

**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 Prem

MAIN PETITION NUMBER : CP(IB)/173(CHE)/2022

(IA/MA) APPLICATION NUMBERS

IA(IBC)/305(CHE)2024

ORDER

Present: Ld. Counsel Shri. Sugumaran for the Petitioner.

Ld. Counsel Shri. Kaushik Narayanan for the IRP.

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

IRP report is taken on record.

IA/305(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)/173(CHE)/2022

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

State Bank of India

Stressed Asset Management Branch
Raja Plaza First Floor,
No.1112, Avinashi Road,
Coimbatore – 641 037

.....Petitioner

Versus

D.Prem

S/o. S.Duraiswamy
Door No.19, Sri Kannabiran Colony,
B.S.Sundaram Road,
Tirupur – 641 601

....Respondent

Along with

IA(IBC)/305/CHE/2024 in CP(IB)/173/CHE/2022

*(Filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with
Rule 11 of the NCLT Rules, 2016)*

CA.S.Thamilvani,

Resolution Professional of
Mr.D.Prem (Personal Guarantor),
IBBI/IPA-001/IP-P00827/2017-2018/11412
Having office at Mp.6/12,
First Cross Street,
Sivananda Nagar, Ambattur, Chennai – 600 053

...Applicant

Order pronounced on 19th July 2024

CORAM:

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

For Petitioner : *R.Sugumaran, Advocate*
Vaiduriya, Advocate
For Respondent : *Aasim Shehzad, Advocate*
For IRP : *KauShik Narayanan.V, Advocate*

COMMON ORDER

(Hearing through hybrid mode)

The present petition 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.Prem ("Personal Guarantor") in respect of Principal Amount of INR 285,55,00,000 (Two Hundred and Eighty Five Crores and Fifty Five Lakhs Only) /-together with interest. The Date of Default, as specified in Part-III of the present petition, is 03.07.2019. This Petition has been filed on 02.07.2022.

2. Part – I of the Petition sets out the details of the Applicant / Financial Creditor. It has its registered office at Raja Plaza, 1st Floor, No.1112, Avinashi Road, Coimbatore – 641 037. Part-II of the Petition

sets out the details of the Personal Guarantor. The address of the Respondent is mentioned as Door No.19, Sri Kannabiran Colony, B.S.Sundaram Road, Tirupur – 641 601 and also at No.5, Prem Gargens Rajaji Nagar, PN Puram, Tiruppur – 641 601. The Respondent stood as a personal guarantor in respect of the loans availed by PGC Corporation Limited, the Corporate Debtor. In part – III of the Petition, the applicant has given the debt amount of 285,55,00,000 (Two Hundred and Eighty Five Crores and Fifty Five Lakhs Only) /-together with interest and other charges as on 01.04.2022 for M/s. PGC Corporation Limited. Part – IV of the Petition sets out the details of the Resolution Professional. The Petitioner has not proposed the Insolvency Resolution Professional and this Tribunal vide order dated 20.12.2023 appointed Mrs.S.Thamilvani as Resolution Professional in respect of the Respondent / Personal Guarantor.

3. It is stated that the Corporate Debtor Company namely PGC Corporation Limited had availed various credit facilities from the then State Bank of Patiala, now amalgamated with State Bank of India (SBI) for its business operations. SBI is the sole banker for the credit facilities availed by the Corporate Debtor. The Corporate Debtor had availed

credit facilities vide sanction letter dated 27.03.2012. The Personal Guarantors S. Duraiswamy, D.Prem, Aadith and D Vikram had guaranteed the due repayment of the loan amount availed by Corporate Debtor.

4. It is stated that the corporate debtor had created hypothecation of stocks, raw materials, finished and semi-finished goods, plant and machinery, book debts receivables as primary security and offered collateral security of immovable property.

5. It is stated that the guarantors had executed letters confirming the deposit of title deeds with an intention to create an equitable mortgage over their respective immovable properties.

6. It is stated since that the corporate debtor committed default in repaying the loan amount, the loan accounts became NPA in the books of financial creditor. Thereafter the financial creditor filed OA No. 235/2015 before DRT Coimbatore and the final order was passed by DRT, Coimbatore on 29.06.2016. Pursuant to the said final order, a

recovery certificate in DRC No. 308/2019 was issued by the DRT, Coimbatore on 03.07.2019.

7. It is stated that there is no legal impediment for the financial creditor to file the above petition against the guarantors in terms of section 95 of IBC. It is stated that the Financial Creditor also issued mandatory demand notice on 06.06.2022 to the guarantors.

8. It is stated that the Financial Creditor could not file the present application against the guarantor between March 2020 and till date due to pandemic situation and there were restrictions on movements not only interstate but also intrastate and hence the period has to be excluded as per the decision of Hon'ble Apex Court.

9. It is stated that the Guarantors along with corporate guarantors are jointly and severally due and liable to pay a sum of Rs.285,55,00,000/- (Rupees Two Hundred and Eighty Five Crore Fifty Five Lakh only) as on 01.04.2022 together with interest at contract rate. Hence the financial creditor is left with no other option except to approach this Tribunal by way of filing the above petition.

10. The Respondent has not filed any counter in the present application.

11. On presentation of the petition by the Financial Creditor, under section 95(1) of the IBC, 2016 for initiating Insolvency Resolution Process against the Personal Guarantor viz. Respondent herein, this tribunal vide Order dated 20.12.2023 appointed Mrs. S.Thamilvani as the Resolution Professional (“RP”) and directed her 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 filed her report in **IA/305/CHE/2024** before this Tribunal seeking to take on record the Report filed in the Annexure -5 as mandated under Section 99 of the IBC, 2016.

12. The RP in her Report, after due examination of the petition, documents filed along with the petition, 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 petition by the Financial Creditor u/s. 95 of IBC, 2016.

13. It is seen from the record of proceedings that sufficient opportunities were granted to the Respondent to file his reply to the report of the RP. However, the Respondent did not file any reply rebutting the recommendations made by the RP for admission of the present petition. During the hearing, on 26.04.2024 the Learned Counsel for the Respondent states that the Respondent has not to file any reply and this Tribunal may proceed with the matter in accordance with law.

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

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

16. 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.”

17. The Corporate Debtor has already been admitted into CIRP. 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 RP has also recommended for initiation of Insolvency Resolution Process against the Respondent. The order passed by DRT Coimbatore in OA No.235/2015 dated 03.07.2019. Present petition has been filed on 02.07.2022. i.e. within the period of limitation, even though the Petitioner is entitled to benefit of limitation as extended by Hon’ble Supreme Court in Suo Moto W.P. (Civil) No. 3 of 2020.

18. With respect 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."

19. In light of the afore-stated observations, the present Application i.e. CP(IB)/173(CHE)/2022 is admitted and the Insolvency Resolution Process stands initiated against Mr. D.Prem 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. **Mrs.S.Thamilvani**, 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, she shall record the reasons thereof. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, she 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, 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.

20. Accordingly the report of the RP filed in IA/IBC/305/CHE/2024 stands **disposed of**. CP/IB/173/CHE/2022 stands **admitted**.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

SriramAnanth.V