

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

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **19.07.2024** THROUGH VIDEO CONFERENCING

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

IN THE MATTER OF : State Bank of India
Vs
D Sivasankaran

MAIN PETITION NUMBER : CP(IB)/71/CHE/2024

(IA/MA) APPLICATION NUMBERS

IA(IBC)/1176(CHE)2024

ORDER

Present: Ld. Counsel Shri. B Raghavulu Naidu for the Petitioner.

Vide separate order pronounced in open Court, the Petition is admitted
and IRP process stands initiated against D Sivasankaran.

IRP report is taken on record.

IA/1176 (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)/71(CHE)/2024

(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 D.Sivasankaran

Plot No. 1656, 21st Main Road,
Anna Nagar West,
Chennai – 600 040

...Respondent/Personal Guarantor

Along with

IA(IBC)/1176/CHE/2024

In

CP(IB)/71(CHE)/2024

(filed under section 99 of Insolvency and Bankruptcy Code, 2016)

Satyadevi Alamuri

Resolution Professional
IP Reg . IBBI/IPA-002/IP/N00071/2017-18/10205
No.23 Lake Area, 3rd Cross Street, Nungambakkam,
Chennai – 600 024

...Resolution Professional

CORAM :

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAN, MEMBER (TECHNICAL)

For Applicant : *Ragavalu Naidu, Advocate*
For Respondent : *M.Vijaya Kumar, Advocate*

Order pronounced on 19th July, 2024

COMMON ORDER

(Hearing through hybrid mode)

The present Application (CP(IB)/175/CHE/2024) 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. D. Sivasankaran ("Personal Guarantor") in respect of Principal Amount of INR 168,56,25,581.88/- together with interest. The Date of Default, as specified in Part-III of the present Application, is 14.02.2023. This Application has been filed before this Tribunal on 19.03.2024.

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 Plot No. 1656, 21st Main Road, Anna Nagar West, Chennai-600 040. The Respondent stood as a personal guarantor in respect of the loans availed by M/s. ICON House Hold Products Pvt. Ltd., the Corporate Debtor, which is now dissolved. In part – III of the application, the applicant has given the debt amount of Rs. 168,56,25,581.88 (Rupees One Hundred and Sixty Eight Crore Fifty Six Lakh Twenty Five Thousand Five Hundred and Eighty One and Paise Eighty Eight Only) as on 31.12.2023 with further interest and other charges. Part – IV of the Application sets out the details of the Resolution Professional. The Applicant has proposed Ms. I. Satyadevi Alamuri with IBBI Registration No - IBBI /IPA-002/ IP-N00071/ 2017-18/ 10205 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. ICON House Hold Products Pvt. Ltd (*hereinafter Corporate Debtor*) vide sanction letter dated 27.09.2005 i.e., Cash Credit of Rs 6,00,00,000/- , FBWC of Rs. 6,00,00,000 and Term Loan-1 of Rs. 0.67, Term Loan-2 of Rs 2,00,00,000, Term Loan-3 of Rs. 4,00,00,000, Term Loan of Rs

6,67,00,000, Total FB facilities of Rs. 12,67,00,000/- and letter of Credit of Rs 2,00,00,000/-, total FB+NFB limits of Rs. 14,67,00,000/- (Rupees Fourteen Crore Sixty Seven Lakh Only)

4. It is stated that the Corporate Debtor executed necessary loan documents inter alia securing hypothecation of stocks and goods in favour of the Bank. The Guarantors executed deed of guarantee agreement for overall limit dated 14.10.2005 securing the repayment of the credit facilities. The Applicant has annexed the following documents in this Application

- i) Deed of Guarantee dated 14.10.2005 executed by the Respondent/Guarantor – **Annexure I (1)**
- ii) Supplement Deed of Guarantee dated 01.02.2007 for increase in overall limit - **Annexure I (2)**
- iii) Suppl. Deed of Guarantee dated 02.03.2009 for increase in Overall Limit - **Annexure I (3)**
- iv) Deed of Guarantee dated 14.07.2010 for Overall Limit **Annexure I (4)**
- v) Order dated 31.07.2017 passed by DRT -I, Chennai in No.64 of 2014 - **Annexure I (5)**

vi) Order passed by High Court , Madras in CP No. 278 of 2012 dated 11.03.2022

vii) Recovery Certificate TRC No. 649/2023 in DRC 01/2023 issued by DRT, Chennai dated 14.02.2023– **Annexure – I (6)**

5. It is stated that the loan account of Corporate Debtor became irregular; despite repeated demands and reminders the Corporate Debtor failed to repay the loan availed by them. Thus, Financial Creditor classified the loan account of Corporate Debtor as NPA on 15.09.2012 and issued a legal notice dated 20.01.2014 calling upon the Corporate Debtor and the Guarantors to repay the loan amount.

6. It is stated that, the Financial Creditor filed O.A for recovery of a sum of Rs. 26,38,09,573.10 (Rupees Twenty Six Crore Thirty Eight Lakh Nine Thousand Five Hundred And Seventy Three And Paise Ten Only) as on 16.02.2014 in O.A No. 64/2014 before the DRT-1 Chennai. The OA No. 64/2014 was allowed on 31.07.2017 and **Recovery Certificate was also issued in DRC No. 1/2023 on 14.02.2023** for a sum of Rs. 26,38,09,573.10 (Rupees Twenty Six Crores Thirty Eight Lakh Nine Thousand Five Hundred And Seventy Three And Paise Ten Only) together with interest @19% compound interest monthly rest

against the Corporate Debtor and guarantors including D.Sivasankaran, the respondent/guarantor.

7. It is stated that, the Hon'ble High Court of Madras by an order dated 09.09.2014, made in the company petition no. 278/2012 appointed the official liquidator attached to the Hon'ble Madras High Court against ICON Household products pvt. ltd., under the provisions of Companies Act. Further, the Hon'ble High Court of Madras passed an order dated 11.03.2022 to dissolve the Corporate Debtor.

8. It is stated that, the Recovery Certificate dated 14.02.2023 issued by DRT, Chennai shall be deemed to be an order of the Court for the purpose of initiation of Insolvency proceedings against the individual guarantor under Section 19(22A) of The Recovery Of Debts And Bankruptcy Act, 1993. Further, it is averred that, the Recovery Officer, DRT-2, issued demand notice on 01.03.2023 to corporate debtor and the guarantors including D.Sivasankaran, the Respondent calling upon them to deposit a sum of Rs. 26,38,09,573.10 (Rupees Twenty Six Crores Thirty Eight Lakhs Nine Thousand Five Hundred and Seventy Three and Paise Ten only) together with future interest @19% p.a with

monthly rests from 17.02.2014 till the date of realization. It is further averred that, as on 31.12.2023 a sum of Rs. 168,56,25,581088 (Rupees One Hundred and Sixty Eight Crore And Fifty Six Lakh Twenty Five Thousand Five Hundred And Eighty One And Paise Eighty Eight Only) is due and payable by the guarantor.

9. It is stated that, the Financial Creditor issued a demand notice dated 17.02.2024 under Form B to the Respondent/guarantor. It is further averred that the present Application has been filed on **19.03.2024**, which is well within the limitation period of 3 years; as the Recovery Certificate was issued on **14.02.2023** by the Debt Recovery Tribunal, Chennai in **DRC No. 1/2023**.

Counter Affidavit filed by the Respondent/Guarantor

10. It is stated that, the Corporate Debtor's loan account was declared NPA on 18.06.2010. Subsequently the financial creditor filed CP No.. 278/2012 on the file of the Hon'ble High Court of Madras for winding up of the Corporate Debtor, wherein the Hon'ble High Court appointed Official Liquidator on 09.09.2014. Further, the Financial Creditor had filed O.A.No.64 of 2014 on the file of the Hon'ble DRT-1, Chennai on 16.02.2014.

11. It is stated that, the date of declaring the Loan Account of Corporate Debtor as NPA is deliberately misrepresented as 14.02.2023 in Form C attached with the present Application filed under Section 95(1) of IBC, 2016. It is averred that, the date of NPA is 18.06.2010 and the Article 137 of the Limitation Act, 1963 prescribes the limitation period as 3 years. Therefore, the present Application is barred by limitation.

12. It is stated that, the Debt Recovery Tribunal had allowed the O.A. No. 64 of 2014 on 31.07.2017 and the applicant had put quietus to the matter and was patiently waiting for another 6 years without attempting to get a copy of Recovery Certificate. Thereafter, the Recovery Certificate was secured by the financial Creditor only on 14.02.2023 by which time the Corporate Debtor was already wound up.

13. It is stated that, the Recovery Certificate issued on 14.02.2023 does not extend the limitation period. Thus, the Present Application is beyond limitation period.

14. It is stated that, the Resolution Professional failed in her duty to record the reason for recommending the acceptance of the Application

filed by the financial Creditor for initiating Corporate Insolvency Resolution Process (CIRP).

Report filed by the IRP in IA(IBC)/1176/CHE/2024

15. Pursuant to the appointment of Satyadevi Alamuri as Interim Resolution Professional(IRP) by this Tribunal vide order dated 08.04.2024, the IRP filed an Application (under Section 99 of IBC, 2016) to take her report on record.

16. The RP in her 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.

OBSERVATIONS AND FINDINGS OF THIS TRIBUNAL:

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

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

19. It is observed that, the Corporate Debtor had taken loans and failed to pay their dues. The Respondent herein had given guarantee to the said loan and the same has not been denied by the Respondents in his counter Affidavit. Further, Recovery Certificate TRC No 649/2012 in DRC 01/2023 was issued by DRT, Chennai on 14.02.2023 to Corporate Debtor and the Guarantors calling upon them to deposit a sum of Rs. 26,38,09,573.10 (Rupees Twenty Six Crores Thirty Eight Lakhs Nine Thousand Five Hundred and Seventy Three and Paise Ten only) together with future interest @19% p.a with monthly rests from 17.02.2014 till the date of realization.

20. 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.”

21. The Corporate Debtor has already been dissolved by an order dated 11.03.2022 of Hon'ble High Court of Madras. 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 Recovery Certificate TRC No. 649/2023 in DRC 01/2023 was issued by DRT, Chennai on 14.02.2023. The Recovery Officer attached to DRT issued a notice to the Corporate Debtor and its guarantors on 01.03.2023 to pay the dues within 30 days. Despite lapse of 30 days, the Guarantors failed to pay the dues. The date of default is reckoned as 14.02.2023 from the date of issuance of Recovery Certificate and the present Application has been filed on 19.03.2024. i.e. within the period of limitation.

22. With regards to limitation aspect, it is 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* 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 from 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."

23. In light of the afore-stated observations, the present Application i.e. CP(IB)/71(CHE)/2024 is admitted. The Insolvency Resolution

Process stands initiated against Mr. D.Sivasankaran 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. **I.Satyadevi Alamuri (IBBI /IPA-002/ IP-N00071/ 2017-18/ 10205)** 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 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.

24. Accordingly the report of the RP filed in **IA/IBC/1176/CHE/2024** stands disposed of. **CP/IB/71/CHE/2024** stands admitted.

-Sd-

VENKATARAMAN SUBRAMANIAM
Member (Technical)

-Sd-

SANJIV JAIN
Member (Judicial)

Kishore P