

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.301

IA/213(AHM)2024 in C.P.(IB)/5(AHM)2024

Order under Section 100 of IBC,2016

IN THE MATTER OF:

Shri Nitin Hasmukhlal Parikh Resolution Professional of Rupa**Applicant**

Pankaj Shah

.....**Respondent**

Order delivered on: 08/05/2024

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 order.

The order is pronounced in 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)

IA No. 213(AHM)/2024

IN

CP(IB) No. 5 / NCLT / AHM / 2024

[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:

Mr. Rupa Pankaj Shah

...Applicant

Versus

Bank of Maharashtra & Anr.

...Respondents

Order pronounced on 08.05.2024

Coram:

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

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

MEMO OF PARTIES

Mr. Rupa Pankaj Shah,

Residing at:

Plot No. 48/49/50, Jintan Udhyog Nagar,
Jintan Road, Surendranagar-363001

...Applicant

Versus

1. **Bank of Maharashtra,**
Having Branch Office at
Zonal Office Ahmedabad,
Mavlankar Haveli,
Vasant Chowk, Bhadra,
Ahmedabad-380001

2. **Bank of Baroda,**
Having Branch Office at
Maskati Market Branch,
Bank of Baroda Bldg.,
Saakar Bazar, P.B.No. 1154,
Ahmedabad-380002

...Respondents

Present:

For the RP : Mr. Harmish Shah, Adv.
RP in person : Mr. Nitin Parikh, Adv.
For Bank of Maharashtra : Mr. Raju Kothari, Adv.
For Personal Guarantor : Mr. Ujas Patel, Adv. for Mr. Aditya
Pandya, Adv.

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. M/s. Heer Tradelink Pvt. Ltd. (hereinafter referred to as Corporate Debtor) has obtained cash credit facility of Rs.10 Crores with the Bank of Maharashtra since 2012. The applicant is one of the guarantor in her personal and individual capacity for the credit facilities availed by the Corporate Debtor. The date of default of payment is 29.06.2014. Bank of Maharashtra has issued demand notice under section 13(2) of SARFAESI Act, 2002 to the Corporate Debtor as well as the guarantor/applicant on 19.07.2014.
3. Part III of the application mentioned other particulars of Debt in which the one of the creditors is Bank of Baroda and the corporate debtor is Veer Commodities Private Limited. Guarantee was executed by the M/s. Nuchem Corporation, a

partnership firm in which applicant is one of the partners.

Bank of Baroda has issued demand notice under section 13(2) of SARFAESI Act, 2002 to Veer Commodities Private Limited as well as to applicant on 07.10.2015.

4. On presentation of the application by the Applicant/ Personal Guarantor, this Authority vide order dated 11.01.2024 has appointed the Resolution Professional viz., Mr. Nitin Hasmukhlal Parikh having Registration No. IBBI/IPA-002/IP-N00058/2017-2018/10110 & directed RP to file report under Section 99 of Insolvency and Bankruptcy Code, 2016, which has been filed by him on 25.01.2024 recommending the admission of the application filed under section 94 of IBC, 2016.
5. Respondent no.1 i.e., Bank of Maharashtra in his reply submitted that the present application is only preferred to frustrate the legal remedy availed by the respondent under SARFAESI Act and RDDB Act and to avoid the auctions of the property of the corporate debtor. It further submitted that there is no invocation of guarantee and also petition is barred by limitation.

6. Respondents no.2 neither filed any reply nor present during the course of proceeding.
7. We have heard the learned Counsel for applicant and respondent no.1 and perused the documents on record. We have also gone through the report dated 25.01.2024 filed by the RP.
8. At Sr. No.14 of Part-I of the application, two Corporate Debtors are mentioned qua which the personal guarantee has been invoked. However, qua Corporate Debtor named, Veer Commodities Private Limited, the guarantee was furnished by the partnership concern of the Applicant in favour of Respondent no.2 i.e., Bank of Baroda and not by the Applicant in his individual capacity. Hence, applicant cannot approach the tribunal for this deed of guarantee under Section 94 of the IBC, 2016.
9. Also, Bank of Baroda has issued Demand Notice to the guarantor on 07.10.2015. The date of default is shown as 31.08.2015. Thereafter, they have not initiated any proceedings against the guarantor under IBC. When the

Demand Notice was issued in the 07.10.2015, the application e-filed on 25.12.2023, is also barred by limitation.

10. Respondent no.1 i.e., Bank of Maharashtra has issued Demand Notice to the guarantor on 19.07.2014. The date of default is shown as 20.08.2014. Thereafter, they have not initiated any proceedings against the guarantor under IBC. When the Demand Notice was issued in the 19.07.2014, the application is e-filed on 25.12.2023 is barred by limitation.
11. Considering the date of default as well as date of demand notice by the respondent no.1 and 2, the application is filed after the limitation period. Hence, the application is barred by limitation.
12. In view of the above, we pass the following order:

ORDER

The CP(IB) 5 of 2024 along with IA 213 of 2024 is rejected.

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

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CHITRA HANKARE
MEMBER (JUDICIAL)