

IN THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL

SPECIAL BENCH

KOLKATA, COURT- I

I.A. (IB) No. 1690/KB/2024

In

C.P. (IB) No. 193/KB/2024

An Application under section 95 of the IBC, 2016 and Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for For Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019

IN THE MATTER OF:

Indian Bank

...Financial Creditor

Versus

Santosh Jhawar, Personal Guarantor of M/s Burgundy Life Style Pvt. Ltd.

...Personal Guarantor

AND

I.A. (IB) No. 1690/KB/2024

An Application under section 99(1) of the IBC, 2016

IN THE MATTER OF:

Indian Bank

...Financial Creditor

Versus

Santosh Jhawar, Personal Guarantor of M/s Burgundy Life Style Pvt. Ltd.

...Personal Guarantor

And

Chandra Kumar Jain

...Applicant

Date of Pronouncement: 18.06.2026

Case Citation: (2026) ibclaw.in 2389 NCLT
IN THE NATIONAL COMPANY LAW TRIBUNAL

SPECIAL BENCH

KOLKATA, COURT- I

I.A. (I.B) NO. 1690/KB/2024

In

C.P. (I.B) NO. 193/KB/2024

CORAM:

Rekha Kantilal Shah, Member (Technical)

Bidisha Banerjee, Member (Judicial)

APPEARANCE:

Mr. Santosh Kr. Ray, Adv.] For The Financial Creditor

Ms. Utkarshika, Adv.]

Ms. Varsha Khowala, Adv.]

Mr. Rashmi Singhee, Adv.] For The Resolution Professional

Mr. Chandra Kumar Jain] The Resolution Professional- In
Person

SPECIAL BENCH

KOLKATA, COURT-I

I.A. (I.B) NO. 1690/KB/2024

In

C.P. (I.B) NO. 193/KB/2024

O R D E R

Per: Bidisha Banerjee, Member (Judicial)

1. The Court convened through hybrid mode.

2. BRIEF BACKGROUND

2.1 The Principal Borrower, M/s Burgundy Life Style Pvt. Ltd., along with its guarantors, approached the Financial Creditor in 2010 for sanction of various credit facilities towards working capital requirements. Pursuant thereto, the Financial Creditor, Indian Bank (the then Allahabad Bank) sanctioned facilities by sanction letter dated 24.03.2010, including Cash Credit, Packing Credit and Letter of Credit in favor of the Principal Borrower.

2.2 To secure the said facilities, a Deed of Guarantee dated 27.03.2010 was executed in favour of the Financial Creditor, inter alia, by the Respondent as personal guarantor.

2.3 It is pertinent to be mentioned that the **liability of the guarantors is co-extensive** with that of the Principal Borrower in terms of Section 128 of the Indian Contract Act, 1872 and as per the following clauses of the said Deed of Guarantee:

*"2. I/ We further declare that this guarantee subject to the provision of clause 1 hereof **shall be extended in the event of any acknowledgement of debt** and/or part payment of capital and/or payment of interest or any part thereof made by the Principal **within the meaning of Section 18** and 19 of the limit nor (limitation) Act 1963 and **such acknowledgement** and/or part payment of capital or payment of interest **shall be deemed to have been made for the principal and also by me/us** as agent for and on behalf of the principal and for this purpose this guarantee shall not be treated as discharge me/us from liability under this guarantee but subject to the said clause 2 hereof shall be a continuing guarantee to the Bank.*

*3. I/ We further declare that upon any **acknowledgement of debt and/or part payment of the capital and/or payment of***

interest or any part thereof this guarantee shall be deemed to have commenced a fresh starting point for limitation against me/us from the date of said acknowledgement and/or payment and for that the relation of principal and guarantor would give rise to an implied authority on the part of the principal to make payment on my/our behalf."

(Emphasis Added)

- 2.4 Thereafter, despite availing the facilities, the Principal Borrower and its guarantors failed to operate the account regularly and began to default in repaying principal and interest. Consequently, the account of the Principal Borrower was classified as Non-Performing Asset (NPA) on 31.03.2016.
- 2.5 Following such NPA classification, the Financial Creditor issued a demand notice under Section 13(2) of the SARFAESI Act, 2002 dated 04.05.2016 to the Principal Borrower and its guarantors, including the Respondent, calling upon them to repay the outstanding dues, **thereby also invoking the personal guarantees.**
- 2.6 Thereafter, the Principal Borrower acknowledged the debt through issuance of letters giving a one-time offer for settlement on 21.05.2019 and subsequent letters dated 20.07.2019, 16.08.2019, 22.10.2019, 07.01.2020 and 06.03.2020. Further, the Principal borrower has also acknowledged the debt in its audited balance sheets for financial years 2019-20 and 2021-22.
- 2.7 On 16.01.2024, the Financial Creditor issued a demand notice in Form-B under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Principal Borrowers) Rules, 2019 to the Respondent at his **last-known address** as obtained from the Deed of Guarantee dated 27.03.2010, calling upon him to pay the entire unpaid debt in default within 14 days.
- 2.8 However, the said postal article was returned with the remark "item returned no such person in the address". The Financial

SPECIAL BENCH

KOLKATA, COURT-I

I.A. (I.B) NO. 1690/KB/2024

In

C.P. (I.B) NO. 193/KB/2024

Creditor also published the Form B demand notice in two newspapers.

- 2.9 Upon the Respondent's failure to clear the dues within the specified period of 14 days, the Financial Creditor filed the present application under Section 95 of the Insolvency and Bankruptcy Code, 2016, read with Rule 7(2) of the Personal Guarantors Rules, on 10.06.2024 to initiate insolvency resolution process against the Personal Guarantor.
- 2.10 Under section 97 of the IBC, this Tribunal appointed Mr. Chandra Kumar Jain as the Resolution Applicant ("RP") on 20.06.2024 and the said RP has filed the application **IA (IBC) No. 1690/KB/2024** under section 99 of the Code, submitting his report and seeking the same to be taken on record, wherein the following recommendation is made:

IV. RESOLUTION PROFESSIONAL'S RECOMMENDATION U/S 99(7):

The Resolution Professional recommend for acceptance of the application made u/s 95.

- V. In compliance of u/s 99(8), Resolution Professional examined the documents provided by Mrs. Santosh Jhawar and observed that he is not qualified for fresh start u/s 81.**

VI. The Reason for recommendation u/s 99(9) of acceptance of application u/s 95 is as following reasons; -

1. It is concluded from the above facts, that there is a debt to corporate debtor, which is in default.
2. Mrs. Santosh Jhawar has executed deed of guarantee dated 27th March, 2010 (**Enclosed as Annexure "K"**) for the purpose of securing



SPECIAL BENCH

KOLKATA, COURT-I

I.A. (I.B) NO. 1690/KB/2024

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C.P. (I.B) NO. 193/KB/2024


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the credit facilities taken by Burgundy Lifestyle Private Limited., corporate debtor. The Financial Creditor has issued the demand notice in Form "B" to the personal guarantor Mrs. Santosh Jhawar as per applicable regulation of IBC 2016.

3. The Personal Guarantor has not provided any documents evidencing payment against above stated debt.
 4. The Financial creditor has filed an application with the requisite court fees for insolvency resolution process of Mrs. Santosh Jhawar u/s 95 of IBC 2016 and the copy of application was duly served upon the personal guarantor.
 5. As per information provided in main application u/s 95, the CIBIL report is enclosed instead of details of registration with the information Utility.
 6. The debt in default was not an excluded debt.
 7. Resolution professional examined the application and found that the application satisfied the requirement of section 95 of IBC, 2016.
- VII. In compliance with Section 99(10), the resolution professional will give copy of the report to debtor or the creditor as case may be in due course of time.

Thus, the Hon'ble NCLT may kindly pass an appropriate order.

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Mr. Chandra Kumar Jain

Resolution Professional

In the matter of

Mrs. Santosh Jhawar, Personal Guarantor of
Burgundy Lifestyle Private Limited



3. The Respondent Personal Guarantor has filed her objection to the Report of the Resolution Professional, raising, inter alia, the following contentions:
 - 3.1 That the instant petition is **barred by limitation** as the default admittedly occurred on 31.03.2016, the last OTS proposal was made on 21.05.2019, and the petition has been filed as late as 10.06.2024.
 - 3.2 It is further contended by the respondent that there exists **no acknowledgment of debt in the books of accounts** of the Principal Borrower.
 - 3.3 That the **demand notice in Form B dated 16.01.2024 is invalid** both on account of the issuing officer lacking authority and non-service upon the Respondent.
 - 3.4 The Respondent further opposes the said application on the ground that **no explanation has been offered for the Financial Creditor's admitted failure to first initiate CIRP against the Principal Borrower** before proceeding against the personal guarantor.

ANALYSIS AND FINDINGS

4. Heard the Learned Counsels appearing for the parties and perused the documents placed on record.
5. The issue that craves consideration is whether the present petition has been filed by the Financial Creditor against the Personal Guarantor within three years from the date of last **acknowledgement of debt by the Principal Borrower**.
6. It is a trite, axiomatic and settled law that the liability of the guarantor is co-extensive with the Principal Borrower and an acknowledgement of liability to repay by the Principal Borrower extends limitation period for the Financial Creditor to initiate the proceedings against the Personal Guarantor too, the following decisions would be relevant to quote:
 - a) The Hon'ble Supreme Court of India on 26.03.2021, in **Laxmi Pat Surana vs Union Bank Of India**, Civil Appeal No. 2734 of 2020, *inter alia* held the following:

“41. ...What is urged by the appellant is that the acknowledgment of liability to pay the amount in question was by the principal borrower and that acknowledgment cannot be the basis to proceed against the corporate guarantor (corporate debtor). Section 18 of the Limitation Act, however, posits that a fresh period of limitation shall be computed from the time when the party against whom the right is claimed acknowledges its liability. The financial creditor has not only the right to recover the outstanding dues by filing a suit, but also has a right to initiate resolution process against the corporate person (being a corporate debtor) whose liability is coextensive with that of the principal borrower and more so when it activates from the written acknowledgment of liability and failure of both to discharge that liability.”

(Emphasis Added)

- b) The Hon'ble NCLAT in **State Bank Of India vs Gourishankar Poddar & Anr**, Civil Appeal (AT) (Ins) No. 689 of 2024, on 06.01.2025, reaffirmed such ruling of the Hon'ble apex court in the following words:

“11. ...The Hon'ble Supreme Court, in *Laxmi Pat Surana v. Union Bank of India* [(2021) 8 SCC 481], has affirmed that an acknowledgment of debt by the principal debtor extends the limitation period for actions against the guarantor as well.”

(Emphasis Added)

7. In terms of the following clauses of the Deed of Guarantee dated 27.03.2010, the demand notice issued by the Financial Creditor on 04.05.2016 under section 13(2) of SARFAESI Act, 2002 serves as the invocation of guarantee:

“11. A statement or demand signed by the Bank or its Manager or its any other authorised official showing that any sum is due to the Bank hereunder shall be conclusive evidence that such sum is in fact due and any demand or legal proceedings shall be sufficiently served if sent by prepaid post to my/our address last known to the Bank or stated hereon and shall be deemed to have reached me/us in course of post.

...

13. I/We further agree that in case the Guarantor fails to pay the Bank's dues within one month from the date of receipt of the demand notice from the bank in pursuance of the guarantee

furnished by the guarantors herein, the bank shall be at liberty to publish the name and addresses of the Guarantor along with details of the outstanding dues payable by the guarantor (s) to the bank and other relevant details in the Newspaper and other publicity media. The Bank will also be at liberty to provide information about the defaulter guarantors to Reserve Bank of India, enforcement Directorate ECGC, CIBIL or any other statutory Authority as may be deemed necessary.

(Emphasis Added)

Hence, non-compliance with the said notice dated 04.05.2016 has led to the default on part of the Respondent Personal Guarantor.

8. The notice period in the said demand notice issued by the Financial Creditor on 04.05.2016 under section 13(2) of SARFAESI Act, 2002 was of **60 days**. Accordingly, the period of limitation commenced from 04.07.2016, i.e., upon the expiry of the said 60 days without repayment. In this regard, we rely upon the judgement of **Syndicate Bank Channaveerappa Beleri**, (2006) 11 SCC 506, wherein the Hon'ble Supreme Court held that:

"11. But in the case on hand, the guarantee deeds specifically state that the guarantors agree to pay and satisfy the bank on demand and interest will be payable by the guarantors only from the date of demand. In a case where the guarantee is payable on demand, as held in the case of Bradford (supra) and Hartland (supra), the limitation begins to run when the demand is made and the guarantor commits breach by not complying with the demand.

13.....In this case, the contract was broken and the right to sue accrued only when a demand for payment was made by the Bank and it was refused by the guarantors. When a demand is made requiring payment within a stipulated period, say 15 days, the breach occurs or right to sue accrues, if payment is not made or is refused within 15 days. If while making the demand for payment, no period is stipulated within which the payment should be made, the breach occurs or right to sue accrues, when the demand is served on the guarantor.

16.....In view of the above, we hold that the time began to run not when the operations ceased in the accounts in mid-1986, but on the expiry of 15 days from 12.10.1987 when the demand was

made by the Bank and there was refusal to pay by the guarantors. The suit filed within three years therefrom is, therefore, in time."

(Emphasis Added)

9. In order to address whether the present application has been filed within the prescribed period of limitation, it is pertinent to note Section 18 of the Limitation Act, 1963 which reads as follows:

“18. Effect of acknowledgment in writing.—(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

xxx

Explanation.—For the purposes of this section,—

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,

(b) the word “signed” means signed either personally or by an agent duly authorised in this behalf,...

10. The Principal Borrower acknowledged the debt through issuance of letter giving a one-time offer for settlement on 21.05.2019 which is well within three years from 04.07.2016, i.e., the commencement of the said prescribed period, thereby attracting the applicability of section 18 of the Limitation Act.
11. Subsequent letters of OTS dated 20.07.2019, 16.08.2019, 22.10.2019, 07.01.2020 and 06.03.2020 were issued by the Principal Borrower. Further, the Principal borrower has also acknowledged the debt in its audited balance sheets for financial years 2019-20 and 2021-22. All

such letters and statements were issued before the expiration of the prescribed period of limitation.

12. It is pertinent to mention here that although the name of the Financial Creditor has not been disclosed in the Financial Statements as placed on record, the debt is sufficiently acknowledged and such statements serve as valid acknowledgements in terms of the judgement of **IL & FS Financial Services Ltd. v. Adhunik Meghalaya Steels (P) Ltd.**, (2026) 3 SCC 794, wherein the Hon'ble Supreme Court has held that:

"35. The other aspect which remains to be examined is the contention of the respondent that the name of the appellant is nowhere mentioned in the balance sheet of FY 2019-20 and as such the balance sheet of FY 2019-20 cannot be construed as an acknowledgement of any jural relationship between the parties.....

42. Keeping all these principles in mind, if we examine the facts of the present case, it will be clear that the balance sheet of FY 2019-20, viewed in the background of the other admitted documents, including the financial statements of the previous years, clearly constitutes a valid acknowledgment of a subsisting liability and indicated the existence of a jural relationship and an admission as to the existence of such relationship. We say so for the following reasons:

42.1. The general tenor and context of the balance sheet of FY 2019-20 considered in the background of surrounding circumstances arising from the balance sheets of FY 2015-16, 2016-17 and 2017-18 clearly points to the fact that the entry in the balance sheet of FY 2019-20 constitutes a valid acknowledgement and pertains to the same borrowing as was reflected in the balance sheet of FY 2015-16, 2016-17 and 2017-18."

(Emphasis Added)

13. Therefore, the objection of the Respondent that there exists no acknowledgement of debt in the books of account of the Personal Guarantor is unsustainable in both law and fact.
14. In light of the above noted circumstances, the last period of limitation commenced from 31.03.2022 and was set to expire in the year

30.03.2025, i.e., upon the expiry of three years. The present petition was filed in 10.06.2024, which is **squarely in time**.

15. Hence, the preliminary objection raised by the Personal Guarantor that the Section 95 petition is barred by limitation is also **rejected by us**.
16. Further, the Respondent has challenged the demand notice on two grounds, lack of authority of the issuing officer and alleged non-service.
17. The ground of lack of authority of the issuing officer has been contended by the Respondent without placing on record a single document, material, or evidence in support. It is further noted that the Financial Creditor has itself relied upon this very notice as a foundational document in the present application. The Respondent cannot be permitted to selectively assail the validity of a document, whose legal existence and effect the Applicant has expressly invoked, on such bald assertion, unsupported by any proof, and the same cannot be entertained by this Tribunal.
18. On the question of service, upon perusal of records, it is evident to this Tribunal that the Financial Creditor has issued the demand notice to the last known address of the Respondent, i.e., as was provided in the Deed of Guarantee. In such regard, this Tribunal places reliance on the judgment of the Hon'ble NCLAT in Paresh Rastogi v. Omkara Assets Reconstruction (P) Ltd., 2025 SCC OnLine NCLAT 529, wherein it was held that **service at the last known or registered address constitutes valid and effective service in law, regardless of whether the notice was physically received**. The Respondent's failure to update its address cannot be used to invalidate such service. The contention is accordingly rejected.
19. The Respondent has further opposed the present petition on the ground that the Financial Creditor has failed to first initiate Corporate Insolvency Resolution Process against the Principal Borrower before proceeding against the Personal Guarantor under Section 95 of the IBC, and that no explanation has been offered for such omission. The Hon'ble National Company Law Appellate Tribunal in **Anita Goyal v. Vistra ITCL (India) Ltd. & Anr.** (Company Appeal (AT) (Ins.) Nos. 2282 & 2283 of 2024) has categorically held that this Tribunal has the jurisdiction to entertain an application under Section 95 of the IBC filed

by a Financial Creditor against a Personal Guarantor without there being any pending proceeding against the Principal Borrower. The maintainability of a Section 95 proceeding is not conditioned upon prior or parallel initiation of CIRP against the Principal Borrower, and consequently, no explanation is warranted for the Financial Creditor's choice to proceed directly against the Personal Guarantor. This Tribunal finds no merit in the said objection and the same stands rejected accordingly.

20. After satisfying ourselves that the present application has been filed within the limitation period, we have examined the report of RP submitted before us on 22.07.2024 vide I.A No. 1690/KB/2024 wherein starting of insolvency resolution process against the Respondent/Personal Guarantor has been recommended. We have also considered all the facts and circumstances of the case and did not find any force in the objections raised by the Respondent/Personal Guarantor against the said Petition filed by the Financial Creditor Bank. **We are satisfied with the recommendation of the Resolution Professional to admit the application.** Accordingly, we make the following directions:-

- a) **CP (IB) 193/KB/2024 stands admitted** under Section 100 of the IBC, 2016 and accordingly, the Insolvency Resolution Process stands initiated against Santosh Jhawar, viz. the Respondent herein.
- b) Moratorium in relation to all the debts is declared, under section 101 from today i.e. date of admission of the application.
- c) During the moratorium period as provided u/s 101, following restrictions would remain in effect:-
 - i) Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed, and
 - ii) The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and
 - iii) The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;

- iv) 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.
- d) The Resolution Professional viz. Mr. Chandra Kumar Jain, having Registration No. IBBI/IPA-001/IP-P00214/2017-18/10414, Mobile No. 9748488836, email ID ckcaacs@yahoo.com, is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of the upload of this Order on the website of the NCLT Kolkata Bench, inviting claims from all Creditors, within 21 days of such issue. The notice under Sub Section (1) of Section 102 shall include :-
- i) details of the order admitting the application;
 - ii) particulars of the resolution professional with whom the claims are to be registered; and
 - iii) the last date for submission of claims.
- e) The said notice shall be published in English and on Vernacular Language newspaper which is in circular in the State where the debtor resides:
- i) affixed in the premises of this Adjudicating Authority; and
 - ii) placed on the website of the Adjudicating Authority.
- f) The RP shall discharge all such duties as are incumbent upon him in terms of the provisions of Sections 104, 105, 106, 107, 108, 112 and 113 of the IBC, 2016, with due deference to the procedure enshrined in Regulation 5, 1, 8, 9, 11, 12, 13, 14, 15 and 17 of IBBI (Insolvency Resolution Process for Personal Guarantor to Corporate Debtors) Regulations, 2019 and also in terms of the other extent provisions of the aforementioned code/regulations and/or any other provisions of law applicable to him, in the discharge of his duties as RP.
- g) The Resolution Professional, in exercise of the powers conferred under Section 104, shall prepare a list of creditors on the basis of-
- i) the information disclosed in the application under Sections 94 or 95, as the case may be, and
 - ii) 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.

- h) The repayment plan may authorize or require the Resolution Professional to:
 - i) carry on the debtor's business or trade on his behalf or in his name; or
 - ii) realise the assets of the debtor; or
 - iii) 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.
- i) 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.
- j) 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 sub-section (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.
- k) 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

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KOLKATA, COURT-I

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In

C.P. (I.B) NO. 193/KB/2024

duties in compliance with the Code of Conduct provided under Section 208 of IBC, 2016.

- l) The Resolution Professional shall submit his periodic reports before this Tribunal, every 30 days.
 - m) The Applicant is directed to deposit INR 75,000/- (Indian Rupees Seventy-Five Thousand) to the bank account of the Resolution Professional within one week, towards his fees. This shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.
 - n) The Registry is directed to communicate a copy of order, report and application within seven working days and upload the same on the website immediately after the pronouncement of order.
21. To come up for consideration of Status Report to be filed by RP, within 8 weeks.
 22. Consequent to our above decision, **I.A. (I.B) No. 1690/KB/2024 is allowed and disposed off**, and the petition bearing **CP (I.B) No. 193/KB/2024** filed under the provisions of Section 95 of the IBC, 2016, by the financial creditors **is allowed** accordingly.
 23. List the company petition CP (I.B) No. 193/KB/2024 on **31.07.2026** for further consideration.
 24. Urgent certified copy of this order, if applied for be issued upon compliance with all requisite formalities.

Rekha Kantilal Shah
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on 18.06.2026.

Bhatt, O. [LRA]