NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI
ORDER SHEET OF THE HEARING ON 9TH SEPTEMBER 2026

CP(IB)/12/GB/2024

Present: 1. Hon'ble Member (Judicial), Shri Rammurti Kushawaha
2. Hon'ble Member (Technical), Shri Yogendra Kumar Singh

In the Matter of	IL&FS Financial Services Limited (FC) Vs Manoj Kumar Agarwal (PG) to *Adhunik Meghalaya Steels Private Limited (CD)*
Under Section	U/s 95 of IBC, 2016

Appearances (via video conferencing/physically)

CP(IB)/12/GB/2024

For Petitioner (s) : Ms. Kiran Sharma, Adv. for FC
: Mr. Soumyajit Saha, Adv.

For Respondent (s) : Mr. Sujit Banerjee, Adv. for PG

ORDER

Order pronounced in open court *vide* separate sheets.

Sd/-
Yogendra Kumar Singh
Member (Technical)

Sd/-
Rammurti Kushawaha
Member (Judicial)

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

CP (IB)/12/GB/2024

An Application under Section 95 of the Insolvency and Bankruptcy Code, 2016

In the matter of CP (IB)/12/GB/2024:

IL&FS Financial Services Limited, company incorporated under the Companies Act, 1956 and having its registered Office at The IL&FS Financial Centre, Plot C - 22, G - Block, Bandra Kurla Complex, Bandra East, Mumbai, India – 400051.

…Financial Creditor/Petitioner

-Versus-

Mr. Manoj Kumar Agarwal, Personal Guarantor of Adhunik Meghalaya Steels Private Limited, having address at BA 209, Salt Lake City, Kolkata – 700064.

…Personal Guarantor/Respondent

Coram:

Shri Rammurti Kushawaha : Member (Judicial)

Shri Yogendra Kumar Singh : Member (Technical)

Appearances (through video conferencing/physical):

For Petitioner : Mr. S. Mitra, Ms. K. Sharma, Mr. S Saha, (Advs.)

For Respondent : Mr. D.N Sharma, (Sr. Adv.), Mr. S. Banerjee, Mr. N. Sengupta, (Advs.)

Order pronounced on: 09.09.2026

As Per Bench

1. The Present Company Petition ('CP') No. 12 of 2024 has been filed by IL&FS Financial Services Limited ('Financial Creditor') under section 95 of the Insolvency and Bankruptcy Code, 2016 ('the Code') for default in the repayment of Rs. 55,45,97,395/- (Rupees Fifty-five crore forty-five lakh ninety-seven thousand three hundred ninety-five only) as on 15.11.2023, seeking Initiation of Insolvency Resolution Process against Mr. Manoj Kumar Agarwal ('Personal Guarantor') of Adhunik Meghalaya Steels Private Limited ('Corporate Debtor').
2. The submissions made by the Financial Creditor in the Company Petition are as follows:
   2.1. Adhunik Meghalaya Steels Private Limited (CIN: U27101ML2000PTC006356) is a private company incorporated under the provision of Companies Act 1956 and having it registered office at Plot No. 19, 23E, P.I.P. Zone, Byrnihat, Meghalaya - 793101, India.
   2.2. The Corporate Debtor had approached IL&FS Financial Services Limited for the term loan facility, whereby the Financial Creditor had agreed to extend a Term Loan Facility of upto Rs. 30,00,00,000 (Rupees Thirty Crore only) ('Term Loan Facility') towards Working Capital Requirements/General Corporate Purposes to Corporate Debtor, *vide* Loan Agreement dated 27.02.2015.
   2.3. Accordingly out of the total sanctioned amount of Rs. 30,00,00,000/- (Rupees Thirty Crore) an amount of Rs. 24,58,84,395/- (Rupees Twenty-Four Crore Fifty Eight Lakh Eighty Four Thousand Three Hundred and Ninety Five only) was approved for disbursement and ultimately, an amount of 24,44,44,456 (Rupees Twenty Four Crore Forty Four Lakh Forty Four Thousand Four Hundred and Fifty Six only) was disbursed (*after adjusting upfront gross interest payable on the facility until 31.03.2015*) by the Financial Creditor to the Corporate Debtor on 17.03.2015 on the terms and conditions more fully provided in the Loan Agreement along with various other documents executed between the parties ('Facility Documents'). A copy of the offer letter along with the copy of the loan agreement dated 27.02.2015 are annexed as *'Annexure D'* and a copy of the pledge agreement dated 27.02.2015 entered into between the Financial Creditor and Corporate Debtor and other related entities is annexed as *'Annexure E'*.

2.4. As per the terms and conditions of the Facility Documents, the Corporate Debtor was required to repay the loan in 8 equal quarterly installments commencing from the end of 27th month from the date of disbursement.

2.5. The Corporate Debtor failed to repay the quarterly installments as per the terms of the Facility Documents and committed multiple defaults, leading up to a failure to pay the said instalments consecutively.

2.6. In view of the said default in paying overdue, the account of the Corporate Debtor was declared as Non-Performing Asset by the Financial Creditor on 01.03.2018 as per the norms and guidelines formulated by the Reserve Bank India.

2.7. The date of default of 01.03.2018 is also duly recorded with the Information Utility as is reflected in the report annexed with the present application provided by the Information Utility being, National E-Governance Services Limited. Also, as per the judicial pronouncements, the date of default provided on the portal of National E-Governance Services Limited shall be conclusive evidence in proving the date of default. Copy of Record on NeSL for CD is annexed as *'Annexure J'*.

2.8. However, the Corporate Debtor once again defaulted in its payments and the Financial Creditor was constrained to issue the Event of Default Notice dated 10.07.2018 and 7 (seven) days were provided to the Corporate Debtor to cure the default as per the terms and conditions of the Facility Documents. A copy of the Event of Default Notice dated 10.07.2018 is annexed as *'Annexure F'*.

2.9. The Corporate Debtor once again defaulted in its payments and the Financial Creditor was constrained to recall the entire facility *vide* Recall Facility Notice dated 10.08.2018 and called upon the Corporate Debtor to repay the entire facility amount together with applicable interests and penalty within 48 (forty eight) hours from the delivery of this notice. The Corporate Debtor failed to even respond to the said recall notice dated 10.08.2018 issued by the Financial Creditor. Copy of Recall Facility Notice dated 10.08.2018 is annexed as *'Annexure L'*.

2.10. The Corporate Debtor has continued to acknowledge its indebtedness to the Financial Creditor in its Financial Statements, thereby extending the period of limitation for filing the instant application within the meaning of Section 18 of the Limitation Act, 1963, as elaborated herein below.

2.11. It is also pertinent to mention that the Term Loan Facility was extended in February, 2015 and the Corporate Debtor has acknowledged the liability and its

default towards the loan obligations due and payable to the Financial Creditors, in all its year-to-year audited Financial Statements since 2015, till the latest Balance Sheet for Financial Year 2019-2020 as per the filed financials by the Corporate Debtor with the Registrar of Companies, Ministry of Corporate Affairs.

2.12. The latest Balance Sheet for the Financial Year 2019-2020 filed with the Registrar of Companies, Ministry of Corporate Affairs was approved by the Board of Directors of the Corporate Debtor on 12.08.2020 and the date of signing of such financial statement by the Directors of the Corporate Debtor is 12.08.2020. The Annual General Meeting of the Corporate Debtor was held on 31.12.2020.

2.13. However, the latest Balance Sheet for the Financial Year 2019-2020 of the Corporate Debtor was filed/made available to the public only on 14.02.2021, which is evident from the details available on the portal of Ministry of Corporate Affairs. Therefore, the instant application has been filed well within the period of limitation, as extended vide the Corporate Debtor's written acknowledgment through the aforementioned financial statements. A copy of each of the challans downloaded as the filing evidence of the filed Balance Sheets by the Corporate Debtor is annexed as *'Annexure G'*.

2.14. It is also pertinent to mention that vide order dated 10.01.2022 passed by the Hon'ble Supreme Court in Suo moto Writ Petition (C) No 3 of 2020 (*read with earlier orders dated 23.03.2020, 08.03.2021 and 23.04.2021*) the period between 15.03.2020 to 28.02.2022 has been excluded from the computation of limitation period and therefore, viewed from such conspectus, this application is in any case being filed within the limitation period prescribed under the Limitation Act, 1963 read with the aforementioned order of the Hon'ble Supreme Court.

2.15. A charge has been created in favour of the Financial Creditor for an amount of Rs. 30,00,00,000 (Rupees Thirty Crore) and certificate of registration has been issued by the Registrar of Companies, Chhattisgarh for the charges created on 27.02.2015 having Charge ID 10563799. The copies of certificate of registration of charge issued by the Registrar of Companies alongwith the forms filed with the Registrar of Companies, for the charges registered on the MCA portal are annexed as *'Annexure H'* and copy of the personal guarantee provided by Mr. Manoj Agarwal is annexed as *'Annexure I'*.

2.16. The total amount which is in default by the CD including the principal amount, accrued and penal interest is to the tune of Rs 55,45,97,395 as on 15.11.2023 and from the above-mentioned facts on record.

2.17. Subsequently, the Financial Creditors issued a Demand Notice dated 20.03.2024 as per the postal receipts, to the Personal Guarantor as per Form B Rule 7(1) of the Insolvency and Bankruptcy (Application of Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019. Copy of Demand Notice in annexed as *'Annexure O'*.

2.18. In light of the aforesaid defaults, the Financial Creditor for initiating a corporate insolvency resolution process against the Corporate Debtor and filed the application under section 7 of the Insolvency and Bankruptcy Code, 2016, within the prescribed limitation as detailed in the application being. C.P (IB) 02/GB/2024 before the Hon'ble Tribunal.

2.19. There is a personal guarantee from the Respondent herein which has been invoked and in light of the aforesaid defaults, the Financial Creditor is desirous of initiating insolvency resolution process against the Personal Guarantor under Section 95 of the Insolvency and Bankruptcy Code, 2016 in respect of the financial debt owed by Corporate Debtor.

3. This Tribunal *vide* order dated 08.11.2024, appointed Mr. Sanjay Poddar, having Registration No. IBBI/IPA-001/IPP01802/2019-2020/12759, Email ID- sanjay@spoddar.in, Contact No- +91-9830047033 is appointed as Resolution Professional in this matter to file report under section 99 of the Code.

4. Accordingly, the Resolution Professional filed its report under section 99 of the Code on 23.12.2024 *vide* IA(I.B.C)/6/GHY/2025. The submissions made by the Resolution Professional in the said report are as follows:

4.1 The Resolution Professional Submitted that he had enquired U/s 99(2) by Letter through Speed Post dated 15.11.2024, which was delivered to Manoj Kumar Agarwal on 16.11.2024 and a subsequent reminder letter dated 06.12.2024 which was delivered on 07.12.2024 to ascertain the debts claimed by the Financial Creditor whether have been repaid? to which the personal guarantor replied *vide* letter dated 10.12.2024 claiming that there is no amount payable by the personal guarantor to the corporate debtor and that the claim is barred by limitation under Limitation Act, 1963 a copy of the letters hereinabove mentioned is annexed as

'Annexure B3' and *'Annexure B4'* respectively. The reply of Mr. Manoj Kumar Agarwal dated 10.12.2024 is annexed as *'Annexure - B5'*.

Recommendation:

4.2 I say that there is a debt outstanding on part of the personal guarantor in the present petition filed by the financial creditor i.e., IL&FS Financial Services Limited to Initiate Insolvency Resolution Process. However, an objection with regards to the same has been filed by the personal guarantor stating that Application for initiation of CIRP proceedings against the corporate debtor was also filed *vide* C.P.(IB) NO. 02/GB/2024 which was dismissed *vide* order dated 16.05.2024 on the ground of limitation. The same grounds are taken by the guarantor in the present petition.

4.3 The same being a mixed question of law and facts the Adjudicating Authority is to adjudicate upon such issue.

Reasoning for such recommendation

- I have examined the application CP (IB) No.12/GB/2024 and the same is found to be satisfying all the ingredients of Sec.95 of IBC
- I have not received any evidence of repayment of the debt claimed in Sec. 95 petition from Manoj Kumar Agarwal
- The personal guarantee was extended by the debtor *vide* agreement dated 27.02.2015 which was invoked on 01.03.2018 by the financial creditor.

5. Contrary to that the Personal Guarantor filed reply affidavit to the Report of Resolution Professional *vide* Reply dated 20.03.2025:

5.1. The Personal Guarantor submitted that the main company petition filed by the Financial Creditor/IL&FS Financial Services Ltd. being C.P(IB) No.12/GB/2024 under section 95 of the Code is misconceived and filed in abuse of process of law and is not maintainable in law and facts.

5.2. The company petition filed by the Financial Creditor under section 95 of the Code is barred by limitation. On this ground alone, the section 95 petition filed by the Financial Creditor should be dismissed without going into the purported merits of the matter.

5.3. The company petition is filed under section 95 of the code is *ex facie* barred by the laws of limitation that appear from the following relevant dates, which are set out hereunder:

Dates	Events
27.02.2015	Loan Agreement
17.03.2015	An amount of Rs. 24,44,44,456/- was disposed by FC to CD.
01.03.2018	Date of Default
10.07.2018	Default Notice issued by FC
10.08.2018	Recall facility Notice issued by FC
15.03.2020 till 28.02.2022	Supreme Court clarified by its final order passed in the suo-moto writ petition during COVID dated January 10, 2022 reported in 2022 (3) SCC 117 whereby limitation which would have expired during this period was excluded and further all persons were given a further period of limitation of 90 days from March 1, 2022 which will appear from paragraph 5.3 of the SC order. However, Supreme Court did not grant any further extension. for condonation of limitation after the expiry of 90 from March 1, 2022. The case of FC in our matter is falling under paragraph 5.3 of Supreme Court order of March 11, 2020 because the three years period from the date of default commencing from March 1, 2018 falls within this period i.e. on or about February 28, 2021.
30.05.2022	The limitation period would end as per SC order of January 10, 2022 taking into account paragraph 5.3 of the order and after taking into consideration the maximum period of 90 days from March 1, 2022.
15.01.2024	Section 7 IBC filed by the Financial Creditor being C.P (IB) No.02/GB/2024 was filed before this Hon'ble Tribunal.
16.05.2024	Order passed by this Hon'ble Adjudicating. Authority dismissing the section 7 IBC petition filed by the Financial Creditor [pg-32 of Report of RP

5.4. In view of the aforesaid, when the section 7 IBC petition filed by the Financial Creditor has been rejected and dismissed by this Hon'ble Adjudicating Authority which was on the self-same claim and on the same contract that for the self-same financial transaction and for the self-same loan agreement the present. section 95

petition filed by the Financial Creditor being C.P (IB) No.12/GB/2024 is also liable to dismissed and rejected on the same ground that the section 95 petition is also barred by laws of limitation.

5.5. The date of default which was mentioned by the Financial Creditor while filing the section 7 petition, before this Hon'ble Tribunal was 01.03.2018. The section 7 petition which was filed by the Financial Creditor on 15.01.2024 has already been held to be barred by laws of limitation. The date of default in the section 95 petition is also the same i.e., 01.03.2018 which will appear from page-17 of CP and also from the NeSL certificate at page-132 of the CP, volume-1.

5.6. The present section 95 petition has been filed by the Financial Creditor on 07.05.2024 and therefore, the same is also barred by limitation and is also liable to be dismissed as the subject matter of the loan agreement and the subject matter of the transaction under which the respondent has been described as 'Personal Guarantor' is the same.

5.7. Therefore, the Report which has been filed by the Resolution Professional, who was appointed by the in terms of the order dated 08.11.2024 passed in C.P (IB) No.12/GB/2024 is incorrect and misconceived and contrary to law as well as contrary to the subsisting order dated 16.05.2024 passed by this Hon'ble Adjudicating Authority while dismissing the section 7 petition filed by the Financial Creditor/IL& FS Financial Services Ltd.

5.8. The financial creditor has suppressed the order dated 16.05.2024 passed by this Hon'ble Adjudicating Authority dismissing the section 7 IBC petition filed by the financial creditor. The conduct of the financial creditor who is playing fast and loose also calls upon this Hon'ble Adjudicating authority to dismiss the section 95 IBC petition. The order dated 16.05.2024 was not disclosed in the section 95 petition and this Hon'ble Adjudicating Authority was misled into passing the order dated 08.11.2024 appointing the resolution professional in the section 95 matter.

5.9. The purported Report of the Resolution Professional reflects a manifest error of law and gross non-application of mind. The findings recorded at page 30 of the Section 99 Application are incorrect and contrary to law.

5.10. The sole basis of the Resolution Professional recommending initiation of CIRP proceeding against the respondent is on the ground that the limitation is a mixed

question of law and facts and that the Adjudicating Authority is required to adjudicate upon such issue in the present section 99 petition filed by the Financial Creditor being C.P (IB) No.12/GB/2024. However, in teeth of the order dated 16.05.2024 passed by this Hon'ble Adjudicating Authority while rejecting the section 7 IBC petition filed by the Financial Creditor that for the self-same transaction, the question of any further adjudication by this Hon'ble Adjudicating Authority of the self-same transaction is not required and therefore, it cannot be said at this stage that the issue of limitation can at all be a mixed question of law and fact, particularly in view of the finding which has been arrived by this Hon'ble Adjudicating Authority in its order dated 16.05.2024 while rejecting the section 7 IBC petition filed by the Financial Creditor.

5.11. The Financial Creditor has filed an appeal before the Hon'ble National Company Law Appellate Tribunal to challenge the order dated 16.05.2024 and the said appeal is pending. The order impugned dated 16.05.2024 has not been stayed by the Hon'ble NCLAT in the pending appeal.

5.12. Furthermore, the Personal Guarantor submitted that he do not admit the purported reasoning given by the Resolution Professional recommending initiation of CIRP proceeding against the respondent/Personal Guarantor as alleged. It is denied and disputed that the Resolution Professional had examined the application filed by the Financial Creditor under section 95 of IBC being C.P(IB) No.12/GB/2024 as alleged or at all. It is denied and disputed that section 95 petition filed by the Financial Creditor being C.P (IB) No.12/GB/2024 is found to be satisfied and meets all the ingredients of section 95 of the IBC as alleged or at all.

5.13. It is further submitted that after taking into consideration that the Financial Creditor had invoked the guarantee on 01.03.2018; still the section 95 petition which has been filed almost after eight years is not maintainable and is liable to be dismissed and rejected. All the issues which have been raised in the section 95 petition have already been considered, decided and rejected by this Hon'ble Adjudicating Authority while dismissing the section 7 IBC petition filed by the same Financial Creditor earlier being CP (IB) No.02/GB/2024 under section 7 of the IBC Code.

5.14. Therefore, it appears from the report of the Resolution Professional that the Resolution Professional has filed the said report without even considering the order passed by the Hon'ble Adjudicating Authority dated 16.05.2024 while dismissing the section 7 IBC petition filed by the same Financial Creditor for the same transaction and therefore, on this ground alone the report filed by the Resolution Professional should be set aside and/or quashed and the section 95 petition filed by the Financial Creditor should be rejected.

5.15. Further, in view of the Resolution Professional having shown total lack of diligence and application of mind by not even considering the order dated 16.05.2024 while submitting his report under section 99 that it calls for initiation of disciplinary proceeding against the Resolution Professional by the Insolvency and Bankruptcy Board of India.

5.16. In view of the order dated 16.05.2024, the Resolution Professional could not have come to a purported finding that the section 95 petition filed by the Financial Creditor satisfies all the ingredients of the IBC Code. It is denied and disputed that the respondent can be described as Personal Guarantor of the Corporate Debtor, namely, Adhunik Meghalaya Steels Pvt. Ltd. It is denied and disputed that there is any default on the part of the respondent as alleged or at all. It is denied and disputed that CRIP can be initiated against the respondent as alleged or at all.

5.17. Hence, in the light of the aforementioned reasons the section 95 petition filed by the Financial Creditor being CP(IB)No.12/GB/2024 is also liable to and should be rejected with costs.

6. Additional submission on behalf of Personal Guarantor *vide* Supplementary Affidavit dated 24.02.2026:

6.1 The Personal Guarantor filed this Affidavit in terms of directions passed by this Tribunal on 05.02.2026 in IA(IBC)/90/GB/2025.

6.2 The Resolution professional in his report has arrived at a purported finding that there is an alleged debt outstanding on the part of the personal guarantor/ respondent. However, the core issue which is found absent in the report of the resolution professional, is the circumstances and reasons which led to the default been shown qua the corporate debtor of the purported debt outstanding towards the financial creditor.

6.3 The Resolution Professional has failed to consider that by reason of the breach on the part of the financial creditor to recover the amount which, according to the Financial Creditor was disbursed in 2015 by invoking the pledged securities that the financial creditor is making unjust gains by allowing the interest to mount. This is done to foist a superficial claim upon the borrower and then armed with such inflated claim, the financial creditor is now trying to arm twist the respondent as the personal guarantor.

6.4 From the Chart enclosed, the FC had first adjusted the interest component, by encashing the pledge share and only in year 2017, the FC adjusted principal amount of Rs. 3.07 Cr.

6.5 In the present case it has been found that the Financial Creditor has purposely allowed the principal claim to be shown in default and in the meanwhile resorted to monthly part invocation of pledged securities only to seek adjustment from the interest component which was allowed to accumulate with the ultimate object of enabling the principal component to remain shown as outstanding in the books of the financial creditor.

6.6 The financial creditor ensured that no part of the principal component from the amount disbursed should be reduced and simultaneously proceeded to encash the pledged securities partly every month commencing from October, 2016 onwards. This was done with the object to seek adjustment of the purported enhanced claim only from the interest component leaving the principal unadjusted.

6.7 Therefore, the report of the Resolution Professional which is unidirectional has not taken into consideration the conduct of the Financial Creditor before proceeding to come into the purported finding that there is no evidence of repayment of the debt which was allowed to remain unadjusted so that the Financial Creditor can reap unjust enrichment at the cost and expense of the Corporate Debtor. The respondent herein who is one of the promoters of the Corporate Debtor has been repeatedly harassed by the Financial Creditor by showing an alleged debt. If there was no debt allowed to remain in the books of the Corporate Debtor by reason of timely invocation of the pledged securities by the Financial Creditor in the first place, there would not have been any occasion for the Financial Creditor to proceed against the respondent who has been described as the personal guarantor of the Corporate Debtor. The report of the

Resolution Professional is therefore erroneous and does not consider the situation whereby the respondent is shown to be a defaulter and saddled to face the ignominy of the section 95 proceeding.

6.8 The Financial Creditor rely upon the communications which were issued every month by the financial creditor commencing from 20.10.2016 onwards to invoke part of the pledged securities only for the purpose of adjusting the interest component without taking any endeavour first to seek adjustment from the principal component so that the principal claim can be reduced/adjusted. The copies of the said notices which were issued by the financial creditor annexed as '*Annexure SA-3'.*

6.9 Furthermore, the CD is yet to be admitted into CIRP that no proceeding can lie against the respondent as the alleged personal guarantor under section 95 of the IBC Code, 2016. Hence, the section 95 petition is liable to be dismissed. The amount alleged to be in default is the same against the corporate debtor and the personal guarantor. Even, the impugned loan agreement is also the same. The financial creditor is deliberately proceeding simultaneously against both the alleged borrower and the alleged guarantor

7. Additional submission on behalf of Financial Creditor *vide* Rejoinder dated 03.05.2026:

7.1. The Financial Creditor submitted that the Supplementary Affidavit has not been filed for a genuine reason and as such the said Supplementary Affidavit is frivolous, motivated, vexatious and filed with malafide intent in order to only derail the insolvency proceedings.

7.2. The Financial Creditor submitted that the Hon'ble Supreme Court *vide* order Judgment dated 30.07.2025 had set aside both the orders passed by the Hon'ble Tribunal dated 16.05.2024 and Hon'ble Appellate Tribunal dated 25.03.2025. The Hon'ble Apex court directed the following:

"46 We have no manner of doubt that sub-para 1 of para 5 of the order of this Court dated 10.01.2022 would apply and the entire period from 15.03.2020 to 28.02.2022 would stand excluded, which would mean that the limitation would, reckoning the acknowledgment of 12.08.2020, commence on 01.03.2022 and continue till 28.02.2025. Since the application has been filed on 15.01.2024 the same is within time. Limitation, in view of the acknowledgment as found above, having commenced only on 12.08.2020, the question of

limitation expiring between 15.03.2022 and 28.02.2022 cannot arise. Hence, Para 5(III) of the order of this Court dated 10.01.2022, has no application to the facts of this case.

47. In view of the observations made hereinabove, the judgments of the NCLAT dated 25.03.2025 and NCLT dated 16.05.2024 are set aside. The appeal is allowed. The matter is remitted to the adjudicating authority to proceed with and decide in accordance with law, treating the application under Section 7 of the IBC, filed by the appellant, as one filed within limitation. No order as to costs."

7.3. It is further submitted that Hon'ble Supreme Court has comprehensively adjudicated upon the limitation issue for the Corporate Debtor and related matters in its detailed judgment and has remanded the matter to this Hon'ble Tribunal specifically for determination of admission under Section 7 of the Code. Any.

7.4. It is further submitted that the facts as alleged in Paras 5 and 6 of the Supplementary Affidavit are the facts prior to the section 7 application and section 95 application and therefore, the Personal Guarantors was never estopped from filing a detailed affidavit. Arguendo, the Personal Guarantors had already filed a detailed reply earlier as there has been no subsequent development on the facts of the case and there cannot be any new development in the matter which requires consideration. The contents of the Reply Affidavit can be referred from the records maintained by this Hon'ble Tribunal.

7.5. It is further submitted that the Hon'ble Supreme Court, in its order dated 30.07.2025, has duly considered and taken cognizance of the contents of the Reply Affidavit filed by the Corporate Debtor. Consequently, the Corporate Debtor has been given full opportunity to present its case and contentions before the highest judicial forum and now cannot take the opportunity to establish a new case.

7.6. Furthermore, it is submitted that alleged recoveries involving the pledgers/ guarantors of the CD have been done by the FC in terms of the contractual documents. Appropriation towards the interest overdue amount has been done in terms of the Loan agreement dated 27.02.2015. Any amount appropriated towards the recoveries made by the Financial Creditor have been duly accounted for in the amount claimed to be under 'default' under the section 95 application.

7.7. Also, the PG has not even made out a case that the amount under default is below the threshold of Rs. 1 Crore after the recoveries made by the FC. Hence, once the conditions are met, the section 7 petition ought to be admitted.

7.8. It is settled law that a creditor can pursue proceedings against multiple debtors, simultaneously. Further the Financial Creditor has already adjusted and appropriated the recovered amounts accordingly and the amount reflected as 'default' in the Section 95 application - after accounting for such recoveries - substantially exceeds the threshold prescribed for admission under Section 95 of the Code and therefore, the application ought to be admitted.

7.9. It is further submitted that the admission of an application under Section 95 of the Code is only dependent upon the fulfilment of two essential conditions: (i) the existence of a financial default exceeding the threshold amount prescribed under the Code; and (ii) the said default falling within the applicable period of limitation. In the instant case, both conditions stand satisfied.

7.10. Furthermore, it is submitted that the Applicant is well entitled to recover the entire amount which has fallen due and payable from the Corporate Debtor and/or guarantors/pledgors etc. whatsoever, with or without exercising any remedies/rights against the

7.11. Therefore, any details mentioned in the Supplementary Affidavit as regards alleged recovery thereof against the Pledgors/Guarantors are irrelevant for deciding fate of the instant proceedings against the Corporate Debtor before this Hon'ble Tribunal under the Code. It is submitted that the focus of the instant proceedings should be solely on the "Corporate Debtor" whether the obligations under the Loan Agreement and other facility documents have been met or not. Any alleged recoveries involving the pledgors/guarantors should not impact law that the liability of the guarantors/pledgers is co-extensive with that of the principal borrower as expressly provided under Section 128 of the Indian Contract Act, 1872.

7.12. Furthermore, Mr. Manoj Kumar Agarwal, the Personal Guarantor for the Term Loan extended by the Financial Creditor to the Corporate Debtor which was secured *vide* the Deed of Guarantee dated 27.02.2015. As per the terms of the Deed of Guarantee, the Personal Guarantor was obligated to the payment of Rs. 30,00,00,000 (Rupees Thirty Crore Only) within 42 hours of demand by the Financial Creditor.

7.13. The aforesaid Deed of Guarantee was irrevocable and unconditional and could not be cancelled till all the Borrower's dues have been finally paid in full. In this

regard, a notice of default dated 10.07.2018, was sent by the Financial Creditor to the Corporate Debtor and other Guarantors/Pledgors demanding repayment of the outstanding dues payable by the Corporate Debtor/ Personal Guarantor. However, despite the said notice, no dues have been cleared till date by the Personal Guarantor.

7.14. According to pledge agreement dated 27.02.2015, the Financial Creditor was entitled '*to sell or otherwise dispose of, in any manner all or any of the pledge securities*', The Corporate Debtor cannot contend that the pledge should have been invoked in a certain manner. The Financial creditor invoked the shares only for the purposes of satisfying the dues towards the repayment of the dues.

7.15. It is further submitted, irrespective how the that a continuing guarantee, as per Section 129 of the Indian Contract Act, 1872, extends to a series of transactions and remains in force until expressly revoked or the payments are made in full. The liability of the guarantor under a continuing guarantee persists until the debt is fully discharged or the guarantee is revoked. In the present case, the deed of guarantee signed by the guarantor is explicitly a continuing guarantee. This means that the guarantor remains liable for the obligations of the Borrower until the entire debt is paid off or till the guarantee is revoked.

7.16. It is submitted that the Applicant is well entitled to recover the entire amount which has fallen due and payable from the Corporate Debtor and/or guarantors/pledgors etc whatsoever, with or without exercising any remedies/rights against the Borrower or the other Pledgors/Guarantors as per the provisions of the law.

7.17. In view of the aforesaid, the section 95 application ought to be allowed, none of the orders as prayed for in the Reply ought to be passed as the same are untenable in law.

8. We have heard the submissions made by the Ld. Counsels and perused the documents on record. The present petition has been filed by the Financial Creditor under Section 95 of the Code seeking initiation of Insolvency Resolution Process against Mr. Manoj Kumar Agarwal, Personal Guarantor to the Corporate Debtor, Adhunik Meghalaya Steels Private Limited.

9. The Financial Creditor has placed on record a series of documents which includes Loan Agreement dated 27.02.2015, Pledge Agreement dated 27.02.2015, Event of

Default Notice dated 10.07.2018, Recall Facility Notice dated 10.08.2018, Guarantee Deed dated 27.02.2015, the challan downloaded as the filing evidence of the latest filed Balance Sheet for the Financial Year 2019-2020 by the Corporate Debtor, certificate of registration of charge issued by the Registrar of Companies, record of default submitted to NeSL, Copy of Form B dated 20.03.2024 was issued to the Personal Guarantor under Rule 7(1) of the Insolvency and Bankruptcy Rules, 2019.

Findings & Analysis:

10. The account of the Corporate Debtor was classified as Non-Performing Asset (NPA) on 01.03.2018 and the present Application was filed on 08.05.2024. Therefore, first and foremost question before this Tribunal is whether the present application is barred by limitation?

11. We find that the issue of limitation no longer survives for determination before this Tribunal. This Tribunal had earlier dismissed the Company Petition filed under section 7 of the Code, bearing CP(IB)/2/GB/2024 (*IL&FS Financial Services Limited vs Adhunik Meghalaya Steels Private Limited*) on the ground of limitation *vide* order dated 16.05.2024, which came to be affirmed by the Hon'ble National Company Law Appellate Tribunal (NCLAT) *vide* order dated 25.03.2025. However, the Hon'ble Supreme Court, by its judgment dated 30.07.2025, directed the following

> *"46 We have no manner of doubt that sub-para 1 of para 5 of the order of this Court dated 10.01.2022 would apply and the entire period from 15.03.2020 to 28.02.2022 would stand excluded, which would mean that the limitation would, reckoning the acknowledgment of 12.08.2020, commence on 01.03.2022 and continue till 28.02.2025. Since the application has been filed on 15.01.2024 the same is within time. Limitation, in view of the acknowledgment as found above, having commenced only on 12.08.2020, the question of limitation expiring between 15.03.2022 and 28.02.2022 cannot arise. Hence, Para 5(III) of the order of this Court dated 10.01.2022, has no application to the facts of this case.*
>
> *47. In view of the observations made hereinabove, the judgments of the NCLAT dated 25.03.2025 and NCLT dated 16.05.2024 are set aside. The appeal is allowed. The matter is remitted to the adjudicating authority to proceed with and decide in accordance with law, treating the application under Section 7 of the IBC, filed by the appellant, as one filed within limitation. No order as to costs."*

12. Hence, the Hon'ble Supreme Court has set aside the order dated 16.05.2024 passed by this Tribunal and order dated 25.03.2025 passed by the Hon'ble NCLAT and categorically held that the application under the Section 7 of the Code is not barred by limitation and is within the prescribed period of limitation. The matter was accordingly remitted to this Tribunal for consideration of the Application on merits. Accordingly, this Tribunal *vide* order dated 21.07.2026 admitted the Petition filed under the Section 7 of the Code and CIRP of Adhunik Meghalaya Steels Private Limited was initiated.
13. In view of the aforesaid observations and the findings of the Hon'ble Supreme Court, and since the present Petition under Section 95 of the Code arises out of the same transaction, this Tribunal is satisfied that the present Petition is filed within the prescribed period of limitation and is not barred by limitation.
14. Now, the principal issue which arises for consideration is whether the present application satisfies the requirements of Sections 95 and 100 of the Code and whether the Insolvency Resolution Process against the Personal Guarantor is liable to be initiated?
15. From the material available on record, it is not in dispute that the Corporate Debtor availed the Term Loan Facility from the Financial Creditor pursuant to the Loan Agreement dated 27.02.2015. Against the sanctioned facility of Rs.30 Crore, an amount of Rs.24,44,44,456/- was ultimately disbursed to the Corporate Debtor. The Corporate Debtor was required to repay the facility in accordance with the agreed repayment schedule, but failed to discharge its repayment obligations and consequently committed default. The said liability of the Corporate Debtor was secured by a Deed of Personal Guarantee dated 27.02.2015 executed by the Respondent/Personal Guarantor. The relevant excerpts of the Deed of Personal Guarantee dated 27.02.2015 is reproduced below:

> *'The Guarantor hereby agrees and undertakes to make, without delay, demur or protest and on first demand and without recourse to the Borrower, within 24 hours of demand by You, your successors, assigns, trustees, or nominees, payment of the principal amount not exceeding Rs 300,000,000/- (Rupees Three Hundred Million Only), alongwith interest and other monies payable by the Borrower as per the said Agreement and/or as per the relevant Bills of Exchange or Promissory Notes towards the outstanding principal amount and interest and other monies and such other costs, charges and expenses which may incurred or suffered or become due and payable at any point in time (hereinafter referred to as "the Borrower's*

Dues"), even if the Borrower in any way refuses, defaults, denies disputes or fails to pay/reimburse the due amounts to the Guarantor or to You or otherwise;'

16. Upon default on the part of Corporate Debtor to pay the outstanding, the account of the Corporate Debtor was declared NPA on 01.03.2018 and the Financial Creditor thereafter issued event of default notice dated 10.07.2018 and thereafter Recall Facility Notice dated 10.08.2018 to recall the outstanding dues. The outstanding amount claimed by the Financial Creditor as on 15.11.2023 is Rs.55,45,97,395/-. These facts are supported by the Facility Documents, notices and other documents placed on record.
17. Thereafter, a section 7 petition bearing CP (IB) No. 2 of 2024 was filed by IL&FS Financial Services Limited against Adhunik Meghalaya Steels Private Limited ('corporate debtor'). The said petition was admitted *vide* order dated 21.07.2026 and Corporate Insolvency Resolution Process was initiated against Adhunik Meghalaya Steels Private Limited ('Corporate Debtor').
18. Due to non-payment of the amount by the Corporate Debtor, the Financial Creditor has filed this application for initiation of Insolvency Resolution Process against the Guarantor under Section 95 of the Code.
19. The Financial Creditor had issued Event of Default Notice dated 10.07.2018 to the Corporate Debtor to cure the default as per the terms and conditions of the Facility Documents. The relevant excerpts of Event of Default Notice dated 10.07.2018 is reproduced below:

    '4. In light of the above, IFIN is entitled to exercise its rights under the Transaction Documents including recall of the entire Facility and enforce any or all of the said Securities, including the right to invoke the Letter of Guarantee, and Pledge-Agreement, in whole or in part'.
20. Pursuant to that, the Financial Creditor sent a Recall Facility Notice dated 10.08.2018 whereby the Financial Creditor had invoked the personal guarantee and called upon the Personal Guarantor to make payment of the entire outstanding amounts under the loan facility. The relevant excerpts of Recall Facility Notice dated 10.08.2018 is reproduced below:

    '4. Vide the Event of Default Notice, IFIN provided the Borrower a cure period in terms of the Facility Agreement, to cure the Events of Default, and gave notice that the Borrower's failure to cure such Events of Default would entitle IFIN to invoke any or all of its rights under the Facility Agreement and the security documents'.

Hence, this Tribunal is satisfied that the guarantee was validly invoked by the Financial Creditor, which constitutes a cardinal requirement for initiating proceedings under Section 95 of the Code.

21. Further, a statutory Demand Notice in Form B dated 20.03.2024 was issued to the Personal Guarantor under Rule 7(1) of the Insolvency and Bankruptcy Rules, 2019, calling upon him to discharge the outstanding liability. The Demand Notice was delivered on 23.03.2024. The Personal Guarantor has admittedly failed to make payment pursuant thereto. The Financial Creditor has thus established the existence of a financial debt and default, as contemplated under the Code.

22. On presentation of the application by the Applicant/Financial Creditor, this Tribunal *vide* order dated 08.11.2024 appointed Mr. Sanjay Poddar, having Registration No. IBBI/IPA-001/IPP01802/2019-2020/12759 as the Resolution Professional. This Tribunal also directed the RP to file his report recommending with reasons in writing for acceptance or rejection of this application within stipulated time as envisaged under the provision of Section 99 of the IBC, 2016. The Resolution Professional has filed the report on 23.12.2024 *vide* IA(I.B.C)/6/GHY/2025 recommending the admission of the application filed under Section 95 of IBC, 2016. The grounds for admission of the application as per the Report are as follows:

    - I have examined the application CP (IB) No.12/GB/2024 and the same is found to be satisfying all the ingredients of Sec.95 of IBC
    - I have not received any evidence of repayment of the debt claimed in Sec. 95 petition from Manoj Kumar Agarwal
    - The personal guarantee was extended by the debtor vide agreement dated 27.02.2015 which was invoked on 01.03.2018 by the financial creditor.

    This Tribunal *vide* order dated 01.05.2025 recorded that *'3. The report is taken on record, subject to just exceptions' and 4. Accordingly, this application is allowed and disposed off'.*

23. The Hon'ble Supreme Court in the judgement of ***Dilip B. Jiwrajka V/s Union of India & Ors. in WP(civil)No. 1281 of 2021*** dated 09.11.2023 upheld the Constitutional Validity of the Sections 94 to 100 and the Conclusion of the Judgments are as follows:

    i. No judicial adjudication is involved at the stages envisaged in Sections 95 to Section 99 of the IBC;

    ii. The resolution professional appointed under Section 97 serves a facilitative role of collating all the facts relevant to the examination of the application for the commencement of the insolvency

resolution process which has been preferred under Section 94 or Section 95. The report to be submitted to the adjudicatory authority is recommendatory in nature on whether to accept or reject the application;

iii. *The submission that a hearing should be conducted by the adjudicatory authority for the purpose of determining 'jurisdictional facts' at the stage when it appoints a resolution professional under Section 97(5) of the IBC is rejected. No such adjudicatory function is contemplated at that stage. To read in such a requirement at that stage would be to rewrite the statute which is impermissible in the exercise of judicial review;*

iv. *The resolution professional may exercise the powers vested under Section 99(4) of the IBC for the purpose of examining the application for insolvency resolution and to seek information on matters relevant to the application in order to facilitate the submission of the report recommending the acceptance or rejection of the application;*

v. *There is no violation of natural justice under Section 95 to Section 100 of the IBC as the debtor is not deprived of an opportunity to participate in the process of the examination of the application by the resolution professional;*

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

vii. *The adjudicatory authority must observe the principles of natural justice when it exercises jurisdiction under Section 100 to determine whether to accept or reject the application;*

viii. *The purpose of the interim moratorium under Section 96 is to protect the debtor from further legal proceedings; and*

ix. *The provisions of Section 95 to Section 100 of the IBC are not unconstitutional as they do not violate Article 14 and Article 21 of the Constitution.*

24. Upon considering the submission made by the learned counsel for both the parties and perused the documents on record and also gone through the report of the Resolution Professional filed on 23.12.2024 *vide* IA(I.B.C)/6/GHY/2025. It is noted under section 128 of Indian Contract Act, 1872 that when a default is committed, the Principal Borrower and Surety are jointly and severally liable to Creditor and Creditor has the right to recover its dues from either of them or from both of them simultaneously. For benevolent reference, the said section of Indian Contract Act, 1872 is reproduced below

"The liability of the surety is co- extensive with that of the principal debtor, unless it is otherwise provided by the contract."

25. The Resolution Professional, after examination of the material placed before him, has also found the debt, validity of the guarantees and default to be established and has recommended **admission** of the Application under Section 100 of the Code.
26. In view of the aforesaid facts and circumstances, we are satisfied that the Financial Creditor has established the existence of a debt guaranteed by the Personal Guarantor, occurrence of default and failure of the Personal Guarantor to discharge the guaranteed liability despite issuance of the requisite demand notice. Thus, there is valid invocation of the Guarantee.
27. Accordingly, we hold that **CP (IB)/12/GB/2024 satisfied the requirements prescribed under Section 95 of the Code.**
28. Accordingly, upon examination of the record under Section 100 of the Code, this Tribunal is satisfied that the application under Section 95 is complete, a financial debt exists, default has occurred, and the objections raised do not dislodge the foundational requirements for admission. The Application is, therefore, liable to be admitted under Section 100 of the Code.

ORDER

29. In view of the foregoing, the present Petition being **CP (IB)/12/GB/2024** filed under Section 95 of the Code is hereby admitted on the following terms:
    i. The Insolvency Resolution Process against the Respondent/Personal Guarantor is hereby initiated. In terms of Section 101 of the Code, a moratorium in relation to all debts shall commence from the date of this order and shall cease to have effect at the end of 180 days or on the date this Tribunal passes an order under Section 114 approving or rejecting the repayment plan, whichever is earlier. During the moratorium period:
        a. Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed,
        b. The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt;
        c. The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein; and

d. The provisions of Section 101 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

ii. In terms of Section 97(5) of the Code, Mr. Sanjay Poddar, having registration no. IBBI/IPA-001/IPP01802/2019-2020/12759, e-mail: sanjay@spoddar.in, and having his address at Todi Chamber, 2 Lal Bazar Street, 2nd Floor, Room 201-203, Kolkata, West Bengal, 700001, who was appointed *vide* order dated 08.11.2024, shall continue to act as the Resolution Professional (RP) for the Personal Guarantor.

iii. The Resolution Professional shall discharge the duties in accordance with Sections 99 to 105 of the Code and the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.

iv. The Resolution Professional is directed to issue a public notice on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Guwahati Bench, inviting claims from all Creditors, within 21 days of such issue. The notice under Section 102(2) shall include: -

a. details of the order admitting the application;
b. particulars of the resolution professional with whom the claims are to be registered; and
c. the last date for submission of claims.

v. The notice shall be published in two newspapers, one in English and other in Vernacular, which is in wide circulation in the State where the Corporate Debtor and Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.

vi. The Resolution Professional, in exercise of the powers conferred under Section 104, shall prepare a list of creditors on the basis of:

a. the information disclosed in the application filed by the debtor under Sections 94 or 95, as the case may be, and
b. claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice.

vii. The debtor shall prepare a repayment plan under Section 105, in consultation with the Resolution Professional, containing a proposal to the Creditors for restructuring of his debts or affairs.

viii. The repayment plan may authorize or require the Resolution Professional to:
   a. carry on the debtor's business or trade on his behalf or in his name: or
   b. realise the assets of the debtor; or
   c. administer or dispose of any funds of the debtor.

ix. The repayment plan shall include the following, namely:
   a. justification for preparation of such repayment plan and reasons based on which the creditors may agree upon the plan;
   b. provision for payment of fee to the Resolution Professional;
   c. such other matters as may be specified

x. The Resolution Professional shall submit the repayment plan along with his report on the plan to this Adjudicating Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106.

xi. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons thereof. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, she shall specify the details as provided under Section 106(3) of the Code. The date of meeting should not be less than 14 days or more than 28 days from the date of submission of the Report under sub- section (1) of Section 106 of the Code, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of the Code.

xii. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 and 111 of the Code. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of the Code, and submit the same to this Tribunal, copies of which shall be provided to the Corporate Debtor and the Financial Creditor. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of the Code.

xiii. The Personal Guarantor is directed to extend full cooperation to the Resolution Professional and furnish all documents and information as may be required for the effective discharge of his duties.

xiv. The Resolution Professional shall submit the periodic reports before this Tribunal, every 30 days.

xv. The Financial Creditor is directed to deposit Rs. 1,00,000/- (Rupees One Lakh Only) to the bank account of the Resolution Professional within one week, towards the fees of the Resolution Professional. This shall be subjected to the rules and regulations under the provisions of the Code.

30. In terms of the above, **CP (IB)/12/GB/2024** filed under Section 95 of the Code is **admitted** and the Insolvency Resolution Process stands initiated against the Personal Guarantor.
31. The Financial Creditor and its Counsel are hereby directed to serve the copy of this Order along with copy of the Application and documents on the Resolution Professional by all modes for information and compliance.
32. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
33. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Sd/-
Yogendra Kumar Singh
Member (Technical)

Sd/-
Rammurti Kushawaha
Member (Judicial)

Signed this on 9th day of September, 2026.

Aditya Prakash (L.R.A)