IN THE NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI SPECIAL BENCH
(*Through Hybrid Mode*)

Item No.1
CP No. 49/95/AMR/2022

IN THE MATTER OF:
State Bank of India (through Resolution Professional Shri Chillale Rajesh)
... Petitioner/ Creditor

Versus

Dr. Jitendra Das Maganti & Seven Hills Health Care Private Limited
... Respondents/Respondents

Under Section: 95 of the IBC, 2016.

Order delivered on 03.07.2026

CORAM:
SHRI KISHORE VEMULAPALLI, HON'BLE MEMBER (JUDICIAL)

PRESENT:

For the Petitioner / Creditor :Mr. Maharshi Viswaraj, Adv.

For the Respondents / Respondents :Mr. Sridhar, Adv.

ORDER

Orders pronounced and recorded vide separate sheets.

Accordingly, CP No. 49/95/AMR/2022 is dismissed and disposed of.

Sd/-
(KISHORE VEMULAPALLI)
MEMBER (JUDICIAL)

Venkatesh (Steno) & RSN (PS)

IN THE NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI

(***Exercising powers of the Adjudicating Authority under The Insolvency and Bankruptcy Code, 2016)***

CP (IB)/49/95/AMR/2022
Petition under Section 95 of 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

BETWEEN:

State Bank of India
(Through Resolution Professional Shri. Chillale Rajesh
SAMB-II Tulsiaini chambers, 1st floor,
Free Press Journal Marg,
Nariman Point, Mumbai-40002.

… **Financial Creditor**

Versus

1. **Dr. Jitendra Das Maganti**,
S/o Late Madhusudhana Rao,
Aged 64 Years,
R/o. 36, Balaji Baymount,
Tarakarama Layout, Pedda Rushikonda,
Vishakhapatnam-530045.

… **Personal Guarantor**

2. **M/s. Seven Hills Health Care Private Limited**
Rockdale layout, Waltair Main Road,
Visakhapatnam, A.P.-530002

… Corporate Debtor

Order delivered on: 03.07.2026

Coram:
HON'BLE SHRI KISHORE VEMULAPALLI, MEMBER (JUDICIAL)

Parties/Counsels Appearance:

For FC/Resolution Professional : Mr M.M. Vishwaraj, Advocate

For Personal Guarantor **:** M. Sridhar, Advocate

ORDER
Per: Hon'ble Shri Kishore Vemulapalli, Member (Judicial)

The present Petition has been e-filed on 09.04.2022 and physically filed vide Diary No. 648 dated 11.04.2022, by State Bank of India (hereinafter referred to as the **"Financial Creditor"** or "**SBI"**) through Resolution Professional Shri. Chillale Rajesh (hereinafter referred to as **"RP"**), under section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the **"IBC"** or **"Code"**) 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 (hereinafter referred to as the **"Personal Guarantors Rules"**) seeking to initiate Personal Insolvency Resolution Process (hereinafter referred to as the **"PIRP"**) against Dr. Jithendra Das Maganti (hereinafter referred to as the **"Personal Guarantor"**), who is the Personal Guarantor of the loan accounts of M/s. Seven Hills Health Care Private Limited (hereinafter referred to as the **"Corporate Debtor"** or **"Principal Borrower"**) and who has extended the Personal Guarantee to the Financial Creditor.

2) The registered office of the Corporate Debtor is at Rockdale layout, Waltair Main Road, Visakhapatnam, Andhra Pradesh, 530002, which is situated in the State of Andhra Pradesh. Further, the Corporate Debtor has been admitted into Corporate Insolvency Resolution Process (hereinafter referred to as the **"CIRP"**), vide this Adjudicating Authority Order dated 13.03.2018 in TCP (IB)/32/7/AMR/2019. Therefore, the jurisdiction lies with this Adjudicating Authority.

3) The present matter was previously adjudicated by this Adjudicating Authority vide order dated 22.07.2024. Aggrieved by that decision, the Financial Creditor preferred an appeal before the Hon'ble NCLAT. Consequently, the Hon'ble NCLAT in ***State Bank of India vs. Dr. Jithendra Das Maganti & Anr.*** **(Company Appeal (AT)(CH)(Ins) No. 360/2024)** issued an order dated 24.10.2025 quashed the initial 22.07.2024 order and remanded the matter back to this Adjudicating Authority for fresh consideration and disposal on merits in accordance with the law.

FACTS OF THE CASE:

4) The facts of the case, as stated by the Financial Creditor in its Petition, are as follows:

(i) The Corporate Debtor has availed various credit facilities from the Financial Creditor in the form of Term Loan and Non-Fund Based Credit facilities limits. The Corporate Debtor defaulted in paying the loan availed from the Financial Creditor and committed default for an amount of Rs. 129,58,95,550.79/-.

(ii) The Corporate Debtor is the Principal Borrower, and the Personal Guarantor stood as the guarantor to secure the repayment of the financial assistance availed by the Corporate Debtor. The outstanding amount as at 31.07.2021 is Rs. 129,58,95,550.79/-. The Personal Guarantor to secure the repayment of the financial assistance availed by the Corporate Debtor has executed Guarantor agreements in favour of the Financial Creditor.

(iii) The Corporate debtor after availing the loan facilities violated the terms of sanction letters and other loan documents and committed defaults in repaying the loan amounts.

(iv) It is stated that the Personal Guarantor entered into a Joint Term Loan Agreement with the Financial Creditor and with other Creditors on 20.01.2010.

(v) The Personal Guarantor entered into another Deed of Guarantee executed with the Financial Creditor on 20.01.2015.

(vi) Vide order dated 13.03.2018, the Corporate Debtor was admitted into CIRP, and a moratorium was declared by this Adjudicating Authority in TCP (IB) No. 32/7/AMR/2019. As the Corporate Debtor failed to discharge its repayment obligations, the Financial Creditor has filed the present Petition under Section 95(1) of the IBC, seeking initiation of the Insolvency Resolution Process against the Personal Guarantor.

(vii) The Financial issued a Form-B demand notice dated 17.08.2021 to the Personal Guarantor on 03.09.2021, pursuant to Rule 7(1) of the Personal Guarantor Rules. The notice was duly served upon the Personal Guarantor on 08.09.2021.

(viii) As of the date, the Personal Guarantor has not made any payments to the Financial Creditor towards satisfaction of the unpaid financial debt, and the Financial Creditor prays to initiate the Insolvency Resolution Process against the Personal Guarantor.

(ix) The details of the debt are as follows:

Sr. No	Bank	Facility	Amount In crores
1	SBI	Term Loan	1,19,91,86,996/-
2	SBI	Bank Guarantee	9,67,08,554/-
	Total		1,29,58,95,550/-

(x) As per Part-III of the Form -C, the date of default is 13.03.2018, being the date of admission of the CIRP of the Corporate debtor.

5) On presentation of the Petition by the Financial Creditor, this Adjudicating Authority vide order dated 30.05.2022 appointed the Interim Resolution Profession (hereinafter referred to as **"IRP"**) as suggested by the Financial Creditor, Mr. Chillale Rajesh, to carry out the Insolvency Resolution Process of CP (IB)/49/95/AMR/2022, State Bank of India vs. Dr Jithendra Das Maganti, the Personal Guarantor under the provisions of the IBC. The IRP is directed to file his report.

6) The IRP has filed the report under Section 99 of the IBC, dated 15.06.2022 vide Diary No. 43 dated 17.06.2022, recommending the admission of the Petition filed under Section 95 of the IBC. The grounds of admission of the present petition, as per the RP Report, are as follows:

(i) It is stated that the IRP had examined the present Petition and the same is found to satisfy all the ingredients of Sec.95 of the IBC.

(ii) As on the date of Application, i.e., on 07.04.2022, the Corporate Debtor and Personal Guarantor owed Rs. 129,58,95,550.79/- to the Financial Creditor. The Personal

Guarantor to the Corporate Debtor has failed to pay the debt within fourteen days of service of the demand in Form B dated 17.08.2021.

(iii) In terms of Section 95(6) of the IBC, the Financial Creditor has the Petition in Form – C through IRP as per Rule 7(2) of The Personal Guarantor Rules.

(iv) In terms of Section 95(7) of the IBC, the following details and documents have been submitted by the Financial Creditor as per Section 95(4) of the IBC:

#	Description
1	Copy of Demand notice with Postal Acknowledgements dated 17.08.2021.
2	Copy of Sanction Letter dated 02.12.2005.
3	Copy of Sanction Letter dated 21.10.2009.
4	Copy of Sanction Letter dated 19.8.2013.
5	Copy of Joint Term Loan documentation dated 20.01.2010
6	Copy of Guarantee agreement dated 20.01.2015
7	Certificate under section 2A b of Bankers Book of Evidence Act 1891
8	Certificate under section 2A e of Bankers Book of Evidence Act 1891
9	Certificate under section 2A a of Bankers Book of Evidence Act 1891

(v) In terms of Section 99(2) of the IBC, the Corporate Debtor or the Personal Guarantor to the Corporate Debtor failed to repay the debt claimed by the Financial Creditor, the RP has not received any evidence for the repayment of the debt, such as:

(a) evidence of electronic transfer of the unpaid amount from the bank account of the debtor;

(b) evidence of encashment of a cheque issued by the debtor; or

(c) a signed acknowledgement by the creditor accepting receipt of dues

(vi) In terms of Section 99(3) of the IBC, the debt for which the petition has been filed by the Financial Creditor is not registered with the Information Utility.

(vii) In terms of Sections 99(4) and 99(5) of the IBC, the RP, vide letter dated 30.05.2022 and email dated 31.05.2022, sought additional information and documents from the Corporate Debtor; however, no response was received. The RP also addressed a letter and email dated 30.05.2022 to the Personal Guarantor seeking further documents and information, to which the Personal Guarantor responded by disputing the debt and raising certain allegations. Further, the RP, vide email dated 31.05.2022, sought information from the Financial Creditor and received a response dated 04.06.2022, wherein the State Bank of India confirmed that no payment had been received from the Personal Guarantor after the filing of the petition under Section 95 of the IBC.

(viii) In terms of Section 99(6) of the IBC, the RP has examined the Petition and found that it satisfies the requirements prescribed under Section 95 of the Code. The Resolution Professional further noted that the Corporate Debtor had defaulted in repayment of its debt obligations and was admitted into CIRP vide order dated 13.08.2018 passed by the Hon’ble NCLT, Amaravati Bench in

CP(IB) No. 282/7/HDB/2017. It was also observed that the Personal Guarantor had executed a deed of guarantee dated 20.01.2015 in favour of the Financial Creditor to secure repayment of the loan facilities availed by the Corporate Debtor. The Financial Creditor issued a demand notice dated 17.08.2021 in Form B claiming an amount of Rs. 129,58,95,550.79/-. As no repayment was made either by the Corporate Debtor or the Personal Guarantor pursuant to the said demand notice, the Resolution Professional concluded that a debt of Rs. 129,58,95,550.79/- was due and payable by the Personal Guarantor to the Financial Creditor.

(ix) In terms of Section 99(7) of the IBC, the RP recommended accepting the present petition filed by the Financial Creditor.

(x) In terms of Section 99(8) of the IBC, RP held that the debtor is not eligible for the fresh start process under Chapter II of the Code; It is submitted that according to section 78 of the IBC, where the amount of the default is not less than one thousand rupees, Part III i.e., Provisions of fresh start, Insolvency and Bankruptcy of Individuals and Partnership firms shall apply. The RP concluded that there is a default of more than one thousand rupees from the Guarantor.

(xi) In terms of Section 99(9) of the IBC, the RP has reiterated the above point VIII for acceptance of the present Petition. The RP has also mentioned the objections raised by the Personal Guarantor as below:

#	Dispute raised by PG	RP examination
1.	That I have not made any payments with respect to the purported debt claimed by the Applicant before NCLT.	Taken on record
2.	That I deny the locus of the Applicant to make such a demand individually when the loan transactions / personal guarantee are entered into with a Consortium of Lenders.	In terms of clause 3 INVOCATION OF GUARANTORS UNDERTAKING sub-clause 3.3 of the Personal Guarantee Agreement dated 20.01.2015 which is read hereunder *"The benefits of this Guarantee shall be available to the members of the Allahabad Bank Consortium and they shall be entitled to call upon the Guarantors to perform the terms of this Guarantee, and upon any such demand, the Guarantors shall, without any protest or demur, perform the obligations under this Guarantee in favour of any such Lender."* The FC State Bank of India has a locus to invoke the guarantee
3.	That I deny the legal liability to the purported debt on account of the same being barred by limitation in my case.	The debt is not barred by limitation. The CIRP of the Corporate Debtor was admitted on 13.08.2018. & the demand notice was served on 17.08.2021. In March 2020 The Supreme Court of India took suo motu congnizance of the extending the limitation period from 15.03.2020 to 28.02.2022. Hence the period from 15.03.2020 to 28.02.2022 stands excluded while considering the limitation period. The service of demand notice is within the limitation period.
4.	That I reserve right to contest before the Hon'ble NCLT, the claim /demand of the Applicant.	Taken on record

(xii) In terms of Section 79(15) of the IBC, the Financial Creditor, while filing the Petition in Form C, has declared that the debt claimed does not constitute an excluded debt. Upon examination of the documents on record, the RP found no material indicating otherwise.

(xiii) In view of the aforesaid findings and submissions, the Resolution Professional recommended that this Adjudicating Authority admit the present Petition filed by the State Bank of India against the Personal Guarantor, Dr. Jithendra Das Maganti.

7) The Personal Guarantor has filed preliminary objections challenging the maintainability of the present Petition vide Diary No. 1008 dated 12.05.2022 as follows:

(i) The Personal Guarantor has contended that the Financial Creditor lacks locus standi to maintain the present Petition under Section 95 of the IBC. It is submitted that the Personal Guarantee was executed in favour of a consortium of lenders and not in favour of the individual Financial Creditor. According to the Personal Guarantor, the purported Personal Guarantee relied upon by the Financial Creditor does not confer any enforceable rights upon it individually. Therefore, it is contended that the present Petition is not maintainable and is liable to be dismissed.

8) The Personal Guarantor has filed the Counter 08.01.2024, as follows:

(i) The Personal Guarantor has contended that the present Petition has been filed by suppressing material facts and with an oblique motive to coerce the Personal Guarantor to pay amounts which he is not liable to pay, and is therefore a patent abuse of the process of law.

(ii) The Personal Guarantor contended that the mandatory demand notice in Form B, as required under Section 95(4)(b) of the

Code read with Rule 7(1) of the Personal Guarantor Rules, was never served upon him. It was submitted that the right to file a Petition under Section 95 of the IBC accrues only upon due service of the notice in Form B and after the prescribed period. He further contended that the address mentioned in the postal receipt filed by the IRP along with his report dated 30.05.2022 did not exist and that the postal receipt annexed to the petition did not pertain to the alleged demand notice. It was also contended that the petitioner had inadvertently annexed documents relating to notices issued to third parties. Therefore, according to the Personal Guarantor, the present Petition is liable to be dismissed for non-compliance with the mandatory requirements of Section 95(4)(b) of the Code and Rule 7(1) of the Personal Guarantor Rules.

(iii) The Personal Guarantor contended that the present petition is barred by limitation, as the Personal Guarantee dated 20.01.2015 had already been fully invoked by the Financial Creditor vide demand notice dated 16.11.2016. It was submitted that the Financial Creditor could have initiated proceedings based on the said invocation only up to 16.11.2019, and any remedy arising out of the Deed of Guarantee thereafter is time-barred. It was further contended that the RP's Report erroneously proceeded on the basis that the guarantee was invoked for the first time through Form B dated 17.08.2021, while failing to disclose or consider the earlier invocation dated 16.11.2016.

(iv) The Personal Guarantor contended that the Deed of Guarantee was not executed by the lenders, including the State Bank of India. It was submitted that the said guarantee is non est and unenforceable in law, and consequently, the present proceedings founded thereon are liable to be dismissed.

(v) The Personal Guarantor contended that the present Financial Creditor is neither a member of the consortium of lenders nor a beneficiary under the Deed of Guarantee and, therefore, lacks the locus standi to maintain and prosecute the present petition.

(vi) The Personal Guarantor contended that no particulars or supporting documents relating to the alleged debt owed by him have been furnished, including duly verified statements of account reflecting the debit and credit entries pertaining to the claim.

(vii) The Personal Guarantor contended that the deed of guarantee was executed in favour of a consortium of lenders and not in favour of the present Financial Creditor, who is not a party thereto. It was further contended that, under Clauses 6 and 7 of the Guarantee, any enforcement rights can be exercised only by the lenders collectively and not by an individual lender. Accordingly, the present petition is liable to be dismissed.

Rejoinder filed by the Financial Creditor:

9) The Financial Creditor has filed a rejoinder vide Diary No.161 dated 08.02.2024, as follows:

(i) The Personal Guarantor has raised baseless objections regarding the maintainability of the present Petition. The Financial

Creditor contended that the Petition is maintainable under Section 95 of the IBC, as the Personal Guarantor had guaranteed the debt of the Corporate Debtor, which committed default in repayment of the loan facilities, thereby entitling the Financial Creditor to initiate the insolvency resolution process against the Personal Guarantor.

(ii) It was submitted that the Financial Creditor had issued the Demand Notice in Form B to the Personal Guarantor through India Post on 03.09.2021 (Article No. RM720292576IN), which was delivered on 08.09.2021. It was further submitted that, despite receipt of the demand notice, the Personal Guarantor neither replied to the notice nor discharged the outstanding dues. Reliance was placed on the postal tracking report annexed to the petition, which evidences delivery of the notice on 08.09.2021. The Financial Creditor has contended that the Personal Guarantor's assertion regarding non-service of the Form B notice is incorrect, as the tracking reports relied upon by the Personal Guarantor pertain to communications issued by the Resolution Professional seeking information and documents and not to the Demand Notice in Form B issued by the Financial Creditor. Accordingly, it was submitted that the records clearly establish issuance and service of the Demand Notice upon the Personal Guarantor.

(iii) It is submitted that the present Petition is not barred by limitation as contended by the Personal Guarantor. It is humbly submitted that the Personal Guarantor has signed the Revival Letter dated 14.08.2017 and acknowledges the debt. Therefore, the present Petition is within the period of limitation. Further, the CIRP of the Corporate Debtor was initiated on 13.08.2018, and demand notice was delivered on 03.09.2021 within the period of limitation. It is further submitted that as per the decision of the Hon'ble Supreme Court of India given in SMW(C) No.3 of 2020 in Cognizance for extension of Limitation the period from 15.03.2020 till 28.02.2022 shall stand excluded for deciding the period of Limitation. The Personal Guarantor acknowledges the debt and default vide letter dated 21.12.2020. The principal borrower also acknowledges the debt. It is humbly submitted that the liability of the Personal Guarantor was terminus with that of the principal borrower; all acknowledgements made by the principal borrower are also binding upon the Personal Guarantor.

(iv) It was submitted that the Personal Guarantor has not denied the execution of the Personal Guarantee dated 20.01.2015 in favour of the lenders specified in Schedule I. It was further submitted that, pursuant to the merger of the State Bank of Hyderabad, State Bank of Mysore, State Bank of Travancore and State Bank of Patiala with the State Bank of India with effect from 01.04.2017 vide Gazette Notifications G.S.R. Nos. 157(E), 158(E), 159(E) and 160(E), all loan accounts, rights, interests and obligations of the erstwhile banks stood vested in and transferred to the State Bank of India. Consequently, all contracts, deeds, bonds, guarantees, agreements and other instruments subsisting immediately prior to the effective date became enforceable by or against the State Bank of India with full force and effect, thereby entitling the Financial Creditor to enforce the Personal Guarantee.

(v) It is submitted that the Corporate Debtor, in order to avail the financial assistance, has executed various loan documents and the Personal Guarantor to the Corporate Debtor in order to secure the repayment of the financial assistance availed by the Corporate Debtor has executed Guarantee Agreements in favour of the Creditor. Copies of sanction letters, Joint Term Loan Agreement, Guarantee Agreement, Certificate under Bankers Book of Evidence Act, 1891 are enclosed to the Petition which show that the loan was availed by the Corporate Debtor which was guaranteed by the Personal Guarantor. It is further submitted that one of the Creditors, Axis Bank Limited, Consortium Member, has filed Section 7 IBC, Petition against the Corporate Debtor for initiating CIRP before the Hon'ble NCLT, Hyderabad Bench (Now NCLT, Amaravati Bench). The Hon'ble NCLT, Hyderabad Bench (Now NCLT, Amaravati Bench) admitted the Section 7 IBC Petition vide order dated 13.03.2018 in CP(IB) No 282/7/HDB/2017 and initiated the Corporate Insolvency Resolution Process against the Corporate Debtor.

(vi) It is submitted that in terms of clause 3.3 of the deed of guarantee, Guarantee shall be available to all the members of the consortium, and they shall be entitled to call upon the Guarantors to perform the terms of the Guarantee. As per the Personal Guarantee Agreement it is not mandatory for initiating proceedings against the Personal Guarantor by all the members of consortium together. Each member of consortium is entitled to initiate proceedings independently.

(vii) It is submitted that the Financial Creditor has sufficiently established that there is a lawful financial debt due to the Petitioner being unpaid by the Corporate Debtor and Personal Guarantor. The present petition filed by the Financial Creditor lucidly outlines the nature and description of the unpaid Financial Debt in accordance with the provisions of the IBC. It is therefore submitted that the instant petition is fit for admission as envisaged by the code and satisfies all the conditions for admission.

10) The Financial Creditor has filed a memo on 21.02.2024, furnishing the information sought by this Adjudicating Authority regarding the document evidencing the address of the Personal Guarantor to which the demand notice was dispatched. The Financial Creditor has also placed on record the Profile of the Borrower/Guarantor submitted by the Personal Guarantor, which reflects the address of the Personal Guarantor as 28, Kirlampudi Layout, Door No. 7-23-7, Sanjeevayya Nagar, Visakhapatnam – 530023, and it is evident from the record that the demand notice was sent to the said address. The Financial Creditor has further annexed a copy of the Writ Petition filed by the Personal Guarantor before the Hon'ble Supreme Court, wherein the Personal Guarantor has categorically admitted receipt of the demand notice. Moreover, a perusal of the preliminary objections and counter filed by the Personal Guarantor before this Adjudicating Authority, as well as the

pleadings filed before the Hon'ble Supreme Court, reveals that no plea regarding non-receipt of the demand notice has been raised at any stage. Therefore, the materials placed on record, coupled with the categorical admission of the Personal Guarantor, clearly establish that the demand notice was duly served upon the Personal Guarantor.

Written Submissions filed by the Personal Guarantor:

11) The Personal Guarantor has filed Written Submission vide Diary No.298 dated 06.03.2024 as follows:

(i) In the present case, no notice is served on the Personal Guarantor, the address of the Personal Guarantor is 36, Balaji Baymount, Tarakarama Layout, Pedda Rushikonda, Vishakhapatnam-530 045, the same is mentioned in the Page 6 of the Petition and the same address is found in Personal Guarantee agreement in Page 100 of the Petition; The relevant extract of the clause 21 of the Personal Guarantee agreement also read as follows:

> ***"21. Notice***
> ***[...]***
> ***All notices to the Guarantors shall be delivered at the address mentioned above."***

(ii) The Notice in Form B was sent to 28, Kirlampudi Layout, Door No. 7-23-7, Sanjeevayya Nagar, Visakhapatnam – 530023, an address which he had allegedly vacated in 2010. It is submitted that the Deed of Personal Guarantee required notices to be sent to the address specified therein, whereas the Petitioner dispatched the notice to a different address not mentioned in the Guarantee.

Accordingly, it is contended that there was no valid service of the demand notice under Section 95 of the Code and, therefore, the petition is liable to be dismissed.

(iii) It is further contended that the service of the notice is doubtful, as the demand notice is dated 17.08.2021, whereas the postal receipt is dated 03.09.2021. It is submitted that the address mentioned in the postal receipt, namely "Pothinamallayapalem – 530041", does not correspond either to the address of the 1st Respondent or to the address to which the notice was purportedly sent. Accordingly, it is contended that the article dispatched on 03.09.2021 appears to have been sent to an altogether different address.

(iv) It is further contended that the alleged tracking report (at page 29 of the Petition) is merely a screenshot without any indication that it was obtained from the official India Post website, nor does it disclose the identity or address of the addressee. It is submitted that the destination PIN code mentioned therein is 530041, which does not correspond either to the address of the Personal Guarantor (PIN code 530045) or to the address to which the demand notice was purportedly sent (PIN code 530023). Accordingly, it is argued that neither the postal receipt nor the alleged tracking report can be relied upon to establish service of the demand notice.

(v) It is submitted that there is no cogent proof to establish that the demand notice was duly served upon the Personal Guarantor.

In the absence of the Petitioner discharging the burden of proving compliance with the mandatory requirement of service of demand notice under Section 95(4)(b) of the IBC, the present petition is liable to be dismissed.

(vi) It is further submitted that the CIRP of the Corporate Debtor was commenced pursuant to a default in respect of the loan facilities granted by Axis Bank Ltd., and not on account of any dues allegedly payable to the Petitioner.

(vii) It is further submitted that the Petitioner has merely placed on record certain sanction letters, joint term loan documents, and the Deed of Personal Guarantee, without furnishing essential documents required under Section 95(4)(a) and (c) of the Code, such as details of the actual amounts disbursed, repayments made by the Corporate Debtor, statements of account of the Petitioner's predecessors-in-interest, and documents evidencing the alleged default of the Corporate Debtor. It is contended that, in the absence of cogent evidence, including statements of account demonstrating the disbursement of funds, repayments received, and the occurrence of default, there is no proof of the alleged debt, its quantum, or the default, and consequently, the Petition under Section 95 of the Code is not maintainable.

(viii) It is submitted that the certificate at page 124 of the Petition neither specifies the concerned branch nor the account numbers and is incomplete, as paragraph D(i) remains unfilled. Further, although the certificates at pages 126 and 127 refer to printouts of account statements, no such statements have been placed on record, nor is there any material to establish that the account numbers mentioned therein belong to the Corporate Debtor.

(ix) It is further submitted that, even assuming the certificates to be correct, they pertain only to the period from 01.04.2021 to 31.07.2021, which neither covers the period of the alleged disbursements and repayments nor the period subsequent to the issuance of the demand notice dated 17.08.2021. Since the Corporate Debtor had already been admitted into CIRP on 13.03.2018, it is contended that the certificates at pages 124–127 of the Company Petition have little or no evidentiary value.

(x) It is submitted that neither the Petition, nor the documents filed along with it, nor the RP Report contain sufficient details or evidence regarding the alleged debt, default, repayments, or the amount claimed. It is further submitted that the amount claimed is not supported by any material on record. In the absence of the basic information and documents required under Section 95(4)(a) and (c) of the Code, the present Petition is liable to be dismissed.

(xi) It is submitted that the Guarantee was executed in favour of a consortium of lenders and not the present Financial Creditor. Since Clauses 6 and 7 provide for enforcement by the "Lenders" collectively, the Financial Creditor cannot independently enforce the Guarantee. Accordingly, it is contended that the present petition is liable to be dismissed.

(xii) It is submitted that the present petition has been filed by the Insolvency Professional pursuant to an authorization letter dated 04.08.2021 allegedly issued by an Assistant General Manager of the Petitioner. However, no material has been placed on record to establish the authority of the said officer to issue such authorization. It is further submitted that the authorization letter dated 04.08.2021 bears the reference "SARG/Infra", whereas the certificates filed by the Petitioner pertain to "SARG-Commercial" (SARGC). Moreover, the said letter required a countersigned copy to be furnished, failing which the authorization would stand cancelled, but no countersigned copy of the letter dated 04.08.2021 has been placed on record.

12) The Financial Creditor has filed written submissions vide Diary No. 449 dated 08.04.2024, and stated that:

(i) In the Preliminary Objections, counter filed by the Personal Guarantor and also before the Hon'ble Supreme Court the Personal Guarantor has not pleaded non-receipt of the demand notice. The theory of non-service of demand notice is invented to prejudice the mind of the Adjudicating Authority.

(ii) The Financial Creditor duly served the Demand Notice upon the Personal Guarantor to the address specified in the Personal Guarantee Agreement/Aadhaar Card via India Post and was duly served upon the Personal Guarantor, with service evidenced by the Postal Receipt and Tracking Report attached at pages 28 and 29 of the Company Petition. Due to an inadvertent and bona fide oversight, a copy of the Demand Notice addressed to Kirlampudi Layout was mistakenly filed at pages 24 to 27 of the petition instead of the correct notice. To rectify this error, the Financial Creditor has formally placed the correct Demand Notice sent to the Rushikonda address on record vide IA No. 84/2024 at pages 7 to 10.

(iii) The Personal Guarantor has mentioned that the receipt of demand notice before the Hon'ble Supreme Court, cannot plead non-service of the demand notice. The demand notice, along with the postal receipt and tracking report, is mentioned in IA No. 84/2024, which shows that the Personal Guarantor has received the demand notice.

(iv) The KYC documents submitted by the Personal Guarantor, specifically the Aadhaar Card attached at pages 128 and 129 of the Company Petition, record the PIN Code as 530041. This PIN Code accurately matches and corresponds with the residential address specified within the said Aadhaar Card.

(v) The present petition has been filed through the Insolvency Resolution Professional pursuant to an engagement letter dated 04.08.2021 issued by the Financial Creditor to Shri Rajesh Chillale, which is enclosed at pages 22 and 23 of the Petition. The said engagement letter was executed by the Assistant General Manager, who is the duly authorized signatory for the Financial Creditor. By virtue of the Gazette Notification issued by the Government of India dated 02.05.1987, the Assistant General Manager is designated as the competent person authorized to sign legal documents on behalf of the Financial Creditor.

(vi) The present petition is not barred by limitation in view of the revival letter dated 14.08.2017, signed by the Personal Guarantor to acknowledge the debt. Furthermore, the Personal Guarantor explicitly acknowledged both the debt and default vide a subsequent letter dated 21.12.2020. Since the Principal Borrower has also acknowledged the debt, the liability of the Personal Guarantor remains co-extensive and co-terminus with that of the Principal Borrower.

(vii) The Hon'ble Supreme Court in ***Dilip B Jiwrajka Versus Union of India & Ors (WP (Civil) No 1281 of 2021)*** observed as follows:

54……The use of these expressions leaves no manner of doubt that the resolution professional is not intended to perform an adjudicatory function or to arrive at binding conclusions on facts. The role of the resolution professional is purely recommendatory in nature and cannot bind the creditor, the debtor or, the adjudicating authority.

86. (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;

(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 and hence does not bind the adjudicatory authority when it exercises its jurisdiction under Section 100;

(viii) The Financial Creditor has established a lawful, unpaid financial debt due from the Corporate Debtor and Personal Guarantor, satisfying all statutory conditions for admission under the code. Reiterating the averments in the Company Petition and Rejoinder, the Financial Creditor respectfully prays this Hon'ble Tribunal to admit the petition and initiate the Insolvency Resolution Process against the Personal Guarantor.

(ix) The Financial Creditor has annexed the National E-Governance Services Limited Form-D Record of Default of the Corporate Debtor, and the status authentication was deemed to be authenticated.

13) The Financial Creditor has filed a Memo vide Diary No. 640 dated 10.04.2026, to place on record the demand notice dated 16.11.2016 under Section 13(2) of the SARFAESI Act, 2002, issued by the Axis Bank.

ANALYSIS AND FINDINGS:

14) We have heard the submissions of learned Counsels for the Financial Creditor, Personal Guarantor and also perused the RP Reports and other records carefully.

15) The first issue that arises before this Adjudicating Authority is "***Whether the Petition is filed within the period of limitation***"

(i) The present Petition was filed on 09.04.2022 before this Adjudicating Authority, noting the date of default as stated by the Financial Creditor to be 13.08.2018. Pursuant to Section 128 of the Indian Contract Act, 1872, when a default is committed by the principal borrower, the surety becomes jointly and severally liable, granting the creditor the right to recover its dues from either party or from both simultaneously. Since the Personal Guarantee was invoked by the Financial Creditor vide a demand notice dated 17.08.2021, which falls within the prescribed timeline, and given that the guarantee extended by the Personal Guarantor is a continuing guarantee, we find that the present Petition is well within the limitation period.

16) The Second issue that arises before this Adjudicating Authority is ***"Whether the Financial Creditor has validly invoked the Personal Guarantee against the Personal Guarantor in accordance with the terms of the Deed of Guarantee, read with the provisions of the Code, and the relevant rules."***

(i) As per the records before us, Part III of Form C of the petition claims an amount in default of Rs. 129,58,95,550.79 as of 31.07.2021. The Financial Creditor has recorded the date of default as 13.03.2018 in the petition. whereas the Form B demand notice issued to the Personal Guarantor on 17.08.2021 specifies the date of default as 14.01.2017.

(ii) Under Clause 3.1 of the Deed of Guarantee dated 20.01.2015, in the event of a default by the principal borrower, the guarantors shall, upon written demand, pay all outstanding amounts to the lenders. The relevant extracts of this clause are as follows:

> ***3. INVOCATION OF GUARANTORS' UNDERTAKING***
>
> ***3.1***
>
> ***In the event of any default on the part of the Borrower in payment/repayment or reimbursement of any of the moneys referred to in Section 2 above (whether at stated maturity, upon acceleration or otherwise), or in the event of any default on the part of the Borrower to comply with or perform any of the terms, conditions and covenants contained in the Restructuring Agreement, the Guarantors shall, upon demand, in writing, forthwith pay to the Lenders without demur, all the amounts payable by the Borrower under the Restructuring Agreement and any other documents****. Any such demand made by any of the Lenders on the Guarantors shall be final, conclusive and binding notwithstanding any difference or any dispute between the Lenders and the Borrower or the Lenders and the Guarantors or the Borrower and the Guarantors or the Borrower and any other Person, including any other Obligors, and/or any other legal proceedings, pending before any court, tribunal, arbitrator or any other authority.*

(iii) A perusal of the aforesaid clause of the Deed of Guarantee dated 20.01.2015 establishes that the Financial Creditor is required to make a formal demand for payment and explicitly invoke the guarantee prior to the initiation of the present proceedings. The fulfilment of this requirement is a condition precedent, rather than a mere formality. In the absence of a prior invocation of the guarantee in terms of the Deed of Guarantee, the Financial Creditor cannot trigger the provisions of the Code or maintain the present Petition against the Personal Guarantor.

(iv) As per Rule 3(1)(e) of the Personal Guarantor Rules, a guarantor is defined as a personal guarantor to a corporate debtor whose guarantee has been invoked by the financial creditor and remains unpaid in full or in part. The relevant extract of the rule is as follows:

> ***3. Definitions — (1) In these rules, unless the context otherwise requires:***
>
> *xx*
>
> ***<u>(e) "guarantor" means a debtor who is a personal guarantor to a corporate debtor and in respect of whom guarantee has been invoked by the creditor and remains unpaid in full or part; (f) "section" means section of the Code;</u>***
>
> xx

(v) Section 3(11) of the IBC, 2016 defines "debt" as a liability or obligation in respect of a claim due from any person.

(vi) Section 3(12) of the IBC, 2016 defines "default" as non-payment of such debt when it becomes due.

(vii) Hence, a Personal Guarantor becomes a Debtor only upon invocation of the guarantee, making the debt due.

(viii) Further, Rule 7(1) of the Personal Guarantor rules, read with Section 95(4)(b) of the Code, mandates a Demand Notice in Form B to be served on the guarantor, demanding payment of the defaulted amount. This notice presupposes an existing default by the guarantor, which arises only after invocation of the guarantee.

(ix) In ***Edelweiss Asset Reconstruction Company vs. Orissa Manganese and Minerals Ltd. ((2019) ibclaw.in 308 NCLAT)***, the Hon'ble NCLAT held that "a contract of guarantee matures into a binding obligation only upon invocation," and the guarantor's liability must be proved separately.

(x) The Hon’ble NCLAT, Principal Bench, New Delhi, in ***Saranga A. Aggarwal vs. State Bank of India & Anr.*** **(Company Appeal (AT)(Ins) No. 1788 of 2025)**, reaffirmed the well-settled legal position that proceedings under Section 95 of IBC cannot be initiated against a Personal Guarantor without first invoking the deed of guarantee. Furthermore, the Hon’ble Tribunal emphasised that the invocation of the guarantee must precede the service of the demand notice in Form B by the Financial Creditor.

(xi) The Hon’ble NCLAT, Principal Bench, New Delhi, in State ***Bank of India vs Deepak Kumar Singhania (Company Appeal (AT)(Ins) No. 191 of 2025)*** reiterated the same position that:

a) A personal guarantor's liability arises only upon invocation of the guarantee as per the Deed of Guarantee.

b) The Demand Notice under Rule 7(1) of the Personal Guarantor rules is a statutory step, not an invocation of the guarantee.

c) Conditions under Rule 3(1)(e) of the Personal Guarantor rules must be fulfilled for the guarantor to be liable.

(xii) A personal guarantor's liability is conditional and crystallizes only upon the formal invocation of the deed of guarantee in terms of the contract. A demand notice under Form B is strictly a statutory prerequisite for initiating insolvency proceedings under Section 95 of the Code; it cannot operate as a substitute for, or serve the dual purpose of, invoking the guarantee. Consequently, the contractual invocation must independently precede the service of the Form B notice.

(xiii) In view of the discussion above, the Financial Creditor failed to formally invoke the guarantee against the Personal Guarantor. The Form B demand notice dated 17.08.2021 cannot operate as an invocation, as it serves purely as a procedural requirement under Section 95 of the Code. The contractual invocation must independently precede the statutory notice. Consequently, the plea of the Financial Creditor is rejected.

17) The RP has submitted a report on 17.06.2022 under Section 99 of the Code, recommending the initiation of the insolvency resolution process against the Personal Guarantor. However, as held by the Hon'ble Supreme Court in ***Dilip B. Jiwrajka v. Union of India and Ors. (2023) SCC Online SC 1530***, this Adjudicating Authority must conduct an independent assessment and cannot solely rely on the RP's report. Since the Financial Creditor has failed to demonstrate the occurrence of default on the part of the Personal Guarantor, the foundational condition for

invoking Section 95 of the Code remains defective and unfulfilled. Consequently, the recommendation of the RP is of no legal consequence.

18) Consequent upon the dismissal of the present Petition, the interim moratorium operational under Section 96(1) of the Code ceases to have effect and stands vacated.

19) As a sequel to the aforesaid discussions, the Petition bearing ***CP(IB)/49/95/AMR/2022 is dismissed and disposed of.***

Sd/-
(Kishore Vemulapalli)
Member (Judicial)

Sankar