

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 374 of 2026

**[Arising out of the Impugned Order dated 04.02.2026 passed by the
Adjudicating Authority, National Company Law Tribunal, New Delhi Bench-
III in C.P. (IB) No. 56/ND/2026]**

In the matter of:

PAWAN GUPTA

S/o. Late Sh. Munna Lal Gupta,
R/o. C-19, Rana Pratap Bagh,
Delhi – 110007

.... Appellant

Versus

1. M/s. CHARM INVESTMENTS PVT. LTD.

Thr. Ms. Nandini Mittal,
Regd. Office: 9982, Ahata Thakur Das,
Sarai Rohila, New Delhi,
India – 110005

.... Respondent No.1

2. MR. PRADEEP KUMAR KAUSHIK

Resolution Professional for Mr. Pawan Gupta,
R/o. Flat No. 384, 2nd Floor,
Pocket 5, Mayur Vihar Phase-I,
Opposite Sanjay Lake, East,
National Capital Territory of Delhi – 110091

.... Respondent No.2

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Himanshu Satija,
Adv. Ripul Swati, Ms. Simran M., Mr. Anshul Sharma and
Ms. Malavika C., Advocates.

For Respondent : Mr. Harshvardhan, Ms. Rituparnapatra, Advocates.

Mr. Ankur Mittal, Mr. Arpit Sharma and Ms. Sabhya Jain,
Advocates.

J U D G M E N T

(29th May, 2026)

INDEVAR PANDEY, MEMBER (T)

This Appeal has been preferred under Section 61 of the Insolvency and Bankruptcy Code, 2016 by the **Appellant, Mr. Pawan Gupta**, assailing the Impugned Order dated 04.02.2026 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench-III) in CP(IB) No. 56 (ND) of 2026 filed by **M/s. Charm Investments Pvt. Ltd./ Respondent No.1**. The Adjudicating Authority vide the Impugned Order, initiated proceedings under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as ‘**Code**’) against the Appellant and appointed **Mr. Pradeep Kumar Kaushik/ Respondent No.2** as the **Resolution Professional** (RP) under Section 99 of the Code.

2. The Appellant is aggrieved that although the loan documents, sanction letter, DRT proceedings, SARFAESI notices, and other contemporaneous records consistently described him merely as a co-borrower in relation to the credit facilities availed by **M/s. L.R. Builders Pvt. Ltd./Corporate Debtor**, the Respondent No.1 nevertheless treated him as a “personal guarantor” for the purpose of invoking insolvency proceedings under Section 95 of the Code. According to the Appellant, no Deed of Guarantee was ever executed either by him or by any other person in respect of the subject loan account and even the

sanction letter issued by Union Bank of India specifically recorded “Guarantors: NIL”.

Brief Facts of the Case

3. Brief facts of the case relevant for deciding the Appeal are as follows:

(i) The Corporate Debtor/L.R. Builders was incorporated was engaged in the business of real estate services, including contracting, infrastructure development, and construction activities. The Company formed part of the PP Jewellers Group and had been incorporated by members of the Gupta family, including Mr. Kamal Gupta and Mr. Pawan Gupta, who served as Directors of the Company. Mr. Kamal Gupta and the Appellant Mr. Pawan Gupta are brothers and were actively associated with the affairs of the Company at the relevant time.

(ii) A credit facility amounting to Rs.5.55 Crores was sanctioned on 18.11.2011 by Union Bank of India in favour of Corporate Debtor (CD). Along with the CD, the Appellant Mr. Pawan Gupta and Mr. Kamal Gupta were reflected in the sanction documents as co-borrowers. The sanctioned amount was later reduced to Rs.4.95 Crores. The sanction documents expressly described all three entities, namely M/s. L.R. Builders, Mr. Pawan Gupta, and Mr. Kamal Gupta, as borrowers/co-borrowers. The facility was secured by mortgage of three immovable properties and the sanction documents specifically recorded “Guarantors: NIL”.

(iii) The Ministry of Corporate Affairs issued Gazette Notification S.O. 4126(E) dated 15.11.2019, whereby provisions contained in Sections 94 to 187 of the Insolvency and Bankruptcy Code, 2016 were brought into force insofar as they related to personal guarantors to corporate debtors.

(vi) Due to defaults in repayment of the loan account and Union Bank of India issued a legal notice on 09.12.2019 demanding repayment of the outstanding dues. This was followed by issuance of a notice under Section 13(2) read with Section 13(3) of the SARFAESI Act on 04.01.2020. The Bank thereafter instituted Original Application No. 74 of 2021 before the Debt Recovery Tribunal-II, New Delhi for recovery proceedings.

(iv) Union Bank of India entered into an assignment agreement with M/s. Rishikesh Hire Purchase and Leasing Company Pvt. Ltd., which in turn on 24.11.2025, entered into an Assignment Agreement with the Financial Creditor/Respondent. In both the assignment agreements, it was recorded 'Guarantors: NIL'.

(v) Thereafter, a demand notice dated 10.01.2026 was issued by the Respondent No.1 to the Appellant under the provisions of the Code. On 27.01.2026, Respondent No.1 filed CP(IB) No. 56 (ND) of 2026 before the Adjudicating Authority under Section 95 of the Code seeking initiation of insolvency proceedings against the Appellant by portraying him as a Co Borrower/ Personal Guarantor to the Corporate Debtor.

(vi) The Adjudicating Authority thereafter passed the Impugned Order dated 04.02.2026 whereby Mr. Pradeep Kumar Kaushik/ Respondent No.2, was appointed as the Resolution Professional under Section 99 of the Code with directions to submit a report. The Resolution Professional thereafter, filed his report under Section 99 of the Code on 23.02.2026. Aggrieved by impugned order dated 04.02.2026 passed by the Ld. Adjudicating Authority, the Appellant has challenged the same before this Appellate Tribunal.

Submissions of the Appellant

4. Ld. Counsel for the Appellant submits that the very initiation of proceedings against the Appellant is fundamentally without jurisdiction and contrary to the admitted record, inasmuch as the Appellant is not a Personal Guarantor to the subject loan transaction. It is submitted that despite complete absence of any deed of guarantee or invocation thereof, the Respondent invoked provisions applicable only to personal guarantors and succeeded in obtaining the impugned order on the basis of incorrect and misleading representations before the Ld. Adjudicating Authority. He further submits that the impugned order itself records that the Respondent had represented before the Learned NCLT that a Deed of Guarantee and Letter of Invocation had been placed on record and that the Appellant was the Corporate Guarantor in respect of the alleged default amount of Rs.5,70,00,414/-. On such representation, notice came to be issued to the Appellant and a Resolution Professional was appointed.

5. He submits that the entire foundation of the proceedings under Section 95 of the Code collapses from the record itself. It is submitted that the sanction letter dated 18.11.2011 issued by Union Bank of India in relation to the subject credit facility expressly records “Guarantors: NIL”. Ld. Counsel submits that this document conclusively demonstrates that no personal guarantee was ever furnished by the Appellant in respect of the subject loan transaction. It is submitted that the sanctioning bank itself never treated the Appellant as a guarantor at the inception of the transaction.

6. It is submitted that Union Bank of India instituted Original Application No. 74 of 2021 before the Learned Debt Recovery Tribunal, New Delhi in relation to the same loan transaction, wherein the Appellant was arrayed only as a co-borrower and not as a guarantor. It is submitted that the conduct of the original lender throughout the proceedings unequivocally establishes that the Appellant was never considered or treated as a personal guarantor. Had there been any guarantee obligation, the Appellant would necessarily have been impleaded in the proceedings in the capacity of guarantor.

7. Ld. Counsel further submits that even the subsequent assignment agreements executed in respect of the debt transaction completely negate the existence of any guarantee. It is submitted that Union Bank of India entered into an Assignment Agreement with Rishikesh Hire Purchase and Leasing Company, which thereafter entered into a further Assignment Agreement dated 24.11.2025 with the present Respondent. Ld. Counsel submits that in both assignment

agreements, it has been specifically recorded that “Guarantors: NIL”. It is submitted that these contemporaneous contractual records completely demolish the Respondent’s attempt to portray the Appellant as a personal guarantor.

8. It is submitted that even in the application filed under Section 95 of the Code by the Respondent, there was no proper disclosure or material establishing the Appellant as a guarantor. It is submitted that the application itself was devoid of any foundational document demonstrating existence of a guarantee obligation.

9. Ld. Counsel further submits that the most crucial circumstance exposing the falsity of the Respondent’s case is the filing of I.A. No. 958 of 2026 by the Respondent itself after issuance of notice in the present Appeal. It is submitted that in the said application seeking rectification of the order dated 04.02.2026, the Respondent categorically admitted that no Deed of Guarantee or Letter of Invocation had been placed on record in the proceedings before the Learned NCLT. Ld. Counsel submits that this admission completely destroys the very basis upon which proceedings under Section 95 were initiated.

10. Ld. Counsel submits that apart from complete absence of any deed of guarantee, the Respondent has also failed to place on record any valid invocation of the alleged guarantee. It is submitted that invocation of guarantee is a mandatory jurisdictional requirement before initiation of proceedings under Section 95 of the Code and in absence thereof, the proceedings are wholly non-maintainable.

11. Ld. Counsel further submits that the statutory demand notice relied upon by the Respondent cannot in law constitute invocation of a personal guarantee. Reliance is placed upon the judgment in “**SBI vs. Deepak Kumar Singhania, Company Appeal (AT) (Ins.) No. 191 of 2025**”, wherein this Appellate Tribunal held that a statutory demand notice does not amount to invocation of guarantee and consequently proceedings under Section 95 of the Code would not be maintainable in absence of proper invocation. It is submitted that the Respondent has failed to satisfy this basic jurisdictional requirement.

12. He submits that despite specifically admitting non-existence of any Deed of Guarantee or Letter of Invocation, the Respondent thereafter sought to justify the proceedings by filing an affidavit dated 12.05.2026 before this Hon’ble Tribunal and placing reliance upon Demand Promissory Notes dated 19.11.2011 and minutes of the meeting of the Board of Directors dated 18.11.2011. It is submitted that on the basis of such documents, the Respondent attempted to allege existence of an oral understanding that the Appellant would furnish a personal guarantee. Ld. Counsel submits that such a contention is wholly misconceived and legally untenable. It is submitted that a borrower cannot legally act as guarantor for his own debt and a valid contract of guarantee necessarily requires existence of three distinct parties, namely the creditor, the principal borrower and an independent guarantor.

13. Ld. Counsel places further reliance upon the judgment of the Hon’ble Supreme Court in “**UV Asset Reconstruction Co. Ltd. vs. Electrosteel Casting**

Ltd., (2026) SCC Online SC 26”, particularly paragraph 22, wherein it has been held that a mere obligation to arrange funds or ensure financial compliance does not amount to a guarantee unless there exists a direct and unambiguous undertaking to discharge liability within the meaning of Section 126 of the Indian Contract Act. It is submitted that the Respondent is attempting to create a guarantee obligation through indirect documents and alleged oral understandings despite complete absence of any actual guarantee agreement.

14. Ld. Counsel submits that the impugned order dated 04.02.2026 has been obtained by the Respondent through clear misrepresentation and suppression of material and jurisdictional facts. It is submitted that the Respondent categorically represented before the Learned NCLT that a valid Deed of Guarantee and Letter of Invocation existed and had been placed on record and on such representation the Appellant was treated as a Personal Guarantor and proceedings under Section 95 of the Code were entertained.

15. He submits that after obtaining the impugned order and securing initiation of insolvency proceedings against the Appellant, the Respondent subsequently resiled from its own stand by filing I.A. No. 958 of 2026 and categorically stating in paragraph 4 thereof that no Deed of Guarantee or Letter of Invocation had been placed on record and that no such submission had been made during the course of hearing. It is submitted that the Respondent cannot be permitted to approbate and reprobate by first obtaining an order based on existence of

guarantee documents and thereafter admitting that no such documents existed at all.

16. It is submitted that vide order dated 03.03.2026 passed in I.A. No. 958 of 2026, even the Ld. Adjudicating Authority recorded dissatisfaction regarding the manner in which the matter had been conducted and represented before it by placing incorrect facts. It is submitted that the Ld. Adjudicating Authority itself noted that no Deed of Guarantee or Letter of Invocation was available on record and that the impugned order had wrongly recorded existence of such documents. Ld. Counsel submits that this itself demonstrates that the impugned proceedings are vitiated by fraud and misrepresentation.

17. Ld. Counsel places reliance upon the judgment of the Hon'ble Supreme Court in "**A.V. Papayya Sastry vs. Government of A.P., (2007) 4 SCC 221**", wherein it has been held that an order obtained by fraud and misrepresentation can be set aside at any stage, including appellate proceedings, writ proceedings or even collateral proceedings. It is submitted that since the very jurisdiction of the Ld. NCLT was invoked on the basis of false representation regarding existence of guarantee documents, the impugned order deserves to be set aside.

Submissions of the Respondent No.1/M/s Charm Investments

18. Ld. Counsel for Respondent No.1 submits that the present dispute arises out of the admitted default committed in respect of the loan facility availed by the Appellant from Union Bank of India as a co-borrower and guarantor

pursuant to the Sanction Letter dated 18.11.2011. It is submitted that the loan account was subsequently classified as NPA. The loan was first acquired by Rishikesh Hire Purchase and Leasing Company Private Limited and was thereafter assigned to Respondent No.1, vide Assignment Agreement dated 24.12.2025. Ld. Counsel submits that by virtue of the said assignment, Respondent No. 1 stepped into the shoes of the original Financial Creditor. It is further submitted that the debt and default stand admitted and have never been disputed by the Appellant in any proceedings. Therefore, the Appellant is not a stranger to the loan transaction and cannot seek to evade the liabilities arising therefrom.

19. Ld. Counsel submits that the short issue arising for consideration before this Appellate Tribunal is whether Respondent No.1 has abused the process of law by filing the Section 95 application before the Ld. Adjudicating Authority against the Appellant. It is submitted that the Appellant has alleged abuse of process primarily on four grounds, namely: firstly, that no deed of guarantee was signed or executed by the Appellant in favour of Respondent No.1; secondly, that Respondent No.1 itself allegedly admitted in paragraphs 3 and 4 of IA No. 958 of 2026 that no deed of guarantee exists on record; thirdly, that the Assignment Deed itself stipulates that no guarantee had been executed; and fourthly, that the jurisdictional issue contemplated in the judgment of the Hon'ble Supreme Court in Dilip B. Jiwrarka v. Union of India & Ors. would not apply to the facts of the present case. Ld. Counsel submits that each of the aforesaid grounds is wholly misconceived and devoid of merit.

20. He submits that the judgment of the Hon'ble Supreme Court in "**Dilip B. Jiwarajka v. Union of India & Ors.**" squarely governs the controversy involved in the present matter. It is submitted that the Hon'ble Supreme Court has clearly held that all jurisdictional questions are to be adjudicated by the Learned NCLT only at the stage contemplated under Section 100 of the Insolvency and Bankruptcy Code and not prior thereto. Reliance is placed particularly upon paragraph 68 of the judgment, wherein the Hon'ble Supreme Court expressly rejected the contention that the Adjudicating Authority could undertake an adjudicatory exercise at the stage of Section 97(5) of the IBC with regard to the existence of debt or the subsistence of the relationship between debtor and creditor. Ld. Counsel further submits that the Hon'ble Supreme Court also rejected the argument of prejudice arising from the inquiry to be conducted by the Resolution Professional under Section 99 of the IBC. It is submitted that in paragraphs 72 to 74 of the said judgment, the Hon'ble Supreme Court categorically held that the adjudicatory function of the NCLT commences only after receipt of the report of the Resolution Professional. Accordingly, the Appellant cannot seek premature adjudication of disputed jurisdictional issues before the stage prescribed by statute.

21. Ld. Counsel further submits that the present case is also squarely covered by the judgment of this Hon'ble Appellate Tribunal in **Mr. C.L. Sharma v. Bank of Maharashtra & Anr.**, wherein it was categorically held that no adjudication can take place at the stage of appointment of the Resolution Professional under Section 97 of the IBC. It was further held therein that all objections pertaining

to maintainability, limitation and jurisdiction are required to be considered only at the stage of Section 100 proceedings. Ld. Counsel submits that the Resolution Professional performs merely a facilitative role and the report under Section 99 is only recommendatory in nature. In light thereof, it is submitted that the present Appeal itself is premature and not maintainable at this stage.

22. Ld. Counsel submits that the controversy involved in the present Appeal is no longer res integra and stands conclusively settled by the judgment of the Three-Member Bench of this Appellate Tribunal in ***Central Bank of India v. Deepen Arun Parekh***. It is submitted that after extensively considering the law laid down in Dilip B. Jiwrajka v. Union of India & Ors., the Three-Member Bench categorically held that no adjudicatory exercise can be undertaken before the stage contemplated under Sections 99 and 100 of the IBC. Ld. Counsel submits that the Bench specifically held that all questions relating to maintainability, limitation, subsistence of debt, validity of guarantee and other jurisdictional objections are matters to be considered, only after submission of the report under Section 99 and at the stage of adjudication under Section 100. It is submitted that any adjudication prior thereto would be contrary to the statutory scheme of the IBC. Ld. Counsel further submits that in the present case, the Appellant seeks precisely such premature adjudication despite having an efficacious remedy before the Learned Adjudicating Authority under Section 100. Judicial discipline therefore requires adherence to the view already taken by the coordinate Three-Member Bench and any contrary view, if at all, can only be considered by a larger Bench.

23. Ld. Counsel for Respondent No. 1 further submits that this Appellate Tribunal in **Jaykumar Bramhadev Mane v. Solapur District Central Cooperative Bank Ltd.** also declined to entertain a jurisdictional challenge founded upon the alleged non-existence of a guarantee and relegated the parties to the Learned NCLT for consideration of all such issues at the stage of Section 100 of the IBC. It is submitted that all four grounds urged by the Appellant before this Tribunal are matters which can appropriately be raised, considered and adjudicated only by the Learned NCLT while exercising adjudicatory powers under Section 100 of the IBC. Ld. Counsel submits that merely alleging abuse of process cannot justify this Hon'ble Appellate Tribunal undertaking adjudication of disputed questions of fact at this premature stage, especially when the statutory mechanism itself provides a complete remedy before the Adjudicating Authority.

24. Without prejudice to the aforesaid submissions, Ld. Counsel submits that the transaction of guarantee stands duly established from the transactional documents executed between the parties. It is submitted that the principal borrower, namely LR Builders Pvt. Ltd., availed a loan facility of Rs. 5.5 Crores from Union Bank of India, being the predecessor-in-interest of Respondent No. 1, and the said loan amount was disbursed into the account of LR Builders Pvt. Ltd. Ld. Counsel submits that the Appellant and one Mr. Kamal Gupta, who were brothers and erstwhile directors of LR Builders Pvt. Ltd., expressly conveyed their willingness to stand as guarantors for the said loan transaction, which is duly recorded in the minutes of the Board Meeting dated 18.11.2011.

25. He submits that the Appellant and Mr. Kamal Gupta also signed the loan documents as co-borrowers. It is submitted that the Appellant executed a Demand Promissory Note in favour of the creditor on 19.11.2011, whereby he unequivocally promised to pay on demand, jointly and severally, the loan amount. Ld. Counsel submits that the Appellant also executed a Take Delivery Letter to the Demand Promissory Note on 19.11.2011 once again undertaking to pay on demand the outstanding loan amount along with applicable interest. Reliance is also placed upon paragraph 14 of the Loan Agreement, which entitled the creditor to take enforcement action upon occurrence of default. It is submitted that the creditor thereafter invoked the Demand Promissory Note and called upon the Appellant to pay the defaulted amount vide demand notice dated 10.01.2026. Ld. Counsel submits that a composite reading of all the aforesaid transactional documents unequivocally demonstrates that although the Appellant may have been described as a co-borrower, he effectively stood in the capacity of a guarantor who guaranteed repayment of the loan disbursed to LR Builders Pvt. Ltd.

26. In support of the aforesaid contention, Ld. Counsel places reliance upon the judgment of the Hon'ble Supreme Court in ***China Development Bank v. Doha Bank Q.P.S.C.***, wherein the Hon'ble Supreme Court interpreted a Deed of Hypothecation executed by certain entities as effectively constituting a deed of guarantee and held that the nomenclature or title of a document is not determinative of its true legal character. Reliance is also placed upon the judgment of the Hon'ble Supreme Court in ***S. Chattanatha Karayalkar v.***

Central Bank of India, wherein the Hon'ble SC considered whether a Demand Promissory Note together with a Letter of Continuity would constitute a document of guarantee or whether the executants thereof would merely be treated as co-borrowers. It was held that a Demand Promissory Note containing an undertaking to pay the loan amount on demand would, having regard to Section 126 of the Indian Contract Act, be construed as a guarantee. Ld. Counsel submits that the present case stands squarely covered by the aforesaid principles.

27. Dealing specifically with the four objections raised by the Appellant, Ld. Counsel submits under the first objection that although no formal deed of guarantee may have been executed in the conventional sense, the guarantee furnished by the Appellant is clearly evident upon a holistic reading of the transactional documents and in light of the law laid down by the Hon'ble Supreme Court. Under the second objection concerning paragraphs 3 and 4 of IA No. 958 of 2026, it is submitted that the said paragraphs are being read wholly out of context. Ld. Counsel submits that the said averments merely state that no formal deed of guarantee in the ordinary commercial sense was available on record and cannot by any stretch be construed as an admission that Respondent No. 1 was not entitled to pursue proceedings under Section 95 of the IBC. In response to the third objection relating to the Assignment Deed, Ld. Counsel submits that whether the expression "co-borrower" or "borrower" used in the transactional documents would, in the context of the Appellant, amount to a guarantor or merely a borrower is itself a matter of interpretation and

construction of documents. It is submitted that the Learned NCLT is yet to apply its mind to the said issue, while exercising jurisdiction under Section 100 of the IBC. In response to the fourth objection concerning the applicability of the judgment in Dilip B. Jiwrajka v. Union of India & Ors., Ld. Counsel submits that the said judgment directly covers the present controversy because the Appellant's argument essentially raises a question regarding the existence of a subsisting relationship between debtor and creditor, which is itself a jurisdictional issue to be adjudicated by the Learned NCLT only after consideration of rival submissions at the stage of Section 100 proceedings.

28. Ld. Counsel further submits that the allegations levelled by the Appellant against the Resolution Professional are wholly misconceived, particularly when the Appellant had an efficacious remedy before the Learned NCLT to file objections to the report of the Resolution Professional, but consciously failed to avail the same. It is submitted that instead of pursuing the statutory remedy available before the Adjudicating Authority, the Appellant has preferred the present Appeal solely with a view to evade liability arising from the admitted debt and default. Ld. Counsel further submits that, in any event, the Resolution Professional has already resigned and an application seeking substitution is presently pending before the Learned NCLT.

29. He submits that the Hon'ble Courts have repeatedly emphasized that procedural law is intended to advance the cause of justice and not to defeat substantive rights on technical grounds. Reliance is placed upon the judgment

of the Hon'ble Supreme Court in ***State of Punjab & Anr. v. Shamlal Murari & Anr.***, wherein it was held that processual law is not to operate as a tyrant but as a servant of justice and that Courts are required to advance justice rather than defeat substantive rights on procedural technicalities.

30. In conclusion, Ld. Counsel submits that the Appellant has admittedly signed multiple documents unequivocally undertaking to pay the loan amount on demand together with applicable interest. It is submitted that whether such undertaking constitutes a guarantee or whether the Appellant acted merely as a borrower or co-borrower is itself a disputed question of fact dependent upon interpretation of the transactional documents. Ld. Counsel submits that the filing of the Section 95 application by Respondent No. 1 on the basis of such documents therefore cannot be termed as an abuse of process of law. It is respectfully submitted that the present Appeal seeks premature adjudication of disputed questions which are required to be considered by the Learned NCLT under Section 100 of the IBC. Accordingly, this Hon'ble Appellate Tribunal may not interfere with the order passed by the Learned NCLT under Section 97(5) of the IBC and the parties may instead be relegated to the Learned NCLT to raise all questions of law and fact as permissible in law.

Analysis and Findings

31. We have heard the Ld. Counsels in detail and have perused the records including the written submissions. Respondent No.2/RP is a proforma party in these proceedings.

32. The principal issue which arises for consideration in the present Appeal is whether the Learned Adjudicating Authority committed any illegality or jurisdictional error in passing the impugned order dated 04.02.2026 under Section 97 of the Insolvency and Bankruptcy Code, 2016 by appointing a Resolution Professional in proceedings initiated under Section 95 of the Code against the Appellant, particularly when the Appellant contends that he is merely a co-borrower and not a personal guarantor and that no formal deed of guarantee exists.

33. The case of the Appellant, in brief, is that the loan facility dated 18.11.2011 was sanctioned in favour of M/s L.R. Builders Pvt. Ltd., and Mr. Pawan Gupta and Mr. Kamal Gupta were co-borrowers and not the guarantors. Even the loan sanction documents and subsequent proceedings before the DRT described the Appellant only as a co-borrower. The Appellant has argued that the sanction letter itself records “Guarantors: NIL” and that no deed of guarantee or invocation letter was ever executed or placed on record. It has further been argued that despite absence of a valid guarantee, Respondent No.1 initiated proceedings under Section 95 of the Code by wrongly portraying the Appellant as a personal guarantor and thereby obtained the impugned order appointing the Resolution Professional. According to the Appellant, since proceedings under Part III of the Code presently apply only to personal guarantors to corporate debtors, initiation of proceedings against a co-borrower is wholly without jurisdiction and the impugned order deserves to be set aside.

34. The Respondent, on the other hand, has contended that the Appeal itself is premature and contrary to the statutory scheme of Sections 95, 97, 99 and 100 of the Code. It has been argued that the Adjudicating Authority, at the stage of Section 97, is not required to finally adjudicate disputed questions relating to existence of guarantee, maintainability, subsistence of debt or status of parties. According to the Respondent, such issues are required to be examined only after submission of the report under Section 99 at the stage of adjudication under Section 100. The Respondent has further argued that the debt and default are admitted and that a holistic reading of the loan documents, board resolutions, demand promissory note and related transactional documents clearly demonstrates that the Appellant had undertaken obligations in the nature of a guarantor even if a separate document titled as “deed of guarantee” was not executed.

35. On 04.02.2026 the Ld. Adjudicating Authority passed the following order:

“Order delivered on 04.02.2026

ORDER

This application has been filed by M/s Charm Investments Pvt. Ltd., the Financial Creditor under Section 95 of the Insolvency and Bankruptcy Code, 2016 seeking initiation of Insolvency Resolution Process against Mr. Pawan Gupta, the Corporate Guarantor for the alleged default of Rs. 5,70,00,414/-. The Applicant has placed on record the Deed of Guarantee and Letter of Invocation.

The Applicant has proposed Mr. Pradeep Kumar Kaushik, having Registration No. IBBI/IPA-002/IP-N01141/2021-2022/13997 and e-

mail ID- law.kaushik1@gmail.com, Insolvency Professional, to be appointed as the Resolution Professional.

We, therefore, appoint Mr. Pradeep Kumar Kaushik as Resolution Professional and direct him to file a report in terms of Section 99 of IBC.

The Applicant seeks liberty to file a valid Authorization for Assignment (AFA) alongwith written consent and registration certificate during the course of the day. He further seeks liberty to file demand promissory note. Liberty granted.

It is needless to mention that interim moratorium has kicked in, in terms of Section 96 of IBC.

*List the matter **on 24.02.2026.***

-Sd-

(REENA SINHA PURI)
MEMBER (TECHNICAL)

-Sd-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)”

(Emphasis Supplied)

36. The record reflects that the impugned order dated 04.02.2026 appoints a Resolution Professional under Section 97 and directs submission of a report under Section 99 of the Code. Subsequent to impugned order the RP has submitted its report under section 99 of the Code. More importantly, the Ld. Adjudicating Authority records that the Applicant who is the Respondent 1 here, has placed Deed of Guarantee and Letter of Invocation on record.

37. The contention of the Appellant is that since the sanction letter records “Guarantors: NIL” and no formal deed of guarantee exists, the proceedings themselves are without jurisdiction. The Respondent initially represented before

the Adjudicating Authority that a deed of guarantee and invocation letter existed and later clarified that no such formal document was placed on record. The proceedings therefore are vitiated by fraud and misrepresentation of jurisdictional facts.

38. At this stage we take a look at relevant portion of the Loan Assignment Agreement dated 24th December 2025 between the Union Bank of India and Risikesh Hire Purchase and Leasing Company Private limited. Schedule 1-A of the agreement gives details of the Financing Documents. The relevant portion of pages 361-362 of Appeal Paper book is extracted below:

SCHEDULE 1
DETAILS OF LOANS AND DISCLOSURES

[SCHEDULE 1-A]

(See clauses 1.1 (i) & 10.11)

Being the details of the Financing Documents

1.	Sl. No.	1
2.	Name/ Details of the Borrower	M/s L.R. Builder Private Limited PAN AACL1446Q, CIN: U74899DL1995PTC067771, Address: 8233, LR Complex, Rani Jhansi Road, Near Filmistan Cinema, Delhi- 110006 Mr. Kamal Gupta Pan No. AAGPG3472N Address: C-19 Rana Pratap Bagh, New Delhi-110007. Mr. Pawan Kumar Gupta, Pan No: AAGPG3475M Address: C-19, Rana Pratap Bagh, New Delhi- 110007,
3.	Details of the guarantor/ co-borrower	Guarantors: Nil

4.	<i>A/c No. as per Assignor's records</i>	<i>560331000041101 (Old A/c No. CMTCC/01/110003)</i>
5.	<i>Whether classified as NPA along with date of such classification</i>	<i>Yes NPA classified on 31.12.2019</i>
	<i>Whether classified as NPA along with date of such classification</i>	<i>Yes NPA classified on 31.12.2019</i>
6.	<i>Outstanding amount (Principal outstanding + interest) as on Cut-off Date (detailed break up as per Schedule 2)</i>	As Per [Schedule 2] <i>Bid Amount: Rs.5,42,00,000/- (Rupees Five Crore Forty Two Lac Only) Final assignment amount Rs.5.42 Crore + further interest and other charges till the final date of assignment.</i>
7.	<i>Nature of the credit facility</i>	<i>Fund based limit of Rs. 550.00 Lac (Business and other purpose) and renewed and last limit further reduced to Rs.495 lacs.</i>
8.	<i>Details of Documents</i>	<i>As per Annexure A</i>

39. We note from the above that the loan agreement did not have any Guarantors listed. The second and subsequent loan assignment from Rishikesh Hiring to the Appellant/Financial Creditor reflects exactly the same position regarding guarantors.

40. We further take a look at the demand notice dated 10.01.2026 sent by the Respondent No.1 in Form B to the Appellant. The documents relied by the Respondent in support of Debt and default are mentioned at item at Sl. No. 14 of the Demand Notice, which is extracted below:

14.	<i>List of documents attached to this notice in order to prove the existence of debt and the amount in default</i>	1. <i>Sanction letter dated 18.11.2011 and 30.06.2014 Annexed as Annexure No.3 and Annexure No.4.</i> 2. <i>Legal Demand Notice dated 09.12.2019 annexed as Annexure No.5.</i> 3. <i>Request for overdraft/ Cash Credit</i>
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		<i>Facility dated 08.08.2017 annexed as Annexure No.6</i> 4. <i>Affidavit cum Encumbrance free declaration dated 08.08.2017 as Annexure No.7</i> 5. <i>Board Resolution dated 07.09.2017 as Annexure No.8.</i> 6. <i>Demand Promissory Note dated 26.09.2017 executed by L.R. Builders as Annexure No.9.</i> 7. <i>Take Delivery Letter to DPN dated 26.09.2017 executed by L.R. Builders as Annexure No.10.</i> 8. <i>Bank Statement annexed as Annexure No. 11.</i>
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41. We note from the above that the Respondent No.1 has not listed “Deed of Guarantee” and “Notice for Invocation of the Guarantee” in the said list. Appellant has relied on the promissory note dated 26.09.2017 and Take Delivery Letter of the same date along with other documents.

42. The above omission is significant as the demand notice constitutes the foundation of the proceedings under Section 95 of the Code. If the case of the Financial Creditor was based upon a personal Guarantee, one would ordinarily expect the Guarantee document and its invocation to find mention amongst the documents relied upon to establish the debt and default.

43. We have also gone through the Application of the Financial Creditor in CP. IB. No. 56 of 2026 filed before the Ld. Adjudicating Authority, where it has arrayed the Appellant as Co-Borrower/ Guarantor in the Part-II of the application. We have also gone through Part-V of the application, which provides

list of Documents to prove debt and default in particular item 8 of the Part-V, and note that 'Deed of Guarantee' and 'Notice for Invocation of Guarantee' are not listed.

44. We further note that subsequent to passing of the impugned order on 04.02.2026, the Appellant filed I.A. No. 958 of 2026 before the Adjudicating Authority. In para 4 of the Respondent makes the following Statement:

“That it is respectfully submitted that the Applicant had not placed on record any Deed of Guarantee and Letter of Invocation in the present proceedings, nor was any submission made to that effect during the course of hearing.”

45. Ld. Adjudicating Authority heard the IA-958 of 2026 on 03.03.2026 and passed the following order:

“Order delivered on 03.03.2026

ORDER

New IA-958/2026:-

This application has been filed by M/s. Charm Investments Private Limited/ Financial Creditor seeking rectification of order dated 04.02.2026.

It is submitted by the Learned Counsel that in the said order, it has been wrongly recorded that the Applicant has placed on record the deed of guarantee and letter of invocation.

At this stage, Mr. Saurabh Kalia, Learned Counsel appearing for the Personal Guarantor submitted that an appeal has been filed before the NCLAT against the order dated 04.02.2026 passed in IA-56/ND/2026 and Hon'ble NCLAT vide order dated 27.02.2026 while

recording the submissions of the Learned Counsel appearing for the Applicant that initiation of proceedings under Section 95 of the Code is abuse of process of the Court and the Resolution Professional has already submitted the report under Section 99 of the Code and directed the Resolution Professional not to take any further steps in the matter.

Having regard to the fact that since the matter is pending before the Hon'ble NCLAT, we are not inclined to entertain this application. However, we may record our dissatisfaction about the manner in which the case has been conducted and represented before this Adjudicating Authority by placing incorrect facts.

IA disposed of.

**-Sd/-
(REENA SINHA PURI)
MEMBER (TECHNICAL)**

**-Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**

(Emphasis Supplied)”

46. We note from the above that the Respondent/Financial Creditor has admitted in IA 958 that it had not placed “Deed of Guarantee” and “Invocation of Guarantee” on record in its Application under Section 95 of the Code; while in the same Application it has arrayed the Appellant as Co-Borrower/ Guarantor. Secondly, we also note that Ld. Adjudicating Authority in its order dated 03.03.2026 has expressed its displeasure about Respondent/Financial Creditor having misrepresented and placed incorrect facts before it.

47. It comes out clearly that there was no personal Deed of Guarantee or its invocation placed on record in the proceedings. The two loan assignment deeds did not have any Guarantee listed in them. Neither the demand notice nor the application under Section 95 of the code mention any Guarantee Document and

its subsequent invocation. The order dated 04.02.2026 specifically took note of Deed of Guarantee and Letter of Invocation. Ld. Adjudicating Authority in its order dated 03.03.2026 have clearly recorded that there was misrepresentation on the part of Respondent/Financial creditor before it and incorrect facts were pleaded.

48. Appellant has also rightly relied on the Judgement of Hon'ble SC in "**A.V. Papayya Sastry vs. Government of A.P., (2007) 4 SCC 221**", wherein it was held that an order obtained by fraud and misrepresentation can be set aside at any stage, including appellate proceedings, writ proceedings or even collateral proceedings.

49. Based on the facts on record, we are of the view that the findings of the Ld. Adjudicating Authority were vitiated by misrepresentation of facts before it. The 'Deed of Guarantee' and 'Letter of Invocation' of the Guarantee are the two most important documents in a Section 95 proceedings. The impugned order dated 04.02.2026 was passed by the Ld. Adjudicating Authority on the basis of misrepresentation of relevant jurisdictional facts by the Respondent No.1, which are foundational to the requirements of Section 95 of the Code. This has been duly noted by Ld. Adjudicating authority in its order dated 03.03.2026. In view of the above, we are of the view that the findings of the Ld. Adjudicating authority were vitiated and therefore are void ab initio.

50. In view of the findings above, the impugned order dated 0402.2026 is set aside. The Respondent/ Financial Creditor would however be at liberty to file fresh application under Section 95 of the code with all relevant documents. Pending IA's, if any, are closed. No order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Mr. Indevar Pandey]
Member (Technical)**

Place: New Delhi

Harleen/
Pragya (LRA)