IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I

C.P. (IB) NO. 385/MB/2023

Under Section 95 of the Insolvency & Bankruptcy Code, 2016 *r/w* Rule 7(2) of the Insolvency and Bankruptcy (Application to the Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), Rules, 2019.

In the matter of

State Bank of India

...Petitioner/Financial Creditor

Versus

Mr. Dinesh Shahra

…Respondent/Personal Guarantor

ORDER PRONOUNCED ON 22.09.2026

Coram:

Prabhat Kumar	Sushil Mahadeorao Kochey
Member (Technical)	Member (Judicial)

Appearances:

For the Applicant	:	Adv Samuel Abraham
For the Resolution Professional	:	Adv. Nausher Kohli
For the Respondent/Personal Guarantor	:	Adv. Jay Zaveri,

ORDER

BRIEF FACTS:

1. The present petition is filed u/s. 95 (1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC/Code") r/w Rule 7(2) of the Insolvency and Bankruptcy (Application to

Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 by **State Bank of India** ("hereinafter referred to as Petitioner/Financial Creditor") for initiating insolvency process against **Mr. Dinesh Shahra** ("hereinafter referred to as Personal Guarantor/Respondent") for outstanding debt of **Rs.1759,12,03,548.36** (Rupees Seventeen Hundred Fifty Nine Crore Twelve Lac Three Thousand Five Hundred Forty Eight and Thirty Six Paisa only) along with further interest and charges payable. The Date of Default as specified in Part-III of the present petition is 12.03.2018.

2. The Petitioner i.e. State Bank of India, having its branch office at Stressed Assets Management Branch, 1st Floor, SBI Building, Plot No. l, Arera Hills, Jail Road, Bhopal, Madhya Pradesh - 462011.
3. The Personal Guarantor, viz. **Mr. Dinesh Shahra** having his address at 41, Sea Land Co-op Housing Society, Flat No. 4, Navy Nagar Road, Cuffe Parade, Mumbai, Maharashtra – 400005, stood as the Guarantor for **M/S Patanjali Foods Ltd.** (formerly known as Ruchi Soya Industries Ltd) (hereinafter referred to as the "Corporate Debtor/Principal Borrower") to secure the credit facilities extended to the Corporate Debtor.
4. The Corporate Debtor was incorporated on 06.01.1986 bearing CIN L15140MH1986PLC038536 and has its registered address at 616, Tulsiani Chambers Nariman Point, Mumbai, Maharashtra, India - 400021.

SUBMISSIONS OF THE APPLICANT:

5. The Applicant submits that the Corporate Debtor approached the Applicant in the year 2013 for availing credit facilities. Pursuant to the assurances and representations made by the Corporate Debtor, the Applicant sanctioned and advanced the said credit facilities vide Sanction Letter dated 22.03.2013. In order to formalise the transaction, various documents, including the Loan Agreement, Deed of Guarantee

and Deed of Hypothecation, all dated 22.03.2013, were executed between the parties.

6. Thereafter, the consortium led by the Applicant reviewed and renewed the existing credit facilities sanctioned to the Corporate Debtor. In connection with the consortium lending, the Working Capital Consortium Agreement (Fifteenth Revision), Deed of Hypothecation and Deed of Guarantee, all dated 15.03.2013, were executed.
7. Subsequently, the Applicant advanced corporate loans to the Corporate Debtor for undertaking capital expenditure pursuant to the Sanction Letter dated 28.03.2014. In order to formalise the said transaction, various documents, including the Loan Agreement, Deed of Guarantee and Deed of Hypothecation, all dated 29.03.2014, were executed between the parties.
8. At the request of the Corporate Debtor, the existing credit facilities were renewed pursuant to the Sanction Letter dated 24.04.2015. In connection with the said renewal, a Loan Agreement, Deed of Hypothecation and Deed of Guarantee, all dated 30.04.2015, were executed between the parties.
9. The Applicant submits that the Corporate Debtor and the Guarantors acknowledged the debt vide Revival Letters dated 30.09.2015 and 23.09.2016. Subsequently, the existing credit facilities were renewed pursuant to the Sanction Letter dated 26.04.2017.
10. Thereafter, Company Petition Nos. 1371 of 2017 and 1372 of 2017 were filed against the Corporate Debtor by Standard Chartered Bank and DBS Bank Ltd., respectively, before this Tribunal. This Tribunal, vide Order dated 15.12.2017, admitted the said petitions and initiated the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.
11. The Applicant submits that the Deeds of Guarantee dated 15.05.2013 securing the working capital facilities, 22.03.2013 securing the corporate loan and term loan, 29.03.2014 securing the corporate loan,

and 30.04.2015 securing the term loan were invoked vide Letter dated 07.03.2018, whereby the Guarantor was called upon to discharge the outstanding dues within three days. The Guarantor failed to make payment within the stipulated period and, accordingly, the default occurred on 12.03.2018.

12. Subsequently, this Tribunal, vide Order dated 24.07.2019, approved the Resolution Plan submitted by Patanjali Group in respect of the Corporate Debtor.

13. Thereafter, a Demand Notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 was issued to the Personal Guarantor on 26.05.2022. The Guarantor replied to the said Demand Notice vide letter dated 16.06.2022. The Respondent/Personal Guarantor, in his reply to the Demand Notice dated 26.05.2022, contends that:

    13.1. The guarantee is invalid, inter alia, on the ground that it was not supported by consideration.

    13.2. Upon approval and implementation of the Resolution Plan of the Corporate Debtor, the underlying debt stood discharged and, consequently, no subsisting default remained against him.

    13.3. Relying upon Section 134 of the Indian Contract Act, 1872, the Respondent contends that discharge of the principal debtor operates to discharge the surety.

    13.4. The Financial Creditor had received payments pursuant to the Resolution Plan and, therefore, cannot seek recovery of the same debt from him.

    13.5. The Respondent also disputes the continued enforceability of the personal guarantee in the absence of any specific provision in the Resolution Plan or Deed of Guarantee preserving the Financial Creditor's rights against him after discharge of the Corporate Debtor. He accordingly contends that the Demand Notice is contrary to law and ought to be withdrawn.

14. Despite repeated notices and opportunities, neither the Corporate Debtor nor the Personal Guarantor discharged the outstanding dues. As on 30.04.2022, the total outstanding amount payable by the Corporate Debtor and the Personal Guarantor is stated to be Rs.1759,12,03,548.36 (Rupees Seventeen Hundred Fifty-Nine Crore Twelve Lac Three Thousand Five Hundred Forty-Eight and Thirty-Six Paisa only) along with further interest and charges, which continue to accrue.
15. In view of the continued default and failure of the Personal Guarantor to honour the guarantee obligations, the Applicant filed the present Petition seeking initiation of Insolvency Resolution Process against the Respondent under Section 95 of the Code.
16. The Applicant further Submitted that the debt in respect of which the present insolvency resolution process has been initiated does not include any 'excluded debt' as defined under the provisions of the Insolvency and Bankruptcy Code, 2016, namely:
    (i) any liability to pay fine imposed by a Court or Tribunal;
    (ii) any liability to pay damages for negligence, nuisance, or breach of statutory, contractual or other legal obligations;
    (iii) any liability to pay maintenance to any person under any law for the time being in force;
    (iv) any liability in relation to a student loan; and
    (v) any other debt as may be prescribed under Section 79(15)(e) of the Insolvency and Bankruptcy Code, 2016.

SUBMISSIONS OF THE RESOLUTION PROFESSIONAL:

17. This Tribunal, vide Order dated 25.02.2025, appointed **Mr. Anurag Kumar Sinha** as the Resolution Professional and directed him to

submit a report under Section 99 of the Insolvency and Bankruptcy Code, 2016 within a period of 10 days. Pursuant thereto, the Resolution Professional filed **IA (I.B.C.) No. 1769/MB/2025** for placing the said report on record, which came to be taken on record by this Tribunal vide Order dated 24.04.2025.

18. The Resolution Professional, in view of the detailed examination of the Application along with the supporting documents, recommends that the Application filed by the Financial Creditor, namely State Bank of India, under Section 95(1) of the Insolvency and Bankruptcy Code, 2016, bearing **C.P. (IB) No. 385/2023,** be admitted under Section 100 of the Code and that the Insolvency Resolution Process be commenced against the Personal Guarantor, namely **Mr. Dinesh Shahra.**

19. The Resolution Professional further states that

"l) That in view of the above stated facts and circumstances, as well as on analysis of the information available before RP and also on the basis of the examination of material on record by the RP, RP recommends that present application filed under section 95(1) of the Code filed by the creditor SBI be ***admitted*** *under section 100 of the Code and Insolvency Resolution Process be commenced against personal guarantor,* ***Mr Dinesh Shahra*** *for the reasons as mentioned herein below-*

i) That the application filed by the creditor SBI meets the requirement as set out in section 95 of the code.

ii) That the Corporate Debtor, Ruchi Soya Industris Ltd has committed default in repayment of loan/credit facility granted by the applicant/creditor (SBI).

iii) That Mr Dinesh Shahra, personal guarantor for the loan granted to CD has also committed default in repayment of loan outstanding dues demanded by creditor SBI after invocation of personal guarantee.

iv) That no concrete evidence proving contrary as to the *existence of debt has been provided by the guarantor.*

v) That the applicant/creditor SBI, vide mail dated 13.03.2025 have stated that there is no transaction in the account after filing of application in Honourable NCLT.

*m) In light of the above, it is just and equitable that insolvency resolution process be initiated against personal guarantor, **Mr Dinesh Shahra** under the Order and Direction of the Honourable Tribunal and accordingly I recommend for the same.*

n) As required under section 99(10), a copy of the report shall be provided to the creditor."

SUBMISSSIONS OF THE RESPONDENT:

20. The Respondent/Personal Guarantor has filed his Affidavit-in-Reply dated 07.09.2026, opposing the Report submitted by the Resolution Professional and praying for dismissal of the Company Petition and rejection of the reliefs sought therein. The Respondent has, inter alia, submitted as follows:

21.1. The Report dated 20.03.2025 filed by the Resolution Professional has been prepared mechanically, without proper appreciation of the material facts. It is contended that the Resolution Professional has merely relied upon the submissions of the Financial Creditor without independently verifying the same or obtaining the necessary information and documents from the Respondent.

21.2. The Company Petition was filed with delay, for which the Financial Creditor had preferred Interim Application No. 2774 of 2023 seeking condonation of delay. Although this Tribunal, vide Order dated 18.10.2023, condoned the delay, the Respondent had challenged the said order before the Hon'ble NCLAT in Company

Appeal (AT)(Ins.) No. 2326 of 2024. The said appeal was subsequently withdrawn vide Order dated 17.08.2026 with liberty to the Respondent to raise the contentions before this Tribunal. Accordingly, the Respondent submits that the issue of limitation and delay in filing the Company Petition remains relevant and reserves his right to advance submissions thereon.

21.3. Pursuant to approval and implementation of the Resolution Plan of the principal debtor, Ruchi Soya Industries Limited, vide order dated 24.07.2019, the Financial Creditor received an amount of Rs. 854.04 crore on 18.12.2019. The Respondent contends that the Resolution Professional has relied upon documents subsequently furnished by the Financial Creditor by email dated 13.03.2025 for determining the quantum of debt, without seeking any comments from the Respondent. Accordingly, the Respondent disputes the quantum of debt stated by the Financial Creditor and relied upon in the Report, contending that the same is inaccurate and flawed.

21.4. The Financial Creditor had earlier preferred Original Application No. 363 of 2018 before the Debts Recovery Tribunal, Jabalpur against the Respondent in respect of the same purported debt forming the subject matter of the present proceedings.

21.5. The present proceedings seek recovery of amounts which, according to the Respondent, are not owed by him. Accordingly, the Respondent prays for dismissal of the Company Petition and rejection of the reliefs sought therein.

Findings & Analysis:

21. We have considered the Application filed under Section 95(1) of the Code, the Report dated 20.03.2025 submitted by the Resolution Professional under Section 99 of the Code, the Affidavit-in-Reply filed by the Respondent/Personal Guarantor and the documents placed on record.
22. The Respondent has contended that the Resolution Professional has submitted the Report mechanically and without proper application of mind. However, except making general allegations, no material has been placed on record to demonstrate any procedural irregularity, bias or patent illegality in the preparation of the Report. However, it is well settled law that at the stage of Section 99, the Resolution Professional is only required to examine the application and make recommendations to the Adjudicating Authority. The Report is recommendatory in nature and the final determination regarding admission or rejection of the Petition rests exclusively with the Adjudicating Authority under Section 100 of the Code.
23. The Respondent has further relied upon the approval of the Resolution Plan of the Corporate Debtor on 24.07.2019 and the receipt of Rs.854.04 crore by the Financial Creditor on 18.12.2019. It is not in dispute that an amount was received by the Financial Creditor pursuant to implementation of the Resolution Plan. However, approval of a Resolution Plan in respect of the Corporate Debtor does not, by itself, discharge the liability of a Personal Guarantor arising under an independent contract of guarantee. The Hon'ble Supreme Court in ***Lalit Kumar Jain v. Union of India, (2021) 9 SCC 321,*** has held that approval of a Resolution Plan does not ipso facto discharge the Personal Guarantor from liability under the contract of guarantee. The relevant portion of the said judgment is reproduced hereinbelow:

"*111. In view of the above discussion, it is 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. As held by this court, 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.*"

24. Indeed, the amount of Rs. 854.04 crore received by the Financial Creditor under the Resolution Plan is required to be duly accounted for while determining the subsisting liability of the Personal Guarantor, however, such receipt, by itself, does not extinguish the guarantee liability, which is to be determined in accordance with the terms of the Deed of Guarantee and the amount remaining payable.
25. The Respondent has also referred to Original Application No. 363 of 2018 filed by the Financial Creditor before the Debts Recovery Tribunal, Jabalpur, in respect of the purported debt. Mere pendency or filing of proceedings before another forum, in the absence of any order demonstrating satisfaction, discharge or extinguishment of the debt or the guarantee liability, does not by itself establish that the debt claimed in the present proceedings no longer subsists. The Respondent has not placed before us any final adjudication in the said proceedings which would establish discharge of his liability.
26. The execution of Guarantee Agreements dated 15.05.2013, 22.03.2013, 29.03.2014 and 30.04.2015 by the Respondent establishes his status as Personal Guarantor with co-extensive liability under Section 128 of the Indian Contract Act, 1872. The Guarantee was invoked vide notice dated 07.03.2018 requiring the Respondent to pay in terms of the Guarantee, and the said notice was served by way of paper publication consequent to failure of normal service.
27. Upon perusal of the Demand Notice issued under [Under Rule 7(1) of

the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019] sent to the Respondent in respect of unpaid debt in default due from Applicant. It is stated in the Notice dt. 26.05.2022, that "*the undersigned request you to unconditionally pay the unpaid debt in default in full within fourteen days from the receipt of this letter, failing which, the insolvency resolution process, under the code shall be initiated against you*". The classification of the account as NPA and issuance of notices under the [Under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019] further establish default.

28. The statutory requirements under Section 95 read with Rule 7 of the 2019 Rules have been complied with. The Resolution Professional, in exercise of powers under Section 99(9), has recommended admission.

29. However, the Respondent has raised an objection regarding delay and limitation, contending that the Financial Creditor had sought condonation of delay and that the Respondent's challenge before the Hon'ble NCLAT was subsequently withdrawn with liberty to raise all available contentions before this Tribunal. From the record, it is evident that this Tribunal had already condoned the delay vide Order dated 18.10.2023. The subsequent Order dated 17.08.2026 passed by the Hon'ble NCLAT, without adjudicating the issue of limitation on merits, permitted the Respondent to raise the available contentions before this Tribunal. Accordingly, the objection is required to be examined on the basis of the relevant dates and documents forming part of the present proceedings.

30. Upon examination of the record, the credit facilities were sanctioned to the Corporate Debtor and various Loan Agreements, Deeds of Hypothecation and Deeds of Guarantee were executed. The debt was acknowledged by the Corporate Debtor and the Guarantors vide

Revival Letters dated 30.09.2015 and 23.09.2016. The Deeds of Guarantee were thereafter invoked vide Letter dated 07.03.2018, whereby the Guarantors were called upon to discharge the outstanding dues within three days, and upon failure to make payment, the default was stated to have occurred on 12.03.2018. Though the statutory Demand Notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 was issued on 26.05.2022, the period from 15.03.2020 to 28.02.2022 is liable to be excluded in view of the orders passed by the ***Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No. 3 of 2020***. Upon giving effect to the said exclusion, the limitation would expire on 26.02.2023.

31. It is noted that this tribunal had condoned the delay in terms of order dated 18.10.2023 passed in **IA 2774 of 2023** after observing that "*The period of limitation expired on 07.03.2021 and the Hon'ble Supreme Court vide order dated 10.1.2022 ordered to exclude the period from 15.03.2020 to 28.02.2022 for determination of the period, and also allowed 90 days period to the litigants where the limitation expired within this period.*" On a careful reading of the order passed in Suo Motu Writ Petition, it is noted that the said period of 90 days was allowed in case the remaining period starting from 01.03.2022 remains less than 90 days. In the present case, a period of 362 days was available from 01.03.2022, accordingly, the said condonation is based on mistaken belief that they remain the period of 90 days was beyond the relaxation granted by hon'ble supreme court in the said petition. It is noted that the hon'ble NCLAT has left the issue of limitation open.

32. Section 5 of the Limitation Act, 1963, provides that *"Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the*

applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period." However, the said provisions apply to applications filed under any statute where the time limit is prescribed to do so and it does not apply to the filing of the application where the period for filing of such application is governed by the time limit specified in schedule appended to the Limitation Act. Accordingly, the present petition filed on 21.03.2023 having been filed after the expiry of limitation on 26.02.2023 is not maintainable.

33. In terms of the above, the **Company Petition No. 385 of 2023** filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 is rejected and disposed of.

SD/-	**SD/-**
Prabhat Kumar	Sushil Mahadeorao Kochey
Member (Technical)	Member (Judicial)

Vipul Ghate