

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - IV**

C.P. (IB) No. 1036/MB/2021

Under Section **95(1)** of the Insolvency & Bankruptcy Code, 2016 *r/w* Rule **7(2)** of the Insolvency and Bankruptcy (Application to the Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), Rules, 2019.

In the matter of

PNB Housing Finance Limited

... Financial Creditor

v/s.

Mrs. Komal Machindar

... Personal Guarantor

Order delivered on: 29.04.2024

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor

Ld. Counsel Ms. Nikita
Abhyankar i/b Gravitas Legal
present through Video
Conferencing.

For the Personal Guarantor

None Present.

For the Resolution Professional

Ms. Pranali Gada, Ld. Counsel
Present.

ORDER

1. The present petition is filed on 14.10.2021 *u/s.* 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “IBC, 2016”) *r/w.* Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 by **PNB Housing Finance Limited** (“Financial Creditor / Applicant”) for the purpose of initiating insolvency resolution process against **Mrs. Komal Machindar** (“Personal Guarantor/ Respondent”) for recovery of total debt amounting to INR 2,54,14,17,668/- (Indian Rupees Two Hundred and Fifty Four Crore, Fourteen Lakh, Seventeen Thousand, Six Hundred and Sixty Eight only) as on 06.10.2021. The Date of Default, per Part-III of the present petition, is 13.10.2019.
2. The Financial Creditor herein submits that Ornate Spaces Private Limited (“**Corporate Debtor**”) had executed a Loan Agreement cum Mortgage Deed *dated* 25.01.2018 to raise finances subject to the terms and conditions thereto. Pursuant to which, the Personal Guarantor *viz.* Respondent herein was one of the executors of the Personal Guarantee Deed *dated* 25.01.2018 thereby personally guaranteeing the debt arising under the said Loan Agreement.
3. The Financial Creditor submits that, a Company Petition bearing C.P. (IB) No. 4469//MB-IV/2019 was filed by *IDBI Trusteeship Services Limited u/s.* 9 of the IBC, 2016, and this Tribunal was thereby pleased to initiate Corporate Insolvency Resolution Process (“CIRP”) against the Corporate Debtor herein *vide* Order *dated* 29.06.2020.
4. The Financial Creditor herein submits that on 05.10.2019 notice was issued to the Personal Guarantor invoking the said guarantee and subsequently on 27.08.2021 notice was issued in Form-B under Rule 7(1) of the Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules,

2019 demanding forthwith payments of its dues. However, the Personal Guarantor including the Respondent, per the Financial Creditor herein, have failed to act thereupon. Hence, the present petition.

5. We note that this Bench had appointed the **Mr. T. Narayana Swamy**, Insolvency Resolution Professional (“RP”) *vide* Order *dated* 06.12.2022 in the captioned petition and had thereby directed the Applicant to prepare and file a Report *u/s.* 99 of the IBC, 2016. The RP *via* his Report *dated* 30.12.2022, after due examination of the application, documents filed along with the application, in addition to the requirements as mandated under clauses (1) to (10) of Section 99 of the IBC, 2016, has recommended to “...accept the application filed under Section 95 of the Insolvency and Bankruptcy Code, 2016, for initiation of Insolvency Resolution Process in respect of Mrs. Natesh Pandurang Shinde”
6. It is trite in law, that the liability of surety is co-extensive with that of the principal debtor. The proceedings in the present matter were put on hold since the constitutional validity of the Sections 94 to 100 of IBC, 2016, relating to the insolvency of personal guarantor was pending before the Hon’ble Supreme Court in the matter of ***Dilip B. Jiwrajka V/s Union of India & Ors.*** [WP (Civil) No. 1281 of 2021].
7. We have heard the learned counsel for the Financial Creditor and have duly perused the documents on record.
 - 7.1 We take note that this Bench had granted several opportunities on 12.05.2023, 25.07.2023, 07.09.2023, 22.12.2023, 13.02.2024 & 18.03.2024 to the personal guarantor to file reply. That on 13.02.2024, at the request of Counsel for the Personal Guarantor two weeks’ time was finally granted to file reply. That on 18.03.2024, in interest of natural justice another chance was granted to the Personal Guarantor to file reply and 2 weeks were further granted.

That on 15.04.2024, the matter was listed for hearing but despite several opportunities Personal Guarantor choose not to file reply. Hence, the Personal Guarantor's right to file reply was forfeited and the matter was heard on merits.

8. After perusal of documents on records and submissions of the Learned Counsel, we are of the considered view that the captioned petition is complete in all aspects, and the present case is therefore fit for admission. Ordered accordingly. Taking into consideration the facts as submitted by the Financial Creditor and the report submitted by the Resolution Professional, this bench is of the view that this matter is fit case for admission.

ORDER

9. In terms of the above, the C.P. (IB) No. 1036/MB/2021 filed under Section 95 of the IBC, 2016 is hereby **Admitted** and the Insolvency Resolution Process stands initiated against Mrs. Komal Machindar viz. the Respondent herein. We hereby direct as hereinafter:

- I. Initiate Insolvency Resolution Process against the Respondent/Personal Guarantor and moratorium in relation to all the debts is declared, from today *i.e.* date of admission of the application, and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on the repayment plan under Section 114 whichever is earlier as provided under Sec 101 of IBC, 2016. During the moratorium period,
- a. Any pending legal action or 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.

II. The Resolution Professional *viz.* **Mr. T. Narayana Swamy**, Insolvency Resolution Professional, having Registration No. IBBI/IPA-002/IP-N01078/2020-2021/13427, having address at 15, Shubhadeepa, 7th cross Bhuvaneshwarinagar, Hebbal Kempapura, H A Farm Post, Bengaluru 560024 [E-Mail: tnswamyubi@gmail.com] Mob: 9113537581] 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.

III. The publication of notice shall be made in two newspapers, one in English and other in Vernacular, which have wide circulation in the State where the Corporate Debtor and Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.

IV. 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 by the debtor under Sections 94 or 95. as the case may be, and
- b.* claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice. 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, business or trade on his behalf or in his name:
or
- b.* realize the assets of the debtor; or
- c.* administers or dispose of any funds of the debtor.

The repayment plan shall include the following, namely;

- a.* justification for preparation of such repayment plan and reasons based on which the creditors may agree upon the plan;
- b.* provision for payment of fee to the Resolution Professional;
- c.* such other matters as may be specified.

- V.** The Resolution Professional shall submit the repayment plan along with his 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.
- VI.** In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons thereof. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of IBC, 2016. The date of meeting should not be less than 14 days 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 provided under the provisions of Section 107 of IBC, 2016.

- VII.** 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 his functions and duties in compliance with the Code of Conduct provided under Section 208 of IBC, 2016.
- VIII.** The Resolution Professional shall submit his periodic reports before this Tribunal, every 30 days.
- IX.** The Applicant is directed to deposit **INR 2,00,000/-** (Indian Rupees Two lakhs) to the bank account of the Resolution Professional within one week, towards his fees. This shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.
- X.** The Registry is directed to communicate a copy of order, report and application within seven working days and upload the same on the website immediately after the pronouncement of order.

Sd/-
ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)

Sd/-
KISHORE VEMULAPALLI
MEMBER (JUDICIAL)
