NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 499 of 2026
&
I.A. No. 1935, 1936, 1937 of 2026

(Arising out of the Impugned Order dated 03.02.2026 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Mumbai Bench in C.P. (IB) 75(MB)/2026)

IN THE MATTER OF:

Aditya Vivek Kawde
1602, Eiffel Tower CHSL. Plot 3, Sector 29
Nerul East, Navi Mumbai – 400706 **...Appellant**

Versus

1. **Bank of Maharashtra**
4th Floor, Janamangalm 45 / 47,
Samachar Marg, Fort, Mumbai - 400 001 **...Respondent No.1**

2. **Anil Kashi Drolia**
B-906, Park Side 1, Raheja Estate,
Kulupwadi, Borivali-East,
Near National Park, Mumbai Suburban,
Maharashtra - 400066 **...Respondent No.2**

Present:

For Appellant : Mr. Harsh Pandey, Mr. Mayank Biyani, Mr. Sandeep Baja, Mr. Akash Agarwal and Ms. Geetika Sharma, Advocates

For Respondent : Mr. Zulbiq Multani, Advocate for R-1.

Mr. Manoj Mishra, Advocate for R-2

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

This Appeal is preferred under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter to be referred as "the Code") by the Appellant, being Personal Guarantor of Aniirudh Civil Engineers and

Contractors Private Limited. The challenge by the Appellant is to the Order dated 03.02.2026 ("Impugned Order") passed by the Learned Adjudicating Authority, National Company Law Tribunal, Mumbai Bench, in C.P. (IB) No. 75/MB/2026, whereby the Learned Adjudicating Authority, directed initiation of the Bankruptcy Process against the Appellant under Section 121(1) of the Code and appointed Respondent No. 2 as the Bankruptcy Trustee. The Impugned Order was uploaded on 18 February 2026.

Factual Background:

2. M/s. Aniirudh Civil Engineers and Contractors Private Limited, the ("Corporate Debtor"), a private company stood incorporated under the Companies Act, 1956 bearing CIN U45400MH2011PTC223994, the Corporate Debtor had availed financial assistance from Respondent No. 1/Bank of Maharashtra, on several occasions: a Cash Credit Limit of ₹300.00 Lakhs was sanctioned on 17.02.2012, a Term Loan of ₹190.00 Lakhs was sanctioned on 22.03.2012, a Working Capital Term Loan of ₹200.00 Lakhs was sanctioned on 30.03.2013, and a Performance Bank Guarantee of ₹279.50 Lakhs was too sanctioned on 14.05.2013. To secure these facilities, the Appellant, along with his father Mr. Vivek Kawade, had executed personal guarantees dated 17.02.2012, 28.03.2012, 30.03.2013 and 15.05.2013 in favour of Respondent No. 1. The debt fell due on 28.02.2014, and the Corporate Debtor's account was classified as a Non-Performing Asset on 29.05.2014.

3. A Demand Notice under Section 13(2) of the SARFAESI Act, 2002 was issued on 31.01.2015 for enforcement of the security interest. Thereafter, a

Demand Notice in Form B under Rule 7(1) of the Insolvency and Bankruptcy Board of India (Personal Guarantors to Corporate Debtors) Rules, 2019 was issued on 28.06.2022, invoking the personal guarantee under the Code. As on 28.02.2023, the outstanding stood at ₹35,69,35,879/-, together with further interest. C.P.(IB) No. 296/2023 was accordingly filed by Respondent No. 1 against the Appellant, and an identical C.P.(IB) No. 297/2023 was filed against his father, Mr. Vivek Kawade, both on 31.03.2023 under Section 95 of the Code.

4. The Appellant was proceeded against ex parte by the Adjudicating Authority vide its Order dated 05.04.2024 in C.P.(IB) No. 296/2023, an order that has never been assailed. Respondent No. 2 was appointed as Resolution Professional vide Order dated 03.01.2024, and the Resolution Professional's report was taken on record vide Order dated 14.05.2024. The Personal Insolvency Resolution Process ("PIRP") was admitted vide Order dated 22.08.2024, which recorded in its Paragraph 6 that, none had appeared for the Respondent (Appellant herein) despite service of court notice, and that the ex parte Order dated 05.04.2024 had accordingly been passed.

5. During the PIRP, the Resolution Professional addressed emails dated 25.09.2024, 03.10.2024, 09.10.2024, 14.10.2024 and 04.12.2024 to the Appellant, calling upon him to furnish a Repayment Plan. The Appellant was present through video conference at the First Meeting of Creditors which was held on 21.11.2024, where he agreed to furnish data within seven days, but no Repayment Plan was ever received thereafter. On 04.01.2025, the

Resolution Professional filed IA 572/2025 seeking closure of the PIRP, as contemplated under Sections 112, 114(1) and 115(2) of the Code, a copy whereof. Its the Respondents' case, that it was served upon the Appellant vide email dated 03.01.2025. The Application was listed on 29.01.2025 and reserved for orders. Only thereafter, on 01.02.2025, did the Appellant propose a one-time settlement of ₹2,00,000/-, and he subsequently submitted a Repayment Plan on 30.05.2025, which was neither in the prescribed format nor commercially viable, because of fact that, the Corporate Insolvency Resolution Process costs alone exceeding ₹4 Lakhs against total admitted claims of ₹90,74,96,492/-. The Committee of Creditors, comprising Central Bank of India, holding 50.57% of the voting share, and Respondent No. 1, holding 49.43%, rejected the plan in exercise of their commercial wisdom.

6. The PIRP Closure Order was passed on 26.06.2025. Upon gaining knowledge of the said Order, the Appellant addressed an email dated 28.06.2025 to the Resolution Professional, and thereafter filed IA(I.B.C)/3437/MB/2025 on 02.07.2025, seeking to set aside the Closure Order. The said Application was dismissed on 07.01.2026, the Adjudicating Authority thereof observing that the proposed Repayment Plan of ₹2 Lakhs against outstanding dues of ₹35.69 Crores was "nothing but an absurd, ludicrous and preposterous offer." A further Application, IA(I.B.C)/828/MB/2026, was instituted for seeking clarification/rectification, which was filed on 16.02.2026 and dismissed on 27.02.2026. Neither order's has been appealed.

7. In the connected proceeding, of C.P.(IB) No. 297/2023 against Mr. Vivek Kawade, the Learned Adjudicating Authority, upon enquiring into invocation of the personal guarantee, dismissed the said Petition on 18.02.2026 on the ground that the personal guarantee had not been invoked.

8. Meanwhile, the Resolution Professional filed C.P.(IB)/75/MB/2026 seeking initiation of the Bankruptcy Process on the basis of the PIRP Closure Order. The Learned Adjudicating Authority condoned the 118-day delay in filing the said petition, upon being satisfied with the explanation furnished regarding the time taken for internal approval within the public-sector Bank and the pendency of the Appellant's Recall Application, and imposed a cost of ₹25,000/-. The Bankruptcy Process was initiated vide the Impugned Order dated 03.02.2026, and Respondent No. 2 was appointed as the Bankruptcy Trustee. Aggrieved, the Appellant preferred the present Appeal on 05.03.2026, praying that the Impugned Order be set aside.

Submissions of the Appellant

9. Appellant contends that the **Learned Adjudicating Authority failed to adhere to principles of natural justice in passing the impugned order**. The Resolution Professional had filed an Application, being Company Petition No.75 of 2026, to initiate Bankruptcy proceedings under Section 121(1) of the Code on the basis of the PIRP Closure Order passed on IA 572 of 2025 in C.P.(IB) No. 296/2023. Appellant submits to juxtapose as to how IA 572 of 2025 was not served upon Appellant despite his request, even the Company Petition No.75 of 2026 was not served upon the Appellant. Further, on 3

February 2026, the Company Petition was listed for the first time before the Learned Adjudicating Authority. The Learned Adjudicating Authority did not even deem fit and proper to issue any court notice to the Appellant, giving him an opportunity to represent to raise his objections. The Adjudicating Authority did not even dim fit and proper to enquire whether the papers and proceedings of Company Petition were even served upon the Appellant. Without giving any opportunity to the Appellant to represent and raise his objections, the Learned Adjudicating Authority passed the Impugned Order directing initiating of Bankruptcy Process against the Appellant and appointing Respondent No.2 as the Bankruptcy Trustee. The reason the Learned Adjudicating Authority passed the Impugned Order was because an order passed by Learned Adjudicating Authority on 26 June 2025 on IA 572 of 2025 in C.P.(IB) No. 296/2023, wherein the Learned Adjudicating Authority had recorded that, the Appellant did not furnish any data or material to the Resolution Professional nor submitted any repayment plan. This observation was erroneous as the Appellant had duly submitted all the requisite data to the Resolution Professional. This fact could be borne out from the order dated 30 May 2025, passed by the Learned Adjudicating Authority in IA 787 of 2025 filed by the Resolution Professional for Non-Cooperation. The Learned Adjudicating Authority had disposed of the said Application on the very ground that all the requisite data was provided to the Resolution Professional. This is the particular reason as to why the Learned Adjudicating Authority ought to have given an opportunity to the Appellant to apprise the true and correct facts.

10. Appellant contends that the **<u>PIRP was closed even without enquiring about the fact of service of the application, being IA 572 of 2025 upon the appellant</u>**. Additionally, the Adjudicating Authority relied upon the order dated 26 June 2025 passed in IA 572 of 2025, which is the order of PIRP Closure Order. On 4 January 2025, the Resolution Professional filed an Application being IA 572 of 2025, to close the Appellant's PIRP as per Section 112 r/w 114 (1) and 115 (2) of the Code and seek permission of the Adjudicating Authority to proceed with Bankruptcy under Section 121 of the Code. Pertinently, the said Application was not served upon the Appellant. Its that, on 29 January 2025, IA 572 of 2025, was listed for the first time before the Learned Adjudicating Authority. Without enquiring whether the said Application was served upon the Appellant or issuing notice to the Appellant to give an opportunity to file its objections to the said Application, the Learned Adjudicating Authority on the first date of listing of the Application reserved it for order. On 26 June 2025, the Learned Adjudicating Authority vide its order allowed IA 572 of 2025 and closed the PIRP of the Appellant. The Learned Adjudicating Authority is furtherance thereto allowed the debtors or creditors to file an application for Bankruptcy under Chapter IV of the Code. Upon gaining knowledge of the PIRP Closure Order, the Appellant addressed an email dated 28 June 2025, requesting the Resolution Professional to serve a copy of IA 572 of 2025. Upon not receiving the copy of IA 572 of 2025, the Appellant was constrained to file a Recall Application being IA No. 3437 of 2026, to recall the PIRP Closure Order. If the Learned Adjudicating Authority

would have given an opportunity to the Appellant to make a representation before it, the Appellant would have informed the aforesaid circumstances to the Learned Adjudicating Authority that despite requesting for IA No.572 of 2025 filed for closure of the PIRP, the Resolution Professional did not provide a copy of the said Application. Hence, the Impugned Order which is arising out of the PIRP Closure Order itself becomes illegal, void, and untenable under law on the basis of violation of principles of natural justice. It was further surprising that on 7 January 2026, when IA No. 3437 of 2026 was listed for recalling the PIRP Closure Order, the Adjudicating Authority had directed the Resolution Professional to consider the repayment plan of the Appellant and accordingly listed the matter on 25 February 2026, However, contrary to what transpired before the Learned Adjudicating Authority in the open court, the Learned Adjudicating Authority dismissed IA No.3437 of 2026, on the grounds that the Appellant did not submit any repayment plan. Hence, there is no reason for recalling the PIRP Closure Order. The order dismissing the IA 3437 of 2026, was contrary to what actually transpired before the Learned Adjudicating Authority because the said IA was listed on 25 February 2026 in the cause list at Sr. No. 106. This evidences that on 7 January 2026, the Learned Adjudicating Authority had not dismissed the IA No. 3437 of 2026. Hence, the Impugned Order arising from the fact that no repayment plan was submitted is also flawed making the Impugned Order illegal and void.

11. Appellant further contends that the **Bankruptcy was initiated without proper invocation of personal guarantee**. On account of purported default

by the Company, the account of the Company turned NPA on 29 May 2014. Accordingly, Bank of Maharashtra addressed a Recall Notice and Demand Notice dated 31 January 2015, under Section 13(2) of the SARFAESI Act invoking the Personal Guarantees of both the Guarantors. Pertinently, after a lapse of 7 years, Bank of Maharashtra addressed a Demand Notice dated 28 June 2022, in Form B under Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rule, 2019). Thereafter, on 31 March 2023, Bank of Maharashtra filed two identical Company Petitions being C.P.(IB) No. 296 of 2023, and C.P.(IB) No. 297 of 2023 under Section 95 in Form C under Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 to initiate Insolvency Resolution Process against Aditya Vivek Kawade - the Appellant and his father Vivek Kawade respectively for an outstanding debt of ₹ 35,69,35,879/-. On 18 December 2023, the Learned Adjudicating Authority vide its order appointed Respondent No.2 in C.P.(IB) No. 297/2023 filed against Vivek Kawade as the Resolution Professional to examine the Company Petition and file his report. On 3 January 2024, the Learned Adjudicating Authority appointed Respondent No.2 in C.P.(IB) No. 296/2023 filed against Aditya Kawade as the Resolution Professional to examine the Company Petition and file his report. The Resolution Professional filed its Report dated 19 January 2024, in C.P.(IB) No. 296/2023 vide an Application being IA 574 of 2024, before the Learned Adjudicating Authority, Pertinently, RP did not take into consideration the

Recall cum Demand Notice issued under Section 13(2) of the SARFAESI Act, to check the limitation. In the report, the RP relied upon Demand Notice issued under Form B in 2023 to draw a conclusion that C.P.(IB) No. 296/2023 was filed within the statutory period of limitation.

12. In fact, even in the Demand Notice dated 28 June 2022 issued under provisions of the Code, Bank of Maharashtra had mentioned that the reason Bank of Maharashtra was constrained to issue the Demand Notice under the provisions of the Code was because there was no reply to the Recall cum Demand Notice dated 31 January 2015, issued by the Bank under Section 13(2) of the SARFAESI Act wherein the Bank had recalled the entire purported outstanding. The relevant portion of the Demand Notice issued under the Code is reproduced hereinbelow:

> "The aggrieved Financial Creditor sent multiple oral and written reminders, however the Corporate Debtor failed to honour the obligation to repay the amount due. A Recall Notice and Demand Notice u/s 13(2) of the SARFAESI Act, 2002 were served upon the said Guarantor, but fell on deaf ears.
>
> Therefore, this present notice to the Guarantor, of the Corporate Debtor seeking for the payment of the aforementioned outstanding dues along with the interest as specified."

13. From the aforesaid reasoning of the Bank issuing the Demand Notice under the provisions of the Code in June 2022 was because admittedly there was already a Recall cum Demand Notice issued in January 2015. Thus, evidently, the three-year statutory period to file a Company Petition against the personal guarantor would end in 2018. This fact, the Bank was well

aware. Hence, the Bank issued a Demand Notice under the provisions of the Code in 2022 to give a false impression that the personal guarantees were invoked in 2022 and not in 2015. Whereas, the truth of the matter was that the personal guarantors including the Appellant was called upon to repay the entire purported outstanding under the Demand Notice issued in 2015 as per provisions of the SARFAESI Act being the first invocation of the personal guarantees. The Learned Adjudicating Authority by an order dated 14 May 2024, allowed IA No. 574 of 2024 and took the Report on record submitted by the Resolution Professional. The Learned Adjudicating Authority failed to check and enquire with the Resolution Professional regarding the limitation whether C.P.(IB) No. 296/2023 was filed within 3 years of limitation from invocation of the Personal Guarantee. Without considering such a vital element of limitation, the Learned Adjudicating Authority vide its order dated 22 August 2024, admitted C.P.(IB) No. 296/2023 and initiated PIRP against the Appellant on the ground that the Demand Notice under Section 13(2) of the SARFAESI Act, 2002 dated 31 January 2015 was issued to the Corporate Debtor and the Personal Guarantor for enforcement of security interest and not for invocation of personal guarantee. This aforesaid reasoning by the Learned Adjudicating Authority is absolutely flawed because the Recall cum Demand Notice issued under Section 13(2) of the SARFAESI Act, 2002 was issued invoking the personal guarantees and demanding the purported outstanding amounts from the Personal Guarantors including the Appellant. The relevant portion of the said Demand Notice is reiterated hereinbelow:

> "5. You have still not repaid the dues of the Bank and hence in exercise of powers conferred on the Bank under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI) and without prejudice to the rights of the Bank and to the pending proceedings mentioned above, the Bank hereby calls upon you to repay in full the below mentioned amounts plus unapplied interest, charges, expenses incurred till realization:..."
>
> (emphasis supplied)

Thus, from the above, it is evident that loans were recalled in full and the personal guarantees were invoked by Bank of Maharashtra demanding the purported outstanding from the personal guarantors as well as from the Company. Therefore, the Learned Adjudicating Authority completely erred in holding that C.P.(IB) No. 296/2023 was filed within limitation of 3 years from the Demand Notice issued under Form B upon the Appellant.

14. Consequently, the reliance placed by the Learned Adjudicating Authority on the decision by the Hon'ble Supreme Court in **Margaret Lalita Samuel V/s Indo Commercial Bank Ltd.** and on the decision by this Hon'ble Tribunal in **Pooja Ramesh Singh V/s State Bank of India & Anr.**, was wholly misplaced as in both these cases, the Company Petition was filed within the three-year limitation period from invoking/demanding under the Guarantee. Whereas, in the present case the Guarantee was invoked and purported outstanding was recalled and demanded vide Bank of Maharahtra's Recall cum Demand Notice of 2015. Hence, the three-year period ended in 2018. There was no acknowledgement by the Appellant

within this period of limitation which could extend the limitation beyond 2018. Certainly, any demand after the expiry of the three-year statutory limitation would be barred under law. Therefore, C.P.(IB) No. No. 296 filed in 2023 against the Appellant was wholly barred by limitation and could not have been entertained on the basis of the Demand Notice issued in 2022.

15. Appellant also contends that there have been **inconsistent and contradictory orders on identical facts**. Au contraire, on 7 May 2025, in the identical Company Petition that of the Appellant, C.P.(IB) No. 297/2023 filed against the Appellant's father Vivek Kawade, the Learned Adjudicating Authority enquired with the Resolution Professional regarding invocation of the Personal Guarantee and limitation to which the Resolution Professional sought time to clarify the queries posted by the Learned Adjudicating Authority. On 9 July 2025, the Learned Adjudicating Authority in C.P.(IB) No. 297/2023 directed the Resolution Professional to place on record the guarantee invocation letter by next date of hearing. Upon the Resolution Professional failing to place on record the guarantee invocation letter, the Learned Adjudicating Authority vide its order dated 18 February 2026, dismissed the C.P.(IB) No. 297/2023 filed against the Appellant's father Vivek Kawade on the grounds that Personal Guarantee was not invoked. Hence, it is evident that the Learned Adjudicating Authority on misconceived facts admitted one Company Petition being C.P.(IB) No. 296/2023 filed against the Appellant and dismissed the

identical Company Petition being C.P.(IB) No. 297/2023 filed against the Appellant's father Vivek Kawade on the ground that personal guarantee was not invoked. Thus, the Impugned Order which arises from the foundation of the Admission Order admitting C.P.(IB) No. 296/2023 against the Appellant becomes wholly illegal and void. Consequently, the Impugned Order is liable to be quashed and set aside. The reason the Appellant was not able to attend the hearings in C.P.(IB) No. 296/2023 was because his father Vivek Kawade was undergoing medical treatment. Upon gaining knowledge about the Admission Order, the Appellant was under bonafide belief that the Appellant would be given an opportunity during the process of PIRP. However, the Appellant did not get the opportunity to challenge the PIRP because the Application being IA No. 572 of 2025 filed by the Resolution Professional seeking closure of the PIRP was never served upon the Appellant despite the Appellant's email dated 28 June 2025. Thus, under these circumstances, the Appellant could not challenge the Admission Order and the PIRP Closure Order. Pertinently, when the Appellant was made aware about the PIRP Closure Order, the Appellant swiftly addressed an email to the Resolution Professional requesting for a copy of the Application filed for seeking PIRP closure. However, when the Appellant did not receive the same, he swiftly filed an Application without any legal guidance to recall the PIRP Closure Order. Hence, the Appellant not challenging the Admission Order admitting C.P.(IB) No. 296/2023 was under bonafide misconception for which the Appellant humbly prays that the Impugned Order is arising from the Admission Order which itself was illegal and bad in law on account of limitation.

<u>Submissions of the Respondents</u>

16. That Respondent No.1, Bank of Maharashtra, and Respondent No.2/Bankruptcy Trustee, have filed similar counter to the appeal. For brevity, the counters of Respondent No.1/Bank of Maharashtra is being taken up representing both the Respondents.

17. Learned Counsel for the Respondents submit that the Appellant has approached this Appellate Tribunal with unclean hands, having concealed the dismissal of IA(I.B.C)/3437/MB/2025 on 07.01.2026 and of IA(I.B.C)/828/MB/2026 on 27.02.2026, both of which have attained finality and were never disclosed or annexed to the Appeal. It is submitted that this amounts to suppressio veri and suggestio falsi.

18. It is submitted that the Appellant was set ex parte vide Order dated 05.04.2024 in C.P.(IB) No. 296/2023, an order that has never been assailed, and that the following orders have all attained finality without challenge: the RP Appointment Order dated 03.01.2024; the ex parte Order dated 05.04.2024; the Order dated 14.05.2024 taking the RP Report on record; the PIRP Admission Order dated 22.08.2024; the Order dated 29.01.2025 reserving the Closure IA for orders; the PIRP Closure Order dated 26.06.2025; the Dismissal Order dated 07.01.2026 in the Recall IA; and the Dismissal Order dated 27.02.2026 in the Rectification IA. It is submitted that the Bankruptcy Order is a natural corollary of these unchallenged orders, and that the Appellant, on grounds of res judicata, acquiescence and laches, is

precluded from assailing it. It is further submitted that no ground has been made out against the Bankruptcy Order per se, the grounds raised in the Appeal being directed instead at the PIRP Admission Order and the PIRP Closure Order.

19. On the question of natural justice, it is submitted that Section 121 of the Code does not stipulate compulsory service of notice upon the bankrupt before the passing of a Bankruptcy Order, that Bankruptcy proceedings follow as a sequel to the PIRP Closure Order, and that the Appellant, having already been set ex parte in the main PIRP proceedings, cannot claim a further right to notice. It is submitted that no provision has been shown that mandates prior service upon the bankrupt, and that, in any event, the Bankruptcy Petition was served upon the Appellant's admitted email address vide email dated 23.01.2026. It is further submitted that the contention regarding the Closure Order's finding on non-furnishing of data re-agitates the Closure Order, which was never appealed, and that the disposal of the Non-Cooperation IA 787/2025 is distinct from the Closure Order's finding regarding non-submission of a Repayment Plan.

20. As to service of IA 572/2025, it is submitted that a copy of the said Application was in fact served upon the Appellant vide email dated 03.01.2025, that the Closure IA is a procedural application, and that while the Code provides a right of objection to a Resolution Professional's Report under Section 99, no corresponding provision requires service of, or objection to, a Closure Report. Reliance is placed on Sections 112, 114(1) and 115(2) of

the Code. It is submitted that the allegation regarding the cause list of 25.02.2026 is false and fabricated, a bare perusal of the said cause list showing that only "C.P. (IB)/296(MB)2023" was listed at that serial number.

21. On limitation, it is submitted that the question stands concluded by the PIRP Admission Order dated 22.08.2024, which held that the SARFAESI notice was for enforcement of the security interest and not for invocation of the personal guarantee, and that the guarantee was invoked for the first time only vide the Demand Notice dated 28.06.2022. Since C.P.(IB) No. 296/2023 was filed on 31.03.2023, within three years of such invocation, it is submitted that the reliance placed on *Margaret Lalita Samuel* and *Pooja Ramesh Singh* was not misplaced, both authorities supporting the position that a petition filed within three years of invocation is within limitation.

22. On the plea of inconsistent orders, it is submitted that each Company Petition is a separate proceeding, and that the outcome of C.P.(IB) No. 297/2023 against Mr. Vivek Kawade does not govern C.P.(IB) No. 296/2023 against the Appellant. It is submitted that the PIRP Admission Order dated 22.08.2024, having attained finality, cannot be collaterally assailed, and that the Appellant himself has admitted, at Grounds EE and HH of the Appeal, that he could not challenge the Admission Order and the PIRP Closure Order, and that the Impugned Order arises from the Admission Order, thereby conceding that the Bankruptcy Order is derivative of orders that were never challenged.

23. On the Repayment Plan, it is submitted that the Appellant was afforded several opportunities to submit a plan, that no plan was received until after the Closure IA had been reserved for orders, that the plan eventually submitted on 30.05.2025 was neither in the prescribed format nor commercially viable, and that the Committee of Creditors, comprising Central Bank of India, holding 50.57% of the voting share, and Respondent No. 1, holding 49.43%, rejected the plan in exercise of their commercial wisdom, which is not open to question.

24. It is further submitted that the pleadings raised in this Appeal were never raised before the Learned Adjudicating Authority in either C.P.(IB) No. 296/2023 or C.P.(IB)/75/MB/2026, and that the Appellant is accordingly barred from raising a new stance for the first time before this Appellate Tribunal. Reliance is placed on **Anish Lawrence & Anr. v. Mr. Renahan Vamakesan, Liquidator of Axiomata Elevators Pvt. Ltd., Company Appeal (AT) (CH) (Ins) No. 377/2023** (Paras 18–19), and **Union of India v. Ibrahim Uddin & Another, (2012) 8 SCC 148** (Paras 36–40).

25. On the condonation of delay under Section 121(2) of the Code, it is submitted that the Learned Adjudicating Authority condoned the 118-day delay upon being satisfied with the explanation furnished regarding the time taken for internal approval within the public-sector Bank and the pendency of the Appellant's own Recall IA, and that the three-month period prescribed under Section 121(2) is directory and prescribes no outer limit, unlike Section 61. Reliance is placed on **Vysyaraju Kalpana v. SBI, 2025 SCC OnLine**

NCLAT 1892. It is submitted that a cost of ₹25,000/- was imposed, and that this finding calls for no interference. It is prayed that the Appeal be dismissed with exemplary costs.

Analysis and Findings

26. We have heard Learned Counsel for the parties and perused the record. The issues before us are as follows:

- whether the Adjudicating Authority failed to adhere to Principles of Natural Justice in passing the Impugned Order,
- whether the PIRP was closed without enquiring service of the Application being IA No.572 of 2025 (closure of PIRP and initiating Bankruptcy) upon the Appellant,
- whether the Bankruptcy was initiated without proper Invocation of Personal Guarantee, and particularly whether it can be agitated at this stage,
- whether there are Inconsistent and Contradictory Orders on Identical Facts.

Violation of the principles of natural justice

27. Learned Counsel for the Appellant submits that the Impugned Order was passed in violation of the principles of natural justice, inasmuch as neither IA No. 572/2025 (for seeking closure of PIRP and permission to initiate bankruptcy) nor C.P.(IB)/75/MB/2026 (to initiate bankruptcy proceedings under Section 121(1) of the Code on the basis of the PIRP closure order passed in IA No. 572 of 2025 in C.P.(IB) No. 296/2023) was served upon the Appellant, and no notice or opportunity of hearing was afforded to him

before the Bankruptcy Process was initiated. It is claimed by the Appellant that the Closure Order's observation that the Appellant had not furnished data to the Resolution Professional was erroneous, since the Non-Cooperation IA No.787/2025 had already been disposed of on 30.05.2025 on the ground that all requisite data had been provided. It is further contended that IA No.572/2025 seeking closure of the PIRP was never served upon the Appellant, that it was reserved for orders on the very first date of listing without any enquiry into service, and that the cause list of 25.02.2026 listed IA 3437 at Serial No. 106, demonstrating that the said Application had not, in fact, been dismissed on 07.01.2026 as recorded.

28. Respondents have brought to our notice that the Appellant has failed to delineate the correct & complete facts of the matter. We have noted the correct and complete facts of the matter, which have not been controverted by the Appellant. They are briefly recapitulated hereinafter for better appreciation and completeness:

a. M/s. Aniirudh Civil Engineers and Contractors Private Limited ("Corporate Debtor") - the Corporate Debtor, had availed financial assistance from the Bank of Maharashtra-R1 on various occasions in the form of cash credit limit, term loan, working capital term loan, and also performance bank guarantee totalling about Rs 969.5 lakhs over 2012 to 2013. The corporate debtor also executed various deeds of guarantee and also provided demand promissory notes in favor of the creditor. Subsequently, the <u>debt fell due on 28.02.2014</u>, however the Corporate Debtor failed to repay the total outstanding amount within the prescribed time, hence resulting in default on 29.05.2014.

b. BOM/Financial Creditor issued Demand Notice u/s. 13(2) of the SARFAESI Act, 2002 on 31.01.2015.

c. Subsequently Demand Notice in Form B under rule 7(1) of Insolvency and Bankruptcy (Application to Adjudication Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules 2019 was issued to the Personal Guarantor on 28.06.2022 vide speed post.

d. outstanding amount was Rs. 35,69,35,879/- as on 28.02.2023 along with further interest remains unpaid.

e. Hence, the Respondent No.1 filed CP(IB)No.296/2023 on 31.03.2023 u/s. 95(1) of IBC, 2016 seeking for initiating PIRP Process against the Appellant NCLT Mumbai.

f. RP Appointment Order was passed by Ld. NCLT on 03.01.2024 in CP(IB)No.296/2023.

g. In the interregnum, Appellant/Personal Guarantor was set ex-parte vide Order dated 05.04.2024.

h. Thereafter, IA(I.B.C)/574/MB/2024 was filed by RP on 01.02.2024 for taking on record RP Report.

i. Vide Order dated 14.05.2024, the RP Report was taken on record and main C.P. (IB)/296(MB)2023 was Reserved for Orders.

j. Finally, PIRP Admission Order was passed by this Hon'ble Tribunal on 22.08.2024 in CP (IB) No. 296/MB/2023.

k. Thereafter, the RP had published Public Announcement inviting claims from Creditors of Personal Guarantor to Corporate Debtor on 24.08.2024

l. During the PIRP Process, RP sent email/s on 25.09.2024, 03.10.2024, 09.10.2024, 14.10.2024 & 04.12.2024 and sought for data/information from the Guarantor in order to prepare statement of affairs of the Guarantor and further sought for a Repayment Plan, however no response from the Personal Guarantor.

m. Further, the Personal Guarantor was present through VC in the 1st meeting of creditors held on 21.11.2024, wherein the Personal Guarantor agreed to provide the data as requested by RP, within a week time, failing which an application for non-cooperation would be filed against him.

n. In pursuance to the 1st Meeting of Creditors, RP had filed non-cooperation IA bearing IA(I.B.C) No. 787/MB/2025 on 13.12.2024, which was listed on 01.05.2025 wherein Ld. NCLT directed Appellant to handover whatever documents/information as has been sought by the RP and finally said IA (I.B.C) No. 787/MB/2025 was next listed for hearing on 30.05.2025.

o. Thereafter, during 2nd Meeting of Creditors, both Creditors namely Central Bank of India and Bank of Maharashtra approved filing of Closure Application against the Personal Guarantor on 26.12.2024.

p. Since no repayment plan was received, the RP proceeded with filing Closure IA bearing No. 572/2025 on

04.01.2025. Subsequently, Closure IA bearing No. 572/2025 was reserved for orders on 29.01.2025.

q. After date of RFO of Closure IA (29.01.2025), the Appellant inter alia sent email on 01.02.2025 giving proposal of one-time payment of Rs. 2,00,000/- as full and final settlement, however such settlement was not acceptable to the Respondent No.1 at all. Thereafter, Personal Guarantor had submitted Repayment Plan on 30.05.2025.

r. That in the interregnum, non-cooperation IA(I.B.C) No. 787/MB/2025 was again listed on 30.05.2025, on which date the said IA was disposed of.

s. Finally, Closure IA bearing No. 572/2025, which was RFO on 29.01.2025, got allowed vide Order dated 26.06.2025.

t. Thereafter, RP sent email on 27.06.2025 to the Personal Guarantor intimating of passing of Closure Order dated 26.06.2025.

u. In view of closure of PIRP Process, the Respondent No. 1 filed C.P. (IB)/75/MB/2026 on 23.01.2026 for initiating bankruptcy proceedings against the Appellant u/s. 121(1) of IBC, 2016. The said Bankruptcy Petition was allowed vide Order dated 03.02.2026 in C.P. (IB)/75/MB/2026.

29. The respondents also brings to our notice that Personal Guarantor was given several opportunities to submit his repayment plan, vide emails dated 25.09.2024, 03.10.2024, 09.10.2024, 14.10.2024, 04.12.2024 and further during the 1st Meeting of Creditors of the Personal Guarantor held on 21.11.2024, however no repayment plan was received till 29.01.2025, in view

of which the Closure IA was argued and reserved for orders on 29.01.2025. Final Closure Order which was reserved for orders on 29.01.2025, was pronounced by this Hon'ble Tribunal on 26.06.2025. Moreover, it is pertinent to note that the Personal Guarantor had submitted Repayment Plan on 01.02.2025 and later on 30.05.2025 i.e., long after the Closure IA was reserved for orders on 29.01.2025. The said Plan was not acceptable by Bank. Only after the Closure IA was Reserved For Orders, the Personal Guarantor started sending Repayment Plan via email, which are neither as per the format set out in IBC, 2016 r/w. rules & regulations nor acceptable since Guarantor proposed to pay only Rs. 2 Lakhs, whereas the CIRP Cost is itself more than Rs. 4 Lakhs and further the Bank's claim sums up to ₹ 35,69,35,879/- as on 28.02.2023 along with further interest till the date of payment/actual realization.

30. It is also brought to our notice by the Respondents that post closure order the Appellant had filed IA(I.B.C)/3437/MB/2025 before Ld. NCLT on 02.07.2025 seeking to set aside the Closure order dated 26.06.2025 in IA(IBC) No.572/MB/2025 and restore the Company Petition for continuing the Personal Insolvency Resolution Process (PIRP) against him in accordance with law. However, said IA (I.B.C)/3437/MB/2025 was dismissed on 07.01.2026.

31. Not satisfied with the above noted dismissal order of 07.01.2026, the Appellant had further filed IA (I.B.C)/828/MB/2026 on 16.02.2026 seeking to clarify/rectify the Order dated 07.01.2026 passed in IA No. 3437/2025 in C.P.(IB) No. 296/MB/2023. However the said IA(I.B.C)/828/MB/2026 was

also dismissed on 27.02.2026 and the same has not been assailed and is final, binding and res judicata.

32. We find that the Appellant has already attempted for recall of order and subsequent clarification, however both IAs filed by Appellant were dismissed by Ld. NCLT. However, the Appellant has not disclosed or attached the above dismissal orders in the Appeal. We find strength in the arguments of the Respondent that the Appellant is guilty of *suppressio veri* and *suggestio falsi*.

33. We also find that the Appellant has concealed fact that he was already set *ex-parte* by Ld. NCLT vide order dated 05.04.2024, which has not been assailed and the same is final and binding in nature.

34. We are also informed by the respondents that the Appellant has raised pleadings before this Appellate Tribunal, which have never been pleaded before the lower tribunal.

35. We find that the Appellant, having already been proceeded against ex-parte in the main proceeding vide Order dated 05.04.2024, an order that stands unassailed to date, cannot now claim a fresh right to notice at the bankruptcy stage. Since the Appellant is already set ex-parte in main PIRP proceedings and bankruptcy proceedings are a natural consequence, hence there is no such requirement to serve notice upon the Appellant in bankruptcy proceedings.

36. It is further borne out from the record that the Bankruptcy Petition was in fact served upon the Appellant's admitted email address on 23.01.2026. Further on the plea of non-service of IA No.572/2025, we note that a copy of the Application was served upon the Appellant vide email dated 03.01.2025.

37. To better appreciate the question that whether the Appellant has a fresh right to notice at the bankruptcy stage, we peruse the provisions of section 121 of the Code which are reproduced as follows:

> **"Section 121. Application for Bankruptcy.**
>
> (1) An application for bankruptcy of a debtor may be made, by a creditor individually or jointly with other creditors or by a debtor, to the Adjudicating Authority in the following circumstances, namely; —
>
> (a) where an order has been passed by an Adjudicating Authority under sub-section 4 of section 100; or
>
> (b) where an order has been passed by an Adjudicating Authority under sub-section 2 of section 115; or
>
> (c) where an order has been passed by an Adjudicating Authority under sub-section 3 of section 118.
>
> (2) An application for bankruptcy shall be filed within a period of three months of the date of the order passed by the Adjudicating Authority under the sections referred to in sub-section *(1)*.
>
> (3) Where the debtor is a firm, the application under sub-section *(1)* may be filed by any of its partners."

38. Perusal of Section 121 of the Code reveals that it does not mandate service of prior notice upon the bankrupt before a Bankruptcy Order is

passed, and furthermore the Bankruptcy Process follows as a natural sequel to an unchallenged PIRP Closure Order.

39. We further note that the Code contemplates a right of objection to a Resolution Professional's Report under Section 99, but provides no corresponding requirement of service of, or objection to, a Closure Report under Sections 112, 114(1) and 115(2).

40. The plea regarding non-furnishing of data is, in substance, a challenge to a finding recorded in the PIRP Closure Order, which was itself never appealed, and cannot be re-agitated at this stage.

41. We find that on the one hand the Appellant has sought for setting aside the Bankruptcy order dated 03.02.2026, and on the other hand, the Appellant has not raised any grounds for rebutting the bankruptcy order. Perusal of questions of law raised by the Appellant in the Appeal reveals that it is assailing PIRP admission order and PIRP closure order but has not raised any grounds for assailing the Bankruptcy order. The Appellant has not been able to demonstrate that such order is void. Thus, we find that the Appellant has on one hand sought to set aside the Bankruptcy Order but on the contrary the Appellant has been raising questions of law in respect of PIRP Admission Order and PIRP Closure Order, which have not been appealed and are rendered *res judicata*.

42. In the above background we find no justification in the argument of the Appellant that there are a violation of natural justice and *audi alteram partum.*

Question of limitation

43. While challenging the bankruptcy order in this case, the Appellant has given details of the filing of the C.P.(IB) No. 296/2023, and it contends that this C.P.(IB) No. No. 296/2023 was wholly barred by limitation and could not have been entertained on the basis of the Demand Notice issued in 2022. We have gone through the details of the grounds raised by the Appellant, and on this question of limitation and invocation of the personal guarantee, we find that the issue stands concluded by the PIRP Admission Order dated 22.08.2024, which held that the SARFAESI notice dated 31.01.2015 was issued for enforcement of the security interest and did not amount to invocation of the personal guarantee. The personal guarantee was invoked for the first time only through the Demand Notice dated 28.06.2022, and C.P.(IB) No. 296/2023, filed on 31.03.2023, is accordingly within the period of limitation. That Order has attained finality, having never been challenged by the Appellant. The decisions in **Margaret Lalita Samuel v. Indo Commercial Bank Ltd.** and **Pooja Ramesh Singh v. State Bank of India & Anr.** were correctly applied by the Learned Adjudicating Authority, since the Petition in the present case, like the petitions in those decisions, was filed within three years of invocation. Thus, the ground for limitation stands rejected.

Inconsistent Orders

44. On the plea of inconsistent orders, we are unable to accept that the dismissal of C.P.(IB) No. 297/2023 against the Appellant's father affects the validity of the proceedings against the Appellant. Each Company Petition constitutes a separate and independent proceeding, to be decided on its own

facts and record. The PIRP Admission Order dated 22.08.2024 in C.P.(IB) No. 296/2023 has attained finality and cannot be collaterally challenged through this Appeal against a subsequent, consequential order. We note, moreover, that the Appellant has himself admitted, at EE and HH of the Appeal, that he could not challenge the Admission Order or the PIRP Closure Order, and that the Impugned Order arises from the Admission Order. This amounts to a concession that the Bankruptcy Order is derivative of orders that were never assailed and have long attained finality.

45. We also find that the grounds now urged before this Appellate Tribunal, including the contentions on natural justice and limitation, were never raised before the Learned Adjudicating Authority in either C.P.(IB) No. 296/2023 or C.P.(IB)/75/MB/2026. It is well settled that a party cannot raise, for the first time in appeal, a plea that was never urged before the forum below. Reliance placed by the Respondents on [1]**Anish Lawrence & Anr. v. Mr. Renahan**

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[1] **Anish Lawrence & Anr. v. Mr. Renahan Vamakesan, Liquidator of Axiomata Elevators Pvt. Ltd., Company Appeal (AT) (CH) (Ins) No. 377/2023**

"In the instant company appeal, the new documents that were sought to be produced for the first time for appreciation were the documents which were available during the proceedings before the learned NCLT, and yet were not produced for the purposes of deciding the Company Appeal as they don't fall under any of the exceptions culled out under Order 41 Rule 27 of CPC, the principles of which would apply to this case as per sub section 2 of Section 424 of the Companies Act, 2013...

...The Appellants did not avail of the opportunity given by the Liquidator to produce the evidence in his support, which they now seek to produce. They also, for the reasons best known to them, did not produce the evidence before the learned NCLT...

...We find no reason to interfere with the impugned order passed by the learned NCLT. ...The Appeal is dismissed and the same is accordingly dismissed. All the pending IAs are closed."

Vamakesan, Liquidator of Axiomata Elevators Pvt. Ltd., Company Appeal (AT) (CH) (Ins) No. 377/2023 (Paras 18–19), and [2]**Union of India v. Ibrahim Uddin & Another, (2012) 8 SCC 148** (Paras 36–40), is apposite, and we find no reason to permit the Appellant to depart from this settled position.

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[2] **Union of India v. Ibrahim Uddin & Another, (2012) 8 SCC 148** "36. The general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances... The parties are not entitled as a matter of right to the admission of such evidence...

37. The appellate court should not ordinarily allow new evidence to be adduced in order to enable a party to raise a new point in appeal. Similarly, where a party on whom the onus of proving a certain point lies fails to discharge the onus, he is not entitled to a fresh opportunity to such a case, pronounce judgment against him and does not require any additional evidence to enable it to pronounce judgment. (Vide Haji Mohammed Ishaq v. Mohd. Ali & Co. (1978) 2 SCC 493)

...Under Order 41 Rule 27 CPC, the appellate court has the power to allow a witness to be examined... This provision does not entitle the appellate court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in a case. It does not entitle the appellate court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. In other words, it is only for removing a lacuna in the evidence that the Court is empowered to admit additional evidence...

...It is not the business of the appellate court to supplement the evidence adduced by one party or the other in the lower court. Hence, the reasons for the non-production of the evidence must be such that the party is not entitled the indulgence of being permitted to give evidence under this Rule. So a party who had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal...

...The inadvertence of the party or his inability to understand the legal issues involved or the wrong advice of a pleader or the negligence of a pleader to produce evidence, as the court can, in that the party did not realise the importance of a document does not constitute a "substantial cause" within the meaning of this Rule. The mere fact that certain evidence is important, is not in itself a sufficient ground for admitting that evidence

...Thus, so a party who had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal."

46. We further note, with concern, that the Appellant did not disclose before this Appellate Tribunal the dismissal of IA(I.B.C)/3437/MB/2025 on 07.01.2026 or of IA(I.B.C)/828/MB/2026 on 27.02.2026, both of which bear directly upon the grounds urged in the present Appeal and have attained finality without challenge. A litigant approaching an Appellate Tribunal is bound to place the complete and correct facts on record, and the non-disclosure of orders material to the very grounds urged in the Appeal detracts from the credibility of the case set up by the Appellant.

Conclusions

47. For the reasons recorded above, we find that the grounds urged in the Appeal, whether on natural justice, service, limitation, or the alleged inconsistency between the orders passed in the two connected Company Petitions, do not survive scrutiny, for the reasons pointed out by both Respondent No. 1/Bank of Maharashtra and Respondent No. 2/Bankruptcy Trustee. The Bankruptcy Order impugned herein is a natural and lawful corollary of a series of orders, culminating in the PIRP Admission Order and the PIRP Closure Order, none of which was ever challenged by the Appellant and all of which have attained finality. We also find that the appellant has presented incomplete facts and has tried to mislead this appellate tribunal and has wasted the precious time of this tribunal and deserves to be appropriately dealt with the imposition of cost.

Orders

48. We do not find any infirmity in the Order dated 03.02.2026 passed by the Learned Adjudicating Authority, National Company Law Tribunal,

Mumbai Bench, in C.P.(IB) No. 75/MB/2026. The Appeal is accordingly dismissed, and the Impugned Order is affirmed. Appellant is imposed a cost of ₹5 lakhs for misleading this tribunal and creating hurdles in the administration of justice, which needs to be deposited in Prime Minister National Relief Fund. Interlocutory Applications, if any, pending in this Appeal stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

New Delhi.
August 11, 2026.

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