IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

COURT-IV (SPECIAL BENCH)

CP (IB) 41 (ND) 2026

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy Code, 2016 (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

STATE BANK OF INDIA
Through its Authorized Representative
Ms. Swati Bhaskar

...Applicant/Financial Creditor

Versus

SURYA FOUNDRY PRIVATE LIMITED
Through its Director
Mr. Rakesh Kumar Gupta

...Respondent/Corporate Guarantor

Order Pronounced On: 29.07.2026

CORAM:

SHRI MAHENDRA KHANDELWAL,
HON'BLE MEMBER (JUDICIAL)

SHRI YOGENDRA KUMAR SINGH,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Abhishek Anand, Mr. Shubham Saigal, Mr. Siddharth Jain, Ms. Ridhima Mehrotra, Ms. Rashi Rampal, Ms.

Shruti Mishra, Advocates.

For the Respondent: Mr. Gaurav Mitra, Sr. Advocate, Mr. Vibhor Kapoor, Aarsheya Sharda, Mr. Abhishek Chhabra, Amit Dhall, Advocates.

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. This Application has been filed by the State Bank of India, the Applicant/Financial Creditor ("FC") before this Adjudicating Authority, under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ("Adjudicating Authority Rules"), for initiating the Corporate Insolvency Resolution Process ("CIRP"), declaring moratorium and for appointment of Interim Resolution Professional ("IRP"), against Surya Foundry Private Limited, the Respondent/Corporate Guarantor ("CG"). As per Part IV of the Application, the amount of default is Rs. 58,11,03,814.51/- and date of default is 01.01.2025.

SUBMISSIONS OF THE APPLICANT/FINANCIAL CREDITOR:

2. The Financial Creditor is a body corporate constituted under State Bank of India Act, 1955. The Principal Borrower initially availed cash credit facility for an amount of Rs. 40 Lakhs ("CC Facility"). Thereafter, the Financial Creditor continued to periodically renew the CC Facility with or without enhancement from time to time.

3. In January 2013, on request of the Principal Borrower, the Financial Creditor renewed and enhanced the CC Limit to INR 10.50 Crores. Additionally, the Financial Creditor extended another credit facility i.e., standby letter of credit ("SLC Facility") for an amount of Rs. 1.50 Crores.

4. In 2018, the Financial Creditor on the request of the Principal Borrower extended a new credit facility namely, cash credit facility against warehouse receipts ("CC-WHR Facility") for an amount of Rs. 15 Crores.

5. The Principal Borrower requested the Financial Creditor to sanction working capital limit under the "Common Covid 19 Emergency Credit Line (CCECL) by way of SLC" for an amount of Rs. 3 Crores ("CECL SLC Facility") which was sanctioned and thereafter also enhanced to 3.5 Crores in May 2020.

6. In November 2021, the Principal Borrower requested the Financial Creditor to sanction working capital facility under the "Guaranteed Emergency Credit Line (GECL-1 Extension) by way of WCTL" for an amount of Rs. 10.33 Crore ["GECL-1 Ext Facility"] which was sanctioned in December 2021.

7. In March 2023, on request of the Principal Borrower, limits of the Credit Facilities were enhanced to a total amount of Rs 65.33 Crore and renewed in April/May 2024.

8. The Corporate Guarantor executed continuing guarantee deeds from time to time. In 2023, Corporate Guarantor executed guarantee deed dated 28.03.2023. The Corporate Guarantor also renewed the instrument of equitable mortgage by way deposit of title deeds in respect of the CG's Mortgaged Immovable Property from time to time, to secure the Credit Facilities.

9. In March 2024, the Principal Borrower issued balance confirmations, confirming that the total outstanding due and payable by it to the Financial Creditor as on 31.03.2024 is Rs. 43,47,62,982/-

10. The details of the disbursal, as mentioned in Part IV of the Application are as follows:

S. No.	Date of sanction of credit facilities	Limits (Rupees Crore)
1.	29/03/2005	0.40
2.	08/05/2007	1.19
3.	29/03/2008	4.50
4.	19/01/2012	8.50
5.	16/01/2013	12.00
6.	04/03/2014	15.75
7.	21/03/2015	18.00
8.	10/12/2015	25.00
9.	21/12/2016	30.00
10.	19/08/2018	50.00
11.	29/03/2019	50.00
12.	18/03/2020	50.00
13.	15/04/2020 (New Facility – CECL SLC)	3.00
14.	25/11/2021 (New Facility – GECL-1 Ext WCTL)	10.33
15.	02/05/2022	55.56
16.	14/09/2022	55.33
17.	28/02/2023	65.33
18.	02/05/2024	65.33

11. As the Principal Borrower failed to make requisite payments in its SLC Limit account despite requests, the Principal Borrower's accounts were declared NPA on 25.08.2024.

12. The Financial Creditor had issued a Demand Notice dated 30.08.2024 to the Corporate Guarantor, under Section 13(2) of the SARFAESI, demanding payment of Rs. 49,10,12,542/-.

13. The Default occurred on 01.01.2025 i.e., 16th day of receipt of the legal notice dated 16.12.2024 by Corporate Guarantor, when the Corporate Guarantor failed to pay the amount demanded in the legal notice. By way of this legal notice, the Financial Creditor invoked the corporate guarantee furnished by the Corporate Guarantor to secure the credit facilities availed by the Principal Borrower from the Financial Creditor. This 2024 Legal Notice was issued by the Financial Creditor not only to the Corporate Guarantor, but also to the Principal Borrower and personal guarantors.

14. The FC also filed recovery proceedings against the Principal Borrower before the Hon'ble Debts Recovery Tribunal, Delhi - II, bearing O.A. No. 214 of 2025. The Financial Creditor has simultaneously initiated proceedings under Section 13(4) of the SARFAESI Act, 2002, in respect of the CG's Mortgaged Immovable Property.

SUBMISSIONS OF THE RESPONDENT/CORPORATE GUARANTOR:

15. The present Application is founded entirely upon a purported Corporate Guarantee Agreement dated 28.03.2023, which is false, forged, fabricated and wholly unauthorised and whose validity, execution and enforceability are the subject matter of serious disputes and pending proceedings before various competent fora.

16. The Financial Creditor has failed to establish the existence of a legally enforceable financial debt or default against the Corporate Debtor, whose alleged liability is entirely derivative of the said disputed guarantee.

17. The very existence, scope and enforceability of the alleged guarantee stand further clouded by the subsequent renewal of the credit facilities in the year 2024 without any requirement of a fresh corporate guarantee.

18. The present Application suffers from material defects, incomplete disclosures and suppression of material pending proceedings directly bearing upon the maintainability of the present proceedings.

19. The Financial Creditor seeks to invoke the insolvency jurisdiction of this Adjudicating Authority as a substitute for adjudication of seriously disputed contractual rights and allegations of fraud, which necessarily require determination in appropriate proceedings and fall outside the limited and summary jurisdiction contemplated under Section 7 of the Code.

20. The Corporate Guarantor has been divided between two promoter groups, namely, the Gupta Group and the Goel Group. Since inception, the Goel Group was responsible for the day-to-day operations and management of the factory and manufacturing activities of the Corporate Debtor, whereas the Gupta Group assumed responsibility for statutory compliances, maintenance of records, corporate documentation and regulatory filings of the Corporate Debtor. Significantly, the registered office of the Corporate Debtor is the same as that of Mubarak Overseas Private Limited and other entities belonging to the Gupta

Group. Accordingly, the statutory records, corporate documents, books of account and regulatory records of the Corporate Debtor remained in the custody and possession of the Gupta group.

21. The alleged liability is solely derivative of the said Corporate Guarantee Agreement dated 28.03.2023, whose validity and enforceability are under challenge. Prior to the filing of the present Petition, the Corporate Debtor had instituted Company Petition No. 62 of 2025 challenging the validity of earlier guarantee agreements, related mortgages, charges, and the Board Resolution dated 16.12.2016, alleging that the guarantees and all consequential transactions benefiting Mubarak Overseas Private Limited were unauthorized and void. Subsequently, the Corporate Debtor also filed a separate application specifically challenging the purported Corporate Guarantee Agreement dated 28.03.2023 as null, void and non est.

22. The challenge is substantive and supported by specific allegations, including that no Board Meeting was held on 22.03.2023, no resolution authorizing the guarantee was passed, the guarantee was executed without the knowledge or approval of the majority directors, and the Board Resolution and guarantee suffer from patent irregularities. No financial debt or default can arise unless the guarantee is first held to be valid and enforceable. The Financial Creditor, by invoking Section 7, seeks a determination of the validity of the disputed guarantee, which falls outside the summary jurisdiction under the IBC.

23. The alleged Board Resolution dated 22.03.2023 is ex facie fabricated inasmuch as: (i) the Directors' Report for FY 2022-23 records no Board Meeting on 22.03.2023; (ii) the resolution bears signatures only of the Gupta Group directors; (iii) it does not identify the borrower, nature of transaction or extent of liability; (iv) it refers to facilities of Rs. 50.33 Crores whereas the alleged facilities are approximately Rs. 55.56 Crores; and (v) it vaguely refers to the mortgage of the "Factory Land and Building" without identifying the Applicant Company's principal asset.

24. Both the foundational documents, namely the purported Board Resolution dated 22.03.2023 and the purported Corporate Guarantee Agreement dated 28.03.2023, are themselves under challenge and pending adjudication.

25. The execution of a corporate guarantee securing facilities of Rs. 30,00,00,000/- by a person who was admittedly not a director of the Corporate Debtor goes to the very root of the validity and enforceability of the said transaction. While the e-Form dated 20.12.2016 was filed with the Registrar of Companies for the purported "creation of charge", the Board Resolution dated 16.12.2016 annexed thereto expressly records that the same pertains to an "extension of charge limits".

26. The Board Resolution dated 16.12.2016 was never placed before or approved by the Board of Directors of the Corporate Debtor. Significantly, on 30.12.2016 and thereafter on 15.02.2018, Mr. Nitin Gupta once again purported to execute further Corporate Guarantee Agreements in favour of the Financial Creditor despite admittedly not being a Director of the Corporate Debtor since 18.09.2013.

27. The creation of the first mortgage and corporate guarantee in 2008, the enhancement of the security in 2009, repeated modifications of charges until 2016, and thereafter the Corporate Guarantee Agreements dated 20.12.2016, 30.12.2016, 15.02.2018 and 28.03.2023, the Financial Creditor consistently accepted and acted upon documents allegedly executed on behalf of the Applicant Company for the exclusive benefit of the Principal Borrower. Throughout this period, the Applicant Company neither availed any financial facilities nor derived any commercial benefit from the transactions in question.

28. Further charges came to be created over the immovable properties and assets of the Corporate Debtor for securing additional facilities availed by M/s Mubarak Overseas Private Limited on 21.05.2020 and 01.12.2021, additional credit facilities aggregating to INR 3,50,00,000/- and INR 10,33,00,000/-, respectively, came to be sanctioned in favour of the Principal Borrower. The repeated sanction and enhancement of facilities against the assets of the Corporate Debtor, despite the ever-increasing encumbrances and the serious disputes regarding the authority and validity of the underlying transactions, assume considerable significance in the present proceedings.

29. The Goel Group immediately lodged a criminal complaint before the Economic Offences Wing, Delhi Police alleging, inter alia, offences of cheating, criminal breach of trust, forgery, criminal conspiracy and dishonest misappropriation of property against the Gupta Group. Pursuant thereto, the Economic Offences Wing registered Complaint bearing Diary No. D/2130 dated 07.12.2024

30. The Financial Creditor has failed to establish the existence of a valid and enforceable contract of guarantee within the meaning of Sections 126 and 128 of the Indian Contract Act, 1872. The circumstances surrounding the execution of the purported guarantee, the absence of authority, the disputed Board Resolution and the allegations of fraud, fabrication and concealment raised by the Corporate Debtor render the applicability of Sections 142 and 143 of the Indian Contract Act, 1872 matters requiring detailed adjudication and not issues capable of summary determination in proceedings under Section 7 of the Code.

31. The Financial Creditor renewed the credit facilities granted to Mubarak Overseas Private Limited through a Letter of Arrangement dated 02.05.2024, while maintaining the same aggregate exposure of Rs. 65.33 Crores. Despite the renewal, the Financial Creditor neither obtained a fresh corporate guarantee nor sought any reaffirmation, confirmation, or ratification of the purported Corporate Guarantee Agreement dated 28.03.2023.

32. This subsequent conduct raises serious questions regarding the scope, subsistence, and enforceability of the purported guarantee. While the Corporate Guarantor does not assert that the renewal extinguished the guarantee, the absence of any fresh guarantee documentation, coupled with the continuation of the same facilities, constitutes a relevant circumstance requiring adjudication. These facts, which came to light upon the Financial Creditor placing the documents on record, form part of the broader dispute regarding the validity and enforceability of the purported guarantee.

33. In the present case, the Financial Creditor has failed to disclose several material facts and pending proceedings which have a direct and substantial bearing on the maintainability of the present Petition and the alleged liability of the Corporate Debtor, such as:

a) The pendency of Company Petition No. 62 of 2025 before this Tribunal wherein the validity of the earlier guarantee arrangements, mortgages and charges created over the assets of the Corporate Debtor is directly under challenge;

b) The pendency of S.A. No. 10 of 2025 before the Hon'ble Debt Recovery Tribunal, New Delhi, wherein the guarantees, mortgages and security documents relied upon by the Financial Creditor are specifically challenged;

c) The order dated 05.05.2025 passed by the Hon'ble Debt Recovery Tribunal recording the Corporate Guarantor's allegations of fraud, absence of authority and lack of any valid Board Resolution;

d) The registration of FIR No. 0032/2025 and the criminal proceedings concerning the very guarantees, mortgages and security documents now relied upon by the Financial Creditor;

e) The fraud monitoring proceedings and the wilful defaulter proceedings initiated by the Financial Creditor itself in respect of the same transactions and the pendency of W.P.(C) No. 3777 of 2026 before the Hon'ble High Court of Delhi;

f) The civil proceedings concerning the extent and validity of the alleged security interests asserted by the Financial Creditor over the properties of the Corporate Guarantor, including the pendency of Civil Revision No. 7697 of 2025 before the Hon'ble High Court of Punjab and Haryana.

34. The present proceedings constitute an attempt to employ the insolvency process as a coercive recovery mechanism and to achieve indirectly what the Financial Creditor has thus far been unable to secure in the pending proceedings, namely, the enforcement and recognition of the disputed guarantee and the defeat of the Corporate Debtor's challenge thereto.

FURTHER SUBMISSIONS OF THE APPLICANT/FINANCIAL CREDITOR:

35. Mr. Pramod Kumar Goel does not have the requisite authority to file the Reply on behalf of the Corporate Guarantor. A company acts through its board of directors and an individual director has no authority to act on behalf of the company unless so authorised by the company's board of directors. No document to substantiate his claim of being the authorised signatory/ representative of the Corporate Guarantor has been filed.

36. Internal disputes among the shareholders or directors of the Corporate Guarantor do not affect the Financial Creditor's rights under Section 7 of the IBC. Under the doctrine of indoor management, a third party dealing with a company is entitled to presume that its internal procedures have been duly complied with and to rely upon the apparent authority of its authorised representatives. Accordingly, the Financial Creditor was justified in assuming that the Corporate Guarantor had validly executed the Guarantee Agreement pursuant to the Board Resolution dated 23.03.2023 authorising Mr. Rakesh Kumar Gupta to execute the same. Additionally, the Financial Creditor was entitled to rely on the validity of the Guarantee Agreement and the authority of the Corporate Guarantor's authorised signatory, irrespective of the Corporate Guarantor's alleged internal procedural lapses. The CG's Board Resolution dated 2023 was passed in compliance with the Companies Act, authorised Mr. Rakesh Kumar Gupta to execute the Guarantee Agreement and affix the common seal, and the charge created pursuant thereto was duly registered with the ROC through Form CHG-1, thereby constituting deemed notice to the Corporate Guarantor and its directors. Since the Board Resolution was never challenged, the Financial Creditor was justified in relying upon it. Further, Mr. Rakesh Kumar Gupta had also executed the registered sale deed through which the Corporate Guarantor acquired the mortgaged property, reinforcing his authority to act on its behalf.

37. Despite having knowledge of the Agreement, its directors did not challenge its validity before any competent forum for over three years and questioned it only after notice was issued in the present Section 7 proceedings. This belated challenge is clearly an afterthought and reflects mala fide conduct, and therefore does not warrant consideration or attract the exception of forgery or fabrication.

38. The veracity of the Guarantee Agreement cannot be adjudicated in proceedings under Section 7 of the IBC, as the Adjudicating Authority exercises summary jurisdiction. Allegations of fraud or forgery involving contractual documents require adjudication by a competent civil court, and permitting such issues to be tried in insolvency proceedings would defeat the legislative intent of the Code.

39. The Guarantee Agreement dated 28.03.2023 was executed pursuant to a Board Resolution dated 23.03.2023, which was attended by two directors, namely Mr. Rakesh Kumar Gupta and Mr. Rajeev Gupta, thereby constituting the requisite quorum, and was unanimously approved authorising Mr. Rakesh Kumar Gupta to execute the Guarantee Agreement on behalf of the Corporate Guarantor. The said Board Resolution has never been challenged before any competent forum, nor has any statutory or judicial authority held either the Board Resolution or the Guarantee Agreement to be forged or fabricated. The charge created pursuant to the Guarantee Agreement was duly reflected in the Corporate Guarantor's MCA records and financial statements, evidencing the directors' knowledge of the transaction. Accordingly, having never challenged the Board Resolution, the Guarantee Agreement, or the charge created thereunder for several years, the Corporate Guarantor cannot now dispute their validity by alleging forgery or fabrication in the present proceedings.

40. The alleged segregation of responsibilities in managing affairs of the Corporate Guarantor cannot be used as a shield to deny knowledge of Corporate Guarantor's liability under Guarantee Agreement.

41. The disputes between the Gupta and Goel families were a collusive attempt to delay and derail the present Section 7 proceedings. Despite having knowledge of the Financial Creditor's charge over the Corporate Guarantor's assets, as reflected in the MCA records, the directors neither challenged the creation of charge nor the Guarantee Agreement for several years. The allegations of oppression and mismanagement surfaced only after it initiated recovery proceedings against the Principal Borrower and the Corporate Guarantor.

42. The legal proceedings instituted by the Corporate Guarantor were a reaction to the Financial Creditor's enforcement measures, namely: (i) a complaint before the EOW, Delhi Police after issuance of the notice under Section 13(2) of the SARFAESI Act; (ii) Company Petition No. 62 of 2025 alleging oppression and mismanagement and S.A. No. 10 of 2025 after the Financial Creditor filed O.A. No. 214 of 2025 before the DRT under Section 19 of the RDDB Act; and (iii) a challenge to the Guarantee Agreement only after notice was issued in the present Section 7 petition, despite the Corporate Guarantor having knowledge of the proceedings since January 2026. These proceedings were an afterthought and a mala fide attempt to obstruct the Financial Creditor's enforcement of its rights and evade repayment of the outstanding debt.

43. The Corporate Guarantor's allegation with respect to the guarantee deeds furnished prior to the year 2023 are irrelevant to the present dispute. The present Application is only concerned with the CG's Board Resolution of 2023 and the Guarantee Agreement of 2023, therefore any reference to the documents of guarantee signed prior in time are irrelevant.

ANALYSIS AND FINDINGS:

44. We have heard the submissions made by Ld. Counsel of both the parties, and have perused all the documents on record.

45. The present Application has been preferred by the Applicant/Financial Creditor under Section 7 of the Code seeking initiation of the CIRP against the Respondent/Corporate Guarantor in respect of the financial facilities extended to the Principal Borrower, Mubarak Overseas Private Limited, which were secured, inter alia, by the Corporate Guarantee dated 28.03.2023 executed by the Respondent.

46. According to the Applicant, the Principal Borrower committed default in repayment of the credit facilities, whereafter the Corporate Guarantee was invoked by notice dated 16.12.2024. The Respondent failed to honour its obligations under the guarantee, resulting in a default on 01.01.2025.

47. The Respondent has objected to the present Application primarily on the ground that the Corporate Guarantee dated 28.03.2023 is forged, fabricated and unauthorised; that the Board Resolution pursuant to which the guarantee is stated to have been executed is itself under challenge; that proceedings relating to the validity of the guarantee, mortgage and charge are pending before different judicial fora; and therefore, according to the Respondent, no legally enforceable financial debt exists against the Corporate Guarantor.

48. Before proceeding to examine the merits of the present Application, it is necessary to deal with the preliminary objection raised by the Financial Creditor that Mr. Pramod Kumar Goel was not duly authorised to file the Reply on behalf of the Corporate Guarantor. The Financial Creditor has contended that no document evidencing such authorisation was placed on record. We have perused the Reply and have found that at Page 449 of Volume III, the Respondent has placed on record a Board Resolution dated 16.06.2026 authorising Mr. Pramod Kumar Goel to represent the Corporate Guarantor and to defend the present proceedings. In view thereof, the objection regarding the competency of Mr. Pramod Kumar Goel to file the Reply does not survive and is accordingly rejected.

49. During the course of Arguments, the Corporate Debtor also raised the issue that the application suffers from a fundamental defect in maintainability and is liable to be dismissed on account of the absence of proper authorisation. The objection regarding lack of authorisation is devoid of merit. In Annexure-A3, comprising the original authority letter issued in favour of Ms. Swati Bhaskar, specifically authorises her to institute, sign, verify and prosecute the present proceedings on behalf of the Financial Creditor.

50. We now proceed to examine the merits of the present Application. The principal question which arises for consideration is whether the Applicant has established the existence of a financial debt and the occurrence of default so as to satisfy the requirements of Section 7 of the Code and whether the objections raised by the Respondent are of such nature as would disentitle the Financial Creditor from invoking the insolvency jurisdiction of this Adjudicating Authority.

51. The scope of the jurisdiction exercised by the Adjudicating Authority while considering an application under Section 7 is well settled. In ***Innoventive Industries Ltd. v. ICICI Bank & Anr., (2018) 1 SCC 407***, the Hon'ble Supreme Court held that the Adjudicating Authority is required to satisfy itself regarding the existence of a financial debt and the occurrence of default on the basis of the records of the Information Utility or other evidence produced by the Financial Creditor. At the admission stage, the Adjudicating Authority does not undertake a detailed adjudication of disputed questions of fact akin to a civil trial. The satisfaction contemplated under Section 7 is a prima facie satisfaction regarding the existence of debt and default. Relevant excerpt of the judgement is reproduced hereinbelow:

> ***27.*** *The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide*

terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount.

28. *When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating* *authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."*

52. The aforesaid principle has consistently been reaffirmed by the Hon'ble Supreme Court in ***E.S. Krishnamurthy v. Bharath Hi-Tech Builders Pvt. Ltd., (2022) 3 SCC 161*** and ***M. Suresh Kumar Reddy v. Canara Bank and others 2023 SCC OnLine SC 608***.

53. The Financial Creditor has placed on record the record of default, sanction letters, loan documents, the Corporate Guarantee dated 28.03.2023, mortgage documents, statements of account, notice invoking the guarantee, demand notice, undertaking of the Corporate Guarantor and other contemporaneous records evidencing the financial facilities extended to the Principal Borrower and the security furnished by the Corporate Guarantor. The record further reveals that the account of the Principal Borrower was classified as Non-Performing

Asset on 25.08.2024 and thereafter the Corporate Guarantee was invoked by legal notice dated 16.12.2024. The Corporate Guarantor failed to discharge its obligations despite invocation of the guarantee, whereupon the default occurred on 01.01.2025.

54. Section 128 of the Indian Contract Act, 1872 provides that the liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract. The Hon'ble Supreme Court in ***Laxmi Pat Surana v. Union Bank of India, (2021) ibclaw.in 53 SC*** has held the following:

> *"**19**. Indubitably, a right or cause of action would enure to the lender (financial creditor) to proceed against the principal borrower, as well as the guarantor in equal measure in case they commit default in repayment of the amount of debt acting jointly and severally. It would still be a case of default committed by the guarantor itself, if and when the principal borrower fails to discharge his obligation in respect of amount of debt. For, the obligation of the guarantor is coextensive and coterminous with that of the principal borrower to defray the debt, as predicated in Section 128 of the Contract Act. As a consequence of such default, the status of the guarantor metamorphoses into a debtor or a corporate debtor if it happens to be a corporate person, within the meaning of Section 3(8) of the Code. For, as aforesaid, expression "default" has also been defined in Section 3(12) of the Code to mean non-payment of debt when whole or any part or instalment of the amount of debt has become due or payable*

and is not paid by the debtor or the corporate debtor, as the case may be."

55. Further, it is well settled that here is no legal impediment preventing a financial creditor from initiating CIRP against both Principle Borrower and Corporate Guarantor simultaneously. The Hon'ble Supreme Court in ***BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd.*** **(2024 INSC 548)** has held the following:

> ***"SIMULTANEOUS PROCEEDINGS UNDER THE IBC AGAINST THE CORPORATE DEBTOR AND GUARANTOR***
>
> ***19.*** *Now, we turn to the provisions of the IBC. Sub-section (8) of Section 5 defines 'financial debt'. Clauses (a) and (i) of sub-section (8) show that the money borrowed against the payment of interest and the amount of any liability in respect of any guarantee for repayment of the loan covered by clause (a) have been put under separate headings. Thus, the liability of the guarantor or surety is a financial debt, and even the money borrowed against the payment of interest is also a financial debt. In the light of these provisions, Section 60 of the IBC is relevant, which reads thus:*
>
>> *"60. Adjudicating Authority for corporate persons.*
>>
>> *(1) The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company*

Law Tribunal having territorial jurisdiction over the place where the registered office of a corporate person is located.

(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor shall be filed before the National Company Law Tribunal.

(3) An insolvency resolution process or liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of the corporate debtor pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.

(4) The National Company Law Tribunal shall be vested with all the powers of the Debt Recovery Tribunal as contemplated under Part III of this Code for the purpose of sub-section (2).

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of -

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

(6) Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded."

(emphasis added)

Sub-section (2) of Section 60 contemplates separate or simultaneous insolvency proceedings against the corporate debtor and guarantor. Therefore, sub-section (3) of Section 60 provides that if CIRP in respect of the corporate guarantor is pending before an adjudicating authority and if the CIRP against the corporate debtor is pending before another adjudicating authority, CIRP proceedings against the corporate guarantor *must be transferred to the adjudicating authority before whom CIRP in respect of the corporate debtor is pending. Thus, consistent with the basic principles of the Contract Act that the liability of the principal borrower and surety is co-extensive, the IBC permits separate or simultaneous proceedings to be initiated under Section 7 by a financial creditor against the corporate debtor and the corporate guarantor."*

56. Further, the Hon'ble Supreme Court while reiterating that financial creditors can initiate the CIRP against a corporate guarantor without first suing the principal borrower in ***K. Paramasivam v. The Karur Vysya Bank Ltd. & Anr., (2022) ibclaw.in 108 SC*** held the following:

> ***"15****. The issue of whether CIRP can be initiated against the Corporate Guarantor without proceeding against the principal borrower has been answered by this Court in* ***Laxmi Pat Surana*** *(supra). The relevant paragraphs are set out hereinbelow: –*
>
> > *"21. Section 7 is an enabling provision, which permits the financial creditor to initiate CIRP against a corporate debtor. The corporate debtor can be the principal borrower. It can also be a corporate person assuming the status of corporate debtor having offered guarantee, if and when the principal borrower/debtor (be it a corporate person or otherwise) commits default in payment of its debt."*

***

23. Indubitably, a right or cause of action would enure to the lender (financial creditor) to <u>proceed against the principal borrower, as well as the guarantor in equal measure in case they commit default in repayment of the amount of debt acting jointly and severally.</u> It would still be a case of default committed by the guarantor itself, if and when the principal borrower fails to discharge his obligation in respect of amount of debt. For, the obligation of the guarantor is coextensive and coterminous with that of the principal borrower to defray the debt, as predicated in Section 128 of the Contract Act. As a consequence of such default, the status of the guarantor metamorphoses into a debtor or a corporate debtor if it happens to be a corporate person, within the meaning of Section 3(8) IBC. For, as aforesaid, the expression "default" has also been defined in Section 3(12) IBC to mean non-payment of debt when whole or any part or instalment of the amount of debt has become due or payable and is not paid by the debtor or the corporate debtor, as the case may be.

***16**. The issues raised in this appeal are settled by this Court in **Laxmi Pat Surana** (supra). As held by this Court in **Laxmi Pat Surana** (supra), the liability of the guarantor is co-extensive with that of the Principal Borrower.*

*The judgment in **Laxmi Pat Surana** (supra), rendered by a three-Judge Bench of this Court is binding on this Bench. It was open to the Financial Creditor to proceed against the guarantor without first suing the Principal Borrower."*

57. The principal objection raised by the Respondent is that the Corporate Guarantee dated 28.03.2023 is void, having allegedly been executed without any valid authority of the Board of Directors and that the Board Resolution authorising execution of the guarantee is fabricated; that the guarantee itself is forged; and that proceedings challenging the validity of the guarantee, mortgage and charge are presently pending before this Adjudicating Authority, the Debts Recovery Tribunal, the Hon'ble High Court and the investigating agencies. On this basis, it has been argued that no legally enforceable financial debt exists against the Corporate Guarantor.

58. The record placed before this Adjudicating Authority discloses that the Financial Creditor has relied upon the Corporate Guarantee, the documents creating security, and the statutory filings made before the Registrar of Companies evidencing the creation and registration of charge. It is not the case of the Respondent that any competent judicial forum has, as on date, declared these documents to be void, illegal or unenforceable. Mere institution of proceedings questioning their validity cannot automatically render such documents non est for the purpose of considering an application under Section 7.

59. The relevant extract of the Corporate Guarantee is reproduced herein below:

64

SME-3

GUARANTEE AGREEMENT

(To be stamped as an Agreement and Power of Attorney)
(Not to be attested by the witnesses)

1	Date of execution of the Guarantee	28/3/2023
2	Place of execution of the Guarantee	New Delhi
3	Name/s of the Guarantor(s) *[Full name in block letters] (Father's/Husband's name to be mentioned)*	1. SHRI. ASHISH GUPTA S/O RAJINDER GUPTA. 2. SHRI. PRADEEP KUMAR GUPTA S/O BABU LAL GUPTA. 3. SHRI. NIMESH GUPTA S/O SUSHIL KUMAR GUPTA. 4. SHRI. SHIVAM GUPTA S/O RAVINDER KUMAR GUPTA. 5. SHRI. SUSHIL GUPTA S/O HARI KRISHAN GUPTA. 6. SHRI. RAKESH GUPTA S/O HARI KISHAN DASS GUPTA. 7. SHRI. RAJIV GUPTA S/O BABU LAL GUPTA. 8. SHRI. NITIN GUPTA S/O RAJINDER GUPTA. 9. SMT. URMIL GUPTA W/O SUSHIL KUMAR GUPTA. 10. SMT. SANGEETA GUPTA W/O PRADEEP KUMAR GUPTA. 11. SMT. RITU GUPTA W/O NITIN GUPTA. 12. SURYA FOUNDARY PVT LTD.
4	Address/s of the Guarantor(s)	AG-31 Shalimar Bagh New Delhi Delhi 110068
	Telephone No…………Res…………Off Fax No. E-mail ID	Tele No. 011-23956300, 23992700, 23953400 Fax No. 011-23982700 info@mubarakfoods.com
5	Full name, age, designation / capacity of the person/s executing the Guarantee for and on behalf of the Guarantors (Eg.: Firm / Company/Society/Trust, etc.)	1. Shri. Ashish Gupta S/O Rajinder Gupta. 2. Shri. Pradeep Kumar Gupta S/O Babu Lal Gupta. 3. Shri. Nimesh Gupta S/O Sushil Kumar Gupta. 4. Shri. Shivam Gupta S/O Ravinder Kumar Gupta. 5. Shri. Sushil Gupta S/O Hari Krishan Gupta. 6. Shri. Rakesh Gupta S/O Hari Kishan Dass Gupta. 7. Shri. Rajiv Gupta S/O Babu Lal Gupta. 8. Shri. Nitin Gupta S/O Rajinder Gupta. 9. Smt. Urmil Gupta W/O Sushil Kumar Gupta. 10. Smt. Sangeeta Gupta W/O Pradeep Kumar Gupta. 11. Smt. Ritu Gupta W/O Nitin Gupta. 12. Surya Foundary Pvt Ltd.
6	Name and full address of the Bank / Branch	**STATE BANK OF INDIA**, a body corporate constituted under the State Bank of India Act, 1955, and having its Central Office at Madam Cama Road, Mumbai 400 021 and a Branch among other places at **SME Lahori Gate ,Khari Baoli Delhi - 110006**
7	Name/s of the Borrower(s) (In full) for whom this Guarantee is executed	**Mubarak Overseas Pvt Ltd**
8	Address/s of the Borrower(s) *(Father's/Husband's name to be mentioned)*	M/S Mubarak Overseas Pvt Ltd 5181-A, Lahori Gate, Naya Bazar Delhi 110006
9	Amount guaranteed (In figures and words)	Rs 65,33,00,000/- (Rupees Sixty Five Crore Thirty Three Lac only) plus interest, enhanced interest, fees, commission, charges, costs and expenses including the legal costs (hereinafter referred to as "the PRINCIPAL SUM")

		Date	Amount
10	Agreement of Loan-cum-Hypothecation	17.05.2022	Rs. 55,56,000,00/-
11	Supplemental Agreement/s of Loan-cum-Hypothecation, if any	Date(s) 1. 2. 3. 4.	Amount Rs. Rs. Rs. Rs

NOTARY
DELHI
REGD. No. 40939
EXPIRY DATE
GOVT. OF INDIA

For Surya Foundary Private ...
Director

60. The relevant extract of the Form CHG-1 is reproduced hereinbelow:

Form No. CHG-1

Application for registration of creation, modification of charge (other than those related to debentures) including particulars of modification of charge by Asset Reconstruction Company in terms of Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI)

[Pursuant to sections 77,78 and 79 and pursuant to Section 384 read with 77,78 and 79 of the Companies Act, 2013 and Rule 3(1) and 13 of the Companies (Registration of Charges) Rules 2014]

सत्यमेव जयते

Form language ⦿ English ○ Hindi

Refer instruction kit for filing the form

*All fields marked in * are mandatory*

Entity's Details

1 *Corporate Identity Number (CIN) or Foreign Company Registration Number (FCRN) — U29199DL2005PTC142669

2(a) *Name of the Company — SURYA FOUNDRY PRIVATE LIMITED

(b) *Address of the registered office or principal place of business in India of the — AG-31 SHALIMAR BAGH, NEW DELHI, NA, Delhi, India,110068

(c) *e-mail ID of the company — suryafoundry74@gmail.com

3 (a) *This form is for registration of

○ Creation of charge ⦿ Modification of charge

(b) *Charge ID of the charge to be modified or rectified — 100097114

4 *Whether the applicant is ⦿ Company ○ Charge holder

Details of charge instrument

5(a) *Date of the instrument creating or modifying the charge (DD/MM/YYYY) — 28/03/2023

(b)*Nature, description and brief particulars of the instrument creating or modifying the charge — SME 3 Guarantee Agreement

(c)* Whether charge is created or modified outside India ○ Yes ⦿ No

6 (a) Whether charge is modified in favour of asset reconstruction company (ARC) or assignee ○ Yes ⦿ No

(b) Whether charge holder is authorised to assign the charge as per the charge agreement ○ Yes ○ No

Page 1 of 9

*Category (Nationalised bank/Scheduled bank/Private Sector Bank/Financial institution/ Non-banking financial company/Co-operative bank/Foreign bank/Individual/Others)	Nationalised bank
If others, please specify	
*Name of the charge holder	State Bank of India
CIN (if applicable)	
*Name	State Bank of India
*Address Line 1	SME Branch
Address Line 2	Lahori Gate/Naya Bazar
*Country	India
*Pin code/Zip Code	110006
*Area/ Locality	Chandni Chowk
*City	Delhi
*District	North Delhi
*State/UT	Delhi
*E-mail ID	nayabazar@sbi.co.in
*Whether charge holder is having a valid Income Tax PAN	◉ Yes ○ No
Income Tax- Permanent Account Number (PAN)	AAACS8577K
BSR Code / Branch Code	

Details of charge

10(a) *Maximum Amount secured by the charge (In case the amount is in foreign currency, rupee equivalent to be stated) (in INR.). (In case of modification of charge, enter the amount secured by the charge after such modification)	550000000
(b) *Maximum Amount secured by the charge in words	Rupees Fifty Five Crore
(c) In case amount secured by the charge is in foreign currency, mention details	

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// True Copy //

☑ I further declare that:

1 the delay in filing the particulars of creation/modification, was accidental or due to inadvertence or some other sufficient cause and are or is not of a nature to prejudice the position of the charge holder, shareholders or creditors of the company;
2 no prejudice would be caused to the charge holder(s) or any other creditor(s) of the company, if the delay is condoned;

3 the company has not created or modified any other charge(s) whatsoever on the assets of the company, since the creation / modification of the present charge;

4 the company is carrying on the business as on the date of filing this application and no proceedings to wind-up the company have commenced or are pending against the company;

5 there is no litigation proceedings pending before any court of law for which condonation of delay is being filed;

6 the company has not applied for striking off the name of the company from the register of Registrar of Companies

To be digitally signed by RAKESH KUMAR GUPTA

Director or manager or secretary or CEO or CFO or IRP/RP/Liquidator (In case of an Indian company) or an authorised representative (In case of a foreign company)

Designation *(Director/Manager/Company Secretary/CFO/ CEO/Authorised Representative/Authorised Representative IRP/RP/Liquidator)*: Director

DIN of the director; PAN of the manager or CEO or CFO or authorised representative or IRP/RP/Liquidator; or membership number of company secretary: 01887137

Declaration

☑ I/we confirm that the attached charge instrument(s) or document(s) is/are true copies of the original which is/are available with the charge holder and/or assignee and all the information and particulars mentioned above are derived there from are concisely and correctly stated. I/we am/are duly authorised to sign this form.

☐ I/we am/are a multilateral/International financial institution who has/have been exempted from payment of income tax in India under the UN Privileges and Immunities Act.

To be digitally signed by

Charge holder: KUMAR BHAWAN AND

PAN of the charge holder: AWWPB9130C

To be digitally signed by

ARC or assignee

PAN of the ARC or assignee

Page 8 of 9

Certificate by Practicing Professional

I declare that I have been duly engaged for the purpose of certification of this form. It is hereby certified that I have gone through the provisions of the Companies Act, 2013 and rules thereunder for the subject matter of this form and matters incidental thereto and I have verified the above particulars (including attachment(s)) from the original/certified records maintained by the Company/applicant which is subject matter of this form and found them to be true, correct and complete and no information material to this form has been suppressed. I further certify that:

i. The said records have been properly prepared, signed by the required officers of the Company and maintained as per the relevant provisions of the Companies Act, 2013 and were found to be in order;

ii .All the required attachments have been completely and legibly attached to this form.

To be digitally signed by

ASHUTOSH SHUKLA

- (●) Chartered accountant (in whole-time practice) or
- ( ) Cost accountant (in whole-time practice) or
- ( ) Company secretary (in whole-time practice)

Whether associate or fellow:

( ) Associate (●) Fellow

Membership number	524054
Certificate of practice number	

Note: Attention is drawn to provisions of Section 447, section 448 and 449 of the Companies Act, 2013 which provide for punishment for fraud, punishment for false statement/ certificate and punishment for false evidence respectively

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For office use only:

eForm Service request number (SRN)	AA2400684
eForm filing date (DD/MM/YYYY)	
Digital signature of the authorising officer	
This eForm is hereby registered	
Date of signing (DD/MM/YYYY)	

Or

This eForm has been taken on file maintained by the registrar of companies through electronic mode and on the basis of statement of correctness given by the filing company.

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61. The relevant extract of the Board Resolution dated 22.03.2023 is reproduced hereinbelow:

SURYA FOUNDRY PVT. LTD.
REGD. OFFICE : AG-31, SHALIMAR BAGH, DELHI-110088

Ref. No.......................   Date :...............................

Extract of the minutes of the meeting dated 22th March, 2023 of Board of Directors of M/s Surya Foundary Pvt. Ltd. held at the registered office of the company at AG-31,Shalimar Bagh,Delhi-110088

A request from M/S Mubarak Overseas Pvt. Ltd has been received for extension of charge on Khewat No. 209, khata No.246 Mustilie & Kila no 101/12(8-0), 13(5-0), 14/1(2-13), Area of village- Akabarpur, Barota, Distt - Sunepat, Haryana by admeasuring area- 9003.62 Sq Yds located in village Akbarpur Barota, District Sonepat (Haryana) by way of extension of corporate guarantee and mortgage of property, factory for land & building on a plot of land mentioned above in favour of State Bank of India,SME Lahori Gate, Khari Baoli, Delhi-110006.

The matter was placed before the meeting and after consideration thereof it was resolved that the company do give corporate guarantee to State Bank of India, SME Lahori Gate, Khari Baoli, Delhi-110006, and also keep mortgaged factory land & building of the company in favour of the said bank as collateral security for the new limit sanctioned as per following:

Sr. No	Name of Account	Limit Sanctioned (in Crore)
1	M/S Mubarak Overseas Pvt. Ltd	50.33
	TOTAL	50.33 (Rs Fifty crore Thirty Three Lac Only)

It was further resolved that Shri Rakesh Kumar Gupta director of the company be authorized to sign all the necessary document on behalf of the company in favour of the bank and deposit title deeds of the factory land & building with the bank for creation of equitable mortgage in favour of the bank for the Cash Credit limit of Rs 50.33 Cr (Rs Fifty crore Thirty Three Lac Only) proposed to be availed by M/s Mubarak Overseas Pvt. Ltd.

It was further resolved that the common seal of the company be also affixed on all the documents of the bank in the presence of Shri Rajeev Gupta, director of the company in terms of articles of Association the company.

1

Works : Qilla No. 101/12, Village Akbarpur Barota, Tehsil Rai, Distt. Sonipat (Haryana)

True copy

It was further resolved that the revival letter and the balance confirmation letter as well as any other instrument or documents company in respect of the above credit facilities from time to time be executed by the company under its common seal to be affixed in the presence of Shri Rajeev Gupta, Director of the company.

Further resolved that a certified true copy of these minutes be forwarded to the State Bank of India, SME Lahori Gate, Khari Baoli Branch, Delhi 110006 for their record and they be requested to act upon.

We M/S Surya Foundary Pvt. Ltd. hereby certify that the above written copy is an extract from the minutes of the proceedings of the meeting of board of director of the company held on 22[rd] March [illegible] and is true and correct copy of the position of the proceedings to which it related in the said minutes.

Certified True Copy

Chairman of the Meeting

For Surya Foundary Private Limi... 6 Director

For [illegible] Private Limited 7

2

True copy

62. The relevant extract of the Directors Report is reproduced hereinbelow:

- **NUMBER OF BOARD MEETINGS:**
  - **NUMBER OF BOARD MEETING HELD DURING THE YEAR**: Company convened five board meetings during the year 2022-23.
  - **DATE OF BOARD MEETINGS HELD DURING THE YEAR**: The board meetings which held during the year were on04/04/2022, 30/06/2022, 03/10/2022, 10/12/2022, 15/03/2023.
  - **NUMBER AND DATE OF COMMITTEE MEETING HELD DURING THE YEAR**: There are no committees formed as per Companies Act, 2013.
  - **NO. OF BOARD MEETING ATTENDED BY THE EACH DIRECTORS DURING THE YEAR:** Two directors i.e. **Rakesh Kumar Gupta (DIN:01887137)&Pramod Kumar Goel (DIN:01228434)** attended every board meeting held during the year 2022-23 of the company.

63. It is pertinent to note that the Corporate Guarantee bears the signature of the authorised representative of the Corporate Guarantor, the charge created pursuant thereto was duly filed with the Registrar of Companies through Form CHG-1, and the Board Resolution dated 22.03.2023, relied upon by the Respondent itself, also bears the signature of the authorised signatory recording the approval for execution of the Corporate Guarantee and the allied security documents. The Respondent has, however, also sought to rely upon the Directors' Report to contend that no meeting of the Board of Directors was held on the said date and, therefore, the Resolution is not genuine. In the absence of any adjudication by a competent judicial forum declaring the Corporate Guarantee, the Board Resolution or the statutory filings to be void or unenforceable, the contemporaneous execution of the Corporate Guarantee, the filing of Form CHG-1 and the signed Board Resolution constitute prima facie documentary material which may be relied upon for the limited purpose of determining the existence of a financial debt and the occurrence of default under the Code.

64. Further, insolvency proceedings are not rendered non-maintainable merely because the Financial Creditor has simultaneously pursued other statutory remedies for recovery of its dues. A secured creditor is legally entitled to pursue all remedies available under law unless specifically prohibited by statute. The simultaneous invocation of remedies under the SARFAESI Act, proceedings before the Debts Recovery Tribunal and proceedings under the Code cannot, therefore, be construed as an abuse of process.

65. The Hon'ble NCLAT while reiterating the same principle in ***Sh. Y.Y. Butchi Babu v. State Bank of India and Anr., (2026) ibclaw.in 21 NCLAT*** has held the following:

> ***50.*** *The argument that pendency of computation disputes before the DRT prevents initiation of insolvency proceedings is unsustainable. The CIRP proceedings under the Code are not designed to adjudicate monetary disputes, but to determine insolvency status of the Corporate Debtor. This has been settled by this Appellate Tribunal in 'Mr. G. Sundaravadivelu vs Indian Overseas Bank [Comp. App.(AT) (CH) (Ins.) No. 143 of 2022]' and 'State Bank of India vs Abhijeet Ferrotech Ltd. [Comp. App. (AT) (Ins.) No. 690 of 2023]', that the pendency before DRT does not bar insolvency proceedings, and an Adjudicating Authority under the Code need not await adjudication by DRT. No statutory provision in the Code suspends Section 95 proceedings due to pending debt adjudication elsewhere.*
>
> ***51.*** *It is the contentions of the Appellants that their dispute on interest computation is pending before the DRT and therefore argue that the insolvency proceedings should not have been initiated until that adjudication is concluded. In this context, reference may be made to decision of this Tribunal in Mr. G. Sundaravadivelu v. Indian Overseas Bank (supra). In the aforesaid case, this Tribunal considered whether pendency before the DRT had any bearing on the jurisdiction of the*

adjudicating authority under the IBC. The Tribunal held that the pendency of proceedings before the Debt Recovery Tribunal is not a bar for a financial creditor to initiate insolvency action, and that the adjudicating authority under the IBC is not required to wait for the DRT to conclude its adjudication before proceeding. Accordingly, the contention based on pendency before the DRT cannot bar initiation of insolvency proceedings.

52. *The relevant para 96 of the Judgment in Mr. G. Sundaravadivelu vs Indian Overseas Bank is extracted below:*

> *"96. It is pointed out that the pendency of proceedings before the `Debt Recovery Tribunal', is not a bar, for the `Financial Creditor', to initiate an action against the `Corporate Debtor'. That apart, an `Adjudicating Authority', need not wait for the decision of `Debt Recovery Tribunal', while rendering its findings."*

53. *The Appellants also placed reliance on the pendency of Section 19 proceedings before the DRT to argue that the Section 95 proceedings should be deferred. In this regard, reference may be made to decision of this Tribunal in State Bank of India v. Abhijeet Ferrotech Ltd., (supra) where the Tribunal examined a question as to whether an application under the IBC could be rejected solely on the ground that DRT* *proceedings were pending and that the DRT had passed certain orders. The Tribunal held that proceedings under Section 19 which were still inconclusive could not prevent admission of proceedings under the IBC, and that such pendency was not a ground to hold an insolvency application as barred. Thus, pendency of Section 19 proceedings before the DRT cannot, by itself, bar consideration of insolvency proceedings.*

54. *The relevant extracts from the Judgment in Abhijeet Ferrotech (supra) of this Tribunal in para 22 & 23 is extracted below:*

> *"22. One more submission was raised before the Hon'ble Supreme Court in A. Navinchandra Steels Pvt. Ltd. (supra) that pendency of winding up proceedings was not brought into the notice of Adjudicating Authority. In the above reference, the Hon'ble Supreme Court held that Section 7 is an independent proceedings and winding up proceeding would have no effect in deciding Section 7 Application on the basis of provisions contained in IBC. In paragraph 29, following was held:*
>
>> *"29. Dr Singhvi and Shri Ranjit Kumar have vehemently argued that SREI has suppressed the winding-up proceeding in its application under Section 7 IBC before NCLT and has resorted to Section 7 only as a subterfuge to*

avoid moving a transfer application before the High Court in the pending winding-up proceeding. These arguments do not avail the appellant for the simple reason that Section 7 is an independent proceeding, as has been held in a catena of judgments of this Court, which has to be tried on its own merits. Any "suppression" of the winding-up proceeding would, therefore, not be of any effect in deciding a Section 7 petition on the basis of the provisions contained in the IBC. Equally, it cannot be said that any subterfuge has been availed of for the same reason that Section 7 is an independent proceeding that stands by itself. As has been correctly pointed out by Shri Sinha, a discretionary jurisdiction under the fifth proviso to Section 434(1)(c) of the Companies Act, 2013 cannot prevail over the undoubted jurisdiction of NCLT under the IBC once the parameters of Section 7 and other provisions of the IBC have been met. For all these reasons, therefore, the appeal is dismissed and the interim order that has been passed by this Court on 18-12-2020 [A. Navinchandra Steels (P) Ltd. v. Srei Equipment Finance Ltd., 2020 SCC OnLine SC 1141] shall stand immediately vacated."

23. The above judgment of the Hon'ble Supreme Court clearly lays down that proceedings under Section 7 can neither be held to be barred by any order passed by DRT under the 1993 Act, nor pendency of proceedings at DRT (which is now pending at the stage of Calcutta High Court) shall preclude decision on Section 7 Application on merits."

***55.** It is clear from the aforesaid Judgments that pendency of a proceeding in DRT is not a bar for initiation of CIRP process under Section 7. Section 7 in case of companies is similar to Section 95 for the Personal Guarantors to the corporates and pari materia the same principle applies for the Personal Guarantors."*

66. The Financial Creditor has also invoked the doctrine of indoor management to contend that it was entitled to rely upon the corporate authorisations and statutory records produced before it at the time of execution of the Corporate Guarantee. Third parties who enter into a contract with any company are protected against any irregularities in the internal procedure of the company. Persons transacting with companies are entitled to assume that internal company rules have been complied with even if they are not. Unless and until the documents relied upon by the Financial Creditor are declared void or unenforceable by a competent forum, this Adjudicating Authority cannot refuse to take cognisance of the same merely because their validity has been questioned in pending proceedings.

67. The Hon'ble NCLAT in the case of ***Tulip Hotel Pvt. Ltd. v. JC Flowers Asset Reconstructions Pvt. Ltd. and Anr., (2024) ibclaw.in 243 NCLAT*** has held the following:

> *"**26.** Thus, to answer the second issue, we hold that in the given circumstances, when there is no cognisance which has been taken by any court of law, civil or criminal, of the Deeds of Guarantee being forged and fabricated, in all fairness, the Respondent No. 1 is fully protected in proceeding on the assumption that the signing and execution of the Guarantee Deeds has taken place in good faith and is therefore a valid and legal document. We are also of the considered opinion that such disputes which involve fraud and forgery in respect of contractual documents cannot be investigated and decided by the Adjudicating Authority which has only been conferred the benefit of summary jurisdiction. Such issues can be raised only in a civil suit and hence any attempt to convert the proceedings under the IBC into civil proceedings akin to a trial cannot meet our approval since it clearly transgresses the legislative intent behind the IBC framework. As regards the alleged handwriting expert's opinion which has been adverted attention to by the Appellant to establish forgery, the Adjudicating Authority in exercise of summary jurisdiction is not expected to scrutinise such opinions and rely*

upon the assessment contained therein and more so when the opinion has been disputed as not being an independent third-party opinion. We find no error on the part of the Adjudicating Authority to have desisted from entering into the realm of contractual disputes as it would tantamount to judicial overreach."

68. In the present case, the Financial Creditor has placed on record the Corporate Guarantee and the statutory filings reflecting creation of charge in favour of the Financial Creditor. There is no material to indicate that at the time of execution of these documents, the Financial Creditor had knowledge of any alleged internal disputes amongst the shareholders or directors of the Corporate Guarantor. In such circumstances, the Financial Creditor was entitled to proceed on the basis that the persons executing the documents possessed the requisite authority to bind the company.

69. The Respondent has sought to contend that the disputes between the Gupta Group and the Goel Group demonstrate absence of authority on the part of the signatories. However, these disputes essentially pertain to the internal affairs of the Corporate Guarantor. Internal disputes between directors or shareholders cannot ordinarily prejudice the rights of a bona fide third party who has acted upon the apparent authority of the company's authorised representatives. To hold otherwise would seriously undermine commercial certainty and defeat the very object of the doctrine of indoor management.

70. The Financial Creditor is a public sector bank which had granted credit facilities to the Principal Borrower as per their banking procedure and received guarantees from individuals. When a Guarantee Agreement is stated to be signed by the director of the Corporate Guarantor, there was no occasion for the Financial Creditor to inquire and verify whether the said director was authorized to sign on behalf of Corporate Guarantor. Any dispute between the two groups of shareholders would not affect the genuineness of document which has been executed in ordinary course of business on behalf of the Corporate Guarantor.

71. The Respondent has not disputed the factum of guarantee on receiving the notice by the Financial Creditor. The record further reflects that the challenge to the Corporate Guarantee and the related corporate authorisations was raised only after the Financial Creditor commenced enforcement proceedings consequent upon the default committed by the Principal Borrower. Though the pendency of such proceedings cannot be ignored, their institution at a stage when the Financial Creditor had already invoked its contractual and statutory remedies does not, in itself, eclipse the documentary evidence placed on record evidencing the debt and default. In the absence of any declaration by a competent forum invalidating the Guarantee Agreement or restraining its enforcement, the subsequent institution of collateral proceedings cannot constitute a valid ground to decline admission of an otherwise maintainable application under Section 7 of the Code.

72. The Respondent has contended that the renewal of the credit facilities by the Financial Creditor under the Letter of Arrangement dated 02.05.2024, without obtaining a fresh Corporate Guarantee or a fresh Board Resolution from the Corporate Guarantor, raises serious doubts regarding the subsistence and enforceability of the Corporate Guarantee dated 28.03.2023.

73. In order to examine the issue, we may refer to the relevant clauses of the Corporate Guarantee, which read as under:

*"**1.** If at anytime default shall be made by the Borrower(s) in payment of the principal sum and/or other monies for the time being due to the Bank in respect of or under the said facilities, the Guarantors shall forthwith pay unconditionally to the Bank merely on demand by the Bank, the whole of such principal sum together with interest, costs, charges, expenses, fees, commission and or any other monies as may be then due to the Bank without any demur or protest or contestation and without reference to the Borrower(s). irrespective of any dispute or difference with the Borrower(s) in any proceedings and shall indemnify and keep indemnified the Bank against all losses of the said principal sum, interest or other monies due and all costs, charges and expenses whatsoever which the Bank may incur by reason of any default on the part of the Borrower(s).*

***3.** The Bank shall have the fullest liberty without affecting this Guarantee to vary the amounts of the individual limits of/ under the said facilities or fresh or additional limits thereunder subject to the aggregate thereof not exceeding the* *principal sum and/or to postpone, enforce or forbear for any time to enforce any remedies or any of them against any securities or parting or losing with any security or promising to give time to or not to sue or making any composition with the Borrower(s) or of any other forbearance, act or omission or any other indulgence on the part of the Bank or by any other matters or things whatsoever which under the law relating to sureties would but for this provision have the effect of so releasing the Guarantors. That as though between the Guarantors and the Borrower(s), the guarantors are the sureties but as between the Bank and the Guarantors, it is expressly agreed that the guarantors would be the principal debtors jointly with the Borrower(s) and accordingly, the Guarantors shall not be entitled to and also hereby waive all the rights conferred on the Guarantors under Sections 131, 133, 134, 135,130,140 and 141 of the Indian Contract Act, 1872.*

4. *That no failure or default by the Bank in requiring or obtaining or enforcing of any security or in the observance or performance of any of the covenants of any loan documents shall have the effect of releasing or discharging or in any manner affecting the stability of the Guarantors, hereunder.*

6. *The Guarantee is a continuing one for all the amounts advanced to the Borrower's) under the said facilities as also for all interest, costs, charges, expenses and/or other monies which may from time to time become due and remain unpaid to the Bank thereunder and shall not be determined or be affected by any account's becoming nil or coming into credit or being closed at* *any time or by any rephasement of repayment schedules of all or any of the said facilities/limits and/or fresh account's being opened in respect of fresh/revised facilities granted/being granted to the Borrower(s).*

13. *That any admission or acknowledgement in writing signed by the Borrower(s) or any of them of its/their liability or indebtedness or otherwise in relation to the said facilities and/or any part payment by it or its/their authorised agent towards the principal sum or any judgement, award or order obtained against the Borrower(s) shall be binding on the Guarantors and further agree that in the Borrower(s) making an acknowledgement or making a payment, the Borrower(s) shall in addition to his/their personal capacity be deemed to act as the Guarantors' duly authorised agent and the Borrower(s) shall be deemed to have made and/or given by or on behalf of the Guarantors themselves and shall be binding upon each of them for the purposes of Sections 18 and 19 of the Limitation Act of 1963."*

74. A perusal of the Corporate Guarantee placed on record prima facie indicates that the Corporate Guarantor unequivocally undertook to discharge the liabilities of the Principal Borrower in the event of default and agreed to pay the outstanding dues upon demand by the Financial Creditor. The terms of the Guarantee further reveal that it was executed as a continuing guarantee to secure the financial facilities extended to the Principal Borrower. A continuing guarantee, by its very nature, is intended to secure a series of transactions or continuing financial accommodations and ordinarily remains operative until it is revoked, discharged or otherwise determined in accordance with its terms or the applicable provisions of law. Significantly, the Guarantee expressly provides that its operation shall not be affected by variation, renewal or revision of the credit facilities, re-phasement of repayment schedules, closure or reopening of loan accounts, or any indulgence granted by the Financial Creditor to the Principal Borrower. It further stipulates that the liability of the Guarantor shall remain unaffected notwithstanding any forbearance in enforcing securities or remedies against the Principal Borrower.

75. In the present case, no material has been produced before this Adjudicating Authority to establish that the Financial Creditor expressly released the Corporate Guarantor from its obligations or that the parties entered into any arrangement extinguishing the earlier guarantee. Further, the balance confirmation forming part of the record indicates that the Principal Borrower acknowledged the liability which makes the Clause 13 applicable and binds the Corporate Guarantor.

76. In view of these express contractual stipulations, the Respondent's contention that the renewal of the credit facilities under the Letter of Arrangement dated 02.05.2024 necessitated execution of a fresh Corporate Guarantee or resulted in discharge of the existing Guarantee is prima facie contrary to the very terms of the Guarantee Agreement and, therefore, cannot be accepted.

77. The Respondent has placed reliance upon various decisions to contend that doctrine of indoor management is inapplicable in case of fraud and the present proceedings have been initiated fraudulently and are liable to be rejected under Section 65 of the Code. However, the cases do not advance the case of the Respondent as in the present case no judicial determination declaring the Corporate Guarantee, the Board Resolution or the statutory filings to be void or unenforceable has been placed before this Adjudicating Authority to establish fraud.

78. We have considered the present matter only in respect of the requirements of Section 7 of the Code i.e. financial debt, default, threshold and limitation. We have also taken in account the totality of the facts mentioned in the documents placed on record. We have not expressed any view on the dispute on any issue pending in the Company Petition No. 62 of 2025. Nothing is to be construed that we have made any observation in respect of any issue which is under consideration in the Company Petition No. 62 of 2025.

79. This Adjudicating Authority is satisfied that the Applicant has successfully established the existence of a financial debt within the meaning of Sections 5(8) of the Insolvency and Bankruptcy Code, 2016, as well as the occurrence of default within the meaning of Section 3(12) of the Code. The requirements of Section 7(5)(a) of the Code stand fulfilled and that the present Company Petition deserves to be admitted.

80. In view of the foregoing discussion, the Application bearing **CP (IB) No. 41/ND/2026** filed by the State Bank of India under Section 7 of the Code against **Surya Foundry Private Limited** is **admitted.** It is hereby ordered as follows:

i. The application bearing **CP (IB) No. 41/ND/2026** filed by the State Bank of India, the Financial Creditor, under Section 7 of the Code for initiating CIRP against Surya Foundry Private Limited, the Corporate Debtor, is hereby **admitted**.

ii. The Applicant has proposed the name of Mr. Reetesh Kumar Agarwal, having Registration Number IBBI/IPA-001/IP-P00878/2017-2018/11475 to be appointed as the Interim Resolution Professional. Therefore, this Adjudicating Authority appoints Mr. Reetesh Kumar Agarwal as the Interim Resolution Professional of the Corporate Debtor. The details of the IRP are as follows:

Name: Mr. Reetesh Kumar Agarwal

Registration Number :IBBI/IPA-001/IP-P00878/2017-2018/11475

Email address: carkagarwal@gmail.com

Address: Unit No. 531, Fifth Floor, Plot No. 8, S.G. Shopping Mall, Community Center, D.C. Chowk ,Sector 9, Rohini ,New Delhi, National Capital Territory of Delhi ,110085

iii. The IRP so appointed shall file consent in Form-2, a valid AFA and disclosure about non-initiation of any disciplinary proceedings against him, within three working days (3) of pronouncement of this order.

iv. We direct the Applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditor. The amount, however, shall be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Financial Creditor.

v. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flow from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

a. The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

b. Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

c. Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

d. The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.

e. The IB Code 2016 also prohibits suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

f. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code

(Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14(3)(b) of the Code.

vi. The Interim Resolution Professional shall perform all functions contemplated, inter alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.

vii. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'.

viii. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, he Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order.

ix. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

x. A copy of the order shall be communicated to the Applicant/Financial Creditor, Corporate Debtor and IRP above named, by the Registry.

xi. In addition, a copy of the order shall also be forwarded to IBBI for its records.

xii. Applicant is also directed to provide a copy of the complete paper book to the IRP.

xiii. A copy of this order shall also be sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

81. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **CP (IB) No. 41/ND/2026** stands **admitted**.

-SD/-	**-SD/-**
YOGENDRA KUMAR SINGH	**MAHENDRA KHANDELWAL**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

COURT-IV (SPECIAL BENCH)

I.A. 2941 (IBC) 2026

IN

CP (IB) 41 (ND) 2026

Under Section 65 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.

IN THE MATTER OF:
SURYA FOUNDRY PRIVATE LIMITED

...Applicant

Versus

STATE BANK OF INDIA

...Respondent

AND IN THE MATTER OF:
STATE BANK OF INDIA
Through its Authorized Representative
Ms. Swati Bhaskar

...Applicant/Financial Creditor

Versus

SURYA FOUNDRY PRIVATE LIMITED
Through its Director
Mr. Rakesh Kumar Gupta

...Respondent/Corporate Guarantor

Order Pronounced On: 29.07.2026

CORAM:

SHRI MAHENDRA KHANDELWAL,

HON'BLE MEMBER (JUDICIAL)

SHRI YOGENDRA KUMAR SINGH,

HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Gaurav Mitra, Sr. Advocate, Mr. Vibhor Kapoor, Aarsheya Sharda, Mr. Abhishek Chhabra, Amit Dhall, Advocates.

For the Respondent: Mr. Abhishek Anand, Mr. Shubham Saigal, Mr. Siddharth Jain, Ms. Ridhima Mehrotra, Ms. Rashi Rampal, Ms. Shruti Mishra, Advocates.

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. The present Application has been filed by the Applicant, Surya Foundry Private Limited ("Corporate Guarantor") under the provisions of Section 65 of the Insolvency and Bankruptcy Code, 2016 ("Code") read with Rule 11 of the National Company Law Tribunal Rules, 2016 ("NCLT Rule, 2016") seeking the following reliefs:

a) Allow the present application and dismiss the present petition bearing No. CP(IB) 41 of 2026 filed before this Hon'ble Tribunal as being collusive and malicious within the meaning of Section 65 of the Code;

b) Impose appropriate costs and/or penalties upon Respondent No. 1 in terms of Section 65 of the Insolvency and Bankruptcy Code, 2016;

c) Pass such other or further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

SUBMISSIONS OF THE APPLICANT/CORPORATE GUARANTOR:

2. The present Section 7 Petition has been instituted solely on the strength of the purported Guarantee Agreement dated 28.03.2023, the validity, legality and enforceability whereof is the subject matter of serious disputes before multiple judicial fora. The Applicant has consistently maintained that the said guarantee is fraudulent, fabricated, wholly unauthorised and incapable of constituting the basis of an admitted and undisputed financial debt.
3. The purported Guarantee Agreement dated 28.03.2023 was allegedly executed by Mr. Rakesh Kumar Gupta, without any authority from the Board of Directors of the Applicant Company. The four directors constituting the Goel Group have categorically stated that no Board Meeting was convened and no resolution was ever passed authorising the execution of the guarantee or assumption of liability for the borrowings of Mubarak Overseas Private Limited.
4. The purported Board Resolution dated 22.03.2023 relied upon by Respondent No. 1 Bank is ex facie fabricated inasmuch as: (i) the Directors' Report for FY 2022-23 records no Board Meeting on 22.03.2023; (ii) the resolution bears signatures only of the Gupta Group directors; (iii) it does not identify the borrower, nature of transaction or extent of liability; (iv) it refers to facilities of Rs. 50.33 Crores whereas the alleged facilities are approximately Rs. 55.56 Crores; and (v) it vaguely refers to the mortgage of

the "Factory Land and Building" without identifying the Applicant Company's principal asset.

5. The very terms of the purported Guarantee Agreement are wholly one-sided, imposing an absolute, unconditional and continuing liability upon the Applicant Company for the indebtedness of Mubarak Overseas despite the Applicant Company deriving no commercial or financial benefit from the facilities. No prudent board would voluntarily expose its sole and most valuable asset to liabilities exceeding Rs. 65 Crores without any corresponding commercial benefit.

6. The Financial Creditor accepted and acted upon the aforesaid guarantee and resolution despite glaring discrepancies apparent on the face of the documents and without undertaking even elementary due diligence expected of a nationalised bank.

7. The validity and enforceability of the purported Guarantee Agreement dated 28.03.2023 is directly and substantially in issue in Company Petition No. 62 of 2025 before this Adjudicating Authority, wherein the Applicant has challenged the fraudulent execution of the guarantee, mortgages and charges and has sought a declaration that the guarantee is null, void and non est in law, along with consequential injunctive reliefs.

8. The Applicant has also challenged the invocation and enforcement of the alleged guarantees and consequential measures before the Hon'ble Debt Recovery Tribunal in S.A. No. 10 of 2025, specifically pleading that the guarantees, mortgages and charges were fraudulently and unauthorisedly created.

9. FIR No. 0032/2025 has been registered by the Economic Offences Wing against members of the Gupta Group and officials of FC in relation to the fraudulent creation and use of the impugned guarantees and mortgages. Further, even in the fraud proceedings and wilful defaulter proceedings initiated by Financial Creditor, the Applicant Company categorically disputed the validity of the purported guarantee and denied any liability thereunder.

10. The institution of the present proceedings on the basis of a document whose validity and enforceability is under challenge before this Adjudicating Authority, the Hon'ble Debt Recovery Tribunal, the Economic Offences Wing and even in proceedings initiated by Respondent No. 1 Bank itself is ex facie malicious and constitutes a gross abuse of the insolvency jurisdiction of this Adjudicating Authority.

11. The multiplicity of proceedings concerning the validity and enforceability of the purported Guarantee Agreement dated 28.03.2023 and the consistent challenge mounted by the Applicant across all available fora unequivocally demonstrate that the alleged liability is neither admitted nor undisputed. Despite being fully aware that the very foundation of the present petition is under serious challenge before various judicial and quasi-judicial fora, the Financial Creditor has deliberately invoked the insolvency process by portraying the alleged guarantee as valid, binding and absolute, which is wholly incompatible with a bona fide invocation of the provisions of the Code.

12. The deliberate non-disclosure of these proceedings, despite Financial Creditor being fully aware thereof, has resulted in an incomplete and misleading picture being placed before this Adjudicating Authority and demonstrates a lack of bona fides, rendering the present petition liable under Section 65 of the Code.

13. The Applicant's assets, creditworthiness and sole immovable property have, since 2008, been repeatedly utilised and encumbered for securing the borrowings of Gupta Group entities, despite the Applicant deriving no commercial or financial benefit therefrom.

14. The Bank repeatedly accepted guarantees, mortgages, charges and Board Resolutions containing glaring irregularities, including documents executed by unauthorised persons, resolutions signed only by members of the Gupta Group and internally inconsistent corporate records, without undertaking even elementary due diligence or verifying the authority of the persons purporting to bind the Applicant Company.

15. Despite being aware that the Applicant Company's Board comprised four Goel Group directors and two Gupta Group directors, Respondent No. 1 Bank never sought confirmation from the Goel Group and instead relied exclusively upon documents furnished by the Gupta Group while repeatedly extending and enhancing credit facilities.

16. The repeated acceptance of patently irregular documents, continued enhancement of facilities, appearance of the Bank in Company Petition No. 62 of 2025 concerning the validity of the very guarantees now relied upon, and the selective invocation of insolvency proceedings only against the Applicant despite the existence of the principal borrower and personal guarantors, collectively demonstrate mala fides, collusion and a coordinated scheme between Bank and the Gupta Group.

17. The present petition is not a bona fide exercise of remedies but the culmination of a long-standing scheme to exploit the assets of the Applicant, accord legitimacy to disputed transactions and push the Applicant into insolvency on the strength of documents whose validity remains under challenge before multiple fora.

18. The present Section 7 Petition has been instituted not for bona fide insolvency resolution but to enforce liabilities allegedly arising under the disputed Guarantee Agreement dated 28.03.2023 and the underlying security documents.

19. The pendency of multiple proceedings challenging the validity and enforceability of the said guarantee demonstrates that the object of the present proceedings is to secure indirect recognition and enforcement of a seriously disputed and allegedly fraudulent document through the insolvency process. Such invocation is malicious and constitutes a gross abuse of the provisions of the Code.

20. The Company Petition No. 62 of 2025 challenges the repeated and unauthorised utilisation of the Applicant's assets through fraudulent guarantees, mortgages and charges, including the continuing course of conduct culminating in the purported Guarantee Agreement dated 28.03.2023, which has also been specifically challenged by way of an Interim Application seeking a declaration that it is null, void and non est in law.

21. The allegations of fraud, collusion, fabrication of corporate records and unauthorised execution of guarantees are presently under adjudication before this Adjudicating Authority. Continuation of the present proceedings would indirectly accord legitimacy to the impugned guarantee, frustrate Company Petition No. 62 of 2025, render the Applicant Company's challenge substantially infructuous and enable the Respondents to achieve through the insolvency process what they cannot directly obtain in the pending proceedings.

<u>ANALYSIS AND FINDINGS:</u>

22. The present Interlocutory Application has been preferred by the Applicant/Corporate Guarantor under Section 65 of the Code read with Rule 11 of the NCLT Rules, 2016 seeking dismissal of the Company Petition bearing CP (IB) No. 41 (ND) of 2026 filed under Section 7 of the Code by the State Bank of India.

23. It is the case that the Section 7 petition has been maliciously instituted solely on the basis of a purported Corporate Guarantee Agreement dated

28.03.2023, which is fraudulent, fabricated and unauthorised. It is submitted that the guarantee was executed without any valid Board Resolution and that the Financial Creditor knowingly relied upon defective corporate records despite glaring irregularities. The validity and enforceability of the guarantee are already under challenge before this Adjudicating Authority, the Debt Recovery Tribunal and the Economic Offences Wing, and that the Financial Creditor deliberately suppressed these proceedings while initiating the present petition. According to the Applicant, the insolvency proceedings are the result of collusion between certain directors of the Corporate Guarantor and the Financial Creditor to enforce disputed liabilities and legitimise fraudulent transactions through the insolvency process.

24. At this stage it would be necessary to refer to Section 65 of the Code which is reproduced herein below:

> ***"Section 65: Fraudulent or malicious initiation of proceedings.***
>
> *65. (1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.*

(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.

(3) If any person initiates the pre-packaged insolvency resolution process-

(a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency; or

(b) with the intent to defraud any person,

the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees."

25. The legislative object behind Section 65 is to prevent abuse of the insolvency process. The provision is penal in nature and, therefore, cannot be invoked routinely. The jurisdiction under Section 65 is attracted only where there exists cogent material demonstrating that the proceedings have been initiated fraudulently or with malicious intent for a purpose other than the objectives of the Code.

26. The Hon'ble NCLAT in the case *of* ***Canara Bank Vs. Bhavesh Mansukhbai Rathod (IRP) and Ors. Company Appeal (AT) (Insolvency) No. 558 of 2025*** in the judgement dated 17.04.2026 has observed that proceeding under

Section 65 application has to be based on specific pleadings and materials to show that initiation of CIRP was malicious and fraudulent.

27. The Hon'ble NCLAT in ***Monotrone Leasing Pvt. Ltd. Vs. PM Cold Storage Pvt. Ltd., [2020] ibclaw.in 21 NCLAT*** has held the following:

> *"**29** Section 65 of the Code provides for penal action for initiating Insolvency Resolution Process with a fraudulent or malicious intent or for any purpose other than the resolution. However, the same cannot be construed to mean that if a petition is filed under Section 7, 9 or 10 of the Code without any malicious or fraudulent intent, then also such a petition can be rejected by the Adjudicating Authority on the ground that the intent of the Applicant/Petitioner was not resolution for Corporate Insolvency Resolution Process. As the proceedings under IBC are summary in nature, it is difficult to determine the intent of the Applicant filing an application under Section 7, 9 or 10 of the Code unless shown explicitly by way of documentary evidence. This situation may arise in specific instances where a petition is filed under IBC specifically with a fraudulent or malicious intent."*

28. The Hon'ble NCLAT in ***Acute Daily Media Pvt. Ltd. and Ors. v. Rockman Advertising and Marketing (India) Ltd. and Ors., (2025) ibclaw.in 41***

NCLAT, while discussing the degree of proof under section 65 has held the following:

> *"**31.** We have no quarrel with the proposition of the Appellants that in terms of Section 7 of the IBC, what is required to be seen is the existence of a debt and default of the said debt. Once a debt becomes due or payable and there is incidence of non-payment of the said debt in full or part, CIRP may be triggered by the Financial Creditor as long as the amount in default is above the threshold limit. Be that as it may, Section 65 of the IBC is an enabling provision within the statutory framework of IBC whereby even if a Section 7 application has been filed or has been admitted, it vests jurisdiction on the Adjudicating Authority to examine an application under Section 65, if a prima facie case is made out to show that the Section 7 application had been filed 'fraudulently' or 'with malicious intent' and for purpose other than resolution of insolvency or liquidation. In the present case too, we therefore do not find any error on the part of the Adjudicating Authority to consider the Section 65 application filed by the Respondent No.1 on being prima facie satisfied that the Section 7 application seeking initiation of CIRP proceedings had been filed by suppression of relevant material for purposes other than insolvency resolution. There is no statutory embargo on the Adjudicating Authority to exercise its discretion carefully and judiciously in a Section 65 application to prevent and protect the Corporate Debtor from being*

dragged into CIRP. This is a well settled proposition of law and the Adjudicating Authority has drawn reference to the binding precedents laid down by this Tribunal which have already been noticed at paragraph 30 above. We are therefore not much impressed by the argument of the Appellants that the Section 7 order of 17.05.2022 having attained finality, it cannot be relooked into by the Adjudicating Authority even when a Section 65 application is filed.

***32.** While returning our findings on the tenability of the impugned order, we must at the very outset add that that to prove any transaction to be collusive and fraudulent in nature, the degree of proof and evidence required should be beyond reasonable doubt and we propose to apply the same standard of proof to the facts of the present case."*

29. Therefore, for attracting the provisions of Section 65 of the Code, it is incumbent upon the Applicant to establish, by cogent material, that the initiation of the insolvency proceedings was fraudulent or initiated with malicious intent for a purpose other than the resolution of insolvency. The element of malice or fraudulent initiation must be proven beyond reasonable doubt. There must be substantial and corroborative evidence to explicitly prove 'fraudulent intent', 'malice' and 'mens rea' on the part of the Applicant. The penalties under Section 65 cannot be imposed unless a clear case of fraudulent or malicious intent is established.

30. The allegations advanced by the Applicant primarily relate to the validity of the Corporate Guarantee, the authority of the person executing the guarantee, the legality of the Board Resolution and the pendency of proceedings challenging those documents. The mere existence of disputes regarding the validity or enforceability of the documents forming the basis of the financial debt cannot, without more, lead to the conclusion that the insolvency proceedings have been initiated fraudulently or with malicious intent. If every disputed financial transaction were to be treated as attracting Section 65, the provision would become applicable in almost every contested insolvency proceeding, a consequence clearly not intended by the legislature.

31. All the contentions made by the Applicant/Corporate Guarantor which are referred in Paragraph 2 of the order are related to the merits of the Section 7 Petition and all are dealt with separately in the Petition bearing CP IB 41 ND 2026.

32. The pendency of civil, criminal or recovery proceedings neither extinguishes the remedies available to a Financial Creditor under the Code nor creates a presumption that the initiation of insolvency proceedings is done with a fraudulent/malicious intent.

33. The Applicant has not produced any cogent material demonstrating that the Financial Creditor invoked the insolvency jurisdiction for any collateral, oblique or extraneous purpose unrelated to insolvency resolution with a malicious intent. Mere allegations, cannot substitute the stringent standard of proof contemplated under a penal provision such as Section 65.

34. A creditor asserting rights under documents which it bona fide considers to be valid and enforceable cannot be accused of abusing the insolvency process merely because the debtor disputes those documents. Acceptance of such an argument would effectively permit every Corporate Debtor to frustrate insolvency proceedings simply by instituting collateral litigation challenging the underlying documents, thereby defeating the time-bound framework envisaged under the Code.

35. Further, the FIR No. 0032/2025 dated 05.03.2025, filed by the Applicant, is annexed as Annexure A-5. In Para 11 of the FIR it is stated that only the branch manager of SBI is arrayed as an accused. There is no allegation against the Bank. Therefore, it cannot be said that SBI as an institution has filed the Section 7 Petition fraudulently.

36. In the present case, the Applicant has failed to establish that the Section 7 Petition was instituted for any purpose other than seeking initiation of the corporate insolvency resolution process on account of the alleged financial debt and default. The entire case of the Applicant rests upon disputing the validity of the Corporate Guarantee and alleging fraud in its execution. These issues do not, by themselves, establish the fraudulent or malicious initiation of insolvency proceedings as contemplated under Section 65 of the Code.

37. Accordingly, this Adjudicating Authority is of the considered opinion that the Applicant has failed to satisfy the essential ingredients of Section 65 of the Code. The allegations raised are insufficient to demonstrate that the present proceedings have been initiated fraudulently or with malicious intent for a purpose other than the resolution of insolvency.

38. Accordingly, the present application bearing **I.A. 2941 OF 2026**, being devoid of merit, is **dismissed**.

No order as to costs.

-SD/-	**-SD/-**
YOGENDRA KUMAR SINGH	**MAHENDRA KHANDELWAL**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**