NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-II

CP (IB) No. 328/2021

Application under Section 94(1) r/w Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Process for Personal Guarantors to Corporate Debtors) Rules, 2019

In the matter of:

FREE OF COST COPY

Mrs. G.V.Marry
W/o.Mr. g. Bala Reddy
Plot No.17, Free one Villa Greens
Gandipet, CBIT Post, Hyderabad – 500 075

... Petitioner / Personal Guarantor

Vs.

CERTIFIED TO BE TRUE COPY OF THE ORIGINAL

1. Union Bank of India
   Stressed Assets Management Branch
   3rd Floor, Andhra Bank Building
   Sultan Bazar, Koti
   Hyderabad – 500 095

... Financial Creditor/Respondent No.1

2. BRG Energy Limited
   Plot No.838
   Vivekananda Nagar Colony
   Kukatpally, Hyderabad
   Telangana – 500 072, India

... Corporate Debtor/Respondent No.2

3. T. Agathamma
   Plot No.838
   Vivekananda Nagar Colony
   Kukatpally, Hyderabad – 500 072

... Financial Creditor/Respondent No.3

4. G. Chinna
   12-4-161/1A, Road No.3
   Pragathi Nagar, Moosapet
   Hyderabad – 500 018

... Financial Creditor/Respondent No.4

5. Gopu Vinod
   Plot No.28, Shathavahna Nagar
   Road No4/1, Little Flower School Back side
   Rangareddy – 500 074

... Financial Creditor/Respondent No.5

6. Mohan
   Plot No.28, Shivapuri Colony
   Manikonda, Puppalaguda
   Rangareddy dist. – 500 089

... Financial Creditor/Respondent No.6

7. PR Cements Ltd.
   Yepalamandhavaram
   Mellacheruvu Mandal
   Suryapet Dist. – 508246

... Financial Creditor/Respondent No.7

8. Sahasra Investments Private Limited
   Plot No.838, Vivekanandana Nagar Colony
   Kukatpally, Hyderabad – 500 072

... Financial Creditor/Respondent No.8

9. Saritha
Plot No.122, Flat No.101
Pragathi Homes, Pragathi Nagar
Kukatpally, Hyderabad – 500 072

... Financial Creditor/Respondent No.9

10. Sudhakar Reddy
Meghana's Building
3rd Floor, H.No.1-98-9/3/9&10
Plot No.25 & 26, Image Gardens Road
Madhapur, Hyderabad – 500 081

... Financial Creditor/Respondent No.10

11. V. Inna Reddy
2-7-6, 2nd Floor, Backside Hospital
Subash Road, Sadasivpet
SangareddyDist – 500 091

... Financial Creditor/Respondent No.11

12. Gopu Shamitha
Plot No.838
Vivekananda Nagar Colony
Kukatpally, Hyderabad – 500 072

... Financial Creditor/Respondent No.12

13. Gopu Shravanthi
Plot No.838
Vivekananda Nagar Colony
Kukatpally, Hyderabad – 500 072

... Financial Creditor/Respondent No.13

14. Securities Exchange Board of India
SEBI Bhavan, Plot No.C-4A, G-Block
Bandra-Kurla Complex, Bandra (East)
Mumbai – 400 051

... SEBI/Respondent No.14

Date of Order: 13.12.2022

Coram:

Hon'ble Justice Telaprolu Rajani, Member (Judicial)

Hon'ble Shri Charan Singh, Member (Technical)

Counsel/Parties present:

For the Petitioner : CS Sneha Agarwal

[PER: BENCH]

ORDER

1. This Application is filed by the Personal Guarantor of M/s. BRG Energy Limited/Respondent No.2under Section 94 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 seeking to initiate the

Corporate Insolvency Resolution Process against herself. The Petitioner was also a Promoter and Managing Director of Respondent No.2 Company. In order to meet the long term and short-term fund requirements, the Corporate Debtor borrowed loans and the Petitioner has extended personal guarantee in respect of the loan taken by the Corporate Debtor. As the Corporate Debtor ran into difficulties, it defaulted in repayment of the loans to Respondent No.1, who is the Financial Creditor (FC). The debt became due and the default occurred on 21.12.2011. Since the Personal Guarantor has given the guarantee to repay the debt due, Respondent No.1 invoked the personal guarantee and issued demand notice to the Petitioner. The Petitioner has given the guarantee by extending her personal property, for securing the debt to Respondent No.1 and hence she is approaching this Hon'ble Tribunal for initiating CIRP against her by filing this application.

2. The Corporate Debtor Company has done the business transaction with other companies also defaulting the amounts to them. In order to recover the amount, those companies approached the Hon'ble High Court of

Judicature at Hyderabad for the State of Andhra Pradesh and Telangana, seeking winding up of the Corporate Debtor Company and winding up Order was passed on 21st August, 2018. The Liquidation case is in process against the Corporate Debtor Company before the Hon'ble High Court of Judicature at Hyderabad for the State of Andhra Pradesh and Telangana.

3. As per Clause 'C' of Sub-Section 1 of Section 434 of the Companies Act, 2013 ***"all proceedings under the Companies Act, 1956 (1 of 1956), including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer".***

Accordingly, the case was transferred to this Bench. Hence, this application.

राष्ट्रीय कम्पनी विधि अधिकरण National Company Law Tribunal हैदराबाद न्यायपीठ Hyderabad Bench

4. Notice was issued to the Respondents. But however since at the stage of appointing the IRP, there is no right of audience to the Respondents, the IRP was appointed and the report of the IRP was filed.

5. Respondent No.1 filed counter contending that Respondent No.1 Bank filed OA No.713 of 2013, on 07.08.20213 before the DRT, Hyderabad, which was allowed on 29.11.2017 and Recovery Certificate was granted by the DRT. As per the Order of the DRT, the Petitioner herein is jointly and severally liable to pay the amount adjudicated as debt, alongwith the 2nd Respondent / Corporate Debtor. The Petitioner mortgaged the properties as detailed in the counter and 1st Respondent is a secured creditor in respect of the properties for recovery of the amount due and payable by the Petitioner. The Respondents intend to proceed with the securities on its own to Respondent No.1 and they will file a claim. In fact, the Bank issued a Demand Notice dated 04.12.2012 in respect of the mortgage properties in the loan account of Corporate Debtor which includes the two properties mortgaged by the Petitioner herein. The Respondent does not admit that she is liable to pay the amounts to the Respondent

Nos. 3 to 14 as claimed by her and they appear to be close relatives of the petitioners. Since the entire paper book is not served leave for filing Additional counter was sought for. But no counter was filed in addition to the counter already filed.

6. It is contended that the petitioner stated that she is the owner of a building located at Gandipet valued at Rs.29.16 crores and it was pledged with Sri Ram City Union Finance Ltd. However, the said Creditor is not made as one of the Respondents as per the cause title. Hence, the application is defective and is liable to be rejected.

7. Rejoinder is filed by the Petitioner denying the contents of the counter and contending that the Applicant does not have any intention to hide any dues from any of the creditors or defraud any of the creditors, since Shri Ram City Union Finance has also sent a demand notice to the Petitioner which evidences that the properties mortgaged to them.

8. Heard both the counsel.

9. The RP has filed his report, which is part of the record. The report endorses the personal guarantee given by the Petitioner for the loans extended by Respondent No.1 to the Corporate Debtor. The Report records that the Corporate Debtor has defaulted the repayment of the debt where the Applicant extended the Guarantee. The Report was taken on record. The procedure as laid down under Section 100 of IBC is that the Adjudicating Authority shall admit or reject the application, within 14 days from the date of submission of the report by the RP.

10. The defences raised by the Financial Creditor with regard to the mortgaging of the property of the Applicant to another creditor cannot be adjudicated by this Tribunal at this stage. It is for the RP to admit the claims of the creditors and collate them and it is for the RP to register the claims and prepare the list of the creditors and also consider the Repayment Plan submitted under Section 105 of IBC.

11. The RP shall also give a report on the Repayment Plan. The RP has wide powers for conducting the meetings of the creditors and approving the repayment plan

submitted by the creditors. Hence, at this stage, the queries raised by the Financial Creditor need not be considered. The only issue that needs to be decided is whether CIRP can be initiated against the Personal Guarantor based on the report of the RP. Since there is no denial of the fact that the Personal Guarantor has become insolvent, the Application is admitted.

ORDER

The Company Petition is admitted. The Insolvency Resolution Process for Personal Guarantors to Corporate Debtors shall commence from this date and shall be completed within 180 days hence.

i. In compliance of Section 102 of IBC, 2016, the IRP is directed to issue a public notice in terms of Section 102 within 7 days of the order.

ii. The Debtor shall prepare, in consultation with the Resolution Professional, a repayment plan containing a proposal to the Creditors for restructuring of his debts or affairs, in terms of Section 105 of IBC, 2016.

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National Company Law Tribunal
हैदराबाद न्यायपीठ
Hyderabad Bench

iii. The Resolution Professional shall submit the repayment plan under Section 105 along with his report on such plan to the Adjudicating Authority within a period of 21 days from the last date of submission of claims under Section 102 of IBC, 2016, in terms of Section 106 (2) and (3) and comply with Section 106 (4).

iv. The IRP shall receive claims in accordance with the Section 103 of IBC, 2016 and prepare list of creditors as mentioned in Section 104 of IBC and follow the procedure prescribed under Sections 105 to 113 of IBC, 2016.

v. The Registry shall communicate the order to the Applicant/Guarantor and the Respondent/Financial Creditor and the IBBI forthwith.

vi. The Applicant/Guarantor and the Registry shall send the copy of this order to IRP for necessary compliance.

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National Company Law Tribunal
हैदराबाद न्यायपीठ
Hyderabad Bench

CHARAN SINGH
MEMBER (TECHNICAL)

JUSTICE TELAPROLU RAJANI
MEMBER (JUDICIAL)

Syamala

15/12/22

Deputy Registrar / ~~Assistant Registrar / Court Officer~~
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER CP(IB)No.328/9/HDB/2021
निर्णय का तारीख
DATE OF JUDGEMENT 13/12/2022
प्रति तैयार किया गया तारीख
COPY MADE READY ON 15/12/2022