**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**ALLAHABAD BENCH, PRAYAGRAJ**

**CP (IB) NO.85/ALD/2025**

*(Under Section* 95 *of the Insolvency and Bankruptcy Code 2016, read with Rule 7 of the Insolvency & Bankruptcy (Application to Adjudicating Authority for initiating Insolvency Resolution Process under section 100 against Personal Guarantors to Corporate Debtors) Rules, 2019.)*

**IN THE MATTER OF:**

**ICICI BANK LIMITED**
Regd. office at ICICI Bank Tower,
Near Chakli Circle, Old Padra Road, Vadodara -390007,
Gujarat and a Zonal Office - ICICI Bank Limited,
TC-13, V-IV, Vibhuti Khand, Gomti Nagar-226010, through it's
authorized signatory, Email id- vidya.pandey@icicibank.com.

**……Financial Creditor/Applicant**

***Versus***

**DIVYA SINGH**
R/o-P1, Tower 5, Amrapali Grand, Block N, Zeta I,
Sakipur, Greater Noida, U.P.-201306,
Email id - 27CHAUHANDIVYA@GMAIL.COM.

**.....Respondent/Personal Guarantor of M/s Ossify Industries Pvt. Ltd.**

**Order Pronounced on: 04.11.2026**

***Coram:***

| | | |
|---|---|---|
| Sh. Praveen Gupta | : | Member (Judicial) |
| Sh. Ashish Verma | : | Member (Technical) |

***Appearances:***

| | | |
|---|---|---|
| Sh. Ankit Yadav, Adv. | : | For the FC/ ICICI Bank |
| Sh. Abhinav Mathur with<br>Sh. Gourav Asati,& Ms. Ishita Arora, Advs. | : | For the RP |
| Sh. Nidish Gupta with<br>Sh. Sahil Yadav, Advs. | : | For the PG |

## ORDER

**1.** This application has been filed on 09.06.2025 under Section 95 of Insolvency and Bankruptcy Code, 2016 (*hereinafter referred to as* "the IBC/Code") read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019 (*hereinafter referred to as "PIRP Rules")* by ICICI Bank Limited (*hereinafter referred to as* "Applicant / Financial Creditor"). The prayer made is to initiate the Personal Insolvency Resolution Process (hereinafter referred to as "PIRP") against of Ms. Divya Singh ("the Respondent/ Personal Guarantor"), the Personal Guarantor to the Corporate Debtor i.e., M/s Ossify Industries Private Limited. The Date of Default in respect of the Corporate Debtor, as mentioned in Part-III of the Petition, is 02.01.2024.

**2.** Part – I of the Application sets out the details of the Applicant having registered address at ICICI Bank Tower, Near Chakli Circle, Old Padra Road, Vadodara- 390007, Gujarat.

**3.** Part-II of the Application sets out the details of the Respondent/ Personal Guarantor having address at P1, Tower 5, Amrapali Grand, Block N, Zeta I, Sakipur, Greater Noida, Uttar Pradesh- 201306. The details of the Corporate Debtor, i.e., M/s Ossify Industries Private Limited, for which guarantee was given, is having its registered office at H 008, Site C, Surajpur Industrial

Area, Greater Noida, UP- 201308. Hence, this Tribunal has jurisdiction over this case under Section 60(3) of the IBC.

**4.** Part – III of the Application provides the particulars of the debt, which in the present case is Rs. 4,86,80,753.30/- (Rupees Four Crore Eighty-Six Lakh Eighty Thousand Seven Hundred and Fifty-Three Rupees and Thirty Paisa Only). As stated, the default is continuing in nature and the account was declared Non-Performing Asset "NPA" on 15.02.2024.

**5.** The Applicant/ Financial Creditor was approached by the Corporate Debtor for availing the cash credit facility and as submitted that it had sanctioned the cash credit facilities for an aggregate amount of Rs. 10,60,00,000/- vide Credit Arrangement Letter "CAL" No. CAL720065924940 dated 24.09.2021 and Facility Agreement dated 24.09.2021. The terms and conditions specified has been accepted by the Corporate Debtor for the sanctioned credit facilities for an aggregate amount of Rs. 10,60,00,000/- ("Previous Credit Limits").

**6.** The following documents have been executed in favour of the Financial Creditor:

| SL NO. | DOCUMENTS | Dated |
|---|---|---|
| 1. | Credit Arrangement Letter | 24.09.2021 |
| 2. | Facility Agreement | 24.09.2021 |
| 3. | Deed of Hypothecation | 24.09.2021 |
| 4. | Deed of Guarantee | 24.09.2021 |
| 5. | PDC declaration | 24.09.2021 |
| 6. | Mortgage declaration executed by Shri Anil Sharma for creation of mortgage on immovable property situated at Residential Plot No B-9, in Block-B, Rohtas Co-operative Housing Building Society Ltd., Village Shakurpur, Delhi. | 25.09.2021 |
| 7. | Mortgage declaration executed by Shri Sandeep Kumar for creation of mortgage on immovable property situated at Commercial Shop / Office no. No. – 302 (admeasuring total super area of 85.37 Sq. Mtrs), on the Third Floor in Tradex Tower – 1, Situated in Sector Alpha – 1, Greater Noida, Distt. Gautam Budha Nagar, Uttar Pradesh. | 16.11.2022 |

**7.** Thereafter, at the request of the Corporate Debtor and upon mutually agreed terms, the Previous Credit Limits were modified/reduced vide Credit Arrangement Letter "CAL" bearing reference no. CAL1253463109199 dated 22.12.2023. Consequently, the Cash Credit facility was modified to an aggregate amount of Rs. 4,60,00,000/- and thereafter, the duration was modified vide amendatory CAL bearing reference no. CAL1253463109199 dated 09.02.2024 ("Credit Limits").

**8.** In respect of the aforesaid credit facilities, as stipulated under the Deed of Guarantee dated 24.09.2021, the Respondent/Personal Guarantor agreed to be jointly and severally liable for the repayment of the amounts due and

payable by the Principal Borrower, i.e., the Corporate Debtor, in respect of the said facilities. The relevant excerpts of Deed of Guarantee are as follows:

"*WHEREAS:*

*(a) By facility agreement(s) and/or ISDA Agreement (including any confirmation executed thereunder) as specified in Schedule I (Facility Agreement(s)" as executed and/or amended from time to time) entered into between the Bank and the borrower(s), more specifically described in Schedule I hereof (the "Borrower(s)"), a copy of which has been made available to and read & understood by the Guarantor(s), the Bank has agreed to grant/extend to the Borrower(s) and the Borrower(s) has/have agreed to avail financial assistances/facilities (the "Facilities", which expression shall include all modifications, amendments, renewals thereto, from time to time up to the respective amounts specified in Schedule I hereof, on the terms and conditions contained in the Facility Agreement(s) and the other related transaction documents including all respective amendments made thereto from time to time (collectively the "Transaction Documents").*

*(b) One of the conditions for grant of the Facilities is that the Facilities together with all amounts whatsoever stipulated in fees, costs and/or payable under the Facility Agreement(s) by the Borrower(s) to the Bank (including principal, interest, additional interest, and expenses. indemnification amounts, any other monies including any increase as a result of revaluation/devaluation/fluctuation or atherwise in the rates of exchange of foreign currencies involved and all other payment obligations) (collectively, the "Guaranteed Obligations"), shall be*

*secured by, inter alia, guarantee from the Guarantor(s). The Guarantor(s) are executing this Guarantee for the said purpose.*

*(c) At the request of the Guarantor(s), the Bank has agreed to grant/extend the Facilities to the Borrower(s) and the Guarantor(s) has/ have agreed to execute these presents.*

*NOW THIS DEED WITNESSETH AS FOLLOWS:*

*1. The Guarantor(s) hereby jointly, severally, unconditionally, irrevocably and absolutely guarantee the Guaranteed Obligations to the Bank.*

*2. Subject to the terms Of this Guarantee, the Guarantor(s) unconditionally and irrevocably undertakes that upon occurrence of any default on the part of the Borrower(s) in payment / repayment Of any amount due and payable under the Facility Agreement(s) or in the Event Of Default (as defined under Facility Agreement) on the part of the Borrower(s) to comply with or perform any Of the terms, conditions and covenants in the Facility Agreement, the Guarantor(s) shall. (Notwithstanding any disputes between the Bank. the Guarantor(s) and/or the Borrower(s) (including the pendency Of any arbitration, administrative or legal proceedings), on first demand, without protest or demur, forthwith pay to the Bank all or any amount demanded by the Bank under the Facility Agreement and/ or the Guaranteed Obligations as if it were the principal debtor ("Demand"). The Guarantor(s)' liability hereunder shall be joint and several and co-extensive with the liability of the Borrower(s) and the Bank shall be entitled to act as if the Guarantor(s) is/are the principal debtor to the Bank. The Bank may make partial demands under this Guarantee and there can be multiple partial demands. In the event Of failure by the*

*Guarantor(s) to make payment under the Guarantee or breach of any terms of this Guarantee, the Guarantor(s) shall pay additional interest at the same rate/s as specified in relation to the Facilities for the Borrower(s) till receipt of the aforesaid amounts by the Bank to its satisfaction.*

*..*

*5. The Guarantor(s) agree that the Guarantor(s) shall indemnify the Bank, as an independent and primary obligation, against all losses, damages, costs, claims and expenses whatsoever which the Bank may suffer, pay or incur by reason of or in connection with any default on the part Of the Borrower(s) and/or the Guarantor(s) in performance Of their respective obligations under the Transaction Documents and this Guarantee, including legal proceedings taken against the Borrower(s) and/or the Guarantor(s) for recovery of the moneys.*

*..*

*20. This Guarantee is a continuing guarantee and shall remain in full force and effect till such time the Borrower(s) repays / pays in full the Facilities together with all interest, commission, costs, charges and all other monies and expenses whatsoever stipulated in or payable under the Transaction Documents, regardless of any intermediate payment or discharge in whole or in part. The enforcement of this Guarantee in part by the Bank, any reason whatsoever, shall not amount to discharge of the obligations of the Guarantor(s) under this Guarantee to the extent of the balance (unenforced) amount(s) of the Guarantee."*

**9.** Thereafter, the loan amounts were disbursed to the Corporate Debtor from time to time. However, the Corporate Debtor in disregard to their contractual obligations under the facility agreement, failed and neglected to comply with

the terms and conditions and thereby failed to fulfill their obligations of repaying the credit facilities and such failure on their part constituted 'event of default' as per the facility agreement. The relevant clause 7 of the Facility Agreement dated 24.09.2021 is reproduced hereunder:

> *"7. EVENTS OF DEFAULT*
>
> *Without prejudice to any rights or remedies that may be available to the Bank under the Transaction Documents or otherwise, on the occurrence of an Event of Default or if the Overall Limits are not renewed beyond the validity period specified in the CAL or if the Borrower has not availed of or drawn from the Facilities by the aforesaid validity period, the Bank may, by a notice in writing to the Borrower, exercise any right, power or remedy permitted to it by law, including by suit, in equity, or by action at law, or both, or otherwise, whether for specific performance of any covenant, condition or term contained in this Facility Agreement or for an injunction against a violation of any of the terms and conditions of this Facility Agreement, or in aid of the exercise of any power or right granted in this Facility Agreement and/or as a creditor."*

**10.** Consequently, owing to such default, the loan account of the Corporate Debtor was classified as NPA on 15.02.2024 and intimation was duly given to the Corporate Debtor by letter dated 02.04.2024. However, the Corporate Debtor made part payments of Rs. 97.92 lakhs on various dates 16.02.2024, 23.02.2024, 01.03.2024, 07.03.2024, 02.08.2024 & 17.08.2024 which were adjusted against outstanding dues however, a substantial portion of the debt remains due and payable.

**11.** Subsequently, the composite Loan Recall Notice and Invocation of Personal Guarantee in relation to the Credit facilities was issued on 29.04.2024 and consequently, the guarantee of the present Respondent/Personal Guarantor was invoked. The relevant excerpt is reproduced hereunder:

> *"8. In light of the above, the Bank issues this Notice to hereby call upon and demand the Obligors to pay, jointly and/or severally, within a period Of 7 (seven) days from the date Of receipt Of this notice, a sum aggregating to (Rupees Four Crore Eleven Lacs Three Thousand Ninety Four and Paisa Thirty Only) outstanding as on April 01, 2024, the particulars of which are set out in Annexure IV hereto, together with, applicable interest, additional interest, premia, costs, charges, etc. thereon at the contractual rates upon the footing Of compound interest until payment/ realization of the outstanding dues. That vide the present Notice ICICI Bank is also invoking the personal guarantee(s) executed by the Personal Guarantors, as detailed under Annexure 111-(A) and Annexure 111-(B), in respect Of the Credit Facilities."*

**12.** After the classification of the loan accounts of the Corporate Debtor/Principal Borrower as NPA, the Applicant /Financial Creditor issued a Notice dated 24.05.2024 under Section 13(2) of the SARFAESI Act, 2002 to the Corporate Debtor/Principal Borrower as well as to the Personal Guarantors, demanding a total outstanding payment of Rs. 4,18,87,051.30/- as on 01.05.2024 within 60 days from the date of notice.

**13.** The Financial Creditor, vide notice dated 03.06.2024, communicated its intent to initiate insolvency proceedings against the Corporate Debtor, to which the latter filed a Reply on 06.06.2024. Subsequently, the Financial Creditor issued a rebuttal dated 02.08.2024, categorically denying and rejecting the contentions raised by the Corporate Debtor in the said Reply. Thereafter, the Corporate Debtor propounded a settlement proposal of Rs. 3.5 Crores, which was expressly declined by the Financial Creditor vide a letter dated 31.08.2024.

**14.** Consequently, as the Corporate Debtor failed to pay the outstanding debt pursuant to the statutory demand notice, and the settlement proposal being rejected, the Financial Creditor further resorted to its legal remedies for recovery. Accordingly, the Financial Creditor instituted recovery proceedings by filing O.A. No. 479 of 2024 before the Learned Debt Recovery Tribunal-II, New Delhi, under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993, which is pending adjudication.

**15.** Thereafter, the Applicant issued a Demand Notice dated 27.02.2025 in Form B under Rule 7(1) of PIRP Rules, to the Respondent/Personal Guarantor, calling upon Ms. Divya Singh to jointly and severally pay the outstanding sum of Rs. 4,64,17,543.30/- as on 03.02.2025 with further interest due to the Corporate Debtor.

**16.** The Personal Guarantor, however, also failed to clear the outstanding debt due to the Applicant within 14 days from the receipt of the Demand Notice in Form B, as mandated under the IBC.

**17.** Consequently, the Application under Section 95 of the Code read with Rule 7(2) of PIRP Rules has been filed by the Applicant/ Financial Creditor against the Respondent Personal Guarantor with a prayer to initiate PIRP against the Respondent/ Personal Guarantor.

**18.** On filing of the Application under Section 95 on 09.06.2025, this Tribunal, vide order dated 12.08.2025, appointed Mr Anil Kohli with Registration No. IBBI/IPA-001/IP-P00112/2017-2018/10219, as Resolution Professional and ordered him to examine the Company Petition in terms of Section 99(6) of IBC and recommend on acceptance or rejection of the application, as the case may be.

## REPORT BY RESOLUTION PROFESSIONAL

**19.** The Resolution Professional (hereinafter referred as 'RP') has filed an Interlocutory Application bearing IA No. 582/2025 on 23.08.2025 for submitting a report under Section 99(1) of the Code.

**20.** The RP submitted his report dated 23.08.2025 under Section 99 before this Tribunal with the following prayers:

> *"i. To allow the instant Application and take on record the Report under Section 99 of the IBC filed by Applicant/RP in compliance with order dated 12.08.2025 passed by the Hon'ble Tribunal;*

*ii. Pass any other order/ direction/ relief (s) as this Hon'ble Tribunal may deem fit in the interest justice, equity, and good conscience."*

**21.** Further, it is stated that the report is filed after complying with the procedure provided in the Section 99 of the Code. It is apparent that the report is filed recommending initiation of PIRP against the Personal Guarantor, Ms. Divya Singh.

**22.** A perusal of the Report filed under Section 99 of the Code , it is found that the following observations have been submitted in the Report:

| Requirements under Section 95 of IBC | Compliance Status |
|---|---|
| Section 95(1) - A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application. | **Yes** Financial Creditor/ICICI Bank has filed the application itself. |
| Section 95(2) - A creditor may apply under sub-section (1) in relation to any partnership debt owed to him for initiating an insolvency resolution process against— (a) any one or more partners of the firm; or (b) the firm. | **Not Applicable** |
| Section 95(3) - Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the Adjudicating Authority in which the first mentioned application is pending for adjudication and such Adjudicating Authority may give such directions for consolidating the proceedings under the applications as it thinks just. | **Not Applicable** |

| | |
|---|---|
| Section 95(4) - An application under sub-section (1) shall be accompanied with details and documents relating to—<br>(a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;<br>(b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and<br>(c)relevant evidence of such default or non-repayment of debt. | **Yes**<br>Financial Creditor has annexed necessary details & documents with the captioned petition |
| Section 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. | **Yes** |
| Section 95(7) - The details and documents required to be submitted under sub-section *(4)* shall be such as may be specified. | **Yes**<br>Financial Creditor/ICICI Bank has annexed necessary details & documents with the captioned petition. |

| **Requirement u/s 99 of IBC** | **Compliance status** |
|---|---|
| Section 99 (2) -<br>Where the application has been filed under section 95, the resolution professional may require the debtor to prove repayment of the debt claimed as unpaid by the creditor | In compliance with Section 99(2) of the Code, the Resolution Professional had informed the Personal Guarantor vide letters & emails dated 14.08.2025 & 18.08.2025. In the said letters and emails, the Applicants requested the Personal Guarantor to provide proof of repayment of the debt claimed by the Financial Creditor. |
| Section 99 (3) -<br>Where the debt for which an application has been filed by a creditor is registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt. | In compliance to section 99(3) the debt is duly registered with the information utility therefore, Divya Singh/Personal Guarantor being debtor is not entitled to dispute the validity of the same. For the sake of brevity, it is further stated that a bare perusal of NESL Form-D would reveal that the financial debt has been authenticated by the Corporate Debtor as of 15.01.2024. |

| | |
|---|---|
| Section 99(4) of the Code read with Section 99(6)(b) of Code | The information provided by the Financial Creditor along with the captioned petition was exhaustive. The Financial Creditor has duly furnished the information requested by the Applicant, including the bank statements for the period from February 2024 to August 2024, vide reply to the email dated 21.08.2025. A copy of the said email and the corresponding reply is annexed herewith and marked as **Annexure-6.** |
| Section 99(5)<br>The person from whom information or explanation is sought under sub-section (4) shall furnish such information or explanation within seven days of receipt of the request. | The Applicant sought information from the Personal Guarantor, Ms. Divya Singh, vide letter dated 14.08.2025 & 18.08.2025 and emails dated 14.08.2025 & 16.08.2025. However, no reply was received by Applicant from Personal Guarantor. In contrast, the Financial Creditor has duly furnished the information requested by the Applicant, including the bank statements for the period from February 2024 to August 2024, vide reply to the email dated 21.08.2025. |

**23.** The RP in his Report recommended to initiate PIRP against Ms. Divya Singh, the Personal Guarantor and the relevant portion is extracted below:

> "*27. That pursuant to Section 99(7) & 99(9) of the IBC, the Applicant recommends for acceptance of the captioned petition filed by Financial Creditor/ ICICI Bank u/s 95(1) of the IBC read with Rule 7(2) of the IBBI (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 seeking initiation of Personal Insolvency Resolution Process of Ms. Divya Singh, who is personal guarantor of the Corporate Debtor in respect of outstanding financial debt of Rs. 4,86,80,753.30 (Rupees Four Crore Eighty-Six Lakh Eighty Thousand Seven Hundred Fifty-Three and Thirty Paise only)…"*

**24.** After filing of the above report of RP, a copy of the same was served to the Respondent/Personal Guarantor. Thereafter, vide order dated 15.09.2025, this Tribunal directed the Respondent to file its reply/objections, if any, to the RP's report within a period of ten days. Subsequently, vide order dated 15.09.2025, this Tribunal took the RP's report on record subject to just exceptions.

**REPLY/ OBJECTIONS OF THE RESPONDENT/ PERSONAL GUARANTOR**

**25.** After looking to the continued failure on the part of the Personal Guarantor in filing the reply, this Tribunal vide order dated 03.02.2026, granted one more opportunity to the Personal Guarantor to file the reply, subject to the imposition of a cost of Rs. 15,000/- to be deposited in the Prime Minister's National Relief Fund. Pursuant thereto, the Respondent/Personal Guarantor has placed the reply on record, wherein she has comprehensively denied the averments made by the Applicant/Financial Creditor as well as the findings of the RP in the Report filed under Section 99 of the Code, and submits as follows:

**a.** The Respondent at the outset contends on the ground of maintainability of the present petition and states that the present Application does not appear to comply with the statutory mandate under Section 95(4)(b) of the IBC, read with Rule 7 of the PIRP Rules. The record indicates that the Demand Notice in Form B, has been issued to Mr. Sandeep Kumar rather than the

Respondent/Personal Guarantor in the present case i.e., Ms. Divya Singh. Consequently, the prerequisite of serving a valid demand notice upon the Personal Guarantor remains unfulfilled, raising preliminary concerns regarding the maintainability of the Application.

**b.** The Respondent further contends that the report filed by the RP under Section 99 of the Code lacks independent application of mind. The RP is statutorily required to examine the application to ascertain the existence of default. However, it is contended that the RP has merely adopted the figures and dates provided by the Financial Creditor, without independently verifying the material discrepancies on record, particularly the validity of the Demand Notice and the exact date of default.

**c.** It is also contended that there are inherent contradictions regarding the date of default in the pleadings. While Part III of the Application states the date of default as 02.01.2024, it is simultaneously pleaded that the Corporate Debtor's account was classified as NPA on 15.02.2024. Furthermore, the RP's report places reliance on a NeSL Information Utility certificate dated 15.04.2024. It is submitted that reliance on a NeSL certificate predating the alleged NPA date of 15.02.2024 presents a factual inconsistency that fails to establish the occurrence of default.

**d.** The Respondent contends that the underlying debt arises from a Cash Credit Facility, wherein no default exceeding the 90-day parameter has occurred. The classification of the account as NPA on 15.02.2024 is contested based on the Financial Creditor's own correspondence. Specifically, an email dated 16.02.2024 reflects that the Financial Creditor sought and obtained the Corporate Debtor's

consent to liquidate a Fixed Deposit to adjust an interest outstanding of Rs. 10,72,176/-. Additionally, an email dated 28.02.2024 from the Financial Creditor explicitly states that the account "shall be declared as NPA tomorrow" if certain renewal documents were not submitted. These communications prima facie indicate that the account had not been classified as NPA on the alleged date of 15.02.2024.

**e.** It is further placed on record that a separate Application under Section 7 of the Code filed by the Financial Creditor against the Principal Borrower is currently pending adjudication before this Tribunal, wherein the wrongful classification of the NPA account is already under challenge. Further, parallel recovery proceedings, including an Original Application, are pending before the DRT, Delhi and facts require careful consideration, hence, the present Section 95 Application ought not to be utilized as a parallel recovery mechanism.

**f.** The Respondent submits that the Corporate Debtor remains a commercially viable going concern, generating a reported turnover of Rs. 70.06 Crores and a net profit of Rs.1.14 Crores in FY 2023-24, while actively maintaining its workforce and statutory compliances. Relying on the settled jurisprudence in matter of *Edelweiss Asset Reconstruction Company Ltd. Vs. Takshashila Heights India Pvt. Ltd., [ CP(IB) No. 104 of 2024*], *passed by NCLT Ahmedabad Bench* it is reiterated that the provisions of the IBC are intended for resolution and not for debt recovery. In light of the Corporate Debtor's solvency and the disputed nature of the default, it is submitted that the initiation of insolvency proceedings against

the Personal Guarantor may not align with the core objectives of the Code.

## FINDINGS OF THE TRIBUNAL

**26.** We have heard the submissions made by the Learned Counsel for the Applicant, RP, Respondent/ Personal Guarantor and perused the report submitted by the RP. After consideration, the main issues to be decided are as follows:

**I.** Whether the application is filed within the period of limitation.

**II.** Whether there exists a debt and default as required under Section 95 of the IBC.

**27.** As regards the Issue (I) of limitation, the date of default as mentioned in Part III pertains to 02.01.2024, and the Principal Borrower/Corporate Debtor was classified as NPA on 15.02.2024. Further, the Personal Guarantee was invoked vide the composite Loan Recall Notice and Invocation of Guarantee dated 29.04.2024 whereby the outstanding debt was recalled as observed in Para 11 hereinabove. Furthermore, the statutory Demand Notice issued under Section 13(2) of the SARFAESI Act, 2002, explicitly anchors upon the aforementioned Loan Recall Notice, thereby reiterating the formal invocation of the guarantee and substantiating the co-extensive liability of the Personal Guarantor towards the outstanding dues.

**28.** Since, no payment was made thereafter by the Corporate Debtor/Personal Guarantor, the Applicant, owing to the continued default in repayment of the outstanding debt, invoked the personal guarantee on 29.04.2024 and

filed the present Application on 09.06.2025, which is well within the period of three years prescribed under Article 137 of the Limitation Act, 1963, applicable to proceedings under the IBC. Also, the invocation of the guarantee of the Personal Guarantor is within the three years of the default committed by the Corporate Debtor/Principal Borrower in repaying the loan.

**29.** Having regard to the above, we are satisfied that the Application is filed well within limitation and is maintainable in law.

**30.** As regards the Issue (II) of debt and default, the report filed by the RP under Section 99 and material submitted by the Financial Creditor under Section 95 have been considered along with the Reply to the said report filed by the Personal Guarantor.

**31.** As per the submissions and records placed before us through the present Application filed under Section 95, it is evident that the Personal Guarantor, viz., Ms. Divya Singh, executed personal guarantee in favor of the Financial Creditor through Deed of Guarantee to Finance Agreement dated 24.09.2021 thereby securing the loan facilities availed by the Corporate Debtor/Principal Borrower. The relevant clause of the Deed of Guarantee as already reproduced in Para 8 hereinabove stipulates the joint and several liability of the Respondent/Personal Guarantor along with the Corporate Debtor/Principal Borrower in respect of the obligations secured thereunder.

**32.** The record further reflects that the Corporate Debtor failed to maintain financial discipline and defaulted on clearing the outstanding dues to the Financial Creditor despite its negotiations and correspondences made in this regard with the Financial Creditor. The factum of existence of debt and default as per Section 95(4)(c) is duly substantiated by the Record of Default issued by the NeSL. It is also worth noting that the said RoD is "**Authenticated**", which means the default on being enquired by the NeSL after it was informed to it, was confirmed by the Corporate Debtor, and therefore the same being now disputed before this Tribunal can be said to be only an afterthought. The relevant excerpt of NeSL records is reproduced hereunder:

ANNEXURE No-7

179

NeSL NATIONAL E-GOVERNANCE SERVICES LIMITED

**FORM D**

**RECORD OF DEFAULT(RoD)**

*(Issued By information utility under sub- regulation (4) of regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017)*

This Record of Default is issued to the Financial Creditor M/s ICICI BANK LIMITED in respect of the default of debt as per details given below-

| | |
|---|---|
| (a) Name of the Submitter: | M/s ICICI BANK LIMITED |
| (b) Schedule-2 Bank (Y/N): | Y |
| (c) Name of Corporate Debtor: | M/s OSSIFY INDUSTRIES PRIVATE LIMITED |
| (d) Unique Debt Identifier Number: | AAACI1195H_003151000114 |
| (e) Registered Address: | ICICI BANK TOWER,NEAR CHAKLI CIRCLE, OLD PADRA ROAD, VADODARA, GUJARAT |
| (f) Total Outstanding Amount: | 44575061.30 |
| (g) Default Amount: | 44575061.30 |
| (h) Date of Default: | 02-01-2024 |
| (i) Status of Authentication of Default: | AUTHENTICATED |
| (j) Date of Last Acknowledgement of Debt (AoD): | Not Available |

| Filing of Default(Submission ID No.) | Submitted on | Status of Authentication(Authenticated /Disputed/Deemed to be authenticated) | Authentication completed on |
|---|---|---|---|
| (22) | 30-03-2024 20:48:37 | AUTHENTICATED<br>Colour Code :GREEN | 15-04-2024 02:34:05 |

NeSL is authorized to issue this record of default and has accordingly affixed its digital signature, as per the provisions of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, Guidelines for Technical Standards for Performance of Core Services and Other Services and the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2017.

NOTARY REKHA ARORA Adv. & NOTARY Regd. No. 31(79)2001 GOVT. OF UTTAR PRADESH

ICICI BANK LTD.

Registered Office : Gresham Assurance House,4th Floor,Sir P.M. Road,Fort,Mumbai-400001.

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**33.** Respondent/Personal Guarantor also pointed out discrepancy in the date of default stating that there are inherent contradictions regarding the date of default in the pleadings and what is mentioned in Part III of the Application as being 02.01.2024 whereas the Corporate Debtor's account was classified as NPA on 15.02.2024. Furthermore, the RP's report places reliance on a NeSL, Information Utility certificate for reporting to occurrence of default by the Corporate Debtor/Principal Borrower after which the personal guarantee was invoked. It is submitted that reliance on a NeSL certificate predating the alleged NPA date of 15.02.2024 presents a factual inconsistency that fails to establish the occurrence of default by the Corporate Debtor/Principal Borrower on 02.01.2024.

**34.** In this regard, we note that as per the RBI Master Circular dated 01st April 2022, an asset becomes non-performing when it ceases to generate income for the bank. In the case of a loan or advance in respect of a term loan, an NPA is determined when the interest and principal instalments remain overdue for more than 90 days for a term loan as per the RBI guidelines. On the other hand, the date of default is defined under Section 3(12) of the Code as the non-payment of debt when the entire or any part of the amount of debt becomes due and payable and is not repaid by the debtor or the corporate debtor. Thus, it is clear that both concepts are different and clearly defined under their respective statutes. Declaration of NPA ordinarily always occurs after the date of default, as a loan is declared NPA

after being overdue for 90 days while the date of default, on the other hand, refers to the date when the instalment in whole or part is payable but not repaid by the Corporate Debtor. Therefore, we agree with the report of RP in which reliance has been placed on occurrence of default by the Corporate Debtor/Principal Borrower on the basis of RoD issued by the NeSL.

**35.** This distinction between the date of default and date of NPA has been further clarified by the Hon'ble Supreme Court while dealing with the matter relating initiation of insolvency process in respect of a Corporate Guarantor in case of ***Laxmi Pat Surana Vs. Union Bank Of India & Anr. On 26-Mar-21 reported in Civil Appeal No. 2734 of 2020***, holding that ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action under Section 7 of the Code, however, Section 7 comes into play when the corporate debtor commits "default", therefore section 7, consciously uses the expression "default" — not the date of notifying the loan account of the corporate person as NPA. The relevant part of this decision on the date of default vis a vis NPA is reproduced as under:

> "37. *Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action under Section 7 of the Code. However, Section 7 comes into play when the corporate debtor commits "default". Section 7, consciously uses the expression "default" — not the date of notifying the loan account of the corporate person as NPA. Further, the expression "default" has been defined in Section 3(12) to mean non-payment of "debt" when*

*whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be.* ***In cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to non-payment of debt.*** *Thus, when the principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of NPA but before the expiration of three years therefrom including the fresh period of limitation due to (successive) acknowledgments, it is not possible to extricate them from the renewed limitation accruing due to the effect of Section 18 of the Limitation Act. Section 18 of the Limitation Act gets attracted the moment acknowledgment in writing signed by the party against whom such right to initiate resolution process under Section 7 of the Code enures. Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (corporate debtor), as the case may be, acknowledge their liability to pay the debt. Such acknowledgment, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgment of the debt, from time to time, for institution of the proceedings under Section 7 of the Code. Further, the acknowledgment must be of a liability in respect of which the financial creditor can initiate action under Section 7 of the Code."*

***[Emphasis Supplied]***

**36.** As regards the occurrence of default by the Corporate Debtor , the Hon'ble Supreme Court in a recent judgment dated 12.02.2026 in case of ***B. Prashanth Hegde v. State Bank of India and Anr.,*** reported in *Civil Appeal No. 477 of 2022* has held that "*In our view, a conjoint reading of sub-sections (1), (2) and (5) of Section 7 makes it clear that an application under Section 7 of a financial creditor for initiating CIRP of CD hinges on*

*a default on part of CD of financial debt of an amount exceeding the specified threshold. The Form prescribed for making the application inter alia serves the purpose of bringing out the necessary ingredients for presentation of an application under Section 7(1) of IBC. The purpose of providing the date of default is to show that the debt is due and payable i.e., it has not become time barred. Therefore, in our view, if the application is substantially in conformity with the prescribed Form and discloses the necessary ingredients for making an application under sub-section (1) of Section 7 and provides the relevant materials/ information to substantiate those ingredients, the purpose of adhering to the Form is served, and such application is not liable to be rejected under clause (b) of sub-section (5) of Section 7 of IBC on the ground of any insignificant omission or error in the application. The aforesaid view finds support from use of the expression 'may' before 'reject' in Section 7(5)(b) of IBC. This means that if the Adjudicating Authority is satisfied from the materials placed before it in the application that all the necessary ingredients are satisfied for presentation of an application under Section 7(1) of IBC, it may not reject the application for an insignificant omission or non-adherence to the Form.*"

**37.** Considering the objection raised relating to date of default to decide about the occurrence of default in the present case in the light of the above cited judgments, it is observed that the 'Date of Default' and 'Date of NPA' are

distinct concepts. The cause of action under the IBC is triggered by the 'default' and not by the NPA classification. The Applicant correctly recorded the Date of Default as 02.01.2024. The subsequent classification of the account as NPA on 15.02.2024 is a mere accounting entry as per RBI guidelines and does not contradict the initial default. Furthermore, the NeSL certificate records the default by the Corporate Debtor that had already occurred triggering the action against the Personal Guarantor by invoking the guarantee against her, hence the attempt of Corporate Debtor to conflate the Date of Default with the Date of NPA to show any dispute on occurrence of default, is misconceived.

**38.** Another argument of the Respondent/Personal Guarantor that the Application under Section 7 of the Code filed by the Financial Creditor against the Corporate Debtor/Principal Borrower is currently pending adjudication before this Tribunal, wherein the wrongful classification of the NPA account is already under challenge , also does not hold good as the application under Section 7 filed against the Corporate Debtor has already been decided vide order dated 17.09.2026 of this Tribunal to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.

**39.** Having satisfied ourselves on occurrence of default by the Corporate Debtor/Principal Borrower, we find that the Financial Creditor rightfully invoked the personal guarantee vide a composite Loan Recall Notice and

Invocation of Guarantee letter dated 29.04.2024 consequent to the said default by the Corporate Debtor/Principal Borrower. This was followed by a statutory Demand Notice under Section 13(2) of the SARFAESI Act, 2002 dated 24.05.2024, calling upon the Corporate Debtor and the Guarantor to jointly and severally repay outstanding dues of Rs. 4,18,87,051.30/- (including interest). Despite the formal invocation of guarantee and statutory demand, neither was any payment tendered towards the outstanding dues nor was any reply received. Thereby, the outstanding debt remained due and payable.

**40.** Thereafter, in strict compliance with the statutory mandate for initiating insolvency against a guarantor, the Financial Creditor issued a Demand Notice in Form B dated 27.02.2025 under Section 95(4)(b) of the IBC, demanding payment of Rs. 4,64,17,543.30/- due as on 14.02.2024. It is observed that the Guarantor failed to discharge the said liability within the prescribed statutory period of 14 days from date of service of notice.

**41.** Accordingly, the issuance of the Guarantee invocation notice, the SARFAESI demand notice, and the Form B notice, coupled with the failure of the Respondent to pay the dues, establishes the existence of a debt and default on the part of the Personal Guarantor. Consequently, the present Application satisfies all statutory prerequisites for initiation of the Personal Insolvency Resolution Process "PIRP" against the Personal Guarantor herein.

**42.** Furthermore, this Tribunal has considered the preliminary objection raised by the Respondent regarding the maintainability of the present petition on the ground that the Demand Notice in Form B was issued to Mr. Sandeep Kumar instead of the Respondent, Ms. Divya Singh. However, upon perusal of the record, it is observed that the Applicant/Financial Creditor has subsequently placed on record a Supplementary Affidavit dated 08.08.2025 filed to this Tribunal on 10.08.2025, bringing on record the fact that the requisite Form B Demand Notice dated 27.02.2025 was duly issued and served upon the Respondent/Personal Guarantor, Ms. Divya Singh. In view of the said Supplementary Affidavit, the defect stands rectified. Consequently, this preliminary contention raised by the Respondent regarding the non-service of the demand notice, no longer exists and is hereby rejected.

**43.** We further observe that the well-settled proposition of law as laid down by the Hon'ble Supreme Court in *Dilip B. Jiwrajka v. Union of India & Ors. Writ Petition (Civil) No 1281 of 2021*, that the role of the RP under Section 99 is inherently facilitative and recommendatory in nature. The RP is not vested with adjudicatory powers and the statutory mandate is limited to examining the application to ascertain whether it satisfies the requirements of Section 95. The adjudicatory function regarding the existence of default and the admission of the petition lies exclusively with this Adjudicating Authority under Section 100. Furthermore, the alleged discrepancy

regarding the Demand Notice stands already rectified via the Supplementary Affidavit on record. Therefore, the RP has acted within the statutory bounds and this objection is devoid of merit and stands rejected.

**44.** The RP has verified the documents and has categorically recorded that the defaulted amount, as prayed by the Applicant, remains due and payable, and that the Guarantor has committed default in making the payment despite service of notices. Considering these documents, and making further enquiries, as provided under Section 99 of the Code, the RP has submitted the report vide I.A. No. 582/2025 recommending initiation of insolvency against the Respondent/ Personal Guarantor, which is taken on record and considered by us while passing this order.

**45.** The provisions of Section 128 of the Indian Contract Act, 1872 render the liability of the guarantor co-extensive with that of the principal debtor, unless otherwise provided. The personal guarantee executed by the Respondent herein is absolute, unconditional, and irrevocable. Further, we find that the Respondent had undertaken to pay forthwith, upon demand, all sums payable by the Corporate Debtor/Principal Borrower under the facility documents. In the present case, despite the demand notice issued under section 95(4)(b) of the IBC, the Guarantor has failed to discharge his liability.

**46.** We have gone through the report dated 23.08.2025, filed by the RP, and we find that:

**i.** The Insolvency Petition satisfies the requirement of Section 95 of IBC and has been filed in the requisite form, in terms of Section 95(1) read with Rule 7(1) and Rule 7(2) of the PIRP Rules, 2019, supported by requisite fee and documents.

**ii.** The Respondent Guarantor after being duly served with a demand notice dated 24.05.2024, has committed default in repayment of his debts; therefore, the requirement as set out under Section 95(4)(b) is satisfied.

**iii.** That the debts mentioned in the application are not excluded debts.

**iv.** That the Personal Guarantor is not eligible for a fresh start process provided under Chapter II of IBC.

**47.** Considering the above facts and circumstances and upon perusal of the documents on record, the CP (IB) No. 85/ALD/2025 filed under Section 95 of the IBC, is hereby admitted, and the Personal Insolvency Resolution Process (PIRP) stands initiated against Ms. Divya Singh, the Respondent herein. We hereby direct as under:

**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 Section 101 of IBC. 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.** The Insolvency Professional viz. Mr. Anil Kohli (e-mail: insolvency@arck.in) having IBBI Registration No IBBI/IPA-001/IP-P00112/2017-2018/10219 with valid AFA till 30.06.2027 is further appointed as Resolution Professional for carrying out PIRP against the Personal Guarantor, Ms. Divya Singh. Accordingly, he is directed to cause a public notice to be published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Allahabad Bench, inviting claims from all Creditors, within 21 days of such issue The notice under Sub Section (1) of Section 102 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.

**iii.** 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 resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.

**iv.** 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.

**v.** 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.** Realise the assets of the debtor; or

**c.** Administer or dispose of any funds of the debtor.

**vi.** 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.

**vii.** The Resolution Professional shall submit the repayment plan along with her 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.

**viii.** In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, she shall record the reasons thereof. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, she 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, 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.

**ix.** The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC. 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, 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.

**x.** The Resolution Professional shall submit his periodic reports before this Tribunal every 30 days.

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

**48.** As per the foregoing discussions, the present CP(IB) No. 85/ALD/2025 is admitted, and PIRP is initiated against the Respondent/Personal Guarantor.

**49.** List the matter on 07.12.2026 for further reporting the progress of the PIRP by the RP.

**50.** Ordered Accordingly.

***-Sd-***

**(Ashish Verma)**
**Member (Technical)**

***-Sd-***

**(Praveen Gupta)**
**Member (Judicial)**

**Date: 04.11.2026**