

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

**CP (IB)/139(CHE) 2021**

*(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w  
Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating  
Authority) Rules, 2016)*

*In the matter of **EZHIL CHEMICAL PRIVATE LIMITED***

**STATE BANK OF INDIA**  
**Registered Office at:**

Corporate Center,  
State Bank Bhavan,  
Madame Cama Road,  
Nariman Point,  
Mumbai – 400 021

**Branch Office at:**

State Bank of India,  
Stressed Assets Management Branch,  
Rep by Assistant General Manager,  
Red Cross Road,  
Egmore, Chennai – 600 008.

*... Financial Creditor*

-Vs-

**EZHIL CHEMICAL PRIVATE LIMITED**

No.9/1, Honey Dew Apartments,  
2<sup>nd</sup> Street, Kilpauk,  
Chennai – 600 010

*...Corporate Debtor*

*Order Pronounced on 20<sup>th</sup> September 2022*

CORAM:

**JUSTICE RAMALINGAM SUDHAKAR, Hon'ble PRESIDENT**  
**AVINASH K. SRIVASTAVA, MEMBER (TECHNICAL)**

*For Financial Creditor : K.Chandrasekaran, Advocate*  
*For Corporate Debtor : Raj Jhabakh, Advocate*

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## ORDER

**Per: JUSTICE RAMALINGAM SUDHAKAR, Hon'ble PRESIDENT**

This Application has been filed by one **STATE BANK OF INDIA** (hereinafter referred to as 'Financial Creditor') on 23.12.2020 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against **EZHIL CHEMICAL PRIVATE LIMITED** (hereinafter referred to as 'Corporate Debtor'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. From Part-I of the Application, it is seen that the Financial Creditor is a Bank. The registered office address of the Financial Creditor as per the Application is stated to be situated at Corporate Center, State Bank Bhavan, Madame Cama Road, Nariman Point, Mumbai - 400 021 and also Branch office address is situated at Stressed Assests Management Branch, Red Cross Building, No.32, Red Cross Road, Egmore, Chennai - 600 008. Further, Part-I lays down the Authorized Representative of the Financial Creditor to be one Mr. R. Spurgen David, Assistant General Manager of the Financial Creditor by virtue of Letter of Authorization dated 15.12.2020 which is placed at Page No. 22 of the Application typeset.

3. Part II of the Application lays down the details of the Corporate Debtor. It can be seen that the Corporate Debtor is a Private limited company incorporated under the Companies Act, 1956 on 23.12.1998 with CIN: U24294TN1988PTC016660. The registered office of the Corporate Debtor as per the MCA master data is situated at No.9/1, Honey Dew Apartments, 2<sup>nd</sup> Street, Kilpauk, Chennai – 600 010.

4. From Part-III of the Application, it is seen that the Financial Creditor has proposed the name of the Interim Resolution Professional (IRP) viz., Tharuvai Ramachandran Ravichandran, Reg. No. IBBI/IPA-002/IP-N00241/2017-18/10692.

5. From Part-IV of the Application, it is seen that the Financial Creditor has claimed a debt amount of Rs.57,79,03,178/- (Rupees Fifty Seven Crores Seventy Nine Lakhs Three Thousand One Hundred and Seventy Eight Only) as on 08.12.2020 with further interest and other charges, less recoveries if any, which is due and payable by the Corporate Debtor. The date of default as averred in Part-IV of the Application is 23.02.2018.

6. It was further averred in Part –IV of the Application that the account was classified as NPA as on 27.11.2018, however, the notices were issued to the Corporate Debtor invoking the guarantee and calling upon the Corporate Debtor to pay the dues within 7 days on 21.05.2019 and as such the default occurred on 21.05.2019.

7. Part V of the application describes the particulars of Financial Debt, list of documents and the same is placed at Annexure –I (1) to Annexure-I (45) of the typed set of the Application.

**FACTS OF THE CASE**

Shorn of unnecessary details, the aspects relevant for the present case are as follows:

8. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor is a Company registered under the Companies Act, 1956 and engaged in the business of Manufacture of basic chemicals. The Corporate Debtor stood as a Corporate Guarantor for the credit facilities granted by the Financial Creditor to one Kiran Global Chems Ltd. (hereinafter called the 'Principal Borrower').

9. The Learned Counsel for the Financial Creditor further submitted that the Principal Borrower had originally availed various credit facilities from the Financial Creditor. The credit facilities were enhanced to the limit of Rs.18 Crores by this Financial Creditor on 16.02.2007. The said facilities were later enhanced to Rs.57.97 Crores on 26.09.2009. Thereafter, it was submitted that the Principal Borrower has also availed various credit facilities from AXIS Bank, IDBI Bank and also from Karur Vyasa Bank.

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10. It was submitted that since the Principal Borrower and the Corporate Guarantor / Corporate Debtor herein have committed defaulted in repayment of Rs.57,79,03,178/- to the Financial Creditor herein and hence the account of the Corporate Debtor became Non-Performing Asset (NPA) on 27.11.2018 as per Section 13(2) of the SARFAESI Act, 2002. It was further submitted that since the principal borrower and the Corporate Guarantor / Corporate Debtor herein had defaulted to pay the dues as above, the Financial Creditor along with the other consortium lenders have filed an application in OA No.30 of 2020 before DRT 1 Chennai and the same is pending adjudication.

11. In the meantime, it was submitted that in respect of the Principal Borrower this Tribunal has already initiated CIRP vide its order dated 27.04.2021 in IBA/45/2020 and the appeal as against the said order was also dismissed by the Hon'ble NCLAT vide its order dated 22.11.2021 in Company Appeal (AT)(Ch)(Ins) No. 97 of 2021.

12. Thus, it was submitted that since the dues of the Principal Borrower are co-extensive with that of the Corporate Guarantor / Corporate Debtor herein, the Financial Creditor prayed for initiation of CIRP in respect of the Corporate Debtor.

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**REPLY FILED BY THE RESPONDENT:**

13. The learned Counsel for the Respondent had filed a Counter wherein it was submitted that the Applicant Bank in column IV of Section 7 Application has failed to mention the "date of default" as well as tabular dues from date of default. The applicant bank has not enclosed any workings of date of default in tabular form which is well before 27.11.2018 and rather deliberately not mentioned any details of date of default in tabular form required to be enclosed with application form.

14. The learned Counsel for the Corporate Debtor further submitted that there is no document on invocation of the corporate guarantee by the Financial Creditor on facts. Further, it is an established law that in order to proceed against the guarantor, it is a *sine qua non* to invoke the guarantee prior to initiating any legal action/proceedings. It is also pertinent to note that, as per the particulars of the Financial Debt, Part IV, S.No.2 at Page 3, there are references to notices dated 21.05.2019 which the Applicant states to be the date wherein the guarantee was invoked and the Respondent was called upon to pay the dues. However, no such notices form part of the typed set of documents filed along with the application and therefore, it is contended that the Deed of Guarantee has not been invoked and no such notices have been issued to the Respondent. Further, no other document has also been

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produced by the Applicant to show the default of the Respondent. Hence, the present petition against the Respondent is not maintainable.

15. It was further submitted by the Respondent that the 'date of default' mentioned in the Application herein is taken to be the alleged date of invocation of the Deed of Guarantee i.e. 21.05.2019. However, the date of NPA is mentioned as 27.11.2018 and in any event, no document invoking the guarantee has been produced and the Applicant has therefore clearly mixed these two aspects in the said application. Therefore, the said application is to be dismissed.

**REJOINDER FILED BY THE APPLICANT:**

16. The Learned Counsel for the Financial Creditor had filed a rejoinder by denying all the averments made by the Respondent in the Counter. With regard to the allegation made in para 6 of the counter, the Financial Creditor submitted that the date of default is mentioned as NPA dated 27.11.2018 and the Guarantee Agreement dated 31.08.2016 was invoked by notice dated 27.05.2019 are filed as documents and the amount due is also mentioned.

17. In response to para 12 of the Counter filed by the Respondent, the Financial Creditor in its para 12 of the rejoinder states that no document for invocation of guarantee was filed is false as the

document was filed at pages 405 to 407 and one more copy was forwarded by email dated 13.12.2021 sent to the Counsel of Corporate Debtor. Even after the loan was classified as NPA on 27.11.2018. Section 13 (2) notice was issued.

18. The Learned Counsel for the Financial Creditor has issued Notice under Section 13(2) of SARFAESI Act to the Respondent/ Corporate Debtor and also to the Borrower Company namely Kiran Global Chem Ltd dated 28.01.2019 and the same is placed at page Nos. 10 to 44 of the Rejoinder typed set filed by the Financial Creditor.

**FINDINGS OF THIS TRIBUNAL:**

19. From the submissions made by the Learned Counsel for both the parties, it is seen that the Principal Borrower viz. Kiran Global Chems Limited is already under CIRP. The Corporate Debtor in the present application stood as a Corporate Guarantor for the loans availed by the Principal borrower viz. Kiran Global Chems Limited. Admittedly the debt and default on the part of the Principal Borrower is already proved before this Tribunal and that as per Section 128 of the Contract Act, 1872 liability of the Guarantor is co-extensive with that of the Principal Borrower, the debt and default on the part of the Principal Guarantor in the present case is also proved.

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20. In relation to the invocation of guarantee, it is seen from the typed set of documents filed along with the Petition would show that the Financial Creditor has already issued a notice under Section 13(2) of the SARFAESI Act, 2002 to the Respondent/ Corporate Debtor / Corporate Guarantor and also to the Principal Borrower Company namely Kiran Global Chem Ltd on 28.01.2019 and inspite of the said notice, the Respondent / Corporate Debtor / Corporate Guarantor has failed to pay the outstanding amount due to the Financial Creditor. Further, it could be seen from the averments made in the Application that the Financial Creditor has issued a notice invoking guarantee upon the Respondent /Corporate Guarantor on 21.05.2019 for a sum of Rs.47,94,67,307/-. The Respondent in their reply has also stated that the date of default mentioned in the Application is allegedly date of invocation of Deed of Guarantee.

21. In relation to the date of default, it could be seen that the present Application is filed before this Tribunal on 23.12.2020 and that if according to the Respondent the date of NPA i.e. 27.11.2018 is to be construed as the date of default, in such circumstances also the present Petition filed by the Financial Creditor is maintainable.

22. Thus, the Financial Creditor has proved the debt and default on the part of the Respondent / Corporate Debtor / Corporate Guarantor and hence the present Petition filed by the Petitioner is required to be

admitted in terms of Section 7(5) of IBC, 2016. Further, the debt and default in the present case has happened much prior to the advent of Covid – 19 period and hence the Respondent / Corporate Debtor also cannot seek shelter under Section 10A of IBC, 2016.

23. Apropos, the Hon'ble Supreme Court in the case of **Innoventive Industries Limited v. ICICI Bank Limited**, where it has discussed extensively the scope of the Adjudicating authority under section 7 of the IBC is limited to assessing the records provided by the financial creditor to satisfy itself that the default has occurred.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is

incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.

24. In view of the facts as stated *supra* and also in view of the 'financial debt' which is proved by the Financial Creditor and the 'default' being committed on the part of the Corporate Debtor, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

25. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- a. The institution of suits or continuation of pending suits or proceedings against the respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

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- b. Transferring, encumbering, alienating or disposing of by the respondent any of its assets or any legal right or beneficial interest therein;
- c. Any action to foreclose, recover or enforce any security interest created by the respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

*Explanation.*-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

26. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

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(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

27. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:



Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

28. The Financial Creditor has proposed the name of **Tharuvai Ramachandran Ravichandran (Email id:travichandran@yahoo.com), Reg. No. IBBI/IPA-002/IP-N00241/2017-18/10692** as the Interim Resolution Professional (IRP) who has also filed his consent in Form - 2 and also upon verification from the IBBI website, it is seen that the said person hold valid Authorization for Assignment till 21.12.2022.

29. **Mr. Tharuvai Ramachandran Ravichandran** is appointed as the IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

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30. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15, 17, 18 of the IBC, 2016. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

31. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions.

32. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the

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initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

33. The IRP is directed to file the 1<sup>st</sup> Progress Report before this Tribunal on or before the 45<sup>th</sup> day of initiation of CIRP by this Adjudicating Authority.

34. Accordingly, the Application stands **admitted**.

- Sd -

**AVINASH K. SRIVASTAVA**  
MEMBER (TECHNICAL)

- Sd -

**JUSTICE RAMALINGAM SUDHAKAR**  
PRESIDENT