

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

Item No. 208
(IB)-503(PB)/2021
IA-4295/2023

IN THE MATTER OF:

State Bank of India
(Through RP Mr. Harvinder Singh)

... **Applicant/Petitioner**

Versus

Mr. Kapil Gupta

... **Respondent**

AND IN THE MATTER OF IA No. 4295/2023:

Mr. Harvinder Singh
(RP for State Bank of India)
11-CSC, DDA Market,
A-Block, Saraswati Vihar,
Delhi-110034

... **Applicant**

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

Order delivered on 11.03.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

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

PRESENT:

For the Applicant : Adv. Bheem Sain Jain, Adv. Himanshu, Adv.
Deobanss Roy

For the Respondent : Adv. Dawneesh Shaktivats

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

IA-4295/2023: Mr. Bheem Sain Jain, Ld. Counsel appearing for the RP could draw our attention to the order dated 18.01.2024 and submitted that the present proceedings viz. the (IB)-392(PB)/2021 and IA-3849/2022 arises out of the same

transaction from which the (IB)-410/2021 and IA-5062/2023 (State Bank of India versus Mr. Kannan Selvaraj) put arise. The order passed by us in (IB)-410(PB)/2021 and IA-5062/2023 reads thus:

“IA-5062/2023: *In view of the averments made in the Company Petition IB-410(PB)2021, the Respondent herein stood as Personal Guarantor for Ms. Deltronix India Ltd., the CD/principal borrower for the following amounts of credit facilities extended by the Applicant to the principal borrower/CD.*

<u>NATURE OF FACILITY/LIMIT</u>	<u>AMOUNT (RS. IN CRORES)</u>
A. FUND BASED CREDIT LIMIT	
i. FUND BASED WORKING CAPITAL (FBWC) LIMITS	12.10
ii. TERM LOAN (TL) WITH OPTION FOR TWO WAY SWING FACILITY TO FCNR (B)-TL & VICE-VERSA SUBJECT TO AVAILABILITY OF FUNDS.	35.00
iii. CREDIT EXPOSURE LIMIT	0.28
TOTAL FUND BASED LIMIT	
B. NON FUND BASED LIMITS	
i. NON-FUND BASED WORKING CAPITAL (NFBWC) LIMITS	5.00
TOTAL LIMIT (A+B)	52.38

(RUPEES FIFTY TWO CRORES AND THIRTY EIGHT LACS ONLY)

2. The other individuals who stood as guarantors qua the principal borrower and in favour of the Applicant were Mr. Kapil Gupta and Mrs. Deepali Gupta. The CD/principal borrower along with Mr. Kapil Gupta, Mrs. Deepali Gupta and Mr. Kannan Selvaraj i.e. the Respondent herein the present application signed the Sanction Letter dated 10.12.2011 in token of having accepted the terms and conditions regulating the aforesaid credit facilities of Rs. 52.38 crores granted to the principal borrower by the Applicant Bank. In terms of the instruments executed between the parties, they agreed to pay interest @5.25% p.a. above Base Rate on Fund based Working Capital

monthly rests and @ 5.50% p.a. above base rate for Term Loan with monthly rests and on FCNR (B) DL 5.50% above LIBOR at applicable rate for company rates SB-7 and on FCNR (B) TL 5.75% above LIBOR at applicable rate for company rated SB-7 the based rate being @10.00% p.a. The CD, as Borrower signed and executed the Agreement of Loan for overall limit (Form C-l) dated 12.12.2011 containing the terms and conditions of the aforesaid credit facilities of Rs. 52.38 crores. Mr. Kapil Gupta, Mrs. Deepali Gupta and Mr. Kannan Selvaraj, as Guarantors, signed and executed Deed of Guarantee dated 12.12.2011 for an Overall Limit of Rs. 52.38 crores.

3. The Principal Borrower approached Applicant Bank for renewing the loan/credit facility and on its request, the Applicant Bank renewed the same on 23.02.2013. The facilities/limit extended to the Principal Borrower as per renewed terms reads thus:

<u>NATURE OF FACILITY/LIMIT</u>	<u>AMOUNT (RS. IN CRORES)</u>
A. FUND BASED CREDIT LIMIT	
iv. FUND BASED WORKING CAPITAL (FBWC) LIMITS	20.00
v. TERM LOAN (TL) WITH OPTION FOR TWO WAY SWING FACILITY TO FCNR (B)-TL & VICE-VERSA SUBJECT TO AVAILABILITY OF FUNDS.	35.00
vi. CREDIT EXPOSURE LIMIT	0.52
TOTAL FUND BASED LIMIT	
B. NON FUND BASED LIMITS	
ii. NON-FUND BASED WORKING CAPITAL (NFBWC) LIMITS	8.00
C. SLC	4.00
TOTAL LIMIT (A+B+C)	67.52
RUPEES SIXTY SEVEN CRORES AND FIFTY TWO LACS ONLY	

4. It is not the case of either of the parties that the loan facility was not extended or the Respondent herein did not stand as Guarantor qua the same. The Applicant Bank served a notice dated 22.06.2021 under Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicatory Authority for

Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019 upon the PG inter alia demanding a sum of Rs. 150,73,30,992.52 (Rupees one hundred fifty crore seventy-three lakhs, thirty thousand, nine hundred ninety-two & paise fifty-two only). Indubitably, the Respondent could not honour the notice. Thus, the present application could be preferred. In terms of the order dated 25.07.2023, this Tribunal appointed Mr. Harvinder Singh as RP qua the Respondent. The order reads thus:

“IB-410/PB/2021: *Ld. Counsel appearing for the State Bank of India submitted that RP has not been appointed in the matter yet. Accordingly, RP is appointed vide order below:*

The Applicant herein i.e., State Bank of India has moved the present application against Personal Guarantor to Corporate Debtor Mr. Kannan Selvaraj under Section 95 of the IBC, 2016 with a prayer to initiate the IR process and appoint an RP. The Applicant has served the copy of the demand notice and invoked the guarantee vide letter dated 18.05.2016. According to the Ld. Counsel, the invocation of guarantee on record with the application.

As per the provision of the Law, on filing of this application, the interim moratorium has already commenced as stipulated under Section 96(1)(a) of IBC, in relation to all debts of the Personal Guarantor.

As proposed by the Applicant/Guarantor, this Bench appoints Mr. Harvinder Singh (Email ID harvinder@akgandassociates.com) as Resolution Professional, whose details are given below:

IBBI	IBBI/IPA-001/IP-P000463/2017-
Registration No.	2018/10806
E-mail Address	harvinder@akgandassociates.com
Contact Number	9810046631, 011-27011986

*The Resolution Professional so appointed shall exercise all the powers as stipulated under Section 99 of IBC, 2016 read with Rules made thereunder. **He is directed to examine the application and make recommendations with reasons in writing for acceptance or rejection of the present application within the time stipulated under Section 99 of IBC, 2016.***

The Resolution Professional shall give a copy of its Report to the Applicant as well as the Creditors of the Applicant as soon as the same is filed before this Authority.

The Applicant and his counsel are directed to serve the copy of this order along with a copy of the application and documents immediately to Mr. Harvinder Singh, Resolution Professional by all modes for information and necessary compliance.

The Court Officer is also directed to inform the RP by E-mail.

List the matter on 18.09.2023.”

5. *The present application has been preferred by the RP for taking his report in terms of the provisions of Section 99 of IBC, 2016 on record. In his final report, the RP has taken note of the brief factual backgrounds of the case.*

Para 4 of the report reads thus:

“4. From the perusal of the insolvency Application and documents on record, the following factual background of the case emerges:

A. That M/s Deltronix India Limited, the Corporate Debtor is a Company within the meaning of the Companies Act, 1956 carrying out its business at its registered office at A-423, Vasant Vihar, New Delhi-110076. Corporate Debtor has been engaged in the business of manufacturing of auto components viz. Carbon canisters, High Tension Cords, radiator tank, vacuum tanks, alloy wheels etc, having its corporate office at E-3, Sector-59, Noida-201303 and Factory/ Godown at 102 D, Udyog Vihar, Phase-V, Gurgaon, Haryana-122016, A-81, Sector-50, Noida-201301; D-238, Sector 63, Noida; A-14, SIPCOT, Indl Complex, Thandalam, Sriperumbudur, Tamil Nadu-602117 and S. No. 820/1B2, Kuthambqakkam Village, Poonamalle Taluk, Thiruvallur District, Tamil Nadu-600121.

B. That the Corporate Debtor, as Borrower, has been availing various loan/ credit facilities from the Applicant Bank from time to time. Mr. Kannan Selvaraj (present Respondent) alongwith Mrs. Deepali Gupta and Mr. Kapil Gupta were the directors of Corporate Debtor and had also given their personal guarantees in respect of the credit/ loan facilities granted to Corporate Debtor by the Applicant Bank.

C. That after due and usual verification of the financial status and requirements of Corporate Debtor, the Applicant Bank sanctioned following credit facilities to the Corporate Debtor vide Sanction Letter dated 10.12.2011:-

NATURE OF FACILITY/LIMIT	AMOUNT (RS. IN CRORES)
A. FUND BASED CREDIT LIMIT	
i. FUND BASED WORKING CAPITAL (FBWC) LIMITS	12.10
ii. TERM LOAN (TL) WITH OPTION FOR TWO WAY SWING FACILITY TO FCNR (B)-TL & VICE-VERSA SUBJECT TO AVAILABILITY OF FUNDS.	35.00
iii. CREDIT EXPOSURE LIMIT	0.28
TOTAL FUND BASED LIMIT	
B. NON FUND BASED LIMITS	
i. NON-FUND BASED WORKING CAPITAL (NFBWC) LIMITS	5.00
TOTAL LIMIT (A+B)	52.38

The aforesaid credit facilities included Capex LC limit of Rs. 35.00 crores as a sub-limit within the Term Loan of Rs. 35.00 crores and Export Packing Credit (EPC)/Pre-Shipment Credit in Foreign Currency (PCFC) Limit OF Rs. 12.00 crores and Foreign Bill Discounting (FBD)/Foreign Bill Purchase (FBP) limit of Rs. 7.00 crores as a sub-limit of Fund Based Working Capital (FBWC) Limit.

D. That in consideration to the grant of the aforesaid credit facilities to Corporate Debtor, Corporate Debtor, as borrower alongwith Mr. Kannan Selvaraj (present Respondent), Mrs. Deepali Gupta and Mr. Kapil Gupta, as guarantors, signed and executed the various loan and guarantee documents in favour of the Applicant Bank on 10.12.2011 and 12.12.2011 including:-

a. Corporate Debtor, as Borrower along with Mr. Kannan Selvaraj(present Respondent), Mrs. Deepali Gupta and Mr. Kapil Gupta, as guarantors, signed the Sanction Letter dated 10.12.2011 in token of having accepted the terms and conditions regulating the aforesaid credit facilities of Rs. 52.38 crores granted to Corporate Debtor by the Applicant Bank. They agreed therein to pay interest @ 5.25% p.a. above Base Rate on Fund based Working Capital with monthly rests and @ 5.50% p.a. above base rate for Term Loan with monthly rests and on FCNR (B) DL 5.50% above LIBOR at applicable rate for company rated SB-7 and on FCNR (B) TL 5.75% above LIBOR at

applicable rate for company rated SB-7 the base rate being @10.00% p.a.

b. Corporate Debtor, as Borrower signed and executed the Agreement of Loan for overall limit (Form C-1) dated 12.12.2011 containing the terms and conditions of the aforesaid credit facilities of Rs. 52.38 crores.

c. Corporate Debtor, as Borrower signed and executed Agreement for hypothecation of goods and assets (form C-2) dated 12.12.2011.

d. Mr. Kannan Selvaraj (present Respondent), Mrs. Deepali Gupta and Kapil Gupta, as Guarantors, signed and executed Deed of Guarantee for Overall Limit (Form C.4) dated 12.12.2011 for an Overall Limit of Rs. 52.38 crores.

Above documents have been filed as **Annexure-A-3 to A-6** to the Insolvency Application.

E. That the Corporate Debtor approached the Applicant Bank for renewing the loan/credit facility and on the aforesaid request of Corporate Debtor, Applicant Bank renewed the aforesaid loan/credit facility on 23.02.2013, as under:-

<u>NATURE OF FACILITY/LIMIT</u>	<u>AMOUNT (RS. IN CRORES)</u>
A. FUND BASED CREDIT LIMIT	
i. FUND BASED WORKING CAPITAL (FBWC) LIMITS	20.00
ii. TERM LOAN (TL) WITH OPTION FOR TWO WAY SWING FACILITY TO FCNR (B)-TL & VICE-VERSA SUBJECT TO AVAILABILITY OF FUNDS.	35.00
iii. CREDIT EXPOSURE LIMIT	0.52
TOTAL FUND BASED LIMIT	
B. NON FUND BASED LIMITS	
i. NON-FUND BASED WORKING CAPITAL (NFBWC) LIMITS	8.00
C. SLC	4.00
TOTAL LIMIT (A+B+C)	67.52

(RUPEES SIXTY SEVEN CRORES AND FIFTY TWO LACS ONLY)

F. That in consideration to the enhancement/ renewal of the aforesaid Overall Limit of Rs. 67.52 crores by Applicant Bank, Corporate Debtor, as Borrower alongwith Mr. Kannan Selvaraj (present Respondent), Mrs. Deepali Gupta and Mr. Kapil Gupta, as Guarantors,

signed and executed the following loan and guarantee documents on 02.03.2013 in favour of the Applicant Bank:

- a. Corporate Debtor, as Borrower along with Mr. Kannan Selvaraj (present Respondent), Mrs. Deepali Gupta and Mr. Kapil Gupta as Guarantors, signed the Sanction letter dated 23.02.2013 in token of having accepted the terms and conditions regulating the aforesaid Overall Limit of Rs. 67.52 crores granted to Corporate Debtor by Applicant Bank. They agreed therein to pay interest SBAR, minimum @ 13.95% p.a. with monthly rests as regards cash credit limit and @ 14.10% with monthly rests on Term loan.*
- b. Corporate Debtor, as Borrower signed and executed Supplemental Agreement of Loan for Overall Limit of Rs. 67.52 crores (Form C.1-A) dated 02.03.2013.*
- c. Corporate Debtor, as Borrower signed and executed Supplemental Agreement for Hypothecation of Goods and Assets for Increase in the Overall Limit of Rs. 67.52 crores (Form C.2-A) dated 02.03.2013.*
- d. Mr. Kannan Selvaraj (present Respondent), Mrs. Deepali Gupta and Mr. Kapil Gupta, as Guarantors, signed and executed Supplemental Deed of Guarantee for increase in the overall limit (Form C.4-A) dated 02.03.2013 for an Overall Limit of Rs. 67.52 crores.*

*Above documents have been filed as **Annexure-A-7 to A-10** along with Insolvency Application.*

G. That in consideration of the grant of the aforesaid loan facilities to Corporate Debtor by the Applicant Bank, Corporate Debtor, created equitable mortgage in favour of the Applicant Bank of the following properties:

- i. S.No. 820/1B2, Kuthambakkam Village, Poonamalle Taluk, Thiruvallur District, Tamil Nadu-600124.*
- ii. Plot No. E-3, Sector-59, Noida-201301,*
- iii. A-81, Sector-57, Noida-201301 and*
- iv. A-14, SIPCOT, Indl Complex, Thandalam, Sriperumbudur, Tamil Nadu-602117.*

The title deed of the properties at Sr. No. (ii) to (iv) were deposited by Corporate Debtor with the Punjab & Sind Bank and the Punjab & Sind Bank vide letter dated 16.01.2012 and 19.03.2012 acknowledged and

made the requisite entry in its records regarding the first pari passu charge of the Applicant Bank on the said property. The said charges were duly registered with the Registrar of Companies vide Form 8 dated 11.01.2012. The aforesaid charge was subsequently extended to cover the enhanced limits which was also duly acknowledged by Punjab & Sind Bank vide letter dated 30.03.2013.

H. That the Corporate Debtor hypothecated all the current assets alongwith all the bank accounts (whether escrow and no lien or otherwise) and all estate, rights, title, interest, benefits, claims and demands whatsoever of Corporate Debtor and all book debts, receivables etc.

I. That consequent to the sanction of the aforesaid limit to Corporate Debtor by the Applicant Bank, two Term Loan Accounts were opened in the name of Corporate Debtor in the usual books of accounts of the Applicant Bank at its Commercial Branch, M-47, Connaught Circus, Opp. Super Bazar, New Delhi-110001 which were regularly kept and maintained and all entries of Debits and Credits were correctly made therein by the Applicant Bank in their regular, ordinary and usual course of banking business in as much as all payments by way of advances allowed to the Corporate Debtor and interest accruing thereon at the contractual rate with agreed rests as also all agreed incidental costs, charges and expenses etc. were duly debited and the payments made by the Defendant towards part liquidation of its liabilities were correctly credited to the aforesaid account on respective dates. The account has subsequently been migrated to SAM Branch of the Applicant Bank for administrative purposes.

*J. That the Corporate Debtor as borrower along with Mr. Kannan Selvaraj (present Respondent), Mrs. Deepali Gupta and Mr. Kapil Gupta as guarantors time and again acknowledged their liability to pay the outstanding amount to the Applicant Bank by their various letters including letter dated 07.08.2014 but failed to pay the outstanding amount. Above letters have been filed as **Annexure A-11** along with Insolvency Application.*

*K. That Corporate Debtor, as Borrower along with Mr. Kannan Selvaraj (present Respondent), Mrs. Deepali Gupta and Mr. Kapil Gupta as Guarantors signed and executed a Revival Letter dated 08.08.2014 thereby acknowledging their liability to repay the outstanding amounts with interest cost, charges and expenses and other monies due and payable by them in respect of the credit facilities. Above Revival letter has been filed as **Annexure A-12** along with Insolvency Application.*

L. That Corporate Debtor also acknowledged its liability to pay the outstanding amount to the Applicant Bank in its duly audited Balance Sheets including as at 31.03.2015. Audited Balance Sheets as on 31.05.2015 have been filed as **Annexure A-13** along with Insolvency Application.

M. That the Corporate Persons duly availed the aforesaid credit facility granted to them by the Applicant Bank. However, the Corporate Persons remained irregular in conduct of the aforesaid credit facility and neglected to maintain the financial discipline, basis a perusal of the documents on record.

N. That the account of the Corporate Debtor stood classified as NPA on 31.03.2014.

O. That basis a perusal of documents on record, it transpires that the Corporate Debtor remained irregular in conduct of the aforesaid loan facilities and neglected to maintain its financial discipline, despite several requests and reminders from the Applicant Bank. Hence, the Applicant Bank issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 dated 10.06.2015 which was followed by the measures of the Applicant Bank under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 has been placed on record alongwith an application for amendment and additional documents duly allowed by this Hon'ble Tribunal.

P. That the Applicant Bank issued a Legal Demand Notice dated 18.05.2016 to the Corporate Debtor and Personal Guarantors including present Respondent calling upon them to repay the outstanding amount but despite receipt of the said notice the Corporate Debtor and Personal Guarantors have failed to liquidate the outstanding amount. Legal Demand Notice dated 18.05.2016 has been filed as **Annexure A-14** along with Insolvency Application.

Q. That the Applicant Bank also filed an Original Application bearing O.A. No. 488 of 2016 titled as "SBI Vs. M/s Deltronix India Limited & Ors. before Debt Recovery Tribunal-II, New Delhi on 05.07.2016. Hon'ble DRT was pleased to issue summons vide order dated 27.07.2016 upon the Corporate Persons and passed various ex-parte ad-interim orders. Original Application bearing O.A. No.488 of 2016 in the Debts Recovery Tribunal-II has been filed as **Annexure A-**

15 along with Insolvency Application. Order dated 27.07.2016 has been filed as **Annexure A-16** along with the Insolvency Application.

R. That despite the service of summons in the Original Application, the Corporate Debtor and Personal Guarantors failed to put up any defence before DRT. Even their right to file written statement stood closed in terms of Orders dated 28.09.2017. Order dated 28.09.2017 has been filed as **Annexure A-17** along with Insolvency Application.

S. That the Corporate Debtor along with Mr. Kapil Gupta and Mrs. Deepali Gupta in order to challenge the measures of Applicant Bank under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, filed a Securitization Application bearing SA No. 57 of 2016 titled "M/s Deltronix India Limited & Ors. Vs. SBI" on 28.08.2016 before the Debt Recovery Tribunal-11, New Delhi. Securitization Application bearing SA No. 57 of 2016 titled "M/s Deltronix India Limited & Ors. Vs. SBI" has been filed as **AnnexureA-18** along with Insolvency Application.

T. That in the said SA Corporate Persons duly admitted to the fact that they availed various credit facilities granted by the Applicant Bank. The Corporate Persons also admitted that they have created a mortgage in favour of the Applicant Bank. Also, Corporate Persons admitted their failure to pay the dues of the Applicant Bank. The contents of the SA were further reiterated in the subsequent interim applications filed by the Corporate Persons in the SA including the IA Nos. 42 and 43 of 2017 and IA No. 2002 of 2017. IA Nos. 42 and 43 of 2017 and IA No. 2002 of 2017 filed in Securitization Application bearing SA No. 57 of 2016 have been filed as Annexure A-19 along with Insolvency Application.

U. That the Securitisation Application No. 57 of 2016 stood dismissed vide Order dated 20.09.2019. Order dated 20.09.2019 has been filed as **AnnexureA-20** along with Insolvency Application.

V. That during the pendency of the Original Application, the Corporate Persons time and again approached the Applicant Bank for settlement of their dues. In this context reference may be made to the Settlement Letters dated 29.05.2017, 15.10.2018, 09.10.2018, 23.09.2019 and 26.09.2019. Pursuant to the settlement approval dated 29.05.2017, the Corporate debtor deposited Rs. 2.50 crores with the Applicant Bank, however, failed to comply with the terms of settlement. That pursuant to the settlement approval dated 10.08.2018, Corporate Debtor deposited Rs. 1.61 crores with the Applicant Bank, however, failed to comply with the terms of settlement.

On the request of the Corporate Persons, the Applicant Bank approved a One Time Settlement (OTS) of dues for Rs. 36,65,85,877/- on 26.09.2019. However, the Corporate Persons again failed to clear the dues of the Applicant Bank. Settlement Letters dated 15.10.2018, 09.10.2018, 23.09.2019 and 26.09.2019 have been filed as **Annexure A-21 (COLLY.)** along with Insolvency Application.

W. That in the meantime, a Creditor namely Indiabulls Housing Finance Limited filed an Application under Insolvency and Bankruptcy Code, 2016 to initiate the Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor bearing C.P. No. (IB) 245 (PB) of 2017 titled as "Indiabulls Housing Finance Limited Vs. Ms. Deltronix India Ltd." Corporate Debtor stood admitted under Corporate Insolvency Resolution Process by the Principal Bench of this Hon'ble Tribunal vide Order dated 24.11.2017. Order dated 24.11.2017 passed in the CP No. (IB) 245 (PB) of 2017 titled as "Indiabulls Housing Finance Limited Vs. M/s. Deltronix India Ltd" by the Principal Bench of this Hon'ble Tribunal has been filed as **Annexure A-23** along with Insolvency Application.

X. That the order dated 24.11.2017 was challenged before the Hon'ble National Company Law Appellate Tribunal vide Company Appeal (AT) (Insolvency) No. 297 of 2017, which appeal stood dismissed vide Order dated 01.12.2017. The order dated 01.12.2017 was challenged before the Hon'ble Apex Court in Civil Appeal No. 20924 of 2017 wherein pursuant to a settlement, the Order dated 01.12.2017 stood set aside by the Hon'ble Apex Court vide Order dated 08.12.2017. Order dated 01.12.2017 has been filed as **Annexure A-24** along with Insolvency Application. Order dated 08.12.2017 has been filed as **Annexure A-25** along with Insolvency Application.

Y. That the Corporate Debtor once again admitted for Corporate Insolvency Resolution Process vide Order dated 03.02.2021 by the Bench -II of this Hon'ble Tribunal passed in the case of "Ms. Tarun Khanna Vs. Ms. Deltronix India Ltd." bearing CP No. (IB) 2963 (ND) of 2019. Ld. Resolution Professional has admitted the claim of the Applicant Bank for Rs. 143.21 crores. Order dated 03.02.2021 has been filed as **Annexure A-26** along with Insolvency Application.

Z. That in view of the defaults, the Applicant Bank served a notice dated 22.06.2021 under Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicatory Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019 upon Mr. Kannan Selvaraj (present Respondent), Mrs. Deepali Gupta and Mr.

*Kapil Gupta for a sum of Rs. 150,73,30,992.52/- (Rupees one hundred fifty crore seventy three lakhs, thirty thousand, nine hundred ninety two & paise fifty two only) as on 21.06.2021. Notice dated 22.06.2021 has been filed as **Annexure A-27** along with Insolvency Application.*

AA. That despite service of the notice dated 22.06.2021, Mr. Kannan Selvaraj (Personal Guarantor and Respondent herein) has failed to pay the outstanding dues within the statutory period of 14 days.”

6. In para 6 of the report, the RP has dealt with the issues. It is noted by the RP in the report that after filing the present petition, the Respondent/PG opposed the maintainability of the same on the ground that there was mismatch in Form B & C. In view of the objection, the Applicants/RP filed an interlocutory application viz. IA-5326/2021 seeking amendment in FORM-C. The Respondent/PG filed response to the said application. The application was allowed in terms of the order dated 25.07.2023, permitting the amended FORM-C to be taken on record. Part-III of the amended FORM-C as reproduced in the report reads thus:

PART - III

PARTICULARS OF DEBT		
<u>3.</u>	Date on which debt was due	<u>31.03.2014</u> Account of the Corporate Debtor stood classified as NPA. <u>07.08.2014</u> Corporate Debtor as borrower alongwith Mr. Kapil Gupta, Mrs. Deepali Gupta and present Respondent i.e. Mr. Kannan Selvaraj as guarantors, acknowledged their liability to pay the outstanding amount to the Applicant Bank by their letters dated 07.08.2014.

		<u>08.08.2014</u> Corporate Debtor, as Borrower alongwith Mr. Kapil Gupta, Mrs. Deepali Gupta and present Respondent i.e. Mr. Kannan Selvaraj as Guarantors signed and executed a Revival Letter dated 08.08.2014 thereby acknowledging their liability to repay the outstanding amounts with interest cost, charges and expenses and other monies due and payable by them in respect of the aforesaid credit facilities. <u>10.06.2015</u> Notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 issued to the Corporate Debtor and its guarantors. <u>09.08.2015</u> Period of 60 days stipulated in notice under
		Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 dated 10.06.2015, for the borrower and guarantors to pay the outstanding dues stood expired, however, the borrower/guarantors failed to make the payment. <u>10.10.2015</u> Corporate Debtor acknowledged its liability to pay the outstanding amount to the Applicant Bank in its duly audited Balance Sheets including as at 31.03.2015. <u>18.05.2016</u> Applicant Bank sent a Legal Demand Notice to the Corporate Debtor and Personal Guarantors calling upon them to repay the outstanding amount but despite receipt of the said notice the Corporate Debtor and Personal Guarantors have failed to liquidate the outstanding amount.

	<u>05.07.2016</u> Applicant Bank filed an Original Application bearing O.A. No. 488 of 2016 titled "SBI vs. M/s Deltronix India Limited & Ors." before the Debt Recovery Tribunal – II, New Delhi. <u>27.07.2016</u> Hon'ble DRT was pleased to issue summons upon the Corporate Persons and pass various ex-parte ad-interim orders. Despite the service of summons in the Original Application, the Corporate Debtor and Personal Guarantors failed to put up any defence before DRT. Even their right to file written statement stood closed in terms of Orders dated 28.09.2017. Said Original Application is next listed on 20.08.2021.
	<u>28.08.2016</u> Challenging the measures of Applicant Bank under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 the Corporate Debtor alongwith Mr. Kapil Gupta and Mrs. Deepali Gupta filed a Securitisation Application bearing SA No. 57 of 2016 titled "M/s Deltronix India Limited & Ors. vs. SBI" before the Debt Recovery Tribunal – II, New Delhi. In the Securitisation Application, the said Corporate Persons duly admitted to the fact that they availed the various credit facilities granted by the Applicant Bank. The Corporate Persons have also admitted that they have created a mortgage in favour of the Applicant Bank. Corporate Persons also admitted their failure to the dues of the Applicant Bank. Securitisation Application No. 57 of 2016 stood dismissed vide Order dated 20.09.2019.

24.11.2017

Corporate Debtor stood admitted under Corporate Insolvency Resolution Process by the Principal Bench of this Hon'ble Tribunal passed in the CP No. (IB) 245 (PB) of 2017 titled "Indiabulls Housing Finance limited versus Ms. Deltronix India Ltd."

01.12.2017

Company Appeal (AT) (Insolvency) No. 297 of 2017 against Order dated 24.11.2017 stood dismissed by Hon'ble National Company Law Appellate Tribunal.

08.12.2017

Pursuant to the settlement, the Order dated 01.12.2017 stood set aside by the Hon'ble Apex Court in Civil Appeal No. 20924 of 2017.

30.03.2017, 29.05.2017, 10.08.2018,

23.09.2019 and 26.09.2019

During the pendency of the Original Application and Securitisation Application, the Corporate Persons time and again approached the Applicant Bank for settlement of their dues. However, the Corporate Persons failed to comply with the terms of settlement. Pursuant to the settlement approval dated 29.05.2017, the Corporate Debtor deposited Rs. 2.50 crores with the Applicant Bank on 30.03.2017 and 29.05.2017. Pursuant to the settlement approval dated 10.08.2018, the Corporate Debtor deposited Rs. 1.61 crores with the Applicant Bank on 20.10.2018.

		<u>22.06.2021</u> Applicant Bank served a notice under Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicatory Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019 upon Mr. Kapil Gupta, Mrs. Deepali Gupta and Mr. Kannan Selvaraj (Present Respondent) for a sum of Rs. 150, 73,30,992.52 (Rupees one hundred fifty crores seventy three lakhs thirty three thousand nine hundred ninety two & paise fifty two only) as on 21.06.2021. Respondent, despite service of the notice dated 22.06.2021 has failed to pay the outstanding due within the statutory period of 14 days.
7.	Date on which default occurred	<u>31.03.2014</u> Account of the Corporate Debtor stood classified as NPA. <u>07.08.2014</u> Corporate Debtor as borrower alongwith Mr. Kapil Gupta, Mrs. Deepali Gupta and Mr. Kannan Selvaraj (Present Respondent) as guarantors acknowledged their liability to pay the outstanding amount to the Applicant Bank by their letters dated 07.08.2014. <u>08.08.2014</u> Corporate Debtor, as Borrower alongwith Mr. Kapil Gupta, Mrs. Deepali Gupta and Mr. Kannan Selvaraj (present Respondent) as Guarantors signed and executed a Revival Letter dated 08.08.2014 thereby acknowledging their liability to repay the outstanding amounts with interest cost, charges and expenses and other monies due and payable by them in respect of the aforesaid credit facilities.

	<u>10.06.2015</u> Notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 issued to the Corporate Debtor and its guarantors. <u>09.08.2015</u> Period of 60 days stipulated in notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 dated 10.06.2015, for the borrower and guarantors to pay the outstanding dues stood expired, however, the borrower/guarantors failed to make the payment. <u>10.10.2015</u> Corporate Debtor acknowledged its liability to pay the outstanding amount to the
	Applicant Bank in its duly audited Balance Sheets including as at 31.03.2015. <u>18.05.2016</u> Applicant Bank sent a Legal Demand Notice to the Corporate Debtor and Personal Guarantors calling upon them to repay the outstanding amount but despite receipt of the said notice the Corporate Debtor and Personal Guarantors have failed to liquidate the outstanding amount. <u>05.07.2016</u> Applicant Bank filed an Original Application bearing O.A. No. 488 of 2016 titled "SBI vs. M/s Deltronix India Limited &Ors." before the Debt Recovery Tribunal – II, New Delhi.

27.07.2016

Hon'ble DRT was pleased to issue summons upon the Corporate Persons and pass various ex-parte ad -interim orders. As despite the service of summons in the Original Application, the Corporate Debtor and Personal Guarantors failed to put up any defence before DRT. Even their right to file written statement stood closed in terms of Orders dated 28.09.2017. Said Original Application is next listed on 20.08.2021.

28.08.2016

Challenging the measures of Applicant Bank under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 the Corporate Debtor alongwith Mr. Kapil Gupta and Mrs. Deepali Gupta filed a Securitisation Application bearing SA No. 57 of 2016 titled "M/s Deltronix India Limited &Ors. vs. SBI" before the Debt Recovery Tribunal - II, New Delhi. In the SA, the said Corporate Persons duly admitted to the fact that they availed the various credit facilities granted by the Applicant Bank. The Corporate Persons have also admitted that they have created a mortgage in favour of the Applicant Bank. Corporate Persons also admitted their failure to the dues of the Applicant Bank. SA No. 57 of 2016 stood dismissed vide Order dated 20.09.2019.

24.11.2017

Corporate Debtor stood admitted under Corporate Insolvency Resolution Process by the Principal Bench of this Hon'ble Tribunal passed in the CP No. (IB) 245 (PB) of 2017 titled "Indiabulls Housing Finance limited versus Ms. Deltronix India Ltd."

01.12.2017

Company Appeal (AT) (Insolvency) No. 297 of 2017 against Order dated 24.11.2017 stood dismissed by Hon'ble National Company Law Appellate Tribunal.

08.12.2017

Pursuant to the settlement, the Order dated 01.12.2017 stood set aside by the Hon'ble Apex Court in Civil Appeal No. 20924 of 2017.

30.03.2017, 29.05.2017, 10.08.2018,

23.09.2019 and 26.09.2019

During the pendency of the Original Application and Securitisation Application, the Corporate Persons time and again approached the Applicant Bank for settlement of their dues. However, the Corporate Persons failed to comply with the terms of settlement. Pursuant to the settlement approval dated 29.05.2017, the

	Corporate Debtor deposited 2.50 crores with the Applicant Bank 30.03.2017 and 29.05.2017. Pursuant to the settlement approval dated 10.08.2018, the Corporate Debtor deposited 1.61 crores with the Applicant Bank on 20.10.2018. <u>22.06.2021</u> Applicant Bank served a notice under Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicatory Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019 upon Mr. Kapil Gupta, Mrs. Deepali Gupta and Mr. Kannan Selvaraj (present Respondent) for a sum of Rs. 150, 73,30,992.52 (Rupees one hundred fifty crores seventy three lakhs thirty three thousand nine hundred ninety two & paise fifty two only) as on 21.06.2021. Respondent, despite service of the notice dated 22.06.2021 has failed to pay the outstanding due within the statutory period of 14 days.
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7. It is espoused in the report that an objection in reply to the interlocutory application was raised with reference to the date of NPA. According to the RP, the account of CD was classified as NPA on 31.03.2014 qua the Applicant bank and thereafter on 10.06.2015 the Applicant Bank issued a demand notice in terms of the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The bank/creditor sent the legal demand notice dated 18.05.2016 to the Corporate Debtor and Personal Guarantors calling upon them to repay the outstanding amount within 60 days of the receipt of the notice by borrowers/guarantors. Nevertheless, despite receipt of the notice, neither the principal borrower nor the personal guarantor could re-pay the outstanding amount. It is not in dispute that the creditors/applicant bank had filed O.A. No. 488 of 2016 titled "SBI vs. M/s Deltronix India Limited & Ors." before the Debt Recovery Tribunal-II, New Delhi on 05.07.2016. The CD had challenged

the measures taken by the Applicant Bank under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 by filing SA No. 57 of 2016 titled “M/s Deltronix India Limited & Ors. vs. SBI” on 28.08.2016.

8. During the pendency of the original application and the securitization application before the DRT, the Principal Borrower approached the creditor and the Applicant Bank for settlement of the dues. Nevertheless, the terms of settlement could not be honoured by the Principal Borrower. Pursuant to the settlement approval dated 29.05.2017, the Principal Borrower deposited 2.50 crores with the Applicant Bank on 30.03.2017 and 29.05.2017. Again pursuant to the settlement approval dated 10.08.2018, the CD deposited 1.61 crores with the Applicant Bank on 20.10.2018. On the request of the Corporate Debtor/Principal Borrower the Applicant Bank approved a One Time Settlement (OTS) of dues of Rs. 36,65,85,877/- on 26.09.2019. Nevertheless, the Principal Borrower/Corporate Debtor again failed to clear the dues qua the Applicant Bank. Thereafter, the Applicant Bank served a notice under Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicatory Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtors) Rules, 2019 upon the Personal Guarantors including the Respondent herein before us. The relevant excerpt of the report, in terms of which the RP has dealt with the issue of limitation which reads thus:

“B. LIMITATION

- *Account of the Corporate Debtor stood classified as NPA on 31.03.2014 with the Applicant Bank. Thereafter, on 10.06.2015, the Applicant Bank had issued a Demand Notice under Section of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Applicant Bank sent a Legal Demand Notice dated 18.05.2016 to the Corporate and Personal Guarantors calling upon them to repay the outstanding amount within 60 days of receipt of the notice by borrower/guarantors. However, despite receipt of the said notice the Corporate Debtor and Personal Guarantors have failed to liquidate*

the outstanding amount. Applicant Bank filed an Original Application bearing O.A. No.488 of 2016 titled as “SBI Vs. M/s Deltronix India Limited & Ors.” before the Debt Recovery Tribunal-II, New Delhi on 05.07.2016. Corporate Debtor challenging measures of Applicant under Section 13(4) filed a Securitization Application bearing SA No. 57 of 2016 titled “M/s Deltronix India Limited & Ors. Vs. SBI” on 28.08.2016 before the Debt Recovery Tribunal11, New Delhi. In the said Securitisation Application, Corporate Persons duly admitted to the fact that they availed various credit facilities granted by the Applicant Bank. Corporate Persons also admitted that they have created a mortgage in favour of the Applicant Bank. Also, Corporate Persons admitted their failure to pay the dues of the Applicant Bank. During the pendency of the Original Application and Securitization Application, the Corporate Persons time and again approached the Applicant Bank for settlement of their dues. However, the Corporate Persons failed to comply with the terms of settlement. Pursuant to the settlement approval dated 29.05.2017, the Corporate Debtor deposited Rs. 2.50 crores with the Applicant Bank on 30.03.2017 and 29.05.2017. Pursuant to the settlement approval dated 10.08.2018, the Corporate Debtor deposited Rs. 1.61 crores with the Applicant Bank. On the request of the Corporate Persons, the Applicant Bank approved a One Time Settlement (OTS) of dues for Rs. 36,65,85,877/- on 26.09.2019. However, the Corporate Persons again failed to clear the dues of the Applicant Bank. Thereafter, the Applicant Bank served a notice under Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicatory Authority for Insolvency Resolution Process for Personal Guarant;)r to Corporate Debtor) Rules, 2019 upon Mr. Kannan Selvaraj (present Respondent), Mrs. Deepali Gupta and Mr. Kapil Gupta for a sum of Rs. 150,73,30,992.52 (Rupees one hundred fifty crore seventy three lakhs, thirty thousand, nine hundred ninety two & paise fifty two only) as on 21.06.2021. Respondent, despite service of the notice dated 22.06.2021 has failed to pay the outstanding due within the statutory period of 14 days.

- After perusing the records of the case and the documents filed by the Applicant Bank, State Bank of India, the undersigned is of the opinion that present application is well within the period of limitation for the following reasons: -

✓ Classification of the account as NPA on 31.03.2014 constitutes date of default in terms of judgment of the Hon'ble Apex Court in the case of **"Laxmi Pat Surana vs. Union Bank of India and Ors. [(2021) 8 SCC 481]"**.

✓ Thereafter, within 3 years from the NPA, the debt as well as the liability stood admitted by the Corporate Debtor in SA No. 57 of 2016 titled "M/s Deltronix India Limited & ander o Ors. Vs. SBI" filed on 28.08.2016, by signing and accepting OTS letters dated 29.05.2017, 10.08.2018 and 29.06.2019 and by making part payment in terms of these OTS letters. These acknowledgments are binding and enforceable against the personal guarantor in view of the provisions of aforesaid Deeds of Guarantee executed by the Respondent. Reference is made to the following clauses of the Deed of Guarantee dated 12.12.2011:

"19. The Guarantor agrees that any admission or acknowledgement in writing signed by the Borrower of the liability or indebtedness of the Borrower or otherwise in relation to the above mentioned credit facilities and or any part payment as may be made by the Borrower towards the Principal sum hereby guaranteed or any judgment, award or order obtained by the Lead Bank against the Borrower shall be binding on the Guarantor and the Guarantor shall accept the correctness of any statement of account that may be served on the Borrower which is duly certified by any office of the Lead Bank and the same shall be binding and conclusive as against the Guarantor also and the Guarantor further agree that in the Borrower making an acknowledgment or making a payment, the Borrower shall in addition to his personal capacity be deemed to act as the Guarantor's duly authorized agent in that behalf for the purpose of Section 18, 19 of the Limitation Act. 1963."

✓ A reference may also be made to the following observations of the Hon'ble Apex Court in the case of **"Laxmi Pat Surana vs. Union Bank of India and Ors. [(2021) 8 SCC 481]"**.

"38. In the present case, the NCLT as well as the NCLAT. have adverted to the acknowledgments by the principal borrower as well as the corporate guarantor corporate debtor after declaration of NPA from time to time and lastly on 08.12.2018. The fact that acknowledgment within the limitation period was only by the principal borrower and not the guarantor, would not absolve the guarantor of its liability flowing from the letter of guarantee and memorandum of mortgage. The liability of the guarantor being coextensive with the principal borrower Under Section 128 of the

Contract Act, it triggers the moment principal borrower commits default in paying the acknowledged debt. This is a legal fiction. Such liability of the guarantor would flow from the guarantee deed and memorandum. of mortgage, unless it expressly provides the contrary”.

✓ Section 19 of the Limitation Act, 1963 read as :

“Effect of payment on account of debt of interest on legacy”

- Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorized in this behalf, a fresh period of limitation shall be computed from the time when the payment was made.

✓ It is no longer res-integra that principles enunciated under Sections 18 and 19 of the Limitation Act, 1963 also apply to the proceedings under the Insolvency and Bankruptcy Code, 2016.

✓ Further, as has been held by the Hon’ble Apex Court in the case of **“Dena Bank vs. C. Shivakumar Reddy & Ors. [(2021)10SCC330]”** an OTS proposal would also constitute an acknowledgment under Section 18 of the Limitation Act, 1963. Para Nos. 141 of the said judgment reads as under:

“141. Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. This Court sees no reason why an offer of One Time Settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act. In Gaurav Hargovindbhai Dave (supra) cited by Mr. Shivshankar, this Court had no occasion to consider any proposal for one time settlement. Be that as it may, the Balance Sheets and Financial Statements of the Corporate Debtor for 2016- 2017, as observed above, constitute acknowledgement of liability which extended the limitation by three years, apart from the fact that a Certificate of Recovery was issued in favour of the Appellant Bank in May 2017. The NCLT rightly admitted the application by its order dated 21st March, 2019.”

✓ Taking into consideration that the last payment towards in the account of the Corporate Debtor was made in August 2018, read with Section 19 of the Limitation Act, 1963, the Limitation period with respect to filing of the present Application under Section 95 of the Code, 2016 commences afresh from the date when the last payment was made.

✓ Further, the Hon'ble Apex Court in Suo Motu Writ Petition (Civil) No(s) of 03/2020 in Re : Cognizance for Extension of Limitation, vide Order dated 10.03.2022 suspended the period of limitation. Further, vide order dated 10.01.2022 the Hon'ble Apex Court directed :

"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 purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi — judicial proceedings.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days' from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall prevail."

✓ Accordingly, the captioned application is found to have been filed well within the period of limitation.

9. In para (F) of the report, the RP has mentioned regarding compliance of Section 95(5) of the IBC, 2016. Para (G) of the report wherein the RP has enumerated the compliance of Section 99 of IBC, 2016 which reads thus:

"G. COMPLIANCE OF TERMS OF SECTION 99 OF THE CODE

➤ **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 undersigned issued a communication/ notice, vide letter dated 28.07.2023 which was sent to the Respondent/Personal Guarantor through speed post on all available addresses on 28.07.2023 as well as through email dated 01.08.2023, requesting the Personal Guarantor to furnish the information / documentary evidence for proving the repayment of debts, payable by the Personal Guarantor to the Financial Creditor. In response to the said communications, the Respondent/Personal Guarantor sent an email dated 05.08.2023 whereby he only provided details of his only alleged assets. In the said email, neither the debt

was disputed nor was the proof of repayment was furnished. Copy of the Letter dated 28.07.2023 alongwith the proof of service including tracking reports is attached herewith as **EXHIBIT-B**. Copy of the email dated 01.08.2023 attached herewith as **EXHIBIT-C**. Copy of the email dated 05.08.2023 of the Respondent attached herewith as **EXHIBIT-D**.

➤ **Section 99 (3) of the Code** :Where the debt for which an application has been filed by a creditor is registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt.

- Vide email dated 01.08.2023, the undersigned in terms of Section 99(3), (4) and (5) of the Code, requested the Financial Creditor to apprise whether the debt due from the corporate debtor, Deltronix India Limited and/or its Personal Guarantor, Mr. Kannan Selvaraj, is registered with the Information Utility i.e. National E-Governance Services Limited (NeSL). However, no response has been received from the Financial Creditor so far. However, even otherwise, the documents filed alongwith the captioned petition including the OTS letters as well as the statements of account prove the default as well as the debt due. The copy of the email dated 28.07.2023 sent by the Resolution Professional to Financial Creditor is attached herewith as **EXHIBIT-E**.

➤ **Section 99 (4) of the Code read with Section 99 (6) (b) of the Code**

- The information provided by the Financial Creditor along with the Insolvency Application is exhaustive in support of default of payment of debt due by the personal guarantor, Respondent herein, to the Financial Creditor.”

10. In para 7 of the report, the RP has mentioned about the filing of application in prescribed form and the efforts made by the RP to give opportunity to PG to prove the repayment by the PG to the Applicant Bank. As can be seen from the report, the RP sent E-mail dated 01.08.2023 and letter dated 28.07.2023 to the PG. Nevertheless, the PG did not come forward to prove the repayment of the debt. Para 7 of the report reads thus:

“7. In view of the foregoing, I Harvinder Singh, the Resolution Professional in terms of directions issued by this Hon’ble

Adjudicating Authority vide order dated 25.07.2023 in C.P. (IB) No. 410 (ND) of 2021, hereby confirm that, I have perused / examined the Insolvency Application filed by the Financial Creditor under Section 95 of the Code, 2016 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 the following grounds: -

- 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 Debtors) Rules, 2019, supported by requisite fees and documents;
- The Insolvency Application satisfies the requirements set out in Section 95 of the Code, 2016 as explained above in paragraph 6 of the instant Report;
- The Personal Guarantor, the Respondent herein, was duly served with Demand Notice dated 22.06.2021 by the Financial Creditor for repayment of the debt owed by her to the Financial Creditor in terms of the provisions of the Code prior to filing the Insolvency Application, but the Personal Guarantor, the respondent herein, failed to repay the same.
- The undersigned has also sent a communication /notice to the Personal Guarantor, Mr. Kannan Selvaraj, vide email dated 01.08.2023 and letter sent by Speed post dated 28.07.2023, immediately on the receipt of aforesaid directions of the Hon'ble Adjudicating Authority, dated 25.07.2023, in terms of Section 99(2) of the Code, asking him to prove repayment of the debt claimed as unpaid by the Financial Creditor. However, no such proof was furnished by him.
- The Insolvency Application does not relate to "excluded debts" as defined under Section 79(15) of the Code.
- The Debtor, Personal Guarantor/Respondent, is not eligible for fresh start under Chapter – II of the Code."

11. Mr. Ravi Raghunath, Ld. Counsel appearing on behalf of the PG argued vociferously and submitted that:

- 1) "The legal demand notice was given on 18.05.2016, thus the present application is time barred.

- 2) As there is no invocation of personal guarantee, the application is not maintainable.
- 3) The Form-B i.e. the form prescribed for invocation of bank guarantee is not in order, as when the form contain the date of default qua Principal Borrower as 10.06.2015, the date of default mentioned qua the PG is 09.08.2015.
- 4) The insolvency application contain different dates of default.
- 5) There is no provision mentioned in IBC to permit amendment in the report of RP in form-C. No new report can be permitted to be brought on record.
- 6) When earlier report was withdrawn, no liberty was granted to bring another report on record.”

12. We heard the Ld. Counsels for the parties and perused the record. As can be seen from the Section 100 of IBC, 2016, this Adjudicating Authority shall within 14 days from the date of submission of the report under Section 99 pass an order either admitting or rejecting the application referred to in Section 94 or 95, as the case may be. Where the Adjudicating Authority admit an application under sub-Section (1) of Section 100 of IBC, 2016, it may on the request of the RP, issue instructions for the purpose of conducting negotiations between the debtor and the creditors and for arriving at a repayment plan. A perusal of Section 100 of IBC, 2016 clearly reveal that the only scope open to this Tribunal while examining report, is to look at the report of RP filed in terms of the provisions of Section 99 of IBC, 2016. As can be seen from Section 99(2) of IBC, 2016, where an application has been filed under Section 95 of IBC, 2016, the RP may require the debtor to prove repayment of the debt claimed as unpaid by the creditor by furnishing: (a) evidence of electronic transfer of the unpaid amount from the bank account of the debtor; (b) evidence of encashment of a cheque issued by the debtor; (c) a signed acknowledgment by the creditor accepting receipt of dues.

13. In terms of the provisions of Section 99(3) of IBC, 2016 where the debt for which an application has been filed by a creditor is registered with the

information utility, the debtor shall not be entitled to dispute the validity of such debt. Section 99(4) provides that for the purposes of examining an application, the resolution professional may seek such further information or explanation in connection with the application as may be required from the debtor or the creditor or any other person who, in the opinion of the resolution professional may provide such information. Section 99(5) provide for the liability of a person from whom the information or explanation is sought to make the same available to RP. Sub-Section 5 and 6 of Section 99 of IBC, 2016 reads thus:

“99. Submission of report by resolution professional.

.....

(5) The person from whom information or explanation is sought under sub-section (4) shall furnish such information or explanation within seven days of receipt of the request.

(6) The resolution professional shall examine the application and ascertain that-

(a) the application satisfies the requirements set out in section 94 or 95.

(b) the applicant has provided information and given explanation sought by the resolution professional under sub-section (4).”

14. A perusal of the report of RP clearly reveals that the RP made efforts to requisite information from the PG, but could not succeed in his efforts. The report also indicate that there was no evidence produced by the PG before the RP to show that the amount of debt demanded by the Applicant Bank could be paid. As far as the various pleas espoused by the Ld. Counsel for the Applicant are concerned, the same are with reference to filing of an application under Section 95 of IBC, 2016, the form-D and the dates prior to 26.09.2019. What the Ld. Counsel ignored to notice is that in terms of the report of RP, the Principal Borrower committed the default on 26.09.2019, when even after the OTS it failed to repay the amount of loan. It was after said date that the notice in Form-B was issued by the Applicant to the Respondent. The notice was given on 22.06.2021. Indubitably, the present application is preferred within 3 years from the date of issuance of form-B

notice i.e. 22.06.2021. Regarding the previous legal notice and demand notice, the Ld. Counsel appearing for the RP submitted that Part-III of the IBC, 2016 came into operation on 15.11.2019, thus the same cannot be referred to while advancing submission regarding compliance of the provisions of Section 99 of IBC, 2016 and Insolvency and Bankruptcy Board (Application to Adjudicatory Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019. Even otherwise also as can be seen from the report of RP (ibid) he has extensively dealt with the compliance of all the extent rules. The relevant excerpt of the report has been reproduced hereinabove. Since even today also the Respondent could not adduce any evidence before us to show that the amount of unpaid loan could be paid by the PG to the Petitioner, i.e. in the form of either evidence of electronic transfer or encashment of a cheque or acknowledgement by the creditor, we are left with no option but to admit the present application. Ordered accordingly. It goes without saying that whatever amount is paid to the Applicant Bank either by the principal borrower or the PG in respect of the loan amount, the same shall be reduced from the liability of the PG. Ld. Counsel appearing for the Applicant could refer to the order passed by the Hon'ble NCLAT in Company Appeal (AT) (Ins.) No. 66 of 2024 to espouse that it is incumbent upon this Adjudicating Authority to examine the issue of jurisdiction while considering the admission of an application filed under Section 95 of IBC, 2016. As it is apparent from the above, we have dealt with such plea raised on behalf of the Applicant. As the cause of action for filing the petition accrued, when the default was committed by principal borrower on 26.09.2019 and the form-B notice was given on 22.06.2021, the present application is within limitation. The dates referred to by the Ld. Counsel appearing for the Personal Guarantor which fall prior to 26.09.2019, when principal borrower committed the default are not relevant.

15. In the sequel to the aforesaid discussion, the Creditor has been able to establish the 'debt' and 'default' beyond doubt in respect of the Guarantee given by the Respondent/Personal Guarantor. Hence, we have no reason to disagree with the recommendation given by the RP for admitting the Application. Thus, we accept the report of the RP given by him in terms of the provisions of Section 99 of the IBC, 2016, and admit the CP (IB)-489/ND/2022 filed by the Creditor. Ergo we order the initiation of the IR process in respect of Mr. Subhash Aggarwal, Respondent/Personal Guarantor with immediate effect.

16. As a sequel of admission of the present application, **a moratorium under Section 101 of IBC, 2016 shall commence in relation to all the debts of the Respondent/Personal Guarantor.** During the moratorium period—

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

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

17. A public notice shall be issued by the RP, within seven days of passing of this order, inviting claims 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 said 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.*

18. 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 due deference to 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 the discharge of his duties as RP.

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

20. **IA-5062/2023 is disposed of accordingly.** To come up for consideration of Status Report to be filed by RP, within 8 weeks”.

2. To buttress his aforementioned plea that the present petition arises out of the same transaction qua which has been passed the order in IB-410/2021. The Ld. Counsel appearing for the RP could draw our attention to Form C-4A (supplementary deed of guarantee for increase in overall limit) which is placed on record at page 204 of the petition filed under Section 95 of IBC, 2016. The relevant excerpt of the deed reads thus:

C.C. No. 8004068

FORM C-4A

**(SUPPLEMENTAL DEED OF GUARANTEE FOR
INCREASE IN OVERALL LIMIT)**

(To be stamped as an Agreement)

THIS SUPPLEMENTAL DEED OF GUARANTEE made the Second
day of March 2013 One thousand nine hundred and .

*Please insert the
names and addresses
of the Guarantors

By (1) Shri/Smt./Kum.* Kapil Gupta
(2) Shri/Smt./Kum.* Deepak Gupta
(3) Shri/Smt./Kum.* Kannan Selvaraj
and (4) _____
(name of the Company)

residing at B-12, Sector-14, Noida (U.P.)
residing at B-12, Sector-14, Noida (U.P.)
residing at B-6, 2nd S. Sai Garden, ICC
Block, Anna Nagar, West Extn
Chennai - 600101

@Please insert
the address of
the registered
office

a company within the meaning of the Companies Act, 1956 and having its
registered office at @ _____

*Please insert the
full address of
Head Office.

(hereinafter unless otherwise specifically designated referred to as "the
Guarantors" which expression shall unless repugnant to the context or meaning
thereof be deemed to include) in so far as the company is concerned its
successors and permitted assigns and in so far as the others are concerned
their respective heirs, executors, administrators and legal representatives) in
favour of STATE BANK OF INDIA, a Corporation constituted by the State
Bank of India Act, 1955 and having one of its Local Head Offices at* 11, Parliament
Street, New Delhi - 110001

**Please insert the
full address of
the Branch

and a branch at** Commercial Branch, M-47, Connaught Circus, New Delhi
- 110001

(hereinafter unless otherwise specifically designated referred to as "the Bank"
which expression shall unless repugnant to the context or meaning thereof be
deemed to include its successors and assigns).

WHEREAS this Agreement is supplemental to a Deed of Guarantee dated
12.12.2011 executed by the Guarantors in favour of the Bank
(hereinafter referred to as "the Principal Deed of Guarantee")

AND WHEREAS by the Principal Deed of Guarantee the Guarantors in
consideration of the Bank having at the request of the Guarantors agreed to
finance the business of

*Please insert
the name of
the Borrower

Shri/Smt./Kum.* _____
son of/wife of/daughter of _____

Kannan Selvaraj

Deepak Gupta

by

**Please insert
the full address
of the place
of business

at present carrying on the business at**_____

***Please insert
the name of
the firm

as sole proprietor/proprietress under the firm name and style of Messrs***_____

(hereinafter referred to as "the Borrower" which expression shall unless repugnant to the context or meaning thereof be deemed to include him/her and his/her heirs, executors, administrators and legal representatives)

OR

Shri/Smt./Kum.*_____
son of/wife of/daughter of _____
Shri/Smt./Kum.*_____
son of/wife of/daughter of _____

*Please insert the
name of the
Borrower

Shri/Smt./Kum.*_____
son of/wife of/daughter of _____
Shri/Smt./Kum.*_____
son of/wife of/daughter of _____

**Please insert the
full address of the
place of business

at present carrying on the business at**_____

***Please insert the
name of the firm

in partnership under the firm name and style of Messrs***_____

(hereinafter referred to as "the Borrower" which expression shall unless repugnant to the context or meaning thereof be deemed to include them and survivors or survivor of them or the partners or partner for the time being thereof and his/her/their respective heirs, executors, administrators, legal representatives, successors and permitted assigns)

OR

Shri _____
son of _____

for self and as the Karta of his joint family carrying on the business at**_____

_____ as joint family

business under the firm name and style of***_____

(hereinafter referred to as "the Borrower" which expression shall unless repugnant to the context or meaning thereof be deemed to include him and all the co-parceners or co-parcener of the joint family of the Borrower and the survivors or survivor of them and him/their respective heirs, executors, administrators, legal representatives, successors and permitted assigns)

OR

Shri _____
son of _____

for self and as the Karta of his joint family carrying on the business at**_____

_____ as joint family

business under the firm name and style of***_____

(hereinafter referred to as "the Borrower" which expression shall unless repugnant to the context or meaning thereof be deemed to include him and all the co-parceners or co-parcener of the joint family of the Borrower and the survivors or survivor of them and him/their respective heirs, executors, administrators, legal representatives, successors and permitted assigns)

OR

*Please insert
name of the
borrower

a society/association
registered under the Societies Registration Act, Co-operative Societies Act, and
having its registered office at**

**Please insert the
full address of
the place of
business

(hereinafter referred to as "the Borrower" which expression shall unless
repugnant to the context or meaning thereof be deemed to include its
successors and permitted assigns)

OR

* Debttronix India Limited Limited, a
company within the meaning of the Companies Act, 1956, and having its
registered office at** A-323, Sarita Vihar, New Delhi

(hereinafter referred to as "the Borrower" which expression shall unless
repugnant to the context or meaning thereof be deemed to include its
successors and permitted assigns) by agreeing to grant to the borrower all or
some or any of the credit facilities by way of overdrafts, cash credits, term
loans, pre-shipment and post-shipment credits, opening of letters of credit,
issuing of guarantees including deferred payment guarantees and indemnities,
negotiation and discounting of bills and cheques, inland as well as foreign,
and such other facilities as may be agreed upon from time to time between the
Bank and the Borrower for sums not exceeding in the aggregate at any one
time the sum of Rs. 52.28 Lacs /- (Rupees Fifty Two Lacs and Thirty Eight Lacs Only).

(hereinafter referred to as the "aforesaid credit facilities") covenanted and
agreed jointly and severally to pay to the Bank on demand upon default made
by the Borrower the whole of such principal amount of Rs. 52.28 Lacs together
with interest costs charges expenses and/or other monies as may then be due
to the Bank and also agreed to indemnify and keep indemnified the Bank against
all loss of principal, interests and other monies due, and all costs (as between
advocate and client) charges and expenses whatsoever which the Bank may
incur by reason of any default on the part of the Borrower.

AND WHEREAS the Bank has at the request of the Borrower and the
Guarantors agreed to increase the aggregate sum limit of the aforesaid credit
facilities from Rs. 52.28 Lacs /- to Rs. 67.52 Lacs /- on the condition that the
Guarantors extend their liability under the Principal Deed of Guarantee from
Rs. 52.28 Lacs /- to Rs. 67.52 Lacs /- which the Guarantors have agreed so
to do.

AND WHEREAS the parties are desirous of modifying and altering the
Principal Deed of Guarantee in the manner hereinafter appearing.

NOW this Agreement Witnesseth and it is hereby covenanted and agreed
(the Guarantors covenanting and agreeing jointly and severally) as follows:

1. The words "Rupees Fifty Two Lacs and Thirty Eight Lacs Only"
wherever appearing shall be deemed
to be" deleted and the words "Rupees Sixty Seven Lacs and Fifty Two Lacs Only"
shall be deemed to be substituted in their respective places in the
Principal Deed of Guarantee.

2. The Principal Deed of Guarantee as hereby varied shall remain in full
force and shall be carried into effect in the same manner as if the
provisions of this Agreement have been incorporated therein.

IN WITNESS WHEREOF the Guarantors abovenamed have executed these presents the day
and year first hereinabove written.

Signed Sealed and Delivered by

Shri/Smt./Kum. Kapil Gupta
Shri/Smt./Kum. Deepali Gupta

and

Shri/Smt./Kum. Kannan Selvaraj

THE COMMON SEAL* of

Limited
was hereinto affixed pursuant to the resolution of the
Board of Directors passed in that behalf on
day of 19 in the presence of

3. The Ld. Counsel could also draw our attention to the principal deed of guarantee dated 12.12.2011 placed on record an Annexure-6 to the petition. The relevant excerpt of the deed reads thus:

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फॉर्म सी.4 This Agreement form of Non-Judicial Stamp is Executed By G.O. No. 000-0065

FORM C.4

समग्र सीमा के लिए गारंटी का विलेख
(DEED OF GUARANTEE FOR OVERALL LIMIT)

(अनुमोदित न किया जाए)
(अनुमोदित की तरह स्टांपित किया जाए)
(NOT TO BE ATTESTED)
(To be stamped as an Agreement)
दिन, एक हजार नौ सौ

*कृपया गारंटीकर्ताओं के नाम और पते लिखें

गारंटी का यह विलेख को निम्नलिखित ने

(1) श्री/श्रीमती/कुमारी *
(2) श्री/श्रीमती/कुमारी *
(3) श्री/श्रीमती/कुमारी *
(4)

पर पर पर
पर पर पर
पर पर पर

THIS DEED OF GUARANTEE made the 12th day of December 2011

One thousand nine hundred BY

(1) Shri/Smt./Kum. * Shri Kapil Gupta residing at B-12, Sector-14, Noida, U.P.
(2) Shri/Smt./Kum. * Krishna Anur Gupta residing at Noida, U.P.
(3) Shri/Smt./Kum. * Shri Deepali Gupta residing at B-12, Sector-14, Noida, U.P.
(4) Shri Kapil Gupta

* Please insert the names and address of guarantors

Shri Kannan Selvaraj residing at Mookaiah Colony, 11, Parliament Street, New Delhi
लिखित जो कम्पनी अधिनियम, 1956 के अंतर्गत

Shri Kannan Selvaraj residing at Mookaiah Colony, 11, Parliament Street, New Delhi
लिखित जो कम्पनी अधिनियम, 1956 के अंतर्गत

Annarajar well known Chennai कम्पनी है और जिसका पंजीकृत कार्यालय *
कम्पनी है और जिसका पंजीकृत कार्यालय *
इसके परचात जब तक कि विरोध रूप से उनको अन्यथा पद नाम बना दिया जाये, "गारंटीकर्ता" कहा गया है और जब तक यह शब्द संदर्भ के या अर्थ के प्रतिकूल न हो तब तक इसमें जहाँ तक कम्पनी का संबंध है, उसके उत्तराधिकारी और अनुमत समनुदेशी और जहाँ तक अन्यो का संबंध है, उनके वारिस निष्पादकर्ता प्रशासक और कानूनी प्रतिनिधि ने भारतीय स्टेट बैंक के पक्ष में निष्पादित किया है जो भारतीय स्टेट बैंक अधिनियम, 1955 के अंतर्गत निर्मित एक निगम है और जिसका स्थानीय मुख्य कार्यालय * पर और जिसकी एक शाखा अन्य स्थानों के अलावा *
पर है (इसे जब तक कि विरोध रूप से अन्यथा पद का नाम न दिया गया हो, इसके परचात "बैंक" कहा गया है। और जब तक यह शब्द संदर्भ के या अर्थ के प्रतिकूल न हो तब तक इसमें बैंक के उत्तराधिकारी और समनुदेशी भी सम्मिलित समझे जायेंगे)

Limited, a company within the meaning of the Companies Act, 1956 and having its registered office at *
(hereinafter unless otherwise specifically designated referred to as "the Guarantors" which expression shall unless repugnant to the context or meaning thereof be deemed to include in so far as the company is concerned its successors and permitted assigns and in so far as the others are concerned their respective heirs, executors, administrators and legal representatives) in favour of STATE BANK OF INDIA a Corporation constituted by the State Bank of India Act, 1955 and having one of its Local Head Office at * 11, Parliament Street and among other places a branch at * M. 4th, Commercial Branch, Connaught Place, New Delhi
(hereinafter unless otherwise specifically designated referred to as "the Bank" which expression shall unless repugnant to the context or meaning thereof be deemed to include its successors and assigns).

** Please insert the address of registered office

* Please insert full address of the Head Office

** Please insert full address of the Branch

4. From the aforementioned, it is clear that the issue involved in the present petition is pari materia to one raised in (IB)-410/2021 (ibid). In the wake, the petition CP-(IB)-392/2021 is admitted.

5. It goes without saying that during the IRP, (Insolvency Resolution Process) the RP shall give an opportunity to personal guarantor to submit his repayment plan. Nevertheless, before that the RP shall also carry the exercise in terms of the provisions of Section 100(2) of IBC 2016. For such purpose it would be open to the Respondents to appear before RP within 1 week from today.

6. There is no request by the RP for the purpose of conducting negotiation between the debtor and the creditors. As a sequel of admission of the present application, a moratorium shall commence in relation to all the debts of the Respondent. During the moratorium period – (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. The moratorium shall cease to have effect at the end of period of 180 days.

7. 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 two National Newspapers, one in English and other one Vernacular Language, 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.

8. We are sanguine that the RP shall discharge all such duties as are incumbent upon him in terms of the provisions of Sections 102, 103, 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.

9. 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.

10. It goes without saying that whatever amount is paid to the creditor by the principal borrower (corporate debtor) and other guarantors would be deducted from the liability of the Respondent to repay.

11. IA 4295/PB/2023 is disposed of accordingly. To come up for consideration of Status Report to be filed by RP, within 8 weeks.

**Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)**

**Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)**