



S.No.3

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
07.05.2026 AT 10:30 A.M.**

**IA(IBC)/2392/2024 in
Company Petition IB/194/95/HDB/2022
U/s 95 of IBC**

IN THE MATTER OF:

Stressed Assets Stabilisation Fund

...Petitioner

AND

Anil Kumar Agarwal

...Respondent

C O R A M:-

**SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)
SHRI. SANJAY PURI, HON'BLE MEMBER (TECHNICAL)**

O R D E R

IA (IBC)/2392/2024

Orders pronounced, recorded vide separate sheets. In the result, the
IA(IBC)/2392/2024 is allowed.

Company Petition IB/194/95/HDB/2022

Orders pronounced, recorded vide separate sheets. In the result, the
Company Petition IB/194/95/HDB/2022 is admitted.

**Sd/-
MEMBER (T)**

**Sd/-
MEMBER (J)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II**

CP (IB) No.194/95/HDB/2022

(Under Section 95 read with Section 60(2) of the Insolvency and Bankruptcy Code, 2016, read with Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019.

OMKARA ASSETS RECONSTRUCTION PRIVATE LTD.

Kohinoor Square, 47th Floor, N.C. Kelkar Marg,
R.G. Gadkari Chowk, Dadar (West), Mumbai – 400028

....Financial Creditor

AND

ANIL KUMAR AGGARWAL,

Plot No. 10-3-3/14, East Marredpally,
Secunderabad – 500 003, Telangana.

.... Respondent 1/ Personal Guarantor

M/S. KUMAR'S METALLURGICAL CORP. LTD.

.... Respondent 2/ Corporate Debtor

Date Of Order: 07.05.2026

CORAM:

Shri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Shri Sanjay Puri, Hon'ble Member (Technical)

Counsel/Parties present:

For the Petitioner : Mr. Dishit Bhattacharjee, Ld. Counsel.

For the Respondent : Mr. C.S. Gupta, Ld. Counsel.



1. This petition was originally filed by the **Stressed Assets Stabilization Fund (SASF)** (Financial Creditor/FC) under Section 95 of the IBC¹, read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019, seeking an order for initiation of the Personal Insolvency Resolution Process (**PIRP**) against **Shri Anil Kumar Aggarwal**² Who is the Personal Guarantor (**PG**) of **M/s: Kumar's Metallurgical Corp. Ltd**, Corporate Debtor (**CD**).
2. In view of the order dated 07.05.2026 passed in I.A. (IBC) No. 2391 of 2024, M/s. Stressed Assets Stabilization Fund stands substituted by M/s. Omkara Assets Reconstruction Private Limited, which shall hereinafter be treated as the Financial Creditor and Applicant in the present proceedings.

APPLICATION

3. The Applicant submits that the Corporate Debtor had availed various term loans from Industrial Development Bank of India (IDBI), along with its associate institutions, namely IFCI Limited and ICICI Bank, under different loan agreements. Further, to secure the repayment of the said financial assistance, Shri S.K. Aggarwal, Shri Anil Kumar Aggarwal, Late Shri Satish Kumar Aggarwal, and Smt. Uma Aggarwal stood as personal guarantor and executed multiple Guarantee Agreements dated 05.02.1991, 10.10.1992, 05.06.1993, 30.10.1993, and 30.10.1995.
4. The Applicant submits that, after availing the financial assistance, the Corporate Debtor committed default, whereupon IDBI issued a Loan Recall Letter dated 05.09.2001 and invoked the personal guarantees on 27.09.2001, thereby recalling the entire outstanding dues. Despite such a recall, neither the Corporate Debtor nor the personal guarantors discharged the liability. Consequently, IDBI and its Associate Banks,

¹ Insolvency and Bankruptcy Code, 2016.

² Personal Guarantor/ Respondent 1



including SASF as a party to the proceedings, instituted Original Applications before the Debt Recovery Tribunal-I, Hyderabad. The said Tribunal passed an order culminating in Recovery Certificate No. 365/2019 dated 24.10.2019, thereby directing payment of the adjudicated dues within 30 days.

5. It is further submitted that an aggregate outstanding amount of Rs. 854,46,74,502/-, together with interest @ 12% as stipulated in the Recovery Certificate, remains unpaid. It is further relevant to note that the application under Section 7 of the Insolvency and Bankruptcy Code, 2016, filed against M/s. Kumar's Metallurgical Corporation Limited ("Corporate Debtor") was admitted by this Tribunal, and this Tribunal has duly approved a Resolution Plan.
6. The Applicant submits that, pursuant to the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019, which came into effect from 01.12.2019, a Demand Notice in Form B under Rule 7(1) was issued to the Personal Guarantor by registered post on 31.12.2021, followed by a further notice dated 19.03.2022. However, since the said notices could not be served upon the Personal Guarantor, the Applicant caused publication of the Demand Notice in "The Man Telangana" and "The Financial Express". It is further submitted that despite due service by way of publication, the Personal Guarantor has failed to discharge the outstanding liability, thereby compelling the Applicant to file the present application.
7. Upon presentation of the application, this Adjudicating Authority, vide order dated 21.06.2022, appointed Mr. Kurapati Singarayya Chowdary Registration No. IBBI/IPA-003/IP-N000149/2017-2018/11728 as Resolution Professional (RP) and directed the RP to submit a report under Section 99 of the IBC, 2016.
8. The Resolution Professional filed a report under Section 99 of the IBC on 11.03.2024 through IA No. 603/2024.



RP REPORT

9. After due examination of the application, the Resolution Professional recommended its admission based on the details recorded in the RP report, as mentioned hereunder:
10. It is observed that an earlier report was filed by the Resolution Professional on 01.07.2022. It is further noted that the Personal Guarantor filed an application seeking the setting aside of the ex parte order, which came to be allowed on 18.08.2022. Subsequently, by order dated 15.02.2024, the Adjudicating Authority directed the Resolution Professional to submit a fresh report under Section 99 of the Code; accordingly, the present Report has been filed.
11. Upon receipt of the aforesaid order, the Resolution Professional sought the requisite information from both the Applicant and the Personal Guarantor. It is noted that an email and a registered communication were issued to the Personal Guarantor on 19.02.2024, and an email was issued to the Applicant on 20.02.2024. In response, the Personal Guarantor, by communication dated 23.02.2024, submitted an unsigned letter asserting that no guarantee subsists. The Applicant, by email dated 04.03.2024, stated that no payment has been received towards the outstanding debt.
12. The RP states that the total debt payable by the Personal Guarantor to the Applicant is Rs. 834,79,60,484/- as on 31.12.2021, as reflected in the reply dated 27.06.2022 issued by SASF. It is noted that the said amount has been computed after adjusting sums received towards the Resolution Plan amounting to Rs. 19,48,58,445/-, along with reversal of interest of Rs. 18,55,574/-, aggregating to Rs. 19,67,14,019/-, together with simple interest at 12% per annum in terms of Recovery Certificate No. R.C. 365/2019. It is further observed that the debt arises from guarantees executed by the Personal Guarantor in respect of financial assistance availed by the Corporate Debtors under Deeds of Guarantee dated 05.02.1991, 10.10.1992, 05.06.1993, 30.10.1993, and



30.10.1995.

13. It is observed that IDBI and its associate banks, including SASF, had filed an application under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993, before the Debt Recovery Tribunal-I, Hyderabad, being O.A. No. 945 of 2001, against the Corporate Debtor, M/s Kumar Metallurgical Corporation Limited, along with its Personal Guarantors. Upon adjudication, a judgment dated 24.10.2018 was passed in favour of the applicants, pursuant to which Recovery Certificate No. 365/2019 dated 24.10.2019 was issued for recovery of the outstanding debt. It is further noted that thereafter, the Applicant issued demand notices dated 31.12.2021 and 19.03.2022 under Rule 7(1) of the applicable Rules.
14. In compliance with Section 99(2) of the Code, the Resolution Professional (RP) requested proof of repayment from the Guarantor via email on 19-02-2024. The Guarantor replied on 24-02-2024 through an unsigned letter, contending that the claim could not be sustained because the Demand Notice dated 19-03-2022 was never received. Regarding this objection, the RP observed that the applicant had issued a paper publication on 28-04-2022, which is annexed at page 317 of the Application. The Guarantor further argued that the claim is barred by limitation, as the last guarantee deed was executed in 1995 with no subsequent acknowledgement of debt. However, the RP observed that, pursuant to the Recovery Certificate issued on 24-10-2019, the Application is within the period of limitation.
15. In view of the continued default and non-payment by the PG, the RP has recommended the admission of Application CP(IB) No. 194/95/HDB/2022, filed under Section 95(1) of the IBC.

RESPONDENT'S COUNTER

16. The Respondent submits that the Applicant has to prove its claim against the answering respondent because the personal guarantee was invoked in 2001 and is time-barred, and that there has been no acknowledgment of liability for more than twenty years. It is further stated that the



Applicant entered into a One Time Settlement through a tripartite agreement, and the personal guarantor stood discharged as she was neither consenting nor a party to the settlement, and by virtue of the Contract Act, such variation discharges the guarantee.

17. The Respondent states that the answering respondent did not receive any intimation, notice, email, or correspondence and had no knowledge of the proceedings under Section 95 of the IBC until the filing of the recall application. It is contended that the alleged email IDs, namely umaaggarwalkmcl@gmail.com and anilaggarwalkmcl@gmail.com, are fabricated and forged. It is further stated that the Financial Creditor had full knowledge of the correct address of the Respondent, i.e., Plot No. 92 & 93, P & T Colony, Karkhana, Secunderabad-500015, Telangana, as reflected in W.P. No. 21354 of 2017, but stated a false address to obtain adverse orders.
18. It is averred that the Respondent has already challenged the issue of personal guarantor in W.P. No. 21354 of 2017 before the Hon'ble High Court of Telangana, inter-alia stating that in 2010 IDBI entered into a MOU with Global Profiles Limited for sale and settlement of debt of M/s Kumar Metallurgical Corporation Limited, pursuant to which written agreements were executed, letters exchanged, and down payments and instalments were received, thereby settling the alleged debt.
19. It is further stated that the said W.P. No. 21354 of 2017 is pending for adjudication, and the applicant, with malicious intention, suppressed these facts and did not disclose them before this Tribunal. It is contended that the Respondent had written a letter dated 09.03.2016 seeking release of the personal guarantee, which was denied by SASF vide letter dated 17.02.2017, and that the present proceedings, being sub-judice, ought to be kept in abeyance.
20. The Respondent submits that, as per the record relied upon by the Resolution Professional/Applicant, the DRT-I, Hyderabad, admitted the recovery application and directed the Corporate Debtor and Respondent to pay Rs. 182,98,30,811/- vide order dated 24.10.2018; however, the



Respondent was not aware of such proceedings, and the order was passed ex parte without adjudication on merits, followed by Recovery Certificate No. RC/365/2019. It is further stated that, by virtue of approval of the Resolution Plan, the liabilities now belong to the Resolution Applicant, the loan account stands closed, and therefore the Respondent disputes the present claim as not sustainable under law.

21. It is contended that the alleged Demand Notices dated 31.12.2021 and 19.03.2022 were never served, and the Financial Creditor is put to strict proof regarding the delivery and valid service of the same. It is further stated that the Demand Notice dated 31.12.2021, raising a claim of Rs. 854,46,74,502/-, was not delivered, and the Respondent had no knowledge of publications in “Mana Telangana” and “Financial Express,” which have limited circulation in the area of residence. It is pointed out that the Guarantee Agreements dated 05.02.1991, 10.10.1992, 05.06.1993, 30.10.1993, and 30.10.1995 were invoked in 2001 and are barred by limitation; consequently, the alleged notices under Rule 7(1) are disputed as not served, and the Financial Creditor is put to proof.
22. The Respondent states that the present Application is barred by limitation, as the applicant admitted issuance of Recall Notice dated 05.09.2001 and invocation of guarantee dated 27.09.2001, whereas the Application filed in May 2022, after a lapse of 21 years, is clearly barred. It is further stated that, even considering the DRT-I order dated 24.10.2018, the present Application filed after more than three years is barred by limitation.
23. It is further stated that under Section 238 of the IBC, the provisions of the Limitation Act apply, and the Financial Creditor, with a malicious intention, relied on the Recovery Certificate dated 24.10.2019 instead of the earlier default dates, which cannot extend the limitation. It is contended that the claim amount of Rs. 854,46,74,502/- is vague and not supported by the DRT order or Recovery Certificate.
24. It is pointed out that the alleged claim pertains to three financial creditors, namely IDBI, IFICI, and ICICI, with no joint decree, and the



DRT order reflects separate claims. It is contended that the present Application is filed only by the Stressed Assets Stabilization Fund, and the assignment by IDBI is challenged as bad in law for want of registration of the deed.

RESPONDENT'S OBJECTIONS TO RP REPORT & WRITTEN SUBMISSIONS.

25. The facts, averments, and submissions already set out in the Counter are not repeated herein for brevity. The Personal Guarantor submits that the earlier Section 99 Report dated 01.07.2022 has become infructuous, and the order dated 19.10.2022 was set aside vide order dated 12.01.2024, with directions to file a revised Report and granting liberty to file objections.
26. The Respondent submits that the Applicant, Stressed Assets Stabilization Fund (SASF), is a trust constituted under a Trust Deed dated 24.09.2004 and does not possess an independent juristic personality. Accordingly, any legal proceedings on its behalf must be instituted by or through its trustees in accordance with Sections 3, 5, 6, and 13 of the Indian Trusts Act, 1882. The present application, not having been filed in the name of or through the trustees, is therefore not maintainable.
27. The Respondent further submits that the alleged assignment of debt by SASF in favour of Omkara Assets Reconstruction Private Limited is invalid and non-est in law. The alleged Assignment Deed has neither been duly stamped as required under the Indian Stamp Act, 1899, nor registered in accordance with the Registration Act, 1908. In the absence of a valid and enforceable assignment, no right, title, or interest in the subject debt could have been transferred, and the Applicant consequently lacks locus standi to maintain the present application.
28. Furthermore, the Respondent submits that the applicant has approached this Tribunal with unclean hands by suppressing material facts regarding earlier settlement attempts, payments received, and the pendency of W.P. No. 21354 of 2017 before the Hon'ble High Court. It is



contended that the existence and enforceability of the personal guarantee and underlying debt are currently under challenge in the said Writ Petition, rendering the present insolvency proceedings premature. The Respondent maintains that such suppression of material facts and the pendency of sub-judice matters constitute an abuse of the process of law, and the application is liable to be kept in abeyance or dismissed on these grounds.

29. It is further contended that neither the DRT-I order dated 24.10.2018 nor the Recovery Certificate dated 24.10.2019 constitutes a fresh cause of action or a valid basis for extending the limitation. The Respondent submits that even if the Recovery Certificate were taken into consideration, the application under Section 95 of the Code, filed after more than three years from the date the right to apply accrued, remains barred under Article 137 of the Limitation Act, 1963, read with Section 238 of the IBC.
30. The Respondent further disputes the alleged claim of Rs. 854,46,74,502/- as being highly inflated, vague, and not supported by the DRT order or Recovery Certificate. It is contended that the Financial Creditor has failed to provide credible documentary evidence or give proper credit for all payments, realizations, and amounts received under the Resolution Plan of the Corporate Debtor. The Respondent asserts that the claimed amount is unsustainable in law and that the applicant has failed to prove an enforceable debt against the answering Respondent.
31. The Respondent contends that the Resolution Professional's Section 99 Report is vitiated by a "mechanical adoption" of the Financial Creditor's claims. By failing to independently verify objections or consider the approved Resolution Plan, limitation bars, and pending High Court proceedings, the RP's recommendations are procedurally and legally flawed.

WRITTEN SUBMISSION BY THE FINANCIAL CREDITOR

32. The facts, averments, and submissions contained in these written



submissions are identical to those detailed in the main petition and, accordingly, to avoid needless repetition and in the interest of brevity, they are not reiterated herein.

33. The Applicant submits that the date of default is 24.10.2019, being the date of issuance of the Recovery Certificate in RC No. 365/2019 by the Debt Recovery Tribunal, Hyderabad, which constitutes a fresh cause of action. The said date is also reflected in the report issued by the National E-Governance Services Limited (NeSL). It is further submitted that, previously in the same matter, the Respondent Personal Guarantors were set ex parte, and the matter was heard on merits, pursuant to which this Tribunal, by order dated 19.10.2022, admitted the applications.
34. It is further submitted that the Personal Guarantors thereafter filed I.A. No. 5 of 2023 seeking to set aside the ex parte order dated 18.08.2022 as well as the admission order dated 19.10.2022, primarily on the ground of alleged non-service of notice. The applicant filed a detailed counter, to which the Personal Guarantors also filed a rejoinder. This Tribunal, by order dated 12.01.2024, after considering the rival submissions, was pleased to hold that notices were duly issued to the addresses furnished by the Personal Guarantors in the guarantee deeds and that it was incumbent upon them to update their address details. While setting aside the ex parte order in the interest of natural justice, this Tribunal permitted the Personal Guarantors to file their counter to the main application.
35. The Applicant submits that, in their counter, the Respondents have reiterated contentions which already stand adjudicated by this Tribunal, with the only additional plea being that of limitation. In this regard, the Applicant further states that upon default in repayment, the Financial Creditor issued a recall notice dated 05.09.2001 and invoked the guarantees vide notices dated 27.09.2001. Thereafter, proceedings were initiated before the Debts Recovery Tribunal in O.A. No. 945/2001, culminating in the issuance of a Recovery Certificate dated 24.10.2019 for a sum of Rs. 182.98 Crores, which constitutes a fresh cause of action.



Accordingly, the present applications filed on 25.05.2022 are within the prescribed limitation period of three years therefrom. It is further submitted that within the said period, demand notices dated 31.12.2021 and Form B notice dated 19.03.2022 were issued, followed by paper publication dated 28.04.2022, thereby evidencing diligent steps taken by the Financial Creditor.

36. The Applicant submits that despite due service of notices, the Personal Guarantors have failed to discharge their liabilities, compelling the applicant to file the present applications under Section 95 of the Code for a total outstanding amount of Rs. 8,54,46,74,502/-. The said amount includes the principal adjudicated under the Recovery Certificate, along with accrued contractual interest and other charges in terms of the loan and guarantee agreements, as detailed in the application and supporting documents.
37. It is further submitted that during the pendency of the proceedings, Stressed Assets Stabilization Fund (SASF), has assigned the debt to Omkara Asset Reconstruction Private Limited (OARPL) vide Assignment Agreement dated 31.08.2024 executed under Section 5 of the SARFAESI Act, 2002. The said assignment includes all underlying rights, title, interests, securities, and guarantees. Consequently, the Applicant has filed I.A. Nos. 2391 and 2392 of 2024 seeking substitution in place of the erstwhile Financial Creditor. It is submitted that upon such assignment, the Applicant steps into the shoes of the original Financial Creditor and is fully entitled to continue and prosecute the present proceedings.

FINDINGS AND DECISION

38. Heard the learned counsel for the Applicant and the Respondent. Perused the record, including the pleadings, affidavits, and the Report submitted by the Resolution Professional.
39. The considerations in an application under Section 95 of the IBC, 2016, are the existence of debt, default in repayment, valid invocation of the guarantee deed, and valid demand notice in Form B served upon the



Personal Guarantor.

40. Upon perusal of the material available on record, it is observed that the Corporate Debtor had availed multiple term loan facilities from the Industrial Development Bank of India and its associate banks under loan agreements dated 31.01.1991³, 01.07.1992⁴, 03.06.1993⁵, 29.10.1993⁶, and 30.10.1995⁷, as evidenced by the loan documents, sanction letters, and statements of account placed on record. It is further observed that the Debt Recovery Tribunal-I, Hyderabad, vide order⁸ dated 24.10.2018 in O.A. No. 945 of 2001, adjudicated the liability and issued a Recovery Certificate⁹ No. 365/2019 dated 24.10.2019 quantifying the dues payable. In view of the aforesaid material, we are satisfied that the amount claimed constitutes a financial debt within the meaning of Section 5(8) of the IBC
41. It is further observed that the Respondent executed Deeds of Guarantee dated 05.02.1991¹⁰, 10.10.1992¹¹, 05.06.1993¹², 30.10.1993¹³, and 30.10.1995¹⁴ in favour of the Financial Creditor, thereby undertaking liability for repayment of the financial assistance availed by the Corporate Debtor. In the absence of any material on record evidencing discharge of such liability in accordance with law, we are satisfied that the Respondent is a personal guarantor and remains liable under the said guarantee agreements.
42. The Respondent's objection that the Stressed Assets Stabilisation Fund, being a trust, cannot maintain the present petition is untenable. The

3 Page no. 25-51 of the petition: Loan Agreement for RTL of Rs. 13 Crores.

4 Page no. 72-101 of the petition: Loan Agreement for RTL of Rs. 1 Crore.

5 Page no. 131-153 of the petition: Loan Agreement for RTL of Rs. 52 Lakh.

6 Page no. 177-202 of the petition: Loan Agreement for RTL of Rs. 3 Crores.

7 Page no. 223-245 of the petition: Loan Agreement for RTL of Rs. 25 Crores.

8 Page no.329-334 of the petition.

9 Page no.320-328 of the petition.

10 Page no 63-71 of the petition.

11 Page no 119-130 of the petition.

12 Page no 168-176 of the petition.

13 Page no 214-222 of the petition.

14 Page no 264-270 of the petition.



record clearly demonstrates that the proceedings have been duly authorized by the Executive Trustee¹⁵, who has empowered an officer of SASF to file and prosecute the petition before this Tribunal. Accordingly, the requirement that a trust act through its trustees stands satisfied in substance. The objection, being purely technical and causing no prejudice to the Respondent, is devoid of merit and stands rejected.

43. The Industrial Development Bank of India (IDBI), upon its conversion into IDBI Bank Limited, transferred a portfolio of its non-performing assets to the Stressed Assets Stabilisation Fund (SASF), a trust established by the Government of India as settlor in the nature of a Special Purpose Vehicle and duly notified under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Pursuant to such transfer, SASF acquired the said financial assets together with all rights, title, and interest therein in terms of the underlying contractual arrangement and consideration structure, and accordingly stepped into the position of the original lender for the purpose of enforcement and recovery of the debts.
44. The issue that arises for consideration is whether the said assignment is liable to be held invalid solely on the ground of non-registration of the assignment deed.
45. Upon consideration of the material available on record, it is noted that the objection raised by the Respondent is confined to the non-registration of the assignment deed. The subject matter of the assignment is a financial asset in the nature of an actionable claim and not immovable property. It is well settled that assignment of actionable claims does not mandatorily require registration, and the validity of such transfer is not dependent upon registration when effected through a valid contractual arrangement between the parties. Therefore, the mere absence of registration of the assignment deed does not render the assignment invalid or unenforceable in law. Accordingly, the objection challenging

¹⁵ Page no 24 of the Application.



the locus on this ground is devoid of merit and stands rejected.

46. It is an admitted position that upon default by the Corporate Debtor, the IDBI issued a Loan Recall Notice¹⁶ dated 05.09.2001 and invoked the guarantees¹⁷ on 27.09.2001, followed by initiation of recovery proceedings before the Debt Recovery Tribunal, culminating in Recovery Certificate No. 365/2019 dated 24.10.2019. The principal issue that arises for consideration is whether the present proceedings are barred by limitation.
47. It is well settled that Article 137 of the Limitation Act applies to proceedings under the Insolvency and Bankruptcy Code, prescribing a limitation period of three years. In **IDBI Bank Ltd. v. Hemangi Patel**¹⁸, relying upon **B.K. Educational Services Pvt. Ltd. v. Parag Gupta & Associates**¹⁹ it was held that issuance of a recovery certificate gives rise to a fresh cause of action, and an application filed within three years thereof is within limitation. The relevant extract is below:

*Hon'ble Supreme Court, however, held that claim of acknowledgment under Section 18 on basis of letter dated 29.01.2020 cannot be accepted since the said acknowledgement was subsequent to expiry of 3 years. Hon'ble Supreme Court relied on earlier judgment of Hon'ble Supreme Court in the matter of B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta & Associates, reported in [(2019) 11 SCC 633], where Article 137 of the Limitation Act was held to be applicable and limitation as 3 years. **Hon'ble Supreme Court held that recovery certificate will give a fresh cause of action and application brought within 3 years of issue of recovery certificate is well within time.** With regard to two recovery certificates, with respect to which Section 7 was initiated within 3 years, Hon'ble Supreme Court held the same to be within limitation relying on Article 137 of the Limitation Act. In the above context, following was laid down in paragraph 24:*

¹⁶ Page no 271-281 of the petition

¹⁷ Page no 282-284 of the application.

¹⁸ (2025) ibclaw.in 599 NCLAT

¹⁹ (2019) 11 SCC 633



Accordingly, the limitation period is to be computed from 24.10.2019, being the date of issuance of the Recovery Certificate. As the present application was filed on 16.06.2022, i.e., within three years from the said date, it is within the limitation.

48. The Financial Creditor has duly demonstrated that Demand Notices²⁰ in Form B, were issued on 31.12.2021 and 19.03.2022. Upon failure of physical delivery, the Creditor resorted to substituted service by publication²¹ of the Demand Notice in “*The Financial Express*” and “*Mana Telangana*” on 28.04.2022. The said mode of service, by way of publication in a widely circulated national English daily and a regional vernacular newspaper, constitutes valid constructive service in accordance with law.
49. The Respondent’s objection that they did not personally read the said publications or that the newspapers allegedly have low circulation in their region is legally unsustainable. The statutory scheme governing service does not require proof of actual personal knowledge or reading by the Respondent; it only mandates compliance with prescribed modes of service. Once such a prescribed procedure has been duly followed, service cannot be invalidated on the basis of subjective denial of receipt or awareness.
50. In view of the above, compliance with the statutory procedure for service, the plea of non-service of the demand notice is rejected. The Demand Notice is held to have been validly served upon the Respondent, and the objection raised in this regard is found to be untenable both on facts and in law.
51. The Respondent has relied upon alleged settlement arrangements/MoUs to contend discharge of liability; however, no documentary evidence has been placed on record to establish the existence of a concluded

²⁰ Page no 285-328 of the petition.

²¹ Page no 317-318 of the petition



settlement, its terms, or full and final satisfaction of the dues, and even otherwise, any arrangement between the lender and a third party does not, by itself, discharge the liability of the Personal Guarantor unless there is an express release or lawful discharge in accordance with the terms of the guarantee, and in the absence of any such material, the plea of settlement is rejected.

52. The Respondent's plea that the present proceedings be kept in abeyance due to pendency of W.P. No. 21354 of 2017 is untenable, as pendency of parallel proceedings before the Hon'ble High Court does not bar proceedings under the Insolvency and Bankruptcy Code, 2016, which is a self-contained statutory framework. In the absence of any stay order or statutory bar, and since the issues raised in the writ petition pertain to alleged settlement disputes, the same do not impede the determination of default and liability under Section 95 of the Code. Accordingly, the objection seeking to keep the present proceedings in abeyance on account of the pendency of W.P. No. 21354 of 2017 is devoid of merit and stands rejected.
53. The Respondent contends that the approval of the Resolution Plan for the Corporate Debtor extinguishes the liability of the Personal Guarantor and that the loan account stands closed. However, it is a well-settled legal principle that the discharge of a Principal Borrower does not ipso facto release a Personal Guarantor.
54. As per Section 128 of the Indian Contract Act, 1872, the liability of a guarantor is co-extensive with that of the principal debtor. Unless the Resolution Plan specifically provides for the release of the Personal Guarantor or the debt stands fully satisfied, the Financial Creditor's right to proceed against the guarantor remains intact. Accordingly, the mere approval of a Resolution Plan for the Corporate Debtor does not bar the present proceedings against the Personal Guarantor, subject to the specific terms of the approved plan.
55. In view of the facts and evidence on record, we are of the considered opinion that the Applicant has established the existence of a financial



debt and a default exceeding Rs. 1 Crore. Accordingly, we accept the Report of the Resolution Professional and admit this application under Section 95 of the Code. Consequently, the Personal Insolvency Resolution Process is hereby initiated against the Respondent–Personal Guarantor.

ORDER

1. The Company Petition vide **CP (IB) No. 194/95/HDB/2022** filed under the provisions of Section 95 of IBC is hereby admitted under the provisions of Section 100 of the Code, 2016, and the Insolvency Resolution Process is initiated against **Shri Anil Kumar Aggarwal**, the Personal Guarantor, and a moratorium is declared in relation to all debts, which begins from the date of admission of the instant petition and shall cease to have effect at the end of the period of 180 days, as provided under Section 101 of the Code, 2016. During the moratorium period-
 - a. Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;
 - b. The Creditors shall not initiate any legal action or legal proceedings in respect of any debt; and
 - c. The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;
 - d. The provisions of this Section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
2. The Resolution Professional, viz. Mr. Kurapati Singarayya Chowdary, having Registration No. IBBI/IPA-003/IP-N000149/2017-2018/11728 stands substituted by Mr. Goteti Kasi Visweswara Rao, in view of the expiry of her Authorisation for Assignment (AFA) on 31.12.2025.
3. The Resolution Professional, viz. **Mr. Goteti Kasi Visweswara Rao**, having Registration No. **IBBI/IPA-002/IP-N01310/2024-2025/14486**, Address at 7-2-18/AT/641, Alekhya Towers, Bairamalguda, Near Sagar



Ring Road, Hyderabad, Telangana – 500079. Phone No.**7757021248**, and email id: **goteti1248@gmail.com**. His AFA, as per the IBBI Website, is valid up to 31.12.2026. He is directed to cause a public notice to be published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Hyderabad Bench, inviting claims from all Creditors, within 21 days of such an issue.

4. The notice shall contain the necessary information as provided under Section 102(2) of the Code. The publication of the notice shall be made in newspapers, one in English and the other in the vernacular (Telugu), which have wide circulation in the State where the Personal Guarantor and Corporate Debtor reside.
5. The Resolution Professional shall furnish two spare copies of the notice to the Registry. One shall be placed on our website by the Registry, and the other shall be affixed in the premises of this Adjudicating Authority.
6. The Resolution Professional, in exercise of the powers conferred under Section 104, shall prepare a list of creditors within 30 days from the date of the notice.
7. The Personal Guarantor, in consultation with the Resolution Professional, shall prepare a repayment plan containing a proposal to the creditors for restructuring his debts or affairs as provided under Section 105. This plan shall include provisions for the payment of fees to the Resolution Professional.
8. 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.
9. 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 thinks that the meeting of creditors should be summoned, he shall specify the details as provided under Section 106(3).



10. The date of the meeting shall not be less than fourteen days or more than 28 days from the date of submission of the Report under Sub-section (1) of Section 106 of the Code, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of the Code.
11. The meeting of the creditors shall be conducted in accordance with Sections 109, 110, and 111 of IBC. 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 and submit the same to the Authority, copies of which shall be provided to the guarantor and the creditors.
12. It is further clarified that the Resolution Professional shall perform his functions and duties in strict compliance with the Code of Conduct prescribed under Section 208 of the Code.
13. The Petitioner is directed to communicate this order to the Resolution Professional appointed in the instant Company Petition immediately.

This CP(IB) No.194/95/HDB/2022 filed under Section 95 of the IBC, 2016, is **admitted**, and the Insolvency Resolution Process is initiated against the Personal Guarantor.

Sd/-

SANJAY PURI
MEMBER (TECHNICAL)

Sd/-

RAJEEV BHARDWAJ
MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, COURT-II

I.A (IBC) No. 2392 of 2024

IN

C.P. (IB) No. 194/95/HDB/2022

[Under Section 60(5) of The Insolvency and Bankruptcy Code, 2016]

Between:

OMKARA ASSETS RECONSTRUCTION PRIVATE LTD.

Kohinoor Square, 47th Floor, N.C. Kelkar Marg,
R.G. Gadkari Chowk, Dadar (West), Mumbai – 400028

.... Applicant

AND

ANIL KUMAR AGGARWAL,

Plot No. 10-3-3/14, East Marredpally,
Secunderabad – 500 003, Telangana.

.... Respondent/Personal Guarantor

Date of Order: 07.05.2026

Coram:

Hon'ble Shri Rajeev Bhardwaj, Member (Judicial)

Hon'ble Shri Sanjay Puri, Member (Technical)

Counsels Present

For Applicant : Mr. Dishit Bhattacharjee, Ld. Counsel

For Respondent : Mr. C.S. Gupta, Ld. Counsel



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IN

C.P (IB) No. 194/95/HDB/2022

Date of Order: 07.05.2026.

1. The present application is filed to take on record the substitution of **OMKARA ASSETS RECONSTRUCTION PRIVATE LIMITED**, having its office at Kohinoor Square, 47th Floor, N.C. Kelkar Marg, R.G. Gadkari Chowk, Dadar (West), Mumbai – 400028, in place of **STRESSED ASSETS STABILIZATION FUND (SASF)**, having its office at 3rd Floor, IDBI Towers, WTC Complex, Cuffe Parade, Mumbai – 400005, pursuant to the Assignment Agreement dated 31.08.2024, in the matter of **ANIL KUMAR AGGARWAL** in CP (IB) No. 194/95/HDB/2022.

APPLICATION

2. The Applicant submits that IDBI Bank, being the original lender, had granted financial facilities to the corporate debtor. Thereafter, IDBI Bank assigned and transferred the said debt, along with all connected rights and interests, in favor of the Stressed Assets Stabilization Fund (SASF) vide the Assignment Agreement dated 30.09.2004.
3. The Applicant submits that the SASF has now unconditionally and irrevocably assigned and transferred the debt to Omkara Assets Reconstruction Private Limited, along with all associated security interests, guarantees, rights, interests, and title, vide the Assignment Agreement dated 31.08.2024, in terms of Section 5 of the SARFAESI Act, 2002. It is submitted that all rights and powers of SASF regarding the loan facilities availed by the Corporate Debtor stand assigned to the applicant. The Applicant seeks amendment of the Section 95 application and substitution of Omkara Assets Reconstruction Private Limited in place of SASF.

RESPONDENT'S CASE

4. The Respondent submits that the present Application is not maintainable as it is not in the prescribed format (Form No. NCLT.1) as required under Rule 34 of the NCLT Rules, 2016, and has been filed by an unauthorized



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person. It is further submitted that the application is defective, as crucial information has been deliberately removed or concealed.

5. The Respondent disputes the validity of the alleged Assignment Deed between the SASF and Omkara Assets Reconstruction Private Limited, dated 31.08.2024, contending that it is improper and invalid as it has not been registered as mandatorily required under Section 17 of the Indian Registration Act. It is further submitted that the deed is not duly stamped as required under the Indian Stamp Act and is therefore liable to be impounded. The Respondent also submits that since SASF has failed to establish a valid assignment from IDBI, it cannot transfer a better title than what it possesses, and consequently, the Applicant has failed to produce evidence of being a validly registered Asset Reconstruction Company holding a valid licence.
6. The Respondent submits that the loan account of the Corporate Debtor has already been settled as per a Resolution Plan approved by this Adjudicating Authority, and thus, the loan cannot be revived. Since the loan account stands closed after the approval of the Resolution Plan, no further proceedings would lie, and no amount remains pending toward the loan account as falsely claimed. Furthermore, by virtue of the approved Resolution Plan, the liabilities and obligations now belong to the Resolution Applicant, and the plan nowhere mentions that the Financial Creditor is entitled to seek recovery from the personal guarantor.
7. The Respondent argues that the present Application seeking substitution is not sustainable as it has neither been moved by the alleged Financial Creditor/SASF nor supported by an Affidavit of the said Financial Creditor/SASF. It is further contended that the assignor, SASF, has not been made a party to the present Application and must confirm and verify the assignment.



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8. The Respondent denies that the Applicant's representative is an authorized representative or fully conversant with the facts and circumstances of the case. It is further submitted that the statement regarding the non-filing of objections is false and made without verification of records, as the Respondent filed objections to the RP report on 03-06-2024, which are already on record. Additionally, the alleged claim of Rs 854,46,74,502/- is vehemently disputed and denied as false, and the Respondent denies that the debt was legally assigned in terms of Section 5 of the SARFAESI Act, 2002.

WRITTEN SUBMISSION BY THE APPLICANT

9. The Applicant submits that the Assignment Agreement was duly stamped in accordance with the Maharashtra Stamp Act, with the relevant challan evidencing payment of stamp duty annexed at page 41 of the I.A. application. It is further averred that the Assignment Agreement was duly signed and stamped by the Authorized Signatory, who was authorized by way of a Board Resolution dated 07.11.2023, marked as Annexure-3 at page 9 of the application filed by the Applicant.

FINDINGS AND DECISION

10. We have heard the Learned Counsel for the Applicant and carefully perused the material and documents placed on record. Upon due consideration of the submissions and the material available on record.
11. At the outset, the Respondent has raised a preliminary objection regarding the maintainability of the present application on the ground that it was not filed in Form NCLT-1, as prescribed under Rule 34 of the NCLT Rules, 2016. Upon consideration, we find this objection to be purely technical in nature. Procedural rules are intended to advance the cause of justice and facilitate adjudication; they cannot be invoked to defeat substantive rights. The relief sought in the present application is confined to the substitution of a party



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in pending proceedings consequent upon the transfer of interest. Such a minor procedural defect does not warrant dismissal of the application. Accordingly, the objection regarding the format of filing stands rejected.

12. At this stage, it is pertinent to note that the issues raised in the present application concerning the status of the Stressed Assets Stabilisation Fund, its locus, and the validity of the assignment have already been examined and decided in detail in the main Company Petition. Accordingly, the same do not require separate adjudication in this application and are governed by the findings recorded in the main order.
13. Documents on record establish that via an Assignment Agreement¹ dated 31.08.2024, Stressed Assets Stabilization Fund assigned the debt and associated security interests to Omkara Assets Reconstruction Private Limited. The Deed of Guarantee² dated 05.02.1991 expressly facilitates this transfer; the Preamble defines 'Lenders' to include 'successors and assigns,' while Clause 17(d) ensures guarantor liability remains unaffected by changes in the Lender's constitution. Furthermore, Clauses 5 and 6 grant the Lender the liberty to exercise its powers and vary terms without notice to or consent from the Guarantors. These provisions collectively empower the Lender to assign its rights and benefits without requiring consent from, or intimation to, the Borrower or Guarantor. Accordingly, the Applicant has legally stepped into the shoes of the assignor and is entitled to pursue the present proceedings
14. The Respondent has also questioned the legal enforceability of the Assignment Agreement on the grounds of insufficient stamping and lack of registration. However, the record reveals that the Assignment Agreement was duly stamped in accordance with the provisions of the Maharashtra Stamp Act. The Applicant has placed on record the relevant challan

¹ Page no 11-47 of the application.

² Page no 61-69 of the section 95 petition.



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evidencing payment of stamp duty at Page 41 of the Interlocutory Application.

15. It is further pertinent to note that Section 5(1) of the SARFAESI Act, 2002, specifically empowers a bank or financial institution to assign financial assets in favour of an Asset Reconstruction Company. Further, Section 5(1A) grants a statutory exemption from compulsory registration in respect of such documents. In light of the evidence regarding payment of stamp duty and the statutory exemption available under law, the objections raised by the Respondent regarding the validity of the Assignment Agreement are untenable and liable to be rejected.
16. The Respondent further disputed the authority of the signatory to the application. However, upon perusal of the record, it is observed that the Assignment Agreement and the present application have been signed by the Authorized Signatory, duly empowered by a Board Resolution³ dated 07.11.2023.
17. We further rely on the principle enunciated by the Hon'ble NCLAT in **Lalan Kumar Singh v. Phoenix ARC Pvt. Ltd**⁴, wherein it was observed that challenges to the validity of an Assignment Agreement fall within the domain of civil proceedings. Proceedings under the Code are summary in nature and cannot be converted into a full-fledged civil trial. An assignment of debt is a recognized mode of transfer under the IBC, and the assignee steps into the shoes of the assignor by operation of law. Therefore, the objections regarding registration and stamping are not sustainable at this stage.
18. The Respondent contends that the approval of the Resolution Plan for the Corporate Debtor extinguishes the liability of the Personal Guarantor and

³ Page no.9-10 of Application.

⁴ (2019) ibclaw.in 84 SC.



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that the loan account stands closed. However, it is a well-settled legal principle that the discharge of a Principal Borrower does not ipso facto release a Personal Guarantor.

19. As per Section 128 of the Indian Contract Act, 1872, the liability of a guarantor is co-extensive with that of the principal debtor. Unless the Resolution Plan specifically provides for the release of the Personal Guarantor or the debt stands fully satisfied, the Financial Creditor's right to proceed against the guarantor remains intact. Accordingly, the mere approval of a Resolution Plan for the Corporate Debtor does not bar the present proceedings against the Personal Guarantor, subject to the specific terms of the approved plan.

20. Upon perusal of the Assignment Agreement dated 31.08.2024, the supporting Board Resolution dated 07.11.2023, and the evidence of stamping, it is observed that the Applicant has satisfied the legal requirements to step into the shoes of the assignor; furthermore, it is a settled principle that a Personal Guarantor cannot ordinarily oppose the substitution of a creditor, as the liability under a guarantee follows the underlying debt and the right of assignment is contractually protected. In view of the above, we find that the Applicant, Omkara Assets Reconstruction Private Limited, is the lawful successor-in-interest to the debt and is entitled to continue the proceedings

Accordingly, the present application is allowed. The Registry is directed to amend the cause title accordingly.

Sd/-

**SANJAY PURI
MEMBER (TECHNICAL)**

Sd/-

**RAJEEV BHARDWAJ
MEMBER (JUDICIAL)**