INSTITUTE OF INSOLVENCY PROFESSIONALS
(Subsidiary of ICSI and Insolvency Professional Agency of IBBI)

LEARNING CURVE

Case No. 17/ 2026 • 27th August, 2026

"Personal Guarantor Cannot Extend Limitation Through Own OTS Proposal; Section 94 IBC Application Must Be Filed Within Three Years of Guarantee Invocation - NCLAT, New Delhi."

CASE TITLE	**Kanta Gupta Versus Bank of India & Ors.**
CASE NO.	Comp. App. (AT)(Ins) No. 1058 of 2026 & I.A. No.4167, 4168, 4169, 4477 of 2026
DATE OF ORDER	21st August 2026
COURT / TRIBUNAL	NCLAT, New Delhi
STATUTES / RULES INVOLVED	• Section 94 of Insolvency and Bankruptcy Code, 2016 • Articles 137 of the Constitution of India • Section 18 of Limitation Act, 1963
BENCH	Justice Mohammad Faiz Alam Khan, Member (Judicial) and Mr. Naresh Salecha, Member (Technical)

BRIEF FACTS OF THE CASE

OSIL Exports Limited, the Corporate Debtor (CD), availed credit facilities from a consortium of banks led by Bank of India. The appellant, Ms. Kanta Gupta, executed personal guarantees dated 21.05.2014 and 21.02.2015 in favour of the lenders. The loan account of the corporate debtor was classified as NPA on 31.12.2015. Bank of India initiated CIRP under Section 7 of the IBC, which was admitted on 31.01.2018. As no resolution plan materialized, the corporate debtor was ordered into liquidation on 17.10.2019. The personal guarantee was invoked through a Section 13(2) SARFAESI notice dated 10.09.2019, followed by a possession notice under Section 13(4).

The appellant submitted that OTS Proposal dated 16.04.2021 Revised OTS Proposal dated 03.04.2023 On 18.12.2025, the appellant filed an application under Section 94 IBC seeking initiation of the insolvency resolution process of a personal guarantor. Though the Resolution Professional recommended admission, the NCLT Chandigarh dismissed the application on 26.05.2026 as being barred by limitation.

Aggrieved, the appellant preferred the present appeal before NCLAT.

ISSUES FOR CONSIDERATION

- **Whether the application under Section 94 of the IBC filed by the personal guarantor was barred by limitation?**
- **Whether OTS proposals submitted by the personal guarantor constitute acknowledgments under Section 18 of the Limitation Act so as to extend the limitation period?**
- **Whether pendency of liquidation proceedings against the corporate debtor or pending recovery proceedings could extend the limitation period for filing a Section 94 application?**

CONTENTIONS OF PARTIES

PETITIONERS — KANTA GUPTA	RESPONDENT — BANK OF INDIA & ORS.
The appellant argued that: • Limitation had not expired because the debt remained enforceable. • Recovery proceedings and liquidation proceedings against the corporate debtor were still pending. • OTS proposals submitted in 2021 and 2023 constituted acknowledgments under Section 18 of the Limitation Act, thereby extending limitation by a fresh period of three years. • Section 18 does not distinguish between creditor and debtor; therefore, a debtor should also be entitled to rely on acknowledgments for extending limitation. • Since the corporate debtor remained under liquidation, the guaranteed debt continued to subsist and remained recoverable.	The Respondent Banks contended that: • The personal guarantee was invoked on 10.09.2019, which constituted the cause of action. • Under Article 137 of the Limitation Act, the Section 94 application ought to have been filed within three years, i.e., by 10.09.2022. • The appellant could not rely on her own OTS proposals to take benefit under Section 18 of the Limitation Act. • Section 18 applies only when acknowledgment is made by the party against whom the right is claimed. • The Section 94 application was filed only to secure the benefit of interim moratorium and frustrate recovery proceedings. • The challenge to the SARFAESI auction notice was not maintainable before NCLAT.

Lower Court’s Ruling

National Company Law Tribunal (NCLT), Chandigarh Bench

The NCLT, by its order dated 26 May 2026, dismissed the application filed by Kanta Gupta under Section 94 of the Insolvency and Bankruptcy Code, 2016 on the ground that it was barred by limitation.

The NCLT held that the appellant could not claim the benefit of Section 18 of the Limitation Act, 1963 on the basis of her own One-Time Settlement (OTS) proposals submitted to the lenders. The Tribunal observed that Section 18 extends limitation only when there is a written acknowledgment of liability by the party against whom the right is claimed. Since the debtor/personal guarantor herself had made the OTS proposals, she could not rely on her own acts to extend the limitation period. The Tribunal further noted that the personal guarantee was invoked through a notice under Section 13(2) of the SARFAESI Act on 10 September 2019, and therefore the appellant had three years, i.e., till 9 September 2022, to initiate proceedings under Section 94 of the IBC.

Accordingly, the NCLT concluded that the Section 94 application filed in December 2025 was hopelessly time-barred. It rejected the Resolution Professional's recommendation for admission of the application and held that permitting a debtor to extend limitation through self-generated acknowledgments would lead to misuse of Section 18 of the Limitation Act. Consequently, the petition under Section 94 IBC was dismissed.

DECISION OF THE NCLAT

The NCLAT upheld the NCLT Chandigarh Bench's order dismissing a personal guarantor's application under Section 94 of the Insolvency and Bankruptcy Code, 2016 on the ground of limitation. The appellant, who had furnished personal guarantees for loans availed by OSIL Exports Limited, contended that the limitation period stood extended owing to One-Time Settlement (OTS) proposals submitted in 2021 and 2023, which according to her constituted acknowledgements under Section 18 of the Limitation Act, 1963. She further argued that since the corporate debtor was still under liquidation and recovery proceedings were continuing, the debt remained enforceable and her insolvency application filed in December 2025 was within time.

Rejecting these arguments, the NCLAT held that the limitation for filing an application under Section 94 by a personal guarantor commences from the date of invocation of the guarantee, which in the present case was 10 September 2019 when the demand notice under Section 13(2) of the SARFAESI Act was issued. The Tribunal clarified that a person cannot rely upon his or her own acknowledgement of liability to extend limitation under Section 18 of the Limitation Act. An OTS proposal is merely an admission of liability and can be used by the creditor against the debtor, but not by the debtor for extending limitation in his own favour. Since the three-year limitation period expired in September 2022 and the Section 94 application was filed only on 18 December 2025, the application was held to be time-barred. Accordingly, the appeal and the challenge to the auction notice were dismissed.

SIGNIFICANCE OF THE CASE

This judgment clarifies that for a personal guarantor, limitation under Section 94 IBC commences from the date of invocation of the guarantee. A personal guarantor cannot rely upon his or her own OTS proposal or acknowledgment to extend limitation under Section 18 of the Limitation Act. Pending liquidation of the corporate debtor or recovery proceedings does not postpone or revive the limitation period for a Section 94 application. The decision strengthens judicial scrutiny of delayed Section 94 applications and discourages their use as a mechanism to obstruct SARFAESI recovery actions.

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