

**DEBTS RECOVERY TRIBUNAL- II
CHENNAI**

**BEFORE HON'BLE PRESIDING OFFICER'S VIRTUAL
COURT DATED 22.10.2020**

PRESENT: SHRI. T. RAJESH, (HON'BLE PRESIDING OFFICER)

APPLICATION NUMBER : IBC SR.NO 2643/2020

NAME OF THE PETITIONER : KEB HANA BANK

NAME OF THE RESPONDENT : MR. ROHIT NATH

UNDER SECTION : 97 OF IBC

ORDER

Counsel for applicant, respondent and IRP present.

In this matter the Resolution professional appointed by this Tribunal on 30.09.2020, filed its report under section 99 of the code recommending approval of application filed u/s 95 of the code by KEB Bank against personal guarantors to the corporate debtors.

Heard the Counsel for the applicant and defendant. Defendant has filed a counter affidavit contending that this Tribunal does not have the jurisdiction to entertain the present petition as he is a residents of Palavakkam which falls within territorial jurisdiction of DRT-3 Chennai. Another objection that is raised is that the Resolution professional had not complied with the procedure as envisaged in section 99(2) which mandates the Resolution professional to require debtor to

prove repayment of the debt claimed as unpaid by the creditor by furnishing the proof of the same.

Having heard the Counsel for the applicant and the defendant, this Tribunal is now called upon to look into the report of the resolution professional only after deciding the preliminary jurisdiction regarding jurisdiction of this Tribunal to entertain this matter.

The contention of the applicant is that as per section 60 of the IBC code, the insolvency resolution has to be initiated before adjudicating authority having territorial jurisdiction over the place where the registered office of the Corporate person is located. This Tribunal is of the view that this contention is unfounded as section 60 deals with proceedings initiated against the corporate debtor whereas have separate forum is clothed with the power to adjudicate. The present proceedings are against guarantor to the corporate debtor alone. As far as the proceedings before this Tribunal is concerned under section 60 of IBC code have no application.

The present application is filed by the applicant showing the address of the respondent has No.4/235, MGR Road, Palavakkam, Chennai, where they have been served with the communications and the same falls within the territorial of the jurisdiction of this Tribunal. Hence, this Tribunal is of the view that there is no force in contention of the respondent that this Tribunal lacks territorial jurisdiction to entertain this matter.

The other contention raised by the respondent is that the Resolution professional is not followed mandate of section 99(2) of the IBC code. Section 99(2) code reads:

“99.

1. The resolution professional shall examine the application referred to in section 94 or section 95, as the case may be, within 10 days of his appointment,

and submit a report to the Adjudicating Authority recommending for approval or rejection of the application.

2. Where the application has been filed under section 95, the resolution professional may require the debtor to prove repayment of the debt claimed as unpaid by the creditor by furnishing-

a) Evidence of electronic transfer of the unpaid amount from the bank account of the debtor;

b) evidence of encashment of a cheque issued by the debtor; or

c) a signed acknowledgment by the creditor accepting receipt of dues.

By reading section 99(2), it is crystal clear that the resolution professional may require the debtor to furnish the details about the repayment and there is nothing to suggest that it is made mandatory to the resolution professional to call for from the debtor the details of repayment. The word used “may” cannot be construed as mandatory one and it gives only discretionary however to the Resolution professional. In view of section 99(2), where does not create a mandatory obligation on the RO, the contention of the respondent is that non-compliance of section 99(2) vitiates the proceedings is unfounded.

Having entered into the above findings, this Tribunal is of the view that the application filed by the applicant under section 95 of the Act can be admitted and accordingly the same is admitted.

The Resolution Professional had requested for providing a refundable advance of Rs.4lakhs/- from the applicant to meet the insolvency resolution process expenses, refundable back to the applicant from realization of payments received on a priority payment as per the water flow mechanism under section 53 of IBC code.

Applicant is directed to provide a refundable advance of Rs.4lakhs/- to the resolution professional on proper receipt. The Resolution professional shall take necessary steps for conducting negotiation between debtor, credit if deems fit.

Sd/-
SHRI. T. RAJESH,
Presiding Officer,
DRT-2,Chennai.