

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No. 301
C.P.(IB)/204(AHM)2021

Order under Section 94 IBC, 2016

In The Matter Of:

Savitaben Gordhanbhai Thumar
(Personal Gaurantor)

.....Applicant

V/s

.....Respondent

Premraj Ramratan Laddha
Liquidatorof Corporate Debtor

Order delivered on: 08/03/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, AHMEDABAD**

CP/IB/204/AHM/2021

*Filed under Section 94 of the Insolvency & Bankruptcy Code,
2016*

*In the matter of **Mrs. Savitaben Gordhanbhai Thumar***

Mrs. Savitaben Gordhanbhai Thumar
Address: 4th Floor, Subham Apartment,
4-Narmada Park Corner,
Vidyakunj Society Main Road,
Rajkot, Gujarat-360005.

... Applicant

VERSUS

- 1. Premraj Ramratan Laddha,**
RP/Liquidator of Corporate Debtor
304, Abhijit-3, Above Pantaloon,
Mithakhali-Law Garden road,
Ellisbridge, Ahmadabad.

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

...Respondents

Order pronounced on : 08.03.2024

CORAM:

Mr. SHAMMI KHAN, MEMBER (JUDICIAL)
Mr. SAMEER KAKAR, MEMBER (TECHNICAL)

APPEARANCE:

For the Applicant/PG : Mr. Rajesh Bohra, Advocate
For the Respondent/SBI : Ms. Noopur Dalal, Advocate

ORDER

1. This application has been filed under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 by the Applicant/Personal Guarantor to initiate proceeding in terms of in terms of Rule 6 of the IB (AAA for IRP for PGCD) Rules, 2019.
2. It is stated that the Corporate Debtor namely, Micro Forge (India) Ltd. was dissolved vide order dated 12.02.2020 passed in I.A. No.375 of 2019 in CP (IB) No.22/10/NCLT/AHM/2017.
3. The present application is filed by Mrs. Savitaben Gordhanbhai Thumar who is stated to be a guarantor to the Corporate Debtor- Micro Forge (India) Ltd. On perusal of the application it is observed that, the Deed of Guarantee is not annexed to the present application.

4. However, the Applicant has filed copy of the Notice which refers to Demand Notice dated 27.11.2009 issued by the Respondent/State Bank of India U/s 13(2) of SARFAESI Act, 2002 and Possession Notice dated 04.12.2010 issued U/s 13(4) of SARFAESI Act, 2002 read with Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 which are annexed as **Annexure-4** with the application.
5. On perusal of these notices issued by the Respondent/State Bank of India, it is observed that said notices are issued only for the purpose of enforcing security interest created by Corporate Debtor and not to invoke any Personal Guarantee.
6. The learned Counsel for the Applicant may be right in his submission that by virtue of Demand Notice dated 27.11.2009 as well as and Possession Notice dated 04.12.2010 issued U/s 13(2) & 13(4) of the SARFAESI Act, 2002, the Applicant was also asked to make the payment of dues. But there is neither anything on record to show that any other notice has been issued

by Respondent Bank to the Applicant in the capacity of Personal Guarantor to invoke the Personal Guarantee nor any steps have been taken by the Respondent Bank to recover the dues from the Applicant by sale of her personal assets.

7. The Hon'ble NCLAT in its decision in the matter of ***Amanjyot Singh Vs. Navneet Kumar Jain & Ors.*** (Company Appeal (AT) (Insolvency) No. 961 of 2022) has upheld the view taken by NCLT, Delhi dismissing an application filed by the Appellant under section 94. The relevant para of the said order is reproduced below:-

"7. Notice under Section 13, sub-section (2) is issued by the Bank for enforcing the security interest. Section 13, sub-section (1) and (2) of the SARFAESI Act is as follows:-

"13. Enforcement of security interest.--(1) *Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.*

(2) *Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).*

Provided that—

- (i) the requirement of classification of secured debt as non-performing asset under this subsection shall not apply to a borrower who has raised funds through issue of debt securities; and*
- (ii) in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of Company Appeal (AT) (Insolvency) No. 961 of 2022 6 security documents executed in favour of the debenture trustee."*

8. *The definition of 'borrower' given in SARFAESI Act under Section-2 (f) is wide enough to include a*

Guarantor also. Section 13 is for enforcement of security interest. The borrower within the meaning of Section 13, sub-section (2) shall obviously include the Guarantor also.

12. *We, thus, are satisfied that foundation which was laid down by the Appellant for initiating the CIRP against the Appellant, was not sufficient to admit Section 94 Application and initiate the CIRP against the Appellant. We may further notice that Section 10 Application against the Corporate Debtor has already been admitted and CIRP against the Corporate Debtor had been initiated. The case taken up by the Bank being categorical and clear that **no steps have been taken by the Bank against the Appellant, there is no cause for the Appellant to pray for initiation of CIRP against the Appellant – the Personal Guarantor.** We, thus, do not find any good ground to interfere with the impugned order in this Appeal. The Appeal is accordingly dismissed. No costs.”*

8. The Applicant through additional affidavit dated 19.02.2024 has also attached a copy of Notice dated 02.06.2008 issued by DRT, Ahmedabad as well as O.A. No.61 of 2008 filed by application filed by State Bank of India under section 19 of the Recovery of Debts and Bankruptcy Insolvency Resolution and

Bankruptcy of Individuals and Partnership Firms Act, 1993 against Principal Borrower and other Guarantors. However, mere filing of such application for recovery against Principal Borrower and other Guarantors under section 19 of RDB Act does not amount to invocation of guarantee. As it is the case of the Applicant that the said O.A. is pending adjudication of debt and liability against the Applicant and till date no recovery certificate is issued by Debt Recovery Tribunal, Ahmedabad.

9. In the present case no document is annexed with the application which suggests that guarantee is invoked by the Respondent Bank. Therefore, by looking at the facts of the present case and relying on the decision of Hon'ble NCLAT *supra* we are of the view that the present application is filed without any cause and is premature. Hence, **CP/IB/204/AHM/2021** stands dismissed with liberty.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)
Arati-LRA

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)