



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

ATTENDANCE CUM ORDER SHEET OF THE HEARING  
HELD ON **30.08.2024** 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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**APPLICATION NUMBER** :  
**PETITION NUMBER** : CP(IB)/219(CHE)/2021  
**NAME OF THE PETITIONER(S)** : Central Bank of India  
**NAME OF THE RESPONDENTS** : Alfonso  
**UNDER SECTION** : Sec 95(1) of IBC, 2016

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**ORDER**

Present: None for the Petitioner.

None for the Respondent.

Vide separate order pronounced in Open Court, the petition under Section 95 of IBC is **admitted** and Shri. Kasiviswanathan is appointed as the IRP.

**Sd/-**

**(VENKATARAMAN SUBRAMANIAM)**  
MEMBER (TECHNICAL)

MG

**Sd/-**

**(SANJIV JAIN)**  
MEMBER (JUDICIAL)



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

**CP(IB)/219/(CHE)/2021**

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

**Central Bank of India,**  
Represent by Chief Manager  
Stressed Asset Management Branch  
48/49, Ground Floor, Montieth Road,  
Egmore, Chennai – 600 008.

...Applicant / Financial Creditor

Vs

**Mrs. Alfonso**  
W/o Dhanraj  
No.6, First Floor, Wellington Estate,  
53, Ethiraj Salai, Egmore,  
Chennai – 600008

...Respondent/Guarantor

**Present:**

<i>For Applicant</i>	<i>: B. Raghavulu Naidu, Advocate</i>
<i>For Respondent</i>	<i>: None Appeared</i>

**CORAM:**

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

*Order Pronounced on 30<sup>th</sup> August, 2024*

**ORDER**

*(Heard through Video Conferencing)*

1. Central Bank of India, the Financial Creditor / Applicant herein has filed this application under Rule 7(2) of the Insolvency and Bankruptcy



(Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 and Section 95(1) of Insolvency and Bankruptcy Code, 2016 against Mrs. Alfonso, Respondent / Personal Guarantor herein for initiating Insolvency and Resolution Process against the Respondent / Guarantor.

2. Part 1 of the application sets out the details of the Applicant / Financial Creditor i.e. Central Bank of India. Its business address is at 48/49, Montieth Road, Egmore, Chennai – 600 008 within the jurisdiction of this Tribunal. Part 2 of the application sets out the details of the Personal Guarantor namely Ms. Alfonso residing at No.6, First Floor, Wellington Estate, 53, Ethiraj Salai, Egmore, Chennai - 600008. In part 3 of the application, the Applicant has given the particulars of debt i.e. total debt (including interest or penalties) Rs. 1,60,87,73,025/- payable by the guarantor, the date on which the debt was due i.e. 15.02.2021 and the date on which the default occurred i.e. 27.06.2019.

3. It is stated that at the request of the Corporate Debtor i.e. M/s. Oceanic Edibles International Ltd., and the Personal Guarantors including Ms. Alfonso, the Applicant along with other Consortium Banks sanctioned the working capital facility. The Corporate Debtor executed the loan documents.



The Respondent Ms. Alfonso executed the deed of guarantee dated 21.07.2014 guaranteeing the repayment of working capital facilities. It is stated that operation and conduct of the loan account became irregular and the account became NPA on 10.09.2013. The Consortium Banks filed O.A. No. 335 of 2015 for recovery of the outstanding dues before DRT-2 Chennai against the Corporate Debtor and the Guarantors. The DRT passed the final order on 21.02.2019 in favour of the consortium banks for Rs. 103,04,18,350.73 together with future interest at the rate of 12% per annum (simple), from the date of filing of O.A till the date of realization in full, jointly and severally against the Corporate Debtor and the Guarantors including Ms. Alfonso. The DRT also issued recovery certificate in DRC No. 313/2019 on 27.06.2019.

4. It is stated that as per Section 19(22-A) of Recovery of Debts and Bankruptcy Act, 1993, the recovery certificate issued by the Presiding Officer under Section 19(22) of the Act shall be deemed to be a decree or order of the Court for the purpose of initiation of Insolvency proceedings against the personal Guarantor. It is stated that on 27.06.2019 a notice was issued to the Corporate Debtor and the Guarantors including Ms. Alfonso calling upon them to deposit the amount and the interest.



5. It is stated that one of the consortium member i.e. ICICI Bank Ltd filed an application under Section 7 in CP/563/2017 before the Tribunal against the Corporate Debtor for initiation of CIRP which was allowed by the Tribunal vide order dated 13.09.2017. On an application filed by the RP for liquidating the Corporate Debtor, the Tribunal passed an order for liquidation of the Corporate Debtor.

6. It is stated that the IBC came into effect on 01.12.2016 and the provisions of Part III relating to personal insolvency of the Corporate Debtor were brought into force w.e.f. 01.12.2019. Prior to such dates, there was no occasion to initiate the personal insolvency proceedings against the Guarantor.

7. It is stated that the Applicant issued Form-B Demand Notice to the Respondent / Guarantor on 08.12.2020 which was received by the Guarantor, but the Guarantor / Respondent did not make the payment and therefore she is liable to pay a sum of Rs. 153,83,32,173/- as on 23.09.2020 together with interest.

8. On this application, a report under Section 99 of IBC was called from the IRP **Kasi Viswanathan S** appointed vide order dated 21.07.2022. The IRP submitted the report *interalia* that on an application filed by one of the



consortium members i.e. ICCI Bank Limited, CIRP was initiated against the Corporate Debtor. It was not successful and consequently the Corporate Debtor landed into liquidation vide order dated 10.12.2018 which process is still going on. It is stated that the DRT-II at Chennai also passed an order in O.A. No. 335 of 2015 in favour of the Financial Creditors holding the Corporate Debtor, Corporate Guarantor and Personal Guarantors liable to pay a sum of Rs. 103.04 Crores together with interest at the rate of 12% per annum from the date of filing the OA till the date of realization. It is stated that in terms of the order dated 21.02.2019, DRT-II at Chennai issued a recovery certificate vide DRC. No. 313/2019 on 27.06.2019 making all jointly and severally liable to pay the amount. It is stated that the recovery officer then directed the Corporate Debtor, Corporate Guarantors and Personal Guarantors vide notice dated 27.06.2019 to appear before the DRT and submit compliance report of payment. It is stated that neither the compliance was submitted nor the amount was paid. It is stated that the Financial Creditor/Applicant sent a notice to the Personal Guarantor Ms. Alfonso on 08.12.2020, but she did not pay any amount. It is stated that as per the break up provided a sum of Rs. 153,83,32,173/- is due against the Guarantor.



9. It is stated that in the Application, the date of default is mentioned as 27.06.2019 which is the date on which the debt recovery certificate was issued by the DRT-II. Though the demand notice dated 08.12.2022 caused by the Applicant shows the default date as 10.09.2013 which was the date of NPA classified in the books of the Bank, but right to claim the amount pursuant to the debt recovery certificate accrued on 27.06.2019. It is stated that the application has been filed on 28.02.2021 in which, the default date has been taken as 27.06.2019, the date on which the debt recovery certificate was issued.
10. Even after giving enough opportunities to file the reply, the Respondent failed to do so.
12. We have heard Ld. Counsel for the Applicant and perused the report of IRP.
13. Ld. Counsel for the Financial Creditor reiterated that the order of DRT and therefore the order of the DRT has become final. Ld. Counsel stated that the claim of the Financial Creditor as per the DRC is valid and proper.
14. Section 95 of IBC provides that a Creditor may apply either by himself or jointly with other Creditors to the Adjudicating Authority for initiating



Insolvency Resolution Process under the Section by submitting an application.

The application shall be accompanied with details and documents relating to the debts owed by the Debtor to the Creditors as on the date of the application; failure by the Debtor to pay the debt within a period of 14 days of the service of the notice of demand; and relevant evidence of such default or non-repayment of debt.

15. A perusal of the application and the documents would show that the Applicant / Financial Creditor along with other consortium Banks sanctioned the working capital facility in favour of the Corporate Debtor M/s. Oceanic Edibles International Ltd. The Guarantors including the Respondent Ms.Alfonso executed the deed of guarantee on 21.07.2014. The Corporate Debtor became irregular in repayment of debt and its account became NPA on 10.09.2013 which in the demand notice in the present application has been stated as the date of default. The consortium Banks filed O.A. No. 335 of 2015 for recovery of the outstanding dues before the DRT –II Chennai against the Corporate Debtor and the Guarantors including the Respondent. The DRT-II passed an order / decree on 21.02.2019 for Rs. 103,04,18,350.78 together with interest holding the Corporate Debtor and the Guarantors including the Respondent jointly and severally liable to pay the debt. The DRT-II issued





debt recovery certificate in DRC No. 313/2019 on 27.06.2019 which is stated as date of default in the application by the Financial Creditor / Applicant. Section 19(22A) of RDB Act, 1993 provides that the recovery certificate issued by the Presiding Officer of the DRT under Section 19(22) of the Act shall be deemed as decree or order of the Court for the purpose of initiation of Insolvency proceedings against the personal guarantor.

16. In the instant case, before filing the application under Section 95 of IBC, the Applicant caused a demand notice on 08.12.2020 after getting the debt recovery certificate, calling upon the Respondent to pay the amount. In the demand notice issued in Form-B under Rule 7(1), total outstanding debt including interest or penalties / debt in default was stated as Rs. 153.83 Crores as on 23.09.2020. The date when the default occurred was stated as 10.09.2013 (date of NPA). The said notice also has a reference of the Tribunal order dated 13.09.2017 qua the CIRP of the Corporate Debtor, liquidation order dated 10.12.2018, debt recovery certificate No. 313/2019 dated 27.06.2019, deed of guarantee dated 21.07.2014 and O.A. No. 335 of 2015. It is not the case that the demand notice only has a reference of the date when the account of the Corporate Debtor became NPA. It also has a reference of the debt recovery certificate issued by DRT – II vide dated 27.06.2019 holding the Respondent



jointly and severally liable with the Corporate Debtor and other Guarantors.

It was held in the case of *Dena Bank (Bank of Baroda) Vs. C. Sivakumar Reddy and another (supra)* that non-payment of amount awarded under a decree, judgment or arbitral award would fall under the definition of financial debt and would give rise to a new cause of action to initiate insolvency proceedings under the Code. It was held that the recovery certificate in itself gives fresh cause of action to initiate CIRP. Admittedly, the date when the account became NPA gave rise to the Applicant to initiate proceedings but the debt recovery certificate issued by the DRT would give rise to a fresh cause of action for the Financial Creditor to initiate the insolvency proceedings, if the debt remains unpaid.

17. In the application under Section 95, in part 3, the Applicant has given the total debt / amount of debt as Rs. 160,87,73,025/- as on 15.02.2021 and the date, on which the debt became due / default occurred as 27.06.2019. The debt amount and the dates have been given on the basis of the debt recovery certificate issued by the DRT-II, Chennai. The variation in the amount as stated in the notice and the application is because of addition of interest on the principal amount due and payable by the Respondent from the date, the debt recovery certificate was issued as in the notice, the interest was calculated



upto 23.09.2020 while in the application, the interest has been calculated upto 15.02.2021. The said variation cannot be construed as mismatch between the amounts stated in the demand notice and the application.

18. 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 Creditor and the Creditor has the 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.”*

19. In the present case, the debt amount is more than the threshold limit required for initiating Insolvency proceedings against the Personal Guarantor. The date of default is reckoned as 27.06.2019 i.e., from the date of issuance of Recovery Certificate. The present Application has been filed on 28.02.2021 i.e. within the limitation period of three years from the date of default.

20. In light of the afore-said discussions, the present Application i.e. CP(IB)/219(CHE)/2021 is admitted for initiating the insolvency resolution



process against **Ms. Alfonso** 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 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. Kasiviswanathan (IBBI/IPA-001/IP-P00396/2017-2018/10714)** 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 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.



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 Applicant is directed to deposit INR 2,00,000/- (Indian Rupees Two lakhs) to the bank account of the Resolution Professional within one week of this order, towards his expenses. This shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.
- X.** The Registry is directed to communicate to the concerned parties a copy of order, report and application within seven working days and upload the same on the website immediately after the pronouncement of order.



21. Accordingly **CP/IB/219/CHE/2021** stands admitted.

**-Sd-**

**VENKATARAMAN SUBRAMANIAM**  
MEMBER (TECHNICAL)

**-Sd-**

**SANJIV JAIN**  
MEMBER (JUDICIAL)