NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)

PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 30.05.2022 AT 10.30 AM

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP (IB) No. 27/95/AMR/2022		95 of IBC	State Bank of India Vs. G. Srinivasa Rao (in the matter of Pratuysha Resources & Infra Private Limited)

Counsel for Petitioner(s):
Ries

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):
Ries

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Orders pronounced, vide separate orders. List the matter on 04.07.2022.

Sd/-

JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT HYDERABAD

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CP (IB) No. 27/95/AMR/2022

Under Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 read with Section 95(1) of the Insolvency and Bankruptcy Code, 2016

AND

In the matter of
M/s. PRATHYUSHA RESOURCES & INFRA PRIVATE LIMITED

BETWEEN:

State Bank of India,
Madame Cama Road,
Nariman Point, Mumbai – 400021.
Local Head Office at: 11,
Parliament Street, New Delhi – 110001.
Branch at: Stressed Assets Management Branch,
2nd Floor, Red Cross Buildings No.32
Montieth Road, Egmore, Chennai – 600008.

...Petitioner/ Financial Creditor

AND

Mr.G.Srinivasa Rao,
D-1, No.3, Umaiyal Viila, Old No.18,
New No.8, Indira Nagar, 12th Cross,
Adayar, Chennai-600020.

... Respondent/Personal Guarantor

Date of Order: 30.05.2022

CORAM:

Justice Telaprolu Rajani, Member Judicial.

Sd/-

Appearance:

For Petitioner/Financial Creditor : Ms.Sneha Iyer, Advocate.

ORDER

1. This Petition is filed by the State Bank of India (Financial Creditor) against the Personal Guarantor/Respondent seeking to initiate Corporate Insolvency Resolution Process (CIRP). But the application is filed under Section 95 of IBC, 2016 and the prayer is also against the Personal Guarantor of the Corporate Debtor.

2. The facts as stated in the Synopsis are as follows:

The Corporate Debtor availed Working capital facilities from the Applicant. The Applicant executed the "Agreement of Loan for Overall Limit" with the Corporate Debtor on 24.03.2011, agreeing to grant Rs.50 Crores. The Respondent stood as a Personal Guarantor for the Working capital facilities availed by the Corporate Debtor and executed a Deed of Guarantee dated 24.03.2011 in favour of the Applicant. The Applicant enhanced the Working capital facilities and renewed the cash credit limit of the Corporate Debtor to Rs.70 Crores vide a sanction letter dated 03.02.2012. On 15.02.2012 the Applicant executed a Supplement Agreement of Loan for Increase in overall limit. The Respondent stood as a Personal Guarantor for the enhanced credit facilities extended to the Corporate Debtor and executed a Supplement Deed of Guarantee on 15.02.2012 in favour of the Applicant. Inspite of several reminders, the Corporate Debtor failed to repay the outstanding debt amount. On 15.12.2017 the Applicant filed an Original Appeal against the Corporate Debtor before the Debt Recovery Tribunal – I, Chennai. The said Original Application is pending. On the request made by the Company for settlement under compromise, the Applicant sanctioned an OTS for Rs.40,00,00,000/- and issued a sanction letter dated 01.04.2019 with the last date of payment as 29.06.2019. However, it did not materialise and failed. Thus, the default occurred on 29.06.2019. The Applicant filed a Petition under Section 7 of IBC before this Tribunal and the same was admitted vide order dated 03.11.2021. The Applicant sent a demand notice i.e., Form-B on 04.09.2021 to the Respondent. As per the Deeds executed by the Respondent, the Respondent is liable for an amount of Rs.147,58,68,782/- as on 31.08.2021 with further interest. The Applicant did not receive any response from the Respondent. Hence, this Application, seeking to initiate CIRP against Respondent.

3. Notice was issued to the Respondent and proof of service is filed. None appeared for the Respondent.

4. No right of audience is provided under the relevant provisions of Section 95 or 97. After the application under Section 95 is filed, under Section 97 the Adjudicating Authority, if the application is filed through a Resolution Professional, 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 and the Board shall within seven days of receipt of directions under sub-section (1) of Section 97 of IBC, 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.*

Under Sub-Section (3) of Section 97 of IBC "*Where an application under section 94 or 95 is filed by the debtor or the creditor himself, 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.*"

Under Sub-Section (4) of Section 97 of IBC "*The Board shall nominate a resolution professional within ten days and then the Adjudicating Authority under Sub-Section (5) shall by order appoint the Resolution Professional.*"

Under Section 99, such Resolution Professional shall submit his report and based on that report, under Section 100, the Adjudicating Authority, shall pass an order either admitting or rejecting the Application. It is only under Section 100(3) that the

Adjudicating Authority shall provide a copy of the order passed under Subsection (1) to the Creditors. Hence, in terms of Section 97 & 100 of IBC, 2016 no right of audience can be given to the Respondents at a stage before appointing the IRP. In support of the said reasoning, a judgment of the Bombay High Court in ***Writ Petition (L.) No.21271 & 21272 of 2021 between Surendra B. Jiwrajka vs Omkara Assets Reconstruction*** can be looked into. It was held by the Bombay High Court that from an analysis of the provisions contained in sections 95 to 100 of IBC, it can be seen that a definite time-line has been provided at each stage of the proceeding. That apart, the interim moratorium in terms of Section 96, which commences from the date of the Application, remains in force till the date of admission of such application under section 100 of IBC. Though time-lines have been prescribed at each stage of the proceeding, leading to acceptance or rejection of the application under section 100, no such time-line has been prescribed for submission of report by the resolution professional, though section 100 provides that the adjudicating authority shall take a decision either admitting or rejecting the application within 14 days from the date of submission of the report. That apart, on a careful examination of section 100, before the adjudicating authority takes a decision to either admit or reject the application upon receipt of report from the resolution professional, the parties to the insolvency resolution process are required to be heard.

It was further held that though the legislature itself has provided in Section 99 (10) that a copy of the report of the Resolution Professional should be furnished to the debtor or creditor, thus complying with the requirement of the principles of natural justice, it would be in the fitness of things and in furtherance of principles of natural justice that the parties are also heard before the decision is taken by the Adjudicating Authority one way or the other under Sub-section (1) of Section 100 of IBC, 2016. It can be noted that the Bombay High Court did not interfere with the order of the Adjudicating Authority therein, appointing the Interim Resolution Professional, which was without notice. The NCLAT common judgment in ***Company Appeal (AT) (Insolvency) No. 316 of 2021 between Mr. Ravi Ajit Kulkarni vs. State Bank of India and Company Appeal (AT) (Insolvency) No. 317 of 2021 between Mr. Mr. AjitBhagwan Kulkarni vs. State Bank of India dated 12.08.2021*** was also relied upon by the Respondent's Counsel therein, in support of the contention that no notice is required to be given to the Personal Guarantor at the stage of appointment of Interim Resolution Professional (IRP). Considering that the legislature has provided in Section 99 (10) of IBC, that a copy of report of the IRP be furnished to the Debtor as complying with the requirement of the principles of natural justice, the High Court of Bombay felt that an opportunity need to be given under Section 100 (1) of IBC, 2016 in furtherance of the principles of natural justice. Since no notice is mandated under Section 100, Bombay High

Court observed that notice before admission under Section 100(1) would serve the principles of natural justice, but it did not say that notice before admission is required. The NCLAT judgment in Mr. Ravi Ajit Kulkarni's case considered the contention raised therein that the debtor did not get opportunity to seek replacement of IRP, since he did not have notice of the fact of appointment of IRP. The Supreme Court considered the vires and validity of a notification dated 15.11.2019, in ***Lalit Kumar Jain Vs. Union of India and others in transferred case (Civil No.245/2020) dated 21.05.2021***. The said judgment was relied upon by the NCLAT and it was observed that the Supreme Court discussed in Para 81 of the judgment in Lalit Kumar Jain, that it was evident that the method adopted by the Central Government to bring into force different provisions of IBC had a specific design which was to fulfil the objectives underlying the code, having regard to its priorities. The NCLAT has considered Section 95 (5) of IBC, 2016 which requires the Creditor to provide copy of the application under subsection (1) to the debtor and felt that it has to be read with Rule 3 (1) (g) which is as under:

> *"**Rule 3 (1)(g)**: "serve" means sending any communication by any means, including registered post, speed post, courier or electronic means, which is capable of producing or generating an acknowledgement of receipt of such communication:*

Provided that where a document cannot be served in any of the modes, it shall be affixed at the outer door or some other conspicuous part of the house or building in which the addressee ordinarily resides or carries on business or personally works for gain."

It held that, it is evident from a reading of the Section along with the Rule, that what the Creditor has to serve is the copy of the application "made under sub-section (1)" to the Debtor. Reading Rule 7(2) with Rule 3 shows that the application filed under sub-section (1) of Section 95 shall be submitted in Form -C and the Creditor will serve forthwith "a copy of the application" to the Guarantor and the Corporate Debtor for whom the Guarantor is a Personal Guarantor. Thus, what has to be served is the copy of application which has been "submitted". What is contemplated is that the application in Form C should be "submitted" and then the Creditor should serve forthwith a copy of the application to the Guarantor and the Corporate Debtor for whom the Guarantor is a Personal Guarantor. The procedure thus prescribed will give the Personal Guarantor, notice of the application already filed before the Adjudicating Authority. Section 95(5) requires the Creditor to provide a copy of the application "made under sub-section (1)", to the Debtor. Thus, serving advance copy is not contemplated.

4. The arguments that Section 98 provides for replacement of the Resolution Professional and hence the Guarantor should have an

opportunity to seek replacement of Resolution Professional and hence he should be heard before appointment of IRP was also considered and held that going through Section 98 of IBC, 2016, it is found that Section 98 is not stage specific. Section 98 itself shows that the section could be resorted to even at stages like implementation of repayment plan which would be a stage beyond Section 116, where implementation and supervision of repayment plan is provided for. It was held that the argument, that before report of Resolution Professional the Debtor must get a chance to seek replacement of Resolution Professional and thus notice was required to be given, has no substance. It is clearly held that, it is only after the Resolution Professional is appointed by the Adjudicating Authority under Section 97(5), that the step under Section 98 is contemplated. From the judgement of the NCLAT, it clear that notice before appointment of IRP is not required to be given to the Respondent. That apart, the principles of natural justice, which were considered by the Bombay High Court in the above cited judgment, are not violated by not providing for a notice before appointment of IRP, as can be seen from Section 99 of IBC. Any amount of audience is provided to the debtor before the Resolution Professional submits a report. Section 99 (2) of IBC gives an opportunity to the debtor to prove repayment of debt claimed as unpaid by the creditor. Section 99 (4) of IBC, empowers the Resolution Professional to seek 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. Hence it is not as if, the Debtor is not provided an audience before the submission of the report. Hence I do not see any violation of principles of natural justice by not giving an opportunity to the Debtor for making his submissions before the appointment of IRP. As observed by the Supreme Court in the judgment of *Lalit Kumar Jain* case, it is in its wisdom that the legislature has enacted various provisions which are unambiguous and do not leave any scope for interpretation, with regard to the issuance of notice and giving the right of audience to the Debtor at the stage of appointment of IRP. It can be noted that the judgment of Bombay High Court in ***Surendra B. Jiwrajka vs Omkara Assets Reconstruction*** case was carried to the Supreme Court and is pending. The Supreme Court has ordered for the Resolution Professional not to submit the report till the finality of the judgment. However, as things stand as on today and going by the law which is settled as on today, I conclude that no notice is required for the Respondent at the stage of appointment of IRP.

5. Considering the said facts, this Tribunal is of the considered opinion that there is no hurdle to entertain this application under Section 95 of IBC, 2016, since the application is found to be complete. The Petitioner suggested Mr. Maligi Madhusudhana Reddy as Insolvency Resolution Professional (IRP) and sought the

Tribunal to appoint him as IRP. Hence Mr. Maligi Madhusudhana Reddy, (Registration No. IBBI/IPA-001/IP-P00843/2017-2018/11427) is appointed as Insolvency Resolution Professional (IRP).

ORDER

A. Mr. Maligi Madhusudhana Reddy, (Registration No. IBBI/IPA-001/IP-P00843/2017-2018/11427), having office at MMREDDY AND CO., 4th Floor HSR Eden, Road No.2, Banjarahills, Hyderabad, Telangana-500034; e-mail: **mmreddyandco@gmail.com**; Mobile: **9848271555** is appointed as the Interim Resolution Professional. No disciplinary proceeding is pending against him as per the IBBI website. He is directed to file his written consent in Form No. 2 forthwith.

B. In terms of the Section 99 of the IBC, 2016, the IRP shall submit his report within 10 days on receipt of the date of this order and submit a report to the Tribunal recommending for approval or rejection of the Application.

C. The Registry shall communicate the order to the Petitioner and the Financial Creditor forthwith.

D. The Petitioner and the Registry shall send the copy of this order to IRP for necessary compliance.

Sd/-

JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

Swamy Naidu