

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH - II, CHENNAI**

CP(IB)/191(CHE)/2021

(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

Tata Capital Financial Services Ltd

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

&

Tata Capital Financial Services Ltd

1st Floor, Centennial Square,
6A, Dr. Ambedkar Salai, Kodambakkam,
Chennai – 600 024

...Financial Creditor

-Vs-

K. BOOTHALINGAM

Currently residing at,
17, Lakshmi Nagar, Thanneerpandal,
Nar Tidel Park, Vilankurichi Road,
Coimbatore – 641 004

Permanent Address,
No. 28, C1/1, Jeeva Nagari,
Keezha Ramanaputhoor Road,
Nagacoil – 629 002

...Personal Guarantor

Order Pronounced on 29th April, 2022

CORAM:

**JUSTICE RAMALINGAM SUDHAKAR, PRESIDENT
ANIL KUMAR B, MEMBER (TECHNICAL)**

For Financial Creditor : Abitha Banu, Advocate
For Personal Guarantor : R. Dinesh, Advocate

ORDER

Per: JUSTICE RAMALINGAM SUDHAKAR, PRESIDENT

Under Consideration is an Application filed by the Financial Creditor Assistant General Manager, State Bank of India, Stressed Assets Management Branch, Chennai under Section 95 (1) read with the Report of the Resolution Professional under section 99 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") against the personal guarantor **K. Boothalingam** of **M/s. Srivatsa International Private Limited**, the Corporate Debtor which is under Liquidation. In so far M/s. Srivatsa International Private Limited is concerned, an order was passed for CIRP of the company by this Adjudicating Authority on 04.03.2020 in IBA/31/2020.

2. APPOINTMENT OF RESOLUTION PROFESSIONAL

The Applicant herein had filed the instant application under section 95 of the Code on 15.09.2021 seeking initiation of Insolvency Resolution Process for Personal Guarantors to Corporate Debtors. In consideration, this Adjudicating Authority vide Order dated 11.02.2022 had passed an interim order appointing **Mrs. Balasubramanian Mekala** having registration number: **IBBI/IPA-002/IP-N00675/2018-2019/12416** as the Resolution Professional placing reliance upon the order of the Hon'ble NCLAT, Principal Bench, in the matter of **Mr. Ravi Ajit**

Kulkarni –Vs- State Bank of India and had accordingly directed the Resolution Professional appointed to file a report in accordance with section 99 of the Code and the same was taken up on 12.04.2022 for further consideration as per section 100 of the Code.

3. **REPORT BY RESOLUTION PROFESSIONAL**

The Resolution Professional Mrs. Balasubramanian Mekala who was appointed vide order dated 11.02.2022 had submitted her report before this Adjudicating Authority on 21.02.2022. Upon perusal of the report it is observed that the report is filed in compliance with section 99 of the Code. It is evident from the report that the Applicant herein has come up against the Personal Guarantor for the failure in repayment of the debt obligations availed by the Corporate Debtor. The relevant observations in the report as extracted hereunder:

"(3) As per Sec.99(2) as RP, I had sent an email on 14.02.2022 (Annexure 2), asking him to submit the details of payment, if any, towards the above said debt by furnishing:

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

(b)evidence of encashment of a cheque issued by K. Boothalingam; or

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

However, no response has been received from K. Boothalingam. Hence, the requirement set out under Sec.99(2) is satisfied;

"(5) I had sent an email on 18.02.2022 asking for the information from TCFSL, for which they had replied on the same day and the email is

attached herewith along with annexures (Annexure 4). The requirement set out under Sec. 99(4) & (5) is satisfied;"

"As required under Sec. 99(6), I examined the application and ascertained that

(a) The application satisfies the requirements set out in Sec. 95

(b) The applicant has provided information and given explanation sought by me under Sec. 99(4).

As required under Sec.99(7), being the RP, I would like to recommend that the application be admitted, as the application filed by TCFSL (Tata Capital Financial Services Limited) is in accordance with the provisions of Sec. 99(6) and Insolvency Resolution of Personal Guarantor to Corporate Debtor can be proceeded against K. Boothalingam"

4. In the light of the report filed and the observations extracted above, the instant Application stands **Admitted** as against the Respondent (Personal Guarantor), for initiation of Insolvency Resolution Process for Personal Guarantors to Corporate Debtors. As a consequence of the instant Application being admitted in terms of Section 100 of the Code, moratorium as envisaged under Section 101 of the Code as extracted hereunder shall follow in relation to the Personal Guarantor:

101-Moratorium-

(1) When the application is admitted under section 100, a moratorium shall commence in relation to all the debts and shall cease to have effect at the end of the period of 180 days beginning with the date of admission of the application or on the date the Adjudicating Authority passes an order on the repayment plan under section 114, whichever is earlier.

(2) During the moratorium period-

- a) any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;
- b) the creditors shall not initiate any legal action or legal Proceeding 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;

(3)

(4) 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.

5. The Code further insists upon publication of this Admission Order for invitation of Claims from all other Creditors in terms of Section 102 of the Code as extracted hereunder:

102-Public notice and claims from creditors-

- 1) The Adjudicating Authority shall issue a public notice within seven days of passing the order under section 100 inviting claims from all creditors within twenty-one days of such issue.
- 2) The notice under sub-section (1) 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.
- 3) The notice shall be-
 - a) published in at least one English and one vernacular newspaper which is in circulation in the state where the debtor resides;
 - b) affixed in the premises of the Adjudicating Authority; and
 - c) placed on the website of the Adjudicating Authority.

6. In compliance of the above mentioned provision the Registry is directed to publish this Admission Order in the NCLT, website and display the same in the premises of this Adjudicating Authority. Accordingly, the Applicant/Resolution Professional herein is directed to take notice for Publication of this Order mentioning the details as stipulated in section 102(2) of the code in one '**Business Standard**' (English-Tamil Nadu Edition) and one in '**Makkal Kural**' (Tamil-Tamil Nadu edition) within 7 days from the date of this Order.

7. The creditors shall register claims with the resolution professional by sending details of their claims by way of electronic communications or through courier, speed post or registered letter. In addition, the creditor shall provide to the resolution professional, personal information and such particulars as may be prescribed.

8. The resolution professional shall prepare a list of creditors on the basis of the information disclosed in the application filed by the debtor under section 94 or 95, as the case may be, claims received by the resolution professional under section 102. The same shall be prepared within thirty days (30) from the date of the notice in terms of Section 104 of the Code.

9. A Repayment Plan shall be prepared by the debtor in consultation with the Resolution Professional, in accordance with section 105 of the code.

10. This Adjudicating Authority, do further order that the resolution professional shall perform his functions and duties in accordance with Part-III, Chapter -III of the Code.

11. Based on the above terms, the Application stands **Admitted** in terms of Section 100 of the Code and the Moratorium shall come into effect as of this date. A copy of the order shall be communicated to the Applicant as well as to the Respondent above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further, the Resolution Professional is directed to serve a copy of the Order along with the

RP Report to the creditors within 7 days from the date of this Order.

12. Accordingly, the Resolution Professional is directed to file an Interim Application under section 106 of the code on or before 29.06.2022. The application in **CP(IB)/191(CHE)/2021** is to be posted on **29.06.2022** along with the Interim Application if any.

-Sd-
B. ANIL KUMAR
MEMBER (TECHNICAL)

-Sd-
Justice RAMALINGAM SUDHAKAR
Hon'ble PRESIDENT

HP