IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I
C.P. (IB) NO. 173/MB/2026

Under Section 95 of the Insolvency & Bankruptcy Code, 2016 r/w Rule 7(2) of the Insolvency and Bankruptcy (Application to the Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), Rules, 2019.

In the matter of

M/S Satheesh Furniture Work

...Petitioner/Operational Creditor

Versus

Abdul Rashid …Respondent/Personal Guarantor

Order pronounced on 29.07.2026

Coram:

Prabhat Kumar	Sushil Mahadeorao Kochey
Member (Technical)	Member (Judicial)

Appearances:

For the Applicant	: Adv. Shachi Kothari
For the Resolution Professional	: Ms. Sonu Gupta

BRIEF FACTS:

1. The present petition is filed on 12.02.2026 *u/s.* 95 (1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC/Code") *r/w* Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 by **M/S Satheesh Furniture Work** ("hereinafter referred to as

Petitioner/Operational Creditor") for initiating insolvency process against **Mr. Abdul Rashid** ("hereinafter referred to as Personal Guarantor/Respondent") for outstanding debt of **Rs. 1,37,12,814.50/- (Rupees One Crore Thirty-Seven Lakhs Twelfth Thousand Eight Hundred and Fourteen and Fifty Paise only)** with further interest and charges payable. The Date of Default as specified in Part-III of the present petition is 02.04.2019.

2. The Applicant is an Operational Creditor engaged in the business of supplying furniture and providing carpentry services, Having its address at Manimangalam House, Kallayam P.O, Vattappara, Thriruvananthapuram, Kerala-695043.
3. The Personal Guarantor, viz. **Mr. Abdul Rashid** having his address at Citadel, Golf Links Road, Kowdiar, Trivandrum - 695003, stood as the Guarantor for **M/S Heera Construction Co Pvt Ltd** (hereinafter referred to as the "Corporate Debtor/ Principal Borrower") to secure the credit extended to the Corporate Debtor.
4. The Corporate Debtor was incorporated on 04.02.1991 bearing CIN U45201GA1991FPTC001114 and has its registered address at City Centre, 113 Patto Plaza, Panaji, Goa, India - 403001.

SUBMISSIONS OF THE APPLICANT:

5. It is submitted that the Applicant had been supplying furniture and rendering carpentry services to the Corporate Debtor on a credit basis from the Financial Year 2008–2009 till the Financial Year 2018–2019. During the said period, the Respondent was serving as a Director of the Corporate Debtor.
6. In order to secure the due payment of the amounts payable by the Corporate Debtor towards the goods supplied and services rendered by the Applicant, the Respondent executed a Personal Guarantee and Indemnity Agreement dated 20.10.2008 in favour of the Applicant, thereby guaranteeing the repayment of the liabilities of the

Corporate Debtor.

7. It is submitted that, according to the terms of the Personal Guarantee dated 20.10.2008, the Respondent unequivocally undertook to be jointly and severally liable for the due payment of all amounts payable by the Corporate Debtor to the Applicant in the event of any default. The Agreement also stipulates that, upon default by the Corporate Debtor, the Respondent shall be liable to pay the outstanding dues together with interest at the rate of 12% per annum from the date of default until full and final realization of the amounts due.
8. It is submitted that, relying upon the assurances and the Personal Guarantee furnished by the Respondent, the Applicant continued to supply furniture and render carpentry services to the Corporate Debtor in the ordinary course of business. However, despite repeated demands and follow-ups, the Corporate Debtor failed to honour its payment obligations. According to the books of account and ledger statements maintained by the Applicant in the regular course of business, a principal sum of Rs. 75,34,514.50/- (Rupees Seventy-Five Lakhs Thirty-Four Thousand Five Hundred Fourteen and Paise Fifty Only) remained outstanding and payable by the Corporate Debtor as on April 2019.
9. It is submitted that the Corporate Debtor has already been admitted into the Corporate Insolvency Resolution Process (CIRP) by an order passed by this Tribunal. Consequently, this Tribunal has the jurisdiction to entertain and adjudicate the present Application initiated against the Respondent, being the Personal Guarantor to the Corporate Debtor.
10. The Statutory Demand Notice 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 was issued to the Personal Guarantors on 02.05.2023.

However, no repayment or settlement has been affected. Despite repeated notices and opportunities, neither the Corporate Debtor nor the Personal Guarantor discharged the outstanding dues.

11. As on the date of filing of the present Petition, the total outstanding amount payable by the Corporate Debtor and the Personal Guarantor is stated to be Rs. 1,37,12,814.50/- (Rupees One Crore Thirty-Seven Lakhs Twelfth Thousand Eight Hundred and Fourteen and Fifty Paise only) along with further interest and charges, which continue to accrue.

12. In view of the continued default and failure of the Personal Guarantor to honour the guarantee obligations, the Applicant filed the present Petition seeking initiation of Insolvency Resolution Process against the Respondent under Section 95 of the Code.

13. The Applicant has filed a written objection/Reply dated 09.05.2026, to the Report of the Resolution Professional opposing the findings contained therein. It is submitted that the Resolution Professional, by emails dated **13.03.2026** and **20.03.2026**, merely called upon the Applicant to deposit an advance fee of **Rs. 75,000/-** and followed up for the same, without seeking any clarification, supporting documents or additional information regarding the Applicant's claim for the purpose of verification. According to the Applicant, the Resolution Professional has failed to independently examine the documents placed on record and has erroneously recommended rejection of the Petition without properly appreciating the evidence produced by the Applicant. According to the Applicant, the documents furnished sufficiently establish the existence of the debt, the liability of the Personal Guarantor and the occurrence of default. It is further submitted that the Report suffers from non-application of mind and deserves to be rejected, while the present Petition is liable to be admitted under Section 100 of the Insolvency and Bankruptcy Code, 2016.

SUBMISSIONS OF THE RESOLUTION PROFESSIONAL:

14. This Tribunal, vide Order dated 05.03.2026, appointed **Ms. Sonu Gupta** as the Resolution Professional and directed him to submit a report under Section 99 of the Insolvency and Bankruptcy Code, 2016 within a period of 10 days. Pursuant thereto, the Resolution Professional filed **IA (I.B.C.) No. 1676/MB/2026** for placing the said report on record, which came to be taken on record by this Tribunal vide Order dated 24.04.2026.

15. The Resolution Professional, after examining the Application, documents placed on record and the information furnished by the Applicant, submitted that the material produced was incomplete, inconsistent and insufficient to establish the existence of a legally enforceable debt and valid invocation of the personal guarantee. The Resolution Professional noted various discrepancies in the invoices and supporting documents, absence of proof of delivery of goods, ledger accounts, balance confirmations, bank statements and proof of invocation of the guarantee. Accordingly, the Resolution Professional recommended rejection of the Application **C.P.(IB)No.173/MB/2026** filed under Section 95 of the Insolvency and Bankruptcy Code, 2016.

16. The Resolution Professional further states that

> *"Therefore, under the provisions of Section 99(2) read with Section 99(7) of the Code, the Resolution Professional hereby recommends the REJECTION of the Application.*
>
> *In view of the failure to meet the mandatory pecuniary threshold, material inconsistencies in the amount claimed, absence of proof of service of Demand Notice, non-filing of claim during CIRP of the Corporate Debtor, and lack of crystallisation of the interest component, the Resolution Professional recommends rejection of the Application under Section 100(1) of the Insolvency and Bankruptcy*

Code, 2016, filed by the Creditor under Section 95 of the Code"

FINDINGS & ANALYSIS:

17. We have heard the Applicant and perused the documents placed on record, the Report submitted by the Resolution Professional under Section 99 of the Insolvency and Bankruptcy Code, 2016.
18. It is observed from the record available before us that the Respondent had executed a Personal Guarantee and Indemnity Agreement dated 20.10.2008 in favour of the Applicant in connection with the supplies made by the Applicant to the Corporate Debtor. The Applicant has placed on record a copy of the said Agreement and has specifically relied upon the same for fastening liability upon the Respondent as Personal Guarantor. The Resolution Professional has, however, recommended rejection of the Application on the ground that (i) Application Falls Below the Mandatory Pecuniary Threshold; (ii) the glaring contradiction amounting to a variance of over Rs. 25 Lakhs, demonstrates a lack of crystallization of the alleged debt and deprives the Personal Guarantor of a fair opportunity to comprehend and repay the actual demanded sum; (iii) Without proof of delivery, the statutory 14-day cure period 30 cannot be said to have commenced or expired, rendering the filing of the present Application premature and legally defective; and (iv) The Petitioner relies on an Authorization Letter (Exhibit 'D') which is a legal nullity, as a proprietor and his firm are a single legal entity and cannot "self-authorize" in this context.
19. The Resolution Professional has pointed out various deficiencies in the supporting documents, including the absence of proof of delivery of goods, balance confirmations, ledger reconciliation, bank statements and proof regarding invocation of the guarantee. It is settled that the Report submitted under Section 99 of the Code is

recommendatory in nature and does not bind the Adjudicating Authority. Nevertheless, the observations made therein require due consideration while independently examining whether the requirements of Sections 95 to 100 of the Code stand satisfied.

20. The Applicant has objected to the Report by contending that the Resolution Professional did not independently examine the claim and merely called upon the Applicant to deposit the advance fee without seeking any clarification or additional documents. It is Observed that the Applicant has filed an interim Application **IA(I.B.C)/2404(MB)2026** for replacement of the Resolution Professional under Section 98(1) of the Insolvency and Bankruptcy Code, 2016 and same was disposed of as dismissed by order dated 16.06.2026.

21. We further note that this Tribunal, by order dated 30.06.2026, specifically directed the Personal Guarantor to produce the original Deed of Personal Guarantee together with the original Invocation Notice for verification. The relevant portion of the order is reproduced hereinbelow:

> *"1. ...In view thereof, the Personal Guarantor is directed to produce original deed of guarantee along with the original copy of invocation notice before this Bench for perusal. Needless to say, the same may be returned after verification."*

Despite adequate opportunity, the Respondent failed to comply with the said direction and did not produce the original documents before this Tribunal. No satisfactory explanation has been offered for such non-compliance still the matter was closed for order.

22. Upon perusal of the documents placed on record, we find that the Applicant has not produced any material to establish that the Personal Guarantee, even if it is accepted that the said Guarantee was a genuine arrangement, was invoked prior to the issuance of the

statutory demand notice 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. The first document evidencing any demand against the Respondent in his capacity as Personal Guarantor is the statutory demand notice dated 02.05.2023 issued under Rule 7(1). Thereafter, the present Petition under Section 95 of the Insolvency and Bankruptcy Code, 2016 came to be filed on 12.02.2026.

23. It is held by the Hon'ble NCLAT in ***State Bank of India vs. Deepak Kumar Singhania [(2025) ibclaw.in 153 NCLAT], Company Appeal (AT) (Ins.) No.191 of 2025*** that before issuance of demand notice under Rule 7(1) in Form B there has to be invocation of guarantee. The argument raised in the above case was that notice under Rule 7(1) in Form B is itself invocation of guarantee, which was specifically dealt with and rejected. Para 17 of the said judgment read as under :

"17. The Notice, thus, contemplate demanding payment of the amount of default. The above Rule clearly indicate that Demand Notice has to be issued, demanding payment of the amount in default. Thus, the default by Guarantor has to exist on the date when Notice in Form-B is being issued. When we read Section 95, sub-section (4) and Rule 7 of 2019Rules, the above is the only intendment of the legislative scheme, i.e. default on the part of Guarantor should exist on the date when Notice in Form-B has to be issued. We have noticed the definitions of 'debt' and 'default' in Section 3 (11) and (12) of the IBC. Default shall arise on account of non-payment of debt, when whole or part of it become due. 'Debt' means a liability or obligation in respect of a claim which is due from any person. Thus, for a default, debt has to be due and Debtor shall be only that person, to whom debt is due. A Personal Guarantor becomes a Debtor only when guarantee is invoked, making him liable to make the payment to the Lender. We have

noticed Clause 2 and Clause 21 of the Deed of Guarantee in the foregoing paragraphs of this judgment, which clearly contemplate that liability on Guarantor shall arise only when demand is made by the Lender, in event Principal Borrower fails to repay the amount. In the present case, there is no case setup by the Appellant that at any point of time guarantee was invoked, except issuance of Notice in Form-B, which is claimed by the Appellant to be treated as Notice for invocation of guarantee. Further, we have noticed the definition of 'Guarantor' under Rule 3(1)(e), which while defining a 'Guarantor' contain two conditions, i.e. (i) who is a Personal Guarantor to a Corporate Debtor; and (ii) in respect of whom, guarantee has been invoked by the Creditor and remains unpaid in full or part. Learned Counsel for the Appellant has contended that expression 'and' used in Rule 3 (1)(e) needs to be read as 'or' to make the provision workable and to avoid producing an unintelligible and absurd result. Learned Counsel for the Appellant has relied on two judgments of the Hon'ble Supreme Court in support of the above submission, i.e. ***AIR 1968 SC 1450 – Ishwar Singh Bindra and Ors. vs. State of U.P.*** *The Hon'ble Supreme Court in the above case had occasion to consider the definition of 'drug' contained in Section 3(b)(i) of Drugs Act 1940. Expression 'and' used in Section 3(b)(1) of the Drugs Act was considered in the said case and in paragraph 11 of the judgment, following was laid down:*

> *"11. Now if the expression "substances" is to be taken to mean something other than "medicine" as has been held in our previous decision it becomes difficult to understand how the word "and" as used in the definition of drug in Section 3(b)(i) between "medicines" and "substances" could have been intended to have been used conjunctively. It would be much more appropriate in the context to read it*

disconjunctively. In Stroud's Judicial Dictionary, 3rd Edn. it is stated at p. 135 that "and" has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of or. Sometimes, however, even in such a connection, it is, by force of a contexts, read as "or". Similarly, in Maxwell on Interpretation of Statutes, 11th Edn., it has been accepted that "to carry out the intention of the legislature it is occasionally found necessary to read the conjunctions 'or' and 'and' one for the other"

24. Upon an independent examination of the material placed on record, we find that the Applicant has failed to produce any document evidencing invocation of the Personal Guarantee prior to issuance of the statutory demand notice 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 dated 02.05.2023. In the absence of any prior invocation of the guarantee in terms of the Deed of Personal Guarantee, the liability of the Respondent as Personal Guarantor cannot be said to have crystallized so as to give rise to a legally enforceable claim under Section 95 of the Insolvency and Bankruptcy Code, 2016. Consequently, the Applicant has failed to establish the existence of a legally enforceable debt against the Respondent in his capacity as Personal Guarantor. According we are of the considered view that the present petition is not maintainable in the absence of prior invocation of guarantee executed by the personal guarantor.

25. Before we part ways, it is pertinent to record that the execution of guarantee itself appears to be ingenuine, and this prima-facie view is father fortified from the unwillingness of both the parties took place on record the original instrument of guarantee.

26. We would also like to observe that the Resolution Professional while

recommending the present company petition for different reasons, completely missed out the fact of prior invocation of guarantee before issuance of the statutory demand notice. Further, the Resolution Professional has misinterpreted the facts of the case while making observation in relation to threshold, Discrepancy in the Claimed Debt Amount and valid authorisation. In our considered view the debt includes interest if such interest is payable in terms of contract between the parties and in this case clause 5 of the deed of Guarantee provides for that. Further, the present petition was filed after about 33 months, accordingly there had to be variation in the amount of default as per demand notice in form B and the present petition. Also it makes no difference even if there would not have been any authorisation letter executed by the proprietor of the firm in the name of the proprietor and has no adverse inference ought to have been drown by the Resolution Professional. We expect that she would be careful and diligent while making the report under section 99 to be more meaningful and relevant.

27. In terms of the above, the Application filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 is rejected.

28. **CP(IB) No. 173 of 2026** stands disposed of.

SD/-	**SD/-**
Prabhat Kumar	Sushil Mahadeorao Kochey
Member (Technical)	Member (Judicial)

Vipul Ghate