

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AY CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.401/2024
(IA No.1090/2024)

IN THE MATTER OF:

DR. BADRI PRASAD

Flat No. 802, 8th Floor, Progressive
Sea Lounge, Plot 44/45, Sector 15
CBD Belapur, Navi Mumbai - 400614

... Appellant

V

TATA CAPITAL FINANCIAL SERVICES LIMITED

Tower A, 11th Floor, 1101,
Peninsula Business Park
Ganpatrao Kadam Marg, Lower Parel,
Mumbai – 400013.

...Respondent No.1 / Financial Creditor

MR. RAJESH RAMANI

Resolution Professional
D-44, Naraina Vihar,
New Delhi – 110028.

...Respondent No.2/Resolution Professional

Present:

For Appellant : Mr. Ujjwal Jain, Advocate

For Respondents : Mr. Chandapillai, Advocate for R1

J U D G M E N T
(Hybrid Mode)

[Per: Justice Sharad Kumar Sharma, Member (Judicial)]

The Appellant claiming himself to be the promoter and director of M/s.

Furnace Fabrica (India) Limited, also enjoys the status of being the Personal

Guarantor, to the financial assistance extended by Respondent No.1 (the Financial Creditor) to the Corporate Debtor, i.e., M/s. Furnace Fabrica India Limited (hereinafter referred as “Corporate Debtor”).

2. The aforesaid Corporate Debtor was incorporated under the provisions of the Companies Act, 2013, as back as on 03.12.1985, and ever since then, it has been engaged in the business of fabrication and manufacturing of structural metal products, tanks, reservoirs, steam generators and henceforth.

3. The Corporate Debtor was in dearth of finances and to meet up its operational needs, it applied to Respondent No.1, the Financial Creditor in 2019, for sanction of term loan and working capital facility totalling Rs. 39.60 crore, which was sanctioned vide the letter of sanction dated 13.05.2019. It is an admitted case of the Appellant, as per the stand taken by him in the counter filed before the Ld. Adjudicating Authority that the name of the Appellant did figure in the aforesaid letter of sanction of loan to the Corporate Debtor. It can be witnessed from the said sanction letter dated 13.05.2019 that, the Appellant had been a signatory to it, as per the description of the signatories to the said letter and that the Appellant had described himself as Guarantor. The relevant portion of the letter of sanction is extracted below: -



documents and if such time same may be cancelled without any prior notice."

This sanction shall stand revoked and cancelled without any notice if there are material changes in the Borrower's financial performance. Any material facts concerning the Borrower's profits or its ability to make payments under this loan agreement or any relevant aspects of its request for loan facility are withheld, suppressed, concealed, or are found to be incorrect or untrue."

The Registered Master Terms and Conditions for the credit facility are available on our website at the link below:
<https://www.tatacapital.com/masteric/commercial.html>

We look forward to a mutually beneficial and long-term relationship. For any clarification or more information, you may like to contact us by e-mail at contact@commercialfinance@tatacapital.com.

This Letter of sanction hereby supersedes All Sanction letter & terms if any, issued / agreed for this facility.

Yours Truly,
For Tata Capital Financial Services Limited


Authorized Signatory

I/we accept all the terms and conditions which have been read and understood by me/us.

Accepted

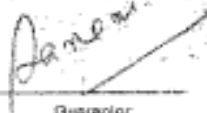
Furnace Fabrica (India) Ltd



Borrower

Accepted

City Hospital Private Limited



Guarantor

Accepted

Mr. BASHEERUDDIN REHMAN
ABDUL



Guarantor

Accepted

Mr. Bashir Bhokran, Prasad



Guarantor

Accepted

Mr. RAIZ BASHEERUDDIN



Guarantor

TRUE COPY

For FURNACE FABRICA (INDIA) LTD.



AUTHORISED SIGNATORY

ADVOCATE

TATA CAPITAL FINANCIAL SERVICES LIMITED

Corporate Identity Number: U67100MH2010PLC210001

11th Floor, Tower A, Peninsula Business Park, Chhatrapati Shivaji Maharaj, Lower Ring Road, Mumbai 400 013

Corporate Identification Number: L27100MH2010PLC210001

Tel: 91 22 6015 9700, 9701, 9702, 9703, 9704, 9705, 9706, 9707, 9708, 9709

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Registered Office: 11th Floor, Tower A, Peninsula Business Park, Chhatrapati Shivaji Maharaj, Lower Ring Road, Mumbai 400 013

Note: The extracted part herein below has been received from the e-mail of the
Ld. Counsel for the Appellant.

“I / We accept all the terms and conditions which have been read and understood by
me/us.

**Accepted
(-sd-)
Furnace Fabrica (India)
Ltd.
Borrower**

**Accepted
(-sd-)
Mr.
BASHEERUDDIN
REHMAN ABDUL
Guarantor**

**Accepted
(-sd-)
Mr. RAIZ
BASHEERUDDIN
Guarantor**

**Accepted
City Hospital Private
Limited
(-sd-)
Guarantor**

**Accepted
Mr. Badri
Bholenath Prasad
(-sd-)
Guarantor**

**For FURNACE FABRICA (INDIA) LIMITED
Authorised Signatory”**

4. In accordance with the said letter and the description given in the said document, the Appellant admittedly was a signatory and had accepted his description and was shown to be a guarantor who has accepted the liability associated with the sanction of loan to the Corporate Debtor by admitting himself to be the guarantor. This letter has not been denied by the Appellant. Further, the said letter has described the guarantors to the loan, in which the Appellant has been shown to be the personal guarantor. The relevant extract is given hereunder: -

<i>Guarantee</i>	<i>Corporate Guarantee: Irrevocable & Unconditional Corporate Guarantee of M/s. City Hospital Private Limited.</i> <i>Personal Guarantee: Irrevocable & Unconditional Personal Guarantee of Mr. Raiz Basheeruddin, Mr. A. Basheeruddin & Mr. Badri Prasad</i>
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5. The Appellant has contended before this Appellate Tribunal and had raised same plea before Ld. NCLT that he had executed a Memorandum of Understanding (MoU) with one Mr. Abdul Basheeruddin and under the terms and conditions of the said MoU dated 01.03.2014, there was a complete ouster of the Appellant from all the executive roles, which the Appellant previously played in the management of affairs and the control of the Corporate Debtor and that as a consequence of the said MoU dated 01.03.2014, the Corporate Debtor, by virtue of a resolution passed by its Board, had in fact withdrawn the authority of the Appellant to operate the Corporate Debtor's bank accounts, that owing to the aforesaid circumstances, the Appellant thereafter didn't continue to have any nexus with regards to the management and affairs of the Corporate Debtor, including the operation of the bank accounts, and that therefore, he cannot be held liable for the sanction of the loan to the Corporate Debtor and the subsequent default by the Corporate Debtor in repayment of the said loan.

6. However, the fact remains that, by virtue of his name and signature appearing in the loan sanction letter, whatsoever financial assistance has been sanctioned and disbursed thereafter, in favour of the Corporate Debtor, it has been done on an assurance by the Appellant as a Personal Guarantor as portrayed in the sanction letter of 13.05.2019 and that, the same has been admitted as per the contents of the counter filed by the Appellant before the Ld. NCLT and even as per the pleading raised before the Ld. NCLT. That being the

case, the Appellant cannot resile away and take a contrary stand that, he was not a valid executant of the personal guarantee deed, on the basis of which the proceedings under Section 95 of the I & B Code, 2016 have been initiated in the instant case.

7. The admitted facts of the case are that the Corporate Debtor, under the strength of the sanction letter dated 13.05.2019, was extended with a term loan and a working capital facility in the year 2019, amounting to a total sum of Rs.39,60,00,000/- vide the sanction letter dated 13.05.2019, which stood secured by the personal guarantors, which were described as Mr. Riaz Basheeruddin, Mr. Abdul Basheeruddin and **Mr. Badri Bholenath Prasad** (i.e., the Appellant herein). A loan agreement document was also executed on 13.05.2019, followed by a corresponding execution of a deed of guarantee by the personal guarantors including the Appellant, a deed of hypothecation, a pledge agreement and henceforth. In accordance with the loan agreement document as it stood executed on 13.05.2019, it had settled the terms of the loan as extended by Respondent No.1 to the Corporate Debtor and clause 8(a) of the said agreement provided the binding effect to the conditions of guarantee obligating the personal guarantors to stand surety and to assume the liability, in an event of default of the loan by the Corporate Debtor. Clause 8 of the loan agreement document is extracted hereunder: -

“8. Guarantee

*a) In consideration of the Lender, **at the request of the Guarantor**, granting the Facility to the Borrower on the terms and conditions appearing in the T&Cs and this Agreement, the Guarantor, hereby guarantees the due payment and discharge of all the Obligors' liabilities to the Lender and performance of the obligations of the Obligors under this Facility Documents, whether such liability is incurred before or after the date hereof, and whether incurred by the Obligors alone or jointly with other(s), and in whatever capacity whether as Obligor or surety or otherwise and whether such liabilities have matured or not and whether they are absolute or contingent, including all liabilities in respect of advances, letters of credit, cheques, hundis, bills, notes, drafts and other negotiable or non-negotiable instruments drawn, accepted, endorsed or guaranteed by the Obligors, and in respect of interest with monthly/quarterly rests, commission and other usual or reasonable banking charges and in respect of all costs, charges and expenses which the Lender may incur in paying any rents, rates, taxes, duties, calls, instalments, legal or other professional charges, or other outgoings whether for insurance, repairs maintenance, management, realization or otherwise in respect of the Secured Assets or any other property, movable or immovable, or any chattels or actionable claims of scrip securities or title deeds pledged, mortgaged or assigned to or deposited with the Lender as security for the due payment and discharge of the Obligors' liability to the Lender.*

b) The Guarantor hereby undertakes and covenants to abide and comply with the Guarantor's undertaking as more particularly given in the T&Cs."

The extraction of clause 8(a) and (b) is necessary because the Appellant had never endeavoured, at any stage of the proceedings, to address upon the terms and conditions of the guarantors under the loan agreement document, as it has been referred to under clause 8(b) of the loan agreement dealing with the guarantees.

8. More importantly, the impugned order makes reference to yet another significant document for the purposes of consideration of the liabilities of the personal guarantors, which is the letter of guarantee executed yet again on 13.05.2019. If it is taken into consideration, as appended by the Appellant along with the memorandum of appeal, an undertaking has been recorded therein under clause 16 (i) to (xii) and clause 17 detailing the liability of the guarantors and the Appellant admittedly is the signatory to the same, which is a fact not denied and which stands confirmed on account of the signature of the Appellant appearing therein, describing him as to be Guarantor No.1. The relevant extract of endorsement of the letter of guarantee is given hereunder: -

In witness whereof the parties hereto HAVE EXECUTED AND HEREUNTO SIGNED THESE PRESENTS ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE WRITTEN	
Signed and delivered by the within named GURANTOR - 1 through the hands of its Authorised Signatory/s Mr Badri Bholenath Prasad	GURANTOR - 1 SIGNATURE 

9. When the Corporate Debtor committed a default in remittance of the loan liability in terms of the loan agreement, the account of the Corporate Debtor was declared as to be a Non-Performing Asset (NPA) on 16.12.2022 and the demand notice was issued to the Corporate Debtor on 19.12.2022, followed by a loan recall notice dated 10.01.2023, which was also simultaneously issued to the personal guarantors, as well as corporate guarantors, calling upon them for the remittance of the loan liability in totality, as expressed in the demand notice, as issued on 19.12.2022.

10. The reference of notice in the impugned order would have to be read in context of the notices as contemplated under Section 95 (4) (b) of the I & B Code, 2016, which mandates that in cases of the initiation of the Personal Insolvency Resolution Process (PIRP) against the personal guarantors, there has to be an issuance of prior notice as contemplated under Section 95 (4) (b) of the I & B Code, 2016, which was issued on 16.02.2023, demanding the personal guarantor to pay a total loan liability as outstanding on the said date, i.e., for an amount of Rs.18,95,48,246.53/- along with the cost and interest to be paid upon the same. Subsequently, the proceedings under Section 95 of the I & B Code, 2016, was thus initiated and the company petition, being CP(IBC)/32/KOB/2023, was filed by the Financial Creditor before the Ld. Tribunal.

11. The matter was taken up on merits by the Ld. Tribunal and the application preferred under Section 95 of the I & B Code, 2016, was directed to be admitted by the impugned order of 14.08.2024. Hence, the company appeal.

12. A stand has been taken by the Ld. Counsel for the Appellant, contending thereof that the entire proceedings would be vitiated because Ld. NCLT admitted the Section 95 application even before the receipt of the report of the Resolution Professional (RP), as contemplated under Section 99 of the I & B Code, 2016. Further, it is contended by the Appellant that he has initiated various proceedings by virtue of filing of a Commercial Suit, filing of a complaint before the Registrar of Companies (RoC) and drawing of the proceedings of CP No.18/2023 under Section 241 and 242 of the Companies Act, 2013 to establish that he was no longer in the management of the corporate Debtor when the loan was sanctioned and therefore, the loan liability emanating from the guarantee document cannot be fastened upon him, which Ld. NCLT failed to appreciate and failed to take into account while passing the impugned order. However, in the entire pleading raised by the Appellant before the Ld. Tribunal, the fact of extension of loan, the fact of the loan amount having been defaulted and the fact of execution of the letter of guarantee and the loan agreement is an admitted fact and therefore, the Appellant cannot now shy away from the liabilities arising out of those documents. Further, as regards the contention that the proceeding would stand vitiated in the absence of there being a prior report by the RP as per Section 99 of the I & B Code, 2016, it is

important to point out at this juncture itself, that this is not the limb of argument either pleaded, raised or argued by the Appellant before the Ld. Tribunal and that it is being raised for the first time before this Appellate Tribunal. How far could it be appreciated at this stage would be yet another question to be considered, for the reason being that the question as raised qua the effect of the RP's report under Section 99 of the I & B Code, 2016, is a mixed question of fact and law and therefore, it ought to have been agitated by the Appellant at the first available opportunity at the stage when the proceedings were being carried before the Ld. NCLT and it ought not or could not have been permitted to be raised for the first time before this Appellate Tribunal. Hence, his contention at this stage cannot be accepted.

13. Besides that, as regards the question of whether non-submission of the report of RP under Section 99 of the I & B Code, 2016, would at all vitiate the proceedings under Section 95 of the I & B Code, 2016 as it has been attempted to be argued by Ld. Counsel for the Appellant, the answer would be that it wouldn't, under the given set of circumstances, for the reason being that, the aspect of debt and default has not been denied by the Appellant at any stage and that, the Appellant admits to have executed the loan sanction letter and signed the same, and also admits to be a signatory to the letter of guarantee and he cannot take retract the aforesaid admission and claim that he is not a personal guarantor on the plea of there being no deed of guarantee on record to establish his liability as a personal guarantee.

14. The provision contained under Section 99 of the I & B Code, is being relied upon by the Ld. Counsel for the Appellant to vehemently argue that it is mandatory on part of Ld. NCLT to obtain the report of the RP under Section 99 of the I & B Code, 2016, and take the same into consideration before passing an order under Section 100 of the Code to admit a Section 95 application. Section 99 of the I & B Code, 2016, is extracted hereunder: -

“99. Submission of report by resolution professional. –

*(1) The resolution professional shall examine the application referred to in section 94 or section 95, as the case may be, within ten days of his appointment, and submit a report to the Adjudicating Authority **recommending for approval** or rejection of the application.*

*(2) Where the application has been filed under section 95, the resolution professional may require the **debtor to prove repayment** of the debt claimed as unpaid by the creditor by furnishing—*

(a) evidence of electronic transfer of the unpaid amount from the bank account of the debtor;

(b) evidence of encashment of a cheque issued by the debtor; or

(c) a signed acknowledgment by the creditor accepting receipt of dues.

(3) Where the debt for which an application has been filed by a creditor is registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt.

(4) For the purposes of examining an application, the resolution professional may seek such further information or explanation in

connection with the application as may be required from the debtor or the creditor or any other person who, in the opinion of the resolution professional, may provide such information.

(5) The person from whom information or explanation is sought under sub-section (4) shall furnish such information or explanation within seven days of receipt of the request.

(6) The resolution professional shall examine the application and ascertain that—

(a) the application satisfies the requirements set out in section 94 or 95;

(b) the applicant has provided information and given explanation sought by the resolution professional under sub-section (4).

(7) After examination of the application under sub-section (6), he may recommend acceptance or rejection of the application in his report.

(8) Where the resolution professional finds that the debtor is eligible for a fresh start under Chapter II, the resolution professional shall submit a report recommending that the application by the debtor under section 94 be treated as an application under section 81 by the Adjudicating Authority.

(9) The resolution professional shall record the reasons for recommending the acceptance or rejection of the application in the report under sub-section (7).

(10) The resolution professional shall give a copy of the report under sub-section (7) to the debtor or the creditor, as the case may be.”

15. The Ld. Counsel for the Appellant, in support of his contention, has referred to a judgment rendered by this Appellate Tribunal in **CA (AT) (Ins) No.697/2024** in the matter of **Central Bank of India, Stressed Asset Management Branch-II Vs. Deepen Arun Parekh**, and particularly has referred to para. 36, which is extracted hereunder: -

“36. In view of the foregoing discussions, we are of the considered opinion that Adjudicating Authority committed error in considering the objections raised by the Respondent on the merits of the application under Section 95 filed by the Central Bank of India at the stage when RP was not even appointed. The Adjudicating Authority proceeded to enter into adjudicatory issues, which can be taken by the Adjudicating Authority only at the time of hearing of section 95 application under Section 100, as is now the law declared by the Hon’ble Supreme Court in Dilip B. Jiwrajka’s case, as noted above.”

16. The Ld. Counsel for the Appellant, while drawing our attention to para. 36 of the abovesaid judgment, has contended that the action of Ld. NCLT in admitting Section 95 application by passing the order under Section 100 of the Code is erroneous, in the absence of calling for a report from the RP prior to passing the impugned order, in light of the principle enunciated in para-36 of the judgement of NCLAT in the matter of **Central Bank of India SAMB II v. Deepen Arun Parekh (supra)**. However, we feel that this principle is not a principle, which could be exactly made to be applied under the circumstances of the instant case, where default is not disputed, the status of the guarantor is not

disputed, signing of a document is not disputed and particularly, when compositely all these acts and actions and the documents itself explicitly establish the default and the liability of the personal guarantors including that of the Appellant towards the loan. These facts in themselves meet the object of Section 99 of the I & B Code, 2016, which intends to establish the liability of the personal guarantor through the report of the RP before Ld. NCLT proceeds to decide on admission of Section 95 application by passing the necessary orders under section 100 of the Code and therefore, absence of the report of RP to be submitted under Section 99 of the Code will not vitiate the proceedings under consideration.

17. The aforesaid distinction as regards to the non-applicability of the ratio as propounded in the judgment of **Central Bank of India (supra)** has been made, for the reason being that, the necessity of the report under Section 99 of the I & B Code, 2016, is only for the purposes of facilitating the Adjudicating Authority to come to a conclusion about the existence of debt and default, and about the liability of the personal guarantor. We are of the view that, the said principle may not be directly made applicable in the instant case, particularly, when the facts that have come on record, as well as the evidence itself were sufficient enough to establish the existence of debt and default, which in itself was sufficient to attract Section 95 of the I & B Code, 2016 and the consequent order of admission of Section 95 application under Section 100 of the Code.

18. It would be not out of context and at the cost of repetition too that the fact of default after the account having been declared as NPA, the fact of extension of

loan and the fact of execution of the guarantee letter are the facts admitted. One of the questions that would emerge for consideration is that, in those eventualities, where the execution of the document is a fact admitted, where the aspect of default is not pleaded in the counter, which otherwise would have been engaging consideration of a question of fact and law, it couldn't have been agitated for the first time at this stage before this Appellate Tribunal and that too when it is not pleaded and is not a plea advanced or established.

19. Reverting back to the implications of Section 99 of the I & B Code, 2016, it has to be read along with the intention of the provisions contained under Section 97 of the I & B Code, 2016. Section 99 of the I & B Code, 2016, which clarifies that the report of RP is necessary only in order to facilitate the Tribunal to arrive at a conclusion, as to whether there actually happens to be a default and liability of guarantor, which could justify and satisfy commencement of proceedings under Section 95 of the I & B Code, 2016. Upto the stage of submission of the report under Section 99 of the I & B Code, 2016, in fact the personal guarantor has got no role to play because the provisions of the Code till that point are only meant to facilitate the Tribunal to come to a conclusion. That is why Section 99 of the I & B Code, 2016, uses the word “**recommending**”. Thus, it has to be inferred that the report of RP is recommendary in nature and that, it is only for the aiding the Tribunal in taking a decision either to admit or to reject the Section 95 application. Up to the stage of proceedings under Section 100 of the I & B Code, 2016, the personal guarantor will have no role to play and

cannot derive any benefit out of the contents of the report to object to the proceedings under Section 95 of the I & B Code, 2016. As observed earlier, the provisions of Section 99 of the I & B Code, 2016, are procedural and are only for the purposes of recommending for approval or rejection of the application, where the recommendation would have to be based upon the facts and evidence presented to the RP or collected by him under the powers conferred upon him to call for records and evidence.

20. The aforesaid basic elements of debt and default stood satisfied, when the account was initially declared as to be an NPA on 16.12.2022, the fact of which was not denied by the Appellant. Declaration of the account as an NPA itself is sufficient proof of existence of debt and default, justifying the act of initiation of proceedings under Section 95 of the I & B Code, 2016. Secondly, when the Appellant himself according to the documents already referred to herein, admits his status to be that of a guarantor and when the very factum of existence of debt and status of Appellant being a guarantor, stands established due to the factors that were taken into consideration, including the records when the account was declared as to be an NPA, the Appellant cannot now be permitted to contend that he is not liable to discharge the guarantee in the absence of the report of RP. The admission of the Appellant regarding his status of a guarantor in itself as evident from the loan sanction letter and from the letter of guarantee is sufficient to initiate proceedings under Section 95 of the I & B Code, 2016. In these eventualities, the very purpose of report under Section 99 of the I & B Code,

2016, which is only recommendatory in nature stood satisfied owing to the other governing and supporting documents and facts on record, establishing the liability of the surety extended by the Appellant as guarantor to pay the amount defaulted by the Corporate Debtor.

21. Further, it is to be noted that this was not a case, which was ever attempted to be canvassed by the Appellant in his pleadings raised in the counter before the Ld. NCLT or even in the grounds taken before this Appellate Tribunal. Then the question would be as to whether the Appellant can take the liberty to *de novo* argue the matter from altogether a new complexion, which was otherwise available to the Appellant but not availed at the stage when he was filing a counter to the principal proceedings under Section 95 of the I & B Code, 2016 and whether he could now be permitted to abuse the process and await the decision of the Ld. NCLT, while reserving the question of default and the effect of Section 99 of the I & B Code, 2016, to be agitated at the stage of Appeal. If this will be permitted it would be creating an absolute judicial chaos where the parties to the proceedings would take the advantage of their own inaction of not availing the opportunity of airing their contentions at the first available opportunity when the proceedings were being taken before the Ld. NCLT, where the question could have been thrashed out based on evidence. In those eventualities, in the absence of such plea having been argued, read or established by evidence before the Ld. NCLT, it cannot be permitted to be pressed in for the first time at an appellate stage, particularly, when it engages consideration of a

new question of fact and law, which may not be necessary under the circumstances of the instant case, owing to the facts already considered above.

22. A very peculiar argument that has been extended by the Appellant now at this belated stage is that all the documents, which were describing the status of the Appellant as to be a personal guarantor were executed under “**duress**”. If at all these are the documents, which were executed under duress, which date back to the year 2019, it is all the more incumbent upon the Appellant to have, at an appropriate stage and within an appropriate time, questioned the propriety of these documents which he had admittedly signed, exhibiting his status as a personal guarantor. Admitting of the signatures is admission of the document itself and liabilities flowing from it. Now contending that signing of those documents was under duress appears to be an articulated realization, which cannot be accepted now, as the said contention should have been made by the Appellant within a reasonable time frame from the dates of execution of the said documents and he should not have waited till the account was declared as to be an NPA, resulting into initiation of various proceedings including the proceedings under Section 95 of the I & B Code, 2016. Having not done so and having not questioned the document, the Appellant cannot be permitted now to contend that he signed the said documents under duress.

23. The proceedings under Section 95 of the I & B Code, 2016, stood instituted as back as on 18.04.2023, in which the Appellant was noticed. The Appellant contends that, on account of the fact that there were other proceedings

which were already filed by the Appellant and were pending consideration and the outcome of which would have an impact on his status as a personal guarantor, the proceedings under Section 95 of the I & B Code, 2016, ought not to have been proceeded with until and unless the said proceedings were decided and the status of the Appellant was conclusively determined accordingly. This contention may not be a valid contention for the reason being that those proceedings have been initiated by the Appellant after filing of the application under Section 95 of the I & B Code, 2016, much after the cause of action arose for him to institute the said proceedings. The details of the said proceedings are listed below:

- (i) The Commercial Suit filed before the Hon'ble High Court of Bombay was instituted by the Appellant on 10.11.2023, i.e., much after filing of the petition under Section 95 of the I & B Code, 2016, on 18.04.2023.
- (ii) Complaint was filed with RoC on 18.07.2023 regarding non-implementation of MoU which was executed as back as on 01.04.2014. It may be noted that ever since 01.04.2014 till the date of filing of the proceedings under Section 95 of the I & B Code, 2016, the Appellant never raised any objection of the nature except for the objection, which was filed in the shape of a complaint before the RoC on 18.07.2023, once again after filing of the proceedings under Section 95 of the I & B Code, 2016.
- (iii) Company Petition No.18/2023 was filed under Section 241 and 242 of the Companies Act, 2013, alleging acts of oppression and

mismanagement arising out of non-implementation of MoU, but it was yet again filed on 15.07.2023, after the filing of the application under Section 95 of the I & B Code, 2016 and much after the issuance of a notice under Section 95 (4) (b) of the I & B Code, 2016.

From the above, it is clear that these proceedings have been instituted by the Appellant as an afterthought.

24. Owing to the aforesaid reasons, we can ultimately conclude that issuance of the letter of guarantee which was admittedly signed by the Appellant and which secured the loan facility extended to the Corporate Debtor, will be enforceable even in the absence of a deed of guarantee, as long as the parties intend to create a binding obligation, and therefore, it will not adversely prejudice the proceedings under Section 95 of the I & B Code, 2016. Further, by way of repetition, it has to be noted that the sanction letter forms to be a vital part of the documentation of the loan transactions outlining the terms and conditions of the credit facilities, in which the Appellant admits his status as to be that of a personal guarantor. Signing of the loan sanction letter and the letter of guarantee demonstrates an explicit consent of guarantee to the loan by the Appellant, the personal guarantor, obligating him to the terms and conditions of the loan and the terms and conditions of the guarantors, which has been expressed in the letter of guarantee.

25. For the aforesaid reasons, since the default is established and the status of the Appellant being the guarantor is too established, invocation of Section 95 of the I & B Code, 2016, doesn't suffer from any apparent error, which could call for any interference by this Appellate Tribunal. Hence, the company appeal lacks merit and the same is accordingly 'dismissed'. All interlocutory applications, if any, would stand 'closed'.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

25 / 06 / 2026

AR/MS/AK