

S.No.8

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1  
VC AND PHYSICAL (HYBRID) MODE  
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
02-12-2024 AT 10:30 AM**

**C.P. (IB)/35(HYD)2022  
AND  
IA(IBC) 2276/2024 in C.P. (IB)/35(HYD)2022  
u/s. 95 of IBC, 2016**

**IN THE MATTER OF:**

Indian Overseas Bank

...Petitioner

**AND**

Mr. K.S.Chowdry & RCM Infrastructure Ltd

...Respondent

**C O R A M:-**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)  
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

**IA(IBC) 2276/2024**

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  
COURT No.1, HYDERABAD**

**IA No.2276 of 2024 in  
CP (IB) No.35/95/HDB/2022**

*Under Section 123 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*

**In the matter between:**

**Indian Overseas Bank,**  
Asset Recovery Management Branch,  
3<sup>rd</sup> Floor, IOB Platinum Plaza,  
Chikadpally, Hyderabad- 500 020.

**.. Petitioner  
Financial Creditor**

**AND**

- 1. K.S.Chowdry,**  
S/o. K.Venkateswara Rao,  
Major, Occ: Business,  
R/o. 501, Lake Melody Apartments,  
Somajiguda, Hyderabad- 500 004.

**..Personal Guarantor**

**Date of order: 02.12.2024**

**Coram:**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA  
HON'BLE MEMBER (JUDICIAL)**

**and**

**Mr. CHARAN SINGH  
HON'BLE MEMBER (TECHNICAL)**

**Parties / counsels present:**

For the Applicant : Mr. Alluri Krishnam Raju, Counsel

**ORDER**

1. This is an application filed by the Applicant/Financial Creditor, under Section 123 of IBC Read with Rule 7 of the I&B (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to corporate debtor) Rules, 2019 to initiate Bankruptcy Process against the personal guarantor to the corporate debtor i.e M/s.RCM Infrastructure Ltd.
2. Brief facts of the case:
  - 2.1 The Respondent i.e K.S.Chowdry stood as a guarantor for the credit limits sanctioned by the Applicant to the corporate debtor i.e M/s.RCM Infrastructure Ltd vide guarantee agreement dated 18.11.2023 and guarantee deed dated 11.04.2014.
  - 2.2 It is averred that Guarantor to the corporate debtor agreed to pay the amount forthwith on demand and their guarantee is joint and several and they are liable to pay the amount in the event of default committed by the said borrower.

2.3 Since there was default, Applicant Bank initiated proceedings under SARFEASI Act, 2002 and filed an application before Hon'ble DRT-II Hyderabad u/9 of Recovery of Debts against the Borrower (corporate debtor) and Personal Guarantors vide O.A No.247/2019 and the said OA was allowed by the DRT vide order dated 09.03.2020.

2.4 Thereafter, Applicant bank issued Demand notice dated 24.12.2021 in Form B of IBC, 2016 for payment of the amount defaulted, but despite of receipt of notice amount defaulted has not been paid within 14 days, which leads to file an Application bearing C.P(IB)No.35/95/HDB/2022 under Section 95 of IBC, 2016 before this Adjudicating Authority, seeking initiation of Insolvency Process against the personal guarantor.

2.5 Subsequently, this Adjudicating Authority, vide order dated 09.02.2022 passed an interim moratorium and appointed RP under Section 97(5) of the code and thereafter directed the RP to file his report under Section 99 of the Code. Consequently, RP filed his report and recommended to admit the petition filed by the financial creditor.

2.6 Pursuant to the report filed by the RP there are grounds for admission since there was no payment from the personal guarantor and debt is also registered in the Information Utility which clearly established the existence of debt. Thus Tribunal at the behest of the report of the Resolution Professional, on 04.09.2023 Admitted the petition filed by the creditor.

2.7 Meanwhile, IA No.538/2024 was filed by the Resolution Professional seeking extension of moratorium period by 60 days contending that personal guarantor had submitted repayment plan by way of OTS and the same is under consideration by the Banker. Having considering the facts this Adjudicating Authority extended time by 60 days and directed the Resolution professional to conclude the process within the time period. Further one more Application i.e IA no.935/2024 was filed by the Resolution professional seeking one more extension for further 60 days contending that creditors in the 4<sup>th</sup> meeting held on 24.04.2024, decided to give final opportunity to the personal guarantor to submit the repayment plan failing which creditor will file bankruptcy proceedings. Hence, this Adjudicating Authority,

once again extended time with a direction to the RP to conclude the process within time period.

- 2.8 Despite availing sufficient opportunity, personal guarantor has not submitted the repayment plan. Hence this Tribunal vide order dated 29.07.2024 in IA no.1465/2024 passed the following order:

*“Despite sufficient opportunity and due compliance, the Personal Guarantor has not submitted any re-payment plan. The same is recorded. The Resolution Professional is discharged. Liberty is given to the Financial Creditor to take further steps as per law. The payment of fee and expenses if any outstanding to the Resolution Professional shall be paid within 7 days from the date of this order and for compliance, call on 13.08.2024”.*

- 2.9 Thus, the Creditor decided to proceed with action against the Personal Guarantor by filing the present Application and this Application for initiation of bankruptcy process against personal guarantor was filed on 29.10.2024, which is well within the period of limitation as per the provisions of the Code.

3. In the light of the contest as afore stated, the Point that emerges for our consideration is;

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

4. We have heard learned Counsel for the Applicant Mr.Alluri Krishnam Raju, for the creditor. Perused the record.

5. At the outset we wish to state that, in disputedly 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 did not submit any repayment plan.
6. 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 29.07.2024 vide the order in IA.No. 1465/2024. The present application since filed on 29.10.2024 is within the 3 months period prescribed as above.

7. 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 stands 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.

8. 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 we hereby pass the following order.

**ORDER**

- (1) Shri Rajesh Chillale, having registration number IBBI/IPA-001/IP-P00699/2017-18/11226, #R/o B-725, Western Plaza, OU Colony, HS Darga, Manikonda, Hyderabad, Telangana, 500008, is hereby appointed as bankruptcy trustee under Section 125 of the Code. The said Resolution Professional also has given the declaration in Part-IV of the petition. His AFA is valid till 31.12.2025.
- (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

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