

S.No.4

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
13-03-2023 AT 10:30 AM**

CP(IB) No. 175/95/HDB/2022
u/s. 95 of IBC, 2016

IN THE MATTER OF:

Bank of Maharashtra

...Petitioner

VS

Shri. V V Raghupathi Rao & M/s. SVSVS Projects Pvt Ltd

...Respondent

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

Orders pronounced, recorded vide separate sheets. In the result, the Company Petition is allowed and the Personal Guarantor is put under Insolvency Resolution Process.

**Sd/-
MEMBER (T)**

**Sd/-
MEMBER (J)**

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

CP (IB) No. 175/95/HDB/2022

Under Section 95 of 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.

BETWEEN

Bank of Maharashtra
#4-3-448 to 460 & 465, 1st Floor,
Vinoothna Pittie's Majesty, Gopalbagh,
Near Bank Street, Koti,
Hyderabad – 500001.

... Petitioner

And

Shri. V V Raghupathi Rao
House No. 24-317/4,
Employees' Colony, Nuzid,
Krishna District, Andhra Pradesh

... Personal Guarantor

&

SVSVS Projects Private Limited
Plot No. 31, 2nd Floor, Phase 1,
Kalyan Nagar, Hyderabad – 500038.

... Corporate Debtor

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)
Sh. Charan Singh, Hon'ble Member (Technical)

Appearance of Parties/Counsels:

For the Petitioner: Ms. Aishwarya Chevuturi, Counsel
For the Personal Guarantor: Shri. Mirza Moinulla Baig, Counsel
For the RP: Shri. Murali Mohan Chevuturi,
Resolution Professional in person

Date of order: 13.03.2023

PER: BENCH

1. The instant Company Petition is filed by the Bank of Maharashtra under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") 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 (hereinafter referred to as "Personal Guarantor Insolvency Rules, 2019") seeking an order for initiation of the Insolvency Resolution Process (hereinafter referred to as "IR Process") against Shri. V V Raghupathi Rao who is the Personal Guarantor of SVSVS Projects Private Limited (hereinafter referred to as "Corporate Debtor").

2. According to the Petitioner Bank, the Personal Guarantor herein executed a Deed of Guarantee to secure the financial assistance granted by the Petitioner Bank to the Corporate Debtor on 25.03.2014 and the Guarantee Deed executed by the Personal Guarantor is irrevocable, independent, coextensive, and

continuing Guarantee. The outstanding debt as on Non-Performing Account dated 27.12.2018 is Rs. 48, 02, 97, 568.69/- (Rupees Forty-Eight Crores Two Lakhs Ninety-Seven Thousand Five Hundred Sixty-Eight and Sixty-Nine paisa Only) together with interest. The following documents prove the existence of debt and the amount in default: -

2.1 Sanction Letter dated 24.03.2014 and 09.04.2016.

2.2 Bank Guarantee Note for Rs. 55.75 Crores dated 25.03.2014.

2.3 Composite Deed of Hypothecation for Rs. 55.75 Crores dated 25.03.2014.

3. It is stated that, on account of the default by the Corporate Debtor, the CIRP proceedings were initiated against the Corporate Debtor on 26.04.2021. Pursuant to framing the 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 31.07.2021 to the Personal Guarantor demanding the payment of the amount in default and the same was served through registered post. The Personal Guarantor herein failed to repay the guaranteed amount after receipt of the notice issued under the Code in Form B dated 31.07.2021.

4. On presentation of the instant Company petition, this Adjudicating Authority vide order dated 06.06.2022 granted interim moratorium and appointed Shri. Murali Mohan Chevuturi as Resolution Professional and as per section 99 of the Code, the Resolution Professional submitted his report on 16.06.2022, inter-alia, stating that the instant Company Petition satisfies the requirements under Section 95 of the Code and accordingly he recommended for acceptance of this instant Company Petition and initiate IR Process against the Personal Guarantor.

5. The Personal Guarantor filed Counter to this instant Petition on 18.08.2022. It is stated in the Counter that pursuant to the sanction letter dated 09.04.2016, the credit facilities were revised along with the terms and conditions but the Personal Guarantor was neither given an opportunity to execute fresh deed of guarantee, nor the Corporate Debtor had entered into fresh agreements and documentation for revised limits and for revised terms and conditions, nor the same were filed with the Registrar of Companies. Hence, the guarantee given on 25.03.2014 stands revoked consequent to the non-execution of any further deed or agreements for revised terms and conditions. It is also stated that the Personal Guarantor herein, who is the Promoter of the Corporate Debtor submitted Resolution Plan on 30.04.2022 and paid an earnest Money Deposit of Rs. 20, 00, 000/- (Rupees Twenty lakhs only) and also an OTS proposal was submitted on 15.07.2022 and the same is pending for consideration.

6. The Petitioner Bank filed rejoinder and stated that the Personal Guarantor vide revival letter dated 15.03.2017 had acknowledged and extended their Deed Guarantee towards all the facilities availed by the Corporate Debtor. It is further stated that the earnest money deposit by the Personal Guarantor herein before the COC is irrelevant to this instant Petition. The Petitioner Bank also filed a memo dated 02.11.2022 stating that the OTS proposal put forth by the Corporate Debtor is not within the guidelines provided by the Financial Creditor, hence there is no active OTS proposal and this instant Company Petition may be allowed.

7. 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?”

8. We have heard the Learned Counsel Ms. Aishwarya Chevuturi for the Petitioner Bank, Learned Resolution Professional Shri. Murali Mohan Chevuturi and Learned Counsel Shri. Mirza Moinullah Baig for the Personal Guarantor and perused the record. Satisfied with reasons.

9. 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. SVSVS Projects Private Limited vide CP (IB) No. 19/7/HDB/2021 under Section 7 of the Code which was admitted into CIRP by this Adjudicating Authority vide order dated 26.04.2021 and this instant Petition initiated against the Personal Guarantor of the Corporate Debtor. The RP in his report recommended for admission of the present Petition. The Personal Guarantor in his counter pleaded that the guarantee given by him on 25.03.2014 stood revoked consequent to the non-execution of any further deed or agreement for revised terms and conditions. This plea of the Personal Guarantor is unsustainable in the light of revival letter dated 15.03.2017 executed by the Personal Guarantor. A bare perusal of the revival letter dated 15.03.2017 clearly and categorically discloses that the Personal Guarantor acting as a surety for the credit facilities extended to the Corporate Debtor i.e., SVSVS Projects Private Limited, had acknowledged and confirmed the balance outstanding amount mentioned in respect of or under the facilities and that as guarantors, jointly and severally bound and liable to pay to the Financial Creditor all the amounts due and payable by M/s. SVSVS Projects Private Limited. Therefore, the Personal Guarantor is estopped from contending,

contra, to this written document dated 15.03.2017. Hence, we are satisfied that the present Company Petition deserves to be admitted.

10. Accordingly, this instant Company Petition vide CP (IB) No. 175/95/HDB/2022 filed under the provisions of Section 95 of the Code is hereby admitted under the Section 100 of the Code and Insolvency Resolution Process is initiated against Shri. V V Raghupati Rao, the Personal Guarantor, and moratorium is declared in relation to all the debts, which begins from the date of admission of this 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:

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.

11. Shri. Murali Mohan Chevuturi, Registration no: IBBI/IPA-003/00307/2020-2021/13464, who has given his written consent on 23.05.2022 in Form -A to act as the Resolution Professional. Hence, this Adjudicating Authority appoints:

Shri. Murali Mohan Chevuturi;

Registration no: IBBI/IPA-003/00307/2020-2021/13464;

Email id: mohan.chevuturi@gmail.com

Address: 1-2-59719, Flat No. 201, Dream Home Vasista, Apts,
Plot No. 9, Baraf Bagh Colony, Lower Tankbund,
Hyderabad, Telangana – 500029.

12. 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 the 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.

13. 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 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 of the Code.

14. 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) of the Code. 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.

15. The meeting of creditors shall be conducted in accordance with the provisions Section 109, 110 and 111 of the Code. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of the Code and submit the same to the Adjudicating 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.

16. The Petitioner Bank is directed to communicate this order to the Resolution Professional appointed herein immediately after uploading the order in the NCLT portal.

Sd/-
Charan Singh
Member (Technical)

Sd/-
Dr. Venkata Ramakrishna Badarinath Nandula
Member (Judicial)