

If notice u/s 13(2) of SARFAESI explicitly demands payment from the guarantor in terms of the guarantee agreement, it amounts to an invocation of the personal guarantee

The NCLAT New Delhi in the case of **Asha Basantilal Surana v/s State Bank of India & Ors. [Company Appeal (AT) (Insolvency) No. 84 of 2025]** dated May 15, 2025, has held that where a notice under section 13(2) of the SARFAESI explicitly demands payment from the guarantor in terms of the guarantee agreement, it amounts to an invocation of the personal guarantee.

The primary question before NCLAT was whether the notice issued under Section 13(2) of the SARFAESI Act and addressed to the Personal Guarantor constituted a valid invocation of the personal guarantee, thereby giving rise to a cause of action under Section 94(1) of the IBC. The Tribunal noted that the Section 13(2) notice was explicitly titled “Notice to Guarantor” and was addressed to the Personal Guarantor, and it clearly required the Personal Guarantor to discharge the outstanding liability within 60 days.

The NCLAT emphasized that the invocation of a personal guarantee must be in accordance with the terms of the guarantee agreement. Since Clause 7 of the Guarantee Agreement in the present case did not prescribe a specific form or mode for the demand notice, any demand made against the personal guarantor requiring repayment of dues could be construed as an invocation of the guarantee.

The NCLAT held that the language of the 13(2) Notice issued by the State Bank of India demonstrated a clear demand upon the Personal Guarantor for payment of Rs. 28,56,64,336.06, and hence, such a notice can provide a valid cause of action for initiating personal insolvency proceedings under Section 94(1) of the IBC.