THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: MS. REETA KOHLI,
HON'BLE JUDICIAL MEMBER

MS. KAVITA BHATNAGAR
HON'BLE TECHNICAL MEMBER

IA (IBC) No. 20/JPR/2026
In CP No. (IB)-86/95/JPR/2022

IN THE MATTER OF:

BANK OF BARODA

...Financial Creditor/ Applicant

VERSUS

SHRI AMIT PRAKASH GUPTA

...Personal Guarantor/ Respondent

AND IN THE MATTER OF:

IA (IBC) No. 20/JPR/2026

MEMO OF PARTIES

ARVIND KAUSHIK, RP,
P-4, Tilak Marg, C-Scheme City,
Jaipur, Rajasthan
Email: ca73588@gmail.com

...Applicant/ Resolution Professional

For the RP	:	Prabhansh Sharma, Adv. Nagendra Singh Adha, Adv. Sristhi, Adv. Rohini, Adv.
For the FC	:	Shivangshu Naval, Adv. Akanksha Noval, Adv.
For the PG	:	Karan Pratap Singh, Adv. Nishant Saraf, Adv. Rishika Pareek, Adv.

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Order Pronounced On: 18.05.2026

ORDER

Per: Ms. Kavita Bhatnagar, Technical Member

1. This Application bearing *IA(IBC) No. 20/JPR/2026* has been filed by *Mr. Arvind Kaushik,* the Resolution Professional, under Section 99 of the Insolvency and Bankruptcy Code, 2016 ('Code'/ 'IBC') recommending the admission of the Application filed by *Bank of Baroda* ('Creditor'/ 'Applicant') under Section 95 of the Code wherein it has sought commencement of the Insolvency Resolution Process ('IRP') against the Personal Guarantor, namely *Shri Amit Prakash Gupta* ('Personal Guarantor'/ 'Debtor'), of *U. N. Automobiles Private Limited* ('Corporate Debtor').

2. The Corporate Debtor UN Automobile is already undergoing CIRP before this Tribunal and accordingly this Tribunal has jurisdiction to entertain the present application under section 60(2) of the Code. The case of Financial Creditor is that CD had originally availed credit facilities from State Bank of India, which were taken over by the Applicant Bank in the year 2010. Thereafter vide sanction letter dated 21.05.2010, credit facilities to the extent of Rs. 35 crores were sanctioned comprising corporate loan and cash credit facilities. On subsequent request of the CD, additional facilities were sanctioned from time to time, including enhancement of limits and

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additional corporate loans, whereby the total exposure increased to Rs. 45.76 crore.

3. The Respondent is stated to have executed multiple Deeds of Guarantee on 10.06.2010, 31.03.2011, 25.08.2011 and 10.02.2012 in favour of the FC to secure the said facilities.

4. The FC has stated that upon failure of the CD to repay the outstanding dues, recovery proceedings were initiated before the Debts Recovery Tribunal, Jaipur by filing OA No. 10/2014 claiming an amount of Rs. 56,44,88,716/- along with contractual interest. During the pendency of the said proceedings, the parties entered into One Time Settlement vide compromise sanction letter dated 24.12.2015 which resulted in consent recovery order dated 28.01.2016 and issuance of a recovery certificate. Later on, an amended recovery certificate dated 30.03.2016 was issued having certain modifications including extension of the validity of the compromise up to 31.03.2018, which was further extended up to 30.06.2018 on request of the CD.

5. The FC has further stated that the CD failed to comply with the terms of the compromise, whereupon OTS stood cancelled vide letters dated 01.09.2018 and 06.09.2018 resulting in revival of the entire liability as originally claimed in the recovery proceedings. It is also stated that the guarantee executed by the Respondent is a continuing guarantee, which remains in

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force notwithstanding any partial payments or settlement attempts and would cease only upon full discharge of the guaranteed amount.

6. Regarding limitation, the FC has asserted that the last payment was received from the CD on 31.01.2022 and accordingly the said date has been treated as the date of default. The FC has also placed reliance on various part-payments allegedly made between 2019 and 2022, including amounts received through DRT proceedings, escrow accounts and recovery actions under SARFAESI to contend that limitation stands extended.

7. It was further pleaded that a demand notice dated 17.10.2022 was issued under Rule 7(1) of the Personal Guarantor Rules calling upon the Respondent to pay an amount of approx. Rs. 192.92 crore as on 31.10.2022 along with interest. After this, the present application has been filed under Section 95. Pursuant to the filing of the application, this Adjudicating Authority vide order dated 07.10.2025 appointed an RP under Section 95 of the Code with a direction to examine the application and submit a report under Section 99. The RP has submitted his report recommending admission of the application observing that financial debt and default are established on the basis of documents such as sanction letters, guarantee deeds, recovery certificate, demand notice, NeSL records and other materials.

8. The Respondent has filed a detailed reply to the report as well as written submissions. At the outset Respondent has raised a preliminary objection that FC has failed to invoke the guarantee in accordance with law and that

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in absence of such invocation, the present petition is not maintainable. It is specifically pleaded that the Company Petition does not contain any averment as to invocation of guarantee and has not annexed any document evidencing such invocation.

9. It has been further stated by the Respondents that the demand notice issued under Rule 7(1) cannot be treated as invocation of guarantee and that invocation is a substantive contractual requirement which must precede initiation of proceedings. It is also contended that the RP has erroneously relied upon a SARFAESI notice dated 01.06.2013 as evidence of invocation, whereas the said notice has been quashed by the Debts Recovery Tribunal Jaipur vide order dated 26.12.2022 and this important fact has not been considered by the RP.

10. The Respondent has also pointed out contradictions in the stand of the FC and RP. While the RP appears to rely upon the SARFAESI notice, the FC in its written submissions seeks to contend that the Recovery Certificate dated 30.03.2016 itself constitutes invocation of guarantee. It is submitted that such a contention is not borne out from the pleadings and is being raised for the first time at the stage of arguments, which is impermissible in law. The Respondent has further relied upon judicial precedents to contend that invocation of guarantee is a condition precedent and that in absence thereof no default can be said to have arisen qua the personal guarantor. It is also

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contended that the Respondent does not fall within the definition of guarantor under Rule 3(1)(e) in absence of invocation.

11. Respondent has also referred to subsequent proceedings before the DRT, including orders passed in miscellaneous applications (MA), to contend that the liability itself was subject to further adjudication and that the conduct of the FC in relation to the OTS and recovery proceedings was not consistent.

Analysis and Findings

12. After consideration of the rival submissions and the material on record, this Tribunal finds that the main issue which arises for determination is whether the FC has established that the personal guarantee of the Respondent was invoked prior to issuance of the demand notice under Rule 7 and prior to filing of this petition.

13. The statutory framework under Part-III of the Code makes it abundantly clear **that invocation of guarantee is a fundamental requirement**. Rule 3(1)(e) explicitly requires that the guarantee must have been invoked and must remain unpaid. This requirement cannot be diluted or bypassed.

14. In the present case, the pleadings of the FC do not disclose any specific act of invocation. The reliance on the Recovery Certificate as invocation is not part of the original pleadings and has been introduced at a later stage. Even otherwise, a Recovery Certificate cannot in the absence of specific stipulation in the contract be equated with invocation of guarantee.

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Similarly, the demand notice under Rule 7 cannot be treated as invocation of guarantee as it presupposes existence of default and cannot itself give rise to a default.

15. The reliance placed on the SARFAESI notice by the Resolution Professional is also of no assistance, particularly in view of the specific objection that the said notice has been quashed and the absence of any consistent pleadings by the FC to rely upon the same as invocation.

Why the SARFAESI Notice cannot constitute invocation of guarantee.

16. The RP has referred to the notice dated 01.06.2013 issued under Section 13(2) of the SARFAESI Act as part of the material evidencing debt and default. The Respondent has specifically objected to such reliance and has asserted that the said notice stood quashed by the DRT vide its order dated 26.12.2022. This objection was raised by the Respondent in its reply to the RP's report.

17. In our considered opinion, the SARFAESI notice cannot be treated as invocation of guarantee for more than one reason. First, the FC has not pleaded in the Section 95 application that the personal guarantee was invoked through the SARFAESI notice dated 01.06.2013. Invocation of personal guarantee is a material fact and must be pleaded with clarity. It cannot be left to be inferred from scattered documents nor can it be introduced through the report of the RP.

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18. Secondly, a notice under Section 13(2) of the SARFAESI Act (Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002) serves a different purpose under the law. It is issued for enforcement of security interest against secured assets. The SARFAESI mechanism operates in the field of enforcement of secured creditor's rights against secured assets. Invocation of personal guarantee, on the other hand, is a contractual act by which the creditor calls upon the guarantor to discharge the guaranteed debt. These two acts are conceptually and legally distinct. Merely because a SARFAESI notice may have been addressed to borrower and guarantor for enforcement of security interest, it does not automatically follow that the guarantee stood invoked for the purpose of personal insolvency proceedings under Section 95 of the Code.

19. Thirdly, the statutory scheme of the 2019 Rules requires that before a person is proceeded against as "guarantor", the guarantee must have been invoked and must remain unpaid. The act of invocation must therefore be clearly identifiable and capable of being tested. If the SARFAESI notice is treated as invocation without a clear pleading or specific demand under the guarantee, the distinction between enforcement of security interest and invocation of personal guarantee would be blurred.

20. Fourthly, in the present case, the Respondent has specifically asserted that the SARFAESI notice dated 01.06.2013 was quashed by the DRT. The RP's report does not meaningfully examine this objection. If the very notice relied

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upon by the RP has been set aside, it cannot be used as the foundation to establish invocation or default. At the very least, the RP was required to address the effect of the DRT order before relying upon such notice.

21. For these reasons, the SARFAESI notice dated 01.06.2013 cannot be accepted as valid invocation of the personal guarantee for the purpose of maintaining the present Section 95 petition.

Why the Recovery Certificate cannot constitute invocation in the present case.

22. The FC has placed considerable reliance on the amended Recovery Certificate dated 30.03.2016 and has stated that the same constitutes valid demand and invocation of guarantee. This submission cannot be accepted on the facts of the present case.

23. Recovery Certificate is the result of adjudication or consent before a recovery forum. Its purpose is to certify the amount recoverable and enable recovery in accordance with the applicable law. However, invocation of guarantee is not the same as adjudication of liability. Invocation is a demand borne out of a contract. It is the creditor's act of calling upon the guarantor to perform his obligation under the contract of guarantee.

24. The distinction is important; a guarantor may have executed a guarantee. A recovery certificate may have been issued in proceedings where the guarantor was a party. But for the purpose of Rule 3(1)(e), the question is

whether the creditor invoked the guarantee and whether the amount remained unpaid after such invocation. The law does not merely require an adjudicated liability; it requires an invocation of guarantee.

25. In the present case, the FC has not shown any clause in the guarantee deed providing that issuance of a recovery certificate shall automatically operate as invocation of guarantee. Nor has the FC produced a specific communication addressed to the Respondent after the recovery certificate calling upon him to pay under the guarantee. In absence of such pleading and proof, the recovery certificate cannot be converted into invocation by inference.

26. There is also an internal inconsistency in the FC's case. If the recovery certificate dated 30.03.2016 is treated as invocation of guarantee, then the FC must also explain as to how the date of default against the personal guarantor is being taken as 31.01.2022 merely on the basis of last payment by the CD. The Bank cannot, on one hand, say that invocation occurred in 2016 through the recovery certificate and on the other hand found the default of the PG on the last payment date of the CD in 2022 without explaining the intervening legal basis. This reinforces the conclusion that there is no clear pleaded case of invocation qua the Respondent.

27. Further, the Respondent has pleaded that subsequent proceedings before the DRT have affected the operation and implementation of the consent decree and recovery certificate. The Respondent has referred to the DRT order

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dated 23.05.2023 and stated that the DRT extended time and made observations regarding hurdles in implementation. Whether or not those contentions finally determine the debt is not the issue at this stage. What is material is that the recovery certificate cannot be mechanically treated as invocation without considering the surrounding pleadings, subsequent orders and the specific requirement under Rule 3(1)(e).

28. The FC's reliance on continuing nature of guarantee also does not solve the problem. A continuing guarantee may continue to secure the debt until discharge, but continuation of guarantee is not the same thing as invocation of guarantee. A guarantee may continue to exist, yet it must still be invoked before the guarantor can be said to have committed default for the purpose of Section 95.

29. Therefore, in the facts of the present case, the amended recovery certificate dated 30.03.2016 cannot be treated as invocation of personal guarantee.

Why Demand Notice cannot constitute Invocation.

30. The demand notice issued under Rule 7(1) of the PG Rules also cannot be treated as invocation of guarantee. The scheme of the Code makes a clear distinction between invocation of guarantee and the statutory demand notice preceding initiation of insolvency proceedings. The notice under Rule 7 is a procedural requirement intended to give an opportunity to the debtor to repay before the application is filed. It is issued in Form-B on the premise that a default has already occurred. Invocation of guarantee, on the other

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hand, is a substantive contractual act which must precede such notice and gives rise to the liability of the guarantor. If the Rule 7 notice is treated as invocation, it would collapse this distinction and render the requirement under Rule 3(1)(e) that the guarantee must have been invoked and remains unpaid redundant. In other words, the statutory demand notice cannot be the very fact which both invokes the guarantee and simultaneously constitutes default. Such an interpretation would be contrary to the scheme of Part-III of the Code and the structure of the 2019 Rules which contemplate invocation as a condition precedent to initiation of proceedings under Section 95.

31. It is equally necessary to clarify what constitutes a valid invocation of a personal guarantee in law. Invocation of guarantee is an act emanating from a contract by which the creditor, in terms of the guarantee deed, makes a clear and unambiguous demand upon the guarantor to discharge the liability of the principal borrower. Such invocation normally requires a specific communication addressed to the guarantor, identifying the debt, calling upon him to pay the guaranteed amount (or the portion due) and indicating that upon failure, the creditor shall enforce the guarantee. The invocation must therefore be traceable to the contract of guarantee. It is for this reason that proceedings or instruments which merely provide evidence of liability such as a recovery certificate issued by a Tribunal or enforcement steps taken under a different regime such as a notice under the SARFAESI Act

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cannot in the absence of a clear contractual demand upon the guarantor be equated with invocation of guarantee. These actions may establish the existence of debt or initiate recovery against secured assets, but they do not substitute the essential requirement that the guarantor must first be called upon in terms of the guarantee to perform his obligation and must fail to do so before default qua the guarantor can be said to arise.

Finding on the RP's Report

32. The Report of the RP requires careful examination. The RP has correctly placed reliance on ***Suresh Atlani*** to explain that the delay in filing the report is not fatal. Therefore, this Tribunal does not reject the report on the ground of delay.

32.1 The Respondent had specifically raised before the RP that the guarantee had not been invoked. This was not a peripheral objection. It went to the very root of maintainability. Once such an objection was raised, the RP was expected to examine whether the Section 95 application contained a clear pleading and document evidencing invocation. Instead, the report proceeds on the basis that debt and default stand established by reference to the loan documents, guarantee deeds, demand notice, NeSL record, SARFAESI notice and recovery proceedings.

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32.2 This approach of RP confused the existence of debt against the CD with the default by the PG. The RP was required to examine whether the statutory requirements of Section 95 and Rule 3(1)(e) were satisfied qua the PG. The report does not identify the precise document by which the guarantee was invoked. It also does not reconcile the FC's present reliance on the Recovery Certificate with the RP's own reference to the SARFAESI notice.

32.3 The RP cannot fill lacunae in the petition, nor can the RP construct a case of invocation on a basis different from that pleaded by the FC. His role is not to supplement the creditor's pleadings but to examine the application independently and place a reasoned recommendation before the Tribunal. In the present case, the report falls short of that standard on the central question of invocation.

32.4 Accordingly, the IA filed by the RP is allowed to the extent that the report is taken on record; the recommendation for admission cannot be accepted.

33. **Judicial precedents and their application to the present case.**

Before examining whether the FC has made out a case for admission under Section 100 of the Code, it is necessary to deal with the decisions and documents relied by the parties and the legal principles arising therefrom.

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33.1 The Respondent has relied upon the judgment of the Hon'ble NCLAT in ***Amit Kumar Kejriwal vs UCO Bank and Anr.***, wherein the Appellate Tribunal has considered the scheme of Rule 3(1)(e) and Rule 7 of the 2019 Rules and has held that invocation of guarantee must precede the issuance of demand notice in Form B under Rule 7. The principle emerging from the said judgment is that a statutory demand notice under Rule 7 cannot itself be treated as invocation of guarantee. Rule 7 notice proceeds on the assumption that default has already occurred. It cannot be treated as the very document which creates the default. The said judgment squarely supports the Respondent's contention that the demand notice dated 17.10.2022 issued under Rule 7 cannot cure absence of prior invocation.

33.2 The Respondent has also relied upon ***Shrinathji Spintex Pvt. Ltd. vs. Shantilal Parbatbhai Lakkad and Ors.,*** to contend that a consent decree or a recovery proceeding cannot be treated as a substitute for a valid contract of a guarantee or invocation thereof. The facts of that matter may not be identical to the present case because in the present case the Bank asserts existence of written guarantee deeds. However, the principle remains relevant. A decree, compromise, recovery certificate or adjudicatory order may evidence liability or provide a mode of recovery, but it does not automatically amount to contractual invocation of guarantee unless the creditor has specifically called upon

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the guarantor to pay under the guarantee or unless the contract itself provides for such consequence.

33.3 The Respondent has referred to ***Kotak Mahindra Bank Ltd. vs. A. Balakrishnan*** and has submitted that the said judgement, even if relied upon by the FC, cannot help the Bank in the present proceedings. The Hon'ble Supreme Court in ***Kotak Mahindra Bank*** was dealing with the issue whether a recovery certificate could give rise to a financial debt for the purpose of proceeding under Section 7 of the Code against a CD. The present case is not a Section 7 proceeding. This is a Section 95 proceeding against a PG where Rule 3(1)(e) expressly requires invocation of guarantee. Thus, even if a Recovery Certificate may evidence a financial debt in a Section 7 context, it does not by itself dispense with the statutory requirement of invocation in Section 95 proceedings.

33.4 The Respondent (PG) has also referred to the judgment of Hon'ble NCLAT in ***Company Appeal (AT) (ins.) No. 191/2025, SBI Vs. Deepak Kumar Singhania*** wherein the Hon'ble Appellate Tribunal has held as below: -

"*27. In view of the foregoing discussion, we are not persuaded to accept the submission of the Appellant that Notice under Rule 7 (1) issued in Form-B to the Guarantor, demanding repayment of the default amount, has to be treated as Notice for invoking guarantee.*

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Default before issuance of Notice under Rule 7(1), must exist on the part of the Guarantor. Hence, we reject the submission of the Appellant that Notice under Rule 7, sub-rule (1) is a Notice, invoking the guarantee. We, thus, do not find any error in the order of the Adjudicating Authority, rejecting Section 95 Application filed by the SBI. There is no merit in the Appeal. The Appeal is dismissed. There shall be no order as to costs."

The Hon'ble NCLAT in the said judgment has referred to another judgment of ***Pooja Ramesh Singh Vs. State Bank of India-Company Appeal (AT) (Ins.) No. 329/2023***, where it was held that default in the guarantee arises only when after the guarantee has been invoked. In paragraph 32, following was laid down: -

"32. In view of the foregoing discussion, we arrive at following conclusions: -

(i) The Corporate Guarantee Deed dated 17.05.2019 is on demand guarantee deed and the default shall arise on the part of the Guarantor only when demand notice is issued as contemplated in the Deed of Guarantee. When the State Bank of India invoked the guarantee vide notice dated 01.10.2020, demand on the part of the Corporate Guarantee shall arise only subsequent to the notice dated 01.10.2020 i.e. non-payment of the amount within seven days i.e. default arise on 08.10.2020…"

33.5 The Respondent (PG) has also referred to the Hon'ble NCLAT judgment in case of ***Canara Bank Vs. Babulal Gumanlal Jain,***

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Company Appeal (AT) (Ins.) No. 297/2025 & IA No. 1135/2025, wherein they have referred to their own order holding that the issue is already been settled. In the above judgment, while considering the above issue held as follows: -

"27. In view of the foregoing discussion, we are not persuaded to accept the submission of the Appellant that Notice under Rule 7 (1) issued in Form-B to the Guarantor, demanding repayment of the default amount, has to be treated as Notice for invoking guarantee. Default before issuance of Notice under Rule 7(1), must exist on the part of the Guarantor.

Hence, we reject the submission of the Appellant that Notice under Rule 7, sub-rule (1) is a Notice, invoking the guarantee. We, thus, do not find any error in the order of the Adjudicating Authority, rejecting Section 95 Application filed by the SBI. There is no merit in the Appeal. The Appeal is dismissed. There shall be no order as to costs."

33.6 The FC has relied upon ***Sumeet Juneja Vs. Stressed Assets Stabilisation Fund,*** to contend that recovery certificate itself constitutes valid demand and invocation of guarantee. This Tribunal has carefully considered the said reliance. The judgement in Sumeet Juneja cannot be read as laying down an absolute rule that every recovery certificate in every factual setting shall ipso facto amount to invocation of guarantee for the purpose of Section 95 proceedings. In the present case, the Section 95 petition does not plead clearly that the

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Recovery Certificate dated 30.03.2016 was the act of invocation of guarantee. The RP's report also does not adopt this as the main foundation of invocation; rather it appears to rely upon the SARFAESI notice.

The said decision primarily examines the effect of a Recovery Certificate and the subsisting nature of the debt in the context of limitation. It does not lay down any proposition dispensing with the requirement of invocation of a personal guarantee in terms of the contract. The Appellate Tribunal proceeded on the factual matrix of continuing liability and not on the basis that statutory recovery proceedings or general communications would by themselves constitute invocation of the guarantee. In the present case there is no material to demonstrate invocation in accordance with the deed of guarantee.

33.7 The Financial Creditor has also placed reliance on the judgment of the Hon'ble NCLAT in ***K.M. Sebastine Vs. State Bank of India***. A careful reading of the said judgment along with the order of Adjudicating Authority considered therein shows that the finding of invocation was based on the existence of a **specified demand notice dated 26.08.2014 addressed to the personal guarantor**, wherein the guarantor was expressly called upon to discharge his liabilities within a stipulated

period. It was in that factual content that the Hon'ble NCLAT observed that invocation need not be repeated prior to filing of the applications. The said judgment does not lay down that any form of recovery proceedings or statutory notice can be treated as invocation on contrary it underscores that invocation is evidenced by a clear demand upon the guarantor.

33.8 The RP has relied upon ***Suresh Atlani vs. Omkara Asset Reconstruction Pvt. Ltd.*** in support of his submission that the period of 10 days prescribed under Section 99(1) for submission of the report is directory in nature and not mandatory. This Tribunal accepts the said proposition for the limited purpose that the report need not be rejected merely on the ground that it was filed beyond the prescribed period. However, the said judgement does not assist the RP or the FC on the core issue. Even if the report is taken on record, the recommendation contained therein must still satisfy the requirements of law. The directory nature of the timeline cannot cure a substantive defect in the Section 95 petition, namely failure to establish invocation of guarantee.

33.9 The judgement of the Supreme Court in ***Dilip B. Jiwrajak vs. Union of India*** is also relevant for understanding the role of the RP. The Supreme Court has held that the RP's role at the stage of Section 99 is recommendatory and facilitative, and that the Adjudicating Authority retains the duty to independently examine the matter under Section 100.

Therefore, this Tribunal is not bound by the RP's recommendation and must independently examine whether the statutory preconditions for admission are satisfied.

34 In view of the above, this Tribunal is of the considered opinion that the FC has failed to establish that the personal guarantee of the Respondent was invoked in accordance with law prior to initiation of proceedings under Section 95. Consequently, in this context no default can be said to have arisen qua the PG and the application is not maintainable.

35 Accordingly, the Company Petition bearing ***CP(IB) No. 86/95/JPR/2022 is rejected*** under Section 100 of the Insolvency and Bankruptcy Code, 2016. The report submitted by the Resolution Professional under Section 99 is taken on record. However, the recommendation for admission is not accepted. The interim moratorium under Section 96 shall stand ceased.

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REETA KOHLI
JUDICIAL MEMBER

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KAVITA BHATNAGAR
TECHNICAL MEMBER