

SL. No.1

**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 22.02.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition IB/118/2023
NAME OF THE COMPANY	
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	Sri Nikhil B Parikh
UNDER SECTION	123 of IBC

ORDER

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

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

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

CP(IB) No.118/123/HDB/2023

*Under Section 121 & 123 of Insolvency and Bankruptcy Code, 2016,
read with Rule 7 of the Insolvency and Bankruptcy (Application
to Adjudicating Authority for Bankruptcy process for Personal
Guarantors to Corporate Debtors) Rules, 2019*

Between:

State Bank of India,
Stressed Assets Management Branch,
5-9-76, 2nd & 3rd Floor,
Prabhat Towers, Opp: Amravathi, LHO,
Chappel Road, Gunfoundry,
Hyderabad – 500 001.

....Petitioner/Financial Creditor

V E R S U S

1. Mr.Nikhil B Parikh,
D.No.4-3-338, R.K.Estate,
Bank Street, Sultan Bazar,
Hyderabad – 500 095.

.... Personal Guarantor/Respondent No.1

2. M/s.Parikh Fabrics Private Limited,
D.No.4-3-338, R.K.Estate,
Bank Street, Sultan Bazar,
Hyderabad – 500 095.

.... Corporate Debtor/Respondent No.2

Date of Order: 22.02.2024

Coram:

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

Counsel/Parties present:

For the Petitioner : Mr.G.P.Yash Vardhan, Advocate.
For the Respondent : Ms.Siva Praneetha, Advocate

[P E R: B E N C H]

ORDER

1. The Petitioner /Financial Creditor has filed this Petition under Section 123 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019 to initiate Bankruptcy Process against the Personal Guarantor of Corporate Debtor.
2. The Corporate Debtor (respondent No.2) is the Principal Borrower and Personal Guarantor (respondent No.1) stood as guarantor to secure the repayment of the financial assistance availed by the Corporate Debtor. The amount claimed be in default is Rs.238,61,90,273.58 as on 31.03.2023 (Annexure 1 – page No.20 of the application).
3. The Corporate Debtor availed financial assistance by executing various loan documents and in order to secure the debt, Guarantee Agreement was executed with the Respondent.
4. It is alleged that the Corporate Debtor after availing the aforesaid loan facilities has violated the terms of the sanction letters and loan documents, due to which the account of the Corporate Debtor was declared as NPA on 30.08.2011. An opportunity was given to the Corporate Debtor to settle the accounts under OTS in the year 2016.

Though initial part payment was made to the Consortium, the Corporate Debtor failed to pay the subsequent instalments, thereby failing to adhere to the OTS terms which forced the consortium to cancel the OTS.

5. Then demand notice u/s 13(2) of SARFAESI Act, 2002 was issued on 31.07.2013 and OA No.188/2014 was filed before the Debts Recovery Tribunal, Hyderabad for recovery of the outstanding amounts from the Corporate Debtor and the Guarantors.
6. The Corporate Debtor has also filed CP (IB) No.12/10/HDB/2019 on 08.02.2019 under Section 10 of the Code. This Tribunal ordered for Liquidation of the Corporate Debtor on 21.01.2020. The Liquidator sold the Business of the Company as a Going Concern and the Financial Creditor has received Rs.10.10 crores towards its share leaving the liability of the Corporate Debtor and its Guarantors to the tune of Rs.226,69,93,584/- as on 31.05.2021 in the books of the Financial Creditor. The Liquidation Proceedings have not reached to its logical conclusion which was listed on 01.05.2023. Therefore, the Personal Guarantor is liable to pay balance amounts as Guaranteed under the Guarantee Agreements which is more than the threshold limit of Rs.1000/- as per Section 78 of the Code.
7. Pursuant to Central Government framing (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 which came into force from 01.12.2019, inter-alia permitting a Financial Creditor to institute Insolvency Resolution Process against Personal Guarantors of Corporate Debtors,

the Financial Creditor has issued demand notice through registered post on 21.06.2021 and the same was served on the Personal Guarantor on 01.07.2021 demanding payment of the amount of default. Despite receipt of the Demand Notice the Personal Guarantor has not come forward to pay the outstanding amounts.

8. As the Personal Guarantor failed to pay the amount in default, the Financial Creditor has filed an Application under Section 95 of the Code bearing C.P.(IB) No.209/95/HDB/2021 seeking initiation of Insolvency Resolution Process against the Personal Guarantor.
9. Vide Order dated 25.08.2021, the Tribunal has passed interim moratorium and appointed Resolution Professional under Section 97(5) of the Code with a direction to submit his report under Section 99 of the Code, recommending rejection or admission of the Application. Subsequently, the Resolution Professional has submitted his report recommending admission of Application filed by the Financial Creditor. This Tribunal vide its Orders dated 15.06.2022 admitted the Application under Section 100 of the Code and declared moratorium under Section 101 of the Code.
10. The Repayment Plan submitted by the Personal Guarantor was rejected by the CoC with 100% voting. The Resolution Professional has filed an Interim Application No. 291 of 2022 to take on record the report wherein, the Repayment Plan submitted by the Personal Guarantor was rejected by the Creditors. This Tribunal disposed of the IA vide its Orders dated 16.03.2023 with the following orders.

"Considering the report of the Resolution Professional filed u/s. 112 and also considering that the Personal Guarantor did not raise any argument

against ordering this application, we are left with no other option except to allow this application. Hence, the application is allowed as prayed for and the creditors shall be entitled to file an application for Bankruptcy under Chapter IV, consequent to the rejection of the Repayment Plan. The RP stands discharged."

11. In view of the aforesaid facts and circumstances, the present Application is filed seeking Bankruptcy of the Personal Guarantor under Section 123 of the Code read with Rule 7 Rules to initiate Bankruptcy Process against the Personal Guarantor of Corporate Debtor.
12. In the counter filed by the respondent No.1/Personal Guarantor, the respondent No.1 denies each and every averment, contention, submission and allegations made by the Creditor in the present Company Petition that is contrary to and or inconsistent with what is averred herein though not specifically denied.
13. The details of the loans availed by the Corporate Debtor are in Page 2 of the counter. The respondent submits that there was considerable delay in disbursing of loan amount, fluctuation in Euro currency rates, which resulted in increase in purchase costs of machinery. The Corporate Debtor could not meet the production requirements as there were frequent power cuts and bandhs in AP State.
14. It is alleged that delay in disbursing of loan amounts by the Financial Creditor resulted in the Corporate Debtor having to service interest amounts that were due, despite not receiving disbursement of the principal loan amount required to conduct its basic operations and necessary purchases. It is claimed by the Corporate Debtor that the delay of disbursement of funds also resulted in not filing a claim for capital

subsidiary under the Technology Upgradation Fund Scheme for Textile Sector initiated by the Government of India, the main objective of the scheme was to making funds available to upgrade its existing units for improved production.

15. The respondent also explained the OTS proposal on page 5 and Repayment Plan of the Personal Guarantor on page 6 of the counter. He also dwelt in length, the problems faced due to non-approval of OTS and Repayment Plan of the Personal Guarantor and explained the negative effects of passing order of Bankruptcy against the Corporate Debtor.
16. The respondent further submits that the bankruptcy proceedings against the Corporate Debtor/Personal Guarantor would have a severe impact on the daily livelihood the Corporate Debtor/Personal Guarantor and would be put to irreparable loss and damage to the reputation of the Corporate Debtor/Personal Guarantor.
17. In view of the facts and circumstances, it is prayed to dismiss the present Petition for bankruptcy proceedings against the Personal Guarantor.
18. We have carefully perused the petition and are satisfied that the repayment plan of the Personal Guarantor has been rightly rejected. There is no reason to reject the prayer of the Petitioner. Therefore, we find it proper to admit this Petition and declare the Personal Guarantor herein, as Bankrupt.
19. In the result, **Mr.Nikhil B Parikh, D.No.4-3-338, R.K.Estate, Bank Street, Sultan Bazar, Hyderabad – 500 095, Personal Guarantor** is hereby **ordered to be BANKRUPT**.

20. The applicant proposed the Resolution Professional **Shri.I.Krishna Mohan Gollamudi**, having IBBI No IBBI/IPA-003/IP-N000161/2018-2019/11952, address at Flat No. 107, 1-9-648/107, Maurya Towers, Adikmet Road, Vidyanagar, Hyderabad-500044, Telangana, email id: krishnamohangollamudi@gmail.com, Mobile No. 9573622744 to be appointed as bankruptcy trustee. The said Resolution Professional also has given the declaration in Part-IV of the petition. Hence we hereby appoint **Shri.I.Krishna Mohan Gollamudi** as Bankruptcy trustee under Section 125 of the Code.
21. The Registry is directed to provide the copy of this Bankruptcy order and copy of the Bankruptcy petition to the creditors and bankruptcy trustee within a week as provided under Section 126 (2) of IBC, 2016.
22. This order of Bankruptcy shall continue to have the effect till the debtor is discharged under section 138 of IBC, 2016.
23. The bankrupt shall submit his statement of financial position to the bankruptcy trustee in the prescribed Form within seven days from the date of the order.
24. The estate of the bankrupt excluding the assets mentioned in Section 155(2) of Code R/W Rule 5 of Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtor) Rules, 2019 vest with the bankrupt trustee in pursuance of this order. The Bankruptcy trustee is directed to forthwith take into his custody all the assets, Properties, and actionable

claims of the Bankrupt and take necessary steps to ensure preservation, protection security and maintenance of those properties as provided under section 128 and 154 of IBC, 2016.

25. The Bankruptcy trustee is directed to adhere to Section 128, 129 (4), 132, 133, 134, 136 and 137 of IBC, 2016 and discharge his powers and duties as specified and meticulously adhere to the Rules and Regulations issued by IBBI in this regard from time to time.
26. The Bankrupt trustee for the Adjudicating Authority shall send notices as provided under section 130(a) of IBC, 2016 within ten days from the date of this order to the creditors mentioned in statement of affairs submitted by the Bankrupt under section 129 of IBC, 2016.
27. The Public Notice inviting claims from the creditors as contemplated under section 130 (2) of the Code shall be issued in one morning, English daily and in one morning vernacular regional language newspapers having wide circulation where the bankrupt resides.
28. On passing of the Bankruptcy order, but subject to sub-section (2) of 128 of the Code, shall not initiate any action against the property of the bankrupt in respect of debt and no suit or other legal proceeding shall be initiated against the bankrupt, save and except with the leave of the Adjudicating Authority as provided in section 128 (ii) of the Code.
29. The Bankrupt Trustee shall conduct the administration of distribution of estate of bankrupt under chapter V as provided in section 136 of the code.

30. The Bankrupt shall from the date of the order be subject to such disqualifications and restrictions as prescribed under section 140 and 141 of the code.
31. The Bankruptcy Trustee may seek such further information or explanation in connection with bankruptcy process as may be required from the debtor or the creditor or any other person who in the opinion of the Bankruptcy Trustee, may provide such information. The persons from whom information or explanation is sought shall furnish such information or explanation within seven days of receipt of the request.
32. The Bankruptcy Trustee shall exercise all the powers as enumerated under the Code read with Rules and Regulations made thereunder.
33. The Bankruptcy Trustee shall submit to this Adjudicating Authority and committee a preliminary report within in ninety days from this date of Bankruptcy order after serving copy of the report on bankrupt as provided in Regulation 8 of Insolvency and Bankruptcy Board of India (Bankruptcy Process for personal Guarantors to corporate debtors) Regulation, 2019.
34. The Bankruptcy Trustee shall submit to this Authority periodical progress report within fifteen days after the end of every quarter after serving copy of the report on the bankrupt provided under Regulation 10 of Insolvency and Bankruptcy Board of India (Bankruptcy Process for personal Guarantors to corporate debtors) Regulation, 2019.

35. The fee of Bankruptcy trustee to be determined as provided under Regulation 4 of Insolvency and Bankruptcy Board of India (Bankruptcy Process for personal Guarantors to corporate debtors) Regulation, 2019.
36. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
37. A certified copy of the order is to be issued upon compliance with requisite formalities.

**SD/-
SANJAY PURI
MEMBER (TECHNICAL)**

**SD/-
RAJEEV BHARDWAJ
MEMBER (JUDICIAL)**

Vinod