Where the Deed of Guarantee is a continuing guarantee, the claim can remain enforceable against the guarantor beyond three years from the date of default of the principal borrower, and limitation against the guarantor would commence when the guarantor defaults in fulfilling his obligations under the guarantee deed after invocation

The **Chennai Bench of the National Company Law Tribunal (NCLT)** in the case of **Aditya Birla Finance Limited vs G. Thiyagarajan [CP(IB)/43(CHE)/2024] dated June 09, 2026**, has held that where the Deed of Guarantee is a continuing guarantee, the claim can remain enforceable against the guarantor beyond three years from the date of default of the principal borrower, and limitation against the guarantor would commence when the guarantor defaults in fulfilling his obligations under the guarantee deed after invocation.

The Tribunal further held that the liquidation of the corporate debtor and disbursal of part proceeds to the financial creditor pursuant to settlement among creditors did not discharge the personal guarantor, because the liability of the surety arises out of an independent contract and is not absolved by release or discharge of the principal borrower through an involuntary process such as liquidation or insolvency. It also held that resignation from the company does not absolve a guarantor from liability under the guarantee agreement unless he is discharged.

The Tribunal observed that the corporate debtor had availed the credit facilities on January 24, 2014; that the respondent had given a Declaration-cum-Undertaking and executed the Deed of Guarantee on the same date; and that the corporate debtor's account became NPA on November 01, 2017. It further noted that while a Section 13(2) SARFAESI notice dated November 03, 2017 was issued to the corporate debtor and the other personal guarantor, no such notice was issued to the respondent at that stage, and the notice invoking the respondent's guarantee was issued only on October 15, 2022.

The Tribunal also noted that insolvency proceedings against the corporate debtor had been initiated in 2018 within limitation, that the corporate debtor went into liquidation, and that the petitioner received Rs. 1.03 crores from sale proceeds pursuant to a settlement among creditors. The Tribunal observed that release or discharge of the principal borrower by operation of law, including liquidation or insolvency, does not absolve the personal guarantor of liability, which arises from an independent contract of guarantee. It further observed that resignation of the respondent from the corporate debtor would not absolve him from liability under the guarantee agreement unless he was discharged.

The Tribunal observed that the guarantee was a continuing guarantee and coextensive with the liability of the principal debtor. It held that, being a continuing guarantee, it could be invoked at any stage, and that the rights of the financial creditor against one guarantor remained in full force notwithstanding any arrangement with another guarantor.