

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

PHYSICAL HEARING

**CORAM: JUSTICE TELAPROLU RAJANI – HON’BLE MEMBER (J)
CORAM: SHRI CHARAN SINGH - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 16.03.2023 AT 02:30 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP/IB/11/2021
NAME OF THE COMPANY	Kondapalli Surekha Uday & Sagar Infra Rail International Ltd
NAME OF THE PETITIONER(S)	Stressed assets Management Branch-II
NAME OF THE RESPONDENT(S)	Kondapalli Surekha Uday & Sagar Infra Rail International Ltd
UNDER SECTION	95 of IBC

ORDER

This application is allowed, vide separate orders.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

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

CP (IB) No. 11/95/HDB/2021

[Application u/s. 95 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Process for Personal Guarantors to Corporate Debtors) Rules, 2019]

IN THE MATTER OF KONDAPALLI SUREKHA UDAY

STATE BANK OF INDIA

Stressed Assets Management Branch - II
TSRTC Bus Stand, Kachiguda
Hyderabad.

...FINANCIAL CREDITOR

AND

Sri. KONDAPALLI SUREKHA UDAY

Plot No. 85, Green Avenue,
Nizampet Road, Kukatpally,
Hyderabad – 500 072

... PERSONAL GUARANTOR

Date of Order: 16.03.2023

Coram:

**Hon'ble Justice Smt.Telaprolu Rajani, Member (Judicial)
Hon'ble Shri Charan Singh, Member (Technical)**

Counsel/Parties present:

For the Petitioner : Mr. GP Durga Bose Gandham, Advocate
For the Respondent : Mr. G. Bhupesh, Advocate

[**PER: BENCH**]

ORDER

1. This petition is filed by the State Bank of India (Financial Creditor) under Section 95 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency process for Personal Guarantors to Corporate Debtors) Rules, 2019 seeking an order for initiation of the Individual Insolvency Resolution Process (“IR Process”) against Mr. Kondapalli Surekha Uday Debtor, who is the Respondent/Personal Guarantor seeking to initiate CIRP against the Respondent.
2. By virtue of the order dated 29.09.2021 RP was appointed and was directed to submit his report. The RP submitted his report recommending for approval of the application and to order for CIRP against Respondent/Personal Guarantor.
3. Application is filed based on the fact that the CD failed to discharge the debt which is due to the petitioner/FC, for which the respondent stood as Guarantor. The CD was taken into CIRP. According to the report of the RP, a demand notice was issued to the PG on 10.08.2020

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demanding payment of Rs.71,47,35,477.90. The debt was registered with information utility. A letter has been addressed to the Government on 20.11.2021 to clarify whether any payment has been made to the creditor in the interim i.e after issuance of demand notice. It is observed that no payment has been made.

4. The applicant submitted the following documents:
 - a. Deed of Guarantee Dt. 01.09.2006
 - b. Supplemental Deed of Guarantee Dt. 13.07.2007
 - c. Supplemental Deed of Guarantee Dt. 11.10.2007
 - d. Supplemental Deed of Guarantee Dt. 11.07.2008
 - e. Supplemental Deed of Guarantee Dt. 24.07.2008
 - f. Supplemental Deed of Guarantee Dt. 03.01.2009
 - g. Supplemental Deed of Guarantee Dt. 29.05.2009
 - h. Supplemental Deed of Guarantee Dt. 13.01.2010
 - i. Statement of Account of the Cash credit account of corporate Debtor obtained from the applicant creditor as on 23.11.2021.
5. Latest statement of account of the Cash credit account of the corporate Debtor was sought from the applicant. The PG, along with his parents, under a Partnership Firm, were into the business of manufacturing of Thermit Welding Portions which are used to join rail tracks, since the year 1984. It has gained good

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reputation as regards the quality of works. Identifying the reputation, Konkan Railway Corporation Limited which is a Public Sector Unit, had taken the Partnership Firm as a unanimous Technological Partner in Track Laying for any works undertaken by the Corporation inside and outside India. The collaboration has resulted in preparing for several prospective projects. The Firm had been converted into a Company in the year 2000 in the name and style of 'Sagar Thermit Corporation Limited (STCL)'. In the due course of business it had entered into a Joint Venture with Ultimate Power Electro – Mechanical Works LLC at Dubai, vide a Joint Venture Agreement dated 13.04.2008.

6. Thereafter, the PG and Ultimate Power have entered into a Working Agreement dated 21.04.2008. Subsequently, 'Empower' had granted contractual works to the said Joint Venture. The Joint Venture has completed contractual works for the completed works rendered to Empower. As per the accounts of the CD, an amount of 67,363,084.94 AED remained due. Despite submission of Bills, Empower has not taken steps to clear the same on an alleged ground that third party Technical Consultants have not approve the

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same. It is learnt that the Technical Consultants left in view of non-payment of dues by empower.

7. The Joint Venture had learnt that the works Contract with Empower consists of an Arbitration Clause. The CD had approached multiple Lenders for credit loans.
8. By the year 2009-2010, global financial crisis has hit all the countries badly. Left with no other option, the CD sold the Porta Cabins to one Firm at Dubai which issued a cheque in favour of the CD and the cheque was returned by the Banker with a remark of 'Insufficient Funds'. For clearance of the same, certain cheques were issued by the PG to CD to certain suppliers but they were dishonoured and cases were initiated against the PG.
9. By then, the CD could clear the Bank Guarantees worth Rs.40 Crores given by ICICI, while, the State Bank of India instructed the CD that they hold biggest loan amounts to the Firm and that all the funds received from Empower shall be deposited into their account. While, the CD has addressed letters to Ultimate Power authorising it to remit the share of the Corporate Debtor to SBI towards its loan, on behalf of the CD. Consequent to the case filed by the CD regarding dishonour of cheques, the court directed one Fahd al-

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T'naiji to pay to the CD Dhs.3,239,000/- with interest @9% from the date of maturity of cheque and till the full and final payment. While matter stood thus CD was ordered into CIRP vide orders dated 08.08.2019.

10. Consequently, this application is filed. Heard both the counsel. A perusal of the pleadings, more particularly the reply filed by the PG, does not make out any case for dismissing the application. Moreover it reflects a clear admission on the part of the PG that it has stood as Guarantor for the CD, which was already taken into CIRP for the failure of the CD to discharge the debt which was due to the Financial Creditors and that the PG also could not discharge the debt as per the Guarantee agreement. Hence, there should not be any further demur on our part to order the application as prayed for.

ORDER

1. The Company Petition is admitted. The initiation of Individual Insolvency Resolution Process shall commence from this date and shall be completed within 180 days hence.
2. Therefore, by exercising powers under Section 100 of the Code, we pass the following orders:

- i. The petition i.e. **CP (IB) No. 11/95/HDB/2021** filed **under the provisions of Section 95 of IBC, 2016 is hereby admitted.**
- ii. Consequently, the Insolvency Resolution Process is hereby initiated against the Personal Guarantor, Mr. Kondapalli Surekha Uday and the moratorium is declared, which begins with effect from the date of admission of the petition and shall cease to have effect at the end of the period of 180 days, as provided under Section 101 of IBC, 2016. During the moratorium period;
- iii. Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;
- iv. The creditors shall not initiate any legal action or legal proceedings in respect of any debt; and
- v. the debtor shall not transfer, alienate, encumber or dispose of any of her assets or her legal rights or beneficial interest therein;
- vi. The provisions of this Section shall not apply to such transactions as may be notified by the Central

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Government in consultation with any financial sector regulator.

- vii. The Resolution Professional i.e. Mr. P.V. Narayana Rao, having Registration No. IBBI/IPA-001/IP-P01706/2019-2020/12633, having office at Plot No: 201. P.R.K. Mansion, Ram Nagar Gundu, Hyderabad, Telangana 500044, email id: rao_ca60@rediffmail.com, Mobile: 9949355122, who was appointed vide order dated 29.09.2021 is directed to cause public notice published on behalf of the Adjudicating Authority within 7 days of uploading of this Order on the website of NCLT, Hyderabad, inviting 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 IBC, 2016. 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 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

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shall be affixed in the premises of this Adjudicating Authority.

- viii. The Resolution Professional in exercise of the powers conferred under Section 104 shall prepare a list of creditors within 30 days from the date of the notice. The debtor 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 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.
- ix. 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

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submission of the Report under Sub-Section (1) of Section 106, 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.

- x. The meeting of the creditors shall be conducted in accordance with the provisions of 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 IBC, 2016.

Sd/-
CHARAN SINGH
MEMBER (TECHNICAL)

Sd/-
JUSTICE TELAPROLU RAJANI
MEMBER (JUDICIAL)

Apoorva