



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

**ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON 09.07.2024 THROUGH VIDEO CONFERENCE**

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

Application No :
Petition No : CP(IB)/176(CHE)/2021
Name of Petitioner : State Bank of India
& Vs
Name of Respondent : T Jayananth
Section : Sec 100 of IBC, 2016

ORDER

Present: Mr. R.Sugumaran, Ld. Counsel for Petitioner

Vide separate order pronounced in open Court, the petition is allowed.

Mr. Muruganandan is appointed as the IRP.

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**[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)**

MS

-sd-

**[SANJIV JAIN]
MEMBER (JUDICIAL)**



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

CP(IB)/176(CHE)/2021

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

State Bank of India

Stressed Asset Management Branch
Red Cross Building, 2nd Floor,
No.32, Montieth Road,
Egmore, Chennai - 600 008

.....Applicant/Financial Creditor

Versus

Sri T.Jayananth

S/o. R Thangappan
No.537, Velacherry Road,
East Tambaram,
Chennai – 600 059

....Respondent/Personal Guarantor

Order pronounced on 09th July, 2024

CORAM :

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAN, MEMBER (TECHNICAL)

For Applicant : *R Sugumaran, Advocate*

For Respondent : *Rishi Nandan, Advocate*

ORDER

(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 State Bank of India (“Financial Creditor”) for initiating insolvency resolution process against Mr. T. Jayananth (“Personal Guarantor”) in respect of Principal Amount of INR 100,67,49,653.20/- together with interest. The Date of Default, as specified in Part-III of the present petition, is 29.12.2018. This Petition has been filed before this Tribunal on 23.07.2021

2. Part – I of the application sets out the details of the Applicant / Financial Creditor. It has its registered office Red Cross Building, 2nd Floor, No.32, Montieth Road, Egmore, Chennai- 600 008. Part-II of the application sets out the details of the Personal Guarantor. The address of the Respondent is mentioned as No.537, Velacherry Raod, East Tambaram, Chennai-600 059. The Respondent stood as a personal guarantor in respect of the loans availed by M/s. Titanium Tantalum Products Limited, the Corporate Debtor, which is currently under Liquidation. In part – III of the application, the applicant has given the debt amount of Rs.100,67,49,653.20(Rupees One Hundred Crore Sixty



Seven Lakhs Forty Nine Thousand Six Hundred and Fifty Three Paise Twenty Only) as on 12.07.2021 with further interest and other charges. Part – IV of the Application sets out the details of the Resolution Professional. The Applicant has proposed Mr. K. Muruganandan with IBBI Registration No -IBBI/IPA-001/IP-P01061/2017-2018/11754 as the Insolvency Resolution Professional in respect of the Respondent /Personal Guarantor.

3. It is stated that the Applicant granted various credit facilities to M/s. Titanium Tantalum Products Limited ("Corporate Debtor") for its business operations. The financial creditor is the sole banker for the credit facilities of Corporate Debtor. It is further stated that, the Corporate Debtor had availed various credit facilities from time to time vide sanctions letters dated 14.12.2002, 15.04.2004, 14.10.2005, 15.02.2007, 19.02.2007, 18.12.2008, 08.04.2010 and 30.012.2012. The guarantors T. Jeyanath, S/o Thangappan, Kamala Thangappan, W/o R. Thangappan and T.Jeyamohan, S/o R. Thangappan had guaranteed the due repayment of the loan amount.



4. It is stated that the guarantors had executed letters confirming the deposit of title deeds with an intention to create an equitable mortgage over their respective immovable properties on 07.12.2001, 22.02.2003, 24.01.2003, 21.02.2004, 24.03.2007, 03.05.2007, and 15.03.2009. Memorandum regarding mortgage by deposit of title deeds were registered as Document No. 4835/2007, 4836/2007, 4837/2007 and 8997/2008 with the respective sub-registrars' of assurances.

5. It is stated that the Corporate Debtor had committed default in repaying the loan amount and consequently the loan accounts had become NPA in the books of Financial Creditor on 28.11.2013 and hence the financial creditor had caused a demand notice under Section 13(2) of SARFAESI Act, 2002, on 16.12.2013 to the Corporate Debtor, guarantor, and Corporate guarantor but evoked no response.

6. It is stated that, in the normal course the corporate debtor through the guarantors approached the financial creditor and submitted the proposal for compromise settlement on 14.02.2017 for compromise settlement of the account. The financial creditor accepted the offer and issued a letter dated 09.03.2017 calling upon the corporate debtor and



the guarantors to make the payment in terms of the letter. However, the Corporate Debtor and the guarantors did not comply with the payment terms and the same got lapsed by efflux of time. Hence, the compromise settlement was cancelled by the bank vide letter dated 25.05.2017.

7. It is stated that, the financial creditor had filed OA No. 156 of 2014 before DRT-1, Chennai against the Corporate Debtor and guarantors and in the said OA, final order was passed on 24.02.2018. The Recovery Officer attached to the DRT, Chennai on 28.11.2018 issued a demand notice to the Corporate Debtor and Guarantors calling upon them to pay the dues mentioned in the DRC within 30 days from the date of receipt thereof. Despite the lapse of 30 days on 29.12.2018, the Corporate Debtor and Guarantors failed to pay the due. It is averred that, the date of default is reckoned as 29.12.2018.

8. It is stated that, the corporate debtor went into CIRP pursuant to an application filed by Operational Creditor Kerala State Electronics Development Corporation Limited in TCP/413/IB/CB/2017 under Section 9 of the Insolvency and Bankruptcy Code, 2016(IBC). This



Tribunal vide order dated 27.11.2017 admitted the Petition and ordered CIRP. Later, this Tribunal vide order dated 12.06.2018 ordered for liquidation of the Corporate Debtor since no resolution plan was received.

9. It is stated that, the Financial Creditor initiated SARFAESI proceeding against the Corporate Debtor and recovered some portion of the debt. The outstanding due of Rs. 100,67,49,653.20 along with interest as on 12.07.2021 is pending and the guarantor has failed to clear the dues. Hence, the financial Creditor is constrained to file Company Petitions against the guarantors, T.Jeyamohan and T.Jeyananth in CP(IB)/175/CHE/2021 & CP(IB)/176/CHE/2021 respectively, under section 95 of Insolvency and Bankruptcy Code, 2016.

10. It is stated that, the present petition CP(IB)/176/CHE/2021 has been filed within 3 years from the date of liquidation of Corporate Debtor i.e., 12.06.2018 reckoning the covid extension granted in as much as the mandatory demand notice was issued on 15.02.2021. It is averred that, the recovery officer attached to DRT issued a demand



notice to the Corporate Debtor and its guarantors on 28.11.2018 calling upon them to pay the dues mentioned in the DRC No. 435/2018 within 30 days from the date of receipt thereof. Despite the lapse of 30 days on 29.12.2018, the Corporate Debtor and its guarantors failed to pay the dues. The date of default is to be calculated from 29.12.2018. Petition filed on 23.07.2021 which is within limitation period.

11. On presentation of the present application 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 24.03.2024 appointed Mr. K.Muruganandan as the Resolution Professional ("RP") 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 RP duly filed his report before this Tribunal.

12. The RP in his Report, after due examination of the application, documents filed along with the application, and the Reply filed by the Respondent, 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 application by the Financial Creditor u/s. 95 of IBC, 2016.

13. It is seen from the record of proceedings dated 01.12.2023, 30.01.2024 and 15.04.2024, that sufficient opportunities were granted to the Respondent to file his reply to the report of the RP. However, the Respondent has not filed any reply rebutting the recommendations made by the RP for admission of the present Application.

14. Heard the submissions made by the Learned Counsel for the parties and perused the report of the RP.

15. The RP in his report has observed that the Applicant satisfies the requirement as set out in Section 95 of IBC, 2016. He has accordingly recommended for admission of the present application.

16. It is noted that u/s. 128 of the Indian Contract Act, 1872, 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.”

17. The Corporate Debtor has already been admitted into CIRP. The Respondent is the Personal Guarantor of the Corporate Debtor which availed the Loan. The Corporate Debtor / Guarantor failed to repay the Loan after the issuance of Demand Notice. The RP has also recommended for initiation of Insolvency Resolution Process against the Respondent. The Recovery Officer attached to DRT issued a notice to the Corporate Debtor and its guarantors on 28.11.2018 to pay the dues within 30 days. Despite lapse of 30 days on 29.12.2018, the Guarantors failed to pay the dues hence the date of default is reckoned as 29.12.2018 and the present Application has been filed on 23.07.2021. i.e. within the period of limitation, even though the Applicant is entitled to benefit of limitation as extended by Hon'ble Supreme Court in *Suo Moto W.P. (Civil) No. 3 of 2020*.



18. In light of the afore-stated observations, the present Application i.e. CP(IB)/176(CHE)/2021 is admitted and the Insolvency Resolution Process stands initiated against Mr. T.Jayananth 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 viz. **K Muruganandan (IBBI/ IPA-001/IP-P01061/2017-2018/11754)**, 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 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.

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VENKATARAMAN SUBRAMANIAM
Member (Technical)

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SANJIV JAIN
Member (Judicial)

Kishore P