

S.No. 3

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

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON **21.09.2022** AT
10:30 AM THROUGH VIDEO CONFERENCE

Company Petition IB/124/2022

U/s. 95 of IBC, 2016

IN THE MATTER OF:

State Bank of India

... Petitioner

Vs

Mr. Shaik Ali Saheb (Chadalvada Infratech Ltd)

... Respondents

CORAM:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER TECHNICAL**

ORDER

Orders pronounced in Company Petition No.124/2022 recorded vide separate sheets. In the result Insolvency proceedings against the Personal Guarantor ordered.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

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

CP (IB) No. 124/95/HDB/2022

(Under Section 95 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 readwith 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:

State Bank of India
Stressed Assets Management Branch
D. No. 5-976, 2nd Floor, Prabhat Towers,
Chappel Road, Opp. SBI Amaravathi LHO,
Gunfoundry, Abids, Hyderabad – 500001.

... Petitioner

Versus

Shri. Shaik Ali Saheb
S/o. Sri Meera Saheb
Maagamuru Village,
S N Padu Mandal,
Prakasham District – 523225

... Personal Guarantor

Date of Order: 21.09.2022

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)
Sh. Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance of Parties/Counsels:

For the Petitioner: Shri. Alluri Krishnam Raju, Advocate alongwith Shri.
D Suryanarayana Raju, Advocate

For the RP: Shri. Maligi Madhusudhana Reddy, Resolution
Professional

PER: BENCH

1. This instant petition is filed by the State Bank of India under Section 95 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) readwith 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 Shri. Shaik Ali Saheb who is the Personal Guarantor of M/s. Chadalavada Infratech Ltd (hereinafter referred to as “Corporate Debtor”).

2. It is to be noted that the Petitioner Bank granted various credit facilities in favour of Corporate Debtor for which the Personal Guarantor herein, stood as a guarantor for an amount of Rs. 7.00 Crores vide deed of guarantee dated 15.02.2006 and when limits were enhanced/modified to the Corporate Debtor, the Personal Guarantor herein executed supplemental deed of guarantee and joined to restructuring package agreement and the Personal Guarantor also agreed that the said guarantee is continuing and when the same become due from time to time the said guarantee shall be irrevocable and enforceable against the guarantors notwithstanding any dispute between the bank and the borrower and also any judgment, award or order obtained by the Bank against the borrower shall be binding on the guarantors.

3. It is to be further noted that the outstanding debt as on Non-Performing Account date 15.04.2011 is Rs. 167,56,23,293.24/- together with interest, accordingly, total amount in default is Rs. 250,90,45,531.03/- (Rupees Two

Hundred Fifty Crores Ninety Lakhs Forty-Five Thousand Five Hundred Thirty-One and Three Paise only). The Petitioner Bank attached the following documents to prove the existence of debt and amount in default: -

- 3.1 Deed of Guarantee dated on 15.02.2006.
- 3.2 Supplemental Deed of Guarantee dated on 02.12.2006; 07.05.2008; 20.10.2009; 18.05.2009; 24.05.2014; 04.02.2016.
- 3.3 Letter confirming extension/continuation of personal guarantor dated 24.05.2014; 05.06.2014.
- 3.4 Restructuring Package Agreement dated 03.02.2016.
- 3.5 Demand Notice under SARFAESI Act issued on 26.09.2017.
- 3.6 Section 7 of IBC Code, 2016 admission order dated 23.09.2021.
- 3.7 Demand Notice Form-B dated 21.10.2021 under Code, 2016.
- 3.8 Postal Receipts/Acknowledgments
- 3.9 Statement of Accounts

4. On account of the default by the Corporate Debtor, the Petitioner Bank initiated action against the borrower/corporate debtor and the guarantors/mortgagors under SARFEASI Act, 2002 vide demand notice dated 26.09.2017 and also took measures under Section 13(4) of SARFEASI Act, 2002 by issuing possession notices dated 18.01.2018, 31.01.2018 and 01.02.2018 in relation to the secured assets detailed therein. An application under Section 19 of Recovery of Debts and Bankruptcy Act, 1993 was initiated by the Petitioner Bank before the Hon'ble DRT-II, Hyderabad bearing OA No. 539/2019 against the borrower/corporate debtor and Personal Guarantors to recover the debt from the Corporate Debtor and Personal Guarantors, and the same is pending before the

Hon'ble DRT-II, Hyderabad and also filed an application under Section 7 of the Code, 2016 against the Corporate Debtor vide CP (IB) No. 1/7/HDB/2020 and the same was admitted by this Tribunal vide order dated 23.09.2021.

5. 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 21.10.2021 to the Personal Guarantor i.e., Shri. Shaik Ali Saheb in Form B of the Code demanding payment of the amount in default and the same was sent by registered post on 22.10.2021 and the same was duly served. The Personal Guarantor herein, failed to repay the amount outstanding as per the statement of accounts within 14 days.

6. On presentation of this instant petition, this Adjudicating Authority on 20.04.2022 granted interim-moratorium and has appointed Shri. Maligi Madhusudhana Reddy as Resolution Professional, directing him to file his report within 10 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. The notice was sent through registered post on 23.04.2022 and the same was served on 30.04.2022. On 13.05.2022, Shri. Vimal Varma Vasireddy, Advocate along with Shri. K V Raman, Advocate submitted that Vakalatnama on behalf of the Personal Guarantor herein has been filed in the Registry on 12.05.2022 and the same was taken on record. After availing sufficient opportunity for filing counter to the instant Petition, the Personal Guarantor failed to file the same and on 14.07.2022, the right of the Personal Guarantor to file counter forfeited.

7. The Resolution Professional has filed his report on 04.05.2022, recommending the admission of the Petition under Section 95 of the Code, 2016.

Date of Order: 21.09.2022

The Resolution Professional in his report stated that he has sent the notice & report via registered post regarding the ordering of interim- moratorium to the available addresses of the Personal Guarantor and the same was served. From his report its clear that the grounds for admission of the Petition are that from the records it is clear that the Personal Guarantor stood as a guarantor to the loans availed by the Corporate Debtor and Corporate Debtor failed to repay the same and since the Personal Guarantor has not responded to the Demand Notice send by the Petitioner Bank it is presumed that the Personal Guarantor has admitted the debt and non-existence of dispute.

8. 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?

9. We have heard the Learned Counsel Shri. D A Suryanaryana Raju for the Petitioner Bank and Learned Resolution Professional Shri. M Madhusudhana Reddy and perused the record.

10. 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. Chadalavada Infratech Limited vide CP (IB) No. 1/7/HDB/2020 under Section 7 of the Code, 2016 which was admitted by this Adjudicating Authority vide order dated 23.09.2021 and the instant petition is initiated against the Personal Guarantor of the Corporate Debtor. Despite service of notice and opportunity

afforded, the Personal Guarantor did not choose to contest the instant petition. Thus, the claim of the Petitioner Bank stands un rebutted.

11. Hence, the instant Company Petition vide CP (IB) No. 124/95/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 Shri. Shaik Ali Saheb, 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 his assets or his 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.

12. The Petitioner Bank herein, has proposed the name of Shri. Maligi Madhusudhana Reddy, (IBBI/IPA-001/IP-P00843/2017-2018/11427) Insolvency Professional to act as Resolution Professional, who has given his consent dated 31.01.2022 in Form-A. Hence, this Tribunal appoints:

Shri. Maligi Madhusudhana Reddy,

Date of Order: 21.09.2022

Registration No. IBBI/IPA-001/IP-P00843/2017-2018/11427,
email id: mmreddyfca@gmail.com or mmreddyandco@gmail.com
Address: M M R Lion Corp, 4th Floor, HSR Eden, Road No.2,
Banjara Hills, Hyderabad – 500034.
Tel no: +91 9848271555.

13. 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.

14. 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 his 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

Date of Order: 21.09.2022

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.

15. 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.

16. 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.

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

Sd/-

**VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)**

Sd/-

**DR. NV RAMAKRISHNA BADARINATH
MEMBER (JUDICIAL)**

Vms.