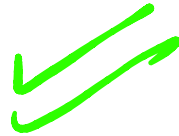




CONTRACT OF GUARANTEE



3

TRIPARTITE AGREEMENT

Principal Debtor
Creditor
Surety



Pappu PD



CREDITOR

D. most

Main = PC ✓
PRINCIPAL CONTRACT

D. most
CREDITOR



CJ.
SURETY

SO.
SECONDARY CONTRACT

CJ
SURETY



Pappu
PD

Implied indemnity
IMPLIED CONTRACT

Indemnity



★ UNIT-7 124 = Contract of Indemnity :-

- ★ It is a contract by which one party promises
- ★ to indemnify or save the other party from loss
- ★ caused by - PR himself / conduct of any other person
- It is a security against loss or to make the loss good or to compensate the other party
- Party who promises to indemnify → INDEMNIFIER / PR
- Party to whom indemnity is given → Indemnity HOLDER
- Any natural event / Act of God is not covered (India)
- Life insurance ≠ COI. It shall have all EE of contract

★ SEC. 125 : RIGHTS OF IH to recover from I^{er}

★ Eq reference :- IH = Anjit
I^{er} = Vivek oberoi

★ IH is entitled to recover from P^{OR}/I^{er} when he is acting within his authority →

D (1) All damages which he is compelled to pay.

C (2) All COST for bringing / defending the suit

C (3) All sums required for compromise of suit

Liab. of I^{ER} commences the moment liability of IH becomes absolute (100%) & certain by court.

★ CONTRACT OF Guarantee :-

★ A contract of Guarantee is a contract where
★ one person (surety) gives guarantee for an-
★ other person (Principal debtor) to creditor.

→ This contract is made to discharge liability of PD by surety to creditor in case PD defaults

There are three contracts (TRIPARTITE) →

- (1) Main / Principal - PD & CR.
- (2) Secondary - Surety & CR
- (3) Implied / indemnity - Surety & PD.

★ In case of Continuing Guarantee :-

★ It goes on until revoked.

★ eg:



For types of Guarantee
Refer ★ Sheet

100,000
50,000

Balance
50,000 ✓

Past
liable
CJ is
liable

After
2 months
(Revoke)

CJ is not liable
for 4 months

Future
transaction

ESSENTIALS OF CONTRACT OF GUARANTEE



126

Oral / Written

NO PD means
NO Guarantee

127

1

Consideration is required but not direct b/w surety and Creditor

2

Past Consideration is no consideration for COG

But Fresh
benefit is }
sufficient.

3

Surety – Competent hi chahye. PD incompetent (**Minor**) chalega

142
143

Misrepresentation
Concealment of material facts

144

Co-surety ki condition hai agar aur wo nahi aata hai then
guarantee is not valid.



AGAINST	RIGHTS OF SURETY	
<p>② done</p> <p>Against the <u>creditor</u></p> <p>✓✓</p>	<p>✓✓ 141</p> <p>Surety's right to benefit of creditor's securities</p>	<p>Right to <u>set off</u></p> <p>✓✓</p> <p>And</p> <p>Right to <u>share reduction</u></p> <p>✓✓</p>
<p>① done</p> <p>Against the <u>principal debtor</u></p>	<p>Surety = CREDITOR</p> <p>140</p> <p><u>Right to subrogation</u></p> <p>दूसरे की जगह लेना</p>	<p>145 ✓✓</p> <p><u>Implied promise to indemnify Surety</u></p>
<p><u>Tomorrow</u></p> <p>Against <u>Co-Sureties</u></p> <p>③</p>	<p>146</p> <p><u>Co-sureties liable to contribute equally</u></p> <p>if nothing in the contract</p>	<p>147</p> <p><u>Liability of co-sureties bound in different sums</u></p>

3

2

2

Surety
1
PD = 3
Implied contract

Barner Silent $\frac{A/B/C}{1:1:1} \xrightarrow{2 \text{ 50k 50k}} D$
3L



147 - Liability of co-sureties bound in different sums -

- The principal of **equal contribution** is however
- **subject** to the **maximum limit** fixed **by a surety** to his liability.
- **Co-sureties** who **are bound** in **different sums** are **liable to pay equally** as far **as the limits** of their respective obligations permit.

A/B/C = Co-Surety
700,000 ✓

A = 1L

B = 2L

C = 4L

① equally divide

② do not cross ind. limit

Default
①

300,000

A - 1L

B - 1L

C - 1L

Default
②

400,000

A - 1L

B - 1.5L

C - 1.5L

Remaining
Equally

Default
③

700,000

A : 1L

B : 2L

C : 4L

★ Essentials of a Valid Contract of Guarantee

- ★ (1) No principal debt = No Guarantee
- ★ (2) COG can be in writing & oral as well

★ (3) SEC. 127 - Consideration :

- No direct consideration is required b/w surety & creditor because PD consideration is sufficient.
- No Past consideration is COG But Fresh benefit is treated as sufficient.

- ★ - A surety must be a competent person means he can't be minor / unsound etc.
- ★ A PD can be incompetent person.

★ (4) A COG based on misrepresentation or concealment of facts = Invalid

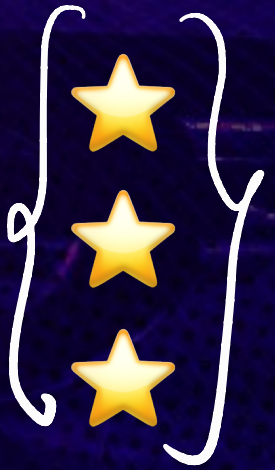
(5) If there is a condⁿ of co-surety then COG will be invalid if another co-surety does not join. (SEC. 144)

★ Nature & Extent of Surety's liability : 128

- ★ - Surety's liab. is secondary & conditional.
- ★ - It is co-extensive with PD's liability
 - It means surety's liab. will be same as PD unless otherwise provided in the contract
 - If PD is not liable due to defect in the doc then liab. of surety also ceases.
- Creditor can sue surety first, it means there is no sequence. Surety's duty remains same.

★ SEC. 132 :-

- ★ - When two persons (Joint Promisors) } 1st contract
- ★ - undertake a liability (Guarantee) }
- ★ - also enter into 2nd contract b/w both of them
- saying that one will be liable if other defaults
- then such 2nd contract will not have any
effect on their primary liability towards the
third person
- whether such person is aware of 2nd contract
or not.



done

By **revocation** of the contract of guarantee -

130 - ✓ CG by **Notice** } Continuing Guarantee — Notice

131 - ✓ CG by **Death** }

62 - **Novation** New ← in place of old

done

By **Conduct of the Creditor** - हरकत

Changes

133 - **Variance** in the terms of the contract

134 - Release or Discharge of the PD

135 - Creditor **compromises** with the PD (Extra time etc.)

done

By the **invalidation** of the contract of guarantee

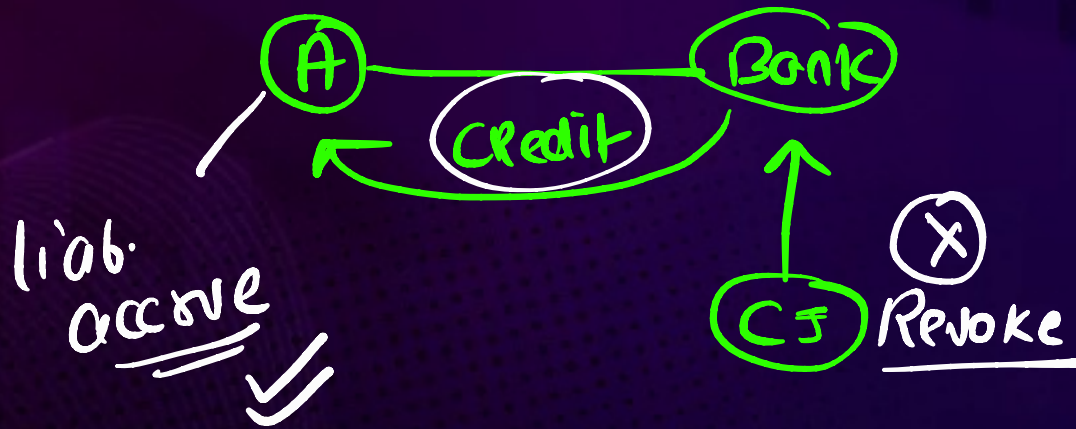
142- Guarantee obtained by **misrepresentation**

143- Guarantee obtained by **concealment**

144- Guarantee on contract that creditor shall not act on it until **co-surety joins**

130 - Revocation of Continuing Guarantee by Notice

- The surety can **revoke** a **continuing guarantee** by giving **notice** to the creditor.
- The surety is liable for all transactions before the notice but not for **future transactions**.
- A **specific guarantee** can only be **revoked** if **liability to the principal debtor has not accrued**.
Accrued एतल दे उरुन = Revocation



131 - Revocation of Continuing Guarantee by Surety's death

- In the absence of an agreement to the contrary, the surety's death revokes the continuing guarantee for future transactions.
- The surety's estate remains liable for transactions before the death.
- However, the surety's estate remains liable for the past transactions which have already taken place before the death of the surety.

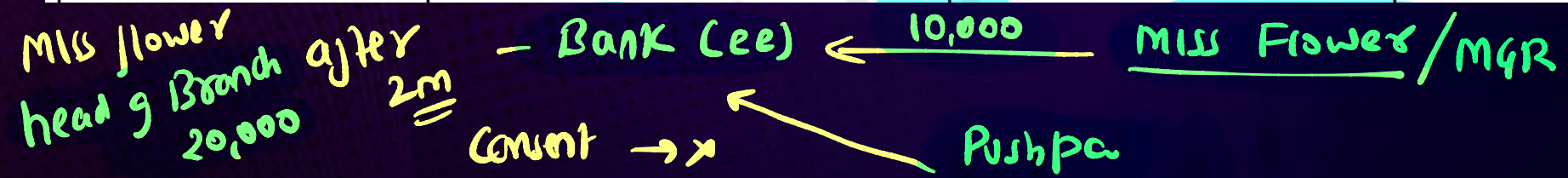
LR = ? liab = Assets
inheritance
↓
liable only for past transactions





Discharge of Surety by Conduct of the Creditor

Section	Condition for Discharge of Surety	Explanation	Example
<p>Section 133</p> <p>Variance in Terms of Contract</p> <p>Changes in the contract</p>	<p>Surety is discharged if the principal debtor and creditor vary the contract terms without the surety's consent.</p> <p>PD ← → CR Wheat / Rice Surety</p>	<p>The surety is no longer liable for transactions occurring after the variation.</p> <p>After the variation</p>	<p>A becomes surety for B's conduct as a manager in C's bank. Without A's consent, B's salary is increased, and B is made liable for overdraft losses. B allows an overdraft, resulting in a loss. A is discharged as surety.</p>





Discharge of Surety by Conduct of the Creditor

Section	Condition for Discharge of Surety	Explanation	Example
<p style="text-align: center;">Section 134</p> <p style="text-align: center;">Release or Discharge of Principal Debtor</p> <p style="text-align: center;">PD = discharge</p> <p style="text-align: center;">automatically</p> <p style="text-align: center;">S = dis.</p>	<p>Surety is discharged if:</p> <ol style="list-style-type: none"> The creditor enters into a new contract with the principal debtor releasing the latter, or. The creditor's action or omission leads to the legal discharge of the principal debtor. 	<div style="text-align: center;"> </div> <p>Once the principal debtor is released or discharged, the surety is also released from liability.</p> <p style="color: red;">Reciprocal promises</p> <p style="color: red;">(A) → X Timber sec. 51</p> <p style="color: red;">(B) → X Construct</p> <p style="color: red;">Surety discharge</p>	<p>A will deliver good to B and C guarantees B will pay. B contracts with C to assign his property in lieu of debt.</p> <hr/> <p>A promises to build house and B will supply timber but omits so PD (A) is discharged so will C (Surety)</p>

Miss Jlower की Guarantee की थी
 But Bank [314 every 1m = audit]
 omit (action) की बात

Discharge of Surety by Conduct of the Creditor

Section	Condition for Discharge of Surety	Explanation	Example
<p style="color: cyan; background-color: #e0ffff; border-radius: 10px; padding: 5px; display: inline-block;">Section 135</p> Compounding, Giving Time, or Agreement Not to Sue <div style="background-color: #90ee90; padding: 5px; display: inline-block; border: 1px solid black;"> Compromise Settlement </div> → composition	Surety is discharged if: 1. The creditor makes a composition (settlement) with the PD or 2. The creditor gives time or 3. Promises not to sue the debtor, unless the surety consents.	Composition with the principal debtor without consulting the surety discharges the surety.	<p style="color: red; font-weight: bold; text-decoration: underline;">Without Consent Surety</p> <p style="color: cyan;">If a creditor gives more time to pay or promises not to sue, the surety is discharged unless they agree to it.</p>
		The surety's right to demand payment is violated if the creditor gives the debtor more time or agrees not to sue.	

VIMP

Never (sue)

↓

Surety discharge

Forbearance

↓

Surety discharge
নেই ঠিক

OG = 1 YR - (+) 2m + 5m + 7m.

→ (Sue) PD ← CR



136



Surety not discharged when agreement is made with third person to give time to principal debtor

- Where a contract to give time to the principal debtor
 - is made by the creditor with a third person,
 - and not with the principal debtor,
 - the surety is not discharged.
- Example 23:** C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged.

135 = CR → extra time PD = surety discharge

136 = CR — agreement — (III) → extra time PD

137

Creditor's forbearance to sue does not discharge surety



- Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him
- does not in the absence of any provision in the guarantee to the contrary,
- discharge the surety.

Example 24: B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.



139

Discharge of surety by creditor's act or omission impairing surety's eventual remedy



- If the creditor does any act which is inconsistent with the rights of the surety or
- omits to do any act
- which his duty to the surety requires him to do, and
- the eventual remedy of the surety himself against the principal debtor is thereby impaired,
- the surety is discharged.

{ mortgage }
cancel

80,000
sum of
amt due → surety
discharge ✓

← Remedy
impairs

★ RIGHTS OF SURETY :- Against the PD :-

★ 140 :- Subrogation, it means surety will stand in the shoes of creditor now. He is invested with all the rights which creditor had against the PD.

★ 145 :- There is an implied promise b/w S - PD to indemnify the surety.

Against the CREDITOR :-

141 :- Surety is entitled to benefit of every security which CR. has against PD.

- ★ Whether or not, surety knows about it.
- ★ And if creditor loses the security w/o the consent of surety then surety will be
- ★ discharged to the extent of security amount

Set off :- Surety will also have the same right

$$\begin{array}{l} \text{eq: } X \longrightarrow Y \text{ 50,000} \\ \quad Y \longrightarrow X \text{ 10,000} \end{array} \} \text{ set off 40,000}$$

Share Reduction :- If PD becomes insolvent then

Surety will also have benefit to claim } 50,000 - eq.
 proportionate reduction in the liability } 25% Assets

★ Right against the Co-Sureties :-

★ 146 :- When contract is silent or in the absence of any contract b/w co-sureties :-

★ co-surety will share the burden of liability Equally

147 :- When bound in diff. sums :-

Amount will be shared equally Subject to the Maximum limit fixed by surety.

