

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

39. C.P. (IB)/265(MB)2024

CORAM:

SHRI ANIL RAJ CHELLAN
HON'BLE MEMBER (T)

SHRI KULDIP KUMAR KAREER
HON'BLE MEMBER (J)

**ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 28.06.2024**

NAME OF THE PARTIES:- Pravin Kumar Narayan Prajapati

Section: U/s 94(1) of Insolvency and Bankruptcy Code, 2016

ORDER

C.P.(IB)/265(MB)2024: - Adv. Manoj Kumar Mishra appeared for the Applicant.

1. The present Petition has been filed under Section 94 of the Insolvency and Bankruptcy Code, 2016 in respect of the credit facilities sanctioned to the Corporate Debtor i.e. Sulabh Pharmaceutical Private Limited by Andhra Bank now Union Bank of India, the Financial Creditor to the Personal Guarantor.
2. We have heard the Counsel for the Petitioner and have gone through the record.
3. This Petition has been filed by the Petitioner/Personal Guarantor under Section 94 of the Insolvency and Bankruptcy Code, 2016 on the averments that the Financial Creditor i.e. Andhra Bank now Union Bank of India sanctioned various credit facilities in favour of M/s Sulabh Pharmaceutical Private Limited i.e. the Principal Borrower/Corporate Debtor. The Petitioner stood as Personal Guarantor for the loan of Rs. 14,32,23,411/- by way of the guarantee deed dated 08.02.2018. A copy of the same is annexed with the additional affidavit filed by the Petitioner/Personal Guarantor. It is submitted that the said guarantee was invoked by the Financial Creditor i.e. Andhra Bank now Union Bank of India

vide notice dated 27.05.2022 which is annexed as Exhibit (C) with the Petition.

4. However, on a perusal of the notice dated 27.05.2022, it transpires that the notice was issued under the SARFAESI Act read with Rule 8 of the Security Interest (Enforcement) Rules, 2002. The notice is addressed to the principal borrower i.e. Sulabh Pharmaceutical Private Limited and its Directors including the Petitioner who also happens to be one of the Personal Guarantors.

5. It has been stated that the Bank had issued a demand notice dated 11.11.2019 under Section 13 (2) of the SARFAESI Act, 2002 which was not complied with, and as a result, the authorised officer of the bank had taken possession of the immovable secured assets under Section 13(4) of the SARFAESI Act read with Rule 8 of the Security Interest (Enforcement) Rules, 2002 and further that the said assets will be sold by holding auction etc. Thus, it is evident from the notice that the guarantee was never invoked by the bank. No other document has been referred to by the Counsel for the Petitioner to show and prove that the guarantee was invoked at any point of time. Therefore, it is evident that the guarantee, in this case, was never invoked. In these circumstances, when the guarantee itself has not been invoked, in our considered view, the Petition under Section 94 of the Insolvency and Bankruptcy Code, 2016 cannot be maintained and is liable to be dismissed. Accordingly, **C.P. (IB) No. 265/2024 is dismissed**. File be closed and consigned to records.

Sd/-
ANIL RAJ CHELLAN
Member (Technical)
ANKIT

Sd/-
KULDIP KUMAR KAREER
Member (Judicial)