S.No.3

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
29-05-2023 AT **10:30 AM**

CP(IB) No.165/95/HDB/2022
u/s. 95 of Companies Act, 2013

IN THE MATTER OF:
State Bank of India **…Petitioner**

VS

Poreddy Chandrasekhar Reddy
(M/s. Servomax India Pvt Ltd) **…Respondent**

C O R A M:-
DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

O R D E R

Order pronounced. Recorded vide separate sheets. In the result, CP is admitted and Insolvency Resolution Process is ordered against Personal Guarantor. Mr.Murali Mohan Chevuturi, is appointed as Resolution Professional and moratorium is declared against Personal Guarantor subject to the conditions mentioned in the order.

Sd/- Sd/-
MEMBER (T) **MEMBER (J)**

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IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH -1

CP (IB) No. 165/95/HDB/2022

(Under Section 95 read with Section 60(2) of the Insolvency and Bankruptcy Code, 2016 readwith Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019.

In the matter of:

STATE BANK OF INDIA
(Erstwhile State Bank of Hyderabad, since merged into SBI)
SAMB Branch,
Kacheguda Station Road
No. 3-2-1, New Bus Station, 1st Floor TSRTC
Kacheguda
HYDERABAD-500027.

… Petitioner/Financial Creditor

Versus

1. Sri. Poreddy Chandrasekhar Reddy,
   S/o. Sri Papi Reddy
   H.No. 1-6-44/4,
   Plot No.14, Anupuram,
   AE Co-op Housing Society Ltd
   Kapra Municipality
   Keesara Mandal,
   Malkajgiri-Medchal District,
   Hyderabad -500062

…Respondent No.1/ Personal Guarantor

2. Servomax India Private Limited,
   Plot No.16,17 & 18,
   IDA Phase. II,
   Cherlapally,
   Hyderabad - 500051

…Respondent No.2/ Corporate Debtor

Date of Order: 29.05.2023

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)
Shri Charan Singh, Hon'ble Member (Technical)

Appearance of Parties/Counsels:

For the Petitioner:	Shri. Sarvani Desiraju, Advocate
For the RP:	Shri. Mr. Murali Mohan Chevuturi, Resolution Professional

PER: BENCH

ORDER

1. This instant petition is filed by the M/s. Stressed Assets Stabilization Fund (SASF) under Section 95(1) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") readwith 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 Sri. Poreddy Chandrasekhar Reddy, who is the Personal Guarantor of M/s. Servomax India Private Limited (In Liquidation) (hereinafter referred to as "Corporate Debtor").

2. It is to be noted that the Corporate Debtor availed financial assistance of INR 435 Crores from the Financial Creditor had sanction to the extent of 330 Crores and in order to secure the repayment of the said financial assistance, the Personal Guarantor has executed Guarantee Agreement securing repayment of the financial assistance availed by the Corporate Debtor.

3. It is averred that the Corporate Debtor i.e., Servomax India Private Limited, had failed to honour its obligations under Working Capital Consortium Agreement dated 27.11.2013 executed between the Financial Creditor and the Corporate Debtor and accordingly the Loan account of Respondent No.2 declared as NPA as on 28.08.2014.

4. It is averred that the Personal Guarantor undertook to indemnify and keep the Financial Creditor indemnified against all losses, costs, claims, damages whatsoever which the Financial Creditor may suffer , pay or incur by reason of or in connection with any such default on the part of the Respondent No.2.

5. It is averred that the Guarantee Deed also provides that a Certificate in writing signed by an official of the Financial Creditor shall be conclusive evidence against the Personal Guarantor for the amount due to the Financial Creditor and it is irrevocable, independent, coextensive and Continuing Guarantee.

6. It is averred that the Respondent No.1 herein being the Personal Guarantor, had failed to pay the outstanding amount, the Financial Creditor herein while invoking the provisions of the Insolvency and Bankruptcy Code, 2016 had vide Form B Demand Notice dated 23.12.2021 through speed post and receipt of the same annexed herewith along with the Form C Application, issued a notice to the Personal Guarantor, Shri Poreddy Chandrasekhar Reddy i.e., Respondent No.1, requesting him to honor the terms of the Agreement. Despite receipt of notice, the Respondent No.1 did not make the payment. Accordingly, the financial creditor filed this application.

7. The Petitioner attached the following documents to prove the existence of debt and amount in default: -

7.1 Sanction letter issued by the Financial Creditor dated 30.03.2013,

7.2 Board resolution of the Corporate Debtor dated 17.07.2013, 7.3 Working Capital Consortium Agreement executed between the Financial Creditor and Corporate Debtor dated 27.11.2013,

7.4 Deed of Guarantee executed between the Financial Creditor and Personal Guarantee dated 27.11.2013.

7.5 Statement of Accounts of the Financial Creditor till 28.02.2022.

8. Pursuant to this Application, this Adjudicating Authority vide order dated 13.05.2022 ordered notice to the personal guarantor and appointed an IRP Shri Murali Mohan Chevuturi, directing him to file a report within 10 days. Subsequently, Learned IRP filed his report vide CP No. 165/2022.

9. The Resolution Professional has filed his report vide CP No.165/2022, recommending the admission of the Petition under Section 95 of the Code, 2016. The Resolution Professional in his report stated that he has sent the notice & report via speed post regarding the ordering of interim- moratorium to the available addresses of the Personal Guarantor and the same was served.

10. It is further reported that with recommendations for acceptance of the application for initiating insolvency resolution process against, Shri Poreddy Chandrasekahar Reddy, Personal Guarantor to the Corporate Debtor for recovery of unpaid dues aggregating Rs 912.42 Crore. Thus RP has recommended for acceptance of the Application under Section 95 of IBC, 2016.

a) The application filed by the Financial Creditor is complete, in order and comply with the requirements of Section 95 of IBC 2016 R/w Rule 7 the Insolvency and Bankruptcy Rules, 2019.

b) The existence of debt and default are evidenced by documents filed by the Financial Creditor and the amount of default is in excess of Rs. 1,00,00,000/- (Rupees One Crore) which satisfies the provisions under section 4(1) of the IBC 2016.

c) The personal guarantor was given an opportunity to repay the amount in default and claimed by the Financial Creditor as unpaid, by serving a Demand Notice on 23.12.2021 and he failed to repay the amount within 14 days provided therefor.

d) The Resolution Professional has sought details of repayment made, if any, into the accounts of the Corporate Debtor after receipt of demand notice dated 23.12.2012, vide his letter dated 18.05.2022, in response, the personal guarantor, inter alia, pleaded his inability to repay the dues. The personal guarantor committed the default in repayment of the dues to an extent of Rs.912.42 Crore.

11. 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?

12. We have heard the Learned Counsel Shri. Sarvani Desiraju, for the Petitioner and Learned Resolution Professional Shri. Mr. Murali Mohan Chevuturi and perused the record.

13. Despite service of notice, the Personal Guarantor did not choose to contest the instant petition. Thus, the claim of the Petitioner Bank stands unrebutted.

14. We have carefully perused the record and also the report of the Resolution Professional. The Resolution Professional in his report recommended admission of this application. We found that the application is in accordance with Section 95 of the IB Code. As already stated the contention put forth by the Financial

Creditor since remain unrebutted by the Personal Guarantor, stand admitted. Hence, we are satisfied that this application deserves to be admitted.

15. Hence, the instant Company Petition vide CP (IB) No. 165/95/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 Sri. Poreddy Chandrasekhar Reddy, 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.

16. The Petitioner Bank herein, has proposed the name of Shri. Mr. Murali Mohan Chevuturi, (IBBI/IPA-003/00307/2020-2021/13464) Insolvency Professional to act as Resolution Professional, who has given his consent dated 14.03.2022 in Form-A. Hence, this Adjudicating Authority appoints:

Shri. Mr. Murali Mohan Chevuturi,
Registration No. IBBI/IPA-003/00307/2020-2021/13464,

17. 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.

18. 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.

19. 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 that 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 atleast 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.

20. 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.

21. The Petitioner is directed to communicate this order to the Resolution Professional appointed in the instant Company Petition immediately.

Sd/-	**Sd/-**
CHARAN SINGH	***DR. N.VENKATA RAMAKRISHNA BADARINATH***
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

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