

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

IA No.587 of 2023

IN

CP IB No.127/95/HDB/2022

Application filed under Section 114 of IBC 2023

IN THE MATTER OF

**STATE BANK OF INDIA vs T. DEVENDER (PERSONAL
GUARANTOR) TO M/S CHADALAVADA INFRATECH LTD
(CORPORATE DEBTOR)**

Maligi Madhusudhana Reddy
Resolution Professional
For M/s Chadalavada Infratech Limited

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

..... Applicant/
Resolution Professional

Date of order 13.09.2023

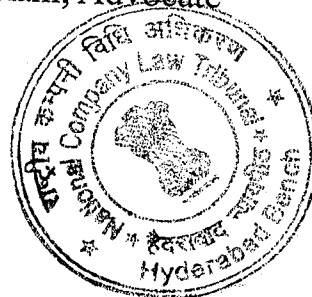
Coram

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



Appearance

For Applicant: Party in person
For Creditor: Shri Suryanarayana Raju, Advocate
For Personal Guarantor: Ms. Sandhya Rani, Advocate



**PER: BENCH
ORDER**

1. This Application is filed under Section 112 (1) and 114 of the Insolvency & Bankruptcy Code, read with 19 of IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 and Rule 11 of NCLT Rules, 2016, by the Resolution Professional for Mr. T. Devender, Personal Guarantor to Corporate Debtor M/s Chadalavada Infratech Limited, seeking approval of the repayment plan submitted by the Personal Guarantor.
2. To put precisely, this Tribunal vide order dated 21.06.2022 ordered commencement of Insolvency Resolution Process against T. Devender (Personal Guarantor to the Corporate Debtor) to M/s Chadalavada Infratech Ltd and appointed Shri Maligi Madhusudhana Reddy, bearing registration no. IBBI/IPA-001/IP-P00843/2017-18/11427, as Resolution Professional.
3. Consequent to his taking over charge as Resolution Professional, the Applicant herein caused public notice calling for claims in "Nava Telangana" (Telugu), Prajashakti (Telugu) & "Financial Express" (English) on 08-07-2022, calling claims from the Creditors from the

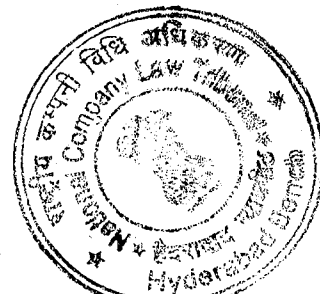


creditors by 28th July 2022. The last date for the Resolution Professional to submit his report under section 106 of IBC was 18th August 2022.

4. It is submitted that the Financial Creditor through its claim form, opted to forfeit its right to enforce the Personal Guarantor's security during the period of Repayment Plan.
5. The Personal Guarantor was asked by the Resolution Professional vide e-mail dated 26.07.2022 and 09.03.2023 to prepare a Repayment Plan in consultation with the Resolution Professional.
6. Pursuant to public announcement, the Resolution Professional received only one claim i.e. from State Bank of India amounting to Rs. Rs.270,61,08,662/-.
7. The 1st repayment plan submitted by the Personal Guarantor on 15.08.2022 was placed before the 1st meeting of the creditors on 08-09-2022 by the Resolution Professional. As advised by the Creditor, two IBBI Registered Valuers to value of land and buildings of the Personal Guarantor and an investigation agency to identify assets of the personal guarantor other than the assets disclosed in the statement of affairs and further advised personal guarantor to disclose the sources of funds that the Personal Guarantor would like to bring in to repay according to the plan.

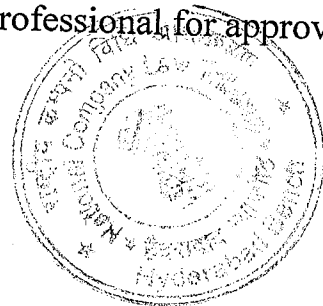


8. It is averred that, the Resolution Professional upon receipt of valuation reports, placed the same before the creditors and investigation reports from the appointed agencies who have confirmed that there are no assets available other than those disclosed in the name of the guarantor.
9. The Resolution Professional held 3rd creditors' meeting on 20th December 2022. After detail deliberations, the revised repayment plan of the Personal Guarantor was approved by the sole creditor SBI. The same was filed before this Tribunal, for approval.
10. Later the Resolution Professional, at the instance of the Sole Creditor moved a memo seeking withdrawal of the repayment plan submitted by Personal Guarantor, that has been earlier approved by the sole creditor and which is pending before this Tribunal, on the ground that, it had come to the notice of the creditor during a review meeting that the Vote casted in "favour" of the repayment plan was inadvertent, instead of 'against' it and directed the Resolution Professional to place fresh Repayment Plan of Shri T. Devender in the next meeting along with the plans of other Guarantors so that a collective decision on all the plans can be considered on commercial grounds and keeping in view, the spirit of the Code. Accordingly, the Tribunal allowed the withdrawal of



Application IA(IBC).No. 1589/2022 on 06.02.2023, granting liberty to file a fresh application if any.

11. It is further submitted that during the process of insolvency of the guarantor, six creditor's meetings were conducted by the Resolution Professional and based on the discussions, copy of the repayment plan submitted by the guarantor along with the compliance particulars under the IBC 2016 and its Regulations, was shared with the Creditor by the resolution professional for their consideration.
12. The Resolution Professional has complied the Statement of Affairs in accordance with Regulation 10(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to the Corporate Debtor) Regulations, 2019. The copy of the statement of affairs is annexed as Annexure -6.
13. The revised improved repayment plan submitted by the Guarantor along with statement of affairs with assets and liabilities was discussed in detail in the 6th meeting of creditors. The Copy of revised Repayment Plan is attached as Annexure-7. Thereafter, the following resolution with respect to revised repayment plan was placed for e-voting from 6 pm, 3rd April 2023 to 6 pm, 4th April 2023 by the resolution professional for approval.



“RESOLVED THAT the Revised Improved Repayment Plan submitted by Mr. T. Devender, Personal Guarantor to the Corporate Debtor M/s. Chadalvada Infratech Private Limited for Rs.5,00,00,000/- with the revised payment schedule of: within 30 days of approval by the Hon’ble Adjudicating Authority - Rs.1,25,00,000/- and within 60 days of the approval of Adjudicating Authority - Rs.3,75,00,000/- be and is hereby approved.”

However, the sole Creditor has neither approved nor rejected the above resolution and **opted to Abstain from voting.**

The copy of the voting record where the repayment plan placed for voting and the creditor opted to abstain is annexed and marked **Annexure -8.**

14. **SALIENT FEATURES OF THE REPAYMENT PLAN:**

The revised improved repayment plan (revised as on 13.03.2023) submitted vide Guarantor’s letter dated 13.03.2023 is annexed and marked as Annexure 7 to the Application. The salient features of the Repayment plan along with the concessions and reliefs prayed for, as extracted from the Repayment plan is given below:



(i) **Brief details about the engagement of debtor with the CD :**

The debtor Mr. T. Devender stood as Personal Guarantor to M/s Chadalavada Infratech Ltd the Corporate Debtor in connection with the Company's borrowings from SBI and signed agreements accordingly. The debtor has executed personal guarantee for the repayment of credit facilities availed by the Corporate Debtor.

S. No.	Name of the creditor	Amount Claimed	Amount admitted	Security interest if any	voting right %
Claims from Banks					
1	SBI	2,70,61,08,662	2,70,61,08,662	Land bearing Sy. No 189/A admeasuring Ac 0.56 cents situated at Narsingi Village (facing ORR Junction) Rajender Nagar Mandal, Ranga Reddy District, Telangana mortgaged vide Doc no.3473/2002 dated 28.11.1996	100

(ii) **Details of the excluded assets and excluded debts:**

It is stated in the repayment plan that the debtor does not have any liabilities within the criteria of excluded debts under Section 79 (15) and excluded assets under Section 79 (14).

(iii) **Payment to the creditors:**

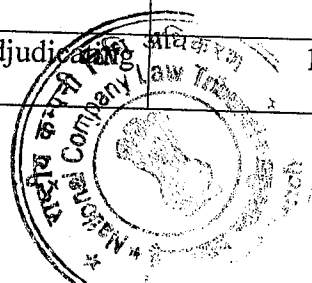
The debtor has proposed to make payment of Rs.5,00,00,000/- to the creditor as under:-

S.No.	Name of the creditor	voting right %	Amount Rs.
1	State Bank of India	100	Rs.5,00,00,000/-
	Total		Rs.5,00,00,000/-

The above amount proposed will be paid in instalments as hereunder

Proposed Revised Repayment Plan:

S.No.	Particulars	Amount Rs.
1	With 30 days of the approval of Adjudicator Authority (25%)	1,25,00,000/-



2	With 60 days of the approval of Adjudicating Authority (75%)	3,75,00,000/-
	TOTAL	5,00,00,000/-

Note: Resolution process costs will be paid separately.

(iv) **Sources of funding:** The source of funding is from sale of the properties and sale of other personal assets. That such payment shall be made in priority over any other creditors. The Guarantor has provided comfort letter obtained from the prospective buyer to confirm the source of funds for payment to creditors as stated in the repayment plan which has been filed.

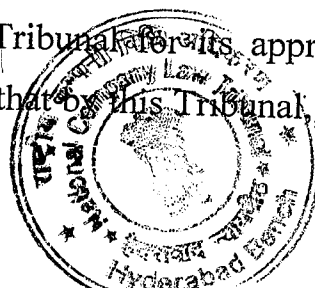
(v) **Reliefs as claimed by the Personal Guarantor:**

- (a) The amount that is being paid by the Guarantor is on the distinct understanding that there shall be no more financial obligations towards State Bank of India and the Bank shall return his original guarantee agreement and issue a Discharge Certificate certifying that his liability as a guarantor to the Corporate Debtor, M/s. Chadalavada Infratech Ltd. is totally discharged.
- (b) The Original Registered documents of the Land bearing Sy. No 189/A admeasuring Ac 0.56 cents situated at Narsingi Village (facing ORR Junction) Rajender Nagar Mandal, Ranga Reddy District, Telangana mortgaged vide Doc no.3473/2002 dated 28.11.1996, to be released along with peaceful physical possession on said properties.

The guarantor further submits that the proposed amount is more than the value of the securities offered by him and for personal guarantee executed in favour of the creditor.

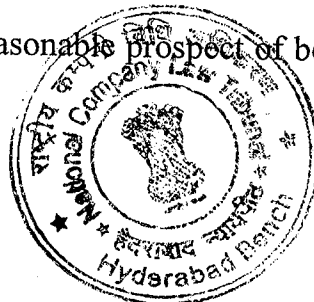


- (15) The Resolution Professional confirms that he has complied with Section 112 of the Code that –
- (1) The resolution professional has prepared report of the meeting of the creditors on repayment plan.
 - (2) The report under sub-section (1):
 - a. the revised repayment plan was not considered for approval as the creditor opted to abstain after repeated modifications thereto;
 - b. the lone creditor State Bank of India was present throughout the meetings conducted in physical mode along with the guarantor, and
 - c. the voting record of the creditors for the current meeting has been made part of the minutes of meeting and is attached for ready information of the Hon'ble Adjudicating Authority;
16. The Resolution Professional declares that the “Insolvency Resolution Process for the Personal Guarantor has been conducted in compliance of the IBC 2016 and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019”. The statement under Regulation 17 by the resolution professional is annexed and marked as **Annexure -9**.
17. The Resolution Professional further confirms that he has complied Section 99 and Section 114 and minutes of all meetings has been circulated to the debtor (guarantor), creditor and to this Tribunal as required under Section 113 and confirmed by the respective members in the meeting.
18. Here the case is that the sole member of creditor earlier approved the Repayment plan submitted by the personal guarantor and the same was submitted by the RP before this Tribunal for its approval. However, before decision could be passed on that by this Tribunal, at the behest of



the sole creditor, leave granted for withdrawal of IA (IBC) No. 1589/2022 for approval of the said Repayment Plan. This Tribunal vide order dated 06.02.2023 granted leave with liberty to file a fresh repayment plan as and when approved by the COC on the said repayment plan.

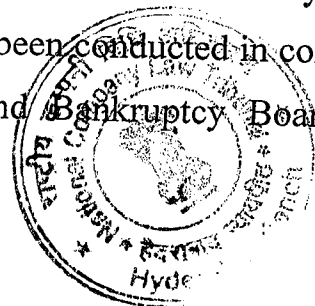
19. While it was so the RP filed IA No. 587/2023 seeking approval of the Repayment Plan which was placed before the member of creditor, wherein the sole creditor neither approved or rejected and opted to abstain from voting. During the pendency of this Application, RP at the behest of the Creditor filed IA No. 895/2023 to treat the Creditor's "abstain" vote in the meeting dated 03.04.2023 as dissent.
20. Under these circumstances, we are not inclined to consider the request of the creditor to treat their "abstain" vote in the meeting meant for voting on the Repayment plan as dissent as no such provision is there under the law. Keeping in view the same, IA No. 895/2023 is dismissed as non-maintainable.
21. Here we are reminded of Proviso 106 (1) & (2), wherein it was held as below:
106. (1) The resolution professional shall submit the repayment plan under section 105 along with his report on such plan to the Adjudicating Authority within a period of twenty-one days from the last date of submission of claims under section 102.
- (2) The report referred in sub-section (1) shall include that—
- (a) the repayment plan is in compliance with the provisions of any law for the time being in force;
- (b) the repayment plan has a reasonable prospect of being approved and implemented; and



(c) there is a necessity of summoning a meeting of the creditors, if required, to consider the repayment plan:

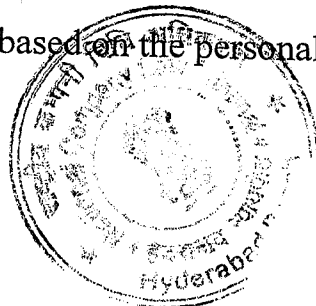
Provided that where the resolution professional recommends that a meeting of the creditors is not required to be summoned, reasons for the same shall be provided.

22. Therefore, as per Section 106 (1) & (2) of the Code, it is not always necessary for the RP to convene a meeting for the purpose of seeking approval of the Repayment plan. In other words, the proviso suggests that RP keeping in view the interest of creditor, can submit the repayment plan for approval by this Tribunal.
23. In the above backdrop of the facts, we have heard learned counsel for the RP and perused the records. At the outset it may be stated that when the RP convened a meeting of the creditor for the purpose of voting of the Repayment plan of the personal guarantor, it was always open for the Creditor to either accept or reject or even suggest modifications in the repayment plan. However, in this case on hand the sole member of creditor chose to abstain. In the circumstances, the Creditor's meeting conveyed no decision on the approval of the plan.
24. Therefore, keeping in view the provision contained in section 114 (1) we are passing an order on the basis of report prepared by RP under section 106 of the Code which confirms that repayment plan is under compliance with section 112 of IBC, 2016.
25. The Resolution Professional also submits that the Insolvency Resolution Process for the Personal Guarantor has been conducted in compliance of the IBC 2016 and the Insolvency and Bankruptcy Board of India



(Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.

26. We therefore, hereby approve the repayment plan with effect from the date of this order, with the following directions:-
- (a) The Resolution Professional shall supervise the implementation of the Repayment Plan as per the terms and conditions mentioned therein and file his final report soon after the implementation of the plan or upon completion of the timelines mentioned in the plan, whichever is earlier.
 - (b) Upon completion of the Repayment Plan, the Resolution Professional shall comply with the provisions stated in Section 117 of the Code.
 - (c) The creditors shall withdraw all the legal proceedings before various fora against the debtor within one month of the fulfilment of repayment obligations by the debtor in accordance with the terms of the repayment plan.
 - (d) Any liability arising out of the settlement with creditors shall not be subject to any kind of tax.
 - (e) All outstanding negotiable instruments issued by the Personal Guarantor in favour of the financial creditor including demand promissory notes and post-dated cheques shall stand terminated and the liability under such instruments shall stand extinguished.
 - (f) The clauses, if any in the loan agreements/documents executed by personal guarantor with regard to after acquired property or later acquired property/future property of the personal guarantor stipulating will become collateral/prime security for the credit facilities extended either to the personal guarantor or to others extended based on the personal guarantee

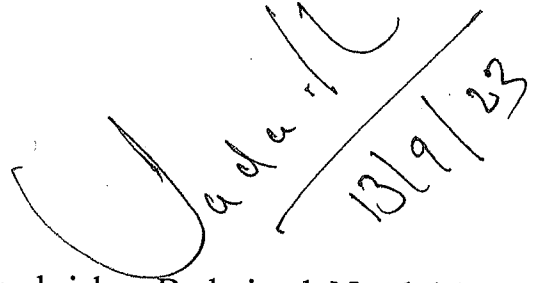


executed by personal guarantor shall not be operative and it shall be treated as null and void.

- (g) The debtor is permitted to share a certified copy of this repayment plan and order of this Tribunal approving this repayment plan with third parties including statutory/government authorities wherever needed.
- (h) The approval of the Repayment Plan shall not be construed as waiver of excluded debts as defined u/s 79(14) if any.
- (i) The Registry is directed to send a copy of this order to IBBI.
- (j) The Resolution Professional, the Applicant herein shall forward all the records pertaining to Insolvency Resolution Process against the Personal Guarantor to IBBI.


13-09-2023

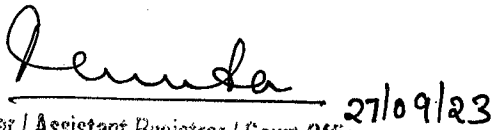
(Charan Singh)
Member(Technical)


13/9/23

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

Binnu




27/09/23

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

प्रमाणित प्रती
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केस संख्या
CASE NUMBER (P/IB) No. 127/95/HDB/22
निर्णय का तिथि
DATE OF JUDGEMENT 13/9/23
प्रति तैयार किया गया तिथि
COPY MADE READY ON 27/9/23