

Sl.No.216

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

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON 30.11.2021 AT 10:30 AM THROUGH
VIDEO CONFERENCE

CP(IB) No.253/95 of IBC/HDB/2020
U/s 95 of IBC, 2016

IN THE MATTER OF:

State Bank of India

... Petitioner

Vs

Kolli Venkata Raja Sekhar & GKC Projects Ltd

... Respondents

CORAM:


**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER JUDICIAL
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER TECHNICAL**


ORDER

Learned counsel Shri. Yash Vardhan for the Petitioner and Learned counsel Shri. G Arun appeared for the Personal Guarantor/Respondents.

Learned counsel for the respondents submitted that the Personal guarantors are admitting the default and the same is submitted in their counter. The submission is taken on record.

CP (IB) No. 253/95/HDB/2020 is admitted vide separate sheets.


MEMBER (T)


MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
BENCH-1, HYDERABAD**

CP (IB) No. 253/95 of IBC/HDB/2020

Petition under Section 95 of IBC, 2016, R/w Rule 7(2) of I & B (Application to Adjudicating Authority for Insolvency Process for Personal Guarantors to Corporate Debtor) Rules, 2019

In the matter of

State Bank of India
Stressed Assets Management Branch-II
First Floor, TSRTC Bus Stand Complex
Kachiguda, Hyderabad

....Petitioner

VERSUS

1. Mr. Kolli Venkata Raja Sekhar
Villa No. 178, XIII Phase
KPHB Colony, Indu Fortune Fields
Kukatpally, Hyderabad – 500072

...Personal Guarantor/
Respondent No.1

2. M/s GKC Projects Limited
Sy. No. 9 (P), CII Green Building Lane
Hitech City, Kondapur
Hyderabad -TG 500 084

...Corporate Debtor/
Respondent No.2

Date of order: 30.11.2021

Coram:

Dr. N. Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)
Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:

For the Petitioner:

Shri G.P. Yashvardhan, Advocate

For Respondents:

Shri G. Arun, Advocate



PER: BENCH

ORDER

1. This petition is filed by the **State Bank of India** (Financial Creditor) under Section 95 of Insolvency of Bankruptcy Code, 2016 (herein after referred as Code) read with Rule 7 (2) of the Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 (herein after referred to as **Personal Guarantors Insolvency Rules, 2019**), seeking an order for initiation of the Insolvency Resolution Process (“**IR Process**”) against **Sri Kolli Venkata Raja Sekhar/Debtor** who is the **Personal Guarantor** of **GKC Projects Limited/Respondent.1** herein.
2. The gist apropos to the case of the Petitioner is that the following credit facilities were sanctioned by the Bank to the Corporate Debtor M/s GKC Projects Limited from time to time in the year 2013.

Loan	Amount (in Rs.)
Cash Credit (CC)	2824667644.97
Term Loans	1729094133.38
Bank Guarantee (BG)	2133281379.00
Optionally Convertible Debentures	1045007961.99
Total	773,20,51,119.34 (Including BG Liability)

3. The total fund based and non-fund based financial assistance granted by the Financial Creditor to the to the Corporate Debtor and the amount outstanding and payable by the Corporate Debtor and Guarantor is






annexed and marked as Annexure No.5 and the security provided by the Corporate Debtor is annexed as **Annexure-6**. The total amount due is **Rs. 773,20,51,119.34** (including BG liability).

4. The Financial Creditor annexed the following documents to prove the existence of debt and amount in default:-
 - (a) Copy of Sanction Letter – Annexure-12 (colly)
 - (b) Copy of Master Restructuring Agreement and the Master Agreement - Annexure-13.
 - (c) Copy of Personal Guarantee Agreement – Annexure-14.
 - (d) Copy of Letter issued by SBICAP Trustee – Annexure-15
 - (e) Copy of CRILC Report- Annexure-16
 - (f) Copy of Recall Letter dated 05.12.2018 – Annexure-17
 - (g) Copy of Letter of irregularity dated 06.11.2018 – Annexure-18
 - (h) Copy of Demand Notice under IBC, 2016 dated 19.03.2020 – Annexure-19 (colly).
5. The Corporate Debtor committed defaults of the terms of sanction letters and loan documents for cash credit account on 24.07.2018 and for Term Loan Account on 31.10.2018. The accounts of the Corporate Debtor were classified as NPA on 21.10.2018. The Bank had withdrawn the interest concessions extended to the Company as part of restructuring package and calculated the interest overdue from the date of implementation of restructuring package i.e. 31.12.2014 and for S4A Scheme from the conversion to OCDs i.e 21.04.2017.
6. The Financial Creditor has exercised its rights and remedies against the Corporate Debtor under SARFAESI Act, 2002 vide OA No. 326 of



2019 before the Debt Recovery Tribunal-1, Hyderabad on 22.04.2019 for recovery of the outstanding amounts from Corporate Debtor and Guarantors.

7. Later, the Financial Creditor also filed a company petition before this Tribunal under Section 7 of the Code to initiate CIRP against the Corporate Debtor vide CP (IB) No. 127/7/HDB/2019. The Corporate Debtor who entered into appearance through the Counsel, took objection on the maintainability of the main petition by referring to RBI Circular dated 12.02.2018. Consequently, the petition was rejected by this Tribunal on account of the order passed by Hon'ble Supreme Court in the matter of *Dharani Sugar and Chemicals Limited Vs Union of India & Ors.* The aforesaid order of this Tribunal was later upheld by the Hon'ble Supreme Court. Another Petition filed by SBI, Oman Branch against the Corporate Debtor under Section 7 was admitted on 21.11.2019.
8. The Financial Creditor had issued demand notice on 04.04.2020 and same is served on the Personal Guarantor i.e. Mr. K. Venkata Raja Sekhar demanding payment of the amount in default.
9. On presentation of the petition, this Tribunal on 28.07.2021 granted interim-moratorium and has appointed Shri Raghu Babu Gunturu as Interim Resolution Professional, directing him to file his report within 10 days of his appointment, in terms of Section 99 of the Code, which has been filed by him on 28.08.2021, recommending the admission of the petition filed under Section 95 of the Code. The grounds for admission of the petition recorded in the report are as under:-
 - (a) The Personal Guarantor has committed default in repayment of debts,



- (b) The Personal Guarantor himself vide email dated 26.08.2021 has admitted the debt.
- (c) Albeit the amount in default as on 15.05.2020 is at Rs. 559,87,69,740.34, but taking into account the cash credit, term loans, bank guarantees and optionally convertible debentures and also the interest overdue, the amount in default mentioned in the petition is Rs. 773,20,51,119.34.
- (d) The Petitioner is eligible to invoke the instant petition by virtue of the fact that even after considering the resolution plan amount of Rs. 227.86 crores, the balance default amount and interest accrued on it till date is more than the threshold limit.
10. Respondent No.1 filed his counter, admitting the debt due to the Creditor. Later, on 27.10.2021 this Tribunal has also recorded the submission made by the learned proxy Counsel appearing for Personal Guarantor regarding admission of debt due to Creditor. He submits that his property was sold by the Financial Creditor by invoking provisions of SARFAESI Act and has realised an amount of Rs. 9,35,79,750/-. Thus, submitting, prayed for initiation of Insolvency Process against him.
11. In the light of the aforesaid factual matrix, the point that arises for our consideration is,

Whether Insolvency Resolution Process can be ordered against the Personal Guarantor Shri Kolli Venkata Raja Sekhar?



12. We have heard the Learned Counsel for the Financial Creditor, Learned Counsel for Personal Guarantor and the Learned Counsel for IRP and perused the material on record.

POINT

13. Admittedly, the 1st Respondent/ Personal Guarantor has neither disposed his liabilities nor denied the default in repayments of debt as claimed by the Petitioner in this petition. That apart, the Financial Creditor had sold away the property of the Personal Guarantor by invoking the provisions of SARFAESI Act and realised a sum of Rs. Rs. 9,35,79,750/- and that the sale was not questioned by the Corporate Debtor. It is stated that, as per the petition, the outstanding debt payable by the Corporate Debtor is Rs. 773,20,51,119.34. From the report of Resolution Professional, it appears that request has been made to the Resolution Professional for issuance of the instructions, for conducting negotiations between the personal Guarantor and Creditor and for arriving at the repayment plan. In this backdrop the IRP recommended for admission of the petition in terms of provisions of the Code.
14. It is to be stated that when the debt and default in respect of the claim of the Financial Creditor is not in dispute and the Personal Guarantor himself had conceded for the sale of the property given as security and accordingly the property has been sold, and only a part of the outstanding dues has been realised, it goes without saying that the default on the part of the debtor is ex facie apparent, hence the Tribunal finds no reason to reject this petition.






15. The Financial Creditor/Petitioner herein has proposed the name of Shri Raghu Babu Gunturu, Insolvency Professional to act as Resolution Professional, who has given his consent in Form-A. Therefore, by exercising powers under Section 100 of the Code, we pass the following orders:

- (1) The petition i.e. **CP (IB) No. 253/95 of IBC/HDB/2020 filed under the provisions of Section 95 of IBC, 2016 is hereby admitted.**
- (2) Consequently, the Insolvency Resolution Process is hereby initiated against the Personal Guarantor Shri Kolli Venkata Raja Sekhar and the moratorium is declared, which begins with 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;
 - (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 his assets or his 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.



- (3) The Resolution Professional i.e. Shri Raghu Babu Gunturu having IBBI registration no. IBBI/IPA-002/IP-N00025/2016-2017/10053, #R/o 402B, 4th Floor, Technopolis, Chikoti Gardens, Begumpet, Hyderabad -16, who was appointed vide order dated 28.07.2021 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 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.
- (4) The Resolution Professional in exercise of the powers conferred under 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.

- (5) 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, 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.
- (6) 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 IBC, 2016.


(Veera Brahma Rao Arekapudi)
Member (Technical)


(Dr. N. Venkata Ramakrishna Badarinath)
Member (Judicial)