

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

COURT – IV

33.

IA-3759/2023 in C.P.(IB)/354(MB)/2023

CORAM:

MS. ANU JAGMOHAN SINGH
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON 26.06.2024

NAME OF THE PARTIES: Omkara Assets Reconstruction Private Limited
Vs
Mr. Augusta Richard D'Souza

SECTION: 95(1), 60(5) OF INSOLVENCY AND BANKRUPTCY CODE, 2016.

ORDER

1. Mr. Charles D'Souza a/w Mr. Ibrahim Shaikh i/b Vaish Associates, Ld. Counsel for the Petitioner present. Mr. Ansh Karnawat a/w Ms. Vinita Hombalkar, Ld. Counsel for the Respondent/Personal Guarantor present.
2. **IA-3759/2023:** This IA is filed by the Personal Guarantor of the Corporate Debtor challenging the maintainability of the Company Petition. The IA was filed prior to the Hon'ble Apex Court judgment. The Personal Guarantor can raise all issues before the RP and before the Adjudicating Authority once the RP report is filed. Since the present IA is pre-mature, it is **dismissed** as infructuous.
3. **C.P.(IB)/354(MB)/2023:** This is a Company Petition filed on 23.12.2022 by **Omkara Assets Reconstruction Private Limited** ("the Financial Creditor"), under Section 95 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating

Contd....2

: 2 :

Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 seeking to initiate Personal Insolvency Resolution Process against Augusta Richard D'Souza ("the Personal Guarantor").

4. This Company Petition has been filed by the Financial Creditor for claiming total outstanding debt of Rs.29,26,00,152/- (Rupees Twenty-nine crore Twenty-six lakh One hundred Fifty-two only).
5. The Counsel for the Financial Creditor submits that he issued Demand Notice on the Personal Guarantor and the Personal Guarantor submits reply. It is establishing that the Demand Notice is served on him. Counsel for the Personal Guarantor admits that he received the Petition.
6. The Petitioner has proposed the name of Mr. Indrajit Mukherjee, an Insolvency Professional having registration No.: IBBI/IPA-001/IP-P01533/2018-2019/12450 to appoint as the Resolution Professional. Mr. Indrajit Mukherjee has given his Letter of Consent to conduct as Resolution Professional in this matter.
7. The Petition for initiating Insolvency Resolution Process against Personal Guarantor of the Corporate Debtor is complete in all respect. Therefore, this Bench is of the opinion that Resolution Professional is to be appointed in this case and accordingly;
8. This Bench appoints Mr. Indrajit Mukherjee, Insolvency Resolution Professional having Registration No.: IBBI/IPA-001/IP-P01533/2018-2019/12450 as the Resolution Professional (RP) in the matter. The fee payable

Contd....3

: 3 :

to Resolution Professional (RP) shall be in accordance with the Insolvency and Bankruptcy Board of India (IBBI) Regulations/Circulars/ Directions issued in this regard.

9. The Resolution Professional shall examine the Application within 10 days from the date of his appointment and submit his report to the Adjudicating Authority recommending for approval or rejection of the Application as referred under section 99(1) of the Code. A copy of the report also will serve upon the Personal Guarantor and file proof of service.
10. This Bench also directs for an advance payment of Rs.2,00,000/- (Rupees two lakh only) to be paid by the Financial Creditor to the Resolution Professional (RP) immediately to initiate the process which shall be adjusted towards the fee and expenses payable to the Resolution Professional (RP).
11. The interim-moratorium under Section 96(1) (a) of the Insolvency and Bankruptcy Code, 2016 has commenced on the date of filing of this application by the Financial Creditor and will cease to have effect on the date of admission.
12. During such interim-moratorium period -
 - i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and
 - ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.
13. List this matter on **21.08.2024**.

Sd/-

ANU JAGMOHAN SINGH
Member (Technical)

26.06.2024 / pvs

Sd/-

KISHORE VEMULAPALLI
Member (Judicial)