

IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

IA 5617/2024

In

CP No. IB 681 (ND)/2024

(Under Section 100 of the Insolvency and Bankruptcy Code, 2016)

IN THE MATTER OF:

UV ASSET RECONSTRUCTION COMPANY LTD.

...PETITIONER/FINANCIAL CREDITOR

VERSUS

CAPTAIN MANOJ AIRON

...RESPONDENT/PERSONAL GUARANTOR

AND

IN THE MATTER OF: IA (IBC) 5617/2024

SHAILESH CHANDRA OJHA

...APPLICANT/RESOLUTION PROFESSIONAL

Order Reserved on: 20.05.2026

Order Pronounced on: 08.06.2026

CORAM:

JUSTICE ANUPINDER SINGH GREWAL

HON'BLE PRESIDENT

SHRI RAVINDRA CHATURVEDI

HON'BLE MEMBER (TECHNICAL)

Present:

For the RP Mr. Shivam Gautam, Adv. a/w Mr. Shailesh Ojha,
RP

For the PG Mr. Bishwajit Singh, Mr. Prakhar Aditya, Mr. Rishi
Kant Singh, Advs.

ORDER

1. The main petition is filed under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 (**IBC/Code**) by **UV Asset Reconstruction Company Limited (“Petitioner”/ “Financial Creditor”/“UVARCL”)** seeking to initiate Personal Insolvency Resolution Process (**“PIRP”**) against Captain Manoj Airon (**“Respondent” / “Personal Guarantor”/ “PG”**), personal guarantor of Harvest Hotels and Serviced Apartments Pvt. Ltd. (**“Corporate Debtor”/ “Principal Borrower”**).
2. This Adjudicating Authority, vide order dated 14.10.2024, appointed Mr. Shailesh Chandra Ojha, bearing Registration No. IBBI/IPA-001/IP-P-02859/2023-2024/14382, email id: ipscojha@gmail.com (**“Resolution Professional” / “RP”**), as the Resolution Professional, to submit a report as per Section 99 of the Code.
3. The Resolution Professional submitted a report under Section 99 of the Code through **IA-5617/2024**, which also forms a part of the subject matter under consideration in the present adjudication.

Brief facts of the case:

As submitted by the parties in the pleadings and submissions made in the court, the following are the relevant facts of the case: -

4. Harvest Hotels and Serviced Apartments Private Limited, i.e. the Corporate Debtor, had availed various financial facilities from State Bank of Patiala (now State Bank of India), Central Bank of India and Allahabad Bank, in the form of Term Loans, Funded Interest Term Loans (“**FITL**”), Working Capital Term Loan and Bank Guarantees. To secure these facilities, Captain Manoj Airon (the Personal Guarantor herein), Captain Chander Mohan Sawhney and Jasbir Singh executed various deeds of Personal Guarantees, providing an irrevocable and continuing guarantee in favour of the respective lenders and Harvest Holdings Pvt. Ltd. (one of the promoters of the Corporate Debtor) stood as a corporate guarantor.
5. Subsequently a Master Restructuring Agreement (“**MRA**”) dated 29.12.2014 was executed between the State Bank of Patiala, Central Bank of India, Allahabad Bank and the Corporate Debtor to efficiently restructure the debt of the Corporate Debtor, pursuant to which the Respondent/ Personal Guarantor executed a further deed of Personal Guarantee dated 29.12.2014 thereby acknowledging the outstanding debt of Rs. 101,25,00,000/- (Rupees One Hundred and One Crore Twenty-Five Lakhs only), in favour of the lenders.
6. The Corporate Debtor failed to honour the agreed repayment schedule and was classified as Non- Performing Asset (“**NPA**”) on **30.04.2017**.
7. Subsequently, the State Bank of India, Central Bank of India and Allahabad Bank, executed assignment deeds dated 19.07.2019, 29.07.2019 and 25.09.2019 respectively in favor of Asset Reconstruction Company Ltd. (“**ARCIL**”) wherein the loans disbursed to the Corporate Debtor, together with all its rights, title and interest, including underlying security interest, pledges and/or guarantees in respect of such loans, were assigned in favour of ARCIL.

8. Subsequently, the promoters of the Corporate Debtor, i.e., Capt. Chander Mohan Sawhney and Harvest Holdings Pvt. Ltd. executed an Undertaking in favour of ARCIL dated 22.08.2019, wherein they acknowledged the debt owed to the Banks and proposed a repayment plan.
9. Despite repeated follow-ups, the Corporate Debtor failed to comply with the obligations set out in the Undertaking dated 22.08.2019. Consequently, ARCIL issued a Recall Notice dated 24.05.2021 recalling the entire outstanding amount of Rs. 170,82,74,727/- (Rupees One Hundred and Seventy Crores Eighty-Two Lakhs Seventy-Four Thousand Seven Hundred and Twenty-Seven only) as on 30.04.2021, along with further interest from 01.05.2021.
10. In response to the said Loan Recall Notice dated 24.05.2021, the Corporate Debtor and its promoters i.e., Captain Mohan Sawhney and Harvest Holdings Pvt. Ltd. issued a fresh declaration cum undertaking on 29.07.2021 acknowledging that an amount of Rs. 170,82,74,727/- (Rupees One Hundred and Seventy Crores Eighty-Two Lakhs Seventy-Four Thousand Seven Hundred and Twenty-Seven only) was due and payable as on 30.04.2021 along with further interest from 01.05.2021.
11. However, the Corporate Debtor once again defaulted in its repayment obligations under the undertaking dated 29.07.2021. Consequently, ARCIL filed a company petition bearing CP (IB) No.144/PB/2022, under section 7 of the Code, seeking initiation of the Corporate Insolvency Resolution Process (**CIRP**) against the Corporate Debtor. The said petition was allowed by this Adjudicating Authority *vide* order dated 07.10.2022, and the resolution plan for the Corporate Debtor was approved *vide* order dated 12.06.2024.

12. Meanwhile, on 28.04.2022, ARCIL issued a **Demand Notice** under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtor) Rules 2019 (**Personal Guarantor Rules**), calling upon the Guarantor to pay the amounts due under the Guarantee Deed.
13. Thereafter, on 26.04.2023, ARCIL entered into an assignment agreement with UV Asset Reconstruction Company Limited (the Petitioner/Financial Creditor/ herein), thereby assigning the entire debt to the Petitioner/Creditor. On 07.06.2024, the Petitioner/Financial Creditor issued another demand notice under Rule 7(1) of the Personal Guarantor Rules, 2019, calling upon the Personal Guarantor to repay an outstanding debt of Rs. 258,92,81,114/- (Rupees Two Hundred and Fifty-Eight Crores Ninety-Two Lakhs Eighty-One Thousand One Hundred and Fourteen only) as on 31.05.2024 along with further interest till the date of repayment.
14. On 26.02.2024, an amount of Rs. 4,00,00,000/- (Rupees Four Crores only) was received from Mr Jasbir Singh, another personal guarantor of the Corporate Debtor. Pursuant to receipt of the aforesaid amount, Mr. Jasbir Singh stood discharged from his liability as a personal guarantor of the CD.
15. Further, on 30.07.2024, an amount of Rs. 10,00,00,000/- (Rupees Ten Crores only) was received by the Financial Creditor herein from the Successful Resolution Applicant of the Corporate Debtor in part performance of the approved Resolution Plan of CD. Accordingly, the liability of the Personal Guarantor herein, Captain Manoj Airon, stands reduced to the extent of the amounts so received.

16. Despite issuance of the aforesaid demand notice, the Personal Guarantor failed to make payment of the outstanding dues. Accordingly, in terms of Section 95(1) of the Code, the Financial Creditor has filed the present petition on 01.10.2024 on the DMS e-portal seeking initiation of insolvency proceedings against the PG/ Respondent for a debt due to the tune of Rs. 2,63,93,04,144/- (Rupees Two Hundred Sixty-Three Crores Ninety-Three Lakhs Four Thousand One Hundred and Forty-Four Only) as on 25.07.2024.
17. This petition was listed for hearing on 14.10.2024, wherein Mr. Shailesh Chandra Ojha, bearing Registration No. IBBI Registration Number IBBI/IPA-001/IP-P-02859/2023-2024/14382, email id: ipscojha@gmail.com, was appointed as the Resolution Professional under Section 97 of the Code, and directed to submit a report under Section 99 of the Code. The relevant portion of the order dated 14.10.2024 is extracted below:

4. Applicant has not proposed the name of the RP to be appointed, thereby this Bench appoints **Mr. Shailesh Chandra Ojha** as Resolution Professional, whose details are given below:

IBBI Registration No: [IBBI/IPA-001/IP-P-02859/2023-2024/14382](#)

E-mail Address: ipscojha@gmail.com, **Contact No. 9896067652**

18. In compliance with the order dated 14.10.2024, the Resolution Professional submitted a report under Section 99 of the Code *vide* IA-5617/2024. The submissions of the Resolution Professional with regard to the present application are as extracted below:

J. RECOMMENDATION

1. In view of the detailed examination of the application along with the supporting documents thereof, the Resolution professional do hereby recommend that the Application filed by the creditor, viz., UV Asset Reconstruction Company Ltd, under Section 95(1) of the Code can be admitted under Section 100 of the Code and the Insolvency Resolution Process be commenced against the Personal Guarantor, viz., **Capt. Manoj Airon** for the reasons established, which are mentioned below:
 - A. There is nothing on record to prove that the Personal Guarantor had denied the existence of debt or default.
 - B. The Application is rightly filed before the Hon'ble NCLT, New Delhi, Principal Bench, which have jurisdiction over the place where the Personal Guarantor actually and voluntarily resides and carries on his business for gain and also the registered offices of the Corporate Debtor is situated in Delhi.
 - C. A demand notice demanding payment of amount in default has been served on the Personal Guarantor before filing the Application.
 - D. The Application filed by the Creditor is complete and satisfies the requirements as set out in Section 95 of the Code.

19. The Resolution Professional has opined that, in view of the foregoing facts and circumstances, and considering that the petition filed by the Creditor satisfies the requirements stipulated under Section 95 of the Insolvency and Bankruptcy Code, 2016, and that the Personal Guarantor has failed to establish repayment of the debt in question, it is accordingly recommended by the RP that the petition filed by the Creditor be admitted under the provisions of Section 100 of the Code.
20. This report of the RP was listed for the first time on 28.11.2024, wherein the following order was passed by this Adjudicating Authority:

New IA-5617/2024, New IA-5637/2024

Ld. Counsel Mr. Vinod Chaurasia appeared through VC on behalf of the RP. The RP Mr. Shailesh Chandra Ojha also appeared through VC. Ld. Counsel sought time to take instructions and pursue these applications.

At request and with consent of the parties, list the matter for a physical hearing **on 09.12.2024.**

21. On 09.12.2024, the following order was passed by the Adjudicating Authority:

IA-5617/2024

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This is a report filed by the Resolution Professional under Section 99 of the Code.

The RP Mr. Shailesh Chandra Ojha appeared through VC.

Ld. Counsel for the Respondent/PG appeared physically and sought time to file a response/reply to the report filed by the RP.

At the request, list the matter for a physical hearing **on 20.01.2025.**

The reply dated 22.02.2025 was filed by the Personal Guarantor.

Objections raised by the PG against the admission of this petition:

22. We have considered the objections raised by the Personal Guarantor in his Reply to the Report submitted by the Resolution Professional under Section 99(1) of the Code. The objections raised by the Personal Guarantor / Respondent pertain to the following grounds:
1. That the present petition is barred by limitation, and that the alleged demand notice dated 28.04.2022 or the loan recall notices were never received by the him
 2. That the Respondent has withdrawn from the Personal Guarantee through letters and telephonic communication.
23. On the **first issue**, it is contended by the Personal Guarantor / Respondent that the present application under Section 95 of the Code is barred by limitation, inasmuch as the first demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“**SARFAESI Act**”) was issued on 28.05.2018 and thereafter OA No. 330/2021 was filed before the Debt Recovery Tribunal, Delhi, wherein notice was issued on 25.06.2021.
24. According to the Respondent, limitation would commence from the date of issuance of the SARFAESI notice, i.e. 28.05.2018, and the Financial Creditor cannot manufacture a fresh period of limitation by issuing the alleged demand notice dated 28.04.2022 or the demand notice dated 07.06.2024. The Respondent has further denied receipt and service of the alleged demand notice dated 28.04.2022 and has contended that no recall notice was ever served upon him.

25. It is also averred that the Respondent was not a party to the Undertaking dated 22.08.2019 or Declaration-cum-Undertaking dated 29.07.2021, and therefore Section 18 of the Limitation Act, 1963 has no application against him. The Respondent has also denied that the CIRP admission order dated 07.10.2022 constitutes an acknowledgement of debt binding upon him. The Respondent has accordingly alleged that the recommendation of the Resolution Professional to the effect that the application has been filed within limitation is erroneous.
26. On the **second issue**, the Respondent has contended, inter alia, that no consortium documents or guarantees were signed or executed by him, as the letter dated 27.12.2014 from the Central Bank of India and the letter dated 26.12.2014 from the State Bank of Patiala required fresh consortium documents to be executed, and no such documents were executed or signed by the Respondent.
27. In the alternative, the personal guarantee, if any, was executed only for the FITL dated 11.01.2013 for the period from July 2014 to March 2016, which was itself subject to various conditions that were never fulfilled by the Corporate Debtor, and since the FITL did not materialise, the alleged guarantee was never enforceable.
28. It is further contended that the Respondent had, through letters dated 10.04.2015, 14.04.2015, 23.04.2015, 02.11.2017 and 22.11.2017 and also through telephonic communications, repeatedly informed the lenders of his withdrawal from the personal guarantee (Annexure R-3 to R-7 of the application). The Respondent had resigned from the directorship of the Corporate Debtor with effect from 06.04.2015, and the resignation letter and DIR-11 Form were duly filed with the Registrar of Companies (Annexure R-9 of the application). The

Respondent has also alleged that the consortium banks had fraudulently used and relied upon undated guarantee documents signed by him, notwithstanding his repeated requests for withdrawal from the said guarantees.

29. It is the contention of the Respondent that the Respondent has neither availed any loan personally, nor did he execute any undertaking dated 22.08.2019 or declaration-cum-undertaking dated 29.07.2021; and therefore, no debt is owed by or enforceable against the Respondent. Accordingly, the Respondent has prayed that the recommendation of the Resolution Professional be rejected and the application under Section 95 be dismissed.
30. On 25.02.2025, the following order was passed by the Adjudicating Authority:

IA-5617/2024

Ld. Counsel appeared on behalf of the Financial Creditor and sought time to file the Rejoinder. Liberty is granted to the Ld. Counsel for the Financial Creditor to place on record the Rejoinder within one week after serving the copy thereof in advance to the Personal Guarantor/Respondent.

Ld. Counsel Mr. Bishwajit Singh appeared on behalf of the Respondent.

Ld. Counsel Mr. Vinod Kumar Chaurasia appeared on behalf of the RP.

For further consideration, at request, list the matter before the Regular (Principal) Bench on **02.04.2025**.

In compliance with the aforementioned order, the Petitioner filed a rejoinder on the DMS e-portal on 31.03.2025.

31. In the Rejoinder, it is contended that the guarantee executed by the Respondent is a continuing guarantee and therefore the liability of the guarantor subsists till complete discharge of the debt. The Financial Creditor has asserted that in terms of Clause 4.1 of the Guarantee Deed dated 29.12.2014, successive and multiple demands can be made upon the guarantor, and such demands do not extinguish the continuing liability under the guarantee. The relevant clause is extracted below for ready reference:

4. CONTINUING GUARANTEE

4.1 This Guarantee shall be:

(A) A continuing Guarantee remaining in full force and effect until payments in full have been received by the Lenders of each and every part of all the monies payable / paid by the Borrower to the Lenders under the Loan Agreement including without limitation, towards the principal amount of the loan together with interest, liquidated damages, up-front fee, premia on prepayment or on redemption, costs, expenses and other monies that may from time

to time become due and payable and remain unpaid to the Lenders under the Loan Agreement, in whatever currency or currencies the same may from time to time be denominated in accordance with the loan Agreement; the Lenders may make multiple or successive demands upon the Guarantor and any such demands shall not be considered or regarded as an invocation of all the obligations under this Guarantee; provided, however, such invocation or demands shall not prejudice or affect the rights of the Lenders to make further additional invocations or demands; and

Further, Clause 19 indicates that the guarantee is irrevocable and unconditional. The same is extracted below:

19. This Guarantee shall be irrevocable and the obligations of the Guarantor hereunder shall not be conditional on the receipt of any prior notice by the Guarantor or by the Borrower and the demand or notice by the Lenders as provided in Clause 26 hereof shall be sufficient notice to or demand on the Guarantor.

It is further contended that resignation from the directorship of the Corporate Debtor does not discharge the Respondent from liability under the guarantee agreement signed by him, which remains enforceable till complete repayment of the outstanding dues.

The petitioner has also contended that the alleged withdrawal letters and telephonic communications relied upon by the Respondent have no legal effect in absence of express discharge by the lenders.

32. On 02.04.2025, the following order was passed by the Adjudicating Authority:

IA-5617/2024

1. This is a report filed by the RP under Section 99 of the Code on 13.11.2024.
2. Today, when the matter was taken up, the RP, Mr. Shailesh Chandra Ojha, appeared in person along with his Counsel Mr. Vinod Kumar Chaurasia and tendered an apology for certain mistakes in a report and sought permission to withdraw the present application. An endorsement to this effect was made, which reads as follows:

“There is sum typographical & factual errors in the report and need to revised report 12.11.2024. I want to withdraw the report.”

3. The same is strongly objected to by the Ld. Counsel Mr. Rishi Kan Singh for the Respondent/PG appeared and submitted that a reply to the report has already been filed.
4. To enable all the parties to submit the relevant documents, list the matter again **on 01.05.2025**.

An additional affidavit mentioning typographical errors in the RP Report dated 12.11.2024 has been filed by the RP on 29.05.2024 in view of the above order.

33. On 24.07.2025, the following order was passed by the Adjudicating Authority:

IA-5617/2024

Ld. Counsels for the parties appeared.

RP undertakes to implead the PG and FC so as to enable them to file their response.

In the meantime, RP is directed to file a list of dates & events along with a short note specifically covering the invocation of guarantee, the proof of delivery of Form-B and the limitation period.

At request and with consent of the parties, list the matter **on 11.08.2025**.

In compliance with the above-mentioned order, the affidavit containing the amended memo of parties was uploaded on the DMS e-portal on 06.08.2025, and the affidavit containing the list of dates and events was uploaded on the DMS e-portal on 08.08.2025.

34. On 08.09.2025, the following order was passed by the Adjudicating Authority:

IA-5617/2024

Brief notes have been filed and the same are taken on record.

Ld. Counsel appearing for the Respondent seeks an adjournment on the ground of some personal inconvenience. At request, list the matter on **06.10.2025**.

35. On 10.02.2026, the following order was passed by the Adjudicating Authority:

IA-5617/2024

Ld. Counsels for the parties appeared.

Ld. Counsel for the RP submitted that pleadings in this matter have already been completed.

Parties are directed to file a brief written submission along with a list of dates & events, specifically addressing the objections raised and submissions advanced by the opposite party.

At request and with consent of the parties, list the matter on **02.03.2026** for further consideration.

36. On 02.03.2026, the following order was passed by the Adjudicating Authority:

ORDER

IA-5617/2024

1. Today, when the matter was called, none appeared on behalf of the RP. Even the RP has not appeared in person.
2. Ld. Counsel Ms. Mahima Shekhawat appeared through VC on behalf of the Financial Creditor.
3. Ld. Counsel appeared on behalf of the Respondent.
4. It is made clear that in case the RP is not represented on the next date of hearing, appropriate orders may be passed.
5. At request and with consent of the parties, list the matter before the Regular (Principal) Bench on **28.04.2026 for arguments**.

37. On 20.05.2026, orders were reserved in the IA -5617/2024, by the following order:

IA-5617/2024

Arguments Heard, Order Reserved.

ANALYSIS:

38. We have carefully considered the submissions and pleadings advanced by both the parties and have perused the material available on record, including the report submitted by the Resolution Professional, the Reply filed by the Personal Guarantor / Respondent, and the Rejoinder / Objections filed by the Petitioner / Financial Creditor. In view of the submissions raised, the following issues fall for determination:

1. Whether the present Petition filed under Section 95(1) of the Code is barred by limitation?
2. Whether resignation of the Personal Guarantor from the directorship of the CD or his unilateral withdrawal from the guarantee agreement releases him from the liability arising out of the Personal Guarantee executed by him?

39. On the **first issue**, it is contended that the present Petition under Section 95 of the Code is barred by limitation on the ground that the first demand notice under Section 13(2) of the SARFAESI Act was issued on 28.05.2018. According to the Respondent, the limitation period commenced from the said SARFAESI notice, and the petitioner cannot create a fresh cause of action by issuing subsequent demand notices dated 28.04.2022 and 07.06.2024. The Respondent has further denied the receipt of the alleged demand notice dated 28.04.2022 and contended that no valid recall notice or invocation notice was ever served upon him. It is also contended that the

Respondent was not a party to the Undertaking dated 22.08.2019 or Declaration-cum-Undertaking dated 29.07.2021 and therefore such documents cannot operate as an acknowledgement of liability against him under Section 18 of the Limitation Act, 1963 to extend the limitation period. The Respondent has further denied that the CIRP admission order dated 07.10.2022, or any acknowledgement by the Corporate Debtor, can be treated as an acknowledgement by the Respondent / Personal Guarantor.

40. The Financial Creditor, however, has contended that the guarantee executed by the Respondent is a continuing guarantee, as expressly stipulated in Clause 4.1 of the Guarantee Deed, and therefore the guarantor's liability subsists until complete discharge of all outstanding dues, including principal, interest, liquidated damages, fees, costs, expenses, and other monies payable under the Loan Agreement. It has been submitted that the fundamental characteristic of a continuing guarantee is that it does not lapse upon a single instance of default but endures until the entire debt owed to the lender is satisfied in full, and that no period of limitation is applicable in the case of a continuing guarantee.
41. It has further been submitted that the Undertaking dated 22.08.2019 executed by the Corporate Debtor and its promoters, and the Declaration-cum-Undertaking dated 29.07.2021, constitute acknowledgements of debt under Section 18 of the Limitation Act, 1963, thereby extending the period of limitation. Reliance has been placed upon Clause 27.1 of the Guarantee Deed, which stipulates that any admission, acknowledgment in writing, part payment, or judgment against the Corporate Debtor shall be binding upon the Personal Guarantor as well, and that the Borrower in making such acknowledgment shall be deemed to act as the duly authorised agent

of the Guarantor for the purposes of Sections 18 and 19 of the Limitation Act, 1963. It has accordingly been submitted that the liability of the Corporate Debtor and the Personal Guarantor being co-terminus, any acknowledgement by the Corporate Debtor extends the limitation period not only for the borrower but also for the guarantor.

42. The Petitioner/Financial Creditor has also placed reliance upon the order of the Hon'ble Supreme Court dated 10.01.2022 in Suo Motu Writ Petition (Civil) No. 3 of 2020, directing exclusion of the period from 15.03.2020 to 28.02.2022 for purposes of limitation under all general and special laws in respect of judicial and quasi-judicial proceedings, which further extends the limitation period. Furthermore, it has been submitted that the limitation period against a guarantor commences only upon a specific demand being made upon the guarantor, and the demand notice dated 28.04.2022 and 07.06.2024 issued specifically to the Personal Guarantor under Rule 7(1) of the Personal Guarantors Rules, and the present petition filed on 26.07.2024, are all within the permissible period of limitation. Additionally, the admission of the CIRP against the Corporate Debtor on 07.10.2022 constitutes a further acknowledgement of the debt. The objection of the Respondent regarding limitation is accordingly denied as being false, frivolous, and untenable.
43. Having considered the submissions advanced by both the parties, the objection on limitation does not appear sustainable prima facie. The record reflects that a Recall Notice dated 24.05.2021 was issued by the Petitioner / Creditor recalling the entire outstanding loan amount as per the Master Restructuring Agreement, and thereafter the Corporate Debtor and its promoters executed a Declaration-cum-Undertaking dated 29.07.2021 expressly admitting that an amount of approximately Rs. 170,82,74,727/- (Rupees One Hundred and

Seventy Crores Eighty-Two Lakhs Seventy-Four Thousand Seven Hundred and Twenty-Seven only) was due and payable as of 30.04.2021 and acknowledging failure to fulfil commitments under the 2019 Undertaking. This acknowledgement of liability prima facie extends the limitation period from 29.07.2021 onwards.

44. Further, Clause 27.1 of the Guarantee Deed expressly provides that any acknowledgement of debt by the Corporate Debtor shall be deemed an acknowledgement by the Personal Guarantor, making the acknowledgements contained in the 2019 and 2021 undertakings binding upon the Respondent as well. The CIRP against the Corporate Debtor was further admitted on 07.10.2022, constituting a formal adjudicatory acknowledgement of the debt. The specific demand notices under Rule 7(1) of the Personal Guarantors Rules were thereafter issued to the Personal Guarantor on 28.04.2022 and 07.06.2024.

Therefore, the filing of the present Section 95 Petition on 26.07.2024 would be well within the prescribed limitation period. Moreover, in the case of a continuing guarantee, no period of limitation is applicable so long as any portion of the debt remains unpaid, since the guarantor remains bound by his obligations until full discharge of all dues.

45. On the **second issue**, the Respondent has raised the defence that no valid and enforceable personal guarantee subsists against him. The Respondent has adopted multiple, shifting, and self-contradictory positions in this regard. Initially, the Respondent categorically denied having furnished any guarantee whatsoever and denied signing any consortium documents. Subsequently, it was alleged that the consortium banks fraudulently used undated signed guarantee papers even after the Respondent had informed them of his withdrawal from the guarantee.

46. Thereafter, upon the factual position becoming clear from the record, the Respondent shifted to asserting that even if a guarantee was signed, it was only in respect of the FITL (Funded Interest Term Loan) which was itself conditional and never materialised, and that in any event the guarantee was unilaterally withdrawn through letters dated 10.04.2015, 14.04.2015, 23.04.2015, 02.11.2017 and 22.11.2017 as well as through telephonic communications.
47. The Respondent has further contended that his resignation from the directorship of the Corporate Debtor with effect from 06.04.2015, as evidenced by the DIR-11 Form filed with the Registrar of Companies, should be treated as a further basis for discharging his liability under the guarantee. The Respondent has denied having availed any loan personally, having executed any Undertaking dated 22.08.2019 or Declaration-cum-Undertaking dated 29.07.2021, or having received any recall notice.
48. The Financial Creditor in its Rejoinder / Objections has contended that the said Guarantee Deed was duly signed by the Respondent, and that this fact itself negates the shifting stand of the Respondent that no guarantee was executed or signed by him.
49. The Financial Creditor has further submitted that the guarantee so executed is irrevocable, unconditional, and continuing in nature, as expressly stipulated in Clause 4.1 read with Clause 19 of the Guarantee Deed. Clause 19 specifically provides that the guarantee shall be irrevocable, and the obligations of the Guarantor shall not be conditional on receipt of any prior notice, and that a demand or notice by the Lenders shall be sufficient notice to the Guarantor. Clause 4.1 provides that the guarantee is a continuing guarantee remaining in full force and effect until payments in full have been received by the Lenders in respect of all monies payable under the Loan Agreement,

and that the Lenders may make multiple or successive demands upon the Guarantor. Clause 24.1 provides that the guarantee shall be binding upon the Guarantor and its successors and assigns. It has accordingly been submitted that the Respondent's unilateral attempt to withdraw from the guarantee through letters dated 10.04.2015, 14.04.2015, 23.04.2015, 02.11.2017 and 22.11.2017 is legally untenable and has no legal effect, since a continuing guarantee of this nature can only be discharged by express release by the creditor, which has not been demonstrated.

50. The Financial Creditor has also submitted that resignation from the directorship of the Corporate Debtor does not in any manner discharge or extinguish the obligations arising under an independently executed personal guarantee, and that no material whatsoever has been placed on record to show that the lenders/creditor ever released the Respondent from his obligations under the Guarantee Deed. The allegation that the consortium banks fraudulently utilised undated guarantee papers bearing the Respondent's signature has also been denied as an afterthought, raised for the first time in the present proceedings without any supporting evidence. It is further submitted by the Petitioners that the allegations of fraud must be specifically pleaded and established by cogent evidence, which is absent in the present case.

51. Upon consideration of the submissions, the contention raised by the Respondent regarding non-existence or withdrawal of the personal guarantee appears to be untenable at this stage. The record prima facie indicates the existence of a duly executed Guarantee Deed dated 29.12.2014, and that the clauses of the Guarantee Deed clearly establish that the guarantee is irrevocable, unconditional, and continuing in nature, and that the Respondent's liability cannot be

affected by any variation, modification, or restructuring of the terms of the principal loan, nor by the mere passage of time.

52. A continuing guarantee can only be discharged in accordance with the terms agreed upon by the parties, which in the present case required full repayment of all dues to the lender, and the same has not been done in this case. The communications and letters relied upon by the Respondent merely reflect unilateral requests for withdrawal or removal of the guarantee, and do not establish any acceptance of such withdrawal or any discharge by the lenders/creditor. The alleged withdrawal letters were specifically addressed by the State Bank of Patiala, clarifying that the guarantee is irrevocable as per the documents and that only the consortium of banks can decide on release, thereby unequivocally rejecting any unilateral withdrawal.

53. Further, resignation of the Respondent from the management or directorship of the Corporate Debtor does not ipso facto extinguish or discharge contractual liability arising under an independently executed and irrevocable contract of guarantee.

54. The inconsistent, shifting, and self-contradictory nature of the defences taken by the Respondent at different times denying execution of any guarantee, alleging fraud, claiming non fulfilment of the conditions of FITL, and asserting withdrawal only reinforces the lack of bona fide merit in the objections raised. Therefore, the contentions raised do not prima facie negate the liability of the Respondent under the Guarantee Deed.

55. In terms of Section 100(1) of the Code, for admitting an application for insolvency resolution of a personal guarantor, the Adjudicating Authority must be satisfied that:

a) the application under Section 95 is complete;

- b) the debt is due and payable by the guarantor; and
- c) the guarantor has not repaid the debt.

56. In the present case, the petition is found to be complete in all respects. The debt arises from financial facilities availed by the Corporate Debtor from State Bank of Patiala (now State Bank of India), Central Bank of India, and Allahabad Bank, which aggregated to Rs. 101.25 crores under the Master Restructuring Agreement dated 29.12.2014 and was secured by the personal guarantee executed by the Respondent on 29.12.2014. The debt has been duly assigned to the Financial Creditor herein through a chain of assignments first from the Banks to ARCIL, and thereafter from ARCIL to the Financial Creditor pursuant to an Assignment Agreement dated 26.04.2023.

57. The debt has become due and payable and remains unpaid, as evidenced by the repeated defaults in repayment, the classification of the accounts as Non-Performing Assets on 30.04.2017, the failed undertakings of 2019 and 2021, the subsequent CIRP proceedings against the Corporate Debtor admitted on 07.10.2022, and the outstanding liability of Rs. 2,63,93,04,144/- as on 25.07.2024. The Guarantee Deed executed by the Respondent is irrevocable, unconditional, and continuing, and the Respondent has neither discharged the outstanding dues nor established any valid ground for release from his obligations thereunder. The Resolution Professional has also duly examined the matter and recommended admission of the petition under Section 100 of the Code. Thus, all conditions stipulated under Section 100(1) stand satisfied. The present petition under Section 95 of the Insolvency and Bankruptcy Code, 2016 is accordingly liable to be admitted.

Accordingly, we order as under

58. The petition under Section 95(1) is **admitted**, and the Insolvency Resolution Process against the Personal Guarantor is hereby initiated. Interim Moratorium, which came into effect in terms of Section 96(1) as on the date of filing the petition, shall cease to have effect. A fresh moratorium under Section 101 is declared from today, to be in effect for 180 days or until an order under Section 114 is passed, whichever is earlier. 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; and
- 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.

59. The Resolution Professional, **Mr. Shailesh Chandra Ojha**, who was appointed by this Adjudicating Authority vide order dated 14.10.2024, is hereby directed to take all further steps in accordance with Part III, Chapter-III of the Code including to publish a public notice on behalf of the Adjudicating Authority within 7 days of uploading of this Order on the website of the NCLT Delhi, inviting claims from all Creditors, who shall register their claims as provided under Section 103 within 21 days of such notice. 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 the other in the Vernacular Languages, which have wide circulation in the State where the Personal Guarantor resides.

60. The Resolution Professional, in exercise of the powers conferred under Section 104 of IBC, 2016, shall prepare a list of creditors within 30 days from the date of the notice. The debtor shall prepare a Repayment Plan in consultation with the Resolution Professional as provided under Section 105, which shall include the provisions for payment of a fee to the Resolution Professional. The Resolution Professional shall submit the Repayment Plan along with his report on the plan to this Adjudicating Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106 of IBC, 2016.
61. 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, he shall specify the details as provided under Section 106(3). The date of the 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 of the IBC, 2016, for which at least 14 days' notice to the creditors shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of the IBC, 2016.
62. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of the IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on the Repayment Plan with all details as provided under Section 112 of the IBC, 2016, and submit the same to this Adjudicating Authority, 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 the IBC, 2016.

63. The Financial Creditor shall deposit a sum of Rs. 1,00,000/- (Rupees One Lakh Only) with the RP to meet the expenses arising out of issuing public notice and inviting claims. This amount shall be adjusted towards the fees and expenses payable to the RP.
64. RP shall submit a status report every 30 days before this Tribunal.
65. The Personal Guarantor/Respondent, Captain Manoj Airon, is directed to cooperate with the Resolution Professional and provide all requisite information for the purpose of carrying out his duties. He is further directed to submit to the Resolution Professional, within two weeks from the date of this order, complete details specifically disclosing his assets and liabilities as on the date of this order, as well as on 31.03.2024 and 31.03.2025, duly supported by copies of the corresponding Income Tax Returns for the said two years. Further, in case any assets have been sold during the last two years, complete details thereof, including the nature of the asset, date of sale, consideration received, and mode of transfer, shall also be disclosed.
66. Registry shall communicate a copy of this order, the report, and the petition to all concerned, including the Financial Creditor, RP and the PG, within 7 working days and upload the same immediately.
67. A copy of this order be sent to **IBBI** by the Registry.
68. Accordingly, **IA No. 5617/2024** is **allowed** and **disposed of**, and the Insolvency Resolution Process has been initiated against the Personal Guarantor / Respondent. List the matter for **status report** by RP within four weeks on 20.07.2026.

Sd/-
(RAVINDRA CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(ANUPINDER SINGH GREWAL)
(PRESIDENT)