

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P.(IB)/108(KB)2022

*Under section 95(1) of the Insolvency and Bankruptcy Code, 2016
read with rule 7(2) of the Insolvency and Bankruptcy (Application to
Adjudicating Authority for Insolvency Resolution Process for
Personal Guarantors to Corporate Debtor) Rules, 2019.*

In the matter of:

PNB HOUSING FINANCE LIMITED

...Applicant

-Versus-

Mr. GAURAV GARG

...Respondent

Order Reserved on: 20/05/2022

Order Pronounced on: 30/06/2022

Coram:

Shri Rohit Kapoor

: Member (Judicial)

Shri Harish Chander Suri

: Member (Technical)

Appearances (through video conferencing)

For FC

: Mr. Ankit Sharma, Adv.

Mr. Satvik Issar, Adv.

For Applicant

: Mr. Rajiv K. Virmani, Adv.

Mr. Gaurav Jain, Adv.

Mr. Rohit Sharma, PCS

Mr. Anuj Malhotra, Adv.

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court convened via video conference.
2. Under consideration is an Application **C.P.(IB)/108 /KB/2022** filed under section 95(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC, 2016**”) read with rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 (hereinafter referred to as “**IB Rules, 2019**”) and regulation 4(2) of IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (hereinafter referred to as “**IB Regulations, 2019**”) for initiating the Insolvency Resolution Process (hereinafter referred to as “**IR Process**”) against personal guarantor, viz., Mr. Gaurav Garg, Personal Guarantor of the Principal Borrower/Corporate Debtor, **Ashiana Landcraft Realty Private Limited (CIN: U70200WB2012PTC173601)** (hereinafter referred to as “**ALRPL**”).
3. The factual matrix of the case is that the Applicant is a banking company incorporated on **11.11.1998**. The present application is being filed to initiate insolvency resolution process against Mr. Gaurav Garg, who is Personal Guarantor to the Principal Borrower/Corporate Debtor i.e., **Ashiana Landcraft Realty private Limited**, under section 95 of the Insolvency and Bankruptcy Code, 2016.
4. The Applicant had sanctioned a loan facility of **Rs. 175,00,00,000/- (Rupees Hundred and Seventy-Five Crore Only)** (“**Loan Amount**”) to the Principal Borrower/Corporate Debtor on 31.03.2016 for construction of a real estate project being the ‘The Centre Court-Phase **I** and Phase **II** situated in Village Hasaru, Teshil and Distt. Gurugram, Haryana. In furtherance of this, a Loan Agreement dated **03.06.2016** (“**Loan Agreement**”) was executed between Principal Borrower/Corporate Debtor and Applicant.

5. Thereafter, in pursuance of the Loan Agreement, Personal Guarantor herein had executed a Deed of Guarantee dated **03.06.2016** (“**Deed of Guarantee**”) guaranteeing repayment of the entire loan amount as mentioned above. Moreover, it was expressly agreed in Clause 3 of the Deed of Guarantee that in the event of any default on the part of the Principal Borrower/Corporate Debtor in re-payment of any of the monies disbursed as loan, the Personal Guarantor shall upon demand, forthwith pay to the applicant without demur, all the amounts payable by the Principal Borrower/Corporate Debtor under the Loan Agreement, which was disbursed by Applicant to Principal Borrower/Corporate Debtor in various tranches. Moreover, Principal Borrower/Corporate Debtor had started making re-payment of the entire loan amount in the form of equated monthly instalments (EMI) starting from 05.04.2020 and was required to make payment of the EMIs on the 5th day of every subsequent month till the re-payment of entire loan amount along with interest was complete.

6. However, the Principal Borrower defaulted in making payment of the EMI resulting in the Applicant issuing a letter dated 11.09.2020, requesting the Principal Borrower/Corporate Debtor to regularize its loan account. Despite that the Principal Borrower/Corporate Debtor, has failed to pay the EMI for the month of October, 2020. Applicant was constrained to issue another request to regularize the loan account. However, the Principal Borrower/Corporate Debtor has continued to fail in discharging its obligations under the loan agreement.

7. On account of the continuous default of the Principal Borrower/Corporate Debtor to make timely repayments, the Applicant was constrained to issue a Notice dated 19.11.2020, recalling the entire loan amount. By the same letter to the Principal Borrower/Corporate Debtor, the Applicant also invoked personal guarantee of the Personal Guarantor herein calling upon him to make payment of the entire loan amount due as on 19.11.2020 in terms of the Deed of Guarantee executed by him within a period of 7 days. However, Personal Guarantor has failed to perform his obligations under the Deed of Guarantee.

8. The Applicant has issued a Demand Notice dated 26.07.2021 in **Form 'B'** under Rule 7(1) of the **I.B Rules** to the Personal Guarantor, calling upon the Personal Guarantor to make the payment of the outstanding loan amount as on 24.07.2021 amounting to **Rs. 192,25,76,442.13/- (Rupees One Hundred Ninety-Two Crore Twenty-Five Lacs Seventy-Six Thousand Four Hundred Forty-Two and Thirteen Paisa)** within a period of 14 days from the date of receipt of Demand Notice, which was duly delivered on 29.07.2021. However, Personal Guarantor has failed to make any payment.

Meanwhile, “**ALRPL**” (Corporate Debtor) was admitted under CIRP by the National Company Law Tribunal, Kolkata Bench vide order dated **11/01/2022** passed in **CP(IB)/666(KB)2020**.

9. In this factual conspectus, the applicant prays for initiation of insolvency resolution process, against the respondent/guarantor.

10. It is made known to everyone that on filing this Application by the Applicant/Creditor the interim-moratorium commences in terms of section 96(1)(a) of IBC, 2016.

11. The Applicant/Creditor has proposed name of **Mr. Arun Kapoor**, an Insolvency Professional for appointment as Resolution Professional. Therefore, we are appointing **Mr. Arun Kapoor** having IBBI Registration No. **IBBI/IPA-003/IP-N00030/2017-2018/10230**, of **G-601, Army Coop Housing Society, Nerul (East) Navi Mumbai, Mumbai-400706**, as Resolution Professional in exercise of the power conferred under section 97 of the IBC, 2016 on this Authority. The Resolution Professional is directed to file declaration within seven days from the date of receiving this Order to the effect that he fulfils all the requirements for being appointed as Resolution Professional in the matter.

12. The Resolution Professional shall exercise all the powers as enumerated under section 99 of the IBC, 2016 read with the Rules made thereunder. He is directed to make

the recommendations for acceptance or rejection of this Application within the stipulated time as envisaged under section 99(1) of the IBC, 2016. The RP shall give a copy of the report under sub-section (7) of section 99 of IBC, 2016 to the Applicant, as soon as the same is filed before this Authority.

13. The Counsel on record for the Applicant is hereby directed to serve the copy of this Order along with copy of the Application and documents on the Resolution Professional by all available modes for information and compliance. Proof of service shall be filed with this Bench for record.

14. List this matter on **12/08/2022** for further consideration.

15. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

16. Certified Copy of this order be issued, if applied for, upon compliance of all requisite formalities.

Harish Chander Suri
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed this, 30th day of June, 2022.

Kundan Kr.