IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT– I) CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **01.09.2025** THROUGH VIDEO CONFERENCE

PRESENT: HON'BLE SHRI SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF : State Bank of India
Vs
Vaddineni Venkattappa Naidu

MAIN PETITION NUMBER : CP(IB)/257(CHE)2021

(IA/MA) APPLICATION NUMBERS

IA(IBC)/324(CHE)2024; IA(IBC)/2330(CHE)/2024

ORDER

CP(IB)/257(CHE)2021
IA(IBC)/324(CHE)2024
IA(IBC)/2330(CHE)/2024

Present: Mr. SelvaVenkatsubramaninam, Ld. Counsel for Applicant.

Vide common Order pronounced in open Court, Report of IRP is taken on record.

Petition is admitted.

Application(s) filed by the Personal Guarantor under Section 65 of IBC, 2016, is dismissed.

Insolvency proceedings against the Personal Guarantor i.e. Vaddineni Venkattappa Naidu, is initiated.

Mr. Kasi Srinivas is appointed as IRP.

-sd-
[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)

-sd-
[SANJIV JAIN]
MEMBER (JUDICIAL)

MS

Date: 01.09.2025

IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – I, CHENNAI

CP(IB)/257(CHE)/2021

(filed under Section 95(1) of the Insolvency and Bankruptcy Code, 2016

State Bank of India
Stressed Assets Management Branch -II (SAMB-II),
Represented by its Assistant General Manager,
Mr. Biswajit Das,
D.No.3-4-1013/A, lst Floor, CAC, TSRTC Bus Station,
Kachiguda, Hyderabad-500 027

…..*Petitioner/ Financial Creditor*

Versus

Vaddineni Venkatappa Naidu
(Personal Guarantor of Victory Electricals Limited)
H.No.7-2-221118,
Ashok Colony, Sanathnagar,
Hyderabad 500 018.
And also at:
Plot No. 213, Phase-2, Kawri Hills,
Opp. Madhapur Police Station, Madhapur,
Hyderabad-500 08 I

…. *Respondent/Personal Guarantor*

Along with

IA(IBC)/324/CHE/2024
In
CP(IB)/257(CHE)/2021

(filed under section 99 of Insolvency and Bankruptcy Code, 2016)

Kasi Srinivas,
Resolution Professional
In the matter of Mr. Vaddineni Venkatappa Naidu,
Reg. No. IBBI/IPA-003/IPA-ICAI-N-00237/2019-2020/12840

Flat No. 104, Kavuri Supreme Enclave,
Kavuri Hills, Madhapur,
Hyderabad - 500 033

…Applicant/Interim Resolution Professional

Along with

IA(IBC)/2330/CHE/2024
In
CP(IB)/257(CHE)/2021

(filed under section 65(1) of Insolvency and Bankruptcy Code, 2016)

Vaddineni Venkatappa Naidu
(Personal Guarantor of
Victory Electricals Limited)

......Applicant / Personal Guarantor

Versus

State Bank of India
Stressed Assets Management
Branch - II (SAMB - II)
Represented by its
Assistant General Manager

......Respondent / Financial Creditor

Present:

For Petitioner Bank	*: Mr. Pranava Charan, Advocate*
For Respondents	*: Mr. K. Koteswara Rao, Advocate*
For IRP	*: Mr. B. Dhanaraj, Advocate*

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

*Order Pronounced on **1st September, 2025***

COMMON ORDER

(Heard through Hybrid Mode)

1. This Petition u/s. 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") r/w Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 has been filed by State Bank of India, Stressed Assets Management Branch ("Financial Creditor") for initiating insolvency resolution process against Vaddineni Venkatappa Naidu , the Personal Guarantor of Victory Electricals Limited (VEL), the Corporate Debtor in respect to Default Amount of Rs.365,36,36,599.58 (Rupees Three Hundred Sixty-Five Crore Thirty-Six Lakh Thirty-Six Thousand Five Hundred Ninety-Nine and Fifty-Eight Paise Only) including interest and penalties. The Date of Default, as specified in Part-III of the Petition, is 09.03.2012 for Cash credit account and 31.05.2012 for Term Loan. The Petitioner has placed Deed of Personal Guarantee executed by the Guarantor Vaddineni Venkatappa Naidu in favour of the Financial Creditor dated 06.09.2005,07.11.2006,31.12.2008 & 16.11.2009, Copy of Sanction letter, Balance Sheet of the CD for FY 2014-15 dated 02.09.2015, Copy of OTS proposal given by the Corporate Debtor dated 18.05.2016, Copy of OTS sanction letter dated 06.10.2016, Copy of cancellation of the OTS letter dated 03.05.2018 along with acknowledgement and Copy of Demand notice dated 28.06.2013.

2. **Part – I** of the Petition sets out the details of the Petitioner / Financial Creditor i.e. State Bank of India. It has its registered office at D.No.3-4-1013/A, 1st Floor, CAC, TSRTC Bus station, Kachiguda, Hyderabad – 500027 and is represented by Assistant General Manager Representative, Biswajit Das. **Part-II** of the petition sets out the details of the Personal Guarantor namely Vaddineni Venkatappa Naidu. The address of the Respondent is stated as H.No.7-2-221/18, Ashok Colony, Sanathnagar, Hyderabad -500018.

3. It is stated that the Respondent stood as a Personal guarantor in the respect of loans availed by Victory Electricals Limited (VEL), the Corporate Debtor, from State Bank of India. The Personal Guarantor executed Deed of guarantee dated 06.09.2005,07.11.2006,31.12.2008 & 16.11.2009, in favour of State Bank of India ("Guarantee Deed"), providing an irrevocable and continuing guarantee for the repayment of the facilities availed by the Corporate Debtor.

4. It is stated that the Corporate Insolvency Resolution Process under section 7 of the IBC, 2016 against the Corporate Debtor (Victory Electricals Limited) was initiated by this Tribunal vide on order dated 13.08.2018 in CP(IB)/872(CHE)2018. Subsequently Liquidation proceedings were initiated against the Corporate Debtor on 19.11.2019.

5. It is stated that a Demand Notice under SARFAESI Act, 2002 was issued on 28.06.2013 to the Corporate Debtor, Corporate Guarantor and the Personal Guarantors, including Vaddineni Venkatappa Naidu, seeking

repayment of the outstanding debt thereby invoking the personal guarantee.

6. It is stated that Demand Notice was issued on 09.09.2020 under Rule 7(1) of the IBBI (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 to the Personal Guarantor calling him to pay the unpaid debt amount in full within 14 days, however, the Guarantor did not make the payment.

7. It is stated that the Corporate Debtor sent revival letters under Form C.6 dated 06.11.2009, 01.06.2012, 03.05.2015 and 04.05.2018 to the Petitioner acknowledging the amount due for the payment of the credit facility availed from the Petitioner.

8. It is stated that the One Time Settlement proposal was given by the Corporate Debtor on 18.05.2016 for an amount of Rs.68.0 crores for the amount due. The Petitioner accepted the OTS proposal and sent a sanction letter for the OTS on 06.10.2016 SAMB-II:DS:947. The terms and conditions pertaining payment schedule mentioned in the letter were:

    i. Rs 0.50 Cr on handing over of sanction letter.

    ii. Rs 39.50 Cr within 3 months from the date of issuing sanction letter to the company.

    iii. Rs 10.00 Cr within 6 months from the date of issuing sanction letter to the company.

iv. Rs 10.00 Cr within 9 months from the date of issuing sanction letter to the company.

v. Rs 8.00 Cr within 12 months from the date of issuing sanction letter to the company.

9. It is stated that the Petitioner subsequently sent another sanction letter for OTS on 06.10.2016 SAMB-II:DS:948 where the total amount for OTS was changed to Rs.69.5 Crores, increasing the amount by Rs.1.50 Crores from the previous sanction letter. The terms and conditions regarding the payment schedule were slightly changed to:

   (a) Rs 4l.00 Cr within three months from the date of conveying sanction instead of Rs 39:50 Cr as mentioned in the previous letter and other payment terms and conditions remained the same.

10. It is stated that the OTS proposal was cancelled by a letter dated 03.05.2018 vide SAMB:HYD:BSK:203 on the grounds that the Corporate Debtor did not fulfil the terms and conditions of the OTS proposal and defaulted in making payment, as per the payment schedule even after an ample time given to it.

11. It is stated that the Corporate Debtor referred itself to Board for Industrial and Financial Reconstruction (BIFR) u/s/15(1) under SICA, 1985 on 18.01.2013 which was registered as case No. 10/2013 on 06.03.2013. The Petitioner did not consent for the restructuring under the BIFR and resorted to recovery measures including under the SARFAESI Act.

12. It is stated that the Petitioner filed a case before Debt Recovery Tribunal, Hyderabad in O.A.No.925/2014 for recovery of an amount of Rs.273,95,41,204.95 (Rupees Two Hundred Seventy-Three Crores Ninety-Five Lakhs Forty-One Thousand Two Hundred Four and Ninety-Five paise only) which was allowed vide an order dated on 28.10.2019.

13. It is stated that the Managing Director of the Corporate Debtor filed a case OS/137/2018 in the Civil Court of Medchal against the cancellation of the OTS proposal and the case is still pending.

14. It is stated that the Petitioner has also filed a case under section 7 against the Corporate guarantor, Hackbridge Hewittic and Easun Ltd of the Corporate Debtor. The NCLT passed an order dismissing the petition on 06.01.2021 on the ground that the petition is barred by limitation. It went in appeal vide case no. Company Appeal (AT) (CH) (Ins.) No. 05 of 2021 & I.A. No. 614 of 2021 where the Hon'ble NCLAT set aside the order of NCLT stating that the petition was filed well within limitation and the case was remanded back to Adjudicating Authority (NCLT).

15. It is stated that the Respondent has filed an application I.A(IBC)/2330/2024 under Section 65(1) of IBC on 26.11.2024 to declare that the Petition CP(IB)No.257/2021 filed by the Financial Creditor as malicious and fraudulent and consequentially dismiss the Petition by imposing penalty.

PROCEEDING OF THE TRIBUNAL

16. This Tribunal vide an order dated 05.01.2024 in CP(IBC)/257(CHE)/2021 appointed Mr. Kasi Srinivas, as Insolvency Resolution Professional and directed the Insolvency Resolution Professional to collate all the facts relevant to the examination of the Petition for the commencement of the Insolvency Resolution Process in respect of the Personal Guarantor. He in terms of the order of this Tribunal filed his report vide SR No.0363 on 17.01.2024.

17. The IRP in his Report, after due examination of the Petition, documents filed along with the Petition, and the Reply filed by the Respondent, in addition to the requirements as mandated under clauses (1), (2), (3), (4), (5), (6), (7), (8), (9) and (10) of Section 99 of the IBC, 2016, recommended for the admission of the present petition against the Personal Guarantor u/s. 95 of IBC, 2016.

<u>SUBMISSIONS OF THE RESPONDENT</u>

18. The Personal guarantor has filed a reply vide SR No.2225 dated 04.04.2022, objection to the report of the IRP vide SR No.1135 dated 17.04.2024 and written synopsis dated 14.04.2025. It is stated that, the Respondent challenges the maintainability of the Petition under Section 65(1) of IBC for unlawfully dragging the 'Corporate Debtor' Victory Electricals Limited and its Promoters into the Corporate Insolvency Resolution Process (CIRP) with a malicious intent. It is stated that the present Petition not only deserves to be dismissed with a penalty but also the Petitioner deserves to be punished under Section 75 of the Code for

furnishing information with concocted facts though fully aware that the particulars are false and also for omitting vital material particulars.

19. It is stated that the Corporate Debtor availed financial limits initially from the Petitioner Bank in the year 2005 and thereafter entered into a Multiple Banking Arrangement (MBA) with Bank of Baroda and Bank of India with the consent of the Petitioner Bank. The properties provided by the Corporate Debtor as security to the Petitioner Bank are as below:

Sl.	MORTGAGE CHARGE	Particulars of Property
1	**Exclusively Mortgaged**	Land and Building in Survey No.6/1A,1, TS No.32 Ward-1 Block, TII Road, Chennai measuring Ac 6.14 situated at Thiruvottiyur, Chennai, Tamilnadu belonging to Hackbridge Hewittic & Easun Limited
2	**2nd Pari passu charge with BOI**	Land and Building in Survey No.853, 855 & 855/P measuring 48,763 Sq.yards (Ac.10.03) at Industrial Estate, Medchal Village and Mandal, Rangareddy District, Telangana belonging to Victory Electricals Limited. This property consists of 7 individual sale deeds out of which one property under Doc no.1537/2001 Dt.1/6/2001 was released by the Applicant bank under OTS after earmarking an amount of Rs. 59.55 Lakhs paid under the OTS.
3	**Exclusively Mortgaged**	Industrial Plot, extent of 2970.33 Sq.Yds and Shed thereon situated at Sy.No.79 of Gajularamaram Village bearing Shed No.D-4, Phase-IV extension IDA Jeedimetla, Talangana belonging to Victory Transformers and Switchgears Limited

20. It is stated that the Corporate debtor was running successfully till 2011. It slipped into liquidation in 2012 due to huge defaults and delayed payments from the State Electricity Boards and other DISCOMs. References were made to the Corporate Debt Restructuring Forum which

were scuttled with the dissent of Bank of India. With no other options available, the Corporate Debtor made a reference to the BIFR under section 50(1) of the SICA, 1985 (Case No. 10/2013 Dt. 06.03.2013).

21. It is stated that in most of the cases, the amounts were pending due to non-fulfilment of the orders and non-compliance of service and repairs. Had the Petitioner cooperated and funded the works in progress as well as repairs, the Corporate Debtor would have recovered all the receivables and repaid the outstanding dues payable to the lenders.

22. It is stated that the Petitioner on 14.09.2013 pre-emptively invoked the measures with the issuance of Notice U/s.13(a)(d) (Annexure.R-3), directing the trade debtors to remit all the dues to the Bank directly and not to the Company. The entire private and public sector which owed to the Corporate Debtor took advantage of this vulnerable situation and deliberately defaulted in paying the dues. The Petitioner Bank was instrumental in further erosion and deterioration of the collateral in which the 'book debtors' and 'works in progress' were the major components. The Respondent via reply to the notice had stated that it is a coercive measure and it would cause them loss of Rs.395.00 Crores.

23. It is stated that the Corporate Debtor approached the Hon’ble High Court of Andhra Pradesh, in WP No. 343231/2013 and obtained a Stay Order on 29.11.2013, where on 11.02.2014 the Interim Stay was made absolute. Despite the protection from the Hon'ble High Court, the receivables from the trade debtors could not be collected, for the damage already done. In

the process, the Corporate Debtor not only suffered in recovery of its dues but also, the pending orders for Transformers in progress could not be salvaged, thereby incurring a total loss of more than Rs.100 Crores at the point of time.

24. It is stated that an OTS proposal was made to the Joint Lender Forum (JLM) including the Petitioner for an amount of Rs.68.0 Crores which was initially agreed by the Petitioner on 06.10.2016 and later changed to Rs.69.50 Crores by the Petitioner due to some disagreement in the JLM. The OTS aimed at redeeming all collateral assets within 12 months, including significant properties such as 6.14 acres of land in Thiruvottiyur Chennai, which belong to the Corporate Guarantor, and Medchal properties in Telangana.

25. It is stated that the OTS tranches and timelines imposed by the Petitioner Bank were inconsistent and unrealistic, considering the large size and nature of the assets. The Corporate Debtor proposed subdividing and selling the assets in parts to facilitate proper sale. The most critical property, i.e. 6.14 acre Thiruvottiyur land (worth Rs.52.5 crores i.e. 76% of the total OTS amount), faced serious marketability issue due to its location in a hazardous CRZ industrial zone and being a landlocked property which shared access issue with neighboring entities like BSNL and Royal Enfield.

26. It is stated that despite earlier accepting Rs.53 lakhs towards release of part of Medchal property and agreeing to the asset-wise plan, the

Petitioner Bank altered the terms unilaterally, increasing the redemption value of Medchal land from Rs.12 crores to Rs.15 crores, and refusing to adjust Jeedimetla land value to Rs.4.33 crores from Rs.5 crores.

27. It is stated that a Hong Kong-based construction company offered to purchase both the Thiruvottiyur mortgaged land and the adjacent 2.85 acres of unencumbered land (not mortgaged) for the full value of Rs.52.5 crores. However, the Bank refused to return the original title deed of the unencumbered land (Doc No. 3567/1959), offering only a "Holding Certificate." This scuttled the deal, as the buyer required a sale agreement and original document to proceed.

28. It is stated that Edelweiss ARC, which held a pari passu second charge on the Medchal properties, did not provide a 'No Objection Certificate' (NOC), making it legally impossible for the Corporate Debtor to sell those assets despite the Bank's insistence. Although Joint Lenders Meeting (JLM) resolved in favour of the OTS, but there was no coordination among the lenders to implement it effectively.

29. It is stated that throughout the process, the Petitioner Bank imposed harsh and shifting conditions, refused practical requests, and ultimately cancelled the OTS via a letter dated 04.01.2017. Nevertheless, it later invited the Respondent for settlement discussions, demonstrating inconsistent conduct. A follow-up meeting on 09.06.2017 was attempted to revive the OTS. By 28.06.2017, the Bank agreed to extend the deadline to 31.07.2017. However, the Corporate Debtor continued to face

difficulties in asset disposal, mainly due to the Bank's non-cooperation and contradictory actions and the OTS was cancelled by the Bank on 03.05.2018.

30. It is stated that while these settlement efforts were going on, the Petitioner Bank filed a petition under Section 7 of the Insolvency and Bankruptcy Code (IBC) in CP(IB) No.1499/2018, citing alleged default in OTS terms. Even during the pendency of that Petition and before the declaration of moratorium, the Bank invited the Corporate Debtor for an amicable settlement through a letter dated 28.02.2019, but continued to pursue insolvency proceedings, displaying double standards and bad faith conduct.

31. It is stated that the Bank, in Form-IV of CP(IB) No. 1499/2018 filed under Section 7 of the Insolvency and Bankruptcy Code, has claimed an amount of Rs.249.50 crores as on 30.11.2018, including a principal sum of Rs.90.98 crores, while alleging the date of default to be 31.05.2012. This alleged date of default is not only factually incorrect but also appears to be arbitrary and inflated, as is evident from the Bank's own previous disclosures and documentation:

    a. In the demand notice issued under Section 13(2) of the SARFAESI Act dated 29.06.2013, the Bank claimed an outstanding of only Rs.110.70 crores.

    b. In the subsequent Section 13(4) notice dated 02.04.2014, the dues were stated as Rs.125.32 crores.

c. The Bank then sanctioned One Time Settlement (OTS) on 06.10.2016 (Annexure R-10), acknowledging dues of Rs.180.67 crores and accepting a settlement offer of Rs.68 crores.

d. Shortly thereafter, the Bank issued a second OTS sanction letter, ante-dated to 06.10.2016 (Annexure R-12), for an increased settlement amount of Rs.69.50 crores.

e. However, in Form-IV of CP(IB) No. 1499/2018, the outstanding was again revised to Rs.175.76 crores as on 30.11.2018.

f. In a subsequent Petition—CP(IB) No. 1257/2021—the Petitioner claimed a staggering amount of Rs.365.77 crores as unsecured debt allegedly owed by the guarantors of Victory Electricals Limited, without providing any reconciliation of payments made under the OTS or amounts realized through the liquidation of the Corporate Debtor's assets.

It is stated that these shifting figures show a lack of reconciliation and transparency on the Bank's part.

32. It is stated that in the memo filed by the Liquidator before the NCLT, Chennai in CP/872/IB/2018 dated 22.01.2020 (Annexure R-34), it was stated in Para 11 that efforts would be made to recover and realise all assets of the Corporate Debtor in a time-bound manner to maximize stakeholder value. This included recovery of current assets such as receivables. However, subsequent actions—or inaction—suggest a complete departure from this undertaking, allegedly at the behest of the Petitioner Bank.

33. It is stated that in the subsequent memo filed before the NCLT on 15.04.2021 (Annexure R-32), the Liquidator acknowledged that the books of account of the Corporate Debtor were maintained in Tally software and stated in Para 14 that not all assets could be taken control of. Despite this, under Asset ID VEL3, the Liquidator confirmed having taken control of current assets, including receivables, cash, and bank balances. However, there is no record of any effort put in to recover these receivables.

34. It is stated that in the Stakeholders' Consultation Committee (SCC) meeting held on 03.10.2020 (Annexure R-33), the Liquidator noted under Para 11 that Asset ID VEL4 (Current Assets: Receivables, Loans & Advances) were yet to be realised. In Para 21, the Liquidator cited the economic downturn due to lockdowns as a reason for the difficulty in recovery and indicated that legal and follow-up costs may not justify pursuing these claims. The SCC members, including the Petitioner Bank, unanimously agreed to this approach, effectively abandoning recoverable receivables, contrary to the object of IBC.

35. It is stated that in the SCC meeting dated 23.08.2021 (Annexure R-35), the Liquidator listed ongoing litigations. Notably, the suit in O.S. No. 137/2018 filed by the Corporate Debtor against the Petitioner Bank before the Senior Civil Court, Medchal, challenging the cancellation of the OTS, was left unrepresented. Similarly, the suit in COS 116 filed against Bank of Baroda for recovery of money and several consumer complaints before

the NCDRC against insurance companies were also not pursued. These actions (or lack thereof) indicate a reluctance on the part of the Liquidator to comfort the Petitioner Bank, who initially appointed him as the Resolution Professional.

36. It is stated that despite the Petitioner Bank holding a 43.35% majority voting share in the Committee of Creditors, it failed to direct the Liquidator in pursuing the following actionable claims and receivables of the Corporate Debtor:

    a. O.S. No. 87/2013 filed on 05.11.2013 before the Chief Judge, City Civil Court, Hyderabad against Bank of Baroda, seeking recovery of Rs.3.46 crores for failure to verify LCs opened by third parties.

    b. Consumer Complaints before NCDRC, New Delhi—CC Nos. 1096/2015, 1097/2015, 357/2015, and 358/2015—against National Insurance Co. Ltd. and New India Assurance Co. Ltd. for recovery of Rs.22.57 crores.

    c. Book Debts of over Rs.62.54 crores as listed in the SCC meeting dated 21.06.2019 (Annexure R-21).

    d. Counterclaim of Rs.592.83 crores by Victory Transformers and Switchgears Ltd.(VTSL) (the holding company of the Corporate Debtor) against Reliance Capital Ltd. in arbitration proceedings before Hon'ble Justice (Retd.) Anoop Mohta, Mumbai.

It stated that the total value of these abandoned receivables and claims amounts to Rs.681.22 crores, a significant figure that has been disregarded by both the Liquidator and the Petitioner Bank.

37. It is stated that the primary objective of the Insolvency and Bankruptcy Code, 2016, particularly under Section 25, is to ensure maximisation of the value of the assets of the Corporate Debtor. This duty is entrusted to the Resolution Professional (RP) appointed by the Committee of Creditors (CoC). In the present case, receivables of the Corporate Debtor and its group companies—including book debts, counterclaims, and insurance claims—are Rs.681.22 crores. The former Managing Director, Vaddineni Mahindra, a technocrat, had expressed willingness to assist in recovering these dues by supporting warranty obligations and coordinating with DISCOMs and TRANSCOMs. This offer was recorded in Paras 35 and 36 of the minutes of the CoC meeting held on 21.06.2019 (Annexure R-21).

38. References have been made to the case of ***Lalit Kumar Jain v. Union of India [(2021) 9 SCC 321]***, wherein the Hon'ble Supreme Court has held that directors have a continuing liability as personal guarantors, even after the approval of a resolution plan, and may participate in CoC meetings to protect their interests. Despite this, the actionable claims including substantial receivables were neglected by the RP/Liquidator, acting solely with the consent of the CoC, where the Petitioner Bank held the majority voting share.

39. It is stated that the Corporate Debtor was forcibly dragged into insolvency proceedings by the Petitioner Bank, despite having earlier approved and sanctioned an OTS (One-Time Settlement). This is contrary to the Bank's own resolutions and concessions. In the judgment of ***Swiss Ribbons Pvt. Ltd. v. Union of India, 2019 (4) SCC 17***, the Hon'ble Supreme Court observed that Section 65 of the Code prescribes penalties for malicious initiation of insolvency proceedings, offering protection to Debtors from such abuse. It also reaffirmed that a Corporate Debtor must be served with a copy of the application under Section 7, and is entitled to file a reply and be heard before any admission order is passed.

40. It is stated that it is evident that the Petitioner Bank maliciously initiated insolvency proceedings, dragging both the Corporate Debtor and its promoters into IBC solely to invoke personal guarantees and gain undue advantage. This conduct prompted other banks in the MBA consortium to follow suit, leading to the current proceedings against the personal guarantors.

41. In the ***Swiss Ribbons case***, the Hon'ble Supreme Court clarified that a "Claim" leads to a "Debt" only when it becomes due, and a "Default" arises only when the debt is due and remains unpaid. This distinction is crucial in understanding the threshold for triggering insolvency under Section 7 (for financial creditors) versus Sections 8 and 9 (for operational creditors).

42. It is stated that the present Petition is premised on the DRT Hyderabad's order dated 28.10.2019 in OA No. 925/2014, where a joint and several liabilities of Rs.134.74 crores were fixed on the Corporate Debtor and its guarantors, including the Respondent. However, it is pertinent to note that recoveries were made prior to and during the OTS and liquidation proceedings, which have been conveniently excluded by the Petitioner Bank in the current claim:

   a. A sum of Rs.6.84 crores was recovered during the One-Time Settlement (OTS) proceedings.

   b. Additional recoveries were made during the liquidation process, details of which are omitted from the present Petition.

   c. An amount of Rs.23,29,643/-, recovered by the Corporate Debtor from Viswanath Projects Limited under Section 9 Application CP(IB)/429/9/JDB/2018, was settled for Rs.30,00,000/- as per NCLT's order dated 16.04.2019 (Annexure R-22) and utilized by the Liquidator on 22.04.2019. This too has not been reflected in the Petitioner filings.

43. It is stated that the Liquidator, appointed on behalf of the Petitioner Bank, demonstrated gross dereliction of duties. The Liquidator failed to pursue recovery proceedings and actionable claims initiated prior to the moratorium order dated 10.04.2019 in CP/872/2018. He did not represent the Corporate Debtor in pursuing a counterclaim worth Rs.592.83 crores filed by the group company Victory Transformers & Switchgears Ltd. before Hon'ble Justice (Retd.) Anoop Mohta in arbitration proceedings.

When a Show Cause Notice dated 05.12.2019 (Annexure R-23) was served on the Corporate Debtor, the Liquidator failed to appear and the counterclaim was consequently dismissed on 17.01.2020.

44. It is stated that one of the promoters, V.V. Naidu, filed W.P. No. 11479/2021 before the Hon'ble Telangana High Court seeking relief (Annexure R-26). Upon hearing, the High Court issued notice on 28.04.2021 (Annexure R-27), questioning why the petition should not be admitted given the factual circumstances. In his Counter Affidavit dated 19.07.2021, the Liquidator admitted in Para 11 the reasons for not pursuing the counterclaim:

- That the counterclaim included personal claims of promoters, and hence he was not obligated to defend them.
- That the counterclaim lacked substantial documentary support and would involve high legal expenses.
- That the counterclaim was time-barred (cause of action in 2011, claim filed in 2019), making it unsustainable in law.
- That after being served with a Show Cause Notice, the Liquidator filed a belated restoration application before the Arbitrator on 21.06.2021 (Annexure R-30), which was dismissed on 24.06.2021 (Annexure R-31).

It is stated that even this "small effort" to restore the counterclaim was made only after consultation with the Committee and based on legal advice that no prospects of success existed, hence no further appeal under Section 37 of the Arbitration and Conciliation Act was filed before the Hon'ble Bombay High Court.

45. It is stated that the Petitioner Bank, which had remained inactive for a prolonged period, was roused into action only after receiving a Notice dated 13.04.2021 from V.V. Naidu, former Director of the Corporate Debtor, urging the Bank to pursue various actionable claims originally instituted during his tenure as part of the management. Following the said notice, the Petitioner Bank—along with other members of the Committee of Creditors (CoC) directed the Liquidator to seek the opinion of the erstwhile Managing Director, Vaddineni Mahindra, regarding the further course of action in the arbitration proceedings involving a counterclaim of Rs.592.83 Crores filed against Reliance Capital Limited by the former management of the Corporate Debtor on 27.04.2019, well before the initiation of CIRP.

46. Pursuant thereto, the Liquidator sent an email dated **10.06.2021** (Annexure R-29) to the erstwhile Managing Director stating:

> *"On 09.06.2021, I arranged a consultation meeting of the Secured Creditors under Regulation 31A of the Liquidation Regulations to discuss whether I, in my capacity as Liquidator, should participate in the arbitration matter RCL vs. WSL and Others. During the discussion, one invitee questioned the likelihood of success of the counterclaim initiated by the previous management. I request you to send a detailed note on the same to facilitate decision-making in consultation with the SCC."*

47. It is stated that Liquidator's email, along with his affidavits before the Ld. Arbitrator in Mumbai and his Counter Affidavit before the Hon'ble High Court of Telangana in W.P. No. 11479/2021, demonstrate a blatant abdication of statutory duties under the IBC. The Liquidator, clearly under the influence of the Petitioner Bank, focused solely on liquidating the mortgaged assets and deliberately ignored other actionable claims running into hundreds of crores, thereby violating the objective of asset maximization under the Code. It is essential to highlight that Section 25 of the IBC imposes a duty on the Resolution Professional/Liquidator to preserve and protect the assets of the Corporate Debtor, which includes:

- Representing the Corporate Debtor before judicial, quasi-judicial, or arbitral forums.
- Enforcing rights and pursuing recoveries, including actionable claims and book debts.

It is stated that the Liquidator requires no specific permission from the CoC or the Bank to perform these statutory obligations. His failure to act constitutes not just negligence but a waiver of enforceable rights, including those under personal guarantees, and borders on fraud under the Code.

48. It is stated that the Liquidator's last-minute perfunctory attempt to revive the counterclaim of Rs.592.83 Crores, long after the claim was dismissed for non-prosecution, is emblematic of the Petitioner Bank's collusion in undermining the recovery process. Such conduct reveals a misguided belief that the IBC grants unfettered discretion to CoC and

Liquidator to discard viable claims and instead weaponize the Code against the guarantors. The Ld. Arbitrator, Justice (Retd.) Anoop Mohta, had issued several communications and even a Show Cause Notice on 05.12.2019 (Annexure R-23), urging the Liquidator to represent the Corporate Debtor and pursue the counterclaim. However, the Liquidator, in his Counter Affidavit dated 19.07.2021 in W.P. No. 11479/2021, shockingly stated:

> *"There are reasons for me not to take interest to proceed with the counterclaim... Prosecuting the eclipsed counterclaim by spending the funds of the liquidation estate is not only wasteful but also non-productive, in my bona fide belief. Even the legal advice was to the same effect."*

It is stated that such a cavalier attitude mocks the legislative intent of the Code, the Arbitration Act, and the sanctity of judicial process.

49. It is stated that meanwhile the erstwhile management, including the Respondent and other stakeholders, actively pursued recoveries—including a successful recovery of Rs.30,00,000 from Vishwanath Projects Ltd. in CP(IB)/429/9/JDB/2018 thereby demonstrating genuine efforts to maximize value, unlike the negligent conduct of the Liquidator and the CoC.

50. It is stated that the Petitioner Bank, having significant voting rights in the CoC, failed to act in good faith in numerous meetings where actionable claims were on the agenda. It cannot now feign ignorance. The Bank is vicariously liable for the violations and omissions of the Liquidator, whose conduct was effectively ratified by the CoC. Ultimately, in the

Final Award dated 21.09.2021 (Annexure R-36), the Ld. Arbitrator held that:

> *"The Liquidator's conduct of seeking restoration of the counterclaim solely based on Supreme Court judgments on limitation is unjust, unacceptable, and contradictory to his statutory obligations... The IBC mandates Liquidators to defend claims and pursue counterclaims. There is no provision restricting participation in judicial proceedings."*

51. It is stated that despite all this the Liquidator had the audacity to declare that, based on legal advice, there were no prospects of success, and therefore he was dissuaded from filing an appeal under the Arbitration Act before the Hon'ble Bombay High Court. However, the Respondent, along with other promoters, retained faith in the legal process and independently filed a challenge under Section 34 of the Arbitration Act before the Hon'ble Bombay High Court in Commercial Arbitration Petition (L) No. 30606 of 2021 on 27.12.2021.

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52. It is stated that the purpose and objective of IBC is to maximize the assets belonging to the Corporate Debtor which the RP/Liquidator miserably failed. The RP/Liquidator with the advice of the bank, abandoned all the actionable claims. It is stated that the RP/Liquidator in his mail dated 10.06.2021, discussed a cost-benefit analysis and chances of recovering the actionable claims assessed prior to taking any decision and the Bank having substantial voting acceded to such shoddy recovery methods against the interest of the Corporate Debtor. It is stated that the

abandonment of the actionable claims and recovery of dues, were consciously approved by the bank with a thumping majority. It is alleged that such fraudulent resolution is nothing but a wilful violation of the provisions of the Code. As such, provisions under section 65(1) of IBC, 2016 attract against the RP/Liquidator and the bank. It is alleged that the RP/Liquidator conveniently abandoned the claims against the Electricity Boards and other government entities though this option was available with the RP/Liquidator. Reference is made to the case of ***A.V. Pappaya Sastry Vs Govt of AP (2007) 4 SCC 21*** where the Hon'ble Supreme Court held that "*fraud – vitiates all judicial acts whether in rem or in person*".

53. It is stated that the Respondent/Personal Guarantor has in the application filed under Section 65(1) of IBC against the Financial Creditor/Petitioner (State Bank of India) wherein it reiterated the facts as stated in the reply filed to the petition referring the case of ***Swiss Ribbons (P) Ltd. v. Union of India (2019) 4 SCC 17 : 2019*** that Section 75 of IBC provides for punishment for furnishing false information in a petition filed by the Financial Creditor for invoking the provisions of Section 7 of IBC. It was held that set off may be considered at the stage of filing of proof of claim during the Resolution Process. Equally the counter claims are the independent rights which are not taken away by the Code but are preserved for the stage of admission of claims during the Resolution Plan. There is nothing in the Code which interdicts the Corporate Debtor from pursuing such counter claims in other judicial forums. The case of ***Tamil Nadu Generation and Distribution Corporation Limited Vs. Union of***

India WP No. 19785 of 2021, is referred where it was held that a Creditor has a right to approach NCLT against an entity which is substantially owned by the government for recovery of its dues and it is within the domain of NCLT to adjudicate any dispute qua the claim and decide the claims and counter claims in the case. It is stated that in the case of S***.S. Engineers Vs. Hindustran Petroleum Corporation Ltd. & Others – 2022 SCC OnLine SC 1385*** dated 15.07.2022, it was held by the Hon'ble Supreme Court that it is not the object of IBC that CIRP should be initiated to penalise the solvent companies for non-payment of disputed dues claimed by Operational Creditor. The Respondent has thus prayed that the petition may be dismissed which is based on malicious and fraudulent claim with penalty.

54. It is alleged that the Financial Creditor having 43.37% voting power in the CoC remained a mute spectator to the failure of RP/Liquidator in the recovery of an actionable claim of around Rs.677 Crores. Rather the bank arbitrarily declared both the Corporate Debtors as fraud though the bank in earlier independent audits, had affirmed that there was no fraud at all. When the promoters questioned the bank why the recovery of actionable claim was neglected by the bank, in retaliation, the bank conducted the forensic audit to make the promoters remediless. It is alleged that the entire group companies have been dragged into insolvency proceedings with a malicious intention. It is stated that there was no misappropriation or fraud committed by the Principal Borrower with regard to the stocks and books of the accounts. The cash flow problem led to a dip in

profitability owing to increased interest cost. The bank refused to restructure the debt in BIFR. The RP/Liquidator did not pursue the insurance claims before NCDRC. It is stated that the bank cannot approbate and reprobate. Case of ***Liquidator for Kapil Steels Ltd. Vs. M/s. Indore Steel Alloys Pvt. Ltd.*** is referred where the Hon'ble NCLAT in the order dated 23.03.2023, held that the Liquidators under the IBC are undisputedly vested with sufficient authority to take into custody or control all assets, property, effects and actionable claims of the Corporate Debtor and also collect outstanding receivables including paying of bills and outstanding debts. In the case of ***Eva Agro Feeds Pvt. Ltd. Vs. Punjab National Bank and Anr.***, the Hon'ble Supreme Court in the order dated 07.09.2023, held that the Liquidator *virtually steps into the shoes of the management of the Corporate Debtor and oversees the liquidation process. In this process, he holds the liquidation estate of the Corporate Debtor as a fiduciary for the benefit of all the creditors. While overseeing the liquidation process, he has the mandate to sell all movable and immovable properties and 'actionable claims' of the Corporate Debtor in liquidation by way of either public auction or by private contract, though he cannot sell such property or claims to any person who is not eligible to be a resolution applicant*.

55. It is stated that Liquidator is vested with powers for preservation and protection of assets of the Corporate Debtor and to promote entrepreneurship. Section 3(27) of IBC defines property which includes actionable claims. Section 25 of IBC lays down that the RP shall take

immediate custody and control of all the assets of the Corporate Debtor including the business records.

SUBMISSIONS BY THE PETITIONER

56. The Petitioner has filed a rejoinder vide SR.No. 1135 dated 31.07.2024. It is stated that Corporate Debtor was in a very bad financial condition and was even referred to BIFR. The Respondent is the Promoter/Director of the Corporate Debtor i.e. Victory Transformers & Switchgears Limited/Victory Electricals Limited. Despite the aforesaid, the Promoter/Personal Guarantor /Respondent never challenged the order of admission/liquidation, which clearly shows that the Respondent has admitted the debt and default of the Corporate Debtor.

57. It is stated that the Corporate Debtor/ Principal Borrowers i.e. Victory Electricals Limited and Victory Transformers & Switchgears Limited both, had debt and default and the guarantees executed by the personal guarantor is a continuing guarantee for all the amount advanced by the Petitioner.

58. It is stated that the default is a continuing one as on date. Hon'ble National Company Law Appellate Tribunal has also confirmed that the subject debt is not barred by limitation and vide order dated 10.04.2023, remanded the matter back to this Tribunal in respect of Corporate Guarantor namely Hackbridge Hewittic and Easun Limited. The relevant portion of the order is as follows:

37. This Appellate Tribunal notes that in the present case, the date of default, would automatically get extended from the date of 'OTS' proposal submitted by the Principal Borrower which will also be deemed proposal by the Respondent. Significantly and admittedly, the first OTS proposal was submitted by the Principal Borrower on 13.03.2014, which was followed by modified OTS or submissions/clarification on the OTS to the Appellant vide letters of the Principal Borrowers dated 18.04.2014, 21.07.2014, 09.10.2014. 08.01.2015, 14.01.2015, 29.01.2015, 25.05.2015, 25.05.2015, 19.06.2015, 20.02.2016, 07.03.2016, 19.03.2016 and 18.05.2016.

38. This Appellate Tribunal notes that there are various acknowledgments of liability by the Corporate Debtor from time to time, total 13 OTS letters from the Respondent to the Appellant within the meaning by Section 18 of the Limitation Act and there are also part payments by the Corporate Debtor, therefore, the period of limitation is extended in the light of Section 19 of the Limitation Act. By the OTS described in letters mentioned above, the Principal Borrower i.e. Victory Electricals Limited had offered the payment of varying amounts to the Appellant herein for full and final settlement of their liability and thereby admitted the jural relationship of Debtor - Creditor or between them and the Bank / Appellant herein.

"Based on above detailed analysis, this Appellate Tribunal has no option but to set aside the impugned order dated 06.01.2021 which is in contravention of I & B Code, 2016 and the Limitation Act, 1963 as discussed in the preceding paragraphs. The matter is remanded back to the Adjudicating Authority ('NCLT', Chennai) and both the parties are required to appear before the 'Adjudicating Authority' on 28.04.2023."

59. It is stated that the covid period between 15.03.2020 to 28.02.2022 was the period when no party could exercise its rights in an unfettered manner and the same was rightly considered as extraneous /extraordinary circumstances (and beyond the control of the Respondent) and excluded by the Hon'ble Supreme Court.

60. It is stated that although the Respondent has made allegations against the Liquidator / RP that he did not pursue the actionable claims of the Corporate Debtor but, the said Liquidator / RP Chinnam Poorna Chandra Rao has not been made a party. It is stated that the allegations are liable to be dismissed for non-arraying of necessary parties. Further the allegations are unsustainable, arbitrary, false and misleading and they do not have any relevance to the instant petition filed under section 95 of IBC.

61. It is stated that none of the suspended management / promoters has taken keen interest in prosecuting the actionable claims of the Corporate Debtor nor filed any application against the RP/Liquidator / CoC of the Corporate Debtor on the aforesaid subject till date. The writ petition(s) filed by the Personal Guarantor also do not relate to the alleged claim of the Respondent.

62. It is stated that the claims of the Respondent are barred by the doctrine of Estoppel. There cannot be any locus for the Respondent to raise allegations /make out a new case at this juncture. The same is barred by the doctrine of Approbate and Reprobate. Reference has been made to the case ***Union of India vs. N. Murugesan, Civil Appeal Nos. 2491–2492 of 2021***, wherein the Hon'ble Supreme Court elaborated on the doctrine of election, particularly through the maxim "a person cannot approbate and reprobate"

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63. The Petitioner Bank/Respondent filed the reply vide SR.No.4024 dated 04.01.2025 to the application stating that the writ petitions relate to the forensic audit conducted by the bank and do not seek any relief against the RP/Liquidator of VEL and VTSL alleging malicious prosecution or on the recovery of actionable claims. It is stated that the Corporate guarantor in its reply dated 20.11.2019, had given 'no objection' for admission of the petition. The Respondent has not filed any case seeking any relief against the bank except the instant application as such, he has waived its rights against the bank. As per the Balance Sheet, as on 09.04.2019 (insolvency commencement date) submitted by VEL, the trade receivables are shown Rs.5,62,19,563/- and not Rs.100 crores or more as alleged. The bank has already filed the reply to the writ petitions pending before the Hon'ble Telangana High Court. The Managing Director of VEL had sent a mail on 21.09.2019 about the CIRP proceedings against the company which the Ld. Arbitrator also acknowledged. Further, it was the duty of the promoter to co-operate with the RP/Liquidator in protecting the interest of the company. It is stated that the Respondent had informed the Liquidator via his mail dated 17.07.2019 that recovery is impossible against the debtors including the Government Bodies. It is stated that the Petitioner cannot blow hot and cold. The dispute relating to OTS has already reached finality and cannot be agitated again. It is stated that since the Principal Borrower did not comply with the terms of OTS, it did not fructify. The

Hon'ble NCLAT in respect of the Corporate Guarantor has already held that the petition is within the limitation. It is stated that the Liquidator of VEL sold the following properties through e-auction.

Rs Lacs

Asset ID	*Description of the Property*	*Sale Price*
VLEIA	*Sy Nos: 855 on a piece of land admeasuring Ac 1-06 Gts with sheds of 1296.81 Sq mts, buildings of 359.73 sq mt and miscellaneous structures like septic tank and transformer yard.*	*5,10.00*
VLEIB	*Sy Nos: 853 in Medchal on a piece of land admeasuring Ac 8-17 Gts (approx.) with structure with an approximate with RCC Building I admeasuring 4,550 sq ft: RCC Building 2 admeasuring 1,606 sq ft; and RCC toilet admeasuring 324 Sq ft.*	*30,99.00*
VELIC	*GI Sheeted Shed 1 admeasuring 21,737 sq ft. GI Sheeted Shed 2 admeasuring 68,777 sq ft and ACC Shed 3 admeasuring 4,550 sq ft*	*1,64.00*
VEL2	*Plant & Machinery, Furniture & Fixtures and Office Equipment*	*71.00*
VEL4	*Plot No. 15 part, Sy No. 79, Phase-IV Extension, Block No.21 situated at 1.D.A Jeedimetla, Gajularamaram Village, Medchal with structure with an approximate built up area of 18,204 sq ft*	*6,20.00*
	Total	***44,64.00***

64. The above realisation was based on the fair value and liquidation value of the assets. The Liquidator of VTSL sold the following properties through e-auction as tabulated above after getting the fair value and liquidation value of the assets.

Rs in Lacs

Asset ID	Description of the Property	Sale Price
VTSLI	Industrial plot No. 7 in Jeedimetla on a piece of land admeasuring 1550 sq yards with structure thereon	3,55.00
VTSL2	Industrial Plot No. D-4 on piece of land admeasuring 2917.33 sq yards with shed	6,10.00
VTSL3	Industrial Plot No. D-52 on piece of land admeasuring 1357.10 sq yards with a structure thereon	2,34.00
VTSL4	Industrial Plot No. D-56 on piece of land admeasuring 1839.60 sq yards with a structure thereon	2,80.00
VTSL5	Industrial Plot Nos. 18 & 19 on a piece of land admeasuring 8359 sq yards with a structure thereon	13,60.00
VTSL6	Industrial Plot in Sy No. 218at Bonthapally village admeasuring Ac 3:02 Gts with a dilapidated structure thereon	4,15.00
VTSL7	Plant & Machinery, Furniture & Office Equipment, Computers, Electrical Equipment, Tools, fittings and Testing Equipment	96.00
	Total	**33,50.00**

65. It is stated that the Liquidator recovered Rs. 59.94 Crores as on 12.11.2024 after the e-auction sale of the assets of VEL and VTSL. As per the tally data, on the date of liquidation commencement date, following debts were outstanding to be recovered by the Corporate Debtor, VEL:

Sr. No	Sundry Debtors	Amount Rupees
1	Hetero Healthcare Limited	2,21,068
2	Mahaveer Roofing Solutions	2,780
3	Valencia Agritech	39,800
4	Karnataka Power Transmission Corporation Ltd	34,56,125
5	RRVPNL	55,26,913
6	Tamilnadu Transmission Corporation	61,71,550
7	UPPTCL	58,36,727

8	*A.P.CP.D.C LTD*	*3,58,251*
9	*Assam Power Distribution Company Limited*	*18,50,626*
10	*Bharat Bijilee Limited*	*1,69,89,566*
11	*Central Power Distribution of AP Lid*	*21,591*
12	*Jaipur Vidyut Vitran Nigam Limited*	*2,21,964*
13	*Jodhpur Vidyut Vitran Nigam Limited*	*5,000*
14	*Jyoti Limited*	*2,03,939*
15	*Kapoor Metals*	*(7,50,072)*
16	*KLG Systel Lid*	*2,29,29,169*
17	*Pokuri Srinivasa Rao*	*20,25,000*
18	*Reliance Utility Engineers Private Limited*	*29,36,859*
19	*Super Intending Engineers Operation*	*1,18,053*
20	*Tracon General Trading FZE*	*(1,48,78,383)*
21	*Vajra Transformers Private Limited*	*41,000*

46. In respect of the other Debtors, vide his email dated 17.07.2019, Vaddineni Mahindra Kumar informed the Liquidator that it is better to write them off as not recoverable. The Corporate Debtor is not in operation since 2012 and the Liquidator has been informed by the erstwhile management that all the above Receivables from (4) to (14), (16) to (19) and (21) have become time-barred. The Liquidator informed the erstwhile management of the Corporate Debtor to provide the details about the above accounts, so that he can independently examine the recoverability of these amounts. The erstwhile management informed that all the records are lying in the Factory at Medchal. However, the Liquidator did not find any records pertaining to these Debtors when searched at Medchal Factory. Further, when Mr Mahindra Vaddineni happened to be at the Factory, the Liquidator and his team went to the Factory and put before him all the records (which were by then securely packed into gunny bags and kept in the building at the Factory). However, no relevant records were found. The erstwhile management affirmed that no further records pertaining to the matter are available with them and that these should be written off as non-receivable.

66. In respect of VTSL as per the tally data on the liquidation commencement date, the following debts were outstanding to be recovered:

Sr No	***Sundry Debtors***	***Amount Rupees***
1	*Anjani PRS Blends Pvt Ltd*	*(7,20,000)*
2	*CE Industries*	*27,440*
3	*S.S.K. Engineering Industries*	*64,600*
4	*S.S.R. Appliances IDA*	*6,48,000*
5	*Raj Foods, JDM-Unit-V*	*(10,96,995)*
6	*Sri Sai Krupa Engineering Industries*	*(5.38,162)*
7	*S.S.R. Appliances*	*(16,27,754)*
8	*Ajmir Vidyut Vitran Nigam Lid*	*85,85,608*
9	*Chattisgarh State Electricity Board*	*20,34,893*
10	*Jaipur Vidyut Vitaran Nigam Ltd*	*1,02,19,798*
11	*Tamilnadu Transmission Corporation*	*27,15,137*

29. The erstwhile management informed that all the records are lying in the Factory at Medchal. However, the Liquidator did not find any records pertaining to these Debtors when searched at Medchal Factory. Further, when Mr Mahindra Vaddineni happened to be at the Factory, the Liquidator and his team went to the Factory and put before him all the records (which were by then securely packed into gunny bags and kept in a building at the Factory). However, no records pertaining to the Receivables were found out. The erstwhile management affirmed that no further records pertaining to the Receivables are available with them and that these should be written off as non-receivable. In view of this, the Liquidator decided to write them off as not recoverable.

67. It is stated that the erstwhile Promoters/Corporate Debtor had instituted some cases before and during CIRP/liquidation, as detailed below:

Sr. No.	***Parties***	***Forum***	***Brief description of the matter***

1	*V Venkatappaiah Naidu vs Union of India & Ors*	*Telangana High Court*	***WP No. 11156 of 2021**: WP seeking to declare the Forensic Audit Report as ultra vires*
2	*TSSPDCL vs Liquidator*	*NCLAT Chennai*	***COMP APP(AT) (CH) (INS) No. 70 of 2024**: Against the impugned order of NCLT, dismissing the IA against the Liquidator who rejected the belated claim of the Applicant, the Applicant filed an appeal. The Liquidator filed a reply and the matter is pending.*
3	*VEL vs National Insurance Company*	*NCDRC, Delhi*	***C.C 1096/2015**, Denial of Insurance claim against Burglary at Chennai factory amounting to Rs.3,18,15,100/-Hearing did not happen on 07.05.2024. New date is yet to come.*
4	*VEL vs National Insurance Company*	*NCDRC, Delhi*	***C.C 1097/2015**, Denial of Insurance claim against Burglary at Chennai factory amounting to Rs. 13,90,80,355/-, Hearing did not happen on 07.05.2024. New date is yet to come.*
5	*VEL vs New India Assurance Company*	*NCDRC, Delhi*	***C.C 357/2015**, Denial of Insurance claim against Burglary at Chennai factory amounting to Rs.3,27,68,725/-. Hearing did not happen on 07.05.2024. New date is yet to come.*

6	*VEL vs New India Assurance Company*	*NCDRC, Delhi*	*C.C 358/2015, Denial of Insurance claim against Burglary at Chennai factory amounting to Rs.2,20,37,982/-. Hearing did not happen on 07.05.2024. New date is yet to come.*

68. It is stated that based on the forensic report, the State Bank of India referred the matter to the CBI for further investigation. It is stated that the ex-promoters have challenged the forensic audit report but did not seek any relief as regards the alleged dereliction of duty or for recovery of Rs.649,47,03,194/-. It is stated that there was no dereliction of duty on the part of the bank and as such the application filed under section 65(1) of IBC deserves to be dismissed.

FINDINGS OF THE TRIBUNAL

69. We have heard Ld. Counsels for the parties, perused the documents, the reply, the report of the IRP and the written synopsis filed.

70. In the present case, the Corporate Debtor, i.e., Victory Electrical Limited had availed credit facility from the Petitioner i.e. State bank of India. The Respondent has executed a personal guarantee dated 06.09.2005,07.11.2006,31.12.2008 & 16.11.2009 undertaking to make payment in case of default by the Corporate Debtor. The account of corporate Debtor was declared NPA and Demand Notice under the SARFAESI Act was issued to both the Corporate Debtor and the Personal

Guarantor 28.06.2013, thereby invoking the guarantee provided by the Respondent. A case was filed before the Debt Recovery Tribunal, Hyderabad in O.A.No.925/2014 for recovery of an amount of Rs.273,95,41,204.95 which was allowed vide an order dated 28.10.2019. An OTS proposal was made on 18.05.2016 by the Corporate Debtor for an amount of Rs.68.0 Crores but was later changed to Rs. 69.5 Crores. The OTS was agreed by both the Petitioner and the Corporate Debtor. The OTS was cancelled on 03.05.2018 due to non-payment of the default amount according to the terms and conditions of the OTS agreement. Subsequently a Legal notice under Form B was sent on 09.09.2020 to the Corporate Debtor and the Respondent for the repayment of the default amount. The present Petition has been filed on 08.05.2021, which is well within the prescribed limitation period of three years considering the covid period as there was continued acknowledgment of debt due by the Corporate Debtor.

71. It is a settled principle that before admitting a case under section 100 of IBC, the adjudicating authority should be satisfied with the essential conditions. At the threshold, the existence of a debt and a corresponding default are foundational. The Hon'ble Supreme Court in ***Swiss Ribbons (P) Ltd. v. Union of India*** **[(2019) 4 SCC 17]** emphasized that the IBC requires a real default and not merely a claim. Similarly, in ***Innoventive Industries Ltd. v. ICICI Bank*** **[(2018) 1 SCC 407]**, the Hon'ble Court underscored that the existence of a "debt" and "default" must be clearly established before any insolvency proceeding can be admitted. These

principles apply with equal force in the context of personal guarantors under Part III of the Code. Further, the application must be based on a valid and enforceable personal guarantee executed in accordance with law. In ***State Bank of India v. V. Ramakrishnan*** **[(2018) 17 SCC 394]**, the Hon'ble Supreme Court held that a personal guarantor's liability is co-extensive with that of the principal debtor under Section 128 of the Indian Contract Act, and the commencement of CIRP does not absolve the guarantor of liability. The Hon'ble NCLAT, in ***R. Srinivasan v. SBI & Ors.*** **[Company Appeal (AT) (Insolvency) No. 305 of 2021]**, reiterated that a Section 95 application must be premised upon an enforceable guarantee deed that evidences the guarantor's liability.

72. Additionally, the law mandates that there must be invocation of the personal guarantee prior to the filing of an application under Section 95. In ***State Bank of India v. Mahendra Kumar Jajodia*** **[Company Appeal (AT) (Insolvency) No. 120 of 2021]**, the Hon'ble NCLAT held that a notice invoking the guarantee, coupled with a notice of demand, is a necessary pre-condition. The obligation of the personal guarantor does not arise in abstract but only upon invocation of the guarantee by the creditor. The application must be filed within the period of limitation, as prescribed under the Limitation Act, 1963. In ***B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates*** **[(2019) 11 SCC 633]**, the Hon'ble Supreme Court held that the limitation period for initiating insolvency proceedings under the IBC is three years from the date of default. Further, ***Manasi Indrajit Wadkar v. Union Bank of India*** **[NCLAT, 2023]**

clarified that acknowledgments of debt, whether through One Time Settlement (OTS) proposals, balance sheets, or correspondence—can extend the limitation period under Section 18 of the Limitation Act. These acknowledgments must be clear, unambiguous, and made before the expiry of the original limitation.

73. In the present case, the Petitioner has placed on record sufficient material to establish the existence of a financial debt and the occurrence of default. The Petitioner has relied upon the audited balance sheet of the Corporate Debtor, which discloses the outstanding liability, as well as an order passed by the DRT directing both the Corporate Debtor and the Personal Guarantor to repay the dues. The existence of a legally valid and enforceable deed of guarantee executed by the Personal Guarantor has also been substantiated. Furthermore, the Petitioner had issued a demand notice invoking the guarantee, thereby crystallizing the liability of the guarantor in accordance with law. In addition, the record contains several documents evidencing acknowledgment of debt, including One Time Settlement (OTS) proposals, signed balance sheets, and revival letters, all of which further reinforce the continuity of liability and extend the period of limitation under Section 18 of the Limitation Act, 1963. Taken together, these documents sufficiently demonstrate that the statutory prerequisites under Section 95 have been met.

74. The Personal Guarantor has raised a contention that the present Petition has been initiated with fraudulent and malicious intent, thereby

attracting Section 65 of the Insolvency and Bankruptcy Code, 2016, and warrants consequences under Section 75 of the Code. For Section 65 to be attracted, the threshold requirement is that the insolvency proceedings must have been initiated with fraudulent or malicious intent, or for a purpose other than the resolution of insolvency or liquidation.

75. Section 65 of IBC, 2016 reads as:

Fraudulent or malicious initiation of proceedings.

(1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.

(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.

(3) If any person initiates the pre-packaged insolvency resolution process

(a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency; or

(b) with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.

76. Section 65(1) of the Code provides that if any person initiates the insolvency resolution process or liquidation proceedings with a fraudulent or malicious intent, the Adjudicating Authority may impose a penalty upon such person. The Hon'ble National Company Law Appellate Tribunal (NCLAT) in ***Monotrone Leasing Pvt. Ltd. Vs. PM Cold Storage Pvt. Ltd., [2020] ibclaw.in 21 NCLAT***, reaffirmed this principle, holding that a petition under Sections 7, 9, or 10 of the IBC cannot be rejected solely on the ground of lack of intent for resolution, unless there is explicit documentary proof of fraudulent or malicious intent.

"34. Section 65 of the Code provides for penal action for initiating Insolvency Resolution Process with a fraudulent or malicious intent or for any purpose other than the resolution. However, the same cannot be construed to mean that if a petition is filed under Section 7, 9, or 10 of the Code without any malicious or fraudulent intent, then also such a petition can be rejected by the Adjudicating Authority on the ground that the intent of the Applicant/Petitioner was not resolution for Corporate Insolvency Resolution Process. As the proceedings under IBC are summary in nature, it is difficult to determine the intent of the Applicant filing an application under Section 7, 9, or 10 of the Code unless shown explicitly by way of documentary evidence. This situation may arise in specific instances where a petition is filed under IBC specifically with a fraudulent or malicious intent."

77. The Hon'ble NCLAT in the case of ***Getz Cables Pvt. Ltd. v. State Bank of India and Anr. Company Appeal (AT) (Insolvency) No.1953 of 2024*** considered the scope of the terms fraudulent and malicious intent. Simply to put, fraud consists of elements of deceit coupled with injury

whereas malice is a wrongful act done without lawful justification. The relevant paragraphs of the order are extracted hereunder,

> *"16. Necessary ingredients, which required to be proved under Section 65, sub-section (1) are that proceedings are initiated fraudulently or with malicious intent for any purpose other than for the resolution of insolvency. Both expression - fraudulent and malicious has definite connotation. The expression 'fraudulently' has been explained in Advanced Law Lexicon by P Ramanatha Aiyar 6th Edition in following words:*
>
> *"Person does a thing fraudulently if he does it with an intent to defraud, and so to constitute fraud two elements are necessary-deceit, and injury and loss to some person."*
>
> *17. Another expression which occurs in Section 65 is 'malicious intent'. Advanced Law Lexicon by P Ramanatha Aiyar define the world 'malice' in the legal sense in following words:*
>
> > *"1. The intent, without justification or excuse, to commit a wrongful act. 2. Reckless disregard of the law or of a person's legal rights."*
> >
> > *There is also a second definition, which is as follows:*
> >
> > *"Malice in the legal sense imports (1) the absence of all elements of justifications, excuse or recognized mitigation, and (2) the presence of either (a) an actual intent to cause to particular harm which is produced or harm of the same general nature, or (b) the wanton and wilful doing of an act with awareness of a plain and strong likelihood that such harm may result....*
> >
> > *18. The Hon'ble Supreme Court has defined 'malice' in (2003) 8 SCC 567 Chairman & MD. BPL Ltd. vs. S.P. Gururaja and Ors. in paragraph 21, in following words: "21. Malice in common law or acceptance means ill will against a person, but in the legal sense it means a wrongful act done intentionally without just cause or excuse."*

78. The Hon'ble NCLAT in the case of ***Amour Infrastructure LLP Vs. Digital Integrated Technologies Pvt. Ltd. (Company Appeal (AT) (Ins.) No. 884 of 2022 & I.A. No. 2458 of 2022)***, held that an Adjudicating Authority cannot make a finding of fraud/malice unless it is specifically pleaded and backed by documentary evidence. The relevant paragraphs are extracted hereunder

"5. Learned Counsel for the respondent has referred to the findings in paragraph 26 of the order which is to the following effect:
"From these facts, we have got reasonable basis to reach to a conclusion that application filed under Section 7 is a mechanism whereby financial creditor is trying to settle personal scores and put undue pressure on the corporate debtor. hence, we have no hesitation in holding that this application has been filed with malicious intent and for purposes other than the Resolution of Insolvency of the Corporate Debtor. We further find that corporate debtor is a solvent company"
8. Observations made in paragraph 26 is that Financial Creditor is trying to settle personal scores and put undue pressure on the Corporate Debtor. We are of the view that for proving the ingredient of Section 65 there has to be adequate pleadings and findings. Observations made in paragraph 26 does not fulfil the requirement of Section 65 so as to reject the Section 7 application."

79. This principle has also been reinforced in the case of ***M/s. Flycreative Online Private Limited v. GO Airlines (India) Limited (Int. Petition No. 68/2023), the Hon'ble National Company Law Tribunal (NCLT), New Delhi***, wherein the Tribunal examined the allegations of fraudulent and malicious intent in insolvency proceedings. The Tribunal emphasized that for an application to be considered malicious under Section 65, there must be substantial and corroborative evidence proving fraudulent intent. It was observed that merely failing to inform creditors about the

intention to file for insolvency, does not, by itself, establish malice unless supported by concrete evidence.

"10. In terms of Section 65 of the Insolvency and Bankruptcy Code, 2016, there must be substantial and corroborative evidence to explicitly prove 'fraudulent intent', 'malice' and 'mens rea' on part of the CD by way of specific documentary evidence and also that the Applicant approached with malicious intent for any purpose other than for the resolution of insolvency."

80. In light of the above legal position, it is evident that to attract Section 65, the burden lies on the objecting party to place on record compelling and credible evidence to prove that the Petitioner has approached the Adjudicating Authority with mala fide intent or for purposes extraneous to the resolution process. In the present case, the Personal Guarantor has failed to produce any such substantial or corroborative material that would support the allegation of fraud or malice.
81. The Respondent has alleged that the Liquidator/Resolution Professional failed to pursue the actionable claims of the Corporate Debtor. However, the said Liquidator/Resolution Professional, Mr. Chinnam Poorna Chandra Rao, has not been made a party to the application. It is further noted that while the ex-promoters have challenged the forensic audit report, they have not sought any relief either in respect of the alleged dereliction of duty or for recovery of the sum of Rs. 649,47,03,194/-.

82. On a consideration of the reply filed by the Financial Creditor and the documents, we do not find substance in the application filed by the Respondent/Personal Guarantor. In the instant case, the account of the

Corporate Debtor was declared NPA in the year 2012. This CIRP petition was filed in 2019. The Corporate Debtor was not in operation even prior to its accounts was declared NPA. The OTS proposal was given in 2016. It was approved on certain terms and conditions. The Corporate Debtor failed to honour the OTS as per the terms and the Financial Creditor cancelled the OTS in 2018. It was only thereafter the petition was filed. The order for initiating CIRP against the Corporate Debtor was passed in 2019. It may be true that the maximum supply of the Corporate Debtor was to the Electricity Boards and there could be trade receivables / book debts but there is no document showing the effort put in by the Corporate Debtor to recover the debts from the Electricity Boards before the initiation of CIRP. As per the tally data, referred in para-65 & 66 *supra,* the Former Manager, Vaddineni Mahindra Kumar vide his mail dated 17.07.2019, had informed the Liquidator that it is better to write off the debts of the other debtors as not recoverable. Although the Liquidator sought the details from the erstwhile management of the Corporate Debtor of above accounts so that he could independently examine the recoverability of the amounts but the management informed that all the records were lying in the factory. The Liquidator did not find any record pertaining to the debtors and thereafter, the management affirmed that no further records pertaining to the matter are available with them and these debts should be written off as non-recoverables. Further, in the Balance Sheet as on 09.04.2019 i.e. insolvency commencement date, the trade receivables were shown as Rs.5,62,19.563/-.

83. As regards OTS, the bank had approved the OTS for Rs.69.50 Crores vide dated 06.10.2016. Since the Principal Borrower did not comply with the terms of OTS, the bank cancelled the OTS on 03.05.2018. It is not the case that the bank did not sympathetically consider the proposal given by the Corporate Debtor including the Respondent. As seen from the record, the Liquidator got conducted the valuation of the assets of the Corporate Debtor and after getting the fair value and the liquidation value, he conducted the auction of the assets of the Corporate Debtors VEL and VTSL and realized the amounts. The RP/Liquidator has also been pursuing the cases instituted by the Corporate Debtor as referred in para-67 *supra*. As regards the land mortgaged with the Financial Creditor, the Liquidator also initiated the action.

84. There is no material to indicate that RP/Liquidator was not vigilant or diligent in recovering the actionable claims of the Corporate Debtor. He informed the CoC/SCC from time to time about the action taken. Since most of the actionable claims had become time-barred even prior to initiation of CIRP, no blame can be put on the RP/Liquidator that he did not make any effort to recover the actionable claim of the Corporate Debtor to maximise the assets of the Corporate Debtor.

85. As regards the arbitral proceedings, it has been explained by the Liquidator that he discussed cost-benefit analysis and the chances of recovery of actionable claims with the bank. The bank voted for the abandonment in view of the reasons *supra.* There is no quarrel on the legal proposition that fraud vitiates the judicial acts whether in rem or in

personal but in the instant case, we do not find any material showing that any fraud was played by the RP/Liquidator or the Financial Creditor. Further, there is no material to indicate that the RP/Liquidator conveniently abandoned the claims against the debtors.

86. It is pertinent to mention that the bank also got conducted the forensic audit of the accounts of the Corporate Debtor and reported the matter to CBI. Against conducting of the forensic audit, the Financial Creditor filed the writ petitions before the Hon'ble Telangana High Court which are pending.

87. In the instant case, the objections are mere assertions unsupported by material evidence. No supporting forensic or statutory material has been produced as envisaged in ***Amour Infrastructure (supra)***, and thereby, the allegations of the Personal Guarantor remain unsubstantiated. There is no material to show that the financial creditor has initiated the insolvency resolution process fraudulently or with malicious intent for any purpose other than for the resolution of insolvency of the Corporate Debtor which are the sine qua non for taking action under Section 65 of IBC. We find that the objections raised in the present petition when measured against the precedents, fall short of the standard required.

88. Further, Section 65 of the Code falls under Chapter VI titled *"Adjudicating Authority for Corporate Persons"* in Part II of the IBC, whereas Section 95 is located in Part III, Chapter III, which specifically deals with the *Insolvency Resolution Process for Individuals and Partnership Firms*. The scheme of the

Code, therefore, makes it evident that Section 65 is not intended to apply to proceedings initiated under Section 95. The Hon'ble NCLAT, in ***Monotrone Leasing Pvt. Ltd. v. PM Cold Storage Pvt. Ltd.*, [2020] ibclaw.in 21 NCLAT**, has also stated that Section 65 pertains to applications filed under Sections 7, 9, and 10 of the Code. Hence, the attempt of the Respondent to invoke Section 65 in the present proceedings is legally untenable, as the provision cannot be stretched to apply to insolvency proceedings against personal guarantors. **The application filed by the Respondent vide IA/2330/2024 is accordingly dismissed.**

89. In light of the aforesaid discussions, the present Petition i.e. **CP(IB)/257(CHE)/2021** is admitted and the Insolvency Resolution Process stands initiated against the Personal Guarantor, Vaddeneni Venkatappa Naidu viz. the Respondent herein. We hereby;

I. Initiate Insolvency Resolution Process against the Respondent/Personal Guarantor, Vaddeneni Venkatappa Naidu. The moratorium in relation to all the debts is declared, from today i.e. date of admission of the petition, 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 1BC, 2016. 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 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. The Resolution Professional viz. **Mr. Kasi Srinivas,** ***IBBI/IPA-003/IPA-ICAI-N-00237/2019-2020/12840,*** **(AFA Valid upto – 31.12.2025)**, Insolvency Resolution Professional is appointed as the RP. He is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Chennai Bench, inviting claims from all Creditors, within 21 days of such issue The notice under Sub Section (1) of Section 102(2) shall include: -

a. details of the order admitting the petition;

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 other in Vernacular, which have 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.

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 petition 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. 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, 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.

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.

V. 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.

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 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 subsection (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.

VII. 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.

VIII. The Resolution Professional shall submit his periodic reports before this Tribunal, every 30 days.

IX. The Petitioner is directed to deposit INR 3,00,000/- (Indian Rupees Two lakhs) to the bank account of the Resolution Professional within one week, towards his expenses. This shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.

X. The Registry is directed to communicate a copy of order, report and petition to the concerned parties within seven working days and upload the same on the website immediately after the pronouncement of order.

90. Accordingly, the report of the RP filed in **IA/IBC/324/CHE/2024** is taken on record, **IA/IBC/2330/CHE/2024** is dismissed and **CP/IB/257/CHE/2021** stands **admitted**.

-Sd-	**-Sd-**
VENKATARAMAN SUBRAMANIAM	**SANJIV JAIN**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

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