

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

45. C.P. (IB)/145(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 14.06.2024**

NAME OF THE PARTIES:- MANOJ ARYA

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

ORDER

1. Counsel, Priyank Jadav appeared for the Petitioner. 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. Turbo Metals Private Limited by the Bank of India, the Applicant to the Personal Guarantor.
2. The Corporate Debtor is a Company incorporated under the provisions of the Companies Act, 1956 and was engaged and involved in the business of manufacturing of re-rollable bars. The Corporate Debtor is having its registered address at Plot No. 5,39/A-7 Village-Kadivili, Taluka Wada, Palghar 421303.
3. The Corporate Debtor had filed a Company Petition under Section 10 of the Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal, Mumbai for the purpose of voluntary initiation of CIRP. The Tribunal was pleased to admit the petition vide its order dated 15 January 2019 and to commence liquidation vide its order dated 12 February 2020.
4. The Applicant submits that he has also received show cause cum demand notice dated 30 November 2011 from Central Excise imposing penalty of Rs.30,00,000/- on the Applicant.

5. The Applicant submits that Office of the Assistant Commissioner of central Goods & Service Tax Division - II, Thane Rural has also issued an order in original No. 03/COM/CD/17-18 dated 03 January 2018 imposing penalty of Rs. 1,00,00,000/- on the Applicant.
6. Hence the Applicant is filing this present petition under Section 94 of the Insolvency and Bankruptcy Code, 2016.
7. From a perusal of the averments made in the application, it transpires that the personal guarantee given by the Applicant in favour of the Bank of India was never invoked nor any invocation notice has been placed on record. The instant Petition under Section 94 of Insolvency and Bankruptcy Code, 2016 has filed on the basis of a show cause notice dated 30.11.2011 issued by the Central Excise imposing a penalty of Rs. 30,00,000/- upon the Applicant. In these circumstances, in our considered view, when the guarantee is not shown to have been invoked by Bank of India at any point of time, the present Petition under Section 94 of Insolvency and Bankruptcy Code, 2016 could not have been filed on the basis of the notice issued by the Central Excise or any other Authority. We are further of the considered view that the present Petition, on the face of it, is not maintainable and seems to have been filed for some ulterior purpose which is nothing but a gross abuse of the process of law. Therefore, we **dismissed** this Petition under Section 94 of Insolvency and Bankruptcy Code, 2016 with a cost of Rs. 1,00,000/- which shall be recovered from the Applicant. File be closed and consigned to records.

Sd/-
ANIL RAJ CHELLAN
Member (Technical)
ANKIT

Sd/-
KULDIP KUMAR KAREER
Member (Judicial)