IN THE NATIONAL COMPANY LAW TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

I.A. No. 1960 OF 2022

IN

RCP (IB)-10(PB)/2024

Old CP No. (IB)- 213(PB)/2022

(Under Section 100 of the Insolvency and Bankruptcy Code, 2016)

IN THE MATTER OF:

MUTHOOT FINCORP LIMITED ...FINANCIAL CREDITORS

VERSUS

BHAWNA LATHER

...PERSONAL GUARANTOR

AND IN THE MATTER OF:

SAJJAN KUMAR DOKANIA

...APPLICANT/RESOLUTION PROFESSIONAL

Order Pronounced On: 15.10.2026

CORAM:

JUSTICE ANUPINDER SINGH GREWAL
HON'BLE PRESIDENT

SHRI RAVINDRA CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Rudra Deosthali, Mr. Gautam Swarup, Ms. Sakshi Pandey, Advs.

For the RP : Mr. Sajjan Kumar Dokania, RP

ORDER

1. The main petition is filed under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 (**IBC/Code**) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 (**"Personal Guarantor Rules 2019"**) by **Muthoot Fincorp Limited ("Petitioner"**/ "**Financial Creditor"**) seeking to initiate the Personal Insolvency Resolution Process ("**PIRP**") against Ms. Bhawna Lather (**"Respondent" / "Personal Guarantor**"/ "**PG**"), personal guarantor of M/s Prabhu Shanti Real Estate Private Limited ("**Corporate Debtor"/"CD"/ "Principal Borrower"**).

2. This Adjudicating Authority, vide order dated 05.04.2022, appointed Mr. Aishwarya Mohan Gahrana, bearing Registration No. IBBI/IPA-002/IP-N00135/2017-18/10351 ("**Resolution Professional" /"RP**"), to submit a report under Section 99 of the Code.

3. The Resolution Professional submitted a report under Section 99 of the Code through IA-1960/2022, which also forms a part of the subject matter under consideration in the present adjudication.

Brief facts of the case:

As submitted by the parties in the pleadings and submissions made before this Adjudicating Authority, the following are the relevant facts of the case: -

4. The Petitioner/Financial Creditor entered into a Loan Agreement with the Corporate Debtor for a short-term loan of Rs. 25,00,00,000/- (Rupees Twenty Five Crores) on 11th June, 2016 ("**Loan Agreement**"). The Loan Agreement was secured by Mr. Joginder Singh Lather, Mr. Bijender Singh, Ms. Bhawna Lather (the Respondent herein), Mr. Sajjan

Singh Beniwal, and Mr. Ram Niwas Lather. In pursuance thereof, the Personal Guarantors executed a Deed of Guarantee dated 11.06.2016 in favour of the Creditor. In terms of the said Deed of Guarantee, the Personal Guarantor undertook to repay the loan amount together with the interest and penal/additional interest in the event of delayed payment of the loan by the CD. The Personal Guarantor also granted the creditor a lien by way of hypothecation over all movable and immovable assets belonging to the Guarantor or under her control, until any amounts/monies remain unpaid.

5. Despite repeated requests, the Corporate Debtor failed to repay the financial assistance and its loan account was classified as a Non-Performing Asset on 31.12.2017. The Corporate Debtor had made payments only up to Rs. 2,82,38,038/-, and the remaining amount was outstanding.

6. Subsequently, a company petition filed by AU Small Finance Bank Limited under Section 7 of the Code for initiation of CIRP against the Corporate Debtor was admitted by this Adjudicating Authority vide order dated 13.06.2018 in CP (IB) No. 477 of 2017. The Resolution Plan in respect of the Corporate Debtor was approved by this Adjudicating Authority vide order dated 24.10.2024.

7. Thereafter the financial creditor herein/petitioner, issued a Demand Notice under Rule 7(1) of the Personal Guarantor Rules, 2019 dated 25.09.2020 in Form-B, demanding payment of Rs. 45,64,31,533/- (Rupees forty five crore sixty four lakhs thirty one thousand five hundred thirty three only) as on 24.09.2020. The notice was sent to the Respondent at her recorded address.

8. The Respondent failed to pay the demand within fourteen days of service of the Demand Notice. Consequently, the present application under Section 95(1) of the Code was filed seeking initiation of the PIRP against the Respondent/Personal Guarantor.

9. Vide order dated 05.04.2022, this Adjudicating Authority appointed Mr. Aishwarya Mohan Gahrana, bearing IBBI Registration Number IBBI/IPA-002/IP-N00135/2017-18/10351, as the Resolution Professional (**"RP"**) under Section 97 of the Code, and directed him to submit a report under Section 99 of the Code. The relevant portion of the order dated 05.04.2022 is extracted below:

> This application is listed today. Ld. Counsel for the Applicant is present and stated that, they have proposed Insolvency Resolution Professional Mr. Aishwarya Mohan Gahrana having registration No. IBBI/IPA-002/IP-N00135/2017-18/10351. However, Ld. Counsel for the applicant further states that, there is no disciplinary proceeding pending against the Resolution Professional.
>
> In view of the above, we confirm the appointment of Mr. Aishwarya Mohan Gahrana, as a Resolution Professional. He is directed to file a report in terms of Section 99 within 10 days. At request of Ld. Counsel for the petitioner, list on 04.05.2022.

10. In compliance with the order dated 05.04.2022 the Resolution Professional submitted a report under Section 99 of the Code vide IA-1960/2022 on 23.04.2022 on the DMS e-portal. The submissions of the Resolution Professional regarding the present application are as extracted below:

8. That the Resolution Professional has perused the application filed by the financial creditor and noting that no reply of the letter/email of the Resolution Professional by the Personal Guarantor and after applying the relevant provisions of law including the Insolvency and Bankruptcy Code, 2015 and Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rule, 2016 determines as under:

a That Prabhu Shanti Real Estate Private Limited is the corporate debtor as it has defaulted in making the payment of outstanding amount of ₹ 56,35,10,392/- (Rupees Fifty-Six Crores Thirty-Five Lakhs Ten Thousand Three Hundred Ninety-Two Only) as on 17.01.2022 to the financial creditor under the Loan Agreement dated 11.06.2016;

b That the abovementioned financial assistance has been duly secured by the Deed of Guarantee dated 11.06.2016 in by the Personal Guarantor in the event of default by the corporate debtor or if corporate debtor fails to comply the terms of the respective Loan Agreement, the Personal Guarantor shall make the payment

of the outstanding amount. Further, under Clause 7 of the Deed of Guarantee, the obligations of the Personal Guarantor are joint and several and independent of the corporate debtor.

c That loan was declared as the non-performing assets on 31.12.2017.

d That in relation to the debts of the CD, Corporate Insolvency Resolution Process ("CIRP") proceedings were initiated under Section 7 of the Code; wherein this Hon'ble Tribunal vide the Order dated 13.06.2018 allowed the Company Petition bearing No. IB 477 (PB)/2017 and imposed the moratorium in terms of Section 14 of the Code. The said proceedings are currently pending before this Hon'ble Tribunal.

e That the financial creditor invoked the personal guarantee and issued a demand notice to the Personal Guarantor on 25.09.2020.

f That after default by the Personal Guarantor to make payment of its obligations under the Deed of Guarantee, the financial creditor served a Demand Notice on 25.09.2020 under Section 95 (4) (b) of the Insolvency and Bankruptcy Code, 2016 read with rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 demanding payment of outstanding loan amount under the Loan Agreement within 14 days. However, the Personal Guarantor has failed to make the payment of the outstanding loan amount under the Loan Agreement.

9. That from the aforesaid, it is abundantly clear that there has been debt; the debt became due and payable when the corporate debtor failed to cure the impairment of security and/ or provide alternate security. Consequently, the financial creditor recalled the entire outstanding loan amount under the respective Loan Agreement. Further, the Personal Guarantor has failed to make payment of the whole of the outstanding loan amount under the Deed of Guarantee and thereby has defaulted in making the payment of the outstanding loan amount.

10. That the Resolution Professional submits that the present application is a fit case for initiation of insolvency resolution process against Personal Guarantor, i.e., Ms Bhawna Lather, under Section 100 of the Insolvency and Bankruptcy Code, 2016.

11. That the Resolution Professional further declares that the present Report under Section 99 of the Insolvency and Bankruptcy Code, 2016 is *bona fide* and in the interest of justice.

11. The Resolution Professional has opined that, in view of the foregoing facts and circumstances, and considering that the petition filed by the Creditor satisfies the requirements stipulated under Section 95 of the Code, and that the Personal Guarantor has failed to establish repayment of the debt in question, the petition filed by the Creditor u/s 95 of the code be admitted under the provisions of Section 100 of the Code.

12. On 27.04.2022 the following order was passed by the Adjudicating Authority:

ORDER

IA-1960/2022

Report under Section 99 of the IBC, 2016 by Resolution Professional has been filed.

Neither the Resolution Professional is present, nor has the petitioner appeared. It appears that the cause for which the Petition has been filed does not survive.

The CP(IB)-213(PB)/2022 stands **dismissed for non-prosecution.**

13. In light of the above, an application bearing no. RA-39/2022 was filed by the petitioner herein under Rule 48(2) r.w Rule 11 of the National Company Law Tribunal Rules, 2016, seeking restoration/revival of the CP(IB) No. 213 of 2022.

14. Further, in view of the proceedings pending before Supreme Court in the case of *Sanjay Singal & Anr. v. Union of India & Ors. (Writ Petition(s) (Civil) No(s). 510/2022)* & *Ashok Pranjivan Bosmiya v. Union of India & Ors. (Writ Petition (Civil) No. 705/2022)* the matter was kept in abeyance till the Supreme Court decided the matter. Accordingly, on 27.03.2023, the following order was passed:

ORDER

RA-39/2022

In view of the proceedings pending before Hon'ble Supreme Court in the case of Sanjay Singal & Anr. v. Union of India & Ors. (Writ Petition(s) (Civil) No(s). 510/2022) & Ashok Pranjivan Bosmiya v. Union of India & Ors. (Writ Petition (Civil) No. 705/2022) which is coming up for hearing on 28.03.2023, various counsels who appeared through VC seek adjournment. At request, we are inclined to adjourn the matter to 25.04.2023.

15. On 11.06.2024, the following order was passed by this Adjudicating Authority:

ORDER

RA-39/2022

Mr. Aishwarya Mohan Gahrana, RP in person appeared through VC and states that his non-appearance on 27.04.2022 and non-service of report under Section 99 upon the Petitioner were his mistakes and he seeks apology for the same. He is directed to file an affidavit to that effect and to be present physically on the next date of hearing.

At request and by consent, list the matter on **22.07.2024.**

In compliance with the above order an affidavit was filed on 15.07.2024 on the DMS e-portal.

16. On 22.07.2024, the following order was passed by this Adjudicating Authority:

RA-39/2022

1. Earlier when the report was filed no notice was issued to the Respondent. In the absence of the RP and non-appearance of the Petitioner, we dismissed the petition along with the report of RP (IA-1960/2022) for non-prosecution vide order dated 27.04.2022 which is extracted below:

ORDER

IA-1960/2022

Report under Section 99 of the IBC, 2016 by Resolution Professional has been filed.

Neither the Resolution Professional is present, nor has the petitioner appeared. It appears that the cause for which the Petition has been filed does not survive.

The CP(IB)-213(PB)/2022 stands **dismissed for non-prosecution.**

2. Thereafter, the Financial Creditor filed RA-39/2022 seeking following reliefs:

"(a) Allow the instant Application and restore the Petition bearing CP(IB) No. 213/2022 and the RP Application bearing IA No. 1960/2022;
(b) Direct expunging the observations made in the Order dated 27.04.2022 that "It appears that the cause for which the Petition has been filed does not survive.";
(c) Take the report of the Resolution Professional on record.
(d) Any such order/direction this Hon'ble Tribunal may deem fit in the facts and circumstances of this case."

3. Today, Ld. Counsel Mr. Gautam Swarup appeared for the Financial Creditor along with RP Mr. Aishwarya Mohan Gahrana appearing in person. The RP has stated that in compliance with our order dated 11.06.2024, he has already filed an affidavit dated 15.07.2024 tendering an unconditional apology for non-appearance on 27.04.2022. However, it is observed that the affidavit dated 15.07.2024 has been filed in **(IB)-214(PB)/2022, (IB)-215(PB)/2022, (IB)-216(PB)/2022, (IB)-217(PB)/2022 but not in (IB)-213(PB)/2022**. Be that as it may, apology is accepted and RA-39/2022 is allowed.

4. Accordingly, the RA-39/2022 stands allowed and disposed of. The CP stands restored to its original number i.e. CP(IB) No. 213/2022 along with IA-1960/2022.

5. RP is directed to present the report on the next date of hearing.

6. At request and with consent of the parties, list the matter for a phyiscal hearing **on 09.09.2024.**

17. Further, on 09.08.2024, an amended memo of parties was uploaded on the DMS e-portal by the RP indicating the PG and the present petitioner as respondents in the report u/s 99 of the Code.

18. On 25.10.2024, the RP was directed to serve the report once again on the PG and file an affidavit of service. In compliance with the same, an affidavit of service indicating service upon the respondent was uploaded on the DMS e-portal on 17.11.2024. Another affidavit indicating service was served upon the respondent was uploaded on the DMS e-portal on 14.12.2024.

19. On 17.12.2024 the following order was passed by this Adjudicating Authority:

ORDER

IA-1960/2022

Notice of the application has already been issued on 02.12.2024. The affidavit of service is filed subject to verification.

Today, when the matter was called there was no representation on behalf of the Respondent/PG so far.

Await the appearance of the respondent.

At the request, list the matter again **on 21.01.2025.**

20. On 21.01.2025, the following order was passed by this Adjudicating Authority:

Affidavit of service dated 14.12.2024 has been filed, despite the same, none appeared for the respondent. The soft copy of the report of RP has been uploaded, he is directed to file the hard copy of the same for verification. In the meanwhile, respondents are proceeded *exparte*.

List the matter on 25.02.2025.

A written synopsis was uploaded on behalf of the RP on the DMS e-portal on 18.02.2025.

21. On 05.08.2025 the following order was passed by the Adjudicating Authority:

IA-1960/2022

Ld. Counsel appearing for the Applicant seeks and is granted permission to take steps for the replacement of RP.

At request, list the matter on **23.09.2025.**

22. Another application bearing no. IA-3936/2025 was filed by the PG seeking recall of the order dated 21.01.2025 passed by this Adjudicating Authority wherein it was held that the matter will be proceeded ex-parte. The application was listed for the 1st time on 14.08.2025 wherein the following order was passed:

ORDER

New IA-3936/2025

Ld. Counsel Ms. Ipshita appears on behalf of the Applicant and undertakes to serve notice upon the Respondent(s)/Non-Applicant(s) through all modes, viz. registered post, speed post, courier service, and the affidavit of service to be filed within one week.

Reply, if any, may be filed by the Respondent within 10 days from the date of receipt of the notice.

Rejoinder, if any, may be filed before the next date of hearing.

At request, list the matter **on 23.09.2025.**

An affidavit of service in compliance with the same was uploaded on the DMS e-portal on 17.09.2025.

23. On 23.09.2025, the following order was passed by this Adjudicating Authority:

IA-3936/2025

Ld. Counsel, Ms. Ipshita, for the Respondent/PG, appeared and willing to pay cost for default and also further undertakes to file response to the Report filed by the RP under Section 99 of the Code, 2016, so as to unable the RP to present the case on the next date of hearing.

The Respondent/Personal Guarantor is liable to pay the cost of Rs. 7,500/- (Rupees Seven Thousand Five Hundred only) to the Prime Minister National Relief Fund (PMNRF) and file a proof of payment.

List the matter **on 06.10.2025** for further consideration along with **IA-1960/2022.**

A reply in compliance with the same was uploaded on the DMS e-portal in the column for the main matter on 04.10.2025 by the PG.

24. On 06.10.2025, due to non-compliance with the previous directions of this Adjudicating Authority a cost of Rs. 25,000 was imposed on the Financial Creditor.

25. On 19.11.2025, the following order was passed by this Adjudicating Authority:

> Ld. Counsel for the Applicant appears and states that some applications have been filed which are under scrutiny and he seeks some time to clear the same. Ld. Counsel is permitted to do so before the next date of hearing.
>
> At his request and with consent, list the matter along with IA-1959/2022 on **17.12.2025**.

Accordingly, IA-5715/2025 was filed by the petitioner herein praying the Adjudicating Authority to recall the order dated 06.10.2025 and reduce the quantum of costs imposed on it. Further, IA-5719/2025 was filed by the petitioner seeking replacement of the erstwhile RP with Mr. Sajjan Dokania, the new RP bearing IBBI/IPA-003/IP-N00150/2017-2018/11729. The same was allowed by this Adjudicating Authority vide order dated 18.12.2025, the relevant portion of which is extracted below:

> **3.** In view of the contentions raised by the applicant and the averments made in the application, we hereby appoint Mr. Sajjan Kumar Dokania, having registration number IBBI/IPA-003/IP-N000150/2017-18/11729, as the Resolution Professional of the Corporate Debtor in place of Mr. Aishwarya Mohan Gahrana having Registration no. IBBI/IPA-002/IP-N00135/2017-18/10351.
> **4.** None appears on behalf for the Respondent.
> **5.** IA-5719/2025 is **allowed and disposed of.**

IA-1960/2022, IA-3936/2025 and IA-5715/2025.

Ld. Counsel for the parties appeared.

The new RP is directed to file a short note for better adjudication of the matter.

List the matter for further consideration **on 09.02.2026.**

In compliance with the same, a short note has been uploaded by the RP on 08.02.2026 on the DMS e-portal.

26. On 09.02.2026, the following order was passed by the Adjudicating Authority:

IA-1960/2022; IA-3936/2025; IA-5715/2025

On 18.12.2025, we have directed the RP to file a short note. Today, Ld. RP appears in person through VC and submits that he has filed the same on 07.02.2026 (Saturday). All other parties are at liberty to file short note, before the next date of hearing, if not already done.

At request and with consent, list the matter for further consideration on **09.03.2026**.

27. On 17.08.2026, the following order was passed by this Adjudicating Authority:

IA-1960/2022, IA-3936/2025, IA-5715/2025

1. Ld. Counsel for the RP as well the Financial Creditor submits that he may be granted one more opportunity to comply with the previous order and file a short note. He may do so before the next date of hearing.
2. No one has put in appearance on behalf of the Respondent/PG.
3. List **on 23.09.2026.**

Short note filed by RP dated 04.09.2026.

28. On 23.09.2026 after hearing the parties' orders were reserved in the matter. Further, IA-5715/2025 was dismissed as withdrawn and the applicant undertook to pay a cost of Rs.25,000 into the PM's National Relief Fund within a period of 10 days, and file a proof thereof. Furthermore, IA-3936/2025 was dismissed for non-prosecution. Short Note/Written Submissions on behalf of the Petitioner/Financial Creditor dated 29.09.2026 was uploaded on DMS e-portal on 02.10.2026.

Submissions by the Respondent:

29. Before moving further, it is pertinent to discuss here the objections raised by the respondent. Learned Counsel for the Respondent opposed the present application on the following grounds:

- That the claim of the Financial Creditor against the Respondent is barred by limitation. It was contended that, in terms of Article 55 of the Limitation Act, 1963, the period of limitation in respect of the alleged contract of guarantee would commence from the date of breach and, where the guarantee requires a demand as a condition precedent to the liability of the guarantor, from the date of such demand and refusal or non-compliance. It was further submitted that where the underlying debt has already become time-barred against the principal debtor, a subsequent demand against the guarantor cannot revive such liability. The Respondent has, therefore, contended that in the absence of any valid demand upon her, the cause of action against her had not accrued.
- That the personal guarantee alleged to have been furnished by the Respondent was never validly invoked by the Financial Creditor. It was contended that the alleged guarantees were continuing guarantees stipulating that the amounts were payable "on demand" and, therefore, the liability of the Respondent could arise only upon a valid demand being made upon her. It was

further submitted that no demand was served upon the Respondent and, consequently, no default could be said to have arisen qua the Respondent. Reliance was placed upon Sections 126, 128, 129 and 130 of the Indian Contract Act, 1872, to contend that the liability of a guarantor is governed by the terms of the contract of guarantee.

- That the mandatory requirement of service of the Demand Notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019, has not been complied with. It was contended that the Demand Notice dated 25.09.2020 in Form B was never served upon the Respondent and that no postal receipt, tracking report or email evidencing such service has been placed on record. It was further submitted that the communications issued by the Financial Creditor and the Resolution Professional were wrongly addressed to the email address of the Corporate Debtor and not to the Respondent. On this basis, it was contended that the statutory requirement preceding the initiation of proceedings under Section 95 of the Code had not been satisfied.
- That the proceedings initiated against the Respondent are not maintainable in view of the resolution process undertaken in respect of the Corporate Debtor, namely, Prabhu Shanti Real Estate Pvt. Ltd. It was submitted that the resolution plan submitted by PING Developers Pvt. Ltd. was approved vide order dated 24.10.2024 in CP(IB) No. 477 of 2017; and that the claim of the Financial Creditor had been admitted in the said proceedings; and that the Financial Creditor had voted in favour of the resolution plan. It was contended that the Financial Creditor could not seek recovery of the same claim from the Respondent as Personal Guarantor while the claim had been dealt with under the approved resolution plan. The Respondent

further submitted that the Financial Creditor had failed to disclose the amount, if any, received pursuant to the resolution plan and that any amount so received would correspondingly affect the amount, if any, recoverable from the Respondent.

- That the Respondent has disputed the quantum and very basis of the claim sought to be fastened upon her. It was contended that the statement of account relied upon by the Financial Creditor is unreliable and that the entries therein, including the interest charged, are disputed as erroneous. It was further submitted that the Financial Creditor had applied varying and excessive rates of interest contrary to the governing documents and applicable guidelines. It was accordingly contended that the alleged documents and statement of account could not be relied upon for determining or fastening any liability upon the Respondent.

On the aforesaid grounds, Learned Counsel for the Respondent submitted that the report of the Resolution Professional recommending admission of the application under Section 95 of the Code suffers from material infirmities and that the statutory requirements for initiation of insolvency resolution process against the Personal Guarantor have not been satisfied. It was, accordingly, prayed that the application filed under Section 95 of the Code be rejected. Further, the short notes filed by the parties have duly been taken into consideration.

Analysis and Findings:

30. We have carefully considered the submissions and pleadings advanced by the parties and have perused the material available on record, including the application filed under Section 95 of the Code, the Report submitted by the Resolution Professional under Section 99, the reply filed by the Respondent/Personal Guarantor, and the subsequent written submissions.

31. In view of the submissions raised, the following issues fall for determination:

    i. Whether the application under Section 95 is barred by limitation;
    ii. Whether the personal guarantee executed by the Respondent was validly invoked;
    iii. Whether the statutory requirement of service of demand notice under Section 95(4)(b) of the Code read with Rule 7(1) of the Personal Guarantor Rules, 2019 has been complied with;
    iv. Whether the Report submitted by the Resolution Professional under Section 99 suffers from any infirmity;
    v. Whether the approval of the Resolution Plan of the Corporate Debtor operates to discharge the liability of the Personal Guarantor and renders the present proceedings under Section 95 of the Code non-maintainable; and
    vi. Whether the application satisfies the requirements prescribed under Section 100 of the Code.

32. At the outset, it is pertinent to note that the Resolution Professional, after examining the application and the material placed before him, has recommended admission of the application under Section 95 of the Code. The Resolution Professional has recorded that the requirements stipulated under Section 95 have been satisfied and that the Personal Guarantor has failed to establish repayment of the debt in question.

33. On the issue of limitation, the Respondent has contended that the present application is barred by limitation on the ground that the loan account of the Corporate Debtor was classified as NPA on 31.12.2017, whereas the application under Section 95 of the Code was filed on 10.03.2022, i.e., beyond the period of three years prescribed under Article 137 of the Limitation Act, 1963 read with Section 238A of the Code. The Respondent has further contended that, in the absence of any valid demand upon her, the cause of action against her had not accrued. Reliance has been placed upon Article 55 of the Limitation Act, 1963.

34. There is no dispute with the proposition that the provisions of the Limitation Act are applicable to proceedings under the Code by virtue of Section 238A thereof and that Article 137 of the Limitation Act, 1963 would govern this application u/s 95 of the Code for which no specific period of limitation is prescribed.

35. It is also relevant to consider the effect of acknowledgement of liability under Section 18 of the Limitation Act, 1963. Section 18 provides that where, before the expiry of the prescribed period of limitation, an acknowledgement of liability in respect of the debt is made in writing and signed by the party against whom such right is claimed, a fresh period of limitation is to be computed from the date of such acknowledgement. The applicability of Section 18 is not excluded merely because the original default had already occurred.

36. The Supreme Court in *Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal, (2021) 6 SCC 366*, has held that an acknowledgement of liability contained in the balance sheet of a Corporate Debtor can constitute an acknowledgement within the meaning of Section 18 of the Limitation Act, subject to examination of the relevant entries and any caveats or qualifications accompanying such acknowledgment. The said principle was reiterated in *Dena Bank v. C. Shivakumar Reddy, (2021) 10 SCC 330*, wherein it was held that an acknowledgment of debt by the Corporate Debtor before expiry of the limitation period would give rise to a fresh period of limitation.

37. In the present case, the Financial Creditor has relied upon subsequent acknowledgments of the outstanding liability made after classification of the account as NPA. Therefore, the computation of limitation cannot be confined to the date of classification of the account as NPA without examining the subsequent acknowledgments and their effect under Section 18 of the Limitation Act. To the extent such acknowledgments

were made before expiry of the then subsisting period of limitation and satisfy the requirements of Section 18, a fresh period of limitation would commence from the respective dates of acknowledgment.

38. It is further relevant that, even if the period of limitation is computed from 31.12.2017, the period directed to be excluded by the Hon'ble Supreme Court in In Re: Cognizance for Extension of Limitation, (2022) 3 SCC 117, would have to be given effect to. The Hon'ble Supreme Court directed exclusion of the period from 15.03.2020 till 28.02.2022 for the purposes of limitation in proceedings before Courts and Tribunals.

39. Consequently, even on the basis that 31.12.2017 is taken as the starting point of limitation, the period from 15.03.2020 till 28.02.2022 would stand excluded. The application under Section 95 having been filed on 10.03.2022, the same cannot, on such computation also, be held to be barred by limitation.

40. The Supreme Court in *B.K. Educational Services Pvt. Ltd. v. Parag Gupta & Associates, (2019) 11 SCC 633*, has held that the right to sue under the Code accrues when the default occurs and that an application filed beyond the prescribed period may be barred by limitation, subject to the applicability of the provisions of the Limitation Act. The Respondent has, however, proceeded on the premise that after the date of classification of the Corporate Debtor's account as NPA, if a debt is time-barred as against the CD, the same cannot be revived as against the PG.

41. The said contention, in our considered view, cannot be accepted in the manner urged. The present proceedings are not proceedings against the Corporate Debtor for recovery of the original debt, but proceedings under Part III of the Code against the Respondent in her capacity as a Personal Guarantor. The liability of the Respondent arises under the

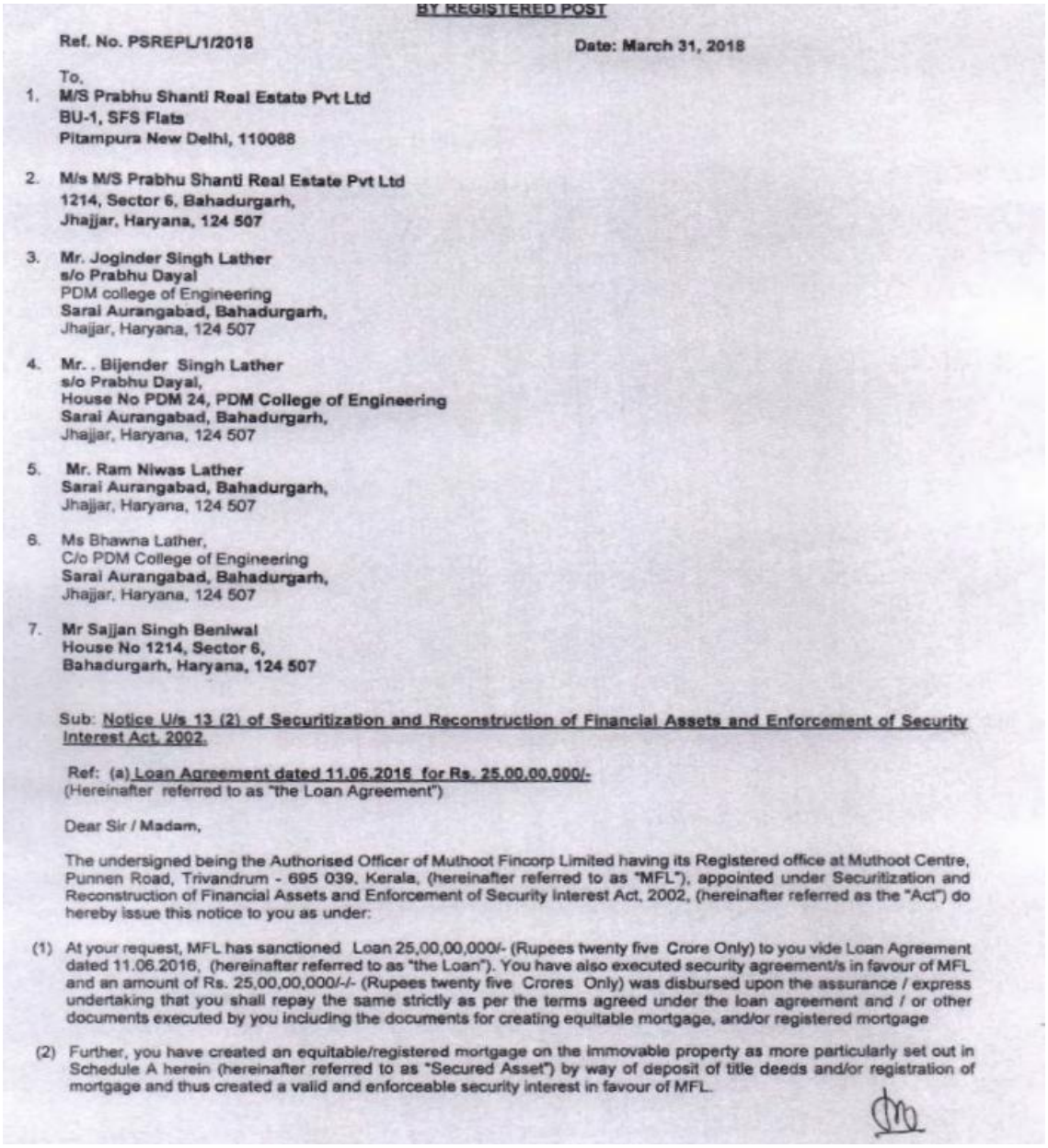
Deed of Guarantee dated 11.06.2016 and is a distinct contractual liability, although co-extensive with that of the principal debtor subject to the terms of the guarantee.

42. It is also relevant that the Supreme Court, while considering the liability of a surety, has recognised that the enforceability of the guarantor's liability has to be examined with reference to the terms of the guarantee and the circumstances in which the liability of the guarantor becomes enforceable. In *Syndicate Bank v. Channaveerappa Beleri & Ors., (2006) 11 SCC 506*, the Supreme Court considered the distinction between a guarantee payable on demand and other forms of guarantee and held that, where the guarantee is enforceable upon demand, the question of limitation has to be considered with reference to the demand and the failure to comply therewith.

43. In the present case, the material on record shows that the Financial Creditor issued a guarantee invocation notice u/s 13(2) of the SARFEASI Act, 2002 on 31.03.2018, and the Demand Notice dated 25.09.2020 in Form-B under Rule 7(1) of the Personal Guarantor Rules, demanding an amount of Rs.45,64,31,533/- as on 24.09.2020 was issued thereafter. The notice was sent to the Respondent at her recorded address, and the Respondent failed to discharge the demand within fourteen days. The application under Section 95 was thereafter filed in the year 2022. Therefore, the Respondent's contention cannot be accepted. Thus, the present application is not barred by limitation.

44. The second objection of the Respondent concerns invocation of the personal guarantee. The Respondent has contended that no separate notice invoking the personal guarantee was issued to her, apart from the statutory Demand Notice, and consequently, no liability accrued against her in the absence of invocation of the guarantee. In the present case, the record establishes that the Respondent had executed the Deed

of Guarantee dated 11.06.2016 in favour of the Financial Creditor, undertaking to repay the loan together with interest and other charges in the event of default by the Corporate Debtor. The date of invocation of the guarantee is 31.03.2018 as notice under Section 13(2) of the SARFEASI Act 2002 was issued on 31.03.2018 which was acknowledged by the respondent vide their reply dated 01.06.2018. The relevant portion of the notice u/s 13(2) of SARFAESI Act, 2002 dated 31.03.2018 is reproduced below:



BY REGISTERED POST

Ref. No. PSREPL/1/2018 Date: March 31, 2018

To,

1. M/S Prabhu Shanti Real Estate Pvt Ltd
BU-1, SFS Flats
Pitampura New Delhi, 110088

2. M/s M/S Prabhu Shanti Real Estate Pvt Ltd
1214, Sector 6, Bahadurgarh,
Jhajjar, Haryana, 124 507

3. Mr. Joginder Singh Lather
s/o Prabhu Dayal
PDM college of Engineering
Sarai Aurangabad, Bahadurgarh,
Jhajjar, Haryana, 124 507

4. Mr. . Bijender Singh Lather
s/o Prabhu Dayal,
House No PDM 24, PDM College of Engineering
Sarai Aurangabad, Bahadurgarh,
Jhajjar, Haryana, 124 507

5. Mr. Ram Niwas Lather
Sarai Aurangabad, Bahadurgarh,
Jhajjar, Haryana, 124 507

6. Ms Bhawna Lather,
C/o PDM College of Engineering
Sarai Aurangabad, Bahadurgarh,
Jhajjar, Haryana, 124 507

7. Mr Sajjan Singh Beniwal
House No 1214, Sector 6,
Bahadurgarh, Haryana, 124 507

Sub: Notice U/s 13 (2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Ref: (a) Loan Agreement dated 11.06.2016 for Rs. 25,00,00,000/-
(Hereinafter referred to as "the Loan Agreement")

Dear Sir / Madam,

The undersigned being the Authorised Officer of Muthoot Fincorp Limited having its Registered office at Muthoot Centre, Punnen Road, Trivandrum - 695 039, Kerala, (hereinafter referred to as "MFL"), appointed under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (hereinafter referred as the "Act") do hereby issue this notice to you as under:

(1) At your request, MFL has sanctioned Loan 25,00,00,000/- (Rupees twenty five Crore Only) to you vide Loan Agreement dated 11.06.2016, (hereinafter referred to as "the Loan"). You have also executed security agreement/s in favour of MFL and an amount of Rs. 25,00,00,000/-/- (Rupees twenty five Crores Only) was disbursed upon the assurance / express undertaking that you shall repay the same strictly as per the terms agreed under the loan agreement and / or other documents executed by you including the documents for creating equitable mortgage, and/or registered mortgage

(2) Further, you have created an equitable/registered mortgage on the immovable property as more particularly set out in Schedule A herein (hereinafter referred to as "Secured Asset") by way of deposit of title deeds and/or registration of mortgage and thus created a valid and enforceable security interest in favour of MFL.

Subsequently a demand notice was issued upon the respondent on 25.09.2020.

45. It is pertinent to note that invocation of a personal guarantee does not necessarily require a separate communication bearing the specific nomenclature of an "invocation notice". Where a notice issued under Section 13(2) of the SARFAESI Act is addressed to the guarantor and, having regard to the terms of the guarantee, contains a clear demand upon the guarantor to discharge the liability secured by the guarantee, the same would constitute sufficient invocation of the guarantee. The NCLAT in *Ujwal Gupta v. Union Bank of India & Anr.*, 2026 SCC OnLine NCLAT 8, has held that the contents of the notice and the terms of the guarantee are material in determining whether a notice under Section 13(2) of the SARFAESI Act constitutes invocation. In the present case, the notice dated 31.03.2018 was issued to the Respondent in his capacity as guarantor and called upon him to discharge the outstanding liability. The said notice was also acknowledged by the Respondent vide his reply dated 01.06.2018. Accordingly, the notice dated 31.03.2018 constitutes valid invocation of the personal guarantee, and the absence of a separate notice specifically styled as an "invocation notice" does not render the invocation invalid.

46. The Respondent has next questioned the service of the demand notice under Section 95(4)(b) read with Rule 7(1) of the Personal Guarantor Rules, 2019. Section 95 contemplates that an application by a creditor for initiating insolvency resolution process against a Personal Guarantor is to be preceded by service of a demand notice in the prescribed manner. In the present case, the Demand Notice dated 25.09.2020 in Form-B was issued to the Respondent at her recorded address (Annexure-5 of the petition) and the Respondent had failed to make payment within fourteen days of service thereof. The objection as to absence of proof of service, therefore, does not merit acceptance in view of the material forming part of the record and the subsequent proceedings before this Adjudicating Authority, wherein the

Respondent has appeared and has filed a detailed reply to the proceedings.

47. The object of the statutory demand notice is to provide the Personal Guarantor an opportunity to discharge the debt before proceedings under Section 95 are initiated. It is also material to note that the very same Demand Notice dated 25.09.2020 was issued to all the Personal Guarantors, and some of them have also initiated proceedings on the basis of that demand notice before the Supreme Court. In view of the same, the Respondent cannot, at this stage, seek to contend before this Adjudicating Authority that the same Demand Notice was never served upon her. The Respondent's participation in the proceedings arising therein is inconsistent with her present plea of non-service. The said plea, having been raised at this stage, therefore, does not merit acceptance.

48. On the fourth issue the Respondent has also questioned the manner in which the Resolution Professional discharged his functions under Section 99 of the Code. Section 99 requires the Resolution Professional to examine the application and submit a report recommending acceptance or rejection thereof. His statutory function is to examine the application and place his recommendation before the Adjudicating Authority. The ultimate determination regarding admission of the application remains within the jurisdiction of the Adjudicating Authority under Section 100. In the present case, the Resolution Professional examined the application and the material available on record and recommended admission, recording that the requirements of Section 95 had been satisfied and that the Respondent had failed to establish repayment of the debt. No material or cogent evidence has been brought on record before us which would establish that the Report under Section 99 was prepared without consideration of the relevant material or that the recommendation suffers from such an infirmity as

would render the subsequent adjudication under Section 100 impermissible.

49. Moving further to the next issue, the respondent has contended that upon approval of the Resolution Plan of the Corporate Debtor on 24.10.2024, the claims against the Corporate Debtor stood dealt with and, consequently, no proceedings could thereafter be maintained against the Personal Guarantor. We are unable to accept the said contention. The liability of a Personal Guarantor under a contract of guarantee is distinct from and independent of the liability of the principal borrower. The Supreme Court in *Lalit Kumar Jain v. Union of India & Ors., (2021) 9 SCC 321*, has held that the approval of the Resolution Plan does not, by itself, discharge the Personal Guarantor from the liabilities arising under the contract of guarantee. The Supreme Court specifically held that the liability of the Personal Guarantor arises from an independent contract of guarantee and is not ipso facto extinguished by the approval of a Resolution Plan.

50. Thus, the mere fact that the Resolution Plan of the Corporate Debtor has been approved cannot, in the absence of anything further in the terms of the approved plan discharging such liability, operate as a bar to proceedings against the Personal Guarantor.

51. The Respondent has further contended that the Financial Creditor has not disclosed the amount, if any, recovered pursuant to the Resolution Plan and that permitting recovery from the Personal Guarantor would result in double recovery. The said objection also does not furnish a ground for rejection of the present application at the stage of Section 100 of the Code. The liability of the Personal Guarantor is co-extensive with that of the principal debtor in terms of Section 128 of the Indian Contract Act, 1872, subject to the terms of the guarantee. At the same time, the Financial Creditor cannot obviously recover an amount in excess of the debt lawfully due. Any amount actually realised from the

Corporate Debtor or under the Resolution Plan would necessarily have to be duly accounted for in determining the amount ultimately recoverable from the Personal Guarantor. Such adjustment, however, does not extinguish the underlying liability of the Personal Guarantor or constitute a bar to initiation of proceedings under Part III of the Code. The Supreme Court has recognised that the liability of the guarantor survives the approval of a Resolution Plan, while the extent of such liability would depend upon the terms of the guarantee and the amount remaining unpaid.

52. Lastly, we now proceed to consider the requirement under Section 100 of the Code. Section 100(1) provides that the Adjudicating Authority shall, upon submission of the report under Section 99, pass an order either admitting or rejecting the application, as the case may be. The jurisdiction at this stage is therefore to examine whether the statutory requirements for commencement of the insolvency resolution process against the Personal Guarantor stand satisfied.

53. The application under Section 95 has been filed by the Financial Creditor in respect of a debt for which the Respondent stood as Personal Guarantor. The underlying loan facility of Rs.25 crore was advanced to the Corporate Debtor pursuant to the Loan Agreement dated 11.06.2016 and was secured, inter alia, by the Deed of Guarantee executed by the Respondent on the same date. The Corporate Debtor failed to discharge its financial obligations and its account was classified as NPA on 31.12.2017. The Resolution Professional has, upon examination of the material, recommended admission of the application. The Respondent, despite having been afforded an opportunity, has not demonstrated that the debt claimed by the Financial Creditor has been discharged or otherwise satisfied. The statutory Demand Notice in Form-B was issued for the outstanding amount, and the Respondent failed to make payment within the

prescribed fourteen-day period. Thus, the conditions specified under section 100 of the Code stand fulfilled.

54. The objections raised by the Respondent do not dislodge the existence of the debt or her liability under the Deed of Guarantee. The approval of the Resolution Plan of the Corporate Debtor does not, by itself, discharge the Respondent from her independent contractual liability as Personal Guarantor. The objection relating to limitation, founded solely upon the date of classification of the Corporate Debtor's account as NPA, is not sustainable in the facts of the present case. The objections relating to invocation, service of demand notice and the report of the Resolution Professional also do not establish any infirmity sufficient to defeat the application under Section 95. Accordingly, the application filed under Section 95(1) of the Code deserves to be admitted and the Insolvency Resolution Process against the Respondent/Personal Guarantor is liable to be initiated in terms of Section 100 of the Code.

Accordingly, we order as under:

55. The Petition under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 is admitted, and the Insolvency Resolution Process against the Personal Guarantor, Ms. Bhawna Lather, is hereby initiated. A moratorium under Section 101 of the Code is declared from today, to remain in force for a period of 180 days or until an order under Section 114 is passed, 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 her assets or her legal rights or beneficial interest therein; and
    d. 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.

56. The Resolution Professional, Mr. Mr. Sajjan Kumar Dokania, who was appointed by this Adjudicating Authority vide order dated 18.12.2025, is hereby directed to take all further steps in accordance with Part III, Chapter III of the Code, including publication of a public notice 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 of the Code within 21 days of such notice. The notice shall contain the necessary information as provided under Section 102(2) of the Code. The publication of notice shall be made in newspapers, one in English and the other in the Vernacular Language, having wide circulation in the State where the Personal Guarantor resides.

57. The Resolution Professional, in exercise of the powers conferred under Section 104 of the Code, shall prepare a list of creditors within 30 days from the date of the notice. The debtor shall prepare a Repayment Plan in consultation with the Resolution Professional as provided under Section 105 of the Code, which shall include the provisions for payment of a fee to the Resolution Professional. 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 of the Code. In terms of the newly inserted Section 106(1A), where no Repayment Plan is submitted, the Resolution Professional shall submit a report to the Adjudicating Authority accordingly.

58. 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, he shall specify the details as provided under Section 106(3) & 106(3A) of the Code. The date of the meeting should not be less than 14 days or more than 28 days from the date of submission of the Report under Section 106(1) of the Code, for which notice shall be issued to the creditors by all modes within the

timeline prescribed under the law. Such notice shall contain the details as provided under Section 107 of the Code.

59. 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 the Repayment Plan with all details as provided under Section 112 of the Code and submit the same to this Adjudicating Authority, copies of which shall be provided to the debtor and the creditors. 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. Further, in terms of the newly inserted Regulation 11A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 the Resolution Professional shall coordinate with the Resolution Professional of the Corporate Debtor in respect of transfer of assets, obtain the approval of the meeting of creditors of the Personal Guarantor for such transfer, and, where such approval is granted, ensure that the proposed transfer is duly disclosed in the reports under Sections 106 and 112 of the Code.

60. The Financial Creditor shall deposit a sum of **Rs. 1,00,000/- (Rupees One Lakh Only)** with the Resolution Professional to meet the expenses arising out of issuing public notice and inviting claims. This amount shall be adjusted towards the fees and expenses payable to the Resolution Professional.

61. The Resolution Professional shall submit a status report every 30 days before this Adjudicating Authority.

62. The Personal Guarantor/Respondent, **Ms. Bhawna Lather**, is directed to cooperate with the Resolution Professional and provide all requisite

information for the purpose of carrying out his duties. He is further directed to submit to the Resolution Professional, within two weeks from the date of this order, complete details specifically disclosing his assets and liabilities as on the date of this order, as well as on 31.03.2024, 31.03.2025 and 31.03.2026, duly supported by copies of the corresponding Income Tax Returns for the said years. The Personal Guarantor is also directed to furnish a copy of the latest Net Worth Certificate submitted to the Financial Creditors, along with a copy of the Net Worth Certificate submitted at the time of furnishing the Personal Guarantee. Further, in case any assets have been sold during the last two years, complete details thereof, including the nature of the asset, date of sale, consideration received and mode of transfer, shall also be disclosed.

63. Registry shall communicate a copy of this order, the report and the petition to all concerned, including the Financial Creditor, Resolution Professional and the Personal Guarantor, within 7 working days and upload the same immediately.

64. A copy of this order be sent to the IBBI by the Registry.

65. Accordingly, **IA No. 1960/2022 is allowed and disposed of**, and the Insolvency Resolution Process is hereby initiated against the Personal Guarantor/Respondent, Ms. Bhawna Lather.

66. List the matter for status report by the Resolution Professional on 25.11.2026.

Sd/-
(ANUPINDER SINGH GREWAL)
(PRESIDENT)

Sd/-
(RAVINDRA CHATURVEDI)
MEMBER (TECHNICAL)