NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI BENCH (COURT-II)

Company Petition No. (IB)167(ND)2022

IN THE MATTER OF :

PNB Housing Finance Limited
9th Floor, Antriksh Bhawan,
22, Kasturba Gandhi Marg,
Delhi-110001.

...Creditor/Applicant

Versus

Mr. Vinod Kumar Gupta
S/o Mr. Gyan Prakash Gupta
R/o Plot No.687, Defence Enclave Delhi
(Personal Guarantor of M/s Ajnara India Limited & M/s Adonis Buildtech Private Limited)

...Personal Guarantor

Order Delivered on: 12.08.2022

SECTION: 95(1) of IBC 2016

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (J)
SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Mr. V.D' Costa, Mr. Astha Ojha and Ms. Gauri Goel, Advocates.
For the Guarantor: Mr. Ashish Aggarwal, Mr. Gurcharan Singh. Advocates.

ORDER

PER SHRI L.N.GUPTA, MEMBER (T)

Under consideration is the Application preferred by PNB Housing Finance Limited **(the 'Applicant/Creditor')**, under Section 95(1) r/w Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for IRP for Personal Guarantors to Corporate Debtor) Rules, 2019. The present Application is filed for initiating the Insolvency Resolution Process **(the "IR Process")** against Mr. Vinod Kumar Gupta (hereinafter, referred as **Personal Guarantor/Debtor**), who is the Guarantor of M/s Ajnara India Limited and M/s Adonis Buildtech Private Limited **(the 'Corporate Debtor herein referred as Borrowers')**.

2. It is stated by the Applicant that vide sanction letters dated 08.12.2016, 18.05.2017, 16.08.2018, it had provided various constructions finance/credit facilities to the Corporate Debtors. The details of the credit facilities provided are reproduced below :

Credit Facility	Outstanding as on 21.10.2021
Credit Facility – I	INR 27,67,42,327.11
Credit Facility – II	INR 43,39,68,014.92
Credit Facility – III	INR 70,52,74,384.20
Credit Facility – IV	NIL
Credit Facility – V	INR 29,10,96,023.95
Credit Facility – VI	INR 8,30,93,525.15
TOTAL	INR 1,79,01,74,275.33

3. It is stated by the Applicant that altogether 03 loan agreements dated 14.12.2016, 24.05.2017 and 28.08.2018 were executed between the Applicant and the Corporate Debtor for the aforesaid loan amount for which the Respondent/Personal Guarantor stood as a surety and executed Deed of Personal Guarantee on the correspondingly even dates.

4. The Applicant has placed on record the copy of the Guarantee Deed dated 14.12.2016, 24.05.2017, 28.08.2018 executed by the Personal Guarantor herein, in favour of the Applicant.

5. It is further stated by the Applicant that vide modified sanction letter dated 15.12.2020, the Applicant/PNB Housing Finance limited (PNBHFL) had provided a supplementary loan vide agreement dated 11.01.2021 to the Corporate Debtors.

6. The Applicant has given detailed particulars of the transaction in Part III of its Application, pursuant to which it had claimed a total debt of Rs.1,82,34,06,251.65.00. The Part III of the Application is reproduced overleaf :-

PART – III

PARTICULARS OF DEBT

1. **Total Debt (including any interest or penalties)**

S. No.	Nature of Facility	Date of Advance	Limit Sanctioned (Amt. in Crores)	Amount Disbursed (Amt. in Crores)	Rate of interest (Floating)
1.	Construction Finance (herein after referred to as "(Credit Facility I")	08.12.2016	50	50	13%
2.	Construction Finance Residential (herein after referred to as Credit Facility II).	24.05.2017	`75	40	12.50%
3.	Construction Finance Residential (herein after referred to as "Credit Facility III")	16.08.2018	85	62	12.25%
4.	Construction Finance	16.08.2018	25	25	12.25%

	Commercial (The debt has been duly paid off therefore no liability qua Corporate Debtor) (hereinafter referred to as "Credit Facility IV")				
5.	Construction Finance Residential (hereinafter referred to as "Credit Facility V")	16.08.2018	35	35	13%
6.	Corporate Term Loan ((hereinafter referred to as "Credit Facility VI")	16.08.2018	10	10	13%
		Total	255	197	
2.	**Amount in Default** INR 1,82,34,06,251.65 /- (Indian Rupees One Hundred Eighty Two Crores Thirty Four Lakhs Six Thousand Two Hundred Fifty One and Paisa Sixty Five only as on 01.12.2021 along with applicable rate of interest, penal interest in the aforesaid loan accounts besides costs, charges etc. incurred / to be incurred in the said credit facility accounts till the date of full and final adjustment of the said credit facility accounts.				

3.	**Date on which the debt fell due:** The said amount of Credit Facilities were payable by the Corporate Debtor:				
	Nature of Facility	Limit	Limit	Rate of	Debt fell due

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		sanctioned INR Crores	availed INR crores	interest (Floating)	(Devolvement Date)
	Credit Facility-I	50	50	13% pa	05.06.2021
	Credit Facility-II	75	40	12.50% pa	05.06.2021
	Credit Facility-III	85	62	12.25% pa	05.06.2021
	Credit Facility-V	25	25	12.25% pa	Amount duly repaid by the Borrower
	Credit Facility-V (Account closed and repaid in full)	35	35	13% pa	05.06.2021
	Credit Facility-VI	10	10	13% pa	05.06.2021

7. It is submitted by the Applicant that it had invoked the Guarantee vide Notices dated 16.04.2021 and 28.06.2021 issued to the Corporate Debtors as well as to the Personal Guarantor herein under the provisions of Section 13(2) of the SARFAESI Act 2002.

8. It is further submitted by the Applicant that it had sent a Demand Notice in Form-B under Rule 7(1) of Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 vide Speed-Post dated 20.11.2021 to the Personal Guarantor demanding payment of total outstanding amount along with interest of Rs.1,79,01,74,275.33 as on 21.10.2021. That the Applicant has placed on record the copy of the tracking report (page 385) reflecting delivery of the Demand Notice to the Personal Guarantor on 22.11.2021.

9. That the Applicant has also served the copy of this Application to the Personal Guarantor through email dated 03.03.2022 in compliance of the provisions under Section 95(5) of IBC, 2016. The Affidavit of Service filed by the Applicant is on record.

10. It is stated by the Applicant that the Respondent failed to make the payment under the Agreement/Contract of Guarantee on account of the default committed by Corporate Debtors/Borrowers and failed to comply with the terms and conditions of the Guarantee executed by the Respondent in favour of the Applicant/Creditor and thereby it has

committed default in making repayment of the loan along with the interest to the Applicant.

11. That vide order dated 07.03.2022, this Adjudicating Authority had issued notice to the Personal Guarantor, pursuant to which the Ld. Counsel for the Personal Guarantor had filed short Reply dated 20.05.2022 on behalf of the Respondent and raised preliminary objection that the Application is entitled to be dismissed as there is neither any CIRP nor any Liquidation proceedings pending against the Borrowers and therefore, this Petition is not maintainable in terms of section 60(2) of IBC.

12. As regards to the objection raised by the Personal Guarantor, on the ground of maintainability of this application, we refer to the judgement of Hon'ble NCLAT dated 27.01.2022 passed in the matter of State Bank of India Vs. Mahendra Kumar Jajodia, as per which the initiation of CIRP or Liquidation is not a pre-requisite for maintaining an application under section 95. That the contents of aforesaid judgement are reproduced overleaf :

"10. Sub-Section 1 of Section 60 provides that Adjudicating Authority in relation to Insolvency or Liquidation for Corporate Debtor including Corporate Guarantor or Personal Guarantor shall be the NCLT having territorial jurisdiction over the place where the Registered Office of the Corporate Person is located. The substantive provision for an Adjudicating Authority is Section 60, sub-Section (1), when a particular case is not covered under Section 60(2) the Application as referred to in sub-section (1) of Section 60 can be very well filed in the NCLT having territorial jurisdiction over the place where the Registered Office of corporate Person is located.

11. The Adjudicating Authority erred in holding that since no CIRP or Liquidation Proceeding of the Corporate Debtor are pending the application under Section 95(1) filed by the Appellant is not maintainable. The Application having been filed under Section 95(1) and the Adjudicating Authority for application under Section 95(1) as referred in Section 60(1) being the NCLT, the Application filed by the Appellant was fully maintainable and could not have been rejected only on the ground that no CIRP or Liquidation Proceeding of the Corporate Debtor are pending before the NCLT. In result, we set aside the order dated 05th October, 2021 passed by the Adjudicating Authority. The Application filed by the Appellant under Section 95(1) of the Code is revived before the NCLT which may be proceeded in accordance with the law."

13. We are aware of the fact that, in the meantime, the judgement of Hon'ble NCLAT dated 27.01.2022 passed in the matter of State Bank of India Vs. Mahendra Kumar Jajodia has been upheld by the Hon'ble

Supreme Court vide order dated 06.05.2022 in the matter of Mahendra Kumar Jajodia Vs. SBI in Civil Appeal No. 1871-1872 of 2022. The Copy of the Order is reproduced below:

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 1871-1872 OF 2022

MAHENDRA KUMAR JAJODIA ETC. — Appellant(s)

VERSUS

STATE BANK OF INDIA,
STRESSED ASSET MANAGEMENT BRANCH — Respondent(s)

O R D E R

We have heard learned Solicitor General and learned senior counsel for the parties and perused the record. We do not see any cogent reason to entertain the Appeals. The judgment impugned does not warrant any interference.

The Appeals are dismissed.

.....J.
(S. ABDUL NAZEER)

.....J.
(VIKRAM NATH)

NEW DELHI
MAY 06, 2022

14. Hence, from the Judgement of Hon'ble NCLAT in the Mahendra Kumar Jajodia (Supra) Case read with the judgement of Hon'ble Supreme Court (Supra), it can be inferred that an Application filed under section 95 of IBC cannot be rejected merely on the ground that no CIRP or Liquidation Proceeding of the Corporate Debtor is pending before the NCLT.

15. That from perusal of the record of the DMS it is observed that the Applicant/Creditor has filed this application in accordance with section 95(1) which categorically states that (1) *A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.* In addition to this the Applicant has annexed the Form-A i.e the consent form given by the proposed Resolution Professional Mr. Varun Vashisht.

16. In the light of the above circumstances, we would like to proceed further in the matter for appointing the Resolution Professional. Hence It is made known to everyone that on filing this Application by the Applicant/ Creditor, the interim-moratorium commences as stipulated under Section 96 (1) (a), in relation to all the debts of the personal guarantor and shall cease to have effect on the date of admission of this Application and during the interim- moratorium period, the following are prohibited:

(a) Any pending legal action or proceeding in respect of any debt of the personal guarantor shall be deemed to have been stayed; and

(b) The Creditors of the personal guarantor shall not initiate any legal action or proceedings in respect of any debt.

This shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

17. The Applicant/Financial Creditor has proposed the name of Mr. Varun Vashisht, Insolvency Professional for appointment as Resolution Professional, who has accepted to be appointed and declared that he is eligible to be appointed as there are no disciplinary proceedings pending against him. **Therefore we, in exercise of the powers conferred under Section 97 of the IBC, 2016 on this Authority subject to the Regulation 4 (1) and (2) of the Insolvency and bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations,2019, appoint Mr. Varun Vashisht IP, as the Resolution Professional.** The details of the Resolution Professional are as under:

Name : Mr. Varun Vashisht

Registration No : IBBI/IPA-001/IP-P-01919/2020-2021/13141

Present Address : R-8, South Extension Part-2, New Delhi-110049.

E-mail : cavarunvashisht@gmail.com

Mobile Number : 9312275602

18. The Resolution Professional Mr. Varun Vashisht shall exercise all the powers as enumerated under Section 99 of the IBC, 2016 read with the Rules made thereunder. **He is directed to examine the Application and make recommendations along with the reasons in writing for acceptance or rejection of this Application, within the stipulated time as envisaged under the provisions of Section 99 of the IBC, 2016.** The RP shall give a copy of the report under Section 99(7) to the

Applicant/Creditor as soon as the same is filed before this Adjudicating Authority.

19. The Applicant and his Counsel and the Court Officer are directed to serve the copy of this Order along with copy of the Application and documents on the abovenamed Resolution Professional immediately by all modes for information and compliance of the order.

20. List the matter on 30.08.2022.

(L. N. Gupta)
Member (T)

(Dharminder Singh)
Member (J)