

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

ITEM No.306

**I.A. No. 364 of 2024 and
C.P.(IB)/46(AHM)2024**

Order under Section 94 IBC

IN THE MATTER OF:

Jamnadas (Jay) Karsandas Ukani
Vs
Union Bank of India

.....Applicant

.....Respondent

Order delivered on 24/04/2024

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 pronouncement of 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**

**I.A. No.364(AHM) 2024
and
CP(IB) No.46/AHM/2024**

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

*In the matter of **Mr. Jamnadas (Jay) Karsandas Ukani***

Mr. Jamnadas (Jay) Karsandas Ukani,
Personal Guarantor of M/s. Vaghasia Ltd.
Vaikunth Palace – 1st Floor,
Akshar Marg, Near Satnam Hospital,
Kalavad Road, Rajkot,
Rajkot Sau Uni Area, Gujarat-360005.

... Applicant/Personal Guarantor

VERSUS

Union Bank of India
Having Correspondence address
Race Course Circle Branch,
Race Course Ring Road,
Opp. Indoor Stadium,
Rajkot-360007.

Order pronounced on 24.04.2024

CORAM:

**SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)**

For the Applicant/IRP : Mr. Ravi Pahwa, Adv
For the Respondent/FC : Mr. Sudhir Mehta, Adv. a.w.
Mr. Virendra Gohel. Adv)

For the PG

: Mr. Mohit Gupta, Adv

ORDER

Per: Bench

1. The Present Application is filed on 15.01.2024 through e-mode under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC, 2016") r/w Rule 6 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtor) Rules, 2019 to initiate the Insolvency Resolution Process (hereinafter referred to as "IR Process") against the Applicant/Debtor who is the Personal Guarantor of **M/s. Vaghasia Limited** for a default amount of **Rs.34,29,65,755/-** in relation to the credit facility extended by the Bank namely the **Union Bank of India**.
2. The brief facts of case are that on 09.04.2007 the Corporate Debtor M/s. Vaghasia Ltd availed Credit Facility of Rs.10,00,00,000/- for Working Capital from Respondent Bank for which the Applicant executed Deed of Guarantee in favour of Respondent Bank. The Credit Facility was enhanced from time to time from

Rs.10,00,00,000/- to Rs.43,00,00,000/- for which the Applicant again executed Deed of Guarantee on 18.12.2007 and 08.07.2008 in favour of Respondent Bank which are annexed as **Annexure-D**.

3. However, after availing the aforesaid Credit Facility, the Corporate Debtor failed to maintain financial discipline as per terms and conditions of the loan agreement due to which loan account became irregular. Despite repeated reminders and persuasion, the Corporate Debtor failed to regularize the loan account. Consequently, the said account of the Corporate Debtor was classified as NPA on 30.06.2010 and recalled by Respondent Bank through Demand Notice dated 17.07.2010 U/s 13(2) of the S.A.R.F.A.E.S.I. Act, 2002 demanding an amount of Rs.22,34,49,874.05 ps. **Annexure-F**.
4. Thereafter, Respondent Bank filed O.A. 183 of 2010 before DRT-II, Ahmedabad against the Corporate Debtor M/s. Vaghasia Limited, the Applicant and others which is still pending for adjudication which is annexed as **Annexure-E**.

5. Hon'ble High Court of Gujarat vide order dated 12.02.2013 in Company Petition No.144 of 2010 ordered for winding-up of the Corporate Debtor M/s. Vaghasia Limited which is annexed as **Annexure-G**.
6. On presentation of the application by the Applicant/Debtor, this Authority vide order dated 29.01.2024 has appointed the Resolution Professional viz., **Mr. Rathin Amishbhai Majumdar**, having Registration No.IBBI/IPA-001/IP-P02576/2021-2022/13928 as IRP to file a report under Section 99 of Insolvency and Bankruptcy Code, 2016 within ten days, which has been filed by IRP through an Affidavit filed on 15.02.2024 under inward No. E-496 recommending the admission of the application filed under section 94 of IBC, 2016. The RP recorded in the prayer part that:

“[A] That this Hon'ble Tribunal may be pleased to allow this application and take the Report dated 12.02.2024 filed by the Applicant-Resolution Professional on record of CP(IB) No.46 of 2024 and pass appropriate orders, in the interest of justice.”

7. It is further stated that the Applicant has placed on record the Demand Notice u/s 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Act, 2002 in the petition Dated 17.07.2010, given by the Union Bank of India.

8. That the Respondent Bank through Mr. Parveen Verma, Chief Manager of the Union Bank of India, submitted in the affidavit-in-reply on 16.04.2024 vide Diary No.D3251.

In Para No.13, it is submitted that:

“.... Under the facts and circumstances of the Case it is prayed that the present application be dismissed in limine on the ground of Limitation alone as explained hereinabove. Additionally, the merit of the case as elaborated in preceding paragraphs may also be considered in the interest of justice and the present application may kindly be rejected and declared ‘non-maintainable’ on legal grounds.”

9. We have heard the learned Counsel for both parties and perused the documents on record. We have also gone through the report dated 15.02.2024 filed by the IRP.

10. On perusal of the notice issued by the Respondent Bank, it is observed that said notice was issued intimating only for the purpose of enforcing security interest created by Corporate Debtor and not to invoke any Personal Guarantee.
11. The learned Counsel for the Applicant may be right in his submission that by virtue of Demand Notice dated 17.07.2010 issued U/s 13(2) 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 his personal assets except secured asset.
12. 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.”

13. The Applicant has also attached a copy of O.A. 183 of 2010 filed by Respondent Bank under section 19 of the Recovery of Debts and Bankruptcy 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.

14. It appears to us that the sole intention of the Applicant/debtor herein is to enjoy the moratorium as contemplated under Section 96 of the IBC, 2016 which commences from the date the application is declared defect-free by the Registry of this Tribunal. The second reason which comes to our mind at this stage is the order under Section 94(1) of the IBC, 2016 was issued by this Tribunal on 15.01.2024. Nearly three months have passed

for further proceedings in the matter and in case the debtor was inclined towards any settlement of his debt with the Secured Financial Creditor, he had enough time to pay by way of restructuring plans, if any. No document has been placed before us by the debtor herein to show that he has taken any effective steps for settling the dues of the Financial Creditor.

15. 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/46/AHM/2024** stands dismissed.
16. In view of the above, **I.A. No.364 of 2024** is also hereby rejected and are disposed of.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

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