

**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 18.04.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition IB/118/2021
NAME OF THE COMPANY	Y.S. Chowdhary & Splendid Metal Products Ltd
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	Y.S. Chowdhary & Splendid Metal Products Ltd
UNDER SECTION	95 of IBC

ORDER

Orders pronounced, recorded vide separate sheets. In the result, this petition is admitted under section 95 of IBC.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II

CP(IB) No.118/95/HDB/2021
U/s. 95 of IB Code, 2016

In the matter of

M/S. SPLENDID METAL PRODUCTS LIMITED

In the matter of:

State Bank of India,
Stressed Assets Management Branch,
At 5th Floor, Rear Block of HMWSSB
Compound, D. No. 6-2-915, Khairatabad,
Hyderabad-500004.

...Petitioner/Financial Creditor

Versus

1. Mr. Y.S. Chowdhary,
H. No. 8-2-269/5/29, Road No. 2,
Banjara Hills, Hyderabad - 500 034.

...Respondent No.1/ Personal Guarantor

2. M/s. Splendid Metal Products Ltd.,
Reo. By its Resolution Professional,
Mr. T. Sathisan, Regd. Office Plot No. 41,
Nagarjuna Hills, Panjagutta,
Hyderabad-500082.

...Respondent No.2/Corporate Debtor

Date of order: 18.04.2024

CORAM: -

Hon'ble Sri Rajeev Bhardwaj, Member (Judicial)

Hon'ble Sri Sanjay Puri, Member (Technical)

Counsels present:

For the Financial Creditor	:	Mr. VVSN Raju, Advocate
Resolution Professional	:	None
For the Personal Guarantor	:	Mr. K. Purna Chandra Rao, Advocate
Heard on	:	26.02.2024

PER: BENCH
ORDER

1. This petition is filed by the State Bank of India (Financial Creditor/ FC) under Section 95 of IBC¹ read with Rule 7(2) of the Insolvency and Bankruptcy Rules², 2019. Seeking an order for initiation of the **PIRP**³ against **Mr. Y.S. Chowdhary**, who is the Personal Guarantor (**PG**) of M/s. Splendid Metal Products Ltd., i.e., Corporate Debtor (**CD**) for a default amount of **Rs. 562,84,30,310.**⁴ including interest, penal interest, devolvement of Bank Guarantee & other charges.

Facts of the Case as per Applicant:

2. The Applicant Bank, formerly the State Bank of Patiala, MCB⁵ Hyderabad Branch, received a request from the CD through the Director/PG, seeking credit facilities totaling INR 136 Crores initially, which were later renewed to INR 160 Crores and further increased to INR 193 Crores, all within a Consortium Limit of INR 1585.12 Crores, as per successive Sanction Letters dated 02.01.2008, 21.04.2011, and 17.08.2012, respectively.
3. The CD failed to comply with the repayment terms for the sanctioned credit facilities, leading to the loan accounts becoming irregular. Subsequently, CD requested the Consortium Lenders for debt restructuring, which was approved by the CDR⁶ Empowered Group on **28.03.2013**⁷. To ensure repayment of the restructured loan facilities, the CD and the CDR Lenders executed the Master Restructuring Agreement⁸ and Trust and Retention Account Agreement⁹ dated 29.03.2013.

¹ Insolvency & Bankruptcy Code, 2016.

² Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor

³ Personal Insolvency Resolution Process

⁴ Part-III of the Application in Form-C At Pg No. 10

⁵ Mid Corporate Branch

⁶ Corporate Debt Restructuring

⁷ Letter of Restructuring, Pg no. 51-68.

⁸ Pg no. 69-151, Annexure-5

⁹ Pg No. 152-215, Annexure-6

4. The Respondent No. 1 (PG) stood as a Guarantor by executing a Personal Guarantee Agreement¹⁰ on 29.03.2013, ensuring the repayment of various credit facilities. Later, the Respondents approached the Applicant Bank again for enhancement of credit limits from INR 254.11 Crores to INR 286.23 Crores. After assessment, the Applicant Bank approved the enhanced limits through a Sanction Letter¹¹ dated 19.01.2015. To secure the said enhanced limits, the Respondents executed supplementary documents¹² on 13.02.2015, extending the mortgage charge on their properties. Furthermore, the Respondents executed revival letters¹³ on 26.02.2016 and 16.12.2017, wherein they committed to fulfil all obligations under the Loan documentation as well as the Guarantee Documents.
5. It is submitted that the CD failed to adhere to the sanction terms and neglected to operate the loan accounts as per the stipulated terms and conditions. Consequently, the accounts became irregular and were classified as NPA on 28.12.2015.
6. The Applicant Bank issued a legal notice¹⁴ on 20.04.2018 to the Respondents, recalling credit facilities and subsequently on 24.04.2018 initiated action under Section 13 (2) of SARFAESI Act by issuing a notice to the CD as well as to Corporate Guarantors (M/s. Sri ganga Steel Enterprises Pvt. Ltd., M/s. Lakshmi Gayatri Industries Ltd and M/s. Glade Steels Pvt. Ltd). Further, the applicant filed O.A. No. 416 of 2018 before the Hon'ble DRT¹⁵ Hyderabad and realized some of the securities. However, the CD was admitted to CIRP¹⁶ vide order¹⁷ dated 04.04.2019 by this Hon'ble Tribunal under section 7 of IBC, 2016 through an

¹⁰ Pg no. 216-241, Annexure-7

¹¹ Pg no. 491-507, Annexure 19

¹² Pg No. 512-589, Annexure-21

¹³ Pg No. 720-722 & Pg No. 743 – 746

¹⁴ Pg No. 723-728, Annexure-28

¹⁵ Debt recovery Tribunal

¹⁶ Corporate Insolvency Resolution Process

¹⁷ Pg No. 729 – 739 Annexure-29

application filed by Punjab National Bank bearing CP (IB) No. 666/7/HDB/2020.

7. The Applicant Bank also invoked the Personal Guarantee by making a demand vide Form B Demand Notice on 24.12.2020 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 on Respondent No. 1 for making payment with interest. However, the PG neglected and failed to make payment.
8. It is submitted that the cause of action for this petition arose on 20.04.2018, when a legal notice was served upon Respondents and on 24.12.2020, when the Guarantee was invoked by the Applicant Bank through the issuance of a Form 'B' Demand Notice to PG, calling upon to pay the amount. Citing "**Margaret Lalita Samuel vs Indo Commercial Bank Ltd. (1979) 2 SCC 396**" it is claimed that the cause of action against PG who had executed continuing Guarantee arose on 20.04.2018 and 24.12.2020 and as such it is continuing till date.
9. On presentation of this instant petition, this Adjudicating Authority on 09.07.2021 granted interim-moratorium and has appointed Shri Maligi Madhusushana Reddy, as Resolution Professional, directing him to file his report within ten days from the date of his appointment, in terms of Section 99 of the Code, 2016. The Resolution Professional has filed his report on 20.07.2021, recommending the admission of the Petition under Section 95 of the Code, 2016. The Resolution Professional in his report stated that the he has examined the Application filed under Section 95 of the IBC, 2016.

"The Personal Guarantor was given an opportunity to repay the amount in default and claimed by the Financial Creditor as unpaid, by serving a Demand Notice dated 24.12.2020. However, the Personal Guarantor failed to repay the amount within 14 days provided there for.

It is also submitted that the Resolution Professional has sought details of repayment made, if any, into the accounts of the Corporate Debtor/Respondent No.2, after receipt of Demand Notice dated 24.12.2020 sent to Personal Guarantor, and was informed that no payments were made into the account. Thus, the Personal Guarantor herein has committed the default in repayment of the dues.”

Respondent No. 1/ Personal Guarantor Counter Affidavit:

10. It is contended that the petition is liable to be dismissed as Applicant had filed this petition relying on the Personal Guarantee Agreement executed on 29.03.2013 at Chennai in favor of CDR lenders and the Applicant is required to bring on record all persons who are parties to the dispute to avoid multiplicity of proceedings.
11. It is stated that the application is liable to be dismissed as the applicant is not competent authority and the authorization letter submitted by the applicant who signed the application on behalf of the Creditor is not valid as it was issued prior to the commencement of I & B Rules, 2019.
12. It is contended that the claim of the applicant is barred by limitation as held in ***BK Educational Services Pvt. Ltd. V. Parag Gupta & Associates*** that the Limitation Act is applicable to the proceedings or appeals before the NCLT, NCLAT, DRT and DRAT by introducing section 238A to the Code.
13. It is contended that the application is liable to be dismissed due to lack of jurisdiction. As per the clause 22 of PGA dated 29.03.2013, to settle any disputes which may arise out of or in connection with the guarantee shall be brought to courts and tribunals in Chennai.

14. It is contended that the application is liable to be dismissed for suppression of material facts intentionally. As the applicant has concealed the material facts before the Adjudicating Authority.
- a. The actual implementation of the CDR package commenced at the end of June 2013 and extended up to March 2014, resulting additional burden on the CD. Furthermore, the Indian Bank & Oriental Bank of Commerce restricted themselves to restructuring of existing debt.
 - b. The CDR package also included sanction of fresh Term Loan amounting to Rs. 40 Crore for the CD's backward integration project resulting in substantial savings and improved profitability. As per the LOA, five banks jointly committed to sanction the term loan. Although, they have failed to release the loan amounts to the CD, which deprived the benefits of backward integration project. Further, the CD was to bear interest costs on the partially released amounts.
 - c. It is contended that SASF¹⁸ did not adhere to the SASF package and demanded for upfront payment of the interest dues of Rs.18.20 Crores, which was not part of the envisaged CDR package and declined to grant a *Pari passu* first/second charge on fixed assets, as envisaged in the CDR package. This caused reluctance on the part of other banks to release their sanctioned limits, ultimately resulting in the failure of the CDR package.
 - d. It is submitted that on May 2014, the CD submitted a **CAP**¹⁹ to its lenders/FC's, *inter alia* envisaging additional working capital limits and sanction of SBLC/EPBG facility in lieu of WCTL & FITL facilities. Although the Punjab National Bank completed the appraisal towards the end of September 2014, the banks which sanctioned limits as per CAP did not release the full amounts and

¹⁸ Stressed Assets Stabilization Fund

¹⁹ Corrective Action Plan

adjusted partial amounts towards over dues in their accounts, restricting the availability of funds to the CD.

- e. Due to the shortfall in working capital funds, the CD left with no choice had to scale down its manufacturing activities. During the Joint Lender's Forum (JLF) convened on 30.11.2015, to explore the SDR²⁰ route, the CD conveyed its agreement for the same and informed that UK based Fernmount Group was interested in acquiring the CD. As there was no response from the banks regarding the proposal submitted by the Fernmount Group, the CD submitted an OTS²¹ proposal to the banks vide its letter dated 30.08.2018.
- f. That PG through a letter²² dated 11.02.2021 has responded to the Demand Notice dated 24.12.2020, issued by the Petitioner. Stating that he held a very miniscule percentage of shareholding of the CD by 2010 and resigned from all executive positions within the company in 2004, with no involvement in its day-to-day affairs since then. PG also conveyed these circumstances to the consortium of banks led by PNB, along with the reasons compelling him to extend his Personal Guarantee and the subsequent breaches committed by the consortium. However, the petitioner failed to disclose this information, crucial for the consideration of this petition by this Adjudicating Authority.

Respondent No. 1 Additional Counter:

15. The petition is not maintainable as the PG has not given any Personal Guarantee for debt being claimed by the applicant. It is stated that the reliance upon the Personal Guarantee dated 13.02.2015 is totally ill-founded, as it was exclusively for securing the amount to be advanced under the Supplemental Master Restructuring Agreement and the

²⁰ Strategic Debt Restructuring

²¹ One Time Settlement

²² Pg no. 748-752, Annexure- 31

- applicant Bank has never acted upon the terms of Supplemental Agreement as failed to disburse amounts as per agreement dated 13.02.2015.
16. It is contended that the petition is miserably barred by limitation, as the Demand Notice dated 24.12.2020, which mentions the date of default as 01.09.2012 and whereas the application has been filed on 19.04.2021 i.e., after 8 years and the applicant has mentioned dated of default as 20.04.2018 and 24.12.2020 to misdirect this Adjudicating Authority.
 17. It is submitted that in present application the CD account was restructured vide agreement dated 29.03.2013 as the loan accounts of CD became irregular and thus the date of default mentioned by applicant as 01.09.2012 in the notice of demand dated 24.12.2020, which abundantly makes it clear that the accounts of the CD were wrongly and illegally classified as a NPA on 28.12.2015 and did not act under the Supplemental Agreement dated 13.02.2015.
 18. It is argued that the Petitioner to revive its claim has falsely classified CD's account as NPA on 28.12.2015, when admittedly as per the demand notice dated 24.12.2020 the default date is stated as 01.09.2012.
 19. It is averred that the Petitioner had recovered funds from securities mortgaged/ charged by CD, and the applicant doesn't disclose the amounts recovered which is a material information and whether due credit was given in loan accounts of CD.
 20. It is contended that Resolution Professional in a casual manner had accepted the date of default as 20.04.2018 and 24.12.2020 instead of 01.09.2012 as stated in the notice of demand dated 24.12.2020. Additionally, had recorded that the Applicant Bank has invoked personal guarantee dated 29.03.2013 which is factually incorrect as the notice of demand clearly states the deed of Personal Guarantee dated 13.02.2015.

21. It is stated that the provisions relating to Insolvency of Personal Guarantor to CD are unconstitutional as a constitutional challenge to personal Insolvency provision under I&B Code is pending before the Hon'ble Supreme Court in ***Surendra B. Jiwarajka Vs Omkara Assets reconstruction Pvt. Ltd.***
22. It is submitted that this Adjudicating Authority, vide its order dated 08.04.2021, approved the Resolution Plan and no CIRP is pending against the CD. The monies paid by the SRA²³ in pursuance of the approval of Resolution Plan have been appropriated by the applicant Bank. Consequently, the applicant Bank has failed to give due credit to the amounts received under the Resolution Plan.
23. It is argued that as CIRP process is not pending this Adjudicating Authority does not have the jurisdiction to entertain the present petition as Section 179 of the Code provides the territorial jurisdiction as DRT for the applications filed under Section 95 of I&B Code.
24. The Respondent No. 1 has relied on various judgments for maintainability of insolvency of a personal guarantor unless Insolvency or Liquidation proceedings are ongoing.
- a) ***Insta Capital Pvt. Ltd. vs. Ketan Vinod Kumar Shah***
 - b) ***Altico Capital India Ltd. vs. Rajesh Patel***
 - c) ***Rohit Nath vs. KEB Hana Bank Ltd.***
25. The judgment of ***State Bank of India vs. Mahendra Kumar Jajodia, CA (AT) Ins No.60 of 2022***, by the Hon'ble NCLAT, held that an Application under Section 95(1) of the Code is maintainable even if no CIRP proceedings are pending against the CD. However, it failed to address the submissions mentioned earlier and cannot be considered reliable. Similarly, the NCLAT in ***UCO Bank Flagship Corporate Branch vs. Navin Kumar Jain, CA (AT) (Ins) No.305 of 2022***, followed the

²³ Successful Resolution Applicant

judgment in **Mahendra Kumar Jajodia** (supra), and hence cannot be relied upon either.

Submissions by Applicant:

26. It is averred that the CD and PG executed supplementary master restructuring agreement and guarantee agreement on 13.02.2015 and the applicant Bank's disbursed its share of Rs. 286.23 in the form of CC, WCTL, FITL-1, FITL-2, LC and SBLC to the loan accounts of CD.
27. The agreement dated 13.02.2015 were in continuation of the earlier guarantee documents executed by the PG. Therefore, there is no merit in the contention of the PG that the guarantee executed by him during the 2015 was not acted upon. Further, it is submitted that in view of the clause 5.4 of the said guarantee deeds, the guarantee shall be valid and binding on the guarantors and operative until the Final Settlement Date.
28. It is submitted that the CD was liable to pay to the applicant Bank an amount of Rs. 400,63,07,670/- as against the limits of Rs. 286.23 crores sanctioned and the account of CD was classified as NPA on 28-12-2015. Therefore, the guarantee executed by the PG was invoked by the FC vide its Notice dated 20.04.2018 demanding payment of dues as on that date.
29. It is submitted that cause of action for this application arose on 20.04.2018 when the guarantee was invoked. The decision of Hon'ble Supreme Court of India in **Margaret Lalita Samuel v. Indo Commercial Bank Limited** that cause of action against the Guarantors who executed continuing guarantee arises on the date of demand.
30. It is submitted that the present petition is filed within the limitation of three years from the date of invocation of guarantee dated 20.04.2018.
31. It is submitted that as per the RBI guidelines, the NPA date in restructured accounts relates back to the original date of the NPA, in case of failure of restructuring packages. In the instant case, since failure of

twice, the default date was mentioned in the Notice as 01.09.2012 in the Notice issued by the FC. The date of default on the part of the PG is the date of invocation of guarantee and not NPA date.

32. It is stated that a simple mistake, without causing any prejudice to the PG, in the notice would not absolve the PG from his liabilities and would not affect the proceedings initiated as settled by the Hon'ble NCLAT "***Credberg Advisors India (P) Ltd. v. Platinum Holdings (P) Ltd.***" has held that a mistake in demand notice does not make application defective unless some prejudice is suffered resulting from such mistake. The NPA date has no relevance with regard to the liability of the guarantor, as the liability of the guarantor arises only on invocation of guarantee i.e., 20.04.2018.
33. The approval of Resolution Plan and recovery of part amounts do not absolve the PG from his liability to pay the remaining outstanding dues. Wherein the Hon'ble Apex court in ***Lalit Kumar Jain v Union of India & Ors*** (para 111) and as per clause 10 of the guarantee deeds, it is submitted that the liability of the Guarantor under the guarantee agreement is separate and distinct and it is a continuing one, until the total dues are recovered in the loan accounts.
34. Upon considering the submissions of both the parties the main questions before us are

Whether the Insolvency Resolution Process of Personal Guarantor is unconstitutional?

35. Hon'ble Supreme Court in its judgement dated 09.11.2023, in the case of ***Dilip B. Jiwrarka V/s Union of India & Ors. in WP (civil) No. 1281 of 2021*** has upheld the Constitutional Validity of the Sections 94 to 100, by holding that:

“The provisions of Section 95 to Section 100 of the IBC are not unconstitutional as they do not violate Article 14 and Article 21 of the Constitution.”

Whether the application filed by the Applicant Bank is time barred as the default occurred on 01.09.2012 as mentioned in the Demand notice?

36. The main contention of Respondent No.1/PG is that since the petition is filed after the expiry of three years from the date of default of 01.09.2012, as identified in the Demand Notice dated 24.12.2020, the petition is barred by limitation. Further, it is submitted that when the claim is barred for the principal borrower on the date of filing this petition, the claim against the guarantor is also barred by limitation. It is contended that there cannot be two different dates of default to calculate period of limitation, one for the principal borrower and another for the guarantor.
37. This proposition is not entirely correct. In general, the date of default of the principal borrower is the date of default for the guarantor also, but it is not always so. It all depends upon the nature and contents of the deed of guarantee executed by the guarantor. In this regard the Apex court in **Syndicate Bank vs Channaveerappa Beleri & Ors²⁴** had made it clear that the limitation depends upon the nature of the guarantee deed executed. In the present case the personal guarantee provided by the PG was of continuing nature. As per Clause 20 of the Personal Guarantee Agreement dated 29.03.2013, it is provided that:

“ This Guarantee shall be a continuing guarantee remaining in full force and effect until payment in full have been received by the CDR Lenders of each and every part of all the monies payable/ paid by the Borrower to the CDR Lenders under the CDR Documents including without limitation, towards the principal amount of the Facilities outstanding together with all Interest, Premium, all other fees, financing charges, reimbursements, costs, expenses and/or other monies payable to CDR Lenders and their trustees and agents as stipulated under the CDR Documents, in whatever currency or currencies the same may from time to time be denominated

²⁴ (2006) 11 SCC 506

in accordance with the CDR Documents. The CDR Lenders may make multiple or successive demands upon the Guarantors and any such demands shall not be considered or regarded as an invocation of all the obligations under this Guarantee; Provided, however, such invocations or demands shall not prejudice or affect the rights of the CDR Lenders to make further additional Invocations or demands”²⁵

38. The judgment cited by the Applicant ***Margaret Lalita Samuel v. Indo Commercial Bank Limited, AIR 1972 SC 102*** is also relevant which held that the cause of action against the Guarantors who execute continuing guarantee arise on the date of demand. It is thus apparent that the limitation in this case will begin from the date of issue of the notice of demand to the PG i.e. 24.12.2020. It’s also worth noting that a legal notice recalling the loans was sent by the Applicant on 20.04.2018. Considering this date as well, the application filed on 27.04.2021 falls within the limitation period.

Whether the application filed has no jurisdiction as no CIRP is pending before this Adjudicating Authority?

39. In case of the CD the Resolution Plan was approved on 08.04.2021. The legal notice recalling the outstanding amounts was sent to the PG on 20.04.2018 and the demand notice under Rule 7(2) was issued on 24.12.2020, before the approval of Resolution Plan of the CD. Thus, the process under section 95 r/w Rule 7 was initiated well before the approval of resolution plan of the CD.
40. Regardless, even if the resolution plan in the case of the CD was approved before the guarantee was invoked, the financial creditor can proceed against the personal guarantor under Section 95 if the guarantor's liability remained unfulfilled. This is supported by ***Lalit Kumar Jain***²⁶ (Supra) wherein the Hon’ble Supreme Court held that

²⁵ Page 232 of the Application

²⁶ 2021 SCC Online SC 396

“... approval of a resolution plan does not ipso facto discharge a personal guarantor (of the corporate debtor) of her or his 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 of law, or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability, which arises out of an independent contract.”

41. It is the admitted fact that the Resolution Plan of CD was approved and the CD was taken over by Successful Resolution Applicant (SRA). However, the guarantee given by the promoters was not been assigned to SRA. Consequently, the personal guarantor remains bound by their guarantee for the outstanding debt. Section 128 of the Indian Contract Act, 1872 stipulates that in the event of a default, both the Principal Borrower and the Surety are jointly and severally liable to the Creditor. The Creditor retains the right to recover its dues from either party individually or from both parties concurrently.

Other Contentions on behalf of the Respondent No.1 /PG

42. It has been contended that since Personal Guarantee Agreement executed by the PG on 29.03.2013 was with the consortium of CDR Lenders, all the parties to that agreement are required to be brought on record to avoid multiplicity of proceedings. This contention lacks substance as the terms of that agreement clearly provided in clauses 3.1 & 3.2 that

“3.1 In the event of any default on part of the Borrower in payment/repayment or reimbursement of any of the moneys referred to in Section 2 above (whether at stated maturity, upon acceleration or otherwise), or In the event of any default on the part of the Borrower to comply with or perform any of the terms, conditions and covenants contained in the CDR Documents, the Guarantors shall, upon demand, in writing, forthwith pay to the CDR Lenders without demur, all the amounts payable by the Borrower under the Master Restructuring Agreement and any other CDR Documents. Any such demand made by any of the CDR Lenders on the Guarantors shall be final, conclusive and binding notwithstanding any difference or any dispute between the CDR Lenders and the Borrower or the CDR

Lenders and the Guarantors or the Borrower and the Guarantors or the Borrower and any other Person and/or any other legal proceedings, pending before any court, tribunal, arbitrator, or any other authority.

3.2 The benefits of this Guarantee shall be available to the other CDR Lenders and they shall be entitled to call upon the Guarantors to perform the terms of this Guarantee, and upon any such demand, the Guarantors shall, without any protest or demur, perform the obligations under this Guarantee in favor of any such CDR Lender”²⁷

Clearly, any of the lenders, including the Applicant herein, could have invoked the Personal Guarantee provided by the PG in case of the default by the CD, identified as the ‘Borrower’ in that agreement. Therefore, there is no necessity to involve all parties to the agreement in the proceedings.

43. Yet another contention that the Applicant is not competent authority and the authorization letter submitted on behalf of the Creditor is not valid as it was issued prior to the commencement of I & B Rules, 2019. This contention is also invalid as the said Authorization Letter was in relation to all proceedings under IBC. The proceedings against the PG also have been initiated under IBC even though the Rules concerning the application to be made before the Adjudicating Authority were framed later. In any case, the present application has been made after the Rules were framed in that regard and has been made as per the prescribed rules.
44. It is also contended that as per the clause 22 of Personal Guarantee Agreement (PGA) of 29.03.2013, any dispute arising in connection with the guarantee should have been brought to courts and tribunals in Chennai. This is also an incorrect representation. Besides the exclusive jurisdiction of courts and tribunals in Chennai stipulated in Clause 22 of the Agreement, it also provided as follows:

²⁷ Page 221 of the Application

“22.4 Nothing contained in this Section 22, shall limit any right of the CDR Lenders to bring any suit or take action or proceedings In-any-other-court or tribunal of competent Jurisdiction in India, nor shall the bringing of any suit, taking of any action or proceedings in one or more jurisdictions preclude the bringing of any suit, taking of any action or proceedings in any other jurisdiction whether concurrently or not and the Guarantors irrevocably submits to and accepts for themselves and in respect of Its property, generally and unconditionally, the jurisdiction of such court or tribunal”²⁸

Therefore, nothing in Clause 22 of the PGA prohibits the Applicant from pursuing the present application before this Authority. Also to be noted are the provisions of Section 60(2) of IBC²⁹ about which Hon’ble NCLAT in **SBI vs Mahendra Kumar Jajodia**³⁰ (Supra) has held that:

“Sub-Section 2 of Section 60 requires that where a CIRP or Liquidation Process of the Corporate Debtor is pending before ‘a’ National Company Law Tribunal the application relating to CIRP of the Corporate Guarantor or Personal Guarantor as the case may be of such Corporate Debtor shall be filed before ‘such’ National Company Law Tribunal. The purpose and object of the sub-section 2 of Section 60 of the Code is that when proceedings are pending in ‘a’ National Company Law Tribunal, any proceeding against Corporate Guarantor should also be filed before ‘such’ National Company Law Tribunal. The idea is that both proceedings be entertained by one and the same NCLT. The sub-section 2 of Section 60 does not in any way prohibit filing of proceedings under Section 95 of the Code even if no proceeding are pending before NCLT.”

45. Other contentions of the PG are with regard to the implementation of the Corporate Debt Restructuring (CDR) Package that commenced after execution of the Master Restructuring Agreement and the Personal

²⁸ Page 234 of the Application

²⁹ Section 60(2):

Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or 1 [liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor] shall be filed before such National Company Law Tribunal.

³⁰ SBI v. Mahendra Kumar Jajodia, 2022 SCC OnLine NCLAT 58

Guarantee Agreement on 29.03.2013. None of the averments made in that regard negate the most important issue concerning the present application i.e. the default by the CD and failure by the PG to fulfil his obligation under the Personal Guarantee Agreement.

The Decision

46. Considering the above, Company Petition vide CP (IB) No. 118/95/HDB/2021 filed under the provisions of Section 95 of IBC is hereby admitted under the provisions of Section 100 of the Code, 2016 and Insolvency Resolution Process is initiated against **Mr. Y.S. Chowdhary**, 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 **Resolution Professional Shri. Maligi Madhusushana Reddy**, having Registration No. IBBI/IPA-001/IPP00843/2017-2018/11427, M M R Lion Crop, 4th floor, HSR Eden, Road no.2, Banjara hills, Hyderabad, Telangana- 500 034, mmreddyfca@gmail.com, who was appointed vide order dated 03.08.2022 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.

- f) 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.
- g) 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.

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

Sd/-

(SANJAY PURI)
MEMBER (TECHNICAL)

Sd/-

(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

Rohit