



**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, COURT – III**

**C.P. No. 293 of 2020**

Under Section 95 (1) of the Insolvency and Bankruptcy Code, 2016 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudication Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rule, 2019

*In the matter of*

**Assets Care & Reconstruction Enterprise Limited**

Registered Office: at 2<sup>nd</sup> Floor, 13, Mohan Dev Building,  
Tolstoy Marg, New Delhi 110001.

**Substituted For**

**Altico Capital India Ltd.**

Registered Office: 21, 2<sup>nd</sup> Floor, 5 North Avenue Maker  
Maxity, Bandra- Kurla Complex, Bandra (East) Mumbai-  
400051.

*.....Applicant/ Creditor*

**V/s.**

**1. Rajesh Patel**

Flat No. 903, 9<sup>th</sup> Floor, Kailash Kiran Building, Opp.  
Lion's Garden, Tilak Road, Ghatkopar (E) Mumbai  
400077.



**2. Harish Patel**

Nutan Kailash Niwas, No. 1, Plot No. 353/4A, 11<sup>th</sup> Floor,  
Flat No. 1101, R.V. Mehta Marg, Ghatkopar (E), Mumbai  
400077.

**3. Pratik Patel**

Nutan Kailash Niwas, No. 1, Plot No. 353/4A, 11<sup>th</sup> Floor,  
Flat No. 1101, R.V. Mehta Marg, Ghatkopar (E), Mumbai  
400077.

**4. Priyal Patel**

G/1301, Kukreja Palace, Vallabh Baug Lane Extn,  
Garodia Nagar, Ghatkopar East, Mumbai 400086

*.....Respondents/Personal Guarantors*

**Order Pronounced on: 26.09.2024**

**CORAM:**

**SHRI CHARANJEET SINGH GULATI**  
**HON'BLE MEMBER (T)**

**SMT LAKSHMI GURUNG**  
**HON'BLE MEMBER (J)**

***Appearances:***

For the Financial Creditor : Adv. Pulkit Sharma a/w. Adv. Vijay Purohit,  
Adv. S. Jain i/b. P & A Law Offices.

For the Respondent : Adv. Rohit Gupta i/b. Adv. Ruturaj V. Bankar.

***Per: - SHRI CHARANJEET SINGH GULATI MEMBER (T)***

**ORDER**

1. The Present Company Petition is filed under section 95(1) of 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 ("**Rules**") by **Altico Capital India Ltd.** for initiating Insolvency Resolution Process against **Rajesh Patel and others** being



**Personal Guarantors** of M/s Rajesh Estates and Nirman Limited  
**(Corporate Debtor).**

2. As a matter of fact, Vistra ITCL (India) Limited (**“Debenture Trustee”**) had entered into a Debenture Trust Deed dated 19.03.2019 (**“Debenture Trust Deed”**) with the Corporate Debtor and certain other persons acting as the Security Providers. Pursuant to the Debenture Trust Deed, the Corporate Debtor had availed financial assistance from the financial Creditor wherein, the Financial Creditor had subscribed to debentures forming a part of the INR 432 Crores non-Convertible debentures issued by the Corporate Debtor pursuant to the Debenture Trust Deed described hereunder (**“Facility”**).
3. Simultaneously, four similar Debenture Trust Deeds were entered into between the Debenture Trustee and Rajesh Buildspaces Private Limited, Rajguru Developers Private Limited, Rajesh Landmark Projects Private Limited and Rajesh Cityspaces Private Limited, group companies of the Corporate Debtor.
4. Guarantees, vide deeds of Guarantee, all dated 19<sup>th</sup> March 2019 were furnished by Rajesh Construction Company Private Limited (**Corporate Guarantee**), Mr. Harish Patel (Personal Guarantee), Mr. Rajesh Patel (Personal Guarantee), Mr. Pratik Patel (Personal Guarantee) and Mr. Priyal Patel (Personal Guarantee) in favour of the Debenture Trustee.
5. In terms of Clause 4 of the Debenture Trust Deed, i.e. ‘Terms of the Debenture’, the Corporate Debtor defaulted in making payments to the Financial Creditor under Debenture Trust Deed. The Financial Creditor served a Notice of Payment Default dated 7<sup>th</sup> November 2019 to the Corporate Debtor calling upon to make payment of the Overdue Amount of INR 10,34,21,531/- along with the Default Interest compounded up to the date of payment/realization.



6. When the Corporate Debtor failed to make payment in terms of the Notice of Payment Default, the Financial Creditor issued a notice dated 11<sup>th</sup> November 2019, to the persons acting as promotor/director/guarantors/pledgor/mortgagor/security provider in relation to the Facility, thereby invoking the guarantees provided by the Respondents and called upon to forthwith arrange to make payment of the overdue amount.
7. On the 2<sup>nd</sup> December 2019, the Applicant/Financial Creditor served a Demand Notice on the Personal Guarantors to the Corporate Debtor in accordance with the provisions of the Rules of 2019, calling upon them to make the requisite payment.
8. Since the Personal Guarantors to the Corporate Debtor have failed to make payment of the amounts due, the present petition has been filed.
9. While the matter was pending, the Petitioner filed IA/1062/2021 seeking substitution of the name of the Petitioner as Assets Care & Reconstruction Enterprise Limited (Assignee) in place of the Original Petitioner/Assignor i.e. Altico Capital India Limited. After hearing the parties, this Tribunal vide order dated 05.06.2024 had allowed the said application thereby substituting the name of the Petitioner as **Assets Care & Reconstruction Enterprise Limited**.
10. The Hon'ble Supreme Court in ***Dilip B Jiwarajka Vs. Union of India & Ors. Writ Petition (Civil) No. 1281 of 2021*** decided on 09.11.2023 held as follows:-

Quote

- i. *No judicial adjudication is involved at the stages envisaged in Section 95 to Section 99 of the IBC;*
- ii. *The Resolution Professional appointed under Section 97 serves a facilitative role of collating all the facts relevant to the examination of the application for the commencement of*



*the insolvency resolution process which has been preferred under Section 94 or Section 95. The report to be submitted to the Adjudicating Authority is recommendatory in nature on whether to accept or reject the application.*

Unquote

11. The Petition for initiating insolvency resolution process against Personal Guarantors to the Corporate Debtor is complete in accordance with section 95 of Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.
12. The Petitioner had proposed the name of the Insolvency Professional, **Mr. Pankaj Nahata** with registration no. **IBBI/IPA-001/IP-P00796/2017-2018/11363** in the petition. The AFA dated 22.12.2023 is submitted by the Petitioners and according to the said AFA, the authorization is valid till 21.12.2024.
13. Accordingly, we appoint **Mr. Pankaj Nahata** (Mobile: 9824312705, email: pmnahata@gmail.com) to act as the **Resolution Professional (RP)** in the Insolvency Resolution Process against Shri **Rajesh Patel and others** being **Personal Guarantors**. The fee payable to Resolution Professional (RP) shall be in accordance with the Insolvency and Bankruptcy Board of India (IBBI) Regulations/Circulars/ Directions issued in this regard.
14. This Bench also directs for an advance payment of Rs. 1,00,000/- (Rupees One Lakh only) to be paid by the Financial Creditor to the Resolution Professional (RP) in respect of each case of Personal Guarantors immediately to initiate the process which shall be adjusted towards the fee and expenses payable to the Resolution Professional (RP).



15. The Petitioner is directed to serve copy of the Petition and the Order on the Resolution Professional.
16. The Registry is also directed to send a copy of this order to the Resolution Professional for their record.
17. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.
18. The Resolution Professional is directed to examine the application and to submit its report in accordance with Section 99 of the I&B Code **within 10 days**, of receipt of this order in each case.
19. List the matter for report of the RP, as and when the report of RP is filed.

**Sd/-**  
**CHARANJEET SINGH GULATI**  
**(MEMBER TECHNICAL)**  
*---Shaharukh. PS---*

**Sd/-**  
**LAKSHMI GURUNG**  
**(MEMBER JUDICIAL)**