



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

**CP (IB) NO.9/ALD/2022 WITH
IA NO.196/2022 & IA NO.171/2024**

(Application filed under section 95 of the Insolvency and Bankruptcy Code, 2016 r/w rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019)

IN THE MATTER OF:

BANK OF BARODA

Stressed Asset Management Branch,
4th Floor, Rajendra Bhavan,
Rajendra Palace, New Delhi-110008.
Through its Authorized Officer

..... Applicant/Financial Creditor

Versus

MR. BHARAT RAJ PUNJ

R/o: - B-20, Greater Kailash Part-I, New Delhi
Personal Guarantor to Leel Electrical Limited
(Corporate Debtor)

..... Respondent/Personal Guarantor

AND IN THE MATTER OF:

Mr. Sandeep Kumar Bhatt

Resolution Professional

Registration No. IBBI/IPA-002/IP-N01064-C01/2017-
2018/10298.

R/o 83-B Pocket-IV, Mayur Vihar Phase-I, New Delhi-110091

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Email skbmica@gmail.com.

..... Applicant

AND IN THE MATTER OF:

Mr. Bharat Raj Punj

Personal Guarantor

..... Applicant

Versus

Sandeep Kumar Bhatt

Resolution Professional

..... Respondent

Order pronounced on 09th January, 2025

Coram:

Mr. Praveen Gupta : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Kamal Deep Tyagi, Adv. : For the Financial Creditor

Sh. Mohit Nandwani, Adv. : For the Resolution Professional

Ms. Madhumita : For the Personal Guarantor/
Bhattacharjee, Adv. Res. No.2 in IA No.196/2022 &
Applicant in IA No.171/2024

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ORDER

1. This Application was filed on 31.12.2021 by Bank of Baroda Stressed Assets Management Branch, New Delhi (hereinafter referred to as the “**Applicant/Financial Creditor**”) under Section 95 of Insolvency and Bankruptcy Code (hereinafter referred to as the “**IBC/I&B Code, 2016/The Code**”) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019 (hereinafter referred as “**PG Insolvency Rules, 2019**”). The prayer made is to initiate the Personal Insolvency Resolution Process (hereinafter referred as “**PIRP**”) against the Respondent/ Personal Guarantor, Mr. Bharat Raj Punj who stood as Personal Guarantor to the various credit facilities availed by the Corporate Debtor namely, M/s Leel Electricals Ltd. ("Borrower/Principal Borrower") for a total outstanding debt of Rs. 40,11,61,229.89/- (Rupees Forty Crore Eleven Lakhs

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Sixty-One Thousand Two Hundred and Twenty-Nine only) as on 31.01.2021 and further interest and charges until payment in full. The date of default as mentioned in Part III of the Application is 19.12.2018 when the Corporate Debtor defaulted on payment of debt.

2. It is stated in Part-III of the Application that the Respondent/Personal Guarantor provided personal guarantee to the Fund based Working Capital Facilities in the form of Cash Credit Account of Rs. 28 Cr. and Non Fund based LC and Inland Foreign BG of Rs. 37 cr. Rupee Term Loan and Foreign Currency Term Loan granted to M/s Leel Electricals Ltd. ("Principal Borrower/Corporate Debtor"). For this purpose, Respondent executed Deed of Guarantee dated 14.8.2018 in favour of the Applicant for an amount of Rs. 65 Crore with interest thereon. The various credit facilities were sanctioned to the Corporate Debtor/Principal Borrower vide sanction letter dated 23.01.2017 and the above guarantee deed was executed

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after the demise of the father Mr. Brij Raj Punj of the Respondent Personal Guarantor.

3. The Corporate Debtor failed to repay the outstanding loan amount as a consequence of which the Applicant Financial Creditor issued loan recall notice dated 04.05.2019 to the Respondent and then proceeded with issuing notice under section 13(2) of the SARFAESI Act on 20.5.2019. The Applicant filed an IA for arraying as a party in in O.A. No. 1096/2019 initiated by the IDBI Bank for initiating recovery proceedings against the Corporate Debtor before the Debt Recovery Tribunal, New Delhi.
4. It is also mentioned in the application that due to the Corporate Debtor's failure to repay the debt, Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") was initiated against the Corporate Debtor by filing an Application under Section 9 of IBC in CP(IB) No. 189/ALD/2019 which was admitted by this tribunal, vide order dated 04.03.2020. Later on, due to non-

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approval of the resolution plan by the CoC, an order for liquidation of the Corporate Debtor has been passed by this Tribunal vide order dated 06.12.2021 under section 33(1) of the IBC, 2016 on filing of an I.A No. 356/2021 in CP(IB) No. 189/ALD/2019.

5. As no repayment of the outstanding loan amount was made either by the Corporate Debtor or Personal Guarantor even after issuing of recall notice and also notice u/s 13(1) of the SARFAESI Act, the Applicant issued demand Notice under Form-B dated 27.05.2021 to the Respondent/Personal Guarantor requiring him to pay the outstanding demand due from the Corporate Debtor as per the Guarantee Agreement. This Notice was duly served to the Respondent/Personal Guarantor but he did not make the payment within 14 days from the date of receipt of the said notice. Therefore, the present Application u/s 95 has been filed seeking starting of the PIRP against the Respondent/Personal Guarantor.

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REPORT OF RP UNDER SECTION 99 OF IBC AND
RECOMMENDATION THEREIN

6. This tribunal vide order dated 14.06.2022 appointed Mr. Sandeep Kumar Bhatt as the Resolution Professional (hereinafter referred as “**RP**”) in this matter. After analyzing all the information and explanation collected from parties and considering the legal provisions, the RP furnished his final report as per the provisions of the Section 99 of the IBC, 2016 on 30.06.2022 vide IA no.196/2022 and the same is discussed as under:

- i. That RP has obtained all the information and explanation which to the best of his knowledge and belief were necessary to frame his opinion for the recommendations for acceptance or rejection of the application by the Hon'ble Adjudicating Authority.*
- ii. On examination of the application and as submitted above, the debt is proved and complies the requirements set out as per Sec 95 of the I&B Code, 2016 because of following reasons:*
 - a. That the debt is proved.*

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- b.** *The debt is owed by the Corporate Debtor of which personal guarantee is executed by the guarantor i.e., Bharat Raj Punj and the debt is duly acknowledged by the Corporate Debtor and the Guarantor;*
 - c.** *That the guarantor has failed to repay the debt within 14 days of the service of notice of demand;*
 - d.** *That the details of documents and evidences in support of the claim by the applicant has been enclosed in the application;*
- iii.** *Based upon the above analysis and as per Section 99(1) of the I&B Code, 2016, the RP hereby recommends for the approval of the Application filed by the Bank of Baroda u/s 95 of the IB Code subject to final amount of recovery from the Guarantor which is to be adjudicated by the Hon'ble Tribunal considering receipts after Liquidation process is complete.*
- iv.** *Accordingly, the Hon'ble Adjudicating Authority is prayed to order to initiate Insolvency against the Personal Guarantor as per section 100 of the IB Code as parameters set out as per section 99 of the IB Code are complied with.”*

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REPLY ON BEHALF OF THE RESPONDENT TO THE
REPORT OF THE RP

7. The Respondent Personal Guarantor has filed Reply on 03.07.2023 raising objections to the report filed by the RP under section 99 of the IBC, 2016 wherein he has raised the followings contentions in support of his claim:-

- i. With regard to an email dated 15.06.2022 sent by the RP to the Respondent for obtaining the information, it is contended that a response was sent by the Respondent vide an email dated 23.06.2022 on the same email address from where the information was sought. Copy of the email dated 23.06.2022 has been annexed as **Annexure-1** with the Reply.
- ii. It is also contended by the Respondent that the Applicant has no power or authority to appoint Resolution Professional as per section 97(3) of the Code. Resolution Professional has to be appointed either by the Board or by the Adjudicating Authority. Therefore, this application is liable to be dismissed solely on this ground.

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- iii.** It is further contended by the Respondent that Applicant has already filed claim of Rs. 34,78,26,113 which has been admitted by the RP of the Corporate Debtor. Now, for the same set of claims, Applicant cannot file an application under section 95 of the Code. Copy of claim of Financial Creditors herein as admitted by the RP of the Corporate Debtor i.e. LEEL Electrical Ltd. has been annexed as **Annexure No. 2** with the Reply.
- iv.** Furthermore, it is contended by the Respondent that Applicant cannot unilaterally file an application under section 95 by declaring an event of default and seek repayment of loan disbursed under the credit facilities when as per the Deed of Guarantee dated 14.8.2018, loan was availed from the Consortium of Banks wherein SBI was the lead Bank. As per the said deed, the intention of the consortium was to act collectively not unilaterally.
- v.** It is further contended that the Respondent resigned from the Board of the Company on 02.03.2019. Respondent while discharging his duties as a Managing Director was neither engaged in any of the financial transactions of the Corporate Debtor nor was a signatory to any of the bank accounts of the Company because such

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transactions were executed by the Core Management Team of the Corporate Debtor.

- vi. The Form-B dated 27.05.2021 issued by the Applicant without enclosing the documents mentioned in its para no.12 vitiates the notice as void ab initio. Therefore, the Report of the RP may be rejected.

REJOINDER ON BEHALF OF THE RESOLUTION PROFESSIONAL

- 8. To counter the contentions raised by the Respondent in its Reply, RP has filed Rejoinder on 13.05.2024 wherein the followings averments have been made: -

- i. The reply given by the Respondent that he had sent mail with reply on 23.06.2022 in response to the mail dated 15.06.2022 of RP has been vehemently denied by the RP in the Rejoinder. In this regard, it is stated by him that two reminders dated 15.06.2022, 20.06.2022 and 22.06.2022 (enclosed with RP report) were sent and he received the first mail of the Respondent on 03.07.2023 wherein the report was filed on 29.06.2022 after giving him opportunity two times for submission of details and

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documents called for. The screenshot of the mail box around the date of 23.06.2022 is enclosed proving no such mail was sent. The copy of mail enclosed by the Respondent is stated to be fabricated for which RP sought for action needs to be taken against him. The screenshot of the mail box around the date of 23.06.2022 of the Applicant RP has been annexed as **Annexure R-1** with the Rejoinder.

- ii.** Para 8 (1) of the Reply is stated to be having no legal value in view of Sec 95 of the IB Code, 2016 wherein the Financial Creditor may apply either personally or through Resolution Professional for initiating the Insolvency Resolution Process by submitting an application. The Part IV of the petition is duly signed by the proposed RP and the petitioner both, hence this objection is contended to be baseless as submitted in the Rejoinder.
- iii.** It is also stated in the Rejoinder that the Reply in Para 8 (4) has no legal substance as the Personal Guarantors are equally liable to pay the dues of the Creditors and the liability is co-extensive. The RP in his report has clearly mentioned the initiation of CIRP in case of Principal Borrower. The Creditor can file claim against each of the corporate debtor and

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the guarantor for same set of liability as per well-settled law.

iv. It is further stated in the Rejoinder that the Reply in Para 8 (12) to (14) has no relevance as the Loan has been sanctioned by the Applicant Bank in individual capacity and there is nothing in the guarantee deed that the guarantee shall be invoked collectively by all the Banks or by the lead bank only, rather it is pointed out in the rejoinder that the guarantee deed provides otherwise.

9. Against the appointment of the RP and his observation/recommendations made in the Report filed vide IA No. 196 of 2022, the Personal Guarantor has filed an IA No. 171 of 2024 under section 98 of the I & B Code on 26.02.2024 challenging the legal validity of the appointment of the RP (*who has already submitted his report u/s 99 as discussed above*) contending that his appointment has been made without following the applicable provisions of the I & B Code, thus seeking for his removal/replacement and rejection of the report submitted by him. In IA No. 171/2024, following

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contentions have been raised to challenge the appointment of the RP and the report submitted by him in respect of the present case under consideration: -

- i.** As regards the liability of the Personal Guarantor/Applicant herein, it has been explained that father of the present Personal Guarantor had furnished a guarantee against the credit facilities availed from consortium of 9 banks including the present Applicant Bank/Financial Creditor that has filed the present application. Following the demise of his father, the present Personal Guarantor/Applicant herein issued a guarantee limited only to the assets which were inherited by the him, which he described in clause 1&12 of the Deed of Guarantee dated 14.08.2018. In this regard, these two clauses have been reproduced below: -

“1. Notwithstanding anything contained herein below in this Deed of Personal Guarantee, the liability of the Guarantor shall not exceed the value of the assets inherited by it from BRP or relinquished by the other heirs of BRP in favour of the Guarantor, more particularly detailed in the Schedule III hereto. However, the quantum of the liability of the

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Guarantor shall not be restricted to the value of the assets as on the date of this Guarantee but shall be the value of the assets, at the time of invocation of the Guarantee by the said Banks or any of them. Further, the Guarantor shall not deal with the assets, in any manner, inherited by them from BRP, without obtaining the prior written consent of the Lead Bank. That the Guarantor shall not, in any way, be liable for any amounts over and above the inheritance of the estate of Late BRP.

Nothing in the subsequent clauses will increase the liability of the Guarantor.

The bank shall not claim any amount from the Guarantor in case of default by the Borrower in excess of the inheritance of the estate of Late BRP by the Guarantor.

12.*The Guarantee shall be irrevocable and enforceable against the Guarantor notwithstanding any dispute between the said Banks and the Borrower, only to the extent of estate mentioned in Schedule III & IV.”*

ii. By pointing out the limited nature of guarantee given by the Personal Guarantor herein, it has been

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contended that though in the demand notice issued in Form B, an amount of Rs. 40,11,61,229/- has been mentioned seeking payment from the Personal Guarantor but no details documents were provided to show as to how the aforesaid amount has been arrived at despite specifically being asked by him.

iii. After issuing of Demand Notice in Form B, the petition u/s 95 as pointed out by the Personal Guarantor, was filed by the Financial Creditor directly, rather than through a Resolution Professional as it is evident from the affidavit and power of attorney annexed with the petition. As further pointed out by him that RP was appointed vide order dated 14.06.2022 based on the proposal made by the Applicant Bank/Financial Creditor in its Petition/Application, which in view of the Personal Guarantor is not as per the provision of Section 97 of the I & B Code. In this regard, he referred the provisions of Section 97(3) wherein the procedure for appointing a Resolution Professional is given, which requires the appointment to be based on a recommendation or nomination by the IBBI. However, in view of the Personal Guarantor, RP has been appointed erroneously pursuant to nomination/proposal made by the Financial

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Creditor without following the procedure given in Section 97(3) on account of misrepresentation made by the Applicant Bank/Financial Creditor.

- iv.** With regard to the Report of the RP, Personal Guarantor/Applicant herein contends that he did not consider the reply of Personal Guarantor submitted to him vide email dated 23.06.2022 in response to his various emails dated 15.06.2022, 20.06.2022 and 22.06.2022 calling for information/documents. As pointed out by him, in the email dated 23.06.2022 itself, he objected to the appointment of RP but without considering his objections, the RP has mechanically, without any application of mind made the report u/s 99 reiterating whatever is stated in the application filed u/s 95.
- v.** It is also pointed out that RP has not considered the contents of the Reply of the Personal Guarantor submitted in response to the Demand Notice dated 27.05.2021. All the objections raised by him in the reply as well as in email dated 23.06.2022, even objection on his appointment has not been considered by the RP, thus the principal of natural justice has not been observed by the RP while preparing the Report.

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- vi.** Further, the Personal Guarantor/Applicant herein contends that the Guarantee was given to consortium, hence in his view, the consortium alone through the Lead Bank was eligible to initiate any action u/s 95. However, as the Financial Creditor is neither the lead bank nor is it acting on behalf of the consortium, therefore, as per him, it lacks the eligibility to file the instant petition.
- vii.** Furthermore, Personal Guarantor/Applicant herein contends that the Creditor has failed to specify the amount for which the alleged guarantee is being invoked. It also fails to disclose the amount it has received in the ongoing liquidation proceedings and is attempting to claim the full amount in both proceedings. As argued by the Personal Guarantor/Applicant herein, as per Section 100 of the Code, crystallization of the liability is a *sin qua non*.
- 10.** By presenting the aforesaid points in the IA No. 171/2024, the Personal Guarantor argued that in the instant case, it is very clear that the RP has acted in complete derogation/derelection of his duties as Resolution Professional and his appointment was also

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made without following the mechanism of Section 97 of I & B Code and therefore , it is prayed by him that the instant Application i.e. IA 171/2024 may be allowed and a fresh Resolution Professional be appointed in accordance with the procedure prescribed under section 98 of the I & B Code and a fresh report u/s 99(1) be submitted by the newly appointed Resolution Professional after considering the various aspects as raised by him in the instant Application.

REPLY BY THE RESOLUTION PROFESSIONAL TO I.A.
NO. 171 OF 2024

11. In response to the aforesaid IA filed by the Personal Guarantor, the Resolution Professional has filed its Reply dated 14.05.2024 countering all the contentions raised in this IA by the Personal Guarantor objecting the appointment of the RP as well as objections raised against the report submitted by the RP u/s 99.

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- i.** As a preliminary objection raised against the instant IA, it has been contended that the provision u/s 98(1) does not give any right to the Personal Guarantor to seek replacement of Resolution Professional appointed u/s 95 of the Code.
- ii.** By referring to the provisions of Sections 97 and 98, it has been argued that from the conjoint reading of these two provisions, it is clear that the specific order in which the term 'debtor or creditor' is stated in section 98(1) corresponds respectively to the term 'section 94 or 95' used in Section 97(1) of the Code. Thus, as contended in the reply that for an Application filed by the debtor u/s 94, the Personal Guarantor being the Applicant Debtor can request for replacement of the Resolution Professional and conversely in the case of a Section 95 petition, only the Creditor is entitled to seek the replacement of the Resolution Professional.
- iii.** By relying on the above analysis, it has been contended in the reply that as in the present case, RP is appointed in Section 95 on Application made by the Creditor, the present IA filed by the Personal Guarantor for replacement of the RP is not maintainable.

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iv. Further, with regard to the objection that the present application has been filed by the Creditor and not by the RP, it is stated to be frivolous objection in view of the procedure as given in the provision of Section 95 for filing of Application u/s 95. In this regard, it is submitted that as per Section 95(1) of the Code, the creditor may either file it by himself or through a resolution professional in Form C as per Rule 7(2) of the PG Insolvency Rules, 2019. Pertinently, in cases where the application under Section 95(1) is being filed by the Creditor through insolvency professional, the insolvency professional is required to submit his particulars and also provide a declaration in Part-IV of Form-C and as stated in the reply, particulars of RP is duly submitted in Part-IV of Form C of the Section 95 petition and after the signature of the Creditor, the petition is signed by the Respondent/RP. In view of such details available on record, it is contended that the objection of the Personal Guarantor that the Petition is not supported by the affidavit of the Respondent/RP is a hyper technical objection.

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- v.** In view of above facts on record, the objection of the Personal Guarantor with respect to appointment of the RP though has not been accepted, but it has also been contended that it is a curable defect and it has been submitted that as declaration by RP has already been provided in Part IV, this petition may be considered as being filed by the Creditor through the Resolution Professional and only for this defect, RP cannot be changed, which otherwise delay the entire process.
- vi.** Even the Applicant Personal Guarantor did not challenge before the NCLAT in appeal the order dated 14.06.2022 of this Tribunal appointing the RP and therefore, this order has attained finality and cannot be subject to review for changing the RP.
- vii.** As regards the objections filed on the report of the RP submitted u/s 99, it is submitted to be only repetition as already covered in reply to RP's report of which rejoinder has already been filed countering all the objections filed by the Personal Guarantor.

Finally, RP pleaded in the reply that the instant IA is not maintainable and also, it is an attempt to delay

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and frustrate the insolvency process, therefore requested to be dismissed.

**REJOINDER BY THE PERSONAL
GUARANTOR/APPLICANT IN IA**

- 12.** In the Rejoinder filed by the Personal Guarantor, the interpretation of section 98 as explained in the Reply that for RP appointed in respect of petition u/s 95, only Creditor can seek replacement of RP is disputed contending that such interpretation is highly restrictive in nature and it is further argued that there can also be instances where a creditor can seek replacement of RP who was appointed by debtor u/s 94 of the Code. By referring to provision of section 97 and order dated 14.06.2022 of this tribunal, it is pointed out in the Rejoinder that the RP was appointed by the Adjudicating Authority on being proposed by the Financial Creditor Bank and hence, he is nominee of the Financial Creditor which in view of the Personal Guarantor is impermissible



under the Code. Irregularities by RP in preparing the Report as perceived by the Personal Guarantor has been reiterated in the Rejoinder and the Report of the RP u/s 99 has been stated to be made mechanically without application of mind recommending for the action against the Personal Guarantor as per the application filed by the Creditor u/s 95 without analyzing the facts of the case. It is also argued that before appointment of RP, requirement of limited notice to be given to Personal Guarantor to secure his presence referring to interim moratorium has commenced, which has been pointed out as held by the Hon'ble Supreme Court in *Swiss Rebbon* and further relied upon by the Hon'ble NCLAT in case of ***Ravi Ajit Kulkarni vs State Bank of India (2021) SCC OnLine NCLAT 641, para 42***. Thus, it is emphasized again in the Rejoinder that the appointment of RP as not being done as per law and because of irregularities committed by him, the RP should be

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replaced by a new RP and a fresh report should be called for.

- 13.** Countering the argument taken in Reply Affidavit as application filed u/s 95 to be considered as having been filed by the RP and not the Creditor and such defect is curable defect, reliance is placed on the decision in the case of ***New Okhla Industrial Development Authority vs Ravindra Kumar Singhvi (Dead) Thr Lrs [CA no. 382/2012]*** wherein it was held that, affidavits filed were not mere sheet of paper but a solemn statement made before a person authorized to administer oath or to accept affirmation.
- 14.** During the course of hearing, this tribunal vide order dated 23.10.2024 directed the Respondent/Personal Guarantor to file affidavit quantifying the debt for which the Personal Guarantor is liable to make payment considering his guarantee to be of limited nature only with respect to assets inherited by him from his late father and the debt which has already been recovered by

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the Financial Creditor i.e. Bank of Baroda from the Corporate Debtor i.e. M/s Leel Electricals Ltd. The relevant extract of the order is reproduced below: -

“ ...

The matter is adjourned only for a limited purpose to enable the Personal Guarantor to file a short affidavit as to the amount of debt, which according to the Personal Guarantor has been repaid in realization of the debt of the Financial Creditor and whether as per his own calculation, at present any debt is outstanding for which he stood as Personal Guarantor....”

- 15.** In compliance of the said order, the Respondent/ Personal Guarantor has filed affidavit wherein it is stated that the Financial Creditor has already filed its claim for a sum of Rs. 34,78,26,113 which has been admitted. Respondent has no knowledge of the realized debt due to the fact that liquidator has taken over the control of the management of the Corporate Debtor.

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- 16.** Both the parties i.e. Applicant Financial Creditor and Respondent has also filed their written arguments vide dairy no. 2210 dated 23.10.2024 and dairy no. 2275 dated 05.11.2024 respectively. Both the written arguments have been taken on record and is not reproduced here for the sake of brevity.

FINDINGS AND ORDER UNDER SECTION 100

- 17.** We have heard the submissions of the Ld. Counsel for the Applicant/Financial Creditor i.e. Bank of Baroda, RP and the Personal Guarantor and perused the Report received under Section 99 of IBC, 2016 filed by the RP recommending for admission of the Application filed under Section 95 as per the provision of Section 100 and to initiate the Insolvency Resolution Process against the Personal Guarantor.
- 18.** After perusing the record, concerning the present petition filed by the Financial Creditor U/s 95 of the Code, we find that the Personal Guarantor, Mr. Bharat Raj Punj, executed a letter of continuing

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guarantee/Guarantee Deed on 14.08.2018 in favor of the Applicant/Financial Creditor to secure the repayment of the principal amount of the fund-based facility for Rs. 65 crores, along with interest, payable by the Corporate Debtor i.e. M/s LEEL Electrical Limited being the Principal Borrower in relation to the sanction letter dated 21.03.2017. The terms of the guarantee clearly indicate that it is irrevocable, the Guarantors' obligations are unconditional, and the guarantor shall pay the Applicant/Financial Creditor on its first demand. Additionally, the guarantee remains valid until the borrower has fully repaid the loan.

- 19.** Later, the Corporate Debtor committed default in repaying the debt on 19.12.2018. Meanwhile, vide order dated 25.03.2020 of this tribunal, CIRP has been initiated against the Corporate Debtor on a petition filed u/s 9 of the Code by an Operational Creditor, MKM Technologies Private Limited, which finally culminated in liquidation proceeding initiated against the Corporate

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Debtor on 06.12.2021 and all its assets have been sold and a total amount of Rs. 135.45 crores have been realized out of which the Financial Creditor has been paid Rs.7.85 crores till 24.08.2023 out of the total admitted amount of Rs. 45.83 crores and an outstanding debt of Rs. 37.98 crores still remain to be paid to Applicant Finance Creditor by the Corporate Debtor that at present stands liquidated and therefore, for the remaining outstanding debt of Rs. 37.98 crores, the Personal Guarantor would be liable to pay.

- 20.** In terms of Section 128 of the Indian Contract Act, 1872, the liability of the surety is coextensive with that of the Principal Borrower. As per Section 5(22), *the Personal Guarantor is an individual who is the surety in a contract of guarantee to a Corporate Debtor.* He in his personal capacity provides guarantee against the loans availed by the Corporate Debtor and as such, his liability is co-extensive with that of the Corporate Debtor. It is now a settled law that a proceeding against a personal

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guarantor can be initiated for outstanding debt of the Corporate Debtor even without initiating any proceeding against the Corporate Debtor due to the reason that the liability of the Personal Guarantor is coextensive with that of the Corporate Debtor.

- 21.** In the present case, action against the Corporate Debtor under IBC has already been taken but an amount of only Rs. 7.85 crores could be realized and a debt of Rs. 37.98 crores are still outstanding. As per section 5(22), the Respondent Mr. Bharat Raj Punj is a surety in a contract of guarantee to Corporate Debtor herein vide a Deed of Guarantee dated 14.08.2018 in which he has been referred as “Guarantor” to the Banks and Financial Institutions as set out in a Schedule I wherein at sl. No.7, the present Financial Creditor, Bank of Baroda is mentioned, for providing a financial facility of a total principal sum of Rs. 1034 crore to the Corporate Debtor, M/s Leel Electrical Limited. Out of Rs. 1034 crores, share of Bank of Baroda is Rs. 65 crores. Thus, the

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Respondent, Mr. Bharat Raj Punj is a Personal Guarantor for the loans availed by the Corporate Debtor, M/s Leet Electricals Ltd. from the Financial Creditor, Bank of Baroda, for which total outstanding debt (including interest at present is Rs. 37.98 crores after amount of Rs.7.85 crores realized subsequent to liquidation of the said Corporate Debtor. It is noteworthy that this guarantee was executed by Mr. Bharat Raj Punj after the demise of his father Late Mr. Brij Raj Punj and he agreed on request of the borrower Corporate Debtor to execute the Guarantee dated 14.08.2018 in favour of the said banks that agreed to continue to grant the said financial facilities on the terms and in the manner as mentioned in the said Guarantee Deed.

- 22.** The terms of the guarantee clearly provide in its clause 12 that it is irrevocable, as per clause 26 it is provided that the guarantee is continuing guarantee till all the obligations of the borrower (principal, interest, additional interest, default interest, penal interest and

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other charges etc.) are fully paid, and as per clause 2, it is provided that the guarantor shall pay the Applicant/Financial Creditor on its first demand. Additionally, the guarantee remains valid until the borrower has fully repaid the loan. Thus, we find that as per the Deed of Guarantee, the Personal Guarantor is fully liable to pay the debt of the Principal Borrower i.e. the Corporate Debtor.

- 23.** In this regard, the objection of the Personal Guarantor that Respondent resigned from the Board of the Company on 02.03.2019 and he while discharging his duties as a Managing Director was neither engaged in any of the financial transactions of the Corporate Debtor nor was a signatory to any of the bank accounts of the Company because such transactions were executed by the Core Management Team of the Corporate Debtor, makes no material change in the liability fastened on the Respondent as Guarantor in terms of the Deed of Guarantee dated 14.06.2018. Therefore, this objection

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cannot be accepted looking to the terms of the Deed of Guarantee executed by him.

- 24.** In the IA no. 171/2024, a contention has been raised by the Personal Guarantor that his guarantee is conditional and it is limited to the value of the assets inherited by him. In this regard, it is submitted by him that following the demise of his father, he issued a guarantee limited only to the assets which were inherited by him, for which he referred to clause 1&12 of the Deed of Guarantee dated 14.08.2018. We have gone through these clauses and find that in clause 1, though it is provided that the liability of the Guarantor shall not exceed the value of the assets inherited by him from his late father or relinquished by the other heirs of his father in favour of the guarantor and these assets are detailed in Schedule III of the Guarantee Deed. However, it is further clarified in the said clause that the quantum of the liability of the Guarantor shall not be restricted to the value of the assets as on the date of the guarantee but shall be the

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value of the assets at the time of invocation of the guarantee and further, the Guarantor shall not deal with the assets, in any manner , inherited by him from his late father without obtaining the prior written consent of the Lead Bank and his liability will not be over and above the inheritance of the estate of his late father. Such estate of the father is mentioned in Schedule III & IV as provided in clause 12. All these assets as provided in Schedule III and IV of the said Guarantee Agreement are reproduced as below: -

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**CP (IB) NO.9/ALD/2022 WITH IA NO.196/2022 & IA NO.171/2024
IN THE NATIONAL COMPANY LAW TRIBUNAL,
ALLAHABAD BENCH, PRAYAGRAJ**

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SCHEDULE-III

(Details of Assets inherited by the Guarantor from BRP)

S. No.	GUARANTOR	ASSET
1.	Bharat Raj Punj Since relinquished by Mrs. Renu Punj in favour of Bharat Raj Punj	Residential Plot No. 95 (Corner), Jasola Pocket -1 Behind Appollo Hospital Delhi.
		One Fourth of the money lying in the Bank Accounts, Fixed Deposit, Bonds etc.
		One Fourth of the total no. of shares, as detailed in Schedule-IV hereto.
		All moveable assets and properties whatsoever including paintings, cars, silver items and personal effects.
2.	Bharat Raj Punj	House No. 118-X, Block A, Sector-35, Noida, District Gautam Buddh Nagar , U.P
		One Fourth of the money lying in the Bank Accounts, Fixed Deposit, Bonds etc.
		One Fourth of the total no. of shares, as detailed in Schedule-IV hereto.
3.	Bharat Raj Punj Since relinquished by Mrs. Bhavna Sareen in favour of Bharat Raj Punj	Flat no. P-3125, Third Floor, Ashiyana Utsav, Vasudhara Colony, Phase-II, Bhiwadi.
		One Fourth of the money lying in the Bank Accounts, Fixed Deposit, Bonds etc.
		One Fourth of the total no. of shares, as detailed in Schedule-IV hereto.

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SCHEDULE-IV
SHARES

S. NO.	Name Of The Company	Equity Share	Demat/Physical	Folio No./DPID/Cert. No.
	Listed Companies			
1	Fedders Electronic & Engg. Ltd.	1,632,667	Demat	IN30120910031747
2	LEEL Electricals Limited	1,617,983	Demat	IN30120910031747
	Private Companies			
1	PSL Engineering Pvt. Ltd.	63,592	Physical	0012
2	PSL Wolfe IV Pvt. Ltd.	100	Physical	02
3	Alrserco Pvt. Ltd.	107.930	Physical	0013
4	Perfect Radiators & Oil Collers Pvt. Ltd.	605.000	Physical	01
5	Fedders Credits Ltd.	200,100	Physical	6



6	Fedders Manufacturing Pvt. Ltd.	41	Physical	004
7	Fedders Aircool Pvt. Ltd.	110,000	Physical	B-1
8	Pandit Kanhaya Lal Punj Pvt. Ltd.	320	Physical	B-16
9	Fedders Sales Pvt. Ltd.	22,420	Physical	B-11
10	Fedders stock & Investments Pvt. Ltd.	500,000	Physical	01
11	Regal Information Technology Pvt. Ltd.	905,520	Physical	01
12	Fedders Infotech(l) Pvt.Ltd.	5.000	Physical	01
13.	Punj Technology Pvt. Ltd.	5,000	Physical	01
14	Punj Engineers Pvt. Ltd.	5,000	Physical	01

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15	Punj Services Pvt. Ltd.	1,170	Physical	Certificate No. 7
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25. Looking to the above list of assets, we can see that these are substantial residential properties as well as shares of companies. Though first two companies in the Schedule IV are sold/liquidated through the process under IBC, the residential properties that are mentioned in Schedule III and shares of private companies mentioned in Schedule IV must be of the value of several cores of rupees, sufficient to pay for the outstanding debt of the Applicant Financial Creditor. Keeping these facts in mind, we asked the Ld. Counsel of the Personal Guarantor to provide the details of the debt for which the Personal Guarantor is liable to make payment considering his guarantee to be of limited nature only with respect to assets inherited by him from his late father and the debt which has already been recovered by

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the Financial Creditor i.e. Bank of Baroda from the Corporate Debtor i.e. M/s LEEL Electricals Ltd.

- 26.** In response to our above query, an affidavit has been filed by the Personal Guarantor stating that the Financial Creditor has already filed its claim for a sum of Rs. 34,78,26,113 which has been admitted. Respondent has no knowledge of the realized debt due to the fact that liquidator has taken over the control of the management of the Corporate Debtor. However, no details of the value of assets inherited by him has been given to the extent of which he is liable to fulfil his guarantee by paying the outstanding debt of the Corporate Debtor.
- 27.** With the above details available on record, we find that a debt of Rs. 37.98 crores are still outstanding as on date, which is payable to the Applicant Financial Creditor by the Corporate Debtor as well as the Personal Guarantor in terms of the Guarantee Deed dated 14.08. 2018 to the extent of the value of the assets inherited by

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him on the date of invocation of guarantee. Therefore, we find that the guarantee was correctly invoked by the Applicant Financial Creditor in terms Guarantee Deed in view of default committed by the Corporate Debtor, by issuing notice dated 20.05.2019 under section 13(2) of the SARFESI Act, 2002 and the Personal Guarantor herein Mr. Bharat Raj Punj was demanded to pay Rs.29.67.03.725/- that existed on the date when the guarantee was invoked. However, the demand raised against him on invocation of guarantee was not paid and the default of not paying the said debt in default is still continuing.

28. Thereafter, we find that a demand notice under Form-B dated 27.05.2021, in accordance with Rule 7(1) of the PG Insolvency Rules, 2019, was correctly issued for an unpaid debt in default due from the Corporate Debtor amounting to Rs. 40,11,61,229 as calculated on 31.01.2021 and was duly served on the Personal Guarantor demanding to pay this amount within 14 days

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and to produce the proof of payment if the amount is already paid. However, neither any payment was made nor any proof of payment was submitted towards the outstanding amount of Rs. 40,11,61,229.89/- as on 31.01.2021 and further interest, penal interest, and other charges.

29. As we find that the said debt amount demanded in the Notice dated 27.05.2021 has not been paid by the Personal Guarantor, Mr. Bharat Raj Punj, proceeding u/s 95 has been correctly initiated against him by filing the present Application under consideration herein for invoking the PIRP against him. On filing of the instant Application, RP was appointed vide order dated 14.06.2022 of this tribunal, who submitted a report u/s 99 of the Code recommending for admission of the present Application u/s 95 as per the provision of Section 100 for initiating PIRP against the Personal Guarantor.

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30. After considering the above details and taking into account the invocation of the guarantee against the Respondent and its subsequent acknowledgement, we find that as per Rule 3(e) of PG Insolvency Rules 2019 , the Respondent herein is a guarantor against whom a guarantee has been invoked in terms of the Guarantee Deed as there being a debt in default in respect of a corporate debtor for which guarantee was given by him and he is also covered by the definition of the Personal Guarantor as provided in the definition of section 5(22) of the IBC. After invoking of the guarantee, the present Application has also been found to be filed within the limitation period of three years as guarantee was invoked on 20.05.2019 and Application u/s 95 has been filed on 31.12.2021. Thus, it is clearly established that the guarantee against the Personal Guarantor was invoked well within the limitation period.

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31. Questioning the validity of the instant Application, the Respondent Personal Guarantor objected to this Application stating that it has been filed by the Financial Creditor Bank of Baroda unilaterally without taking any approval from the Consortium of Banks when the Deed of Guarantee dated 14.08.2018 was executed in respect of the loans that was availed from the Consortium of Banks wherein SBI was the lead Bank. Therefore, as contended by the Personal Guarantor, such unilateral action taken by the present Financial Creditor is not valid in the eyes of law. This contention of the Respondent Personal Guarantor has not been found to be correct in view of clause 23 of the Guarantee Deed, which is reproduced as under: -

“23. Subject to Clause 1 above and to the extent of inherited Estate of BRP or relinquished by the other heirs of BRP in favour of the Guarantor. The Guarantor hereby agrees that, the Guarantor are liable to be treated as a Willful defaulter in terms of the applicable RBI Guidelines. In the event, the

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said Banks or any of the said Banks makes a claim on the guarantor on account of the default made by the Principal Debtor, and the Guarantor refuses to comply with the demand made by the said Banks or any of the said Banks despite having sufficient means to make payment of the dues.”

Looking to the above clause, it is clear that any of the said banks are entitled to make claim on the Guarantor on account of the default made by the Principal Debtor. Therefore, we don't find any infirmity in the action taken u/s 95 of the IBC by the present Financial Creditor against the Personal Guarantor after invoking the guarantee on account of the default made by the Principal Debtor. Therefore, this objection of the Respondent Personal Guarantor is rejected.

- 32.** As regards the objection of the Personal Guarantor that the Form-B dated 27.05.2021 issued by the Applicant without enclosing the documents mentioned in its para no.12 vitiates the notice as void ab initio and therefore,

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the Report of the RP may be rejected, we find that in para 12 of the notice in Form B, the provision of law, contract or other documents under which debt has become due is to be mentioned and a copy thereof is to be attached. On perusing the Form B, we find that all these details are duly filled in the Form B. The documents mentioned therein are Deed of Guarantee dated 14.06.2018, Sanction Letter vide BR:OVERSE:ADV:2016-17:101A dated 21.03.2017, letters of revival dated 26.09.2018 and Demand Notice to the Corporate Debtor M/s Leel Electricals Ltd. and its Guarantors dated 20.05.2019 under Section 13(2) and Legal Notice for recall dated 04.05.2019. All these documents are even otherwise if not attached, they are in possession of the Personal Guarantor and also attached with the instant Application u/s 95. While filing reply and filing of IA no 171/2024 in this case, reference of these documents have also been made by the Personal Guarantor and also referred during oral arguments by the Ld. Counsel

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appearing for him, therefore in our considered opinion if any such omission of not attaching the documents with the Notice in Form B has occurred, it will not vitiate the Notice in Form B as these documents are not such documents which are not in the knowledge or possession of the Personal Guarantor. Therefore, this objection is also rejected.

- 33.** The Personal Guarantor through its IA 171/2024 has raised objections with respect to the appointment of the RP, raising certain points *inter alia* that the Application was not filed through RP but by the Financial Creditor directly , however the RP was appointed on recommendation of the Financial Creditor as per the provision of section 97(1) as if the Application was filed through RP while RP should have been appointed as per the provision of 97(3) applicable for the application filed u/s 97(3) . The RP countered these objections explaining that the declaration by RP has been provided in Part IV of the Application filed in Form C and after the signature

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of the Creditor, the petition is signed by the Respondent/RP, and therefore this petition may be considered as being filed not by the Financial Creditor itself but through the Resolution Professional. Just because the affidavit filed along with the Application is signed by the Authorized Representative of the Financial Creditor, it cannot be said to have been filed by the Financial Creditor and only for this reason RP cannot be changed, which otherwise delay the entire process.

- 34.** We have examined the entire issue and we find that the Application in Form C has been duly filled up in a manner as being filed through an RP and it is even signed by the RP. Considering these details, the order dated 14.06.2022 has been passed by this tribunal, appointing the RP under section 97. This order was not challenged and accordingly, the RP carried out necessary inquiries and verifications as per the provisions of section 99 of IBC and submitted his report on 30.06.2022. Thereafter, objection to the report of the RP

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has also been filed vide Reply dated 03.07.2023. Meanwhile, as the objections filed by the Personal Guarantor was being considered, this IA 171/2024 was filed on 15.03.2024 seeking replacement of RP. Looking to these chain of events , it is quite clear that just by pointing out a defect in filing of the Application by the Financial Creditor , the Personal Guarantor's only intention is to delay the process of his personal insolvency by demanding the change of RP and submission of another report when there is clear default on his part in repayment of the guaranteed amount against the debt in default on account of the Corporate Debtor and the required application u/s 95 for initiation of PIRP against him, has also been filed by the Financial Creditor within the limitation period as we have already discussed in foregoing paras of this order.

- 35.** In the objection raised against the Report of the present RP also, we have not found any substance as we have already discussed in this order. Moreover, the report

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submitted by the RP is purely recommendatory in nature and cannot bind the Adjudicating Authority as held by the Hon'ble Supreme Court in case of ***Dilip B. Jiwarajka vs Union of India & Ors.*** dated 09.11.2023. In this order, it has been clearly held that the resolution professional appointed under Section 97 serves a facilitative role of collating all the facts relevant to the examination of the application for the commencement of the insolvency resolution process which has been preferred under Section 94 or Section 95. The report to be submitted to the adjudicatory authority is recommendatory in nature on whether to accept or reject the application. In this order, the Hon'ble Supreme Court clearly demarcated the role of the RP and the Adjudicating Authority while dealing with the Application u/s 95 or 94. The same is reproduced as under:

“1. Role of the Resolution Professional as a facilitator is to collate facts

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65. *In the provisions of Chapter III, particularly in Section 99, Parliament has provided for an engagement of the debtor with the resolution professional at various stages. Sub-section (2) of Section 99 stipulates that where an application has been filed by the creditor under Section 95, the resolution professional may require the debtor to prove the repayment of the debt in the manner which has been indicated in sub-clauses (a), (b) and (c). Evidently, the expression "may require the debtor to prove repayment of the debt" implicates the role of the debtor in explaining, whether, as a matter of fact, the debt remains unpaid or has been paid. 66.*

The resolution professional cannot decide that issue in the absence of an opportunity to the debtor to furnish an explanation and to produce material evidencing the payment of the debt. Likewise, sub-section (4) of Section 99 empowers the resolution professional, in the course of carrying out an examination of an application to seek further information or explanation in connection with the application from the debtor or the creditor. The expression

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"in connection with the application" indicates that Parliament has not contemplated a roving enquiry by the resolution professional but an enquiry for the purpose of making the ultimate recommendation in the report on the nature of the application itself.

The resolution professional, after carrying out the process which is evidenced in sub-sections (2) and (4), in particular, is then required to make an ascertainment in terms of sub-section (6). It is thereafter that the resolution professional would submit a report either recommending the acceptance or rejection of the application together with the reasons in support of the report.

67.*The provisions of Section 99 thus leave no manner of doubt that the process which takes place before the resolution professional is not an ex parte process in the absence of a debtor against whom the insolvency resolution process is sought to be initiated. Though, the ultimate report of the resolution professional has only a recommendatory value, the legislature has ensured that the recommendation is made after*



taking into account the information or, as the case may be, the explanation that is furnished by the debtor.

Thus, it cannot be said that there is any element of bias in a report submitted by an RP who is nominated by the creditor. In the decision in Ravi Ajit Kulkarni v. State Bank of India¹⁸, it has been emphasized that under Section 98 of the IBC, the debtor retains the option to replace the RP appointed under Section 97 by filing an appropriate application with the adjudicating authority.

68. *The submission which has been urged on behalf of the petitioners, however, is that Section 97(5) contemplates a role for the adjudicating authority in the appointment of a resolution professional anterior to the stage which is contemplated during the course of adjudication under Section 100. It has been urged that when the adjudicating authority appoints a resolution professional under Section 97(5), the adjudicating authority should be required to decide the jurisdictional questions on the basis of which the provisions of Part III are implicated.*

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In other words, it is urged that, at that stage, it would be necessary for the adjudicating authority to apply its mind as to whether (i) a debt subsists; and (ii) the relationship of creditor and debtor subsists. This is similar to the UNCITRAL Guide which emphasises the need for the insolvency court to evaluate commencement criteria before admitting insolvency proceedings, ensuring a fair hearing for the parties involved.¹⁹

69. *Reliance has been placed on the decision in Ujjam Bai v State of Uttar Pradesh²⁰ to support the submission that unless such an exercise is carried out, the debtor would be exposed to a wide-ranging enquiry by the resolution professional under Section 99 accompanied by a duty to furnish information or an explanation as required by the resolution professional. We are not inclined to accept this assertion.*

The principles articulated in Swiss Ribbons Private Limited v Union of India²¹ elucidate that the resolution professional's functions are administrative, not adjudicatory. Essar Steel India Limited v Satish Kumar Gupta,²²

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underscores the non-adjudicatory nature of the resolution professional's role. Further support for the administrative role of the resolution professional is drawn from the BLRC's drafting instructions, affirming that the resolution professional's role is primarily administrative for information and documentation collation and verification of the creditor's claim under Section 95 of the IBC.23

70. *We would also like to deal with the submission that the resolution professional is empowered to direct the personal guarantor and others to disclose sensitive personal information without a prior hearing. This demand for information, lacking an opportunity for the personal guarantor to be heard, raises (according to the petitioners) concerns about violating the right to privacy.*

We are of the considered view that the resolution professional, operating under the regulatory oversight of the Board, plays a vital role in the effective functioning of the insolvency process and contributes significantly to its efficiency. Firstly, the resolution professional is only

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entitled to seek information which is strictly relevant to the examination of the application for IRP; and secondly, regulation 7(2)(h) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 read with para 21 of the First Schedule, casts an obligation on the resolution professional to ensure confidentiality of all information relating to the insolvency process.

The BLRC also acknowledges the information imbalance between debtors and creditors, necessitating the resolution professional's investigative role in individual insolvency.²⁴ Therefore, Section 99 empowers the resolution professional to seek information.

71. In *K.S. Puttaswamy (9 Judge Bench) v Union of India*²⁵, this Court laid down the threshold requirements to balance privacy with legitimate state interest emanating from the procedural and content-based mandate of Article 21, as follows - (a) legality, i.e. there must be a law in existence; (b) the pursuit of a legitimate aim; and (c) proportionality of the legitimate aims with the object sought to be achieved. The right to privacy

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is subject to reasonable restraints. In the context of Section 99(4), the legitimate aims of establishing a comprehensive framework for individual insolvency and aiding the adjudicating authority justify seeking personal financial information, balancing privacy rights with the objective.

72. *We are of the view that the submission that an adjudicatory role should be interposed at the stage of Section 97(5) cannot be accepted. The power which is conferred on the adjudicating authority at the stage of filing of an application is to appoint a resolution professional.*

The appointment of a resolution professional is for the purpose of a facilitative exercise which is contemplated by Section 99 which, as we have noted, eventually ends in a report either recommending the acceptance or rejection of the application. Bearing in mind the statutory scheme, it would be impermissible for this Court to allow for the adjudicatory intervention of the adjudicating authority in adjudicating what is described as a jurisdictional question at the stage of Section 97(5).

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2. Role of the Adjudicatory Authority

73. Section 100(1) stipulates that the adjudicating authority must issue an order within fourteen days of receiving the report, either admitting or rejecting the application filed under Sections 94 or 95, depending on the circumstances. **Importantly, the adjudicating authority does not mechanically accept or reject applications based solely on the resolution professional's report. Instead, it must actively engage in a fair process, affording the debtor a fair opportunity to present their case.**

The adjudicating authority arrives at its determination by considering arguments supported by relevant material particulars. In essence, the adjudicating authority conducts an independent assessment, not solely relying on the resolution professional's report, to decide the fate of applications under Section 94 or 95 of the IBC.

74. *The true adjudicatory function of the authority commences under Section 100 after the submission of the report. Another reason why*

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we are not inclined to accept the submission is that what is described as a jurisdictional question by the petitioners may not be a simple matter to be decided as a question of law.

The jurisdictional questions of the nature which have been suggested by the petitioners, namely, on whether there is a subsisting debt or whether the relationship of debtor and creditor subsists, would involve a decision on mixed questions of law and fact. The entire scheme of Sections 99 and 100 implicates time lines which have been laid down by Parliament.

The entire process of implementing these time lines would be rendered nugatory if an adjudicatory role were to be read into the provisions of Section 97(5). The final reason which would militate against accepting the submission is that the provisions of Section 99 do not as such implicate any adverse civil consequences particularly if those provisions are read in the manner in which we now propose to elucidate.”

(Emphasis Supplied)

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36. While dealing with the role of the Adjudicating Authority, it has been held by the Hon'ble Supreme Court that the adjudicating authority does not mechanically accept or reject applications based solely on the resolution professional's report. Instead, it must actively engage in a fair process, affording the debtor a fair opportunity to present their case. Keeping in view the above guidelines set by the Hon'ble Supreme Court, we have provided full opportunity to the Personal Guarantor through his Ld Counsel asking her to submit as to how the Personal Guarantor has no obligation to pay for the outstanding debt of the Corporate Debtor but during the hearing, instead of showing as to how the entire debt of the Corporate Debtor has been discharged and the Personal Guarantor is not liable to pay for the amount guaranteed by him, the Ld. Counsel has mostly argued on the defect in the order dated 14.06.2022 of this tribunal with respect to the appointment of RP , which was pointed out by filing an IA , three years after the said order was

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passed and even no appeal against that order was filed at the relevant time and the report of the RP was also filed long back in compliance of the said order. The defect in the Application on the basis of which the manner in which RP was appointed has been objected, has also been found by us as being of hyper technical nature because the Application has been found by us as filled up in the manner as being filed through the RP whose details have also been filed in its part IV and also signed by him but as the Affidavit filed along with the Application was signed by the Authorized Representative of the Financial Creditor , it was being termed as filed by the Financial Creditor itself and not through the RP and hence, RP is contended to have been appointed as per section 97(3) and not as per section 97(1) in which the RP is appointed as proposed by the Financial Creditor. We do not find any force in such arguments of the Personal Guarantor as while passing the order dated 14.06.2021 while appointing RP, the instant application

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was considered as being filed through the RP and this order became final as no appeal against that order was filed and now, at this stage, we are of considered view that the same cannot be reviewed by us. Therefore, we decline to interfere with the order of appointment of the RP and the prayer made by the Personal Guarantor to replace the RP and call for a new report u/s 99 has been rejected. As regards a decision relied upon by the Personal Guarantor in respect of the affidavit filed, the facts and decision given in that case are in different context and not on filing of application u/s 95 and hence, not applicable to the facts of this case.

- 37.** As far as the contention raised by the Personal Guarantor to have been given opportunity by a issuance of notice to him before the appointment of the RP in view of a decision of Hon'ble NCLAT in case of **Ravi Ajit Kulkarni vs State Bank of India (supra)** is concerned, the law in this regard is now settled after the decision of the Hon'ble Supreme Court in case of **Dilip B. Jiwarajka**

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(supra) wherein , it is held that “*The submission that a hearing should be conducted by the adjudicatory authority for the purpose of determining 'jurisdictional facts' at the stage when it appoints a resolution professional under Section 97(5) of the IBC is rejected. No such adjudicatory function is contemplated at that stage. To read in such a requirement at that stage would be to rewrite the statute which is impermissible in the exercise of judicial review;*” Therefore, as no adjudicatory is contemplated at the stage of appointment of RP for proceeding u/s 95, there was no need of issuing notice to the Personal Guarantor to be present while considering the instant Application for the appointment of RP. Therefore, objection raised in this regard is also rejected.

- 38.** Now, as far as merit of the report is concerned , no specific objection on the content of the report about the debt of the Corporate Debtor being in default and there being a liability of the Personal Guarantor to pay for such

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debt in default and the same is still not paid, has been raised, except taking of the plea by the Ld. Counsel for the Personal Guarantor that reply submitted by the Personal Guarantor to the RP was not considered by the RP and the Personal Guarantor's guarantee is limited to the assets inherited by him from his late father . About the reply of the Personal Guarantor sent to RP, it has been submitted by the RP that the said reply was not received by him and hence, he did not discuss the same in his report. However, we provided full opportunity to the Personal Guarantor to explain his position about his liability towards the debt in default on account of the Corporate Debtor and whether the same has been discharged or not but instead of providing the relevant details, it was only submitted that he has no knowledge of the realized debt due to the fact that liquidator has taken over the control of the management of the Corporate Debtor.

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39. We have already discussed that after realization from liquidation, the outstanding debt of the Corporate Debtor towards the Financial Creditor remain at Rs. 37.98 crores and the Personal Guarantor has assets of substantial value as listed in Schedule III and IV of the Guarantee Deed and also reproduced in this order from which the outstanding debt of the Corporate Debtor can be realized. Such debt which can be realized from the assets of the Personal Guarantor as guaranteed by him is *prima facie* much more than Rs. 1 crore looking to the details of assets listed in Schedule III and IV of the Deed of Guarantee, though valuation of these assts have not been provided by the Personal Guarantor on the date of invocation of the guarantee despite asking him to provide the amount of the debt for which he is liable to pay for the amount guaranteed by him. Total amount of the debt in default for which the proceeding u/s 95 has been initiated, is also more than Rs. 1 crore as we have already discussed in this order, and hence it meets the

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threshold limit. Therefore, we find the report of RP recommending for the initiation of insolvency resolution process against the Personal Guarantor, Mr Bharat Raj Punj by admitting the application u/s 95 in accordance with the provision of section 100 of IBC, as acceptable.

40. In the Report of the RP dated 30.06.2022 as submitted before us, following finding have been given:

- i.** The present application has been filed within the limitation period.
- ii.** The Insolvency Petition satisfies the requirement of Section 95 of IBC, 2016 and has been filed in the requisite form, in terms of Rule 7(1) of the Rules, 2019, supported by requisite fee and documents.
- iii.** The Respondent Guarantor after being duly served with demand notice dated 27.05.2021 has committed default in not paying the debt within a period of 14 days of the service of the notice of demand; therefore, the requirement as set out under Section 95(4) is satisfied.
- iv.** That the debts mentioned in the application are fully recoverable from the personal guarantor as per the guarantee deed and it is not excluded debt.

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- v. That the Personal Guarantor is not eligible for a fresh start process provided under Chapter II of IBC, 2016.
- 41.** Considering the above facts and circumstances and upon perusal of the documents on record, the CP (IB) No.09/ALD/2022 filed under Section 95 of the IBC, 2016 is hereby Admitted in accordance with the provision of Section 100 of the Code and accordingly, the Insolvency Resolution Process stands initiated against Mr. Bharat Raj Punj viz. the Respondent/Personal Guarantor herein.
- 42.** We hereby direct as hereinafter:
- I.** Initiate Insolvency Resolution Process against the Respondent/Personal Guarantor and moratorium in relation to all the debts is declared, from today i.e. date of admission of the application, and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on the repayment plan under Section 114 whichever is earlier as provided under Sec 101 of IBC, 2016. During the moratorium period,

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- a.** Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed, and
- b.** The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and
- c.** The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;
- d.** The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

II. We noted that the Resolution Professional who submitted the report u/s 99 viz. Sandeep Kumar Bhatt, Insolvency Resolution Professional, having Registration No. IBBI/IPA-002/IP-N01064-C01/2017-2018/10298 is suspended w.e.f 01.12.2023 subsequent to filing of report u/s 99 and has no valid AFA at present. Therefore, this tribunal appoints Mr. Jayant Prakash from the panel provided by the IBBI, having Registration No. IBBI/IPA-001/IP-P00597/2017-2018/11049, R/o 15/775, Vasundhara, Ghaziabad, Uttar Pradesh, 201012 (email-id jayant_prakash@yahoo.com

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holding valid authorization till 30.06.2025. He is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Allahabad Bench, inviting claims from all Creditors, within 21 days of such issue. The notice under Sub Section (1) of Section 102(2) shall include: -

- a.** Details of the order admitting the application;
- b.** Particulars of the resolution professional with whom the claims are to be registered; and
- c.** The last date for submission of claims.

III. The publication of notice shall be made in two newspapers, one in English and other in Vernacular, which have wide circulation in the State where the Corporate Debtor and Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.

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

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

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- b.** Claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice. The debtor shall prepare a repayment plan under Section 105, in consultation with the Resolution Professional, containing a proposal to the Creditors for restructuring of his debts or affairs.
- V.** The repayment plan may authorize or require the Resolution Professional to
 - a.** Carry on the debtor, business or trade on his behalf or in his name: or
 - b.** Realise the assets of the debtor; or
 - c.** Administers or dispose of any funds of the debtor.
- VI.** The repayment plan shall include the following, namely:
 - a.** Justification for preparation of such repayment plan and reasons based on which the creditors may agree upon the plan;
 - b.** Provision for payment of fee to the Resolution Professional;
 - c.** Such other matters as may be specified.

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- VII.** The Resolution Professional shall submit the repayment plan along with his report on the plan to this Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106.
- VIII.** In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons thereof. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of IBC, 2016. The date of meeting should not be less than 14 days or more than 28 days from the date of submission of the Report under sub-section (1) of Section 106 of IBC, 2016, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of IBC, 2016.
- IX.** The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of IBC, 2016 and submit the same to

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this Tribunal, copies of which shall be provided to the Debtor and the Creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of IBC, 2016.

- X.** The Resolution Professional shall submit his periodic reports before this Tribunal, every 30 days.
- XI.** The Applicant is directed to deposit INR 1,00,000/- (One lakh rupees) to the bank account of the Resolution Professional within one week, towards his fees. This shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.
- XII.** The Registry is directed to communicate a copy of order, report and application within seven working days and upload the same on the website immediately after the pronouncement of order.

43. Accordingly, CP (IB) No.9/ALD/2022 filed under Section 95 of the IBC, 2016 is admitted in accordance with Section 100 of the Code and the Insolvency Resolution Process stands initiated against the Respondent/Personal Guarantor. Consequently, **IA No.**

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171/2024 is hereby dismissed. **IA No. 196/2022** has already been taken on record vide our order dated 06.02.2023.

- 44.** List the matter on 06.02.2025 for further proceeding.

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(Ashish Verma)
Member (Technical)

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(Praveen Gupta)
Member (Judicial)

Date: 09th January, 2025