IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

IA-1190/2024 IN IB-313/ND/2022
IA-332/2024 IN IB-332/ND/2022
IA-4000/2022 IN IB-335/ND/2022
IA-1110/2024 IN IB-336/ND/2022

IN THE MATTER OF IB-313/ND/2022:

Karur Vysya Bank **... Applicant/Creditor**

Versus

Mr. Vishnoo Mittal **... Respondent/ Personal Guarantor**

AND IN THE MATTER OF IA-1190/2024 in IB-313/ND/2022:

Shruti Gupta
227, Sharda Niketan,
Pitampura, Delhi-110034 **... Applicant/Resolution Professional**

IN THE MATTER OF IB-332/ND/2022:

Karur Vysya Bank **... Applicant/Creditor**

Versus

Smt. Homi **... Respondent/ Personal Guarantor**

AND IN THE MATTER OF IA-332/2024 in IB-332/ND/2022:

Devinder Kumar
109, Surya Kiran Building,
KG Marg, New Delhi-110001 **... Applicant/Resolution Professional**

IN THE MATTER OF IB-335/ND/2022:

Karur Vysya Bank **... Applicant/Creditor**

Versus

Smt. Pooja Malhotra **... Respondent/ Personal Guarantor**

AND IN THE MATTER OF IA-4000/2022 in IB-335/ND/2022:

Mohit Kumar Gupta
15, Paschim Vihar Extn.
Main Rohtak Road, Delhi-110063 **... Applicant/Resolution Professional**

IN THE MATTER OF IB-336/ND/2022:

Karur Vysya Bank **... Applicant/Creditor**

Versus

Mr. Heavent Sudhir Malhotra **... Respondent/ Personal Guarantor**

AND IN THE MATTER OF IA-1110/2024 in IB-336/ND/2022:

Harvinder Singh
11 CSC DDA Market,
A Block, Saraswati Vihar,
New Delhi-110034 **... Applicant/Resolution Professional**

Under Section: 99 r/w 95(1) of IBC 2016

Order delivered on: 02.12.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant	:	Adv. Vijay Kumar & Adv. Rekha Anand
For the PG	:	Adv. Abhishek Anand, Adv. Karan Kohli, Adv. Ishaan Dhingra
For the RP	:	Adv. Yashu Gupta in **IA-1190/2024** Adv. Rajiv Malik, Adv. Pratiksha Singh & Adv. Mansi Aggarwal for RP along with Mohit Kumar Gupta, RP in **IA-4000/2022** Adv. Animesh Khandelwal & Adv. Rashi Gupta in **IA-332/2024** Adv. Kushal Bansal & Adv. Anish Ahlawat for the RP in **IA-1110/2024**

ORDER

IA-1190/2024 IN IB-313/ND/2022, IA-332/2024 IN IB-332/ND/2022, IA-4000/2022 IN IB-335/ND/2022 and IA-1110/2024 IN IB-336/ND/2022

All these applications arise out of the financial facility extended by the creditor to M/s Xalta Food and Beverages Pvt. Ltd. (Principal Borrower). Indubitably, the Respondents herein before us stood as Personal Guarantor qua such financial facility. Thus, the same are taken up for disposal in terms of this common order. The facts involved in all these proceedings being common/similar, for convenience, the same are referred to from IB-313/ND/2022 and IA-1190/2024. The particulars of the debt and date of default are given in Part-III of the petition, which reads thus: -

Part – III

PARTICULARS OF DEBT			
1.	Total outstanding debt (including any interest or penalties)	Rs 14,91,62,709.79 on 31.05.2021 + Interest thereupon from 01.06.2021	
2.	Amount of debt in default	Rs 14,91,62,709.79 (Rupees Fourteen Crores Ninety one lakhs Sixty Two thousand Seven hundred Nine & Seventy Nine only) + Interest thereupon from 01.06.2021	
3.	Date when the debt was due	30.12.2018	
4.	Date when the default occurred	Continuing Guarantee recalled on 13.03.2019	
5.	Nature of the debt	Nature of Debt	Outstanding as on 31.05.2021
		Term Loans	14,91,62,709.79
6.	Secured debt including particulars of security held, the date of its creation, its estimated value as per the creditor (as applicable), and details of securities	Primary : **Primary:** **Term Loan:** First Pari-passu charge over the Fixed Assets (machineries & utilities) purchased pertaining to the project (ie. For setting up of 1350BPM -Bottle per Minute in the Carbonated Fruit Drink and Fruit Juices line in the existing premises at Khasraa No.509 Village ChhejarsiKuleech Nagar, Tehsil Dhalulana, Dist-Hapur UP. The estimated total value of Rs.55.70 crore (including machineries of Rs.49.98 Crs. and Utilities of Rs.5.72 Crs.) The above securities shall be shared on pari-passu basis among the lenders participating in phase-II expansion with total term loan of Rs.45.00 crore. **ILC/FLC:** Hypothecation of goods received under LC **Collateral Security :** **Term Loan /ILC/FLC:** 1)First pari-passu Charge on Freehold land admeasuring 13.79 acres situated on the State Highway, Sanand Bavla Road, Ahmedabad Standing in the name of M/s Xalta Infrastructure Pvt. Ltd. The approximate Market value as per valuation is Rs.23.29 crore. (In process of sale by consortium Lead bank i.e Indian Bank ,SAM Large Branch Delhi) Applicant Bank Share 25%	
7.	Unsecured debt (as applicable)	N/A	
8.	Details of retention of title arrangements (if any) in respect of goods to which the debt refers (attach a copy)	N/A	
9.	Details of any mutual credit, mutual debts, or other mutual dealings between the guarantor and the creditor, which may be set-off against the claim (attach proof)	N/A	
10.	Particulars of an order of a court, tribunal or arbitral panel adjudicating on the default, if any (attach a copy of the order)	N/A	
11.	Record of default with the information utility, if any (attach a copy)		
12.	Details of succession certificate, or probate of a WILL, or letter of administration, or court decree (as may be applicable), under the Indian Succession Act, 1925 (10 of 1925 (attach a copy)	N/A	

13.	Provision of law, contract or other document under which debt has become due (attach a copy)	1. Common Loan agreement dated 04.05.2017 2. Letter of Authority to lead bank dated 04.05.2017 3. Inter creditor agreement and confirmation of borrower to ICA dated 04.05.2017 4. Deed of hypothecation dated 04.05.2017 5. Escrow Account agreement dated 04.05.2017 6. Personal Guarantee by Ms. Homi dated 04.05.2017 7. Personal Guarantee by Ms. Pooja Malhotra dated 04.05.2017 8. Personal Guarantee by Mr. Heavent Sudhir Malhotra dated 04.05.2017 9. Personal Guarantee by Mr. Vishnoo Mittal dated 04.05.2017 10. Personal Guarantee by Mr. Vinod Sehvag dated 08.05.2017 11. Undertaking cum Indemnity dated 04.05.2017 12. Corporate Guarantee by M/s- Xalta Infrastructure & Services Private Limited 13. Corporate Guarantee by M/s- VHV Beverages Private Limited 14. Corporate Guarantee by M/s- V & V Corporation Private Limited 15. Board Resolutions of M/s- Xalta Food & Beverages Private Limited dated 24.03.2017 16. Board Resolution of M/s- V & V Corporation Private Limited dated 22.03.2017 & 24.03.2017 17. Board Resolution of M/s- VHV Beverages Private Limited dated 17.03.2017 & 24.03.2017 18. Board Resolution of M/s- Xalta Infrastructure & Services Private Limited dated 20.03.2017 & 24.03.2017 19. KYC of Directors, Personal Guarantors & Corporate Guarantors 20. Term Loan account statement 21. Buyer's credit utilisation report 22. Statement of accounts showing arrear.
14.	A statement of bank account where deposits are made or credits received normally by the creditor in respect of the debt of the corporate debtor, from the date on which the debt was incurred	-
15.	List of documents attached to this notice in order to prove the existence of debt and the amount in default	1. Common Loan agreement Dated 04.05.2017 2. Personal guarantee Agreement Dated 04.05.2017 3. 13(2) SARFAESI notice copy Dated 13.03.2019 4. Account statement attached 5.The copy of Banker's Book of Evidence.
16	Statement by creditor in respect of excluded debts	I [creditor] hereby state that the debt(s) for which the insolvency resolution process application is filed does not include any- liability to pay fine imposed by a court or tribunal; liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation; liability to pay maintenance to any person under any law for the time being in force; liability in relation to a student loan; any other debt prescribed under section 79(15)(e) of the Code
17	If you are a secured creditor, tick the applicable box in the right column relating to forfeiture of right to enforce security during the period of the repayment plan, which will determine the voting share as per section 110 of the Code	I agree to forfeit my right to enforce my security [insert description] during the period of the repayment plan. I do not agree to forfeit my right to enforce my security [insert description] during the period of the repayment plan.

2. The copy of Deed of Guarantee has been placed on record at Annexure-V to IB-313/ND/2022. The Deed has been executed by Mr. Vishnoo Mittal,

the Respondent in the company petition. It is not denied by the counsels for the parties that the similar deed could be executed by the Respondents in all the proceedings.

3. As can be seen from clause 2 to 20.8 of the deed, the Respondents/ Guarantors could undertake to repay the amount of loan/financial facility. The clauses 2 to 5 of the deed read thus: -

> 2. In the event of any default on the part of the Borrower in payment/repayment of monies referred to in clause 1 above and other monies due and payable under or in terms of the Finance Documents or in the event of any default on the part of the Borrower to comply with or perform any of the terms, conditions and covenants contained in the Common Loan Agreement, the Guarantor shall, upon demand, forthwith pay to the Term Lenders without demur all the amounts payable by the Borrower under the Common Loan Agreement and the other Finance Documents.
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> 3. The Guarantor shall also indemnify and keep the Term Lenders/ Lead Bank indemnified against all losses, damages, costs, claims and expenses whatsoever which the Term Lenders/ Lead Bank may suffer, pay or incur by reason of or in connection with any such default on the part of the Borrower including costs and expenses in connection with any legal proceedings taken by or against the Borrower and/or the Guarantor relating to or arising out of the guarantee.
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> 4.1 **CONTINUING GUARANTEE**
> This Guarantee shall be:
> (A) A continuing guarantee remaining in full force and effect against the Guarantor until payments in full have been received by the Term Lenders of each and every part of all the monies payable/paid by the Borrower to the Term Lenders under the Common Loan Agreement including without limitation, towards the amount of the Term Loan together with all interest, additional interest, commission, liquidated damages, up-front fee, premia on prepayment or on redemption, costs, expenses and other monies that may from time to time become due and payable and remain unpaid to the Term Lenders under the Common Loan Agreement, in whatever currency or currencies the same may from time to time be denominated in accordance with the Common Loan Agreement. The Term Lenders may make multiple or successive demands upon the Guarantor and any such demands shall not be considered or regarded as an invocation of all the obligations under this Guarantee; provided, however, such invocations or demands shall not prejudice or affect the rights of the Term Lenders to make further additional invocations or demands; and
> (B) In addition to and not in substitution for or in derogation of any other guarantee or security held by the Term Lenders from time to time in respect of the obligations of the Borrower under the Common Loan Agreement, the rights of the Term Lenders under this Guarantee shall not be in any way prejudiced or affected by any one or more other securities or guarantees, for any other loan whether from the Guarantor or from any other person, which the Term Lenders may now or subsequently hold.
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> 4.2 Notwithstanding any discharge, release or settlement from time to time between the Term Lenders and the Guarantor, if any payment made by the Guarantor to the Term Lenders is avoided or set aside or ordered to be surrendered, paid away, refunded or reduced by virtue of any provision, law or enactment relating to bankruptcy, insolvency, liquidation, winding-up, composition or arrangement or otherwise, the Term Lenders shall be entitled to enforce this Guarantee as if no such discharge, release or settlement had occurred and as if no such payment had been made.

5. PAYMENTS

Notwithstanding anything to the contrary contained in this Guarantee each payment to be made by the Guarantor hereunder shall be:

(A) made, without any demur or protest, with immediately available funds in the currency in which such payment is due under the Common Loan Agreement without set off, counter claim, deduction or retention of any kind by payment to such account of the Term Lenders as the Term Lenders may from time to time notify to any or all of the Guarantor in writing; and 29

(B) increased to the extent necessary to ensure that after allowance for any deduction or withholding (including but without limitation deduction or withholding by reason of present or future taxes or duties) from any such payment which is made or required to be made by law or made for any other reason whatever, the Term Lenders receives and retains (free from claim or liability in respect thereof) a net sum equal to the sum which they would have received and so retained had no such deduction or withholding been made or required to be made.

6. ENFORCEMENT

6.1 Before taking steps to enforce this Guarantee, it shall not be necessary for the Term Lenders/Lead Bank:

(A) to obtain judgment against the Borrower or the Guarantor in any court or other tribunal; or

(B) to make or file any claim for bankruptcy or insolvency of the Borrower or the Guarantor; or

(C) to take any action whatsoever against the Borrower or the Guarantor under the Common Loan Agreement or this Guarantee; and the Guarantor hereby waives all such notices, formalities or rights (except for notices expressly required under the terms of this Guarantee) to which they would otherwise be entitled or which the Term Lenders would otherwise first be required to satisfy or fulfil before proceeding or making demand against the Guarantor hereunder.

6.2 This Guarantee may be enforced without the Term Lenders first having recourse to any other security or rights or taking any other steps or proceedings against the Guarantor or any other person and may be enforced for any balance due even after the Term Lenders has resorted to any one or more other means of obtaining payment or discharge of the monies obligations and liabilities hereby secured.

7. The Guarantor hereby agrees that –

(a) without the consent/concurrence of the Guarantor, the Borrower and the Term Lenders shall be at liberty to vary, alter or modify the terms and conditions of the Common Loan Agreement and/or of the Security created and/or of the Security Documents executed by the Borrower in favour of the Term Lenders and in particular to renew/ extend the Term Loan for such period or periods on such terms and conditions as may be mutually agreed between the Term Lenders and the Borrower and/or defer, postpone or revise the repayment of the Term Loan and or payment of interest and other monies payable by the Borrower to the Term Lenders on such terms and conditions as may be considered necessary by the Term Lenders including any revision in the rate of interest in accordance with the provisions of the Common Loan Agreement. The Term Lenders shall also be at liberty to absolutely dispense with or release all or any of the security/securities furnished or required to be furnished by the Borrower to the Term Lenders to secure the Term Loan. The Guarantor agrees that the liability under this guarantee shall in no manner be affected by any such variations, alterations, modifications, waiver, dispensation with or release of security, and that no further consent of the Guarantor is required for giving effect to any such renewal, extension, variation, alteration, modification, waiver, dispensation with, or release of security. The Guarantor undertakes and assures that the Guarantor shall keep herself informed of any amendments/changes, etc. to/for the Term Loan out of his own time, efforts and costs;

(b) the Term Lenders shall be at liberty to take in addition to the subsisting security any other security for the Term Loan or any part thereof and to release or forbear to enforce all or any of the remedies upon or under such security and any collateral security now held by the Term Lenders and that no such release or forbearance as aforesaid shall have the effect of releasing or discharging or in any manner affecting the liability of the Guarantor under this Guarantee and that the Guarantor shall have no right to the benefit of the said security and/or any other security that may be held by the Term Lenders until all the monies payable by the Borrower in connection with the Term Loan arising under or in pursuance of the Finance Documents shall have been fully paid/ repaid to the satisfaction of the Term Lenders and then in so far only as such security shall not have been exhausted for the purpose of realising the amount of the claims of the Term Lenders/ Lead Bank and rateably only with other guarantors or other persons (if any) entitled to the benefit of such security;

(c) He shall not be released of his obligation under this Guarantee in caseany dissolution / reconstitution of the Borrower is effected, without prior written approval of the Term Lenders; and

(d) the Term Lenders shall have the right to securitize the secured assets and in the event of such securitization, the Term Lenders shall not be bound to send any individual information regarding the said securitization to the Guarantor.

(e) He, shall, not pay any consideration, in whatever form, to the guarantors/guaranteeing directors, either directly or indirectly (except without prior approval of the Term Lenders) for the guaranteeing of Term Loan sanctioned by the Term Lenders to the Borrower.

8. The Term Lenders shall have full liberty, without notice to the Guarantor and without in any way affecting this Guarantee, to exercise at any time and in any manner any power or powers reserved to the Term Lenders under the Common Loan Agreement and other Finance Documents, to enforce or forbear to enforce payment of the Term Loan or any part thereof or interest or other monies due to the Term Lenders from the Borrower or any of the remedies or securities available to the Term Lenders, to enter into any composition or compound with or to grant time or any other indulgence or Term Loan to the Borrower and the Guarantor shall not be released by the exercise by the Term Lenders of their liberty in regard to the matters referred to above or by any act or omission on the part of the Term Lenders or by any other manner or thing whatsoever which under the law relating to sureties would but for this provision have the effect of so releasing the Guarantor and the Guarantor hereby waives in favour of the Term Lenders so far as may be necessary to give effect to any of the provisions of this Guarantee, all the suretyship and other rights which the Guarantor might otherwise be entitled to enforce.

9. The Guarantor hereby agrees and gives consent to the sale, mortgage on prior, pari-passu or second charge basis, release etc., of any of the assets of the Borrower from time to time as may be approved by the Term Lenders or the transfer of any of the assets of the Borrower from one unit to the other, or to the release or leasing out by the Term Lenders any or whole of the assets charged to the Term Lenders on such term and conditions as the Term Lenders may deem fit and this may be treated as a continuing consent for each and every individual act of transfer, mortgage, release or lease of any of such assets of the Borrower. The Guarantor hereby declares and

agrees that no separate consent for each such transfer, mortgage, release or lease of any of such assets would be necessary in future.

10. The Guarantor hereby agrees and declares that the Borrower will be free to avail of further loans or other facilities in addition to the Term Loan during the subsistence of this Guarantee and in that event the guarantee herein contained will not be affected or vitiated in any way whatsoever but will remain in full force and effect and binding on the Guarantor.

11. The rights of the Term Lenders against the Guarantor shall remain in full force and effect notwithstanding any arrangement which may be reached between the Term Lenders and the other guarantors, if any, or notwithstanding the release of that other or others from liability and notwithstanding that any time hereafter the other guarantors may cease for any reason whatsoever to be liable to the Term Lenders, the Term Lenders shall be at liberty to require the performance by the Guarantor of their obligations hereunder to the same extent in all respects as if the Guarantor had at all times been solely liable to perform the said obligations. The Guarantor hereby waives any of the rights conferred on a Guarantor by Section 133, 134, 135, 139 and 141 of the Indian Contract Act, 1872 (9 of 1872).

12. The Guarantor agrees to submit the details of the legal heirs within 2 Business Days from the date of this Deed and also declares that the persons mentioned as legal heirs are his only legal heirs and agree and undertake to notify the Lenders in writing particulars of changes, if any, therein immediately upon such change so long as this guarantee remains in force.

13. To give effect to this Guarantee, the Term Lenders may act as though the Guarantor is the principal debtors to the Term Lenders. The liability of the Guarantor shall be co-extensive with that of the Borrower.

14. The Guarantor hereby declares and agrees that he has not received and shall not, without the prior consent in writing of the Term Lenders receive any security or commission from the Borrower for giving this Guarantee so long as any monies remain due and payable by the Borrower to the Term Lenders under the Financing Documents.

15. The Guarantor shall not in the event of the insolvency or bankruptcy of the Borrower prove in competition with the Term Lenders in the liquidation, insolvency or bankruptcy proceedings as long as any monies due hereunder remain outstanding.

16. A certificate in writing signed by a duly authorised official of the Term Lenders shall be conclusive evidence against the Guarantor of the amount for the time being due to the Term Lenders from the Borrower in any action or proceeding brought on this Guarantee against the Guarantor.

17. This Guarantee shall not be wholly or partially satisfied or exhausted by any payments made to or settled with the Term Lenders by the Borrower and shall be valid and binding on the Guarantor and operative until payment in full of all monies due to the Term Lenders under the Finance Documents.

18. This Guarantee shall be irrevocable and the obligations of the Guarantor hereunder shall not be conditional on the receipt of any prior notice by the Guarantor or by the Borrower and the demand or notice by the Term Lenders, as provided in Clause 24 hereof shall be sufficient notice to or demand on the Guarantor.

19. The liability of the Guarantor under this Guarantee shall not be discharged, impaired or otherwise affected by reason of any of the following events or circumstances:

i) any time, forbearance or other indulgence given or agreed by the Term Lenders to or with the Borrower in respect of its obligations under the Common Loan Agreement; or

ii) any legal limitation, disability or incapacity relating to the Borrower or the Guarantor; or

iii) any invalidity, irregularity, unenforceability, imperfection or avoidance of any defect in any security granted by, or the obligations of the Borrower or the Guarantor or any amendment to or variation thereof or of any other document or security comprised therein; or

iv) any change in the name, constitution or otherwise of the Borrower or the Guarantor or any change in the set-up of the Borrower which may be by way of change in the constitution, winding up, voluntary or otherwise, or any merger, acquisition, amalgamation or otherwise of the Borrower with any other corporate entity or concern; or

v) The liquidation, bankruptcy or dissolution (or proceedings analogous thereto) of the Borrower or the appointment of a receiver or administrative receiver or administrator or trustee or similar officer of any of the assets of the Borrower and/or the Guarantor or the occurrence of any circumstances whatsoever affecting the Borrower's and/or the Guarantor's liability to discharge its obligations under the Common Loan Agreement or this Guarantee respectively; or

vi) any release, renewal, exchange or realisation of any security or obligation provided under or by virtue of the Common Loan Agreement and/or the Guarantee or the provision to the Term Lenders at any time of any further security for the Term Loan; or

vii) any failure whatsoever on the part of the Term Lenders (whether intentional or not) to take or perfect or enforce any security (if any) agreed to be taken under or in relation to the Common Loan Agreement; or

viii) any other act, matter or thing which, to the extent the Guarantor hasnot fully discharged herobligations under and in accordance with this Guarantee, might otherwise constitute a legal or equitable discharge of any of the Guarantor's obligations under this Guarantee; or

ix) any amendment to or waiver of any or all, in whole or in part, of the terms and conditions set out in the Common Loan Agreement and/or this Guarantee; or

x) any change in the management of the Borrower or takeover of the management of the Borrower by any government or by any other authority or the acquisition or nationalisation of the Borrower or of any of its respective undertaking(s) or pursuant to any law; or

xi) any change in the constitution of the Term Lenders; or

xii) the insolvency or death of the Guarantor.

20. **UNDERTAKINGS**

(A) Positive Undertakings

20.1 The undertakings in this Clause shall remain in force from and after the date hereof until the Final Settlement Date.

20.2 (A) The Guarantor will provide to the Term Lenders as soon as practicable and in any event within one hundred and eighty (180) days after the end of each financial year a certified copy of the audited accounts of the Guarantor for that year; and

(B) All accounts required under this Clause shall be prepared in accordance with accounting principles generally accepted in India consistently applied and shall fairly represent the financial condition of the Guarantor.

20.3 The Guarantor shall obtain and promptly renew from time to time, and promptly furnish certified copies to the Term Lenders, of all such authorisations, approvals, consents, licenses and exemptions as may be required under any applicable law or regulation to enable him to perform his obligations hereunder or required for the validity or enforceability of this Guarantee and the Guarantor shall comply with the terms of the same.

20.4 The Guarantor shall, from time to time on being required to do so by the Term Lenders, do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form satisfactory to the Term Lenders as the Term Lenders may reasonably consider necessary for giving full effect to this Guarantee or securing to the Term Lenders the full benefit of the rights, powers and remedies conferred upon the Term Lenders by this Guarantee.

20.5 As a separate, additional and continuing obligation, the Guarantor unconditionally and irrevocably undertake with the Term Lenders that, should any of the moneys referred to in Clause 1 above not be recoverable from the Borrower for any reason whatsoever (including, but without prejudice to the generality of the foregoing, by reason of any provision of the Common Loan Agreement being or becoming void, unenforceable or otherwise invalid under any applicable law) then, the Guarantor shall, as if a sole, original and independent obligor, upon first written demand by the Term Lenders, make payment of all the monies referred to in Clause 1 above by way of full indemnity in such currency and otherwise in such manner as is provided for in the Term Loan.

20.6 The Guarantor undertakes to create mortgage on his properties, when instructed by the Term Lenders/ Lead Bank, for recovery of the Secured Obligations.

20.7 The Guarantor undertakes to furnish to the Term Lenders the names, age and addresses of the legal Heirs and which shall be recorded and updated from time to time.

20.8 The Guarantor, shall, not pay any consideration, in whatever form, to the guarantors/guaranteeing directors, either directly or indirectly (except without prior approval of the Term Lenders) for the guaranteeing of Term Loan sanctioned by the Term Lenders to the Borrower.

(B) Negative Undertaking

The Guarantor undertakes and agrees with the Term Lenders that throughout the continuance of this Guarantee in accordance with the terms hereof, the Guarantor, shall not, unless the Term Lenders otherwise agree in writing:

(a) enter into any agreement or obligation, which is likely to materially and adversely affect the Guarantor's ability to perform his obligations under this Guarantee;

(b) sell, transfer, assign, dispose of, mortgage, charge, pledge or create any lien or in any way encumber any moveable and immoveable properties, whether as solely or jointly owned by the Guarantor and the immoveable properties, to be acquired by the Guarantor in future, whether as sole or joint owner, without the prior written consent of the Term Lenders, till all obligations under the aforesaid Guarantee are discharged in full.

(c) receive consideration, in whatever form, either directly or indirectly for guaranteeing the credit limits sanctioned by the Term Lenders;

(d) enter into borrowing arrangement either secured or unsecured with any other bank, financial institution, company or person;

(e) enter into any contractual obligation of a long-term nature or effecting the Guarantor financially to a significant extent;

(f) undertake guarantee obligations on behalf of any other Company, firm or person (including group companies);

4. On filing of the application, after issuance of notices to the Respondents/ Personal Guarantors, this Tribunal passed separate orders dated 04.08.2022 and appointed Resolution Professionals qua the Respondents. The RP appointed qua Respondent in (IB)-313/ND/2022 filed the report in terms of the provisions of Section 99 of IBC, 2016 by way of IA-

1190/2024. As can be seen from Para 12 of the report, the RP found that the application is in compliance of the provisions of Section 95(4) of the Code. In second part of same para, the RP could indicate that no evidence as mentioned in Section 99(2) could be adduced to prove the repayment of debt. The Para 12 of the report reads thus: -

COMPLIANCE OF TERMS OF SECTION 95 OF THE CODE READ WITH SECTION 99(6)(A) OF THE CODE

PROVISIONS	COMPLIANCES
Section 95(4)(A) of the Code: Details and documents relating to the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application	From the perusal of the Application, it is evident that the following documents were placed on record in relation to the credit facilities granted by the Financial Creditor to the Corporate Debtor: a. Common Loan agreement dated 04.05.2017 for term loan of Rs.49.98 Crs. and Utilities of Rs.5.72 Cr. b. Personal Guarantee Agreement executed dated 04.05.2017 c. Common deed of hypothecation for First pari-passu Charge on Freehold land admeasuring 13.79 acres situated on the State Highway, Sanand Bavla Road, Ahmedabad Standing in the name of M/s Xalta Infrastructure Pvt. Ltd. The approximate Market value as per valuation is Rs.23.29 crore. (In process of sale by consortium Lead bank i.e Indian Bank, SAM Large Branch Delhi) in which Share of Applicant Bank 25%.
Section 95(4)(b) of the Code: Details and documents relating to the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand	Demand Notice dated 03.06.2021 was issued by The Karur Vysya Bank Limited to Shri Vishnoo Mittal (Personal Guarantor), calling upon the Personal Guarantor to pay Rs. 14,91,62,709.79/- which was duly served upon the Personal Guarantor. Hence, The Karur Vysya Bank Limited was constrained to file the present Application against the Personal Guarantor. Vide Email dated 08.08.2022 and 15.08.2022 and letter sent on 10.08.2022, the Resolution Professional, Ms. Shruti Gupta requested the personal guarantor, to submit the proof for repayment of debt, if any made to the Karur Vysya Bank Limited in response to the demand notice dated 21.06. 2021. However, till date, the respondent has failed to provide his reply on the same.

Section 95(4) (¢) of the Code: Details and documents relating to relevant evidence of Such default or non-repayment of debt	Basis of the Insolvency Application, the details and documents evidencing the default and the non-repayment of the debt are annexed to the Insolvency Application which are as follows: - a. Copy of Demand Notices dated 21.06.2021 sent by Karur Vysya Bank Limited under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules. 2019 to the Guarantor. b. E-mail dated 08.08.2022 wherein the Personal Guarantor (Respondent) has not given any reply towards the debt claimed by the applicant.
Section 95(5) of the Code: The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.	Basis of the Insolvency Application. it is understood that a copy of the Insolvency Application was sent to the Personal Guarantor vide email and speed post dated 25/04/2022.

COMPLIANCE OF TERMS OF SECTION 99 OF THE CODE

PROVISIONS	COMPLIANCES
Section 99 (2) of the Code: Where the application has been filed under section 95. The resolution professional may require the debtor to prove repayment of the debt claimed as unpaid by the creditor	In compliance of Section 99(2) of the Code. The Resolution Professional has informed the Guarantor vide Letter dated 06.08.2022 (mailed on 10.08.2022) and Email dated 08.08.2022 about the appointment of Resolution Professional and further directed to prove the repayment of debt claimed as unpaid by the Financial Creditor. That the Respondent has not given any reply towards the debt claimed by the applicant.
Section 99 (3) of the Code: Where the debt for which an application has been tiled by a creditor is registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt	Neither Financial creditor provided any information nor Personal Guarantor raised any dispute against the debt
Section 99(4) of the Code read with Section 99(6)(b)	The information provided by the Financial Creditor along the Insolvency Application was exhaustive. Accordingly, the Financial Creditor has provided the information and / or given the explanation sought by the Resolution Professional.

5. As can be seen from Para 12 of the report/application, the RP could recommend the admission of IB-313/ND/2022. The Para 12 of the report reads thus: -

"12. In view of the above, I, Shruti Gupta, the Resolution Professional appointed by the Hon'ble Adjudicating Authority vide order dated 04.08.2022 in C.P.(IB)-313(ND)/2022. hereby confirm that I have perused/examined the Insolvency Application filed by the Financial Creditor under Section 95 of the Code along with all the underlying documents and annexures and have formed the opinion to recommend the same for approval to this Hon'ble Adjudicating Authority, based on following grounds: -

a) The Insolvency Application has been filed in the requisite form, Form C in terms of Rule 7 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 supported by requisite fee and documents.
b) The Insolvency Application satisfies the requirements set out in Section 95 of the Code.
c) The Personal Guarantor was duly served with demand notice dated 21.06.2021 by the Financial Creditor for repayment of the debt owed by him to the Financial Creditor in terms of the provisions of the Code prior to filing the Insolvency Application but the Personal Guarantor failed to repay the same. Although, an amount of Rs. 5,51,20,445.25 towards dues has been recovered by the applicant, after filling of the present application vide sale of property through SARFAESI.
d) The undersigned has also sent a communication to the Personal Guarantor, vide e-mail dated 08.08.2022 and 15.08.2022 and via speed post on 10.08.2022, asking the Personal Guarantor to prove repayment of debt claimed as unpaid by the Financial Creditor. That the Personal Guarantor has not given any reply to the mail.

e) The Insolvency Application does not relate to "excluded debts" as defined under Section 79(15) of the Code.
f) The Debtor (Personal Guarantor) is not eligible for fresh start under Chapter Il of the Code.
g) That in view of material available on record. I recommend for the approval of the petition bearing no. CP(IB) 313 of 2022."

6. The reports on the line similar to the one filed in terms of IA-1190/2024 could be filed in terms of IA-332/2024 in CP (IB)-332/2022, IA-4000/2022 in CP (IB)-335/ND/2022 and IA-1110/2024 in CP (IB)-336/ND/2022. During the course of hearing, counsels for the Creditor, RP and the Personal Guarantor agreed that the factual position involved in all these petitions/ applications preferred under Section 95 and 99 of IBC, 2016 is *pari materia.* Mr. Abhishek Anand, Ld. Counsel for the Personal Guarantors opposed the admission of the applications preferred under Section 99 of IBC, 2016, as also the reports filed by RP, espousing thus: - (1) The applications are barred by limitation; (2) the Demand Notice under Section 7 could not be served upon the Corporate Debtors.

7. Regarding the issue of limitation, the Ld. Counsel for the Creditor could rely upon the judgment of Hon'ble Supreme Court in Suo Motu Writ Petition (C) No. 3 of 2020 in ***Re: Cognizance for Extension of Limitation*** and submitted that in terms of the view taken by Hon'ble Supreme Court in the said judgement, the period from 15.03.2020 till 28.02.2022 need to be excluded while reckoning the period of limitation for filing the petitions under Section 95 of IBC, 2016. Para 5(1) of the order reads thus: -

"5(I) The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021. it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings."

8. As can be seen from the notice issued by the Creditor, invoking bank guarantee, the same was issued on 13.03.2019. From the notice issued under Section 7 of IBC, 2016, it is clear that the default in repayment of the debt occurred on 30.12.2018. Calculating the period from either of the said dates, after excluding period from 15.03.2020 to 28.02.2022, we find that the applications/petitions preferred under Section 95 of IBC, 2016, in the year 2022 are within the prescribed period of limitation. Regarding service of notice, we see from the order dated 04.08.2022 passed in IB-313/ND/2022 (Karur Vysya Bank vs. Mr. Vishnoo Mittal) in Para 7 of the same, it is categorically recorded that the demand notice was sent to the Personal Guarantors by speed post dated 23.06.2021. It is also noted in said para that when the demand notice could not be served by speed post, the same was served by way of publication. Para 7 of the order reads thus: -

"7. It is further submitted by the Applicant that it had sent a Notice via Speed Post dated 23.06.2021 in Form B under Rule 7(1) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 to the Personal Guarantor demanding payment of the outstanding amount of Rs.14,91,62,709.79/-. It is added that the Demand Notice could not be served by Speed Post and therefore, the Demand Notice was served through newspaper publication made

in the newspapers namely 'Jansatta' (Hindi) and 'Financial Express' (English) on 30.12.2021.

9. Similar finding is there in Para 7 of the orders passed in other applications/petitions filed under Section 95 of IBC, 2016.

10. Mr. Abhishek Anand, Ld. Counsel for the Personal Guarantors also submitted that in terms of the Rule 3(1)(g) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules 2019, would mean sending any communication by any means including registered post, speed post, courier or an electronic form, which is capable of producing or generating an acknowledgment of receipt of such communication. According to him, when notice could not be served in terms of Rule 3(1)(g), the same could be served in terms of the proviso under clause (g) i.e. by affixing the same at the outdoor or some other conspicuous part of the house or building in which the addressee ordinarily resides, organize his business or personal working. The Rule 3(1)(g) reads thus:-

> *"**3. Definitions. —** (1) In these rules, unless the context otherwise requires, -*
>
> ....
>
> *(g) "serve" means sending any communication by any means, including registered post, speed post, courier or electronic form, which is capable of producing or generating an acknowledgement of receipt of such communication:*
> *Provided that where a document cannot be served in any of the modes, it shall be affixed at the outer door or some other conspicuous part of the house or building in which the*

addressee ordinarily resides or carries on business or personally works for gain;"

11. The aforementioned clause gives the definition of "serve". It nowhere provides that the service of notice by publication in newspaper cannot be treated as proper service. Besides, in the orders passed by this Tribunal, appointing the Resolution Professional, a finding regarding service of notice could be recorded. It would not be open to her us to take a view contrary to the one which we could already take. Thus, we reject the plea raised on behalf of the Personal Guarantors that the demand notice under Rule 7(1) of the aforementioned rules could not be served upon the Personal Guarantors properly.

12. The Ld. Counsel for the Applicant could also raise the plea that an order appointing RP, prior to the judgment passed by Hon'ble Supreme Court in ***Dilip B. Jiwrajka v. Union of India & Ors.*** [Writ Petition (Civil) No. 1281 of 2021] cannot be relied upon by this Tribunal. In our view, in the judgment of *Dilip B. Jiwrajka (supra)*, the Hon'ble Supreme Court could provide that the principal of natural justice would apply only at the stage of filing of the report by the RP in terms of the provisions of Section 99 of IBC, 2016 and not at the stage of appointment of RP. The relevant excerpt of the judgment by the Hon'ble Supreme Court reads thus: -

> *"**80.** The legislature has evidently made provisions in Section 99, as we have construed earlier, to allow for the engagement of the debtor with the resolution professional before a report is submitted to the adjudicating authority. The process under Section 100 before the adjudicating authority must be compliant with the principles of natural justice."*

[…]

86. *We summarise the conclusion of this judgment below:*

[…]

(vii) The adjudicatory authority must observe the principles of natural justice when it exercises jurisdiction under Section 100 for the purpose of determining whether to accept or reject the application;

Having perused the judgment of Hon'ble Supreme Court, we are unable to appreciate that in what manner, the Ld. Counsel for Personal Guarantor is trying to draw support from the same.

13. From the same, as in the said judgment of the Hon'ble Supreme Court, has nowhere ruled that the orders passed by this Tribunal appointing the RPs prior to the date of the judgment would not be valid.

14. In the wake, we have no option but to admit the captioned applications. The applications i.e. IA-1190/2024, IA-332/2024, IA-4000/2022 and IA-1110/2024 preferred under Section 99 of IBC, 2016, are allowed and the petitions i.e. IB-313/ND/2022, IB-332/ND/2022, IB-335/ND/2022 and IB-336/ND/2022 preferred under Section 95 are admitted.

15. As a sequel of admission of the present application, a moratorium is declared to the following effect: –

(a) any pending legal action or proceedings in respect of any debt qua the Respondent shall be deemed to have been stayed;

(b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt qua the Respondent; and

(c) the debtors shall not transfer, alienate, encumber or dispose of any of the assets or his legal right or beneficiary interest therein.

(d) The moratorium shall cease to have effect at the end of period of 180 days.

16. A public notice shall be issued by the RP within seven days of passing of this order, inviting claim from all creditors within 21 days of such notice. The notice shall include details of the present order, particulars of the Resolution Professional with whom the claims have to be registered and the last date for the submission of the claims. The notice shall be – (a) published in English and one Vernacular Language newspaper which is in circulation in the State where the debtor resides; (b) affixed in the premises of this Adjudicating Authority; and (c) placed on the website of the Adjudicating Authority.

17. We are sanguine the RP shall discharge all such duties as are incumbent upon him in terms of the provisions of Sections 104, 105, 106 , 107, 108, 112 and 113 of IBC, 2016, with the due deference of the procedure enshrined in Regulations 5, 7, 8, 9, 11, 12, 13, 14, 15 and 17 of IBBI (Insolvency Resolution Process for Personal Guarantor to Corporate Debtors) Regulations, 2019 and also in terms of the other extent provisions of the aforementioned code/ regulations and/or any other provisions of law applicable to him, in discharge of his duties as RP. The IRP Qua all the Personal Guarantors would be carried separately.

18. A copy of this order along with the copy of the application as also the report of Resolution Professional shall be provided to the Creditor (Applicant), Personal Guarantor (Respondent) and IBBI, by the Registry/Court Master within 7 days from today by email.

19. **IA-1190/2024 in IB-313/ND/2022, IA-332/2024 in IB-332/ND/2022, IA-4000/2022 in IB-335/ND/2022 and IA-1110/2024 in IB-336/ND/2022 stands disposed of accordingly. To come up for consideration of Status Report to be filed by RP, within 8 weeks.**

Sd/-	**Sd/-**
(SUBRATA KUMAR DASH)	**(ASHOK KUMAR BHARDWAJ)**
MEMBER (T)	**MEMBER (J)**