

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

ITEM No.304  
I.A. No. 358 (AHM)2024 and  
C.P.(IB)/15(AHM)2024

**Order under Section 94 IBC**

**IN THE MATTER OF:**

Girish Kantilal Patel  
V/s  
Punjab National Bank

.....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.358(AHM) 2024  
and  
CP(IB) No.15/AHM/2024**

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

*In the matter of **Mr. Girishbhai Kantilal Patel***

**Mr. Girish Kantilal Patel,**  
Personal Guarantor of M/s Vaman Fabrics Pvt. Ltd.  
17, Shanti Vihar Society,  
Parvat Patiya, Magob Gam,  
Surat, Gujarat – 395010.

**... Personal Guarantor**

**Versus**

**Punjab National Bank,**  
Having Correspondence address  
1<sup>st</sup> Floor, Meghani Tower,  
Station Road, Surat – 395003.

**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. Sumit Parikh, Adv.  
For the Respondent/FC : None (PNB)  
For the PG : Mr. Mohit Gupta, Adv.

**O R D E R**  
**Per: Bench**

1. The Present Application is filed on 08.01.2024 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. Vaman Fabrics Private Limited** for a default amount of **Rs.8,88,52,327.07ps** in relation to the credit facility extended by the Bank namely the **Punjab National Bank**.
2. **The facts of the Case are as follows: -**

I) **Punjab National Bank**

The Applicant Personal Guarantor had given personal guarantee in respect of Cash Credit Facility amounting to Rs.4,50,00,000/- and Term Loan Facility of 419 lakhs extended to Vaman Fabrics Private Limited, having Registered Office at

29/292, Satyanagar-4, Udhna, Surat – 395007 by Punjab National Bank - Commercial Branch, Ahmedabad, on 29.02.2012 and 09.03.2013.

- II) The Corporate Debtor (CD) defaulted in repayment of dues; accordingly, the debt was classified as Non-Performing Asset by the Punjab National Bank and a Demand Notice dated 09.03.2016 to the corporate applicant was issued u/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, calling upon the borrower to repay the amount mentioned in the notice i.e., **Rs.7,34,89,392.77.** plus interest and other incidental charges. **Annexure-I.**
- III) Thereafter, on 16.05.2017 Punjab National Bank filed O.A. 491 of 2017 before DRT\_II, Ahmedabad against the Corporate Debtor Vaman Fabrics Private Limited, the Applicant and others. Vide order dated 31.10.2018 O.A. was allowed for Recovery of Rs.8,88,52,327.07ps. holding the Corporate Debtor, the Applicant and others jointly and severally liable to

pay the amount. Further, Recovery Certificate was issued being R.C. No.607/2018 which is pending for execution before the Recovery Officer, DRT-II, Ahmedabad.

IV) On 16.12.2017, Corporate Debtor- **Vaman Fabrics Private Limited** also filed an application before this Adjudicating Authority (herein after referred to as AA) to initiate CIRP against it under section 10 of Code, and the same was admitted by this AA vide its order dated 01.10.2018.

V) Later on, the Corporate Debtor was dissolved vide order dated 10.12.2020 in IA No. 355 of 2020.

3. On presentation of the application by the Applicant/Debtor, this Authority vide order dated 16.01.2024 has appointed the Resolution Professional viz., **Mr. Tejas K Shah**, having Registration No.IBBI/IPA-001/IP-P00089/2017-2018/10185 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 01.02.2024 under Diary No.

E-377 recommending the admission of the application filed under section 94 of IBC, 2016. The RP recorded in the report that:

*“The RP recommends that the present Application under section 94 of the Code filed by the Personal Guarantor Girish Kantilal Patel deserved to be admitted under Section 100 of the Code and Insolvency Resolution Process be commenced against Girish Kantilal Patel Personal Guarantor to M/s. Punjab National Bank.”*

4. It is further stated that the Applicant has placed on record the Demand Notice u/s 13(2) of Securitisations and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Act, 2002 in the petition Dated 09.03.2016, given by the Punjab National Bank.

5. That the respondent/FC/PNB, through Mr. Swwapnil Sharrma, Chief Manager of the Punjab National Bank, submitted in the affidavit-in-reply that in Para No.13 that:

*“in the above conspectus of the matter and further submissions that may be urged at the time of hearing, this Hon’ble Tribunal considering the same may pass appropriate orders.”*

Hence, they have no objection if the petition is allowed by this Tribunal for passing an order under Section 100 of the IBC, 2016.

6. We have heard the learned Counsel for both parties and perused the documents on record. We have also gone through the report dated 29.12.2021 filed by the IRP.
7. It is noted under section 128 of Indian Contract Act, 1872 that when a default is committed, the Principal Borrower and Surety are jointly and severally liable to Creditor and Creditor has the right to recover its dues from either of them or both of them simultaneously. For benevolent reference, the said section of Indian Contract Act, 1872 is reproduced below:

“The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.”

8. The proceedings in the matter was put on hold since the Constitutional Validity of the Sections 94 to 100 relating to the insolvency of personnel Guarantor was pending before the Hon’ble Supreme Court in the matter of **Dilip**

**B. Jiwrajka V/s Union of India & Ors.** in WP(civil)No. 1281 of 2021.

9. The Hon'ble Supreme Court in the judgement of **Dilip B. Jiwrajka V/s Union of India & Ors.** in **WP(civil)No. 1281 of 2021** dated **09.11.2023** upheld the Constitutional Validity of the Sections 94 to 100.

10. From the report of IRP, it is clear to us that:

- i. IRP has recommended accepting the application for the reason as stated in the report dated 30.01.2024.
- ii. Demand Notice dated 09.03.2016 was issued by the Respondent Bank u/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 for invocation of Guarantee against the Applicant/Personal Guarantor.
- iii. Thereafter, on 16.05.2017 Punjab National Bank filed O.A. 491 of 2017 before DRT\_II, Ahmedabad against the Corporate Debtor Vaman Fabrics Private Limited, the Applicant and others. Vide order dated



31.10.2018 O.A. was allowed for Recovery of Rs.8,88,52,327.07ps. holding the Corporate Debtor, the Applicant and others jointly and severally liable to pay the amount.

- iv. Further, Recovery Certificate was issued being R.C. No.607/2018 which is pending for execution before the Recovery Officer, DRT-II, Ahmedabad.
- v. It is stated in the report that the Applicant is eligible under Section 94(4) of the IBC, 2016.
- vi. It is stated in the said report that all the documents required under Rule 6 along with the Form-A of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantor to Corporate Debtor.
- vii. Further, Demand Notice has already been issued by Recovery Officer, DRT-II Ahmedabad in RC No.607/2018 invoking guarantee which is still

pending and the filing of the application was on 08.01.2024, which is under the period of limitation.

11. In view of the foregoing we are left with no other choice but to order as under: -

- I. Initiate Insolvency Resolution Process against the Applicant/Personal Guarantor and moratorium in relation to all the debts is declared, from today i.e. date of admission of the application and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on the repayment plan under Section 114 whichever is earlier as provided under Sec 101 of IBC, 2016. During the moratorium period;
  - a) Any pending legal action of proceeding in respect of any debt shall be deemed to have been stayed: and
  - b) The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and
  - c) The debtor shall not transfer, alienate, encumber, of dispose of any of his assets or his legal rights or beneficial interest therein;
  - d) The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

- II. The Resolution Professional viz. **Mr. Tejas K Shah**, having Registration No. IBBI/IPA-001/IP-P00089/2017-2018/10185 who was appointed when the Section 97 application was allowed vide Order dated 17.11.2021, is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Ahmedabad Bench, inviting claims from all Creditors, within 21 days of such Issue. The notice under Sub Section (1) of Section 102(2) shall include: -
- a) details of the order admitting the application;
  - b) particulars of the resolution professional with whom the claims are to be registered; and
  - c) the last date for submission of claims.
- III. The publication of notice shall be made in two newspapers, one in English and other in Vernacular which have wide circulation in the State where the Corporate Debtor and Personal Guarantor situated/resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.
- IV. The Resolution Professional in exercise of the powers conferred under Section 104 shall prepare a list of creditors on the basis of:

- a. the information disclosed in the application filed by the debtor under Sections 94 or 95, as the case may be, and
  - b. claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice.
- V. The debtor shall prepare a repayment plan under Section 105, in consultation with the Resolution Professional, containing a proposal to the Creditors for restructuring of his debts or affairs. The repayment plan may authorize or require the Resolution Professional to: -
- a) carry on the debtor's business or trade on his behalf or in his name or
  - b) realise the assets of the debtor, or
  - c) administer or dispose of any funds of the debtor.
- VI. The repayment plan shall include the following, namely:-
- a) justification for preparation of such repayment plan and reasons on the basis of which the creditors may agree upon the plan;
  - b) provision for payment of fee to the Resolution Professional.
- VII. The Resolution Professional shall submit the repayment plan along with his report on the plan to this Authority within a period of 21 days from the last

date of submission of claims, as provided under Section 106.

- VIII. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons therefor. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of IBC, 2016. The date of meeting should not be less than 14 day or more than 28 days from the date of submission of the Report under sub- section (1) of Section 106 of IBC, 2016, for which at least 14 days' notice to the creditors as per the list prepared shall be issued by all modes. Such notice must contain the details as provides under the provisions of Section 107 of 1BC, 2016.
- IX. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of IBC, 2016 and submit the same to this Tribunal, copies of which shall be provided to the Debtor and the Creditors. It is made clear that the Resolution Professional shall perform his functions and duties in

compliance with the Code of Conduct provided under Section 208 of IBC, 2016.

X. The Resolution Professional shall submit his periodic reports before this Tribunal every 30 days.

12. In terms of the above, **CP(IB)/15(AHM)/2024** filed under Section 94 (1) of the IBC, 2016 is admitted and the Insolvency Resolution Process stands initiated against the Applicant/Personal Guarantor.

13. Accordingly, **IA/358(AHM)2024** in CP(IB)/63(AHM)/2023 is disposed of.

**-Sd-**  
**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

**-Sd-**  
**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**