

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

(Video Conference)

**CORAM: DR.VENKATA RAMAKRISHNA BADARINATH NANDULA – HON’BLE MEMBER (J)
CORAM: SHRI VEERA BRAHMA RAO AREKAPUDI, HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 18.10.2022 AT 02:30 PM THROUGH VIDEO CONFERENCE**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition IB/264/2021
NAME OF THE COMPANY	
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	Shri Saritha Singh & Shivani Alloys Casting Ltd
UNDER SECTION	95 of IBC

ORDER

Order pronounced vide separate sheets in the Company Petition No. IB/264/2021.
The petition is admitted.

Sd/-
MEMBER (T)
Satya Priya

Sd/-
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH- II, HYDERABAD**

CP(IB) No.264/95/HDB/2021
Under Section 95 of the IB Code, 2016.

In the matter of
Smt Saritha Singh

Between:

State Bank of India
(Erstwhile State Bank of Hyderabad, since merged into SBI),
SAMB Branch,
Kacheguda Station Road,
No. 3-2-1, New Bus Station, 1st Floor TSRTC,
Kacheguda, Hyderabad – 500 027.

...Petitioner /
Financial Creditor

And

1. Smt. Saritha Singh,
H. No. 6-3-1092/C-5
Flat No.5, Block –C,
Shantisikhara Apartments
Somajiguda, Hyderabad.

...Respondent No.1/
Personal Guarantor

2. Shivani Alloys Steel Casting Ltd,
6-3-863/2, 1st floor,
Opp Hotel Green Park Lane,
Near Niraj Public School,
Ameerpet, Hyderabad.

...Respondent No.2/
Corporate Debtor

Date of Order : 18.10.2022

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Member Judicial
Mr. Veera brahma rao arekapudi, Member Technical

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Parties/Counsels Present:

For the Applicant : Ms. Sarvani Desiraju, Advocate

For the Resolution Professional : Mr. Kasi Srinivas, Advocate

Per: Bench

ORDER

1. Under Consideration is an Application filed by the Financial Creditor under Section 95 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7(2) of Insolvency and Bankruptcy (Application to Adjudicating Authority Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 to initiate Insolvency Resolution Process against the Personal Guarantor of Corporate Debtor i.e., Shivani alloys Steel Casting Ltd.,
2. Brief facts of the instant Petition are as under:-
 - a. That the Corporate Debtor had availed financial assistance of INR 15 Crores from the Financial Creditor herein from time to time and in order to secure the repayment of the said financial assistance, the Personal Guarantor has executed Guarantee Agreement securing repayment of the Financial assistance availed by the Corporate Debtor.
 - b. That the Corporate Debtor i.e., Shivani Alloys Steel Ltd., had failed to honour its obligations under various Loan Agreements dated 06.02.2003, 20.09.2004 and 16.04.2008 executed between the Financial Creditor and the Corporate Debtor. Accordingly, the Loan account of Respondent No.2 was declared as NPA as on 16.04.2012.

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- c. That the Respondent No.1, Personal Guarantor executed a deed of Guarantee on 10.02.2003 to secure the financial assistance granted by the Financial Creditor to Respondent No.2. Under the said agreement, the Personal Guarantor undertook to pay the Financial Creditor upon demand forthwith, without demure all the amounts payable by the Corporate Debtor under the Corporate Loan Agreement. It is stated that 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 reason of or in connection with any such fault on the part of the Respondent No.2.
- d. The Guarantee Deed also provides that a certificate in writing signed by an official of the Financial Creditor shall be conclusive evidence against the Personal Guarantor for the amount due to the Financial Creditor. It is submitted that the Guarantee Deed executed by Respondent No.1 is irrevocable, independent, coextensive and continuing Guarantee.
- e. The Respondent No.1 herein being the Personal Guarantor, had failed to pay the outstanding amount, the Financial Creditor herein while invoking the provisions of the Insolvency and Bankruptcy code, 2016 had vide Form B Demand Notice Dated 28.08.2021 issued a notice to the Personal Guarantor, Smt Saritha Singh i.e., Respondent No.1 requesting him to honor the terms of the Agreement.
3. That this Adjudicating Authority vide its order dated 25.10.2022 has passed an interim order declaring interim moratorium and has appointed Mr. Kasi Srinivas bearing IBBI Registration No. IBBI/IPA-003/IP-N00237/2019-2020/12840 as Resolution Professional.

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4. The said Resolution Professional in its report filed on 08.11.2021 has recommended for admission.
5. That despite availing sufficient opportunity, the Personal Guarantor has failed to file his response and the same is recorded during the hearing held on 30.09.2022.
6. Heard. Perused the record.
7. It is the case of the Financial Creditor that it has provided various loan facilities to the Corporate Debtor namely M/s. Shivani Alloys Casting Ltd and the Respondent herein stood as a Personal Guarantor to such loan facilities. Upon default by the said Corporate Debtor, an Application under Section 7 of the Code, 2016 came to be filed and the same was admitted for CIRP.. While the matter stood thus, the Financial Creditor herein has filed instant Application under Section 95 of the Code, 2016 against the Respondent No.1/ Personal Guarantor namely Smt Saritha Singh.
8. The said Application came up for hearing on 25.10.2021, wherein the orders of interim moratorium as contemplated U/s. 96 of the Code, 2016 and for appointing the RP as contemplated U/s. 97 of the Code, 2016 came to be passed and Mr. Kasi Srinivas holding IBBI Registration No. IBBI/IPA-003/IPA-ICAI-N-00237/2019-2020/12840 was appointed as RP. The RP was directed to file his Report within 10 days.
9. The RP has filed his report dated 08.11.2021 as contemplated U/s. 99 of the Code, 2016, inter-alia, recommending for acceptance of the instant Application.
10. It is also pertinent to note that the Personal Guarantor did not contest the matter and instead has accorded his consent to proceed further in this matter.

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11. In view of the above facts and circumstances and upon perusal of the record, we are of the view that in the instant case, there is a financial debt and there has been a default in repayment of the same by the Corporate Debtor for which the Respondent herein stood as Personal Guarantor. Further the Financial Creditor has fulfilled all the stipulations as required under the provisions of the IB Code, 2016 for the purpose of initiating Insolvency Resolution Process against the Personal Guarantor. In these circumstances, having satisfied with the submissions made by the Petitioner/Financial Creditor, this Adjudicating Authority is inclined to admit the instant Application.
12. Accordingly, the instant Application is hereby admitted in terms of Section 100 of the IB Code, 2016 for Insolvency Resolution Process against the Personal Guarantor namely Smt Saritha Singh.
13. The moratorium is hereby declared which shall commence in relation to all the debts and shall cease to have effect at the end of the period of one hundred and eighty days beginning with the date of admission of the application or on the date this Adjudicating Authority passes an order on the repayment plan under section 114, whichever is earlier. For the purposes referred to in section 101 of the IB Code, 2016, hereby the following prohibitions in respect of the personal guarantor being the debtor are ordered :
 - 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 the assets or his legal right or beneficial interest therein.*

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14. The Resolution Professional viz., Mr. Kasi Srinivas, who has been appointed under Section 97 vide Order dated 04.08.2021, is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of uploading of this Order on the website of the NCLT Hyderabad, inviting claims from all Creditors, who shall register their claims as provided under Section 103 of IBC, 2016 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 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 by Registry on our website and the other shall be affixed in the premises of this Authority.
15. The Resolution Professional in exercise of the powers conferred under Section 104 of IBC, 2016 shall prepare a list of creditors within 30 days from the date of the notice. The debtor shall prepare a repayment plan in consultation with the Resolution Professional as provided under Section 105 of IBC, 2016 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 Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106 of IBC, 2016.
16. In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons therefor. If the Resolution Professional is of the opinion that the meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of IBC, 2016. The date of meeting should

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- not be less than 14 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 of IBC, 2016.
17. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of IBC, 2016 and submit the same to this Authority, copies of which shall be provided to the debtor 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 the IBC, 2016.
18. In terms of the above, the instant application bearing CP (IB) No.264/95/HDB/2021 filed under Section 95 of the Code, 2016 is admitted and the Insolvency Resolution Process stands initiated against Smt Saritha Singh, Respondent/Personal Guarantor.

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Veera Brahma Rao Arekapudi
Member Technical

 -sdv

Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial