



NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

1. C.P. (IB)/1265(MB)2022

IN THE MATTER OF

Think Hard India Private Limited

VS

Mr. Narendra Rajani

U/s 95(1) of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 05.06.2026

CORAM:

SH. ASHISH KALIA
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner: Adv Amey Hadwale (VC)

For the Respondent:

ORDER

C.P. (IB)/1265(MB)2022: The above CP is listed for pronouncement of the order. The same is pronounced in open court, vide a separate order.

Sd/-
ASHISH KALIA
Member (Judicial)
//Rahul//

Sd/-
CHARANJEET SINGH GULATI
Member (Technical)



IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT – V

CP 1265 of 2022

Order under Section 100 and Section 95 of the IBC, read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019,

Think Hard India Private Limited

Having address at:

611, Reliable Business Centre, Anand Nagar, Jogeshwari (W), Mumbai, 400 102

... Applicant/ Financial Creditor

In the matter of:

Mr. Narendra Rajani

Having address at:

5th Floor, Ghanshyam Chamber B 12, Off Link Road, Andheri (West), Mumbai – 400 053

...Respondent/ Personal Guarantor

Order Pronounced on: 05.06.2026

Coram:

Sh. Ashish Kalia
Member (J)

Charanjeet Singh Gulati,
Member (T)

Appearances:

For the Applicant: Adv. Amey Hadwake (PH)

For the Respondent: Adv. Rajeev Ravi (PH)



For the RP: Adv. Avinash Khanolkar a/w Adv. Maheshkumar Nulolu
Adv Shivani Prabhukhanolkar

ORDER

1. The present Company Petition No. (IB) 1265 of 2022 has been filed under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as '**IBC, 2016**' / '**Code**') read with Rule 7 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 '**CIRP Rules**'), by M/s. Think Hard India Private Limited (hereinafter referred to as '**Financial Creditor**' / '**Petitioner**') for the purpose of initiating insolvency proceedings against Shri Narendra Rajani (hereinafter referred to as '**Personal Guarantor**' / '**Respondent**') in his capacity as the personal guarantor of M/s. Seya Industries Limited (hereinafter referred to as '**Corporate Debtor**'). The outstanding debt claimed by the Financial Creditor is Rs. 4,12,55,03,018.89/- (Rupees Four Hundred and Twelve Crores Fifty-Five Lakhs Three Thousand Eighteen and Eighty-Nine Paise only) as on September 15, 2022.

BRIEF FACTS OF THE CASE

2. The Financial Creditor granted an interest-bearing secured business loan of up to Rs. 152 Crores (Rupees One Hundred Fifty-Two Crores only) to the Corporate Debtor pursuant to a Loan Agreement dated 06.01.2020. The aforesaid facilities are, inter alia, secured by the following financing document:
 - a. Additional Security Letter dated 20.07.2020



- b. Personal Guarantee dated 27.07.2020 executed by the Personal Guarantor in favour of the Financial Creditor.
 - c. Indenture of Mortgage dated 21.01.2020 by the Borrower of land admeasuring in aggregate approximately 61,760 sq. metres or thereabouts, MIDC Industrial Area, Tarapur, Village: Salwad, Taluka & District Palghar- 401506 on the terms and conditions contained in the financial documents.
3. The Financial Creditor issued a Demand Notice in Form B dated September 15, 2022 under Rule 7(1) of the CIRP Rules, demanding payment of the outstanding dues from the Personal Guarantor. The Financial Creditor states that the said Demand Notice was duly received by the Personal Guarantor on September 16, 2022. The Personal Guarantor neither replied to the said Demand Notice nor repaid any part of the outstanding dues. Accordingly, the Financial Creditor filed the present Petition.
4. This Tribunal vide Order dated 06.02.2023 appointed CMA Harshad Shamkant Deshpande (hereinafter referred to as '**Resolution Professional**' / '**RP**'), bearing IBBI Registration No. IBBI/IPA-001/IP-P00166/2017-18/10335, as Resolution Professional and directed him to examine the Petition and submit his report under Section 99(1) of the Code within 10 days.

REPORT OF THE RESOLUTION PROFESSIONAL

5. The Order dated 06.02.2023 was communicated to the RP by the Registry only on 02.03.2023. The RP in compliance with the said Order filed its



Report under Section 99 of the Code in IA 2125 of 2023 as Annexure “4”. The said report was taken on record by this Tribunal on 12.07.2024. The RP in its report recommends the admission of the Petition filed under Section 95 of the Code on the following grounds:

Sr.No	Requirements under the Relevant Provisions of Section 99 of the Code	Submissions of the RP	Compliance with requirement of Section 99 of the Code
1)	Section 99 (1): The resolution professional shall examine the application referred to in section 94 or section 95, as the case may be, within ten days of his appointment, and submit a report to the Adjudicating Authority recommending for approval or rejection of the application.	The RP submits that the present Report is being prepared in compliance with the requirements of Section 99(1) of the Code.	Yes: The RP submits that the present report is being filed in terms of the requirement of section 99(1) of the Code.
2)	Section 99(2) Where the application has been filed under section 95, the resolution professional may require the debtor to prove repayment of the debt claimed as unpaid by the	The RP has an intimation under Section 99(2) dated 06.02.2023, copy received on 02.03.2023 to the personal guarantor requiring the personal guarantor to prove repayment of the debt claimed as unpaid by the creditors in compliance with provisions of section 99(2) of	YES



	<p>creditor by furnishing — (a) evidence of electronic transfer; (b) evidence of encashment of a cheque; or (c) a signed acknowledgment by the creditor.</p>	<p>the Code. Copy of the said intimation dated 06.02.2023 is hereto annexed as “Annexure 2”. Copy of the email is hereto annexed as “Annexure 3”. In respect to this report, RP did not receive any reply from the personal guarantor within the prescribed time. Letters received after the time limit do not contain any information about repayment. Hence RP has concluded that the personal guarantor has not repaid the debt claimed by the Creditor.</p>	
3)	<p>Section 99(3)</p> <p>Where the debt for which an application has been filed by a creditor is registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt.</p>	<p>A) The Creditor has filed the record available with the information utility (NeSL), during the application under Section 95 of the Code, showing record of default.</p>	<p>No:</p> <p>The Financial Creditor has not complied with the requirements of Section 99(3) of the Code.</p>
4)	<p>Section 99(4)</p> <p>For the purposes of examining an application, the resolution professional may seek such further information or explanation as may be required from the debtor or the creditor</p>	<p>Since the application is filed by the RP, no further information or explanation in connection with the application is sought from the creditor.</p>	<p>Yes:</p> <p>The RP submits that the requirements of Section 99(4) of the Code are complied with.</p>



	or any other person who, in the opinion of the resolution professional, may provide such information.		
5)	Section 99(5) The person from whom information or explanation is sought under sub-section (4) shall furnish such information or explanation within seven days of receipt of the request.	Not applicable.	Yes: The RP submits that the requirements of Section 99(5) of the Code do not impact either the admission or rejection of the present application.
6)	Section 99(6) The resolution professional shall examine the application and ascertain that — (a) the application satisfies the requirements set out in section 94 or 95; (b) the applicant has provided information and given explanation sought by the resolution professional under sub-section (4).	RP submits that the present application satisfies the requirements of Section 95 of the Code as has been provided in detail hereinabove in this Report.	Yes: The RP submits that the requirements of Section 99(6) of the Code are complied with.
7)	Section 99(7) After examination of the application under	RP submits that the present application satisfies the requirements of the provisions of Section 95 as is	Yes: The RP submits that the based on his examination the present



	sub-section (6), the resolution professional may recommend acceptance or rejection of the application in his report.	required to be examined under Section 99(6) of the Code.	application deserves to be admitted under section 100 of the Code and this Hon'ble NCLT may pass appropriate orders.
8)	Section 99(8) Where the resolution professional finds that the debtor is eligible for a fresh start under Chapter II, the resolution professional shall submit a report recommending that the application by the debtor under section 94 be treated as an application under section 81 by the Adjudicating Authority.	RP submits that considering the facts of the case and the debtor/personal guarantor does not satisfy the requirements under Section 80(2) and hence is not eligible for a "fresh start" under Chapter II. In any case, the relevant sections are not yet notified and hence, the same cannot be applied in the present case on hand.	Not applicable: The RP submits that the provisions of Section 99(8) of the Code does not apply to the present case on hand.
9)	Section 99(9) The resolution professional shall record the reasons for recommending the acceptance or rejection of the application in the report under sub-section (7).	RP submits that the present report which is being presented under Section 99(7) of the Code to this Hon'ble NCLT with a recommendation of accepting the present application	Yes: The RP submits that the presents report prepared under Section 99(7) of the recommending acceptance of the present application filed by Think Hard India Private Limited, through the RP, for further orders under Section 100 of the Code.
10)	Section 99(10)	RP submits that he complied with the requirement of filing	Yes:



The resolution professional shall give a copy of the report under sub-section (7) to the debtor or the creditors, as the case may be.	a copy of this report prepared under Section 99(7) of the Code to the Creditor.	The present report prepared under Section 99(7) of the Code is shared with the Creditor i.e. Think Hard India Private Limited vide email dated 19.03.2023 in compliance with provisions of section 99(10) of the Code.
---	---	--

ANALYSIS & FINDINGS

6. We have heard the learned Counsel for the RP and the Financial Creditor, perused the documents on record, and have also gone through the Report of RP filed under Section 99 of the Code.
7. It is the case of the Financial Creditor that the Corporate Debtor availed financial assistance under the Loan Agreement dated 06.01.2020 and that the Respondent executed a Deed of Personal Guarantee dated 27.07.2020 securing the obligations of the Corporate Debtor. It is further contended that upon default committed by the Corporate Debtor, the Financial Creditor issued a Demand Notice in Form B dated 15.09.2022 under Rule 7(1) of the CIRP Rules, 2019 and, upon failure of the Respondent to make payment, filed the present Application. Further the Learned Counsel for the RP submits that in his report under Section 99 of IBC, RP has recommended admission of the petition.
8. In order to examine the admissibility of petition, it is necessary to advert to the relevant terms of the Deed of Guarantee dated 27.07.2020 in order to ascertain the mode and manner in which the guarantee was required to be invoked and the conditions under which the liability of the Personal



Guarantor could arise. The operative clause of the Deed of Guarantee reads as follows:

- a. *Clause 1 - In the premises aforesaid and at the request of the Lender, the Guarantor hereby agrees with and guarantees the Lender the payment assured to the Lender by M/s Seya Industries Ltd. under the Loan Agreement dated January 6, 2020 and in the event of the Lender not receiving the amounts in terms of the Loan Agreement, irrespective of any reasons from M/s Seya Industries Ltd., the Guarantor hereby irrevocably and unconditionally agrees and covenants to pay to the Lender the amounts to be received by the Lender in terms of the annexed said Loan Agreement or any part or parts thereof with interest thereon as aforesaid and as set out in the said Loan Agreement between the Lender and M/s Seya Industries Ltd. upon demand in that behalf being made by the Lender.*
- b. *Clause 3 - The Guarantor agrees that the a demand for payment under this Guarantee made in writing shall be deemed to have been given to the Guarantor if delivered at his address mentioned hereinabove (and acknowledgment obtained thereof) or if sent by post at his address mentioned hereinabove, shall be deemed to have been received by the Guarantor within 24 hours after posting thereof and in proving such service it shall be sufficient to produce only the postal receipt pertaining to dispatch of such notice of demand.*

(Bold for Emphasis)



9. A plain reading of the aforesaid clause makes it evident that the Deed of Guarantee is an on-demand guarantee. The obligation of the Personal Guarantor to pay is not automatic upon the default of the Corporate Debtor; rather it is contingent upon a specific demand being made by the Lender upon the Personal Guarantor. In other words, the liability of the Personal Guarantor to pay crystallises only upon the receipt of a demand made by the Financial Creditor by invoking the deed of guarantee. In the absence of such invocation, no debt can be said to be due from the Personal Guarantor and consequently no default can be said to have been committed him.

10. On a perusal of the record, it is observed that the only document placed on record by the Financial Creditor regarding invocation of the Personal Guarantee is the demand notice in Form B dated 15.09.2022 issued under Rule 7(1) of the Rules. No other material has been produced to establish that the Personal Guarantee was separately and specifically invoked by the Financial Creditor prior to or independent of the issuance of the said notice. It is further noted that no proof of service of the demand notice in Form B has been placed on record, whether by way of postal receipt, courier tracking record, or any other evidence of delivery. Moreover, the notice is addressed to Ms. Pooja Rajani and not to Narendra Rajani, who is the Respondent/Personal Guarantor in the present petition. The Respondent, in his reply dated 20.03.2023 addressed to the Resolution Professional, has pointed out that no acknowledgment bearing his signature has been produced on record.

11. Moreover, the issuance of the demand notice in Form B, being a statutory notice under Rule 7(1) of the CIRP Rules for the initiation of insolvency proceedings, does not constitute invocation of guarantee. In this regard we place reliance on the Judgement of Hon'ble National Company Law



Appellate Tribunal *in Deepak Kumar Singhania v. State Bank of India & Anr Company Appeal (AT) (Insolvency) No. 191 of 2025 decided on 28.02.2025*. wherein the Hon'ble NCLAT has categorically held that the Demand Notice in Form B prescribed under Rule 7 of the Rules is a statutory notice for initiation of insolvency proceedings and cannot be construed as a notice invoking the personal guarantee. The relevant portion of the judgement is reproduced below:

17. The Notice, thus, contemplate demanding payment of the amount of default. The above Rule clearly indicate that Demand Notice has to be issued, demanding payment of the amount in default. Thus, the default by Guarantor has to exist on the date when Notice in Form-B is being issued. When we read Section 95, sub-section (4) and Rule 7 of 2019 Rules, the above is the only intendment of the legislative scheme, i.e. default on the part of Guarantor should exist on the date when Notice in Form-B has to be issued. We have noticed the definitions of 'debt' and 'default' in Section 3 (11) and (12) of the IBC. Default shall arise on account of non-payment of debt, when whole or part of it become due. 'Debt' means a liability or obligation in respect of a claim which is due from any person. Thus, for a default, debt has to be due and Debtor shall be only that person, to whom debt is due. A Personal Guarantor becomes a Debtor only when guarantee is invoked, making him liable to make the payment to the Lender.

20.Guarantor with regard to whom guarantee has not been invoked, shall not be a Debtor and no default can be committed by Guarantor, unless guarantee is invoked as per the terms of Deed of Guarantee. Thus, the insolvency resolution process against a Guarantor, against whom debt has not become due, is not understandable."

(Bold for Emphasis)



12. Since in this case the Guarantee has not been invoked separately and prior to the issue of demand notice, there is no liability can be said to exist on the respondent herein. Moreover, even the demand notice in Form B issued in terms of Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019, has not been evidenced to have been served on the Respondent. Accordingly, and in view of facts and circumstance of the present case, we are of the considered opinion that the present petition is **not maintainable**. Accordingly, CP (IB) 1265 of 2022 is **dismissed**.

Sd/-

Ashish Kalia
Member (Judicial)

/ST/

Sd/-

Charanjeet Singh Gulati
Member (Technical)