

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

I.A. No. 4524 of 2025

In

Company Appeal (AT) (Insolvency) No. 955 of 2025

[Arising out of Order dated 01.07.2025 passed by the Adjudicating Authority
(National Company Law Tribunal, Mumbai Bench – I), in C.P. (IB) No.
510/MB/2021 & I.A. No. 382 of 2023]

IN THE MATTER OF:

Kiran Kumar Jain

...Appellant

Versus

Cosmos Co-Operative Bank Ltd. & Anr.

...Respondents

Present:

For Appellant : Mr. Arun Kathpalia & Mr. Abhijeet Sinha, Sr. Advocates with Mr. NPS Chawla, Mr. Sujoy Datta, Mr. Surekh Kant Buxy, Ms. Kinjal Goyal and Mr. Ritwik D. and Mr. Akhil Bhansali, Advocates.

For Respondents : Mr. Krishnendu Dutta, Sr. Advocate with Mr. Ramchandra Madan, Ms. Mehak Khurana and Mr. Tushar Nigam, Advocates for R-1.

Mr. Gaurav Mitra, Mr. Himanshu Shembekar and Ms. Aarushi, Advocates for R-2.

Mr. Himanshu Shembekar, Advocate for RP.

J U D G M E N T

ASHOK BHUSHAN, J.

Comp. App. (AT) (Ins.) No. 955/2025

This appeal by a personal guarantor has been filed challenging the order dated 01.07.2025 passed by the adjudicating authority (National Company Law Tribunal, Mumbai Bench – I) admitting Section 95 application filed by the financial creditor, Cosmos Cooperative Bank Limited & Anr. By

the impugned order, adjudicating authority after considering the Report of Resolution Professional (RP) admitted Section 95 application by passing an order under Section 100 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as the 'IBC' or the 'Code'). Aggrieved by the order admitting Section 95 application, this appeal has been filed by the personal guarantor.

2. Brief facts of the case necessary to be noticed for deciding the appeal are:

- i. Cosmos Cooperative Bank Limited, the financial creditor granted various credit facilities to the corporate debtor M/s. Dilip Chabria Design Private Ltd.
- ii. Cash credit limit of ₹16 crore and term loan facilities of ₹22 crore as on 25.06.2014 was sanctioned by the financial creditor. The repayment of the said facilities among the others was secured by personal guarantee by the deed of guarantee dated 28.07.2014.
- iii. Existing facilities were renewed and deed of guarantee was issued on 29.09.2015 and further the deed of guarantee was issued on 26.11.2015.
- iv. The above guarantee issued in 2014–15 was issued by personal guarantors, which did not include the appellant herein.
- v. A fresh loan agreement was executed on 02.03.2016 and a deed of guarantee was executed on 02.03.2016 by personal guarantors of the corporate debtor including the appellant.

- vi. On 02.03.2016, a promissory note was also issued for an amount of ₹44 crore by personal guarantors, including the appellant. Continuing guarantee, letter of lien was also issued on 02.03.2016 by the personal guarantor including the appellant. The corporate debtor failed to honour the repayment obligations hence a call back was issued by the financial creditor dated 31.08.2018 to the corporate debtor and also to personal guarantors, including the appellant asking to repay the entire outstanding loan amount of ₹36,23,10,825/- as on 01.08.2018 within seven days.
- vii. The bank also issued a notice under Section 13(2) to the corporate debtor and all personal guarantors dated 05.10.2018, referring to the various guarantee agreements, including guarantee agreement dated 02.03.2016. Outstanding amount mentioned was ₹37,20,41,186/- as on 30.09.2018.
- viii. Cosmos Cooperative Bank Limited (hereinafter referred to as the 'Bank') also filed the application before the Debt Recovery Tribunal (DRT), claiming an amount of ₹38,72,48,452/-.
- ix. Appellant on 09.11.2020 filed a Counter Claim No. 01/2021 before the DRT. In the meantime, Section 7 proceeding were initiated against the corporate debtor by a different financial creditor which was admitted on 14.12.2018, the said proceedings came to be settled by order dated 17.09.2019, Section 7 application was admitted against corporate debtor initiated by one Creative Garments Private Limited, in which proceedings subsequently an order of liquidation has been passed against the corporate debtor.

- x. The bank issued a notice on 31.07.2020 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019, calling upon the appellant, the personal guarantor to pay unpaid debt of ₹39,64,17,695/-, demand notice dated 31.07.2020 was replied by the appellant on 14.09.2020.
- xi. It was stated by appellant that appellant is also a financial creditor of corporate debtor, who owes an amount of ₹95,24,91,521/- and a claim has also been filed in the Corporate Insolvency Resolution Process (CIRP) of the corporate debtor by the appellant.
- xii. It was pleaded that appellant was informed by the management that additional capital was required for operation of the company for which they approached the bank for additional funding of ₹44 crore for which the appellant was requested to give a guarantee. It was pleaded that no amount was disbursed by the bank, hence there is no valid claim against the personal guarantor, no amount was disbursed for which guarantee was obtained from the appellant. After serving notice under Rule 7, the bank filed a Section 95 application being C.P. No.510/2021 on 07.12.2020.
- xiii. Appellant has also filed an arbitration application under Section 9 of the Arbitration and Conciliation Act, 1996, on 26.08.2021. Adjudicating Authority appointed the RP. Appellant also filed an I.A. in the company petition seeking a declaration of deed of guarantee 02.03.2016 as null and void. Reply was also filed by the bank to the IA. The RP submitted report under Section 99 on 22.02.2020

recommending admission of Section 95 application. Appellant filed its response to the Report. Parties were heard by adjudicating authority and vide order dated 01.07.2025 admitted Section 95 application. Adjudicating authority held that guarantee deed dated 02.03.2016 was invoked. The amount of ₹44 crore for which guarantee was given was the amount already granted and disbursed by the bank. Appellant have given guarantee to guarantee the repayment for Rs.44 crore which amount had already has granted by bank. Adjudicating authority held that Section 95 application was filed after service of demand notice on the personal guarantor.

xiv. Aggrieved by the order admitting Section 95 application, this appeal has been filed.

3. We have heard learned senior counsels Mr. Arun Kathpalia and Mr. Abhijit Sinha appearing for the appellant. Learned senior counsel Mr. Krishnendu Dutta has appeared for the Bank. Learned counsel Mr. Gaurav Mitra has appeared for the RP.

4. Learned counsel for the appellant challenging the impugned order submits that the guarantee was given by the appellant on 02.03.2016 on the representation of the corporate debtor that corporate debtor requires additional finance for carrying its operation for which bank has agreed to sanction ₹44 crore. The amount of ₹44 crore for which guarantee was given by appellant never came to be sanctioned or disbursed subsequent to 02.03.2016, no amount of ₹44 crore having been disbursed by the bank. There is no liability of appellant for any repayment there is no debt no default attributable to the appellant. It is further pleaded that guarantee was never

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invoked, there is no crystallised liability on the appellant. The deed of guarantee 02.03.2016 clearly pertains only to proposed fresh facility. Adjudicating authority, exceeded its summary jurisdiction by interpreting the commercial document and imputing liability for past loans, which was secured by separate personal guarantee executed by other directors in the year 2014–15. It is submitted that in the application filed before the DRT by the bank, claiming recovery of the amount, counter claim has already been filed where the appellant has questioned liability qua the guarantee dated 02.03.2016. The issue of guarantee dated 02.03.2016 being pending adjudication, bank was not authorised to file Section 95 application. Appellant is a solvent individual with positive net worth. Appellant is also financial creditor of the corporate debtor, it has filed its claim in CIRP of the corporate debtor. Bank has proceeded to initiate proceeding only against the appellant, whereas, there are other directors, personal guarantors of the corporate debtor, with whom the bank has not proceeded with. There is no evidence of any legally enforceable debt against the appellant.

5. Learned counsel for the bank refuting the submissions of the appellant submits that appellant admittedly has execute a personal guarantee dated 02.03.2016, which guarantee clearly covered the facilities agreed to grant and/or continue to grant and/or granted to the borrower. The guarantee mentions aggregate sum of ₹44 crore which was facilities already granted. The guarantee thus clearly cover the facilities already extended to the borrowers i.e., the corporate guarantee. It is on the record that Rs.22 crore term loan was granted and disbursed to the borrower with cash credit limit of ₹21 crore and further credit of Rs.1 crore. Loan agreement was also executed
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on 02.03.2016, which in paragraph 5 has referred to credit facilities aggregating to ₹44 crore. The said loan agreement contained the repayment/prepayment of the term loan, which repayment was to begin with payment of first instalment on 04.03.2016. The loan agreement further contemplated the issue of unconditional guarantee by personal guarantors, including the appellant. Appellant also on the same day, executed a promissory note for repayment of ₹44 crore, letter of continuing security and letter of lien on 02.03.2016. The execution of aforesaid documents on 02.03.2016 by the appellant clearly indicate that appellant was well aware of the financial facilities already granted to the borrower and gave personal guarantee to ensure the repayment. The appellant's case that no disbursement having been made subsequent to 02.03.2016, there is no liability of the appellant cannot be accepted. The guarantee also covered the facilities already granted, and the bank has proved by filing relevant statement of account of the corporate debtor to prove the disbursement and outstanding in the cash credit account. Disbursal of term loan and facility of cash credit extended was fully proved by the bank. The submission of the appellant that deed of guarantee was never invoked also cannot be accepted. Call back notice dated 31.08.2017 was issued to other personal guarantors including the appellant demanding the amount from all. Section 13(2) notice also referring to the various guarantee is called upon the corporate debtor and all personal guarantor to make the repayment hence the guarantee was fully invoked. Section 95 application was filed on 07.12.2020 after service of notice under Rule 7 dated 31.07.2020. The RP has rightly submitted a Report after considering all relevant facts, recommending admission of Section 95 I.A. No. 4524 of 2025 in Comp. App. (AT) (Ins.) No. 955 of 2025

application. The counter claim filed by the appellant before the DRT cannot be a ground to ignore the guarantee deed dated 02.03.2016. Before the adjudicating authority and before this tribunal, appellant's case is not that he has not executed the guarantee 02.03.2016, rather appellant is contending that no disbursal having been made of ₹44 crore subsequent to 02.03.2016, there is no liability of the appellant, which contention is wholly unacceptable. Appellant was well aware of the financial facilities already extended to the corporate debtor prior to 02.03.2016, for which guarantee was given.

6. We have considered the submissions of counsel for the parties and perused the records.

7. There is no dispute between the parties that corporate debtor availed the various credit facilities from the bank. The term loan of ₹22 crore with cash credit limit of ₹21 crore, the said facilities were obtained in the year 2014-15 for which guarantee was given on 28.07.2014 and further guarantee deeds were given on 29.09.2015 and 26.11.2015 by other personal guarantors including Dilip Chabria. The appellant gave guarantee subsequently on 02.03.2016 to secure the repayment of debt of the bank.

8. The principal submission which has been advanced by the appellant is that since no disbursal of credit facility of ₹44 crore was extended by the bank subsequent to the issuance of guarantee on 02.03.2016 by the appellant there is liability or debt on the appellant nor any default can be imputed to the appellant since no disbursal was made after 02.03.2016. The bank has filed all relevant deed of guarantee including deed of guarantee dated 02.03.2016 as well as other document executed on 02.03.2016 including the loan agreement dated 02.03.2016. There is no dispute that the earlier guarantee

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was given by Dilip Harikishin Chabria and other directors of the corporate debtor in 2014-15 and it was for the first time that appellant was part of the deed of guarantee on 02.03.2016.

9. We may first notice the loan agreement dated 02.03.2016 which is brought on record. The loan agreement dated 02.03.2016 was executed by the bank and the corporate debtor. Paragraph 5 of the loan agreement is as follows:

“5. The Borrower/s agree/s to borrow from the Bank and the Bank at the request of the Borrower/s having agreed to grant and / or continue to grant and / or granted to the Borrower's the following credit facility/les with a limit of / and / or an aggregate limit of Rs. 44,00,00,000/-:

<i>Facility/ies</i>	<i>Principal sum limits (In lacs/crores)</i>	<i>Rate of Interest</i>
<i>Cash Credit (Hypothecation of stocks and book debts</i>	<i>2100.00</i>	<i>12.25%</i>
<i>Bill Discounting Facility</i>		
<i>Term Loan for purchase of machinery</i>	<i>2200.00</i>	<i>12.25%</i>
<i>Term Loan for land and building</i>		
<i>Term Loan for other purpose</i>		
<i>Bank Guarantee Limit</i>		
<i>Letter of Credit (inland/foreign)</i>		
<i>Letter of Credit (one time)</i>	<i>100.00</i>	
<i>Working Capital Term Loan</i>		
<i>Specific Loan for specific purpose (SLSP)</i>		
<i>Packing Credit</i>		
<i>Cheque Purchase Facility</i>		
<i>Ad-hoc Facility/ Stand by Credit</i>		

Total	4400.00	
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On the terms and conditions contained herein and such other conditions as may be stipulated by the Bank from time to time.”

10. The above paragraph mentions cash credit of ₹21 crore term loan of ₹22 crore and loan of credit of ₹1 crore totalling to ₹44 crore. Under the heading repayment, with regard to term loan the amount was to be repaid in 60 equal quarterly instalment of Rs.55,60,000/- and which instalment was to begin on 04.03.2016. Thus, the loan agreement indicated that the repayment has to begin with effect from 04.03.2016 for term loan. Repayment begins on 04.03.2016 clearly proves that loan was already disbursed. Article 2 of the loan agreement deals with is of (securities for credit facilities). The Schedule II, Clause 5 provides that borrower shall procure irrevocable and unconditional guarantees in the form prescribed by the bank from corporate debtor and other guarantors. In paragraph 5, the name of appellant was also mentioned. The agreement dated 02.03.2016 also mentions the name of appellant Kirankumar Moolchand Jain as one of the guarantors at item No. 5. The guarantee is for banking facility for credit sum of ₹44 crore. Clause 1 of the guarantee deed reads as follows:

“1. In consideration of the Bank at the request of the Borrower/s, having agreed to grant and/or continue to grant and/or granted to the Borrower/s banking facility/ies or accommodation for a sum and/or for an aggregate sum of Rs. 44,00,00,000/-pursuant to the sanction letter dated _____ and punctually repay/pay the aforesaid amount/s together with further interest, The Borrower/s shall duly costs, charges and expenses and all other monies, whatsoever stipulated in or payable under the Banking facility/ies and/or other security documents, and perform and comply with all other terms, conditions and covenants contained in the loan document and

other security documents. In the event of any default on part of the Borrower/s in payment/re-payment of any of the monies referred herein above, or in the event of default on the part of the Borrower to comply with or perform any of the terms, conditions and covenants contained in the Loan document or other security document, the Guarantor/s shall, upon demand, forthwith pay to the Bank without demurall the amount/s payable by the Borrower/s under the aforesaid Banking facility/ies. Any such demand made by the Bank on the Guarantor/s shall be final, conclusive and binding notwithstanding any difference or any dispute between the Bank and the Borrower/s/Arbitration/or any other legal proceeding/s pending before any Court/s, Tribunal/s, Arbitrator/s or any other authority/ies.”

11. Clause 4 of the guarantee deed also mentions that the guarantee shall be irrevocable and obligation of the guarantor shall not conditional and receipt of any prior notice by the guarantor or borrower and demand of the notice by the bank for payment shall be sufficient notice to the notice of demand to the guarantor. Clause 4 is as follows:

“4. The Guarantor/s hereby agree that this guarantee shall be irrevocable and the obligations of the Guarantor/s hereunder shall not be conditional on the receipt of any prior notice by the Guarantor/s or by the Borrower/s and the demand or notice by the Bank for payment or notice under this guarantee shall be sufficient notice to or demand on the Guarantor/s. This guarantee shall be continuing one and shall remain in full force and effect and/or binding on the legal representative, executor, administrator, successor and assigns till such time the Borrower/s repay/pay in full the amount mentioned herein above together with all interest, commission, cost, charges and expenses and all other monies whatsoever stipulated in or payable under the Loan document and/or other documents.”

12. Clause 1 of the guarantee deed uses the expression “in consideration of the bank at the request of the borrowers having agreed to grant and/or continue to grant and/or granted to the borrower banking facilities or

accommodation for sum and/or for aggregate sum of Rs.44 crores pursuant to the sanction letter dated _____. The borrower shall duly and punctually pay the aforesaid amount together with further interest costs, charges and expenses and all other monies, whatsoever stipulated in or payable under the Banking facilities and/or other security documents, and perform and comply with all other terms, conditions and covenants contained in the loan document and other security documents. Thus, the guarantee contemplates the facilities GRANTED TO THE BORROWER.

13. Facilities of ₹44 crore have already been granted to the borrower which was duly proved by the bank by producing the relevant records including the bank statement. The submission of the appellant that the said guarantee was given by the appellant only on the representation that guarantee is given by the appellant for disbursement of ₹44 crore which was to be made after execution of the deed of guarantee cannot be accepted. The guarantee by a personal guarantor can be issued for a consideration which has already been received by a borrower or to be received by borrower and in the facts of the present case the facility of ₹44 crore has already been received by the borrower which is amply proved. The submission of the appellant that since no disbursement was made on ₹44 crore subsequent to the execution of the personal guarantee by the appellant hence there is no liability on the appellant cannot be accepted. We have noticed the loan agreement which clearly also contains the same expression that the bank at request of the borrower having agreed to grant and/or continue to grant and/or granted to the borrower. Thus, the loan agreement subsequently mentions cash credit of ₹21 lakhs term loan of ₹22 crores and letter of credit of ₹1 crore totalling to I.A. No. 4524 of 2025 in Comp. App. (AT) (Ins.) No. 955 of 2025

₹44 crores thus clearly refers to facilities granted to the borrower by the bank. Use of expression granted to the borrower clearly covers all facilities which were granted and existing.

14. We have also noticed the Clause under the heading repayment in the loan agreement, which clauses is as follows:

“REPAYMENT/PREPAYMENT

1. The Borrower shall repay the term loan of Rs. 22,00,00,000/- by 60 equal monthly/quarterly Instalment of Rs. 55,05,000/- together with accrued interest as set out in SCHEDULE IIT hereunder written, the first of such instalments being payable on the 4th day of March 2016 and the subsequent Instalments being payable on the 4th day of each succeeding month/quarter until the entire loan is repaid in full.

PROVIDED THAT the repayment schedule advised and mentioned in Schedule-III in this agreement may change and/or extend in view of modification/enhancement of rate/s of interest. The Borrower agrees and undertakes to such change or extend the repayment schedule fill the entire term loan is repaid in full.

2. The Borrower/s shall have an option to prepay the entire loan/advances or any part thereof. If prepayment of the entire term loan is made then the Borrower/s has to pay as per 5% sanction letter prepayment charges on the outstanding balance amount for the entire unexpired period of the loan.”

15. Repayment of the loan had to begin on 04.03.2016 which is a clear stipulation in the loan agreement thus, repayment of the loan clearly pre-supposes the receipt of facilities and two days after the execution of the guarantee the repayment had to begin. We have further noticed that under Schedule II of the loan agreement, the borrower undertaken to procure irrevocable and unconditional guarantees from several person including the

appellant whose name was specifically mentioned in Clause 5 of the loan agreement.

16. It is also on the record that on 02.03.2016 a promissory note was issued by all guarantors including the appellant who give a promissory note to the bank to repay amount of ₹44 crores which promissory note was also brought on the record by the bank. Promissory note is part of Annexure A-9 to the appeal. Promissory note was also executed by appellant who is referred as authorised director. Promissory note was issued for an amount of ₹44 crore. There was no occasion for issuance of promissory note unless a consideration has already received. Continuing security of ₹44 crore was also issued by corporate debtor and other personal guarantors which was also signed by the appellant. Sufficient material was brought on the record by the bank to prove that guarantee dated 02.03.2016 was in consideration of the facilities granted by the bank to the corporate debtor aggregating to ₹44 crore.

17. We thus are not persuaded to accept the submission of the appellant then there being no disbursal after 02.03.2016 of ₹44 crore, the appellant is not liable for any debt. Appellant having given personal guarantee on 02.03.2016, which guarantee also extended facilities granted by the bank to the borrower, which facilities were aggregating to ₹44 crore as on the date.

18. The submission of the appellant that management has represented the appellant that bank shall agree to give further credit of ₹44 crore for starting new business and appellant gave guarantee only on the representation that a new business shall be started by the corporate debtor with fresh financial credit cannot be accepted. The execution of the guarantee on 02.03.2016 is not denied by the appellant. The guarantee deed with other documents have
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to be read in the manner as the deed and document contains the recitals and recommendation.

19. We thus reject the submission of the appellant that there is no liability on the appellant since no disbursal of ₹44 crore was made subsequent to 02.03.2016.

20. Insofar as submission of the appellant that guarantee was not invoked the said submission is belied from the call back notice dated 31.08.2018 and Section 13(2) notice dated 05.10.2016 which notices were part of Section 95 application and after the aforesaid notices, the bank initiated proceedings under Section 19 for recovery before the DRT in which counter claim has been filed. Notice under Rule 7(1) 2019 dated 31.07.2018 was duly served which was also replied by the appellant. There is a clear material to indicate that guarantee was duly invoked and the application under Section 95 was filed by the bank after due invocation of the personal guarantee.

21. The submission of the appellant that his counter claim filed before the DRT, where he has questioned the liability as per guarantee deed dated 02.03.2016 is pending consideration hence bank was not entitled to initiate proceedings under Section 95 cannot be accepted. The fact that application for recovery of the debt filed by the bank before the DRT is pending along with counter claim filed by the appellant does not preclude the bank from initiating proceeding Section 95 of the IBC which is separate remedy provided by the bank.

22. We thus do not find any substance in the submission of the counsel for the appellant that pendency of the counter claim in any manner preclude the initiation of proceeding under Section 95.

23. The submission of the appellant that bank has proceeded to initiate proceeding only against the appellant, whereas, it has chosen not to proceed against other co-guarantors who were also part of guarantee dated 02.03.2016 also does not commend us. It is for the bank to proceed against one or all personal guarantors of a corporate debtor under Section 95 and the mere fact that bank has proceeded against the appellant cannot be any reason to reject any application under Section 95 filed by bank against one personal guarantors. The submission of the appellant is that appellant is solvent with positive of networth. It is always open for the appellant to submit a repayment plan before the RP as per the provisions of the IBC which shall be considered and decided in accordance with law.

24. We, thus do not find any ground raised by the appellant warranting any interference with the order of the adjudicating authority admitting Section 95 application.

I.A. No. 4524 of 2025

In

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25. IA No.4524 of 2025 has been filed by the Applicant/Appellant praying for following reliefs:-

“(a) Take on record the Settlement Agreement dated 01.08.2025 executed between the Appellant and Respondent No.1;

(b) Pass an order disposing of the present Appeal in terms of the Settlement Agreement;

(c) Pass directions for closure of the insolvency resolution process initiated pursuant to the order dated 01.07.2025 in CP (IB) No. 510 (MB) of 2021 before the Hon’ble National Company Law Tribunal, Mumbai;

(d) Pass such other & further order(s) as this Hon'ble Appellate Tribunal may deem fit and proper in facts and circumstances of the case."

26. The Applicant's case is that after filing of the present Appeal challenging the order dated 01.07.2025 admitting application under Section 95 filed by Cosmos Co-operative Bank Ltd. against the Appellant, the personal guarantor, the Bank has entered into settlement and executed a Settlement Agreement dated 01.08.2025. Counsel for the Appellant submitted that in view of the Settlement Agreement, the Appellant has undertaken to make payment of Rs.15 Crore to the Cosmos Co-operative Bank, the Respondent No.1 in the manner as agreed in the Settlement Agreement and Bank has agreed to discharge the personal guarantee. Submission of the Counsel for the Appellant is that in view of the Settlement, the Appeal be disposed of and personal insolvency resolution process initiated against the Appellant by order dated 01.07.2025 be closed.

27. In the above application, Reply has been filed by the Resolution Professional. Counsel for the Resolution Professional referring to the reply submits that in pursuance of the order dated 01.07.2025 initiating personal insolvency against the Appellant, publication was made on 04.07.2025. It is submitted that initially the matter was reserved in the present Appeal on 08.07.2025. Resolution Professional received e-mail dated 24.07.2025 from Deputy Commissioner of Income Tax by which claim of Rs.17,80,96,393/- has been received which receipt was acknowledged by the Resolution Professional. The claim was also partly admitted and remaining provisionally admitted. Resolution Professional also submits that he was apprised by the Appellant and the Bank that they have executed a Settlement Agreement on I.A. No. 4524 of 2025 in Comp. App. (AT) (Ins.) No. 955 of 2025

01.08.2025 and amount of Rs.5 Crore has already been paid to the Bank. Appellant intimated the Resolution Professional on 09.08.2025 that Appellant is entitled to refund of nearly Rs.19.5 Crore of the Department. Counsel for the Resolution Professional refers to the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 and submits that post admission, Application can be allowed to be withdrawn if 90% of the creditors consent to such withdrawal. It is submitted that the list of creditors has not been uploaded in view of the interim order passed on 06.08.2025 by this Tribunal in the present application.

28. Counsel for the Appellant in his rejoinder submission submits that in view of the Settlement Agreement with the Bank, personal insolvency initiated by order dated 01.08.2025 needs to be closed. It is submitted that the Resolution Professional has erroneously admitted the claim of Income Tax Department whereas the crystallised demand has already been set aside by the Commissioner of Income Tax (Appeals) vide order dated 19.12.2018 which was upheld by the High Court. In paragraph 15 of the rejoinder, details of the orders by which demand of different assessment years have been set aside have been mentioned. It is further submitted that no demand/ assessment could have been initiated during interim Moratorium period. It is submitted that this Tribunal under the inherent powers can permit CIRP to be withdrawn.

29. Counsel for the Bank does not dispute the settlement with the Appellant, however, it is submitted that under Settlement, payments are

required to be paid by the Appellant in phased manner and in event, the default is committed by the Appellant, there shall be liberty to Bank to initiate proceeding in accordance with law.

30. We have considered the submissions of the Counsel for the parties made in the IA No.4524 of 2025 as noted above.

31. Section 95 application filed by the Cosmos Co-operative Bank Ltd. was admitted by order dated 01.07.2025 against which Appeal was filed. Appellant was initially heard on 08.07.2025 and orders were reserved and thereafter this IA No.4524 of 2025 was filed by the Appellant after taking liberty from this Tribunal which was directed to be listed by order dated 06.08.2025 is as follows:-

“06.08.2025: This Appeal was heard and judgment was reserved on 08.07.2025. With liberty, the Appellant has filed an IA No.4524 of 2025 bringing on record the settlement with the Bank dated 01.08.2025.

2. Counsel for the Applicant/ Appellant submits that in view of the fact that the Bank who has initiated Personal Insolvency Proceeding has entered into settlement, Section 95 proceedings be permitted to be withdrawn.

3. Counsel for the Resolution Professional prays that he be permitted to file the reply to the IA. We allow one week's time to the Resolution Professional to file reply.

4. Counsel for the Bank may also obtain instructions and may file reply, if any, before the date fixed.

5. List this Application for consideration on 13.08.2025.

Counsel for the Resolution Professional may communicate the Resolution Professional that he may not take any further steps.”

32. Settlement Agreement between Appellant and Cosmos Co-operative Bank Ltd. which initiated personal insolvency proceeding against the Appellant- personal guarantor has been entered which settlement dated 01.08.2025 has been brought on the record as Annexure A-1 to the application. The question which need to be considered is as to whether on the basis of settlement, the insolvency resolution process initiated against the Appellant- personal guarantor need to be closed in this Appeal. Rule 11 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 provides for ‘withdrawal of application’. Rule 11 provides as follows:-

“11. Withdrawal of application. — (1) The Adjudicating Authority may permit withdrawal of the application submitted under rule 6 or rule 7, as the case may be,-

(a) before its admission, on a request made by the applicant;

(b) after its admission, on the request made by the applicant, if ninety per cent. of the creditors agree to such withdrawal.

(2) An application for withdrawal under clause (b) of sub-rule (1) shall be in Form D.”

33. Counsel for the Appellant has referred to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019. It is submitted that under sub-regulation (5) of Regulation 7, the Resolution Professional shall verify each claim as soon as it is received and prepare a list of creditors within 30 days from the date of public notice. It is further submitted that the

Resolution Professional shall modify the amounts of claims admitted, after he comes across additional information. Regulation 7(5) and 7(7) is as follows:-

“7. Submission and verification of claim.- (5) The resolution professional shall verify each claim as soon as it is received and prepare a list of creditors under sub-section (1) of section 104 within thirty days from the date of public notice.

(7) The resolution professional shall modify the amounts of claims admitted, including the estimates of claims made under sub-regulation (6), as soon as may be practicable, after he comes across additional information warranting such revision, till the approval of a repayment plan by the creditors.”

34. Regulation 9 provides for ‘list of creditors’. Regulation 9 is as follows:-

“9. List of creditors. (1) The list of creditors under sub-section (1) of section 104 shall contain the names of creditors, amount claimed, amount admitted and security interest, if any, in respect of such claims.

(2) The resolution professional shall –

(a) make the list of creditors available for inspection by the persons who submitted claims with proof;

(b) serve a copy of the list of creditors to the guarantor;

(c) make available the list of creditors on the website, if any, of the guarantor;

(d) present the list of creditors at the meeting of creditors; and

(e) file a certified copy of the list of creditors with the Adjudicating Authority along with the repayment plan.”

35. Rule 11 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 contains withdrawal of application filed by creditors or guarantor. In the present case, Section 95 application having already been admitted on 01.07.2025 against which order this Appeal has been filed.

36. We have considered the respective submissions of the parties in the Company Appeal (AT) (Insolvency) No.955 of 2025 and have come to the conclusion that the order of admission of the Adjudicating Authority cannot be faulted. We having upheld the order dated 01.07.2025 admitting Section 95 application, for withdrawal of application procedure as contemplated under Rule 11(1)(b) has to be followed.

37. Counsel for the Resolution Professional submits that he shall publish the list of creditors after modification in the amount of claim as per materials now received by the Resolution Professional and thereafter shall ascertain as to whether 90% of the creditors have agreed to such withdrawal.

38. In view of the aforesaid, we are of the view that IA No.4524 of 2025 needs to be disposed of in following manner:-

- i. Resolution Professional may upload the list of creditors along with the respective amount admitted.
- ii. The Financial Creditor is permitted to file an application for withdrawal of Section 95 application before the Adjudicating Authority.
- iii. The Resolution Professional shall ascertain as to whether 90% of the creditors agree to withdrawal of Section 95 application and submit report/affidavit before the Adjudicating Authority on the application for withdrawal as noted above.

39. It shall be open for the Adjudicating Authority to consider the application for withdrawal and pass appropriate order as per Rule 11 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for I.A. No. 4524 of 2025 in Comp. App. (AT) (Ins.) No. 955 of 2025

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40. In result of foregoing discussions, we uphold the order dated 01.07.2025 passed by the Adjudicating Authority admitting Section 95 application. IA No.4524 of 2025 is disposed of as above.

In result, both the appeal as well as IA No.4524 of 2025 are disposed of as above.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

02nd September, 2025

himanshu/anjali