

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

IBA/475/2020

*(filed under Section 95 of the Insolvency and Bankruptcy Code, 2016
and Rule 7(2) of the Insolvency and Bankruptcy [Application to
Adjudicating Authority for Insolvency Resolution Process for
Personal Guarantors to Corporate Debtor], Rules, 2019)*

In the matter of **G. Ramakrishna Reddy**

M/s. TATA CAPITAL FINANCIAL SERVICES LIMITED

Peninsula Business Park,
Tower A, 11th Floor,
Ganapatrao Kadam Marg,
Lower Parel,
Mumbai – 400 013

*Filed through Ms. Sripriya Kumar,
Resolution Professional*

.. Creditor

– Vs –

G. RAMAKRISHNA REDDY

Old No.24, New No.17,
South Mada Street,
Srinagar Colony, Saidapet,
Chennai – 600 015

.. Personal Guarantor

Order Pronounced on 1st June 2021

CORAM:

R. VARADHARAJAN, MEMBER (JUDICIAL)

ANIL KUMAR B, MEMBER (TECHNICAL)

For the Financial Creditor : Abitha Banu, Advocate

For the Personal Guarantor : B. Ramana Kumar, Advocate

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. This Application has been filed under Section 95 of the Insolvency & Bankruptcy Code, 2016 ("hereinafter referred to as

IBC, 2016”) read with Rule 7(2) of the Insolvency and Bankruptcy [Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor], Rules, 2019 by **M/s. Tata Capital Financial Services Private Limited** (hereinafter called as “*Creditor*”) for the purpose of initiating the Insolvency Resolution Process against **Mr. G. Ramakrishna Reddy** (hereinafter called as “*Personal Guarantor*”). The Respondent / Personal Guarantor, herein has stood as a Guarantor in respect of the loans availed by the Principal Borrower viz. M/s. Arohi Infrastructure Private Limited.

2. In so far as the Personal Guarantors to Corporate Debtors is concerned, the Hon’ble Supreme Court of India in the matter of **Lalit Kumar Jain –Vs– Union of India & Ors.** in *Transferred Case (Civil) No.245/2020* has upheld the *vires* of the notification issued by the Central Government vide S.O. 4126(E) dated 15.11.2019, in so far as it relates to coming into force of Insolvency and Bankruptcy Process of Personal Guarantors to Corporate Debtor. Thus, when a Corporate Insolvency Resolution Process in relation to Corporate Debtor is pending before this Adjudicating Authority, then as per Section 60(2) of IBC, 2016 the NCLT would be the competent forum to file an Application for Personal Guarantor in relation to such Corporate Debtor. The

Corporate Insolvency Resolution Process in respect of the Corporate Debtor was ordered by this Adjudicating Authority on 20.03.2018. Hence, the present Application in respect of the Insolvency and Bankruptcy proceedings of the Personal Guarantor of Corporate Debtor is filed by the Creditor before this forum.

3. As far as the present Application is concerned, since it pertains to the Insolvency Resolution Process of Individuals, it is necessary to refer to the relevant provisions of the IBC 2016;

95. Application by creditor to initiate insolvency resolution process. –

(1) 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 this section by submitting an application.

(2) A creditor may apply under sub-section (1) in relation to any partnership debt owed to him for initiating an insolvency resolution process against-

- (a) any one or more partners of the firm; or
- (b) the firm.

(3) Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the Adjudicating Authority in which the first mentioned application is pending for adjudication and such Adjudicating Authority may give such directions for consolidating the proceedings under the applications as it thinks just.

(4) An application under sub-section (1) shall be accompanied with details and documents relating to-

(a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;

(b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and

(c) relevant evidence of such default or non-repayment of debt.

(5) The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.

(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.

(7) The details and documents required to be submitted under sub-section (4) shall be such as may be specified

4. Section 95(1) of IBC, 2016 postulates that a Creditor may, either by himself, or through a Resolution Professional file an Application for initiating Insolvency Resolution Process against a Personal Guarantor or a Partnership Firm. Section 96 of IBC, 2016 deals with the interim – moratorium in relation to the Application being filed under Section 95 of IBC, 2016. If the Application is filed through the Resolution Professional, as in the present case, then Section 97(1) of the IBC, 2016 would get attracted, which is extracted hereunder;

97. Appointment of resolution professional. –

(1) If the application under section 94 or 95 is filed through a resolution professional, the Adjudicating Authority shall direct the Board within seven days of the date of the application to confirm that there are no disciplinary proceedings pending against resolution professional.

(2) The Board shall within seven days of receipt of directions under sub-section (1) communicate to the Adjudicating Authority in writing either –

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

(b) rejecting the appointment of the resolution professional and nominating another resolution professional for the insolvency resolution process.

(3) Where an application under section 94 or 95 is filed by the debtor or the creditor himself, as the case may be, and not through the resolution professional, the Adjudicating Authority shall direct the Board, within seven days of the filing of such application, to nominate a resolution professional for the insolvency resolution process.

(4) The Board shall nominate a resolution professional within ten days of receiving the direction issued by the Adjudicating Authority under sub-section (3).

(5) The Adjudicating Authority shall by order appoint the resolution professional recommended under sub-section (2) or as nominated by the Board under sub-section (4).

(6) A resolution professional appointed by the Adjudicating Authority under subsection (5) shall be provided a copy of the application for insolvency resolution process

5. Upon the Board viz. the Insolvency and Bankruptcy Board of India (IBBI) nominating / confirming the Resolution Professional as per Section 97(1) or (4) of IBC, 2016 as the case may be, the Adjudicating Authority in terms of Section 97(5) of IBC, 2016 is required to appoint such person as the Resolution Professional. Section 98 of IBC, 2016 deals with the Replacement of the Resolution Professional, in case the Creditor or the Debtor is of the opinion that the Resolution Professional

appointed under Section 97 of IBC, 2016 is required to be replaced. Thereafter, Section 99 of IBC, 2016 would come into play, which states as follows;

99. Submission of report by resolution professional. –

(1) The resolution professional shall examine the application referred to in section 94 or section 95, as the case may be, within ten days of his appointment, and submit a report to the Adjudicating Authority recommending for approval or rejection of the application.

(2) Where the application has been filed under section 95, the resolution professional may require the debtor to prove repayment of the debt claimed as unpaid by the creditor by furnishing –

(a) evidence of electronic transfer of the unpaid amount from the bank account of the debtor;

(b) evidence of encashment of a cheque issued by the debtor; or

(c) a signed acknowledgment by the creditor accepting receipt of dues.

(3) Where the debt for which an application has been filed by a creditor is registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt.

(4) For the purposes of examining an application, the resolution professional may seek such further information or explanation in connection with the application as may be required from the debtor or the creditor or any other person who, in the opinion of the resolution professional, may provide such information.

(5) The person from whom information or explanation is sought under sub-section (4) shall furnish such information or explanation within seven days of receipt of the request.

(6) The resolution professional shall examine the application and ascertain that –

(a) the application satisfies the requirements set out in section 94 or 95;

(b) the applicant has provided information and given explanation sought by the resolution professional under sub-section (4).

(7) After examination of the application under sub-section (6), he may recommend acceptance or rejection of the application in his report.

(8) Where the resolution professional finds that the debtor is eligible for a fresh start under Chapter II, the resolution professional shall submit a report recommending that the application by the debtor under section 94 be treated as an application under section 81 by the Adjudicating Authority

(9) The resolution professional shall record the reasons for recommending the acceptance or rejection of the application in the report under sub-section (7).

(10) The resolution professional shall give a copy of the report under sub-section (7) to the debtor or the creditor, as the case may be.

6. Section 99 of IBC, 2016 contemplates that upon appointing the Resolution Professional in terms of Section 97(5) of IBC, 2016, the Resolution Professional is required to examine the Application filed under Section 95 of IBC, 2016 by the Creditor, within 10 days from the date of his appointment and submit a report to the Adjudicating Authority recommending for approval or rejection of the application. The mode in which the Resolution Professional is required to examine the Application is set out in Section 97(6) of IBC, 2016 and after examining the Application, as per Section 97(7) of IBC, 2016 the Resolution Professional may recommend for the acceptance or rejection of the Application in his report. Thereafter, Section 100 of IBC,

2016 explains the further course of action, which is extracted as follows;

100. Admission or rejection of application. –

(1) The Adjudicating Authority shall, within fourteen days from the date of submission of the report under section 99 pass an order either admitting or rejecting the application referred to in section 94 or 95, as the case may be.

(2) Where the Adjudicating Authority admits an application under sub-section (1), it may, on the request of the resolution professional, issue instructions for the purpose of conducting negotiations between the debtor and creditors and for arriving at a repayment plan.

(3) The Adjudicating Authority shall provide a copy of the order passed under subsection (1) along with the report of the resolution professional and the application referred to in section 94 or 95, as the case may be, to the creditors within seven days from the date of the said order.

(4) If the application referred to in section 94 or 95, as the case may be, is rejected by the Adjudicating Authority on the basis of report submitted by the resolution professional or that the application was made with the intention to defraud his creditors or the resolution professional, the order under sub-section (1) shall record that the creditor is entitled to file for a bankruptcy order under Chapter IV

7. Section 100(1) of IBC, 2016 contemplates that within 14 days from the date of submission of the Report by the Resolution Professional under Section 99 of IBC, 2016, the Adjudicating Authority is required to pass an order either admitting or rejecting the Application referred to Section 95 of IBC, 2016. Thereafter, if the Adjudicating Authority is inclined to admit the Application as filed under Section 95 of IBC, 2016 then the

moratorium as stated under Section 101 of IBC, 2016 shall commence.

8. Thus, the sequential reading of the above extracted provisions would manifest the fact that immediately upon filing of the Application under Section 94 or 95 of IBC, 2016, this Adjudicating Authority is required to refer the matter to the Board viz. the Insolvency and Bankruptcy Board of India, for approving the name of the Resolution Professional. However, it is to be noted that, this Adjudicating Authority is required to satisfy itself, before referring to the Board the name of the Resolution Professional for its confirmation, as to whether the Application filed under Section 95 of IBC, 2016 satisfies the conditions as laid out in sub – section (4) of Section 95 of IBC, 2016 and they are;

(a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;

(b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and

(c) relevant evidence of such default or non-repayment of debt.

9. In relation to Section 95(4)(a), it is seen from the Application filed, that one M/s. Arohi Infrastructure Private

Limited (*hereinafter referred to as "Principal Borrower"*) availed financial facility from the Creditor herein to an extent of Rs.50 Crore repayable within a period of 48 months. For the said facility, the Respondent herein viz. Mr. G. Ramakrishna Reddy stood as a Guarantor vide Deed of Guarantee Agreement dated 28.08.2011 and 28.09.2011. It was submitted that the Principal Borrower has committed default in repayment of the dues and as a result thereof, the account of the Principal Borrower was declared as Non – Performing Asset (NPA) by the Creditor on 19.07.2014. It was further submitted that based upon an Application vide CP/672/IB/2017 filed by the Creditor herein under Section 7 of IBC, 2016, this Adjudicating Authority had initiated the Corporate Insolvency Resolution Process (CIRP) against the Principal Borrower on 20.03.2018 and subsequently the Liquidation order was also passed on 05.12.2018. Further, it was submitted that the Creditor herein had also initiated Arbitration Proceedings against the Respondent / Personal Guarantors and the borrowers and the Learned Arbitrator has passed a final award on 13.07.2019 directing the Personal Guarantors and other guarantors to jointly and severally pay a sum of Rs.183,31,97,001.44/- as on 02.07.2017. It was submitted that the Personal Guarantor has failed to make the decreed amount as per the Arbitral Award till date and the

Amount which is due and payable by the Personal Guarantor as on 17.01.2020 is Rs.232,60,41,491/-.

10. In relation to Section 95(4)(b), it is seen that the Creditor has issued a Demand Notice on 04.02.2020 as per Rule 7 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor), Rules, 2019, calling upon the Personal Guarantor to pay an amount of Rs.232,60,41,491/-. Despite receipt of the Demand Notice on 08.02.2020, the Personal Guarantor has failed to repay the outstanding dues and continues to commit default till date.

11. In relation to Section 95(4)(c), it is seen that the Creditor has filed the Final Award passed by the Learned Arbitrator on 13.07.2019 and that in the counter filed by the Respondent / Personal Guarantor he has not denied that the said sum is not payable.

12. Thus, in all respects, this Application filed under Section 95 of IBC, 2016 is complete and a perusal of Part – IV of the Application posits the fact that the Application has been moved by an Insolvency Professional, viz. **Sripriya Kumar** bearing

Registration No. **IBBI/IPA-001/IP-P00771/2017-2018/11316**.

Hence as per Section 97(2) of IBC, 2016 we hereby direct the Board viz. The Insolvency and Bankruptcy Board of India, to confirm that there are no disciplinary proceedings pending against Resolution Professional, within a period of 7 days from the date of this order.

13. At this juncture, it is necessary to refer to Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor), Rules, 2019, wherein it states as follows;

8. Confirmation or nomination of insolvency professional.—

(1) For the purposes of sub-section (2) of section 97 and sub-section (5) of section 98, the Board may share the database of the insolvency professionals, including information about disciplinary proceedings against them, with the Adjudicating Authority from time to time.

(2) For the purposes of sub-section (4) of section 97 and sub-section (3) of section 98, the Board may share a panel of insolvency professionals, who may be appointed as resolution professionals, with the Adjudicating Authority

14. Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor), Rules, 2019 states that the Board may share a database of the Insolvency Professionals, including the information about the disciplinary

proceedings against them with the Adjudicating Authority from time to time. However, upon enquiry from the Registry of this Tribunal, it was found that no such database including in relation to disciplinary proceedings, if any, of the insolvency professionals is being shared to the Chennai Bench of NCLT by the Board under the relevant Rules as above. Hence, in this regard, we hereby direct the IBBI also to share the database of the insolvency professionals including the details about the disciplinary proceeding, if any which is pending against them, for effective adjudication of matters listed under Section 95 of IBC, 2016.

15. The matter may be listed for further hearing on 15.06.2021, for awaiting confirmation from IBBI in this regard.

-Sd-
ANIL KUMAR B
MEMBER (TECHNICAL)

-Sd-
R. VARADHARAJAN
MEMBER (JUDICIAL)

Raymond