IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item Nos. 212—215

IA-1290/2023 in IB-12/ND/2023
IA-1318/2023 in IB-13/ND/2023
IA-1314/2023 in IB-14/ND/2023
IA-1289/2023 in IB-16/ND/2023

IN THE MATTER OF:

CFM Asset Reconstruction Pvt. Ltd ... Applicant

Versus

Sh. Jugal Kishore Baweja ... Respondent/Personal Guarantor

AND IN THE MATTER OF IA No. 1290 OF 2023:

Neeraj Bhatia
(Resolution Professional)
P-27, 1st Floor,
Malviya Nagar, New Delhi-110017 **... Applicant/RP**

IN THE MATTER OF:

CFM Asset Reconstruction Pvt. Ltd ... Applicant

Versus

Sh. Darshan Lal Baweja ... Respondent/Personal Guarantor

AND IN THE MATTER OF IA No. 1318 OF 2023:

Neeraj Bhatia
(Resolution Professional)
P-27, 1st Floor,
Malviya Nagar, New Delhi-110017 **... Applicant/RP**

IN THE MATTER OF:

CFM Asset Reconstruction Pvt. Ltd ... Applicant

Versus

Sh. Jagdish Kumar Baweja ... Respondent/Personal Guarantor

AND IN THE MATTER OF IA No. 1314 OF 2023:

Neeraj Bhatia
(Resolution Professional)
P-27, 1st Floor,
Malviya Nagar, New Delhi-110017 **... Applicant/RP**

IN THE MATTER OF:
CFM Asset Reconstruction Pvt. Ltd ... Applicant

Versus

Sh. Parth Baweja ... Respondent/Personal Guarantor

AND IN THE MATTER OF IA No. 1289 OF 2023:

Neeraj Bhatia
(Resolution Professional)
P-27, 1st Floor,
Malviya Nagar, New Delhi-110017 **... Applicant/RP**

Under Section: 95 of IBC, 2016

Order delivered on 29.01.2024

CORAM:
SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:
For the Applicant : Adv. Karan Aggarwal
For the Respondent :
For the RP : Adv. Ashutosh Kumar

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

I.A. Nos.-1290/2023, 1318/2023, 1314/2023 & 1289/2023: - All these petitions as also the reports filed under Section 99 of IBC, 2016, arises out of common transaction and the RP who has filed the report is also same, thus, the petitions as well as applications are assimilated to be disposed of in terms of the present common order.

2. The Xander Finance Private Ltd. and JM Financial Products Ltd. had, upon the request of Delhi Baroda Road Carrier Pvt. Ltd. (Corporate Debtor)

sanctioned term loan facilitate to the extent of Rs. 150 Crores out of which 75 crores was the facility against certain securities the personal guarantees given by the Respondents hearing before us viz. securities executed by Jagdish Kumar Baweja, Jugal Kishore Baweja, Darshan Lal Baweja and Parth Baweja, in terms of the deed of guarantee dated 24.09.2018. Nevertheless, the guarantee deed was amended in terms of addendum deed dated 16.11.2018. As per the Loan Agreement, Xander disbursed the amount of Rs. 75,00,00,000/- to the Corporate Debtor in 24.09.2018. Subsequent to the disbursement of loan amount, the Corporate Debtor defaulted in discharging the obligation to repay the loan. In the wake, the account of CD was declared as Non-Performing Assets (NPA) on 01.10.2019.

3. Later, all the rights, title, interest and powers, in terms of the loan agreement and other documents executed qua the transactions were transferred to the Applicant herein before us viz. CFM Assets Reconstruction Pvt. Ltd. (Applicant), in terms of the Assignment Agreement dated 27.12.2019.

4. A Company Petition No. 1665/(PB)/2018 filed by Mahindra & Mahindra Finance Services Ltd. against the Corporate Debtor was admitted in terms of the order dated 24.09.2019 passed by this Tribunal. In terms of the Loan Agreement, since the Corporate Debtor was undergoing the CIRP, recall notice dated 30.09.2020 was issued by Applicant calling upon the Respondents viz. Personal Guarantors including to pay outstanding amount of Rs. 89,52,41,917/- as on 13.09.2020. Nevertheless, in the interregnum, the Financial Creditor received an amount of Rs. 24,06,00,000/- as per the resolution plan qua the CD. The balance outstanding amount is jointly and severally payable by the Personal Guarantors including the Respondents herein before us in the present applications.

5. The Creditor issued a Demand Notice dated 06.07.2022 invoking the personal guarantee. The Creditor had issued separate notices to all the Guarantors/Respondents on same date demanding the amount of Rs. 91,47,43,676/-, as on 23.06.2022, within 7 days. Copy of notice was sent to the Security Trustee namely IDBI Trusteeship Services Limited.

6. Yet again the Creditor i.e. Applicant addressed separate notice dated 22.08.2022 to the Guarantors including the Respondents herein before us, as per the Section 95(4) of the IBC, 2016, calling upon them to pay unpaid debt amount i.e. Rs. 92,84,27,813/- as on 18.08.2022. As despite the demand notice sent to the Respondents in Form-B, the amount of loan was not paid, the Applicant/Creditor preferred the present applications. Part-III of the Application i.e. IB-12/ND/2023 reads thus:

Part- III

PARTICULARS OF DEBT		
1.	Total debt (including any interest or penalties)	Rs. 92,84,27,813/- (Rupees Ninety-Two Crores Eighty-Four Lakhs Twenty-Seven Thousand Eight Hundred and Thirteen only) as on August 18, 2022.
2.	Amount in default	Rs. 92,84,27,813/- (Rupees Ninety-Two Crores Eighty-Four Lakhs Twenty-Seven Thousand Eight Hundred and thirteen only) as on August 18, 2022 1. Xander Finance Private Limited ("**Xander**") and JM Financial Products Limited had, upon the request of Delhi Baroda Road Carrier Pvt. Ltd. ("Corporate Debtor"), granted a rupee term loan facility to the aggregate amount of Rs. 150,00,00,000/- (Rupees One Hundred and Fifty Crores only) (out of which amount of Rs. 75,00,00,000/- (Rupees Seventy-Five Crores only) was the commitment of Xander) against certain security ("**Facility**") as per terms and conditions mentioned in the loan agreement dated September

		24, 2018 read with the First Amendment cum Addendum to Loan Agreement dated November 16, 2018 (hereinafter together "**Loan Agreement**"). 2. The Corporate Debtor was obligated to repay the Facility as per clause 6.1 read with schedule 13 of the Loan Agreement. Further, in order to secure the Facility, as per clause 11 of the Loan Agreement, the Corporate Debtor was required to create certain security interest for the benefit of the Xander (and other Lenders). 3. In compliance of its obligation under the Loan Agreement, the repayment of the Facility along with all other outstanding thereto including interest, additional interest, default interest ("**Outstandings**") was guaranteed by Mr. Jugal Kishore Baweja in his capacity as a personal guarantor, in favour of the Security Trustee (for the benefit of Xander) under the terms (more specifically clause 2) of Deed of Personal Guarantee dated September 24, 2018 ("**Personal Guarantee**").
		4. Some of the relevant clauses of the Personal Guarantee are mentioned below: *"2. GUARANTEE* *2.1 Joint and Several Obligations* *2.1.1. Each of the Guarantors hereby agrees and undertakes that they are jointly and severally liable for all their obligations under this Guarantee and that its performance under this Guarantee is not conditional or dependent upon the performance by the other Guarantors of the terms of this Guarantee and is irrespective of a default by any of the other Guarantors in the performance of the terms of this Guarantee, whether such default is on account of a legal restriction or otherwise.*

		2.1.2.	*Each of the Guarantors shall at all times continue to perform in full its obligations under this Guarantee, including the obligations undertaken pursuant to this Clause 2. The performance by each of the Guarantors of its obligations herein and the exercise of their rights by the Security Trustee and/or the Lenders with respect to each of the Guarantors is not conditional on any demand being made against the other Guarantors for performance of similar obligations or the exercise by the Security Trustee and/or Lenders of similar rights against such other Guarantors under this Guarantee.*
		2.1.3.	*The Guarantors hereby, jointly and severally, guarantee, as primary obligors and not merely as sureties, to the Security Trustee the payment, repayment and reimbursement, as the case may be, of the Outstanding Amounts (including the Default Interest) and hereby guarantee, assure and undertake, as continuing guarantee for the due performance and compliance of the obligations under the Finance Document, that in the event of failure on the part of any of the Obligors in complying with the their respective obligations under the Finance Documents, the Guarantors shall comply with such obligations including in case any payment to any of the Security Trustee and/or the Lenders which had fallen due is not paid, whether at scheduled maturity or on acceleration or otherwise, then the Guarantors shall unconditionally and irrevocably pay, immediately upon occurrence of such default, which the Guarantors agree is a reasonable period, the amounts equivalent to the amounts fallen due for appropriation towards the Outstanding Amounts and all other sums payable by the Borrower and/or any of the Obligors to the Security Trustee and the Lenders under the Loan Agreement and the Finance Documents.*
		.....	

		2.3. Independent Obligation *Each of the Guarantors agree that they will, as a separate and independent stipulation and without prejudice to the other provisions contained herein, as a primary obligor and not merely as surety, on a full indemnity basis, indemnify, the Security Trustee against any loss or damage caused to the Finance Parties as a result of the whole or any of the*
		obligations of the Obligors under the Finance Documents being or becoming void, voidable, unenforceable or ineffective as against any of the Borrower and/or the Obligors for any reason whatsoever irrespective of whether such reason or any related fact or circumstance was known or ought to have been known to the Security Trustee or any of their officers or employees. The amount of such loss shall not exceed the amount which the Security Trustee would otherwise have been entitled to recover from the Guarantors in respect of the Guarantee. ....
		2.6. No discharge *The Guarantors hereby acknowledge and agree that notwithstanding any discharge, release or settlement from time to time between the Security Trustee/Lenders and any of the Guarantors or the Security Trustee/Lenders and the Borrower or the Security Trustee/Lenders and any of the other Obligors or any of the Guarantors and the Borrower, if any payment made by the Guarantors or the Borrower and/or any of the other Obligors is avoided or set aside or ordered lo be surrendered, paid away, refunded or reduced including by virtue of any provision of law or enactment relating to bankruptcy, insolvency, liquidation, winding-up, composition or arrangement, or by virtue of any provision(s) of other existing agreements entered into by the Borrower (including with its existing creditors) or otherwise, the Security Trustee and the Lenders shall be entitled to enforce this Guarantee as if no such*

discharge, release or settlement had occurred and as if no such payment had been made under this Guarantee.

.....

3. Indemnity

3.1 The Guarantors will, indemnify and keep the Security Trustee and Lenders indemnified against all losses, damages, costs, claims and reasonable expenses whatsoever which the Security Trustee, may suffer or incur by reason of or in connection with any default on the part of the Borrower and (or any of the Obligors including legal proceedings taken against the Guarantors for recovery of the monies referred to in Clause 2.2.

3.2 Further, the Guarantors agree and undertake that if at any time the obligations under this Guarantee are not enforceable as a guarantee, then the obligation shall be enforceable as an indemnity and the Guarantors shall make all such payments as are required to be made to ensure that the Lenders and the Security Trustee are able to receive all the monies then outstanding under the Finance Documents and to ensure that they do not suffer any loss or costs or expenses whatsoever.

3.3 The amounts payable by the Guarantors pursuant to Clause 3.1 and Clause 3.2 above will be paid immediately upon demand from the Security Trustee, which the Guarantors agree is a reasonable period.

....."

5. As per the terms of the Loan Agreement, Xander disbursed an amount of Rs. 75,00,00,000/- to the Corporate Debtor on September 24, 2018. Subsequent to the disbursal by Xander, the Corporate Debtor defaulted in its payment obligations under the Loan Agreement. Accordingly, the account of the Corporate Debtor was declared as Non-Performing Asset ("**NPA**") on October 1, 2019.

6. Thereafter, Xander has assigned all the rights, title and interest in favour of CFM. Therefore, all the rights, powers under the Loan Agreement and other finance documents including the underlying securities have now been transferred to and vested in CFM *vide* an Assignment Agreement dated December 27, 2019. Therefore, CFM has stepped into the shoes of Xander and become entitled to recover outstanding dues and enforce the securities available.

7. In the interim, a Company Petition No. 1665 (PB) of 2018 filed by Mahindra & Mahindra Financial Services Ltd. against the Corporate Debtor was admitted *vide* an Order dated September 24, 2019.

8. As per the terms of the Loan Agreement, since the Corporate Debtor was undergoing the Corporate Insolvency Resolution Process ("**CIRP**"), and Mr. Jugal Kishore Baweja and other Personal Guarantors defaulted in making necessary repayments, a Notice for Recall dated September 30, 2020 ("**Recall Notice**") was issued by CFM, *inter alia*, calling upon the personal guarantors including Mr. Jugal Kishore Baweja to pay the outstanding amount of Rs. 89,52,41,917/- (Rupees Eighty-Nine Crore Fifty-Two Lakh Forty-One Thousand Nine Hundred Seventeen only) as on September 16, 2020. Despite receipt of the said Recall Notice, neither the Corporate Debtor nor Mr. Jugal Kishore Baweja paid the Outstandings.

		9. In the interim, the Financial Creditor received an amount of Rs. 24,06,00,000/- (Rupees Twenty-Four Crores Six Lakhs only) as per the Resolution Plan after the conclusion of the CIRP of the Corporate Debtor. Therefore, the balance outstanding amount is jointly and/or severally payable by Mr. Jugal Kishore Baweja and other personal guarantors of the Corporate Debtor. 10. Further, as per the terms of the Personal Guarantee, a demand certificate dated July 6, 2022 ("**Demand Certificate**") was issued by CFM, *inter alia*, invoking the personal guarantee under clause 2.2 of the Personal Guarantee read with Schedule III thereon. The Demand Certificate was addressed to the Personal Guarantors including Mr. Jugal Kishore Baweja to pay an amount of Rs. 91,47,43,676/- (Rupees Ninety-One Crore Forty-Seven Lakhs Forty-Three Thousand Sixty Hundred and Seventy-Six) as on June 23, 2022 within 7 days and the same was also copied to Security Trustee namely IDBI Trusteeship Services Limited. Despite receipt of the said Demand Certificate, Mr. Jugal Kishore Baweja failed to pay the outstanding amount.
		11. In these circumstances, an amount of Rs. 92,84,27,813/- (Rupees Ninety-Two Crores Eighty-Four Lakhs Twenty-Seven Thousand Eight Hundred and Thirteen only) as on August 18, 2022 is due and payable to CFM by Mr. Jugal Kishore Baweja.

3.	Date on which debt was due	July 6, 2022
4.	Date on which default occurred	July 13, 2022
5.	Nature of the debt	Financial Debt
6.	Secured debt including particulars of security held, the date of its creation, its estimated value as per the creditor (as applicable)	NA
7.	Unsecured debt (as applicable)	An amount of Rs. 92,84,27,813/- (Rupees Ninety-Two Crores Eighty-Four Lakhs Twenty-Seven Thousand Eight Hundred and thirteen only) as on August 18, 2022 along with default interest at the rate of 3% per annum, on the outstanding amount till the actual date of payment.
8.	Details of retention of title arrangements (if any) in respect of goods to which the debt refers (attach a copy)	NIL
9.	Details of any mutual credit, mutual debts, or other mutual dealings between the guarantor and the creditor, which may be set-off against the claim (attach proof)	NA
10.	Particulars of an order of a court, tribunal or arbitral panel adjudicating on the default, if any (attach a copy of the order)	NA
11.	Record of default with the information utility, if any (attach a copy)	Filed with National E-Governance Services Ltd. on June 24, 2020 with Unique Debt Identifier as AAGCC1296B_DBRC 1 Hereto annexed and marked as **Exhibit C** is the copy of the record of default.
12.	Details of succession certificate, or probate of a will, or letter of administration, or court decree (as may be applicable), under the Indian Succession Act, 1925 (10 of 1925) (attach a copy)	NA

13.	Provision of law, contract or other document under which debt has become due (attach a copy)	1. The Indian Contract Act, 1972; 2. The Insolvency and Bankruptcy Code, 2016; 3. Loan Agreement dated September 24, 2018; 4. Deed of Personal Guarantee dated September 24, 2018; 5. Security Trustee Agreement dated September 24, 2018; 6. Letter of Continuity dated September 24, 2018; 7. Inter Creditor Agreement dated September 24, 2018; 8. Recall Notice dated September 30, 2020; 9. Demand Certificate invoking Personal Guarantee dated July 6, 2022. 10. Demand Notice dated August 22, 2022.
14.	A statement of bank account where deposits are made or credits received normally by the creditor in respect of the debt of the corporate debtor, from the date on which the debt was incurred (attach a copy)	Hereto annexed and marked as **Exhibit C1** is the copy of the statement of bank account.
15.	List of documents attached to this application in order to prove the existence of debt and the amount in default	List of documents: 1. Loan Agreement dated September 24, 2018 is annexed as **Exhibit D**; 2. Deed of Personal Guarantee dated September 24, 2018 is annexed as **Exhibit E**; 3. Security Trustee Agreement dated September 24, 2018 is annexed as **Exhibit F**; 4. Letter of Continuity dated September 24, 2018 is annexed as **Exhibit G**; and 5. Inter Creditor Agreement dated September 24, 2018 is annexed as **Exhibit H**;

		6. Assignment Agreement dated December 27, 2019 is annexed as **Exhibit I**; 7. Recall Notice dated September 30, 2020 is annexed as **Exhibit J**; 8. Demand Certificate invoking Personal Guarantee dated July 6, 2022 along with the proof of delivery is annexed as **Exhibit K**; 9. Demand Notice dated August 22, 2022, along with Proof of Delivery is annexed as **Exhibit L**.
16.	Statement by creditor in respect of excluded debts	NA
17.	If you are a secured creditor, tick the applicable box in the right column relating to forfeiture of right to enforce security during the period of the repayment plan, which will determine the voting share as per section 110 of the Code.	NA

7. Limited notices were issued to the Personal Guarantor qua the Petitioner. Nevertheless, no one entered appearance on its behalf. In the wake, by separate orders passed in the respective applications filed under Section 95 of IBC, 2016, Mr. Neeraj Bhatia was appointed as RP, in terms of the provisions Section 97 of IBC, 2016. The relevant excerpt of the Order dated 06.02.2023 passed in CP-(IB)-12/ND/2023 reads thus:

> *"Ld. Counsel Mr. Aditya Narayan Mahajan appearing on behalf of the Applicant submits that the Applicant has not proposed the name of the RP, which may be appointed from the panel of the IBBI. Accordingly, from the panel of IPs suggested by the IBBI, this Bench appoints Mr. Neeraj Bhatia (Email ID nbtrace1@yahoo.com) as Resolution Professional, whose details are given below:*
>
> ***IBBI Registration No.*** : *IBBI/IPA-001/IP-P00824/2017-2018/11400*
> ***E-mail Address*** : *nbtrace1@yahoo.com*
> ***Contact Number*** : *9810317585"*

8. The aforementioned RP appointed qua all the Respondents (Personal Guarantors) filed separate applications under Section 99 of IBC, 2016. Though the applications are separate, but the contents thereof or pari materia. As can be seen from the report of RP filed in IB-12/ND/2023, qua the IA-1290/2023, the RP communicated with the Personal Guarantors at their known addresses to apprise them regarding his appointment as RP in terms of the provisions of Section 95 of IBC, 2016 and asking them to come forward for their submissions to prove the repayment of debt claim by the Creditors as per the Section 99(2) of IBC, 2016. Part-2 of the Report reads thus:

"***PART 2: Communication with the Personal Guarantor***

An email, courier and speed post was sent to Mr Jugal Kishore Baweja on his known address i.e. dbrc47@rediffmail.com and House No, 14,15 Palm wood, Sohna Road, Near South City, Malibu Town, Sector-47, Islampur(97), Gurugram, Haryana-122018 on 10th February, 2023 and 13th February, 2023 respectively, to apprise him of initiation of Insolvency Resolution Process against him and asking him to come forward for his submissions to prove the repayment of debt claimed by the creditor as per the section 99(2) of the Insolvency and Bankruptcy Code, 2016..

As per section 99(2) of the Insolvency and Bankruptcy Code, 2016, Where the application has been filed under section 95, the Resolution Professional may require the debtor to prove repayment of the debt claimed as unpaid by the creditor by furnishing:

a) Evidence of electronic transfer of the unpaid amount from the bank account to the debtor
b) Evidence of enchashment of a cheque issued by the debtor, or
c) A signed acknowledgement by the creditor accepting receipt of dues.

Upon Receipt of above letter, Mr Madan Lal Baweja on behalf of his father (Mr Jagdish Kumar Baweja), brothers (Mr Darshan Lal Baweja & Mr Jugal Kishore Baweja) & Nephew (Mr Parth Baweja) called me over phone on 14.02.2023 and fixed time for meeting on the next day at my office situated at P-27, 1st Floor, Malviya Nagar, New Delhi-110017. On 15.02.2023, Mr Madan Lal Baweja & Mr Jugal Kishore Baweja personally came to my office and acknowledged our letter dated 10.02.2023 and shared their contact number and email id and assured me of all the co-operation from their side. They confirmed that

they have not made any payment after the service of Demand notice dated 22.08.2022."

9. In Part-3 of the Report/Application, the RP has given the list of methods followed by him in undertakes the process. The Part-3 reads thus.

"***Part 3 : Methods followed/Documents relied***

l) Entire application scrutinized
m) A statement of accounts of the Creditor
n) Loan Agreement dated 24.09.2018
o) Deed of Personal Guarantee dated 24.09.2018
p) Security Trustee Agreement dated 24.09.2018
q) Letter of Continuity dated 24.09.2018
r) Inter Creditor Agreement dated 24.09.2018
s) Assignment Agreement dated 27.12.2019
t) Recall Notice dated 30.09.2020
u) Demand Certificate invoking Personal Guarantee dated 06.07.2022
v) Demand Notice dated 22.08.2022
w) Record of default filed with National E-Governance Services Ltd (NeSL) on 24.06.2020 with Unique Debt Identifier as AAGCC1296B_DBRC 1
x) NCLT order dated 21.02.2022 wherein Resolution Plan got approved (Corporate Debtor Delhi Baroda Road Carrier Pvt Ltd)."

10. After examining the application and following the process in terms of the provisions of sub-Section 6 of Section 99 of IBC, 2016, the RP recommended for acceptance of the applications filed under Section 95 of IBC, 2016, for commencement of IRP against Personal Guarantor. The Part-4 of the application and the recommendation made by RP read thus:

"***Part 4 : Conclusion with recommendation***

We clarify the following:

a) Demand Notice issued is as per the prescribed format.
b) No amount received within a period of 14 days of issue of demand notice nor even till date.
c) The application made is in the prescribed format;
    i) The application satisfies the requirements set out in section 95

ii) The applicant has provided information and given explanation sought by me.

d) Debtor is not eligible for fresh start under section 99(8) of the code.

e) Upon Receipt of above letter, Mr Madan Lal Baweja on behalf of his father (Mr Jagdish Kumar Baweja), brothers (Mr Darshan Lal Baweja & Mr Jugal Kishore Baweja) & Nephew (Mr Parth Baweja) called me over phone and fixed time for meeting on the next day at my office situated at P-27, 1st Floor, Malviya Nagar, New Delhi-110017. Mr Madan Lal Baweja & Mr Jugal Kishore Baweja personally came of my office and acknowledged our letter dated 10.02.2023 and shared their contact number and email id and assured me of all the co-operation from their side.

Recommendation

After examination of the application under sub section 6 of Section 99, I hereby recommend for acceptance of application filed u/s 95 of the Insolvency and Bankruptcy Code, 2016 for commencement of Insolvency Resolution Process against Personal Guarantors/Debtor."

11. We had issued notice qua the applications filed by the RP recommending admission of the application to the Respondents/Personal Guarantors, but despite service of notice, none of them entered appearance.

12. As can be seen from Section 100 of IBC, 2016, after filing on Report under Section 99 of IBC, 2016, this Tribunal need to take a decision regarding admission or rejection of application within 14 days. Once the RP has submitted report and the Personal Guarantors have not entered appearance, we are left with no option but to take decision on the basis of the material and documents available on record. As it may, there being no evidence produced either before RP or before this Adjudicating Authority in terms of the provisions of Section 99(2) of IBC, 2016, there is sufficient ground to admit the present application. Section 99(2) of IBC, 2016, read thus:

"99. Submission of report by resolution professional.

...

(2) Where the application has been filed under section 95, the resolution professional may require the debtor to prove repayment of the debt claimed as unpaid by the creditor by furnishing—

(a) evidence of electronic transfer of the unpaid amount from the bank account of the debtor;

(b) evidence of encashment of a cheque issued by the debtor; or

(c) a signed acknowledgment by the creditor accepting receipt of dues."

13. In view of the aforementioned, particularly in the wake of the recommendation made by RP and there being no evidence regarding repayment of loan by the Personal Guarantor, **we are left with no option but to admit the petitions filed under Section 95 of IBC, 2016. Ordered accordingly.** It is made clear that, whatever payment is recovered by the Creditor either by auction of the Securities or from Corporate Debtor, or from any of the Guarantor, the same would be taken into account in the repayment plan to be submitted by the Personal Guarantors and considered by the Creditors. It is further made clear that no amount beyond whatever is left out of the total term loan sanctioned to the Corporate Debtor would be recoverable from the Guarantors. The RP shall conduct separate process in terms of the IBC, 2016 qua each of the Personal Guarantors. In another words, the procedure in terms of provisions of Section 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112 and 113 qua each of the Respondents would be separate and not common.

14. There is no request by the RP for the purpose of conducting negotiation between the debtor and the creditors. As a sequel of admission of the present application, a moratorium shall commence in relation to all the debts of the Respondent. During the moratorium period – (a) any pending legal action or proceedings in respect of any debt qua the Respondent shall be deemed to have been stayed; (b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt qua the Respondent; and (c) the debtors shall not transfer, alienate, encumber or dispose of any of the assets or his legal right or beneficiary interest therein. The moratorium shall cease to have effect at the end of period of 180 days.

15. A public notice shall be issued by the RP within seven days of passing of this order, inviting claim from all creditors within 21 days of such notice. The

notice shall include details of the present order, particulars of the Resolution Professional with whom the claims have to be registered and the last date for the submission of the claims. The notice shall be – (a) published in English and one Vernacular Language newspaper which is in circulation in the State where the debtor resides; (b) affixed in the premises of this Adjudicating Authority; and (c) placed on the website of the Adjudicating Authority.

16. We are sanguine that the RP shall discharge all such duties as are incumbent upon him in terms of the provisions of Sections 104, 105, 106 , 107, 108, 112 and 113 of IBC, 2016, with the due deference of the procedure enshrined in Regulations 5, 7, 8, 9, 11, 12, 13, 14, 15 and 17 of IBBI (Insolvency Resolution Process for Personal Guarantor to Corporate Debtors) Regulations, 2019 and also in terms of the other extent provisions of the aforementioned code/ regulations and/or any other provisions of law applicable to him, in discharge of his duties as RP.

17. A copy of this order along with the copy of the application as also the report of Resolution Professional shall be provided to the Creditor (Applicant), Personal Guarantor (Respondent) and IBBI, by the Registry/Court Master within 7 days from today by email.

18. It goes without saying that whatever amount is paid to the creditor by the principal borrower (corporate debtor) and other guarantors would be deducted from the liability of the Respondents to repay.

19. **IA-1290/2023, IA-1318/2023, IA-1314/2023 and IA-1289/2023 are disposed of accordingly. To come up for consideration of Status Report to be filed by RP, within 8 weeks.** Let a copy of this order be uploaded in the e-portal qua all the applications.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)