S.No.7

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSCIAL (HYBRID) MODE

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
23-01-2024 AT **03:30 PM**

CP (IB) No. 27/123/HDB/2023
u/s. 123 of IBC, 2016

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

VS

Mr. M.S.P Rama Rao
(M/s. Konaseema Gas Power Limited) **…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

Orders pronounced. In the result, **this petition is allowed**, subject to the terms mentioned mentioner therein.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

Swapna

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1

CP (IB) No. 27/123/HDB/2023

Under Section 123 of Insolvency and Bankruptcy Code, 2016, read with Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019

Between

Central Bank of India,
A Banking institution established under the
Banking Companies (Acquisitions and Transfer of Undertakings)
Act, 1970, having its registered office at Chandramukhi building,
Nariman point, Mumbai and a branch inter alia called as
SAM-V Branch, Hyderabad, Telangana State represented by
its authorized signatory Senior Manager Sri Syed Kamal
S/o Late Mr. Syed Khaja Mohiuddin

…Financial Creditor/ Petitioner

Versus

1. **Shri M.S.P Rama Rao,**
   S/o. MVVS Murthi,
   R/o 6-3-251/4A, Balapur Basti,
   Erramanzil Colony, Road No.1,
   Banjara Hills, Hyderabad - 500034

…Personal Guarantor/ Respondent No.1

2. **M/s Konaseema Gas Power Limited**
   A company incorporated under the
   Provisions of the Companies Act, 1956
   Having its registered office at 6-2-913,
   2nd Floor, Progressive Towers,
   Khairatabad, Hyderabad - 500004

…Corporate Debtor/ Respondent No.2

DATE OF ORDER:23.01.2024

Coram:

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

Appearance:

For Petitioner : Smt.JVL Bharati, Counsel

PER: BENCH

ORDER

1. The Petitioner/Financial Creditor has filed this petition under Section 123 of the Insolvency and Bankruptcy Code, *2016 read with* Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019 to initiate Bankruptcy Process against the Respondent No.1, the personal guarantor of M/s Konaseema Gas Power Limited.

2. ***The averments in brief of the Petition are that;***

2.1 It is averred that the Respondent No.1 viz., MSP Rama Rao is the Personal Guarantor for the credit facilities sanctioned to the Respondent No.2 which is the Corporate Debtor.

2.2 It is averred that the Respondent No.2, namely, M/s Konaseema Gas Power Limited, had been granted, from time to time, various credit facilities, in the form of Fund based and Non-fund limits by the Petitioner/Financial Creditor herein along with other consortium member banks to set up a power plant and to meet its working capital requirements. The limits sanctioned by the petitioner Bank through its Corporate Finance Branch, Koti, Hyderabad, are in the nature of Fund based and Non-fund based limits. The Fund-based limits include Cash Credit and the Non-Fund based include Bank Guarantee Limits and Letter of Credit limits aggregating to Rs 134.84 Cr after executing necessary documents, the Corporate Debtor availed the facilities. The Respondent No.1 herein executed Deed of Guarantee guaranteeing the repayment of the said credit facilities.

2.3 It is averred that the share of the Applicant Bank in the said facilities sanctioned by the consortium banks under the leadership of IDBI Bank is Rs. 1259.00 Cr. After executing necessary documents and securities, the Corporate Debtor availed the credit facilities. The said limits were renewed during 2014, after taking into consideration the business needs of the Corporate Debtor. The Respondents herein, who are the borrower and the guarantor for the said credit facilities, executed necessary documents, thereby securing the total amount of Rs. 1259.00 Crore sanctioned by the consortium to the Corporate Debtor and further executed revival letter dated 31.12.2016.

2.4 It is averred that the Personal Guarantor, Respondent No.1 herein executed a Guarantee Agreement under which he undertook that *in the event of any default on the part of the Barrower, in payment/repayment of any moneys referred to above, or in the event of any default on the part of the Borrower to comply with or perform any of the terms, conditions and covenants contained in the loan Agreements and the other Transaction Documents, the Guarantor shall, upon demand, forthwith pay to the lenders without demur all the amounts payable by the Borrower under the loan and Transaction*

Documents. Any such demand made by the Lenders on the Guarantors shall be final, conclusive and binding notwithstanding any difference or any dispute between the Lenders and the Borrower/arbitration or other legal proceedings, pending before any court, tribunal arbitrator or any other authority.

2.5 It is averred that the guarantor further undertook to indemnify and keep the lenders indemnified against all losses, damages, costs, claims and expenses whatsoever, which the Lenders may suffer, pay or incur by reason of or in connection with any default on the part of the Corporate Debtor.

2.6 It is averred that the Corporate Debtor and the Respondent No.1 herein failed to comply with the Terms and Conditions of the Loan Documentation as a result the loan accounts became irregular and were classified as NPA as per the guidelines issued by the RBI from time to time in this regard. An amount of Rs. 300,01,06,609/- is due and payable by the Corporate Debtor to the Financial Creditor herein as on 14.12.2022 Statement of Accounts with bifurcation of Credit Facilities are enclosed to the application. After classification of accounts as NPA on 01.10.2012 the loan accounts of the Corporate Debtor were transferred to the Petitioner Branch for recovery of the dues as per the Petitioner Banks policy.

2.7 It is averred that the said Guarantee Agreement was invoked by the Bank vide its Demand Notice dated 16.02.2018. However, the Respondents failed to make the payment as demanded in the notice. The filed OA no 339/2018 on the file of the DRT-II Hyderabad on 01.06.2018 against the Corporate Debtor and the Guarantors including the Respondent No.1 for recovery of total dues amounting to Rs. 164,83,10,783.00 as on the date of the suit and it is pending.

2.8 It is averred that the Corporate Debtor was referred to this Adjudicating Authority referred by IDBI Bank Ltd under the Insolvency and Bankruptcy Code, 2016 for initiating CIRP vide CP(IB)/458/07/HDB/2018. As no resolution plan have been received and as per the resolution of the CoC, this Adjudicating Authority vide orders dated 20.02.2020 ordered for liquidation and liquidation proceedings are pending. Therefore the applicant Bank filed a company petition bearing number IB/202/2021 before this Adjudicating Authority under Section 95 of the Code on 27.07.2021 against Sri MSP Rama Rao, the Personal Guarantor of the Corporate Debtor.

2.9 It is averred that this Adjudicating Authority has appointed Mr. Madasa Kumar, IP as Resolution Professional vide orders dated 13.08.2021 and that upon filing of report by the RP under Section 99 of the Code recommending for approval of the application, this Adjudicating Authority admitted the application under Section 100 of the Code. The Resolution Professional has issued publication in News Papers and prepared the list of creditors after collating claims. The RP has filed a report under Section 106(1) of the Code as there was a necessity of summoning of a meeting of the creditors to consider the repayment plan of Rs. 70.00 lakhs submitted by the Personal Guarantor as per Section 106(2)(c) of the Code. The meeting of the creditors was held on 24.06.2022 and as per the advice of the creditors, the Personal Guarantor revised the plan amount to Rs. 117.23 lakhs which was further revised to Rs.

250.00 lakhs as per the decision of creditors in the 2nd meeting held on 20th July, 2022.

2.10 It is averred that the revised repayment plan was discussed in the meeting held on 23.08.2022 and was rejected by the creditors with share of 67.02%. An IA bearing No.979/2022 was filed before this Adjudicating Authority by the RP under Section 112(1) of the Code. This Adjudicating Authority vide orders dated 10.10.2022 rejected the repayment plan and as per the orders the Insolvency Resolution Process against the Personal Guarantor has been concluded and RP has been relieved from his duties. Further as per the instant orders, ***the creditors are at liberty to file appropriate application as per the provision of the Law.*** Hence, the creditor decided to proceed with action against the Personal Guarantor by filing application for Bankruptcy under Section 123 of IBC, 2016 and that this Company Petition is being filed within the period of 3 months from the date of the orders as per the provisions of the Code.

3 We have carefully perused the petition and satisfied that admittedly the repayment plan of the Personal Guarantor has been rejected. Therefore, we find it proper to admit this Petition and declare the personal guarantor herein, as Bankrupt.

5 In the result, **Shri Madasa Kumar**, having registration number IBBI/IPA-001/IP-P01590/2019-20/12465, address at Plot No.48, 4th Floor, Road No.4 Vaishnoi Enclave Pet Basheerbad(M), Qutubuallahpur(M), Medchal Malkajgiri District, Telangana. This Adjudicating Authority is hereby ordered to be bankrupt. **Shri Madasa Kumar**, to be appointed as bankruptcy trustee. The said Resolution Professional also has given the declaration in Part-IV of the petition. Hence, we hereby appoint **Shri Madasa Kumar**, as Bankruptcy trustee under Section 125 of the Code.

6 The Registry is directed to provide the copy of this Bankruptcy order and copy of the Bankruptcy petition to the creditors and bankruptcy trustee within a week as provided under Section 126 (2) of IBC, 2016.

7 This order of Bankruptcy shall continue to have the effect till the debtor is discharged under section 138 of IBC, 2016.

8 The bankrupt shall submit his statement of financial position to the bankruptcy trustee in the prescribed Form within seven days from the date of the order.

9 The estate of the bankrupt excluding the assets mentioned in Section 155(2) of Code R/W Rule 5 of Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtor) Rules, 2019 vest with the bankrupt trustee in pursuance of this order, the Bankruptcy trustee is directed to forthwith take into his custody all the assets, Properties, and actionable claims of the Bankrupt and take necessary steps to ensure preservation, protection security and maintenance of those properties as provided under section 128 and 154 of IBC, 2016.

10 The Bankruptcy trustee is directed to adhere to Section 128, 129 (4), 132 133, 134, 136 and 137 of IBC, 2016 and discharge his powers and duties as specified and meticulously adhere to the

Rules and Regulations issued by IBBI in this regard from time to time.

11 The Bankrupt trustee for the Adjudicating Authority shall send notices as provided under section 130(a) of IBC, 2016 within ten days from the date of this order to the creditors mentioned in statement of affairs submitted by the Bankrupt under section 129 of IBC, 2016.

12 The Public Notice inviting claims from the creditors as contemplated under section 130 (2) of the Code shall be issued in one morning, English daily and in one morning vernacular regional language newspapers having wide circulation where the bankrupt resides.

13 On passing of the Bankruptcy order but subject to sub-section (2) of 128 of the Code, shall not initiate any action against the property of the bankrupt in respect of debt and no suit or other legal proceeding shall be initiated against the bankrupt, save and except with the leave of the Adjudicating Authority as provided in section 128 (ii) of the Code.

14 The Bankrupt Trustee shall conduct the administration of distribution of estate of bankrupt under chapter V as provided in section 136 of the code.

15 The Bankrupt shall from the date of the order be subject to such disqualifications and restrictions as prescribed under section 140 and 141 of the code.

16 The Bankruptcy Trustee may seek such further information or explanation in connection with bankruptcy process as may be required from the debtor or the creditor or any other person who in the opinion of the Bankruptcy Trustee, may provide such information. The persons from whom information or explanation is sought shall furnish such information or explanation within seven days of receipt of the request.

17 The Bankruptcy Trustee shall exercise all the powers as enumerated under the Code read with Rules and Regulations made thereunder.

18 The Bankruptcy Trustee shall submit to this Adjudicating Authority and committee a preliminary report within in ninety

days from this date of Bankruptcy order after serving copy of the report on bankrupt as provided in Regulation 8 of Insolvency and Bankruptcy Board of India (Bankruptcy Process for personal Guarantors to corporate debtors) Regulation, 2019.

19 The Bankruptcy Trustee shall submit to this Authority periodical progress report within fifteen days after the end of every quarter after serving copy of the report on the bankrupt provided under Regulation 10 of Insolvency and Bankruptcy Board of India (Bankruptcy Process for personal Guarantors to corporate debtors) Regulation, 2019.

20 The fee of Bankruptcy trustee to be determined as provided under Regulation 4 of Insolvency and Bankruptcy Board of India (Bankruptcy Process for personal Guarantors to corporate debtors) Regulation, 2019.

21 The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps,

22 A certified copy of the order is to be issued upon compliance with requisite formalities.

-SD-	-SD-
Charan Singh	Dr. Venkata Ramakrishna Badarinath Nandula
Member Technical	Member Judicial

Pavani