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

Supplementary Cause list Item No.1
CP (IB)/29/95/AMR/2025

IN THE MATTER OF:

IDBI Bank Ltd … Petitioner/ Financial Creditor

Versus

Smt.Kukkala Krishna Kumari, PG of M/s Esskay Shipping Pvt Ltd

… Respondent/Personal Guarantor

Under Section: 95 of IBC, 2016

Order delivered on 20.11.2026

CORAM:

SHRI KISHORE VEMULAPALLI, HON'BLE MEMBER (JUDICIAL)

SHRI UMESH KUMAR SHUKLA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Financial Creditor : Mr. G.P. Yash Vardhan, Adv.

For the Respondent/PG : Mr. Satya Narayana Nimmala, Adv.

ORDER

Orders pronounced and recorded *vide* separate sheets. The Section 95 Application bearing **CP (IB)/29/95/AMR/2025** filed by the Financial Creditor is **admitted.**

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)

CP(IB)/29/95/AMR/2025

Under Section 95 of Insolvency and Bankruptcy Code, 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

BETWEEN:
IDBI Bank Limited,
Registered office at IDBI Tower,
WTC Complex, Cuffe Parade, Mumbai-400005.
Branch office at No.370, D.No.5-9-89/1 and 2,
Chapel Rd, P.B, Hyderabad, Telangana-500001.
Represented by its Authorized Signatory,
Shri Bhagabat Prasad Patra, S/o Shri Pradyumma Kumar Patra,
Aged about: 46 years, Occ: Deputy General Manager,
IDBI Bank Ltd., NPA Management Group, Chapel Road, Hyderabad.

…… Financial Creditor

AND

Smt. Kukkala Krishna Kumari
Personal Guarantor of Esskay Shipping Private Limited
D. No. 9-29-10/A, Gokul Nivas, Balajinagar, Siripuram,
Visakhapatnam-530003, Andhra Pradesh.

…… Personal Guarantor

ORDER DELIVERED ON: 20.11.2026

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

PRESENT:

For the Financial Creditor : Mr. G.P. Yash Vardhan, Advocate
For the Personal Guarantor : Mr. Satya Narayana Nimmala, Advocate
Resolution Professional : None

[ORDER]
[PER: BENCH]

This Petition bearing No. CP(IB)/29/95/AMR/2025 was e-filed on 05.07.2025 and physically filed vide Diary No.1319 dated 09.07.2025 by the IDBI Bank Limited (hereinafter referred to as the **"Financial Creditor"**) 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"**) seeking to initiate Personal Insolvency Resolution Process (hereinafter referred to as the **"PIRP"**) against Smt. Kukkala Krishna Kumari (hereinafter referred to as the **"Personal Guarantor"**), who is the Personal Guarantor of Esskay Shipping Private Limited (hereinafter referred to as the **"Corporate Debtor"** or **"Principal Borrower"**) and who has extended the Personal Guarantee to the Financial Creditor. The amount claimed to be in default is Rs.67,39,33,333.75 as on 27.05.2025.

2. The registered address of the Corporate Debtor is at 25-40-40, ESSKAY House, Gangulavari Street, Visakhapatnam-530001, which is situated in the State of Andhra Pradesh. Therefore, the jurisdiction lies with this Adjudicating Authority in accordance with Section 60(1) of the Code.

3. After scrutiny of the Petition, the Registry raised certain objections, for which the Financial Creditor e-filed on 31.07.2025 the Compliance

Memo dated 30.07.2025, the hard copy of which was filed vide Diary No.1576 dated 04.08.2025 stating as below:

S. No.	Objections	Compliance
1.	Please Check Memo of Parties	Complied and A copy of the Memo of Parties is annexed hereto.
2.	Proof of service to IBBI may be submitted in Form 1A .	Proof of service to IBBI is annexed hereto.

4. The Financial Creditor also re-filed the Petition on 31.07.2025 on DMS portal. Thereafter, the Petition was numbered and first listed on 12.08.2025.

FACTS OF THE CASE:

5. The facts of the case, as stated in the Petition refiled by the Financial Creditor, are summarized below:

(i) The Corporate Debtor is a private limited company, engaged in the business of rendering services to national and international principals as steamer agents, clearing & forwarding house agents, stevedores, offshores support and logistics etc.

(ii) An unsecured operational creditor, M/s. Bunge SA of Switzerland filed a Company Petition No. 201 of 2015 (hereinafter referred to as the "**CP 201/2015**") before the Hon'ble High Court of Telangana (now transferred to Amaravti, Andhra Pradesh) against the Corporate Debtor seeking its winding up. The Hon'ble High Court ordered for liquidation on 30.08.2017 and appointed the Official

Liquidator. The CP 201/2015 is pending before the Hon'ble High Court of Andhra Pradesh.

(iii) Out of 6 mortgaged properties, the Official Liquidator conducted e-auction for sale of 3 properties, which were successfully auctioned at a cumulative bid amount of Rs.5.90 crore and the sale proceeds were received by the Official Liquidator, which were distributed as per the High Court order dated 30.12.2024 and the same were appropriated towards interest on 03.01.2025 in the CC account.

(iv) The Corporate Debtor through its Director, Late Dr. Kukkala Nageshwara Rao, approached the Financial Creditor, in the month of March 2010, requesting to take over the loan account of the Corporate Debtor from the Syndicate Bank and the said request was accepted and Financial Creditor took over the loan and sanctioned financial assistance on 23.03.2010.

(v) The Corporate debtor, in order to avail the financial assistance, executed various loans documents and the Personal Guarantor of the Corporate Debtor, in order to secure the repayment of the financial assistance availed by the Corporate Debtor, executed Guarantee Agreements dated 25.03.2010, 11.04.2011 and 08.10.2012 in favour of the Financial Creditor.

(vi) The Corporate Debtor failed to repay the loan and the loan account was declared as Non-Performing Assets (hereinafter referred to as the **"NPA"**) on 30.09.2014.

(vii) Thereafter, Financial Creditor issued recall notice dated 20.08.2016 to the Corporate Debtor marking a copy to the Personal Guarantor, recalling the entire outstanding amounts. The said notice was served on 26.08.2016 on the Corporate Debtor and Personal Guarantor. However, the Corporate Debtor failed to repay the outstanding amounts.

(viii) The Financial Creditor issued a notice dated 09.09.2016 to the Personal Guarantor herein and other guarantors invoking the guarantee and recalling the payment of the outstanding amounts. The said notice was served on the Personal Guarantor on 15.09.2016. Despite the said notice, the Personal Guarantor did not come forward to pay the outstanding loan amounts.

(ix) Thereafter, the Financial Creditor issued notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the **"SARFAESI"**) on 23.11.2016 to the Personal Guarantor herein and other guarantors recalling payment of the outstanding amounts within 60 days from the date of notice. The said notice was served on the Personal Guarantor on 26.11.2016, however, the Personal Guarantor has not paid the outstanding loan accounts.

(x) The Financial Creditor initiated proceedings against the Corporate Debtor, Personal Guarantor herein and other guarantors by filing an Original Application No.66 of 2017 (hereinafter referred to as the "**OA**" or "**OA 66/2017**") before the Hon'ble Debt recovery Tribunal, Visakhapatnam (hereinafter referred to as the **"Hon'ble DRT"**).

(xi) The Hon'ble DRT passed an Order in OA on 26.12.2019 directing the Corporate Debtor, Personal Guarantor herein and other Guarantors/ Defendants therein, to pay Rs.11,03,90,768.96 along with future interest @14.25% p.a. (BBR 10.25% plus 4% p.a.) with monthly rests from the date of OA, till the date of realization, to be recovered from the Personal Guarantor herein and other defendants/ guarantors, jointly & severally and personally.

(xii) Thereafter, the Hon'ble DRT vide its Orders dated 08.07.2022, issued a Recovery Certificate in favour of the Financial Creditor for recovering an amount of Rs.11,03,90,768.96 along with cost, expenses from 07.01.2017 i.e. date of filing/ effective date of the OA and future interest @14.25% p.a. with monthly rests from the order date till the date of realization in full, jointly or severally from the Personal Guarantor herein and other defendants/ guarantors.

(xiii) The office of Recovery Officer-II vide demand notice dated 29.09.2022, directed the Corporate Debtor, Personal Guarantor herein and other guarantor/ defendants to pay the amount under the Recovery Certificate within 15 days from the date of receipt. The Corporate Debtor, Personal Guarantor herein and other guarantors/ defendants therein committed default in paying the amount ordered under the Recovery Certificate. The Recovery Certificate proceedings are still continuing.

(xiv) The debt was due on 08.07.2022 i.e., date of issuance of the Recovery Certificate by the Hon'ble DRT. Therefore, the date of

default is 08.07.2022, which is the date of issuance of the Recovery Certificate by the Hon'ble DRT.

(xv) The Financial Creditor issued a demand notice to the Personal Guarantor to the address mentioned in the Guarantee Agreement on 05.06.2025, which was returned on 10.06.2025 with the endorsement as "*No such person in the address*".

(xvi) The Personal Guarantor in the Guarantee Agreement agreed that the Financial Creditor serving the Personal Guarantor with a notice requiring payment of the amount and such notice shall be deemed to have been served on the Personal Guarantor either by actual delivery thereof to the Personal Guarantor or by dispatch thereof by the Registered Post or Certificate of Posting to the Personal Guarantor address given or any other address in India, which the Personal Guarantor may by written intimation give to the Financial Creditor or request that communication addressed to the Personal Guarantor be dispatched. Further, the Personal Guarantor is also obligated to inform/ intimate the Financial Creditor with respect to change in address. However, the Personal Guarantor has not intimated any change in address. Therefore, the Demand Notice issued by the Financial Creditor is deemed to have been served on the Personal Guarantor.

(xvii) The Financial Creditor as per Rule 3(g) of the Personal Guarantors Rules, affixed the above-mentioned Demand Notice at the outer door of Personal Guarantor's house i.e., D. No.9-29-10/A, Gokul Nivas, Balajinagar, Siripuram, Visakhapatnam-530003, Andhra

Pradesh on 17.06.2025. Even after a lapse of 14 days the Personal Guarantor has failed to pay the outstanding amount claimed to be in default.

(xviii) Under the Guarantee Agreement, the Personal Guarantor agreed that the Guarantee provided shall be a continuing one and shall remain in full force and effect till such time, the Corporate Debtor repays in full the loan together with all interest, liquidated damages, costs, charges and all other monies that may from time to time become due and payable and remain unpaid to the Financial Creditor under the Agreement. Therefore, the liability towards Financial Creditor to pay the outstanding amount is still subsisting as on date. As such, the captioned Petition is within the limitation.

(xix) As per Part-III of Form C, enclosed with the Petition, the details of total amount of debt, the amount claimed to be in default and the date on which the default occurred are reproduced below:

PARTICULARS OF DEBT		
1.	Total Outstanding debt (including any interest or penalties)	Rs.67,39,33,333.75 (Rupees Sixty-Seven Crore Thirty-Nine Lakh Thirty-Three Thousand Three Hundred Thirty-Three and Paisa Seventy-Five Only) as on 27.05.2025.
2.	Amount of debt in default as on 27.05.2025	Rs.67,39,33,333.75 (Rupees Sixty-Seven Crore Thirty-Nine Lakh Thirty-Three Thousand Three Hundred Thirty-Three and Paisa Seventy-Five Only) as on 27.05.2025.
4	Date when the default occurred	1. 08.07.2022 – Date of issuance of the Recovery Certificate by the Hon'ble DRT.

(xx) The Financial Creditor along with the Petition has enclosed the following documents:

(a) Copy of the Directorship of the Personal Guarantor as per the MCA as Annexure No.1 at pages 39-39A of the Petition

(b) The details of the assets of the Personal Guarantor as provided at the time of execution of the Guarantee Agreement as Annexure No. 2 at pages 40-60 of the Petition

(c) Facility-wise outstanding details as Annexure No.3 at page 61 of the Petition

(d) Details of security and estimated value as Annexure No.4 at pages 62-65 of the Petition

(e) Copy of the Order dated 26.12.2019 passed by the Hon'ble DRT as Annexure No.5 at pages 66-95 of the Petition

(f) Copy of the RC dated 08.07.2022 issued by the Hon'ble DRT as Annexure No.6 at pages 96-101 of the Petition

(g) Record of Default report dated 09.05.2025 filed with National E-Governance Services Limited (herein after referred to as the "**NeSL**") as Annexure No.7 at pages 102-113 of the Petition

(h) Copy of sanction letters dated 23.03.2010, 06.04.2011, 14.08.2012, 15.02.2013 and 06.01.2014 as Annexure No.8 at pages 114-150 of the Petition

(i) Copy of Facility Agreements dated 25.03.2010, 11.04.2011 and 08.10.2012 as Annexure No. 9 at pages 151-216 of the Petition

(j) Copy of Guarantee Agreement dated 25.03.2010, 11.04.2011 and 08.10.2012 as Annexure No.10 at pages 217-258 of the Petition

(k) Copy of Omnibus Counter Guarantee Agreements dated 25.03.2010, 11.04.2011 and 08.10.2012 as Annexure No.11 at pages 259-273 of the Petition.

(l) Copy of Hypothecation Agreement dated 25.03.2010, 11.04.2011 and 08.10.2012 Annexure No. 12 at pages 274-309 of the Petition.

(m) Copy of the Demand Promissory Notice dated 25.03.2010, 11.04.2011, 08.10.2012 and 15.02.2013 as Annexure No. 13 at pages 310-313 of the Petition.

(n) Copy of the recall notice dated 20.08.2016 as Annexure No.14 at pages 314-341 of the Petition.

(o) Copy of the notice invoking the Guarantee dated 09.09.2016 along with tracking report as Annexure No.15 at pages 342-352 of the Petition.

(p) Copy of the notice dated 23.11.2016 under Section 13(2) of the SARFAESI along with the tracking report as Annexure No.16 at pages 353-382 of the Petition.

(q) Copy of the demand notice along with return cover as Annexure No.17 at pages 383-723 of the Petition.

(r) Copy of the proof of affixing the demand notice as Annexure No.18 at pages 724-726 of the Petition

(s) Copy of the Orders dated 30.08.2017 & 30.12.2024 passed by the Hon'ble High Court for Telangana and Andhra Pradesh in the matter of CP 201/2015) as Annexure No.19 at pages 727-784 of the Petition.

(t) Copy of the MCA of the Corporate Debtor as Annexure No.20 at pages 785-787 of the Petition.

(u) The statement of accounts of Esskay Shipping Private Limited as Annexure No. 21 at pages 788-794 of the Petition.

6. During the course of hearing held on 12.08.2025, the Financial Creditor submitted that the demand notice was served to the Personal Guarantor through Register Post with Acknowledgement Due, which returned unserved without providing valid reason for the non-service. It was further submitted that the demand notice was also sent through e-mail, which was successfully delivered. However, no supporting affidavit has been filed along with this Petition to substantiate the service through electronic mode. Hence, the Financial Creditor sought and was granted time to find out the correct address of the Personal Guarantor and to effect service through Speed Post and file a proof of service thereof.

7. The Financial Creditor vide Diary No. 1952 dated 29.09.2025, filed an affidavit dated 26.09.2025 stating the Financial Creditor appointed an agency, M/s. Kanitkars Advisory, LLP and entrusted the assignment for identifying and tracing the present and correct address of the Personal Guarantor, who submitted the report on 20.09.2025. Based on the report submitted by the agency, the Financial Creditor issued notice along with

the Company Petition to the current address of the Personal Guarantor on 23.09.2025. The Financial Creditor annexed the report of the Agency and notices sent along with postal tracking as Annexure Nos. 1 & 2 respectively. The status of the notices sent to the Personal Guarantor are as below:

Address	Status
Smt. KUKKALA KRISHNA KUMARI Door No. 25-40-40, KOTAVEEDHI, Ganugula Vari Street, Revenue Ward 25, CHILAKAPETA-01, Visakhapatnam, AP-530001.	Return to Sender on 26.09.2025
Smt. KUKKALA KRISHNA KUMARI Door No. 9-29-10A, SIVAJIPALEM, Revenue Ward 16, Election Ward 16, Visakhapatnam, AP-530017.	Missent - Redirected to Vijayawada GPO on 26.09.2025

8. Further, the Financial Creditor vide Diary No.1972 dated 03.10.2025, filed a Memo dated 30.09.2025, stating that one of the notices sent to the Personal Guarantor on 23.09.2025, was in transit, while filing the Memo dated 26.09.2025, therefore, the present memo is filed to bring on record the final status of the notices along with the tracking reports which is as below:

Address	Status
Smt. KUKKALA KRISHNA KUMARI Door No. 25-40-40, KOTAVEEDHI, Ganugula Vari Street, Revenue Ward 25, CHILAKAPETA-01, Visakhapatnam, AP-530001.	Return to Sender on 26.09.2025 with an endorsement of " No Such Person in the Door No. (Addressee Moved)"
Smt. KUKKALA KRISHNA KUMARI Door No. 9-29-10A, SIVAJIPALEM, Revenue Ward 16, Election Ward 16, Visakhapatnam, AP-530017.	Missent- Redirected to Vijayawada on 26.09.2025 with an endorsement of " No Such addressee in the Door No. hence Redirected"

9. During the course of hearing on 06.10.2025, the Financial Creditor sought time to submit the copy of the notice dated 28.12.2015 for

invocation of the personal guarantee as per the Guarantee Agreement along with proof of service in terms of Section 95(5) of the Code.

10. Pursuant to the Order dated 06.10.2025 of this Adjudicating Authority, the Financial Creditor vide Diary No.2155 dated 27.10.2025, filed a Memo dated 27.10.2025 with the following submissions:

(i) The copy of the Petition was sent on 05.07.2025 through Speed Post and the same was returned on 09.07.2025. The copy of Track consignment report with return cover annexed as Annexure No.1 of the Memo.

(ii) The authorized officer of the Financial Creditor was able to obtain the copy of notice dated 28.12.2015, however, postal receipts and tracking reports could not be located despite diligent and sincere efforts. The copy of the notice dated 28.12.2015 are annexed as Annexure No.2 of the Memo.

(iii) The Financial Creditor was constrained to issue a fresh notice dated 09.09.2016 superseding the earlier notice dated 28.12.2015 for the following reasons:

(a) The details of other Guarantee Agreements dated 25.03.2010, 11.04.2011, 08.10.2012 and 23.01.2014 were not captured in the notice dated 28.12.2015

(b) The details of the bank guarantee liability were inadvertently mentioned in the notice dated 28.12.2015, which were subsequently rectified and removed in the notice dated 09.09.2016

(c) The outstanding amount was revised in the notice dated 09.09.2016 from Rs.9,41,06,086.96 to Rs.10,63,53,045.96.

(iv) The Financial Creditor sought further two weeks' time to place on record the postal receipts and tracking report/postal acknowledgements, proof of service of the notice dated 28.12.2015.

11. During the course of hearing on 28.10.2025, the Financial Creditor sought and was granted two weeks' time to file the copy of notice dated 28.12.2015 for invocation of personal guarantee along with proof of service as per the Guarantee Agreement. During the course of hearing on 19.11.2025, the Financial Creditor again sought and was granted two weeks' time to comply the Order dated 28.10.2015.

12. Pursuant to the Order dated 28.10.2025 of this Adjudicating Authority, the Financial Creditor vide Diary No. 2453 dated 05.12.2025, filed a Memo dated 04.12.2025, wherein besides reiterating the facts of the Petition, it also contended the maintainability of the Petition on the following grounds:

(i) No judicial adjudication is involved at the stages envisaged in Sections 95 to 99 of the Code.

(ii) The recall notice dated 09.09.2016 constitutes a fresh cause of action under the continuing guarantee.

(iii) The recovery certificate dated 08.07.2022 constitutes a fresh cause of action under the continuing agreement.

(iv) Valid service of the demand notice under the provisions of the Code.

13. During the course of hearing on 09.12.2025, the Financial Creditor submitted that the first invocation notice was issued to the Personal Guarantor on 28.12.2015, however, the proof of its service could not be traced. The Financial Creditor also submitted that within three years of the invocation notice dated 28.12.2015, it filed the OA on 07.01.2017 before the Hon'ble DRT, which issued the Recovery Certificate on 08.07.2022 and all these dates survives the continuity of limitation period from 28.12.2015. The Financial Creditor sought time to submit legal proposition of superior courts on the question whether, after the invocation on 28.12.2015, the mere filing and pendency of the OA before the Hon'ble DRT would, by itself, extend the period of limitation.

14. Pursuant to the Order dated 09.12.2025 of this Adjudicating Authority, the Financial Creditor vide Diary No.29 dated 05.01.2026, filed a Memo dated 02.01.2026 placing reliance on following judgements:

(i) Hon'ble Supreme Court Judgement dated 30.05.2022 in the matter of ***Kotak Mahindra Bank Ltd. v. A. Balakrishnan*** in Civil Appeal No. 689 of 2021 (2022 SCC OnLine SC 706);

(ii) Hon'ble Supreme Court Judgement dated 18.10.2023 in the matter of ***Tottempudi Salalith v. State Bank of India & Ors.*** in Civil Appeal No. 2348 of 2021 (2023 INSC 923);

(iii) Hon'ble NCLAT, Chennai Bench Judgement dated 24.07.2025 in the matter of ***Virigneni Anjaiah v. Pridhvi Asset Reconstruction and Securitization Company Ltd.*** in Company Appeal (AT) (CH)

(Ins) No.163/2024 (IA No.434/2024) with Company Appeal (AT) (CH) (Ins) No.164/2024 (IA No.435/2024);

(iv) Hon'ble NCLAT, Principal Bench Judgement dated 08.08.2025 in the matter of ***IDBI Bank Ltd Vs Hemangi Patel*** in Company Appeal (AT) (Insolvency) No. 991 of 2025; and

(v) Hon'ble NCLT, Division Bench (Court-I) Chennai Judgement dated 20.09.2024 in the matter of ***State Bank of India v. Mrs. J. Geetha*** *in CP(IB)/189(CHE)/2022.*

15. During the course of hearing on 16.02.2026, the Financial Creditor reiterated that the invocation notice was issued to the Personal Guarantor on 28.12.2015 and within three years, they initiated the OA proceedings before the Hon'ble DRT on 07.01.2017 for recovery of the due debt of the Corporate Debtor, and the Hon'ble DRT issued the Recovery Certificate on 08.07.2022. It was further stated that the Financial Creditor, in Part-IV of form C of Petition, has proposed the name of Mr. Sivarama Prasad Bhamidi having Registration No. IBBI/IPA-003/IP-N00084/2017-2018/10822 as the Resolution Professional (hereinafter referred to as the **"RP"**) along with the written consent in Form-A dated 02.07.2025, wherein he stated that he is eligible to be appointed as the RP of the Personal Guarantor and affirmed that he is not subjected to any disciplinary proceedings initiated by the Board or the Insolvency Professional Agency. Since the Authorization for Assignment (hereinafter referred to as **"AFA"**) of the proposed RP in Form-B, enclosed with the Petition, showed the validity of the authorization till 31.12.2025, the

credentials of the proposed RP were verified from the website of the IBBI, which shows that AFA is valid till 31.12.2026. Considering the same, this Adjudicating Authority vide Order dated 16.02.2026 appointed Mr. Sivarama Prasad Bhamidi as RP with the direction to submit his report under Section 99 of the Code within ten days by categorically examining the issue of limitation keeping in view of the provisions of the IBC and other judgments pronounced by the superior Courts.

RP REPORT:

16. In compliance of this Adjudicating Authority Order dated 16.02.2026, the RP e-filed IA (IBC)/95/2026 on 26.02.2026 and physically on 27.02.2026 vide Diary No.366 to place on record the RP Report under Section 99 of the Code, which was taken on record by this Adjudicating Authority, vide its Order dated 18.03.2026. The contents of the RP's report has been summarized below:

(a) As per Section 99 (2), the RP may require to prove the repayment of the debt to the creditor, who is claiming as unpaid. The RP sent letters to the Personal Guarantor at her address available in records, requesting her to provide proof of repayment of dues vide letter and email dated 18.02.2026. But the letter was returned undelivered.

(b) As per Section 99(6)(a), the RP after examination, shall ascertain that the Petition satisfies the requirements set out in Section 95. Accordingly, the RP conducted such examination, and the observations are placed below:

Sec No	Provision under IBC, 2016	Observation of Resolution Professional
95(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 application is filed by the Financial Creditor, IDBI Bank Limited.
95(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 (a) any one or more partners of the firm; or (b) the firm.	This is not applicable in present case
95(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.	This is not applicable in present case
95(4)		An application under sub-section (1) shall be accompanied with details and documents relating to—
95(4)(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;	• Copies of the Sanction Letters dated 23.03.2010,06.04.2011,14.08.2012,15.02.2013 and 06.01.2014 were attached to the application at Annexure No 8 to the application filed by the creditor. • Copies of the Facilities Agreements dated 25.03.2010, 11.04.2011 and 08.10.2012 were attached to the application at Annexure No 9 to the application filed by the Creditor. • The statements of accounts of the CD were attached to the application filed by the Creditor.
95(4)(b)	Failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and	**Personal Guarantee**: • Copies of the personal guarantees dated 25.03.2010, 11.04.2011 and 08.10.2012 provided by the Respondent to the application are attached to the application at Annexure 10 filed by the Creditor. **Invocation of Personal Guarantee**: • The personal Guarantee was invoked on 09.09.2016. A copy of the invocation sent by Regd. Post is attached to the application at Annexure-15 filed by the Creditor. • A copy of the notice dated 23.11.2016 u/s 13(2) of the SARFAESI Act, 2002 to the respondent recalling the payment sent by Regd. Post was attached to the application at Annexure 16 filed by the Creditor. • A copy of the demand notice dated 04.06.2025 issued to the respondent as required under Rule 7(1) of I&B (Application to Adjudicating Authority for

		Insolvency Resolution Process of Personal guarantors to Corporate Debtors) Rules, 2109. But the Demand Notice was returned unserved. • On return of the Demand notice(s) the steps taken by the applicant to serve the demand notice were given in the application filed by the Creditor. • As permitted under Rule 3(g) of the I&B (Application to Adjudicating Authority for Insolvency Resolution Process of Personal guarantors to Corporate Debtors) Rules, 2109 the demand notice was affixed at the outer door of the house of the respondent and a proof the affixation is attached to the application at Annexure-18 filed by the Creditor. • RP on his appointment sent communication to the respondent as required under Section 99(2) of IB Code, 2016 requesting her "to prove repayment of the debt claimed as unpaid by the creditor". • The communication was sent to the respondent at the address to which the demand notice was sent.
95(4)(c)	Relevant evidence of such default or non-payment of debt	NA
95(5)	The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.	A copy of the application sent by the applicant's counsel was returned un-served.
95(6)	The application referred to in subsection (1) shall be in such form and manner and accompanied by such fee as may be prescribed.	The application was filed in the prescribed form and the prescribed fee was paid by the Creditor / Applicant.
95(7)	The details and documents required to be submitted under sub-section (4) shall be such as may be specified. The list of the documents to be attached to the Application are specified in IB (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.	
1	All documents mentioned in serial number 15 of Part III of Form C	
1.01	Order of DRT and RC issued by Hon'ble DRT	Copy of the order of Hon'ble DRT dated 26.12.2019 is attached at Annexure-5 to the application filed by the Creditor. Copy of the RC dated 08.07.2022 issued by Hon'ble DRT is attached as Annexure-6 to the application filed by the Creditor.
2	Copy of the Demand Notice Served on the guarantor in Form - B	Copy of the demand notice sent along with return cover is attached at Annexure-17 to the application filed by the Creditor. Copy of the proof of affixation of the demand notice as per Rule 3(g) of I&B (Application to Adjudicating Authority for Insolvency Resolution Process of Personal guarantors to Corporate Debtors) Rules, 2109 is attached as Annexure-18 to the application filed by the Creditor
3	Copies of the income Tax Returns with details computation of the income of the guarantor, or the firm, as the case may be, for the previous three years, if available	Not available
4	Copy of the Personal guarantee contract	Copies of the personal guarantee dated 25.03.2010,11.04.2011 & 08.10.2012 were executed by the Respondent attached to the application at Annexure 11 to the application filed by the Creditor.
5	Copy of the authorization, wherever required under this form	A copy of the authorising the signatory to the application is attached at page no 36 of the application filed by the Creditor.

6	Proof that application money has been paid	Application fee has been paid
7	Documents evidencing the debt and default in relation to the debt, as the case may have been provided by the guarantor at any point in time, if available.	Not available
8	Document evidencing the assets, liabilities, income and any other relevant information as may have been provided by the Guarantor at any point in time, if available	Not available

(c) Since no evidence has been provided by the Personal Guarantor for the repayment of Rs.61,97,33,333.75 of the dues of the Corporate Debtor to the Financial Creditor in full or part, the RP in terms of Section 99(7) of the Code, recommended for acceptance of the Petition to initiate insolvency resolution process against the Personal Guarantor.

(d) The RP also examined the Petition on the issue of limitation in the light of the provisions of the Code, Indian contract Act, 1872 and the judgements of superior court and submitted as below:

(i) The three years' time prescribed in Article 137, Limitation Act 1963, starts from the date, when the right to apply accrued.

(ii) As defined under Section 129 of the Indian Contract Act, 1872, a continuing guarantee is one that extends to a series of transactions, not limited to a single debt or obligation. By expressly agreeing in Clause 7 that the guarantee is continuing, the Personal Guarantor bound himself to cover not just the initial liability but also subsequent advances, renewals, or

obligations until the guarantee is revoked or discharged in accordance with law.

(iii) The invocation of the Corporate Guarantee successively is not barred under law, so long as the loan default continues and the debt obligations remain unsatisfied by the Principal Borrower. In view of continuing nature of the guarantee, each invocation gives rise to a fresh cause of action, thereby entitling the Financial Creditor to seek enforcement at every stage of default. Consequently, the commencement of limitation under Article 137 of the Limitation Act, 1963 is triggered upon each invocation, as the said Article stipulates that limitation begins *"when the right to apply accrues".* Thus, in the present case, successive defaults and corresponding invocations of the guarantee clearly establish that the Petition is within limitation and maintainable in law. The reliance is placed on the judgement of Hon'ble NCLAT, Principal Bench in the matter of ***IDBI Bank Ltd. vs. ARM Infra & Utilities Pvt. Ltd***; Company Appeal (AT) (Ins.) No. 1046 of 2023.

(iv) As per Section 3(12) of the Code, the *"default"* means non-payment of a debt, when the whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. Thus, the occurrence of default is established the moment, any portion of the debt, which has become due and payable,

remains unpaid either by the Corporate Debtor or by the Personal Guarantor.

(v) In the case of such a continuing guarantee, so long as the account is a live account in the sense that it is not settled and there is no refusal on the part of the guarantor to carry out the obligation, how the period of limitation could be said to have commenced running. The reliance is placed on the judgements of Hon'ble Supreme Court in the matter of ***Margaret Lalita Samuel vs. Indo Commercial Bank Ltd***, (1979) 2 SCC 396 & **Syndicate Bank vs. Channaveerappa Beleri & Ors.**, (2006) 11 SCC 506 and Hon'ble NCLAT in the matter of ***Archana Deepak Wani vs. Indian Bank (erstwhile Allahabad Bank) & Ors.***, Company Appeal (AT) Insolvency No. 301 of 2023.

(vi) In the present case, it is the fact that the account is not settled and there is no refusal on the part of the guarantor to carry out the obligation; hence the limitation could not have commenced and running. Further, the continued non-payment of the debt obligations by the Corporate Debtor/ Personal Guarantor squarely falls within the ambit of *"default"* as contemplated under Section 3(12) of the Code, thereby entitling the Financial Creditor to invoke the Corporate Guarantee at any stage and seek appropriate reliefs under law.

(vii) The summary of events as per the documents available to the RP, as mentioned in the Petition as follows:

S No	Particulars	Date of Event
1	Issuance of Recall Notice to the Personal Guarantor	28.12.20 15 09.09.2016
2	Issuance of Section 13(2) SARFAESI Notice	23.11.2016
3	Date of filing the OA before the Hon'ble DRT	07.01.2017
4	Recovery Certificate issued by the Hon'ble DRT in OA/66/2017 in the matter of "IDBI BANK vs Esskay Shipping Private Ltd"	08.07.2022
5	Issuance of demand notice to the Personal Guarantor under IBC	05.06.2025
6	Filing of Section 95 IBC Application	05.07.2025

(viii) The Hon'ble DRT in OA 66/2017 issued a Recovery Certificate on 08.07.2022, wherein the Personal Guarantor was also a party to the proceedings, by virtue of which the total debt due to Financial Creditor stood crystallized against the Corporate Debtor and the Personal Guarantor having executed a personal guarantee is legally bound to discharge the said liability.

(ix) If the Personal Guarantor was of the view that the proceedings in OA 66/2017 were barred by limitation, he had sufficient opportunity to raise such contention before the Hon'ble DRT or in an appeal therefrom. The Personal Guarantor having failed to file such petition or avail of appellate remedies is estopped from re-agitating the issue of limitation in the present proceedings initiated by the Financial Creditor on the strength of the Recovery Certificate. Once the debt stood crystallized by virtue of the Recovery Certificate dated 08.07.2022, the Personal Guarantor cannot dispute its enforceability and his liability under the personal guarantee remains intact.

(x) The demand notice issued to the Personal Guarantor on 05.06.2025 and subsequent filing of Petition under Section 95 of Code on 05.07.2025 are well within the prescribed period of three years from the date of issuance of the Recovery Certificate by the Hon'ble DRT, on 08.07.2022. Accordingly, the limitation as envisaged under Article 137 of the Limitation Act, 1963 stands duly complied with. In the considered opinion of the RP, there exists no bar under limitation in the present proceedings, and the Petition is maintainable in law.

COUNTER FILED BY THE PERSONAL GUARANTOR

17. The Personal Guarantor, vide Diary No.1090 dated 29.06.2026, filed Counter denying all the averments made in the Petition and further made the following submissions:

(i) The Petition is liable to be dismissed as being barred by limitation, devoid of merit, and not maintainable either in law or on facts.

(ii) The credit facilities were availed by the Corporate Debtor and not by the Personal Guarantor in her personal capacity. During the lifetime of the then Managing Director of the Corporate Debtor, substantial repayments were made towards the loan account. By the end of the year 2014, approximately Rs.7.5 Crores had been paid towards the outstanding dues, leaving only a limited balance outstanding.

(iii) After the demise of the then Managing Director in the year 2013, the Personal Guarantor joined the Corporate Debtor merely as a

Director to assist in continuation of its operations. The Personal Guarantor held no shares in the Corporate Debtor and was neither a promoter nor a beneficiary of the credit facilities and do not derive any personal benefit from the loan transaction and had only provided one property as security.

(iv) The loan account was classified as NPA during the year 2016. Therefore, the date of default, at the latest, is the year 2016. Subsequently, liquidation proceedings were initiated against the Corporate Debtor and orders were passed in the year 2018. Thus, the cause of action, if any, arose in 2016 and, in any event, not later than 2018. The present Petition is filed in the year 2025, nearly nine years after the alleged default and approximately seven years after the liquidation proceedings commenced.

(v) Section 99 of the Code requires examination of the existence of a legally enforceable debt before admission of the Petition. The RP and this Adjudicating Authority are required to consider whether the debt is legally enforceable on the date of filing. Since the alleged debt is barred by limitation, disputed in quantum and unsupported by complete accounting, the requirements of Section 99 are not satisfied.

(vi) The Code cannot be converted into a mechanism for recovery of stale, disputed and time-barred claims. For the sake of convenience, the important dates are extracted below:

Date / Period	Event
Prior to 2013	Credit facilities sanctioned to the Corporate Debtor Company
2013	Demise of the then Managing Director of the Company
2013 onwards	Respondent joined the Company only to assist in continuation of its affairs
By end of 2014	Approximately Rs.7.50 Crores repaid towards loan liabilities
2016	Loan account classified as NPA
01.07.2017	Original Application filed before DRT
30.08.2017	Winding-up order passed against the Corporate Debtor
2018	Official Liquidator appointed and liquidation proceedings commenced
2018 onwards	Secured assets at Chennai and Kakinada auctioned
2025	Present Section 95 Application filed
Delay	Nearly 9 years from NPA and about 7 years after liquidation proceedings

(vii) The proceedings initiated by the Financial Creditor are wholly illegal, unsustainable and not binding upon the Corporate Debtor in liquidation and its stakeholders.

(viii) Prior to the institution of the OA before the DRT, a winding-up order had already been passed against the Corporate Debtor and an Official Liquidator had been appointed by the competent Court. Upon passing of the winding-up order, all the assets, properties, books and records of the Corporate Debtor came under the custody and control of the Company Court through the Official Liquidator.

(ix) Despite having knowledge of the winding-up proceedings and appointment of the Official Liquidator, the Financial Creditor deliberately failed to implead the Official Liquidator as a necessary and proper party to the proceedings before the Hon’ble DRT. The Official Liquidator represents the Corporate Debtor in liquidation and safeguards the interests of all creditors, contributories and

stakeholders. Any adjudication in his absence is opposed to the principles of natural justice and is not binding upon the Corporate Debtor in liquidation.

(x) Under the scheme of company liquidation, all creditors are required to lodge and prove their claims before the Official Liquidator, who adjudicates such claims in accordance with law. The Financial Creditor, instead of submitting its claim before the Official Liquidator and participating in the winding-up proceedings, sought to bypass the statutory process and obtained an ex-parte adjudication before the Hon'ble DRT.

(xi) The proceedings before the Hon'ble DRT were conducted without notice to, and without participation of the Official Liquidator. Consequently, the Hon'ble DRT had no occasion to examine the status of the Corporate Debtor as a company in liquidation, the rights of other secured and unsecured creditors, workmen's dues, statutory dues, and the *pari passu* distribution mechanism contemplated under the company law.

(xii) Any decree, order or Recovery Certificate obtained against a company in liquidation without impleading the Official Liquidator and without affording an opportunity to the liquidation estate to contest the claim is a nullity in the eye of law and cannot be enforced against the assets under liquidation.

(xiii) The Recovery Certificate issued pursuant to such proceedings is equally unenforceable and non-est, as it is founded upon

proceedings conducted in violation of mandatory statutory requirements and principles of natural justice. Any action taken pursuant to the said Recovery Certificate against the assets of the company in liquidation is liable to be declared illegal and void.

(xiv) The Financial Creditor cannot obtain any preferential advantage over other creditors by circumventing the winding-up proceedings. The rights of all creditors stand crystallized upon the passing of the winding-up order and are subject to adjudication and distribution in accordance with the provisions governing liquidation.

(xv) Therefore, the order passed in the OA and the consequential Recovery Certificate obtained by the Financial Creditor, without impleading the Official Liquidator and without following the procedure prescribed under law, are void, non-est, unenforceable and not binding on the company in liquidation, the Official Liquidator, the creditors or the contributories. Consequently, all further proceedings based on such Recovery Certificate are void and not enforceable.

(xvi) It is settled law that Article 137 of the Limitation Act, 1963 applies to proceedings under the IBC and that the limitation period is three years from the date of default.

(xvii) The Financial Creditor has failed to establish any valid acknowledgment of debt within the meaning of Section 18 of the Limitation Act, so as to extend the limitation period. In the absence

of any legally valid acknowledgment within the prescribed period, the claim is barred by limitation and is liable to be rejected.

(xviii) The Financial Creditor has already proceeded against various secured assets and auctioned multiple properties situated at Chennai and Kakinada. Substantial recoveries have been made through such enforcement measures. The Financial Creditor continues to retain and exercise control over additional secured assets, whose market value is significantly higher than the alleged outstanding dues.

(xix) The Financial Creditor failed to disclose complete particulars regarding amounts recovered, assets sold, sale proceeds realized, and adjustments made towards the alleged debt. Without furnishing a complete statement of recoveries and appropriations, the alleged outstanding amount cannot be accepted as correct. In view of the recoveries already made and the security available, the existence and quantum of any alleged balance debt is seriously disputed.

(xx) The Financial Creditor deliberately omitted these material facts while seeking initiation of personal insolvency proceedings. The present Petition is barred by limitation and is liable to be rejected at the threshold. The alleged loan account was classified as the NPA in the year 2016. The present Petition under Section 95 of the Code has been filed only in the year 2025, well beyond the prescribed period of limitation.

(xxi) The Personal Guarantor has relied on the following judgements:

(a) In ***B.K. Educational Services Pvt. Ltd. v. Parag Gupta & Associates***, (2019) 11 SCC 633, the Hon'ble Supreme Court held that the Limitation Act, 1963 applies to the proceedings under the Code and that Article 137 governs such proceedings. It was further held that a time-barred debt cannot be revived through insolvency proceedings.

(b) In ***Gaurav Hargovindbhai Dave v. Asset Reconstruction Company (India) Ltd.***, (2019) 10 SCC 572, the Hon'ble Supreme Court held that limitation commences from the date of declaration of the account as NPA and that insolvency proceedings initiated beyond three years from such date are barred, unless limitation is validly extended.

(c) In ***Vashdeo R. Bhojwani v. Abhyudaya Co-operative Bank Ltd.***, (2019) 9 SCC 158, the Hon'ble Supreme Court reiterated that limitation begins from the date of default and cannot be postponed indefinitely.

(d) In ***Jignesh Shah & Another v. Union of India & Another***, (2019) 10 SCC 750, the Hon'ble Supreme Court held that the Code cannot be used to revive stale and time-barred claims.

(e) In ***Laxmi Pat Surana v. Union Bank of India***, (2021) 8 SCC 481, the Hon'ble Supreme Court held that although proceedings against a personal guarantor are maintainable under the IBC, the debt sought to be enforced must be legally enforceable and within limitation.

(f) In ***Dena Bank (now Bank of Baroda) v. C. Shivakumar Reddy***, (2021) 10 SCC 330, the Hon'ble Supreme Court held that limitation may be extended only upon proof of a valid acknowledgment of liability or any other legally recognized extension of limitation.

18. During the hearing held on 15.07.2026, the Counsel for the Personal Guarantor raised the objection on maintainability on the ground of limitation, as the recall notice to the Personal Guarantor was issued on 28.12.2015, but the Petition was e-filed on 05.07.2025. It was further submitted by the Personal Guarantor that filing of the case on 07.01.2017 before the Hon'ble DRT would not start the fresh limitation period and the Recovery Certificate was issued on 08.07.2022, much after the limitation period. The Financial Creditor submitted that the Petition has been filed on the basis of the Recovery Certificate dated 08.07.2022, which amounts to fresh cause of action as per the Judgment of the Hon'ble Supreme Court in ***Dena Bank (now Bank of Baroda) vs. C. Shivakumar Reddy & Anr.*** (Supra). The Personal Guarantor submitted that the aforesaid Judgment is with respect to Section 7 Petition and thus would not be applicable in Section 95 Petition, where the limitation has to be seen with reference to the date of invocation of personal guarantee. The Personal Guarantor further submitted that the Hon'ble High Court for the State of Telangana and the State of Andhra Pradesh, by its Order dated 30.08.2017 passed in CP 201/2015, directed the winding up of the Corporate Debtor and appointed the Official Liquidator to take charge of the Corporate Debtor, however, the Financial Creditor did not file its claim

before the Official Liquidator and subsequently filed Company Application No. 46 of 2024 before the Hon'ble High Court of Andhra Pradesh at Amaravati seeking direction to the Official Liquidator to disburse at least 90% of the sale proceeds of the three properties as an interim measure. The Hon'ble High Court, vide its Order dated 28.11.2024, directed that the Financial Creditor be considered for disbursement of approximately 50% as an interim payment and the Financial Creditor was directed to submit the claim before the Official Liquidator within 15 days. However, the Financial Creditor preferred not to file any claim before the Official Liquidator and therefore, is estopped from filing this Petition. The Personal Guarantor raised another objection that the proceedings against the Personal Guarantor under Section 95 of IBC cannot be initiated unless Corporate Insolvency Resolution Process (hereinafter referred to as the "**CIRP**") has been/ can be initiated against the Corporate Debtor and in the present case, since the Corporate Debtor is undergoing winding-up/ liquidation proceedings, such initiation of CIRP would be impossible. In this regard, he referred to the Order dated 17.12.2024 passed by the Coordinate Bench of the ***NCLT, Kolkata, in the matter of UCO Bank vs. Mr. Subrata Das [Company Petition (IB) No. 286 of 2024 & in the matter of Mr. Vaibhav Khandelwal, Resolution Professional [IA No. 2023/KB/2024]*** [Paras 7, 28, 29, 30, 31(a) and (b), 32]. The Financial Creditor submitted that the simultaneous proceedings against the Corporate Debtor and Personal Guarantor are maintainable in view of the Judgment of the ***Hon'ble NCLAT dated 23.01.2025 in the matter of Anita Goyal vs. Vistra ITCL (India) Ltd***

[Company Appeal (AT) (Ins.) No. 2282 of 2024] (Paras 10, 11 and 12); and ***Order dated 10.04.2023 passed by Coordinate Bench of the NCLT, Hyderabad, in the matter of Stressed Assets Stabilizations Fund vs. Mr. NHC Siva Mohan Reddy & Vishnupriya Industries Ltd. in CP (IB) No. 215/95/HDB/2022*** (Paras 4 & 14).

19. During the course of hearing held on 04.09.2026, it was observed that the three Guarantee Agreements dated 25.03.2010, 11.04.2011 and 08.10.2012, have been enclosed in the Petition, wherein the address of the Personal Guarantor herein is shown as “9-29-10/2,Balaji Nagar, Siripuram Junction, Visakhapatnam-530003”. However, all the communications to the Personal Guarantor including notice dated 09.09.2016 for invocation of guarantee and demand notice dated 04.06.2025 under Rule 7 of Personal Guarantors Rules were sent at the address “9-29-10/A Gokul Nivas, Balaji Nagar, Siripuram Junction, Visakhapatnam-530003”. The Counsel for Financial Creditor sought time to submit the clarification by way of a Memo.

20. Pursuant to this Adjudicating Authority Order dated 04.09.2026, the Financial Creditor vide Diary No.1839 dated 25.09.2026, filed a Memo dated 24.09.2026 submitting the following:

(i) The Aadhar Card issued to the Personal Guarantor records her address as “W/o Kukkala Nageswara Rao, 9-29-10/A, Balaji Nagar, Near more, Siripuram, Visakhapatnam (Urban), Andhra University, Andhra Pradesh, 530003”.

(ii) The Personal Guarantor herself in the Declaration and Undertaking dated 08.10.2012 in connection with the facilities sanctioned by the Financial Creditor to the Corporate Debtor declared her residential address as “D. No. 9-29-10/A, Gokul Nivas, Balaji Nagar, Siripuram, Visakhapatnam, 530003”. The said Declaration and Undertaking bears the same date as the third of the Guarantee Agreements dated 08.10.2012.

(iii) The Personal Guarantor in the verification to her Counter/ Reply filed in the present proceedings, has affirmed on oath that she is a resident of “No. 9-29-10/A, Gokul Nivas, Balajinagar, Siripuram, Visakhapatnam-530003”.

(iv) In view of the foregoing, No. 9-29-10/A, Gokul Nivas, Balajinagar, Siripuram, Visakhapatnam-530003 stands established as the correct residential address of the Personal Guarantor, and the variance is only a clerical error in the description of her address in the Guarantee Agreements and does not affect the identity of the Personal Guarantor, the service of the notices upon her, or the maintainability of the present Petition.

21. During the hearing held on 30.09.2026, the Personal Guarantor sought time to file reply to the Memo filed by the Financial Creditor. Subsequently, the Personal Guarantor vide Dairy No. 1999 dated 13.10.2026, filed a Counter Affidavit making the following submissions:

(i) The Personal Guarantor resigned from the Directorship of the Corporate Debtor, which is evident from the Master Data obtained

from the Ministry of Corporate Affairs records, and ceased to be a director of the Corporate Debtor from 21.11.2013 onwards. The Financial Creditor is required to establish the precise legal basis, on which the Personal Guarantor continues to incur or remained liable for any personal guarantee obligation thereafter.

(ii) The earlier guarantee arrangements/ documents dated 08.10.2012 were subsequently replaced or novated, as reflected in the later documents and the conduct of the parties and in place, other directors furnished fresh guarantee agreements in favour of the Financial Creditor. The Financial Creditor must disclose and prove the complete series of original and subsequent guarantee documents, the circumstances in which the later guarantees were furnished, and whether the bank accepted the later guarantees as a substitution for, or in discharge of, the earlier guarantee arrangements. The Personal Guarantor herein relies 'Doctrine of Novation' under Section 62 of the Indian Contract Act, 1872, to the extent established by the documents and the Financial Creditor's acceptance and intention.

(iii) The mere fact that the Personal Guarantor herein was once a director of the Corporate Debtor cannot itself establish a continuing personal guarantee liability. The Directorship and personal guarantee liability are legally distinct. The Financial Creditor must identify the exact instrument said to bind the Personal guarantor herein, prove its execution and terms, establish that it remained legally subsisting, show that the alleged debt and default fall within



its scope and cannot simply presume that an earlier guarantee continued indefinitely without addressing the later guarantee documents. The Financial Creditor is put to strict proof of whether any guarantee executed by the Personal Guarantor herein was subsisting, unrevoked and enforceable at the material time; whether the later guarantee agreements substituted for the earlier arrangements; whether the bank accepted such substitution; and whether any release, discharge, novation or variation was recorded. The original and subsequent guarantee instruments, sanction letters, renewal documents, board resolutions, bank correspondence and all related records are necessary for a fair determination.

(iv) The Financial Creditor subsequently relied upon or produced a mortgage deed, which do not automatically become a personal guarantee. Unless the mortgage deed contains an express and legally enforceable personal undertaking by the Personal Guarantor herein satisfying the requirements of a guarantee, it cannot, merely by being a mortgage deed, be treated as proof of a personal guarantee for the purpose of section 95 of the Code.

(v) The Financial Creditor cannot cure the absence of proof of a subsisting personal guarantee by relying only on a mortgage deed or on the Corporate Debtor’s underlying borrowing.

(vi) The service of the statutory Form-B Demand Notice is disputed. The notice dated 04.06.2025 was allegedly returned with the endorsement “no such person in the address”, and subsequent

notices dated 19.06.2025 were also allegedly returned. The Financial Creditor must produce the address used, dispatch records, postal tracking & delivery reports, e-mail delivery records, and all proof of any alleged affixture, including photographs & contemporaneous records. The compliance with the statutory requirements cannot be presumed.

22. During the course of hearing held on 04.11.2026, the Personal Guarantor sought time to verify and file by way of Memo, whether any communication has been received from the Financial Creditor, vide which the Personal Guarantor has been absolved from her liabilities in respect of the Guarantee Agreements executed by her.

23. During the hearing held on 17.11.2026, the Counsel for the Personal Guarantor submitted that he could not trace out any communication from the Financial Creditor absolving the Personal Guarantor herein from the liabilities arising out of Guarantee Agreements executed by her on 25.03.2010, 11.04.2011 and 08.10.2012. He further submitted that the Guarantee Agreements executed by other Personal Guarantors, i.e. K. Venkata Rama Vidya Sagar, K. Mohan Nageswar dated 23.01.2014 amounts to novation as per Section 62 of the Indian Contract Act, 1872, consequently absolving the Personal Guarantor herein from the liabilities arising out of the Guarantee Agreements executed by her on 25.03.2010, 11.04.2011 and 08.10.2012. In support of the arguments in respect of absolving the liabilities on novation of the contract, he cited two judgements i.e. (i) ***Lata Constructions & Ors Vs.***

Dr. Rameshchandra Ramnikal Shah & Anr [2000 (1) SCC 586] and (ii) ***Indian Bank Vs. Anjanee Kumar Lakhotia & Ors [2025 SCC OnLine NCLAT 960]***. The Counsel for the Financial Creditor contended that the judgements cited by the Counsel for the Personal Guarantor do not apply in the present case, as the Guarantee Agreements dated 23.01.2014 do not amount to novation of contract and are only extension of earlier Guarantee Agreements executed by the Personal Guarantor herein. Consequently, the Personal Guarantor herein remains liable under the Guarantee Agreements executed by her.

ANALYSIS AND FINDINGS:

24. We have heard learned Counsels for the Financial Creditor & Personal Guarantor and also perused the RP Report & other records carefully.

25. Before proceeding to examine the matter, we consider it appropriate to peruse the documents filed by the parties.

(i) The Financial Creditor vide letter dated 23.03.2010 (page 114-122 of the Petition), sanctioned the credit facilities within an overall limit of Rs.13.00 crore (cash credit- Rs.11.00 crore and bank guarantees-Rs.2.00 crore) to the Corporate Debtor, which was accepted by the Corporate Debtor through its Directors, Dr. K. Nageshwar Rao and Personal Guarantor herein and they were the guarantors also. The relevant extracts of the above letter are reproduced below:

SANCTION LETTER

In Duplicate

Ref .IDBI [VIZAG]].MCG.ESPL.WC.ROC/44/180320'0. March 23, 2010.

Esskay Shipping Private Limited,
Esskay House, Door # 25-40-40,
Gangulavari Street,
Visakhapatnam – 530 001.

Dear Sirs,

Sanction of credit facilities

Please refer to your application and the subsequent discussions your representatives had with us regarding grant of working capital facilities. The proposal has been considered and IDBI Bank Limited [IDBI Bank] is agreeable, in principle, to grant to you the following credit facilities within an overall limit of Rs.1300 lakhs [Rupees One thousand three hundred lakhs only]

Type of Facility	Facility amount forming part of the overall limit [Rs. Lakhs]
Cash Credit [CC]	1100.00
Bank Guarantees [BG]	200.00
Overall Limit	1300.00

XXXXXXXXXXXX

6. The Overall Limits hereby offered are subject to periodic review by IDBI and shall be due for repayment before March 18, 2011 unless any individual facility is due for repayment before that date or renewed by IDBI Bank before that date.

7. IDBI Bank reserves the right to amend any of the terms and conditions hereof [including reducing or canceling any or all- the credit facilities] at its sole discretion.

8. Meanwhile, kindly acknowledge receipt of this Sanction Letter.

Yours faithfully,

[D. Jayaprakash]
Assistant Manager & Credmin

[Y. Prathap Kumar]
Relationship Manager

[M.S.S. Sastry]
Dy.General Manager &
Branch Head

The Borrower hereby affixes their signature to this document in acceptance of the terms and conditions herein contained.

ACCEPTED
For Esskay Shipping Private Limited,

For ESSKAY SHIPPING (P) LTD.
(K.N. RAO)
AUTHORISED SIGNATORIES

For ESSKAY SHIPPING (P) LTD.
DIRECTOR

1. NAME: K. Nageswara Rao
DESIGNATION: Assistant Director
ADDRESS: Esskay Shipping Pvt Ltd

2. NAME: K. Krishna Kumari
DESIGNATION: Director
ADDRESS: Esskay Shipping Pvt Ltd.

GUARANTORS

The Guarantors hereby affixes their signature to this document in acceptance of the terms and conditions herein contained.

ACCEPTED

For ESSKAY SHIPPING (P) LTD. For ESSKAY SHIPPING (P) LTD.

[1] Dr. K. Nageswar Rao President [2] K. Krishna Kumari DIRECTOR

1. NAME: _____
DESIGNATION: _____
ADDRESS: _____

2. NAME: _____
DESIGNATION: _____
ADDRESS: _____

(ii) Pursuant to the sanction letter dated 23.03.2010, the Corporate Debtor through its Directors, Dr. K. Nageswar Rao & Personal Guarantor herein and Financial Creditor entered into a Facility Agreement dated 25.03.2010 (page 151-170 of the Petition), the relevant extracts of which are reproduced below:

FACILITY AGREEMENT

THIS AGREEMENT made this 25th day of March-2010 at Visakhapatnam between Esskay Shipping Private Limited, a company within the meaning of the Companies Act, 1956 (1 of 1956) and having its Registered Office at Esskay House, Door No. 25-40-40 Gangulavari Street , Visakhapatnam – 530 001(hereinafter referred to as "the Borrower" which expression shall, unless it be repugnant to the subject, context or meaning thereof, be deemed to mean and include its successors and permitted assigns);

AND

IDBI BANK Limited, a company incorporated and registered under the Companies Act, 1956 (1 of 1956) and a banking company within the meaning of Section 5 (c) of the Banking Regulations Act, 1949 (10 of 1949) and having its Registered Office at IDBI Tower, W.T.C. Complex, Cuffe Parade, Mumbai 400005 and a Branch Office at 30-15-35, Ground Floor, Near Saraswathi park, Dabagardens, Visakhapatnam – 530 002 (hereinafter referred to as "the Bank" which expression shall, unless repugnant to the subject, context or meaning thereof, be deemed to mean and include its successors and assigns).

WHEREAS

At the request of the Borrower, "the Bank" vide its Sanction Letter dated March 23, 2010 (Sanction Letter) sanctioned Working Capital Facilities of Rs.13,00,00,000/- (Rupees Thirteen crore only) (Overall Limit) with break up of each facility as described in the Sanction Letter. The Sanction Letter and modifications thereof, if any, shall be construed as forming part of this Agreement, which is annexed hereto.

The parties hereto have agreed to execute these presents for recording the terms agreed to by them for sanctioning of the Working Capital Facilities (hereinafter referred to as " said Facilities") sanctioned to the Borrower aforesaid.

xxxxxxxxxxxxxxxxxxxxx

IN WITNESS WHEREOF the Borrower has caused its common seal to be affixed hereunto and the, by duly authorized on the day and year first herein above written.

THE COMMON SEAL OF ESSKAY SHIPPING PRIVATE LIMITED has (pursuant to the Resolution of its Board of Directors passed in that behalf on the 25th day of March 2010) hereunto been affixed in the presence of Shri K. Nageswara Rao ,Director and Shri K. Krishna Kumar, Director who have signed these presents in token thereof.

ESSKAY SHIPPING (P) LTD. For ESSKAY SHIPPING (P). LTD.

DIRECTOR DIRECTOR

1. 2 K.K.Kumar

SIGNED AND DELIVERED BY the withinnamed Lender by the hand of Shri K. Vikweswara Rao an authorised official of the Lender.

For IDBI BANK LTD.

Authorised Signatory

(iii) In terms of the Facility Agreement dated 25.03.2010, the Corporate Debtor through its Directors, Dr. K. Nageswar Rao & Personal Guarantor herein executed Omnibus Counter Guarantee Agreement (page 259-262 of the Petition, Deed of Hypothecation (page 274-285 of the Petition) and Demand Promissory Note (page 310 of the Petition) in favour of the Financial Creditor on 25.03.2010.

(iv) Further, in terms of Facility Agreement dated 25.03.2010, the Personal Guarantor herein & K. Nagewara Rao executed the Guarantee Agreement dated 25.03.2010 (page 217-230 of the Petition) in favour of Financial Creditor. As per clause 7 of the Guarantee Agreement, the Guarantee is a continuing one. The relevant extracts of the Guarantee Agreement dated 25.03.2010 are reproduced below.

GUARANTEE AGREEMENT

THIS GUARANTEE AGREEMENT executed at Visakhapatnam on the 25th day of March 2010, Two thousand ten by

(1).Shri. K.Nageswara Rao, S/o Venkateswara Rao aged about 55 years, residing at D.No.9-29-10/2, Balaji Nagar, Siripuram Junction, Visakhapatnam 530 003.

(2) Smt. K.Krishna Kumari, W/o K.Nageswara Rao aged about 48 years residing at-D.No.9-29-10/2, Balaji Nagar, Siripuram Junction, Visakhapatnam 530 003.

hereinafter unless otherwise specifically designated referred to as **"the Guarantor(s)"** (which expression shall unless repugnant to the context or meaning thereof be deemed to include in so far as the company is concerned its successors and permitted assigns and in so far as the others are concerned their respective heirs, executors and legal representatives and to include all surviving partners if they are partnership concerns

IN FAVOUR OF

IDBI Bank Ltd., a company incorporated under the Companies' Act, 1956, and a banking company within the meaning of the Banking Regulation Act, 1949, having its Registered Office at IDBI Tower, World Trade Complex, Cuffe Parade, Mumbai 400 005 and among other places a Branch at 30-15-35, Ground Floor, Near Saraswathi park, Dabagardens, Visakhapatnam – 530 002 hereinafter unless otherwise specifically designated referred to as "the Bank" (which expression shall unless repugnant to the subject, context or meaning thereof be deemed to include its successors and assigns).

WHEREAS in terms of the agreement executed by Esskay Shipping Private Limited, a company within the meaning of the Companies' Act, 1956, having its Registered Office at Esskay House, Door No 25-40-40 Gangulavari Street, Visakhapatnam – 530 001 (hereinafter referred to as **"the Borrower"** which expression shall unless repugnant to the context or meaning thereof be deemed to include its successors and permitted assigns) on the day of 25-3-2010 (hereinafter collectively referred to as **"the Facilities Agreement"**), the Bank has agreed to provide the facilities or any of the facilities as may be agreed upon from time to time between the Bank and Borrower for sums not exceeding in the aggregate Rs.13,00,00,000/- (Rupees Thirteen crore only) (hereinafter referred to as **"the Facilities"**) on the terms and conditions specified and contained therein.

AND WHEREAS one of the conditions specified in the Facilities Agreement is that the Borrower shall procure and furnish to the Bank one or more guarantees for the purpose of guaranteeing due payment by the Borrower of all or some or any of the sums due under the Facilities Agreement or any part thereof on demand by the Bank.

AND WHEREAS the Guarantors at the request of the Borrower and in consideration of the Bank having agreed to grant or granted and/or continue at the request of the Guarantors the Facilities to the Borrower, have agreed to execute this Guarantee in favour of the Bank on the terms and in the manner hereinafter appearing.

XXXXXXXXXXXXXXXXX

7. The Guarantee herein contained is a continuing one for all amounts advanced by the Bank to the Borrower in respect of or under the Facilities as also for all interest, costs and all other monies which may from time to time become due and remain unpaid tothe Bank under the Facilities Agreement 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 credits 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.

XXXXXXXXXXXXXXXXX

IN WITNESS WHEREOF the Guarantors have executed this Deed the day and year first hereinabove written.

Signed and Delivered by

Shri.K.Nageswar Rao

Smt.K.Krishna Kumari

(v) The Financial Creditor vide letter dated 06.04.2011 (page 123-133 of the Petition), sanctioned the revised credit facilities of Rs.15.50 crore (cash credit-Rs.13.50 crore and bank guarantees-Rs.2.00 crore) to the Corporate Debtor, which was accepted by the Corporate Debtor through its Directors, Dr. K. Nageswar Rao and Personal Guarantor herein and they were the guarantors also. The relevant extracts of the above letter are reproduced below:

SANCTION LETTER

Ref.IDBI [Vizag] No.5/SCB.MCG.RCC/16/1632011 April 6, 2011.

In Duplicate

Esskay Shipping Private Limited,
Esskay House, Door # 25-40-40,
Gangulavari Street,
Visakhapatnam – 530 001.

Dear Sirs,

Sanction of credit facilities

Please refer to your application and the subsequent discussions your representatives had with us regarding increase in the credit facilities sanctioned vide Original Sanction Letter dated March 23, 2010. In this connection, we advise that, IDBI Bank is agreeable, in principle, to grant to you the following revised credit facilities on the terms and conditions contained in the Term Sheet[s] annexed hereto.

Type of Facility	Amount of limit [₹. crore]	
	Existing	Revised
Cash Credit [CC]	11.00	13.50
Bank Guarantees [BG]	2.00	2.00
Overall Limit	13.00	15.50

xxxxxxxxxxxxxxxxxxxxx

6. The Overall Limits hereby offered are subject to periodic review by IDBI and **shall be due for repayment before March 16, 2012** unless any individual facility is due for repayment before that date or renewed by IDBI Bank before that date.

7. IDBI Bank reserves the right to amend any of the terms and conditions hereof [including reducing or canceling any or all- the credit facilities] at its sole discretion.

8. Meanwhile, kindly acknowledge receipt of this Sanction Letter.

Yours faithfully,

[D. Jayaprakash]
Assistant Manager-Credmin

[M.S.S. Sastry]
Dy.General Manager &
Branch Head

The Borrower hereby affixes their signature to this document in acceptance of the terms and conditions herein contained.

ACCEPTED
For Esskay Shipping Private Limited,

K·K·Kumi

AUTHORISED SIGNATORIES

1. NAME: _____
   DESIGNATION: _____
   ADDRESS: _____

2. NAME: _____
   DESIGNATION: _____
   ADDRESS: _____

GUARANTORS

The Guarantors hereby affixes their signature to this document in acceptance of the terms and conditions herein contained.

ACCEPTED

[1] Dr. K. Nageswar Rao

K·K·Kumi

[2] K. Krishna Kumari

1. NAME: _____
   DESIGNATION: _____
   ADDRESS: _____

2. NAME: _____
   DESIGNATION: _____
   ADDRESS: _____

(vi) Pursuant to the above sanction letter, the Corporate Debtor through its Directors, Dr. K. Nageswar Rao & Personal Guarantor herein and Financial Creditor entered into a Facility Agreement dated 11.04.2011 (page 172-190 of the Petition), the relevant extracts of which are reproduced below:

FACILITY AGREEMENT

THIS AGREEMENT made this 11th day of April 2011 at Visakhapatnam between Esskay Shipping Private Limited, a company within the meaning of the Companies Act, 1956 (1 of 1956) and having its Registered Office at Esskay House, Door No. 25-40-40 Gangulavari Street , Visakhapatnam – 530 001(hereinafter referred to as "the Borrower" which expression shall, unless it be repugnant to the subject, context or meaning thereof, be deemed to mean and include its successors and permitted assigns);

AND

IDBI BANK Limited, a company incorporated and registered under the Companies Act, 1956 (1 of 1956) and a banking company within the meaning of Section 5 (c) of the Banking Regulations Act, 1949 (10 of 1949) and having its Registered Office at IDBI Tower, W.T.C. Complex, Cuffe Parade, Mumbai 400005 and a Branch Office at 30-15-35, Ground Floor, Near Saraswathi park, Dabagardens, Visakhapatnam – 530 020 (hereinafter referred to as "the Bank" which expression shall, unless repugnant to the subject, context or meaning thereof, be deemed to mean and include its successors and assigns).

WHEREAS

At the request of the Borrower,"the Bank" vide its Sanction Letter dated March 23, 2010 (Sanction Letter) sanctioned Working Capital Facilities of ₹.15,50,00,000/- (Rupees Fifteen crore fifty lakh only) (Overall Limit) with break up of each facility as described in the Sanction Letter. The Sanction Letter and modifications thereof, if any, shall be construed as forming part of this Agreement, which is annexed hereto.

The parties hereto have agreed to execute these presents for recording the terms agreed to by them for sanctioning of the Working Capital Facilities (hereinafter referred to as " said Facilities") sanctioned to the Borrower as aforesaid.

xxxxxxxxxxxxxxxxxxxxx

IN WITNESS WHEREOF the Borrower has caused its common seal to be affixed hereunto and the, by duly authorized on the day and year first herein above written.

THE COMMON SEAL OF ESSKAY SHIPPING PRIVATE LIMITED has (pursuant to the Resolution of its Board of Directors passed in that behalf on the 9th day of April 2011) hereunto been affixed in the presence of Shri K. Nageswara Rao ,Director and Shri. K. Krishna Kumar, Director who have signed these presents in token thereof.

for ESSKAY SHIPPING (P) LTD.
Director

For ESSKAY SHIPPING (P) LTD.
K.K.Kumar
Director

SIGNED AND DELIVERED BY the withinnamed Lender by the hand of Shri _____ an authorised official of the Lender.

कृते आईडीबीआई बैंक लि. For IDBI Bank Ltd.
प्राधिकृत हस्ताक्षरी / Authorised Signatory

(vii) In terms of the Facility Agreement dated 11.04.2011, the Corporate Debtor through its Directors, Dr. K. Nageswar Rao & Personal Guarantor herein executed Omnibus Counter Guarantee Agreement (page 263-266 of the Petition), Deed of Hypothecation

(page 286-296 of the Petition) and Demand Promissory Note (page 311 of the Petition) in favour of the Financial Creditor on 11.04.2011.

(viii) Further, in terms of Facility Agreement dated 11.04.2011, the Personal Guarantor herein & K. Nagewara Rao executed the Guarantee Agreement dated 11.04.2011 (page 231-244 of the Petition) in favour of Financial Creditor. As per clause 7 of the Guarantee Agreement, the Guarantee is a continuing one. The relevant extracts of the Guarantee Agreement dated 11.04.2011 are reproduced below.

GUARANTEE AGREEMENT

THIS GUARANTEE AGREEMENT executed at Visakhapatnam on the 11th day of April 2011.

(1).Shri. K.Nageswara Rao, S/o Venkateswara Rao aged about 56 years, residing at D.No.9-29-10/2, Balaji Nagar, Siripuram Junction, Visakhapatnam 530 003.

(2) Smt. K.Krishna Kumari, W/o K.Nageswara Rao aged about 49 years residing at D.No.9-29-10/2, Balaji Nagar, Siripuram Junction, Visakhapatnam 530 003.

hereinafter unless otherwise specifically designated referred to as "the Guarantor(s)" (which expression shall unless repugnant to the context or meaning thereof be deemed to include in so far as the company is concerned its successors and permitted assigns and in so far as the others are concerned their respective heirs, executors and legal representatives and to include all surviving partners if they are partnership concerns.

IN FAVOUR OF

IDBI Bank Ltd., a company incorporated under the Companies' Act, 1956, and a banking company within the meaning of the Banking Regulation Act, 1949, having its Registered Office at IDBI Tower, World Trade Complex, Cuffe Parade, Mumbai 400 005 and among other places a Branch at 30-15-35, Ground Floor, Near Saraswathi park, Dabagardens, Visakhapatnam – 530 020 hereinafter unless otherwise specifically designated referred to as "the Bank" (which expression shall unless repugnant to the subject, context or meaning thereof be deemed to include its successors and assigns).

WHEREAS in terms of the agreement executed by Esskay Shipping Private Limited, a company within the meaning of the Companies' Act, 1956, having its Registered Office at Esskay House, Door No. 25-40-40 Gangulavari Street, Visakhapatnam – 530 001 (hereinafter referred to as "the Borrower" which expression shall unless repugnant to the context or meaning thereof be deemed to include its successors and permitted assigns) on the day of 11-4-2011 (hereinafter collectively referred to as "the Facilities Agreement"), the Bank has agreed to provide the facilities or any of the facilities as may be agreed upon from time to time between the Bank and Borrower for sums not exceeding in the aggregate ₹.15;50;00;000/- (Rupees Fifteen crore fifty lakh only) (hereinafter referred to as "the Facilities) on the terms and conditions specified and contained therein.

AND WHEREAS one of the conditions specified in the Facilities Agreement is that the Borrower shall procure and furnish to the Bank one or more guarantees for the purpose of guaranteeing due payment by the Borrower of all or some or any of the sums due under the Facilities Agreement or any part thereof on demand by the Bank.

AND WHEREAS the Guarantors at the request of the Borrower and in consideration of the Bank having agreed to grant or granted and/or continue at the request of the Guarantors the Facilities to the Borrower, have agreed to execute this Guarantee in favour of the Bank on the terms and in the manner hereinafter appearing.

XXXXXXXXXXXXXXX

7. The Guarantee herein contained is a continuing one for all amounts advanced by the Bank to the Borrower in respect of or under the Facilities as also for all interest, costs and all other monies which may from time to time become due and remain unpaid tothe Bank under the Facilities Agreement 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 credits 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.

XXXXXXXXXXXXXXXXX

IN WITNESS WHEREOF the Guarantors have executed this Deed the day and year first hereinabove written.

Signed and Delivered by

Shri.K.Nageswar Rao 1.

Smt.K.Krishna Kumari 2. K.K.Kri

(ix) The Financial Creditor vide letter dated 14.08.2012 (page 134-145 of the Petition), sanctioned the revised credit facilities of Rs.17.00 crore (cash credit-Rs.15.00 crore and bank guarantees-Rs.2.00 crore) to the Corporate Debtor, which was accepted by the Corporate Debtor through its Director, Dr. K. Nageshwar Rao as wells as by Dr. K. Nageshwar Rao and the Personal Guarantor herein as the guarantors. The relevant extracts of the above letter are reproduced below:

SANCTION LETTER

Ref.IDBI [Vizag] No.123/CBG.SZCC/14/31072012 August 14, 2012.

In Duplicate

Esskay Shipping Private Limited,
Esskay House, Door # 25-40-40,
Gangulavari Street,
Visakhapatnam – 530 001.

Dear Sirs,

Sanction of credit facilities

Please refer to your application and the subsequent discussions your representatives had with us regarding increase in the credit facilities sanctioned vide Original Sanction Letter dated April 6, 2011. In this connection, we advise that, IDBI Bank Limited [IDBI Bank] is agreeable, in principle, to grant to you the following revised credit facilities on the terms and conditions contained in the Term Sheet[s] annexed hereto.

Type of Facility	Amount of limit [₹. crore]	
	Existing	Revised
Cash Credit [CC]	13.50	15.00
Bank Guarantees [BG]	2.00	2.00
Overall Limit	15.50	17.00

xxxxxxxxxxxxxxxxxxxxx

6. The Overall Limits hereby offered are subject to periodic review by IDBI and **shall be due for repayment before July 31, 2013** unless any individual facility is due for repayment before that date or renewed by IDBI Bank before that date.

7. IDBI Bank reserves the right to amend any of the terms and conditions hereof [including reducing or canceling any or all- the credit facilities] at its sole discretion.

8. Meanwhile, kindly acknowledge receipt of this Sanction Letter.

Yours faithfully,

[D. Jayaprakash]
Manager-Credmin

[K.Das]
Dy.General Manager &
Branch Head

The Borrower hereby affixes their signature to this document in acceptance of the terms and conditions herein contained.

ACCEPTED
For Esskay Shipping Private Limited,

AUTHORISED SIGNATORIES

1. NAME: Smt. K. Nageswara Rao
   DESIGNATION: Director
   ADDRESS: Esskay Shipping Pvt Ltd.

2. NAME:
   DESIGNATION:
   ADDRESS:

GUARANTORS

The Guarantors hereby affixes their signature to this document in acceptance of the terms and conditions herein contained.

ACCEPTED

[1] Dr. K. Nageswar Rao

[2] K. Krishna Kumari

1. NAME: Dr. K. Nageswara Rao
   DESIGNATION: Director
   ADDRESS: Esskay Shipping Pvt Ltd.

2. NAME: Smt. K. Krishna Kumari
   DESIGNATION: Director
   ADDRESS: Esskay Shipping Pvt Ltd.

(x) Pursuant to the sanction letter dated 14.08.2012, the Corporate Debtor through its Director, Dr. K. Nageswar Rao and Financial

Creditor entered into a Facility Agreement dated 08.10.2012 (page 191-216 of the Petition), the relevant extracts of which are reproduced below:

FACILITY AGREEMENT

THIS AGREEMENT made this 8th day of October 2012 at Visakhapatnam between Esskay Shipping Private Limited, a company within the meaning of the Companies Act, 1956 (1 of 1956) and having its Registered Office at Esskay House, Door No. 25-40-40 Gangulavari Street , Visakhapatnam – 530 001(hereinafter referred to as "the Borrower" which expression shall, unless it be repugnant to the subject, context or meaning thereof, be deemed to mean and include its successors and permitted assigns);

AND

IDBI BANK Limited, a company incorporated and registered under the Companies Act, 1956 (1 of 1956) and a banking company within the meaning of Section 5 (c) of the Banking Regulations Act, 1949 (10 of 1949) and having its Registered Office at IDBI Tower, W.T.C. Complex, Cuffe Parade, Mumbai 400005 and a Branch Office at 30-15-35, Ground Floor, Near Saraswathi park, Dabagardens, Visakhapatnam – 530 020 (hereinafter referred to as "the Bank" which expression shall, unless repugnant to the subject, context or meaning thereof, be deemed to mean and include its successors and assigns).

WHEREAS

At the request of the Borrower,"the Bank" vide its Sanction Letter dated August 14, 2012 (Sanction Letter) sanctioned Working Capital Facilities of Rs.17,00,00,000/- (Rupees Seventeen crore only) (Overall Limit) with break up of each facility as described in the Sanction Letter. The Sanction Letter and modifications thereof, if any, shall be construed as forming part of this Agreement, which is annexed hereto.

The parties hereto have agreed to execute these presents for recording the terms agreed to by them for sanctioning of the Working Capital Facilities (hereinafter referred to as " said Facilities") sanctioned to the Borrower as aforesaid.

xxxxxxxxxxxxxxxxxxxx

IN WITNESS WHEREOF the Borrower has caused its common seal to be affixed hereunto and the, by duly authorized on the day and year first herein above written.

The common seal of ESSKAY SHIPPING PRIVATE LIMITED is hereto affixed pursuant to the resolution of its Board of Directors passed in their meeting held on 27-09-2012 and in presence of Shri K. Nageswara Rao the Director duly authorized signatory who have subscribed their signatures is token thereof.

Signed and delivered by IDBI Bank Limited through its Authorised Signatory Shri. K. Das, DGM.

For ESSKAY SHIPPING (P) LTD.

Director

IDBI Bank Ltd.

Authorised Signatory

(xi) In terms of the Facility Agreement dated 08.10.2012, the Corporate Debtor through its Director, Dr. K. Nageswar Rao executed Omnibus Counter Guarantee Agreement (page 267-273 of the Petition), Deed of Hypothecation (page 297-309 of the Petition) and Demand Promissory Note (page 312 of the Petition) in favour of the Financial Creditor on 08.10.2012.

(xii) Further, in terms of Facility Agreement dated 08.10.2012, the Personal Guarantor herein & K. Nagewara Rao executed the Guarantee Agreement dated 08.10.2012 (page 245-258 of the Petition) in favour of Financial Creditor. As per clause 7 of the Guarantee Agreement, the Guarantee is a continuing one. The relevant extracts of the Guarantee Agreement dated 08.10.2012 are reproduced below.

GUARANTEE AGREEMENT

THIS GUARANTEE AGREEMENT executed at Visakhapatnam on the 8th day of October 2012.

(1).Shri. K.Nageswara Rao, S/o Venkateswara Rao aged about 57 years, residing at D.No.9-29-10/2, Balaji Nagar, Siripuram Junction, Visakhapatnam 530 003.

(2) Smt. K.Krishna Kumari, W/o K.Nageswara Rao aged about 50 years residing at D.No.9-29-10/2, Balaji Nagar, Siripuram Junction, Visakhapatnam 530 003.

hereinafter unless otherwise specifically designated referred to as "**the Guarantor(s)**" (which expression shall unless repugnant to the context or meaning thereof be deemed to include in so far as the company is concerned its successors and permitted assigns and in so far as the others are concerned their respective heirs, executors and legal representatives and to include all surviving partners if they are partnership concerns.

IN FAVOUR OF

IDBI Bank Ltd., a company incorporated under the Companies' Act, 1956, and a banking company within the meaning of the Banking Regulation Act, 1949, having its Registered Office at IDBI Tower, World Trade Complex, Cuffe Parade, Mumbai 400 005 and among other places a Branch at 30-15-35, Ground Floor, Near Saraswathi park, Dabagardens, Visakhapatnam – 530 020 hereinafter unless otherwise specifically designated referred to as "**the Bank**" (which expression shall unless repugnant to the subject, context or meaning thereof be deemed to include its successors and assigns).

WHEREAS in terms of the agreement executed by Esskay Shipping Private Limited, a company within the meaning of the Companies' Act, 1956, having its Registered Office at Esskay House, Door No. 25-40-40 Gangulavari Street , Visakhapatnam – 530 001 (hereinafter referred to as "the Borrower" which expression shall unless repugnant to the context or meaning thereof be deemed to include its successors and permitted assigns) on the day of 08-10-2012 (hereinafter collectively referred to as "the Facilities Agreement"), the Bank has agreed to provide the facilities or any of the facilities as may be agreed upon from time to time between the Bank and Borrower for sums not exceeding in the aggregate Rs.17,00,00,000/- (Rupees Seventeen crore only) (hereinafter referred to as "the Facilities) on the terms and conditions specified and contained therein.

AND WHEREAS one of the conditions specified in the Facilities Agreement is that the Borrower shall procure and furnish to the Bank one or more guarantees for the purpose of guaranteeing due payment by the Borrower of all or some or any of the sums due under the Facilities Agreement or any part thereof on demand by the Bank.

AND WHEREAS the Guarantors at the request of the Borrower and in consideration of the Bank having agreed to grant or granted and/or continue at the request of the Guarantors the Facilities to the Borrower, have agreed to execute this Guarantee in favour of the Bank on the terms and in the manner hereinafter appearing.

XXXXXXX

7. The Guarantee herein contained is a continuing one for all amounts advanced by the Bank to the Borrower in respect of or under the Facilities as also for all interest, costs and all other monies which may from time to time become due and remain unpaid tothe Bank under the Facilities Agreement 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 credits 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.

XXXXXX

IN WITNESS WHEREOF the Guarantors have executed this Deed the day and year first hereinabove written.

Signed and Delivered by

Shri.K.Nageswar Rao

Smt.K.Krishna Kumari

(xiii) The Financial Creditor vide letter dated 15.02.2013 (page 146-147 of the Petition), allowed interchangeability of Rs.1 crore from Bank Guarantee Limit to Cash Credit Limit for 180 days, which was accepted by the Corporate Debtor through its Director, Dr. K. Nageshwar Rao and Dr. K. Nageshwar Rao & the Personal Guarantor herein were the guarantors. The relevant extracts of the above letter are reproduced below:

SANCTION LETTER

Ref.IDBI [Vizag] No.331/CBG./ED/15022013 February 15, 2013.

In Duplicate

Esskay Shipping Private Limited,
Esskay House, Door # 25-40-40,
Gangulavari Street,
Visakhapatnam – 530 001.

Dear Sirs,

Working Capital Facilities –
Allowing interchangeability to Fund Based Limits

Please refer to the sanction letter Ref. IDBI [Vizag] No.123/CBG.-SZCC/14/31072012 dated August 14, 2012 ["SL"] and the subsequent discussions your representatives had with us regarding increase in Fund Based Limits. In this connection, we advise that, IDBI Bank Limited [IDBI Bank] is agreeable in principle, to grant to you interchangeability of Rs.1 crore from Bank Guarantee Limit [BG] to Cash Credit Limit [CC] for 180 days from the date of this letter.

2. Please note that this letter is being issued for the limited purpose of allowing interchangeability of Rs. 1 crore from BG limit to CC limit. The rest of the terms and conditions as contained in the SL shall remain unchanged.

3. This letter shall form an integral part of the Facility Agreement entered into between you and IDBI Bank Limited [IDBI Bank].

4. IDBI Bank reserves the right to amend any of the terms and conditions hereof [including reducing or canceling any or all- the credit facilities] at its sole discretion.

Yours faithfully,

[K.Das]
Dy.General Manager &
Branch Head

The Borrower hereby affixes their signature to this document in acceptance of the terms and conditions herein contained.

ACCEPTED
For Es:kay Shipping Private Limited,

AUTHORISED SIGNATORIES

1. NAME: Sri K. Mageshwara Rao
DESIGNATION: Director
ADDRESS: Eskay Shipping Pvt Ltd.

2. NAME:
DESIGNATION:
ADDRESS:

GUARANTORS

The Guarantors hereby affixes their signature to this document in acceptance of the terms and conditions herein contained.

ACCEPTED

[1] Dr. K. Nageswar Rao

[2] K. Krishna Kumari

1. NAME: Sri - K. Mageshwara Rao
DESIGNATION: Director
ADDRESS: Eskay Shipping Pvt Ltd.

2. NAME: Sri K. Krishna Kumari
DESIGNATION: Director
ADDRESS: Eskay Shipping Pvt Ltd.

(xiv) Pursuant to the letter dated 15.02.2013, the Corporate Debtor through its Director, Dr. K. Nageshwar Rao executed the Demand Promissory Note in favour of the Financial Creditor on 15.02.2013 (page 313 of the Petition).

(xv) The Financial Creditor vide letter dated 06.01.2014 (page 148-150 of the Petition), extended the validity of the limits till 30.04.2014 on the condition of payment of non-refundable processing charges of Rs.6,92,000/- and furnishing irrevocable and unconditional

guarantees from Shri K.Venkata Rama Vidya Sagar and Shri K. Mohan Nageswar in favour of the Financial Creditor, which was accepted by the Corporate Debtor through its Director, who is the Personal Guarantor herein as well as by K.Venkata Rama Vidya Sagar, K. Mohan Nageswar & Personal Guarantor herein as the guarantors. The relevant extracts of the above letter are reproduced below:

Working Capital Facilities –
Extension of validity of Limits

In duplicate

Ref.IDBI [VIZAG].No.6/SCB.CBG.ESPL.WCF. EXTN January 6, 2014.

In Duplicate

Esskay Shipping Private Limited,
Esskay House, Door # 25-40-40,
Gangulavari Street,
Visakhapatnam – 530 001.

Andhra Pradesh

Dear Sirs,

Please refer to sanction letter Ref.IDBI [Vizag] No.123/CBG.SZCC-/14/31072012 dated August 14, 2012 ['SL'] wherein you have been sanctioned following working capital facilities subject to periodic review by IDBI Bank and shall be due for repayment before July 31, 2013 unless renewed by IDBI Bank Limited.

S.No	Type of Facility	Amount of Limit [Rs. Crore]
1.	Cash Credit [CC]	15.00
2.	Bank Guarantees [BG]	2.00
	Total	**17.00**

2. The said working capital facilities had been reviewed and validity of the limits extended till April 30, 2014 on the following term and conditions.

i. You shall pay non-refundable processing charges of Rs.6,92,000/- plus applicable taxes for the extended period on pro-rata basis.

ii. The company shall furnish an irrevocable and unconditional guarantee[s] from Shri K.Venkata Rama Vidya Sagar and Shri K.Mohan Nageswar in favour of IDBI Bank. No guarantee commission shall be payable by you to the guarantors.

3. Please note that this letter is issued for the limited purpose of extension of validity of working capital limits. The rest of the terms and conditions as contained in the above 'SL' remain unchanged, save and except the conditions mentioned at point 2 above.

4. The Overall Limits hereby offered are subject to periodic review by IDBI Bank and shall be due for repayment before April 30, 2014 unless any individual facility is due for repayment before that date or renewed by IDBI Bank before that date.

5. IDBI Bank reserves the right to amend any of the terms and conditions hereof [including reducing or canceling any or all- the credit facilities] at its sole discretion.

6. Meanwhile, kindly acknowledge receipt of this Sanction Letter.

Yours faithfully,

[D. Jayaprakash]
Manager & Credmin

[K.Das]
Dy.General Manager

The Borrower hereby affixes their signature to this document in acceptanc of the terms and conditions herein contained.

ACCEPTED

For Esskay Shipping Private Limited,

K. K. Kul

AUTHORISED SIGNATORIES

1. NAME: Smt. K. Krishna Kumari
   DESIGNATION: Director
   ADDRESS: Esskay Shipping Pvt Ltd.

2. NAME:
   DESIGNATION:
   ADDRESS:

GUARANTORS

The Guarantors hereby affixes their signature to this document in acceptance of the terms and conditions herein contained.

ACCEPTED

[1]. K.Venkata Rama Vidya Sagar [2].K.Mohan Nageswar [3]. K.Krishna Kumari

1. NAME: Shri. K. Venkata Rama Vidya Sagar
   DESIGNATION: Director
   ADDRESS: Esskay Shipping Pvt Ltd.

2. NAME: Shri. K. Mohan Nageswar
   DESIGNATION: Director
   ADDRESS: Esskay Shipping Pvt Ltd.

3. NAME: Smt. K. Krishna Kumari
   DESIGNATION: Director
   ADDRESS: Esskay Shipping Pvt Ltd.

(xvi) On 07.12.2015, the Financial Creditor issued recall notices to the Corporate Debtor. The copy of the above recall notice is not placed on record.

(xvii) On 28.12.2015, the Financial Creditor issued recall notices (page 14-20 of memo dated 27.10.2025) to the Personal Guarantors including the Personal Guarantor herein calling upon them to pay Rs.9,41,06,086.96 as per the details given in the Annexure-II of the notice and substitute the bank guarantees for the aggregate limit of Rs.22,50,000/-. The relevant extracts of the above recall notice are reproduced below:

Without Prejudice

Registered Post Acknowledgement Due/ Recorded delivery

58, 39, 40

Ref No.IDBI[VIZAG]No. /SCB/CBG-II/ESPL/2015-16 December 28, 2015

Shri K Vidyasagar Director, Esskay Shipping Pvt Ltd., No.9-29-10/A, Balajinagar, Siripuram, **Visakhapatnam – 530 003**	**Shri Mohan K Nageswar** Director, Esskay Shipping Pvt Ltd., No.9-29-10/A, Balajinagar, Siripuram, **Visakhapatnam – 530 003**
Smt. K Krishna Kumari Director, Esskay Shipping Pvt Ltd., No.9-29-10/A, Balajinagar, Siripuram, **Visakhapatnam – 530 003**	

Dear Sirs/Madam,

Financial Assistance aggregating ₹17 crore
sanctioned to Esskay Shipping Pvt Ltd. by IDBI Bank Ltd
- Defaults Committed

Esskay Shipping Pvt. Ltd. **("the Borrower")**, has been sanctioned by us, IDBI Bank Limited (IDBI Bank), financial assistance aggregating **₹17 crore (Rupees Seventeen crore only)** comprising of (i) Fund based facilities of ₹15,00,00,000/- (Rupees Fifteen crore only) (ii) Non-fund based Facilities of ₹2,00,00,000/- [Rupees Two core only]. The said facilities are, hereinafter, collectively referred to as the "Loan" for the purposes and on the terms and conditions more particularly set out in the Loan/Facility Agreement dated October 08, 2012 made between the Borrower and IDBI Bank, the Loan and Facility Agreements hereinafter collectively referred to as **"the Loan Agreement"**.

2. One of the conditions stipulated in the Loan Agreement was that the Loan shall be secured, inter alia, by unconditional and irrevocable personal guarantees to be executed by each one of you in favour of IDBI Bank. Accordingly, each one of you have executed unconditional and irrevocable personal guarantee(s) on October 08, 2012, in favour of IDBI Bank, guaranteeing the due repayment of the Loan and payment of interest and other monies payable by the Borrower to IDBI Bank.

3. The Borrower has failed and neglected to pay to IDBI Bank, the instalments of principal and interest, which fell due on different dates in respect of the Loan. The Borrower has also committed some other defaults in terms of the Loan Agreement. Therefore, IDBI Bank, in terms of the provisions of the Loan Agreement called upon the Borrower to repay to IDBI Bank, the Loan together with interest and other monies, vide its letter No Ref No.IDBI[VIZAG]No.33/SCB/CBG-II/ESPL/2015-16 dated December 7th, 2015 issued to the Borrower.

The Borrower has failed and neglected to pay the dues of IDBI Bank as per its above letter. A copy of the said letter (which gives particulars, inter alia, of the amounts of defaults committed by the Borrower and the total amounts recoverable from it) is enclosed hereto for information as **Annexure I**. Inspite of the said letter, the Borrower has failed and neglected to pay the outstanding dues to IDBI Bank as required therein.

4. By the aforesaid Guarantee Agreements dated on October 08, 2012, entered by each one of you and have agreed as under: -

a) In the event of any default on the part of the Borrower in repayment of the Loan and payment of interest, etc. each one of you will make payment as required;

b) Indemnify and keep IDBI Bank indemnified against all losses, damages, costs, claims and expenses whatsoever which IDBI Bank may suffer, pay or incur by reason of or in connection with any such default on the part of the Borrower including legal proceedings taken against the Borrower and/or the Guarantors for recovery of the moneys referred to above;

c) Guarantee shall be enforceable against each one of you, notwithstanding that any security or securities comprised in any instrument(s) executed or to be executed by the Borrower in favour of IDBI Bank shall, at the time when the proceedings are taken against the Guarantor(s) on this Guarantee, be outstanding or unrealised or lost;

d) To give effect to the Guarantee, IDBI Bank may act as though each one of you were the principal debtor to IDBI Bank;

e) A certificate in writing signed by a duly authorised official of IDBI Bank shall be conclusive evidence against each one of you of the amount for the time being due to IDBI Bank from the Borrower in any action or proceeding brought on the Guarantee against each one of you.

5. In the premises, we hereby call upon each one of you and demand from each one of you to pay forthwith to IDBI Bank at Visakhapatanam :
(i) Sums aggregating to [outstanding amount aggregating **₹9,41,06,086.96/- (Rupees Nine crore Forty One Lakh Six Thousand Eight Six and Ninety Six paisa only)**. as per details given in Annexure-II of the letter, together with further interest, liquidated damages thereon, at the contractual rates upon the footing of compound interest along with costs, charges, expenses & other monies in respect of the Bank Guarantee commission until payment or realization.
(ii) immediately substitute the said Bank Guarantees already issued by IDBI Bank for the aggregate limit **₹22,50,000/- (Rupees Twenty Two lakh Fifty Thousand only)**, as per **Annexure-II** hereto, with the bank guarantees issued by any other Bank and arrange to return the said Bank Guarantees, in original (duly discharged by the Beneficiaries), to IDBI Bank or in the alternative, you are hereby advised to deposit a sum of **₹22,50,000/- (Rupees Twenty Two lakh Fifty Thousand only)**, as per **Annexure-II** hereto, with IDBI Bank towards the said Bank Guarantees to enable IDBI Bank to mark a lien on the same during the validity of the said Bank Guarantees.

(xviii) The Financial Creditor issued recall notice to the Corporate Debtor on 20.08.2016 (page 314-338 of the Petition) calling upon the Corporate Debtor to pay within 15 days Rs.10,63,53,046.96/- together with further interest, liquidated damages with effect from 01.08.2016 and substitute the bank guarantees for the aggregate limit of Rs.22,50,000/-. A copy of the recall notice was also endorsed to the Personal Guarantors including Personal Guarantor herein. The relevant extracts of the above recall notice are reproduced below:

RECALL NOTICE

Ref:IDBI/NMG/Hyd/No.096/ESPL/2016-17/Recall

August 20 ,2016

WITHOUT PREJUDICE
RPAD / RECORDED DELIVERY

Esskay Shipping Private Ltd
No.25-40-40,
Esskay House
Gangulavari Street
Visakhapatnam -530 001

Dear Sir,

Financial assistance aggregating Rs. 17 Cr sanctioned to you by IDBI Bank Limited
Defaults committed.

This notice is being issued in supersession of the recall notice dated 07.12.2015 issued by IDBI to the borrower, Esskay Shipping Pvt. Ltd.

We, IDBI Bank Limited (hereinafter referred as 'IDBI Bank"), have granted to you, Esskay Shipping Pvt. Ltd.:-

1. Working capital limits aggregating to Rs.17,00,00,000/- [Rupees Seventeen crore only] comprising fund based limits of Rs.15,00,00,000/- [Rupees Fifteen crore only] ("the fund based facilities") and non fund based limits of Rs.2,00,00,000/- [Rupees Two crore only] ("non fund based facilities"), for the purpose of meeting working capital requirements. The fund based facilities and non-fund based facilities are collectively referred to as "the Facilities".

2. You have, inter alia, entered into Loan Agreement(s) / Facility Agreement(s), executed Deed of Hypothecation on all movable assets, created mortgages on all immovable properties, executed omnibus counter guarantee in respect of non-fund based facilities, procured joint and several personal guarantee(s) of Smt. K Krishnakumari, Shri K Vidyasagar , Shri Mohan K Nageswar and Late Shri K Nageswara Rao in their individual capacity, as security for the due repayment of the Financial Assistance and furnished other securities, the particulars whereof are mentioned in Annexure I hereto.

xxxxxxxxxxxxxxxxxxxxxxxxxxxxx

3. In view of the above and since you committed defaults in payment of principal, interest and other monies and also in observance and performance of the other conditions of the Loan Agreement/Sanction letters modified from time to time IDBI Bank has become entitled to recall the entire principal amount of the loan, Interest and other monies due in respect thereof.

4. Accordingly, IDBI Bank hereby declares in writing as follows:

(i) THAT the outstanding Facilities have become due and payable by you to IDBI Bank immediately and accordingly, the outstanding Facilities together with accrued interest, liquidated damages, etc. aggregating Rs.**10,63,53,045.96/- (Rupees Ten crore Sixty Three Lakh Fifty Three Thousand Forty Five and Ninety Six paisa only)** as 01.08.2016, the particulars of which are given in **Annexure –III hereto** has become immediately due and payable by you to IDBI Bank.

(ii) THAT you are also hereby advised to immediately substitute the said Bank Guarantees already issued by IDBI Bank for the aggregate limit of Rs.**22,50,000/- (Rupees Twenty Two lakh Fifty Thousand only)**, as per **Annexure –IIA** hereto, with the bank guarantees issued by any other Bank and arrange to return the said Bank Guarantees in original (duly discharged by the Beneficiaries) to IDBI Bank or in the alternative, you are hereby advised to deposit with IDBI Bank, a sum of Rs.**22,50,000/- (Rupees Twenty Two lakh Fifty Thousand only)**, as per **Annexure –IIA** hereto, with IDBI Bank towards the said Bank Guarantees to enable IDBI Bank to mark a lien on the same during the validity of the said Bank Guarantees; and

5. In the premises, we hereby call upon you and demand of you to pay to IDBI Bank **within a period of 15 days from the date hereof:**

(i) Sums aggregating Rs.**10,63,53,046.96/- (Rupees Ten crore Sixty Three Lakh Fifty Three Thousand Forty Six and Ninety Six paisa only)** as per Annexure-III hereto, together with further interest, liquidated damages thereon with effect from 01.08.2016 at the contractual rates upon the footing of compound interest along with costs, charges, expenses & other monies in respect of the Loans/Facilities until payment or realization and

(ii) immediately substitute the said Bank Guarantees already issued by IDBI Bank for the aggregate limit Rs.**22,50,000/- (Rupees Twenty Two lakh Fifty Thousand only)**, as per Annexure-IIA hereto, with the bank guarantees issued by any other Bank and arrange to return the said Bank Guarantees, in original (duly discharged by the Beneficiaries), to IDBI Bank or in the alternative, you are hereby advised to deposit with IDBI Bank a sum of Rs.**22,50,000/- (Rupees Twenty Two lakh Fifty Thousand only)**, as per Annexure-IIA hereto, towards the said Bank Guarantees to enable IDBI Bank to mark a lien on the same during the validity of the said Bank Guarantees

6. In case you fail to make the payments as aforesaid and comply with the requirements, IDBI Bank shall be constrained to take such steps as may be advised for enforcing the securities and realising its dues at your own risk as to the costs and consequences thereof, including but not limited to action/measures under the Securitisation and Reconstruction of Financial Assets And Enforcement of Security Interest Act, 2002.

7. Kindly note that above notice is issued without prejudice to the rights available to IDBI Bank against the Guarantors and the Mortgagor(s) of the Loan.

Yours faithfully

Deputy General Manager
NPA Management Group
Hyderabad

(xix) The Financial Creditor issued recall notice to the Personal Guarantors including Personal Guarantor herein on 09.09.2016 (page 342-346 of the Petition) calling upon each of them to pay Rs.10,63,53,045.96 together with further interest with effect from 01.08.2016. The relevant extracts of the above recall notice are reproduced below:

By Registered Post Acknowlegdement Due/Recorded Delivery

WITHOUT PREJUDICE

Ref:IDBI/NMG-Hyd/102 /ESPL/PGInvoc/2016-17 September 09 ,2016

Smt. K. Krishna Kumari No.9-29-10/A, Gokul Nivas Balajinagar, Siripuram, Visakhapatnam – 530 003	Shri.K.Venkata Rama Vidya Sagar,No.9-29-10/A, Gokul Nivas Balajinagar, Siripuram, Visakhapatnam – 530 003	Shri. K. Mohan Kumar alias Shri Mohan Nageswar No.9-29-10/A, Gokul nivas, Balajinagar, Siripuram, Visakhapatnam – 530 003
Smt K. Krishna Kumari, Shri K. Venkata Rama Vidya Sagar, Shri.K. Mohan Kumar alias Shri Mohan Nageswar Smt Dokku Geeta Devi As Legal Heirs of the mortgagor and personal guarantor, Late Shri K Nageswara Rao No.9-29-10/A, Gokul Nivas, Balajinagar, Siripuram, Visakhapatnam – 530 003		

Dear Sir/Madam,

The Financial assistance aggregating Rs.17 Crore sanctioned to M/s. Esskay Shipping Private Limited by IDBI Bank Ltd - Defaults committed.

This personal guarantee notice is being issued afresh and super cedes the earlier personal guarantee invocation notice dated 28.12.2015 issued by IDBI Bank Ltd to the guarantors of M/s. Esskay Shipping Private Ltd.

Esskay Shipping Private Limited ("**the Borrower**"), has been sanctioned by us, IDBI Bank Limited (IDBI Bank), financial assistance aggregating Rs.17,00,00,000.00 (Rupees Seventeen Crore only) ("Loan") for the purposes and on the terms and conditions more particularly set out in the Facility Agreements dated October 08, 2012 made between the Borrower and IDBI Bank Ltd ("**the Loan Agreement**")

2. One of the conditions stipulated in the Loan Agreement was that the Loan shall be secured, inter alia, by unconditional and irrevocable personal guarantees to be executed by each one of you in favour of IDBI Bank. Accordingly, each one of you have executed unconditional and irrevocable personal guarantee(s) on 25.3.2010, 11.4.2011, 8.10.2012 & 23.1.2014 in favour of IDBI Bank, guaranteeing the due repayment of the Loan and payment of interest and other monies payable by the Borrower to IDBI Bank.

3. The Borrower has failed and neglected to pay to IDBI Bank, the instalments of principal and interest, which fell due on different dates in respect of the Loan. The Borrower has also committed some other defaults in terms of the Loan Agreement. Therefore, IDBI Bank Ltd, in terms of the provisions of the Loan Agreement called upon the Borrower to repay to IDBI Bank, the Loan together with interest and other monies, vide its letter No. IDBI/NMG/Hyd/No.096/ESPL/2016-17/Recall dated 20.08.2016 issued to the Borrower.

However, the Borrower has failed and neglected to pay the dues of IDBI Bank as per its above letter. A copy of the said letter (which gives particulars, inter alia, of the amounts of defaults committed by the Borrower and the total amounts recoverable from it is enclosed hereto for information as **Annexure-I**. Inspite of the said letter, the Borrower has failed and neglected to pay the outstanding dues to IDBI Bank as required therein.

4. By the aforesaid Guarantee Agreement dated 25.3.2010, 11.4.2011, 8.10.2012 & 23.1.2014 each one of you have agreed as under: -

a) In the event of any default on the part of the Borrower in repayment of the Loan and payment of interest, etc. each one of you will make payment as required;

b) Indemnify and keep IDBI Bank indemnified against all losses, damages, costs, claims and expenses whatsoever which IDBI Bank may suffer, pay or incur by reason of or in connection with any such default on the part of the Borrower including legal proceedings taken against the Borrower and/or the Guarantors for recovery of the moneys referred to above;

c) Guarantee shall be enforceable against each one of you, notwithstanding that any security or securities comprised in any instrument(s) executed or to be executed by the Borrower in favour of IDBI Bank shall, at the time when the proceedings are taken against the Guarantor(s) on this Guarantee, be outstanding or unrealised or lost;

d) To give effect to the Guarantee, IDBI Bank may act as though each one of you were the principal debtor to IDBI Bank;

e) A certificate in writing signed by a duly authorised official of IDBI Bank shall be conclusive evidence against each one of you of the amount for the time being due to IDBI Bank from the Borrower in any action or proceeding brought on the Guarantee against each one of you.

5. In the premise, we hereby call upon each one of you and demand from each one of you to pay forthwith to IDBI Bank Ltd sums aggregating Rs.**10,63,53,045.96/- (Rupees Ten crore Sixty Three Lakh Fifty Three Thousand Forty Five and paise Ninety Six only)** as on 01.08.2016 , as per details given in **Annexure-II** of this letter, together with further interest thereon with effect from 01.08.2016 at the given contractual rates, upon the footing of compound interest until payment/realisation. In case, you fail to make the payments as aforesaid, IDBI Bank, shall be constrained to take such steps against you as may be necessary for enforcing the guarantees and realising the dues at your own risk as to the costs and consequences thereof.

Please also note that this notice is issued to you "Without Prejudice" to our rights and remedies against the Borrower.

Yours faithfully,

(Jitendra Danane)
DGM, NMG, Hyderabad

Encl : Annexure I, II

(xx) The Financial Creditor issued Demand Notice under Section 13(2) of the SARFAESI on 23.11.2016 (page 353-378 of the Petition) calling upon the Corporate Debtor and Personal Guarantors including Personal Guarantor herein to pay within 60 days Rs.10,63,53,045.96 as on 01.08.2016 together with further interest thereon. The relevant extracts of the above Demand Notice are reproduced below:

(Demand Notice – under Section 13(2) of The SARFAESI Act, 2002)

REGD POST WITH ACKNOWLEDGEMENT DUE

Ref:IDBI/NMG-Hyd/154 /ESPL/2016-17/SARFAESI November 23, 2016

WITHOUT PREJUDICE

1. Esskay Shipping Private Ltd No.25-40-40,Esskay House, Gangulavari Street,Visakhapatnam -530 001 Andhra Pradesh	2.Smt. Kukkala Krishna Kumari No.9-29-10/A, Gokul Nivas, Balajinagar, Siripuram, Visakhapatnam – 530 003 Andhra Pradesh
3.Shri Kukkala Venkata Rama Vidya Sagar, No.9-29-10/A, Gokul Nivas, Balajinagar, Siripuram, Visakhapatnam – 530 003 Andhra Pradesh	4. Shri Kukkala Mohan Kumar alias Shri Mohan Nageswar No.9-29-10/A, Gokul Nivas, Balajinagar, Siripuram, Visakhapatnam – 530 003 Andhra Pradesh
5. Sree Kristna Marine Ladens, D No 25-12-49, Godavari Street, Visakhapatnam - 530 001 Andhra Pradesh	6.Smt. D. Nageswaramma, D no 25-12-49, Godavari street, Vishakhapatnam - 530 001 Andhra Pradesh
7. Smt Kukkala Krishna Kumari, (As legal heir of the mortgagor and personal guarantor Late Shri Kukkala Nageswara Rao) No.9-29-10/A, Gokul Nivas, Balajinagar, Siripuram, Visakhapatnam – 530 003 Andhra Pradesh	8. Shri Kukkala Venkata Rama Vidya Sagar, (As legal heir of the mortgagor and personal guarantor Late Shri K Nageswara Rao) No.9-29-10/A, Gokul Nivas, Balajinagar, Siripuram, Visakhapatnam – 530 003 Andhra Pradesh
9. Shri Kukkala Mohan Kumar alias Shri Mohan Nageswar (As legal heir of the mortgagor and personal guarantor Late Shri Kukkala Nageswara Rao) No.9-29-10/A, Gokul Nivas, Balajinagar, Siripuram, Visakhapatnam – 530 003 Andhra Pradesh	10. Smt Dokku Geeta Devi (As legal heir of the mortgagor and personal guarantor Late Shri K Nageswara Rao) No.9-29-10/A, Gokul Nivas, Balajinagar, Siripuram, Visakhapatnam – 530 003 Andhra Pradesh

Page 1 of 26

Ref:IDBI/NMG-Hyd/154 /ESPL/2016-17/SARFAESI November 23, 2016

WITHOUT PREJUDICE

Dear Sir/Madam,

Financial Assistance Sanctioned to you by IDBI Bank Ltd--
Defaults Committed - Statutory Notice u/s 13(2) of
The Securitisation and Reconstruction of the Financial Assets
And Enforcement of Security Interest Act, 2002 (SARFAESI Act)

We, IDBI Bank Ltd ("IDBI Bank"), through the Authorised Officer, do hereby issue this Statutory Notice to you, under section 13(2) of the Securitisation and Reconstruction of the Financial Assets and Enforcement of Security Interest Act, 2002 ("the Act") in the circumstances narrated below:

2. IDBI Bank Ltd, granted Financial Assistance to you, the Cash credit limits of Rs.17 Crore comprising of fund based limit of Rs.15 Crore and Non-fund based limit of Rs.2 Crore aggregating to Rs.17 Crore (Rupees Seventeen Crore only) (hereinafter collectively referred to as "the Financial Assistance") on the terms and conditions contained in the Loan /Facility Agreement dated October 8 ,2012 ("the Loan Agreements") and the Security Documents including the Guarantee(s) and other Securities ("**the Security Documents**"), the particulars whereof are given in **Annexure-1A**.

3. As Security for the Financial Assistance, you, Addressee No.1 had created security interest in favour of IDBI Bank Ltd, inter alia, by way of Hypothecation in respect of moveable properties. You the Addressee No.1, and 2 to 6 had also mortgaged the immovable properties The above movable and immovable properties are hereinafter collectively referred to as "**the Secured Assets**", particulars whereof are given in **Annexure-1B**.

4. Pursuant to the above, you the Addressee No.1 have availed the disbursement aggregating Rs.17 Crore from time to tine.

5. In terms of the Loan Agreement read with the Security Documents, you, the Addressee No.1 has agreed to repay to IDBI Bank Ltd, the Financial Assistance in accordance with the amortization schedule contained in the Loan Agreement. The Addressee No.1 has failed and neglected to pay to IDBI Bank, the installments of principal amount of the Financial Assistance, interest and other monies, the particulars whereof are given in **Annexure II**. Consequent upon the defaults committed by you, the Addressee No.1, the account(s) in respect of the Financial Assistance, has/have been classified by IDBI Bank as non performing asset on 30th September 2014 in accordance with the directions/ extant guidelines issued by the Reserve Bank of India from time to time.

6. In view of the defaults committed by you the Addressee No.1, IDBI Bank Ltd, vide it's letter bearing Ref. IDBI/NMG/Hyd/No.096/ESPL/2016-17/Recall dated August 20, 2016, has declared the Financial Assistance together with interest and other monies aggregating to Rs.**10,63,53,045.96/- (Rupees Ten Crore Sixty Three Lakh Fifty Three Thousand Forty Five and Ninety Six paisa only)** as on August 01,2016, to have become immediately due and payable by you and called upon you, the Addressee No.1 to pay to IDBI Bank the said amount. A copy of the said loan recall notice / letter is enclosed as **Annexure-IV** hereto for your ready reference.

In view of the Defaults committed by Addressee No.1, you, Addressee No.2 to 6 as Mortgagors, are called upon to pay to IDBI Bank the outstanding amount within the stipulated period. The particulars of the outstanding amount as on August 01, 2016 are given in the **Annexure-III.**

7. In the premises, IDBI Bank Ltd has become entitled to and does issue this Statutory Notice to you under section 13(2) of the Act and hereby calls upon you to pay to IDBI Bank at its NPA Management Group located at Specialized Corporate Branch, Hyderabad Zonal Office,No.5-9-89/1 & 2, Chapel Road, Hyderabad – 500 001, within a period of **60 Days** from the date of this Notice, the aforesaid sum aggregating **Rs.10,63,53,045.96/- (Rupees Ten Crore sixty three lakh fifty three thousand and forty five and paise ninety six only)** as on August 01, 2016 as furnished in the **Annexure-III**, together with further interest thereon with effect from August **01, 2016** to IDBI Bank Ltd, at the contractual rates upon the footing of Compound Interest, until payment/ realisation, failing which IDBI Bank Ltd , as a Secured Creditor shall be entitled to enforce its Security Interest without intervention of the Court or Tribunal, by taking recourse to one or more of the measures under Chapter III of the Act, including (but not limited to) taking over of Possession and/or Management of the Secured Assets, short particulars whereof are given in **Annexure-1B** for realising its dues at your own risk as to the costs and consequences thereof.

8. Please note that after receipt of this Notice, in terms of Section 13(13) of the Act, you shall not transfer by way of sale, lease or otherwise (other than in the ordinary course of your business) any of the Secured Assets described in **Annexure-1B** hereto, without prior written consent of IDBI Bank Ltd. Please note that contravention of the provisions of the Act is an offence punishable under section 29 of the Act.

9. Please further note that this statutory notice is issued **WITHOUT PREJUDICE** to all the other rights and remedies available to IDBI Bank Ltd in law or in contract or both, in respect of the Financial Assistance.

Yours Sincerely,

Authorized Officer &
DGM- NMG-Hyderabad

Encl: A copy of loan recall notice/letter dated August 20, 2016.

(xxi) On 30.08.2017, the Hon'ble High Court of Hyderabad for the State of Telangana and the State of Andhra Pradesh in a Petition No. 201 of 2015 filed under Sections 439(1)(b) & 433(e) read with 434(1)(a) of the Companies Act, 1956 (hereinafter referred to as the

"**CA,1956**"), passed the Order for winding up of the Corporate Debtor (page 727-737 of the Petition). The relevant extracts of the above Order are reproduced below:

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
(Original Jurisdiction)

WEDNESDAY, THE THIRTIETH DAY OF AUGUST
TWO THOUSAND AND SEVENTEEN

:PRESENT:

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

OFFICIAL LIQUIDATOR / INWARD 14 NOV 2017

COMPANY PETITION No.201 OF 2015

IN THE MATTER OF COMPANIES ACT, 1956
AND
IN THE MATTER OF M/S.ESSKAY SHIPPING PRIVATE LIMITED

Between:

Bunge SA,
13 Route de Florissant,
P.O.Box 518,
1211, Geneva, Switzerland
Rep. by its Constituted Attorney and Authorised Signatory
Mr. Anil Shamrao Jadhav S/o Shamrao Jadhav aged 30 Yrs.
..... PETITIONER

AND

M/s. Esskay Shipping Private Limited,
Having their registered address at 25-40-40,
ESSKAY HOUSE, Gangulavari Street,
Vishakhapatnam, Andhra Pradesh, 530 001 .....RESPONDENT

Petition for Winding up under Sections 439(1)(b) & 433(e) R/w 434(1) (a) of the Companies Act, 1956, praying that this Hon'ble Court may be pleased to:

That the Respondent viz., M/s. Esskay Shipping Private Limited, whose registered office is situated at Esskay House, Gangulavari Street,Vishakhapatnam, Andhra Pradesh, 530 001, be wound up by and under the orders and directions of this Hon'ble Court under the provisions of the Companies Act, 1956;

a) The Official Liquidator of this Hon'ble Court be appointed Liquidator of the Respondent with all powers under Section 457 of the Companies Act 1956 to take charge of the assets, business affairs, properties, bank accounts, books of account vouchers, documents etc. of the Respondent with all powers under the provisions of the Companies Act, 1956;

b) That pending the hearing and final disposal of the present Petition, the Official Liquidator of this Hon'ble Court or some other fit and proper person be appointed as the Provisional Liquidator of the Respondent with all powers under Section 457 of Companies Act 1956 to take charge of the assets business affairs, properties, bank accounts, books of account vouchers, documents etc. with all powers under the provisions of the Companies Act, 1956;

c) That pending the hearing and final disposal of the Petition, the Respondent's servants, agents, representatives etc. restrained by an order and judgment of this Court from selling, alienating, encumbering or creating any third party right in relation to its assets both movable and immovable.

d) That pending the hearing and final disposal of the Petition, the company be directed to file an Affidavit swigs as oath all the assets held by the Respondent and also giving details of all property sold in the last six months;

e) For ad-interim reliefs in terms of prayers (c) & (d) above;

f) for Costs of the petition;

This Petition coming on for orders upon reading the Company Petition and the affidavit dated 11-04-2015 and filed by Sri Anil Shamrao Jadhav, Authorized Signatory of the Petitioner Company in support of the Petition and upon hearing the arguments of M/s.Indus Law Firm, learned Counsel for the petitioner and Sri K.Venkata Rangadas, Advocate for the Respondent.

The Court made the following Order:

XXXXXXXXXXXXXXXXXXXXX

31. So I hold that the respondent-company has neglected to pay it's debt to petitioner within the meaning of Section 434 (1) (a) and Sec.433 (e) of the Companies Act, 1956.

32. In the absence of *bona fide* dispute as to the liability, even if the respondent company is commercially solvent, it would not be a ground for not granting relief under Section 434 (1) (a) as held in **IBA Health (India) Private Limited Vs. Info-Drive Systems SDN.BHD**[1].

33. In this view of the matter, the Company Petition is allowed and the respondent company is directed to be wound up. The Official Liquidator of this Court is appointed as Liquidator of the respondent with all powers under Section 457 of the Companies Act, 1956 to take charge of the assets, business affairs, properties, bank accounts, books of account, vouchers, documents etc. of the respondent under the provisions of the Companies Act, 2013.

[1](2010) 10 S.C.C. 553

Sd/- R.L.N.CHARYULU
JOINT REGISTRAR

// TRUE COPY //

(xxii) This Financial Creditor filed Company Application No.46/2024 before the Hon'ble High Court of Andhra Pradesh at Amaravati (Special Original Jurisdiction) seeking that 90% of the sale proceeds to be disbursed to the Financial Creditor as an interim measure. The Hon'ble High Court vide its Order dated 28.11.2024 (page 738-784 of the Petition) disposed of the Company Application with the direction to the Financial Creditor to submit the claim and also an undertaking for disbursement of Rs.3,15,00,000/- as an interim payment. The relevant extracts of the above Order are reproduced below:

APHC010468532024

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3311]**
(Special Original Jurisdiction)

THURSDAY, THE TWENTY EIGHTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE MS JUSTICE B S BHANUMATHI

COMPANY APPLICATION NO: 46/2024

Between:

Idbi Bank Ltd **...APPELLANT**

AND

M/s Esskay Shipping Pvt Ltd **...RESPONDENT**

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ORDER:

This application has been filed by the applicant, IDBI Bank Limited, seeking the following relief:

> "i) To direct the Official Liquidator to disburse at least 90% of the sale proceeds of the three properties one at Chennai and two at Visakhapatnam to the applicant herein as an interim measure after keeping the balance 10% monies towards the expenses incurred by the Official Liquidator for sale of the properties and the liquidation proceedings.
> ii) And pass such other orders/directions that may be necessary in the interest of justice."

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considered for disbursement of 50% (approximately), i.e., Rs.3,15,00,000/- out of the fund available to the credit of the company (in liquidation), i.e., Rs.6,31,29,478/- as interim payment subject to submission of claim and production of undertaking by the applicant that in event of any excess amount refundable by them, upon adjudication, they shall remit the said amount within fifteen (15) days as and when called by the office of the Official Liquidator.

5. In the above facts & circumstances, Company Application No.46 of 2024 is disposed of with the following directions:

a) The request of the applicant is considered for disbursement of only Rs.3,15,00,000/- out of the fund available to the credit of the company (in liquidation) (approximately 50%) as an interim payment;

b) The applicant shall submit claim and produce an undertaking that in the event of any excess amount, they shall remit the said amount within fifteen (15) days as and when called for by the office of the Official Liquidator and any delay in return of excess payment shall carry interest @ 8% per annum.

There shall be no order as to costs.

B. S. BHANUMATHI, J

Dt.28.11.2024
RAR

(xxiii) In 2017, the Financial Creditor filed OA 66/2017 before the Hon'ble DRT against the Defendants, which include the Corporate Debtor and Personal Guarantor herein, wherein the Defendants were called absent and set ex-parte on 15.11.2017 and thereafter,

Hon'ble Presiding Officer, DRT vide its Order dated 26.12.2019, in view of the uncontroverted averments made in the OA, allowed the OA with costs, for recovery of Rs.11,03,90,768.96 along with future interest from the defendants jointly & severally (page 66-95 of the Petition). The relevant extracts of the above Order are reproduced below:

IN THE DEBTS RECOVERY TRIBUNAL
VISAKHAPATNAM

Present:- SHRI DUPPALA VASUDEVA RAO,
PRESIDING OFFICER

Dated the 26th day of December, 2019

O.A.No. 66 of 2017

Between:-
IBDI Bank Ltd, NMG Department, South-III, Zonal office, Chapel Road, Post Box No.370, Hyderabad-500001.

....Applicant Bank

And

1. Esskay Shipping Private Ltd, rep by its Managing Director, No.25-40-40, Esskay House, Gangulavari Street, Visakhapatnam-530001.
2. Smt Kukkala Krishna Kumari, No.9-29-10/A, Gokul Nivas, Balaji Nagar, Siripuram, Visakhapatnam-530003.
3. Sri Kukkala Venkata Rama Vidya Sagar, No.9-29-10/A, Gokul Nivas, Balaji Nagar, Siripuram, Visakhapatnam-530003.
4. Sri Kukkala Mohan Kumar alias Sri Kukkala Mohan Nageswar, No.9-29-10/A, Gokul Nivas, Balaji Nagar, Siripuram, Visakhapatnam-530003.
5. Sri Krishna Marine Landens, D.No.25-12-49, Godavari Street, Visakhapatnam-530001.
6. Smt D. Nageswaramma, D.No.25-12-49, Godavari Street, Visakhapatnam-530001.
7. Smt Kukkala Krishna Kumari, W/o Late Kukkula Nageswara Rao, No.9-29-10/A, Gokul Nivas, Balajinagar, Siripuram, Visakhapatnam-530003.
8. Sri Kukkala Venkata Rama Vidya Sagar, S/o Late Kukkala Nageswara Rao, No.9-29-10/A, Gokul Nivas, Balaji Nagar, Siripuram, Visakhapatnam-530003.
9. Sri Kukkala Mohan Kumar alias Kukkala Mohan Nageswar, S/o Late Kukkala Nageswara Rao, No. No.9-29-10/A, Gokul Nivas, Balaji Nagar, Siripuram, Visakhapatnam-530003.
10. Smt Dokku Geetha Devi, D/o Late Kukkala Nageswara Rao, No.9-29-10/A, Gokul Nivas, Balaji Nagar, Siripuram, Visakhapatnam-530003.

...Defendants/Respondents

The application is coming up for hearing in the presence of Sri V. Lakshmi Prasad, Ld. Counsel for applicant bank and D1 to D10 were called absent and set ex-parte on 15.11.2017, and the matter having stood for consideration, this Tribunal made the following order:-

ORDER

This application is filed under Section 19 of Recovery of Debts Due to the Banks and Financial Institutions Act, 1993 to pass an order directing the defendants to pay an amount of Rs.11,03,90,768-96 ps along with future interest @14.25% p.a. [presently BBR is 10.25% plus @ 4% p.a. with monthly rests from the date of OA till the realization of the entire amount and for issue of Recovery Certificate accordingly.

2. According to the facts of the case in brief, the defendant No.1 is a Private Limited Company within the meaning of the Companies Act, 1956 having its Registered Office at # No. 25-40-40, Esskay House, Gangulavari Street, Visakhapatnam – 530001, State of Andhra Pradesh. The 1st Defendant is engaged inter alia in rendering services to the National and International principals as Steamer Agents, Clearing & Forwarding House Agents, Stevedores, Offshore support and Logistics etc,. The Defendants 2 to 4 are the guarantors personally and individually, having guaranteed the repayment of the loans advanced by the Applicant to the Defendant No.1. It is submitted that, due to the demise of Sri. Kukkala Nageswara Rao his legal heirs who succeeded his estate, have been added as a parties as Defendants No. 7 to 10. The present Application is filed in order to enforce the securities created by the Defendants No. 1 to 10 in favour of the Applicant as and by way of security for the repayment of the loans and payment of interest, liquidated damages, costs, etc., as hereinafter set forth and to recover the amounts due there under to the Applicant and also to enforce the guarantee obligations undertaken by the defendants No. 2 to 10. It is

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5. Heard the learned Counsel for applicant bank and having perused the OA, and also evidence affidavit filed along with documents and marked as above exhibits, and in view of the uncontroverted averments made in the application, the claim of the applicant bank is proved against defendants and OA deserves to be allowed with costs, for recovery of an amount of Rs.11,03,90,768-96 ps along with future interest @14.25% p.a. [presently BBR is 10.25% plus @ 4% p.a. with monthly rests from

the date of OA, till the date of realization, to be recovered from the defendants jointly & severally.

6. In the result, the OA is allowed with costs. Issue Recovery Certificate for an amount of Rs.11,03,90,768-96 ps along with future interest @14.25% p.a. [presently BBR is 10.25% plus @ 4% p.a. with monthly rests from the date of OA, till the date of realization, to be recovered from the defendants jointly & severally and personally and also by sale of mortgaged/hypothecated property, if any.

Accordingly issue Recovery Certificate. Let the copy of order be made available to the parties as per rule.
[Typed to the dictation, corrected and pronounced by me in the open court on this 26th day of December, 2019]

PRESIDING OFFICER
DEBTS RECOVERY TRIBUNAL
VISAKHAPATNAM

(xxiv) In terms of its Order dated 26.12.2019, Hon'ble Presiding Officer, DRT vide RC No. 1164/2019 in OA 66/2017 dated 08.07.2022 (page 96-98 of the Petition), ordered that Financial Creditor is entitled to recover Rs.110390768.96 along with cost, and future interest jointly or severally from the Defendants, which include the Corporate Debtor and Personal Guarantor herein. The relevant extracts of the above Order are reproduced below:

DEBTS RECOVERY TRIBUNAL VISHAKHAPATNAM
Ground & 1st Floor, 31-31-21, Sai Baba Street, Narayan Bhawan, Dabagardens, Visakhapatnam- 530020

RECOVERY CERTIFICATE UNDER SECTION 19(7) READ WITH SECTION 19(22) OF THE RECOVERY OF DEBTS & BANKRUPTCY ACT, 1993, AS AMENDED FROM TIME TO TIME.

RC No. 1164/2019
IN
Case No: OA/66/2017

In the Matter of:
(CH- 1) IDBI BANK
NMG DEPARTMENT , SOUTH -III ,
ZONAL OFFICE , CHAPEL ROAD , POST BOX NO 370 , HYDERABAD
HYDERABAD ,TELANGANA-500001 — Applicant(s)

----- Versus -----

To,
(CD- 1) ESSKAY SHIPPING PRIVATE LTD
Rep by its Managing Director , No 25- 40-40 , Esskay House , Gangulavari Street , Visakhapatnam
Visakhapatnam ,ANDHRA PRADESH -530001 — Defendant(s)

(CD- 2) SMT KUKKALA KRISHNA KUMARI
NO 9-29-10/A , GOKUL NIVAS
BALAJINAGAR SIRIPURAM
VISAKHAPATNAM
VISAKHAPATNAM ,ANDHRA PRADESH
-530003

(CD- 3) SRI KUKKALA VENKATA RAMA VIDYA SAGAR
NO 9-29-10/A , GOKUL NIVAS
BALAJINAGAR SIRIPURAM
VISAKHAPATNAM
VISAKHAPATNAM ,ANDHRA PRADESH
-530003

(CD- 4) SRI KUKKALA MOHAN KUMAR ALIAS SRI KUKKALA MOHAN NAGESWAR
NO 9-29-10/A , GOKUL NIVAS
BALAJINAGAR SIRIPURAM
VISAKHAPATNAM
VISAKHAPATNAM ,ANDHRA PRADESH
-530003

(CD- 5) SREE KRISHNA MARINE LADENS
D NO 25-12-49 , GODAVARI STREET
VISAKHAPATNAM
VISAKHAPATNAM ,ANDHRA PRADESH
-530001

(CD- 6) SMT D NAGESWARAMMA
D NO 25-12-49 , GODAVARI STREET
VISAKHAPATNAM
VISAKHAPATNAM ,ANDHRA PRADESH
-530001

https://drt.gov.in/drtlive/rc/print_debtsdue_bank.php?no=OTk5OTk

(CD- 7) SMT KUKKALA KRISHNA KUMARI
W/O LATE KUKKALA NAGESWARA RAO NO 9-29-10/A , GOKUL NIVAS
BALAJINAGAR SIRIPURAM
VISAKHAPATNAM
VISAKHAPATNAM ,ANDHRA PRADESH
-530003

(CD- 8) SRI KUKKALA VENKATA RAMA VIDYA SAGAR
S/O LATE KUKKALA NAGESWARA RAO NO 9-29-10/A , GOKUL NIVAS
BALAJINAGAR SIRIPURAM
VISAKHAPATNAM
VISAKHAPATNAM ,ANDHRA PRADESH
-530003

(CD- 9) SRI KUKKALA MOHAN KUMAR ALIAS K MOHAN NAGESWAR
S/O LATE KUKKALA NAGESWARA RAO NO 9-29-10/A , GOKUL NIVAS
BALAJINAGAR SIRIPURAM
VISAKHAPATNAM
VISAKHAPATNAM ,ANDHRA PRADESH
-530003

(CD- 10) SMT DOKKU GEETHA DEVI
D/O LATE KUKKALA NAGESWARA RAO NO 9-29-10/A , GOKUL NIVAS
BALAJINAGAR SIRIPURAM
VISAKHAPATNAM
VISAKHAPATNAM ,ANDHRA PRADESH
-530003

Recovery Certificate for Rs 110390768.96 [One One Crore Three Lakh Ninety zero Thousands Seven Hundred and Sixty Eight Rupees And Nine Six Paise]

In terms of final order dated 26/12/2019 passed by this Tribunal in the above mentioned case, it is ordered that the Applicant Certificate Holder Bank is entitled to recover a sum of Rs. 110390768.96 along with cost, expenses from the 07/01/2017 i.e. date of filing / with effective date of the OA/66/2017 and future interest from order date till the date of realisation in full, jointly or severally from the Certificate Debtors, hereinafter referred to as:-

Sr.no	CD Name	Property Name	Int. Type/Mode	Int. Rate	Effective Date	Order Date	Amount(Rs.)	Liability Type	Interest (as on Order Date)	RC Amount(Rs.)	Remark
1	ESSKAY SHIPPING PRIVATE LTD		Compound Interest (Monthly)	14.25	07/01/2017	26/12/2019	110390768.96	Jointly And Severally	57739401.44	168130170.4	
2	SMT KUKKALA KRISHNA KUMARI		Compound Interest (Monthly)	14.25	07/01/2017	26/12/2019	110390768.96	Jointly And Severally	57739401.44	168130170.4	
3	SRI KUKKALA VENKATA RAMA VIDYA SAGAR		Compound Interest (Monthly)	14.25	07/01/2017	26/12/2019	110390768.96	Jointly And Severally	57739401.44	168130170.4	
4	SRI KUKKALA MOHAN KUMAR ALIAS SRI KUKKALA MOHAN NAGESWAR		Compound Interest (Monthly)	14.25	07/01/2017	26/12/2019	110390768.96	Jointly And Severally	57739401.44	168130170.4	
5	SREE KRISHNA MARINE LADENS		Compound Interest (Monthly)	14.25	07/01/2017	26/12/2019	110390768.96	Jointly And Severally	57739401.44	168130170.4	
6	SMT D NAGESWARAMMA		Compound Interest (Monthly)	14.25	07/01/2017	26/12/2019	110390768.96	Jointly And Severally	57739401.44	168130170.4	
7	SMT KUKKALA KRISHNA KUMARI		Compound Interest (Monthly)	14.25	07/01/2017	26/12/2019	110390768.96	Jointly And Severally	57739401.44	168130170.4	
8	SRI KUKKALA VENKATA RAMA VIDYA SAGAR		Compound Interest (Monthly)	14.25	07/01/2017	26/12/2019	110390768.96	Jointly And Severally	57739401.44	168130170.4	
9	SRI KUKKALA MOHAN KUMAR ALIAS K MOHAN NAGESWAR		Compound Interest (Monthly)	14.25	07/01/2017	26/12/2019	110390768.96	Jointly And Severally	57739401.44	168130170.4	
10	SMT DOKKU GEETHA DEVI		Compound Interest (Monthly)	14.25	07/01/2017	26/12/2019	110390768.96	Jointly And Severally	57739401.44	168130170.4	

Parties are directed to appear before B N S V S K BANGAR RAJU , Recovery Officer, DEBTS RECOVERY TRIBUNAL VISHAKHAPATNAM on 04/10/2022.

The Recovery Officer shall realize the amount as per this Certificate in the manner and mode prescribed under Sections 25 to 28 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (as amended from time to time) from the above named Certificate Debtors.

This Certificate has been issued under my signature and seal of the Tribunal on this 08/07/2022

PRESIDING OFFICER
DEBTS RECOVERY TRIBUNAL VISHAKHAPATNAM

(xxv) In terms of above Order dated 08.07.2022, the Recovery Officer, Hon'ble DRT issued through paper publication (substituted service) a Demand Notice dated 29.09.2022 (page 99-101 of the Petition) for Rs.11,03,90,768.96 along with pendentellite and future interest @ 14.25% compounded monthly w.e.f. 07.01.2017 and costs of Rs.196000/-, to all the Defendants, which include the Corporate Debtor and Personal Guarantor herein. The relevant extracts of the above Order are reproduced below:

OFFICE OF THE RECOVERY OFFICER -II

DEBTS RECOVERY TRIBUNAL

(Ministry of Finance, Government of India)

Ground & 1st Floor, 31-31-21, Sai Baba Street, Narayan Bhavan, Dabagardens, Visakhapatnam- 530020

DEMAND NOTICE

(NOTICE UNDER SECTIONS 25 TO 28 OF THE RECOVERY OF DEBTS & BANKRUPTCY ACT, 1993 AND RULE 2 OF SECOND SCHEDULE TO THE INCOME-TAX ACT, 1961)

RC/1164/2019 **29-09-2022**

IDBI BANK
Versus
ESSKAY SHIPPING PRIVATE LTD & OTHERS

To

(CD 1) Esskay Shipping Private Ltd, Rep by its Managing Director, No 25- 40- 40 , Esskay House , Gangulavari Street , Visakhapatnam-530001

(CD 2) Smt Kukkala Krishna Kumari
No 9-29-10/A , Gokul Nivas Balajinagar Siripuram Visakhapatnam-530003

(CD 3) Sri Kukkala Venkata Rama Vidya Sagar
No 9-29-10/A , Gokul Nivas Balajinagar Siripuram Visakhapatnam-530003

(CD 4) Sri Kukkala Mohan Kumar Alias Sri Kukkala Mohan Nageswar
No 9-29-10/A , Gokul Nivas Balajinagar Siripuram Visakhapatnam-530003

(CD 5) Sree Krishna Marine Ladens
D No 25-12-49 , Godavari Street Visakhapatnam-530001

(CD 6) Smt D Nageswaramma
D No 25-12-49, Godavari Street Visakhapatnam-530001

(CD 7) Smt Kukkala Krishna Kumari, W/o late Kukkala Nageswara Rao
D.No 9-29-10/A , Gokul Nivas, Balajinagar, Siripuram, Visakhapatnam-530003

(CD 8) Sri Kukkala Venkata Rama Vidya Sagar, S/o Late Kukkala Nageswara Rao
D.No 9-29-10/A , Gokul Nivas, Balajinagar, Siripuram, Visakhapatnam-530003

(CD 9) Sri Kukkala Mohan Kumar Alias K Mohan Nageswar, S/o Late Kukkala Nageswara Rao
D.No 9-29-10/A , Gokul Nivas, Balajinagar, Siripuram, Visakhapatnam-530003

(CD 10) Smt Dokku Geetha Devi, D/o Late Kukkala Nageswara Rao
D.No 9-29-10/A , Gokul Nivas Balajinagar Siripuram Visakhapatnam-530003

This is to notify that as per the Recovery Certificate issued in pursuance of orders passed by the Presiding Officer, DEBTS RECOVERY TRIBUNAL VISHAKHAPATNAM in OA/66/2017 an amount of Rs 11,03,90,768.96 (Rupees Eleven Crores Three Lakh Ninety Thousands Seven Hundred Sixty Eight And Paise Ninety Six Only) along with pendentellite and future interest @ 14.25 % Compound Interest Monthly w.e.f. 07/01/2017 till realization and costs of Rs 196000/- (Rupees One Lakh Ninety Six Thousands Only) has become due against you (Jointly and severally/ Fully/Limited).

2. You are hereby directed to pay the above sum within 15 days of the receipts of the notice, failing which the recovery shall be made in accordance with the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and Rules there under.

3. You are hereby ordered to declare on an affidavit the particulars of yours assets on or before the next date of hearing.

4. You are hereby ordered to appear before the undersigned on 27/10/2022 at 10:30 a.m. for further proceedings.

5. In addition to the sum aforesaid you will be liable to pay, —

(a) such interest as is payable for the period commencing immediately after this notice of the execution proceedings;

(b) all costs, charges and expenses incurred in respect of the service of this notice and other process that may be taken place for recovering the certificate amount due.

Given under my hand and the seal of the Tribunal, on this date: 29/09/2022

(B.N.S.V.S.K.BANGARRAJU)
Recovery Officer

(xxvi) The status of the Recovery Certificate as shown on the website of Hon'ble DRT[1], is as below:

IR(JSD) No. 11176/2025 in RP No. 1164/2019 (arising out of OA No. 66/2017)

IR(JSD) No. 11176/2025 in RP No. 1164/2019 (arising out of OA No. 66/2017)	Parties: IDBI Bank Ltd, NMG Department, South-III, Zonal Office, Chapel Road, Hyderabad. ...CHR Vs Esskay Shipping Private Limited & others ...CDR

Date of the order	Order with signature
15.12.2025	Matter has been placed before me by the Ld. Recovery Officer-1. The above matter is put up on the strength of the Part Satisfaction Memo dated 24.11.2025 filed by the CHB. The Recovery Certificate was issued on 08.08.2022 for **Rs. 11,03,90,768.96 Ps** as per the Final Order dated 26.12.2019 passed in OA No. 66/2017. In the above said memo, the CHB has stated that the CHR Bank has recovered an amount of **Rs. 3,15,00,000/- (Rupees three crore and fifteen lakhs only)** upon sale of mortgaged schedule properties i.e Property Nos. 1, 8 & 9 of Schedule "B" through Official Liquidator. Accordingly, the CHR Bank has requested to record Part Satisfaction. As the CH Bank has prayed to record the Part Satisfaction of the Recovery Certificate, I allow the same. The Part Satisfaction of CHB is hereby recorded for **Rs. 3,15,00,000/- (Rupees three crore and fifteen lakhs only)** in the recovery proceedings i.e. RP No. 1164/2019 (arising out of OA No. 66/2017). The original document in respect of the sold properties may be returned to the CHB after scrutiny by the Registry as per procedure. The recovery proceedings shall continue till the full satisfaction of the due amount under the Recovery Certificate. Copy of Order be sent/ provided to the parties and to the NIC Cell. (Krishna Gopal Dwivedi) Presiding Officer, DRT, Visakhapatnam

[1] Accessed on 25.08.2026.

(xxvii) Based on the information provided on 09.05.2025 by the Financial Creditor and other communication (page 102-113 of the Petition), the NeSL completed the authentication of the default by the Corporate Debtor on 10.06.2025 and issued Record of Default in Form D (page 102 of the Petition). The relevant extracts of the Record of Default are reproduced below:

NeSL NATIONAL E-GOVERNANCE SERVICES LIMITED

India's First Information Utility

FORM D

RECORD OF DEFAULT(RoD)

(Issued By information utility under sub- regulation (4) of regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017)

This Record of Default is issued to the Financial Creditor M/s IDBI BANK LIMITED in respect of the default of debt as per details given below-

(a)	Name of the Submitter:	M/s IDBI BANK LIMITED
(b)	Schedule-2 Bank (Y/N):	Y
(c)	Name of Corporate Debtor:	M/s ESSKAY SHIPPING PRIVATE LIMITED
(d)	Unique Debt Identifier Number:	AABCI8842G_150655100000082
(e)	Registered Address:	IDBI Tower,cuffe parade colaba Mumbai
(f)	Total Outstanding Amount:	INR 667757473.75
(g)	Default Amount:	INR 667757473.75
(h)	Submission ID:	3
(i)	Date of Default:	30-09-2014
(j)	Status of Authentication of Default:	AUTHENTICATED
(k)	Authentication Completed on:	10-06-2025 00:06:07
(l)	Date of Last Acknowledgement of Debt (AoD):	08-07-2022
(m)	Fraud:	No
(n)	Wilful Defaulter:	No

** where dispute is pertaining to non-financial information and financial creditor is schedule II bank, the status of authentication will be recorded as Authenticated*

26. One of the contentions of the Personal Guarantor during the course of hearing held on 15.07.2026 was on the jurisdictional issue. It was contended that the Petition under Section 95 is not maintainable, since the Financial Creditor failed to file any claim before the Official Liquidator and the CIRP against the Corporate Debtor has neither been initiated and

nor can be initiated in future as well, as the Corporate Debtor is undergoing winding up pursuant to the order of the Hon'ble High Court. Therefore, the first question before us is **"Whether the Petition against Personal Guarantor is maintainable, when there is no pending CIRP proceeding against the Corporate Debtor"**.

(i) In support of her contention, the Personal Guarantor referred to Paras 7, 28, 29, 30, 31(a) & (b), and 32 of the order dated 17.12.2024 of Hon'ble Bench of the ***NCLT, Kolkata, in the matter of UCO Bank (supra).***

7. Thus, the issues that have cropped up for determination in the present matter are two folds are:

(i) ***Whether proceedings against Personal Guarantor under Section 95 of the Code is maintainable even when no CIRP proceedings have been initiated against the Corporate Debtor/ Principal Borrower***.

(ii) ***Whether the present application under Section 95(1) of the Code against the Personal Guarantor would be maintainable before this forum, or should the creditor approach the Learned Debt Recovery Tribunal (DRT) for its relief.***

28. At this juncture, it would be expedient to quote the Hon'ble Apex Court in ***Embassy Property Developments Pvt. Ltd. vs. State of Karnataka and Ors.*** reported in **MANU/SC/1661/2019**, wherein the Hon'ble Apex Court has clearly observed as under:

> *"32. Sub-section (4) of Section 60 of IBC, 2016 states that the NCLT will have all the powers of the DRT as contemplated under Part III of the Code for the purposes of Sub-section (2). Sub-section (2) deals with a situation where the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor of a corporate debtor is taken up,* ***when CIRP or liquidation proceeding of such a corporate debtor is already pending before NCLT****. ..."*

The Hon'ble Apex Court expounds the object of Section 60(2) of the Code in the following words:

> *"The object of Sub-section (2) is to group together (A) the CIRP or liquidation proceeding of a corporate debtor and (B) the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor of*

the very same corporate debtor, so that a single Forum may deal with both. This is to ensure that the CIRP of a corporate debtor and the insolvency resolution of the individual guarantors of the very same corporate debtor do not proceed on different tracks, before different Fora, leading to conflict of interests, situations or decisions.

33. If the object of Sub-section (2) of Section 60 is to ensure that the insolvency resolutions of the corporate debtor and its guarantors are dealt with together, ***then the question that arises is as to why there should be a reference to the powers of the DRT in Sub-section (4).*** *The answer to this question is to be found in Section 179 of IBC, 2016. Under Section 179(1), it is the DRT which is the Adjudicating Authority in relation to insolvency matters of* ***individuals*** *and firms. This is in contrast to Section 60(1) which names the NCLT as the Adjudicating Authority in relation to insolvency resolution and liquidation of corporate persons including corporate debtors and personal guarantors. The expression "****personal guarantor****" is defined in Section 5(22) to mean an* ***individual who is the surety in a contract of guarantee to a corporate debtor****. Therefore the object of Sub-section (2) of Section 60 is to avoid any confusion that may arise on account of Section 179(1) and to ensure that* ***whenever a CIRP is initiated against a corporate debtor,*** *NCLT will be the Adjudicating Authority not only in respect of such corporate debtor but also in respect of the individual who stood as surety to such corporate debtor, notwithstanding the naming of the DRT Under Section 179(1) as the Adjudicating Authority for the insolvency resolution of individuals. This is also why Sub-section (2) of Section 60 uses the phrase "notwithstanding anything to the contrary contained in this Code".*

34. ***Sub-section (2) of Section 179 confers jurisdiction upon DRT to entertain and dispose*** *of (i) any suit or proceeding by or against the* ***individual debtor*** *(ii) any claim made by or against the individual debtor and (iii) any question of priorities or any other question whether of law or facts arising out of or in relation to insolvency and bankruptcy of the individual debtor. Clauses (a), (b) and (c) of Sub-section (2) of Section 179 are identical to Clauses (a), (b) and (c) of Sub-section (5) of Section 60. Therefore the only reason why Sub-section (4) is incorporated in Section 60 is to ensure that NCLT will exercise jurisdiction - (1) not only to entertain and dispose of matters referred to in Clauses (a), (b) and (c) of Sub-section (5) of Section 60 in* ***relation to the corporate debtor,*** *(2) but also to entertain and dispose of the matters specified in Clauses (a), (b) and (c) of Sub-section (2) of Section 179,* ***whenever the contingency stated in Section 60(2) arises."***

(Emphasis Added)

29. Further, we would note that the decision rendered by the Hon'ble NCLAT in ***Shapoorji Pallonji Finance Pvt. Ltd. v. Rekha Singh*** in **Company Appeal (AT) (Insolvency) No. 397 of 2022, 398 of 2022 and 399 of 2022**, judgment dated **18.01.2023**, the Hon'ble NCLAT at para 4 has framed the question to answer as under:

> *"4. Question which needs to be answered in these Appeals is as to whether the applications filed by the Appellant under Section 95 of the I&B Code against the Personal Guarantors – Respondents was maintainable or not maintainable."*

The Hon'ble NCLAT at paras 29 and 30 has clearly held that:

> *"29. In view of the foregoing discussion, we are of the view that submission of learned counsel for the Respondent that since the asset size of JFIL became less than Rs.500 Crore as on 31.03.2021, the Adjudicating Authority shall lose jurisdiction to proceed further and this Tribunal shall also have no jurisdiction to proceed in the matter, cannot be accepted.* ***We are of the view that jurisdiction will be there with the Adjudicating Authority****, as per Notification dated 18.11.2019,* ***which has to exercise on the date when application can be filed against the Financial Service Provider for insolvency.*** *As a corollary,* ***an application under section 95 can be filed against the Personal Guarantor only when on the same date insolvency can be commenced against the Financial Service Provider****.*
>
> *30. The objection of the Respondent that application filed by the Financial Creditor under Section 95 is not maintainable since* ***no insolvency proceedings*** *are* ***pending*** *against the Principal Borrower has already been overruled by the Adjudicating Authority. The issue is fully covered by judgment of this Tribunal in "Company Appeal (AT) (Ins.) No. 60 of 2022,* ***State Bank of India vs. Mahendra Kumar Jajodia, decided on 27.01.2022****",*

where interpreting Section 60(2) of the Code following was laid down in Paras 8, 9, 10 and 11:"

(Emphasis Added)

30. Thus, in view of the ratio laid down in ***Embassy Property* (Supra)** by the Hon'ble Apex Court and in ***Shapoorji Pallonji* (Supra)** by the Hon'ble NCLAT, it is clear that the jurisdiction of NCLT to consider an application under Section 95 of the Code against a personal guarantor to a corporate debtor starts when a CIRP is initiated against such corporate debtor.

CONCLUSIONS:

31. In view of the legal position enumerated above as it emanates from in the decisions rendered by the Hon'ble Chief Justice's Division Bench of Madras High Court in ***Rohit Nath I (Supra)*** and the Hon'ble Apex Court in ***Embassy Property (Supra)***, we can safely conclude that:

a. In terms of Section 60 (1) and (2) read with Section 179 of the I&B Code, NCLT is the only Adjudicating Authority in respect of Personal Guarantors to a Corporate Debtor **where a corporate insolvency resolution process or liquidation proceeding initiated against a corporate debtor is either pending before a National Company Law Tribunal or is already concluded.**

b. In absence of an "initiated" or "pending" or "concluded" CIRP against a Principal Borrower, an application under Section 95(1) to initiate Insolvency Resolution Process against a Personal Guarantor to a Corporate Debtor will not be maintainable before the NCLT. The Recovery Proceedings will lie only before the Debt Recovery Tribunal (DRT) having territorial jurisdiction.

32. In view of above, having noted that no CIRP was ever initiated against the Principal Borrower in respect of the respondent Personal Guarantor, before this Adjudicating Authority or any other Bench, we are of the considered opinion that this application preferred under Section 95 of the IBC is not maintainable before the NCLT. Accordingly, the same is **dismissed**. Liberty is however be given to take a recourse of other legal remedies as would be advised.

(ii) Contending the submissions of the Personal Guarantor, the Financial Creditor in his arguments in the hearing referring to para 10, 11 and 12 the Judgment dated 23.01.2025 of the Hon'ble NCLAT in the matter of ***Anita Goyal (supra)*** submitted that the Petition against the Personal Guarantor is maintainable, even though the CIRP has not been initiated against the Corporate Debtor.

> 10. Now, we come to the submission of the learned Counsel for the Appellant that NCLT has no jurisdiction to entertain Section 95 Application filed by the Financial Creditor and the Application ought to have been filed before the DRT. Although learned Counsel for the Respondent has contended that the objection regarding jurisdiction having not been raised before the NCLT, we proceed to examine the contention on merit. The issue raised by the Appellant needs consideration and answer in these Appeal(s) to clarify the law on the subject.
>
> 11. The submission which has been pressed by the Counsel for the Appellant is that NCLT shall be the Adjudicating Authority for Personal Guarantor only when proceeding of insolvency resolution process is ongoing against the Corporate Debtor have been initiated and are pending before the NCLT. Reliance has been placed by learned Counsel for the Appellant on Section 60, sub-section (2). It is contended that in the present case, no CIRP or liquidation is going on against the Corporate Debtor, hence, the jurisdiction to entertain Application under Section 95 lies with DRT. Learned Counsel for the Appellant has also relied on Section 79 and 179 of the IBC to support his submission. Learned Counsel for the Appellant also relied on judgment of the Madras High Court in ***Rohit Nath vs. KEB Hana Bank Ltd.***, decided on 30.03.2023 as well as two judgments of NCLT, Kolkata in ***Aditya Birla Finance Ltd. vs. Sarita Mishra – IA (IB) No.356/KB/2024*** in ***Company Petition (IB) No.67 of 2023;*** and ***Tata Capital Financial Services Ltd. vs. Arjun Agarwal – I.A. (IB) 1670/KB/2024*** in ***C.P.(IB)51/KB/2024***. Learned Counsel for the Appellant has referred to judgments of the Hon'ble Supreme Court in ***Lalit Kumar Jain vs. Union of India – (2021) 9 SCC 321*** and ***State Bank of India vs. V. Ramakrishnan & Anr. – Civil Appeal No.3595 of 2018***.

12. Refuting the submissions of learned Counsel for the Appellant, learned Counsel for the Respondent submits that IBC having been made applicable against the Personal Guarantors and provision of Section 60, sub-section (1), insolvency resolution process against Personal Guarantors of a Corporate Person, can be initiated before NCLT, which is Adjudicating Authority. It is submitted that the issue has already been answered by this Appellate Tribunal in ***State Bank of India vs. Mahendra Kumar Jajodia – (2022) SCC OnLine NCLAT 58*** and ***Mahendra Kumar Agarwal vs. PTC India Financial Services Ltd. – (2023) SCC OnLine NCLAT 421***, where this Tribunal relying on Section 60, sub-section (1) has held that even if no insolvency resolution process or liquidation is pending against the Corporate Debtor, Application under Section 95 is maintainable before NCLT for initiation insolvency resolution process. Coming to the judgment of the NCLT, Kolkata in **Tata Capital Financial Services Ltd. vs. Arjun Agarwal** and **Aditya Birla Finance Ltd. vs. Sarita Mishra**, it is submitted that the orders passed by NCLT, Kolkata Bench are directly contrary to the binding decisions of Hon'ble Supreme Court and this Tribunal in **Mahendra Kumar Agarwal vs. PTC India Financial Services Ltd.** and **State Bank of India vs. Mahendra Kumar Jajodia**. It is also contended that Section 7 Application is pending against Allied Strips Ltd. being C.P.(IB) 731/ND/2024 before NCLT, New Delhi. It is submitted that Nivaya Allied Strips Pvt. Ltd., who has issued the debentures, is a SPV that was incorporated with the sole objective of financing the resolution of Allied Strips Ltd., therefore Corporate Borrower, for all intents and purpose is Allied Strips Ltd.

(iii) The Hon'ble NCLAT vide its Judgment dated 14.07.2026, in the matter of ***UCO Bank vs. Subrata Das in Company Appeal (AT) (Ins) No.451 of 2025*** referring to the its judgement in ***Anita Goyal (supra)*** set aside order passed by the Hon'ble NCLT, Kolkata. The relevant extracts of the above Judgment are reproduced below:

9. Thus, only issue we have to decide in the present appeal is whether the Adjudicating Authority can proceed against Personal Guarantor of the Corporate Debtor only if the CIRP or Liquidation proceeding has been initiated against the Corporate Debtor or the Adjudicating Authority can proceed against Personal Guarantors of the Corporate Debtor, even the Financial creditor has not initiated any proceeding i.e. any CIRP or Liquidation proceeding against the Corporate Debtor but directly initiated proceedings against the Personal Guarantor of the Corporate Debtor under Section 95 of the Code.

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11. In case of State Bank of India v. V. Ramakrishnan and Anr. [Civil Appeal No. 3595 of 2018] the Hon'ble Supreme Court held that the moratorium under Section 14, applicable to the Corporate Debtor, does not extend to Personal Guarantor, which reinforced the separation of guarantor's liability vis -a-vis Corporate Debtor liability. It can be said that the IBC is not contemplated to allow Personal Guarantor to escape independent liability merely because CIRP against the Corporate Debtor is pending or because the Corporate Debtor enjoy a memorandum or even no CIRP has been initiated against the Corporate Debtor at all. We are conscious of the fact that the Financial Creditors have two independent and distinct legal remedies under the Code i.e., firstly against the Corporate Debtor itself under section 7 of the Code and secondly, against the Personal Guarantor of the Corporate Debtor under Section 95 of the Code.

12. We observe that a guarantor is meant to provide an additional credit support so if creditor has necessarily to first litigate exhaustively against the Corporate Debtor, the guarantee would lose much of its value. This is the reason why the law treats surety obligations as immediate upon the default, unless the contract says otherwise. It also needs to be clearly understood that the IBC aims for speed as well as value maximisation of the Corporate Debtor, thus forcing creditors onto a sequential and delayed recovery path will be against the very spirit of the Code.

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14. We also note that the Adjudicating Authority has not appreciated that under Section 128 of Indian Contract Act, 1872, when a default is committed, the Principal Borrower and Surety are jointly and severally liable to Creditor and Creditor has the right to recover its dues from either of them or from both of them simultaneously. For quick reference, the said Section 128 of Indian Contract Act, 1872 is reproduced below:

> *"The liability of the surety is co-extensive with that of the Principal Debtor, unless it is otherwise provided by the Contract."*

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16. We would also refer to another judgement of the Hon'ble Supreme Court of India in the matter of ***Bank of Bihar Ltd. Versus Damodar Prasad & Anr.*** *[1968 SCC OnLine SC 280]* wherein after having relied upon the judgment of the Division Bench of the Hon'ble Bombay High Court in the case of ***Lachhman Joharimal Vs. Bapu Khandu & Surety Tukaram Khandoji*** has observed as under:

> *"A creditor is not bound to exhaust his remedy against the principal debtor before suing the surety and that when a decree is obtained against a surety, it may be enforced in the same manner as a decree for any other debt."*
>
> *(Emphasis supplied)*

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20. We would like to amplify that core legal proposition under the Insolvency regime governed by the code is that liability of a Personal Guarantee is co-existing with that of the Corporate Debtor. The Hon'ble Supreme Court of India in landmark case of ***Lalit Kumar Jain vs. Union of India & Ors.*** *(Transferred Case (Civil) No. 245/2020)* has clearly upheld the framework for Personal Guarantor and confirmed that insolvency proceeding under Section 95 of the Code can be proceeded under Par III of the Code against the Personal Guarantor of the Corporate Debtor, independently of the proceedings against the Corporate Debtor.

21. We hold that it is the legal prerogative under the scheme of the Code, which gives flexibility to the Financial Creditor to proceeded for CIRP against the Personal Guarantor of the Corporate Debtor under Section 95 of the Code along with CIRP proceedings against the Corporate Debtor under Section 7 of the Code or only against Personal Guarantor of the Corporate Debtor under Section 95 of the Code without even initiating any proceeding, against the Corporate Debtor. Typically, such cases arise when Financial Creditors find that there is very low chances of resolution of the Corporate Debtor. We also observe that this is purely within domain of commercial wisdom of the Creditors to decide the legal course of action in such matters. We also hold that the legally correct interpretation is that a creditor is entitled to initiate action against the Personal Guarantor directly, even, if no CIRP or separate legal action has been initiated against the Corporate Debtor. The Personal Guarantor can't insist that the creditors must first exhaust remedies against the Corporate Debtor, because both liabilities are co-extensive and the creditor has a concurrent right of action.

22. Based on above discussion, we find impugned orders are contrary to settled laws. The Adjudicating Authority did not appreciate correct proposition. The impugned orders cannot be sustained. The appeals succeed. The impugned orders are set aside. The matter is remanded back to the Adjudicating Authority to decide in accordance with the law. The original petitions of the Appellant is restored back. Parties are directed to appear before the Adjudicating Authority on **27.07.2026**. No order as to the cost. I.A., if any, stand closed.

(iv) It is also noted that the Hon'ble NCLAT in the aforesaid Order also observed that the liability of a surety is co-extensive with that of the principal debtor and the creditor is entitled to proceed against the surety without being first required to exhaust its remedies against the principal debtor. In view of the above, the failure of the Financial Creditor to file a claim before the Official Liquidator does not itself extinguish the right of the Financial Creditor to file the present Petition.

(v) It is noted that the Hon'ble NCLAT vide Judgment dated 27.01.2022 in the matter of ***SBI vs. Mahendra Kumar Jojo*dia** in Company Appeal (AT) (Ins) No.60 of 2022 with Company Appeal (AT) (Ins) No.61 of 2022 after discussing Section 60 (1) & 60 (2) of the Code, held that even if no CIRP or liquidation is pending against the Corporate Debtor, Application under Section 95 can be filed before the NCLT. The relevant extracts of the said Order are reproduced below:

> 6. Section 60 (1) & (2) which falls for consideration in the present case is as follows:
>
> > ***"Section 60: Adjudicating Authority for corporate persons.***
> >
> > *"**60.** (1) The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate persons located.*
> >
> > *(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or [liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor] shall be filed before such National Company Law Tribunal.*
>
> 7. Sub-Section 1 of Section 60 provides that Adjudicating Authority for the corporate persons including corporate debtors and personal guarantors shall be the NCLT. The Sub-Section 2 of Section 60 requires that where a CIRP or Liquidation Process of the Corporate Debtor is pending before **'a'** National Company Law Tribunal the application relating to CIRP of the Corporate Guarantor or Personal Guarantor as the case may be of such Corporate Debtor shall be filed before '**such**' National Company Law Tribunal. The purpose and object of the sub-section 2 of Section 60 of the Code is that when proceedings are pending in '**a**' National Company Law Tribunal, any proceeding against Corporate Guarantor should also be filed before '**such**' National Company Law Tribunal. The idea is that both proceedings be entertained by one and the same NCLT. The sub-section 2 of Section 60 does not in any way prohibit filing of proceedings under Section 95 of the Code even if no proceeding are pending before NCLT.

8. The use of words 'a' and 'such' before National Company Law Tribunal clearly indicates that Section 60(2) was applicable only when a CIRP or Liquidation Proceeding of a Corporate Debtor is pending before NCLT. The object is that when a CIRP or Liquidation Proceeding of a Corporate Debtor is pending before 'a' NCLT the application relating to Insolvency Process of a Corporate Guarantor or Personal Guarantor should be filed before the same NCLT. This was to avoid two different NCLT to take up CIRP of Corporate Guarantor. Section 60(2) is applicable only when CIRP or Liquidation Proceeding of a Corporate Debtor is pending, when CIRP or Liquidation Proceeding are not pending with regard to the Corporate Debtor there is no applicability of Section 60(2).

9. Section 60(2) begins with expression '*Without prejudice to sub-section (1)'* thus provision of Section 60(2) are without prejudice to Section 60(1) and are supplemental to sub-section (1) of Section 60.

10. Sub-Section 1 of Section 60 provides that Adjudicating Authority in relation to Insolvency or Liquidation for Corporate Debtor including Corporate Guarantor or Personal Guarantor shall be the NCLT having territorial jurisdiction over the place where the Registered Office of the Corporate Person is located. The substantive provision for an Adjudicating Authority is Section 60, sub-Section (1), when a particular case is not covered under Section 60(2) the Application as referred to in sub-section (1) of Section 60 can be very well filed in the NCLT having territorial jurisdiction over the place where the Registered Office of corporate Person is located.

11. The Adjudicating Authority erred in holding that since no CIRP or Liquidation Proceeding of the Corporate Debtor are pending the application under Section 95(1) filed by the Appellant is not maintainable. The Application having been filed under Section 95(1) and the Adjudicating Authority for application under Section 95(1) as referred in Section 60(1) being the NCLT, the Application filed by the Appellant was fully maintainable and could not have been rejected only on the ground that no CIRP or Liquidation Proceeding of the Corporate Debtor are pending before the NCLT. In result, we set aside the order dated 05th October, 2021 passed by the Adjudicating Authority. The Application filed by the Appellant under Section 95(1) of the Code is revived before the NCLT which may be proceeded in accordance with the law.

(vi) It is noted that the aforesaid judgement of the Hon'ble NCLAT was upheld by the Hon'ble Supreme Court vide its Order dated 06.05.2022 in the matter of ***Mahendra Kumar Jojodia vs SBI*** in Civil Appeal No.1871-1872 of 2022. The relevant extracts of the said Order are reproduced below:

> **We have heard learned Solicitor General and learned senior counsel for the parties and perused the record. We do not see any cogent reason to entertain the Appeals. The judgment impugned does not warrant any interference.**
>
> **The Appeals are dismissed.**

(vii) In view of the above judgements of the Hon'ble Supreme Court and NCLAT, the settled position of law is that even though the CIRP against the Corporate Debtor has not been initiated, the Petition under Section 95 is still maintainable against the Personal Guarantor.

(viii) It is also contended by the Personal Guarantor that since the Corporate Debtor is undergoing winding up before the Hon'ble High Court and therefore, CIRP proceedings can never be initiated against the Corporate Debtor. It is noted that even though the case of the Personal Guarantor is not covered under Section 60 (2) but it is still maintainable under Section 60 (1) of the Code, in view of the Hon'ble NCLAT judgement in ***Mahendra Kumar Jajodia (supra)***.

(ix) In view of the aforesaid discussions, we are of the considered view that the objection raised by the Personal Guarantor is not tenable.

27. During the hearing held on 15.07.2026, the Personal Guarantor raised the objection on maintainability on the ground of limitation, as the recall notice to the Personal Guarantor was issued on 28.12.2015, but the Petition was e-filed on 05.07.2025. It was further submitted by the Personal Guarantor that filing of the case on 07.01.2017 before the Hon'ble DRT would not start the fresh limitation period and the Recovery Certificate was issued on 08.07.2022, much after the limitation period. The Personal Guarantor in its Counter has also contended that the prior to the institution of proceedings before the Hon'ble DRT, a winding up order has already been passed by the Hon'ble High Court of Andhra Pradesh against the Corporate Debtor and an Official Liquidator had been appointed, who took custody and control of the Corporate Debtor. Despite the same, the Liquidator was not made a party to the proceedings before the DRT in the OA, which was adjudicated ex-parte. Therefore, the Recovery Certificate issued consequential to the proceedings in the OA is nullity in the eyes of law and thus, not enforceable. Therefore, the next issue for consideration before us is ***"Whether the Petition is filed within the period of limitation?"***

(i) The loan account of the Corporate Debtor was classified as NPA on 30.09.2014.

(ii) On 07.12.2015, the Financial Creditor issued recall notices to the Corporate Debtor.

(iii) On 28.12.2015, the Financial Creditor issued recall notices to the Personal Guarantor.

(iv) On 20.08.2016, in supersession of the recall notice dated 07.12.2015, the Financial Creditor again issued recall notice to the Corporate Debtor, a copy of which was also endorsed to the Personal Guarantor herein.

(v) On 09.09.2016, in supersession of the recall notice dated 28.12.2015, the Financial Creditor again issued recall notice to the Personal Guarantor calling upon to pay Rs.10,63,53,045.96 together with further interest with effect from 01.08.2016.

(vi) On 23.11.2016, the Financial Creditor issued Demand Notice under Section 13(2) of the SARFAESI calling upon the Corporate Debtor and Personal Guarantors including Personal Guarantor herein to pay within 60 days Rs.10,63,53,045.96 as on 01.08.2016 together with further interest thereon.

(vii) In 2017, the Financial Creditor filed OA 66/2017 before the Hon'ble DRT and thereafter, the Hon'ble Presiding Officer, DRT vide its Order dated 26.12.2019, allowed the OA with costs, for recovery of Rs.11,03,90,768.96 along with future interest from the defendants including the Personal Guarantor herein jointly & severally.

(viii) In terms of its Order dated 26.12.2019, Hon'ble Presiding Officer, DRT vide RC No. 1164/2019 in OA 66/2017, ordered that Financial Creditor is entitled to recover Rs.11,03,90,768.96 along with cost, and future interest jointly or severally from the Defendants, which include the Corporate Debtor and Personal Guarantor herein.

(ix) Based on the above Recovery Certificate, the Financial Creditor filed the present Petition on 05.07.2025 treating the date of recovery certificate i.e., 08.07.2022, as the date of default. During the course of hearing dated 15.07.2026, the Financial Creditor submitted that the Petition has been filed on the basis of the Recovery Certificate dated 08.07.2022, which amounts to fresh cause of action as per the Judgment of the Hon'ble Supreme Court in ***Dena Bank (now Bank of Baroda) vs. C. Shivakumar Reddy & Anr.*** (Supra). However, the Personal Guarantor contended that the aforesaid Judgment is with respect to Section 7 Petition and thus, would not be applicable in Section 95 Petition, where the limitation has to be seen with reference to the date of invocation of personal guarantee.

(x) It is noted that the Hon'ble NCLAT in the matter of ***IDBI Bank Limited v. Hemangi Patel [Company Appeal (AT) (Insolvency) No. 991 of 2025],*** vide its Order dated 08.08.2025, while examining the issue of limitation for initiating insolvency resolution process against Personal Guarantor based on Recovery Certificate, upheld the NCLT's view that period of limitation in 95 Petition is 3 years from the date of issue of Recovery Certificate. The relevant paragraphs of the judgement are extracted below:

> These two appeals have been filed by the IDBI Bank, challenging the two identical orders passed on 05.05.2025 by the National Company Law Tribunal (NCLT), Indore Special Bench, Court – I in C.P. (IB) No.55/MP/2024 and C.P. (IB) No.54/MP/2024, rejecting Section 95 application filed by the IDBI Bank against the respondent, the personal guarantor herein.
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> xxxxxxxxxxxxxxxxxxxxxxx

iv. The adjudicating authority by the impugned order rejected the application as barred by time. It was held that from recovery certificate dated 25.01.2019, 3 years will expire on 25.01.2022 and even giving benefit of order of the Hon'ble Supreme Court in **Suo Moto WP (Civil) No. 3 of 2022** in ***'Re: Cognizance for Extension of Limitation',*** the limitation period would extend only till 11.01.2024 and the application having been filed on 02.09.2024 is beyond limitation period.

14. We do not find any error in the order of the adjudicating authority rejecting Section 95 application filed by the appellant as barred by time.

(xi) Although the Personal Guarantor has contended that the Recovery Certificate is null and unenforceable, however, no material has been placed before us to demonstrate that the Order passed by the Hon'ble DRT in the OA was either challenged or set aside by the competent court or was recalled by the Hon'ble DRT. Further, no material has been placed to demonstrate that the Recovery Certificate issued pursuant thereto was challenged by way of an appeal or that any stay has been granted on operation of the Recovery Certificate. In view of the above, the contention raised by the Personal Guarantor with respect to validity of the Recovery Certificate is not tenable.

(xii) Since the Recovery Certificate was issued on 08.07.2022, and the Petition was filed on 05.07.2025 i.e. within three years from the date of issuance of recovery certificate, we are of the considered view that the present Petition has been filed well within the limitation period.

28. The Personal Guarantor herein contended that she ceased to be a Director of the Corporate Debtor with effect from 21.11.2013 and that the Guarantee Agreements executed by other Personal Guarantors, i.e. K. Venkata Rama Vidya Sagar, K. Mohan Nageswar dated 23.01.2014 amounts to novation as per Section 62 of the Indian Contract Act, 1872, consequently absolving the Personal Guarantor herein from the liabilities arising out of the Guarantee Agreements executed by her. Therefore, the next issue for consideration before us is ***"Whether the execution of the Guarantee Agreements dated 23.01.2014 by the other Personal Guarantors amounts to Novation under Section 62 of the Indian Contract Act,1872?***

(i) It is noted from Section 62 of the Indian Contract Act, 1872 that when the parties to a contract agree to substitute a new contract, it would amount to novation of a contract. The Section 62 is reproduced below:

> ***"62. Effect of novation, rescission, and alteration of contract.-*** *If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.*
>
> *Illustrations.*
>
> *(a) A owes money to B under a contract. It is agreed between A, B and C, that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.*
>
> *(b) A owes B 10,000 rupees. A enters into an agreement with B, and gives B a mortgage of his (A's), estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old.*
>
> *(c) A owes B 1,000 rupees under a contract, B owes C 1,000 rupees, B orders A to credit C with 1,000 rupees in his books, but C does not assent to the agreement. B still owes C 1,000 rupees, and no new contract has been entered into."*

(ii) It is noted from the letter dated 06.01.2014 of the Financial Creditor that although the letter has been issued for the limited purpose of

extension of validity of working capital limits keeping unchanged the rest of the terms and conditions as contained in the Sanction Letter dated 14.08.2012, save and except the conditions mentioned at point 2 above, however, the Personal Guarantor herein has affixed her signature accepting the terms and conditions of the letter in the capacity of both as a Director of the Corporate Debtor and as a Personal Guarantor to the facilities granted by the Financial Creditor. The letter dated 06.01.2014 along with acceptance by the Personal Guarantor herein is at para no. 25 (xv) of this Order.

(iii) It is further noted that there is no mention either in the aforesaid letter dated 06.01.2014 of the Financial Creditor or in the Guarantee Agreements dated 23.01.2014 executed by the Personal Guarantors namely K. Venkata Rama Vidya Sagar, K. Mohan Nageswar that the same are for substitution of the earlier loan facility or for the guarantee agreements executed by the Personal Guarantor herein absolving her liability as a Personal Guarantor.

(iv) In view of the above, we are of the considered view that the execution of the Guarantee Agreements dated 23.01.2014 by the other Personal Guarantors does not amount to Novation under Section 62 of the Indian Contract Act,1872 as the Personal Guarantor herein accepting the terms and conditions of the letter dated 06.01.2014 also accepted that the rest of the terms and conditions of Sanction letter dated 14.08.2012. Further, the Guarantee Agreements dated 25.03.2010, 11.04.2011 and 08.10.2012 executed by the Personal Guarantor herein are

continuing guarantee and therefore does not amount to novation of the contract .

29. In terms of the Facility Agreements dated 25.03.2010, 11.04.2011 and 08.10.2012, the Personal Guarantor herein executed Guarantee Agreements dated 25.03.2010, 11.04.2011 and 08.10.2012 in favour of the Financial Creditor. It is noted that the Hon'ble NCLAT vide its judgement dated 28.02.2025 in the matter of ***State Bank of India vs. Mr. Deepak Kumar Singhania*** in Company Appeal (AT) (Insolvency) No.191 of 2025 has held that liability of the Guarantor must be determined strictly in terms of the Deed of Guarantee. The relevant extracts of the judgement are reproduced below:

> 24. This Tribunal in ***Archana Deepak Wani vs. Indian Bank – Company Appeal (AT) (Ins.) No.301 of 2023*** has also held that liability of the Guarantor must be determined strictly in terms of the Deed of Guarantee. In paragraph 26, following has been laid down:
>
> > "**26.** The scheme of I&B Code clearly indicate that both the Principal Borrower and the Guarantor become liable to pay the amount when the default is committed. When default is committed by the Principal Borrower the amount becomes due not only against the Principal Borrower but also against the Corporate Guarantor, which is the scheme of the I&B Code. When we read with as is delineated by Section 3(11) of the Code, debt becomes due both on Principal Borrower and the Guarantor, as noted above. The definition of default under Section 3(12) in addition to expression 'due' occurring in Section 3(11) uses two additional expressions i.e "payable" and "is not paid by the debtor or corporate debtor". The expression 'is not paid by the debtor' has to be given some meaning. As laid down by the Hon'ble Supreme Court in ***"Syndicate Bank vs. Channaveerappa Beleri & Ors." (supra)***, a guarantor's liability depends on terms of his contract. There can be default by the Principal Borrower and the Guarantor on the same date or date of default for both may be different depending on the terms of contract of guarantee. It is well settled that the loan agreement with the Principal Borrower and the Bank as well as Deed of Guarantee between the Bank and the Guarantor are two different transactions and the Guarantor's liability has to be read from the Deed of Guarantee."

30. Therefore, the next issue for consideration before us is ***"Whether the Personal Guarantor is liable to pay the dues by virtue of the Guarantee Agreements executed by her?"***

(i) As per clause 6 of the Guarantee Agreement, the financial creditor is entitled to treat the Personal Guarantor as the principal debtor for all the payments guaranteed by her. The above clause of the Guarantee Agreement is reproduced below:

> 6. In order to give effect to the Guarantee herein contained the Bank shall, upon invoking of the Guarantee, be entitled to act as if the Guarantor were principal debtors to the Bank for all payments guaranteed by them as aforesaid to the Bank.

(ii) As per Clause 8 of the Guarantee Agreement, the Financial Creditor has the liberty to call upon the Personal Guarantor to pay dues without requiring the Financial Creditor to realise the securities provided by the Corporate Debtor. The above clause of the Guarantee Agreement is reproduced below:

> 8. Notwithstanding the Bank's rights under any security which the Bank may have obtained or may obtain the Bank shall have fullest liberty to call upon the Guarantor to pay all or any other monies for the time being due to the Bank in respect of or under the Facilities or any of them without requiring the Bank to realise from the Borrower the amount due to the Bank in respect of the Facilities and/or requiring the Bank to enforce any remedies or securities available to the Bank.

(iii) As per Clause 10 of the Guarantee Agreement, the guarantee is irrevocable and enforceable notwithstanding, any dispute between the Financial Creditor and Corporate Debtor. The above clause of the Guarantee Agreement is reproduced below:

> 10. The Guarantee shall be irrevocable and enforceable against the Guarantor notwithstanding any dispute between the Bank and the Borrower.

(iv) As per Clause 14 of the Guarantee Agreement, the Personal Guarantor shall not be released or discharged in the event of losing/

parting with securities given by the Corporate Debtor. The above clause of the Guarantee Agreement is reproduced below:

> 14. The Guarantor agree that notwithstanding the Bank for any reason whatsoever losing and/or parting with any of the securities given by the Borrower the Guarantor shall not be released or discharged of their obligations under this Guarantee and in the event of the Bank so losing or parting with the security the Guarantor shall be deemed to have consented to or acquiesced in the same.

(v) As per clause 15 of the Guarantee Agreement, in case of winding up of the Corporate Debtor, the Financial Creditor may recover dues from the Guarantor. The above clause of the Guarantee Agreement is reproduced below:

> 15. The Guarantor agree that if the Borrower being an individual becomes an insolvent or a firm being dissolved 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 under-taking 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 Guarantor 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 Guarantor in competition with the Bank until all the Bank's claims are fully satisfied and the Guarantor will not by 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 Guarantor of the full amount payable by the Guarantor notwithstanding any such proof or composition as aforesaid. On the happening of any of the aforesaid events, the Guarantor shall forthwith inform the Bank in writing of the same.

(vi) As per clause 16 of the Guarantee Agreement, the Guarantee is independent and distinct from the securities given to the Financial Creditor and the Personal Guarantor will not be discharged of liability even if the bank fails to exercise its rights on such security. The above clause of the Guarantee Agreement is reproduced below:

16. The Guarantee hereby given is independent and distinct from any security that the Bank has taken or may take 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 the Guarantor have not given this Guarantee upon any understanding faith or belief that the Bank has taken and/or may hereafter take any or other such security and that notwithstanding the provisions of Sections 140 and 141 of the Indian Contract Act, 1872 or other section of that Act or any other law, the Guarantor will not claim to be discharged to any extent because of the Bank's failure to take any or other such security or in requiring or obtaining any or other such security or losing for any reason whatsoever including reasons attributable to its default and negligence benefit of any or other such security or any of rights to any or other such security that have been or could have been taken.

(vii) As per clause 17 of the Guarantee Agreement, any judgement/ award/ order obtained by the Financial Creditor against the borrower shall also be binding on the Personal Guarantor and the statement of account duly certified by the Financial Creditor shall be binding and conclusive against the Personal Guarantor. The above clause of the Guarantee Agreement is reproduced below:

17. The Guarantor 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 Facilities and or any part payment as may be made by the Borrower towards the principal sum hereby guaranteed or any judgment, award or order obtained by the Bank against the Borrower shall be binding on the Guarantor and the Guarantor 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 Guarantor also and the Guarantor further agree that in the Borrower making an acknowledgment or making a payment the Borrower shall in addition to his personal capacity be deemed to act as the Guarantor duly authorised agent in that behalf for the purposes of Sections 18 and 19 of the Limitation Act of 1963

(viii) In view of the above, we are of the considered view that the Personal Guarantor is liable to pay the dues by virtue of the Guarantee Agreements executed by her.

31. The next issue for consideration before us is ***"Whether the Form B Demand Notice was duly served upon the Personal Guarantor***

demanding the outstanding amount beyond the threshold of Rs. One crore due and payable under the Guarantee Agreement?"

(i) The Financial Creditor issued the demand notice for outstanding debt of Rs.67,39,33,333.75 in Form B on 04.06.2025 to the Personal Guarantor's Address, which was returned on 10.06.2025 with the endorsement "No such person in the address". The relevant extract of the Form B notice and postal endorsement are reproduced below:

BY REGISTERED POST WITH ACKNOWLEDGEMENT DUE

FORM B

[Under rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019]

Ref: IDBI / NMG (Hyd) / ~~027~~ / ESPL / 2025-26 04.06.2025

Smt. Kukkala Krishna Kumari
No.9-29-10/A, Gokul Nivas,
Balajinagar, Siripuram,
Visakhapatnam - 530 003
Andhra Pradesh.

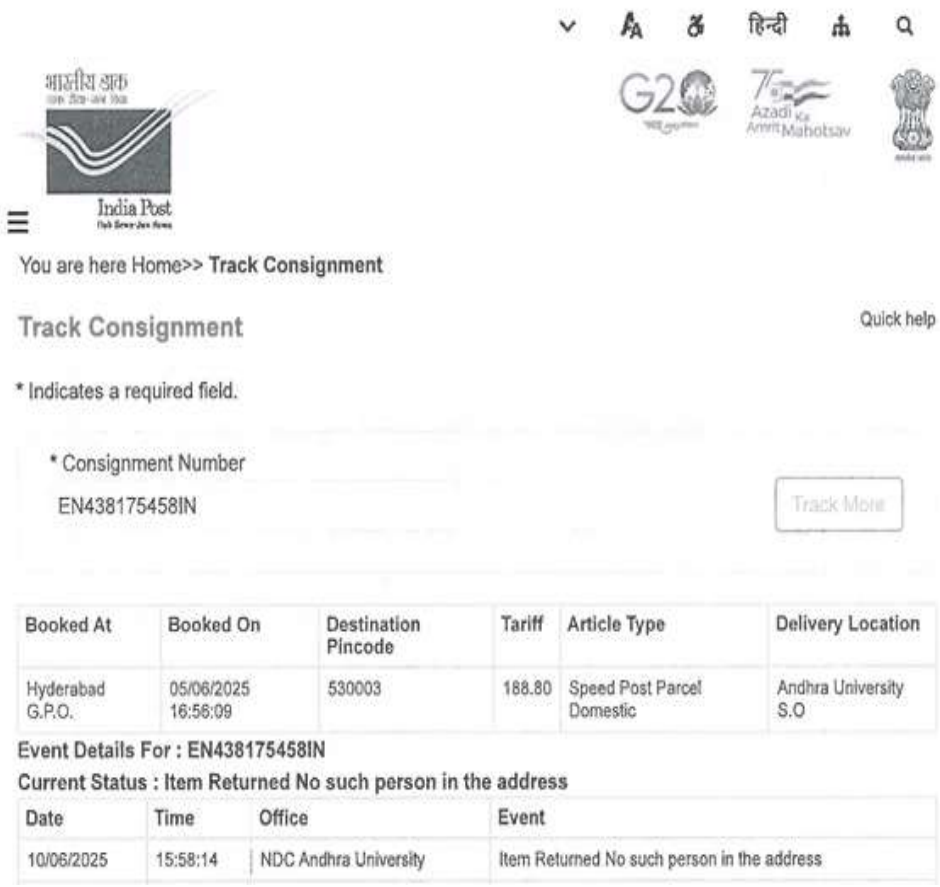
From
The Authorised officer,
IDBI Bank Limited,

Branch Office:
2nd Floor, NPA Management Group,
#5-9-89/1&2, Chapel Road,
Hyderabad- 500 001

Registered Office:
IDBITower,WTC
Complex, Cuffee Parade,
Mumbai- 400 005

Subject: Demand notice in respect of unpaid debt in default due from M/s. Esskay Shipping Private Limited under the Code.

PARTICULARS OF DEBT		
1.	Total outstanding debt (including any interest or penalties) as on 27.05.2025	Rs.67,39,33,333.75 (Rupees Sixty Seven Crore Thirty Nine Lakh Thirty Three Thousand Three Hundred Thirty Three and Paisa Seventy Five Only) as on 27.05.2025. Facility wise outstanding details is enclosed herewith as **Annexure No. 1**
2.	Amount of debt in default	Rs.67,39,33,333.75 (Rupees Sixty-Seven Crore Thirty-Nine Lakh Thirty-Three Thousand Three Hundred Thirty-Three and Paisa Seventy-Five Only) as on 22.05.2025.



India Post

You are here Home>> **Track Consignment**

Track Consignment

Quick help

* Indicates a required field.

* Consignment Number

EN438175458IN

Track More

Booked At	Booked On	Destination Pincode	Tariff	Article Type	Delivery Location
Hyderabad G.P.O.	05/06/2025 16:56:09	530003	188.80	Speed Post Parcel Domestic	Andhra University S.O

Event Details For : EN438175458IN

Current Status : Item Returned No such person in the address

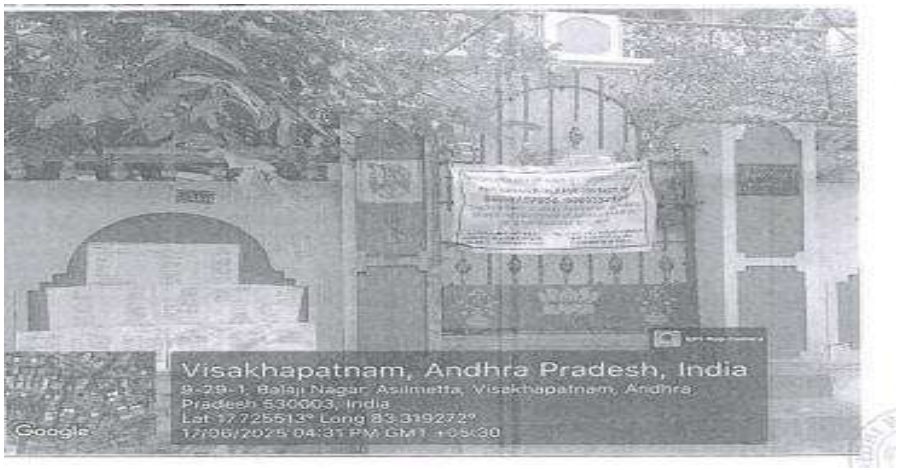
Date	Time	Office	Event
10/06/2025	15:58:14	NDC Andhra University	Item Returned No such person in the address

(ii) On 17.06.2025, the officials of the Financial Creditor visited the address of the Personal Guarantor and affixed the demand notice at the entrance gate. The relevant extracts of the visit report are reproduced below:

IDBI Bank Limited
Retail Recovey-Visakhapatnam
Esskay Shipping Pvt. Ltd. (ESPL)
Visit Report

S. No.	Particulars	Remarks
1	Name of the company	**Esskay Shipping Pvt. Ltd. (ESPL)**
2	Name & designation of the visiting officer	Shri Chintada Bhaskar Rao, Manager
3	Date of Visit	June 17, 2025
4	Purpose of Visit	Effective service of Demand Notice (Form B) under Rule 7(1) of the Insolvency and Bankruptcy Rules, 2019,
5	Particulars	Personal Insolvency Resolution Process has to be initiated against the three PGs of ESPL and applications needs to be filed in NCLT, Hyderabad. The Demand Notices were served at available address i.e. Vishakhapatnam and same got returned. Consequently, effective serving of the Notice was done by way of pasting at that address by Shri Chintada Bhaskar Rao, Manager, Retail Recovery, Siripuram, Vishakhapatnam. The exercise was completed.
6	**Addresses of** 1.Shri K.Venkata Rama Vidya Sagar 2.Shri.K Mohan Nageswar 3.Smt. Kukkala Krishna Kumari.	D.No-9-29-10/A Gokul Nivas Balaji Nagar Siripuram Visakhapatnam-530003 Andrapradesh.
7	Observations and Comments:	As per demand notice addressee we had visited the location and it was observed that Scheduled property door locked, hence notices were pasted at entrance gate.
6	Documentary evidence	Time and GPS stamped images of all the addresses have been provided at **Annexure-I**.

Chintada Bhaskar Rao
Manager-Retail Recovery.



(iii) The Financial Creditor identified two alternate addresses of the Personal Guarantor by appointing an agency to identify the address of the Personal Guarantor and sent the demand notice along with

Company Petition on 23.09.2025, which were returned/redirected to the sender.

(iv) In this regard, we refer to Rule 7(1) of the Personal Guarantors Rules, which states that *"a demand notice under clause (b) of sub-section (4) of section 95 shall be served on the guarantor demanding payment of the amount of default, in Form B."* Further, Rule 3 (g) also defines "serve", which is as below:

> *(g) "serve" means sending any communication by any means, including registered post, speed post, courier or electronic form, which is capable of producing or generating an acknowledgement of receipt of such communication:*
>
> *Provided that where a document cannot be served in any of the modes, it shall be affixed at the outer door or some other conspicuous part of the house or building in which the addressee ordinarily resides or carries on business or personally works for gain.*

(v) As the demand notice dated 04.06.2025 sent in Form B to the Personal Guarantor was returned, the same was affixed at entrance gate of the registered address on 17.06.2025. Further, Financial Creditor also sent notice to the alternate addresses identified by the Agency. In view of Rule 3 (g) of the Personal Guarantor Rules, we are of the considered view that the demand notice in Form B has been duly served upon the Personal Guarantor demanding the outstanding amount beyond the threshold of Rs. One crore due and payable under the Guarantee Agreement.

32. In terms of the provisions of Section 100 of IBC, while considering the admission of Petition filed under Section 95(1) of IBC, this

Adjudicating Authority needs to satisfy itself regarding the acceptability of the RP report filed under Section 99 of IBC. In the present case, the RP in his report filed under Section 99 of IBC has stated that the Petition filed by the Financial Creditor is in compliance with section 95 of the Code and has recommended for acceptance of the present Petition for initiating PIRP against the Personal Guarantor herein. In view of the above, we are of the considered view that this Petition needs to be admitted. Therefore, CP (IB)/29/95/AMR/2025 is admitted.

33. As a sequel to the admission of the present Petition, moratorium commences 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 beginning with the date of admission of the Petition or on the date this Adjudicating Authority passes an order on the repayment plan under section 114, whichever is earlier.

34. 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(s), 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.

35. 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.

36. If no repayment plan is submitted within the period stipulated under Section 106 (1), the RP shall submit a report to this Adjudicating Authority as provided under Section 106 (1A).

37. If a repayment plan is submitted, the RP shall issue the notice of the meeting of the creditors in accordance with sub-sections (3A) & (4) of Section 106 and Section 107 of the Code.

38. 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.

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

40. 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.

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

Sd/-	**Sd/-**
(Umesh Kumar Shukla)	**(Kishore Vemulapalli)**
Member (Technical)	**Member (Judicial)**

Naila/ Krishna PS