

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.307
CP(IB)/64(AHM)2022

Proceedings under Section 94 IBC

IN THE MATTER OF:

Bhavarlal M Karnawat
(Operational Creditor)

.....Applicant

.....Respondent

Order delivered on: 28/06/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

(Hybrid Mode)

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

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, COURT- I, AHMEDABAD**

CP/IB/64/AHM/2022

(Filed under Section 94 of the Insolvency & Bankruptcy Code, 2016 read with Rule 6 of the IB (AAA for IRP for PGCD) Rules, 2019)

*In the matter of **Mr. Bhavarlal M. Karnawat***

Mr. Bhavarlal M. Karnawat,

Personal Guarantor of Metal Link Alloys Ltd.

& Karnawat Associate Pvt. Ltd.

(Now Metal holding India Pvt. Ltd.)

Address: 1006, 10th Floor, Sunker Seth Palace,

Nana Chowk, Grant Road Mumbai

... Applicant/Personal Guarantor

VERSUS

1. Bank of India,

Bank of India Building,

Mezzanine Floor, 70-80,

M.G. Road, Fort, Mumbai – 400001

2. State Bank of India,

SME Backway Reclamation Branch,

B Wing, Ground Floor, Nariman Point,

Mumbai – 400021

3. Indian Overseas Bank,

Nariman Point Branch,

Bhaktawar, Nariman Point,

Mumbai – 400021

... Respondents/Financial Creditors

Order pronounced on: 28.06.2024

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For Applicant/PG : Mr. Arjun Seth, Adv.
For the Respondent/IOB : Ms. Moniti Oza, adv. (proxy)
(For the SBI : None

ORDER

1. The Present Application has been e-filed on 14.02.2022 by the Applicant/Personal Guarantor of Corporate Debtor (Metal Link Alloys Ltd. and Karnawat Associate Pvt. Ltd Now Metal holding India Pvt. Ltd.) under Section 94 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") to initiate the Insolvency Resolution Process 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 Guarantor to Corporate Debtor) Rules, 2019.
2. The facts of the Case are as follows:-

- a) It is stated that the Applicant is the Personal Guarantor of Corporate Debtor (Metal Link Alloys Ltd. and Karnawat Associate Pvt. Ltd Now Metal holding India Pvt. Ltd.) for the various Credit Facilities Availed by them from the Respondent no.1 to 3.
- b) The Applicant is duly authorized to file captioned application with National Company Law Tribunal at Ahmedabad to initiate Insolvency Resolution Process 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 Guarantor to Corporate Debtor) Rules, 2019.
- c) The Applicant has placed on record Deed of Guarantee dated 10.12.2013 in the name of Bhawarlal M. Jain executed in favour of the Respondent No.2 (State Bank of India) which is annexed as **Annexure-C**.
- d) It is stated that after availing the various credit facilities the Corporate Debtors failed to repay the

same. Hence, on 15.05.2014, 29.05.2014 15.05.2014, the debt of the Corporate Debtors (Metal Link Alloys Ltd. AND Karnawat Associate Pvt. Ltd. Now Metal holding India Pvt. Ltd.) Became due. Thereafter, on 04.07.2015, 30.05.2014, 29.12.2014 loan Recall Notices were issued to the Corporate Debtors as well as to the Applicant by the Respondent No.1 to 3 which are annexed as **Annexure-D to F**.

- e) It is stated that the Corporate Debtor namely, Metal Link Alloys Ltd. was admitted to CIRP vide order dated 17.08.2017 U/s 10 of the IBC, 2016 and later on liquidated vide order dated 11.05.2018 passed in I.A. No.57 of 2018 in CP (IB) No.67/10/NCLT/AHM/2017 which are annexed as **Annexure-A Colly**.
- f) It is stated that the Corporate Debtor namely, Karnawat Associate Pvt. Ltd. Now Metal holding India Pvt. Ltd. was also admitted to CIRP vide order dated 17.08.2017 U/s 10 of the IBC, 2016 and later on liquidated vide order dated 11.05.2018 passed in I.A.

No.58 of 2018 in CP (IB) No.68/10/NCLT/AHM/2017
which are annexed as **Annexure-B Colly**.

- g) It is stated that the State Bank of India has also filed CP (IB) 145 of 2022 before the NCLT-Mumbai Bench-II against the Applicant U/s 95(1) of the IBC, 2016 which has been dismissed vide the order dated 02.05.2024 on the ground of limitation.
3. We have heard the Learned Counsel for the Applicant/Personal Guarantor as well as Respondent No.3 and perused the documents provided in the Application.
4. It is seen that the Applicant/Personal Guarantor has placed only reliance of Deed of Guarantee dated 10.12.2013 with name Bhawarlal M. Jain executed in favour of State Bank of India to secure the Credit Facilities availed by the Corporate Debtor (Metal Link Alloys Ltd.).
5. However, it is observed that no other Deed of Guarantee is annexed which was alleged to be executed by the Applicant in favour of either Bank of India or Indian Overseas Bank to

secure the Credit Facilities availed by the Corporate Debtor (Metal Link Alloys Ltd. and Karnawat Associate Pvt. Ltd. Now Metal holding India Pvt. Ltd).

6. It is the case of the Applicant/Personal Guarantor that the personal guarantee was invoked by the Respondent No.1 (Bank of India) by way of Legal Notice dated 04.07.2015 which is annexed as **Annexure-D**, by the Respondent No.2 (State Bank of India) by way of Recall Notice dated 29.12.2014 U/s 13(2) of the SARFAESI Act, 2002 which is annexed as **Annexure-F** and by the Respondent No.3 (Indian Overseas Bank) by way of Demand Notice dated 30.05.2014 U/s 13(2) of the SARFAESI Act, 2002 which is annexed as **Annexure-E**.

7. On perusal of the notices dated 29.12.2014 and dated 30.05.2014 issued by the Respondent No.2 & 3, it is observed that said notices are issued U/s 13(2) of the SARFAESI Act, 2002 only for the purpose of enforcing security interest and not to invoke any Personal Guarantee.

8. The learned Counsel for the Applicant may be right in his submission that by virtue of Demand Notice dated 29.12.2014 and dated 30.05.2014 issued U/s 13(2) of the SARFAESI Act, 2002, the Applicant was also asked to make the payment of dues. But there is neither anything on record to show that any other notice has been issued by Respondent Banks to the Applicant in the capacity of Personal Guarantor to invoke the Personal Guarantee nor any steps have been taken by the Respondent Bank to recover the dues from the Applicant by sale of personal assets except secured assets.
9. Hon'ble Supreme Court ***in Suo Moto WP (Civil) No. 3 of 2022 in Re: Cognizance for Extension of Limitation*** held that the period i.e. 15.03.2020 to 28.02.2022 is excluded for the purposes of computing limitation prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings in light of the spread of the wave of the Covid-19 pandemic.

10. Even after the exclusion of the aforesaid period from 15.03.2020 to 28.02.2022 for the purposes of computing limitation, the present Petition is filed after lapse of more than **4** years from the date of invocation of Guarantee by the Respondent No.1 (Bank of India) by way of Legal Notice dated 04.07.2015 (**Annexure-D**).

11. Section 238A of the IBC stipulates: -

*“**Limitation.** -- The provision of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings or appeal before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be.”*

12. Therefore, the present petition i.e. **Company Petition (IB) No. 64 of 2024** is dismissed being hopelessly barred by limitation.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)