

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P8

IA(I.B.C)3003(MB)2025 in

C.P. (IB)/376(MB)2025

CORAM:

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

ORDER SHEET OF HEARING (HYBRID) DATED **06.04.2026**

NAME OF THE PARTIES:

Canara Bank

Vs

Mr. Deepak Nagjibhai Patel

Under Section 95 of the IBC.

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, *vide* separate order. Detailed order is being uploaded on the NCLT portal today.

Sd/-

NILESH SHARMA
MEMBER (JUDICIAL)

//Sumant//

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

C.P. (IB) No.376/NCLT/MB/2025

with

IA(I.B.C) No.3003/NCLT/MB/2025

[Company Petition under Section 95(1) 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 Guarantor to Corporate Debtors) Rules, 2019]

*In the matter of **Mr. Deepak Nagjibhai Patel***

C.P. (IB) No.376/NCLT/(MB)/2025

Canara Bank

Stressed Assets management Branch

C-14 , G- Block, Bandra-Kurla Complex

Bandra(E) , Mumbai-400051

.....Applicant/ Financial Creditor

V/s

Mr. Deepak Nagjibhai Patel

Having Address at:

Flat No. 900, 9th Floor,

Shanudeep Building, Mafatlal House,

Altamont Road, Cumbala Hill, Kemps Corner,

Mumbai - 400026

.... Respondent / Personal Guarantor

I.A.(I.B.C.) No. 3003 of 2025

IN THE MATTER OF :

Mrs. Megha Agarwal

Resolution Professional of **Shewta Deepak Patel**

Having Correspondence address at:

001, Shivranjani Apartments,

In circle of Congress Nagar Garden, Congress Nagar,

Nagpur- 440012

... Applicant/RP

Order Pronounced on 06.04.2026

C O R A M:

MR. NILESH SHARMA, HON'BLE MEMBER (JUDICIAL)

MR. SAMMER KAKAR, HON'BLE MEMBER (TECHNICAL)

Appearances : Hybrid

For Applicant: Adv. Yash Dhruva a/w Ruchita Jain i/b MDP Legal

For Respondent/PG: Adv Mr Charles De Souza a/w Somya i/b TN Tripathi & Co.

For Resolution Professional: Adv Ms. Raj Laxmi Pawar , Adv Diva Shukla i/b

Devanshu Desai

ORDER

(Per Bench)

1. This Company Petition being CP(IB) No. 376 of 2025 is filed on 12.02.2025 by Canara Bank (the Applicant-Financial Creditor) under Section 95(1) 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 seeking initiation of Insolvency Resolution Process against Mr. Deepak Nagjibhai Patel for a default amount of Rs 51,34,29,353.81,- in respect of Deed of Guarantee dated 21.02.2019 in favour of the Applicant/Financial Creditor.
2. The Financial Creditor has placed the facts through this Petition in the following manner: -
 - 2.1. It is stated that the Financial Creditor has sanctioned Financial assistance of Rs. 38,00,00,000/- to the Principal Borrower i.e Swami Narayan Diamonds Private Limited. The sanction letter is attached as **Exhibit 4** of the Application.
 - 2.2. Further from time to time the Credit Facilities were extended by the Corporate Debtor by (i) Letter of Renewal dated February 21, 2019 (ii) Sanction Letter (Renewal) dated September 1, 2020 read with Letter of Renewal dated September 1, 2020 and (iii) Sanction Letter dated March 14, 2023 . The same has been duly accepted by the Corporate Debtor and the Personal Guarantor. The copies of same are attached at **Exhibit 5, 8, 9 & 13** to the Application.
 - 2.3. The aforementioned Credit Facilities were guaranteed by the Personal Guarantor by Guarantee Agreement dated 21.02.2019. The Guarantee Agreement is attached as **Exhibit 7** of the Application.
 - 2.4. It is stated that the personal guarantor agreed to

- i. unconditionally and irrevocably guarantee the repayment of all amounts advanced and all liabilities guaranteed by the Bank and also all amounts which may be advanced and all guarantees which may be issued by the Bank from that day
- ii. indemnify the Bank against all loss and to pay and satisfy to the Bank on demand the balance due from the Borrower
- iii. that the Personal Guarantee shall be a continuing Guarantee and that the liabilities of the Personal Guarantor shall be joint and several
- iv. the Personal Guarantor is the principal debtor, jointly with the Borrower
- v. The Personal Guarantee shall be in addition to and shall not be in any way prejudice affected by any collateral or other security or guarantee now or hereafter to be held by the Bank
- vi. any notice may be served on the Guarantor personally or by sending the same in a prepaid cover to the address registered with the Bank
- vii. the Personal Guarantor authorizes the Borrower to act as his agent and give acknowledgement of liability in respect of the balance due under the Personal Guarantee from time to time; and declares that he is bound by such acknowledgment of liability given by the Borrower from time to time

2.5. Besides the above Credit Facilities, the Financial Creditor has also sanctioned certain term loans to the Corporate Debtor. Under the Government's Guaranteed Emergency Credit Line ("GECL") scheme, the Financial Creditor sanctioned a Working Capital Term Loan ("WCTL I") of INR 5 Crore on November 9, 2020. Furthermore, under the GECL 1.0 extension scheme, the Financial Creditor sanctioned a Working Capital Term Loan ("WCTL II") of INR 6.4 crore on November 25, 2021. WCTL I and WCTL II were accepted by the

Corporate Debtor and Personal Guarantor. The Copies of the same have been attached as **Exhibit 11 &12** of the Application.

- 2.6. The outstanding amounts due to the Financial Creditor were duly acknowledged by the Borrower from time to time & the acknowledgment of liability by the Principal Borrower is binding on the Personal Guarantor. Thereafter, the Principal Borrower defaulted on its outstanding liabilities. Accordingly, the account of the Borrower was classified as Non-Performing Asset ("NPA") on 05.07.2024.
- 2.7. Thereafter, the Financial Creditor issued a Notice dated 06.07.2024 under 13(2) of SARFAESI Act , 2002("Demand Notice/ 13(2) Notice") and called upon the Corporate Debtor as well as the Personal Guarantor, calling upon them by way of demand to pay INR 46.43 crores. The copy of notice is is attached as **Exhibit 15** to the Application. The CD as well as the Personal Guarantor failed to repay the outstanding amount.
- 2.8. The Financial creditor submits that although the Demand Notice dated 06.07.2024 was issued under Section 13(2) of the SARFAESI Act, under the terms of the Personal Guarantee, it is submitted that the Demand Notice constitutes a valid demand on the Personal Guarantor to pay the outstanding amounts, and thus the Demand Notice is an invocation of the Personal Guarantee.
- 2.9. The date of default as mentioned in Part - III of the Application is 04.09.2024
- 2.10. Subsequently, the Financial Creditor issued a Demand Notice dated December 2, 2024 in Form B under Rule 7(1) of the Personal Guarantor Rules, 2019, to the Personal Guarantor. By Reply dated December 21, 2024, the Personal Guarantor raised vague responses and failed to make payment of the outstanding amount due to the Financial Creditor. A copy of the demand notice is attached as **Exhibit – 16** of the Application.

- 2.11. In view of the aforesaid, the Petitioner submits that there is a debt and default on the part of the Borrower. The Petitioner has validly invoked the Personal Guarantee issued by the Personal Guarantor by the Demand Notice. However, the Personal Guarantor has failed to make payment of the outstanding amounts. Accordingly, it is submitted that there is a debt and default on the part of the Personal Guarantor to make payment of the outstanding amounts to the Petitioner. Accordingly, the present Company Petition ought to be admitted.
- 2.12. Further vide order dated 11.04.2025 this tribunal directed the applicant to file a brief note on the issue of maintainability.
- 2.13. The applicant further stated that 13(2) notice can be considered as an invocation of the guarantee:
- 2.14. It is stated that in terms of the Personal Guarantee, inter alia, the Personal Guarantor was liable to, on demand, make payment of the outstanding amounts due and payable by the Borrower to the Financial Creditor. The Personal Guarantee further contemplated that the Personal Guarantor would also be the principal debtor, jointly with the Borrower. It is submitted that the Financial Creditor has duly made a demand upon the Personal Guarantor, by the Demand Notice dated 06.07.2024, to make payment of the outstanding amounts to the Financial Creditor. The said notice explicitly called upon the Respondent to repay the entire outstanding liability of INR 46.42 crores, thereby satisfying the requirement of a written demand under Section 128 of the Indian Contract Act, 1872 ("Contract Act") and the terms of the Personal Guarantee. Accordingly, it is submitted that a demand has been raised upon the Personal Guarantor and that the Personal Guarantee has been duly invoked.
- 2.15. The Financial Creditor has relied upon the following documents to establish the existence of debt and default, which are as under: -
- a. A copy of Sanction Letter dated 18.01.2019

- b. A copy of letter of renewal addressed to FC dated 21.02.2019
- c. A copy of personal Guarantee Agreement dated 21.02.2019
- d. A copy of renewed Sanction Letter duly accepted by PG dated 01.09.2020
- e. Copy of GECL Sanction Letter for WCTL of 5 Crore dated 09.11.2020
- f. Copy of GECL Sanction Letter for WCTL of 6.4 Crore dated 25.11.2021
- g. Copy of Acknowledgement of Debt dated 10.05.2023
- h. Copy of SARFAESI Notice dated 06.07.2024
- i. Copy of Demand Notice in Form B dated 02.12.2024
- j. Copy of Reply to demand Notice dated 21.12.2024
- k. Copy of Record of Default with NeSL.
- l. Copy of Statement of Accounts.

3. On presentation of the Company Petition by the Financial Creditor, this Tribunal vide order dated 27.05.2025, appointed Resolution Professional (hereinafter referred to as "RP") as proposed by the Financial Creditor viz. Mrs. Megha Agarwal, having registration number IBBI/IPA-001/IP-P-01456/2018-2019/12272, to carry out the Insolvency Resolution Process of the Personal Guarantor as per section 97(3) of IBC, 2016, with a direction to submit the report under Section 99 of the IB Code, 2016, within ten days. The RP was also directed to file her report through a separate IA.

4. The Resolution Professional has filed the report through I.A. No.3003/NCLT/MB/2025, recommending the **Admission** of the Company Petition filed under Section 95 of IBC, 2016. The RP submitted his observation and recommendation as regards the admission of the Company Petition in his report dated 13.06.2025 . The ground for admissions of the application are as follows:-

- a. The Personal Guarantor has failed to provide the Resolution Professional with proof of repayment of the debt claimed as unpaid

by the creditor and has not furnished evidence of electronic transfer of the unpaid amount from the bank account of the debtor, neither evidence of encashment of a cheque issued by the debtor, nor a signed acknowledgment by the creditor accepting receipt of dues.

- b.** The application filed under section 95 does not pertain to excluded debt.
- c.** That the debtor has failed to pay the debt within a period of 14 days of the service of the notice of demand. Hence, the requirement as set out u/s 78, 95(4) of Insolvency and Bankruptcy code, 2016 read with Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019, is satisfied.
- d.** That there is no record of any other application filed against the guarantor under section 94 or 95 of IBC for initiation of resolution process in respect of the said guarantor.
- e.** That the present Application is a fit case for initiation of Insolvency Resolution Process against Personal Guarantor, i.e. Mrs. Shewta Deepak Patel, under Section 100 of the Insolvency and Bankruptcy Code 2016 and hereby recommend for approval of application filed by the the Financial Creditor.

- 5.** After issuance of notice in I.A(I.B.C) 3003 of 2025 the Respondent/Personal Guarantor appeared through Counsel and filed her reply which is affirmed on 30.08.2025 .The Respondent/Personal Guarantor has placed the facts through the reply in his defence in the following manner:-

- 5.1. The Respondent states that present petition is filed on basis of a contract dated 21.02.2019 describing it as a "guarantee agreement" to the Corporate Debtor. However, on a true construction of the document dated 21.02.2019, it would be seen that the same is not a guarantee document within the meaning of Section 126 of the Indian Contract Act.
- 5.2. Respondent states that contract of guarantee must be strictly construed. Since the Respondent received no benefit or consideration for the alleged contract, his liability, if any, must be determined based on the document's precise meaning and legal construction. Given that the Petitioner drafted the contract using a printed form dated 21.02.2019, any ambiguity should be resolved using the strict construction approach and the contra proferentem principle, which favors the non-drafting party (Respondent) in cases of ambiguity.
- 5.3. It is submitted that the alleged instrument dated 21.02.2019 ["the document"] though bears a level of "guarantee agreement", but in a legal sense it is not a contract of guarantee. The document as apparent on its face is an indemnity and not guarantee. It purports to indemnify the Bank against all loss and pay and satisfy the Bank on demand the "General Balance" of the Borrower. It is trite that the claim under an indemnity is found in damage and not in debt.
- 5.4. The "principal debtor clause" in the document creates a primary obligation on the Respondent, rather than a secondary liability, which is a fundamental characteristic of a guarantee. This clause effectively makes the Respondent primarily liable, rendering the document not a guarantee. A guarantee typically requires a debt, default, or miscarriage of another party, which is absent in this contract. Section 126 of the Contract Act is not applicable to a contract like the present one whereby the surety promises to pay and discharge the contractual debt as a principal debtor. The nature of the "secondary liability" of a surety is to ensure that the principal should perform its own obligation. However, the

document creates an original principal liability on the Respondent rather than the obligation to answer the debt, default or miscarriage of another and thus the document is not a guarantee.

- 5.5. The document being an indemnity, is evidenced by the fact that basic principles governing guarantees under Sections 130, 133, 134, 135, 139 and 141 of the Indian Contract Act (such as discharge of surety, alteration of contract, release of principal debtor, and loss of security) or any other relevant provision of the Contract Act in that behalf are intentionally excluded from the alleged document through a waiver clause.
- 5.6. The document dated 21.02.2019 is otherwise inadmissible in evidence for want of adequate stamping as per Article 5(h)(A)(iv) read with section 5 of the Maharashtra Stamp Act. The said document cannot be admitted in evidence "for any purpose" much less to support the Petition as per the statutory mandate contained in section 34 of the Maharashtra Stamp Act. The said document is bound and liable to be impounded as per the mandatory provision prescribed under section 33 of the said Act.
- 5.7. It is submitted that the date of default is ex-facie illegal and erroneous. The present Petition is filed on the basis of the purported default of 04.09.2024 in respect of alleged debt which according to the Petitioner had fallen due on 06.07.2024. The alleged date of default of 04.09.2024 is derived on the basis of a notice dated 06.07.2024 issued under section 13(2) of SARFAESI Act.
- 5.8. Further the respondent submits that the petitioner has filed a section 7 application against the Principal Borrower. The date of default in the present application is different from the date of default of the Section 7 application.
- 5.9. It is submitted that guarantor is automatically in breach if the principal debtor commits breach. If principal debtor fails in performance, the guarantor is at once

liable for the breach. It is because the obligation of the guarantor is to see that the debtor performed his obligation to the creditor.

- 5.10. Hence The creditors cause of action qua the guarantor arises at the moment the debtor defaults and limitation period then start to run. Thus, As soon as breach is committed by the borrower performance of which is guaranteed, the surety is liable to the full extent of his obligation.
- 5.11. The present Petition based on a different and distinct date of default qua the Corporate Debtor and the guarantor is not maintainable and is liable to be dismissed.
- 5.12. The Respondent states that 13(2) letter dated 06.07.2024 cannot be construed as invocation of the alleged guarantee dated 21.02.2019. The demand is expressly made under section 13(2) of the SARFAESI Act. Section 13(2) of the SARFAESI Act contemplates a demand of liabilities in a default arising out of a "security agreement". The contract of guarantee is not a "security agreement" within the meaning of section 2(1)(zb) of the SARFAESI Act. The letter dated 06.07.2024 by no stretch of imagination can be said to be a letter of invocation of the guarantee as alleged. The said notice is issued making a demand of alleged dues arising out of the security agreement and not any guarantee document.
- 5.13. It is stated that Corporate Debtor to make payment of certain allegedly outstanding dues and further provided a period of 60 days to comply with such demand. Thus, even if the Petitioner's case that the Respondent was a guarantor is true, the liability of the Respondent would arise at the earliest on the 61st day from the notice dated 06.07.2024. Consequently, an invocation of the alleged guarantee based on the notice dated 06.07.2024 is evidently premature. On the contrary, in contending that a demand was made on the Respondent by the notice dated 06.07.2024, despite no default in compliance

on the part of the Corporate Debtor having occurred on that day, the Petitioner admits that there was a 'principal' liability on the Respondent and not a contingent one.

- 5.14. The respondent submits that the petition is filed for extraneous purpose as the Petitioner has already invoked the jurisdiction of the Debts Recovery Tribunal, Mumbai for recovery of its dues and enforcement of securities under section 19(1) of the Recovery of Debts and Bankruptcy Act, 1993. The Petitioner has filed Original Application No.587 of 2024. The conduct of the Petitioner is clearly unjust, unfair and unreasonable in attaching the property and failing to proceed further in recovery proceedings. By attaching properties and not taking any step to realise the securities, the Petitioner has prevented the Corporate Debtor and the mortgagor from taking steps to sell the properties and applying the proceeds of sale against legal dues, if any of the Petitioner. Since the security as claimed is attached, the Respondent is not in a position to persuade the mortgagor to sell the properties and apply the proceeds in discharge of legal liability. The Petitioner has committed a breach of its legal duties in failing to realize the security even after attachment. The Petitioner has thus lost its right to claim the amount.
- 5.15. The Petitioner is a secured creditor holding securities far exceeding its alleged dues. The Petitioner has already resorted to SARFAESI action and filed recovery proceeding being Original Application No.587 of 2024 under section 19 of the Recovery of Debts and Bankruptcy Act, 1993 claiming different sums. The motive for the present petition is to exert pressure on the Respondent. There is no intent for resolution and the petition is utilised merely as a means for realizing debt which is fully secured. It is designed to place improper pressure on the Respondent. The Petitioner is malafide dragging the Respondent to the present insolvency proceeding. The Code cannot be used

for recovery of the amount pending for adjudication in DRT Mumbai as has been held by Hon'ble Supreme Court in many judgments. The present petition is malafide and filed only for the purpose of recovery and not for insolvency resolution. The Petitioner is misusing and abusing the process of this Hon'ble Tribunal as a Debts Recovery Tribunal.

- 5.16. It is submitted that disbursement of alleged credit facilities and purported debt are not supported by statement of account duly certified as per the Bankers Book of Evidence Act. Petitioner has produced incomplete and improper statement of accounts. The alleged statements of accounts are not showing the "disbursement" of credit facilities or defaults in respect thereof as alleged. Besides that, the statements of accounts relied by the Petitioner are not in consonance with the Certificates under Section 2A(a) of the Bankers Book of Evidence Act. The Certificates under the Bankers Book of Evidence Act in absence of statement of accounts are not having any legal sanctity.
- 5.17. It is submitted that RP has not examined Petition as mandated by section 99(I) of the Code. the alleged claims of Rs.1,15,59,760.20 under GECL and Rs.6,16,41,623.59/- under GECL 1.0 are not covered by any guarantee document.
- 5.18. There is no proper and legal invocation of alleged guarantee document dated 21.02.2019. The RP has described 13(2) notice dated 06.07.2024 as recall notice.
- 5.19. The report is complete silent on the part of the invocation of the guarantee which is sine qua none for maintaining section 95 petition in terms of Notification dated 15.11.2019. Form -B relied by the Petitioner is not supported by any contract of guarantee. Even the date of guarantee is not mentioned in the said notice.

- 5.20. Further the Respondent submits that the RP has failed to examine elementary requirements of loan transaction regarding disbursement of credit facilities to the Corporate Debtor. The RP has misconstrued the document dated 21.02.2019 as guarantee agreement. RP ought to have reported to the Hon'ble Tribunal that the Petition filed by the Petitioner is containing false and misleading statements regarding GECL facilities vis-a-vis the alleged guarantee agreement. It is pertinent to note that RP has described a letter dated 05.07.2024 as recall of facilities. It is not a Letter of Invocation. The RP ought to have reported to the Hon'ble Tribunal that there is no legal and proper letter of invocation on record. The RP failed to examine Form -B which was lacking a very elementary requirement of particulars of guarantee and even copy of guarantee agreement was not served to the Respondent. The RP referred reply dated 21.12.2024 to Form -B, but failed to examine the contents of Form-B. The RP has erroneously recorded that the Respondent has executed personal guarantee dated 21.02.2019 and Form -B was served to the Respondent. The Petitioner has not relied on any balance sheet. Despite that RP has erroneously observed that the Petition is within limitation on the basis of the balance sheet of the Corporate Debtor. It seems that report is merely cut-paste from any other report. The report submitted by the RP is showing complete non -application of mind. It is misleading. It is respectfully submitted that the said report is not reliable,
6. The Financial Creditor has filed a rejoinder to the reply filed by the Respondent/Personal Guarantor, which is affirmed 10.09.2025, denying contentions raised by the Respondent/Personal Guarantor in his reply. The Financial Creditor has placed the facts through the Rejoinder in its rebuttal in the following manner: -

- 6.1. The Financial Creditor states that the Personal Guarantor seeks to incorrectly contend that the Personal Guarantee is an "indemnity" and not in the nature of a "guarantee". This contention is false, frivolous and misleading.
- 6.2. In the present case, under the Personal Guarantee, the Personal Guarantor, unconditionally and irrevocably has guaranteed the due repayment of the outstanding amounts due and payable by the Borrower. Thus, the Personal Guarantor has agreed to discharge the liability of the Borrower, in case of a default on the part of the Borrower. Hence, it is submitted that the Personal Guarantee is undoubtedly a "contract of guarantee" under Section 126 of the Contract Act.
- 6.3. In contrast, under Section 124 of the Contract Act, a "contract of indemnity" is a contract wherein one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person. In the present case, under the Personal Guarantee, there is no provision whereby the Personal Guarantor attempts to save the Financial Creditor from the loss suffered by the conduct of the Borrower. The Personal Guarantor in fact agrees and guarantees to pay the outstanding amounts upon default by the Borrower. Hence, by no stretch of imagination can the Personal Guarantee be construed as a "contract of indemnity" as incorrectly contended by the Personal Guarantor. The said transaction documents expressly contemplate the issuance of the guarantee (and not an indemnity) by the Personal Guarantor in favour of the Financial Creditor to secure the repayment of the said Facilities.
- 6.4. It is stated that Personal Guarantee is in the nature of an "on demand" guarantee. Under the very terms of the Personal Guarantee, any demand made by the Financial Creditor on the Personal Guarantor would constitute an invocation of the Personal Guarantee, which would give rise to the liability of

the Personal Guarantor. It is therefore submitted that when a demand notice is issued against the Personal Guarantor asking the Personal Guarantor to discharge its liabilities, the Personal Guarantee stands invoked.

- 6.5. By the Invocation Notice, the Financial Creditor has recorded that the Borrower has failed and neglected to make payment of the outstanding dues; and accordingly, the Financial Creditor has raised a demand on the Personal Guarantor to make payment of the outstanding amounts within a period of 60 days from the date of the notice i.e. on or before September 4, 2024. It is therefore submitted that the Invocation Notice, being a demand raised on the Personal Guarantor, thus constitutes a valid invocation of the Personal Guarantee.
- 6.6. Although the Invocation Notice is in the nature of a Demand Notice under Section 13(2) of the SARFAESI Act, it does not change the fact that a valid demand has been raised on the Personal Guarantor to make payment of the outstanding amounts, which under the terms of the Personal Guarantee would constitute an invocation of the Personal Guarantee.
- 6.7. Further it is stated that the Date of Default of September 4, 2024 is correct. Vide Invocation Notice dated July 6, 2024, the Financial Creditor raised a demand on the Personal Guarantor to make payment of the outstanding amounts within a period of 60 days i.e. on or before September 4, 2024. It is submitted that the liability of the Personal Guarantor arises on the invocation of the Personal Guarantee i.e. on July 6, 2024, when the Invocation Notice was issued. It is further submitted that the default on the part of the Personal Guarantor is on September 4, 2024, being 60 days from when the demand was raised by the Financial Creditor on the Personal Guarantor by the Invocation Notice. The Petitioner craves leave to refer and rely upon the relevant judgments to show that the liability of the Personal Guarantor arises upon

invocation of the Personal Guarantee, at the time of hearing of the present Company Petition.

- 6.8. Further on the stamping issue it is submitted that the Personal Guarantor cannot escape from its liability of repayment of the said Facilities granted to the Borrower on the ground that the Personal Guarantee is insufficiently stamped. It is submitted that the insufficiency/deficiency in stamping of the Personal Guarantee will not affect the admission of the Personal Guarantor into insolvency under the IBC. It is submitted that the insufficiency of stamp duty paid on documents is a mere technical deficiency and does not affect admission under the IBC.
- 6.9. In any event, the obligation to pay stamp duty is on the Personal Guarantee is on the Borrower. Therefore, if at all there is a deficient stamp duty, it is the Borrower and the Personal Guarantor that is responsible and liable for the same and they cannot be permitted to take advantage of their own wrong. It is pertinent to note that in any event, the Personal Guarantor has not denied or disputed the execution of the Personal Guarantee.
- 6.10. Moreover, as settled by the Hon'ble Tribunal from time to time, debt and default may be established from other documents forming part of the transaction, even if the document which is purportedly not stamped is ignored. It is submitted that the other transaction documents i.e. the sanction letters pertaining to the said Facilities already contemplate a guarantee to be given by the Personal Guarantor whereby the amounts due and payable by the Borrower are guaranteed to be paid by the Personal Guarantor.
- 6.11. It is submitted that the action taken by the Petitioner under the SARFAESI Act will not bar the Petitioner from instituting the present Company Petition. Any grievance that the Respondent may have as regards the invocation of the jurisdiction of the Hon'ble DRT may be raised before the appropriate forum.

- 6.12. The Petitioner submits that the disbursement of the said Facilities is evident from the Statement of Accounts along with the Certificates under Section 2A(a) of the Bankers Book of Evidence Act ("Certificate"). A copy of the Statement of Account along with the Certificate showing the disbursement of the OCC Facility is annexed hereto as **Exhibit C** of the Rejoinder.
7. The Financial Creditor in the Written Statement has relied on the following Judgements.
- i. Mavjibhai Nagarbhai Patel Vs State Bank Of India
 - ii. Asha Basantilal Surana Vs State Bank Of India & Ors.
8. The Respondent in the Written Statement has relied on the following Judgements.'
- a. Moschi vs Lep Air Services Limited.
 - b. Laxmi Pat Surana Vs Union Bank Of India [(2021)8SCC 481].
 - c. Brown Vs Brown.
9. Analysis and Findings
- 9.1. We have heard the submissions of the Ld. Counsel for the Financial Creditor, Ld. Counsel for the RP, Ld. Counsel for the Personal Guarantor and perused the documents on record. We have also gone through the report dated 13.06.2025 filed by the RP.
- 9.2. The present Company Petition has been filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as Code) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (hereinafter referred to as PG rules) by the Financial Creditor seeking initiation of Insolvency Resolution Process against the Respondent/Personal Guarantor.

- 9.3. On perusal of the documents we observe that the Principal Borrower i.e. Swaminarayan Diamonds Pvt Ltd had availed various financial facilities which includes OCC Facility of Rs 38 Crore ,GECL Term Loan Facility I of Rs. 5 Crore and GECL Term Loan Facility II of Rs. 6.4 Crore.
- 9.4. The Respondent stood as a Personal Guarantor for OCC Facility . As per the guarantee agreement dated 21.02.2019, Mr. Deepak Nagjibhai Patel , is stated to be the Guarantor of Swaminarayan Diamonds Private Limited and in turn, act as the surety for the OCC Facility.
- 9.5. The Respondent further accepted the sanction letter dated 14.03.2023 renewing the OCC financial facility.
- 9.6. Further, the loan account of the principal borrower was declared NPA on 05.07.2024.
- 9.7. Thereafter the Financial Creditor issued a demand Notice dated 06.07.2024 under 13(2) of the SARFAESI Act 2002 to the Principal Borrower as well as the Respondents and other Guarantors. However, The principal borrower and Guarantor failed to pay the due amount.
- 9.8. The Petitioner thereafter filed an Application under Section 7 of the code i.e. CP IB 333 (MB) 2025 against the Principle Borrower i.e. Swaminarayan Diamonds Private Limited. The same came to be admitted vide order dated 11.09.2025 of this Tribunal. Hence the debt and default are not disputed.
- 9.9. Further the Applicant issued demand notice under rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Principal Borrower's) Rules, 2019 on 02.12.2024.
- 9.10. One of the contentions of the respondent is that the Contract dated 21.02.2019 is not a Guarantee Agreement but an Indemnity Agreement.

9.11. In this regard on perusal of the Agreement dated 21.02.2019 this Tribunal observed that a Guarantee Agreement was executed between the Parties. The Respondent was termed as a Guarantor. Further it is specifically written in the agreement that guarantor shall unconditionally and irrevocably guarantee the repayment of all amounts. The relevant clauses of the Guarantee Deed dated 21.02.2019 are reproduced hereunder:-

“Whereas the Guarantor has requested the bank to grant financial assistance to the Borrower by way of facilities , including guarantees subject to specific condition that the Guarantor shall unconditionally and irrevocably guarantee the repayment of all amounts advanced and all liabilities guaranteed by the bank as also all amounts which may be advanced and all guarantees which may be issued by the Bank from this day.”

“The liabilities of the Guarantors under these presents shall be construed as joint and several. This Guarantee shall be a continuing guarantee notwithstanding the death of any one or more of the Guarantors and shall be binding on the representatives and the estate of the deceased Guarantors”.

“Guarantor would have required the Bank to do. Though as between the Borrower and the Guarantor the Guarantor is surely only, the guarantor agrees that as between the Bank and Guarantor , the Guarantor is the principal debtor , jointly with the Borrower . Accordingly the Guarantor waives all of the rights conferred on him by Section 130,133,134,135,139,141 or any other relevant provision of the Contract Act.”

Further it is also seen that vide Renewal of Sanction letter for OCC Facility dated 14.03.2023 the Respondent has accepted the Terms and Conditions as a Guarantor.

9.12. Hence This Tribunal is of the view that Contract dated 21.02.2019 is nothing but a Guarantee agreement as the said document at many places states the obligation of the respondent as a guarantor to the facilities granted by the applicant to the Principal Borrower. The term guarantee used in the said document will derive its meaning from Section 126 of the India Contract Act , 1872 which defines the “Contract of Guarantee” as a contract to perform or discharge the liability of a third person in case of his default. As such the usage

of the term “Guarantee” in the Guarantee Deed dated 21.02.2019 clearly establish the obligation of the Guarantor to pay the outstanding of the Principal Borrower in case of his default. As such the plea of the personal Guarantor that the Contract between the parties is that of an Indemnity and not of a “Guarantee” cannot be accepted.

9.13. Another contention of the Respondent is with respect to that Date of Default & that the 13(2)-demand notice dated 06.07.2024 shall not be equivalent to Invocation of Guarantee notice.

9.14. It is a settled law that the guarantor's liability arises from the date of invocation of Guarantee. In the instant case the Guarantee was invoked via 13(2) demand Notice dated 06.07.2024 which clearly states that the Respondent is also liable to pay the amount within 60 days. The title of the said notice also clearly states “NOTICE TO BORROWER/GUARANTOR/MORTGAGOR/OWNER”.

The relevant Extract of the said Notice is reproduced here under:

“

The secured creditor through this notice brings to your attention that the Borrower has failed and neglected to repay the said dues /outstanding liabilities and hence hereby demand you under Section 13(2) of the Act, by issuing this notice to discharge the liabilities of the Borrower as stated above to the secured creditor within 60 days from the date of receipt of this notice. Further it is brought to your notice that you are also liable to pay future interest at the rate as mentioned in Schedule C together with all costs, charges, expenses and incidental expenses with respect to the proceedings undertaken by the secured creditor in recovering its dues.

”

As the Respondent has failed to pay the outstanding amount within stipulated period of 60 days as mentioned in 13(2) notice, the date of default as mentioned in Part III of the Application i.e. 04.09.2024 is determined correctly.

9.15. This Tribunal has relied on judgement of Hon'ble NCLAT in **Mavjibhai Nagarbhai Patel Vs State Bank Of India & Anr.** Wherein it was held that a demand Notice issued under Section 13(2) of the SARFAESI Act calling upon

the Borrower and the Guarantors to make payment of the outstanding amount containing a specific demand to make payment of the outstanding amounts constitutes an invocation of the personal guarantee . Relevant extracts are reproduced here under :-

Para 16 : The liability of the guarantor has to be read from the Deed of Guarantee. Further, the terms of the Deed of Guarantee are extremely material as the invocation of the guarantee was to be purely in accordance with the terms of guarantee. Having looked at the relevant clauses of the Deed of Guarantee in the preceding paragraph, we are of the considered view that the Deed of Guarantee entered between the Respondent No.1 Bank and Personal Guarantor is an independent, distinct and a special contract which has to be construed on its own terms. It is clear from the reading of the clauses in the Deed of Guarantee that guarantee was given by the Personal Guarantor in unequivocal terms and the guarantee amount was to be paid by the guarantor once the guarantee was invoked

Para 18 : In the present case, after the Corporate Debtor was admitted into CIRP on 21.01.2020 and the Personal Guarantee was invoked by the Respondent No.1 Bank through Demand Notice dated 04.06.2021 under Section 13(2) of the SARFAESI Act which called upon both the Borrowers and the Guarantors to make payment of the amount of Rs 32.60 Cr. as on 30.04.2021 within 60 days. The Section 13(2) Notice which was sent to the Corporate Debtor was also forwarded to the Guarantor with the specific demand to make payment of the amount mentioned in the notice in terms of the guarantee. This Section 13(2) Notice was indisputably also sent to the Personal Guarantors separately and independently. When we see the Section 13(2) notice under SARFAESI Act as placed at pages 549 to 551 of Appeal Paper Book ("APB" in short) we find that there is clear indication of the names of all the Personal Guarantors therein which includes the present Appellant (and also the other two Appellants whose appeals are also under consideration before us).

- 9.16. The Respondent also contends that he had given Guarantee for OCC facility and not GECL and GECL 1.0. With this regards we have not seen any Guarantee Agreement for the Credit Facilities namely GECL and GECL 1.0.
- 9.17. Further the default with respect to OCC facility is way above the threshold of Rs.1 Crore as stipulated under Section 4 of the Code under Section 4(1) read with Section 78 of the Insolvency and Bankruptcy Code 2016.
- 9.18. This Tribunal has placed reliance on **Mudraksh Investfin Pvt. Ltd. v. Gursev Singh, (2025) ibclaw.in 323 NCLAT** wherein the Hon'ble NCLAT held that the threshold limit for invoking the provisions of Section 95 of the IBC, 2016, with respect to the Personal Guarantor to a Corporate Debtor, would be Rs. One Crore. The guarantee deed dated 21.02.2019 executed by the Personal Guarantor, creates a contingent liability that crystallises upon default by the Corporate Debtor.
- 9.19. The Personal Guarantor has taken an objection that the petition based on a different and distinct dates of default qua the Corporate Debtor and Guarantor is not maintainable and is liable to be dismissed. However, in our view, the said objection is not maintainable for the reasonable that the guarantor's obligation to pay arises after invocation of guarantee consequent upon a default made by the principal borrower. In this case, the principal borrower made a default in making payment of the dues of the Financial Creditor and as a result the account of the Principal Borrower in the books of Financial Creditor became NPA on 05.07.2024. Thereafter, the Financial Creditor issued a demand notice upon the Principal Borrower and invoked the personal guarantees vide notice under section 13(2) of SARFAESI Act, 2002 on 06.07.2024 giving 60 days notice to make payment. As the Personal Guarantor failed to make payment within the 60 days period, which expired on 04.09.2024, the same is treated as the date of default in respect of the Personal Guarantor. It has been held by

Hon'ble Supreme Court in matter of Syndicate Bank V. Channaveerappa Beleri & Ors., (2006) 11 SCC 506. that the default in respect of the Guarantor arises on expiry of the notice period vide which the guarantee has been invoked on failure of the guarantor to make payment. The limitation period in respect of the guarantor, therefore, commences from the said date of default and not from the date when principal borrower has made the default. The relevant portion of the said Judgment is reproduced hereunder:

“11. But in the case on hand, the guarantee deeds specifically state that the guarantors agree to pay and satisfy the bank on demand and interest will be payable by the guarantors only from the date of demand. In a case where the guarantee is payable on demand, as held in the case of Bradford (supra) and Hartland (supra), the limitation begins to run when the demand is made and the guarantor commits breach by not complying with the demand.”

9.20. In any case, the relevance of the date of default is only for the purpose of limitation of the action taken by the Financial Creditor and as this petition has been filed by the applicant on 12.02.2025, the same falls within the limitation period of 3 years from the date of default for the principal borrower i.e. the date of NPA which is 05.07.2024 and also from the date of default for the personal guarantor i.e. from 04.09.2024

9.21. The Personal Guarantor has raised another objection that the Guarantee Deed dated 21.02.2019 is not admissible as evidence for want of adequate stamping. However, the said objection is not tenable as the Financial Creditor has been able to establish the existence of debt and default on the part of the Personal Guarantor with the help of other documents attached along with the petition even if the Guarantee Deed is disregarded for want of adequate stamping. The said documents include Acknowledgement of Debt toward Financial Creditor

duly accepted by the Personal Guarantor, Renewed Sanction letter of 2019 duly Accepted by the personal guarantors.

- 9.22. As regard the objection of the Personal Guarantor that the applicant has already resorted to SARFAESI Action and has also filed OA before learned and view of the same the intent of the applicant is to use this petition as a means of recovery rather than for Resolution, we are of the view that the said objection is not tenable for the reason that the provisions of IBC, 2016 override the provisions of SARFAESI Act, 2002 and also of RDDB Act, 1993 as result of the provisions of section 238 of IBC and resultantly invocation of provisions of SARFAESI Act and filling of an OA before Ld. DRT does not invalidate the filling of application u/s 95 of IBC, 2016, which is not for making of the recovery from the Personal Guarantor, rather the same is for restructuring and resolution of the dues of the Personal Guarantor by way of an agreed repayment Plan. In this regard a reference is made to the judgment of Hon'ble NCLAT in the matter of **Y.Y.Butchi Babu vs State Bank Of India [Company Appeal (AT)(Ins.) No.909 of 2024]** is relevant wherein it was held that no statutory provisions suspend Section 95 proceedings due to pending Debt adjudication elsewhere. The relevant extract is reproduced here;-

“51. It is the contentions of the Appellants that their dispute on interest computation is pending before the DRT and therefore argue that the insolvency proceedings should not have been initiated until that adjudication is concluded. In this context, reference may be made to decision of this Tribunal in Mr. G. Sundaravadivelu v. Indian Overseas Bank (supra). In the aforesaid case, this Tribunal considered whether pendency before the DRT had any bearing on the jurisdiction of the adjudicating authority under the IBC. The Tribunal held that the pendency of proceedings before the Debt Recovery Tribunal is not a bar

for a financial creditor to initiate insolvency action, and that the adjudicating authority under the IBC is not required to wait for the DRT to conclude its adjudication before proceeding. Accordingly, the contention based on pendency before the DRT cannot bar initiation of insolvency proceedings.

52. The relevant para 96 of the Judgment in Mr. G. Sundaravadivelu vs Indian Overseas Bank is extracted below:

“96. It is pointed out that the pendency of proceedings before the ‘Debt Recovery Tribunal’, is not a bar for the ‘Financial Creditor’, to initiate an action against the ‘Corporate Debtor’. That apart, an ‘Adjudicating Authority’, need not wait for the decision of ‘Debt Recovery Tribunal’, while rendering its findings.”

53. The Appellants also placed reliance on the pendency of Section 19 proceedings before the DRT to argue that the Section 95 proceedings should be deferred. In this regard, reference may be made to decision of this Tribunal in State Bank of India v. Abhijeet Ferrotech Ltd., (supra) where the Tribunal examined a question as to whether an application under the IBC could be rejected solely on the ground that DRT proceedings were pending and that the DRT had passed certain orders. The Tribunal held that proceedings under Section 19 which were still inconclusive could not prevent admission of proceedings under the IBC, and that such pendency was not a ground to hold an insolvency application as barred. Thus, pendency of Section 19 proceedings before the DRT cannot, by itself, bar consideration of insolvency proceedings.

54. The relevant extracts from the Judgment in Abhijeet Ferrotech (supra) of this Tribunal in para 22 & 23 is extracted below:

“22. One more submission was raised before the Hon’ble Supreme Court in A. Navinchandra Steels Pvt. Ltd. (supra) that pendency of winding up proceedings was not brought into the notice of the Adjudicating Authority. In the above reference, the Hon’ble Supreme Court held that Section 7 is an independent proceedings and winding up proceedings would have no effect in deciding Section 7 Application on the basis of provisions contained in IBC. In paragraph 29, following was held:

“29. Dr Singhvi and Shri Ranjit Kumar have vehemently argued that SREI has suppressed the winding-up proceeding in its application under Section 7 IBC before NCLT and has resorted to Section 7 only as a subterfuge to avoid moving a transfer application before the High Court in the pending winding-up proceeding. These arguments do not avail the appellant for the simple reason

that Section 7 is an independent proceeding, as has been held in a catena of judgments of this Court, which has to be tried on its own merits. Any “suppression” of the winding-up proceeding would, therefore, not be of any effect in deciding a Section 7 petition on the basis of the provisions contained in the IBC. Equally, it cannot be said that any subterfuge has been availed of for the same reason that Section 7 is an independent proceeding that stands by itself. As has been correctly pointed out by Shri Sinha, a discretionary jurisdiction under the fifth proviso to Section 434(1)(c) of the Companies Act, 2013 cannot

prevail over the undoubted jurisdiction of NCLT under the IBC once the parameters of Section 7 and other provisions of the IBC have been met. For all these reasons, therefore, the appeal is dismissed and the interim order that has been passed by this Court on 18-12-2020 [A. Navinchandra Steels (P) Ltd. v. Srei Equipment Finance Ltd., 2020 SCC OnLine SC 1141] shall stand immediately vacated.”

23. The above judgment of the Hon'ble Supreme Court clearly lays down that proceedings under Section 7 can neither be held to be barred by any order passed by DRT under the 1993 Act, nor pendency of proceedings at DRT (which is now pending at the stage of Calcutta High Court) shall preclude decision on Section 7 Application on merits.”

55. It is clear from the aforesaid Judgments that pendency of a proceeding DRT is not a bar for initiation of the CIRP process under Section 7. Section 7 in case of companies is similar to Section 95 for the Personal Guarantors to the corporates and pari materia the same principle applies for the Personal Guarantors.

9.23. Further this Tribunal has relied on the Judgement of Hon'ble NCLAT in the matter of Sri Vibu Venkatsubramanian vs State Bank of India Comp. App. (AT)(Insolvency) No. 1288 of 2024 wherein it was held that IBC code overrides the SARFAESI Act. The relevant extract is reproduced here under:-

“6.4 We also note that the argument that multiple proceedings have been initiated by the Respondent Bank has been correctly dealt with in the order of Ld. NCLT. As per provisions of Section 238 of IBC, 2016.

the Code overrides other laws and there is no bar of filing application under Section 95 of IBC, 2016 during the pendency of the proceedings under the SARFAESI Act, 2002.”

- 9.24. As regards the objection of the Personal Guarantor that the disbursement of credit facilities are not supported by statement of account duly certified as per the Bankers Books Evidence Act and the petitioner has produced incomplete statement of account, it is observed that the Applicant has vide its rejoinder dated 10.09.2025 submitted the statement of accounts w.e.f. 01.06.2013 along with the Bankers Books Evidence Act Certificate, which reflects the disbursement made to the Corporate Debtor and in view of the same the objection of the Personal Guarantor is not sustainable.
- 9.25. The Corporate Debtor has relied upon the following judgments, which in our view do not help its case for the following reasons:-
- i. Judgement of Hon'ble Supreme Court in Laxmi Pat Surana Vs Union Bank Of India [(2021)8SCC 481] does not apply to the facts of this case as the Applicant has been successfully able to demonstrate that Guarantee was validly invoked which was well within limitation.
 - ii. The judgment of the House of Lords in Moschi vs Lep Air Services Limited & Brown Vs Brown does not come to rescue the Corporate Debtor as the provisions of IBC will prevail.
- 9.26. The documents establish that the debt is financial debt under Section 5(8) of the Insolvency and Bankruptcy Code 2016 as it arises from the time value of money disbursed against consideration of interest. Further the Application is filed on 12.02.2025 , which is well within the limitation period.
- 9.27. The RP in its report has recommended the Admission of the Respondent into Insolvency Resolution Process as Respondent has failed to produce any evidence of payment of the debt as claimed by the Creditor.

- 10.** In view of findings on above issues, the Company Petition under Section 95 of the Insolvency and Bankruptcy Code 2016 is complete, the existence of financial debt and default stands established and there is no evidence of repayment or dispute under Section 99(3). The requirements under Sections 95 and 99 are met, warranting admission under Section 100(1) for Insolvency Resolution Process against the Personal Guarantor – Mr Deepak Nagjibhai Patel
- 11.** Accordingly, the IA No.3003 of 2025 is allowed and disposed off and as a result the application being CP 376 of 2025 is admitted under Section 100 of the IBC, 2016, initiating the insolvency resolution process against the Personal Guarantor- Mr. Deepak Nagjibhai Patel
- 12.** The interim moratorium under section 96 ceases to have effect and the moratorium under Section 101 commences on the date of admission and shall cease at the end of 180 days or on order under Section 114, whichever is earlier.
- 13.** During the moratorium period, the following provisions shall be in effect: -
- (i) any pending legal action or proceeding in respect of any debt are stayed;
 - (ii) Creditors shall not initiate legal actions or legal proceedings in respect of any debt;
 - (iii) The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;
 - (iv) Provisions do not apply to notified transactions by the Central Government.
- 14.** Mrs Megha Agarwal (Reg. No. IBBI/IPA-001/IP-P-01456/2018-2019/12272) is appointed as Resolution Professional. The RP shall:

- (a) cause a public notice to be published within 7 days on the NCLT website, inviting claims within 21 days from the date of issuance, including details under Section 102(2);
- (b) publish the said Notice in one English and one vernacular newspaper with wide circulation in the state where the debtor resides and to affix the notice in the premises of the Adjudicating Authority as per Section 102(3);
- (c) prepare a list of creditors under Section 104 within 30 days from the date of admission;
- (d) assist the debtor in preparing repayment plan under Section 105, including justifications, Provisions for the RP fees, etc.;
- (e) submit a repayment plan and report under Section 106 within 21 days from claim submission;
- (f) if a meeting is recommended, specify details under Section 106(3), including the date and time of such meeting, which shall not be less than 14 days or more than 28 days from the date of the report under Section 106(1), with at least 14 days' notice under Section 107(2).
- (g) conduct a meeting under Sections 108-111;
- (h) Prepare a meeting report under Section 112 and submit to the Tribunal with copies;
- (i) Perform duties as provided under Section 208;
- (j) Comply with other applicable provisions of IBC , 2016

- 15.** The Registry is directed to communicate a copy of the order, report and application within seven working days to the Applicant, Respondent/PG, and Resolution Professional and upload on the website immediately after the pronouncement of the order.

16. In terms of the above, C.P. (IB) No.376/NCLT/MB/2025 filed under Section 95 (1) of the IBC, 2016 is admitted and the Insolvency Resolution Process stands initiated against the Respondent/Personal Guarantor. Accordingly, I.A. (I.B.C) No.3003/NCLT/MB/2025 stands allowed and disposed off accordingly.

Sd/-

NILESH SHARMA
Hon'ble Member(Judicial)

Sd/-

SAMEER KAKAR
Hon'ble Member(Technical)

//Sumant//