



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

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **31.07.2024** THROUGH VIDEO CONFERENCING

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

IN THE MATTER OF : S Sharvesh
Vs
Canara Bank

MAIN PETITION NUMBER : CP(IB)/217(CHE)2023

(IA/MA) APPLICATION NUMBERS

IA(IBC)/483(CHE)2024

ORDER

Present: Ld. Counsel Shri. A S Sathish Kumar for the Petitioner.

Vide separate order pronounced in Open Court, CP(IB)/217(CHE)2023 is
admitted and IA(IBC)/483(CHE)2024 is disposed of.

Sd/-

(VENKATARAMAN SUBRAMANIAM)
MEMBER (TECHNICAL)

MG

Sd/-

(SANJIV JAIN)
MEMBER (JUDICIAL)



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

CP(IB)/217(CHE)/2023

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

S.Sharvesh

D Block, 1st Floor,
M M Oasis, Lakshmi Nagar, 1st street,
Gerugambakkam, Chennai – 600 122

.....Applicant/Guarantor

Versus

Canara Bank

New No.3, SAIT Colony,
1st Street, Egmore
Chennai – 600 008

....Respondent

Order pronounced on 31st July 2024

Along with

IA(IBC)/483/CHE/2024 in CP(IB)/217/CHE/2023

(Filed under Section 99(1) of the Insolvency and Bankruptcy Code, 2016)

M.Govindarajan,

Insolvency Professional
IBBI/IPA-003/IP-N00293/2020-2021/13290
55, Rajaram Street, Jawahar Nagar,
Tirumangalam- 625 706
Madurai District

...Applicant

CORAM :

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAN, MEMBER (TECHNICAL)

For Petitioner : *A.S.Sathish Kumar, PCS*

For Respondent : *None*



COMMON ORDER

(Hearing through hybrid mode)

The present petition has been filed u/s. 94(1) the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") r/w. Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. The Prayer is to initiate the Insolvency Resolution Process against Mr.S.Sharvesh ("Personal Guarantor") of Canara Bank in respect of an Amount of Rs.1,18,28,277/-together with interest. The Date of Default, as specified in Part-III of the petition, is 29.04.2022. This Petition has been filed before this Tribunal on 20.12.2023.

2. Part – I of the application sets out the details of the Applicant / Personal Guarantor namely S.Sharvesh residing at D Block, 1st Floor, M M Oasis, Lakshmi Nagar, 1st Street, Gerugambakkam, Chennai- 600 122.The Applicant had stood as personal guarantor in respect of the loans availed by Srivisha Infra Private Limited. Part-III of the application sets out the details of the Creditor. The address of the Respondent is mentioned as New No.3, SAIT Colony, 1st Street,



Egmore, Chennai – 600 008. In part – III of the application, the applicant has given the debt amount of Rs.1,18,28,277/-together with interest. Part – IV of the Application sets out the details of the Resolution Professional and the Applicant had proposed Mr.Madhu Desikan as the Insolvency Resolution Professional in respect of the Respondent / Personal Guarantor. However, this Tribunal vide Order dated 25.01.2024appointed **Mr.Govindarajan M** with Reg No: IBBI/IPA-003/00293/2020-2021/13290 (Email Id: govind.ayyan@gmail.com) (whose AFA is valid till 17.12.2024) as Interim Resolution Professional in respect of the Personal Guarantor.

FACTS OF THE CASE:

3. It is stated that the Corporate Debtor namely Srivisha Infra Private Limited through its Directors had availed credit facilities to the tune of Rs.1.50 crores from Canara Bank, Egmore Branch during September 2019. It had entered into security agreements in favor of the bank, the secured creditor. It also agreed to repay the loan amount in accordance with terms and conditions as mentioned in the agreements.

4. It is stated that the Applicant, Sri Sarvesh and other two Directors, viz, Sri R. Sankar and Smt. S. Bhanumathi guaranteed, the payment on demand of all moneys and discharge of all obligations and liabilities owing or incurred to the bank, the secured creditor by the borrower company.

5. It is stated that on 28.05.2020 the Corporate Debtor had applied for loans to Micro & Small Enterprises to the Canara Bank, Egmore branch, Chennai for which Rs.20 lakhs were granted by the bank to the Corporate Debtor as GECL loan. The Personal Guarantor also furnished guarantee for the said amount.

6. Since the loans were not repaid regularly, the bank classified the debt as Non-Performing Asset (NPA) on 29.04.2022. The bank issued a demand notice to the corporate debtor as well as the three guarantors on 30.04.2022 under Section 13(2) of the SARFAESI Act, 2002 directing to repay the dues to the tune of Rs.1,18,28,277.14) as on 30.04.2022, (Annexure-2) as arrived at as below-

- a) Secured OD (loan No. 0932256038259) -Rs. 1,01,71,796.35
- b) GECL (loan No. 0932755000003)-Rs. 16,56,480.79

Total - Rs. 1,18,28,277.14



7. It is stated that the applicant in the present application also marked the above said demand notice issued by the bank, the Financial Creditor implying that he has received the demand notice and accepted the outstanding amount payable by the Corporate debtor and also his liability as personal guarantor to the corporate debtor.

8. It is stated that the said dues, except the payment as one time settlement, have not been paid by either by corporate debtor or by guarantors. It is stated that the financial creditor has not taken action for initiating corporate insolvency resolution process against the corporate debtor.

9. It is stated that the personal guarantor has filed an application before this Tribunal under Section 94(1) of the Insolvency and Bankruptcy Code, 2016, read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) on 20.12.2023 submitting the full facts of the case along with the copies of documents with the prayer to initiate the insolvency process in respect of him (Shri Sarvesh), the personal guarantor to Srivisha Infra Private Limited,



Chennai. The applicant also furnished his Statement of Affairs as on 15.12.2023 (page No. 24 of the application) to the tune of Rs.1,43,00,000/- (Rupees One crore and forty three lakhs only) and accepted the liability as Rs.1,18,28,277/- in the application.

10. It is stated that the information as to the filing of the said application was intimated to the Financial Creditor by the Counsel of the applicant on the email of the financial creditor on 20.12.2023.

11. It is stated that this Tribunal Vide Order dated 25.01.2024 in CP (IB) 217(CHE)/2023 appointed Shri M. Govindarajan, as Insolvency Resolution Professional in this case and directed the Insolvency Resolution Professional to 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.

12. It is stated that a letter dated 03.02.2024 was served on the personal guarantor through email and also the hard copy by speed post. The same was received by the personal guarantor on 05.02.2024. It was confirmed in the application as well as by oral confirmation that



the personal guarantor had given a guarantee to the Canara Bank for the loan obtained by the Corporate Debtor.

13. Despite service of the petition, none appeared on behalf of the Respondent/ Canara Bank.

14. On presentation of the present application by the Personal Guarantor under section 94(1) of the IBC, 2016 for initiating Insolvency Resolution Process against the Personal Guarantor viz. Sharvesh, this tribunal vide Order dated 25.01.2024 appointed Mr.M.Govindarajan 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 bearing IA/483/CHE/2024 before this Tribunal.

15. 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 Personal Guarantor u/s. 94 of IBC, 2016.

16. This Tribunal dated 01.07.2024 has recorded that :

Despite sufficient time and opportunity given, the Respondent has not filed any reply nor has any objections to the IRP report.

It appears that Respondent has nothing to say on the Petition and the report of the IRP.

FINDINGS OF THIS TRIBUNAL:

17. Heard the submissions made by the Learned Counsel for the applicant and perused the report of the RP.

18. The RP in his report has observed that the Applicant satisfies the requirement as set out in Section 94 of IBC, 2016. He has accordingly recommended for admission of the present application.

19. 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.”

20. The applicant 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 applicant.

21. In light of the afore-stated observations, the present Petition i.e. CP(IB)/217(CHE)/2023 is admitted. The Insolvency Resolution Process stands initiated against Mr.S.Sharvesh viz. the applicant 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. **M.Govindarajan**, 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/ Personal Guarantor is directed to deposit INR 2,00,000/- (Indian Rupees Two lakhs) to the bank account of the Resolution Professional within one week, towards his fees. 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 a copy of order, report and application to the concerned parties within seven working days and upload the same on the website immediately after the pronouncement of order.



22. Accordingly the report of the RP filed in IA/IBC/483/CHE/2024 stands **disposed of**. CP/IB/217/CHE/2023 stands **admitted**.

-Sd-
VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-
SANJIV JAIN
MEMBER (JUDICIAL)

SriramAnanth.V