

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
03-06-2024 AT 10:30 AM**

**CP (IB) No. 2/95/HDB/2021
AND
IA (IBC) 226/2024 in CP (IB) No. 2/95/HDB/2021
u/s. 95 of IBC, 2016**

IN THE MATTER OF:

State Bank of India

...Petitioner

AND

Mrs. L Ramalakshamma in the
matter of Lanco Infratech Ltd.

...Respondent

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

O R D E R

CP (IB) No. 2/95/HDB/2021

Orders pronounced. In the result, the Company Petition vide CP (IB) No. 2/95/HDB/2023 filed under the provisions of Section 95 of Code, 2016 is hereby admitted under the provisions of Section 100 of the Code, 2016 and Insolvency Resolution Process (IRP) is initiated against Mrs. L Ramalakshamma, the Personal Guarantor, and moratorium is declared in relation to all debts, which begins from the date of admission of the instant petition and shall cease to have effect at the end of the period of 180 days, as provided under Section 101 of the Code, 2016.

IA (IBC) 226/2024

Orders pronounced. In the result, **this application is dismissed.** However, without costs.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – I**

CP (IB) No.2/95/HDB/2021

*(Under Section 95 of the Insolvency and Bankruptcy Code, 2016 read with 7(2) of the
Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency
Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.*

**In the matter of Ms.L.Ramalakshamma (Personal Guarantor to the
Corporate Debtor – M/s.Lanco Infratech Limited)**

Between:

State Bank of India
Having its office at
Stressed Assets management Branch-I
11th Floor, Jawahar Vyapar Bhavan
STC Building, 1 Tolstoy Marg
Janpath, New Delhi.

Filed through

Resolution Professional
Proposed by State Bank of India
Shri Anil Kohli, Insolvency Professional
Having its office at 409, 4th Floor, Ansal Bhawan 16,
K.G. Marg, New Delhi – 110 001.

... Applicant/Financial Creditor

A N D

Ms. L.Ramalakshamma
W/o. Late Sh.L.V.Rama Naidu
Aged about 79 years,
R/o. H.No.8-21-9/1, III Lane
Seetharama Nagar, Mangalagiri Road,
Guntur – 522001, Andhra Pradesh.

... Respondent/ Personal Guarantor

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CORAM:

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA,
HON'BLE MEMBER (JUDICIAL)
SHRI. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

Appearance: -

For the Petitioner /Financial creditor: Mr.P.Ravi Charan along with
Ms. Niharika Agarwal, counsels.

For the Respondent: Mr. Arjun Syal, along with Mr.K.V.Raman, Counsels

For the Resolution Professional : Sri Abhishek Anand, Counsel

Resolution Professional : Sri Anil Kohli, RP

PER: BENCH

1. This instant petition is filed by the Financial Creditor (State Bank of India) under Section 95 of the Insolvency and Bankruptcy Code, 2016 read with rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (hereinafter referred to as "Personal Guarantors Insolvency Rules, 2019"), seeking an order for initiation of the Insolvency Resolution Process ("IR Process") against Ms.L.Ramalakshamma, who is the Personal Guarantor of the Corporate Debtor, M/s.Lanco Infratech Limited (hereinafter referred to as "Corporate Debtor") for the default amount of Rs.1814,86,85,594.58 as on 17.08.2020.

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2. The averments of the Petition in brief as follows:

2.1 It is averred that Ms.L.Ramalakshamma (Personal Guarantor), executed a personal guarantee to secure the repayment of financial assistance availed by M/s Lanco Infratech Limited (Corporate Debtor) from State Bank of India. Pursuant to default in repayment of debt by the Corporate Debtor, IDBI Bank Ltd. filed an application under Section 7 of Insolvency and Bankruptcy Code, 2016 (herein after referred to as “the Code, 2016”), which was admitted by this Hon’ble Adjudicating Authority vide its order dated 07.08.2017 and a Corporate Insolvency Resolution Process was initiated against the Corporate Debtor under the provisions of the Code being C.P. (IB) No. 111/7/HDB/2017.

2.2 It is stated that during the CIRP, State Bank of India filed its claim before the Interim Resolution Professional for an amount of Rs. 1807.00 Crores, which was admitted by the Interim Resolution Professional. Since, no resolution plan was received for the Corporate Debtor, the Resolution Professional filed an application under Section 33 of the Code for liquidation of the Corporate Debtor, which was allowed by this Hon’ble Adjudicating Authority vide order dated 27.08.2018. Pursuant thereto, the State Bank of India filed its claim before the liquidator, for an amount of Rs. 2109.36 Crores, which was admitted by the Liquidator. During the Liquidation process State Bank of India has received an amount of Rs. 76,15,694.00/- and as on 17.08.2020, an amount of Rs.

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1814,10,69,900.58/- is still due and payable to State Bank of India. Pursuant to default, in repayment of debt by the Corporate Debtor, personal guarantee of Ms. L.Ramalakshamma was invoked, and accordingly, the personal guarantor was called upon to repay the debt of Corporate Debtor. However, Ms. L.Ramalakshamma failed to repay the debt in default.

2.3 It is stated that State Bank of India vide its Demand Notice dated 15.06.2018 to Corporate Debtor and the Guarantors called upon them to repay the outstanding amount but despite receipt of the said notice the Respondents failed to pay outstanding amount.

2.4 It is stated that Part III of the Code, 2016 titled as 'INSOLVENCY RESOLUTION AND BANKRUPTCY FOR INDIVIDUALS AS PARTNERSHIP FIRMS' contains provisions for initiation of Insolvency Resolution Process and Bankruptcy in respect of Individuals. The relevant provisions in this regard including Section 94 to 187 of the Code, 2016 were notified by Ministry of Corporate Affairs vide notification no. S.O 4126 (E) dated November 15, 2019. Section 95 of the Code, 2016 provides, a Creditor either himself or through a Resolution Professional may initiate Insolvency Resolution Process in respect of a debtor. The rules for filing an Application under Section 94 and 95 of the Code, 2016 in respect of Debtors which are Personal Guarantors to the Corporate Debtor titles as "The Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors

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to Corporate Debtors) Rules, 2019” were also notified by the Ministry of Corporate Affairs vide Notification No. G.S.R. 854 (5) dated November 15, 2019 (hereinafter referred as ‘Personal Insolvency Rules’).

2.5 It is stated that State Bank of India issued a Demand Notice dated 04.07.2020 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019, to which a reply was received from the Guarantor and a rejoinder was issued by the Bank. However, as the relevant documents were already provided to the Guarantor in O.A. No. 350/2019 pending before the DRT-II, Hyderabad, documents were not annexed along with the Demand Notice.

2.6 It is stated that a fresh Demand Notice dated 20.08.2020 under Section 95(4)(b) of the Code, 2016 was issued by State Bank of India (herein after referred to as ‘Creditor’ and/or ‘Applicant’), to Ms.L.Ramalakshamma (Personal Guarantor) under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 calling upon the Personal Guarantor to pay Rs.1814,86,85,594.58/- liability accruing pursuant to invocation of Personal Guarantee executed in respect of Corporate Debtor, which was duly served upon the Personal Guarantor. The Guarantor vide its reply dated 31.08.2020 raised false and frivolous

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grounds in order to escape its liability towards the State Bank of India.

2.7 In terms of Section 60(1) of Insolvency and Bankruptcy Code, 2016 read with Rule 3(1)(a) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019, the Hon'ble Adjudicating Authority, in relation to Insolvency Resolution and Liquidation of Corporate Persons including Corporate Debtors and Personal Guarantors thereof shall be National Company Law Tribunal having territorial Jurisdiction over where the registered office of the Corporate Debtor is located. The registered office of M/s Lanco Infratech Limited - Corporate Debtor is situated within the territorial jurisdiction of this Hon'ble Adjudicating Authority and even the Liquidation Process is being carried out within the territorial jurisdiction of this Hon'ble Adjudicating Authority. Thus, the Jurisdiction for adjudication of present application for initiation of Insolvency Resolution Process under Section 95 of the Code, 2016 is with this Hon'ble National Company Law Tribunal, Hyderabad Bench.

2.8 In terms of Section 95(1) of the Code, 2016, the Applicant creditor may file an Application itself or through a Resolution Professional. Further, in terms of Section 97, where a Creditor makes an application through a Resolution Professional, such Resolution Professional shall be appointed for the purpose of carrying

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Insolvency Resolution Process. In the present case the Applicant creditor has appointed Mr. Anil Kohli an Insolvency Professional enrolled with Indian Institute of Insolvency Professionals of ICAI having registration number (IBBI/IPA-001/IP-P00112/2017-18/10219) for filing the present application under Section 95 of the Code, 2016 for initiation of Insolvency Resolution Process and for appointment as Resolution Professional under Section 97 of the code, 2016.

- 2.9 It is stated that the list of documents attached to this application in order to prove the existence of debt and the amount in default, which are as follows:
- 2.9.1 Copies of statement of Accounts maintained by State Bank of India is annexed herewith and marked as **Annexure A-1.**
- 2.9.2 A copy of Corporate Loan Agreement dated 20.05.2006 India is annexed herewith and marked as **Annexure A-2.**
- 2.9.3 A copy of the Guarantee Deed dated 20.05.2006 and Counter Guarantee dated 24.07.2006 are collectively annexed herewith and collectively marked as **Annexure A-3.**
- 2.9.4 A copy of the Agreement of Loan dated 02.05.2006, Deed of Guarantee dated 02.05.2006, the Counter Guarantee and Omnibus Counter Guarantee are collectively annexed herewith and collectively marked as **Annexure A-4.**
- 2.9.5 A copy of the sanction letter dated 18.12.2007 is annexed herewith and marked as **Annexure A-5.**

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- 2.9.6 A copy of the Agreement of load dated 18.02.2008 is annexed herewith and marked as **Annexure A-6.**
- 2.9.7 Copy of Form 8 is annexed herewith and marked as **Annexure A-7.**
- 2.9.8 A copy of the sanction letter dated 01.10.2008 is annexed herewith and marked as **Annexure A-8.**
- 2.9.9 A copy of an Agreement of loan dated 17.10.2008, an agreement for Pledge of Goods and Assets dated 17.10.2008 are is collectively annexed herewith and collectively marked as **Annexure A-9.**
- 2.9.10 A copy of sanction letter dated 21.10.2008 is annexed herewith and marked as **Annexure A-10.**
- 2.9.11 A copy of the Loan Agreement dated 13.11.2008, the letter for the grant of individual limits within the overall limit and Omnibus guarantee are collectively annexed herewith and collectively marked as **Annexure A-11.**
- 2.9.12 A copy of the Loan Agreement dated 06.03.2009 along with Omnibus Guarantee are collectively annexed herewith and collectively marked as **Annexure A-12.**
- 2.9.13 A copy of sanction letter dated 28.03.2009 issued by State Bank of Mysore is annexed herewith and marked as **Annexure A-13.**
- 2.9.14 A copy of the letter dated 14.05.2009 is annexed herewith and marked as **Annexure A-14.**

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- 2.9.15 A copy of the Supplemental Agreement of loan and Omnibus Guarantee are collectively annexed herewith and collectively marked as **Annexure A-15.**
- 2.9.16 A copy of sanction letter dated 09.10.2009 is annexed herewith and marked as **Annexure A-16.**
- 2.9.17 A copy of sanction letter dated 13.10.2009 issued by erstwhile State Bank of Bikaner & Jaipur to Corporate Debtor is annexed herewith and marked as **Annexure A-17.**
- 2.9.18 A copy of the sanction letter dated 27.11.2009 issued by erstwhile State Bank of Hyderabad to Corporate Debtor is annexed herewith and marked as **Annexure A-18.**
- 2.9.19 A copy of Agreement of Loan dated 02.01.2010 executed between erstwhile State Bank of Mysore and the Corporate Debtor is annexed herewith and marked as **Annexure A-19.**
- 2.9.20 A copy of Agreement of loan on 13.02.2010 executed between erstwhile State Bank of Hyderabad and Corporate Debtor along with counter Indemnity dated 13.02.2010 executed by Corporate Debtor in favour of erstwhile State Bank of Hyderabad are collectively annexed and marked as **Annexure A-20.**
- 2.9.21 A copy of sanction letter dated 05.03.2010 issued by State Bank of India to Corporate Debtor is annexed herewith and marked as **Annexure A-21.**
- 2.9.22 A copy of letter dated 18.03.2010 sent by erstwhile State Bank of Patiala to Corporate Debtor for ceding pari-passu charge is annexed herewith and marked as **Annexure A-22.**

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- 2.9.23 A copy of letter dated 23.03.2010 sent by erstwhile State Bank of Hyderabad to Corporate Debtor for ceding pari-passu charge is annexed herewith and marked as **Annexure A-23**.
- 2.9.24 A copy of letter dated 24.03.2010 sent by erstwhile State Bank of Mysore to Corporate Debtor for ceding pari-passu charge is annexed herewith and marked as **Annexure A-24**.
- 2.9.25 A copy of letter dated 29.03.2010 sent by erstwhile State Bank of Bikaner & Jaipur to Corporate Debtor for ceding pari-passu charge is annexed herewith and marked as **Annexure A-25**.
- 2.9.26 A copy of the letter regarding the grant of individual limits within the overall limits dated 29.03.2010 is annexed herewith and marked as **Annexure A-26**.
- 2.9.27 Copies of Debt Balance Confirmation dated 31.03.2010 and Revival Letter on 11.10.2010 are collectively annexed herewith and collectively marked as **Annexure A-27**.
- 2.9.28 A copy of sanction letter dated 16.12.2010 issued by erstwhile State Bank of Mysore is annexed herewith and marked as **Annexure A-28**.
- 2.9.29 A copy of the sanction letter dated 05.03.2011 issued by erstwhile State Bank of Hyderabad is annexed herewith and marked as **Annexure A-29**.
- 2.9.30 A copy of the letters dated 28.03.2011 sent to the erstwhile State Bank of Hyderabad is annexed herewith and marked as **Annexure A-30**.

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- 2.9.31 A copy of Sanction letter dated 31.03.2011 issued by State Bank of India is annexed herewith and marked as **Annexure A-31.**
- 2.9.32 A copy of letter dated 19.04.2011 sent by the Corporate Debtor to erstwhile State Bank of Patiala is annexed herewith and marked as **Annexure A-32.**
- 2.9.33 a copy of Sanction Letter dated 07.01.2012 sent by erstwhile State Bank of Mysore to the Corporate Debtor is annexed herewith and marked as **Annexure A-33.**
- 2.9.34 A copy of Sanction letter dated 14.06.2012 issued by State Bank of India is annexed by State Bank of India is annexed herewith and marked as **Annexure A-34.**
- 2.9.35 A copy of Agreement of Loan dated 03.08.2012 executed between the Corporate Debtor and erstwhile State Bank of Mysore is annexed herewith and marked as **Annexure A-35.**
- 2.9.36 A copy of Agreement of Hypothecation of Goods and Assets and Omnibus Counter Guarantee are collectively annexed herewith and collectively marked as **Annexure A-36.**
- 2.9.37 A copy of Sanction letter dated 26.03.2013 issued by erstwhile State Bank of Hyderabad is annexed herewith and marked as **Annexure A-37.**
- 2.9.38 A copy of letter dated 05.04.2013 sent by State Bank of India to Corporate Debtor is annexed herewith and marked as **Annexure A-38.**

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- 2.9.39 A copy of letter dated 19.04.2013 sent by erstwhile State Bank of Bikaner & Jaipur to the Corporate Debtor is annexed herewith and marked as **Annexure A-39**.
- 2.9.40 A copy of letter dated 28.06.2013 sent by State Bank of India to the Corporate Debtor is annexed herewith and marked as **Annexure A-40**.
- 2.9.41 A copy of revival letter dated 13.08.2013 sent by the Corporate Debtor to the State Bank of India is annexed herewith and marked as **Annexure A-41**.
- 2.9.42 A copy of the letter dated 20.12.2013 providing approved restructuring proposal under CDR System is annexed herewith and marked as **Annexure A-42**.
- 2.9.43 A copy of Master Restructuring Agreement dated 27.12.2013 is annexed herewith and marked as **Annexure A-43**.
- 2.9.44 A copy of the security Trustee Agreement dated 27.12.2013 is annexed herewith and marked as **Annexure A-44**.
- 2.9.45 A copy of the Deed of Guarantees executed on 31.12.2013 by Mr. L Ramalakshamma, M/s Lanco Group Limited are collectively annexed herewith and collectively marked as **Annexure A-45**.
- 2.9.46 A copy of sanction letter dated 01.02.2014 issued by State Bank of India is annexed herewith and marked as **Annexure A-46**.
- 2.9.47 A copy of undertaking dated 21.03.2014 executed by the Corporate Debtor in favour of State Bank of India is annexed herewith and marked as **Annexure A-47**.

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- 2.9.48 A copy of Debit Balance Confirmation dated 21.03.2014 issued by the Corporate Debtor to erstwhile State Bank of Bikaner and Jaipur is annexed herewith and marked as **Annexure A-48**.
- 2.9.49 A copy of Memorandum of Entry dated 18.06.2014 is annexed herewith and marked as **Annexure A-49**.
- 2.9.50 A copy of share pledge agreement dated 27.06.2014 executed by and between M/s.Lanco Group Limited. Mr. L Madhusudhan Rao and Security Trustee is annexed herewith and marked as **Annexure A-50**.
- 2.9.51 A copy of Pledge Power of Attorney dated 27.06.2014 executed M/s Lanco Group Limited in favour of the Security Trustee is annexed herewith and marked as **Annexure A-51**.
- 2.9.52 A copy of Amendment Agreement to Master Restructuring Agreement dated 28.06.2014 is annexed herewith and marked as **Annexure A-52**.
- 2.9.53 A copy of Memorandum of Entry dated 14.10.2014 is annexed herewith and marked as **Annexure A-53**.
- 2.9.54 A copy of Sanction Letter dated 16.03.2016 issued by erstwhile State Bank of Mysore to Corporate Debtor is annexed herewith and marked as **Annexure A-54**.
- 2.9.55 A copy of Balance Confirmation letter dated 31.03.2015 sent by Corporate Debtor to the State Bank of India is annexed herewith and marked as **Annexure A-55**.
- 2.9.56 A copy of Omnibus Counter Guarantee Agreement dated 29.04.2015 is annexed herewith and marked as **Annexure A-56**.

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- 2.9.57 A copy of Second Amendment Agreement dated 29.07.2015 to Master Restructuring Agreement is annexed herewith and marked as **Annexure A-57.**
- 2.9.58 A copy of Board Resolution dated 06.11.2015 executed by M/s Lanco Group Limited is annexed herewith and marked as **Annexure A-58.**
- 2.9.59 A copy of Sanction letter dated 19.12.2015 of the State Bank of India is annexed herewith and marked as **Annexure A-59.**
- 2.9.60 A copy of Sanction Letter dated 21.12.2015 issued by erstwhile State Bank of Bikaner & Jaipur is annexed herewith and marked as **Annexure A-60.**
- 2.9.61 A copy of Agreement of Loan dated 14.01.2016 executed between erstwhile State Bank of Bikaner & Jaipur and the Corporate Debtor is annexed herewith and marked as **Annexure A-61.**
- 2.9.62 Copies of Deed of Guarantees dated 14.01.2016 by Mr. L. Madhusudhan Rao alongwith networth are collectively annexed herewith and collectively marked as **Annexure A-62.**
- 2.9.63 Copies of Deed of Guarantees dated 18.01.2016 by Mr. L. Ramalakshamma alongwith net worth are collectively annexed herewith and collectively marked as **Annexure A-63.**
- 2.9.64 A copy of the Letter of Sanction dated 28.03.2016 is annexed herewith and marked as **Annexure A-64.**
- 2.9.65 A copy of a Balance Confirmation Letter dated 31.03.2016 is annexed herewith and marked as **Annexure A-65.**

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- 2.9.66 A copy of the letter dated 09.09.2016 restructuring of financial assistance by various lenders is annexed herewith and marked as **Annexure A-66.**
- 2.9.67 A copy of letter dated 25.11.2016 acknowledging debt and confirmation of security is annexed herewith and marked as **Annexure A-67.**
- 2.9.68 A copy of Sanction Letter dated 31.03.2017 is annexed herewith and marked as **Annexure A-68.**
- 2.9.69 A copy of Balance Confirmation Letter dated 31.03.2017 is annexed herewith and marked as **Annexure A-69.**
- 2.9.70 A copy of letter dated 07.11.2017 is annexed herewith and marked as **Annexure A-70.**
- 2.9.71 A copy of Balance Confirmation Letter dated 31.03.2018 sent by the Corporate Debtor is annexed herewith and marked as **Annexure A-71.**
- 2.9.72 A copy of the Legal Notice dated 15.06.2018 issued by the State Bank of India is annexed herewith and marked as **Annexure A-72.**
- 2.9.73 A copy of list disclosing the amount distributed to Secured creditor is annexed herewith and marked as **Annexure A-73.**
- 2.9.74 A copy Demand Notice dated 04.07.2020 sent by State Bank of India under Rule 7(1) of the Insolvency and (Application Bankruptcy to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019

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to the Guarantor along with speed-post receipt and tracking report is annexed herewith and marked as **Annexure A-74**.

2.9.75 A copy of reply to demand notice and rejoinder to reply are collectively annexed herewith and collectively marked as **Annexure A-75**.

2.9.76 A copy of Demand Notice dated 20.08.2020 sent by State Bank of India under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 to the Guarantor along with speed-post receipt and tracking report is annexed herewith and marked as **Annexure A-76**.

2.9.77 A copy of reply dated 31.08.2020 is annexed herewith and marked as **Annexure A-77**.

2.9.78 A copy of Authorization letter issued by State Bank of India in favour of Mr. Anil Kohli, Resolution Professional along with Consent form and IBBI Certificate is annexed herewith and marked as **Annexure A-78**.

3. The preliminary reply filed by Respondent/Personal Guarantor on 06.08.2021, inter-alia stating that:

3.1 It is stated that there has been deliberate suppression of grave material facts by the Petitioner/Creditor and moreover facts which have been placed before this Hon'ble Tribunal are contrary to the records and the Respondent herein reserves its right to place the said material facts on record at the time of filing a detailed reply. Moreover, the Petitioner

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has mentioned about documents which are in no way relevant to the present case and no liabilities arise out of the said documents. However, it is believed that the same have been mentioned in the Company Petition particularly in Column 5 of the Company Petition just as to mislead and prejudice this Hon'ble Tribunal against the Respondent.

3.2 It is further stated that the Company Petition/Creditor has not only suppressed and concealed material facts but has selectively omitted to place on record facts and documents and is guilty of misleading this Hon'ble Tribunal. It is stated that the following documents are crucial and necessary for the proper adjudication of the present matter:

- i. The CDR Final Report.
- ii. The Minutes of Meeting of the Joint Lenders Meeting.
- iii. The Minutes of the Meeting of the Steering Committee.

3.3 It is stated that the documents further show that the CDR Lenders including SBI were in material breach of the MRA and CDR Documents and fiduciary duty reposed on them by the Corporate Debtor as also the Respondent. It is stated that the present Company Petition has been filed by the Petitioner/Creditor against the Personal Guarantor/Respondent arising out of invocation of personal guarantees said to be executed by the Respondent on 02.05.2006, 20.05.2006, 31.12.2013 in terms of the CDR Package and Master Restructuring Agreement dated 27.12.2013 and 14.01.2016 in terms of the Long Term

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Working Capital Agreement (LTWCLA) executed with the Corporate Debtor.

3.4 It is stated that the subject matter PGs were executed for an “intended purpose”. A tabular chart demonstrating the purpose for which they were executed as under:

Table 9: Describing purpose of the Purported Guarantees:

S. No.	Date	Document	In Favor of	Purpose for Execution
1.	31.12.2013	Deed of Guarantee	IDBI Trusteeship Ltd. as Security Trustee for the benefit of all CDR lenders	For securing the due payment and discharge of the Guaranteed Obligations in accordance with the CDR Documents. It is pertinent to note that the Personal Guarantee though executed by Respondent, has not been referred to or attached with the Company Petition. It shows the malafides of the Petitioner, who has omitted to disclose the said guarantee since it had failed to act on it.
2.	14.01.2016	Deed of Guarantee (Annexure A- 63)	State Bank of Bikaner & Jaipur	For securing payment of LTWCL of Rs. 11.42 Crores

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3.5 It is stated that the Subject Matter PGs mentioned at Item No. 1 and 2 under the MRA i.e., Personal Guarantee dated 31.12.2013 was given to secure the Guaranteed Obligations under the MRA and Personal Guarantee dated 18.01.2016 was given to secure the payment of LTWCL under the LTWCL. It is submitted that although the Subject Matter PGs are as such still valid but due to the acts of omission and commission of the Consortium of Lenders including SBI as well as on account of the blatant breach of the terms and conditions of MRA/CDR Documents and LTWCLA, the same are *null and void*. The acts of omissions and commissions and breaches committed by the CDR Lenders resulted in failure of implementation of the CDR Package in letter and spirit. It may be noted that it is settled law that the liability of a surety stands discharged on account of acts and omissions committed by the creditor.

3.6 It is stated that the RBI in the Master Circular dated July 15, 2014 on Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances, emphasized that the basic objective of restructuring of loans by banks was to preserve the economic value of (borrower) units, not ever-greening of problem accounts. It is further stated that the account should be taken up for restructuring by the banks if the financial viability is established and there is a reasonable certainty of repayment by the borrower, as per the terms of the restructuring package. Any restructuring done without looking into cash flows of the borrower and assessing the viability of

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the projects/activity financed by banks would be treated as an attempt at evergreening a weak credit facility and would invite supervisory *actions as deemed appropriate by RBI.*

- 3.7 It is stated that wherever significant evergreening in a bank was detected by RBI, RBI should impose penalties wherein: (i) unvested stock options granted to officers who have indulged in the practice, and to all whole-time directors, be cancelled in part or in full. (ii) monetary bonuses paid to such officers and to all whole-time directors, be clawed back by the bank, in part or in full; and (iii) the chairman of the audit committee be asked to step down from the board of the bank.
- 3.8 It is stated that the view of RBI on ever-greening has remained unchanged over the years and in fact RBI's scrutiny of such practices has become more stringent in the recent times. For instance, in its notification dated 12.02.2018 on Resolution of Stressed Assets - Revised Framework, RBI clearly stated that Any failure on the part of lenders in meeting the prescribed timelines or any actions by lenders with an intent to conceal the actual status of accounts or evergreen the stressed accounts, will be subjected to stringent supervisory/enforcement actions as deemed appropriate by the Reserve Bank, including, but not limited to, higher provisioning on such accounts and monetary penalties.
- 3.9 It is stated that the records reveal that CDR Lenders including SBI used a substantial part of the priority loans and the LTWCL to adjust the

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interest dues of the Corporate Debtor from its previous debts instead of the disbursing the same for the revival of the projects of the Corporate Debtor. Thus, the CDR Lenders including SBI were blatantly involved in evergreening the Corporate Debtor's loans in violation of the applicable RBI Guidelines and the MRA executed between the parties, to manipulate their own books of accounts. Since the actions of the CDR Lenders including SBI are in violation of applicable law, the Petitioner/Creditor cannot seek to enforce the Subject Matter PGs.

3.10 It is stated that the CDR Lenders including SBI admittedly breached the terms of the MRA and CDR documents by illegally and *malafidely* servicing the interest dues of the CDR Lenders including SBI which derailed the implementation of CDR package and the very purpose for which it was availed by the Corporate Debtor. It was on the joint representation of the CDR Lenders including SBI and the Corporate Debtor's ability to complete the projects successfully, and the CDR Lenders' commitment to fund the same, that the Subject Matter PGs were executed by the Respondent.

3.11 It is stated that anything done, or any promise made for the benefit of the principal debtor must be contemporaneous to the surety's contract of guarantee to constitute consideration thereof. Therefore, the Subject Matter PGs were executed subsequently without any consideration and therefore are *null & void*. Further, the Subject Matter PGs are not in the nature of financial debt. For this reason, the Company Petition *ex facie*

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fails to establish the existence of financial debt. On this ground itself the present Company Petition/Petition ought to be dismissed.

3.12 It is stated that the present Company Petition filed by the Petitioner/Creditor is a desperate attempt to include other purported guarantees dated 18.11.2006, 30.11.2007, which are *ex facie* not covered under Part III of IB Code and are not related to the Respondent. It is pertinent to note that the copies of the said Guarantees have not been placed on record. It is stated that the Petitioner/Creditor is trying to mislead this Hon'ble Tribunal by purportedly fastening liability on the Respondent against the Counter Guarantee given by the Corporate Debtor to the Banks for enabling banks to issue Bank Guarantee on behalf of the Corporate Debtor in connection with their business.

3.13 It is stated that the Corporate Debtor is a separate legal entity that was managed by a professional board of directors. In these circumstances, the promoters cannot be made scapegoats for the default by the Corporate Debtor. The promoters are individuals, and the debts of a listed company cannot be foisted on them in the garb of a guarantee which they were forced to give.

3.14 It is stated that by imposing liability on the promoters, effectively a limited liability company has been converted into an unlimited liability company without following the procedure under the law and without imposing similar burden on the other shareholders of the Corporate Debtor. By way of CDR Scheme, the intent was to bypass the statutory

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framework under the Companies Act which cannot be allowed by any court of law. Therefore, the invocation of the personal guarantee is inequitable and unconscionable.

3.15 It is stated that The Petitioner/Creditor's right to invoke the Subject Matter PGs stand extinguished for the following reasons:

- i. **Projections made in the CDR Package were never achieved-** The Subject Matter PGs were provided on the basis that the Petitioner/Creditor will fulfill its obligations under MRA and CDR documents approved by them and other lenders. It is submitted that the execution of the Subject Matter PGs was conditional upon the implementation of the CDR Package in accordance with the sanction terms. As per the CDR Package, the Corporate Debtor had an estimated turnover of Rs 3686 crores in the year 2014 consisting of Rs.1455 Cr from internal project and Rs.2231 Cr from external projects. This estimation was made assuming disbursement of Priority Loan before 31.12.2013 which would have enabled the Corporate Debtor to take up execution of internal projects. However, due to delay in the implementation of CDR Package and disbursement of Priority Loans by the CDR Lenders, the Corporate Debtor could not take up the proposed works and achieved a turnover of Rs. 2236 Cr. in the year 2014 (i.e., Rs. 146 Cr internal projects and Rs. 2090 Cr. from external projects).

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- ii. **Petitioner/Creditor not Entitled to Claim right under the Subject Matter PGs-** It is submitted that the Subject Matter PGs were executed as security for the restructured facilities that the CDR Lenders including SBI agreed to provide under the CDR Scheme. On the basis of Petitioner/Creditor's representations and assurances to provide the reliefs and concessions in the foul' of CDR Package to the Corporate Debtor, the Respondent was induced/coerced to execute the Subject Matter PGs in favor of the Petitioner/Creditor. Therefore, had the Petitioner/Creditor not made false assurances or representation, the Respondent would not have executed the Subject Matter PGs. It is submitted that the purpose of the Subject Matter PGs was to secure the enhanced restructured facilities under the MRA afresh and not the debts of the Corporate Debtor as they stood prior to the sanctioning of the CDR Package. However, since no such funds were in fact disbursed by the Petitioner/Creditor, in accordance with the terms of the CDR package, the Petitioner/Creditor is not entitled to claim any right under the Subject Matter PGs.
- iii. **Misrepresentation and Undue Influence-** A considerate view of the facts and circumstances elaborated above makes it clear that the Subject Matter PGs were taken under misrepresentations and undue influence and therefore the Petitioner/Creditor cannot be allowed to give effect to and or act in furtherance to the same. Moreover, the CDR not having been implemented, the Subject Matter PGs cannot be given effect.

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- iv. **CDR Mechanism was not implemented in accordance with the sanctioned terms** - The CDR mechanism was not implemented in accordance with the sanction terms, and this fact was brought to the Petitioner/Creditor's notice in several consortium meetings including but not limited to JLF meetings dated 02.07.2014, 05.12.2015, 04.07.2016 and 14.12.2016 and Steering Committee meetings dated 18.08.2014, 22.01.2015, 14.05.2015, 23.03.2016 and 26.04.2017. Consequently, the Respondent stood discharged of his debt and the Subject Matter PGs are not binding on the Respondent. It is well settled that one cannot be permitted to take undue and unfair advantage of his own wrongdoings to gain favorable interpretation of the law. It is also well settled that one who prevents a thing from being done shall not avail himself of the non-performance he has occasioned.
- v. **Retrospective Classification by the Lenders/Reserve Bank of India** - In the year 2015, the Reserve Bank Of India in view of the fact that there were rampant evergreening by the lenders, took a few drastic measures whereby the Reserve Bank of India undertook periodic quality audit of the accounts of the banks. Since the banks were not complying with the various directions of RBI, RBI appointed its own officials to conduct the aforementioned audits with the banks. During the FY 2016-17 the Petitioner loan accounts to the Corporate Debtor were classified as NPA by RBI which were classified as Standard by the Petitioner in their books. The RBI

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further directed the Petitioner to recognize the NPA with effect from 01-10-2013 in the year 2016-17.

- 3.16 It is stated that on account of material breach committed elaborated above, (by the CDR Lenders including SBI) of the MRA and facility agreements, the Subject Matter PGs *stood frustrated and the rights and obligations of the parties arising therefrom stand extinguished*. Thus, the Respondent is absolved of its obligations under the Subject Matter PGs. In view of the facts and circumstances it is prayed to dismiss the present Company Petition.
4. While it was so the Resolution professional appointed by this Tribunal filed his report vide IA No.487/2021 under Section 99 of I&B Code and the same was taken on record on 15.09.2021.
5. Questioning the appointment of RP made in IA No.346/2021 in CP IB NO.2/95/2021, and the report filed by the RP, the personal guarantor filed Company Appeal (AT)(CH)(Insolvency) No.220 of 2021 before Hon'ble NCLAT and the same was dismissed on 22.11.2021.
6. The personal guarantor also filed a Writ Petition No.5099/2022 before Hon'ble High Court of Telangana for the following reliefs:
- "a. Issue a or any other and writ of declaration appropriate writ, order or direction in the nature of writ of mandamus declaring holding the personal guarantees dated 31.12.2013 18.01.2016 furnished by the petitioner No.1 and the personal guarantees dated 31.12.2013 and 18.01.2016 furnished by petitioner No.2 as null and void and unenforceable;
 - b. Issue a writ of declaration or any other appropriate writ, order or direction in the nature of declaration holding that no amounts are either due or payable to the

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respondent No.1 in the Original Application bearing No.350/2019 before the DRT-II, Hyderabad.

- c. Issue a writ of mandamus or any other appropriate writ, order or direction setting aside the O.A.No.350/2019 qua petitioner No.1 and 2;
- d. Pass such other order or orders and grant such other reliefs in favour of the petitioner No.1 and 2 as this Hon'ble Court may deem fit and proper in the interest of justice and as would be warranted in equity."

7. The said Writ Petition was disposed of observing, inter-alia, that:

“ on due consideration, we are of the view that prayers (a) and (b) can only be decided by the Tribunal on adducing of evidence. Writ proceedings are not a substitute for and cannot be used to circumvent proceedings before the statutory Tribunal. Therefore, we relegate the petitioners to the forum of the Tribunal i.e. Debts Recovery Tribunal -II, Hyderabad, on the above aspects, including on the point of invocation of personal guarantees.”

8. In the light of the objections, the point that arises for our consideration is;

Whether of the report of the Resolution Professional can be accepted and the petition under section 95 IBC, can be admitted against the personal guarantor Ms.L.Ramalakshamma?

9. We have heard Ld.Counsel for Applicant Mr.P. P.Ravi Charan, Counsel along with Ms.Niharika Agarwal, counsel, Ld.Counsel Mr. Arjun Syal, Counsel along with Mr.K.V.Raman, Counsel and Ld.Counsel Mr.Abhishek Anand, for RP Mr.Anil Kohli. Perused the record.

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10. According to the Id.Counsel for the personal guarantor the Resolution professional, in his report has recommended for the admission of the petition, inter-alia, contending, that :

- a. The Insolvency Application has been filed in the requisite form, Form C, in terms of Rule 7 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019, supported by requisite fee and documents.
- b. The Insolvency Application satisfies the requirements set out in Section 95 of the Code.
- c. The Personal Guarantor was duly served with demand notices dated 04.07.2020 and 20.08.2020 by the Financial Creditor for repayment of the debt owed by him to the Financial Creditor in terms of the provisions of the Code prior to filing the Insolvency Application, but the Personal Guarantor neither repaid the outstanding debt nor provided any evidence of repayment of debt.
- d. In terms of Section 99(2) of the Code the undersigned informed the counsel of the Personal Guarantor vide email dated 29.07.2021 about the passing of order dated 23.07.2021 and further directed to prove the repayment of debt claimed as unpaid by the Financial Creditor i.e. SBI. Thereafter, the undersigned informed the Personal Guarantor vide email dated 31.07.2021 about the passing of order dated 23.07.2021 and further directed to prove the repayment of debt claimed as unpaid by the Financial Creditor i.e. SBI. The undersigned also informed the Personal Guarantor vide letter dated 30.07.2021 about the passing of order dated 23.07.2021 and further sought proof of the repayment of debt claimed as unpaid by the Financial Creditor. However, till date no response has been received from the Personal Guarantor to the communications as issued by the undersigned. On the contrary, the Counsel for the Personal Guarantor has submitted a reply to Section 95 Application on 03.08.2021, wherein liberty to file counter was granted on 11.01.2021.
- e. The Insolvency Application does not relate to "excluded debts" as defined under Section 79(15) of the Code.
- f. The Debtor, Personal Guarantor, is not eligible for fresh start under Chapter II of the Code.

11. However Ld.Counsel for the personal guarantor, submitted that Personal guarantor has raised objection t the report and the gist of the objections raised by the personal guarantor to the report, is as below:

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- Evergreening of Loans by the CDR Lenders including SBI is unlawful and in breach of the RBI Mater Circular dated 15.07.2014.
 - Breach on part of the Petitioner/Creditor in proper and timely disbursal of loans and financial facilities.
 - Personal Guarantees executed without consideration and therefore there is no "financial debt" due and payable by the Applicant/personal guarantor.
 - Company Petition is not maintainable since Counter Guarantees are not within the purview of Part III proceedings under the IB Code.
 - Debts of the Corporate Debtor cannot be foisted on Applicant/personal guarantor.
 - Personal Guarantees do not create legally binding obligation to pay.
 - Subject Matter PGs stand extinguished.
 - Pendency of the civil proceedings before the Debt Recovery Tribunal.
12. Before we proceed with our discussion on the point above, we wish to refer to the ruling of Hon'ble Supreme Court of India, in Surendra B. Jiwrajka vs Omkara Assets Reconstruction Private Limited, in W.P.(C) No. 149/2022, wherein, Hon'ble Supreme Court, explained the role of the Adjudicating Authority, post filing of the report under section 97

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by the resolution professional recommending for admission of the
Petition filed under section 95 of IB Code, as below;

“Once a recommendation is made, it is not binding on the Adjudicating Authority. The Authority would only decide after looking at the recommendation of the resolution professional and affording full opportunity of hearing to the debtor or the personal guarantor, as the case may be”.

13. Here it is pertinent to note that, the personal guarantor has not disputed the due execution of personal guarantee in favour of the financial creditor, for the due discharge of the credit facilities executed to the principal borrower besides its due invocation, the enforcement of which is sought by the petitioner/financial creditor under the present proceedings. In fact, the objections supra, relate to alleged breach of terms of RBI Master Circular, lapses etc, on the part of the financial creditor, alleged in implementation of CDR package.
14. A perusal of the sanction letter dated 02.01.2014, the terms and conditions of which were accepted by the personal guarantor herein, clearly states that the sanction was in respect of the following facilities;

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(Rs. In crores)

Facility	Existing Limits	Revises Sanctioned Limits
FB Limits:		
Cash Credit	125.00	64.39
WCTL		60.56
FITL-I		3.54
FITL-II		13.32
Fresh TL(PTL)		77.31
Total FB Limits	125.00	219.12
NFB Limits:		
Letters of Credit*		5.00
Bank of Guarantee	100.00	128.00
Total NFBWC	100.00	128.00
TOTAL	225.00	347.12

*Sub limit within BG Limit

15. Admittedly, the principle borrower has availed the above stated financial facilities, and later defaulted in its repayment.
16. The clause in the Guarantee agreement clearly says that:

2.GUARANTEE:

“2.1 (a) The Borrower has agreed and undertaken to duly and punctually pay and/or discharge the Guaranteed Obligations in accordance with the CDR Documents.

(b) On the failure of Borrower to pay and/or discharge the Guaranteed Obligations, the Guarantor shall, unconditionally and irrevocably, upon demand, pay to the Security Trustee without demur or protest, within 3 (three) Business Days, the amount stated in the demand certificate (the "Demand Certificate", in the form and manner set out in Annexure A hereto), not exceeding the Guaranteed Amount, Provided that if upon invocation of this guarantee, the Guarantor has not made a payment within the time so specified for such payment in this Deed, the Guarantor shall be liable to pay Default Interest on the Guaranteed Amount, till the date

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of payment by the Guarantor of such amounts to the satisfaction of the Security Trustee.

2.2 Independent Obligation

The Guarantor shall, as a separate and independent stipulation and without prejudice to the other provisions contained herein, as primary obligor and not merely as surety, on a full indemnity basis, indemnify the Security Trustee as a result of the whole or any of the Guaranteed Obligations being or becoming void, voidable, unenforceable or ineffective as against the Borrower 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 its officers, employees, agents or advisers or the CDR Lenders. The amount of such loss shall be equal to the amount, which the Security Trustee or the CDR Lenders would otherwise have been entitled to recover from the Borrower in respect of the Guaranteed Obligations.

17. It is not at all the case of the personal guarantor that the subject guarantee has been invoked contrary to the above terms and conditions or any other of the guarantee. Admittedly, the principal borrower breached the terms and conditions of the credit facilities sanctioned the due repayment of which is guaranteed by the personal guarantor herein. *Therefore, when the breach of the obligation to repay the debt guaranteed by the herein, by the principal borrower is not at all in dispute, the guarantor is bound, to honour the guarantee and cannot escape from his /her liability under the said contract of guarantee.* The terms of the guarantee referred supra, discloses that the same is an independent contract.

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18. In so far as the RBI Master Circular relied on by the guarantor is concerned it is to be stated that the terms of the guarantee referred supra, discloses that the same is an independent contract does not either expressly or impliedly say, that contravention of any of its circulars will invalidate the very subject loan or the guarantee contract that the parties herein have entered into. Moreover, it is pertinent to state that except a bald pleading, there is not even an iota of evidence as regards the contravention of the terms of RBI Master circular by the financial creditor in this case.

A. Hon'ble Supreme Court in Bank of India Finance v. Custodian, (1997) 10 SCC 488, wherein it was held that,

“Infringements of the instructions issued by the Reserve Bank of India under [Banking Regulations Act](#) prohibiting the banks from entering into by-back arrangements do not invalidate such contracts entered into between the banks and it's customer'.”

B. In Punjab National Bank v. M/s Superior Industries Limited, order dated 23.03.2023 in IA No.604/ND/ 2021 in CP (IB) No.1032/ND/2018, by NCLT, Court VI, New Delhi. Paras 15 and 17 it was held as under:

"The next issue raised by the Corporate Debtor is about legality of Guarantee due to the fact that there was no approval of RBI /FEMA.

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“The Corporate Debtor has relied on this Regulation however, the Corporate Debtor failed to show that how this Regulation violates Regulation 5(d) of FEMA. Since Regulation 5(d) deals with external commercial borrowing and in our understanding external commercial borrowing are commercial loans raised by eligible Indian resident entities from a foreign entity. However, in the present case the principal borrower and to whom guarantee was given was a foreign entity incorporated outside India i.e. in Mauritius.

However, from the letter dated 11.12.2015` it appears that RBI permission is required even for Corporate Guarantee to be given by an entity based in India, in favor of an entity incorporated outside India which has borrowed monies from an overseas lender. It may well be covered under some other regulations/guidelines issued by the RBI which have not been brought to our notice. Even if we assume that the Regulation as quoted above is applicable even then that would not make the Corporate Guarantee invalid. It is pertinent to refer to judgement of Hon'ble Delhi High Court in the matter of SRM Exploration Pvt. Ltd vs. N and S and N Consultants S.R.O. (21.03.2012 - DELHC): MANU/DE/2056/2012 wherein it was held that Corporate Guarantee is not void only due to violation of FEMA. Para 11 of the aforesaid judgement is reproduced as under: - "11. We have perused the provisions of FEMA, 1999 Section 3 thereof prohibits dealing in or transferring of any foreign exchange save as otherwise provided therein or under the Rules & Regulations framed thereunder without general or special permission of RBI. We are unable to find any provision therein voiding the transactions in contravention thereof. We may mention that the predecessor legislation to FEMA namely FERA 1973 vide Section 47 prohibited 25 I.A. 604/2021, 1552/ND/2021, 1553/ND/2021 (IB)- 1032/(ND)/2018 entering into any contract or agreement directly or indirectly evading or avoiding any operation of the said Act or any provision thereof. However, Sub Section (3) thereof also provided that such prohibition shall not prevent legal proceedings being brought in India for recovery of a sum which apart from the provision of FERA would be due. However, the legislature while re-enacting the law on the subject has chosen to do away with such a provision. We are of the view that the same shows a legislative intent to not void the transaction even if in violation of the said Act. Thus, we are of the opinion that the plea of the appellant Company in this regard is without any force."

The Corporate Debtor cannot take advantage of its own default and set up the said plea of absence of permission of the Reserve Bank of India”.

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19. Here, it is pertinent to state that there cannot be any denial of the fact that under guise of the objections to the RP's report, The personal guarantor had challenged the enforceability of personal guarantees dated 13.12.2013 and 18.01.2016, despite raising the very same plea in Writ Petition no.5099/2022 before Hon'ble High Court of Telangana and inviting an order as below:

“ on due consideration, we are of the view that prayers (a) and (b) can only be decided by the Tribunal on adducing of evidence. Writ proceedings are not a substitute for and cannot be used to circumvent proceedings before the statutory Tribunal. Therefore, we relegate the petitioners to the forum of the Tribunal i.e. Debts Recovery Tribunal -II, Hyderabad, on the above aspects, including on the point of invocation of personal guarantees.”

Therefore, the applicant is precluded under law and on facts from raising the very same pleas as objections to the RP's report in this case as well.

20. Thus, in the light, of our discussion on the point above, we hereby hold that the objections by the Personal Guarantor on taking the report of the RP, are untenable and unsustainable, hence, the same are hereby rejected. We have carefully perused the RP report and found that the same is in accordance with Sections 97 to 99 of IBC. Hence the report is taken-on record.

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21. Therefore, it is a fit case to order Insolvency resolution process against Respondent/personal guarantor.

22. Hence, the instant Company Petition in CP (IB) No. 2/95/HDB/2021 is hereby admitted under Section 100 of the Code, 2016 and Insolvency Resolution Process is initiated against Ms.L.Ramalakshamma, the Personal Guarantor, and moratorium is declared in relation to all debts, which begins from the date of admission of the instant petition and shall cease to have effect at the end of the period of 180 days, as provided under Section 101 of the Code, 2016. 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 shall not initiate any legal action or legal proceedings in respect of any debt; and
- c) The debtor shall not transfer, alienate, encumber or dispose of any of her assets or her legal rights or beneficial interest therein;
- d) The provisions of this Section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

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- e) The Petitioner Bank herein, has proposed the name of Shri. Anil Kohli, having Registration No. IBBI/IPA-001/IP-P00112/ 2017-2018/10219 insolvency Professional to act as Resolution Professional, who has given his consent dated 07.09.2020 in Form-A. Hence, this Tribunal appoints: **Shri. Anil Kohli**, having Registration No. IBBI/IPA-001/IP-P00112/2017-2018/10219, email id: insolvency@arck.in , Address: 409, 4th Floor, Ansal Bhawan, 16 KG Marg, CP, Delhi 110001, Mobile No.8929106031.
- f) The Resolution Professional is directed to cause public notice published on behalf of the Adjudicating Authority within 7 days from the date of uploading of this order on the website of NCLT, Hyderabad, inviting the claims from all creditors, who shall register their claims as provided under Section 103 of the Code within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102(2) of the Code. The publication of notice shall be made in newspapers, one in English and other in vernacular (Telugu) which have wide circulation in the State where the Personal Guarantor and Corporate Debtor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry. One shall be placed on our website by the Registry and the other shall be affixed in the premises of this Adjudicating Authority.
- g) The Resolution Professional in exercise of the powers conferred under the Section 104 shall prepare a list of creditors within 30 days from the date of the notice. The Personal Guarantor shall prepare, in

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consultation with the Resolution professional, a repayment plan containing a proposal to the creditors for restructuring of her debts or affairs as provided under Section 105 which shall include the provisions for payment of fee to the Resolution Professional. 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.

- h) In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof. If the Resolution Professional is of the opinion that the meeting of creditors should be summoned., he shall specify the details as provided under Section 106(3). The date of meeting shall not be less than fourteen 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.
- i) The meeting of the creditors shall be conducted in accordance with the provisions Sections 109, 110 and 111. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 and submit the same to the Authority, copies of which shall be provided to the guarantor and the creditors. It is made clear that the Resolution Professional shall

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perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of the Code.

- j) The Petitioner is directed to communicate this order to the Resolution Professional appointed in the instant Company Petition immediately.

SD

Charan Singh
Member Technical

SD

Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

Sridher/Pavani

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-I**

**IA.No. 226 of 2024
in
CP (IB) No. 2/ 95 / HDB/ 2021**

*Under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 read
with Rule 11 of National Company Law Tribunal Rules, 2016.*

BETWEEN

Mrs. L.Ramalakshamma
W/o. Late Sh. L.V. Rama Naidu
Aged about 79 years,
R/o. H.No.8-21-9/1, III Lane
Seetharama Nagar, Mangalagiri Road,
Guntur – 522001, Andhra Pradesh.

...Applicant/ Personal Guarantor

AND

State Bank of India
Stressed Assets Management Branch-I
11th Floor, Jawahar Vyapar Bhavan
STC Building, 1 Tolstoy Marg
Janapath, New Delhi

... Respondents/ Financial Creditor

In the matter of :

State Bank of India

... Financial Creditor

Versus

L.Ramalakshamma

... Personal Guarantor

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Coram:

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA,
HON'BLE MEMBER (JUDICIAL)
SHRI CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

Parties / Counsels Present

For the Applicant : Mr. P.Soma Sekhara Naidu, Counsel

For the Respondent:Mr.Abhishek Anand, Counsel for R.P Mr.Anil Kohli.

PER BENCH

ORDER

1. This application is filed by the Applicant/Personal Guarantor under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016 praying to allow the present application and adjudicate the serious question of priorities, law and facts as stated in paragraph nos. 17 and 18 of the present Application before passing any order on the merit of the captioned Application filed by the Financial Creditor under Section 95 of the Code in the event the questions as raised in paragraph nos. 17 and 18 of this present Application is decided in favour of the Applicant/Personal Guarantor herein;

2. Gist of the Application:

2.1 It is averred that the Financial Creditor has filed the Company Petition against the Personal Guarantor of the Corporate Debtor namely

M/s.Lanco Infratech Limited under Section 95 of the Insolvency & Bankruptcy Code, 2016. On account of invocation of personal guarantees said to be executed by the Applicant/ Personal Guarantor on 31.12.2013 and 18.01.2016 in terms of the CDR Package and Master Restructuring Agreement dated 27.12.2013 and 14.01.2016 in terms of the Long Term Working Capital Agreement (LTWCLA) (“Restructuring Documents”) executed with the Corporate Debtor.

- 2.2 It is stated that the personal guarantees were executed by the Applicant/ Personal Guarantor for an “intended purpose” on approval of the CDR package for the corporate debtor. The CDR Lenders including the Financial Creditor herein failed in implementation of the CDR Package in letter and spirit. The CDR Lenders were blatantly involved in evergreening the Corporate Debtor’s loans in violation of the applicable RBI Guidelines and the MRA executed between the parties, to manipulate their own books of accounts. The CDR Lenders including the Financial Creditor herein utilised 75% of the priority loan out of the disbursal of Rs. 1158 Crores in 2014, 73% of the priority loan out of the disbursal of Rs. 1688 Crores in 2015, 69% of the priority loan out of the disbursal of Rs. 2244 Crores in 2016 towards their own outstanding interest which resulted in the failure of the CDR Package.
- 2.3 It is further stated that the failure of the lenders including the Petitioner bank in implementation of the CDR package and breaches committed by them were brought to their notice in various meetings of the Monitoring Committee, Steering Committee and Joint Lenders Forum.

On account of material and repudiatory breach by the CDR Lenders including the Petitioner bank, the subject matter Personal Guarantees stand frustrated and the rights and obligations of the parties arising therefrom stand extinguished.

2.4 It is stated that the Petitioner bank has also initiated proceedings under Section 19 of the Recovery of Debt and Bankruptcy Act, 1993 before the Hon'ble Debt Recovery Tribunal, Hyderabad at Telangana ("DRT"), being Original Application No. 350/ 2019 against the Corporate Debtor and the Applicant/Personal Guarantor herein. The subject matter of the said OA proceedings before the Hon'ble DRT are identical to the subject matter of the present application under Section 95 of the Code. The validity and existence of the Personal Guarantees executed by the Applicant/Personal Guarantor herein and Mr. L. Madhusudhan Rao are pending adjudication before the Hon'ble DRT. The Applicant/Personal Guarantor herein and another guarantor Mr. L. Madhusudhan Rao have filed a Written Statement and have raised a Counter Claim against the petitioner bank herein inter alia seeking declaration to the effect that the Personal Guarantees may be declared as null, void, and inoperative.

2.5 It is stated that the CDR been implemented in its true letter and spirit by the CDR Lenders including RBI and Priority Loans and LTWCL were disbursed properly in accordance with the terms of the MRA and CDR Documents, instead of being used for servicing the interest dues of the CDR Lenders, then the Corporate Debtor had a fair chance of

revival and would have prevented the Corporate Debtor from being referred to NCLT for Corporate Insolvency Resolution Process (CIRP). The Petitioner bank cannot take advantage of its own wrong doings/non-performance and initiate the present proceedings against the Applicant/ Personal Guarantor.

2.6 It is stated that as per the detailed explanation given in para nos. 17 and 18 which are reproduced below:

“17. The Applicant is preferring the present Application on the following grounds:

“I. Evergreen of Loans by the CDR Lenders including SBI is unlawful and in breach of the MRA

- a. It is stated that Reserve Bank of India (“RBI”) has time and again, in its Guidelines, Notifications and Master Circulars, reiterated that banks should not indulge in ever-greening of their loans. RBI has strongly frowned upon the practice of ever-greening of loans where banks to avoid classifying their accounts as non-performing assets (NPAs) (which requires higher provisioning and ultimately affects the profitability of banks), extend more loans to debt-ridden companies to repay their old loans with such banks, much to the detriment of the interest of the stakeholders and public interest.
- b. For instance, the RBI in the Master Circular dated July 15, 2014 on Prudential norms on Income Recognition, Asset

Classification and Provisioning pertaining to Advances, emphasized that the basic objective of restructuring of loans by banks was to preserve the economic value of (borrower) units, not ever-greening of problem accounts. It is further stated that the account should be taken up for restructuring by the banks if the financial viability is established and there is a reasonable certainty of repayment by the borrower, as per the terms of the restructuring package. Any restructuring done without looking into cash flows of the borrower and assessing the viability of the projects/activity financed by banks would be treated as an attempt at evergreening a weak credit facility and would invite supervisory actions as deemed appropriate by RBI.

- c. RBI specifically emphasized on the prohibition of providing additional financing to the borrower for ever-greening of an account by stating that while the JLF may consider providing need based additional finance to the borrower, if considered necessary, as part of the rectification process, however, it should be strictly ensured that additional financing is not provided with a view to ever-greening the account.
- d. A strong view against ever-greening was also expressed in the Report of the Committee constituted by the RBI to review the Governance of Boards of Banks in India dated May 2014, wherein evergreening was recognized as a practice of mis-governance for which the top management is to be held

accountable. The Report states that if significant evergreening is detected by RBI supervisors, then it must mean that evergreening is wilful and has support of the senior management of the bank. It then becomes necessary to levy penalties and target the prime beneficiaries of such evergreening.

- e. Therefore, it was recommended that wherever significant evergreening in a bank was detected by RBI, RBI should impose penalties wherein: (i) unvested stock options granted to officers who have indulged in the practice, and to all whole-time directors, be cancelled in part or in full. (ii) monetary bonuses paid to such officers and to all whole-time directors, be clawed back by the bank, in part or in full; and (iii) the chairman of the audit committee be asked to step down from the board of the bank.

- f. The view of RBI on ever-greening has remained unchanged over the years and in fact RBI's scrutiny of such practices has become more stringent in the recent times. For instance, in its notification dated 12.02.2018 on Resolution of Stressed Assets - Revised Framework, RBI clearly stated that "Any failure on the part of lenders in meeting the prescribed timelines or any actions by lenders with an intent to conceal the actual status of accounts or evergreen the stressed accounts, will be subjected to stringent supervisory/enforcement actions as deemed appropriate by the

Reserve Bank, including, but not limited to, higher provisioning on such accounts and monetary penalties.

- g. In the past, there has been a gross divergence between banks' assessment of NPAs in their annual reports and the RBI's assessment of NPAs. The RBI has in its notification dated 18.04.2017 noted this divergence as follows: "In fact, the instances of material divergences in banks' asset classification and provisioning from the RBI norms, thereby leading to the published financial statements not depicting a true and fair view of the financial position of the bank. RBI has also in various instances imposed heavy penalties on various banks, for violation of the instructions/guidelines of RBI relating to submission of false compliance regarding closure of NPA accounts by indulging in ever-greening of loans. Ever-greening of loans has unfortunately been a widespread practice adopted by banks in the past to ever-green their stressed accounts (and avoid classification of NPAs which would require higher provisioning, compliances, and impact profitability). This has led to huge debts getting piled up with borrower entities who clearly have no capacity to repay such loans, and ultimately results in a situation of hundreds (and in many cases thousands of crores) of bank debt remaining unpaid, a consequence much against the public interest at large.
- h. In the present case, the records reveal that CDR Lenders including the Petitioner bank used a substantial part of the priority loans and

the LTWCL to adjust the interest dues of the Corporate Debtor from its previous debts instead of the disbursing the same for the revival of the projects of the Corporate Debtor. Thus, the CDR Lenders including the Petitioner bank were blatantly involved in evergreening the Corporate Debtor's loans in violation of the applicable RBI Guidelines and the MRA executed between the parties, to manipulate their own books of accounts. Since the actions of the CDR Lenders including SBI are in violation of applicable law, the Petitioner bank cannot seek to enforce the Subject Matter PGs.

- i. It is stated that one cannot be permitted to take advantage of its own wrongs. In other words, one who prevents a thing from being done shall not avail himself of the non-performance it has occasioned. In the instant case, it was only because of the non-performance of the obligations of the CDR Lenders, including the Petitioner bank that led to the default on the part of the Corporate Debtor and ultimately to the invocation of the Subject Matter PGs. Thus, the Petitioner bank cannot take advantage of its own wrong doings/non-performance and initiate the present proceedings against the Applicant/ Personal Guarantor.
- j. The present Company Petition is nothing but a fraudulent and malicious proceedings against the Applicant/Personal Guarantor. It is submitted that the CDR Lenders, including Petitioner bank should be directed to depose on affidavit the compliance of

necessary guidelines and directions in this regard along with disclosure in terms of amounts adjusted towards interest.

- k. It is submitted that the present proceedings are nothing but a fraudulent and malicious attempt to extort money out of the Applicant /Personal Guarantor and unnecessarily harass and coerce him to satisfy the Petitioner/Creditor's unjust demands.

II. Breach on part of the Petitioner/Creditor in proper and timely disbursement of loans and financial facilities

- l. It is reiterated that proper and timely disbursement of the loans is the essence of the CDR Package and completion of Corporate Debtors pending project. The CDR Lenders including SBI admittedly breached the terms of the MRA and CDR documents by illegally and malafidely servicing the interest dues of the CDR Lenders including SBI which derailed the implementation of CDR package and the very purpose for which it was availed by the Corporate Debtor. It was on the joint representation of the CDR Lenders including SBI and the Corporate Debtor's ability to complete the projects successfully, and the CDR Lenders' commitment to fund the same, that the Subject Matter PGs were executed by the Applicant/personal guarantor. The details of the breach committed by the CDR Lenders including SBI have been elaborated in Para 5 above and are relied upon and not reiterated herein for the sake of brevity. The Petitioner/Creditor, having failed to perform their part of the contract, are consequently estopped from invoking the

Subject Matter PGs to compel the Applicant/personal guarantor to perform its reciprocal promise. The detailed tables depicting the misutilisation of priority loan and long term working capital loan on the part of the Petitioner have been provided in the foregoing paragraphs at Table No. 4 and 5.

III. Personal Guarantees executed without consideration and therefore there is no "financial debt" due and payable by the Applicant/personal guarantor

- m. It is the admitted position that the Subject Matter PGs were executed after the loan amounts had been disbursed and the MRA had already been executed on 27.12.2013. It is settled law that anything done, or any promise made for the benefit of the principal debtor must be contemporaneous to the surety's contract of guarantee to constitute consideration thereof. Therefore, the Subject Matter PGs were executed subsequently without any consideration and therefore are null & void. Further, the Subject Matter PGs are not in the nature of financial debt. For this reason, the Company Petition ex facie fails to establish the existence of financial debt. On this ground itself the present Company Petition/Petition ought to be dismissed.

IV. Company Petition is not maintainable since Counter Guarantees are not within the purview of Part III proceedings under the IB Code

- n. It is submitted that the present Company Petition filed by the Petitioner/Creditor is a desperate attempt to include other purported guarantees dated 18.11.2006, 30.11.2007, which are ex facie not covered under Part III of IB Code and are not related to the Applicant/personal guarantor. It is pertinent to note that the copies of the said Guarantees have not been placed on record. It is submitted that the Petitioner/Creditor is trying to mislead this Hon'ble Tribunal by purportedly fastening liability on the Applicant/personal guarantor against the Counter Guarantee given by the Corporate Debtor to the Banks for enabling banks to issue Bank Guarantee on behalf of the Corporate Debtor in connection with their business.
- o. It is submitted that said Counter Guarantees are not Personal Guarantees and are entirely different instruments and no liability arising out of such Counter Guarantees can be fastened upon the Applicant/personal guarantor in the present proceedings under Section 95 of IB Code. It is submitted that proceedings under Section 95 of the IB Code are applicable only to Personal Guarantees and said Counter Guarantees are not within the purview of the Part III proceedings.

V. Debts of the Corporate Debtor cannot be foisted on Applicant/personal guarantor

- p. It is well settled that the Corporate Debtor is a separate legal entity that was managed by a professional board of directors. In these circumstances, the promoters cannot be made scapegoats for the default by the Corporate Debtor. The promoters are individuals, and the debts of a listed company cannot be foisted on them in the garb of a guarantee which they were forced to give.
- q. It is submitted that the Subject Matter PGs executed by the Applicant/personal guarantor are against the right to livelihood of the promoters to the extent it imposes liability of the Corporate Debtor's entire debt on individuals without any relationship with their role/shareholding in the Corporate Debtor and therefore the personal guarantee cannot be enforced. The promoters were constrained to sign the Subject Matter PGs since without them restructuring of loans would not have happened despite the technical and financial viability (as judged by independent TEV studies) of the Corporate Debtor.
- r. It is submitted that by imposing liability on the promoters, effectively a limited liability company has been converted into an unlimited liability company without following the procedure under the law and without imposing similar burden on the other shareholders of the Corporate Debtor. By way of CDR Scheme, the intent was to bypass the statutory framework under the Companies Act which cannot be allowed by any court of law. Therefore, the

invocation of the personal guarantee is inequitable and unconscionable.

VI. Personal Guarantees do not create legally binding obligation to pay

- s. It is submitted that CDR Lenders including SBI were well aware of the net worth of the personal guarantors like the Applicant/personal guarantor and that the net worth of the personal guarantors was nowhere close to the total debt obligations of the Corporate Debtor. Hence, it is evident that there could not have been any intention on the part of the parties to create a legally binding obligation on the Guarantor to pay the entire debts of the Company/Corporate Debtor. There is no intention to create a legally binding obligation, and the personal guarantee cannot be enforced.

VII. Subject Matter PGs stand extinguished

- t. The Petitioner/Creditor's right to invoke the Subject Matter PGs stand extinguished for the following reasons:
 - i. Projections made in the CDR Package were never achieved- The Subject Matter PGs were provided on the basis that the Petitioner/Creditor will fulfil its obligations under MRA and CDR documents approved by them and other lenders. It is submitted that the execution of the Subject Matter PGs was conditional upon the implementation of the CDR Package in

accordance with the sanction terms. As per the CDR Package, the Corporate Debtor had an estimated turnover of Rs 3686 crores in the year 2014 consisting of Rs.1455 Cr from internal projects and Rs. 2231 Cr from external projects. This estimation was made assuming disbursement of Priority Loan before 31.12.2013 which would have enabled the Corporate Debtor to take up execution of internal projects. However, due to delay in the implementation of CDR Package and disbursement of Priority Loans by the CDR Lenders, the Corporate Debtor could not take up the proposed works and achieved a turnover of Rs. 2236 Cr. in the year 2014 (i.e., Rs. 146 Cr internal projects and Rs. 2090 Cr. from external projects).

- ii. Petitioner/Creditor not Entitled to Claim right under the Subject Matter PGs- It is submitted that the Subject Matter PGs were executed as security for the restructured facilities that the CDR Lenders including SBI agreed to provide under the CDR Scheme. On the basis of Petitioner/Creditor's representations and assurances to provide the reliefs and concessions in the form of CDR Package to the Corporate Debtor, the Applicant/personal guarantor was induced/coerced to execute the Subject Matter PGs in favor of the Petitioner/Creditor. Therefore, had the Petitioner/Creditor not made false assurances or representation, the Applicant/personal guarantor would not have executed the Subject Matter PGs. It is submitted that the purpose of the Subject Matter PGs was to secure the enhanced

restructured facilities under the MRA afresh and not the debts of the Corporate Debtor as they stood prior to the sanctioning of the CDR Package. However, since no such funds were in fact disbursed by the Petitioner/Creditor, in accordance with the terms of the CDR package, the Petitioner/Creditor is not entitled to claim any right under the Subject Matter PGs.

- iii. Misrepresentation and Undue Influence- A considerate view of the facts and circumstances elaborated above makes it clear that the Subject Matter PGs were taken under misrepresentations and undue influence and therefore the Petitioner/Creditor cannot be allowed to give effect to and or act in furtherance to the same. Moreover, the CDR not having been implemented, the Subject Matter PGs cannot be given effect.
- iv. CDR Mechanism was not implemented in accordance with the sanctioned terms-The CDR mechanism was not implemented in accordance with the sanction terms, and this fact was brought to the Petitioner/Creditor's notice in several consortium meetings including but not limited to JLF meetings dated 02.07.2014, 05.12.2015, 04.07.2016 and 14.12.2016 and Steering Committee meetings dated 18.08.2014, 22.01.2015, 14.05.2015, 23.03.2016 and 26.04.2017. Consequently, the Applicant/personal guarantor stood discharged of his debt and the Subject Matter PGs are not binding on him. It is well settled that one cannot be permitted to take undue and unfair advantage

of his own wrongdoings to gain favorable interpretation of the law. It is also well settled that one who prevents a thing from being done shall not avail himself of the non-performance he has occasioned.

- v. Retrospective Classification by the Lenders/Reserve Bank Of India In the year 2015, the Reserve Bank Of India in view of the fact that there were rampant evergreening by the lenders, took a few drastic measures whereby the Reserve Bank of India undertook periodic quality audit of the accounts of the banks. Since the banks were not complying with the various directions of RBI. RBI appointed its own officials to conduct the aforementioned audits with the banks. In the course of such audits, RBI unearthed several transactions whereby the banks had indulged in ever-greening. As a result, RBI directed the lenders to classify all those accounts wherein the banks had indulged in evergreening as non-performing assets. Consequently, all such accounts which were standard until that point were classified as non-performing assets with retrospective effect. Even in the case of the Corporate Debtor and its SPVs the banks had deliberately indulged in evergreening and the accounts were classified as non performing assets thereby adversely affecting their prospects of revival. During the FY 2016-17 the Petitioner loan accounts to the Corporate Debtor were classified as NPA by RBI which were classified as Standard by the Petitioner in their books. The

RBI further directed the Petitioner to recognise the NPA with effect from 1-10-2013 in the year 2016-17.

- u. It is reiterated that on account of material breach committed elaborated above, (by the CDR Lenders including SBI) of the MRA and facility agreements, the Subject Matter PGs stood frustrated and the rights and obligations of the parties arising therefrom stand extinguished. Thus, the Applicant/personal guarantor is absolved of its obligations under the Subject Matter PGS.

Pendency of the civil proceedings before the Debt Recovery Tribunal

VIII. It may be noted that in the instant case the issue of validity and existence of the Subject Matter Personal Guarantees is the subject matter of civil proceedings pending adjudication before the Hon'ble Debt Recovery Tribunal - II. Hyderabad in Original Application No. 350/2021 ("OA") wherein the Applicant/personal guarantor has filed its detailed Counter Claim inter alia seeking declaration to the effect that the Subject Matter Personal Guarantees may be declared as null, void and inoperative.

IX. Further, the Applicant/personal guarantor has also filed a stay application inter alia seeking a stay on the effect and operation of the Subject Matter Personal Guarantees till the pendency of the aforesaid OA.

X. Therefore, since the present Report and proceedings have been filed based on the purported Personal Guarantees and moreover

since their validity and existence being subject matter and pendency of the aforesaid OA and further since the Adjudicating Authority does not have the power to grant any declaratory relief, it is submitted that the present Report and the proceedings ought to be rejected or otherwise kept in abeyance till the time the said issue has attained finality.

- XI. It is submitted that if the present proceedings are adjudicated upon without the issue of validity and existence of the Subject Matter Personal Guarantees attaining finality before the concerned civil court then the Applicant/personal guarantor shall be rendered remediless and that would amount to gross violation of principles of natural justice as also the rights of the Applicant/personal guarantor guaranteed under Article 14 and 19 of the Constitution of India.
- XII. It is also settled law that where there has been gross violation of principles of equity, the guarantor can restrain the creditor from taking any coercive action. In other words, one who prevents a thing from being done shall not avail himself of the non-performance it has occasioned. In the present case, admittedly, it was only on account of non-performance of the obligations of the CDR Lenders including the Petitioner that led to the default on the part of the Corporate Debtor. Therefore, the Petitioner cannot take advantage of its own non-performance and initiate the present proceedings against the Applicant/personal guarantor.

18. In view of the aforesaid facts and circumstances, the following questions of fact and law arise which need adjudication by this Ld. Tribunal before passing any orders;

i. Whether there was any material breach on the part of the CDR Lenders including the Petitioner Creditor herein, of the terms of the MRA?

ii. Whether the CDR Mechanism was implemented in accordance with the sanctioned terms?

iii. Whether there was any breach on the part of the CDR Lenders including the Petitioner Creditor herein in proper and timely disbursal of the loans and financial facilities?

iv. Whether there was any evergreening of loans by the Petitioner Creditor herein?

v. Whether there was retrospective classification of the account of the Corporate Debtor as Non Performing Asset?

vi. Whether the Subject Matter PGs were obtained by the CDR Lenders including the Petitioner Creditor herein through misrepresentation and undue influence?

vii. Whether on account of the material breach committed by the CDR Lenders including the Petitioner Creditor herein of the MRA and facility agreements, the Subject Matter PGs stand frustrated and the rights and obligations of the parties arising therefrom stand extinguished?"

2.7 It is stated that the Applicant/personal guarantor is preferring the present Application on the various questions of fact and law as stated in paras 17 and 18 of the present Application, which go to the root of

the matter, and also the validity of personal guarantee and existence of any liability on part of the Applicant/personal guarantor under the subject matter of the personal guarantee as also existence of any liability with respect to the debt of the Petitioner bank. It is stated that no prejudice shall be caused to the Applicant/personal guarantor if the present application is allowed however the Applicant/personal guarantor shall suffer irreparable loss and injury if the same is not allowed.

3. In the light of the objections, the point that arises for our consideration is;

Whether the report of the Resolution Professional can be accepted and the petition under section 95 IBC, can be admitted against the personal guarantor Ms.L.Ramalakshamma?

4. We have heard Ld.Counsel for Applicant Mr.P. Soma ,Sekhara Naidu, and Ld.Counsel Mr.Abhishek Anand, for RP Mr.Anil Kohli. Perused the record.

5. According to the ld.Counsel for the personal guarantor the Resolution professional, in his report has recommended for the admission of the petition, inter-alia, contending, that :

- a. The Insolvency Application has been filed in the requisite form, Form C, in terms of Rule 7 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019, supported by requisite fee and documents.
- b. The Insolvency Application satisfies the requirements set out in Section 95 of the Code.
- c. The Personal Guarantor was duly served with demand notices dated 04.07.2020 and 20.08.2020 by the Financial Creditor for repayment of the debt owed by him to the Financial Creditor in terms of the provisions of the Code prior to filing the

Insolvency Application, but the Personal Guarantor neither repaid the outstanding debt nor provided any evidence of repayment of debt.

- d. In terms of Section 99(2) of the Code the undersigned informed the counsel of the Personal Guarantor vide email dated 29.07.2021 about the passing of order dated 23.07.2021 and further directed to prove the repayment of debt claimed as unpaid by the Financial Creditor i.e. SBI. Thereafter, the undersigned informed the Personal Guarantor vide email dated 31.07.2021 about the passing of order dated 23.07.2021 and further directed to prove the repayment of debt claimed as unpaid by the Financial Creditor i.e. SBI. The undersigned also informed the Personal Guarantor vide letter dated 30.07.2021 about the passing of order dated 23.07.2021 and further sought proof of the repayment of debt claimed as unpaid by the Financial Creditor. However, till date no response has been received from the Personal Guarantor to the communications as issued by the undersigned. On the contrary, the Counsel for the Personal Guarantor has submitted a reply to Section 95 Application on 03.08.2021, wherein liberty to file counter was granted on 11.01.2021.
- e. The Insolvency Application does not relate to "excluded debts" as defined under Section 79(15) of the Code.
- f. The Debtor, Personal Guarantor, is not eligible for fresh start under Chapter II of the Code.

6. However Ld.Counsel for the personal guarantor, submitted that Personal guarantor has raised objection to the report and the gist of the objections raised by the personal guarantor to the report, is as below:

- Evergreening of Loans by the CDR Lenders including SBI is unlawful and in breach of the RBI Mater Circular dated 15.07.2014.
- Breach on part of the Petitioner/Creditor in proper and timely disbursal of loans and financial facilities.
- Personal Guarantees executed without consideration and therefore there is no "financial debt" due and payable by the Applicant/personal guarantor.

- Company Petition is not maintainable since Counter Guarantees are not within the purview of Part III proceedings under the IB Code.
 - Debts of the Corporate Debtor cannot be foisted on Applicant/personal guarantor.
 - Personal Guarantees do not create legally binding obligation to pay.
 - Subject Matter PGs stand extinguished.
 - Pendency of the civil proceedings before the Debt Recovery Tribunal.
7. Before we proceed with our discussion on the point above, we wish to refer to the ruling of Hon’ble Supreme Court of India, in Surendra B. Jiwrajka vs Omkara Assets Reconstruction Private Limited, in W.P.(C) No. 149/2022, wherein, Hon’ble Supreme Court, explained the role of the Adjudicating Authority, post filing of the report under section 97 by the resolution professional recommending for admission of the Petition filed under section 95 of IB Code, as below;
- “Once a recommendation is made, it is not binding on the Adjudicating Authority. The Authority would only decide after looking at the recommendation of the resolution professional and affording full opportunity of hearing to the debtor or the personal guarantor, as the case may be”.
8. Here it is pertinent to note that, the personal guarantor has not disputed the due execution of personal guarantee in favour of the financial creditor,

for the due discharge of the credit facilities executed to the principal borrower besides its due invocation, the enforcement of which is sought by the petitioner/financial creditor under the present proceedings. In fact, the objections supra, relate to alleged breach of terms of RBI Master Circular, lapses etc, on the part of the financial creditor, alleged in implementation of CDR package.

9. A perusal of the sanction letter dated 15.07.2014, the terms and conditions of which were accepted by the personal guarantor herein, clearly states that the sanction was in respect of the following facilities;

(Rs. In crores)

Facility	Existing Limits	Revises Sanctioned Limits
FB Limits:		
Cash Credit	125.00	64.39
WCTL		60.56
FITL-I		3.54
FITL-II		13.32
Fresh TL(PTL)		77.31
Total FB Limits	125.00	219.12
NFB Limits:		
Letters of Credit*		5.00
Bank of Guarantee	100.00	128.00
Total NFBWC	100.00	128.00
TOTAL	225.00	347.12

*Sub limit within BG Limit

10. Admittedly, the principle borrower has availed the above stated financial facilities, and later defaulted in its repayment.

11.The clause in the Guarantee agreement clearly says that:

2.GUARANTEE:

“2.1 (a) The Borrower has agreed and undertaken to duly and punctually pay and/or discharge the Guaranteed Obligations in accordance with the CDR Documents.

(b) On the failure of Borrower to pay and/or discharge the Guaranteed Obligations, the Guarantor shall, unconditionally and irrevocably, upon demand, pay to the Security Trustee without demur or protest, within 3 (three) Business Days, the amount stated in the demand certificate (the "Demand Certificate", in the form and manner set out in Annexure A hereto), not exceeding the Guaranteed Amount, Provided that if upon invocation of this guarantee, the Guarantor has not made a payment within the time so specified for such payment in this Deed, the Guarantor shall be liable to pay Default Interest on the Guaranteed Amount, till the date of payment by the Guarantor of such amounts to the satisfaction of the Security Trustee.

2.2 Independent Obligation

The Guarantor shall, as a separate and independent stipulation and without prejudice to the other provisions contained herein, as primary obligor and not merely as surety, on a full indemnity basis, indemnify the Security Trustee as a result of the whole or any of the Guaranteed Obligations being or becoming void, voidable, unenforceable or ineffective as against the Borrower 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 its officers, employees, agents or advisers or the CDR Lenders. The amount of such loss shall be equal to the amount, which the Security Trustee or the CDR Lenders would otherwise have been entitled to recover from the Borrower in respect of the Guaranteed Obligations.

12.It is not at all the case of the personal guarantor that the subject guarantee has been invoked contrary to the above terms and conditions or any other of the guarantee. Admittedly, the principal borrower breached the terms

and conditions of the credit facilities sanctioned the due repayment of which is guaranteed by the personal guarantor herein. *Therefore, when the breach of the obligation to repay the debt guaranteed by the herein, by the principal borrower is not at all in dispute, the guarantor is bound, to honour the guarantee and cannot escape from his /her liability under the said contract of guarantee.* The terms of the guarantee referred supra, discloses that the same is an independent contract.

13. In so far as the RBI Master Circular relied on by the guarantor is concerned it is to be stated that the terms of the guarantee referred supra, discloses that the same is an independent contract does not either expressly or impliedly say, that contravention of any of its circulars will invalidate the very subject loan or the guarantee contract that the parties herein have entered into. Moreover, it is pertinent to state that except a bald pleading, there is not even an iota of evidence as regards the contravention of the terms of RBI Master circular by the financial creditor in this case.

A. Hon'ble Supreme Court in *Bank of India Finance v. Custodian*, (1997) 10 SCC 488, wherein it was held that,

“Infringements of the instructions issued by the Reserve Bank of India under [Banking Regulations Act](#) prohibiting the banks from entering into

by-back arrangements do not invalidate such contracts entered into between the banks and its customer'.”

B. In Punjab National Bank v. M/s Superior Industries Limited, order dated 23.03.2023 in IA No.604/ND/ 2021 in CP (IB) No.1032/ND/2018, by NCLT, Court VI, New Delhi. Paras 15 and 17 it was held as under:

"The next issue raised by the Corporate Debtor is about legality of Guarantee due to the fact that there was no approval of RBI /FEMA.

“The Corporate Debtor has relied on this Regulation however, the Corporate Debtor failed to show that how this Regulation violates Regulation 5(d) of FEMA. Since Regulation 5(d) deals with external commercial borrowing and in our understanding external commercial borrowing are commercial loans raised by eligible Indian resident entities from a foreign entity. However, in the present case the principal borrower and to whom guarantee was given was a foreign entity incorporated outside India i.e. in Mauritius.

However, from the letter dated 11.12.2015` it appears that RBI permission is required even for Corporate Guarantee to be given by an entity based in India, in favor of an entity incorporated outside India which has borrowed monies from an overseas lender. It may well be covered under some other regulations/ guidelines issued by the RBI which have not been brought to our notice. Even if we assume that the Regulation as quoted above is applicable even then that would not make the Corporate Guarantee invalid. It is pertinent to refer to judgement of Hon'ble Delhi High Court in the matter of SRM Exploration Pvt. Ltd vs. N and S and N Consultants S.R.O. (21.03.2012 - DELHC): MANU/DE/2056/2012 wherein it was held that Corporate Guarantee is not void only due to violation of FEMA. Para 11 of the aforesaid judgement is reproduced as under: - "11. We have perused the provisions of FEMA, 1999 Section 3 thereof prohibits dealing in or transferring of any foreign exchange save as otherwise provided therein or under the Rules & Regulations framed thereunder without general or special permission of RBI. We are unable to find any provision therein voiding the transactions in contravention thereof. We may mention that the predecessor legislation to FEMA namely FERA 1973 vide Section 47 prohibited 25 I.A. 604/2021, 1552/ND/2021, 1553/ND/2021 (IB)- 1032/(ND)/2018 entering into any contract or agreement directly or indirectly evading or avoiding any operation of the said Act or any provision thereof. However, Sub Section (3) thereof also provided that such

prohibition shall not prevent legal proceedings being brought in India for recovery of a sum which apart from the provision of FERA would be due. However, the legislature while re-enacting the law on the subject has chosen to do away with such a provision. We are of the view that the same shows a legislative intent to not void the transaction even if in violation of the said Act. Thus, we are of the opinion that the plea of the appellant Company in this regard is without any force."

The Corporate Debtor cannot take advantage of its own default and set up the said plea of absence of permission of the Reserve Bank of India".

14. Here, it is pertinent to state that there cannot be any denial of the fact that under guise of the objections to the RP's report, the personal guarantor had challenged the enforceability of personal guarantees dated 13.12.2013 and 18.01.2016, despite raising the very same plea in Writ Petition no.5099/2022 before Hon'ble High Court of Telangana and inviting an order as below:

" on due consideration, we are of the view that prayers (a) and (b) can only be decided by the Tribunal on adducing of evidence. Writ proceedings are not a substitute for and cannot be used to circumvent proceedings before the statutory Tribunal. Therefore, we relegate the petitioners to the forum of the Tribunal i.e. Debts Recovery Tribunal -II, Hyderabad, on the above aspects, including on the point of invocation of personal guarantees."

Therefore, the applicant is precluded under law and on facts from raising the very same pleas as 'objections' to the RP's report in this case as well.

15. Thus, in the light, of our discussion on the point above, we hereby hold that the objections by the Personal Guarantor on taking the report of the RP, are untenable and unsustainable, hence, the same are hereby rejected.
16. We have carefully perused the RP report and found that the same is in accordance with Sections 97 to 99 of IBC. Hence the report a taken-on record.
17. Consequently, this Application is dismissed. However, without costs.

SD

Charan Singh
Member (Technical)

SD

Dr.Venkata Ramakrishna Badarinath Nandula
Member (Judicial)

Sridher/pavani