NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – II
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, CHENNAI BENCH, HELD ON 03.07.2026 AT 10.30 A.M. THROUGH VIDEO CONFERENCING:

CORAM : SHRI. JYOTI KUMAR TRIPATHI, HON'BLE MEMBER (JUDICIAL)
SHRI. RAVICHANDRAN RAMASAMY, HON'BLE MEMBER (TECHNICAL)

APPLICATION NUMBER	**: IA(IBC)/2322(CHE)2024**
PETITION NUMBER	**: CP(IB)/255/CHE/2021**
NAME OF THE APPLICANT	**: Vaddineni Savitri Naidu of M/s. Victory Transformers & Switch Gears Ltd**
NAME OF THE RESPONDENT(S)	**: State Bank of India**
UNDER SECTION	**: Sec 65(1) of IBC, 2016**

ORDER

Present : Ld. Counsel for the Applicant.

Vide separate order pronounced in open court, **CP(IB)/255/CHE/2021** is allowed and **IA(IBC)/2322(CHE)2024** is dismissed.

-SD-	**-SD-**
RAVICHANDRAN RAMASAMY	**JYOTI KUMAR TRIPATHI**
Member (Technical)	**Member (Judicial)**

kg

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

CP (IB) 255/ (CHE)/ 2021

(Filed under Section 95(1) r/w sections 96,97,99 & 100 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 7 of the National Company Law Tribunal)

STATE BANK OF INDIA
Stressed Assets Management Branch – II (SAMB-II),
D.No.3-4-1013/A, 1st Floor, CAC, TSRTC Bus Station,
Kachiguda, Hyderabad – 500 027.

… Financial Creditor/ Petitioner

Versus

VADDINENI SAVITRI NAIDU
Present Address: H.No.7-2-221/18, Ashok Colony,
Sanathnagar, Hyderabad – 500 018.
Permanent Address: Plot No.213, Phase 2, Kavuri Hills,
Opp.Madhapur Police Station, Madhapur, Hyderabad – 500 081.

… Personal Guarantor to Victory Transformers & Switch Gears Limited (CD)/ Respondent

Along with

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

IA(IBC)2322/(CHE)2024

In

CP (IB) 255/ (CHE)/ 2021

(Filed under Section 55(1) of the Insolvency and Bankruptcy Code, 2016)

VADDINENI SAVITRI NAIDU
Present Address: H.No.7-2-221/18, Ashok Colony,
Sanathnagar, Hyderabad – 500 018.
Permanent Address: Plot No.213, Phase 2, Kavuri Hills,
Opp.Madhapur Police Station, Madhapur, Hyderabad – 500 081.

… Applicant/ Personal Guarantor

Versus

STATE BANK OF INDIA
Stressed Assets Management Branch – II (SAMB-II),
D.No.3-4-1013/A, 1st Floor, CAC, TSRTC Bus Station,

Kachiguda, Hyderabad – 500 027.

… Respondent/ Financial Creditor

Order pronounced on 03.07.2026

CORAM

SHRI JYOTI KUMAR TRIPATI, MEMBER (J)

SHRI RAVICHANDRAN RAMASAMY, MEMBER (T)

Present
For Financial creditor: Pranava Charan, Advocate
For Personal Guarantor/ Respondent: Kotteswara Rao, Advocate
For Resolution Professional: B.Dhanaraj, Advocate

ORDER

(Hearing through hybrid mode)

The present Petition has been filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as Code IBC, 2016) read as rule 7(2) of IBC by State Bank of India (hereinafter referred to as Financial Creditor) for initiating Insolvency Resolution Process against **Vaddineni Savitri Naidu** (hereinafter referred to as Personal Guarantor / PG of M/s. Victory Transformers & Switch Gears Limited).

2. Part I of the Application shows the details of State Bank of India (Financial Creditor). The registered address is located at D.No.3-4-1013/A, 1st Floor, CAC, TSRTC Bus Station, Kachiguda, Hyderabad – 500 027.

3. Part II of the Application shows the details of the Personal Guarantor/ Respondent, in respect of the credit facilities availed by the Corporate Debtor, M/s. Victory Transformers & Switch Gears Limited. The address of the PG / Respondent is Vaddineni Savitri Naidu, Present Address: H.No.7-2-221/18, Ashok Colony, Sanathnagar, Hyderabad – 500 018, Permanent Address: Plot No.213, Phase 2, Kavuri Hills, Opp. Madhapur Police Station, Madhapur, Hyderabad – 500 081.

4. Part III of the Application shows that Financial Creditor has given the value of total debt as Rs.224,62,96,502.26/- (Rupees Two Hundred Twenty Four Crores Sixty Two Lakhs Ninety Six Thousand Five Hundred Two and Twenty Six Paise Only) which includes Working Capital Facility and Bank Guarantee as on 30.06.2020 and the date of default is specified as 31.07.2012.

5. Part – IV of the Application gives the details of the Resolution Professional and the Financial Creditor has proposed the name of Mr.Kasi Srinivas Reg No. IBBI/IPA-003/IPA-ICAI-N-00237/2019-2020/12840 to act as Insolvency Resolution Professional.

***6. SUBMISSIONS OF THE APPLICANT*:**

6.1. It is submitted that the Respondent is the Promoter and former Director of the Corporate Debtor and had executed Deeds of Guarantee dated 16.03.2007 and 01.06.2012, along with Supplemental Deeds of Guarantee dated 01.11.2008, 30.12.2008, and 18.09.2009, thereby irrevocably guaranteeing repayment of the financial facilities sanctioned by the Applicant to the Corporate Debtor.

6.2. It is submitted that various credit facilities, including Cash Credit and Bank Guarantee facilities, were sanctioned to the Corporate Debtor from time to time under sanction letters dated 13.01.2007, 27.10.2008, 30.12.2008, 18.09.2009, 15.03.2011, and 30.03.2012, and that the Respondent, as Personal Guarantor, undertook liability for repayment of the dues arising therefrom.

6.3. It is further submitted that the Corporate Debtor committed default in repayment of the loan facilities, the initial default having occurred on 31.07.2012. Thereafter, the Applicant issued a combined demand notice dated 10.07.2013 to the Corporate Debtor and the Guarantors calling upon them to discharge the outstanding dues. Despite the demand notice, the default continued.

6.4. It is submitted that although the Corporate Debtor submitted a One Time Settlement (OTS) proposal dated 18.05.2016, which was accepted by the Applicant through sanction letter dated 06.10.2016, the terms of the settlement were not complied with. Consequently, the

Applicant cancelled the OTS vide letter dated 03.05.2018, following which the default persisted.

6.5. It is submitted that as on 30.06.2020, the total outstanding dues payable by the Corporate Debtor amounted to Rs.224,62,96,502.26, inclusive of the Bank Guarantee liability, while the outstanding excluding the Bank Guarantee liability stood at Rs.223,42,08,818.26.

6.6. It is submitted that the debt remains unpaid and the Personal Guarantor continues to be jointly and severally liable under the guarantees executed by her.

6.7. It is further submitted that the liability comprises dues arising under the Cash Credit and Bank Guarantee facilities. It is stated that no security of the Personal Guarantor is held by the Applicant and, accordingly, the claim against the Respondent is an unsecured claim to the extent of the personal guarantee obligations.

6.8. It is submitted that the Corporate Debtor was admitted into Corporate Insolvency Resolution Process by order dated 01.05.2019 passed by this Adjudicating Authority and was subsequently ordered to be liquidated by order dated 29.10.2019. The Applicant has also relied upon the order dated 03.04.2019 passed by the High Court of Telangana and the CIBIL Default Search Report dated 13.08.2020 in support of the occurrence of default.

6.9. It is further submitted that they have relied upon, inter alia, the sanction letters, deeds of guarantee and supplemental guarantees, statement of accounts duly certified under the Bankers' Books Evidence Act, revival letters, balance confirmation letters, demand notice dated 10.07.2013, OTS proposal, OTS sanction letter, cancellation of OTS, and other supporting documents to establish the existence of the financial debt, execution of the personal guarantees, acknowledgment of liability, and the amount in default.

6.10. It is submitted that there is no legal bar or impediment under the Code for initiation of insolvency proceedings against the Guarantor, and all statutory requirements under Section 95 read with the Personal Guarantor Rules, 2019 have been duly complied with.

6.11. The Applicant has proposed Mr. Kasi Srinivas, bearing Registration No. IBBI/IPA-003/IPA-ICAI-N-00237/2019-2020/12840, Insolvency Professional, as Resolution Professional, who has furnished his written consent and requisite declarations as mandated under the Code and Regulations.

<u>7. SUBMISSIONS OF THE RESPONDENT/ PG</u>:

7.1. It is stated that at the outset, the Respondent/ Personal Guarantor contends that the Application is not maintainable and has been filed to invoke the personal guarantee without the Applicant Bank having discharged its obligations under the Code.

7.2. It is contended that the Applicant Bank, the Committee of Creditors and the Resolution Professional/ Liquidator failed to maximize the assets of the Corporate Debtor by abandoning substantial actionable claims, receivables and pending litigations, and has instead sought to proceed against the personal guarantors.

7.3. It is stated that the Corporate Debtor, M/s. Victory Transformers & Switchgears Limited, was engaged in the manufacture of transformers and allied electrical equipment, with nearly 80% of its business being with State Electricity Boards and Government entities.

7.4. It is further stated that the Company had availed credit facilities from the Applicant Bank and later entered into a Multiple Banking Arrangement with Bank of Baroda and Bank of India by creating exclusive and *pari passu* security interests over various immovable properties.

7.5. It is stated that the Corporate Debtor suffered a liquidity crisis owing to delayed payments from State Electricity Boards, resulting in financial distress. According to the Respondent, although restructuring was proposed through the Corporate Debt Restructuring Forum, the proposal failed due to non-approval by one of the consortium lenders, compelling the Corporate Debtor to approach the Board for Industrial and Financial Reconstruction under the Sick Industrial Companies Act, 1985. During the pendency of those proceedings, the Applicant Bank initiated recovery proceedings under the SARFAESI Act and also instituted proceedings before the Debt Recovery Tribunal, wherein the Corporate Debtor filed a counter claim for recovery of substantial damages.

7.6. It is stated that the Corporate Debtor repeatedly sought an amicable settlement under the One Time Settlement (OTS) Scheme and that, pursuant to a Joint Lenders' Meeting held on 23.05.2016, all consortium lenders resolved to permit settlement of their respective dues. It is stated that the Applicant Bank sanctioned the OTS on 06.10.2016, which was accepted by the Corporate Debtor with certain suggestions, and substantial payments amounting to Rs.5,65,55,947/- were made towards release of properties exclusively mortgaged to the Applicant Bank. It is further contended that despite receipt of the said amounts, the Applicant Bank failed to release all title deeds and mortgages in accordance with the OTS terms.

7.7. It is further stated that the OTS relating to properties under *pari passu* charge remained incomplete, as the Applicant Bank required the Respondent to obtain No Objection Certificates from the other consortium lenders instead of procuring such consents itself. According to the Respondent, despite repeated representations and enhanced settlement offers to the other lenders, particularly Bank of Baroda, the OTS could not be fully implemented due to lack of cooperation from the consortium lenders, rendering the subsequent cancellation of the OTS unjustified.

7.8. It is also stated that the Applicant Bank itself acknowledged the payments made under the OTS in proceedings before the Debt Recovery Tribunal and even invited revival of the OTS in January 2019. Nevertheless, the Applicant simultaneously initiated proceedings under Section 7 of the Code against the Corporate Debtor, while the Respondent challenged cancellation of the OTS before the Civil Court and also before the High Court of Telangana.

7.9. It is stated that after commencement of the Corporate Insolvency Resolution Process, the Resolution Professional and subsequently the

Liquidator failed to discharge their statutory obligations under Section 25 of the Code by neglecting to pursue substantial receivables, book debts, insurance claims, arbitration proceedings and other actionable claims running into several hundred crores of rupees, despite repeated assurances recorded in the meetings of the Committee of Creditors and Stakeholders' Consultation Committee. According to the Respondent, these recoveries would have substantially reduced or extinguished the liabilities of the Corporate Debtor and the personal guarantors.

7.10. It is further stated that although the Committee of Creditors approved expenditure for engaging support personnel and legal professionals during the CIRP, neither the Resolution Professional nor the Liquidator pursued the pending litigation, arbitration proceedings, insurance claims, book debts or counter claims initiated by the erstwhile management. Instead, the Liquidator allegedly adopted a cost-benefit approach and abandoned valuable recoveries, thereby acting contrary to the object of value maximisation under the Code.

7.11. It is contended that the Applicant Bank, being the lead financial creditor with the highest voting share in the Committee of Creditors, actively permitted and encouraged such inaction by the Resolution Professional and Liquidator. It is contended that numerous actionable claims, including arbitration proceedings against Reliance Capital Limited, consumer disputes against insurance companies, recovery suits, book debts and receivables, were deliberately abandoned, causing substantial prejudice to the stakeholders and increasing the liability sought to be enforced against the personal guarantors.

7.12. It is stated that the Applicant Bank has exaggerated and incorrectly computed the outstanding dues and has failed to disclose amounts already recovered through OTS payments, liquidation proceedings and recoveries made by the subsidiary company, while also relying upon an incorrect date of default and inflated figures in the insolvency proceedings.

7.13. It is further stated that the Liquidator failed to prosecute the Corporate Debtor's counter claim in arbitration against Reliance Capital Limited, resulting in dismissal of the claim for non-prosecution. It is submitted that the Liquidator subsequently admitted that he refrained from pursuing the proceedings due to perceived costs and low prospects of success, which, according to the Respondent, amounted to breach of statutory duties and resulted in loss of valuable assets of the Corporate Debtor.

7.14. The Respondent relies upon the decisions of the Hon'ble Supreme Court in ***Lalit Kumar Jain v. Union of India*** and ***Swiss Ribbons Pvt. Ltd. v. Union of India***, contending that personal guarantors are entitled to raise all relevant objections, including the conduct of the financial creditor and the insolvency professionals.

7.15. It is finally stated that the Applicant Bank maliciously initiated insolvency proceedings against the Corporate Debtor and thereafter invoked the personal guarantees without first exhausting recoverable assets and actionable claims available to the Corporate Debtor, contrary to the objectives of the Insolvency and Bankruptcy Code.

8. SUBMISSIONS OF THE RESPONDENT IN ADDITIONAL REPLY:

8.1. It is stated that the Applicant Bank has deliberately invoked the personal guarantee after failing to maximize the value of the Corporate Debtor's assets and recoveries during the CIRP and liquidation proceedings.

8.2. It is stated that the Applicant Bank was the lead lender in the Multiple Banking Arrangement comprising State Bank of India, Bank of Baroda and Bank of India (whose debt was subsequently assigned to Edelweiss Asset Reconstruction Company Limited) and exercised effective control over the decisions taken during the Corporate

Insolvency Resolution Process and liquidation of M/s. Victory Transformers & Switchgears Limited. According to the Respondent, the Applicant cannot avoid responsibility for the decisions taken during those proceedings.

8.3. The Respondent reiterates that substantial actionable claims, arbitration proceedings, insurance claims, book debts, receivables and other valuable assets of the Corporate Debtor were abandoned by the Resolution Professional and Liquidator with the approval of the Committee of Creditors headed by the Applicant Bank.

8.4. It is contended that these recoveries, if diligently pursued, would have substantially reduced the liability now sought to be enforced against the Personal Guarantor.

8.5. It is further stated that the Applicant Bank failed to honour the One Time Settlement sanctioned in favour of the Corporate Debtor despite receipt of substantial payments and thereafter arbitrarily cancelled the settlement and also contends that the Bank cannot take advantage of its own conduct by first frustrating the settlement and thereafter invoking the personal guarantees.

8.6. It is stated that the Liquidator failed to prosecute valuable arbitration proceedings and other recovery actions, including proceedings against Reliance Capital Limited, resulting in dismissal of the Corporate Debtor's counter claim for non-prosecution.

8.7. It is contended that despite repeated representations made by the erstwhile management and stakeholders requesting pursuit of actionable claims and recoveries, the Applicant Bank and the Liquidator deliberately ignored such requests and adopted a cost-benefit approach contrary to the objective of value maximisation under the Insolvency and Bankruptcy Code.

8.8. It is further stated that the Applicant Bank has failed to disclose recoveries already made from liquidation, sale of secured assets and other sources while computing the alleged outstanding liability against the Personal Guarantor and also that the claim amount has consequently been exaggerated and does not represent the actual subsisting liability.

8.9. It is stated that several proceedings, including writ petitions, arbitration proceedings and proceedings before the Hon'ble High Courts, were initiated by the promoters and stakeholders seeking directions for recovery of the Corporate Debtor's actionable claims and challenging the conduct of the Applicant Bank and the insolvency professionals. According to the Respondent, these proceedings demonstrate that substantial assets capable of recovery were available but were deliberately left unpursued.

8.10. It is contended that the Applicant Bank has not approached this Adjudicating Authority with clean hands and has suppressed material facts relating to the CIRP, liquidation proceedings, recoveries made and abandonment of valuable claims.

9. SUBMISSIONS OF THE APPLICANT IN REJOINDER:

9.1. It is submitted that the Respondent has not disputed the execution of the personal guarantees, the sanction of financial facilities, the occurrence of default or the outstanding debt, and has instead sought to raise issues wholly extraneous to proceedings under Section 95 of the Code.

9.2. It is submitted that the allegations concerning the conduct of the Committee of Creditors, the Resolution Professional and the Liquidator during the Corporate Insolvency Resolution Process and liquidation of the Corporate Debtor are irrelevant for adjudication of the present proceedings against the Personal Guarantor.

9.3. It is submitted that the alleged failure to pursue receivables, arbitration proceedings, insurance claims or other actionable claims cannot absolve the Respondent from her independent and co-extensive liability under the deeds of guarantee.

9.4. It is further submitted that the Respondent is attempting to convert the present proceedings into an enquiry into the conduct of the Resolution Professional, Liquidator and Committee of Creditors, although no challenge has been made against any orders passed during the CIRP or liquidation proceedings before the appropriate forum. According to the Applicant, such contentions are beyond the scope of adjudication under Section 95 of the Code.

9.5. It is submitted that the liability of a personal guarantor is independent and co-extensive with that of the principal borrower under Section 128 of the Indian Contract Act, 1872. Accordingly, the Financial Creditor is entitled to proceed against the Personal Guarantor without first exhausting remedies against the Corporate Debtor or realizing all securities and assets of the Corporate Debtor.

9.6. It is submitted that the Respondent cannot avoid liability by relying upon the alleged non-recovery of receivables or pendency of claims belonging to the Corporate Debtor. The Applicant contends that recoveries, if any, made during liquidation would only reduce the outstanding debt but would not extinguish the liability of the Personal Guarantor until the entire debt is discharged.

9.7. It is further submitted that the allegations relating to the One Time Settlement are misconceived. It is stated that although an OTS proposal was sanctioned, the Corporate Debtor failed to comply with the stipulated terms and conditions, resulting in cancellation of the OTS. Consequently, the Respondent cannot derive any benefit from an unimplemented settlement proposal.

9.8. It is contended that the Respondent has suppressed material facts and has selectively relied upon events relating to the CIRP and liquidation while omitting to disclose that the liability under the personal guarantees remains outstanding.

9.9. It is further submitted that the Respondent has sought to reopen issues relating to commercial decisions taken by the Committee of Creditors and the Liquidator, despite such decisions having attained finality. It is submitted that the present proceedings cannot be used as a forum to indirectly challenge actions taken during the insolvency and liquidation process of the Corporate Debtor.

9.10. The Applicant relies upon the doctrine of approbate and reprobate, placing reliance on the decision of the Hon'ble Supreme Court in ***Union of India v. N. Murugesan***, to contend that a party cannot simultaneously accept the benefits arising from a transaction while disputing the obligations flowing therefrom.

9.11. It is submitted that according to the Applicant, the Respondent, having executed unconditional deeds of guarantee and enjoyed the benefits arising from the credit facilities extended to the Corporate Debtor, cannot now evade liability by raising collateral objections.

9.12. It is reiterated that the essential requirements for initiation of proceedings under Section 95 of the Code stand satisfied, namely, the existence of a financial debt, execution of valid and enforceable personal guarantees, occurrence of default and subsistence of liability.

***10. APPOINTMENT OF RESOLUTION PROFESSIONAL*:**

10.1. This Tribunal vide order dated 11.04.2022 appointed **Mr. Kasi Srinivas** with registration number **IBBI/IPA-003/IPA-ICAI-N-00237/2019-2020/12840** and ordered to examine whether the company petition is as set out in Section 97(6) of IBC, 2016 and who after examining may recommend for the acceptance or rejection of the application.

11. REPORT OF THE RESOLUTION PROFESSIONAL:

11.1. Resolution Professional submitted the report dated 25.04.2022 before this Tribunal.

11.2. Further, it is stated that the report is being filed in compliance with Section 99 of the IBC Code. It is apparent that the report filed is regard to initiation of insolvency resolution process against the Respondent/ PG Smt. Vaddineni Savitri Naidu, personal guarantor to M/s. Victory Transformers & Switch Gears Limited.

11.3. Observations of the report filed under Section 99 of the code are as follows:

***i. Details of debt*:**

No.	Particulars	
1	Outstanding Claim	Principle with Interest and other penalties as on 30.06.2020 is **Rs. 224,62,96,502.26/-** (Rupees Two Hundred Twenty Four Crores Sixty Two Lakhs Ninety Six Thousand Five Hundred Two and Twenty Six Paise Only)
2	Documents establishing Personal Guarantor's Liability	1. Copy of the order dated 01 .05.2019 passed by the Hon'ble National Company Law Tribunal, Chennai, admitting CIRP against the Corporate Debtor. 2. Copy of the order dated 29.10.2019 passed by the Hon'ble National Company Law Tribunal, Chennai ordering for Liquidation of the Corporate Debtor. 3. Copy of the Order of High Court of Telangana dated 03.04.2019. 4. Defaulter Search report of CIBIL dated 13.08.2020. 5. Copy of the sanction letters dated 13.01.2007, 27 .10.2008, 30j2.2008, 18.09.2009, 1 5.03.2011 & 30.03.2012. 6. Copy of Letter regarding the grant of individual limits dated 0l.06.2012.

		7. Copy of Deed of Guarantees dated 16.03.2007, 01.11.2008, 30.12.2008, 18.09.2009 & 01.06.2012. 8. Statement of account & list of outstanding Bank guarantees. 9. Copy of Revival letters dated 01.11.2008, 01.06.2012, 13.05.2015 & 04.05.2018. 10. Copy of Balance confirmation letter dated 01.11.2008 & 31.12.2012. 11. Copy of Demand Notice dated 10.07.2013. 12. Copy of Balance Sheet of the CD for FY 2014-15 dated 02.09.2015. 13. Copy of One Time Settlement proposal given by CD dated 18.05.2016. 14. Copy of One Time Settlement Sanction letter dated 06.10.2016. 15. Copy of Cancellation of OTS letter dated 03.05.2018 along with acknowledgment.

ii. Compliance under Section 95 of IBC

Sec No.	Details of the Sections	Compliance
95 (4)	An application under sub-section (1) shall be accompanied with details and documents relating to - (a) the debts owed by the debtor to the creditor or creditors submitting the application insolvency for resolution process as on the date of application; (b) the failure by the debtor to pay the debt within period of a fourteen days	1. Total outstanding debt as on 31-05-2021 is Rs.223,42,08,818.26 (Rupees Two Hundred Twenty-Three Crores Forty-Two Lakhs Eight Thousand Eight Hundred Eighteen and Twenty-Six Paise Only) 2. The debt is in relation to the Guarantee extended by personal guarantor to the financial assistance availed by the Corporate Debtor M/s Victory Transformers & Switch Gears Limited in the form of Term loan, Working Capital, Cash Credit and Bank Guarantees etc., from the Financial Creditor. 3. The guarantor herein executed Deed of guarantee on 16-03-2007 to secure the repayment of the financial assistance availed by the Corporate Debtor under Loan Agreement aggregating to Rs.36.94 Crores to the Financial Creditor (at page no. 115 - 128 of the Application)

	of the service of the notice of demand; and 98. (c) Relevant evidence of such default or non-repayment of debt	4. The guarantor herein executed Supplemental Deed of guarantee for increase of overall limits on 01-11-2008 to secure the repayment financial by the Corporate Debtor under Loan Agreement aggregating to Rs. 61 Crores to the Financial Creditor (at page no. 129 - 134 of the Application). 5. The guarantor herein executed Supplemental Deed of guarantee for increase of overall limits on 30-12-2008 to secure the repayment of the increased financial assistance availed by the Corporate Debtor under Loan Agreement aggregating to Rs. 66 Crores to the Financial Creditor (at page no. 135-140 of the application) 6. The guarantor herein executed Supplemental Deed of guarantee for increase of overall limits on 18-09-2009 to secure the repayment increased financial assistance availed Corporate Debtor under Loan Agreement aggregating to Rs.103 Crores to the Financial Creditor (at page no. 141 - 146 of the Application) 7. The said facilities were revived by the financial creditor from time to time and the same were acknowledged by the guarantor herein from time to time on 01-11-2008, 01-06-2012, 13-05-2015 and on 05-04-2018 (at page no.199-204 of the Application) 8. The financial creditor issued demand notice u/s13(2) of SARFESI Act, 2002 on 10-07-2013 9. Corporate Debtor M/s Victory Transformers & Switch Gears Limited settlement on 18-05-2016 and the same was sanctioned by the financial creditor on 06-10-2016 and the sanction letter was duly signed by the Guarantor herein. 10. The CD herein failed to comply with the onetime proposal and the Financial Creditor

		cancelled the One-time proposal on 03-05-2018 and the same was acknowledged by the CD. 11. The Corporate Debtor is in Liquidation by the Order of this Hon'ble Tribunal vide orders dated 29-10-2019 in MA No.1139/2019
95 (5)	The creditor shall also provide a copy of the application made under sub-section (1) to the debtor	The Applicant Creditor State Bank of India, through their counsel served a copy of the application to the Personal Guarantors.
95 (6)	The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.	Paid
95 (7)	The details and the documents required to be submitted under sub – section (4) shall be such as may be specified.	All necessary documents are produced.

11.4. The resolution professional in the report recommended to initiate insolvency resolution process against PG/ Respondent and relevant portion is extracted below:

> *"Therefore, it is humbly submitted that in view of the aforementioned relevant acts the Applicant/ Resolution Professional is recommending for the approval of the Petition CP (IB) No. CP/IB/255/CHE/2021 filed by Financial Creditor against the Personal Guarantor Vaddineni Savitri Naidu to the Corporate Debtor M/s Victory Transformers & Switch Gears Limited."*

<u>IA(IBC)2322/(HE)2024</u>:

The Applicant/ Personal Guarantor has filed the present Interlocutory Application under Section 65(1) of the Insolvency and Bankruptcy Code, 2016, seeking a declaration that **CP(IB)/255(CHE)/2021** filed by the Respondent/ Financial Creditor under Section 95 of the Code has been initiated fraudulently and with malicious intent for a purpose other than insolvency resolution, and consequently praying for dismissal of the main Company Petition with appropriate penalty under Section 65 of the Code.

<u>12. SUBMISSIONS OF THE APPLICANT</u>:

12.1. It is submitted that the Respondent/ Financial Creditor had earlier initiated proceedings under Section 7 of the Code against the Corporate Debtor and thereafter invoked the personal guarantee under Section 95 despite having failed to maximize the value of the assets of the Corporate Debtor during the Corporate Insolvency Resolution Process and liquidation. According to the Applicant, the Financial Creditor has abused the insolvency process by proceeding against the Personal Guarantor while permitting valuable assets and actionable claims of the Corporate Debtor to remain unrealised.

12.2. It is submitted that throughout the CIRP and liquidation proceedings, the erstwhile management cooperated with the Resolution Professional and the Liquidator and subsequently raised objections regarding the failure of the insolvency professionals to discharge their statutory obligations under the Code.

12.3. It is contended that such objections were also raised in the insolvency proceedings relating to the Corporate Guarantor, ***M/s. Hackbridge Hewittic & Easun Limited***, wherein similar issues concerning the conduct of the Resolution Professional and Liquidator came to be considered.

12.4. It is submitted that the Hon'ble National Company Law Appellate Tribunal, while dealing with the proceedings concerning the Corporate Guarantor, remanded the matter to the Adjudicating Authority for fresh consideration.

12.5. The Applicant relies upon the observations recorded by the Hon'ble NCLAT in its orders dated 10.04.2023 and 05.06.2024, contending that the issues regarding negligence and failure of the Resolution Professional and Liquidator in pursuing the assets of the Corporate Debtor are required to be adjudicated on their own merits.

12.6. It is submitted that the Resolution Professional and the Liquidator failed to discharge the statutory obligations cast upon them under Section 25 of the Code, particularly the duty to preserve, protect and maximise the value of the assets of the Corporate Debtor.

12.7. It is alleged that several actionable claims, receivables, arbitration proceedings, insurance claims and other recoverable assets of considerable value were abandoned without justification, resulting in substantial loss to the stakeholders.

12.8. It is further submitted that the Stakeholders' Consultation Committee and the Committee of Creditors, under the leadership of the Respondent Bank, consciously approved the decisions of the Liquidator not to pursue recoverable claims and legal proceedings. According to the Applicant, such decisions cannot be protected under the doctrine of commercial wisdom, as they amount to deliberate violation of the provisions and objectives of the Insolvency and Bankruptcy Code.

12.9. It is contended that the Liquidator failed to pursue substantial claims against debtors of the Corporate Debtor, including arbitration proceedings wherein the Corporate Debtor had raised claims running into several hundred crores of rupees. It is alleged that one such arbitration claim for approximately Rs.592 Crores came to be rejected solely because the Liquidator failed to participate in the proceedings, thereby causing irreparable loss to the Corporate Debtor.

12.10. It is submitted that the Respondent Bank actively participated in and approved the abandonment and withdrawal of valuable claims of the Corporate Debtor during the liquidation process. According to the Applicant, the Financial Creditor, having consciously permitted such diminution of the assets of the Corporate Debtor, cannot subsequently invoke the personal guarantee to recover the unrecovered balance from the Personal Guarantor.

12.11. It is further submitted that the acts of the Financial Creditor and the insolvency professionals amount to collusive fraud, inasmuch as they deliberately failed to pursue valuable assets of the Corporate Debtor while seeking to recover the alleged outstanding dues from the Personal Guarantor. It is contended that such conduct falls squarely within the ambit of Section 65(1) of the Code, warranting dismissal of the insolvency proceedings initiated against the Personal Guarantor.

12.12. It is submitted that the proceedings concerning the Corporate Debtor, the Corporate Guarantor and the Personal Guarantor arise out of the same financial transactions and involve common questions relating to the conduct of the Financial Creditor and the insolvency professionals.

13. SUBMISSIONS OF THE RESPONDENT:

13.1. The Respondent/ Financial Creditor has filed the present Reply denying all the allegations made by the Applicant except those specifically admitted.

13.2. It is stated that the Application under Section 65 is wholly misconceived, not maintainable in law and liable to be dismissed in limine.

13.3. It is further stated that the Applicant is the Personal Guarantor of M/s. Victory Electricals Limited, while M/s. Victory Transformers & Switchgears Limited is the holding company of the said entity. Both companies were admitted into Corporate Insolvency Resolution Process and are presently under liquidation pursuant to orders passed by the Adjudicating Authority.

13.4. It is contended that the present Application under Section 65 is itself not maintainable, as the main Company Petition has been filed under Part III of the Code relating to Personal Guarantors, whereas Section 65 invoked by the Applicant falls under Part II dealing with corporate insolvency and also that Section 60 of the Code confers upon the Adjudicating Authority only such jurisdiction as is exercisable by the Debt Recovery Tribunal in matters under Part III, and therefore the

Applicant cannot invoke Section 65 in proceedings relating to Personal Guarantors.

13.5. It is further stated that the jurisdiction of this Adjudicating Authority in proceedings under Part III is confined to determining the existence of debt and default and the fulfilment of the statutory requirements prescribed under the Code.

13.6. The Respondent relies upon the decisions of the Hon'ble Supreme Court in ***Nahar Industrial Enterprises Ltd. v. Hong Kong and Shanghai Banking Corporation Ltd., Pratap Technocrats (P) Ltd. v. Monitoring Committee of Reliance Infratel Ltd.,*** and the judgment of the Hon'ble Delhi High Court in ***Cofex Exports Ltd. v. Canara Bank,*** to contend that the jurisdiction of the Adjudicating Authority is statutory and limited, and that neither the Debt Recovery Tribunal nor the National Company Law Tribunal can exercise an equitable or inherent jurisdiction beyond the powers expressly conferred by the Code.

13.7. It is stated that the allegations made by the Applicant regarding failure of the Resolution Professional, Liquidator or the Committee of Creditors to realise actionable claims are wholly irrelevant to the adjudication of the present proceedings.

13.8. It is further stated that no proceedings have been instituted by the Applicant against the Respondent Bank alleging malicious prosecution or wrongful conduct.

13.9. It is contended that the litigations relied upon by the Applicant were initiated by the erstwhile promoters of the Corporate Debtor and have remained pending without any adjudication. Those proceedings, therefore, do not establish any fraud or malicious intent on the part of the Respondent.

13.10. The Respondent specifically refers to W.P. No.11156 of 2021 and W.P. No.11479 of 2021 filed by the erstwhile Directors, submitting that the said writ petitions merely challenged the forensic audit reports prepared by the Bank and sought fresh forensic audits and also that the writ petitions did not contain any allegation regarding failure of the Resolution Professional or Liquidator to pursue actionable claims, nor did they seek any relief relating to recovery of receivables or assets of the Corporate Debtor.

13.11. It is stated that the allegations of collusion, fraud and malicious initiation of proceedings are bald, unsupported by any documentary evidence and have been made only to delay the adjudication of the main petition under Section 95 of the Code.

14. SUBMISSIONS OF THE APPLICANT IN REJOINDER:

14.1. The Applicant/ Personal Guarantor has filed the present Rejoinder denying the averments made in the Reply and reiterating that the Application under Section 65 of the Insolvency and Bankruptcy Code, 2016 is maintainable.

14.2. It is submitted that the Reply filed by the Respondent Bank is based on misleading and incorrect facts and seeks to divert the attention of this Adjudicating Authority from the principal issue, namely, that the insolvency proceedings have been initiated with a fraudulent and malicious intent.

14.3. It is also submitted that the present Application has been filed pursuant to the liberty and observations made by the Hon'ble National Company Law Appellate Tribunal in its judgment dated 10.04.2023, directing a de novo consideration of the issues after affording adequate opportunity of hearing.

14.4. It is submitted that the insolvency proceedings initiated against the Principal Borrower, its subsidiary companies, the Corporate Guarantor and the Personal Guarantors form part of a single course of conduct adopted by the Respondent Bank with the object of proceeding against the valuable immovable assets of the group companies instead of pursuing revival or recovery of the actionable claims available to the Corporate Debtor.

14.5. It is further submitted that the Respondent Bank itself had proposed restructuring of the debts through the Corporate Debt Restructuring mechanism and had caused a Stock Audit to be conducted in the year 2012, wherein it was found that the inventories, receivables and books of account were genuine, no fraud or diversion of funds was noticed, and obsolete stock and long outstanding receivables had already been written off in accordance with the directions of the Bank.

14.6. It is contended that the subsequent stand taken by the Bank alleging fraud is contrary to its own earlier findings and is hit by the doctrine of approbation and reprobation.

14.7. It is further submitted that when the restructuring proposal failed, the Principal Borrower approached the Board for Industrial and Financial Reconstruction under the Sick Industrial Companies Act, 1985. During the pendency of the statutory protection available under the said enactment, the Respondent Bank initiated measures under the SARFAESI Act, issued garnishee notices to the customers of the Corporate Debtor and frustrated the rehabilitation process despite being aware of the substantial receivables and confirmed purchase orders available with the Corporate Debtor.

14.8. It is reiterated that valuable actionable claims, receivables, arbitration proceedings, insurance claims and book debts aggregating to more than Rs.677 Crores were available for recovery by the Resolution Professional and the Liquidator.

14.9. It is submitted that both the Resolution Professional and the Liquidator had assured the Committee of Creditors and this Adjudicating Authority that they would endeavour to recover and realise such assets; however, the said recoveries were never pursued, resulting in serious prejudice to the stakeholders and the Personal Guarantor.

14.10. It is submitted that despite incurring substantial CIRP and liquidation expenses with the approval of the Committee of Creditors, no meaningful expenditure was incurred for pursuing revenue-generating actionable claims.

14.11. The Applicant places reliance upon the decisions in Liquidator for ***Kapil Steels Ltd. v. M/s. Indore Steel & Alloys Pvt. Ltd. and Eva Agro Feeds Pvt. Ltd. v. Punjab National Bank & Anr.*** to contend that recovery of actionable claims forms part of the statutory duties of the Liquidator.

It is further submitted that the Respondent Bank initiated an independent forensic audit during the CIRP despite the Resolution Professional having reported that no preferential, undervalued, extortionate or fraudulent transactions existed under Sections 43, 45, 50 and 66 of the Code.

14.12. It is contended that the forensic audit was undertaken only as a retaliatory measure after the promoters questioned the failure of the Resolution Professional and Liquidator to pursue the recoverable assets of the Corporate Debtor.

14.13. It is submitted that the declaration of the loan accounts of the Corporate Debtor as "Fraud" was arbitrary, contrary to the earlier internal investigation conducted by the Respondent Bank, and based upon an unreliable forensic audit report. According to the Applicant, the Respondent Bank itself has subsequently withdrawn the fraud classification by communication dated 05.03.2025, admitting that no opportunity of hearing had been afforded before classifying the account as fraud.

14.14. It is contended that the failure to pursue the recoverable assets of the Corporate Debtor, coupled with the cancellation of the One Time Settlement, the institution of CIRP proceedings, the declaration of fraud and the subsequent invocation of the personal guarantee, demonstrate a continuous course of malicious conduct falling squarely within the ambit of Section 65(1) of the Code.

14.15. It is submitted that the insolvency proceedings have been employed as a recovery mechanism to appropriate the landed assets of the Corporate Debtor and the Personal Guarantors rather than for the genuine resolution of insolvency.

14.16. It is further submitted that the provisions of Sections 3(27), 25, 35 and 54 of the Code impose a statutory obligation upon the Resolution Professional and the Liquidator to preserve, protect and realise all assets, including actionable claims, before seeking dissolution of the Corporate Debtor. Since substantial actionable claims remain unrecovered, it is contended that the Respondent Bank cannot invoke the personal guarantee while simultaneously permitting such assets to remain unrealised.

<u>15. FINDINGS OF THIS TRIBUNAL</u>:

15.1. Heard the submissions made by the Learned Counsel for the Financial Creditor/ SBI, Resolution Professional and perused the report submitted by the Resolution Professional.

15.1.I.A.(IBC)2322/(CHE)2025

15.1.1. The principal contention of the Applicant is that the Company Petition under Section 95 has been initiated fraudulently and with malicious intent within the meaning of Section 65 of the Code. According to the Applicant, the Financial Creditor, despite being the lead member of the Committee of Creditors, permitted the Resolution Professional and the Liquidator to abandon valuable actionable claims, receivables, insurance claims, arbitration proceedings and other recoverable assets of the Corporate Debtor and thereafter sought to recover the unrecovered balance from the Personal Guarantor. It has also been contended that the cancellation of the One Time Settlement, the declaration of the loan account as fraud and the initiation of insolvency proceedings constitute a continuous course of malicious conduct on the part of the Financial Creditor.

15.1.2. Per contra, the Financial Creditor has contended that the present Application itself is not maintainable in proceedings under Part III of the Code and that the allegations concerning the conduct of the Resolution Professional, the Liquidator and the Committee of Creditors are wholly extraneous to the adjudication of an Application under Section 95. It is further submitted that the liability of the Personal

Guarantor is independent and co-extensive with that of the Principal Borrower and cannot be defeated by alleging deficiencies in the conduct of liquidation proceedings.

15.1.3. Having considered the rival submissions, we are of the considered view that the Applicant has failed to establish that the proceedings under Section 95 have been initiated fraudulently or with malicious intent so as to attract Section 65 of the Code. The foundation of the present Application rests primarily upon allegations regarding the conduct of the Committee of Creditors, the Resolution Professional and the Liquidator during the Corporate Insolvency Resolution Process and the subsequent liquidation of the Corporate Debtor. Whether certain actionable claims ought to have been pursued, whether particular commercial decisions were justified or whether the Liquidator exercised proper diligence are issues which arise independently in the insolvency proceedings of the Corporate Debtor and cannot, by themselves, determine the validity of proceedings initiated against the Personal Guarantor.

15.1.4. The record demonstrates that the Financial Creditor had extended financial facilities to the Corporate Debtor, the Applicant herein executed personal guarantees securing the said facilities, default admittedly occurred and the guarantees continued to subsist on the date of filing of the present Company Petition. The existence of these foundational facts has not been displaced by the allegations raised in the present Interlocutory Application.

15.1.5. We also find that the Applicant has not placed any material to demonstrate that the Financial Creditor has invoked Section 95 for any purpose other than enforcement of its statutory remedies available under the Code. The mere existence of disputes relating to the conduct of the Resolution Professional or Liquidator, or the pendency of proceedings before other judicial forums, cannot by itself establish fraud or malicious initiation of insolvency proceedings.

15.1.6. Much emphasis has been laid upon the alleged non-recovery of actionable claims and receivables of the Corporate Debtor. However, such allegations, even if assumed to be correct for the sake of argument, do not extinguish the debt nor absolve the Personal Guarantor of liability arising under the contract of guarantee. The Applicant's grievance, therefore, relates more to the manner in which the liquidation proceedings were conducted than to the maintainability of the proceedings under Section 95.

15.1.7. The Applicant has also relied upon the subsequent withdrawal of the fraud classification and the observations contained in the orders passed by the Hon'ble National Company Law Appellate Tribunal. In our considered opinion, none of these developments establish that the present proceedings under Section 95 have been instituted with fraudulent or malicious intent. At best, they disclose independent disputes between the parties which may be adjudicated before the competent forum in accordance with law.

15.1.8. The Status Report filed by the Liquidator further reveals that liquidation proceedings have progressed substantially and recoveries have been made by sale of the assets of the Corporate Debtor. The said recoveries have been distributed in accordance with the provisions of the Code. Any further recoveries that may arise from pending proceedings would equally be governed by the provisions of the Code and would necessarily enure towards reduction of the outstanding liability. Such circumstances cannot constitute a ground for invoking Section 65 against the Financial Creditor.

15.1.9. 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.

15.1.10. 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."

15.1.11. 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."

15.1.12. 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."*

15.1.13. 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. Consequently, the Interlocutory Application filed under Section 65 of the Insolvency and Bankruptcy Code, 2016 deserves to be dismissed.

15.2.C.P.(IBC)255/(CHE)2021

15.2.1. We shall now proceed to consider the Company Petition filed under Section 95 of the Insolvency and Bankruptcy Code, 2016.

15.2.2. The present application has been filed under Section 95 of the Code by the Financial Creditor seeking initiation of insolvency resolution process against the Personal Guarantor to the Corporate Debtor, M/s. Victory Transformers & Switch Gears Limited, in respect of default arising out of credit facilities availed by the Corporate Debtor, M/s. Victory Transformers & Switchgears Limited.

15.2.3. On perusal of records, we find that the Corporate Debtor was admitted into CIRP by this tribunal in CP/1515/IB/2020 vide order dated 01.05.2019 and subsequently was admitted into liquidation vide order dated 29.10.2019.

15.2.4. Therefore, in terms of Section 60(2) of the Code, this Tribunal retains jurisdiction to entertain and try insolvency applications against the personal guarantor.

15.2.5. The record discloses that the Respondent executed various Deeds of Guarantee and Supplemental Deeds of Guarantee securing the financial facilities extended by the Applicant to the Corporate Debtor. The execution of the guarantee deeds has not been specifically disputed. The materials placed on record further establishes that the Corporate Debtor committed default in repayment of the credit facilities. Demand notices were issued by the Applicant. Though a One Time Settlement was sanctioned, the same admittedly did not fructify and thereafter stood cancelled. The debt has remained unpaid.

15.2.6. Pursuant to the order passed under Section 97 of the Code, the Resolution Professional has submitted a Report under Section 99 after examining the application, the supporting documents and the information furnished by the Financial Creditor. The Resolution Professional has concluded that the statutory requirements prescribed under Section 95 read with Rule 7 of the relevant Rules stand complied with and has recommended admission of the Application.

15.2.7. The principal defence raised by the Respondent in the Company Petition substantially overlaps with the contentions urged in the Interlocutory Application under Section 65, namely, that the Resolution Professional and the Liquidator failed to maximise the assets of the Corporate Debtor, that valuable actionable claims were abandoned, that the One Time Settlement was improperly cancelled and that the Applicant Bank has suppressed recoveries made during liquidation.

15.2.8. We are unable to accept the said contentions as constituting a valid defence to proceedings under Section 95 of the Code. The scope of consideration under Sections 95 to 100 is confined to examining the existence of debt, the occurrence of default and compliance with the statutory requirements prescribed under the Code. The present proceedings are not intended to adjudicate upon the propriety of commercial decisions taken during the Corporate Insolvency Resolution Process or liquidation of the Corporate Debtor.

15.2.9. It is a settled principle that the liability of a guarantor is co-extensive with that of the principal borrower unless otherwise contracted. The Financial Creditor is not obliged to first exhaust the remedies available against the Principal Borrower or realise every available asset before invoking the personal guarantee. Consequently, the alleged failure to recover every actionable claim of the Corporate Debtor cannot defeat the independent contractual liability undertaken by the Personal Guarantor.

15.2.10. The Resolution Professional has also taken into consideration the recoveries already realised during liquidation while assessing the outstanding liability. Therefore, the contention that the Financial Creditor has ignored the recoveries made during liquidation is not borne out from the material available on record. Needless to observe, any further recoveries realised in the liquidation proceedings shall necessarily be given due credit in accordance with law.

15.2.11. We have also considered the various proceedings pending before different judicial fora, including those concerning the One Time Settlement, arbitration proceedings and alleged recoverable claims. The pendency of such proceedings does not obliterate the debt nor create any legal embargo against initiation of proceedings under Part III of the Code against the Personal Guarantor.

15.2.12. Upon an independent consideration of the pleadings, the documents placed on record and the Report submitted by the Resolution Professional under Section 99 of the Code, we are satisfied that:

(i) the Applicant is a Financial Creditor;

(ii) the Respondent executed valid and enforceable personal guarantees in favour of the Applicant;

(iii) a financial debt exists and continues to remain due and payable;

(iv) default has occurred; and

(v) the Resolution Professional has rightly recommended admission of the Application.

15.2.13. The Resolution Professional, after examining the application, replies, documents and objections, has categorically recorded that the debt and default are established and has recommended admission of the application. We find no infirmity in the said report.

15.2.14. It is noted that U/S. 128 of the Indian Contract Act, 1872, when a default is committed, the Principal Borrower and Surety are jointly and severally liable to Creditor and the Creditor has the right to recover its dues from either of them or from both of them simultaneously. Section 128 of the Indian Contract Act, 1872 is reproduced hereunder:

> *"The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract."*

15.2.15. The Respondent is the Personal Guarantor of the Corporate Debtor for the Loan and credits which it availed from the SBI/ Financial Creditor. The Corporate Debtor and Personal Guarantor failed to repay the Loan after the issuance of Demand Notice. The liability of the personal guarantor is co-extensive with the corporate debtor, as expressly provided under section 128 of the Indian contract act 1872, as the personal guarantor's liability is through an independent contract. The Resolution Professional has also recommended for initiation of Insolvency Resolution Process against the Respondent/ Personal Guarantor.

15.2.16. In view of the admitted execution of guarantee, subsistence of debt, established default and compliance with statutory requirements, this Tribunal is satisfied that the petition **CP(IBC)255/(CHE)2021** filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 deserves to be admitted. The Insolvency Resolution Process stands initiated against **Vaddineni Savitri Naidu** viz. the Personal Guarantor/ Respondent in this petition. Further we hereby direct as follow: -

i. Initiate Insolvency Resolution Process against the Respondent/ Personal Guarantor. The moratorium in relation to all the debts is declared, from today i.e., date of admission of the application, and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on the repayment plan under Section 114 whichever is earlier as provided under Sec 101 of 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. We hereby appoint **Kasi Srinivas**, as the Resolution Professional **(email Id: Srinivaskashyap111080@gmail.com)** and Reg. No. **IBBI/IPA-003/IPA-ICAI-N-00237/2019-2020/12840** with valid **AFA** till **31.12.2026**.

iii. The Resolution Professional viz. **Kasi Srinivas** 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 application;

b. particulars of the resolution professional with whom the claims are to be registered; and

c. the last date for submission of claims.

iv. 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 reside. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.

v. The Resolution Professional, in exercise of the powers conferred under Section 104, shall prepare a list of creditors on the basis of:

a. the information disclosed in the application filed by the debtor under Sections 94 or 95 as the case may be, and

b. claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice. 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.

vi. The repayment plan may authorise 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. administer or dispose of any funds of the debtor.

vii. 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.

viii. 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.

ix. 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.

x. 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.

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

xii. The Financial Creditor(s) are directed to deposit Rs.2,00,000/- (Rupees Two lakhs only) to the bank account of the Resolution Professional within one week, towards his fees. This shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.

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

16. Accordingly, the application **IA(IBC)2322/(CHE)2024** stands **dismissed**. Consequently, the Report submitted by the Resolution Professional under Section 99 is **accepted and taken on record** and the company petition **CP(IBC)255/(CHE)2021** stands **admitted**.

-Sd/-	-Sd/-
RAVICHANDRAN RAMASAMY	**JYOTI KUMAR TRIPATHI**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)