

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

CP(IB)/130/(CHE)/2023

*(Filed under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 read with
Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority
for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors)
Rules, 2019)*

Mr.M P Sakthivel,
9/6, Thillai Nagar, Near IOB,
Erode - 638 001
Tamil Nadu

... Applicant & Guarantor

Order Pronounced on 23rd February 2024

CORAM:

**Shri. JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)
Shri. RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)**

Present:

For Petitioner : *A.S.SathishKumar, PCS*

ORDER

(Hearing Conducted through Video Conferencing)

This application has been filed under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 ('Code'/ 'IBC') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 ('Rules') by the Applicant/ Personal Guarantor "**Mr.M P Sakthivel**".

2. The prayer has been made to initiate the Insolvency Resolution Process in respect of "Mr.M P Sakthivel", being the Personal Guarantor for **M/s. KMP Spinners Private Limited. ('Corporate Debtor')**.

3. As per the averments made in the application, **M/s. KMP Spinners Private Limited** had taken credit facilities from **Indian Overseas Bank, Erode Main Branch, Erode-638 003** and **M/s Aditya Birla Finance Limited, T.Nagar, Chennai-600 017**. The Applicant herein had given personal guarantee to the said loan. In this matter, the Corporate Debtor to whom the Applicant has given Personal Guarantee failed to repay the debt and in pursuance of which the present application has been filed.

4. The Applicant has given the particulars of debt in Part-III of the application, including interest for Indian Overseas Bank as Rs.24,31,81,344/- (Rupees Twenty Four Crores Thirty One Lakhs Eighty One Thousand Three Hundred and Forty Four only), amount of default as Rs.24,31,81,344/- (Rupees Twenty Four Crores Thirty One Lakhs Eighty One Thousand Three Hundred and Forty Four only) and date of default as 30.06.2019. Particulars of Debt for Aditya Birla Finance Limited as Rs.6,94,34,457/- (Rupees Six Crores Ninety Four Lakhs Thirty Four Thousand Four Hundred and Fifty Seven only),

amount of default as Rs.6,94,34,457/- (Rupees Six Crores Ninety Four Lakhs Thirty Four Thousand Four Hundred and Fifty Seven only) and the date of default as 28.08.2019.

5. The Applicant has placed copy of Sale Notice dated 11.05.2023 issued by Indian Overseas Bank as Annexure 1(i)(a) (colly) and copy of Demand Notice dated 04.09.2019 issued by Aditya Birla Finance Limited as Annexure 1(i)(b) (colly) U/s 13(2) of the SARFAESI Act, 2002. The Applicant has also filed the statement of affairs as on 20.05.2023 as Annexure 10 at **Page 41**. .

6. As per Rule 6(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019, the Guarantor has served a copy of this application to every Financial Creditors and the Corporate Debtor for whom the guarantor is a personal guarantor. It is seen that the Guarantor has annexed proof of service to the creditors and Corporate Debtor. The same is annexed in Annexure 14 of the Application Typeset.

7. We have heard Learned Authorized Representative for the Applicant and perused the record.

8. Section 94 of IBC provides that a debtor may apply either by himself, or jointly with Partners, or through a Resolution Professional to the Adjudicating Authority for initiating an Insolvency Resolution Process under the Section by submitting an application.

9. In this matter, the Personal Guarantor has himself moved the application for initiation of Insolvency Resolution Process.

10. Considering the above facts, we are of a considered opinion that a Resolution Professional to be appointed who will collate all the facts related to the examination of the application for the commencement of Insolvency Process in respect of the Personal Guarantor/Applicant.

11. In the instant case, the Applicant has proposed the name of the Resolution Professional, "**Mr.Madhu Desikan**",having Registration No. **IBBI/IPA-001/IP-P-00579/2017-2018/11021**(*Email Id: Desikan.madhu@gmail.com*) (*whose AFA is valid till 27.11.2024*) as Resolution Professional in respect of the Personal Guarantor.

12. We have gone through the verification about the AFA status of the Proposed Resolution Professional of "**Mr.Madhu Desikan**". No disciplinary action is going on against the Proposed Resolution Professional and the AFA Status with IBBI is valid. We are satisfied with the name of the Proposed Resolution Professional, "**Mr.Madhu**

Desikan", and we hereby appoint "**Mr.Madhu Desikan**", as Resolution Professional in respect of the Applicant/Personal Guarantor.

13. The Resolution Professional is directed to examine the application as set out in Section 97(6) of IBC, 2016 and after examining, may recommend for the acceptance / rejection of the application as provided under Section 97(6) of IBC, 2016, **within a period of 10 days** as contemplated under Section 99(1) of IBC, 2016.

14. The Applicant is directed to serve copy of the application and the order on the Resolution Professional.

15. List this application for report / hearing on **21.03.2024**.

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RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-SD-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)