



S.No.1

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – II  
VC AND PHYSICAL (HYBRID) MODE  
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
30.01.2026 AT 10:30 A.M.**

**Company Petition IB/144/95/HBD/2023  
U/s 95 of IBC**

**IN THE MATTER OF:**

**State Bank of India**

**...Petitioner**

**AND**

**Mr. Mallapati Madhu**

**...Respondent**

**C O R A M:-**

**SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)  
SHRI. SANJAY PURI, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

**Company Petition IB/144/95/HBD/2023**

Orders pronounced, recorded vide separate sheets. In the result, the Company Petition IB/144/95/HDB/2023 is not admitted at this stage.

The present petition is therefore, disposed of, with liberty reserved in favour of the Financial Creditor to institute appropriate proceedings under Section 95 of the IBC against the Personal Guarantor only upon failure of the Principal Borrower to satisfy the debt from the arbitral award, or in the event of any material change in circumstances impairing its ability to discharge the debt in default.

**SD/-  
MEMBER (T)**

**SD/-  
MEMBER (J)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH - II  
CP (IB) No.144/95/HDB/2023**  
(Section 95(1) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 7(2) of  
Insolvency and Bankruptcy Code, 2016 (Application to Adjudicating Authority for  
Insolvency Resolution  
Process for Personal Guarantors to Corporate Debtor) Rules, 2019

**In the matter of:**

**State Bank of India**

**Head Office**

State Bank Bhavan,  
Madame Cama Road,  
Nariman Point, Mumbai 400 021.

**Branch Office**

SAM Branch- II,  
D. No. 3-4-1013/A, 1st Floor,  
Commuter Amenity Centre (CAC)  
TSRTC Bus Station,  
Kachiguda, Hyderabad- 500 027

**....Financial Creditor**

Versus

**Mr Mallampati Madhu**

S/o Gopal Rao House No. 1-4-65/C, Nehru Nagar Khammam  
Khammam Dist., Telangana — 507 001

**.... Personal Guarantor/ Respondent No. 1**

**M/s. TN (DK) Expressways Limited**

R/o: Madhucon House, Plot No. 1129/A,  
Road No. 36, Hitech City Road, Jubilee Hills  
Hyderabad 500 0033, Telangana, India

**....Corporate Debtor/ Respondent No.2**

**Date Of Order: 30.01.2026**

**CORAM:**

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

**Counsels present:**

For the Financial Creditor: Ms.Niharika Agarwal, Mr.P Ravi Charan Advocates

For the Personal Guarantor: Mr.Raja Shekar Rao Salvaji, Ms. Madhumita  
Advocates



**[ PER: BENCH ]**  
**ORDER**

1. The instant petition is filed by **M/s. State Bank Of India** (Financial Creditor/FC/Petitioner) under Section 95(1) of The Insolvency and Bankruptcy Code, 2016 (IBC) r/w Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019, seeking an order for initiation of Personal Insolvency Resolution Process against Mr. Mallampati Madhu, the Personal Guarantor (PG/Respondent) of M/s. TN (DK) Expressways Limited (Corporate Debtor/CD/ Principal Borrower).

**APPLICATION:**

2. It is averred that the CD had availed credit facilities of Rs 224.00 Crores (Rupees Two Hundred and Twenty- Four Crores Only) from the consortium of Banks which includes State Bank of Hyderabad, State Bank of Mysore, State Bank of Saurashtra, Bank of Maharashtra, Vijaya Bank, Andhra Bank under a Common Loan Agreement dated 11.10.2006<sup>1</sup>. This consortium is presently led by State Bank of India.
3. It is averred that the State Bank of India acted as the lenders' agent as well as security trustee. The FC extended an aggregate facility of Rs.190 Crores (Rupees One Hundred and Ninety Crores Only) to the CD under the Common Loan Agreement.

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<sup>1</sup> Page 27-160 of the Petition



4. It is submitted that the Personal Guarantor herein stood as a guarantor to secure the repayment of the financial assistance availed by the CD from the FC. Accordingly, the Personal Guarantor executed a Guarantee Agreement dated 28.03.2013<sup>2</sup>.
5. It is further submitted that the said financial facilities were revived through revival letters dated 03.10.2009, 04.01.2012, 12.02.2016, and 30.07.2018<sup>3</sup>.
6. It is stated that the FC has agreed to restructure the debt granted to CD including grant of Fund Interest Term Loan<sup>4</sup> of Rs 3.10 Crores out of total 5.81 Crores granted by other lenders including the merged banks of FC, vide a sanction letter dated 28.03.2013.
7. In the meantime, the CD has made an application for debt restructuring. Accordingly, the CD and Consortium Lenders executed the Master Restructuring Agreement<sup>5</sup> dated 30.03.2013, and the outstanding amount was stated to be Rs.180.46 Crores<sup>6</sup>.
8. According to the MRA, the CD has agreed to repay the loan commencing from 31.03.2013 till 31.03.2023 in the form of 40 quarterly instalments<sup>7</sup> and the FITL to be paid in 16 quarterly instalments from 31.03.2014 to 31.03.2017<sup>8</sup>.
9. It is asserted that the Corporate Debtor had committed a default in repayment of loan on 31.12.2018, which had been established based on the default record submitted to the Information Utility.

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<sup>2</sup> Page 717 of the Petition

<sup>3</sup> Pages 169-174 of the Petition

<sup>4</sup> Hereinafter referred to as FITL

<sup>5</sup> Hereinafter referred to as MRA and the same is annexed at pages 608-651 of the Petition

<sup>6</sup> Page 443 of the petition

<sup>7</sup> Page 646 of the Petition, (Schedule IV, Part A)

<sup>8</sup> Page 647 Of the Petition (Schedule IV, Part B)



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

**CP (IB) No.144/95/HDB/2023  
Date Of Order : 30.01.2026**

10. It is averred that a legal notice 10.06.2019 was issued by the FC on their letter-head addressed to the CD and a copy of the same was marked to PG, demanding payment of Rs.113, 79, 59,869.00 within 10 days from the date of the notice.
11. In response to the said notice, the CD has issued letters dated 13.02.2019, 01.10.2017, 10.04.2017, 01.04.2017, 10.07.2017, 10.10.2017, 24.01.2017, 15.04.2015, and 11.06.2013<sup>9</sup> confirming the outstanding balance amounts.
12. It is submitted that part payments were made by CD on 18.12.2021, 16.12.2022, 31.03.2023, and 04.03.2023<sup>10</sup>. Subsequently, the CD offered one time settlement but the same was rejected by the FC.
13. It is averred that due to the failure of CD to service the financial facilities availed, the restructuring which was implemented in 2013 failed. Earlier, the account of the Corporate Debtor was classified as Non-Performing Asset (“NPA”) on 21.03.2013, in accordance with the guidelines issued by the Reserve Bank of India.
14. The Corporate Insolvency Resolution Process application was filed against the Principal Borrower/CD under Section 7 of the IBC, 2016 through an application filed by the State Bank of India (FC) bearing CP (IB) No.112/7/HDB/2023.
15. Thereafter, a demand notice in Form-B under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019 was issued to the Personal Guarantor on 08.05.2023 asking to pay the unpaid debt of CD amounting to Rs.

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<sup>9</sup> Pages 179-188 of the petition

<sup>10</sup> Pages 225-259 of the petition



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

**CP (IB) No.144/95/HDB/2023  
Date Of Order : 30.01.2026**

138,27,79,560.97 (Rupees One Hundred Thirty-Eight Crore Twenty-Seven Lakh Seventy Nine Thousand Five Hundred Sixty and Ninety-Seven Paise Only) within 14 days from the date of receipt of the notice.

16. The said notice was successfully delivered upon the PG on 12.05.2023 on their last known correct address and the requirement u/s 95 of the Code is complete. The said notice has not received any reply within the prescribed time. (Copy of the notice along with the postal tracking is at Pages 161 to 168 of the petition)
17. The Personal Guarantor failed to repay the debt amount to the Financial Creditor within the time specified. Given this default, the Financial Creditor has preferred the instant petition under Section 95(1) of the IBC.

**COUNTER:**

18. In the counter, the Respondent has contested the averments made by the Petitioner by submitting:
- a) That the RP submitted his Report on 25.01.2024, which is after the expiration of 10 days from the date of receiving the Tribunals' order, i.e., 09.01.2024.
19. The CD has availed loan facilities from the consortium of banks to the tune of Rs.224 Crores, for the purpose of a project of NHAI and entered into various agreements as follows:

<b>S.No</b>	<b>Documents</b>
1.	Common Loan Agreement dated 11.10.2006
2.	Lenders Agent Agreement dated 11.10.2006



NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH - II

CP (IB) No.144/95/HDB/2023  
Date Of Order : 30.01.2026

3.	Security Trustee Agreement dated 11.10.2006
4.	Inter-Creditor Agreement dated 11.10.2006
5.	Confirmation of Inter-Creditor Agreement dated 11.10.2006
6.	Agreement of pledge of shares dated 11.10.2006
7.	Undertaking For overrun/shortfall dated 11.10.2006
8.	Memorandum of Operating Procedures dated 11.10.2006
9.	Consent & Agreement dated 11.10.2006
10.	Indenture of Mortgage dated 16.10.2006
11.	Escrow Account Agreement dated 19.10.2006

20. The Respondent averred that the FC and CD were under an arrangement to repay the loan amount from the revenue generated from the toll collected from the project to be deposited in the Escrow Account.
21. The PG submits that he has entered into a concession agreement with the NHAI on 20.04.2006. It is also averred that there was a dispute between the CD and the NHAI, in which an arbitral award was passed in favor of CD amounting to Rs.288,96,78,319. The enforcement proceedings<sup>11</sup> bearing OMP(ENF)(Comm.) 41 of 2019 were initiated before the Hon'ble High Court of Delhi and the NHAI deposited a sum of Rs.107,07,23,874/-.
22. It is averred that the CD issued the revival letters concerning the Master Restructuring Agreement dated 30.03.2019<sup>12</sup>. Later a demand notice was issued on 10.06.2019<sup>13</sup> with mala fide intention and without any justified cause and to state further the last date for final repayment of

<sup>11</sup> At pages 1351-1355 of the Counter

<sup>12</sup> At pages 1356-1365 of the Counter

<sup>13</sup> At pages 1366 &1367 of the Counter



the term loan was to end only on 31.03.2023, whereas the FC has sent demand notices very much prior to the same. It is averred that the act of declaring default prematurely and the motive to usurp all the funds generated from the toll revenue collection, is not acceptable.

23. It is submitted that the disputes between the Financial Creditor and the Corporate Debtor were aggravated when the Petitioner began violating the Escrow Agreement by allocating all funds in the Escrow Account to debt service instead of following the waterfall mechanism in Clause 3.3.1. As a result of these actions, the Corporate Debtor filed Writ Petition W.P No. 1387 of 2020 against the Petitioner and the NHAI, seeking the release of funds for necessary highway maintenance.
24. On 06.03.2020, the Hon'ble Telangana High Court passed an interim order<sup>14</sup> directing the Petitioner to comply with the Escrow Agreement and release funds for maintenance projects related to the Concession Agreement dated 20.04.2006. That the said Writ Petition is pending for final adjudication. On the same day, the Hon'ble Telangana High Court also passed an order in Writ Petition No. 1387 of 2020<sup>15</sup>, highlighting the need to prioritize highway maintenance and directed the Petitioner/Financial Creditor to release approximately Rs. 190 Crore to the Corporate Debtor.
25. It is averred that the Financial Creditor is in material default of the order dated 06.03.2020, passed in W.P. No. 1387 of 2020, and continues to breach the terms of the Escrow Account Agreement dated 19.10.2006, more specifically the waterfall mechanism.
26. It is submitted that the proceedings initiated by FC, under the provisions of 7 and 95 of IBC against the CD and PG respectively, are

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<sup>14</sup> At pages 1368 to 1381 of the Counter

<sup>15</sup> Pages 1382-1385 of the Counter



- mala fide* attempts to exert pressure and to appropriate all funds lying in the Escrow Account for debt repayment, rather than for the maintenance of the Project Highway as required under the agreement.
27. It is averred that the CD made repeated efforts to resolve the issue amicably by issuing One-Time Settlement (OTS) proposals<sup>16</sup>, which were ignored by the Financial Creditor.
28. The PG submits that the CD made efforts to resolve all the disputes amicably and further revised its settlement proposal and submitted an improved One-Time Settlement Proposal dated 09.10.2023. However, the Financial Creditor has failed to respond to this proposal or even indicate any intention to consider it.
29. It is averred that the FC is fully aware of its obligations under the Master Restructuring Agreement dated 30.03.2013, yet has repeatedly violated the terms of the agreement, specifically, the FC prematurely declared a default under the Master Restructuring Agreement without a valid basis, and has used this allegation as a pretext to appropriate all funds generated from toll revenue collection. The Corporate Debtor has consistently disputed these actions throughout the litigation process.
30. It is submitted that the Promoters of the Corporate Debtor infused a total of Rs. 93.71 Crores, which is an excess of Rs. 19.05 Crores over the committed amount of Rs. 74.66 Crores, to complete the Project. This additional contribution was made despite the cost overruns not being attributable to the Corporate Debtor. Furthermore, it is pertinent to note that neither the Lenders nor NHAI made any additional contributions.

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<sup>16</sup> At pages 1386-1463 of the Counter



31. It is submitted that against the debt of Rs. 224 Crores, the Lenders including SBI, have already recovered Rs. 381.38 Crores. Additionally, due to a 51% variation between actual and projected traffic, the toll revenue realization as of March 2023 is Rs. 581.48 Crores, significantly less than the projected revenue of Rs. 1195.49 Crores. Despite the shortfall in toll revenues, the Petitioner/Financial Creditor, along with other lenders, has adjusted an amount of Rs. 331 Crores towards the interest and principal as of April 2023.
32. It is averred that the FC is bound by the terms of the Escrow Account Agreement and was required to open Sub-Accounts to enable CD to deposit toll revenues but there has been deviation in the same and has initiated proceedings against the Respondent to evade liabilities arising from its breaches.
33. The Respondent submits that the Petitioner/Financial Creditor, in an attempt to avoid the directions of this Tribunal, is seeking to convert a contractual dispute into an insolvency dispute. The Petition under Section 7 of the Insolvency and Bankruptcy Code (IBC) filed by the Petitioner against the CD is still pending for adjudication. However, the present expedited proceedings under Section 95 of the Code unfairly prejudice the Respondent, as the Respondent is most likely to defend the Petition before this Tribunal successfully.
34. We have heard the learned counsels for both the parties and have duly perused the documents on record.

**FINDINGS:**

35. To recapitulate the factual matrix of the case, a Consortium of Banks consisting of State Bank of India, State Bank of Hyderabad, State Bank



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

**CP (IB) No.144/95/HDB/2023  
Date Of Order : 30.01.2026**

- of Mysore, State Bank of Saurashtra, Bank of Maharashtra, Vijaya Bank, Andhra Bank granted financial assistance of Rs.224 crores to M/s. TN (DK) Expressways Limited, vide Common Loan Agreement dated 11.10.2006 out of which the Petitioner herein granted Rs.180.46 crores.
36. Pursuant thereto, Mr. Mallampati Madhu (Respondent) executed a Deed of Personal Guarantee dated 28.03.2013 in favour of the Petitioner, thereby guaranteeing the repayment of the loan amount disbursed by the Petitioner.
  37. Subsequently, the loan (granted as common loan agreement) was restructured by way of a Master Restructuring Agreement dated 30.03.2013 and by subsequent Revival letters dated 03.10.2009, 04.01.2012, 12.02.2016, and 30.07.2018. Thereafter, there was a failure of CD in making payments as per the restructuring agreement and the default occurred. According to the Information Utility record, the default date was 31.12.2018, and the PG did not deny the same.
  38. Upon the failure of CD to repay the loan, the FC filed CP (IB)No.112/7/HDB/2023 against CD on 01.05.2023 under Section 7 of the IBC, 2016.
  39. Consequently, M/s State Bank of India, in its capacity as the Financial Creditor, invoked the Deed of Guarantee by issuing a demand notice dated 08.05.2023 to the Personal Guarantor (PG), which was not replied to by the PG. On the failure of repayment of loan amount by the PG, the present Petition was filed on 06.06.2023.
  40. Furthermore, part payments were made by the CD between 2021 and 2023; however, a due and subsisting default of Rs. 27,81,22,478.00



remained outstanding as on the date of the last payment<sup>17</sup>. Prior thereto, an acknowledgment of debt was made by the CD in March 2020, as reflected in the audited financial statements. Subsequently, another acknowledgment was made in the audited financial statements for the year 2022.

41. This Tribunal has examined the sequence of events arising out of the Deed of Guarantee dated 28.03.2013. It is observed that the Principal Borrower/CD committed default on 31.12.2018, whereas the notice invoking the Personal Guarantee was issued to the PG on 08.05.2023.
42. We may profitably rely upon the ruling of Hon'ble Supreme Court in ***Laxmi Pat Surana vs. Union Bank of India & Anr.***<sup>18</sup> [Para 35,36,37], where it was held that, if there is an acknowledgement of debt in writing within a limitation period, a fresh limitation period as per section 18 of Limitation Act commences from the date of the acknowledgement of debt. In the instant petition, the limitation period started in March 2020, when the acknowledgment was initially made, and subsequently, there were acknowledgments in 2021 and 2022. Hence, the last date of acknowledgment was in March 2022, which has further extended the limitation period for 3 years from March 2022. Therefore, we find that the debt as well as default is very much proved on record against the Respondent/Guarantor and present the Application is well within the limitation period.
43. Hence, the last date of acknowledgment was in March 2022, which has further extended the limitation period for 3 years from March 2022. Therefore, we find that the debt as well as default is very much proved

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<sup>17</sup> At page 259 of the Petition

<sup>18</sup> Appeal No. 2734 OF 2020



on record against the Respondent/Guarantor and present the Application is well within the limitation period.

44. However, another issue which has a bearing on the admission of the present petition is the feasibility of initiating the CIRP against the Applicant, who is the Personal Guarantor, in light of the arbitration proceedings initiated by the Principal Borrower against the National Highways Authority of India (“NHAI”) and the arbitral award rendered therein. An arbitral award aggregating to Rs.288.96 Crores has been passed in favour of the Principal Borrower, M/s TN (DK) Expressways Limited, against NHAI. The said award is presently under challenge before the Hon’ble Delhi High Court in O.M.P. (COMM) No. 151 of 2019 filed by NHAI, and the execution and realisation of the award are still pending.
45. In view of the arbitral award (of Rs.288.96 Crores) in favour of the Principal Borrower being substantially higher than the amount of default (of Rs 138.27 crores) claimed in respect of the very project for which the loan facilities were extended, this Tribunal has not allowed initiation of the CIRP against the Principal Borrower in CP (IB) No. 112 of 2023, filed by the State Bank of India against M/s TN (DK) Expressways Limited. Liberty has, however, been reserved in favour of the Financial Creditor to initiate CIRP proceedings if circumstances so warrant, upon the challenge to the arbitral award attaining finality. As per the principle of parity or equality, the Applicant also deserves the same treatment, otherwise it would be discriminatory vis-à-vis the Applicant.



46. At this juncture, we find it necessary to rely upon the ruling of the Hon'ble Supreme Court of India in **Vidarbha Industries Power Ltd. v. Axis Bank Ltd.**<sup>19</sup>, wherein it was held that:

*“87. Ordinarily, the Adjudicating Authority (NCLT) would have to exercise its discretion to admit an application under Section 7 of the IBC of the IBC and initiate CIRP on satisfaction of the existence of a financial debt and default on the part of the Corporate Debtor in payment of the debt, unless there are good reasons not to admit the petition.*

*88. The Adjudicating Authority (NCLT) has to consider the grounds made out by the Corporate Debtor against admission, on its own merits.”*

*89. In the case of a financial debt, there is a little more flexibility. The Adjudicating Authority (NCLT) has been conferred the discretion to admit the application of the Financial Creditor. If facts and circumstances so warrant, the Adjudicating Authority can keep the admission in abeyance or even reject the application. Of course, in case of rejection of an application, the Financial Creditor is not denuded of the right to apply afresh for initiation of CIRP, if its dues continue to remain unpaid.”*

47. Furthermore, it was observed that:

*“59. There can be no doubt that a Corporate Debtor who is in the red should be resolved expeditiously, following the timelines in the IBC. No extraneous matter should come in the way. However, the viability and overall financial health of the Corporate Debtor are not extraneous matters.*

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<sup>19</sup> (2022) ibclaw.in 91 SC



60.. *The question is whether an award of the APTEL in favour of the Corporate Debtor, can completely be disregarded by the Adjudicating Authority (NCLT), when it is claimed that, in terms of the Award, a sum of Rs.1,730 crores, that is, 22 an amount far exceeding the claim of the Financial Creditor, is realizable by the Corporate Debtor. The answer, in our view, is necessarily in the negative.*

61. *In our view, the Appellate Authority (NCLAT) erred in holding that the Adjudicating Authority (NCLT) was only required to see whether there had been a debt and the Corporate Debtor had defaulted in making repayment of the debt, and that these two aspects, if satisfied, would trigger the CIRP. The existence of a financial debt and default in payment thereof only gave the financial creditor the right to apply for initiation of CIRP. The Adjudicating Authority (NCLT) was require to apply its mind to relevant factors including the feasibility of initiation of CIRP, against an electricity generating company operated under statutory control, the impact of MERC's appeal, pending in this Court, order of APTEL referred to above and the overall financial health and viability of the Corporate Debtor under its existing management.”*

48. Hence, we are of the considered view that initiation of the Corporate Insolvency Resolution Process against the Personal Guarantor would be inequitable, when the ability of the Principal Borrower to discharge its liability is yet to be determined and no CIRP has been initiated in its case. Accordingly, the present Petition is not admitted at this stage.

49. The present Petition is, therefore, disposed of, with liberty reserved in favour of the Financial Creditor to institute appropriate proceedings under Section 95 of the IBC against the Personal Guarantor only upon



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

**CP (IB) No.144/95/HDB/2023  
Date Of Order : 30.01.2026**

failure of the Principal Borrower to satisfy the debt from the arbitral award, or in the event of any material change in circumstances impairing its ability to discharge the debt in default.

**Sd/-**

**(SANJAY PURI)  
MEMBER (TECHNICAL)**

**Sd/-**

**(RAJEEV BHARDWAJ)  
MEMBER (JUDICIAL)**