

S.No.4

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
15-04-2024 AT 10:30 AM**

CP(IB) No.207/95/HDB/2023
u/s. 95 of IBC, 2016

IN THE MATTER OF:

Pridhvi Asset Reconstruction and
Securitisation Company Ltd

...Petitioner

AND

Smt. Kadiyala Suneetha

...Respondent

CORAM:-

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

ORDER

Orders pronounced. In the result, the Company Petition vide CP (IB) No. 207/95/HDB/2023 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 (IRP) is initiated against Smt. Kadiyala Suneetha, 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.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH -1
CP (IB) No. 207/95/HDB/2023**

(Under Section 95 read with Section 60(2) of the Insolvency and Bankruptcy Code, 2016 readwith Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019.

In the matter of:

Pridhvi Asset Reconstruction and
Securitisation Company Limited
Door No 1-55, 4th Floor,
Wing I “Raja Praasadamu”,
Masjid Banda Road, Kondapur,
Hyderabad – 500084.

Rep by its Power of Attorney, Mr K V Ramakrishna Prasad

... Financial Creditor

Versus

1. Smt. Kadiyala Suneetha,
D/o Sri Krishna Prasad Rao Kadiyala,
Flat. No. 102, Block-D, Aparna Towers,
Kothaguda (V), Serlingapalli Mandal,
Hyderabad - 500084

... Respondent No.1/Personal Guarantor

2. **Sri Pavan Keerthi Hotels India Private Limited,**
Having its registered office at Plot No 207,
Model Colony, S R Nagar, Hyderabad – 500029

... Respondent No.2/Corporate Debtor

Date of Order: 15.04.2024

Coram:

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

Appearance of Parties/Counsels:

For the Financial Creditor	:	Shri. VVSN Raju, Advocate
For the Respondent No.1	:	Shri. P. Pratap, Advocate
For Resolution Professional	:	Smt Mano Ranjani, Advocate
Resolution Professional	:	Shri Govada Venkata Subbarao.

PER: BENCH

ORDER

1. This instant petition is filed by M/s Pridhvi Asset Reconstruction and Securitisation Company limited (hereinafter referred to as “Financial Creditor”) U/s 95 r/w Section 60(2) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 7(2) Insolvency and Bankruptcy Rules, 2019, seeking to initiate Insolvency Resolution Process against Personal Guarantor to the Corporate Debtor for a total outstanding amount of Rs. 37,02,00,931/-.
2. It is averred that the erstwhile Andhra Bank which was incorporated under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, head office at Hyderabad through its corporate finance branch Hyderabad had sanctioned a term loan of Rs 19.28 Crores for the purpose of establishments of the hotel. The term loan was repayable in 94 monthly instalments commencing from June 2015, the repayment period would end in the month of March 2021. The term loan is repayable with interest which was lined to the base rate with a speed of 3% and 0.5% of TP. A copy of the sanction letter dated 20.09.2014 annexed as Annexure 3.
3. It is averred that the respondent no.2, after fully after availing the said credit facilities, failed to adhere to the repayment terms of the sanctioned credit facilities, resulting in the loan amounts becoming irregular.
4. It is averred that respondent no.1 stood as a Guarantor by executing a Personal Guarantee Agreement dated 20.10.2014 guaranteeing the due repayment of the aforesaid credit facilities. A copy of the General form of guarantee annexed as annexure 5.
5. It is averred that the renewal sanction also failed and the accounts were classified as NPA on 29.09.2015 as per the RBI guidelines in this regard. After the classification of the account as NPA, the bank recalled the term loan and filed OA 403 of 2017 on the file of the DRT Hyderabad-I claiming

an amount of Rs 32,19,88,213/- as on the date of the suit and interest thereon on contractual rate against Corporate Debtor and Guarantors.

6. It is averred that the Hon'ble DRT after adjudicating the matter granted decree on 09.02.2019 and Recovery Certificate on 09.07.2019 for the said amount, where after the Recovery Officer attached to the DRT on 22.07.2020 issued a demand notice to the judgment debtors for the payment of the said amount, where after the Recovery Officer attached to the DRT on 22.07.2020 issued a demand notice to the judgment debtors for the payment of the said amount, nevertheless the demand notice was not delivered to the Corporate Debtor. On 18.04.2023 the demand notice was delivered by hand and was duly acknowledged. However, till date the said Guarantor did not bother to pay the amount. A copy of DRT decree, Recovery certificate and Demand notice by Recovery officer is annexed as Annexure Nos 12,13 and 14.
7. It is averred that the erstwhile Andhra Bank assigned the debt portfolio of the Corporate Debtor in favour of the Financial Creditor vide its assignment agreement dated 27.09.2017 which was duly registered with the sub register concern and by virtue of this assignment the Financial Creditor entered into the shoes of erstwhile Andhra Bank and is entitled to recover the total dues with up to date interest as decreed by the Hon'ble DRT. An amount of Rs 25,71,79,268/- as on 06.06.2017 and interest thereon from that date @12% simple rate is due and payable by the Corporate Debtor. A copy of the Assignment agreement is annexed as annexure 11.
8. It is averred that the Guarantee executed by the personal guarantor the Respondent No 1 herein was also invoked by the Financial Creditor by making a demand vide Form B Demand notice dated 29.12.2021 under Rule 7(1) of the Insolvency and Bankruptcy (*Application to Adjudicating*

Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 on Respondent No 1 for making the payment with up-to-date interest however the demand notice was not delivered to the Corporate Debtor. On 18.04.2023 the demand notice was once again served through delivered by hand and it was duly acknowledged by the Corporate Debtor. Nevertheless, the Personal Guarantor who is Respondent No.1 herein neglected and failed to make the payment.

9. It is averred that the following amounts are due and payable by the Respondent No 1 in the capacity of Personal Guarantor to the Financial Creditor as on 30.11.2021 is Rs 37,02,00,931/- + Interest and charges from 30.11.2021 as per the Personal Guarantee Agreements executed by him. He is also liable to pay interest on the said amount from the said date and also other charges and expenses.
10. It is averred that the detailed terms and conditions are not reproduced here for brevity sake and a copy of the Agreement of Guarantee is being filed along with the Application and the Respondent No.2 was referred to this Hon'ble Tribunal for CIRP process vide CP(IB) No 153/7/HDB/2021 and the same was admitted on 11.04.2022.
11. It is further averred that during the hearing on 25.05.2023 in CP (IB) No. 199/95/HDB/2022 it was observed by this Tribunal that upon the non-service demand notice earlier, the said application was closed with a liberty to file a fresh application in compliance of the same. The Applicant has served the demand notice dated 22.07.2020 afresh, which was duly acknowledged by Personal Guarantor/Respondent No.1 herein on 18.04.2023.
12. The Petitioner attached the following documents to prove the existence of debt and amount in default: -
 - 1.1 Term (Composite) Agreement dated 06.10.2014,

- 1.2 Guarantee Letters by Guarantors dated 20.10.2014,
 - 1.3 Credit Sanction intimation for term loan dated 20.09.2014,
 - 1.4 Mortgaged Documents dated 12.12.2014, 22.10.2014,
 - 1.5 Board Resolution passed for availing loan dated 27.09.2014,
 - 1.6 Demand Notice issued under SARFAESI Act dated 02.11.2015,
 - 1.7 Reply to the Demand Notice dated 28.12.2015,
 - 1.8 Assignment Agreement dated 27.09.2017,
 - 1.9 Board Resolution authorizing Sri K V Ramakrishna Prasad dated 20.09.2018,
 - 1.10 Order of Hon'ble Debt Recovery Tribunal-I Hyderabad dated 19.02.2019,
 - 1.11 Letter given by the Company for settlement of the dues dated 16.01.2020,
 - 1.12 Demand Notice issued by Recovery Officer DRT for Decreed amount dated 22.07.2020.
 - 1.13 Statement of default recorded at CIBIL dated 31.03.2020,
 - 1.14 Form B demand Notice dated 29.12.2021 duly acknowledged.
 - 1.15 Statement of Account.
- 13.** Pursuant to this Application, this Adjudicating Authority vide order dated 14.12.2023 ordered notice to the personal guarantor and appointed an IRP Shri Govada Venkata Subbarao, directing him to file a report within 10 days. Subsequently, Learned IRP filed his report.
- 14.** The Resolution Professional has filed his report, recommending the admission of the Petition under Section 95 of the Code, 2016. 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.

15.In his report it's clear that there are grounds for admission of this instant Petition, since there was default and non-payment of debt from the personal guarantor. Thus, RP has recommended for acceptance of the Application under Section 95 of IBC, 2016.f

16. COUNTER FILED ON BEHALF OF RESPONDENT No.1:

- i. The Respondent No.1 denies the allegations which are made in the petition.
- j. It is averred that the present petition is barred by limitation as per the Financial Creditor itself, the Demand notice under section 13(2) of the SARFAESI Act, 2002 was issued on 01.11.2015 and in suppression of the said fact, the financial Creditor to mislead this Tribunal has stated in Part-III of Form-C, under the heading particulars of the Debt, that the default accrued on the date on which 15days time period has been expired from the demand notice dated 22.07.2020 issued by the Recovery Officer of DRT-I, Hyderabad.
- k. It is averred that the financial creditor paras has no privity of contract with the Personal Guarantor pursuant to assignment of the debt by Andhra Bank and therefore has no locus to file the present company petition for initiating CIRP against the Personal Guarantor.
- l. It is averred that the mandate in Clause (b) Sub-Section 4 of Section 95 clearly states that the application under sub-section (1) of Section 95 shall be accompanied with details and documents relating to failure of the debtor to pay the debt even after service of notice. The alleged service of Form-14 demand notice dated 22.07.2020 issued by the Recovery Officer of DRT-I, Hyderabad is under the Debts Due to Banks and Financial Institutions Act, 1993 and Rules made thereunder and therefore prima facie the same cannot be equated with Form-B as mandated in rule 7 of the Insolvency and Bankruptcy Rules 2019. Therefore, the averment of petitioner is ex-facie misconceived to

mislead this Tribunal to draw adverse inference against the answering Respondent/Personal Guarantor.

- m. It is averred that a table which clearly demonstrates the dates on which the default took place and the cause of action began to run which exhausted the prescribed limitations.
- n. It is averred that the mandate given in Articles 55, 113 and 137 of the Limitation Act, clearly specifies that cause of action in respect of the breach any agreement or contract will begin to run from the date the cause of action arises. In the instant case admittedly the cause of action to invoke the Guarantee has arisen on 31.10.2015, when the principal Borrower/Respondent No.2 herein neglected and defaulted to pay the debt continuously for a period of 90 days prior to 31.10.2015, therefore, the cause of action for the Petitioner in the present case began to run in terms of article 113 of the Limitation Act, and even exhausted on 31.10.2018.
- o. It is averred that the present petition is hopelessly time barred as the Personal Guarantor had never admitted or acknowledged the alleged debt during the period from 31.10.2015 to 30.10.2018 (3 years). Therefore, there is no possibility of any extension of the limitation prescribed under Article 137 or Article 18 & 19 of the Limitation Act. Hence, the present company petition is liable to be dismissed as barred by limitation with costs.
- p. The respondent relied on Hon'ble Supreme Court's, ruling in *Syndicate Bank vs Channaveerappa Beleri & Ors (Appeal (civil) 6894 of 1997)*, to prove that the present petition is time barred under limitation act.
- q. It is averred that, when the demand is made by the creditor on the guarantor on 01.11.2015 pursuant to classification of Loan Account as

NPA on 31.10.2015, the guarantor becomes liable in pursuance of a demand validly made in time, the creditor can sue the guarantor within three years thereafter i.e., on or before 31.10.2018, the dt 01.11.2015 specifically mandated issue of demand notice as a condition precedent for the liability of the guarantor and if such debt had already become time-barred against the guarantor on 30.10.2018, the question of creditor again demanding payment thereafter under the guise of section 95 of the IBC law, against the guarantor would not arise.

- r. It is averred that according to the financial creditor, the alleged debt was assigned by the erstwhile Andhra Bank on 27.09.2017 i.e, during the running of limitation and therefore the financial creditor has a cause of action to initiate the CIRP proceedings against the Personal Guarantor. But, the fact remains that still the present petition is barred by limitation as the cause of action is ended on 30.10.2018 and apparently the present company petition since filed before this Tribunal on 05.07.2023 the same is manifestly barred by limitation.
- s. It is averred that the petitioner/financial creditor has approached this Tribunal with unclean hands and is guilty of suppression of material facts. It is further averred that CP/IB/No.213/95/HDB/2023 is filed under the provisions of Section 95,96(1),97(5),99(1),99(2), and 100 of the CODE, the vires of which is under challenge in a batch of Writ Petitions pending before the Hon'ble Supreme Court of India in WP (Civil) No.307 of 2022 and batch, which is reserved for orders.
- t. It is averred that the applicant had initiated proceedings under section 95 of the IBC in CP(IB) No 199/95/HDB/2022 on 23.05.2022 against the Personal Guarantor/ Respondent No.1 herein and it was not admitted by this Tribunal due to non-service of demand notice

mandated under rule 7(1) of the IBC rules. However, this Tribunal given liberty to file fresh application after issuing the required notice.

- u. It is averred that, time and again the applicant is misleading this Tribunal by filing application under section 95 without serving the demand notice upon personal guarantor as mandated under Rule 7(1) of the IBC Rules. Again the demand notice is not served to the respondent no.1 herein and proof of service such as postal receipts and tracking report were also not filed by the applicant in the present application. The demand notice which was alleged to be served by the applicant to the Respondent 1 by hand 18.04.2023 was never served to the Personal Guarantor/Respondent No. 1, in any which case the date of alleged service is prior to the date of order granting liberty to file fresh case after serving the notice as required.
- v. It is averred that the present company petition is barred by limitation since the proceedings under SARFAESI Act and DRT proceedings does not extend the period of limitation and therefore it is not maintainable as held by various judgments passed by Hon'ble Supreme Court, NCLAT and NCLT which are mentioned in the present application.
- w. It is further averred that the present company petition is devoid of merits and bereft of the record of the case including the fact that Form-B dated 29.12.2021, alleged to have been served by hand on 18.04.2023 on the Personal Guarantor was never served, much less before the expiry of the limitation period of three years from the date of default ended on 30.10.2018. Moreover, the Form-B is never served after 25.05.2023 as directed by this Tribunal vide its order dated 25.05.2023 as directed by this Tribunal vide its order dated 25.05.2023 in CP(IB) No 199/95/HDB/2022. Therefore, the present petition is liable to be dismissed for the reasons herein before submitted with exemplary costs.

17. Written Arguments filed on behalf of Financial Creditor:

(a) The Financial Creditor reiterated the same facts which are mentioned in the petition.

18. 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?

19. We have heard the Learned Counsel Shri. VVSN Raju, for the Petitioner, Learned Counsel Mr. P. Pratap, for Respondent No.1, Learned Counsel Smt. Mano Ranjani, for Resolution Professional and Learned Resolution Professional Shri. Govada Venkata Subba Rao and perused the record.

20. The main contention of the respondent is that this petition is not maintainable being time barred. The applicant to which replied that the period from 15.03.2020 to 28.02.2022 is excluded for computation of the period of Limitation by virtue of the order of the Hon'ble Supreme Court in Re: Cognizance for extension of Limitation (Miscellaneous Application No.21 of 2022). As such, the instant Company Petition is well within the limitation period. In view of this, there is no merit in the contentions of Respondent no.1 that the Company Petition is time-barred.

21. Hence, the instant Company Petition vide CP (IB) No. 207/95/HDB/2023 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 Smt. Kadiyala Suneetha, 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.

22. The Petitioner Bank herein, has proposed the name of Shri. Govada Venkata Subba Rao, (IBBI/IPA-003/IP-N00358/2021-2022/13753) Insolvency Professional to act as Resolution Professional, who has given his consent dated 18.12.2023 in Form-A. Hence, this Adjudicating Authority appoints:

Shri. Govada Venkata Subba Rao,

Registration No. IBBI/IPA-003/IP-N00358/2021-2022/13753,

23. 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.

- 24.** 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.
- 25.** 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.
- 26.** 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,

*CP (IB) No. 207 of 2023
Under Section 95 of the Code, 2016.
Date of Order: 15.04.2024*

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.

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

Sd/-
CHARAN SINGH
MEMBER (TECHNICAL)

Sd/-
DR. N.VENKATA RAMAKRISHNA BADARINATH
MEMBER (JUDICIAL)

Swapna