

SL. No.3

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)

CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 27.02.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition IB/222/2022
NAME OF THE COMPANY	
NAME OF THE PETITIONER(S)	State Bank of India Stressed Assets Management Branch-II
NAME OF THE RESPONDENT(S)	Yarlagadda Madhu Mohan
UNDER SECTION	95 of IBC

ORDER

Orders pronounced, recorded vide separate sheets. In the result, this petition is allowed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, COURT - II

CP (IB) No.222/95/HDB/2022

[Under Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019]

In the matter of:

M/s.State Bank of India
State Bank of India, Stressed Asset Management Branch,
Secunderabad (4106), 5-9-76, 2nd Floor, Prabhat Towers,
Chapel Road, Gunfoundry, Hyderabad – 500 001.

...Financial Creditor

AND

1. Shri. Yarlagadda Madhu Mohan
1-8-373 & 380 & 383, Flat No 512,
Pattigadda, Krishe Gardens, Begumpet,
Hyderabad – 500003.

...Personal Guarantor/Respondent No.1

2. M/s. YKM Entertainment & Hotels Private Limited
Registered Office: H.No.6-3-883/F1, 2nd Floor,
Pothula Towers Annex, Somajiguda,
Hyderabad TG 500082 India.

...Corporate Debtor/Respondent No.2

Date of Order:27.02.2024

CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Sri Sanjay Puri, Hon'ble Member (Technical)

Counsel/Parties present:

For the Applicant : Mr. GP Yash Vardhan, Advocate
For the Respondent : Ms. Siva Praneetha, Advocate

PER: RAJEEV BHARDWAJ, MEMBER (JUDICIAL)

ORDER

1. The present Petition was filed by State Bank of India (hereinafter referred as Financial Creditor/Petitioner) for initiating the Insolvency Resolution Process against the Personal Guarantor, Shri. Yarlagadda Madhu Mohan (hereinafter referred as Personal Guarantor/Respondent No.1) of M/s.YKM Entertainment and Hotels Private Limited (hereinafter referred as Corporate Debtor/Respondent No.2) under Section 95(1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.
2. The Corporate Debtor has availed various types of financial assistance from the Financial Creditor and its Associate Banks i.e. erstwhile State Bank of Hyderabad, erstwhile State Bank of Patiala, erstwhile State Bank of Mysore, erstwhile State Bank of Travancore and erstwhile State Bank of Bikaner and Jaipur.
 - 2.1 The first loan agreement was executed between the Corporate Debtor and Financial Creditor for term loan of Rs.78.00 Crores dated 30.08.2011. The credit agreement was revised to Rs.113.70 Crores vide agreement dated 23.07.2014 and the agreement was further revised to Rs.138.70 Crores vide agreement dated 27.10.2015. (**Annexure No.11** of the Petition).
 - 2.2 Agreement of Hypothecation of Goods and Assets dated 30.08.2011, 23.07.2014 and 27.10.2015, were also executed between the Financial Creditor and Corporate Debtor. (**Annexure No.12** of the Petition).

- 2.3 Guarantee Deed was executed between the Financial Creditor and the Guarantors including R1 on 30.08.2011, 23.07.2014 and 27.10.2015. (**Annexure No.13** of the Petition).
- 2.4 The Corporate Debtor committed default in making payment of the loan amount and accordingly the loan account became Non-Performing Asset (NPA) on 29.11.2016. Therefore, the Financial Creditor issued notice under Section 13(2) of SARFAESI Act on 09.08.2018 to the Corporate Debtor and the Personal Guarantor.
- 2.5 When both the Respondents did not pay the loan amount, the Financial Creditor filed Original Application No.767 of 2018 before the Debt Recovery Tribunal, Hyderabad-II against both the Respondents for recovering an amount of Rs.184,82,88,871.00/- along with Interest. During the pendency of the said O.A, an OTS proposal was made by the Corporate Debtor, vide letter dated 02.04.2019. Subsequently, an IA No.4620 of 2019 was filed before the Debts Recovery Tribunal on 13.09.2019 to record the compromise, wherein both the Respondents have admitted the debt and agreed to pay the settlement amount as per the terms and conditions mentioned therein. Resultantly, the OA was allowed by the Debts Recovery Tribunal, Hyderabad-II, vide order dated 19.09.2019.
- 2.6 When both the Respondents made default in paying the loan amount as per the terms and conditions of the settlement, the Financial Creditor has brought this to the notice of the Corporate Debtor vide letter dated 24.01.2020 and further to the notice of the Debts Recovery Tribunal, Hyderabad-II by moving Miscellaneous Application No.61 of 2020.

- 2.7 The Corporate Debtor has also acknowledged its liability in the Financial Statements for the years 2015-2016, 2016-2017, 2018-2019, 2019-2020, 2020-2021 and 2021-2022.
- 2.8 On the failure of the Corporate Debtor to pay back the loan amount, the Financial Creditor filed Company Petition (IB)No. 206/07/HDB/2021 before the NCLT, Hyderabad against the Corporate Debtor and vide order dated 05.01.2022, this application was admitted.
- 2.9 The Financial Creditor has issued demand notice through registered post on 29.04.2022 to the Respondent No.1 after coming into force of the Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 on 01.12.2019. However, the Personal Guarantor/Respondent No.1 failed to pay the amount in default, which is Rs.271,37,80,931/- together with interest as on 26.04.2022.
3. The Personal Guarantor/Respondent No.1 by filing reply has not disputed availing of the loan facilities vide agreements dated 30.08.2011, 23.07.2014 and 27.10.2015, execution of the Guarantee Deed and other documents, declaration of the account of the Corporate Debtor as Non-Performing Asset and filing of O.A.No.767 of 2018 before the Debts Recovery Tribunal, Hyderabad-II, wherein the Financial Creditor has claimed an amount of Rs.184,82,88,871/- along with the interest.
- 3.1 It is also not denied that the Corporate Debtor issued one-time settlement offer for a sum of Rs.1,12,00,00,000/- and further filed Joint Memo Compromise dated 30.08.2019 for paying a total sum of Rs.1,12,00,00,000/- and when the Respondents failed to adhere to the settlement, the Financial

Creditor filed Miscellaneous Application No.61 of 2020 before the Debts Recovery Tribunal, Hyderabad-II.

- 3.2 About the admission of the Corporate Debtor into CIRP vide order dated 05.01.2022, the Respondent No.1 has submitted that the approval of the resolution plan was obtained in an arbitrary manner. Dr.Y.Krishna Mohan who represented the erstwhile management of the Corporate Debtor as well as the Personal Guarantor including Respondent No.1 was not entirely privy to the discussions which took place in the COC for the approval of the resolution plan. The resolution plan was then approved by this Authority without providing opportunity of participation.
- 3.3 After filing of the present petition, Dr.Y.Krishna Mohan submitted OTS proposal for Rs.80,00,00,000/- but the same was rejected on 09.12.2022. Again, the OTS proposal was revised to Rs.90,00,00,000/- on 30.01.2023, but the same was also rejected.
4. We have heard both the learned counsel for the parties and have also gone through the entire record.
5. The Financial Creditor extended the term loan of Rs.78.00 Crores on 30.08.2011, which was extended to Rs.113.70 Crores on 23.07.2014 and finally to Rs.138.70 Crores on 27.10.2015. (**Annexure No.11** of the Petition).
6. The Respondent No.1, Shri.Yarlagadda Krishna Mohan, Shri.Yarlagadda Madhu Mohan, Shri.Vasireddy Sambasiva Rao, Smt.Yarlagadda Padmavathi, YKM Projects Limited and Time Projects Private Limited stood Guarantors for the payment of the loan amount taken by Corporate

Debtor and the Guarantee Deeds were executed. (**Annexure No.13** of the Petition).

7. When default was made by the Corporate Debtor in paying the amount on 29.11.2016, the account was declared as NPA. Then the Financial Creditor approached the Debts Recovery Tribunal, Hyderabad-II against the Corporate Debtor and all the Guarantors including Respondent No.1 by filing an Original Application No. 767 of 2018 for the recovery of Rs.184,82,88,871.00. Both the parties moved Joint Memorandum of Compromise by moving an IA.No.4620 of 2019 on 13.09.2019, wherein the Corporate Debtor and the Personal Guarantor admitted the liability and agreed to pay Rs.112 Crores in instalments (**Annexure No.6** of the Petition). However, the Corporate Debtor and the Personal Guarantors did not adhere to the terms and conditions of the settlement and again default was made. The present petition has been filed on 25.07.2022. Thus, the petition is within the limitation period. On the failure of the Corporate Debtor to return the loan amount, the Financial Creditor filed Company Petition (IB)No. 206/07/HDB/2021, which was admitted vide order dated 05.01.2022 by the NCLT, Hyderabad. (**Annexure No.7** of the Petition).
8. The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract. The Guarantee Agreement provides that the guarantee is not only co-extensive but also continuous.
9. When the Respondent No.1 has admitted taking of loan and both the parties filed joint settlement memo before the Debts Recovery Tribunal, Hyderabad-II and the petition against the Corporate Debtor has already been admitted under Section 7 of IBC, we are of the considered opinion that the

application is within the period of limitation and the liability of the Respondent No.1 will be the same as that of the principal debtor.

10. The due amount was Rs.271,37,80,931/- along with interest as on 26.04.2022 when the application was filed, as per the statement of the accounts. (**Annexure No.9** of the Petition).
11. Therefore, the Respondent No.1 being jointly and severally responsible along with the Corporate Debtor to pay an amount of Rs.271,37,80,931/-.
12. The RP in his report recommended for initiation of Insolvency Resolution Process against Shri. Yarlagadda Madhu Mohan, Personal Guarantor to the YKM Entertainment and Hotels Private Limited.
13. For the reasons given above, this CP (IB) No.222/95/HDB/2022 is allowed.

FINAL ORDER

14. Therefore, by exercising powers under Section 100 of the Code, we pass the following orders:
 - i. The petition/application i.e. **CP (IB) No.222/95/HDB/2022** filed **under the provisions of Section 95 of IBC, 2016 is hereby admitted.**
 - ii. The initiation of Individual Insolvency Resolution Process shall commence from this date and shall be completed within 180 days.
 - iii. Consequently, the Insolvency Resolution Process is hereby initiated against the Personal Guarantor, Shri. Yarlagadda Madhu Mohan 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 IBC, 2016.
During the moratorium period;

- iv. Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;
- v. The creditors shall not initiate any legal action or legal proceedings in respect of any debt; and
- vi. The debtor shall not transfer, alienate, encumber or dispose of any of her assets or her legal rights or beneficial interest therein;
- vii. 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.
- viii. The Resolution Professional i.e. Mr.Raghu Babu Gunturu, having Registration No. IBBI/IPA-002/IP-N00025/2016-2017/10053 and address at EzResolve LLP, 1st Floor, Golden Heights Plot No.9, Opp. Raheja IT Mindspace HUDA Techno Enclave, Madhapur, Hyderabad – 500008, email id: raghu@ezresolve.in who was appointed vide order dated 29.07.2022 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 IBC, 2016. 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

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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.

- ix. 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 his 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.
- x. 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.
- xi. The meeting of the creditors shall be conducted in accordance with the provisions of sections 109, 110 and 111. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan

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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 IBC, 2016.

Sd/-

**(SANJAY PURI)
MEMBER (TECHNICAL)**

Sd/-

**(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)**

Apoorva