IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH–I, CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **07.09.2026** THROUGH VIDEO CONFERENCING

CORAM: **HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)**
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF **:** Gagan Bothra
Vs
Senthil Kumar

MAIN PETITION NUMBER **:** CP(IB)/96(CHE)2025

(IA/MA) APPLICATION NUMBERS

IA(IBC)/1384/CHE/2025

ORDER

Present: None for the Petitioner.
Ms. Deepaa, Ld. Counsel for the IRP.

Vide separate order pronounced in the Open Court, petition is admitted. Insolvency proceedings is initiated against the Personal Guarantor.

Shri. S.R. Shriraam Shekher is appointed as the IRP.

Sd/-
[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)

Sd/-
[SANJIV JAIN]
MEMBER (JUDICIAL)

VS

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI

CP(IB)/96(CHE)/2025

(filed under Section 95(1) of Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019)

In the matter of ***Gagan Bothra Vs. Senthil Kumar***

M. Gagan Bothra,
No. 44, Veerappan Street,
Sowcarpet,
Chennai – 600 001

... Petitioner

Vs

Senthil Kumar
Guarantor to PRC International Hotels Pvt Ltd
No. 7, Millwood Court,
Monroe Township,
New Jersey - 08831

... Respondent / Guarantor

<u>Present:</u>

For Petitioner : Gagan Bothra, Petitioner in person

Along with

IA(IBC)/1384(CHE)/2025
IN
CP(IB)/96(CHE)/2025

(filed under Section 99 of Insolvency & Bankruptcy Code 2016 R/w Rule 7(2) of IBBI (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 R/w Rule 11 of NCLT Rules, 2016)

In the matter of ***Gagan Bothra Vs. Senthil Kumar***

Dr. S.R. Shriraam Shekher,
No. 11, Prayag Apartments, First Floor,
Gandhi Nagar, First Main Road,
Adyar, Chennai – 600 020

... Applicant / Interim Resolution Professional

Present:

For Applicant : Bathrinarayan, Advocate

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Order Pronounced on 07th September, 2026

ORDER

(Heard through Hybrid Mode)

1. This petition CP(IB)/96(CHE)/2025 has been filed by the Financial Creditor M. Gagan Bothra, Petitioner herein under Section 95 of IBC against the Personal Guarantor Senthil Kumar, Respondent herein / Guarantor of the Corporate Debtor PRC International Hotels Private Limited for initiating insolvency resolution process.

2. **Part – I** of the petition sets out the details of the Petitioner M. Gagan Bothra. He is resident of 44, Veerappan Street, Sowcarpet, Chennai – 600001. **Part – II** of the petition sets out the details of the Personal

Guarantor Senthil Kumar. He is resident of 7, Millwood Court, Monroe Township, New Jersey – 08831. He was the Personal Guarantor to the loan facilities availed by the Corporate Debtor PRC International Hotels Private Limited. **Part – III** sets out the total debt including interest / penalties / amount in default as Rs. 14,92,28,600/- and the date of default as 30.03.2018. In **Part – IV** of the petition, the Petitioner has proposed the name of Insolvency Professional Shri. S.R. Shriraam Shekher having IBBI Registration No: IBBI/IPA-03/N-00144/2017-2018/11598.

3. The case of the Petitioner is that the Corporate Debtor PRC International Hotels Private Limited had business dealings with the father of the Petitioner namely late Shri. S. Mukanchand Bothra. It had borrowed a sum of Rs. 15.0 Crore from him through its erstwhile Directors and executed the letters confirming the debt. The Respondent / Guarantor Senthil Kumar executed the personal guarantee for the debt borrowed by the Corporate Debtor. The Corporate Debtor defaulted in repayment of debt which made late Shri. S. Mukanchand Bothra file the petition CP/540/2018 against the Corporate Debtor. After filing the petition, Shri. S. Mukanchand Bothra died on 18.04.2019 and the Petitioner and his three legal heirs were impleaded as Petitioners by the

Tribunal vide an order dated 03.05.2019 passed in M.A. No. 441 of 2019. The Corporate Debtor was admitted to CIRP vide an order dated 24.07.2018. On the directions of the Tribunal vide an order dated 02.07.2019 in MA/518/2018, the RP admitted the entire claim of the Petitioners / Financial Creditor for Rs. 15.0 Crore. The resolution plan of the Corporate Debtor was approved on 27.08.2019. In the approved resolution plan of the Corporate Debtor, the Creditor was paid Rs. 4.12 Crores out of the admitted claim of Rs. 15.0 Crores. After adjusting the said amount, there remained an outstanding amount of Rs. 14,92,28,600/- including interest. Since M. Gagan Bothra was handling the business of his father, the other legal heirs i.e. his sister M. Karishma Bothra and his brother M. Sandeep Bothra permitted / authorized him to represent on their behalf since living together under one roof as joint family. Wife of late Shri. S. Mukanchand Bothra renounced the world after becoming Sati (Jain Monk) after the death of Shri. S. Mukanchand Bothra.

4. The Petitioner invoked the personal guarantee executed by the Respondent being the ex-Director of the Corporate Debtor for the debts owed by the Corporate Debtor and issued the demand notice on

06.09.2020. Although it was responded by the Personal Guarantor vide reply dated 09.09.2020 but the Guarantor did not make the payment. The Petitioner thereafter filed the petition CP/29/2021. It was dismissed by the Tribunal vide an order dated 17.12.2021. Against the order of dismissal, an appeal was preferred by the Petitioner before Hon'ble NCLAT in CA(AT)(INS) No. 21 of 2022 where Hon'ble NCLAT vide an order dated 08.01.2025 set aside the order dated 17.12.2021 and remanded the matter back to the Tribunal for hearing. During hearing on 08.04.2025, it was noticed that common CP/29/2021 was filed against the two Guarantors. Accordingly, Petitioner was permitted to withdraw CP/29/2021 with liberty to file two separate petitions against the two Guarantors.

5. The Petitioner has filed copy of the agreement dated 02.08.2016, letter of personal guarantee dated 02.08.2016, order passed in M.A. No. 518 of 2018 dated 02.07.2019 admitting the claim of the Petitioner in CP/540/2018, order dated 27.08.2019 approving the resolution plan against the Corporate Debtor, order of Hon'ble NCLAT dated 15.06.2020, demand notice dated 06.09.2020, reply notice dated 09.09.2020 and order of Hon'ble NCLAT dated 08.01.2025.

6. On this petition, the report of the IRP under Section 99 of IBC was called vide an order dated 23.07.2025. The IRP submitted the report in the application IA/1384/2025 recommending initiation of insolvency proceedings against the Personal Guarantor.

7. **The report is taken on record and the application IA/1384/2025 is disposed of.**

8. Notice of the petition and the report was given to the Respondent / Personal Guarantor for reply / objection. Despite service through mail as well as international speed post and the Respondent seeking time to file response, he did not file any reply nor any objection to the report of the IRP.

9. We have heard the Petitioner in person and Ld. Counsel for the IRP and perused the record.

10. In the instant case, the IRP after examining the application and the documents has reported that the Corporate Debtor / Borrower was engaged in hospitality services. A perusal of record reveals that at the request of the Borrower, the lender had disbursed the loan from time to

time to the Corporate Debtor. There is an outstanding debt of Rs. 14,92,28,600/- which is inclusive of principal and accrued / penal interest. Gagan Bothra is the legal heir of the deceased S. Mukundchand, the original lender. All the transactions qua the loan and repayments were made in cash as reflected in the ledger. The loan was a unsecured loan and was acknowledged as debt by the Corporate Debtor. A letter of acceptance was given by the Corporate Debtor accepting to sell movable / immovable property to the Financial Creditor by way of an unregistered sale agreement dated 02.08.2016. The Respondent was the Director of the Borrower / Corporate Debtor. He along with another Director Kanaka Subbu Ganapathy had executed the letter of guarantee dated 02.08.2016 in favour of the Financial Creditor acknowledging debt of Rs. 15.0 Crore. On 06.09.2020, the Financial Creditor issued a demand notice to the Personal Guarantor in accordance with Rule 7(1) of IBC calling upon the Personal Guarantor to repay the sum of Rs. 14,92,28,600/- outstanding as on the date of issue of notice. The notice was replied by the Personal Guarantor on 12.09.2020 disputing the claim stating that he is not liable. He stated that under Section 31(1) of IBC, the liability of Personal Guarantor stood extinguished upon the approval of the plan which is binding on the Guarantors.

11. Hon'ble NCLAT in its order dated 08.01.2025 in an appeal preferred against the order dated 17.12.2021 rejecting the petition CP/29/2021 filed against the Personal Guarantor interalia on the ground that the Petitioner has not been able to prove himself to be the successor of late Mr. S. Mukanchand Bothra has held that once the Appellant has already been determined as to be the Successor in the order dated 15.06.2020 in CP/540/2018, the impugned order is held to be perverse and contrary to the evidence on record.

12. The order dated 27.08.2019 of the Tribunal placed by the Petitioner as to the approval of the resolution plan in relation to the CIRP of the Corporate Debtor shows that the Corporate Debtor had borrowed the loan from the father of the Petitioner. After his death, he succeeded to the estate of the deceased father. The Respondent had given a letter of personal guarantee confirming borrowing of loan by the Company for business and development of the Corporate Debtor acknowledging the debt of Rs. 15.0 Crores. The letter contains that in case, sale deed is not

executed on time as per the agreement by the Company, they shall from their own personal funds, undertake to repay the entire amount of Rs. 15.0 Crores with interest @ 24% per month within ten months from the expiry of the period mentioned in the sale agreement. It was stated that the letter be treated as their personal guarantee for the funds borrowed by the Company.

13. The record shows that the Corporate Debtor failed to repay the debt. Even after resolution of the Corporate Debtor, the debt of the lender was not settled in full. Still the liability exists on the Guarantors. Hon'ble Supreme Court in the case of *Lalit Kumar Jain Vs Union of India, AIR 2021 SC 402,* has held that approval of a resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under the contract of guarantee. The release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process, i.e. by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability, which arises out of an independent contract. Section 128 of the Indian Contract Act also provides that the liability of the surety is co-extensive with that of the

principal debtor unless it is otherwise provided by the contract. The creditor has a right to obtain a decree against the surety and the principal debtor as held in the case of *Ram Krishan Vs. State of Uttar Pradesh, AIR 2012 SC 2288*.

14. In the present case, when the debt of the lender was not settled by the Corporate Debtor or through the resolution plan, the Petitioner issued a demand notice on 06.09.2020 calling upon the Guarantors to make the unpaid debt in default. In the notice, the date of default was stated as 29.05.2017. Owing to the order of Hon'ble Supreme Court in suo moto writ petition 3 /2020 extending the limitation on account of Covid pandemic, the petition filed by the Petitioner is within limitation. The Respondent / Guarantor in his reply has not disputed the amount but has stated that by virtue of Section 31 of IBC, after approval of the resolution plan, his liability stood extinguished. The said reply cannot be accepted in view of the settled proposition of law as held in the case of *Vijaykumar Jain supra* and Section 128 of the Indian Contract Act. The liability of the Guarantor subsists and continues till the debt of the lender is completely settled.

15. In this case, except sending a reply to the demand notice, the Respondent neither made his appearance nor raised any other defence. The case of the Petitioner remained unassailed. Admittedly, the amount lent to the Corporate Debtor was paid in cash but considering the fact that CIRP was initiated on the very lending of the cash amount and resolution plan was approved, this issue cannot be agitated again in the present petition.

16. As seen from Part – II of the petition, Petitioner is permanent resident of New Jersey, USA. However, when the letter of personal guarantee dated 02.08.2016 was given, he had given his address that of T.Nagar, Chennai enclosing the copy of the PAN card, passport and Federal of U.S. Individual IT returns 2013, 2014. The Corporate Debtor is also based in Chennai. He was the Director of the Corporate Debtor. He therefore despite being the permanent resident of USA is bound by the statutory obligation as any other party with respect to liability under IBC. The provisions of this Code do not restrict the applicability of the Code to the Personal Guarantor on the basis of nationality or citizenship. Hence the provisions of IBC are applicable to the Respondent / Personal Guarantor. Section 235 also provides that

procedural mechanism for the Adjudicating Authority to issue a letter of request to a foreign Court or authority concerning insolvency, liquidation or bankruptcy proceedings where assets of the Corporate Debtor or the Personal Guarantor are located abroad.

17. In the instant case, the debt is more than Rs. 1.0 Crore. The Petitioner being the the successor of late Shri. Mukundchand Bothra, the original lender in terms of the order of Hon'ble NCLAT and the affidavits given by other legal heirs is entitled to maintain the petition.

18. In the instant case, common petition was filed in respect of the two Guarantors vide CP/29/2021. By the order of the Tribunal, the Petitioner withdrew the petition taking liberty to file two separate petitions. Thereafter, this petition was filed on 24.04.2025. We are of the view that Petitioner is entitled to the benefit of limitation.

19. In light of the aforesaid discussions, this petition CP(IB)/96(CHE)/2025 is admitted and the Insolvency Resolution Process is initiated against Mr. Senthil Kumar, the Respondent herein. The Petitioner has proposed Shri. S.R. Shriraam Shekher having IBBI registration No. (IBBI/IPA-03/N-00144/2017-2018/11598) as the Insolvency Professional. We

therefore appoint ***Mr. S. R. Shriraam Shekher with IBBI Reg. No.*** IBBI/IPA-03/N-00144/2017-2018/11598 ***(AFA valid till 31.12.2026) (email ID: shekhershriraam@gmail.com)*** as the RP. We hereby direct as follows;

I. Initiate Insolvency Resolution Process against the Respondent/Personal Guarantor. The moratorium in relation to all the debts is declared, from today i.e. date of admission of the application, and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on the repayment plan under Section 114 whichever is earlier as provided under Sec 101 of 1BC, 2016. During the moratorium period,

a. Any pending legal action or proceeding in respect of any debt shall 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 viz. ***Mr. S. R. Shriraam Shekher,*** with ***Reg. No.*** **IBBI/IPA-03/N-00144/2017-2018/11598** ***(AFA valid till 31.12.2026)*** Insolvency Resolution Professional is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Chennai Bench, inviting claims from all Creditors, within 21 days of such issue The notice under Sub Section (1) of Section 102(2) shall include: -

a. details of the order admitting the application;
b. particulars of the resolution professional with whom the claims are to be registered; and
c. the last date for submission of claims.

III. The publication of notice shall be made in two newspapers, one in English and other in Vernacular, which have wide circulation in the State where the Corporate Debtor and Personal Guarantor reside. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.

IV. The Resolution Professional, in exercise of the powers conferred under Section 104, shall prepare a list of creditors on the basis of:

a. the information disclosed in the application filed by the debtor under Sections 94 or 95 as the case may be, and

b. claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice. The debtor shall prepare a repayment plan under Section 105, in consultation with the Resolution Professional, containing a proposal to the Creditors for restructuring of his debts or affairs.

The repayment plan may authorize or require the Resolution Professional to:

a. carry on the debtor, business or trade son his behalf or in his name: or

b. realise the assets of the debtor; or

c. administers or dispose of any funds of the debtor.

The repayment plan shall include the following, namely;

a. justification for preparation of such repayment plan and reasons based on which the creditors may agree upon the plan;

b. provision for payment of fee to the Resolution Professional;

c. such other matters as may be specified.

V. 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.

VI. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons thereof. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of IBC, 2016. 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 subsection (1) of Section 106 of IBC, 2016, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of IBC, 2016.

VII. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of IBC, 2016 and submit the same to this Tribunal, copies of which shall be provided to the Debtor and the Creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of IBC, 2016.

VIII. The Resolution Professional shall submit his periodic reports before this Tribunal, every 30 days.

IX. The Petitioner is directed to deposit **Rs. 3,00,000/- (Rupees Three Lakhs only)** to the bank account of the Resolution Professional within one week of this order, towards his fees and expenses. This shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.

X. The Registry is directed to communicate to the concerned parties a copy of order within seven working days and upload the same on the website immediately after the pronouncement of order.

20. Accordingly, **CP(IB)/96(CHE)/2025** stands **admitted.**

Sd/-	**Sd/-**
VENKATARAMAN SUBRAMANIAM	**SANJIV JAIN**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)