

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

IBA/719/2020

(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

STATE BANK OF INDIA

Represented by its Assistant General Manager
Stressed Assets Management Branch,
Red Cross Building, 2nd Floor,
No. 32, Montieth Road,
Egmore, Chennai – 600 008

...Financial Creditor

-Vs-

MRS. N RADHIKA

Wife of Prapanna Kumar,
Door No. 245 (Old No. 4-B),
Kilpauk Garden Road,
Kilpauk, Chennai – 600 010

...Personal Guarantor

Order Pronounced on 29th April, 2022

CORAM:

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

*For Financial Creditor : K. Chandrasekaran,
B. Raghavulu Naidu
R. Vigneshwaran, Advocates*
*For Personal Guarantor : AnantMerathia
Lekha Chandrasekhar
Rishi Srinivas, Advocates*

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 **Mrs. N Radhika** of **M/s. Nathella Sampath Jewelry Private Limited**, the Corporate Debtor which is under Liquidation. In so far M/s. Nathella Sampath Jewelry Private Limited is concerned, a common order was passed for Liquidation of the company by this Adjudicating Authority on 03.01.2020 in MA/1147/2019 & MA/547/2018 in CP/129/IB/CB/2018.

2. APPOINTMENT OF RESOLUTION PROFESSIONAL

The Applicant herein had filed the instant applicant under section 95 of the Code on 03.11.2020 seeking initiation of Insolvency Resolution Process for Personal Guarantors to Corporate Debtors. In consideration, this Adjudicating Authority vide Order dated 11.03.2022 had passed an interim order appointing **Mr. ANIL KUMAR KHICHA** having registration number: **IBBI/IPA-001/IP-P00422/2017-18/10745** 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 11.04.2022 for further consideration as per section 100 of the Code and the same was posted for physical hearing to 12.04.2022.

3. REPORT BY RESOLUTION PROFESSIONAL

The Resolution Professional Mr. Anil Kumar Khicha who was appointed vide order dated 11.03.2022 had submitted his report before this Adjudicating Authority on 01.04.2022. 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 Respondent (Personal Guarantor) for the failure in repayment of Cash Credit Facility availed by the Corporate Debtor. The relevant observations in the report as extracted hereunder:

"16. That in accordance with Section 99 (2) of the Code, the Resolution Professional is to examine the proof of repayment of debt claimed as unpaid by the creditor. In pursuance of the same, on the perusal of the said Petition, the debt has been unpaid to the State Bank of India and the Petitioner has provided the substantive proof annexing the Statement of Accounts which depicts that no payment of debt has been made by the Respondent, after the Demand Notice was issued by the Petitioner. Moreover, the Resolution Professional, vide Email dated 15.03.2022 and Letter dated 15.03.2022 as well as Email dated 17.03.2022, requested the Respondent, to provide confirmation for repayment of debt, if any, as claimed by the Petitioner. However, till date, the Respondent has failed to provide his reply on the same. Copies of the Email dated 15.03.2022 and Letter dated 15.03.2022 as well as Email dated 17.03.2022 sent by the Resolution Professional to the Respondent are collectively annexed herewith and marked as ANNEXURE - 2 (COLLY)."

"17. That as per the requirements set out under Section 99 (4) of the Code, the Resolution Professional, vide Email dated 15.03.2022 and Letter dated 15.03.2022 as well as Email dated 17.03.2022, requested the Respondent, to provide further information on the Application filed by the State Bank of India. However, till date, the Respondent has failed to provide his reply on the same."

"20. That in light of the above facts and circumstances, the Resolution Professional, considering the requirements of the admission of the said Petition as stipulated under the Code, opines and confirms that the Insolvency Resolution Process for Personal Guarantor, Mrs. N Radhika, to the Corporate Debtor, M/s Nathella Sampath Jewelry Private Limited,

should be initiated and the Application filed by State Bank of India, who is the Creditor, should be admitted henceforth."

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 nor 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 **IBA/719/2020** 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

Mohanapriya