

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-II**

**C.P. (IB)/580(MB)2022**

*[Under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 7(2) of the  
Insolvency and Bankruptcy (Application to the Adjudicating Authority for Insolvency Resolution  
Process for Personal Guarantors to Corporate Debtors) Rules, 2019]*

**IN THE MATTER OF:**

**Tata Capital Limited (Erstwhile Tata Capital Financial Services Limited)**

11<sup>th</sup> Floor, Tower - A, Peninsula Business Park,  
Ganpatrao Kadam Marg, Lower Parel,  
Mumbai -400 013

**... Applicant/Financial Creditor**

**Versus**

**Mr. Vijay Gokhale**

**(Personal Guarantor of Pandit Automotive Private Limited)**

Jayprabha, 14/2/9, Sunita Jayprabha, HSC, Erandavana, Pune – 411004

**Pronounced On: 21.10.2026**

**CORAM:**

**HON'BLE SHRI ASHISH KALIA, MEMBER (JUDICIAL)**

**HON'BLE SHRI BANWARI LAL MEENA, MEMBER (TECHNICAL)**

**Appearances: Hybrid**

**For RP :** Adv. Atishay Jain i/b Adv. Kunal Kanungo

**For Authorized Representative of Financial Creditor:** Adv. Ameet Deosthale,

Tata Capital Limited, erstwhile TCFSL. (VC)

**For CD :** Adv. Shadab Jan a/w Adv. Tanmay P. Bidkar, Adv. Tharekesh Dharamaraj

i/b I. V. Merchant & Co.

**ORDER**

**Per- Coram**

**1. BACKGROUND**

- 1.1 This Petition has been filed by **Tata Capital Limited** (hereinafter referred to as “the Financial Creditor”) under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”), read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (hereinafter referred to as “**the PG to CD Rules**”), seeking initiation of the insolvency resolution process against **Mr. Vijay Gokhale** (hereinafter referred to as “the Personal Guarantor/Respondent”), being the personal guarantor to **Pandit Automotive Private Limited** (hereinafter referred to as “the Corporate Debtor”).
- 1.2 The Corporate Debtor had availed Channel Finance facilities from **the financial creditor** from September 2007 onwards, which were renewed and enhanced from time to time. Pursuant to the Sanction Letter dated **18.12.2015**, **the financial creditor** sanctioned a Channel Finance Facility of Rs. **25,00,00,000/-** (Rupees Twenty-Five Crores only). A Channel Finance Agreement was executed on **15.01.2016** and the Personal Guarantor executed a Letter of Guarantee dated **15.01.2016** in favour of **the financial creditor** to secure the obligations of the Corporate Debtor. Upon failure of the Corporate Debtor to repay the dues, various recall and statutory notices were issued and the Corporate Debtor subsequently failed to honour the Consent Terms dated **26.10.2016**, under which it had agreed to pay Rs. **13,73,26,184.19/-**.

- 1.3 The Corporate Debtor was subsequently ordered to be liquidated vide order dated **09.08.2018** passed by this Tribunal in Company Petition No. 1624 of 2017. The Financial Creditor thereafter issued a Demand Notice dated **21.10.2021** to the Personal Guarantor under Rule 7(1) of the PG to CD Rules, calling upon him to pay the outstanding dues. The Demand Notice records the date of debt due and date of default as **23.05.2017**.
- 1.4 The total outstanding debt is stated to be Rs. **27,53,25,619/-** (Rupees Twenty-Seven Crores Fifty-Three Lakhs Twenty-Five Thousand Six Hundred Nineteen only) as on **21.10.2021**, apart from further interest and other charges till repayment in full.
- 1.5 During the pendency of the present Petition, pursuant to the Scheme of Arrangement sanctioned by this Tribunal vide order dated **24.11.2023**, effective from **01.01.2024**, the rights, debts and obligations of **the financial creditor** stood transferred to **Tata Capital Limited**. The Petitioner was accordingly substituted as Tata Capital Limited pursuant to order dated **25.06.2024**, and the amendment was carried out on **18.07.2024**.

## **2. AVERMENTS OF FINANCIAL CREDITOR**

- 2.1 The Financial Creditor has submitted that the Respondent herein is the Personal Guarantor to **Pandit Automotive Private Limited** (hereinafter referred to as the "Corporate Debtor/Borrower"). The Corporate Debtor had been availing Channel Finance facilities from **the financial creditor** from September 2007 onwards, which facilities were renewed and enhanced from time to time. Pursuant to the Sanction Letter dated **18.12.2015**, **the financial creditor** sanctioned a Channel Finance Facility of Rs. **25,00,00,000/-** (Rupees Twenty-Five Crores only) to the Corporate Debtor for a

tenure of 12 months from the date of sanction, carrying normal interest at the rate of **13.50% per annum**.

- 2.2 It is further submitted that pursuant to the aforesaid sanction, the Corporate Debtor and **the financial creditor** executed a **Channel Finance Agreement dated 15.01.2016**. In order to secure repayment of the said Channel Finance Facility, the Respondent, along with the other Personal Guarantor(s), executed a **Letter of Guarantee dated 15.01.2016** in favour of **the financial creditor**. Under the said Letter of Guarantee, the Personal Guarantors irrevocably and unconditionally, jointly and severally, guaranteed repayment of all amounts in respect of which default was committed by the Corporate Debtor, together with interest, additional interest and costs, charges and expenses incurred by the Financial Creditor.
- 2.3 The Financial Creditor has further submitted that the Corporate Debtor also executed a **Letter of Undertaking-cum-TDS Indemnity dated 15.01.2015** and an **Irrevocable Power of Attorney dated 14.03.2016** in favour of **the financial creditor** in connection with the said Channel Finance Facility. The Corporate Debtor thereafter committed continuous defaults in repayment of the amounts due under the Channel Finance Agreement, including interest, additional/penal interest and other lawful charges and expenses. Consequently, Loan Recall Notices dated **04.05.2016** and **11.08.2016** were issued, followed by a Statutory Winding Up Notice under Sections 433 and 434 of the Companies Act, 1956 dated **12.08.2016**.
- 2.4 It is further averred that, upon the continued default by the Corporate Debtor and the Personal Guarantors, the Financial Creditor initiated proceedings before the Hon'ble High Court of Bombay, pursuant to which **Consent Terms dated 26.10.2016** were executed between the parties. Under the said Consent Terms, the Corporate Debtor agreed to pay a sum of Rs. **13,73,26,184.19/-** to the Financial Creditor in instalments,

with the instalments being payable on or before **31.12.2016**. The Corporate Debtor failed to honour the said Consent Terms.

- 2.5 The Financial Creditor has stated that the date when the debt became due and the date of default are **23.05.2017**. The Corporate Debtor was subsequently admitted into Corporate Insolvency Resolution Process and was thereafter ordered to be liquidated by this Tribunal vide order dated **09.08.2018** passed in Company Petition No. **1624 of 2017**. The Financial Creditor submitted its Proof of Claim dated **29.03.2018** in the CIRP of the Corporate Debtor.
- 2.6 It is further submitted that the Financial Creditor issued a **Demand Notice dated 21.10.2021** under Rule 7(1) of the PG to CD Rules to the Respondent, calling upon him to discharge the unpaid debt in default due from the Corporate Debtor. The said Demand Notice records the total outstanding debt at Rs. **27,53,25,619/-** (Rupees Twenty-Seven Crores Fifty-Three Lakhs Twenty-Five Thousand Six Hundred Nineteen only) as on **21.10.2021**, together with unpaid interest and other charges till repayment in full.
- 2.7 The Financial Creditor has relied upon the **Record of Default/Certificate issued by National E-Governance Services Limited (NeSL) dated 19.10.2021**, wherein the information relating to the debt of the Corporate Debtor was recorded. The Financial Creditor has also relied upon the Statement of Account and the documents evidencing the sanction of the facility, execution of the Channel Finance Agreement and Letter of Guarantee, recall notices, Consent Terms, orders passed in the proceedings concerning the Corporate Debtor, and the Demand Notice issued to the Respondent.
- 2.8 In view of the aforesaid facts and circumstances, the Financial Creditor has filed the present Petition under Section 95(1) of the Code read with Rule 7(2) of the PG to CD

Rules, seeking initiation of the Insolvency Resolution Process against the Respondent in his capacity as Personal Guarantor of the Corporate Debtor.

**3. RECOMMENDATION OF RESOLUTION PROFESSIONAL (RP)**

- 3.1 This Tribunal appointed **Mrs. Palak Swapnil Desai**, a registered Insolvency Professional, to act as Resolution Professional (RP) vide Order dated 22.08.2023 in the aforesaid Petition and directed the RP to prepare and file a Report under Section 99 of the Code, and the same was filed on 16.09.2023 through IA 4341/2023 filed by the RP.
- 3.2 The RP, vide his Report dated 15.09.2023, after due examination of the application and the documents filed along with the same, recommended admission of the application.

**4. FINDINGS:**

- 4.1 We have carefully perused the material available on record, including the Application filed by the Financial Creditor, the documents placed on record, the Report submitted by the Resolution Professional under **Section 99 of the** the Code, and the pleadings and averments forming part of the record. The Respondent/Personal Guarantor, despite service of notice, failed to appear and contest the proceedings and was accordingly proceeded **ex parte vide order dated 09.07.2024**.
- 4.2 The twin issues for consideration in the present application are whether the invocation of guarantee is in accordance with Rule 3 (1)(e) of PG to CD Rules and whether the petition is within limitation. As per the prevailing legal position, an application u/s 95 of the Code is not maintainable unless the creditor has first

invoked the guarantee prior to issuing the demand notice in Form B under Rule 7(1).

- 4.3 In the present case, it is provided in **clause VI and clause VII** of Channel Finance Agreements dated 15.01.2016 as under:

*At the option of TCFSL, and without the necessity of any demand upon or notice to the Dealer, all of which are hereby expressly waived by the Dealer, and notwithstanding anything contained herein or in any other documents that may be executed by the Dealer pursuant to this Agreement, all the outstanding dues and all of the obligations of the Dealer to TCFSL hereunder, shall immediately become due and payable and the said Facility shall stand frozen upon the happening of any of the following events, ("the Events Of Default"):*

- a) Failure to make payment to TCFSL of the outstanding dues or any part thereof payable under these presents on the due date(s) or on demand as the case may be;.*

#### **VII. CONSEQUENCES OF DEFAULT**

*In the event of the Dealer committing any breach or default or on the happening of any of the Events of Default, without prejudice to rights of TCFSL under this Agreement or in law or equity.*

- a) TCFSL shall be entitled to recall the Facility and demand immediate repayment of the outstanding Dues. TCFSL shall at its discretion be entitled to enforce the Security without notice to the Dealer, if given under this Facility and enforce the covenants and undertakings given under this Agreement. The appropriation by TCFSL of the said Security (or any part thereof) in accordance with the provisions*

*of this Agreement shall not discharge or relieve the Dealer of its obligations to TCFSL under this Agreement, and shall be without prejudice to any other right and/or remedy that TCFSL may have at equity or in law.*

In terms of the aforesaid clause, it is evident that the liability of the Respondent/Personal Guarantor arises upon a demand being made by the Financial Creditor.

- 4.4 In ***Asha Basantilal Surana v. State Bank of India & Ors., (2025) ibclaw.in 359 NCLAT***, it has been held that invocation of a personal guarantee must be in accordance with the terms of the Guarantee Agreement. In the present case, Clause VI and clause VII of the Channel Finance Agreements provides that the liability of the Guarantor arises upon the Banks serving a notice requiring payment of the amount. The said clause does not prescribe any specific mode or manner for issuance of such notice. In the present case, vide notice dated 11.08.2016, the Respondent/Personal Guarantor was called upon to pay the outstanding dues to the Financial Creditor. In view of Clause VI and clause VII, the issuance of such notice requiring payment constitutes invocation of the guarantee.
- 4.5 We are therefore satisfied that the personal guarantees stood validly invoked and the requirement contemplated under Rule 3(1)(e) stands duly complied with.
- 4.6 In the present case, the Financial Creditor has stated the date of default as **23.05.2017**. The said date is also reflected in the **Record of Default/Certificate issued by National E-Governance Services Limited (NeSL) dated 19.10.2021**, wherein the default in respect of the debt has been recorded. The said record forms part of the material placed before us and corroborates the date of default

relied upon by the Financial Creditor. No material has been placed on record by the Respondent/Personal Guarantor to dispute or dislodge the said date.

4.7 In the facts and circumstances of the present case, and having regard to the entries contained in the NeSL Record of Default read with the other documents placed on record, including the recall notices, the Consent Terms dated 26.10.2016 and the subsequent proceedings in relation to the Corporate Debtor, we take **23.05.2017** as the date of default for the purpose of examining limitation in the present proceedings.

4.8 The application under Section 95 of the Code is governed by Article 137 of the Limitation Act, 1963, by virtue of Section 238A of the Code, and is required to be filed within three years from the date on which the right to apply accrues. The Hon'ble Supreme Court, in *In Re: Cognizance for Extension of Limitation, M.A. No. 21 of 2022 in M.A. No. 665 of 2021 in Suo Motu Writ Petition (C) No. 3 of 2020*, excluded the period from **15.03.2020 to 28.02.2022** for the purpose of limitation. The said exclusion has also been reiterated by the Hon'ble Supreme Court in *IL&FS Financial Services Limited v. Adhunik Meghalaya Steels Private Limited, Civil Appeal No. 5787 of 2025*.

4.9 Accordingly, the limitation of three years, comprising **1095 days**, is to be computed from the date of default, i.e. **23.05.2017**. Out of the said period, **1026 days** had elapsed between 23.05.2017 and 14.03.2020. The period from 15.03.2020 to 28.02.2022 is liable to be excluded. Consequently, a balance period of **69 days** remained available to the Financial Creditor from 01.03.2022.

The computation is set out below:

| Particulars                | Dates/Period |
|----------------------------|--------------|
| Date of Default            | 23.05.2017   |
| Total period of limitation | 1095 days    |

|                                                            |                             |
|------------------------------------------------------------|-----------------------------|
| Period of limitation expired till 14.03.2020               | 1026 days                   |
| Exclusion period                                           | 15.03.2020 to<br>28.02.2022 |
| Balance period of limitation available as on<br>01.03.2022 | 69 days                     |
| Balance period of 69 days commencing from<br>01.03.2022    | 01.03.2022 to<br>08.05.2022 |
| Date of expiry of limitation                               | 08.05.2022                  |
| Date of filing of the present Petition                     | 06.04.2022                  |

4.10 In view of the reasons recorded hereinabove, we hold that the present Application filed under Section 95 of the Code on **06-04-2022** is within the period of limitation prescribed under Article 137 of the Limitation Act, 1963 read with Section 238A of the Code. The objection as to limitation, therefore, does not merit acceptance.

4.11 In view of the foregoing discussion and having regard to the recommendation contained in the Report submitted by the RP under Section 99 of the Code, we are satisfied that the requirements contemplated under Section 100 of the Code stand fulfilled and the present Application deserves to be admitted.

### **ORDER**

In the result, the Company Petition, bearing **C.P. (IB)/580(MB)2022** filed under Section 95(1) of the Code, by the Petitioner **Tata Capital Limited**, for initiating insolvency resolution process against **Mr. Vijay Gokhale**, the Respondent/Personal Guarantor, is **admitted**.

We hereby direct that:

- I. Insolvency Resolution Process against the Respondent/Personal Guarantor be initiated and moratorium in relation to all her debts is declared, from the date of this Order, and shall cease to have effect at the end of the period of 180 days, or when this Tribunal passes order on the

repayment plan under Section 114, whichever is earlier, as provided under Section 101 of the Code. During the moratorium period

- a) Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed, and;
- b) The creditors of the debtors shall not initiate any legal action or proceedings in respect of any debt; and
- c) The debtors shall not transfer, alienate, encumber, or dispose of any of their assets or their legal rights or beneficial interests therein;

II. The IP viz. **Mrs. Palak Swapnil Desai**, having Registration No. **IBBI/IPA-001/IP-P-01517/2019 -2020/12515**, having address at 901, 9<sup>th</sup> Floor, Park Vistas, Lallubhai Park Road, ,Near MTNL, Andheri (West), Mumbai-400058 ,Maharashtra ,400058 and Email: [palakdesai77@gmail.com](mailto:palakdesai77@gmail.com), who is appointed as Resolution Professional, is directed to cause public notice to be made on behalf of this Adjudicating Authority within 7 days of uploading this Order on the website of the NCLT, Mumbai Bench, inviting claims from all Creditors, within 21 days of such publication. The notice under Sub-section (1) of 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.

III. The publication of notice shall be made in two newspapers, one in English and the other in Vernacular, which have wide circulation in the State where the Corporate Debtor has its registered office and the

Respondents/Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notices to the Registry for record.

- IV. The Resolution Professional, in exercise of the powers conferred under Section 104 of the Code, shall prepare a list of creditors on the basis of:
- a) the information disclosed in the Application;
  - b) claims received by the Resolution Professional under Section 102 of the Code within 30 days from the date of the notices;
  - c) The debtors shall prepare repayment plans under Section 105 of the Code, in consultation with the Resolution Professional, containing proposals to the creditors for restructuring of their debts or affairs;
  - d) The repayment plans may authorise or require the Resolution Professional to:
    - i. Carry on the debtors' businesses or trades on their behalf or in their names; or
    - ii. Realise the assets of the debtors; or
    - iii. Administer or dispose of any funds of the debtors
  - e) The repayment plans shall include the following, namely-
    - i. Justification for preparation of such repayment plans and reasons based on which the creditors may agree upon the plans;
    - ii. Provide for payment of fee to the Resolution Professional; and
    - iii. Such other matters as may be specified.
- V. The Resolution Professional shall submit the repayment plan along with his Report on the plan to this Tribunal within a period of 21 days from the last date of submission of claims, as provided under Section 106 of the Code.

- VI. 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 meetings of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of the Code. The date of meetings 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 notices must contain the details as provided under the provisions of Section 107 of the Code.
- VII. The meetings of the creditors shall be conducted in accordance with Sections 108, 109, 110 and 111 of the Code. The Resolution Professional shall prepare Report of the meetings of the creditors on repayment plans 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 debtors 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 and the Rules and Regulations made thereunder.
- VIII. The Resolution Professional shall submit his periodic reports before this Tribunal every 30 days.
- IX. In exercise of the powers conferred on this Tribunal under Rule 11 of the NCLT Rules, 2016, the Financial Creditor is directed to deposit **Rs. 1,00,000/- (One Lakh Rupees)** to the bank account of the Resolution Professional within one week towards his fees.

**IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI -II**

**C.P. (IB)/580(MB)2022**

- X. The Registry is directed to communicate a copy of this Order, Report and the Application within seven working days to the concerned parties and upload the same on the website immediately after the pronouncement of this Order.

**Sd/-**

**BANWARI LAL MEENA  
MEMBER (TECHNICAL)**

KRS

**Sd/-**

**ASHISH KALIA  
MEMBER (JUDICIAL)**