

S.No.2

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
28-04-2023 AT 10:30 AM**

CP(IB) No. 183/95/HDB/2022
u/s. 95 of IBC, 2016

IN THE MATTER OF:

Bank of Maharashtra

...Petitioner

VS

Shri. NNBV Venkateswara Rao &
M/s. SVSVS Projects Pvt Ltd

...Respondent

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

Orders pronounced. Recorded vide separate sheets. In the result, this Company Petition is admitted and Insolvency Resolution Process is ordered against the Personal Guarantor. Mr. Murali Mohan Chevuturi is appointed as Resolution Professional and Moratorium ordered as per the terms and conditions.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

CP (IB) No. 183/95/HDB/2022

(Under Section 95 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 7(2) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019.

In the matter of:

Bank Of Maharashtra
#4-3-448 to 460&465, 1st Floor,
Vinoothna Pittie's Majesty, Gopalbagh,
Near Bank Street, Koti,
Hyderabad- 500 001.

... Petitioner/Financial Creditor

Versus

1. Shri NNBV Venkateshwara Rao,
Flat No.502, Murthy Mansion,
Kalyam Nagar, Phase 1,
Hyderabad-500 038.

**... Respondent No.1/
Personal Guarantor**

2. M/s SVS Projects Private Limited
Plot No.31, 2nd Floor, Phase 1,
Kalyan Nagar,
Hyderabad-500 038.

**... Respondent No.2/
Corporate Debtor**

Date of order: 28.04.2023

CORAM:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA,
HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

Appearance:-

For the Petitioner: - Ms.Aishwarya Chevuturi, Counsel.

RP :- Shri Murali Mohan Chevuturi.

Learned Counsel for RP:- Ms.Mirza M.Baig.

PER: BENCH

1. This instant petition is filed by the Financial Creditor under Section 95 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 (hereinafter referred to as “Personal Guarantors Insolvency Rules, 2019), seeking an order for initiation of the Insolvency Resolution Process (“IR Process”) against NNBV Venkateshwara Rao, who is the Personal Guarantor of M/s. SV SVS Projects Private Limited (hereinafter referred to as “Corporate Debtor”).
2. It is to be noted that the Petitioner Bank vide its Sanction letter dated 24.03.2014 and 09.04.2016 has sanctioned working capital facility consisting of Cash Credit facility with a limit of Rs.2.50 cores and bank guarantee Facilities aggregating to Rs.48 crores. The total repayments of the corporate debtor is Rs.48,02,97,568.69/- as on 17.05.2022.
3. It is averred that corporate debtor had failed to honor its obligations under Composite Deed of Hypothecation for all facilities dated

25.03.2014 executed between the financial creditor and corporate debtor. The loan account of Respondent No.2 was declared as NPA as on 27.12.2018.

4. It is averred that Respondent No.1, Personal Guarantor executed a Deed of Guarantee on 25.03.2014 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 demur or protest all the amounts payable by the corporate debtor.
5. It is averred that Respondent no.1 being the personal guarantor, failed to pay the outstanding amount, financial creditor herein while invoking the provisions of the I&B Code, 2016 had vide Form B demand notice dated 31.07.2021 issued to the personal guarantor , i.e Respondent No.1 requesting him to honor the terms of the agreement. Despite receipt of the demand notice, Respondent No.1 did not pay any amount. Thus the present application for initiation of insolvency resolution process with respect to personal guarantor.
6. The Petitioner Bank attached the following documents to prove the existence of debt and amount in default: -
 - 6.1 Sanction letter dated 24.03.2014 and 09.04.2016.
 - 6.2 Bank Guarantee Note for Rs.55.75 Crs dated 25.03.2014.
 - 6.3 Composite Deed of Hypothecation for 55.75 Crores dated 25.03.2014.

7. Counter filed by Respondent No.1

- 7.1 It is averred that the deed of guarantee was executed by Respondent No.1 on March 25, 2014, pursuant to the Sanction Letter dated March 24, 2014. Thereafter, the credit facilities were revised, along with the terms and conditions, pursuant to the sanction letter dated April 9, 2016. However, the Respondent no.1 was neither given an opportunity to execute fresh agreements and documentation for revised limits and for revised terms and conditions, nor same filed with the ROC.
- 7.2 It is averred that in order to comply the obligations under the deed of guarantee, by honoring the terms and to settle the amount payable, requested the petitioner to release the mortgaged properties as collateral towards credit facilities provided to the Respondent No.2.
- 7.3 It is averred that based on the request the petitioner has issued sanction letter No.AX-21/OTS/2021-22 dated September 27, 2021, directing the respondent no.1 to pay a sum of Rs.1,10,00,000/- within two months as the settlement amount, which has been paid well within timeline indicated in the sanction letter, which has been acknowledged by the petitioner and consequently, the properties were released. Thus it averred that personal guarantor has discharged his liability and no amounts are due and payable by him to the petitioner.

- 7.4 It is further averred that in the 5th CoC meeting dated 05.05.2022, the promoter of the corporate debtor Shri V.Ramamohan Rao, has submitted the resolution plan and paid an earnest money deposit. Further in the 6th COC meeting dated 15.06.2022, the resolution plan submitted by the promoter of the corporate debtor is advised to submit the revised resolution plan. Meanwhile OTS was also moved by the same Resolution Applicant on July 15th,2022.
- 7.5 It is averred that as per 7th CoC meeting dated 16.08.2022, the resolution plan was discussed at length and was deferred. Simultaneously the OTS proposal was considered and the same is in process. Thus the personal guarantor prayed the Tribunal to hold the proceedings under Section 95 as the resolution plan and the OTS proposal are rejected by the COC. Thus prayed the Tribunal to reject the Application.

8. Rejoinder by the Petitioner

- 8.1 Petitioner denied all the averments and allegations of the Respondent No.1 in his reply.
- 8.2 It is averred that the personal guarantor vide revival letter dated 15.03.2017 has acknowledged and extended their Deed Guarantee towards all the facilities by the corporate debtor.
- 8.3 It is averred that as per the request of the personal guarantor, financial creditor vide letter dated 27.09.2021, for release of securities provided by the personal guarantor. Further as per Clause b of the terms and conditions all remaining securities in the account of the corporate debtor, including the financial creditors

claim against personal guarantor shall continue as per the existing terms.

- 8.4 It is further averred that personal guarantor has not carried out his obligations against financial creditor. The amount of Rs.1,10,00,000/- which was paid by the personal guarantor was for the release of Title deeds of the properties mortgaged by the Mrs. N.Savitri, and the personal guarantor. It is towards release of securities of personal guarantor and not towards the release of Guarantee.
- 8.5 It is further submitted that the invocation of I& B Code, 2016 is independent to the resolution plan submitted before the COC for revival of the corporate debtor Company. Hon'ble Apex Court in the matter of "*Lalit Kumar Jain Vs Union of India*" has held that *the approval of resolution plan does not ipso facto discharge a personal guarantor of his or her liabilities under the contract of guarantee. As held by this Court, the release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process i.e by Operation by law, or due to liquidation or insolvency proceedings, does not absolve the surety/guarantor of his or her liability which arises out of an independent contract*".
- 8.6 It is averred that the deed of contract entered by the personal guarantor is an independent contract. Further, the debt owned by to its creditor by an involuntary process i.e by operation of law, or due to liquidation or insolvency proceedings, does not absolve the surety/guarantor of his or her liability, which arises out of an

independent contract, Therefore the present Application filed by the petitioner is maintainable and the prayed the Tribunal to allow the application.

9. Pursuant to framing of Personal Guarantors Insolvency Rules, 2019 which came into effect from 01.12.2019, permitting the Petitioner Bank to institute IR Process against the Personal Guarantors, the Petitioner Bank issued a demand notice dated 31.07.2021 and 10.06.2022 to the Personal Guarantor, in Form B of the Code demanding payment of the amount in default along with acknowledgement receipt.

10. On presentation of this instant petition, this Adjudicating Authority on 06.06.2022 granted interim-moratorium and has appointed Shri. Murali Mohan Chevuturi , as Resolution Professional, directing him to file his report within ten days from the date of his appointment, in terms of the Section 99 of the Code, 2016 and directed the Petitioner to issue notice to the Personal Guarantor and notice was send through registered post and the same was delivered. The Resolution Professional has filed his report, recommending the admission of the Petition under Section 95 of the Code, 2016. The Resolution Professional in his report stated that he has sent the demand notice in Form-B dated 10.06.2022. Based on the facts the RP is recommending for approval of the Petition filed by financial creditor against the personal guarantor Shri NNBV Venkateswara Rao, to the Corporate debtor M/S.SVSVS Projects Private Limited.

11. In the light of the aforesaid factual matrix the point arises for our consideration is:

Whether an Insolvency Resolution Process can be ordered against the Personal Guarantor under Section 100 of the Insolvency and Bankruptcy Code, 2016?

12. We have heard the Learned Counsel Ms.Aishwarya Chevuturi, for the Petitioner Bank and Learned Resolution Professional Shri. Murali Mohan Chevuturi and Learned Counsel for Respondent Ms.Mirza Moinulla Baig, and perused the record.

13. At the outset it may be stated that the Petitioner Bank has initiated Corporate Insolvency Resolution Process against the Corporate Debtor i.e., M/s.SVSVS Projects Private Limited vide CP (IB) No. 19/7/HDB/2021 under Section 7 of the Code, 2016 which was admitted by this Adjudicating Authority vide order dated 26.04.2021 and the instant petition is initiated against the Personal Guarantor of the Corporate Debtor. However, Respondent No.1 has raised certain objections stating that OTS and resolution plan are under consideration and thus prayed to hold the instant Application. IRP in his report has observed that creditor has send demand notice in Form-B on 31.07.2021 to Respondent No.1 intimating the total amount of debt including interest or penalties due as on 31.07.2021 is Rs.44,29,08,805. But personal guarantor failed to repay the amount due towards the creditor within 14 days from the date of receipt of demand notice and

recommended initiation of Insolvency Resolution Process against R-1 in terms of Section 99 (7) of IBC, 2016.

14. Therefore, in the light of un-deniable factors this Tribunal carefully examined the report of RP. As per the report it is clear that the personal guarantor has not offered any repayment plan. Personal guarantor has not filed any objections to the report of the RP. We therefore, find no reason to reject the report of RP. Hence we admit the petition.
15. Therefore, in the light of our discussions above, on perusal of the written submissions filed by Financial Creditor, record and case laws, we consider it is a fit case to order insolvency resolution process against Respondent No.1/Personal Guarantor.
16. Hence, the instant Company Petition vide CP (IB) No. 183/95/HDB/2022 filed under the provisions of Section 95 of Code, 2016 is hereby admitted under the provisions of Section 100 of the Code, 2016 and Insolvency Resolution Process is initiated against NNBV Venkateshwara Rao, the Personal Guarantor, and moratorium is declared in relation to all debts, which begins from the date of admission of the instant petition and shall cease to have effect at the end of the period of 180 days, as provided under Section 101 of the Code, 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.
- e) The Petitioner Bank herein, has proposed the name of Shri. Murali Mohan Chevuturi, IBBI/IPA-003/00307/2020-2021/13464 insolvency Professional to act as Resolution Professional, who has given his consent dated 23.05.2022 in Form-A. Hence, this Tribunal appoints: Shri. Murali Mohan Chevuturi, IBBI/IPA-003/00307/2020-2021/13464, email id: mohan.chevuturi@ gmail.com Address: 1-2-59719, Flat No.601, Dream Home Vasista Apts, Plot no.9, Baraf Bagh Colony, Lower Tankbund, Hyderabad, Telangana- 500 029.
- f) The Resolution Professional is directed to cause public notice published on behalf of the Adjudicating Authority within 7 days from the date of uploading of this order on the website of NCLT, Hyderabad, inviting the claims from all creditors, who shall register their claims as provided under Section 103 of the Code within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102(2) of the Code. 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 Personal Guarantor and Corporate 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.
- g) The Resolution Professional in exercise of the powers conferred under the Section 104 shall prepare a list of creditors within 30 days from the date of the notice. The Personal Guarantor 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.
- h) 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 than fourteen days or more than 28 days from the date of submission of the Report under Sub-section (1) of Section 106 of the Code, 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 the Code.
- i) 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 the Code.

- j) The Petitioner is directed to communicate this order to the Resolution Professional appointed in the instant Company Petition immediately.

Sd/-

Charan Singh
Member Technical

Sd/-

Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

Pavani