IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH–I, CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **05.06.2026** THROUGH VIDEO CONFERENCING

CORAM: **HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)**
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF **:** Indian Bank
Vs
S Swaminathan

MAIN PETITION NUMBER **:** CP(IB)/179(CHE)/2024

(IA/MA) APPLICATION NUMBERS

IA(IBC)/2382(CHE)2024

ORDER

Present: Ms. K. Varshini, Ld. Counsel for the Petitioner.

Shri. Bharadwajramasubramanian, Ld. Counsel for the Respondent/Personal Guarantor.

Vide common order pronounced in the Open Court, the report of the IRP is taken on record. Petition under Section 95 is admitted.

Insolvency proceedings is initiated against the Personal Guarantor, S. Swaminathan and Shri. Madhu Desikan, is appointed as the IRP.

IA(IBC)/2382(CHE)/2024 disposed of.

Sd/-	**Sd/-**
[VENKATARAMAN SUBRAMANIAM]	**[SANJIV JAIN]**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

Suguna

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – I, CHENNAI

CP(IB)/179(CHE)/2024

(Filed under Section 95(1) of the Insolvency and Bankruptcy Code, 2016)

Indian Bank,
Stressed Asset Management Branch,
Zonal Office Building,
No. 55, 2nd Floor, Ethiraj Salai,
Egmore, Chennai-600 008

….Petitioner/Financial Creditor

Versus

Mr. S. Swaminathan,
45, South Usman Road
T.Nagar, Chennai - 600 017
Also at:
Plot No.9, S/2, Astha Apartments,
Sairam Avenue 1st Cross Street,
Valasaravakkam, Chennai - 600 097

….Respondent/Personal Guarantor

Present:

For Petitioner	:	*Shri. T. Ravichandran, Advocate*
For Respondent	:	*Shri. Bharadwaj Ramasubramaniam, Advocate*

ALONG WITH

IA(IBC)/2382(CHE)/2024
in
CP(IB)/179(CHE)/2024

(Filed under Section 99 r/w Section 60(5) of the Insolvency & Bankruptcy Code, 2016)

Madhu Desikan,
Interim Resolution Professional for Ms. S. Swaminathan,
(Personal Guarantor to Corporate Debtor)
No. 1 /4, Vijay Laxmi Apartment,
Balasubramanium Street,
Mylapore, Chennai-600 004

…..Applicant

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Order Pronounced on 5th June, 2026

COMMON ORDER

(Heard through Video Conferencing)

This petition CP(IB)/179(CHE)/2024 under Section 95 of IBC, 2016 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 has been filed by the **Indian Bank,** Stressed Asset Management Branch, Chennai **("Financial Creditor")** against **S. Swaminathan ("Personal Guarantor")** who stood guarantee for the loan facilities availed by the Corporate Debtor, Indalloys & Extrusion Pvt. Ltd. The prayer made in the petition is to initiate insolvency resolution process against the Personal Guarantor.

2. **Part-I** of the petition sets out the details of the Petitioner, Indian Bank. It was incorporated on 15.08.1907 and its business address is SAMB, Zonal Office Building, No. 55, 2nd Floor, Ethiraj Salai, Egmore, Chennai-600 008.

3. **Part-II** of the petition sets out the details of the Personal Guarantor, S. Swaminathan. He has been living at No.45, South Usman Road, T. Nagar, Chennai-600 017.

4. **Part-III** of the petition sets out the particulars of debt, amount in default and the date of default. The amount of debt is stated as Rs.15.69 Crores as on 11.02.2009 and Rs. 32.62 Crores as on 22.07.2024 and date of default is stated as 30.04.2009.

5. In **Part-IV** of the petition, the Petitioner has proposed the name of Mr. Madhu Desikan as the Resolution Professional for conducting the insolvency process against the Personal Guarantor. The Petitioner has attached the documents details mentioned at page 19 of the petition which include statement of accounts as per R.C. 224/2021 in O.A. No. 57/2011 showing the closing balance as Rs. 32,61,85,318.37.

6. As per the averments made in the petition, the Corporate Debtor Indalloys & Extrusion Private Limited had availed the credit facilities from the Petitioner in the form of OCC for Rs.8.00 Crores, Term Loan for Rs.2.06 Crores and LC for Rs.6.00 Crores. It executed various loan documents for the security of the loans. The Respondent/Personal Guarantor extended Guarantee by executing an Agreement of Guarantee dated 12.03.2008. The Corporate Debtor and the Guarantors

defaulted in repayment of loan facilities which made the Petitioner file the recovery suit before the DRT vide O.A. No.57/2011. The DRT, Chennai vide its order dated 23.10.2019 which was amended on 26.02.2021 allowed the claim of the Petitioner and held that the Petitioner is entitled to a Recovery Certificate for a sum of Rs.15,68,88,928.99 together with interest. In the above suit, the Corporate Debtor had filed a counter claim being the Claim No. 1 of 2011 which was dismissed by the DRT. The Petitioner was issued Recovery Certificate vide R.C. No.224/2022 on 27.07.2021 entitling the Petitioner to recover a sum of Rs.15,68,88,928.99 with interest @ 8% per annum.

7. It is stated that the Petitioner realized a sum of Rs.5,51,40,000/- from and out of the sale proceeds of the secured assets which amount was given credit on 26.02.2021. It is stated that the Petitioner issued a demand notice in Form-B on 20.07.2023 calling upon the Corporate Debtor and the Guarantors to make the balance amount, however, no amount was paid. The Petitioner has enclosed the copy of order of DRT and the Recovery Certificate. It also enclosed Form-B notice dated 20.07.2023 along with service report and Agreement of Guarantee dated 12.03.2008 signed by the Guarantor/Respondent, S. Swaminathan.

8. On this petition, Shri. Madhu Desikan was appointed as IRP to give his report under Section 99 of IBC, 2016 vide an order dated 18.10.2024. The IRP after collating the information, recommended for initiation of personal insolvency resolution process against the Personal Guarantor vide his report filed vide S.R. No. 3129 dated 13.12.2024.

9. The report is taken on record and **the application IA/2382/2024 is disposed of.**

10. **On getting notice of the petition and the IRP report, the Corporate Debtor filed reply and objections** to the report of the IRP alleging that the Petitioner has suppressed the fact that the Corporate Debtor was subjected to liquidation by an order dated 28.11.2012 passed by the Hon'ble Madras High Court in C.P. No.03/2010 and thus the Corporate Debtor was not in existence even as on the date when the IBC was notified. A conjoint reading of section 79(1) and 179 of IBC, 2016 would reveal that the adjudicating forum in respect of section 95 proceeding for the cases not falling under section 60 of IBC is the DRT. It is stated that the jurisdiction of the Tribunal for maintaining the petition under section 95 has been prescribed under section 60(2) of IBC and is to be determined to be in relation to the Registered Office of the Corporate Debtor and in terms of section 60(1)

of IBC, 2016. It is stated that the Corporate Debtor stood liquidated on 28.11.2012 well before the commencement of IBC and is not in existence. So there is no question of filing the application under section 60(1) of IBC. It is stated that the proceeding against the Respondent/Guarantor can be initiated only in his capacity as an individual for the liabilities arising independently from a guarantee agreement and as such DRT is the only Adjudicating Authority for the proceedings initiated against any individual or firm. Reference is made of the case "***Lalit Kumar Jain vs. Union of India (2021) 9 SCC 321)***" to contend that since the Corporate Debtor has been liquidated, there is no scope for further value maximization warranting attraction of section 60. It is stated that the Respondent had approached the Hon'ble High Court in Writ Petition W.P. No.1691 of 2025 for quashing of the proceedings on which the Hon'ble High Court vide an order dated 16.06.2025 directed as under:

> *"…15. In view of the matter, we do not advert to the merits of the objections or the defence of R1 and leave it to the parties to pursue the matter before the NCLT. Let the NCLT consider the issue of maintainability as a preliminary issue prior to proceeding with the substantial aspects."*

11. It is stated that the Corporate Debtor was an MSME doing manufacturing activities at three factories offering employment to 300

labourers. In and around December, 2006, it with an object of expanding its business, availed certain credit facilities from the Axis Bank. The Branch Manager of the Petitioner bank in 2007, approached the Corporate Debtor proposing to offer enhanced credit facilitates and expressed intent to take over the existing credit facilities of the Corporate Debtor from the Axis Bank which the Corporate Debtor accepted. The Petitioner sanctioned the credit facilities vide letter dated 01.03.2008 in favour of the Corporate Debtor on the execution of Agreement of Hypothecation dated 12.03.2008 for securing the loan facilities with movables which were further secured by equitable mortgages over three properties belonging to the Corporate Debtor by the Memorandum of Deposit of Title Deeds. T.R. Viswanathan mortgaged a property in favour of the Petitioner by deposit of title deed dated 25.08.2008. Mrs. S.P. Bhooma also offered two properties as security vide letter dated 29.04.2008. It is stated that the Corporate Debtor paid the part sums in discharge of its liability and a sum of Rs. 5,68,17,880/- remained unpaid. It is stated that due to sudden fall in the prices of aluminum globally, the Corporate Debtor faced difficulty in repaying the loan amount and the Petitioner classified the account of the Corporate Debtor NPA on 30.04.2009. It is stated that the Corporate Debtor made multiple unsuccessful attempts for restructuring the loan facilities but the Petitioner declined. The Petitioner then initiated the proceedings under the SARFAESI Act and issued a notice under section 13(2) of the Act on 08.05.2009 which was followed by a possession notice dated 22.08.2009. It is alleged that on 10.10.2009, the Petitioner unlawfully entered the premises of the Corporate Debtor and forcefully evicted and manhandled the workers for which a criminal complaint was lodged as Crime No. 615 of 2009. Another complaint was also lodged on 16.09.2010.

12. It is stated that the Corporate Debtor and the Respondents in O.A. No. 210 of 2009 renumbered as O.A. No. 57 of 2011 submitted their reply refuting the claims of the Petitioner and also preferred counter claim C.C. No. 1 of 2011 claiming losses on account of the unlawful removal of assets by the Petitioner. It is stated that the Guarantor's liability stood discharged as provided under section 139 of the Indian Contract Act and as such the petition against the Respondent is unsustainable in law.

13. It is stated that the DRT without considering the counter claim, passed the final order on 23.10.2019. The Respondent filed a petition seeking recall of the order stating that both O.A. and the counter claim be heard together but the DRT simply amended the original order

dated 23.10.2019 through a subsequent order dated 26.02.2021 rejecting the counter claim, however, considered the sale of mortgaged and hypothecated properties by the Petitioner and the recovery therefrom for an amount of Rs.5,51,40,000/- and passed an order entitling the Petitioner to a Recovery Certificate for a sum of Rs.15,68,88,928.99 together with interest @ 8% per annum. It is stated that the Respondent preferred a Review Application No.1 of 2022 before DRT to review its order dated 26.02.2021 which is pending.

14. It is stated the Petitioner sold the secured and unsecured assets of the Corporate Debtor on various dates without notice to the Corporate Debtor or its directors without adhering to the procedures as per details tabulated below:

S. No.	Date	Details of Sale
1.	28.07.2010	OA Scheduled Properties C, E and F sold
2.	05.08.2010	Sale of OA Scheduled Properties C, E and F confirmed.
3.	12.05.2011	OA Scheduled Property A sold.
4.	16.05.2011	IA Scheduled Property B sold.
5.	17.05.2011	Sale of OA Scheduled Properties A and B confirmed.
6.	20.02.2018	OA Scheduled Property G sold.
7.	14.09.2018	OA Scheduled Property D sold.
8.	23.01.2019	Petitioner Bank permitted by Hon'ble Madras High Court to withdraw Rs. 52,10,000 (being sale proceeds from sale of OA Scheduled Property D & G) lying in 'No Lien Account'.

15. **The Petitioner filed the rejoinder** stating that admittedly the company was subjected to liquidation by an order dated 28.12.2012 passed by the Hon'ble High Court but this would not disentitle the Petitioner from initiating proceedings under Section 60(2) r/w section 95 of IBC, 2016. Reference is made of section 60(1), 60(2), 3(37) of IBC and section 2(94-A) of the Companies Act to state that cumulative reading of the above provisions would reveal that the proceeding under section 95 is maintainable before this tribunal. Reference is made of the case ***State Bank of India, SAMB v. Mahendra Kumar Jajodia (2022) 233 Company Case 36*** where Hon'ble NCLAT held that even no insolvency process or liquidation proceedings are pending, the NCLT has got jurisdiction to entertain the personal insolvency against the guarantor in terms of section 60(2) of IBC. It is stated that the judgment of the Hon'ble NCLAT has been upheld by the Hon'ble Supreme Court in Civil Appeal No.1871 and 1872 of 2022. In the case of ***Anita Goyal vs. Vistra ITCL (India) Ltd. & Anr.,*** Hon'ble NCLAT has held that the application is maintainable even if proceeding against the Corporate Debtor was not pending before the Adjudicating Authority.

16. It is stated that the DRT has rejected all the submissions of the Respondent and granted the Recovery Certificate in favour of the Petitioner in O.A. 57 of 2011 and R.C. No. 224/2022. The Tribunal at the stage of admission, has only to consider debt and default for passing an order under section 100 of IBC. The sale proceeds have already been adjusted in the order passed by the DRT.

17. The Petitioner has filed a memo vide S.R. 1379 dated 26.03.2026 enclosing the order of the DRT dated 09.02.2026 in the Review Application inter alia as under:

> *"Both the counsels are present in RA. It is submitted that the applicant in RA intends to settle the liability and seeks an opportunity to negotiate with the respondent bank. Considering the submission that the respondent bank has already sold the mortgage property and the hypothecated materials and in the final order there is no mention of counter claim. It is a specific case of the applicant that the applicant had paid the court fee and have contested and filed the counter claim, counter proof affidavit. However, it is seen in the final order that there is a discussion of the counter claim and there is no mention of counter claim in the final portion of the OA order. Subsequently the OA order is amended incorporating that the counter claim is dismissed. However, the Tribunal feels it apt to grant an opportunity to both the parties to negotiate for the amicable settlement and the bank is also directed to take a lenient view in considering the counter claim and the bank have already sold all the mortgaged and hypothecated properties. List the matter on 06.04.2026"*

ANALYSIS AND FINDINGS

18. We have heard Ld. Counsels for the parties, perused the notes of submissions, report of the IRP and the pleadings/ objections and the case laws referred by the parties.

19. In the present case, the Corporate Debtor had availed the credit facilities which were guaranteed by the Respondent/Guarantor. The Corporate Debtor was subjected to liquidation by an order dated 28.11.2012 passed by the Hon'ble Madras High Court in C.P. No. 3/2010. Now the Corporate Debtor is not in existence. The Petitioner had also filed O.A. for recovery after the account of the Corporate Debtor was declared NPA against the Corporate Debtor and others including the Respondent. The DRT in O.A. No. 57 of 2011 vide an order dated 23.10.2019 which was amended on 26.02.2021, allowed the claims of the Petitioner and held that the Petitioner is entitled to a Recovery Certificate for a sum of Rs.15,68,88,928.99 with interest. The Recovery Officer also issued the Recovery Certificate vide R.C. 224 of 2022 on 27.07.2021 entitling the Petitioner to a sum of Rs.15,68,88,928.99 together with the interest @ 8% per annum. In that O.A., the Respondent/Corporate Debtor had filed the counter claim which was dismissed. The Corporate Debtor/Respondent then filed a review petition where the *DRT vide an order dated 09.02.2026 recorded*

that the Applicant/Respondent herein intends to settle the liability and seeks an opportunity to negotiate with the bank. Considering the submission that the bank has already sold the mortgaged property and hypothecated materials and in the final order, there is a discussion of counter claim but there is no mention of the counter claim in the final portion of the O.A. order but in the amended O.A. order, the counter claim has been dismissed, the tribunal (DRT) feels it apt to grant an opportunity to the parties for a amicable settlement with directions to the bank to take a lenient view to consider the counter claim since the bank has already sold all the mortgaged and hypothecated properties. The DRT listed the matter on 06.04.2026.

20. The Notification shows that Chapter III of IBC was notified with effect from 01.12.2019 vide S.O. 4126(E) dated 15.11.2019 meaning thereby though Section 94 & Section 95 were existing in the IBC but the same came into force with effect from 01.12.2019. The case of ***State Bank of India vs. Ramakrishnan and Another (2018) 17 SCC 304*** referred by the Respondent is prior to the notification coming into effect and as such has no applicability in the present case. In the case of ***Lalit Kumar Jain*** supra, it was held that right of the Appellant to recover money from the Respondent who stood guarantor arises out of the terms of the deed of guarantee which are not in any way superseded or brought to naught merely because the appellant may

not able to recover money from the principal borrower. The approval of the resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of his liability under the contract of guarantee. The release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process i.e. operation of law or due to liquidation or insolvency proceedings, does not absolve the surety/guarantor of his or her liability which arises out of an independent contract.

21. In the light of above legal proposition, even though the Corporate Debtor has been liquidated, it will not absolve the personal guarantor/Respondent of his liability which arose out of an independent contract i.e. agreement of guarantee. The cases of ***Arun Kumar & Ors. v. Union of India (2007) 1 SCC 732 and Shapoorji Pallonji Finance Private Limited. v. Rekha Singh (Company Appeal (AT) (Ins.) No. 397 of 2022)*** have no relevance to the facts and circumstances of the case.

22. Hon'ble NCLAT in the case of ***Mahendrakumar Jojodia*** supra which was upheld by the Hon'ble Supreme Court has held that even if no insolvency process or liquidation proceedings are pending, NCLT has got jurisdiction to entertain the personal insolvency against the

Personal Guarantor in terms of section 60(2) of the Code. It was held that the application filed under section 95 was fully maintainable before NCLT and could not have been rejected only on the ground that no CIRP or liquidation proceedings are pending before the National Company Law Tribunal. In the case of ***Anita Goyal*** supra, it was held that section 60(2) does not in any manner prohibit filing of proceeding under section 95 of the Code even if no proceedings are pending before NCLT. Considering the judgments supra, the case of ***Rohit Nath vs. KEB Hana Bank Ltd. 2021 SCC OnLine Mad 2734*** and C.R.P. No. 2513 of 2022 has no applicability in the present case. The case of ***Nvinchandra Steels Private Limited v. Srei Equipment Finance Ltd. (2021) 4 SCC 435 and Action Ispat and Power Private Ltd. v. Shyam Metalics and Energy Ltd. (2021) 2 SCC 641*** are also not applicable as the proceedings against the Personal Guarantor are independent of the proceedings against the Corporate Debtor.

23. Section 60(1) of IBC provides that the Adjudicating Authority in relation to insolvency resolution and liquidation for the corporate persons including Corporate Debtors and Personal Guarantors there of shall be the NCLT having territorial jurisdiction over the place where the Registered Office of the corporate person is located. In the present

case, the Registered Office of the corporate person is located in Chennai and hence this tribunal has territorial jurisdiction.

24. For the aforesaid discussions, we are of the view that the petition filed under section 95 of IBC by the Indian Bank is maintainable before this Tribunal. **The preliminary issue is accordingly decided in favour of the Petitioner and against the Respondent/Personal Guarantor.**

25. Now coming to the merits of the case. In the present case, the loan facilities were availed on 01.03.2006 from the Axis Bank which facilities were transferred to the Petitioner Bank on 01.03.2008. The Corporate Debtor executed an Agreement of Hypothecation dated 12.03.2008 for securing the loan facilities. It initiated the proceedings under the SARFAESI Act and issued a notice under section 13(2) of the Act on 08.05.2009 which was followed by a possession notice dated 28.09.2009. The Petitioner also filed O.A. No.210 of 2009 which was renumbered as 57 of 2011 for recovery against the Corporate Debtor and the directors including the Respondent who signed the Agreement of Guarantee. The Deed of Guarantee filed with the petition dated 12.08.2008 shows that guarantee was a continuing guarantee and coextensive with the Corporate Debtor. Clause 10 of the agreement provides that guarantor agrees that the bank shall be entitled to

recover its entire dues on the said account from his or properties upon default in payment by the borrower.

26. Section 128 of the Indian Contract Act, 1872, provides that when a default is committed, the Principal Borrower and Surety are jointly and severally liable to the Creditor and the Creditor has the right to recover its dues from either of them or from both of them simultaneously. Section 128 of the Indian Contract Act, 1872 is reproduced hereunder:

> *"The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract."*

27. With regard to limitation aspect, it is relevant to refer to the Judgment of Hon'ble Supreme Court in the case of ***Dena Bank (Now Bank of Baroda) versus C. Shivakumar Reddy & Anr. (2021) 10 SCC 330*** where it was held that the Judgment and/or decree for money in favour of the Financial Creditor', passed by DRT, or any other Tribunal or Court, or the issuance of a certificate of recovery in favour of the 'Financial Creditor', would give rise to a fresh cause of action for the 'Financial Creditor', to initiate proceedings under Section 7 of the Code, if the dues of the 'Corporate Debtor' under the Judgment/decree

or any part thereof remained unpaid. The relevant para is reproduced as under:

"141. Moreover, a judgment and/or decree for money in favour of the financial creditor, passed by the DRT, or any other tribunal or court, or the issuance of a certificate of recovery in favour of the financial creditor, would give rise to a fresh cause of action for the financial creditor, to initiate proceedings under Section 7 IBC for initiation of the corporate insolvency resolution process, within three years from the date of the judgment and/or decree or within three years form the date of issuance of the certificate of recovery, if the dues of the corporate debtor to the financial debtor, under the judgment and/or decree and/or in terms of the certificate of recovery, or any part thereof remained unpaid."

28. It is also relevant to refer to the Hon'ble Supreme Court judgment in the ***MA.21 of 2022 in Suo Moto W.P No. 3 of 2020*** where it was held that in cases where the limitation period would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. The relevant para is extracted here below:

5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

i) The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

ii) Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

***iii) In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply**.*

iv) It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

29. Thus, in terms of the Hon'ble Supreme Court judgment in the case of ***Dena Bank***, supra Debt Recovery Certificate dated 27.07.2021 which would give rise to a fresh cause of action to file the application and in terms of Hon'ble Supreme Court order in MA 21 of 2022 in W.P. No. 3 of 2020, the period between 15.03.2020 to 28.02.2022 shall be

excluded, the present application having been filed on 26.07.2024 will fall squarely within the limitation period.

30. Although the Petitioner in the instant case, has placed only a Form-B demand notice dated 20.07.2023 which does not have reference of invocation of the agreement of guarantee dated 12.03.2008 and the Hon'ble NCLAT in the case of ***State Bank of India v. Deepak Kumar Singhania in Company Appeal (AT) (Insolvency) No. 191 of 2025*** **vide** order dated 28.02.2025 held that default in the guarantee arises only when after the guarantee has been invoked and the notice under Rule 7(1) issued in Form-B to the guarantor demanding the repayment of default amount would not amount to invocation of guarantee but considering the fact that there is a record having reference of issuance of section 13(2) SARFAESI notice which has not been disputed by the Respondent/Guarantor, we are of the view that the guarantee was duly invoked by the Petitioner before filing the recovery suit or the petition under Section 95 of IBC..

31. In the case of ***Ujwal Gupta v. Union Bank of India and Anr. in Company Appeal (AT) (Ins.) No.2001 of 2024*** decided on 07.01.2026, Hon'ble NCLAT referring the case of ***Asha Basantilal Surana vs. State Bank of India CA (AT) (Ins.) No. 84 of 2025 and Amonjot Singh vs. Navneet Kumar CA (AT) (Ins.) No. 961 of 2022*** it was held that if the

notice under the SARFAESI Act demands payment from the Personal Guarantor in terms of the guarantee, it can be treated as an invocation of the guarantee. The word 'director' suffix after the name of the Personal Guarantor will not change the character of the person from guarantor of the Corporate Debtor. The order has a reference that the Respondent had executed an Agreement of Guarantee on 06.01.2012 in favour of the Financial Creditor thereby guaranteeing the due repayment of the term loan availed by the borrower.

32. The Petitioner has thus proved the debt which is more than Rs.1.0 Crore, the threshold limit. The default in payment of debt is also proved.

33. In this case, the Respondent has filed a memo vide S.R. No. 2710 dated 20.03.2026 stating that the DRT vide its order dated 02.06.2025, in the review application RA 1 of 2022, has passed an order that the recovery proceedings R.C.224 of 2021 is stayed and matter is posted on 16.07.2025 but on perusal, we find that in the subsequent order dated 09.02.2026, the DRT had given opportunity to the parties to explore an amicable settlement and listed the matter for further hearing on 06.04.2026. The stay of the recovery proceedings would not bar the Petitioner instituting the present petition under Section 95 of IBC as there is no stay on the order of the DRT O.A. 57/2011.

34. For the aforesaid discussions, we allow the petition and order for initiation of insolvency proceedings against the Respondent/Personal Guarantor, S. Swaminathan.

35. In this case, the Petitioner has proposed the name Shri. Madhu Desikan as the Insolvency Professional. We therefore appoint Shri. **Madhu Desikan having Registration No. IBBI/IPA-001/IP-P00579/2017-2018/11021, Email ID:** desikan.madhu@gmail.com who has given his written consent in Form AA as the Resolution Professional to carry out the insolvency proceedings against the Personal Guarantor/Respondent, S. Swaminathan. His AFA is valid till 31.12.2026.

36. We hereby direct as follows;

I. Initiate Insolvency Resolution Process against the Respondent/Personal Guarantor. The moratorium in relation to all the debts is declared, from today i.e. date of admission of the application, and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on the repayment plan under Section 114 whichever is earlier as provided under Sec 101 of 1BC, 2016. During the moratorium period,

a. Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed, and

b. The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and

c. The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein:

d. The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

II. The Resolution Professional viz. Madhu Desikan having Registration No. IBBI/IPA-001/IP-P00579/2017-2018/11021 is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Chennai Bench, inviting claims from all Creditors, within 21 days of such issue The notice under Sub Section (1) of Section 102(2) shall include: -

a. details of the order admitting the application;

b. particulars of the resolution professional with whom the claims are to be registered; and

c. the last date for submission of claims.

III. The publication of notice shall be made in two newspapers, one in English and other in Vernacular, which have wide circulation in the State where the Corporate Debtor and Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.

IV. The Resolution Professional, in exercise of the powers conferred under Section 104, shall prepare a list of creditors on the basis of:

a. the information disclosed in the application filed by the debtor under Sections 94 or 95 as the case may be, and

b. claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice. The debtor shall prepare a repayment plan under Section 105, in consultation with the Resolution Professional, containing a proposal to the Creditors for restructuring of his debts or affairs.

The repayment plan may authorize or require the Resolution Professional to:

a. carry on the debtor, business or trade son his behalf or in his name: or

b. realise the assets of the debtor; or

c. administers or dispose of any funds of the debtor.

The repayment plan shall include the following, namely;

a. justification for preparation of such repayment plan and reasons based on which the creditors may agree upon the plan;

b. provision for payment of fee to the Resolution Professional;

c. such other matters as may be specified.

V. The Resolution Professional shall submit the repayment plan along with his report on the plan to this Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106.

VI. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons thereof. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of IBC, 2016. The date of meeting should not be less than 14 days or more than 28 days from the date of submission of the Report under subsection (1) of Section 106 of IBC, 2016, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of IBC, 2016.

VII. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of IBC, 2016 and submit the same to this Tribunal, copies of which shall be provided to the Debtor and the Creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of IBC, 2016.

VIII. The Resolution Professional shall submit his periodic reports before this Tribunal, every 30 days.

IX. The Petitioner is directed to deposit **Rs. 2,00,000/- (Rupees Two lakhs only)** to the bank account of the Resolution Professional within one week of this order, towards his expenses. This shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.

X. The Registry is directed to communicate to the concerned parties a copy of order within seven working days and upload the same on the website immediately after the pronouncement of order.

37. Accordingly, **CP(IB)/179(CHE)/2024** stands **admitted.**

Sd/-	**Sd/-**
VENKATARAMAN SUBRAMANIAM	**SANJIV JAIN**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

Suguna