

NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

13.C.P. (IB)/1056(MB)2021

IN THE MATTER OF

Central Bank Of India Through
Resolution Professional Jitendra Palande
Vs
Sanjay Tanaji Bhade

U/s 95(1) of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 16.10.2026

CORAM:
SH. VINAY GOEL
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner:

For the Respondent: Adv. Aishwarya Darda (VC)

ORDER

C.P. (IB)/1056(MB)2021: The above CP is listed for pronouncement of the order. The same is pronounced in open court, vide a separate order.

Sd/-
VINAY GOEL
Member (Judicial)

//Rahul//

Sd/-
CHARANJEET SINGH GULATI
Member (Technical)

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, V**

CP (IB). 1056 OF 2021

Order under Section 100 of the Insolvency
and Bankruptcy Code, 2016

IN THE MATTER OF:

Central Bank of India

Having its office at:

Mid Corporate Branch Zonal Office
Building, Ground Floor, 317, MG Road,
Camp, Pune, Maharashtra - 411001

Through Resolution Professional Mr.
Jitendra Palande

Having its office at:

38,5-3/D New Ajanta Avenue, Paud Road,
Kothrud, Pune – 411038

... Petitioner

Versus

Sanjay Tanaji Bhade

Having its Registered Address at:

Flat No. 301, Roopganga Gaikwad, Audh
Pune – 411007

...Respondent

Order Delivered on: 16.10.2026

Coram:

Sh. Vinay Goel
Member (Judicial)

Sh. Charanjeet Singh Gulati
Member (Technical)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner: - Adv. Nausher Kohli, Adv. Anushka Bhosale a/w Adv. Ativ Patel, Adv. Pawan Kulkarni & Ishita Desai (PH)

For the Respondent: Adv. Ninad Deshpande a/w Adv Aishwarya Darda (VC)

ORDER

CP (IB). 1056 OF 2021

1. The present Petition is filed by the Central Bank of India (Petitioner/Financial Creditor) under Section 95(1) of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as "IBC, 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, seeking initiation of the Insolvency Resolution Process against Mr. Sanjay Tanaji Bhade (Respondent/Personal Guarantor), being the Personal Guarantor of M/s. Innoventive Industries Limited (Corporate Debtor) for a default of a debt amounting to Rs. 188,98,55,733.00 (Rupees One Hundred Eighty-Eight Crores Ninety-Eight Lakhs Fifty-Five Thousand Seven Hundred and Thirty-Three only) as on the date of commencement of liquidation of Principal Borrower i.e., 08.12.2017, together with interest and other charges.
2. It is submitted that the Petitioner had sanctioned various fund-based and non-fund-based credit facilities to the Principal Borrower from time to time since 23.11.2009. Thereafter, the existing facilities were restructured under the Corporate Debt Restructuring ("CDR") mechanism vide the Petitioner's sanction letter No. MCFPUNE/2014-15/141 dated 30.06.2014 and the Master Restructuring Agreement dated 09.09.2014 ("MRA"),

executed between a consortium of lenders including the Petitioner, the Corporate Debtor as the principal borrower, and its promoters.

3. It is submitted that the repayment of the said facilities was secured, amongst other securities, by a Deed of Personal Guarantee dated 30.06.2014 executed in favour of the Petitioner, and an Agreement of Guarantee dated 09.09.2014 executed in favour of Centbank Financial Services Limited as Security Trustee for the consortium lenders. Both were given by the Respondent along with Mr. Chandu Chavan, Mr. Ravindra Katre, Mr. Parag Mulye and Mr. Shivaji Katke.
4. It is submitted that thereafter, a Petition was filed before this Tribunal for initiating the Corporate Insolvency Resolution Process against M/s. Innoventive Industries Limited, which was admitted by an order dated 17.01.2017. Subsequently, the Liquidation Process against the Principle Borrower was initiated vide order dated 08.12.2017. The Petitioner submitted its claim of Rs. 188,98,55,733/- to the Liquidator, which was admitted.
5. It is submitted that the Petitioner, vide notice dated 19.09.2018, invoked the Guarantee dated 09.09.2014 and called upon the Respondent, along with the other guarantors, to repay Rs. 152.22 crores with further interest within 10 days. A further notice to the same effect was issued on 11.02.2019 calling upon the Respondent and others to pay within 10 days from the date of the said demand notice. Another notice to the same effect was issued on 12.04.2019 calling upon the respondent and others to pay the entire dues within 15 days from the receipt of the demand notice.

6. Thereafter, the Petitioner issued a Demand Notice dated 15.02.2021 to the Respondent under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (“Rules, 2019”), dispatched by speed post on the same day. The Respondent replied to the Demand Notice through his Advocate on 10.03.2021, to which the Petitioner responded vide letter dated 03.05.2021. Despite the notice, payment has not been made. Hence, the Petitioner has filed the present Petition.
7. The Petitioner filed an Additional Affidavit dated 30.11.2021 bringing on record the following documents:
 - a. Annexure P-1: Delivery receipt of the Demand Notice dated 15.02.2021, booked by speed post on 15.02.2021 and addressed to the Respondent at Pune 411007.
 - b. Annexure P-2: Reply dated 10.03.2021 of the Respondent to the Demand Notice.
 - c. Annexure P-3: Rejoinder of the Petitioner dated 03.05.2021 to the reply to the Demand Notice.

Affidavit in Reply of the Respondent

8. The Respondent filed an Affidavit in Reply dated 14.12.2021. It is contended that the working capital facilities and term loans sanctioned by the Petitioner to the Principal Borrower since 2009 (“Original Credit Facility”) were not guaranteed by the Respondent. The Original Credit Facility was restructured vide sanction letter dated 30.06.2014 and the MRA dated 09.09.2014 (“CDR Facilities”). The Respondent’s personal guarantee dated 09.09.2014 applies to the repayment obligations under the

CDR Facilities only, which are a contract distinct from the Original Credit Facility.

9. It is submitted that the Committee of Creditors (“CoC”) of the Principal Borrower, consisting of the consortium of banks which had executed the MRA, decided in its meeting dated 15.02.2017 to revoke the CDR Facilities and reinstate the Original Credit Facility. According to the Respondent, the guarantee was co-terminous with the CDR Facilities and therefore stood cancelled and extinguished upon their revocation. The Respondent relies upon the Claim Affidavit filed by ICICI Bank Limited in OA No. 135 of 2018 before the Debts Recovery Tribunal, Pune.
10. It is further submitted that the claim of the Petitioner before the Liquidator, as also the present Petition, is based on pre-CDR terms, i.e., on the Original Credit Facility, for which no guarantee was given by the Respondent.
11. Without prejudice, it is submitted that the Petitioner has relinquished its security interest in the mortgaged properties of the Principal Borrower by exercising the option under Section 52 of the Code, without the consent of the Respondent. Accordingly, the Respondent stands discharged of his obligations under Section 141 of the Indian Contract Act, 1872.

Rejoinder of the Petitioner

12. The Petitioner filed an Affidavit in Rejoinder dated 12.02.2022. It is submitted that the Respondent has admitted giving a personal guarantee under the MRA, guaranteeing the due payment and discharge of the Secured Obligations of the Principal Borrower as defined in Clause 1.78 of the MRA. Those obligations extend to all obligations of the borrower, present or future. The Respondent has not disputed the claim amount of Rs. 188,98,55,733/-.

13. It is submitted that the facilities restructured under the MRA are the very facilities originally granted to the Principal Borrower, and that the MRA was never revoked; all securities provided under it remained intact. In its first meeting held on 15.02.2017, the CoC in the CIRP of the Principal Borrower only decided that claims be submitted on pre-CDR terms, and that claims for facilities released post-CDR be submitted on CDR terms. This decision was taken for the administrative purpose of claim verification and has no bearing on the personal guarantees. The Petitioner has placed on record the minutes of the said meeting as Annexure A to the Rejoinder.
14. It is further submitted that the resolution plan submitted in the CIRP of Principal Borrower on 03.09.2017 sought the release of the personal guarantees given by the erstwhile promoters (Annexure B to the Rejoinder), which shows that the guarantees were subsisting on that date. The Petitioner has not relinquished the corporate guarantees of the subsidiaries of the Principal Borrower, nor the personal guarantee of the Respondent; hence Section 141 of the Indian Contract Act, 1872 is not applicable.
15. The Petitioner thereafter filed an Additional Affidavit dated 05.04.2024, bringing on record copies of the Deed of Personal Guarantee dated 30.06.2014 and the Agreement of Guarantee dated 09.09.2014 (Exhibit A thereto). It is stated therein that the said documents were inadvertently not annexed to the Petition at the time of filing.

Report of the Resolution Professional

16. This Tribunal vide order dated 06.03.2023 appointed Mr. Jitendra Palande having Registration No. IBBI/IPA-003/IP-N00028/2017-2018/10188 as Interim Resolution Professional in the matter and directed him to submit a

report under Section 99 of the Code. The RP filed his report under Section 99 of the Code vide IA No. 5508 of 2023 which was taken on record on 03.12.2024. The RP in his report recommends the admission of the Petition on the following grounds:

No.	Particulars (According to Section 94 and 95 of Insolvency and Bankruptcy Code, 2016)	Comments of the Resolution Professional
1.	Application under section 94 (1) by debtor who commits a default, either personally or through a resolution professional, to the Adjudicating Authority for initiating the Insolvency resolution process.	NA
2.	An application under section 94 (1) shall be submitted only in respect of debts which are not excluded debts.	NA. This application is not related to excluded debts
3.	A debtor shall not be entitled to make an application under sub- section (1) if he is a. an undischarged bankrupt b. undergoing a fresh start process c. undergoing an insolvency resolution process d. undergoing a bankruptcy process	NA. Debtor is eligible to make an application.
4.	A debtor shall not be eligible to apply under sub-section (1) if an application under this Chapter has been admitted in respect of the debtor during the period of twelve months preceding the date of submission of the application under this section	NA. No previous application admitted against debtor during the period of twelve months
5.	Application under section 95 (1) by creditor either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process.	Application under section 95 (1) submitted by creditor through Resolution Professional
6.	RP has to check whether the application has satisfied the condition mention under Section 95	The details of documents attached to prove the existence of claim and non- payment of the same to Central Bank of India is as follows:

No.	Particulars (According to Section 94 and 95 of Insolvency and Bankruptcy Code, 2016)	Comments of the Resolution Professional
	(4) an application under sub-section (1) shall be accompanied with details and documents relating to – a. the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application; b. the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and Relevant evidence of such default or non-repayment of debt.	1. The Master Restructuring Agreement dt. 09.09.2014. Copy of the agreement is annexed as EXHIBIT E to the subject company petition. 2. Admission order dated January 17, 2017 whereby Corporate Insolvency Resolution Process against the Corporate Debtor was admitted by NCLT Mumbai. Copy of the order dt. 17.1.2017 is annexed as EXHIBIT F to the subject company petition. 3. NCLT order dated December 08, 2017, whereby Liquidation Process against the Corporate Debtor was initiated. Copy of the order dt. 8.12.2017 is annexed as EXHIBIT G to the subject company petition. 4. List of Financial Creditors uploaded on the website of the Corporate Debtor by the Resolution Professional. Copy of the list is annexed as EXHIBIT H to the subject company petition. 5. List of Stakeholders prepared by the Liquidator of the Corporate Debtor. The said list is annexed as EXHIBIT I to the subject company petition. 6. Copy of the Commercial ACE Report dated February 01, 2021 is annexed as EXHIBIT N to the subject company petition. 7. Renewal of Facilities letter dated June 30, 2014. Copy of the renewal letter is annexed as EXHIBIT D to the subject company petition. 8. Liquidation claim form dated January 06, 2018 submitted to the Liquidator. Copy of the claim form is annexed as EXHIBIT J to the subject company petition. 9. Copy of the Demand Notice dt. 15.02.2021 sent by Central Bank of India to the personal guarantor, Mr. Sanjay Tanaji Bhade is annexed as EXHIBIT O to the subject company petition.

No.	Particulars (According to Section 94 and 95 of Insolvency and Bankruptcy Code, 2016)	Comments of the Resolution Professional
		9. CIBIL Report of the personal guarantor is annexed as EXHIBIT P to the subject company petition.
7.	The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.	Upon review of records, it is stated that a copy of the application was sent by email to the Personal Guarantor/Debtor on 27.06.2021. After notice was issued by the Hon'ble Tribunal on 2.11.2021 vide the said order, the Hon'ble Tribunal directed the Registry and to the counsel of the applicant/petitioner to issue court notice to the Corporate Debtor intimating regarding the next date of hearing in the said Company Petition. A copy of the order dated 02.11.2021 and Court notice was served on the Respondent vide email on 29.11.2021. The said email has not bounced back.
8.	The application referred to in sub- section (1) shall be in such form and manner and accompanied by such fee as may be prescribed	Application submitted under this section is in form and manner and accompanied by such fee as is prescribed
9.	The details and documents required to be submitted under sub-section (4) shall be such as may be specified.	Details and documents submitted are as per the requirements specified under relevant section

Compliance in terms of Section 99

PROVISIONS	COMPLIANCES
Section 99 (2) of the Code: Where the application has been filed under section 95, the resolution professional may require the debtor to prove repayment of the debt claimed as unpaid by the creditor	The personal guarantor has filed his reply to the demand notice dated 10.03.2021 and never disputed that the debt is unpaid or in other words claimed that he has paid the unpaid debt. Further, from the information/documentation provided by the financial creditor to the Resolution Professional, it appears that debt is unpaid as claimed by the financial creditor. Out of caution, the Resolution Professional has sent an email on 21.03.2023 requiring the debtor to prove repayment of the debt.

PROVISIONS	COMPLIANCES
	However there has been no response to the said email till date. Copy of the email dated 21.03.2023 is annexed herewith as ANNEXURE 2.
Section 99 (3) of the Code: Where the debt for which an application has been filed by a creditor is registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt	The debt is not registered with the Information Utility
Section 99(4) of the Code r/w section 99(6)(b) For the purposes of examining an application, the resolution professional may seek such further information or explanation in connection with the application as may be required from the debtor or the creditor or any other person who, in the opinion of the resolution professional, may provide such information. Section 99(6)(b): that the applicant has provided information and given explanation sought by the resolution professional under sub-section (4).	The information provided by the Financial Creditor along with the Insolvency Application was exhaustive. Accordingly, the Financial Creditor has provided the information and/or given the explanation sought by the Resolution Professional

Affidavit in Reply of Respondent to the Report of the Resolution Professional

17.The Respondent filed an Affidavit in Reply dated 27.09.2024 to the report of the RP. The Respondent reiterated the contentions raised in his Affidavit in Reply dated 14.12.2021. He further submitted that the Original Credit Facility was secured only by a personal guarantee of Mr. Chandu Chavan, the then Managing Director of the Principal Borrower, and that the RP has wrongly reported that the Respondent guaranteed the original loan.

18.It is submitted that the Petitioner has not placed the Personal Guarantee on record, and that the Petition deserves to be dismissed on this ground alone. It is further submitted that, in the absence of the said document, there was no occasion for the RP to peruse it. It is submitted that the Petitioner cannot

claim default under both the Original Credit Facility and the CDR Facilities at the same time.

19. It is further submitted that the RP was appointed by the Petitioner even before the filing of the Petition and has verified its contents by way of an affidavit. The report is therefore vitiated by conflict of interest and bias, and has been prepared in haste without considering the objections of the Respondent. The Respondent accordingly prays that the report of the RP and the Petition be dismissed with costs.

Analysis and Findings

20. We have heard the learned counsel for both the parties and perused the material on record including the Report of the Resolution Professional.

20. It is the Petitioner's case that the Respondent executed the Deed of Personal Guarantee dated 30.06.2014 and the Agreement of Guarantee dated 09.09.2014 to secure the facilities extended to the Principal Borrower, which were subsequently restructured under the MRA. The MRA was never revoked, and the CoC's decision dated 15.02.2017 merely prescribed the basis for submission and verification of claims in the CIRP of Principal Borrower. The Petitioner has not released the Respondent from its guarantee; hence, Section 141 of the Indian Contract Act, 1872 is inapplicable. The Principal Borrower having admittedly defaulted, the guarantee was invoked and the Demand Notice under Rule 7(1) of the Rules, 2019 was duly served on the Respondent, who failed to pay the debt. The Petitioner therefore seeks admission of the Petition.

21. Per contra, it is the Respondent's case that his guarantee was limited to the CDR facilities, which stood revoked pursuant to the CoC's decision dated

15.02.2017 in the CIRP of Principal Borrower, thereby extinguishing the guarantee. The Respondent contends that the Petitioner's claim is founded on the pre-CDR terms, namely, the Original Credit Facility and the CDR facilities. He further submits that he stands discharged under Section 141 of the Indian Contract Act, 1872, owing to the Petitioner's relinquishment of security under Section 52 of the Code. It is also contended that the Personal Guarantee has not been placed on record and that the RP's report is vitiated by bias. The Respondent therefore seeks dismissal of the Petition.

22. Before examining the issue, it is necessary to consider the terms of the Agreement of Guarantee dated 09.09.2014 executed by the Respondent (Exhibit A to the Additional Affidavit dated 05.04.2024). The rights and obligations of the parties in relation to the Guarantee are required to be examined in the context of its express terms. The relevant recital and clauses are reproduced hereinbelow:

*B. At the request of Borrower and to enable the Borrower to, inter alia, meet its repayment obligations/ liabilities under the Existing Facilities, **the Lenders have now reconstituted the Existing Facilities, along with overdue interest, and granted fresh rupee term loan facilities and working capital facilities**, details whereof, along with the terms and conditions governing the grant/ restructure of the Facilities, are more particularly set out in the Master Restructuring Agreement;*

...

4. In the event of any default on the part of the Borrower in payment/ repayment/ reimbursement/ discharge of any of the Facilities together with all interest, liquidated damages, premia on prepayment or on redemption, costs, expenses and all other amounts whatsoever stipulated in, or payable by the Borrower in terms of the Restructuring Documents or in the event of any default on the part of the Borrower to comply

*with or perform any of terms, conditions and covenants contained in the Restructuring Documents, **the Guarantors shall, upon demand, forthwith pay to the Lenders/ Security Trustee without demur all the amounts payable by the Borrower under the Restructuring Documents.***

*5. This Guarantee shall not be wholly or partially satisfied or exhausted by any payments made to or settled with any of the Lenders by the Borrower and **shall remain valid, in full force and effect until the Final Settlement Date/ tenor of the Facilities.***

...

*22. **This Guarantee shall be a continuing one** and shall be valid and binding and in full force until the Final Settlement Date.*

(Bold for Emphasis)

23. Clause B records that the lenders “reconstituted the Existing Facilities, along with overdue interest”. The Facilities guaranteed by the Respondent are, therefore, the Existing Facilities of the Principal Borrower in their restructured form, and not a debt unconnected with them. Clauses 5 and 22 further provide that the Guarantee is a continuing one and shall remain in force until the Final Settlement Date. The contention that the guarantee was wholly distinct from the original facilities is, therefore, contrary to the express terms of the instrument.

24. The Respondent contends that the CDR Facilities were revoked by the CoC in CIRP of Principal Borrower in its meeting held on 15.02.2017. The minutes of the said meeting have been placed on record by the Petitioner as Annexure A to the Rejoinder. The relevant extract is reproduced hereinbelow:

.....The CoC were informed that few financial creditors had submitted claims basis pre CDR terms while few have

submitted claims basis CDR terms. Dinkar requested the CoC to maintain consistency in submission of claims with regards to either pre CDR terms / post CDR terms.

After deliberation, the CoC unanimously agreed to submit the claims as per pre CDR terms. It was agreed that all the financial creditors would resubmit the claims (basis pre CDR terms) in the format already circulated by the IRP before the next scheduled CoC meeting ie by February 27, 2017. It was also decided that claims against facilities released post CDR would be basis the CDR terms while all other claims would be pre CDR terms. It was agreed that until all claims are finalised, voting share shall be determined basis balances in books of the Company.

(Bold for Emphasis)

25.A plain reading of the minutes shows that the decision of the CoC related only to the basis on which claims against the Principal Borrower were to be submitted and verified in the CIRP of Principal Borrower, so as to maintain consistency among the financial creditors. The minutes contain no resolution revoking the MRA, rescinding the restructured facilities, or releasing any guarantor. A decision of the CoC on the method of computing claims against the Principal Borrower cannot, by itself, rescind a contract of guarantee executed by a third party, or discharge the guarantor from it. The Respondent has not placed on record any document evidencing the release of his guarantee by the Petitioner or by the Security Trustee.

26.As regards the contention that the claim of the Petitioner is founded on pre-CDR terms, and that the Petitioner cannot claim default under both the Original Credit Facility and the CDR Facilities, it is noted that the Petitioner, vide notice dated 19.09.2018, invoked the Agreement of Guarantee dated 09.09.2014 and itemised the outstanding dues under the restructured heads, namely WCTL, FITL-CC, FITL-WCTL and FITL-TL.

The computation of the claim before the Liquidator on pre-CDR terms was in compliance with the decision of the CoC in the CIRP of Principal Borrower for uniform verification of claims in the CIRP, and does not alter the terms of the guarantee.

27. The Respondent has next contended that he stands discharged under Section 141 of the Indian Contract Act, 1872, the Petitioner having relinquished its security interest under Section 52 of the Code. In this regard, the Respondent has expressly consented, in advance, to the release of the securities. Clauses 7 and 10 of the Agreement of Guarantee dated 09.09.2014 read as under:

*7. ... **The Lenders/ Security Trustee shall also be at liberty to absolutely dispense with or release all or any of the Security furnished by the Borrower to the Lenders/ Security Trustee to secure any of the Facilities as per the provisions of the MRA. The Guarantors agree that the liability under this Guarantee shall in no manner be affected by any such variations, alterations, modifications, waiver, dispensation with or release of Security, and that no further consents of any of the Guarantors are required for giving effect to any such renewal, extension, variation, alteration, modification, waiver, dispensation with, or release of Security.***

...

*10. This Guarantee shall be enforceable against the Guarantors, notwithstanding any undertaking, security or securities comprised in any instrument(s) executed or to be executed by the Borrower in favour of the Lenders/ Security Trustee, as the case may be, shall, at the time when the proceedings are taken against the Guarantors on this Guarantee, **be outstanding or unrealised or lost.***

(Bold for Emphasis)

28. Further, Clause 8 of the Deed of Personal Guarantee dated 30.06.2014, executed in favour of the Petitioner, provides as under:

8. ... The Guarantors agree that the liability under this Guarantee shall in no manner be affected by any such variations, alterations, modifications, waiver, composition, dispensation with or release of security, and no further consent of the Guarantor is required for giving effect to any such variation, alteration, modification, waiver, dispensation with, or release of security. Though as between the Borrower and the Guarantor, they are Guarantor only, the Guarantor agree that as between the Lender and the Guarantor, they are debtors jointly with the Borrower, and accordingly shall not be entitled to claim the benefit or legal consequence of any variation in the terms of the contract to any of the rights conferred on a guarantor by Section 133, 134, 135, 139 and 141 of the Indian Contract, 1872.

(Bold for Emphasis)

29. Having considered the aforesaid contention and the terms of the Guarantees, we are of the considered opinion that the Respondent expressly agreed that the release of any security would not affect his liability, and expressly waived the benefit of Section 141 of the Indian Contract Act, 1872. Having agreed to such terms, the Respondent cannot subsequently contend that his liability stood discharged. The said defence is therefore, untenable.

30. As regards the contention that the Personal Guarantee was not placed on record, it is observed that both the Deed of Personal Guarantee dated 30.06.2014 and the Agreement of Guarantee dated 09.09.2014 were brought on record by the Petitioner by its Additional Affidavit dated 05.04.2024. This was prior to the filing of the Respondent's Affidavit in Reply dated 27.09.2024, which does not deal with the terms of either instrument. The Respondent has, in any event, admitted the execution of

the Guarantee dated 09.09.2014. The omission at the time of filing stands cured, and no prejudice has been caused to the Respondent. The objection is therefore rejected.

31. The Resolution Professional, upon examining the petition and the material placed on record, has submitted a report under Section 99 of the Code recommending acceptance of the petition. The RP has confirmed compliance with the provisions of Sections 95 and 99 of the Code. The Respondent has not provided any evidence to demonstrate repayment of the debt.

32. The Respondent has also alleged bias on the part of the RP on the ground that he was proposed by the Petitioner. Section 95(1) of the Code expressly permits a creditor to file an application “through a resolution professional”, and Section 97 of the Code provides for the appointment of the resolution professional so proposed, subject to confirmation by the Insolvency and Bankruptcy Board of India. The mere fact that the RP was proposed by the Petitioner is thus a course contemplated by the Code itself, and does not, without more, establish bias. Further, as held by the ***Hon’ble Supreme Court in Dilip B. Jiwrajka v. Union of India, (2024) 5 SCC 435***, the report of the RP under Section 99 is recommendatory in nature, and the decision to admit or reject the application rests with the Adjudicating Authority under Section 100 after hearing the debtor. The RP afforded the Respondent an opportunity to prove repayment by email dated 21.03.2023, to which no response was received, and the objections of the Respondent to the report have been considered by this Tribunal. The objection is therefore rejected.

33.It is however, noted that the Authorisation for Assignment (AFA) issued to Mr. Jitendra Palande, the Resolution Professional proposed by the Petitioner, was valid upto 02.12.2025, and nothing has been placed on record to show that the same has since been renewed. As Mr. Jitendra Palande does not hold a valid AFA as on the date of this order, he cannot be appointed as the Resolution Professional in the Insolvency Resolution Process of the Respondent.

34.Accordingly, we are satisfied that the petition filed by the Financial Creditor under Section 95 of the Code is complete and merits admission. The debt and default stand established, and the RP has recommended acceptance of the petition. The objections raised by the Respondent are devoid of merit and are hereby rejected. Consequently, we admit the present petition and order the initiation of the Insolvency Resolution Process against the Respondent/Personal Guarantor, Mr. Sanjay Tanaji Bhade, in terms of the directions set out hereunder.

ORDER

- I. Initiate Insolvency Resolution Process against the Personal Guarantor and moratorium in relation to all the debts is declared, from today i.e., the date of admission of the application and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on the repayment plan under Section 114 whichever is earlier as provided under Sec 101 of IBC, 2016. During the moratorium period;
 - a) Any pending legal action of proceeding in respect of any debt shall be deemed to have been stayed; and
 - b) The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and

- c) The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;
- 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.

II. As discussed in Paragraph 33 of the order, we deem it appropriate to appoint Mr. Vivek Murlidhar Dabhade, having registration no: IBBI/IPA-001/IP-P00306/2017-2018/10570, residing at Flat No - 27, Rosewood A, 7th Floor Riddhi Siddhi Paradise, Dhayari Phata, Pune 411041, Near Manas Society, Pune, Maharashtra, 411041. Having email address: ipvivekdabhade[at]gmail[dot]com, having AFA valid upto 30-Jun-27 as the Resolution Professional. He is directed to cause a public notice to be published on behalf of the Adjudicating Authority, within 7 days from the date of passing of this Order, on the website of the NCLT, Mumbai Bench, inviting claims from all Creditors within 21 days from the date 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 under Section 102(3) shall be made in two newspapers, one in English and the other in Vernacular, which have wide circulation in the State where the Principal Borrower and Personal Guarantor reside. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.

IV. 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.
- V. 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. 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. administers or dispose of any funds of the debtor.
- VI. 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.
- VII. The Resolution Professional shall submit the repayment plan along with his report on the plan to this Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106.
- VIII. 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 IBC, 2016. 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 IBC, 2016, 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 IBC, 2016.

IX. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC, 2016. 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 IBC, 2016 and submit the same to this Tribunal, 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 IBC, 2016. The Resolution Professional shall submit his periodic reports before this Tribunal every 30 days.

X. The Registry is directed to communicate a copy of the Order to the Resolution Professional immediately after the pronouncement of the Order, and upload the same on the website within seven working days after the pronouncement of the Order.

21. In terms of the above, Company Petition (IB) 1056 of 2021 is **admitted** and the Insolvency Resolution Process stands initiated against the Personal Guarantor.

Sd/-

VINAY GOEL
Member (Judicial)
Smeet - LRA

Sd/-

CHARANJEET SINGH GULATI
Member (Technical)