

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-I, CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **14.02.2025** THROUGH VIDEO CONFERENCING

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

APPLICATION NUMBER :
PETITION NUMBER : CP(IB)/165/CHE/2021
NAME OF THE PETITIONER(S) : State Bank of India
NAME OF THE RESPONDENT(S) : P Danaraj
UNDER SECTION : Sec 95(1) of IBC, 2016

ORDER

Present: Ms. Lavanya K., Ld. Counsel for the Petitioner.

Shri. Mayan H Jain, Ld. Counsel for the Respondent/Personal
Guarantor.

Vide separate order pronounced in the Open Court, Shri. Radhakrishnan Dharmarajan is appointed as the IRP who is directed to give his report under Section 99 of IBC, 2016.

List the petition for the report of the IRP on **20.03.2025**.

Sd/-
VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

Sd/-
SANJIV JAIN
MEMBER (JUDICIAL)

VS

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

CP(IB)/165/(CHE)/2021

(filed under Section 95(1) of the Insolvency and Bankruptcy Code, 2016)

State Bank of India

Stressed Asset Management Branch
Red Cross Buildings,
Red Cross Road, Egmore,
Chennai – 8

...Petitioner/Financial Creditor

-Vs-

Mr.P.Dhanraj

No.12, Zahir Hussain Street,
Kuppan Road,
Near VGP Garden Beach,
Panayur, Chennai – 600 119

...Respondent/Personal Guarantor

Order pronounced on 14th February, 2025

CORAM :

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAN, MEMBER (TECHNICAL)

Present:

For Applicant: T.Ravichandran, Advocate

For Respondent: P.H.Arvinth Pandian, Ld. Sr. Counsel for the Respondent

ORDER

(Hearing through Video Conferencing)

1. The Applicant, State Bank of India has filed this application under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 ("IBC") read with Rule 7(c) of the Insolvency and Bankruptcy

(Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, for initiating Personal Insolvency Resolution Process against the Personal Guarantor/ Respondent **P Danaraj** of Diamond Engineering (Chennai) Private Limited, the Corporate Debtor.

2. Part II of the Application sets out the details of the Personal Guarantor and provides the address of the Personal Guarantor as No.1, Nehru Street Old Mahabalipuram Road, Sholinagallur, Chennai – 600 119. It is stated that, the Respondent stood as the Personal Guarantor for the Corporate Debtor, Diamond Engineering (Chennai) Private Limited (hereinafter CD).

3. Part-III of the application provides the particulars of **debt as 391,60,87,767/-** (Rupees Three Hundred Ninety Crores Sixty Lakhs Eighty Seven Thousand Seven Hundred Sixty Seven) and amount of **default as 391,60,87,767/-** (Rupees Three Hundred Ninety Crores Sixty Lakhs Eighty Seven Thousand Seven Hundred Sixty Seven) as on 31.01.2021. It is stated that, the date of default is 19.02.2017 and liability was acknowledged by the Respondent in balance sheet of the CD for the year ended on 31.03.2018 and the same has been signed by the Respondent herein in the capacity of personal guarantor cum suspended board of director on 22.03.2019

4. The Applicant has placed Sanction letter dated 27.12.2014, Restructuring Agreement dated 31.12.2014, Trust and Retention Agreement dated 31.12.2014, Deed of Guarantee dated 31.12.2014,

Undertaking by promoters dated 31.12.2014, Omnibus Counter Guarantee dated 26.02.2015, SARFAESI 13(2) notice dated 21.12.2016, Possession notice dated 18.05.2017 and Demand notice in Form B dated 04.02.2021.

5. The Demand Notice issued under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 to the Personal Guarantor dated 04.02.2021 is placed at **Page 223-227** of the typed set filed along with the application.

6. It is stated that, the Petitioner provided various credit facilities to Diamond Engineering Chennai Pvt. Ltd., the CD. The facilities granted by the Petitioner was guaranteed by the Respondent herein who had executed a personal guarantee in favour of the Petitioner guaranteeing repayment of the facilities extended by the CD.

7. It is stated that on an application under Section 9 of IBC, 2016 by an Operational Creditor to the CD, the CD was admitted into CIRP in CP(IB)/507(CHE)/2017. It is stated that, pursuant to the appointment of RP and consequent to his discharge of functions under the Code, a Resolution plan submitted by the Promoters of the Corporate Debtor including the Respondent, was approved but the fact remains that the said Resolution plan has not been implemented.

8. In the notes of submission filed by the respondent/guarantor vide SR. No. 2812 dated 11.06.2024, it was submitted that at the time of submitting the plan, the promoters had submitted an OTS proposal for

Rs.17.63 crores to the Applicant for the discharge of Personal Guarantors. As per the OTS, sale of the personal properties of the Respondent and the one other promoter to the third parties were identified by the promoters. The promoters also handed over the original cheques and demand draft for Rs.6,57,95,000/-. Additionally, they had provided xerox copies of 11 cheques for balance of Rs.11,05,05,000/- but in the mean time the financial sponsor to the approved plan intimated vide mail dated 13.02.2020 that it completely withdraws the support to the plan. The promoters then came up with another alternative by raising funds by selling personal properties of the promoters and the non-core assets of the Corporate Debtor. As per the proposed plan, 7.85 crores was to be infused by sale of the personal properties of the promoters. The promoters wrote to the Financial Creditors seeking their permission to implement the resolution plan seeking no objection but the bank issued the NOC only in respect of three non-core assets of the Corporate Debtor and the personal properties of the promoters on 20.03.2020 at the onset of COVID-19 pandemic. Due to the pandemic, the implementation got delayed. The promoters found interested purchasers and sought extension and NOC for the sale of mortgaged properties on 17.02.2022. But the applicant issued the NOC on 25.02.2022. In the meantime, one of the FC Axis Bank filed an application for liquidation which was allowed vide order dated 30.05.2022. IA 310 of 2020 seeking approval for the implementing modified plan was dismissed.

9. In the memo filed vide SR. No. 502 dated 04.02.2025 it was submitted that, the promoters preferred an appeal against the said order and obtained the stay on 29.06.2022. The said appeal is pending before the Hon'ble NCLAT. In the meantime, the promoters identified a purchaser for non-core asset and presented the proposal before the monitoring committee on 15.02.2023, the Applicant also consented to sale of the property. The Hon'ble NCLAT passed an order approving the sale on 05.06.2023. The Applicant and other banks filed the IA seeking recall of certain portions of the order before Hon'ble NCLAT but the Hon'ble NCLAT dismissed the recall application vide order dated 12.01.2024. Thereafter the applicant preferred an appeal before Hon'ble Supreme Court.

10. Ld. Senior Counsel Shri. Aravind Pandian for the Respondent reiterated what has been stated in the memos. He stated that, the CD is MSME and the Promoters including the Respondent had submitted a Resolution Plan for revival of the CD. The said plan came to be approved by this Tribunal vide order dated 30.09.2019. Ld. Counsel submits that while submitting the plan, the Promoters had submitted an OTS for Rs.17.63 Crores for discharge of the Personal Guarantors identifying the personal properties of the Promoters which fact was recorded vide order dated 30.09.2019. The Promoters handed over original cheques and demand draft for Rs. 6,57,95,000/- and given Xerox copies of 11 cheques for the balance of Rs.11,05,05,000/- along with the letter dated 03.12.2019.

11. Ld. Senior Counsel for the Respondent stated that in the meantime, the financial sponsor to the approved plan intimated vide mail dated 13.02.2020 withdrawing its support to the plan. Thereafter, the Promoters came up with another alternative i.e. raising funds by selling the personal properties of the Promoters and non-core assets of the Corporate Debtor vide letter dated 10.02.2020. They also wrote to the Financial Creditors vide letter dated 07.03.2020 seeking their permission. Ld. Counsel submits that the bank issued the NOC as regards the sale of 3 non-core assets and personal properties of the Promoters only on 20.03.2020 at the onset of the COVID-19 pandemic because of which, the implementation got delayed. Ld. Counsel submits that the Promoters found the interested purchasers and submitted a proposal for implementation vide letter dated 11.02.2022 to the creditors requesting to issue NOC for sale of the mortgaged properties of the Corporate Debtor and Promoters which was issued on 25.02.2022. Thereafter, an application IA No.310 of 2020 was preferred seeking approval for implementing the plan as per the modified proposal but in the meantime, Axis Bank filed IA No.1266 of 2020 seeking liquidation which was allowed vide order dated 30.05.2022. The application IA No.310 of 2020 was also dismissed. Ld. Counsel submits that the Promoters preferred an appeal before the Hon'ble NCLAT where stay has been granted vide dated 29.06.2022. Ld. Counsel submits that the Corporate Debtor is a running unit. Ld. Counsel submits that the Promoters have a good case in their favour and this petition be adjourned *sine die* till the orders are received from the Hon'ble NCLAT.

12. Ld. Counsel for the Petitioner per contra submits that the revised plan has already been rejected against which no appeal has been preferred. The OTS submitted by the Guarantor to the Bank is not under consideration. Ld. Counsel submits that the OTS has already been rejected by the Bank/Petitioner.

13. We have heard Learned Counsel for both the parties.

14. Section 95 of IBC provides that a creditor may apply either by himself, or jointly with other creditors, or through a Resolution Professional to the Adjudicating Authority for initiating an Insolvency Resolution Process under the Section by submitting an application. The application shall be accompanied with details and documents relating to the debts or by the debtor to the creditor as on the date of application, failure by the debtor to pay the debt within a period of 14 days of the service of the Notice of Demand and the relevant evidence of such default or non-payment of debt. It also provides that “the creditor shall provide a copy of the application to the debtor and the application shall be in such form and manner.

15. Hon’ble Supreme Court in the matter of **Dilip B Jiwrajka –Vs- Union of India & Ors** in *Writ Petition (Civil) No 1281 of 2021* while dealing with the jurisdiction of NCLT in relation to adjudication of cases filed under Section 94 and 95 of IBC, 2016 has summarized in para-86 as follows;

86. We summarise the conclusion of this judgment below:

(i) No judicial adjudication is involved at the stages envisaged in Sections 95 to Section 99 of the IBC;

- (ii) *The resolution professional appointed under Section 97 serves a facilitative role of collating all the facts relevant to the examination of the application for the commencement of the insolvency resolution process which has been preferred under Section 94 or Section 95. The report to be submitted to the adjudicatory authority is recommendatory in nature on whether to accept or reject the application;*
- (iii) *The submission that a hearing should be conducted by the adjudicatory authority for the purpose of determining 'jurisdictional facts' at the stage when it appoints a resolution professional under Section 97(5) of the IBC is rejected. No such adjudicatory function is contemplated at that stage. To read in such a requirement at that stage would be to rewrite the statute which is impermissible in the exercise of judicial review;*
- (iv) *The resolution professional may exercise the powers vested under Section 99(4) of the IBC for the purpose of examining the application for insolvency resolution and to seek information on matters relevant to the application in order to facilitate the submission of the report recommending the acceptance or rejection of the application;*
- (v) *There is no violation of natural justice under Section 95 to Section 100 of the IBC as the debtor is not deprived of an opportunity to participate in the process of the examination of the application by the resolution professional;*
- (vi) *No judicial determination takes place until the adjudicating authority decides under Section 100 whether to accept or reject the application. The report of the resolution professional is only recommendatory in nature and hence does not bind the adjudicatory authority when it exercises its jurisdiction under Section 100;*
- (vii) *The adjudicatory authority must observe the principles of natural justice when it exercises jurisdiction under Section*

100 for the purpose of determining whether to accept or reject the application;

(viii) The purpose of the interim-moratorium under Section 96 is to protect the debtor from further legal proceedings; and

(ix) The provisions of Section 95 to Section 100 of the IBC are not unconstitutional as they do not violate Article 14 and Article 21 of the Constitution.

16. Hon'ble Supreme Court has held that no judicial adjudication is involved at the stages envisaged in Sections 95 to Section 99 of the IBC and there is no violation of natural justice under Section 95 to Section 100 of the IBC as the debtor is not deprived of an opportunity to participate in the process of the examination of the application by the resolution professional. The Respondent / Personal Guarantor will be given an opportunity to file a reply once the RP has filed his Report under Section 99 of IBC, 2016.

17. In the instant case, the Resolution plan has not been implemented. Liquidation proceedings have been initiated against Corporate Debtor. At this stage as envisaged in Section 95-99 of IBC, the Hon'ble Supreme Court in the case *supra* has held that no judicial intervention or adjudication is involved. The IRP has to collect the information from the parties and to submit his report after collating the information.

18. Considering the above facts and the case *supra*, we appoint the Resolution Professional who will collate all the facts relevant to the examination of the application for the commencement of the Insolvency Resolution Process in respect of the Personal Guarantor.

19. In the instant case, the Applicant has proposed the name of the Resolution Professional as **Radhakrishnan Dharmarajan**. We therefore, upon verification of disciplinary status with the IBBI portal, appoint **Mr. Radhakrishnan Dharmarajan** with *Reg. No. IBBI/IPA-001/IP-P00508/2017-2018/10909* (email id:- **dharmadharma@rdhandco.com**) as Interim Resolution Professional in respect of the Personal Guarantor/Respondent.

20. The Resolution Professional is directed to examine the application as set out in Section 97(6) of IBC, 2016 who after examining, may recommend for the acceptance / rejection of the application as provided under Section 97(6) of IBC, 2016, **within a period of 10 days** as contemplated under Section 99(1) of IBC, 2016.

21. The Applicant is directed to serve copy of the application and the order on the Interim Resolution Professional.

22. List this application for report / hearing on **20.03.2025**.

-Sd-

VENKATARAMAN SUBRAMANIAM
Member (Technical)

-Sd-

SANJIV JAIN
Member (Judicial)

Kishore P