

S.No.1

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
28-04-2023 AT 10:30 AM**

CP(IB) No. 181/95/HDB/2022
u/s. 95 of IBC, 2016

IN THE MATTER OF:

Bank of Maharashtra

...Petitioner

VS

Smt. Nukala Savithri & M/s. SVSVS Projects Pvt Ltd

...Respondent

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

Orders pronounced. Recorded vide separate sheets. In the result, this Company Petition is admitted and Insolvency Resolution Process is ordered against the Personal Guarantor. Mr. Murali Mohan Chevuturi is appointed as Resolution Professional and Moratorium ordered as per the terms and conditions.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

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

CP (IB) No. 181/95/HDB/2022

*(Under Section 95 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7(2) of
Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency
Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019.*

BETWEEN

BANK OF MAHARASTRA
4-3-448 TO 460 & 465, 1st Floor,
Vinoothna Pittie's Majesty, Gopalbagh,
Near Bank Street, Koti,
Hyderabad – 500001.

...Financial Creditor

AND

1. Smt. Nukala Savithri
Flat No. 502, Murthy Mansion,
Kalyan Nagar. Phase – 1,
Hyderabad – 500038.

...Personal Guarantor

2. SV SVS Projects Private Limited
Plot No. 31, 2nd Floor, Phase 1,
Kalyan Nagar,
Hyderabad – 500038.

...Corporate Debtor

Date of order: 28.04.2023

CORAM:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA,
HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

Appearance:-

For the Petitioner: Ms. Aishwarya Chevuturi, Advocate.
For the Respondent: Shri Mirza Moinullah Baig, Advocate.
For the RP: Shri. Murali Mohan Chevuturi,
Resolution Professional

PER: BENCH

1. This instant petition is filed by Financial Creditor under Section 95 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 (hereinafter referred to as “Personal Guarantors Insolvency Rules, 2019), seeking an order for initiation of the Insolvency Resolution Process (“IR Process”) against the Personal Guarantor of Corporate Debtor i.e., SV SVS Projects Private Limited alleging non-payment of Rs.48,02,97,568.69/- as on 27.12.2018 including interest is said to be due and payable by personal guarantor to Financial Creditor.
2. Averments filed by the financial creditor:
 - 2.1 It is averred that the Financial Creditor i.e., Bank of Maharashtra vide its letter dated 24.03.2014 and 09.04.2016 had sanctioned a working capital facility consisting of Cash Credit facility with a limit of Rs. 2.50 Crores and Bank Guarantee Facilities aggregating to Rs. 48

Crores and the total facilities aggregating to an amount of Rs.50.50 Crores to the Corporate Debtor i.e., SV SVS Projects Private Limited and these letters has been annexed along with the application.

- 2.2 It is averred that excluding the total repayments of the Corporate Debtor the total Principal amount of default payable is Rs. 32,30,71,217.76/- (Rupees Thirty Two Crores Thirty Lakhs Seventy One Thousand Two Hundred Seventeen and Seventy Six Paise Only) along with total interest amount of Rs. 15,72,26,350.93/- (Rupees Fifteen Crores Seventy Two Lakhs Twenty-Six Thousand Three Hundred Fifty and Ninety Three Paise Only) which was calculated until 17.05.2022.
- 2.3 It is further averred that the Corporate Debtor i.e, SV SVS Projects Private Limited, had failed to honor obligations under Composite Deed of Hypothecation for all Facilities dated 25.03.2014 executed between the Financial Creditor and the Corporate Debtor and the loan amount was declared as NPA as on 27.12.2018 and the copy of Deed of Hypothecation has been annexed.
- 2.4 It is averred that on 25.03.2014 the Personal Guarantee executed a Deed of Guarantee to secure the financial assistance granted by Financial Creditor to Respondent No.2 under this agreement the Personal Guarantor undertook to pay to the Financial Creditor upon demand forthwith, without demur or protest all the amounts payable by the Corporate Debtor. The copy of Deed of Guarantee on 25.03.2014 annexed along with the application and this Deed of Guarantee provides a Certificate in writing signed by an official of

the Financial Creditor shall be conclusive evidence against the Personal Guarantor and this Deed of Guarantee executed by Respondent No. 1 is irrevocable, independent, coextensive and continuing Guarantee.

- 2.5 It is averred that the respondent no.1 herein being the Personal Guarantor had failed to pay the outstanding amount and the Financial Creditor while invoking the provisions of the I & B Code,2016 had vide Form B Demand Notice Dated 31.07.2021 issued to the Personal Guarantor i.e., respondent no.1 requesting him to honor the terms of the Agreement and it is relevant to mention that the Demand Notice was issued through speed post and the receipt of the same is annexed along with Form C Application and despite receipt of Notice, the Respondent No.1 did not make the payment. Accordingly, this application is filed by the Financial Creditor under section 95 read with section 60(2) of the IBC.

3. Counter filed by the Respondent No.1:

- 3.1 This application is filed by the Financial Creditor under Section 95 of the Insolvency and Bankruptcy Code, 2016. The petitioner is pursuing the CIRP proceedings against the Respondent No.2 vide CP (IB) No. 19/7/2021, with the compliance order dated 26.04.2021 which was passed by this Tribunal admitting the petition on that date and the proceedings are still underway as on the date of filing this counter.
- 3.2 It is averred that the Deed of Guarantee executed by the Respondent No.1 on 25.03.2014, pursuant to the Sanction Letter dated

24.03.2014, and the credit facilities were revised along with the terms and conditions, to the sanction letter dated 09.04.2016. The Respondent No.1 had never given an opportunity to execute the fresh deed of guarantee nor the Respondent No.2 had entered into fresh agreements and documentation for revised limits and for revised terms and conditions and nor the same was filed with the Registrar of Companies. The Guarantee which was given on 25.03.2014, stands revoked consequent to the non-execution of any further deed of guarantee or agreements for revised terms and conditions pursuant to the Sanction letter dated 09.04.2016.

- 3.3 It is averred that the petitioner had issued a sanction letter No. AX/21/OTS/2021-22 dated 27.09.2021, directing to pay sum of Rs. 1,10,00,000/- (Rupees One Crore and Ten Lakh Only) within 2 (Two) months as the settlement amount for release of my properties and the copy of letter dated 27.09.2021 issued by the petitioner.
- 3.4 It is averred that the payment of the aforesaid amount was acknowledged by the petitioner and consequently the properties were released and it is evident from the letter dated 06.12.2021, issued by the petitioner and the letter was annexed as Annexure 2.
- 3.5 It is averred that the respondent No.1 had carried out the part of the obligations mentioned above thereby discharging my liability in the capacity of the Personal Guarantor and no amounts are due and payable to the petitioner.
- 3.6 It is averred that as per the Minutes of 5th CoC Meeting which was held on 05.05.2022, Mr. V.Ramamohan Rao the promoter of

Corporate Debtor who is also one of the Personal Guarantor submitted the Resolution Plan on 30.04.2022 and paid the earnest money deposit of Rs. 20,00,000/- (Rupees Twenty Lakhs Only) vide Ref No. CBINR52022042710008132 on 27.04.2022. the Promoter and the Personal Guarantors have together paid Rs.1,55,00,000/- (Rupees One Crore and Fifty Five Lakh Only) including the earnest money deposit. The receipt for payment of earnest money deposit, and statement of payments made to the Petitioner are annexed as Annexures 3,4 and 5.

3.7 It is averred that the 6th CoC meeting which was held on 15.07.2022 and the Resolution Applicant was advised to submit revised Resolution Plan by 31.07.2022. The one time settlement (OTS) proposal was also mover by the same Resolution Applicant on 15.07.2022 and these copies are annexed as Annexures 6 and 7.

3.8 It is averred that the 7th Meeting of CoC was held on 16.08.2022, the Resolution Plan was discussed and the decision on the same was differed and the OTS proposal was considered by CoC and decided to give time to the Corporate Debtor to pay Rs. 1,50,00,000- (Rupees One Crore and Fifty Lakh Only) as to consider and file withdrawal of CIRP proceedings under section 12A of the I &B Code, 2016 it is annexed as annexure 8.

4. Rejoinder has been filed on behalf of the Financial Creditor by denying all the claims, allegations, averments and contentions raised by the Personal Guarantor in the Counter except those that are matter of record or specifically admitted. Further financial creditor placed reliance on the

Hon'ble Apex Court in re "Lalit Kumar Jain Vs Union of India which had 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".

5. Written Submissions had been filed by the personal guarantor by reiterating the facts mentioned in the petition and has cited the case laws.
6. On presentation of this instant petition, this Adjudicating Authority on 06.06.2022 granted interim-moratorium and has appointed Shri. Murali Mohan Chevuturi, as Resolution Professional, directing him to file his report within 10 days from the date of his appointment, in terms of the Section 99 of the Code, 2016. The Resolution Professional has filed his report on 17.06.2022, recommending the admission of the Petition under Section 95 of the Code, 2016. The Resolution Professional in his report stated that the he has examined the Application filed under Section 95 of the IBC, 2016 by the financial creditor and its clear that the grounds for admission of this instant Petition are that the Personal Guarantor stood as a guarantor to the loans availed by the Corporate Debtor and Corporate Debtor failed to repay the same and since the Personal Guarantor has admitted the debt and non-existence of dispute.

7. In the light of the aforesaid factual matrix the point arises for our consideration is:

Whether an Insolvency Resolution Process can be ordered against the Personal Guarantor under Section 100 of the Insolvency and Bankruptcy Code, 2016?

8. We have heard the Learned Counsel Ms. Aishwarya Chevuturi, for the Petitioner, Learned Counsel Shri Mirza Moinullah Baig, for respondent/personal guarantor and Learned Resolution Professional Shri. Murali Mohan Chevuturi, and perused the record.
9. At the outset it may be stated that the Petitioner has initiated Corporate Insolvency Resolution Process against the Corporate Debtor i.e., SV SVS Projects Private Limited vide CP (IB) No.19/7/HDB/2021 under Section 7 of the Code, 2016 which was admitted by this Adjudicating Authority vide order dated 26.04.2021 and the instant petition is initiated against the Personal Guarantor of the Corporate Debtor.
10. The Resolution Professional has filed his report on 17.06.2022, recommending the admission of the Petition under Section 95 of the Code, 2016. The Resolution Professional in his report its clear that the grounds for admission of this instant Petition are that the Personal Guarantor stood as a guarantor to the loans availed by the Corporate

Debtor and Corporate Debtor failed to repay the same and since the Personal Guarantor has admitted the debt and non-existence of dispute.

- 11.** Hence, the instant Company Petition vide CP (IB) No. 181/95/HDB/2022 filed under the provisions of Section 95 of Code, 2016 is hereby admitted under the provisions of Section 100 of the Code, 2016 and Insolvency Resolution Process is initiated against Smt. Nukala Savithri, the Personal Guarantor, and moratorium is declared in relation to all debts, which begins from the date of admission of the instant petition and shall cease to have effect at the end of the period of 180 days, as provided under Section 101 of the Code, 2016.

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.
- 12.** The Petitioner herein, has proposed the name of Shri Murali Mohan Chevuturi, (IBBI/IPA-003/00307/2020-2021/13464) Insolvency

Professional to act as Resolution Professional, who has given his consent dated 06.06.2022 in Form-A. Hence, this Adjudicating Authority appoints: Shri Murali Mohan Chevuturi having Registration No. IBBI/IPA-003/00307/2020-2021/13464, email id: mohan.chevuturi@gmail.com Address: Flat No. 602-B, Plot No.9,6th Floor, Dream Home Vasista, Baraf Bagh Colony, Lower Tankbund Road, Hyderabad-500029.

13. The Resolution Professional is directed to cause public notice published on behalf of the Adjudicating Authority within 7 days from the date of uploading of this order on the website of NCLT, Hyderabad, inviting the 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 Personal Guarantor and Corporate 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.
14. The Resolution Professional in exercise of the powers conferred under the Section 104 shall prepare a list of creditors within 30 days from the date of the notice. The Personal Guarantor 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.

- 15.** 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 of the Code, 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 the Code.
- 16.** 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.

17. The Petitioner is directed to communicate this order to the Resolution Professional appointed in the instant Company Petition immediately.
18. The Registry is directed to furnish free copy to the parties as per Rule 50 of the NCLT Rules, 2016.

Sd/-

Charan Singh

Member Technical

Sd/-

Dr. Venkata Ramakrishna Badarinath Nandula

Member Judicial

Swapna/pavani