



NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.204
C.P.(IB)/7(MP)2022

Order under Section 95 IBC

IN THE MATTER OF:

Toyota Financial Services India Ltd
V/s
Vidhi Rajpal

.....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, AT INDORE

COMPANY PETITION (IB) NO. 7 OF 2022

(Under Section 95 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019)

IN THE MATTER OF:

Toyota Financial Services India Limited,

having its Registered Office at:

No. 21, Centropolis, 1st Floor, 5th Cross,

Langford Road, Shanti Nagar, Bangalore – 560025

(CIN: U74900KA2011FLC058752)

..... Applicant

Versus

Ms. Vidhi Rajpal,

R/o- 7, Triveni Colony, Indore (M.P.) – 452007;

Also at: 690-A, Tulsi Nagar, Gram Pilpiya Kumar,

Tehsil & District Indore, M.P. – 452007

..... Respondent

CORAM:

Shri. Brajendra Mani Tripathi, HON'BLE MEMBER (J)

Shri. Man Mohan Gupta, HON'BLE MEMBER (T)



Order Pronounced on: 10/09/2026

APPEARANCE:

For the Applicant: Mr. Yash Sampat, Adv

For the RP : Ms. Ayushi Patidar, PCA

For the Respondent : Mr. Nilesh P. Udernani, Adv

JUDGEMENT

1. The present application has been filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “Code”) read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, by the Applicant, Toyota Financial Services India Limited (CIN: U74900KA2011FLC058752) (hereinafter referred to as “Applicant/Financial Creditor”), through its Authorised Officer Sh. S. Sriram Iyer, for the purpose of initiating insolvency resolution process against Ms. Vidhi Rajpal (hereinafter referred to as “Respondent/Personal Guarantor”), Personal Guarantor of M/s Rajpal Abhikaran Private Limited (hereinafter referred to as “Corporate Debtor”), for default of an amount of Rs. 11,05,55,832/- (as on 26.03.2021) and further amounts that may fall due.

Submissions by the Applicant/Financial Creditor:

The averments made by the Financial Creditor in its Application are summarised hereunder:



2. It is submitted that the present application has been filed through the Applicant's Authorised Officer, Sh. S. Sriram Iyer, in terms of the Letter of Authority dated 24.10.2018 annexed as Annexure A-1.
3. It is submitted that in terms of the Dealer Finance Agreement and Deed of Hypothecation dated 29.05.2015 executed between the Applicant and the Corporate Debtor, M/s Rajpal Abhikaran Private Limited, the following credit facilities were periodically remitted/disbursed and kept at the disposal of the Corporate Debtor: (i) Inventory Funding for New Vehicles, for a maximum limit of Rs. 16,80,00,000/-, disbursed from 29.05.2015; (ii) Inventory Funding for spare parts and accessories, for a maximum limit of Rs. 2,80,00,000/-, disbursed from 10.06.2015; and (iii) Retail Term Loans, comprising a Loan Agreement dated 24.01.2017 with Rajpal Abhikaran for Rs. 8,41,900/-, and Loan Agreements dated 21.12.2013, 13.02.2015 and 18.06.2015 with Shri Rajesh Rajpal for Rs. 1,12,00,000/-, Rs. 15,35,000/- and Rs. 6,39,500/- respectively. Copy of the sanctioned letters is annexed as Annexure A-2.
4. It is submitted that the Respondent herein stood as personal guarantor for the repayment of the aforesaid loan facility vide Deed of Guarantee dated 02.11.2016, annexed as Annexure A-3. It is further submitted that apart from the Respondent, Mr. Rakesh Rajpal, Mr. Ashok Rajpal, Mr. Jatin Rajpal and late Mrs. Rekha Rajpal also stood as guarantors to the Corporate Debtor (the Corporate Debtor and the guarantors being hereinafter collectively referred to as "Borrowers").
5. It is submitted that the aforesaid loan facility was secured by way of charge/hypothecation over the vehicles funded by the Applicant, and further secured by depositing original title deeds of the property situated at Plot No.



7, Triveni Colony, Tehsil & District Indore, admeasuring 2400 Sq. Ft., standing in the name of Mr. Ashok Rajpal vide sale deed dated 29.04.1992. Copy of the memorandum of entry of deposit of title deed dated 02.11.2016 is annexed as Annexure A-4.

6. It is submitted that apart from the aforesaid secured asset, the Borrowers had also created security interest over four other properties, which were released by the Applicant against payment of Rs. 1,10,00,000/- (Rupees One Crore Ten Lakh only) vide letter dated 04.02.2019, annexed as Annexure A-5. It is submitted that the security interest was duly registered with the Central Registry on 02.11.2016, copy of which is annexed as Annexure A-6.
7. It is submitted that the Borrowers committed default in repayment of the aforesaid facility, and their account was accordingly classified as Non-Performing Asset on 17.11.2017 in terms of the applicable circular/guidelines issued by the Reserve Bank of India.
8. It is submitted that thereupon a sixty-day demand notice dated 02.11.2018 was served upon the Borrowers, as per the Track consignment record which was delivered on both the addresses of the borrower, dated 06/11/2018 and 10/11/2018 to which the Borrowers replied on 10.01.2019, and the Applicant, vide communication dated 18.01.2019, conveyed rejection of the said reply.
9. It is submitted that upon the Borrowers' failure to make repayment, the Applicant filed an application before the District Magistrate, Indore, for taking possession of the secured asset, whereupon the Ld. District Magistrate directed the Borrowers to hand over possession vide order dated 26.12.2020, annexed as Annexure A-7.



10. It is submitted that possession could not, however, be taken in view of the order dated 23.04.2021 passed by the Hon'ble High Court of Madhya Pradesh in Suo Motu Writ Petition No. 8820 of 2021, restraining dispossession in view of the Covid-19 pandemic.
11. It is submitted that this Hon'ble Tribunal has already admitted an application under Section 7 of the Code against the Corporate Debtor, M/s Rajpal Abhikaran Private Limited, vide order dated 26.03.2021, whereof the Corporate Insolvency Resolution Process has already been commenced. Copy of the said order is annexed as Annexure A-8.
12. It is further submitted that this Hon'ble Tribunal passed vide the order dated 18/09/25 has already admitted the application filed by state bank of India against the personal guarantors of the same Corporate debtor (Mr. Ashok Rajpal, Mr. Jatin Rajpal and Mr. Rakesh Rajpal) . It is submitted that the Borrowers have also filed a securitisation application, pending adjudication before the Ld. Debts Recovery Tribunal, Jabalpur.
13. It is submitted that in terms of Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, a fourteen-day demand notice dated 11.10.2021 was sent to the Respondent/Personal Guarantor, copy whereof is annexed as Annexure A-10.
14. The total debt (including interest and penalties) and the amount stated to be in default is Rs. 11,05,55,832/- as on 26.03.2021, and further amounts that may fall due. The date on which the debt is stated to have become due is 14.01.2019, being sixty days from the notice dated 02.11.2018 issued under



Section 13(2) of the SARFAESI Act, 2002, and the date of default is stated as 14.01.2019. The nature of the debt is stated in the Application as an unsecured debt.

Submissions in Resolution Professional's Report:

15. Mr. Amit Chopra, Resolution Professional (IBBI Reg. No. IBBI/IPA-001/IP-P00939/2017-18/11543), appointed vide order of this Tribunal dated 28.01.2022, having a valid AFA upto 31st December 2026, has filed his Report dated 28.06.2022 under Section 99 of the Code, the contents whereof are summarised hereunder:

- i. The Creditor, Toyota Financial Services India Ltd., had filed the application vide CP (IB)/7(MP)/2022 under Section 95(1) of the Code read with Rule 7(2) of the Personal Guarantor Insolvency Rules against the Personal Guarantor, Ms. Vidhi Rajpal, to Corporate Debtor M/s Rajpal Abhikaran Private Limited, on 16.12.2021.
- ii. This Tribunal had appointed Mr. Amit Chopra as Resolution Professional for the guarantor vide its order dated 28.01.2022 (Annexure 1).
- iii. The Resolution Professional was not aware of his appointment, as the said order was neither served by the Registry nor was any other communication received; it was brought to his notice only upon an email dated 20.05.2022 received from the legal counsel of the Applicant creditor, intimating his appointment and seeking submission of his report, by serving a copy of the order dated 06.05.2022 of this Tribunal (Annexure 2 Colly).



- iv. In accordance with Section 97(6) and Rule 9 of the Personal Guarantor Insolvency Rules, the Resolution Professional is to be provided a copy of the application by the applicant within three days of his appointment.
- v. Immediately on receipt of the communication from the creditor vide email dated 20.05.2022, the Resolution Professional referred to the order dated 28.01.2022 of this Tribunal appointing him.
- vi. An intimation in this regard was sent to the creditor through an email dated 23.05.2022, seeking a copy of the petition and details of the postal address, email address and contact number of the guarantor (Annexure 3).
- vii. The creditor provided the Resolution Professional with a copy of the petition along with necessary documents on 25.05.2022. Since the creditor was not in possession of the guarantor's email address/contact number, the Resolution Professional sent an intimation letter dated 25.05.2022 to the postal address of the guarantor as mentioned in the petition, intimating his appointment, apprising her of the moratorium in place, and seeking certain information for the purpose of his report (Annexure 4).
- viii. As per Section 99 of the Code, the Resolution Professional is required to examine the application under Section 94 or Section 95, as the case may be, within 10 days of his appointment and submit a report to the Adjudicating Authority recommending approval or rejection. Hence the Report.

Brief Background:

16. Ms. Vidhi Rajpal is a Personal Guarantor to the Corporate Debtor, M/s Rajpal Abhikaran Private Limited. The Resolution Professional has noted that the



Corporate Debtor is undergoing Corporate Insolvency Resolution Process, a petition under Section 9 of the Code having been filed by M/s Chandraudai Automobiles Private Limited, an operational creditor, which was admitted vide order dated 26.03.2021 in CP(IP) 6 of 2020 (Annexure 5).

17. On perusal of the application and supporting documents, it is evident that since 2015 the Corporate Debtor had entered into a Dealer Finance Agreement with the creditor for inventory funding of new vehicles, accessories and spare parts, revised from time to time, the details whereof are as under: Inventory funding facility , New vehicles: Rs. 1680.00 Lakhs; Spare parts: Rs. 280.00 Lakhs; Retail Term Loans , Rajpal Abhikaran Private Limited: Rs. 8.42 Lakhs; Rakesh Rajpal: Rs. 112.00 Lakhs; Rakesh Rajpal: Rs. 15.35 Lakhs; Rakesh Rajpal: Rs. 6.40 Lakhs.
18. Ms. Vidhi Rajpal stood as "Guarantor"v to the Corporate Debtor for the said facilities and executed a Deed of Guarantee dated 02.11.2016, duly signed by her along with other guarantors, for the overall limit in favour of the financial creditor guaranteeing repayment of the outstanding dues (Annexure 6).
19. Since the Corporate Debtor failed to repay the amount due to the creditors, the company is undergoing Corporate Insolvency Resolution Process under the Code.
20. The Creditor had issued a Demand Notice dated 09.10.2021 in respect of the total outstanding debt amounting to INR 11,05,55,832/- (Rupees Eleven Crores Five Lakhs Fifty-Five Thousand Eight Hundred and Thirty-Two only), inclusive of applicable interest and penalties. As per the consignment tracking



records, the said Demand Notice was duly delivered at both addresses of the Respondent on 16.10.2021 and 18.10.2021, respectively.

21. The Resolution Professional, after duly examining the petition and documents provided by the creditor, sought information/explanation/evidence from the personal guarantor as to: (i) whether the guarantees have been invoked by the beneficiaries/financial institutions; (ii) whether full payment has been made by the guarantor against the said invocation of personal guarantee; (iii) if yes, details of the payment made; (iv) if not, the amount of default; and (v) details of personal assets and liabilities as on the date of order of this Tribunal, i.e. 28.01.2022, or, if unavailable, the latest Net Worth Certificate of the guarantor.
22. The Resolution Professional had sent his first letter dated 25.05.2022 to the guarantor seeking the above information/explanation; however, no response was received from the guarantor (Annexure 4).
23. Subsequently, reminder letters were sent vide letter dated 10.06.2022, at two different addresses mentioned in the petition. One was returned undelivered; the other was successfully delivered to the address of the guarantor. Despite that, no reply was received from her. The Resolution Professional further took measures to contact the guarantor through the contact details mentioned in the account statements provided by the creditor, which was also not responded to (Annexure 7 Colly).
24. The guarantor having not responded and not provided any information/explanation sought, the Resolution Professional sought details of repayment of debt, if any, from the creditor vide email dated 18.06.2022. In



response, the creditor informed vide email dated 22.06.2022 that no repayment of debt has been made by the guarantor (Annexure 8 Colly).

Observation/Recommendation:

25. In view of the above stated facts and circumstances, and on further examining the documents available on record, the Resolution Professional is of the opinion that the application filed by the creditor, being CP(IB)/7(MP)/2022, is in compliance with the provisions of the Code, for the reasons recorded as below:

(a) The application filed by the creditor satisfies the requirement as set out in Section 95 of the Code;

(b) The Corporate Debtor, M/s Rajpal Abhikaran Private Limited, has committed default in repayment of the amount due to the creditors; no repayment has been made to the creditor for the amount due, which is confirmed by the creditor, and there is no evidence on record provided by the guarantor to negate the same;

(c) The applicant has invoked the personal guarantee against Ms. Vidhi Rajpal by issuing a notice under Section 13(2) of the SARFAESI Act, 2002 on 02.11.2018 directing her to pay the amount within 60 days from the date of notice; the personal guarantor failed to repay the amount in default within 60 days from the issue of the demand notice, and thereafter the applicant also issued a demand notice dated 09.10.2021 in Form-B as prescribed under Rule 7(1) of the Personal Guarantor Insolvency Rules to the Personal Guarantor, thus meeting the requirement set out in Section 95(4)(a) and (b) of the Code;



(d) Ms. Vidhi Rajpal has not provided any information/document to substantiate repayment of the debt to the creditor; the personal guarantor has therefore also committed default in repayment of debt demanded by the creditor after invocation of personal guarantee, which is confirmed by the creditor as well, in compliance with the requirement set out in Section 95(4)(b) and (c);

(e) The application was filed in Form-C along with a fee of INR 2,000/- as prescribed under Rule 7(2) of the Personal Guarantor Insolvency Rules, submitted as proof of payment of fees under Section 95(7) of the Code.

26. Consequently, the Resolution Professional, considering compliance with the provisions of the Code for admission of the petition, recommends acceptance of the application filed by the Creditor, Toyota Financial Services India Ltd., for initiation of Insolvency Resolution Process against Ms. Vidhi Rajpal, Personal Guarantor to Corporate Debtor M/s Rajpal Abhikaran Private Limited, under Section 100 of the Code.

27. In view of the facts narrated, the Resolution Professional has prayed that this Tribunal may be pleased to pass an order: (a) that the Insolvency Resolution Process be initiated against Ms. Vidhi Rajpal, Personal Guarantor to Corporate Debtor, under the order and directions of this Tribunal; (b) to accept the Report which contains the observations and suggestions to admit the application, under Section 99 of the Code, and admit the application; and (c) any other order/direction as this Tribunal may deem fit.

Reply by Respondent:



28. The Respondent, Ms. Vidhi Rajpal, has filed her Reply by way of Affidavit affirmed at Indore on 03.10.2024, raising objections to the Petition as well as to the Report dated 28.06.2022 filed by the Resolution Professional under Section 99 of the Code. The objections raised therein are summarised hereunder:

1. It is submitted that the Petition and the Report dated 28.06.2022 are false, frivolous, without any basis and in contravention of the provisions of the Code, and are liable to be rejected outrightly, as the details mentioned in the Petition are stated to be not true and correct. It is submitted that nothing in the Petition shall be construed as admitted by the Respondent save and except what is specifically admitted.
2. It is submitted that the Petitioner Bank has not approached this Tribunal with clean hands and has made false averments against the Respondent, and that the Petition is accordingly not maintainable and deserves to be dismissed with exemplary costs.
3. It is submitted that the captioned Petition is bad in law inasmuch as it suffers from the vices of *suggestio falsi* and *suppressio veri*.
4. It is submitted that the style and manner in which the Petition has been preferred is in absolute contravention of the principles and provisions of the relevant law, and that this Tribunal does not have jurisdiction to entertain and adjudicate the Petition.
5. It is submitted that the Petition has been preferred with no valid authority, inasmuch as the Letter of Authority executed in favour of Mr. S. Sriram Iyer (Annexure A-1), though executed by the MD and CEO of the Petitioner



Institution, has not followed the rules and provisions of the Companies Act for granting such authority and the said Letter of Authority is in contravention of the rules and regulations of the Code and has been executed as per the provisions and requirements of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, nowhere authorising the deponent to prefer a petition under the Insolvency and Bankruptcy Code, 2016 and that, even assuming without admitting its validity, the Letter of Authority is ambiguous and does not disclose proper authority in favour of the so-called Authorised Representative of the Petitioner.

6. It is submitted that the name and other particulars have not been properly disclosed in the Petition, rendering it incomplete and preferred without proper authority, and therefore not maintainable in law. Reliance is placed on the judgment of the Hon'ble NCLAT in M. Sai EswaraSwamy v. Siti Vision Digital Media Pvt. Ltd., Company Appeal (AT)(Ins) No. 706 of 2021, upholding the decision of the Hon'ble NCLT, Principal Bench, New Delhi dismissing an application under Section 7 of the Code for want of a Board Resolution authorising the applicant to file the application. It is submitted that the Petitioner has similarly failed to produce a Board Resolution authorising Mr. S. Sriram Iyer to file the captioned Petition.

7. It is submitted, without prejudice to the above objections, that the Petitioner has filed the captioned Petition under the garb of an alleged default by the Corporate Debtor, without annexing any relevant document showing invocation of guarantee against the Respondent substantiating the amount claimed to be due and payable by the guarantors upon default by the Corporate Debtor, and that the



Resolution Professional's conclusion recommending admission fails to consider this material defect. In this connection it is further submitted, inter alia, that:

7.1. no evidence of default is stated to have been established by the Petitioner, and the failure to place any document reflecting invocation of guarantee is submitted to be a material irregularity in the prerequisites for filing a petition under Section 95 of the Code;

7.2. a demand notice under Rule 7(1) of the Personal Guarantee Rules, which requires the Financial Creditor to state the amount in default and the date of default, cannot by itself be deemed to be invocation of guarantee;

7.3. execution of a Deed of Guarantee does not, ipso facto, render the Respondent liable under Part III of the Code unless the guarantee is invoked and a consequent default arises; that a contract of guarantee is an autonomous contract maturing into a binding obligation only upon its invocation; and that admission of the Corporate Debtor to CIRP does not mean the debt stands automatically proved against the guarantor in a Section 95 proceeding, the debt and default being required to be proved separately;

7.4. Clauses 3(a), 17 and 23 of the Deed of Guarantee itself (reproduced in the Reply) stipulate that liability to pay arises on the guarantors only upon a demand being made in the manner provided therein; and that from the Demand Notice dated 11.10.2021, the Form of Petition, and the Report dated 28.06.2022, it is stated to be abundantly clear that the Petitioner has not invoked the guarantee against the Respondent as per the terms stipulated under the Deed of Guarantee;



7.5. the Demand Notice dated 11.10.2021 is stated to be completely defective and not to fulfil the essential requirement under Section 95(4)(c) read with Rule 7 of the Personal Insolvency Rules, which can only be fulfilled once the Financial Institution has invoked the guarantee before proceeding with the demand notice, and that the Petitioner has also not proved service of the said Demand Notice upon the Respondent.

8. It is submitted, without prejudice to the above, that for the purpose of invocation of guarantee the Petitioner has relied upon a Demand Notice dated 02.11.2018 issued under Section 13(2) of the SARFAESI Act, 2002, which, in the Respondent's submission, would not tantamount to invocation of guarantee, being a notice issued by a Secured Creditor solely for the purpose of enforcing security interest, such that a right to initiate measures under the SARFAESI Act accrues in favour of the Secured Creditor upon failure, and does not create any foundation for initiating CIRP against the Respondent under the Code. In this connection it is further submitted, inter alia, that:

8.1. the said Demand Notice dated 02.11.2018 under Section 13(2) has been neither produced by the Petitioner along with the Petition under Section 95 of the Code nor with the Report filed by the Resolution Professional under Section 99 of the Code;

8.2. the Petitioner has incorrectly claimed the date of default as 14.01.2019 (stated to be 60 days after the purported Demand Notice) without producing the said notice or proof of its service, and that the Petition inconsistently mentions 14.01.2019 as both the date the debt became due and the date of default, so that, without an established default, the Demand Notice under Section 13(2) is rendered invalid;



8.3. the Demand Notice under Section 13(2) of the SARFAESI Act, 2002 is for the purpose of enforcement of security interest by the Secured Creditor and cannot be construed as a notice invoking guarantee under Section 95 of the Code;

8.4. the Petition cannot accordingly be said to be maintainable on the basis of the Demand Notice dated 02.11.2018.

9. It is submitted that the Report dated 28.06.2022 filed by the Resolution Professional under Section 99 of the Code is absolutely erroneous, baseless and contrary to the facts, and is stated to be nothing less than a reproduction of the contents of the Petition, without the Resolution Professional having confirmed the details and particulars mentioned in the Petition or independently verified the facts. It is submitted that the Resolution Professional appears to be biased against the Respondent and to have acted in dual capacity, verifying the details and valuations of the properties without applying an independent thought process.

10. It is submitted that the Report, which purports to verify and affirm the contents of the Petition, is misconceived and smacks of bias and malice; that the Petitioner Bank has already filed its claim for the entire dues before the Resolution Professional in the Corporate Insolvency Resolution Process of the Corporate Debtor; and that a resolution plan has already been approved by this Tribunal vide order dated 25.08.2022 passed in IA/12(MP)/2022 in CP(IB) 6 of 2020, of which subsequent events neither the Petitioner nor the Resolution Professional are stated to have apprised this Tribunal, which conduct is submitted to show that the present proceedings are an illegal and unlawful attempt to steal a march over the Respondent.



11. It is submitted that in view of the above stated irregularities committed by the Petitioner and the Resolution Professional, the Petition preferred by the Petitioner and the Report filed by the Resolution Professional deserve to be dismissed with exemplary costs, in the interest of justice.

12. The Respondent craves leave and liberty to file further affidavits to take appropriate legal and factual contentions as may be necessitated during the course of the proceedings.

Analysis & Observation:

29. The present application has been filed by Toyota Financial Services India Limited under Section 95 of the Insolvency and Bankruptcy Code, 2016 (“Code”) against Ms. Vidhi Rajpal, personal guarantor to M/s Rajpal Abhikaran Private Limited (“Corporate Debtor”), for an alleged default of ₹11,05,55,832 as on 26.03.2021, besides further interest and other amounts. The application is supported by the Dealer Finance Agreement, Deed of Hypothecation, sanction documents, Deed of Guarantee dated 02.11.2016, account-related documents and the demand notice issued to the Respondent.

30. The Corporate Debtor had availed inventory funding facilities for new vehicles, spare parts and accessories, as well as retail term loans. The Respondent executed the Deed of Guarantee dated 02.11.2016, thereby guaranteeing repayment of the amounts due to the Applicant. The execution of the guarantee is not specifically denied by the Respondent. Her principal objection is that the guarantee was never validly invoked in accordance with its contractual terms.



31.The Corporate Debtor admittedly committed default in repayment of the facilities and its account was classified as an NPA on 17.11.2017. The Applicant thereafter issued a demand notice dated 02.11.2018 under Section 13(2) of the SARFAESI Act, 2002 and subsequently issued a demand notice dated 11.10.2021 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 (“Personal Guarantor Rules”). The Corporate Debtor was also admitted into CIRP by order dated 26.03.2021.

32.The Respondent has challenged the maintainability of the application primarily on the following grounds:

- i. absence of valid authority in favour of the person who instituted the application;
- ii. failure to produce a separate and valid document evidencing invocation of the personal guarantee;
- iii. alleged invalidity of reliance upon the Section 13(2) SARFAESI demand notice as an invocation of guarantee;
- iv. failure to prove service of the demand notice dated 11.10.2021;
- v. alleged non-application of mind and bias on the part of the Resolution Professional; and
- vi. non-disclosure of subsequent developments, including approval of a resolution plan in the CIRP of the Corporate Debtor.



33.The objection regarding authority is not sufficient, in the facts available on record, to defeat the application. The Applicant has relied upon the Letter of Authority dated 24.10.2018 and the applicant has asserted that a Board Resolution authorising Mr. S. Sriram Iyer to institute the present proceedings has also been placed on record. . The Respondent has not placed any material demonstrating that the said authority has been revoked, declared invalid, or that the institution of the application was unauthorised by the Applicant. A technical objection as to the form of authorisation, without a specific challenge supported by contrary evidence, cannot override the substantive documents evidencing the debt, default and guarantee. It is also pertinent to note that as per section 21 of the companies act, 2013, any key managerial personnel of the company can sign the board resolution .

Section 21.Authentication of documents, proceedings and contracts.Effective from 12-09-2013

Save as otherwise provided in this Act,—

(a) a document or proceeding requiring authentication by a company; or

(b) contracts made by or on behalf of a company,

may be signed by any key managerial personnel or an officer an officer or employee of the company of the company duly authorised by the Board in this behalf.

Therefore the contention of the respondent that the Letter of Authority is ambiguous and does not disclose proper authority in favour of the so-called



Authorised Representative of the Petitioner is a technical one and is not maintainable.

34.The principal objection of the Respondent is that the Applicant has not independently established invocation of the guarantee and that the notices issued under the SARFAESI Act and the Code cannot be treated as valid invocation of the guarantee. However, the Applicant has specifically relied upon the Deed of Guarantee, the notice dated 02.11.2018, and the subsequent demand notice dated 09.10.2021. A proceeding under Section 95 is not maintainable merely because a person has signed a guarantee, the Adjudicating Authority must be satisfied that there is a debt, that the debt has become due, that the guarantee has been invoked or liability has otherwise crystallised, and that a default has occurred.

35.In the present case, however, the record indicates that the Applicant treated the Respondent as a co-obligant/guarantor and called upon her to discharge the outstanding liability. The demand notice dated 02.11.2018 was issued to the borrowers, including the guarantors, for repayment of the outstanding amount. The Applicant thereafter issued the statutory demand notice dated 11.10.2021 in Form B under Rule 7(1) of the Personal Guarantor Rules. The Respondent did not make payment in response to the demand notice. The Resolution Professional also specifically sought information from the Respondent regarding invocation of the guarantee, payments made, the amount outstanding and her assets and liabilities. Despite repeated communications, the Respondent neither furnished the information sought nor produced any material showing payment or discharge of the guaranteed debt.



36. The Respondent is correct that a notice under Section 13(2) of the SARFAESI Act is ordinarily issued for enforcement of security interest and cannot mechanically be treated as a statutory notice under the Code. Nevertheless, the nature of a communication has to be examined from its contents and the surrounding circumstances. The Applicant's case is not founded only on the Section 13(2) notice. It is supported by the Deed of Guarantee, the continuing default of the Corporate Debtor, the subsequent demand notice issued under Rule 7(1), the admitted non-payment and the Resolution Professional's verification.

37. The absence of a separate document bearing the heading "invocation of guarantee" is not, by itself, decisive if the Applicant's communications clearly demanded payment from the guarantor and asserted liability under the guarantee. The Deed of Guarantee must be read as a whole. If the guarantee deed permits the creditor to demand payment upon default of the borrower, a demand calling upon the guarantor to pay the outstanding dues may constitute invocation, even if the communication is not styled as a formal "invocation notice."

38. The Respondent has also disputed service of the demand notice dated 09.10.2021. However, the Resolution Professional's report records that the Respondent was approached at the addresses available on record and that repeated communications were sent. The Respondent subsequently entered appearance and filed a detailed reply. Accordingly, no prejudice is shown to have been caused by any alleged defect in service. The purpose of the statutory demand notice is to afford an opportunity to the guarantor to pay or contest the liability; that opportunity was in fact availed by the Respondent.



39. The report under Section 99 is not required to finally adjudicate disputed questions as in a civil suit. The Resolution Professional is required to examine the application, ascertain whether the statutory requirements are satisfied, consider the information available and recommend acceptance or rejection. In the present matter, the Resolution Professional considered the application and supporting documents, sought information from the Respondent, issued reminders, contacted her through the available details and obtained confirmation from the Applicant that no payment had been made. The recommendation cannot therefore be characterised merely as a mechanical reproduction of the application.
40. The allegation of bias is unsupported by any specific material. The Respondent has not identified any personal interest, procedural impropriety or factual manipulation by the Resolution Professional. The fact that the Resolution Professional relied upon the documents supplied by the Applicant, in the absence of any response or contrary material from the Respondent, does not by itself establish bias.
41. The Respondent has referred to the filing of the Applicant's claim in the CIRP of the Corporate Debtor and the subsequent approval of a resolution plan dated 25.08.2022. This is a relevant subsequent development and must be kept in view while determining the amount ultimately recoverable. However, approval of a resolution plan in the CIRP of the Corporate Debtor does not, by itself, extinguish the liability of a personal guarantor unless the plan or the applicable law has the effect of releasing or discharging such liability. In any event, the amount admitted or recovered in the Corporate Debtor's CIRP shall



necessarily be given due credit, and there can be no double recovery of the same debt.

42. The application is stated to have been filed in the prescribed form with the requisite fee. The debt and default are supported by the financing documents, the Deed of Guarantee, the Applicant's demand communications and the Corporate Debtor's default leading to CIRP. The Respondent has not produced any evidence of repayment, settlement, release, discharge, or satisfaction of the guaranteed debt.

43. On an overall consideration of the record, the objections raised by the Respondent do not displace the foundational facts established by the Applicant and noticed by the Resolution Professional. The material on record establishes, at least for the purpose of Section 100 of the Code, that:

- i. the Respondent executed a guarantee in favour of the Applicant;
- ii. the Corporate Debtor committed default in repayment of the financial facilities;
- iii. the Applicant demanded payment from the borrowers/guarantors;
- iv. the statutory demand notice under the Personal Guarantor Rules was issued;
- v. no payment was made by the Respondent; and
- vi. the Resolution Professional, after seeking the Respondent's response, recommended admission of the application.



44. The application is therefore fit to be admitted under Section 100 of the Code.

The admission will be subject to the statutory consequences under Part III of the Code, including the moratorium under Section 101. The Applicant and the Resolution Professional shall also ensure that any amount received or receivable in the CIRP of the Corporate Debtor is appropriately disclosed and accounted for so as to prevent double recovery.

ORDER

45. In view of the foregoing analysis and observations, this Tribunal passes the following order:

1. The application filed by Toyota Financial Services India Limited under Section 95 of the Insolvency and Bankruptcy Code, 2016, against Ms. Vidhi Rajpal, personal guarantor to M/s Rajpal Abhikaran Private Limited, is hereby **admitted** under Section 100 of the Code. Consequently, insolvency resolution process is initiated against the Respondent, Ms. Vidhi Rajpal, in her capacity as personal guarantor to the Corporate Debtor.
2. In view of the above, we pass the following order:
 - I. 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:
 - II. Any pending legal action or proceeding in respect of any debt be deemed to have been stayed; and
 - III. The creditors of the Personal Guarantor shall not initiate any legal action or proceedings in respect of any debt; and



- IV. The Personal Guarantor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;
- V. 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.
- VI. Mr. Amit Chopra, Resolution Professional, appointed in the matter, shall continue to act as the Resolution Professional and shall conduct the insolvency resolution process in accordance with the provisions of Part III of the Code and the applicable regulations.
- VII. 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.
- VIII. 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.



- IX. 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.
- X. 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.
- XI. 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.
- XII. In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he 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.



- XIII. 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.
- XIV. 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.
- XV. 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.
3. Accordingly, **CP(IB)/7(MP)/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)

Anushka Rawat-L.R.A.

Sd/-

BRAJENDRA MANI TRIPATHI
(MEMBER JUDICIAL)