

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

CP/IB/151/CHE/2021

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

*In the matter of **Mr. Ahmed A.R. Buhari***

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

... Financial Creditor

-VS-

Mr. Ahmed A.R. Buhari,
8, Subbarao Avenue,
First Street, Nungambakkam,
Chennai – 600 006

... Personal Guarantor

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

CORAM:

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

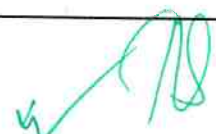
For Financial Creditor : K. Chandrasekaran, Advocate
For Personal Guarantor : Dr. R. Maheswari, Advocate

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

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

2. In so far Coastal Energy Private Limited is concerned, an order was passed initiating Corporate Insolvency Resolution Process against the Corporate Debtor by this Tribunal on 06.01.2020.
3. The present application is filed by the **State Bank of India**, Stressed Asset Management Branch, represented by Assistant General Manager Mr.R. Spurgen David, duly authorized by Letter of Authority dated 06.07.2021 against the Personal Guarantors of the Corporate Debtor Company which is CIRP.
4. It is seen from Part – III at Sl. No. 13 of the Application that the Personal Guarantor has executed the Deed of Guarantees dated 31.08.2005, 29.12.2009 & 19.12.2013 and the said Deed of guarantees 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 22.10.2020 is also placed on record at Pg. Nos. 188 to 189 at Annexure I(14).
6. The date of default as mentioned in the application is 08.03.2019. 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. The Respondent has filed counter and it has been submitted that this application is not maintainable and the instant application arises out of an order dated 08.03.2019 from DRT-J in O.A.No.300 of 2017 for Rs. 28,50,72,591/- which stipulates that if the sale proceeds of the Schedule Properties are not sufficient to cover the amount due to the Applicant, the Respondent is personally liable for the same. Therefore, it is premature for the Applicant to proceed against the Respondent for recovery of money and seeking dismissal of the present Application.

8. The Learned Counsel for the Applicant had filed rejoinder to the Counter wherein the Applicant refuted the allegations made by the Guarantor and stated that the personal guarantor is projecting the case of the borrower company and raised several pleas available to the borrower which is not maintainable. In this case, the borrower's liability has been adjudicated and he is made liable. In addition to that, the Personal Guarantor has not preferred any appeal against the decree passed by Hon'ble DRT and the said decree has become final. Further, the CIRP proceedings against the said Corporate Debtor is pending in IBA/624/2019 before this

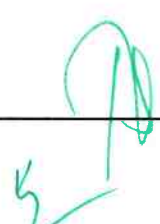


Tribunal. Hence, the Applicant is seeking to admit this application as per the facts stated in the application.

9. 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.

10. 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.

11. Accordingly, we hereby appoint **Mr. Prasanna Kumar Rath** having Registration No.: IBBI/IPA-003/IP-N000140/2017-2018/11512 as the Interim Resolution Professional in respect of the Personal Guarantor.



12. 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.

13. 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.

14. 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