



S.No. 7

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
07.07.2022 AT 10:30 AM THROUGH VIDEO CONFERENCE

CP(IB) 297/95/HBD/2021

U/s 95 of IBC, 2016

IN THE MATTER OF:

State Bank of India

...Petitioner

Vs

Shri Ghanshyam Surajbali Kurmi

...Respondent

CORAM

**DR.VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH.VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)**

ORDER

Order pronounced. Recorded vide separate sheets. In the result, the Company Petition is admitted. Consequently, the Personal Guarantor is hereby declared as insolvent. Insolvency Resolution Process is ordered against the Personal Guarantor as per the terms mentioned in the order.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

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U/s 95 of IBC, 2016

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**DR.VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH.VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)**

ORDER

It is brought to the notice of this Tribunal that certain typographical errors have crept in the final order dated 07.07.2022, hence the same require correction by this Tribunal.

Since the mistakes are typographical by virtue of the power of Rule 154 of NCLT Rules, which is as below:

“154. Rectification of Order. - (1) Any clerical or arithmetical mistakes in any order of the Tribunal or error therein arising from any accidental slip or omission may, at any time, be corrected by the Tribunal on its own motion or on application of any party by way of rectification”

The prayer is allowed. Let the corrected copy be uploaded again and certified copies of the same be issued.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)



NATIONAL COMPANY LAW TRIBUNAL BENCH-1, HYDERABAD

CP (IB) No. 297/95 of IBC/HDB/2021

*Petition under Section 95 of IBC, 2016, R/w Rule 7(2) of I & B
(Application to Adjudicating Authority for Insolvency Process for
Personal Guarantors to Corporate Debtor) Rules, 2019*

In the matter of

State Bank of India

Stressed Assets Management Branch,

Hmwssb Compound, Rear Block,

5th Floor, Khairatabad,

Hyderabad– 500004

...Financial Creditor/Petitioner

VERSUS

Shri. Ghanshyam Surajbali Kurmi

2 A 7Gulvilla, 2 VeerSavarkar Marg,

Opposite Mahim, St. Michale Church,

Mumbai– 400016

...Personal Guarantor/

Respondent

Date of order: 07.07.2022

Coram:

Dr. N. Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)

Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:

For the Petitioner:

Shri. Amir Bavani, Advocate

For Respondent:

Shri. Varun Ambati, Advocate

For Resolution Professional:

Resolution Professional in person



PER: BENCH

ORDER

1. This petition is filed by **State Bank of India** (*Hereinafter referred as Financial Creditor*) under Section 95(1) of Insolvency of Bankruptcy Code, 2016 (*Hereinafter referred as Code*) read with Rule 7 (2) of the Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 (*Hereinafter referred as Personal Guarantors Insolvency Rules, 2019*), seeking an order for initiation of the Insolvency Resolution Process (“IR Process”) against **Shri. Ghanshyam Surajbali Kurmi/Debtor** who is the **Personal Guarantor** of **Apex Drugs Limited/ Respondent No. 1** herein.
2. It is stated that the Corporate Debtor is the Principal Borrower and Respondent herein, stood as personal guarantor in order to secure the repayment of the financial assistance availed by the Corporate Debtor.
3. It is stated that the gist apropos to the case of the Financial Creditor is that Corporate Debtor i.e. **Apex Drugs Limited** (under Corporate Insolvency Resolution Process) had been granted various credit facilities amounting to Rs. 208,21,65,555.24 Crores (As per Part-III in Form-C) from time to time from the Financial Creditor/SBI.



4. It is stated that after availing the said credit facilities, the Corporate Debtor failed to adhere to sanction terms and neglected to operate loan accounts as per terms and conditions of the restructuring package sanction and as a result the accounts of the Corporate Debtor were classified as Non-Performing Asset (NPA) on 30.06.2013.
5. It is stated that the Financial Creditor thereafter sent a Demand Notice dated 25.04.2014 under Section 13(2) of SARFAESI Act, 2002. Further the Financial Creditor has exercised its rights and remedies against the Respondent No.1 and 2 under SARFAESI Act, 2002 vide OA No. 338 of 2017 before the Debt Recovery Tribunal-II, Hyderabad for recovery of the outstanding amounts from Corporate Debtor and Guarantor.
6. It is stated that one of the Operational Creditor¹ also filed a Company petition before this Adjudicating Authority under Section 9 of the Code to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor vide CP (IB) No. 269/9/HDB/2018. The petition was admitted by this Adjudicating Authority on 06.09.2018.
7. It is stated that pursuant to framing of I & B (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 which came into effect from 01.12.2019, permitting the Financial Creditor to institute insolvency resolution process against

¹ Amended as per Order dated 12.07.2022.



personal guarantors, the Financial Creditor had issued demand notice in Form B dated 16.08.2021 through RPAD on 01.09.2021 to the Personal Guarantor i.e. Shri. Ghanshyam Surajbali Kurmi demanding payment of the amount in default.

8. It is stated that the Financial Creditor annexed the following documents to prove the existence of debt and amount in default:-
- i. Copy of Recovery Certificate issued by Debt Recovery Tribunal dated 27.10.2017–Annexure 5
 - ii. Copy of Supplemental Deed of Guarantee Agreement dated 15.12.2011 - Annexure-6 (colly).
 - iii. Copy of Sanction Letter dated 01.04.2013– Annexure-7
 - iv. Copy of Revival Letter dated 02.04.2013– Annexure-8.
 - v. Copy of Demand Notice dated 25.04.2014 under Section 13(2) of SARFAESI Act, 2002– Annexure-9
 - vi. Copy of Demand Notice dated 16.08.2021 in Form B along with postal acknowledgement –Annexure -10
 - vii. Copy of Bank Account Statement- Annexure-11.
9. It is stated that the petition is well within Limitation, and the same can be computed from the date of Recovery Certificate i.e. issued on 27.10.2017 by Debt Recovery Tribunal-II, Hyderabad. The time period from 15.03.2020 to 02.10.2021 shall be excluded from computing of limitation by virtue of the Suo Moto Judgement pronounced by the Hon'ble Supreme Court in case of ***In Re Cognizance for Extension of Limitation***²

² Miscellaneous Application No.665/2021 in SMW(C) No.3/2020



10. On presentation of the petition, this Adjudicating Authority on 29.11.2021 granted interim-moratorium and has appointed Shri Kanchinadham Ravi Kumar as Resolution Professional, directing him to file his report within 10 days of his appointment, in terms of Section 99 of the Code. Accordingly, Resolution Professional had filed his report on 13.12.2021, and stated in its report that the amount of Debt as on 31.07.2021 as per Form-B, Form of Demand Notice stands at Rs. 208,21,65,555.24 Crores. The Resolution Professional further stated that he did not receive any response from the Personal Guarantor within the stipulated period, however during telephonic discussion with the Personal Guarantor, the Personal Guarantor confirmed that no payment had been made to the Financial Creditor towards the default committed by the Corporate Debtor and lack of resources to pay the amount. Hence the Resolution Professional recommended the admission of the petition filed under Section 95 of the Code.
11. The Respondent had filed an Interlocutory Application No. 177/2022 for setting aside the order dated 17.01.2022 where by the Respondent was set ex-parte. The same was allowed by this Adjudicating Authority vide its order dated 03.03.2022.
12. **The contentions as put forth by the Personal Guarantor in the Counter Affidavit are:**
 - 12.1. It is stated by the Respondent in its Counter Affidavit that the Financial Creditor was part of the Committee of Creditors (*Hereinafter referred as CoC*) and had voting share of 70.10%. Pursuant to Section 30(4) of the Code, the CoC initially approved



resolution plan of Successful Resolution Applicant with 100% voting, which was further approved by this Adjudicating Authority under Section 31 of the Code. It is further contended that by virtue of Clause F of the approved Resolution Plan, the liability of the Personal Guarantor to Corporate Debtor is discharged. Clause F of the Resolution Plan is hereby states:

“Once the consideration as envisaged in the resolution plan is paid, all rights, security and interest including but not limited to mortgage, pledge, guarantee and hypothecation created shall stand satisfied in lieu of the said payment.”

Hence the petition filed by the Financial Creditor should be dismissed with exemplary costs.

13. The Financial Creditor denied the contentions as put forth in the Counter Affidavit and further contented in its Rejoinder that:

- 13.1 It is submitted that the fact of Financial Creditor being part of the CoC does not in any manner bar the Financial Creditor from initiating the insolvency proceedings qua the Personal Guarantor. Further, the fact of approval of resolution plan by the CoC and subsequent approval of the said plan by this Adjudicating Authority does not in any manner affect the instant proceedings before this Adjudicating Authority.



13.2 It is denied that clause F of the Resolution Plan explicitly states that once consideration as envisaged in the Resolution Plan is paid, all rights, security interest including but not limited to mortgage, pledge, guarantee and hypothecation created shall stand satisfied in lieu of the said payment. It is imperative to draw the attention of this Adjudicating Authority to clause F of the Resolution Plan which is Reliefs and Concessions, whereby the Resolution Applicant seeks certain reliefs from this Adjudicating Authority as far as the Corporate Debtor is concerned which is very much in line with the clean slate theory. It is humbly submitted that such reliefs which are sought for the smooth functioning of the Corporate Debtor are in line with the aim and object of the Code, however, any relief sought for the ex-management would eventually cast a doubt upon the independence of the Resolution Applicant vis-à-vis Suspended Management. Hence, the said clause clearly depicts the intention of the Resolution Applicant of seeking such reliefs and concessions as far as the Corporate Debtor entity is concerned. Therefore, interpreting the said clause that the said extinguishment of the Guarantee is for the personal guarantor would create a scenario which will have adverse cascading effects. It is further denied that clause F in any manner discharges the guarantors of the Corporate Debtor from any future liabilities.

13.3 It is vehemently denied that any liability of the Respondent herein as a personal guarantor of the Corporate Debtor was discharged upon the approval of the Resolution Plan vide order



dated 18.12.2019 in Interlocutory Application No. 439 of 2019 in CP(IB) No. 269/9/HDB/2018 and more so any rights of the Applicant herein against the Respondent have been forfeited after according its approval to the said Resolution Plan.

- 13.4 It is submitted that even after the Resolution Plan of Corporate Debtor being approved, the Financial Creditor is still at the liberty to proceed with filing of an Application under Section 95 to initiate the Insolvency Resolution Process qua Personal Guarantor. It is imperative to mention that the object of Code is to maximize the value of the assets of the Corporate Debtor. The Resolution Plan approved by the CoC is not for recovery but for the revival of the Corporate Debtor and hence the creditors retain the right to proceed against the guarantors of the Corporate Debtor separately.
- 13.5 It is further stated that, there is no specific bar under the Code for a Financial Creditor to initiate appropriate insolvency proceedings against the Personal Guarantor. Rather, the Code provides for a mechanism specifically for insolvency and bankruptcy of the personal guarantors to the Corporate Debtor. It is a settled position of law that the liabilities of the guarantors are co-extensive with that of the principal debtor/ borrower.
- 13.6 It is stated that as per Section 134 of Indian Contract Act, 1872, a guarantor is discharged of its liability towards the creditor only if the creditor on its own instance discharges the principal debtor. The main ingredient of this section is discharge of the debtor



through voluntary act of the creditor and not due to operation of law. Any scheme or plan that is approved by a Court or Tribunal becomes a statutory scheme and is, therefore, an act of operation of law. Therefore, under the Code, the Corporate Debtor is discharged by the operation of law, i.e., by approval of the resolution plan by the Adjudicating Authority on its satisfaction and not at the instance of a Creditor even if one or any of the Creditor may or may not be in favour of Resolution Plan. Thus, the guarantor cannot be said to be discharged of its liability towards the creditor in the discharge of principal debtor's liability under the Code.

13.7 It is stated that the Hon'ble Supreme Court in the case of **SBI v. Ramakrishnan**³ while addressing this issue placed strong reliance on Section 31 of the Code which states that once the Resolution plan is approved it will be binding on all the stakeholders including the guarantors. On the basis of the said provision, it was held that the guarantor cannot be relieved from making payment by virtue of Section 133 of the Indian Contract Act, 1872 even if the debt is varied under the Resolution Plan.

13.8 It is stated that under Code, after the CIRP is concluded, a guarantor cannot enjoy a right of subrogation when the payment is made by the guarantor with respect to the debt for which the guarantee is provided. This position has been settled by the Hon'ble National Company Law Tribunal ('NCLAT') in **Lalit**

³ 2018 SCC Online SC 963



Mishra & Ors. v. Sharon Bio Medicine Ltd⁴ dated 14.11.2018, wherein the Appellate Tribunal held that the guarantor cannot exercise its right of subrogation under the Indian Contract Act, 1872 as proceedings under the Code are not recovery proceedings. The object of the proceedings under the Code is to revive the company and focus on maximization of value of its assets and not to ensure that credit is available to all stakeholders.

13.9 It is stated that the Resolution Professional in his report had stated that the Respondent herein has not made any payment to the Financial Creditor. Further, the Resolution Professional in his report has clearly mentioned that the Respondent informed the him that Respondent does not have resources to pay the outstanding amount.

13.10 It is stated that the Hon'ble Supreme Court in the matter of **Lalit Kumar Jain v. Union of India⁵** decided on 21.05.2021, wherein it was held:

“111. In view of the above discussion, it is held that approval of a resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under the contract of guarantee. As held by this Court, the release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process, i.e., by operation of law, or due to liquidation or insolvency proceeding, does not absolve the

⁴ Company Appeal Insolvency No.164 of 2018

⁵ Transferred Case (Civil) No. 245/2020)



surety/guarantor of his or her liability, which arises out of an independent contract.”

14. The Financial Creditor reiterated the contentions as put forth in the Rejoinder and further contented in its Written Submissions that:

14.1. It is submitted that this position has been settled by the Hon’ble National Company Law Tribunal (‘NCLAT’) in **Sandeep Garg & Ors. v. M/s DMI Finance Pvt. Ltd⁶** dated 24.03.2022, wherein the Appellate Tribunal held that:

“32. ...when the liabilities of the principal borrower and surety are co-extensive under an agreement, it stands to reason that the liabilities of co-borrowers who have equal and similar liabilities under a loan agreement will also be there and CIRPs against them can run simultaneously. Moreover, till the financial creditor is able to get payment of his claim, he can file claim in all the CIRPs and also have voting rights in the respective CoCs based on the quantum of his financial debt. Thus, we infer that the liabilities of the corporate debtor and the co-borrower companies are joint and co-extensive in nature and that claims of similar amounts could be submitted by the financial creditor in all the CIRPs.”

15. In the light of the aforesaid factual matrix, the point that arises for our consideration is,

⁶ Company Appeal Insolvency No.321 of 2021.



i. Whether the Clause-F of the approved Resolution Plan bars the Financial Creditor to initiate Insolvency Resolution Process against the Personal Guarantor?

16. We have heard the Learned Counsel Shri Amir Bavani for the Financial Creditor and Shri Varun Ambati Learned Counsel for Respondent and Shri. Dantu Indu Sekhar⁷ as Resolution Professional perused the material on record.

POINT (i)

17. Whether the Clause-F of the approved Resolution Plan bars the Financial Creditor to initiate Insolvency Resolution Process against the Personal Guarantor?

- 17.1 This Adjudicating Authority has passed an order of commencement of Interim Moratorium from the date of filing of this application and also appointed Resolution Professional and directed Resolution Professional to file interim report as per Section 99 of the Code. The Resolution Professional submitted the report with his recommendation to admit the application filed by Financial Creditor herein.

- 17.2 The Financial Creditor/Applicant in its submissions averred that even after Resolution Plan of Corporate Debtor being approved the Financial Creditor is still at liberty to proceed with filing of

⁷ Amended as per Order dated 12.07.2022



application under Section 95 to initiate Interim Resolution Process qua Personal Guarantor. The Applicant further submitted that Resolution Plan submitted by Corporate Debtor is not for recovery but for revival of Corporate Debtor. Hence the Creditors retain the right to proceed against the Personal Guarantors of Corporate Debtor separately.

- 17.3 It is a settled position of law, the liability of Personal Guarantors are co-extensive with that of Principal Borrower. As per the Section 134 of the Indian Contract Act, 1872 a guarantor is discharged of its liability towards the creditor only if the creditor on its own instance discharges the Principal Debtor. The main ingredient of this section is discharge of the debtor through voluntary act of creditor and not due to operation of law.
- 17.4 The Financial Creditor further contended that the Resolution Plan approved by Adjudicating Authority becomes a statutory scheme and is therefore, an act of operation of law. With approval of the Resolution Plan under the Code the Corporate Debtor is discharged by the operation of law and not at the instance of the creditor even if one or any of the creditor may or may not be in favour of the resolution plan.
- 17.5 Hon'ble NCLAT in case of ***Lalit Mishra & Ors. v. Sharon Bio Medicine Ltd***⁸ it was held that the guarantor cannot exercise its right of subrogation under Indian Contract Act, 1872 as proceedings under the Code are not recovery proceedings. The

⁸ Company Appeal Insolvency No.164 of 2018.



object of the proceedings under the Code is to revive the company and find resolution and focus on maximization of value of its assets.

17.6 The Hon'ble Supreme Court in the matter of **Lalit Kumar Jain vs Union of India**⁹ where it held that:

“111. In view of the above discussion, it is held that approval of a resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under the contract of guarantee. As held by this Court, the release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process, i.e., by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability, which arises out of an independent contract.”

17.7 In light of the above judgements, the above judgement of Hon'ble Supreme Court has been reinforced by the Hon'ble NCLAT in **Sandeep Garg & Ors. v. M/s DMI Finance Pvt. Ltd**¹⁰ wherein the Appellate Tribunal held that:

“32. ...when the liabilities of the principal borrower and surety are co-extensive under an agreement, it stands to reason that the liabilities of co-borrowers who have equal and similar liabilities under a loan agreement will also be there and CIRPs against them can run simultaneously. Moreover, till the financial

⁹ Transferred Case (Civil) No. 245/2020).

¹⁰ Company Appeal Insolvency No.321 of 2021.



creditor is able to get payment of his claim, he can file claim in all the CIRPs and also have voting rights in the respective CoCs based on the quantum of his financial debt. Thus, we infer that the liabilities of the corporate debtor and the co-borrower companies are joint and co-extensive in nature and that claims of similar amounts could be submitted by the financial creditor in all the CIRPs.”

17.8 Therefore, the Financial Creditor has submitted that the conclusion of Corporate Insolvency Resolution Process even by Resolution Plan /Revival does not bar Creditor to proceed against the guarantors and the Financial Creditor can always approach Adjudicating Authority as envisaged under the Code. The Financial Creditor has further submitted that the Reliefs and Concessions whereby the Resolution Applicant seeks certain reliefs from the Adjudicating Authority as far as Corporate Debtor is concerned is very much in light with the clean slate theory and this was sought for the qua the Corporate Debtor for smooth functioning of this Corporate Debtor, which are in line with aim and objective of the Code.

17.9 It is also pertinent to note that any relief sought for the ex-management would eventually cast a doubt upon the independence of the Resolution Applicant vis-à-vis Suspended Management. Therefore, the Financial Creditor has submitted that the said Clause-F of Resolution Plan clearly depicts the intention of Resolution Applicant of seeking reliefs and concessions as far as the Corporate Debtor entity is concerned



only. Interpreting the said clause would extinguish the Personal Guarantee of Personal Guarantor is not tune with objectives of the Code and would create a scenario which would have adverse cascading effects.

17.10 Therefore, Financial Creditor contended that it is not proper to state that Clause-F discharges Personal Guarantor of the Corporate Debtor from any future liabilities and prayed that Instant application shall be allowed as the same is filed keeping aims and objectives of the Code in consideration. Lastly, they contended that Legislature has specifically provided for Insolvency and Bankruptcy of Personal Guarantors and the same has also been upheld by the Hon'ble Supreme Court in the matter of Lalit Kumar Jain¹¹

17.11 In view of the above submissions Financial Creditor has prayed that the instant Application be allowed for Initiating Insolvency Resolution Process against the Personal Guarantor Qua/Respondent under Section 100 of the Code.

17.12 On the contrary the Personal Guarantor submitted that Financial Creditor was herein part of Committee of Creditors with voting share of 70.10% and was well aware of the fact that the resolution plan initially approved by CoC and subsequently by this Adjudicating Authority. The Financial Creditor herein has deliberately failed to place on record while filing present Application. The Personal Guarantor submitted that Clause-F of

¹¹ *Supra* n. 4.



Resolution Plan explicitly states that once the consideration as envisaged in the resolution plan is paid, all rights, security and interest including but not limited to mortgage, pledge, guarantee and hypothecation created shall stand satisfied in lieu of the said payment.

17.13 Personal Guarantor further brought to knowledge of the Adjudicating Authority, that approved Resolution Plan discharges Personal Guarantor of Corporate Debtor from future liabilities. Despite knowing this fact very well, Financial Creditor herein has filed this application without paying heed to provisions of the Resolution Plan.

17.14 The Learned Counsel for Personal Guarantor further contended that any liability of Personal Guarantor herein was discharged upon approval of Resolution Plan and more so any rights of Financial Creditor herein against Respondent have been forfeited after according its approval to the said resolution plan.

17.15 However, Financial Creditor has approached this Adjudicating Authority and filed the present application by suppressing essential facts and with an intention to unlawfully hold the Personal Guarantor liable for past and settled dues. They further contended that the Financial Creditor herein has filed the present application purely with an intention to cause irreparable harm to the Personal Guarantor and harass the Personal Guarantor whose liability as Personal Guarantor of the Corporate Debtor was discharged after approval of Resolution Plan.



17.16 Therefore, in light of the above submissions the Personal Guarantor herein has contended the application deserves to be dismissed *in limine* with exemplary costs indulging in such frivolous applications and misleading the Adjudicating Authority.

17.17 We have gone through records and submissions made by Financial Creditor as well as Personal Guarantor. We have also gone through the case laws submitted by Applicant herein in Lalit Misra¹² and also Lalit Kumar Jain v. Union of India¹³

17.18 Therefore, we are also of the view that conclusion of Corporate Insolvency Resolution Plan does not bar Financial Creditor against Guarantor, and Financial Creditor can always approach this Adjudicating Authority as envisaged under the Code.

17.19 We are also of the view Clause-F Reliefs and Concessions is applicable to Corporate Debtor only which is very much in line with clean slate theory or in line with aims and objectives of Code. We are also in agreement with the aims and reliefs sought by the for the ex-management would cast doubt on the independence of the Resolution Applicant vis-à-vis Suspended Management. Therefore, interpreting said claim the personal guarantee would create scenario which would have adverse cascading effects. That apart Clause- F of Resolution Plan does not discharges¹⁴ the Personal Guarantor of Corporate Debtor for any future liabilities. The celebrated judgement of Lalit Kumar

¹² *Supra* n. 3.

¹³ *Supra* n. 4.

¹⁴ Amended as per Order dated 12.07.2022



Jain is squarely applicable in this case as decided by Hon'ble Supreme Court.

17.20 We are also of the view that guarantor cannot enjoy a right of subrogation when the payment is made by the guarantor with respect to the debt for which the guarantee is provided.

17.21 We are also of the view that Financial Creditor is also at liberty to initiate Insolvency Resolution Process¹⁵ against the Personal Guarantor the resolution plan approved by Adjudicating Authority is not for recovery but for revival. Further as per Section 134 of the Indian Contract Act, 1872, a guarantor is discharged of its liability towards the creditor only if the creditor on its own instance discharges the principal debtor through voluntary act of the creditor and not due to operation of law.

17.22 In view of the above findings there is no merit in submission made by Personal Guarantor and accordingly this Adjudicating Authority puts Personal Guarantor into Insolvency Resolution Process.

17.23 The Financial Creditor filed an Interlocutory Application No. 275/2022 on 21.03.2022 and contended that the Resolution Professional so appointed by this Adjudicating Authority had informed the Financial Creditor about his inability to continue as Resolution Professional due personal reasons vide email dated 31.01.2022 and 02.02.2022 respectively. The Financial Creditor further prayed that the existing Resolution Professional be

¹⁵ Amended as per Order dated 12.07.2022



replaced by Shri. Dantu Indu Sekhar (Reg. No. IBBI/IPA-003/IPA-ICAI-N-00233/2019-2020/12773) who has given his consent in Form-A and his AFA is valid till 23.11.2022. The said Interlocutory Application was allowed by this Adjudicating Authority vide order dated 04.04.2022

18. Therefore, by exercising powers under Section 100 of the Code, we pass the following orders:

- (1) The petition i.e. **CP (IB) No. 297/95 of IBC/HDB/2021 filed under the provisions of Section 95 of IBC, 2016 is hereby admitted and Personal Guarantor Shri. Ghanshyam Surajbali Kurmi is hereby declared as insolvent.**
- (2) Consequently, the Insolvency Resolution Process is hereby initiated against the Personal Guarantor Shri. Ghanshyam Surajbali Kurmi/Personal Guarantor and the moratorium is declared, which begins with effect from the date of admission of the petition and shall cease to have effect at the end of the period of 180 days, as provided under Section 101 of the Code During the moratorium period;
 - (a) Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;
 - (b) The creditors shall not initiate any legal action or legal proceedings in respect of any debt; and



- (c) the debtor shall not transfer, alienate, encumber or dispose of any of her assets or her 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.
- (3) The Resolution Professional is directed to cause public notice published on behalf of the Adjudicating Authority within 7 days of uploading of this order on the website of NCLT, Hyderabad, inviting claims from all creditors, who shall register their claims as provided under Section 103 of the Code within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102 (2) of the Code. The publication of notice shall be made in newspapers, one in English and other in vernacular (Telugu) which have wide circulation in the State where the Debtor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry. One shall be placed on our website by the Registry and the other shall be affixed in the premises of this Adjudicating Authority.
- (4) The Resolution Professional in exercise of the powers conferred under Section 104 shall prepare a list of creditors within 30 days from the date of the notice. The debtor shall prepare, in consultation with the resolution professional, a repayment plan containing a proposal to the creditors for restructuring of her debts or affairs as provided under



Section 105 which shall include the provisions for payment of fee to the Resolution Professional. The Resolution Professional shall submit the repayment plan along with his report on the plan to this Adjudicating Authority within a period of 21 days from the last date of submission of claims as provided under Section 106.

- (5) In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof. If the Resolution Professional is of the opinion that the meeting of creditors should be summoned, he shall specify the details as provided under Section 106 (3). The date of meeting shall not be less than fourteen days or more than 28 days from the date of submission of the Report under Sub-Section (1) of Section 106, 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.
- (6) The meeting of the creditors shall be conducted in accordance with the provisions sections 109, 110 and 111. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 and submit the same to the Authority, copies of which shall be provided to the guarantor 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 the Code.

- (7) The Financial Creditor is directed to communicate this order to the Resolution Professional appointed in this case immediately.

Sd/-

(Veera Brahma Rao Arekapudi)
Member (Technical)

Sd/-

(Dr. N.Venkata Ramakrishna Badarinath)
Member (Judicial)

Rohit (LRA)