

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
19-12-2025 AT 10:30 A.M.**

Company Petition IB/186/7/HDB/2024
U/s 7 of IBC

IN THE MATTER OF:

P.L. Srinivas Reddy

...Petitioner

AND

Techtrans Constructions India Pvt Ltd

...Respondent

C O R A M:-

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

O R D E R

Company Petition IB/186/7/HDB/2024

Orders pronounced, recorded vide separate sheets. In the result, this Petition is dismissed with costs of Rs.5,00,000/-, (Rupees Five Lakhs only) payable by the Applicant.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

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

CP(IB) No.186/07/HDB/2024

*(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the of
the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

**In the matter of M/s.Techtrans Constructions
India Private Limited**

Mr.P.L.Srinivas Reddy,
S/o.Sri P.Lakshmi Narayana Reddy,
Aged about: 56 years, Occ: Business,
R/o.H.No.10-1-61/B, West Marredpally,
Secunderabad – 500 026.

.... Applicant/Financial Creditor

A n d

M/s.Techtrans Constructions India Private Limited,
Regd Office: H.No.7-1-58, 3rd Floor,
Divyashakthi Commercial
Complex, Ameerpet,
Hyderabad – 500 016.

.... Respondent/Corporate Debtor

Date of Order:19.12.2025

Coram:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Sri Sanjay Puri, Hon'ble Member (Technical)

Counsels/Parties Present:

For the Applicant	:	Mr.V.K.Sajith and Mr.V.Ravi Kumar, Ramalakshmi, Advocates, O/o.One Law
For the Respondent	:	Mr.Prem Kumar Pothina, Advocate

[PER: Rajeev Bhardwaj]

ORDER

1) This Application/Petition under Section 7 of the Insolvency Bankruptcy Code, 2016 (**IBC**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by Mr.P.L.Srinivas Reddy (**Applicant**) for initiating Corporate Insolvency Resolution Process (“**CIRP**”) against M/s.Techtrans Constructions India Private Limited (**Respondent**)

2) **Application:**

2.1 It is averred that the Applicant initially approached State Bank of India (**SBI**), Secunderabad Branch, seeking credit facilities to the tune of ₹4 crore for his business activities by offering mortgage of collateral securities. However, after due diligence, SBI allegedly informed the Applicant that he was ineligible to avail the said credit facilities on account of an adverse CIBIL report.

2.2 It is submitted that during the processing of his request, he came into contact with Mr. H. Ramesh, Chairman and Managing Director of the Respondent Company, who along with officials of SBI insisted that the Applicant provide additional collateral security for the purpose of credit enhancement in respect of loans proposed to be sanctioned to the Respondent. It is alleged that upon

the suggestion of SBI, the Applicant entered into a Memorandum of Understanding (**MoU**) with the Respondent, whereby he offered his immovable property as collateral security and for the loans availed by the Respondent, and the Respondent allegedly agreed to extend certain financial accommodations to the Applicant. It is further alleged that the Applicant was compelled by the Respondent and SBI to sign certain documents.

2.3 According to the Applicant, he became aware of the true nature of the transaction only upon receipt of a legal notice from SBI, demanding an amount of ₹31.17 crore in respect of credit facilities extended to the Respondent. Thereafter, notice under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**SARFAESI Act**) was issued to him, calling upon him to discharge the outstanding liability. Upon failure to comply, a sale notice dated 08.03.2023 under Rule 8(6) of the SARFAESI Rules, 2002 was issued for auction of the mortgaged properties.

2.4 Aggrieved by the actions of SBI, which were alleged to be collusive and intended to usurp his assets, the Applicant approached the Hon'ble High Court of Telangana by way of a writ petition. The Hon'ble High Court directed the Applicant to approach the Debts Recovery Tribunal (**DRT**). Accordingly, the Applicant filed an application before the DRT challenging the

measures initiated by SBI under the SARFAESI Act. The DRT, by way of an interim order, directed SBI not to proceed further, subject to the Applicant depositing a sum of ₹2 crore. It is stated that the Applicant deposited ₹1.5 crore, but was unable to arrange the balance amount.

2.5 In the interregnum, the Applicant filed CP (IB) No.74/94/HDB/2024 before this Adjudicating Authority under Section 94 of the IBC, and vide order dated 27.03.2024, an interim moratorium was declared. The Resolution Professional appointed therein recommended admission of the said petition.

2.6 In the present application, the Applicant claims that a total sum of ₹158,62,47,294/- is due and payable by the Respondent, with the date of default stated as 08.03.2023, along with interest at the rate of 9.75% per annum from the date of filing of the application till realization.

3. Counter:

3.1 The Respondent has contested the maintainability of the present Application on the plea that the Applicant cannot simultaneously assume the position of a borrower and a guarantor. In this regard, reliance is placed on the definition of borrower in Section 2(1)(f) of the SARFAESI Act.

- 3.2 It is further contended that the present Application is misconceived, not maintainable in law, and vexatious, having been filed with an oblique motive to stall lawful recovery proceedings initiated by SBI under the SARFAESI Act.
- 3.3 The Respondent has also placed reliance on the decisions in *Neeraj Bhatia vs Davinder Ahluwalia & 2 others, Company Appeal (AT)(Insolvency) No.142/2017, NCLAT, New Delhi* and *P.B.Radhakrishnan & Ors vs M/s.Deleo Construction Private Limited, Company Appeal (AT)(Insolvency) No.387/2018, NCLAT, New Delhi* to submit that the guarantor cannot claim to be a financial creditor as defined under Section 5(7) read with Section 5(8) of the IBC until the guarantor is able to prove that the payment has been made to him by the financial creditor in pursuance of the loans availed by the principal debtor.
- 3.4 It is asserted that the Applicant has neither repaid the outstanding debt to SBI in full nor established any legally enforceable financial debt owed by the Respondent to him. In the absence of such payment or subrogation, the Applicant cannot invoke Section 7 of the IBC against the Corporate Debtor.
4. We have heard the Learned Counsels for both the parties and have gone through the entire records including written submissions of the parties.

5. Findings

- 5.1 It is undisputed that the credit facilities in question were sanctioned by the SBI in favour of the Respondent, and not in favour of the Applicant. The Applicant's role, as emerges from his own pleadings and documents, was limited to that of a collateral security provider, who mortgaged his personal property to secure the loans availed by the Respondent.
- 5.2 An Application under Section 7 of the IBC is maintainable only when the Applicant establishes that a financial debt, as defined under Section 5(8), has been disbursed by him to the Corporate Debtor against consideration for the time value of money, and that a default has occurred. In contrast, an Application under Section 94 is maintainable at the instance of an individual debtor seeking initiation of insolvency resolution in respect of a separate financial debt owed by him to a Financial Creditor. Therefore, while the capacity of an individual as a debtor under Section 94 arises from an independent contractual relationship, such capacity does not automatically confer upon him the status of a Financial Creditor under Section 7 unless the statutory ingredients are strictly fulfilled.
- 5.3 At the outset, it must be noted that the present proceedings exemplify an attempt to invoke the provisions of the IBC not for genuine insolvency resolution, but as a defensive mechanism to obstruct lawful recovery proceedings. The insolvency mechanism under the IBC is not intended

to be used as a substitute for recovery proceedings or as a tool to stall enforcement of security interests

- 5.4 The controversy revolves around the equitable mortgage by deposit of title deeds dated 12.03.2013 (Pages 46–97 of the Application), whereby the Applicant mortgaged his properties to secure a loan of ₹100,40,00,000/- availed by the Respondent from SBI. The mortgage deed was executed in the presence of two witnesses. Though certain letters issued by SBI dated 18.06.2013 and 07.10.2013 refer to the Applicant as a “guarantor” for the sanctioned limits, no deed of guarantee has been placed on record. Even in CP (IB) No. 74/94/HDB /2024 filed by the Applicant under Section 94 of the IBC, he has disclosed only the mortgaged property and not any guarantee obligation. In the absence of a guarantee deed, the legal status of the Applicant must necessarily be determined primarily on the basis of the mortgage deed.
- 5.5 Upon default by the Corporate Debtor, SBI issued a demand notice dated 30.05.2014 claiming ₹31.17 crore, followed by a sale notice dated 14.10.2022. The Applicant approached the Hon’ble High Court of Telangana, which relegated him to the remedy before the DRT. In IA No.840 of 2023 in SA No. 139 of 2023, the DRT stayed the auction subject to deposit of ₹2 crore. The Applicant admittedly deposited only ₹1.5 crore. Instead of complying with the conditional order, he invoked Section 94 of the IBC. By order dated 17.02.2025, insolvency proceedings were initiated against the Applicant himself.

- 5.6 Subsequent to the filing of CP (IB) No.74 of 2024, the Applicant filed the present Application under Section 7 of the IBC against M/s.Techtrans Constructions India Private Limited, contending that the loan secured by the mortgage constitutes a financial debt owed to him by the Respondent. However, the moratorium imposed in proceedings under Section 94 operates for the benefit of the individual debtor and cannot be construed to create, elevate, or recognise any creditor rights in favour of such debtor against a third party.
- 5.7 The sequence of events unmistakably demonstrates that the Applicant has approached one forum after another, not for resolution of insolvency, but with the object of delaying the recovery process and protecting the mortgaged property, which was offered by him as security for the loans availed by the Respondent from SBI.
- 5.8 The Applicant's plea that the mortgage deed was executed under coercion or fraud is devoid of merit. The mortgage deed was executed in 2013; the demand notice was issued in 2014; yet no proceedings were initiated seeking cancellation of the mortgage deed. Even the DRT proceedings were confined to interim protection and not annulment of the security. The long acquiescence of the Applicant and execution of the deed in the presence of witnesses negate allegations of coercion, which are accordingly rejected.
- 5.9 It is no doubt true that the Code does not prohibit an individual from acting in dual capacities - namely, as a Financial Creditor in one

transaction and as a debtor in another - provided that the statutory requirements governing each proceeding are independently satisfied. Such permissibility, however, depends entirely upon the nature of the underlying legal relationships and whether the transaction in question fulfils the statutory definition of a financial debt.

5.10 Section 5(7) of the Code defines a “financial creditor” as follows:

Section 5(7) "financial creditor" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;

5.11 The expression “*financial debt*” is defined in Section 5(8) of the Code in the following terms:

Section 5(8) "financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes-

- (a) money borrowed against the payment of interest;
- (b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;
- (e) receivables sold or discounted other than any receivables sold on non-recourse basis;

- (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;
- (i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in Sub-clauses (a) to (h) of this clause;

5.12 The definition of “financial debt” employs both the expressions “means” and “includes”. While the use of the word “means” indicates an exhaustive definition, the expression “includes” expands its ambit to enlarge the scope of the definition by bringing within its fold certain matters which may not otherwise fall within its ordinary meaning.

5.13 It is thus clear that although the words “mean” and “include” denote two different aspects, one is restrictive and the other expansive, nevertheless that does not mean that there can be no definition where “mean” and “include” both are used. It can only mean that primarily it is the restricted meaning which should be taken into account. But in cases where the expansive meaning can be given without doing any violence to the Act, the term “includes” would be in operation. [See *Reclamation Corporation Ltd. v. Presiding Officer, Labour Court, (1990)3 SCC 682*

Krishi Utpadan Mandi Samiti v. Shankar Industries, 1993 Supp (3) SCC 361 (2), at page 364]

- 5.14 Thus, disbursal of money against consideration for the time value of money is the sine qua non of a financial debt under the IBC, and the illustrative clauses in Section 5(8)(a) to (i) cannot be read in isolation from this foundational requirement.
- 5.15 For determining the time value of money, we also need to see the true import of the transaction, which uses the expressions “guarantee” and “mortgage”, but these are not defined under the IBC. By virtue of Section 3(37) of the Code, their meanings must be drawn from the Indian Contract Act, 1872 and the Transfer of Property Act, 1882.
- 5.16 Under Section 58 of the Transfer of Property Act, 1882, a mortgage is a transfer of an interest in specific immovable property for the purpose of securing the payment of money. A mortgage, by itself, does not create a primary obligation to repay unless it contains an express covenant to that effect.
- 5.17 A contract of guarantee, as defined under Section 126 of the Indian Contract Act, 1872, is a contract to perform the promise or discharge the liability of a third person in case of his default. A guarantor undertakes to pay the debt of the principal debtor only upon such default. There is no deed of guarantee on record and even the mortgage document does not contain any covenant undertaking repayment of the loan amount. In

the absence of such contractual obligation, the Applicant cannot assume the status of a Financial Creditor unless and until the debt is actually discharged by him.

- 5.18 In order to determine whether there was any disbursement of money by the Applicant to the Respondent, or whether the transaction was merely one of providing security, it is necessary to examine the mortgage deed dated 12.03.2013 (Pages 46–110 of the Application). The relevant clause of the said document reads as follow

“The Depositor is hereby declare and confirm that the Title Deeds relating to his property mentioned below described more fully in the Schedule here to have been deposited by the said Depositor on 12.03.2013 with the Lender-Bank with an intention of creating Equitable Mortgage by Deposit of Title Deed to secure the loan amount of Rs.100,40,00,00/- (Rupees one hundred crores and forty lacs only) to be borrowed/borrowed by 1) TECHTRANS CONSTRUCTIONS INDIA PVT LTD and 2) TSS PROJECTS & INDUSTRIES PVT LTD, represented by Mr.HARIDASS RAMESH in the capacity of MD and payable from time to time of at any time due to the said STATE BANK OF INDIA, together with interest, accounts commission, costs, charges and expenses etc., in relation thereto.

- 5.19 From the statutory definitions of mortgage and contract of guarantee and the mortgage deed, it is evident that the Applicant merely secured the credit advanced by SBI to the Respondent and did not disburse any amount to the Respondent. A person who merely mortgages his property

as collateral security does not become a creditor of the borrower in the absence of having advanced money. Such a person only creates a security interest to secure an existing debt owed to a lender. A mortgage deed, in the absence of disbursal or a covenant creating a primary debt obligation, does not by itself create a financial debt. The decision of the Hon'ble Supreme Court in *China Development Bank v. Doha Bank Q.P.S.C. and Ors.(2024) ibclaw.in 340 SC*, further clarifies that only where a security document contains an express covenant creating a liability to pay, can it be construed as a contract of guarantee.

- 5.20 In *Anuj Jain v. Axis Bank Ltd. (2020), Ibcil.in 06 SCC*, the Hon'ble Supreme Court held that a third-party mortgage created by a subsidiary to secure loans taken by its holding company does not result in a creditor-debtor relationship, as there was no disbursal of money to the mortgagor. It was further observed that a mortgagor is primarily interested in release of the security, whereas a Financial Creditor is interested in the resolution and revival of the Corporate Debtor. Similarly, in *Phoenix ARC Pvt. Ltd. v. Spade Financial Services Ltd. (2021)3SCC475*, and *Phoenix ARC Pvt. Ltd. vs. Ketulbhai Ramubhai Patel (2021)2 SCC 799*, it was reiterated that disbursal of money against time value is an indispensable element of a financial debt, and that even non-loan transactions fall within the ambit of financial debt only if they have the commercial effect of borrowing.

- 5.21 Applying the aforesaid principles, the mortgage is an equitable mortgage by deposit of title deeds, created solely to secure the loan amount of ₹100,40,00,000/- borrowed by the Respondent from SBI and payable to the said Bank along with interest and other charges. There is no disbursal of money by the Applicant to the Respondent, which is an essential requirement for constituting a financial debt under the IBC. The Applicant, at best, can be said to be a security provider having a security interest, but not a Financial Creditor within the meaning of Sections 5(7) and 5(8) of the IBC.
- 5.22 The contention of the Applicant that, by depositing an amount of ₹1.5 crore pursuant to the order of the DRT dated 13.04.2023, he stepped into the shoes of the Financial Creditor by application of the principle of subrogation is wholly misconceived. Under Section 140 of the Indian Contract Act, 1872, the right of subrogation arises only upon complete discharge of the debt by the surety. Partial payment does not clothe the guarantor or security provider with the rights of the creditor. In any event, the Applicant cannot claim any rights superior to or independent of those of the original creditor.
- 5.23 It is also well settled that amounts paid by a guarantor or personal guarantor to the lender do not constitute a financial debt owed by the Corporate Debtor to such guarantor, unless it is demonstrated that the amount was disbursed to the Corporate Debtor against consideration for time value of money. Reliance in this regard is placed on the decision of

the Hon'ble NCLAT in *Neeraj Bhatia v. Davinder Ahluwalia & Ors., Company Appeal (AT) (Insolvency) No. 142 of 2017*, decided on 09.02.2018, wherein the Appellate Tribunal rejected a similar claim by a guarantor seeking to initiate proceedings under Section 7 of the IBC. The Hon'ble NCLAT held as under:

19. The amount of Rs. 29,97,000/-, is claimed to have been paid by the contesting respondents either to Captain V.K. Adukia or Captain Rajeev Chauhan or the Punjab National Bank. There is nothing on record to suggest that the amount has been 'disbursed' in favour of 'Corporate Debtor' against 'consideration for the time value of money'. The contesting respondents have also failed to bring on record any evidence to suggest that the money was borrowed or raised by the 'Corporate Debtor' under any other transactions including sale or purchase or other mode having commercial effect of borrowing.

20. In view of the aforesaid finding, we hold that the contesting respondents do not come within the meaning of 'Financial Creditor' and the application under Section 7 at their instance was not maintainable. The Adjudicating Authority has failed to notice the aforesaid provisions and without going to the question as to whether the application at the instance of the contesting respondents was maintainable or not has admitted the application.

5.24 In view of the foregoing discussion, the Applicant has failed to establish that he is a Financial Creditor within the meaning of Section 5(7) of the IBC or that the amount claimed by him constitutes a financial debt under Section 5(8) of the Code.

5.25 The Applicant has also failed to establish a clear, consistent, and legally sustainable date of default. In Part IV of the Application, the date of default is stated as 08.03.2023, being the date of issuance of the auction notice. However, in Paragraph 7 of Part III of CP (IB) No. 74/94/HDB/2024 (Pages 115–130 of the Application), the date of default is mentioned as 01.01.2014, allegedly continuing thereafter, while at other places reliance is placed upon the sale notice dated 14.10.2022. These mutually inconsistent pleadings demonstrate a complete lack of clarity as to the occurrence and date of default and further reinforce the conclusion that the present petition is misconceived, not maintainable, and barred by limitation.

5.26 For the reasons discussed hereinabove, this Adjudicating Authority holds that the Applicant is neither a financial creditor nor does the amount claimed constitute a financial debt under the Insolvency and Bankruptcy Code, 2016. The Application further suffers from serious legal infirmities and is found to be misconceived and frivolous. In view thereof, the **CP(IB) No.186/7/HDB/2024** is dismissed with costs of ₹5,00,000/- (Rupees Five Lakhs only), payable by the Applicant.

Sd/-
(SANJAY PURI)
MEMBER (TECHNICAL)

Sd/-
(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

Vinod