

65

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

CP(IB)/167/CHE/2021

*(filed under Section 95(1) of the Insolvency and Bankruptcy Code, 2016
r/w the Insolvency and Bankruptcy (Application to Adjudicating Authority
for Bankruptcy Process for Personal Guarantors to Corporate Guarantors)
Rules, 2019)*

In the matter of **Mr. SHIVGAN K PATEL**

State Bank of India,
Stressed Asset Management Branch,
Represented by its Assistant General Manager
Red Cross Building, Montieth Road,
Egmore, Chennai- 600 008.

... Applicant/Financial Creditor

-Vs-

Mr. SHIVGAN K PATEL
S/o. Mr. Khetha S. Patel
No. 1/810, Kuttralam Road,
Piranoor Border,
Sengottah – 627 809

... Respondent/Personal Guarantor

Order Pronounced on 15th July, 2022

CORAM:

**JUSTICE (RETD.) S. RAMATHILAGAM, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

For Applicant: Mr. M.L. Ganesh, Advocate

For Respondent: Mr. K. Gowtham Kumar, Advocate

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This application has been filed under Section 95(1) of the
Insolvency and Bankruptcy Code, 2016 by State Bank of India,
Stressed Asset Management Branch, represented by its Assistant
General Manager who is duly authorized under a Letter of Authority,

against one of the Personal Guarantors of M/s. Prabhat Resources Limited (formerly M/s. Shinago Infrastructure & Resources Limited), to whom certain credit facilities in terms of a Working Capital Consortium Agreement which were provided by the Applicant.

2. In so far as the Corporate Debtor (M/s. Prabhat Resources Limited), it can be seen that the said Corporate Debtor was ordered to be liquidated by this Tribunal vide order dated 23.02.2021 in IA/1124(CHE)/2020 in IBA/546/2019.

3. The Guarantee Agreement dated 27.03.2014 executed is placed along with Application at page nos. 51 to 61. The date of default as stated in the Application is 19.02.2016 and the date of invocation of the Personal Guarantee in 23.09.2020 by way of issuing the Demand Notice in Form B which is placed along with the Application as Annexure I (6).

4. Hence, on this term, the present Application is filed to initiate a proceeding in terms of Section 95 (1) of the Code against the Respondent herein. The Applicant for the purpose of limitation relies on the Recovery Certificate as well as the admission of the Corporate Insolvency Resolution Process of the Corporate Debtor and submits that this Application is well within the period of limitation.

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

6. Therefore, at this stage, this Application must be admitted in terms of the above observation of the Hon'ble NCLAT. The Applicant Financial Creditor has proposed the Insolvency Resolution Professional, namely **Mr. S. Kannan**, having Reg. No.: **[IBBI/IPA-001/IP-P00755/2017-2018/11287]**, (e-mail ID: **charitarthkannan@gmail.com**) as the Interim Resolution Professional in respect of the Respondent Personal Guarantor. The proposed Insolvency Professional has duly placed his written consent in Form A to act as an IRP and holds a valid AFA, therefore we appoint the proposed Insolvency Professional to be the Resolution Professional in the relation to the Respondent Guarantor.

7. The Applicant 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.

8. 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.

9. All defenses 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.

10. Post this matter on **05.08.2022** for filing of Report by the Interim Resolution Professional.

11. With the above said directions, this Application stands **Allowed.**

-Sd-

SAMEER KAKAR

MEMBER (TECHNICAL)

-Sd-

JUSTICE (RETD.) S. RAMATHILAGAM

MEMBER (JUDICIAL)

V.Shreekumar