

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

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)

CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 07.05.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition IB/254/2023
NAME OF THE COMPANY	
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	Mr. Gopu Bala Reddy
UNDER SECTION	121 of IBC

ORDER

Present: Ld. Counsel Mr. GP Yash Vardhan for the Petitioner.

Ld. Counsel Mr. Harsh Chowdary for the Respondent.

Ld. Counsel for the Respondent stated that he does not want to file counter to the petition and he has no objection if the application filed by the Petitioner is allowed. Accordingly, the petition is disposed of vide separate orders.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

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

CP(IB) No.254/121/HDB/2023

*Under Section 121 & 123 of Insolvency and Bankruptcy Code, 2016,
read with Rule 7 of the Insolvency and Bankruptcy (Application
to Adjudicating Authority for Bankruptcy process for Personal
Guarantors to Corporate Debtors) Rules, 2019*

Between:

State Bank of India,
Stressed Assets Management Branch,
5-9-76, 2nd & 3rd Floor,
Prabhat Towers, Opp: Amravathi, LHO,
Chappel Road, Gunfoundry,
Hyderabad – 500 001.

....Petitioner/Financial Creditor

V E R S U S

1. Mr.Gopu Bala Reddy,
Plot No.139, Vivekanand Nagar,
Kukatpally,
Hyderabad – 500 072.

.... Personal Guarantor/Respondent No.1

2. M/s.ICSA (India) Limited,
Plot No.573 J,
Road No.82, Jubilee Hills,
Hyderabad – 500 033.

.... Corporate Debtor/Respondent No.2

Date of Order: 07.05.2024

Coram:

Hon'ble Rajeev Bhardwaj, Member (Judicial)
Hon'ble Sanjay Puri, Member (Technical)

Counsel/Parties present:

For the Petitioner : Mr.G.P.Yash Vardhan, Advocate
For the Respondent : Mr.Harsh Chowdary, Advocate

P E R : B E N C H

O R D E R

1. The Petitioner /Financial Creditor has filed this Petition under Section 123 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019 to initiate Bankruptcy Process against the Personal Guarantor of Corporate Debtor.
2. The Corporate Debtor (respondent No.2) is the Principal Borrower and Personal Guarantor (respondent No.1) stood as guarantor to secure the repayment of the financial assistance availed by the Corporate Debtor. The amount claimed to be in default is Rs.1140,57,62,494.93/- as on 22.11.2023 (Annexure 5 – page No.36 of the application).
3. The Corporate Debtor availed financial assistance by executing various loan documents and in order to secure the debt, Guarantee Agreement was executed by the Respondent. Details of various important Agreement/Loan documents/Guarantee Agreement executed with the Respondent in favour of the financial assistance availed by the Corporate Debtor is detailed in Para No.7 of the Synopsis given in the Application.
4. It is submitted that the Corporate Debtor came under severe strain due to various internal and external reasons mainly slowdown in power

sector, high level of receivables, high level of debt etc. In order to overcome the difficulties faced by them, it was decided to focus on high technology and high margin business, disinvest from wind power generation division by sale of its assets to bring about cost efficiency in its core business and requested the Financial Creditor and other consortium lenders for carrying out debt restructuring and providing additional financial assistance.

5. It is submitted that at the request of the Corporate Debtor and the commitment given by him to improve its operations, the Corporate Debtor was admitted to CDR forum, a non-statutory voluntary mechanism set up under the aegis of the Reserve Bank of India guidelines. Thereafter, in the meeting held on 16.03.2012, the CDR Empowered Group has approved the restructuring package in terms of which existing financial assistance was restructured and additional financial assistance was extended to the Corporate Debtor. Pursuant thereto, the CDR Cell has issued a letter dated 29.03.2012 to the Consortium Lenders and the Corporate Debtor setting out the details of restructure package as approved by the CDR EG.
6. It is submitted that the Financial Creditor, consortium lenders and Corporate Debtor entered into Master Restructuring Agreement dated 30.03.2012 giving the terms & conditions of the Restructuring/credit facilities limits for the Account of the Corporate Debtor, which are extracted below:

S.No	Nature of Loan Facility (Limits)	Loan Amount (Rs.in crores)
1	CC	149.00
2	FCCB Debt Term Loan	5.11
3	WCTL	34.91

	FITL	22.11
	Total Fund Based	211.13
4	NFBWC Bank Guarantee	181.25
5	LC	(23.90)
	TOTAL NFB	181.25
	TOTAL FB+NFB	392.38

7. It is submitted that Mr.Gopu Bala Reddy stood as Guarantor in order to secure the repayment of the financial assistance availed by the Corporate Debtor. The details of outstanding amount as on 22.11.2023 is as follows:

S.No	Limits	Amount (Rs.)
1	Cash Credit	871,83,88,604.61
2	Fund Based Term Loan	2,68,23,73,890.32
3	Bank Guarantee	50,00,000.00
	TOTAL	1140,57,62,494.93

8. It is submitted that Corporate Debtor after availing the aforesaid loan facilities violated the terms of Sanction alleged that the Corporate Debtor after availing the aforesaid loan facilities has violated the terms of the Sanction Letters, Master Restructuring Agreement and other loan documents and committed defaults in repaying the loan amounts. Further the accounts of the Corporate Debtor were classified as NPA on 23.01.2014. It is further submitted that the Application is within the limitation.
9. It is submitted that the Corporate Debtor which obtained sizeable amounts by way of financial assistance from the Financial Creditor has failed to pay the outstanding loan amounts, the Financial Creditor exercised rights and remedies available to it and filed demand notice u/s 13(2) of SARFAESI Act, 2002 vide OA No.173 of 2018 before the

Debts Recovery Tribunal, Hyderabad for recovery of the outstanding amounts of Rs.412,79,43,736.78 payable by the Corporate Debtor and the same is reserved for orders.

10. It is submitted that as the Personal Guarantor failed to pay the amount under default, the Financial Creditor has filed CP (IB) No.132/7/HDB/2018 on 21.10.2019 before this Authority under Section 10 of the Code. This Tribunal ordered for Liquidation of the Corporate Debtor on 18.08.2020.
11. It is submitted pursuant to Central Government framing (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules 2019 which came into force from 01.12.2019, inter-alia permitting a Financial Creditor to institute Insolvency Resolution Process against Personal Guarantors of Corporate Debtors, the Financial Creditor has issued demand notice dated 20.06.2020¹ to the Personal Guarantor through registered post on 26.09.2020 and the same was served on 30.06.2020. The Personal Guarantor has not come forward to pay the outstanding amounts.
12. As the Personal Guarantor failed to pay the amount in default, the Financial Creditor has filed an Application under Section 95 of the Code bearing C.P.(IB) No.38/95/HDB/2021 seeking initiation of Insolvency Resolution Process against the Personal Guarantor.
13. This Authority vide its order dated 14.07.2021 has passed interim moratorium and appointed Resolution Professional under Section 97(5)

¹ Annexure No.15

of the Code with a direction to submit his report under Section 99 of the Code recommending rejection or admission of the Applicant. Subsequently, the Resolution Professional has recommended admission of the Application filed by the Financial Creditor. This Authority vide its orders dated 04.02.2022 admitted the Application under Section 100 of the Code and declared moratorium under Section 101 of the Code.

14. The Repayment Plan submitted by the Personal Guarantor was rejected by the CoC with 100% voting on 22.07.2023, the Resolution Professional has filed an Interim Application No.1269 of 2023² under Section 113 and 114 of the Code seeking Bankruptcy of the Personal Guarantor. This Tribunal disposed of the IA vide its Orders dated 28.03.2023 with the following orders.

"It is evident that the repayment plan was not approved by the CoC, in all its commercial wisdom. The only remedy in such a situation is for the creditors either individually or jointly, to file an application for Bankruptcy under Section 121 IBC. Hence, with liberty to the creditors to file Bankruptcy application in terms of Section 121 IBC, we dispose of the application."

15. In view of the aforesaid facts and circumstances, the present Application is filed seeking Bankruptcy of the Personal Guarantor under Section 123 of the Code read with Rule 7 Rules to initiate Bankruptcy Process against the Personal Guarantor of Corporate Debtor.
16. We have carefully perused the petition and are satisfied that the repayment plan of the Personal Guarantor has been rightly rejected. There is no reason to reject the prayer of the Petitioner. Therefore, we

² Page Nos.91-95 of the Application

find it proper to admit this Petition and declare the Personal Guarantor herein, as Bankrupt.

17. In the result, **Mr.Gopu Bala Reddy**, Plot No.139, Vivekanand Nagar, Kukatpally, Hyderabad – 500 072, **Personal Guarantor** is hereby **ordered to be BANKRUPT**.
18. The applicant proposed the Resolution Professional **CA Sri. Vamsi Kambhammettu**, having IBBI No IBBI/IPA-001/IP-P00664/2017-2018/11141, address at A.85, DX4, Road No.11, Film Nagar, Jubilee Hills, Hyderabad – 500 033, Telangana, email id: casrivamsi@gmail.com, Mobile No.98667122632 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 **CA Sri. Vamsi Kambhammettu** as Bankruptcy trustee under Section 125 of the Code.
19. 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 IBC, 2016.
20. This order of Bankruptcy shall continue to have the effect till the debtor is discharged under section 138 of IBC, 2016.
21. The bankrupt shall submit his statement of financial position to the bankruptcy trustee in the prescribed Form within seven days from the date of the order.
22. 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 and take necessary steps to ensure preservation, protection security and maintenance of those properties as provided under section 128 and 154 of IBC, 2016.

23. The Bankruptcy trustee is directed to adhere to Section 128, 129 (4), 132, 133, 134, 136 and 137 of IBC, 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.
24. The Bankrupt trustee for the Adjudicating Authority shall send notices as provided under section 130(a) of IBC, 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 IBC, 2016.
25. The Public Notice inviting claims from the creditors as contemplated under section 130 (2) of the Code shall be issued in one morning, English daily and in one morning vernacular regional language newspapers having wide circulation where the bankrupt resides.
26. On passing of the Bankruptcy order but subject to sub-section (2) of 128 of the Code, 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 (ii) of the Code.

27. The Bankrupt Trustee shall conduct the administration of distribution of estate of bankrupt under chapter V as provided in section 136 of the code.
28. 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.
29. 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 of the request.
30. The Bankruptcy Trustee shall exercise all the powers as enumerated under the Code read with Rules and Regulations made thereunder.
31. The Bankruptcy Trustee shall submit to this Adjudicating Authority and committee a preliminary report within in 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.
32. 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.

33. 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.
34. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsel for information and for taking necessary steps.
35. A certified copy of the order is to be issued upon compliance with requisite formalities.

Sd/-
Sanjiv Puri
Member(Technical)

Sd/-
Rajeev Bhardwaj
Member(Judicial)

Vinod