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

CP/IB/39/CHE/2021

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

In the matter of ***Mr. Raj H Eswaran***

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

... Financial Creditor

-vs-

Raj H Eswaran
S/o. Shri Hari Eswaran
A Block, Pasupathinath,
No 26, Desika Road,
Mylapore, Chennai- 600 004

... Personal Guarantor

Order pronounced on ***30th May 2022***

CORAM:

R. SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Financial Creditor : K. Chandrasekaran, Advocate
For Personal Guarantor : T. K. Bhaskar, Advocate

ORDER

***Per:* SAMEER KAKAR, MEMBER (TECHNICAL)**

This application has been filed under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 against the Personal Guarantors of *Easun Reyrolle Limited*, the Corporate Debtor which is under Liquidation.

2. In so far *Easun Reyrolle Limited* is concerned, an order was passed for commencement of CIRP on 05.05.2020 by this Tribunal and liquidation was ordered on 17.02.2022.

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 08.02.2021 against the Personal Guarantors of the Corporate Debtor Company which is under liquidation.

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 30.09.2013 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 24.01.2020 is also placed on record at Pg. Nos. 233 to 235 and the Reply to the said Demand notice effected by the Respondent is placed at Pg. No. 236 of the typed set filed along with the Application.

6. The date of default as mentioned in the application is 26.06.2018. Hence, on this term, the present Petition is filed on 15.03.2021 to initiate proceeding in terms of Section 95 (1) of the IBC, 2016, against the Respondent herein.

7. The Respondent has filed counter and submitted that demand notice dated 24.01.2020 was premature and this present Application has been wrongly filed. In this connection, it was submitted that the Demand notice issued by the Applicant on 24.01.2020 was premature and at that point of time the Corporate Debtor was not admitted into the Corporate Insolvency Resolution Process and IBA/1169/2019 was pending on the file of this Tribunal. The Financial Creditor has filed a Rejoinder in response to the contentions made by the Personal Guarantor in the Counter statement. Further, the Financial Creditor submitted that the claim of the Demand notice being premature is incorrect and inappropriate and the Respondent Personal Guarantor has not denied his guarantor liabilities or the outstanding debt to be paid by the Corporate Debtor being Rs.167,43,02,130.57/- (Rupees One Hundred and Sixty Seven Crore Forty Three Lakh Two Thousand one Hundred and Thirty Fifty Seven paise).

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

10. Accordingly, we hereby appoint **Mr. S. Rajendran** with Reg. No. IBBI/IPA-002/IP-N00098/2017-2018/10241 *(email id:- cs.srajendran.associates@gmail.com)* as the Interim Resolution Professional in respect of the Personal Guarantor viz. Mr. Raj H Eswaran.

11. 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.

12. 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.

13. Post this matter on **15.07.2022** for filing of Report by the Interim Resolution Professional.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
R. SUCHARITHA
MEMBER (JUDICIAL)

Vinita Varshini