the above, Dilip Jivrajka and Surendra Jiwarka has filed copy of the order of Hon'ble DRT at Mumbai, wherein they are taking a plea that since RP has been appointed in DRT proceeding. The present proceeding need not be proceeded with.

VI. As regards, assignment of debt of the corporate debtor is concerned, all the debt and underlying security has been assigned under the resolution plan, excluding the liability of the personal guarantors of the promoter groups. That the personal guarantee of the promoters group are excluded from the resolution plan. The reference can be seen from the following pleadings and documents;

a. Page 108 Annexure -B of the Reply last portion

b. Page 1n0.52-53 27 at paragraph 27 of order of AA dated order 26" July 2019. Annexure- E/2 of CP page no. 116-170.

c. Deed of Assignment dated dated 5" March 2020 (Exhibit - C to Reply pages no. 172-231) at pageno. 21, and 22, paragraph 2.1.7 & 2.1.10 "It is specifically agreed that this Clause shall not in any manner affect or impair the rights of the relevant Assignor in relation to the Specified Third-Party Security Interest, the Outstanding Trading Dues and for the Existing Promoter Guarantees."

d. Page no.4 to 6 of the Rejoinder.

VII. It is clear from the above that the CoC in its wisdom has approved the resolution plan which excludes the liability of the guarantors. It is a commercial wisdom of the creditors which needs to be respected (K Shashidhar Vs. IOB 2019 Online SCC 257)

- *Interm of section 31 of the IBC once a resolution plan is approved by the adjudicating authority. It is binding on all the stakeholders including the guarantors.*
- *The guarantee is not extinguished after passing of the resolution plan. (Lalith Kumar Jain vs. Union of India Online 2021 Supreme Court 402 Para No. 107 & 110).*
- *State Bank of India Vs . V Ramakrishan AIR 2018 SC 3876 Para.22 (Page 12 of the Rejoinder)*
- *The resolution plan, the order of the adjudication authority and deed of assignment dt. 08.03.2018 never absorbed the personal guarantor of the liability. Hence, the Respondents guarantor's liability was subsisting and enforceable by the Applicant/Financial Creditor.*

VIII. *The Respondents relied upon the Judgment of the High Court of Australia in the matter of Hutchens V. Deauville Investments Pty. Ltd. and came to the conclusion that once the loan is assigned the liability of the guarantor is extinguished, However, this case is distinguishable from the present case. The same is stated in the Page no. 33 of the Compilation of the Judgment of Dilip Jiwarajka- "rhe overall transaction involving the assignment of the principal debt, and the securities including hutchen's guarantee and supporting mortgage to the helvetics". In that case the guarantee also supporting mortgage has been assigned whereas in the present case, liability under the Guarantee Agreement was never assigned.*

IX. *Limitation*

i) *The Respondents executed Guarantee Agreements from time to time in order to secure the financial assistance*

availed by the Corporate Debtor and last such document was executed on 12 August 2016 in favour of the Security Trustee-

ii) SBI Cap for the benefit of the lenders. ii. SBI Cap Trustee as trustee for the benefit of the financial creditor, issued notice invoking guarantee by its letter dated 9<sup>th</sup> April 2018 addressed to the Respondents, is "Exhibit-A" to the Rejoinder at page 29A

iii) Thee-SYB filed an OA before the Hon'ble Debts Recovery Tribunal-II at Ahmedabad (DRT) being OA No. 999 of 2019 against the Respondents. The Respondents in their Written Statement on 7/8<sup>th</sup> September, 2019, Exhibit -B to the Rejoinder at page 30. Thereafter, the Financial Creditor filed an Original Application before the Hon'ble Debts Recovery Tribunal Ahmedabad in the 9 September, 2020 having OA No.620, inter alia, against the Respondents and the Respondents filed their Written Statements on 21<sup>st</sup> December 2020 , Annexure - F to at page 171-217 . In the written statement the debt due was acknowledged, but the liability to pay was not accepted by the Guarantor. In the written statement at Paragraph 5 (w) and (z). The Respondents has contended that debt is prior to CIRP and the Applicant has received its due under the approved resolution plan. Furtherance, the Applicant has assigned its further dues to ARC trust under the assignment agreement. Hence the applicant is in.no capacity to file the OA against the Defendant No. 2 to 4, hence the OA needs to be rejected. has reasons mentioned here above. [Paragraph 5 (w)]

X. The relevant portion of the Para 5 (z) at Page No. 200 of the CP reads as under:

*“Additionally the guarantee relied by the Applicant are barred by Limitation as the same alleged were executed in 2016 and now the applicant cannot enforce the same.”*

- XI. *Similarly a written statement was filed in case the OA filed by the Canara Bank. It is clear from the Written-Statement that though the Respondents admitted their Jural relationship, wither they have pleaded that the same has been extinguished or set off in terms of resolution plan comes under the purview of the explanation of Section 18 éf the Limitation Act.*
- XII. *It is now settled primal of law that existence of debt and denial of Liability amounts to acknowledgement of debt. 1961 SCC online SC 147 Khan Bahadur Shapor Freedom Mazda vs. Durga Prasad Chamara & Qrs. (Paragraph No. 6).*
- XIII. *Basant Singh Vs. Janaki Singh& Ors. AIR 1967SC 431-In this matter, the Plaintiff tendered in evidence, a plaint, in an earlier suit. And relied on an admission made by the defendant with regards to facts in issue in a later suit. The Hon’ble High Court ruled that the plaint was not admissible in evidence on grounds. On appeal to The Hon’ble Supreme Court held that all matter in issue as an admission though it is not conclusive. (8t No.12-Page o 169 of the List of Judgment.)*
- XIV. *It is the setiled principle of law that, a denial of liability coupled with an admission of debt can amount to acknowledgment. In the acknowledgment the party need not admit liability, it is sufficient if it admits the underlying jural relationship. What matters is admission of the relationship and not the willingness to pay. If the existence of the debt is admitted but the payment is disputed, it's a valid acknowledgment. Hence, admission of debt is*

important and not promise to pay. An acknowledgment can exist even with denial of the liability. It consists two steps: a) Is there admission of jural relationship? b) Is there admission of subsisting debt? An admission of debt with disputes about payment terms is an acknowledgment. Similarly, disputing the quantum of debt while admitting the relationship qualifies as acknowledgement. A denial must not negate the entire relationship. Further, denial of present liability while admitting past debt is acknowledgment. The technical objections to payment don't invalidate acknowledgment. The test is whether the Jural relationship is acknowledged or not?

XV. The guarantee was invoked on 9<sup>th</sup> April, 2018. The limitation for filing expires on 8<sup>th</sup> April, 2021. However, the Respondents filed its last written statement in the OA before DRT on 20<sup>th</sup> December, 2020. As already stated hereinabove the statement in the written statement filed before the DRT is an Acknowledgement of debt u/s 18 of the Limitation Act. The limitation shall start running from 20 December 2020 and end on 19<sup>th</sup> December 2023. However in view of Corona Pandemic the Hon'ble Supreme Court as extended the period upto 28<sup>th</sup> February 2022. Hence the limitation shall be counted from 28 February, 2022 and end on 27<sup>th</sup> February 2026 and the present company petition was filed on 07.11.2024 and the claim is well within the limitation.

XVI. Stamping of Documents

i) It is submitted that, National Company Law Tribunal (NCLT) time and again have observed that, held that technical defects in documentation should not prevent the admission of legitimate claims. The focus should be on the substance of the debt rather than procedural formalities.

ii) It is submitted that their various bank and financial institutions who had financed Alok industries Limited (the Corporate Debtor) under consortium arrangement. The financial assistances by the lenders are secured inter alia, by way of hypothecation of the movable plant & machinery and, book debts, mortgage of the immovable properties of the Corporate Debtor & group companies, Personal Guarantee of the Promoters/Respondents and Corporate Guarantee of the group companies. In every trench of sanction, fresh documents are executed in favour of the security trustee that is SBICap Trustee Company Limited (SBI CAP), who have been appointed as Trustees by the Corporate Debtor, Alok Industries Limited, for the benefit of the lenders. In each trench of sanction, the facility was secured, inter alia, Indenture of mortgage of the Corporate Debtor's immoveable property, such documents executed from time to time. The Corporate Debtor also considered as indenture of mortgage as the principal document and accordingly maximum term duty was paid by the Corporate Debtor and stamp duty of Rs.200/- is paid in all other documents. The last such transaction was for 21666.39 cr. and accordingly Supplemental Working Capital Consortium Agreement dated 12 August 2016 was executed pursuant to the said consortium Agreement and other documents like Supplemental Deed of Hypothecation, Supplemental Deed of Guarantee was executed. Pursuant to the sanction terms of the Fifth Supplemental Working Capital Consortium Agreement and in compliance to the sanction terms, an indenture of mortgage was executed by the Corporate Debtor and its group companies was created on 27<sup>th</sup> December 2016, which of registered to the office of sub registrar assurance, Vapi at serial number BAP —

106372016 dated 27<sup>th</sup> December 2016. In the said indenture of mortgage, a total stamp duty of ₹4,36,83,900/- has been paid and further registration fee of 22,04,400/- was also paid by the Borrower Company Alok Industries Limited. Indenture of Mortgage dated 27<sup>th</sup> December 2016 is annexed as "Annexure A" to the Supplementary Affidavit. Hence, all the document executed by the Respondents was properly stamped and duly executed and are enforceable.

iii) The Applicant has undertaken to either recall the Order/challenge the same competent authority or get the document adjudicated.

iv) It is now settled principle of law that stamping is a curable defect and the Applicant has undertaken to complete the process. (NN Global Mercantile Pvt. Ltd. Vs. Indo Unique Flame Ltd. Review Petition (C) No. 704 Of 2021).

XVII. As regards the Bankruptcy proceedings before DRT it is submitted that DRT has no jurisdiction in the present case for following reasons

a. In terms of Section 60 (1) of the Code, the Adjudicating Authority (NCLT) in relation to "Insolvency Resolution" (and not recovery) and "Liquidation" for "Corporate Debtors" and "Personal Guarantors" shall be NCLT having territorial jurisdiction or the place where the registered office of the corporate person is located. Thus, the Adjudicating Authority for insolvency resolution of the corporate persons including corporate debtors and personal guarantors thereof (of such corporate debtors) shall be NCLT having territorial jurisdiction or the place where the registered office of the , corporate person is located.

- b. Section 60(2) of the Code enumerates that where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor shall be filed before such National Company Law Tribunal.
- c. Further, in terms Section 60 (4) of IBC, the National Company Law Tribunal shall be vested with all the powers of the Debt Recovery Tribunal as contemplated under Part II of this Code of sub-section (2) of Section 60 of the Code.
- d. The Section 179 (1) of IBC provides that the Adjudicating Authority, in relation to insolvency matters of individuals and firms shall be the Debt Recovery Tribunal having territorial jurisdiction over the place where the individual debtor actually and voluntarily resides or carries on business or personally works for gain and can entertain an application under this Code regarding such person. However, section 179 of IBC is subject to the provisions section 60(1) of IBC. Hence, DRT has no jurisdiction to try the matter in NCLT Ahmedabad is the proper court for this.
- e. The Hon'ble Division Bench of Madras High Court in the case of Rohit Nath vs. KEB Hana Bank Ltd. MANU/TN/5212/2021, clearly propounds at para 22 of the judgment.

XVIII. In terms of section 4, in the case of any sale, mortgage or settlement, several instruments are employed for

completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I for the conveyance, mortgage or settlement, and each of other instruments shall be chargeable with a duty of one hundred rupees instead of the duty (if any) prescribed for it in that schedule. Section 4 applies when

- i. a single instrument contains multiple distinct transactions
- ii. these transactions are separate and not interconnected ;
- (iii) each transaction would have been independently chargeable with stamp duty;
- (iv) the party may chose one of such document as Principal Document and
- (v) The instrument chargeable with maximum stamp duty should be considered as Principal document.

XIX. Hence in terms of the Gujarat Stamp Act, the indenture of mortgage being the document chargeable with maximum stamp duty has been considered as the principal document and accordingly maximum stamp duty has been paid in indenture of mortgage and Rs.200/~ stamp duty paid in other document.

XX. Further, [say that, the duty of the payment of duty lies with the mortgager/ corporate debtor and they have paid the same and in terms of section 4 of the Gujarat Stamp Act, the Corporate Debtor has considered the indenture of mortgager as Principal document, wherein the Respondents is the promoters and are in control of the management and aware of the stamping and now taking a wrong stand and trying to misguiding this Hon'ble Tribunal for wrongful gain.

XXI. It is further submitted that while filing the recovery application before DRT, Ahmedabad, Canara Bank and Syndicate Bank did not enclose any of the document pertaining to the mortgage of the properties of the corporate

debtor, since by that time the resolution plan has been approved, and asset of the Corporate Debtor has been transferred to the Resolution Applicant by virtue of implementation resolution plan. These document has no relevancy in those proceeding hence these documents are not filed along with OA in the DRT, the a reply from the bank the Tribunal has has referred the matter for impounding of the documents. Since the document was executed in secured Security, trustee and the lender Saab only copy of the documents they file the same before they.

XXII. I say that, the bank has now decided to file an application to recall this order of the Debts Recovery Tribunal and in the event the same is not recalled, it would request the SBI CAP to get the document be adjudicated by the stamp authority and certificate may be obtained that no further stamp duty is payable. 18. T say that, the bank has now decided to file an application to recall this order of the Debts Recovery Tribunal and in the event the same is not recalled, it would request the SBI CAP to get the document be adjudicated by the stamp authority and certificate may be obtained that no further stamp duty is payable. 19. In the above circumstances, humbly prey that the pleading and the Indenture of Mortgage dated 27" December 2016 be taken on record. Hence, the CP. No. 355, 356 & 357 of 2024 be allowed

**14.** I have heard the learned counsel for Applicant Bank as well as learned counsel for the Respondents/Guarantors and perused the documents on record.

15. The present reference made to me by the Hon'ble President, NCLT, exercising the power under Section 419(5) of the Companies Act r.w. Rule 60(1)(3) of the NCLT Rules, 2016 to hear the matter on the difference of opinion. The issue on which my opinion is sought are restricted to the following points: -

**(a) Whether Personal Guarantors can be admitted/ rejected into PIRP on merits?**

16. The Section 419(5) of the Companies Act, 2013 is reproduced hereunder: -

*“If the Members of a Bench differ in opinion on any point or point, it shall be decided according to the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President for hearing on such point or points by one or more of the other Members of the Tribunal and such point or points by one or more of the other Members of the Tribunal and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it.*

17. During the pendency of the present reference the Respondents approached the Hon'ble NCLAT through Company Appeal (AT) (Insolvency) No. 930-932 of 2025, which was disposed of by the Hon'ble NCLAT vide its order

dated 11.07.2025. The relevant portion of the said order is reproduced hereunder: -

2. *This appeal has been filed against an order dated 07.05.2025 passed in C.P. (IB) No. 355(AHM)/2024, C.P. (IB) No. 356(AHM)/2024 & C.P. (IB) No. 357(AHM)/2024. Common order dated 07.05.2025 was passed, there being difference of opinion between Judicial Member and Technical Member. Order dated 07.05.2025 is as follows:*

*“The case is listed today for pronouncement of order. The members are dissenting on following points:*

*(a) Whether Personal Guarantors can be admitted/rejected into PIRP on merits?*

*The Registry is directed to place the record before the Hon'ble President under Section 419(5) of the Companies Act, 2013 for constitution of appropriate 3rd Member for his opinion, so that the order in CP(IB) 355 of 2024, CP(IB) 356 of 2024 and CP(IB) 357 of 2024 is rendered in accordance with the opinion of majority.”*

3. *In the appeal detailed judgment delivered by Judicial Member dated 07.05.2025 has been brought on the record. Judicial Member after hearing the financial creditor and the personal guarantor who were appellants before us opined that C.P. (IB) No. 355(AHM)/2024, C.P. (IB) No. 356(AHM)/2024 & C.P. (IB) No. 357(AHM)/2024 are to be rejected, whereas, Technical Member after hearing the parties recorded its conclusion at Page 121 to following effect:*

*“1. Applications are allowed.*

*2. RP be appointed to submit the report making all lenders a party by issuing notices to file their reply. RP to form an opinion and submits report based on*

- the reply of the PG. Since this is a guarantee favouring all financial creditors RPs report to be served on all the lenders who whom the applicant is made party including any other whom RP may identify based on the petitioner/reply.”*
- 4. There being difference of opinion between two Members, the reference was made on 07.05.2025 as extracted above to the President who has referred the matter to the third Member. Third Member has already commenced the hearing and matter was heard on 05.06.2025, 19.06.2025, 25.06.2025, 01.07.2025, 03.07.2025 and now the matter is fixed for 17.07.2025.*
  - 5. Learned counsel for the appellant submits that as per Section 419(5) of the Companies Act, 2013 the point of difference of opinion between Judicial Member and Technical Member ought to have been specifically noticed to enable the third Member to give his answer on the points of difference. The judgments of both Judicial Member and Technical Member are detailed and part of the record and question framed is as to whether personal guarantors can be admitted/rejected into CIRP on merits.*
  - 6. Third Member having commenced the hearing to answer the question, we see no reason at this stage to entertain the appeal.*
  - 7. Giving liberty to both the parties to raise their issues after final opinion is expressed by third Member and order is passed by the adjudicating authority, we close the appeal.*
  - 8. As per Section 419(5) of the Companies Act, 2013, it goes without saying the opinion has to be expressed by third Member on the point of difference between the Judicial Member and the Technical Member.*
- Appeal is disposed of accordingly.”*

## **BACKGROUND AND FACTS**

**18.** The Applicant, Canara Bank, is a banking company constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, with its head office at 112, JC Road, Bangalore-560002, and a branch at Stressed Assets Management Branch, 8th Floor, B-Wing, C-14, G-Block, Canara Bank Building, BKC, Mumbai-400051. The Respondents, Mr. Ashok B. Jiwrajka, Mr. Dilip B. Jiwrajka, and Mr. Surendra B. Jiwrajka, are an individual and serve as a personal guarantors for Alok Industries Limited, the Corporate Debtor, which is a company incorporated under the Companies Act, 1956, bearing CIN L17110DN1986PLC000334, with its registered office at Weaving Mill 17/5/1 & 521/1, Village Rakholi/Saily, Silvassa, Dadra & Nagar Haveli-396230.

**19.** The Applicant sanctioned various credit facilities to Alok Industries Limited between the years 2005 and 2016, forming part of the SBI Consortium led by State Bank of

India. These facilities included term loans, working capital limits, and other credit arrangements, with State Bank of India recognized as the lead bank. The Respondents executed personal guarantees on 11.12.2014 in favour of State Bank of India, and on 04.02.2016 and 12.08.2016 in favour of SBICAP Trustee Company Limited, acting as the security trustee for the lenders, to secure these facilities. These guarantees were continuing in nature, covering the repayment of the credit facilities extended to the Corporate Debtor, including interest, costs, charges, and other expenses. The Applicant claims a default of Rs. 1,229,15,19,292 as of 30.09.2024, with the date of default stated as 27.02.2015, when the Corporate Debtor's account was classified as a Non-Performing Asset (NPA) by the Applicant, following persistent defaults in repayment obligations.

- 20.** SBICAP Trustee Company Limited invoked the guarantees dated 04.02.2016 and 12.08.2016 vide notice dated 09.04.2018. There is no material, evidence, or averment that the guarantee dated 11.12.2014 was invoked by the

Applicant or SBICAP Trustee Company Limited. The Corporate Debtor underwent Corporate Insolvency Resolution Process (CIRP), initiated on 18.07.2017 by the NCLT, Ahmedabad Bench. A Resolution Plan submitted by Reliance Industries Limited, JM Financial Asset Reconstruction Company Limited, and JM Finance ARC March 2018 Trust was approved on 08.03.2019 and 26.07.2019. The Applicant and Syndicate Bank (merged with Canara Bank on 04.03.2020) filed claims of Rs. 1,528,76,17,307 in Form C during the CIRP, of which Rs. 254,92,71,811 was paid, and the remaining debt was assigned to ARC Trust under an Assignment Agreement dated 05.03.2020.

- 21.** The Applicant issued a demand notice to the Respondents on 17.11.2023 under Rule 7(1) of the 2019 Rules, demanding repayment of the outstanding amount, to which the Respondents replied on 29.11.2023, disputing the claim on grounds of limitation, assignment, and stamp duty. The Applicant also filed proceedings before the Debt Recovery Tribunal (DRT), Ahmedabad, in OA No.

999/2019 (filed 30.08.2019) and OA No. 620/2020 (filed 09.09.2020), claiming Rs. 667.23 crores and Rs. 1,020.08 crores, respectively, against the Respondents and others, based on the same guarantees.

- 22.** The Respondents filed a reply on 10.12.2024, raising objections on maintainability, limitation, stamp duty, assignment of debt, and non-invocation of the guarantee dated 11.12.2014, supported by a compilation of judgments filed on 24.07.2025. The Applicant filed a rejoinder and a compilation of judgments on 03.07.2025. The Respondents specifically highlighted that the DRT, vide its order dated 25.10.2019, impounded the guarantees dated 04.02.2016 and 12.08.2016 for insufficient stamp duty, giving opportunity to cure the defect, and the Applicant has not cured this defect to date.
- 23.** Based on the pleadings, submissions, and documents, including the judgments the following issues are framed for determination: -
- (a)** Whether the Deeds of Guarantee dated 04.02.2016 and 12.08.2016 are admissible in evidence, given

the DRT's order dated 25.10.2019 impounding them for insufficient stamp duty, which remains uncured despite the opportunity to cure?

- (b) Whether the Deeds of Guarantee dated 11.12.2014 is enforceable, given the absence of material, evidence, or averments that it was invoked by the Applicant or SBICAP Trustee Company Limited?
- (c) Whether the petition is barred by limitation under Section 238A of the IBC, 2016, read with Article 137 of the Limitation Act, 1963?
- (d) Whether the Assignment Agreement dated 05.03.2020 extinguishes the Applicant's right to enforce the personal guarantees?
- (e) Whether the Applicant has the locus standi to file the petition under Section 95 of the IBC, 2016, considering the guarantees were executed in favour of SBICAP Trustee Company Limited?
- (f) Whether the petition merits admission for initiation of PIRP against the Respondents, and should a Resolution Professional be appointed?

#### **24. Issue No.(a): Admissibility of Guarantees;**

24.1. The Respondents argues that the guarantees dated 04.02.2016 and 12.08.2016 are inadmissible, as they were impounded by the DRT on 25.10.2019 for insufficient stamp duty, giving opportunity to cure the defect, and the Applicant has not cured this defect to date, citing Section 35 of the Indian Stamp Act, 1899, and **Chief Controlling Revenue Authority vs. Coastal Gujarat Power Ltd. (2015 10 SCC 700,**

**para 31).** The Applicant submits that stamping defects are curable, as held in ***N.N. Global Mercantile Pvt. Ltd. vs. Indo Unique Flame Ltd. (Curative Petition (C) No. 44 of 2023)***, and undertakes to rectify the issue.

24.2. Section 35 of the Indian Stamp Act bars the admissibility of unstamped or insufficiently stamped instruments unless the duty and penalty are paid. Section 42 requires the Collector to certify payment for admissibility. This aligns with NCLAT in ***Hirendra Meghji Bharani (Company Appeal (AT) (Insolvency) No. 446 of 2023)***, where stamping defects were held curable but do not bar initiation if other evidence proves default; **however, here, guarantees are foundational.**

24.3. The Supreme Court in ***Bidyut Sarkar vs. Kanchilal Pal (Dead) Through Its Lrs (2024 INSC 704, paras 30)*** held that an insufficiently stamped document, marked with objection and referred to the Collector, remains inadmissible until the duty and penalty are paid and certified. The relevant portion of the judgment is reproduced hereunder: -

*“30. We find no reason to disagree with the findings of the Trial Court regarding the inadmissibility of the agreement to sell dated 29.03.1999. The document, being insufficiently stamped, was rightfully barred*

*from being admitted as evidence in the absence of the requisite stamp duty and penalty being paid and certified by the Collector. The High Court, in treating this document as admissible without resolving the stamp duty deficiency, overlooked the statutory mandate under the Stamp Act. As the document is foundational to the suit, the failure to comply with the statutory requirements renders the entire claim unenforceable. Consequently, the suit must be dismissed, as it is based on an instrument that is legally inadmissible as evidence. The plaintiff cannot claim relief on the basis of a document that has not satisfied the legal requirements for admissibility.”*

24.4. In the present case, also the DRT vide order dated 25.10.2019 impounded the guarantees, and the Applicant has not provided evidence of curing the defect by paying the requisite stamp duty and penalty or obtaining certification. This impounding order was issued in the context of the DRT proceedings, where the guarantees were submitted as evidence, and the defect was identified under the provisions of the Stamp Act. The DRT-II order dated 25.10.2019 is reproduced hereunder: -

*“O.A. No.533/19*

**25.10.2019**

*Present: Shri Rajesh Nagori Ld. counsel for Applicant.*

*Shri Saurabh Suparkar Ld. Counsel for  
defendant No. 1, 2, 3, & 5.*

*Counsel for the Applicant submitted that bank is ready to pay deficit stamp duty if any under the stamp act in view of Judgement of Hon'ble Apex Court in Gujarat Coastal Power*

*Limited Vs. Chief Controlling Revenue Authority Civil Appeal No. 6054 of 2015.*

*Counsel for the defendants submitted that following document are required to be sent to stamp authorities for adjudication of deficit stamp duty and payment of deficit stamp duty in accordance with law under Stamp Act.*

*a) Exhibit F in OA Deed of Guarantee dated 27.11.15*

*b) Exhibit L in OA Deed of Guarantee dated 12.8.16.*

*c) Exhibit P in OA Deed of Guarantee dated 4.2.16*

*As bank has agreed to pay deficit stamp duty, so in my opinion there would not be any need to send original documents to stamp authorities for the time being for the purpose of adjudication of deficit stamp duty.*

*Vide my separate detailed reference photocopies of documents referred above are sent for adjudication of deficit stamp duty if any in accordance with law and it is expected that said authorities would act expeditiously and adjudicate the same as early as possible as in this case amount of more than Rs.800 Crs. (More than Eight Hundred Crores) of public money is at stake and this Tribunal is unable to adjudicate the matter on merits due to objections raised on behalf of the defendants.*

*As adjudication of deficit stamp duty would take some time so case is adjourned to 20.11.19.*

*-Sd-*

*(Vinay Goel)*

*I/C In-Charge Presiding Officer  
DRT-II, Ahmedabad”*

24.5. The Applicant's reliance on **N.N. Global Mercantile** is noted, as it clarifies that stamping defects are curable and do not render the instrument void ab initio. However, **Bidyut Sarkar vs. Kanchilal Pal (Dead) Through Its Lrs** emphasizes that an impounded

document cannot be acted upon or admitted in evidence until the defect is rectified and certified by the Collector. The Applicant's undertaking to resolve the issue is insufficient, as no concrete steps have been taken since the DRT's order on 25.10.2019, despite the passage of over five years. The guarantee dated 11.12.2014 is not subject to the DRT's impounding order, but its enforceability, which is addressed under **Issue No.(b)**.

24.6. Therefore, after detailed examination of the DRT order, the provisions of the Stamp Act, and the Supreme Court precedents, the guarantees dated 04.02.2016 and 12.08.2016 are inadmissible in evidence at this stage due to the uncured stamp duty defect, significantly undermining the Applicant's ability to establish the debt and default for these guarantees.

24.7. Accordingly, the issue is decided against the Applicant Bank and in favour of the Respondents.

**25. Issue No.(b): Enforceability of Guarantee Dated 11.12.2014;**

25.1. It is seen from the record that the Deed of guarantee dated 11.12.2014, there is no material, evidence, or averment that it was invoked by the Applicant or SBICAP Trustee Company Limited. The Applicant

claims that the guarantee supports part of the debt, but no specific invocation notice for this guarantee has been produced or referenced in the petition or submissions.

25.2. Under Section 128 of the Indian Contract Act, 1872, a guarantor's liability is co-extensive with the principal debtor's, but enforcement typically requires invocation of the guarantee as per its terms to crystallize the liability and trigger the right to sue. The Supreme Court in State ***Bank of India vs. V. Ramakrishnan (AIR 2018 SC 3876, para 22)*** and ***Lalit Kumar Jain vs. Union of India (2021 SCC Online SC 402, para 107)*** clarified that a guarantor's liability persists post-CIRP unless expressly released. However, the absence of an invocation notice for the guarantee dated 11.12.2014 raises a critical issue, as invocation is a condition precedent for enforcing the guarantor's liability under the terms of most guarantee agreements, including those in consortium lending arrangements.

25.3. The Applicant has not provided evidence of invocation for the guarantee dated 11.12.2014, unlike the guarantees dated 04.02.2016 and 12.08.2016, which were invoked by SBICAP on 09.04.2018. Without such evidence, the default under this guarantee cannot be established, as the limitation period under Article 137

of the Limitation Act, 1963, runs from the date of invocation or, absent invocation, the NPA date of 27.02.2015. The Respondents' DRT written statements (07.09.2019 and 21.12.2020) acknowledge the jural relationship for all guarantees, extending the limitation period to 20.12.2023, and with the COVID-19 extension until 27.02.2025. However, the lack of an invocation notice renders the guarantee dated 11.12.2014 unenforceable at this stage, and the Applicant has not segregated the debt attributable to this guarantee, making it impossible to determine the enforceable portion of the claim.

25.4. Therefore, after comprehensive analysis of the guarantee terms, invocation requirements, and legal precedents, the guarantee dated 11.12.2014 cannot be relied upon to establish a default, due to the absence of invocation evidence.

25.5. Accordingly, the issue is decided against the Applicant Bank and in favour of the Respondents.

**26. Issue No. (c): Limitation;**

26.1. The Respondents argue that the petition is time-barred, as the default occurred on 27.02.2015, and the petition was filed on 09.12.2024, beyond the three-year period under Article 137 of the Limitation Act, 1963. The Respondents argue no unconditional

acknowledgment exists; the Written Statements deny liability and debt existence post-assignment, and the petition is filed 10 years post-default. Upon perusal, the Written Statements e.g., paras 5(w) and 5(z) in OA 620/2020 admit the execution of guarantees and prior debt but deny current liability due to the Resolution Plan/assignment.

- 26.2. The Applicant contends that the limitation period was extended by acknowledgments of debt in the Respondents' written statements filed in DRT proceedings on 07.09.2019 and 21.12.2020, invoking Section 18 of the Limitation Act. Additionally, the Applicant relies on the Supreme Court's COVID-19 orders extending limitation periods.
- 26.3. Section 238A of the IBC, 2016, applies the Limitation Act to IBC proceedings, making Article 137 applicable, which provides a three-year limitation period from the date when the right to apply accrues, i.e., the date of default. The Supreme Court in ***Bank of India vs. Bimalkumar Manubhai Savalia (2023 ibclaw.in 200 SC, paras 4-6)*** clarified that an acknowledgment under Section 18 need not include a promise to pay; a simple admission of the jural relationship and debt suffices to extend the limitation period. The Respondents' written statements in the DRT proceedings (para 5(w) and (z)) acknowledge the

execution of the guarantees but dispute liability, citing the resolution plan and assignment. These statements admit the jural relationship, satisfying the requirements of Section 18, as held in ***Khan Bahadur Shapoor Freedom Mazda vs. Durga Prasad Chamaria (1961 SCC Online SC 147, para 6)***.

26.4. The contents of **Para 5(w) & 5(z)** of written statement filed in DRT by the Respondents are reproduced hereunder: -

*“Para 5(w). With reference to paragraph no. 5.23, the contents therein are matter of record however, it is admitted by the Applicant itself that the Defendant Nos. 2 to 4 stood guarantors to the facility sanctioned to the Defendant No.1 only to secure the loan and not to repay the same. Furthermore, the debt is prior to the CIRP and the Applicant had received its dues under the approved Resolution Plan. Furthermore, the Applicant has assigned its further dues to the ARC Trust under the Assignment Agreement, and since the Applicant does not possess the debt or right of the same, hence, the Applicant is in no capacity to file the OA against the Defendant Nos. 2 to 4. Additionally, it is to be noted that the Deed of Guarantee is insufficiently stamped under the applicable stamp duty. Furthermore, the Guarantee is barred by the limitation, as the same was executed in 2013 and now the Applicant cannot come after 5 (five) years have been passed to seek enforcement of the same. Hence, the OA needs to be rejected on grounds of mentioned hereinabove.”*

*“Para 5(z). With reference to paragraph no. 5.27, 5.28, 5.29, the contents therein are a matter of evidence as far as the Defendant No.1 is concerned and is required to be proved by the Applicant. It is to be noted that the Applicant nowhere has mentioned Defendant Nos. 2 to 4 have availed the loan or in any way is liable for the same. Additionally, the guarantees relied by the Applicant are barred by the limitation as same as alleged were executed in 2016 and now the Applicant cannot*

*enforce the same. Furthermore, the debts mentioned therein are prior to the CIRP and the Applicant has received its dues under the approved Plan and has assigned its debt to ARC Trust under the Assignment Agreement as follows hereunder. Hence, the Applicant does not possess the debt or right of the same of the Defendant No.1, and thus, the Applicant is in no capacity to file the OA against the Defendant Nos. 2 to 4. Further, the onus is on the Applicant to prove that they still possess any the debts/dues of the Defendant No. 1 despite assigning the same to the ARC Trust and receiving the claims under the Resolution Plan.”*

26.5. The Respondents rely on **River Steamer Co. Mitchell’s Claim (1871 L.R. 6 Ch. 822, pages 8-11) and Ghulam Murtaza vs. Fasihunnissa Bibi (AIR 1935 ALL 129, para 4)**, arguing that acknowledgments must be absolute and unconditional. However, **Bank of India vs. Bimalkumar Manubhai Savalia** emphasizes a liberal construction of acknowledgments, and the Respondents’ statements meet this threshold by admitting the guarantees’ existence. The written statement dated 21.12.2020, filed within three years from the invocation of the guarantees dated 04.02.2016 and 12.08.2016 on 09.04.2018, resets the limitation period to 20.12.2023 for those guarantees.

26.6. The Supreme Court’s orders in In **Re: Cognizance for Extension of Limitation** extended limitation periods due to the COVID-19 pandemic until 28.02.2022. Thus, the limitation period commenced from 28.02.2022 and extends to 27.02.2025 for the invoked guarantees. The

petition, filed on 09.12.2024, is within the limitation period for the guarantees dated 04.02.2016 and 12.08.2016. However, the guarantee dated 11.12.2014, lacking evidence of invocation, relies on the NPA date of 27.02.2015 as the date of default. The acknowledgments extend the limitation for this guarantee as well, but its enforceability is addressed under **Issue No.(b)**.

26.7. Therefore, after comprehensive analysis of the default dates, invocation notices, written statements, and legal precedents on limitation, the petition is not barred by limitation for the guarantees dated 04.02.2016 and 12.08.2016, as the Respondents' acknowledgments and the COVID-19 extension render it timely. The limitation for the guarantee dated 11.12.2014 is similarly extended, subject to enforceability issues.

26.8. Accordingly, the issue is decided in favour of the Applicant Bank, subject to enforceability issues.

### **27. Issue No.(d): Effect of Assignment Agreement;**

27.1. The Respondents argue that the Assignment Agreement dated 05.03.2020 assigned the debt of Rs. 22,682.60 crores to ARC Trust, extinguishing the applicant's right to enforce the guarantees. They cite foreign judgments (Hutchens v. Deauville Investments Pvt. Ltd., (1986) 68 ALR 367, para 4; Mark Sensing

(Aust.) Pvt. Ltd. v. Flammea, (2003) VSCA 41, para 21) to argue that a creditor cannot enforce a guarantee post-assignment.

27.2. The Applicant argues that clauses 2.1.7 and 2.1.10 of the Agreement preserve its rights to enforce the guarantees relies on **Lalit Kumar Jain v. Union of India ((2021) 9 SCC 321)** and **State Bank of India v. V. Ramakrishnan ((2018) 17 SCC 394)**, asserting that the Resolution Plan and Assignment Agreement explicitly exclude promoter guarantees, preserving their liability under Section 128 of the Indian Contract Act, 1872.

27.3. The Resolution Plan (approved 08.03.2019) and Assignment Agreement (05.03.2020) allocate Rs. 4,852 crores for Financial Creditors and Rs. 200 crores for ARC Trust to purchase the “Outstanding ARC Debt.” Clause 7.2 of the Assignment Agreement requires the assignee to cooperate with the assignors for enforcing promoter guarantees, indicating their exclusion from the assignment. Lalit Kumar Jain (para 97) holds that a resolution plan’s discharge of the Corporate Debtor does not absolve guarantors, as their liability is co-extensive and independent under Section 128. SBI v. Indexport Registered (para 13) confirms that guarantors can be pursued without exhausting remedies against the principal debtor. Foreign

judgments like *Hutchens* are not binding when Indian law, as in *Lalit Kumar Jain*, clearly preserves guarantors liability post-assignment (*Padma Sundara Rao v. State of Tamil Nadu*, (2002) 3 SCC 533, para 9).

- 27.4. However, the assignment transfers the underlying debt, and the guarantees' enforceability depends on the applicant's status as a creditor. The explicit exclusion in the agreements ensures the applicant retains the right to pursue the guarantors, subject to other legal bars (e.g., limitation, stamping).
- 27.5. The Assignment Agreement dated 05.03.2020 assigns the "Outstanding ARC Debt" but explicitly excludes the personal guarantees from assignment, preserving the Applicant's enforcement rights. The Supreme Court in *State Bank of India vs. V. Ramakrishnan and Lalit Kumar Jain* clarified that the guarantor's liability is co-extensive with the principal debtor's under Section 128 of the Indian Contract Act, 1872, and persists post-resolution plan unless expressly released. The Respondents's reliance on *Hutchens* is distinguishable, as Indian law governs, and the Agreement's clauses are clear in separating the assignment of debt from the guarantees.
- 27.6. Therefore, after detailed examination of the Assignment Agreement clauses, the resolution plan terms, and

Supreme Court precedents, the Assignment Agreement does not extinguish the Applicant's right to enforce the guarantees.

27.7. Accordingly, the issue is decided in favour of the Applicant Bank and against the Respondents.

**28. Issue No.(e): Locus Standi of the Applicant;**

28.1. The Respondents contend that the Applicant lacks locus standi, as the Deeds of Guarantee dated 04.02.2016 and 12.08.2016 were executed in favour of SBICAP Trustee Company Limited, not Canara Bank directly. The Applicant counters that, as a member of the SBI Consortium, it is entitled to enforce the guarantees, and SBICAP invoked the guarantees dated 04.02.2016 and 12.08.2016 on 09.04.2018 on behalf of all lenders, including the Applicant.

28.2. For the adjudication of this issue, the tribunal would first like to place reliance on Section 95 of the Code. The Section 95(1) of the Code states that:-

***“95. Application by creditor to initiate insolvency resolution process. -***

*(1) A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.”*

- 28.3. Section 95(1) of the IBC, 2016, allows a creditor either by himself, or jointly with other creditors, or through a resolution professional, to file an application against a personal guarantor for initiation of insolvency resolution process. The Supreme Court in ***Lalit Kumar Jain vs. Union of India (2021 SCC Online SC 402, paras 107, 110)*** upheld the constitutional validity of insolvency proceedings against personal guarantors, emphasizing that the NCLT is the competent forum under Section 60(2) when the Corporate Debtor's CIRP is pending before it.
- 28.4. The Applicant, as a financial creditor of Alok Industries Limited, is part of the consortium for which SBICAP acted as trustee, and the Deeds of Guarantee dated 04.02.2016 and 12.08.2016 were executed to secure the facilities extended by all lenders, including Canara Bank. This consortium arrangement grants the Applicant the right to enforce the guarantees through the trustee or directly as a beneficiary.
- 28.5. Further, the Assignment Agreement dated 05.03.2020, particularly clauses 2.1.7 and 2.1.10, explicitly preserves the Applicant's rights to enforce "Existing Promoter Guarantees," indicating that the Applicant retains the right to pursue the Respondents independently of the assignment of the underlying debt. The Respondents' reliance on ***SBI vs. Indexport***

**Registered (1992 3 SCC 159, paras 13-18)** to argue that only the trustee can enforce the guarantee is misplaced, as the guarantees are for the benefit of all lenders, and the Applicant's status as a financial creditor under the IBC is undisputed.

- 28.6. To adjudicate upon this contention, the Tribunal would like to place reliance on the judgment of Hon'ble NCLAT in **Amit Dineshchandra Patel v. State Bank of India & Ors.** in **Company Appeal (AT) (Insolvency) No. 1826 of 2024** wherein following was held by the Hon'ble appellate authority:-

*"19. This now brings us to the argument canvassed by the Appellant that in Rakshit Dhirajlal Joshi vs. IDBI Bank Ltd 2022 SCC Online NCLAT 4524 it had been held by this Tribunal that if the Security Trustee Agreement had laid down that the lenders shall act collectively, then an individual bank without obtaining formal consent of the other lenders cannot substitute itself in place of the Security trustee. The reliance placed by the Appellant on the decision of this Tribunal in Rakshit Dhirajlal judgment is not applicable in the present case since in this case there is no dispute inter se between the members of the consortium which had joined hands in signing the Security Trustee Agreement. None of the members of the consortium have raised any objection on the authority of the Respondents No.1 Bank to file the Section 95 application. Clearly therefore this judgement does not come to the rescue of the Appellants. Further, from the statutory construct point of view also, Section 95 of IBC clearly provides that a Section 95 application can be filed by a creditor in his individual capacity or jointly with other creditors or through a RP. It nowhere lays down any prescription that if the credit*

*facility has been extended by more than one financial creditor, the Section 95 application is required to be filed collectively. Hence, we do not find any irregularity in the invocation of the personal guarantee by the Respondents No. 1 Bank on these counts either.”*

*(Emphasis Supplied)*

- 28.7. Similarly, in the present case as well, there is no dispute inter se between the members of the lending consortium. No lender has raised any objection to the filing of the petition under Section 95 of the Code by the Petitioner bank. The Guarantee Agreement does not prohibit individual action by any creditor, and the invocation of the personal guarantee by the Petitioner is in accordance with the rights available under the restructuring documents. Furthermore, Section 95 of the Code expressly permits initiation of proceedings by an individual creditor, jointly with other creditors, or through a Resolution Professional. There is no statutory requirement for collective filing.
- 28.8. Therefore, after detailed examination of the consortium documents, guarantee deeds, and legal precedents, the Applicant has the locus standi to file the petition, as it is a creditor entitled to enforce the guarantees under the consortium arrangement and the provisions of the IBC, 2016.
- 28.9. Accordingly, the issue is decided in favour of the Applicant Bank.

**29. Issue No.(f): Admission of Petition and Appointment of RP;**

29.1. The Applicant seeks admission of the petition and appointment of an RP to submit a report under Section 99 of the IBC, 2016, arguing that a prima facie debt and default exist. The Respondents argues that the petition is defective due to limitation, stamp duty, and assignment issues, and cites prior NCLT orders dated 01.05.2024 in CP (IB) 134-136/2024, where similar petitions against the Respondents and related guarantors were rejected on grounds of limitation and non-disclosure.

29.2. The Court-II order dated 07.05.2025 reflects a dissent: the Judicial Member rejected the petition, due to limitation, non-disclosure of DRT proceedings, and inadmissibility of documents, while the Technical Member allowed it, emphasizing the continuing nature of the guarantee, the Resolution Plan's non-absolution of guarantor liability, and the need for RP examination. The Technical Member's view aligns with Lalit Kumar Jain and State Bank of India vs. V. Ramakrishnan, which uphold the guarantor's liability post-CIRP.

29.3. The prior NCLT orders (01.05.2024) dismissed petitions by SIDBI for limitation and non-disclosure, but the

facts differ: SIDBI's guarantee was invoked in 2016, and no acknowledgment extended the limitation beyond the three-year period. In contrast, the Applicant's petition benefits from the Respondents' DRT acknowledgments (07.09.2019 and 21.12.2020) and the COVID-19 extension for the guarantees dated 04.02.2016 and 12.08.2016, as clarified in *Bank of India vs. Bimalkumar Manubhai Savalia*.

29.4. Section 95(1) requires the Applicant to establish a debt and default for admission. The Applicant has demonstrated a debt of Rs.1,229,15,19,292 supported by the NeSL report and guarantee documents. The default for the guarantees dated 04.02.2016 and 12.08.2016 is established by the NPA classification on 27.02.2015 and the invocation on 09.04.2018. However, these guarantees are inadmissible due to the uncured stamp duty defect, as per *Bidyut Sarkar vs. Kanchilal Pal (Dead) Through Its Lrs.* The guarantee dated 11.12.2014, while not impounded, cannot be enforced due to the absence of invocation evidence, and the Applicant has not segregated the debt attributable to this guarantee, making it impossible to determine the enforceable portion of the claim.

29.5. Given the inadmissibility of the guarantees dated 04.02.2016 and 12.08.2016 and the non-enforceability of the guarantee dated 11.12.2014, the Applicant fails

to establish a prima facie debt and default under Section 95(1), precluding admission and RP appointment under Section 97.

### **FINDINGS OF THE TRIBUNAL**

- 30. On Issue No.(a):** The guarantees dated 04.02.2016 and 12.08.2016 are inadmissible due to the DRT's impounding order dated 25.10.2019, which remains uncured despite the opportunity to cure, as per the judgment of the Hon'ble Supreme Court rendered in ***Bidyut Sarkar vs. Kanchilal Pal (Dead) Through Its Lrs.***
- 31. On Issue No.(b):** The guarantee dated 11.12.2014 is not enforceable, as there is no material, evidence, or averment of its invocation by the Applicant or SBICAP Trustee Company Limited, precluding establishment of a default under this guarantee.
- 32. On Issue No.(c):** The petition is within the limitation period for the guarantees dated 04.02.2016 and 12.08.2016, as the Respondents' written statements dated 07.09.2019 and 21.12.2020 constitute valid acknowledgments under Section 18 of the Limitation Act,

extended by the COVID-19 orders until 27.02.2025. The limitation for the guarantee dated 11.12.2014 is similarly extended, subject to enforceability issues.

**33. On Issue No.(d):** The Assignment Agreement dated 05.03.2020 does not extinguish the Applicant's right to enforce the guarantees, as clauses 2.1.7 and 2.1.10 preserve such rights, and Indian law upholds Guarantor liability persists post-CIRP and assignment as per *Lalit Kumar Jain v. Union of India* ((2021) 9 SCC 321) and *State Bank of India v. V. Ramakrishnan* ((2018) 17 SCC 394), as the liability is independent and co-extensive under IBC Section 60(2) r/w Contract Act Section 128, unless expressly released in the resolution plan

**34. On Issue No.(e):** The Applicant has locus standi to file the petition, as it is a financial creditor under the SBI Consortium, and the Assignment Agreement preserves its enforcement rights.

**35. On Issue No.(f):** The petition does not merit admission, as the guarantees dated 04.02.2016 and 12.08.2016 are inadmissible due to uncured stamp duty defects despite

over five years and opportunity to cure under Stamp Act Section 42, and the guarantee dated 11.12.2014 is not enforceable due to lack of invocation evidence, precluding the establishment of the full debt and default.

- 36.** In view of above findings, the Company Petitions **CP(IB)/355/NCLT/AHM/2024, CP(IB)/356/NCLT/AHM/2024, CP(IB)/357/NCLT/AHM/2024** are **rejected**, as foundational documents are defective, precluding prima facie debt/default under IBC Section 95(1).
- 37.** Hence, the present reference on the issue of **Whether Personal Guarantors can be admitted/ rejected into PIRP on merits** is decided accordingly.
- 38.** The Registry is directed to communicate this order to the Applicant and Respondents forthwith.

sd/-

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**