

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 694 of 2026

[Arising out of the Impugned Order dated 09.04.2026 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi, Bench-II in I.A. No. 5111/ND/2025 in CP (IB) 318 (ND)/2025]

IN THE MATTER OF:

GAURAV BHALLA

Personal Guarantor of Arcturus Developers Private Limited Residing at Farm No. 4, Hyde Park, Prakriti Marg Sultanpur Farm, Mehrauli New Delhi – 110030.

...Appellant(s)

Versus

1. BEACON TRUSTEESHIP LIMITED

Having its Registered Office at: 5W, 5th Floor, The Metropolitan Building, E-Block, Bandra-Kurla Complex (BKC) Bandra (East), Mumbai – 400051

2. CA Nitin Om Kothari

Resolution Professional

IBBI Regn No.: IBBI/IPA-001/IP-P01456/2018-2019/12272 Address of the IRP: 5A/301, Alica Nagar, Lokhandwala Township, Kandivali (East), Mumbai - 400101

...Respondent(s)

Present:

For Appellant : Mr. Virender Ganda, Sr. Advocate with Mr. Vishal Ganda, Mr. Ayandeb Mitra, Ms. Riya Palnitkar and Mr. Pulkit Goyal, Advocates.

For Respondents : Mr. Abhijeet Sinha, Sr. Advocate with Ms. Meghna Mishra, Mr. Nikhil Ratti Kapoor, Ms. Yashodhara Gupta and Mr. Kevin Chadha, Advocates for R-1.
Mr. Vivek Sharma, Advocate for R-2/RP.

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 ('IBC' in short) by the Appellant arises out of the Order dated 09.04.2026 (hereinafter referred to as the '**Impugned Order**')

passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi, Bench-II) in I.A. No. 5111/ND/2025 in CP (IB) 318 (ND)/2025. By the said impugned order, the Adjudicating Authority has allowed the application i.e. I.A. No. 5111/ND/2025 preferred by the Resolution Professional under Section 99 of IBC and has admitted the application preferred by Beacon Trusteeship Limited-Debenture Trustee under Section 95(1) and (2) of the IBC for initiation of Personal Insolvency Resolution Process of Gaurav Bhalla-Appellant/Personal Guarantor. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant-Personal Guarantor.

2. Coming to the factual matrix of the present case the salient events/development which are relevant to be noticed are as shown hereunder:

- Arcturus Developers Private Limited (**'ADPL'** in short) had sought to raise funds in 2019 through issuance and allotment of 50,00,000 Optionally Convertible Debentures (**'OCDs'** in short) having a face value of Rs. 1,000 each aggregating to a total issue size of Rs. 500 Cr. Pursuant thereto, a Debenture Trustee Agreement was executed on 11.06.2019 between ADPL and Respondent No. 1-Beacon Trusteeship Limited (**'Beacon'** in short), appointing it as the Debenture Trustee for the benefit of the debenture holders.
- On 12.06.2019, 50,00,000 OCDs aggregating to Rs. 500 Cr were issued to IndiaBulls Dual Advantage Real Asset Fund and on 29.07.2019, ADPL entered into a Debenture Trust Deed (**'DTD'** in short) with Respondent No. 1-Financial Creditor setting out the terms and conditions governing the debentures.

- Subsequently, on 23.08.2019, Gaurav Bhalla-Appellant along with other promoters of ADPL executed Deeds of Personal Guarantee (**'DPG'** in short) securing the obligations arising under the debenture issuance.
- On 17.01.2020, the DTD was amended whereby the redemption provisions were revised through the First Amendment to the DTD.
- On 06.01.2021, the debenture holder exercised its conversion option through a First Conversion Notice calling upon ADPL to convert the entire 50,00,000 OCDs into Compulsorily Convertible Debentures (**'CCDs'** in short) within 36 months.
- On 05.01.2024, a Second Conversion Notice was issued modifying the conversion timeline to convert the OCDs into CCDs within 54 months, i.e., by 06.07.2025.
- Subsequently, on 16.01.2024, the DTD was amended for a second time whereby the tenure of the debentures was extended to 108 months from the date of allotment, i.e., up to 12.07.2028.
- Beacon-Respondent No. 1, acting on the instructions of the debenture holder, issued a Put Option Notice dated 07.01.2025 seeking to exercise the put option under the DTD and calling upon ADPL to pay an amount of Rs. 1,258.73 Cr within seven days. The Put Option Notice was delivered to ADPL-Corporate Debtor on 10.01.2025. On account of non-payment of the said amount within seven days from receipt of the Put Option Notice, Respondent No. 1-Beacon claimed occurrence of default by ADPL as on 17.01.2025.
- On 26.03.2025, Respondent No. 1 issued a Demand Notice under Clause 2 of the Deed of Guarantee dated 23.08.2019 calling upon the

Appellant to discharge the alleged outstanding liability of Rs. 1,258.73 Cr.

- On 10.04.2025, Respondent No. 1 issued a Demand Notice under Rule 7(1) of the IBBI (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019, to pay the outstanding amount wherein the date on which the debt became due was stated as 07.01.2025 and the date of default was stated as 17.01.2025.
- The Appellant replied to the said Demand Notice on 15.04.2025 contending that the OCDs had already been converted into CCDs thereby extinguishing the debt besides questioning the locus of debenture trustee to file the Section 95 PIRP application.
- On 06.05.2025, Respondent No. 1 filed an Application under Section 95 of IBC seeking initiation of personal insolvency proceedings against the Appellant in which admittedly the Deed of Guarantee annexed was purportedly defective as it was the one executed by Mr. Anil Bhalla instead of the Appellant and the date on which the debt became due was shown as 07.01.2025 and the date of default as 17.01.2025.
- On 29.08.2025, the Adjudicating Authority appointed Respondent No. 2 as the Resolution Professional ('**RP**' in short). The RP issued communications to the Respondent No. 1 seeking documents and information under Section 99(2) of IBC regarding the DPG. Later, on 07.10.2025, Respondent No. 2-RP filed IA No. 5111/ND/2025 before the Adjudicating Authority placing on record its report under Section

99 of the IBC and recommending initiation of insolvency proceedings against the Appellant.

- The Appellant filed detailed Reply/Objections on 29.01.2026 to the report submitted by Respondent No. 2-RP.
- By the impugned order dated 09.04.2026, the Adjudicating Authority admitted the application filed under Sections 95(1) and 95(2) of the IBC against the Appellant.
- Aggrieved by this impugned order, the present appeal has been filed by the Appellant-Personal Guarantor.

3. Making submissions on behalf of the Appellant, Shri Virender Ganda, Ld. Sr. Counsel submitted that Personal Insolvency Resolution Proceedings (**'PIRP'** in short) against a Personal Guarantor is not maintainable in the absence of a valid and enforceable Deed of Guarantee. Though the Appellant had specifically raised this objection in its reply to the application filed by the RP under Section 99 of the IBC regarding non-annexation of the Deed of Guarantee in respect of the Appellant, the RP did not look into this aspect nor took any steps to remedy this fatal defect.

4. It was also submitted that another reason for the application under Section 95 of the IBC to be non-est and invalid was on account of the DPG being defective as the Respondent No. 1 had annexed a guarantee deed executed by Mr. Anil Bhalla and not the guarantee deed executed by the Appellant. The RP had noticed this defect in the DPG but only approached Respondent No. 1 for the correct copy of the DPG. However, the DPG which was placed on record by the RP continued to be defective as it identified the guarantor as Gautam Bhalla who was not the Appellant and in spite of this

glaring discrepancy, the RP filed the Section 99 application with a defective Deed of Guarantee. Submission was pressed that the RP could not have cured the deficiency in the guarantee deed by approaching Respondent No. 1 for the correct version of the guarantee document and the Respondent No. 1 could not have sought enforcement of a faulty instrument under Section 95 of the IBC. Respondent No. 1 should have rectified the instrument in accordance with law or by initiation of proceedings before a Civil Court under Section 26 of the Specific Relief Act, 1963.

5. It was vehemently contended that the RP had committed a grave error by suppressing the defects in the guaranteed document while recommending the admission of personal insolvency as he was duty-bound to point out the inherent defects in the guaranteed document in its report under Section 99 of the IBC. Even the Adjudicating Authority erred in dismissing the fundamental defect in the identity of the guarantor as some sort of a typographical/clerical error at a time when no such ground was ever pleaded or argued before the Adjudicating Authority by the Respondent No. 1 and returning of such suo motu findings is impermissible in law.

6. It was further submitted that obtaining of an order of admission under Section 100 of the IBC on the basis of erroneous documents constituted a gross misuse of the provisions of IBC. It was submitted that the Respondent No. 1 had issued a Demand Notice on 10.04.2025 wherein the date on which the debt became due was shown as 07.01.2025 and the date of default as 17.01.2025. When the Personal Guarantee was not invoked prior to the purported date of default, no default could be attributed to the Appellant. It

was not clear whether the date of default annexed with Section 95 application under IBC and the application under Section 99 of IBC pertained to the Appellant-Personal Guarantor or to the Principal Borrower. Submission was pressed that the Adjudicating Authority had erred by failing to record any finding with respect to the disputes concerning the date of default.

7. It was also contended that the RP is required under the IBC to act independently, objectively and with due diligence but in the present case, the RP had mechanically recommended the admission of PIRP against the Personal Guarantor which amounts to gross misconduct and failure to discharge statutory duties and responsibilities. The acceptance of the report of the RP by the Adjudicating Authority having caused grave prejudice to the Appellant, hence, the impugned order deserves to be set aside.

8. It was further argued that Section 95 of the IBC specifically provided that a Section 95 petition can be filed either by the creditor or by the creditors through the RP and exercise of this right by any other third party or person was not statutorily permissible. It was also contended that the Respondent No. 1 being a debenture trustee lacked the locus to initiate proceedings under Section 95 of the IBC. When the legislature had not permitted third parties such as debenture trustees from filing a petition under Section 95 of the IBC, the Adjudicating Authority in the present case by allowing a debenture trustee to file a Section 95 application had acted contrary to the text of the statute which tantamount to judicial legislation which is impermissible in law.

9. Rebutting the arguments of the Appellant, Shri Abhijeet Sinha, Ld. Sr. Counsel for the Respondent No. 1 submitted that the impugned order passed

by the Adjudicating Authority admitting the Appellant into PIRP was a well-reasoned order which did not suffer from any infirmities. It was submitted that a composite reading of the DTD dated 29.07.2019 with the DPG dated 23.08.2020 and the first and the second amendment to the DPG as well as the NeSL report of 21.01.2025 clearly establish that the Appellant had provided security for the Principal Borrower as a Personal Guarantor. In addition, the Appellant in their reply to the statutory Demand Notice as well as in their email addressed to the Interim Resolution Professional have not expressly denied their status as that of a Personal Guarantor.

10. It was further submitted that there is no dispute over the fact that the Principal Borrower was in default which is conclusively established by the Adjudicating Authority in its order dated 20.01.2026 which order was affirmed by this Tribunal on 25.02.2026 and the Hon'ble Supreme Court on 10.04.2026. On default by the Principal Borrower in converting the OCDs into equity instruments, the debenture holder had exercised the put option on 07.01.2025 and default having been committed by the Principal Borrower, the debenture trustee had inter alia invoked the DPG of the Appellant by issue of a notice on 26.03.2025 followed by issue of a Statutory Demand Notice on 10.04.2025 and thereafter by filing of Section 95 petition under the IBC. It was also pointed out that the Appellant had neither denied the existence of the DPG nor the validity of its invocation either in the reply to the statutory Demand Notice or in the email addressed by them to the IRP or in the objections to the IRP's report which is conclusive evidence that the Appellant as Principal Borrower had committed a default which is established beyond reasonable doubt.

11. On the allegation of purported defects in the guarantee documents, the wrong attachment of the petition of Anil Bhalla inadvertently to the Section 95 petition in respect of the Appellant was not relevant in that it had been rectified by filing IA No. 746 of 2026 which rectification had also been allowed by the Adjudicating Authority on 18.02.2026. It was also submitted that the mention of the name of the Personal Guarantor as Gautam Bhalla instead of the name of the Appellant-Gaurav Bhalla in Schedule I of the DPG was admittedly an error. However, after noticing that all pages of the DPG carried the name of the Appellant-Gaurav Bhalla and the stamp paper on which the DPG was executed also carried the name and signature of the Appellant, the Adjudicating Authority did not commit any error in holding this mistake to be a typographical error in view of the surrounding circumstances. It was pressed that this objection raised by the Appellant of defect in the guarantee deed document was unreasonable and rightly disregarded by the Adjudicating Authority. Even the wrong mention of the date of default in the guarantee deed was admittedly another inadvertent error. Contending that such mistakes in the date of default are curable, attention was adverted to the judgement of this Tribunal in **Saranga A. Aggarwal vs State Bank of India in CA(AT)(Ins) No. 1788 of 2025** which held that amendment of date of default is not impermissible. The relevance of the date of default was only with regard to calculating the period of limitation and as the present Section 95 petition had been filed within the period of limitation, no dispute can be raised with regard to the date of default.

12. It was further added that the Appellant's argument that a debenture trustee has no locus to initiate proceedings under Section 95 was misplaced.

It was asserted that in terms of the judgement of this Tribunal in **Krishan Kumar Jajoo vs Piramal Enterprises Ltd. in CA(AT)(Ins) No. 1601 of 2024**, a debenture trustee has the locus to initiate proceedings under Section 95 of the IBC and hence the narrow interpretation ascribed to the word "creditor" appearing in Section 95 by the Appellant is misconceived. When the terms of the DPG authorised the debenture trustee to take action against the personal guarantor and the debenture holders had specifically authorised Respondent No. 1 to initiate the present proceedings, the filing of Section 95 petition by Respondent No. 1 was legally tenable.

13. We have heard Ld. Counsel for both the parties and perused the record carefully.

14. Coming to the issue of locus standi of Respondent No. 1 to file the Section 95 application, it is the case of the Appellant that the Respondent No. 1 being only a Debenture Trustee, it lacked the locus to initiate proceedings under Section 95 of IBC. In support of their contention, it was contended that the legislature in its wisdom consciously restricted the initiation of insolvency proceedings under Section 95 of IBC by the creditor himself or jointly with other creditors or through a Resolution Professional but does not permit such filing through any other person, which was in sharp contrast to Section 7 which expressly allows a financial creditor to act through an authorized person. It was also submitted that the Hon'ble Supreme Court in a catena of judgements viz. **J. Jayalalithaa & Ors. vs State of Karnataka & Ors. (2014) 2 SCC 401; State of Uttar Pradesh vs Singhara Singh & Ors. 1963 SCC Online SC 23 and Hardeep Singh vs State of Punjab & Ors. (2014) 3 SCC 92** has consistently held that when any statute provides for a

particular procedure, the relevant authority has to follow the same and cannot be permitted to act in contravention of the same. Therefore, in light of the legislative intent and the procedure prescribed under the IBC, the Respondent No. 1 being only a debenture trustee and not the creditor was not entitled to invoke the provisions of Section 95 of the IBC. The Adjudicating Authority had therefore erred in holding that an application under Sec 95 of the IBC can be filed by a debenture trustee in disregard of the explicit statutory provisions.

15. Per contra, it is the case of the Respondent No.1 that it is already a well settled legal precept as laid down in terms of the judgement of this Tribunal in ***Krishan Kumar Jajoo vs Piramal Enterprises Ltd. in CA(AT)(Ins) No. 1601 of 2024*** that a debenture trustee has the locus to initiate proceedings under Section 95 of the IBC. Moreover, when the DPG executed between the Appellant and the Respondent No. 1 had clearly authorised the debenture trustee to take action against the personal guarantor and in the present case the debenture holder had also specifically authorised Respondent No. 1 to initiate the present proceedings against the personal guarantor, the Respondent No. 1 was fully empowered to initiate Section 95 petition on behalf of and for the benefit of the debenture holder.

16. To return our findings on the tenability of the locus of the Respondent No.1 to file the Section 95 application, at this stage, we may have a look at Section 95(1) of the IBC which reads as under:

Section 95: Application by creditor to initiate insolvency resolution process.

95 (1) A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating

Authority for initiating an insolvency resolution process under this section by submitting an application.

When we look at the wordings of Section 95 of the IBC, it is unambiguously clearly that it confers rights on the creditor singly or consortium of creditors to jointly file an application to initiate PIRP of the personal guarantor.

17. The question, however, that requires to be answered is that when the debenture trustee is holding security in favour of the creditor or consortium of creditors, whether in such a case, the debenture trustee can also file an application under Section 95 of the IBC. To answer this question, we need to look at the relevant provisions of the Debenture Trust Deed and the Deed of Personal Guarantee.

18. When we look at the DTD, the salient Clauses are 5.1 and 11.2 which are as reproduced below:

“5.1 Appointment of Debenture Trustee

The Company has appointed Beacon Trusteeship Limited as the debenture trustee pursuant to the Debenture Trustee Agreement. The Debenture Trustee has agreed and hereby re-affirms that it shall act as the debenture trustee for the benefit of the Secured Parties and their successors, transferees and assigns under the trust created pursuant to Clause 5.2 (Declaration of Trust by the Debenture Trustee) below and in such capacity, the Debenture Trustee agrees and is authorised:

(iii)subject to the terms and provisions of this Deed and the other Definitive Agreements, to take such other action in connection with the foregoing as the Debenture Holder(s) may from time to time direct.

11.2 Consequences of Event of Default

Upon the occurrence of an Event of Default as set out in Clause 11.1 (Events of Default) above, the Debenture Trustee may (in its discretion) or shall, pursuant to the Approved Instructions, declare the Outstanding Amounts to be due and payable forthwith, and take all actions necessary under the Definitive Agreements, and the Debenture Trustee shall have the following rights:

(iv) to enforce any Security created pursuant to the Security Documents in accordance with its terms, as may be set out herein or therein, towards repayment of the Outstanding Amounts;

(ix) exercise the Put Option;

(x) exercise any other rights and remedies that the Debenture Trustee and/or Debenture Holder(s) may have under the Definitive Agreements or under Applicable Law;

(xvi) to exercise such other rights as the Debenture Trustee may deem fit under Applicable Law to protect the interest of the Debenture Holder(s).”

(Emphasis supplied)

The above two clauses make it clear that the Debenture Trustee on the instruction of the debenture holder was empowered to exercise all rights and remedies to enforce any security interest including exercise of the put option. We also find that Clause 32 of the DTD further stipulated that the debenture trustee was empowered to exercise due diligence in carrying out its duties and take all actions necessary to protect and secure the interests of the debenture holder and take action on behalf of the debenture holder.

19. This now brings us to the relevant clauses of the DPG which are as below:

“2. GUARANTEE

2.1. The Guarantor hereby irrevocably and unconditionally guarantees to the Debenture Trustee (acting on behalf, and for the benefit, of the Debenture Holder(s)), the due and punctual observance and performance by the Issuer Company of all its obligations under, or pursuant to the Debenture Trust Deed including but not limited to the due and punctual payment of the Outstanding Amounts by the Issuer Company, in accordance with the terms of the Definitive Agreements.

2.2. Without prejudice to the indemnity obligations of the Guarantor set out herein, the Guarantor hereby irrevocably, absolutely and unconditionally guarantees to the Debenture Trustee that the Guarantor shall upon the occurrence of an Event of Default and upon demand by the Debenture Trustee, pay to the Debenture Trustee,

within 1 (one) Business Day from the delivery of the Demand Notice (as defined below) to the Guarantor, without any demur or protest, the amount stated in the Demand Notice. The Debenture Trustee shall be entitled to make 1 (one) or more demands (through 1 (one) or more Demand Notices) from the Guarantor under this Deed.

2.4. Any demand issued by the Debenture Trustee to the Guarantor pursuant to Clause 2.2 above shall be in the form and manner set out in Schedule II hereto ("Demand Notice") and shall bind the Guarantor and be conclusive evidence that the Guarantor's liability hereunder has accrued and that the extent of the Guarantor's liability is the amount shown therein, notwithstanding any difference, dispute or Proceedings between the Debenture Trustee and/or the Debenture Holder(s) on the one hand and the Issuer Company and/ or the Guarantor and / or any Obligors on the other hand, pending before any Governmental Agency or any arbitrator(s).....”

(Emphasis supplied)

In addition when we look at Clause 8 of the DPG, it clearly provides that the guarantor undertakes that if the Corporate Debtor did not pay the outstanding amounts in accordance with the definitive agreements, then the guarantor on demand shall pay such amount as if it is the Principal Debtor of the secured parties. Further Clause 12 clearly provides that the obligations of the guarantor was irrevocable, while Clause 14 clearly provided that the obligation of the guarantor was to be of a continuing nature until the final discharge date.

20. Having seen the terms of the DTD and the DPG, we have no hesitation on our mind that the Respondent No.1 in its capacity of debenture trustee was empowered to do all such acts on behalf of the debenture holders that were necessary to secure the interest of the debenture holders. It also provided for debenture trustee to issue demand notice which was to bind the Guarantor as if it was the principal debtor of the secured parties and it was therefore

implicit that debenture trustee could file the PIRP application under Section 95 of the IBC on the directions of the debenture holder. We also find that the Debenture Holder had sent a letter dated 30.04.2025 authorising Respondent No. 1 to act as their authorized representative and to initiate the present PIRP proceedings against the Appellant as is placed at page 749 of Appeal Paper Book (**'APB'** in short). Therefore, when Respondent No. 1 was specifically and categorically authorised to initiate the Section 95 petition on behalf of and for the benefit of the Debenture Holder, the Debenture Trustee stood fully empowered to do so.

21. Coming to the catena of judgements relied upon by the Appellant to contend that when the legislative intent and the procedure prescribed under the IBC provides for a particular procedure, the competent authority was to act only in that way which was also applicable to filing of a petition under Section 95, we must emphatically add that we have no quarrel with the proposition of law laid down by the Hon'ble Supreme Court in the **J. Jayalalithaa** and the other judgements that when the statute provides for a particular procedure, the relevant authority cannot act in contravention of the same. However, the applicability of these judgments to the facts of the present case is misplaced since from a plain reading of Section 95 we do not find the debenture trustee to have been expressly prohibited from filing a Section 95 application on behalf of the debenture holders whose interest it had sought to protect in terms of the agreement between the debenture holders and the debenture trustee.

22. More pertinently, we find that the Respondent No. 1 has contended that this Tribunal in its judgment in **Krishan Kumar Jajoo supra** has held that

Section 95 of the IBC not only provides right to the creditors to file application to initiate PIRP but also to the security trustee for holding security in favour of the financial creditor/consortium of creditors if the clauses of the personal guarantee so provides. The relevant excerpts from the judgment is as extracted below:

“(vii) The terms of the Personal Guarantee clearly stipulated that ‘Lender’ or the ‘Trustee’ could initiate action against the Appellant as discussed below:

a. The Personal Guarantor guaranteed to pay the lender, on failure to pay the outstanding amounts by the Corporate Debtor and on demand by the Lender and/or Trustee

b. In the event of default on the part of the Corporate Debtor in payment, the Guarantor shall, upon demand, forthwith pay to the Lenders and/or Trustee, without demur, all amounts demanded by the Lenders and/or Trustee.

c. The Lender and the Trustee would be entitled to take action against the Corporate Debtor and the Guarantor as it deems fit, in the event of failure to honour any terms of the Deed of Guarantee.

(viii) Above clauses of the Personal Guarantee dated 20.07.2017 are loud and vocal and establish the independent rights of creditors in addition to Trust. By no way of imagination it can be argued by the Appellant (as guarantor) that creditor (including its assignee) cannot pursue his rights against the Appellant. The pleading of the Appellant does not stand to any logic and need to be dismissed. We do not find any merit in the pleadings of the Appellant on their issue and stand rejected.”

(Emphasis supplied)

23. When seen from the prism of the provisions of the DTD and DPG in the present factual matrix as well as judicial precedent laid down by this Tribunal, there is no foundation in the contention of the Appellant that the Respondent No. 1 lacked the locus and authority to file a Section 95 petition. We are inclined to agree with Respondent No. 1 that the Appellant has wrongly attached a narrow interpretation to the word “creditor” appearing in Section

95 to contend that a debenture trustee has no locus to initiate proceedings under Section 95. The Adjudicating Authority by admitting the Section 95 application was not rewriting or reframing the legislative fiat of the IBC in any manner.

24. Coming to the next limb of argument of the Appellant, it is their case that neither the Respondent No. 1 in its application under Section 95 of the IBC nor the RP in its application under Section 99 of the IBC had filed a valid guarantee agreement which recognized the Appellant as the Personal Guarantor. The PIRP against the Appellant-Personal Guarantor therefore stood vitiated by the non-production of a valid DPG.

25. Repelling the contention raised by the Appellant with respect to absence of a valid DPG vitiating the Section 95 proceedings, it was submitted that the Appellant had executed an irrevocable, unconditional and continuing deed of personal guarantee in favour of Respondent No. 1 for the repayment of all outstanding amounts in the event of any default on the part of the Principal Borrower and this was clearly borne out by the DTD of 29.07.2019 as well as the DPG dated 23.08.2019 and the first and the second amendment thereto. Further, the NeSL report of 21.01.2025 clearly mentions that the Appellant had provided security for the Principal Borrower as a Personal Guarantor. In addition, some of the communications sent by the Appellant themselves viz. their reply to the statutory Demand Notice as well their email addressed to the IRP substantiates beyond reasonable doubt that the Appellant at no stage in those communications had denied their status as a Personal Guarantor.

26. To return our findings on the veracity of the status of the Appellant as Principal Guarantor, we need to see in the first place whether the Principal Borrower was in default qua the Respondent No.1. From material placed on record, it is clear that the debt of the Principal Borrower qua the Respondent No. 1 was decided by the Adjudicating Authority in its order dated 20.01.2026 which order was subsequently affirmed by this Tribunal on 25.02.2026 and later upheld by the Hon'ble Supreme Court on 10.04.2026. These orders having attained finality, there is no dispute over the fact that the Principal Borrower was clearly in default. Thus, the Adjudicating Authority has rightly held that when the default is found to have been committed by the Principal Borrower for whom the Appellant stood as Personal Guarantor, in the absence of any evidence given by the Personal Guarantor regarding repayment of debt, the default of Personal Guarantor stood established. It is a well settled legal precept that the liability of the Personal Guarantor is co-extensive with that of the Principal Borrower and once the default by the Principal Borrower has occurred in respect of the underlying debt, the obligation of the personal guarantor stands triggered in law.

27. When we see further material placed on record, it shows that when the Principal Borrower had defaulted by failing to convert the OCDs into equity instruments, the debenture holder had exercised the put option by issue of notice on 07.01.2025 and called upon both the Principal Borrower and the present Appellant to remit the outstanding amount of Rs. 1258.73 Cr. In response to the put option notice, while on the one hand the Principal Borrower had admitted that conversion of the OCDs into equity shares/CCDs was adversely hit by absence of an active ISIN number, on the other hand,

the Appellant had neither expressly responded to the put option notice nor denied the existence of their liability as a surety for the Principal Borrower. It is also a fact that when the Principal Borrower failed to redeem the OCDs, the Respondent No. 1 had invoked the personal guarantee of the Appellant in terms of the DPG by issue of a notice on 26.03.2025 and subsequently by issue of a Statutory Demand Notice under Section 95 of IBC on 10.04.2025. The Demand Notice and the statutory Demand Notice are conclusive evidence that the liability of the Appellant had accrued on account of the inability of Principal Borrower to remedy their default. Thereafter, failure of the Appellant to remedy the default as principal guarantor within the contractual and statutory period, the Respondent No. 1 was constrained to approach the Adjudicating Authority by filing the petition under Section 95 of the IBC. Even at this stage, the Appellant did not dispute either the existence of DPG executed by them as Principal Guarantor nor did they dispute having received the Demand Notices. The Appellant did not expressly deny the existence of the DPG or its validity on its invocation either in their reply of 15.04.2025 to the statutory Demand Notice or in the email addressed by them to the IRP on 11.09.2025 which establishes beyond reasonable doubt that the Appellant was a personal guarantor.

28. At this stage, it may be useful to have a look at the DTD and DPG documents. At page 81 of the APB is placed the DTD which was signed inter alia between the Principal Borrower, the Debenture Trustee and Gaurav Bhalla-Appellant amongst others. The DTD in the 'Definition Clauses' shows at page 93 of APB that the Appellant is also a promoter of the Principal Borrower Company. Clause 7.1(iii) of the DTD clearly provides that in

consideration of the debenture holders subscribing to the purchase of the debenture, the obligors/promoters which included the Appellant had agreed to provide guarantee in favour of the trustee for the benefit of the secured parties. The status of the Appellant as a personal guarantor is further fortified by Clause 2.1 of the DPG which is already reproduced at para 19 above which stipulates that the Guarantor had executed an irrevocable and unconditional continuing guarantee to the Debenture Trustee. Even the First and the Second Amendment to the DTD which was also executed by the Appellant as placed at pages 251 and 288 respectively of APB removes all doubts that the Appellant is indisputably a Personal Guarantor for the Principal Borrower.

29. We now come to the issue of statutory demand notice on 10.04.2025 by the Respondent No. 1 which is placed at page 342-346 of the APB wherein the Appellant has been clearly addressed as the “Personal Guarantor” and at Sl. No. 7 therein of the notice, it has been stated that the Appellant having *“Executed the personal guarantee dated 23 August 2019 whereby you have irrevocably and unconditionally guaranteed, on a continuing basis, the due and punctual discharge of all the Outstanding Amounts in accordance with the Debenture Trust Deed dated 29 July 2019 (and addenda thereto) and the Deed of Guarantee dated 23 August 2019.”* This notice makes it unambiguously clear that the Respondent No. 1 had invoked the personal guarantee of the Appellant in terms of the DPG and held the Appellant to be a Personal Guarantor.

30. We now look at the reply of the Appellant dated 15.04.2025 to the above notice dated 10.04.2025 which is as extracted under:

“4. That, on instructions of Our Client, we respond to your Demand Notice as under:

a) That, you have deliberately suppressed the conversion notices dated January 6, 2021 and January 5, 2024 ("Conversion Notices"), calling upon Arcturus Developers Private Limited to convert the Optionally Convertible Debentures ("OCDs") into Compulsory Convertible Debentures ("CCDs"), within 54 months from January 6, 2021 (i.e.) by July 6, 2025. In pursuance whereof, the OCDs have since been converted into CCDs, vide resolutions dated December 28, 2024, in accordance with law.

b) That, your attention is also drawn to Clause 6 of Schedule I to the Debenture Trust Deed dated July 29, 2019, which provides for the conversion of the debentures. The said clause is reproduced herein below for your reference:

"6. Manner of Conversion.

a. Within 7 (Seven) days following the receipt of a Conversion Notice, the Company shall convert the Debentures into Equity Shares;

b. For the avoidance of doubt, it is clarified that the conversion is effective and all Debentures shall be forthwith treated as Equity Shares on and from the date on which the Debenture Holder(s) issue the Conversion Notice to the Company as specified above ("Conversion Date"). Each Debenture Holder will, with effect from the Conversion Date, be deemed and be treated by the Company for all purposes as the holder of the relevant number of Equity Shares issued upon conversion and the Company shall immediately record the details of such holder of Equity Shares issued pursuant to the conversion of Debentures in the relevant statutory registers of the Company;

c) That, consequent upon the conversion as aforesaid, the said debentures have ceased to be a financial debt in terms of the provisions of the Insolvency and Bankruptcy Code, 2016. Therefore, there is no question of occurrence of any default whatsoever, much less on January 17, 2025 as stated in the Demand Notice.

d) That, without prejudice to the above, the Demand Notice fails to provide any calculation sheet as to how has the redemption premium of Rs. 758,73,33,609 (Rupees Seven Hundred and Fifty-Eight Crores Seventy-Three Lakhs Thirty-Three Thousand Six Hundred and Nine) is being determined and how has it become due and payable.

Under such facts and circumstances, we are hereby call upon the Debenture Trustee to:

a. Forthwith withdraw the Demand Notice dated April 10, 2025; and
b. The Debenture Trustee is hereby cautioned from sending such notices and/or initiating any legal proceedings against Our Client, which if initiated, will be strongly contested. and defended, and in respect of the same, the Debenture Trustee alone shall be responsible for the cost and consequences.”

31. When we read the above response, we do not find the Appellant having questioned or challenged Respondent No. 1 for being accorded the status of Personal Guarantor. All that has been questioned is the existence of financial debt of the Principal Borrower on the purported conversion of the OCDs into CCDs. Likewise, when we look at the e-mail addressed by the Appellant-Personal Guarantor to the IRP on 11.09.2025 as placed at page 840 of the APB, we find that the Appellant has articulated that there was no debt due or payable on the conversion of OCDs having already been effected besides questioning the locus of the debenture trustee to file a Section 95 application. However, in this email reply, the Appellant has not questioned their being treated as a Personal Guarantor. Even the NeSL Report as placed at page 742-743 of the APB clearly depicts the Appellant as Personal Guarantor for the Principal Borrower basis security interest created by the DPG dated 23.08.2019. The claim of the Appellant that the NeSL details pertain to ADPL and not to the Appellant is a hollow argument in view of the fact that it reflects the Appellant as a personal guarantor in terms of the DPG which factum has not been disputed or controverted.

32. Thus, when all the documents and material placed on record like the DTD, DPG and the two Addendums thereto, NeSL Report are seen together in a composite manner and read alongwith put option notice issued by

Respondent No. 1 and certain communications emanating from the Appellant including reply of the Appellant to the guarantee invocation notice of 10.04.2025 wherein the status of the Appellant being a Personal Guarantor has not been contested or challenged, we are inclined to agree with the finding returned by the Adjudicating Authority that the Appellant was Personal Guarantor to the Principal Borrower having executed an irrevocable, unconditional and continuing deed of guarantee and on being satisfied that the requirements of Sections 95(4) and 99(2) of the IBC were met, there was no reason not to accept the recommendation made by the RP for admission of the Section 95 application preferred by Respondent No. 1.

33. This brings us to the contention of the Appellant that the application under Section 95 (1) and (2) of the IBC was non-est and illegal as the DPG furnished with the Section 95 application was erroneous and defective in that the Respondent No. 1 had annexed a guarantee deed executed by one Mr. Anil Bhalla and not the guarantee deed executed by the Appellant with the Section 95 application.

34. Per contra, while conceding this error, it was contended by the Respondent No. 1 that this mistake was bonafide. It was submitted by Respondent No. 1 that the debt of the Corporate Debtor-ADPL had been secured by the personal guarantees not only given by the Appellant but also by his other blood relatives, including his father, Anil Bhalla and brother, Gautam Bhalla which had led to the unintentional mix-up but this defect was cured on time with the approval of the Adjudicating Authority.

35. Having heard the rival contentions on this score, we notice that this inadvertent error was admitted by the Respondent No. 1 that in the process of filing the Section 95 petition, the personal guarantee document of Anil Bhalla had mistakenly got attached. However, this error was duly rectified by the Respondent No. 1 by way of filing IA No. 746 of 2026 which was allowed by the Adjudicating Authority on 18.02.2026. This error having already been placed before the Adjudicating Authority for due rectification and the Adjudicating Authority having allowed the rectification, we do not find any good reason for this issue to be re-opened belatedly at this stage.

36. It was vehemently argued by the Appellant that the DPG placed on record still continued to be defective as it identified the guarantor at Schedule-I as one Gautam Bhalla and not the Appellant-Gaurav Bhalla. As per the recital read with Schedule 1 to the DPG, since the guarantor is shown as Gautam Bhalla and not Gaurav Bhalla, the covenants signed and agreed to by Gautam Bhalla cannot bind Gaurav Bhalla. The Respondent No. 1 could not have sought enforcement of such a faulty instrument under the summary jurisdiction of Section 95 of the IBC and in the face of such a glaring discrepancy, the RP could not have filed the Section 99 application with a defective Deed of Guarantee. Thus, the RP had committed a grave error by suppressing the defects in the guarantee document while recommending the admission of personal insolvency of the Appellant. The RP was duty-bound to point out the inherent defects in the guarantee document in its report under Section 99 of the IBC. Even the Adjudicating Authority erred in overlooking the defect in the identity of the guarantor in the DPG on its own presumption of a typographical/clerical error having occurred while this ground was never

raised or pleaded by the Respondent No. 1 or the RP at any stage during the proceedings before the Adjudicating Authority.

37. When we look at the facts on record, we find that it was again admitted by the Respondent No. 1 that in the DPG at Schedule 1, the name of the Personal Guarantor had been wrongly mentioned as Gautam Bhalla instead of the name of the Appellant-Gaurav Bhalla. We also find that the Adjudicating Authority had also taken notice of this discrepancy but after finding that each and every other page of the DPG was signed and carried the name of the Appellant-Gaurav Bhalla and the stamp paper on which the DPG was executed also carried the name and signature of the Appellant-Gaurav Bhalla, it did not find this defect to render the Section 95 petition nugatory or invalid.

38. To our mind, the mistake in Schedule I of the DPG of 23.08.2019 of the mention of Gautam Bhalla in place of Gaurav Bhalla appears to be genuine when we look at the 1st and 2nd amendment to the DTD as placed at pages 251 and 288 of APB respectively wherein Gaurav Bhalla has been shown as the guarantor of the Principal Borrower. If Gaurav Bhalla had not been the promoter/guarantor in the DPG of 23.08.2019, it defies logic as to how the subsequent amendment documents continued to be executed by the Appellant in its capacity as a Promoter/Personal Guarantor with his signature again appearing on each of the pages. If the original DPG was defective in that it wrongly carried the name of Gaurav Bhalla, surely this would have been pointed out while signing the subsequent two amendments to the DPG with the name of Gaurav Bhalla being repeated again as guarantor. When no such disputes were raised in the past, it is clear that the Appellant had signed the

two amendments to the DPG in their continued capacity as Promoter/Personal Guarantor. When no dispute was raised by the Appellant regarding this defect at the time of signing the 1st and 2nd amendments of the DPG, this matter cannot be agitated belatedly. The Appellant cannot be seen to wash away its personal guarantee liability merely on hyper-technical ground that the DPG of 23.08.2019 was defective basis which no personal guarantee liability could be invoked.

39. It is also the case of the Appellant that the Respondent No. 1 had mentioned an incorrect date of default in the Demand Notice. It was submitted that the Respondent No. 1 had issued a Demand Notice on 10.04.2025 under Rule 7(1) of the IBBI (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019, wherein the date on which the debt became due was stated as 07.01.2025 and the date of default was stated as 17.01.2025. In the absence of invocation of the alleged Personal Guarantee prior to the purported date of default, no default could be attributed to the Appellant especially when invocation of guarantee was a condition precedent for fastening liability upon a guarantor under Clause 2.2 of the Deed of Guarantee. Reliance was placed on the judgment of this Tribunal in ***Pooja Ramesh Singh vs State Bank of India in CA(AT)(Ins) No. 329 of 2023*** which held that default on a guarantee arises only after it is invoked as contemplated in the Deed of Guarantee. It was contended that the Adjudicating Authority could not have suo motu amended the date of default. The onus lay on the Respondent No. 1 to move an appropriate application to amend the date of default. However, as no such application was either moved, nor any specific pleading made to this effect

before the Adjudicating Authority, in such circumstances, the Adjudicating Authority could not have accepted the change in the date of default without specific pleading.

40. On the alleged mistake in the date of default, the Respondent No. 1 submitted that it had admitted that an incorrect date of default had been mentioned by them and that the correct date of default on part of the Appellant as Personal Guarantor was 27.03.2025 being one business day from the date of issue of the Demand Notice on 26.03.2025 in terms of Clause 2.2 of the DPG. It is the contention of the Respondent No. 1 however that the defect in the date of default was curable, as has been held by this Tribunal in the ***Saranga A. Aggarwal judgement supra*** and hence on this ground alone the Section 95 application could not have been disallowed by the Adjudicating Authority.

41. To return our findings on whether the defect in the date of default was sufficient ground for disallowing the Section 95 application, we are guided by the judicial precedent laid down in the ***Saranga A. Aggarwal judgement supra*** which clearly held that amendment of date of default is not impermissible. In addition, when Clause 8 of the DPG clearly provided that the guarantor undertakes that if the Corporate Debtor did not pay the outstanding amount in accordance with the definitive agreements, then the Appellant as guarantor on demand shall pay such amount as if it is the Principal Debtor of the secured parties, and the Appellant having provided an irrevocable, unconditional and continuing personal guarantee for the Principal Borrower and the Respondent No.1 having validly invoked the DPG by issue of statutory demand notice calling upon the Appellant to remit the

outstanding amounts and the receipt of the demand notice not being in dispute and the Appellant having failed to remit the outstanding debt and default, the contention of the Appellant that the Section 95 application could not have been admitted by the Adjudicating Authority on grounds of discrepancy in the date of default, in our considered view, is a frivolous and specious plea with which we are not impressed.

42. The Adjudicating Authority in the impugned order has clearly noticed that the Appellant in their email to the RP on 11.09.2025 did not provide any evidence of repayment. In the absence of any evidence regarding the repayment of the debt, the default of the Appellant as Personal Guarantor stands clearly established since in terms of Clause 2 of the DPG, the Appellant had accepted the liability to repay the amount of debt and discharge the liability of the Principal Debtor. This has also been clearly noticed by the Adjudicating Authority at para 4 of the impugned order. It has also been noticed by the Adjudicating Authority at Para 7 of the impugned order that the RP in its report has also stated that no evidence as required in terms of Section 99(2) of IBC was adduced to establish repayment of the debt and hence the requirement of Section 95(6) of the IBC stood met. Moreover, the RP has independently suggested admission of Section 95 petition after conducting an independent evaluation, as has been noted in details by the Adjudicating Authority at para 7 of the impugned order. Hence, the report of the RP under Section 99 of IBC cannot be said to be suffering from any procedural infirmity in terms of form and content.

43. In fine, we do not find any infirmity in the impugned order allowing the Section 99 application filed by the RP and admitting the Section 95

application filed by the Respondent No.1. The impugned order does not warrant any interference. The Appeal is found to be devoid of merit and is accordingly dismissed. No costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

*Place: New Delhi
Date : 30.06.2026
Farhan*