

SL. No.6

**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 06.06.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition IB/186/2022
NAME OF THE COMPANY	
NAME OF THE PETITIONER(S)	Power Finance Corporation
NAME OF THE RESPONDENT(S)	M. Seetaram
UNDER SECTION	95 of IBC

ORDER

Orders pronounced, recorded vide separate sheets. In the result, this Petition is allowed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II

CP(IB) No. 186/95/HDB/2022
U/s. 95 of IB Code, 2016

In the matter of
M/S. Power Finance Corporation Limited

In the matter of:

Power Finance Corporation Limited,
Urja Nidhi, No.1, Barakhamba Lane,
Connaught Place, New Delhi- 110001.

...Petitioner/Financial Creditor

Versus

Mr. M. Seetaram,
Personal Guarantor of
M/s. Krishna Godavari Power Utilities Limited,
4691, Royce Road Irvine,
California, 92612, USA.
and also, at
Plot No. 321/A/27, Road No. 26,
Jubilee Hills, Hyderabad, 500 033.

...Respondent/ Personal Guarantor

Date of order: 06.06.2024

CORAM: -

Hon'ble Sri Rajeev Bhardwaj, Member (Judicial)

Hon'ble Sri Sanjay Puri, Member (Technical)

Counsels present:

For the Financial Creditor : Ms. Niharika Agarwal, Advocate
Resolution Professional : None

For the Personal Guarantor : Mr. Lakshman Sravan, Advocate

Heard on : 18.04.2024

PER: BENCH

ORDER

1. This petition has been filed by M/s. Power Finance Corporation Limited (**Financial Creditor/ FC**) under Section 95 of IBC¹ read with the applicable Rules². The petition filed on 31.05.2022, is seeking an order for initiation of the **PIRP**³ against **Mr. M. Seetaram** who is the Personal Guarantor (**PG/Respondent**) of M/s Krishna Godavari Power Utilities Limited, i.e. Corporate Debtor (**CD**) for a default amount of **Rs 235.94 crores**⁴ including interest as on 05.05.2022.

Brief facts of the Applicant:

2. The FC issued a Rupee term Loan of Rs. 76.63 Crores to the CD vide Sanction Letter⁵ dated 27.04.2007. Subsequent to this financial assistance, the CD executed Consortium Loan Agreement and multiple security documents on different occasions for a total loan amount of Rs 178.82 Crores creating securities in favor of FC and other four lenders, vide a Common Rupee Loan Agreement⁶ dated 25.10.2008. A Personal Guarantee Deed⁷ was also signed on that date by Dr M. Venkataraman and Shri Sreenivas Motupalli. On the demise of Dr M. Venkataraman, a fresh Personal Guarantee Deed⁸ was signed by the Respondent on 19.03.2013 to secure the loans extended to the CD by the lenders.
3. The CD defaulted in discharging its liability to repay of the said loan. Consequently, the account of CD was classified as Non-Performing Asset⁹

¹ Insolvency & Bankruptcy Code, 2016.

² **Rule 7(2)** of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules 2019

³ Personal Insolvency Resolution Process

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

⁵ Application Page no. 606-617, Enclosure-7.

⁶ Application Enclosure-5(a), Pg no. 386-580.

⁷ Application Enclosure-1, Pg no. 17-42.

⁸ Application Enclosure-1, Pg no. 43 - 63

⁹ Application Pg no. 618, Enclosure- 8.

on 15.01.2014.

4. It is submitted that the CD acknowledged the debt payable to FC vide letter¹⁰ dated 08.10.2016. Moreover, the CD on 11.01.2018 issued a letter¹¹ for balance confirmation as on 31.12.2017. Subsequently, on 23.02.2018 the FC issued a recall notice¹² to the CD, demanding payment of the loan aggregating to Rs 148.07 Crores as on 23.02.2018. However, the CD failed to pay the dues to FC within the time stipulated in recall notice.
5. It is averred that the FC on 28.03.2018 issued a notice¹³ calling upon PG to pay Rs 148.07 Crores by invoking the Personal Guarantee. Additionally, the notice demanded the payment of applicable Rupee Term Loan interest, liquidated damages, and other charges from 23.02.2018 onwards, calculated with compound interest and monthly/quarterly interests. The PG was given a deadline of 15 days from the date of receipt of the notice to fulfill these obligations under the Loan Agreement.
6. It is averred that the CD vide order¹⁴ dated 04.12.2018, had admitted to CIRP by this Adjudicating Authority under Section 7 of IBC, filed by FC. Subsequently, on 27.02.2020 a Resolution Plan¹⁵ was approved and amount of Rs 12.40 Crores was paid to the FC towards loan balance and Rs 46.66 Lacs towards CIRP costs with interest up to 01.04.2020. Further, on 29.09.2021 the FC issued “No Default Certificate” to Karthik Rukmini Energy Limited, the Successful Resolution Applicant (SRA).
7. It is averred that the Personal Guarantee provided by the PG on 19.03.2013 states that the guarantor is legally bound to repay the lenders upon written demand, as per the clause no. 3 of the Deed of Personal

¹⁰ Application Pg no. 850-851, Enclosure- 23.

¹¹ Application Enclosure- 12, Pg no. 622.

¹² Application Enclosure 5(b), Page 581 - 588

¹³ Application Enclosure 5(c), Page 589 - 591

¹⁴ CP(IB) No. 249/7/HDB/2018, Application Page No. 359-371.

¹⁵ Application Page no. 372-385

Guarantee states as follows:

“In the event of default on the part of the Borrower in payment/repayment of the obligations, or in the event of any default on the part of the Borrower to comply with or perform any of the terms and conditions and covenants contained in the said Facility Agreement and/or the Security Documents, the Guarantor shall, upon demand in writing, forthwith pay to the lenders without demur all the amounts payable by the borrower under the said Facility Agreement and/or the Security Documents”¹⁶

8. It is submitted that the FC on 04.02.2022 issued a Demand Notice¹⁷ to Respondent under Form-B as per Rule 7 of the Insolvency and Bankruptcy Rules, 2019 along with all the material papers, which were served to the address of PG at USA and through an email on 21.03.2022. But no amount has been credited to the FC from the PG till date.
9. It is stated that the Hon'ble Supreme Court in Suo-Moto Writ Petition (Civil) No. 3 of 2020 had excluded the time period from 15.03.2020 to 28.02.2022 for computing of limitation. Hence, the instant application against the Personal Guarantor is within the limitation period.
10. On presentation of this instant petition, this Adjudicating Authority on 08.06.2022 granted interim-moratorium and has appointed Shri Medarametla Rama Rao, 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 21.06.2022, recommending the admission of the Petition under Section 95 of the Code, 2016. The Resolution Professional in his report stated that 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 04.02.2022. However, the Personal Guarantor failed to repay the amount within 14 days provided there for.

¹⁶ Application Page 46 & 47

¹⁷ Application Enclosure 25, Page 853 - 1559

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 04.02.2022 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.”

Counter Affidavit of the Respondent / Personal Guarantor:

11. It is submitted by Respondent that the present Application is liable to be dismissed at threshold, as it does not contain details of dues as mandated under Section 95(4)(a) of IBC. It is claimed that Form-B filed under Rule 7(1) of the applicable Rules¹⁸ does not disclose any mandatory details except some historical documents.
12. No details are said to be provided to establish the alleged claim of Rs 229,48,42,668. It is alleged that the claim amount is arbitrary, as no detailed calculations as mandated under section 95(4)(a) of IBC towards “Interest” of Rs 85,42,57,336 and “Further Interest” of Rs 67,42,85,332 are provided in Form-B.
13. The discrepancy between the debt amount specified in Form-B, totaling Rs 229,48,42,668, and Rs 235.94 Crores reported in Form-C of the petition is pointed out. It is submitted that neither form contains the essential detailed calculation sheets mandated by Section 95(4)(a) of the IBC.
14. It is asserted that the FC acknowledged the due date of the debt as 28.03.2018, with the default occurring on 12.04.2018 and 22.02.2022. There is a significant inconsistency regarding the "date of default," as conventionally it shall be after the due date, i.e., 29.03.2018. Once a default has transpired, there cannot be subsequent default dates occurring four years later. The alleged default of 22.02.2022, is intended

¹⁸ Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules 2019

to facilitate the filing of a time-barred debt.

15. The certificate dated 26.05.2022 filed by the Applicant under Section 2A of the Bankers Book of Evidence Act, 1891, containing printouts of account statements and loan accounts, is also questioned for its authenticity. It is alleged that the printouts do not accurately reflect the genuine entries stored in the computer system.
16. In the rejoinder the FC reiterates the contentions made in the petition and denied the averments made in the counter.

The Decision

17. We have heard the Counsel for the parties and gone through the record. Admittedly, taking financial assistance from the Financial Creditor and execution of various documents including Guarantee Deed have not been disputed by the Respondent. Moreover, the Financial Creditor has meticulously outlined the computing of debt within the Bankers Books of Evidence, pertaining to the calculation of debt¹⁹ from the Rupee Term Loan, interest, and subsequent further interest as of 05.05.2022.
18. It is noted under section 128 of Indian Contract Act, 1872 that when a default is committed, the Principal Borrower and Surety are jointly and severally liable to Creditor and Creditor has the right to recover its dues from either of them or from both of them simultaneously. For reference, the said section of Indian Contract Act, 1872 is reproduced below:

“The liability of the surety is co- extensive with that of the principal debtor, unless it is otherwise provided by the contract.”

Therefore, within the terms of the Personal Guarantee Deed of 19.03.2013, the Respondent PG is clearly liable to pay the debt in the

¹⁹ Application Page 603 - 605

event of default by the principal borrower i.e. the Corporate Debtor M/s Krishna Godavari Power Utilities Ltd.

19. The Respondent's argument regarding the issue of limitation lacks merit. 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 & Ors***²⁰ 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 18 of the Personal Guarantee Agreement dated 19.03.2013, it is provided that:

“18. This Guarantee shall be a continuing one and shall remain in full force and effect till such time the Borrower' repays in full the said Loans together with interest, liquidated damages, premia on prepayment or on redemption, costs, expenses, guarantee fee and all other moneys that may from time to time become due and payable and remain unpaid to the Lenders under the Facility Agreement and/or the Security Documents.”²¹

20. The Hon'ble Supreme Court in the judgment of ***Margaret Lalita Samuel v. Indo Commercial Bank Limited, AIR 1972 SC 102*** held that the cause of action against the Guarantors who execute a 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. 28.03.2018 and 04.02.2022.
21. It's also worth noting that a legal notice recalling the loans was sent by the Applicant on 28.03.2018. Considering this date as well, the application filed on 31.05.2022 falls within the limitation period, as Hon'ble Supreme Court in ***Suo Moto WP (Civil) No. 3 of 2022 in Re:***

²⁰ (2006) 11 SCC 506

²¹ Page 52 of the Application

Cognizance for Extension of Limitation held that the period i.e. 15.03.2020 to 28.02.2022 is to be excluded for calculating the period of limitation.

22. Therefore, the present Application is well within the limitation period as the notice for invocation of guarantee was issued on 28.03.2018, and the present application filed on 31.05.2022 (after excluding the period of 15.03.2020 to 28.02.2022). We find that the debt as well as default is very much proved on record against the Respondent/Personal Guarantor.

The Order

23. Considering the above, Company Petition vide CP (IB) No. 186/95/HDB/2022 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. M. Seetaram**, 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. Medarametla Rama Rao**, having Registration No. IBBI/IPA-001/IP-P01894/2019-2020/12896, Flat 122, Vasavi Indraprastha, Street 1, Czech Colony, Sanathnagar, Hyderabad, Telangana- 500 018, ramarao_metla@yahoo.com, who was appointed vide order dated 08.06.2022 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