# IN THE NATIONAL COMPANY LAW TRIBUNAL

# KOCHI BENCH

**CP (IBC)/13/KOB/2025**
**&**
**CP (IBC)/14/KOB/2025**

*(Under Section 95(1) of the IBC, 2016 read with Rule 7(2) of IBBI (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019)*

***In the matter of:***
***Tata Motors Finance Limited vs. Mr. Rajwanth Ben***

**MEMO OF PARTIES:**

**Tata Motors Finance Limited**
Formerly known as Tata Motors Finance Solutions Limited | — Think Techno Campus Building A, 2nd Floor Off Pokhran Road 2, Thane West, Mumbai — 400601.

**...Petitioner/Creditor**

**-Vs-**

**Mr. Rajwanth Ben**
1B Lavender, Skyline Riverdale Apartments, Petta, Tripunithura P O, Tripunithura, Errnakulam — 682301, Kerala Also at CC No. 52/3171, 52/3172, Sharon Tower, Opp. Salafi Mazjid, Vyttila, Ermakulam — 682019, Kerala

**...Respondent/Personal Guarantor**

**&**

***In the matter of:***
***Tata Motors Finance Limited vs. Mrs. Molly G***

**MEMO OF PARTIES:**

**Tata Motors Finance Limited**
Formerly known as Tata Motors Finance Solutions Limited | — Think Techno Campus Building A, 2nd Floor Off Pokhran Road 2, Thane West, Mumbai — 400601.

**...Petitioner/Creditor**

**-Vs-**

**Mrs. Molly G**
1B Lavender, Skyline Riverdale Apartments, Petta, Tripunithura P O, Tripunithura, Errnakulam — 682301, Kerala Also at CC No. 52/3171, 52/3172, Sharon Tower, Opp. Salafi Mazjid, Vyttila, Errnakulam — 682019,

**...Respondent/Personal Guarantor**

**Date of Institution: 24.02.2025.**

**Order delivered on: 03.11.2025.**

***Coram:***

**HON'BLE MEMBER (JUDICIAL) : SHRI. VINAY GOEL**

**HON'BLE MEMBER (TECHNICAL) : SMT. MADHU SINHA**

***Appearances:***

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|---|---|---|
| For the Petitioner | : | Ms. Pooja Pandey, Advocate |
| For the Personal Guarantor | : | Mr. Anil D Nair, Advocate |
| Resolution Professional | : | Mr. Rakesh Kumar Tulasyan |

## ORDER

**Per Coram**

1. Both petitions have been filed by the Tata Motors Finance Limited as the financial creditor against two different individuals, who have stood as personal guarantors for the debt of the Corporate Debtor. The legal and factual matrix in these cases are identical. Therefore, both petitions have been heard together, and a common order is being issued.

2. These Company Petitions are filed by the Financial Creditor, Tata Motors Finance Limited under Section 95 of the Insolvency & Bankruptcy Code, 2016 (hereinafter 'the Code' or 'IBC, 2016') 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, to initiate the insolvency resolution process in respect of Mr. Rajwanth Ben and Mrs. Molly G, Personal Guarantors to M/s Malayalam Vehicles India Private Limited, the Corporate Debtor for default of a debt amounting to Rs. Rs.2,56,37,953.21/-

3. Petitioner has produced the following documents in support of these petitions, coincidentally numbering all Annexures in both Petitioners are same:

    i. **Annexure C** - Channel finance agreement **dated** 18.03.2023.
    ii. **Annexure D** - Deed of Guarantee dated 18.03.2023.
    iii. **Annexure E** -Copy of the Demand Notice dated 24.07.2024 along with the proof of service through Registered post and Email by the Financial Creditor to the Personal Guarantors.

4. The creditor served demand notices on the guarantors in Form B dated 23.08.2024 as required under section 95(4)(b) of the Code read with Rule 7(1) of the Rules.

5. It is stated that the amount of default exceeds the minimum threshold of Rs. One Crore; the date of default, as stated in Part III of the Petition, is 23.08.2024.

6. The petitioner has proposed the insolvency professional, Mr. Rakesh Kumar Tulsyan, Insolvency Resolution Professional having Registration IBBI/IPA-001/IP-P01144/2018-2019/11970 residing at B-4, Vinay Tower, Kranti Nagar, Lokhandwala, Kandivali East, Mumbai, Maharashtra,400101 as the Resolution Professional. The Insolvency Professional has submitted his authorization for assignment and his certificate of registration from the Insolvency and Bankruptcy Board of India, along with the petition, and declared his eligibility to act as the RP in Part IV of the petition.

7. Upon consideration of the petitions, this Tribunal appointed Mr. Rakesh Kumar Tulsyan, Insolvency Resolution Professional having Registration No: IBBI/IPA-001/IP-P01144/2018-2019/11970 as RP on 23.06.2025. The RP has filed two applications IA/(IBC)/292/KOB/2025 & IA(IBC)/293/KOB/2025, under Section 99 (1) of IBC, 2016, along with a report, recommending the admission of the Company Petitions filed under Section 95 (1) of IBC, 2016.

8. The Respondents/ Personal Guarantors filed a reply affidavit in response to the report of the RP on 19.09.2025, stating that the present application under Section 95 of the IBC is premature and not

maintainable, as the Corporate Debtor's application under Section 10 has already been admitted by this Hon'ble Tribunal vide Order dated 04.04.2025 in CP(IBC)/55/KOB/2024. The Respondents have been named in this application solely in their capacity as personal guarantors for the same debt, which is already the subject matter of the ongoing CIRP. Initiating parallel proceedings against the Respondent during the pendency of the CIRP may result in double recovery and leads to multiplicity of proceedings.

9. Respondents submitted that the debt in question is a *secured debt*, as clearly evidenced by the Sanction Letter dated 15.03.2023, which details the securities provided, including: (a) irrevocable and unconditional personal guarantees of Mr. Rajwanth Ben and Mrs. Molly G; (b) a cheque for the full facility amount; (c) hypothecation of vehicles/inventory and receivables; and (d) a Fixed Deposit of Rs. 40,00,000/- with lien marked in favour of the Applicant (TMFSL). While certain details were left blank in the Channel Finance Agreement dated 18.03.2023, these securities existed and were acted upon. The Fixed Deposit was invoked by TMFSL, as confirmed by Canara Bank's letter dated 29.05.2025. The financed vehicles, which form part of the primary security, are still available at the Respondent's showroom/yard. Therefore, the Applicant was obligated to first realise the value of these securities before invoking the personal guarantee. Proceeding directly against the guarantors, without exhausting the specific and primary securities, is premature and unjustified. Moreover, the invocation of the Fixed Deposit for Rs. 40,00,000/- must be adjusted against the outstanding debt to avoid double recovery.

10. It is further submitted that the original loan tenure was until 14.03.2024. Under Section 133 of the Indian Contract Act, 1872, any change in the terms of the contract between the principal debtor and the creditor without the surety's consent discharges the surety from liability for any subsequent transactions. If the terms of the loan were varied without informing or obtaining consent from the Respondent, the personal guarantee stands discharged to that extent. This legal safeguard has been overlooked by the Resolution Professional, and therefore, the invocation of the personal guarantee is invalid and unsustainable in law.

11. In the rejoinder, the petitioner submitted that the objection raised by the Personal Guarantors, that no proceedings can be initiated or continued against them during the pendency of CIRP against the Corporate Debtor is legally untenable. As per Section 128 of the Indian Contract Act, 1872, the liability of a guarantor is co-extensive with that of the principal debtor, unless specifically excluded by contract. The initiation of CIRP does not extinguish or suspend the liability of the Personal Guarantor. Further, there is no bar under the Insolvency and Bankruptcy Code preventing insolvency proceedings from being initiated or continued against a Personal Guarantor during the CIRP. It is further submitted that this position has been reaffirmed by the Hon'ble Supreme Court in *Lalit Kumar Jain v. Union of India & Ors.* [(2021) 9 SCC 321], where it was held that approval of a resolution plan for the corporate debtor does not, by itself, discharge the personal guarantor of their obligations under the guarantee.

12. It is further submitted that the Hon'ble Supreme Court has upheld the validity of the Insolvency and Bankruptcy (Application to Adjudicating

Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, and has clearly held that proceedings against personal guarantors are independent and can run parallel to the CIRP of the Corporate Debtor. Therefore, the mere admission or pendency of CIRP proceedings does not discharge, defer, or affect the liability of the Personal Guarantor, nor does it render proceedings under Section 95 read with Section 99 of the IBC premature or non-maintainable.

**FINDINGS:**

13. We have heard both sides and also gone through the records. These are two petitions filed by the Financial Creditor against the Personal Guarantors under Section 95 of the Insolvency and Bankruptcy Code, 2016, for initiation of the Insolvency Resolution Process against the Personal Guarantors. Sri. Rakesh Kumar Tulsyan, the Resolution Professional, has filed his reports vide I.A. (IBC)/292/KOB/2025 & IA(IBC)/293/KOB/2025 with recommendations to initiate the Insolvency Process against the Personal Guarantors. It is recorded in the reports that the Channel Finance Facility of Rs. Four Crores was credited to Malayalam Vehicles India Private Limited on 15th March, 2023, for which the respondents, Sri. Rajwanth Ben and Mrs. Molly G stood as guarantors in their individual capacity and executed a Deed of Guarantee on 18th March, 2023, along with other standard loan documents. The Corporate Debtor availed the loan but failed to observe financial discipline, and it is recorded in the report that the amount is more than the threshold amount. The guarantors responded to the Resolution Professional and raised their objections, questioning the legality and

validity of initiation of Insolvency Process against the guarantors, owing to invocation of Fixed Deposit lying with Canara Bank under the lien of the Financial Creditor, existence of other secured assets, and questioning the right of the secured creditor to initiate Insolvency Process against the guarantor before realization of such secured assets, and existence of primary hypothecated assets, and also took the defence of limitation as there is no acknowledgment of debt from the guarantors. Further, renewal and restructuring between the Financial Creditor and Borrower without the consent of the guarantor leads to discharge of guarantee under Section 133 of the Indian Contract Act. Thus questions of validity of initiation of the Insolvency Process on vivid grounds. It is the case of the respondent that, despite such defence, and without taking into account the documents and submissions, the Insolvency Professional submitted recommendations to initiate such proceedings.

14. The respondents filed their objections against such report and reiterated all such defences before this Adjudicating Authority and ultimately prayed for rejection of the application.

15. Before proceeding further, we would like to recall that in this case, sanction of credit facility, execution of loan and guarantee documents, default, invocation of guarantee, admission of application under Section 10 of the Insolvency and Bankruptcy Code, 2016, by creation of secured interest, issuance of demand notice and statutory demand notice, and service of said notices upon concerned persons are not disputed. Even the respondents have failed to point out any discrepancy in the statement of accounts annexed with this petition.

16. At this juncture, we would like to reproduce the relevant portion of the Deed of Guarantee executed by the respondents on 18th March, 2023.

> *17. I/We hereby waive all the rights available to the undersigned under Sections 133, 134, 135, 139 and 141 of the indian Contract Act, 1872 and shall not be entitled to the benefit of subrogation to the security/ies held by TMFSL until the Final Settlement Date and also if the same securities are held by TMFSL for any other indebtedness of the Dealer.*
>
> *18. The guarantee hereby given is independent and distinct from any other security interests that TMFSL may have taken or may take or which may be created in favour of TMFSL in any manner whatsoever whether it be by way of hypothecation, pledge and/or mortgage and/or any other charge over goods, movables or other assets and/or any other property movable or immovable and that I/we have not given this guarantee upon any understanding, faith or belief that TMFSL has taken and/or may hereafter take or have created in its favour any other such security interests and that notwithstanding the provisions of Sections 140 and 141 of the Indian Contract Act, 1872 or other provisions of applicable law, I/we will not claim to be discharged to any extent because of TMFSL's failure to take any such security interests or in requiring or obtaining any such security interests or losing for any reason whatsoever including reasons attributable to its default and negligence, benefit of any such security interests or any of its rights in respect of such security interests.*
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> *20. Notwithstanding anything to the contrary in these presents or any other document/ arrangement: (a) (i) in respect of all and any of my our obligations in relation to this Deed and (ii) all and any of the my/ our present and future liabilities to TMFSL, TMFL or any affiliate or associate companies (as defined in the Companies Act, 2013) of TMFSL and/or TMFL (the "TMF Entities") under any obligation/loan/ facilities/ borrowings/ document, whether such liabilities are/ be crystallised, actual or contingent, primary or collateral or several or jointly with others, whether as principal debtor*

*and/or as guarantor and or otherwise howsoever, (collectively "Liabilities"), the TMF Entities shall have a specific and special lien on all of my/our present and future stocks, shares, securities, property, book debts, ail moneys held with or in custody, legal or constructive, with the TMF Entities, now or in future, whether in same or different capacity, and whether severally or jointly with others, and (b) separately, the TMF Entities shall have an express right to, without notice and without consent, set-off, transfer, sell, realise, adjust, appropriate all such amounts, securities and property as aforesaid (whether earmarked for any particular Liability or not) for the purpose of realising or against any of dues in respect of any of the Liabilities and to combine or consolidate all or any of my/our loan accounts and to set-off any monies, whether of same type or nature or not and whether held in same capacity or not including upon any default in payment of any part of any of the Liabilities when due in terms of such documents.*

17. So, the guarantors waived their rights under Sections 133, 134, 135 and 136 of the Indian Contract Act. Although the respondents have taken a vague defence, they have not given any specific reference to claim protection under Section 133 of the Indian Contract Act. But the fact remains that such defence is not at all available to the respondents/guarantors in view of the specific waiver to that effect in their Deed of Guarantee.

18. Further, the guarantors accepted their joint liability with the principal borrower, and the availability of other securities and assets would not absolve the guarantor from liability under the guarantee agreement. It is to be reminded that the Insolvency and Bankruptcy Code process is not a recovery mechanism.

19. Further, initiation of the CIRP under Sections 7, 9 and 10 of the IBC is distinct and independent from the proceedings under Section 95 of IBC, 2016 against the personal guarantor. At this juncture, we would like to rely upon the decision of the *Hon'ble Supreme Court of India in Lalit Kumar Jain v. Union of India & Ors., (2021) 9 SCC 321*. The relevant portion of the judgment is reproduced here as under: -

> *111. In view of the above discussion, it is held that approval of a resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under the contract of guarantee. As held by this court, the release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process, i.e. by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability, which arises out of an independent contract.*

20. Therefore, the defence as taken by the guarantors is not tenable. The General Finance Agreement was executed on 18th March, 2023, and the present proceedings have been initiated on 11.01.2025. Hence, the proceedings are well within time, and the defence that the application under Section 95 of IBC, 2016 is premature and unjustified is without merit, as to initiate the insolvency process there is no need to first dispose of the secured assets.

21. We find no merit in the objection raised on behalf of the respondents. As far as the defence alleging that the application under Section 95 of the Code is premature and unjustified is concerned, it is settled that the insolvency process cannot be treated as a recovery mechanism, and existence of other securities or pendency of proceedings against the Corporate Debtor, or admission of application filed by the Corporate Debtor for initiation of CIRP proceedings under Section 10, would not

operate as any bar for initiation of insolvency process against the guarantor under Chapter III of the IBC.

22. On going through the averments in the Company Petitions and the reports of the Resolution Professional, and after hearing the learned counsel for the Petitioners/Creditors and the Respondents/Personal Guarantors, we find no legal impediment to allow the reliefs claimed in these cases, and we are of the considered opinion that these are fit cases for admission and for initiating Insolvency Resolution Process against the Respondents/Personal Guarantors.

23. For the reasons stated aforesaid, **we admit CP(IBC)/13/KOB/2025 & CP(IBC)/14/KOB/2024,** filed under the provisions of Section 95 (1) of the IBC, 2016, and initiate Insolvency Resolution Process against the Respondents/Personal Guarantors. Moratorium in relation to all the debts is declared, from today, i.e. date of admission of the application and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes the order on the repayment plan under Section 114, whichever is earlier, as provided under Section 101 of IBC, 2016. During the moratorium period;

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

24. The Resolution Professional viz.., Mr. Rakesh Kumar Tulsyan (IBBI/IPA-001/IP-P01144/2018- 2019/11970), B-4, Vinay Tower, Kranti Nagar, Lokhandwala, Kandivali East, Mumbai, Maharashtra,400101, who was appointed vide order dated 23.06.2025, is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Kochi Bench, inviting claims from all Creditors, within 21 days of such issue. The notice under Sub-Section (1) of Section 102(2) of the Code shall include: -

    a. Details of the order admitting the application;

    b. Particulars of the resolution professional with whom the claims are to be registered; and

    c. The last date for submission of claims.

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

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

    a) the information disclosed in the application filed by the debtor under Sections 94 or 95, as the case may be; and

    b) claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice.

27. The debtor shall prepare a repayment plan under Section 105 of the Code, in consultation with the Resolution Professional, containing a

proposal to the Creditors for restructuring of his debts or affairs. The repayment plan may authorize or require the Resolution Professional to: -

a) carry on the debtor's business or trade on his behalf or in his name; or
b) realise the assets of the debtor; or
c) administer or dispose of any funds of the debtor.

28. The repayment plan shall include the following, namely;

    a) justification for the preparation of such repayment plan and reasons on the basis of which the creditors may agree upon the plan;
    b) provision for payment of fee to the Resolution Professional;
    c) such other matters as may be specified

29. The Resolution Professional shall submit the repayment plan along with his report on the plan to this Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106 of the Code.

30. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons therefor. If the Resolution Professional is of the opinion that a meeting of the creditors should be called, he shall specify the details as provided under Section 106(3) of the IBC, 2016. The date of meeting should not be less than 14 days or more than 28 days from the date of submission of the Report under Sub-Section (1) of Section 106 of IBC, 2016, for which at least 14 days' notice to the creditors [as per the list prepared]

shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of IBC, 2016.

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

32. The Resolution Professional shall submit his periodic reports before this Tribunal, as per rules.

33. The Registry is directed to send e-mail copies of this order forthwith to all the parties, inclusive of the Counsel. Let the Certified Copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

34. Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.

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| **Sd /-** | **Sd /-** |
| **MADHU SINHA** | **VINAY GOEL** |
| **(MEMBER TECHNICAL)** | **(MEMBER JUDICIAL)** |

Signed on this the 03rd day of November, 2025.

*Steno_A*