

S.No.6

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
17-01-2024 AT 10:30 AM**

CP (IB) No. 109/121/HDB/2023
u/s. 121 of IBC, 2016

IN THE MATTER OF:

State Bank of India

...Petitioner

VS

Mr. T V Subbaiah

...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

Orders pronounced. In the result, this **petition is allowed**, subject to the terms mentioned in the order.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

CP(IB) NO. 109/121/HDB/2023

***Petition filed under Rule 7 of I&B (Application to Adjudicating Authority for
Bankruptcy Process for Personal Guarantors to Corporate Debtor) Rules,
2019***

**IN THE MATTER OF T.V.SUBBAIAH (PERSONAL GUARANTOR TO
CHADALAVADA INFRATECH LIMITED)**

BETWEEN

State Bank of India
Stressed Asset Management Branch
D. No. 5-9-76, 2nd floor,
Prabhat Towers, Chappel Road,
Opp. SBI Amaravathi LHO,
Gunfoundry, Abids,
Hyderabad-500 001

...Petitioner/
Financial Creditor

AND

T.V.Subbaiah,
S/o. Kotaiah,
H.No.8-3-988/19, SBH Colony,
Srinagar Colony,
Hyderabad – 500 073.

...Respondent/
Personal Guarantor

Date of order: 17.01.2024

Coram:

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

Appearance:

For Petitioner: Shri Alluri Krishnam Raju, Advocate

**PER BENCH
ORDER**

1. The Petitioner/Financial Creditor has filed this petition under 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 **CHADALAVADA INFRATECH LIMITED**.
2. The facts of the case, briefly, as stated in the Petition are that the Respondent provided personal guarantee in respect of the loans availed by the Corporate Debtor i.e. Chadalavada Infratech limited from the Petitioner Bank and also furnished immovable properties as collateral security for those credit limits availed by the Corporate Debtor. The Respondent i.e. Ch T.V.Subbaiah stood as a guarantor initially for an amount of Rs. 7.00 Crores vide guarantee agreement dated 15.02.2006 for all the credit limits then sanctioned by the Applicant to the Corporate Debtor. Subsequently, when limits were enhanced/modified to the

Corporate Debtor, the Respondent executed supplemental deed of guarantee and also joined as a party to restructuring package agreement detailed hereunder:

- i) Guarantee Agreement dated 15.02.2006 for Rs. 7,00,00,000/-
- ii) Supplemental deed of guarantee dated 02.12.2006 for Rs. 15.40 Crores
- iii) Supplemental deed of guarantee dated 13.10.2007 for Rs. 32.00 Crores
- iv) Supplemental deed of guarantee dated 18.05.2009 for Rs. 180.00 Crores
- v) Supplemental deed of guarantee dated 20.10.2010 for Rs. 243.00 Crores
- vi) Supplemental deed of guarantee dated 24.05.2014 for Rs.157.27 Crores
- vii) Restructuring Package Agreement dated 03.02.2016 for Rs. 281.23 Crores
- viii) Supplemental deed of guarantee dated 24.02.2016 for Rs. 281.23 Crores

3. As per clause 8 of the Guarantee Agreement, the guarantee given by him in relation to the loans granted to the Corporate Debtor is a continuing one and it was agreed by the Guarantor/Respondent to pay the amount forthwith on demand in the event of default committed by the said borrower.
4. It was further agreed vide Clause 11 of the guarantee agreement that the guarantee provided by the Respondent shall be irrevocable and enforceable against the guarantors notwithstanding any dispute between the Bank and the borrower. The Respondent also agreed that any admission or acknowledgment in writing signed by the borrower of the liability or otherwise in relation to the credit facilities and or any part payment made by the borrower or any judgment, award or order obtained by the bank against the borrower shall be binding on the guarantors.
5. It is stated that the Petitioner Bank initiated action against the borrower Chadalavada Infratech Ltd and the guarantors/mortgagors under SARFEASI Act, 2002 vide demand notice dated 26.09.2017 and that the Petitioner took measures u/s 13(4) of SARFEASI Act, 2002 by issuing

possession notices dated 18.01.2018, 31.01.2018 and 01.02.2018 in relation to the secured assets detailed therein. The Petitioner also filed an application registered as OA No. 539/2019, before the Hon'ble DRT-II Hyderabad u/s 19 of Recovery of Debts and Bankruptcy Act, 1993 against the Borrower (Corporate Debtor) and Personal Guarantors to recover the debt from the Corporate Debtor and the Personal Guarantors including the Respondent herein, who gave personal guarantee in respect of the amounts due and payable by the Corporate Debtor, and the same is pending before the Hon'ble DRT.

6. The Applicant Bank issued a demand notice dated 21.10.2021 in Form B of IBC, 2016. However, the Respondent failed to pay the amount to the Petitioner within 14 (Fourteen) days. It is further stated that the cause of action to file this petition arose on 15.02.2006 and on subsequent dates when supplemental deed of guarantees including supplemental deed of guarantee dated 24.02.2016 were executed as detailed in Para No. 2 supra and also when he joined in the capacity of guarantor as party to restructuring package agreement dated 03.02.2016 and on 26.09.2017 when the demand was made on the Respondent to pay the amounts due

and liable in the loan accounts of Corporate Debtor and on 23.09.2021 when the Corporate Debtor was admitted for CIRP under IBC, 2016 and on 21.10.2021 when the demand notice in Form B was issued by the Applicant to the Respondent

7. It is averred that the Applicant Bank issued a demand notice dated 26.09.2017 calling upon the Respondent u/s 13(2) to pay the amount within 60 days. Since, the Hon'ble Supreme Court vide orders dated 08.03.2021, 23.09.2021 and 10.01.2022 in Suo Moto Writ Petition (Civil) No. 3 of 2020 suspended the period of limitation. As such, the present application is within the period of three years from the date of first demand made on the Respondent to pay the amount within 60 days and he committed the default thereon. Hence, the Applicant states that the Application is within the period of limitation as provided under law.
8. As the Personal Guarantor failed to pay the amount claimed to be in default, the Financial Creditor filed an Application under Section 95 of the Code bearing **C.P.(IB)No.132/95/HDB/2022**, seeking initiation of Insolvency Resolution Process against the Personal Guarantor. This

Tribunal vide Order dated 21.06.2022 passed interim moratorium and appointed Resolution Professional under Section 97(5) of the Code with a direction to submit his report under Section 99 of the Code. Subsequently, at the behest of the report of the Resolution Professional, this Tribunal on 12.09.2022 admitted the Application filed by the Financial Creditor.

9. Pursuant thereto, the Resolution Professional filed his report vide IA No. 853/2022 stating that he has not received any Repayment Plan from the Personal Guarantor. As such this Tribunal vide order dated 10.10.2022 passed the following order.

” In view of the report the insolvency resolution process against the personal guarantor is concluded and RP is relieved from this duties. the creditors are at liberty to file appropriate application as per the provisions of the law”

10. Thus, the Creditor/petitioner decided to proceed with action against the Personal Guarantor by filing the present petition and this Petition has been filed within the period of 03 months from the date of the orders as per the provisions of the Code.

11. The record reveals that despite granting sufficient opportunity the Respondent/Personal Guarantor failed to appear before this Tribunal and as such was set *ex-parte* vide this Tribunal order dated 23.06.2023.
12. We have carefully perused the petition and satisfied that since no repayment plan is received from the Personal Guarantor, we find it proper to admit this Petition and declare the personal guarantor herein, as Bankrupt.
13. In the result, this Adjudicating Authority hereby declares the personal guarantor/ Mr. T.V. Subbaiah to be bankrupt and pass the following order:-

ORDER

- (1) Shri Maligi Madhusudhan Reddy, having registration number IBBI/IPA-001/IP-00843/2017-18/11427, #R/o M.M.R Lion Corp, 4th Floor, HSR Eden, Road No.2, Banjara Hills, Hyderabad – 500034, 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 29.10.2024.

- (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

Binnu