



S.No.2

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
03-05-2023 AT 10:30 AM

Company Petition IB/143/2022
u/s. 95 of IBC, 2016

IN THE MATTER OF:

RARE Asset Reconstruction Ltd

...Petitioner

VS

Mr. Prakash Chand Gupta & M/s. MBS Impex Pvt 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

Order in 143/2022 pronounced. Recorded vide separate sheets. In the result, this petition is admitted and Insolvency Resolution Process is ordered against Personal Guarantor. Mr. Vamsi Kambhammettu is appointed as Resolution Professional and moratorium is declared against Personal Guarantor subject to the conditions mentioned in the order.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

vamsi



**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

CP (IB) No. 143/95/HDB/2022

(Under Section 95 read with Section 60(2) of the Insolvency and Bankruptcy Code, 2016 read with Rule 7(2) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019.

BETWEEN

ICICI BANK LIMITED

ICICI Bank Towers, Tower 2, North Wing,
4th floor, Plot no.12, Financial District,
Gachibowli, Hyderabad, 500032

Regd. Office – ICICI Bank Tower, Near Chakli Circle,
Old Padra Road. Vadodara 390 007, India.

Corp. office – ICICI Bank Towers, bandra-Kurla
Complex, Mumbai 400051, India.

Rep. by its Authorized Signatory, Sreedhar Inampudi,

...Financial Creditor

AND

1. Prakash Chand Gupta, S/o.Bhagwat Swaroop Gupta,
Personal Guarantor of M/s.MBS Impex
Private Limited (in liquidation)
#3-5-784/B&C, Nageena Building,
King Koti, Hyderabad, 500001.

...Personal Guarantor

2. M/s.MBS Impex Private Limited
Registered office at #5-9-45, Aashi Towers,
Basgeerbagh, Hyderabad- 500 063.
Also Office at:
1st Floor, #125
M G Road, Secunderabad- 500 003.

...Corporate Debtor



Date of order: 03.05.2023

CORAM:-

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

Appearance:-

For the Petitioner: Shri. Dishit Bhattacharjee, Advocate.
For the Respondent: Shri Herur Rajesh Kumar, Advocate.
For the RP: Shri. Vamsi Kambhammettu,
Resolution Professional

PER: BENCH

1. This instant petition is filed by Financial Creditor under Section 95(1) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 (hereinafter referred to as "Personal Guarantors Insolvency Rules, 2019), seeking an order for initiation of the Insolvency Resolution Process ("IR Process") against Prakash Chand Gupta, who is the Personal Guarantor of M/s. MBS Impex Private Limited (hereinafter referred to as "Corporate Debtor").



2. It is averred that corporate debtor had availed working capital facilities in the form of overdraft and SBLC/BG under different loan documents from ICICI Bank. In order to secure the repayment of the financial assistance Shri Prakash Chand Gupta, stood as guarantor and had executed guarantee agreements dated 09.02.2011. Thus the financial creditor exercised its rights and remedies available and issued notices to the corporate debtor and guarantors for recalling the outstanding amounts.
3. It is averred that neither corporate debtor nor personal guarantor paid the outstanding amount, and thus the financial creditor and its Associated Banks filed the Original Applications (**O.A**) before the Hon'ble Debt Recovery Tribunal.
4. It is averred that DRT has passed decree and issued recovery certificate by directing the corporate debtor and guarantors to pay the amount in 30 days. The same has been defaulted.
5. It is submitted that pursuant to the Central Government framing of I&B (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor) Rules, 2019 which has come into force from 01.12.2019. Thus financial creditor issued demand notice on 17.12.2021 to personal guarantor, despite of receipt of demand notice, personal guarantor has not come forward to pay the outstanding amounts. Thus the financial creditor has filed the present



Application to initiate Insolvency Resolution Process against the personal guarantor.

6. It is averred that on 26.08.2022, ICICI Bank Limited has unconditionally and irrevocably assigned and transferred all the financial assistance granted by it in favour of financial creditor herein, together with all the underlying security interests, guarantees, etc and Original Applicant right, interest and title thereto created to secure, guarantees issued in respect of, the repayment of which ICICI Bank Limited was entitled to vide Assignment Agreement dated 26.08.2022 between ICICI Bank Limited and Rare Asset Reconstruction Limited.
7. Further submitted that personal guarantor has not made payments thus the financial creditor has filed the present Application for initiation of Insolvency Resolution process against the personal guarantor.
8. It is to be further noted that the outstanding debt as on 29.11.2021 is Rs. 49,95,98,391.27/- (Rupees Forty Nine Crore Ninety Five Lakh Ninety Eight Thousand Three Hundred Ninety One and Paise Twenty Seven only). The Petitioner Bank attached the following documents to prove the existence of debt and amount in default: -
 - Credit Agreement letter dated December 31st,2010.
 - Master facility agreement dated February 9th , 2011.
 - Deed of Hypothecation dated February 9th, 2011.
 - Memorandum of Deposit of the title deeds dated February 15th, 2011.



- Personal Guarantee Agreement of Mr.Prakash Chand Gupta, Mr.Sukesh Gupta, Mrs.Neetu Gupta and Mr.Anurag Gupta dated February 9th 2011.
- Credit Arrangement Letter dated March 29th, 2012.
- Note of Amendment and letter of Acknowledgement of debt dated April 20th, 2012.
- Credit Arrangement letter dated August 14th, 2012.
- Supplemental and amendatory agreement dated August 23rd, 2012.
- Credit Arrangement letter dated April 3rd, 2013.
- Note of Amendment and letter of Acknowledgment of Debt dated April 15th, 2013.
- Loan recall notice dated July, 8th 2014.
- Recovery certificate issued by DRT, Hyderabad on September 26th, 2016 and demand notice dated October 3rd, 2016.
- CRILC Report.
- Statement of account of Corporate debtor.
- Demand Notice dated 17.12.2021 and postal receipts along with acknowledgment cards.

9. Counter filed by the Respondent:

9.1 1st Respondent had objected the present Application stating that the present Petition is not maintainable.

9.2 It is further stated that the petition filed by the petitioner is barred by limitation as the cause of action has accrued on 03.10.2016 when the



petitioner had obtained the recovery certificate from the DRT Hyderabad and as such the Limitation of invoking the jurisdiction of this Tribunal expires on 03.10.2019 hence the present Petition is barred by limitation.

9.3 It is further stated that the contents of the Column No.6 of Part-II are false as the petitioner has resigned from the Board of Directors of M/s. MBS Impex Pvt. Ltd., MBS Gems and Jewels Pvt. Ltd., in the Year 2013 which can be seen in the Company Master data filed by the petition along with the Company Petition as Annexure-2.

9.4 It is further stated that petitioner is having securities against the loan account which are worth more than the loan sanctioned amount itself and inspite of recovering the loan due by selling the assets of MBS Impex Pvt . Ltd, petitioner has initiated the proceedings against the respondent to cause wrongful loss. Thus submitted that the present petition is not maintainable and is liable to be dismissed.

10. Rejoinder filed the financial creditor:

10.1 It is submitted that the application is not barred by the limitation as the cause of action firstly arose and when the Financial Credit Facilities were sanctioned in favour of the corporate debtor and financial creditor on 31.12.2010 and 09.02.2011. Subsequently, the cause of action



continued till 2018. Further due to non-payment of the total amount as per the said recovery certificate the corporate debtor along with personal guarantor approached the financial creditor several time proposing OTS and withdrawal of CP(IB) No.407/7/HDB/2019 dated 05.11.2019, 22.11.2.19 and 12.12.2019 which established the acknowledgement of debt. During the process the final action arose when the financial creditor issued demand notice on 17.12.2021. Therefore, the Application CP (IB) No.143/95/HBD/2022 is not barred by limitation and the limitation period shall continue till December, 2014.

- 10.2 In view of the above precedents, it is stated that the OTS letters would amount to extension of the limitation period and as the corporate debtor and the personal guarantor herein as director has issued several OTS letters dated 05.11.2019, 22.11.2019 and 12.12.2019 to the financial creditor. Hence the present Application is barred by limitation.
11. On presentation of this instant petition, this Adjudicating Authority on 29.04.2022 granted interim-moratorium and has appointed Shri. Vamsi Kambhammettu as Resolution Professional, directing him to file his report within 10 days from the date of his appointment, in terms of the Section 99 of the Code, 2016. The Resolution Professional has filed his report on 24.05.2022, recommending the admission of the Petition under Section 95 of the Code, 2016. The Resolution Professional in his report stated that the he has examined the Application filed under Section 95 of the IBC, 2016 by the financial creditor and hereby recommends for the acceptance of the Application.



11. In the light of the aforesaid factual matrix the point arises for our consideration is:

Whether an Insolvency Resolution Process can be ordered against the Personal Guarantor under Section 100 of the Insolvency and Bankruptcy Code, 2016?

11. We have heard the Learned Counsel Shri.Dishit Bhattacharjee, for the Petitioner, Learned Counsel Shri Herur Rajesh Kumar, for respondent/personal guarantor and Learned Resolution Professional Shri. Vamsi Kambhammettu, and perused the record.
12. At the outset it may be stated that the Petitioner has initiated Corporate Insolvency Resolution Process against the Corporate Debtor i.e., M/s. MBS Impex Private Limited vide CP (IB) No.407/7/HDB/2019 under Section 7 of the Code, 2016 which was admitted by this Adjudicating Authority vide order dated 13.11.2019 and the instant petition is initiated against the Personal Guarantor of the Corporate Debtor.
13. The Resolution Professional has filed his report on 24.05.2022, recommending the admission of the Petition under Section 95 of the Code, 2016. The Resolution Professional in his report its clear that the grounds for admission of this instant Petition are that the Personal Guarantor stood as a guarantor to the loans availed by the Corporate Debtor and Corporate Debtor failed to repay the same.
14. Hence, the instant Company Petition vide CP (IB) No. 143/95/HDB/2022 filed under the provisions of Section 95 of Code, 2016 is hereby admitted under the provisions of Section 100 of the Code, 2016 and Insolvency Resolution Process is initiated against Shri



Prakash Chand Gupta, the Personal Guarantor, and moratorium is declared in relation to all debts, which begins from the date of admission of the instant petition and shall cease to have effect at the end of the period of 180 days, as provided under Section 101 of the Code, 2016.

During the moratorium period-

- a) Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;
- b) The Creditors shall not initiate any legal action or legal proceedings in respect of any debt; and
- c) The debtor shall not transfer, alienate, encumber or dispose of any of her assets or her legal rights or beneficial interest therein;
- d) 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.

15. The Petitioner herein, has proposed the name of Shri. Vamsi Kambhammettu, (IBBI/IPA-001/IP-P00664/2017-2018/11141) Insolvency Professional to act as Resolution Professional, who has given his consent dated 23.03.2022 in Form-A. Hence, this Adjudicating Authority appoints:

Shri. Vamsi Kambhammettu,
Registration No. IBBI/IPA-001/IP-P00664/2017-2018/11141,
email id: casrivamsi@gmail.com
Address: Survey No.A85, DX4, Level 2,
Road No.11, Film Nagar, Jubilee Hills, Hyderabad-500 033,



TS India.

16. The Resolution Professional is directed to cause public notice published on behalf of the Adjudicating Authority within 7 days from the date of uploading of this order on the website of NCLT, Hyderabad, inviting the 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 the Code. The publication of notice shall be made in newspapers, one in English and other in vernacular (Telugu) which have wide circulation in the State where the Personal Guarantor and Corporate 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.
17. The Resolution Professional in exercise of the powers conferred under the Section 104 shall prepare a list of creditors within 30 days from the date of the notice. The Personal Guarantor shall prepare, in consultation with the Resolution professional, a repayment plan containing a proposal to the creditors for restructuring of her 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.



- 18.** 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 106 of the Code, for which atleast 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 of the Code.
- 19.** The meeting of the creditors shall be conducted in accordance with the provisions 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 the Code.
- 20.** The Petitioner is directed to communicate this order to the Resolution Professional appointed in the instant Company Petition immediately.

Sd/-

Sd/-

Shri Charan Singh
Hon'ble Member Technical

Dr. Venkata Ramakrishna Badarinath Nandula
Hon'ble Member Judicial

Pavani/Swapna