



**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

CP (IB)/1/GB/2025

An Application under Section 95 of the Insolvency and Bankruptcy Code, 2016

In the matter of CP (IB)/1/GB/2025:

Indian Bank (erstwhile Allahabad Bank), a banking company duly constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970, having its head office at PB No: 5555, 254-260, Avvai Shanmugam Salai, Royapettah, Chennai -600014 and a branch office among others at H.S. Road, Dibrugarh, Assam-786001.

...Financial Creditor/Petitioner

-Versus-

Mr. Saurabh Poddar, erstwhile director and the Personal Guarantor of the Corporate Debtor, having address at 21, Belvedere Road, Alipore, Kolkata, West Bengal -700001.

...Personal Guarantor/Respondent

Coram:

Shri Rammurti Kushawaha : Member (Judicial)

Shri Yogendra Kumar Singh : Member (Technical)

Appearances (through video conferencing/physical):

For Petitioner : Mr. Karan Borad (Adv.)

For Respondent : Mr. Shaunak Mitra, Mr. A. Sandilya (Advs.)

Order pronounced on:02.09.2026



As Per Bench

1. The Present Company Petition ('CP') No. 1 of 2025 has been filed by Indian Bank (erstwhile Allahabad Bank) ('Financial Creditor') under section 95 of the Insolvency and Bankruptcy Code, 2016 ('the Code') for default in the repayment of Rs. 4,12,99,168/- (Rupees Four Crores Twelve Lakhs Ninety-Nine thousand One Hundred Sixty-Eight) as on 03.12.2024, seeking Initiation of Insolvency Resolution Process against Mr. Saurabh Poddar ('Personal Guarantor') of M/s Balajee Exports Limited ('Corporate Debtor').
2. **The submissions made by the Financial Creditor in the Company Petition are as follows:**
 - 2.1. The M/s Balajee Exports Ltd. is a company duly incorporated under the relevant provisions of the Companies Act, 1956 and now within the meaning of the Companies Act, 2013, having its registered office at C/o Balimara Tea Estate P.O., Naharkatia, Dibrugarh -786610, Assam.
 - 2.2. The Corporate Debtor is a Public Company, was incorporated on 27.12.1982., classified as Non-Government Company, having Corporate Identification Number (CIN: U51909AS1982PLC002004, having authorised share capital of Rs. 75,00,000/- (Rupees Seventy-Five Lakhs) only and Paid-up share capital of Rs. 75,00,000/- (Rupees Seventy-Five Lakhs) only. Further, the Corporate Debtor was engaged in the business of manufactures, importers, exporters and trading of various commodities such as tea, timber plywood, edible oil, vegetable oil, foodgrains, textiles etc.
 - 2.3. The Corporate Debtor, through its directors, sought a cash credit sanction of Rs. 2,00,00,000/- (Rupees Two Crores) from the Applicant Bank. After evaluating the application, the Applicant Bank issued a sanction letter on 19.01.2017, approving the cash credit of Rs. 2,00,00,000/- (Rupees Two Crores). A copy of Sanction Letter dated 19.01.2017 is annexed as '*Annexure A-2*'.
 - 2.4. Pursuant to this, the Corporate Debtor on 24.01.2017 had signed and executed a general Letter of Hypothecation in the case of Limited Liabilities Companies in favour of Financial Creditor. Also, on 02.02.2017, the Corporate Debtor signed and executed an Undertaking to maintain stipulated margin for the cash credit facilities availed by the Corporate Debtor in favour of the Financial Creditor. Again on 02.02.2017, Corporate Debtor signed and executed a Letter of Mortgage



confirming Deposit of Title Deeds for Borrower and Guarantors, in favour of the Financial Creditor. A copy of General Letter of Hypothecation of applicable in the case of Limited Liabilities Companies dated 24.01.2017 is annexed as '*Annexure A-4*', a copy of undertaking from borrowers to maintain stipulated margin dated 02.02.2017 is annexed as '*Annexure A-5*' and a copy of Supplementary Letter of Mortgagor confirming Deposit of Title Deeds for borrowers dated 02.02.2017 is annexed as '*Annexure A-6*'.

- 2.5. On 01.03.2017, the directors submitted a loan application for the renewal of this cash credit limit, which was also approved by the Applicant Bank. In addition to the renewal, they requested a fresh term loan of Rs. 56,00,000 (Rupees Fifty-Six Lakhs), which was sanctioned on 28.03.2017. Subsequently, the directors applied for a working capital fund, the Applicant Bank sanction a Working Capital Fund (Cash Credit) limit to Rs. 4,00,00,000 (Rupees Four Crores). A copy of Loan Application dated 01.03.2017 and a copy of Sanction Letter dated 28.03.2017 are annexed as '*Annexure A-7 & Annexure A-8*'.
- 2.6. On 03.04.2017, the Corporate Debtor issued three Demand Promissory in favour of the Financial Creditor, thereby promising to pay an amount of Rs. 2,00,00,000/-, Rs. 56,00,000/- & Rs. 2,56,00,000/- respectively. A copy of DP Note dated 03.04.2017 is annexed as '*Annexure A-9*'.
- 2.7. Further, on 06.03.2019, the director request for a term loan of Rs. 1,00,00,000 (Rupees One Crore) was made by the director of the Corporate Debtor's and subsequently sanctioned by the Applicant Bank. In this Regards Corporate Debtor signed and executed General Letter of Hypothecation applicable in the case of limited liability Companies, in favour of the Financial Creditor. Also, the Guarantee Deed was executed between the Financial Creditor and the Personal Guarantor Mr. Saurabh Poddar to secure the Credit Facilities availed by the Corporate Debtor. A copy of the Loan Sanction letter dated 06.03.2019 is annexed as '*Annexure A-13*' and a copy of general letter of hypothecation applicable in the case of Limited Liability Companies dated 08.03.2019 is annexed as '*Annexure A-14*' and a copy of letter of Guarantee executed by the Personal Guarantor/Respondent dated 08.03.2019 is annexed as '*Annexure A-18*'.
- 2.8. Additionally, on 15.06.2020, a loan application for Rs. 1,10,00,000 (Rupees One Crore Ten Lakhs) was submitted for a GECLS term loan . On 29.06.2020 the



Financial creditor vide sanction letter bearing No BR/DIB/ADV/2020-21/826 sanctioned the said amount and on 06.07.2020 the corporate debtor signed and executed Term Loan agreement in favour of Financial Creditor. Also, the Corporate Debtor issued two Single/Joint Demand Promissory Note in favour of the Financial Creditor thereby promising to pay an amount of Rs. 1,10,00,000/- and Rs. 6,66,00,000/- respectively. The Guarantee Agreement was also executed between the Financial Creditor and the Personal Guarantor to secure the Credit Facilities availed by the Corporate Debtor on the same date. A loan application dated 15.06.2020 is annexed as '*Annexure A-20*', a copy of Sanction Letter dated 29.06.2020 is annexed as '*Annexure A-21*', a copy of term loan agreement dated 06.07.2020 is annexed as '*Annexure A-22*', Joint Demand Promissory note is annexed as '*Annexure A-23*' and copy of guarantee deed dated 06.07.2020 is annexed as '*Annexure A-25*'.

- 2.9. However, the director applied for a review, renewal, and restructuring of various credit facilities. The Applicant Bank approved this request through a sanction letter dated 27.09.2021. However, it is pertinent to mention herein that the directors of the Corporate Debtor signed and executed all the necessary documents in favour of the Applicant Bank in respect to the said loan facilities availed by the Corporate Debtor. A copy of Review/Renewal & Restructure of various credit facilities dated 27.09.2021 is annexed as '*Annexure A-26*'.
- 2.10. Furthermore, another request for a sanction of Rs. 55,00,000 (Rupees Fifty-Five Lakhs) was made by the director and the same was sanctioned by the Applicant Bank on 30.09.2021. A copy of Term Loan Agreement dated 30.09.2021 is annexed as '*Annexure A-27*'.
- 2.11. The date of default is 22.12.2022, when the loan account Nos. 50116791501, 50383206195, 50480223084, 58000935455 & 7102452645 of the Corporate Debtor were classified as Non-Performing Asset (NPA) by the Financial Creditor.
- 2.12. Following this classification, the Financial Creditor issued a Demand Notice dated 26.12.2022 under Section 13(2) of the SARFAESI Act, 2002, requesting payment of the outstanding dues. A copy of notice under Section 13(2), of the SARFAESI Act, dated 26.12.2022 is annexed as '*Annexure A-28*'.
- 2.13. Additionally, due to the failure to pay the outstanding dues by the Corporate Debtor and the Personal Guarantors, the Financial Creditors as Applicant had also



filed an Original Application bearing O.A. No. 751/2023 before the Debts Recovery Tribunal at Guwahati against the Corporate Debtor, Personal Guarantor as Defendants for recovery of Rs. 7,96,45,692/- (Rupees Seven Crores Ninety-Six Lakhs Forty-Five Thousand Six Hundred and Ninety-Two) only and the said application is pending for disposal.

- 2.14. Subsequently, the Applicant Bank issued a Demand Notice dated 03.12.2024, as prescribed under Rule 7(1), of the Insolvency and Bankruptcy (Application to the Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019, calling upon Mr. Saurabh Poddar to make payment of the unpaid debt amount to the Applicant Bank. However, despite the issuance of the demand notice, there has been no response from the Respondent. A copy of Demand Notice in Form B dated 03.12.2024 is annexed as 'Annexure 29'.
- 2.15. The Financial Creditor, Indian Bank (erstwhile Allahabad Bank), has filed the present Section 95 Application for a default in repayment of the financial debt amounting to Rs. 4,12,99,168/- (Rupees Four Crores Twelve Lakhs Ninety-Nine Thousand One Hundred and Sixty-Eight) only as on 03.12.2024, by the Corporate Debtor.
3. Submission on behalf of Personal Guarantor *vide* reply dated 21.01.2026.
 - 3.1. The Personal Guarantor submitted that the Financial Creditor through its sanction letter dated 29.06.2020, cash credit facilities of Rs. 400 Lakhs, two term loans of Rs.100 lakhs and Rs.56 lakhs and a GECLS-COVID-19 loan (TL) of Rs.110 lakhs.
 - 3.2. Subsequently, the Financial Creditor sanctioned another GEGL facility in the year 2021 and also reviewed, renewed and restructured the existing credit facilities through its sanction letter dated September 27, 2021. Post such sanction, the Borrower enjoyed a cash credit limit of Rs.400 lakhs, a term loan of Rs.46 lakhs, a second term loan of Rs. 100 lakhs, a working capital term loan of Rs.110 lakhs, and a fresh term loan (GECLS) of Rs.55 lakhs.
 - 3.3. The Personal Guarantor had executed a Deed of Guarantee on 06.07.2020 to secure the credit facilities sanctioned by the Financial Creditor on 29.06.2020. Although the subsequent sanction letter dated 27.09.2021 contemplated execution of a fresh personal guarantee in respect of the facilities sanctioned thereunder, the Personal Guarantor did not execute any such personal guarantee. The Financial



Creditor, being fully aware of such non-execution, nevertheless proceeded to issue the sanction on 27.09.2021 and thereafter executed the Term Loan Agreement on 30.09.2021 without insisting upon or obtaining a fresh personal guarantee from the Personal Guarantor.

- 3.4. The Financial Creditor had asserted default in respect of credit facilities sanctioned *vide* sanctioned letter dated 27.09.2021 in respect of which the term loan was executed on 30.09.2021.
- 3.5. The said facility was not secured by the Personal Guarantor, nor was any deed of guarantee executed in respect thereof. Accordingly, in the absence execution of any personal guarantee securing the 2021 facility, proceedings under Section 95 of the Code are not maintainable against the Personal Guarantor. The Financial Creditor has suppressed this material fact and relied upon earlier guarantees pertaining to distinct facilities, thereby misleading this Tribunal. On this ground alone, the present proceedings are liable to be dismissed.
- 3.6. Further, the 2021 sanction and execution of the fresh Term Loan Agreement materially altered the terms of the earlier facility. The Financial Creditor subsequently restructured the facility and executed the Term Loan Agreement dated 30.09.2021 without the consent or participation of the Personal Guarantor. Such material variation of the principal contract, without the surety's consent, discharges the Personal Guarantor from any alleged liability arising from the 2021 facility.
- 3.7. Further submitted that the mandatory pre-requisite for initiation of proceedings under Section 95 of the Code that the personal guarantee relied upon by the Financial Creditor must first be duly invoked in accordance with the terms of the contract. In the present case, even the earlier guarantees upon which the Financial Creditor now seeks to rely have never been invoked at any point of time.
- 3.8. The present proceedings have been initiated after issuance of a demand notice in Form B under the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors) Rules, 2019. However, issuance of a notice in Form B on the Personal Guarantor does not, in law, amount to Invocation of the personal guarantee. In absence of any prior and valid invocation of guarantee deed, Section 95 of the code proceeding cannot be initiated.



- 3.9. In Part III of Form C, the Financial Creditor has stated the default as Rs. 2,19,84,415.49 and the total outstanding debt as Rs.4,12,99,168/- as on 03.12.2024. Though it disclosed the Section 13(2) SARFAESI notice, it suppressed that the mortgaged asset was subsequently sold through e-auction for Rs.4.75 crores, which amount stands recovered by the Financial Creditor. The Borrower's challenge the action of Financial Creditor before the DRT, Guwahati in S.A. No. 92 of 2023 which was subsequently withdrawn. In view of the substantial recovery, the debt claimed in the present proceedings does not survive in the manner or quantum stated by the Financial Creditor.
- 3.10. The Financial Creditor has also instituted O.A. No. 400 of 2023 under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 before the DRT, Guwahati against the Borrower, its Directors and Guarantors, including the Personal Guarantor herein. The said proceedings are actively contested and the alleged debt remains sub judice and yet to be adjudicated.
- 3.11. The Financial Creditor has not instituted any proceeding under Section 7 of the Insolvency and Bankruptcy Code, 2016 against the Borrower. On the contrary, the Financial Creditor has already proceeded under the SARFAESI Act, has taken possession of a secured asset of the Borrower, and has recovered a substantial sum of Rs.4.75 crores by way of e-auction. Further, the Financial Creditor has also instituted proceedings under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 by filing O.A. No. 400 of 2023 before the learned Debt Recovery Tribunal, Guwahati, which is being actively contested.
- 3.12. In such circumstances, where the existence and quantum of debt are under active challenge before a competent forum, initiation or continuation of proceedings under Section 95 of the Insolvency and Bankruptcy Code, 2016 against the Personal Guarantor is unwarranted. The present proceedings appear to be an attempt to exert coercive pressure for recovery of a disputed liability, which remains sub judice. The Personal Guarantor ought not to be proceeded against while the principal borrower's liability itself remains under adjudication.
- 3.13. It is stated that the Financial Creditor, in its notice dated 26.12.2022 issued under Section 13(2) of the SARFAESI Act, referred to a purported deed of guarantee dated 30.09.2020 and raised claims on that basis. No such Deed of guarantee was ever executed by the Personal Guarantor, nor has any such document been



produced with the notice, Form B, or in the present proceedings under Section 95. The reference to the alleged guarantee dated 30.09.2020 is therefore incorrect. Even assuming that the Financial Creditor relied upon any guarantee in the Section 13(2) notice, such reference could only be to the purported guarantee dated 30.09.2020, and not to the deed of guarantee dated 06.07.2020, which is now relied upon in the Form B demand notice and the present Section 95 proceedings. Admittedly, the deed dated 06.07.2020 was never invoked. Accordingly, no valid or subsisting invocation of the said guarantee can be said to exist so as to sustain the present proceedings under Section 95 of the Code.

- 3.14. In these circumstances, it cannot be said that any valid or existing guarantee has been invoked for maintaining the present proceedings under Section 95 of the Code.
- 3.15. In any event, the only deed of guarantee actually executed by the Personal Guarantor is dated 06.07.2020 in relation to the facilities sanctioned on 29.06.2020. No demand invoking this guarantee has ever been issued to the Personal Guarantor. In the absence of invocation of this guarantee, no cause of action has arisen in favour of the Financial Creditor against the Personal Guarantor under the Insolvency and Bankruptcy Code, 2016.
4. This Tribunal *vide* order dated 06.10.2025 appointed the Resolution Professional, Mr. Sandeep Khaitan (Reg. No. IBBI/IPA-001/IP-P00532/2017-2018/10957) with a direction to submit its report within 10 days from the date of communication regarding his appointment.
5. Accordingly, the Resolution Professional submitted its report under Section 99 of the Code *vide* IA (I.B.C.)/122/GHY/2025. The submissions made by the Resolution Professional in the said report are as follows:
 - 5.1. On the basis of the documentary record supplied by the Financial Creditor and in the absence of any rebuttal or material from the Personal Guarantor despite specific requisitions, the RP records the following determinations for the assistance of the Hon'ble Tribunal:
 - a) **Existence of Debt:**
The Financial Creditor has established, through duly certified statements of account under the Bankers' Books Evidence Act, 1891, and the Demand Notice in Form B dated 03.12.2024, that a financial debt of Rs. 4,12,99,168 (including



interest and charges) as on date of the issue of the Notice is due and payable by Mr. Saurabh Poddar, Personal Guarantor to M/S Balajee Exports Limited.

The principal outstanding of Rs. 2,19,84,415 stands admitted in the creditor's records, and the corresponding default in repayment is evidenced by the classification of the borrower's account as NPA on 22.12.2022 and the subsequent invocation of the personal guarantee.

No material or evidence has been produced by the Personal Guarantor to rebut the above or to show payment, discharge, or novation of liability.

b) Validity and Enforceability of Guarantee:

The Guarantee Deeds dated 08.03.2019, 06.07.2020 and 30.09.2021, executed by the Personal Guarantor in favour of the Financial Creditor, are on record and constitute continuing guarantees. The liabilities of the Personal Guarantor under these contracts remain valid and enforceable until specifically discharged. The cap/limit noted by the Bank will be as per the executed deeds on record.

c) Maintainability, Jurisdiction and Limitation:

The application filed under Section 95 read with Section 60(5) of the Code by Indian Bank is maintainable before this Hon'ble NCLT, Guwahati Bench, being the Adjudicating Authority having territorial and subject-matter jurisdiction over both the Corporate Debtor and its Personal Guarantor.

The application is within limitation, having been filed on 31.01.2025, within three years of the demand/guarantee invocation dated 03.12.2024.

d) Default:

Default by the Personal Guarantor stands established upon invocation and non-payment, read with the borrower's NPA and the subsequent SARFAESI action.

e) Cooperation of Parties:

The Financial Creditor has substantially cooperated and furnished the documents required under Section 99(4). The Personal Guarantor, despite repeated notices, has failed to furnish any information or documentary response, which the IRP respectfully notes as non-cooperation under Section 99(5).

5.2. RECOMMENDATION

In light of the foregoing, **the Insolvency Resolution Professional recommends that the application filed by Indian Bank (Erstwhile Allahabad Bank) under Section 95 of the Insolvency and Bankruptcy Code, 2016, against Mr. Saurabh**



Poddar, personal Guarantor to M/s Balajee Exports Limited, be admitted by this Hon'ble Tribunal under Section 100 of the Code, and that the insolvency resolution process of the Personal Guarantor be commenced in accordance with law.

6. Contrary to this Report, Personal Guarantor filed its Report on 21.01.2026 *vide* Reply dated 20.01.2026:
 - 6.1. It is submitted that the report by the Resolution Professional is not maintainable in law. The entire foundation of the report is premised upon mechanical reproduction without any exercise of discretion or evaluation of evidence.
 - 6.2. It is further mentioned that the alleged liability of the Borrower is presently sub judice before the learned Debt Recovery Tribunal, Guwahati, in O.A. No. 400 of 2023 and is being actively contested. The quantum of debt, existence of default, and extent of liability are yet to be adjudicated by a competent forum. Until such adjudication, the Financial Creditor cannot unilaterally treat the debt as crystallized for the purpose of invoking insolvency proceedings against the Personal Guarantor.
 - 6.3. The Personal Guarantor further contended that the only Deed of Guarantee executed by him was dated 06.07.2020, in respect of the credit facilities sanctioned on 29.06.2020. It was submitted that no fresh deed of guarantee was executed by him in respect of the subsequent facilities sanctioned/restructured pursuant to the sanction letter dated 27.09.2021 and the Term Loan Agreement dated 30.09.2021. It was accordingly contended that the said subsequent facilities were not secured by any personal guarantee executed by him.
 - 6.4. It was also contended that the subsequent restructuring and alteration of the credit facilities in September 2021, without the consent of the Personal Guarantor, amounted to a material variation of the terms of the principal contract and, therefore, discharged him from liability in respect of such subsequently sanctioned facilities.
 - 6.5. The Personal Guarantor further submitted that the Deed of Guarantee dated 06.07.2020 had never been invoked by the Financial Creditor and that, in the absence of such invocation, no cause of action had arisen against him for initiation of proceedings under Section 95 of the Code. It was further contended that



issuance of a demand notice in Form B could not, by itself, be treated as invocation of the guarantee.

- 6.6. It was further alleged that the Financial Creditor had recovered a sum of ₹4.75 crore through e-auction of a secured asset pursuant to proceedings under the SARFAESI Act, 2002, but the alleged the Financial Creditor had not disclosed/appropriately accounted for the recovery while stating the amount of default and total debt in the application. On this basis, the Personal Guarantor disputed the quantum of debt claimed by the Financial Creditor.
- 6.7. The Personal Guarantor also disputed the reference to a purported Deed of Guarantee dated 30.09.2020 and stated that no such deed had ever been executed by him. It was contended that the Financial Creditor had neither established the existence of such guarantee nor validly invoked the Deed of Guarantee dated 06.07.2020
- 6.8. The contents and findings of the Section 99 Report were accordingly denied. The Personal Guarantor contended that the Resolution Professional had failed to properly consider the aforesaid objections and documents and had proceeded mechanically in recommending admission of the application under Section 95 of the Code. It was therefore prayed that the report and the recommendation made therein be rejected.
- 6.9. The Report of the Resolution Professional was taken on Record by this Tribunal on 17.04.2026.
7. The Financial Creditor filed General Affidavit on 17.04.2026 to bring on record the Guarantee Deed dated 30.09.2021. *Vide* General Affidavit the Financial Creditor submitted the following:
 - 7.1. It is submitted that this Hon'ble Tribunal, *vide* its order dated 09.03.2026 was directed the Applicant Bank to produce the Original Deed of Guarantee dated 09.03.2026. The Applicant Bank has duly complied with the aforesaid directions of this Hon'ble Tribunal by annexing a true copy of the said Original Deed of Guarantee dated 09.03.2026, for the kind perusal and consideration of this Hon'ble Tribunal.
 - 7.2. The Respondent/Personal Guarantor executed three successive Deeds of Guarantee dated 08.03.2019, 06.07.2020, and 30.09.2021, respectively, thereby furnishing his personal guarantees in favour of the Applicant Bank/Financial



Creditor for the loan facilities availed of by the Corporate Debtor. Further, the Respondent/Personal Guarantor and the aforesaid guarantee deeds dated 08.03.2019, 06.07.2020 and 30.09.2021, were duly executed by the Respondent/Personal Guarantor in favour of the Applicant Bank and thus stands jointly and severally liable under the said Deeds of Guarantee for the outstanding dues of the Corporate Debtor. A copy of Guarantee Deeds dated 30.09.2021, has been annexed and marked as Annexure No.A-2 to the General Affidavit.

- 7.3. The Guarantee Deeds have been duly invoked by the Financial Creditor/Applicant Bank vide Demand Notice dated 26.12.2022 issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act") against the Respondent/Personal Guarantor, which invocation remains well within the period of limitation of the Limitation Act, 1963, as the captioned application was instituted on 31.01.2025. A Copy of Demand Notice dated 26.12.2022, issued under Section 13(2) of the SARFAESI Act, 2002 has been annexed and marked as Annexure No.A-3 to the General Affidavit.
- 7.4. The Guarantee Deeds dated 08.03.2019, 06.07.2020, and 30.09.2021 are continuing guarantees under the provisions of the Indian Contract Act, 1872, and are accordingly enforceable against the Respondent/Personal Guarantor notwithstanding any variation in the underlying facilities or dues of the Corporate Debtor.
- 7.5. It is a trite law that the liability of a personal guarantor is co-extensive with that of the principal debtor under the provisions of the Indian Contract Act, 1872 and thus the Respondent/Personal Guarantor is liable to discharge the entire outstanding debt of the Corporate Debtor.
- 7.6. Hence, the Respondent/Personal Guarantor is entitled to pay an outstanding Amount of Rs. 4,12,99,168/- (Rupees Four Crores Twelve Lakhs Ninety-Nine Thousand One Hundred and Sixty-Eight) only, to the Applicant Bank as on 03.12.2024.
8. We have heard the submissions advanced by the Ld. Counsels and perused the documents on record. The present petition has been filed by the Financial Creditor under Section 95 of the Code seeking initiation of Insolvency Resolution Process



against Mr. Saurabh Poddar, Personal Guarantor to the Corporate Debtor, M/s Balajee Exports Limited.

Findings & Analysis:

9. The principal issue that arises for determination in the present Company Petition is whether CP(IB)/1/GB/2025 is maintainable in law as Interlocutory Application which was filed by Personal Guarantor seeking early consideration of the maintainability application, being IA (IBC)/20/GB/2025 and for expeditious hearing and disposal of the said application.
10. In light of that, this Tribunal first decide the Maintainability of the Present Company Petition CP(IB)/1/GB/2025.

Maintainability of the Petition

11. We have considered the submissions of the parties and perused the documents placed on record. The principal objection raised by the Personal Guarantor is that no valid invocation of the personal guarantee was made and therefore, no cause of action had arisen for initiation of proceedings under Section 95 of the Code. It is also contended that the liability of the Corporate Debtor is pending adjudication before the learned DRT and that substantial recovery has already been made by the Financial Creditor.
12. In this regard, it is evident from the record that the Personal Guarantor had executed successive Deeds of Guarantee dated 08.03.2019, 06.07.2020 and 30.09.2021 in favour of the Financial Creditor. The Financial Creditor has placed the said guarantee deeds on record and has also relied upon the Demand Notice dated 26.12.2022 issued under Section 13(2) of the SARFAESI Act, wherein the liability of the Personal Guarantor was asserted. Further, a statutory Demand Notice in Form B dated 03.12.2024 was issued to the Personal Guarantor under Rule 7(1) of the Insolvency and Bankruptcy Rules, 2019, calling upon him to discharge the outstanding liability. The Personal Guarantor has admittedly failed to make payment pursuant thereto. The Financial Creditor has thus established the existence of a financial debt and default, as contemplated under the Code. The Resolution Professional, after examination of the material placed before him, has also found the debt, validity of the guarantees and default to be established and has recommended **admission** of the Application under Section 100 of the Code.



13. The contention that the debt is not maintainable merely because proceedings concerning the liability of the Corporate Debtor are pending before the DRT cannot be accepted. The liability of a personal guarantor is distinct and co-extensive with that of the principal debtor and the pendency of recovery proceedings against the Corporate Debtor does not, by itself, bar initiation of insolvency resolution proceedings against the Personal Guarantor. Likewise, the recovery of an amount through enforcement of the security would necessarily have to be duly accounted for while determining the amount actually due; however, such recovery by itself does not extinguish the liability of the Personal Guarantor where an outstanding debt and default continue to subsist.
14. In view of the aforesaid facts and circumstances, we are satisfied that the Financial Creditor has established the existence of a debt guaranteed by the Personal Guarantor, occurrence of default and failure of the Personal Guarantor to discharge the guaranteed liability despite issuance of the requisite demand notice. The objections raised by the Personal Guarantor regarding non-invocation of the guarantee. However, the Records Reveals that Demand Notice dated 26.12.2022 issued under Section 13(2) of the SARFAESI Act to the Personal Guarantor demanding discharge of the entire outstanding liability within the statutory period. Thus, there is valid invocation of the Guarantee.
15. At the stage of admission under Section 100, the Tribunal is required to ascertain existence of debt and default. On the material available, the application cannot be said to be ex facie time-barred.
16. Accordingly, we hold that **CP (IB)/1/GB/2025 is maintainable and satisfies the requirements prescribed under Section 95 of the Code.**
17. Accordingly, upon examination of the record under Section 100 of the Code, this Tribunal is satisfied that the application under Section 95 is complete, a financial debt exists, default has occurred, and the objections raised do not dislodge the foundational requirements for admission. The Application is, therefore, liable to be admitted under Section 100 of the Code.



ORDER

18. In view of the foregoing, the present Petition being **CP (IB)/1/GB/2025** filed under Section 95 of the Code is hereby admitted on the following terms:
- i. The Insolvency Resolution Process against the Respondent/Personal Guarantor is hereby initiated. In terms of Section 101 of the Code, a moratorium in relation to all debts shall commence from the date of this order and shall cease to have effect at the end of 180 days or on the date this Tribunal passes an order under Section 114 approving or rejecting the repayment plan, whichever is earlier. During the moratorium period:
 - a. Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed,
 - b. The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt;
 - c. The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein; and
 - d. The provisions of Section 101 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 - ii. In terms of Section 97(5) of the Code, Mr. Sandeep Khaitan, having registration no. IBBI/IPA-001/IP-P00532/2017-2018/10957, e-mail: khaitansandeep@gmail.com, and having his address at Singhi & Co. Sanmati Plaza, G.S. Road, Opp IDBI Bank, ABC Area, Guwahati, Kamrup, Assam, 781005, who was appointed *vide* order dated 06.10.2025, shall continue to act as the Resolution Professional (RP) for the Personal Guarantor.
 - iii. The Resolution Professional shall discharge the duties in accordance with Sections 99 to 105 of the Code and the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.
 - iv. The Resolution Professional is directed to issue a public notice on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Guwahati Bench, inviting claims from all Creditors, within 21 days of such issue. The notice under Section 102(2) shall include: -
 - a. details of the order admitting the application;



- b. particulars of the resolution professional with whom the claims are to be registered; and
 - c. the last date for submission of claims.
- v. The notice shall be published in two newspapers, one in English and other in Vernacular, which is in wide circulation in the State where the Corporate Debtor and Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.
- vi. The Resolution Professional, in exercise of the powers conferred under Section 104, shall prepare a list of creditors on the basis of:
 - a. the information disclosed in the application filed by the debtor under Sections 94 or 95, as the case may be, and
 - b. claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice.
- vii. The debtor shall prepare a repayment plan under Section 105, in consultation with the Resolution Professional, containing a proposal to the Creditors for restructuring of his debts or affairs.
- viii. The repayment plan may authorize or require the Resolution Professional to:
 - a. carry on the debtor's business or trade on his behalf or in his name: or
 - b. realise the assets of the debtor; or
 - c. administer or dispose of any funds of the debtor.
- ix. The repayment plan shall include the following, namely:
 - a. justification for preparation of such repayment plan and reasons based on which the creditors may agree upon the plan;
 - b. provision for payment of fee to the Resolution Professional;
 - c. such other matters as may be specified
- x. The Resolution Professional 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.
- xi. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons thereof. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, she shall specify the details as provided under Section 106(3) of the Code. The date



of meeting should not be less than 14 days or more than 28 days from the date of submission of the Report under sub- section (1) of Section 106 of the Code, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of the Code.

- xii. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 and 111 of the Code. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of the Code, and submit the same to this Tribunal, copies of which shall be provided to the Corporate Debtor and the Financial Creditor. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of the Code.
 - xiii. The Resolution Professional shall coordinate with parallel recovery proceedings to ensure that there is no duplication or double recovery, and that any sums realised in O.A. No. 400/2023 proceedings before the Hon'ble DRT, Guwahati are duly disclosed and adjusted in the insolvency estate statement. The Financial Creditor shall ensure full disclosure of any amounts realised elsewhere.
 - xiv. The Personal Guarantor is directed to extend full cooperation to the Resolution Professional and furnish all documents and information as may be required for the effective discharge of his duties.
 - xv. The Resolution Professional shall submit the periodic reports before this Tribunal, every 30 days.
 - xvi. The Financial Creditor is directed to deposit Rs. 80,000/- (Rupees Eighty Thousand Only) to the bank account of the Resolution Professional within one week, towards the fees of the Resolution Professional. This shall be subjected to the rules and regulations under the provisions of the Code.
19. In terms of the above, **CP (IB)/1/GB/2025** filed under Section 95 of the Code is **admitted** and the Insolvency Resolution Process stands initiated against the Personal Guarantor.
20. The Financial Creditor and its Counsel are hereby directed to serve the copy of this Order along with copy of the Application and documents on the Resolution Professional by all modes for information and compliance.



21. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
22. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Sd/-
Yogendra Kumar Singh
Member (Technical)

Sd/-
Rammurti Kushawaha
Member (Judicial)

Signed this on 2nd day of September, 2026.

Aditya Prakash (L.R.A)

Niketa Choudhary(L.R.A)