

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.301

IA/265(AHM)2024 in C.P.(IB)/4(AHM)2024

Order under Section 100 of IBC,2016

IN THE MATTER OF:

Jaykumar Pesumal Arlani Resolution Professional PankajApplicant
Chandulal Shah

Order delivered on: 06/05/2024

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 order.

The order is pronounced in open Court vide separate sheet

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

-sd-

CHITRA HANKARE
MEMBER (JUDICIAL)

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

CP(IB) No. 4 / NCLT / AHM / 2024

[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:

Mr. Pankaj Chandulal Shah

...Applicant

Versus

Bank of Maharashtra & Ors.

...Respondents

Order pronounced on 06.05.2024

Coram:

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

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

MEMO OF PARTIES

Mr. Pankaj Chandulal Shah,

Residing at:

Plot No. 48/49/50, Jintan Udhyog Nagar,
Jintan Road, Surendranagar-363001

...Applicant

Versus

1. **Bank of Maharashtra,**
Having Branch Office at
Zonal Office Ahmedabad,
Mavlankar Haveli,
Vasant Chowk, Bhadra,
Ahmedabad-380001
2. **Bank of Baroda,**
Having Branch Office at
Maskati Market Branch,
Bank of Baroda Bldg.,
Saakar Bazar, P.B.No. 1154,
Ahmedabad-380002
3. **Religare Finvest Limited,**
Having office at
1, Shittalvarsha Building,
First Floor, Opp. Manan Auto Link,
Vijay Cross Road, Navrangpura,
Ahmedabad- 380009
4. **IDFC First Bank Limited
(Erstwhile known as 'Capital First
Limited')**
Having office at
KRM Tower, 7th Floor, No. 1,
Harrington Road, Chetpet,
Chennai-600031

5. **Tata Capital Financial Service Limited**
Having office at
TCL Shop No. 11 & 12, Ground Floor,
Devnandan Mega Mall,
Opp. Sanyash Ashram,
Ellisbridge, Ahmedabad
6. **HDFC Bank Limited,**
Having office at
3rd Floor, Shivalik,
Nr. Drive In Cinema, Bodakdev,
Ahmedabad-380052
7. **Office of the Assistant Commissioner
of Income Tax Circle 4(1)(1),
Ahmedabad,**
Having office at
Pratyakshkar Bhawan, Ahmedabad,
B/H. Stock Exchange, Nr. Panjara Pole X
Road, Ambawai, Ahmedabad-380006

...Respondents

Present:

For PG : Mr. Arjun Padhiyar, Adv. a.w.
Mr. Aditya Pandya
For the RP : Mr. Dheeraj Garg, Adv
RP : Mr. Jaykumar Pesumal Arlani
For Bank of Maharashtra : Mr. Raju Kothari, Adv.

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. Heer Tradelink Pvt. Ltd. (hereinafter referred to as Corporate Debtor) has obtained cash credit facility of Rs.10 Crores with the Bank of Maharashtra since 2012. The applicant was a Director of the Corporate Debtor apart from being a guarantor in his personal and individual capacity for the credit facilities availed by the Corporate Debtor. The date of default of payment is 29.06.2014. Bank of Maharashtra has issued demand notice under section 13(2) of SARFAESI Act, 2002 to the Corporate Debtor as well as the guarantor/applicant on 19.07.2014.
3. Part III of the application mentioned other particulars of Debt in which the one of the creditors is Bank of Baroda and the corporate debtor is Veer Commodities Private Limited.

Guarantee was executed by the M/s. Nuchem Corporation, a partnership firm in which applicant is one of the partners. Bank of Baroda has issued demand notice under section 13(2) of SARFAESI Act, 2002 to Veer Commodities Private Limited as well as to applicant on 07.10.2015.

4. On presentation of the application by the Applicant/ Personal Guarantor, this Authority vide order dated 11.01.2024 has appointed the Resolution Professional viz., Mr. Jaykumar Pesumal Arlani having Registration No. IBBI/IPA-001/IP-P01582/2018-2019/12443 & directed RP to file report under Section 99 of Insolvency and Bankruptcy Code, 2016, which has been filed by him on 26.01.2024 recommending the admission of the application filed under section 94 of IBC, 2016.
5. Respondent no.1 i.e., Bank of Maharashtra in his reply submitted that the present application is only preferred to frustrate the legal remedy availed by the respondent under SARFAESI Act and RDDB Act and to avoid the auctions of the property of the corporate debtor. It further submitted that

there is no invocation of guarantee and also petition is barred by limitation.

6. Respondents no.2 to 7 neither filed any reply nor present during the course of proceeding.
7. We have heard the learned Counsel for applicant and respondent no.1 and perused the documents on record. We have also gone through the report dated 26.01.2024 filed by the RP.
8. At Sr. No.14 of Part-I of the application, two Corporate Debtors are mentioned qua which the personal guarantee has been invoked. However, qua Corporate Debtor named, Veer Commodities Private Limited, the guarantee was furnished by the partnership concern of the Applicant in favour of Respondent no.2 i.e., Bank of Baroda and not by the Applicant in his individual capacity. Hence, applicant cannot approach the tribunal for this deed of guarantee under Section 94 of the IBC, 2016.
9. Also, Bank of Baroda has issued Demand Notice to the guarantor on 07.10.2015. The date of default is shown as 31.08.2015. Thereafter, they have not initiated any

proceedings against the guarantor under IBC. When the Demand Notice was issued in the 07.10.2015, the application e-filed on 25.12.2023, is also barred by limitation.

10. Respondent no.1 i.e., Bank of Maharashtra has issued Demand Notice to the guarantor on 19.07.2014. The date of default is shown as 20.08.2014. Thereafter, they have not initiated any proceedings against the guarantor under IBC. When the Demand Notice was issued in the 19.07.2014, the application is e-filed on 25.12.2023 is barred by limitation.
11. There is no notice of invocation of guarantee by other financial creditors i.e., Respondents no.3 to 6. As there is no invocation of guarantee which is mandatory to prefer the application under Section 94 of IBC, the application is not maintainable against Respondents No.3 to 7. Resolution professional relied upon the judgement of Hon'ble Supreme Court in Punjab National Bank & Ors. Vs. Surendra Prasad Sinha [MANU/SC/0345/1992; AIR 1992 SC 1815] which is not relevant to the fact of present proceeding.
12. Considering the date of default as well as date of demand notice by the respondent no.1 and 2, the application is filed

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

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

ORDER

The CP(IB) 4 of 2024 is rejected.

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

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**CHITRA HANKARE
MEMBER (JUDICIAL)**

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