NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.202

C.P.(IB)/40(MP)2021

Order under Section 95 IBC

IN THE MATTER OF:

State Bank of India **.....Applicant**
V/s
Mahesh Rajpal **.....Respondent**

Coram:

Hon'ble Shri Brajendra Mani Tripathi, Member (J)
Hon'ble Shri Man Mohan Gupta Member (T)

PRONOUNCEMENT OF ORDER
Delivered on 11/09/2026

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

MAN MOHAN GUPTA
MEMBER (TECHNICAL)

Sd/-

BRAJENDRA MANI TRIPATHI
MEMBER (JUDICIAL)

Tomar

NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.203

IA (IBC) 399/2025
in
C.P.(IB)/40(MP)2021

Order under Section 60(5)

IN THE MATTER OF:

Mahesh Rajpal Vs State Bank of India **.....Applicant**

Coram:

Hon'ble Shri Brajendra Mani Tripathi, Member (J)
Hon'ble Shri Man Mohan Gupta Member (T)

PRONOUNCEMENT OF ORDER
Delivered on 11/09/2026

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

MAN MOHAN GUPTA
MEMBER (TECHNICAL)

Sd/-

BRAJENDRA MANI TRIPATHI
MEMBER (JUDICIAL)

Tomar

THE NATIONAL COMPANY LAW TRIBUNAL

INDORE BENCH

C.P.(IB)/40(MP) OF 2021 & IA(IBC) 399/2025

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

IN THE MATTER OF:

State Bank of India,
Stressed Assets Management Branch,
1st Floor, SBI Building, Plot No. 1,
Arera Hills, Bhopal (M.P.) – 462011 **……. Applicant**

Versus

Shri Mahesh Rajpal,
R/o 8, Triveni Colony,
Indore (M.P.) – 452001 **……. Respondent**

CORAM:

Shri. Brajendra Mani Tripathi, HON'BLE MEMBER (J)
Shri. Man Mohan Gupta, HON'BLE MEMBER (T)

Order Pronounced on: 11/09/2026

APPEARANCE:

For the Applicant : Ld. Adv. Mr. Nipun Singhvi

For the Respondent : Ld. Adv. Ms. Soumya Dharwa

: Mr. Manoj Munshi, Sr. Adv

For the RP : Mr. Sajjan Kumar Dokania

JUDGEMENT

1. The present application has been filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "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 by the Applicant, State Bank of India, for the purpose of initiating insolvency resolution process against Shri Mahesh Rajpal (hereinafter referred to as "Respondent/Personal Guarantor"), Personal Guarantor of M/s. Rajpal Abhikaran Private Limited (hereinafter referred to as "Corporate Debtor") having Corporate Identification Number (CIN): U34300MP1999PTC013302, for default of an amount of Rs. 18,40,66,284.85/- (Rupees Eighteen Crores Forty Lakhs Sixty-Six Thousand Two Hundred Eighty-Four and Paise Eighty-Five Only), the total debt including interest and penalties being stated in the Application as Rs. 23,70,25,755.39/-.

2. It is submitted that a legal notice dated 31.05.2019 recalling the entire credit facilities was issued to the Guarantor, followed by a notice dated 01.07.2019 under Section 13(2) of the SARFAESI Act, 2002, demanding a sum of Rs. 19,21,29,224.85/- plus further interest at the contracted rate and thus 60 days

time was given to pay and the date on which the debt became due as per Section 13(2) of the SARFAESI Act, 2002 is 01.07.2019 and therefore the date of default is considered as 30.08.2019.

Submissions by the Applicant/Financial Creditor:

3. The averments made by the Financial Creditor in its Application are summarized hereunder.

4. It is submitted that the Applicant is a Nationalized Public Sector Bank, a body corporate constituted under the State Bank of India Act, 1955, having its Head Office at 14th Floor, State Bank Bhavan, Madame Cama Marg, Mumbai, Maharashtra – 400021, and Branch office, amongst other places, at the Stressed Assets Management Branch, 1st Floor, SBI Building, Plot No.1, Arera Hills, Bhopal (M.P.) – 462011. It is submitted that the present Application has been filed by the Financial Creditor through its Authorized Officer, Shri Kamlesh Verma, the Letter of Authority in whose favour is annexed as **Annexure-A**.

5. It is submitted that on 24.03.2016, the Personal Guarantor executed a Deed of Guarantee whereby he guaranteed that in the event of default by the Corporate Debtor, M/s. Rajpal Abhikaran Private Limited, in payment of the principal sum of Rs. 20 Crores together with interest, costs, charges, expenses and other monies due under the credit facilities, the Guarantor would forthwith on demand pay the said sum to the Applicant. The said Deed of Guarantee dated 24.03.2016 is annexed as **Annexure-B**.

6. It is submitted that the Corporate Debtor was availing a drop line overdraft facility of Rs. 20 Crores from the Applicant, in respect of which the following

documents were executed: (i) Letter of Arrangement dated 21.03.2016; (ii) Deed of Guarantee dated 24.03.2016; and (iii) Letter of Confirmation for creation of mortgage by deposit of title deeds dated 24.03.2016, collectively annexed as **Annexure-C (Colly.)**.

7. It is submitted that upon default of payment, a legal notice dated 31.05.2019 recalling the entire credit facilities and other charges due was issued to the Guarantor, annexed as **Annexure-D**.

8. It is submitted that the Applicant was constrained to issue a notice dated 01.07.2019 under Section 13(2) of the SARFAESI Act, 2002, to the Guarantor demanding a sum of Rs.19,21,29,224.85/- plus further interest at the contracted rate until payment, annexed as **Annexure-E**.

9. The Applicant recalled the loan and invoked the guarantee, despite the same, neither the principal borrower nor the Personal Guarantor paid the outstanding dues.

10. It is submitted that the Applicant thereafter issued a demand notice dated 06.07.2021 in Form-B to the Guarantor by speed post, annexed as **Annexure-F**.

11. It is submitted that a reply dated 19.07.2021 and 21.07.2021 was received from the Guarantor denying the debt raised by the Applicant in Form-B, annexed as **Annexure-G**. It is clarified that this reply, as reflected in the Application, was addressed to the Form-B demand notice and is distinct from any formal Reply that may be filed by the Respondent in the present proceedings.

12. It is submitted that the Corporate Debtor enjoyed and utilized the said credit facilities but did not adhere to the terms and conditions of the sanction, and despite repeated requests did not clear the dues within the stipulated time, the account became irregular, although transactions continued to be entered into and acknowledged from time to time. The balance confirmation letters are annexed as **Annexure-H**.

13. It is submitted that the Applicant maintained the accounts of the Corporate Debtor in accordance with banking norms, and the Statement of Account of the Corporate Debtor along with the Certificate under the Bankers' Books Evidence Act evidencing the debt is annexed as **Annexure-I**.

14. It is submitted that an application under Section 9 of the Code was earlier filed against the Corporate Debtor before this Hon'ble Tribunal, Indore Bench, being (MP) CP(IB) No. 06 of 2020 (also referred to in the Application as (MP) CP(IB) No.06/9/NCLT/AHM/2020 titled Chandraudai Automobile Pvt. Ltd. v. Rajpal Abhikaran Pvt. Ltd., which was admitted vide order dated 26.03.2021, and that the Corporate Insolvency Resolution Process of the Corporate Debtor is stated to be ongoing and the matter pending before this Hon'ble Tribunal. The said order is annexed as **Annexure-J**.

15. It is submitted that the Applicant referred the matter to CIBIL after the account became NPA, and the CIBIL report of the Guarantor is annexed as **Annexure-K**.

16. It is submitted that Mr. Sajjan Kumar Dokania, Insolvency Professional, Registration No. IBBI/IPA-003/IP-N000150/2017-2018/11729, has been proposed by the Applicant, and has furnished his consent, disclosures and

certification of eligibility as required under the applicable Regulations of the Insolvency and Bankruptcy Board of India, disclosing his prior assignments as Resolution Professional in the CIRP of M/s. Patwa Automotive Pvt. Ltd. (CIN: U01711MP1997PTC011615) and M/s. Divya Jyoti Industries Ltd. (CIN: L15143MP1992PLC007090), and affirming that no disciplinary proceedings are pending against him. The consent letter, IBBI registration certificate and authorization are annexed as **Annexure-L**.

17. It is submitted that the present Application has been filed to initiate insolvency resolution process against the Personal Guarantor in respect of the aforesaid defaults.

Submissions in Resolution Professional's Report:

18. This Tribunal, vide order dated 07.01.2022, appointed Mr. Sajjan Kumar Dokania, Insolvency Professional, Registration No. IBBI/IPA-003/IP-N000150/2017-2018/11729, as Resolution Professional under sub-section (5) of Section 97 of the Code. The Resolution Professional, in compliance with the said directions, filed his report (Report No. PG MR/CP(IB)/40(MP)/2021/01) dated 20.01.2022 in respect of the application filed under Section 95 of the Code. The submissions made in the report are summarized as under:

i. The Resolution Professional stated that he examined the application, details and documents relating to the petition filed for initiating insolvency proceedings against Mr. Mahesh Rajpal and found the same to be in order to satisfy the requirements of Section 95 of the Code.

ii. It is submitted that the total debt (including interest and penalties) has been stated at Rs. 23,70,25,755.39/- as on 30.06.2021, comprising a principal amount of Rs. 18,40,66,284.85/- and interest of Rs. 5,29,59,470.54/- up to 30.06.2021, with further interest and other expenditure accruing from 01.07.2021. The nature of the debt has been recorded as an Overdraft Dropline Facility extended to the Corporate Debtor, secured by the personal guarantee of Mr. Mahesh Rajpal.

iii. It is further submitted that the Resolution Professional issued notices dated 10.01.2022 to the Personal Guarantor and to the Financial Creditor calling for their responses, a reply was received from the Financial Creditor vide letter dated 12.01.2022, and a reply on behalf of the Personal Guarantor was received from the office of Advocate dated 16.01.2022 (received on 17.01.2022), along with a Vakalatnama, further queries raised by the Resolution Professional were responded to on 17.01.2022.

iv. It is submitted that the Personal Guarantor, in his said reply, contended that he had withdrawn his guarantee, though without producing any letter of withdrawal addressed to the Bank, and further contended that he had resigned as a director of the Corporate Debtor on 16.03.2016 and that the loan documents were pre-signed.

v. The Resolution Professional, upon examination of the record, observed that the Letter of Arrangement dated 21.03.2016 was issued after sanction of the loan and bore the signature and photograph of the Personal Guarantor affixed after his stated date of resignation, that the Board Resolution of the Corporate Debtor dated 23.03.2016 named the Personal Guarantor as a guarantor for the loan, and that the guarantee was in the nature of a third-

party personal guarantee unconnected with his directorship. Reliance was placed on Condition No. 11 of the Guarantee Agreement dated 24.03.2016, providing that the liability of the guarantors is not discharged by any change in the legal status of the borrower or the guarantors, and on Condition No. 13 thereof read with Section 128 of the Indian Contract Act, 1872, providing that an acknowledgement of liability by the borrower binds the guarantor.

vi. The Resolution Professional recorded that no evidence of repayment of the debt claimed in the Section 95 petition, and no order of any court or forum cancelling or setting aside the Guarantee Agreement dated 24.03.2016, was placed before him.

vii. The Resolution Professional, upon examination of the application and the documents annexed thereto, has recommended that the application filed by the Financial Creditor, State Bank of India, under Section 95 of the Code for initiation of insolvency resolution process against the Personal Guarantor, Mr. Mahesh Rajpal, **be admitted**.

Reply by Respondent dated 26.10.2021 (to the Petition):

20. It is submitted by the Respondent that he is not liable as guarantor since the loan agreement and Deed of Guarantee dated 24.03.2016 were pre-signed documents handed over prior to his resignation as director of the Corporate Debtor with effect from 17.03.2016, duly evidenced by Form DIR-12 filed with the Registrar of Companies, annexed as Annexure R/1. It is contended that the sanction and disbursal of the loan occurred after such resignation, that the pre-signed documents thereby lost their purpose and legal significance and

cannot be used against the Respondent, and that the Application is accordingly not maintainable against him.

21. It is further submitted that the Respondent was never signatory to the EM declaration, the DP note delivery letter, the balance confirmation letters dated 20.04.2016, 20.04.2017, 31.03.2018 and 16.03.2019, or the revival letter (SME-11) dated 18.03.2019, and that the Corporate Debtor had, at the Respondent's instance, communicated the fact of his resignation and the withdrawal of his guarantee to the Applicant vide letter dated 03.05.2016, which the Applicant is stated to have acknowledged on 05.05.2016 by affixing its seal and signature, annexed as Annexure R/2. On this basis it is contended that the Application is barred by limitation, and reliance is placed on *Rajendra Narottamdas Sheth v. Chandra Prakash Jain*, (2021) SC 524 (Civil Appeal No. 4222 of 2020, decided 30.09.2021), for the proposition that the onus of establishing limitation lies on the Financial Creditor.

22. It is further contended that the loan agreement was subsequently revived between the Applicant and the Corporate Debtor vide a revival letter dated 18.03.2019, to which the Respondent was not a signatory and which the Applicant has not annexed to the Application, it is submitted that this amounts to a novation of the underlying contract to which the Respondent was not a party, such that no liability can be fastened on him. The said revival letter is annexed as Annexure R/3.

23. It is submitted that the mortgaged assets of the Corporate Debtor are valued by the Applicant's own approved valuer at approximately Rs. 40 Crores, and that a possession notice dated 18.10.2019 fixed an auction reserve price of Rs. 19,15,00,000/-, said to be sufficient to cover the default of Rs.

18,40,66,284.85/- as on 30.08.2019, it is contended that the Applicant cannot recover further amounts from the personal guarantors once secured assets sufficient to cover the debt are in its possession, and that describing the debt as "unsecured" at Part III of the Application is inconsistent with the Applicant's own annexures.

24. It is further submitted that proceedings on an identical cause of action are pending before the Debts Recovery Tribunal, Jabalpur, being O.A. No. 348 of 2020, in which the Respondent has filed a Written Statement dated 18.08.2021 (Annexure R/4) and a Counter Claim No. 01 of 2021 (Annexure R/5); it is contended that, on the principle of judicial comity, the same dispute ought not to be adjudicated afresh before this Tribunal during the pendency of the DRT proceedings.

25. It is submitted that the reply to the demand notice annexed by the Applicant at Annexure-G of the Application, filed through Adv. Mr. Shripad Kapil, was neither signed by the Respondent nor filed under his instructions, and that the correct reply was served through Advocate Ms. Deepika Rathi dated 21.07.2021, a copy of which (with postal receipt) is annexed as Annexure R/6.

26. It is further submitted that the CIBIL report of the Respondent annexed at Annexure-K of the Application records a credit score of 787/900 and does not disclose any default of the debt in question, and it is contended that the same cannot be relied upon as a record of default under Section 99(3) of the Code.

27. Lastly, it is submitted that the Letter of Authority in favour of Mr. Kamlesh Verma (Annexure-A of the Application) authorizes the filing of proceedings against personal guarantors of "Rajpal Abhikaran" rather than "Rajpal

Abhikaran Pvt. Ltd.", and that no Board Resolution of the Applicant Bank authorizing the filing of the Application has been annexed, reliance is placed on the decision of the Hon'ble NCLAT in *M Sai Eswara Swamy v. Siti Vision Digital Media Pvt. Ltd.*, Company Appeal (AT) (Ins) No. 706 of 2021, to contend that the Application is not maintainable for want of proper authorization.

28. The Respondent has accordingly prayed that the Application be dismissed with exemplary costs.

Reply/Objection by Respondent dated 14.02.2024 (to the Resolution Professional's Report under Section 99):

29. It is submitted that the Respondent has denied all averments and allegations made in the Resolution Professional's Report unless specifically admitted, and has objected to the quantification of the total debt at Rs. 23,70,25,755.39/- as arbitrary and unexplained, contending that the amount of default as on 30.08.2019 was quantified by the Applicant itself at Rs. 18,40,66,284/- and that no justification has been furnished for the additional interest and penalty of approximately Rs. 5 Crores said to have accrued over two years; it is submitted that the Applicant ought to produce the statement as per the Banker's Books to substantiate the said amount.

30. The Respondent has reiterated the grounds already taken in his Reply dated 26.10.2021 namely, his resignation as director with effect from 17.03.2016 (Annexure R/1), the Applicant's acknowledgment of withdrawal of his guarantee vide letter dated 03.05.2016/05.05.2016 (Annexure R/2), and the alleged novation of the loan vide revival letter dated 18.03.2019 to which he

was not a signatory (Annexure R/3) and has contended that the Resolution Professional failed to consider the questions of limitation and maintainability while preparing the Report.

31. It is further submitted, as a subsequent development, that the Resolution Plan of the Corporate Debtor submitted by Agrawal City Private Limited was approved by the Committee of Creditors during the CIRP of the Corporate Debtor, under which a repayment of Rs. 19,11,00,000/- was sanctioned to the Applicant against its stated default of Rs. 18,40,66,284/-, and that this amount is stated to have been received by the Applicant on 28.09.2022 pursuant to approval of the Resolution Plan by this Tribunal. It is contended that the Resolution Professional was aware of the Resolution Plan through a representation dated 17.01.2022 but omitted to mention it in the Report, and that the relevant extracts of the repayment schedule and the minutes of the 17th meeting of the Committee of Creditors dated 11.12.2021 are annexed as Annexure R/7 (Colly).

32. It is further contended, in the alternative, that any residual claim of the Applicant, after receipt of the amount under the Resolution Plan, ought to be recovered from personal guarantors connected with the management of the Corporate Debtor rather than from the Respondent, and that the Resolution Professional's recommendation to recover the entire claimed amount of Rs. 23,70,35,755.39/- from the Respondent, without accounting for the amount already recovered, and while simultaneously recommending personal insolvency proceedings for the same amount against three other personal guarantors of the same Corporate Debtor, amounts to seeking recovery of several times the amount in default.

33. The Respondent has accordingly prayed that the recommendations of the Resolution Professional be rejected, that the subsequent development of the approval of the Resolution Plan and receipt of Rs. 19.11 Crores by the Applicant be taken on record, and for such other relief as this Tribunal may deem fit.

Rejoinder by Applicant dated 05.01.2022 (to the Reply dated 26.10.2021):

34. It is submitted that the Applicant filed an Affidavit in Rejoinder dated 05.01.2022 (in I.A. No. 309 of 2021 in the present Company Petition) to the Respondent's Reply dated 26.10.2021, denying the correctness of the said Reply in toto save what is specifically admitted therein, and contending that the Reply suffers from the vices of *suppressio veri* and *suggestio falsi*.

35. On the question of the Respondent's status as guarantor, it is submitted that the contract of guarantee is an independent contract entered into by the Respondent in his individual capacity, and that his resignation as director of the Corporate Debtor does not amount to revocation of the guarantee. Reliance is placed on *Lalit Kumar Jain v. Union of India & Ors.*, for the proposition that approval of a resolution plan does not *ipso facto* discharge a personal guarantor of a corporate debtor from liability under the contract of guarantee, and that discharge of the principal borrower by operation of law does not absolve the surety. It is further submitted that the Letter of Arrangement dated 21.03.2016 (annexed as Annexure-A to the Rejoinder) records the Respondent as having signed as a third-party guarantor, such that his liability towards the credit facilities availed by the Corporate Debtor subsists notwithstanding his resignation, and reliance is placed on Section 128 of the Indian Contract Act, 1872 (co-extensive liability of surety), it being submitted that discharge under

Section 134 thereof does not extend to a discharge secured by the principal debtor through operation of law or insolvency/liquidation proceedings.

36. On the question of limitation, it is submitted that the letter dated 03.05.2016 was acknowledged by the Applicant on 05.05.2016 only as to receipt, and that such acknowledgment cannot be construed as acceptance of withdrawal of the guarantee, that revocation of a guarantee requires the guarantor himself to approach the Applicant directly, which the Respondent did not do, the request having instead been made by the Corporate Debtor on his behalf and that, in any event, the default having occurred on 30.08.2019, the Application is well within limitation under Section 238A of the Code, reliance being placed on *B.K. Educational Services Private Limited v. Parag Gupta and Associates*, Civil Appeal No. 23988 of 2017, for the proposition that the right to sue accrues upon default.

"The right to sue", therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application.

In view of the above judgment the default occurred on 30.08.2019 and therefore the application is well within the limitation as per Section 238A to initiate personal insolvency against the guarantors.

37. On the revival letter dated 18.03.2019, it is submitted that the same is not concealed, having been referred to at page 66 of the Application (along with the SARFAESI notice) and at page 73 of the Application (along with the

Form-B demand notice) and that the balance confirmation letters, duly acknowledged by the principal borrower, bind the guarantors as well under Condition No. 13 of the Deed of Guarantee dated 24.03.2016 read with Sections 18 and 19 of the Limitation Act, 1963, such that non-signature of the revival letter by the Respondent does not affect his co-extensive liability.

38. On the sufficiency of the mortgaged security, it is submitted that the purpose of proceedings under Section 95 of the Code is to balance the interests of all stakeholders and maximize the value of assets, that the Corporate Debtor, M/s. Rajpal Abhikaran Private Limited, is undergoing CIRP in (MP) CP(IB) No. 6 of 2020 with a moratorium under Section 14 of the Code in effect, and that recovery from the mortgaged property does not curtail the Applicant's right to initiate personal insolvency proceedings against the personal guarantors.

39. On the pendency of proceedings before the Debts Recovery Tribunal, it is submitted that parallel proceedings under the SARFAESI Act, 2002 and the Code can be initiated simultaneously, and reliance is placed on ***Punjab National Bank v. M/s. Vindhya Cereals Pvt. Ltd.,*** **Company Appeal (AT) (Insolvency) No. 854 of 2019,** it was held that:

In the light of above pronouncement, we are of the considered view that the Financial Creditor can proceed simultaneously under SARFAESI Act, 2002 as well as under I&B Code. Section 238 of I&B Code provides that the provisions of this code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by the virtue of any such law. Thus, the non-obstante clause of the I&B Code will prevail over any other law for the time being in force.

Similarly Hon'ble NCLAT in ***Encore Asset Reconstruction Company Pvt. Ltd. v. Ms. Charu Sandeep Desai & Ors.,*** Company Appeal (AT) (Insolvency) No. 719 of 2018, has held that:

'SARFAESI Act, 2002' being an existing law, Section 238 of the 'I&B Code' will prevail over any of the provisions of the 'SARFAESI Act, 2002' if it is inconsistent with any of the provisions of the 'I&B Code'.

Therefor the proposition that Section 238 of the Code has an overriding, non-obstante effect over the SARFAESI Act, 2002, such that the Respondent cannot take shelter of the DRT proceedings.

40. It is further submitted that the letter of arrangement appearing at page 41 of the Respondent's Reply pertains to Rajpal Autolink Pvt. Ltd., stated to be a sister concern of the Corporate Debtor, and cannot be relied upon in the present Application and that both replies received to the demand notice (through Adv. Mr. Shripad Kapil and through the Respondent's own advocate) were duly responded to by the Applicant on 27.07.2021 and 29.07.2021, copies whereof are annexed as Annexure-B to the Rejoinder.

41. On the question of authorization, it is submitted that Mr. Kamlesh Verma is duly authorized under Regulation 76(1) of the State Bank of India General Regulations, 1955 (framed under Section 50 of the State Bank of India Act, 1955) to sign and file the present Application on behalf of the Applicant.

42. The Applicant has accordingly submitted that the Application is liable to be admitted and that the contentions raised by the Respondent are baseless and without authority of law.

I.A. No. 399 of 2025 (filed by the Respondent/Personal Guarantor challenging maintainability of the Application on the ground of limitation):

43. It is noticed that the Respondent/Personal Guarantor has filed I.A. No. 399 of 2025 in the present Company Petition, under Section 60(5) and Section 238A of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the National Company Law Tribunal Rules, 2016, supported by his affidavit dated 25.07.2025, praying that the question of maintainability of the Company Petition be heard and decided as a preliminary issue, on the ground that the Application is barred by limitation.

44. In the said Application, the Respondent has reiterated that he resigned from all positions, including the directorship of the Corporate Debtor, with effect from 17.03.2016, duly evidenced by Form DIR-12 along with his resignation letter, annexed as Annexure A/1 (Colly.) That the Letter of Arrangement dated 21.03.2016 and the Deed of Guarantee dated 24.03.2016 relied upon by the Bank were pre-signed documents handed over by him while he was a director of the Corporate Debtor, which, upon his resignation prior to the sanction and disbursement of the loan, are stated to have lost their purpose and legal significance and that he was never signatory to the alleged EM declaration, the alleged DP note delivery letter, the alleged balance confirmation letters dated 20.04.2016, 20.04.2017, 31.03.2018 and 16.03.2019, or the alleged revival letter (SME-11) dated 18.03.2019.

45. It is further reiterated that, upon the Respondent's request, the Corporate Debtor communicated the withdrawal of his guarantee to the Bank vide letter dated 03.05.2016, annexed as Annexure A/2, which is stated to have been acknowledged by the Bank on 05.05.2016 by affixing its seal and signature and that the Bank has since revived the loan agreement and the deeds of guarantee with the Corporate Debtor vide letter dated 18.03.2019, annexed as Annexure A/3, to which the

Respondent is not a signatory, which is contended to amount to a novation of the underlying loan agreement and Deed of Guarantee to which the Respondent was not a party, so as to absolve him of liability for any breach or default arising from such revived/novated agreement.

46. In support of the plea of limitation, reliance has been placed on **Rajendra Narottamdas Sheth v. Chandra Prakash Jain, (2021) SC 524 (Civil Appeal No. 4222 of 2020, decided 30.09.2021**), for the proposition that the onus of establishing that the claim of the creditor is within limitation lies upon the Financial Creditor, and on the decision of the Hon'ble NCLAT in **Mahmood Bava Bahrudeen Noorul Ameen v. State Bank of India & Anr., Company Appeal (AT) (Ins.) No. 1324 of 2024,** for the proposition that an application under Section 95 of the Code must be filed within the period of limitation, and that a recovery certificate issued in prior proceedings before the Debts Recovery Tribunal does not automatically extend such limitation unless it is explicitly relied upon and forms the basis of the application. It is accordingly prayed that the Company Petition be held to be barred by limitation and not maintainable against the Respondent, on the above stated facts and grounds.

Analysis & Observation:

47. The present application has been filed by State Bank of India under Section 95 of the Insolvency and Bankruptcy Code, 2016 ("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, against Shri Mahesh Rajpal, the Personal Guarantor of M/s. Rajpal Abhikaran Private Limited ("Corporate Debtor"). The Applicant has claimed a debt of ₹23,70,25,755.39 as on 30.06.2021, comprising principal of ₹18,40,66,284.85 and interest of ₹5,29,59,470.54, with further interest and charges.

48. The Corporate Debtor was sanctioned a drop-line overdraft facility of ₹20 Crores. The record placed before the Tribunal includes the Letter of Arrangement dated 21.03.2016, the Deed of Guarantee dated 24.03.2016, the relevant security documents, the demand notices, the statement of account and the certificate under the Bankers' Books Evidence Act. The Applicant thereafter recalled the facility and invoked the guarantee. The debt and default are thus supported by the contemporaneous banking documents and the statutory notices issued by the Applicant.

49. In terms of Section 95 of the Code, an application for initiation of insolvency resolution process against a personal guarantor may be filed by a creditor in respect of a default in payment of the guaranteed debt. Upon such application, the Resolution Professional is required to examine the application and submit a report recommending acceptance or rejection of the application in accordance with Section 99 of the Code.

50. The Resolution Professional, after examining the application and the documents annexed thereto, issued notices to the Applicant and the Respondent, considered the responses received, and recorded his findings in Report No. PG MR/CP(IB)/40(MP)/2021/01 dated 20.01.2022. The Resolution Professional found the application to be complete, the debt to be due and payable, and the guarantee to be subsisting. He further recorded that no evidence of repayment or any order cancelling or setting aside the Deed of Guarantee had been produced by the Respondent. The Resolution Professional accordingly recommended admission of the application.

51. The principal objection of the Respondent is that the Deed of Guarantee and the loan documents were pre-signed before his resignation from the office of director of

the Corporate Debtor with effect from 17.03.2016. The Respondent has also relied upon Form DIR-12 and asserted that, after his resignation, the documents ceased to have legal effect.

52. This contention is not acceptable. The liability in the present proceedings is not founded upon the Respondent's status as a director of the Corporate Debtor, but upon the separate contract of personal guarantee executed by him in his individual capacity. A personal guarantee is an independent contractual undertaking. Resignation from the office of director does not, by itself, revoke or extinguish a guarantee already furnished in favour of the creditor.

53. The documents relied upon by the Applicant, including the Letter of Arrangement and the Board Resolution dated 23.03.2016, record the Respondent as a guarantor. The guarantee agreement also contains provisions to the effect that the liability of the guarantor would not be discharged by any change in the constitution or legal status of the borrower or guarantor. The Respondent has not placed on record any written revocation of the guarantee addressed by him directly to the Applicant and accepted by the Applicant before the facility was acted upon.

54. The alleged letter dated 03.05.2016, stated to have been acknowledged by the Applicant on 05.05.2016, does not establish acceptance by the Applicant of any revocation of the guarantee. Mere acknowledgment of receipt of a communication cannot be treated as acceptance of its contents. In the absence of a specific and unequivocal acceptance of revocation, the Respondent cannot avoid his contractual obligations merely by relying upon his resignation as director.

55. The Respondent has further contended that he was not a signatory to the revival letter dated 18.03.2019 or certain balance confirmation letters. This objection also

does not, at this stage, defeat the application. The liability of the surety under Section 128 of the Indian Contract Act, 1872, is co-extensive with that of the principal debtor unless the contract provides otherwise. The guarantee documents placed on record further provide that acknowledgment of liability by the principal borrower would bind the guarantor. Whether any particular amount is ultimately payable, after giving credit for all recoveries and permissible adjustments, is a matter to be determined in the subsequent insolvency resolution process and does not negate the existence of the underlying guaranteed debt.

56. The plea of limitation is equally untenable. The Applicant has stated the date of default as 30.08.2019 and the guarantee was invoked through the notices issued thereafter. The application under Section 95 was filed on 12.08.2021. Even reckoning limitation from the date asserted by the Respondent, the application was filed within the applicable period prescribed under Section 238A of the Code read with Article 137 of the Limitation Act, 1963. The Respondent has not demonstrated that the application was filed beyond limitation.

57. The Interlocutory Application filed by the Respondent under Section 60(5) and 238A of the Code read with Rule 11 of the NCLT Rules, 2016, challenging maintainability of the Company Petition on the ground of limitation, is, in substance, a reiteration of the very objections already urged by the Respondent in his Reply dated 26.10.2021 and his Objection dated 14.02.2024, namely, his resignation as director with effect from 17.03.2016, the pre-signed nature of the loan documents and Deed of Guarantee, the letter dated 03.05.2016 said to have been acknowledged by the Bank, and the alleged novation of the loan agreement vide the revival letter dated 18.03.2019. For the reasons already recorded in paragraphs 51 to 55 above,

these contentions do not establish that the Respondent's guarantee stood revoked, nor do they demonstrate that the Application is barred by limitation.

58. The decision in Mahmood Bava Bahrudeen Noorul Ameen v. State Bank of India & Anr. (supra), relied upon in the said Application, does not assist the Respondent, since that decision turns on whether limitation stands extended on the strength of a recovery certificate obtained in proceedings before the Debts Recovery Tribunal. In the present case, the Applicant has not sought to extend limitation on the strength of any recovery certificate, but has computed limitation from the date of NPA classification and default, which, for the reasons recorded in paragraph 56 above, is well within the period prescribed under Section 238A of the Code read with Article 137 of the Limitation Act, 1963.

59. In these circumstances, I.A. No. 399 of 2025 does not disclose any ground warranting a preliminary determination of non-maintainability of the Company Petition, and the same is accordingly found to be devoid of merit and liable to be dismissed.

60. The Respondent has also contended that the mortgaged assets of the Corporate Debtor were valued at approximately ₹40 Crores and that the reserve price fixed in the possession notice was sufficient to cover the amount claimed. The availability or estimated value of security does not extinguish the debt or prevent the creditor from proceeding against a personal guarantor. The creditor's right against the guarantor is not lost merely because the principal debt is secured. Any amount actually recovered from the secured assets or pursuant to a resolution plan must, of course, be duly accounted for, and there can be no double recovery.

61. In this regard, the subsequent approval of the resolution plan of the Corporate Debtor and the alleged receipt of ₹19.11 Crores by the Applicant are relevant developments. However, approval of a resolution plan of the Corporate Debtor does not, by itself, discharge the personal guarantor from his liability under the contract of guarantee. At the same time, the amount received by the Applicant pursuant to the resolution plan must be given due credit while determining the subsisting liability. The present order is confined to the existence of a default and the maintainability of the Section 95 application; it does not adjudicate the final quantum recoverable from the Respondent.

62. The pendency of proceedings before the Debts Recovery Tribunal does not bar the present application. The remedies available to a financial creditor under the Code and other applicable laws are not mutually exclusive, subject to the restriction against duplication or double recovery. The proceedings under Section 95 concern initiation of the insolvency resolution process of the personal guarantor and are not an adjudication of the recovery claim in the same manner as proceedings before the DRT.

63. The objection regarding the CIBIL report is also of no assistance to the Respondent. A credit report is not the sole or decisive proof of default. In the present case, the default is supported by the sanction documents, the Deed of Guarantee, the statement of account, the NPA classification, the demand notices and the other documents forming part of the record.

64. As regards authorization, the Applicant has placed on record the Letter of Authority in favour of its authorized officer. The Applicant has also relied upon Regulation 76(1) of the State Bank of India General Regulations, 1955, framed under the State Bank of India Act, 1955. The Respondent has not shown any material

prejudice arising from the description of the Corporate Debtor in the authorization document, nor has he established that the application was filed by an unauthorized person. The objection is therefore rejected.

65. On an overall consideration of the pleadings, documents and the report of the Resolution Professional, this Tribunal is satisfied that:

a. there exists a debt within the meaning of the Code;

b. the debt was guaranteed by the Respondent under a Deed of Guarantee dated 24.03.2016;

c. a default has occurred in payment of the guaranteed debt;

d. the application has been filed within limitation and is complete in all material particulars;

e. the objections raised by the Respondent, including those raised in I.A. No.399 of 2025, do not disprove the existence or enforceability of the guarantee; and

f. the report of the Resolution Professional supports admission of the application.

66. In view of the foregoing discussion, the application filed by State Bank of India under Section 95 of the Insolvency and Bankruptcy Code, 2016, against Shri Mahesh Rajpal, Personal Guarantor of M/s. Rajpal Abhikaran Private Limited, is admitted.

ORDER

67. In view of the above, we pass the following order:

I. The moratorium begun on the date of admission of the application shall cease to have effect at the end of the period of 180 days from the date of this order. During the moratorium period, the following provisions shall be in effect:

II. Any pending legal action or proceeding in respect of any debt be deemed to have been stayed; and

III. The creditors of the Personal Guarantor shall not initiate any legal action or proceedings in respect of any debt; and

IV. The Personal Guarantor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;

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

VI. The Resolution Professional Mr. Sajjan Kumar Dokania, Insolvency Professional, Registration No. IBBI/IPA-003/IP-N000150/2017-2018/11729, hereby appointed as Resolution Professional for conducting the Insolvency Resolution Process of the Personal Guarantor.

VII. The Resolution Professional is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of uploading of this Order on the website of the NCLT, inviting claims from all Creditors, who shall register their claims as provided under Section 103 within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102 (2) of IBC, 2016. The publication of notice shall be made in newspapers, one in English and other in Vernacular which have wide circulation in the State where the Personal

Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry. One shall be placed by the Registry on our website and the other shall be affixed in the premises of this Authority.

VIII. The Resolution Professional shall prepare a list of creditors under Section 104 of the Code on the basis of:

a. information disclosed in the Application filed under Section 95, and

b. claims received under Section 102, within 30 days from the date of publication of notice.

IX. The Personal Guarantor shall prepare a Repayment Plan under Section 105, in consultation with the Resolution Professional, containing a proposal for restructuring of his debts.

X. 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. realize the assets of the debtor; or

c. administer or dispose of any funds of the debtor.

The Plan shall include:

a. justification for preparation of such plan;

b. payment of fee to the Resolution Professional;

c. any other matter as may be specified.

XI. The Resolution Professional shall submit the Repayment Plan to this Authority along with his report within 21 days from the last date of submission of claims, in terms of Section 106 of the Code.

XII. In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof. If the resolution professional is of the opinion that the meeting of the creditors should be summoned,

she shall specify the details as provided under Section 106(3). 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, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all relevant/feasible modes. Such notice must contain the details as provided under the provisions of Section 107.

XIII. The meeting of the creditors shall be conducted in accordance with sections 108, 109, 110 & 111. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 and submit the same to this Authority, copies of which shall be provided to the Personal Guarantor and the creditors. It is made clear that the resolution professional shall perform his function and duties in compliance with the code of Conduct provided undersection 208 of the Code.

XIV. The Applicant/financial creditor is directed to deposit Rs. 50,000/- (Rupees Fifty Thousand Only) to the bank account of Resolution Professional within one week, from the date of this order towards his fees. This shall be subjected to the Rules and Regulations under the provisions of IBC, 2016, including maintaining independence, confidentiality, and impartiality in all actions.

XV. The Resolution Professional is directed to strictly abide by the provisions of IBC 2016 and complete the process of insolvency in a time bound manner after constitution of the committee of creditors.

1. Accordingly, **CP(IB)/40/(MP)/2021** filed under section 95 of IBC, 2016 is **admitted** and the Insolvency Resolution process stands initiated against the Respondent/Personal Guarantor.
2. **I.A. No. 399 of 2025** filed by the Respondent/Personal Guarantor under Section 60(5) and 238A of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the

National Company Law Tribunal Rules, 2016, challenging the maintainability of the Company Petition on the ground of limitation, stands **dismissed.**

Sd/-

MAN MOHAN GUPTA

(MEMBER TECHNICAL)

Sd/-

BRAJENDRA MANI TRIPATHI

(MEMBER JUDICIAL)

Anushka Rawat-L.R.A.