

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.304
CP(IB) 320 of 2020

Order under Section 100 IBC

IN THE MATTER OF:

Ila Bharat Valia Personal Gaurantor to API Industries Pvt Ltd**Applicant**

.....**Respondent**

Order delivered on: 10/05/2024

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.

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

-sd-

CHITRA HANKARE
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT - II)**

CP(IB) No. 320 / NCLT / AHM / 2020

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

IN THE MATTER OF:

Mrs. Ila Bharat Valia

...Applicant

Versus

State Bank of India

...Respondent

Order pronounced on 10.05.2024

Coram:

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

**MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)**

MEMO OF PARTIES

Mrs. Ila Bharat Valia,

Residing at:

1001/B, Rupani House,
32, Ashok Nagar Society,
NS Road 9, Juhu
Mumbai - 400056

...Applicant

API Industries Pvt. Ltd.

A/3, Rameshwar Complex
Ghogha Circle
Bhavnagar -364 002 (Gujarat)

...Corporate Debtor

Versus

State Bank of India

Sir P M Road Branch
Gresham House, Ground Floor
Sir P M Road, Fort
Mumbai-400001

...Financial Creditors

Present:

For the Applicant/ PG : None

For the SBI : Ms. M A Gogia, Adv.

Resolution Professional : Ms. Anjali Choksi

JUDGEMENT

1. The Present Application is filed under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC, 2016") r/w Rule 6 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for IRP for Personal Guarantors to Corporate Debtor) Rules, 2019.
2. In Part I of the application API Industries Pvt. Ltd. is mentioned as Corporate Debtor qua which the personal guarantee was given by the applicant. In Part III State Bank of India is mentioned as Financial Creditor. The date of default of payment is 2013-14.
3. On presentation of the application by the Applicant/ Personal Guarantor, this Authority vide order dated 15.11.2021 has appointed the Resolution Professional viz., Ms. Anjali Nirav Choksi having Registration No. IBBI/IPA-001/IP-P00820/2017-2018/11382 & directed RP to file report under Section 99 of Insolvency and Bankruptcy Code, 2016, which has been filed by him on 10.12.2021 recommending the admission of the application filed u/s. 94 of IBC, 2016.

4. Respondent i.e., State Bank of India in his reply submitted that it is a secured creditor to the Corporate Debtors and initiated recovery proceedings under the SARFAESI Act, 2002 and secured assets are under their possession. It further submitted that it do not want to relinquish their security interest qua the secured assets and also do not want to liquidate the secured asset by the legal process either under the provisions of the IBC, 2016 and/or the SARFAESI Act, 2002.
5. We have heard the learned Counsel for applicant and respondent and perused the documents on record. We have also gone through the report dated 10.12.2021 filed by the RP.
6. Respondent has issued Demand Notice to the API Industries Pvt. Ltd. as well as applicant/guarantor on 09.10.2014. The date of default is shown as 27.09.2014. Thereafter, they have not initiated any proceedings against the guarantor under IBC. When the Demand Notice was issued in the 09.10.2014, the application is filed on 10.08.2020 is barred by limitation.
7. Considering the date of default as well as date of demand notice by the respondent, the application is filed after the limitation period. Hence, the application is barred by limitation.

8. In view of the above, we pass the following order:

ORDER

The CP(IB)320 of 2020 is rejected.

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

**CHITRA HANKARE
MEMBER (JUDICIAL)**

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