IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT– I) CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **03.08.2026** THROUGH VIDEO CONFERENCE

CORAM : HON'BLE SHRI SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF : Phoenix ARC Pvt Ltd
Vs
Shyam Prasad Thikkavarapu

MAIN PETITION NUMBER : CP(IB)/225(CHE)/2022

(IA/MA) APPLICATION NUMBERS

IA(IBC)/306(CHE)2024

ORDER

CP(IB)/225(CHE)/2022
IA(IBC)/306(CHE)2024

Present: Ms. Subathra Madhavan, Ld. Counsel for the Petitioner/ Financial Creditor.
Ms. Shalma, Ld. Counsel for the IRP.
Mr. Selvan Samuel, Ld. Counsel for the Personal Guarantor.

Vide separate order pronounced in the open Court, report of the IRP is taken on record.

Petition is admitted.

Insolvency proceedings against the Personal Guarantor i.e. Shri. Shyam Prasad Thikkavarapu are initiated.

Ms. Renuka Devi Rangaswamy is appointed as RP.

-sd-
[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)

-sd-
[SANJIV JAIN]
MEMBER (JUDICIAL)

MS

Date: 03.08.2026

IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – I, CHENNAI

CP(IB)/225(CHE)/2022

[filed under Section 95(1) of IBC, 2016 r/w Rule 7(2) of IBC Rules, 2019]

In the matter of ***Phoenix ARC Limited***

1. **Phoenix ARC Limited,**
   Trustee of Phoenix Trust FY 22-16
   3rd Floor, Dani Corporate Park,
   5th Floor, 158, CST Road, Kalina, Santacruz,
   Mumbai-400 098.

. . . Petitioner / Financial Creditor

Vs.

1. **Shyam Prasad Tikkavarapu,**
   Old No. 41/1, New No. 26, Kanni Koil Street,
   Dr. Ranga Road, Abhiramapuram,
   Chennai – 600 004

. . . Respondent / Personal Guarantor

Present:

For Petitioner : *E. Om Prakash, Senior Advocate*
Vijay R Sekar, Advocate

For Respondent : *Kumarpal Chopra , Advocate*
Chiron Singhi, Advocate
P.C. Harikumar, Advocate

Along with

IA(IBC)/306/(CHE)/2024
IN
CP(IB)/225(CHE)/2022

[filed under Section 99(1) of IBC, 2016 r/w Section 99(7) of the Code]

In the matter of ***Personal Guarantor Shyam Prasad Tikkavarapu***

1. Mr. V. Murali,
IBBI Reg. No. IBBI/IPA-001/IP-P-02403/2021-2022/13658
Interim Resolution Professional for Shri. Shyam Prasad Thikkarvarapu
No. 23/11, Ground Floor, Bhasha Street,
Choolaimedu,
Chennai – 600 094

. . . Applicant / Interim Resolution Professional

Present:

For Applicant : Jayanthi K Shah, Advocate

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Order Pronounced on 03rd August, 2026

ORDER

(Heard through Hybrid Mode)

1. This petition under Section 95(1) of IBC r/w Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Process for Personal Guarantors to Corporate Debtors) Rules, 2019 has been filed by Phoenix ARC Limited for initiating insolvency resolution process against Shyam Prasad Tikkavarapu in respect of debt of Rs. 35,11,64,864/- and amount in default as Rs. 19,43,35,289/-. The date of default as specified in Part – III of the petition is 13.11.2021. This petition has been filed on 06.08.2022.

2. **Part – I** of the petition sets out the details of the Financial Creditor / Assignee Phoenix ARC Limited, acting in capacity as trustee of Phoenix Trust FY 22-16. It was incorporated on 02.05.1994. Its registered office is situated at Dani Corporate Park, 5th Floor, 158, CST Road, Kalina, Santacruz, Mumbai – 400098. **Part – II** of the petition sets out the details of the Personal Guarantor Shyam Prasad Tikkavarapu. His address is No. A4 / 16, Green Acres, Justice Veera Swamy Road, Perungudi, Chennai 600 096. He had given guarantee in respect of the loan facilities availed by the Corporate Debtors i.e. Virgo Realtors Private Limited (Borrower) and Virgo Properties Private Limited (Co Borrower). **Part – III** sets out the amount of total debt as Rs. 35,11,64,864/-, amount in default as Rs. 19,43,35,289/-, date on which the debt became due as 15.08.2021 and date on which the default occurred as 13.11.2021. It also contains the list of documents attached with the petition. In **Part – IV** of the petition, Petitioner has not proposed any name of the IRP to conduct the insolvency proceedings against the Respondent / Personal Guarantor.

3. The case of the Petitioner is that L&T Housing Finance Limited sanctioned a term loan of Rs. 107,00,00,000/- vide sanction letter dated

15.06.2017 to the Corporate Debtors (Virgo Realtors Private Limited, Borrower & Virgo Properties Private Limited, Co-Borrower). They executed the loan documents including loan agreement dated 23.06.2017. The loan was assigned by L&T Housing Finance Limited to L&T Finance Limited vide assignment deed dated 29.03.2019. Later, L&T Housing Finance Limited merged with L&T Finance Limited under a scheme of merger and amalgamation through an order dated 19.03.2021. L&T Finance Limited thereafter assigned the loan to Phoenix ARC Private Limited vide assignment agreement dated 29.03.2022.

4. The loan was granted for the following construction projects:

i. *Tranquil Square by M/s. Virgo Realtors Private Limited (Corporate Debtor) located at Kovilambakkam, Chennai admeasuring 126.50 Cents comprised in various survey Nos. situate at Kovilambakkam Village, Sholinganallur Taluk, Kancheepuram District.*

ii. Bounty Acres by M/s. Virgo Properties Private Limited (Co-Borrower) located at Kovilambakkam, Chennai admeasuring 353 Cents situate at Periyar Salai, Indrajit Nagar, Kovilambakkam, Chennai.

Rs. 44,70,34,770/- were disbursed to the Corporate Debtor Virgo Realtors Private Limited and Rs. 56,85,98,913/- were disbursed to Virgo

Properties Private Limited. Both Borrower and Co-Borrower were made jointly and severally liable towards the repayment of entire loan and not just the amount disbursed to them as all the disbursements were made under the loan agreement dated 23.06.2017. The details of disbursement to both the Corporate Debtors are as under.

Corporate Debtor (Virgo Realtors Private Limited):

Date	Amount (Rs.)
30-Jun-2017	30,21,70,512.00
30-Jun-2017	25,72,500.00
30-Jun-2017	77,15,000.00
30-Jun-2017	2,500.00
10-Aug-2017	2,75,39,488.00
16-Oct-2017	2,00,00,000.00
31-Jan-2018	2,00,00,000.00
27-Apr-2018	2,00,00,000.00
13-Aug-2018	2,00,00,000.00
26-Jun-2019	1,00,00,000.00
28-Sep-2019	82,05,423.00
26-Mar-2020	31,29,347.00
31-Mar-2021	57,00,000.00
Total	44,70,34,770.00

Co-Borrower (Virgo Properties Private Limited):

Date	Amount (Rs.)
30-Jun-2017	46,57,76,286.00
30-Jun-2017	30,45,000.00
30-Jun-2017	6,56,250.00
30-Jun-2017	91,35,000.00
10-Aug-2017	4,13,87,464.00
16-Oct-2017	2,50,00,000.00
31-Jan-2018	1,30,00,000.00

28-Sep-2019	81,40,495.00
26-Mar-2020	24,58,418.00
Total	56,85,98,913.00

5. As a security towards repayment of the loan, the Corporate Debtors created charge in favour of the Financial Creditor, of the lands and buildings by deed of hypothecation dated 23.06.2017 including receivables on the entire project and under the documents entered into with the customers by the Corporate Debtors and all insurance proceeds present and future. The Financial Creditor / Assignee would have exclusive charge on the escrow account and DSRA, all monies credited / deposited therein and all investments in respect thereof. The loan was guaranteed by the Guarantors B.V.V. Prasad, T. Shyam Prasad and T. Radhika who had given unconditional and irrevocable personal guarantee dated 23.06.2017 guaranteeing repayment of the loan together with such charges and interest till actual realization. The Guarantors had also given their net worth certificate as on 31.03.2017.

6. It is alleged that despite reminders and demand notices issued to the Borrowers and their Directors, the Borrowers and the Directors did not make the repayment. The Financial Creditor L&T Finance vide letter

dated 17.09.2021 invoked the personal guarantee in relation to overdue amounts alleging that the Borrowers have neglected and failed to remit the overdue amounts including interest aggregating to Rs. 6,15,05,408/- as on 16.09.2021 and called upon them to remit the overdue amounts within seven days from the date of notice i.e. on or before 25.09.2021. The Financial Creditor also invoked the arbitration against the Corporate Debtors and their Directors.

7. Since the Guarantors despite invocation of guarantee, failed to repay the loan / overdue amounts, the Financial Creditor issued Form B notice under Rule 7(1) dated 19.11.2021 i.e. demand notice in respect of unpaid debt claiming the amount of debt in default being Rs. 11,30,14,212.78 and the date on which the default occurred being 14.11.2021.

8. Form B notice was responded by the Personal Guarantor vide reply dated 29.11.2021 alleging that the notice is against the provision of Section 185 of the Companies Act, 2013. Both the Corporate Debtors are the independent and distinct entities registered under the Companies Act. They had passed separate Board Resolutions for availing the loan facilities but the Financial Creditor entered into one loan agreement dated 23.06.2017 for Rs. 107.0 Crores. Further, Section 185 prohibits the

Companies to give cross guarantee or borrow loan over and above the limit prescribed in the Board Resolution. Any amount due under the facility agreement or loan agreement shall not be construed as a debt within the meaning of Section 3(11) of IBC. Thus, there is no obligation or liability to pay any amount under the void agreement or contract. He denied his liability and alleged that letter for invocation of personal guarantee is highly premature. It is stated that any amount due under the mortgage deed is only a debt and it shall not be construed as a financial debt within the meaning of Section 5(8) of IBC. It is alleged that a deed of cancellation of mortgage was signed whereby Financial Creditor agreed to discharge the mortgage. Hence, the Personal Guarantee to the Corporate Debtors shall not be enforceable in view of Section 133 off the Indian Contract Act. Further, arbitral proceedings are pending. It is alleged that without the written consent, the Financial Creditor sold the property to Kauvery Hospital for Rs. 60.0 Crores which is worth of Rs. 120.0 Crores.

9. The Petitioner has filed the report generated by NeSL on defaults committed by the Corporate Debtors / Borrowers. It has also filed the statement of escrow account of both the Corporate Debtors for the

period from 01.02.2022 till 07.03.2022. It is stated that the loan was assigned vide assignment agreement entered between L&T Finance Limited and Phoenix ARC Private Limited on 29.03.2022. The Petitioner also responded to the notice dated 12.04.2022 sent by the Corporate Debtor stating that the Borrowers have joint and several liability to repay the loan under the loan agreement to the fullest extent irrespective of the project being developed by any of them. It is stated that as on 16.02.2022, a sum of Rs. 34,82,46,286.36 is due and payable by the Borrowers / Corporate Debtors.

10. On this petition, Shri. V. Murali was appointed as IRP vide an order dated 20.12.2023 to give his report under Section 99 of IBC. He filed the report through an application IA/306/2024. It is stated that the Financial Creditor had issued Form B notice on 11.02.2022. **The notice under the SARFAESI Act was issued to the Borrowers and Guarantors on 19.02.2022 which was replied by the Guarantor on 22.02.2022**. After examining the records and communicating with the parties, he submitted the report recommending for initiation of insolvency proceedings against the Personal Guarantor.

11. The Petitioner also filed a memo vide Sr. No. 1564 dated 07.04.2026 stating that the Company Phoenix ARC Private Limited has been converted into a Public Limited Company and its name has been changed to Phoenix ARC Limited vide certificate of incorporation dated 19.02.2026.

12. On getting notice of the petition and the report of the IRP, the Respondent / Guarantor filed the reply / counter wherein he denied the averments made in the petition and the report. It is stated that any financial dealings including loans borrowed by Virgo Realtors Private Limited do not encumber the Respondent. No guarantee / cross guarantee or any security was extended by him to Virgo Realtors Private Limited. He stated on the lines of the reply to the notice and stated that the personal guarantee serving as the basis for initiating the proceedings under Section 95 of IBC lacks requisite witness signatures which is a direct violation of Section 10 of the Indian Contract Act. He has already taken steps by seeking judicial intervention to determine the guarantee in O.S. No. 1614 of 2022 before the Assistant Judge, City Civil Court, Chennai seeking a declaration that the alleged personal guarantee is null and void. It is stated that Virgo Properties Private

Limited, of which the Applicant was the Director had borrowed loan from L&T Housing Finance Limited. Without the consent of the Corporate Debtor or the Guarantor, L&T Housing Finance Limited assigned the financial debt to L&T Finance Limited. It is stated that assignment is invalid and inoperative due to non-adherence of mandatory provisions of Section 28(2) of the Registration Act (as amended by Tamil Nadu Act). In accordance with Section 17(b) of the Registration Act, 1908, the transaction involving transfer of financial debt require formal registration of the assignment deed. Reference is made of the case *Veena Textiles Limited Vs. The Authorised Officer, 2014 (5) CTC 209 DB* where it was held that assignment deed not registered in accordance with the specified requirements is deemed void.

13. It is stated that since the first assignment deed is void, subsequent assignment would also become void. Further, second assignment deed was not presented for registration. It is stated that there is pending arbitration with regard to the validity of the loan agreement in which the Corporate Debtor has filed the counter claim.

14. It is alleged that the Corporate Debtor Virgo Properties Private Limited has not defaulted in repayment of loan. The original lender unilaterally

transferred the funds from the escrow account of Virgo Realtors to Virgo Properties without obtaining its consent. The transfer was purportedly guaranteed on the basis of the company's asset valuation being sufficient to cover the debt obligations to repay the loan. Such unilateral transfer renders the loan unenforceable and not in confirmatory with the applicable laws.

15. It is stated that L&T Finance Limited has already made recoveries against the debts. Virgo Realtors at the time of borrowing had mortgaged two properties which were sold after obtaining NOC. Following the NOC, Virgo Realtors executed a discharge deed / receipt before the Sub-Registrar. It is stated that as per the terms of the sale agreement with Shri Kauvery Medical Care Private Limited, the Purchaser was required to pay Rs. 60.0 Crore to L&T Housing Finance Limited. This payment was completed on 01.07.2021. L&T Finance also confirmed the receipt of Rs. 60.0 Crore on the same date. The Respondent / Personal Guarantor had issued notice to L&T Finance seeking production of statement of accounts for the loan account No. 6240063869 belonging to Virgo Properties which was not provided. It is alleged that guarantee is rendered void due to substantial variation in

the terms of the contract without the consent of the Respondent which is in dispute before the City Civil Court as well as the Arbitrator.

16. It is alleged that the debt is not a qualifying debt but an excluded debt.

17. The Petitioner filed the Rejoinder wherein it denied the averments made in the reply / objection. It is stated that the Personal Guarantor has executed the deed of guarantee dated 23.06.2017 explicitly representing both the Borrower and Co-Borrower while acting as the Director of Virgo Properties in favour of L&T Housing Finance Limited which was merged with L&T Finance Limited and subsequently its rights and obligations were assigned to the Petitioner. Section 185 of the Companies Act, 2013 pertains to the loans to the Directors and related entities. The present case involves the liabilities incurred by the Respondent in his personal capacity as the Guarantor for the loans extended. The proposal dated 15.06.2017 clearly indicates that Respondent willfully acted as a Guarantor for both the Borrower and Co-Borrower when availing the loans. He signed for both the entities expressing his intention to act as a Guarantor for the above loan. No Board Resolution is required for an individual to provide a guarantee.

18. It is stated that pursuant to legal notice dated 17.09.2021, the Respondent filed civil suit before the City Civil Court seeking declaration that the deed of personal guarantee dated 23.06.2017 is null and void. After the assignment, the Civil Court allowed the substitution on the 'no objection' given by the Respondent / Plaintiff in the civil suit. The assignment deed has been registered vide document No. 6701 of 2023. It is stated that L&T Housing Finance Limited merged with L&T Finance Limited through a scheme of merger sanctioned on 19.03.2021. Clause 17.4 of the loan agreement provides the lender an authority to assign its rights and benefits to another party without prior intimation to the Borrower. L&T Finance assigned the secured asset vide assignment deed dated 29.03.2022 which was presented for registration after remitting the entire stamp duty and the registration charges. It is stated that Clause 5(a) of the personal guarantee executed by the Respondent entitled the Petitioner to proceed against the Guarantor such like the Respondent notwithstanding any difference or dispute between the lender and the Borrower including arbitration pending before any Court or Tribunal. Rule 7(1) notice by L&T Finance Limited to the Borrower and Guarantor establishes the

initial communication of obligations and details. The Guarantor obligations to the assignee are continuous and unaffected by the need for additional procedural notifications.

19. The Personal Guarantor also filed an application IA/1088/2025 seeking permission to place additional documents, details mentioned in the application (Document 1 to 28). The application was opposed by the Petitioner stating that this application has been filed at belated stage without showing any due diligence or sufficient cause for non-filing earlier. The Respondent / Guarantor has not denied his signature on the deed of personal guarantee and as such admitted the execution of the document and now cannot question its validity on baseless grounds. The liability of the Guarantor is co-extensive with the Borrower as provided under Section 128 of the Indian Contract Act.

20. On this application, report was called from the IRP whether the documents were shown and considered by the IRP while submitting his report under Section 99. The erstwhile IRP without offering any comments withdrew from the proceedings. Later vide proceedings dated 08.12.2025, it was submitted by the Counsel appearing for the IRP that the above documents were considered by the IRP in his report

under Section 99 of IBC. The application was accordingly allowed vide an order dated 08.12.2025.

21. We have heard Ld. Counsels for the parties and perused the documents and the report of the IRP.

22. A perusal of the pleadings and the documents would show that the Corporate Debtors Virgo Realtors Private Limited (Borrower) and Virgo Properties Private Limited (Co-Borrower) had availed the credit facilities for a sum of Rs. 107.0 Crores from the L&T Housing Finance Limited and executed the loan agreement dated 23.06.2017. Out of the sanctioned amount, Rs. 44,70,34,770/- were disbursed to Virgo Realtors Private Limited and Rs. 56,85,98,313/- were disbursed to Virgo Properties Private Limited. This loan was availed to repay the facilities taken from JM Financials and for financing the balance construction cost and DSRA. As per Clause 2.18 of the loan agreement, the liability of the Borrower and Co-Borrower is joint and several to the fullest liability or obligation towards the lender. As per Clause 10.2, the Borrower shall open and maintain an escrow account for depositing all the project receivables from the project with the lender. The Borrower also agreed that a debt service reserve equivalent to three months

interest shall be created upfront in such form and manner as applicable to the lender in the form of fixed deposit with the Bank. If the Borrower fails to adhere to the terms, the same shall be constitute as an event of default. The lender shall have option to recall the credit facilities and the Borrower shall also ensure deduction of TDS in respect to payment of TDS to the Government Authorities. Clause 17.4 of the agreement provides for assignment which is extracted as under:

> *(a) Any Lender(s) may without prior intimation to the Borrower, enter into any kind of risk participation or take out arrangement or transfer or assign or novate or securitize all or any part of its loan (or any part thereof) and/or any of its rights and benefits hereunder and under the other Transaction Documents to another bank or financial institution or any other Person in India at any time in accordance with the provisions herein ("New Lender(s)") and in such manner and on such terms as the Lender(s) may decide and while so transferring, assigning or securitizing, the Lender(s) may reserve to it a right to proceed against the Borrower on behalf of the purchaser, assignee or transferee. Whilst the Lender(s) may exercise the aforesaid right, the Lender(s) shall be under no obligation to do so. The Borrower shall take such action as may be necessary (including providing the necessary information and executing the relevant documents) to perfect such risk participation arrangement, assignment, transfer, novation, or securitization.*

23. The loan agreement was signed by the Managing Director of both the Corporate Debtors. The loan was guaranteed by three persons namely Mr. T. Shyam Prasad, Mrs. T. Radhika and Mr. B.V.V. Prasad

(Guarantors) which was for the project Bounty Acres executed by Virgo Properties Private Limited and Tanquil Square executed by Virgo Realtors Private Limited. The loan was carrying an interest @14.75% per annum payable monthly. Tenor is also mentioned in the loan agreement. The loan agreement also contains repayment schedule reproduced as under:

SCHEDULE IV
REPAYMENT SCHEDULE

Principal Moratorium for Project Bounty Acres developed by Virgo Properties Private Limited shall be for a period of 36 months after the date of first disbursement of the Loan and for Project Tranquil Square developed by Virgo Realtors Private Limited shall be for a period of 66 months from the date of first disbursement (**"Moratorium Period"**).

Sr No.	Principal Instalments - Facility 1 Project – Bounty Acres	Principal Instalments - Facility 2 Project – Tranquil Squre.
1	2,41,66,667	1,36,11,111
2	2,41,66,667	1,36,11,111
3	2,41,66,667	1,36,11,111
4	2,41,66,667	1,36,11,111
5	2,41,66,667	1,36,11,111
6	2,41,66,667	1,36,11,111
7	2,41,66,667	1,36,11,111
8	2,41,66,667	1,36,11,111
9	2,41,66,667	1,36,11,111
10	2,41,66,667	1,36,11,111
11	2,41,66,667	1,36,11,111
12	2,41,66,667	1,36,11,111
13	2,41,66,667	1,36,11,111
14	2,41,66,667	1,36,11,111
15	2,41,66,667	1,36,11,111
16	2,41,66,667	1,36,11,111
17	2,41,66,667	1,36,11,111
18	2,41,66,667	1,36,11,111
19	2,41,66,667	1,36,11,111
20	2,41,66,667	1,36,11,111
21	2,41,66,667	1,36,11,111
22	2,41,66,667	1,36,11,111
23	2,41,66,667	1,36,11,111
24	2,41,66,667	1,36,11,111
25	--	1,36,11,111
26	--	1,36,11,111

Virgo Properties Private Limited	Virgo Realtors Private Limited	L & T Housing Finance

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27	--	1,36,11,111
28	--	1,36,11,111
29	--	1,36,11,111
30	--	1,36,11,111
31	--	1,36,11,111
32	--	1,36,11,111
33	--	1,36,11,111
34	--	1,36,11,111
35	--	1,36,11,111
36	--	1,36,11,111
Total	58,00,00,000	49,00,00,000

24. Record shows that L&T Housing Finance Limited assigned the loan to L&T Finance Limited vide assignment deed dated 29.03.2019. In addition to the assignment, a scheme of merger and amalgamation was submitted with the NCLT Kolkata whereby L&T Housing Finance Limited merged with L&T Finance Limited vide an order dated 19.03.2021 and the entire financial assets of L&T Housing Finance Limited vested absolutely in L&T Finance Limited. Considering the merger, we are of the view that the assignment in favour of L&T Finance Limited would not require any registration.

25. The correspondences would show that the Corporate Debtors did not adhere to the repayment schedule and committed defaults in repayment of the debts. This is also proved from the record of default with information utility submitted by L&T Finance Limited.

26. Record shows that L&T Finance Limited assigned the debt to Phoenix ARC Private Limited vide assignment deed dated 29.03.2022 who was

acting in a capacity as trustee of Phoenix Trust FY 22-16. As per the assignment agreement, it is having all the rights, title and interest which was vested with the L&T Finance Private Limited against the Corporate Debtors and it is thus entitled to pursue, continue / initiate any legal action against the Corporate Debtors to recover the financial debt legally owed to it. Section 5(7) of IBC defines Financial Creditor which includes a person to whom such debt has been legally assigned or transferred. Section 5(4) of SARFAESI Act, 2022 also provides that assignee can continue and prosecute any proceeding. Since Phoenix ARC Limited is the trustee of Phoenix Trust so as per Clause 2.1.1 of the registered assignment agreement, it could hold the loan interest for the benefit of the holder of the security receipts. The Petitioner has also filed the registration of the assignment deed in its favour vide document No. 6701 of 2023.

27. The Petitioner has filed the deed of personal guarantee executed by the Respondent Shyam Prasad Tikkavarapu in favour of the Financial Creditor as regards repayment of the loan amount as per the loan agreement dated 23.06.2017 and the net worth certificate in the name of the Guarantor as document Annexure II(4) and Annexure II(5) which

clearly find mention the name of borrowers, loan amount, rate of interest, details of term sheet and date of loan agreement. At the time of signing the deed of personal guarantee, the Respondent / Guarantor did not raise any objection that he did not have any association with Virgo Realtors Private Limited directly or indirectly. The deed of personal guarantee clearly shows that the guarantee was given for the loan which was disbursed to the Corporate Debtors Virgo Realtors Private Limited and Virgo Properties Private Limited. He even did not raise objection that the Corporate Debtors are independent and distant entities and had passed separate Board Resolutions for availing the financial facilities. We do not agree with the contention of the Respondent that the said facility shall not be construed as debt and there is no obligation of the Corporate Debtors or the Guarantors to make the repayment. The terms and conditions of the loan agreement clearly show that it is a financial debt as defined under Section 5(8) of IBC.

28. As per Clauses of the deed of personal guarantee, the Guarantor has guaranteed as primary obligor to unconditionally and irrevocably pay on demand from time to time by the lender all sums payable by the

Borrowers to the lender under the loan documents including the principal amount together with interest. In the event of default, on the part of the Borrowers, the lender is entitled to proceed against the Guarantor even without exhausting the available remedies against the Borrowers. The lender shall be at liberty to vary, alter or modify the terms and conditions of the loan agreement and of the security created. The Guarantor has agreed to give consent to the sale or mortgage of the property / assets by the Borrowers from time to time. The guarantee is irrevocable and the obligation of the Guarantor is not conditional on receipt of any prior notice by the Guarantor or the Borrowers. Clause 20 clearly provides that the liability of the Guarantor shall not be affected by merger or amalgamation and it will be a continuing guarantee. The liability of the Guarantor is co-extensive with the Corporate Debtors. That being the position, the guarantee against the Personal Guarantor shall be enforceable and pendency of the arbitral proceedings would not have any effect on the initiation of the insolvency proceedings against the personal guarantor in the event of default.

29. As regards the contention that the deed of personal guarantee does not bear the signature of the witness, considering the fact that the Respondent has not disputed of having executed the deed of personal guarantee in favour of the Financial Creditor, the deed of personal guarantee not bearing the signature of the witness would only be a irregularity which would not carry much significance. There is no stay from the Civil Court on the initiation of insolvency proceedings. The guarantee and the loan agreement do not provide that the consent from the Guarantor has to be taken before assignment of any debt by the Financial Creditor in favour of assignee. In this case, registration has already taken place. Stamp duty has been paid, so the Petitioner has complied with the requirements as provided under the Registration Act and Indian Stamp Act. Section 185 of the Companies Act pertains to the loans to the Directors and related parties but the present case involves the liabilities incurred by the Respondent in his personal capacity as Guarantor for the loans extended. The Respondent signed the agreement for both the entities expressing his intention to act as a Guarantor for the above loan for which no Board Resolution is required.

30. In the present case, the Petitioner had issued the SARFAESI notice and invoked the deed of personal guarantee. Form B notice was issued. The petition has been filed within limitation. Since there was a default by the Corporate Debtors, by virtue of the deed of personal guarantee and the loan agreement, the Respondent / Guarantor is liable to repay the loan with the Corporate Debtors. It has been settled by Hon'ble NCLAT that SARFAESI notice issued under Section 13(2) shall constitute invocation of deed of personal guarantee.

31. It is relevant to mention that all these contentions raised by the Respondent have been dealt in detail in the order dated 31.07.2026 passed in CP(IB)/71(CHE)/2022 and CP(IB)/28(CHE)/2022 in relation to the Corporate Debtors Virgo Realtors Private Limited and Virgo Properties Private Limited. Reiteration of the same would be the repetition. In the order dated 31.07.2026 at para 41, the reference was made of the memo of clarifications pursuant to the order dated 07.07.2026 on 16.07.2026 on the two accounts of the Corporate Debtors and closing of the account of Virgo Realtors Private Limited after adjustments. It was observed that the loan account of Virgo Properties Private Limited was assigned to Phoenix ARC Private Limited. As per

the loan agreement, the liability of Virgo Realtors Private Limited and Virgo Properties Private Limited are joint and several. As per the deed of personal guarantee, the petitions against both the Corporate Debtors as well as the Personal Guarantors are maintainable until the loan is fully discharged. Para 42 to 45 of the order also find reference of the clarificatory memo dated 23.07.2026 where clarifications about debit and credit entries were given which included adjustment of receipts against sales of properties and transfer of amount of Rs. 2,37,17,410/- etc.,. It was held in the case of *State Bank of India Vs. Saksaria Sugar Mills (1986) 2 SCC 145* that as per Section 128 of the Indian Contract Act, the cause of action for the creditor commences on the date of default of the principal borrower and the Creditor in furtherance to the joint and several liability cast upon the Guarantor is free to proceed against the principal guarantor or both i.e. once the default occurs, the creditor has right to elect.

32. It is also to be noted that Virgo Properties had given OTS letter dated 07.12.2023 to the Petitioner has offering one time settlement of Rs. 3.5 Crores as full and final of the entire claim which was rejected by the Petitioner vide letter dated 19.12.2023. It was followed by a letter given

by Virgo Properties Private Limited on 08.03.2024 offering a one time settlement of Rs. 3.60 Crores towards full and final settlement of the entire loan accounts. This offer letter was also rejected by the Petitioner vide letter dated 24.04.2024. Again a letter was given by T. Shyam Prasad, who was the Managing Director of Virgo Properties bearing the seal of the Virgo Properties Private Limited which is an unconditional OTS proposal offering settlement amount of Rs. 3.60 Crores which offer was also rejected by the Petitioner vide letter dated 22.07.2024. As per the terms of the deed of personal guarantee, OTS given by the Corporate Debtors binds the Guarantors. The liability of the Guarantor being co-extensive with the Principal Borrower under Section 128 of the Contract Act, triggers the moment the Principal Borrower commits default in paying the debt. This is a legal fiction. Such liability of the Guarantor flows from the deed of personal guarantee unless it expressly provides to the contrary.

33. Looking into the OTS proposals and the third proposal being unconditional and unequivocal, and considering the facts in totality, we are of the view that the Corporate Debtors and the Guarantors including the Respondent owe a debt towards the Petitioner which is

more than Rs. 1.0 Crore. There was a default in repayment of the debt. This petition has been filed within limitation. The IRP in his report has also recommended for insolvency proceedings against the Personal Guarantor / Respondent .

34. In the light of the above discussions, **we admit the petition filed under Section 95 of IBC to initiate insolvency proceedings against Personal Guarantor Shyam Prasad Tikkavarapu**.

35. In the instant case, Mr. V. Murali with Reg. No. IBBI/IPA-001/IP-P02403/2021-2022/13658 was appointed as the IRP. Since in the petitions against the Corporate Debtors and the Personal Guarantor Boppudi Vemana Vara Prasad, we have appointed Ms. Renuka Devi Rangaswamy as the IRP / RP, **we appoint Ms. Renuka Devi Rangaswamy with Reg. No. IBBI/IPA-001/IP-P01862/2019-2020/12871 having AFA valid till 30.06.2027, (Email ID: jrassociatesbe@gmail.com) as the RP**.

36. We hereby direct as follows;

I. Initiate Insolvency Resolution Process against the Respondent/Personal Guarantor. The moratoriums in relation to all the debts is declared, from today i.e. date of admission of the application, and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on the repayment plan under Section 114 whichever is earlier as provided under Sec 101 of 1BC, 2016. During the moratorium period,

a. Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed, and
b. The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and

c. The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his 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.

II. The Resolution Professional viz. **Ms. Renuka Devi Rangaswamy,** Insolvency Resolution Professional is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Chennai Bench, inviting claims from all Creditors, within 21 days of such issue The notice under Sub Section (1) of Section 102(2) shall include: -

a. details of the order admitting the application;

b. particulars of the resolution professional with whom the claims are to be registered; and

c. the last date for submission of claims.

III. The publication of notice shall be made in two newspapers, one in English and other in Vernacular, which have wide circulation in the State where the Corporate Debtor and Personal Guarantor reside. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.

IV. The Resolution Professional, in exercise of the powers conferred under Section 104, shall prepare a list of creditors on the basis of:

a. the information disclosed in the application filed by the debtor under Sections 94 or 95 as the case may be, and

b. claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice. The debtor shall prepare a repayment plan under Section 105, in consultation with the Resolution Professional, containing a proposal to the Creditors for restructuring of her debts or affairs.

The repayment plan may authorize or require the Resolution Professional to:

a. carry on the debtor, business or trade on his behalf or in his name; or

b. realise the assets of the debtor; or

c. administers or dispose of any funds of the debtor.

The repayment plan shall include the following, namely;

a. justification for preparation of such repayment plan and reasons based on which the creditors may agree upon the plan;

b. provision for payment of fee to the Resolution Professional;

c. such other matters as may be specified.

V. The Resolution Professional shall submit the repayment plan along with her report on the plan to this Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106.

VI. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, she shall record the reasons thereof. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, she shall specify the details as provided under Section 106(3) of IBC, 2016. The date of meeting should not be less than 14 days or more than 28 days from the date of submission of the Report under subsection (1) of Section 106 of IBC, 2016, 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 IBC, 2016.

VII. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of IBC, 2016 and submit the same to this Tribunal, copies of which shall be provided to the Debtor 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.

VIII. The Resolution Professional shall submit her periodic reports before this Tribunal, every 30 days.

IX. The Petitioner is directed to deposit Rs.3,00,000/- (Rupees Three Lakhs only) to the bank account of the Resolution Professional within one week of this order, towards her fees and expenses. This shall be subjected to the rules and regulations under the provisions of the Insolvency and Bankruptcy Code, 2016.

X. The Registry is directed to communicate to the concerned parties a copy of order within seven working days and upload the same on the website immediately after the pronouncement of order.

37. Accordingly, **IA(IBC)/306(CHE)/2024** is taken on record and is **disposed of**. The petition **CP(IB)/225(CHE)/2022** stands **admitted.**

Sd/-	**Sd/-**
VENKATARAMAN SUBRAMANIAM	**SANJIV JAIN**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)