

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.303

IA/530(AHM)2024 in CP(IB)/338(AHM)2022

Order under Section 99(1) r/w 99(7) of IBC,2016

IN THE MATTER OF:

Anil Kashi Drolia RP in the Matter of Biren Kumar Palani

.....Applicant

.....Respondent

Order delivered on: 03/07/2024

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.

-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/530(AHM)2024
With
CP(IB) No. 338 / NCLT / AHM / 2022**

(IA filed under Section 99 of the Insolvency & Bankruptcy Code, 2016) and Application filed under section 95 of the Insolvency and Bankruptcy Code, 2016.

In the Matter of:

Mr. Anil Kashi Drolia
RP of Mr. Birenkumar Palani,
B-906, Park Side 1, Raheja,
Estate, Kulupwadi, Borivali,
Near National Park, Mumbai,
Suburban, Maharashtra-400066.

...Resolution Professional

And in the matter of:

Bank of Maharashtra
Stressed Assets Management Branch,
4th Floor, Jana Mangal,
Mumbai Samachar Marg,
Fort, Mumbai-400001

...Financial Creditor

Versus

Mr. Birenkumar Palani
211, Nimus Centre, Off Link Road,
Andheri (West), Mumbai-400053
Also At:
Flat No. 601, Jewel Mahal Co-Operative Housing
Society Ltd., Seven Bunglow,
Andheri-West-400061

... Personal Guarantor

Order pronounced on 03.07.2024

CORAM:

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

**DR. V. G. VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)**

Present:

For the Applicant/RP : Mr. Kamil Lokhandwala, Adv. a.w Mr. Manoj
Kumar Mishra, Adv.
For the PG : Mr. Jaydeep Palani, for Biren Kumar Palani,
Party in Person.
For the FC : Ms. Heena Jain, Adv. For Raina Birla, Adv.

JUDGEMENT

1. Bank of Maharashtra (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 to initiate Insolvency Resolution Process against Mr. Birenkumar Palani, the Personal Guarantor of the Corporate Debtor namely DNP Foods Limited for default of an amount of Rs. 14,24,84,610.75/-. Date of Default as mentioned in the

application is 29.09.2017.

2. On receipt of loan application from the Corporate Debtor, the financial creditor had sanctioned various credit facilities from the year 2010 and later in 2012 was renewed to 16 crore. As per sanctioned letter dated 22.03.2016 credit facilities were sanctioned to the Corporate Debtor to the tune of Rs. 12 crore. As a security for the repayment of the said credit facilities with interest, cost, charges and other expenses payable in respect of credit facilities, respondent executed personal Deed of Guarantee in favour of the applicant for securing various credit facilities to Corporate Debtor on 23.06.2016.
3. Applicant/bank had originally sanctioned the credit facilities to the tune of Rs. 16 crore to the corporate debtor in view of which the corporate debtor had executed facility documents in favor of applicant/bank i.e Memorandum of Record of Additional Equitable Mortgage by the corporate debtor dated 30.03.2012 and Mortgagors letter of confirmation of Equitable Mortgage dated 31.03.2012.
4. Due to non-payment of amount by the corporate debtor and the personal guarantor, the financial creditor has filed this

application for initiation of Insolvency Resolution Process against the Guarantor under Section 95(1) of IBC, 2016. As per the applicant, the Demand Notice under section 13(2) of SARFAESI Act was issued upon the corporate debtor and the personal guarantor on 10.01.2018 by the applicant/bank. Demand notice in Form-B was issued to the Respondent/Personal Guarantor on 17.11.2022 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. According to the applicant the said notice amounts to invocation of personal guarantee. The account of the corporate debtor was classified as Non Performing Assets on 28.12.2017 and the date of default mentioned in the application is of 29.09.2017.

5. Vide order dated 16.01.2024 the Resolution Professional, Mr. Anil Kashi Drolia bearing IBBI registration No. IBBI/IPA-001/IP-P-02327/2020-2021/13482 appointed to carry out Insolvency Resolution Process of the Personal Guarantor as per section 97(3) of IBC, 2016.

6. The Resolution Professional has filed the report on 01.04.2024 recommending admission of the application filed under section 95 of IBC, 2016. The Report of RP states that the RP had not received any evidence of repayment of the debt claimed in Sec.95 petition from Mr. Birenkumar Palani. Further, RP vide latter dated 19.01.2024 intimate to the applicant/bank about his appointment and sought certain documents/information, which the applicant/bank provided the same vide E-mail dated 23.01.2024. Resolution Professional also intimated to the Personal Guarantor about his appointment and sought certain documents/information on 19.01.2024. In turn the Personal guarantor replied vide E mail dated 23.01.2024 attaching with it the PDF file, raising various objections to the present petition but no payment was made by the personal guarantor nor produced any proof of payment of debt on record.

7. The respondent/personal guarantor has filed affidavit in reply raising the following objections:

- 1) Personal guarantor state that the present application is barred by limitation as it was filed after delay of 5 days on 05.12.2022. Personal Guarantor further states that

applicant/bank has already invoked recovery proceedings under SARFAESI Act before DRT Mumbai. Despite this bank has deliberately invoked the provisions of IBC, 2016.

- 2) The bank has provided conflicting default dates, namely 28.12.2017 and 29.09.2017, in two consecutive demand notices dated 22.07.2022 and 17.11.2022 without superseding the previous one. No such notice was served upon the corporate debtor. The bank had the opportunity to initiate CIRP proceedings against the CD, however the bank deliberately chose personal insolvency resolution process seemingly to twist the arm of PG.
- 3) Applicant/bank committed various torts, acted in breach of terms of sanction letter/ agreements. Applicant has wrongly classified the account of CD as NPA without following the RBI guidelines. Vide letter dated 14.12.2017 CD requested the applicant for restructuring of account, however bank remained silent.
- 4) The corporate debtor and the personal guarantor opposed the bank's unlawful and arbitrary practice. In response dated 12.03.2018 to the Demand Notice under section

13(2) of SARFAESI Act, the CD and PG explained to the Bank the unlawful and arbitrary practice carried out by the bank officers.

- 5) Sanction letter dated 23.06.2016 is a void document. The CD and the PG applied for review/renewal of their limit vide letter dated 20.05.2015. The Head Office of applicant granted the facility on 23.06.2016 (after delay of 300 days). Bank issued sanction letter dated 29.09.2017 without the consent of PG or CD.
- 6) The Respondent is a common director in Joy International India Private Limited, a sister company of CD, the applicant bank lost export document/negotiable instrument resulting a significant loss. RBI has also took strict action against the applicant. Respondent filed consumer complaint against the bank for recovery of damages which was rejected and now it is pending for adjudication before the Hon'ble Supreme Court.
- 7) In addition to above objections the respondent/personal guarantor has raised various objections to dismiss the present application and against the bank officials for non

compliance of RBI guidelines etc. PG has also relied on various judgments of various forums in support of his contentions. PG has also filed reply to the delayed written submission filed by applicant.

8. Further, Respondent also filed reply to the report of Resolution Professional and raised following objection:

1) RP submitted his report on 28.03.2024, 62 days after the stipulated time period. RP prepared the report without application of mind not only this but RP failed to address any of the meticulously outlined objections raised by the respondent in the letter dated 23.01.2024 regarding the numerous irregularities and various legal violation committed by the Financial Creditor.

9. Heard the Ld. Counsel for the applicant, the Resolution Professional and the personal guarantor in person.

10. As far as the Limitation is concerned, the applicant/bank has invoked the personal guarantee by issuing Notice under Rule 7(1) in Form-B on 17.11.2022 and the date of default is mentioned as 29.09.2017, Account of the corporate debtor was classified as NPA on 28.12.2017. In the petition, the applicant/

Bank of Maharashtra mentioned a deed of guarantee stated to have been executed on 23.06.2016 (date of NPA is 28.12.2017) which is not enclosed. As the original guarantee deed was 23.06.2016 is enclosed which was invoked on 10.01.2018. Whereas the present application is E-filed on 05.12.2022 which is much beyond the period of three years from the date of invocation of guarantee. Prima-facie the present application is barred by limitation. However, the applicant seems to have an application filed before DRT on 26.02.2019 which was admitted on 01.03.2022 against the Corporate Debtor and the personal guarantor which is yet to be adjudicated. It also appears that there are no CIRP proceedings initiated against the Corporate Debtor before the NCLT. The respondent (who appeared in person) stated that the application is not maintainable as it was after a delay of 5 days, The contentions submitted by the applicant financial creditor does not satisfactory address the issue of delay in filing the application before NCLT as it gets barred by limitation for filing under section 238A of IBC,2016.

11. The Resolution Professional after examination of material available on record recommends that present application under

section 95(1) of IBC filed by the Applicant/Bank may be admitted against Mr. Birenkumar Palani.

12. Based on the documents submitted, oral hearings and the inconsistencies observed in the documents submitted by applicant, the response of the respondent who appeared in person, we are not in position to admit this application due to limitation as it is time barred.
13. Hence, we pass the following order.

ORDER

- i. IA 530 of 2024 in CP(IB) 338 of 2022 is rejected.

-Sd-

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

-Sd-

CHITRA HANKARE
MEMBER (JUDICIAL)