SL. No.6

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH

COURT HALL NO: II

Hearing Through: VC and Physical (Hybrid) Mode

SPECIAL BENCH

CORAM: SHRI. RAJEEV BHARDWAJ – HON'BLE MEMBER (J)
CORAM: SHRI. YOGENDRA KUMAR SINGH- HON'BLE MEMBER (T)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, HYDERABAD BENCH, HELD ON 16.10.2025 at 12:00 PM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition IB/44/95/HDB/2024
NAME OF THE COMPANY	Vensa Laboratories Pvt Ltd
NAME OF THE PETITIONER(S)	Canbank Factors Ltd
NAME OF THE RESPONDENT(S)	Mr. D Rama Linga Raju
UNDER SECTION	95 of IBC

ORDER

Orders pronounced, recorded vide separate sheets. In the result, the Company Petition IB/44/95/HDB/2024 is dismissed

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

Vamsi

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II

CP (IB) No.44/95/HDB/2024.

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

CANBANK FACTORS LIMITED,
(A Subsidiary of Canara Bank),
a Public Limited Company and
Non-Banking Financial Company
having its registered office at #67/1,
Kanakapura Main Road,
Basavangudi, Bangalore – 560004.
and
Branch Office at Flat No. 201-202, 2nd Floor,
Sanatana Eternal, D. No. 3-6-108/1, Road No. 19,
Himayathnagar, Hyderabad – 500029, Telangana,
represented by its Asst. Vice President,
Mr. S.R. Srinivasa Rao.

.....Petitioner/Financial Creditor

AND

Sri D. Rama Linga Raju
Personal guarantor of
M/s. Vensa Laboratories Pvt. Ltd.
D. No. 8-3-236/2 & 3, Flat No. 104
Harmony Apartments, Yousufguda,
Near Sarovar Function Hall,
Hyderabad. **....Personal Guarantor/Debtor**

CORAM:

Shri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Shri Yogendra Kumar Singh, Hon'ble Member (Technical)

Counsel/Parties present:

For the Petitioner : Mr. Dishit Bhattacharjee.

For the Respondent : Mr. Rajashekar Rao Salvaji.

Date Of Order: 16.10.2025.

[PER: BENCH]

ORDER

1. This petition is filed by **Canbank Factors Limited (a subsidiary of Canara Bank)** (Financial Creditor/FC) under Section 95 of the Insolvency and Bankruptcy Code 2016 (IBC)[1], 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, seeking an order for initiation of the Personal Insolvency Resolution Process (**PIRP**) against **Sri D. Rama Linga Raju,** who is the Personal Guarantor (**PG**) of **M/s. Vensa Laboratories Pvt Ltd** Corporate Debtor (**CD**).

APPLICATION

2. The Corporate Debtor availed financial facilities, namely Sale Bill Factoring and Purchase Bill Factoring, from the Financial Creditor under various loan documents. To secure repayment of the aforesaid financial assistance, Sri J. Krishna Rao, Sri V. Nageswara Rao, Sri K. Hanumantha Rao, Sri K. Raj Gopal Rao, and Sri D. Rama Linga Raju executed guarantee agreements dated 03.02.2006 and 21.04.2009.

[1] Insolvency and Bankruptcy Code.

3. Subsequently, the Corporate Debtor defaulted on the repayment of the financial facilities. Consequently, the Financial Creditor issued a Loan Recall Notice dated 05.12.2012 to the Corporate Debtor and the Personal Guarantors. Despite this notice, no payment was made by either party.

4. The Corporate Debtor and the Personal Guarantors are jointly and severally liable to repay an outstanding debt of Rs. 5,09,43,004. In view of the default, the Applicant issued a Demand Notice dated 24.01.2024 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, followed by a paper publication on 15.02.2024, calling upon the Personal Guarantors to discharge the outstanding dues. However, the Personal Guarantors failed to make any payment.

5. Pursuant thereto, the Financial Creditor filed the present Application under Section 95(1) of the Insolvency and Bankruptcy Code, 2016, read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, seeking initiation of the Insolvency Resolution Process against the Personal Guarantors to the Corporate Debtor.

6. Upon presentation of the Application, this Adjudicating Authority, vide order dated 15.04.2024, appointed Sri Rajesh Chillale (Registration No. IBBI/IPA-001/IP-P00699/2017-18/11226) as Resolution Professional and directed him to submit a report under Section 99 of the Insolvency and Bankruptcy Code, 2016.

7. The Resolution Professional filed a report under Section 99 of the IBC on 08.05.2024 through **IA No. 1029/2024**.

RP REPORT

8. After due examination of the application, the Resolution Professional recommended its admission based on the details recorded in the RP report, as mentioned hereunder:

a. The Corporate Debtor, M/s. Vensa Laboratories Pvt. Ltd. availed fund-based and non-fund-based credit facilities from the Financial Creditor under various loan agreements. To secure the obligations of the Corporate Debtor, the Personal Guarantor, **Sri D. Rama Linga Raju**, executed Letters of Guarantee dated 03.02.2006, 22.07.2007, 09.11.2010, and 15.11.2010.

b. The Corporate Debtor defaulted in repayment on 17.08.2012, and the Personal Guarantor also failed to repay the debt, leading to the account being classified as a Non-Performing Asset on 25.11.2012. Subsequently, the Financial Creditor filed a recovery suit, COS No. 37/2018, against the Corporate Debtor before the Special Court, City Civil Court, Hyderabad, on 26.10.2017, which remains pending trial.

c. Further, a Record of Default against the Corporate Debtor and the Personal Guarantor was registered with M/s. National e-Governance Services Limited (NeSL) on 08.02.2024 and authenticated on 24.02.2024.

d. The Financial Creditor submitted that the Corporate Debtor has defaulted in repayment of its debt, though no Corporate Insolvency Resolution Process has been initiated under the IBC. It was emphasized that, under Section 128 of the Indian Contract Act, 1872, the liability of a guarantor is co-extensive with that of the Corporate Debtor. As affirmed by the Hon'ble Supreme Court in ***Bank of Bihar v. Damodar Prasad***, the guarantor becomes immediately liable upon default by the Corporate Debtor, without requiring the creditor to exhaust remedies against the Corporate Debtor first.

e. In view of the foregoing, the Financial Creditor invoked the personal guarantee and issued a Demand Notice dated 24.01.2024, which was returned undelivered. Thereafter, the Financial Creditor published notices in the English newspaper ***Telangana Today*** and the ***Telugu newspaper***

Mana Telangana on 15.02.2024 in the districts where the Personal Guarantor resides.

f. The Financial Creditor then filed the present application dated 15.03.2024 under Section 95(4) of the Insolvency and Bankruptcy Code, 2016 (IBC), seeking initiation of the Insolvency Resolution Process against the Personal Guarantor. A copy of the application was served on the Personal Guarantor on 18.03.2024, which was also returned undelivered.

g. The Resolution Professional verified the records, notices, application, proof of service, and confirmation from the Financial Creditor that no payments have been made either post-demand notice or after the filing of the Section 95 application. Further, requests for additional information and documents were issued to the Corporate Debtor and the Personal Guarantor via email and postal service on 17.04.2024, 20.04.2024, and 27.04.2024. While the emails were successfully delivered, the physical postal communications were returned marked "***No such person***."

COUNTER.

9. The Personal Guarantor has filed a counter denying all the averments, contentions, and allegations made by the Financial Creditor in the application, except those specifically admitted therein. It is further stated that no statement or omission in the counter shall be deemed to constitute an admission for want of specific denial**.**

10. The Personal Guarantor contends that the application lacks proper authorization and is not maintainable. The application is signed by Mr. S.R. Srinivasa Rao, Assistant Vice President (Branch Head), Hyderabad, but no board resolution has been submitted to confirm his authority to file the same. Although a Power of Attorney dated 18.05.2023 indicates that Mr. Rajib Kumar Sahoo, Managing Director, was delegated powers pursuant to a board resolution dated 28.01.2021, the said resolution has not been furnished. Moreover, the documents do not establish Mr. Rajib Kumar Sahoo's position as a director or his authority to delegate powers to Mr. S.R. Srinivasa Rao. Consequently, without valid

authorization, the application lacks due authority and should be dismissed in limine.

11. Furthermore, the Financial Creditor has failed to comply with the mandatory provision under Rule 7(1) of the Rules. The Financial Creditor did not serve a demand notice on the Personal Guarantor as mandated before commencing proceedings under Section 95 of the Code. Rather, the Financial Creditor seems to have relied on the publication of the demand notice, which does not amount to valid service under the aforesaid Rule. Therefore, the lack of proper service invalidates the proceedings, making the present application not maintainable in law.

12. Additionally, the alleged default amount of Rs. 71,01,829 falls below the statutory threshold of Rs. 1 crore as prescribed under the Code. Hence, the Financial Creditor is not entitled to initiate the present application. Moreover, the Financial Creditor has already filed a recovery suit bearing COS No. 37/2018 before the Commercial Court, Hyderabad, and is attempting to misuse the insolvency mechanism to inflict undue hardship on the Personal Guarantor. The application is procedurally defective under the aforementioned Rules and is thus not maintainable. Having considered the potential impact, the initiation of insolvency proceedings would severely disrupt the Personal Guarantor's business operations, adversely affect his livelihood, and harm his reputation and goodwill. In view of the foregoing, the Personal Guarantor prays for the dismissal of the application, with liberty to file additional documents as may be required for just adjudication.

REJOINDER

13. The Financial Creditor denied the contentions of the Personal Guarantor and reiterated the submissions made in the application. The Financial Creditor filed the Power of Attorney along with the main application. Mr. Rajib Kumar Sahoo, Managing Director of the Petitioner Bank, was authorized through a valid Board Resolution dated

28.01.2021, passed under Clause 175(2)(i) and Clause 175(3). As per Clause 8 of the same resolution, Mr. Rajib Kumar Sahoo delegated his authority to Mr. S. R. Srinivasa Rao to file applications and company petitions under the IBC.

14. The Financial Creditor issued a demand notice on 24.01.2024 to the Personal Guarantor, seeking repayment of Rs 5.09 crore within 14 days, in compliance with Rule 7(1). The notice was sent to the guarantor's current address as per the bank's records, which also appears in the respondent's counter affidavit. The notice was returned with the remark "No such person at the address / Return to sender."

15. Clause 23 of the Personal Guarantee Agreement states that notices sent by registered post to the last known address are deemed to be served three days after posting. The Financial Creditor exercised due diligence and published the notice in widely circulated newspapers-Mana Telangana (Telugu) and Telangana Today (English), both dated 15.02.2024.

16. With regard to the contention of threshold limit, the NeSL report reflects the outstanding debt as 71,01,829 as of the date of default, being 25.11.2012, it accounts solely for the principal amount, excluding interest. As on 31.12.2023, the total debt, comprising the principal amount and accrued interest, aggregates to Rs. 5,09,43,004, thereby exceeding the prescribed threshold.

17. Reliance may be placed on the case of Hon'ble NCLAT in the matter of **Netafirm Agricultural Financial Agency Pvt. Ltd. vs Baliraja Sakhar Kharkhana Ltd.**[2] wherein the Hon'ble NCLAT held that for finding out the threshold, both principal amount and Interest have to be computed.

18. The Commercial Suit relates to the recovery of the debt, while the present application seeks to establish the insolvency of the Personal Guarantor. Therefore, the causes of action in the Commercial Suit and

[2] Company Appeal (AT)(Insolvency) No. 408 of 2023

this application are distinct and independent. Moreover, the Commercial Suit is filed against the Corporate Debtor, whereas the present application pertains exclusively to the Personal Guarantor.

19. The Financial Creditor states that the present application is within the period of limitation. As the Guarantee Deeds dated 03.02.2006, 22.07.2007, 09.11.2010, and 15.11.2010 provide a continuing and co-extensive guarantee alongside the Corporate Debtor. The default occurred on 25.11.2012, and the Corporate Debtor acknowledged the debt on 31.10.2014. Subsequent OTS proposals on 08.12.2015, 21.03.2019, 22.07.2019, 24.10.2019, 18.03.2020, 20.04.2020, and 04.02.2023 further acknowledged the debt and promised repayment, extending the limitation period.

20. Reliance is placed on ***SASF v. D. Srinivas Rao***[3] which held that acknowledgment or promise to pay extends the limitation under Section 18 of the Limitation Act and Section 25(3) of the Contract Act. The Supreme Court in Dena Bank v. C. Shivakumar Reddy (2021) 10 SCC 330 also recognized OTS offers as acknowledgment under Section 18.

ANALYSIS AND FINDINGS

21. Heard the learned counsel for the Applicant and the Respondent. Perused the record, including the pleadings, affidavits, and the Report submitted by the Resolution Professional

22. The considerations in an application under Section 95 of the IBC, 2016, are the existence of debt, default in repayment, valid invocation of the guarantee deed, and valid demand notice in Form B served upon the Personal Guarantor.

23. To recapitulate the factual matrix, the Corporate Debtor availed financial facilities, namely Sale Bill Factoring and Purchase Bill Factoring, from the Financial Creditor under various loan agreements.

[3] NCLT HYDERABAD IA(IBC) 58/2023.

To secure the obligations of the Corporate Debtor, **Sri D. Rama Linga Raju**, the Personal Guarantor, executed Letters of Guarantee dated 03.02.2006, 22.07.2007, 09.11.2010, and 15.11.2010.

24. The Corporate Debtor defaulted in repayment of the loan on 17.08.2012, consequent to which the account was classified as a Non-Performing Asset (NPA) on 25.11.2012. Thereafter, the Financial Creditor issued a Loan Recall Notice dated 05.12.2012 exclusively to the Corporate Debtor, demanding repayment of the outstanding amount. The said notice was not addressed to the Personal Guarantor. Despite the issuance of the recall notice, no payment was made by the Corporate Debtor. Subsequently, the Corporate Debtor acknowledged the debt and security on 31.10.2014 and proposed a One-Time Settlement (OTS) to the Financial Creditor on 16.12.2015.

25. Meanwhile, the Financial Creditor instituted a recovery suit, being COS. No. 37 of 2018, before the Special Court, City Civil Court, Hyderabad, on 26.10.2017, which remains pending adjudication. Thereafter, the Corporate Debtor submitted further OTS proposals on 04.02.2023 and 05.07.2023.

26. Subsequently, the Financial Creditor issued a Demand Notice dated 24.01.2024 in Form B under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, calling upon the Respondent to unconditionally repay the outstanding debt. The Respondent failed to respond to the said notice.

27. It is observed that no invocation of the guarantee has been made against the Personal Guarantor. The Financial Creditor has relied upon the Demand Notice dated 24.01.2024 issued in Form B under Rule 7(1) as an invocation of the guarantee. However, such a notice cannot be treated as an invocation of the guarantee, as Form B merely serves as a demand for payment of the defaulted amount and does not specifically

call upon the Personal Guarantor to discharge his obligations under the guarantee.

28. Under Rule 3(1)(e) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, a "Guarantor" means a debtor who is a personal guarantor to a corporate debtor, in respect of whom the guarantee has been invoked by the creditor and remains unpaid in full or in part. Therefore, the debt becomes due against the guarantor only upon invocation of the guarantee.

29. The letter of guarantee dated **15.11.2010**[4] specifically provides that the Guarantor shall be liable to "pay and satisfy on demand" the dues of the Corporate Debtor. The relevant clause reads as follows:

> *"Jointly and severally guaranteeing to pay and satisfy on demand the general balance due from the client to you for an amount not exceeding Rs.150.00 lacs (Rupees One Hundred Fifty Lacs only), together with discount, charges, and interest thereof at 15.50% per annum, compounded monthly from the **date of demand upon us** for payment, expenses, charges, etc., as debited in the client's accounts with you from time to time, or at such other rate/s as may be specified in writing."*

Thus, the liability of the Personal Guarantor arises only upon demand being made in accordance with the guarantee deed. On this point we rely on the decisions of Hon'ble NCLAT ***State Bank of India v. Mr. Deepak Kumar Singhania***[5]**.** and ***Asha Basantilal Surana v. State Bank of India & Ors***[6]**.**

30. In the State ***Bank of India v. Mr. Deepak Kumar Singhania,*** *supra,* it was held that where the guarantee has not been invoked, the guarantor shall not be a Debtor and no default can be committed by the guarantor, unless the guarantee is invoked as per the terms of the Deed of Guarantee. Thus, the insolvency resolution process against a

[4] Page No. 331-333 of the Petition.
[5] Company Appeal (AT) (Insolvency) No. 191 of 2025, decided on 28.02.2025 (NCLAT)
[6] Company Appeal (AT) (Insolvency) No. 84 of 2025, decided on 15.05.2025 (NCLAT).

Guarantor, against whom the debt has not become due, is not understandable.

> *Para 20…. "Guarantor with regard to whom guarantee has not been invoked, shall not be a Debtor and no default can be committed by Guarantor, unless guarantee is invoked as per the terms of Deed of Guarantee. Thus, the insolvency resolution process against a Guarantor, against whom debt has not become due, is not understandable."*

31. Similarly, the Hon'ble NCLAT in ***Asha Basantilal Surana v. State Bank of India & Ors.*** Supra has held that the invocation of a personal guarantee must be in accordance with the terms of the Guarantee Agreement, which is a settled principle of law. When a demand notice is issued to the personal guarantor calling upon them to discharge their liabilities, the guarantee stands invoked. Therefore, the language and contents of the notice must be carefully examined to determine whether it, in fact, calls upon the personal guarantor to discharge their liabilities under the guarantee. The relevant extract from the order of the Hon'ble NCLAT reads as follows:

> *"12. Thus, the dismissal of the Appeal in the Amanjyot Singh's case was on the facts of the said case and has no application in the facts of the present case.* ***The invocation of personal guarantee has to be in accordance with the terms of the Guarantee Agreement which is a settled law.*** *Clause 7 of the Guarantee Agreement does not require any particular mode and manner of the demand notice. When demand notice is issued against the personal guarantor asking the personal guarantor to discharge its liabilities, the guarantee stands invoked. Whether notice under Section 13(2) in a particular case invoked the guarantee or not depends on the words and intent of the notice.* ***For finding out as to whether Notice under Section 13(2) invoked the personal guarantee, the letters and words of***

> ***the Notice has to be looked into to come to any conclusion that whether personal guarantor has been asked to discharge its liabilities or not.*** *In the facts of the present case, we are of the considered opinion that the Notice under Section 13(2) issued by the State Bank of India is a clear demand notice from the Appellant to pay the amount of Rs.28,56,64,336.06/-."*

32. In view of the foregoing, as there has been no invocation of the guarantee or demand made by the Financial Creditor against the Personal Guarantor, the debt cannot be said to have become due from the guarantor. Accordingly, the present application is filed under Section 95 of the IBC, 2016, and is not maintainable.

Accordingly, the application stands **dismissed**.

Sd

YOGENDRA KUMAR SINGH

MEMBER (TECHNICAL)

Sd

RAJEEV BHARDWAJ

MEMBER (JUDICIAL)