



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

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **14.11.2024** THROUGH VIDEO CONFERENCE

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

IN THE MATTER OF : State Bank of India
Vs
U Suganthi Shankar

MAIN PETITION NUMBER : CP(IB)/181(CHE)/2022

(IA/MA) APPLICATION NUMBERS

IA(IBC)/492(CHE)/2024

ORDER

Present: Mr. R.Sugumaran, Ld. Counsel for State Bank of India.

Vide separate order pronounced in Open Court, the petition for initiating insolvency proceedings against the Personal Guarantor / Respondent is allowed.

Mr. Kumarasamy R is appointed as the IRP.

IA/492/2024 is disposed of.

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**[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)**

MS

-sd-

**[SANJIV JAIN]
MEMBER (JUDICIAL)**



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

CP(IB)/181(CHE)/2022

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

State Bank of India

Stressed Asset Management Branch
No.1112, Raja Plaza, Avinashi Road,
Coimbatore - 641 037

.....Applicant/Financial Creditor

Versus

U.Suganthi Shankar

Old No.33, New No.10,
Kongu Nagar Extension,
First Street,
Tirupur - 641 607

....Respondent/Personal Guarantor

Along with

IA(IBC)/492(CHE)/2024

In

CP(IB)/181(CHE)/2022

(filed under section 99 of Insolvency and Bankruptcy Code, 2016)

Benegal Parameshwara Udpa

Resolution Professional
IP Reg . IBBI/IPA-002/IP-N00480/2017-2018/11445

...Resolution Professional

CORAM :

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAN, MEMBER (TECHNICAL)

For Applicant : *R Sugumaran, Advocate*

Ms Vaiduriya, Advocate

For Respondent : *Exparte (vide order dated 06.09.2024)*



Order pronounced on 14th November, 2024

COMMON ORDER

(Hearing through hybrid mode)

The present Application (CP(IB)/181/CHE/2022) has been filed u/s. 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "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 ("Financial Creditor") for initiating insolvency resolution process against Ms. U Suganthi Shankar("Personal Guarantor") in respect of default amount of INR 66,15,65,098.06/- together with interest. The Date of Default, as specified in Part-III of the present Application, is 29.07.2019. This Application has been filed before this Tribunal on 29.07.2022.

2. Part – I of the application sets out the details of the Applicant / Financial Creditor. It has its registered office at Raja Plaza First Floor, #1112, Avinashi Road, Coimbatore – 641 037. Part-II of the application sets out the details of the Personal Guarantor. The address of the Respondent is mentioned as Old No.33, New No.10, Kongu Nagar



Extension, First Street, Tirupur - 641 607. The Respondent stood as a personal guarantor in respect of the loans availed by M/s. MP Shan Tex Clothing Pvt. Ltd., the Corporate Debtor. In part – III of the application, the applicant has given the default amount as Rs. 66,15,65,098.06(Rupees Sixty Six Crores Fifteen Lakhs Sixty Five thousand Ninety Eight and Paise six) as on 30.06.2022. Part – IV of the Application sets out the details of the Resolution Professional. The Applicant has proposed Mr. Benegal Parameshwara Udpa with IBBI Registration No - IBBI/IPA-002/IP-N00480/2017-2018/11445 as the Insolvency Resolution Professional in respect of the Respondent /Personal Guarantor.

3. It is stated that the Applicant granted various credit facilities to M/s. MP Shan Tex Clothing Pvt. Ltd., (*hereinafter Corporate Debtor*) vide sanction letter dated 08.03.2013 for its business operations. It is stated that SBI is the sole banker for the credit facilities availed by the Corporate Debtor company. It is stated that, the personal guarantors P.Uma Shankar, S. Uma Maheswari, K.Palanisamy, V.Sekar and U.Suganthi Shankar had guaranteed the due repayment of the loan



amount availed by the Corporate Debtor by executing deed of guarantee on 14.03.2013.

4. It is stated that the Corporate Debtor committed default in repaying the loan amount and consequently the loan accounts had become NPA in the books of financial creditor. It is further stated that, the Financial Creditor filed OA No. 124/2015 before DRT Coimbatore and final order was passed by DRT, Coimbatore on 06.03.2018. Pursuant to the order, a recovery certificate in DRC No.433/2019 was issued by the DRT, Coimbatore on 29.07.2019.

5. The Applicant has annexed the following documents in this Application to support their claim;

- i) Loan Sanction Letter to Corporate Debtor dated 08.03.2013
- ii) Guarantee Agreement dated 14.03.2013
- iii) Demand notice dated 20.06.2014.
- iv) Debt Recovery Certificate issued by DRT Coimbatore under DRC No. 433/2019 in OA.No 124/2015

6. It is stated that, the Financial Creditor issued a demand notice dated 01.07.2022 under Form B to the Respondent/guarantor. It is



further averred that the present Application has been filed on 29.07.2022, which is well within the limitation period of 3 years.

Report filed by the IRP in IA(IBC)/492/CHE/2024

7. Pursuant to the appointment of Shri. Benegal Parameshwara Udpa as Interim Resolution Professional(IRP) by this Tribunal vide order dated 20.12.2023, the IRP filed an Application (under Section 99 of IBC, 2016) to take his report on record.

8. The RP 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 Financial Creditor u/s. 95 of IBC, 2016.

OBSERVATIONS AND FINDINGS OF THIS TRIBUNAL:

9. Despite publication and repeated calls, the Respondent did not appear. Thus, this Tribunal vide order dated 06.09.2024 has set the Respondent exparte.



10. Heard the submissions made by the Learned Counsel for the Applicant and perused the report of the IRP.

11. The RP in his report has observed that the Applicant satisfies the requirement as set out in Section 95 of IBC, 2016. He has accordingly recommended for admission of the present application.

12. It is observed that, the Corporate Debtor had taken loans and failed to pay their dues. The Respondent herein had given guarantee to the said loan. Further, Recovery Certificate DRC No. 433/2019 in OA No. 124/2015 was issued by DRT, Coimbatore on 29.07.2019 to Corporate Debtor and the Guarantors calling upon them to deposit a sum of Rs. 10,82,73,523/- (Rupees Ten crores eighty two lakhs seventy three thousand five hundred and twenty three only) together with future interest @14% p.a from 05.03.2015 till the date of realisation.

13. 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 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.”

14. The Respondent 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 Recovery Certificate DRC No. 433/2019 in OA No. 124/2015 was issued by DRT, Coimbatore on 29.07.2019. The date of default is reckoned as 29.07.2019 from the date of issuance of Recovery Certificate and the present Application has been filed on 29.07.2022. i.e. within the period of limitation.

15. With regards to limitation aspect, it is relevant to refer to the Judgment of Hon'ble Supreme Court in the case of *Dena Bank (Now Bank of Baroda) versus 'C. Shivakumar Reddy & Anr. (2021) 10 SCC 330* it was held that the Judgment and/or decree for money in favour of the Financial Creditor', passed by DRT, or any other Tribunal or Court, or the issuance of a certificate of recovery in favour of the 'Financial Creditor', would give rise to a fresh cause of action for the 'Financial Creditor', to initiate proceedings under Section 7 of the Code, if the dues of the 'Corporate Debtor' under the Judgment/decree or any part



thereof remained unpaid. The relevant para is reproduced as hereunder:

"141. Moreover, a judgment and/or decree for money in favour of the financial creditor, passed by the DRT, or any other tribunal or court, or the issuance of a certificate of recovery in favour of the financial creditor, would give rise to a fresh cause of action for the financial creditor, to initiate proceedings under Section 7 IBC for initiation of the corporate insolvency resolution process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the certificate of recovery, if the dues of the corporate debtor to the financial debtor, under the judgment and/or decree and/or in terms of the certificate of recovery, or any part thereof remained unpaid."

16. In the light of the afore-stated observations, the present Application i.e. **CP(IB)/181(CHE)/2022** is admitted. **The Insolvency Resolution Process stands initiated against Mr. U. Suganthi Shankar** viz. the Respondent herein.

17. This Tribunal had appointed Mr. Benegal Parameshwara Udpa (IBBI/IPA-002/IP-N00480/2017-2018/11445) as the IRP vide order dated 20.12.2023. Upon verification of IRP in the IBBI portal, it is observed



that he does not have valid Authorisation for Assignment (AFA) as on this date. Thus, we hereby appoint **KUMARASAMY RAMANATHAN (IBBI/IPA-001/IP-P-02674/2022-2023/14127) (94434 28869)** as the Resolution Professional, whose AFA is valid upto 30.06.2025.

18. 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. The Resolution Professional viz. **KUMARASAMY RAMANATHAN (IBBI/IPA-001/IP-P-02674/2022-2023/14127)** Insolvency Resolution Professional 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 the periodic reports before this Tribunal, every 30 days.
- IX.** The Applicant is directed to deposit INR 2,00,000/- (Indian Rupees Two lakhs) to the bank account of the Resolution Professional within one week of this order, towards his expenses. 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 to the concerned parties a copy of order, report and application within seven working days and upload the same on the website immediately after the pronouncement of order.

19. Accordingly the IA filed by IRP **IA(IBC)/492(CHE)/2024** stand disposed of. **CP(IB)/181(CHE)/2022** stands admitted.

-Sd-

VENKATARAMAN SUBRAMANIAM
Member (Technical)

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SANJIV JAIN
Member (Judicial)

Kishore P