

NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.201
CP(IB)/12(MP)2025

Order under Section 95 IBC

IN THE MATTER OF:

M/s Ocean Impex

.....Applicant

V/s

Gaurav Mungad

.....Respondent

Coram:

Hon'ble Shri Brajendra Mani Tripathi, Member (J)

Hon'ble Shri Man Mohan Gupta Member (T)

PRONOUNCEMENT OF ORDER
Delivered on 15/05/2026

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

**MAN MOHAN GUPTA
MEMBER (TECHNICAL)**

Tomar

Sd/-

**BRAJENDRA MANI TRIPATHI
MEMBER (JUDICIAL)**

**THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
CP(IB) 12 OF 2025**

(Under Section 95 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules 2019)

IN THE MATTER OF:

M/s. OCEAN IMPEX

Office: C/o Ladha Bothers, 161/58, Gurjar Mohalla,

Bhilwara, Rajasthan, 311001

Through its proprietor, Mr. Ravi Ladda

Email: ravidaddha99@gmail.com

Contact: 99774 43144

..... **Applicant**

Versus

MR. GAURAV MUNGAD

Address: 7, Nagarchi Bakhhal, Behind BartanBazar,

Rajwada, Indore-452007

Email: gauravmungad23@gmail.com, mungad@gmail.com

Contact: 9926900604

..... **Respondent**

CORAM:

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

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

APPEARANCE:

For the Applicant: Mr. Rohit Dubey Adv.

For the RP: Mr. Navin Khandelwal, PCA

For the Respondent: Mr. Rohan Patel, Adv.

JUDGEMENT

1. The present application has been filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**Code**”) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 by the applicant for the purpose of initiating insolvency resolution process against Gaurav Mungad, (hereinafter referred to as “**Respondent/Personal Guarantor**”), Personal Guarantor of **Mungad Strips and Alloys Private Limited.** (hereinafter referred to as “**Corporate Debtor**”) having Corporate Identification Number (CIN): U27205MP2009PTC021597 for default of an amount of **Rs. 10,48,79,990.98/-**. The date of default is **30.04.2021**.

Submissions by the Applicant/Financial Creditor:

2. The averments made by the Financial Creditor in its Application and argued by the learned counsel for the Applicant are summarized hereunder:
3. The Applicant submits that the Corporate Debtor had, in the month of May 2010, approached the Applicant for supply of aluminium scrap and profiles. Pursuant thereto, the Applicant supplied goods during the period from 01.10.2010 to 21.12.2010 amounting to ₹11,90,27,998.98/-, which were duly accepted by the Corporate Debtor.

4. It is submitted that due to financial difficulties faced by the Corporate Debtor, delays occurred in making payments towards the goods supplied. At the request of the Corporate Debtor, the Applicant also extended financial assistance of ₹51,00,000/- on 24.12.2010 and ₹30,48,992/- on 27.12.2010.
5. The Applicant submits that the Corporate Debtor made partial payments and an amount of ₹11,48,79,990.98/- remained outstanding as on 31.03.2011. Thereafter, the Corporate Debtor returned certain unutilized goods worth ₹1,00,00,000/- during the period from 01.10.2011 to 05.10.2011. The proof of sales return and account confirmation is annexed as **Annexure A2**.
6. After adjustment of the aforesaid returned goods, a sum of ₹10,48,79,990.98/- remained due and payable as on 05.10.2011.
7. It is further submitted that in the year 2020, the Corporate Debtor along with the Respondent/Personal Guarantor approached the Applicant for settlement of the outstanding dues, and a Settlement Agreement dated 01.11.2020 was executed between the parties. The copy of the Settlement Agreement is annexed as **Annexure A3**.
8. It is submitted that as per the terms of the Settlement Agreement, the Corporate Debtor agreed to pay a settlement amount of ₹8,00,00,000/- within six months, i.e., on or before 30.04.2021. The Corporate Debtor and the Respondent/Personal Guarantor further agreed to be jointly and severally liable for repayment of the dues under the said Agreement.

9. It is submitted that the Corporate Debtor failed to make any payment in terms of the Settlement Agreement, thereby committing breach of the terms thereof. Upon such breach, the entire outstanding amount of ₹10,48,79,990.98/- became due and payable. The debt thus stands crystallized and undisputed.
10. The Applicant submits that the Respondent, being the Personal Guarantor, had furnished personal guarantees under the Settlement Agreement and is liable to pay the outstanding dues along with interest and costs incurred by the Applicant.
11. It is further submitted that the Applicant issued a notice of default, demand for payment and invocation of personal guarantee dated **17.06.2021** to the Corporate Debtor and the Respondent/Personal Guarantor, calling upon them to discharge the entire outstanding liability. The copy of the said notice is annexed as **Annexure A4**.
12. Despite service of the aforesaid notice and expiry of the stipulated period, the Respondent/Personal Guarantor has failed to make any payment towards the outstanding dues.
13. The Applicant further issued a demand notice dated 12.12.2024 under Rule 7(1) of the 2019 Rules, calling upon the Respondent to pay the outstanding amount. The said notice is annexed as **Annexure A5** (Colly.). The

Respondent had failed to comply with the said demand notice and the statutory period of 14 days has expired.

14. The Applicant submits that the debt is due, payable and has remained unpaid, and the Respondent/Personal Guarantor is liable for the same in terms of the guarantee and the Settlement Agreement. The relevant ledger accounts of the Applicant are annexed as **Annexure A6**.

Submissions in Resolution Professional's Report:

15. This tribunal vide order dated 20th June 2025 appointed Mr. Navin Khandelwal, having registration No. IBBI/IPA-001/IP/P00703/2017-2018/11301 as Insolvency resolution professional under sub-section (5) of the section 97 of the code. The Resolution Professional, in compliance of the directions issued by this Adjudicating Authority has filed his report through a separate IA No.324 of 2025 on 5th July 2025 in respect of the application filed under Section 95 of the Insolvency and Bankruptcy Code, 2016. The submissions made in the report are summarized as under:

- i. The Resolution Professional, in compliance with Section 99(2) of the Code, sought information from the Personal Guarantor and examined the application along with documents submitted and information available in public domain.
- ii. The Personal Guarantor, Mr. Vaibhav Mungad, is a director holding DIN 01790847 and is associated with M/s Mungad

Strips and Alloys Private Limited and Jiji Industries Limited, both of which have been admitted into CIRP vide order dated 08.01.2025 passed by this Hon'ble Tribunal.

- iii. The debt in the present matter arises from supply of Aluminium Scrap and Profiles by the Applicant M/s Ocean Impex to the Corporate Debtor in May 2010, on mutually agreed terms, and an amount of Rs. 10,48,79,990.98/- remained outstanding as on 05.10.2011 after adjustment of returned goods.
- iv. A Settlement Agreement dated 01.11.2020 was executed between the parties, wherein the Corporate Debtor agreed to pay Rs. 8,00,00,000/- within six months ending on 30.04.2021. However, the Corporate Debtor failed to make payment under the agreement and as per Clause 2.1 of the Settlement Agreement, upon failure to pay the settlement amount within the stipulated time, the entire outstanding amount of Rs. 10,48,79,990.98/- became immediately due and payable and the settlement stood void.
- v. As per Clause 3.6 of the Agreement, the Personal Guarantor is jointly and severally liable and the creditor is entitled to enforce the guarantee directly against the guarantor without

exhausting remedies against the Corporate Debtor. The Personal Guarantor became liable for payment of the outstanding amount along with interest and costs under the guarantee.

- vi. The Applicant Creditor invoked the personal guarantee vide notice dated **17.06.2021** demanding payment from the Personal Guarantor.
- vii. The Applicant /Creditor also issued demand notice dated 12.12.2024 under Rule 7(1) of the relevant Rules, calling upon the Personal Guarantor to discharge the liability, however, no payment was made despite expiry of statutory period of 14 days.
- viii. Further on 8.01.2025, an application under section 10 of IBC by both the corporate debtor wherein the personal guarantor was director namely Mungad Strips and Alloy Private Limited & Jiji Industries limited and was admitted into the CIRP Process by the NCLT Indore Bench.
- ix. The Personal Guarantor has executed a valid and subsisting personal guarantee in favour of the Applicant Creditor securing the debt of the Corporate Debtor.

- x. The Resolution Professional observed that the debt falls within the definition of “debt” under Section 3(11) of the Code and the default stands established under Section 3(12) of the Code as the Corporate Debtor failed to pay the amount due under the Settlement Agreement.
- xi. From examination of financial statements, settlement agreement, demand notice and other documents, there exists sufficient material evidence to establish occurrence of default.
- xii. The Resolution Professional further observed that the invocation of guarantee has been properly made in accordance with law.
- xiii. With respect to limitation, the Resolution Professional observed that although the initial transaction dates back to 2010, the liability has been acknowledged in financial statements from FY 2013-14 to FY 2022-23 and also in the Settlement Agreement dated 01.11.2020. Further, after excluding the period from 15.03.2020 to 28.02.2022 (716 days) in terms of Hon’ble Supreme Court judgment in *Suo Motu WP (Civil) No. 3 of 2020*, the application filed on 11.01.2025 appears to be within limitation.

- xiv. The Resolution Professional observed that the Personal Guarantor has committed default in honouring the personal guarantee and has failed to discharge the liability.
- xv. It was further observed that the debts in question do not fall within the category of “excluded debts” as defined under Section 79(15) of the Code.
- xvi. The Resolution Professional confirmed that the Application has been filed in prescribed Form-A along with requisite fee of Rs. 2,000/- and is complete in terms of Section 95(4) and 95(6) of the Code.
- xvii. It was also observed that the Applicant Creditor has served a copy of the Application upon the Personal Guarantor prior to filing, thereby complying with Section 95(5) of the Code. The Resolution Professional further observed that the Personal Guarantor is not undergoing any insolvency resolution process, bankruptcy process, or fresh start process, and has not been declared an undischarged bankrupt.
- xviii. Based on available information, the Personal Guarantor holds assets and is therefore not eligible for fresh start process under Section 80 of the Code. The Resolution Professional has

collected information from available sources and submitted the report under Section 99 of the Code.

- xix. In view of the above facts and examination, the Resolution Professional concluded that the Application satisfies all the requirements under Section 95 of the Insolvency and Bankruptcy Code, 2016 and recommended initiation of insolvency resolution process against the Personal Guarantor.

Written Submission made by Respondent:

16. The Respondent submits that the Corporate Debtor had purchased goods from the Applicant during 2010, and after adjustment of returned goods, an amount of ₹10,48,79,990/- remained outstanding. A Settlement Agreement dated 01.11.2020 was entered into, whereby the Corporate Debtor along with the Respondent agreed to be jointly and severally liable for repayment.

17. It is submitted that due to financial difficulties, the Corporate Debtor could not discharge its liability, and consequently, the Respondent has also failed to pay the said outstanding amount.

18. The Respondent further submits that he is presently not in a financial position to repay the admitted dues and has prayed for appropriate relief from this Hon'ble Tribunal.

Written Submission made by Applicant:

19. The Applicant submits that the Respondent has not raised any substantive or legally tenable defence and has, in fact, admitted the debt, default, and his status as Personal Guarantor. It is further submitted that the liability of the Respondent is co-extensive with that of the Corporate Debtor and stands clearly established.
20. It is submitted that goods were supplied to the Corporate Debtor and financial assistance was also extended, out of which an amount of ₹10,48,79,990.98/- remains outstanding after adjustment of part payments and return of goods. A Settlement Agreement dated 01.11.2020 was executed, however, the Corporate Debtor and the Respondent failed to comply with its terms, resulting in the entire amount becoming due and payable.
21. The Applicant further submits that the defence of financial difficulty taken by the Respondent is not tenable in law, and despite issuance of demand notice and invocation of personal guarantee, the Respondent has failed to discharge the liability. It is therefore submitted that there is no pre-existing dispute, the debt and default stand established, and the present application under Section 95 of IBC is maintainable.

Analysis & observation:

22. We have heard the submissions made by the Learned Counsel for the Applicant and the Respondent and have perused the material available on record, including the Application filed under Section 95 of the Insolvency and Bankruptcy Code, 2016, the report submitted by the Resolution Professional under Section 99 of the Code. It is noted that this Adjudicating Authority had directed the Respondent to file objections however, the Respondent has chosen to file written submissions, which have been taken on record along with the rejoinder thereto.

23. Issue No. I: Whether the debt exists and has been duly established?

- i. From the record, it is observed that the debt in the present matter arises out of supply of aluminium scrap and profiles by the Applicant to the Corporate Debtor during the period from 01.10.2010 to 21.12.2010, amounting to ₹11,90,27,998.98/-, which were duly accepted by the Corporate Debtor. The Applicant had also extended financial assistance of ₹51,00,000/- on 24.12.2010 and ₹30,48,992/- on 27.12.2010. After adjustment of part payments and return of goods worth ₹1,00,00,000/-, an amount of ₹10,48,79,990.98/- remained outstanding and due as on 05.10.2011.

- ii. It is further evident from the record that a Settlement Agreement dated 01.11.2020 was executed between the Applicant, the Corporate Debtor, and the Respondent/Personal Guarantor, wherein the subsisting liability of ₹10,48,79,990.98/- was expressly recorded and the Corporate Debtor agreed to pay a settlement amount of ₹8,00,00,000/- within six months, i.e., on or before 30.04.2021. The said Settlement Agreement constitutes a clear acknowledgment of the liability and crystallises the debt. The liability is also reflected in the financial statements of the Corporate Debtor from FY 2013–14 to FY 2022–23.
- iii. Accordingly, Issue No. I is answered in the affirmative. The existence of debt stands clearly established within the meaning of Section 3(11) of the Code.

24.Issue No. II: Whether a default has been committed within the meaning of Section 3(12) of the Code?

- i. It is not in dispute that the Corporate Debtor failed to make any payment in terms of the Settlement Agreement within the stipulated period. As per Clause 2.1 of the Settlement Agreement, upon failure to pay the settlement amount on or before 30.04.2021, the entire outstanding amount of

₹10,48,79,990.98/- became immediately due and payable and the settlement stood void. The date of default is accordingly and rightly taken as 30.04.2021.

- ii. The Resolution Professional, in his Report under Section 99 of the Code, has also observed and confirmed that the default stands established under Section 3(12) of the Code.
- iii. Accordingly, Issue No. II is answered in the affirmative. The occurrence of default stands clearly established.

25. Issue No. III: Whether the personal guarantee has been validly invoked and the liability of the Respondent stands established?

- i. The Respondent, being the Personal Guarantor, had undertaken joint and several liability under the Settlement Agreement. As per Clause 3.6 of the Settlement Agreement, the Personal Guarantor is jointly and severally liable, and the Applicant Creditor is entitled to enforce the guarantee directly against the Personal Guarantor without first exhausting remedies against the Corporate Debtor.
- ii. The personal guarantee was duly invoked by the Applicant vide notice dated 17.06.2021, calling upon both the Corporate Debtor and the Respondent/Personal Guarantor to discharge the entire outstanding liability. Subsequently, a demand notice dated

12.12.2024 was also issued under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. Despite receipt of the said notices and expiry of the statutory period of 14 days, the Respondent has failed to discharge the liability.

- iii. The liability of the guarantor is co-extensive with that of the principal borrower. The Resolution Professional has also observed that the Personal Guarantor has executed a valid and subsisting personal guarantee in favour of the Applicant Creditor and that the invocation of guarantee has been properly made in accordance with law.
- iv. Accordingly, Issue No. III is answered in the affirmative. The personal guarantee has been validly invoked and the liability of the Respondent as Personal Guarantor stands established.

26. Issue No. V: Whether the present Application is within the period of limitation?

- i. On the question of limitation, this Adjudicating Authority deems it necessary to draw a distinction between the liability of the Corporate Debtor and that of the Respondent/Personal Guarantor, as both have different points of origin.

- ii. The Corporate Debtor's liability arose from supply of goods during 01.10.2010 to 21.12.2010, crystallising at ₹10,48,79,990.98/- as on 05.10.2011. The said liability was continuously acknowledged in the financial statements of the Corporate Debtor from FY 2013-14 to FY 2022-23, constituting valid acknowledgements under Section 18 of the Limitation Act.
- iii. Insofar as the Respondent/Personal Guarantor is concerned, the personal guarantee came into existence for the first time on 01.11.2020 under Clause 3.1 of the Settlement Agreement, whereby Mr. Gaurav Mungad provided his unconditional and irrevocable personal guarantee in favour of the Applicant. The guarantee liability of the Respondent therefore originates on 01.11.2020 and not from the original transactions of 2010-2011. Under Clause 4 of the said Agreement, the Buyer and the Guarantors have expressly acknowledged the total outstanding liability of ₹10,48,79,990.98/-, constituting a fresh acknowledgement of debt under Section 18 of the Limitation Act. Upon failure of the Corporate Debtor to pay the Settlement Amount by 30.04.2021, as per Clause 2.1, the entire outstanding amount became immediately due and payable, giving rise to a

fresh cause of action against the Personal Guarantor on 30.04.2021. The guarantee being a continuing guarantee under Clause 3.4, and the obligations of the Guarantor surviving under Clause 3.7 until full discharge of all outstanding amounts, the liability of the Respondent continued to subsist as on the date of filing of this Application.

- iv. Furthermore, the period from 15.03.2020 to 28.02.2022 (716 days) stands excluded in terms of the judgment of the Hon'ble Supreme Court in *Suo Motu Writ Petition (Civil) No. 3 of 2020*. In view of the foregoing, this Adjudicating Authority is satisfied that the present Application filed on 11.01.2025 is well within the period of limitation.
- v. Accordingly, Issue No. V is answered in the affirmative.

27. Based on the material available on record, including the Settlement Agreement, ledger accounts, demand notices and the Report of the Resolution Professional, we are satisfied that the existence of debt and occurrence of default stand clearly established within the meaning of Sections 3(11) and 3(12) of the Code.

28. The Resolution Professional, in his Report submitted under Section 99 of the Code, has concluded that the Application satisfies the requirements of Section 95 of the Code. The Application is complete

in all respects and the debt does not fall within the category of excluded debts under Section 79(15) of the Code which have been duly considered.

29. Upon consideration of the entire material on record, this Adjudicating Authority is satisfied that the debt exists, default has been committed, and the Application is complete and in compliance with the provisions of Section 95 of the Insolvency and Bankruptcy Code, 2016.

ORDER

30. In view of the above, the petition deserves admission, and we pass the following order:

- I. The present Application CP/IB/12/2025 is hereby **ADMITTED** under Section 100 of the Code and the Insolvency Resolution Process stands initiated against the **Personal Guarantor i.e. Gaurav Mungad**.
- II. The moratorium begun on the date of admission of the application shall cease to have effect at the end of the period of 180 days from the date of this order. During the moratorium period, the following provisions shall be in effect:
 - III. Any pending legal action or proceeding in respect of any debt be deemed to have been stayed; and
 - IV. The creditors of the Personal Guarantor shall not initiate any legal action or proceedings in respect of any debt; and

- V. The Personal Guarantor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;
- VI. 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.
- VII. The Resolution Professional **Mr. Navin Khandelwal**, Insolvency Professional having Registration No. IBBI/IPA-001/IP/P00703/2017-2018/11301, who was appointed as the Insolvency Resolution Professional vide order dated **20.06.2025**, is hereby appointed as Resolution Professional for conducting the Insolvency Resolution Process of the Personal Guarantor.
- VIII. The Resolution Professional is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of uploading of this Order on the website of the NCLT, inviting claims from all Creditors, who shall register their claims as provided under Section 103 within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102 (2) of IBC, 2016. The publication of notice shall be made in newspapers, one in English and other in Vernacular which have wide circulation in the State where the Personal Guarantor resides. The Resolution Professional

shall furnish two spare copies of the notice to the Registry. One shall be placed by the Registry on our website and the other shall be affixed in the premises of this Authority.

IX. The Resolution Professional shall prepare a list of creditors under Section 104 of the Code on the basis of:

- a. information disclosed in the Application filed under Section 95,
and
- b. claims received under Section 102, within 30 days from the date of publication of notice.

X. The Personal Guarantor shall prepare a Repayment Plan under Section 105, in consultation with the Resolution Professional, containing a proposal for restructuring of his debts.

XI. The Repayment Plan may authorize or require the Resolution Professional to:

- a. carry on the debtor's business or trade on his behalf or in his name; or
- b. realize the assets of the debtor; or
- c. administer or dispose of any funds of the debtor.

The Plan shall include:

- a. justification for preparation of such plan;
- b. payment of fee to the Resolution Professional;

- c. any other matter as may be specified.
- XII. The Resolution Professional shall submit the Repayment Plan to this Authority along with his report within 21 days from the last date of submission of claims, in terms of Section 106 of the Code.
- XIII. In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof. If the resolution professional is of the opinion that the meeting of the creditors should be summoned, she shall specify the details as provided under Section 106(3). The date of meeting should not be less than 14 days or more than 28 days from the date of submission of the report under sub-section (1) of Section 106, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all relevant/feasible modes. Such notice must contain the details as provided under the provisions of Section 107.
- XIV. The meeting of the creditors shall be conducted in accordance with sections 108, 109, 110 & 111. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 and submit the same to this Authority, copies of which shall be provided to the Personal Guarantor and the creditors. It is made clear that the resolution professional shall

perform his function and duties in compliance with the code of Conduct provided under section 208 of the Code.

XV. The Applicant/financial creditor is directed to deposit Rs. 50,000/- (Rupees Fifty Thousand Only) to the bank account of Resolution Professional within one week, from the date of this order towards her fees. This shall be subjected to the Rules and Regulations under the provisions of IBC, 2016, including maintaining independence, confidentiality, and impartiality in all actions.

XVI. The Resolution Professional is directed to strictly abide by the provisions of IBC 2016 and complete the process of insolvency in a time bound manner after constitution of the committee of creditors.

31. Accordingly, **CP(IB)/12(MP)/2025** filed under section 95 of IBC, 2016 is **admitted** and the Insolvency Resolution process stands initiated against the Respondent/Personal Guarantor.

Sd/-

MAN MOHAN GUPTA
(MEMBER TECHNICAL)

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Sd/-

BRAJENDRA MANI TRIPATHI
(MEMBER JUDICIAL)