

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

CP/IB/18/CHE/2022

Filed under Section 95 of the Insolvency & Bankruptcy Code, 2016

*In the matter of **Mr. R.Vijay Kumar***

State Bank of India,
Represented by its Assistant General Manager,
Stressed Asset Management Branch,
Red Cross Building, Montieth Road,
Egmore, Chennai – 600 008.

... Financial Creditor

-VS-

Mr.R.Vijay Kumar,
10/60, (Old No. 11/A),
Dr. Ranga Road, 2nd Street,
Alwarpet, Chennai – 600 018

... Personal Guarantor

*Order pronounced on **24th March 2022***

CORAM:

R. SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Financial Creditor : M.L.Ganesh, Advocate

For Personal Guarantor : S.Kaushik Ramaswamy, Advocate

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

This application has been filed under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 against the Personal Guarantors of Gemini Communications Limited, the Corporate Debtor which is under Liquidation.

2. In so far Gemini Communications Limited is concerned, an order was passed initiating Corporate Insolvency Resolution Process against the Corporate Debtor by this Tribunal on 20.06.2018 and liquidation was ordered on 26.02.2019.

3. The present application is filed by the **State Bank of India**, Stressed Asset Management Branch, represented by Assistant General Manager Mr.T.Adithya Varma, duly authorized by Deputy General Manager, State Bank of India, through Authorization Letter dated 12.04.2021 against the Personal Guarantors of the Corporate Debtor Company which is under liquidation.

4. It is seen from Part – III at Sl. No. 13 of the Application that the Personal Guarantor has executed the Deed of Guarantee on 18.03.2011 and the said Deed of guarantee is enclosed along with the typed set filed along with the Application.

5. The Demand Notice which was issued under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 to the Personal Guarantor on 28.10.2020 is also placed on record at Pg. Nos. 124 to 133 at Annexure I(9).

6. The date of default as mentioned in the application is 18.05.2019 and the Financial Creditor has also placed on file the Record of Default at Page Nos. 134 to 140 at Annexure I (10). Hence,

on this term, the present Petition is filed to initiate proceeding in terms of Section 95 (1) of the IBC, 2016, against the Respondent herein.

7. All the defences raised by the Corporate Debtor will be considered at the time when the RP files his report under Section 99 of IBC, 2016 and when the matter is taken up for admission or rejection under Section 100 of IBC, 2016.

8. The Hon'ble NCLAT, Principal Bench, in the matter of **Mr. Ravi Ajit Kulkarni -Vs- State Bank of India** in *Company Appeal (AT) (Insolvency) No. 316 of 2021* has held in para 42 that once an Application under Section 95 of IBC, 2016 is filed, the Adjudicating Authority has to act on it, and following principles of natural justice, give limited notice to Personal Guarantor to appear referring to the Interim Moratorium that has commenced as per terms of Section 96 and subsequently proceed to the next stage of appointing Resolution Professional as per Section 97 read with attendant Rules and Regulations

9. Accordingly, we hereby appoint **Mr. K.Sivalingam** having Registration No.: IBBI/IPA-001/IP-P01597/2018-19/12430 as the Interim Resolution Professional in respect of the Personal Guarantor.



10. The Financial Creditor is also directed to serve a copy of this Application to the Interim Resolution Professional for preparing the Report under Section 99 of IBC, 2016.

11. The Resolution Professional is required to examine the Application as 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, within a period of 10 days as contemplated under Section 99(1) of IBC, 2016.

12. All the defences raised by the Corporate Debtor will be considered at the time when the RP files his report under Section 99 of IBC, 2016 and when the matter is taken up for admission or rejection under Section 100 of IBC, 2016.

13. Post this matter on **26.04.2022** for filing of Report by the Interim Resolution Professional.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

R. SUCHARITHA
MEMBER (JUDICIAL)

Sriram Ananth. V