IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH

[Through Physical hearing/ VC Mode (Hybrid)]

ITEM No.32
I.A.No.702/2024 in
C.P.(IB)No.151/BB/2024

IN THE MATTER OF:

Sri Visvesvaraya Co-operative Bank Ltd.	...	Petitioner
Vs.		
Mr. Nagaraj C M	...	Respondent

Petition under Section 95 of I & B Code, 2016

Order delivered on: 29.09.2025

CORAM:

SHRI SUNIL KUMAR AGGARWAL
HON'BLE MEMBER (JUDICIAL)

SHRI RADHAKRISHNA SREEPADA
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the RP : Shri Ravi Sankar Devarakonda

For the Respondent : Ms. Apoorva

ORDER

1. Heard the Ld. Counsel for the parties.
2. The order could not be prepared. List on **29.10.2025 for Orders**.

-Sd-
RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)

-Sd-
SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)

PS

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)

I.A. No.702/2024 in
C.P.(IB)No.151/BB/2024
Under Section 99 & Section 60(5) of IBC, 2016 r/w Rule 7 (2) of the Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019

IN THE MATTER OF:
Mr. Nagaraj C. M.,
Personal Guarantor of *M/s Right Engineers and Equipments India Private Limited*
through his Resolution Professional ***Shri Ravi Sankar Devarakonda,***
41/1, 2nd Floor, 8th Main, 11th Cross,
Jayanagar 2nd Block, Bangalore - 560001 ……. Applicant/Resolution Professional

IN THE DECIDED MATTER OF:

Sir M. Visvesvaraya Co-operative Bank Limited,
No-109, Sankaramatt Road,
Shankar Puram, Bengaluru – 560 004 ……..Financial Creditor

Vs

Mr. Nagaraj C. M.
S/O. Sri. Manjappa Shetty C.A.
No. 3, Flat No-H1, 1st Floor,
Brindavan Apartment, Anugraha Layout,
2nd Stage, Bilekahalli, Bannerghatta Road,
Bengaluru - 560076
…….Personal Guarantor of the Corporate Debtor

Order Delivered on: 29.09.2025

Coram: **Hon'ble Shri Sunil Kumar Aggarwal, Member (Judicial)**
Hon'ble Shri Radhakrishna Sreepada, Member (Technical)

O R D E R

1. The present Application has been filed on 09.09.2024 by the Resolution Professional, with a prayer to take on record the Report submitted by the RP under Section 99 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "IBC, 2016/Code") recommending acceptance of the Application filed U/s. 95 of the Code

for initiation of Insolvency Resolution Process in respect of Mr. Nagaraj C. M. who is the Personal Guarantor of M/s Right Engineers and Equipments India Private Limited ("Corporate Debtor").

2. It is stated that Mr. Nagaraj C. M stood as Personal Guarantor in respect of the financial facilities extended by Sir Visveswaraya Cooperative Bank Ltd. to Corporate Debtor. Upon default by the Corporate Debtor in servicing the said facilities, the Bank initiated CIRP proceedings in CP(IB)/320/BB/2019, which were admitted vide order dated 29.10.2019. As no Resolution Plan was approved, the Corporate Debtor was ordered into Liquidation on 02.12.2020, and ***Mr. Addanki Haresh*** was appointed as Liquidator.

3. Since the dues remained unrealised in liquidation, the Bank invoked the Personal Guarantee dated 25.10.2016 executed by Mr. Nagaraj C. M and issued notice under Rule 7(1) of the IBBI (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, read with Section 95(4)(b) of the IBC, 2016, in Form B on 17.12.2022, calling upon him to discharge the guaranteed liability within 14 days. Upon his failure, the default by the Personal Guarantor is reckoned as 01.01.2024.

4. Subsequently, the Financial Creditor filed an application CP(IB) No. 150/BB/2024 under Section 95 of IBC, 2016, claiming the following amounts:

Principal	Rs. 3,43,85,779/-
Interest outstanding	Rs. 97,43,317/-
Reversal of Interest in the books of Bank	Rs. 4,83,41,810/-
Other Charges	Rs. 40,79,743/-
Total	**Rs. 9,65,50,649/-**

5. By order dated 20.08.2024, Mr. Ravi Sankar Devarakonda was appointed as the Resolution Professional to submit a report under Section 99(7) regarding acceptance or rejection of the application.

6. As required under section 99(1) of the IBC, 2016, the Resolution Professional examined the application and annexures filed by the Financial Creditor u/s 95(1) read with sections 96, 97, 99 and 100, together with Rule 7(2) of the 2019 Rules. In this connection, further information and explanations were sought from the personal

guarantor on 26.08.2024 and reminded on 31.08.2024 under sections 99(2) and 99(4). However, no response was received. Copies of the letters and emails with tracking reports are annexed.

7. Further queries were also raised with the creditor under section 99(3) by email and letter dated 26.08.2024. The Bank furnished the application filed with the Hon'ble NCLT and confirmed that an amount of Rs. 9.65 crore, including interest, remains outstanding from the Corporate Debtor. Correspondence and reply are annexed at Annexure 3 to Exhibit 1. Since certain amounts were received by the Bank during the liquidation of the Corporate Debtor, the RP also sought details of claims and settlements from the Liquidator on 27.08.2024. The Liquidator, by reply dated 02.09.2024, confirmed that Rs. 17.44 crore was claimed and Rs. 10.72 crore was disbursed to the Bank during liquidation.

8. As provided under Section 99(1) read with Section 99(7) of the IBC, the Resolution Professional prepared a report containing observations and recommendations and submitted the same to the debtor and creditor on 04.09.2024, i.e., within ten days from the date of uploading of the order of appointment on the NCLT website. A copy of the report along with annexures is enclosed at Exhibit 1. Based on the above examination of the application, and in the absence of any further information or explanation from the debtor/personal guarantor, the Resolution Professional makes the following findings and observations:

   a) That the Debtor Mr. Nagaraj C. M has given personal guarantee to Sir M Visveswaraya Cooperative Bank Ltd, the Creditor for the outstanding Financial Assistance availed by M/s Right Engineers and Equipments India Private Ltd.

   b) That as brought out in the application, the debtor has committed a default under section 95(1) of IBC,2016 in making payments to the Bank for Rs 9.65 Cr for which he has given personal guarantee on behalf of Right Engineers and Equipments India Pvt Ltd. for the following reasons:

      i. The Financial Creditor invoked the guarantee executed by the Personal Guarantor and, by demand notice dated 17.12.2022 issued in Form B under Section 95 of the IBC, 2016 read with Rule 7(1) of the 2019 Rules, called upon the guarantor to discharge the dues of the corporate debtor, failing which insolvency proceedings would be initiated. Under Rule 3(e) of the said Rules, a "guarantor" means a debtor who is a personal guarantor to a corporate debtor, whose guarantee has been invoked and remains unpaid in full or in part.

ii. In terms of Section 128 of the Indian Contract Act, 1872, the liability of the guarantor is coextensive with that of the principal debtor; accordingly, the personal guarantor is in default, as established by the creditor's application, and has failed to discharge debts which do not fall within the ambit of excluded debts.

c) That the Applicant/Creditor has filed the present application under Section 95(1) of the IBC, 2016 in respect of debts which do not fall within the ambit of "excluded debts" as defined under Section 79(15) of the Code, namely liabilities relating to fines imposed by a court or tribunal, damages for negligence, nuisance or breach of obligations, maintenance liabilities, student loans, or any other debts as may be prescribed. Accordingly, the debts forming the subject matter of this application are not excluded debts within the meaning of Section 94(3) of the Code.

d) That no application under Chapter III of the IBC, 2016 in respect of the debtor has been admitted during the twelve months preceding the date of submission of the present application. Further, as on the date of filing of the application under Section 95(1), the debtor was not an undischarged bankrupt, not undergoing a fresh start process, not undergoing an insolvency resolution process, and not undergoing a bankruptcy process.

e) That the application filed by the applicant/creditor under Section 95(1) read with Sections 96, 97, 99 and 100 of the IBC, 2016, and Rule 7(1) of the IBBI (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, has been duly submitted in the prescribed Form C — Application by Creditor to initiate Insolvency Resolution Process.

f) That the Financial Creditor has furnished a list of assets of the debtor valued at Rs. 1.33 crore as on 13.08.2015, as certified by ***M/s Bellala & Co., Chartered Accountants,*** Bangalore. However, the Resolution Professional has not been able to independently quantify or verify the assets and liabilities of the debtor. It is, however, noted that the gross annual income of the debtor exceeds Rs. 60,000 and the value of assets exceeds Rs. 20,000, and accordingly the debtor is not eligible for a fresh start process under Section 80(2)(a) of Chapter II of the IBC, 2016.

9. The Resolution Professional after examining the petition has filed this instant application recommending the acceptance of this present application as it satisfies the requirements set out under Section 95 and 99 of IBC, 2016, as follows:

i. Mr. Nagaraj C. M, the Debtor has committed default in repayment of his debts, and M/s Sir Visveswaraya Cooperative Bank Ltd, has submitted the application and therefore, first requirement as set out under section 95(1) is satisfied.

ii. The application is made against the Guarantor in his individual capacity, hence Section 95(2) & (3) are not applicable.

iii. All the debts mentioned in the application are not excluded debts.

iv. Debtor is not an undischarged bankrupt, not undergoing a fresh start process, not undergoing an insolvency resolution process or bankruptcy process.

v. No application under Chapter-III of IBC,2016 has been admitted in respect of the applicant/debtor during the period of twelve months preceding the date of submission of this application u/s 95, since the provisions of Chapter III have been made applicable in the year 2019 only.

vi. The application is accompanied with details and documents mentioned in Section 95(4).

vii. The Creditor has provided copy of the application to the Debtor, and proof of the same has been provided to the Resolution Professional as provided in Section 95(5).

viii. That application has been duly filed in the prescribed "Form C" along with requisite fee of Rs 2000/- satisfies the requirement under section 95(6).

ix. The Debtor is not eligible under Section 80 and Section 99 (8) for a fresh start process provided under chapter II of IBC,2016.

x. Resolution Professional emailed intimation under Section 99(2) on 26.08.2024 and reminded PG on 31.08.2024 to the Personal Guarantor to prove repayment of the Debt claimed as unpaid by the Creditor. However, no clarifications were received from the Personal Guarantor. The provisions of Section 99(4) albite were complied with.

xi. Resolution Professional has ascertained from the Applicant that the default was not recorded with Information Utility, and hence the provisions of Section 99(3) do not apply.

xii. The Resolution Professional did not receive any proof of payment from the Debtor, whereas the Applicant Creditor confirmed that Loans of around Rs. 9.65 Cr. is outstanding, and thus Section 99(5) has been complied with.

xiii. The Resolution Professional examined the Application and ascertained that the application satisfies the requirements set out in Section 95. Further the Resolution Professional received the information sought from the Applicant. Thus, provisions of Section 99(6) have been complied with.

xiv. The Resolution Professional has forwarded copy of the Report on 04.09.2024, wherein detailed compliance of each provision of Section 99 of IBC is reported, to Debtor and Creditor and thus complying provisions of Section 99(10). Copy of the Speed post Receipts and email to the Debtor and Creditor are enclosed.

10. The Respondents filed its Statement of Objections on 09.12.2024, stating the following:

i. The Respondent submits that present Application and the Report under reply are wholly false, barred by limitation, and not maintainable either in law or on facts. It is contended that the Petitioner has concealed material facts, has not approached this Hon'ble Tribunal in good faith, and is attempting to misuse the process with the sole motive of recovering time-barred debts.

ii. The account of the Corporate Debtor, *M/s Rights Engineers and Equipment India Private Limited*, was declared as a Non-Performing Asset in the year 2018. Thereafter, notices were issued by the Petitioner to the Corporate Debtor as well as the Respondent seeking repayment of the alleged debt. However, these notices have not been annexed to the present Application, thereby indicating suppression of material facts.

iii. The Petitioner had already filed an Application under Section 7 of the IBC in C.P. (IB) No. 320/BB/2019 against the Corporate Debtor, which was admitted by this Hon'ble Tribunal vide order dated 29.10.2019. Subsequent liquidation proceedings were initiated against the Corporate Debtor, and the debts of the creditors were settled in accordance with due process of law.

iv. It is further submitted that in the Section 7 Application filed earlier, the Date of Default was clearly mentioned as 31.07.2018. However, in the instant Application, the Petitioner has falsely and with mala fide intention stated the due date as 17.12.2022 and the Date of Default as 31.12.2022, only to artificially extend the limitation period. A copy of the said Section 7 Application has been annexed as Document No. 1.

v. It is a settled principle of law that limitation of three years is to be reckoned from the Date of Default. In the present case, the limitation expired on 31.07.2021. Even after considering the extension granted by the Hon'ble Supreme Court in ***Suo Motu Writ Petition No. 03 of 2020***, the Petitioner would only be entitled to an additional 90 days. Since the present Application was filed only on 14.05.2024, it is hopelessly barred by limitation.

vi. Further, the claim of Rs. 9,65,50,649/- (including interest of Rs. 2,93,10,403/-) is wholly false, and no material has been placed on record by the Petitioner or the Resolution Professional to substantiate the same. All allegations which are not specifically admitted herein are denied, and the Petitioner and the Resolution Professional are put to strict proof thereof. Therefore, in view of the above submissions, the Respondent prays to dismiss the present Application and the Report dated 04.09.2024 filed by the Resolution Professional, in the interest of justice and equity.

11. Pursuant to the Objections, the Applicant filed Rejoinder on 26.03.2025, stating the follows:

a) The Respondent in Paragraph 2 and 4 alleged that the Claims are barred by Limitation, since the date of default by Corporate Debtor was beyond Limitation period of three years. In this connection, various concerned dates are provided hereunder:

i. Date of Default to the Corporate Debtor – 30th June 2019

ii. Date of Invocation of Personal Guarantee – 10th June 2022

iii. Issuance of Demand Notice in Form B – 17th December 2022

iv. Date of filing of Application u/s 95 – 14th May 2024

The Hon'ble Supreme Court, in ***Civil Appeal No. 6894 of 1997 (Syndicate Bank vs. Channaverappa Beleri & Ors.)***, by order dated 10.04.2006, held that the limitation period of three years for proceedings against a guarantor begins from the date of invocation of the bank guarantee and not from the date of default of the corporate debtor. Specifically, Para 16 of the judgment provides that the limitation starts on expiry of 15 days from the date the demand is made by the bank, and a suit filed within three years from such demand is timely. This principle has been consistently followed by several NCLTs and NCLATs.

b) The Letters of Guarantee executed by the personal guarantor, enclosed at Annexures 6.4 and 6.5 of the main application, expressly provide that the guarantee is payable on demand (Para 8) and constitutes a continuing co-guarantee (Para 9). Accordingly, the limitation period for initiating proceedings begins from the date of demand. In the present case, the guarantee was invoked on 10.06.2022, Form B was issued on 17.12.2022, and the application under Section 95 was filed on 14.05.2024, which is well within the limitation period.

c) The Respondent's allegation in Paragraph 9 regarding falsity of the Bank's claim is baseless. The amount claimed in the Application and in the Resolution Professional's Report is Rs. 9,65,50,650/-, while the amount certified by the Liquidator is Rs. 6,72,40,246/-. t is submitted that, in line with the provisions of the IBC and the judgment of the Hon'ble Supreme Court in ***Dilip B. Jiwarjika vs. Union of India*** **(W.P. (C) No. 1281 of 2021**, decided on 09.11.2023), the duties of a Resolution Professional in respect of personal guarantors are limited to examining the application, seeking clarifications from stakeholders, and filing a reasoned report recommending acceptance or rejection of the application. The Resolution Professional accordingly sought clarifications from the Financial Creditor, the Personal Guarantor, and the Liquidator of the Corporate Debtor. Replies were received only from the Financial Creditor and the Liquidator, and these were duly incorporated in the Report. Despite repeated opportunities, no response was given by the Personal Guarantor.

d) It is further clarified that the variation in figures arises on account of interest component. Even as per the lower figure certified by the Liquidator, the outstanding dues amount to Rs. 6.72 crores. Hence, the claim cannot be disputed. The Applicant therefore submits that after admission of the present Application under Section 95 of the IBC, the claims will be subject to detailed verification in accordance with law.

e) Further, in Para 9 of the Objections, the Personal Guarantor has objected to the claiming of interest by the Financial Creditor after the limitation period and during the liquidation period. In this regard, it is humbly submitted that the Hon'ble NCLAT, Chennai, in **Company Appeal AT(CH)INS) No. 43/2022 (Arun Kumar v. Kotak Mahindra Bank)** by order dated 08.08.2023, held that the Financial Creditor is entitled to charge interest even after the liquidation period, up to the date of actual realisation of funds. Specifically, Para 19 of the order observes that Section 14 of the IBC does not provide for any "interest waiver" during the moratorium period, and the Financial Creditor is therefore at liberty to charge interest during the CIRP or liquidation period at the applicable rates. A copy of the order is enclosed at Annexure B.

f) The Applicant submits that the allegations in the Statement of Objections are unfounded and that the Resolution Professional has complied with all provisions of the IBC. The Personal Guarantee was invoked on 10.06.2022, which was duly acknowledged by the Respondent. Thereafter, a demand notice in Form B was issued on 17.12.2022 granting 14 days for payment. The postal records clearly show that the Respondent deliberately avoided service of the notice despite repeated tenders over three days. Considering the above, the Applicant submits that the Respondent has failed to establish any valid defence in law.

12. Heard the Applicant/Resolution Professional and pursued the entire case records/documents and have gone through the report dated 22.06.2024 filed by the Resolution Professional.

13. It is an admitted fact that the Respondent stood as a Personal Guarantor for the financial facilities extended by the Applicant to the Corporate Debtor, who defaulted

and was ordered into liquidation. The Personal Guarantee dated 25.10.2016 was invoked, and despite service of demand notice in Form B dated 17.12.2022 under Rule 7(1) of the 2019 Rules read with Section 95(4)(b) of the Code, the guarantor failed to discharge his liability. Hence, a clear default stands established.

14. On the issue of limitation, the Respondent's objection is untenable. The Hon'ble Supreme Court in ***Syndicate Bank v. Channaveerappa Beleri*** **(Civil Appeal No. 6894/1997, decided on 10.04.2006)** has categorically held that the limitation period against a guarantor runs from the date of invocation of the guarantee and demand, not from the date of default of the principal borrower. In this case, the guarantee was invoked on 10.06.2022, demand was made on 17.12.2022, and the present application was filed on 14.05.2024, well within the limitation period of three years.

15. Under Section 128 of the Indian Contract Act, 1872, the liability of the guarantor is co-extensive with that of the principal debtor. Since the Corporate Debtor failed to discharge its liability, the guarantor is equally bound to repay. The Applicant has therefore rightly invoked the personal guarantee and initiated proceedings under Section 95 of the Code.

16. As regards the quantum of claim, even the lower figure certified by the Liquidator amounts to Rs. 6.72 crores, which is substantial. The debt is legally enforceable and falls within the scope of Section 95 of the Code. Despite opportunities, the Respondent has not furnished any material to dispute the debt or establish repayment. The objections raised are general, and devoid of merit. Hence, no valid defence exists against admission of the petition.

17. Hence, based on the reasons recorded in the report submitted by the Resolution Professional, the instant **I.A. No. 702/2024 is allowed** and the Petition i.e., C.P.(IB)No.151/BB/2024 filed under Section 95(1) of IBC, 2016 is hereby **admitted** under Section 100 of the IBC, 2016.

18. The Insolvency Resolution Process is initiated against the Respondent/Personal Guarantor and moratorium is declared in place of interim moratorium, which begins with the date of admission of the Application and shall cease to have effect at the end of the period of 180 days, as provided U/s.101 of IBC, 2016.

19. During the moratorium period;
    (i) Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;
    (ii) The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt;
    (iii) The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;
    (iv) 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.

20. The Resolution Professional viz. Shri Ravi Sankar Devarakonda already appointed vide Order dated 10.06.2024, is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of uploading of this Order on the website of the NCLT, Bengaluru inviting claims from all Creditors, who shall register their claims as provided under Section 103 within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102(2) of IBC, 2016. The publication of notice shall be made in newspaper, one in English and other in Vernacular language which have wide circulation in the State where the Corporate Debtor and Personal Guarantor existed. The Resolution Professional shall furnish two copies of the notice to the Registry.

21. The Resolution Professional in exercise of the powers conferred U/s.104 of the IBC, 2016 shall prepare a list of creditors within 30 days from the date of notice. The debtor shall prepare a repayment plan in consultation with the Resolution Professional as provided U/s.105 of IBC, 2016 which shall include provisions for payment of fee to the Resolution Professional. 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 of IBC, 2016.

22. In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons therefor. If the Resolution Professional is of the opinion that the meeting of the creditors should be summoned,

he shall specify the details as provided U/s. 106(3) of the IBC, 2016. The date of meeting should not be of 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.

23. 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 to this Authority, copies of which shall be provided to the Debtor and the Creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided U/s.208 of the IBC, 2016.

24. The Resolution Professional is directed to inform this Adjudicating Authority in case no repayment plan has been prepared or submitted by the personal guarantor under section 105 of the Code by filing an application before this adjudicating authority in accordance with the procedure stipulated under Regulation 17B of the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.

25. The Resolution Professional shall submit his periodic reports before this Adjudicating Authority, as per the relevant provisions of the Code and the Rules made thereunder.

-Sd-	**-Sd-**
RADHAKRISHNA SREEPADA **MEMBER (TECHNICAL)**	**SUNIL KUMAR AGGARWAL** **MEMBER (JUDICIAL)**