

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. 5

CP (IB) -255/MB/2021

Under Section 95 of the I&B Code, 2016
read with Rule 7(2) of the I & B
(Application to Adjudicating Authority for
Insolvency Resolution Process for
Personal Guarantors to Corporate
Debtors) Rules, 2019

In the matter of

IDBI Trusteeship Services Limited

(acting in its capacity of debenture trustee in
trust and for the benefit of Debenture Holders
(namely) ICICI Prudential Real Estate AIF- I
including its successors, transferees and/ or
assignees)

Asian Building, Gr. Floor, 17 R Kamani
Marg, Ballard Estate, Mumbai-400001

.... Applicant/ Creditor

Vs.

Mr. Kashyap K. Mehta

(Personal Guarantor of Sunshine Housing
and Infrastructure Private Limited)

Address- Sunshine plaza, Sixth Floor,
Naigaum Cross Road Dadar (East),
Mumbai-400014.

.... Respondent/ Personal Guarantor

Order Pronounced on: 03.08.2021

Coram:

Hon'ble Suchitra Kanuparthi, Member (Judicial)

Hon'ble Chandra Bhan Singh, Member (Technical)

For the Petitioner: Mr. Siddharth Ranade Adv., Mr. Prakshal Jain Adv.,
Ms. Ritika Ajitsaria Adv. & Ms. Angelika Awasthi Adv.
i/b Trilegal.

For the Respondent: None Present.

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. The court has been convened through Video Conferencing to hear the matter.
2. ICICI Prudential Real Estate AIF I (AIF I) disbursed Rs. 40,00,00,000/- to Sunshine Housing and Infrastructure Private Limited (SHIPL), by subscribing to 4,000 unlisted, unrated, secured, redeemable non-convertible debentures of a face value of Rs. 1,00,000/- each issued by SHIPL pursuant to a Debenture Subscription Agreement dated 06.09.2016.
3. The Petition has been filed under Section 95 of the I & B Code through the Creditor IDBI Trustee Services Limited (Debenture Trustee) against Mr. Kashyap K. Mehta, Personal Guarantor to the Corporate Debtor, Sunshine Housing and Infrastructure Private Limited. The Bench notes that the IDBI Trustee Services Limited (Debenture Trustee) was appointed as the Debenture

Trustee for the Debentures by way of a Debenture Trust Deed dated 26.10.2016. As per the Debenture deed the IDBI has been appointed to initiate personal insolvency against the Personal Guarantor of the Corporate Debtor, i.e., Sunshine Housing and Infrastructure Private Limited.

4. As per the submissions made by the Ld. Counsel for the Applicant, the Corporate Debtor Company (Sunshine Housing and Infrastructure Private Limited) was admitted under Corporate Insolvency Resolution Process by an NCLT Mumbai Order dated 08.05.2019 vide CP No. 4733(IB)/MB/2018.

5. The debt obligation arises out of a deed of guarantee dated 7 September 2016 (Personal guarantee) issued by the Personal Guarantor in favor of the Debenture Trustee to secure the Debentures (defined below) issued by Sunshine Housing and Infrastructure Private Limited (SHIPL) pursuant to the Debenture Subscription Agreement dated 6 September 2016 (DSA). The Personal Guarantee secures inter alia the performance of payment obligations of SHIPL under the DSA and any failure to discharge such obligations renders the Personal Guarantor liable to pay such amounts in terms of its obligations under the Personal Guarantee. A copy of the Personal Guarantee is annexed herewith as Annexure C. The total amount in default under the Personal Guarantee as on 17 February 2021 is INR 87,73,06,800/- (Indian Rupees Eighty-Seven Crores Seventy-Three Lacs Six Thousand Eight Hundred Only).

6. ICICI Prudential Real estate AIF I (AIF I) disbursed INR 40,00,00,000/- (Indian rupees Forty Crores Only) by subscribing to 4,000 unlisted, unrated, secured, redeemable non-convertible debentures of a face value of INR 1,00,000/- each (Indian rupees One Lakh Only) (Debentures) issued by SHIPL pursuant to the DSA.

Pursuant to DSA, SHIPL issues 4,000 Debentures with a term of 42 months to

AIF. A copy of the DSA is annexed to the Petition. IDBI Trusteeship Services Limited was appointed as the Debentures Trustee for the Debentures by way of a Debenture Trust Deed dated 26 October 2016 (DTD). A copy of the DTD is annexed to the Petition.

7. AIF I has disbursed amounts to SHIPL towards the Debentures on the following dates:

Date	No. of Debentures issued	Amount (in INR)
12/09/2016	2500	25,00,00,000/-
26/05/2017	500	5,00,00,000/-
22/09/2017	1000	10,00,00,000/-
TOTAL	4000	40,00,00,000/-

A copy of the Transaction Statement issued by the National Securities Depository Limited recording the Debentures held by AIF I is annexed to the Petition. Amongst other securities, the Debentures were secured by the Personal Guarantee.

FINDINGS:

8. The Bench notes that to the continuing default by SHIPL, the Debenture Trustee invoked the Personal Guarantee vide notice dated 12.07.2019 calling upon the Personal Guarantor to pay the outstanding amount as on the date of notice.

The Deed of Guarantee Clause 10 is reproduced as below: -

“This Guarantee shall be a continuing security binding the Guarantors until the payment of the entire amounts due and discharge of the secured obligations and shall remain in full force and effect till the final Settlement Date”.

9. The Bench notes that a Demand Notice was issued by the Debenture Trustee, to the Personal Guarantor in respect of the unpaid debt due from M/s. Sunshine Housing and Infrastructure Private Limited (Corporate Debtor) under rule 7(1) of the IBC, 2016 on 17.12.2020. The Applicant has produced proof of evidence that the said notice was delivered to the Personal Guarantors 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. Thereafter, on 11.01.2021, the Personal Guarantor has sent the short reply saying that he does not have access to SHIPL's record and seeking 3 weeks' time to respond to the demand notice the reply filed by the Personal Guarantor is reproduced as below:

KASHYAP K. MEHTA

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26/27, A-Wing, Ahuja Towers, Rajabhau Desai Marg, Prabhadevi, Mumbai – 400025.
Mob:- +91 98700 14601 E-mail: kashyapkmehta@hotmail.com

Date : January 11, 2021

To,
IDBI Trusteeship Services Ltd.
Ground Floor, Asian Building,
17, R Kamani Rd, Ballard Estate,
Fort, Mumbai - 400001

Sub : Preliminary Response to The Demand Notice dated 17.12.2020 issued by
IDBI Trusteeship Services Ltd.

Dear Sir,

I am in receipt of the demand notice dated 17.12.2020 issued 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 Debtor) Rules 2019 in respect of the alleged unpaid debt in default due from Sunshine Housing & Infrastructure Pvt. Ltd. (SHIPL).

You are aware that Covid-19 has posed several logistical constrains and has forced organizations to work with restricted work force. In fact, taking into consideration, these difficulties, the Hon'ble Supreme Court has condoned all delays in approaching courts during the pandemic period.

Considering that I am no longer involved in the affairs of SHIPL, I don't have ready access to SHIPL's records. I am trying to obtain relevant information/document to answer, the misplaced and incorrect demand notice issued to me.

In these circumstances, I, while denying contents of the demand notice and my liability to discharge the wrongful demand raised in the notice, seek 3 weeks' time to respond to the same. In the meantime, you are called upon not to take any precipitative action to complicate the issues, any further.

Thanking you.

Regards,



Kashyap Mehta



10. The Bench notes that as required under the I&B Code, after 14 days from the date of service of the demand notice, the Petition under Section 95 in prescribed Form 'C' was filed on 25.02.2021 and was served and copy of it was delivered to the Respondent side on 26.02.2021. A proof of delivery has been annexed by the Applicant.

11. The Bench notes that as per Form 'C' of the Petition, the total debt from the Personal Guarantor by way of personal guarantee given to M/s. Sunshine Housing and Infrastructure Private Limited, the Corporate Debtor, including the rate of interest as on 17.02.2021 stands at Rs.87,73,06,800/-.

12. The Bench, after hearing the Petitioner, notes that the Corporate Guarantor has not filed any submissions and on the date of hearing there was no representation from the side of the Respondent, i.e., the Personal Guarantor.

13. Based on the submissions made by the Applicant 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., M/s. Sunshine Housing and Infrastructure Private Limited as per the Deed of Guarantee entered between the parties through the Deed of Guarantee dated 07.09.2016.

14. This Bench "Allows" the Application filed by IDBI Trusteeship Services Limited Creditor via ICICI Prudential Real Estate AIF- I the Financial Creditor, under Section 95 of the Insolvency & Bankruptcy Code, 2016 read with Rule 7(2) of the IBC Rules 2019 against Mr. Kashyap K. Mehta, the Personal Guarantor of the Corporate Debtor, M/s. Sunshine Housing and Infrastructure Private Limited in CP (IB) -255/MB/2021. The Interim Moratorium as per Section 96(1) of the Code has commenced from the date of filing of Application,

i.e. 26.02.2021

15. The Bench makes it clear that from the date of filing this Application, i/e. 26.02.2021, by the Petitioner, Interim Moratorium commences as stipulated under Section 96(1) of the Code in relation to all the debts of the Personal Guarantor. During the Interim Moratorium period: (i) any pending legal action or proceedings 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. As per Section 96(3) of the Code, the provisions of sub-section 96(1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

16. The Bench appoints Mr. Rajesh Kumar Mittal having Registration No. IBBI/IPA-002/IP-N00083/2017-18/10224 having address at 204/A, Navjyoti Darshan CHS, Near Purnima Talkies, Murbad Road, Kalyan (West), Mumbai, Maharashtra, 421301 as a Resolution Professional. The bench confirms the appointment of the Resolution Professional in the matter.

17. The Bench notes that the appointment of Resolution Professional under Section 97 of the Code is critical and essential not only for the Applicant but also to safeguard the assets of the Personal Guarantor in terms of the provisions of the Code.

18. In this matter, the Resolution Professional, Mr. Rajesh Kumar Mittal, shall exercise all the powers as enumerated under Section 99 of the Code read with Rules made there under. 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.

19. List this matter for further proceedings hearing on 27.09.2021.

Sd/-
Chandra Bhan Singh
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member(Judicial)