NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

ORDER SHEET OF THE HEARING ON 28thOCTOBER 2026

IA(IBC)/83/GB/2026
In CP(IB)/36/GB/2026

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

In the Matter of	UCO Bank Vs Manas Barooah (PG) To ***M/s Lohit Construction Pvt. Ltd. (CD)***
Under Section	U/s 95 of IBC, 2016

Appearances (via video conferencing/physically)

CP(IB)/36/GB/2026 & IA(IBC)/83/GB/2026

For Petitioner (s) : None

For Respondent (s) : Mr. Rakesh Dubey, Adv.
: Ms. Amrita B. Kayastha, Adv.
For RP : Mr. Amit Pareek, in person

ORDER

Order pronounced in open court *vide* separate sheets.

Sd/-
Yogendra Kumar Singh
Member (Technical)

Sd/-
Rammurti Kushawaha
Member (Judicial)

Zeba (PS)

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

CP (IB)/36/GB/2026
And
IA (IBC)/83/GB/2026

An Application 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 CP (IB)/36/GB/2026:

UCO Bank, a body corporate and a banking company duly constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 having its corporate office at UCO Bank, 10 BTM Sarani, Brabourne Road, Kolkata-700001 and one of its zonal office at Silpukhuri Branch, Silpukhuri, Guwahati-781003, and carrying on the business of banking through diverse branches and in particular a branch named UCO Bank, Silpukhuri Branch, Silpukhuri, Guwahati-781003, Assam and represented by Sri Abhishek Kumar, Chief Manager of the said branch.

…Petitioner/ Financial Creditor

-Versus-

Manas Barooah, son of Late Krishnadhar Barooah, residing at Jyotinagar, Noonmati, Guwahati – 781021, Kamrup (M), Assam

…Respondent/Personal Guarantor

-to the-

Lohit Construction Private Limited, bearing CIN- U45201AS1998PTC005343, having its registered address at Rajgarh Road, Kamrup, Guwahati, Assam, India, PIN – 781007

…Corporate Debtor

-And-

An Application under Section 99 of the Insolvency and Bankruptcy Code, 2016

In the matter of IA (IBC)/83/GB/2026 in CP(IB)/36/GB/2026:

Mr. Amit Pareek

… Applicant/Resolution Professional

Coram:

Shri Rammurti Kushawaha : Member (Judicial)

Shri Yogendra Kumar Singh : Member (Technical)

Appearances (through video conferencing/physical):

For Petitioner : S. Chamaria (Adv.)

For Respondent : Mr. R. Dubey, Ms. A.B. Kayastha (Advs.)

For IRP/RP : Mr. A. Pareek, RP

Order pronounced on: 28.10.2026

As Per Bench

CP (IB)/36/GB/2026

1. The present Company Petition("**CP**") No. 36 of 2026 has been filed by UCO bank, Silpukhuri branch ("**Financial Creditor**" or "**Petitioner**") under section 95 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") for default in the repayment of Rs. 01,41,15,28,508.09/- (Rupees One Hundred Forty One Crore Fifteen Lakh Twenty Eight Thousand Five Hundred Eight and Nine Paisa), as on 20.01.2025., by Manas Barooah ("**Personal Guarantor**" or "**Respondent**") to M/s Lohit Construction Private Limited ("**Corporate Debtor**"). The date on which default occurred is 31.12.2011.

2. **Submissions of the Financial Creditor** *vide* Company Petition filed online on 17.04.2026:

2.1. The Corporate Debtor is a private limited company bearing Corporate Identification Number ("**CIN**") U45201AS1998PTC005343 registered under the Indian Companies Act having its registered office situated at Rajgarh Road, Guwahati, Assam, PIN- 781007.

2.2. The Corporate Debtor initially approached the Financial Creditor to avail a cash credit facility of Rs. 32 lakhs on 06.02.1998. On 03.04.2000, the Corporate Debtor confirmed and acknowledged their liability at Rs. 91,46,293.34/- with interest calculated up to 31.03.2000. The aforesaid loan facility and its limit were renewed or enhanced time to time by executing Demand Promissory Note on 24.03.2003, 14.03.2005, and 08.08.2006. Hypothecation of movable plant and machineries

were also executed on 14.03.2005 amounting to Rs. 45.78 lacs. Copies of the Demand Promissory Notes, and Hypothecation of plant and machinery are attached to the Petition as "*Annexure I-D (series)*" and "*Annexure I-E (series)*" respectively.

2.3. The Corporate Debtor again approached the Financial Creditor for a fresh term loan to meet the cost of the business. The Financial Creditor enhanced the loan limit to Rs. 350 lakh from Rs. 250 lacs at 15% interest per annum after the scrutiny of papers and documents and being satisfied with the transaction in the said loan amount.

2.4. The Personal Guarantor stood a guarantor along with others for the aforesaid loan by executing a letter of guarantee (Form No. A21) dated 07.06.2007 in favour of the Financial Creditor. This letter of guarantee assured and guaranteed that the Personal Guarantor, along with other representatives of the Corporate Debtor, will repay the entire amount with interest, cost and charges that arises therefrom in case the Corporate Debtor defaults on its payment. A copy of the Letter of Guarantee is attached to the Petition as "*Annexure I-N*".

2.5. The Financial Creditor scrutinised another application by the Corporate Debtor and on 13.03.2008, it sanctioned a cash credit limit of Rs. 350 lakh at 15% interest per annum with monthly rest subject to changes as per banks directive from time to time repayable on demand for a period of one year. It also sanctioned a bank guarantee of Rs. 950 lakh enhanced from Rs. 340 lakh with inland letter of credit of Rs. 200 lakhs out of the above bank guarantee limit of 950 lakh with interchangeability clause against primary security of hypothecation of stock of plant and machinery and hypothecation of construction materials, Work-in-Progress and Book Debts besides guarantee of the Personal Guarantor along with others.

2.6. Once again, the Personal Guarantor along with other representatives stood as a guarantor against the aforesaid loan by executing letter of guarantee (Form A21) dated 09.05.2008 in favour of the Financial Creditor by which they guaranteed to repay the entire loan amount with interest, costs and charges therefrom. A copy of the Letter of Guarantee is attached to the Petition as "*Annexure I-V*".

2.7. On 13.03.2009, the Financial Creditor considered another application by the Corporate Debtor and sanctioned and enhanced the cash credit limit from Rs. 350 lakh to Rs. 600 lakh with additional cash credit facility of Rs. 300 lakhs approved

within the overall bank guarantee facility of Rs. 17.50 crores. Taking additional facility, the total cash credit facility would be Rs. 9 crores and with this sanction, existing ad-hoc limit of Rs. 2 crores would get merged with enhanced limit at 14.25% per annum. In furtherance of the same the Personal Guarantor executed another Letter of Guarantee dated 13.03.2009 in favour of the Financial Creditor. A copy of the Letter of Guarantee is attached to the Petition as "*Annexure I-AE*".

2.8. Once again, the Corporate Debtor applied for enhancement of limit and on 06.09.2010, the Financial Creditor approved the one way interchangeability from Bank Guarantee to cash credit for additional Rs. 3 crores with certain terms and conditions mentioned in the said approval besides those of last sanction dated 09.03.2009. The Personal Guarantors deposited the Title Deed from time to time in terms of the sanction as co-lateral security of the loans.

On 13.09.2009, they extended the earlier mortgage covering the increase limit in respect of the land covered by Title /Sale Deed no. 1143 of 2005, 8864 of 2001, 11345 of 2007, 1141 of 2005, 2206 of 1994, 2551 of 1994, 2193 of 2001, 2190 of 2001, 2091 of 2001, 1144 of 2005, 15258 of 2008, 8663 of 2001, 15758 of 2008, 4222 of 2002, 957 of 2006, 9404 of 2000, 8665 of 2001, 9402 of 2000, 1252 of 1971, 1314 of 1995, 5667 of 1962, 1085 of 2006, 761 of 1995 and also extended the mortgaged from time to time in favour of the Financial Creditor. A copy of Letter of Extension of the earlier mortgage along with Title/ Sale Deed is attached to the Petition as "*Annexure I-AL*".

2.9. The Financial Creditor repeatedly requested and reminded the Personal Guarantors to regularize the loan account but the said company did not take any steps and thereafter, the Financial Creditor declared the aforesaid account as Non-Performing Asset ("**NPA**") on 29.11.2011. Subsequently, the Financial Creditor approached before the Debt Recovery Tribunal ("**DRT**"). Guwahati and filed the case numbered as O.A. No. 03/2012. However, the two parties reached a compromise in this matter. The learned DRT *vide* order dated 18.05.2018 directed that the compromised amount i.e. Rs. 12,65,00,000/- should be paid by the Company as per terms and conditions mentioned in the said Joint Petition bearing I.A. No. 119/2018 dated 17.05.2018 executed between the parties. In the event of default of payment in terms of the compromise made between the parties, the settlement would stand cancelled and the Company would have to pay the entire

claimed amount to the Financial Creditor. A copy of the DRT Order is attached to the Petition as "*Annexure I-AR*".

2.10. The judgment passed in O.A. Case No. 03/2012 dated 18.05.2018 was basically passed in terms of the settlement deed made between the parties on 17.05.2018 which contained a time limit for repayment which was to be followed by the guarantors. However as they could not follow up, the guarantors made a representation on 08.06.2020 which was accordingly considered. Again on 07.11.2022, the guarantors sought an extension of time upto the period of May 2024 to repay the amount due to the Financial Creditor but failed to make any payments as per the letter dated 07.11.2022. Furthermore, R.C. 3009/2018, i.e. the certificate issued in connection with O.A. Case No. 03/2012 by the Recovery Officer of the DRT, Guwahati for recovery of due amount is still pending in the aforesaid certificate proceeding pending before the DRT, Guwahati, but the due amount could not be recovered till yet, hence this instant proceeding is initiated against the Personal Guarantor to recover the due amount of the Financial Creditor. Copies of the Recovery Certificate, Extension of Repayment, and Letter dated 07.11.2022 are attached to the Petition as "*Annexure I-AS*", "*Annexure I-AT*", and "*Annexure I-AU*" respectively.

2.11. It is submitted that the Financial Creditor was assured by the representatives of the Corporate Debtor to repay the compromised amount in terms of settlement made on 17.05.2018 but no such payment was made subsequently. The Financial Creditor requested each of the Personal Guarantors to square up the liability but the Personal Guarantor repeatedly delayed the matter. The Financial Creditor concluded that the Personal Guarantor had no intention to repay the amount in terms of the Agreement of Guarantee as much as settlement is arrived at.

2.12. It is submitted that a demand notice dated 09.04.2025 under Rule 7(1) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 ("**Personal Guarantor Rules**") have issued through registered post to all Personal Guarantors to their personal addresses available on record, to the email address of the lead company, and also by way of two local leading newspaper publication. But nothing has been recovered till date. Copies of the Demand Notice and its Proof of Service

through email and newspaper publication are attached to the Petition as "*Annexure I-AX*", "*Annexure I-AAA*" and "*Annexure I-AAB*" respectively.

2.13. It is submitted that the instant Application has been filed by the Financial Creditor exclusively claiming the outstanding dues of Rs. **01,41,15,28,508.09/-** as on 20.01.2025 from the Personal Guarantors, duly supported by the books of account.

2.14. It is submitted that this Application has been filed well within the period of limitation. The Financial Creditor has been constantly pursuing the matter from the date the Recovery Certificate was issued in connection with O.A. Case No. 03/2012 but it has not been recovered till date. Therefore, the recovery attempt is still in continuance process and the recovery proceeding against the personal guarantor is within time limit.

2.15. In view of the above, the Financial Creditor prayed that this Tribunal may admit the application under Section 95 of the Code, and pass such further orders as may be deemed fit in the interest of justice.

IA (IBC)/83/GB/2026

3. **Report by the Resolution Professional:** It had been filed as case numbered **IA(IB)/83/GB/2026** dated 07.05.2026. The following are the submissions of the Resolution Professional:

3.1. The Resolution Professional submitted that vide Order dated 28.04.2026, the Hon'ble National Company Law Tribunal ("**NCLT**"), Guwahati, has appointed Amit Pareek as Resolution Professional ("**RP**") of Manas Barooah under Section 97 of the Code. The said Order was uploaded on the NCLT website on 29.04.2026. A copy of the order dated 28.04.2026 has been annexed to the RP Report as "*Annexure A*".

3.2. The Resolution Professional had duly communicated the Financial Creditor and Personal Guarantor vide email dated 01.05.2026 information about the order dated 28.04.2026 passed by this Hon'ble Tribunal in CP(IB)/36/GB/2026, appointment of IRP, and intimation of his duty to submit the report to this Hon'ble Tribunal within 10 days, recommending admission/rejection this application for the Insolvency Resolution Process, intimation about IRP's duty to collect information under Section 99 of the Code from the Financial Creditor and Personal Guarantor and any other persons and their obligation to provide the details within 7 days of his request. No response had been received from both the parties.

3.3. With respect to compliance of Section 95 of the Code:

3.3.1. With reference to Section 95(4)(a) of the Code, the Financial Creditor had filed the Application along with Statement of Account dated 20.01.2025 reflecting an outstanding of dues of Rs. 1,41,15,28,508.09/- as on 20.01.2025. A copy of the statement of accounts is annexed to the Petition as "*Annexure I-AW*".

3.3.2. With reference to Section 95(4)(b) of the Code, the Financial Creditor had issued a demand notice dated 09.04.2025 under Rule 7(1) of the Personal Guarantor Rules, calling upon the Personal Guarantor to pay the outstanding dues. This was served upon the Corporate Debtor through registered post and through email dated 15.05.2025 and through newspaper publication dated 22.05.2025. Despite service of the demand notice, the Personal Guarantor failed to repay the outstanding dues within the statutory period of fourteen days. Accordingly, the requisite details and documents evidencing such failure have been duly placed before this Hon'ble Tribunal. Copies of proof of service of demand notice through registered post, email and newspaper publication are annexed to the Petition as "*Annexure "I-AX*", "*Annexure I-AAA*", and "*Annexure I-AAB*" respectively.

3.3.3. With reference to Section 95(4)(c) of the Code, the details and documents evidencing the default and non-payment of debt have been placed before this Hon'ble Tribunal including demand promissory notes executed at various dates from 06.02.1998 to 15.09.2010, letters of guarantee executed by the Personal Guarantor on 07.06.2007, 09.05.2008, and 13.03.2009, DRT order dated 18.05.2018 passed in O.A. No. 03/2012, recovery certificate dated 07.06.2018 numbered as R.C. 3009/2018, statement of account as on 20.01.2025 showing total outstanding dues, and demand notice dated 09.04.2025, 15.05.2025, and 22.05.2025 with proof of service.

3.3.4. With reference to Section 95 (5) of the Code, a copy of the Application was sent to the Personal Guarantor through email on 31.03.2026. A copy of the proof of service has been annexed to the main Petition as "*Annexure I-A*".

3.4. With respect to compliance of Section 99 of the Code:

3.4.1. With reference to Section 99(2) of the Code, upon receipt of the NCLT Order of Appointment of Resolution Professional, the RP served a notice on

01.05.2026 upon the Personal Guarantor and his legal counsel, calling upon him to furnish records as per Section 99(2) of the Code including evidence of electronic transfer of the unpaid amount from the bank account of the debtor, evidence of encashment of cheque issued by the debtor, and a signed acknowledgment by the creditor accepting receipt of funds. The Personal Guarantor opposed the Application on the ground of parallel same application by the Financial Creditor, limitation, baseless claims, etc.

3.4.2. With reference to Section 99(3) of the Code, the debt has not been registered with any information utility. However, the existence of debt is duly evidenced by documents filed along with the Application, including demand promissory notes, letters of guarantee, statement of account, DRT order dated 18.05.2018 and recovery certificate dated 07.06.2018.

3.5. As per Section 99(4) read with Section 99(6)(b) of the Code, the report was filed within the time prescribed recommending **admission** of the Application. The RP examined all submitted documents and was satisfied on the following grounds:

3.5.1. A debt exists in favour of the Financial Creditor amounting to Rs. 1,41,15,28,508.09/- as on 20.01.2025. The debt amount is qualifying debt not excluded debt.

3.5.2. The Personal Guarantor committed default in repayment as evidenced by NPA declaration on 29.11.2011, DRT proceedings and the Recovery Certificate issued as R.C. 3009/2018, so the requirement of Section 95(1) is satisfied.

3.5.3. The Personal Guarantor had duly executed Letters of Guarantee on 07.06.2007, 09.05.2008, and 13.03.2009 guaranteeing the repayment of the aforesaid loan. The application is made against the Personal Guarantor in his personal capacity hence Section 95(2) &(3) is not applicable.

3.5.4. The Application is accompanied with details and documents as required under Section 95(4) of the Code. It has been filed in prescribed Form-C with requisite fees as per Section 95(6) of the Code.

3.5.5. A demand notice was issued under Section 95(4) read with Rule 7(1) of the Personal Guarantor Rules on 09.04.2025 and served through registered post, emails dated 15.05.2025 and 31.03.2026, and newspaper publications dated

22.05.2025. Yet, service of demand remains subject to examination by Adjudicating Authority.

3.5.6. The Personal Guarantor has failed to repay the debt or dispute it within the prescribed period.

3.5.7. The Personal Guarantor is not eligible for a fresh start process as provided under Part III, Chapter II of the Code.

3.5.8. As per Section 60 (1) and (2) of the Code, this Hon'ble Tribunal has the jurisdiction to adjudicate this instant Application as the Corporate Debtor has its registered office at Guwahati, Assam and the Personal Guarantor is also a resident of Assam.

3.5.9. The Personal Guarantor replied to the notice issued by the RP under Section 99(2) of the Code calling upon him to prove repayment of debt. However, he decided to oppose the Application itself which is subject to this Hon'ble Tribunal's adjudication.

3.6. Thus, the Resolution Professional recommends the instant Application for **admission** against the Personal Guarantor.

4. **Submissions of the Financial Creditor** *vide* Convenience Note dated 23.06.2026:

4.1. The facts of the main Petition are reiterated and relied upon, and are not repeated herein for the sake of brevity

4.2. It is submitted that the compromise settlement as well as the subsequent communications constitutes clear acknowledgments of liability under Section 18 of the Limitation Act, 1963, thereby giving rise to fresh period of limitation. The debt was never disputed but rather repeatedly admitted by borrowers and guarantors.

4.3. The communication dated 07.11.2022 specifically sought extension of time till May 2024. The cause of action for initiating proceedings against the expiry of the extended repayment period, i.e., May 2024. Thus, the present Petition filed on 06.04.2026 is well within limitation.

4.4. It is further submitted that the Recovery Certificate dated 07.06.2018 issued by the Learned DRT remains under execution in R.C.No. 3009/2018. The recovery proceedings are still pending, so the debt remains due, payable and legally enforceable.

4.5. It is settled law that proceedings under the IBC, 2016 are governed by Article 137 of the Limitation Act 1963 and valid acknowledgments of liability extend limitation. In the present case, the compromise before the DRT, Guwahati the subsequent extension requests and particularly the acknowledgment dated 07.11.2022 keep the debt alive and enforceable.

5. This Hon'ble Tribunal by its Order dated 03.06.2026, granted a final opportunity to the Personal Guarantor to file its counter within five days in the main i.e, CP(IB)/36/GB/2026, failing which its right to file the same would stand forfeited. Upon failure to comply, the right of the Personal Guarantor to file its counter was closed vide order dated 17.07.2026. Thereafter, the Respondents were given a final opportunity to file its convenience notes to present their submissions.

6. **Submissions of the Financial Creditor** *vide* Additional Convenience Note dated 10.10.2026:

6.1. It is submitted that there is a valid invocation of personal guarantee against the Personal Guarantor. Initially, the credit facilities were secured by personal guarantees furnished in favour of the Financial Creditor. Pursuant to the default, a demand notice dated 02.11.2011 was issued under Section 13(2) of the SARFAESI Act, 2002, in connection with the outstanding credit facilities. A copy of the demand notice dated 02.11.2011 is annexed to the Additional Convenience Note as "*Enclosure 1*".

Under Section 128 of the Indian Contract Act, 1872, the liability of a surety is co-extensive with that of the principal debtor, unless otherwise provided by the contract. The borrower and guarantors subsequently entered into a compromise settlement, accepted by the DRT on 18.05.2018. The letter dated 07.11.2022 issued on the letterhead of the Corporate Debtor under the subject "Proposal for revival of expired compromise settlement: Loan A/C – Lohit Construction Pvt. Ltd and other 6 accounts", sought time for repayment upto May 2024. The Financial Creditor relies upon the guarantee documents, compromise settlement and subsequent communications in support of the liability of the Respondent.

6.2. It is submitted that the Petition is within limitation. The Financial Creditor relies upon the compromise proposal dated 14.02.2018, the DRT order dated 18.05.2018

and the subsequent communications dated 25.06.2020 and 07.11.2022 as material evidencing acknowledgment of liability. In particular, the letter dated 07.11.2022 sought revival of the expired compromise settlement and further time for repayment up to May 2024. The said documents are relied upon for consideration under Section 18 of the Limitation Act, 196, read with Section 238A of the Code, subject to fulfilment of the applicable statutory requirements. Additionally, the Financial Creditor also relies upon the Recovery Certificate dated 07.06.2018 and its pending execution proceedings to bolster its submission.

6.3. It is submitted that Rs. 1,41,15,28,508.09 is the outstanding claim amount as on 20.01.2025. The amount of Rs. 12,65,00,000/- reflected in the compromise settlement and approximately Rs 9.79 crore admitted in the liquidation proceedings represent figures arising from the compromise arrangement and the liquidation proceedings represent figures arising from the compromise arrangement and the liquidation process, respectively. The compromise amount was conditional upon timely compliance with the proposal dated 14.02.2018. As per the Financial Creditor, the borrower failed to fulfill the conditions of the compromise, and Clause 9 of the compromise proposal provides for cancellation upon such failure. Accordingly, the Financial Creditor relies upon the said clause in support of its claim for recovery of the outstanding contractual dues together with applicable interest, subject to adjustment of amounts actually recovered and avoidance of double recovery.

6.4. Prior to filing the present Petition, the prescribed demand notice in Form B under Rule 7(1) of the Personal Guarantor Rules was dispatched by registered post to the personal addresses of the guarantors, including the Personal Guarantor herein, and communicated to the registered office of the Corporate Debtor and the available email address of the lead company. Notices were also published in Dainik Asom and The Times of India. The Personal Guarantor has entered appearance before this Hon'ble Tribunal and filed a reply to the Petition.

7. **Submissions of the Personal Guarantor** *vide* Convenience Note uploaded online on 12.10.2026:

7.1. In response to the main Petition, the Personal Guarantor submitted that on 06.04.2026, the Financial Creditor filed the instant petition under Section 95 of the

Code against the Personal Guarantor, after an unexplained lapse of nearly 15 years from the date of NPA classification on 29.11.2011 and nearly 8 years from the DRT compromise order dated 18.05.2018.

7.2. By virtue of Section 238A of the Code, provisions of the Limitation Act, 1963 apply to proceedings before the Adjudicating Authority. An application under Section 95 of the Code is governed by the residuary Article 137 of the Limitation Act, 1963, which prescribes a period of three years from the date on which the right to apply accrues. The loan amount was declared an NPA on 29.11.2011 and the right to apply in respect of the alleged default at the latest in November 2011. The three year period expired in November 2014. The present Petition, filed in April 2026 is more than a decade beyond limitation and is hopelessly barred.

7.3. The Financial Creditor sought to overcome the bar by relying upon the letters dated 08.06.2020 and 07.11.2022 as an acknowledgment of debt under Section 18 of the Limitation Act, 1963. Under Section 18, an acknowledgment must be in writing and signed by the party against whom the right is claimed, or by an agent duly authorised in that behalf. The letter was authored and signed solely by Mukul Deka in his capacity as Managing Director of M/s Lohit Construction Pvt. Ltd., on the Letterhead of the Corporate Debtor. Sri Mukul Deka was never appointed, authorised, or empowered as an agent of the Respondent in his individual capacity as personal guarantor.

7.4. It is submitted that an acknowledgment executed exclusively by the principal borrower does not automatically operate as an acknowledgment by the guarantor, nor does it extend limitation against him in the absence of express agency. The co-extensive liability of a surety under Section 128 of the Indian Contract Act, 1872 does not create a statutory presumption of agency under Section 18 of the Limitation Act. Therefore, the letter dated 07.11.2022 is non-est and incapable of extending limitation against the Personal Guarantor.

7.5. The Financial Creditor's own letter dated 10.02.2023, numbered as UCOSIL/MISC/NPA-COMPROMISE/2022-23/248, which the bank suppressed from this Hon'ble Tribunal expressly refused to accept the One Time Settlement ("**OTS**") proposal dated 07.11.2022 and made a conditional counter-offer demanding deposit of 25% of the residual amount upfront and liquidation of the entire balance within a maximum period of one year.

7.6. Under Section 7 of the Indian Contract Act, 1872, acceptance must be absolute and unqualified. A conditional counter-offer amounts in law to a rejection of the original offer and terminates the proposal. Consequently, the OTS proposal dated 07.11.2022 stood rejected at the instance of the Financial Creditor itself.

7.7. The Financial Creditor treated the 07.11.2022 proposal as rejected for compromise purposes but now cannot simultaneously rely upon the same proposal's proposed instalment timeline upto May 2024 as valid for extending limitation. The counter offer of 10.02.2023 conclusively proves no concluded contract or consensus ever existed. Therefore, there is no subsisting acknowledgment extending the period of limitation.

7.8. Without admitting to it, even if the letter dated 07.11.2022 were treated as an acknowledgment binding on the Personal Guarantor, a fresh three-year period would run only from 07.11.2022 and would expire on 06.11.2025. The petition filed in March or April 2026 remains barred.

7.9. It is submitted that no demand notice invoking the personal guarantee was ever served upon the Personal Guarantor. The purported Section 13(2) SARFAESI Notice dated 02.11.2011 was never received by the Personal Guarantor, was never produced in the DRT proceedings, formed no part of the original petition record, and appears to have been improperly introduced through an additional convenience note without leave of this Hon'ble Tribunal, in violation of the principles of natural justice and the requirement of strict proof of service. Moreover, as per the applicant's own version, if the account of the Corporate Debtor became NPA on 29.11.2011, then how would a notice under Section 13(2) of the SARFAESI Act, 2002 be issued on 02.11.2011, a date prior to the Corporate Debtor's account becoming NPA. Even otherwise, the notice dated 02.11.2011 cannot be termed to be a notice of invocation of personal guarantee.

7.10. The compromise recorded before the Learned DRT on 18.05.2018 was entered into between the Financial Creditor and the Principal Borrower only. The Respondent was neither a signatory nor a consenting party. Under Section 62 of the Indian Contract Act, 1872 where parties to a contract agree to substitute a new contract for original debt, the original contract need not be performed. The compromise, to which the guarantor was not a party, operated as novation of the original debt and discharged the Respondent.

Without admitting to it, even if this compromise were to be treated as an acknowledgment, the fresh three year period would have expired on 18.05.2021, which would be nearly five years before the present petition was filed.

7.11. The pendency of execution in R.C. No. 3009 of 2018 does not suspend or enlarge limitation for an application under Section 95 of the Code. The Code is not a forum for the execution of decrees or recovery certificates, and the existence of recovery proceedings does not furnish a continuing cause of action. The cause of action, if any, crystallized at default or NPA classification and stood barred long before the filing of this petition.

7.12. It is submitted that the alleged outstanding claim of Rs. 1,41,15,28,508.09 computed on 20.01.2025 is unilateral, inflated, unexplained and disconnected from the sum of Rs. 12.65 crores fixed under the 2018 compromise and that too for seven different accounts.

7.13. It is submitted that the RP had not relied with the issues raised by the Respondent herein in his report. Therefore, the recommendation of the RP for admission of the present Petition is not binding upon this Hon'ble Tribunal.

7.14. The Personal Guarantor prays for this Hon'ble Tribunal to dismiss his Company Petition as it is barred by limitation and not maintainable against the Respondent. It is further prayed to reject the petition for being founded upon unserved, inadmissible, and novated claims, and to hold that the Respondent stands discharged as Guarantor. Lastly, he prays for exemplary costs to be imposed upon the Financial Creditor.

8. Heard the submissions made by the Learned Counsel for both the parties and perused the records.

FINDINGS AND ANALYSIS

9. The present application has been filed by the Financial Creditor under Section 95 of the Code seeking initiation of Insolvency Resolution Process against Manas Barooah, Personal Guarantor to the Corporate Debtor, M/s Lohit Construction Pvt. Ltd.

10. As per Section 60 (1) and (2) of the Code, this Hon'ble Tribunal has the jurisdiction to adjudicate this instant Application as the Corporate Debtor has its registered office at Guwahati, Assam and the Personal Guarantor is also a resident of Assam.

11. The record reflects that the Demand Notice dated 09.04.2025 was sent by post to the Personal Guarantor, which was delivered by 16.04.2025 as per the track consignment report. Thereafter, the Financial Creditor published the demand notice in two local leading newspaper in English and vernacular language on 22.05.2025. Therefore, the demand notice had been adequately served.

12. In compliance with Section 97 of the Code, this Tribunal appointed Amit Pareek as Resolution Professional (RP) on 28.04.2026 to examine the application and submit his report under Section 99 of the Code. The Resolution Professional, in the report under Section 99 of the Code, has recommended acceptance of the application and has opined that the material available indicates the existence of a debt and default for consideration by this Tribunal.

13. However, the Respondent raised the following issues for determination before this Tribunal:

13.1. Whether the Application is within limitation?

13.2. Whether there is a valid invocation of personal guarantee?

13.3. Whether the claim amount is unreasonably inflated?

Whether the Application is within limitation?

14. It is admitted on record that the Personal Guarantor was a signatory to the compromise accepted by the Learned DRT, Guwahati, vide order dated 18.05.2018 in O.A. No. 03/2012, which constitutes a valid acknowledgment of liability. Consequently, a Recovery Certificate (R.C. 3009/2018) dated 07.06.2018 was issued by the DRT, providing a fresh cause of action to the Financial Creditor. Copies of the Compromise Proposal, DRT Order and Recovery Certificate are attached to the Petition as "*Annexure I-AQ*", "*Annexure I-AR*" and "*Annexure I-AS*" respectively.

15. Prior to the expiry of the initial repayment plan, the Corporate Debtor proposed an extension of repayment period till June 2022 for the compromised amount vide letter dated 08.06.2020, which was subsequently accepted by the Financial Creditor on 25.06.2020. Subsequently, similar extension request was sought upto May 2024 vide letter dated 07.11.2022 which was accepted by the Financial Creditor on 21.11.2022. It is admitted that M/s Lohit Construction Pvt. Ltd. is the Corporate Debtor in respect of whose credit facilities the Personal Guarantor stood guarantor. Under Section 128 of the Indian Contract Act, 1872, the liability of a surety is co-extensive with that of

the principal debtor unless otherwise provided in the contract of guarantee. No document has been placed on record, nor has any been pointed out, evidencing an explicit release or discharge of the Personal Guarantor's liability at any point after the compromise dated 18.05.2018. In the absence of such release, an acknowledgment of liability by the Corporate Debtor in respect of the very same debt for which the Personal Guarantor stood surety operates to bind the Personal Guarantor as well, his liability being co-extensive and not independent of that of the Corporate Debtor. The letter dated 07.11.2022, by which the Corporate Debtor sought extension of time up to May 2024 for liquidation of the outstanding dues, accordingly constitutes a valid and subsisting acknowledgment of liability binding on the Personal Guarantor as well. The cause of action against the Personal Guarantor did not crystallize into a completed default for the purposes of limitation until the extended repayment period held out in the said letter had run its course. Limitation, therefore, commenced to run only upon expiry of the extended repayment period in May 2024, and not from any earlier date.

16. This view is fortified by the law laid down by the Hon'ble Supreme Court in ***Laxmi Pat Surana v. Union Bank of India,*** *(2021) 8 SCC 481*, where it was held that the liability of a guarantor being coextensive with that of the principal borrower under Section 128 of the Indian Contract Act, 1872, an acknowledgment of liability by the principal borrower, made within the period of limitation, operates to extend limitation as against the guarantor as well, the debt being one and indivisible as between the principal debtor and the surety. Relevant excerpt (para 38) from the judgment is quoted below:

"*The fact that acknowledgment within the limitation period was only by the principal borrower and not the guarantor, would not absolve the guarantor of its liability flowing from the letter of guarantee and memorandum of mortgage. The liability of the guarantor being coextensive with the principal borrower under Section 128 of the Contract Act, it triggers the moment principal borrower commits default in paying the acknowledged debt. This is a legal fiction. Such liability of the guarantor would flow from the guarantee deed and memorandum of mortgage, unless it expressly provides to the contrary*."

17. Applying this principle, the acknowledgment contained in the letter dated 07.11.2022, though issued by the Corporate Debtor, extends limitation against the Personal Guarantor in equal measure, there being no release of his guarantee on record.

18. Computed from May 2024, and applying Article 137 of the Limitation Act, 1963, the period of three years available to the Financial Creditor for institution of proceedings

against the Personal Guarantor had not expired as on 17.04.2026, the date of filing of the present Petition online. The Petition is accordingly within limitation.

19. Even if the letter dated 10.02.2023 issued by the Financial Creditor is considered, the letter itself states that—

"*The repayment period sought by you is to be reduced and it should be kept at maximum of one year*"

It would mean that the repayment schedule is extended only upto November 2023, which would mean limitation period would run afresh from that date upto November 2026. Even then the Petition filed online on 17.04.2026 is within limitation.

20. Accordingly, this issue is answered in favour of the Financial Creditor. The objection of the Personal Guarantor that the Petition is barred by limitation is rejected.

Whether there is a valid invocation of personal guarantee?

21. The Respondent contends that the Guarantee was never invoked. However, we find that their objection fails upon scrutiny of record.

22. It stands established that a demand notice dated 02.11.2011 under Section 13(2) of the SARFAESI Act was addressed to the Personal Guarantor herein, in which he was explicitly named in his capacity as guarantor and called upon to discharge the outstanding liability. The relevant excerpts from the letter to the Corporate Debtor are as follows:

"*The operation and conduct of the above said financial assistance/ credit facilities have become irregular and the* ***debt has been classified as non-performing assets*** *in accordance with the directives/guidelines relating to asset classifications issued by the Reserve Bank of India consequent to the default committed by you in repayment of principal debt and interest thereon… Therefore, the Bank hereby calls upon U/S 13(2) of the said Act by issuing this notice to discharge in full your liabilities stated hereunder to the Bank within 60 days from the date of this notice."*

"COPY FORWARDED TO…(6) Manash Barooah…You are requested to make the payment of the amount mentioned in the notice in terms of the guarantee executed by you."

23. Despite the fact that the Petitioner themselves had stated the date of NPA classification as 29.11.2011 in their submissions, the demand notice dated 02.11.2011 had already stated that the debt had already been classified as "non-performing assets" as on

02.11.2011. In the said notice, outstanding liabilities due and owing to the Bank is in the sum of Rs. 129390885.44 with interest calculated upto 30.09.2011. This date can be considered the date of NPA classification as per this notice dated 02.11.2011, particularly in light of the legal notice dated 28.09.2011 which was addressed to the Corporate Debtor and copied to all personal guarantors including the Respondent himself. In the legal notice dated 28.09.2011, the following excerpt is relevant:

"*From the statement of account maintained by my aforesaid client in their regular course of business, it appears that you have not transacted in the loan account since 30.06.2011 and present outstanding balance comes to Rs. 12,75,95,2723.44 as on 30.08.2011 and you are legally bound to regularize the aforesaid loan account* "

Considering there had been no transactions from the aforesaid loan accounts for over 90 days since 30.06.2011 as on 30.09.2011, it could be the date of NPA classification as mentioned in the demand notice. A copy of the demand notice dated 02.11.2011 is annexed to the Additional Convenience Note as "*Enclosure -1*". A copy of the legal notice is annexed to the Petition as "*Annexure I-AN*".

24. Therefore, this constitutes a valid invocation of the guarantee executed by the Personal Guarantor. The objection on this count is accordingly rejected.

Whether the claim amount is unreasonably inflated?

25. The Respondent has raised the objection that the alleged outstanding claim of Rs. 1,41,15,28,508.09 computed on 20.01.2025 is unilateral, inflated, unexplained and disconnected from the sum of Rs. 12.65 crores fixed under the 2018 compromise and that too for seven different accounts.

26. This Tribunal finds that the discrepancy stands explained on record. The amount of Rs. 12.65 crores reflected in the DRT order represent the compromised figure conditional upon timely payment in terms of the Compromise Proposal dated 14.02.2018. Upon the Corporate Debtor's failure to honour the conditions of the settlement, the compromise stood cancelled in terms of Clause 9 of the Compromise Proposal, reviving the Applicant's entitlement to recover the entire outstanding contractual dues, together with interest. Further, the precise apportionment of liability amongst the several guarantees executed by the Respondent, and the correctness of the quantum claimed, are matters that squarely fall for verification during the claims verification process under the Code. The alleged discrepancy in quantum, therefore,

does not detract from the existence of a debt and a default for the purposes of admission under Section 95 of the Code, and is left open for determination during the verification of claims. A copy of the Compromise Proposal is annexed to the Petition as "*Annexure I-AQ*".

27. In light of the above findings, this Tribunal is satisfied that the personal guarantee executed by the Respondent stood validly invoked, that the Application is not barred by limitation in view of the acknowledgment of debt contained in the letter dated 07.11.2022 issued on behalf of the Corporate Debtor and that the Financial Creditor has established the existence of a legally enforceable debt and default against the Respondent. Therefore, the RP Report under IA (IBC)/83/GB/2026 is taken on record and CP IB)/36/GB/2026 deserves to be admitted.

ORDER

1. In view of the foregoing reasons, the present Petition being **CP(IB)/36/GB/2026** filed under Section 95 of the Code is hereby **admitted** on the following terms
   i. The Insolvency Resolution Process against the Respondent/Personal Guarantor is hereby initiated. In terms of Section 101 of the Code, a moratorium in relation to all debts shall commence from the date of this order and shall cease to have effect at the end of 180 days or on the date this Tribunal passes an order under Section 114 approving or rejecting the repayment plan, whichever is earlier. During the moratorium period:
      a) Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed,
      b) The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt;
      c) The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein; and
      d) The provisions of Section 101 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
   ii. In terms of Section 97(5) of the Code, **Amit Pareek**, E-mail: amitpareek99@yahoo.com, bearing registration number **IBBI/IPA-002/IP-N00413/2017-18/11205**, having his address at 4th floor, Ram Prasad Complex,

Chatribari, Guwahati- 781001, who was appointed *vide* order dated 28.04.2026, shall continue to act as the Resolution Professional for the Personal Guarantor.

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

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

a) details of the order admitting the application;

b) particulars of the resolution professional with whom the claims are to be registered; and

c) the last date for submission of claims.

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

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

a) the information disclosed in the application filed by the debtor under Sections 94 or 95, as the case may be, and

b) claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice.

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

viii. The repayment plan may authorize or require the Resolution Professional to:

a) carry on the debtor's business or trade on his behalf or in his name: or

b) realise the assets of the debtor; or

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

ix. The repayment plan shall include the following, namely:

a) justification for preparation of such repayment plan and reasons based on which the creditors may agree upon the plan;

b) provision for payment of fee to the Resolution Professional;

c) such other matters as may be specified

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

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

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

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

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

xv. The Financial Creditor is directed to deposit INR 50,000/- (Rupees Fifty Thousand Only) to the bank account of the Resolution Professional within one week, towards the fees of the Resolution Professional. This shall be subjected to the rules and regulations under the provisions of the Code.

2. In terms of the above, **CP (IB)/36/GB/2026** filed under Section 95 of the Code is **admitted** and the Insolvency Resolution Process stands initiated against the Personal Guarantor. . The RP report under **IA (IBC)/83/GB/2026** is **accepted**, **taken on record**, and **disposed of**.
3. The Financial Creditor and its Counsel are hereby directed to serve the copy of this Order along with copy of the Application and documents on the Resolution Professional by all modes for information and compliance.
4. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
5. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
6. File be consigned to records.

Sd/-
Yogendra Kumar Singh
Member (Technical)

Sd/-
Rammurti Kushawaha
Member (Judicial)

Signed this on 28th day of October, 2026

Madona Barman (L.R.A.)