



**IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI**  
**CP (IB) No.1041/MB/2023 ALONG WITH IA No.5043/2024**

*[Under Section 94 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019]*

IN THE MATTER OF:

**Mrs. Archana Lalit Palwe**

**[Personal Guarantor to Creative Powertech Private Limited]**

Flat No.8, Payas Co-Operative Housing Society

ST Colony, Gangapur Road

Nasik-422013

Maharashtra.

**...Applicant/Personal Guarantor**

**Along with**

**IA (I.B.C.)/5043(MB)/2024**

**Mr. Vakati Balasubramanyam Reddy**

**Vs**

**Archana Lalit Palwe**

**Pronounced:30.10.2024**

**CORAM:**

**HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)**

**HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)**

**Appearances: Hybrid**

Applicant: Adv. Partho Sarkar i/b Vidhi Legal.



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**ORDER**

***[PER: SANJIV DUTT, MEMBER (TECHNICAL)]***

**1. BACKGROUND**

- 1.1 This is an Application filed on 07.08.2023 by Ms. Archana Lalit Palwe (hereinafter referred to as “the Applicant/ Personal Guarantor”) under Section 94(1) of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 6(1) of the Insolvency and Bankruptcy (Application for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 seeking initiation of Insolvency Resolution Process against herself being the Personal Guarantor to the Corporate Debtor.
- 1.2 The Applicant herein is a Personal Guarantor to Creaative Powertech Private Limited (hereinafter referred to as the “Corporate Debtor”) in respect of loans taken from various lenders. The details of the lenders are given in Part-III of the Application in Form-A annexed to this Application.
- 1.3 The amount in default is Rs.10,86,83,115/- and the dates of default are provided against the name of the each creditor at point 7 of PART III Form A and there are negligible assets (save for excluded assets) to repay the debt obligations.
- 1.4 It is submitted that Applicant (along with other directors of the Corporate Debtor) has been making earnest efforts to revive the business and repay the overdue amounts of the lenders but it has been unfortunate for the Corporate Debtor along with the present Applicant to make repayment. Hence, the Applicant has approached this Tribunal under Section 94 of the Code.



- 1.5 The Loan Agreements were executed between the Corporate Debtor and the Financial Creditor, i.e., *Central Bank of India, Samata Nagari Sahakari Patsanstha Maryadit, Bajaj Finance Limited, Piramal Capital and Housing Finance, L. & T Finance, Indostar Capital Finance, and AU Small Finance Bank* (hereinafter collectively referred to as "Lenders").
- 1.6 An Application seeking Insolvency Resolution Process for Corporate Persons (CIRP) of the Corporate Debtor, Creative Powertech Pvt. Ltd. was admitted into CIRP by NCLT, Mumbai Bench-IV under Section 9 of the Code *vide* order dated 12.04.2023 in the matter of *Gujarat Copper Alloys Limited vs. Creative Powertech Private Limited [CP (IB) No.1294/MB-IV/2022]*.
- 1.7 The interim-moratorium under Section 96(1) (a) of the Code has commenced on the date of filing of this Application by the Applicant and shall cease to have effect on the date of admission of this Application.
- 1.8 During the interim-moratorium period –
- (i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and
  - (ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.
- 1.9 This bench *vide* order dated 05.08.2024 appointed **Mr. Vakati Balasubramanyam Reddy**, an Insolvency Professional having Registration No. **IBBI/PA-001/IP-P00662/2017-2018/11131** to act as the Resolution Professional (RP) in the present matter and directed the RP to file report under Section 99 of the Code. The RP filed IA No. 5043/2024 on 12.09.2024 and furnished his report



recommending admission of the Application under Section 94 of the Code. The RP is satisfied that there is a financial debt and that default has occurred and hence recommends the acceptance of the Application for initiation of insolvency resolution process against the Applicant under Section 94 of the Code. The grounds for admission of the Application recorded in the Report are as follows: -

*"I, ..... hereby, on the basis of the gathered facts and figures averred by the applicant in the present application, is of strong view that the application and the applicant satisfies all the requirements as set out under section 94.*

*In such premises, it is just and equitable that insolvency resolution process be initiated against the Personal Guarantor Mrs. Archana Lalit Palwe under the orders and directions of this Hon'ble Tribunal.*

*Therefore, I hereby, recommend that present application under section 94 deserves to be accepted by this Hon'ble Tribunal. I have reached this conclusion based on facts and observations derived from the application and related documents and records annexed to the application and on receipt of explanation/clarifications accorded by the Applicant/Financial creditor."*



## 2. ANALYSIS AND FINDINGS

- 2.1 Heard the Learned Counsel for the Applicant. The records along with the report submitted by the RP have been perused.
- 2.2 It is observed that the RP has filed the **IA** for placing on record the report prepared under Section 99 of the Code, recommending admission of the Application. **Consequently, the report submitted by the RP is taken on record and the said IA is hereby disposed of.**
- 2.3 Section 128 of the Indian Contract Act, 1872 provides that *“the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.”* In the event of default, both the Principal Borrower and the Surety are jointly and severally liable to the Creditor who holds the right to recover outstanding dues from either or both parties simultaneously. The Hon’ble National Company Law Appellate Tribunal in the matter of ***State Bank of India Vs. Athena Energy Venture Private Limited in Company Appeal (AT)(Ins) No.633 of 2020*** held that in the matter of guarantee, CIRP can proceed against Principal Borrower as well as Guarantor.
- 2.4 In the present case, it is observed that the Applicant had extended personal guarantee for loans granted to the Corporate Debtor by the various financial institutions, namely, Central Bank of India, Samata Nagari Sahakari Patsanstha Maryadit, Bajaj Finance Limited, Piramal Capital and Housing Finance, L&T Finance, Indostar Capital Finance and AU Small Finance Bank.



- 2.5 An Affidavit dated 06.02.2024 filed by the Applicant has provided a summary of the total outstanding amounting to Rs.10,86,83,115/- as follows:

Summary of Outstanding		
Sr. No.	Name of the Financial Institution/Status	Amount in Rs.
1	Central Bank Cash Credit/LC (Guarantor to Creative Powertech)	2,40,00,000/-
2	Central Bank Term-Loan (Guarantor to Creative Powertech)	3,74,66,000/-
3	Central Bank 1 <sup>st</sup> Covid Package Loan (Guarantor to Creative Powertech)	1,06,15,000/-
4	Central Bank 2 <sup>nd</sup> Covid Package Loan (Guarantor to Creative Powertech)	0,61,49,000/-
5	Samta Co-operative Society (Guarantor to Creative Powertech)	1,30,00,000/-
6	Samta Co-operative Socy. (Guarantor to Lalit Palwe)	1,30,00,000/-
7	Bajaj Finance (Guarantor to Creative Powertech)	0,05,36,539/-
8	Bajaj Finance (Guarantor to Creative Powertech)	0,08,58,545/-
9	Piramal Capital (Guarantor to Creative Powertech)	0,09,67,987/-
10	L & T Finance (Guarantor to Creative Powertech)	0,18,92,574/-
11	IndoStar Capital (Guarantor to Creative Powertech)	0,01,97,470/-
	Total	10,86,83,115/-

The said debt has also been verified by the RP in his report, wherein the RP, at para 2(iv) categorically states that he has satisfied himself as to the details of the debt and default. Further, at para 2(v), it is stated that the Applicant has failed to repay the outstanding dues and the default continues. Finally, in para 2(vii) of the report, it is stated that the debt exists which is in the nature of financial debt. The RP has also made a clear averment in its report that the **Application and the Applicant** satisfies all the requirements as set out under Section 94 of the Code.



2.6 The Applicant *vide* Additional Affidavit dated 17.01.2024 has placed on record English Translation of 'Notice of Seizure' dated 19.10.2023 under the provisions of Maharashtra Co-operative Societies Act, 1960 served on her in her capacity as guarantor by Samata Nagari Cooperative Credit Society Ltd., Kopergaon, Ahmednagar (one of the Corporate Debtor's lenders) demanding payment of loan amount of Rs.1,58,14,797/- and outstanding dues of Rs.1,67,73,735/- along with interest and expenses owed to the said Co-operative Credit Society. This notice, originally issued in Marathi, upon translation, suggests that the guarantee has been invoked against the Applicant. The outstanding debt is above the statutory threshold under the Code. It is noted that the Applicant has not made any payment following the issuance of the 'Notice of Seizure' in her capacity as Personal Guarantor to the Corporate Debtor.

### 3. ORDER

3.1 In light of the above facts, we hold that it is a fit case for admission. Accordingly, the Insolvency Resolution Process is initiated against the Applicant/Personal Guarantor and CP (IB) No.1041 of 2023 filed under Section 94 of the Code is **admitted** under Section 100 of the Code.

- I. The RP is directed to initiate Insolvency Resolution Process against the Applicant/Personal Guarantor and moratorium in relation to all the debts is declared from today i.e., date of admission of the Application and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on



the repayment plan under Section 114 whichever is earlier as provided under Section 101 of the Code. 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 of the debtor shall not initiate any legal action or proceedings in respect of any debt;
- c) The debtor shall not transfer, alienate, encumber, or dispose of any of her assets or her legal rights or beneficial interest therein and
- d) The provisions of Section 101 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

II. The RP viz. **Mr. Vakati Balasubramanyam Reddy**, having Registration No. **IBBI/IPA-001/IP-P00662/2017-2018/11131**, registered address at **C 1205, Galaxy, Quroshi Nagar, Kurla (East), Mumbai, Maharashtra ,400070**, e-mail Id [ybsreddy7@gmail.com](mailto:ybsreddy7@gmail.com) is directed to cause a public notice under Section 102(1) of the Code published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Mumbai Bench, inviting claims from all creditors within 21 days of such issue. The notice shall include: -

- a. details of the order admitting the application;
- b. particulars of the RP with whom the claims are to be registered; and
- c. the last date for submission of claims.





**III.** The publication of notice shall be made in two newspapers, one in English and other in Vernacular, which have wide circulation in the State where the Corporate Debtor and the Personal Guarantor are situated or reside. The Resolution Professional shall furnish two spare copies of the notice to the Registry the record.

**IV.** The RP, shall prepare a list of creditors under Section 104 on the basis of:-

- a. the information disclosed in the application filed by the debtor under Section 94 and
- b. claims received by the RP under Section 103 within 30 days from the date of the notice. The debtor shall prepare a repayment plan under Section 105 in consultation with the RP containing a proposal to the creditors for restructuring of her debts or affairs.

The repayment plan may authorise or require the RP to:

- a. carry on the debtor's business or trade on her behalf or in her name: or
- b. realise the assets of the debtor; or
- c. administer or dispose of any funds of the debtor.

The repayment plan shall include the following, namely:-

- a. justification for preparation of such repayment plan and reasons based on which the creditors may agree upon the plan;
- b. provision for payment of fee to the RP;
- c. such other matters as may be specified by the Regulations made under the Code.



- V. The RP 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 of the Code.
- VI. In case the RP recommends that a meeting of the creditors is not required to be called, he shall record the reasons thereof. If the RP is of the opinion that a meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of Code. 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 of the Code, 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 of the Code.
- VII. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 and 111 of the Code. The RP shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of the Code and submit the same to this Tribunal, copies of which shall be provided to the Debtor and the Creditors. It is made clear that the RP shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of the Code read with the Regulations made under the Code.
- VIII. The RP shall submit his periodic reports before this Tribunal every **30 days**.



**IX.** The Applicant is directed to deposit **Rs.2,00,000/- (Two lakhs Rupees)** to the bank account of the RP within **one week** towards his fees. This shall be subject to the rules and regulations under the provisions of the Code.

**X.** The Registry is directed to communicate a copy of Order, report and application within **seven** working days and upload the same on the website immediately after the pronouncement of the order.

**XI.** A Copy of this Order shall also be forwarded to the IBBI for information and record.

Sd/-  
**SANJIV DUTT**  
**MEMBER (TECHNICAL)**

//Deepa//

Sd/-  
**K.R. SAJI KUMAR**  
**MEMBER (JUDICIAL)**