

**NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH – (COURT-I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **07.06.2022 at 10.30 AM** THROUGH VIDEO CONFERENCING

**PRESENT: JUSTICE RAMALINGAM SUDHAKAR, HON'BLE PRESIDENT
SHRI. SAMEER KAKAR, MEMBER (TECHNICAL)**

APPLICATION NUMBER :
PETITION NUMBER : CP(IB)/5(CHE)/2022
NAME OF THE PETITIONER(S) : State Bank of India
NAME OF THE RESPONDENTS : P K Balasubramanian
UNDER SECTION : 95(1) of IBC, 2016

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

CP/IB/5/CHE/2022

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

*In the matter of **P.K.Balasubramanian***

State Bank of India,
Stressed Assets Management Branch,
Red Cross Buildings,
No.32, Montieth Road,
Egmore, Chennai – 600 008.

... Financial Creditor

-VS-

Mr.P.K. Balasubramanian
S/o PS Krishnan
6th Floor, Coromandel towers,
816-817, Poonamallee High Road,
Chennai- 600 010

... Personal Guarantor

*Order pronounced on **7th June 2022***

CORAM:

**JUSTICE RAMALINGAM SUDHAKAR, Hon'ble PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)**

For Financial Creditor : Mr. Ragavelu Naidu, Advocate

For Personal Guarantor : Mr. Kaushik N Sharma, Advocate

ORDER

Per: JUSTICE RAMALINGAM SUDHAKAR, Hon'ble PRESIDENT

This application has been filed under Section 95(1) of the
Insolvency and Bankruptcy Code, 2016 against the Personal
Guarantors of *Tebma Shipyards Limited*, the Corporate Debtor.



2. In so far *Tebma Shipyards Limited* is concerned, an order was passed for commencement of CIRP on 25.09.2018 by this Tribunal and further the Resolution plan was approved by this Tribunal on 04.03.2020.

3. The present application is filed by the Financial Creditor viz. State Bank of India represented by Assistant General Manager, Mr. R. Rupalingappa duly authorized by Letter of Authority dated 02.01.2022 against the Personal Guarantors of the Corporate Debtor Company.

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 08.09.2009 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 17.12.2021 is also placed on record at Pg. Nos. 561-564 and the Acknowledgement of the said Demand notice is placed at Pg. No. 564- 565 of the typed set filed along with the Application.

6. The date of default as mentioned in the application is 05.11.2018. 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 on 27.04.2022 and submitted objections to this Application in a comprehensive manner. Further the Applicant has filed a Reply Statement on 07.06.2022 in response to the Counter filed by the Respondent.

8. All the defences raised by the Respondent Personal Guarantor 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

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appointing Resolution Professional as per Section 97 read with attendant Rules and Regulations.

10. Further the Hon'ble NCLAT in the matter of **SBI v. Mahendra Kumar Jajodia, [2022 SCC OnLine NCLAT 58]** held that, the Application having been filed under Section 95(1) and the Adjudicating Authority for such application as referred in Section 60(1) being the NCLT, the Application could not have been rejected only on the ground that no CIRP or Liquidation Proceeding of the Corporate Debtor are pending before the NCLT. The same was upheld by the Hon'ble Supreme Court in *Civil Appeal No. 1871/2022*.

11. From Part-IV of the Application it can be seen that one Mr. Mudappallur Varieth Gangadharan with Registration No: *IBBI/IPA-001/IP-P00438/2017-2018/10761* has been recommended by the Financial Creditor to be the IRP. However from the IBBI website it can be seen that the said RP does not have a valid AFA as on date. Therefore, we hereby appoint **Mr. Arumugam Palanikumar** with Reg. No. *IBBI/IPA-003/IP-N00369/2021-2022/13879* (email id: *caapalanikumar@gmail.com*) as the Interim Resolution Professional in respect of the Personal Guarantor viz. Mr.P.K.Balasubramanian.

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12. 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.

13. 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.

14. Post this matter on **25.07.2022** for filing of Report by the Interim Resolution Professional.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-

JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT