

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD



Item No.301- IA/553(AHM) 2025
In
C.P(IB)/180(AHM) 2024

Order Under Section 122(1) IBC r/w Rule 11 NCLT

IN THE MATTER OF:

Prawincharan P Dwary RP of Sunil Mishra PG of Archon Engicon LimitedApplicant

V/s

Sunil Mishra PG of Archon Engicon Limited & OrsRespondents

Item No.302- IA/458(AHM) 2025
In
C.P(IB)/176(AHM) 2024

Order Under Section 122(1) IBC r/w Rule 11 NCLT

IN THE MATTER OF:

Prawincharan P Dwary RP of Anjana Sunil Mishra PG of Archon Engicon LimitedApplicant

V/s

Anjana Sunil Mishra PG of Archon Engicon Limited & OrsRespondents

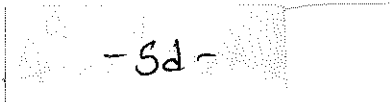
Order delivered on:05/03/2026

C O R A M:

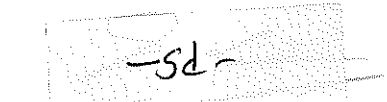
MR. SHAMMI KHAN, HON'BLE MEMBER (J)
MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of order. The common order is pronounced in the open court, vide separate sheet.



SANJEEV SHARMA
MEMBER (TECHNICAL)



SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I, AHMEDABAD**



**I.A. No.553/NCLT/AHM/2025
In
CP (IB) No.180/NCLT/AHM/2024
AND
I.A. No.458/NCLT/AHM/2025
In
CP (IB) No.176/NCLT/AHM/2024**

I.A. No.553/NCLT/AHM/2025

[An application filed under Section 112(1) of the Insolvency and Bankruptcy Code, 2016 R/w. Rule 11 of NCLT Rules, 2016]

IN THE MATTER OF: Sunil Mishra

Mr. Prawincharan P Dwary,
Resolution Professional of
Sunil Mishra
Personal Guarantor of
Archon Engicon Limited (in Liquidation)
Correspondence at :-
407, Akchhat Tower, Pakwan Cross Road
S.G. Highway, Bodakdev
Ahmedabad, Gujarat-380015

... Applicant/RP

VERSUS

- 1. Sunil Mishra**
Personal Guarantor of
Archon Engicon Limited
Having Residing at:
1074, Sector 2D,
Shree Hari Park Society
Nr. Swaminarayan Temple,
Gandhinagar-382002

...Respondent No.1

- 2. State Bank of India**
Member of Creditor of



Archon Engicon Limited
Having Branch Address at
SBI Building, Ganesh Vasudev Mavalankar Rd,
Old City, Lal Darwaja
Ahmedabad, Gujarat 380001

...Respondent No.2

3. IDBI Bank Limited

Member of Creditor of
Archon Engicon Limited
Having Branch Address at
NPA Management Group,
IDBI Complex, Near Lal Bunglow,
Off C.G. Road, Ahmedabad.

...Respondent No.3

4. Bank of Baroda

Member of Creditor of
Archon Engicon Limited
Stressed Assets Management Branch,
1st Floor, Kamdhenu Complex,
Panjrapole Cross Road, Ambawadi,
Ahmedabad – 380015.

...Respondent No.4

5. Bank of India

Member of Creditor of
Archon Engicon Limited
Ahmedabad Large Corporate Branch,
2nd Floor, Bank of India Building,
Bhadra, Ahmedabad-380001.

...Respondent No.5

6. Union Bank of India

Member of Creditor of
Archon Engicon Limited
SAMP 1st Floor Rangoli Complex,
Opp. V S Hospital,
Ahmedabad – 380006.

...Respondent No.-6

I.A. No.458/NCLT/AHM/2025

*[An application filed under Section 112 (1) of the Insolvency and
Bankruptcy Code, 2016 R/w. Rule 11 of NCLT Rules, 2016]*

IN THE MATTER OF: Anjana Sunil Mishra



Mr. Prawincharan P Dwary,
Resolution Professional of
Anjana Sunil Mishra
Personal Guarantor of
Archon Engicon Limited (in Liquidation)
Correspondence at :-
407, Akchhat Tower, Pakwan Cross Road
S.G. Highway, Bodakdev
Ahmedabad, Gujarat-380015

... Applicant/RP

VERSUS

1. Anjana Sunil Mishra
Personal Guarantor of
Archon Engicon Limited
Having Residing at:
1074, Sector 2D,
Shree Hari Park Society,
Nr. Swaminarayan Temple,
Gandhinagar-382002.

...Respondent No.1

2. State Bank of India
Member of Creditor of
Archon Engicon Limited
Having Branch Address at
SBI Building, Ganesh Vasudev Mavalankar Rd,
Old City, Lal Darwaja
Ahmedabad, Gujarat 380001

...Respondent No.2

3. IDBI Bank Limited
Member of Creditor of
Archon Engicon Limited
Having Branch Address at
NPA Management Group,
IDBI Complex, Near Lal Bunglow,
Off C.G. Road, Ahmedabad.

...Respondent No.3

4. Bank of Baroda
Member of Creditor of
Archon Engicon Limited



Stressed Assets Management Branch,
1st Floor, Kamdhenu Complex,
Panjrapole Cross Road, Ambawadi,
Ahmedabad – 380015.

...Respondent No.4

5. Bank of India

Member of Creditor of
Archon Engicon Limited
Ahmedabad Large Corporate Branch,
2st Floor, Bank of India Building,
Bhadra, Ahmedabad-380001.

...Respondent No.5

6. Union Bank of India

Member of Creditor of
Archon Engicon Limited
SAMP 1st Floor Rangoli Complex,
Opp. V S Hospital,
Ahmedabad – 380006.

...Respondent No.-6

Order pronounced on 05.03.2026

C O R A M :

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

A P P E A R A N C E:

For the Applicant/RP : Mr. Sumit Parikh, Advocate
: Mr. Pravincharan P. Dwary,
(RP in Person)
For the Respondent/PG : Mr. Dheeraj Garg, Advocate
For the FC/SBI : Mr. Aishwarya Reddy, Advocate

C O M M O N O R D E R
(Per: BENCH)

IA/553/(AHM)2025 & IA/458/(AHM)2025

1. The present applications being **IA/553/(AHM)2025 &**
IA/458/(AHM)2025 are filed on 20.03.2025 by the



Applicant/Resolution Professional (hereinafter referred to as “RP”) of **Mr. Sunil Mishra and Mrs. Anjana Sunil Mishra**, Personal Guarantors of **M/s. Archon Engicon Limited** under Sections 112(1) of the Code r.w. Rule 11 of the NCLT Rules, 2016 seeking the following prayers: -

- A. *Your Lordship may be pleased to allow the present application;*
- B. *Your Lordship may be pleased to pass an order to discharge the applicant/ Resolution Professional of Sunil Mishra and Mrs. Anjana Sunil Mishra as per Section 114 r.w. Section 112 of the IB Code;*
- C. *Your Lordship may be please to condone the delay of 76 days [i.e. 03.01.2025 to 20.03.2025] for filing of the present application;*
- D. *Your Lordship may be pleased to direct the Members of the Creditors to Contribute the IIRP Cost as per the provision of the Code including those approved by the creditors;*
- E. *Your Lordship may be pleased to grant any other relief or reliefs as may deem fit in the interest of justice;*

2. The Applicant/RP has placed the facts through this **I.A.s** in the following manner: -


2.1. It is stated that State Bank of India filed application under section 95 of Insolvency and Bankruptcy Code 2016 for initiation of Personal Insolvency Resolution Process against Sunil Mishra & Mrs. Anjana Sunil Mishra as personal guarantor of Archon Engicon Limited.



2.2. This Bench admitted the petition on 04.09.2024 and appointed Mr Prawincharan P Dwary as Resolution Professional. Copy of admission order dated 04.09.2024 is annexed as Annexure A. Tribunal directed publication of public notice within 7 days inviting claims from creditors within 21 days. Notice to include details of admission order particulars of Resolution Professional and last date for claims.

2.3. It is stated that in compliance Resolution Professional published public notice on 07.09.2024 in Financial Express in English and Gujarati languages with last date for claims as 28.09.2024. Copy of public notice dated 07.09.2024 is annexed as Annexure B. Pursuant to notice Resolution Professional received claims from creditors of personal guarantor and constituted list of Committee of Creditors under section 104(2) of Code read with regulation 9(1) of Insolvency and Bankruptcy Board of India Insolvency Resolution Process for Personal Guarantors to Corporate Debtors Regulations 2019. Report certifying list of creditors dated 28.09.2024 is annexed as Annexure C.

2.4. It is stated that Resolution Professional convened first meeting of creditors on 11.11.2024 where personal guarantor remained absent. Resolution Professional apprised creditors that emails were sent to personal guarantor for submission of repayment plan on several occasions. Creditors resolved to reduce notice period from




14 days to 48 hours for calling meetings under section 107 of Code read with regulation 11(3) of Regulations 2019 and ratified Personal Insolvency Resolution Process costs. Copy of minutes of first meeting dated 11.11.2024 is annexed as Annexure D.

- 2.5. It is stated that the Applicant has served an E-mail to the Personal Guarantor on 11.09.2024, 05.10.2024, 14.10.2024, 28.10.2024, 29.10.2024, 11.11.2024, 20.11.2024, 04.12.2024, 11.12.2024, 18.12.2024, 28.12.2024 request for submission of Repayment Plan. The copy of said E-mail dates served by the RP to the Personal Guarantor is annexed as Annexure-E Colly.
- 2.6. It is stated that Resolution Professional convened second meeting of creditors on 09.01.2025 where personal guarantor remained absent, wherein members of Creditors had resolved to file an appropriate application for the discharge the Applicant / RP from Insolvency Resolution Process against the Personal Guarantor and also resolved to Ratification of the IRP Cost. A copy of the Minutes of the Second Meeting dated 09.01.2025 is annexed as Annexure-F.
- 2.7. Since the Personal Guarantor has failed to submit Repayment Plan, in the minutes of the Second Meeting of the Creditors, the applicant prays this Adjudicating Authority to pass an appropriate direction/ Order under Section 112 of the IB Code.



3. That on issuance of the notice vide order dated 14.05.2025 in the I.A.s to the Personal Guarantors as well as to the Financial Creditors and after due service of notice, the Financial Creditors (SBI) as well as the Personal Guarantors appeared.
4. Thereafter, the Personal Guarantors have filed their replies on 23.09.2025, vide Inward Diary No. D-6418 for IA No. 553 of 2025 and on 08.09.2025, vide Inward Diary No. D-6027 for IA No. 458 of 2025 respectively. The relevant portion of the same are reproduced as under:
 - 4.1. It is stated that the present Insolvency Proceedings are predicated upon an alleged Deed of Guarantee dated 12.06.2014 which is void ab initio, unenforceable, and obtained by fraud, coercion and undue influence.
 - 4.2. Against the insolvency admission order dated 04.09.2024 passed in CP (IB)176 of 2024, the PG approached the Hon'ble NCLAT. The Hon'ble NCLAT while disposing the appeal observed that the issue of limited guarantee is to be looked into at the time of finalization of payment plan.
 - 4.3. In order to arrive at the stage of Repayment plan, the RP is required to share a list of claimants with the PG in terms of Regulation 9(2)(c) the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal



Guarantors to Corporate Debtors) Regulations, 2019. However, the RP has failed to share any such list of claims backed by the supporting evidence to provide the PG with an opportunity to agitate the same.

4.4. However, since, the RP has filed a list of claimants along with the present application, the PG is stating its objections qua existence of any financial obligations on account of frustration/termination of his liability under the limited guarantee deed.

Doctrine of Frustration and Failure of Consideration

4.5. The alleged Deed of Guarantee dated 12.06.2014 on the basis of which the present application has been filed, stands frustrated under **Section 56 of the Indian Contract Act, 1872** owing to the unavailability and defect in the collateral property which formed the substratum of the deed of guarantee.

4.6. That the PG was forced and coerced to execute an undated guarantee deed to secure repayment of the loan facilities borrowed by the CD **to the extent of the collateral property** to be mortgaged by him being property situated at Sector 2/d, Plot no. 1074 (Shri Hari Park Society) Nr. Swaminarayan Mandir, Gandhinagar (Gujarat) 382007.

4.7. However, soon thereafter it was discovered that the title of the collateral property of the PG was not clear, following which the lead bank i.e. State Bank of India issued a



revised sanction through a letter dated 31.05.2014 where the collateral of PG which were earlier proposed as collateral were dropped making the purpose of the Guarantee Deed obsolete thereby making the Guarantee Deed frustrated.

- 4.8. The proposed guarantee deed was premised entirely on the strength of the collateral as evident by Clause 24 of the guarantee deed. Once the collateral became unavailable and was rejected by the creditor itself, the very foundation of the contract failed. It is a settled principle that a contract stands discharged when the underlying basis of the agreement disappears.
- 4.9. State Bank of India, in its sanction letter dated 31.05.2014, unequivocally admitted that the residential property jointly owned by PG and her husband was defective in title and incapable of being accepted as valid security. A copy of the section letter dated 31.05.2024 is attached as Annexure R3.
- 4.10. The Creditors replaced the collateral of the PG with a cash collateral of ~INR 2.68 crores from the CD.
- 4.11. In the present case, the failure of collateral security acknowledged by the Creditors themselves-discharged the deed of guarantee in toto. The doctrine of frustration squarely applies, rendering the guarantee unenforceable. The whole purpose of execution of deed of guarantee was to make the PG to tender her personal assets as collateral



which automatically fails down owing to non-availability of clear title over the proposed collateral properties. This is evident by the fact that the promoters of the CD tendered their personal guarantee without any limitation while the deed of guarantee signed by the PG was for and to the extent of her personal properties only. Copy of deed of guarantee executed by the PG is attached as Annexure R1. Copy of deed of guarantee executed by the promoters of the CD is attached as Annexure R2.

4.12. The Hon'ble Supreme Court in the matter of, Delhi Development Authority vs. Kenneth Builders & Developers Ltd. & Ors. (Civil Appeal No.5370 of 2016) [(2016) 3 S.C.R. 1126] has observed as follows:

*"The interpretation of Section 56 of the Contract Act came up for consideration in Satyabrata Ghose v. Mugneeram Bangur & Co. **It was held by this Court that the word "impossible" used in Section 56 of the Contract Act has not been used in the sense of physical or literal impossibility. It ought to be interpreted as impracticable and useless from the point of view of the object and purpose that the parties had in view when they entered into the contract. This impracticability or uselessness could arise due to some intervening or supervening circumstance which the parties had not contemplated**"*




4.13. That the purported deed of guarantee, which was actually signed before 31.05.2014, contained blank spaces that were later filled in without the PG's consent, and no intimation of the same was ever made to the PG by the Creditor. Further, the Creditors in a haste manner showed the execution of the guarantee on 12.06.2014 despite of having clear knowledge of the defect of the title in the personal collateral property mentioned in the said deed of guarantee whereas the franking(stamping) was done on 02.06.2014 and since the intended mortgage property of the PG showed as collateral was not competent to be given as collateral and therefore on the date of execution showed in the alleged deed of guarantee, deed of guarantee has become void and same was relied upon by the concealment on the part of Creditor. This is a testament of the fraudulent intentions of the Creditor to proceed against the PG in an illegal manner and abuse the process of the banking system founding their claim on an illegal deed which is void ab initio. Even otherwise, assuming 12.06.2014 to be the date of execution, since, on the said date, the Creditors being aware that the properties of the PG cannot be offered as collateral due to defect in title (as evident by Sanction Letter dt. 31.05.2014) the Creditors proceeded with the guarantee implying that the deed of guarantee was obtained by way of concealment of material facts and by way of committing fraud and is therefore void under Section 17,141 and 142 of the India Contract Act, 1872.



- 4.14. That the capricious and hasty manner in which the Deed of Guarantee has been attempted to be made good at a later date is highlighted by the fact that there is a mention of some "Annexure" at page no. 2 of the last paragraph of the Deed of Guarantee which had to specify bifurcation of various amount for which Guarantee was to be tendered. However, it is submitted that no such Annexure was ever attached with such Deed giving the bifurcation of the amount for which the Guarantee was sought to be tendered.
- 4.15. The Deed of Guarantee is nowhere accepted or executed by the Creditors thereby the Deed of Guarantee lacks from "consensus ad idem" which is sine qua non for an agreement to qualify as a Contract.
- 4.16. Importantly, IDBI Bank Ltd. (which is one of the consortium members) has not mentioned the name of the PG as the guarantors in its letter dated 20.03.2015 which is a letter of restructuring of debt under JLF which shows that the liabilities of the PG had actually never been arisen. This shows that guarantee obligations of the PG never came into existence and any step taken by the Creditors against the PG basing their claims on such alleged deed of guarantee is a nullity if such Deed of Guarantee itself is void. A copy of the IDBI restructuring letter dated 20.03.2015 is attached herewith as Annexure R4.




- 4.17. The perusal of the said letter also makes it evident that the Creditors also entered into some variation(restructuring) of loan terms with the CD in the year 2015 without obtaining any consent from PG thereby discharging the PG on this count again from the obligations under purported Deed of Guarantee as surety in terms of Section 133 of the Indian Contract Act, 1872
- 4.18. That the husband of the PG was engaged as a professional director of the CD (named Sh. Sunil Mishra) from 19.07.2013 to 11.06.2016 and have been engaged into the managing the business affairs of the CD as specifically told and informed to him by the managing director of the CD.
- 4.19. That the CD was in the financial need for the business of the company and it decided to obtain consortium/consolidated loan from the Creditors, the terms of which were not known to the PG. The promoter and Managing Director of the CD informed the husband of the PG with regard to renewal of the credit facilities which was falling due in the year 2014 and informed that the CD has received various orders and to fulfil those orders the company is in need of loan. It was explained to the husband of the PG by the promoters and Creditors of the CD that in order to instill confidence to the banks to renew loan facilities, it is a normal banking practice that some personal properties by all the working directors of the CD which seeks loan from the Banks are offered as



collateral (which is required to be backed by a personal guarantee to the extent of value of collateral).

- 4.20. The husband of the PG, being only a professional director, expressed its denial to offer any personal properties as collateral as his only personal asset being "Sector 2/d, Plot no. 1074 (Shri Hari Park Society) Nr. Swaminarayan Mandir, Gandhinagar (Gujarat) 382007" was co-owned by me, his wife.
- 4.21. But I and my husband were induced, under coercive pressure and undue influence exerted by promoter of the CD, to sign at the undated deed of the guarantee in favour of the Creditors offering our personal guarantee in order to tender their joint property being Sector 2/d, Plot no. 1074 (Shri Hari Park Society) Nr. Swaminarayan Mandir, Gandhinagar (Gujarat) 382007 as collateral for loan to be renewed in favour of the CD.
- 4.22. In fact, I have never been the director of the company whose signature has been obtained just to make the personal property as collateral and the husband of the PG was associated with the affairs of the company in 2013 only and resigned as the director in 2016.
- 4.23. That the promoter of the CD was in a dominant position over the husband of the PG due to fiduciary relationship between the company and my husband. The CD and its promoter had the capacity to affect my husband's



professional career and used this position to unlawfully influence my decision-making.

4.24. That the PG did not give free consent for the execution of the personal bank guarantee and the same was obtained by the CD by exerting undue influence within the meaning of Section 16 of the Indian Contract Act, 1872. The guarantee deed, being the product of such undue influence, is voidable at the instance of the PG and is liable to be cancelled under Section 19A of the Indian Contract Act, 1872.

4.25. That the terms of the deed of guarantee are also void for the reason of the "uncertainty" in the said deed itself. The language of the deed of guarantee itself does not clearly express its intent and has given undue dominance to the Creditor. In the beginning amount mentioned as 427 crores however at clause 24 it mentions that the guarantee shall be limited to the amount of the property given as collateral. This provisions of this deed within itself are contrary to each other and are not capable of being understood or being made as a conclusion.

4.26. That the deed of guarantee does not clearly specify as to who is the "lead bank" and the definition itself is quite vague and not setting out name of one clear bank in its first clause itself making it void for uncertainty as per the provisions of Section 29 of the Indian Contract Act, 1872.



- 4.27. That the deed of guarantee also mentions at Paragraph No. 2 that "the Lead Bank shall also be entitled to charge at its own discretion such enhanced rate of interest on the account/s either on the entire outstanding or on a portion thereof as it may fix for any irregularity and for such period as the irregularity continues..." The clause merely uses the word "Such enhanced rate" but does not clearly state the real rate of interest as such which clearly sets out the uncertain nature of the Deed.
- 4.28. That the alleged deed of guarantee also consists of various other clauses which are absolutely uncertain in their nature and the words cannot be understood or are capable of being understood. PG reserves the right to further explain those circumstances.
- 4.29. That the said deed of guarantee is not a legal contract within the meaning of definition provided by the Indian Contract Act, 1872 under Section 10 as it is devoid of "free consent" and suffers from the consent induced through undue influence and fraud as per Section 16 as well as 17 of the Indian Contract Act, 1872. The alleged contract of guarantee also suffers from the uncertainty defined under Section 29 of the said Act and hence deserves to be quashed and set aside by this Hon'ble Court.
- 4.30. The said deed of guarantee is already challenged before the Hon'ble Civil Court on the grounds as mentioned above. Copy of Complaint is attached as Annexure R5.



4.31. That the main insolvency proceedings have been based on a purported claim of INR 341 crores showing "01.02.2016" to be the date of default making the petition liable to be dismissed.

4.32. That the main insolvency proceedings were also based on a false Demand Notice wherein it was wrongly stated as below:


"12. Provision of law, contract or document under which debt has become due (attach a copy)

i. 1. ***Memorandum of deposit of title deeds dated 12.06.2014 by way of deposit of title deeds***

However, no such title deeds have even been deposited by the PG thereby making the Demand Notice (Form B) false. Copy of Form-B is attached as Annexure R6.

4.33. In the matter titled, "Canara Bank vs. Valsala TS (CP (IBC)/1/KOB/2025), Hon'ble NCLT, Kochi Bench dismissed the insolvency application against the debtor by observing as follows:

*"56. Despite providing ample opportunity, the Petitioner bank has failed to satisfy the bench on the amount mentioned in the demand notice (Rs 43,68,79,602/-) in all the cases. **The computation of the amount claimed in all three demand notices was never explained.** It is quite apparent that while the guarantors in all the cases mentioned a limiting amount of the*



guarantor's liability, the bank has simply demanded from them the amount of the loan outstanding in the principal borrower's account. **This makes the demand invalid and inadmissible.**

57. So, we feel it judicious and fair to dismiss the captioned Company Petitions with clear observations that if the Financial Creditor intends to move afresh, they will be able to do the same in accordance with law and would be bound to face all legal and factual consequences on account of limitation, etc in accordance with law.

58. The Petitioner is allowed to approach this Tribunal after raising a valid demand through fresh Demand Notices in accordance with law in its own discretion and subject to the Limitation Act provisions.

59. Having regard to the conspectus of facts of the captioned Company Petitions and the issues discussed above, this Adjudicating Authority is of the considered view that the present Company Petitions **deserve to be dismissed and are accordingly dismissed."**

5. Thereafter, responses by the State Bank of India to the Affidavit in Reply of the Personal Guarantors were filed on 28.10.2025, vide Inward Diary No. D-7058 for IA No. 553 of 2025 and on 07.10.2025, vide Inward Diary No. D-6798 for IA No. 458 of 2025 respectively. The relevant portion of the same are reproduced as under: -

5.1. It is stated that pursuant to this, the Committee of Creditors ('CoC') was constituted, wherein the present



Respondent No. 2 State Bank of India, along with 4 other Banks formed part of the Committee of Creditors, with the Answering Respondent holding 42.82% voting share. That the CoC had its first meeting on 11.11.2024, whereby there was no repayment plan submitted by the Personal Guarantors. That the Personal Guarantors have not submitted any repayment plans for the CoC's consideration.

- 5.2. Consequently, the present Application was filed by the Resolution Professional seeking discharge u/s. 114 r/w. 112, IBC. The Respondent No. 1 Personal Guarantors then filed their Reply to the Application. The present Affidavit is a Response by the Respondent No. 2 Financial Creditor, State Bank of India to the Affidavit in Reply filed by the Personal Guarantors.
- 5.3. It is submitted that the Personal Guarantors in their Reply has opposed the present Application on the ground that the guarantee extended by the Personal Guarantors stood frustrated u/s. 56, Contracts Act, 1872 owing to unavailability and defect in the collateral property which formed the substratum of the deed of guarantee.
- 5.4. At the outset, it is submitted that the it is settled law that non-submission of repayment plan by the Personal Guarantors, as is the case in the present case, will be a deemed rejection of the Repayment Plan u/s. 114 r/w. s. 115(2), IBC, which will entitle the Creditors to file an Application for Bankruptcy under Chapter IV of IBC,



which is the case at hand. (**Mr. Naseet Ahmed v. Ravindra Beleyur, RP**, NCLAT Chennai, Comp Appeal (AT) (Ins) No. 232 of 2025 dt. 13.06.2025)

5.5. It is submitted that by way of the Affidavit in Reply, the Personal Guarantors are attempting to re-agitate the same issues which were already contested at the time of acceptance of the RP Report u/s. 99, IBC. The Personal Guarantors had previously raised the contention that they were discharged from the guarantee, as the guarantee was conditional upon the title clearance of the mortgaged property, and any defect in the collateral rendered the guarantee frustrated. It is submitted that at paragraph no. 10(a) & 10(d) of the Order dt. 04.09.2024 passed by this Hon'ble NCLT in IA No. 922 of 2024 in CP(IB) No. 176 of 2024, this exact submission of the Personal Guarantors is mentioned. The Hon'ble NCLT after considering the submissions of the Personal Guarantors and the State Bank of India, observed that –

"15.

ii. The Respondent has admitted to have executed the Guarantee Agreement.

iii. Hon'ble DRT vide Order dt. 03.08.2021 passed in O.A. No. 83 of 2017 has confirmed the amount and issued recovery certificate against the Respondent/Guarantor and other after considering the loan/security documents as well as guarantee agreement in question and the said action has assumed finality."



After observing the same, the Hon'ble NCLT went ahead to admit the Personal Guarantors into personal insolvency process, wherein one of the directions were to the Personal Guarantors to submit the repayment plan, which has not been done.

5.6. It is submitted that the Personal Guarantors seek to rely on Sanction Letter dt. 31.05.2014 and an alleged unsigned guarantee deed dt. 31.05.2014 to show that there was defect in the title of the collateral property and since the intended mortgage property of the PG was not competent to be given as collateral, the deed of guarantee was rendered void. It is submitted that the Guarantee Deed dt. 12.06.2014, annexed as Annexure B to the main s. 95, IBC Application by the Financial Creditor, State Bank of India, clearly bears the signature of the Personal Guarantors, as against what is submitted by the Personal Guarantors, and that the terms therein are binding upon the Personal Guarantors. That the Guarantee Deed dt. 12.06.2014 clearly stipulates in the Recitals that –

"AND WHEREAS the guarantors have at the request of the Borrower and in consideration of the Lead Bank having agreed to grant/granted at the request of guarantors the abovementioned credit facilities to the Borrower, have agreed to execute this Guarantee in favour of the Lead Bank on the terms and in the manner hereinafter appearing...

1. If at any time default shall be made by the Borrower in payment of the principal sum (not exceeding Rs.427.00 Crores) together with



interest, costs, charges, expenses and/or other moneys for the time being due to the Lead Bank in respect of or under the abovementioned credit facilities or any one of them the Guarantors shall forthwith on demand pay to the Lead Bank the whole of such principal sum (not exceeding Rs.427.00 Crores) together with interest, costs, charges, expenses and/or other money as may be due to the Lead Bank in respect of the abovementioned credit facilities and shall indemnify and keep indemnified the Lead Bank against all losses of the said principal sum, interest or other money due and all costs, charges, expenses whatsoever which the Lead Bank may incur by reason of any default on the part of the Borrower."

That the Guarantee Deed nowhere mentions that the Guarantee Deed executed by the Respondent Personal Guarantors was subject to title clearance of the mortgaged property of the Respondent Personal Guarantors. That the Guarantee Deed clearly states that the Guarantors, including the Respondent, have agreed to execute the Guarantee Deed in consideration of the Financial Creditor Bank having agreed to grant credit facilities (not exceeding Rs. 427 Crores) to the Corporate Debtor.

5.7. Furthermore, the Personal Guarantors cannot object to the decision of the Committee of Creditors on account of the sole reason that the guarantee extended by the Personal Guarantors was limited to the extent of the



property mortgaged to the Bank. It is submitted that the Hon'ble DRT in its Order dt. 03.08.2021 in OA No. 83 of 2017 has clearly crystallised the debt accruing in favour of the Financial Creditors from the Corporate Debtor and its Personal Guarantors, including the current Personal Guarantors.

- 5.8. Even otherwise, the nature of guarantee as evident from the Guarantee Deed dt. 12.06.2014 is that the Personal Guarantors are wholly liable to repay the full principal amount on demand to the Lead Bank. That Cl. 1 of the Guarantee Deed itself states that –

"1. If at any time default shall be made by the Borrower in payment of the principal sum, the Guarantors shall forthwith on demand pay to the Lead Bank the whole of such principal sum (not exceeding 427.00 Crores) together with interest, costs..... and shall keep indemnified the Lead Bank against all losses of the said principal sum, interest of other money due ...which the Lead Bank may incur by reason of any default on part of the Borrower."


That Cl. 6, 9 & Cl. 13 of the Guarantee Deed also reflect the same intent as Cl. 1 and state that the liability of the Guarantors will cover the entire credit facility extended to the Corporate Debtor. It is therefore submitted these Clauses of the Guarantee Deed dt. 12.06.2014 clearly reveal that the intent of the Parties while entering into the Guarantee Deed dt. 12.06.2024 was that the liability



of the Guarantors will be bound to pay the entire credit facility extended to the Corporate Debtor. As contended by the Personal Guarantors that since Cl. 24 is repugnant with earlier clauses, the same renders the deed as void is unsustainable in law. It is a settled rule of interpretation of contracts that if there is a conflict between the earlier clauses (in a Deed) and the later clauses and it is not possible to give effect to all of them, then it is the earlier clause that must override the later clause and not the vice-versa. (**Bharat Sher Singh Kalsia v. State of Bihar & Anr**, (2024) 4 SCC 318, para no. 32)

5.9. It is submitted that the defences pertaining to the guarantee deed dt. 12.06.2014, if any, should have been raised by the Personal Guarantors before the Hon'ble DRT in OA No. 83 of 2017, wherein the Personal Guarantors were impleaded as Defendant No. 9 and was duly represented by a counsel. The defences now being raised at the stage of proceedings under Section 112 of the IBC are clearly an afterthought, intended solely to delay and protract the proceedings before the Hon'ble NCLT. It is submitted that the Hon'ble DRT vide Order dt. 03.08.2021 passed in O.A. No. 83 of 2017 has confirmed the amount and issued recovery certificate against the Respondent/Guarantor and others after

40




considering the loan/security documents as well as guarantee agreement in question and the said action has assumed finality.

5.10. The relevant paras from the Order of the DRT are:-

"11. The Defendants no. 1 to 9 filed their written statement at Exh. R/16 and further the Defendants no. 10 & 11 adopted the written statement filed by Defendants no.1 to 9. On 16.07.2021, the Ld. Counsel, Ms. Nimisha Kayastha submitted that she has already informed the Defendants no.1 to 11 that she would not be able to appear in this matter and hence, pleaded no instructions on behalf of appearing Defendants. Subsequently, Ms. Hardy Kayastha, Ld. Counsel appeared for Defendant no.8 & 9. Mr.S.S.Jadeja, Ld. Counsel appeared for Defendant no.5.

34. The banks have proved on record Deeds of Guarantee dtd: 12.06.2014 executed by defendant no. 2 to 11 in their individual capacities from page no.184 to 207 of the Original Application, vide which said defendants agreed to pay dues of the banks on commission of default by borrower defendant no.1 **and I am of the opinion that banks have duly proved their case against defendant no.2 to 11 in their individual capacity that they stood guarantors and are liable to pay dues of the bank as claimed in the O.A. Once defendant no.2 to 11 executed Deeds of Guarantee dtd: 12.06.2014 & revival letter dtd: 12.06.2014 and passed resolution dtd: 02.06.2014 to execute guarantee agreement, on execution of guarantee agreement and after commission of default, the guarantors including defendant no.2 to 11 are bound to face consequences of default clause enumerated in guarantee agreement, so all**



the defendants no.2 to 11 are jointly and severally liable along with Defendant no.1, their liability will be joint, several and co-extensive.

*35. Even otherwise, I find no legal impediment to grant the relief claimed in favour of Applicant banks. The applicant banks are **entitled to Recovery Certificate for entire amount claimed in the Original Application** and further applicant banks have every right to recover the said amount by sale of hypothecated assets/ mortgaged properties to recover their dues, subject to pari-passu charge on such assets with other consortium members."*

5.11. After making the above observations, the Hon'ble DRT went on to order for issuance of Recovery Certificate in favour of the Applicant Banks against the Defendants Nos. 1-11.

5.12. It is submitted that after passing of the abovementioned Order of the Hon'ble DRT and there being no Order setting aside the same, the same has attained finality. That the Financial Creditor had relied upon the Order of the Hon'ble DRT in the statutory Demand Notice dt. 15.12.2021 issued to the Personal Guarantors invoking the Bank Guarantee. That the expiry of period mentioned in the Demand Notice was considered as the date of default in the Main s. 95, IBC Application filed in the present case. It can therefore be understood that the Financial Creditor has relied upon the Order of the Hon'ble DRT in the present s. 95, IBC proceedings and the Personal Guarantors are liable for the amount mentioned in the Order of the Hon'ble DRT.



5.13. It is further submitted that the Financial Creditor, State Bank of India strongly objects to the language used in the Affidavit in Reply of the Personal Guarantors to describe the conduct of the Financial Creditor by terming the actions of the Financial Creditor as fraudulent, illegal and amounting to abuse of process of banking system.

5.14. It is respectfully submitted that the Personal Guarantors' contention, that the Guarantee Deed is void on grounds of "uncertainty" and alleged execution under undue influence, is untenable at the stage of adjudication under Section 112 of the IBC before the Hon'ble Tribunal. The Hon'ble DRT has already adjudicated upon the existence of 'debt' in favour of the Financial Creditor, and a 'default' was established upon the failure of the Personal Guarantors to repay the said debt within the period stipulated in Form B issued by the Financial Creditor. Once these criteria are satisfied under the IBC, the Hon'ble NCLT is well within its jurisdiction to pass appropriate orders. Even otherwise, the allegations made in the Affidavit in Reply are unsubstantiated and do not have any legal backing in the form of an Order by an appropriate court. That the Personal Guarantors have not placed on record any Order passed by the City Civil Court in the concerned suit staying the operation of proceedings in furtherance to the Guarantee Deed dt 12:06 2014.



6. Thereafter, vide an order dated this Adjudicating Authority directed the Applicant/Financial Creditor, Personal Guarantors as well as the Applicant/RP to file their written submission within a period of seven days. Pursuant to that the Financial Creditor / SBI has filed its Revised Written Submissions on 09.02.2026, vide Inward Diary No. D-1164 for IA No. 553 of 2025 and on 02.02.2026, vide Inward Diary No. D-1165 for IA No. 458 of 2025 respectively. The relevant portion of the same are reproduced as under:

6.1. The Financial Creditor filed an application under Section 95 of the Insolvency and Bankruptcy Code, 2016 against the Personal Guarantors in CP(IB) No. 180 of 2024 and CP(IB) No. 176 of 2024. The Resolution Professional was appointed on 17.05.2024. The report under Section 99 was accepted on 04.09.2024 and the Personal Guarantors were admitted into insolvency process.

6.2. After admission, the Committee of Creditors was constituted. The Personal Guarantors were required to submit a repayment plan. No repayment plan was submitted. Therefore, the Resolution Professional filed the present application under Section 114 of the Code

6.3. It is stated that PG in her Reply has assailed this decision of the COC on the ground that the guarantee extended by the PG stood frustrated u/s. 56, Contracts

21



Act, 1872 owing to unavailability and defect in the collateral property which was mortgaged under the Guarantee Deed.

- 6.4. At the outset, it is submitted that it is settled law that non-submission of repayment plan is deemed rejection of the Repayment Plan u/s. 114 r/w. 115(2) of the IBC. (**Mr. Naseer Ahmed v. Ravindra Beleyur, RP**, NCLAT Chennai, Comp Appeal (AT) (Ins) No. 232 of 2025 dt. 13.06.2025)
- 6.5. It is stated that the PG had already agitated the issue of defective title of the collateral property before the Ld. NCLT during the s.99, IBC proceedings, which were rejected by the Ld. NCLT in its Order dt. 04.09.2024 in IA No. 922 of 2024. (@s. 99, IBC Order, para no. 10(a), 10(d), & 15(ii), 15(iii)).
- 6.6. It is submitted that as per statement of the PG and the records available with the Bank, no property has been mortgaged by the PG in favour of the Bank. Consequently, the clauses in the Guarantee Deed dated 12.06.2014 that contemplate a guarantee limited upon the value of the mortgaged property do not come into operation. Thereby, by application of the doctrine of severance, the inoperative clauses stand excluded, and the Guarantee Deed dated 12.06.2014 operates as an absolute and unconditional guarantee for the entire amount stipulated therein.



6.7. The Financial Creditor has also relied upon Section 22 of the Indian Contract Act, 1872. It provides that a contract is not void merely because one party is under a mistake of fact. Therefore, the guarantee cannot be treated as void on that ground.

6.8. Secondly, it is submitted that the debt due to the Bank was crystallised by the Ld. DRT in its Order dt. 03.08.2021 in OA 83 of 2017 passed against the Corporate Debtor and its personal guarantors, including the current PG. The present Respondent PG was Defendant No. 9 before the Ld. DRT and was duly represented before the Ld. DRT and had filed his written statement as recorded by the Ld. DRT in para 1 & 11 of the Order. Para 1 of the Order states that the present PG was represented by a Counsel. Para 11 further elaborates and records that all the Defendants, including the present PG, were initially represented before the Ld. DRT. Subsequently, on 16.07.2021, the Counsel for the Defendants withdrew their appearance, following which the other Defendants were proceeded ex parte. However, a counsel appeared on behalf of the present Respondent PG, thereby establishing that she remained fully aware of and represented in the proceedings before the Ld. DRT. Para 12 of the Order records the arguments of the Respondent PG before the Ld. DRT. (**@Ann. E of Main Application, page no. 62-65**). Considering the arguments and the records, the Ld. DRT in para 34 of the Order clearly expressed its satisfaction about the



Banks having duly proved their case, relying on the Guarantee Deed dt. 12.06.2014, against the Defendant Personal Guarantors (@Ann. E of Main Application, page no. 83).

6.9. That the Guarantee Deed dt. 12.06.2014 has been duly considered by the Ld. DRT and by the Ld. NCLT in the s. 99, IBC proceedings. Any objection regarding the validity or scope of the Guarantee Deed, including reliance on documents now sought to be introduced by the PG, ought to have been raised before the Ld. DRT. The Order dated 03.08.2021 passed by the Ld. DRT has not been challenged and has therefore attained finality. The PG is therefore precluded, by the doctrine of constructive res judicata, from raising the plea of limited guarantee at this stage.

6.10. Even otherwise, it is submitted that the nature of guarantee as evident from the Guarantee Deed dt. 12.06.2014 (**@Ann. B of Main Application, page no. 27-41**) is that the Personal Guarantors are wholly liable to repay the full principal amount along with interest thereon on demand to the Lead Bank. That Cl. 1 (**@Ann. B of Main Application, relevant page no. 32**) of the Guarantee Deed itself states that in case of default, the Guarantor shall forthwith on demand pay to the Lead Bank the whole of such principal sum. That Cl. nos. 6 & 9 (**@Ann. B of Main Application, relevant page no. 34**) of the Guarantee Deed also reflect the same intent as Cl.



1. While the Personal Guarantor relies on Cl. 24 (**@Ann. B of Main Application, relevant page no. 40**) of the Guarantee Deed to rebut the same, it is submitted that Cl. 24, even if it is repugnant with Earlier Clauses such as Cl. nos. 1, 6, & 9 will not prevail upon them. It is a settled rule of interpretation of contracts that if there is a conflict between the earlier clauses (in a Deed) and the later clauses and it is not possible to give effect to all of them, then it is the earlier clause that must override the later clause and not the vice-versa. (**Bharat Sher Singh Kalsia v. State of Bihar & Anr**, (2024) 4 SCC 318, para no. 32).

6.11. It is submitted that the Ld. NCLT at the stage of s. 114, IBC is not concerned with the validity of the amount of debt or with validity of the guarantee agreement. S. 114, IBC clearly states that the Ld. NCLT has to approve or reject the repayment plan basis the report of the meeting of creditors. The language of s. 114, IBC places primacy on the decision of the COC. Ld. NCLT has accepted the primacy of the commercial wisdom of the COC in various cases (**CA Vineeta Maheswari v. Chandrashekar Panchal, IA No. 319 of 2025 in CP(IB) No 214 of 2024**). In cases where no repayment plan is submitted, as in the present case, the Ld. NCLT ought to allow the Application.

6.12. In view of the above facts and legal position, the Financial Creditor has sought that the application under



Section 114 of the Insolvency and Bankruptcy Code, 2016 be allowed and appropriate orders be passed on account of non-submission of repayment plan by the Personal Guarantors.

7. The Applicant/RP had also filed its written submissions on 05.01.2026, vide Inward Diary No.D-38 in IA No. 553 of 2025 and on 05.01.2026, vide Inward Diary No. D-39 in IA No. 458 of 2025 respectively. The relevant portion of the same are reproduced as under:

7.1. It is stated that since the Personal Guarantors have not file any Re-Payment Plan in spite of given time the Hon'ble Tribunal is of the opinion that it is to be given non-filing of repayment plan causes similar effect of rejection of repayment Plan, as held by NCLT, New Delhi in the matter of **Mr. Swatantra Kumar Singh V/s Mr. Amul Gabrani**, IA No. 94 of 2023 in CP IB No. 505 of 2024 vide its Order dated 07.05.2024 **"that non-filing of repayment plan causes similar effect of rejection of repayment plan under Section 114 as provided under Section 115(2) of the Insolvency and Bankruptcy Code 2016. This is further notified by Regulation 17B of the IBBI (Insolvency Resolution Process for Personal Guarantors to corporate Debtors) (Amendment) Regulations 2025"**, which mandates the RP to seek directions on Non- submission, as approved by the CoC.




7.2. It is stated that on account of the aforesaid fact that the Applicant / RP is a duty bound to filed the present application as prescribed by the Code.

7.3. In view of the aforesaid facts and Circumstances and in view of the settled position if the law, the Applicant / RP humbly submits that the applicant is entitled for any reliefs' as sought for in the present application in Para.

V. **The deponent submits that the present application deserved to be allowed.**

8. The final written submission on behalf of the Respondent No.1 /Sunil Mishra was filed on 09.02.2026 vide Inward No. D-1131 in IA No. 553 of 2025 and & on behalf of the Respondent No.1 /Mrs. Anjana Sunil Mishra was filed on 09.02.2026 vide Inward No. D-1125 in IA No. 458 of 2025 respectively. The relevant portion of the same are reproduced as under:

8.1. In order to arrive at the stage of Repayment Plan, the correct list of claims needs to be arrived at. Since the Resolution Professional (RP) has now shared a list of claimants along with this application, the PG is submitting these objections regarding the extinguishment of her guarantee obligations based on the frustration and termination of the otherwise void limited guarantee deed, in terms of the liberty granted by the NCLAT. The PG also raised the issue of limited



liability having extinguished before the RP and the CoC in the 1st meeting of the CoC.

A. OBJECTIONS PURSUANT TO LIBERTY GRANTED BY THE HON'BLE NCLAT

8.2. The Respondent No. 1 ("PG") had approached the Hon'ble NCLAT against the insolvency admission order dated 04.09.2024. The Hon'ble NCLAT, in its order dated 29.10.2024, dismissed the Appeal while specifically observing that the question of limited guarantee is to be looked into by the Hon'ble Adjudicating Authority at the time of the Repayment Plan. (Ref: Pg. No. 61 of IA)

8.3. In order to arrive at the stage of Repayment Plan, the correct list of claims needs to be arrived at. Since the Resolution Professional (RP) has now shared a list of claimants along with this application, the PG is submitting these objections regarding the extinguishment of her guarantee obligations based on the frustration and termination of the otherwise void limited guarantee deed, in terms of the liberty granted by the NCLAT. The PG also raised the issue of limited liability having extinguished before the RP and the CoC in the 1st meeting of the CoC. (Ref: Pg. No. 53 of IA).

B. THE CLAIM IS EX-FACIE BARRED BY LIMITATION

8.4. **Cause of Action in Form B:** The Demand Notice in Form B dated 15.12.2021 is founded exclusively upon the alleged Deed of Guarantee dated 12.06.2014 and



date of default is mentioned as “01.02.2016” and not on the basis of amount and date under DRT order dated 03.08.2021.

- 8.5. **Lapse of Statutory Period:** As the demand is based on the Guarantee Deed with **date of default as “01.02.2016”**, under Article 137 of the Limitation Act, 1963, the three-years period for filing application under Section 95 of the IBC has already expired back on 31.01.2019 i.e. three years from date of default. Thus, the Demand Notice is based on a stale claim and is bad in law.
- 8.6. **Legal Precedents:** Hon'ble NCLAT has also held that the issue of limitation can even directly be raised in Appellate forum even if no defence is set up earlier. [**Ref: Page No. 8 of Case Law Compilation on behalf of PG**]. Further, Hon'ble Gujarat High Court in the matter of, "Punjab National Bank Vs. M/s Mithilanchal Industries Pvt. Ltd. R/Letters Patent Appeal No. 159 of 2020" observed as follows:

*"18. Since Demand Notice has been set aside as above, further action of respondent Bank consequent upon Demand Notice dated 29th December, 2014 is also quashed and set aside. **It is settled legal proposition that if initial action is not in consonance with law, the subsequent proceedings would not sanctify the same.** In such a fact situation, the legal maxim 'sublato fundamento credit opus' is applicable, meaning thereby in case a foundation is removed, the superstructure automatically falls.*




**C. THE DECREE PASSED BY THE DRT CANNOT MAKE
GOOD THE PRESENT PROCEEDINGS**

8.7. **DRT Decree is not Binding on NCLT:** Since, no definition of "Decree" is provided under the IBC or Companies Act, 2013, under Section 2(2) of the Code of Civil Procedure, 1908, a "decree" is defined to mean a formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. A DRT Decree or Recovery Certificate does not qualify as a binding "decree" so far as it relates to determination of obligations of the PG under the insolvency proceedings by the Hon'ble NCLT under IBC.

8.8. **Even otherwise also, the decree of DRT nowhere considers the aspects of limited guarantee and frustration of liability of PG under that and thus, the same is hit by rule of Sub-Silentio and holds no valid precedential value as far limited liability and discharge thereof is considered.**


8.9. **Legal Precedents:** Hon'ble Supreme Court in the matter of, "Municipal Corporation of Delhi V. Gurnam Kaur-[1988] Supp. 2 S.C.R." explained this as follows:

"A decision passes sub silentio, in the technical sense that has come to be attached to that phrase,



when the particular point of law involved in the decision is not perceived by the court or present to its mind. The Court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.

8.10. **Amount due under DRT Decree is not a Corporate Debtor for which any Guarantee is tendered by the PG:** Firstly, the amount due under the DRT order was not the basis of raising demand under Form-B. Secondly, the amount due under the DRT Order could be at the best regarded as a separate liquidated amount payable by the PG but under no circumstances, it can be regarded as a “Debt” which was availed by the Corporate Debtor for which any guarantee was extended by the PG. In other words, the amount payable under the DRT decree can at the best be considered as an independent debt owed as judgment debtor but not as a Personal Guarantors to Corporate Financial Debt, thus, no proceedings can continue on the basis of a judgment debt under section 95 of IBC (as it stands notified till date)




**D. THERE ARE TWO SETS OF GUARANTEE DEEDS-
ONE FOR PROMOTERS' GROUP AND ANOTHER FOR
NON-PROMOTERS GROUP**

8.11. The intention of the Financial Creditors and non-promoter guarantors including the PG herein had been very explicit that they would extend their guarantee limited to the extent of the proposed personal collateral security. It is for this very reason that two different Guarantee Deeds of even date were secured by the financial creditors.

•**Promoter Group Guarantee:** Guarantee Deed dated 12.06.2014 for seeking unlimited and unconditional guarantee for the entire corporate debt.

•**Non-Promoter/Limited Guarantee Deed:** Executed by non-promoters including PG, with liability limited to the extent of collateral property proposed to be tendered in favour of Financial Creditors. in terms of Clause 24 of the Deed of Guarantee dated 12.06.2014.

8.12. **Legal Precedents:** Hon'ble NCLT, Kochi Bench in the matter of, "*Canara Bank vs. Smt. Valsala TS-CP (IBC)/1/KOB/2025*" has dismissed a IIRP on account of claiming whole amount by Creditor, and not the amount limited by guarantee deed, under Demand Notice.



**E. POWERS OF HON'BLE NCLT TO ENQUIRE THE
FRAUD PERPETRATED DURING THE CONTRACT OR
IF THE CONTRACT HAS STOOD DISCHARGED**

8.13. In the matter of, "*Roseland Buildtech Pvt. Ltd vs. Vihaan 43 Reality Pvt Ltd & Ors.-C.S.(COMM.) 812/2025*", Hon'ble Delhi High Court referring to the various provisions of the IBC, NCLT Rules and several other precedents has held that the powers of the NCLT would extend to examining fraud and discharge of contract by observing as follows:

*"73. The rules as reproduced above **evinced a comprehensive scheme to enable the NCLT to undertake a full-fledged fact-finding exercise**, including directing parties to lead evidence on affidavit, summoning and examining witnesses on oath, ordering their cross-examination where necessary, compelling discovery and production of documents, and regulating its own procedure in accordance with principles of natural justice and equity.*

*104. In the instant case, **the determination as to whether defendant no. 1 holds debt qua the plaintiff under the BTA or the same has been discharged is a question which falls for the determination of the NCLT** under the provisions of the IBC. Further, whether the agreement/instrument, on the basis of which the existence of debt is claimed, is fraudulent can also be determined by the NCLT under Sections 65, 75, 60(5)(c) of the IBC read with the relevant NCLT Rules, 2016. The claim of the plaintiff that the defendants have in collusion with each other, initiated the CIRP, can further be adjudicated upon by the tribunal. The question whether the BTA is fabricated or forged is first, a sub-issue or*



an incidental question, needed to be determined and answered, to decide the broad question of the existence of debt; and second, a question capable of adjudication under Section 75 of the Code. 106. In both the above-cases, the dispute as detailed in the plaint, falls under the jurisdiction of the NCLT, to be determined in accordance with the IBC. Resultantly, the power of a civil court to entertain the present suit is, therefore, statutorily barred.

106. In both the above-cases, the dispute as detailed in the plaint, falls under the jurisdiction of the NCLT, to be determined in accordance with the IBC. Resultantly, the power of a civil court to entertain the present suit is, therefore, statutorily barred.

F. FRUSTRATION OF GUARANTEE DEED

Rejection of Collateral by Creditor leading to Frustration of Guarantee Deed (Section 56, Contract Act):

8.14. The guarantee tendered by the PG was predicated on property jointly owned by the PG and her husband which is identified as Plot No. 1074, Sector 12D, Gandhinagar. In the SBI Sanction Letter dated 31.05.2014, the Bank explicitly noted that if title defects in this property would be found, the same has to be substituted by additional cash collateral.

8.15. It is an undisputed fact as also admitted by SBI during the course of hearing and its Written Submissions that no collateral/any other personal property of PG came to be furnished to the Financial Creditors.



8.16. Under **Section 56 of the Contract Act, 1872**, a contract becomes **void** when its purpose fails. The rejection of the collateral proposed to be offered by the PG rendered the Deed of Guarantee as otiose and **void** due to frustration of the contract's substratum.

8.17. **Legal Precedent:** In Delhi Development Authority v. Kenneth Builders & Developers Ltd. & Ors. (Civil Appeal No. 5370 of 2016, the Hon'ble Supreme Court held that if a contract's object becomes impracticable and useless from the point of view of the object and purpose from the parties' point of view, it stands frustrated.

8.18. The non-subsistence of guarantee of PG is also evident by the Debt Restructuring Package-2015 by one of the consortium member namely IDBI Bank to the CD wherein the name of all the guarantors were appearing but it nowhere bears the name of the PG-Sunil Mishra & Mrs. Anjana Sunil Mishra. Importantly, IDBI was one of the beneficiaries of the Guarantee Deed being one of the consortium lenders.

G. GUARANTEE DEED OBTAINED BY FRAUD AND COERCION

8.19. **Vitiating by Fraud (Section 142):** The Letter dated 31.05.2014 clearly establishes the knowledge of the Financial Creditor that the intended collateral property of the PG was having title defects still the Financial Creditors proceeded with the execution of guarantee



deed by PG on 12.06.2014 despite knowing the property title was defective (as per their own 31.05.2014 letter), implying the deed was obtained by concealing material facts on the part of financial creditors making the Guarantee Deed void under Section 142 of the Contract Act, 1972. Section 142 reads as follows:

“142. Guarantee obtained by misrepresentation invalid.—Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

8.20. In light of ratio laid down by the Hon'ble NCLAT in **“Anubhav Anilkumar Aggarwal v. Rajendra Kumar Girdhar-Company Appeal (AT) (Ins.) No. 1277 of 2024”**, a document that is per se fraudulent and void ab initio can be ignored by NCLT without being declared so by a civil court. The Hon'ble NCLAT observed as follows:

“78. In the case at hand also the validity of the MOU, alleged to have been executed between appellant and respondent no.2, was at the core of the issue and thus in the back ground of the above mentioned precedents it is/was well within the jurisdiction of the Ld. NCLT to consider this document with regard to gauge its validity and when it has been found fraudulent and void ab initio, it is non-est in the eyes of Law and may be ignored, as there was no need to get the same cancelled by any competent Civil Court and in our considered view the same has been rightly ignored by the Ld. Adjudicating Authority. Therefore, no illegality appears to have been committed by Ld. NCLT on this score.”



8.21. **Coercion and Undue-influence:** It may be further noted that the PG was neither a Promoter nor a director of the CD. It was the promoter of the CD who exerted coercion and undue influence over the PG and her husband into signing an undated guarantee deed containing blank spaces under the threat of loss of employment of the husband of the PG who was acting as professional director for the CD. A civil suit to get the Guarantee Deed is void is already pending before the Civil Court, Ahmedabad.

ALTERNATE SUBMISSIONS

H. DISCHARGE OF ALLEGED GUARANTEE DEED U/S

133

8.22. **Variance in Terms (Section 133):** Alternatively, since, the terms of loan with the CD has also undergone variation in 2015 as evident by Debt Restructuring Package without the PG's consent, on this count also, the PG stood discharged under section 133 of the Contract Act, 1872. The same reads as follows:

133. Discharge of surety by variance in terms of contract. Any variance, made without the surety's consent, in the terms of the contract between the principal debtor and the creditor,

*discharges the surety as to transactions
subsequent to the variance.*


I. ALLEGED GUARANTEE DEED STOOD DISCHARGED

U/S 141

8.23. In terms of the Sanction Letter dated 31.05.2014 read with clause 24 of the Guarantee Deed, the guarantee obligations of the PG was limited to the value of the value of her properties which was evaluated at INR 2.68 crores.

8.24. As evident by the terms of the Sanction Letter dated 31.05.2014 (Page No. 35 of PG Reply), in case of non-availability of Title Investigation Report (TIR) of properties of the PG herein, the CD shall provide an additional cash collateral of INR 2.68 crores which is equal to the value of the property. Owing to title defects in the property of the PG, the CD has tendered this cash collateral of INR 2.68 crores. In terms of section 141 of the Contract Act, 1872, the PG is entitled to the benefit of such cash collateral as tendered by the CD. Section 141 reads as follows:

141. Surety's right to benefit of creditor's securities.-A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and




if the creditor loses, or, without the consent of the surety, parts with security, the surety is discharged to the extent of the value of the security.

8.25. Assuming if any limited guarantee obligations existed on the part of PG, since, the creditors have used this cash collateral without PG's consent, the guarantee obligations stood discharged in terms of Section 141 of the Contract Act, 1872.

8.26. **Legal Precedent:** In the matter of, "State Bank Of Saurashtra Vs Chitranjan Rangnath Raja And Anr.- [1980] 3 S.C.R," Hon'ble Supreme Court observed that the Surety/Guarantor would get discharged since the Creditor has lost the goods pledged by the Principal Borrower.

8.27. On section 141, Hon'ble Karnataka High Court in the matter of, "P. Janakiram Chetty vs Punjab National Bank Ltd. and Anr.- AIR1968KANT56", observed as follows:

"And there is no suggestion in his cross-examination that what he has stated is not true. Therefore, in our view, the value of the security must mean the value of the security at the time when it was given to the creditor. Therefore, when it was given to the creditor. Therefore, the words 'the surety is discharged to the extent of the value of the security is less than the liability undertaken



by the surety, then the surety must be held to be discharged to the extent of the value of the security and that he will still be required to discharge the liability which exceeds the value of the security. **But if the value of the security given is far in excess of the liability, then it is clear that the surety must be held to be discharged wholly. Since, in the instant case, the value of the security was far in excess of the liability of the principal debtor, and consequently that of the surety, and since the security has been parted with or sold by the creditor without the consent of the surety, we hold that the surety Le., the second defendant, is wholly discharged.**

9. We have heard the learned counsel for the Applicant/Resolution Professional, the learned counsel for the Financial Creditor (State Bank of India), the learned counsel for the Personal Guarantors, and perused the material on record, including the pleadings, annexures, minutes of meetings of creditors, the Guarantee Deed dated 12.06.2014, the DRT Recovery Certificate dated 03.08.2021, and the written submissions filed by the parties.

10. The following principal issues arise for determination in these applications: -

- (i) Whether non-submission of a repayment plan by the Personal Guarantors results in failure of the Personal Insolvency Resolution Process under Section 114 of the Code?
- (ii) Whether the plea of “limited guarantee” survives in the absence of creation of any mortgage/security over the Personal Guarantors’ property?
- (iii) Whether the doctrine of severance applies to the Guarantee Deed dated 12.06.2014 so as to render the substantive liability clauses operative and enforceable?
- (iv) Whether the objections relating to frustration (Section 56 Contract Act), fraud, coercion, undue influence, discharge under Sections 133 & 141 of the Contract Act, and limitation can be re-agitated or entertained at the stage of Section 114 IBC?
- (v) Whether the Resolution Professional is entitled to discharge and directions for contribution towards IIRP costs?

11. **Analysis & Findings on Issue No.(i):** Non-submission of Repayment Plan & Consequence under Section 114 IBC:


11.1. It is an undisputed position on record that despite repeated communications from the Resolution Professional (emails dated 11.09.2024 to 28.12.2024 – Annexure E Colly), the Personal Guarantors neither appeared in the meetings of creditors nor submitted any repayment plan within the statutory timeline or thereafter.



11.2. The first meeting of creditors (11.11.2024) and the second meeting (09.01.2025) recorded the absence of the Personal Guarantors and their failure to propose any repayment plan. The Committee of Creditors thereupon resolved to seek termination of the process and discharge of the Resolution Professional.

11.3. The Hon'ble NCLAT has consistently held that non-submission of a repayment plan within the prescribed period amounts to deemed rejection under Section 114 of the Code, entitling the creditors to liberty to initiate bankruptcy proceedings under Chapter IV (Sections 115(2) & 121). Reference may be made to: -

- (a) NCLAT Chennai in ***Naseer Ahmed v. Ravindra Beleyur (RP), Comp. App. (AT) (Ins.) No. 232 of 2025 dated 13.06.2025 (ibclaw.in 433 NCLAT)***: "Once Personal Guarantor has failed to submit Repayment Plan within the time frame, in the light of Section 114 of IBC, it would automatically stand rejected and consequential decision taken under Section 115(2) by NCLT to permit Creditors to file Bankruptcy Application by invoking Chapter IV, would not call for any interference."
- (b) NCLAT New Delhi in ***Paresh Rastogi v. Omkara Assets Reconstruction Pvt. Ltd. (2025 ibclaw.in 194 NCLAT)***, has held that if Personal Guarantor does not file a repayment plan, Resolution Professional is constrained to file an insolvency termination application under Section 114(1) read with Sections 115(2) and 106 of the IBC, with liberty for creditors to file a bankruptcy application.
- (c) NCLAT New Delhi in ***Sudip Dutta @ Sudip Bijoy Dutta v. Prashant Jain (RP), (2024) ibclaw.in 713 NCLAT*** has categorically held that where no



repayment plan is submitted, the Adjudicating Authority commits no error in permitting creditors to initiate bankruptcy proceedings under Chapter IV and discharge of the Resolution Professional follows as a statutory consequence.

11.4. The said position is further reinforced by Regulation 17B of the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (as amended), which obliges the Resolution Professional to seek appropriate directions from the Adjudicating Authority in case of non-submission of repayment plan.

11.5. Accordingly, non-submission of repayment plan constitutes failure of the Personal Insolvency Resolution Process under Section 114 of the Code.

12. **Analysis & Findings on Issue No.(ii) & (iii):** – Limited Guarantee Plea & Doctrine of Severance:

12.1. The Personal Guarantors contend that their liability under the Guarantee Deed dated 12.06.2014 was limited to the value of the proposed collateral property (Clause 24), which was never accepted due to title defects (Sanction Letter dated 31.05.2014).

12.2. It is an admitted position (including in the written submissions of State Bank of India dated 02.02.2026) that no mortgage was ever created over the property of the Personal Guarantors and no title deeds were deposited. Consequently, the condition precedent for invoking the limiting clause never arose.



- 12.3. The substantive clauses of the Guarantee Deed (Clauses 1, 6 & 9) unequivocally create co-extensive and unconditional liability up to Rs.427 crores (principal) together with interest, costs and charges, in terms of Section 128 of the Indian Contract Act, 1872.
- 12.4. In case of repugnancy between clauses, the earlier substantive clauses prevail over the later inconsistent clause. The Hon'ble Supreme Court in ***Bharat Sher Singh Kalsia v. State of Bihar & Anr., (2024) 4 SCC 318*** (para 32) has held: *"...if there is a conflict between the earlier clauses (in a Deed) and the later clauses and it is not possible to give effect to all of them, then it is the earlier clause that must override the later clause and not the vice-versa."*
- 12.5. Applying the doctrine of severance, the limiting Clause 24 becomes inoperative in the absence of mortgage/security, while the principal liability clauses remain fully enforceable.
- 12.6. The plea of limited guarantee does not survive and is not tenable at this stage, more so when the Debts Recovery Tribunal vide Recovery Certificate dated 03.08.2021 in O.A. No.83 of 2017 has already adjudicated joint and several liability of the guarantors (including the present Personal Guarantors) and the said order has attained finality.




12.7. Therefore, doctrine of severance supports enforceability of main liability clauses of the Guarantee Deed dated 12.06.2014. The plea of limited liability cannot be re-agitated in collateral proceedings under Section 114 of the Code.

13. **Analysis & Findings on Issue No.(iv):** Re-agitation of Frustration, Fraud, Discharge & Limitation at Section 114 Stage:

13.1. The Personal Guarantors have raised pleas of frustration (Section 56 Contract Act), fraud, coercion, undue influence, discharge under Sections 133 & 141 of the Contract Act, and limitation (default date 01.02.2016 per Form-B).

13.2. All these issues were either raised or could have been raised at the admission stage under Sections 99 & 100 IBC. The admission order dated 04.09.2024 (after considering objections in IA No.922/2024) attained finality and was not set aside by the Hon'ble NCLAT (order dated 29.10.2024 granting limited liberty only qua repayment plan stage).

13.3. The existence and quantum of debt stand crystallized by the DRT Recovery Certificate dated 03.08.2021, which was relied upon for issuance of statutory demand notice dated 15.12.2021. The Section 95 applications were filed within limitation reckoned from the said demand notice.



The issue of limitation cannot be re-opened at the Section 114 stage.

13.4. Allegations of fraud, coercion and undue influence are subject matter of a pending civil suit (Annexure R5). No interim order staying the operation of the Guarantee Deed or the DRT certificate has been produced. In the absence of any prima facie finding or restraint from a competent forum, these pleas cannot stall the statutory consequence under Section 114 IBC.

13.5. The doctrine of frustration (***Delhi Development Authority v. Kenneth Builders, (2016) 3 SCR 1126***) is inapplicable, as the contract of guarantee is not rendered impossible or purposeless merely because collateral was not accepted; the primary obligation to indemnify on default remains intact.

13.6. Similarly, Sections 133 & 141 of the Contract Act do not apply, as no variance prejudicial to the surety without consent is demonstrated, and no security was created or parted with in respect of the Personal Guarantors.

13.7. At the stage of Section 114, the Adjudicating Authority is concerned only with the consequence of failure of the repayment plan process and not with re-adjudication of issues settled at admission or by prior binding adjudication (DRT order).

14. **Analysis & Findings on Issue No.(v):** Discharge of Resolution Professional & IIRP Costs:



- 14.1. The Resolution Professional has discharged all statutory duties, including publication of public notice, collation of claims, constitution of Committee of Creditors, convening meetings, and seeking directions on non-submission of repayment plan.
- 14.2. The delay of 76 days in filing the present applications is procedural in nature, explained in the applications, and has caused no prejudice to any party. In ***Naseer Ahmed v. Ravindra Beleyur (RP), (2025) ibclaw.in 432 NCLAT*** held that “Delay in submission of a report containing Repayment Plan under Section 106 of the IBC is condonable”. The same is condoned in exercise of inherent powers under Rule 11 of the NCLT Rules, 2016.
- 14.3. The Committee of Creditors has ratified the IIRP costs in its meetings. The Resolution Professional is entitled to discharge and direction for contribution of such costs by the creditors in proportion to their voting share unless otherwise agreed, in accordance with Regulation of the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.
15. In view of the foregoing analysis, the applications deserve to be allowed in exercise of powers under Section 114 of the Insolvency and Bankruptcy Code, 2016, on the basis of the report submitted under Section 112 of the Code with the directions hereinafter: -



- (a) The delay in filing this IA is condoned in the interest of justice.
 - (b) The report filed by the Resolution Professional under Section 112 is taken on record and accepted. In absence of submission of any repayment plan, the same stands rejected under Section 114 of the Insolvency and Bankruptcy Code, 2016.
 - (c) Liberty is granted to the creditor(s) of the Personal Guarantors to initiate bankruptcy proceedings under Chapter IV of the Insolvency and Bankruptcy Code, 2016 in terms of Sections 115(2) and 121 of the Code within three months from the date of this order.
 - (d) The moratorium commenced under Section 101 of the Code in respect of the Personal Guarantors shall cease to have effect from the date of this order.
 - (e) The Resolution Professional stands discharged from the conduct of the insolvency resolution process of the Personal Guarantors.
 - (f) The fees and costs incurred shall be treated as process costs and shall be borne by the creditors in proportion to their voting share unless otherwise agreed in accordance with the applicable Regulations.
 - (g) The Resolution Professional shall communicate this order to the creditors, the Personal Guarantors and the Insolvency and Bankruptcy Board of India within one week.
16. With the above directions, the **IA/553/NCLT/AHM/2025** and **IA/458/NCLT/AHM/2025**, are **allowed** in the above terms. No order as to costs.

17. Certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.



[Handwritten signature]
-Sd-

SANJEEV SHARMA
MEMBER (TECHNICAL)

VP

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-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)