



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

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **30.08.2024** THROUGH VIDEO CONFERENCING

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

IN THE MATTER OF : M Shanmugam

MAIN PETITION NUMBER : CP(IB)/27(CHE)/2024

(IA/MA) APPLICATION NUMBERS

IA/1400(CHE)/2024

ORDER

Present: Ld. Counsel Shri. A.S. Sathish Kumar for the Petitioner.

Vide separate order pronounced in Open Court, the petition under Section 94 of IBC is **admitted** and Shri. Madhu Desikan is appointed as the IRP.

IA/1400(CHE)/2024 is **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)/27(CHE)/2024

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

Mr. M Shanmugam

Flat No. 108, B Block, ETA Verde,
No. 6 Arcot Road, Porur
Chennai – 600 116 Tamil Nadu

....Applicant/Guarantor

Versus

TamilNadu Mercantile Bank Limited/

Chennai Mount Road Branch,
738, Anna Salai,
Ground Floor, Khivraj Mansion,
Chennai TN 600 002.

....Respondent

Along with

IA/1400(CHE)/2024 in CP(IB)/27 (CHE)/2024

(Filed under Section 99(1) of the Insolvency and Bankruptcy Code, 2016)

Mr. MADHU DESIKAN

Interim Resolution Professional
I / 4 Vijay I avmi Apartment, Balasubramanium Street
Mylapore, Chennai 600 004
Email: desikan.madhu@gmail.com

...Applicant

CORAM :

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAN, MEMBER (TECHNICAL)

For Petitioner : *A S Sathish Kumar, PCS*
For IRP : *Madhu Desikan, IRP*
For Respondent : *Aishwarya, Advocate*

Order pronounced on 30th August, 2024



COMMON ORDER

(Hearing through hybrid mode)

The present petition has been filed u/s. 94(1) the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") r/w. Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. The Prayer is to initiate the Insolvency Resolution Process against Mr. M Shanmugam ("Personal Guarantor") in respect of an Amount of Rs. 8,30,59,218 together with interest. The Date of Default, as specified in Part-III of the petition, is 30.12.2023. This Petition has been filed before this Tribunal on 06.02.2024.

2. Part – I of the application sets out the details of the Applicant / Personal Guarantor namely Mr. M Shanmugam residing at Flat No.108, B Block, ETA Verde, No.6, Arcot Road, Porur, Chennai, 600116. The Applicant had stood as personal guarantor in respect of the loans availed by Ommeena Pharma Distributors Private Limited. Part-III of the application sets out the details of the Creditor. The address of the Respondent is mentioned as Tamilnad Merchantile Bank Limited,



Chennai Mount Road Branch, Ground Floor, Khivraj Mansion 738, Anna Salai, Chennai - 600002. In part – III of the application, the applicant has given the debt amount of Rs.8,30,59,218/- together with interest. Part – IV of the Application sets out the details of the Resolution Professional and the Applicant has proposed **Madhu Desikan** as the Insolvency Resolution Professional in respect of the Respondent / Personal Guarantor.

Submissions by the Applicant

3. It is stated that the Corporate Debtor namely Ommeena Pharma Distributors Private Limited had availed credit facilities on various dates from Tamilnad Merchantile Bank Limited.

4. It is stated that the Applicant, M. Shanmugam along with S.P.S Raja. S. Ashok Kumar & S. Chandra guaranteed, the payment on demand of all moneys and discharge of all obligations and liabilities owing or incurred to the bank, the secured creditor by the borrower company.

5. It is stated that the Corporate Debtor defaulted in the payment and therefore the loan account of Corporate Debtor was classified as Non-performing Asset (NPA) as on 30.12.2023.



6. It is stated that the bank issued a demand notice to the corporate debtor as well as the guarantors on 12.01.2024 under Section 13(2) of the SARFAESI Act, 2002 directing to repay the dues to the tune of Rs.8,30,59,218.13 (Rupees Eight Crore Thirty Lakh Fifty Nine Thousand Two Hundred and Eighteen and Paise Thirteen Only) as on 09.01.2024. (Copy of Demand Notice dated 12.01.2024 is annexed and marked as **Annexure 1(i)** along with the Application Typeset)

7. It is stated that the personal guarantor has filed an application before this Tribunal under Section 94(1) of the Insolvency and Bankruptcy Code, 2016, read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) on 06.02.2024 along with the copies of documents with the prayer to initiate the insolvency process in respect of M Shanmugam, the personal guarantor to Ommeena Pharma Distributors Private Limited. The applicant also furnished his Statement of Affairs as on 31.01.2024 (page No. 29 of the Application) to the tune of Rs.8,30,59,218.13



(Rupees Eight Crore Thirty Lakh Fifty Nine Thousand Two Hundred and Eighteen and Paise Thirteen Only)

8. It is stated that the information as to the filing of the said application was intimated to the Financial Creditor by the Counsel of the applicant on the email of the financial creditor on 06.02.2024.

9. It is stated that this Tribunal Vide Order dated 26.04.2024 in CP (IB) 27(CHE)/2023 appointed Madhu Desikan, as Insolvency Resolution Professional in this case and directed the Insolvency Resolution Professional to collate all the facts relevant to the examination of the application for the commencement of the Insolvency Resolution Process in respect of the personal guarantor.

Submissions by the Respondent

10. It is stated that, the applicant in the present case is the Guarantor for the M/s. Ommenna Pharma Distributors Private Limited. The applicant has mortgaged the property with the Respondent, subsequently the original borrower defaulted in the repayment therefore the loan account was classified as Non-performing Asset (NPA) as on 30.12.2023.



11. It is stated that, the Respondent in the exercise of powers conferred under Section 13(12) read with rule 3 of the Security Interest (Enforcement) Rules 2002, issued a demand notice dated 12.01.2024. (Copy of Demand notice is annexed and marked as **Annexure-A** of the Respondent Typeset)

12. It is stated that, the demand notice was sent to the borrower and the Guarantors to repay the amount of 8,30,59,218.13 (Rupees Eight Crore Thirty Lakh Fifty-Nine Thousand Two Hundred and Eighteen and Paise Thirteen Only) as on 09.01.2024, within 60 days from the date of the notice. However, both the borrower and the guarantor refused to receive the demand notice. Consequently, the Respondent published the Demand notice in two prominent newspapers, namely "The New Indian Express" and "Dinamani" on 31.01.2024. (Copy of the Newspaper publication is marked and annexed as **Annexure B** to the Respondent Typeset)

13. It is stated that having failed to repay the entire amount, the Respondent published possession notice, in two prominent newspapers, namely The Indian Express and Dinamani on 09.04.2024,



to the borrower, guarantor and the public in general that the Respondent has taken possession of the property that was mortgaged under Section 13(4) read with rule 8 of Security Interest (Enforcement) Rules 2002. (Copy of the Newspaper Publications is marked and annexed as **Annexure-C** to the Respondent Typeset)

14. It is stated that, the Respondent had made the Applicant in the possession notice as Mortgagor not the guarantor and the Respondent has not invoked the personal guarantee of the Applicant. It is stated that mere designation as a mortgagor does not inherently trigger the invocation of the personal guarantee.

15. It is stated that, the Respondent has initiated proceeding under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI) against the borrower even before this Application.

16. It is stated that, this Application before the Tribunal is a delaying tactics of Applicant which has been filed only with an intention to delay the recovery proceeding initiated by the Bank under SARFAESI Act, 2002.



17. It is stated that, the Application filed by the Applicant needs to meet the requirements stipulated in Section 94(6) of the relevant regulations. According to Rule 6 of the IBBI (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019, any application submitted under Section 94(1) should adhere to the prescribed Form A. It is averred that, the application filed by the Personal Guarantor is not in a correct format as specified in Form A.

Report filed by IRP in IA/1400/CHE/2024

18. In accordance with the Order of this Tribunal dated 09.05.2024, the appointed IRP has filed his report in IA/1400/CHE/2024 on 13.05.2024.

19. The IRP in his Report, after due examination of the application, documents filed along with the application, and the Reply filed by the Respondent, in addition to the requirements as mandated under clauses (1), (2), (3), (4), (5), (6), (7), (8), (9) and (10) of Section 99 of the



IBC, 2016, has recommended for the admission of the present application by the Personal Guarantor u/s. 94 of IBC, 2016.

FINDINGS OF THIS TRIBUNAL:

20. Heard the submissions made by the Learned Counsels for the applicant, respondent and perused the report of the IRP.

21. The Respondent contends that it has not invoked the Personal Guarantee of the Applicant, instead filed proceeding under SARFAESI Act, 2002 against the borrower on the mortgaged property. We are of the considered view that, this contention of Respondent does not hold good. To file an application under Section 94, there is no pre-requisite to invoke the personal guarantee by the Creditor. In this case, the Respondent herein had sent a demand notice to both Corporate Debtor along with Guarantors. Subsequently, the Applicant/Personal guarantor has filed this Application under Section 94 of IBC, 2016. The demand notice sent by Financial Creditor to the Borrower and Guarantors is extracted here below:



CHENNAI REGION
No.45, Pulla Avenue, Shenoy Nagar,
Chennai - 600030.

Phone : (044) 26286363, 26209650
Fax : (044) 26240133
E-mail: Chennai_region@tmbank.in

Annexure I(i)(a)



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TAMILNAD MERCANTILE BANK LTD
(Regd.office at 57, V.E.Road, Thoothukudi)

CHENNAI MOUNT ROAD BRANCH

738, Anna Salai, Ground Floor, Khivraj Mansion, Chennai - 600 002.

DEMAND NOTICE

Date : 12.01.2024

(BY Speed Post AD)

To

1.M/s. Ommeena Pharma Distributors Private Limited,
Represented by its Director Mr.S.P.S.Raja
No.7, 34th street,
Pudur, Ashok Nagar,
Chennai-600083

... Borrower

2.Mr.S.P.S.Raja, S/o.Mr.S.P.Shanmuganathan,
6/49, Main Road, Pandaravilai,
Srivaikuntam Taluk,
Thoothukudi Dist 628751

... Guarantor

Also at

4th Floor, Indra Foundation,
Leith Castle North street,
Santhome,
Chennai-600028

3.Mr.S.Ashok Kumar, S/o.Mr.M.Shanmugam
C/o.Ponharasi Enterprises,
HP Petrol Bunk,
Kunrathur sriperumpudur Main Road,
Nandabakkam-602109

... Guarantor

Also at

No.20 Jai Garden 2nd street,
Perambur, Chennai-600011

4. Mr.M.Shanmugam, S/o.Mr.Muthaiah,
Flat No.108B, ETA Verde,
No.6, Arcot Road, Porur,
Chennai-600116

...Guarantor / Mortgagor





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5. Mrs.S.Chandra, W/o.Mr.M.Shanmugam, ... Guarantor / Mortgagor
Flat No.108B, ETA Verde,
No.6, Arcot Road, Porur,
Chennai-600116

Dear Sir/Madam,

Sub : Notice under Section 13(2) of SARFAESI Act in respect of CC A/c.No.096700150950090, TL I- A/c.No.096700460100124, TL II-A/c.No.096700480100595 availed by M/s.Ommeena Pharma Distributors Private Limited at our Chennai Mount Road Branch.

At your request, the Bank has granted through its Chennai Mount Road Branch from time to time, various credit facilities to you as per the particulars mentioned in Schedule-A. You, have availed the credit facilities with an undertaking to repay the said credit facilities and executed the necessary loan documents in favour of the Bank and created charge in respect of moveables shown in schedule- B.

Further No.4 and No.5 of you had also created mortgage by way of deposit of title deeds in respect of the property more fully described in Schedule - C as security.

The liability in the above loan account was duly acknowledged by you by executing security documents from time to time. Further the loan account was personally guaranteed by No.2 to No.5 of you. Consequent to the default committed by you in repayment of the principal debt and interest thereon, the loan account has been classified as Non-Performing Asset (NPA) as on 30.12.2023 as per the directions/guidelines of Reserve Bank of India relating to asset classifications issued from time to time. Despite repeated requests, you have failed and neglected to repay the said dues/outstanding liabilities.

You are hereby called upon by this Notice under Section 13(2) of SARFAESI Act to discharge the liabilities in full to the bank and to repay a sum of Rs.8,30,59,218.13 (Rupees Eight Crore Thirty Lakh Fifty Nine Thousand Two Hundred and Eighteen and Paise Thirteen Only) (CC- Rs.7,67,59,939.50; TL-1-Rs.18,10,283.00 and TL-2-Rs.44,88,995.63) as on 09.01.2024 to the Bank within 60 days from date of this notice. You are also liable to pay future interest at CC 16.30%, TL I-9.25% and TL II -9.25% with monthly rests on the aforesaid amount together with 2% penal interest and incidental expenses, cost, charges etc.,

Bank will exercise all or any of the rights detailed under Sub-Section (4) of Section 13 and under other applicable provisions of the Act if you fail to repay the Bank the aforesaid amount with future interest and all costs and expenses thereon.

You are restrained from transferring by way of sale, lease or otherwise, any of the above said

M. Shanmugam






assets more specifically mentioned in the schedule hereunder after issuance of this notice as per Section 13(13) of the above Act and any such transfer without prior written consent of the Bank will not affect the rights of the Bank and any such transfer shall be void. 18

The Borrower's/Guarantor's/Mortgagor's attention is hereby invited to the provisions of sub-section 8 of Section 13 of the Act, in respect of time available to redeem the assets. Section 13(8) of the SARFAESI Act.

"Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets:

- i) The secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and
- ii) In case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets".

This notice is issued without prejudice to the Bank's right to initiate such other actions or legal proceedings as it deems necessary under any other applicable provisions of law.


Authorised Officer
Tamilnad Mercantile Bank Ltd.,
(For Chennai Mount Road Branch)



23. The IRP in his report has stated that the Applicant satisfies the requirement as set out in Section 94 of IBC, 2016. He has accordingly recommended for admission of the present application.

24. 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 the Creditor and the Creditor has 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.”

25. The applicant is the Personal Guarantor of the Corporate Debtor which availed the Loan. The Corporate Debtor / Guarantor failed to repay the Loan after the issuance of Demand Notice. The IRP has also recommended for initiation of Insolvency Resolution Process against the applicant.

26. In light of the afore-stated observations, the present Petition i.e. CP(IB)/27/(CHE)/2024 is admitted. The Insolvency Resolution Process stands initiated against M Shanmugam a viz. the applicant 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. **Madhu Desikan, IBBI/IPA-001/IP-P00579/2017-2018/11021**, 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 his periodic reports before this Tribunal, every 30 days.
- IX.** The Applicant/ Personal Guarantor is directed to deposit INR 2,00,000/- (Indian Rupees Two lakhs) to the bank account of the Resolution Professional within one week, towards his fees. 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 a copy of order, report and application to the concerned parties within seven working days and upload the same on the website immediately after the pronouncement of order.



27. Accordingly the report of the RP filed in IA/IBC/1400/(CHE)/2024 is taken on record. The Petition CP/IB/27/CHE/2023 stands **admitted**.

-Sd-
VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-
SANJIV JAIN
MEMBER (JUDICIAL)

Kishore P