



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

IBA/791/2020

(filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 and Rule 7(2) of the Insolvency and Bankruptcy [Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor], Rules, 2019)

In the matter of **Mr.R.R.Gopaljee.**

Shriram City Union Finance Limited,
No.123, Angappa Naicken Street,
Parrys, Chennai – 600 001.

... Applicant

Vs.

1. Mr.R.R.Gopaljee,
New No.11, Old No.11-1,
Mcnicholas Road, 4th Street,
Chetpet, Chennai – 600 031.

2. Mrs.Sudhasri Gopaljee,
New No.11, Old No.11-1,
Mcnicholas Road, 4th Street,
Chetpet, Chennai – 600 031.

... Respondents

Order Pronounced on 20th June 2022

CORAM:

**Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Applicant : Mr.Umashankar, Advocate
For Respondent: Mr.Kaushik N Sharma, Advocate
Mr.Prakash Venkatramani, Advocate*

ORDER

Per: Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)

Under Consideration is an Application filed under Section 95
(1) of the Insolvency and Bankruptcy Code, 2016 against the
personal guarantors **Mr.R.R.Gopaljee and Mrs.Sudhasri**

Gopaljee of Malar Energy & Infrastructure Pvt. Ltd., the Corporate Debtor which is under CIRP. In so far Malar Energy & Infrastructure Pvt. Ltd., is concerned, an order was passed for initiation of CIRP by this Adjudicating Authority on 05.07.2019 CP/561/IB/2019.

2. The present application is filed by the Financial Creditor, Shriram City Union Finance Limited against the personal guarantors of the Corporate Debtor under CIRP.

3. The date of default as stated in the Application is 07.03.2019. The Agreements of Guarantee executed by the Personal Guarantor are placed in the typed set filed along with the application.

4. The Demand Notice 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 dated 24.01.2020 is placed in the typed set filed along with the application. Hence, on this term, the present Petition is filed to initiate proceeding in terms of Section 95 (1) of the IBC, 2016, against the Respondents herein.

5. The Respondents have filed counter and it has been submitted that the present application is barred by limitation, in view of the fact that the Guarantee Agreement was executed on

31.12.2015 and it was not invoked within 3 years and no renewal agreement executed in this regard, which was countered by the Applicant that the liability was time to time acknowledged by the Respondents. The contentions raised by the parties will be considered at the time when the RP filed 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.

6. Heard the submissions of the Learned Counsels of both the parties. At the outset, it is seen that single application has been filed by the Applicant to initiate Insolvency Resolution Process against two Personal Guarantors of the Corporate Debtor. This Adjudicating Authority finds that a provision to file this application is *non est* in IBC, 2016 read along with the attendant regulations, and entertaining this application will lead to procedural infirmities.

7. Accordingly, this Application IBA/791/2020 stands **dismissed**. However, liberty is given to the Applicant to file independent applications in accordance with IBC, 2016.

-SD-

ANIL KUMAR B
MEMBER (TECHNICAL)

-SD-

JUSTICE (RETD.)
S. RAMATHILAGAM
MEMBER (JUDICIAL)

Gopishankar D