

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.303

IA/528(AHM)2024 in CP(IB)/277(AHM)2022

Order under Section 99 of IBC,2016

IN THE MATTER OF:

Vineeta Maheshwari RP in the matter of Praful GirdharbhaiApplicant
Chaniyara

.....Respondent

Order delivered on: 14/05/2024

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.

-Sd-

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

-Sd-

**CHITRA HANKARE
MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY
THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT - II)**

IA/528(AHM)2024

with

CP(IB) No. 277/ NCLT/ AHM/2022

(Application Filed under Section 99 of the Insolvency & Bankruptcy Code, 2016, Company Petition filed under Section 95 of the Insolvency and Bankruptcy Code, 2016)

In the matter of :

CA Vineeta Maheshwari
RP of Mr. Praful Girdharbhai Chaniyara
Reg. No. IBBI/IPA-001/IP-P00185/2017-18/10364
Having office at,
Office No. 302, 3rd Flooe,
Reegus Business Centre,
Nr. Anupam Bungalows,
New Citylight Road, Bharthana, Vesu,
Surat, Gujarat-395007

.... Applicant/RP

And In the matter of :-

State Bank of India
Stressed Assets Management
Branch,
2nd Floor, Paramsiddhi Complex,
Opp. V. S. Hospital, Ellisbridge,
Ahmedabad-380006, Gujarat

.... Applicant /
Financial Creditor

Versus

Mr. Prafulkumar Girdharbhai
Chaniyara
Vaidehi Punit Nagar Main Road,
Gondal, District Rajkot.

... Respondent/
Personal Guarantor

Order pronounced on 14.05.2024

CORAM:

MRS. CHITRA HANKARE, MEMBER (JUDICIAL)

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

Present:

For Applicant/Financial Creditor : Mr. Biju Nair, Advocate

For RP

: Mr. Saurabh Rachchh, Advocate

JUDGMENT

1. State Bank of India (Financial Creditor) has filed this Application under section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 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, seeking to initiate Insolvency Resolution Process against Mr. Prafulkumar Girdharbhai Chaniyara, the Personal Guarantor of the Corporate Debtor namely M/s. Yogiraj Ginning and Oil Industries Pvt. Ltd. for default of an amount of Rs.24,41,53,898.12/-.
2. As per letter of arrangement dated 07.01.2012 (Original sanction of credit facilities), credit facilities were sanctioned to the

Corporate Debtor. It was renewed from time to time i.e. on 15.04.2013, 09.05.2014 and 24.03.2015. The credit facilities were again renewed on 21.04.2016, 26.04.2017 and on 06.06.2018. The Respondent executed personal guarantee in favour of the applicant for securing various credit facilities to Corporate Debtor on 07.01.2012, 05.06.2014 and 24.03.2015. According to the applicant, as per the last guarantee agreement executed by the respondent dated 24.03.2015, credit facilities aggregating to Rs.19.65 crore were secured. The respondent also executed revival letter on 19.09.2017, so limitation started from that date. The Corporate Debtor defaulted in the repayment hence, its credit facility account becomes Non-Performing Asset (NPA) on 27.09.2018. In the form B the applicant stated that the date of default is 24.12.2019. The applicant issued notice on 14.06.2019 under Section 13(2) of the SARFAESI Act, 2002 to the corporate debtor and personal guarantor. They have not filed reply to said notice. Thereafter, they filed application before DRT for recovery of an amount of Rs.19,00,36,798.08/- on 31 10. 2019. The applicant also filed application under Section 7 of the IBC against the corporate debtor which was admitted. The total amount of default is mentioned in application is

Rs.24,41,53,898.12/- together with interest.

3. This Tribunal vide order dated 05.02.2024 appointed Ms. Vineeta Maheshwari as Resolution Professional (RP) in respect of Personal Guarantor. The RP has filed his report dated 15.03.2024. The copy of the present application and the Report of RP was duly served upon the Personal Guarantor but the PG has chosen not to file any reply.

4. RP has sent letter on 16.02.2024 and 17.02.2024 through mail and speed post respectively and demanded details as well as documents from Personal Guarantor. The report of RP states that the RP had not received any evidence of repayment of the debt claimed in Sec.95 petition from personal guarantor. Further, RP communicated to the personal guarantor for any evidence of proof of payment of the debt claimed as unpaid by the creditor, no reply or communication was received from the personal guarantor. RP had neither received any document whereby the Personal Guarantee agreement dated 24.03.2015 was cancelled by both the parties nor received any order of court or any other forum whereby the personal guarantee agreement dated 24.03.2015 was cancelled or set aside. Therefore, RP

recommended to admit the present petition.

5. Applicant/Financial Creditor has issued notice under Section 13(2) of SARFAESI Act for invocation of personal guarantee. Notice issued under SARFAESI Act is for the purpose of enforcement of security interest by the bank and it cannot be construed as notice invoking guarantee under section 95 of IBC. In this regard RP filed a letter, File No. 2/5/2016-Recovery, Ministry of Finance, Department of Financial Services. RP by relying this letter states that even though Notice under Section 13(2) of SARFAESI Act, 2002 issued for enforcement of security interest, it is considered valid for the public sector banks to issue notice under Section 13(2) upon the personal guarantor for invocation of personal guarantee. RP further stated that the letter issued by the Ministry of Finance contained an instruction that Personal guarantors are also to be issued notice under section 13(2) for enforcement of security interest.

6. Amount of default as mentioned in the application and in Demand Notice under Rule 7(1) is different. Default amount mentioned in the application is Rs. 24,41,53,898.12/- whereas in

the demand notice it is mentioned as Rs. 15,49,98,684.40/-.
Amount of default must be same for the same cause of action. On
this sole ground petition is not maintainable.

7. The next point is to be considered is of limitation. According to the applicant, demand notice under Section 13(2) of SARFAESI Act issued on 14 June, 2019. The same is treated as invocation of guarantee as it was issued to guarantor also and petition was filed before DRT against guarantor also. As per IBC norms, to date of default is to date of when account becomes NPA. According to applicant, he has issued another notice to PG on 21.10.2021. However, when notice was already issued on 14.06.2019, date of limitation will not start from second notice. Earlier notice is not filed by the applicant. The account of corporate debtor classified as Non Performing Assets on 27.09.2018. Even per direction by The Hon'ble Supreme Court in Suo Moto Writ Petition (C) No. 3 of 2020, the application is not coming within the period of limitation. As the notice of invocation of Guarantee 14.06.2019 it self is not produce on record and date of NPA is 27.09.2018, the petition is defective as well as time barred. Hence, we pass the following order.

ORDER

- I. Accordingly IA/528(AHM)2024 with CP(IB) No. 277/ NCLT/
AHM/2022 is rejected.

-Sd-

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

-Sd-

**CHITRA HANKARE
MEMBER (JUDICIAL)**