

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
SPECIAL BENCH, COURT No. II**

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IA No. 1009 of 2020 in CP (IB) 916 (MB) of 2020

IA No. 1010 of 2020 in CP (IB) 917(MB) of 2020

***** ****

State Bank of India

Vs.

Anil Dhirajlal Ambani

***** ****

Dated 20th August, 2020

The work of the Tribunal has been closed due to Covid-19 pandemic as per letter dated 22.03.2020 and subsequent follow up orders of the Principal Bench, National Company Law Tribunal. The Principal Bench vide Notice dated 15.06.2020, constituted this Bench for hearing of the urgent matters through Video Conference (VC).

The matter is taken up on VC. The Counsels for Applicant led by Mr. V. R. Dhond, Sr. Advocate with Mr. Ryan Dsouza & Mr. Nirav Shah and the Counsels for the Respondent led by Mr. J. J. Bhatt, Sr. Advocate with D.J. Kakalia, J. P. Mishra and Raghavi Sharma are present. A Common order is passed in IA No. 1009 of 2020 and IA No. 1010 of 2020 as per separate order. Prayer (a) in both the Applications are allowed as detailed in the order and Prayer (b) in both the Applications are refused. Learned Senior Counsel Mr. J.J. Bhatt appearing for the Respondent submitted that some time may be allowed to him before the order is implemented and to stay the operation of order till then. Learned Senior Counsel Mr. V.R. Dhond appearing for the Applicant opposed the submissions. Considering the fact that the IAs has been disposed of, we are not persuaded to stay the operation of the order or to extend the implementation of the order to a future date. Accordingly, the request made by the Learned Counsel for the Respondent is not accepted. Upload the order for information of the parties.

**Sd/-
MEMBER JUDICIAL
(Janab Mohammed Ajmal)**

**Sd/-
MEMBER TECHNICAL
(Ravikumar Duraisamy)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
SPECIAL BENCH, COURT No. II**

*** **

**IA No. 1009 of 2020 in
[CP (IB) No. 916/(MB) of 2020]
IA No. 1010 of 2020 in
[CP (IB) No. 917/(MB) of 2020]**

*In the matter of Applications for Appointment of Resolution
Professional in accordance with Section 97(3) of the Insolvency and
Bankruptcy Code, 2016.*

*** **

**IA No. 1009 of 2020 in
[CP (IB) No. 916/(MB) of 2020]**

In the matter of:

STATE BANK OF INDIA,

A Banking Corporation constituted under the
State Bank of India Act, 1955 (23 of 1955),
Having its registered office at
State Bank Bhavan, Madam Cama Road,
Fort, Mumbai-400 021.

And having branch at:

Stressed Assets Reconstruction Group,
Commercial III Branch, Tulsiani Chambers,
1st Floor, Free Press Journal Marg,
Nariman Point, Mumbai-400 021.

... **Applicant.**

Versus

Anil Dhirajlal Ambani,

39, Sea Wind, Cuffe Parade,
Near Hotel President,
Colaba, Mumbai-400 005.

... **Personal Guarantor.**

and

**IA No. 1010 of 2020 in
[CP (IB) No. 917/(MB)/2020]**

In the matter of:

STATE BANK OF INDIA,

A Banking Corporation constituted under the
State Bank of India Act, 1955 (23 of 1955),
Having its registered office at
State Bank Bhavan, Madam Cama Road,
Fort, Mumbai-400 021.

And having branch at:

Stressed Assets Reconstruction Group,
Commercial III Branch, Tulsiani Chambers,
1st Floor, Free Press Journal Marg,
Nariman Point, Mumbai-400 021.

... **Applicant.**

Versus

Anil Dhirajlal Ambani,
39, Sea Wind, Cuffe Parade,
Near Hotel President,
Colaba, Mumbai-400 005.

... **Personal Guarantor.**

Date of Order: 20.08.2020

Coram:

Janab Mohammed Ajmal,

Hon'ble Member Judicial

Ravikumar Duraisamy,

Hon'ble Member Technical

Appearance:

For the Applicant: Mr. Venkatesh Dhond, Sr. Advocate & Associates
For the Respondent: Mr. Harish Salve, Sr. Advocate & Associates.

Per: Janab Mohammed Ajmal, Member Judicial

ORDER

These Applications are filed by the Financial Creditor against a Personal Guarantor of the Corporate Debtors seeking urgent hearing and necessary orders under section 97(3) of the Insolvency and Bankruptcy Code, 2016 (the Code for short).

2. Facts leading to the present application may thus briefly be stated. The Reliance Communications Limited (RCOM) in or around 2015-16 approached the Project Finance Strategic Business Unit of State Bank of India, SBI (hereinafter referred to as the Financial Creditor) seeking credit facilities to the tune of Rs. 565,00,00,000/- (Rupees Five Hundred Sixty-five Crores) for the purpose of repayment of certain existing financial indebtedness. Similarly, another Company viz. Reliance Infratel Limited (RITL) one of its sister concerns also approached the Financial Creditor for the credit facilities of Rs. 635,00,00,000/- (Rupees Six Hundred Thirty-five Crores) for the repayment of existing financial indebtedness. The Financial Creditor under the Rupee Loan Facilities Agreement dated 29.08.2016, as

amended and restated on 08.09.2016 provided the aforesaid amounts as loan respectively to RCOM and RITL. The Respondent is the Chairman of the Reliance ADA Group, the umbrella organization under which RCOM and RITL functioned. The Respondent, along with other securities, provided personal guarantee under a Personal Guarantee Deed dated 23.09.2016 in favour of the Financial Creditor in respect of the credit facilities. Both RCOM and RITL committed defaults in repayment in and around January 2017. The accounts were retrospectively declared as Non-Performing Account (NPA) with effect from 26.08.2016 pursuant to the Risk Based Supervision during the year 2017. This Authority by a common order dated 15.05.2018/17.05.2018 admitted the batch of Company Petitions filed by Ericsson India Private Limited under section 9 of the Code initiating Corporate Insolvency Resolution Process (CIRP) against RITL (CP No. 1385 of 2017) and RCOM (CP No. 1387 of 2017). In view of the default in payment of the credit facilities the Applicant on 31.01.2018 invoked the personal guarantee and issued an Invocation Notice of the even date upon the Respondent. Despite various correspondence between the Financial Creditor and the Personal Guarantor (Respondent) no repayment was made on behalf of the Respondent. The Applicant apprehends that it would not be able to recover the claim amount from the CIRP or from the borrowers RCOM & RITL. It accordingly issued a Demand Notice dated 20.02.2020 in Form-B to the

Respondent demanding payment. The Notice was not responded to by the Respondent. The Applicant accordingly filed the Petitions under section 95 of the Code against the Respondent before this Authority on 12.03.2020. Soon thereafter however the Country went into lockdown due to the Covid-19 pandemic and the Petitions could not be listed before this Authority. Section 97(3) of the Code mandates that the Authority shall direct the Insolvency and Bankruptcy Board of India (IBBI) within 7 days of filing of such Application to nominate the name of the Resolution Professional (RP). The lockdown was extended periodically and is still in operation.

3. The Respondent had also provided personal guarantee to various other banks without obtaining the consent of the Financial Creditor in availing credit facilities for the group companies of Reliance ADA Limited, from the Industrial and Commercial Bank of China Limited, China Development Bank and Exim Bank of China (hereinafter referred to as Chinese Banks). The Chinese Banks have initiated recovery proceedings against the Respondent in the United Kingdom. The Commercial Division of the Hon'ble High Court of England and Wales by an order dated 22.05.2020 has directed the Respondent to pay an amount of 717 million US Dollars (Indian Rs. 5447,53,29,750/- as on 24.05.2020) within 21 days. In case the Respondent fails to make the payment, the Chinese Banks could pursue all available options of enforcement of the order of the UK Court. The Applicant apprehends

that the Chinese Banks might attempt to initiate enforcement or execution proceedings against the Personal Guarantor in India including attachment or restraint of his assets in India and abroad. Such action would have an adverse effect on the recovery rights of the Applicant. Section 96 of the Code provides for an interim moratorium, the moment the Application under section 94 or 95 of the Code is filed. Thus, the appointment of the Resolution Professional under section 97 of the Code is critical and essential not only for the Applicant but also to safeguard the assets of the Personal Guarantor in terms of the provision of the Code. The Applicant hence filed the present Petitions. Therein it filed the present Applications for urgent hearing and necessary orders under section 97 of the Code. Both the Application based on common facts were heard together and shall abide by the orders passed herein.

4. The Respondent in his Counter admitted the Credit Facilities availed by RCOM and RTIL and his personal guarantee under the Deed of Guarantee dated 23.09.2016. It is submitted that the credit facilities were *inter alia* secured by the following:
 - a. First ranking and second ranking charge by hypothecation over various assets of RCOM, RITL, Reliance Communications Infrastructure Limited (“RCIL”) and Reliance Telecom Limited;
 - b. Pledge over shareholding of Reliance Webstore Limited and Reliance IDC Limited;

- c. Corporate guarantee of RCIL, RCOM and Reliance Telecom Limited in respect of the RCOM Facility; and
 - d. Corporate guarantee of RCIL, RCOM and Reliance Telecom Limited in respect of the RITL Facility.
5. Axis Trustee Services Limited was appointed as the security trustee for both the credit facilities. It was the understanding between the Financial Creditor and Personal Guarantor, at the time of execution of the Personal Guarantee deed dated 23.09.2016, that the Corporate Guarantee provided by RITL, Reliance Communications Infrastructure Limited, RCOM and Reliance Telecom Limited would be invoked before invoking the Personal Guarantee. The Personal Guarantee would be invoked only upon there being any shortfall in the recovery of amounts under the credit facilities. RCOM and RITL were forced, by commercial and market conditions particularly due to continuous market disruptions in the telecom industry sometime in 2017, to default in repayments of the credit facilities. The Admission Order dated 15.05.2018 had been stayed by the NCLAT by an Order dated 30.05.2018. The Appeal was however dismissed as withdrawn by an order dated 13.04.2019. The Advocates of RCOM by letter dated 11.02.2019 initially responded to the Demand Notice and requested the Applicant to withdraw the Demand Notices and informed that efforts were underway to cure the defaults in terms of the Monetization and Resolution Plan dated 08.09.2018 that was being arrived at jointly

between the companies and the lenders under the Reserve Bank of India's circular dated 12.02.2018. By their letter dated 13.03.2019 the Advocates of RCOM intimated to the Applicant that in view of the ongoing CIRP of RCOM and RITL, the liabilities under the resolution plan approved under the Code pursuant to which the Personal Guarantee will be rendered redundant, more so in view of the understanding that the Personal Guarantee would not be invoked until the other guarantees had been invoked. Pursuant to the dismissal of the Appeal, this Authority by an Order dated 07.05.2019 directed the Interim Resolution Professional of the Corporate Debtors to proceed with the CIRP. Subsequently by order dated 21.06.2019 the Authority appointed Mr. Aneesh N. Nanavati as the Resolution Professional for RCOM Entities. This Authority by an Order dated 09.05.2019 (in MA-1766/2019) excluded the period from 30.05.2018 to 30.04.2019 taken before the Hon'ble NCLAT from the period of CIRP. The Applicant, notwithstanding the Order of Admission, filed OA No. 130/2019 before the Debt Recovery Tribunal (DRT) Mumbai for recovery of the debts against RCOM Entities including the present respondent and others for the total claim of Rs. 1428,05,80,961.25 (Rupees One Thousand Four Hundred Twenty-eight Crores Five Lakhs Eighty Thousand Nine Hundred Sixty-one and Twenty-five Paise).

6. One UV Asset Reconstruction Company Limited had submitted a Resolution Plan in the CIRP of RCOM while Reliance Digital Platform

& Project Services Limited had submitted a resolution plan for RITL. The Resolution Professional has filed an Application IA No. 883/2020 for approval of the Resolution Plan by UV Asset Reconstruction Company, after the Committee of Creditors (CoC) of which the Applicant is a major player/component approved the Plan with 100% voting share. There is no urgency in the present Application to pass an Order under section 97 of the Code. The Resolution Plan of UV Asset Reconstruction Company should be able to discharge the entire financial debt of RCOM to the Applicant and other lenders. Therefore, upon approval of the resolution plan, there will be no amount outstanding in respect of any of the borrowings of RCOM including the present credit facilities. Under the circumstances the Respondent's liability as Guarantor under Personal Guarantee would stand fully and completely discharged. The Applicant in all fairness should first realise and recover the amounts under the CIRP which the UV ARCIL seeks to satisfy and in case of any remainder it can proceed against the Respondent under personal guarantee. Even otherwise the recovery of RCOM through realization of the assets would be approximately INR Thirty-one Thousand Crores which is the entire secured debt and the amount recovered from the CIRP would further reduce the amount. The debts of RCOM are likely to get in the realization process, therefore, no action for proceeding against the Personal Guarantor is necessary. Same would be the case with the Resolution Plan of

Reliance Digital Platform and Project Services Limited, which would take care of the entire debt liability of RITL. The Applicant has filed the IAs based on the apprehension that the Chinese Banks might take steps to enforce Hon'ble UK High Court's Order by attachment or restraint of the Respondent's assets in India and abroad. In view of the filing of the Petitions on 12.03.2020 the interim moratorium has come into force till the disposal of the Company Petitions. Therefore, all legal actions proceeded against the Respondent shall be deemed to have been stayed and the creditors of the Respondent cannot initiate any legal action in respect of any debt. Thus, the Chinese Banks would be restricted from initiating any legal action or proceedings for the enforcement of the UK Court's Order in India. The apprehension of the Applicant is thus ill-founded and there could be no urgency in the matter. The reliefs sought in the Applications cannot be granted pending final decision of the Company Petitions. The purpose of initiating Insolvency and Bankruptcy proceedings against the Personal Guarantor is not only sensible but fair in the generality of cases to synchronize the two proceedings. That is not to say that when the proceedings against the Corporate debtor could be fruitfully decided the Personal Guarantor should also be proceeded against.

7. The Tribunal has in certain cases taken the view that upon assignment of debts, the guarantees would cease to be enforceable by the assignor. The NCLAT has also in some cases taken the view that once the

resolution process has been initiated against a corporate debtor then for the same debt a claim cannot be filed by the same financial creditor which would result in two separate insolvency resolution processes against the corporate debtor and against guarantor. These decisions are pending appeal. In any event, unlike resolution of corporate insolvency is, it is implicit in the creation of bankruptcy proceedings in respect of personal guarantees through a mechanism akin to the resolution of corporate insolvencies, that the two are carried out in sync thereby ensuring that the rights of guarantors would not be unnecessarily put in peril. Fairness in action would be imperative. This fairness is achieved in certain cases by putting personal bankruptcies in abeyance, when there is a serious prospect of the resolution of the corporate debt in the resolution process of the corporate debtors.

8. Under section 99 of the Code the Resolution Professional is required to submit the report to the Authority with reasons for acceptance or rejection of the Application. Since the Application for approval of the Resolution Plan is pending the RP could not file any report on the admissibility or otherwise of the Applications. Thus an order for appointing the Resolution Professional would be premature since the RP would not be able to determine, if any debt remained due from the Applicant. The credit facilities crystalized on the date of Admission Order (17.05.2018). Therefore, the claim of alleged dues of RCOM and RITL till 11.03.2020 is not maintainable. No case is made out by the

Applicant to restrict the Respondent from dealing with his assets. The Respondent would be subjected to grave prejudice, irreparable loss, injury and loss of reputation in case the reliefs sought under the present Applications are allowed. More so in view of the Resolution Plans being under consideration, pendency of the Applications before the DRT as well as interim moratorium under section 96 of the Code, no order can possibly be passed. The Applications thus are liable to be rejected.

9. It is submitted by the Respondent that while the Resolution Plans for the Corporate Debtors are pending consideration, it would be prudent not to proceed against the Personal Guarantor. In this connection reliance is placed on the observations of the Hon'ble NCLAT in *Dr. Vishnu Kumar Agarwal v. M/s. Piramal Enterprises Limited* (Company Appeal (AT) (Insolvency) No. 346 & 347 of 2018 decided on 08.01.2019). On the other hand, it is submitted by the Financial Creditor that the judgment cited would not be applicable in the present case as the judgment relates to initiation of Corporate Insolvency Resolution Process against two Corporate Guarantors. Even otherwise the judgement is impugned in Civil Appeal No. 878/2019 and is pending before the Apex Court. The Hon'ble Apex Court have passed an order of *status quo* as it exists today and shall be maintained till the final decision is brought forth. It is submitted by the Financial Creditor that suspension of the present proceedings would be anathema to the

scheme of the Code. More particularly to the provisions contained in Sections 60(2) and 95 thereof. In this connection he made reference to *Gauri Shankar Jain v. Punjab National Bank: 2019 SCC Online Calcutta 7288* and *State Bank of India v. Ramakrishnan: (2018) 17 SCC 394*.

10. For consideration of the prayers made in the Applications, allusion to certain provisions of the Code would be pertinent. It would accordingly be appropriate to refer to them. Section 60(2) of the Code sets the tone for initiation *inter alia* of insolvency resolution of a personal guarantor of the Corporate debtors. Section 60(2) of the Code reads as under.

“(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or [liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor] shall be filed before such National Company Law Tribunal.”

11. Section 60(2) of the Code provides that proceedings against the Personal Guarantor can simultaneously be filed. There is no quarrel at the Bar regarding the same. It is only submitted by the Respondent that in view of the pendency of the Resolution Plans the Petitions/Applications should not be proceeded with. When the law mandates that a particular proceeding can be initiated, it would be

preposterous to think that after initiation of the proceedings the Authority, before whom it is filed, would not act upon such Petition/Application and would not do anything about it until some subsequent event happens. Had that been the intention of the Legislature, a provision for initiation of proceedings wouldn't have been made in the first place. Therefore, it would be fallacious to assume that though the proceedings can be filed no action can be taken until the Resolution Plan(s) is/are accepted or otherwise. The natural and legal consequence of filing of a Petition/Application would be that the Authority before whom it is filed shall take all possible steps according to law that would follow as per the procedure prescribed for the same. In the case of Piramal Enterprises (*supra*) the Hon'ble NCLAT had no occasion to consider the effect of CIRP on a Personal Guarantor. Besides the judgments impugned in the Appeals related to dates (24th & 31st May 2018) prior to the amendment dated 6th June 2018 of the Code. The decision accordingly would not be made applicable to the case at hand. The Hon'ble Calcutta High Court in Gauri Shankar (*supra*) in a similar matter, *inter alia* framed the following issue.

“8. The issues that have fallen for consideration in the present writ petition are as follows: -

- a) Whether the liability of a guarantor of a debt of a corporate debtor stands reduced/extinguished upon an Insolvency Resolution Plan in respect of the corporate debtor, being approved under the Insolvency and Bankruptcy Code, 2016?”

12. While discussing the issue it referred to the decision of the Hon'ble Apex Court in *Maharashtra State Electricity Board v. Official Liquidator*¹ and quoted the following.

“28. The Supreme Court in *Maharashtra State Electricity Board, Bombay (supra)* has held that, a discharge which the principal debtor may secure by operation of law in bankruptcy or in liquidation proceedings in the case of a company does not absolve the surety of his liability. In such case, the Supreme Court has considered the interplay of sections 128 and 134 of the Act of 1872. In the facts of that case, a company in respect of which a bank issued a guarantee in favour of the Electricity Board, went into liquidation. The Supreme Court has held that, the fact that the company which is the principal debtor has gone into liquidation would not have any effect on the liability of the guarantor.

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30. The Supreme Court in *Canonore Spinning and Weaving Mills Ltd (supra)*² has considered discharge of liability of a guarantee under the provisions of section 141 of the Act of 1872. It has held that, a definite volition on the part of the creditor is required to take place for the guarantor to stand discharged in terms of section 141 of the Act of 1872. It has held that, the liability of the guarantor cannot but be stated to be a strict liability and even if the principal debtor is discharged from his liability unless such discharge is through the act of the creditor without consent of the surety/guarantor, the creditor's right of action against the surety is preserved.”

13. Basing on the law decided the Hon'ble High Court answered the question in the negative. It held that a discharge which the principal debtor may secure by operation of law in bankruptcy or in liquidation

¹ AIR 1982 SC 1497

² Appeal (civil) 3239 of 1995 decided on 12 April 2002

proceedings does not absolve the surety of his liability. The Hon'ble Court have also held that the fact that the Company i.e. principal debtor has gone into liquidation would not have any effect on the liability of the guarantor. The principle thus laid down applies on all fours to the case at hand. In view of such authoritative pronouncement by the Hon'ble Apex Court, it is clear that notwithstanding pendency of the Resolution Plans, the personal guarantor can be proceeded against under section 60(2) read with sections 95 and 97(3) of the Code.

14. A plain reading of the provision would indicate that while an Application for corporate insolvency resolution process or liquidation proceedings of corporate debtors are pending before this Authority i.e. to say during the pendency of a process of corporate insolvency resolution of the Corporate Debtors, an Application against the Personal Guarantor shall have to be filed. This itself indicates that the process of corporate insolvency resolution of the Corporate Debtors in an Application relating to insolvency resolution etc. of a personal guarantor needs to be filed and can be prosecuted. The law doesn't envisage that the insolvency resolution of the personal guarantor should follow only when the process of corporate insolvency resolution of the corporate debtor has come to an end. Therefore, the submission that this Authority should wait till the resolution of RCOM or RITL is successfully accomplished and the debts of the corporate debtors have been satisfied, would be eristic. It is to be remembered that the present

forum is not a recovery forum and has nothing to do with the satisfaction or otherwise of the debts of the corporate debtors. The submissions accordingly don't hold much water.

15. Section 95 of the Code reads as under:

“95. Application by creditor to initiate insolvency resolution process –

(1) A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.

(2) A creditor may apply under sub-section (1) in relation to any partnership debt owed to him for initiating an insolvency resolution process against;

- (a) any one or more partners of the firm; or*
- (b) the firm.*

(3) Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the Adjudicating Authority in which the first mentioned application is pending for adjudication and such Adjudicating Authority may give such directions for consolidating the proceedings under the applications as it thinks just ;

(4) An application under sub-section (1) shall be accompanied with details and documents relating to:-

- (a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;*
- (b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and*
- (c) relevant evidence of such default or non-repayment of debt.*

(5) *The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.*

(6) *The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.*

(7) *The details and documents required to be submitted under sub-section (4) shall be such as may be specified.”*

16. Section 97(3), (4), (5) and (6) of the Code read as follows:

“97. Appointment of resolution professional:

(3) *Where an application under section 94 and 95 is filed by the debtor or the creditor himself, as the case may be, and not through the resolution professional, the Adjudicating Authority shall direct the Board, within seven days of the filing of such application, to nominate a resolution professional for the insolvency resolution process.*

(4) *The Board shall nominate a resolution professional within ten days of receiving the direction issued by the Adjudicating Authority under sub-section (3).*

(5) *The Adjudicating Authority shall by order appoint the resolution professional recommended under sub-section (2) or as nominated by the Board under sub-section (4)*

(6) *A resolution professional appointed by the Adjudicating Authority under sub-section (5) shall be provided a copy of the application for insolvency resolution process.”*

17. The Company Petitions have been filed under Section 95(1) of the Code read with Section 97(3) of the Code. It is not in dispute that the Respondent furnished his personal guarantee for the credit facilities availed by RCOM and RITL. When an Application under section 95 of

the Code is filed by the Creditor, as in this case, the Adjudicating Authority shall within seven days of filing of the Application direct the Board to nominate a resolution professional for the insolvency resolution process. Section 97(3) of the Code doesn't provide for any alternative or any option to the Adjudicating Authority to be tardy in making the direction to the Board. The use of the word '*shall*' itself indicates the urgency with which the Application needs to be dealt with. The Authority accordingly has no other option than to issue the direction. The submissions made by the Respondents that this Authority could wait till the resolution of the Corporate debtors are completed accordingly cannot be accepted. Therefore, in our considered opinion we feel it appropriate to issue the direction in terms of Section 97(3) of the Code. Rule 8 of the I & B (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors) Rules, 2019 provides that for the purposes *inter alia* of sub section (2) of section 97 the IBBI may share the database of Insolvency Professionals and share a panel of Insolvency Professionals for the purpose *inter alia* of sub-section (4) of section 97 of the Code. The IBBI has since shared the panel (valid till 25th November 2020) under its letter dated 25th June 2020. Therefore, there is no need to direct the IBBI to nominate the name of a Resolution Professional. This Authority can appoint one from the panel. Since on filing of the Petition interim moratorium under

section 96 of the Code had set in, no other order in terms of prayer (b) of the Application can be passed.

18. Before parting it would be pertinent to note that, the Applicant under the Rupee Loan Facilities Agreement dated 29.08.2016, as amended and restated on 08.09.2016 provided the aforesaid amounts as loan to RCOM and RITL. The RCOM and RITL committed default in repayment in and around January 2017. The accounts were retrospectively declared as Non-Performing Account (NPA) with effect from 26.08.2016 i.e. even before loan agreements had been entered into. Such retrospective declaration seems rather incongruous, akin to the adage *'putting the cart before the horse'*. While debt and default has remained undisputed, the incongruity of declaration of NPA, has not been raised and contested by the Respondent. Besides, reappraisal of the declaration of the NPA by this Authority would not fall within the ambit of the provisions of the Code, under which the instant Applications have been made. We herewith pass the following order.

ORDER

Both the IAs numbering IA Nos. 1009 of 2020 and 1010 of 2020 be and the same are allowed in part on contest. Prayer (a) made in both the Applications are allowed as follows. Mr. Jitender Kothari (IBBI/IPA-001/IP-P00540/2017-2018/10965), email: jitenderkothari@rediffmail.com is appointed as the Resolution Professional (RP) under

section 97 (4) of the Code read with Rule 8 of the I & B (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors) Rules, 2019. The Applicant shall take necessary action under Rule 9 thereof. The Deputy Registrar of this Tribunal shall forthwith inform the RP of the order. Prayer (b) made in both the Applications are refused. No costs.

Sd/-
MEMBER JUDICIAL
Janab Mohammed Ajmal

Sd/-
MEMBER TECHNICAL
Ravikumar Duraisamy

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