



IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH (COURT- I) CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING  
HELD ON **30.01.2025** THROUGH VIDEO CONFERENCE

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**PRESENT:** HON'BLE SHRI SANJIV JAIN, MEMBER (JUDICIAL)  
HON'BLE SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

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**IN THE MATTER OF** : ASK Investment Managers Ltd  
Vs  
R Damodaran

**MAIN PETITION NUMBER** : CP(IB)/205/CHE/2022  
**(IA/MA) APPLICATION NUMBERS**

IA(IBC)/596/2024

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**ORDER**

**CP(IB)/205/CHE/2022**  
**IA(IBC)/596/2024**

Present: None for the Petitioner.  
None for IRP.  
None for Respondent.

Vide separate Order pronounced in the open Court, the Petition is **admitted**.  
Insolvency proceedings are initiated against the Respondent / Personal Guarantor.  
Mr. Madhu Desikan is appointed as the RP.  
IA(IBC)/596/2024 is **disposed of**.

-sd-  
[VENKATARAMAN SUBRAMANIAM]  
MEMBER (TECHNICAL)

-sd-  
[SANJIV JAIN]  
MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH-I, CHENNAI

**CP(IB)/205/(CHE)/2022**

*(Under Section 100 of the Insolvency and Bankruptcy Code, 2016)*

*In the matter of*

ASK Investment Managers Limited,  
Birla Aurora, 16 Level, Office Floor 9,  
Dr. Annie Beasant Road,  
Worli, Mumbai – 400 030.

*.... Applicant/Financial Creditor*

Vs

Mr. R.Damodaran  
New No.14, Old No. 18,  
Crescent Park Street, T.Nagar,  
Chennai – 600 017.

*.... Respondent/Personal Guarantor*

*Along with*

**IA(IBC)/596/CHE/2024**

**In**

**CP(IB)/205(CHE)/2022**

*(filed under section 99 of Insolvency and Bankruptcy Code, 2016)*

**Mr. Madhu Desikan**

IRP of R.Damodaran Personal Guarantor  
¼ Vijay laxmi Apartment, Balasubramaniam Street,  
Mylapore, Chennai – 600 004

*...Applicant/Interim Resolution Professional*

**CORAM :**

**SANJIV JAIN, MEMBER (JUDICIAL)**

**VENKATARAMAN SUBRAMANIAN, MEMBER(TECHNICAL)**

*For Applicant* : *Mr. Vishnu Mohan, Advocate*  
*For Respondent* : *M/s. Srenik S. Jain & A.Vikash, Advocates*  
*For IRP* : *M/s. Ramya, Advocate*



*Order pronounced on 30.01.2025*

**COMMON ORDER**

*(Hearing through hybrid mode)*

The present Application CP(IB)/205/2022 has been filed u/s. 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 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) Rules, 2019 by ASK Investment Managers Limited ("Financial Creditor") for initiating Insolvency Resolution Process against Shri R.Damodaran ("Personal Guarantor") in respect of Principal Amount of INR 229,04,09,761 (Rupees Two Hundred and Twenty Nine Crore Four Lakh Nine Thousand Seven Hundred and Sixty One Only) as on 28.02.2022. The Date of Default, as specified in Part-III of the present Application is 31.01.2018, i.e. the date on which the Arbitration Award was passed. This Application has been filed on 21.04.2022.

2. Part – I of the application sets out the details of the Applicant / Financial Creditor. It has its registered office in Birla Aurora, 16 level, Office Floor 9, Dr. Annie Beasant Road, Worli, Mumbai – 400 030.



3. Part-II of the application sets out the details of the Personal Guarantor. The address of the Respondent is mentioned as New No.14, Old No.18, Crescent Park Street, T.Nagar, Chennai – 600 017. The Respondent stood as a Personal Guarantor in respect of the loans availed by M/s. Ambojini Properties Developers Private Limited, the Corporate Debtor.

4. In part-III of the application, the applicant has given the debt amount of Rs.229,04,09,761 (Rupees Two Hundred and Twenty-Nine Crore Four Lakh Nine Thousand Seven Hundred and Sixty One Only) as on 28.02.2022.

5. Part – IV of the Application sets out the details of the Resolution Professional. The Applicant has proposed Mr.Madhu Desikan with IBBI Registration No. IBBI/IPA-001/IP-P00579/2017-2018/11021 as the Insolvency Resolution Professional in respect of the Respondent /Personal Guarantor.

6. It is stated that the Corporate Debtor *M/s. Ambojini Property Developers Private Limited* was originally incorporated as a Partnership firm on 15.07.2009 in the name of M/s. Ambojini Property



Developers and thereafter the said Partnership was converted into a Private Limited Company on 17.03.2011 in the name of *M/s. Ambojini Property Developers Private Limited*. In order to develop the lands into a project called "Sai Peace & Prosperity", the Corporate Debtor approached the applicant for funding and resultantly the applicant and the promoters including the respondent entered into a Subscription & Share Holders Agreement (hereinafter referred to as "SSHA") on 23.03.2011. Pursuant to the above SSHA, the applicant invested in the property an amount of Rs.49,50,00,000 (49,50,000 convertible Debentures of Rs.100/- each) and acquired 5,00,000 Equity Shares of Rs.10/- each totaling to Rs.50,00,00,000/-. On the same same day i.e., 23.03.2011, the respondent herein executed a deed of Personal Guarantee which is an unconditional and continuing guarantee, in favour of the applicant.

7. It is stated that in exchange of the investment, the Corporate Debtor had given certain rights to the applicant in the management of the affairs of the Corporate Debtor. Clause 15.2 (j) of SSHA provides for Events of Default, if all relevant approvals, including Projects Approvals, for the Project, including for construction, sale or other



disposal of Flats in the project have not been obtained within 12 (twelve) months from the first Closing Date. It is stated that if the event of default has occurred, as per Clause 15.3 of SSHA, the Investor viz., applicant can inter-alia call upon the guarantees issued for the benefits of the Investors and enforce the equitable mortgage on the lands.

8. It is stated that the Corporate Debtor did not obtain requisite approvals / permissions for the development of lands for a long period of 5 years and failed to comply with terms of the SSHA.

9. It is stated that the promoters including the Personal Guarantor made representations to the applicant to cede its charge on the project land in favour of ICICI Bank as they were in the process of raising funds. It was under the instance, the applicant executed the discharge receipt on a categorical understanding that the Corporate Debtor shall repay the said amount along with the interest thereon upon execution of Discharge Receipt. However, there was no such repayment by the Corporate Debtor or the promoters.



10. It is stated that as there is continuous default on the part of the promoters in transgression of the terms of SSHA, an Exit Agreement was entered into by the parties on 06.07.2015 according to which the applicant was to be given an exit in the manner prescribed in it. It is stated that upon failure of the execution of Exit Agreement, the matter was referred to Arbitration by the parties concerned in terms of Clause 20.5 read with Clause 20.6 & 20.7 of SSHA comprising of 3 Arbitrators out of which (the Promoters and the Company had to appoint one arbitrator which the promoter having the right to appoint) and the Investor representative to (on behalf of itself and the Investor) appoint the second arbitrator and the arbitrators so appointed to appoint a third arbitrator who shall act as the Chairman of the Arbitral Tribunal. Accordingly, Arbitral Tribunal comprising of Hon'ble Mr.Justice Shivraj Patil (Retd), Hon'ble Mr.Justice K.Govindarajan (Retd) and Hon'ble Mr.Justice D.K.Desh Mukh (Retd) was constituted.

11. It is stated that said Arbitral dispute was decided in favour of the applicant vide order dated 31.01.2018 awarding Rs.155,32,56,626/- together with interest @ 4% p.a. on daily basis till expiry of 3 months from the date of award and 12% p.a. after expiry of 3 months from the



date of award on the outstanding amount. The Arbitration Award is extracted hereunder:

**AWARD**


i) It is declared that the claimant became entitled to redeem the Debentures on 2/2/2016 for an amount of Rs.1,43,40,00,000/- (Rupees One Hundred Forty Three Crores Forty Lakhs only). The claimant is also entitled to Rs.11,92,56,626/- (Rupees Eleven Crores Ninety Two Lakhs Fifty Six Thousand Six Hundred Twenty Six only) towards interest on the said amount @ 4% p.a. on daily basis from 3/2/2016 till the date of this award i.e., 31/1/2018. Thus, totally the claimant is entitled ~~as on the~~ for Rs.1,55,32,56,626/- (Rupees One Hundred Fifty Five Crores Thirty Two Lakhs Fifty Six Thousand Six Hundred Twenty Six only) as on 31/1/2018. This amount shall carry compound interest @ 4% p.a. on daily basis till expiry of 3 (three) months from the date of the award or the payment by the respondents, whichever is earlier and interest @ 12% p.a. after expiry of 3 (three) months from the date of this award on the outstanding amounts. The respondents are directed jointly and severally to pay the said amount to the claimant in the manner provided in para-9.66 hereinabove. Till the said liability is discharged, the charge held by the claimant over the Said Land shall continue to be in force and in case of default / non-payment by the respondents, the claimant shall be at liberty to enforce the same in accordance with law.

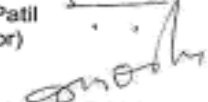
ii) The respondent No.2 is directed deposit Rs.20,37,00,000/- in the bank account of respondent No.1.

iii) The Parties shall bear their respective costs;

This award is passed on this Thirty First day of January Two Thousand Eighteen (31/1/2018) at Mumbai.

  
Justice K. Govindarajan  
(Co-Arbitrator)

  
Justice Shivaraj V. Patil  
(Presiding Arbitrator)

  
Justice D.K. Deshmukh  
(Co-Arbitrator)

12. It is stated that against the arbitration award, the Personal Guarantor along with others filed CARBPN0.705/2018 u/s 34 before the Hon'ble High Court of Bombay which is pending for admission and there is no stay against the award. It is stated that the applicant herein



has filed two Execution Petitions before the Hon'ble High Court of Madras which are also pending for adjudication.

13. It is stated that Shri R.Damodaran, who is one of the Directors in the Corporate Debtor had stood as the Personal Guarantor as stated supra to the credit facilities availed by the Corporate Debtor as per the terms and conditions of SSHA.

14. Per contra, the respondent personal guarantor in his counter has stated that in the capacity of promoter he entered into the SSHA and executed the Personal Guarantee dt.23.03.2011 to the applicant. It is stated that the execution proceedings and IBC cannot go together. It is stated that he has filed the objections u/s 34 of the Arbitration and Conciliation Act before the Hon'ble High Court of Bombay and the same are pending adjudication. He referred to Clause of 2, 3 and 4 of the Discharge Receipt dt.04.10.2013 wherein it has been stated that the loan amount of Rs.50,00,00,000/- was repaid together with interest thereon in full to the mortgagee. The respondent has filed various pronouncements/orders in support of his defence.

15. The applicant in his rejoinder, with regard to the Discharge



Receipt, has submitted that the promoters including the respondent had made representations to the applicant that they were in the process of raising funds from another lender viz., ICICI to infuse funds to CD and need to cede its charge and hence the applicant executed the discharge receipt on a categorical understanding that the CD shall repay the dues along with the interest thereon subsequent to the execution of discharge receipt.

**Report filed by the IRP**

16. Pursuant to the appointment of Mr. Madhu Desikan as Interim Resolution Professional (IRP) by this Tribunal vide order dated 20.12.2023, the IRP filed the report.

17. The IRP in his Report dated 11.02.2024, after due examination of the application, documents filed with the application, has submitted that the registration of the Discharge Receipt was to help the CD enabling to raise loans with M/s ICICI and after extensive contest by both sides before the Arbitrators, the Arbitration Award was passed on 31.01.2018 mentioning that the Personal Guarantor is liable jointly and severally with others to make good the amount claimed. Accordingly, based on the documents furnished, the personal guarantor is liable,



jointly and severally with other parties to pay the Applicant the sum claimed amounting to Rs. 229,04,09,761 as on 28.02.2022. Further, the debts are owed by the Personal Guarantor and he has not paid the debts so far. The IRP has stated that the Arbitrators were the retired High Court Judges and main Arbitrator happened to be Retired Supreme Court Judge, and the matter were hotly contested between the Corporate Debtor, the respondent and others and Award was passed in favour of the Applicant. The IRP has thus recommended for acceptance of Application as per NCLT order dated 20.12.2023 passed in the instant CP (IB)/205/(CHE)/2022 filed u/s 95(1) of IBC filed by Financial Creditor.

**OBSERVATIONS AND FINDINGS OF THIS TRIBUNAL:**

18. The submissions advanced by the Learned Counsel for Applicant, counter filed by the respondent, Rejoinder and the report of the IRP were perused in detail.

19. This instant CP originates from the Arbitration Award dt.31.01.2018. It is admitted fact that the Corporate Debtor had taken credit facilities by way of Subscriber and Share holders' Agreement on 23.03.2011 and apparently failed to comply with the terms and



conditions of SSHA and the respondent herein had given unconditional and continuing Personal guarantee to the applicant. The debt and default of the Corporate Debtor is established.

20. The IRP in his report has observed that the Applicant satisfies the requirement as set out in Section 95 of IBC, 2016. He has accordingly recommended for admission of the present application.

21. The Arbitral Tribunal in its Award dt.31.01.2018 has categorically directed that *“The respondents are directed jointly and severally to pay the said amount to the claimant in the manner provided in para-9.66 hereinabove. Till the said liability is discharged, the charge held by the claimant over the Said Land shall continue to be in force and in case of default / non-payment by the respondents, the claimant shall be at liberty to enforce the same in accordance with law.*

22. It is noticed that a Company Petition bearing No.CP(IB)/938/(CHE)/2018 filed by Nuvoco Vistas Corporation Limited, one of the operational creditors of the present Corporate Debtor, is pending before the NCLT, Bench-II Chennai in which CIRP against the Corporate Debtor has already been initiated vide order dated 09.09.2019.



23. It is stated by that applicant that consequent upon the initiation of CIRP of the Corporate Debtor, the applicant's claim as Financial Creditor for Rs.182.53 crores, on the basis of Arbitration Award has been admitted. The successful Resolution Applicant, viz., M/s. Casa Grand has taken over the Corporate Debtor as a going concern. An amount of Rs.79.89 Crores is payable to the applicant and Rs.152.15 Crore (approx.) remains due and payable to the applicant from the respondent herein.

24. Section 128 of the Indian Contract Act, 1872, provides that when a default is committed, the Principal Borrower and Surety are jointly and severally liable to the Creditor and the Creditor has right to recover its dues from either of them or from both of them simultaneously. Section 128 of the Indian Contract Act, 1872 is reproduced hereunder:

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

25. In the instant case, the date of default is reckoned as 31.01.2018 i.e., the date on which the Arbitration Award was passed by the 3 members Arbitral Tribunal. The present Application has been filed on 21.04.2022. The Applicant is entitled to benefit of limitation from



15.03.2020 to 28.02.2022 as extended by *Hon'ble Supreme Court in Suo Moto W.P. (Civil) No. 3 of 2020*. Thus, considering the date of default and the date on which the Application has been filed, we are of the opinion that this Application is within the period of limitation.

26. In light of the afore-stated observations, the instant CP(IB)/205/(CHE)/2022 is admitted. The Insolvency Resolution Process stands initiated against Mr.R.Damodaran viz. the Respondent herein.

27. This Tribunal had appointed Mr.Madhu Desikan, IBBI / IPA-001 / IP-P-00579 / 2017-2018 / 11021 as Interim Resolution Professional vide order dated 20.12.2023. Thus, we appoint **Mr.Madhu Desikan, IBBI / IPA-001 / IP-P-00579 / 2017-2018 / 11021** with AFA valid upto 31.12.2025 as Resolution Professional.

28. We hereby direct as follows;

- a. Initiate Insolvency Resolution Process against the Respondent/Personal Guarantor. The 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,

- (i) Any pending legal action or proceeding 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; and
- (iii) The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein:
- (iv) 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.

b. The Resolution Professional viz. **Mr.Madhu Desikan, IBBI / IPA-001 / IP-P-00579 / 2017-2018 / 11021** Insolvency Resolution Professional 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 Chennai Bench, inviting claims from all Creditors, within 21 days of such issue. The notice under Sub Section (1) of Section 102(2) shall include: -

- (i) details of the order admitting the application;
- (ii) particulars of the resolution professional with whom the claims are to be registered; and
- (iii) the last date for submission of claims.

c. 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.

d. The Resolution Professional, in exercise of the powers conferred under Section 104, shall prepare a list of creditors on the basis of:

(i) The information disclosed in the application filed by the debtor under Sections 94 or 95 as the case may be, and

(ii) 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) Realise 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.
- e. 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.
- f. 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 subsection (1) of Section 106 of IBC, 2016, for which atleast 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.
- g. 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.

- h. The Resolution Professional shall submit her periodic reports before this Tribunal, every 30 days.
- i. The Registry is directed to communicate to the concerned parties a copy of order within seven working days and upload the same on the website immediately after the pronouncement of order.

28. Accordingly, the IRP report filed in **IA(IB)/596(CHE)/2024** is taken on record and IA is **disposed of**. **CP (IB) / 205 / (CHE)/ 2022** stands **admitted**.

**-Sd-**

**VENKATARAMAN SUBRAMANIAM**  
Member (Technical)

**-Sd-**

**SANJIV JAIN**  
Member (Judicial)