



**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

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

APPLICATION NUMBER :
PETITION NUMBER : CP(IB)/133(CHE)/2021
NAME OF THE PETITIONER(S) : Central Bank of India
NAME OF THE RESPONDENTS : Ramesh Narayanan
UNDER SECTION : Sec 95(1) of IBC, 2016

ORDER

Present: None for the Petitioner.

Ld. Counsel Shri. Vikram P Jain for the Respondent.

Vide separate order pronounced in Open Court, the petition under Section 95 of IBC is **admitted** and Shri. Natanagopal 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)/133/(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

Mr. Ramesh Narayanan
No.5, New No.11/1,
Beemasena Garden Street,
Mylapore, Chennai-600046

...Respondent/Guarantor

Present:

<i>For Applicant</i>	<i>: B. Raghavulu Naidu, Advocate</i>
<i>For Respondent</i>	<i>: Vikram P Jain, Advocate</i>

CORAM:

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

Order Pronounced on 30th 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 Mr. Ramesh Narayanan, 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 Ramesh Narayanan residing at No.5, New No.11/1, Beemasena Garden Street, Mylapore, Chennai-600046. In part 3 of the application, the Applicant has given the particulars of debt i.e. total debt (including interest or penalties) Rs. 63,82,50,738/- payable by the guarantor, the date on which the debt was due i.e. 24.09.2019 and the date on which the default occurred i.e. 24.09.2019.

3. It is stated that at the request of the Corporate Debtor i.e. M/s. Oceanic Tropical Fruits Pvt. Ltd., and the Personal Guarantors including Ramesh Narayanan , the Applicant along with other consortium Bank sanctioned the working capital facility. The Corporate Debtor executed the loan documents.



The Respondent Mr. Ramesh Narayanan executed the deed of guarantee dated 21.03.2012 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 20.08.2013. The consortium Banks filed O.A. No. 344 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 14.03.2019 in favour of the consortium banks for Rs. 227,20,59,666.28 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 Mr.Ramesh Narayanan. The DRT also issued the recovery certificate in DRC No. 382/2019 on 24.09.2019.

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 28.09.2019 a notice was issued to the Corporate Debtor and the Guarantors including Mr. Ramesh Narayanan 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/564/2017 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 he is liable to pay a sum of Rs. 63,82,50,738/- as on 15.02.2021 together with interest.

8. On this application, a report under Section 99 of IBC was called from the IRP Mr. Natanagopal appointed vide order dated 24.03.2022. 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 31.10.2018 which process is still going on. It is stated that the DRT-II at Chennai also passed an order in O.A. No. 344 of 2015 in favour of the Financial Creditors vide dated 14.03.2019 holding the Corporate Debtor, Corporate Guarantor and Personal Guarantors liable to pay a sum of Rs. 227.21 Crore 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 14.03.2019, DRT-II at Chennai issued a recovery certificate vide DRC. No. 382/2019 on 24.09.2019 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 28.09.2019 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 Mr. Ramesh Narayanan on 08.12.2020, but he did not pay any amount. It is stated that as per the break up provided a sum of Rs. 63,82,50,738/- is due against the Guarantor.



9. It is stated that in the Application the date of default is mentioned as 24.09.2019 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 20.08.2013 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 24.09.2019. It is stated that the application has been filed on 24.02.2021 in which the default date has been taken as 24.09.2019, the date on which the debt recovery certificate was issued.

10. The Respondent / Personal Guarantor filed the Reply alleging that the application is barred by limitation. In the petition CP/564/2017 under Section 7 of IBC filed by the ICICI Bank, the date of default was alleged as 31.12.2014. As per the demand notice under Rule 7(1) sent to the Respondent by the Applicant on 08.12.2020, the date of default has been alleged as 20.08.2013. It is stated that in the Application, the Applicant has stated the date of default as 24.09.2019, the date on which the recovery certificate issued by DRT-II. It is stated that the recovery certificate is in the nature of a decree or an order of the Court and not in the nature of deed of guarantee. It is stated that the Gazette Notification No. SO 4126(E) dated 15.11.2019 issued by the Ministry of Corporate Affairs does not permit initiation of Insolvency proceedings against



an individual in his capacity as a judgment debtor. It is stated that the deed of guarantee is of dated 21.03.2012, as per which the date of default would be 20.08.2013 and therefore the application is not maintainable. It is stated that as per Article 137, the Limitation Act, 1963 is three years from the date the cause of action arises. It is stated that the application cannot be admitted during pendency of the liquidation proceedings against the principal borrower. The liability of a personal guarantor is co-extensive with that of the principal borrower and therefore any reduction or extinguishment of debt owed by the principal borrower would also accrue to the benefit of the personal guarantor as his liability under personal guarantee shall stand *pro tanto* reduced or extinguished.

11. The Applicant / Financial Creditor filed the Rejoinder stating that the loan account of the Corporate Debtor became NPA on 20.08.2013. The Financial Creditor along with other consortium Banks filed O.A. No. 344 of 2015 before DRT-II Chennai against the Corporate Debtor and Guarantors for recovery of their dues together with interest. The DRT passed the final order on 14.03.2019 and issued the recovery certificate on 24.09.2019. The DRT also issued a notice on 28.09.2019 to pay the amount, but they including the Respondent failed and committed the default. The Financial Creditor then



issued Form-B notice to the Respondent to pay the amount of Rs. 61.51 Crores as per the DRC certificate but the Respondent failed and committed default in paying the said amount under the recovery certificate. It is stated that IBC came into effect on 01.12.2016 and the provisions relating to personal insolvency came into effect on 01.12.2019. Accordingly the Financial Creditor issued the Form –B demand notice on 08.12.2020. Reference is made of the case *Dena Bank (Now Bank of Baroda)’ versus ‘C. Shivakumar Reddy & Anr. (2021) 10 SCC 330* to contend 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 is stated that this application has been filed by relying upon the provision of Section 19(22A) of RDB Act based on the recovery certificate No. 382/2019 dated 24.09.2019 issued by the DRT and the same is well within the limitation period of three years from the default committed by the Respondent.

12. We have heard Ld. Counsels for the parties.

13. Ld. Counsel for the Financial Creditor reiterated what has been stated in the petition and rejoinder. He submitted that that the Respondent did not



prefer any appeal against 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. Ld. Counsel for the Respondent per contra argued on the lines of the Reply / Counter filed by the Respondent. Ld. Counsel contended that in the demand notice given in 2020, the date of default is stated as 20.08.2013 when the account of the Corporate Debtor became NPA. Ld. Counsel contended that the deed of guarantee was signed on 21.03.2012. The O.A. No. 344 of 2015 before the DRT was filed in 2015. The debt recovery certificate was issued by the DRT on 24.09.2019. In the application under Section 95 of the Code, the date of default has been stated as 24.09.2019. Ld. Counsel contended that there cannot be two dates of default. Ld. Counsel stated that the date of default cannot be changed / amended. He referred the case of *M/s. Asia (Chennai) Engineering Company Pvt Ltd Vs. M/s Jayabheri Properties Private Limited, CP(IB)/CHE/55/2023 and Ramesh Kymal Vs. Siemens Gamesa Renewable Power Private Limited (2021) 3 SCC 224*). Learned Counsel contended that, since in the instant case as per the demand notice, the date of default is 20.08.2013, the application filed by the Financial Creditor is barred by limitation. Ld. Counsel submitted that there is also discrepancy in the



amount stated in the notice and the application. The deed of guarantee is for Rs. 257.00 Crores, in the demand notice, the amount is stated as 61.51 Crores but in the application, the amount claimed is 63.83 Crores. Ld. Counsel referred the case of *Starlog Enterprises VS ICCI Bank Ltd, 2017 SCC Online NCLAT 13* to contend that the application deserves to be dismissed since there is mismatch between the amounts due in the demand notice and the application.

15. We have considered the submissions and perused the documents.

16. 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.

17. 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 Tropical Fruits Pvt Ltd. The Guarantors including the Respondent Mr. Ramesh Narayanan executed the deed of guarantee on 21.03.2012. The Corporate Debtor became irregular in repayment of debt and its account became NPA on 20.08.2013 which in the demand notice in the present application has been stated as the date of default. The consortium Banks filed O.A. No. 344 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 14.03.2019 for Rs. 227,20,59,666.28 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. 382/2019 on 24.09.2019 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.



18. 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. 61.51 Crores as on 23.09.2020. The date when the debt became due was stated as 23.05.2013 and the date when the default occurred was stated as 20.08.2013 (date of NPA). The said notice also has a reference of the Tribunal order dated 12.09.2017 qua the CIRP of the Corporate Debtor, liquidation order dated 31.10.2018, debt recovery certificate No. 382/2019 dated 24.09.2019, deed of guarantee dated 12.03.2012 and O.A. No. 344 of 2015 filed on 20.03.2015. 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 24.09.2019 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.

19. In the application under Section 95, in part 3, the Applicant has given the total debt / amount of debt as Rs. 63,82,50,738/- as on 15.02.2021 and the date on which the debt became due / default occurred as 24.09.2019. 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. That being the position, the reliance placed on the *Starlog Enterprises Limited* supra is misplaced.



20. In the application, the date of default is stated as 24.09.2019, the date on which the debt recovery certificate was issued. The demand notice was sent on 08.12.2020. Admittedly, the Applicant has not filed any application for amendment in the date of default but, the Respondent even after receipt of the demand notice did not respond to the notice within ten days from the date of receipt of the notice.

21. In the case of *Ramesh Kymal Vs. Siemens Gamesa Renewable Power Privat Limited (Supra)*, the Appellant had filed an application under Section 9 of IBC on 11.05.2020 on the ground that there was a default in the repayment of his operational dues. During the pendency of the application, an ordinance was promulgated on 05.06.2020 by which Section 10A was inserted into IBC. The Respondent thereafter filed an application seeking dismissal of the application. In Form -3 Notice sent by the Appellant, the date of default was set up as 30.04.2020. It was argued that though the demand notice mentions the date of default as 30.04.2020, the actual first date of default was 21.01.2020 when the letter of resignation was tendered and the second date of default was 23.03.2020 when the sixty days' notice period concluded. It was held that this attempt to set back the date of default to either 21.01.2020 or 23.03.2020 is



plainly untenable for the reasons that it is contrary to the disclosure made by the Appellant in the demand notice which has been issued in pursuance of the provisions of Section 8(1) and Section 9 of the IBC.

22. In the present case, the account was declared as NPA on 20.08.2013, which date the Applicant has mentioned as the date of default in the demand notice. The Applicant thereafter initiated the debt recovery proceedings by filing O.A. No. 344 of 2015 before the DRT-II, Chennai. The IBC came into effect on 01.12.2016. The provisions of Part III relating to Personal Insolvency were brought into force w.e.f. 01.12.2019. Prior to the said date, there was no provision to initiate personal insolvency proceedings against the Guarantor. The DRT-II passed the final order on 14.03.2019. The recovery certificate was issued on 24.09.2019. It has been clearly held in the case of *Dena Bank* supra that non-payment of amount awarded under a decree would fall under the definition of financial debt and would give rise to a new cause of action to initiate insolvency proceedings. In the instant case, there was no occasion for the Applicant to initiate insolvency proceedings against the personal guarantor when the loan became NPA. It was only after the notification which came into effect w.e.f. 01.12.2019, the Applicant filed the application for initiating insolvency proceedings against the personal guarantor. In the



application, the date of default has been mentioned as 24.09.2019. This application has been filed on 24.02.2021 i.e. within the period of three years from the date of default. Therefore, the application is within limitation.

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 the Creditor and the Creditor has 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. The case of *M/s. Asia (Chennai) Engineering Company Pvt Ltd, supra* referred by the Respondent is not applicable to the facts and circumstances of the case. In that case, the Applicant had sought amendment in the date of default stated in Form-5 application filed under Section 9 of IBC pointing variance in the date of default in the notice and the application which was objected by the Respondent. The Tribunal observing that the Applicant did not state any reason on what basis the date of default was taken as 24.01.2022 referred the case of *Ramesh Kymal supra* and held that the date of default in



case of running payments where the running bills / final bills were raised will be the date on which the last running bill / final bill was raised or the time provided for the payment against the running bill / final bill. The date of default cannot be said to be individual bill wise in case of such like works. In the present case, the Applicant has disclosed in the demand notice and the application about the debt when it became NPA and when the debt recovery certificate was issued by the DRT-II. There is no prayer as to the amendment in the date of default.

25. In the present case, the debt amount is more the threshold limit for initiating Insolvency proceedings against the Personal Guarantor. The date of default is reckoned as 24.09.2019 i.e., when the Recovery Certificate was issued. This Application has been filed on 24.02.2021 i.e. within the limitation period of three years from the date of default.

26. In light of the afore-said discussions, the present Application i.e. CP(IB)/133(CHE)/2021 is admitted for initiating the insolvency resolution process against **Mr. Ramesh Narayanan** 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. Natanagopal (IBBI/IPA-001/IP-P01108/2017-2018/11789)** 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.

27. Accordingly **CP/IB/133/CHE/2021** stands admitted.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)