

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**CORAM: MS. REETA KOHLI,  
HON'BLE JUDICIAL MEMBER**

**MS. KAVITA BHATNAGAR  
HON'BLE TECHNICAL MEMBER**

**IA No. 294/JPR/2025**  
**In CP No. (IB)-02/94/JPR/2025**

*(Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)*

**IN THE MATTER OF:**

**MR. SHARAD GUPTA  
(PG to CD-Brown & Black Bio Pvt. Ltd.)**

**...Applicant/ Personal Guarantor**

**VERSUS**

**ICICI BANK & ORS.**

**...Creditors / Respondents**

**MEMO OF PARTIES**

**IA No. 294/JPR/2025**

**MS. GARIMA DIGGIWAL, RP**  
91, Moji colony, Malviya Nagar,  
Jaipur, Rajasthan- 302021.

**...Applicant/ Resolution Professional**

**For the Applicant** : Anurag Kalavatiya, Adv.  
Parul Singhal, Adv.  
Aayushi Jain, Adv.  
**For the RP** : Nitesh Srivastava, Adv.  
**For the Respondent** : Abu John Methew, Adv.

**Order Pronounced On: 24.04.2026**

**ORDER**

1. The present Application bearing *I.A. No. 294/JPR/2025* is filed by *Ms. Garima Diggiwal* ('Applicant'/ 'Resolution Professional') for placing on record the Report under Section 99 the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') recommending rejection of the Company Petition bearing no. *CP No. (IB) No.- 02/94/JPR/2025* filed by *Mr. Sharad Gupta* ('Petitioner'/ 'Debtor') under Section 94 of the Code.
2. The Resolution Professional was appointed by this Adjudicating Authority *vide* its Order dated 27.05.2025 in the Company Petition bearing No. CP No. filed under Section 94 of the Code by *Mr. Sharad Gupta* seeking initiation of personal insolvency proceedings on account of invocation of guarantee and default in repayment of dues to creditors.
3. To fully appreciate the submissions made by the Resolution Professional in her Report, it is relevant to recapitulate relevant facts as contended by the Petitioner in his Petition i.e., *CP No. (IB) No.- 02/94/JPR/2025*, and the same are reproduced hereunder: -
  - 3.1. In the captioned Company Petition it was submitted that the Petitioner has extended various personal guarantees towards the financial facilities availed by *M/s Brown & Black Bio Pvt. Ltd.* Further, the Corporate Debtor has defaulted to meet its debt obligation as per the loan agreements and has filed a Petition under Section 10 of the Code bearing *CP (IB) No. 03/10/JPR/2025*.

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*IA (IBC) No. 249/JPR/2025*

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*CP No. (IB) - 02/94/JPR/2025*

3.2. The inability of the Corporate Debtor to discharge its loan obligations has triggered invocation of personal guarantees by the Creditors against the Petitioner. The total amount in default is Rs. 3,42,12,430/- (Rupees Three Crores Forty-Two Lakhs Twelve Thousand Four Hundred and Thirty Only).

3.3. In Part-I of the Petition, it was submitted that the following guarantees have been invoked

- I. The unsecured creditor *Ugro Capital Ltd.* Issued two Loan Recall Notices dated 09.11.2022 in respect of loan account no. HCFJAIUSC00001000351 & HCFJAIUSC00001021112 demanding outstanding payment of Rs. 14,55,203/- and 10,49,995/-, respectively, within seven days of the Loan Recall notice.
- II. The unsecured creditor *Axis Finance Ltd.* Issued a Loan Recall Notice dated 30.11.2022 in respect of loan account no. 0456BLA00002184 demanding outstanding payment of Rs. 25,27,434/-.
- III. The unsecured creditor *Poonawalla Fincorp Ltd.* Issued a Notice dated 05.12.2022 u/s 25 of the Payment and Settlement Systems Act, 2007, in respect of loan account no. BLU0052BL\_000005546416 calling upon to make payment of

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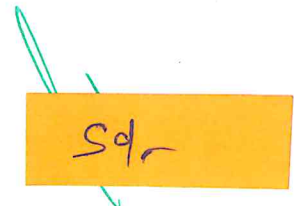
the dishonored ACH Debit transaction amounting to Rs. 1,07,396/-.

- IV. The unsecured creditor *Standard Chartered Bank* issued a Legal Notice dated 12.12.2022 u/s 25 of the Payments and Settlement Systems Act, 2007 in respect of loan account no. 50200007633795 demanding outstanding payment of Rs. 9516.25 within fifteen days from the receipt of the Legal Notice.
- V. The unsecured creditor *M/s Aditya Birla Finance Ltd.* issued a Loan Recall Notice dated 30.12.2022 in respect of loan account no. ABJAIBIL000000535628 demanding outstanding payment of Rs. 26,62,086/- within seven days of the receipt of the Loan Recall Notice.
- VI. The unsecured creditor *Fedbank Financial Services Ltd.* issued a Loan Recall cum Invocation of Arbitration notice dated 09.01.2023, in respect of loan agreement no. FEDJPR0BL0490797 demanding the outstanding amount of Rs. 19,18,185.71/-.
- VII. The unsecured creditor *M/s Hero Fincorp Ltd.* issued a Loan Recall Notice dated 09.01.2023, in respect of two facility agreement dated 26.12.2020 & 15.03.2022 demanding outstanding payment of Rs. 20,89,164.84/- within seven days from the receipt of the Notice.

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- VIII. The unsecured creditor *Tata Capital Financial Services Ltd.* issued a Legal Recall cum Demand Notice dated 25.01.2023 in respect of loan agreement no. TCFBL0365000010965618 demanding outstanding payment of Rs. 1,08,717/- within seven days from the legal notice.
- IX. The unsecured creditor *Piramal Capital & Housing Finance Ltd.* issued a Loan Recall cum intimation notice dated 22.02.2023 regarding proposing the name of sole arbitrator in respect of loan account no. M00082104 and demanding payment of outstanding amount of Rs. 10,66,180/- within seven days from the receipt of the Loan Recall Notice.
- X. The guarantee has been invoked by *ICICI Bank* initially by loan recall notice dated 05.06.2024 and subsequently notice u/s 13 (2) of SARFAESI Act, 2002 dated 12.07.2024 was issued to the Applicant. Further a Notice under Section 13 (4) of SARFAESI Act, 2002 has also been issued by *ICICI Bank* on 25.11.2024.
- XI. The unsecured creditor *Canara Bank* issued a notice dated 01.11.2024 demanding Rs. 14,90,518.92/- in respect of loan account no. 125002694230 within 14 days i.e., 15.11.2024 of the date of said notice.



3.4. In view of the aforementioned invocation of guarantees, the captioned Petition has been filed seeking initiation of personal insolvency process against the Petitioner namely, *Mr. Sharad Gupta*.

4. The Resolution Professional in her Report has recommended rejection of the Company Petition bearing *CP No. (IB) No.- 02/94/JPR/2025* filed under Section 94 by the Debtor. The Resolution Professional has made the following submissions in the report filed under Section 99 of the Code: -

4.1. The Resolution Professional was appointed by this Adjudicating Authority *vide* its Order dated 27.05.2025. The Resolution Professional obtained the letter qua the same from NCLT portal on 01.06.2025. Immediately on receipt of the Order, the Resolution Professional sent intimation letters to the Applicant and all the Creditors on 02.06.2025 seeking required information within 7 days in compliance of Section 99 (5) of the Code.

4.2. In pursuance to the same, the Resolution Professional became aware that during the pendency of the captioned Petition, the secured debt of ICICI Bank was settled. Thus, warranting detailed scrutiny of the Petition. Further, the Resolution Professional has been continuously following up with the unsecured financial creditors and till date she has only received information from a few of them. Apropos some unsecured financial creditors, their response is still awaited. In view of

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the same, the Resolution Professional prayed for condoning the delay in filing the report under Section 99 of the Code.

4.3. It was stated that *vide* email dated 02.06.2025, the Resolution Professional requested the Petitioner/Debtor to provide information qua outstanding debts, assets, and list of creditors. In pursuance to the same, the Petitioner/Debtor has provided the following documents to the Resolution Professional

- a. Facility Agreement of CD with Aditya Birla Finance Limited dated 31.10.2018.
- b. Facility Agreement of CD with UGRO Capital Ltd. dated 28.12.2020.
- c. Facility Agreement of CD with Standard Chartered Bank Ltd. 22.11.2021.
- d. Business Loan Agreement of CD with IDFC First Bank Ltd. dated 31.05.2022.
- e. Facility Agreement of CD with Hero Fincorp Ltd. dated 26.12.2020.
- f. Facility Agreement of CD with Hero Fincorp (New Loan) Ltd dated 15.03.2022.
- g. Facility Agreement of CD with Axis Finance Ltd. dated 25.08.2021.



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h. Facility Agreement of CD with Poonawala Fincorp dated 21.08.2021.

i. No dues letter from ICICI bank dated 06.03.2025.

4.4. Besides the aforesaid documents, the Resolution Professional sought personal guarantee deeds/ any documentary evidence qua personal guarantees provided by him in favour of the facilities availed by the Corporate Debtor *vide* emails dated 09.06.2025 and 26.06.2025. However, no response was received except that the Resolution Professional can avail CIBIL report of the Petitioner.

4.5. Further, the Resolution Professional has only received information from the unsecured creditors qua three loan facilities i.e, *Hero Fincorp Ltd.* (Loan Now assigned to Kotak Mahindra Bank), *Hero Fincorp Ltd. (New)* (HCFUDUUBL000007982043) (Loan Now assigned to Kotak Mahindra Bank Ltd.), and *Piramal Capital and Housing Finance Ltd.* (Loan Now assigned to Kotak Mahindra Bank Ltd.). It was stated that in these loan accounts, *Mr. Sharad Gupta* executed the co-borrower cum guarantee deed towards the loan availed by the Corporate Debtor. In these accounts, assignor invoked guarantee deeds and initiated arbitration proceedings against the Corporate Debtor and the Petitioner. In so far as other creditors are concerned, the Resolution Professional has not received any response.

- 4.6. In her report, the Resolution Professional has submitted that the Section 94 is only applicable to personal guarantors of a Corporate Debtor. In the instant case, the Petitioner extended a personal guarantee in favour of ICICI Bank, however, the said debt has been discharged in full and the same can be corroborated by No Dues Certificate dated 06.03.2025. In so far as the other creditors are concerned, no conclusive documentary evidence has been furnished to establish that the Petitioner had executed any personal guarantee in their favour. Further, on reading of facility agreements it transpires that there is no independent deed of guarantee or any express contractual obligation undertaken by the Petitioner to act as a surety for the debts of the Corporate Debtor.
- 4.7. It was stated that none of the creditors, including Kotak Mahindra Bank, have produced any invocation notice addressed to the Petitioner as a personal guarantor. While Kotak Bank has confirmed that the Petitioner is a co-borrower cum guarantor and that the guarantee has been invoked, it has not provided any documentary proof of such invocation or the original co-borrower cum guarantee deed.
- 4.8. Hence, in the absence of relevant documents and invocation of guarantee, the Petitioner cannot be considered as a Personal Guarantor for the purposes of the Code to entitle him to invoke Section 94 of the

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Code. Thus, the Resolution Professional recommended rejection of the captioned Company Petition.

5. The Petitioner/Debtor has filed objections to the report submitted by the Resolution Professional and has made the following submissions: -

5.1. It was submitted that the Resolution Professional has failed to consider and give due weightage to cogent documentary evidence placed on record including multiple notices of invocation of personal guarantee issued by secured and unsecured creditors.

5.2. It was stated that the Petitioner has unequivocally undertaken the role of a guarantor for the loans availed by the Corporate Debtor. The aforesaid guarantees have been invoked not by a single but by multiple creditors. The invocation of guarantees by creditors leaves no ambiguity qua the liability of the Petitioner as a personal guarantor of the Corporate Debtor. Hence, the Resolution Professional has misinterpreted the term 'Personal Guarantor' as stipulated under Section 5 (22) of the Code and Rule 3 (e) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019. In support of the contention, the Petitioner/Debtor relied upon guarantee invocation notices annexed with the main Petition.

5.3. Further, in response to the information sought by the Resolution

Professionals namely, Hero Fincorp Ltd. and Piramal Capital

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& Housing Finance Ltd. have categorically stated that the Petitioner is co-borrower cum guarantor in the loans availed by the Corporate Debtor. Thus, the said banks have unequivocally acknowledged and confirmed the status of the Personal Guarantor/Debtor as a personal guarantor of the Corporate Debtor.

5.4. It was contended that the categorization of Petitioner as a 'Co-borrower' by the Resolution Professional is misconceived and does not have any statutory backing. The term 'Co-borrower' has not been defined in IBC, SARFAESI Act, or in any other relevant statutory framework. Rather, 'Co-borrower' is a commercial expression employed by banks and financial institutions in common lending practice interchangeably with 'guarantor'. A co-borrower undertakes joint liability for repayment and assumes obligations identical to those of a personal guarantor as contemplated under Section 5 (22) of the Cod. Therefore, the mere nomenclature used by the lending institution cannot alter the legal position or diminish the statutory rights of a personal guarantor.

5.5. Further, the Resolution Professional is not bestowed with any adjudicating powers under Section 99 of the Code. The Resolution Professional is only empowered to conduct a preliminary examination and prepare a report for consideration of this Adjudicating Authority. Therefore, the recommendations contained in the report cannot by

themselves be treated as final or conclusive determination of status or eligibility of the Personal Guarantor/Debtor under the Code.

5.6. Thus, the captioned Company Petition deserves to be admitted.

6. We have heard the Ld. Counsels for the parties and perused the averments made in the Petition, Application, Objections to the Report and the documents annexed therewith.
7. In the instant case, the Resolution Professional has recommended rejection of the Company Petition citing non-production of the guarantee deeds by the Creditors and the Debtors and classification of the debtor as a co-borrower by some of the unsecured creditors. It was submitted that for invoking personal insolvency under Section 94 of the Code, the debtor must be a personal guarantor to a Corporate Debtor. Therefore, the debtor in the instant case does not satisfies the mandator requirement under the Code and hence, the captioned Company Petition deserves to be rejected.
8. To the contrary, the Debtor has contended that the existence of guarantee and its invocation stand duly proved by the loan recall notices issued by various creditors. Hence, the instant Petition deserves to be admitted as it satisfies the mandatory requirements under the Code.
9. Before proceeding further, it is relevant to take note of the loan recall notices on the basis of which the captioned Company Petition has been filed. The relevant details of the recall notices are tabulated hereunder: -

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Date	Name of the Creditor	Amount	Denotation of the Debtor
09.11.2022	UGRO Capital Limited A/c: HCFJAIUSC00001000351	14,55,203/-	Borrowers
09.11.2022	UGRO Capital Limited A/c: HCFJAIUSC00001021112	10,49,995/-	Borrowers
30.11.2022	Axis Finance Limited	25,27,434/-	Co-Borrower/ Guarantor
05.12.2022	Poonawalla Fincorp Ltd.	1,07,396/-	Not Mentioned Specifically. CD and its directors including the debtor are combinedly referred as 'you'
12.12.2022	Standard Chartered Bank	9,516.25/-	Not Mentioned Specifically. CD and its directors including the debtor are combinedly referred as 'you'
30.12.2022	Aditya Birla Finance Limited	26,62,086/-	Not Mentioned Specifically. CD and its directors including the debtor are combinedly referred as 'addressee'
09.01.2023	Fedbank Financial Services Limited	19,18,185.71/-	Borrower/Co-Borrower/Guarantor
09.01.2023	Hero FinCorp Limited	20,89,164.84/-	Not Mentioned Specifically. CD and its directors including the

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			debtor are combinedly referred as 'addressee'
25.01.2023	Tata Capital Financial Services Limited	1,08,717/-	Borrower/Co-Borrower/Guarantor
22.02.2023	Piramal Capital & Housing Finance Limited	10,66,180/-	Not Mentioned Specifically. CD and its directors including the debtor are combinedly referred as 'addressee'
05.06.2024	ICICI Bank	1,27,91,391/-	Guarantor
01.11.2024	Canara Bank	44,143.76/-	Addressed in capacity of proprietor of M/s B and B Pharma

10. At this juncture, it is pertinent to mention that ICICI Bank has given its NOC dated 06.03.2025 stating that the entire due amount apropos the Corporate Debtor stands paid.

11. Before proceeding further, it is incumbent to take note of Scheme of the Code pertaining to the individual insolvency resolution process. It is a settled position of law that insolvency proceedings against personal guarantors form an integral and inseparable component of the overall insolvency framework applicable to corporate debtors. The legislative intent underlying the provisions of the Insolvency and Bankruptcy Code, 2016, particularly post the notification dated 15.11.2019 bringing personal guarantors to

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corporate debtors within the purview of Part III of the Code, is to ensure that the liability of such guarantors is adjudicated in coordination with the insolvency resolution process of the corporate debtor. For ease of reference, the notification dated 15.11.2019 is reproduced hereunder: -

**“NOTIFICATION**

*New Delhi, the 15th November, 2019*

**S.O. 4126(E).**—*In exercise of the powers conferred by sub-section (3) of section 1 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby appoints the 1st day of December, 2019 as the date on which the following provisions of the said Code only in so far as they relate to personal guarantors to corporate debtors, shall come into force:—*

- (1) clause (e) of section 2;
- (2) section 78 (except with regard to fresh start process) and section 79;
- (3) sections 94 to 187 [both inclusive];
- (4) clause (g) to clause (i) of sub-section (2) of section 239;
- (5) clause (m) to clause (zc) of sub-section (2) of section 239;
- (6) clause (zn) to clause (zs) of sub-section (2) of section 240; and
- (7) section 249.

*[F. No. 30/21/2018-Insolvency Section]  
GYANESHWAR KUMAR SINGH, Jt. Secy.”*

12. On perusal of the aforesaid notification, it becomes conspicuous that the framework for individual insolvency under Section 94 and 95 of the Code is applicable to the personal guarantors to the Corporate Debtor. Therefore, for invoking the jurisdiction of this Adjudicating Authority under the aforementioned Sections, the debtor must be a personal guarantor to a Corporate Debtor.

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13. In view of the scheme of the Code, we are of the opinion that the legislature in its wisdom extended the application of individual insolvency process only to the Personal Guarantors to the Corporate Debtor. Further, in so far as the argument of the Debtor that co-borrower and guarantors are mere commercial expression is concerned, the same appears to be misconceived. Unlike a guarantor, a co-borrower is primarily liable for meeting the debt obligation. Further, it's on the default by the borrower/co-borrower that the guarantor becomes liable to meet the debt obligations. Thus, the cause of action for initiation of any proceedings differ in the cases of borrower/ co-borrower and guarantor.
14. Thus, we are not swayed by the argument of the debtor that the liabilities of co-borrower and guarantor are analogous in nature. As observed earlier, the Legislature in its wisdom has consciously brought the provisions of individual insolvency only qua personal guarantors of the Corporate Debtor and not qua other debtors. Hence, for invoking the jurisdiction of this Adjudicating Authority under Section 94 or 95, the debtor must unequivocally be a personal guarantor to a corporate debtor.
15. In the instant case, the Debtor has failed to provide relevant guarantee deeds to the IRP. Further, upon enquiry, it transpires that only a few of the creditors have responded to the information sought by the Resolution Professional. Upon the information sought by the Resolution Professional, the creditors namely, *Hero Fincorp Ltd.* and *Piramal Capital and Housing Finance Ltd.*

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have confirmed that the Debtor has executed the co-borrower cum guarantee deeds towards the financial facilities availed by the Corporate Debtor.

16. At this juncture, it is pertinent to refer to the judgment of the Hon'ble NCLAT in *Mudraksh Investfin Pvt. Ltd. v. Gursev Singh*, (2025) *ibclaw.in* 323 *NCLAT* wherein it has been held that the threshold for filing an application for personal insolvency process against Personal Guarantor is Rs. 1.00 Cr. The relevant paragraph of the said judgment is reproduced hereunder:-

*“15. The fact that process of insolvency in Part-III is to apply to individuals, whereas the process related to CD set out in Part-II, apply to CD, does not lead to incongruity. On the other hand, there appears to be sound reasons why for Forum for adjudicating insolvency process – the provisions of which are disparate – is to be common, i.e. through NCLT. When NCLT is the Forum for initiating the CIRP against the Personal Guarantor and the process against the Personal Guarantor are to be taken by the same Forum before whom the insolvency resolution process of the CD is to be held, we are persuaded to accept the submission of the learned Counsel for the Respondent that threshold for the Application to be filed by against the Personal Guarantor before the NCLT shall be Rs.1 crore...”*

17. In the instant case, the Debtor has been addressed as ‘guarantor’ by various creditors on the following instances: -

Name of the Creditor	Amount	Denotation of the Debtor
Axis Finance Limited	25,27,434/-	Co-Borrower/ Guarantor
Fedbank Financial Services Ltd.	19,18,185.71/-	Borrower/Co- Borrower/Guarantor

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Tata Capital Financial Services Ltd.	1,08,717/-	Borrower/Co-Borrower/Guarantor
ICICI Bank	1,27,91,391/-	Guarantor
Hero Fincorp Ltd.	12,49,411/-	Guarantor cum co-applicant
Piramal Capital and Housing Finance Ltd.	9,27,050/-	Guarantor cum co-applicant
Hero Fincorp Ltd.	6,65,007/-	Guarantor cum co-applicant

Keeping in view the NOC dated 06.03.2025 issued by ICICI Bank stating that the entire due amount apropos the Corporate Debtor stands paid, even if the Debtor herein is to be treated as a 'guarantor', then also the total default amount comes up to be Rs. 74,01,804.71/- which fails to satisfy the threshold of Rs. 1.00 Cr. as required for the initiation of personal insolvency process.

18. This Adjudicating Authority deems it appropriate to point out the fact that not only the Debtor failed to provide relevant guarantee deeds to the IRP, but has also provided misleading financial information under Section 94 Petition in particular the details with respect to the loan in the capacity of 'proprietor' of *M/s B and B Pharma*.
19. Keeping in view the facts and circumstances of the instant case, no case has been made out for initiating insolvency resolution process against *Mr. Sharad Gupta*.
20. Hereby, the interim moratorium under Section 96(1)(a) of the Code commenced *vide* Order dated 27.05.2025 will cease to have effect from the date of the instant Order.

21. The Debtor is directed to pay the balance amount of fees, *if any*, to the Resolution Professional within a period of 2 weeks from the date of this Order.
22. The Report under Section 99 of the Code is taken on record. Accordingly, *IA No. 294/JPR/2025* is allowed and *CP. No. (IB)- 02/94/JPR/2025* is **dismissed and disposed of**.

  
REETA KOHLI  
JUDICIAL MEMBER

  
KAVITA BHATNAGAR  
TECHNICAL MEMBER