**IN THE NATIONAL COMPANY LAW TRIBUNAL**
**DIVISION BENCH (COURT– I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **23.10.2024** THROUGH VIDEO CONFERENCING

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**PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)**
**HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

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**IN THE MATTER OF** **:** Culver Max Enterinment Pvt Ltd
Vs
Vimalarani Britto

**MAIN PETITION NUMBER** **:** CP(IB)/164(CHE)/2022

**(IA/MA) APPLICATION NUMBERS**

IA(IBC)/477(CHE)2024

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**ORDER**

Present: Ld. Counsel P. Ganesan for the IRP.

Vide separate order pronounced in Open Court, the petition is admitted. Insolvency proceedings be initiated. Shri. R. Sankaran is appointed as IRP.

**Sd/-**
**(VENKATARAMAN SUBRAMANIAM)**
MEMBER (TECHNICAL)

**Sd/-**
**(SANJIV JAIN)**
MEMBER (JUDICIAL)

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# IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – I, CHENNAI

## CP(IB)/164(CHE)/2022

*(under Section 100 of the Insolvency and Bankruptcy Code, 2016*

**Culver Max Entertainment Private Limited**
Formerly Sony Pictures Networks India Pvt Ltd,
4th Floor, Interface Building No. 7.
Off Malad Link Road, Malad (West), Mumbai.
Maharashtra - 400 064

*.....Financial Creditor/Petitioner*

Versus

**Vimalarani Britto**
(Personal Guarantor of Premier Futsal Management Private Limited)
No. 1, Royal Enclave,
Beasant Avenue, Adyar,
Chennai - 600 020, Tamil Nadu

*....Personal Guarantor/Respondent*

*Along with*

## IA(IBC)/447 /CHE/2024
## In
## CP(IB)/164(CHE)/2022

*(filed under section 99 of Insolvency and Bankruptcy Code, 2016)*

**Mr. R Sankaran**
Resolution Professional of Shri. Vimalarani Britto,
5, First Floor, Vyasar Street,
T. Nagar, Chennai - 600 017

*…Petitioner/Interim Resolution Professional*

*Order pronounced on* ***23rd October, 2024***

**CORAM :**

**SANJIV JAIN, MEMBER (JUDICIAL)**
**VENKATARAMAN SUBRAMANIAN, MEMBER (TECHNICAL)**

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| *For Petitioner* | : | *Mr. Abhishek Malhotra, Advocate;*<br>*Ms. Srishti Gupta, Advocate.* |
| *For IRP* | : | *A.G. Satyanarayana, Advocate;*<br>*Shri Sankaran, IRP in person.* |

**O R D E R**

***(Hearing through hybrid mode)***

The present Petition has been filed u/s. 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") r/w Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 by Culver Max Entertainment Private Limited ("Financial Creditor") for initiating insolvency resolution process against Vimalarani Britto ("Personal Guarantor") in respect of Principal Amount of Rs. 1,64,50,000/- (Rupees One Crore, Sixty-Four lakhs and Fifty thousand) and interest and penalties. The Date of Default, as specified in Part-III of the present Petition, is 15.10.2017 as per clause 4.1 (b) of the Media Right Agreement between the Financial

Creditor and the Corporate Debtor. This Petition has been filed before this Tribunal on 29.06.2022.

2. Part – I of the Petition sets out the details of the Petitioner / Financial Creditor. It has its registered office 4th Floor, Interface Building No. 7. Off Malad Link Road, Malad (West), Mumbai, Maharashtra - 400 064 and is represented by its Authorised Representative, Rajkumar Bidawatka. Part-II of the petition sets out the details of the Personal Guarantor. The address of the Respondent is mentioned as Vimalarani Britto, No. 1, Royal Enclave, Beasant Avenue, Adyar, Chennai - 600020, Tamil Nadu. The Respondent stood as a personal guarantor in respect of the loans availed by M/s. Premier Futsal Management Private Limited, the Corporate Debtor. In part – III of the Petition, the Petitioner has given the debt amount of INR Rs. 1,64,50,000/- (Rupees One Crore, Sixty-Four lakhs and Fifty thousand).

3. It is stated that the Corporate Debtor namely M/s. Premier Futsal Management Private Limited had availed various credit facilities from the Petitioner/Financial Creditor. It is stated that the Corporate Debtor was required to pay an amount of Rs. 2,75,00,000/- (Rupees Two Crores

and Seventy-Five Lakhs only) with additional TDS and GST aggregating to Rs. 2,97,00,000/- (Rupees Two Crores and Ninety-Seven Lakhs only). The Corporate Debtor paid a sum of Rs. 1,50,00,000/- (Rupees One Crore and Fifty Lakhs only) towards part payment of the liability and thereafter defaulted in making further payments towards its liability. The Respondent, Vimalarani Britto executed a deed of guarantee dated 29.09.2017, guaranteeing payment to the Petitioner of the remaining dues of Rs. 1,47,00,000/- (Rupees One Crore Forty-Seven Lakhs only) payable by the Corporate Debtor and to pay the said amount on or before 15.10.2017. Thereafter a sum of Rs. 10,00,000/- (Rupees Ten Lakhs only) was paid by the Corporate Debtor on 26.12.2017, with no further payments being made by the Corporate Debtor to the Petitioner. It is stated that the remaining liability is Rs. 1,64,50,000/- (Rupees One Crore Sixty-Four Lakhs and Fifty Thousand only) (Outstanding Amount) which includes Rs. 1,37,00,000/- (Rupees One Crore and Thirty-Seven Lakhs only) as outstanding amount and Rs. 27,50,000/- as TDS due and payable by the Corporate Debtor, guaranteed by the Guarantor.

4. It is stated that the M/s Fare Tours & Travels Pvt Ltd filed a petition under Section 7 in IBA/441/CHE/2019 before this Tribunal against the Corporate Debtor for initiation of CIRP and the same was allowed by this Tribunal vide order dated 31.01.2020.

5. It is stated that the Petitioner issued Form-B Demand Notice to the Respondent / Guarantor on 27.03.2022, but the Guarantor / Respondent did not act upon the same.

6. On presentation of the petition by the Financial Creditor, under section 95(1) of the IBC, 2016 for initiating Insolvency Resolution Process against the Personal Guarantor viz. Respondent herein, this tribunal vide Order dated 25.01.2024 appointed Mr. R. Sankaran as the Interim Resolution Professional ("IRP") and directed him to exercise all the powers as enumerated u/s. 99 of the Code, r/w rules made thereunder. In accordance with the said Order, the IRP filed his report vide S.R. No. 514 dated 14.02.2024 in **IA/(IBC)477(CHE)/2024** before this Tribunal seeking to take on record the Report filed as a separate typeset as mandated under Section 99 of the IBC, 2016.

7. The IRP was directed by this Tribunal to serve copy of the Report on the Petitioner and the Respondent. However, the Respondent did not appear despite service of the petition and the report. The right of the Respondent to file reply/objection was closed by this Tribunal vide order dated 19.08.2024.

8. The IRP in his Report, after due examination of the petition, documents filed along with the petition, in addition to the requirements as mandated under clauses (1), (2), (3), (4), (5), (6), (7), (8), (9) and (10) of Section 99 of the IBC, 2016, has recommended for the admission of the present petition by the Financial Creditor u/s. 95 of IBC, 2016.

9. Heard the submissions made by the Learned Counsel for the Petitioner and perused the report of the IRP.

10. The IRP in his report has observed that the Petitioner satisfies the requirement as set out in Section 95 of IBC, 2016. He has accordingly recommended for admission of the present petition.

11. Section 128 of the Indian Contract Act, 1872, provides that when a default is committed, the Principal Borrower and Surety are jointly and

severally liable to the Creditor and the Creditor has right to recover its dues from either of them or from both of them simultaneously. Section 128 of the Indian Contract Act, 1872 is reproduced hereunder:

> *"The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract."*

12. The Respondent is the Personal Guarantor of the Corporate Debtor. The Corporate Debtor / Guarantor failed to repay the debt due after the issuance of Demand Notice. The IRP has recommended for initiation of Insolvency Resolution Process against the Respondent. The date of default as mentioned in the application is 15.10.2017, as per clause 4.1 (b) of the Media Right Agreement between the Financial Creditor and the Corporate Debtor. The Present petition has been filed on 29.06.2022. The Petitioner is entitled to a benefit of limitation from 15.03.2020 to 28.02.2022 as extended by ***Hon'ble Supreme Court in Suo Moto W.P. (Civil) No. 3 of 2020.*** Thus, considering the date of default and the date on which the Application has been filed, we are of the opinion that this Application is within the period of limitation.

13. In light of the aforesaid discussions, the present Petition i.e. **CP(IB)/164(CHE)/2022** is admitted and the Insolvency Resolution Process stands initiated against Shri. Vimalarani Britto viz. the Respondent herein. We hereby direct as follows;

**I.** Initiate Insolvency Resolution Process against the Respondent/Personal Guarantor. The moratorium in relation to all the debts is declared, from today i.e. date of admission of the petition, 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 1BC, 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 viz. **R. Sankaran (IBBI/IPA-001/IP-P-01692/2019-2020/12608) (AFA valid till 22.11.2024),** Insolvency Resolution Professional 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 Chennai 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 petition;

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 petition 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.

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. realise the assets of the debtor; or c. administers or dispose of any funds of the debtor.

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.

**V**. 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.

**VI**. 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 subsection (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.

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

**VIII**. The Resolution Professional shall submit his periodic reports before this Tribunal, every 30 days.

**IX**. The Registry is directed to communicate a copy of order, report and petition to the concerned parties within seven working days and upload the same on the website immediately after the pronouncement of order.

14. The report of the RP filed in **IA/IBC/477/CHE/2024** is **taken on record**. Accordingly, **CP/IB/164/CHE/2022** stands **admitted**.

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|---|---|
| **Sd** | **Sd** |
| **VENKATARAMAN SUBRAMANIAM** | **SANJIV JAIN** |
| Member (Technical) | Member (Judicial) |

*Hresha. S*