

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**COURT - 2**

ITEM No.303

IA/472(AHM)2024 in C.P.(IB)/61(AHM)2024

**Order under Section 100 of IBC 2016**

**IN THE MATTER OF:**

Trupalkumar Patel RP in the matter of Mansukhlal  
Maganbhai Bakarania PG of Europa Foams Private Limited  
V/s

.....Applicant

PG Mansukhlal Maganbhai Bakaraniania & Another

.....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. 472(AHM)/2024**

**IN**

**CP(IB) No. 61 / 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:**

Shri Mansukhlal Maganlal Bakarania  
Personal Guarantor to Corporate Debtor  
M/s. Europa Foams Pvt. Ltd.

...Applicant

**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**

**Shri Mansukhlal Maganlal Bakarania**

"Maa Chamunda Krupa"  
Meghani Nagar, Street No. 4  
Kothariya Main Road, Rajkot.

AND/OR

Shop No. 125-126; Plenary Arcade,  
Opp. Kadvibhai Kanya Vidhyalaya,  
Near Bombay Petrol Pump,  
Gondal Road, Rajkot

**... Applicant**

**Rajkot Nagrik Sahakari Bank Ltd**

Having Its Reg. Office At:  
Arvinbhai Maniar Nagrik Sevalaya  
150 Ft. Ring Road, Nr. Raiya Circle  
Rajkot – 360005

**... Financial Creditor**

**M/s. Europa Foams Pvt. Ltd.**

Plot No. 11, Sanosara Rev. Sur. No. 168/2  
Shri Sardar Patel Industrial Hub  
Nr. H. J. Steel Industries  
Opp. Getco Sub Station (Surya Rampar)  
Kuvadva Wankaner Road  
At Sanosara, Rajkot-360003 Gujarat

AND/OR

Shop No. 125-126, Plenary Arcade,  
Opp. Kadvibhai Kanya Vidhyalaya,  
Near Bombay Petrol Pump,  
Gondal Road, Rajkot

**...Corporate Debtor**

**Present:**

For the Applicant : Ms. M A Gogia, Adv.  
For the RP : Mr. Sumit Parikh, Adv.  
For the Respondent : Ms. Noopur K. Dalal, 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. Europa Foams Pvt. Ltd. has obtained Cash Credit Facility of Rs.4,90,00,000/- (Rupees Four Crores and Ninety Lacs Only) and Industrial Machinery Loan of 1,20,63,000/- (Rupees One Crore Twenty Lacs and Sixty Three Thousand Only) from Rajkot Nagrik Sahakari Bank Ltd. The total debt including interest and penalty is of Rs.5,42,44,059/-. The applicant has executed various documents in favour of the Bank. The date of default of payment is 30.11.2022. Rajkot Nagrik Sahakari Bank Ltd has issued demand notice to guarantor on 06.12.2022. One M/s. Chamunda Furniture has obtained Cash Credit of Rs.90,00,000/- (Rupees Ninety Lacs Only) from Rajkot Nagrik Sahakari Bank Ltd. The total debt including interest and penalty is of Rs.93,18,620/- (Rupees Ninety Three Lacs Eighteen Thousand Six Hundred and

Twenty Only). The applicant has executed various documents in favour of the Bank. The date of default is 30.11.2022. The demand notice under Section 13(2) of SARFAESI Act was issued on 06.12.2022. The applicant stood guarantor to both these Financial Creditors.

3. On presentation of the application by the Applicant/ Personal Guarantor, this Authority vide order dated 02.02.2024 has appointed the Resolution Professional viz., Mr. Trupalkumar Patel, having Registration No. IBBI/IPA-001/IP-P01186/2018-19/11907 & directed RP to file report under Section 99 of Insolvency and Bankruptcy Code, 2016, which has been filed by him through an IA No. 472 of 2024 recommending the admission of the application filed under section 94 of IBC, 2016.

4. Submission by the Respondent:

i. Respondent submitted that the RP has filed the Report through IA.472 of 2024 in the main matter i.e. CP(IB)61 of 2024 for placing on record the Report under Section 99 of the Code which is already disposed off on 02.02.2024 hence the prayer of the RP for taking on record the Report

stands infructuous. It is further submitted that the applicant has not filed copy of the Sanction Letter nor the Deed of Guarantee in respect of both the personal guarantee extended hence the main CP(IB)61 of 2024 is liable to be dismissed on the grounds of being defective.

- ii. It is submitted that after declaring both the account of Europa Foams Pvt Ltd and M/s Chamunda Furniture as NPA on 30.11.2022 and issuing notice under Section 13(2) SARFAESI on 06.12.2022, Respondent took symbolic possession of the properties mortgaged. It is further submitted that on 06.04.2023 respondent filed an application under Section 14 of SARFAESI before the learned Chief Judicial Magistrate for taking physical possession of the properties mortgaged by both the borrowers which was allowed on 31.05.2023.
- iii. Respondent further submitted that the applicant along with other Guarantors and the Borrowers filed an application under Section 17 of SARFAESI (S.A. No.439 of 2023 in the account of Europa Foams Pvt Ltd and S.A. No.440 of 2023 in the account of M/s. Chamunda

Furniture) on 19.06.2023 which was dismissed on 23.06.2023 in view of the undertaking given by the Personal Guarantor as well as by individual guarantors and the Borrowers that they shall clear the outstanding amount within period of three months and shall also hand over the possession of the one property. It is submitted that the applicant along with others (Guarantors) and the Borrowers filed a M.A. No.35 of 2023 in S.A. No.439 of 2023 and M.A. No.36 of 2023 in S.A. No.440 of 2023 for extension of time in view of the order passed on 23.06.2023 by Hon'ble DRT. The period of extension sought expired on 23.09.2023. It is further submitted that the applicant along with others (Guarantors) and the Borrowers filed appeal under Section 18 before the Hon'ble DRAT on 22.09.2023 and challenged the order dated 22.09.2023 and appeal has been admitted to circulate on 11.10.2023.

- iv. It is submitted that the Respondent Bank issued a Notice on 29.09.2023 for taking over possession of the Properties mortgaged with the Bank, possession to be taken on

15.10.2023. Respondent further submitted that during the pendency of the DRAT appeal, the Personal Guarantor filed an Insolvency Application [C.P(IB) No.249 of 2023] before the Hon'ble NCLT, Ahmedabad on 06.10.2023. It is further submitted that the applicant along with others (Guarantors) and the Borrowers had also approached the Hon'ble High Court of Gujarat through SCA 18064 of 2023 challenging the notice dated 29.09.2023 issued by the learned Court Commissioner for taking possession of the mortgaged property.

- v. It is submitted that Hon'ble DRAT on 09.10.2023 directed the appellant to deposit the total sum of Rs.2.71 crores in five instalments and the first instalment of Rs.50,00,000/- to be deposited on or before 01.11.2023 which applicant along with others (Guarantors) and the Borrowers failed to comply. Therefore DRAT dismissed the appeal on 01.11.2023. It is further submitted that Insolvency Application [C.P(IB) No.249 of 2023] before the Hon'ble NCLT, Ahmedabad was also dismissed by this Tribunal on 01.01.2023 being defective.



- vi. Respondent submitted that the Personal Guarantor again filed this Insolvency Application on 05.01.2024 which is also defective since the Personal Guarantor has not furnished a copy of the Deed of Guarantee nor has provided any proof evidencing invocation of guarantee by the Respondent Bank. It is further submitted that this petition is filed only to frustrate the legal remedy availed by the Respondent Bank under SARFAESI and RDDB Act and to frustrate the actions of the Respondent Bank for taking physical possession of the properties mortgaged by the Personal Guarantor with the Respondent Bank.
5. We have heard the learned Counsel for both the parties and perused the documents on record. We have also gone through the report dated 09.03.2024 filed by the RP.
6. It is clearly established that the present application was filed by the Personal Guarantor herein to thwart the recovery proceedings initiated by the sole Secured Financial Creditor who has obtained physical possession of the secured assets and to frustrate other proceedings under SARFAESI Act, the debtor came running and filed this application.

7. It appears to us that the sole intention of the Personal Guarantor herein is to enjoy the moratorium as contemplated under Section 96 of the IBC, 2016 which commences from the date the application is declared defect-free by the Registry of this Tribunal. The applicant has also not produced the Deed of Guarantee in the original petition but produced by way of rejoinder after the Report of the RP has been filed.
8. It will be a travesty of justice if we allow the application i.e. CP(IB) No. 61 of 2024 and the consequential report of the RP filed in IA 472 of 2024 is accepted at this stage.
9. Hence we pass the following order:

**Order**

CP(IB) No. 61 of 2024 along with IA 472 of 2024 is rejected.

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

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**CHITRA HANKARE  
MEMBER (JUDICIAL)**