

S.No.5

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

CP(IB) No. 401/95/HDB/2020

AND

IA (IBC) 1603/2024 in CP(IB) No. 401/95/HDB/2020

u/s. 95 of IBC, 2016

IN THE MATTER OF:

State Bank of India

...Petitioner

AND

Satyan Kasturi & PPS Enviro Power Pvt Ltd

...Respondent

C O R A M:-

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

ORDER

IA (IBC) 1603/2024

Orders pronounced. In the result, **this bankruptcy application is allowed**, subject to the terms and conditions mentioned therein.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

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

**IA NO. 1603 OF 2024
IN
CP (IB) No. 401/95/HDB/2020**

*Under Section 121 read with 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
Debtor) Rules, 2019*

Between

STATE BANK OF INDIA,
Stressed Assets Management Branch,
Red Cross Building, 32, Montieth Road,
Egmore, Chennai – 600008,
Corporate Office at State Bank Bhavan
Madame Cama Road, Mumbai, Maharashtra.
Represented by its Assistant General Manager
Mr.B.Suresh.

... Applicant/ Financial Creditor

Versus

- 1. Mr. Satyan Kasturi**
Present address: 102/36, Defence Officers Colony,
Ekkattuthangal, Chennai – 600032
Permanent address: 165, Lake View Road,
West mambalam, Chennai – 600033.
Business address: 97/A, Road No.18, Phase-1,
IDA, Jeedimetla, Hyderabad – 500055.

... Respondent No.1/ Personal Guarantor

- 2. M/s. PPS Enviro Power Private Limited,**
97/A, Road No.18, Phase-1, IDA,
Jeedimetla, Hyderabad - 500055.

... Respondent No.2/ Corporate Debtor

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Coram:

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

Appearance:

For the Applicant : Mr. G.P.Yash Vardhan, Counsel

PER: BENCH

ORDER

1. The Applicant /Financial Creditor has filed this Application under Section 121 read with 123 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 to initiate Bankruptcy Process against the Personal Guarantor of Corporate Debtor.
2. **The averments in brief of the Application are that;**
 - 2.1 It is stated that the Corporate Debtor has availed various credit facilities from Financial Creditor and its associate banks i.e., erstwhile State Bank of

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Hyderabad and erstwhile State Bank of Travancore. The details of the credit facilities as captured in the Sanction Letter are extracted below:

Facility	Amount Granted (Crores)	Amount Disbursed
Term Loan (SBH)	8.78	8.78
Term Loan (SBT)	35.00	35.00
Term Loan-I (SBI)	34.38	34.38
Term Loan-II (SBI)	30.18	30.18
Cash Credit (SBH)	15.00	15.00
Cash Credit (SBI)	30.00	30.00
Corporate Loan (SBH)	3.00	3.00
Corporate Loan (SBT)	4.00	4.00
Letter of Credit (SBH)	30.00	30.00
Bank Guarantee/Letter of Credit (SBI)	35.60	35.60
TOTAL	225.94	225.94

2.2 It is stated that Corporate Debtor is the Principal Borrower and Mr. Satyam Kasturi, stood as guarantor in order to secure the repayment of the financial assistance availed by the Corporate Debtor. The outstanding debt as on 20.11.2023 is Rs.559,41,87,013.01/- (Rupees Five hundred Fifty-Nine Crore Forty-One Lakh Eighty-Seven Thousand Thirteen and One Paise Only) together with interest at contract rate and other costs.

2.3 It is submitted that the Corporate Debtor in order to avail the financial assistance has executed various loans documents and the guarantor of the Corporate Debtor in order to secure the repayment of the financial assistance

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availed by the Corporate Debtor has executed Guarantee Agreements in favour of the Financial Creditor. Some of the relevant and important Agreements/Loan documents for the purpose of the captioned matter are detailed in page 2 and 3 of the application and also annexed as **Annexure Nos.6 to 14 of the application.**

2.4 It is further stated that the Corporate Debtor and Guarantors from time to time have been acknowledging debt and liability towards the Financial Creditor. As such, the captioned case is within the limitation. It is further submitted that the Financial Creditor got issued recall/legal notice dated 11.10.2017 to the Personal Guarantor and other parties therein recalling and demanding payment of outstanding amounts mentioned in the notice therein within (7) Seven days from the date receipt of notice. Further, as per the terms and conditions under the Guarantee Agreements, the Personal Guarantor has agreed that, any notice dispatched by the Financial Creditor by registered post to the address of the Personal Guarantor shall be deemed to have been duly served on the Personal Guarantor (4) days after the date of posting thereof. The recall/legal notice was dispatched on 12.10.2017 and the same is deemed to have been served on the Personal Guarantor to pay outstanding amounts mentioned therein within (7) Seven days from the date of receipt of notice i.e., 21.10.2017. The Personal Guarantor failed to pay

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the said amount. As such, the date of default against the Personal Guarantor occurred on 22.10.2017.

2.5 It is stated that the Financial creditor exercised rights and remedies available to it at that point in time against the Corporate Debtor under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (“SARFAESI Act”) and filed an Original Application against the Corporate Debtor before the Debt Recovery Tribunal-I, Chennai, vide O.A.no. 41 of 2018, for recovery of outstanding amounts.

2.6 It is stated that the Financial Creditor has filed a Company Petition under Section 7 of Code to initiate Corporate Insolvency Resolution Process (“CIRP”) against the Corporate Debtor vide CP(IB)No. 407/7/HDB/2018 before this Hon'ble National Company Law Tribunal, Bench-1. Subsequent to filing the Company Petition, Corporate Debtor entered appearance and filed its counter. The Hon’ble Tribunal after hearing the parties, was pleased to admit application on 13.08.2019.

2.7 It is stated that 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

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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 dated 23.09.2020 through registered post on 26.09.2020 and the same was returned on 28.09.2020 marked as “no such person”. The Financial Creditor again issued a demand notice to another address available with it and the same was delivered on 06.10.2020. Despite receipt of the demand notice the Personal Guarantor has not come forward to pay the outstanding amounts.

- 2.8 As the Personal Guarantor failed to pay the amount claimed to be in default, the Financial Creditor has filed an Application under Section 95 of the Code bearing CP/IB/401/95/HDB/2020 seeking initiation of Insolvency Resolution Process against the Personal Guarantor. This Hon’ble Tribunal vide its Order dated 28.07.2021 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 Hon’ble Tribunal vide its Orders dated 20.06.2022 was pleased to admit the Application under

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Section 100 of the Code and declared moratorium under Section 101 of the Code.

2.9 It is stated that thereafter, as the Personal Guarantor was not cooperating and has not come forward to submit any ne-payment plan, the Resolution Professional has filed an IA.No.1260/2022 seeking a direction to the personal guarantor to co-operate in completing the CIRP. This Hon'ble Tribunal vide its Orders dated 23.02.2023 has disposed of the I.A., with the following orders

“This is an application filed by the RP to pass an order, disposing the company petition, in the backdrop of the Personal Guarantor not cooperating and not submitting a repayment plan, and there is no possibility of resolution of insolvency of the Personal Guarantor.

The record reveals that opportunity has been given to the Personal Guarantor to submit the plan however no plan has been submitted. Therefore, as rightly contented, resolution of insolvency of the Personal Guarantor, in the absence of a repayment plan being not possible, this application is allowed and proceedings are closed, giving liberty to the Financial Creditor to move an application if they so choose, u/s 121 of the IBC Accordingly, IA (IBC) 1260/2022 is allowed and disposed of”.

2.10 It is submitted that, as per Section 121 (2) of the Code, an application for bankruptcy shall be filed within a period of three months from the date of the order passed by the Adjudicating Authority. However, as there is a delay in filing the captioned Application, the Financial Creditor has also filed an Interlocutory Application seeking condonation of delay and the same was

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allowed. Therefore, the captioned Interlocutory Application is filed seeking Bankruptcy of the Personal Guarantor.

3. The counsel for the Applicant/Financial Creditor filed written submissions by re-iterating the contents of the application.
4. We have carefully perused the application and satisfied that admittedly the Personal Guarantor has not submitted any repayment plan. Therefore, we find it proper to admit this application and declare the personal guarantor herein, as Bankrupt.
5. In the result, bankruptcy process is ordered against **Mr. Satyan Kasturi**, address at 102/36, Defence Officers Colony, Ekkattuthangal, Chennai – 600032, **Personal Guarantor**. The Applicant proposed the bankruptcy trustee/Resolution Professional **Mr. Mahalingam Suresh Kumar**, having IBBI No. IBBI/IPA-001/IP-P00110/2017-2018/10217, address at 2nd Floor, CODISSIA- G D Naidu Towers, Huzur Road, Coimbatore, Tamil Nadu – 641018, email: msureshkumar@icai.org, Mobile No. 7373052341, to be appointed as bankruptcy trustee. The said bankruptcy trustee also has given the declaration in Part-IV of the petition and also filed written consent. Hence, we hereby appoint **Mr. Mahalingam Suresh Kumar** as Bankruptcy trustee under Section 125 of the Code.

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6. 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.
7. This order of Bankruptcy shall continue to have the effect till the debtor is discharged under section 138 of IBC, 2016.
8. The bankrupt shall submit her/his statement of financial position to the bankruptcy trustee in the prescribed Form within seven days from the date of the order.
9. 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.

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10. 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.
11. 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.
12. 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.
13. 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.

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14. The Bankrupt Trustee shall conduct the administration of distribution of estate of bankrupt under chapter V as provided in section 136 of the code.
15. 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.
16. 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.
17. The Bankruptcy Trustee shall exercise all the powers as enumerated under the Code read with Rules and Regulations made thereunder.
18. 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.

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19. 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.
20. 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.
21. 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.
22. A certified copy of the order is to be issued upon compliance with requisite formalities.

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Charan Singh
Member Technical

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Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

Sridher