

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

CP/IB/220/CHE/2021

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

*In the matter of **Mr. James Walter***

Central Bank of India,
Represented by its Chief Manager,
Stressed Asset Management Branch,
48/49, Montieth Road,
Egmore, Chennai – 600 008.

... Financial Creditor

-VS-

Mr. James Walter,
No.6, 1st Floor,
Wellington Estate,
No.53, Ethiraj Salai,
Egmore, Chennai – 600 008

... Personal Guarantor

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

CORAM:

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

For Financial Creditor : B.Raghavulu Naidu, Advocate
For Personal Guarantor : T.K.Bhaskar, Advocate

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

This application has been filed under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 against the Personal Guarantors of Oceanic Edibles International Limited, the Corporate Debtor which is under Liquidation.

2. In so far Oceanic Edibles International Limited is concerned, an order was passed for commencement of CIRP on 13.09.2017 by this Tribunal and liquidation was ordered on 10.12.2018.

3. The present application is filed by the **Central Bank of India**, Stressed Asset Management Branch, represented by Chief Manager Mr.V.Matheswaran, duly authorized by Letter of Authority dated 20.02.2021 against the Personal Guarantors of the Corporate Debtor Company which is under liquidation.

4. It is seen from Part – III at Sl. No. 13 of the Application that the Personal Guarantor has executed the Deed of Guarantee on 21.07.2014 and the said Deed of guarantee 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 08.12.2020 is also placed on record at Pg. Nos. 57 to 59 and acknowledgment of receipt is placed at 60 of the typed set of the application.

6. The date of default as mentioned in the application is 27.06.2019. 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 the present Application is barred by limitation in view of the fact that the Applicant has wrongly stated that the date of default as 27.06.2019. In this connection, it was submitted that the said date was arrived at taking into consideration the Recovery Certificate issued by the Presiding Officer of DRT – 2 Chennai and that the Applicant cannot rely upon the Recovery Certificate for arriving at the date of default. Further, it was submitted that in the present case the assets of the Corporate Debtor was declared as NPA on 10.09.2013 and if the said date is construed as date of default then the present Application is barred by limitation.

8. 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.

9. 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.

10. Accordingly, we hereby appoint **Mr. Chandrasekhar Sagutoor** having Registration No.: *IBBI/IPA-001/IP-P00960/2017-2018/11581* (email id:- *sagutoor@gmail.com*) as the Interim Resolution Professional in respect of the Personal Guarantor Mr. A. James Walter.

11. 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.

12. 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.

13. 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