



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - II**

**CP (IB) No. 29/MB/2022**

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

*In the matter of:*

- 1. LICHFL TRUSTEE COMPANY PRIVATE LIMITED,** a Financial Creditor acting in its capacity as a sole Trustee of the LICHFL Urban Development Fund, which is a contributory trust formed as a scheme of a trust known as “LICHFL Fund” acting through its Investment Manager-LICHFL Asset Management Company Limited, having its office at: 304, 03<sup>rd</sup> Floor, Vibgyor Towers, Opp. Trident Hotel, Bandra Kurla Complex, Bandra (East), Mumbai-400051.
  
- 2. Vistra ITCL (India) Limited,** a Debenture Trustee of the above-named Financial Creditor, having its office at: The IL&FS Financial Centre, Plot No.22, G-Block,

IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, COURT-II



CP(IB) No. 29 (MB)/2022

Bandra Kurla Complex, Bandra East,  
Mumbai-400051.

..... Applicants/Creditor

**Versus**

**Mrs. Sunita Pandurang Shinde**

Residing at: - (i.) Flat No. 144, Rohini, Building-8, Tarangan CHS-2, Near Korum Mall, Thane West-400604 and (ii) Flat No.202, 02<sup>nd</sup> Floor, A-Wing, Building No.02, Greeshma Residency-II, Mental Hospital Road, Opp. Dynansadhana Vidyalaya, Thane West-400604; and having her permanent residence at: Sushan Bungalow, Ground Floor, Opp. RBL Bank, Ram Ganesh Gadkari Path, Thane, Maharashtra-400604.

..... Personal Guarantor/Respondent

**Order Delivered on :- 28.11.2024.**

*Coram:*

**Shri. Anil Raj Chellan**  
**Member (Technical)**

**Mr. Kuldip Kumar Kareer**  
**Member (Judicial)**

*Appearances (in Hybrid mode):*

For the Petitioner : Adv. Nimay Dave a/w Adv. Samiksha Rajput.

For the Resolution Professional : Adv. Amey Hadwale a/w Adv. Geeta Lundwani.

For the Personal Guarantor : Adv. Jayshree Gilra through V-C.

**ORDER**

***Per: - Kuldip Kumar Kareer, Member (Judicial)***

1. This is an application filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) 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 (‘PGIRP Rules’) by **LICHFL TRUSTEE COMPANY PRIVATE LIMITED** (hereinafter referred to as “the Petitioner” or “the Financial Creditor” or “Applicant No.01”) and by **VISTRA ITCL (INDIA) LIMITED** (hereinafter referred to as “the Debenture Trustee” or “Applicant No.02”) for initiating the Personal Guarantor’s Insolvency Resolution Process (‘PGIRP’) against **Mrs. Sunita Pandurang Shinde** (hereinafter referred to as "Personal Guarantor"). As stated in Part III of the Petition, the date on which the default occurred is March 31, 2019, and the amount in default is INR 79,88,77,900/- (Rupees Seventy-Nine Crores, Eighty-Eight Lakhs, Seventy-Seven Thousand and Nine Hundred only).

**Case of the Applicant (in brief):**

2. It was represented by the Corporate Debtor that it owns a land bearing Final Plot No. 43, TPS-1, Panchpakhadi, Thane West under the Slum Redevelopment Scheme of Thane Municipal Corporation on 2.21 Acres of land, and is in the process of developing and constructing a residential project named “Silver Spring” with minor components of shops and

IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, COURT-II


CP(IB) No. 29 (MB)/2022

offices. For the purpose of completing the project, the Corporate Debtor needed funds.

3. Accordingly, an agreement being Share Subscription Cum Debenture Subscription and Shareholders Agreement (“Subscription Agreement”) dated 13<sup>th</sup> October, 2016 was executed between the Financial Creditor and Anudan Properties Private Limited (“Corporate Debtor”) pursuant to which the Financial Creditor had invested an amount of INR 79,90,00,000/- by subscribing to the Equity Shares and Series ‘A’ Optionally Fully Convertible Debentures (“OFCDs”) of the Corporate Debtor in the manner given in the table below:


<u>Sr. No.</u>	<u>Date of Issuance</u>	<u>Security</u>	<u>Amount (in INR)</u>
i.	15.11.2016	10 ordinary equity shares of Rs. 100 each.	1,000/-
ii.	15.11.2016	1,211 voting equity shares of Rs.100 each having only voting rights to the extent of 19.47%.	1,21,100/-
iii.	15.11.2016	44,98,779 Series A1 OFCD of Rs. 100 each bearing interest @18.001% p.a.	44,98,77,900/-
iv.	28.03.2017	18,00,000 Series A2 OFCD of Rs. 100 each bearing interest @18.00% p.a.	18,00,00,000/-
v.	29.01.2018	8,00,000 Series A3 OFCD of Rs. 100 each bearing interest @18.00% p.a.	8,00,00,000/-
vi.	12.04.2018	8,90,000 Series A4 OFCD of Rs. 100 each bearing interest @18.00% p.a.	8,90,00,000/-
		<b>TOTAL</b>	<b>79,90,00,000/-</b>

4. The parties also executed a Debenture Trust Deed, Escrow Agreements, Share Pledge Agreement, Indenture of Mortgage, etc. It is pertinent to note that as per the Subscription Agreement, the Investor agreed to invest




an amount of Rs. 81 crores by subscribing to OFCDs. However, the actual subscription amounted to only Rs. 79.90 crores, as indicated in the table above.

5. Some of the material terms and conditions of the Subscription Agreement are that as per Clause 7 of the Subscription Agreement, the Corporate Debtor was liable to pay the interest on OFCDs to the Investor on or before 31<sup>st</sup> March of each financial year unless waived. As per Clause 10.2 of the Subscription Agreement, the Corporate Debtor shall have to redeem all or part of Series 'A' OFCDs for a consideration not later than 31<sup>st</sup> March, 2019. The Subscription Agreement provides for Events of Default under Clause 21.
6. On 21.10.2016, the Promoters executed a Deed of Guarantee jointly and severally giving an irrevocable and unconditional guarantee to the Debenture Trustee in the event the Corporate Debtor and/or its Promoters failed to pay any amount due and payable under the transaction documents referred-to-above on their respective dates.
7. On 14.12.2018, LICHFL-AMC issued a letter at the Corporate Debtor's request, *inter-alia*, for waiving off the interest on OFCDs for the half year ended on 30.09.2018 upon certain terms and conditions more particularly mentioned therein. A similar request was made on 18.07.2019 for waiving off the interest on OFCDs for the half year ended on 31.03.2019. Since the Corporate Debtor failed to make payment of the Participation Redemption Amount as stipulated under Clause 10.2 of the Subscription Agreement, the LICHFL-AMC issued a letter dated 01.08.2019 to the Corporate Debtor and the Promoters calling upon them to pay the



investment amount by redemption of debentures as per Clause 10.2 of the Subscription Agreement, on or before 31<sup>st</sup> August, 2019. Similar letter dated 13.08.2019 was issued to the Promoters for payment of the investment amount by redemption of debentures as per Clause 10.2 of the Subscription Agreement, on or before 31<sup>st</sup> August, 2019.

8. On 29.08.2019, the Corporate Debtor replied to the letter dated 01<sup>st</sup> August, 2019, wherein the Corporate Debtor not only admitted the delay in the execution of the project but also expressed its inability to pay the Participation Redemption Amount and made a request to extend the due date till 31<sup>st</sup> December, 2019. Notably, the Participation Redemption Amount was due and payable as on 31.03.2019. However, despite giving ample time and indulgence, the Corporate Debtor and the Promoters have failed and neglected to pay the Participation Redemption Amount and therefore, the Corporate Debtor has committed Category-I Event of Default as per Clause 21.1(b) of the Subscription Agreement.
9. Since the Corporate Debtor, as well as the Promoters, failed to redeem the OFCDs on or before 31<sup>st</sup> March, 2019, as per Clause 10.2 of the Subscription Agreement, the Investor through its Advocates issued a Notice dated 18.02.2020 to the Corporate Debtor as well as the Promoters calling upon them to pay an amount of INR 127,82,04,640/- as on 31<sup>st</sup> March, 2019 towards the Participation Redemption Amount along with interest of INR 12,68,57,433/- accrued on Series 'A' OFCDs from 01.04.2019 to 17.02.2020 as per Clause 7 of the Subscription Agreement. However, the Corporate Debtor neither redeemed the OFCDs in terms of the Subscription Agreement nor replied to the aforesaid notice.




10. In view of the above, the Applicant No.01 was constrained to file a Company Petition (IB) No. 1147/MB-IV/2020 before the NCLT, Mumbai Bench against the Corporate Debtor u/s 7 of the Code and vide Order dated 15.03.2021, the Tribunal admitted the said petition. Thereafter, on 10.06.2021, the Applicants through its Advocates issued five demand notices to the Respondent and other guarantors to unconditionally pay the unpaid debt in default of INR 163,90,84,518/- which is due from the Corporate Debtor as on June 30, 2021 including interest of INR 36,08,79,878/- from 01.04.2019 to 30.06.2021 accrued on Series 'A' OFCDs along with further interest at the rate of 18% till the date of actual payment in terms of the Personal Guarantee Deed. However, till date, the Respondent and other guarantors have not paid the unpaid debt in default due from the Corporate Debtor and have also not replied to the aforesaid notice. Hence the present petition.

### **Report of the Resolution Professional u/s 99 of the Code**

11. The RP has placed on record her Report dated 12<sup>th</sup> February, 2024 filed u/s 99 of the Code. The said Report has recommended for admitting the Respondent-Personal Guarantor into PGIRP. The observations made by the Ld. RP in his report are summarized hereunder:

- i. The Creditor invoked the Personal Guarantee provided by the Respondent/Personal Guarantor herein viz. Mrs. Sunita Pandurang Shinde, vide Demand Notice dated 10<sup>th</sup> June, 2021 in Form B claiming outstanding debt of INR 163,90,84,518/- due and payable by the Personal Guarantor.


- 
- ii. The said Demand Notice was served on the Personal Guarantor, yet the Personal Guarantor failed to pay the debts within a period of 14 days of the service of the Demand Notice.
  - iii. A copy of this report has been shared with the Creditor and has been served upon the Personal Guarantor with hard copy on 12<sup>th</sup> February, 2024 in compliance with Section 99(10) of the Code.
  - iv. A copy of the Application u/s 95 of the Code has also been provided to the Personal Guarantor by the Applicant. Thus, the above-captioned application satisfies the requirements set out u/s 95 of the Code.
  - v. Hence, the learned RP has presented his report u/s 99(7) of the Code to this Tribunal with a recommendation of acceptance of the application based on the reasons recorded above.


12. **Reply of the Respondent/Personal Guarantor:**


The Respondent has pleaded that the report of the RP is baseless and not up to the mark. It is further alleged by the Respondent that the report of the RP is biased and unfair. The learned RP has failed to notice that the Deed of Guarantee is unstamped and unregistered. According to the Respondent, the guarantee is mandatorily required to be registered u/s 17 of the Registration Act, 1908. As the report of the RP cannot be taken into consideration for the reasons stated above, the present application is not maintainable.

**FINDINGS**

13. We have heard the learned counsels for the Petitioner and the Respondent/Personal Guarantor and we have also perused the records.

- 
14. During the course of the arguments, Counsel for the Petitioner has argued that the Respondent/Personal Guarantor along with some others executed a deed of guarantee dated 21.10.2016 in favour of Vistara ITCL (India) Limited who is the trustee for the Petitioner. The said guarantee was furnished in respect of the loan advanced by the Petitioner to Anudan Properties Private Limited, as is evident from the guarantee deed itself.
  15. It has further been pointed out that the Corporate Debtor i.e. Anudan Properties Private Limited was admitted into Insolvency vide order dated 15.03.2021 on account of default committed by it in respect of the non-payment of outstanding dues of Rs. 144.79 crores. Counsel for the Petitioner has further referred to the demand notice dated 10.06.2021 whereby the guarantee was invoked and the Respondent/Personal Guarantor was called upon to pay the outstanding amount in respect of which the default had been committed by the Corporate Debtor/Principal Borrower. As the demand was not made good by the Respondent, the instant Petition deserves to be admitted as against the Respondent.
  16. On the other hand, Counsel for the Respondent/Personal Guarantor has argued that since the Corporate Debtor has already been admitted into insolvency and a resolution plan has also been approved by the NCLT and, therefore, the liability of the Personal Guarantor has come to an end. In this regard, it has further been argued on behalf of the Personal Guarantor that with the approval of the resolution plan, the recovery has already been made from the Corporate Debtor and, therefore, the liability of the Personal Guarantor is deemed to have come to an end and on this ground alone, the Petition under Section 95 of the Insolvency and Bankruptcy Code, 2016 is liable to be dismissed.

- 
17. We have weighed the contentions raised by the Counsel for the parties and have also gone through the record.
  18. The factum of execution of the deed of guarantee dated 21.10.2016 has not been disputed by the Respondent. It has also not been disputed that demand notice invoking the guarantee was issued on 10.06.2021 and the present Petition was filed within a period of three years from the invocation of the guarantee and, therefore, the Petition is well within the period of limitation.
  19. The only contention raised on behalf of the Respondent/Personal Guarantor is that since the debt incurred by the Corporate Debtor, for whom the guarantee was furnished by the Respondent/Personal Guarantor has already been resolved by way of a resolution plan, no liability can be fastened upon the Respondent nor any recovery can be made from him and, therefore, the present Petition is liable to be dismissed.
  20. We have considered the contention raised by the Counsel for the Respondent/Personal Guarantor but have found the same to be devoid of any merits. The necessary documents pertaining to the approval of the resolution plan in respect of the Corporate Debtor namely Anudan Properties Private Limited have not been brought on record. Even otherwise, it is a settled proposition of law that approval of the resolution plan against the Corporate Debtor does not by itself extinguish the guarantees given by the Personal Guarantor in favour of the Financial Creditor. In this regard, a reference can be made to the law laid down by the Hon'ble Supreme Court in *Lalit Kumar Jain Vs Union of Indian & Others* whereby it was held that the 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. In the light of the laid down by the Hon'ble Supreme Court in the aforesaid case, it cannot be successfully argued on behalf of the Personal Guarantor that its liability has come to an end or that the proceedings under Section 95 of the Insolvency and Bankruptcy Code, 2016 cannot be initiated against the Personal Guarantor.

21. No other points have been raised on behalf of the Respondent/Personal Guarantor.
22. As a result of the above discussion, it is held that the factum of execution of the guarantee deed and its invocation stands proved on record and the IRP in its report under Section 99 of the Insolvency and Bankruptcy Code, 2016 has recommended the admission of the Petition under Section 95 of the Insolvency and Bankruptcy Code, 2016 and further that the Petition is filed well within the period of limitation. Therefore, we find the present Petition to be a fit case for admission under Section 95 of the Insolvency and Bankruptcy Code, 2016. It is ordered accordingly in the following terms:-

**ORDER**

- I. Initiate Insolvency Resolution Process against the Respondent/Personal Guarantor named **Mrs. Sunita Pandurang Shinde** 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 the order on the repayment plan under Section 114, whichever is earlier, as provided under Sec 101 of IBC, 2016. During the moratorium period, a) Any pending legal action or proceeding against the Respondent/Personal Guarantor in respect of any debt shall be deemed to have been stayed; b) The creditors of the Personal Guarantor shall not initiate any legal action or proceedings in respect of any debt; and c) The Personal Guarantor shall not transfer, alienate, encumber, or dispose of any of her assets or her legal rights or beneficial interest therein.

II. The Resolution Professional viz., **Mr. Abhijit Gokhale** (having Registration No. **IBBI/IPA-002/IP-N00964/2020-21/13092** email: [abhijitgokhale07@gmail.com](mailto:abhijitgokhale07@gmail.com), Mobile No. 9619067834), who was appointed vide Order dated 23.01.2024, is directed to cause a public notice to be published on behalf of the Adjudicating Authority within 7 days of uploading of this order on the website of NCLT, inviting claims from all Creditors within 21 days of such issue. The notice under Sub Section (1) of Section 102(2) shall include: -

- a) details of the order admitting the application;
- b) particulars of the resolution professional with whom the claims are to be registered; and
- c) the last date for submission of claims.

III. The Petitioner is directed to deposit an advance payment of INR **2,00,000/- (Rupees Two Lakhs only)** to the bank account of Resolution Professional within one week, so as to initiate the process. This shall be adjusted towards the fee and expenses payable to the Resolution Professional.

- 
- IV. The publication of notice shall be made in two newspapers, one in English and other in Vernacular, which are in circulation in the state where the Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.
- V. The Resolution Professional in exercise of the powers conferred under Section 104 shall prepare a list of creditors on the basis of:
- a. the information disclosed in the application filed by the Petitioner under Section 95 and
  - b. claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice.
- VI. The Personal Guarantor 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 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.
- VII. 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

IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, COURT-II

CP(IB) No. 29 (MB)/2022

duties in compliance with the Code of Conduct provided under Section 208 of IBC, 2016.

VIII. The Registry is directed to communicate a copy of order to the Petitioner, the Respondent and the Resolution Professional within three working days from the date of this order.

IX. In terms of the above, **CP(IB) No. 29/MB/2022** filed under Section 95 of the IBC, 2016 **is hereby admitted** and the Insolvency Resolution Process stands initiated against the Personal Guarantor.

Sd/-  
ANIL RAJ CHELLAN  
(MEMBER TECHNICAL)

Sd/-  
KULDIP KUMAR KAREER  
(MEMBER JUDICIAL)