

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III**



C.P. No. (IB) 755/MB/C-III/2025

Under Section 123 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtor) Rules, 2019

In the matter of

Union Bank of India

Having registered office at:
Large Corporate Branch, 14th Floor,
Maker Towers, 'F' Cuff Parade,
Mumbai - 400005.

... Financial Creditor/Petitioner

Vs.

Mr. Kapil Wadhawan

Residing at:
Wadhawan House, Plot No. 32/A, Union
Park Road No.5, Bandra (W)
Mumbai.

... Personal Guarantor/Respondent

Order pronounced on: 14.08.2025

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)
Hon'ble Shri. Hariharan Neelakanta Iyer, Member (Technical)

Appearances:

For the Petitioner : Adv. Pushkar Deo, Adv. Aniruth Purusothaman
i/b. Cyril Amarchand Mangaldas

Per: Ms. Lakshmi Gurung, Member (Judicial)

1. This Petition has been filed by Union Bank of India (**'Petitioner/ Financial Creditor'**) under Section 123 of the Insolvency and Bankruptcy Code, 2016 (**'the Code'**) read with Rule 7 of the



Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (**'Bankruptcy Rules'**) seeking to initiate Bankruptcy Process against the Respondent (**'Personal Guarantor'**) who had executed personal guarantee for the credit facilities extended to Dewan Housing Finance Corporation Limited (**'DHFL/ Principal Borrower'**).

2. **Facts in brief:**

2.1 The Petitioner, along with Andhra Bank and Corporation Bank had extended various Credit facilities to the Corporate Debtor. (*Andhra Bank and Corporation bank were amalgamated into Union Bank from 01.04.2020*). Various Consortium agreements entered between the Petitioner and Corporate Debtor are as follows:

- i) Consortium Agreement dated 24.07.2010.
- ii) First Supplemental Consortium Agreement dated 29.06.2011.
- iii) Second Supplemental Consortium Agreement dated 26.06.2012.
- iv) Third Supplemental Consortium Agreement dated 20.06.2013.
- v) Fourth Supplemental Consortium Agreement dated 25.06.2014
- vi) Fifth Supplemental Consortium Agreement dated 18.06.2015

*(Collectively refereed as **'DHFL Facility Agreements'**)*

2.2 The Respondent had executed Joint Deed of Guarantee dated 22.06.2019, along with another guarantor, in favor of Catalyst Trusteeship Limited acting as security trustee for and on behalf of consortium of lenders (one of the banks being the Petitioner), whereby he jointly and severally, absolutely, irrevocably and unconditionally personally guaranteed to the banks for due payment of the principal borrower's obligations under the credit facilities, not



exceeding Rs.50,656.84 Crores. (Fifty Thousand, Six Hundred Fifty-Six Crores and Eighty-Four Lakhs.

- 2.3 Further, the Corporate Insolvency Resolution Process (**'CIRP'**) in respect of the Corporate Debtor was initiated vide order dated 03.12.2019 passed in Company Petition 4258 of 2018 filed by RBI under section 7 of the Code.
- 2.4 Pursuant thereto, the Administrator made public announcement inviting claims from the creditors of the Corporate Debtor. The Petitioner filed a claim amounting to Rs. 36,45,56,87,597.83 out of which claim of Rs. 35,17,30,39,020 was admitted by the Administrator.
- 2.5 Thereafter, upon occurrence of event of default under the DHFL facility Agreements, the Petitioner issued invocation cum demand notice on 10.09.2020 along with supplementary invocation cum demand notice dated 21.09.2020 collectively referred to as (**'Guarantee Invocation Notice'**) calling upon the Personal Guarantor to pay Rs. 39,58,30,48,963.71. However, the Respondent continued to be in default in respect of amounts demanded under the Guarantee Invocation Notice, therefore the creditor issued a Demand Notice dated 07.10.2020 in Form B under the provisions of the Code.
- 2.6 Since the Personal Guarantor failed to repay the amount, the Petitioner on 01.12.2020 filed Company Petition No. 5 of 2021 under Section 95 of the Code seeking initiation of Insolvency Resolution Process against the Personal Guarantor. While the Petition under Section 95 of the Code was pending, the resolution plan for corporate debtor submitted by Piramal Capital & Housing Finance Limited was approved. Pursuant thereto the creditor received certain sum of monies.
- 2.7 Vide order dated 12.06.2023 NCLT Mumbai Bench – I appointed Mr. Devendra Mehta (**"Erstwhile RP"**) as the Resolution Professional in



CP No.755/2025. The erstwhile RP filed a report dated 07.07.2023 recommending admission of Section 95 Petition against the Personal Guarantor.

- 2.8 Pursuant thereto, NCLT Mumbai Bench – I vide order dated 02.04.2024 (**‘PG Admission order’**) admitted Section 95 Petition and initiated insolvency resolution of the Personal Guarantor and passed order under Section 100 of the Code.
- 2.9 The Personal Guarantor by way of appeal challenged the PG admission order before the Hon’ble NCLAT which was dismissed vide its order dated 14.08.2024. Thereafter, the Personal Guarantor filed an appeal against the order dated 14.08.2024 before the Hon’ble Supreme Court and the same is sub-judice and no orders have been passed till date.
- 2.10 Pursuant thereto, the erstwhile RP published public notice on 08.04.2024 in two newspapers inviting claims from the creditors. In the meantime, an application was filed for replacement of the erstwhile RP with Mr. Abhilash Lal (**‘Resolution Professional’**) which was allowed by NCLT Mumbai Bench- I vide its order dated 11.06.2024.
- 2.11 As per the PG admission order, the Personal Guarantor had to prepare a repayment plan under Section 105 of the Code, in consultation with the Resolution Professional, containing a proposal to the creditors of the Personal Guarantors for restructuring of his debts and affairs.
- 2.12 Several attempts were made by the Erstwhile RP and the Resolution Professional to seek a repayment plan from the Personal Guarantor. However, no repayment plan was received from the Personal Guarantor Therefore, the creditors in their meeting held on 20.09.2024 unanimously agreed to seek closure of the insolvency process and initiate the bankruptcy process with this Tribunal.



2.13 Pursuant thereto, the Resolution Professional filed Interlocutory Application No.6 of 2025, under section 112 of the Code which was allowed vide order dated 02.01.2025 holding that non-receipt of repayment plan would tantamount to rejection of plan in terms of Section 114 of the Code and the consequences as provided in Section 115(2) shall follow. The relevant extracts of order dated 02.01.2025 are reproduced herein under:

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4. Section 114 of the Code mandates the adjudicating authority to pass an order either approving or rejecting the repayment plan on basis of report of the meeting of creditors submitted by the Resolution Professional under section 112 of the code. Since no repayment plan has been received in the present case and the personal guarantor is not traceable. We are of considered view that the present facts warrant passing of an order, which this Tribunal can pass u/s 114 on rejection of the Plan.

Section 115(2) provides that "Where the Adjudicating Authority rejects the repayment plan under section 114, the debtor and the creditors shall be entitled to file an application for bankruptcy under Chapter IV. Accordingly, we hold that the non-receipt of repayment plan would tantamount to rejection of plan in terms of section 114 of the code and the consequences as provided in section 115(2) shall follow."

2.14 NCLT Mumbai vide its order dated 29.01.2025 rectified the error which had crept in the order dated 02.01.2025 in following terms:

"2. Paragraph 4 of the order 02.01.2025 it is stated that the Personal Guarantor was not traceable, however, he was lodged in the Tihar Jail. The said submissions are noted and the order dated 02.01.2025 is modified as follows:

a) In the fifth line of para 4 the words "not traceable" shall be substituted by the words "lodged in Tihar Jail in the Judicial Custody".

3. Rest of the order shall remain unchanged."



3. In the above backdrop, the present application has been filed by the Petitioner under section 123 of the Code seeking initiation of Bankruptcy process in respect of the Personal Guarantor. The total amount of debt (including interest and penalties) due and payable by the Personal Guarantor to the Petitioner as on 28.03.2025, after adjusting the part amounts recovered by the Creditor from the resolution of Corporate Debtor is Rs. 4545,96,56,973.57 (Rupees Four Thousand Five Hundred Forty-Five Crores Ninety-Six Lakhs Fifty-Six Thousand Nine Hundred Seventy-Three and Fifty-Seven Paisa).
4. As per Section 115(2) of the Code where the Adjudicating Authority rejects the repayment plan under Section 114, the creditors shall be entitled to file an application for bankruptcy under Chapter IV.
5. As per section 121(2) of the Code, an application for bankruptcy shall be filed within a period of three months from the date of order passed by the Adjudicating Authority under Section 115(2) of the Code. We note that the Adjudicating Authority had passed the order under Section 114 of the Code on 02.01.2025 and the present application was filed on 29.03.2025 which is within limitation.
6. On perusal of the record, we note that the present petition has been filed in the prescribed form Form B accompanied by the relevant documents as follows:
 - i. A copy of the Joint Deed of Guarantee dated 22.06.2019.
 - ii. A copy of order dated 03.12.2019 passed in Company Petition 4258 of 2018 filed by RBI under section 7 of the Code.
 - iii. A copy of the order dated 02.04.2024 passed by this Tribunal admitting the Section 95 Petition.
 - iv. A copy of order dated 02.01.2025 holding that non-receipt of repayment plan tantamount to rejection of plan and creditors can file bankruptcy order against the Personal Guarantor.



- v. Copies of the statement of accounts (where deposits were made or credits were received in respect of the debt of, DHFL) and the certificate under Section 2A of the Bankers' Book Evidence Act, 1891.
7. We are satisfied that the Petition complies with all the requirements as prescribed in section 123 of the Code. Therefore, we consider it proper to admit this Petition and pass following orders:
- i. Mr. Kapil Wadhawan, the Personal Guarantor herein, is declared as **Bankrupt**.
 - ii. The Financial Creditor has proposed the name of Mr. Sanjay Kumar Mishra having IBBI Registration No. IBBI/IPA-001/IP-P01047/2017-18/11730 to act as the Bankruptcy Trustee. The proposed Bankruptcy Trustee has submitted his Written Consent dated 27.03.2025 under Regulation 3(3) of the Insolvency and Bankruptcy (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019. The Written Consent is accompanied with Authorisation for Assignment (AFA) dated 19.11.2024 valid upto 31.12.2025. Accordingly, we appoint **Mr. Sanjay Kumar Mishra**, having office at: Dreams Complex, 4C- 1605, LBS Marg, Bhandup (W), Mumbai-78, as the Bankruptcy Trustee.
 - iii. The Registry is directed to provide the copy of this Bankruptcy order and the copy of the Bankruptcy petition to:
 - a) Bankrupt,
 - b) Creditors, and
 - c) Bankruptcy Trusteewithin 7 (seven) days as provided under Section 126 (2) of the Code.



- iv. The estate of the bankrupt as provided under section 155 of the Code read with Rule 5 of Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtor) Rules, 2019 shall:
 - a) Vest in the Bankruptcy Trustee immediately as provided under section 128 and 154 of the Code;
 - b) The estate of the bankrupt shall be divided among his creditors;
 - c) Subject to provisions of sub-section (2), a creditor of the bankrupt indebted in respect of any debt claimed as a bankruptcy debt shall not –
 - i) Initiate any action against the property of the bankrupt in respect of such debt; or
 - ii) Commence any suit or other legal proceedings except with the leave of the Adjudicating Authority and on such terms as the Adjudicating Authority may impose.
- v. The Bankruptcy trustee shall discharge his powers and duties as specified in the Code and shall adhere to the applicable provisions of the Code and the Rules and Regulations issued by the IBBI in this regard from time to time.
- vi. The Bankrupt shall submit his statement of financial position to the Bankruptcy Trustee in the prescribed form within 7 (seven) days from the date of this order i.e. Bankruptcy commencement date as provided in section 129 of the Code.
- vii. The Bankruptcy trustee shall send notices within 10 (ten days) from the bankruptcy commencement date to the creditors specified as provided under section 130(a) of the Code.



- viii. The Bankruptcy Trustee shall issue Public Notice inviting claims from the creditors as contemplated under section 130 (2) of the Code in leading newspapers, one in English and another in vernacular having sufficient circulation where the bankrupt resides.
- ix. The Bankruptcy Trustee shall conduct the administration of distribution of estate of bankrupt in accordance with the provisions of Chapter V of the Code.
- x. The Bankrupt shall from the date of this order be subject to such disqualifications and restrictions as specified under sections 140 and 141 of the Code.
- xi. The Bankruptcy Trustee may seek such further information or explanation in connection with bankruptcy process as may be required from the debtor or the creditor or any other person who in the opinion of the Bankruptcy Trustee, may provide such information. The persons from whom information or explanation is sought shall furnish such information or explanation within seven days of receipt of the request.
- xii. The Bankruptcy Trustee shall submit to this Adjudicating Authority and Committee of Creditors ('CoC') a preliminary report within 90 (ninety) days of the bankruptcy commencement date and a copy of the report shall also be served on the bankrupt as provided in Regulation 8 of Insolvency and Bankruptcy Board of India (Bankruptcy Process for personal Guarantors to corporate debtors) Regulation, 2019.
- xiii. The Bankruptcy Trustee shall submit progress reports to the Adjudicating Authority and CoC within 15 (fifteen) days after the end of every quarter and a copy of the report shall also be served upon the bankrupt as provided under Regulation 10 of Insolvency and Bankruptcy Board of India (Bankruptcy Process for personal Guarantors to corporate debtors) Regulation, 2019.



- xiv. The Bankruptcy Trustee shall file the final report with the Adjudicating Authority along with the application under sub-section (1) of section 138 as provided in Regulation 11 of Insolvency and Bankruptcy Board of India (Bankruptcy Process for personal Guarantors to corporate debtors) Regulation, 2019.
 - xv. The fee of Bankruptcy trustee shall be in accordance with Regulation 4 of the IBBI (Bankruptcy Process for Personal Guarantors to the Corporate Debtors) Regulations, 2019.
 - xvi. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
 - xvii. A certified copy of the order to be issued upon compliance with requisite formalities.
 - xviii. This order of Bankruptcy shall continue to have the effect till the debtor is discharged under section 138 of the Code.
8. Accordingly, the Company Petition No. 755/MB/2025 is **admitted**.
9. List this Company Petition as and when reports are filed by the Bankruptcy Trustee.

SD/-

Hariharan Neelkanta Iyer,
Member (Technical)

SD/-

Lakshmi Gurung
Member (Judicial)