

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.303
CP(IB)/25(AHM)2022

Order under Section 95 IBC

IN THE MATTER OF:

YES Bank Limited

.....Applicant

V/s

Nidhi Rajratan Agarwal

.....Respondent

(Personal Guarantor)

Order delivered on: 04/04/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)

Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-Sd-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-Sd-

CHITRA HANKARE
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT - II)
CP(IB) No. 25 / NCLT / AHM / 2022**

(Filed under Section 95(1) of the Insolvency & Bankruptcy Code, 2016)

Yes Bank Limited
Yes Bank House,
Off Western Express Highway,
Santacruz East, Mumbai-400055.

... Financial Creditor

Versus

Mrs. Nidhi Rajratan Agarwal
Flat No.4, Gokul Geet Gopal Apartment,
Opp. Laxmi Processors,
Hatkanangale, Ichalkaranji,
Kolhapur, Maharashtra-416115.

... Personal Guarantor

Order pronounced on 04.04.2024

Coram:

**MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)**

**DR. V. G. VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)**

Present:

For the Applicant : Ms. Noopur Dalal , Adv.

For the Respondent : Mr. Navin Pahwa, Sr. Adv. a.w Mr. Ravi Pahwa,
Adv

For the RP : Mr. Rakesh Gupta, Adv.

For the Yes Bank : Mr. Anip Gandhi, Adv. a.w Mr. Raju Kothari, Adv

JUDGMENT

1. Yes Bank Limited (Financial Creditor) has filed this Application under section 95 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 to initiate Insolvency Resolution Process against Mrs. Nidhi Rajratan Agarwal, the Personal Guarantor of the Corporate Debtor namely Honest Derivatives Private Limited for default of an amount of Rs.21,51,07,994.41/-.
2. The said amount is due to the corporate debtor and the date of default is 29.06.2019. The Corporate Debtor was brought under CIRP under Section 9 of IBC vide order dated 28.05.2020. The applicant has granted credit facilities of Rs.21,10,00,000/- to the Corporate Debtor to which the respondent stood as a personal guarantor. At the request of the Corporate Debtor loan facility was sanctioned by the applicant on 04.12.2017 vide several financial documents, as amended, supplemented and modified from time to time in accordance with terms and conditions of the security documents executed in relation thereto. Deed of Guarantee was executed between Financial Creditor and Personal Guarantor on 19.12.2017 wherein the respondent has unequivocally guaranteed due and prompt repayment of the amounts due under the facilities.
3. Pursuant to the credit facilities granted to the borrower, necessary documents were executed by the Respondent Company. Such as

Master Facility Agreement, Loan Agreement, Deed of Hypothecation, Deed of Guarantee etc from time to time. A Demand Notice U/s 13(2) of SARFAESI Act was issued on 14.10.2019 to the Respondent. A Demand Notice in Form-B was sent to the respondent on 02.12.2021. Date of filing the application was on 13 Jan 2022.

4. This Tribunal has appointed Ms. Prajakta Avil Menezes bearing registration No. IBBI/IPA-001/IP-P01349/2018-2019/12016 as resolution professional. Accordingly, the RP has filed report on 07.03.2022.
5. On perusing the report of RP, it is observed that the RP has examined various documents including Facility Letter dated 04.12.2017, 20.12.2017 & 22.04.2019, Master Facility Agreement dated 19.12.2017, Loan Agreement dated 19.12.2017, Mortgage Deed dated 19.03.2018, Deed of Hypothecation dated 19.12.2017, Deed of Guarantee dated 19.12.2017 etc.. RP has also sent Notice on 24.02.2022 through Email and on 25.02.2022 through speed post to the Personal Guarantor and demanded details as well as documents.
6. On 03.03.2022 Personal Guarantor replied to the Email dated 24.02.2022 denying the debt against the corporate debtor and mentioned that the Hon'ble Supreme Court of India vide order dated 29.06.2021 in Civil Appeal No. 2199 of 2021 directed that, "Status Quo, as of today, shall be maintained in meanwhile". Further stated that the copy of application was never served upon the personal guarantor, and only three days back the copy was

served upon her.

7. The RP has also sent an email dated 03.03.2022 to the Applicant requesting to confirm whether the Personal Guarantor have made any payment towards the unpaid debt. The Applicant vide email dated 03.03.2022 stated that “No payment is received by Yes Bank Ltd from any personal guarantor of HDPL pursuant to filing of application”. The RP has not received any evidence of repayment of debt by the personal guarantor also the RP has not received any document or order from any forum for the cancellation of Personal Guarantee Agreement. The RP submitted that the application satisfies the requirement of provisions of Section 95 of the IBC.
8. Heard the learned counsels for the applicant and Resolution Professional.
9. The RP has recommended to initiate the Insolvency Resolution Process against the personal guarantor. The RP has submitted the copies of documents and also details of assets of respondent. It is observed from the record that the respondent has chosen not to file any reply. PG has not even denied issuance of personal guarantee to Corporate Debtor in her reply to email dated 24.02.2022 except the Status Quo order of Hon’ble Supreme Court. The liability of personal guarantor is co-extensive with the principal of borrower as per Section 128 of Contract Act. Recall notice was issued by the Creditor Bank on 04.10.2019. The Creditor has also issued notice under Section 13(2) of the SARFAESI Act dated 14.10.2019. The petitioner bank also issued demand notice in respect of unpaid debt from the Corporate Debtor to the respondent on 02.12.2021. There is no any evidence

by the respondent to show that she has paid the debt or her personal guarantee agreement is cancelled.

10. Accordingly, the application is observed to be within the period of limitation for filing. There is presently no stay on hearing the applications filed under Sec 95 of IBC against personal guarantors.
11. Hence, we pass the following order:

ORDER

- i. Application is allowed.
- ii. The insolvency process is initiated against the respondent personal guarantor. The moratorium begun on the date of admission of the application shall cease to have effect at the end of the period of 180 days from the date of this order. During the moratorium period, the following provisions shall be in effect:
 - a. Any pending legal action or proceeding in respect of any debt be deemed to have been stayed; and
 - b. The creditors of the debtor shall not initiate any legal action or 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
- iii. The Resolution Professional viz., Ms. Prajakta Avil Menezes, who has been appointed under Section 97 vide order dated 15.02.2022,

is directed to cause a public notice to be published on behalf of the Adjudicating Authority within 7 days of uploading of this order on the website of NCLT, inviting claims from all Creditors who shall register their claims as provided under Section 103 within 21 days of such issuance. The notice shall contain the necessary information as provided under section 102(2) of IBC. The publication of the notice shall be made in newspapers, one in English and the other in Vernacular 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 by the Registry on our website and the other shall be affixed in the premises of this Authority.

- iv. 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 a repayment plan in consultation with the Resolution Professional 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 Authority within a period of 21 days from the last date of submission of claims as provided under Section 106.
- v. 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 the creditors should be summoned, he shall specify the details as provided under Section 106(3). The date of meeting should not be less than 14 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 relevant/feasible modes. Such notice must contain the details as provided under the provisions of Section 107.

- vi. The meeting of the creditors shall be conducted in accordance with section 108, 109, 110 & 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 this Authority, copies of which shall be provided to the debtor and the creditors. It is made clear that the resolution professional shall perform his function and duties in compliance with the code of Conduct provided under section 208 of the IBC, 2016.
- vii. The applicant is directed to deposit Rs.2 lakhs to the bank account of RP within one week, towards his fees. This shall be subjected to the Rules and Regulations under the provisions of IBC, 2016.
- viii. Accordingly, CP(IB) 25 of 2022 is disposed off.

-Sd-

DR.V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-Sd-

CHITRA HANKARE
MEMBER (JUDICIAL)