

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

C.P. (IB) No. 302/95/HDB/2022

[Application u/s. 95 read with section 60(2) of the Insolvency and Bankruptcy Code, 2016
r/w the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency
Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019]

In the matter of Shri G. Praveen Kumar, Personal Guarantor to
M/s VNR Infrastructure Limited

Between

Bank of Baroda,
Baroda House, Mandvi,
Vadodara – 390 006, Gujarat
Having Branch called
Stressed Assets Management Branch
At 4th Floor, JBAS Building, No. 45,
Moore Street, Chennai – 600 001
Represented by Mr. M.V. Ramakrishna,
Chief Manager.

... Petitioner/Financial Creditor

Vs.

1. Shri G. Praveen Kumar
Flat No. AF6, Stone Valley,
8-2-416, Road No. 4, Banjara Hills,
Hyderabad – 500 034

... Respondent No. 1/ Personal Guarantor

2. M/s VNR Infrastructure Limited
#8-2-310/17, Road No. 14, Banjara Hills,
Hyderabad, Telangana,
Represented by its Liquidator

... Respondent No. 2/ Corporate Debtor

Date of Order: 19.06.2023

Coram:

Hon'ble Justice Mrs. Telaprolu Rajani, Member (Judicial)
Hon'ble Sri Charan Singh, Member (Technical)

Date of Order: 19.06.2023

Counsel present:

For the Financial Creditor: Mr. V.V.S.N. Raju

For the Respondent: Mr. Vivek Jain

Heard on: 14.06.2023**Per : Bench****ORDER**

1. This application is filed by the Petitioner Bank of Baroda, Financial Creditor (FC) against Respondents 1 & 2, who are the Personal Guarantor (PG) and Corporate Debtor (CD) respectively, seeking for initiation of Personal Insolvency Resolution Process (PIRP) against Respondent No. 1/Personal Guarantor (PG) for the loan that was taken by the second Respondent. Though R2 is figured as a party, no relief is claimed against it.

2. The facts, on the basis of which, the above mentioned relief is sought for are as follows:

i) The Petitioner Financial Creditor (FC) is a body corporate constituted under the provisions of the Banking Companies having its Head Office at Baroda House, Mandvi, Baroda.

ii) Respondent No. 1 is one of the Personal Guarantors (PG) for the credit facilities granted to Respondent No. 2, Corporate Debtor (CD). On request of the CD, the FC

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sanctioned fund based and non-fund based credit facilities amounting to Rs. 75 crores, out of which the working capital facility of Rs. 56 crores was sanctioned under a Consortium Agreement and were sanctioned under Multiple Banking Arrangement.

iii) Subsequent to the issuance of sanctioned letter, the consortium bankers, including the FC, had entered into a Working Capital Consortium Agreement dated 30/01/2014 with the CD, for sanctioning of working capital credit facilities of Rs. 720 crores, of which, the FC had sanctioned Rs. 56 crores. The company also executed a Deed of Hypothecation dated 31/01/2014 in favour of the consortium bankers.

iv) The PG executed a deed of personal guarantee dated 30/01/2014 in favour of the consortium bankers and undertook to pay on demand to the lenders all the amounts due in case any default in repayment occurs on the part of or committed by the CD. The CD availed the said credit facilities, but, failed to comply with the terms and conditions of the loan documentation and defaulted in repayment of the loan amount as per the said terms and conditions. As a result, the accounts of the CD were classified as non-performing asset (NPA) as per the guidelines issued by the RBI.

v) After classification of the accounts of the CD as NPA, the loan accounts of the CD were transferred to the Stressed Assets Management for focussed efforts to recover the dues

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as per the policy of the Bank. Hence, this application is being filed by the transferee branch.

vi) As Respondent No. 2's capital was substantially eroded, a reference was made to the Board for Industrial and Financial Reconstruction (BIFR) u/s 15(1) of Sick Industrial Companies (Special Provisions) Act, 1985. Thereafter, while the said proceedings were pending, BIFR was dissolved with effect from 01/12/2016 after notifying the IBC, 2016.

vii) Recovery proceedings were filed before the DRT, Hyderabad against the CD and the Guarantors, including Respondent No. 1 and in O.A. No. 638 of 2016, the DRT was issued recovery certificate on 22/01/2020 favouring the applicant bank.

viii) The liability of the guarantor is coextensive with that of the borrower. A demand notice was issued to Respondent No. 1 on 20/09/2020 and again on 06/05/2022, but, the Respondent failed to pay the amount. Hence, this application.

3. Respondent No. 1/Personal Guarantor has filed Counter, wherein, it was contended that the Tribunal has passed the order of liquidation process against Respondent No. 2 and e-auction was conducted by the Liquidator and the sale of the assets of the CD was completed by the Liquidator. Therefore, the liquidation process of Respondent No. 2 having stood completed with the sale of the assets, this application against Respondent No. 1 is not maintainable.

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3.1 It is submitted that at the time of sanctioning of loan/credit to Respondent No. 2, it was well within the knowledge of the Petitioner that guarantee of Respondent No. 1 alone would not suffice to repay its debts, as Respondent No. 1 has limited assets and all the assets taken together could not assure the repayment of the debt owed by Respondent No.2 to the applicant. Therefore, the present application filed by the Petitioner is just to harass Respondent No. 1.

3.2 The contention of the Applicant that the liability of the guarantor is coextensive with that of the borrower is untenable in the light of the fact that even as on the date of taking guarantee, the applicant was aware that the assets of the respondent were limited. Most of the investments of Respondent No. 1 were made in the company's name, i.e. Respondent No. 2, which is already liquidated.

3.3 If this application is allowed and in case the repayment plan is not submitted by the PG, if, bankruptcy proceedings are initiated, it would lead to a situation that PG cannot be appointed or act as public servant and cannot stand for elections to any public office as per section 140 of the IBC, 2016 and loses his reputation.

3.4 It is submitted that the account of Respondent No. 2 was classified as non-performing account and the company was admitted into CIRP on 9th February, 2017. As per the resolution

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process, a strategic proposal for revival and reconstruction, was submitted, which was rejected by the bankers.

3.5 The other contentions made in the counter are not found to be relevant for deciding this application.

4. Heard both the counsel and perused the record. During the hearing, the ld. Counsel for the PG, at the outset, contends that there is no CIRP ordered against CD and hence, this application is not maintainable. In this connection, we refer to the judgment of the NCLT, Principal Bench, New Delhi in CP (AT) (Insolvency) No. 60 of 2022 in the matter of State Bank of India, Stressed Asset Management Branch Vs. Mahendra Kumar Jajodia, PG to the CD, on which reliance was placed by the counsel for the OC, wherein it was held that sub-section 2 of section 60 does not in any way prohibit filing of proceedings u/s 95 of the Code even if no proceedings are pending before NCLT. It was explained that the use of words “a” and “such” before NCLT clearly indicate that section 60(2) was applicable only when a CIRP or liquidation proceeding of a CD is pending before the NCLT. The object is that when a CIRP or liquidation proceeding of a CD is pending before NCLT, the application relating to insolvency process of a Corporate Guarantor or Personal Guarantor should be filed before the same NCLT. This was to avoid two different NCLT to take up CIRP of CG. Hence, in the light of the above, this application can be entertained in spite of the CD not being taken into CIRP. However the facts mentioned in the counter show that the liquidation of the CD was

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also ordered and CP No. 12/10/2017 moved for CIRP is also before this Tribunal.

4.1 The next contention that was raised by the PG is that all the assets of the PG were brought to sale and, hence, this application is not maintainable. But, he fails to answer the query posed to him with regard to personal guarantee given to CD for which the PG is personally liable to pay the debt. Hence, the said contention also gets marginalized.

4.2 As regards the limitation, it is seen that DRT has issued recovery certificate on 22/01/2020 and, hence, application can be filed within three years from the date of issuance of recovery certificate by the DRT and, therefore, this application filed by the Petitioner is well within the limitation.

4.3 In view of the above mentioned facts, we hereby allow this application.

ORDER

5. The Company Petition is admitted. The initiation of Individual Insolvency Resolution Process shall commence from this date and shall be completed within 180 days hence.

6. Therefore, by exercising powers under Section 100 of the Code, we pass the following orders:

- i. The petition i.e. CP (IB) No. 302/95/HDB/2022 filed under the provisions of Section 95 of IBC, 2016 is hereby admitted.
- ii. Consequently, the Insolvency Resolution Process is hereby initiated against the Personal Guarantor, Shri G. Praveen Kumar and the moratorium is declared, which begins with

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effect from the date of admission of the petition and shall cease to have effect at the end of the period of 180 days, as provided under Section 101 of IBC, 2016. During the moratorium period;

iii. Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;

iv. The creditors shall not initiate any legal action or legal proceedings in respect of any debt; and

v. the debtor shall not transfer, alienate, encumber or dispose of any of her assets or her legal rights or beneficial interest therein;

vi. The provisions of this Section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

vii. The Resolution Professional **i.e.** Mr. Kedari Narsimha Rao, having Registration No. IP: IBBI/IPA-001/IP-P01531/2018-2019/12397, having email ID: kedarinarsimha@yahoo.co.in, Mobile No. 9966408229, who was appointed vide order dated 30.01.2023 is directed to cause public notice published on behalf of the Adjudicating Authority within 7 days of uploading of this Order on the website of NCLT, Hyderabad, inviting claims from all creditors, who shall register their claims as provided under Section 103 of the Code within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102 (2) of IBC, 2016. The publication of notice

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shall be made in newspapers, one in English and other in vernacular (Telugu) which have wide circulation in the State where the Debtor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry. One shall be placed on our website by the Registry and the other shall be affixed in the premises of this Adjudicating Authority.

viii. The Resolution Professional, in exercise of the powers conferred under Section 104 shall prepare a list of creditors within 30 days from the date of the notice. The debtor shall prepare, in consultation with the resolution professional, a repayment plan containing a proposal to the creditors for restructuring of his debts or affairs as provided under Section 105 which shall include the provisions for payment of fee to the Resolution Professional. The Resolution Professional shall submit the repayment plan along with his report on the plan to this Adjudicating Authority within a period of 21 days from the last date of submission of claims as provided under Section 106.

ix. In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof. If the Resolution Professional is of the opinion that the meeting of creditors should be summoned, he shall specify the details as provided under Section 106 (3). The date of meeting shall not be less than fourteen days or more than 28 days from the date of submission of the Report under Sub-Section (1) of Section

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106, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107.

x. The meeting of the creditors shall be conducted in accordance with the provisions of sections 109, 110 and 111. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 and submit the same to the Authority, copies of which shall be provided to the guarantor and the creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of IBC, 2016.

Sd/-
Charan Singh
Member, Technical

Sd/-
Justice Telaprolu Rajani
Member, Judicial

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