

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.302
IA/211(AHM)2024
in
CP(IB)/199(AHM)2022

Order under Section 99 of IBC,2016

IN THE MATTER OF:

Surendra Namchand Shah RP of Hemanshu Jamnadas
Domadia
V/s
Central Bank of India

.....Applicant

.....Respondent

Order delivered on: 24/04/2024

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

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

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CHITRA HANKARE
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT - II)**

CP(IB) No. 199 / NCLT / AHM / 2022

[Under Section 94 of the Insolvency and Bankruptcy Code, 2016 read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019]

IN THE MATTER OF:

Hemanshu Jamnadas Domadia

...Applicant

Order pronounced on 24.04.2024

Coram:

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

**MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)**

MEMO OF PARTIES

Hemanshu Jamnadas Domadia
22, Ketan Apartment Co-operative Society,
Park Colony,
Jamnagar

...Applicant

Present:

For the Applicant : Mr. Nilesh Udernani, Adv.

For the Financial Creditor: Mr. A P Joshi, Adv

For the Liquidator : Mr. Shalabh Dagga

JUDGEMENT

1. The Present Application is filed 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 IRP for Personal Guarantors to Corporate Debtor) Rules, 2019.
2. M/s. Silver Protein Pvt. Ltd. has obtained cash credit facility and term loan from Central Bank of India. Financial Creditor Central Bank of India has issued demand notice u/s. 13(2) of SARFAESI Act against the Corporate Debtor as well as Applicant on 15.07.2015.
3. On presentation of the application by the Applicant/ Personal Guarantor, this Authority vide order dated 12.12.2023 has appointed the Resolution Professional viz., Mr. Surendra Nemchand Shah, having Registration No. IBBI/IPA-001/IP-P-02273/2021-2022/13535 & directed RP to file report under Section 99 of Insolvency and Bankruptcy Code, 2016, which

has been filed by him through an IA No. 211 of 2024 recommending the admission of the application filed under section 94 of IBC, 2016.

4. Respondent submitted that the Applicant has filed the present application under Sec. 94 of the Code, being the personal guarantor of Corporate Debtor-M/s. Silver Protein Pvt. Ltd., which is already under Liquidation Process in C.P. (IB) No. 554 of 2018. Respondent stated that it could not realize a single penny till date in liquidation process from the assets of the corporate debtor, despite every possible efforts made by the concerned Liquidator of the said Corporate debtor. It is also stated that the assets available into liquidation process are of obsolete nature and due to which no bidders are ready to buy the said assets. It is further submitted that up till now six attempts are made for auctioning of the Assets of the Corporate Debtor by the liquidator and the last e-auction in respect of assets of the corporate debtor was conducted on 10.11.2022 with a reserve price of Rs. 44,47,710/- (Rs.44.47 lakhs) but no bids received despite efforts made to get the successful bid. The Respondent/Financial creditor Bank

further submitted that as per admitted claim with Resolution Professional/Liquidator is Rs. 47,79,40,307/- (Rs. 47.79 Crores) plus further interest is still outstanding against the Corporate Debtor.

5. That the Respondent/Financial Secured Creditor Bank submitted that in absence of any resolution of Corporate Debtor or realization of any amount in liquidation, the Respondent/Financial creditor attempted to exercise other remedies available against the personal guarantors/mortgagors, including the present applicant, under the provisions of SARFAESI Act, 2002 and RDB Act, 1993. However, against the measures initiated by the Financial Secured Creditor under the provisions of SARFAESI Act 2002, the present Applicant approached the Hon'ble High Court by way of preferring Writ Petition bearing SCA No. 1224/2023 and the Hon'ble High Court vide Order dated 13/02/2023 pleased to grant Ad-interim relief for a limited period till notice returnable date i.e. 27/02/2023. It further stated that since the Respondent/ Financial Creditor Bank has invoked the remedy against the mortgaged properties of

personal guarantors, to take the physical possession and auction of these mortgaged properties under the provisions of SARFAESI Act, 2002, the present application by personal guarantor came to be filed before this Hon'ble Adjudicating Authority with malafide intention so as to scuttle the recovery measures taken under SARFAESI Act, under the guise of claiming moratorium under the provisions of Code of 2016.

6. The Respondent/Secured Financial Creditor Bank submitted that the Applicant has not disclosed the full and correct particulars in Part-I to Part-II of FORM-A and the Applicant should be directed to produce documentary evidence about holding of his shares in stock market supported by ledger/extract of DEMAT account of the Applicant, evidence/proof about LIC policies, Evidence/proof about Investments in various Mutual Funds, evidence/proof of investment in unlisted companies as well as all income tax returns, evidence/proof of personal financial statements, so as to bring the correct financial position on record of this Hon'ble Tribunal, before admitting the present Application of the Applicant. Respondent further submitted that the Applicant

has disclosed misleading particulars by hiding so many documentary evidence/proofs and suppressed the material facts on record and therefore Applicant has not approached this Hon'ble Tribunal with clean hands, therefore, the Application of the Applicant u/s 94 of the I.B. Code 2016 is not maintainable and deserves to be dismissed in limine without entering into the merits of the Matter.

7. We have heard the learned Counsel for both the parties and perused the documents on record. We have also gone through the report dated 12.12.2023 filed by the RP.
8. Central Bank of India has issued Demand Notice to the guarantor on 15.07.2015. The date of default is shown as 30.06.2015. Thereafter, they have not initiated any proceedings against the guarantor under IBC. When the Demand Notice was issued in the 15.07.2015, the application is e-filed on 17.07.2022 is barred by limitation. The applicant failed to establish how the application is within the period of limitation.
9. Considering the date of default as well as date of demand notice by the respondent, the application is filed after the

limitation period. Hence, the application is barred by limitation.

10. In view of the above, we pass the following order:

ORDER

The CP(IB) 199 of 2022 is rejected.

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

**CHITRA HANKARE
MEMBER (JUDICIAL)**

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