



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

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **08.11.2024** THROUGH VIDEO CONFERENCING

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

IN THE MATTER OF : P Rajamani
Vs
Indian Overseas Bank

MAIN PETITION NUMBER : CP(IB)/129/CHE/2023

(IA/MA) APPLICATION NUMBERS

IA(IBC)/1771(CHE)2024; IA(IBC)/1401(CHE)2024

ORDER

Present: None for the Petitioner.

Ld. Counsel Shri. Sashi Kumar for the Respondent / Financial
Creditor.

None for the IRP.

Vide separate order pronounced in Open Court, the petition is **admitted**.
Insolvency proceedings is initiated against the Personal Guarantor / Petitioner.
Shri. Mahalingam Suresh Kumar is appointed as the RP.

The report of IRP under Section 99 of IBC is taken on record.

IA/1771/2024 and IA/1401/2024 are **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)/129(CHE)/2023

(Filed under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019)

Mrs. P Rajamani
9/6, Thillai Nagar,
Near IOB
Erode 638001

.....Personal Guarantor/Applicant

Versus

- 1. Indian Overseas Bank**
Erode Main Branch,
12, APT Road
Sathy Road - Park Road Junction
Erode 638 003
- 2. Aditya Birla Finance Ltd**
10 &12, Oval Building, 6th Floor
Venkatanarayana Road T Nagar
Chennai 600 017

....Financial Creditors/Respondents

Along with

IA(IBC)/1401 /CHE/2024

In

CP(IB)/129(CHE)/2023

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



Mr. Madhu Desikan

Interim Resolution Professional,
14 Vijay Laxmi Apartment, Balasubramaniam Street
Mylapore, Chennai 600004

... Interim Resolution Professional/Petitioner

And

IA(IBC)/1771 /CHE/2024

In

CP(IB)/129(CHE)/2023

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

Indian Overseas Bank,

SARM Branch, 11/952, Cross Cut Road,
Gandhipuram, Coimbatore- 641 012

...Financial Creditors/Applicant

Versus

1. Mr. Madhu Desikan,

Interim Resolution Professional,
No.1/4, Vijay Laxmi Apartment,
Balasubramaniam Street, Mylapore,
Chennai - 600 004

... Interim Resolution Professional/1st Respondent

2. Mrs. P.Rajamani,

No.9/6, Thillai Nagar,
Erode - 638 001

.....Personal Guarantor/2nd Respondent

Order pronounced on 8th November, 2024



CORAM :

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

For Applicant : *Mr. A S Sathish, PCS;*
For Respondent : *Mr. M.L. Ganesh, Advocate*
For IRP : *Madhu Desikan, IRP in person*

ORDER

(Hearing through hybrid mode)

This Application has been filed u/s. 94(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 by Mrs. P. Rajamani ("Personal Guarantor") to initiate the Insolvency Resolution Process in respect of the Applicant, being the Personal Guarantor for M/s. KMP Spinners Private Limited. ('Corporate Debtor"). In Part-III of the application, the Applicant has given the particulars of debt pertaining to the 1st Respondent as Rs.24,31,81,344/- (Rupees Twenty-Four Crores Thirty-One Lakhs Eighty-One Thousand Three Hundred and Forty-Four only), and the amount of default as Rs.24,31,81,344/- (Rupees Twenty-Four Crores Thirty-One Lakhs Eighty-One Thousand Three Hundred and



Forty-Four only), the date of default as 30.06.2019 and the particulars of debt pertaining to the 2nd Respondent as Rs. 6,94,34,457/- (Rupees Six Crores Ninety Four Lakhs Thirty-Four Thousand Four Hundred and Forty-Seven Only), the amount of default as Rs. 6,94,34,457/- (Rupees Six Crores Ninety Four Lakhs Thirty-Four Thousand Four Hundred and Forty-Seven Only), the date of default as 28.08.2019, also being the date when the debt was due. The instant application has been filed on 24.05.2023.

2. Part – I of the Application sets out the details of the Applicant / Personal Guarantor. The address of the Applicant is mentioned 9/6, Thillai Nagar, Near IOB, Erode 638001. The Applicant stood as a personal guarantor in respect of the loans availed by M/s. KMP Spinners Private Limited, the Corporate Debtor. It is stated that the guarantees were invoked by the 1st Respondent vide notice of Demand dated 23.07.2019 issued u/s 13(2) of The SARFAESI Act, 2002 and by the 2nd Respondent vide notice of Demand dated 04.09.2019 issued u/s 13(2) of The SARFAESI Act, 2002.



3. It is stated that the Applicant is the guarantor to the Respondent to secure the borrowings of M/s. KMP Spinners Private Limited. The Corporate Debtor committed default in repayment of debt and subsequently, the Respondents invoked the guarantee executed by the Applicant. Hence, the instant application has been filed for initiating insolvency resolution process under Section 94 of the IBC, 2016.

4. The Applicant has placed copy of sale notice dated 11.05.2023 issued under Section 13(2) of The SARFAESI Act, 2002 by the 1st Respondent as Annexure 1 (i) (a) and copy of demand notice dated 04.09.2019 issued under Section 13(2) of The SARFAESI Act, 2002 by the 2nd Respondent as Annexure 1 (i) (b). The Applicant has also filed the statement of affairs as on 20.05.2023 at Page 38 as Annexure 10.

5. As per Rule 6(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019, the Guarantor has served the copy of the application to every Financial Creditor and the Corporate Debtor for whom the Applicant is the personal guarantor. The Guarantor has also annexed proof of service to the creditors and



Corporate Debtor. The same is annexed as Annexure 14 of the Application Typeset.

6. On presentation of the Application by the Personal Guarantor, under section 94(1) of the IBC, 2016 for initiating Insolvency Resolution Process, this tribunal vide Order dated 26.04.2024 appointed Mr. Madhu Desikan as the Interim Resolution Professional (“IRP”) and directed him 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 IRP filed his report vide S.R. No. 1476 dated 24.05.2024 in **IA/(IBC)1401(CHE)/2024** before this Tribunal seeking to take on record the Report filed as a separate typeset as mandated under Section 99 of the IBC, 2016.

7. The 1st Respondent filed counter affidavit vide S.R. No. 3823 dated 29.07.2024. It is stated that the loan account of the Corporate Debtor slipped into NPA on 29.06.2019 as per RBI guidelines. It is averred that the application has been filed by the applicant/guarantor to thwart the 1st Respondent from confirming the sale and taking physical possession of secured asset in terms of SARFAESI Act, 2002. It is stated that the possession notice was issued by the 1st Respondent on 27.12.2019 and



symbolic possession of secured asset was taken. Thereafter, 12 e-auction notices were issued and 3 out of the total 7 properties have been sold. It is also stated that the associate concern of the Corporate Debtor, M/s. Rakshitha Textiles availed credit facilities from the 1st Respondent and four Loans-against-property (LAP) were availed in the name of directors/guarantors of the Associate Company.

8. The 1st Respondent filed **IA/(IBC)1771(CHE)/2024** under Section 98 of IBC, 2016 vide S.R. No. 2222 dated 30.08.2024, praying that the present IRP, Mr. Madhu Desikan may be replaced and in his place, Mr. Mahalingam Suresh Kumar, having IBBI Registration No: IBBI/IPA-001/IP-P00110/2017-2018/10217 may be appointed. The reason for the same is that the present IRP is placed at Chennai whereas the 1st Respondent and the Personal Guarantor are placed outside of Chennai. Hence, it is stated that change of IRP is necessary to conduct the proceedings in an expedient manner.

9. On the hearing dated 24.10.2024, representative for the Guarantor submits that the he has no objection if Shri. Mahalingam Suresh is appointed as the IRP.



10. The IRP in his Report, after due examination of the application, documents filed along with the application, 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.

11. Heard the submissions made by the Learned Counsel for the Applicant and perused the report of the IRP.

12. The IRP in his report has observed that the Applicant satisfies the requirement as set out in Section 94 of IBC, 2016. He has accordingly recommended for admission of the present Application. The report of the IRP filed in **IA/IBC/1401/CHE/2024** is **taken on record**.

13. 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.”

14. The Applicant is the Personal Guarantor of the Corporate Debtor. The Corporate Debtor / Guarantor failed to repay the debt due after the issuance of Demand Notice. The IRP has recommended for initiation of Insolvency Resolution Process against the Applicant. The date of default as mentioned in the application is 30.06.2019 for the 1st Respondent and 28.08.2019 for the 2nd Respondent. The instant application has been filed on 24.05.2023. The Applicant is entitled to a benefit of limitation from 15.03.2020 to 28.02.2022 as extended by *Hon’ble Supreme Court in Suo Moto W.P. (Civil) No. 3 of 2020*. Thus, considering the date of default and the date on which the Application has been filed, we are of the opinion that this Application is within the period of limitation.

15. In light of the aforesaid discussions, the present Application i.e. **CP(IB)/129(CHE)/2023** is admitted and the Insolvency Resolution Process stands initiated against Mrs. P. Rajamani 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. Section 98 of IBC, 2016 provides for replacement of the Resolution Professional on application by the debtor or the creditor. Section 98 is reproduced hereunder:

“98. (1) Where the debtor or the creditor is of the opinion that the resolution professional appointed under section 97 is required to be replaced, he may apply to the Adjudicating Authority for the replacement of the such resolution professional.



(2) *The Adjudicating Authority shall within seven days of the receipt of the application under sub-section (1) make a reference to the Board for replacement of the resolution professional.*

(3) *The Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (2), recommend the name of the resolution professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.*

(4) *Without prejudice to the provisions contained in sub-section (1), the creditors may apply to the Adjudicating Authority for replacement of the resolution professional where it has been decided in the meeting of the creditors, to replace the resolution professional with a new resolution professional for implementation of the repayment plan.*

(5) *Where the Adjudicating Authority admits an application made under sub-section (1) or sub-section (4), it shall direct the Board to confirm that there are no disciplinary proceedings pending against the proposed resolution professional.*

(6) *The Board shall send a communication within ten days of receipt of the direction under sub-section (5) either —*

(a) confirming appointment of the nominated resolution professional; or

(b) rejecting appointment of the nominated resolution professional and recommend a new resolution professional.



(7) On the basis of the communication of the Board under sub-section (3) or sub-section (6) , the Adjudicating Authority shall pass an order appointing a new resolution professional.

(8) The Adjudicating Authority may give directions to the resolution professional replaced under sub-section (7)—

(a) to share all information with the new resolution professional in respect of the insolvency resolution process; and

(b) to co-operate with the new resolution professional in such matters as may be required.”

III. As per Section 98, the creditor or the debtor may make an application for replacement of the Resolution Professional and the Adjudicating Authority may admit the same provided there are no disciplinary proceedings pending against the Resolution Professional. In the instant case, the present IRP is placed at Chennai whereas the 1st Respondent and the Personal Guarantor are placed outside of Chennai. Considering the above facts and provisions and no objection given by the applicant. Mr. Madhu Desikan is discharged, and Mr. Mahalingam Suresh Kumar, having IBBI Registration No: IBBI/IPA-001/IP-P00110/2017-2018/10217 is appointed as the Resolution Professional. **IA/(IBC)1771(CHE)/2024** is accordingly, **allowed.**



- IV. The Resolution Professional viz. **Mr. Mahalingam Suresh Kumar (IBBI/IPA-001/IP-P00110/2017-2018/10217) (AFA valid till 31.12.2024)**, 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 petition;
 - b. particulars of the resolution professional with whom the claims are to be registered; and
 - c. the last date for submission of claims.
- V. 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.
- VI. 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 petition 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.

VII. 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.

VIII. 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.

- IX.** 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.
- X.** The Resolution Professional shall submit his periodic reports before this Tribunal, every 30 days.
- XI.** 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 expenses. This shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.



XII. The Registry is directed to communicate a copy of order, report and petition to the concerned parties within seven working days and upload the same on the website immediately after the pronouncement of order.

16. Accordingly, **CP/IB/129/CHE/2023** stands **admitted**. The Applications in **IA/(IBC)1771(CHE)/2024** and **IA/IBC/1401/CHE/2024** stands disposed of.

-Sd-
VENKATARAMAN SUBRAMANIAM
Member (Technical)

-Sd
SANJIV JAIN
Member (Judicial)

Hresha. S