

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.305

IA/777(AHM)2024 in C.P.(IB)/106(AHM)2024

Order under Section 100 of IBC, 2016

IN THE MATTER OF:

Nilesh Rajendra Kothari RP in the matter of PG Madhuben
Gandalal Patel

.....Applicant

.....Respondent

Order delivered on: 25/07/2024

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)

IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD (COURT - II)

IA No. 777 / NCLT / AHM / 2024

IN

CP(IB) No. 106 / 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]

Nilesh Rajendra Kothari (RP) of

Madhuben Gandlal Patel

...Resolution Professional

IN THE MATTER OF:

Madhuben Gandlal Patel

...Applicant

Versus

Bank of Baroda

...Respondent

Order pronounced on 25.07.2024

Coram:

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

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

MEMO OF PARTIES

Nilesh Rajendra Kothari (RP)

Having address at: A703, Iskon Riverside,
Near Shelaleikh Society, Shahibaug,
Ahmedabad, Gujarat-380004

...Resolution Professional

IN THE MATTER OF:

Madhuben Gandadal Patel,
73,B, Parth Bungalows,
Patan Chanasma Highway Road,
Patan-384265

...Applicant

Versus

Bank of Baroda
With its registered office at
Market Yard Branch,
Maruti Business Park,
Opp. DSP Office, Patan - 384265

...Respondent

Present:

For the Applicant/RP : Ms. Mily Ghoshal, Adv.
For the Respondent : Ms. Nalini Lodha, Adv. for BoB
For PG : Ms. Riddhi Vadgama, Adv. for Mr.
Ritesh Patadia

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. Subha Proteins Pvt. Ltd. (hereinafter referred to as Corporate Debtor) has obtained various Cash Credit Facility from Bank of Baroda/Respondent. The applicant is one of the guarantors for the credit facilities availed by the Corporate Debtor. The date of default of payment is 01.08.2020. Respondent has issued demand notice u/s. 13(2) of SARFAESI Act against the Corporate Debtor as well as Applicant on 01.06.2020.
3. On presentation of the application by the Applicant, this Authority vide order dated 11.03.2024 has appointed the Resolution Professional viz., Mr. Nilesh Rajendra Kothari having Registration No. IBBI/IPA-002/IP-N01225/2022-2023/14132 & directed RP to file report under Section 99 of IBC, 2016, which has been filed by him through an IA No.

779 of 2024, recommending the admission of the application filed under section 94 of IBC, 2016.

4. Respondent in his reply submitted that the corporate debtor was classified as NPA on 31.03.2020 and respondent invoked the provisions of the SARFAESI Act, 2002 including invoking of personal guarantee by the applicant and other personal guarantors vide demand notice dated 01.06.2020. Respondent further submitted that it has taken over the possession u/s. 13(4) of the SARFAESI Act, 2002 dated 25.08.2020 and has obtained order u/s 14 of the SARFAESI Act, 2002 from Ld. District Magistrate, Patan dated 09.03.2022. In pursuance of the order dated 09.03.2022, Ld. Mamlatdar and Executive Magistrate, Patan City issued a Notice dated 22.12.2023 for taking physical possession of the secured asset belonging to personal guarantors on 16.01.2024. Upon receipt of the said notice, a consent letters dated 12.01.2024 through corporate debtor and also Petitioners and other personal guarantors, the mortgagors was submitted to the respondent bank agreeing therein to hand over the physical possession on 15.01.2024. It further submitted that the respondent bank put the secured asset to

auction and published e-auction sale notice dated 29.01.2024 for the auction of the secured asset on 06.03.2024.

5. Respondent submitted that the present application is only preferred to frustrate the legal remedy availed by the respondent under SARFAESI Act and to avoid the auctions of the mortgaged property handed over by the personal guarantors including the present applicant.
6. We have heard the learned Counsel for both the parties and perused the documents on record. We have also gone through the report dated 03.05.2024 filed by the RP.
7. After passing the order by Learned District Magistrate, Patan on 09.03.2022 as well as after the notice dated 22.12.2023 issued by Ld. Mamlatdar and Executive Magistrate, Patan City, to take physical possession of the secured asset fixing on 16.01.2024, a consent letter dated 12.01.2024 was submitted by the corporate debtor, applicant along with other personal guarantors to the respondent agreeing therein to hand over the physical possession on 15.01.2024. Thereafter, the respondent bank put the secured asset to auction and published e-auction sale notice dated 31.01.2024 for the

auction scheduled on 06.03.2023 and this application was filed on 29.02.2024.

8. It is clearly established that the present application was filed by the personal guarantor to thwart the recovery proceedings initiated by the sole Secured Financial Creditor and to frustrate other proceedings under SARFAESI Act. It appears to us that the sole intention of the debtor herein is to enjoy the moratorium as contemplated under Section 96 of the IBC, 2016 which commences from the date the application.
9. It will be a travesty of justice if we allow the application i.e. CP(IB) No. 106 of 2024 and the consequential report of the RP filed in IA 777 of 2024.
10. Hence, we pass the following order:

ORDER

CP(IB) No.106 of 2024 along with IA No.777 of 2024 is rejected.

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

-sd-
CHITRA HANKARE
MEMBER (JUDICIAL)