

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
29-11-2024 AT 10:30 AM**

CP(IB) No. 43/95/HDB/2023

AND

**IA (IBC) 2332/2024 in CP(IB) No. 43/95/HDB/2023
u/s. 95 of IBC, 2016**

IN THE MATTER OF:

Bank of Maharashtra

...Petitioner

AND

Mr. Gali Niranjana, P G., for
M/s Rex Contractors & Traders Pvt Ltd

...Respondent

CORAM:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

IA (IBC) 2332/2024

Ld. Counsel Ms. Aishwarya for the Creditor present through V.C.

Orders pronounced. In the result, **the application is allowed** subject to terms as indicated in the order.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

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

**IA.NO. 2332 OF 2024
IN
CP(IB) NO. 43/95/HDB/2023**

***Under Section 123 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 Guarantors to
Corporate Debtor) Rules, 2019***

**IN THE MATTER OF MR. GALI NIRANJAN (PERSONAL GUARANTOR TO M/S.
REX CONTRACTORS & TRADERS PRIVATE LIMITED)**

BETWEEN

BANK OF MAHARASHTRA

A Public Sector Bank having its Head Office at Pune

And one of its Branches, i.e., SAM Branch, at

Sultan Bazar, Koti, Hyderabad.

...Applicant /Financial Creditor

AND

1. Mr. Gali Niranjana

Plot No.32, Flat No.201,

Srinivasa Homes, Pragathi Enclave,

Miyapur, Hyderabad – 500 049.

...Respondent No.1 /Personal Guarantor

2. M/s. Rex Contractors & Traders Private Limited

Sy.No.148, Plot No.32, Flat No.201,

Pragathi Enclave, Miyapur,

Hyderabad – 500 049.

... Respondent No.2/ Corporate Debtor

DATE OF ORDER: 29.11.2024

Coram:

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

Appearance:

For Applicant : Mr. Varun Ambati & Ms.Aishwarya Chevuturi, Counsels

PER BENCH

1. The Applicant /Financial Creditor has filed this application under Section 123 read with 60(2) 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 Debtor) Rules, 2019 to initiate Bankruptcy Process against Respondent No.1, the personal Guarantor of **M/S.REX CONTRACTORS & TRADERS PRIVATE LIMITED.**
2. The facts of the case, briefly, as stated in the Application are that the Applicant vide its sanction letter dated 02.11.2012 (which is annexed as **Annexure-III** to the application) has sanctioned Rs.1.80 Crores in the form of Cash Credit facilities in favour of the Respondent No.2/ Corporate Debtor for its business needs. The Respondent NO.1 provided

personal guarantee vide Deed of Guarantee dated 06.11.2012 (which is annexed as **Annexure-IV** to the application) in respect of the loans availed by the Corporate Debtor i.e., Rex Contractors & Traders Private Limited from the Applicant Bank.

3. The Corporate Debtor had failed to honor its obligations to Financial Creditor and therefore, the loan account of Respondent No.2 was declared as NPA on 20.01.2014. It is stated that the excluding the total amount of payments by the Corporate Debtor Company, the total amount payable to the Financial Creditor herein in Rs.8,21,44,938/- (Rupees Eight Crores Twenty-One Lakhs Forty-Four Thousand Nine Hundred and Thirty-Eight only) calculated along with interest until 20.09.2024. A copy of the interest Closing Balance Statement in annexed herewith an **Annexure-VI**.
4. As the Personal Guarantor failed to comply with the terms of the Form-B demand notice dated 15.06.2022 the Creditor filed the CP(IB) No. 43/95/HDB/2023 in terms of Section 95 of Insolvency and Bankruptcy Code, 2016. This Tribunal vide the order dated 06.07.2023 admitted the same and also appointed Mr. Golla Ramakantha Rao as Resolution

Professional with a direction to file report within 10 days from the date of the order.

5. As per the report filed by the Resolution Professional, despite opportunity the Personal Guarantor did not submit any repayment plan, the Resolution Professional filed IA.No. 1067/2024 seeking closure of the Personal Insolvency Resolution Proceedings against the Personal Guarantor. Accordingly, this Tribunal having gone through the record allowed IA.No. 1067/2024 and discharged the Resolution Professional. In the above backdrop, the Creditor had filed the present application for bankruptcy against the guarantor.

6. Therefore, the point that emerges for consideration is:

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

7. We have heard Learned Counsels Mr.Varun Ambati & Ms.Aishwarya Chevuturi for the Applicant/ Creditor. Perused the record.
8. At the outset we wish to state that, 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.

9. 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 this Tribunal passed an order under sub section (1)(a) of Section 121 of Insolvency and Bankruptcy Code, 2016 on 31.07.2024 vide the order in IA.No. 1067/2024. The present application since filed on 29.10.2024 is within the 3 months period prescribed as above.

10. 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 bankruptcy. Creditor also proposed the name of Insolvency Professional to act as Bankruptcy Trustee.

11. Therefore, having carefully examined the application and found that the same is accordance with Section 121 and 123 of Insolvency and Bankruptcy Code, 2016. As such we hereby pass the following order.

ORDER

- (1) Mr. Golla Ramakantha Rao, having registration number IBBI/IPA-003/ICAI-N-0310/2020-2021/13364, #R/o Flat No.1106, Block-4, SMR Vinay Fountainhead, Calvary Temple Road, Hydernagar, Hyderabad – 500 049, Telangana, is hereby appointed as bankruptcy trustee under Section 125 of the Code. The said Resolution Professional also has given the declaration in Part-IV of the Application. His AFA is valid till 17.12.2024.
- (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/-

Charan Singh
Member Technical

Sd/-

Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

Sridher