

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **09.06.2026** THROUGH VIDEO CONFERENCE

CORAM: HON'BLE SHRI SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF : Aditya Birla Finance Ltd
Vs
G Thiyagarajan

MAIN PETITION NUMBER : CP(IB)/43(CHE)/2024
(IA/MA) APPLICATION NUMBERS

IA(IBC)/799(CHE)2024

ORDER

**CP(IB)/43(CHE)/2024
IA(IBC)/799(CHE)2024**

Present: None for the Petitioner.
Mr. Ullasa, Ld. PCS for the IRP.
Mr. S.Satish, Ld. Counsel for the Personal Guarantor.

Vide common order pronounced in the open Court, petition is admitted.

Insolvency proceedings are initiated against the Respondent / Personal Guarantor viz., Mr. G Thiyagarajan.

Mr. Ravindra Beleyur is appointed as RP.

The report of the IRP is taken on record and the Application IA/799/2024 is disposed of.

-sd-
[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)

MS

Date: 09.06.2026

-sd-
[SANJIV JAIN]
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – I, CHENNAI**

CP(IB)/43(CHE)/2024

(Filed under Section 95(1) of the Insolvency and Bankruptcy Code, 2016)

Aditya Birla Finance Limited,

Represented by its Authorized Representative,

Mr. Sujit Ganesh,

Unit #10 & 12, 4th & 6th Floor,

Oval, Venkatanarayana Road,

T. Nagar, Chennai-600 017

....Petitioner/Financial Creditor

Versus

Mr. G. Thiyagarajan,

No. 23A, Narmadha S T, 4th Main Road,

IAS/IPS Colony, Manapakkam,

Chennai-600 125

....Respondent/Personal Guarantor

Present:

For Petitioner

: Ms. Shiksha, Advocate

For Respondent

: Shri. S. Satish, Advocate

ALONG WITH

IA(IBC)/799(CHE)/2024

in

CP(IB)/43(CHE)/2024

(Filed under Section 99 of the Insolvency & Bankruptcy Code 2016)

Ravindra Beleyur,

IBBI/IPA-001/IP-00189/2017-18/10368

Interim Resolution Professional of

Sri. G. Thiyagarajan,

A Personal Guarantor of Velohar Infra Private Limited,

'Shreevathsa', No. 428, 19B Cross,

Jayanagar 3rd Block, Bengaluru-560 011

.....Applicant

Present:

For IRP : Shri. BC Ullasa, PCS

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Order Pronounced on 9th June, 2026

COMMON ORDER

(Heard through Video Conferencing)

This petition CP(IB)/43(CHE)/2024 under Section 95 of IBC, 2016 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 has been filed by **Aditya Birla Finance Limited** (“**Financial Creditor**”) against **G. Thiyagarajan** (“**Personal Guarantor**”) who stood guarantee for the loan availed by the Corporate Debtor, Velohar Infra Private Limited. The prayer made in the petition is to initiate insolvency resolution process against the Personal Guarantor.

2. **Part-I** of the petition sets out the details of the Petitioner, Aditya Birla Finance Limited. Its office is situated at Unit # 10 & 12, 4th & 6th Floor, Oval, Venkatanarayana Road, T. Nagar, Chennai-600 017.

3. **Part-II** of the petition sets out the details of the Personal Guarantor, Shri. G. Thiyagarajan. He has been living at No. 23A, Narmadha S T, 4th Main Road, IAS/IPS Colony, Manapakkam, Chennai-600 125.

4. **Part-III** of the petition sets out the details of debt and date of default. The amount of debt and default is stated as Rs.3,65,28,644 and date of default is stated as 01.11.2017.

5. As per the averments made in the petition, the Corporate Debtor, Velohar Infra Private Limited availed loan facilities from the Petitioner, Aditya Birla Finance Limited and executed a loan agreement dated 24.01.2014. Under the agreement in the form of Working Capital Demand amounting to Rs.2,98,00,000/- and overdraft for an amount of Rs.52,00,000/- were extended to the Corporate Debtor. The Corporate Debtor executed the mortgage in favour of the creditor along with the original title deeds as a security for the debt. The Petitioner has placed the statement of accounts maintained by it in the due course of business. It has also filed the sanction letter, term loan agreement and mortgage deed.

6. It is stated that the repayment towards the loan was guaranteed by G. Thiyagarajan and Mrs. Vijayalakshmi Subburaj, in favour of the Petitioner by executing the Deed of Guarantee for the entire loan amount together with interest. The Petitioner has also placed the Deed of Guarantee dated 24.01.2014.

7. It is stated that the Corporate Debtor defaulted in repayment of the loan resulting the loan becoming NPA on 01.11.2017. A notice of demand under Section 13(2) of the SARFAESI Act was issued on 03.11.2017 invoking the Personal Guarantee dated 24.01.2014 but the Corporate Debtor and the Guarantors failed to make the payment, hence this petition under Section 95 has been filed against the Personal Guarantor, G. Thiyagarajan on 09.06.2023.

8. On this petition, this Tribunal vide an order dated 08.03.2024, appointed Shri. Ravindra Beleyur as the Interim Resolution Professional to give his report under Section 99 of IBC, 2016. He filed the report vide IA(IBC)/799(CHE)/2024 on 03.04.2024 recommending for initiation of insolvency proceedings against the Respondent/Personal Guarantor.

9. The Respondent on getting notice of the petition and the report, filed his reply / counter stating that the petition is barred by limitation. As per the petition, the date of default is 01.11.2017 but the petition has been filed on 09.06.2023. It is stated that in the insolvency proceedings, the cause of action must relate to debt which is due and payable and the same must be legally recoverable. A debt which has become time-barred, cannot be said to be a debt. Default arises for non-payment of an amount which is an event on the occurrence of which insolvency proceeding is initiated. Right to sue accrues when a default occurs. It is stated that demand is a condition precedent for the liability of the guarantor which should be for the payment of a sum legally due and recoverable from the Principal Debtor. If the debt has become time-barred against the Principal Debtor, then the demand from the guarantor would not arise. It is stated that the Respondent had resigned from the Corporate Debtor on 15.10.2016. The last payment received from the Corporate Debtor by the Petitioner was on 03.10.2017. The account was classified NPA on 01.11.2017. SARFAESI notice under Section 13(2) on 03.11.2017 was addressed only to the Corporate Debtor and Mrs. Vijayalakshmi Subburaj and not to the Respondent. The limitation ended on 30.10.2020. The legal notice for recovery was issued on 20.09.2022. The notice invoking the guarantee

was issued on 15.10.2022. The Notice invoking the arbitration was issued on 20.09.2022. The Notice in Form-B was issued on 04.03.2023 and this petition has been filed on 09.06.2023. It is stated that the arbitration notice would amount to admitting and acknowledging the existence of the dispute. Reference is made of the case *Syndicate Bank vs. Channaveerappa Beleri & Ors Civil Appeal No.6894 of 1997* where Hon'ble Supreme Court held as under:

"14. We have to, however, enter a caveat here. When the demand is made by the creditor on the guarantor, under a guarantee which requires a demand, as a condition precedent for the liability of the guarantor, such demand should be for payment of a sum which is legally due and recoverable from the principal debtor. If the debt had already become time-barred against the principal debtor, the question of creditor demanding payment thereafter, for the first time, against the guarantor would not arise. When the demand is made against the guarantor, if the claim is a live claim (that is, a claim which is not barred) against the principal debtor, limitation in respect of the guarantor will run from the date of such demand and refusal/non compliance. Where guarantor becomes liable in pursuance of a demand validly made in time, the creditor can sue the guarantor within three years, even if the claim against the principal debtor gets subsequently time-barred. To clarify the above, the following illustration may be useful: Let us say that a creditor makes some advances to a borrower between 10.4.1991 and 1.6.1991 and the repayment thereof is guaranteed by the guarantor undertaking to pay on demand by the creditor, under a continuing guarantee dated 1.4.1991. Let us further say a demand is made by the creditor against

the guarantor for payment on 1.3.1993. Though the limitation against the principal debtor may expire on 1.6.1994, as the demand was made on 1.3.1993 when the claim was 'live' against the principal debtor, the limitation as against the guarantor would be 3 years from 1.3.1993. On the other hand, if the creditor does not make a demand at all against the guarantor till 1.6.1994 when the claims against the principal debtor get time-barred, any demand against the guarantor made thereafter say on 15.9.1994 would not be valid or enforceable."

10. **The Respondent also filed an additional counter vide S.R. No. 2825 dated 11.07.2025** enclosing a Memo of Compromise & Withdrawal and the order of Hon'ble NCLAT in Company Appeal (AT) (Ins) No. 232/2022 inter alia stating that the parties had reached to a settlement as to the disbursement of the amount including to the Petitioner whereby the Petitioner was given an amount of Rs.1,03,66,200/- in the liquidation proceedings initiated against the Corporate Debtor in CP/114/IB/2018. Hon'ble NCLAT in the order dated 05.11.2024, took on record the withdrawal memo containing the terms of the settlement and closed the appeal. It is stated that the compromise / withdrawal would directly result in discharge of the surety's liabilities as specified in The Indian Contract Act, 1872. The act of the Petitioner by filing the compromise and withdrawal memo and agreeing to receive lesser sum despite claiming exclusive security

interest in the property clearly shows that the liability of the surety/Respondent has been discharged.

11. **The Petitioner filed the rejoinder vide S.R. No.4849 dated 27.09.2024** wherein it denied that the petition is barred by limitation.

Reference is made of the case of *Syndicate Bank* supra where Hon'ble Supreme Court has held that the liability to pay whether on the Principal Debtor or the Personal Guarantor, may arise at the same or different points in time. A claim may be time-barred against the Principal Debtor but can still be enforced against the guarantor owing to the nature of continuing guarantee. In the present case, the Deed of Guarantee is a continuing guarantee. Even if default occurred on 01.11.2017, it was not mandatory to issue a demand notice or file claim against the guarantor within three years. The claim remains enforceable against the guarantor beyond this period due to the continuing nature of the guarantee. If the account remains unsettled and there is no refusal from the guarantor, the period of limitation does not begin to run. In the present case, notice invoking the guarantee was issued on 15.10.2022. So the limitation commenced on 15.10.2022. Hence this petition filed on 08.07.2023 is within limitation. It is stated that the limitation period can be determined from the specific clauses of the Personal Guarantee Deed which explicitly states

that the Personal Guarantor's liability is enforceable on demand in terms of Clause 3 of the Deed of Guarantee. In the instant case, though the date of default is 01.11.2017 but the Personal Guarantee was invoked on 15.10.2022 and the period of limitation would commence when the guarantor defaulted in fulfilling his obligations as contained in the Guarantee Deed. It also referred Clause 12 and 30 of the Deed of Guarantee.

12. We have heard Ld. Counsels for the parties and perused the synopsis of arguments filed by the Respondent.

13. A perusal of the documents placed on record would show that the Petitioner had extended the credit facilities to the Corporate Debtor for an amount of Rs.3,50,00,000/- under the loan agreement dated 24.01.2014. A Declaration-cum-Undertaking was given by the Respondent on 24.01.2014. As a security for the loan, the Corporate Debtor mortgaged its immovable property. The Loan was also guaranteed by G. Thiyarajan and Vijayalakshimi Subburaj by executing the Deed of Guarantee dated 24.01.2014. The Corporate Debtor defaulted in repayment of loan resulting the loan account of the Corporate Debtor NPA on 01.11.2017.

14. Record shows that the Petitioner issued the notice under Section 13(2) of the SARFAESI Act on 03.11.2017 to the Corporate Debtor and the Personal Guarantor Mrs. Vijayalakshmi Subburaj calling upon them to repay the loan. No notice under Section 13(2) was issued to the Respondent/Guarantor, G. Thiyagarajan. It was issued only on 15.10.2022 which has a reference of the notice dated 03.11.2017 and the Personal Guarantee executed by the guarantors. This Tribunal vide an order dated 25.04.2025, initiated the insolvency proceedings against the Personal Guarantor, Vijayalakshmi Subburaj recording the fact that the Personal Guarantor had acknowledged the debt vide mail dated 28.02.2024. The case of *Laxmi Pat Surana vs. Union of India and Anr. (2021) 8 SCC 481* was referred where it was held that the liability of the guarantor is coextensive with the principal borrower under section 128 of The Indian Contract Act. The moment the principal debtor commits default in paying the acknowledged debt or there is an acknowledgment of debt by the principal borrower and even not by the guarantor, he will not be absolved of his liability. The liability of the guarantor would flow from the guarantee deed unless expressly provided to the contrary.

15. Record shows that insolvency proceeding against the Corporate Debtor was initiated in CP/114/IB/2018 within the limitation period. It resulted into the liquidation of the Corporate Debtor. From the sale of the assets of the Corporate Debtor, a sum of Rs.1,03,66,200/- was disbursed to the Petitioner by virtue of a settlement entered among the creditors of the Corporate Debtor. The default amount as per the petition is Rs.3,65,28,644/-. It was held in the case of *Lalit Kumar Jain v. Union of India & Ors., (2021) ibclaw.in 61 SC* that *approval of a resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under the contract of guarantee. As held by this court, the release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process, i.e. by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety / guarantor of his or her liability, which arises out of an independent contract.* It is thus clear that release or discharge of principal borrower from debt owed to it by an involuntary process i.e. by operation of law or due to liquidation or insolvency process does not absolve the surety or guarantor of his/her liability, which arises out of an independent contract.

16. In the present case, the account of the Corporate Debtor was declared NPA on 01.11.2017. The SARFAESI notice was issued to the Corporate Debtor on 03.11.2017. Insolvency proceedings against the Corporate Debtor was initiated in the year 2018 i.e. within the period of limitation of three years as per Article 137 of the Limitation Act, 1963. The Deed of Guarantee shows that it is a continuing guarantee and is coextensive with the Principal Debtor. Being the continuing guarantee, in terms of the clauses of the Guarantee Deed specifically Clauses 3, 12 and 30, the guarantee being the continuing guarantee can be invoked at any stage. The relevant clauses are reproduced as under:

"3. That if the Borrower commits any default in payment on the due dates of the principal amount or interest and additional interest or any of the Obligations or part thereof as mentioned in the Facility Agreements) or on the occurrence of an Event of Default, I/we shall jointly and severally, forthwith on demand without demur or dispute pay/repay to ABFL at Mumbai the Obligations and also together with all costs, charges and expenses, legal or otherwise which ABFEL may incur or be put to howsoever by reason of omission, failure or default, temporary or otherwise in such payment by the Borrower or by myself/us, including-costs (as aforesaid) of enforcement or payment by suit or otherwise or by sale or realisation or attempted sale or realization of any security/asset for such Facility/lies as aforesaid or otherwise howsoever or any costs, charges or expenses which ABFL may incur by being joined in any proceeding to which ABFL may be

made or may make itself a party either with or without others in connection with any proceedings or action."

Clause 12: "That this Guarantee shall be a continuing Guarantee to the extent at any time of Rs.3,50,00,000/-(Rupees Three crore fifty lakhs only) together with interest as more particularly set out in the said Facility/ies Agreement(s) and penal rate of interest at such rate as decided by ABIL in its sole discretion, in the event of delayed payment plus interest tax with monthly rests payable thereon as also the costs, charges, expenses payable under the said Facility/ies and shall not be considered as wholly or partially satisfied or exhausted by payment or liquidation at any time hereafter of any sum or sums of money for the time being due in respect of the Facility/ies granted by ABFL to the Borrower, but shall within the limit aforesaid extend to cover and be a security for every sum and all sums of money at any time or from time to time be reduced or extinguished or the balance or the said Facility/ies be brought to credit."

Clause 30: That Where this Guarantee is signed by more than one party the liability of each of them hereunder to ABFL shall be joint and several and every agreement and undertaking on their part shall be construed accordingly. The liability hereunder of the undersigned and each of them if more than one shall not be avoided or invalidated by reason of any guarantee or any change by any co-surety (if any) being invalid or unenforceable. The rights of ABFL against me/us shall be remain in full force and effect notwithstanding any arrangement which may be reached between ABFL and the other Guarantor/s (if any)(under these present or otherwise) with respect to such his/her/their/its liability and notwithstanding that any time hereafter the other Guarantor/s may cease for any reason whatsoever including death, insolvency, lunacy or otherwise to be liable to ABFL, ABFL shall be at liberty

to require the performance by me/s of my/our obligations hereunder to the same extent in all respects as if the other Guarantor/s had at all times been solely liable to perform the said obligations."

17. In the instant case, the guarantee being the continuing guarantee against the Personal Guarantor, was invoked on 15.10.2022. during the subsistence of the liquidation proceedings against the Principal Borrower/Corporate Debtor. The other guarantor to the loan had acknowledged the debt by a mail dated 28.02.2024. In the case of *Syndicate Bank* supra, it was held that the liability to pay whether on principal debtor or the personal guarantor may arise at the same or different points in time. A claim may be time-barred against the principal debtor but still can be enforceable against the guarantor owing to the nature of continuing guarantee. Considering the above, we agree with the contention of the Petitioner that even if the date of default was 01.11.2017, it was not mandatory for the Petitioner to issue a demand notice or file a claim against the Respondent/Guarantor within three years and the debt would remain enforceable against the guarantor beyond that period due to the continuing nature of the guarantee. In the present case, the period of limitation against the Respondent/Guarantor would commence when the guarantor defaulted in fulfilling his obligations as contained in the guarantee

deed. The guarantee against the Respondent was invoked on 15.10.2022 and thus this petition filed on 09.06.2023 is within limitation.

18. As regards submission that the Respondent resigned from the Company/Corporate Debtor on 15.10.2016 and he is no more the Director of the Company, law is well settled that resignation would not absolve the guarantor from his liability to repay the debt under the guarantee agreement until and unless he is discharged.

19. For the aforesaid discussions, we admit the petition and direct that insolvency proceedings be initiated against the Personal Guarantor, G. Thiyagarajan under Section 95 of IBC, 2016.

20. Since the Petitioner has not proposed any name of the Insolvency Resolution Professional, considering the fact Shri. Ravindra Beleyur has given a report under Section 99 of IBC, we appoint **Shri. Ravindra Beleyur having Registration No. IBBI/IPA-001/IP-00189/2017-18/10368**. His AFA is valid till 31.12.2026.

21. We hereby direct as follows;

- 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 IBC, 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.** The Resolution Professional Shri. Ravindra Beleyur (IBBI/IPA-001/IP-00189/2017-18/10368) 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.

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.

The repayment plan may authorize 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. administers or dispose of any funds of the debtor.

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.

V. 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.

VI. 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.

VII. 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.

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

IX. The Petitioner is directed to deposit **Rs. 2,00,000/- (Rupees Two lakhs only)** to the bank account of the Resolution Professional within one week of this order, towards his expenses. This shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.

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

22. Accordingly, **CP(IB)/43(CHE)/2024** stands **admitted**.

Sd/-
VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

Sd/-
SANJIV JAIN
MEMBER (JUDICIAL)

Suguna