NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

COURT-III

I.A. NO. 155 OF 2023

IN

C.P./IB/4190/MB/2018

Filed by

Lakshya Swarupa Housing Projects Pvt. Ltd.

...Applicant/Financial Creditor

Vs.

Rajendra Kumar Girdhar (RP)

....Respondent No. 1

ICICI Prudential Real Estate AIF I

....Respondent No. 2

ICICI Prudential Asset Management Company Ltd.

....Respondent No. 3

IDBI Trusteeship Services Limited

....Respondent No. 4

In the matter of

ICICI Prudential Real Estate AIF

...Financial Creditor

Versus

M/S. Mayur Pankh Properties Pvt Ltd. (MPPL)

...Corporate Debtor

Reserved for order on: 03.02.2023

Order Pronounced on: 17.05.2023

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Madhu Sinha, Member (Technical)

Appearance:

For the Applicant: Mr. Rajan D. Agarwal, Mr.Varun Agarwal (Advocate)

For the Resolution Professional: Trilegal (Advocates), Rajendra Kumar Girdhar (Resolution Professional)

Per: Madhu Sinha, Member (Technical)

ORDER

1. This Interlocutory Application is filed by M/s Lakshya Swarupa Housing Projects Pvt. Ltd, Applicant, against the Resolution Professional (Respondent no.1) of Mayur Pankh Properties Pvt. Ltd. (MPPL, hereinafter referred to as "the Corporate Debtor"), ICICI Prudential Real Estate AIF I (Respondent no. 2), ICICI Prudential Asset Management Company Ltd (Respondent no. 3) and IDBI Trusteeship Services Limited (Respondent no. 4).

   Praying for the following reliefs:

   a. Direct Respondent No. 1 to proportionately reduce/adjust the claim of Respondent No.4 in the CIRP of the Corporate Debtor;

   b. Order re-constitution of the CoC pursuant to prayer A above;

   c. Grant any other relief that this Hon'ble Tribunal deems fit considering the facts and circumstances of the case.

2. Brief submissions of the Applicant are as follows:

   i. The Applicant states that the Corporate Debtor issued corporate guarantee in favor of ICICI Prudential Real Estate AIF 1(Respondent No. 2), for securing the amount lent by ICICI Prudential Real Estate AIF 1 to Sunshine Housing and Infrastructure Pvt. Ltd. (herein after referred as SHIPL) by subscribing to debentures issued by SHIPL. Respondent No. 4 was appointed as the Debenture Trustee for the debentures issued by SHIPL.

Since then, both the companies SHIPL and MPPL have gone under CIRP, RP's have been appointed and claims have admitted against them by their respective RP's.

ii. In the CIRP of the Corporate Debtor (MPPL), the Respondent No. 4 Lodged claim as a financial creditor for dues payable on invocation of guarantee provided by the Corporate Debtor (MPPL) for debentures issued by SHIPL. The claim as filed by Respondent No.4 for Rs 56,88,22,000/- was fully admitted by the IRP/RP of the Corporate Debtor (MPPL).

iii. The Applicant in this IA states that, In the CIRP of SHIPL this Hon'ble Tribunal has approved a Resolution Plan vide their Order dated 11.02.2022 and ICICI Prudential Real Estate AIF 1 in their capacity as Debenture holders have been allotted a RERA carpet area of 19,200 sq. ft. valued at Rs 44,64,00,000/-. In the same Resolution Plan, the Respondent No. 4 in their capacities as Debenture Trustee for SHIPL, acting on behalf of ICICI Prudential Real Estate AIF 1 and others has been allotted a RERA carpet area of 1800 sq. ft. valued at Rs 4,18,50,000/- in a residential project known as "Galaxy Project" to be developed by the Successful Resolution Applicant (SRA), Nandivardhan Infrastructure Limited (hereinafter referred to as "the Project"). Additionally, the SRA was also directed to pay an amount of INR 5,00,00,000 to ICICI Prudential Real Estate AIF 1 within six months from the date of approval of the SHIPL Resolution Plan by this Hon'ble Tribunal.

iv. The Applicant states that Allotment of space (19200 sq feet RERA carpet @ Rs. 23,250/- per sq feet) to ICICI Prudential Real Estate AIF-1 (whom the Respondent No 4 represents in this CIRP as Debenture Trustee) under the resolution plan of

SHIPL duly approved by the Hon'ble Tribunal is inevitable in nature and is bound to get implemented.

v. The Applicant addressed an email to Respondent No. 1/RP on 20.05.2022 stating that in view of the allocation in the form of RERA carpet area assigned to ICICI Prudential Re Estate AIF-1 in the Resolution Plan of SHIPL as approved by the Hon'ble Tribunal on 11.02.2022, the claim of Respondent No.4 against the Corporate Debtor(MPPL, the Corporate Guarantor of SHIPL) needs to be deleted or reconsidered from the Resolution Plan of MPPL as the claim already stands satisfied under the Resolution Plan of SHIPL, the Principal Borrower.

vi. The Respondent No. 1(Resolution Professional) has rejected this request of the Applicant. Therefore, the applicant is compelled to file the present Application in order to protect and safeguard its rights and interests in the Corporate Debtor and to prevent creation of an anomalous situation of double recoveries for the Respondent No 4 to the detriment of the Applicant and the other creditors of the Corporate Debtor.

The IDBI Trusteeship Services Limited (Respondent No. 4) has filed a detailed reply along with the written submission of Resolution Professional (Respondent no.1) to this Bench. The Important Paragraphs of the Reply filed by the Respondent no. 1 & Respondent no. 4 are reproduced below:

Applicant's mala fide objective is to scuttle the successful completion of CIRP of the Corporate Debtor

3. The Respondent submitted that the Applicant has time and again sought to defeat the CIRP by filing frivolous and baseless applications, which have either been withdrawn or summarily

dismissed by this Hon'ble Tribunal. The massive delay in conduct of the CIRP is largely on account of the multiple frivolous applications filed by the Applicant. A brief description of such applications as under shows that the Applicant has time and again attempted to delay the CIRP of the Corporate Debtor.

i. The Respondent submits that in the initial stage of the CIRP, the Applicant as well as its group company, i.e., Atul and Parekh Infra projects LLP (**Atul**) had filed separate applications challenging part rejection of their claim by the Resolution Professional (being I.A. No. 1949 of 2019 and I.A. No. 1950 of 2019, respectively). Notably, after dragging the said applications for over two years, the application filed by the Applicant was dismissed as withdrawn by way of order dated 03.12.2021. The application filed by Atul was also dismissed on the same date as Atul failed to enter appearance and this Hon'ble Tribunal did not find any merit in their case.

ii. Applicant filed another application, being I.A. No. 2669 of 2019 against the Resolution Professional, seeking possession of the project land. The application was filed in the year 2019 only to be withdrawn three years later, i.e., on 25.02.2022.

iii. I.A. 469 of 2021 was filed on 4.03.2021 by the Applicant against Respondent No. 2 and the Resolution Professional, alleging collusion by Respondent No. 2 with the erstwhile resolution applicant [Ozone Lifestyle Projects Private Limited (**Ozone**)] and seeking rejection of Respondent No. 2's claim filed with Resolution Professional apart from reconstitution of the entire CoC of the Corporate Debtor. Notably, such application seeking drastic changes in the CIRP was filed after more than two years of initiation of CIRP of the Corporate Debtor (i.e., 18.11.2018) even when all this while the Applicant was participating in the CIRP, and participating actively in the meetings of the CoC. The said application was also withdrawn as noted in order dated 25.02.2022.

iv. The Applicant, while raising similar allegation of collusion had also filed a Transfer Petition before the Principal Bench of this Hon'ble Tribunal seeking to transfer the captioned Company Petition to Court Room no. I of Mumbai Bench from this Hon'ble Tribunal, where the CIRP of the holding company of the Corporate Debtor, i.e., Mayurpankh Fine Builders Private Limited (**MFBPL**) is ongoing. The Hon'ble President, by way of order dated 28.04.2021 had summarily dismissed the said Transfer Petition as being without merits. The Hon'ble President had also noted the fact that it was filed at an extremely belated stage, i.e., after the application for approval of resolution plan was finally heard and reserved for orders by this Hon'ble Tribunal.

v. It was further submitted that the starkest example of Applicant's intent to derail the CIRP and drive the Corporate Debtor into liquidation was when the Resolution Professional had filed an application for withdrawal of its earlier application for this Hon'ble Tribunal's approval of the first resolution plan (*being I.A. No.1092 of 2022*). In the said application, to achieve successful resolution of the Corporate Debtor, which is the primary intent of the Code, the Resolution Professional had prayed before this Hon'ble Tribunal for grant of extra 90 days for conducting the CIRP process afresh. However, the Applicant, rather than supporting the said request in line with the spirit and intent of the IBC, vehemently opposed the same at the time of hearing of the matter. Nonetheless, this Hon'ble Tribunal *vide* order dated 5.05.2022, allowed the request for withdrawal of the first resolution plan and extended the CIRP by an additional period of 90 days to complete the fresh bidding process for the Corporate Debtor.

vi. The Applicant went on to file an appeal before the Hon'ble NCLAT against the said order arguing that initiating liquidation was the only option available to the Resolution Professional of the Corporate Debtor (*Company Appeal (AT) (I) No. 661 of 2022*). Such conduct of the Applicant makes it amply clear that its only intent was to drive the Corporate Debtor into liquidation for its own selfish interests. Needless to say, that the Applicant's appeal was also dismissed as withdrawn by way of NCLAT order dated 11.07.2022.

4. The Respondent no. 1 & 4 further states that the aforementioned examples amply demonstrate the Applicant's intention to scuttle the CIRP and its dishonest intentions of driving the Corporate Debtor into a premature liquidation. Separately, the Applicant's sister concern i.*e.*, Pro-Earth Housing Corp Private Limited (**Pro Earth**) has also acted in the exact same *mala fide* manner and adopted the exact same dilatory tactics in the CIRP of MFBPL, the holding company of the Corporate Debtor. It is submitted that, both the Applicant and Pro-Earth, have filed frivolous litigations with the sole intent of scuttling the CIRP of the respective companies and defeat the provisions of the Code. In fact, an almost verbatim similar application to the present application has been filed by Pro Earth in the CIRP of MFBPL.

5. Further to note that the Applicant was appointed as the development manager of the Project prior to initiation of the CIRP by the erstwhile promoters of the Corporate Debtor. However, the Applicant failed to execute or make any significant progress towards

the construction of the Project. Hence, the failure of the Corporate Debtor and consequent insolvency was largely due to the inaction and inability of the Applicant to execute the Project.

6. Notably, during the first round of bidding for the Corporate Debtor, the Applicant had submitted an expression of interest (**EoI**) for the Corporate Debtor. However, the Applicant failed to submit the requisite information and documents along with the EoI and was excluded from the final list of prospective resolution applicants by the Resolution Professional.
7. The conduct of the Applicant is further questionable as group companies/connected parties of the Applicant have also been accused of siphoning of sums from the Corporate Debtor and/or its group companies in order to defraud the creditors.
8. Further, it would be relevant to note that the Applicant and Pro-Earth, currently have the same two directors, being Mr. Mayur Ishvardas Gandhi and Mr. Darshan Shantilal Savla, (since February 2021) and have the same registered address. Since May 2017 till February 2021, Mr. Hetaal Parekh, Mr. Prashant Parekh and Mr. Atul Patel, were directors of both, the Applicant and Pro-Earth, and the directorship prior to that was also common. Thus, the Applicant and Pro-Earth have been run by the same management since at least 2017 and are twin entities.
9. The Respondent(s) further state that the conduct of both pro-earth and Applicant are way similar in nature as pro-earth in the CIRP of MFBPL appointed as development manager failed to execute the real estate project, further Pro-Earth also repeatedly filed frivolous applications similar to this one in the CIRP of MFBPL, to delay and defeat the successful conduct of the CIRP only for personal gains. Hence, the *modus operandi* of both Applicant and Pro-Earth has been to first lead the Corporate Debtor's group companies into insolvency on account of non-performance of their obligations and

thereafter collude with the erstwhile promoters to defeat the CIRP and drive the companies into liquidation.

10. In view of the comprehensive information provided above, it is submitted that the Applicant along with its group companies have all consistently acted in *bad faith* and with *mala fide* intentions and in complete contravention of the purpose and spirit of the IBC. The Applicant is nothing but a proxy of the Corporate Debtor which has been acting in collusion with the Corporate Debtor's promoters to scuttle its CIRP and send the company into liquidation. The present IA is only another attempt by the Applicant towards this end. It is therefore, submitted that the present IA which raises frivolous allegations regarding the claim of Respondent No. 4, ought to be dismissed with heavy costs.

Responses to grounds raised in the Interlocutory Application

11. In support of the reliefs being sought in the Interlocutory Application, the Applicant has made the following submissions:

i. In view of the Order dated 11.02.2022 passed by this Hon'ble Tribunal approving the resolution plan in respect of Sunshine Housing and Infrastructure Pvt. Ltd. (**SHIPL**) (referred to hereinafter as the **SHIPL Plan Approval Order**), the claim of Respondent No. 4 is required to be deleted/reconsidered; and

ii. Since liabilities of a principal borrower and guarantor are co-extensive in nature, if recoveries are made from SHIPL (being the principal borrower), the amounts to be recovered from the guarantor/surety of SHIPL, i.e. in this case, the Corporate Debtor, are required to be proportionately reduced/adjusted in order to ensure that no 'double recovery' is made by Respondent No. 4.

12. To support its submissions, the Applicant has placed reliance on provisions of the SHIPL Plan Approval Order, wherein Nandivardhan Infrastructure Ltd. (**Nandivardhan**), the successful resolution applicant of SHIPL, has proposed to construct and allocate carpet area in the 'Galaxy Project', a residential project under the resolution plan, to ICICI Prudential Real Estate AIF-I (ICICI AIF/Respondent No. 2) and Respondent No. 4 (in its capacity as the debenture trustee for the debentures issued by the Corporate Debtor and SHIPL).

13. It is submitted that the Interlocutory Application is misconceived in as much as the Application proceeds on the basis that by virtue of the passing of the SHIPL Plan Approval Order alone, ICICI AIF and IDBI Trusteeship have 'recovered' the debt due to them.

14. In this regard, the Applicant's reliance on portions of the SHIPL Plan Approval Order which record that the allocation of area in favour of ICICI AIF and IDBI Trusteeship constitutes a '*full and final settlement of their claims against the Corporate Debtor*' (the Corporate Debtor here being SHIPL) is selective and does not come to the aid of the Applicant for the reason that while the construction and allocation of area in favour of ICICI AIF and IDBI Trusteeship may settle their debt *vis a vis* SHIPL upon completion of construction and allocation of such constructed area, it does not presently impact IDBI Trusteeship's claim in respect of the Corporate Debtor in any manner. Admittedly, as of date, the construction under SHIPL's resolution plan has not even commenced.

15. The Applicant's reliance on portions of the SHIPL Plan Approval Order which record that the allocation of area in favour of ICICI AIF and IDBI Trusteeship constitutes a 'full and final settlement of their claims against the Corporate Debtor' also does

not come to the aid of the Applicant. It would be relevant to note that in order to allocate the area and come good on its promise under the resolution plan, the very first step for Nandivardhan is to construct the Galaxy Project. In the absence of such construction, the clause under the Resolution Plan which promises allocation of area (upon construction) is a mere promise, which in no manner can be construed to be a settlement of the claims against SHIPL. It is clear that the Applicant is selectively using phrases of the SHIPL Plan Approval Order without giving complete background to mislead this Hon'ble Tribunal into believing that the debt of ICICI AIF and IDBI Trusteeship against SHIPL has been fully settled.

16. It is pertinent to state that under the resolution plan in respect of SHIPL, the guarantee provided by the Corporate Debtor (MPPL) is expressly saved. The relevant clause under the resolution plan is reproduced hereunder:

> *"4.3.2 Nothing contained in this Resolution Plan shall, in any manner, limit or restrict the right (and it exercise) of any creditor in relation to the corporate guarantees, personal guarantees, third party securities (whether by way of hypothecation, pledge or mortgage), indemnities, warranties executed by the Existing Shareholders/ existing Promoters/ affiliates of the Corporate Debtor/ any other Person, provided for and on behalf of, and/ or in order to secure any obligations of the Corporate Debtor, in accordance with the Applicable Laws (collectively, the Third-Party Securities). Nothing contained under this Resolution Plan shall operate as discharge of any obligations or release of any form of Third-Party Securities provided for and on behalf of, and/ or in order to secure any obligations of the Corporate Debtor."*

17. It is submitted that as is settled law, release or discharge of a principal borrower from the debt owed by it to its creditor by an involuntary process, i.e. by operation of law or due to liquidation or insolvency proceeding does not absolve the surety/guarantor of his or her liability, which arises out of an independent contract. Without prejudice to the above, it is therefore submitted that even in the event that the SHIPL resolution plan is implemented as approved, the Corporate Debtor's liability under the guarantee provided by it on behalf of SHIPL, does not automatically get discharged.

18. Furthermore, as per the law laid down and followed in judicial precedents, under the contract of guarantees, it is only when the creditor would *receive* the amount, that the question of no more dues or adjustment would arise. It is a matter of adjustment when the creditor *receives* the debt due from the borrower/guarantor in the respective CIRP that the same should be taken note of and adjusted in the other CIRP. As stated above, such an eventuality has yet not been arrived at. Therefore, there can be no question of a 'double recovery' on the part of IDBI Trusteeship.

19. Therefore as per the settled law, the question of adjustment if any, arises only upon *receipt* of the debt by the debtor. In this regard, it is submitted that IDBI Trusteeship remains responsible for apprising the Resolution Professional of the Corporate Debtor in the event that it receives satisfaction of its claim or any part thereof as and when such receipt takes place. However, at the present stage, there is no question of any reduction/adjustment in the claim filed by IDBI Trusteeship in the CIRP of the Corporate Debtor, as although the resolution plan for SHIPL has been approved by this Hon'ble Tribunal, there has neither been any implementation of the resolution plan, nor any actual receipt as would be sufficient to satisfy this Respondent's claim, or any part thereof.

20. Resultantly, the monitoring committee appointed by and under the SHIPL Plan Approval Order has been constrained to approach this Hon'ble Tribunal by filing an application in the SHIPL insolvency proceedings (*being Interlocutory Application No. 53 of 2023*), specifically seeking directions against Nandivardhan to:

a. Pay outstanding CIRP costs; and
b. Pay a sum of INR 5 crore to ICICI AIF.

FINDINGS

21. Heard the Learned Counsel Mr. Rajan Agarwal, Advocate for the Applicant/Lakshya Swarup Housing Pvt. Ltd. (Unsecured Financial Creditor) in the Corporate Debtor and Mr. Chetan Kapadia on behalf of the Resolution Professional /M/s Mayur Pankh Properties Ltd /Corporate Debtor and perused the record.

After hearing the submissions of both sides and upon perusing the material available on record, the main & foremost issue with this bench is:

Whether to reduce/adjust the claim of IDBI Trusteeship (Respondent No.4) in the CIRP of the Corporate Debtor MPPL (who are also the Corporate Guarantor of SHIPL which has also gone under CIRP), on the basis of a separate Resolution Plan Approved by NCLT Mumbai, Court - I for SHIPL.

22. The Respondent No. 4 in his detailed Reply dated 03.02.2023 and The Resolution Professional through his Written Submission dated 02.03.2023 have both put before this Bench crucial aspects to be dealt and looked upon in the matter. The Resolution Professional through his written submission held attention of this Bench to Debenture Subscription Agreement dt. 24.02.2014 wherein the ICICI Prudential Real Estate AIF I (R2) subscribed to 3990 debentures and other group of investors subscribed to 1510 Debentures issued by Corporate Debtor (MPPL) for aggregating

investment amount of Rs 55,00,00,000/- (Rupees Fifty-Five Crores only). Further as per Debenture Subscription Agreement dated 06.09.2016 the ICICI Prudential Real Estate AIF I (R2) also subscribed to 4000 debentures issued by SHIPL for an amount of Rs. 40,00,00,000/- (Rupees Forty Crores only). Debentures issued by SHIPL for Rs. 40 crores were secured by the Corporate Guarantee of (MPPL), mortgaging its assets by executing a registered deed of mortgage dated 26.10.2016 in favor of IDBI Trusteeship Services Ltd. (R 4) acting in trust and for the benefit of the debenture holders. The Corporate Debtor has also executed a deed of guarantee dated 7.09.2016 to secure due repayment of debentures issued by SHIPL.

23. Further, RP pointed towards the deed of guarantee executed by Corporate Debtor on 07.09.2016, which has contracted out the applicability of Section 134 of the Indian Contract Act, 1872 ("Contract Act").

24. On 11.02.2022, an Order was passed by Court no.1, Mumbai Bench in IA no. 1863 of 2020 approving the Resolution Plan of SHIPL. In the Resolution Plan passed for SHIPL, ICICI Prudential Real Estate AIF I (R2) being a Secured Financial Creditor of SHIPL, is proposed to be allotted 19,200 sq. ft. RERA carpet area and IDBI Trusteeship Services Limited (R.4) being an unsecured Financial Creditor of SHIPL is proposed to be allotted 1,800 sq. ft. RERA carpet area, both in a proposed residential project known as 'Galaxy Project'. In addition, ICICI Prudential Real Estate AIF I (R2) being a Secured Financial Creditor of SHIPL will also be paid Rs. 5,00,00,000/- within 6 months from the date of SHIPL Plan approval order (hereinafter referred to as "Proposed Consideration").

25. It is further submitted by the Respondent that the Corporate Debtor had issued a Corporate Guarantee in favor of Respondent No.4 securing the amount subscribed by ICICI Prudential Real

Estate AIF I (R.2) in SHIPL. Therefore, as Corporate Debtor (MPPL) is undergoing CIRP, Respondent No.4 also submitted their claim (which has been admitted) against Corporate Debtor, invoking the corporate guarantee issued by the Corporate Debtor (MPPL) to secure repayment of debentures issued by SHIPL to ICICI Prudential Real Estate AIF I(R2). As a result, Respondent No 4 forms a part of the Committee of Creditors ("COC") of Corporate Debtor having a vote percentage of **39.15%**. Similarly, Respondent No.2 and Respondent No.3 have also submitted their respective claims (which have been admitted) against Corporate Debtor (MPPL) for debentures issued by the Corporate Debtor (MPPL) to Respondent No.2 and Respondent No.3 and they also form a part of the COC of Corporate Debtor having a vote percentage of **39.26**% and **14.72**% respectively.

26. On 20.05.2022 the Applicant, via an email to RP demanded that the claim of Respondent No.4 has to be deleted from the list of claims against Corporate Debtor (MPPL) as being 'satisfied'. RP sought legal opinion and on 02.06.2022 it was well discussed in the 11^{th} CoC meeting, where the Applicant was also present wherein the RP pointed to out the relevant portion of the resolution Plan of SHIPL Plan which expressly provides that nothing contained in the resolution plan of SHIPL would impact the right of creditors under any corporate guarantee issued to secure the obligations of SHIPL. Further it is a settled position of law that approval of resolution plan for principal borrower cannot discharge the guarantor of its liability. But the Applicant being in disagreement with the said Legal Opinion, filed this IA for reduction of the Claim of the Respondent (R.4)

27. The RP in his written submissions brought attention of this Bench, that the Corporate Debtor has waived all rights available to it as a surety under Section 134 of the Contract Act pursuant to

Clause 14 of the Deed of Guarantee dated 7.09.2016 issued by Corporate Debtor in respect of loan availed by SHIPL. Therefore, Corporate Debtor will not be entitled to avail the benefit merely because of the Proposed Consideration being allotted under the resolution plan of SHIPL. Section 134 of the Indian Contract Act, 1872 ("Contract Act") is as follows:-

134. The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

The Resolution Professional further relied upon the judgment of ***Lalit Kumar Jain vs. Union of India*** wherein the Supreme court has held that an approval of the Resolution Plan for Principal Borrower cannot discharge the guarantor of its liability.

In ***Lalit Kumar Jain vs. Union of India***, The Hon'ble Supreme Court has observed that the Guarantee, (including Corporate Guarantee) is an independent contract as per Section 126 of the Contract Act. The discharge or release of the principal borrower does not absolve the Guarantor of its obligations. Further, if a surety waived / contracted out the right under Section 134 of the Contract Act, it will not be entitled to avail its benefit.

The relevant paragraphs of Supra are extracted here for ready reference:

108. *It is therefore, clear that the sanction of a resolution plan and finality imparted to it by Section 31 does not per se operate as a discharge of the guarantor's liability. As to the nature and extent of the liability, much would depend on the terms of the guarantee itself. However, this court has indicated, time and again, that an involuntary act of the principal debtor leading to loss of security, would not absolve a guarantor of its liability. In Maharashtra State Electricity Board (supra) the liability of the guarantor (in a case where* *liability of the principal debtor was discharged under the insolvency law or the company law), was considered. It was held that in view of the unequivocal guarantee, such liability of the guarantor continues and the creditor can realize the same from the guarantor in view of the language of Section 128 of the Contract Act as there is no discharge under Section 134 of that Act*

111. *In view of the above discussion, it is held that approval of a resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his abilities under the contract of guarantee. As held by this court, the release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process, ie by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability, which arises out of an independent contract.*

28. Therefore, this Bench is of the view that any variance on the liability of the principal borrower as a result of approval of a resolution plan which is basically by operation of law does not per se result in discharge of the guarantor of the said debt, since the guarantee is an independent contract.

29. As has been laid down in judicial precedents, when the liabilities of the principal borrower and surety are co-extensive under an agreement, it stands to reason that the CIRPs against them can run simultaneously – moreover, till the financial creditor is *able to get payment* in respect of his claim, he can file a claim in all the CIRPs and also have voting rights in the respective COCs based on the quantum of its financial debt. Therefore, claims of similar amounts can be submitted by the financial creditor in all the CIRPs. In this regard, reliance is placed supra, (2021) 9 SCC 321, wherein the Hon'ble Supreme Court held as follows:

"***133.*** *It is therefore, clear that the sanction of a resolution plan and finality imparted to it by Section 31 does not per se operate as a discharge of the guarantor's liability. As to the nature and extent of the liability, much would depend on the terms of the guarantee itself. However, this court has indicated, time and again, that an involuntary act of the principal debtor leading to loss of security, would not absolve a guarantor of its liability.*"

30. Therefore, this Bench upon perusal of records and document, and in view of the cited case laws is of the view that the Approval of Resolution Plan for SHIPL does not restrict the right of the creditor against a Corporate Guarantor of SHIPL. In the present case, the resolution plan of SHIPL proposes to construct and allocate units in the residential project to be developed by SHIPL, the units which are proposed to be allotted after construction.

31. This Bench observes that, as on date, construction of the proposed units has not commenced. Further, as on date, Rs 5,00,00,000/- envisaged to be paid to ICICI Prudential Real Estate AIF-1 (R.2) remains unpaid. And therefore, the creditor ICICI Prudential Real Estate AIF-I (R2) has not received any part of the Proposed Consideration yet under the approved SHIPL resolution plan.

The claim of the respondents which are admitted by Resolution professional under CIRP of the Corporate Debtor (MPPL) are as given below:

Sr. No.	Respondent(s)	Admitted Claim
1.	Respondent No. 2	57,04,10,000/-
2.	Respondent No. 3	21,38,56,000/-
3.	Respondent No. 4	56,88,22,000/-

32. This Bench considers that although the Resolution Plan of SHIPL contemplates the Proposed Consideration to ICICI Prudential

Real Estate AIF - I (R.2) and Respondent No.4. It is subsequently meant as follows: -

a. As far Respondent No.4's claim against SHIPL is concerned, the Resolution Applicant will allocate 1,800 sq. ft. in the Galaxy Project and for Respondent No.2 it will allocate 19,200 sq. ft. in the Galaxy Project. In addition, the resolution applicant of SHIPL shall pay Rs. 5,00,00,000/- to Respondent No 2.
b. The Resolution Plan of SHIPL has estimated the value of proposed area at Rs 23,250/sq ft. However, actual value of the aforesaid proposed area given is yet to be determined for R.2 and R.4. Such value can only be ascertained upon completion of construction and only thereafter will be credited towards the benefit of the creditor i.e. Respondent No.4's claim against Corporate Debtor/SHIPL. Thus, Ascertainment of any value for such proposed area is inextricably linked with construction and completion of the said "Galaxy Project", remains merely on the grounds of promise & will not tantamount to R.4 receiving any monetary value in its hand as at present, Therefore the question of proportionate reduction of their claim (R.4) remains unsatisfactory.

33. Further the approval in itself of a Resolution Plan will not amount to satisfaction of the claim of creditor (R.4) against the Corporate Debtor/SHIPL. It is only when the creditor represented by Respondent No.4, actually receives the Proposed Consideration, constructed and allotted as proposed in the Resolution Plan of SHIPL, Only then it would be fair that their claim (R.4) be proportionally attempted, reduced or even satisfied on grounds of its merits as prayed by the Applicant.

34. Therefore, until such time, as it will be premature to presume that creditor represented by Respondent No.4 receives the Proposed

Consideration as per the Resolution Plan of SHIPL, the claim amount of Respondent No.4 of Rs. 56,88,22,000/- in the CIRP of Corporate Debtor cannot be modified and is allowed to continue at the same value as approved by CoC in their Commercial Wisdom.

35. This Bench is of the view that, in absence of implementation of the resolution plan in the CIRP of SHIPL, and prior to completion of the SHIPL project and ICICI AIF (R2) and IDBI Trusteeship(R4) actually receiving the allocated carpet area as per Plan, the liability of the Corporate Debtor (MPPL) who is a guarantor of SHIPL, cannot be said to be extinguished. In fact, in the event that a payment of INR 5 crore is made in favour of ICICI AIF (as contemplated under the resolution plan of SHIPL) and there is a construction and allocation of area in the 'Galaxy Project' in favour of ICICI AIF and IDBI Trusteeship as promised in SHIPL's Plan, the liability of the Corporate Debtor/MPPL (being the guarantor of SHIPL) will be reduced only to the extent to which SHIPL's debt will be satisfied and the Corporate Debtor will continue to remain liable for the balance debt that was owed by SHIPL in terms of the guarantee agreement signed by the CD.

36. The Court therefore, does not see any reason to interfere or modify the decisions taken by the CoC as the same have been taken in its commercial wisdom and to do not in any way violate the relevant provisions of the Code. Therefore, in view of the aforementioned circumstances and observations, the Application preferred by the Applicant is rejected and stands disposed of accordingly.

Sd/-	Sd/-
MADHU SINHA	H. V. SUBBA RAO
Member (Technical)	Member (Judicial)