

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

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **18.10.2024** THROUGH VIDEO CONFERENCING

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF : State Bank of India
Vs
J Kamala

MAIN PETITION NUMBER :CP(IB)/245(CHE)/2022

(IA/MA) APPLICATION NUMBERS

IA/53(CHE)/2024

ORDER

Present: Shri. V Bathri Narayan, Ld. Counsel for the RP.

Vide separate order pronounced in the Open Court, the petition is admitted.

Ms. Kavitha Surana is appointed as IRP.

Sd/-
VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

Sd/-
SANJIV JAIN
MEMBER (JUDICIAL)

vs

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

CP(IB)/245(CHE)/2022

(under Section 100 of the Insolvency and Bankruptcy Code, 2016)

State Bank of India

Stressed Asset Management Branch
Red Cross Building, Montieth Road,
Egmore, Chennai - 600008
Rep by its Assistant General Manager

.....Financial Creditor/Applicant

Versus

Mrs. J. Kamala

No. 12. Sammandhan Street,
Bharathipuram, Chrompet,
Chennai – 600044

....Personal Guarantor/Respondent

Along with

IA(IBC)/53 /CHE/2024

In

CP(IB)/245(CHE)/2022

(filed under section 99 of Insolvency and Bankruptcy Code, 2016)

Kavitha Surana

Resolution Professional of Ms. Kamala Jeevanandam
SUS Bhawan, No. 2, Vimala Street, Ayyavoo Colony, Aminjikai,
Chennai - 600029

...Applicant/Interim Resolution Professional

Order pronounced on 18th October, 2024

CORAM :

**SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAN, MEMBER (TECHNICAL)**

For Applicant : *M.L Ganesh and S. Arun Kumar, Advocate*
For Respondent : *Ex-parte*
For IRP : *S.Satyanarayanan, IRP in person*

COMMON ORDER

(Hearing through hybrid mode)

The present Petition has been filed u/s. 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") r/w Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 by State Bank of India ("Financial Creditor") for initiating insolvency resolution process against Mrs. J. Kamala("Personal Guarantor") in respect of Principal Amount of INR 124,88,59,483.63/-(Rupees One Hundred Twenty Four Crores Eighty Eight Lakhs Fifty Nine Thousand Four Hundred Eighty Three and Paise Sixty Three Only) together with interest and penalties. The Date of Default, as specified in Part-III of the present Petition, is 03.06.2014 and 18.09.2017, being the date on which the final order was passed in OA No. 333 of 2015 issued by DRT-II, Chennai. The date of request for OTS

made by the Corporate Debtor as per Part III of the Application is 13.12.2017. This Petition has been filed before this Tribunal on 27.05.2022.

2. Part – I of the Petition sets out the details of the Applicant / Financial Creditor. It has its registered office Stressed Asset Management Branch, Red Cross Building, Montieth Road, Egmore, Chennai -600 008 and is represented by its Assistant General Manager. Part-II of the petition sets out the details of the Personal Guarantor. The address of the Respondent is mentioned as Mrs. J. Kamala, No.12. Sammandhan Street, Bharathipuram, Chrompet, Chennai- 600 044. The Respondent stood as a personal guarantor in respect of the loans availed by M/s. JKS Constructions Private Limited, the Corporate Debtor. In part – III of the petition, the applicant has given the debt amount of INR 124,88,59,483.63/- (Rupees One Hundred Twenty-Four Crores Eighty-Eight Lakhs Fifty Nine Thousand Four Hundred Eighty Three and Paise Sixty Three Only).

3. It is stated that the Corporate Debtor namely M/s JKS Constructions Private Limited had availed various credit facilities from

the Applicant/Financial Creditor. The Respondent Mrs. J. Kamala executed the deed of guarantee dated 07.12.2009 and multiple supplemental deeds of guarantee dated 20.12.2010, 28.04.2011, 25.06.2012 and 01.11.2012. It is stated that the loan account became NPA in the books of the Financial Creditor on 28.10.2013. Thereafter, the Financial Creditor and Bank of Maharashtra jointly filed OA No.333 of 2015 before DRT-II, Chennai. The DRT-II, Chennai allowed the application vide its order dated 18.09.2017 directing the Applicant herein and Bank of Maharashtra to recover the total sum of Rs. 115,39,31,669.51/- (Rupees One Hundred and Fifteen Crore Thirty Nine Lakh Thirty One Lakh Six Hundred and Sixty Nine and Paise Fifty One Only) with interest @ 12% p.a.(simple) from the date of institution of the OA till realization and also costs of the OA from the Corporate Debtor and its Personal Guarantors jointly and severally. The Corporate Debtor also made a one-time settlement offer vide letter dated 13.12.2017 to the Applicant herein and the same was rejected.

4. It is stated that the Applicant herein had filed a petition under Section 7 in CP(IB)/232/CHE/2021 before this Tribunal against the Corporate Debtor for initiation of CIRP and the same was allowed by

Court II of this Tribunal vide order dated 11.03.2022. Later, liquidation process was initiated against the Corporate Debtor vide order of Court II of this Tribunal dated 08.09.2022 in IA/920/CHE/2022.

5. It is stated that the Applicant issued Form-B Demand Notice to the Respondent / Guarantor on 19.08.2021 which was duly received by the Guarantor, but the Guarantor / Respondent did not act upon the same.

6. On presentation of the petition by the Financial Creditor, under section 95(1) of the IBC, 2016 for initiating Insolvency Resolution Process against the Personal Guarantor viz. Respondent herein, this tribunal vide Order dated 20.12.2023 appointed Smt. M. Kavitha Surana as the Interim Resolution Professional (“IRP”) and directed her to exercise all the powers as enumerated u/s. 99 of the Code, r/w rules made thereunder. In accordance with the said Order, the IRP filed her report vide S.R. No. 0067 dated 05.01.2024 in **IA/(IBC)53(CHE)/2024** before this Tribunal seeking to take on record the Report filed as a separate typeset as mandated under Section 99 of the IBC, 2016.

7. The IRP was directed by this Tribunal to serve copy of the Petition and the Report on the Respondent and file Affidavit of Service. The Affidavit of Service was filed by the IRP on 05.01.2023 having S.R. No. 48. The Respondent did not appear despite service of the petition and the report. The Respondent was set ex parte by this Tribunal vide order dated 23.09.2024.
8. The IRP in her Report, after due examination of the petition, documents filed along with the petition, in addition to the requirements as mandated under clauses (1), (2), (3), (4), (5), (6), (7), (8), (9) and (10) of Section 99 of the IBC, 2016, has recommended for the admission of the present petition by the Financial Creditor u/s. 95 of IBC, 2016.
9. Heard the submissions made by the Learned Counsel for the Applicant and perused the report of the IRP.
10. Section 128 of the Indian Contract Act, 1872, provides that when a default is committed, the Principal Borrower and Surety are jointly and severally liable to the Creditor and the Creditor has right to recover its dues from either of them or from both of them simultaneously. Section 128 of the Indian Contract Act, 1872 is reproduced hereunder:

“The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.”

11. The Corporate Debtor has already been admitted into Liquidation. The Respondent is the Personal Guarantor of the Corporate Debtor which availed the Loan. The Corporate Debtor / Guarantor failed to repay the Loan after the issuance of Demand Notice. The date of default as mentioned in the petition is **18.09.2017**, being the date on which the final order was passed in OA No. 333 of 2015 by the DRT-II, Chennai. Subsequently, the Corporate Debtor made an offer for one time settlement of the debts owed to the Applicant herein vide letter dated 13.12.2017 and the same is placed at **Page No. 65 to 66** of the Petition Typeset. The Present petition has been filed on 27.05.2022.

12. It is apt to refer the Judgment of Hon'ble Supreme Court in the case of *Dena Bank (Now Bank of Baroda) versus 'C. Shivakumar Reddy & Anr. (2021) 10 SCC 330* it was held that the Judgment and/or decree for money in favour of the Financial Creditor', passed by DRT, or any other Tribunal or Court, or the issuance of a certificate of recovery in favour of the 'Financial Creditor', would give rise to a fresh cause of action for the 'Financial Creditor', to initiate proceedings under Section

7 of the Code, if the dues of the 'Corporate Debtor' under the Judgment/decree or any part thereof remained unpaid. The relevant para is reproduced as hereunder:

"141. Moreover, a judgment and/or decree for money in favour of the financial creditor, passed by the DRT, or any other tribunal or court, or the issuance of a certificate of recovery in favour of the financial creditor, would give rise to a fresh cause of action for the financial creditor, to initiate proceedings under Section 7 IBC for initiation of the corporate insolvency resolution process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the certificate of recovery, if the dues of the corporate debtor to the financial debtor, under the judgment and/or decree and/or in terms of the certificate of recovery, or any part thereof remained unpaid."

13. The Applicant is also entitled to a benefit of limitation from 15.03.2020 to 28.02.2022 as extended by ***Hon'ble Supreme Court in Suo Moto W.P. (Civil) No. 3 of 2020***. The Apex Court in ***Suo Motu Writ Petition (C) No. 3 of 2020*** by order dated 10.01.2022 observed as follows:

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of

limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

14. In view of the aforementioned judgements, the date of default is the date as stated in the petition is 18.09.2017. Thus, the period of limitation expires on 17.09.2022. The instant Petition has been filed on 27.05.2022. Hence, the petition is not barred by limitation.

15. In light of the aforesaid discussions, the present Petition i.e. **CP(IB)/245(CHE)/2022** is admitted and the Insolvency Resolution Process stands initiated against Mrs. J. Kamala viz. the Respondent herein. We hereby direct as follows;

- I. Initiate Insolvency Resolution Process against the Respondent/Personal Guarantor. The moratorium in relation to all the debts is declared, from today i.e. date of admission of the petition, and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on the repayment plan under Section 114 whichever is earlier as provided under Sec 101 of IBC, 2016. During the moratorium period,

- a. Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed, and
- b. The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and
- c. The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein:
- d. 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.

II. The Resolution Professional viz. **Kavitha Surana (IBBI/IPA-002/IP-N00166/2017-18/10435), (AFA Valid upto – 22.11.2024)**, Insolvency Resolution Professional is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Chennai Bench, inviting claims from all Creditors, within 21 days of such issue The notice under Sub Section (1) of Section 102(2) shall include: -

- a. details of the order admitting the petition;
- b. particulars of the resolution professional with whom the claims are to be registered; and
- c. the last date for submission of claims.

III. The publication of notice shall be made in two newspapers, one in English and other in Vernacular, which have wide

circulation in the State where the Corporate Debtor and Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.

IV. The Resolution Professional, in exercise of the powers conferred under Section 104, shall prepare a list of creditors on the basis of:

- a. the information disclosed in the petition filed by the debtor under Sections 94 or 95 as the case may be, and
- b. claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice. The debtor shall prepare a repayment plan under Section 105, in consultation with the Resolution Professional, containing a proposal to the Creditors for restructuring of his debts or affairs.

The repayment plan may authorize or require the Resolution Professional to:

- a. carry on the debtor, business or trade on his behalf or in his name: or
- b. realise the assets of the debtor; or c. administers or dispose of any funds of the debtor.

The repayment plan shall include the following, namely;

- a. justification for preparation of such repayment plan and reasons based on which the creditors may agree upon the plan;

- b. provision for payment of fee to the Resolution Professional; c. such other matters as may be specified.
- V. The Resolution Professional shall submit the repayment plan along with his report on the plan to this Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106.
- VI. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons thereof. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of IBC, 2016. The date of meeting should not be less than 14 days or more than 28 days from the date of submission of the Report under subsection (1) of Section 106 of IBC, 2016, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of IBC, 2016.
- VII. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of IBC, 2016 and submit the same to this Tribunal, copies of which shall be provided to the Debtor and the Creditors. It is made clear that the

Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of IBC, 2016.

VIII. The Resolution Professional shall submit his periodic reports before this Tribunal, every 30 days.

IX. The Registry is directed to communicate a copy of order, report and petition to the concerned parties within seven working days and upload the same on the website immediately after the pronouncement of order.

16. The IRP in his report has observed that the petitioner satisfies the requirement as set out in Section 95 of IBC, 2016. She has accordingly recommended for admission of the present petition.

17. The report of the RP filed in **IA/IBC/54/CHE/2024** is **taken on record** and delay of 4 days in filing the report is condoned. Accordingly, **CP/IB/245/CHE/2022** stands **admitted**.

-Sd-

VENKATARAMAN SUBRAMANIAM
Member (Technical)

-Sd-

SANJIV JAIN
Member (Judicial)

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