

**IN THE DEBTS RECOVERY TRIBUNAL-I, KARNATAKA
AT BENGALURU**

**BEFORE HON'BLE PRESIDING OFFICER'S OPEN COURT
DATED 11.10.2021**

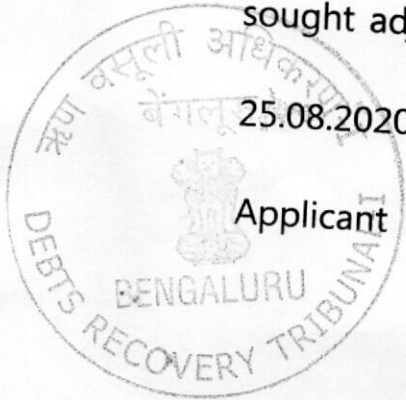
PRESENT: SHRI K. RAVINDRAN NAIR, HON'BLE PRESIDING OFFICER

APPLICATION NUMBER : IR 39/2020
NAME OF THE APPLICANT : INDIABULLS HOUSING
FINANCE LIMITED
NAME OF THE RESPONDENT : HUSSAIN SOMJEE

ORDER

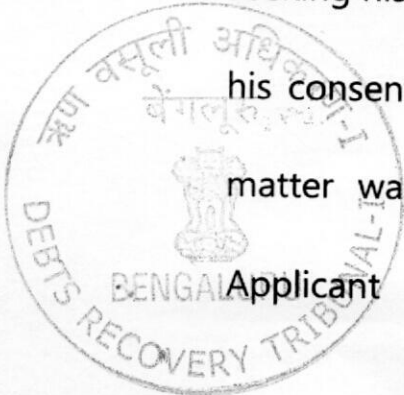
Counsel for Applicant and IRP present. Respondent absent.

2. Applicant has filed this application to initiate insolvency resolution process against Respondent under Section 95(1) of the Insolvency And Bankruptcy Code (in short IBC) before this Tribunal on 12.08.2020. The Applicant sought adjournments at the initial stages i.e. on 18.08.2020, 25.08.2020 and on 10.09.2020 when the Counsel for Applicant submitted that the Corporate Debtor had filed



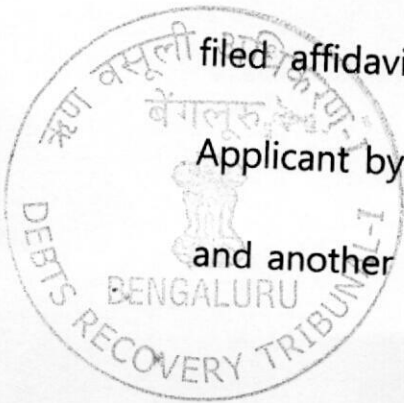
W.P.No.9694/2020 before the Hon'ble High Court of Karnataka challenging the enforcement of security interest initiated by the Applicant herein against the Corporate Debtor under Section 13(4) of the SARFAESI Act and the Applicant is hopeful of settlement of the matter including with Respondent. The Applicant again kept taking adjournments on the above premises on 23.09.2020 and again on 30.09.2020. On 14.10.2020, Counsel for Applicant submitted that the settlement efforts failed and therefore this Tribunal passed an order appointing Mr Addanki Haresh as Insolvency Resolution Professional from the panel provided by IBBI with the consent of the Counsel for Applicant. The Applicant was directed to furnish full set of petition with documents to said RP forthwith. Registry was also directed to intimate the said RP by e-mail about appointment and seeking his consent. On 20.11.2020, Mr Addanki Haresh gave

his consent for being appointed as IRP in the matter. The matter was posted to 11.12.2020 when the Counsel for Applicant appeared and Advocate Santhosh Devdas

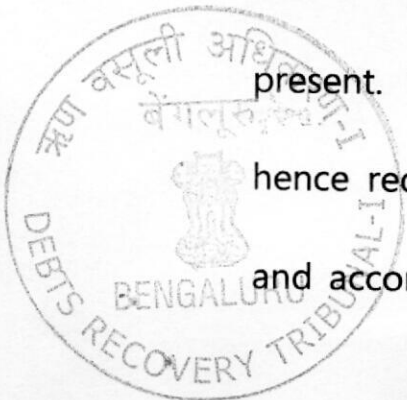


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appeared for Respondent and undertook to file vakalat. The Counsel for Respondent also submitted that the matter has been settled for Rs.75.00 crore between the Applicant and the Respondent and the Corporate Debtor company and terms are under finalization and he therefore sought time upto 11.01.2021 to which Applicant consented. RP Mr Addanki Hareesh was present and the matter was therefore posted to 12.01.2021. On 12.01.2021, both the Counsels for Applicant and Respondent were present and again Respondent Counsel sought time again to file vakalat for Respondent. RP was also present. Both sides again said the settlement is at advanced stage and sought time upto 03.02.2021. On 03.02.2021, Counsel for Applicant appeared and Advocate Santhosh Devdas filed vakalat for Respondent. RP was also present. Counsel for Respondent submitted that he was Promoter Guarantor to borrower company which has filed affidavit cum undertaking to settle the dues of the Applicant by paying Rs.50.00 crore on or before 28.02.2021 and another Rs.25.00 crore on or before 31.03.2021 and the

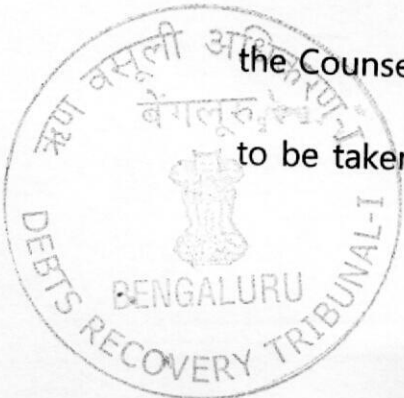


petition before the Hon'ble High Court is posted to 08.02.2021. In view of the above development, Respondent sought time till the second week of March 2021. On 10.03.2021 both the Counsels appeared along with the RP. Again both sides submitted that the matter has been settled in a proceedings before the Hon'ble High Court and sought time to file copy of the order passed by the Hon'ble High Court recording settlement. Therefore, the matter was posted to 28.04.2021 and due to second wave of pandemic COVID-19, the matter was re-posted to 09.07.2021. On 09.07.2021, Counsel for Applicant appeared, but there was no representation from Respondent. Applicant submitted that the matter is under settlement and again sought time and accordingly, the matter was posted to 25.08.2021. On 25.08.2021, the Counsel for Applicant appeared, but there was no representation from Respondent. RP was also present. The Applicant submitted that settlement failed and hence requested that the matter be posted for arguments and accordingly, the matter was posted to 22.09.2021. On



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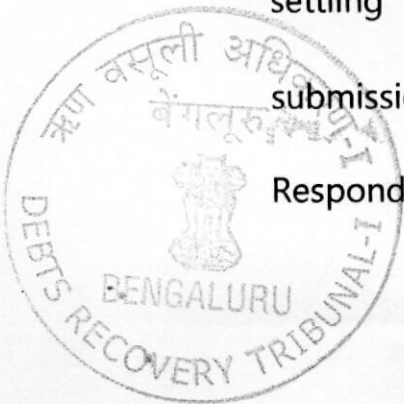
22.09.2021, Counsel for Applicant could not appear, but was represented through his junior as well as Legal Manager of Applicant herein was present. The RP was also present. There was no representation from Respondent. As this is a petition filed under Section 95(1) of IBC by the Creditor on 12.08.2021 before the Tribunal and petition was taken up on various dates from 10.09.2020 when the Applicant took time for settlement with Respondent, and subsequently from 11.12.2020 Respondent also joined in such requests for adjournment through his Counsel stating that settlement was under process and finally the same having not fructified, the Tribunal observed that this petition needs to be taken up in accordance with the provisions of IBC as well as Rules. It was also observed that RP Mr Addanki Haresh had in the meantime filed his report on 21.12.2020 and the same was not acted upon because of the settlement reported by the Petitioner and Respondent from time to time and therefore the Counsel for Applicant was informed that same will have to be taken up in accordance with the provisions of the Act



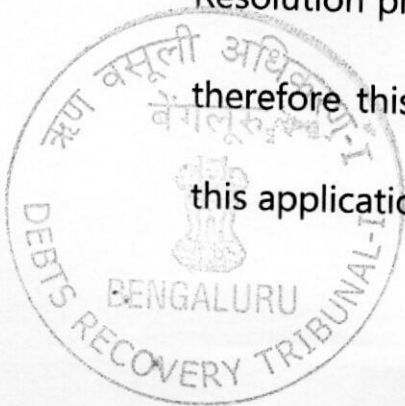
and the Rules. The matter was thus posted to 11.10.2021 i.e. today when the Counsel for Applicant remained present, but there was no representation from Respondent. RP was also present.

3. The RP on the basis of gathered facts and figures averred by the Applicant in the Application is of the strong views the application satisfied all the requirements as set out in Section 95 and he therefore concludes that it is just and equitable that insolvency process be initiated against the Respondent who is guarantor to the Applicant for the loans granted to the Corporate Debtor. He has therefore recommended that the present application under Section 95(1) deserves to be admitted by the Tribunal.

4. Counsel for Applicant would submit that the Applicant has granted sufficient time to the Respondent for settling the dues and the Respondent has also made submissions on various dates through his Counsel that the Respondent is keen to settle the dues of the Applicant. It is

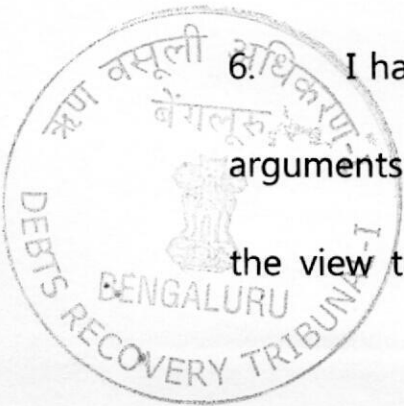


also submitted by the Counsel for Applicant that in the W.P. No.9694/2020 filed by the Corporate Debtor challenging the SARFAESI measures initiated by the Applicant herein, the Corporate Debtor has filed affidavit cum undertaking to settle the dues as per time line i.e. payment of Rs.50.00 crore on or before 28.02.2021 and another sum of Rs.25.00 crore on or before 31.03.2021 and the same was also accepted by this Applicant and Hon'ble High Court has accordingly disposed of the Writ Petition recording the settlement. However, the Corporate Debtor has failed to comply with the affidavit cum undertaking terms and therefore this Applicant has initiated appropriate proceedings for contempt of court before the Division Bench of the Hon'ble High Court of Karnataka. Both the Counsels for the Applicant as well as RP would also submit that there is no Corporate Insolvency Resolution process initiated or pending before the NCLT and therefore this Tribunal has requisite jurisdiction to entertain this application filed by the Applicant under Section 95.



5. Heard arguments addressed by the Counsel for Applicant. The Respondent has admitted the liability as guarantor to the Corporate Debtor and appeared before the proceedings at the initial stage, reporting on various dates that the matter is under settlement and therefore there is no dispute about the liability of the Respondent to the Applicant. When the settlement which was recorded by the Hon'ble High Court in Writ Petition filed by the Corporate Debtor did not fructify by payment of agreed amounts, the Applicant has again appeared and sought for proceeding with this application under IBC. The Respondent which was represented through his Counsel was conspicuously absent from 09.07.2021 and it is thereafter the Applicant has submitted that the settlement failed and pressed for taking up this matter further.

6. I have considered the facts of the case as well as the arguments addressed by the Counsel for Applicant. I am of the view that the application filed by the Applicant herein

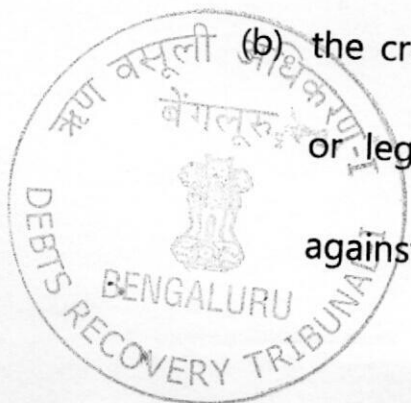


under Section 95 deserves to be admitted and accordingly the same is hereby admitted. Consequently, upon admission of the application under Section 100, moratorium under Section 101 of the Code shall commence from today in relation to all the debts and shall cease to have effect at the end of the period of 180 days beginning from today i.e. the date of admission or on the date the adjudicating authority passes an order on the repayment plan under Section 114, whichever is earlier.

7. In terms of Section 101(2) during the moratorium period:

(a) any pending legal action or proceedings in respect of any debt shall be deemed to have stayed;

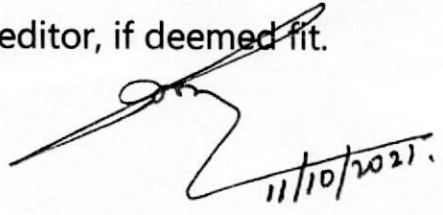
(b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt against Respondent; and



(c) the debtor shall not transfer, alienate, encumber or dispose of any of his assets or his legal rights or beneficial interest therein.

8. The IRP would submit that he would need Rs.2.5 lakhs towards meeting the expenses such as, publication of public notice and claims from creditors under Section 102. Applicant is directed to provide the said sum of Rs.2.5 lakhs to RP against proper receipt which would be covered under Regulation No.17(1)(b) of IBBI Regulation, 2019 i.e. to be eligible to be repaid in priority. The RP shall take necessary steps for negotiation between Debtor, Creditor, if deemed fit.

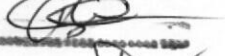



(K. RAVINDRAN NAIR)
Presiding Officer
DRT-I, Bengaluru

THE DEBTS RECOVERY TRIBUNAL, BENGALURU
ENDORSEMENT ON APPLICATION & CERTIFIED COPY

1. Sr. No. of Application : IR 39/2020
2. Proceeding No. : IR 39/2020
3. Name of the Applicant :
4. Date of Presentation of Application : 14/10/2021
5. Date Given to Collect Copy : 29/10/2021
6. Number of Pages : 10
7. Copying Fee Charges : 10
8. Date of Which Copy is Ready : 14/10/2021
9. Date of Delivery :

(Signature of S.O./Official Authorised)

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