**A SARFAESI notice or a recovery certificate cannot, in the absence of a clear contractual stipulation or specific demand made upon the guarantor under the guarantee deed, be treated as invocation of the personal guarantee**

The **Jaipur Bench of the National Company Law Tribunal (NCLT)** in the case of **Bank of Baroda vs Amit Prakash Gupta [IA (IBC) No. 20/JPR/2026] dated May 18, 2026**, has held that for initiation and admission of proceedings against a personal guarantor under Section 95 of the Insolvency and Bankruptcy Code, 2016, invocation of the guarantee in accordance with the contract of guarantee is a mandatory precondition under Rule 3(1)(e) of the relevant Rules, and such invocation must precede the Rule 7 demand notice as well as the filing of the Section 95 application.

The NCLT clarified that a Rule 7 of the Personal Guarantor Rules notice cannot itself amount to invocation, because it proceeds on the basis that default has already occurred. Similarly, a SARFAESI notice or a recovery certificate cannot, in the absence of a clear contractual stipulation or specific demand made upon the guarantor under the guarantee deed, be treated as invocation of the personal guarantee. Where no such prior invocation is pleaded and proved, no default arises qua the personal guarantor and the Section 95 application is not maintainable.

The Tribunal observed that the statutory framework under Part III of the Code makes invocation of guarantee a fundamental requirement because Rule 3(1)(e) requires that the guarantee must have been invoked and remain unpaid. Finding that the financial creditor had not disclosed in its pleadings any specific act of invocation, the Tribunal rejected the argument that the recovery certificate could amount to invocation, observing that a recovery certificate is the result of adjudication or consent before a recovery forum, whereas invocation is a contractual act by which the creditor calls upon the guarantor to perform his obligation under the contract of guarantee.

The Tribunal further noted that the Bank had shown no clause in the guarantee deed under which issuance of a recovery certificate would automatically operate as invocation, and had produced no specific communication addressed to the respondent after the recovery certificate demanding payment under the guarantee.

The Tribunal also held that the SARFAESI notice could not constitute invocation of the personal guarantee. It observed that the financial creditor had not pleaded in the Section 95 application that the guarantee was invoked through that notice; that a notice under Section 13(2) of the SARFAESI Act serves the purpose of enforcement of security interest against secured assets; and that invocation of a personal guarantee is conceptually and legally distinct from enforcement proceedings under SARFAESI.

The Tribunal further held that the Rule 7(1) demand notice could not be treated as invocation of guarantee because the scheme of the Code and the 2019 Rules treats invocation as a prior substantive contractual act and the Rule 7 notice as a later procedural step issued on the premise that default has already occurred. It explained that a valid invocation of a personal guarantee requires a clear and unambiguous demand upon the guarantor in terms of the guarantee deed, identifying the debt, calling upon him to pay the guaranteed amount or relevant portion, and indicating that upon failure the creditor would enforce the guarantee. On that reasoning, the Tribunal found that proceedings or instruments such as recovery certificates or SARFAESI notices may evidence liability or enforcement steps, but cannot substitute for invocation unless there is a clear contractual demand upon the guarantor.

On the RP's report, the Tribunal accepted that delay in filing the report under Section 99 was not fatal, but held that the report still failed on the central issue because it confused existence of debt against the corporate debtor with default by the personal guarantor. The Tribunal recorded that the RP did not identify the precise document by which the guarantee was invoked and could not fill lacunae in the petition or construct a case of invocation on a basis different from what the financial creditor had pleaded.

Accordingly, the Tribunal concluded that the financial creditor had failed to establish invocation of the personal guarantee in accordance with law before initiation of the Section 95 proceedings. It therefore held that no default could be said to have arisen qua the personal guarantor, rejected the company petition under Section 100, took the RP's report on record but declined to accept the recommendation for admission, and declared that the interim moratorium under Section 96 stood ceased.