

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.307

IA/1474(AHM)2023 in CP(IB)/100(AHM)2023

Order under Section 99, 60(5) IBC r.w Rule 11 of NCLT Rules, 2016

IN THE MATTER OF:

Nimai Gautam Shah RP of Personal Guarantor

.....Applicant

.....Respondent

Order delivered on: 10/05/2024

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/1474/(AHM)2023

With

CP(IB) No. 100 / NCLT / AHM / 2023

(Application filed under Section 99,60(5) of the Insolvency & Bankruptcy Code, 2016) and Petition filed under section 95 of the Insolvency and Bankruptcy Code, 2016.

In the Matter of:

Nimai Gautam Shah
605,606,607, Silver Oaks,
Nr. Mahalaxmi Char Rasta,
Paldi, Ahmedabad-380007

...Applicant/Resolution Professional

And in the matter of:

State Bank of India
Stressed Assets Management Branch,
2nd Floor, Paramsiddhi Complex,
Opp. V. S. Hospital, Ellisbridge,
Ahmedabad-380006, Gujarat

... Financial Creditor

Versus

Mr. Jayesh Tribhovandas Ganatra
A/20, Maruti Row House,
Subhash Chowk,
Memnagar, Ahmedabad-380052

... Personal Guarantor

Order pronounced on 10.05.2024

CORAM:

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

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

Present:

For the Applicant/FC : Ms. M.A.Gogia, Adv
For RP : Mr. Kamil Lokhandwala, Adv
For the PG : Mr. Chaitanya Patel, Adv

JUDGEMENT

1. State Bank of India (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. Jayesh Tribhovandas Ganatra, the Personal Guarantor of the Corporate Debtor namely Shri Jalaram Rice Industries Private Limited for default of an amount of Rs. 318,70,07,009.00/-.
2. On receipt of loan application from the Corporate Debtor, the Financial Creditor had sanctioned the various credit facilities 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 on 27.07.2012. The amount due to the Corporate Debtor was Rs. 318,70,07,009.00/- and date of default as mentioned in the application is 27.09.2014. The Corporate Debtor was brought under CIRP under Section 9 of the IBC vide order dated 12.04.2019 and presently under liquidation since 19.09.2019. 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 deed of Guarantee was executed on 18.11.2010, Deed of guarantee for overall limit was executed on 30.07.2012 another deed of guarantee was executed on 23.10.2012 and last deed of guarantee was executed on 07.04.2014.

3. Working capital consortium agreement was executed on 18.11.2010 between bank consortium and corporate debtor. On the same day Joint Deed of Hypothecation and Term loan agreement was executed. First Supplemental Working Capital Consortium Agreement was executed on 02.12.2011. Agreement for Hypothecation of Goods and Assets was executed on 31.07.2012.

Various other documents, deeds and agreement etc. was executed from time to time.

4. In the year of 2018, one of the operation creditor had filed an application for initiation of corporate Insolvency Resolution process against the corporate debtor being CP(IB) 616 of 2018 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 12.04.2019. Presently, under liquidation since, 19.09.2019. Further, Notice under Section 13(2) of the SARFAESI Act, 2002 was issued on 09.04.2015. An Original Application No. 207 of 2015 was filed before the Debt Recovery Tribunal, Ahmedabad.
5. 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 10.05.2022 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.
6. Vide order dated 11.12.2023 the Resolution Profession, as suggested

by the Financial Creditors, Mr. Nimai Guatam Shah bearing registration No. IBBI/IPA-001/IP-P00154/2017-2018/10323 appointed to carry out Insolvency Resolution Process of the Personal Guarantor as per section 97(3) of IBC, 2016

7. The Resolution Professional has filed the report on 27.12.2023 recommending the 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. Jayesh Tribhovandas Ganatra. Further, RP has asked the bank to provide the present whereabouts or the contact number of PG. Bank provided various addresses but notices sent to the PG are returned undelivered. Then RP used his personal sources and contacted to PG and had a meeting with him and in that meeting the PG informed that all the personal immovable properties as mortgaged with bank had already been sold by bank further stated that as on date he does not own any immovable property, bank account, and vehicle, jewellery or any valuable assets. RP had neither received any document whereby the Personal Guarantee agreement dated 18.11.2010 (or subsequent agreement) was cancelled by both the parties nor received any order of court or any other forum whereby the personal guarantee agreement dated

18.11.2010 (or any subsequent agreement) was cancelled or set aside.

8. The Respondent/Personal Guarantor filed affidavit on 19.04.2024 and states that State Bank of India and consortium has sold all the assets of the personal guarantor under SARFAESI Act and presently there are no personal assets including any immovable property, bank accounts, vehicles, jewelry and other personal belongings. Personal Guarantor further submitted that since there are no estates of the respondent so he does not object the preset application subject to adjudication by the Hon'ble Tribunal with regard to the limitation of the present application.
9. The RP has recommended to initiate the Insolvency Resolution Process against the Personal Guarantor. The RP has submitted the copies of documents and also details of assets of respondent. It is observed from the record that the respondent had not brought on record any document denying or disputing the invocation of his Personal Guarantee. There is no evidence given by the respondent to show that he has paid the debt or his Personal Guarantee agreement is cancelled.
10. Heard the Ld. Counsel for the applicant and the respondent.
11. Based on the documents and submissions we observe that the loan

sanctioned by SBI and BOB as a consortium to the Corporate Debtor was guaranteed by the respondent on deed of Guarantee was executed on 18.11.2010, Deed of guarantee for overall limit was executed on 30.07.2012. Another deed of guarantee was executed on 23.10.2012 and last deed of guarantee was executed on 07.04.2014. The loan was defaulted on 27.09.2014. The applicant issued a demand notice on 14.06.2018 for which there was no satisfactory reply and the amount was not repaid by the respondent. The applicant moved the DRT under SARFESI Act and the orders were passed decreeing the amount on 19.03.2018. Considering these statements and the date on which this application is filed i.e 25.02.2023 is barred by limitation. Hon'ble Supreme Court in Suo Moto WP (Civil) No. 3 of 2022 in Re: Cognizance for Extension of Limitation held that the period i.e 15.03.2020 to 28.02.2022 is excluded for calculating the period of limitation. In view of the same we pass following order.

ORDER

I. IA/1474(AHM)2023 in CP(IB)/100(AHM)2023 is rejected.

-Sd-

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

-Sd-

CHITRA HANKARE
MEMBER (JUDICIAL)

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