

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
05-04-2024 AT 10:30 AM**

CP (IB) No. 87/95/HDB/2023

AND

IA (IBC) 18/2024 in CP (IB) No. 87/95/HDB/2023

u/s. 95 of IBC, 2016

IN THE MATTER OF:

National Bank for Agriculture and
Rural Development(NABARD)

...Petitioner

AND

Smt. M N Jaya Laxmi

...Respondent

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)

SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

ORDER

IA (IBC) 18/2024

Since, Resolution Professional report is already taken on record. Hence **this IA is allowed and disposed of.**

CP (IB) No. 87/95/HDB/2023

Orders pronounced. In the result, the Company Petition vide CP (IB) No. 87/95/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. M N Jaya Laxmi, 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. 87/95/HDB/2023

*(Under Section 95 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7(2) of
Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency
Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019.*

BETWEEN

National Bank for Agriculture and Rural Development (NABARD)

...Applicant

AND

Smt M.N Jaya Lakshmi

W/o.M.Chandra Bushanaswamy Reddy,

R/o.H.No.8-2-293/NL/188,

Road No.10C, MLA-MP Colony,

Jubilee Hills, Hyderabad-500 033, Telangana State.

Date of order: 05.04.2024.

CORAM:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA,
HON'BLE MEMBER (JUDICIAL)**

SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

Appearance:-

For the Petitioner : Shri.B.Harinath Rao, Counsel

Resolution Professional : Shri Chakilam Nagarjuna Rao.

PER: BENCH

1. This instant petition is filed by Financial Creditor under Section 95 of 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 Debtor) Rules, 2019 (hereinafter referred to as “Personal Guarantors Insolvency Rules, 2019), seeking an order for initiation of the Insolvency Resolution Process (“IR Process”) against Smt M.N Jaya Lakshmi, who is the Personal Guarantor of M/s. Smaat India Private Limited (hereinafter referred to as “Corporate Debtor”) alleging non-payment of 6,24,89,526/- as on 05.01.2023 including interest is said to be due and payable by personal guarantor to Financial Creditor.
2. It is averred that Corporate Debtor i.e M/s.Smaat India Private Limited, had availed loan facilities and had defaulted in repaying the said loans to the Applicant Bank. Meanwhile, operational creditor i.e M/s.V.K.Global, has filed an application under Section 9 of IBC, 2016, which was admitted into CIRP. Applicant had filed its claim in Form C for an amount of Rs.4,42,39,970/- which has been admitted by the Resolution Professional. Since no repayment plan has been received, this Hon’ble Tribunal on 06.06.2019 passed liquidation order. Thus, Applicant filed its claim before the liquidator on 27.06.2019 for an amount of Rs.4,67,69,840/-, which has been admitted by the liquidator.

3. It is averred that during the liquidation process, one of the personal guarantor Mr.M.Karunakar Reddy, (one of the personal guarantor) purchased the corporate debtor as going concern and was declared as successful bidder.
4. It is averred that during the liquidation process, Applicant had received Rs.36,83,905/- and the balance is still due and payable to the Applicant. Pursuant to the said default in repayment of the debt by the corporate debtor, Applicant invoked personal guarantee of Sri M.Chandra Bushanaswamy Reddy along with other individual personal guarantors and issued personal guarantee invocation notice dated 03.08.2020, demanding for the payment of debt.
5. It is averred that Applicant had issued demand notice dated 12.01.2023 under Rule 7(1) of the I&B Rules, 2019, calling upon all personal guarantors to pay Rs.6,24,89,526/-. Though personal guarantors received the notice has not cleared the debt. Thus, the present Application is filed for initiation of Insolvency Resolution Process under Section 95 of the Code, 2016.
6. The Petitioner Bank attached the following documents to prove the existence of debt and amount in default: -
 - Loan Sanction letter 26.12.2012.
 - Loan Agreement dated 11.01.2013.
 - Agreement of Hypothecation dated 11.01.2013
 - Demand promissory note dated 11.01.2013
 - Deed of Guarantees.

- Demand promissory note
 - Acknowledgment of debt
 - Personal guarantee invocation notice issued
 - Demand notice
 - Closure of liquidation process
 - Statement of accounts
 - Certificate filed under Bankers Book of Evidence Act.
7. On presentation of this instant petition, this Adjudicating Authority on 11.12.2023 granted interim-moratorium and has appointed Mr.Chakilam Nagarjuna Rao, as Resolution Professional, directing him to file his report within 10 days from the date of her appointment, in terms of the Section 99 of the Code, 2016. The Resolution Professional has filed his report on 26.12.2023, 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 by the financial creditor and recommended for acceptance of the Application under Section 95 of IBC, 2016 which is under limitation.
8. It is averred that this Tribunal vide its order dated 13.03.2024 had set the respondent as ex-parte.
9. 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?

10. We have heard the Learned Counsel Shri.Harinath Rao, for the Petitioner, and Learned Resolution Professional Shri Chakilam Nagarjuna Rao, and perused the record.
11. The Resolution Professional has filed her report on 26.12.2023 recommending the admission of the Petition under Section 95 of the Code, 2016. The Resolution Professional in his report its clear that the grounds for admission of this instant Petition are that the Personal Guarantor stood as a guarantor to the loans availed by the Corporate Debtor and as per the recitals, the guarantee is continuing guarantee, the guarantor waived all the rights provided in Section 140 and 141 of the Contract Act, 1872 and the guarantee is payable on demand. The Personal Guarantor till the date of filing the Application never refuted the guarantee.
12. Hence, the instant Company Petition vide CP (IB) No. 87/95/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. M.N Jaya Lakshmi, 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.

13. The Petitioner herein, has proposed the name of Mr.Chakilam Nagarjuna Rao, (IBBI/IPA-002/IP-N01215/2021-2022/14065) Insolvency Professional to act as Resolution Professional, who has given his consent dated 16.02.2022 in Form-A. Hence, this Adjudicating Authority appoints:

Mr.Chakilam Nagarjuna Rao

RegistrationNo. (IBBI/IPA-002/IP-N01215/2021-2022/14065),

email id: chakilamnagarjunarao456[at]gmail[dot]com

14. 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.

15. 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.
16. 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.

17. 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.
18. The Petitioner is directed to communicate this order to the Resolution Professional appointed in the instant Company Petition immediately.
19. The Registry is directed to furnish free copy to the parties as per Rule 50 of the NCLT Rules, 2016.

SD

Charan Singh
Member Technical

SD

Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

Pavani