



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

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **25.09.2024** THROUGH VIDEO CONFERENCING

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

APPLICATION NUMBER :
PETITION NUMBER : CP(IB)/179(CHE)/2024
NAME OF THE PETITIONER(S) : Indian Bank
NAME OF THE RESPONDENTS : S Swaminathan
UNDER SECTION : Sec 95 of IBC, 2016

ORDER

Present: Ld. Counsel Shri. Deva Dakshan for the Petitioner.

Vide separate order pronounced in Open Court, Shri. Madhu Desikan is appointed as IRP to submit the report.

Sd/-

(VENKATARAMAN SUBRAMANIAM)
MEMBER (TECHNICAL)

MG

Sd/-

(SANJIV JAIN)
MEMBER (JUDICIAL)



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

CP(IB)/179/(CHE)/2024

(filed under Section 95(1) of the Insolvency and Bankruptcy Code, 2016)

Indian Bank,

Stressed Assets Management Branch,

Zonal Office Building

No. 55, 2ND Floor, Ethiraj Salai,

Egmore, Chennai-600 008

.....Applicant

-Vs-

Mr. S. Swaminathan,

45, South Usman Road,

T. Nagar, Chennai – 600017

Also at:

Plot No. 9, S/2,

Astha Apartments, Sairam Avenue

1st Cross Street, Valasaravakkam,

Chennai - 600097

....Respondent

Order pronounced on 25th September, 2024

CORAM :

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAN, MEMBER (TECHNICAL)

For Applicant

: T. Ravichandran, Advocate

For Respondent

: Dinesh, Advocate

ORDER

(Hearing through Hybrid Mode)



The Applicant, Indian Bank, through its Stressed Assets Management Branch has filed this application under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 ("IBC") for initiating Insolvency Resolution Process against the Personal Guarantor/ Respondent **S. Swaminathan** of **M/s Indalloys & Extrusion Pvt Ltd.**, the Corporate Debtor.

2. As per the averments made in the application, **M/s Indalloys & Extrusion Pvt Ltd.**, CIN: U27209TN1995PTC031043 had taken credit facilities from the Applicant. The Respondent herein had given personal guarantee to the said loan. The Corporate Debtor failed to repay the debt which made the Applicant initiate CIRP against the Personal Guarantor.

3. In Part-III of the application, the Applicant has given the particulars of **debt as on 22.07.2024 as Rs.32,62,00,000/-** (Rupees Thirty-Two Crores Sixty-Two Lakhs Seven Crores Only), amount of **default as Rs.15,69,00,000 /-** (Rupees Fifteen Crores Sixty Nine Lakhs Only) and date of default is 30.04.2009. The amount of default as per Recovery Certificate having RC No. 224/2021 dated 27.07.2021 is Rs.



15,68,88,928.99 /- (Rupees Fifteen Crores Sixty Eight Lakh Eighty Eight Thousand Nine Hundred Twenty Eight and Paise Ninety Nine Only)

The Applicant has placed the Summary of Statement of Accounts, Deed of Guarantee dated 12.03.2008 executed by the Guarantor in favour of the Corporate Debtor, Copy of the Final Order dated 26.02.2021 passed by the DRT III, Chennai in O.A/57/2011 and the Recovery Certificate having RC No. 224/2024 issued by DRT III, Chennai .

4. The Demand Notice issued under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 to the Personal Guarantor dated **20.07.2023** is placed at **Page 40-41** of the typed set filed along with the application.

5. We have heard Learned Counsel for the Applicant.

6. Section 95 of IBC provides that 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 the Section by submitting an application.



The application shall be accompanied with details and documents relating to the debts or by the debtor to the creditor as on the date of application, failure by the debtor to pay the debt within a period of 14 days of the service of the Notice of Demand and the relevant evidence of such default or non-payment of debt. It also provides that “the creditor shall provide a copy of the application to the debtor and the application shall be in such form and manner.

7. Hon’ble Supreme Court in the matter of **Dilip B Jiwrajka –Vs- Union of India & Ors in Writ Petition (Civil) No 1281 of 2021** while dealing with the jurisdiction of NCLT in relation to adjudication of cases filed under Section 94 and 95 of IBC, 2016 has summarized in para-86 as follows;

86. We summarise the conclusion of this judgment below:

- (i) No judicial adjudication is involved at the stages envisaged in Sections 95 to Section 99 of the IBC;*
- (ii) The resolution professional appointed under Section 97 serves a facilitative role of collating all the facts relevant to the examination of the application for the commencement of the insolvency resolution process which has been preferred under Section 94 or Section 95. The report to be submitted to the adjudicatory authority is recommendatory in nature on whether to accept or reject the application;*
- (iii) The submission that a hearing should be conducted by the adjudicatory authority for the purpose of determining*



'jurisdictional facts' at the stage when it appoints a resolution professional under Section 97(5) of the IBC is rejected. No such adjudicatory function is contemplated at that stage. To read in such a requirement at that stage would be to rewrite the statute which is impermissible in the exercise of judicial review;

- (iv) The resolution professional may exercise the powers vested under Section 99(4) of the IBC for the purpose of examining the application for insolvency resolution and to seek information on matters relevant to the application in order to facilitate the submission of the report recommending the acceptance or rejection of the application;*
- (v) There is no violation of natural justice under Section 95 to Section 100 of the IBC as the debtor is not deprived of an opportunity to participate in the process of the examination of the application by the resolution professional;*
- (vi) No judicial determination takes place until the adjudicating authority decides under Section 100 whether to accept or reject the application. The report of the resolution professional is only recommendatory in nature and hence does not bind the adjudicatory authority when it exercises its jurisdiction under Section 100;*
- (vii) The adjudicatory authority must observe the principles of natural justice when it exercises jurisdiction under Section 100 for the purpose of determining whether to accept or reject the application;*
- (viii) The purpose of the interim-moratorium under Section 96 is to protect the debtor from further legal proceedings; and*
- (ix) The provisions of Section 95 to Section 100 of the IBC are not unconstitutional as they do not violate Article 14 and Article 21 of the Constitution.*

8. The Hon'ble Supreme Court has held that no judicial adjudication is involved at the stages envisaged in Sections 95 to



Section 99 of the IBC and also there is no violation of natural justice under Section 95 to Section 100 of the IBC as the debtor is not deprived of an opportunity to participate in the process of the examination of the application by the resolution professional. The Respondent / Personal Guarantor will be given an opportunity to file a reply once the RP has filed his Report under Section 99 of IBC, 2016.

9. Considering the above facts and the case *supra*, we appoint the Resolution Professional who will collate all the facts relevant to the examination of the application for the commencement of the Insolvency Resolution Process in respect of the Personal Guarantor.

10. In the instant case, the Applicant has proposed the name of the Resolution Professional as **Mr. Madhu Desikan (IBBI/IPA-001/IPP00579/2017-2018/11021)**. We therefore, upon verification of disciplinary status and Authorisation for Assignment with the IBBI portal, appoint **Mr. Madhu Desikan (IBBI/IPA-001/IPP00579/2017-2018/11021) (email id:- desikan.madhu@gmail.com)** as Interim Resolution Professional in respect of the Personal Guarantor/Respondent.



11. The Resolution Professional is directed to examine the application as set out in Section 97(6) of IBC, 2016 who after examining, may recommend for the acceptance / rejection of the application as provided under Section 97(6) of IBC, 2016, **within a period of 10 days** as contemplated under Section 99(1) of IBC, 2016.

12. The Applicant is directed to serve copy of the application and the order on the Interim Resolution Professional.

13. List this application for report / hearing on **28.10.2024**.

-Sd-

VENKATARAMAN SUBRAMANIAM
Member (Technical)

-Sd-

SANJIV JAIN
Member (Judicial)

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