IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSCIAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
11-12-2024AT **10:30AM**

Company Petition IB/249/2021
AND
IA (IBC) 1300/2024 in Company Petition IB/249/2021
u/s. 95 of IBC, 2016

IN THE MATTER OF:
Central Bank of India **…Petitioner**

AND

Ritesh Agarwal & Rajvir Industries Ltd **…Respondent**

C O R A M:-
DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

O R D E R

IA (IBC) 1300/2024
Orders pronounced. In the result, **this bankruptcy application is allowed**, subject to the terms and conditions mentioned therein.

Sd/-	Sd/-
MEMBER (T)	**MEMBER (J)**

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NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1
IA No 1300/2024
In
CP (IB) No. 249/123/HDB/2021

Under Section 123 of Insolvency and Bankruptcy Code, 2016, read with Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019

Between

Central Bank of India,
Having its registered office at Chandra Mukhi,
Nariman point, Mumbai – 400021, and having its Branch Office
Situated at Koti, Hyderabad.

…Financial Creditor/ Petitioner

Versus

1. Ritesh Agarwal,
S/o. Sh U.K Agarwal,
H/o 85-86, Nandanvan,
AP Text Book Colony, Gunrock Enclave,
Secunderabad-500009
Also at: House No: 8-2-293/82, Plot No 324,
Road No.79, Phase III, Jubilee Hills, Hyderabad-33.

…Personal Guarantor/ Respondent No.1

2. M/s Rajvir Industries Limited

…Corporate Debtor/ Respondent No.2

DATE OF ORDER:11.12.2024

Coram:

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

Appearance:

For Petitioner : Mr. Peri Rama Krishna, Counsel
For Guarantor : Mr S Rajagopalan, Counsel

PER: BENCH

ORDER

1. The Applicant /Creditor has filed this Application under Section 121 read with 60(2) *of the* Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantor to Corporate Debtor) Rules, 2019, praying for leave to initiate Bankruptcy Process against the Personal Guarantor of the Corporate Debtor.

2. **The averments in brief of the Application are that*;***

2.1 The Applicant is a Creditor and one of the joint lenders for the Credit facilities sanctioned to the Corporate Debtor namely M/s Rajvir Industries Limited. The other joint lenders to the Corporate Debtor namely M/s Rajvir Industries Limited are State Bank of India, Axis Bank, ICCI Bank Limited, IDBI Bank Limited, State Bank of Bikaner and Jaipur, State Bank of Hyderabad, State Bank of Mysore.

2.2 It is averred that the Corporate Debtor account slipped to NPA category on account of the default committed by the Corporate Debtor in repayment of the debt due to the Financial Creditors including the Applicant.

2.3 It is averred that one of the Creditors namely State Bank of India, filed an Application under section 7 of IBC Code 2016, vide CP No

747/7/HDB/2019 and the same was admitted by this Tribunal, vide order dated 26.04.2021. Consequent to the approval and its implementation, the Applicant received an amount of Rs 395.69 lakhs. It is averred that the Applicant along with State Bank of India, also has filed OA before Hon'ble DRT-II, Hyderabad on 03.09.2019 for recovery of Applicant Bank's dues and the said OA bearing No: 76/2020 is pending for adjudication. Thereafter, applicant has filed the present application under Section 95 of Insolvency and Bankruptcy Code, 2016 against the Respondent and same was admitted and an was appointed.

2.4 The resolution professional filed his Report recommending admission of the Application filed under Section 95 of IB Code, 2016. After hearing the creditor, resolution professional and the personal guarantor, an order of admission of the petition filed undersection 95 IBC, was passed by this Hon'ble Adjudicating Authority vide its order in CP IB/249/2021 on 21.04.2022.

2.5 Subsequently, RP filed an application i.e IA No. 1038/2022 stating, inter alia, that the personal guarantor has not submitted any repayment plan, and this Adjudicating Authority on 30.09.2022, passed the following order

" *IA no.1038/2022, is allowed and RP is relieved from his duties. Report is taken on record. It is open to the Financial Creditor to take appropriate steps in the light of the report."*

2.6 Post passing of the order in IA No. 1038/2022 the Petitioner/creditor filed CP(IB) No 29/123/HDB/2023 under Section 123 of the Insolvency and Bankruptcy Code, 2016, seeking leave to initiate Bankruptcy Proceedings against the respondent/Personal Guarantor, and the same was disposed of as 'withdrawn' consequent upon filing a memo of withdrawal by the creditor/applicant vide order dated 27.03.2024 as below:

"Learned Counsel Mr Praveen Jain along with Mr Srikanth Rati, for the applicant physically present.
Learned Counsel Mr Rajagopalan, for respondent present through Video Conference.
Matter passed over.
Matter called again. It is represented that a withdrawal memo has been e-filed today and physical copy of the same is done.
It is stated that a copy of this withdrawal memo is served to the other side.
Therefore, in the light of the memo the following order is passed:
This petition is disposed of as withdrawn however, by giving liberty to the petitioner to file a fresh application as per law.
Accordingly, this petition is disposed of as withdrawn."

2.7 Subsequently, the creditor/Applicant filed IA 1300/2024 seeking leave to *initiate* bankruptcy process against the respondent/personal guarantor and this Adjudicating Authority, vide order dated 26.06.2024 issued notice to the personal guarantor and the same has been served on the personal guarantor and thereafter, respondent on 01.08.2024 had filed counter, contending, that;

I. The averments as made in the application not correct and the Application is liable to be dismissed in *limini* and in toto.

II. The CP(IB) No 249/HDB/2021 was disposed of on 30.09.2022, by directing the Applicant to take appropriate steps as per law. Thereafter the petitioner filed CP(IB) No 29/123/HDB/2023, with a delay of 100 days in and the same was withdrawn.

III. It is averred that contents Part II and III of the present Application are not correct and the petitioner had not enclosed any document to substantiate the claim. Thus, the petition is liable to be dismissed.

IV. It is averred that the financial creditor must amend Form B (See Rule 7(1)) and incorporate details of monies received under the resolution plan of the corporate debtor and then should issue a fresh demand notice in Form-B for the balance amount on the Personal Guarantor. But in the present instance, the financial creditor has miserable failed to produce any such document regarding recovery of amount despite acknowledging the fact that the Rajvir Industries Limited (Corporate Debtor) has completed its CIRP and a Successful Resolution Plan has been implemented.

V. It is further averred that an Appeal filed by the corporate debtor vide Company Appeal (AT)(INS) 195/2021 is pending and thus prayed to keep the present Application in abeyance.

3. In the light of the contest as afore stated, the point that emerges for our consideration is;

Whether the Applicant/Creditor is entitled to proceed against the Respondent/Guarantor for bankruptcy?

4. We have heard learned Counsel for the Applicant Mr. Peri Ramakrishna and Learned Counsel for Respondent Mr.S.Rajagopalan. Perused the record.

5. The personal guarantor filed preliminary objections contending, that the cause title of the present Application is incorrect besides that, this Tribunal vide order dated 30.09.2022 disposed of the main CP No.249/2021 giving liberty to take appropriate steps as per law. According to the personal guarantor there is no provision in IBC conferring liberty while disposing the petition 'finally'. Lastly it is contended that present Application since not filed within three months from the date of the order 27.03.2024 on which date the Cp no.29/2023 has been withdrawn, the Application is barred by limitation.

6. We have carefully examined the above objection and found that the same are devoid of any force or substance. Our reasons for this conclusion are as below.

7. Wide our order dated 30.09.2022 in IA 1038/2022, we have discharged the RP and also granted *liberty* to the creditor to take further proper steps as per law.

8. The CP(IB) No 249/HDB/2021 was also disposed of on 30.09.2022, however by directing the Applicant to take appropriate steps as per law, within three months.

9. Thereafter the petitioner/creditor filed an interlocutory application with a delay of 100 days and the same was registered as CP(IB) No 29/123/HDB/2023.

10. While it was so, in view of the ruling of Hon'ble Supreme Court of India, in Surendra B. Jiwrajka vs Omkara Assets Reconstruction Private Limited in W.P.(C) No. 149/2022 and batch, a decision on administration side has been take, to register all the Applications filed under Section 121 r/w section 123 as IA's and the registry was accordingly instructed.

11. Since the Application filed by the creditor under Section 123 was registered as CP 29/123/2023, the creditor filed IA 1038/2022 for leave to withdraw the same with liberty to file fresh application and the said application was allowed on 30.09.2022.

12. The personal guarantor has not questioned the order dated 30.09.2022 as such it is not open to him now to say that, there is no provision in IBC conferring liberty while disposing the petition 'finally'.

13. In the light of the liberty granted as above, the creditor has filed the present application for leave to initiate bankruptcy proceedings against

the respondent/personal guarantor.

14. Be it as it may, the submission of the personal guarantor in so far as the plea of limitation is concerned, holds good if 3 months' time prescribed under Section 121 of is *mandatory.*

15. Hon'ble Supreme Court while dealing with an identical issue, in Topline Shoes Ltd Vs Corporation Bank 2002 (3) SCR 1167, held that:

> "***The question which however arises is as to whether the provision prescribing limit for filing reply is mandatory or directory in nature****. The Statement of Objects and Reasons of the Consumer Protection Act, 1986 indicates that it has been enacted to promote and protect the rights and interests of consumers and to provide them speedy and simple redressal of their grievances. Hence, quasi-judicial machinery has been set up for the purpose, at different levels. These quasi-judicial bodies have to observe the principles of natural justice as per clause (4) of the Statement of Objects and Reasons which reads as under:*
>
> > *"To provide speedy and simple redressal to consumer disputes, a quasi- judicial machinery is sought to be set up at the district, State and Central levels. These quasi-judicial bodies will observe the principles of natural justice and have been empowered to given relief of a specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance of the orders given by the quasi-judicial bodies have also been provided," (emphasis supplied) Thus the intention to provide a time frame to file reply, is really meant to expedite the hearing of such matters and to avoid unnecessary adjournments to linger on the proceedings on the pretext of filing reply. The provision however, as framed, does not indicate that it is mandatory in nature. In case the extended time exceeds 15 days, no penal consequences are prescribed therefor. The period of extension of time "not exceeding 15 days," does not prescribe any kind of period of limitation. The provision appears to be directory in nature, which the consumer forums are ordinarily supposed to apply, in the proceedings before them. We do not find force in the submission made by the appellant, in person, that in no event, whatsoever, the reply of the respondent could be taken on record beyond the period of 45 days. The provision is more by way of procedure to achieve the object of speedy disposal of such disputes. It is an expression of "desirability" in strong terms. But it falls short of creating of any kind of substantive right in favour of the complainant by reason of which the respondent may be debarred from placing his version in defence in any circumstances*

whatsoever. It is for the Forum or the Commission to consider all facts and circumstances along with the provisions of the Act providing time frame to file reply, as a guideline, and then to exercise its discretion as best it may serve the ends of justice and achieve the object of speedy disposal of such cases keeping in mind principles of natural justice as well. The Forum may refuse to extend time beyond 15 days, in view of Section 13(2) (a) of the Act but exceeding the period of 15 days of extension, would not cause any fatal illegality in the order."(Emphasis is ours).

16. Here it is pertinent to note that on a plain reading of Sub (2) of Section 121 which is as below:

(2)An application for bankruptcy shall be filed within a period of three months of the date of the order passed by the Adjudicating Authority under the sections referred to in sub-section (1) though says, that the creditors "shall" make an application for bankruptcy within three months from the date of the order passed by this Adjudicating Authority in terms of Section 121 (1) of IBC, consequences if any for not complying the said rule since are conspicuously silent, the word "shall" used in Section 121 sub-section (2) be construed as *directory* but not mandatory, and the intention behind fixing the said time line of three months, is only to expedite the hearing process. Therefore, compliance of Section 121 thus, only directory.

Thus, from the above ruling it is clearer than crystal, the section 121(2) of IB Code, is *directory* but not mandatory, hence the submission, *supra*, of the personal guarantor does not hold any water.

17. Now we shall deal with point whether the applicant/creditor is entitled for the relief as prayed.

18. Indisputedly the resolution process initiated against the Respondent/Guarantor in terms of Section 95 of Insolvency and Bankruptcy Code, 2016 has failed, since the Personal Guarantor despite sufficient opportunity did not submit any repayment plan.

19. In terms of Section 121 of Insolvency and Bankruptcy Code, 2016 which is as below: -

> ***"Section 121: Application for bankruptcy.***
>
> ***121.*** *(1) An application for bankruptcy of a debtor may be made, by a creditor individually or jointly with other creditors or by a debtor, to the Adjudicating Authority in the following circumstances, namely;-*
>
> *(a) where an order has been passed by an Adjudicating Authority under sub-section 4 of section 100; or*
>
> *(b) where an order has been passed by an Adjudicating Authority under sub-section 2 of section 115; or*
>
> *(c) where an order has been passed by an Adjudicating Authority under sub-section 3 of section 118.*
>
> *(2) An application for bankruptcy shall be filed within a period of three months of the date of the order passed by the Adjudicating Authority under the sections referred to in sub-section (1).*
>
> *(3) Where the debtor is a firm, the application under sub-section (1) may be filed by any of its partners."*

An application for bankruptcy by the Creditor against the Personal Guarantor shall be filed within a period of 3 months of the date of order passed by the Adjudicating Authority under Section referred in sub section (1) of Section 121 of Insolvency and Bankruptcy Code, 2016. As already stated, on 30.09.2022 this Tribunal passed an order under sub section (1)(a) of Section 121 of Insolvency and Bankruptcy Code, 2016 vide CP(IB) No 249/HDB/2021. Thereafter the petitioner/creditor filed an interlocutory application with a delay of 100 days and the same was registered as CP(IB) No 29/123/HDB/2023. Subsequently, the creditor filed IA 1038/2022 for leave to withdraw the same with liberty to file fresh application and the said application was allowed on 30.09.2022.

20. Thereafter the present application was filed on 30.12.2022, however beyond 3 months from the date of the order under subsection 1 of section 2 of IB Code.is within the 3 months period prescribed as above.

21. In terms of Section 123 of Insolvency and Bankruptcy Code, 2016 which is as below:

> ***"Section 123: Application by creditor.***
>
> ***123.*** *(1) The application for bankruptcy by the creditor shall be accompanied by—*
>
> *(a) the records of insolvency resolution process undertaken under Chapter III;*

(b) a copy of the order passed by the Adjudicating Authority under Chapter III permitting the creditor to apply for bankruptcy;

(c) details of the debts owed by the debtor to the creditor as on the date of the application for bankruptcy; and

(d) such other information as may be prescribed.

(2) An application under sub-section (1) made in respect of a debt which is secured, shall be accompanied with—

(a) a statement by the creditor having the right to enforce the security that he shall, in the event of a bankruptcy order being made, give up his security for the benefit of all the creditors of the bankrupt; or

(b) a statement by the creditor stating—

(i) that the application for bankruptcy is only in respect of the unsecured part of the debt; and

(ii) an estimated value of the unsecured part of the debt.

(3) If a secured creditor makes an application for bankruptcy and submits a statement under clause (b) of sub-section (2), the secured and unsecured parts of the debt shall be treated as separate debts.

(4) The creditor may propose an insolvency professional as the bankruptcy trustee in the application for bankruptcy.

(5) An application for bankruptcy under sub-section (1), in case of a deceased debtor, may be filed against his legal representatives.

(6) The application for bankruptcy shall be in such form and manner and accompanied by such fee as may be prescribed.

(7) An application for bankruptcy by the creditor shall not be withdrawn without the permission of the Adjudicating Authority."

an application for bankruptcy by the Creditor shall be accompanied by the records of the insolvency resolution process under chapter III and also the order passed by the Adjudicating Authority under chapter III permitting the Creditor for apply to bankruptcy. We found that the above requirements stand complied as the application is accompanied by the record of Personal Insolvency Resolution Process undertaken under chapter III against the Personal Guarantor and also the order granting leave to the Creditor to apply for bankruptcy.

22. In so far as the objection that the creditor must amend Form B (See Rule 7(1)) and incorporate details of monies received under the resolution plan of the corporate debtor and then should issue a fresh demand notice in Form-B for the balance amount on the Personal Guarantor but the creditor has miserable failed to produce any such document regarding recovery of amount despite acknowledging the fact that the Rajvir Industries Limited (Corporate Debtor) has completed its CIRP and a Successful Resolution Plan has been implemented as such his application is liable to be dismissed is concerned, it may be stated the personal guarantor had every opportunity before the resolution professional to raise the same, so that, the same can be appropriately dealt in the report of the resolution professional. However, it is not the case of the respondent that he has raised the same before the resolution professional but was not considered. So much so, the plea lacks neither merit nor *bona fides*, hence rejected.

23. Therefore, having carefully examined the application, we found that, the personal guarantor failed to submit the repayment plan to the

resolution professional hence the creditor filed this application. We also found that there was no willful negligence or intentional delay on the part of the creditor in not fling this application within 3 months from the date of the order passed under section 121(1) of IB Code. In fact, the delay in filing this application also endured to the benefit of the personal guarantor, as the personal guarantor could have submitted a revised/improved repayment plan. But the personal guarantor harping on some unfounded technicalities, has not paid the amount which he has undertaken to pay upon the default of the principal borrower. We also found that this application is in accordance with section 121 of Insolvency and Bankruptcy Code, 2016. Hence, we hereby pass the following order.

ORDER

(1) Mr. Venkata Chalam Varanasi, having registration number IBBI/IPA-002/IP-N00267/2017-18/10780, #12-13-205, Street No. 2, Tarnaka, Secunderabad,Telangana ,500017, is hereby appointed as bankruptcy trustee under Section 125 of the Code. His AFA is valid till 02.01.2025. The said Resolution Professional is hereby directed to file his consent in FORM-A within three days from the date of receipt of this order.

(2) 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.

(3) This order of Bankruptcy shall continue to have the effect till the debtor is discharged under section 138 of IBC, 2016.

(4) 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.

(5) 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.

(6) 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.

(7) The Bankrupt trustee 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.

(8) The Public Notice inviting claims from the creditors as contemplated under section 130 (2) of the Code shall be issued in English daily and in one vernacular regional language newspapers having wide circulation where the bankrupt resides.

(9) 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.

(10) The Bankrupt Trustee shall conduct the administration of distribution of estate of bankrupt under chapter V as provided in section 136 of the code.

(11) 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.

(12) 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.

(13) The Bankruptcy Trustee shall exercise all the powers as enumerated under the Code read with Rules and Regulations made thereunder.

(14) 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.

(15) 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.

(16) 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.

(17) The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsels for information and for taking necessary steps.

(18) A certified copy of the order is to be issued upon compliance with requisite formalities.

Sd/-	**Sd/-**
Charan Singh Member Technical	Dr. Venkata Ramakrishna Badarinath Nandula Member Judicial

Swapna/pavani