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SARFAESI Notice as Valid Invocation of Personal Guarantee: The NCLT Mumbai Perspective

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For financial creditors navigating the dual landscape of traditional debt recovery and modern insolvency resolution, the personal guarantor provisions of the Insolvency and Bankruptcy Code, 2016 (IBC) present both opportunity and procedural complexity. The Code's promise of time-bound resolution for personal guarantors to corporate debtors intended to prevent the erosion of credit discipline has generated a steady stream of litigation testing the boundaries of guarantee law, statutory invocation requirements, and the interplay between the IBC and older recovery statutes such as the SARFAESI Act, 2002 and the RDDB Act, 1993.

The National Company Law Tribunal (NCLT), Mumbai Bench, in its judgment dated 06 April 2026 in Canara Bank v. Shweta Deepak Patel [C.P.(IB) No.377/NCLT/MB/2025 with I.A.(I.B.C) No.2976/NCLT/MB/2025], (2026) ibclaw.in 1073 NCLT, delivered a comprehensive ruling addressing the nature of guarantee documents, the validity of invocation through SARFAESI notices, the determination of default dates for guarantors, and the overriding effect of the IBC over parallel recovery proceedings. This article examines the factual matrix, rival contentions, legal analysis, and the Tribunal's findings to distil the jurisprudential significance of this decision for banking and insolvency practitioners.

Factual Background and Genesis of the Dispute

Canara Bank, the applicant-financial creditor, had sanctioned financial assistance aggregating Rs. 38 Crore by way of an Overdraft Cash Credit (OCC) Facility to Swami Narayan Diamonds Private Limited, the principal borrower and corporate debtor. This facility was initially sanctioned on 18 January 2019 and subsequently renewed through letters dated 21 February 2019, 01 September 2020, and 14 March 2023, all of which were duly accepted by both the corporate debtor and the personal guarantor. Additionally, under the Government's Guaranteed Emergency Credit Line (GECL) scheme, the bank sanctioned two Working Capital Term LoansGECL-I of Rs. 5 Crore on 09 November 2020 and GECL-II of Rs. 6.4 Crore on 25 November 2021. The personal guarantor, Ms. Shweta Deepak Patel, executed a Personal Guarantee Agreement dated 21 February 2019 in favour of Canara Bank, securing the repayment of the OCC Facility. This agreement contained several stringent clauses, including an unconditional and irrevocable guarantee of repayment, a continuing guarantee provision, joint and several liability, a principal debtor clause deeming the guarantor as principal debtor jointly with the borrower, and waivers of rights conferred by Sections 130, 133, 134, 135, 139, and 141 of the Indian Contract Act, 1872.

The principal borrower defaulted on its outstanding liabilities, leading to classification of the account as a Non-Performing Asset (NPA) on 05 July 2024. On 06 July 2024, Canara Bank issued a demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), demanding payment of Rs. 46.43 Crores from the borrower as well as the guarantor, providing a 60-day compliance period. Both parties failed to discharge the liability. Subsequently, on 02 December 2024, the bank issued a formal Demand Notice in Form B under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, to which the guarantor responded vaguely on 21 December 2024 without making payment. Canara Bank also initiated Section 7 proceedings against the principal borrower, which were admitted on 11 September 2025. The present petition under Section 95(1) of the IBC, 2016, seeking initiation of insolvency resolution process against the personal guarantor for a default amount of Rs. 51,34,29,353.81, was filed on 12 February 2025.

Rival Contentions Before the Tribunal

The Personal Guarantor advanced several substantive defences. She argued that the document dated 21 February 2019, despite being labeled a guarantee agreement, was in legal substance a contract of indemnity under Section 124 of the Contract Act, primarily because the principal debtor clause created a primary obligation rather than secondary liability characteristic of guarantees. She invoked the contra proferentem principle, submitting that ambiguities in the bank-drafted document must be resolved in her favour. On stamping, she contended that the document was inadmissible for want of adequate stamping under Article 5(h)(A)(iv) read with Section 5 of the Maharashtra Stamp Act and liable to impoundment under Section 33. She challenged the date of default as ex-facie illegal, arguing that the SARFAESI notice gave 60 days to comply, rendering liability premature before the 61st day, and that different dates of default for the corporate debtor and guarantor rendered the petition non-maintainable. She further submitted that the Section 13(2) notice could not constitute invocation of the guarantee because a guarantee contract was not a "security agreement" within Section 2(1)(zb) of the SARFAESI Act. She raised allegations of mala fides, contending that the petition was filed for extraneous recovery purposes since the bank had already initiated DRT proceedings (OA No. 587 of 2024) and SARFAESI action, and that the bank was misusing the IBC process as a debt recovery

mechanism. She also challenged the Resolution Professional's report as defective, cut-paste, and showing non-application of mind, and argued that the GECL facilities were not covered by any guarantee agreement executed by her.

The Financial Creditor contended that the document dated 21 February 2019 was unequivocally a contract of guarantee under Section 126 of the Indian Contract Act, 1872, and that the Section 13(2) SARFAESI notice dated 06 July 2024 constituted valid invocation of this guarantee. It argued that the guarantee was an "on demand" instrument, and any demand made by the bank, including through the SARFAESI notice explicitly addressed to guarantors, would constitute invocation. The date of default for the guarantor was correctly identified as 04 September 2024, being the expiry of the 60-day notice period. On the stamping issue, the bank submitted that even if the Guarantee Deed were disregarded for insufficient stamping under the Maharashtra Stamp Act, debt and default could be established through other transaction documents including sanction letters and acknowledgments of debt. Furthermore, the bank asserted that the IBC, by virtue of Section 238, overrides the SARFAESI Act and the Recovery of Debts and Bankruptcy Act, 1993 (RDDB Act), and that parallel recovery proceedings before the Debt Recovery Tribunal (DRT) did not bar the Section 95 petition.

Tribunal's Analysis and Findings

The Tribunal, after hearing counsel for all parties and perusing the RP's report dated 13 June 2025, systematically addressed each contention. On the nature of the document, the Tribunal held that the agreement dated 21 February 2019 was indisputably a contract of guarantee. The document explicitly termed the respondent as "Guarantor," used the word "guarantee" throughout, provided for unconditional and irrevocable guarantee of repayment, and established joint and several liability. The principal debtor clause and waivers of surety rights under Sections 130, 133, 134, 135, 139, and 141 of the Contract Act were held to be standard enhancement clauses commonly found in bank guarantees, not converting the instrument into an indemnity. The Tribunal noted that Section 126 defines a contract of guarantee as a contract to perform or discharge the liability of a third person in case of his default, which the document squarely satisfied. The guarantor's acceptance of the renewed sanction letter dated 14 March 2023 further confirmed this relationship.

Regarding invocation, the Tribunal placed significant reliance on the NCLAT judgment in Mavjibhai Nagarbhai Patel v. State Bank of India, which held that a Section 13(2) SARFAESI notice calling upon both borrower and guarantors to pay, containing specific demand to guarantors, constitutes valid invocation of the personal guarantee. The Tribunal observed that the notice dated 06 July 2024 was explicitly titled "NOTICE TO BORROWER/GUARANTOR/MORTGAGOR/OWNER," named the respondent specifically, demanded payment within 60 days, and stated that the guarantor was "also liable to pay future interest." The fact that the notice was issued under the SARFAESI Act did not alter its character as a valid demand under the guarantee terms.

On the date of default, the Tribunal accepted the bank's position that the guarantor's liability arises from the date of invocation, not the principal borrower's default. Citing Syndicate Bank v. Channaveerappa Beleri [(2006) 11 SCC 506], the Tribunal held that in "on demand" guarantees, limitation begins to run when demand is made and the guarantor commits breach by not complying. The default date of 04 September 2024 was therefore correctly determined as the expiry of the 60-day notice period, and the petition filed on 12 February 2025 was well within the three-year limitation period from both the principal borrower's NPA date (05 July 2024) and the guarantor's default date (04 September 2024). The Tribunal rejected the contention that different dates rendered the petition non-maintainable, holding that the dates were legally sequential and consistent with the nature of guarantor liability.

The stamping objection was overruled on the ground that the Financial Creditor had established debt and default through multiple other documents, including acknowledgments of debt and renewed sanction letters duly accepted by the guarantor. The Tribunal followed the established principle that debt and default may be proved from the totality of transaction documents even if one document is disregarded for stamping deficiencies.

On the maintainability objection based on parallel proceedings, the Tribunal invoked Section 238 of the IBC and relied on a series of NCLAT and Supreme Court judgments including Y.Y. Butchi Babu v. State Bank of India, G. Sundaravadivelu v. Indian Overseas Bank, State Bank of India v. Abhijeet Ferrotech Ltd., and A. Navinchandra Steels Pvt. Ltd. v. Srei Equipment Finance Ltd., to hold that pendency of DRT or SARFAESI proceedings is not a bar to IBC proceedings. The Tribunal emphasised that Section 95 proceedings are for restructuring and resolution through an agreed repayment plan, not mere recovery, and that the IBC is a complete code with overriding effect.

The Tribunal noted that while no separate guarantee agreement was produced for the GECL facilities, this was not fatal since the default on the OCC facility alone (Rs. 38 Crore plus interest) far exceeded the Section 4 threshold of Rs. 1 Crore for personal guarantor insolvency, as clarified in Mudraksh Investfin Pvt. Ltd. v. Gursev Singh [(2025) ibclaw.in 323 NCLAT]. The RP's recommendation for admission was accepted, with the Tribunal finding that the respondent failed to produce evidence of repayment and that all requirements under Sections 95 and 99 were satisfied.

Conclusion

The NCLT Mumbai Bench's decision in Canara Bank v. Shweta Deepak Patel reinforces several critical principles in the evolving jurisprudence of personal guarantor insolvency under the IBC. The judgment clarifies that bank guarantee documents containing standard enhancement clauses, including principal debtor provisions and waivers of surety rights, retain their character as contracts of guarantee under Section 126 of the Contract Act. It establishes that SARFAESI notices explicitly addressed to guarantors can validly invoke personal guarantees, provided they contain specific demands for payment. The ruling affirms that guarantor default dates are distinct from principal borrower default dates in "on demand" guarantees, and that the IBC's overriding effect under Section 238 ensures that parallel recovery proceedings do not obstruct insolvency resolution. For banking and insolvency practitioners, this decision provides valuable guidance on document construction, invocation mechanics, and the strong framework for personal guarantor insolvency under the IBC, underscoring the Tribunal's commitment to enabling time-bound resolution of stressed assets while rejecting technical objections that would derail the statutory process.

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