NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – II
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, CHENNAI BENCH, HELD ON 16.10.2026 AT 10.30 A.M. THROUGH VIDEO CONFERENCING:

CORAM: SHRI. JYOTI KUMAR TRIPATHI, HON'BLE MEMBER (JUDICIAL)
SHRI. RAVICHANDRAN RAMASAMY, HON'BLE MEMBER (TECHNICAL)

APPLICATION NUMBER	**: IA(IBC)/1444/CHE/2024**
PETITION NUMBER	**: CP/188/IB/2022**
NAME OF THE APPLICANT	**: Tirumavalavan C K (RP) (K Raghavendra Rao)**
NAME OF THE RESPONDENT(S)	**: --**
UNDER SECTION	**: Sec 60(5) of IBC, 2016**

ORDER

Present: Ld. Counsel Mr. K. Bharath for the Applicant.

Ld. Counsel Ms. Varsha Jain for the Respondent.

Vide separate order pronounced in open court, **IA(IBC)/1444/CHE/2024** is taken on record and **CP/IB/188/(CHE)2022** is Allowed.

Sd/-
RAVICHANDRAN RAMASAMY
Member (Technical)

Sd/-
JYOTI KUMAR TRIPATHI
Member (Judicial)

jp

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

IBA/186/(CHE)/ 2022

(Filed under Section 95(1) r/w sections 96,97,99 & 100 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 7 of the National Company Law Tribunal)

IDBI BANK LIMITED
Represented by its Deputy General Manager,
NPA Management Group, #115, Anna Salai, P.B.No.805,
Saidapet, Chennai – 600 015.

… Financial Creditor/ Petitioner

Versus

VIJAYALAKSHMI R
No.6, 7 & 11/6, Arundale Road, Beach Kalakshetra Colony,
Besant Nagar, Chennai – 600 090.

… Personal Guarantor to Orchid Pharma Limited (CD)/ Respondent

And

IA(IBC)1406/(CHE)2024

In

IBA/186/(CHE)/ 2022

(Filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)

TIRUMAVALAVAN C. K.
Resolution Professional for Vijaya Lakshmi R,
137-H, NS Complex, Sathy Main Road, Saravanampattit,
Near Karur Vysya Bank, Opposite to Federal Bank,
Coimbatore, Tamil Nadu – 641 035.

… Applicant/ Resolution Professional

Along with

IBA/188/(CHE)/ 2022

(Filed under Section 95(1) r/w sections 96,97,99 & 100 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 7 of the National Company Law Tribunal)

IDBI BANK LIMITED
Represented by its Deputy General Manager,
NPA Management Group, #115, Anna Salai, P.B.No.805,
Saidapet, Chennai – 600 015.

… Financial Creditor/ Petitioner

Versus

K RAGHAVENDRA RAO
No.6, 7 & 11/6, Arundale Road, Beach Kalakshetra Colony,
Besant Nagar, Chennai – 600 090.

… Personal Guarantor to Orchid Pharma Limited (CD)/ Respondent

And

IA(IBC)1444/(CHE)2024

In

IBA/188/(CHE)/ 2022

(Filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)

TIRUMAVALAVAN C. K.
Resolution Professional for K. Raghavendra Rao,
137-H, NS Complex, Sathy Main Road, Saravanampattit,
Near Karur Vysya Bank, Opposite to Federal Bank,
Coimbatore, Tamil Nadu – 641 035.

… Applicant/ Resolution Professional

Order pronounced on 16th October 2026

CORAM

SHRI JYOTI KUMAR TRIPATI, MEMBER (J)

SHRI RAVICHANDRAN RAMASAMY, MEMBER (T)

Present
For Financial creditor: Pranava Charan, Advocate
For Personal Guarantor/ Respondent: Kotteswara Rao, Advocate
For Resolution Professional: B. Dhanaraj, Advocate

ORDER

(Hearing through hybrid mode)

The present Petition has been filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as Code IBC, 2016) read as rule 7(2) of IBC by **IDBI Bank Limited** (hereinafter referred to as Financial Creditor) for initiating Insolvency Resolution

Process against the respective Personal Guarantors, namely, **R. Vijayalakshmi and K. Raghavendra Rao** (hereinafter referred to as Personal Guarantor / PG of **Orchid Pharma Limited**).

2. Part I of the Applications shows the details of IDBI Bank Limited (Financial Creditor). The registered address is located at #115, Anna Salai, P.B.No.805, Saidapet, Chennai – 600 015.

3. Part II of the Applications shows the details of the Personal Guarantors/ Respondents, in respect of the credit facilities availed by the Corporate Debtor, Orchid Pharma Limited. The address of the PGs / Respondents is No.6, 7 & 11/6, Arundale Road, Beach Kalakshetra Colony, Besant Nagar, Chennai – 600 090.

4. Part III of the Application shows that Financial Creditor has given the value of total debt as Rs.2,56,29,67,958.16/- (Rupees Two Hundred and fifty six crore twenty nine lakh sixty seven thousand nine hundred and fifty eight rupees and sixteen paise) as on 01.05.2022 with further interest and charges there on and the date of default is specified as 31.03.2017.

5. Part – IV of the Application gives the details of the Resolution Professional and the Financial Creditor has proposed the name of Mr.

Sambasivan Kannan Reg No. IBBI/IPA-001/IP-P00755/2017-2018/11287/IP to act as Insolvency Resolution Professional.

***6. SUBMISSIONS OF THE APPLICANT*:**

6.1. It is submitted that the applications concern the personal guarantees furnished by the Respondents in respect of the financial facilities availed by the Corporate Debtor. The demand raised against the Personal Guarantors was stated to be Rs. 2,56,29,67,958.16 as on 01.05.2022.

6.2. It is submitted that various credit facilities, including Cash Credit, Term Loan Facility, Capital Term Loan facility and Funded Interest Term Loan, were sanctioned to the Corporate Debtor from time to time under sanction letters dated 13.01.2007, 27.10.2008, 30.12.2008, 18.09.2009, 15.03.2011, and 30.03.2012, and that the Respondents, as Personal Guarantors, undertook liability for repayment of the dues arising therefrom.

6.3. It is further submitted that the Corporate Debtor committed default in repayment of the loan facilities, the initial default having occurred on 31.03.2017. Thereafter, the Applicant issued a demand notice dated 31.07.2017 to the Corporate Debtor and the Guarantors calling

upon them to discharge the outstanding dues. Despite the demand notice, the default continued.

6.4. It is submitted that in accordance with the Resolution Plan approved by the Hon'ble NCLT on June 27, 2019, (upheld by the Hon'ble Supreme Court vide order dated 28.02.2020), Dhanuka Laboratories Ltd has taken over Orchid Pharma Limited and hence, only 23,89,755 shares pledged by R Vijayalakshmi Raghavendra Rao and 10,65,173 shares pledged by Raghavendra Rao in favour of SBI Caps Security Trustee as per Pledge Agreement dated 08.07.2014 and the guarantees provided by K Raghavendra Rao & R Vijaya Lakshmi vide Agreement dated 02.07.2014 are available.

6.5. It is submitted that the debt remains unpaid and the Personal Guarantor continues to be jointly and severally liable under the guarantees executed by the Personal Guarantors.

6.6. It is further submitted that they have relied upon, inter alia, the loan agreements, deed hypothecation, personal guarantee agreements, facility agreements, statement of accounts, demand notice and other supporting documents to establish the existence of the financial debt, execution of the personal guarantees, acknowledgment of liability, and the amount in default.

6.7. It is submitted that there is no legal bar or impediment under the Code for initiation of insolvency proceedings against the Guarantor, and all statutory requirements under Section 95 read with the Personal Guarantor Rules, 2019 have been duly complied with.

6.11. The Applicant has proposed Mr. Sambasivan Kannan Reg No. IBBI/IPA-001/IP-P00755/2017-2018/11287/IP, Insolvency Professional, as Resolution Professional, who has furnished his written consent and requisite declarations as mandated under the Code and Regulations.

***7. APPOINTMENT OF RESOLUTION PROFESSIONAL*:**

7.1. This Tribunal vide order dated 22.12.2023 appointed **Mr. Tirumavalavan C. K.** with registration number **IBBI/1PA-001/1P-P-02067/2020-2021/13400** and ordered to examine whether the company petition is as set out in Section 97(6) of IBC, 2016 and who after examining may recommend for the acceptance or rejection of the application.

8. REPORT OF THE RESOLUTION PROFESSIONAL:

8.1. Resolution Professional submitted the report dated 18.01.2024 before this Tribunal.

8.2. Further, it is stated that the report is being filed in compliance with Section 99 of the IBC Code. It is apparent that the report filed is regard to initiation of insolvency resolution process against the

Respondents/ PGs Vijayalakshmi R and K Raghavendra Rao, personal guarantors to Orchid Pharma Limited.

8.3. Observations of the report filed under Section 99 of the code are as follows:

***i. Details of debt*:**

No.	Particulars	
1	Outstanding Claim	Principle with Interest and other penalties as on 01.05.2022 is **Rs. 2,56,29,67,957.80/-** (Rupees Two Hundred Fifty Six Crores Twenty Nine Lakhs Sixty Seven Thousand Nine Hundred and Fifty Seven and Eighty Paise Only)
2	Documents establishing Personal Guarantor's Liability	1. Form of Demand Notice dated 31.07.2021. 2. Acknowledgment Card 3. Loan Agreement dated 13.11.2000, 02.01.2002, 09.02.2004, 17.03.2006, 16.05.2008, 23.12.2009, 15.02.2010 and 20.07.2010. 4. Deed of Hypothecation dated 13.11.2000, 27.12.2000, 02.01.2002, 09.02.2004, 30.08.2004, 02.06.2005, 17.03.2006, 16.05.2008, 30.06.2008, 15.02.2010, 20.07.2010, 18.03.2011. 5. Personal Guarantee executed by Shri K Raghavendra Rao dated 13.11.2000, 20.07.2010, 11.01.2011 and 18.03.2011. 6. Facility Agreement dated 27.12.2000, 25.01.2001, 02.06.2005, 20.07.2010 and 18.03.2011 7. Promissory Note dated 25.01.2001, 26.08.2004, 25.09.2008 and 15.02.2010. 8. Personal Guarantee dated 15.02.2010 executed by Shri. K. Raghavendra Rao. 9. Supplementary facility agreement dated 11.01.2011.

		10. Omnibus Counter Guarantee dated 11.01.2011. 11. Master Restructure Agreement dated 07.06.2014. 12. Security Trustee Agreement dated 07.06.2014. 13. Trust & Retention Account Agreement dated 02.07.2014. 14. Personal Guarantee dated 02.07.2014 executed by Mr Raghavendra Rao and Mrs. Vijayalakshmi Raghavendra. 15. Corporate Guarantee dated 02.07.2014 executed by Orchid Healthcare Pvt Ltd. 16. Amendment Agreement dated 04.07.2014 to the Master Restructure Agreement dated 07.06.2014. 17. Pledge Agreement dated July 08, 2014 18. Escrow account agreement 26.03.2018. dated 19. Revival Letter dated 27.03.2017. 20. Demand Notice dated 30.06.2018. 21. Notice of Invocation of personal guarantee dated 30.06.2018. 22. Statement of accounts. 23. Hon'ble National Company Law Tribunal order dated June 27, 2019 approving Resolution Plan of Dhanuka Laboratories Ltd for taking over Orchid Pharma Limtied.

ii. Compliance under Section 95 of IBC

Sec No.	Details of the Sections	Compliance
95 (4)	An application under sub-section (1) shall be accompanied with details and documents relating to - (a) the debts owed by the debtor to the creditor or	1. Total outstanding debt as on 01.05.2022 is Rs. 2,56,29,67,957.80/- (Rupees Two Hundred Fifty Six Crores Twenty Nine Lakhs Sixty Seven Thousand Nine Hundred and Fifty Seven and Eighty Paise Only) 2. The debt is in relation to the Guarantee extended by personal guarantor to the financial assistance availed by the Corporate

	creditors submitting the application insolvency for resolution process as on the date of application; (b) the failure by the debtor to pay the debt within period of a fourteen days of the service of the notice of demand; and 98. (c) Relevant evidence of such default or non-repayment of debt	Debtor Orchid Pharma Limited in the form of Term loan, Working Capital, Cash Credit and Bank Guarantees etc., from the Financial Creditor. 3. The Petitioner has annexed the documents evidencing the debts owned by the Debtor to the Creditor and the same is attached as Pg No. 41 to 970 of the main Application i.e. demand notice, annexures including NESL record of default, agreement, guarantee agreements, letter, acknowledgement of debt and security upto copy of recall notice, etc. More specifically demand notice dated 31.07.2021 with the annexures thereto pertains to debts owed by debtor as on date of application. 4. The Petitioner has served a demand notice to the debtor dated 31.07.2021 wherein the Petitioning Creditor had demanded to pay off the total outstanding debt from the debtor (respondent). The demand notice stating payment to be made within fourteen days from receipt of the notice and the proof of service of the said demand notice is attached in Pg No. 14-39 of the main Application wherein the demand notice was received by respondent herein on 09.08.2021. However, as on date of application which is 27.05.2022, the said amount as per the demand notice remained outstanding. 5. That, the Loan transaction details for the Loans availed as enclosed at Page 41-970 of the Original Petition u/s 95. Further record of default duly available with NESL is also enclosed as on Page 21-38. Further that the statement of accounts is enclosed as Pg. Nos. 878-970 of the main Application evidencing outstanding amount as on 25.05.2022 and demand notice dated 31.07.2021 was sent to the respondent for the repayment. Hence the

		default is established. Further that no reply for payment was received from respondent for the demand notice dated 31.07.2021.
95 (5)	The creditor shall also provide a copy of the application made under sub-section (1) to the debtor	The Applicant Creditor IDBI Bank Limited, through their counsel served a copy of the application to the Personal Guarantors.
95 (6)	The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.	Paid
95 (7)	The details and the documents required to be submitted under sub – section (4) shall be such as may be specified.	All necessary documents are produced.

8.4. The resolution professional in the report recommended to initiate insolvency resolution process against PGs/ Respondents and relevant portion is extracted below:

> *"**IA(IBC)1406/(CHE)2024:***
>
> *The Report filed under Section 99 of IB Code, in the matter of IDBI Bank Limited vs. Vijaya Lakshmi R (Personal Guarantor of Orchid Pharma Limited-) be taken on record and necessary directions towards acceptance of the application be given based on present Report in light of equity & Justice.*
>
> ***IA(IBC)1444/(CHE)2024:***

The Report filed under Section 99 of IB Code, in the matter of IDBI Bank Limited vs. K Raghavendra Rao (Personal Guarantor of Orchid Pharma Limited-) be taken on record and necessary directions towards acceptance of the application be given based on present Report in light of equity & Justice"

9. REPLY BY THE RESPONDENTS TO THE IRP REPORT:

9.1. It is submitted that the Respondents, being the Personal Guarantors and erstwhile/ suspended Managing Director and promoter of Orchid Pharma Limited, have opposed the applications.

9.2. It is submitted that the applications are barred by limitation. According to them, the default in the account of the Corporate Debtor occurred on 31.03.2017 and the account became NPA on the same date. They contend that the personal guarantees were last revived by a Revival Letter dated 27.03.2017 and were not thereafter renewed or supported by any balance confirmation or further revival letter. According to the Respondents, the guarantees therefore became time barred and infructuous and the applications filed on 27.05.2022 were beyond the prescribed period.

9.3. It is further submitted that under the Master Restructuring Agreement and the relevant CDR arrangements, SBI CAP Trustee was authorised to issue the demand on behalf of the CDR lenders. Since the default had occurred in March 2017 and the account had become NPA on

31.03.2017, according to the Respondents, the demand ought to have been issued by SBI CAP Trustee during the first quarter of the financial year 2017-18. The demand notice subsequently issued by the Petitioner is therefore alleged to be defective and time barred.

9.4. It is further submitted that the personal guarantees were required to be renewed once in three years and executed afresh, but no such renewal was obtained after 27.03.2017. The Respondents assert that they did not execute any balance confirmation or Revival Letter thereafter and consequently the Financial Creditor cannot seek to enforce the guarantees after expiry of the said period.

9.5. It is also disputed the amount claimed by the Financial Creditor. They state that the SBI CAP Trustee had relinquished the assets furnished by them as security and that the sale proceeds were distributed amongst the CDR lenders upon implementation of the resolution plan during 2020-2021. They further contend that the Financial Creditor had received Rs. 62,27,75,797 on 30.03.2020 upon liquidation of the Financial Debtor and another Rs. 40,28,764 from sale of shares held by the Respondents and erstwhile promoters, aggregating to Rs. 62,68,04,561, which amount was appropriated towards the claim.

9.6. It is submitted that Orchid Pharma Limited was taken over by Dhanuka Laboratories pursuant to a resolution plan dated 27.06.2019 and that the e-mail IDs associated with the Corporate Debtor were subsequently suspended. The Respondents therefore contend that there was no proper communication with them and that the RP proceeded with the report without receiving the requisite information and explanation.

9.7. It is further submitted that they challenge the RP's recommendation on the ground that the RP allegedly recommended acceptance without complete information from the Financial Creditor and the Personal Guarantors and, therefore, according to them, the report does not represent an independent consideration of their objections.

9.8. It is contended that their alleged non-compliance with the requirements referred to by the RP was neither wilful nor wanton and was attributable to the absence of communication following suspension of the relevant e-mail ID after approval of the resolution plan.

9.9. It is further submitted that reliance is placed on ***Siemens Financial Services Pvt. Ltd. v. Vinod Sehwag, NCLT, New Delhi***, to contend that Section 99 is intended to afford protection to the Personal Guarantor by enabling him to establish discharge/ payment of the debt and to dispute

the validity of the debt and therefore submit that the RP ought to have considered their objections before making the recommendation.

9.10. The Respondents have also relied upon ***Dilip B. Jiwrajka v. Union of India***, wherein, according to them, the Hon'ble Supreme Court held that the process before the RP under Section 99 is not an ex parte process and that the RP is required to consider the information or explanation furnished by the debtor before making the recommendation.

9.10. Reliance is also placed upon ***C.L. Sharma and Others v. Bank of Maharashtra and Others, NCLAT, New Delhi***, to contend that the RP can consider limitation and other jurisdictional facts while making his recommendation and that the Personal Guarantor is entitled to place objections and information before the RP.

***10. WRITTEN SUBMISSIONS OF THE FINANCIAL CREDITOR*:**

10.1. The Petitioner reiterates contentions advanced in the petition.

10.2. It is further submitted that they deny all the allegations set forward by the Respondents in their counter filed.

10.3. It is also submitted that the Petitioners have recovered a sum of Rs. 62,27,75,797 through Resolution Plan and a sum of Rs.40,28,764/- from the sale of shares. Despite the recoveries, the Respondent is still liable to pay the balance outstanding to the Petitioner bank.

10.4. It is submitted that according to Supreme Court judgement in ***State Bank of India v. V. Ramakrishnan*** it was held that the approval of a resolution plan under section 31(1) of the Code does not automatically result in the discharge of the guarantor. Instead, it may allow the creditors to continue their efforts to recover any remaining gap or shortfall in the amount owed to them from the corporate debtor by pursuing the guarantors.

11. FINDINGS OF THE TRIBUNAL:

11.1. We have heard the learned Counsel appearing for the Financial Creditor/ Petitioner, the learned Resolution Professional and the learned Counsel appearing for the Personal Guarantors and have perused the Applications filed under Section 95(1) and the Report submitted by the Resolution Professional under Section 99 of the Code, the objections/ replies filed by the Personal Guarantors and the other materials available on record.

11.2. Since the present Applications in CP(IB) No.186(CHE)/2022 and CP(IB) No.188(CHE)/2022 arise out of the same underlying financial transaction concerning M/s Orchid Pharma Limited and the Personal Guarantors are husband and wife, namely, Mrs. R. Vijayalakshmi and

Mr. K. Raghavendra Rao, both the matters are being considered together and disposed of by this common order.

11.3. It is not in dispute that the Financial Creditor, IDBI Bank Limited, has invoked the jurisdiction of this Adjudicating Authority under Section 95 of the Code seeking commencement of insolvency resolution process against the respective Personal Guarantors in respect of the debt arising out of the guarantees furnished by them in relation to the facilities availed by the Corporate Debtor. Pursuant to the order dated 22.12.2023, Mr. Tirumavalavan C. K. was appointed as the Resolution Professional for examining the Applications and submitting the Report contemplated under Section 99 of the Code.

11.4. The Resolution Professional, after examining the Applications and the material placed before him, has submitted the requisite Report recommending acceptance of the Applications. The Respondents have, however, raised several objections, principally with regard to limitation, the date of invocation/ revival of the guarantees, the authority of SBI CAP Trustee to issue the demand notice, the amounts already realised by the Financial Creditor, and the alleged non-consideration of their explanations and documents.

11.5. The Personal Guarantors have contended that the guarantees were last revived by the Revival Letter dated 27.03.2017 and were not thereafter renewed or acknowledged by them. According to them, the guarantee arrangements expired on 27.03.2020 and the Applications filed on 27.05.2022 are consequently barred by limitation. They have also questioned the demand notice issued by the Financial Creditor and contended that, under the Master Restructuring Agreement/CDR arrangement, SBI CAP Trustee was the appropriate authority to issue the demand notice.

11.6. The Personal Guarantors have further contended that substantial amounts had already been realised by the Financial Creditor, including an amount of Rs. 62,27,75,797/- received on 30.03.2020 and Rs. 40,28,764/- realised from sale of shares held by the Respondents and erstwhile promoters, aggregating to Rs. 62,68,04,561/-. It is their contention that these amounts ought to be duly accounted for while determining the subsisting liability.

11.7. The Respondents have also relied upon the judgment of the Hon'ble Supreme Court in ***Dilip B. Jiwrajka v. Union of India & Ors.*** dated 09.11.2023 and other decisions to contend that the Resolution Professional was required to afford them an effective opportunity to

furnish information and explanation concerning the debt and payments made by them. It is further contended that the Report could not have been submitted without properly considering their objections.

11.8. We have considered the aforesaid objections. At this stage, it is necessary to bear in mind the limited scope of examination contemplated under Section 99 of the Code. The Resolution Professional is required to examine the application, call for such further information or explanation as may be necessary and thereafter submit a Report recommending acceptance or rejection of the application, together with reasons. The Resolution Professional does not adjudicate upon disputed contractual or other contentious issues as a Civil Court would do.

11.9. The Hon'ble Supreme Court in ***Dilip B. Jiwrajka v. Union of India & Ors.*** has also clarified the nature of the process undertaken by the Resolution Professional under Section 99 and recognised that the Report submitted by the Resolution Professional is recommendatory in nature. The ultimate determination as to admission of the application remains with the Adjudicating Authority.

11.10. In the present case, the Resolution Professional has examined the Applications and has submitted his Reports recommending acceptance thereof. The objections raised by the Personal Guarantors have been

placed before this Adjudicating Authority and have been duly considered. The fact that the Respondents dispute the debt, limitation, invocation of the guarantees and the quantum of the amount cannot, by itself, result in rejection of the Applications when the statutory requirements for admission are otherwise satisfied on the material available on record.

11.11. The contention regarding limitation has been seriously urged by the Respondents. However, the question whether the Revival Letter, subsequent correspondence, acknowledgments, payments, enforcement of securities or other materials available on record have the effect of extending or otherwise affecting the period of limitation requires appreciation of the entire factual matrix. At the present stage, the objections raised by the Respondents do not persuade us to hold that the Applications are liable to be rejected outright, particularly when the Resolution Professional, upon examination of the material, has recommended acceptance.

11.12. Likewise, the amounts stated to have been realised by the Financial Creditor are matters which are required to be appropriately accounted for in determining the subsisting liability. Admission of the insolvency resolution process cannot be construed as a final adjudication that the

entire amount claimed in the Applications continues to remain outstanding notwithstanding the recoveries already made.

11.13. We also take note of the fact that the Corporate Debtor, M/s Orchid Pharma Limited, had undergone a resolution process pursuant to which the Respondents contend that the assets furnished by them were dealt with and amounts were realised by the Financial Creditor. These circumstances may have a bearing upon the ultimate determination of the liability and the claims to be dealt with in the course of the insolvency resolution process. They do not, however, constitute sufficient ground, at this stage, to reject the Applications which otherwise satisfy the requirements of Section 95 of the Code.

11.14. It is noted that U/S. 128 of the Indian Contract Act, 1872, when a default is committed, the Principal Borrower and Surety are jointly and severally liable to Creditor and the Creditor has the right to recover its dues from either of them or from both of them simultaneously. Section 128 of the Indian Contract Act, 1872 is reproduced hereunder:

> *"The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract."*

11.15. The Respondent is the Personal Guarantor of the Corporate Debtor for the Loan and credits which it availed from the IDBI/ Financial Creditor. The Corporate Debtor and Personal Guarantor failed to repay

the Loan after the issuance of Demand Notice. The liability of the personal guarantor is co-extensive with the corporate debtor, as expressly provided under section 128 of the Indian contract act 1872, as the personal guarantor's liability is through an independent contract. The Resolution Professional has also recommended for initiation of Insolvency Resolution Process against the Respondent/ Personal Guarantor.

11.16. Upon consideration of the Applications, the Report of the Resolution Professional, the objections of the Personal Guarantors and the material available on record, we are satisfied that the Applications under Section 95(1) of the Code fulfil the statutory requirements for admission. Accordingly, **CP(IBC)186(CHE)/2022** filed against **Mrs. R. Vijayalakshmi** and **CP(IBC)188(CHE)/2022** filed against **Mr. K. Raghavendra Rao** are liable to be admitted.

11.17. At the same time, we note that the insolvency resolution process of the Personal Guarantors has reached a stage where no repayment plan has been received for consideration in accordance with the provisions of the Code. The absence of a repayment plan renders continuation of the process in its present form untenable and calls for the consequential course contemplated under the Code.

11.18. However, as on date, no separate application seeking closure of the Personal Insolvency Resolution Process and commencement of bankruptcy proceedings against the respective Personal Guarantors has been filed before this Adjudicating Authority. Therefore, this Tribunal is not inclined to directly commence bankruptcy proceedings in the present Applications without there being a proper application before it seeking such consequential relief and without the statutory requirements applicable thereto being examined.

11.19. In view of the above admission of the present petitions, the Resolution Professional/ concerned applicant is directed to take necessary steps and file an appropriate application seeking closure of the Personal Insolvency Resolution Process and commencement of bankruptcy proceedings against the respective Personal Guarantors, in accordance with the provisions of the Code and the applicable Rules.

11.20. It is made clear that the question relating to commencement of bankruptcy proceedings shall be considered separately upon filing of the appropriate application and after examination of the statutory requirements applicable thereto. Nothing contained in this order shall be construed as an order commencing bankruptcy proceedings at this stage.

11.21. The Insolvency Resolution Process stands initiated against **Vijayalakshmi R and K Raghavendra Rao** viz. the Personal Guarantors/ Respondents in this petition. Further we hereby direct as follow: -

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

a. Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed, and

b. The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and

c. The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;

d. The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

ii. We hereby appoint **Mr. Tirumavalavan C. K.** as the Resolution Professional **(email Id: rvacas48@gmail.com)** and Reg.

No. **IBBI/1PA-001/1P-P-02067/2020-2021/13400** with valid **AFA** till **31.12.2026**.

iii. The Resolution Professional viz. **Tirumavalavan C. K.** is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Chennai Bench, inviting claims from all Creditors, within 21 days of such issue The notice under Sub Section (1) of Section 102(2) shall include: -

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

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

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

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

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

vi. The repayment plan may authorise or require the Resolution Professional to:

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

b. realise the assets of the debtor; or

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

vii. The repayment plan shall include the following, namely;

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

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

c. such other matters as may be specified.

viii. The Resolution Professional shall submit the repayment plan along with his report on the plan to this Authority within a

period of 21 days from the last date of submission of claims, as provided under Section 106.

ix. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons thereof. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of IBC, 2016. The date of meeting should not be less than 14 days or more than 28 days from the date of submission of the Report under subsection (1) of Section 106 of IBC, 2016, for which at least 14 days' notice to the creditors (as per the list. prepared) shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of IBC, 2016.

x. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of IBC, 2016 and submit the same to this Tribunal, copies of which shall be provided to the Debtor and the Creditors. It is

made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of IBC, 2016.

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

xii. The Financial Creditor(s) are directed to deposit Rs.2,00,000/- (Rupees Two lakhs only) to the bank account of the Resolution Professional within one week, towards his fees. This shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.

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

11. The issue of commencement of bankruptcy proceedings shall be considered by this Adjudicating Authority upon filing of the aforesaid application in accordance with law.

12. The present order shall not be construed as commencement of bankruptcy proceedings against either of the Personal Guarantors.

13. Accordingly, the Report submitted by the Resolution Professional in **IA(IBC)1406/(CHE)2024** and **IA(IBC)1444/(CHE)2024** under Section 99 is **accepted and taken on record** and the company petitions **CP(IBC)186/(CHE)2022** and **CP(IBC)188/(CHE)2022** stands **admitted**.

-Sd/-	-Sd/-
RAVICHANDRAN RAMASAMY	**JYOTI KUMAR TRIPATHI**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)