



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

C.P. (IB) NO. 166 of 2024

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

**Indian Bank applying through Ms.
Aakriti Sood, Resolution Professional**

[Stressed Asset Management Large Branch]

.....Applicant/ Financial Creditor

Vs.

Kushan Nandy

..... Respondent/Personal Guarantor

Order pronounced on **07.11.2025**

Coram:

Shri. Prabhat Kumar

Shri Sushil Mahadeorao Kochey

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor : Ms. Geeta Lundwani

For the Resolution Professional : Mr. Amey Hadwale



For Personal Guarantor/ : Mr. Harsh Kesharia
Respondent

ORDER

Brief facts:

1. The present petition is filed on 25.1.2024 u/s. 95(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016/the Code") 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 **Indian Bank applying through Ms. Aakriti Sood, Resolution Professional** ("hereinafter referred to as Applicant/Financial Creditor/FC") for the purpose of initiating Insolvency Resolution Process against **Kushan Nandy**("hereinafter referred to as Personal Guarantor/Respondent"). The total outstanding debt including interest is **Rs. 9,92,73,378/- (Rupees Nine Crore Ninety Two Lacs Seventy-Three Thousand Three Hundred Seventy-Eight only)** as on 31.01.2023 as specified in Part III of the present application. The Date of Default, as specified in Part-III of the present petition is 20.05.2018 for the Personal Guarantor and the amount of debt in default is **Rs. 5,03,43,589/- (Rupees Five Crores Three Lakhs Forty-Three Thousand Five Hundred and Eighty-Nine Only)**.
2. The Applicant, Indian Bank (hereinafter referred to as the "Creditor"), is a banking company incorporated under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. Pursuant to the Gazette Notification dated 4th March 2020, Allahabad Bank was amalgamated with Indian Bank with effect from 1st April 2020. The Bank's registered office is situated at Indian Bank, Stressed Asset Management Branch, Mittal Chamber, Office No. 73, 7th Floor, Nariman Point, Mumbai – 400021. The present Application has been filed by Indian Bank through Ms. Aakriti Sood, Resolution Professional (Registration No. IBBI/IPA-003/IP-



N00062/2017-18/10548), having her registered address at 1A, Sanskriti Apartment, GH-22, Sector-56, Gurugram – 122011

3. Mr. Kushan Nandy, residing at Flat No. 1203, 12th Floor, Raheja Classiue, Building No. 7, Near Infiniti Mall, New Link Road, Andheri (West), Mumbai – 400053, is a Director of M/s Kushan Nandy & Kiran Shroff Pictures Private Limited. The Personal Guarantor had executed a Deed of Guarantee in favour of Indian Bank to secure the loan facilities extended to the said Corporate Debtor.

Submissions of the Applicant:

4. M/s Kushan Nandy & Kiran Shroff Pictures Private Limited (hereinafter referred to as the “Corporate Debtor”) having CIN U74120MH2012PTC238914 availed a term loan facility of ₹4 crores from Indian Bank under a medium-term loan agreement dated 23rd November 2015. Subsequently, the Creditor reviewed the existing facility and sanctioned an additional demand loan of ₹70 lakhs vide sanction letter dated 7th February 2017.
5. To secure the said facilities, Mr. Kushan Nandy (Personal Guarantor) executing a Deed of Guarantee dated 18th February 2017, guaranteeing repayment of all amounts due and payable by the Corporate Debtor to the Bank, together with applicable interest and charges until full and final repayment.
6. Upon violation of the terms of sanction and occurrence of default, the loan account was classified as a Non-Performing Asset (NPA) on 20th March 2018, and a demand notice dated 21st March 2018 was issued under Section 13(2) of the SARFAESI Act, 2002, calling upon the Corporate Debtor and its guarantors to repay the entire outstanding liability, along with interest, costs, and charges, within 60 days, i.e., by 20th May 2018..
7. On 3.12.2018, a One-Time Settlement (OTS) offer was proposed for



settlement of debt owed by the Corporate Debtor, which is signed by Respondent Personal Guarantor, Kiran Shroff and Ashmit Kunder, the guarantors. Thereafter, the Respondent herein has sent an email dated 27.1.2020 informing an offer for sale of Lokhandwala Property which can reduce the liability sufficiently. It is further stated that, on 29th February 2020, the acknowledgment of debt was reiterated with a consent to peacefully hand over possession of the property; and on 15th April 2025, a fresh OTS proposal offering to repay ₹20,00,000/- towards closure of the loan accounts was submitted.

8. It is further stated that the period between 15.03.2020 to 28.02.2022 is to be excluded due to Covid-19 as per the Hon'ble Apex Court judgement. The Applicant submits that, in view of that, a fresh limitation commenced on 28.02.2022, and since the petition was filed on 25th January 2024, it is within limitation and liable to be admitted.

Submission of the Respondent:

9. The Respondent has filed an application IA 5201 of 2024 challenging the present Application on ground of limitation. He has also filed his reply contesting the present application on following grounds :
 - a. The present Company Petition has been filed by the Petitioner seeking initiation of personal insolvency proceedings against the Respondent for the alleged default committed by *Kushan Nandy and Kiran Shroff Pictures Pvt. Ltd.* ("the Principal Borrower"), however, no Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016 has been initiated or is presently pending against the said Principal Borrower. Therefore, in the absence of CIRP proceedings against the Corporate Debtor, this Hon'ble Tribunal lacks the requisite jurisdiction to entertain the present petition, as such matters appropriately fall within the purview of the Hon'ble Debt Recovery Tribunal.
 - b. The alleged default arose on 20.03.2018, while the guarantee was invoked only on 23.02.2023. The guarantee was invoked only upon issuance of the



statutory notice under Section 95 of the IBC (Form B).

- c. The Petitioner has relied on the Demand Notice dated 21.03.2018 as invocation of the guarantee and filed an Additional Affidavit dated 10.10.2025 changing the date of default to 23.02.2023 . Even assuming the default occurred on 20.05.2018, the Petition filed after three years (post 19.05.2021) is barred by limitation, since the limitation period commences from the date of default. Any acknowledgments made after 20.05.2018 do not extend the period of limitation under Section 18 of the Limitation Act, and the Petitioner has not sought any extension or condonation of delay under Section 5 thereof.

Report of Resolution Professional:

10. This Tribunal appointed Ms. Aakriti Sood, as the Resolution Professional vide order dated 10.04.2024 and directed him to file his report under section 99 of the Code. Ms. Aakriti Sood, having Insolvency Registration No. IBBI/IPA002/IP-N01224/2022-2023/14221, has office address as 1A, Sanskriti Apartment, GH-22, Sect or 56, Gurugram 122011 and email: contactaakritisood@gmail.com.
11. In view of the aforementioned order of this Tribunal, the RP submits his report recommending for approval of the said application filed on 03-05-2024. The ground(s) for admission of the present application, as recorded in the said RP report, are reproduced in-verbatim as hereinafter:

<i>Sr.</i>	<i>Provision</i>	<i>Remarks</i>
1.	<i>Section 99(8): Where the resolution professional finds that the debtor is eligible for a fresh start under Chapter 11, the resolution professional shall submit a report recommending that the application</i>	<i>RP submits that considering the facts of the case and the debtor/personal guarantor does not satisfy</i>



	<p><i>by the debtor under section 94 be treated as an application under section 81 by the Adjudicating Authority.</i></p>	<p><i>the requirements under section 80(2) and hence is not eligible for a “fresh start” under chapter II. The RP submits that the provisions of section 99(8) of the code does not apply to the present case in hand.</i></p>
2.	<p><i>Section 99(9): The resolution professional shall record the reasons recommending for the acceptance or rejection of the application in the report under sub-section (7).</i></p>	<p><i>The Resolution Professional has filed the report before the Hon’ble NCLT recommending acceptance of the application. It is stated that Mr. Kushan Nandy had executed a deed of guarantee in favour of the Financial Creditor to secure repayment of the debt of Kushan Nandy and Kiran Shroff Pictures Private Limited. Since the corporate debtor has defaulted and the debt remains unpaid, the personal guarantee of Mr. Kushal Nandy was invoked by the Financial Creditor. The present report records the reasons for recommending</i></p>



		<i>acceptance filed by RP on behalf of financial creditors for further orders under section 100 of the code.</i>
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The RP submits his recommendation as follows:

It is humbly submitted by the RP that the present application meets the requisite requirements of the Code as is provided in this report and this Hon'ble NCLT may kindly pass appropriate orders under section 100 of the Code, "Admitting" the present application filed by Financial Creditor through the RP in the matter of Kushal Nandy and declare "Moratorium" under section 101 of the Code and issue "Public Notice" for inviting the claims under section 102 of the Code and may pass such orders as this Hon'ble NCLT deem necessary.

Findings & Analysis:

12. We have heard the learned counsel appearing for both sides and carefully examined the pleadings, documents on record, as well as the report of the Resolution Professional.
13. In the present case, this Bench, vide order dated 10.04.2024, appointed Ms. Aakriti Sood, Insolvency Professional (Registration No. IBBI/IPA002/IP-N01224/2022-2023/14221), as the Resolution Professional in terms of Section 97(3) of the Code.
14. Under Section 60(1) of the Insolvency and Bankruptcy Code, 2016, the National Company Law Tribunal (NCLT) is the Adjudicating Authority for insolvency and bankruptcy proceedings relating to personal guarantors to corporate debtors. The Tribunal's jurisdiction is independent and not contingent upon the pendency or initiation of CIRP against the corporate debtor. The Hon'ble Supreme Court in ***State Bank of India v. Mahendra Kumar Jajodia, 2022 SCC OnLine SC 908***, has held that an "application under Section 95 of the Code is maintainable against a personal guarantor,



even in the absence of pending CIRP or liquidation proceedings against the corporate debtor”. Further, in *Lalit Kumar Jain v. Union of India*, (2021) 9 SCC 321, “the Apex Court affirmed that the liability of a personal guarantor is distinct and co-extensive, and proceedings against one do not preclude action against the other”.

15. It is further clarified that any Original Application (OA) proceedings pending before the Debt Recovery Tribunal (DRT) under the Recovery of Debts and Bankruptcy Act, 1993, do not bar the initiation of insolvency proceedings under Section 95 of the IBC. The two processes operate in distinct legal domains—while DRT proceedings concern individual debt recovery, the IBC process seeks collective insolvency resolution. Moreover, once the present application is filed, the interim moratorium under Section 96 of the Code automatically comes into effect, staying all other proceedings, including those before the DRT, in respect of the same debt. Therefore, the present petition under Section 95 of the Code is maintainable before this Tribunal. The objection raised by the Respondent on the ground of lack of jurisdiction is rejected.
16. Upon perusal of the record, including the demand notice dated 21.03.2018 issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), and the statutory demand notice dated 08.02.2023 issued under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2019. The invocation of guarantee through notice u/s 13(2) has been held to be valid invocation in case the personal guarantor is also called upon to discharge his/her liability under the guarantee vide such notice as also held by Hon’ble NCLAT in *Asha Basantilal Surana v. State Bank of India & Ors.* [Company Appeal (AT) (Insolvency) No. 84 of 2025 & I.A. No. 334 of 2025]. Accordingly, this Tribunal holds that the Date of Default stood triggered and crystallized upon expiry of the 60-day period from the SARFAESI notice, i.e., on 20.05.2018. Accordingly, for the purposes of the present proceedings under



the Insolvency and Bankruptcy Code, 2016, the Date of Default is determined as 20.05.2018.

17. The Hon'ble Supreme Court, in *Suo Motu Writ Petition (Civil) No. 3 of 2020, read with M/s Arif Azim Co. Ltd. v. M/s Aptech Ltd., (2004) 3 SCR 73 : 2004 INSC 155*, has categorically held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for the purpose of computation of limitation, in view of the disruption caused by the COVID-19 pandemic. Further, it was clarified that the balance limitation available as on 15.03.2020 would recommence from 01.03.2022, thereby extending the limitation period accordingly.
18. In the present case, even if limitation is computed from 20.05.2018, the filing of Original Application (O.A.) No. 79 of 2019 before the Hon'ble Debt Recovery Tribunal, Mumbai, on 23.03.2019, establishes that the Financial Creditor has been diligently pursuing its remedies. The pendency of the said DRT proceedings, coupled with the exclusion of the COVID-19 period as directed by the Hon'ble Supreme Court in *Suo Motu Writ Petition (C) No. 3 of 2020*, ensures that the present claim remains well within limitation. Nonetheless, the Respondent herein has sent an email dated 27.1.2020 informing an offer for sale of Lokhandwala Property which can reduce the liability sufficiently. In our considered view the said communication effectively indicates the existence of jural relationship as debtor creditor between the parties and subsisting liability. Accordingly, the communication of an offer for sale of one of mortgaged property to sufficiently reduce the liability constitutes a valid acknowledgement of debt in terms of Section 18 of the Limitation Period. Accordingly, the limitation initially expiring on 19.05.2021 gets further extended from 27.1.2020 for further period of 3 years. The balance period available as on 15.3.2020 is to commence from 1.3.2022 in view of Hon'ble Supreme Court decision in case of *Arif Azimji (Supra)* explaining the effect of the Order in *Suo Moto writ Petition*. Therefore, a period of 2 years, 11 months and 13 days becomes available from 1.3.2022



thus taking expiry of limitation period to the year 2025, while the present petition has been filed on 25.1.2024 itself. Thus, there is no merit in ground of limitation and the present petition is well within the extended period of limitation.

19. Furthermore, upon the filing of the present personal insolvency petition, an interim moratorium under Section 96 of the Insolvency and Bankruptcy Code, 2016, automatically came into effect, rendering the pending DRT proceedings in abeyance. Consequently, the pendency of the DRT case does not affect the maintainability of the present petition under Section 95 of the Code, which constitutes a distinct statutory proceeding. Hence the contention of the Respondent that the present proceedings are barred by limitation or premature is rejected.
20. It is prima facie established that there exists a financial debt due from the Personal Guarantor under the Deeds of Guarantee executed in favour of the Financial Creditor, and that default has occurred. The debt arises from two credit facilities extended to the Corporate Debtor, namely, Term Loan–I of Rs. 4,00,00,000/- (Rupees Four Crores Only) and Term Loan–II of Rs. 70,00,000/- (Rupees Seventy Lakhs Only), aggregating to Rs. 4,70,00,000/- (Rupees Four Crores Seventy Lakhs Only). The total outstanding debt, including interest, amounts to Rs. 9,92,73,378/- (Rupees Nine Crore Ninety-Two Lakhs Seventy-Three Thousand Three Hundred Seventy-Eight Only) as on 31.01.2023, as specified in Part III of the present application. The Guarantee limits the liability of the Respondent to a sum of Rs. 4,70,00,000/- with interest, accordingly the present default is within said limitation also. The Date of Default, as recorded in Part III of the petition, is 20.05.2018 in respect of the Personal Guarantor, and the amount of debt in default stands at Rs. 5,03,43,589/- (Rupees Five Crore Three Lakhs Forty-Three Thousand Five Hundred Eighty-Nine Only). The said amount exceeds the threshold limit of Rs. 1.00 crore
21. The Financial Creditor has issued statutory Demand Notice dated 08.02.2023



in Form B under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019. The notice required the Personal Guarantor to pay the outstanding dues aggregating to Rs. 9,92,73,378/-. (Rupees Nine Crore Ninety Two Lacs Seventy-Three Thousand Three Hundred Seventy-Eight only) as on 08.02.2023, together with further interest and charges.

22. Upon consideration of the record, it is clear that the Corporate Debtor, M/s Kushan Nandy & Kiran Shroff Pictures Private Limited, committed defaults in repayment, and the Personal Guarantor, is co-extensively liable under the Guarantee Deed. The requirements under Section 95 of the Code stand satisfied.
23. Since the liability of the guarantor is co-extensive with that of the borrower under Section 128 of the Indian Contract Act, 1872, we find no hesitation in admitting the Personal Guarantor into the insolvency resolution process in terms of Section 100(2) of the Code.
24. IA 5201 of 2024 is dismissed for the aforesaid reasons and disposed of accordingly.

ORDER

25. Considering the facts and circumstances of the case, and upon perusal of the pleadings, documents, and submissions placed on record, this Tribunal is satisfied that a case is made out for initiation of the Insolvency Resolution Process under Section 95 of the Insolvency and Bankruptcy Code, 2016. In view of above, **C.P. (IB)/166/MB/2024** filed under Section 95 of the Code is hereby **admitted**, and the Insolvency Resolution Process is initiated against Mr. Kushan Nandy, the Personal Guarantor to the Corporate Debtor. The Tribunal further directs as follows: —

- I. Initiate Insolvency Resolution Process against the 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 Section 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 Corporate 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 Petitioner states that the proposed Resolution Professional **Ms. Aakriti Sood** 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 publication. The Resolution Professional shall discharge the functions/duties casted upon him under the provisions of the Code in this relation within time bound manner and shall be empowered to exercise the powers vested in him for discharge of such functions/duties.

III. The Resolution Professional shall submit his periodic reports before this Tribunal as required under the I&B Code or Regulations made thereunder.



- IV. The Applicant is directed to deposit **INR 2,00,000/-** (Indian Rupees Two lakhs) or such lesser amount as is mutually agreed between the Resolution Professional and the Applicant Bank, to the bank account of the Resolution Professional within **1 week**, towards his fees and out of pocket expenses to be incurred in relation to the process, however, the fees and such out of pocket expenses shall be such as is mutually agreed with the Creditor. Needless to say, this shall be subject to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.
- V. The Registry is directed to communicate a copy of order to the Resolution Professional immediately after the pronouncement of order, and upload the same on the website within **7** working days after the pronouncement of order.

26. Ordered accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Sushil Mahadeorao Kochey
Member (Judicial)