

(2026) ibclaw.in 784 NCLT

IN THE NATIONAL COMPANY LAW TRIBUNAL
Ahmedabad Bench

IDBI Trusteeship Services Ltd.

v.

Kamleshbhai Keshavbhai Gondalia

CP (IB) No. 188 of 2025 with IA No. 140 of 2026

Decided on 16-Mar-26

*Smt. Chitra Ram Hankare (Judicial Member) and Shri Velamur Govindan
Venkata Chalapathy (Technical Member)*

Add. Info:

Personal Guarantor: Kamlesh Gondalia

For Appellant(s): Mr. Dhaval Vyas, Sr. Adv a.w. Mr. Digant Popat Adv, and
Mr. Nihar Thakkar Adv.

For Respondent(s): Mr. Arjun Sheth Adv. and Mr. Arjun Padhiyar, Adv.

JUDGEMENT

1. The Present Application is filed by IDBI Trusteeship Services Limited acting in its capacity as a Debenture Trustee for Axis RERA Opportunities Fund – I (AROF-I) under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as IBC, 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 to initiate Personal Insolvency Resolution Process against Mr. Kamlesh Gondalia, the Personal Guarantor of the Corporate Debtor namely M/s. Takshashila Heights India Private Limited for default of an amount of Rs.100,27,45,307/- (including interest and additional cost) as on 04.04.2025. The date of default is submitted as the first date on which the debt was due after restructuring is 31.12.2022.

2. It is submitted that present proceedings arise from financial facilities extended to the Corporate Debtor who had issued 6,500 senior, secured, redeemable, unlisted non-convertible debentures aggregating to Rs. 65 Crores subscribed to by AROF- I pursuant to a Debenture Trust Deed dated 01.09.2020. The said facilities were secured, inter alia, by irrevocable and unconditional personal guarantees dated 01.09.2020 executed by Mr. Kamlesh Gondalia and Mr. Parthil Gondalia. It is submitted that the Borrower Corporate Debtor committed repeated defaults under the repayment schedule despite restructuring and extension granted from time to time. It is further submitted that owing to continued defaults, the applicant under instructions of AROF-I, issued an Event of Default notice dated 17.09.2024, following which demand certificate dated 09.11.2024 were issued to both personal guarantors invoking the personal guarantees, and thereafter statutory Form-B notices dated 05.12.2024 were served calling upon the Personal Guarantors to discharge aggregate dues exceeding Rs. 93,43,72,737/- within stipulated period. It submitted that on 18.12.2024 issued a letter signed by the Personal Guarantor to the applicant seeking additional time for repayment of its debts. It is further submitted that the applicant acting on behalf of AROF-I granted a further opportunity on 01.01.2025 and called upon the Borrower and Co-Obligors to pay Rs. 95,01,12,480/- within ten days. It is further submitted that on 02.01.2025, a sum of Rs. 12,90,000/- was adjusted towards the outstanding principal from designated account receipts. It is contended that despite the same, an aggregate amount of Rs. 100,27,45,307/- remained due and payable by the Personal Guarantor as on 04.04.2025. The applicant has also produced Form-D Record of Default issued by NeSL.

3. Vide order dated 14.05.2025, Mr. Sunil Kumar Kabra was appointed as Resolution Professional (RP) of the Personal Guarantor and to submit his report within the stipulated period, which was complied with by filing IA No. 758 of 2025. The said appointment was challenged before the Hon'ble High Court of Gujarat and, vide order dated 12.08.2025, the appointment order dated 14.05.2025 was quashed and set aside, further the matter remanded to this Tribunal, directing to take up the proceeding from the stage of section 97(3). In compliance thereof, this Tribunal, vide order dated 26.11.2025, directed the Insolvency and Bankruptcy Board of India to

nominate an RP. Pursuant to letter dated 04.12.2025, the Board informed that it has been preparing bench-wise panels of insolvency professionals since June 2017 for appointments under various provisions of the Insolvency and Bankruptcy Code, 2016, and shared the zone-wise and bench-wise panel for selection of RP. Accordingly, Mrs. Indira Suresh Vora was appointed as RP vide order dated 09.12.2025 and in view of the fresh appointment, the report submitted by the earlier RP in IA No. 758 of 2025 was held not to survive for consideration and the said IA was disposed. However, vide email dated 19.12.2025, Mrs. Indira Suresh Vora expressed her inability to accept the assignment due to unavoidable circumstances.

4. In view of such, this Tribunal, vide order dated 12.01.2026, appointed the resolution professional, Mr. Chetan Patel having Registration No. IBBI/IPA-002/IP-N00819/2019 -2020/12561 and directed to file his report recommending on the admission or rejection of the application within 10 days of the order in terms of Section 99 of the Code. The Resolution Professional has filed his report vide IA No. 140 of 2026. It is submitted by RP that various communications seeking details of any repayment made by the PG were made through emails, however he received reply from PG through email dated 22.01.2026 as a result of which RP report was filed on 26.01.2026 hence RP has prayed for condonation of delay in filing of this application. It is submitted that PG in his reply dated 22.01.2026 admitted the total outstanding debt amounting to Rs. 45,27,21,422/- only. However no proof of repayment has been furnished by PG to RP. Hence in the IA No. 140 of 2026 RP has submitted report recommending admission of the application under Section 95 IBC, 2016 as all the requirements under section 95 of the Code are satisfied

5. Vide order dated 20.02.2026 right to reply of the Respondent PG was closed after providing various opportunities, however liberty to file written submission was provided. The Respondent has opposed the maintainability of the present petition contending, firstly, that the interim directions dated 09.12.2025 passed by this Tribunal are presently under challenge before the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 27 of 2026, wherein by order dated 08.01.2026 the Hon'ble Appellate Tribunal has partially stayed the operation of the impugned directions and issued notice

to the Applicant, with the matter being returnable on 23.02.2026. However on perusal of the said order it is observed that the order is stayed on for the following part “*The RP is directed to take charge of the corporate debtor’s management immediately.*” It is further contended that the petition, having been filed through a Power of Attorney holder, is not maintainable in view of the judgment of the Hon’ble NCLAT in Palogix Infrastructure Private Limited v. ICICI Bank Limited, wherein it was held that power of attorney holder is not competent to file an application on behalf of a financial creditor or operational creditor or corporate applicant. It is submitted that provisions related to personal insolvency under sections 94 and 95 of the Insolvency and Bankruptcy Code, 2016 are pari materia with Sections 7,9 and 10, hence the said ratio is stated to apply squarely to the present case, particularly when the board resolution relied upon allegedly authorises execution of a power of attorney and not initiation of insolvency proceedings. It is further argued that the Applicant, being a debenture trustee, has failed to demonstrate that it acted upon specific instructions of the debenture holders as required under Clause 15.2 of the Debenture Trust Deed for invocation of guarantees or initiation of proceedings, no such instructions having been placed on record, and on these grounds the Respondent has prayed for dismissal of the present petition.

6. Both the parties have filed their written submissions. We have heard the learned counsels and perused the record.

7. Observations

a) The nature of debt is the default on the repayment to the applicant debenture trustee of the unlisted non convertible debentures. The stated default occurs on 13.11.2024 on the failure to pay the amount as per demand notice dated 09.11.2024(3 day notice). Even though the borrower had failed to repay(defaulted) payments during the period between Dec 2022 to March 2024, there were additional funding made including an Inter Creditor Agreement to the borrower and an escrow mechanism was put in place. There is also an amendment of deed of pledge executed(by borrower and respondent PG) on 05.01.2024 with the applicant (ITSL) which is in continuation of the debenture trustee

agreement dated 01.09.2020

b) The respondent PG in his reply dated 30 Jan 2026, raises two issues: invalid authority to file the application (the Assistant Manager of Trusteeship Services Limited has signed) without any authority letter, board resolution or power of attorney placed on record to prosecute the respondent. The respondent contended that a power of attorney holder is not competent to file an application on behalf of a financial creditor or operational creditor or corporate applicant. The respondent relies on the judgment of Hon'ble NCLAT in case of Palogix Infrastructure Private Ltd VS ICICI Bank in Company Appeal (AT) (Insol) Nos.30,37 and 54 of 2017. The relevant para is "The question arises whether the Power of Attorney Holder given power of attorney prior to enactment of the I & B Code is entitled to file an application under Sec 7, 9, or 10 of the IBC. The Honble NCLAT further holds that "POA holder is not competent to file an application on behalf of a financial creditor or OC or Corporate Applicant. The respondent relies on the answer to the question which was raised whether it is permissible before enactment of IBC. The position is different here as the officer who files the application is an authorised official of the applicant.

c) The respondent has relied on a clause 15.2 of the debenture trust deed, which sets out on the default as: "upon the occurrence of an event of default as stated in clause 15.1 above, notwithstanding anything contained in this deed, the debenture trustee acting on the instructions of the debenture holders shall, without prejudice to their other rights and remedies, be entitled to any of the remedies as stated in Clause 16 which includes invocation of guarantee 16.1.2(iii).

d) There is no document placed on record to show instructions given by any debenture holder to either invoke the guarantee and or file the present petition.

e) We have perused the respondent PG email dated Jan 22, 2026 where in it is stated that "that as per the books of account of Takshashila

Heights India Private Limited, the total outstanding amount towards Axis RERA Opportunities Fund – IDBI Trusteeship Services Limited is Rs. 45,27,21,422/- which presently remains unpaid and in respect of which settlement and restructuring efforts are actively underway. It is further confirmed that, till date, the said debt has been serviced in accordance with the agreed terms, and approximately 30% of the realisations have been consistently appropriated towards repayment of the aforesaid debt. It is respectfully submitted that the principal debt forming the basis of the present personal insolvency proceedings is the very same debt which constitutes the subject matter of the Corporate Insolvency Resolution Process application filed by the same Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016, against Takshashila Heights India Private Limited, and which is presently pending adjudication before the Hon'ble National Company Law Tribunal, Ahmedabad Bench. The Corporate Debtor is actively contesting the said Section 7 application and is simultaneously engaged in bona fide and ongoing efforts to resolve the said debt outside the rigours of the CIRP framework.

f) It is immaterial whether the CD is or not under CIRP and the factual position is the CD has been admitted in to CIRP and various appeals before Honble Supreme Court have been turned down. Hence it is clear that the respondent has acknowledged that a debt is due and payable thereby the liability is acknowledged irrespective of the amount owned up by respondent.

g) The RP should at first under Sec 99(2) require the debtor to prove the repayment which undoubtedly by the email the respondent acknowledges, irrespective of the amount which shows a difference. Further under Sec 99(6), the RP has to confirm whether the application filed under Sec 95 of IBC which includes verification of the set of documents. The respondent has not contested that in the reply to the notice of RP, but has made certain defence which could be after thought after receipt of the report and does not gain any ground.

h) The applicant had placed Copies of an extract of Board Resolution

dated 2 February 2021 and Power of Attorney dated 4 March 2022 authorizing Ms. Gauri Nimkar, Senior Manager working at the corporate office of the applicant who has also filed this application by affidavit dated 09.04.2025. The respondent raised an objection in the main petition by filing written statement on 20.2.2026 objecting to the POA and board resolution, however has not denied the debt.

i) The debenture trustee (applicant) is appointed by the borrower. Clause 15.2 of the irrevocable and personal guarantee deed agreement executed by the applicant with the two personal guarantors, namely Mr Kamlesh Gondalia and Mr Parthil Gondalia on 1 Sept 2020 states: “Any Financial Indebtedness of the Company to the Guarantors, now or hereinafter, if the Debenture Holders so require shall be collected, enforced and received by the Guarantors as trustee for the Debenture Holders and shall be paid over to the Debenture Trustee on account of the payment of Secured Obligations by the Company under the Debenture Trust Deed, and other Transaction Documents but without reducing or affecting in any manner the Guarantors’ liabilities hereunder. Any security now or hereafter held by or for the Guarantors from the Company in respect of any liabilities shall be held in trust for the Debenture Trustee for the benefit of the Debenture Holders”

j) There is no ground to believe that these documents clearly specify the liability of the personal guarantors which gets established on non payment of debt and the limited acknowledgment, while the applicant has the power to enforce the document on default by the corporate debtor.

In view of the above, we pass the following order:

ORDER

I. The insolvency process is initiated against the personal guarantor, Mr. Kamlesh Gondalia. The moratorium begun on the date of admission of the application shall cease to have effect at the end of the period of 180 days from the date of this order. During the moratorium

period, the following provisions shall be in effect:

- a. Any pending legal action or proceeding in respect of any debt be deemed to have been stayed; and
- b. The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and
- c. The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his 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.

II. The Resolution Professional is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of uploading of this Order on the website of the NCLT, inviting claims from all Creditors, who shall register their claims as provided under Section 103 within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102 (2) of IBC, 2016. The publication of notice shall be made in newspapers, one in English and other in Vernacular which have wide circulation in the State where the Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry. One shall be placed by the Registry on our website and the other shall be affixed in the premises of this Authority.

III. The Resolution Professional in exercise of the powers conferred under Section 104 shall prepare a list of creditors within 30 days from the date of the notice. The debtor shall prepare a repayment plan in consultation with the Resolution Professional 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 Authority within a period of 21 days from the last date of submission of claims as provided under Section 106.

IV. 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 the creditors should be summoned, he shall specify the details as provided under Section 106(3). The date of meeting should not be less than 14 days or more than 28 days from the date of submission of the report under sub-section (1) of Section 106, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all relevant/feasible modes. Such notice must contain the details as provided under the provisions of Section 107.

V. The meeting of the creditors shall be conducted in accordance with sections 108, 109, 110 & 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 this Authority, copies of which shall be provided to the debtor and the creditors. It is made clear that the resolution professional shall perform his function and duties in compliance with the code of Conduct provided under section 208 of the IBC, 2016.

VI. The applicant/personal guarantor Mr. Kamlesh Gondalia is directed to deposit Rs.2,00,000 to the bank account of RP within one week, towards his fees. This shall be subjected to the Rules and Regulations under the provisions of IBC, 2016.

VII. In terms of the above, IA No.140 of 2026 stands allowed and CP(IB) No. 188 of 2025, filed under Section 95 of the IBC, 2016 is admitted under section 100 of IBC, 2016 and the Insolvency Resolution Process stands initiated against the Personal Guarantor i.e., Mr.Kamlesh Gondalia.

CHITRA HANKARE
MEMBER (JUDICIAL)

DR.V. G. VENKAT A CHALAPATHY
MEMBER (TECHNICAL)

