

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.3
C.P. (IB)/240(AHM)2024

Proceedings under Section 95 IBC

IN THE MATTER OF:

Canara Bank

.....Applicant

V/s

Ashit Umashankar Agarwal

.....Respondent

Order delivered on: 22/07/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)

Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

PRESENT:

For the Applicant/Bank : Mr. K S Sunil Kumar, Adv.

For the Respondent :

ORDER

1. This application has been filed under Section 95(1) of IBC 2016 read with rule 7(2) of Insolvency and Bankruptcy (Adjudicating Authority For Insolvency Resolution process for Personal Guarantor to the Corporate Debtor) Rule 2019 by the Financial Creditor against the respondent for recovery of amount of debt due to the Corporate Debtor, guaranteed by the respondent Personal Guarantor in favour of the applicant.

2. The application and the relevant documents have been perused. It is observed that:

a) The date of the guarantee is mentioned as 30.10.2013 & 19.09.2013 which was renewed on 07.11.2015. The date of NPA is mentioned as 30 August 2016.

b) The date of invocation of the guarantee & the date of issue of notice under SARFESI Act is mentioned as 02.12.2016.

c) The date of filing before the Hon'ble DRT Ahmedabad is mentioned as on 12.04.2018 O.A. No. 255 of 2018 which is pending adjudication wherein the Personal guarantor is also made a party.

d) Date of issue of fresh demand notice to the Personal Guarantor is Mentioned as 19.02.2024 (as per Form B) under IBC 2016.

f) Date of filing this application is 26.06.2024. The applicant has already preferred within the period of limitation an application before the DRT for recovery of its dues, which is pending adjudication. Filing of this application, provisions under Sec 95 of IBC 2016 was enforced with effect from 1.12.2019 as far as it relates to corporate debtors and their personal guarantors, but the applicant did not consider it appropriate to file the application before this forum in time. It is therefore considered to be not in compliance with Sec 238 A of IBC 2016 as it is beyond the period of limitation, irrespective of any parallel proceedings before DRT for recovery.

In view of the same, the application filed is time barred and hence dismissed.

-Sd-

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

-Sd-

**CHITRA HANKARE
MEMBER (JUDICIAL)**