

NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.201
CP(IB)/29(MP)2022

Order under Section 95 IBC

IN THE MATTER OF:

M/s Arsec (India) Ltd (Volkswagen Finance Pvt Ltd)
V/s
Pratik Jain

.....Applicant

.....Respondent

Coram:

Hon'ble Shri Brajendra Mani Tripathi, Member (J)
Hon'ble Shri Man Mohan Gupta Member (T)

PRONOUNCEMENT OF ORDER
Delivered on 05/10/2026

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

MAN MOHAN GUPTA
MEMBER (TECHNICAL)

Tomar

Sd/-

BRAJENDRA MANI TRIPATHI
MEMBER (JUDICIAL)

THE NATIONAL COMPANY LAW TRIBUNAL

INDORE BENCH,

CP(IB)/29(MP)/2022

(An application under Section 95(1) of the Insolvency and Bankruptcy Code, 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)

IN THE MATTER OF:

M/s ASREC (India) Limited

Through its Authorized Signatory Add:

Solitaire Corporate Park, Unit No. 201-202A and 200-202B,

Ground Floor, Andheri Ghatkopar,

Andheri East, Mumbai, 400093 ... **Applicant / Financial**

Creditor

VERSUS

Mr. Pratik Jain,

House No. 368/22, Behind Gurudwara Gorakhpur,

Jabalapur, Madhya Pradesh – 482001

Add: F/ 1, Seth Nihalchand Complex, 599 Gorakhpur,

Jabalpur Madhya Pradesh – 482001

Email Id: pratik63664@yahoo.com ... **Respondent / Personal**

Guarantor

Order delivered on:05.10.2026

CORAM:

SHRI BRAJENDRA MANI TRIPATHI, MEMBER (JUDICIAL)

SHRI MAN MOHAN GUPTA, MEMBER (TECHNICAL)

Appearances:

For the Applicant: Shri Madhav Lahoti, Adv.

For the Respondent: Ms. Faguni Jain, Adv.

For the Resolution Professional: Ms. Vanshika Khandelwal, Adv.

ORDER

1. The present application has been filed on 29.03.2022 under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter, the “**Code**”) 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 (hereinafter, the “**Rules**”) by Volkswagen Finance Private Limited — since substituted by M/s ASREC (India) Limited, acting as Trustee of the ASREC PS 03/2022-23 Trust (hereinafter, the “**Financial Creditor**”/“**Applicant**”) — for the purpose of initiating the insolvency resolution process against Mr. Pratik Jain (hereinafter, the “**Respondent**”/“**Personal Guarantor**”), Personal Guarantor of M/s Sagar Autotech (Jabalpur) Private Limited (hereinafter, the “**Corporate Debtor**”) having CIN U50300MP2015PTC034634, for default of an amount of Rs.

3,95,53,280/- (Rupees Three Crores Ninety-Five Lakhs Fifty-Three Thousand Two Hundred and Eighty Only).

Submissions by the Applicant / Financial Creditor:

2. The averments made by the Financial Creditor in its application are summarized hereunder.

3. The original lender, Volkswagen Finance Private Limited, extended a “New Car Unit Funding / Inventory Stock Funding” credit facility to the Corporate Debtor, for which purpose two Facility Agreements dated 02.01.2018 and 10.01.2018, each for a facility limit of Rs. 3,00,00,000/-, were executed between the lender and the Corporate Debtor, secured, inter alia, by Deeds of Hypothecation of even date over the financed vehicles and stock.

4. The repayment of the obligations of the Corporate Debtor was further secured by personal guarantee, the Respondent, Mr. Pratik Jain — being a Director of the Corporate Debtor — having executed Deeds of Guarantee dated 02.01.2018 and 10.01.2018 in favour of the lender, whereby he unconditionally, absolutely and irrevocably guaranteed, as primary obligor, the discharge of the obligations of the Corporate Debtor. Security was also created by a Deed of Mortgage dated 27.09.2018 for Rs. 3,00,00,000/- over immovable property at Bungalow No. 4, Palm Residency, Ideal Hills, Near Adarsh Nagar, Jabalpur (M.P.).

5. A sum of Rs. 3,23,11,577.54 is stated to have been disbursed by the lender towards the financing of 20 vehicles, and the Corporate Debtor committed default in repayment.

6. Upon default, the lender recalled the facility by Loan Recall Notice dated 11.11.2019, calling upon the Corporate Debtor and the guarantors to pay the amount then outstanding of Rs. 2,27,28,492.04 (computed as on 08.11.2019); the lender also initiated proceedings under the SARFAESI Act, 2002 against the secured immovable property, including notices under Sections 13(2) and 13(4), taking of possession, and an auction attempted on 11.04.2022 (Reserve Price Rs. 73,45,800/-), which was unsuccessful.

7. The lender thereafter invoked the personal guarantee by a statutory Demand Notice in Form B dated 04.10.2021 under Rule 7(1) of the Rules, calling upon the Respondent to discharge the outstanding liability, then quantified at Rs. 3,39,15,253/-, within fourteen days, which the Respondent failed to pay.

8. By Deed of Assignment dated 21.10.2022 (cut-off date 14.09.2022) executed under Section 5(1)(b) of the SARFAESI Act, 2002, the debt, together with the underlying securities and guarantees, was assigned in favour of the Applicant; the account of the Corporate Debtor forms part of the assigned portfolio, the amount so assigned being Rs. 3,95,47,508.54 (principal Rs. 1,44,37,887.90 + interest/charges Rs. 2,51,09,620.64) as on the cut-off date. The Applicant was substituted in place of the original lender vide order dated 12.10.2023 passed in IA No. 290 of 2023.

9. The particulars of the debt, the default committed by the Corporate Debtor, and the invocation of the personal guarantee upon the Respondent, as pleaded and borne out by the record, are tabulated hereunder:

S. No.	Particulars	Date	Amount (Rs.)
1	Date on which the debt fell due	29.08.2019	—
2	Date of default as in form b	31.10.2019	—
3	Loan Recall Notice recalling the facility	11.11.2019	2,27,28,492.04
4	Demand Notice in Form B (Rule 7(1))	04.10.2021	3,39,15,253/-
5	Expiry of 14 days from the Form B Demand Notice	18.10.2021	—
6.	Original application was filed on	29.03.2022	
7.	Amended application was filed on	18.01.2024	

Submissions in the Resolution Professional's Report:

10. This Tribunal, vide order dated 13.06.2024, appointed Mr. Kamal Agarwal as Resolution Professional under sub-section (5) of Section 97 of the Code, with a direction to examine the application and submit a report under Section 99 of the Code recommending acceptance or rejection thereof.

11. In compliance, the Resolution Professional filed his Report under Section 99(1) dated 30.08.2024. His key findings are summarized hereunder.

12. In compliance with Section 99(2), the Resolution Professional took steps to intimate the Respondent, namely Mr. Pratik Jain: by

e-mail dated 20.06.2024 to pratik63664@yahoo.com and pratik@sagarjbp.co.in; by registered post dispatched 26.06.2024 to both addresses of the Respondent, returned undelivered on 08.07.2024 ("addressee not found"); by e-mail to the Financial Creditor dated 05.08.2024; by WhatsApp to mobile no. 8649977777 on 06.08.2024; and by courier (Shree Maruti, docket no. 24039100047416) dispatched 10.08.2024 and shown delivered 15.08.2024, followed by transmission of the application by WhatsApp on 11.08.2024 with a reminder on 13.08.2024. Despite the same, no reply was received.

13. On examination, the Resolution Professional observed that, although the application asserts personal guarantees dated 02.01.2018 and 10.01.2018 (annexed as Annexures A-5 and A-6), the Deeds of Guarantee so annexed are, in fact, executed by Ms. Meenal Jain and not by the Respondent, Mr. Pratik Jain; and that, on his seeking clarification, the Financial Creditor (by reply dated 30.08.2024) admitted the error and undertook to seek correction. He accordingly, in compliance with Section 99(9), recommended **rejection** of the application under Section 99(7), unless a correction is sought and allowed, noting that the role of the Resolution Professional under Section 99 is recommendatory in nature, as held in *Dilip B. Jiwarajka v. Union of India*, 2023 INSC 1018.

Reply-Cum-Objections of the Respondent / Personal Guarantor:

14. The Respondent, by his Reply-cum-Objections dated 20.01.2025, has opposed both the application under Section 95 of

the Code and the Report of the Resolution Professional under Section 99 of the Code, and has prayed for dismissal. His objections are summarized hereunder.

- i.** First, the Respondent contends that the application is not maintainable as no Deed of Guarantee executed by him has been annexed. Though Annexures A-5 and A-6 are relied upon as Deeds of Guarantee, the documents at the stated pages were executed by Ms. Meenal Jain and not by the Respondent; and in the absence of a valid personal guarantee executed by him, the application under Section 95 read with Rule 7 is inadmissible and liable to be dismissed in limine.
- ii.** Secondly, the application is said to be defective and incomplete: the two Facility Agreements dated 02.01.2018 and 10.01.2018 are referred to without specifying to which the alleged debt relates; no banking transaction is disclosed to establish disbursement; several fields, including Point No. 17 of Part III, are left blank; secured-creditor status is claimed without any immovable property being stated in the agreement; no bank statement of account has been produced to substantiate the amount as outstanding and in default; and, though Rule 7(2) requires a fee of Rs. 2,000/- and a declaration in Form C as to its payment, no such declaration or proof of payment is annexed.
- iii.** Thirdly, as to the Form B Demand Notice, the Respondent contends that its issuance is a pre-requisite to a Section 95 application and that the notice is defective: the Corporate Debtor is wrongly described as “Sagar Auto Tech

Jabalpur Rise Pvt Ltd”, which is not a company on the records of the Ministry of Corporate Affairs; where a demand notice is issued by a person other than the creditor, the requisite authorization must accompany it, and none is annexed; and the Form B was never served upon him, so that the application is misconceived.

- iv.** Fourthly, in his para-wise reply to the Report, the Respondent denied the outstanding debt of Rs. 3,95,53,280/- opposed condonation of the delay in filing the Report (which, he said, was filed beyond the period in Section 99, relying on the order sheet dated 06.10.2022 recording no service upon him); denied receipt of any communication from the Resolution Professional (contending that the e-mail went to the registered id of the principal borrower and not to him); disputed service, submitting that Annexure RP-5 shows no message to the alleged number but only an entry “Pratik Jain PG Saga” without the number, and that the courier receipts disclose no address; and objected that a resolution professional cannot make a conditional recommendation.
- v.** Fifthly, the Respondent contends that the application is barred by limitation, the Deed of Guarantee and the Facility Agreement having been executed on 10.01.2018 so that limitation, on his reckoning, expired on 10.01.2021.
- vi.** Lastly, he objects that the affidavit supporting the application is inadmissible for want of stamp duty of Rs. 100/- payable in Maharashtra; that the documents are photocopies, neither certified by the authorised

representative or advocate nor verified from the originals as required by Rules 10, 23 and 26 of the National Company Law Tribunal Rules, 2016, and are unsupported by a proper verifying affidavit; and, relying on judgments of the Hon'ble Supreme Court and various High Courts, that facts and documents not specifically denied be treated as denied and be proved by the Applicant, while reserving liberty to file an additional reply.

Submissions in the Addendum to the Report of the Resolution Professional:

15. The Report dated 30.08.2024 (**filed vide IA/376(MP)/2024**) was taken on record and disposed of vide order dated 15.10.2024, with a direction to serve the Report and the application upon the Personal Guarantor. Thereafter, vide order dated 18.03.2025 — recording that the copy of the personal guarantee had not been provided by the Financial Creditor, and the Financial Creditor's submission that the Deed of Guarantee stood attached along with Form B at page 312 — this Tribunal permitted the filing of an Addendum Report within ten working days. In compliance, the Resolution Professional filed his Addendum to the Report under Section 99(1) dated 08.04.2025, whereby he **revised his recommendation and now recommends acceptance** of the application.

16. In the Addendum, the Resolution Professional states that, pursuant to the order dated 18.03.2025, he obtained from the Financial Creditor (on 24.03.2025) the Deeds of Guarantee executed by the Respondent dated 02.01.2018 and 10.01.2018 (at

pages 325 and 312 of the petition), and its parawise reply to the Respondent's objections (received 07.04.2025) (Annexure RP-9); and, having considered the Deed of Guarantee, the objections of the Respondent and the reply of the Applicant thereto, recommends acceptance on the grounds, inter alia, that the two Facility Agreements were executed; that the Respondent, a Director of the Corporate Debtor, extended the said personal guarantees; that a debt of Rs. 3,95,53,280/- is shown in Part III of Form C as supported by the Statement of Account / Foreclosure Report (Annexure A-9); that the Respondent has furnished no evidence of repayment under Section 99(2); that the Form B dated 04.10.2021 was dispatched to the Respondent's own address; that the application dispatched to the Respondent was returned "Not Delivered – REFUSED" (deemed service under Section 95(5)); and that, on limitation, time runs from invocation and the application is within limitation.

Reply of the Applicant to the Respondent's Objections (dated 07.04.2025, Annexure RP-9):

17. Pursuant to the order dated 18.03.2025 and the Resolution Professional's request, the Applicant filed a parawise reply dated 07.04.2025 to the objections of the Respondent (annexed to the Addendum as part of Annexure RP-9), submitting, inter alia: that it had inadvertently filed the Deeds of Guarantee of Ms. Meenal Jain as Annexures A-5 and A-6, the error being rectified by e-mail dated 24.03.2025 furnishing the Respondent's own Deeds of Guarantee dated 10.01.2018 and 02.01.2018 (also annexed in the petition at pages 312 and 325); that the reference in the Form

B to “Sagar Auto Tech Jabalpur Rise Private Limited” was an inadvertent error, the correct name being borne out by the e-stamp paper, and that the Respondent, Mr. Pratik Jain, had executed the personal guarantee in respect of the facility; that the Form B was dispatched to the Respondent’s address (postal receipt at page 364, “368/2, PIN-482001, Jabalpur”) and is to be treated as deemed to have been delivered; that the application is not barred by limitation, the guarantee being a continuing one under Clause 17 (pages 318 and 331); and that the affidavit is duly stamped and notarised and the documents duly certified by its authorised representative.

Reply-cum-Objections of the Respondent to the Addendum:

18. The Respondent filed his Reply-cum-Objections to the Addendum dated 05.01.2026 (supported by affidavit), opposing acceptance and praying for dismissal *in limine*. His contentions are summarized hereunder.

19. As a threshold objection, it is contended that the original application is *void ab initio, non-Est* and not maintainable for want of subsisting authority, in that it was filed by one Mr. Utkarsh Singh, purportedly as authorised representative of Volkswagen, on the strength of a Power of Attorney dated 11.06.2019 (Annexure P-10), the last paragraph whereof (at page 444) provided that it “shall expire automatically on 10th February, 2022”; that the application was signed on 29.03.2022 and filed on 04.04.2022, i.e., after the automatic expiry of the said Power of Attorney; and that, consequently, the deponent had no authority to institute or verify the application. It is urged that this is a jurisdictional defect,

incapable of cure by ratification, substitution or later orders, and that the objection could not be raised earlier as the unamended application was received only from the Resolution Professional after the first reply had been filed.

20. It is further contended that the verifying affidavit, sworn by the said Mr. Utkarsh Singh who wrongly described himself as “the Applicant”, discloses no subsisting authority and is *non est*, rendering the application liable to be treated as no application at all.

21. It is contended that the Resolution Professional, even in the Addendum, failed to discharge his duty under Sections 99 and 100, having merely reproduced the Financial Creditor’s assertions without independent scrutiny, and failed to examine material defects, namely: lack of authority in filing the application; invalidity of the supporting affidavit; absence of proof of disbursement; absence of proof of service of the demand notice; and contradictory dates of default.

22. It is reiterated that the Financial Creditor has taken mutually destructive stands on the date of default — Part III stating 04.10.2021; Form B stating the debt fell due on 29.08.2019 and default occurred on 31.10.2019; and reliance being placed on the Loan Recall Notice dated 11.11.2019 — rendering the application vague; and that, the application being void for want of authority, no valid application exists within the limitation period (which, on the 11.11.2019 trigger, expired on 10.11.2022), so the proceedings are time-barred.

23. In its parawise reply, the Respondent has, inter alia: denied that the Facility Agreements give rise to any enforceable debt for want of proof of disbursement and of identification of the operative agreement; contended that the Deeds of Guarantee produced belatedly (Annexure RP-9) are invalid for want of stamp duty and that no specific invocation is disclosed; contended that the Statement of Account (Annexure A-9) is unreliable, disclosing no account number, no complete name and no certification under the Bankers' Books Evidence Act, 1891; denied that the Form B dated 04.10.2021 was ever served, no proof of delivery having been annexed; denied valid service of the application, the receipt at page 470 mentioning only the Respondent's name and the city "Jabalpur" without a complete postal address; and contended that, by addressing the reply through an addendum, the Financial Creditor filed an impermissible rejoinder.

Written Submissions of the Applicant / Financial Creditor
(dated 27.01.2026):

24. The Applicant, by its Written Submissions, contends: **(i)** that the application is within limitation, the Deeds of Guarantee dated 02.01.2018 and 10.01.2018 being *continuing* guarantees which, by Clause 17 thereof (at pages 318 and 331), remain operative and binding until the final settlement of all dues, so that the cause of action is recurring; **(ii)** that the objection of want of authority is unsustainable, the application having been amended pursuant to IA No. 290 of 2023 (allowed 12.10.2023) on the basis of the Deed of Assignment dated 21.10.2022, and the amended application being duly supported by a Power of Attorney authorising Mr.

Harshad V. Garude (Annexure-11, page 465 of the amended petition), whereby the defect, if any, stands cured without prejudice to the Respondent; **(iii)** that there is no inconsistency as to the date of default, the date of default for a personal guarantor being the date of invocation of the guarantee, i.e., 04.10.2021 (the Form B date), the dates 29.08.2019 and 31.10.2019 pertaining solely to the default of the principal borrower and set out only as background; **(iv)** that the Form B was duly dispatched to the Respondent's correct and last-known address (postal receipt at page 364), attracting a presumption of due service notwithstanding the absence of a delivery report, and that the application was served, the endorsement "Not Delivered – Refused" amounting to deemed service; and **(v)** that the affidavit is duly stamped and notarised, the misdescription of the Corporate Debtor's name is clerical (the e-stamp paper at page 184 reflecting the correct name), and the Statement of Account (Annexure A-9) sufficiently establishes the debt, no certificate under the Bankers' Books Evidence Act, 1891 being required under the Code.

**Written Submissions of the Respondent / Personal Guarantor
(dated 20.08.2026):**

25. The Respondent, by his Written Submissions (with case law), contends, **first**, that the application is *non Est* and void *ab initio* for want of subsisting authority: the original application was signed by Mr. Utkarsh Singh on the strength of a Power of Attorney dated 11.06.2019 (Annexure P-10), the last paragraph whereof (page 444) provided that it "shall expire automatically on 10th February, 2022"; the application was signed on 29.03.2022 and

filed on 04.04.2022, after such expiry; the verifying affidavit and the vakalatnama were likewise executed by Mr. Utkarsh Singh without authority; and such a defect of authority is substantive and jurisdictional, incapable of cure by ratification, substitution or subsequent orders, relying on *Adarsh Kanch Udyog Pvt. Ltd. v. Arya Filaments Pvt. Ltd.*, Company Petition No. 36/2016 (High Court of Madhya Pradesh, Indore Bench, order dated 07.07.2017).

26. The Respondent contends, **secondly**, that the application is barred by limitation: taking the Loan Recall Notice dated 11.11.2019 as the trigger, limitation expired on 10.11.2022, and no valid, authorised application was filed within that period (the substituted application being of 12.10.2023); that the Demand Notice in Form B dated 04.10.2021 cannot be treated as the date of invocation for the purposes of Section 95, relying on *State Bank of India v. Deepak Singhania*, 2025 SCC OnLine NCLAT 461; and that the Applicant's reliance on Clause 17 of the guarantee deed is misplaced, since Clause 20 of the same deed provides that limitation begins to run once the guarantee is invoked. He further contends that there is no valid service of the Form B (the receipt at page 364 disclosing neither the Respondent's address nor any delivery report); that there are inconsistent dates of default and, materially, an unexplained discrepancy in quantum — Rs. 3,39,15,253/- in the Form B as against Rs. 3,95,53,280/- in the application; that the Statement of Account does not evidence disbursement or match the amounts claimed, relying on *Central Bank of India v. Geeta Devi Agarwal*, C.P.(IB)/7(MP)/2021, order dated 04.07.2025; and that the application is otherwise defective (two Facility Agreements without specifying the operative one;

Point No. 17 of Part III left blank; a claim of secured-creditor status without particulars of immovable property).

ANALYSIS AND FINDINGS

27. We have heard the learned counsel for both sides and the learned Resolution Professional, and have gone through the application, the Report and the Addendum filed under Section 99 of the Code, the objections and replies of the parties, their written submissions, and the documents on record.

28. It is settled, after the judgment of the Hon'ble Supreme Court in *Dilip B. Jiwrarka v. Union of India*, 2023 INSC 1018, that the report of the Resolution Professional under Section 99 is only a recommendation and does not bind this Tribunal. Whether the report is for acceptance or for rejection, the Tribunal has to take its own decision under Section 100 after hearing the parties.

29. The main objection of the Respondent is that the application is void from the very beginning because it was filed without authority. The point is this. The original application was signed on 29.03.2022 by Mr. Utkarsh Singh on behalf of Volkswagen Finance Private Limited, on the strength of a Power of Attorney dated 11.06.2019 (Annexure P-10) issued under a Board Resolution dated 29.05.2019. The last paragraph of that Power of Attorney stated that it "shall stand forthwith terminated if the said Attorney ceases to be in employment, death, permanent disability, retirement or resignation from the Company, or shall expire automatically on 10th February, 2022, whichever is earlier." Since the Power of Attorney expired on 10.02.2022, the Respondent says

that Mr. Utkarsh Singh had no authority when he signed the application on 29.03.2022, and that this defect cannot be cured. The Applicant does not deny that the Power of Attorney had expired, but says that the defect stands cured.

30. We have considered this objection and are unable to accept it, for the reasons that follow. A defect in the authority of the person who files a case for a company is a defect that can be cured. It does not take away the jurisdiction of the Tribunal. The company can later approve and adopt the filing, and once it does so, that approval takes effect from the date of the original filing. This is settled by the Hon'ble Supreme Court in *United Bank of India v. Naresh Kumar*, (1996) 6 SCC 660. A genuine claim should not be thrown out only on such a technical ground, more so under the Code, which does not insist on technical formalities.

31. What happened in this case shows that the defect has been cured. By a Deed of Assignment dated 21.10.2022, Volkswagen Finance Private Limited assigned the debt, along with the securities and guarantees, to the present Applicant, ASREC (India) Limited, as Trustee of the ASREC PS 03/2022-23 Trust. On the basis of that assignment, this Tribunal, by order dated 12.10.2023 in IA No. 290 of 2023, allowed ASREC (India) Limited to be substituted in place of Volkswagen Finance Private Limited, and gave liberty to the Respondent to file objections. ASREC (India) Limited is now conducting the case through Mr. Harshad V. Garude, its Assistant Vice President, who holds a Power of Attorney dated 22.03.2022. That Power of Attorney was given by Mr. Manjunatha Reddy, Senior Vice President, who was himself

authorised, with power to further delegate, by the Company's Managing Director and Chief Executive Officer under a Power of Attorney dated 23.06.2021. This Power of Attorney is on record as Annexure-11 at page 465 of the amended petition, and it allows Mr. Garude to file and conduct cases before this Tribunal and to sign the pleadings for the company. So the case, as it stands today, is being run by a proper assignee through a properly authorised officer.

32. The Respondent argued that the substitution cannot cure the defect, because the case was filed by Volkswagen, which has not ratified anything, whereas ASREC is a different entity. We do not accept this. ASREC did not file a fresh case. By taking the assignment of the debt, it stepped into the shoes of Volkswagen and was substituted in the same proceeding, which has continued without a break. Substitution of a party does not begin a new case; it carries on the existing one. For this reason, the date of filing remains 29.03.2022, and the adoption of the case by the assignee takes effect from that date.

33. Two further points support this view. First, the lack of authority complained of relates to the representative of the earlier applicant, that is, Volkswagen. That is a matter between the company and its own officer. The opposite party cannot take advantage of it to defeat the case once the company, and then its assignee, have accepted and pursued it. Second, the substitution of the assignee was allowed on 12.10.2023 with liberty to the Respondent to object, but the Respondent did not object to the substitution at that time and raised the plea of authority only later.

The decision in *Adarsh Kanch Udyog Pvt. Ltd. v. Arya Filaments Pvt. Ltd.* (order dated 07.07.2017 of the Hon'ble High Court of Madhya Pradesh, Indore Bench), relied on by the Respondent, was a winding-up petition filed by a person who had no authority at all. It did not deal with an assignment, a substitution or a ratification, and in any case it cannot override the judgment of the Hon'ble Supreme Court in *Naresh Kumar*. The objection is therefore rejected. We hold that the application was validly filed on 29.03.2022.

34. The next objection is that the application is barred by limitation. This objection depends entirely on the earlier objection about authority. The Respondent's argument is that, since the original application is void, the only valid application is the one filed after substitution on 12.10.2023, and that this is beyond three years from the Loan Recall Notice dated 11.11.2019. Once we have held that the application was validly filed on 29.03.2022, this argument does not survive.

35. In any case, the position on limitation is clear. In the case of a guarantor, the period of limitation runs from the date on which the guarantee is invoked by a demand, and not merely from the default of the borrower. This is settled by *Syndicate Bank v. Channaveerappa Beleri*, (2006) 11 SCC 506, and it is also what Clause 20 of the deed of guarantee that provides that no period of limitation shall commence to run in favour of the Guarantor until a demand for payment in writing is made in the manner stipulated therein.

Here, the guarantee was invoked by the Loan Recall Notice dated 11.11.2019 and again by the demand notice in Form B dated 04.10.2021. In the present case, Clause 2 of the Personal Guarantee dated 10.01.2018 provides that the Guarantor shall, on demand by the Lender, forthwith pay and make good the amounts due in respect of the Borrower Obligations. The Loan Recall Notice dated 11.11.2019 pertains to the Facility Agreement dated 10.01.2018, in respect of which the Respondent furnished the Personal Guarantee, and the said notice was addressed, inter alia, to the Respondent/Personal Guarantor and called upon him to pay the outstanding amount of Rs. 2,27,28,492.04. The address mentioned in the said notice is also the address specified for the Respondent in Schedule I of the Personal Guarantee for the purpose of notices. On a reading of the terms of the Personal Guarantee and the Loan Recall Notice together, the said notice constitutes the written demand/invoke of the guarantee. The application was filed on 29.03.2022. Whichever date is taken as the starting point, the application is well within three years, as the following table shows:

Starting point relied upon	Date	Three years end on	Original application (29.03.2022)	Amended application (18.01.2024)
Loan Recall Notice	11.11.2019	11.11.2022	Within time	Within time (relates back to 29.03.2022)
Demand notice (Form B)	04.10.2021	04.10.2024	Within time	Within time

36. As the table shows, the application is within limitation on either starting point. The original application (29.03.2022) is within three years of both the Loan Recall Notice and the Form B; and the amended application (18.01.2024), consequent upon the substitution of the Applicant, relates back to the original filing and is, in any event, within three years of the invocation by the Form B dated 04.10.2021. The objection of limitation is, therefore, rejected.

37. On the service of the demand notice, the Respondent says that the Form B dated 04.10.2021 was never served on him. We do not accept this. The notice was sent by speed post to House No. 368/2, Gorakhpur, Jabalpur, which is the same address the Respondent has given in his own affidavit. When a notice is correctly addressed and posted, service is presumed, and the Respondent has said nothing to show otherwise except a bare denial. Even so, and to leave no doubt.

38. The objection that the guarantee itself is not proved has no force. By mistake, the application first attached the guarantee deeds of Ms. Meenal Jain. But the guarantee deeds dated 02.01.2018 and 10.01.2018 signed by the Respondent are on record at pages 325 and 312, and were filed again along with the Addendum. The Respondent has, in fact, admitted that he signed them. Under Section 128 of the Indian Contract Act, 1872, the liability of a guarantor is the same as that of the borrower. There is some difference in the amount claimed, namely Rs. 3,39,15,253/- in the Form B, Rs. 3,95,53,280/- in the application,

and Rs. 3,95,47,508.54 in the Deed of Assignment. But at this stage, under Section 100, the Tribunal has only to be satisfied that there is a debt and that there is a default. Both are present. The exact amount can be worked out later when the claims are collated.

39. The remaining objections, about the stamp on the affidavit, the certification of the copies, and the wrong name of the Corporate Debtor as “Sagar Auto Tech Jabalpur Rise Private Limited”, are only technical. They do not go to the merits and are not a good reason to reject the application. The wrong name is clearly a clerical error, the correct name being evident from the e-stamp and the other documents. The objection that the Addendum is a rejoinder is also not correct, because the Addendum was filed under the liberty given by this Tribunal on 18.03.2025.

40. Taking all the material together, we are satisfied that there is a financial debt against the Corporate Debtor; that the Respondent gave a guarantee for that debt; that there is a default; that the guarantee was invoked on the Respondent and he did not pay; that the application is within limitation and was validly filed; and that none of the objections raised by the Respondent is good enough to reject it. The requirements of Section 100 of the Code are satisfied, and the application deserves to be admitted.

ORDER

41. In view of the above, the petition deserves admission, and we pass the following order:

- I. The present Application **CP/IB/29 /2022** is hereby
ADMITTED under Section 100 of the Code and the
Insolvency Resolution Process stands initiated against
the **Personal Guarantor i.e. Mr. Pratik Jain**
- II. 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:
- III. Any pending legal action or proceeding in respect of any
debt be deemed to have been stayed; and
- IV. The creditors of the Personal Guarantor shall not initiate
any legal action or proceedings in respect of any debt;
and
- V. The Personal Guarantor shall not transfer, alienate,
encumber, or dispose of any of his assets or his legal
rights or beneficial interest therein;
- VI. 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.

- VII. The Resolution Professional Mr. Kamal Agarwal, having
IBBI (Reg. No. IBBI/IPA-001/IP P00868/2017
2018/11466 (AFA Valid upto 30.06.2027), IBBI/IPA-
001/IP-P01445/2018-2019/12137, who was appointed
as the Resolution Professional vide order dated
07.06.2024, is hereby appointed as Resolution
Professional for conducting the Insolvency Resolution
Process of the Personal Guarantor.
- VIII. 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.

- IX. The Resolution Professional shall prepare a list of creditors under Section 104 of the Code on the basis of:
- a. information disclosed in the Application filed under Section 95, and
 - b. claims received under Section 102, within 30 days from the date of publication of notice.
- X. The Personal Guarantor shall prepare a Repayment Plan under Section 105, in consultation with the Resolution Professional, containing a proposal for restructuring of his debts.
- XI. The Repayment Plan may authorize or require the Resolution Professional to:
- a. carry on the debtor's business or trade on his behalf or in his name; or
 - b. realize the assets of the debtor; or
 - c. administer or dispose of any funds of the debtor.

The Plan shall include:

- a. justification for preparation of such plan;
- b. payment of fee to the Resolution Professional;

c. any other matter as may be specified.

- XII. The Resolution Professional shall submit the Repayment Plan to this Authority along with his report within 21 days from the last date of submission of claims, in terms of Section 106 of the Code.
- XIII. In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, she shall record the reasons thereof. If the resolution professional is of the opinion that the meeting of the creditors should be summoned, she 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.
- XIV. 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 Personal Guarantor 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 Code.

XV. The Applicant/financial creditor is directed to deposit Rs. 50,000/- (Rupees Fifty Thousand Only) to the bank account of Resolution Professional within one week, from the date of this order towards his fees. This shall be subjected to the Rules and Regulations under the provisions of IBC, 2016, including maintaining independence, confidentiality, and impartiality in all actions.

XVI. The Resolution Professional is directed to strictly abide by the provisions of IBC 2016 and complete the process of insolvency in a time bound manner after constitution of the committee of creditors.

42. Accordingly, **CP(IB)/29(MP)/2022** filed under Section 95 of the Code is **admitted**. A copy of this order be communicated to both parties and to the Resolution Professional.

Sd/-

MAN MOHAN GUPTA
MEMBER (TECHNICAL)
deepti-Lra

Sd/-

BRAJENDRA MANI TRIPATHI
MEMBER (JUDICIAL)