

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
03-12-2024 AT 10:30 AM**

**CP(IB) 312/95/HDB/2021
AND
IA (IBC) 1827/2024 in CP(IB) 312/95/HDB/2021
u/s. 95 of IBC, 2016**

IN THE MATTER OF:

State Bank of India

...Petitioner

AND

M. LaxmiNarayan Reddy &
Vishwa Infrastructures and Services 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

IA (IBC) 1827/2024

Orders pronounced. In the result, **this bankruptcy application is allowed**, subject to the terms and conditions mentioned therein.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - I**

**IA.NO. 1827 OF 2024
IN
CP (IB) NO. 312/95/HDB/2021**

***Under Section 121 of IBC, 2016 read with Rule 7 of the Insolvency and
Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process
for Personal Guarantors to Corporate Debtor) Rules, 2019***

**IN THE MATTER OF MR. M. LAXMI NARAYANA REDDY, PERSONAL
GUARANTOR OF M/S. VISHWA INFRASTRUCTURES AND SERVICES
PRIVATE LIMITED**

BETWEEN

State Bank of India,
A banking institution established under the
State Bank of India Act, 1955 having its Corporate Office
At State Bank Bhavan, Madam Cama Road, Nariman Point
Mumbai, Maharashtra – 400 021, and branches across
India and abroad, one branch, inter-alia, at D.No.3-4-1013/A,
1st Floor, Commuter Amenity Center (CAC),
TSRTC Bus Station, Kachiguda, Hyderabad – 500 027
Called as SAMB II, Represented by its
Assistant General Manager Mr.T.Veerabhadra Rao

...Applicant /Financial Creditor

AND

1. Mr. M. Laxmi Narayana Reddy
H.No. 8-2-293/82/NL/110, New MLA's and MP's Colony,
Road No.10C, Jubilee Hills, Shaikpet,
Hyderabad – 500 033
Also at:
H.No.9, Venkat Reddy Colony, Sikh Village,
Secunderabad – 500 009.

... Respondent No.1/ Personal Guarantor

2. M/s. Vishwa Infrastructures and Services Private Limited
Door No. 1-11-256/C/24, Plot No.24,
Gagan Vihar Colony, Begumpet, Hyderabad – 500 016.
...Respondent No.2 /Corporate Debtor

DATE OF ORDER: 03.12.2024

Coram:

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

Appearance:

For Applicant : Mr. VVSN Raju, Counsel

PER BENCH

1. The applicant/Financial Creditor has filed this application under Section 121 of Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtor) Rules, 2019 to initiate Bankruptcy Process against Respondent, the Personal Guarantor of M/s. Vishwa Infrastructures and Services Private Limited.
2. The facts of the case, briefly, as stated in the Application are that the Respondent No.2/ Corporate Debtor had availed various credit facilities

in the form of cash credit and bank guarantee facilities. In order to secure the repayment of the Financial Assistance the Personal Guarantor executed Guarantee Agreements dated 28.10.2008, 24.11.2009, 29.11.2010, 18.01.2012, 29.07.2013 and 27.06.2014 securing the repayment of the Financial Assistance availed by the Corporate Debtor.

3. It is averred that despite restructuring under the CDR mechanism there was no turn around in the operations of the Corporate Debtor as result the debt restructuring also failed and it was declared as Non-Performing Asset (NPA) on 01.10.2013 with a retrospective date on the failure of the CDR mechanism. The Financial Creditor issued legal notice on 17.07.2018 to the Respondents recalling the credit facilities. The Financial Creditor also initiated action under the SARFAESI Act by issuing a notice on 17.05.2018 to the Corporate Debtor as well as the Personal Guarantor under Section 13(2) of the SARFAESI Act demanding payment of the outstanding dues within the time period mentioned in the notice. However, the Respondents neglected and failed to pay the amount. Therefore, the Financial Creditor continued the action and filed OA.No. 559 of 2018 before the Debt Recovery Tribunal – I at Hyderabad.

4. This Adjudicating Authority admitted the Respondent No.2/ Corporate Debtor into Corporate Insolvency Resolution Process ('CIRP') vide CP (IB) No. 329/7/HDB/2018 vide an order dated 31.08.2018. Thereafter the Respondent No.2/Corporate Debtor was admitted to Liquidation Process vide order dated 14.06.2019 and subsequently sold as going concern.
5. It is averred that the Respondent No.1/Personal Guarantor along with other guarantors vide their letter dated 21.10.2019 requested the Bank to release the collateral security provided by them, against payment of market value of the properties. The Bank considered their request and accordingly released the property after receiving the value of such properties.
6. As the Personal Guarantor failed to comply with the terms of the Form-B demand notice dated 02.08.2021 the Creditor filed the CP(IB) No. 312/95/HDB/2021 in terms of Section 95 of Insolvency and Bankruptcy Code, 2016. This Tribunal vide the order dated 13.05.2022 admitted the same and also appointed Mr. Kiran Kumar Mannikawar, as Resolution Professional with a direction to file report within 10 days from the date of

the order.

7. As per the report filed by the Resolution Professional, despite opportunity the Personal Guarantor failed to implement repayment plan, the Resolution Professional filed IA.No. 1015/2023 seeking closure of the Personal Insolvency Resolution Proceedings against the Personal Guarantor. Accordingly, this Tribunal having gone through the record allowed IA.No. 1015/2023 and discharged the Resolution Professional and leave granted to the creditor to file bankruptcy application. In the above backdrop, the Creditor had filed the present application for bankruptcy against the guarantor.

8. Therefore, the point that emerges for consideration is:

Whether the Applicant/Creditor is entitled to proceed against the Respondent/Guarantor for bankruptcy?

9. We have heard Learned Counsel Mr. VVSN Raju for the Applicant/Creditor. Perused the record.

10. At the outset we wish to state that, indisputedly the resolution process initiated against the Respondent/Guarantor in terms of Section 95 of Insolvency and Bankruptcy Code, 2016 has failed since the Personal

Guarantor despite sufficient opportunity failed to implement the repayment plan.

11. In terms of Section 121 of Insolvency and Bankruptcy Code, 2016 which is as below: -

“Section 121: Application for bankruptcy.

121. (1) An application for bankruptcy of a debtor may be made, by a creditor individually or jointly with other creditors or by a debtor, to the Adjudicating Authority in the following circumstances, namely;-

(a) where an order has been passed by an Adjudicating Authority under sub-section 4 of section 100; or

(b) where an order has been passed by an Adjudicating Authority under sub-section 2 of section 115; or

(c) where an order has been passed by an Adjudicating Authority under sub-section 3 of section 118.

(2) An application for bankruptcy shall be filed within a period of three months of the date of the order passed by the Adjudicating Authority under the sections referred to in sub-section (1).

(3) Where the debtor is a firm, the application under sub-section (1) may be filed by any of its partners.”

an application for bankruptcy by the Creditor against the Personal Guarantor shall be filed within a period of 3 months of the date of order passed by the Adjudicating Authority under Section referred in sub section (1) of Section 121 of Insolvency and Bankruptcy Code, 2016. As already stated, this Tribunal passed an order under sub section (1)(a) of

Section 121 of Insolvency and Bankruptcy Code, 2016 on 29.05.2024 vide the order in IA.No. 1015/2023. The present application since filed on 28.08.2024 is within the 3 months period prescribed as above.

12. In terms of Section 123 of Insolvency and Bankruptcy Code, 2016 which is as below:

“Section 123: Application by creditor.

123. (1) The application for bankruptcy by the creditor shall be accompanied by—

(a) the records of insolvency resolution process undertaken under Chapter III;

(b) a copy of the order passed by the Adjudicating Authority under Chapter III permitting the creditor to apply for bankruptcy;

(c) details of the debts owed by the debtor to the creditor as on the date of the application for bankruptcy; and

(d) such other information as may be prescribed.

(2) An application under sub-section (1) made in respect of a debt which is secured, shall be accompanied with—

(a) a statement by the creditor having the right to enforce the security that he shall, in the event of a bankruptcy order being made, give up his security for the benefit of all the creditors of the bankrupt; or

(b) a statement by the creditor stating—

(i) that the application for bankruptcy is only in respect of the unsecured part of the debt; and

(ii) an estimated value of the unsecured part of the debt.

(3) If a secured creditor makes an application for bankruptcy and submits a statement under clause (b) of sub-section (2), the secured and unsecured parts of the debt shall be treated as separate debts.

(4) The creditor may propose an insolvency professional as the bankruptcy trustee in the application for bankruptcy.

(5) An application for bankruptcy under sub-section (1), in case of a deceased debtor, may be filed against his legal representatives.

(6) The application for bankruptcy shall be in such form and manner and accompanied by such fee as may be prescribed.

(7) An application for bankruptcy by the creditor shall not be withdrawn without the permission of the Adjudicating Authority.”

an application for bankruptcy by the Creditor shall be accompanied by the records of the insolvency resolution process under chapter III and also the order passed by the Adjudicating Authority under chapter III permitting the Creditor for apply to bankruptcy. We found that the above requirements stand complied as the application is accompanied by the record of Personal Insolvency Resolution Process undertaken under chapter III against the Personal Guarantor and also the order granting leave to the Creditor to apply bankruptcy. Creditor also proposed the name of Insolvency Professional to act as Bankruptcy Trustee.

13. Therefore, having carefully examined the application and found that the same is accordance with Section 121 and 123 of Insolvency and

Bankruptcy Code, 2016. As such this Adjudicating Authority hereby declares the personal guarantor/ Mr. M.Laxmi Narayana Reddy to be bankrupt and pass the following order: -

ORDER

- (1) Mr. Medi Yadaiah, an insolvency professional, having registration number IBBI/IPA-002/IP-N01039/2020-2021/13334, # 8-16-30/2 Sowbhagya Nagar Colony, SBH Venture 3, LB Nagar, Hyderabad, Near Madhavi Kirana General Store, Ranga Reddy, Telangana-500074, Mobile No. 9491877921, Email: yadmedi[at]gmail[dot]com is hereby appointed as bankruptcy trustee under Section 125 of the Code. His AFA is valid till 30.06.2025. The said Resolution Professional is hereby directed to file his consent in FORM A within three days from the date of receipt of this order.
- (2) 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.
- (3) This order of Bankruptcy shall continue to have the effect till the debtor is discharged under section 138 of IBC, 2016.

- (4) 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.
- (5) 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.
- (6) 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.
- (7) The Bankrupt trustee 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.

- (8) The Public Notice inviting claims from the creditors as contemplated under section 130 (2) of the Code shall be issued in English daily and in one vernacular regional language newspapers having wide circulation where the bankrupt resides.
- (9) 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.
- (10) The Bankrupt Trustee shall conduct the administration of distribution of estate of bankrupt under chapter V as provided in section 136 of the code.
- (11) 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.
- (12) 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.

- (13) The Bankruptcy Trustee shall exercise all the powers as enumerated under the Code read with Rules and Regulations made thereunder.
- (14) 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.
- (15) 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.

- (16) 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.
- (17) The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsels for information and for taking necessary steps.
- (18) A certified copy of the order is to be issued upon compliance with requisite formalities.

Sd/-

Charan Singh
Member Technical

Sd/-

Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

Sridher