



NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.206
CP(IB)/43(MP)2022

Order under Section 95 IBC

IN THE MATTER OF:

Tata Capital Ltd
(earlier known as "Tata Capital Financial Services Ltd")
V/s
Manju Saurabh Garg

.....Applicant

.....Respondent

Coram:

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

PRONOUNCEMENT OF ORDER
Delivered on 10/09/2026

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) 43 (MP) OF 2022**

*(Under Section 95 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:

TATA CAPITAL LIMITED

(formerly Tata Capital Financial Services Limited)
11th Floor, Tower A, Peninsula Business Park,
Ganpatrao Kadam Marg,
Lower Parel, Mumbai – 400 013.

.... Applicant / Financial Creditor

Versus

MRS. MANJU SAURABH GARG

W/o Late Shri Saurabh Garg,
E-7/88-89, HIG State Bank Colony, Avantika Community Hall,
Bhopal, Madhya Pradesh – 462 003.
(Personal Guarantor of M/s Excel Vehicles Private Limited)

... Respondent / Personal Guarantor

CORAM:

**Shri Brajendra Mani Tripathi, HON'BLE MEMBER (J)
Shri Man Mohan Gupta, HON'BLE MEMBER (T)**

APPEARANCE:



For the Applicant: Ms. Nidhi Mistry, Adv.

For the RP: Mr. Rajesh Ramnami,

For the Respondent: Mr. Udit Singh Parihar, Adv.

JUDGEMENT

1. The present application has been filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 (“**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, by the Applicant, through the Resolution Professional, for initiating the insolvency resolution process against **Mrs. Manju Saurabh Garg** (“**Respondent/Personal Guarantor**”), Personal Guarantor of **M/s Excel Vehicles Private Limited** (“**Corporate Debtor**”), CIN:(**U50400MP2012PTC028568**), for default of an amount of **Rs. 6,28,11,912/-** as on **01.03.2022**. The date of default as stated in Part-III of Form C is **29.08.2018**. The present petition was filed on **21.07.2022**.

Submissions made by the Applicant/Financial Creditor:

2. The averments of the Applicant, and the documents on record, are summarised hereunder.
3. By Sanction Letter dated 30.08.2013, the Applicant (a Non-Banking Financial Company) sanctioned to the Corporate Debtor a Channel Finance/Inventory Funding Facility not



exceeding **Rs. 5,00,00,000/-**, on the terms of the Channel Finance Agreement dated 24.09.2013 (Annexure C), secured inter alia by a Deed of Hypothecation dated 24.09.2013 (Annexure A) and a Letter of Guarantee dated 01.10.2013.

4. By Sanction Letter dated 25.08.2016 (Annexure B) the facility was renewed and reduced to Rs. 4,00,00,000/- (“the renewed facility”), on the terms of the Channel Finance Agreement dated 14.09.2016 (Annexure C). In lieu thereof, the Personal Guarantors — the late Saurabh Garg, the Respondent and Mr. Rishabh Garg — executed a Letter of Guarantee dated 14.09.2016 (Annexure D), jointly and severally guaranteeing repayment on demand of all amounts due, with interest and charges. The Respondent, vide Net-Worth Affidavit dated 14.09.2016 (Annexure G), disclosed her individual net worth as Rs. 30,20,71,000/-.
5. The liability was acknowledged from time to time, including by Confirmation of Balance Letter dated 21.09.2017 (Annexure M) confirming Rs. 2,93,26,913/- as outstanding on that date, and by Revival Letters dated 14.09.2016, 08.05.2017 and 21.09.2017 executed for the purposes of Sections 18 and 19 of the Limitation Act, 1963.
6. On default, the Applicant, by its Loan Recall-cum-Arbitration Invocation Notice dated 14.02.2019 (Annexure N), and thereafter by notice dated 24.10.2019 (Annexure O), invoked the Letter of Guarantee dated 14.09.2016 and called upon the Corporate Debtor and the guarantors, jointly and severally, to



pay the outstanding dues, and invoked the arbitration agreements.

7. The Applicant's Arbitration Petition No. 744 of 2019 (Bombay High Court, under Section 9) was withdrawn with liberty vide order dated 24.09.2019 (Annexure P). On the Applicant's Commercial Arbitration Application No. 63 of 2021, the Hon'ble Bombay High Court, by order dated 06.01.2021 (Annexure R), substituted the Sole Arbitrator, and Ms. Gulnar Mistry entered upon the reference. The Corporate Debtor and the guarantors filed a common Statement of Defence dated 14.03.2021 (amended 30.08.2021) and, vide submissions dated 26.09.2021, communicated inability to participate, whereupon the Tribunal proceeded ex parte vide Minutes dated 28.09.2021 (Annexure R-1).
8. By Award dated 18.02.2022 (Annexure S), the learned Sole Arbitrator held the Respondents therein — including the present Respondent (as Respondent No. 3) — jointly and severally liable to pay principal of Rs. 3,04,80,000/- as on 01.05.2018, with interest at 13.50% p.a. for 90 days (01.05.2018–29.07.2018) and 19.50% p.a. thereafter (30.07.2018–30.01.2020), pendente lite interest at 10% p.a. (31.01.2020 to date of Award), Rs. 1,00,000/- as legal fees and Rs. 8,08,500/- as arbitrator's fees. The Award was received on 18.02.2022 (Annexure T) and served on the Respondent on 03.03.2022 (Annexure U).
9. The Applicant issued a Demand Notice in Form B dated 25.03.2022 (Annexure V) under Rule 7(1) of the 2019 Rules,



demanding Rs. 6,28,11,912/- (including interest as on 01.03.2022) with further interest at 20.55% p.a., received by the Respondent on 06.04.2022 and 09.04.2022. The Applicant has also placed on record the Record of Default from NeSL dated 10.03.2022 (Annexure X) and the Statement of Accounts as on 01.03.2022 (Annexure Y).

Submissions in the Resolution Professional's Report:

10. This Tribunal, vide order dated **18.04.2024** (received on 29.04.2024), confirmed the appointment of Mr. Rajesh Ramnani, Insolvency Professional (Registration No. IBBI/IPA-002/IP-N00993/2020-2021/13187), as the Resolution Professional and directed him to examine the application and submit his report under Section 99 of the Code. The Resolution Professional has filed his Report (dated 22.05.2024) by way of **I.A. No. 264 of 2024**. The submissions made in the Report are summarised as under:

- i. By Sanction Letter dated 30.08.2013, the Applicant sanctioned to the Corporate Debtor a Channel Finance/Inventory Funding Facility not exceeding Rs. 5,00,00,000/-, on the terms of the Channel Finance Agreement dated 24.09.2013 (Annexure C), secured by a Deed of Hypothecation dated 24.09.2013 (Annexure A) creating a first and exclusive charge on the stocks and book debts of the Corporate Debtor; the Corporate Debtor and the guarantors also executed a Power of Attorney, an Irrevocable Power of Attorney, a Tripartite Agreement, a letter of disbursal and a Demand Promissory Note (all



dated 24.09.2013) and a Letter of Guarantee dated 01.10.2013 (which documents are, however, not annexed to the application).

- ii. The facility was renewed from time to time between 2013 and 2015, an Amendment Agreement dated 10.07.2015 to the Channel Finance Agreement and allied documents of even date having been executed (also not annexed); and, by Sanction Letter dated 25.08.2016 (Annexure B), the facility was renewed and reduced to Rs. 4,00,00,000/- (“the renewed facility”), on the terms of the Channel Finance Agreement dated 14.09.2016 (Annexure C), which the Personal Guarantors signed and ratified.
- iii. In lieu of the renewed facility, the Personal Guarantors executed a Letter of Guarantee dated 14.09.2016 (Annexure D), jointly and severally guaranteeing repayment on demand; and a Tripartite Agreement dated 28.11.2016 (Annexure E), a Power of Attorney dated 14.09.2016 (Annexure F), a Revival Letter dated 14.09.2016 (Annexure H) and a Link Letter dated 14.09.2016 (Annexure I) were executed.
- iv. The Respondent, by Net-Worth Affidavit dated 14.09.2016 (Annexure G), disclosed her individual net worth as Rs. 30,20,71,000/-; and the late Mr. Saurabh Garg, by Net-Worth Affidavit dated 14.09.2016 (Annexure G-1), disclosed his net worth as Rs. 88,78,51,000/-. Mr. Saurabh Garg having expired on 25.03.2019, the



Respondent is one of his legal heirs, upon whom his estate is presumed to have devolved.

- v. The liability was acknowledged from time to time — by Confirmation of Balance Letter dated 14.09.2016 (Annexure J) confirming Rs. 4,03,73,620.20 as due as on 13.09.2016; by Extension Letter dated 08.05.2017 (Annexure J-1) and Revival Letter dated 08.05.2017 (Annexure J-2); by Extension Letter dated 18.09.2017 (Annexure K) and Revival Letter dated 21.09.2017 (Annexure L); and by Confirmation of Balance Letter dated 21.09.2017 (Annexure M) confirming Rs. 2,93,26,913/- as due as on that date.
- vi. The Corporate Debtor committed default; and by Advocate's Notices dated 14.02.2019 (Annexure N) and 24.10.2019 (Annexure O), the Applicant called upon the Corporate Debtor and the guarantors to pay Rs. 3,48,24,672/- (as on 07.01.2019) and Rs. 3,88,70,550/- (as on 23.10.2019) respectively.
- vii. The Applicant's **Arbitration Petition No. 744 of 2019** (Bombay High Court, under Section 9) was withdrawn with liberty vide order dated 24.09.2019 (Annexure P); on the Applicant's Commercial Arbitration Application No. 63 of 2021, the Sole Arbitrator was substituted by the Hon'ble Bombay High Court vide order dated 06.01.2021 (Annexure R); a common Statement of Defence dated 14.03.2021 and an Amended Statement of Defence dated 30.08.2021 were filed; and the Arbitral Tribunal



proceeded ex parte vide Minutes dated 28.09.2021
(Annexure R-1).

- viii. **By Award dated 18.02.2022 (Annexure S)**, the Sole Arbitrator directed the Respondents therein, jointly and severally, to pay Rs. 3,04,80,000/- as principal (as on 01.05.2018) with interest at 13.50% p.a. and thereafter 19.50% p.a., pendente lite interest at 10% p.a., Rs. 1,00,000/- as legal fees and Rs. 8,08,500/- as costs; the Award was received on 18.02.2022 (Annexure T).
- ix. The Applicant issued a Form B Demand Notice dated **25.03.2022** demanding **Rs. 6,28,11,912/-** (including interest as on 01.03.2022) with further interest at 20.55% p.a., received by the Respondent on 06.04.2022 and 09.04.2022 and the Corporate Debtor replied by letter dated 10.04.2022 (Annexure W). The Applicant placed on record the Record of Default from NeSL dated 10.03.2022 and the Statement of Accounts as on 01.03.2022.
- x. As to jurisdiction, in terms of Section 60(2) of the Code and the Corporate Debtor not having been admitted into the corporate insolvency resolution process, the jurisdiction to entertain the application against the personal guarantor lies with this Tribunal; that, under Section 95(1), a creditor may apply through a resolution professional; that the Respondent's liability arises from the Letters of Guarantee executed by her; and that the application is accordingly maintainable under Section 95 of the Code.



- xi. In compliance with Section 95(4)(a) of the Code, the documents relating to the debts owed by the Corporate Debtor are on record, and the Letter of Guarantee establishes that the Respondent guaranteed the obligations of the Corporate Debtor under the credit facilities.
- xii. In compliance with Section 95(4)(b), the Respondent was served with the Demand Notice dated 25.03.2022 (Rs. 6,28,11,912/- with interest at 20.55% p.a.) and failed to pay the amount within fourteen days of service, having instead replied by letter dated 10.04.2022.
- xiii. In compliance with Sections 95(4)(c), 95(5) and 99(2), the evidence of default, together with the date, amount and days of default as set out in Form C and the account statements maintained by the Applicant with a certificate under the Bankers' Books Evidence Act, 1891, are on record; a copy of the application was duly served upon the Respondent, who, having replied to the demand notice, is aware of the proceedings; and, upon being called upon, the Respondent denied her liability.
- xiv. In terms of Section 99(4) read with Section 99(6)(b), the information furnished by the Applicant is exhaustive and supports the default; the Resolution Professional sought relevant information from the Respondent, which, despite reminders, was not furnished, and the Resolution Professional therefore relied upon the material annexed to



the application and the reply of the Corporate Debtor to the demand notice.

- xv. The Resolution Professional formed the opinion to recommend the application for approval, on the grounds that — **(a)** it is filed in the requisite Form C in terms of Rule 7(2) of the 2019 Rules, supported by the requisite fee and documents; **(b)** it satisfies the requirements of Section 95 of the Code; **(c)** the Financial Creditor has invoked the personal guarantee against the Respondent before this Tribunal; **(d)** the Respondent, having been served with the demand notice dated 25.03.2022, failed to repay the debt; **(e)** the application does not relate to any “excluded debt” under Section 79(15) of the Code; and **(f)** the Respondent is not eligible for a fresh start under Chapter II of Part III — and accordingly recommended that the application be ADMITTED under Section 100 of the Code and the insolvency resolution process be initiated against the Personal Guarantor.

Reply / Objections filed by the Respondent:

11. The Respondent, by her Affidavit in Reply, has resisted the petition and has also filed objections to the Report of the Resolution Professional. She denies the debt and the default, and contends that the petition is not maintainable, is coercive, and is an abuse of the process of law. Her objections to the petition are set out below.
- i. **Barred by limitation.** That the petition is hopelessly barred by limitation. Form C does not disclose the exact date of



default, the synopsis stating only that the default occurred “in or about 2018”, while the date of default as per the Record of Default is 29.08.2018; the petition, however, was filed on 21.07.2022, beyond the period of three years. It is further contended that the personal guarantee was, in any event, invoked earlier by notice dated 14.02.2019 (Annexure N); that limitation against a guarantor runs from the date of invocation of the guarantee; and that the Applicant, having invoked the guarantee in February 2019 and thereafter slept over its rights, has suppressed the said earlier invocation, so that the petition deserves to be dismissed as time-barred.

- ii. **No jurisdiction.** That Clause 31 of the personal guarantee confers exclusive jurisdiction on the courts at Mumbai, the document having been prepared by the Creditor at its own instance; consequently, this Tribunal does not possess the jurisdiction to entertain the present petition.
- iii. **Non-service of the Demand Notice.** That the Demand Notice in Form B was never served upon, or received by, the Respondent in the registered envelope; that service of the demand notice is a sine qua non for initiating the personal insolvency process; and that in the absence of valid service the petition is not maintainable.
- iv. **Guarantee inadmissible; process void.** That the Letter of Guarantee upon which the proceedings are founded is insufficiently stamped and unregistered, and hence inadmissible in evidence and incapable of being read; that the documents evidencing the guarantee are required to be duly



stamped, registered and validly executed before recovery can be pursued; and that, the documents being incongruous, the very institution of the insolvency resolution process is void ab initio.

- v. **Not a debt; not a Financial Creditor; no recovery through IBC.** That the alleged default debt is not a “debt” and the remedy sought lies outside the purview of the IBC; that the Applicant is not a Financial Creditor and has no cause of action against the Personal Guarantor; that the claim is imaginary, illusory and without basis; that the amount has been wrongly clubbed/consolidated (the adjudicated sum being Rs. 3,04,80,000/-); and that the IBC, not being a recovery forum, cannot be invoked to coerce payment from the Personal Guarantor.
- vi. **Report illegal — affidavit precedes the Report.** That the Report of the Resolution Professional is illegal and perverse, inasmuch as the affidavit filed in support of the Report bears the date 08.05.2024, whereas the Report itself is dated 22.05.2024 and was brought on record only on 29.07.2024. An affidavit sworn in support of a document cannot, in point of time, precede the very document it purports to verify, and the Report is on that ground liable to be rejected.
- vii. **Report barred by time.** That Section 99 of the Code requires the Resolution Professional to submit his report within ten days of his appointment. The Resolution Professional having been appointed on 18.04.2024, the Report was required to be filed by 28.04.2024, whereas it



bears the date 22.05.2024 and was placed on record only on 29.07.2024 — a delay of about three months. The Report having been filed in clear contravention of the statutory timeline, it deserves to be rejected.

- viii. **False explanation for the delay.** That the Report attributes the delay to the failure of the Personal Guarantor to furnish information; whereas, in fact, no information was ever sought from the Respondent, and where no information was sought there could be no delay on her part in furnishing it. The explanation offered for the delay is therefore false.
- ix. **Report prepared in secrecy; no reasons recorded.** That the Report has been prepared in complete secrecy, without seeking any information or documents from the Respondent; and that, contrary to Section 99(9) of the Code, the Resolution Professional has not recorded any reasons whatsoever for recommending admission of the application, and has failed to advert to the requirements of Section 99(8).
- x. **Appointment of the Resolution Professional void.** That a bare perusal of Form C reveals that, though the name of the Resolution Professional was proposed by the Applicant, the prerequisites of the proposal were not met, inasmuch as the signature of the Resolution Professional does not appear under the declaration made by him at page 30 of Form C; the appointment is, therefore, void and illegal.
- xi. **No averment on continuing guarantee / limitation.** That the Resolution Professional has made no averment with respect to the guarantee being a continuing guarantee, or as



to the point from which the period of limitation would run against a continuing guarantor; and that, for want of any such consideration, the stand taken in the Report is unsustainable.

Rejoinder / Written Submissions of the Applicant:

12. By its Written Submissions, the Applicant has replied to the objections as under:

- i. **Valid invocation.** That the Letter of Guarantee dated 14.09.2016 was validly invoked by the Loan Recall-cum-Invocation Notice dated 14.02.2019 in terms of Clauses 2 and 4 thereof, a written demand being conclusive proof of default.
- ii. **Within limitation.** That the guarantee being a continuing guarantee, and the claim having been diligently pursued through the arbitration culminating in the Award dated 18.02.2022, and the period from 15.03.2020 to 28.02.2022 standing excluded by the order of the Hon'ble Supreme Court, the petition filed on 21.07.2022 is within limitation; and that there is no suppression, the invocation notice itself having been annexed.
- iii. **Stamping curable.** That insufficiency of stamping is a curable defect not affecting validity, the proceeding under Section 95 being summary in nature.
- iv. **Jurisdiction.** That jurisdiction is governed by Section 60 of the Code, the Corporate Debtor being registered in



Madhya Pradesh, and a private contractual clause cannot oust the statutory jurisdiction of this Tribunal.

Analysis and Findings:

13. We have considered the application, the documents on record, the Reply and objections of the Respondent, the Report of the Resolution Professional and the Written Submissions of the Applicant, and have heard learned counsel for the parties.

- i. **Jurisdiction.** — The Corporate Debtor is registered with the Registrar of Companies, Madhya Pradesh, within the territorial jurisdiction of this Bench; the Respondent resides within jurisdiction; and the Letter of Guarantee dated 14.09.2016 was executed at Bhopal. Jurisdiction over an application against a personal guarantor is governed by Section 60 of the Code, and a private contractual clause conferring jurisdiction on the courts at Mumbai (Clause 31 of the guarantee) cannot override the statutory scheme, which has overriding effect under Section 238 of the Code. No corporate insolvency resolution process of the Corporate Debtor being pending, the maintainability of the petition against the personal guarantor before this Tribunal is not thereby affected. The objection to jurisdiction is rejected.
- ii. **Valid invocation of the guarantee.** — The Letter of Guarantee dated 14.09.2016 is an on-demand continuing guarantee; by Clauses 2 and 4 thereof the Respondent undertook to pay on demand, a written demand being conclusive proof of default. The guarantee was invoked by the Loan Recall-cum-Invocation Notice dated 14.02.2019



(Annexure N), in accordance with its terms, prior to the filing of the petition. Valid invocation is therefore established.

iii. **Limitation.** — This being the principal objection, we deal with it in some detail.

(a) **The date of default.** — The Corporate Debtor committed default on 29.08.2018, being the date of default stated in Part-III of Form C and reflected in the Record of Default of the information utility (Annexure X); and the outstanding liability had, prior thereto, been acknowledged in the Confirmation of Balance Letter dated 21.09.2017 (Rs. 2,93,26,913/-).

(b) **The date of invocation.** — The liability of the Respondent as personal guarantor was invoked by the Applicant's Loan Recall-cum-Arbitration Invocation Notice dated 14.02.2019 (Annexure N), issued in terms of Clauses 2 and 4 of the Letter of Guarantee dated 14.09.2016. It is from the date of such invocation and demand that the cause of action against the guarantor, and the period of limitation, would run.

(c) **The reckoning and the exclusion.** — By its order dated 10.01.2022 in *Suo Motu Writ Petition (Civil) No. 3 of 2020 (In Re: Cognizance for Extension of Limitation)*, the Hon'ble Supreme Court directed that the period from 15.03.2020 to 28.02.2022 shall stand excluded in computing limitation, and that where the limitation would have expired during that period, the party shall have ninety days from 01.03.2022 or, where the actual balance of limitation remaining with effect



from 01.03.2022 is greater than ninety days, that longer balance. The position on both reckonings — the date of default and the date of invocation — is tabulated below (the periods being computed on an approximate basis):

Particulars	From the date of default(29.08.2018)	From the date of invocation(14.02.2019)
Prescribed period (Article 137)	3 years	3 years
Date limitation would ordinarily expire	29.08.2021	14.02.2022
Falls within excluded window/suo moto period (15.03.2020 – 28.02.2022)	Yes	Yes
Period run before 15.03.2020	approx. 1 year 6 months	approx. 1 year 1 month
Balance of limitation remaining	approx. 1 year 5 months (limitation expires on: 15.08.2023)	approx. 1 year 11 months (limitation expires on:31.01.2024)
Date of filing of the petition	21.07.2022	21.07.2022
Whether within limitation	Yes	Yes

(d) **Conclusion on limitation.** — As is evident from the above, on either reckoning — whether from the date of default



or from the date of invocation of the guarantee — the balance period of limitation available with effect from 01.03.2022 was, in each case, greater than ninety days, and had not expired when the petition came to be filed on 21.07.2022. The petition is, therefore, within the period of limitation, and the objection fails on the Respondent's own least favourable reckoning.

(e) **Independent grounds.** — In any event, the liability was kept alive by the acknowledgements of balance and the revival letters (attracting Section 18 of the Limitation Act, 1963, and binding the Respondent as guarantor under Section 128 of the Indian Contract Act, 1872), and stood crystallised afresh by the Arbitral Award dated 18.02.2022, the Applicant having diligently pursued the arbitral proceedings between 2019 and 2022 and not, as alleged, slept over its rights. The plea of suppression is untenable, the invocation notice dated 14.02.2019 having itself been annexed to the petition (Annexure N). Accordingly, the objection of limitation is rejected, and the petition is held to be within limitation

iv. **Debt and default.** — The liability of the Respondent as personal guarantor stands adjudicated by the Arbitral Award dated 18.02.2022, which holds her (as Respondent No. 3) jointly and severally liable, her liability being co-extensive with that of the principal borrower under Section 128 of the Indian Contract Act, 1872. The existence of a debt and the occurrence of default are thereby established, read with the acknowledgements of balance and the demand notice. The



Respondent's bare denial, and her general pleas that the claim is “imaginary”, “not a debt” or that the IBC is a recovery forum, are without substance: The Applicant is an NBFC that disbursed a facility, the repayment of which was guaranteed by the Respondent and has since been adjudicated by an arbitral award; such a claim is plainly a “debt”, and the Applicant a creditor entitled to maintain the petition.

- v. **Quantum.** — We note that while the Demand Notice and Form C quantify the amount in default at Rs. 6,28,11,912/- with interest at 20.55% p.a. (as per the Applicant's Statement of Accounts), the adjudicated liability under the Award dated 18.02.2022 is the principal sum of Rs. 3,04,80,000/- with interest at the rates specified in the Award. For the purpose of the present order, the existence of debt and default is established; the precise quantum of the claim shall be determined at the stage of collation of claims by the Resolution Professional.
- vi. **Insufficiency of stamping.** — The objection that the guarantee is insufficiently stamped and cannot be read in evidence does not assist the Respondent. Proceedings under Section 95 of the Code are summary in nature and are confined to ascertaining default; insufficiency of stamping, if any, is a curable defect and does not render the guarantee void or extinguish the adjudicated liability. The objection is rejected.
- vii. **Service of the Demand Notice.** — The contention of non-service is contrary to the record. The Form B Demand Notice



dated 25.03.2022 (Annexure V), together with the tracking reports, establishes delivery to the Respondent on 06.04.2022 and 09.04.2022 at her addresses; the Award was likewise served on 03.03.2022. The objection is rejected.

viii. Objections to the Report of the Resolution Professional. —

(a) The delay in filing the Report beyond ten days does not vitiate it: the timeline under Section 99 is directory, and in any event the delay is explained by the Respondent's failure to furnish information; the delay is condoned and the Report, filed by way of interlocutory application, is taken on record.

(b) The contention that no reasons are recorded is not borne out; the Report sets out the grounds on which the recommendation for approval is made.

(c) As to the objection that the affidavit in support of the Report (08.05.2024) precedes the Report (22.05.2024), the same is, at highest, a curable irregularity in verification which does not go to the root of the matter or affect the substance of the Report, the Respondent having had, and availed, full opportunity to file her objections thereto

(d) The objection that the Resolution Professional's signature is absent at page 30 of Form C does not survive, the Resolution Professional's written consent in Form A dated 23.05.2022 being on record and his appointment having been duly confirmed by this Tribunal vide order dated 18.04.2024. The objections to the Report are, accordingly, rejected.



14. On an overall consideration, we are satisfied that the application is complete and in the prescribed Form C with the requisite fee; that it satisfies the requirements of Section 95 of the Code; that the debt is not an “excluded debt” under Section 79(15) and the Respondent is not eligible for a fresh start; that a debt is due and a default has occurred; and that the Resolution Professional has, upon examination, recommended approval. No ground for rejection is made out.

ORDER

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

- I. The present Application **CP/IB/43/2022** is hereby **ADMITTED** under Section 100 of the Code and the Insolvency Resolution Process stands initiated against the **Personal Guarantor i.e. Mrs. Manju Saurabh Garg.**
- 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. Rajesh Ramnani Insolvency Professional, having IBBI Registration No. IBBI/IPA-002/IP-N00993/2020-2021/13187 (AFA Valid upto 31-Dec-26) who was appointed as the Resolution Professional vide order dated **18.04.2024**, 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.

16. Accordingly, **CP(IB) 43 (MP) of 2022** filed under section 95 of IBC,2016 is **admitted** and the Insolvency Resolution process stands initiated against the Respondent/Personal Guarantor.

Sd/-

MAN MOHAN GUPTA
(MEMBER, TECHNICAL)

Deepti-Lra

Sd/-

BRAJENDRA MANI TRIPATHI
(MEMBER, JUDICIAL)