IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISON BENCH – II, CHENNAI
IA (IBC)/ 506/ 2024
In
IBA/616/2020

(filed under Section 99 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the National Company Law Tribunal)

Mr. Bhaskar.B,
Resolution Professional,
Having office at,
Do:No 4/447A, 7th Street, Arun Nagar,
K.Vadamadurai Post, Coimbatore – 641017
Tamil Nadu.

... Applicant

In the matter of

State Bank of India **... Financial Creditor**

Versus

Mr. S. Ravindranathan

... Personal Guarantor to MPL Cars Private Limited (CD)/ Respondent

Order pronounced on 05th March 2025

CORAM

SHRI JYOTI KUMAR TRIPATI, MEMBER (JUDICIAL)
SHRI RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Present
In IA(IBC)/506/2024
For Resolution Professional/Applicant : Mr. M.L. Ganesh, Advocate
In IBA/616(CHE)/2020
For Financial Creditor/Petitioner : Mr. M L Ganesh, Advocate
For Personal Guarantor/ Respondent : Ms. Ambilini Menon, Advocate

ORDER

(Hearing through hybrid mode)

1. The present Petition has been filed under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "Code/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 (hereinafter referred to as "Financial Creditor") for initiating insolvency resolution process against Mrs. Mr. S. Ravindranathan (hereinafter referred to as "Personal Guarantor") of MPL Cars Private Limited (hereinafter referred to as "Corporate Debtor").

2. This Tribunal vide order dated 13.08.2019 in CP/855/IB/2018 admitted the Corporate Debtor into CIRP and subsequently vide order dated 12.07.2024 into Dissolution.

3. Part – I of the application shows the details of the SBI/ Financial Creditor. The registered address is located at SBI, Stressed Asset Management Branch, Red Cross Building, Montieh Road, Egmore, Chennai - 600 008.

4. Part-II of the application shows the details of the Personal Guarantor. The Personal Guarantor/ Respondent stood as a personal guarantor in respect of the loans availed by MPL Cars Private Limited. The address of the Personal Guarantor / Respondent is F1, Abul Regency, 1st Floor, No.6, South Mada Street, Srinagar Colony, Saidapet, Chennai – 600 015 and also residing at Old No.10, New No.15/17, North Cresent Road, T. Nagar, Chennai -620 017.

5. Part – III of the application shows that the SBI/ Financial Creditor has given the value of total debt as Rs.36,50,28,970/- (Rupees Thirty six Crore fifty lakh twenty eight thousand and nine seventy only) covering Principal amount together with interest as on 07.10.2020 and the Date of Default is specified as 06.03.2019.

6. Part – IV of the Application gives the details of the Resolution Professional and the SBI/ Financial Creditor has proposed Mr. V Sadhasivam as the Insolvency Resolution Professional in respect of the Personal Guarantor/ Respondent.

7. ***Financial Creditors Submissions***

7.1 SBI/Financial Creditor submitted that it had advanced cash credit loan facilities by means of e-DFS (Electronic Dealer Finance Scheme) to a tune of Rs.35 Crores **vide sanction letter dated 25.01.2012** to the Corporate Debtor company namely M/s. MPL Cars Private Limited. On **05.12.2012**, the Corporate Debtor was sanctioned with adhoc additional Cash Credit e-DFS to a tune of Rs.7 crores.

7.2 It is submitted that Corporate Debtor has sought for renewal of existing credit facility and the same was renewed at an existing level on 03.12.2013. On 28.04.2015 the Financial Creditor, after taking into the consideration the financial position of the Corporate Debtor, renewed the credit facility and accordingly reduced the limit from Rs.35 Crores to Rs.25 Crores.

7.3 On 30.09.2015 the SBI has again sanctioned a temporary loan facility of Rs.5 Crores for a period of three months for purchasing new vehicle models as per the Corporate Debtor's request letter dated 22.09.2015. The Corporate Debtor's concerned credit facility account has become inactive from 26.11.2015 due to non-routing of sale proceeds of Nov 2015 to SBI e-DFS

Account. The Corporate Debtor has also failed to repay the Adhoc amount of Rs.5 Crores supposed to be paid before 31.12.2015. On 07.05.2016, vide a sanction letter Financial Creditor has reduced the existing credit facilities by reducing the limit from Rs.30 Crores to Rs.25 Crores subject to specific condition of bringing the collateral security.

7.4 The Corporate Debtor has offered an immovable property belonging to one of the guarantor Mr. S Ashok as collateral security by creating an equitable mortgage by deposit of title deeds which was executed on 19.05.2016 and registered as Doc. No. 1655/2016 with SRO Mylapore.

7.5 It is submitted that, despite several opportunities given, the Corporate Debtor neither revamp the business operations, nor has repaid the sales amount which lead to credit facility becoming **NPA on 01.09.2016.**

7.6 The Personal guarantee for all the credit facilities availed from the Financial Creditor by the Corporate Debtor has been executed by four persons namely, Mr. Ravindranathan, Mr. Madhavi Latha, Mr. S. Gauthama Sankar and Mr. S. Ashok. The Corporate Guarantee has been provided by MPL Parts Services Private Limited which is a sister company of the Corporate Debtor. Deed of Guarantee has been executed during each and every credit sanction, where the above Guarantors personally, jointly and severally guaranteed for the amounts due to the SBI/ Financial Creditor.

7.7 It is submitted that a demand notice under Section 13(2) of SARFAESI Act, 2002 dated 06.09.2016 was issued to the Corporate Debtor and its guarantors.

7.8 It is alleged that the Corporate Debtor Company has diverted its bank funds for several real estate projects. Further the corporate Debtor has transferred its business interest at Teynampet, Alwarpet, Vadapalani and OMR in favour of M/s. Eureka Automobiles Private Limited.

7.9 It is submitted that, Financial Creditors has continued the SARFAESI proceedings against the mortgaged security interest belonging to Mr. S Ashok, who challenged it via S.A. No.126/2016 before Learned DRT-II Chennai wherein it was allowed by observing that the guarantee given by Mr. S Ashok was only conditional. An appeal was preferred against the Learned DRT order via R.A. (S.A.) No. 95/2017 before DRAT, Chennai which was allowed in favour of the Financial Creditor.

7.10 The Guarantor has preferred writ petition against the DRAT's Order in W.P. No.3755/2018 before High Court of Madras, which dismissed the same with cost.

7.11 It is submitted that, the Corporate Debtor and guarantors prevented from making legitimate payments due under various credit facilities obtained from the Financial Creditors/ SBI, O.A. No.113/2017 was preferred before Learned DRT-II, Chennai for recovery. The said O.A was allowed on 06.03.2019 holding that the Corporate Debtor Company, guarantors are jointly and severally liable to pay the outstanding loan amount.

7.12 It is further submitted that, Financial Creditor has sold the secured property of the guarantor Mr. S Ashok under SARFAESI proceedings and recovered a sum of Rs.3,57,00,000/- through auction process and adjusted towards the loan account.

7.13 It is stated that, apart from the said auctioned security, there is no securities available with financial creditor for further realization. The SBI/ Financial Creditor claims that the Guarantors are due and liable to pay a sum of Rs.36,50,28,970/- as on 07.10.2020.

7.14 Therefore Financial Creditor has caused a demand notice under provisions of IBC in Form B on 10.03.2020 to the Guarantors and subsequently filed this petition for initiation of Insolvency Resolution or Bankruptcy Proceedings of a Personal Guarantor of MPL Cars Private Limited.

8. ***<u>Personal Guarantor/ Respondent</u>***

8.1 Personal Guarantor/ Respondent filed his counter in the main company petition IBA/616/2020 dated 05.01.2022. Subsequently filed written arguments on 09.02.2022. The Personal Guarantor/ Respondent lastly appeared on 04.03.2024.

8.2 Personal Guarantor/ Respondent was given last opportunity to respond to the IRP report during the hearing dated 02.07.2024. Despite multiple opportunities, respondent Personal Guarantor remained silent, and the Respondent/ Personal Guarantor is set ex parte vide order dated 06.12.2024.

8.3 Personal Guarantor/Respondent submits that, Mr.S Ravindranathan promoter and was the Managing Director of the MPL Cars Private Limited which has started the company in 1996 and involved in FORD dealership retail business which went well till 2015.

8.4 Further submitted that, Mr. S Ravindranathan and his wife has signed Personal Guarantee for availing credit facility for the Corporate Debtor from the Financial Creditor. The company till 2016 regularly paid the interest due to the Creditors and no act of siphoning off or routing of the sale proceeds of the business to any other account or bank other than that of the SBI as alleged by the Financial Creditor.

8.5 It is stated that during 2015, due to Floods in Chennai their service centre facility was affected causing huge damage and loss to the business of the Corporate Debtor. Further respondent Personal Guarantor submits that, only the Financial Creditor's letter dated 21.01.2016 to Ford India Private Limited asking them to stop supply of inventories to MPL Cars Private Limited which led to its decline.

8.6 It is submitted that Corporate Debtor was forced to close down its business as the Ford India stopped supply of vehicles and dumped their spare parts without giving notice of termination. Ford India has also advertised for dealership in Chennai and Pondicherry, ignoring the Corporate Debtor's presence as Ford Dealer.

8.7 It is submitted that, the Corporate Debtor has invoked arbitration clause against the acts of Ford India and filed a claim of Rs.60 Crores for the loss incurred to the CD due to the business misconduct and breach of trust.

8.8 Respondent/ Personal Guarantor submit that, he does not have any other personal property in his name other than a Residential house bearing Old No.1, New No.15/7, North Crescent road, T. Nagar, Chennai – 600 017 which was also pledged with Union Bank of India against a loan of Rs.20 Crores raised to meet the business needs.

8.9 It is submitted that, the Union Bank of India has also issued Section 13(2) Notice under SARFAESI, Act and took possession, sold it and adjusted the entire proceeding towards the loan account.

8.10 Respondent/ Personal Guarantor submits that all the documents pertaining to the business is available with the Resolution Professional and further submits that the personal guarantor/ Respondents is left with noting and there is no asset and/ or security available and is literally on streets struggling to make his ends meet.

8.11 It is contended that SBI has extended its loan in the nature of Inventory Funding for the purchase of inventory through that account and the payments can only be made to the principal from that account.

8.12 Respondent/ Personal Guarantor finally submits that, the Corporate Debtor was admitted into Liquidation during its active pursuance of arbitration proceedings.

8.13 In light of above contentions, the respondent/ Personal Guarantor pray for dismissal of the company petition.

9. ***Appointment of Resolution Professional***

This Tribunal vide order dated 02.02.2024 appointed Mr. Bhaskar B with Registration No. IBBI/IPA-002/IP-N00644/2018-2019/12024 as the Resolution Professional and ordered to examine whether the Company Petition is as set out in Section 97(6) of IBC, 2016 and recommend on acceptance or rejection of application.

10. ***Report by Resolution Professional***

10.1 Resolution Professional submitted his Report dated 16.02.2024 before this Tribunal vide IA(IBC)/506 (CHE)/2024 on 16.02.2024 with following prayers,

"In light of the above, herewith filed the report under section 99 of Insolvency and Bankruptcy Code, 2016 with recommendation for the acceptance of this application and pray to pass appropriate order under section 100 of IBC, 2016 for admission of this application"

10.2 Further it is stated that the report is filed in compliance with Section 99 of the Code. It is apparent that the report filed is regard to initiation of Insolvency Resolution Process against the Personal Guarantor Mr. S. Ravindranathan.

10.3 Observation of the Report filed under Section 99 of the Code is as follows,

Details of Debt

S. No	Particulars	
1	Outstanding Claim	Total sum of Rs.48,97,59,953/- (Rupees Forty eight crores ninety seven lakhs fifty nine thousands nine hundred and fifty three only) is due as on 05.02.2024
2	Document establishing Personal Guarantor's Liability	• e-DFS Agreement dated 25.01.2012. • Guarantee Agreement dated 25.01.2012 • DRT Order dated 06.03.2019 • Debt Recovery certificate No.346/2019 dated 29.07.2019 • Record of Default registered with RoC dated 15.07.2020

Compliance under Section 95 of IBC

Sec. No.	Details of the section	Compliance
95(4)	An application under sub-section (1) shall be accompanied with details and documents relating to- (a) the debts owed by the debtor to the creditor or creditors submitting the application insolvency for resolution process as on the date of application; (b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and 98 (c) Relevant evidence of such default or non-repayment of debt	• The Demand Notice was served to the Personal Guarantors on February 12, 2020 and no payment was made till date. • e-DFS Agreement dated January 25 2012, of Rs.35,00,00,000/- (Rupees Thirty-Five Crores only) executed inter alia between the Financial Creditor and the Corporate Debtor and its guarantors. • Guarantee Deed dated January 25, 2012, executed inter alia between the State Bank of India, Guarantor, and the Corporate Debtor. • Final Order dated March 6, 2019 in O.A. No. 113/2017, DRT- II, and Chennai.

		• Debt Recovery Certificate No. 346/2019 dated 29.07.2019. • The Record of Default created with Information Utility - National Governance Services Limited ('NeSL') dated July 15, 2020. • Copy of the NCLT CIRP order of the CD dated August 13, 2019 in CP/885/IB/2018.
95(5)	The creditor shall also provide a copy of the application made under sub-section (1) to the debtor	No information available
95(6)	The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.	No information available

10.4 The Resolution Professional in his report recommended to initiate Insolvency Resolution Process against the Personal Guarantor Mr. S. Ravindranath and the relevant portion is extracted below,

"7. It is submitted that, in view of the reasons recorded in para3,4&5 of this report, I hereby recommend for the acceptance of the application No. CP(IB)/616(CHE)/2020 filed U/s 95(1) of IBC 2016 by the Creditor M/s. State Bank of India, Stressed Assets Management Branch, Egmore, Chennai, to initiate Insolvency Resolution Process against personal Guarantor Mr. S. Ravindranathan of the Corporate Debtor M/s. MPL Cars Private Limited and the adjudicating authority may appropriate order u/s. 100 of IBC,2016 for admission of the application".

11. ***<u>Findings of this Tribunal</u>***

11.1 Heard the submissions made by the Learned Counsel for the Financial Creditor/ SBI, Resolution Professional and perused the report submitted by the Resolution Professional.

11.2 The Resolution Professional in his report has observed that the SBI/ Financial Creditor satisfied the requirement as set out in Section 95 of IBC, 2016. He has accordingly recommended for admission of the present application.

11.3 Guarantee Agreement dated 28.04.2015 which is filed vide memo dated 27.12.2023, shows that the Respondent/ Personal Guarantor is one of the Guarantor to the Borrower/ M/s. MPL Cars Private Limited. This Respondent/ Personal Guarantor along with 3 other Personal Guarantor and one Corporate Guarantor has given guarantee to a tune of Rs.25,00,00,000/- (Twenty Five Crores only) plus interest, enhanced interest, fees, commission, charges, costs and expenses including the legal costs (referred to as the 'Principal Sum").

11.4 Copy of the Final order passed in O.A. No. 113/2017 by Learned DRT – II Chennai, dated 06.03.2019 which is as Annexure 1(1) of the Main Petition gives the crystallized value of outstanding debt in respect of the Borrower. Copy of the Debt Recovery Certificate No.346/2019 issued by the Learned DRT – II Chennai, dated 29.07.2019 which is as Annexure 1(2) of the Main petition classified the Respondent /Personal Guarantor as Certificate Debtor No. 3.

11.5 It is further observed from the order dated 06.03.2019 of Learned DRT – II Chennai, a Demand Notice dated 06.09.2016 was issued U/S. 13(2) of the SARFAESI Act to the respondent / Personal Guarantor.

11.6 Copy of Demand Notice issued to the Corporate Debtor and its Guarantors in Form B under IBC, 2016, dated 10.03.2020, which is as Annexure A1(6) of the Main Petition highlights the total outstanding debt as Rs.34,60,63,370/- as on 11.02.2020 and the date of default as 06.03.2019 referring to the final order passed by Learned DRT II, Chennai in O.A. No.113/2017.

11.7 The position of limitation law being clear that, any application under IBC has to be filed within 3 years from the date of accrual of right. Here date of Default is submitted as 06.03.2019, being the date of order of Learned DRT –II, Chennai and the application is filed on 26.10.2020. Thus the matter falls well within the period of limitation.

11.8 It is noted that U/S. 128 of the Indian Contract Act, 1872, 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."

11.9 The Respondent is the Personal Guarantor of the Corporate Debtor for the Loan and credits which it availed from the SBI/ Financial

Creditor. The Corporate Debtor and Personal Guarantor failed to repay the Loan after the issuance of Demand Notice. The liability of the personal guarantor is co-extensive with the corporate debtor, as expressly provided under section 128 of the Indian contract act 1872, as the personal guarantor's liability is through an independent contract. The Resolution Professional has also recommended for initiation of Insolvency Resolution Process against the Respondent/ Personal Guarantor.

11.10 In light of the afore-stated observations, the present application IA(IBC)/506/2024 and the main company insolvency petition IBA/616/2020 is allowed. The Insolvency Resolution Process stands initiated against Mr. S. Ravindranthan viz. the Respondent/ Personal Guarantor in the main petition. Further 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 1BC, 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. We find that "***Mr. Baskaran. K***" is appointed as the Resolution Professional in IBA/615(CHE)/2020 and hence, in this present case, we replace the present Resolution Professional"***Mr.CS Bhaskar B***" and appoint "***Mr. Baskaran. K***" as the Resolution Professional.

iii. The Resolution Professional viz. ***"Mr. Baskaran K"*** (e-mail: baskaran.karruppuswamy@gmail.com and Contact No. 9176587503) having IBBI Registration No. **IBBI/IPA-001/IP-P-02838/2023-2024/14354** with valid AFA till 31.12.2025 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.

iv. 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.

v. 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.

vi. 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.

vii. 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.

viii. 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.

ix. 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.

x. 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.

xi. The Resolution Professional shall submit his periodic reports before this Tribunal, every 30 days.

xii. The Financial Creditor/ SBI is directed to deposit INR.1,00,000/- (Rupees one lakhs only) 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.

xiii. The Registry is directed to communicate the 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.

12. Accordingly the report of the RP is taken on record and ***IA(IBC)/506/CHE/2024 in IBA/616(CHE)/2020*** is ***allowed*** and ***disposed off***. Consequently, the Company Petition, ***IBA/ 616(CHE)/2020*** stands **admitted.**

-Sd-	-Sd-
RAVICHANDRAN RAMASAMY	**JYOTI KUMAR TRIPATHI**
Member (Technical)	**Member (Judicial)**