



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

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **08.11.2024** THROUGH VIDEO CONFERENCING

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

APPLICATION NUMBER :
PETITION NUMBER : CP(IB)/18(CHE)/2022
NAME OF THE PETITIONER(S) : State Bank of India
NAME OF THE RESPONDENTS : Vijayakumar
UNDER SECTION : Sec 95(1) of IBC, 2016

ORDER

Present: Ld. Counsel Shri. Sashi Kumar for the Petitioner.

Ld. Counsel Ms. Srinithi Malavika for the Respondent.

Vide separate order pronounced in Open Court, the petition is admitted.
Insolvency proceedings is initiated against the Respondent.

Ms. Rosita Fernando is appointed as the RP.

Sd/-
(VENKATARAMAN SUBRAMANIAM)
MEMBER (TECHNICAL)

MG

Sd/-
(SANJIV JAIN)
MEMBER (JUDICIAL)



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

CP(IB)/18/(CHE)/2022

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

State Bank of India

Stressed Asset Management (Large) Branch

Red Cross Building, Montieth Road,

Egmore, Chennai - 600008

.....Applicant/Financial Creditor

Versus

Mr. R. VijayKumar

S/o Ramamurthy

10/60 (Old No:11A),

Dr Ranga Road, 2nd Street, Alwarpet,

Chennai – 600 018

....Respondent/Personal Guarantor

CORAM :

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAN, MEMBER (TECHNICAL)

For Applicant : *M.L.Ganesh, Advocate*

For Respondent : *Gajendran Ravi, Advocate*

Order pronounced on 8th November, 2024

COMMON ORDER

(Hearing through hybrid mode)

1. The present Application (CP(IB)/18/CHE/2022) 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 (“Financial Creditor”) for initiating insolvency resolution process against Mr. R. Vijay Kumar (“Personal Guarantor”) in respect of Principal Amount of INR 154,91,79,006.84/- (Rupees One Hundred and Fifty Four Crores Ninety One Lakhs Seventy Nine Thousand and Six and Paise Eighty Four Only) together with interest. The Date of Default, as specified in Part-III of the present Application is 26.07.2017, i.e., the date on which the DRC certificate was issued. This Application has been filed on 17.04.2021

2. Part – I of the application sets out the details of the Applicant / Financial Creditor. It has its registered office at Red Cross Building, 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 Mr. R Vijay Kumar, 10/60 (Old No:11/A), Dr, Ranga Road, 2nd Street, Alwarpet, Chennai – 600018. The Respondent stood as a personal guarantor in respect of the loans availed by M/s. Gemini Communications Ltd., the Corporate Debtor. In part – III of the application, the applicant has given the debt amount of INR 154,91,79,006.84/-(Rupees One Hundred and Fifty Four Crores



Ninety One Lakhs Seventy Nine Thousand and Six and Paise Eighty Four Only) as on 31.03.2021. Part – IV of the Application sets out the details of the Resolution Professional. The Applicant has proposed Mr. K. Sivalingam with IBBI Registration No IBBI/IPA-001/IP-P-01597/2018-2019/12430 as the Insolvency Resolution Professional in respect of the Respondent /Personal Guarantor.

3. It is stated that the M/s Gemini Corporations Corporate Debtor availed various credit facilities from the financial creditor for which the Respondent stood as guarantor for the loan liability by executing guarantee agreement. It is stated that the Corporate Debtor and Guarantor deposited the original title deeds pertaining to the secured property with an intention to create equitable mortgage in favour of the financial creditor.

4. It is stated that the Corporate Debtor failed to repay the loan amount, the loan accounts were continuously running irregular and slipped in to NPA category. The financial creditor filed OA No. 228/2014 before DRT-II Chennai against the corporate debtor and guarantors which was allowed on 26.07.2017.

5. It is stated that pursuant to an application filed by financial creditor this Tribunal vide order dated 20.16.2018 placed the Corporate



Debtor in CIR Process. It is further stated that vide order dated 26.02.2019, this Tribunal admitted the liquidation of the Corporate Debtor.

6. It is stated that the guarantor had submitted Resolution plan on 18.05.2019 which was rejected inter alia on many grounds.

7. It is stated that, the Debt Recovery Certificate was issued by DRT-II Chennai vide order dated 26.07.2017 in DRC No. 307/2017 in OA No. 228 of 2014.

8. It is stated that, the Financial Creditor/Applicant sent mandatory demand notice on 28.10.2020 to the guarantors but evoked no response.

9. It is stated that the present Application has been filed on 17.04.2021.

10. It is stated that, the Respondent along with other guarantor Mr. Ram Kumar is jointly and severally liable to pay a sum of INR 154,91,79,006.84/-(Rupees One Hundred and Fifty Four Crores Ninety One Lakhs Seventy Nine Thousand and Six and Paise Eighty Four Only) as on 31.03.2021.

11. The Applicant has annexed following documents along with this Application to support its claim;



- i) Deed of guarantee dated 18.03.2011 – Annexure I (3)
- ii) Balance Confirmation dated 10.04.2013 – Annexure I (4)
- iii) DRC No. 307 of 2017 issued by DRT-II Chennai dated 26.07.2017.
- iv) Resolution Plan dated 18.05.2019 submitted by the Guarantors.
- v) Demand notice dated 28.10.2020 issued to the guarantor.

Report filed by the IRP

12. Pursuant to the appointment of Mr. K.Sivalingam as Interim Resolution Professional(IRP) by this Tribunal vide order dated 24.03.2022, the IRP filed the report.

13. The RP in his Report, after due examination of the application, documents filed 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.

Reply filed by Respondent:

14. The Respondent filed his reply and stated that the Financial Creditor had filed OA No.228/2014 before DRT-II Chennai against the



Corporate Debtor and Guarantors including the Respondent, which was allowed vide order dated 18.05.2017, and the Hon'ble DRT-II issued DRC No. 307/2017 in O.A.No.228 of 2014. It is stated that, the final amount arrived by the DRT was a sum of Rs.87,54,12,175 along with interest. Thus, the final amount derived by the DRT was Rs.119,31,46,168.93 as on the date of the Order i.e., 04.01.2017.

15. It is stated that, the Financial Creditor filed this Application CP(IB)/17(CHE)/2022, after three years from the date of the DRT's Order, under Section 95 of the IBC,2016 alleging that the Guarantor is liable to pay a sum of Rs.154,91,79,006.84/-.

16. It is stated that, this Application is barred by res judicata and double jeopardy as the Financial Creditor has already sued the Respondent for the same debt in the DRT-II Chennai. Thus, filing this application before the NCLT would amount to res judicata.

17. It is stated that, the case O.A.No.228 of 2014 filed by the Financial Creditor before the DRT-II Chennai should have been earlier transferred to this Tribunal as per Section 60(3) of IBC,2016. Since the case was not transferred earlier, the present Application prejudices the interest and rights of the Respondent. It is averred that, the Financial



Creditor has opportunistically filed this instant petition, misusing the IBC provisions for mere money recovery.

18. It is stated that, this Application is barred by limitation as the Debt Recovery Certificate was issued on 26.07.2017 and this Application has been filed after 3 years i.e. 17.04.2021. It is further averred that the Respondent is a guarantor and not a borrower, where the claim against the borrower itself is non-existent thus the Guarantor's liability cannot be invoked.

OBSERVATIONS AND FINDINGS OF THIS TRIBUNAL:

19. Heard the submissions made by Learned Counsels for Applicant, Respondent and perused the report of the RP.

20. 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.

21. It is seen from the records that, the Corporate Debtor had taken loans which it failed to pay. The Respondent herein had given guarantee to the said loan. Further, Recovery Certificate dated 26.07.2017 in DRC No. 307 of 2017 in OA No. 228 of 2014 was issued by DRT, Chennai against Corporate Debtor and the Guarantors.



22. The Respondent's contention of transferring debt recovery proceedings to this Tribunal is unfounded. The IBC, 2016 does not envisage such transfer of debt proceeding from DRT to this tribunal under Section 60(3). Further, the contention of Res Judicata and Double Jeopardy does not apply as there is no bar on the financial creditor to initiate proceedings under Section 95 of IBC, 2016 when Debt Recovery Certificate is issued by Debt Recovery Tribunal.

23. 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."

24. In the instant case, the date of default is reckoned as 26.07.2017 i.e., the date of issuance of Recovery Certificate. The present Application has been filed on 17.04.2021. The Applicant is entitled to 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 of 3 years.

25. It is also relevant to refer to the Judgment of Hon'ble Supreme Court in the case of *Dena Bank (Now Bank of Baroda) versus 'C. Shivakumar Reddy & Anr. (2021) 10 SCC 330* where it was held that the Judgment and/or decree for money in favour of the Financial Creditor', passed by DRT, or any other Tribunal or Court, or the issuance of a certificate of recovery in favour of the 'Financial Creditor', would give rise to a fresh cause of action for the 'Financial Creditor', to initiate proceedings under Section 7 of the Code, if the dues of the 'Corporate Debtor' under the Judgment/decree or any part thereof remained unpaid. The relevant para is reproduced as hereunder:

"141. Moreover, a judgment and/or decree for money in favour of the financial creditor, passed by the DRT, or any other tribunal or court, or the issuance of a certificate of recovery in favour of the financial creditor, would give rise to a fresh cause of action for the financial creditor, to initiate proceedings under Section 7 IBC for initiation of the corporate insolvency resolution process, within three years from the date of the judgment and/or decree or within three years form the date of issuance of the certificate of recovery, if the dues of the



corporate debtor to the financial debtor, under the judgment and/or decree and/or in terms of the certificate of recovery, or any part thereof remained unpaid.”

26. In the light of the afore-stated observations, the present Application i.e. **CP(IB)/18(CHE)/2022** is admitted. **The Insolvency Resolution Process stands initiated against Mr. R.Vijay Kumar** viz. the Respondent herein.

27. This Tribunal appointed **K.Sivalingam (IBBI/IPA-001/IP-P-01597/2018-2019/12430)** as the IRP vide order dated 24.03.2022. Upon verification of IRP in the IBBI portal, it is observed that he does not have valid Authorisation for Assignment (AFA) as on this date. Thus, we hereby appoint **Rosita Fernando (IBBI/IPA-003/ICAI-N-00452/2024-2025/14405)** as the Resolution Professional, whose AFA is valid upto 30.06.2025.

28. **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 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. **Rosita Fernando (IBBI/IPA-003/ICAI-N-00452/2024-2025/14405)** 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 her 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 her 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.



29. Accordingly CP/IB/18/CHE/2022 stands admitted.

-Sd-

-Sd-

VENKATARAMAN SUBRAMANIAM
Member (Technical)

SANJIV JAIN
Member (Judicial)

Kishore P