

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH - I

C.P. (IB) NO. 812/MB/2024

Under Section 95 of the Insolvency & Bankruptcy Code, 2016 r/w Rule 7(2) of the Insolvency and Bankruptcy (Application to the Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), Rules, 2019.

In the matter of:

Abhyudaya Co-op Bank Ltd,

...Petitioner/Financial Creditor

Versus

Monica Ajeet Mulay,

...Respondent/Personal Guarantor

Order pronounced on 10.06.2026

Coram:

Shri Prabhat Kumar

Member(technical)

Shri Sushil Mahadeorao Kochey

Member (Judicial)

Appearances:

For the Applicant

: Adv Maulik Chokshi

For the Respondent

: Adv. Iqra Qureshi

ORDER

Brief facts

1. The present petition is filed on 26.07.2024 under section 95 (1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC/Code") read with Rule 7(2) of the Insolvency and

Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 by **Abhyudaya Co-Op. Bank Ltd** (“hereinafter referred to as Applicant/Financial Creditor”) for initiating insolvency resolution process against **Mrs. Monica Ajeet Mulay** (“hereinafter referred to as Personal Guarantor/Respondent”) for outstanding debt of **Rs. 7,39,69,524.14/-** (Rupees Seven Crore Thirty-Nine Lakh Sixty-Nine Thousand Five Hundred Twenty-Four and Paise Fourteen Only) including interest and charges payable. The Date of Default as specified in Part-III of the present petition is **26.07.2021**.

2. The Applicant is a scheduled Co-Operative bank registered under the Multi-State Co-operative Societies Act, having its registered office at 36/2515, Abhyudaya Nagar, G.D Ambekar Marg, Mumbai-400 033, Administrative office at K. K. Tower, Abhyudaya Bank Lane Off. G.D. Ambekar Marg Parel Village, Mumbai – 400012.
3. The Personal Guarantor, viz. **Mrs. Monica Ajeet Mulay** have stated her address as ‘Shivneri Bunglow’, Govind Nagar Bansilal Nagar, Aurangabad-431001, stood as the Guarantor for **M/s. Nirmangold Plasttech Private Limited**. (hereinafter referred to as the “Corporate Debtor/ Principal Borrower”) to secure the credit facilities extended to the Corporate Debtor.
4. The Corporate Debtor was incorporated on 03.05.2013 bearing CIN **U25199MH2013PTC242846** and has its registered address at Gut No. 17, Sultanpur Shivar, Near Jikthan Phata, Tq Gangapur, Aurangabad, Maharashtra, India - 431133. The Corporate Debtor, is engaged in the business of Manufacturing of Automobiles parts. Mr. Ajeet Madhukar Mulay and Mr. Shekhar Bhushan Patil along with

Mrs. Monica Ajeet Mulay stood as Guarantors in their personal capacity for all the credit facilities granted to the Corporate Debtor. Mr. Bhushan Pundlikrao Patil, Mrs. Anita Bhushan Patil and Mr. Kunal Gopichand Chavan are the Directors of the Corporate Debtor and have also furnished personal guarantee for repayment of the dues.

Submissions of the applicant

5. It is submitted by the applicant that the Corporate Debtor had availed various credit facilities from the Applicant, including a Term Loan facility of Rs. 8,43,48,000/- sanctioned on 02.12.2013 and a Term Loan facility of Rs. 1,00,00,000/- sanctioned on 03.06.2016, together with other working capital facilities. The Respondent, Mrs. Monica Ajeet Mulay, executed deeds of personal guarantee in favour of the Applicant Bank securing the aforesaid facilities, dated 05.12.2013 17.06.2016.
6. It is submitted by the Applicant that the Corporate Debtor and the guarantors executed the requisite loan and security documents in favour of the Applicant. The credit facilities were secured by hypothecation of machinery and other movable assets of the Corporate Debtor and by creation of mortgage over immovable properties situated at Sultanpur/Jikthan, Taluka Gangapur, District Aurangabad and other secured assets. It is submitted that the Corporate Debtor committed defaults in repayment of the credit facilities availed from the Applicant Bank and, consequently, the loan accounts were classified as Non-Performing Assets (NPA) on 29.10.2019.
7. It is submitted that despite repeated requests and reminders, the Corporate Debtor failed to regularise the loan accounts. In view of the continuing default, the Applicant invoked the personal guarantee

executed by the Respondent and issued a notice of invocation dated 15.07.2021 (despatched on 16.07.2021 via speed post) calling upon the Respondent to discharge the debt due from the Corporate Debtor in terms of the personal guarantee within 10 days from the date of receipt of the notice. It is further submitted that the Respondent failed and neglected to comply with the demand raised under the invocation notice. Consequently, the default on the part of the Respondent as Personal Guarantor crystallised on 26.07.2021, rendering the Respondent liable for the outstanding dues payable to the Applicant Bank.

8. It is submitted that an amount of Rs. 7,39,69,524.14/- remained due and payable to the Applicant in respect of the credit facilities availed by the Corporate Debtor and guaranteed by the Respondent. The Respondent has failed to discharge the said liability despite repeated demands and invocation of the personal guarantee. It is further submitted that the Applicant initiated appropriate recovery proceedings against the borrowers and guarantors. An Arbitral Award dated 12.02.2024 came to be passed in favour of the Applicant Bank in respect of the outstanding dues, thereby affirming the liability of the borrowers and guarantors.
9. The Applicant issued a Statutory Demand Notice dated 29.06.2024 in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016. Despite service of the said notice, the Respondent failed to liquidate the outstanding dues. Accordingly, the Applicant has filed the present Application under Section 95 of the Code.

Submissions of the Resolution Professional:

10. This Tribunal vide order dated 25.11.2024 appointed **Mr. Manish Lalji Dawada**, (hereinafter referred to as the Resolution

Professional) having registration number **IBBI/IPA-001/IP-02506/2021-22/13797** as Resolution Professional, and directed him to file report under section 99 of the Code within 10 days. Accordingly, the RP has filed **IA (I.B.C)/529/MB/2025** thereby placing his report on record on 21.12.2024 recommending 'admission' of the present petition.

11. In view of the aforementioned order of this Tribunal, the RP submits his report recommending for approval of the said application filed on 26.07.2024. The relevant part of the said report, is reproduced m as hereinafter:

In view of the aforesaid, I hereby recommend the acceptance of the captioned Application filed by the Creditor under Section 100 (1) of IBC.

That in light of the above facts and circumstances, the Applicant, considering the requirements of the admission of the said Petition as stipulated under the Code, opines and confirms that the Insolvency Resolution Process for Personal Guarantor, Mrs. Monica Ajeet Mulay, the Personal Guarantor to the Corporate Debtor, M/s. Nirmangold Plasttech Private Limited should be initiated and the Application filed by the Petitioner herein, who is the Creditor, should be admitted henceforth.

12. In view of the detailed examination of the Application along with the supporting documents, the Resolution Professional found that the debt remains due and payable and that a default of Rs. 7,39,69,524.14/- has occurred. Accordingly, the Resolution Professional recommends that the Application filed by the Financial Creditor, namely Abhyudaya Co-op Bank Ltd, under Section 95(1)

of the Insolvency and Bankruptcy Code, 2016, bearing C.P. (IB) No. 812/2024, be admitted under Section 100 of the Code and that the Insolvency Resolution Process be commenced against the Personal Guarantor, namely **Mrs. Monica Ajeet Mulay**.

Submissions on behalf of the Respondent / Personal Guarantor

13. Learned Counsel appearing for the Respondent / Personal Guarantor submitted that although the Petition was filed before this Adjudicating Authority on 26.07.2024, a copy thereof was not served upon the Respondent at the time of filing and was furnished only after the hearing held on 03.04.2025. According to the Respondent, despite repeated requests, the Financial Creditor failed to serve a copy of the Petition and therefore the Petition deserves to be dismissed at the threshold.
14. It was contended that the Reserve Bank of India, vide order dated 24.11.2023, superseded the Board of Directors of the Financial Creditor and appointed an Administrator to manage its affairs. Reliance was placed on the RBI order dated 24.11.2023 as well as the proceedings before the Hon'ble Bombay High Court and the Hon'ble Supreme Court. It was submitted that the challenge to the RBI action was carried before the Hon'ble Bombay High Court in *Writ Petition (L) No. 34124 of 2023* and thereafter before the Hon'ble Supreme Court. According to the Respondent, in view of the supersession of the Board of Directors and the alleged lack of proper authorization, the present proceedings are not maintainable.
15. It was further submitted that the Financial Creditor has deliberately relied upon purported Deed of Guarantee to which the Respondent is neither a party nor a signatory. Learned Counsel contended that the guarantees relied upon by the Financial Creditor have not been

executed by the Respondent and therefore no liability can be fastened upon her on the basis of the said documents.

16. Learned Counsel for the Respondent also submitted that the Deed of Guarantee relied upon by the Financial Creditor are inadequately stamped and therefore cannot be relied upon in law. It was contended that the said documents are unenforceable and consequently the present proceedings initiated on the basis thereof are liable to be rejected.
17. On the issue of limitation, the Respondent submitted that the account of the Corporate Debtor was classified as NPA on 29.10.2019 and that the guarantee was invoked on 15.07.2021. Reliance was placed upon the notice dated 15.07.2021. It was contended that the present Petition, having been filed in July 2024, is barred by limitation. Learned Counsel further submitted that while the guarantee was admittedly invoked on 15.07.2021, the Financial Creditor has incorrectly stated in the demand notice dated 29.06.2024 that the guarantee was invoked on 26.07.2021 in an attempt to bring the claim within the prescribed period of limitation.
18. It was further submitted that the Financial Creditor had issued a demand notice dated 07.03.2024 to the Respondent, to which a detailed reply dated 25.03.2024 was furnished. According to the Respondent, the said correspondence has been deliberately suppressed by the Financial Creditor while initiating the present proceedings.
19. Learned Counsel further submitted that *FIR No. 0015 dated 10.01.2024* came to be registered by the Economic Offences Wing, Chhatrapati Sambhajnagar against certain officials of the Financial

Creditor. It was contended that the said proceedings raise serious issues regarding the conduct of the officials of the Financial Creditor and therefore the claim made in the present Petition requires careful scrutiny.

20. It was further submitted that the Financial Creditor has already pursued arbitration proceedings and obtained an arbitral award dated 12.02.2024. Learned Counsel submitted that the said arbitral award has been challenged before the Hon'ble Bombay High Court in *Commercial Arbitration Petition (L) No. 18013 of 2024* and the challenge remains pending for further consideration. According to the Respondent, the Financial Creditor has failed to disclose the pendency of the said proceedings before this Adjudicating Authority.
21. It was argued that after pursuing arbitration proceedings and obtaining an arbitral award, the Financial Creditor has initiated insolvency proceedings as a coercive measure. According to the Respondent, the provisions of the Code cannot be invoked as a substitute for recovery proceedings or as a mechanism for enforcement of disputed claims.
22. In view of the aforesaid submissions, Learned Counsel for the Respondent prayed that the Report of the Resolution Professional as well as the present Petition be dismissed.

Findings & Analysis

23. Heard the learned Counsel appearing for the Applicant, the Resolution Professional and the Personal Guarantor and perused the material available on record.
24. In the present case, this Bench, vide order dated 09.12.2024,

appointed **Mr. Manish Lalji Dawada**, Insolvency Professional (Registration No. **IBBI/IPA-001/IP-02506/2021-22/13797**), as the Resolution Professional in terms of Section 97(3) of the Code.

25. The principal objections raised by the Respondent is as follows:
- i. alleged non-compliance with Section 95(1) of the Code on account of absence of advance service of petition to the guarantor;
 - ii. s lack of proper authorization in favour of persons instituting the proceedings and issuing the notices on behalf of the Applicant Bank;
 - iii. the present petition is barred by law of limitation;
 - iv. challenges the validity and enforceability of the Deed of Guarantee relied upon by the Applicant Bank on ground of stamping and the respondent not being party to it; and
 - v. pendency of proceedings challenging the Arbitral Award before the Hon'ble Bombay High Court.
26. Insofar as the objection regarding authorization is concerned, this Adjudicating Authority, vide order dated 24.07.2025, directed the Applicant to place on record the authorization in favour of the person who had signed the demand notice and the Petition. Pursuant thereto, the Applicant Bank filed an Additional Affidavit dated 8.8.2025 placing on record, inter alia, a resolution passed by the Administrator's Committee meeting held on 2.7.2024, whereby Mr. Rajesh Padmakar Telang, the manager of the applicant bank, amongst others was authorised to sign Vakalatnama, application/s, petition/s, affidavit/s, replies, rejoinder, Appeal/s etc. for initiating proceedings u/s 95 of the IBC against the guarantors, including the Respondent herein, to the credit facilities extended by the applicant creditor to Nirmangold Plasttech Pvt. Ltd. Hence, this objection has

no merit.

27. With regard to the contention that a copy of the Petition was not served upon the Respondent at the time of filing, it is observed that the Respondent was served the copy of petition vide email dated 26.7.2024 at email address nirmangoldalloys@gmail.com. Thereafter, the advocate of the applicant creditor also filed an affidavit dated 16.11.2024 stating that “...*the hearing Petition under Section 95 of the Insolvency and Bankruptcy Code, 2016 was duly served upon the aforementioned registered address of the Respondents which was clearly reflecting on the acknowledgment*”. The Counsel for the personal guarantor uploaded on 7.12.2024 a vakalatnama dated 03.12.2024 on DMS duly executed by the Respondent. Further, the Respondent was again served a copy of petition on 3.4.2025 as per her own admission. The Respondent Personal Guarantor was also approached by the Resolution Professional vide email(s) dated 2.12.2024 and 7.12.2024, however, she never raised any objection before the Resolution Professional also in this relation. Considering the facts in totality, we are of considered view that the personal guarantor, herein, has raised this objection as after-thought seeking rejection of present petition on mere technicalities despite fully knowing that a proceeding u/s 95 of IBC has been initiated. Nonetheless, the Hon’ble Supreme Court in case of ***Dilip B. Jiwrajka v. Union of India*** [\(2023\) ibclaw.in 147 SC](#) has held that “*it would be impermissible for this Court to allow for the adjudicatory intervention of the adjudicating authority in adjudicating what is described as a jurisdictional question at the stage of Section 97(5).*” Accordingly, the adjudication of the proceedings initiated u/s 95 of the IBC commences only after a report u/s 99 of IBC is placed before this Tribunal, and the respondent herein was duly served prior to adjudication of present

petition, even the Respondent's negation of service is taken at face. The Respondent has actively contested the proceedings on merits.

28. The Respondent has further contended that the guarantee relied upon by the Applicant was not executed by her and that the documents are inadequately stamped. On perusal of the deed of guarantee, it is noted that such deed of guarantee is duly signed by the Respondent herein beside her name written on the deed of guarantee, and basis such deed of guarantee, an arbitral award in favor of applicant creditor has also been passed against the respondent.

29. *In the matter of State Bank of India and Ors. v. Doha Bank Q.P.S.C. and Anr., [\(2026\) ibclaw.in 234 SC](#)*, it is held that “28.....The production of corporate guarantees in a proceeding in New Delhi, does not attract the provisions of Maharashtra Stamp Duty Act, 1958. In any case, the legal position governing the effect of insufficiently stamped document is no longer *res integra* and the same does not become void or unenforceable merely on that account (*Hindustan Steel Ltd. v. Dilip Construction Company, (1969) 1 SCC 597*). The defect of insufficient stamping of the document is curable in nature and does not go to the root of validity of the instrument. Even otherwise, the Stamp Act is a fiscal measure enacted to secure revenue for the State on certain classes of instrument. It is not intended to be used as a weapon by a litigant to defeat the cause of the opponent (*NN Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd. & Ors.; [\[\(2023\) ibclaw.in 56 SC\]](#)*). A Constitution Bench of this Court (*Interplay Between Arbitration Agreements under Arbitration & Conciliation Act, 1996 and Stamp Act, 1899, IN RE, [\[\(2023\) ibclaw.in 153 SC\]](#)*) has held that “Non stamping or improper stamping does not result in the instrument becoming invalid. The Stamp Act does not render such

an instrument void. The non-payment of stamp duty is accurately characterized as a curable defect. Therefore, the contention that the corporate guarantees were not duly stamped as Stamp Duty under the Maharashtra Stamp Duty Act, 1958 was not paid is sans substance.”

30. Accordingly, the non-stamping or insufficiency of stamping is not a relevant factor for consideration in the insolvency proceedings. Hence, we do not find any merit in the objection.
31. It is trite that the period of limitation qua guarantor runs from the date when the period, stated for payment in the notice invoking guarantee of such guarantor, expires, and the date of default qua principal borrower is not to be taken as date of default qua the personal guarantor. Further, the clause 9 of the Guarantee expressly provides that *“This guarantee shall not be revoked by the Guarantors and shall remain in force till all the amounts due and payable to the Bank by Borrower in respect of the said credit facilities are paid in full inclusive of interest and other charges payable by the Borrower. The Guarantors further specifically agree that this guarantee shall continue to remain in force and Guarantors shall continue to be liable there under for all amount due and payable to the Bank by the Borrower even though some of the credit facilities may have been unutilised or utilised and then repaid in full so long as the credit facility is continued by the Bank to the Borrower....”*.
32. On the issue of limitation, it is observed that the personal guarantee was invoked vide notice dated 15.07.2021 requiring her to pay within 10 days from the date of receipt of the notice, which was despatched by speed post on 16.7.2021. Under law, the service of speed post is presumed within 48 hours, accordingly, there is presumption that the said invocation notice was served upon the respondent on 18.7.2021. Accordingly, the period of 10 days

expired on 27.7.2021, hence, the default arose on 28.7.2021 on the failure of Respondent as well as other personal guarantor and principal debtor to pay the amount called in the said notice.

33. Further, the period from 15.3.2020 till 28.02.2022 was excluded from the period of Limitation by Hon'ble Supreme Court in the matter of *Suo Moto WP (Civil) No. 3 of 2020*, as further explained in the decision in case of *M/s Arif Azim Co. Ltd. Vs M/s Aptech Ltd. (2004) 3 S.c.R. 73: 2004 INSC 155, holding at Para 84 that "the effect of the above-referred order of this Court in the fact of the present case is that the balance limitation left on 15.03.2020 would become available w.e.f. 01.03.2022. The balance period of limitation remaining on 15.03.2020 can be calculated by computing the number of days between 15.03.2020 and 27.03.2021, which is the day when the limitation period would have come to an end under ordinary circumstances. The balance period thus comes to 1 year to 13 days. This period of 1 year 13 days become available to the Petitioner from 01.03.2022, thereby meaning that the limitation period available to the petitioner for invoking arbitration proceedings would have come to an end on 13.03.2023"*.
34. The present Application under Section 95 of the Code came to be filed on 26.07.2024. In view of aforesaid, the period from 28.7.2021 till 28.02.2022 also stands excluded, thus the period of limitation in the present case would expire on 28.02.2025. Accordingly, the Application cannot be said to be barred by limitation and the objection raised by the Respondent in this regard is rejected.
35. The Respondent has also relied upon the pendency of proceedings before the Hon'ble Bombay High Court challenging the arbitral award dated 12.02.2024. It has been contended that the Applicant in this Petition has suppressed the pendency of the said proceedings. It is further stated by the Respondent that the insolvency proceedings is in view to stall the current ongoing proceeding before the Hon'ble Bombay High Court. In our considered view, the pendency of

proceedings challenging the arbitral award does not bar the present proceedings, and the applicant creditor has enclosed with the petition a copy of Arbitral Award dated 12.2.2024. It is noted that the present petition is filed on basis of default committed by the Respondent independent of decree passed in Arbitration, which is in challenge before the Hon'ble Bombay High Court, accordingly, the pendency of challenge of said award or non-disclosure of such challenge has no bearing on the present proceedings.

36. The material placed on record reflects that the debt remains due and payable. The Resolution Professional, upon examination of the Application and the documents placed before him, has also recommended acceptance of the Application under Section 100 of the Code.
37. It is further observed that the Applicant has placed on record the statement of accounts, record of default registered with NeSL as duly authenticated and other supporting documents in support of its claim. In the absence of any material demonstrating that the present proceedings have been instituted by an unauthorized person, the said objection is devoid of merit and is accordingly rejected.

Order

38. Upon consideration of the pleadings, documents placed on record, submissions advanced by the parties and the Report of the Resolution Professional submitted under Section 99 of the Insolvency and Bankruptcy Code, 2016, it is observed that the debt claimed by the Applicant/Financial Creditor remains due and payable. The material available on record further reflects that the personal guarantee furnished by the Respondent was invoked vide notice dated 15.07.2021 and the liability of the Respondent as Personal Guarantor remained unsatisfied despite such invocation.

39. Considering the above facts and circumstances and upon perusal of the documents on record, the C.P. (IB)/812/MB/2024 filed under Section 95 of the IBC, 2016 is hereby **Admitted** and the Insolvency Resolution Process stands initiated against **Mrs. Monica Ajeet Mulay** viz. the Respondent herein. We hereby direct as hereinafter:

I. Initiate Insolvency Resolution Process against the Respondent/Personal Guarantor and 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, 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 viz. **Mr. Manish Lalji Dawada, Insolvency Professional (Registration No. IBBI/IPA-001/IP-02506/2021-22/13797)**, having Email: dawdamanish@gmail.com and Contact: 8767645419 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 Mumbai Bench, inviting claims from all Creditors,

within 21 days of such issue. The Resolution Professional shall discharge the functions/duties casted upon him under the provisions of the Code in this relation within time bound manner and shall be empowered to exercise the powers vested in him for discharge of such functions/duties.

- III. The Applicant is directed to deposit **INR 75,000/-** (Indian Rupees Seventy-Five Thousand) or such amount as is agreed between the Resolution Professional and the Applicant to the bank account of the Resolution Professional, towards his fees and out of pocket expenses, which shall be such as is approved by the applicant herein and subsequently confirmed by the Creditors. This shall be subject to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.
- IV. The Registry is directed to communicate a copy of order to the Resolution Professional immediately after the pronouncement of order, and upload the same on the website within **seven** working days after the pronouncement of order.
- V. Ordered accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

Akanksha S

Sd/-

Sushil Mahadeorao Kochey
Member (Judicial)