

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH COURT III**

**C.P.(IB)-607(MB)/C-III/2020**

Under Section 95 (1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rule, 2019.

***In the matter of***

**VISTRA ITCL (INDIA) LIMITED**

Having Office at: IL&FS Financial Centre, Plot No. C-22, G Block Bandra (E), Mumbai – 400 051

*... Petitioner No. 1*

**INDIAN ASSET GROWTH FUND**

Having Office at: 601, 6th Floor, Jet Prime, Plot No. 39-B, Suren Road Andheri (E), Mumbai- 400 093

*... Petitioner No. 2*

*(Collectively referred to as Petitioners)*

**Vs**

**MR. HEMENDRA BOSMIYA**

Residing at: 1504, Agarwal Residency, Building 2A, Shankar Lane Aadarsh Dugdhalay, Kandivali (West), Mumbai- 400 067

*... Personal Guarantor/ Respondent*

**Order Pronounced on: 29.04.2024**

**Coram:**

Ms. Lakshmi Gurung : Member (Judicial)  
Sh. Charanjeet Singh Gulati : Member (Technical)

**Appearances:**

For Petitioners : Adv. Rishabh Chandra a/w Adv. Sandhya Iyer,

Adv. Ibrahim Shaikh i/b Vaish Associates

For Personal Guarantor : Adv. Kunal Kanungo a/w Adv. Tanushree Sogani  
& Adv. Atishay Jain

**ORDER**

***Per: Sh. Charanjeet Singh Gulati, Member (T)***

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1. This Company petition has been filed under section 95 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2019 by **Vistra ITCL (India) Limited** (earlier known as IL&FS Trust Company Limited) **and Indian Asset Growth Fund** ('Petitioners') through its Investment Manager, Essel Finance Advisors and Manager LLP to initiate Insolvency Process against **Mr. Hemendra Bosmiya** ('Personal Guarantor').

**2. Facts of the Case:**

2.1. The Petitioners had jointly filed C.P. (IB) 3119/ I&B/MB/ 2018 seeking commencement of Corporate Insolvency Resolution Process (CIRP) against Rashmi Housing Private Limited (Rashmi Housing/ **Corporate Debtor**) on 14.12.2018. Rashmi Housing had issued senior secured, unlisted, redeemable Non-Convertible Debentures (NCDs) having face value of Rs. 1,00,000/- each, aggregating to Rs. 25,00,00,000 (Rupees Twenty Five Crores) by way of private placement to Indian Asset Growth Fund (India Asset). In terms of the issue, Vistra ITCL (India) Ltd. was appointed as the debenture trustee acting for and on behalf of the India Asset. Indian Asset is registered with SEBI as a category II Alternative Investment Fund having registration number IN/AIF2/12-13/0037 dated 11.03.2013. Vistra ITCL (India) Limited is the trustee of the India Asset Growth fund. The Trustee Vistra ITCL (India) Limited, has

appointed Essel Finance Advisors and Managers LLP as the Investment Manager of the India Assets by an Investment Management Agreement dated 15.01.2013. The Trustee of the Indian Asset has by a letter dated 08.08.2018 also authorised the Investment Manager to file the present proceedings.

- 2.2. India Asset invested in the NCDs of Rashmi Housing of Rs. 25 Crores as per the Debenture Trust Deed executed on 20.10.2015. Share Pledge Agreement dated 26.10.2015 was created by personal guarantors being pledge, 76.142% of the total paid-up equity share capital of the Corporate Debtor on a fully diluted basis in favour of the Petitioners by Pledgors namely Mr. Yogesh Bosmiya, Mr. Hemendra Bosmiya, Ms. Megha Bosmiya, Ms. Rashmi Bosmiya, Mr. Ashok Bosmiya and Ms. Jyoti Bosmiya.
- 2.3. The Personal Guarantor had issued a guarantee dated 26.10.2015 (Deed of Guarantee) in favour of the Petitioners under which he guaranteed the repayment obligation of Rashmi Housing in respect of a Principal amount of Rs. 25 Crores. The Deed of Guarantee is annexed to the Petition as 'Annexure D' . This deed of guarantee is executed by Shri Hemendra Pranjivan Bosmiya in favour of IL & FS Trust Company Limited & Essel Finance Advisors and Managers LLP in respect of the Obligation of Rashmi Housing Pvt. Ltd. Para 2 & 3 of the said deed of Guarantee is reproduced here for ready reference:

*“2. The Guarantor hereby guarantees, jointly and severally, as a primary obligor and not merely as surety, to unconditionally and irrevocably on first demand without any demur, delay or protest, within 1 Business Day of service of a notice in writing by the Debenture Trustee (acting on the written instructions of the Investment Manager) in the form given in Schedule*

*1 thereto ('Notice of Demand'), make payment of such amount forming the Debenture Outstandings or any part thereof or any amounts agreed to paid by the Guarantor in terms of this Guarantee or the other Transaction Document, to the Debenture Trustee (acting for and on behalf of the Fiance Parties). The payment shall be made into such bank account and for such amount as mentioned in the Notice of Demand. The amounts so deposited shall be utilised to apportion the Debenture Outstandings, or otherwise, as per the provisions of the Escrow Agreement and the other Transaction Documents.*

*3. The Guarantor hereby guarantees, jointly and severally, agrees and undertakes, as a separate and independent stipulation and without prejudice to the other provisions contained herein or under the other Transaction Documents, as primary obligor and not merely as surety, on a full indemnity basis, to indemnify the Finance Parties for any losses, liabilities, damages, costs, claims and expenses, including legal fees whatsoever which the Finance Parties may suffer, pay or incur: (i) by reason of or in connection with the Debenture Outstandings not being discharged by the Company and in the execution or performance of the terms and conditions hereof; or ii) as a result of the whole or any of the Debenture Outstandings being or becoming void, voidable, unenforceable or ineffective as against the Company or any of the Obligors for any reason whatsoever irrespective of whether such reason or any related fact or circumstance was known or ought to have been known to the Finance Parties or any of their officers, employees, agents or advisers; or (iii) in terms of the Transaction Documents.”*

2.4. The Personal Guarantor agreed to pay the Petitioners Principal amount of Rs. 25 Crores along with other outstandings in relation thereto as well as interest, liabilities, costs, losses etc as specifically mentioned in the said Deed of Guarantee.

2.5. Rashmi Housing confirmed the investment/ liability arising out of the issuance of NCDs on 26.04.2017. Further, the NCDs were shown in the balance sheet of Rashmi Housing in the Financial Year 2015-16 and 2016-17. Rashmi Housing was

admitted into CIRP by this Tribunal vide CIRP Commencement order dated 14.12.2018.

- 2.6. On 30.11.2019, an outstanding amount of Rs. 34,35,48,668/- (Rupees Thirty-Four Crores Thirty-Five Lakhs Forty-Eight Thousand Six Hundred Sixty-Eight) was due against the Respondent with default interest of 24% p.a. from 30.11.2019 till payment and/or realization.
- 2.7. Petitioners had served a demand notice in Form B dated 10.12.2019 on Respondent claiming a debt amount of Rs. 34,35,48,668/-. The notice was dispatched to and received by the Respondent.
- 2.8. The Company Petition seeking commencement of insolvency in respect of the Personal Guarantor/ Respondent was filed on 20.01.2020.
- 2.9. This Tribunal vide order dated 08.11.2021 had appointed the Resolution Professional, **Ms. Pinkush Jaiswal**, having registration number IBBI / IPA – 002 / IP - N00452 / 2017 – 2018 / 11409 and directed to submit her report. The Resolution Professional on 23.03.2022 submitted report under section 99 of Insolvency and Bankruptcy Code, 2016 and submitted that she has conducted the examination of the application filed by the Petitioners in terms of Section 99 of the Code read with applicable rules and regulations and on the basis of the documents available and responses sought/ received, the Resolution Professional recommends **approval** for the present application on the following grounds:

1. *The Personal Guarantor had issued a guarantee dated 26.10.2015 (Deed of Guarantee) in favour of the*

*Applicants under which he guaranteed the repayment obligations of M/s. Rashmi Housing Private Limited (Corporate Debtor) in respect of a principal amount of Rs. 25,00,00,000 (Rs. Twenty-Five Crores) availed by the said Corporate Debtor by issuing Non-Convertible Debentures to the Applicants herein under various transaction documents such as Debenture Trust Deed dated 20.10.2015 and Share Pledge Agreement dated 26.10.2015.*

*2. The Personal Guarantor, under the said Deed of Guarantee agreed to pay to the Applicant the above-mentioned Principal amount along with other outstandings in relation thereto as well as interest, liabilities, costs, losses etc as specifically mentioned in the said Deed of Guarantee. Deed of Guarantee is placed at Page 563 (Vol IV) to Page 578 of the Application by Financial Creditor.*

*3. M/s. Rashmi Housing Private Limited (Corporate Debtor) was Admitted to CIR process by the Hon'ble NCLT Mumbai by admission of Petition No. CP No. 3119 /IBC /MB /2018 on 14.12.2018. The process of CIRP is still pending completion.*

*4. The Applicants herein, had vide Notice in Form B dated December 10,2019 served a demand notice on the Personal Guarantor claiming A debt amount of Rs. 34,35,48,668 (Rs. Thirty Four Crores Thirty Five Lakhs Forty Eight Thousand Six Hundred and Sixty Eight only). The said notice was duly dispatched to and received by the Personal Guarantor. The proof of delivery by way of postal tracking has been duly provided by the Applicant (Page 620 - Vol IV of application)*

*5. The Personal Guarantor has not paid the claimed debt amount. The personal guarantor has not furnished any evidence/proof of payment of the debt claimed, despite of notice sent to him by the RP under Section 99(2) of IBC.*

*6. The application filed by the Applicant is otherwise complete with the relevant information about the default by Personal Guarantor and the application was filed within a period of limitation.*

**3. Brief Submission of the Respondent/ Personal Guarantor:**

- 3.1. The Respondent has stated that in the Form C filed by the Petitioners the column concerning the forfeiture of the right to enforce security during the repayment plan has not been ticked by the Petitioners which determines the voting share as per Section 110 of the Code.
- 3.2. The Petition is barred by law of limitation. There are two dates of default in the Petition i.e. date of default for Principal Amount: 31<sup>st</sup> December 2016 and Coupon Amount: 15<sup>th</sup> November 2017. and the date of default qua Principal Amount is 31.12.2016, while the date of filing of the Company Petition, i.e., 20.01.2020. Therefore, the instant proceeding is barred by limitation.
- 3.3. Invocation of the Personal Guarantee is the main criterion for an individual to be made a Respondent to a Company Petition under Sec. 95 of IBC. Initiation of CIRP against Corporate Debtor does not mean that the guarantee has been invoked against the Respondent. Also, the Deed of Personal Guarantee executed by the Respondent provides for a format of notice in writing by the Debenture Trustee. The heading of the Notice of Demand which is Schedule I of the Deed of Personal Guarantee reads as – *“Format of notice to be addressed by the Debenture Trustee to the Guarantor”*. However, in the present case, notice/ demand qua the Respondent has not been made.
- 3.4. Further, the Rule 7(1) of Personal Guarantor Rules mandates to serve the demand notice under Form B upon the personal

guarantor. The Rule 7(1) of the Personal Guarantor Rules is reproduced below:

***“7. Application by creditor –***

*(1) A demand notice under clause (b) of sub-section (4) of section 95 shall be served on the guarantor demanding payment of the amount of default, in Form B.”*

The Rule 7(1) of the Personal Guarantor Rules requires that a demand notice under Clause B of sub section (4) of Section 95 be served upon the personal guarantor demanding payment of amount in default in Form B. The rules also provides that service means sending any communication by any means including registered post/ speed post/ courier/ any electronic form. The Demand notice under Form B has never received by the Respondent. The bare perusal of the acknowledgment card shows that the Demand Notice was sent to an incomplete address and as the same has never been received by the Respondent. The postal receipt relied upon by the Petitioners is showing that one 'Arpan Sarkar, Jet Prime had sent a consignment to the Respondent and the tracking report relied upon by the Petitioners reflects that the consignment was delivered to 'Kandivali West SO' on 12.12.2019, however, the same was again bagged in 'Mandavgan SO' on 19.12.2019. It is not showing whether the consignment was delivered to the Respondent. Respondent never received any consignment of Demand Notice from the Petitioners. It is submitted that even if the post is delivered to the above address, it has probably been received by some staff/ relative and the Respondent is not aware about the contents of the envelope. The statutory rules require personal service and personal service having not been affected on Respondent.



The Respondent has relied upon the judgment of the Hon'ble National Company Law Appellate Tribunal in the matter of **Ravi Ajit Kulkarni vs State Bank of India [(Company Appeal (AT) (Insolvency) No. 316 of 2021]**, where as it is held that an application under Section 95 of the Code shall be filed post issuance of demand notice. The notice of demand was sought to be issued as per Rule 7 in Form-B and the service of notice to be affected as per Rule 3 (1) (g) of the Personal Guarantor Rules.

3.5. Also, the Report submitted by Resolution Professional ('RP') is not valid and proper as RP has not examined the petition in proper manner. The Report of the Resolution Professional has ignored that the Petition needs to be rectified since it is incomplete and then only the same can be adjudicated by the Tribunal.

3.6. The Respondent has also raised the objection that Petition was jointly filed by the Petitioners.

4. **Submission of the Petitioners vide Rejoinder dated 07.06.2022 in brief :**

4.1. Regarding objection of unticked column in Form C, the Petitioners have submitted that, the question of forfeiture of right to enforce security during the period of repayment of resolution plan, which will determine the voting share as per Section 110 of the Code, shall arise after the admission of the Petition and not prior thereto. The column of Form C was inadvertently left out to be filled while filing the present Petition. However, in the Affidavit in Rejoinder, it has been made clear that "the Petitioners shall prefer not to forfeit their

right to enforce security and are completely aware of implications of Section 110 of the Code.”

4.2. In respect of contentions that Petition is barred by limitation, the petitioners submitted that it is trite law that a guarantee becomes a debt as soon as guarantee is invoked against Personal Guarantor. The Demand Notice invoking Personal Guarantee was issued by the Petitioners upon the Respondent on 10.12.2019 for full repayment of the debt within fourteen days from the receipt of the demand notice. Hence, it is clear that the Petition is very well within the period of limitation. Moreover, the principal borrower, i.e., Rashmi Housing has been admitted into Corporate Insolvency on the basis of the same transaction, which in itself is a testament to the fact that the proceeding is liable to be admitted in so far as the defense of limitation is concerned. In this regard, Petitioners relied upon the judgment dated 08.01.2019 pronounced by the Hon'ble National Company Law Appellate Tribunal, New Delhi in the matter of Ferro Alloys Corporate Limited versus Rural Electrification Corporation Limited [Company Appeal (AT) (Insolvency) No. 92 of 2017].

4.3. The Respondent has contended that, the Personal Guarantee is not invoked by the Petitioners. Whereas, the Petitioners have issued the Demand Notice as per the format provided under Rule 7(1) of Personal Guarantors Rules, 2019, to which the Respondent had not replied. The Demand Notice dated 10.12.2019 is not only more detailed and comprehensive than the format as notice as provided in Schedule I of the Deed of Guarantee but also contains in substance all the contents of Schedule I of Deed of Guarantee. It is trite law if at all there arises any inconsistency, the provisions of the Code shall

override any private agreement or any instrument executed between parties.

- 4.4. The Respondent contended that while the demand notice was signed by Mr. Vishnu Rathore on behalf of Essel and Ms. Pragati Gupta on behalf of Vistra; however the packet was dispatched by Mr. Arpan Sarkar (colleague of Mr. Vishnu Rathore). During hearing dated 12.02.2024, this bench asked whether it is Respondent's case that he never received the demand notice, the Id. Counsel on behalf of the Respondent has assured that he will take appropriate instruction from client and will apprise the bench. It is noted that the defenses with respect of format of demand notice and signatories and dispatching details can only be raised once the demand notice is served.
- 4.5. The Respondent has raised certain contentions against the report filed by the RP. The report filed by the RP is in compliance of the provisions of the Code. Report by RP affirmed the existence of debt by virtue of the Deed of Personal Guarantee dated 26.10.2015, which the Respondent has failed to repay the debt.
- 4.6. There is not bar/ embargo on filing of joint petitions under the Code. The demand notice dated 10.12.2019 was issued jointly by Debenture Trustee i.e. Vistra as well as by India Asset.

#### **FINDINGS**

5. We have heard the Learned Counsels and perused the documents on record. We have also gone through the report dated 23.03.2022 filed by the Resolution Professional.

6. It is noted under section 128 of Indian Contract Act, 1872 that when a default is committed, the Principal Borrower and Surety are jointly and severally liable to Creditor and Creditor has the right to recover its dues from either of them or both of them simultaneously. For benevolent reference the said section of Indian Contract Act, 1872 is reproduced below:

*“The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.”*

7. Further, the Hon’ble National Company Law Appellate Tribunal in the matter of **State Bank of India Vs. Athena Energy Venture Private Limited** in Company Appeal (AT)(Ins) No. 633 of 2020 observed as under:

*“19. It is clear that in the matter of guarantee, CIRP can proceed against Principal Borrower as well as Guarantor.”*

8. The proceedings in the matter were put on hold since the Constitutional Validity of the Sections 94 to 100 relating to the insolvency of personnel Guarantor was pending before the Hon’ble Supreme Court in the matter of **Dilip B. Jiwrajka V/s Union of India & Ors. in WP(civil)No. 1281 of 2021**. The Hon’ble Supreme Court in the aforementioned matter has upheld the Constitutional Validity of the Sections 94 to 100.

9. We note that, in the Form C filed by the Petitioners the column concerning the forfeiture of the right to enforce security, which determines the voting share as per Section 110 of the Code during repayment plan has not been ticked by the Petitioners. The respondent in this case has taken an exception on this issue and has contended that the Form C been not filled properly and it makes the application deficient and therefore liable for rejection. In this regard, it is stated that the Petitioners vide Affidavit of Rejoinder dated 07.06.2022 have submitted that they shall prefer not to forfeit their right to enforce security.

Accordingly, the deficiency in this regard stands cured and the application/petition can be proceeded with.

10. The respondent/personal guarantor has contended that the date of default for the principal amount being on 31.12.2016 and for the Coupon amount that being on 15.11.2017 the instant petition filed is barred by limitation since it is filed on 20.01.2020. In this regard, it is stated that in this case demand notice under Form-B under Rule 7(1) of the Personal Guarantor Rules was issued upon the respondent on 10.12.2019 and was sent through the speed post. In this regard, It is useful to make reference to the judgment dated 08.01.2019 pronounced by the Hon'ble National Company Law Appellate Tribunal, New Delhi in the matter of **Ferro Alloys Corporate Limited versus Rural Electrification Corporation Limited [Company Appeal (AT) (Insolvency) No. 92 of 2017]**, In the aforesaid judgment, it has been observed as under:

*“Para 27. A guarantee becomes a debt or as soon as the guarantee is invoked against it whereinafter a guarantor ('corporate guarantor') becomes a 'corporate debtor' in terms of the I&B Code.”*

*“Para 29. In ‘Ram Bahadur Thakur vs. Sabu Jain Limited [1981 (51) Comp Cas 301], the Hon’ble High Court of Delhi relying on the decision of the Hon’ble Supreme Court in ‘Kesoram Mills Case’ - [(1996) 59 ITR 767], held that under the ‘deed of guarantee’ the liability of the company to pay debt arose when the borrower defaulted in making payments and the creditor sent a demand / notice invoking the guarantee”.*

It can accordingly be seen that the liability of the personal guarantor arises when the principal borrower defaults in making the payment and the creditor thereafter sends a demand / notices invoking the guarantee.

In this case, such action on the part of the creditor was taken on 10.12.2019 whereas the present petition was filed on 20.01.2020. Hence, the present petition is well within the limitation.

11. The Respondent have contended that Personal Guarantee was not invoked as neither it was in the '*Format of notice to be addressed by the debenture trustee to the guarantor*' as per Schedule-1 of the deed of personal guarantee nor the Form-B as mandated in Rule 7(1) was served properly on the respondent. It is contended that the Form-B under Rule 7(1) was to be issued and service was required to be affected as per Rule 3 (1) (g) of the Personal Guarantors Rules. In this regard, it is stated that the demand notice in this case in Form-B in accordance with Rule 7(1) of the Personal Guarantor Rules was issued on 10.12.2019. It was served at the address of the respondent/personal guarantor. The very fact that the respondent has raised issues regarding some defects in the demand notice proves that the demand notice in Form-B under Rule 7(1) of the Personal Guarantor Rules was served on the respondent.
12. As regards '*Format of notice to be addressed by the debenture trustee to the guarantor*' a useful reference can be made to the decision of Hon'ble National Company Law Appellate Tribunal in the matter of **K.V. Jayaprakash v. State Bank of India (Company Appeal (AT) (Insolvency) No. 362 of 2022** wherein it has been held that,

**"83. ... the agreement of guarantee is an independent contract. ...**

*(4) The provisions of IBC will override the provisions of Indian Contract Act. "*

**(Bold for emphasis)**

Also as per Section 238 of the Code in case of any conflict, the IBC overrides any law inconsistent with IBC and any instrument having effect by virtue of such law. Having regard to aforesaid position of law, it cannot be considered that the invocation of guarantee could only be

in terms of the 'Format of notice to be addressed by the debenture trustee to the guarantor' as per schedule of deed of personal guarantee executed between the respondent and the creditors. The issue and service of valid Form-B mandated under Rule 7(1) of the Personal Guarantor Rules would be good and sufficient compliance towards invocatoion of the guarantee against the personal guarantor.

13. The Respondent has averted that this Petition was filed jointly by Petitioners and therefore invalid. In this regard, Provisions of Section 95 (1) of the Code is referred to which states as under:

*'(1) **A Creditor may apply either by himself, or jointly with other creditors,** or through a resolution professional to to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.'*

**(Bold for Emphasis)**

Accordingly, Application under Section 95 of the Code can be filed jointly by Debenture Trustee/ Creditors and there is no invalidity in such petition filed jointly by a creditor with other creditor/creditors.

14. The Respondent has also contended that the report submitted by the resolution professional is not valid and proper as she has not examined the petition and has not pointed out the rectifications needed in the petition which was incomplete. In this regard it is stated that the RP has submitted her report in accordance with the directions of this Tribunal passed in the order dated 08.11.2021. The RP accordingly has carried out her duty and submitted the report. Based on such report submitted by the RP and keeping in view the principles of natural justice due and proper opportunity has been granted to the Respondent in this case and the Respondent / Personal Guarantor has availing such opportunity not only presented his case before the tribunal through his counsel but has also filed affidavit in reply which has been considered here. It is only

after due consideration of all material facts of the case together with the applicable provisions of law and the jurisprudence, the case of the petitioner is being proceeded with. Accordingly, we don't see any deficiency in the application or the report of the RP restraining us from proceeding further in the matter.

15. Therefore, in view of the facts and circumstances of the present case and considering the report of the Resolution Professional confirming that the Respondent had given personal guarantee and till date has neither responded to the notice nor has produced any proof of repayment of default amount, we are of the considered opinion that it is a fit case for admission and proceeding against the Personal Guarantor to initiate Insolvency Resolution Process. Hence, we admit CP No. 607 of 2020 under Section 95 of the IBC, 2016 by following order:

#### **ORDER**

- I. Initiate Insolvency Resolution Process against **Mr. HEMENDRA BOSMIYA** and moratorium under section 101 of IBC, 2016, shall commence in relation to all the debts and shall cease to have effect at the end of the period of 180 days beginning with the date of admission of the application or on the date this Tribunal passes an order on the repayment plan under Section 114 whichever is earlier as provided under Section 101 of IBC, 2016.
- II. During the moratorium period;
  - a. Any pending legal action of proceeding in respect of any debt shall be deemed to have been stayed; and
  - b. The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and



- c. The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;
  - d. The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- III. The Resolution Professional, Ms. PINKUSH JAISWAL is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Mumbai Bench, inviting claims from all Creditors, within 21 days of such Issue. The notice under Sub Section (1) of Section 102(2) shall include: -
- a. details of the order admitting the application;
  - b. particulars of the resolution professional with whom the claims are to be registered; and
  - c. the last date for submission of claims.
- IV. The publication of notice shall be made in two newspapers, one in English Language and other in Vernacular Language which having wide circulation in the State where the Corporate Debtor and Personal Guarantor situated/resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.
- V. The Resolution Professional in exercise of the powers conferred under Section 104 shall prepare a list of creditors on the basis of:
- a. the information disclosed in the application filed under Sections 95 and
  - b. claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice.

- VI. The debtor shall prepare a repayment plan under Section 105, in consultation with the Resolution Professional, containing a proposal to the Creditors for restructuring of his debts or affairs. The repayment plan may authorize or require the Resolution Professional to: -
- a. carry on the debtor's business or trade on her behalf or in her name or
  - b. realise the assets of the debtor, or
  - c. administer or dispose of any funds of the debtor.
- VII. The repayment plan shall include the following, namely:-
- a. justification for preparation of such repayment plan and reasons on the basis of which the creditors may agree upon the plan;
  - b. provision for payment of fee to the Resolution Professional.
- VIII. The Resolution Professional shall submit the repayment plan along with her report on the plan to this Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106.
- IX. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, she shall record the reasons therefor. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, she shall specify the details as provided under Section 106(3) of IBC, 2016. The date of meeting should not be less than 14 day or more than 28 days from the date of submission of the Report under sub-section (1) of Section 106 of IBC, 2016, for which at least 14 days'

notice to the creditors as per the list prepared shall be issued by all modes. Such notice must contain the details as provides under the provisions of Section 107 of IBC, 2016.

X. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of IBC, 2016 and submit the same to this Tribunal, copies of which shall be provided to the Debtor and the Creditors. It is made clear that the Resolution Professional shall perform her functions and duties in compliance with the Code of Conduct provided under Section 208 of IBC, 2016.

XI. The Resolution Professional shall submit her periodic reports before this Tribunal every 30 days.

16. In view of the above observations and directions, the above Company Petition No. 607 of 2020 filed under section 95 of IBC, is **admitted** and the Insolvency Resolution Process stands initiated against the Personal Guarantor.

SD/-

**CHARANJEET SINGH GULATI**  
**(MEMBER TECHNICAL)**

(Saayli, LRA)

SD/-

**LAKSHMI GURUNG**  
**(MEMBER JUDICIAL)**