IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.305 – C.P.(IB)/171(AHM)2025 With
ITEM No. 306 - IA /663(AHM)2025 in C.P.(IB)/171(AHM)2025

Order under Section 94 of IBC, 2016

IN THE MATTER OF: C.P.(IB)/171(AHM)2025

Mrs.Pinkal Harshbhai Soni ....**Applicant**
V/s
Bank of Baroda .....**Respondent**

WITH

Order under Section 99 of IBC, 2016
IN THE MATTER OF: IA /663(AHM)2025

Mr. Kiran Chand Sipani RP of Mr. Pinkal Harshbhai Soni PG of Shree Mikt Jewellers Baroda Pvt. Ltd ......**Applicant**
V/s
Mr. Pinkal Harshbhai Soni PG of Shree Mikt Jewellers Baroda Pvt. Ltd & ors. .....**Respondent**

Order delivered on 10/11/2025

Coram:
Mr. Shammi Khan, Hon'ble Member (J)
Mr. Sanjeev Sharma, Hon'ble Member (T)

ORDER
(Hybrid Mode)

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

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)

- SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

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

CP(IB) No.171/94(AHM)2025
WITH
I.A. No.663/99/NCLT(AHM)2025

[Company Petition under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019]

IN THE MATTER OF: Mrs. Pinkal Harshbahi Soni

CP(IB) No.171/94(AHM)2025

Mrs. Pinkal Harshbahi Soni
Flat No.1 Subhashish Apartment,
1st Floor, Near Ishwar Bhuvan Road,
Navrangpura, Ahmedabad, Gujarat.

...Petitioner/PG/PG

VERSUS

Bank of Baroda
Zosarb Branch
Suraj Plaza-3, Sayajigunj,
Vadodara-390020, Gujarat

... Respondent/FC

WITH

I.A. No.663/99/NCLT(AHM)2025

Kiran Chand Sipani
Resolution Professional of
Mrs. Pinkal Harshbahi Soni
Personal Guarantor of Shree
Mukt Jewellers Baroda Pvt. Ltd.
Having address at: Office no-502-B-

Metro tower, Ring Road,
Near Rajhans Empria Surat,
Gujarat-395002
Email: sipaniadvisor@gmail.com

...Applicant/IRP

VERSUS

(1) Mrs. Pinkal Harshbahi Soni
Personal Guarantor of Shree
Mukt Jewellers Baroda Pvt. Ltd.
Flat No.1 Subhashish Apartment,
1st Floor, Near Ishwar Bhuvan Road,
Navrangpura, Ahmedabad-38009
Email: gssoni1008@gmail.com

.....Respondent No.1/PG

(2) Bank of Baroda
Zosarb Branch, Suraj Plaza-3
Sayajigunj, Vadodara-390020.
Email: armsgz@bankofbaroda.com
corbar@bankofbaroda.com

Also, at: Bank of Baroda
1st Floor, Opp. Petrol Pump,
RC Dutt Road, Alkapuri,
Vadodara, Gujarat- 390 007 India.
E- mail: cobar@bankofbaroda.com

.....Respondent No.2/FC

Order pronounced on 10.11.2025

C O R A M:

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

A P P E A R A N C E:

For the Applicant/IRP	: Mr. Nipun Singhvi, Advocate
For the PG	: Mr. Ritesh Patadia, Advocate
For the FC /BoB	: Ms. Nalini Lodha, Advocate
For the CD	: None

ORDER
Per: Bench

1. This Company Petition bearing CP(IB) No.171/94(AHM)2025 has been filed on 16.04.2025 by **Mrs. Pinkal Harshbahi Soni** (the Petitioner/PG- Personal Guarantor) under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules 2019 seeking initiation of Insolvency Resolution Process in respect of herself as Personal Guarantor to the Corporate Debtor - **Shree Mukt Jewellers Baroda Private Limited** for a total default amount of **Rs.192,78,12,622.38ps.** as on 09.01.2017 in respect of Deed of Guarantee dated 28.09.2013 annexed as **Exhibit.-G** executed in favour of the Respondent No.1/Financial Creditor.

2. The case of the Petitioner/PG/ Personal Guarantor is that the Petitioner/PG as Personal Guarantor had given a personal guarantee on 28.09.2013 in respect of Credit Facilities of Rs. 201,00,00,000/- granted in favour of Corporate Debtor - **Shree Mukt Jewellers Baroda Private Limited** by the Respondent Bank / Bank of Baroda, which is annexed with the Petition as **Exhibit.-G**. The aforesaid Credit Facilities were reviewed later on in the year 2015.

3. However, after availing the aforesaid Loan/Credit Facilities, the Corporate Debtors failed to maintain financial discipline as per terms and conditions of the loan agreement due to which loan accounts became irregular and the Corporate Debtor defaulted in repayment of dues. Thereafter, the debt was classified as Non-Performing Asset on 27.02.2016. The Respondent Bank also issued a demand notice dated 06.08.2016 for recalling the entire amount.

4. Subsequently, the Respondent No.1/Financial Creditor filed Recovery Suit before DRT-II Ahmedabad on 09.08.2016 which was allowed on 09.01.2017 and Recovery Certificate was issued by DRT-II, Ahmedabad in OA/551/2016 for an amount of Rs.192,78,12,622.38ps. along-with interest which is annexed as **Exhibit.-H**.

5. Further, One of the Directors & Guarantors of the Corporate Debtor namely Harshkumar G. Soni submitted various settlement proposals dated 09.07.2018, 01.08.2018, 20.09.2019, 17.03.2022, 11.05.2022 out of which lastly for Rs. 41,00,00,000/- to the Respondent No.1/Financial Creditor. However, the same were declined and rejected by the Respondent No.1/Financial Creditor vide Rejection Letters dated 10.07.2018, 02.08.2018, 19.03.2022, 21.05.2022 which is annexed as- **Exhibit.-J to Exhibit.-N.**

6. The Petitioner/PG/Personal Guarantor has filed this Company Petition under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 in the prescribed FORM-A on 16.04.2025 under Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate

Debtors) Rules, 2019 before this Adjudicating Authority for initiation of Insolvency Resolution Process.

7. The Petitioner/PG/Personal Guarantor in support of the Company Petition has filed following documents as **Exhibit.-A to Exhibit.-Q** at **page 25 to 83.** Details of **which** are as under: -

(a) Copy of Aadhar Card,

(b) Copy of Pan Card,

(c) Financial Statements for the F.Y. 2022 -2023,

(d) F.Y. 2023-24,

(e) F.Y. 2024-25,

(f) Copy of Company Master Data of Shree Mukt Jewellers Baroda Private Limited,

(g) Copy of Guarantee Deed dated 28.09.2013

(h) Copy of DRT Decree dated 09.01.2017 in OA/551/2016.

(i) Copy of Cause Title of TRP/02/2023 and Statement of Account

(j) Copy of Settlement Letters and Rejection Letters

(k) Copy of Further Affidavit by the Petitioner/PG/PG

(l) Copy of Email intimating the Respondent Bank about proposed filing of the Present Petition and RPAD Receipt

(m) Copy of Email intimating the Corporate Debtor about proposed filing of the present petition and RPAD Receipt.

8. On presentation of the Company Petition by the Petitioner/PG/Debtor, this Adjudicating Authority vide order dated 21.04.2025 has appointed as Interim Resolution Professional viz, **Mr. Kiran Chand Sipani**, having Registration No. IBBI/IPA-001/IP-P-02309/2021-2022/13589 as Interim Resolution Professional with directions to issue notice to creditors, obtain responses as per section 97(3) of IBC, 2016 and submit a report under Section 99 of the Code within ten days. The IRP was also directed to file its report through a separate IA.

9. The IRP to file a report under Section 99 of Insolvency and Bankruptcy Code, 2016 within ten days, which has been by IRP dated 09.05.2025 through **I.A. No.663/99/NCLT(AHM)2025,** recommending the ***admission*** of the Company Petition filed by the Petitioner/PG/Debtor under Section 94 of IBC, 2016. The IRP recorded in the report that:-

> "It is *humbly submitted by the Applicant that the present application meets the requisite requirements of the Code as is provided in this report and this Hon'ble NCLT may kindly pass appropriate orders under section 100 of the Code, Admitting the present application filed by, The Mrs. Pinkal Harshbahi Soni., on And declare "Moratorium" under section 101 of the Code and issue "Public Notice" for inviting claims under section 102 of the Code and may pass* such further orders as this Hon'ble NCLT deems necessary."

10. The IRP, in its report dated 09.05.2025 filed under Section 99 of the IBC, inter alia stated hereunder: -

10.1. It is stated that Mr. Kiran Chand Sipani was appointed as Interim Resolution Professional for Mrs. Pinkal Harshbahi Soni, personal guarantor of M/s. Shree Mukt Jewellers Baroda Private Limited, vide order dated 25.04.2025 in CP(IB) No.171/94(AHM)2025. The order directs submission of report under Section 99 of Insolvency and Bankruptcy Code, 2016 within 10 days. The report examines the application under Section 94 filed by personal guarantor. Annexure-A contains copy of the order dated 25.04.2025.

10.2. It is stated that intimation letters were issued by IRP on 30.04.2025 via email and registered post to personal guarantor and Bank of Baroda. The letters seek information on assets, bank accounts, balance sheet, and communications. Reply from personal guarantor was received on 03.05.2025 stating no immovable assets and listing bank accounts. Reply from Bank of Baroda was received on 05.05.2025 with sanction letter and default details. Annexure-B contains email dated 30.04.2025, postal receipt, and reply dated 03.05.2025. Annexure-C contains email, postal receipt, and reply dated 05.05.2025.

10.3. It is stated that personal guarantor executed guarantee agreement dated 28.09.2013 in favour of Bank of Baroda for corporate debtor. Debt Recovery Tribunal decree dated 09.01.2017 directs repayment of Rs. 1,92,78,12,622.38 within 30 days. Date of default is 27.02.2016 (NPA declaration), with ongoing non-compliance post-decree, including failure to honour OTS proposals culminating on

11.05.2022. One Time Settlement offers are submitted by personal guarantor on 09.07.2018, 01.08.2018, 20.09.2019, 17.03.2022, and 11.05.2022. Rejections by Bank of Baroda are dated 10.07.2018, 02.08.2018, and 21.05.2022. Demand notice was issued on 01.08.2024 this reinforces ongoing liability but does not alter the default date.

10.4. It is stated that IRP prepared report under Section 99 on 09.05.2025 recommending acceptance of application. The report confirms existence of debt, default, and invocation of guarantee. Personal guarantor provides balance sheet and income tax return with petition. No disputes on debt validity are raised. Information Utility registration is absent, so Section 99(3) is not applicable. Annexure-D contains copy of the report under Section 99 dated 09.05.2025.

10.5. It is stated that report examines compliance under Section 99(1) recommending acceptance within 10 days. Section 99(2) is not applicable as application is under Section 94. Section 99(4) compliance is met by seeking and receiving information. Section 99(5) is complied with as responses are furnished within 7 days. Section 99(6) confirms application meets Section 94 requirements. Section 99(7) recommends admission under Section 100.

10.6. It is stated that Company Petion filed by the Personal Guarantor is with in limitation from decree dated 09.01.2017 per Supreme Court judgment in ***Tottempudi***

Salalith v. State Bank of India & Ors., (2023) ibclaw.in 123 SC, decided on 18.10.2023. One Time Settlement communications dated 11.05.2022 and 21.05.2022 acknowledge debt. Personal guarantor has no eligibility for fresh start under Chapter II. Reasons for recommendation are recorded under Section 99(9). Sections 99(8) and 99(9) provisions are applied.

10.7. It is stated that report was served on personal guarantor and Bank of Baroda via email on 10.05.2025. Interlocutory Application is filed on 10.05.2025 seeking condonation of 2 days delay. Jurisdiction lies with NCLT Ahmedabad as corporate debtor office is in Gujarat.

10.8. It is stated that in view of above-narrated facts, the Applicant-IRP has sought condonation of delay in filing, taking of report on record, admission of application under Section 100, declaration of moratorium under Section 101, issuance of public notice for claims under Section 102, and such other reliefs as deemed fit.

11. After issuance of notice in the I.A., the Respondent / Financial Creditor i.e., Bank of Baroda appeared and has filed its reply in the shape of affidavit in reply on 21.08.2025 vide inward diary No. D-5551 in I.A. No.663/99/NCLT(AHM)2025. The relevant portion of same are reproduced as under: -

11.1. It is stated that the Petitioner/PG/PG has suppressed material facts in the petition including the Recovery

Certificate issued on 09.01.2017 for Rs.192,78,12,622. The Petitioner/PG/PG is Certificate Debtor No.2 in DRT proceedings and the RC is in force. Filing under Section 94 of IBC attempts to avoid RC satisfaction. Section 94 cannot be used as a shield against RC execution.

11.2. It is stated that the Petitioner/PG/PG has suppressed attachment of inherited property jointly with other heirs upon death of Late Gopalbhai Shankarlal Soni. The property is under attachment by Ld. RO in Recovery Proceedings TRP 02/2023 (earlier RP 14/2017). The Petitioner/PG/PG failed to disclose full particulars and value of the property. This violates Section 94(c) read with Rule 6(2)(iii) of IBBI Rules 2019.

11.3. It is stated that the petition lacks bonafides and amounts to abuse of PIRP to defeat execution when active execution is pending. Resorting to personal insolvency constitutes forum shopping and misuse of process. The petition is a mala fide attempt to stall lawful execution of RC and frustrate recovery. Reliance on Section 18 of Limitation Act via settlement proposal dated 11.05.2022 for time extension is misconceived.

11.4. It is stated that the settlement proposal dated 11.05.2022 by SMJBPL through Mr. Harsh Gopalbhai Soni is of no avail. As per latest Master Data on MCA portal SMJBPL has only one director Mr. Harsh Gopalbhai Soni. Second director Mr. Gopalbhai Shankarlal Soni expired on

24.05.2016 and no other director appointed. Last Balance Sheet filed showing position as at 31.03.2014.

11.5. It is stated that under Section 174 of Companies Act 2013 quorum for valid board meeting in private company requires at least two directors. No valid board resolution could have been passed to authorize submission of settlement proposal. The sole surviving director lacked authority to bind the company without statutory procedure under Companies Act. The invalid settlement proposal cannot be countenanced.

11.6. It is stated that the settlement letter is ultra vires and cannot constitute valid acknowledgement under Section 18 of Limitation Act. The present PIRP application filed within twelve years from RC date is liable to be dismissed. It is filed solely to stall and frustrate ongoing recovery proceedings. Financial creditor has attached one personal property of Petitioner/PG/PG along with joint owners devolved upon death of Mr. Gopalbhai Shankarlal Soni.

11.7. It is stated that the said personal property remains under lawful attachment of Ld. Recovery Officer in RP 14/2017 now TRP 02/2023. Financial creditor's right to recover is obstructed by filing the petition. Though guarantee admitted present Section 94 petition filed only to stall lawful execution of RC and shield personal assets from recovery. IBC not meant to be invoked as protective umbrella against execution proceedings underway.

11.8. It is stated that respondent bank granted credit facilities aggregating Rs.198,36,00,000 to SMJBPL for trading and manufacturing of jewellery mainly gold against hypothecation of stocks book-debts and mortgage of immovable properties including that of Petitioner/PG/PG. Petitioner/PG/PG executed General Form of Guarantee dated 28.09.2013 for Rs.201,00,00,000 along with others for facilities availed by SMJBPL. SMJBPL committed default in repayment of facilities.

11.9. It is stated that bank issued demand notice dated 06.08.2016 to SMJBPL and guarantors including Petitioner/PG/PG for outstanding dues of Rs.192,56,19,068.75 with further interest. Bank initiated recovery by filing OA No.551/2016 before Hon'ble DRT-II Ahmedabad on 09.08.2016 (copy at Annexure R/1). Hon'ble DRT granted ex-parte ad-interim relief on 10.08.2016 directing disclosure of assets (copy at Annexure R/2). OA decided by final judgment dated 09.01.2017 allowing recovery of Rs.192,78,12,622.38 with 12% interest (copy at Annexure R/3).

11.10. It is stated that Hon'ble Presiding Officer DRT-II issued RC to Ld. RO and recovery proceedings RP 14/2017 now TRP 02/2023 commenced. All mortgaged properties sold by Ld. RO in RP 14/2017. Bank has still to recover certified dues of more than Rs.200 Crores in terms of RC. In RP 14/2017 Petitioner/PG/PG filed Affidavit dated 10.12.2020 under Section 28(4A) of RDB Act stating dependents income from labour/bakery work Rs.10,000-20,000 monthly and non-operational bank accounts (copy at Annexure R/4).

11.11. It is stated that Petitioner/PG/PG produced ITR acknowledgements for AY 2022-2023 AY 2023-2024 and AY 2024-2025 disclosing gross total income Rs.3,82,787 Rs.3,60,000 and Rs.4,41,853 respectively with address discrepancies. Mrs. Jyoti Gopalbhai Soni address differs in ITR and petition. As per Aadhaar Card Petitioner/PG/PG address is 36 Arunodhay Society Alkapuri Vadodara. From copy of Passport dated 16.05.2014 Petitioner/PG/PG working as Sales Executive in Panache Jewels LLC UAE where mother shown as partner (copy at Annexure R/5).

11.12. It is stated that SMJBPL account reported fraud and complaint filed with CBI BS&FC Mumbai registered as FIR No.RC0292020A0012 against the company and Director Mr. Harsh Gopalbhai Soni (husband of PG) under investigation. Personal properties inherited attached except one property sale held up as not identified at site steps taken to trace. RP recommended acceptance relying on Tottampudi Salalith Vs. State Bank of India and OTS communications last on 11.05.2022 and 21.05.2022 but misplaced as invalid.

11.13. It is stated that reliance on OTS communications is misplaced as personal guarantor has not signed settlement letter dated 11.05.2022 to Financial Creditor. The settlement letter dated 11.05.2022 signed by Petitioner/PG/PG as director on behalf of SMJBPL and not in personal capacity. It is invalid settlement proposal and cannot be construed as extending time under Section 18 of Limitation Act.

11.14. It is stated that Petitioner/PG/PG has come before Hon'ble Tribunal with unclean hands and not disclosed material facts in memo of petition. Discrepancy in Affidavit filed under Section 28(4A) of RDB Act before Ld. RO in RP 14/2017 now TRP 02/2023. Petitioner/PG/PG has not submitted copies of Income Tax Returns at time of filing affidavit under Section 28(4A) of RDB Act.

11.15. It is stated that Petitioner/PG/PG filed Income Tax Returns for AY 2022-2023 2023-2024 and 2024-2025 showing income Rs.3,82,787 Rs.3,60,000 and Rs.4,41,853 respectively without disclosing source of income. Discrepancy in Section 28(4A) affidavit vis-a-vis Income Tax Returns. Petitioner/PG/PG has not disclosed personal property of late Gopalbhai Shankarlal Soni devolved upon him along with mother Mrs. Jyoti Gopalbhai Soni and others under attachment of Ld. RO and sale under process.

11.16. It is stated that Petitioner/PG/PG has not disclosed working as Sales Executive in firm of Panache Jewels LLC in UAE wherein Mrs. Jyoti G. Soni mother of Petitioner/PG/PG is one of partners. There is suppression of facts and non-disclosure of material facts hence Hon'ble Tribunal may reject petition considering conduct of Petitioner/PG/PG. Present petition not bonafide filed only to frustrate recovery in pending execution proceedings. In view of above-narrated facts in the Reply the Respondent/FC have sought rejection of RP recommendation dismissal of petition with costs and lifting of interim moratorium forthwith.

12. The Rejoinder has also filed by the Petitioner/PG/Personal Guarantor against the reply filed by the Respondent Bank/Bank of Baroda on 16.09.2025, vide inward diary No.D-6300. The relevant portion of same are reproduced as under: -

12.1. It is stated that the Petitioner/PG/PG denies all averments, allegations, and contentions in the respondent bank's reply dated 08.08.2025 except those specifically admitted. The reply is misconceived and contains factual and legal inaccuracies to obfuscate the issue under Section 94 of the Insolvency and Bankruptcy Code, 2016.

12.2. The challenge to maintainability of the petition and validity of settlement proposals for limitation extension is erroneous and deserves rejection. The timeline shows guarantee deed dated 28.09.2013, NPA on 27.02.2016, decree on 09.01.2017, settlement letters on 09.07.2018 rejected on 10.07.2018, on 01.08.2018 rejected on 02.08.2018, on 20.09.2019, on 17.03.2022 rejected on 19.03.2022, on 11.05.2022 rejected on 21.05.2022, COVID-19 period from 15.03.2020 to 28.02.2022, and filing on 16.04.2025.

12.3. It is stated that with reference to Para 1 of the reply, allegations of suppressed material facts are denied as Recovery Certificate No.14/2017 (present TRP No.02/2023) is disclosed and pending before DRT. Pendency of DRT/RC proceedings does not bar application under Section 94 of IBC. The respondent's attempt to allege suppression is without evidence and is baseless and not admitted.

12.4. It is stated that with reference to Para 2 of the reply, reliance is placed on settlement proposals dated 09.07.2018, 01.08.2018, 20.09.2019, 17.03.2022, and 11.05.2022 issued by the corporate debtor/guarantor. The bank's rejection communications confirm subsisting liability and continuing negotiations. The present application is not barred by limitation. As per the judgment in Dena Bank v. C. Shivakumar Reddy & Anr., (2021) 10 SCC 330, an acknowledgment of liability or OTS/settlement proposal constitutes valid acknowledgment of debt under Section 18 of the Limitation Act, thereby extending the limitation period. The present claim is within limitation.

12.5. It is stated that the liability of the company does not get extinguished merely due to the demise of one director. The settlement proposal executed by the surviving director is valid, binding, and enforceable against the company, once the bank being the only creditor accepts the said settlement letter and acts upon it. The respondent bank has never taken any such contention in its reply to settlement letter about the fact that said letter shall not be considered, as one director has expired and shall amount to nullity. That bank itself treated the settlement letter as valid communication from the company and responded to the same even after knowledge that only one director is available. So, Doctrine of Estoppel clearly applies to the bank now.

12.6. It is stated that it also amounts to waiver of objection to the director's authority once bank has responded without taking any such contentions. That it is clear that once bank itself has not taken such contention at relevant point of time, bank now cannot raise such contention as it is clear an afterthought which now cannot be accepted or considered at such belated stage. Further the law is well settled that a party cannot approbate and reprobate i.e. accept validity as one time and reject later. So it is clear that bank is barred by estoppel from disputing the settlement letter now after a period of 4 years after accepting the same at one stage.

12.7. It is stated that further, Section 18 of the Limitation Act states that any acknowledgement of liability signed by the debtor or authorised representative is sufficient to extend the period of limitation. Courts have consistently held that the substance of acknowledgement prevails over form, and even informal proposals, correspondence or settlement offers can constitute valid acknowledgement if they recognise debt and signed by the debtor.

12.8. It is stated that further the respondent claim that the settlement proposal is void for lack of proper board resolution or multiple directors. These technical pleas ignore the fact that the company was continuing to operate and the surviving director was recognized in all MCA data. Further, the bank has previously accepted correspondence or settlement letters from said director and has transacted on that basis, thereby waiving any formal defect for the purposes of limitation. The respondent bank never disputed the validity of similar communications when it suited their interest, and only now, for the purpose of limitation, is raising objection. Such selective challenge must be rejected, especially when the settlement proposal was addressed to the bank and intention to acknowledge liability was clear and unequivocal.

12.9. It is stated that with reference to Paras 3 to 7 of the reply, the present application filed by the Petitioner/PG/PG under Section 94 of the IBC, 2016 is a statutory remedy available to personal guarantors. Further, the respondent's allegation that the present application is filed to frustrate execution of RC is misconceived as proceedings under the RDB Act are in the nature of execution for recovery of money decrees. Further, proceedings under IBC, particularly Section 94-101, provide for a resolution mechanism for personal guarantors and are independent statutory remedies. Further, Section 96 of IBC itself mandates an interim moratorium on filing of such application, overriding other proceedings. It is therefore legally untenable to argue that pendency of RC proceedings should defeat the statutory rights of the Petitioner/PG/PG under IBC.

12.10. It is stated that with reference to Paras 8.1 to 8.5 of the reply, it is part of record that the respondent bank has granted various facilities to M/s Shree Mukt Jewellers Baroda Pvt Ltd and the Petitioner/PG/PG herein stood as a personal guarantor qua the said loan facility and also had executed various documents and Guarantee Agreement dated 28.09.2013 for Rs.201,00,00,000/- qua the said loans. Further, it is also admitted fact that the respondent bank has issued Demand Notice dated 06.08.2016 to corporate debtor company and its guarantors. Further, the respondent bank has filed Original Application No.551/2016 before the Hon'ble Debt Recovery Tribunal-II, Ahmedabad for recovery of a sum of Rs.192,78,12,622.38.

12.11. Further, the respondent bank has obtained Ex-parte interim order dated 10.08.2016 and obtained final Decree dated 09.01.2017, which is also placed by the Petitioner/PG/PG in the company petition. Further, it is also admitted fact that Recovery Certificate No.14/2017 issued (present as TRP No.02/2023). Further, in the said recovery proceedings, all the secured assets have been sold under auction and the said RC is pending adjudication. Further, it is also admitted fact that the Petitioner/PG/PG has filed Affidavit on 10.12.2020 u/s 28(4A) of the RDB Act.

12.12. It is stated that with reference to Para No.8.6 of the reply, the respondent's reliance on alleged discrepancies in address, ITR filings, is wholly irrelevant. That Petitioner/PG/PG has not got any permanent address as the bank has already sold the residential house of the Petitioner/PG/PG and she is solely residing in friends and relatives places. It is submitted that the "C-3, Shree Mukt Kunj, Indirapuri Society, Harni Road, Vadodara-390022 was the old home address of Jyotiben Gopalbhai Soni herein Mother of the Petitioner/PG/PG. Further, the said property also mortgaged with the bank in the year 2013 and subsequently released in the year 2015. Further, the address mentioned as per the Aadhar Card is also old address of the Petitioner/PG/PG and the present address of the Petitioner/PG/PG is as per the present petition filed and therefore such allegation/discrepancy in the address are not admitted. Other facts stated shall be dealt at the time of hearing, if needed.

12.13. It is stated that with reference to Para No.8.7 of the reply, it is an admitted fact that the Petitioner/PG/PG was working as Sales Executive in Panache Jewels LLC in UAE and mother of the Petitioner/PG/PG i.e. Jyotiben Gopalbhai Soni was the one of the partners of the same. However, the Petitioner/PG/PG working as Sales Executive in the year 2016-2017 and thereafter, the Petitioner/PG's mother has withdrawn his partnership since long. With reference to Para No.8.8 of the reply, it is submitted that as per the bank, Complaint has been filed with the CBI and same has

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been registered as FIR No. RC0292020A0012 against the company and its Director i.e. Mr. Harsh Gopalbhai Soni and it is under investigation.

12.14. With reference to Para No.8.9 of the reply, it is denied that the Petitioner/PG in collusion with other guarantors has suppressed the facts. That the Petitioner/PG herein has clearly disclosed all the facts qua the RC proceedings and hence same is not admitted and if needed shall be dealt at the time of hearing.

12.15. It is stated that with reference to Para No.8.10 to 8.12 of the reply, it is submitted that vide order dated 25.04.2025 IRP Mr. Kiran Chand Sipani was appointed and Interim Resolution Professional has independently reviewed the application and recommended acceptance. Further, as per Section 99(1) of IBC, the RP is duty-bound to give a reasoned recommendation. The final discretion lies with this Hon'ble Tribunal under Section 100. Hence, the respondent's claim to the RP's recommendation is misconceived.

12.16. With reference to Para No.8.13 of the reply, it is submitted that the respondent only repeated an allegation against the Petitioner/PG. That the Petitioner/PG has also given reply in above para that it is admitted fact that on 10.12.2020, Petitioner/PG has filed an Affidavit u/s 28(4A) of the RDB Act. Other facts stated are not admitted and if needed shall be dealt at the time of hearing.

12.17. With reference to Para No.8.14 of the reply, it is denied that the Petitioner/PG has filed present petition in collusion with other guarantors to delay the recovery under the provisions of the RDB Act. That it is an admitted position that application u/s 94 is filed independent and so collusion does not arise. Further it is clear that bank has taken U turn considering the fact that on one hand bank has been responding all the settlement letters given by the sole directors and subsequently now states that settlement letter itself are nullity. That bank acts as per its will and wish whereby on one hand where they wish they consider the proposal and reject and subsequent as per their will now submits that said settlement letters itself are void which cannot be permissible.

12.18. Further, in the RC proceeding, IA No.54/2019 was filed for direction and for clarification qua the settlement aspect. Further, the respondent bank has also given reply to the said I.A. Copy of IA/54/2019 and reply filed by bank is annexed herewith and marked as ANNEXURE: A. With reference to Para No.8.15 to 8.17 of the reply, it is submitted that the facts stated in the said paras are not admitted.

12.19. In view of the above-narrated facts, the Petitioner/PG/PG has sought acceptance of the report filed by the Interim Resolution Professional u/s 99 qua recommendation of the present petition and pass an order under Section 100 to admit the present application and declare moratorium under Section 101 of the IBC and pass appropriate order.

13. We have heard the Ld. Counsel for the Applicant/IRP, Ld. Counsel for the Personal Guarantor as well as Ld. Counsel for the Financial Creditor and perused the records as well as Report of IRP.

14. Based on the pleadings, submissions, and records, the following issues are framed for adjudication: -

(i). **Issue No.01:** Whether the Company Petition under Section 94 of the Insolvency and Bankruptcy Code, 2016 is maintainable and not barred by limitation?

(ii). **Issue No.02:** Whether the Personal Guarantor has suppressed material facts under Section 94(c) of the Insolvency and Bankruptcy Code, 2016 read with Rule 6(2)(iii) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 rendering the petition liable for rejection?

(iii). **Issue No.03:** Whether the petition constitutes an abuse of process or forum shopping to frustrate execution under the Recovery of Debts and Bankruptcy Act, 1993?

(iv). **Issue No.04:** Whether to admit or reject the petition under Section 100 of the Insolvency and Bankruptcy Code, 2016, continue or lift the interim moratorium under Section 96?

15. **Findings on Issue No.01:** Whether the Company Petition under Section 94 of the Insolvency and Bankruptcy Code, 2016 is maintainable and not barred by limitation?

15.1. The Personal Guarantor filed the petition on 16.04.2025 seeking initiation of Personal Insolvency Resolution Process against herself as guarantor to the Corporate Debtor. The default relates to guarantee dated 28.09.2013 for credit facilities of Rs.201,00,00,000 to the Corporate Debtor. The account turned Non-Performing Asset on 27.02.2016. Demand notice issued on 06.08.2016. Original Application No.551/2016 filed before Debts Recovery Tribunal-II, Ahmedabad on 09.08.2016 resulted in decree on 09.01.2017 for Rs.192,78,12,622.38 with interest. Recovery Certificate issued leading to proceedings RP 14/2017 renumbered TRP 02/2023.

15.2. The Interim Resolution Professional in report dated 09.05.2025 under Section 99 of the Insolvency and Bankruptcy Code, 2016 recommended admission of the petition stating. The Interim Resolution Professional noted execution of guarantee on 28.09.2013, declaration of Non-Performing Asset on 27.02.2016, demand notice on 06.08.2016 invoking guarantee, and decree on 09.01.2017 holding debt payable by Corporate Debtor and guarantors. The Interim Resolution Professional calculated period from 09.01.2017 to filing on 16.04.2025. The Interim Resolution Professional considered One Time Settlement offers are submitted by one of the Directors & Guarantor on

10.07.2018, 01.08.2018, 20.09.2019, 17.03.2022, and 11.05.2022. Rejections by Bank of Baroda are dated 10.07.2018, 02.08.2018, and 21.05.2022. Demand notice was issued on 01.08.2024.

15.3. The Interim Resolution Professional stated that Company Petition is in limitation from decree dated 09.01.2017 per Supreme Court judgment in ***Tottempudi Salalith v. State Bank of India & Ors., (2023) ibclaw.in 123 SC***, decided on 18.10.2023. One Time Settlement communications dated 11.05.2022 and 21.05.2022 acknowledge debt. Personal guarantor has no eligibility for fresh start under Chapter II. Reasons for recommendation are recorded under Section 99(9). Sections 99(8) and 99(9) provisions are applied

15.4. The Financial Creditor in reply affidavit dated 21.08.2025 opposed the recommendation of admission and assertred for rejection on limitation. The Financial Creditor reiterated timeline from guarantee invocation on 06.08.2016 and decree on 09.01.2017. The Financial Creditor contested reliance on settlement proposals arguing they are invalid and cannot extend limitation under Section 18 of Limitation Act, 1963.

15.5. The Financial Creditor stated Corporate Debtor Shree Mukt Jewellers Baroda Private Limited has one director Harsh Gopalbhai Soni after death of co-director Gopalbhai Shankarlal Soni on 24.05.2016, with last balance sheet filed as on 31.03.2014. The Financial Creditor referred to

Section 174 of Companies Act, 2013 requiring two directors for quorum in private company board meetings, hence no valid board resolution for proposals. The Financial Creditor termed proposals ultra vires and not binding acknowledgment. The Financial Creditor noted no payments made despite offers, suggesting intent to evade limitation without settlement intention.

15.6. The Personal Guarantor in rejoinder to Financial Creditor reply dated 16.09.2025 denied limitation bar. The Personal Guarantor placed on record five settlement proposals submitted by Corporate Debtor through Harsh Gopalbhai Soni: proposal dated 09.07.2018 offering Rs.85,00,00,000 rejected by Financial Creditor on 10.07.2018; proposal dated 01.08.2018 offering Rs.125,00,00,000 rejected on 02.08.2018; letter dated 20.09.2019 requesting time to submit offer after prior rejections, with no response from Financial Creditor; proposal dated 17.03.2022 offering Rs.50,00,00,000 payable by 31.03.2022 from private sources rejected on 19.03.2022; proposal dated 11.05.2022 offering Rs.41,00,00,000 rejected on 21.05.2022. These documents annexed in the Company Petition as Exhibit-J to N.

15.7. The Personal Guarantor argued each proposal signed by authorized representative of Corporate Debtor acknowledges subsisting debt to Financial Creditor, restarting three-year limitation under Section 18 of Limitation Act, 1963 from date of each. The Personal

Guarantor stated last proposal on 11.05.2022 extends limitation to 11.05.2025, hence filing on 16.04.2025 within time. The Personal Guarantor noted COVID-19 period from 15.03.2020 to 28.02.2022 under Supreme Court orders extended limitation where applicable. The Personal Guarantor cited Supreme Court judgment in Dena Bank (now Bank of Baroda) v. C. Shivakumar Reddy, Civil Appeal No.1650 of 2020 decided on 04.08.2021 holding one-time settlement proposals constitute acknowledgment under Section 18 of Limitation Act, 1963 if recognize debt in writing before expiry. The Personal Guarantor also cited NCLAT judgment in Tejas Khandhar v. Bank of Baroda, (2022) ibclaw.in 496 NCLAT decided on 12.07.2022 applying same to guarantor where Corporate Debtor acknowledged debt.

15.8. Section 238A of Insolvency and Bankruptcy Code, 2016 provides Limitation Act, 1963 applies to proceedings under Code as far as may be. Article 137 of Limitation Act, 1963 prescribes three years from when right to apply accrues for applications not otherwise provided. For personal guarantors under Part III of Code, cause of action arises on default. Decree or recovery certificate constitutes fresh cause of action per Supreme Court in Dena Bank case dated 04.08.2021. Section 18 of Limitation Act, 1963 states where before expiry of prescribed period, acknowledgment of liability in respect of property or right made in writing signed by party against whom such property or right claimed or by person through whom derives title or liability, fresh period of limitation computed from time when acknowledgment signed. Explanation to Section 18 clarifies acknowledgment conditional or qualified or promise to pay wholly or in part sufficient if identifies liability. No specific form required; substance matters if unequivocal.

15.9. In ***Dena Bank (now Bank of Baroda) v. C. Shivakumar Reddy dated 04.08.2021***, Supreme Court examined whether one-time settlement offer extends limitation for Section 7 petition under Part II of Code. Court held offer letter acknowledging debt as live claim within limitation constitutes valid acknowledgment under Section 18. Court distinguished mere payment promises from those recognizing quantum and existence. Court stated decree in suit gives fresh starting point under Article 136 of Limitation Act, 1963 but acknowledgments post-decree further extend. Applied to personal guarantors via co-extensive liability under Section 128 of Indian Contract Act, 1872.

15.10. In ***Tejas Khandhar v. Bank of Baroda, (2022) ibclaw.in 496 NCLAT***, decided on 12.07.2022, NCLAT followed Dena Bank case. Tribunal held one-time settlement proposals dated 01.08.2016 and 27.03.2018 by Corporate Debtor to Bank of Baroda acknowledged debt extending limitation for guarantor. Tribunal noted guarantor's liability secondary but acknowledgments by principal debtor bind guarantor. Tribunal rejected contention that guarantor must personally acknowledge.

15.11. Applying to facts, each settlement proposal dated 09.07.2018, 01.08.2018, 20.09.2019, 17.03.2022, 11.05.2022 signed by Harsh Gopalbhai Soni, the director and co-guarantor of Corporate Debtor states outstanding dues to Financial Creditor, offers specific sums as full and final settlement, and seeks acceptance. These identify liability clearly in writing by party against whom claimed. Rejection letters dated 10.07.2018, 02.08.2018, 19.03.2022, 21.05.2022 by Financial Creditor reference proposals and confirm dues outstanding, reinforcing acknowledgment. Letter dated 20.09.2019 references prior rejections and requests time for new offer, implying ongoing liability. Sequence shows continuous engagement from 2018 to 2022 without three-year gap breaking chain, as each post-acknowledgment restarts clock independently.

15.12. Financial Creditor's argument on invalidity due to quorum under Section 174 of Companies Act, 2013 examined. Section 174 requires two directors present for private company board meetings unless articles provide otherwise. Corporate Debtor's Master Data shows one director post 24.05.2016, last annual return 31.03.2014. However, proposals on letterhead signed by sole director, addressed to Financial Creditor who responded on merits without questioning authority for over four years. Doctrine of estoppel under Section 115 of Indian Evidence Act, 1872 applies: Financial Creditor induced Corporate Debtor to believe proposals valid by engaging, cannot now deny after benefit of negotiations. Waiver of formalities occurred as

Financial Creditor transacted without objection. Courts prioritize substance over form in acknowledgments per Explanation to Section 18 of Limitation Act, 1963.

15.13. No requirement under Section 18 for payments as acknowledgment alone suffices. Supreme Court in ***Shapoor Freedom Mazda v. Durga Prasad, AIR 1961 SC 1236*** held conditional promises qualify if admit liability. Gaps between proposals irrelevant as fresh periods start from each. COVID-19 extensions (15.03.2020-28.02.2022) via Supreme Court in ***Suo Motu Writ Petition (Civil) No. 3 of 2020 in Re: Cognizance for Extension of Limitation)*** cover earlier OTS but not required post-11.05.2022.

15.14. Decree dated 09.01.2017 provides initial three-year period to 09.01.2020 as per Article 137 of the Limitation Act, 1963, extended by first proposal 09.07.2018 to 09.07.2021, and subsequent ones culminating in 11.05.2025 expiry. Filing 16.04.2025 within time. Order dated 04.09.2024 in CP(IB) No.268(AHM)2024 distinguished: that petition lacked settlement documents, relied solely on decree, unlike here where proposals filed and considered.

15.15. Section 99 of Insolvency and Bankruptcy Code, 2016 mandates Interim Resolution Professional examine application and recommend acceptance or rejection with reasons, but recommendation not binding. Adjudicating Authority under Section 100 decides after hearing parties, satisfying itself on default, limitation, and maintainability.

15.16. Petition discloses default of Rs.192,78,12,622.38 as on 09.01.2017 per decree annexed as Exhibit-H. No dispute on debt existence or guarantee validity. Maintainable under Section 94 read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 in Form-A.

15.17. Thus, **Issue No.01** is held in favour of Personal Guarantor. Company Petition maintainable and not barred by limitation.

16. <u>Findings on Issue No.02</u>: Whether the Personal Guarantor has suppressed material facts under Section 94(c) of the Insolvency and Bankruptcy Code, 2016 read with Rule 6(2)(iii) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 rendering the petition liable for rejection?

16.1. Section 94(1) of Insolvency and Bankruptcy Code, 2016 allows debtor to file application for insolvency resolution process. Section 94(c) requires application accompanied by information and records specified in rules. Rule 6(1) prescribes Form-A. Rule 6(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority...) Rules, 2019 requires particulars of financial position including assets, liabilities, debts, income, and particulars of encumbrances.

16.2. Petition in Form-A annexes Aadhaar Card (Exhibit-A), PAN Card (Exhibit-B), financial statements for financial year 2022-2023 (Exhibit-C), 2023-2024 (Exhibit-D), 2024-2025 (Exhibit-E) disclosing income Rs.3,82,787, Rs.3,60,000 and Rs.4,41,853 respectively under heads salary and income from other sources. Company Master Data of Corporate Debtor (Exhibit-F), guarantee deed (Exhibit-G), decree dated 09.01.2017 (Exhibit-H), cause title of TRP 02/2023 and statement of account (Exhibit-I), settlement and rejection letters (Exhibit-J), further affidavit (Exhibit-K), emails and RPAD receipts to Financial Creditor and Corporate Debtor (Exhibit-L, M).

16.3. Financial Creditor in reply dated 21.08.2025 alleged suppression of material facts amounting to suppresio veri and suggestio falsi under Section 94(c) read with Rule 6(2)(iii). Financial Creditor stated Personal Guarantor as Certificate Debtor in Debts Recovery Tribunal proceedings suppressed inherited property from deceased husband Gopalbhai Shankarlal Soni attached by Recovery Officer in TRP 02/2023 (earlier RP 14/2017). Property details: Old Survey No.335/1, New Survey/Block No.562 admeasuring 2322 square meters at Village Umeta, Taluka Anklav, District Anand, attached on 05.07.2018, sale held up due to site identification issues. Financial Creditor annexed copy of decree (Annexure-R/3). Financial Creditor alleged non-disclosure of value and particulars breaches disclosure duties.

16.4. Financial Creditor further alleged suppression of partnership in Panache Jewels LLC, UAE per passport submitted in Debts Recovery Tribunal (Annexure-R/5 dated before 2017). Financial Creditor noted discrepancies in income: affidavit dated 10.12.2020 under Section 28(4A) of RBD, 1993 in RP 14/2017 stated housewife with Nil income from employment or sources, non-operational bank accounts at Canara Bank No.0160101015401 and Dena Bank No.074910007944 (Annexure-R/4). Contrasted with income tax returns for assessment year 2022-2023 to 2024-2025 showing incomes without source disclosure. Address in returns C-3, Shree Mukt Kunj, Indrapuri Society, Harni Road, Vadodara-390022 differs from petition address Flat No.1, Subhashish Apartment, 1st Floor, Near Ishwar Bhuvan Road, Navrangpura, Ahmedabad, Gujarat. Financial Creditor argued these mislead Adjudicating Authority, show unclean hands, warrant rejection.

16.5. Financial Creditor stated schedules to Recovery Certificate detailing personal properties of Certificate Debtors including Personal Guarantor not produced with decree in Exhibit-H. Financial Creditor referred to Original Application No.551/2016 filing on 09.08.2016 (Annexure-R/1), ex-parte order dated 10.08.2016 directing asset disclosures (Annexure-R/2), decree dated 09.01.2017 (Annexure-R/3), affidavit dated 10.12.2020 (Annexure-R/4), passport (Annexure-R/5). Financial Creditor noted all mortgaged properties sold in RP 14/2017, dues exceed Rs.200,00,00,000, personal recoveries ongoing.

16.6. Personal Guarantor in rejoinder dated 16.09.2025 denied suppressions. Personal Guarantor stated Recovery Certificate No.14/2017 (now TRP 02/2023) disclosed in Exhibit-I with cause title and statement of account. Personal Guarantor argued pendency of Debts Recovery Tribunal or Recovery Certificate proceedings does not bar Section 94 application per Section 238 of Insolvency and Bankruptcy Code, 2016. Personal Guarantor stated attached property inherited jointly known to Financial Creditor from Debts Recovery Tribunal proceedings; no need for separate disclosure as petition focuses on default, not asset valuation. Personal Guarantor annexed copy of IA No.54/2019 in Recovery Proceedings and Financial Creditor reply as Annexure-A to rejoinder.

16.7. On partnership, Personal Guarantor admitted involvement in Panache Jewels LLC in 2016-2017 but stated withdrawal thereafter; not current asset, hence not material under Rule 6(2). On income, Personal Guarantor explained Nil income from financial year 2016-2020 due to Corporate Debtor defunct status and COVID-19, no returns filed. Post 28.02.2022, started home business with friends and relatives support, filed returns disclosing income under appropriate heads. Affidavit dated 10.12.2020 reflected position then; financial statements in Exhibits C-E update to current.

16.8. On address, Personal Guarantor stated Vadodara address in returns old, mortgaged to Financial Creditor in 2013, released 2015, sold in auction; Aadhaar address also old. Current residence with relatives at Ahmedabad address in petition, no permanent home post sale. Personal Guarantor argued discrepancies irrelevant to default; full particulars of liabilities including decree and Recovery Certificate provided.

16.9. Rule 6(2) requires particulars of financial position but Form-A allows summary with annexures. Petition discloses debts via Exhibits G-I, assets via financial statements C-E, encumbrances via Exhibit-I. Suppression implies intentional concealment of facts affecting merits. Here, Recovery Certificate and proceedings central to default, explicitly mentioned in paragraph 5 of petition and Exhibit-I. Financial Creditor aware from own proceedings; no prejudice. Discrepancies in past affidavit and returns explained by timeline changes: affidavit 10.12.2020 during COVID Nil income; returns post-recovery start. Address change post asset sale logical.

16.10. Partnership pre-2017 not current; if asset, would appear in financial statements but withdrawn. No breach warranting rejection; Adjudicating Authority under Regulation 7(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 may direct supplementation of information.

16.11. Thus, **Issue No.02** held against Financial Creditor. No suppression rendering petition liable for rejection; Personal

Guarantor directed to file updated asset particulars within seven days of order and share with IRP.

17. **Findings on Issue No.03:** Whether the petition constitutes an abuse of process or forum shopping to frustrate execution under the Recovery of Debts and Bankruptcy Act, 1993?

17.1. Financial Creditor in reply dated 21.08.2025 argued petition filed to stall lawful execution of Recovery Certificate in TRP 02/2023. Financial Creditor stated all secured assets sold, dues over Rs.200,00,00,000, now pursuing personal properties including attached inherited land at Umeta on 05.07.2018. Financial Creditor alleged timing of filing 16.04.2025 post attachment promulgation shows intent to obstruct sale. Financial Creditor termed Section 94 shield against Recovery of Debts and Bankruptcy Act, 1993 execution as forum shopping and misuse. Financial Creditor argued Insolvency and Bankruptcy Code, 2016 not protective umbrella for ongoing recoveries; petition lacks bona fides, filed with unclean hands to delay.

17.2. Financial Creditor stated Personal Guarantor as Certificate Debtor No.4 and 6/1 jointly liable; filing halts Recovery Officer actions per interim moratorium under Section 96 of Insolvency and Bankruptcy Code, 2016 from 16.04.2025. Financial Creditor sought lifting of moratorium.

17.3. Personal Guarantor in rejoinder dated 16.09.2025 denied abuse. Personal Guarantor stated Section 94 provides statutory remedy for personal guarantors facing default, independent of Recovery of Debts and Bankruptcy Act, 1993 proceedings. Personal Guarantor argued Recovery of Debts and Bankruptcy Act, 1993 proceedings executionary for money decrees; Insolvency and Bankruptcy Code, 2016 under Sections 94-101 offers resolution mechanism overriding as per Section 238.

17.4. Personal Guarantor noted Section 96 mandates interim moratorium on application admission, staying suits, executions, distress. Personal Guarantor denied collusion with co-guarantors; each files independently. Personal Guarantor stated Financial Creditor engaged in settlement negotiations 2018-2022 without raising execution bar, now raises post filing.

17.5. Insolvency and Bankruptcy Code, 2016 object per Preamble maximization of asset value, promotion of entrepreneurship, availability of credit, balance interests. Part III for individuals and partnerships including personal guarantors. Section 94 empowers debtor to initiate on inability to pay debts. Section 96(1) provides interim moratorium from application date, prohibiting institution or continuation of suits, recovery, execution against debtor or property.

17.6. Recovery of Debts and Bankruptcy Act, 1993 enables expeditious debt recovery via tribunals. Section 34 bars civil court jurisdiction but Insolvency and Bankruptcy Code, 2016 non-obstante per Section 238 prevails in conflict. Section 94 application not barred by pending recovery; moratorium applies to stay executions for resolution.

17.7. Forum shopping implies selecting forum to evade law; here, Section 94 specific to personal insolvency, not alternative to Debts Recovery Tribunal. Filing post acknowledgments 11.05.2022 timely, not timed to attachment 05.07.2018. No evidence of mala fides like fabricated documents; default admitted.

17.8. Financial Creditor's negotiations 2018-2022 imply debt resolution intent; rejection without authority challenge waives objections. IA No.54/2019 in Recovery Proceedings on settlement annexed as Annexure-A shows Financial Creditor addressed merits.

17.9. No evidence of collusion is placed by the Financial Creditor or by the IRP. Abuse of process requires intent to pervert justice; here, petition seeks resolution per Code object, moratorium statutory. Supreme Court in ***Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407*** held Code overrides other laws for insolvency.

17.10. Thus, **Issue No.03** also held in favour of Personal Guarantor. Present Company Petition is not abuse of process or forum shopping. Hence, moratorium is to continue.

18. **Findings on Issue No.04:** Whether to admit or reject the petition under Section 100 of the Insolvency and Bankruptcy

Code, 2016, continue or lift the interim moratorium under Section 96?

18.1. Section 100(1) of Insolvency and Bankruptcy Code, 2016 requires Adjudicating Authority after hearing Resolution Professional, debtor, creditors pass order on application under Section 94. Section 100(2) mandates reasons. Section 100(3) on admission declares moratorium continuation, appoints Resolution Professional, fixes remuneration.

18.2. In the present case in hand default is established as there is a Deed of Guarantee dated 28.09.2013 for Rs.201,00,00,000 and default crystallized by NPA (27.02.2016) and decree (09.01.2017, fresh cause per Dena Bank (2021) 10 SCC 330). Debt is financial debt under Section 5(8)(i) being a disbursed loan with interest as bank facility. Application in Form-A with particulars under Rule 6. Limitation satisfied per Issue No.1. No suppression per Issue No.2. No abuse per Issue No.3.

18.3. Therefore, Company Petition deserves to be admitted under Section 100 of the Insolvency and Bankruptcy Code, 2016.

18.4. Personal Guarantor shall file updated particulars of assets, encumbrances, income sources on oath by way of affidavit within seven days with this Tribunal with copy to Financial Creditor as well as to the RP.

19. Accordingly, the Company Petition is admitted under Section 100 of the IBC, 2016, initiating the insolvency resolution process against **Mrs. Pinkal Harshbahi Soni,** the Personal Guarantor of **Shree Mukt Jewellers Baroda Private Limited**.

20. The fresh moratorium under Section 101 (replacing the interim moratorium under Section 96) commences on the date of admission and shall cease at the end of 180 days or on an order under Section 114, whichever is earlier.

21. During the moratorium period, the following provisions shall be in effect: -

a. pending legal actions in respect of any debt are stayed;

b. creditors shall not initiate legal actions in respect of any debt;

c. the debtor shall not transfer, alienate, encumber, or dispose of assets or rights;

d. the provisions do not apply to such transactions as may be notified by the Central Government under Section 101(4) of the IBC.

22. **Kiran Chand Sipani**, having Registration No. IBBI/IPA-001/IP-P-02309/2021-2022/13589, having address: Office No-502-B-Metro Tower, Ring Road, Near Rajhans Empria, Surat, Gujarat, 395002. Email ID; sipaniadvisor@gmail.com, is appointed as Resolution Professional. The Resolution Professional shall:

(i) cause a public notice to be published within 7 days on the NCLT website, inviting claims within 21 days from the date of issuance, including details under Section 102(2);

(ii) publish in one English and one vernacular newspaper with wide circulation in the state where the debtor resides, affix the notice in the premises of the Adjudicating Authority;

(iii) ensure the public notice is also affixed in the premises of this Adjudicating Authority as per Section 102(3)(b);

(iv) prepare a list of creditors under Section 104 within 30 days from the date of admission;

(v) assist debtor in preparing repayment plan under Section 105, including justifications, RP fees, etc.;

(vi) submit a repayment plan and report under Section 106 within 21 days from claim submission;

(vii) if a meeting is recommended, specify details under Section 106(3), including the date and time of such meeting, which shall not be less than 14 days or more than 28 days from the date of submission of the report under Section 106(1), with at least 14 days' notice under Section 107(2)

(viii) conduct a meeting under Sections 108-111;

(ix) prepare a meeting report under Section 112 and submit to the Tribunal with copies;

(x) perform duties under Section 208;

(xi) The Registry is directed to communicate a copy of the order, report and application within seven working days to the Petitioner/PG/PF, Respondent/FC, IBBI and Resolution Professional and upload on the website immediately after the pronouncement of the order.

23. The IRP's delay in filing the report under Section 99(1) IBC and Rule 11 NCLT Rules, 2016 is condoned under Rule 11 of the NCLT Rules, 2016, as the delay was due to the complexity of verifying the Applicant's financial records and does not prejudice the parties.

24. In terms of the above, **CP(IB) No.171/94(AHM)2025** filed under Section 94 (1) of the IBC, 2016 is ***admitted,*** and the Insolvency Resolution Process stands initiated against the Petitioner/PG/Personal Guarantor.

25. Accordingly, **I.A. No.663/99/NCLT(AHM)2025** filed in CP(IB) No.171/94(AHM)2025 is disposed of.

-Sd-

SANJEEV SHARMA
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)