

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH, (COURT NO.-II)

KOLKATA

I.A.(I.B.C)/2323(KB)2024

In

C.P.(IB)/336(KB)2024

Section 95(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 7(2) of the Insolvency and Bankruptcy Code, 2016 (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019

IN THE MATTER OF:

Aditya Birla Capital Limited (post amalgamation of Aditya Birla Finance Limited with Aditya Birla Capital Limited) Registered Office at Indian Rayon Compound, Veraval, Gujarat- 362266 and Regional Office at Room No. 401, 4th Floor, 24, Camac Street, Kolkata - 700014.

...Financial Creditor

VERSUS

Minu Dey; daughter of Sukha Ranjan Guha, a resident of India, is residing at Habra, Habra (m), North 24 Parganas, Habra, West Bengal -743263.

...Personal Guarantor

AND

A report under Section 99 of the Insolvency and Bankruptcy Code 2016 read with applicable Regulation of the Insolvency of the Insolvency and Bankruptcy Board of India (Insolvency Resolution process for Personal Guarantors to Corporate Debtors) 2016 as amended

IN THE MATTER OF:

Mahesh Chand Gupta, Resolution Professional having registered address at FE-202, Salt Lake City, Sector - III, 1st Floor, Kolkata - 700106, IBBI Regd. No.:- IBBI/IPA-001/IP-P01489/2018-19/12304, AFA No. : AA1/12304/02/191124/106336

...Applicant

CORAM:

MR. LABH SINGH, HON'BLE MEMBER (JUDICIAL)
MS. REKHA KANTILAL SHAH, HON'BLE MEMBER (TECHNICAL)

APPEARANCES (Via Hybrid mode):

Mr. Shaunak Mitra, Adv.] For Financial Creditor
Mr. Amit Kumar Nag, Adv.]
Ms. Ranjabati Ray, Adv.]
Mr. Saptarshi Kar, Adv.]

Mr. Snehasish Chakraborty, Adv.] For the Personal Guarantor

Order Pronounced On:22.6.2026

O R D E R

(Hearing through Hybrid Mode)

LABH SINGH, JUDICIAL MEMBER

I.A.(I.B.C)2323(KB)2024

1. The present application has been filed under Section 99 of the Insolvency and Bankruptcy Code, 2016 (“Hereinafter referred as IBC or the Code”) read with applicable Regulation of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) 2016 seeking following reliefs:
 - a) *To be pleased to take on record the report u/s 99(7) filed by the Applicant herein;*
 - b) *To be pleased to accept the application filed u/s 95(1) of the Insolvency & Bankruptcy Code, 2016 for commencement of Insolvency Resolution Process against Personal Guarantor.*
 - c) *Such further and/or other order or orders as this Tribunal may deem fit and proper;*
2. An application under Section 95 of the Insolvency and Bankruptcy Code, 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, was filed against Ms. Minu Dey (hereinafter referred to as the “Personal Guarantor” or “PG”) before this Bench. This Adjudicating Authority, vide order dated 17.10.2024, appointed the applicant as the Resolution Professional (hereinafter referred to as the “RP”) under Section 97 of the IBC and directed the RP to examine the application and submit a report under Section 99 of the IBC, 2016, recommending acceptance or rejection of the application for consideration of this Adjudicating Authority within a period of ten days from the receipt of the order.

3. The Personal Guarantor, in order to secure repayment of loan amount of 15,00,00,000/- (Rupees Fifteen Crores only) advanced to Corporate Debtor, P.C Dey & Sons Distributors Pvt. Ltd (CIN No. U51909WB2011PTC157451), stood as guarantor and executed a Guarantee Agreement dated 19.09.2018. The personal guarantee was invoked on 23.09.2021. The amount in default by the Corporate Debtor as of 19.04.2020 is recorded as Rs. 15,10,84,283.82, along with unapplied interest and other costs.
4. The Financial Creditor, prior to filing of the present application, had issued a demand notice dated 19.02.2020 under Section 13(2) of SARFAESI Act 2002. The Financial Creditor also filed an application under Section 95 with the Debt Recovery Tribunal (for short ‘DRT’) in December 2021.

Learned DRT, vide its order dated 13.08.2024, advised the Financial Creditor to approach the appropriate forum, being the NCLT and accordingly, present petition was filed.

5. It is submitted that the RP sent letters on 02.11.2024 on four available addresses of the Personal Guarantor, requesting proof of repayment of the debt claimed and provide requisite documents and information within three days, as per Section 99(2) of the Code. Despite the delivery of these letters, as confirmed by postal track reports, no reply received from the Personal Guarantor till date. In the absence of cooperation from the Personal Guarantor, the RP relied upon the present application filed by the Financial Creditor, data provided with the Ministry of Corporate Affairs, and details received from the Financial Creditor and their Advocates.
6. It is submitted that the Personal Guarantor has committed a default in the payment of the debts and has not denied the existence of the debt or the guarantee executed in favour of the applicant. No evidence has been provided to prove that the debt has stood discharged, and the debts are qualifying debts, not excluded debts.
7. Heard Ld. Counsels appearing for the parties. We have considered the report and perused the details of the claim indicated therein.

8. We are inclined to take on record the Report under Section 99(7) of IBC, 2016 filed by the Resolution Professional in the Insolvency Resolution Process of the Personal Guarantor, Minu Dey.

9. Accordingly, I.A.(I.B.C)2323(KB)2024 is allowed and disposed of.

C.P.(I.B)336(KB)2024

10. The present petition has been filed by Aditya Birla Capital Limited (Financial Creditor) under Section 95(1) of the Insolvency and Bankruptcy Code, 2016(for short “the Code”) read with Rule 7(2) of the Insolvency and Bankruptcy Code, 2016 (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 for initiation of Insolvency Resolution Process against Minu Dey, Personal Guarantor of the Corporate Debtor P.C. Dey and Son Distributors Pvt. Ltd. (CIN No. - U51909WB2011PTC157451).

11. The Corporate Debtor, M/s. P.C. Dey and Sons Distributors Private Limited, was granted credit facilities for which a Sanction Letter was issued on 14th September 2018, followed by a Loan Agreement dated 19th September 2018. The respondent, Ms. Minu Dey, who was one of the Directors of the Corporate Debtor, stood as a personal guarantor in respect of the secured loan and credit facilities amounting to Rs. 15,00,00,000/- (Rupees Fifteen Crore Only).

12. The respondent executed a Deed of Guarantee dated 19th September 2018 in favour of the financial creditor. To secure the debt, an equitable mortgage was created over the secured assets vide a loan agreement dated 19.09.2018, and Memoranda of Entry were executed on 5th October 2018 and 12th October 2018, at which time original title deeds were handed over to the creditor.
13. The loan account of the corporate debtor subsequently became irregular for more than 90 days and was declared a Non-Performing Asset (NPA) on 15th January 2020, in accordance with the guidelines issued by the Reserve Bank of India (RBI) Master Circular on Prudential Norms on Income Recognition, asset classification and provisioning pertaining to Advances. Following this declaration, the Financial Creditor issued a demand notice dated 19.02.2018 under Section 13(2) of the SARFAESI Act, 2002, to the Borrowers. The total debt, including interest and penalties, is calculated at Rs. 15,10,84,283.82, which is the same amount in default and the debt became due on 19th April 2020.
14. A notice of invocation of the personal guarantee was issued to the respondent on 23rd September 2021. The date of default is stated to be 15th October 2021. Thereafter, the financial creditor issued a Demand Notice dated 15th November 2021 in Form 'B' under rule 7(1) of the Insolvency

and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019. A subsequent Form 'B' demand notice, dated 20th August 2024, was issued by the financial creditor and sent to the last recorded address of the respondent. The current application to initiate the Insolvency Resolution Process was filed on 26th September 2024.

15. This Tribunal, vide order dated 17th October 2024, has appointed Mr. Mahesh Chand Gupta, IBBI Registration No. IBBI/IPA-001/IP-P01489/2018-2019/12304, email ID: mcgupta90@gmail.com, as the Resolution Professional in exercise of the power conferred under Section 97 of the IBC, 2016. The Resolution Professional was directed to file his report under Section 99 of the IBC, 2016 within a period of ten days from the receipt of the notice. Accordingly, the RP submitted his report in the application being I.A.(I.B.C)2323(KB)2024.
16. We have considered the report and perused the details of claim indicated therein, and the said report being I.A.(I.B.C)2323(KB)2024 is considered along with the main petition for the purpose of deciding the admission of the Insolvency Resolution Process against the Personal Guarantor.

17. The Resolution Professional Mr. Mahesh Chand Gupta, has vide his report attached as Annexure - 1 in I.A.(I.B.C)2323(KB)2024, suggested/stated as extracted hereunder:

PART I :- Application Details

1.	Particulars of Applicant/Financial Creditor	Aditya Birla Capital Limited (post amalgamation of Aditya Birla Finance Limited with Aditya Birla Capital Limited) Registered Office at Indian Rayon Compound, Veraval, Gujarat- 362266 and Regional Office at Room No. 401, 4th Floor, 24, Camac Street, Kolkata - 700014 Email - gautam.das3@adityabirlacapital.com sanjay.gupta7@adityabirlacapital.com utkarsh.raj@adityabirlacapital.com
2.	Particulars of Corporate Debtor under CIRP	P.C.Dey and Son Distributors Private Limited Regd Office:- Deshbandhu Park, Bata Show Room Jessore Road, Habra, West Bengal-743263 Email-pcdey4@gmail.com CIN No - U51909WB2011PTC157451 A private limited non-govt company involved in Other wholesale business.
3.	Date of Commencement of	CIRP is yet to be initiated.

	CIRP of Corporate debtor	
4.	Details of personal guarantee given to applicant by Personal Guarantor	<p>Ms. Minu Dey, daughter of Sukha Ranjan Guha, a resident of India, is residing at Habra, Habra (m), North 24 Parganas, Habra, West Bengal 743263.</p> <p>Email Id:- NA</p> <p>PAN no - NA</p> <p>Aadhar No - 887992606624</p> <p>Contact No- NA</p> <p>PG has executed Guarantee Agreement dated 19-09-2018, to the tune of INR 15,00,00,000/- in favour of the financial creditor for securing the financial debt provided by the Financial Creditor to the corporate debtor.</p>
5.	Date of Invocation of personal guarantee by Financial Creditor	23-09-2021
6.	Date of filing Petition under Section 94/95 of IBC	On or about 23.09.2024
7.	Amount in default by Corporate Debtor to the Applicant at the time of	Rs. 15,10,84,283.82 as on 19/04/2020 plus unapplied interest and other costs.

	commencement of CIRP	
8.	Amount provided in the resolution plan, if any, against the claim of the applicant.	NIL because CIRP is yet to be initiated.
9.	Balance due from Personal Guarantor	Rs. 15,10,84,283.82
10.	Net worth of personal Guarantor as on the date of the report	Not made available
11.	Copies of past 5-year balance sheet and income tax return of personal guarantor.	No such documents have been provided by PG or by the Financial Creditor.
12.	Details of actions taken by Applicant or any other Financial Creditor against Personal Guarantor under any other Act in respect of debt owed by Corporate Debtor.	Financial Creditor had issued notice u/s 13(2) of SERFAESI on 19-02-2020. FC also filed application under Section 95 with the DRT in Dec 2021 against the PG. The DRT vide its order dated 13-08-2024, advised FC to approach the appropriate forum being the NCLT.
13.	Recommendation (Admit/Reject)	Relying upon the documents submitted by the advocates of the FC alongwith copy of demand notice

		and having received no reply from PG in response to letters sent by RP, I hereby Recommend to ADMIT the case.
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18. The Resolution Professional, Mr. Mahesh Chand Gupta in his report has recommended admission of the personal guarantor into the Insolvency Resolution Process. The relevant portion of his report has been extracted and appended below for the sake of convenience.

“PART IV- Conclusion with recommendation

Based on the materials on record which are also on record of the application, I conclude and recommend as below :

(i) The Personal Guarantor has committed default in payment of the debts to the Financial Creditor as agreed upon.

(ii) PG has not denied existence of Debt & Guarantee executed in favour of the applicant.

(iii) PG has not provided any document/evidence stating that the debt owned to the applicant has stood discharged.

(iv) The debts mentioned in the application are qualifying debt and not excluded debts.

(v) The application is accompanied with details and documents as mentioned in Section 95(4) and has

been duly filed in the prescribed Form-C under rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, with the requisite fees - satisfies the requirement under Section 95(6) of the Code.

(vi) Demand notice issued as per prescribed format

(vii) No amount received within a period of 14 days of issue of demand notice nor even till date.

(viii) The Personal Guarantor is not eligible under Section 80 for a Fresh Start Process as provided under Part III Chapter II.

Recommendation

After examination of the application under sub Section (6) of Section 99 and ascertaining that the requirement set out in Section 95 has been satisfied by the financial creditor and the financial creditor has provided information and given explanation sought by me under sub-secc (4), I hereby recommend, in terms of Section 99(7) of the Code, for admission of the application filed u/s 95 of IBC, 2016 for commencement of Insolvency Resolution Process against Ms Minu Dey, Personal

*guarantor to the Corporate Debtor - P.C.Dey and Son
Distributors Private Limited.”*

19. The Respondent appeared in pursuance of notice issued by this Tribunal and filed its reply stating therein that the petition is not maintainable in law or facts. The application is filed in abuse of the process of law and is barred by the law of limitation. The petition suffers from serious infirmities and gross suppression of facts, and is liable to be dismissed in limine with exemplary costs.
20. It is submitted that the petition has not been filed in accordance with Section 95(4) of the Insolvency and Bankruptcy Code, 2016. Furthermore, the petition was not submitted in accordance with Rule 7 of the Insolvency and Bankruptcy (Application to adjudicating authority for Insolvency Resolution Process for personal guarantors to corporate debtors) Rules 2019, which provides that the application under Section 95(5) of the Code shall be submitted in Form 'C'. It is submitted that the petition was filed without any authority whatsoever, as the deponent of the petition does not have any authority to file and/or affirm the petition or to act on behalf of the petitioner.
21. It is submitted that the present petition is barred by the laws of limitation because the invocation of the guarantee was allegedly made on 23rd September 2021, whereas the present petition was filed on 26th September 2024, which is

beyond the period of limitation. It is submitted that the date of default mentioned in the petition is 15th October 2021; however, no justification and/or reasoning has been stated as to why such a date shall be construed as the date of default and as such, the petition is ex-facie barred by laws of limitation. Although the debt due date was allegedly stated to be 19th April 2020, the loan account of the Corporate Debtor was declared as a NPA on 15.01.2020.

22. It is submitted that under the prudential norms of the RBI, an account can be declared as an NPA only when it has been irregular over a period of 90 days, but here the applicant bank stated the debt itself fell due on 15.01.2020 and classified it as an NPA on the same day. Therefore, the loan account was wrongfully classified as an NPA, and the date of default qua the date of NPA is erroneous, unlawful, illegal, vexatious, arbitrary, premature, and against the Prudential norms of the Reserve Bank of India.
23. The demand notice dated 19.02.2020 under Section 13(2) issued to the Principal Borrower and alleged guarantors has been purportedly construed as an invocation of guarantee; however, the demand notice issued under Section 13(2) is strictly a statutory notice for enforcement of security interest and cannot be construed as an invocation of guarantee. In any event, the said notice was never received by the respondents, and the applicants have failed to prove

service upon them. In the absence of such service, the notice is devoid of any merit and does not bind the respondent.

24. It is submitted that the liability of the guarantors can only be enforced when, despite the invocation of guarantee, the guarantor fails to pay the invoked amount. The alleged notice dated 23rd September 2021 contained no statement of account and/or memorandum of interest, and the claimed outstanding of Rs. 15,10,84,283.82/- lacks any authentication whatsoever. The respondent denied that such amount was outstanding. The claim is completely false, erroneous, and exaggerated by way of levying an excessive rate of interest.
25. It is submitted that the alleged FORM 'B' demand notice dated 15.11.2021 does not even pertain to the respondent herein and has been addressed to one Amitava Dey. Consequently, the present petition is defective on the face of the records since Form 'B' pertaining to some other person has been annexed to this application.
26. It is submitted that the petitioners are also resorting to forum shopping as they had previously filed the same application before the Learned DRT, which rejected the Section 95 application on the ground that it was not maintainable due to want of jurisdiction. No appeal was preferred against that order, and thus no new application

can be filed before this Learned Tribunal on the same cause of action, as it is hit by the principles of res judicata.

27. It is submitted that the statement of accounts annexed to the petition does not corroborate the claim of the applicant company, and the interest calculation sheet is completely fictitious, inflated, and a result of an excessive charge of interest. It is contended that there is no break-up of the calculation of alleged outstanding dues. The Resolution Professional has completely acted beyond his jurisdiction by not pointing out serious lacunae on the part of the applicant company.
28. It is submitted that the report filed by the Resolution Professional under Section 99 of IBC is cryptic, illusory, completely cyclostyle in nature, and prepared without application of mind, serving as nothing but a transcription of the application filed by the creditor. It is submitted that the Resolution Professional failed in his duties to verify whether the FORM 'B' demand notice was issued upon the personal guarantor and failed to independently verify or examine the veracity of the petition. It is further submitted that the report is erroneous, unlawful in the eyes of law, and the petition is liable to be rejected in limine with exemplary costs.
29. The Financial Creditor filed its rejoinder to reply filed by the Personal Guarantor denying the content of reply

affidavit and reiterating the facts pleaded in the present petition which are not reproduced here for sake of brevity.

30. Heard Ld. Counsels appearing for the Petitioner and the Personal Guarantor. We have considered the report and perused the details of the claim indicated therein. We have also appreciated the law applicable on the facts of the present case.

31. The Personal Guarantor states that the company petition is barred by limitation as the invocation of guarantee has been allegedly made on 23.09.2021, whereas the present petition has been filed on 26.09.2024, which is beyond the period of limitation. However, looking into the facts and circumstances in the present matter, the applicant, under provision of Section 14 of the Limitation Act 1963, is entitled to exclusion of the entire time spent in the proceeding pending with Debt Recovery Tribunal(DRT) as the DRT refused to entertain the petition filed before it under provision of Section 95 petition for want of jurisdiction. The relevant observations of DRT (Page 331 of the application) are as follows:

“Accordingly, the present issue with regard to the jurisdiction has been crystallized and settled - jurisdiction with regard to Insolvency proceeding of personal guarantor to corporate debtor is NCLT, irrespective of the fact whether there is any

pending CIRP/Liquidation proceedings against corporate debtor or not.”

32. In computing the period of limitation, the time during which the applicant has been prosecuting diligently another civil proceeding against the same party for the same relief shall be excluded where such proceeding is prosecuted in a court which, from defect of jurisdiction, is unable to entertain it. The Provisions of the limitation act are as follows:

“Section 14: Exclusion of time of proceeding Bonafide in court without jurisdiction.

14. (1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first

instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-Section (1) shall apply in relation to a fresh suit instituted in permission granted by the

court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation: For the purposes of this Section, –

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding; and

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”

33. Hon'ble Supreme Court in case of Sesh Nath Singh and Anr. v. Baidyabati Sheoraphuli Co-Operative Bank Ltd and Anr. [(2021) ibclaw.in 49 SC] observed that Section 14 of the Limitation Act applies for the purpose of computation of the period of limitation under the IBC. The relevant observation of the Hon'ble Apex Court is as follow:

“21. Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said Section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:

(1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;

(2) The prior proceeding had been prosecuted with due diligence and in good faith;

(3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;

(4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;

(5) Both the proceedings are in a court.”

“88. An Adjudicating Authority under the IBC is not a substitute forum for a collection of debt in the

sense it cannot reopen debts which are barred by law, or debts, recovery whereof have become time barred. The Adjudicating Authority does not resolve disputes, in the manner of suits, arbitrations and similar proceedings. However, the ultimate object of an application under Section 7 or 9 of the IBC is the realization of a ‘debt’ by invocation of the Insolvency Resolution Process. In any case, since the cause of action for initiation of an application, whether under Section 7 or under Section 9 of the IBC, is default on the part of the Corporate Debtor, and the provisions of the Limitation Act 1963, as far as may be, have been applied to proceedings under the IBC, there is no reason why Section 14 or 18 of the Limitation Act would not apply for the purpose of computation of the period of limitation.”

34. Hon’ble Supreme Court’s in case of *Suo Motu Covid orders in Re: Cognizance for Extension of Limitation*, [(2022) ibclaw.in 02 SC] excluded limitation for all proceedings due to prevailing situation of Covid-19. The relevant observation of the Hon’ble Apex Court is as follow:

“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.”

35. Taking into consideration the facts of the present case and law applicable thereon, we hold that the present petition filed under Section 95 on 26.09.2024 is well within the period of limitation.

36. We further observe that the deed of guarantee dated 19th September 2018 is a valid document duly executed by the Personal Guarantor. The Corporate Debtor's account was rightly classified as NPA on 15th January 2020 in accordance with the RBI Master Circular on Prudential Norms on Income Recognition, asset classification and provisioning pertaining to Advances. The objection raised by the Personal Guarantor regarding the NPA date being 15.01.2020 is not sustainable.

37. It is a settled principle that the guarantor's liability is co-extensive with that of the principal borrower. In the present case, the Personal Guarantor's liability became absolute upon the invocation of the personal guarantee upon issuance of notice dated 23rd September 2021. The service of the invocation notice has been proved by the postal track reports filed by the applicant, which confirm delivery to the Personal Guarantor; and therefore the process of asset classification by the Financial Creditor cannot be deemed arbitrary.
38. Regarding the Form 'B' demand notice, the Financial Creditor has clarified that, while the petition initially annexed a Form 'B' dated 15th November 2021 pertaining to another individual (Mr. Amirtava Dey, relative of the personal guarantor), the subsequent rejoinder demonstrate that the correct Form 'B' of the same date was served upon the Personal Guarantor. The Financial Creditor, after disposal of proceedings by the DRT, issued a fresh Form 'B' demand notice dated 20th August 2024 to the Personal Guarantor, which is the demand upon which the current petition is founded. The Financial Creditor has provided proof of service for this fresh notice and thus the Personal Guarantor's objection that the petition is defective due to the initial error is not maintainable.

39. The Demand Notice dated 20.08.2024 issued to the Personal Guarantor under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 is placed at Page 339 of the typed set filed along with the application.
40. It is recommended by the Resolution Professional that the present application be admitted and the Insolvency Resolution Process be commenced against Ms. Minu Dey.
41. Section 95 of IBC provides that 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 the Section by submitting an application. The application shall be accompanied with details and documents relating to the debts or by the debtor to the creditor as on the date of application, failure by the debtor to pay the debt within a period of 14 days of the service of the Notice of Demand and the relevant evidence of such default or non-payment of debt. It also provides that the creditor shall provide a copy of the application to the debtor and the application shall be in such form and manner.
42. Hon'ble Supreme Court in the matter of Dilip B Jiwrajka -Vs- Union of India & Ors in Writ Petition (Civil) No 1281 of 2021 while dealing with the jurisdiction of NCLT in relation

to adjudication of cases filed under Section 94 and 95 of IBC, 2016 has summarized in para-86 as follows;

“86. We summarise the conclusion of this judgment below:

- (i) No judicial adjudication is involved at the stages envisaged in Sections 95 to Section 99 of the IBC;*
- (ii) The resolution professional appointed under Section 97 serves a facilitative role of collating all the facts relevant to the examination of the application for the commencement of the Insolvency Resolution Process which has been preferred under Section 94 or Section 95. The report to be submitted to the adjudicatory authority is recommendatory in nature on whether to accept or reject the application;*
- (iii) The submission that a hearing should be conducted by the adjudicatory authority for the purpose of determining ‘jurisdictional facts’ at the stage when it appoints a resolution professional under Section 97(5) of the IBC is rejected. No such adjudicatory function is contemplated at that stage. To read in such a requirement at that*

- stage would be to rewrite the statute which is impermissible in the exercise of judicial review;*
- (iv) The resolution professional may exercise the powers vested under Section 99(4) of the IBC for the purpose of examining the application for insolvency resolution and to seek information on matters relevant to the application in order to facilitate the submission of the report recommending the acceptance or rejection of the application;*
 - (v) There is no violation of natural justice under Section 95 to Section 100 of the IBC as the debtor is not deprived of an opportunity to participate in the process of the examination of the application by the resolution professional;*
 - (vi) No judicial determination takes place until the adjudicating authority decides under Section 100 whether to accept or reject the application. The report of the resolution professional is only recommendatory in nature*
 - (vii) The adjudicatory authority must observe the principles of natural justice when it exercises jurisdiction under Section 100 for the purpose of determining whether to accept or reject the application;*

(viii) *The purpose of the interim-moratorium under Section 96 is to protect the debtor from further legal proceedings; and*

(ix) *The provisions of Section 95 to Section 100 of the IBC are not unconstitutional as they do not violate Article 14 and Article 21 of the Constitution.*

43. The Hon'ble Supreme Court has held that no judicial adjudication is involved at the stages envisaged in Sections 95 to Section 99 of the IBC and also there is no violation of natural justice under Section 95 to Section 100 of the IBC as the debtor is not deprived of an opportunity to participate in the process of the examination of the application by the resolution professional.

44. Therefore in view of our aforesaid discussion and law applicable thereon, we pass the following order:

I. This application is admitted under Section 100;

II. In terms of Section 101:

A moratorium shall commence in relation to all the debts and shall cease to have effect at the end of the period of one hundred and eighty days beginning with the date of admission of the application or on the date this Adjudicating Authority passes an order on the repayment plan under Section 114, whichever is earlier.

III. During the moratorium period—

- a) any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;
- b) the creditors shall not initiate any legal action or legal 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) In relation to a firm, the moratorium under sub-Section (1) shall operate against all the partners of the firm.
- e) 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.
- f) In absence of any prayers from any quarters against the nominated Resolution Professional, the IRP will act as the Resolution Professional.
- g) The said Resolution Professional shall act in terms of Section 102, 103, 104 of the Code, to cause public notice, invite claims from creditors, prepare list of creditors, and hold regular meeting as directed hereunder:

IV. In terms of Section 102:

1. The Resolution Professional shall cause a public notice within seven days of passing the order under Section 100, inviting claims from all creditors within twenty-one days of such issue.

2. The notice under sub-Section (1) 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.
3. The notice shall be –
 - a) published in at least one English and one vernacular newspaper which is in circulation in the state where the debtor resides;
 - b) placed on the website of the Adjudicating Authority.

V. In terms of Section 103:

- a) The creditors shall register claims with the resolution professional by sending details of the claims by way of electronic communications or through courier, speed post or registered letter.
- b) In addition to the claims referred to in sub-Section (1), the creditor shall provide to the resolution professional, personal information and such particulars as may be prescribed.

VI. In terms of Section 104:

The resolution professional shall, within 30 days from the date of notice prepare a list of creditors on the basis of –

- a) the information disclosed in the application filed by the debtor under Section 94 or 95, as the case may be; and;

b) claims received by the resolution professional under Section 102.

VII. In terms of Section 105:

The Resolution Professional shall assist the debtor in preparing repayment plan containing a proposal to the creditors for restricting of his debts or affairs.

VIII. In terms of Section 106:

The Resolution Professional shall submit the repayment plan under Section 105 along with his report, within 21 days from the last date of submission of claims under Section 102 specifying.

a) That the repayment plan is in compliance with the provisions of any law for the time being in force;

b) That the repayment plan has a reasonable prospect of being approved and implemented; and

c) Whether there is a necessity of summoning a meeting of the creditors, if required, to consider the repayment plan:

Meeting of creditors shall be held if necessary, specifying the-

a. Date, Time and Place of meeting after consulting the creditors;

b. Within 14 to 28 days from submission of its report;

c. After issuance notice for meeting at least 14 days in advance, to all the creditors mentioned in the list of creditors.

- IX. The Resolution Professional shall prepare a report of the meeting in accordance with Section 112 and furnish a report to this Adjudicating Authority.
45. Thus, we accept the application filed under Section 95(1) of the IBC, 2016 for commencement of Insolvency Resolution Process against the Personal Guarantor.
46. Consequently, the Company Petition No. C.P (IB) No.336/KB/2024 stands admitted.
47. Next date for consideration would be 23.7.2026.
48. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
49. Certified copy of the order may be issued, if applied for, upon compliance of all requisite formalities.

Rekha Kantilal Shah
Member (Technical)

Labh Singh
Member (Judicial)

SRIDHAR.R(LRA)