

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING  
HELD ON **09.12.2024** THROUGH VIDEO CONFERENCING

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**PRESENT:** HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)  
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

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**IN THE MATTER OF** : Indian Bank  
Vs  
K Shanmugham

**MAIN PETITION NUMBER** : CP(IB)/63(CHE)2024

**(IA/MA) APPLICATION NUMBERS**

IA/975(CHE)/2024

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**ORDER**

Present: None for the Petitioner.

None for the Respondent.

Vide separate order pronounced in Open Court, insolvency proceedings against the Personal Guarantor Mr. K Shanmugham is initiated. Shri. Ashok Seshadri is appointed as IRP.

IA/975(CHE)/2024 stands disposed of.

**Sd/-**

**(VENKATARAMAN SUBRAMANIAM)**  
MEMBER (TECHNICAL)

MG

**Sd/-**

**(SANJIV JAIN)**  
MEMBER (JUDICIAL)

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

**CP(IB)/63(CHE)/2024**

*(Under Section 100 of the Insolvency and Bankruptcy Code, 2016)*

**Indian Bank**

Stressed Asset Management(Small) Branch

100/101, East Avani Moola Street,

Madurai-625 001,

Rep. by its Chief Manager Mr. M.Athiyaman

*.....Applicant/Financial Creditor*

Versus

**Mr. K.Shanmugham**

Suspended Director of M/s Yashica Electronics Pvt. Ltd.

No.11, Mangal Nagar,

Kullumani Road,

Woraiyur,

Trichy - 620003

*...Respondent/Personal Guarantor*

*Along with*

**IA(IBC)/975(CHE)/2024**

**In**

**CP(IB)/63(CHE)/2024**

*(filed under section 99 of Insolvency and Bankruptcy Code, 2016)*

**Ashok Seshadri**

Interim Resolution Professional

IP Reg . IBBI/IPA-001/IP-P00937/2017-2018/11541

*...Resolution Professional*

**CORAM :**

**SANJIV JAIN, MEMBER (JUDICIAL)**

**VENKATARAMAN SUBRAMANIAN, MEMBER (TECHNICAL)**

*For Applicant*

*: Mr. T Sundar Rajan, Advocate  
Ms. Bhargavi Sundarajan, Advocate,  
M Pravin Kumar , Advocate*

*For Respondent* : *Exparte (vide order dated 20.08.2024)*

*Order pronounced on 09<sup>th</sup> December, 2024*

**COMMON ORDER**

*(Hearing through hybrid mode)*

1. The present Application (CP(IB)/63/CHE/2024) has been filed u/s. 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") r/w. Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 by State Bank of India ("Financial Creditor") for initiating insolvency resolution process against Mr K Shanmugham ("Personal Guarantor") in respect of default amount of INR 1,29,14,561/-(One Crore Twenty Nine Lakhs Fourteen Thousand Five Hundred And Sixty One). The Date of Default, as specified in Part-III of the present Application, is 29.03.2019. This Application has been filed before this Tribunal on 23.01.2024.

2. Part – I of the application sets out the details of the Applicant / Financial Creditor. It has its registered office at Stressed Asset Management(Small) Branch, 100/101, East Avani Moola Street, Madurai-625 001, Rep. by its Chief Manager Mr. M.Athiyaman. Part-II

of the application sets out the details of the Personal Guarantor. The address of the Respondent is mentioned as No.11, Mangal Nagar, Kullumani Road, Woraiyur, Trichy – 620 003. The Respondent stood as a personal guarantor in respect of the loans availed by M/s. Yashica Electronics Pvt. Ltd., the Corporate Debtor. In part – III of the application, the applicant has given the default amount as Rs. 1,29,14,561/-(Rupees/-(One Crore Twenty Nine Lakhs Fourteen Thousand Five Hundred And Sixty One) as on 30.11.2023. Part – IV of the Application sets out the details of the Resolution Professional. The Applicant has proposed Ashok Seshadri with IBBI Registration No - IBBI/IPA-001/IP-P00937/2017-2018/11541 as the Insolvency Resolution Professional in respect of the Respondent /Personal Guarantor.

3. It is stated that the Applicant granted various credit facilities to M/s. Yashica Electronics Pvt. Ltd., (*hereinafter Corporate Debtor*) vide sanction letter dated 28.03.2019 for its business operations. It is stated that the Financial Creditor sanctioned an open cash credit limit of Rs.140 lakhs, working capital term loan limit of Rs.35.74 lakhs and funded interest term loan of Rs.10.96 lakhs vide sanction letter dated 28.03.2019.

4. It is stated that the guarantor entered the agreement of guarantee with the Indian bank on 29.03.2019, in which he acknowledged the liabilities of the primary borrower viz., M/s Yashica Electronics Pvt. Ltd. and agreed to pay debts defaulted by it.

5. It is stated that the Corporate debtor defaulted in repayment and the account of Corporate Debtor was classified as NPA on 29.03.2019. The Financial Creditor filed an OA No.539/2022 on the file of the DRT Madurai on 28.03.2022 against the Corporate Debtor and the Guarantors for recovery of money and the said O.A is pending for adjudication.

6. It is stated that one of the operational creditor namely M/s Luminous Power Technology Pvt. Ltd. filed an application under Section 9 of IBC,2016 in IBA/765-A/2019 against the Corporate Debtor, which was admitted by this Tribunal by an Order dated 20.01.2020 and Mr.S. Kamaraj was appointed as Interim Resolution Professional.

7. It is stated that, the Corporate Debtor went into liquidation vide order dated 02.09.2021 in IA/745(CHE)/2020 of this Tribunal.

8. It is stated that, the Financial Creditor sold the secured assets of the Corporate Debtor under the SARFAESI Act on 23.09.2022 for Rs.135

lakhs and Rs.133.65 lakhs has been credited to the loan account of the Corporate Debtor. It is further averred that after adjusting the sale proceeds, a sum of Rs.1,29,14,561/- is outstanding to be paid by the Corporate Debtor and the guarantors jointly and severally.

9. It is stated that this Application has been filed on 23.01.2024, i.e., within 3 years from the date of the order of liquidation dated 02.09.2021 passed by this Tribunal and within 3 years from 23.09.2022 when the secured asset of the Corporate Debtor was sold under SARFAESI Act and adjusted towards the loan account.

#### **Report filed by the IRP in IA(IBC)/975/CHE/2024**

10. Pursuant to the appointment of Ashok Seshadri as Interim Resolution Professional (IRP) by this Tribunal vide order dated 20.12.2023, the IRP filed an Application (under Section 99 of IBC, 2016) to take his report on record.

11. The RP in his Report, after due examination of the application and documents filed along with the application, has recommended for the admission of the present application by the Financial Creditor u/s. 95 of IBC, 2016.

#### **OBSERVATIONS AND FINDINGS OF THIS TRIBUNAL:**

12. Despite publication and repeated calls, the Respondent did not appear. Thus, this Tribunal vide order dated 20.08.2024 set the Respondent ex parte.

13. Heard the submissions made by the Learned Counsel for the Applicant and perused the report of the IRP.

14. The RP in his report has observed that the Applicant satisfies the requirement as set out in Section 95 of IBC, 2016. He has accordingly recommended for admission of the present application.

15. It is seen that, the Corporate Debtor had taken loans and failed to pay its dues. The Accounts were classified as NPA on 29.03.2019. The Respondent herein had given guarantee to the said loan.

16. Section 128 of the Indian Contract Act, 1872, provides that when a default is committed, the Principal Borrower and Surety are jointly and severally liable to Creditor and the Creditor has the right to recover its dues from either of them or from both of them simultaneously. Section 128 of the Indian Contract Act, 1872 is reproduced hereunder:

*“The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.”*

17. The Respondent is the Personal Guarantor of the Corporate Debtor which availed the Loan. The Financial Creditor had caused a Demand Notice dated 18.07.2023 to the Guarantor through Registered post in terms of Rule 7(1) of the Insolvency and Bankruptcy Rules, 2019.. The Corporate Debtor / Guarantor failed to repay the Loan after the issuance of Demand Notice.

18. The date of default is 29.03.2019. As per the law of limitation, the limitation period would expire by 29.03.2022. Since the Applicant is entitled to a benefit of limitation from 15.03.2020 to 28.02.2022 as extended by *Hon'ble Supreme Court in Suo Moto W.P. (Civil) No. 3 of 2020*, we are of the opinion that, the Present petition which has been filed on 23.01.2024 is within the period of limitation.

19. In the light of the afore-stated observations, the present Application i.e. **CP(IB)/63(CHE)/2024** is admitted. **The Insolvency Resolution Process stands initiated against Mr. K Shanmugham viz.** the Respondent herein. We hereby direct as follows;

- I. Initiate Insolvency Resolution Process against the Respondent/Personal Guarantor. The moratorium in relation to all the debts is declared, from today i.e. date of admission of the application, and shall cease to have effect at the end of the period of 180 days, or this Tribunal

passes order on the repayment plan under Section 114 whichever is earlier as provided under Sec 101 of IBC, 2016. During the moratorium period,

- a. Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed, and
- b. The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and
- c. The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein:
- d. The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

**II.** The Resolution Professional viz. **Ashok Seshadri IBBI/IPA-001/IP-P00937/2017-2018/11541** Insolvency Resolution Professional is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Chennai Bench, inviting claims from all Creditors, within 21 days of such issue The notice under Sub Section (1) of Section 102(2) shall include: -

- a. details of the order admitting the application;
- b. particulars of the resolution professional with whom the claims are to be registered; and

c. the last date for submission of claims.

**III.** The publication of notice shall be made in two newspapers, one in English and other in Vernacular, which have wide circulation in the State where the Corporate Debtor and Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.

**IV.** The Resolution Professional, in exercise of the powers conferred under Section 104, shall prepare a list of creditors on the basis of:

- a. the information disclosed in the application filed by the debtor under Sections 94 or 95 as the case may be, and
- b. claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice. The debtor shall prepare a repayment plan under Section 105, in consultation with the Resolution Professional, containing a proposal to the Creditors for restructuring of his debts or affairs.

The repayment plan may authorize or require the Resolution Professional to:

- a. carry on the debtor, business or trade on his behalf or in his name: or
- b. realise the assets of the debtor; or c. administers or dispose of any funds of the debtor.

The repayment plan shall include the following, namely;

- a. justification for preparation of such repayment plan and reasons based on which the creditors may agree upon the plan;
  - b. provision for payment of fee to the Resolution Professional; c. such other matters as may be specified.
- V. The Resolution Professional shall submit the repayment plan along with his report on the plan to this Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106.
- VI. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons thereof. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of IBC, 2016. The date of meeting should not be less than 14 days or more than 28 days from the date of submission of the Report under subsection (1) of Section 106 of IBC, 2016, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of IBC, 2016.
- VII. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details

as provided under Section 112 of IBC, 2016 and submit the same to this Tribunal, copies of which shall be provided to the Debtor and the Creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of IBC, 2016.

**VIII.** The Resolution Professional shall submit the periodic reports before this Tribunal, every 30 days.

**IX.** The Applicant is directed to deposit INR 2,00,000/- (Indian Rupees Two lakhs) to the bank account of the Resolution Professional within one week of this order, towards his expenses. This shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.

**X.** The Registry is directed to communicate to the concerned parties a copy of order, report and application within seven working days and upload the same on the website immediately after the pronouncement of order.

20. Accordingly the IA filed by IRP **IA(IBC)/975(CHE)/2024** stands disposed of. **CP(IB)/63(CHE)/2024** stands admitted.

**-Sd-**

**VENKATARAMAN SUBRAMANIAM**  
Member (Technical)

**-Sd-**

**SANJIV JAIN**  
Member (Judicial)

*Kishore P*