

NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.202
CP(IB)/21(MP)2023

Order under Section 95 IBC

IN THE MATTER OF:

IDBI Bank Ltd
V/s
Umesh Jayantilal Mehta

.....**Applicant**

.....**Respondent**

Coram:

Hon'ble Shri Brajendra Mani Tripathi, Member (J)
Hon'ble Shri Man Mohan Gupta Member (T)

PRONOUNCEMENT OF ORDER
Delivered on 08/06/2026

The case is fixed for pronouncement of the order.

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

Sd/-

Sd/-

MAN MOHAN GUPTA
(MEMBER TECHNICAL)

BRAJENDRA MANI TRIPATHI
(MEMBER JUDICIAL)

Chandni-LRA

IN THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL

INDORE BENCH

CP (IB) NO. 21 (MP) OF 2023

[An Application under Section 95 of the Insolvency and Bankruptcy Code, 2016, read with the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019]

IN THE MATTER OF:

IDBI Bank Limited,

7th Floor, IDBI Tower,

Cuffe Parade, Mumbai – 400005.

Represented by: Shri Nipun Paliwal,

Deputy General Manager, IDBI Bank

Limited

...Applicant /

Financial Creditor

Versus

Shri Umesh Jayantilal Mehta,

S/o. Shri Jayantilal Mehta,

Room No. 6, Park View Bldg,

Rajawadi Garden Road, Ghatkopar

East, Mumbai – 400077.

...Respondent /

Personal Guarantor

Coram: Shri Brajendra Mani Tripathi, Hon'ble Member (Judicial)

Shri Man Mohan Gupta, Hon'ble Member (Technical)

Appearances:

For the Applicant/Financial Creditor: Shri Arjun R. Sheth, Advocate

For the Personal Guarantor: None

For the Resolution Professional: Mr. Dheeraj Garg, Advocate

Order Pronounced on: 08.06.2026

J U D G M E N T

1. The present Company Petition bearing **CP (IB) No. 21 (MP) of 2023** (hereinafter referred to as the "*Petition*") has been filed by **IDBI Bank Limited** (hereinafter referred to as the "*Financial Creditor*" or "*Applicant*") under **Section 95** of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "*IBC*" or "*Code*") read with **Rule 7(2)** of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (hereinafter referred to as the "*Personal Guarantors Rules*") seeking initiation of the **Personal Insolvency Resolution Process** (hereinafter referred to as "*PIRP*") against **Shri Umesh Jayantilal Mehta** (hereinafter referred to as the "*Personal Guarantor*" or "*Respondent*"), who is the Personal Guarantor of **M/s Navsan Glass Industries Limited** (hereinafter referred to as the "*Corporate Debtor*"), bearing CIN: U26101MP2009PLC021885.

BRIEF FACTS OF THE CASE:

2. The Corporate Debtor — **M/s Navsan Glass Industries Limited** — is a company engaged in the business of manufacturing glass products including glass containers, bottle jars, and bottles for packaging of liquor, pharmaceuticals, food, and beverages. For the purpose of setting up its manufacturing unit, the Financial Creditor sanctioned the following credit facilities vide **Sanction Letter dated 11.11.2009:**
 - (a) Rupee Term Loan of **Rs. 35 Crores;**
 - (b) Cash Credit Facility of **Rs. 5 Crores.**

3. In consideration of the above credit facilities, the Respondent — being a Director of the Corporate Debtor — executed a **Deed of Personal Guarantee dated 09.03.2010** in favour of IDBI Bank Limited, thereby binding himself co-extensively and unconditionally with the Corporate Debtor for repayment of all the credit facilities availed. A Demand Promissory Note was also executed on **09.03.2010**. The Respondent thus is a "*personal guarantor*" within the meaning of Section 5(22) of the IBC, read with Regulation 3 of the Personal Guarantors Rules.
4. The Corporate Debtor's account was classified as a **Non-Performing Asset (NPA) on 30.09.2011**. The Corporate Debtor made a part payment of **Rs. 5.08 Crores** against the outstanding dues. Additionally, the Financial Creditor recovered **Rs. 2.26 Crores** through recovery action under the SARFAESI Act (by taking possession and selling the mortgaged land via e-auction on 05.01.2021). Despite such recovery, the total outstanding dues stood at **Rs. 70,75,30,451.84/-** (principal: Rs. 16,40,37,137.84/- ; interest as per terms of sanction on 02.03.2022: Rs. 54,34,93,314/-) as on 02.03.2022.
5. The Corporate Debtor, subsequently, issued a **Revival Letter dated 18.01.2013**, acknowledging the subsisting liability and the outstanding debt. A separate **Acknowledgement of Debt and Confirmation of Security dated 08.02.2013** was also executed. These acknowledgements had the legal effect of commencing a fresh period of limitation under **Section 18 of the Limitation Act, 1963**.
6. Thereafter, the Financial Creditor issued a **Recall Notice dated 28.02.2013**, recalling the loan facilities, and formally invoked the

- Personal Guarantee of the Respondent vide **Notice dated 27.12.2013**. Despite demand, the dues remained entirely unpaid.
7. Due to continued default, the Financial Creditor initiated recovery proceedings by filing **Original Application No. 138 of 2014 before the Hon'ble Debts Recovery Tribunal-III, Mumbai** under Section 2(d) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDB Act) on **23.01.2014**, against the Corporate Debtor and its personal guarantors (including the Respondent).
 8. The Hon'ble DRT-III, Mumbai decreed the said O.A. in favour of the Financial Creditor vide order dated **10.05.2018**. Thereafter, a **Recovery Certificate bearing RC No. 117/2019** was issued by the Hon'ble DRT-III, Mumbai on **06.09.2019**, against the following entities/persons for the sum of **Rs. 21,32,34,009/-**:
 - (i) M/s Navsan Glass Industries Limited (Corporate Debtor);
 - (ii) Mr. Umesh Jayantilal Mehta (Respondent herein);
 9. It is relevant to note that the Financial Creditor had also filed an application under **Section 7** of the IBC against the Corporate Debtor being **CP (IB) No. 63 (MP) of 2022** before this Tribunal. The CIRP against the Corporate Debtor was admitted by this Tribunal vide order dated **04.11.2025**, thereby commencing the Corporate Insolvency Resolution Process in respect of M/s Navsan Glass Industries Limited.
 10. A statutory Demand Notice in **Form B** under Rule 7(1) of the Personal Guarantors Rules was issued to the Respondent / Personal Guarantor on **17.08.2022**, demanding payment of the outstanding dues of **Rs. 70,75,30,451.84/-**. Despite receipt of the said notice, the Respondent failed to make any repayment to

the Financial Creditor. The present Petition was accordingly filed before this Adjudicating Authority on **31.01.2023**.

11. Upon filing of the Petition on 31.01.2023, this Adjudicating Authority issued notice to the Respondent vide order dated **10.02.2023**. The Respondent, however, failed to appear or file any reply.
12. Vide order dated **05.08.2024**, this Hon'ble Tribunal was pleased to appoint **Shri Parag Sheth**, Insolvency Professional (IBBI Registration No. IBBI/IPA-002/IP-N00142/2017-18/10381, enrolled with the Indian Institute of Insolvency Professionals of ICSI), as the **Resolution Professional** in the present proceedings under Section 97(5) of the IBC, with directions to submit a Report under Section 99 of the IBC.
13. The Resolution Professional received intimation of his appointment along with a copy of the order dated 05.08.2024 by e-mail on **13.08.2024**.
14. Vide order dated **15.10.2025**, this Hon'ble Tribunal was pleased to direct the Applicant to effect **substituted service of notice** upon the Respondent/Personal Guarantor by way of publication of notice in a national English newspaper and in vernacular language newspapers, in view of the Respondent's failure to appear despite personal service.
15. In compliance with the aforesaid order, the Applicant duly caused publication of the notice of the present proceedings on **02.12.2025** in the following four (4) newspapers:
 - (i) Fresh Press Journal (English newspaper);
 - (iii) Nav Shakti (Marathi vernacular newspaper); and

Copies of the aforesaid publications dated 02.12.2025, evidencing due compliance of the order dated 15.10.2025, are on record before this Tribunal as Annexure B to the compliance memo filed by the Applicant.

16. Notwithstanding personal service of notice and the substituted service effected through publication in the aforesaid four newspapers, the Respondent/Personal Guarantor has chosen not to appear before this Tribunal, either in person or through counsel, at any stage of the proceedings. The Respondent has neither filed any reply to the Petition, nor raised any objection to the Report of the Resolution Professional, nor appeared before the Resolution Professional, nor provided any Statement of Affairs or any information regarding his assets and liabilities, as required under the Code.

SUBMISSIONS OF THE APPLICANT:

A. The present Application is within limitation

17. That the liability of the Corporate Debtor and the Respondent stood finally adjudicated and crystallised on 06.09.2019, being the date on which Recovery Certificate RC No. 117 of 2019 was issued by the Hon'ble DRT-III, Mumbai. The said date constitutes the date of default for the purposes of the present proceedings.
18. That in any event, the Corporate Debtor had acknowledged the subsisting liability by issuing a Revival Letter dated 18.01.2013, thereby extending limitation in terms of Section 18 of the Limitation Act, 1963.
19. That further, the time spent by the Applicant in bona fide prosecution of recovery proceedings before the Hon'ble DRT is liable to be excluded while computing limitation.

20. In this regard, the Hon'ble Supreme Court in **Sesh Nath Singh & Ors. v. Baidyabati Sheoraphuli Co. Ltd., (2021) 7 SCC 313** has held as under:

*"64. Similarly, under Section 18 of the Limitation Act, **an acknowledgment of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencement of a fresh period of limitation from the date on which the acknowledgment is signed.** However, the acknowledgment must be made before the period of limitation expires.*

*68. **Section 14(2) of the Act provides that in computing the period of limitation for any application, the time during which the petitioner had been prosecuting, with due diligence, another civil proceeding, whether in a court of first instance, or of appeal or revision, against the same party, for the same relief, shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.** The conditions for exclusion are that the earlier proceedings should have been for the same relief, the proceedings should have been prosecuted diligently and in good faith, and the proceedings should have been prosecuted in a forum which, from defect of jurisdiction or other cause of a like nature, was unable to entertain it."*

21. That additionally, the Hon'ble Supreme Court directed exclusion of the period from 21.03.2020 till 28.02.2022 while computing limitation on account of the COVID-19 pandemic.

Limitation - Brief Computation with Specific Dates:

| S. No. | Particulars | Date / Period |
|---------------|--|--------------------------------|
| 1. | Date of default (issuance of Recovery Certificate RC No. 117 of 2019 by Hon'ble DRT-III, Mumbai) | 06.09.2019 |
| 2. | Normal limitation period of 3 years (Article 137, Limitation Act) | Up to 05.09.2022 |
| 3. | Period excluded as per directions of Hon'ble Supreme Court (COVID-19) | 21.03.2020 to 28.02.2022 |
| 4. | Extended date of limitation after exclusion | 15.08.2024 |

22. Accordingly, the present Application is clearly within limitation.

B. Proceedings against the Corporate Debtor and continuation of liability of the Personal Guarantor

23. That the admission of insolvency proceedings against the Corporate Debtor conclusively establishes the existence of financial debt and default. The liability of the Respondent as Personal Guarantor is co-extensive and coterminous with that of the Principal Borrower in terms of Section 128 of the Indian Contract Act, 1872.

24. In this regard, the Hon'ble Supreme Court in Laxmi Pat Surana vs. Union Bank of India & Ors. has held:

"43....., In cases where the corporate person had offered guarantee in respect of loan transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor), would get triggered

the moment the principal borrower commits default due to non-payment of debt.

25. Further the Hon'ble Delhi High Court in the case of Kiran Gupta vs State Bank of India and Others has stated that

"Section 128 of the Indian Contract Act provides that the liability of a guarantor is co-extensive with that of the principal debtor. In Industrial Investment Bank of India Ltd. v. Biswanath Jhunjhunwala reported as (2009) 9 SCC 478, the Supreme Court has observed as under (page 482):

14. Mr. Gupta, in support of his submission, placed reliance on a judgment of this court in *Bank of Bihar Ltd. v. Dr. Damodar Prasad* (1969) 39 Comp Cas 133 (SC); AIR 1969 SC 297; (1969) 1 SCR 620, AIR page 298, paragraph 5. In that case, the court referred to a judgment in *Lachhman Joharmal v. Bapu Khandu* (1869) 6 Bom HCR 241 in which the Division Bench of the Bombay High Court held as under (*Lachhman Joharmal v. Bapu Khandu* (1869) 6 Bom HCR 241, Bom HCR page 242): 'The court is of opinion that a creditor is not bound to exhaust his remedy against the principal debtor before suing the surety and that when a decree is obtained against a surety, it may be enforced in the same manner as a decree for any other debt.'

14. This court, while approving the said judgment, observed that (*Bank of Bihar Ltd. v. Dr. Damodar Prasad* (1969) 39 Comp Cas 133 (SC); AIR 1969 SC 297; (1969) 1 SCR 620, AIR page 299, paragraph 6): **'The very object of the guarantee is defeated if the creditor is asked to postpone his remedies against the surety. In the present case the**

creditor is a banking company. A guarantee is a collateral security usually taken by a banker. The security will become useless if his rights against the surety can be so easily cut down.'

21. A Division Bench of the Bombay High Court in Jagannath Ganeshram Agarwala v. Shivnarayan Bhagirath, AIR 1940 Bom 247; (1941) 11 Comp Cas 11 (Bom) held that the liability of the surety is co-extensive, but is not in the alternative. Both the principal debtor and the surety are liable at the same time to the creditors."

15. Accordingly, the Respondent cannot avoid liability on the ground that proceedings have been initiated against the Corporate Debtor or that recovery proceedings were pursued earlier.

C. Admission under Section 100 of the Code

19. That in view of the Application being within limitation, the admitted default, the co-extensive liability of the Respondent as Personal Guarantor, the unrebutted pleadings, and the Report of the Resolution Professional, the present Application satisfies all requirements for admission under Section 100 of the Insolvency and Bankruptcy Code, 2016.

20. In view of the aforesaid facts and circumstances, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to admit the present Application under Section 100 of the Insolvency and Bankruptcy Code, 2016 and initiate the Insolvency Resolution Process against the Respondent / Personal Guarantor in accordance with law, and to pass such

other and further orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice.

REPORT OF THE RESOLUTION PROFESSIONAL UNDER SECTION 99 OF THE IBC

26. As noted above, this Hon'ble Tribunal vide order dated **05.08.2024** appointed Shri Parag Sheth as the Resolution Professional. The RP, upon receipt of intimation by e-mail on **13.08.2024**, proceeded to examine the Petition as mandated under Section 99 of the IBC.
27. In compliance with **Section 99(2)** of the IBC, the RP issued a letter to the Personal Guarantor — Shri Umesh Jayantilal Mehta, S/o. Jayantilal Mehta, Ghatkopar East, Mumbai on **16.08.2024** by e-mail and by speed post, requesting him to provide proof of repayment of the dues as required under Section 99(2) of the IBC 2016 and intimating him of the order of appointment dated 05.08.2024.
28. The speed-post letter sent by the RP was **returned undelivered**. also there is no reply from the personal guarantor. A copy of the letter and email issued by the RP is annexed to the RP's Report as **Annexure-2**.
29. The RP submitted his Report under Section 99 of the IBC by filing **IA/402(MP)/2024** on **31.08.2024**. The said Report was taken on record by this Hon'ble Tribunal vide order dated **12.11.2024**.

FACTS OF THE CASE AS STATED IN THE REPORT

30. The RP, in his Report, has set out the following facts of the case, as submitted by and on the basis of information furnished by the Financial Creditor:

- 1) M/s Navsan Glass Industries Limited availed credit facilities aggregating **Rs. 40 Crores** in the form of Term Loan of Rs. 35 Crores and Cash Credit of Rs. 5 Crores from IDBI Bank vide Sanction Letter dated 11.11.2009. The Corporate Debtor actually availed Rs. 16.09 Crores from the Term Loan.
- 2) The Respondent, Shri Umesh Jayantilal Mehta, gave a Personal Guarantee on 09.03.2010 in favour of IDBI Bank to secure repayment of debts owed by M/s Navsan Glass Industries Limited (Corporate Debtor). He is therefore a **personal guarantor** within the meaning of Section 5(22) of the Code.
- 3) The Corporate Debtor defaulted on 30.09.2011, being the date of its NPA classification. The Corporate Debtor made part payment of Rs. 5.08 Crores. The Financial Creditor also received Rs. 2.26 Crores through recovery action under SARFAESI. The **Principal Amount outstanding is Rs. 16,40,37,137.84/-** and the interest as per the terms of sanction on 02.03.2022 is **Rs. 54,34,93,314/-**, making the **total outstanding Rs. 70,75,30,451.84/-**.
- 4) The Corporate Debtor issued a Revival Letter on 18.01.2013 acknowledging the debt. Recall notice was issued on 28.02.2013. Personal Guarantee was invoked on 27.12.2013. O.A. No. 138 of 2014 was filed before DRT-III, Mumbai on 23.01.2014. The DRT-III decreed the same on 10.05.2018. The Recovery Certificate RC No. 117/2019 was issued on 06.09.2019.
- 5) The COVID-19 pandemic commenced w.e.f. 21.03.2020 and the period of limitation was extended by the Hon'ble Supreme Court of India upto 28.02.2022.

- 6) The Financial Creditor filed an application under Section 7 of the IBC against the Corporate Debtor before this Tribunal (CP IB No. 63(MP)/2022), which was subsequently admitted vide order dated 04.11.2025.
- 7) The Applicant issued a Form B Demand Notice to the Personal Guarantor on 17.08.2022, and no repayment has been received from the Respondent after issuance of the Demand Notice, as confirmed by the Financial Creditor (balance outstanding: Rs. 70,75,30,451.84/- as of 02.03.2022 per Form C). Copy of Form B Demand Notice is enclosed as **Annexure-3** to the RP's Report.

RP'S COMPLIANCE ANALYSIS UNDER SECTION 95

31. The Resolution Professional examined the Petition against the requirements of Section 95 of the Code and summarised his findings as under:

| Section | Requirement | RP's Observation / Compliance |
|----------------|---|--|
| Section 95(1) | Creditor may apply, either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process. | Creditor has application submitted vide the no: CP(IB)/21(MP)2023 against Umesh Jayantilal Mehta and therefore, requirement as set out under Section 95(1) is satisfied. |
| Section 95(2) | Application in relation to any partnership debt owed to the creditor (partners). | The application is made against the Personal Guarantor in his personal capacity and hence |

| Section | Requirement | RP's Observation / Compliance |
|----------------|---|---|
| | | Sections 95(2) is not applicable. |
| Section 95(3) | Consolidation of applications against partners of the same firm. | The application is made against the Personal Guarantor in his personal capacity and hence Sections 95(3) is not applicable. |
| Section 95(4) | Application shall be accompanied with details and documents relating to: (a) debts owed to the creditor on the date of application; (b) failure to pay within fourteen days of demand notice; (c) relevant evidence of default. | The application is accompanied with full details and documents as mandated under Section 95(4). |
| Section 95(5) | Creditor shall also provide a copy of the application made under sub-section (1) to the debtor. | Yes the creditor has provided copy of the Application was provided to the Respondent/Personal Guarantor. Proof of acknowledgment of demand notice served is on record as Annexure-3 to the RP's Report. |
| Section 95(6) | Application shall be in prescribed form and manner and accompanied with such fee as may be prescribed. | Yes, the application has been duly filed in the prescribed Form C with the requisite fees satisfied the requirement under |

| Section | Requirement | RP's Observation / Compliance |
|---------------|--|--|
| | | Section 95(6); Copy of Form-C is enclosed as Annexure-4 Detail |
| Section 95(7) | Details and documents required to be submitted under sub-section (4) shall be as may be specified. | Detail / document was asked for, no reply was received from the Debtor |

RP'S COMPLIANCE ANALYSIS UNDER SECTION 99

32. The Resolution Professional further examined the requirements of Section 99 of the Code and his findings are set out herein below:

| Section | Submissions of the RP | Compliance with the requirement of Section 99 of the Code (Yes/No) |
|--|--|--|
| Section 99(1): The resolution professional shall examine the application referred to in section 94 or section 95, as the case may be, within ten days of appointment and submit a report to the Adjudicating Authority recommending for approval or rejection of the application. | The RP submits that the present report is prepared in compliance with the requirements of Section 99(1) of the Code recommending for approval of Application | Yes. RP submits that the present report is being filed in terms of the requirement of Section 99(1) of the Code. |
| Section 99(2): Where the application has been filed under Section 95, the resolution | RP submits that an Email requesting to provide the proof for repayment of | Yes |

| | | |
|---|--|--|
| <p>professional may require the debtor to prove repayment of the debt claimed as unpaid by the creditor by furnishing — (a) evidence of electronic transfer of the unpaid of the debtor; (b) evidence of encashment of a cheque issued by the debtor; or (c) a signed acknowledgement by the creditors accepting receipt of dues.</p> | <p>dues along with intimation of the order dated 05.08.2024 was sent to the personal guarantor on 14.08.2024 by e-mail and speed post and sought information in connection with repayment of debt, wherein he has been asked to prove repayment of debit.</p> | |
| <p>Section 99(3): Where the debtor for which an application has been filed by a creditor is registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt.</p> | <p>No such information is available with the RP</p> | <p>RP submits that no information in connection with the is available.</p> |
| <p>Section 99(4): For the purposes of examining an application, resolution professional may seek such further information or explanation in connection with the application as may be required from the debtor or the creditor or any other person who, in the opinion of the resolution professional, may provide such information.</p> | <p>Since the application is filed by the RP for the Financial creditor, no further information or explanation in connection with the application is required. However, the RP had sought any other relevant information from the Personal Guarantor. No information is</p> | <p>RP submits that the requirements of Section 99(4) is complied with.</p> |

| | | |
|---|---|--|
| | received except confirmation of debt. | |
| Section 99(5): The person from whom the information or explanation is sought under sub-section (4) shall furnish such information or explanation within seven days of receipt of the request. | The Personal Guarantor fails to submit any reply | RP submits that the No reply has been received from Debtor Mr. Umesh Mehta. |
| Section 99(6): The resolution professional shall examine the application and ascertain that — the application satisfies the requirements set out in Section 95; the applicant has provided information and given explanation sought by the resolution professional under sub-section (4) | RP submits that the present application satisfies the requirements of provision of section 95 of the Code. | Yes, RP submits that the requirements of Section 99(6) of the Code are complied with. |
| Section 99(7): After examination of the application under sub-section (6), he may recommend acceptance or rejection of the application in this report | RP submits that the present application satisfies the requirements of Section 95 as required to be examined under Section 96(6) of the Code. RP recommends the acceptance of the Application. | Yes, RP submits that based on the examination, the present application deserves to be admitted under Section 100 of the Code and this Hon'ble NCLT may pass appropriate order. |

| | | |
|--|---|---|
| <p>Section 99(8) Where the resolution professional finds that the debtor is eligible for a fresh start under Chapter II, the resolution professional shall submit a report recommending the application by the debtor under section 81 by the Adjudicating Authority.</p> | <p>RP submits that the debtor/ personal guarantor has not provided any detail with respect to his eligibility under Section 80(2) however, since the aggregate qualifying debts of the Debtor exceeds thirty-five thousand rupees, the debtor he does not qualify for fresh start process under section 80 of the Code.</p> | <p>Not Applicable. The RP submits that the provisions of Section 99(8) of the Code do not apply to the present case.</p> |
| <p>Section 99(9): The resolution professional shall record the reasons for recommending the acceptance or rejection of the application in the report under sub-section (7).</p> | <p>RP submits that the present report which is being presented under section 99(7) of the Code to this Hon'ble Tribunal with a recommendation of accepting the present application by the Financial Creditor through RP for further orders under Section 100 of the Code.</p> | <p>Yes, RP submits that the present report prepared under section 99(7) of the Code recommending acceptance of the present application by the Financial Creditor through RP for further orders under Section 100 of the Code.</p> |
| <p>Section 99(10): The resolution professional shall give a copy of the report under sub-section (7) to the debtor or the</p> | <p>RP submits that he has compiled with the requirement of filing a copy of this report</p> | <p>Yes, the present report prepared under section 99(7) of the Code with the debtor, i.e., Mr. Umesh Mehta by</p> |

| | | |
|-------------------------------|--|---|
| creditor, as the case may be. | prepared under section 99(7) of the Code to the creditor and debtor. | mail and speed post. It is shared by mail with the Creditor also. |
|-------------------------------|--|---|

RP'S OVERALL RECOMMENDATION

33. After detailed examination of the Application and all supporting documents, and after due analysis under Sections 95 and 99 of the IBC, the Resolution Professional — **Shri Parag Sheth** — made the following **recommendations** in his Report dated 31.08.2024:
1. That the Application meets the requirements of Section 95 of the Code;
 2. That the present Application may be allowed;
 3. That the Personal Insolvency Resolution Process of Shri Umesh Jayantilal Mehta be initiated under Section 100 of the Code;

ANALYSIS AND FINDINGS OF THIS TRIBUNAL

34. We have heard the learned Counsel for the Applicant/Financial Creditor and have duly perused the documents on record as well as the Report of the Resolution Professional. The Respondent/Personal Guarantor, despite multiple opportunities and service by publication, has chosen not to appear.
35. It is prima facie evident that there exists a **debt** due from the Personal Guarantor in terms of the Deed of Personal Guarantee dated 09.03.2010, and there is a **default** in payment thereof. The total outstanding dues stand at **Rs. 70,75,30,451.84/-** (as of 02.03.2022), comprising principal of Rs. 16,40,37,137.84/- and interest of Rs. 54,34,93,314/-, as set out in the Application.

36. The Personal Guarantee was duly invoked vide Notice dated **27.12.2013**. The Financial Creditor also obtained a decree from the Hon'ble DRT-III, Mumbai and a Recovery Certificate (RC No. 117/2019 dated 06.09.2019) against the Respondent, inter alia, for **Rs. 21,32,34,009/**. The liability of the Respondent as Personal Guarantor is co-extensive with that of the Corporate Debtor in terms of **Section 128 of the Indian Contract Act, 1872**, and stands conclusively established.
37. On the question of **limitation**: The date of default is **06.09.2019**, being the date of issuance of Recovery Certificate RC No. 117/2019 by the Hon'ble DRT-III, Mumbai, on which date the liability was finally adjudicated and crystallised. The normal period of **three years under Article 137** of the Limitation Act, 1963 would ordinarily expire on **05.09.2022**.
38. However, the Hon'ble Supreme Court of India, in ***Suo Motu Writ Petition (Civil) No. 3 of 2020***, has categorically held that the period from **15.03.2020 to 28.02.2022** shall stand excluded for the purpose of computation of limitation on account of the COVID-19 pandemic disruption.
39. The limitation computation is as follows:

| S. No. | Particulars | Date / Remarks |
|---------------|--|-----------------------|
| 1. | Date of default — issuance of Recovery Certificate RC No. 117/2019 by Hon'ble DRT-III, Mumbai (date on which liability was crystallised and adjudicated) | 06.09.2019 |

| S. No. | Particulars | Date / Remarks |
|---------------|--|---|
| 2. | Normal limitation period of 3 years under Article 137 of the Limitation Act, 1963 (expires) | 05.09.2022 |
| 3. | Period excluded per Hon'ble Supreme Court direction on account of COVID-19 pandemic (Suo Motu WP (C) No. 3 of 2020) | 15.03.2020 to 28.02.2022 |
| 4. | Balance limitation available on 15.03.2020 (from 15.03.2020 to 05.09.2022 = approx. 2 years 5 months 20 days); said balance period available from 01.03.2022 | Limitation extends to approx. 15.08.2024 |
| 5. | Date of filing of present Application under Section 95 IBC | 31.01.2023 |
| 6. | Result | Petition filed well within limitation. Not barred. |

40. Accordingly, the present Petition filed on **31.01.2023** is well within the extended limitation period and is **not barred by limitation.**

41. The Applicant issued a valid Form B Demand Notice on **17.08.2022**. The Petition is filed in the prescribed Form C with all requisite documents and fees. The Resolution Professional was duly appointed and has submitted his Report recommending acceptance. All procedural requirements of Sections 95 and 99 of the IBC stand **duly complied with.**

42. We are of the considered view that the captioned Petition is **complete in all aspects**, and the present case is fit for admission. Ordered accordingly.

ORDER

43. In view of the aforesaid findings, and upon being fully satisfied that the requirements of **Section 100 of the Insolvency and Bankruptcy Code, 2016** stand fulfilled in the present proceedings, this Adjudicating Authority hereby passes the following Order:

- (1) The present Petition bearing **CP (IB) No. 20 (MP) of 2023** filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 is hereby **ADMITTED** under Section 100 of the IBC.
- (2) The **Personal Insolvency Resolution Process (PIRP)** in respect of **Shri Umesh Jayantilal Mehta** (DOB: 08.02.1968, PAN: AANPM8083G the Respondent/Personal Guarantor herein, is hereby **initiated** with effect from the date of this Order.
- (3) Shri Parag Sheth, Insolvency Professional (IBBI Registration No. **IBBI/IPA-002/IP-N00142/2017-18/10381**), AFA Valid Upto 31.12.2026 is hereby **confirmed as the Resolution Professional** for the conduct of the PIRP of the Respondent, with directions to carry out all functions, duties, and responsibilities as assigned under the Code, the Personal Guarantors Rules, and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.

- (4) The **moratorium** as contemplated under **Section 101 of the IBC** shall come into effect from the date of this Order and shall remain operative for the period of PIRP, subject to the conditions and exceptions as provided under the Code and shall cease to have effect at the end of the period of one hundred and eighty days beginning with the date of admission of the application or on the date the Adjudicating Authority passes an order on the repayment plan under section 114, whichever is earlier.
- (5) The Resolution Professional shall cause **public announcement** of the initiation of PIRP in terms of Section 101 of the IBC and Regulation 6 of the PIRP Regulations, within **three (3) days** from the date of this Order.
- (6) The Applicant is directed to deposit Rs. 1,00,000/- to the bank account of Resolution Professional within one week, towards his fees. This shall be subjected to the rules and regulations under the provisions of IBC, 2016. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under IBC, 2016.
- (7) The Respondent/Personal Guarantor shall, upon receipt of the public announcement, submit a **Statement of Affairs** to the Resolution Professional within the period prescribed under the Code and the Regulations.
- (8) The Resolution Professional is directed to submit a **status report** to this Tribunal on the progress of the PIRP within **30 days** of this Order.

(9) A copy of this Order shall be communicated to the **Resolution Professional**, the **Applicant/Financial Creditor**, and the **Respondent/Personal Guarantor** forthwith.

44. Accordingly, **CP(IB)/21 (MP)/2023** filed under section 95 of IBC, 2016 is **admitted** and the Insolvency Resolution process stands initiated against the Respondent/Personal Guarantor.

Sd/-

MAN MOHAN GUPTA
(MEMBER TECHNICAL)

Chandni-LRA

Sd/-

BRAJENDRA MANI TRIPATHI
(MEMBER JUDICIAL)