IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-IV

CP (IB) No.43/MB-IV/2022

Under Section 95 of the IBC, 2016

Read with

Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019

In the matter of

LICHFL Trustee Company Private Limited

…Applicant/ Financial Creditor

v/s.

Harshada Natesh Shinde

…Personal Guarantor/Respondent

Anudan Properties Private Limited

…Corporate Debtor

Order Delivered on: 11.04.2022

Coram:

Mr. Rajesh Sharma Hon'ble Member (Technical)	Mr. Kishore Vemulapalli Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner : Mr. Nimay Dave, Advocate.

For the Respondent : Mr. Shyam Kapadia, Advocate.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. The Court is convened through video conferencing today.

2. The Petition is fixed for final hearing on 01.06.2022.

3. This is a Company Petition filed by **LICHFL Trustee Company Private 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 Personal Insolvency Resolution Process (CIRP) against **Harshada Natesh Shinde** ("the Personal Guarantor").

4. This Company Petition is filed by the Applicant claiming a total outstanding of Rs.163,90,84,518/- (Rupees one hundred sixty-three crore ninety lakh eighty-four thousand five hundred eighteen only).

5. The Learned Counsel for the Applicant submits that the Petition bearing CP No. 1147/MB/2020 under section 7 of the Code was admitted against Anudan Properties Private Limited (the 'Corporate Debtor') on 15.03.2021.

6. The Learned Counsel for the Applicant submits that the Personal Guarantee was invoked via Demand Notice dated 10.06.2021 by the Applicant.

7. Demand Notice dated 10.06.2021 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.163,90,84,518/- (Rupees one hundred sixty-three crore ninety lakh eighty-four thousand five hundred and eighteen only). The said Demand Notice was served upon the Personal Guarantor via registered post on 25.06.2021. The Personal Guarantor has not replied to the said Demand Notice.

8. The Learned Counsel appearing for the Personal Guarantor submits that the Demand Notice dated 10.06.2021 issued, as stated above, by the Financial

Creditor to the Personal Guarantor, was not in the proper format as prescribed under Schedule 1 of the Deed of Guarantee ('Promoter's Guarantee') dated 21.10.2016 (Annexure 'A' at page 17-44 of the Petition). While going through the contents of the Demand Notice, the Bench has observed that the essential contents of the Demand Notice as mentioned in the Deed of Guarantee under Schedule 1 were included in the Demand Notice dated 10.06.2021 and the Counsel for the respondent is only trying to base his arguments on the *form* rather than the *substance*. The requisite substance of the Demand Notice as required under the Deed of Guarantee was duly covered in the Demand Notice dated 10.06.2021 and the Bench is of the considered view that the Demand Notice served upon the Personal Guarantor meets the requisite requirement of Demand Notice for invocation of Personal Guarantee.

9. The Learned Counsel for the Applicant submits that the Petition was served upon the Personal Guarantor to his 3 different addresses via registered post on 18.01.2022.

ORDER

I. This bench appoints **Mr. Abhijit S. Gokhale, Insolvency Resolution Professional having Registration No. IBBI/IPA-002/IP-N00964/2020-21/13092**; as the Resolution Professional (RP) in the matter. 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.

II. The Resolution Professional shall examine the Application within 10 days from the date of his appointment and submit its report to the Adjudicating

Authority recommending for approval or rejection of the Application as referred under section 99(1) of the Code.

III. That this Bench also directs for an advance payment of Rs.2,00,000/- (Rupees two lakh only) to be paid by the Financial Creditor 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).

IV. 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.

V. 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

VI. 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. Compliance report of the order by designated Registrar is to be submitted today.

Sd/-
Kishore Vemulapalli
Member (Judicial)

Sd/-
Rajesh Sharma
Member (Technical)

11.04.2022