

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.303

IA/1455(AHM)2023 in CP(IB)/140(AHM)2022

Order under Section Rule 11 of NCLT Rules, 2016

IN THE MATTER OF:

Rathin Amishbhai Majmudar RP of Personal Guarantor

.....Applicant

Vs

INDIAN BANK

.....Respondent

(ERSTWHILE ALLAHABAD BANK) & Anr.

Order delivered on: 17/05/2024

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/1455/(AHM)2023

With

CP(IB) No. 140 / 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.Rathin Amishbhai Majmudar
RP of Mr. Narendra Patel,
604, Scarlet Gateway,
Opp. Rivera Antilia, Corporate Road,
Near Prahladnagar Garden,
Ahmedabad-380015

....Applicant/Resolution Professional

Versus

Indian Bank (Erstwhile Allahabad Bank)
Having its Branch Office at
Stressed Asset Management (SAM) Branch,
2nd Floor, Deshna Chambers,
B/h. Kadva Patidar Wadi,
Usmanpura Cross Roads,
Opp. AMC Water Tank, Ashram Road,
Ahmedabad.

... Financial Creditor No.1

Mr. Narendra Patel
Flat No.302, Harsh Complex,
Old Padra Road,
Vadodara-390020.

... Personal Guarantor No.2

Order pronounced on 17.05.2024

CORAM:

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

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

Present:

For the Applicant/RP : Mr. Ravi Pahwa, Adv a.w Ms. Pragati Bansal,
Adv.
For the Respondent : Mr. Harmish Shah, Adv.
For the FC : Mr. Ritesh Patadia, Adv.

JUDGEMENT

1. Indian Bank (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. Narendra Patel, the Personal Guarantor of the Corporate Debtor namely Maktel Power Limited for default of an amount of Rs. 22,94,45,298.64/-.
2. On receipt of loan application from the Corporate Debtor, the Financial Creditor had sanctioned the various credit facilities, fund

based and non fund based, from time to time. The limits sanctioned under the said credit facilities were renewed or enhanced from time to time by the financial creditor. At the request of corporate debtor Sanction Letter was issued by the financial Creditor 16.04.2015. The amount due to the Corporate Debtor was Rs. 22,94,45,298.64/-/- and date of default as mentioned in the application is 31.05.2018. The Corporate Debtor was brought under CIRP under Section 9 of the IBC vide order dated 11.09.2020. The applicant bank has granted credit facilities to the Corporate Debtor to which the respondent stood as a personal guarantor. As a security for the repayment of the said credit facilities with interest, costs, charges and other expenses payable in respect of credit facilities, the various deed of Guarantee was executed on 06.09.2007,19.08.2008, 25.04.2009, 21.01.2011 and the last deed of guarantee was executed on 19.12.2011.

3. In the year of 2019, one of the operation creditor had filed an application for initiation of corporate Insolvency Resolution process against the corporate debtor being CP(IB) 482 of 2019 under Section 9 of the Insolvency and Bankruptcy Code, 2016 before the Hon'ble Adjudicating Authority at NCLT Ahmedabad which came to be

admitted vide and order dated 11.09.2020. Presently, under liquidation since, 05.05.2021. Applicant filed an Original Application No. 1252 of 2019 before the Debt Recovery Tribunal, Ahmedabad.

4. Due to non-payment of the amount by the Corporate Debtor, the Financial Creditor has filed this application for initiation of Insolvency Resolution Process against the Guarantor under Section 95(1) of IBC, 2016. The Financial Creditor invoked the personal guarantee and issued demand notice to the Respondent on 09.11.2020 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.
5. Vide order dated 06.12.2023 the Resolution Profession, as suggested by the Financial Creditors, Mr. Rathin Majmudar bearing registration No. IBBI/IPA-001/IP-P-02576/2021-2022/13928 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 20.12.2023 recommending not to admit 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. Narendra Patel. Further, RP vide latter dated 09.12.2023 intimated to PG about his appointment and requested PG to submit the proof of payment of debt. In turn the respondent/PG replied to the letter of RP on 15.12.2023 and stated that applicant bank has released his personal guarantee by letter of 12.11.2013 thereafter bank has sanctioned/enhanced loan on several occasion specifically dated 16.04.2015 and 17.05.2017, which has never signed by him. Further, RP vide Email dated 13.12.2023 requested financial creditor/bank to provide certain detail to which financial creditor/bank provide the same vide E mail dated 14.12.2023. RP vide Email dated 15.12.2023 requested Bank to submit clarification on the Email received from PG, the said letter has not been replied by the Financial Creditor/Bank.

7. The Respondent/Personal Guarantor filed affidavit in reply on 12.12.2023 and raised the following objections:
 - I. The Respondent at present is not a personal guarantor, the applicant bank has released the personal guarantee of the respondent and the same has been confirmed by the applicant bank vide its latter dated 12.11.2013.

- II. The applicant bank has given no objection certificate of the mortgaged property situated at Shade No.C-1/B-853 at GIDC Waghodia in the name of Star Electromac Industries. The said property was released by deed of release dated 07.06.2016.
 - III. The applicant bank has sanctioned a loan amounting to Rs. 21 crore vide sanction letter dated 16.04.2015. In the said sanction letter nowhere the name of present respondent were shown as a personal guarantor. The applicant bank has not produced any single documents showing that there is signature of the present respondent in guarantee agreement executed on the basis of sanction letter dated 16.04.2015.
 - IV. Further sanction letter dated 17.05.2017 for renewal of credit facilities, nowhere the name of present respondent is mentioned as a personal guarantor. The respondent/PG have not signed any guarantee agreement after the release from the personal guarantee with effect from 12.11.2013. Also the petition is not filed within the period of limitation.
8. Heard the Ld. Counsel for the applicant and the respondent.
 9. Amount of default is different in the present application and demand notice. Amount of default as mentioned in application is Rs. 22,94,45,298.64/- whereas the default amount mention in the

notice under Rule 7(1) is Rs. 26,66,67,191.42/-. Amount of default must be the same for the same cause of action whereas in the present case the default amount is different, hence, on this sole ground the petition is not maintainable.

10. As mentioned in the application Demand Notice under Rule 7(1) was issued by the applicant bank on 09.11.2020 but there is no delivery proof annexed with the present application. There is an ambiguity with respect to service of notice that whether the respondent/PG has received the notice or not.
11. Applicant/Bank has not produced on record along with the application any sanction letter dated 16.04.2015 and 17.05.2017 issued by them. Further, applicant has not brought on record the Release Deed dated 07.06.2016. It seems that bank vide letter dated 12.11.2013 released the personal guarantee of Mr. Narendra Patel. All these facts are not brought on record by the applicant/bank. Therefore the present application is not maintainable.
12. The Resolution Professional after examination of material available of record also recommend that present application under section 95(1) of IBC filed by the creditor Indian Bank may not be admitted as Mr. Narendra Patel released from the personal guarantee vide letter

issued by the Applicant/Bank on 12.11.2013. RP further states that sanction letter dated 16.04.2015 issued by the Indian Bank wherein the name of respondent herein is not mentioned as personal guarantor. RP further states that the OA filed before DRT, the interim order against Mr. Narendra Patel still operates and has not been vacated.

13. Hence, we pass the following order.

ORDER

i. IA/1455(AHM)2023 with CP(IB)/140(AHM)2022 is rejected.

-Sd-

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

-Sd-

CHITRA HANKARE
MEMBER (JUDICIAL)