



S.No.4

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
09-12-2024 AT 10:30 AM**

**Company Petition IB/98/2021
AND
IA(IBC) 707/2024 in Company Petition IB/98/2021
u/s. 95 of IBC, 2016**

IN THE MATTER OF:

State Bank of India

...Petitioner

AND

Harikrishna Polavarappu & Varam Bio Energy 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) 707/2024

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

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH – I, HYDERABAD**

IA No. 707/2024
In
CP (IB) No. 98/95/HDB/2021

*(Filed under section 121 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 7(1) of
Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process
for Personal Guarantors to Corporate Debtors) Rules, 2019)*

IN THE MATTER OF M/s VARAM BIOENERGY PRIVATE LIMITED

Between:

State Bank of India,
Stressed Assets Management Branch,
Red Cross Building, 32 Montieth Road,
Egmore, Chennai-600008
Corporate Office at State Bank Bhavan,
Madame Cama Road, Mumbai-Maharashtra

...Applicant/ Financial Creditor

Versus

1. Mr. Harikrishna Polavarapu,
S/o. Mr. Ramakrishna Palavarapu, Age: 52 years,
R/o H. No. 30/265/20/3, C3,
Officers Colony, Malkajgiri,
Near Radhika Theater, Secunderabad
Hyderabad-500047

...Respondent No. 1/ Personal Guarantor

2. M/s Varam Bioenergy Private Limited,
Rep by Liquidator Mr. Vikas Prakash Gupta,
B-32, Steel & Mines Complex,
Srinagar Colony, Hyderabad -500073

...Respondent No. 2/ Corporate Debtor

Date of Order: 09.12.2024



Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)

Shri Charan Singh, Hon'ble Member (Technical)

Appearance:

For Applicant : Ms. Sarvani Desi Raju, Advocate

**PER: BENCH
ORDER**

1. This is an application filed by the Applicant/Financial Creditor under Section 121 of the Insolvency and Bankruptcy Code, 2016 (IBC) r/w Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution 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. Varam Bioenergy Private Limited, inter alia, seeking the following reliefs:

- a) *To pass an order admitting the instant petition and order for initiating Bankruptcy Proceedings against the personal Guarantor/ Respondent No.1 herein.*
- b) *To appoint Mr. Dantu Indu Sekhar as the Bankruptcy Trustee*

2. **Brief of averments of the application as follows:**

2.1. It is stated that the Respondent No. 2/ Corporate Debtor is the Principal Borrower and availed Rs. 69,14,54,733/- Credit facilities from the Financial Creditor for business needs, as per the Sanction Letters dated 23.10.2006, 05.02.2007, 31.03.2009, 09.11.2010, 29.08.2011 and 07.12.2012, a copy of which is enclosed as (**Annexure 8**). In view of the sanction letters the financial creditor and the Corporate Debtor executed a



Joint Term Loan (Consortium) Agreement dated 18.07.2007 (**Annexure 9**) and Inter-Se Agreement dated 29.08.2012.

2.2. Pursuant to the said sanction letters, the Personal Guarantor executed the following deeds, namely,

- Deed of Guarantee dated 28.03.2007 (**Annexure 14**);
- Deed of Guarantee for overall limits dated 27.04.2009 (**Annexure 15**);
- Supplementary Deed of Guarantee for increase in overall limits dated 23.10.2012 (**Annexure 16**);
- Deed of Guarantee dated 25.07.2012 (**Annexure 17**);
- Deed of Guarantee dated 18.01.2013 (**Annexure 18**);
- Deed of Guarantee dated 18.01.2013 (**Annexure 19**)

ensuring repayment of the financial assistance provided to the Corporate Debtor. Under the said agreements, the Personal Guarantor agreed to pay all amounts due without delay and to indemnify the Financial Creditor against any losses resulting from the default committed by the Corporate Debtor. Furthermore, the personal guarantor undertook to indemnify and keep the financial creditor indemnified against all losses, costs, claims, damages whatsoever which the Financial Creditor may suffer, pay or incur by the reason of or in connection with any such default on the part of the Corporate Debtor.

2.3. It is stated that the Corporate Debtor after availing the aforesaid loan facilities has violated the terms of the Sanction Letters and other loan documents by committing default in repaying the loan amounts. Thus, the accounts of the Corporate Debtor were classified as NPA by the Financial creditor on 31.12.2010 and by State Bank of Hyderabad on 15.09.2011. Subsequently, demand notices under SARPAESI were issued to the



respondents on 17.10.2014 calling upon for the repayment of the loan availed.

- 2.4. As the corporate debtor failed to repay despite receiving the said notices, the financial creditor filed an application before the Learned D.R.T, Chennai vide O.A. No. 147 of 2015, wherein the Learned D.R.T, Chennai issued a Recovery Certificate vide DRC NO. 132 of 2018 on 06.03.2018 directing the corporate debtor to pay the debt amount within 30 days. It is stated that the corporate debtor again failed to repay despite the above direction. Aggrieved by the same, the financial creditor filed an application under section 7 of the IBC for initiating Corporate Insolvency Resolution Process (CIRP) before this Tribunal vide CP (IB) No. 377/7/HDB/2018 and the same was admitted on 18.07.2019. Thereafter, to initiate the Insolvency Resolution Process a Demand Notice Dated: 12.10.2020 was issued to the Personal Guarantor demanding the Payment of the default amount. Despite receipt of the demand notice the Personal Guarantor failed to acknowledge the same.
- 2.5. Subsequently, this Adjudicating Authority, vide order dated 23.07.2021, 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 on 15.08.2021 and recommended to admit the petition filed by the Creditor.
- 2.6. Pursuant to the report, since the RP did not receive any repayment from the Personal Guarantor. On 18.04.2022, this Tribunal at the behest of the report of the RP, admitted the petition CP (IB) No 98/95/HDB/2021 filed by the Creditor and commenced the Insolvency Resolution Process against the Personal Guarantor.



- 2.7. To solicit claims from creditors and submit a report of repayment plan within 21 days under section 105 IBC, Code, RP sent intimation to the Personal Guarantor. As there was no response from the Personal Guarantor, RP filed an application I.A No.602/2022 with a prayer to direct the Personal Guarantor to cooperate. Accordingly, in the said application the Personal Guarantor contested and stated that he will submit the repayment plan. However, the Personal Guarantor did not submit any repayment plan. Thereafter, this Tribunal vide order 23.02.2023 admitted application I.A No. 1274/2022 filed by the Resolution Professional and the RP report was taken on record while enabling the Creditor to file the Bankruptcy Application.
- 2.8. In the light of the order dated 23.09.2022, the financial creditor filed the present application. However, as there was a delay in filing of the present application, the financial creditor filed an application I.A. No. 33 of 2024 to condone the delay for 182 days. This Tribunal vide order dated: 07.02.2024, stated that the language used under section 121(2) of IBC wherein three months' time is prescribed for filing bankruptcy application is directory but not mandatory and condoned the delay.
- 2.9. Thus, the financial creditor proceeded and filed the present application under Section 121 read with Section 60(2) of the IBC for initiating bankruptcy proceeding against the personal guarantor.
3. Respondent no. 1 remained ex-parte.
4. In the light of the aforesaid contest, the following point arises for our consideration is:

Point:



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

5. We have heard the Ld. Counsel Ms. Sarvani Desi Raju, for the applicant and Ld. Senior Counsel Mr. Purna Chandra Rao, for the respondent no.1, perused the record and written submissions.

Point:

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

Our Analysis and Findings:

6. At the outset we wish to state that, undisputedly 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.
7. In terms of Section 121 of Insolvency and Bankruptcy Code, 2016 which is as below;

“(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.”



8. In view of the above provision and on perusal of the Report of the Resolution Professional filed in IA. No. 1274/2022 on 27.10.2022 which was taken on record vide order dated 23.02.2023 noting that the Personal Guarantor did not submit any repayment plan, as contemplated under section 105 of Insolvency and Bankruptcy Code, 2016. As such this Tribunal granted leave to the creditor to take further steps for filing of bankruptcy application against personal guarantor.
9. We find that in the absence of a repayment plan which is to be filed by the personal guarantor, the Resolution Professional cannot proceed with submitting the plan or prepare a report as contemplated under Sections 105 and 114 of the IBC 2016. In view of the above, this procedural lapse is treated as equivalent to a rejection of the repayment plan, as stipulated under Section 115(2) of the Code. The same was observed by the Learned NCLT, Delhi bench- IV in *Mr. Swatantra Kumar Singh Vs. Mr. Amul Gabrani personal guarantor of M/s. Tecpro Infra Project Limited [IA-94/2023 in CP (IB)-505/ND/2021]*, the relevant portion is extracted hereunder;

*“6. The Resolution Professional further submitted that the Personal Guarantor has not provided for the provision of Fee payment of Resolution Professional in the said matter. **Further, since the Personal Guarantor is unable to present a Repayment Plan, the same stands as non-presentation of Repayment Plan, and the Resolution Professional is of the view that since the Personal Guarantor is unable to provide for Repayment Plan, the Insolvency Resolution Process of Mr. Amul Gabrani shall be concluded and the further course of action i.e. Bankruptcy of Personal Guarantor may be initiated.***

7. We have heard the learned Resolution Professional and perused the documents annexed there on. As per section 105 of IBC 2016 the debtor shall submit repayment plan, then the Resolution professional shall submit the repayment plan along with his report



*to the adjudicating Authority. After conducting the meeting of creditors on the repayment plan the Resolution professional shall prepare report of the meeting of creditors and submit it to the Adjudicating Authority. The Adjudicating Authority may then pass an order either approving or rejecting the report. **But in the case before us, in the absence of the any repayment plan filed by the personal guarantor the supra procedure could not be carried out. The non-filing of repayment plan causes similar effect of rejection of repayment plan under section 114 as provided under section 115(2) of IBC 2016.***

10. This Tribunal has passed an order under sub section (2) of Section 121 of Insolvency and Bankruptcy Code, 2016 on 07.02.2024 vide the order in I.A. No. 33 of 2024 condoning the delay for 182 days, holding inter-alia that three months' time prescribed under the above provision for filing bankruptcy application is only directory but not mandatory.
11. The Hon'ble Supreme Court of India in re **Topline Shoes Ltd Vs Corporation Bank** (Judgement 2002 (3) SCR 1167) , wherein it was held that:

“Thus, the intention to provide a time frame to file reply, is really meant to expedite the hearing of such matters and to avoid unnecessary adjournments to linger on the proceedings on the pretext of filing reply. The provision however, as framed, does not indicate that it is mandatory in nature. In case the extended time exceeds 15 days, no penal consequences are prescribed therefor. The period of extension of time "not exceeding 15 days," does not prescribe any kind of period of limitation. The provision appears to be directory in nature, which the consumer forums are ordinarily supposed to apply, in the proceedings before them. We do not find force in the submission made by the appellant, in person, that in no event, whatsoever, the reply of the respondent could be taken on record beyond the period of 45 days. The provision is more by way of procedure to achieve the object of speedy disposal of such disputes. It is an expression of "desirability" in strong terms. But it falls short of creating of any kind of substantive right in favour of the complainant by reason of which the respondent may be debarred from placing his version in defence in any circumstances whatsoever. It is for the Forum or the Commission to consider all facts and circumstances along with the provisions of the Act providing time frame to file reply, as a guideline, and then to exercise its discretion as best it may serve the ends of justice and achieve the object of speedy disposal of such cases keeping in mind principles of natural justice as well. The Forum may refuse to extend time beyond 15 days, in view of Section 13(2) (a) of the Act but exceeding the period of 15 days of extension, would not cause any fatal illegality in the order.”



Here it is pertinent to note that on a plain reading of Sub (2) of Section 121 which is as below: *(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)* though says, that the creditors “shall” make an application for bankruptcy within three months from the date of the order passed by this Adjudicating Authority in terms of Section 121 (1) of IBC, since the consequences if any for not complying the said rule are conspicuously silent, the word “shall” used in Section 121 sub-section (2) be taken directory but not mandatory, and the intention behind fixing the said time line of three months, is only to expedite the hearing process. Therefore, compliance of Section 121 thus, only directory.

12. We have carefully perused the record and satisfied that the requirement under sub-sections 1 and 2 of section 121 IBC, supra, are fully satisfied in this case. Hence, we have no hesitation in ordering this petition.
13. Therefore, having carefully examined the application and found that the same is accordance with Section 121 of Insolvency and Bankruptcy Code, 2016. As such we hereby pass the following order.

ORDER

- (1) In the result, bankruptcy process is ordered against **Mr. HarikrishnaPolavarapu**, Personal Guarantor, S/o. Mr. Ramakrishna Palavarapu, Age: 52 years, R/o H. No. 30/265/20/3, C3, Officers Colony, Malkajiri, Near Radhika Theater, Secunderabad, Hyderabad-500047.



- (2) The applicant proposed the Resolution Professional, **Shri. Dantu Indu Sekhar**, having IBBI registration number IBBI/IPA-003/IPA-ICAI-N-00233/2019-2020/12773, address at 29.1401/6/1, Plot No.253, Road No.2 (West), Deendayal Nagar, Ramakrishnapuram, Neredmet, Hyderabad-500056, email: indu.sekhar3@gmail.com, Mobile No.8806667974, to be appointed as bankruptcy trustee. The said Resolution Professional also has given the declaration in Part-IV of the petition. Hence, we hereby appoint the Insolvency Professional **Shri. Dantu Indu Sekhar**, as Bankruptcy trustee under Section 125 of the Code, 2016.
- (3) 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 Insolvency and Bankruptcy Code, 2016.
- (4) This order of Bankruptcy shall continue to have the effect till the debtor is discharged under section 138 of IBC, 2016.
- (5) The bankrupt shall submit his statement of financial position to the bankruptcy trustee in the prescribed Form as provided under Section 129 of Insolvency and Bankruptcy Code, 2016, within seven days from the date of the order.
- (6) 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



immediately from the date of his appointment and take necessary steps to ensure preservation, protection security and maintenance of those properties as provided under section 128 and 154 of Insolvency and Bankruptcy Code, 2016.

- (7) The Bankruptcy trustee is directed to adhere to Section 128, 129 (4), 132, 133, 134, 136 and 137 of Insolvency and Bankruptcy Code, 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.
- (8) The Bankrupt trustee for the Adjudicating Authority shall send notices as provided under section 130(a) of Insolvency and Bankruptcy Code, 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 Insolvency and Bankruptcy Code, 2016.
- (9) 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.
- (10) On passing of the bankruptcy order, subject to Section 128(2) of the Code, 2016, 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 (1)(C)(ii) of the Code, 2016.
- (11) The Bankruptcy Trustee shall conduct the administration of distribution of the estate of the bankrupt under chapter V as provided in Section 136 of the Code, 2016.



- (12) 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, 2016.
- (13) 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.
- (14) The Bankruptcy Trustee shall exercise all the powers as enumerated under the Code read with Rules and Regulations made thereunder.
- (15) The Bankruptcy Trustee shall submit to this Adjudicating Authority and committee a preliminary report within 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.
- (16) 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.
- (17) 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.



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

Sd/-
Sh. Charan Singh
Member (Technical)

Sd/-
Dr. Venkata Ramakrishna
Badarinath Nandula
Member (Judicial)