NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

4. C.P. (IB)/63(MB)2025

IN THE MATTER OF

The Bank Of Maharashtra Limited
VS
Mrs. Madhurani Avinash Khadilkar
U/s 95(1) of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 07.09.2026

CORAM:

SH. VINAY GOEL	SH. CHARANJEET SINGH GULATI
MEMBER (J)	MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Financial Creditor: - Adv. Rithika Yerra i/b Chittranjan, Shah, Kay Legal & Associates LLP (VC)

For the Respondent: -

ORDER

C.P. (IB)/63(MB)2025: - The above **C.P. (IB)/63(MB)2025** is listed for pronouncement of orders. The same is pronounced in open court today vide a separate order.

Sd/-	Sd/-
VINAY GOEL	CHARANJEET SINGH GULATI
Member (Judicial)	Member (Technical)

//Anmol//

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, V

CP (IB) 63 OF 2025
Order under Section 100 r/w Section 95 of the Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF:

Bank of Maharashtra

Having its registered office at:

Stressed Asset Management Branch, 2nd Floor, Agarkar School Building, Near Apollo Cinema Somwarpeth, Pune – 411011

…Petitioner/Financial Creditor

Versus

Mrs. Madhurani Avinash Khadilkar

Having its registered address at:

Flat No. 4, Annj Apartments, SBI Colony, Sangam Press Road, Kothrud, Pune – 411029

…Respondent/ Personal Guarantor

Order Delivered on: 07.09.2026

Coram:

Sh. Vinay Goel
Member (Judicial)

Sh. Charanjeet Singh Gulati
Member (Technical)

Appearance through VC/Physical/Hybrid Mode:

For the Financial Creditor: - (Bank of Maharashtra) Adv. Tanmay R. Sangani i/b Kay Legal & Associates LLP (VC)

For the RP: - Adv. Kunal Chheda (VC)

ORDER

CP (IB) 63 OF 2025

1. The Present Company Petition bearing C.P (IB) No. 63 of 2025 has been filed on 29.11.2024 (refiled on 23.12.2024) by Bank of Maharashtra **("Petitioner/Financial Creditor")** under Section 95 of Insolvency and Bankruptcy Code, 2016 **("the Code")** read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, seeking initiation of the Insolvency Resolution Process against the Respondent, **Mrs. Madhurani Avinash Khadilkar**, **("Respondent/Personal Guarantor")** who is the Personal Guarantor of the M/s SAM Hitech Components Private Limited **("the Company")**.

Brief Facts of the Case

2. The Company availed credit facilities from the Financial Creditor comprising of a Term Loan I of Rs 7,80,00,000/- sanctioned on 06.06.2011, and a Cash Credit facility enhanced to Rs 5,00,00,000/- together with a fresh term loan II of Rs. 2,50,00,000/-, both sanctioned on 09.07.2012.

3. To secure the repayment of the aforesaid facilities, the Respondent, along with Mr. Dhiren Vijaykumar Gupte and Mrs. Geeta Dhiren Gupte, executed a Deed of Guarantee dated 18.07.2012 in favour of the Financial Creditor, undertaking joint and several liability for repayment of the said facilities.

4. The date of default as per Part III of the Petition is 30.11.2014 The Company committed default in repayment of its dues, and the loan account was classified as Non-Performing Assets (NPA) on 28.02.2015.

5. Thereafter, the Financial Creditor issued a Notice dated 19.06.2015 under Section 13(2) of Securitisation & Reconstruction of Financial Assets and Enforcement of Security Act 2002 **("SARFAESI Act, 2002")**, thereby calling upon the Respondent and other guarantors to pay 12,64,28,098 plus interest thereon @13.75% on CC & @13.50% pa w.e.f from 01.03.2015 within 60 days from the date of receipt of the said notice.

6. By a letter dated 23.08.2019 addressed to the Financial Creditor, the Company acknowledged the receipt of the Financial Creditor's One Time Settlement (OTS) offer of Rs 7,52,28,000/-and proposed a revised payment schedule.

7. By a legal notice dated 23.04.2021, Financial Creditor through its advocate called upon the Company, the Respondent and other guarantors to jointly repay the outstanding sum of Rs. 11,25,89,578/- together with interest.

8. The Financial Creditor thereafter filed Original Application No. 896 of 2021 against the Company before the Debts Recovery Tribunal, Pune, on 03.06.2021, which is stated to be pending adjudication.

9. The Financial Creditor issued a Demand Notice in Form B dated 28.10.2022, under Rule 7(1) of the IBBI (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019, addressed specifically to the Respondent in her capacity as guarantor of the Company, calling upon her to discharge the unpaid debt in default of Rs. 11,17,89,578.07, shown as due as on

30.09.2022, failing which an application would be made for initiation of the Insolvency Resolution Process against her.

10. The present Petition was thereafter filed by the Financial Creditor under Section 95 of the Code claiming a total outstanding debt in default of Rs 40,62,14,349.07/- as on 25.10.2024, together with further interest.

Report of the Resolution Professional

11. Vide Order dated 17.02.2025, this Tribunal appointed Mr. Fanendra harakchand Munot (IBBI Registration No. IBBI/IPA-001/IP-P00515/2017-2018/10916) as Resolution Professional under Section 97 of the Code. The Resolution Professional filed his report dated 11.03.2025 under Section 99 of the Code, which is reproduced below:

Sr No.	Requirements under the relevant provisions of section 99 of the Code	Submissions of the RP	Compliance with requirements of section 99 of the Code (Yes / No)
1)	Section 99(1): The resolution professional shall examine the application referred to in section 94 or section 95, as the case may be, within ten days of his appointment, and submit a report to the Adjudicating Authority recommending for approval or rejection of the application.	The RP submits that the present report is being prepared in compliance with the requirements of section 99(1) of the Code.	Yes: The RP submits that the present report is being filed in terms of the requirement of section 99(1) of the Code.
2)	Section 99(2): Where the application has been filed under section	The RP has sent an intimation through email under section 99(2) to the personal guarantor requiring the personal guarantor	Yes: The RP submits that the requirements of section

Sr No.	Requirements under the relevant provisions of section 99 of the Code	Submissions of the RP	Compliance with requirements of section 99 of the Code (Yes / No)
	95, the resolution professional may require the debtor to prove repayment of the debt claimed as unpaid by the creditor by furnishing – (a) evidence of electronic transfer of the unpaid amount from the bank account of the debtor; (b) evidence of encashment of a cheque issued by the debtor; or (c) a signed acknowledgment by the creditor accepting receipt of dues.	to prove repayment of the debt claimed as unpaid by the Creditor in compliance with provisions of section 99(2) of the Code. Copy of the said email dated 27/02/2025 is annexed as "Exhibit B" to the Interlocutory application. The Personal Guarantor sent reply on 06/03/2025. Copy of the said reply by the personal guarantor to the RP by email is annexed as "Exhibit C" to the Interlocutory application. The Personal Guarantor has not provided any proof of repayment of the unpaid debt.	99(2) of the Code are complied with.
3)	Section 99(3): Where the debt for which an application has been filed by a creditor is registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt.	The Financial Creditor was requested to provide the details of registration of debt with information utility. Such details are yet to be received from the Financial creditor. SAM Hitech Components Pvt. Ltd., the corporate debtor had sent a letter to the Financial Creditor on 23/08/2019 for the one time settlement of the debt. Thus, the debt for which application has been filed by Financial creditor is valid.	Yes: The RP has complied with the requirements of section 99(3) of the Code.
4)	Section 99(4):	The application is filed by Financial Creditor and	Yes: The RP submits that the

Sr No.	Requirements under the relevant provisions of section 99 of the Code	Submissions of the RP	Compliance with requirements of section 99 of the Code (Yes / No)
	For the purposes of examining an application, the resolution professional may seek such further information or explanation in connection with the application as may be required from the debtor or the creditor or any other person who, in the opinion of the resolution professional, may provide such information.	subsequently shared with the RP along with supporting.	requirements of section 99(4) of the Code are complied with.
5)	Section 99(5): The person from whom information or explanation is sought under sub-section (4) shall furnish such information or explanation within seven days of receipt of the request.	Not applicable.	Yes: The RP submits that the requirements of section 99(5) of the Code does not impact either admission or rejection of the present application.
6)	Section 99(6): The resolution professional shall examine the application and ascertain that - (a) the application satisfies the requirements set out in section 94 or 95; (b) the applicant has provided information and given	RP submits that the present application satisfies the requirements of provisions of section 95 as has been provided in detail hereinabove in this report.	Yes: The RP submits that the requirements of section 99(6) of the Code are complied with.

Sr No.	Requirements under the relevant provisions of section 99 of the Code	Submissions of the RP	Compliance with requirements of section 99 of the Code (Yes / No)
	explanation sought by the resolution professional under sub-section (4).		
7)	Section 99(7): After examination of the application under sub-section (6), he may recommend acceptance or rejection of the application in his report.	RP submits that the present application satisfies the requirements of provisions of section 95 as is required to be examined under section 99(6) of the Code.	Yes: The RP submits that based on examination, the present application deserves to be admitted under section 100 of the Code and Hon'ble NCLT may pass appropriate Orders.
8)	Section 99(8): Where the resolution professional finds that the debtor is eligible for a fresh start under Chapter II, the resolution professional shall submit a report recommending that the application by the debtor under section 94 be treated as an application under section 81 by the Adjudicating Authority.	RP submits that considering the facts of the case, the debtor/personal guarantor does not satisfy the requirements under section 80(2) and hence is not eligible for a "fresh start" under Chapter II.	Not applicable: The RP submits that the provisions of section 99(8) of the Code does not apply to the present case in hand.
9)	Section 99(9): The resolution professional shall record the reasons for recommending the acceptance or rejection of the application in the	RP submits that the present report is being presented under section 99(7) of the Code to Hon'ble NCLT with a recommendation of accepting the present application. It is stated that Mrs. Madhurani Khadilkar had executed the deed of guarantee in favour of the	Yes: The RP submits that the present report prepared under section 99(7) of the Code records the reasons for recommending acceptance of the

Sr No.	Requirements under the relevant provisions of section 99 of the Code	Submissions of the RP	Compliance with requirements of section 99 of the Code (Yes / No)
	report under sub-section (7).	Financial Creditor to secure the repayment of the debt of SAM Hitech Components Pvt. Ltd. Mrs. Madhurani Khadilkar is a personal guarantor of corporate debtor and due to non-payment of debt by corporate debtor, the said personal guarantee was invoked by the Financial Creditor. The Demand notice in Form B in respect of the unpaid debt was issued by the Financial Creditor to the personal guarantor. However, the debt has remained unpaid.	present application filed by RP on behalf of Financial Creditor for further orders under section 100 of the Code.
10)	Section 99(10): The resolution professional shall give a copy of the report under sub-section (7) to the debtor or the creditor, as the case may be.	RP submits that he has complied with the requirement of filing a copy of this report prepared under section 99(7) of the Code to the Creditor/Guarantor.	Yes: The present report prepared under section 99(7) of the Code has been shared with the Financial creditor and Guarantors in compliance with provisions of section 99(10) of the Code.

12. The Resolution Professional, in his report filed under Section 99 of the Code, has recommended acceptance of the petition on the ground that the procedural requirements under Section 95 and 99 have been complied with.

Analysis & Findings

13. We have heard the learned counsel for the Petitioner, perused the material on record and the Resolution Professional's Report dated 11.03.2025. Vide order dated 31.08.2026, since none appeared on behalf of the Personal Guarantor and no reply was found to be reflected on the DMS or produced before the Tribunal in hard copy, the Personal Guarantor was proceeded against ex-parte.

14. The Resolution Professional, in his report filed under Section 99 of the Code, has recommended acceptance of the petition on the ground that the procedural requirements under Section 94 and 99 have been complied with. However, the recommendation of the Resolution Professional under Section 99 is not binding upon this Tribunal. For this we place reliance on judgement of ***Hon'ble Supreme Court in the case of Dilip B. Jiwrajka v. Union of India & Ors. in W.P. (Civil) No. 1281 of 2021*** where it is held

> *"No judicial determination takes place until the adjudicating authority decides under Section 100 whether to accept or reject the application.* ***The report of the resolution professional is only recommendatory in nature and hence does not bind the adjudicatory authority when it exercises its jurisdiction under Section 100;"***
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> **[Bold for Emphasis]**

15. The record reflects that the Company, M/s SAM Hitech Components Private Limited, availed credit facilities from the Financial Creditor, in respect of which the Respondent, Mrs. Madhurani Avinash Khadilkar, stood as Personal Guarantor pursuant to the Deed of Guarantee dated 18.07.2012. The account of the Company was classified as a Non-Performing Asset (NPA) on 28.02.2015. Prior thereto, the Financial Creditor had issued a Recall Notice dated 28.01.2015, calling upon the Company and the Respondent to discharge the outstanding debt within 60 days. Thereafter, on 23.08.2019, the Respondent acknowledged receipt of

the One-Time Settlement (OTS) offer made by the Financial Creditor. Subsequently, vide legal notice dated 23.04.2021, the Financial Creditor formally invoked the personal guarantee of the Respondent. The present petition was filed on 04.11.2024, i.e., approximately three and a half years after the invocation of the personal guarantee.

16. Before adverting to the issue of limitation, it is necessary to examine the terms of the Deed of Guarantee executed by the Respondent and the manner in which the said guarantee was invoked. The Deed of Guarantee dated 18.07.2012, executed by the Respondent in favour of the Financial Creditor, contains, inter alia, the following terms:

> *2.* ***The Guarantors agree that the amount guaranteed shall be due and payable by the Guarantors jointly and severally to the Bank, two days after demand and without demur merely upon the Bank sending to the Guarantors a demand notice requiring payment of the amount. Any such demand made by the Bank on the Guarantors shall be conclusive as regards the amount claimed therein having become due and payable by the Borrowers to the Bank in respect of the credit facilities mentioned therein and also conclusive as regards the default having been committed by the Borrowers In repayment of the said amount to the Bank.*** *The Guarantors agree that they will not require any further proof of these facts from the Bank and will pay the amount demanded forthwith on receipt of the demand notice. Any such demand notice sent by the Bank by hand delivery or by post to the Guarantors at their address mentioned above such address as may be known to the Bank shall be deemed to duly served on Guarantors at the time when the-notice would in the ordinary course of post be delivered at such address, notwithstanding that the notice may not in fact have been received by the Guarantors or that the address to which it is despatched may have ceased to the Guarantor's address. It is agreed that the Bank may in its sole discretion invoke this Guarantee as regards the amounts due from the Borrowers under some of the credit facilities without prejudice*

to its right to invoke this Guarantee thereafter in respect of the other credit facilities.

(Bold for Emphasis)

17. A plain reading of the aforesaid clause makes it evident that the liability of the Guarantor arises upon the Bank sending a demand notice requiring payment of the amount. The moment such demand is made, the amount becomes due and payable by the Guarantor, and the Guarantor is obligated to pay the amount demanded. The clause also stipulates that any such demand made by the bank shall be conclusive as regards the amount claimed and the default committed by the Borrower. Therefore, the date of the invocation of the guarantee is the date on which the Financial Creditor makes a demand upon the Guarantor in terms of the Deed of Guarantee.

18. In the present case, the Financial Creditor issued a Demand notice dated 18.06.2015 under Section 13(2) of the SARFAESI Act, 2002 calling upon the Company and the Respondent to discharge the secured debt within 60 days from the date of receipt of the notice. The said Demand Notice fulfils the requirement of a demand notice under the deed of guarantee. By virtue of the said notice, the guarantee stood invoked, and the Respondent's liability to pay the outstanding amount crystallized in terms of the Deed of Guarantee.

19. Before proceeding further, it is necessary to examine the applicable period of limitation. Section 238A of the Code makes the provisions of the Limitation Act, 1963 applicable to proceedings before the Adjudicating Authority. In the absence of any specific provision under the Code prescribing the period of limitation for an application under Section 95, Article 137 of the Limitation Act, 1963, would apply, prescribing a period of three years from the date on which the right to apply accrues. In this regard, reliance is placed on the judgment of the Hon'ble NCLAT in **Suyog**

Jain v. Arvind Kumar (Resolution Professional) & Ors., *Company Appeal (AT) (Insolvency) No. 567 of 2019*, wherein it was held that the period of three years prescribed under Article 137 of the Limitation Act applies to an application under Section 95 of the Code.

20. In the present case, the right to proceed against the Respondent under the Deed of Guarantee arose upon the invocation of the guarantee by the Financial Creditor vide Demand Notice dated 18.06.2015. Accordingly, the period of three years expired on 17.06.2018. The present Petition, having been filed on 29.11.2024, is ex facie barred by limitation.

21. Additionally, the Financial Creditor has placed reliance upon the letter dated 23.08.2019, whereby the Company acknowledged the Bank's One-Time Settlement (OTS) offer, contending that the same constitutes an acknowledgement of liability under Section 18 of the Limitation Act, 1963, and consequently gives rise to a fresh period of limitation. Taking the said letter dated 23.08.2019 into consideration for the purpose of computing limitation, the fresh period of limitation would commence from 23.08.2019. Further, upon giving effect to the exclusion of the period from 15.03.2020 to 28.02.2022, as directed by the Hon'ble Supreme Court in ***In Re: Cognizance for Extension of Limitation, (2022) 3 SCC 117***, the period of limitation expires on 07.08.2024. The present petition was filed on 29.11.2024, i.e., beyond the prescribed period of limitation. Accordingly, even after taking the letter dated 23.08.2019 into consideration, the present petition is barred by limitation.

22. In view of the foregoing, this Tribunal is of the considered view that the Petition is ex facie barred on the basis of the original cause of action arising upon invocation of the Deed of Guarantee on 18.06.2015 and, even upon taking into consideration the letter dated 23.08.2019 as an

acknowledgement of liability under Section 18 of the Limitation Act, 1963, the Petition having been filed beyond the expiry of the extended period of limitation, is not maintainable. Accordingly, the present Petition bearing C.P. (IB) No. 63 of 2025 is, accordingly, **dismissed as not maintainable**.

Sd/-

VINAY GOEL

Member (Judicial)

Smeet - LRA

Sd/-

CHARANJEET SINGH GULATI

Member (Technical)