

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, Court-I, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

**CP (IB) No. 178/Chd/Hry/2021
and
I.A. No. 2026/2024 & I.A. No. 2027/2024**

**Under Section 95 of the
Insolvency and Bankruptcy
Code, 2016 and Rule 11 of
NCLT Rules, 2016**

In the matter of C.P.(IB) No.178/Chd/Hry/2021:

Siemens Financial Services Private Limited

Having its registered office at:
Plot No.2, Sector No.2, Khargar Node,
Navi Mumbai 410210

...Petitioner

Vs.

Ravi Kumar Jain

M/s RCC Infraventures Ltd. 14, Ground Floor
Vipul Agora M.G. Road, Sector -28,
Gurgaon, Haryana - 122002

...Guarantor

Also at:

GV-02, The Palm Springs, Golf Course Road,
Opposite IBIS Hotel, Sector- 54
Galleria DLF-IV, Gurgaon- 122009
Also at:
RCC Infraventures Ltd., KM 54
Haridwar Nagina Road Colony
Opposite PNS Arhiant School
(Camp 02), Village Sarvanpur
Najibabad, Uttar Pradesh- 246763

Also at:

RCC Hari Agro Ventures India Pvt. Ltd.
A-2, 3rd Floor, Panchsheel Apartment
Vaibhav Nagar, Agra

Uttar Pradesh- 282001

Also at:

Vardhman Resorts Pvt. Ltd.

3A, Manglik Colony,

Vaibhav Nagar, Agra

Uttar Pradesh- 282001

In the matter of I.A. 2026 of 2024:

Smt. Sangita Narula

W/o Shri Praveen Kumar Narula

R/o 45, North Avenue, Punjabi Bagh

New Delhi- 26

...Applicant

Vs.

1. Ravi Kumar Jain

RCC Infraventures Ltd.

14, Ground Floor

Vipul Agora M.G. Road,

Sector 28, Gurgaon

Haryana- 122001

Also at:

R/o Villa Apartment No. TPV-G-GV-GV02,

The Palm Springs, situated in the Revenue Estate of Village Wazirabad,

Tehsil & District - Gurgaon (Haryana)

...Respondent No.1/Personal Guarantor

2. Siemens Financial Services Private Limited

Having its registered office at:

Plot No.2, Sector No.2, Khargar Node,

Navi Mumbai- 410210

...Respondent No.2

3. Union Bank of India

Through its Authorized Officer,

Union Bank of India Stressed Assets Management Branch

2nd Floor, Sharda Tower, Kapoorthala,

Aliganj, Lucknow,

Uttar Pradesh -226024

...Respondent No.3

And in the matter of I.A. 2027 of 2024:

Ravi Kumar Jain

Son of Lat Sh. Radhey Lal Jain

Director cum Guarantor of M/s RCC Infraventures Ltd

R/o Villa Apartment No. TPV-G-GV-GV02,

The Palm Springs, situated in the Revenue Estate of Village Wazirabad,

Tehsil & District - Gurgaon (Haryana)

...Applicant/Personal Guarantor

Vs.

1. Union Bank of India

The Authorized Officer,

Union Bank of India Stressed Assets Management Branch

2nd Floor, Sharda Tower, Kapoorthala,

Aliganj, Lucknow,

Uttar Pradesh -226024

...Respondent No.1

2. Smt. Sangita Narula

W/o Sh. Parveen Kumar Narula

R/o 45, North Avenue, Punjabi Bagh West

New Delhi - 110026

...Respondent No.2

3. Smt. Neeru Jain

W/o Sh. Ravi Kumar Jain

R/o Villa Apartment No. TPV-G-GV-GV02, The Palm Springs,

situated in the Revenue Estate of Village Wazirabad,

Tehsil & District - Gurgaon (Haryana),

...Proforma Respondent No.3

4. RCC INFRAVENTURE LTD

3A, Manglik Colony, Vibhav Nagar,

Agra, Uttar Pradesh

Also At:

14, ground floor, Vipul Agora M.G. Road,

Sector -28, Gurgaon,

Haryana - 122002

(Under CIRP represented through R.P.)

... Proforma Respondent No.4

5. Siemens Financial Services Private Limited

Having its registered office at:

Plot No.2, Sector No.2, Khargar Node,
Navi Mumbai 410210

...Respondent No.5

Judgment delivered on: 04.07.2025

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE SH. SHISHIR AGARWAL, MEMBER (TECHNICAL)**

Present:

For the RP in main petition:

Mr. Sanjeev Kataria, Advocate
Mr. Gulshan Kumar Gupta,
RP-in-person

For the Petitioner in main petition:

Mr. Raj Kumar Narang, Advocate

For the Respondent in main CP and
Applicant in IA No.2027/2024:
and Respondent No.1 in IA No.2026/2024

Mr. Anand Chhibbar, Senior Advocate
Mr. Karan Kaushal, Advocate
Ms. Swati Vashisth, PCA

For the Union Bank of India and
Respondent No.3 in IA No.2026/2024:
and Respondent No.1 in IA No.2027/2024

Mr. Sandeep Arora, Advocate

For the Applicant-Auction Purchaser :
in IA No. 2026/2024 and Respondent
No.2 in IA No.2027/2024

Mr. Virender Ganda, Senior Advocate
Mr. Tanuj Gulati, Advocate
Mr. Lokesh Bhidvri, Advocate
Mr. Nishant, Advocate
Mr. Ankit Sharma, Advocate

For Performa Respondent No.4 :
in IA No.2027/2024

None

**PER: SH. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
SH. SHISHIR AGARWAL, MEMBER (TECHNICAL)**

JUDGMENT

I.A. No. 2026 of 2024, I.A. No. 2027 of 2024 and C.P.(IB) No.178/Chd/Hry/2021 are taken up together for discussion and adjudication, being inter-related and interconnected.

C.P.(IB) No.178/Chd/Hry/2021:

The present petition has been filed by **Siemens Financial Services Private Limited**, (hereinafter referred to as the “**Petitioner**” or “**SFSPL**”), under Section 95 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as the “**Code**” or “**IBC**”) to initiate Personal Insolvency Resolution Process (hereinafter referred to as the “**PIRP**”) against **Ravi Kumar Jain**, (hereinafter referred to as the “**Personal Guarantor**”).

2. The registered office/address of the Corporate Debtor and the Personal Guarantor is situated in the State of Haryana, falling under the jurisdiction of this Adjudicating Authority.
3. The present application was filed on 24.03.2021 before this Adjudicating Authority on the ground that the Guarantor has defaulted to make a payment of a sum of Rs. Rs.8,94,58,478/-.
4. The details of transactions leading to the filing of this petition as averred by the Petitioner are as follows:
 - i. The Corporate Debtor, where the Personal Guarantor was a director, approached SFSPL for a lease facility of equipment and entered into a Master Lease Agreement on 21.05.2019. Various documents were executed, including a Lease Rental dated 28.05.2019, a Term Sheet dated

27.05.2019, and a Form of Guarantee dated 28.05.2019. An Irrevocable and Unconditional Demand Promissory Note was also issued by the Guarantor to SFSPL on 28.05.2019.

- ii. RCC Infraventures Ltd. (hereinafter referred to as the **“Corporate Debtor”**) committed a default in repaying the lease rentals.
- iii. Details of the machines/assets over which SFSPL is having its sole and exclusive ownership and its total cost are clearly stated in the Surrender Letter dated 24.12.2019 issued by the Corporate Debtor in favour of SFSPL.
- iv. Thereafter, SFSPL issued a Legal Notice dated 07.12.2020 for termination of the lease facility and invocation of Arbitration under the Master Lease Agreement dated 28.05.2019 and Demand Notice dated 11.12.2020 under rule 7(1) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019.
- v. The Guarantor is liable for an amount of Rs.9,97,31,150/- as on date 20.10.2020.
- vi. Reliance is placed upon the judgment of Hon’ble NCLAT in the matter of **“State Bank of India vs. Mahendra Kumar Jajodia Personal Guarantor to Corporate Debtor”** and **“INTEC Capital Limited vs. Eastern Embroidery Collection”** to assert the maintainability of the Section 95 petition without proceeding qua the Corporate Debtor.
- vii. RP was appointed vide order dated 03.01.2024 with directions to submit his report under Section 99 of IBC within ten days.

5. **RP's Report:** Gulshan Kumar Gupta (RP) filed his report through I.A. No.410/2024, wherein the observation recorded by RP are as under:

7. That the Resolution Professional has examined the application as required under sub-section (1) of section 99 of I&B Code and on the basis on such examination it is most respectfully submitted:

- a. As per information available at the website of the Ministry of Corporate Affairs, the registered office of the Corporate Debtor is situated at 14, Ground Floor, Vipul Agora M.G. Road, Sector 28, Gurgaon, Haryana. Accordingly, this Hon'ble AA has the territorial jurisdiction over the place where the registered office of the corporate person is located [provisions of section 60 complied with].*
- b. The amount of default as mentioned in the petition is Rs. 8,94,58,478 (Rupees eight crore ninety-four lakh fifty-eight thousand four hundred seventy-eight only) and same is above the threshold limit of rupees one thousand rupees [provisions of section 78 complied with].*
- c. A demand notice was issued on 14.12.2020 in the prescribed form [provisions of rule 7 (1) complied with].*
- d. The debtor failed to make repayment of the debt in default within fourteen days of the service of notice of demand [provisions of section 95 (4) (b) complied with].*
- e. The creditor has not enclosed with application the proof for registration of debt in default with information utility and informed that default has not been registered with the information utility [provisions of section 95 (3) not applicable].*
- f. The relevant documents evidencing the debt owed by the debtor to the creditor and default in repayment are duly enclosed with the application [provisions of section 95 (4) (a) and (c) complied with].*

- g. A copy of the application has been served to the debtor and guarantor [provisions of section 95 (5) and rule 7 (3) complied with].*
 - h. The applicant has provided a copy of the application to the Resolution Professional within 3 days of uploading the order at NCL T website i.e., on 15.01.2024 and to the Board for its record on 17.01.2024 [provisions of rule 9 complied with].*
 - i. The application is in the prescribed form C and accompanied with a fee of rupees two thousand [provisions of section 95 (6) and rule 7(2) complied with].*
 - j. The application not submitted under section 94, hence the comments regarding eligibility of the personal guarantor for a fresh start under Chapter II are not applicable in the instant matter [provisions of section 95 (8) not applicable].*
 - k. The application by creditor to initiate insolvency resolution process against the personal guarantor is in accordance with the requirements of section 95 and the relevant documents evidencing the debt owed by the debtor to the creditor and default in repayment are duly enclosed with the application.*
- 8. That in view of the above-mentioned facts, circumstances and grounds, the Resolution Professional by way of this report recommends to the Hon'ble Adjudicating Authority for acceptance of the Petition bearing C.P. (IB)/178(CH)2021 filed by the Applicant under section 95 of the I&B Code.*

6. The Personal Guarantor filed its objections to the RP's Report, with a prayer to vacate the rigors of Section 96 imposed on the Personal Guarantor. The Personal Guarantor raised the following objections:

- i. The debt between SFSPL and the Corporate Debtor is not registered with the information utility, and SFSPL has failed to provide supporting documents.
- ii. SFSPL has not pursued claims against the Corporate Debtor, possibly because it wouldn't withstand arbitration or the rigors of Section 9 of IBC.
- iii. The statement of account (Annexure A-11 of the petition) and the surrender letter dated 24.12.2019 (Annexure A-3) indicate that lease rentals were paid up to 28.11.2019. The equipment was surrendered on 24.12.2019. Therefore, any default could only be for November and December 2019, amounting to Rs.35,29,602/- as per their own statement. This significantly contrasts with the SFSPL's claimed amount of Rs.9,97,31,150/- which is deemed untenable.
- iv. SFSPL did not serve a demand notice to the Personal Guarantor invoking his personal guarantee, except for a Form B notice dated 07.12.2020. The respondent alleges that triggering Section 95 of IBC 2016 and imposing an interim moratorium demonstrates the SFSPL's intentions, and the SFSPL was obligated to contact the Personal Guarantor before initiating the IRP. Thus, the demand notice is considered premature and malicious.
- v. The machinery leased did not meet the operational standards prescribed by NHA1 and was rejected, leading to its surrender in December 2019. SFSPL is accused of mischievously preferring the present claim under the promissory note dated 28.05.2019, which is fundamentally different from what the Personal Guarantor intended to execute (non est factum). The promissory notes are for the entire 48-month lease value of

Rs.10,52,61,310/-, but the lease was terminated within six months. SFSPL's claim of Rs.9,97,31,150/- against six months of lease rent is questioned.

- vi. SFSPL's claim of Rs.5,31,43,944/- under 'Penal Discounting Value' (depreciation of machinery) and Rs.95,65,910/- under 'GST on Penal Discount' is beyond the scope of the 'Form of Guarantee', which is limited to debts due and payable by the Lessee to the Lessor under or in connection with the Lease, and the Personal Guarantor has not undertaken liability for depreciation or futuristic claims.
- vii. The statement of account shows total outstanding lease rent of Rs.3,16,98,175/- up to 28.09.2020. However, the machinery was surrendered in December 2019, making the claim for lease rent from January to September 2020 unsubstantiated. The claimed amount of Rs.2,86,14,534/- under 'amount outstanding (Past Dues)/Principal outstanding' in Part III of the Petition also does not tally with the statement of account, suggesting an over-inflated and untenable claim.
- viii. SFSPL's statement in Part III, Para 16 i.e. 'Statement by creditor in respect of excluded debt' that the IRP does not include liability for damages for negligence, nuisance, or breach of obligation, is disputed. Personal Guarantor points out that charges like 'Penal Discounting Value', 'Cheque Dishonour Fees', 'Default Interest', 'GST on Penal Discount', 'GST on Default Interest', 'Buy Back Value', 'Total Sale Price', and 'Other charges including legal charges/stamp duty' clearly fall under the definition of excluded debts.

7. RP filed his response to the objections raised by the Personal Guarantor, wherein it is submitted that:

- i. Regarding the Personal Guarantor's contention about the non-registration of debt with the information utility, such registration is not mandatory for proceedings against a personal guarantor.
- ii. Initiating action under Section 9 of the IBC is not mandatory for filing an application against a personal guarantor.
- iii. The Personal Guarantor's claim that the leased equipment failed to meet operational standards, no such conditions were mentioned in the master lease agreement, and no supporting documents were provided by the Personal Guarantor.
- iv. The Personal Guarantor in his reply has contended that the default is attributable to the debtor for the month of November and December, 2019 amounting to Rs.35,29,602 and SFSPL claimed the amount of Rs.9,97,31,150. SFSPL has also forfeited security of Rs.77 Lacs as per averments made by the Personal Guarantor. The amount of default claimed by SFSPL is Rs.8,94,58,478, which is above the threshold limit.
- v. Clause 16.5 of the master lease agreement is cited, outlining the lessee's liability upon termination, including all due moneys, liquidated damages, and early repayment costs:

On termination according to this Agreement, the Lessee shall be liable to pay to the Lessor:

a) all moneys due and payable under this Agreement and the terminated Lease Schedule including but not limited to any default interest under this Agreement (Default Interest);

b) liquidated damages equal to the aggregate amount of all future Lease Instalment payable under this Agreement and the terminated Lease Schedule(s); and

c) any early repayment or other break costs incurred by the Lessor as a secured or financing party or the owner of the Equipment in prepaying any funding arrangement in connection with the purchase and leasing of the Equipment to the Lessee.

Any termination of this Agreement or any Lease Schedule and any payment by the Lessee will not affect any other rights that the Lessor has under this Agreement or any Lease Schedule or law or otherwise.

8. Written Submissions were filed by the Personal Guarantor, wherein refuting the allegation of collusion between him and SFSPL, it is submitted that:

- i. The date of filing of Section 95 petition is 24.03.2021, whereas the date of declaration of housing loan account of the Personal Guarantor as Non-Performing Asset (hereinafter referred to as “**NPA**”) is 31.03.2021 and auction of the alleged property took place in April, 2024. Further, the Personal Guarantor is facing 11 criminal cases u/s 138 of N.I. Act initiated by SFSPL. Also, admission under Section 100 of IBC would be of a serious consequence to the Personal Guarantor and cannot be interpreted as a result of collusion.
- ii. The argument addressed by the Bank and the Auction Purchaser with respect to legality of auction qua the subject asset, is that the moratorium will get triggered from the date of the appointment of the RP is not sustainable in terms of judgment in ***Dilip B. Jiwarika vs. Union of India 2023 INSC 1018***, wherein it has been held by the Hon’ble Supreme Court that interim moratorium gets triggered from the date of filing of application under Section 95.

I.A. No. 2026 of 2024:

9. This application is filed by Smt. Sangita Narula (hereinafter referred to as the **“Auction Purchaser”**) under Rule 11 of the NCLT Rules, 2016 against the Personal Guarantor, SFSPL and the Union Bank of India (hereinafter referred to as **“UBI”**) with a prayer that the present proceedings have no effect qua the property (described in the facts) and further specific directions qua the release of the said property as the same being already sold by the UBI before the appointment of RP in the present proceedings.
10. The facts of the application are as under:
- i. Personal Guarantor and his wife, Neeru Jain, initially took out a loan from UBI in 2013, securing it with an equitable mortgage on their property- Villa No. TPV GVG02 in the Palm Springs situated in the Estate of Village Wazirabad, Sector 54, Golf Course Road, Gurugram, Haryana (**“alleged property”**). In 2019, the Corporate Debtor, a company where the Personal Guarantor was a director, also secured a loan using the same property as collateral security.
 - ii. Both loan accounts became NPA due to a failure to make payments. Consequently, UBI initiated recovery proceedings under the SARFAESI Act, by issuing a demand notice and subsequently, a possession notice dated 24.08.2021 was issued. Thereafter, UBI filed a petition under Section 14 of the SARFAESI Act for taking possession of the alleged property.

- iii. The Auction Purchaser purchased this property at an auction held by UBI on 29.04.2022, for Rs.7.26 crores. A sale certificate was issued to her on 28.06.2022.
- iv. The Personal Guarantor and the Corporate Debtor repeatedly challenged the UBI's actions by filing applications with Debt Recovery Tribunals (**DRTs**) at Lucknow and Allahabad, appeals with the Debt Recovery Appellate Tribunal (**DRAT**), which all were dismissed. A writ petition was filed with the Allahabad High Court, wherein the Personal Guarantor and the Corporate Debtor sought liberty to file objections before the Ld. Additional Civil Judge. On 10.08.2022, the Ld. Additional Civil Judge, Gurugram allowed the application filed by the Bank under Section 14 of the SARFEASI Act and receiver was appointed to take possession of the property.
- v. Another two applications were filed by the Personal Guarantor and the Corporate Debtor under Section 17 of the SARFAESI Act seeking quashing of the order passed by the Ld. Additional Civil Judge, Gurugram. The Corporate Debtor approached the Hon'ble High Court of Allahabad wherein the Hon'ble High Court was pleased to propose the petitioners to deposit atleast sum of Rs.2 crores to show their bonafide, which they failed to do so.
- vi. The Personal Guarantor and the Corporate Debtor again approached the Hon'ble High Court of Allahabad, whereby the Hon'ble High Court vide order dated 05.04.2023 observed "*In case, higher offer is given, the property shall be sold by the bank other than the two properties i.e. (i) Residential House No.3A (Owned by Ravi Kumar Jain) & 3B (Owned by*

Neeru Jain) situated at Manglik Colony, Vibhav Vihar, Agra admeasuring area of 348.38 sqmt. and (ii) Villa Apartment No. TPV-G-GV-GV02, The Palm Springs, situated in the Revenue Estate of Village Wazirabad, Tehsil & District - Gurgaon (Haryana), Area - 3950 Sq.Ft., in the name of Mr. Ravi Kumar Jain S/o Late Radhey Lal Jain and Mrs. Neeru Jain W/o Mr. Ravi Kumar Jain, for which sale certificate has been issued and are mentioned at Serial No.10 and 11. ”

- vii. The Personal Guarantor is deliberately misusing court orders and engaging in "forum shopping" (filing multiple applications in different courts) to cause delays and complicate the process.
 - viii. Despite legally purchasing the property and paying the full amount, the Auction Purchaser has been unable to gain physical possession for nearly two years and has incurred over Rs.2 crores in interest payments on her own loan to acquire the property.
 - ix. IBC's moratorium provisions apply only to the corporate debtor's assets and not to personal assets already sold in an auction.
11. The Personal Guarantor refuting the contentions of the Auction Purchaser stated in his reply:
- i. The Auction Purchaser's application is not valid because she failed to disclose that she had already appealed to the DRAT against the order dated 13.05.2024 passed by the Ld. DRT Allahabad temporarily halted possession of the secured asset on account of interim moratorium under Section 96 of IBC.
 - ii. UBI improperly enforced a "second charge" (corporate loan) on the property without first addressing the "first charge" (housing loan), which

violates Section 48 of the Transfer of Property Act, 1882, rendering the enforcement and subsequent auction of the property null and void. The said issue is pending consideration before the Ld. DRT, Allahabad.

- iii. An interim moratorium, as per Section 96 of the IBC began on 24.03.2021, when the main petition was filed against the Personal Guarantor, which prevents creditors from initiating any recovery actions or proceedings related to debts.
- iv. Since the property auction occurred in April 2022, well after the moratorium commenced, no rights stemming from this auction are valid for the Auction Purchaser. The previous court orders relied upon by the Auction Purchaser did not consider the impact of this interim moratorium.
- v. The Personal Guarantor relied upon the Hon'ble Supreme Court's ruling in ***Alchemist Asset Reconstruction Co. Ltd. v. Hotel Gaudavan (P) Ltd., (2018) 16 SCC 94*** and the Delhi High Court's decision in ***Sanjay Dhingra v. IDBI Bank Ltd. & Ors., 2024 SCC OnLine Del 4521***, to support the argument that the IBC's moratorium provisions override other laws, including the SARFAESI Act, 2002.
- vi. UBI issued a Demand Notice dated 03.06.2021 under Section 13(2) of the SARFAESI Act, for enforcement of the security interest in the form of equitable mortgage/first charge created in respect of the alleged property, created so as to secure the housing loan account, and despite a detailed representation in terms of Section 13(3A) having been preferred by the Personal Guarantor on 28.07.2021, a public notice intimating that symbolic possession of the subject property had been taken on 16.08.2021

under Section 13(4) of the SARFAESI Act, was issued by the UBI on 24.08.2021, without even deciding the objections/representation preferred by the Personal Guarantor, which UBI was bidden to in terms of well-settled law.

12. Reply was filed by SFSPL wherein it was argued that:

- i. An interim moratorium commenced on 24.03.2021, from the date of filing the petition. According to Section 96(1)(b) of the IBC, any legal action or proceeding pending in respect of any debt is deemed stayed, and creditors cannot initiate new legal actions.
- ii. Despite the interim moratorium, UBI took possession of the property under Section 13(4) of the SARFAESI Act via a possession notice on 24.08.2021, and subsequently sold it by auction to the Applicant on 28.06.2022. SFSPL contends this action is illegal and prohibited by Section 96(1)(b) of the Code.
- iii. Reliance is placed upon the Hon'ble Supreme Court's judgment in ***Indian Overseas Bank versus RCM Infrastructure Limited and Another (2022) 8 SCC 516*** and the Hon'ble NCLAT's judgment in ***Indiabulls Asset Reconstruction Company Limited versus Pawan Kapoor (Company Appeal (AT)(Ins) No.192 of 2021***, to support the argument that IBC provisions override other laws, and SARFAESI proceedings should have been stayed.
- iv. No right accrued to the Auction Purchaser as the possession and subsequent sale by UBI were illegal and void, and thus the sale should be set aside, as the Hon'ble NCLAT in ***M/s Omkara Assets Reconstruction***

Private Limited versus ECI Infra Towers Company Private Limited and Another (Company Appeal (AT)(CH)(Ins) no. 35 of 2022 has stated that a sale certificate registered in violation of an interim moratorium is non-est in law.

I.A. No. 2027 of 2024

13. This application is filed by the Personal Guarantor under Rule 11 of the NCLT Rules, 2016 with the following prayers:

- a. *Pass appropriate directions quashing/ setting aside the steps/proceedings initiated under SARFAESI Act, 2002 qua the alleged property during the subsistence of interim moratorium under Section 96 of IBC; and*
- b. *Pass appropriate directions whereby the operation of steps/proceedings initiated under the SARFAESI Act, qua the alleged property, during the subsistence of interim moratorium under Section 96 of IBC, may kindly be put in abeyance during the pendency of present Application.*

14. Reiterating the fact that UBI auctioned the alleged property during the interim moratorium, the Personal Guarantor has stated in the application that:

- i. The Personal Guarantor and his wife (joint owner) were sanctioned a housing loan of Rs.4,99,00,000/- by UBI on 23.09.2013, with the alleged property as the first charge.
- ii. The Corporate Debtor also availed a corporate loan, for which the Personal Guarantor provided the same property as collateral security, in his capacity as a Personal Guarantor, creating a second charge with a mortgage value of Rs.0.85 Cr.

- iii. Accounts of the Corporate Debtor were declared NPA between 29.02.2020, and 19.08.2020. A Section 13(2) SARFAESI notice dated 28.08.2020 was issued by UBI, invoking the second charge on the property before the first charge. Symbolic possession of the property under the second charge was taken by UBI on 05.01.2021, and public notices were issued.
- iv. The housing loan account of the Personal Guarantor and his wife was declared an NPA on 31.03.2021. UBI issued a Section 13(2) SARFAESI notice for the housing loan on 03.06.2021, for an outstanding amount of Rs.3,16,73,790/-.
- v. The Personal Guarantor and his wife submitted a representation against this demand notice on 28.07.2021, which UBI failed to respond to. The Bank issued a public notice under Section 13(4) of the SARFAESI Act, taking symbolic possession on 24.08.2021, without deciding on the representation, making the process unlawful and a public auction was conducted on 29.04.2022.
- vi. UBI approached the Hon'ble Court of Chief Judicial Magistrate, Gurugram under Section 14 of the SARFAESI Act. The said petition was allowed by appointing a court receiver on 10.08.2022, to take possession, based on the corporate loan default, not the housing loan.
- vii. The Personal Guarantor and his wife challenged these SARFAESI proceedings before the DRT, Allahabad, which are currently pending.
- viii. Aggrieved by the Notice dated 13.05.2024 issued by the Receiver for recovering possession of the alleged property, the Personal Guarantor preferred I.A. No. 1341(CH)2024 on 27.05.2024 which is still pending.

- ix. An order from the DRT, Allahabad on 29.05.2024, recognized the interim-moratorium under Section 95 of the IBC, stating that the Tribunal and financial institutions are ceased from further SARFAESI actions.
 - x. Even though UBI preferred an appeal before the Ld. DRAT, Allahabad, the said order has not been stayed or put in abeyance at the time of filing of present application.
15. Reply has been filed by UBI which was adopted by the Auction Purchaser as recorded in order dated 03.02.2025, wherein it is stated that:
- i. Personal Guarantor's current filing is merely a coercive and manipulative strategy. The Personal Guarantor's dishonest aim is to pressure and harass UBI and to hinder the legal actions being taken under the Securitization Act [Act 54 of 2002] (hereinafter referred to as the **“Securitization Act”**).
 - ii. The Personal Guarantor is considered a borrower under the Securitization Act and has acted as a guarantor for multiple credit facilities provided by UBI to the Corporate Debtor.
 - iii. After classifying the borrowers' loan accounts as NPAs, the Authorized Officer initiated legal actions against the borrowers, including the applicant and guarantor. A notice was served on 28.06.2020, requiring them to repay a total of Rs.2,06,19,44,413.36, plus future interest and expenses, within 60 days. If the payment wasn't made, the bank reserved the right to exercise all other legal options under Section 13 (4) and other relevant provisions of the Act.

- iv. Once notices are issued under the SARFAESI Act, all rights of the Personal Guarantor and his wife concerning the secured asset immediately transfer to the bank. Therefore, after the Securitization Act proceedings began, the bank gained full authority over the secured asset.
- v. An initial application was filed under Section 17 of the Securitization Act by the Corporate Debtor, and the applicant was submitted to the Presiding Officer of the DRT in Lucknow. This application aimed to halt the steps taken by the bank leading up to the auction sale on 29.04.2022, but it was dismissed vide order dated 17.06.2022.
- vi. The Corporate Debtor, and the Personal Guarantor later filed a writ petition (bearing no. 20317 of 2022) with the Hon'ble High Court of Judicature at Allahabad, challenging the dismissal of their application under Section 17 of the Securitization Act. However, during this writ petition, the Corporate Debtor, and the Personal Guarantor withdrew all other requested reliefs and limited their plea to only filing objections before the Additional Civil Judge and Tribunal to participate in the proceedings under Section 14 of the Securitization Act.
- vii. Furthermore, the appeal against the DRT Lucknow order of 17.06.2022, filed by the Corporate Debtor and the Personal Guarantor under Section 18 of the Securitization Act, was dismissed by the DRAT, Allahabad, via an order dated 30.09.2022.
- viii. The Corporate Debtor and the Personal Guarantor intentionally hid the fact that their previous application under Section 17 was rejected by the DRT in Lucknow. They then filed another application under the same

Section 17 of the Securitization Act at the DRT Allahabad, which was similarly rejected by the Presiding Officer of the D.R.T. in Allahabad.

- ix. The Personal Guarantor also failed to make payments on a Housing Loan received from UBI. As a result, the loan accounts of these borrowers were classified as NPA on 31.03.2023.
- x. After the loan accounts were classified as NPAs, the Authorized Officer initiated legal proceedings against the borrowers, including the applicant and guarantor, under Section 13 (2) of the Securitization Act. A notice was served or delivered on 03.06.2021, instructing them to repay a total of Rs.3,61,73,790.08 (outstanding as of 31.03.2021), plus future interest and other expenses, within 60 days from the notice date. If they failed to do so, the bank reserved the right to exercise all rights detailed under Sub-Section (4) of Section 13 and other applicable provisions of the Act.]
- xi. Since the notice served under Section 13(2) of the Act was not complied with by the borrowers, including the guarantor, a possession notice dated 24.08.2021, was delivered to the borrowers and mortgage holders by the Authorized Officer of UBI. This possession notice was also published by the Authorized Officer in two daily newspapers. Therefore, the mandatory requirements of Section 13(4) along with Rule 8(1) and 8(2) were fully met.
- xii. Additionally, to complicate the legal proceedings, the Personal Guarantor and his wife have filed another application under Section 17 of the Securitization Act, which is registered as S.A. 649 of 2022. This application, titled "RAVI JAIN VS. UNION BANK OF INDIA," deliberately

combines facts related to credit facilities involved in S.A. 650 of 2022 and the housing loan

- xiii. During the period this application under Section 17 of the Securitization Act was pending, the DRAT, Allahabad, dismissed an appeal filed under Section 17(6) of the Securitization Act. This dismissal was registered as M.A.02 of 2023, titled "Union Bank of India Vs. Ravi Jain."
 - xiv. Subsequently, an order from the DRAT, Allahabad, dated 30.01.2023, directed the DRT to resolve the application under Section 17(6). It was noted that S.A. No. 649/2022 was still pending, with a three-month period granted to obtain a certified copy of this order.
 - xv. The Personal Guarantor challenged the order dated 30.01.2023, issued by the Hon'ble DRAT, Allahabad, by filing a writ petition (bearing number 24075 of 2023) with the Hon'ble High Court of Judicature at Allahabad.
 - xvi. On July 10, 2023, the Hon'ble High Court of Judicature at Allahabad issued an order in this writ petition, dismissing it
16. SFSPL made the following submissions in its reply:
- i. The IA seeks to set aside proceedings under the SARFAESI Act related to the alleged property due to interim moratorium.
 - ii. Personal Guarantor had entered into a Master Lease Agreement with SFSPL on 21.05.2019, along with other related documents. Due to financial indiscipline, a legal notice was issued on 07.12.2020, to the Guarantor/Corporate Debtor, terminating the lease facility and invoking arbitration. A demand notice under the Insolvency and Bankruptcy Rules, 2019, was subsequently issued on 11.12.2020.

- iii. Corporate Debtor is liable for Rs.9,97,31,150/-. The loan account was declared NPA on 26.11.2019. Consequently, SFSPL invoked the personal guarantee of the Personal Guarantor on 26.02.2021, initiating the PIRP.
- iv. An interim moratorium commenced on 24.03.2021, the date the petition was filed. Section 96 of the IBC states that during this interim moratorium, any pending legal action or proceeding regarding a debt is stayed, and creditors cannot initiate new legal actions.
- v. Despite the interim moratorium, the Bank took possession of the property on 24.08.2021, under Section 13(4) of the SARFAESI Act and subsequently sold it by auction to the Auction Purchaser on 28.06.2022.
- vi. The Hon'ble Supreme Court in ***Indian Overseas Bank versus RCM Infrastructure Limited and Another (2022) 8 SCC 516*** held that the IBC is a comprehensive code, and its provisions prevail over other laws. Therefore, the Bank should not have continued proceedings under the SARFAESI Act once the IRP began and the interim moratorium commenced.
- vii. The interim moratorium under Section 96 of the Code aims to protect and preserve the value of assets for insolvency resolution. Any SARFAESI Act proceedings initiated by the Bank were stayed when the petition was filed on 26.02.2021. The Hon'ble NCLAT in ***Indiabulls Asset Reconstruction Company Limited versus Pawan Kapoor (Company Appeal (AT)(Ins) No. 192 of 2021***, dated 28.08.2024), relying on the Delhi High Court's decision in ***Sanjay Dhingra versus IDBI Bank Limited and Others (2024 SCCOnLine Del 4521)***, directed the lender

bank to restore possession of a mortgaged property sold under SARFAESI and to halt further SARFAESI proceedings during the interim moratorium.

- viii. The Auction Purchaser has not acquired any valid rights to the property, as the possession taken by the Bank under SARFAESI Act and the subsequent auction sale are illegal and void. The NCLAT's decision in ***M/s Omkara Assets Reconstruction Private Limited versus ECI Infra Towers Company Private Limited and Another (Company Appeal (AT) (CH)(Ins.) No. 35 of 2022)*** states that a Sale Certificate registered in violation of an interim moratorium is non-existent in law, and the purchaser gains no advantage, title, or right to the property.
- ix. Given these points, the Tribunal is requested to set aside the SARFAESI Act proceedings concerning the property and adjudicate Company Petition No. 178 of 2021. Furthermore, the sale of the property by the Bank to the Auction Purchaser should be declared a violation of Section 96 of the Code.

17. Rejoinder was filed by the Personal Guarantor stating that:

- i. The Personal Guarantor strongly denies the Bank's claims that the Application is baseless, false, or a tactic to pressure and harass the Bank and obstruct SARFAESI Act, 2002 proceedings. The Personal Guarantor asserts that the Application was filed to support the interim moratorium under Section 96 of the IBC.

- ii. UBI is trying to recover possession of the property through the SARFAESI Act, 2002, despite an interim moratorium being in effect under Section 96 of the IBC which should stay such actions.
- iii. The Personal Guarantor referred to the Delhi High Court's decision in ***Sanjay Dhingra v. IDBI Bank Ltd. & Ors. (supra)***, wherein SARFAESI Act proceedings against a guarantor's property were deemed unsustainable due to an interim moratorium under Section 96 of the IBC, against the guarantor.
- iv. UBI invoked a second charge on the property for a corporate loan to the Corporate Debtor, even though the property was already mortgaged under a housing loan account (a first charge). The second charge could not be enforced without first enforcing the primary charge, citing Section 48 of the Transfer of Property Act, 1882, and the principle "Qui prior est tempore potior est jure" (he who is earlier in time is stronger in law).
- v. The validity of this action is pending before the DRT, Allahabad and DRAT, Allahabad. An order from DRT, Allahabad, dated 16.12.2024 (Annexure RJ-1), observed that the property's auction sale by UBI during the moratorium period granted by the NCLT appears to be unlawful.
- vi. The Personal Guarantor contends that the UBI's claim that all rights of the Applicant and Personal Guarantor's wife vested with UBI merely by issuing a Section 13(2) SARFAESI Act notice is baseless.

ANALYSIS AND FINDINGS:

18. Heard the Ld. Counsels for all parties and considered the arguments presented by the parties, including their respective petitions, replies, and written submissions.
19. The following issues arise for determination:
- i. Whether SFSPL has invoked the guarantee of the Personal guarantor before filing the Section 95 petition?
 - ii. Whether the petition filed under Section 95 of IBC is complete and maintainable ?
 - iii. Whether the auction of the alleged property is null and void in terms of Section 96 of IBC?

The above-mentioned issues are discussed in detail in the following paragraphs.

20. The first issue is ***Whether the Demand Notice issued under Rule 7(1) of the 2019 Rules can be considered as Notice for invocation of guarantee for the purposes of filing Section 95 Application by a Creditor?***

- i. The liability of a Personal Guarantor is determined from the Deed of Guarantee. Clause 2, Clause 3 and Clause 23 of the Guarantee arising out of the Master Lease Agreement dated 28.05.2019 executed by the Personal Guarantor with SFSPL, reads as follows:

2. In event of the Lessee for any reason omitting, failing or defaulting in making the payment of the Lessee's Dues or any part thereof, the Guarantor irrevocably agrees and undertakes that on demand by the Lessor (or its assigns), the Guarantor shall without any demur pay to the Lessor (or its assigns) the Lessee's Dues in full up to the date of payment.

3. Any such demand made by the Lessor (or its assigns) on the Guarantor may be made by sending a written communication to the Guarantor at its address given under its signature hereunder and shall be conclusive as regards the correctness of the amount

mentioned therein, as having become due and payable by the Lessee to the Lessor (or its assigns), and also conclusive as regards default having been committed by the Lessee in payment of the amount to the Lessor (or its assigns). The Guarantor agrees that it will not require and shall not be entitled to require any further proof of these facts from the Lessor (or its assigns).

23. Any notice, communication or other correspondence addressed by the Lessor (or its assigns) to the Guarantor may be addressed to the address given herein or to such other address as the Lessor (or its assigns) may be aware. Such notice, communication or correspondence may be served by ordinary post or hand delivery or otherwise and in case of post shall be deemed to have been served on the Guarantor at the time it would have been delivered in the normal course. In the event of any change in address, the Guarantor shall forthwith intimate the same to the Lessor (or its assigns) failing which service of a notice or correspondence to the address last given shall be deemed to be service on the Guarantor.

- ii. The above-mentioned clauses clearly show that in order to invoke the Guarantee of the Personal Guarantor, SFSPL had to send a written communication.
- iii. The Hon'ble NCLAT in the case of **State Bank of India vs Mr. Deepak Kumar Singhania, Company Appeal (AT) (Insolvency) No.191 of 2025** has observed:

15. The 'Guarantor' within the meaning of 2019 Rules, means a Debtor who is a Personal Guarantor to a Corporate Debtor and in respect of whom guarantee has been invoked by the Creditor and remains unpaid in full or part. Learned Counsel for the Appellant has relied on definition of 'Personal Guarantor' as contained in Section 5, sub-section (22) of the IBC. Section 5, sub-section (22) of the IBC is in Part-II, whereas Section 95 of the IBC is in Part-III. Hence, the definition of 'Personal Guarantor' under Rule 5(22) may not be applicable with regard to initiation of insolvency resolution process against the Personal Guarantor and the definition given in Rule 3, sub-rule (1) (e) of 2019 Rules has to be looked into for the purpose of

initiating insolvency resolution process against the Personal Guarantor.

16. Rule 7, sub-rule (1) provides that 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. Sub-section (4) of Section 95 refers to documents relating to debts owed by the Debtor to the Creditor. Rule 7, sub-rule (1) contemplate service of Demand Notice under Clause (b) of sub-section (4) on the Guarantor, demanding payment of the amount of default in Form B.

17. The Notice, thus, contemplate demanding payment of the amount of default. The above Rule clearly indicate that Demand Notice has to be issued, demanding payment of the amount in default. Thus, the default by Guarantor has to exist on the date when Notice in Form-B is being issued. When we read Section 95, sub-section (4) and Rule 7 of 2019 Rules, the above is the only intendment of the legislative scheme, i.e. default on the part of Guarantor should exist on the date when Notice in Form-B has to be issued. We have noticed the definitions of 'debt' and 'default' in Section 3 (11) and (12) of the IBC. Default shall arise on account of non-payment of debt, when whole or part of it become due. 'Debt' means a liability or obligation in respect of a claim which is due from any person. Thus, for a default, debt has to be due and Debtor shall be only that person, to whom debt is due. A Personal Guarantor becomes a Debtor only when guarantee is invoked, making him liable to make the payment to the Lender. We have noticed Clause 2 and Clause 21 of the Deed of Guarantee in the foregoing paragraphs of this judgment, which clearly contemplate that liability on Guarantor shall arise only when demand is made by the Lender, in event Principal Borrower fails to repay the amount. In the present case, there is no case setup by the Appellant that at any point of time guarantee was invoked, except issuance of Notice in Form-B, which is claimed by the Appellant to be treated as Notice for invocation of guarantee.

20.Guarantor with regard to whom guarantee has not been invoked, shall not be a Debtor and no default can be committed by Guarantor, unless guarantee is invoked as per the terms of Deed of Guarantee. Thus, the insolvency

resolution process against a Guarantor, against whom debt has not become due, is not understandable. ...

27. In view of the foregoing discussion, we are not persuaded to accept the submission of the Appellant that Notice under Rule 7 (1) issued in 30 Company Appeal (AT) (Ins.) Nos.191 of 2025 23 Form-B to the Guarantor, demanding repayment of the default amount, has to be treated as Notice for invoking guarantee. Default before issuance of Notice under Rule 7(1), must exist on the part of the Guarantor. Hence, we reject the submission of the Appellant that Notice under Rule 7, sub-rule (1) is a Notice, invoking the guarantee. We, thus, do not find any error in the order of the Adjudicating Authority, rejecting Section 95 Application filed by the SBI.

iv. In the present case, no notice for invocation of the personal guarantee of the Personal Guarantor has been sent by SFSPL. Thus, as contended by the Ld. Counsel for the Personal Guarantor, the guarantee of the Personal Guarantor has not been invoked by SFSPL before filing of the Section 95 petition. In these circumstances, it can be safely concluded that mere issuing notice in Form B under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, does not amount to invocation of guarantee.

21. The second issue is ***Whether the petition filed under Section 95 of IBC is complete and maintainable ?***

i. It is seen that the Section 95 petition is incomplete as the Petitioner has failed to attach the Income Tax Returns of the Personal Guarantor for the preceding three years from the date of filing of the petition, as required under Rule 7(2) of the Insolvency and Bankruptcy (Application to

Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. Further, the Petitioner has failed to attach any evidence/document of invocation of the guarantee of the Personal Guarantor.

- ii. SFSPL also failed to explain as to why these documents could not be attached and also it is not maintainable in absence of invocation of guarantee. Even the RP has failed to explain as to why these documents were not attached with the petition and the RP has also not verified the financial status of the Personal Guarantor. It is settled law (Hon'ble Supreme Court's judgment in ***Dilip B Jiwarajka Vs Union of India & Ors Writ Petition (Civil) No 1281 of 2021***) that this Adjudicating Authority is not bound to accept the report filed by the RP under Section 99 of the Code until and unless it is complete or filed after invocation of the guarantee. Thus, the petition under Section 95 of IBC filed by SFSPL is not maintainable.

22. The last and crucial point for determination is “***Whether the Auction and Sale conducted by UBI is invalid in view of the interim moratorium imposed under Section 96 of IBC?***”

This point is discussed on the basis of the following two arguments advanced by the Ld. Counsel for the Auction Purchaser and UBI:

A. Contradictory Stand taken by the Personal Guarantor:

- i. It is the contention of the Ld. Counsel for the Personal Guarantor and SFSPL that the Auction and Sale of the alleged property by UBI is ultra vires of Section 96 of IBC as the petition was filed on 24.03.2021 and the account

of the Personal Guarantor was declared NPA and guarantee was invoked by UBI on 03.06.2021. Symbolic possession of the alleged property was taken by UBI on 24.08.2021 and the Auction was held on 29.04.2022, whereby the Sale Certificate was issued to the Auction Purchaser on 28.06.2022. Thus, the sale is void as interim moratorium was in force.

- ii. Refuting the contentions of the Personal Guarantor, the Ld. Counsel for the Auction Purchaser argued that the Personal Guarantor has approached DRT Lucknow, DRT Allahabad and DRAT Allahabad and the Hon'ble High Court at Allahabad on various occasions disputing the auction and sale of the alleged property by UBI. The copies of the orders dated 17.06.2022 passed by the Ld. DRT, Lucknow and order dated 30.09.2022 passed by the Ld. DRAT, Allahabad, annexed as **Annexure-2** and order dated 10.08.2022 passed by the Ld. ACJ, Gurugram, attached as **Annexure-4** and orders dated 15.09.2022 and 05.04.2023 passed by the Hon'ble High Court of Allahabad attached as **Annexure-5** and **Annexure-6**, respectively with IA 2026/2024, clearly show that the possession of the alleged property taken by the UBI and the auction conducted by it has been upheld in every forum.
- iii. It is pertinent to note here that the Personal Guarantor has concealed the fact of the pendency of the present Section 95 petition before all the forums (Fora) as mentioned in the preceding paragraph. The Personal Guarantor has challenged the possession and auction conducted by UBI on ground of deficiency in service of demand notice, wrong date and amount mentioned in the demand notice and illegal auction conducted in view of such

allegations, which were all dismissed by the concerned authorities. The Personal Guarantor did not mention anywhere about the interim moratorium in force under Section 96 of IBC and the possession and auction being in violation of the same. The Personal Guarantor failed to explain as to what stopped him to take this legal plea of moratorium before the Hon'ble High Court of Allahabad while challenging the legality of the auction purchase, which is being pleaded here.

- iv. It is also worthwhile to note that the Hon'ble High Court of Allahabad vide order dated 15.09.2022 had directed the Personal Guarantor to deposit a sum of Rs.2 crore to show his bonafide but the said amount was never deposited. Therefore, it can be safely concluded that the Bench hunting/forum shopping by the Personal Guarantor is malafide in order to stall the SARFAESI proceedings.
- v. Apart from this, the plea related to the first and second charge was also not taken before the Hon'ble High Court of Allahabad. The authority ***Sanjay Dhingra v. IDBI Bank Ltd. & Ors., (supra)*** relied upon by the Personal Guarantor is distinguishable as both the charges were created in favour of UBI (same financial creditor) and the decision to invoke the charge is prerogative of UBI and rests with it. Further, it is noted that the Personal Guarantor, Mr. Ravi Kumar Jain was also the director of the principal borrower/Corporate Debtor, i.e. RCC Infraventures Ltd.
- vi. Also, on the contrary, in response to the report filed by the RP under Section 99 of the IBC, the Personal Guarantor has prayed to uplift the interim moratorium, whereas, in the relief prayed in the rejoinder to I.A.

2027/2024, the Personal Guarantor has prayed for issuing a writ in nature of Certiorari quashing the actions taken by UBI. In reply to IA 2026/2024 filed by the Auction Purchaser, the Personal Guarantor has taken the plea that the auction and sale of the alleged property by UBI is in violation of interim moratorium, which reflects contradictions and irregularities in the pleas taken by the Personal Guarantor.

vii. On account of Estoppel by matter of record and Equitable Estoppel, the Personal Guarantor is precluded from taking the plea of interim moratorium, which has earlier not been pleaded by him before the Hon'ble High Court of Allahabad. Order 2 Rule 2 of Code of Civil Procedure, 1908, bars subsequent separate pleadings and proceedings if a plaintiff omits a portion of its claim or intentionally relinquishes it without court permission.

B. The Sale of the alleged property is not ultra vires of the Interim Moratorium under Section 96 of IBC.

i. It is noted is that the alleged property was given as a Collateral Security for two loans; firstly for the personal loan availed by the Personal Guarantor and his wife and secondly, for the corporate loan availed by the principal borrower/Corporate Debtor wherein the Personal Guarantor and his wife gave their guarantees. UBI invoked the second charge (corporate loan) and issued the demand notice dated 28.08.2020 under Section 13(2) of the SARFAESI Act to the Corporate Debtor, the Personal Guarantor and his wife, Ms. Neeru Jain invoking their personal guarantee given under the corporate loan. Notice under Section 13(4) of the SARFAESI Act was issued

on 19.12.2020 and symbolic possession was taken by UBI on 05.01.2021, prior to the filing of the Section 95 petition by SFSPL on 24.03.2021.

- ii. The first charge created by virtue of the personal loan was invoked by UBI and demand notice under Section 13(2) of the SARFAESI Act to the Personal Guarantor and his wife, was issued on 03.06.2021 and notice under Section 13(4) of the SARFAESI Act was issued on 24.08.2021.
- iii. Thus, it is established by UBI and the Auction Purchaser that the proceedings under SARFAESI Act, 2002 were already in motion before the filing of the Section 95 petition and the alleged interim moratorium.
- iv. Further, the demand notice was addressed to both Personal Guarantors and the alleged property has been mentioned as Secured Asset, on which charge has been created by UBI. The Section 95 petition is filed against one Personal Guarantor only. In addition to the Estoppel against one Personal Guarantor, the sale cannot be set aside as the Bank has sold the property in view of the guarantee given by Ms. Neeru Jain, the other Personal Guarantor and no Section 95 petition has been filed against her, thus no interim moratorium if at all was in operation qua her share, in the auctioned property. The authorities ***Indian Overseas Bank versus RCM Infrastructure Limited and Another, Indiabulls Asset Reconstruction Company Limited versus Pawan Kapoor, M/s Omkara Assets Reconstruction Private Limited versus ECI Infra Towers Company Private Limited and Another and Sanjay Dhingra v. IDBI Bank Ltd. & Ors. (supra)*** relied upon by SFSPL and the Personal Guarantor are not applicable to the facts and circumstances of the case in hand as no interim

moratorium under Section 96 of IBC is triggered at all from the very inception and filing of the petition under Section 95 of IBC in this case in view of discussions in paragraph below. Thus, the authorities (supra) relied upon are distinguishable.

- v. Until and unless the petition is complete, interim moratorium does not come into operation with filing of such incomplete petition which is otherwise not maintainable being filed without demand notice for invocation of guarantee and thus Section 96 of the Code is inapplicable. When the petition under Section 95 of IBC is dismissed on these grounds, the interim moratorium under Section 96 of IBC is bound to go w.e.f. The inception and institution of the petition. Once the foundation collapses, the superstructure is bound to collapse. Auction/sale during the alleged interim moratorium, cannot be set aside or annulled on account of operation of interim moratorium, which was not triggered at all from the very inception.

23. The Section 95 petition lacks maintainability, rendering it invalid due to its incomplete nature and SFSPL's lapse in not invoking the personal guarantor's obligation prior to serving the Form B Demand Notice under Rule 7(1) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. This deficiency results in the interim moratorium under Section 96 of the IBC being retrospectively invalidated.

24. It is worthwhile to note that although the Personal Guarantor has refuted any collusion between him and SFSPL in affidavit filed vide Diary No. 00507/19 dated

18.06.2025. The amount claimed by UBI from the principal borrower, i.e. Rs.206,19,44,413.36 is many times higher than the amount of Rs.8,94,58,478/- claimed by SFSPL under Section 95 of IBC but the Personal Guarantor, Mr. Ravi Kumar Jain neither paid a single penny as Personal Guarantor and Director of Principal Borrower to the Bank despite directions of Hon'ble High Court of Allahabad to deposit Rs.2 crore.

25. Thus, in light of the foregoing discussion and the reasons recorded hereinbefore, it is hereby held that the petition bearing **CP (IB) No.178/Chd/2021 is not maintainable** and **is dismissed and disposed of**. Consequently, **I.A. No.2027 of 2024 stands dismissed** and **I.A. No. 2026 of 2024** is rendered **infructuous** and **are disposed of accordingly**, without any order as to costs.

Sd/-

(Shishir Agarwal)
Member (Technical)

July 04, 2025
ASG

Sd/-

(Harnam Singh Thakur)
Member (Judicial)