



IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

COURT-IV (SPECIAL BENCH)

I.A. 2941 (IBC) 2026

IN

CP (IB) 41 (ND) 2026

Under Section 65 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.

IN THE MATTER OF:

SURYA FOUNDRY PRIVATE LIMITED

...Applicant

Versus

STATE BANK OF INDIA

...Respondent

AND IN THE MATTER OF:

STATE BANK OF INDIA

Through its Authorized Representative

Ms. Swati Bhaskar

...Applicant/Financial Creditor

Versus

SURYA FOUNDRY PRIVATE LIMITED

Through its Director

Mr. Rakesh Kumar Gupta

...Respondent/Corporate Guarantor

Order Pronounced On: 29.07.2026

CORAM:

SHRI MAHENDRA KHANDELWAL,

HON'BLE MEMBER (JUDICIAL)

SHRI YOGENDRA KUMAR SINGH,

HON'BLE MEMBER (TECHNICAL)



PRESENT:

For the Applicant : Mr. Gaurav Mitra, Sr. Advocate, Mr. Vibhor Kapoor,
Aarsheya Sharda, Mr. Abhishek Chhabra, Amit Dhall,
Advocates.

For the Respondent: Mr. Abhishek Anand, Mr. Shubham Saigal, Mr. Siddharth
Jain, Ms. Ridhima Mehrotra, Ms. Rashmi Rampal, Ms.
Shruti Mishra, Advocates.

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. The present Application has been filed by the Applicant, Surya Foundry Private Limited ("Corporate Guarantor") under the provisions of Section 65 of the Insolvency and Bankruptcy Code, 2016 ("Code") read with Rule 11 of the National Company Law Tribunal Rules, 2016 ("NCLT Rule, 2016") seeking the following reliefs:

- a) Allow the present application and dismiss the present petition bearing No. CP(IB) 41 of 2026 filed before this Hon'ble Tribunal as being collusive and malicious within the meaning of Section 65 of the Code;*
- b) Impose appropriate costs and/or penalties upon Respondent No. 1 in terms of Section 65 of the Insolvency and Bankruptcy Code, 2016;*
- c) Pass such other or further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.*



SUBMISSIONS OF THE APPLICANT/CORPORATE GUARANTOR:

2. The present Section 7 Petition has been instituted solely on the strength of the purported Guarantee Agreement dated 28.03.2023, the validity, legality and enforceability whereof is the subject matter of serious disputes before multiple judicial fora. The Applicant has consistently maintained that the said guarantee is fraudulent, fabricated, wholly unauthorised and incapable of constituting the basis of an admitted and undisputed financial debt.
3. The purported Guarantee Agreement dated 28.03.2023 was allegedly executed by Mr. Rakesh Kumar Gupta, without any authority from the Board of Directors of the Applicant Company. The four directors constituting the Goel Group have categorically stated that no Board Meeting was convened and no resolution was ever passed authorising the execution of the guarantee or assumption of liability for the borrowings of Mubarak Overseas Private Limited.
4. The purported Board Resolution dated 22.03.2023 relied upon by Respondent No. 1 Bank is ex facie fabricated inasmuch as: (i) the Directors' Report for FY 2022-23 records no Board Meeting on 22.03.2023; (ii) the resolution bears signatures only of the Gupta Group directors; (iii) it does not identify the borrower, nature of transaction or extent of liability; (iv) it refers to facilities of Rs. 50.33 Crores whereas the alleged facilities are approximately Rs. 55.56 Crores; and (v) it vaguely refers to the mortgage of



the "Factory Land and Building" without identifying the Applicant Company's principal asset.

5. The very terms of the purported Guarantee Agreement are wholly one-sided, imposing an absolute, unconditional and continuing liability upon the Applicant Company for the indebtedness of Mubarak Overseas despite the Applicant Company deriving no commercial or financial benefit from the facilities. No prudent board would voluntarily expose its sole and most valuable asset to liabilities exceeding Rs. 65 Crores without any corresponding commercial benefit.
6. The Financial Creditor accepted and acted upon the aforesaid guarantee and resolution despite glaring discrepancies apparent on the face of the documents and without undertaking even elementary due diligence expected of a nationalised bank.
7. The validity and enforceability of the purported Guarantee Agreement dated 28.03.2023 is directly and substantially in issue in Company Petition No. 62 of 2025 before this Adjudicating Authority, wherein the Applicant has challenged the fraudulent execution of the guarantee, mortgages and charges and has sought a declaration that the guarantee is null, void and non est in law, along with consequential injunctive reliefs.
8. The Applicant has also challenged the invocation and enforcement of the alleged guarantees and consequential measures before the Hon'ble Debt Recovery Tribunal in S.A. No. 10 of 2025, specifically pleading that the



guarantees, mortgages and charges were fraudulently and unauthorisedly created.

9. FIR No. 0032/2025 has been registered by the Economic Offences Wing against members of the Gupta Group and officials of FC in relation to the fraudulent creation and use of the impugned guarantees and mortgages. Further, even in the fraud proceedings and wilful defaulter proceedings initiated by Financial Creditor, the Applicant Company categorically disputed the validity of the purported guarantee and denied any liability thereunder.
10. The institution of the present proceedings on the basis of a document whose validity and enforceability is under challenge before this Adjudicating Authority, the Hon'ble Debt Recovery Tribunal, the Economic Offences Wing and even in proceedings initiated by Respondent No. 1 Bank itself is ex facie malicious and constitutes a gross abuse of the insolvency jurisdiction of this Adjudicating Authority.
11. The multiplicity of proceedings concerning the validity and enforceability of the purported Guarantee Agreement dated 28.03.2023 and the consistent challenge mounted by the Applicant across all available fora unequivocally demonstrate that the alleged liability is neither admitted nor undisputed. Despite being fully aware that the very foundation of the present petition is under serious challenge before various judicial and quasi-judicial fora, the Financial Creditor has deliberately invoked the insolvency process by



portraying the alleged guarantee as valid, binding and absolute, which is wholly incompatible with a bona fide invocation of the provisions of the Code.

12. The deliberate non-disclosure of these proceedings, despite Financial Creditor being fully aware thereof, has resulted in an incomplete and misleading picture being placed before this Adjudicating Authority and demonstrates a lack of bona fides, rendering the present petition liable under Section 65 of the Code.
13. The Applicant's assets, creditworthiness and sole immovable property have, since 2008, been repeatedly utilised and encumbered for securing the borrowings of Gupta Group entities, despite the Applicant deriving no commercial or financial benefit therefrom.
14. The Bank repeatedly accepted guarantees, mortgages, charges and Board Resolutions containing glaring irregularities, including documents executed by unauthorised persons, resolutions signed only by members of the Gupta Group and internally inconsistent corporate records, without undertaking even elementary due diligence or verifying the authority of the persons purporting to bind the Applicant Company.
15. Despite being aware that the Applicant Company's Board comprised four Goel Group directors and two Gupta Group directors, Respondent No. 1 Bank never sought confirmation from the Goel Group and instead relied exclusively upon documents furnished by the Gupta Group while repeatedly extending and enhancing credit facilities.



16. The repeated acceptance of patently irregular documents, continued enhancement of facilities, appearance of the Bank in Company Petition No. 62 of 2025 concerning the validity of the very guarantees now relied upon, and the selective invocation of insolvency proceedings only against the Applicant despite the existence of the principal borrower and personal guarantors, collectively demonstrate mala fides, collusion and a coordinated scheme between Bank and the Gupta Group.
17. The present petition is not a bona fide exercise of remedies but the culmination of a long-standing scheme to exploit the assets of the Applicant, accord legitimacy to disputed transactions and push the Applicant into insolvency on the strength of documents whose validity remains under challenge before multiple fora.
18. The present Section 7 Petition has been instituted not for bona fide insolvency resolution but to enforce liabilities allegedly arising under the disputed Guarantee Agreement dated 28.03.2023 and the underlying security documents.
19. The pendency of multiple proceedings challenging the validity and enforceability of the said guarantee demonstrates that the object of the present proceedings is to secure indirect recognition and enforcement of a seriously disputed and allegedly fraudulent document through the insolvency process. Such invocation is malicious and constitutes a gross abuse of the provisions of the Code.



- 20.** The Company Petition No. 62 of 2025 challenges the repeated and unauthorised utilisation of the Applicant's assets through fraudulent guarantees, mortgages and charges, including the continuing course of conduct culminating in the purported Guarantee Agreement dated 28.03.2023, which has also been specifically challenged by way of an Interim Application seeking a declaration that it is null, void and non est in law.
- 21.** The allegations of fraud, collusion, fabrication of corporate records and unauthorised execution of guarantees are presently under adjudication before this Adjudicating Authority. Continuation of the present proceedings would indirectly accord legitimacy to the impugned guarantee, frustrate Company Petition No. 62 of 2025, render the Applicant Company's challenge substantially infructuous and enable the Respondents to achieve through the insolvency process what they cannot directly obtain in the pending proceedings.

ANALYSIS AND FINDINGS:

- 22.** The present Interlocutory Application has been preferred by the Applicant/Corporate Guarantor under Section 65 of the Code read with Rule 11 of the NCLT Rules, 2016 seeking dismissal of the Company Petition bearing CP (IB) No. 41 (ND) of 2026 filed under Section 7 of the Code by the State Bank of India.
- 23.** It is the case that the Section 7 petition has been maliciously instituted solely on the basis of a purported Corporate Guarantee Agreement dated



28.03.2023, which is fraudulent, fabricated and unauthorised. It is submitted that the guarantee was executed without any valid Board Resolution and that the Financial Creditor knowingly relied upon defective corporate records despite glaring irregularities. The validity and enforceability of the guarantee are already under challenge before this Adjudicating Authority, the Debt Recovery Tribunal and the Economic Offences Wing, and that the Financial Creditor deliberately suppressed these proceedings while initiating the present petition. According to the Applicant, the insolvency proceedings are the result of collusion between certain directors of the Corporate Guarantor and the Financial Creditor to enforce disputed liabilities and legitimise fraudulent transactions through the insolvency process.

- 24.** At this stage it would be necessary to refer to Section 65 of the Code which is reproduced herein below:

“Section 65: Fraudulent or malicious initiation of proceedings.

65. (1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.



(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.

(3) If any person initiates the pre-packaged insolvency resolution process-

(a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency; or

(b) with the intent to defraud any person,

the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.”

25. The legislative object behind Section 65 is to prevent abuse of the insolvency process. The provision is penal in nature and, therefore, cannot be invoked routinely. The jurisdiction under Section 65 is attracted only where there exists cogent material demonstrating that the proceedings have been initiated fraudulently or with malicious intent for a purpose other than the objectives of the Code.

26. The Hon’ble NCLAT in the case of **Canara Bank Vs. Bhavesh Mansukhbai Rathod (IRP) and Ors. Company Appeal (AT) (Insolvency) No. 558 of 2025** in the judgement dated 17.04.2026 has observed that proceeding under



Section 65 application has to be based on specific pleadings and materials to show that initiation of CIRP was malicious and fraudulent.

27. The Hon'ble NCLAT in ***Monotrone Leasing Pvt. Ltd. Vs. PM Cold Storage Pvt. Ltd., [2020] ibclaw.in 21 NCLAT*** has held the following:

“29 Section 65 of the Code provides for penal action for initiating Insolvency Resolution Process with a fraudulent or malicious intent or for any purpose other than the resolution. However, the same cannot be construed to mean that if a petition is filed under Section 7, 9 or 10 of the Code without any malicious or fraudulent intent, then also such a petition can be rejected by the Adjudicating Authority on the ground that the intent of the Applicant/Petitioner was not resolution for Corporate Insolvency Resolution Process. As the proceedings under IBC are summary in nature, it is difficult to determine the intent of the Applicant filing an application under Section 7, 9 or 10 of the Code unless shown explicitly by way of documentary evidence. This situation may arise in specific instances where a petition is filed under IBC specifically with a fraudulent or malicious intent.”

28. The Hon'ble NCLAT in ***Acute Daily Media Pvt. Ltd. and Ors. v. Rockman Advertising and Marketing (India) Ltd. and Ors., (2025) ibclaw.in 41***



NCLAT, while discussing the degree of proof under section 65 has held the following:

“31. We have no quarrel with the proposition of the Appellants that in terms of Section 7 of the IBC, what is required to be seen is the existence of a debt and default of the said debt. Once a debt becomes due or payable and there is incidence of non-payment of the said debt in full or part, CIRP may be triggered by the Financial Creditor as long as the amount in default is above the threshold limit. Be that as it may, Section 65 of the IBC is an enabling provision within the statutory framework of IBC whereby even if a Section 7 application has been filed or has been admitted, it vests jurisdiction on the Adjudicating Authority to examine an application under Section 65, if a prima facie case is made out to show that the Section 7 application had been filed 'fraudulently' or 'with malicious intent' and for purpose other than resolution of insolvency or liquidation. In the present case too, we therefore do not find any error on the part of the Adjudicating Authority to consider the Section 65 application filed by the Respondent No.1 on being prima facie satisfied that the Section 7 application seeking initiation of CIRP proceedings had been filed by suppression of relevant material for purposes other than insolvency resolution. There is no statutory embargo on the Adjudicating Authority to exercise its discretion carefully and judiciously in a Section 65 application to prevent and protect the Corporate Debtor from being



dragged into CIRP. This is a well settled proposition of law and the Adjudicating Authority has drawn reference to the binding precedents laid down by this Tribunal which have already been noticed at paragraph 30 above. We are therefore not much impressed by the argument of the Appellants that the Section 7 order of 17.05.2022 having attained finality, it cannot be relooked into by the Adjudicating Authority even when a Section 65 application is filed.

32. *While returning our findings on the tenability of the impugned order, we must at the very outset add that that to prove any transaction to be collusive and fraudulent in nature, the degree of proof and evidence required should be beyond reasonable doubt and we propose to apply the same standard of proof to the facts of the present case.”*

29. Therefore, for attracting the provisions of Section 65 of the Code, it is incumbent upon the Applicant to establish, by cogent material, that the initiation of the insolvency proceedings was fraudulent or initiated with malicious intent for a purpose other than the resolution of insolvency. The element of malice or fraudulent initiation must be proven beyond reasonable doubt. There must be substantial and corroborative evidence to explicitly prove ‘fraudulent intent’, ‘malice’ and ‘mens rea’ on the part of the Applicant. The penalties under Section 65 cannot be imposed unless a clear case of fraudulent or malicious intent is established.



- 30.** The allegations advanced by the Applicant primarily relate to the validity of the Corporate Guarantee, the authority of the person executing the guarantee, the legality of the Board Resolution and the pendency of proceedings challenging those documents. The mere existence of disputes regarding the validity or enforceability of the documents forming the basis of the financial debt cannot, without more, lead to the conclusion that the insolvency proceedings have been initiated fraudulently or with malicious intent. If every disputed financial transaction were to be treated as attracting Section 65, the provision would become applicable in almost every contested insolvency proceeding, a consequence clearly not intended by the legislature.
- 31.** All the contentions made by the Applicant/Corporate Guarantor which are referred in Paragraph 2 of the order are related to the merits of the Section 7 Petition and all are dealt with separately in the Petition bearing CP IB 41 ND 2026.
- 32.** The pendency of civil, criminal or recovery proceedings neither extinguishes the remedies available to a Financial Creditor under the Code nor creates a presumption that the initiation of insolvency proceedings is done with a fraudulent/malicious intent.
- 33.** The Applicant has not produced any cogent material demonstrating that the Financial Creditor invoked the insolvency jurisdiction for any collateral, oblique or extraneous purpose unrelated to insolvency resolution with a



malicious intent. Mere allegations, cannot substitute the stringent standard of proof contemplated under a penal provision such as Section 65.

- 34.** A creditor asserting rights under documents which it bona fide considers to be valid and enforceable cannot be accused of abusing the insolvency process merely because the debtor disputes those documents. Acceptance of such an argument would effectively permit every Corporate Debtor to frustrate insolvency proceedings simply by instituting collateral litigation challenging the underlying documents, thereby defeating the time-bound framework envisaged under the Code.
- 35.** Further, the FIR No. 0032/2025 dated 05.03.2025, filed by the Applicant, is annexed as Annexure A-5. In Para 11 of the FIR it is stated that only the branch manager of SBI is arrayed as an accused. There is no allegation against the Bank. Therefore, it cannot be said that SBI as an institution has filed the Section 7 Petition fraudulently.
- 36.** In the present case, the Applicant has failed to establish that the Section 7 Petition was instituted for any purpose other than seeking initiation of the corporate insolvency resolution process on account of the alleged financial debt and default. The entire case of the Applicant rests upon disputing the validity of the Corporate Guarantee and alleging fraud in its execution. These issues do not, by themselves, establish the fraudulent or malicious initiation of insolvency proceedings as contemplated under Section 65 of the Code.



37. Accordingly, this Adjudicating Authority is of the considered opinion that the Applicant has failed to satisfy the essential ingredients of Section 65 of the Code. The allegations raised are insufficient to demonstrate that the present proceedings have been initiated fraudulently or with malicious intent for a purpose other than the resolution of insolvency.

38. Accordingly, the present application bearing **I.A. 2941 OF 2026**, being devoid of merit, is **dismissed**.

No order as to costs.

-SD/-

-SD/-

YOGENDRA KUMAR SINGH

MAHENDRA KHANDELWAL

MEMBER (TECHNICAL)

MEMBER (JUDICIAL)