



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

**C.P. (IB) No. 1186/MB/2020**

Under Section **95(1)** of the Insolvency & Bankruptcy Code, 2016 *r/w* Rule **7** 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**

Bank Of Baroda

**... Financial Creditor/Petitioner**

*Versus*

Mrs. Usha Jawaharlal Gangaramani

**... Personal Guarantor/Respondent**

**Order delivered on: 04.12.2024**

***Coram:***

Prabhat Kumar

Justice V.G Bisht, (Retd).

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

***Appearances:***

For the Financial Creditor : Mr.Yash Dhruva, Advocate

For the Personal Guarantor : Mr. Ashish Pyasi, Advocate.



**ORDER**

*Per:* Justice (Retd) Virendrasingh Gyansingh Bisht

**Brief Facts**

1. The present petition has been filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) r/w Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 by Bank of Baroda (“**Financial Creditor /Petitioner**”) for the purpose of initiating Insolvency Resolution Process against Mrs. Usha Jawaharlal Gangaramani (“**Personal Guarantor/ Respondent**”). The total debt amounts to Rs. 2,95,77,27,075.27/- as on 30.04.2020 along with further interests, charges and expenses.


**Submission on Behalf of the Financial Creditor/Petitioner**

2. On 20.06.2012, the Financial Creditor sanctioned credit facility of Rs.103 Crore in favour of Alfarra Infra Projects Private Limited (“**Corporate Debtor**”). Subsequently vide Sanction Letter dated 15.01.2014 and 09.12.2016, the total amount sanctioned in favour of the Corporate Debtor was revised to Rs.85 Crores and Rs 360 Crores, in accordance with the terms and conditions therein.
3. The Personal Guarantor, vide Guarantee Agreement dated 08.03.2014 and 22.01.2018 guaranteed in writing to the Petitioner the due payment and discharge of all amounts due and payable to the Petitioner by the Corporate Debtor at any time, in accordance with the terms and conditions therein.
4. The Account of Corporate Debtor was classified as a Non-Performing Assets (“**NPA**”) on 18.06.2018. The date of NPA is also recorded as the

date of default by the Personal Guarantor/Respondent.

5. Subsequently, the Financial Creditor sent a notice under Section 13(2) of the SARFAESI Act, 2002 on 05.07.2018, whereby the Petitioner called upon the Corporate Debtor to make the payment of outstanding amount within 60 days from the date of the notice. However, the Personal Guarantor failed to make any payment to the Financial Creditor.
6. The Financial Creditor submits that the Corporate Debtor was admitted into CIRP on 12.04.2019, under Section 7 of the Code.
7. On 18.07.2020, the Financial Creditor issued a Demand Notice in Form-B, requesting the Respondent to settle the outstanding amount within 14 days from the date of the notice.
8. The Financial Creditor further submits that all relevant documents to establish debt and default and liability of the Personal Guarantor have been duly annexed. It is reiterated and submitted that there is admittedly debt and default on the part of the Borrower and Personal Guarantor, also Personal Guarantor has not denied the execution of the Personal Guarantee Agreement in favour of the Petitioner, but has contested validity of said Guarantee on ground of insufficiency of stamp duty paid thereon.
9. The Financial Creditor contends that the debt and default can be established through other documents related to the transaction. The debt and default on the part of the Corporate Debtor were admitted into CIRP on 12.04.2019. Regarding the liability of the Guarantor, it is asserted that, in addition to the Personal Guarantee Agreements, the Sanction Letters and other documents explicitly agreed that the Personal Guarantor would be liable for the sanctioned amount.





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10. The Financial Creditor further submits that all relevant documents to establish debt and default and liability of the Personal Guarantor have been duly annexed. It is reiterated and submitted that there is admittedly debt and default on the part of the Borrower and Personal Guarantor, and Personal Guarantor has not denied the execution of the Personal Guarantee Agreement in favour of the Petitioner.
11. The Financial Creditor has executed the following documents in favour of applicant/Financial Creditor against the loan Facilities granted:
- i. Guarantee Agreements
  - ii. Sanction letters
  - iii. Demand Notice
12. This Bench had appointed **Mr. Uday Shreeram Sakrikar having**, Insolvency Resolution Professional (“RP”) *vide* Order dated 01.12.2023 in the captioned petition and had thereby directed the Applicant to prepare and file a Report *u/s.* 99 of the IBC, 2016. The RP *via* his Report was taken on record by a virtue of I.A.1363 of 2024 *on* 28.03.2024, after due examination of the application, documents filed along with the application, in addition to the requirements as mandated under of Section 99 of the IBC, 2016, has recommended to “..*Admitting the present application filed by Bank of Baroda CP(IB)/1186(MB)/2020 against Usha Jawaharlal Gangaramani and thereafter 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. It is humbly submitted by the RP that, based on the application filed by the Applicants — Financial Creditors, it is recommended that this is the fit case to commence the personal insolvency and the creditor, Bank of Baroda a Limited, should take the necessary steps. The Hon’ble NCLT thereafter may kindly pass appropriate orders under section 100 of the Code, “Admitting” the said application in CP No. (IB)- 1186(MB)/2020 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 against. Mrs. Usha Jawahralal Gangaramani."*

**Submissions on Behalf of the Personal Guarantor**

13. The Personal Guarantor denies all the averments made by the Financial Creditor in the present Petition and contends that the Petition should be dismissed with cost at the very instance because the intent of the Financial Creditor is to recover the outstanding debt which is against the scope, objective and spirit of the Code. The claim of the Financial Creditor is unreasonable/unambiguous.
14. The Resolution Professional ("RP") has submitted his Report vide Interlocutory Application No. 1363 of 2024, which has been taken on record by this Tribunal. The Respondent has contested the RP's Report, specifically challenging the admissibility of the General Form of Guarantee dated 08.03.2014 and 22.01.2018. The Respondent argues that these documents are inadmissible as evidence because they are not stamped, as required.
15. The Personal Guarantor/Respondent submits that it is the case of the Financial Creditor that the account of the Corporate Debtor was allegedly classified as NPA on 18.06.2018. However, the Creditor has failed to produce any NPA certificate.
16. It is also submitted that the Financial Creditor has failed to verify the present Petition by presenting a verification clause to its affidavit-in-support filed by the Assistant General Manager of the Financial Creditor. Thus, the present Petition is in non-compliance of Rule 34(4) of the National Company Law Tribunal Rules, 2016 which states that "*Every petition or application including interlocutory application shall be verified by an affidavit in Form No. NCLT.6.*"

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17. Further in the NeSL Report, the Financial Creditor has recorded the total outstanding amount as Rs.1,99,41,31,691.30/-, however, in Part III of the present Petition, the total outstanding amount is mentioned as Rs.2,95,77,27,075.27/-. It shows that the present Petition has been filed by the Petitioner without any seriousness and with the sole intent of recovery.
18. The Respondent asserts that the Financial Creditor has not provided the complete set of Loan Documents related to the Guarantees allegedly executed by the Guarantor. Therefore, the amounts claimed in the Petition cannot be claimed from the Guarantors under these purported Guarantees unless all relevant documents are presented, detailing the actual terms agreed upon by the parties, including the Corporate Debtor and the Guarantor. It is also submitted that in the event of breach or modification of the terms of the loan or otherwise any variation or modification would lead to release of the guarantors as well.
19. It is submitted that the Petitioner has annexed General Form of Guarantee as Guarantee Agreements. Further, the said Guarantee Agreements are wholly unstamped and since Letter of Guarantee is an instrument which admittedly creates an obligation, right or interest and which has monetary value, Article 5(h)(iv)(b) of the Maharashtra Stamp Act, 1958 would therefore squarely apply to the Letter of Guarantee. The prescribed stamp duty payable on such an instrument is 0.2 per cent of the amount agreed in the contract i.e. 0.2% of the Alleged Loan. It is trite law that any document which is not sufficiently stamped cannot be received in evidence or considered.
20. The Respondent submits that as per Section 30A of the Maharashtra Stamp Act, 1958, the Financial Creditor is liable to pay adequate stamp duty on the said Guarantee Agreements. Section 34 of the Maharashtra Stamp Act makes the bar against admissibility of an unstamped




document absolute in nature, including for a collateral purpose. Consequently, the Letter of Guarantee cannot be used as evidence before this Tribunal as is required under Section 99 of the Code to demonstrate that a guarantee exists between the Guarantor and the Creditor, and that the debt has become due under this agreement.

21. Lastly, the Respondent submits that the Resolution Professional has failed to appreciate whether there is a debt which is due and payable. Therefore, in view of the above, the petition and RP Report both need to be rejected.

**Submission of Additional Affidavit on Behalf Financial Creditor**


22. The Financial Creditor submits that Personal Guarantee Agreements were insufficiently stamped but the entire set of documents, including the primary mortgage deed related to the transaction with the Borrower and deed of Guarantee, have been duly stamped by subsequent payment of additional stamp duty.
23. The Financial Creditor has relied on the decision of the Hon'ble National Company Law Appellate Tribunal ("NCLAT") in the case of *Sandeep Kasare Vs. IL&FS Financial Services Ltd.* where it has been held that the guarantor cannot escape from its liability of repayment of the loan sanctioned to the Principal Borrower on the ground that the Guarantee is insufficiently stamped.
24. The Financial Creditor has also placed reliance on *IDBI Bank Limited vs. Mr. Manohar Gopal Bidaye*, where this Bench has held that :

*"23. In the present case, the guarantee agreement is in place and it has been invoked thus casting an obligation on the Respondent to pay the amount he is called upon to pay. It is the obligation of the borrower to pay for the stamp duty on the documents executed for the purpose of borrowing, and neither borrower nor guarantor ever raised any question on this issue. The proceedings under IBC are not intended to enforce the guarantee but are meant for resolution of the insolvency of the personal guarantor. Accordingly, we do not find any merit in this argument as well."*

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25. The Financial Creditor submits that the Respondent as a Guarantor vide letter dated 07.10.2016 has acknowledged the debt due and payable to the Petitioner.
26. The Financial Creditor submits that they have paid proper stamp duty on the loan, security Documents transactions which are subject matter of the present Petition of a sum of Rs.13,20,000/-(Rupees Thirteen Lakhs Twenty Thousand only) and Rs.10,00,000/-(Rupees Ten Lakhs Only) respectively.
27. The Respondent has admitted the documents including the guarantee and also liability due and payable to the Petitioner before the Hon'ble Debt Recovery Tribunal-I Mumbai, however thereafter on the ground that the present Section 95 Petition is filed before this Tribunal, the Respondent got the said Original Application Adjourned sine die.
28. The Financial Creditor submits that it is an admitted position that the Respondent has admitted the liability and Guarantee executed by the Respondent in favour of the Petitioner. The acknowledgement of debt is on record before this Tribunal. The Respondent's alleged contention of deficit stamp duty is also rebutted as the Petitioner has paid proper stamp duty on the loan transaction. Petitioner has produced the challans, which demonstrate that proper stamp duty has been paid on the loan and security documents. The Respondent is trying to delay the present proceeding on frivolous grounds which is nothing but afterthought and abuse of process of law.

**Submission in Reply to the Additional Affidavit on Behalf Personal Guarantor**

29. The Personal Guarantor submits that the Financial Creditor has failed to identify or specify which of the multiple documents filed in the main Petition reflects the payment of stamp duty, or on which document the stamp duty has been paid.

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30. The Personal Guarantor submits that the Financial Creditor has deliberately withheld the complete document, annexing only one page. By concealing the full document on which the stamp duty has been paid, the Financial Creditor is not only attempting to mislead this Tribunal but also creating confusion for both the Personal Guarantor and the Tribunal.
31. The Personal Guarantor submits that the challan in question allegedly reflects that stamp duty of Rs. 13,20,000/- and Rs. 10,00,000/- was paid on a 15-page document. However, it is important to note that none of the Guarantee documents consist of 15 pages. This indicates that the stamp duty was not paid on the Guarantee documents. Therefore, the Financial Creditor has committed the offense of perjury.

**Findings**

32. We have heard the learned counsel for both the parties and have duly perused the documents on record as well as the Report of the Resolution Professional.
33. The total debt amounts to Rs. 2,95,77,27,075.27/- as on 30.04.2020 along with further interests, charges and expenses. On 05.07.2018, the Guarantee was invoked by way of notice under Section 13(2) of the SARFAESI Act, 2002 to make payment of the outstanding amounts within 60 days from date of the notice. According to the NeSL report the date of default is recorded as 18.06.2018.
34. The Account of Corporate Debtor was classified as Non-Performing Assets (NPA) on 18.06.2018.
35. On 18.07.2020, the Financial Creditor issued a Demand Notice in Form-B, requesting the Respondent to settle the outstanding amount within 14 days from the date of the notice.



36. Counsel for the Petitioner submits that despite the invocation of Personal Guarantee given by the Respondent to the Petitioner, the same has not been honoured and the Respondent despite service of the Demand Notice under the provisions of the Code, continues to remain in default. The Respondent has failed to rebut the factum of default and thus, the learned RP has recommended for acceptance of his report u/s 99 of the Code. In view of the evidence available on record and the RP's report u/s 99 of the Code, the Ld. Counsel for the Petitioner prays that the above-captioned Petition be admitted, and the Respondent be subject to the Personal Guarantor's Insolvency Resolution Process
37. Per contra, Counsel for the Respondent submits that the Deed of Guarantee is not stamped, therefore, the aforesaid deeds are inadmissible in evidence as per the provisions of Section 34 of the Maharashtra Stamp Act, 1958.
38. The Resolution Professional has placed on record his Report u/s 99 of the Code. The RP in his Report has recommended the acceptance of the above-captioned Petition in order to admit the Respondent into the Personal Guarantor's Insolvency Resolution Process ("PGIRP").
39. The stamp duty payable on the loan documents as well as deed of guarantee is recoverable from by the Borrower, though it is paid by the lender at first instance. The Financial Creditor has placed on record the challans evidencing payment of additional stamp duty and has affirmed on affidavit that such additional stamp duty completes the payment of applicable stamp duty on loan documents, including guarantee document. The Respondent had not questioned the admissibility of such deed of guarantee at any time in any proceedings earlier.
40. Further, this is not a debt recovery forum where the court before decreeing a suit or a proceeding against the debtor in favour of the



creditor has to examine the admissibility of documents. The proceedings before the Adjudicating Authority are summary in nature and the IBC, 2016 being a complete code in itself, we are of the considered view that the provisions of the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872 do not strictly apply to the proceedings before the Adjudicating Authority while adjudicating an application u/s 95 read with Section 100 of the Code. The Respondent has not objected to the proceedings filed against her before DRT pursuant to such deed of guarantee. Accordingly, the objections taken by the Respondent with respect to the admissibility of the Guarantee Agreement as evidence on account of deficient stamping are irrelevant while adjudicating this Petition.

41. We are of the considered view that the captioned Petition is complete in all aspects, and the present case is therefore fit for admission. Ordered accordingly.

42. In terms of the above, the C.P. (IB) No. 1186/MB/2020 filed under Section 95 of the Code is hereby **admitted** and the Insolvency Resolution Process stands initiated against **Mrs. Usha Jawaharlal Gangaramani** viz. the Respondent herein. We hereby direct as hereinafter:

I. Initiate Insolvency Resolution Process against the Respondent/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 Sec 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 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 Resolution Professional **Mr. Uday Shreeram Sakrikar**, is appointed as a Resolution Professional, having Registration No. IBBI/IPA-001/IP-P01230/2018-2019/11927, having address at at 303, Rahul Vihar A, Lane 8 Dahanukar Colony , Kothrud, Pune ,Maharashtra-411038; Email-ipudaysakrikar@gmail.com 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 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 publication of notice shall be made in two newspapers, one in English and other in Vernacular, which have wide circulation in the State where the Corporate Debtor and Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.
- IV. 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 debtor under Sections 94 or 95. as the case may be, and



*b.* claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice. The debtor 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.

V. The repayment plan may authorize or require the Resolution Professional to:

- a.* carry on the debtor, business or trade on his behalf or in his name:  
or
- b.* realize the assets of the debtor; or
- c.* administers or dispose of any funds of the debtor.

VI. The repayment plan shall include the following, namely;

- a.* justification for preparation of such repayment plan and reasons based on which the creditors may agree upon the plan;
- b.* provision for payment of fee to the Resolution Professional;
- c.* such other matters as may be specified.

VII. 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.

VIII. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons thereof. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of IBC, 2016. The date of meeting should not be less than 14 days or more than 28 days from the date of submission of the Report under sub-section (1) of Section 106 of IBC, 2016, for which at least 14 days' notice to the creditors (as per the list



prepared) shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of IBC, 2016.

- IX. 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 duties in compliance with the Code of Conduct provided under Section 208 of IBC, 2016.
- X. The Resolution Professional shall submit his periodic reports before this Tribunal every 30 days.
- XI. The Petitioner is directed to deposit **INR 2,00,000/-** (Indian Rupees Two lakhs) to the bank account of the Resolution Professional within **one week**, towards his fees. This shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.
- XII. The Registry is directed to communicate a copy of order, report and application within **seven** working days and upload the same on the website immediately after the pronouncement of order.

**Sd/-**

**Prabhat Kumar**  
**Member (Technical)**

*Shivang(LRA)*

**Sd/-**

**Justice V. G. Bisht**  
**Member (Judicial)**