

**NATIONAL COMPANY LAW TRIBUNAL
BENCH-1, HYDERABAD**

CP (IB) No. 400/95 of IBC/HDB/2020

*Petition under Section 95 of IBC, 2016, R/w Rule 7(2) of I & B
(Application to Adjudicating Authority for Insolvency Process for
Personal Guarantors to Corporate Debtor) Rules, 2019*

In the matter of

State Bank of India
Stressed Assets Management Branch
Red Cross Building
32, Montieth Road, Egmore
Chennai – 600 008

....Petitioner

VERSUS

1. Mr. Badri Kasturi
Camelot, Plot No.2
3rd Floor, Central Avenue
Kesavaperu Malpuram, RA Puram
Chennai - 600028

...Respondent No.1/
Personal Guarantor



M/s PPS Enviro Power Private Limited
97/A, Road No.18, Phase-1, IDA
Jeedimetla, Hyderabad – 500055

...Respondent No.2/
Corporate Debtor

Date of order: 31.03.2022

Coram:

Dr. N. Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)
Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:

For the Petitioner:
For Respondent:

Shri G.P. Yashvardhan, Advocate
Shri R.S. Sravan Kumar, Advocate

PER: BENCH

ORDER

1. This petition is filed by the **State Bank of India** (Financial Creditor) under Section 95 of Insolvency of Bankruptcy Code, 2016 (herein after referred as Code) read with Rule 7 (2) of the Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 (herein after referred to as **Personal Guarantors Insolvency Rules, 2019**), seeking an order for initiation of the Insolvency Resolution Process (“IR Process”) against **Shri Badri Kasturi** who is the **Personal Guarantor** of **PPS Enviro Power Private Limited/ Respondent.1** herein.
2. The gist apropos to the case of the Petitioner is that the following credit facilities amounting to Rs. 225.94 crores were availed by the Corporate Debtor i.e. **PPS Enviro Power Private Limited** from time to time from the Financial Creditor/SBI and its associate Banks i.e. erstwhile State Bank of Travancore.



Loan	Amount (in Rs/crores)
Term Loan (SBH)	8.78
Term Loan (SBT)	35.00
Term Loan-I (SBI)	34.18
Term Loan-II (SBI)	30.38
Cash credit (SBH)	15.00
Cash Credit (SBI)	30.00
Corporate Loan (SBH)	3.00
Corporate Loan (SBT)	4.00
Letter of Credit (SBH)	30.00
TOTAL	225.94

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3. It is stated that the Corporate Debtor is the Principal Borrower and Personal Guarantor, stood as guarantors in order to secure the repayment of the financial assistance availed by the Corporate Debtor. The outstanding debt as on 06.12.2017 is Rs. 237,84,44,380.77 together with interest at contract rate and other costs. The Corporate Debtor in order to avail the financial assistance has executed various loan documents and the Guarantors of the Corporate Debtor in order to secure the repayment of the financial assistance availed by the Corporate Debtor, has executed Guarantee Agreements in favour of financial Creditor.

4. The Financial Creditor annexed the following documents to prove the existence of debt and amount in default:-

- (a) Copy of Sanction Letters – Annexure-8 (colly)
- (b) Copy of Agreement of loan for overall limit dated 27.03.2010 and copy of supplemental Agreement of loan for increase in overall limit - Annexure-9 (colly).
- (c) Copy of Agreement of loan for overall limit dated 21.05.2010 – Annexure-10
- (d) Copy of Term Loan Agreement for high value advances dated 12.10.2010 – Annexure -11.
- (e) Copy of Agreement of Loan for overall limit dated 19.09.2013- Annexure-12.
- (f) Copy of working capital consortium agreement dated 19.09.2013 and 26.09.2014 - Annexure-13 (colly).
- (g) Copy of Term Loan Agreement dated 24.02.2016- Annexure -14.
- (h) Copy of Deed of Guarantee for overall limit dated 27.03.2010 and copy of Supplemental Deed of guarantee for increase in overall Limit – Annexure-15 colly.



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- (i) Copy of Deed of Guarantee for overall limit dated 21.05.2010 – Annexure-16.
 - (j) Copy of Deed of Guarantee for Term Loan dated 12.10.2010.- Annexure-17
 - (k) Copy of Deed of Guarantee for overall limit dated 19.09.2013 – Annexure -18.
 - (k) Copy of Deed of Guarantee for overall limit dated 27.03.2015 – Annexure-19.
 - (l) Copy of Revival Letters – Annexure -21 (colly).
5. The accounts of the Corporate Debtor were classified as Non-Performing Asset (NPA) on 26.12.2015. A recall notice dated 11.10.2017 was issued to the Personal Guarantor and other parties recalling and demanding payment of outstanding amounts mentioned therein within 7 days of receipt of the notice, which has been served on the Personal Guarantor on 15.10.2017 demanding payment of outstanding amounts by 21.10.2017. As such the date of default of the Personal Guarantor is 22.10.2017.
6. The Financial Creditor has exercised its rights and remedies against the Corporate Debtor under SARFAESI Act, 2002 vide OA No. 41 of 2018 before the Debt Recovery Tribunal-1, Chennai for recovery of the outstanding amounts from Corporate Debtor and Guarantors.



Later, the Financial Creditor also filed a company petition before this Tribunal under Section 7 of the Code to initiate CIRP against the Corporate Debtor vide CP (IB) No. 407/7/HDB/2018. The petition was admitted by this Tribunal on 13.08.2019.

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8. Pursuant to framing of I & B (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 which came into effect from 01.12.2019, permitting the Financial Creditor to institute insolvency resolution process against personal guarantors, the Financial Creditor had issued demand notice dated 23.09.2020 through registered post on 26.09.2020 on the Personal Guarantor i.e. Mr. Badri Kasturi demanding payment of the amount in default, but the postal cover was returned on 07.10.2020 as unclaimed, after making two attempts to deliver the same by the postal department which according to the Petitioner has been done intentionally. It is further stated that, as per the terms and conditions under the Guarantee Agreements, the personal guarantor has agreed that any notice despatched by the Financial Creditor by registered post to the address of the Personal Guarantor shall be deemed to have been duly served on the personal guarantor, four days after the date of posting thereof.
9. On presentation of the petition, this Tribunal on 28.07.2021 granted interim-moratorium and has appointed Shri Krishnasamy Vasudevan as Interim Resolution Professional, directing him to file his report within 10 days of his appointment, in terms of Section 99 of the Code. The IRP vide his memo dated 06.08.2021 has detailed therein the reasons for not filing his report within 10 days and informed that he would be filing the same by 15.08.2021. Accordingly, he has filed his report on 15.08.2021, recommending the admission of the petition filed under Section 95 of the Code. The grounds for admission of the petition recorded in the report are that, the Personal Guarantor failed to respond to the notices



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sent to the mail id of the Personal Guarantor as well as through speed post acknowledgement due, demanding repayment of debt as claimed by the Financial Creditor. It is further stated that, out of the two letters sent, the one sent to the address of the Corporate Debtor was delivered and the other letter sent to address of Personal Guarantor was returned with endorsement "door locked" after making two attempts to deliver by the postal department. The IRP further stated in his report that, since the Personal Guarantor has not responded to the Demand Notice served by SBI, it is presumed that Personal Guarantor has admitted to the debt and non-existence of dispute. To substantiate the contention of the IRP, the IRP has filed details of the debt registered with the Information Utility.

10. In the light of the aforesaid factual matrix the point that arises for our consideration is,
- Whether Corporate Insolvency Resolution Process can be ordered against respondent no.1/ Personal Guarantor?



We have heard the learned counsel Shri G.P. Yash Vardahan for the Financial Creditor and Shri R.S. Sravan Kumar, learned counsel for the respondent and perused the material on record

At the outset it may be stated that the Financial Creditor has initiated Corporate Insolvency Resolution Process against respondent no.2 in CP IB No.407 of 2018 which has been admitted by the Adjudicating Authority vide order dated 13.08.2019. The present petition is filed against respondent no.1, who is Personal Guarantor to the Corporate Debtor. Despite service of notice and opportunity afforded, respondent no.1 did not choose to contest

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the matter. Thus, the claim of the applicant as against respondent no.1 stands unrebutted.

13. It has been stated that respondent no.2 is now under liquidation as resolution failed. The report of the Resolution Professional discloses that respondent no.1 has neither made any request for holding negotiations with the creditor for arriving at repayment plan nor any repayment plan has been submitted. Therefore, under the circumstances, the liability of respondent no.1 herein being coextensive with that of respondent no.2 and as the debt which has been guaranteed by respondent no.1 since defaulted, the prayer of the applicant to order Corporate Insolvency Resolution Process against respondent no.1, since finds merit, the same is hereby allowed.

14. The Financial Creditor/Petitioner herein has proposed the name of Shri Krishnasamy Vasudevan, (IBBI/IPA-001/IP-P00155/2017-18/10324) Insolvency Professional to act as Resolution Professional, who has given his consent in Form-A. However, it is observed from the IBBI website that his Authorization for Assignment (AFA) has expired. Hence, the Tribunal appoints Shri P.V.B. Sudhakar Rao, having IBBI Registration No. IBBI/IPA-002/IP-N00795/2019-2020/12547, email id: pasalasudhakar3@gmail.com from the panel of Insolvency Professionals available in IBBI Website. He shall file his consent along with AFA within two days of receipt of the copy of this order.



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- (1) The petition i.e. **CP (IB) No. 400/95 of IBC/HDB/2020** filed under the provisions of **Section 95 of IBC, 2016** is hereby **admitted**.
- (2) Consequently, the Insolvency Resolution Process is hereby initiated against the Personal Guarantor **Shri Badri Kasturi** 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;
 - (a) Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;
 - (b) The creditors shall not initiate any legal action or legal proceedings in respect of any debt; and
 - (c) the debtor shall not transfer, alienate, encumber or dispose of any of her assets or her 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.
- (2) The Resolution Professional 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



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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 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.

(3) The Resolution Professional in exercise of the powers conferred under 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 her 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.



(4) 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

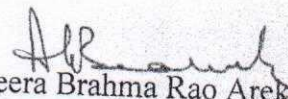
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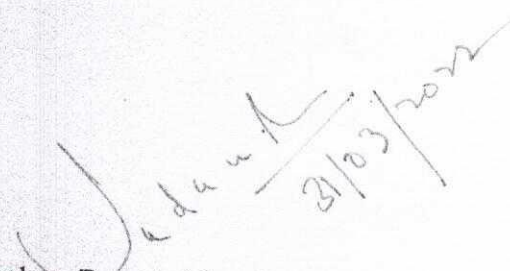
than fourteen days or more than 28 days from the date of submission of the Report under Sub-Section (1) of Section 106, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107.

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



- (6) The Financial Creditor is directed to communicate this order to the Resolution Professional appointed in this case immediately.


(Veera Brahma Rao Arekapudi)
Member (Technical)


(Dr. N. Venkata Ramakrishna Badarinath)
Member (Judicial)

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OF THE ORIGINAL**


Deputy Registrar / Assistant Registrar / Court Officer
National Company Law Tribunal, Hyderabad Bench

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CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER CP (IB) No. 400/95/HDB/2021
निर्णय का तारीख
DATE OF JUDGEMENT 31/3/22
प्रति तैयार किया गया तारीख
COPY MADE READY ON 8/4/22