

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-II**

C.P.(IB)-138/MB/2021

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

In the matter of

Indiabulls Housing Finance Limited

A Company incorporated under the Companies Act, 2013, having its registered office at M-62 & 63, 1st Floor, Connaught Place, New Delhi – 110001.

.....Applicant/Creditor

Versus

Mrs. Ritu Chhabria

Personal Guarantor to the Applicant, Having its Present Address at:

Indian Inhabitant, Residing at 13/14, New Solitaire CHS, Central Avenue Road, Santa Cruz West, Opp. Rose Manor School, Santacruz West, Mumbai – 400054.

.....Respondent/ Guarantor

Order Delivered on 29.04.2022

Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)
Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Applicant : Mr. Shyam Kapadia,
Advocate.
For the Respondent : Mr. Vaibhav K. Krishna,
Advocate.

ORDER

Per: Shyam Babu Gautam, Member (Technical)

1. This is a Company Petition filed by **Indiabulls Housing Finance Limited**, (“the Applicant”), under section 95 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 seeking to initiate Individual Insolvency Resolution Process (IRP) against **Mrs. Ritu Chhabria** (“the Personal Guarantor”).
2. This Company Petition is filed by the Applicant claiming total outstanding of Rs. 146,68,83,834/- (Rupees One Hundred Forty-Six Crore Sixty-Eight Lakh Eighty-Three Thousand Eight Hundred Thirty-Four Only).
3. In March 2017, Raghuleela Infraventures Private Limited (“**Corporate Debtor**”) approached Indiabulls Housing Finance Limited (“**IHFL/Financial Creditor**”) seeking total loan facilities for an amount of INR 283 Crores. Acceding to the request of the Corporate Debtor, the Financial Creditor sanctioned the following loans to the Corporate Debtor.

- i. Loan Account No. S000239814 – Loan Agreement dated March 14, 2017 for an amount of INR 150,00,00,000/- (Rupees One Hundred and Fifty Crores) sanctioned *vide* letter dated March 07, 2017 (“**Loan 1**”). The entire amount of INR 150,00,00,000/- (Rupees One Hundred and Fifty Crores) has been disbursed on March 30, 2017.
- ii. Loan Account No. S000239815 – Loan Agreement dated March 14, 2017 for an amount of INR 133,00,00,000/- (Rupees One Hundred and Thirty-Three Crores) sanctioned *vide* letter dated March 07, 2017 (“**Loan 2**”). A sum of INR 131,40,00,000/- (Rupees One Hundred and Thirty-Three Crores and Forty Lakh Only) was disbursed on March 23, 2017.

Loan 1 and Loan 2 are collectively referred to as the “**Loan Facilities**”.

4. The Learned Counsel for the Applicant submits that a Deed of Personal Guarantee was executed by Mrs. Ritu Chhabria, Personal Guarantor on 14.03.2017.
5. The total amount disbursed by the Financial Creditor to the Corporate Debtor under the aforesaid Loan Agreement is INR 146,68,83,834/- (Rupees One Hundred Forty-Six Crore Sixty-Eight Lakh Eighty-Three Thousand Eight Hundred and Thirty-Four Only).
6. To secure the loan Facilities, various security documents were executed, viz. deed of mortgage, deed of hypothecation, deeds of guarantee and share pledge agreements.

7. Demand Notice in Form B dated 07.07.2021 under Rule 7 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution of Personal Guarantor to Corporate Debtors) Rules, 2019 was issued to the Personal Guarantor claiming total outstanding of Rs.124,86,18,294/- (Rupees One Hundred Twenty-Four Eighty-Six Eighteen Thousand Two Hundred Ninety-Four Only) as on 09.03.2020, Along with pending income tax deducted at source (“TDS”) for an amount of Rs.11,09,04,439/- (Rupees Eleven Lakh Nine Lakh Four Thousand Four Hundred Thirty-Nine Only).
8. The said Demand Notice was served upon the Personal Guarantor via Blue Dart Courier on the date of 10.07.2020 However, the Personal Guarantor has not replied to the said Demand Notice.
9. The Respondent has submitted that the Financial Creditor has not disclosed that they had filed Petition with NCLT, Mumbai bearing CP (IB) No.1422/MB/IV/2020 India Bulls Housing Finance Limited Vs. Raghuleela Infraventures Private Limited for default in payment of Rs.144,11,30,937/- by the Company and this authority has passed Order dated 06.10.2021 admitting the Petition and initiating Corporate Insolvency Resolution Process against the Company and appointed IRP as the incharge for day to day management of the Company.

10. The Respondent contended that there were disputes between Financial Creditor and the Company regarding the various heading under which the Financial Creditor had raised demand for payment. The disputes and challenges were inter alia on (i) Charge of SCC charges, (ii) challenge to demand raised regarding accrued 2% interest of Rs.46,00,792/- on the first loan and Rs.13,19,935/- on the second loan, default interest of Rs.1,43,94,462/- for the first loan and Rs.1,91,26,525/- for the second loan and foreclosure charges of Rs.83,33,916/- for the first loan and Rs.23,90,925/- and on calculation of default interest, per day interest @2% and rate of interest @ 24.26%.
11. Further, Respondent submitted that at present stage the Corporate Insolvency Resolution Process has been initiated against the Company, the principal borrower. In addition, Orders of injunction are operating against the principal borrower in the arbitration proceedings pending in Delhi High Court. In addition, Orders passed by High Court, Bombay are operating against the Respondent pertaining to dealing with their movable and immovable assets and no useful purpose shall be served by initiating insolvency proceedings against the Respondent.
12. The Bench notes that a Demand Notice was issued by the Petitioner, to the Personal Guarantor, Mrs. Ritu Chhabria in respect of the unpaid debt due from Raghuleela Infraventures Private Limited (Corporate Debtor) under rule 7(1) of the IBC, 2016 on 14.03.2017. The Applicant

has produced proof of service that the said notice was delivered to the Personal Guarantor along with computation of the amount of default and other particulars. The Applicant mentions that there has been no response from the Respondent side to the demand notice or any payments from the Personal Guarantor, within the period of 14 days stipulated in the Demand Notice.

13. Based on the submissions made by the counsel for the Petitioner and the documents produced and placed on record before this Bench, the Bench has no doubt in its mind that there is a 'default' on the part of the Personal Guarantor by not fulfilling the debt owed to the Corporate Debtor, i.e., Raghuleela Infraventures Private Limited as per the Deed of Guarantee entered between the parties through the Deed of Guarantee dated 14.03.2017.
14. This Bench "Allows" the petition filed by Beacon Trusteeship Limited the Applicant, under Section 95 of the Insolvency & Bankruptcy Code, 2016 read with Rule 7(2) of the IBC Rules 2019 against Mrs. Ritu Chhabria, the Personal Guarantor of the Corporate Debtor, Raghuleela Infraventures Private Limited CP (IB) No.1422/MB/IV/2020. The Interim Moratorium as per Section 96(1) of the Code has commenced from the date of filing of Application.
15. That this bench appoints **Mr. Nitin Om Kothari**, having

Registration No. IBBI/IPA-001/IP-P02310/2020-2021/13477 and having office at: 5A/301, Alisha Nagar, Lokhanwala Township, Kandivali (East), Mumbai 400101, as the Resolution Professional (RP) in the matter under Section 97(5) of the Code. The fee payable to Resolution Professional (RP) shall be in accordance with the Insolvency and Bankruptcy Board of India (IBBI) Regulations/Circulars/Directions issued in this regard.

16. In this matter, the Resolution Professional, **Mr. Nitin Om Kothari**, shall exercise all powers as enumerated under Section 99 of the Code read with Rules made thereunder. He is directed to make the recommendations with reasons in writing for acceptance or rejection of this Application within the stipulated time as envisaged under the provisions of Section 99 of the Code. The Resolution Professional shall provide a copy of the report under sub-section 7 of Section 99 to the Creditor as soon as the same is filed before this Authority.
17. That this Bench also directs for an advance payment of Rs. 3,00,000/- (Rupees Three Lakh only) to be paid by the Petitioner to the Resolution Professional (RP) immediately to initiate the process which shall be adjusted towards the fee and expenses payable to the Resolution Professional (RP).
18. The interim-moratorium under Section 96(1) (a) of the Insolvency and Bankruptcy Code, 2016 has commenced on the date of filing of this application by the Financial

Creditor and will cease to have effect on the date of admission.

19. During such interim-moratorium period-
- i. any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and
 - ii. the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt
20. List this matter on 03.06.2022. The IRP is directed to file a Report by way of an Application in the matter for further proceedings.
21. The registry is directed to immediately communicate this order to the Financial Creditor, Personal Guarantor, Corporate Debtor and Resolution Professional even by way of email.

Sd/-

SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

29.04.2022
SAM

Sd/-

JUSTICE P. N. DESHMUKH
MEMBER (JUDICIAL)