IN THE NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(*Through Hybrid Mode*)

Item No.1
IA (IBC)/139/2025 in CP (IB)/48/95/AMR/2023 &
CP (IB)/48/95/AMR/2023

IN THE MATTER OF:

State Bank of India ... Financial Creditor / Applicant

Versus

Mr. G. Rama Subrahmanyam & Anr. ... Respondents

Under Section: 95 of IBC, 2016
Rule: 11 of NCLT Rules, 2016

Order delivered on 27.06.2025

CORAM:

SHRI UMESH KUMAR SHUKLA
HON'BLE MEMBER (TECHNICAL)

SHRI KISHORE VEMULAPALLI
HON'BLE MEMBER (JUDICIAL)

PRESENT:

In CP

For the Financial Creditor	:	Ms. Sarvani Desiraju, Adv.
For the Personal Guarantor	:	Mr. T. Lakshminarayana, Adv.

In IA

IA (IBC)/139/2025

For the Applicant	:	Ms. Sarvani Desiraju, Adv.
For the Respondents	:	Mr. T. Lakshminarayana, Adv.

ORDER

Orders pronounced and recorded *vide* separate sheets. The I.A. bearing **IA (IBC)/139/2025** is **allowed and disposed of**, and Section 95 Application bearing **CP (IB)/48/95/AMR/2023** filed by the Financial Creditor is **allowed**.

Sd/-
UMESH KUMAR SHUKLA
MEMBER (TECHNICAL)

Sd/-
KISHORE VEMULAPALLI
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI
(Exercising Powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)

IA(IBC)/139/2025 in CP (IB)/48/95/AMR/2023
and
CP (IB)/48/95/AMR/2023

Under Section 95 of the Insolvency and Bankruptcy Code, 2016 read with Section 100 of the Code, Rule 7(2) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 and Rule 11 of the National Company Law Tribunal Rules, 2016

IN THE MATTER OF:

STATE BANK OF INDIA
SAMB Branch, Kacheguda Station, 1st floor TSRTC
Kacheguda,Hyderabad-500027

……….Applicant / Financial Creditor

Versus

1. G. RAMA SUBRAHMANYAM
H.No.4-50/42/A, Jayabheri Enclave,
Gachibowli, Hyderabad-500032

...Respondent No. 1/ Personal Guarantor

2. M/S. MANGALAGIRI TEXTILES MILLS PRIVATE LIMITED
H. No. 6/224/8, Chinna Kakani,
Mangalagiri, Guntur District-522503.

..... Respondent No. 2/ Corporate Debtor

IN THE MATTER OF INTERLOCUTORY APPLICATION NO 139/2025:

STATE BANK OF INDIA
SAMB Branch,
Kacheguda Station, 1st floor TSRTC
Kacheguda
Hyderabad-500027

……….Applicant / Financial Creditor

Versus

1. G. RAMA SUBRAHMANYAM
H.No.4-50/42/A, Jayabheri Enclave,
Gachibowli, Hyderabad-500032

...Respondent No. 1/ Personal Guarantor

2. M/S. MANGALAGIRI TEXTILES MILLS PRIVATE LIMITED
H. No. 6/224/8, Chinna Kakani,
Mangalagiri, Guntur District – 522503.

..... Respondent No. 2/ Corporate Debtor

Coram: **HON'BLE Mr. KISHORE VEMULAPALLI, MEMBER (JUDICIAL)**
HON'BLE Mr. UMESH KUMAR SHUKLA, MEMBER (TECHNICAL)

<u>Order delivered on: 27.06.2025</u>

<u>PRESENT:</u>

For the Financial Creditor	:	Ms. Sarvani Desi Raju, Advocate
For the Personal Guarantor	:	Mr. T.Lakshmi Narayana, Advocate

<u>COMMON ORDER</u>

<u>PER: BENCH</u>

The present Application is filed under section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the **"IBC" or "Code")** read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (hereinafter referred to as the "**Personal Guarantors Rules**") vide Diary No. 6348 dated 06.10.2023 by State Bank of India (hereinafter referred to as the "**Applicant**" or "**Financial Creditor**" or "**SBI**"), through its Assistant General manager, Mr. Veerabhadhra Rao Teki, who has authorisation letter dated 19.19.2023, seeking to initiate the Personal Insolvency Resolution Process (hereinafter referred to as the "**PIRP**") against G. Rama Subrahmanyam (hereinafter referred to as the

"**Respondent No. 1"** or "**Personal Guarantor**"), who is the Personal Guarantor on the loan accounts of Mangalagiri Textile Mills Private Limited (hereinafter referred as the "**Respondent No. 2"** or "**Corporate Debtor**" or "**Principal Borrower**") by the Financial Creditor.

2. The registered office of the Corporate Debtor is at H.No.6/224/8, Chinna Kakani, Mangalagiri, Guntur District, Andhra Pradesh-522503, which is situated in the State of Andhra Pradesh. Further, this Adjudicating Authority vide its Order dated 25.07.2024 has admitted the Corporate Debtor into Corporate Insolvency Resolution Process. Therefore, in terms of section 60(1) and 60(2) of the IBC, the subject matter of this Application is under the territorial jurisdiction of this Adjudicating Authority.

<u>FACTS OF THE CASE:</u>

3. Facts of the case, as stated by the Financial Creditor, have been summarised below:

(i) The Financial Creditor, *vide* sanction letter dated 18.12.2009, sanctioned a working capital facility comprising a Term Loan of Rs.20 crores, Working Capital Limit of Rs.4.50 crores, Letter of Credit of Rs.6 crore, and Bank Guarantee of Rs.30 lakhs. At the request of the Corporate Debtor, these facilities were subsequently restructured into Cash Credit Limit, Working Capital Term Loan, and Bank Guarantee.

(ii) After adjusting repayments, the total outstanding dues of the Corporate Debtor amount to Rs.38,49,75,059/-, which includes principal sum of Rs.25,19,24,577/-, interest of Rs.13,28,23,882/- as of 31.07.2023, and legal and other charges of Rs.2,26,600/- and the Financial Creditor seeks recovery of the said amount along with further interest and costs as applicable.

(iii) The Corporate Debtor failed to meet its repayment obligations to the Financial Creditor. Consequently, the loan account of the Corporate Debtor was classified as a Non-Performing Asset (hereinafter referred to as the "**NPA**") on 30.09.2016.

(iv) To secure the financial assistance granted to Corporate Debtor, the Personal Guarantor executed a Deed of Guarantee on 22.09.2014, under which, the Personal Guarantor agreed to pay the Financial Creditor, upon demand, the principal sum, interest, costs, charges, expenses, and other dues relating to the credit facilities. The Personal Guarantor also undertook to indemnify and keep the Financial Creditor indemnified against all losses, costs, and expenses arising from any default by the Corporate Debtor.

(v) The Guarantee Deed executed by the Personal Guarantor provides that a certificate in writing by an official of the Financial Creditor shall be conclusive evidence against the Personal Guarantor regarding the amount due. The Guarantee is irrevocable, independent, coextensive, and continuing, securing the obligations of the Corporate Debtor in favour of the Financial Creditor.

(vi) As the Personal Guarantor failed to repay the outstanding dues, the Financial Creditor invoked the IBC and a demand notice in Form B dated 10.08.2022 was issued to the Personal Guarantor, calling upon him to honour the Guarantee. The Demand Notice, sent through Registered Post, was delivered on 18.08.2023, the postal receipt of the same and tracking report is annexed as Annexure 8 along with the Application.

(vii) As per Part-III of the Form-C of Application, the details of total debt, amount in default, date on which debt was due, date on which default occurred and the nature of debt are given hereunder:

Part-III

	PARTICULARS OF DEBT	
1.	Total debt (including any interest or penalties)	The Total amount payable is Rs. 38,49,75,059/- (Rupees Three Eight Crores Forty-Nine Lakhs Seventy-Five Thousand Fifty-Nine Only). Including a principal amount of Rs. 25,19,24,577.00 (Rupees Twenty-Five Crores Nineteen Lakhs Twenty-Four Thousand Five Hundred and Seventy-Seven Only) along with a total interest amount of Rs. 13,28,23,882 (Rupees Thirteen Crores Twenty-Eight Lakhs Twenty-Three Thousand Eight Hundred and Eighty-Two Only) calculated until 31.07.2023 and Legal Charges and other charges of Rs. 2,26,600/- (Rupees Two Lakhs Twenty-Six Thousand Six Hundred Only)
2.	Amount in default	The Total amount payable is Rs. 38,49,75,059/- (Rupees Three Eight Crores Forty-Nine Lakhs Seventy-Five Thousand Fifty-Nine Only).
3.	Date on which debt was due	The debt owed by the Principal Debtor / Respondent No. 2 was due and payable on 30.09.2016.
4.	Date on which default occurred	The debt owed by the Principal Debtor / Respondent No. 2 was defaulted on 02.07.2016 and the account of the Principal Debtor / Respondent No. 2 was declared as an NPA. This debt was periodically acknowledged thought the Recovery Certificate issued by the Hon'ble DRT and through various OTS proposals submitted by the Corporate Debtor Company. The default in respect of Respondent No. 1 for the purposes of this petition has occurred when they failed to repay the guaranteed amount after receipt of the notice issued under IBC in Form B dated 10.08.2023.
5.	Nature of the debt	Term Loan and Cash Credit

(viii) In Part-IV of Form-C of the Application, the Financial Creditor proposed the name of Mr. Kurapati Singarayya Chowdary (Regn. No. IBBI/IPA-003/IP-N00149/2017-2018/11728) as Resolution Professional (hereinafter referred to as the "**RP**")

4. This Adjudicating Authority, *vide* order dated 06.12.2023, appointed Mr. Kurapati Singarayya Chowdary (Regn. No. IBBI/IPA-003/IP-N00149/2017-2018/11728) as the RP with the direction to submit his report under Section 99 of the Code within ten days.

REPORT OF THE RESOLUTION PROFESSIONAL:

5. In compliance of this Adjudicating Authority order dated 06.12.2023, the RP filed IA(IBC)/423/2023, *vide* Diary No. 6671 dated 19.12.2023 to place on record the report under Section 99 of the Code, which was taken on record vide this Adjudicating Authority order dated 20.12.2023. The contents of the RP report has been summarised below:

(i) In compliance with Section 99(1) of the Code, RP has examined the Application filed under Section 95 and observed the following:

Particulars of the Section 95	Observations of the Resolution Professional
(1) A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.	The Financial Creditor, State Bank of India filed the captioned Petition against the Personal Guarantor Sri G. Rama Subrahmanyam to the Corporate Debtor M/s Mangalagiri Textile Mills Private Limited.
(2) A creditor may apply under sub-section (1) in relation to any partnership debt owed to him for initiating an insolvency resolution process against-	Not Applicable

(a) any one or more partners of the firm; or (b) the firm	
(3) Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the Adjudicating Authority in which the first mentioned application is pending for adjudication and such Adjudicating Authority may give such directions for consolidating the proceedings under the applications as it thinks just.	Not Applicable
(4) An application under sub-section (1) shall be accompanied with details and documents relating to-	
(a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;	1. The total debt owed by the Personal Guarantor to the creditor herein is Rs. 38,49,75,059/- (Rs. Thirty-Eight Crores Forty-Nine Lakhs, Seventy-Five Thousand and Fifty-Nine only) which is inclusive of Principal Amount of Rs. 25,19,24,577/- and interest of Rs. 13, 28,23,882/- calculated till 31-07-2023 and Legal Charges & other Charges of Rs.2,26,600/- 2. The debt is in relation to the Guarantee extended by the Personal Guarantor to the financial assistance availed by the Corporate Debtor in the form of Term Loans, Working Capital Limits, Cash Credit Limits. 3. The guarantor has executed the following deeds of guarantee. a. The guarantor herein executed Deed of guarantee on 22-09-2014 to secure the financial assistance granted by the Financial Creditor to the Corporate Debtor/ Respondent No.2 and the Guarantee is irrevocable, independent, co-extensive and continuing guarantee. 4. The Financial Creditor filed Original Application OA No.43/2018 against the Corporate Debtor before the Hon'ble DRT Hyderabad for recovery of outstanding dues and Recovery Certificate RC No.240/2020 was issued on 28-01-2020 for Rs. 31,02,47,327.01/- **Date of Default:** Date of default is on 31-08-2023 the date on which the guarantor failed to repay the guaranteed amount after receipt of the notice issued under IBC in Form B.

	a. The guarantor herein executed Deed of guarantee on 22-09-2014 to secure the financial assistance granted by the Financial Creditor to the Corporate Debtor/ Respondent No.2 and the Guarantee is irrevocable, independent, co-extensive and continuing guarantee. 4. The Financial Creditor filed Original Application OA No.43/2018 against the Corporate Debtor before the Hon'ble DRT Hyderabad for recovery of outstanding dues and Recovery Certificate RC No.240/2020 was issued on 28-01-2020 for Rs. 31,02,47,327.01/- **Date of Default:** Date of default is on 31-08-2023 the date on which the guarantor failed to repay the guaranteed amount after receipt of the notice issued under IBC in Form B.
5. the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand;	1. The financial creditor issued notice of demand on 10-08-2023 under Rule 7(1) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantor to Corporate Debtor) Rules, 2019 calling upon the Guarantor herein to pay the unpaid debt within 14 days from the date of the receipt of the notice but the guarantor failed to pay the demanded amount.

	6. The Resolution Professional sent e-mail to Financial Creditor on 07-12-2023 requesting to confirm the repayment of the debt claimed is unpaid and the financial creditor replied on 13-12-2023 stating that no amounts are received from the Guarantor till date, and also shared the NeSL Report.
7. relevant evidence of such default or non-repayment of debt.	1. Reply of the financial creditor dated - 13-12-2023 stating that no payment has been received from the Personal Guarantor for the outstanding amount. 2. Copy of the record of default with NeSL (Information Utility) is attached with this Application at page no. 21-28
(5) The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.	Provided
(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.	1. The Application is filed in Form C and is in accordance with to Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantor to Corporate Debtor) Rules, 2019. 2. The prescribed fee as per Rule 7(2) has been paid.
(7) The details and documents required to be submitted under sub-section (4) shall be such as may be specified.	All the necessary documents are submitted.

(ii) In compliance with Section 99(2) of the Code, the RP issued a registered letter dated 07.12.2023 to the Personal Guarantor, requesting proof of repayment of the debt claimed as unpaid by the Creditor. The letter was received by the Personal Guarantor on 09.12.2023; however, no reply has been received to date.

(iii) In accordance with Section 99(4) and (5) of the IBC, the RP sought confirmation from the Financial Creditor via email dated 07.12.2023 regarding the repayment status. The Financial Creditor, in its reply dated 13.12.2023, confirmed that no payments had been received from the Personal Guarantor towards the outstanding debt.

(iv) In compliance with Section 99(6)(a) and 99(6)(b) of the IBC, the RP ascertained that the Application satisfies the requirements set out under Section 95 of the IBC. Further, the Financial Creditor provided the information and explanations sought by the RP u/s 99(4) of the IBC through its response dated 13.12.2023.

(v) In compliance with Sections 99(7) and 99(9) of the IBC, the RP recommends the acceptance of this Application for the following reasons:

(a) The Personal Guarantor has defaulted in repaying dues of Rs.38,49,75,059/-, comprising a principal of Rs.25,19,24,577/-, interest of Rs.13,28,23,882/- (calculated up to 31.07.2023), and legal and other charges of Rs.2,26,600/-, thereby fulfilling the requirements of Section 95(1) of the Code. The Application is supported by all necessary details and documents regarding the debt owed by the Personal Guarantor. Additionally, essential documents, including the

Deed of Guarantee executed by the Guarantor on 22.09.2014, are annexed along with the Application seeking initiation of the insolvency resolution process against the Personal Guarantor.

(b) The Financial Creditor has provided proof of registration of the debt with the Information Utility, NeSL, to the RP. In terms of Section 99(3) of the IBC, since the debt is registered with the Information Utility, the debtor is not entitled to dispute its validity. The date of default is 31.08.2023, being the date on which the Personal Guarantor failed to repay the guaranteed amount after receipt of the demand notice issued in Form-B under the IBC. Accordingly, the present application is well within the three-year limitation period prescribed under Article 137 of the Limitation Act, 1963.

(c) Further, the debtor failed to repay the debt within fourteen days of service of the demand notice dated 10.08.2023, issued under Rule 7(1) of the IBBI (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019. The Financial Creditor's letter to the RP dated 13.12.2023 stands as relevant evidence of such default. The Application, filed in Form C, complies with Rule 7 of the said Rules, and satisfies the requirements of Sections 95(4) and 95(6) of the IBC. Therefore, the RP recommends acceptance of CP (IB) No. 48/95/AMR/2023 filed by the Financial Creditor against Personal Guarantor.

COUNTER TO THE COMPANY APPLICATION BY THE PERSONAL GUARANTOR:

6. The Personal Guarantor filed, *vide* Diary No.1101 dated 01.08.2024, Counter to the Section 95 Application filed by the Financial Creditor stating that:

(i) The default dates of 23.12.2020 or 29.12.2020 fall within the Section 10A of IBC embargo period from 25.03.2020 to 25.03.2021, barring initiation of CIRP. In similar circumstances, the Hon'ble NCLAT in *Carissa Investments LLC v. Indu Techzone Private Limited*, Company Appeal (AT) (CH) (Ins) No.124/2022 vide Order dated 08.08.2023, held that an application is not maintainable where the date of default falls within the embargo period specified under Section 10A of the IBC. Therefore, the Application is not maintainable and must be rejected.

(ii) The provisions of the IBC do not override the Indian Contract Act or the Transfer of Property Act. The Corporate Debtor, as mortgagor, has exercised its statutory right of redemption under Section 60 of the Transfer of Property Act by making substantial deposits during the pendency of OA No. 43 of 2018 before the DRT-1, Hyderabad, and even after issuance of the Recovery Certificate dated 28.01.2020. These include payments of Rs.58,00,000/- on 06.10.2019 (post-judgment dated 19.08.2019 in OA No.43 of 2018, but prior to the date of Recovery Certificate), Rs.52,00,000/- on 24.11.2020, Rs.32,00,000/- on 23.12.2020 (post-Recovery Certificate), and Rs.30,00,000/- on 15.05.2024 pursuant to orders of the Hon'ble High Court of A.P., totalling Rs.7,59,00,000/-. The Financial Creditor's statement dated 26.02.2024 admits a written-off debt of Rs.12,35,60,032/- and Rs.1,35,48,065.76/- (CC limit) as of 25.08.2021, against which the

Corporate Debtor is ready and willing to redeem the debts within a reasonable period as may be fixed by this Adjudicating Authority. The Recovery Certificate relied upon in this Application does not reflect the actual debt after accounting for the deposits and is thus misleading, rendering the Application untenable. The Corporate Debtor reserves its right to seek permission from this Adjudicating Authority to make further deposits under Sections 60, 83, and 84 of the Transfer of Property Act, as any restriction thereon would amount to an unlawful clog on redemption.

(iii) Further, the OTS scheme entered into between the Financial Creditor and the Corporate Debtor under the SBI OTS 2020 scheme dated 24.11.2020 constitutes a novation of contract within the meaning of Section 62 of the Indian Contract Act, 1872. The said scheme resulted in substitution of the original contract between the Financial Creditor and the Corporate Debtor. The guarantors, including the present answering guarantor, were not parties to this subsequent contract. As such, by operation of law, the guarantors stand discharged from their liabilities, since the original contract underlying their guarantee has been altered. Consequently, the present Application filed by the Financial Creditor as against the Personal Guarantor is not maintainable and is liable to be dismissed.

(iv) The present Application by the Financial Creditor is based on the Recovery Certificate issued following the judgment in O.A. No. 43 of 2018 by DRT-1, Hyderabad, on the premise that the Recovery Certificate, once issued, is sacrosanct and beyond challenge, while ignoring payments made subsequent to its issuance. Such a contention is legally flawed in view that a Recovery Certificate is not beyond scrutiny or challenge. Accordingly, the present Application deserves to be dismissed.

(v) The Financial Creditor has filed a regular Appeal under Section 20 of the RDB Act, 1993 before the Hon'ble Debts Recovery Appellate Tribunal, Kolkata against the judgment and Recovery Certificate issued in O.A. No. 43 of 2018, which has been registered as Diary No. 672/2024 and is pending. Additionally, the Corporate Debtor has filed M.A. No. 21 of 2024 before the Hon'ble DRT-1, Hyderabad under Section 26(2) of the RDB Act, 1993 challenging the Recovery Certificate, which is posted for the Financial Creditor's counter on 25.07.2024. In the event, the appeal is allowed, the present Company Application, being based solely on the judgment in O.A. No. 43 of 2018, may stand extinguished or be modified accordingly.

(vi) The date of default of the debt of the Corporate Debtor was 02.11.2016, as communicated through SBI's letter dated 04.11.2016, wherein the debt due as on 02.11.2016 was stated to be Rs. 20,97,38,334/-. The Financial Creditor's reliance on Section 18 of the Limitation Act is misplaced, as the letters dated 01.07.2023 and 10.07.2023 from the Corporate Debtor were merely offers for settlement and not acknowledgments of debt. These offers were categorically rejected by the SBI through its letters dated 03.07.2023 and 11.07.2023. Therefore, the offer of the Corporate Debtor made unilaterally, for which this Personal Guarantor is not a party in his personal capacity. The said offers, being unilateral proposals as defined under Section 2(a) of the Contract Act, do not amount to acknowledgment of liability, nor do they extend the limitation period. The language of those letters does not indicate any clear acknowledgment of liability within three years from the date of debt. Accordingly, the present Application is liable to be dismissed.

(vii) The Personal Guarantor was shocked to receive a notice from the RP, appointed *vide* order dated 06.12.2023 in CP (IB) No.48/95/AMR/2023, which was passed without proper service of notice and therefore is liable to be recalled on the ground that there is no proper service of the notice much less the advance notice. The Financial Creditor did not furnish the statement of accounts from the date of NPA to 04.10.2023 i.e. the date of filing the application.

(viii) The Financial Creditor, being a "State" under Article 12 of the Constitution and a public sector bank, is expected to act fairly, but failed to do so, rendering the present Application liable for dismissal due to *suppressio veri* and *suggestio falsi*. The Financial Creditor deliberately withheld crucial facts, including failing to file the book outstanding as on 04.10.2023, which is essential for the Personal Guarantor to take legal advice and respond effectively. It also suppressed the issuance of a Warrant of Attachment of immovable and movable properties of the Corporate Debtor and the Personal Guarantor by the Recovery Officer, DRT-1, Hyderabad, on 06.11.2023, 15.11.2023, and 16.11.2023, the facts that directly affect this Application and were concealed from this Adjudicating Authority before passing the order dated 06.12.2023 in CP (IB) No.48/95/AMR/ 2023. The Financial Creditor failed to inform the Personal Guarantor of application's status after its return with objections, keeping him uninformed and unable to defend himself. Therefore, these legal and moral lapses warrant recalling of the order dated 06.12.2023 in the interest of justice.

(ix) The Financial Creditor itself admitted in its statement dated 26.02.2024 that the written-off debt is Rs.13,41,08,098/-, yet it has filed this Application claiming a different, untenable figure. Hence, the application is liable to be dismissed. The consent of the Principal Borrower to write off the debt does not bind the Guarantor. Moreover, DRT-1, Hyderabad lacked territorial jurisdiction to entertain OA No.43 of 2018, as the Section 13(2) SARFAESI notice was issued by SBI, Guntur Branch. Therefore, only DRT, Visakhapatnam had jurisdiction. Therefore, the Recovery Certificate and the present Application based on it are void, illegal, and without jurisdiction.

REJOINDER TO THE COUNTER FILED BY THE FINANCIAL CREDITIOR:

7. Pursuant to the aforesaid reply, the Financial Creditor filed rejoinder, *vide* Dairy No.1468 dated 08.10.2024 stating that:

(i) Section 10A of the IBC applies only to CIRP under Sections 7, 9, and 10 (Part II, Chapter II) and not to proceedings under Section 95 (Part III). No corresponding amendment was made in Part III, thereby confirming that Section 10A is not applicable to proceedings initiated under Section 95 of the IBC. The **Hon'ble NCLAT in *Amit Jain v. Siemens Financial Services Pvt. Ltd.*, Company Appeal (AT) (Insolvency) No. 292 of 2022**, held that Section 10A does not bar proceedings against Personal Guarantors under Section 95 of the IBC. Further, repeated acknowledgments and part payments extended the limitation period.

(ii) All payments made by the Corporate Debtor, whether under its right of redemption under Section 60 of the Transfer of Property Act or as part-payments, have been duly accounted for. The present resolution process concerns only the outstanding balance. The Applicant has filed the updated Statement of Accounts as of 17.09.2024, which is annexed as Annexure-1 to the Rejoinder, reflects the accurate dues. The Corporate Debtor's payments amount to repeated acknowledgments of debt. Further, the allegation that any portion of the debt was written off is incorrect, as the annexed statement clearly reflects the balance due.

(iii) The proposal by the Personal Guarantor for payment in instalments itself amounts to an admission of his liability. Both the Corporate Debtor prior to its admission into CIRP, and its ex-management/ Personal Guarantor after such admission, issued settlement proposals, which were inadequate, forcing the Financial Creditor to reject them.

(iv) There is no novation under Section 62 of the Indian Contract Act. The Guarantee Agreement, particularly Clauses 3, 5, 8, and 14, continues to bind the Personal Guarantor. The clause 14 specifically provides that any composition, variation, or extension of time does not discharge the Guarantee. Since the OTS terms were not fulfilled by the Corporate Debtor, the OTS was terminated, and the original debt under the Recovery Certificate remains payable, as guaranteed by the Personal Guarantor. Therefore, the main Application filed under Section 95 of the IBC is fully maintainable.

(v) The Personal Guarantor executed an irrevocable, independent, coextensive, and continuing Deed of Guarantee dated 22.09.2014, undertaking to pay the principal sum, interest, costs, and charges due from the Corporate Debtor and indemnify the Financial Creditor against any losses. The Guarantee Deed also provides that a certificate issued by the Financial Creditor is conclusive proof of dues. As the Personal Guarantor failed to pay, the Applicant rightly approached this Adjudicating Authority. However, as the Recovery Certificate has been issued, the interest has been claimed only in terms of the RC, i.e., as per the mandated simple interest and not as per the terms of the loan. The Recovery Certificate issued by the DRT has not been set aside remains valid, and its pendency in appeal before the Hon'ble DRAT/ the Hon'ble High Court of Andhra Pradesh does not bar these independent proceedings.

(vi) The claim by the Personal Guarantor that the Application under Section 95 of the IBC is barred by limitation due to the NPA date of 02.11.2016 is entirely baseless and without merit. The assertion that the Financial Creditor cannot invoke Section 18 of the Limitation Act is absolutely unfounded.

(vii) The Financial Creditor initiated recovery proceedings in O.A. No. 43 of 2018 against both the Corporate Debtor and the Personal Guarantor, culminating in a Recovery Certificate issued on 28.01.2020. As settled in law, such a certificate gives rise to a fresh cause of action. Additionally, after excluding the COVID-19 period from 15.03.2020 to 31.03.2022, the present Application is clearly within limitation.

(viii) As admitted by the Personal Guarantor, the Corporate Debtor made several part-payments toward the outstanding dues from January 2018 to December 2020 (including Rs.32,00,000/- on 23.12.2020), as well as further payments in 2024. Each of these part-payments extends the limitation period under Section 19 of the Limitation Act. Additionally, OTS proposals issued by the Corporate Debtor between July 2023 and September 2024 constitute acknowledgments under law. In this regard, the reliance is placed on the decision of **Manesh Agarwal v. Bank of India & Ors. in Company Appeal (AT) (Insolvency) No. 1182 of 2019, decided on 28.02.2020**, which, following *Jignesh Shah*, held that OTS offers, even if conditional, extend limitation under Section 18. Thus, the instant Application is within the limitation.

(ix) The Financial Creditor denies all the allegations of procedural infirmity by the Personal Guarantor as false and baseless. The pre-filing copy of the Application was duly dispatched; hence no Application number was mentioned. Any illegible pages could have been clarified by contacting counsel. The Registry objections were resolved before the Application was numbered. As per Section 95 of the IBC, notice was issued, the IRP appointed, and interim moratorium was declared. Therefore, no infirmity exists, as prior notice before IRP appointment is not required. The Adjudicating Authority verified service of notice before passing the order dated 06.12.2023. The statement of accounts and certificate are duly filed before this Adjudicating Authority.

(x) The Financial Creditor denies the false claims of the Personal Guarantor regarding "*Suppressio Veri* and *Suggestio Falsi*." The Financial Creditor filed all the relevant documents for proving debt and default, and followed due procedure without breaching principles of justice. As a public sector bank, it is duty-bound to recover dues lawfully. The Statement of Accounts as of 17.09.2024 shows the actual debt owed, and no part of the debt has ever been written off by the Financial Creditor.

(xi) The similar contentions raised by the Personal Guarantor were considered and rejected in C.P. (IB)/76/7/AMR/2022, wherein this Adjudicating Authority admitted the Application and directed CIRP against the Corporate Debtor, *vide* order dated 25.07.2024.

OBJECTIONS TO RP REPORT BY THE PERSONAL GUARANTOR:

8. The Personal Guarantor, *vide* Diary No.28 dated 09.01.2025, filed the objections to the RP report mainly contesting the maintainability on the grounds of limitation and procedural lapses. It is submitted that the RP report is not maintainable either in law or on facts and is liable to be rejected in toto. The objections of the Personal Guarantor have been summarised below:

(i) Section 10A of the IBC, which begins with a non-obstante clause, places a clear embargo on filing applications for defaults arising on or after 25.03.2020 for a specified period under Sections 7, 9, and 10 of the IBC and, by extension, to proceedings against Personal Guarantors. The purpose was to protect corporate persons from insolvency proceedings during the COVID-19 pandemic. The application against the Corporate Debtor (CP (IB) No.76/7/AMR/2022) was filed on 30.05.2022, based on an alleged default dated 23.12.2020, when the Corporate Debtor failed to pay the first OTS instalment. The Financial Creditor subsequently cancelled the OTS via letter dated 29.12.2020. Both these dates of default fall within the period covered by Section 10A of the IBC (25.03.2020 to 25.03.2021, as per SO 38(E) dated 22.12.2020). Hence, the RP report recommending admission of the Application is contrary to statutory provisions and liable to be rejected.

(ii) The Corporate Debtor made payments of Rs.5.87 crores towards redemption under Section 60 of the Transfer of Property Act, altering the total debt figure and consequently, the Recovery Certificate issued by Hon'ble DRT, Hyderabad dated 28.01.2020 do not represent the total amount due. The RP's report is based on incorrect debt computation, making the notice to the Guarantor and the report itself defective.

(iii) The RP failed to account for payments admitted by the Hon'ble DRT in O.A. No. 43 of 2018, such as Rs. 2.57 crores, in contravention of Section 84 of the Transfer of Property Act. Applications regarding these payments are pending before the Hon'ble DRT, and without final adjudication, the RP's notice does not represent the true debt figure. Additionally, deposits made by the Corporate Debtor after the date of the Recovery Certificate (on 16.10.2019, 24.11.2020, and 23.12.2020) were ignored. The RP failed in his duty to diligently examine the application as required under Sections 94 and 95 of the IBC, violating principles of natural justice.

(iv) The examination of the application by the RP is not a clerical task, but a quasi-judicial function involving recommendations that significantly impact the guarantor. The RP must act consciously, diligently, and impartially, which did not happen here. Furthermore, the SBI OTS dated 24.11.2020 constituted a novation under Section 62 of the Contract Act, discharging the guarantor upon alteration of the original contract. The RP overlooked this legal position, making his report unsustainable.

(v) The Application against the guarantor is barred by limitation. The default date was 02.11.2016 as per the Financial Creditor's intimation dated 04.11.2016. The application was filed only on 04.10.2023, beyond the three-year limitation period under Article 137 of the Limitation Act. The benefit of Section 18 of the Limitation Act is unavailable, as no valid acknowledgment extends the limitation. Consequently, the proceedings against the guarantor are time-barred, and the RP report is liable to be rejected.

(vi) Moreover, the RP failed to appreciate that the Corporate Debtor's efforts for amicable settlement are ongoing, and hence the RP's report is liable to be rejected.

9. This Adjudicating Authority vide its Order dated 24.03.2025 granted time to the Counsel for the Financial Creditor to file notice issued to prove invocation of the Personal Guarantee.

10. In compliance of the above Order, the Financial Creditor filed under Rule 11 of the National Company Law Tribunal Rules 2016 (hereinafter referred to as the "**NCLT Rules**") interlocutory Application bearing no. IA (IBC)/139/2025 (hereinafter referred to as the "**IA**"), vide Diary No. 883 dated 07.05.2025 to place on record the copy of the notice dated 04.11.2016 issued to the Personal Guarantor under Section 13(2) of the SARFAESI Act for the payment of the outstanding liability, along with acknowledgements and postal receipts for the said notice. It has also been submitted by the Financial Creditor that though guarantee was first invoked with the issuance of the notice under Section 13(2) of the SARFAES] Act, over the years, the Corporate Debtor and the Personal Guarantor had consistently acknowledged the debt to be

outstanding and payable to the Financial Creditor and even the Guarantor was called upon to pay the due amount in terms of the IBC, 2016,but he failed to do so. It was only due to inadvertence and as subsequent acknowledgements were present and since the Recovery Certificate was also issued by the Hon'ble DRT that the aforementioned notice issued under Section 13(2) of the SARFAESI Act was not filed and not due to any other reason. The Financial Creditor also submitted the following additional documents for being brought on record:

(a) Copy of the email dated 16.10.2024 issued by the Financial Creditor to the Personal Guarantor rejecting his compromise offer dated 14.10.2024 of a payment of Rs.25 Crore.

(b) Copy of the email dated 13.09.2024, issued by the Financial Creditor to the Personal Guarantor rejecting his compromise offer dated 13.09.2024, of a payment of Rs. 18 crore.

11. In response to the IA filed by the Financial Creditor, the Personal Guarantor filed the Counter affidavit, vide Diary No.993 dated 27.05.2025 stating that.

(i) The original default by the Corporate Debtor was on 02.11.2016 and that the SARFAESI notice dated 04.11.2016, which the Financial Creditor now seeks to place on record through this IA, was already in its possession at the time of filing the main CP. No explanation has been furnished for the delay in submitting the said document.

(ii) The IA fails to disclose the relevance or necessity of the documents sought to be introduced at this belated stage. The documents, including computer printouts, are not accompanied by certification under Section 65B of the Indian Evidence Act, rendering them inadmissible in law.

(iii) The claim against the Personal Guarantor is barred by limitation. The CP was filed on 02.10.2023, whereas the limitation period commenced on 04.11.2016 upon issuance of the SARFAESI notice. No application for condonation of delay has been filed.

(iv) The existence of a One Time Settlement (hereinafter referred to as the "**OTS**") agreement between the Financial Creditor and the Corporate Debtor, and its subsequent cancellation on 29.12.2020, falls within the exclusion period under Section 10A of the IBC. As such, no insolvency proceedings could have been initiated for defaults arising during that protected period.

12. After careful consideration of the document, we are of the considered view that in the interest of justice, the additional documents placed by the Financial Creditor in the IA are the necessary documents and therefore needs to be taken on record for the proper adjudication of the matter. In view of the above, the additional documents placed by the Financial Creditor in the IA are taken on record and the **IA (IBC)/139/2025 is hereby allowed and disposed of.**

ANALYSIS AND FINDINGS:

13. We have heard the submissions of the Counsels for the Financial Creditor, Personal Guarantor and also perused the RP report and other records carefully.

14. The first issue that arises for adjudication before this Adjudicating Authority is ***"Whether the present Application is filed within the period of limitation?"***

(i) As per the Form C filed by the Financial Creditor, the date of declaration of account of the Corporate Debtor as NPA is 30.09.2016.

(ii) As per clause 20 of the Deed of Guarantee, the notice to the Guarantor shall be served either by actual delivery or by despatch thereof by registered post or certificate of posting to the Guarantors at the address given or any other address in India to which the Guarantor may by written intimation given to the Bank. The extracts of the above Clause is reproduced below:

20. The Guarantors agree that amount due under or in respect of the aforesaid credit facilities and hereby guaranteed shall be payable to the Bank on the Bank serving the Guarantors with a notice requiring payment of the amount and such notice shall be deemed to have been served on the Guarantors either by actual delivery thereof to the Guarantors or by despatch thereof by Registered Post or Certificate of Posting to the Guarantors address herein given or any other address in India to which, the Guarantors may by written intimation give to the Bank or request that communication addressed to the Guarantors be despatched. Any notice despatched by the Bank by Registered Post or Certificate of Posting to the address to which it is required to be despatched under this clause shall be deemed to have been duly served on the Guarantors four days after the date of posting thereof, and shall be sufficient if signed by any officer of the Bank and in proving such service it shall be sufficient if it is established that the envelope containing such notice, communication or demand was properly addressed and put into the post office.

(iii) Pursuant to the default made by the Corporate Debtor, the Financial Creditor sent a notice dated 04.11.2016 through registered post under section 13(2) of the SARFAESI calling upon the Personal Guarantor to discharge the full liabilities of the Financial Creditor with 60 days from the date of notice, which has been delivered to the Personal Guarantor. The extract of the notice and proof of delivery thereof are reproduced below:

STATE BANK OF INDIA
GUNTUR BRANCH
Kannavarithota
GUNTUR 522 004
ANDHRA PRADESH
Ph: 0863 –2216142,2323134,2218199
Fax: 0863– 2336507

To,
Sri G Rama Subrahmanyam
4-50/42/A, Jayabheri Enclave,
Gachibowli,
Hyderabad.

Date: 04.11.2016

BY REGISTERED POST WITH ACKNOWLEDGEMENT DUE
DEMAND NOTICE TO GUARANTOR

Dear Sir

Sub: Notice u/s 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Act.No.54 of 2002)(hereinafter called Act)

At your request, the Bank has extended credit facilities to M/s Mangalagiri Textile Mills Private Ltd (hereinafter called "the Borrower") by way of financial assistance against secured assets. The outstanding amount with up to date interest and the details of the secured assets are mentioned in the enclosed notice addressed to the above borrower.

You being the guarantor have created security interest in respect of the properties by execution of security agreement(s)/document(s)/ confirmation of creation of mortgage mentioned below.

Sl.No	Name of the Document	Nature of Security	Date of Execution	Amount Secured (Rs.)
1	C1 Agreement of loan		17.02.2010	248000000/-
2	C2 Hypothecation agreement		17.02.2010	248000000/-
3	C5		17.02.2010	248000000/-
4	C1A Supplemental agreement		23.03.2011	269000000/-
5	C2A Supplemental Hypothecation		23.03.2011	269000000/-
6	C4A Supplemental deed of guarantee		23.03.2011	269000000/-
7	Revival letter		16.02.2013	
8	Agreement of loan		22.09.2014	273000000/-
9	Deed of guarantee		22.09.2014	273000000/-
10	Letter regarding granting of individual limits		22.09.2014	273000000/-
11	Revival letter		22.09.2014	
12	Guarantee agreements		22.09.2014	273000000/-
13	C4A Supplemental deed of guarantee		16.05.2016	273000000/-
14	Revival Letter		16.05.2016	273000000/-
15	Link Letter		16.05.2016	273000000/-
16	C5		16.05.2016	273000000/-

The operation and conduct of the said financial assistance/credit facilities have become irregular and the debt has been classified as non-performing assets as specifically stated in the enclosed notice to the borrower.

Therefore, the Bank hereby calls upon you u/s 13(2) of the said Act by issuing this notice to discharge in full your liabilities stated hereunder to the Bank within 60 days from the date of this notice. Your outstanding liabilities (in aggregate) due with up to date interest and owing to the Bank is the sum of Rs20,97,38,334/- (Rupees Twenty crore ninety seven lakhs thirty eight thousand three hundred and thirty four only) as on 02.11.2016. You are also liable to pay future interest at the contractual rate on the aforesaid amount together with incidental expenses, cost, charges etc.

If you fail to repay to the Bank the aforesaid sum of Rs. 20,97,38,334/- (Rupees Twenty crore ninety seven lakhs thirty eight thousand three hundred and thirty four only) as on 02.11.2016

13(2) of the Act, the Bank will exercise all or any of the rights detailed under sub-Section (4) of Section 13 and under other applicable provisions of the said Act.

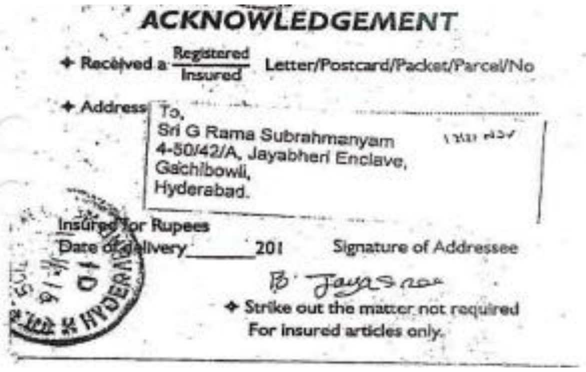
You are also put on notice that in terms of sub-section 13 of section 13 you shall not transfer by sale, lease or otherwise the said secured assets detailed in Schedule "C" of the notice annexed without obtaining written consent of the Bank.

The notice is without prejudice to the Bank's right to initiate such other actions or legal proceedings as it deems necessary under any applicable provisions of Law.

Yours faithfully,

Authorised Officer

Enclosed: Copy of Demand Notice dated on 04.11.2016 issued to M/s Mangalagiri Textile Mills Private Limited



ACKNOWLEDGEMENT

✦ Received a Registered/Insured Letter/Postcard/Packet/Parcel/No

✦ Address To,
Sri G Rama Subrahmanyam
4-50/42/A, Jayabheri Enclave,
Gachibowli,
Hyderabad.

Insured for Rupees

Date of delivery ______ 201 Signature of Addressee

✦ Strike out the matter not required
For insured articles only.

(iv) Therefore, the cause of action in the instant case arises on 03.01.2017 i.e. 60 days from the date of the notice.

(v) The instant Application has been filed on 06.10.2023, which is beyond the period of 3 years from the date, when the cause of action arose.

(vi) However, it is noticed that in the recovery proceedings in O.A. No. 43 of 2018 initiated by the Financial Creditor against both the Corporate Debtor and the Personal Guarantor, Hon'ble DRT-1 Hyderabad issued the Recovery Certificate RC No.240 of 2020 on 28.01.2020 against both the Corporate Debtor and Personal Guarantor. As settled in law, such a certificate gives rise to a fresh cause of action ***extending the limitation to 27.01.2023***. In this context, we rely on the judgment of the Hon'ble Supreme Court in ***Dena Bank vs. C. Shiva Kumar Reddy & Anr.*** Reported in **(2021) ibclaw.in 69 SC**, *wherein it was held that a judgment and/ or decree for money passed in favour of a Financial Creditor by the* ***Debt Recovery Tribunal (DRT),*** *or by any other Tribunal or Court, or the* ***issuance of a Recovery Certificate in favour of the Financial Creditor****, would give rise to a* ***fresh cause of action*** *for the purpose of initiating proceedings under Section 7 of the IBC, 2016, if the dues of the Corporate Debtor under the judgment/ decree or any part thereof remained unpaid.*

(vii) However, the ***Hon'ble Supreme Court vide its Order dated 10.01.2022 in M.A. No. 21 of 2022 in Suo Motu Writ Petition (C) No. 3 of 2020*** gave the following directions:

> *"I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*
>
> *II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*
>
> *III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.*
>
> *IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12Aof the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."*

(viii) Considering the above judgements, the present Application is within the limitation period.

(ix) Further, the Clause 19 of the Deed of Guarantee executed on 22.09.2014 provides that the admission or acknowledgment in writing signed by the Corporate Debtor shall be binding on the Personal Guarantor for the purposes of sections 18 and 19 of the Limitation Act, 1963. The relevant extracts are reproduced below:

> 19. The Guarantors agree that any admission or acknowledgement in writing signed by the Borrower of the liability or indebtedness of the Borrower or otherwise in relation to the above mentioned credit facilities and or any part payment as may be made by the Borrower towards the Principal sum hereby guaranteed or any judgement, award or order obtained by the Bank against the Borrower shall be binding on the Guarantors and the Guarantors accept the correctness of any statement of account that may be served on the Borrower which is duly certified by any officer of the Bank and the same shall be binding and conclusive as against the Guarantors also and the Guarantors further agree that in the Borrower making an acknowledgement or making a payment the Borrower shall in addition to his personal capacity be deemed to act as the Guarantors duly authorised agent in that behalf for the purposes of Sections 18 and 19 of the Limitation Act of 1963.

(x) Considering the above, we are of the considered view that the present Application has been filed well within the limitation period.

15. The next issue that arises for adjudication before this Adjudicating Authority is ***"Whether the Personal Guarantor is liable by virtue of Deeds of Personal Guarantee signed by him".***

(i) The Deed of Guarantee has been executed by the Personal Guarantor for the loan extended by the Financial Creditor to the Corporate Debtor and the outstanding amount is more than threshold of Rs, one crore.

(ii) As per clause 6 of the Deed of Guarantee, the guarantee shall be enforceable notwithstanding the securities or any collateral security obtained from the Corporate Debtor or any other person. The extract of the same is reproduced hereunder:

> 6. The Guarantee herein contained shall be enforceable against the Guarantors notwithstanding the securities aforesaid or any of the them or any other collateral securities that the Bank may have obtained or may obtain from the Borrower or any other person shall at the time when proceedings are taken against the Guarantors hereunder be outstanding and/or not enforced and or remain unrealised.

(iii) As per Clause 7 of the Deed of Guarantee, the Financial Creditor can treat the Personal Guarantor as Corporate Debtor for all payments guaranteed by them. The extract of the same is reproduced hereunder:

> 7. In order to give effect to the Guarantee herein contained the Bank shall be entitled to act as if the Guarantors were principal debtors to the Bank for all payments guaranteed by them as aforesaid to the Bank.

(iv) As per Clause 8 of the Deed of Guarantee, the Guarantee is a continuing for all amounts advanced by the Financial Creditor to the Corporate Debtor. The extract of the same is reproduced hereunder:

> 8. The guarantee herein contained is a continuing one for all amounts advanced by the Bank to the Borrower in respect of or under the aforesaid credit facilities as also for all interest costs and other monies which may from time to time become due and remain unpaid to the Bank thereunder and shall not be determined or in any way be affected by any account or accounts opened or to be opened by the Bank becoming nil or coming into credit at any time or from time to time or by reason of the said account or accounts being closed and fresh account or accounts being opened in respect of fresh facilities being granted within the overall limit sanctioned to the Borrower.

(v) As per Clause 11 of the Deed of Guarantee, the guarantee shall be irrevocable and enforceable against the Personal Guarantor notwithstanding any dispute between the Financial Creditor and the Corporate Debtor. The extract of the same is reproduced hereunder:

> 11. The Guarantee shall be irrevocable and enforceable against the Guarantors notwithstanding any dispute between the Bank and the Borrower.

(vi) Clause 14 of the Deed of Guarantee provides that any variation in terms of the loan agreement, extension of the date of payment of instalment and any composition made between the Financial Creditor and the Corporate Debtor to give time etc., will not discharge the Personal Guarantor. The extract of the same is reproduced hereunder:

> 14. The Guarantors hereby agree that notwithstanding any variation made in the terms of the said Agreement of Loan and/or any of the said security documents including reallocation/interchange of the individual limits within the principal sum variation in the rate of interest, extension of the date for payment of the installments, if any, or any composition made between the Bank and Borrower to give time to or not to sue the Borrower, or the Bank parting with any of the securities given by the Borrower, the Guarantors shall not be released or discharged of their obligation under this Guarantee provided that in the event of any such variation or composition or agreement the liability of the Guarantors shall notwithstanding anything herein contained be deemed to have accrued and the Guarantors shall be deemed to have become liable hereunder on the date or dates on which the Borrower shall become liable to pay the amount/amounts due under the said Agreement of Loan and/or any of the said security documents as a result of such variation or composition or agreement.

(vii) As per Clause 17 of the Deed of Guarantee, the Personal Guarantor shall remain liable even if the Corporate Debtor becomes insolvent or enters into liquidation etc., or Corporate Debtor make any arrangement or composition with the Financial Creditor. The extract of the same is reproduced hereunder:

> 17. The Guarantors agree that if the Borrower being an individual becomes an insolvent or being a company enters into liquidation or winding up (whether compulsory or voluntary) or if the management of the undertaking of the Borrower is taken over under any law or if the Borrower and/or the undertaking of the Borrower is nationalised under any law or make any arrangement or composition with creditors the Bank may (notwithstanding payment to the Bank by the Guarantors or any other person of the whole or any part of the amount hereby secured) rank as creditor and prove against the estate of the Borrower for the full amount of all the Bank's claims against the borrower or agree to and accept any composition in respect thereof and the Bank may receive and retain the whole of the dividends, composition, or other payments thereon to the exclusion of all the rights of the Guarantors in competition with Bank until all the Bank's claims are fully satisfied and the Guarantors will not be paying off the amounts payable by them or any part thereof or otherwise prove or claim against the estate of the Borrower until the whole of the Bank's claims against the Borrower have been satisfied and the Bank may enforce and recover payment from the Guarantors of the full amount payable by the Guarantors notwithstanding any such proof or composition as aforesaid. On the happening of any of the aforesaid events, the Guarantors shall forthwith inform the Bank in writing of the same.

(xi) In view of the above, we are of the considered view that the Personal Guarantor is liable under the Deed of Guarantee.

16. The next issue that arises for adjudication before this Adjudicating Authority is **whether OTS between the Corporate Debtor and Financial Creditor would discharge the Personal Guarantors?**

(i) Relying on the judgment of Hon'ble Supreme Court "***Sanjiv Prakash vs. Seema Kukreja AIR 2021 Supreme Court 1979,*** the Counsel for the Personal Guarantor contended that the upon the execution of the OTS agreement between the Corporate Debtor and the Financial Creditor, a new contract came into existence, thereby extinguishing the earlier contract, including the obligations of the Personal Guarantors. As a result, the Personal Guarantors stand discharged from all their liabilities under the original contract.

(ii) However, the Counsel for the Financial Creditor argued that even after OTS between the Corporate Debtor and the Financial Creditor, the Personal Guarantor would remain liable as per the Deed of Guarantee, more particularly in view of the Clauses 3, 5, 8 and 14 of the Deed of Guarantee, the extract of which are reproduced hereunder:.

3. The Bank shall have the fullest liberty without affecting this Guarantee to vary the amounts of the individual limits of the aforesaid credit facilities as may be agreed upon from time to time between the Bank and the Borrower subject to the aggregate thereof not exceeding the principal sum and/or to postpone for any time or from time to time enforce or forbear to enforce any remedies of securities available to the Bank of its liberty with reference to the matters aforesaid or any of them or by reason of time being given to the Borrower or of any other forbearance act or omission on the part of the Bank or any other indulgence by the Bank to the Borrower or by any other matters or things whatsoever which under the law relating to sureties would but for this provision have the effect of so releasing the Guarantors.

5. The Bank shall be at liberty to take in addition to the subsisting securities any other securities for the aforesaid credit facilities or any of them or any part thereof and to release or forbear to enforce all or any of the remedies upon or under such securities and any collateral security or securities now held by the Bank and that no such release or forbearance as aforesaid shall have the effect of releasing or discharging or in any manner affecting the liability of the Guarantors under the Guarantee and that the Guarantors shall have no right to the benefit of the said security and / or any other security that may be held by the Bank until the claims of the Bank against the Borrower in respect of the aforesaid credit facilities and of all (if any) other claims of the Bank against the Borrowers on any other account whatsoever shall have been fully satisfied and then in so far only as such security shall not have been exhausted for the purpose of realising the amount of the Bank's claims and ratably only with other Guarantor or other persons (if any)entitled to the benefit of such securities respectively.

8. The guarantee herein contained is a continuing one for all amounts advanced by the Bank to the Borrower in respect of or under the aforesaid credit facilities as also for all interest costs and other monies which may from time to time become due and remain unpaid to the Bank thereunder and shall not be determined or in any way be affected by any account or accounts opened or to be opened by the Bank becoming nil or coming into credit at any time or from time to time or by reason of the said account or accounts being closed and fresh account or accounts being opened in respect of fresh facilities being granted within the overall limit sanctioned to the Borrower.

14. The Guarantors hereby agree that notwithstanding any variation made in the terms of the said Agreement of Loan and/or any of the said security documents including reallocation/interchange of the individual limits within the principal sum variation in the rate of interest, extension of the date for payment of the installments, if any, or any composition made between the Bank and Borrower to give time to or not to sue the Borrower, or the Bank parting with any of the securities given by the Borrower, the Guarantors shall not be released or discharged of their obligation under this Guarantee provided that in the event of any such variation or composition or agreement the liability of the Guarantors shall not withstanding anything herein contained be deemed to have accrued and the Guarantors shall be deemed to have become liable hereunder on the date or dates on which the Borrower shall become liable to pay the amount/amounts due under the said Agreement of Loan and/or any of the said security documents as a result of such variation or composition or agreement.

(iii) We have observed in the Para 15 of this Order that as per the Deed of Guarantee, the Personal Guarantor is liable even after any variation in terms of the loan agreement, extension of the date of payment of instalment and any composition made between the Corporate Debtor and Financial Creditor

(iv) We also note that ***NCLAT in its judgement in the matter of Dilip Ramachandhra Mohite Vs. Edelweiss assets Reconstruction Company Ltd.(2022)ibclaw.in 810*** has held as below

> *"Keeping in view the terms of the guarantee deed and the ratio of the aforenoted judgements, we are of the earnest view that 'OTS' is not a 'Novation' of the original debt, but is only to be construed as "Term of Settlement' offered and agreed upon by the Borrower to discharge its liability. The guarantors is a direct beneficiary of the OTS. Having signed and accepted OTS proposal, the appellant cannot now turn around and take a stand that the liability is not co-extensive or that guarantee was invoked only in 2013. We do not find this argument tenable as we hold that(a) it is a continuing and (b) that is not required for a continuing guarantee to be invoked twice in these facts of the matter when the liability is co-extensive."*

(v) In view of the above, we are of the considered view that the objections raised by the Personal Guarantor is not relevant and OTS between the Corporate Debtor and Financial Creditor does not absolve the Personal Guarantor of the liabilities under the Deed of Guarantee.

17. We also note that the Financial Creditor, in terms of Rule 7(1) of the Personal Guarantors Rules, have served the Demand Notice in Form-B dated 10.08.2023 to

the Personal Guarantor demanding the unpaid debt in default to the tune of Rs.38,49,75,059/- and the Personal Guarantor has failed to make the payment against that notice. Further, the main Application filed by the Financial Creditor is in accordance with the provisions of the law and is maintainable and therefore, the instant Application needs to be admitted.

18. While considering the Application under Section 99(7) of IBC, we need to refer to the report/recommendation of the RP. In the present case, the RP in his report filed under Section 99 of IBC has stated that the Application filed by the Applicant, State Bank of India is in compliance with section 95 of the Code and has recommended for acceptance of the present Application for initiating Personal Insolvency Resolution Process against the Personal Guarantor.

19. In terms of the provisions of Section 100 of IBC, 2016, while considering the admission of a Application filed under Section 95(1) of IBC, 2016, this Adjudicating Authority needs to satisfy itself regarding the acceptability of the report filed under Section 99 of IBC, 2016. In view of the above, we are of the considered view that this Application needs to be admitted. Therefore, **CP (IB) No. 48/95/AMR/2023 is allowed**.

20. As a sequel of admission of the present Application, the interim moratorium, which had kicked in as per Section 96 of the IBC shall cease and a fresh moratorium will begin in terms of Section 101 of the IBC in relation to all the debts of the Personal Guarantor. During the moratorium period – (a) any pending legal action or proceedings in respect of any debt qua the Personal Guarantor shall be deemed to have been stayed; (b) the Creditors shall not initiate any legal action or legal proceedings in respect of any debt qua the Personal Guarantor; and (c) the Personal

Guarantor shall not transfer, alienate, encumber or dispose of any of the assets or his legal right or beneficiary interest therein. The moratorium shall cease to have effect at the end of a period of 180 days.

21. The public notice as envisaged under Section 102 of the IBC shall be issued by the RP, on behalf of the Adjudicating Authority, within seven days of passing of this Order, inviting claim from all creditors within 21 days of such notice. The notice shall include details of the present Order, particulars of the RP with whom the claims have to be registered and the last date for the submission of the claims. The notice shall be – (a) published in English and one Vernacular Language newspaper, which are in circulation in the State, where the Personal Guarantor resides as well as where the registered office of the Corporate Debtor is situated; (b) affixed in the premises of this Adjudicating Authority; and (c) placed on the website of the Adjudicating Authority.

22. The RP in exercise of the powers conferred under Section 104 shall prepare a list of creditors within 30 days from the date of the notice as provided under Section 105, the debtor shall, in consultation with the RP, prepare a repayment plan containing a proposal to the creditors for restructuring of his debts or affairs, which besides other things, shall also include the provisions for payment of fee to the RP. The RP shall submit the repayment plan along with his report on the plan to this Adjudicating Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106 of the IBC.

23. In case the RP recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof. If the RP is of the opinion that the meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3). 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, for which at least 14 days' notice to the Creditors (as per list prepared) shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of the IBC.

24. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 and 111 of IBC, 2016. The RP shall prepare a report of the meeting of the Creditors on repayment plan with all details as provided under Section 112 and submit the same to this Adjudicating Authority, copies of which shall be provided to the Debtor and all the Creditors. It is made clear that the RP shall perform his functions and duties in compliance with the code of conduct provided under Section 208 of the IBC, 2016.

25. A copy of this Order along with a copy of the Application and RP Report shall be provided to the Applicant/Financial Creditor, Personal Guarantor and IBBI by the Registry/Court Master within 7 days from today by email.

26. It goes without saying that whatever amount is paid to the Financial Creditor by the Principal Borrower (Corporate Debtor) and other guarantors, the same would be deducted from the liability of the Personal Guarantor to repay.

27. To come up for consideration of Status Report to be filed by RP, within eight weeks.

Sd/-
Umesh Kumar Shukla
Member (Technical)

Sd/-
Kishore Vemulapalli
Member (Judicial)

Reddy Pavani, LRA