

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.302
CP(IB) 361 of 2020

Order under Section 95 IBC

IN THE MATTER OF:

Alchemist Asset Reconstruction Co.Ltd
V/s
Manish Patel

.....Applicant

.....Respondent

Order delivered on: 30/04/2024

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.

-Sd-

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

-Sd-

CHITRA HANKARE
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT - II)**

CP(IB) No. 361 / NCLT / AHM / 2020

(Filed under Section 95(1) of the Insolvency & Bankruptcy Code, 2016)

Alchemist Asset Reconstruction Company Limited
A-270, 1st & 2nd Floor, Defence Colony,
New Delhi-110024

... Financial Creditor

Versus

Mr. Manish Patel
C-13, Shivam Bungalows,
Opp, Ambe School,
Manjalpur, Vadodara.

... Personal Guarantor

Order pronounced on 30.04.2024

Coram:

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

**DR. V. G. VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)**

Present:

For the Applicant : Mr. Masoom Shah, Adv.

For the Respondent : Mr. Harshal Patel Adv for Mr. Lalit Patel, Adv.

JUDGMENT

1. Alchemist Asset Reconstruction Company Limited (Financial Creditor) has filed this Application under section 95 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 to initiate Insolvency Resolution Process against Mr. Manish Patel, the Personal Guarantor of the Corporate Debtor namely Sort India Enviro Solutions Limited for default of an amount of Rs. 32,92,63,121.23/-.
2. On receipt of loan application from the Corporate Debtor, the financial creditor had sanctioned the loan facilities. The respondent was a director and the Personal Guarantor of the Corporate Debtor. The amount due to the Corporate Debtor was Rs. 32,92,63,121.23/- and date of default mentioned in application is 31.03.2018. The Corporate Debtor was brought under CIRP under section 7 of the IBC vide order dated 23.09.2020 and presently under liquidation since 25.08.2022. The applicant has granted loan facility to the Corporate Debtor to which the respondent stood as a Personal Guarantor. The deed of Guarantee was executed on 28.11.2015 and 17.10.2016 between the applicant and the Guarantor. A demand notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 was issued on 14.07.2020.

3. Memorandum of pledge of physical shares and irrevocable power of attorney for pledge of shares was executed by the personal guarantor in favour of applicant Bank on 01.12.2015. Deed of Hypothecation was executed on 11.05.2016. Further, Deed of pledge of securities was executed on 17.10.2016. Several financial documents, as amended, supplemented and modified from time to time in accordance with terms and conditions of the security documents executed in relation thereto.
4. Due to non-payment of the amount by the Corporate Debtor, the Financial Creditor has filed this application for initiation of Insolvency Resolution Process against the Guarantor under Section 95(1) of IBC, 2016. The Financial Creditor invoked the personal guarantee and issued demand notice to the Respondent on 14.07.2020 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.
5. This Tribunal has appointed Mr. B. L. Chakravarti bearing registration No. IBBI/IP-002/IP-N00863/2019-2020/12776 as resolution professional. Accordingly, the RP has filed report on 27.08.2021.
6. On perusal of the report of RP, it is observed that he has examined various documents including deed of guarantee, Memorandum of pledge of physical shares, Deed of Hypothecation, Statement of Account, Demand notice etc. RP has sent notice on 29.07.2021

through E-mail demanded details as well as documents from Personal guarantor. The Report of RP states that the RP had not received any evidence of repayment of the debt claimed in Sec.95 petition from personal guarantor. Further, Vide notice dated 29.07.2021 RP communicated to the personal guarantor for any evidence of proof of payment of the debt claimed as unpaid by the creditor, a reply was received on 16.08.2021 and furnished information pertaining to its bank account and immovable assets but has not submitted any documentary evidence or information evidencing repayment of debt. RP had neither received any document whereby the Personal Guarantee agreement dated 28.11.2015 and 17.10.2016 was cancelled by both the parties nor received any order of court or any other forum whereby the personal guarantee agreement dated 28.11.2015 and 17.10.2016 was cancelled or set aside. Therefore, RP recommended to admit the present petition.

7. The Respondent/Personal Guarantor filed an affidavit in reply dated 15.07.2021 and raised the following objections:
 - i. RBL Bank Limited had not exercised its rights under Put Option Agreement, instead of exercising its rights the Bank had entered into assignment agreement with the present applicant, therefore the petition is deserve to be dismissed for the reason of non-rejoinder of party. The Put option agreement comes into force when the put event occurs. Put Event means the happening of any event of default under the facility agreement. The Put option agreement comes into force when any default occurs under facility agreement. Meaning thereby when

borrower defaults under the loan agreement executed in favour of RBL than first RBL has to approach Agnus Capital LLP which is put option party to discharge its obligation of borrower. PUT OPTION means the obligation of the Put Option Party to buy the Pledged Securities on the happening of the put event.

- ii. The petitioner has along with the petition placed on record volumes of documents which are not relevant. Further states that the PG has given guarantee to the RBL Bank Ltd and not to the present applicant. The Deed of Assignment is not acceptable to PG as neither the corporate debtor nor the Personal Guarantor is party to the said assignment agreement. No prior consent of PG or any intimation given to the personal guarantor about the Assignment Agreement. Therefore no action can be initiated against the personal guarantor. RBL Bank Limited and Alchemist Asset Reconstruction Company Limited making arrangement between themselves and impacting PG as liable without his consent to such arrangement is incorrect.
- iii. The Personal Guarantor denies his liability as mentioned in the application and relied upon clause 23 of Deed of Guarantee and states that it is agreed between RBL Bank and PG that as a PG will have only to make payment when the bank has to exhaust all its possible claims against borrower and thereafter have to approach guarantor.
- iv. The Deed of Guarantee executed on 17.10.2016 and in absence

of any agreement for modification of any terms of law shall not be binding to PG even the proposition of law has changed which cannot be applied retrospectively to the transaction of personal guarantee given by personal guarantor

- v. The present applicant not initiated within three years from the date of execution of guarantee agreement dated 17.10.2016 and thereafter applicant initiated action against the respondent on 25.11.2020 i.e almost after five years therefore the present application is barred by limitation. Further states that applicant has filed the present application only after the Hon'ble NCLT admitted the petition on 23.09.2020 filed against the corporate debtor.
- vi. Personal Guarantor states that the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution for Personal Guarantor to Corporate Debtors) Rules, 2019 came into effect 01.12.2019 prior to that no action initiated by the applicant in any forum. When rule 2019 comes into force the applicant choose to initiate action against the PG.
- vii. Further, PG denies the relevance placed by application on section 128 of Indian Contract Act in petition. The Act as applicable should be read as a whole. Applicant cannot use one provision which is beneficial to them. Further states that no RP be appointed in the matter as no action can be initiated against PG in the given case and accordingly no order as to attachment of property of guarantor.

- viii. Personal Guarantor also filed Additional Affidavit on 22.03.2024 raising certain objection to the present application.
8. Heard the learned counsels for the applicant, Respondent/Personal Guarantor and Resolution Professional.
 9. As far as Assignment Agreement is concerned, provision for the same is mentioned in the Deed of Guarantee clause 32, the bank has the power to assign the deed with any party and the same was binding on the guarantor. Further as regards the put option clause to have been exercised, it is a separate document regarding the pledged security or a right available for the parties, but the same does not have a provision in the guarantee document executed. Guarantee is a separate document which can be invoked when the default occurs. The respondent has not questioned the default which becomes payable under provisions of Sec 95 of IBC 2016. The company has already in to CIRP and liquidation and the Applicant has invoked the guarantee.
 10. Further, the application is filed within the period of limitation. In the present case the date of default as mentioned in the application is 31.03.2018 and the application filed before this tribunal on 09.10.2020. Therefore the present application falls within the period of limitation.
 11. The RP has recommended to initiate the Insolvency Resolution Process against the Personal Guarantor. The RP has submitted the copies of documents and also details of assets of respondent. It is observed from the record that the respondent had not brought on record any document denying or disputing the invocation of his

Personal Guarantee. There is no any evidence given by the respondent to show that he has paid the debt or his Personal Guarantee agreement is cancelled.

12. The Hon'ble Supreme Court in its judgment in Lalit Kumar Jain V Union of India & Ors held that the release or discharge of a principal borrower from the debt owned by it to creditor by an involuntary process, i.e. by operation of law, or due to liquidation or insolvency proceedings, does not absolve the surety/guarantor of his or her liability, which arises out of an independent contract.
13. Accordingly, based on the report of Resolution Professional submitted under Section 99 that the applicant satisfies the provisions of Section 95 of IBC 2016 and after hearing of the submissions of the applicant and the respondent, pass the following order in terms of Section 100 of IBC, 2016.

ORDER

- (i) Application is allowed.
- (ii) The insolvency process is initiated against the respondent personal guarantor. The moratorium begun on the date of admission of the application shall cease to have effect at the end of the period of 180 days from the date of this order. During the moratorium period, the following provisions shall be in effect:
 - a. Any pending legal action or proceeding in respect of any debt 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, or 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
- (iii) The Resolution Professional viz., Mr. B. L. Chakravarti, who has been appointed under Section 97 vide order dated 20.07.2021, is directed to cause a public notice to be published on behalf of the Adjudicating Authority within 7 days of uploading of this order on the website of NCLT, inviting claims from all Creditors who shall register their claims as provided under Section 103 within 21 days of such issuance. The notice shall contain the necessary information as provided under section 102(2) of IBC. The publication of the notice shall be made in newspapers, one in English and the other in Vernacular which have wide circulation in the state where the debtor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry. One shall be placed by the Registry on our website and the other shall be affixed in the premises of this Authority.
- (iv) The Resolution Professional in exercise of the powers conferred under Section 104 shall prepare a list of creditors

within 30 days from the date of the notice. The debtor shall prepare a repayment plan in consultation with the Resolution Professional as provided under section 105 which shall include the provisions for payment of fee to the Resolution Professional. 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.

- (v) In case the Resolution Professional recommends that a meeting of the creditors is not required to be summoned, he shall record the reasons thereof. If the resolution professional is of the opinion that the meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3). The date of meeting should not be less than 14 days or more than 28 days from the date of submission of the report under sub-section (1) of Section 106, for which at least 14 days' notice to the creditors (as per the list prepared) shall be issued by all relevant/feasible modes. Such notice must contain the details as provided under the provisions of Section 107.
- (vi) The meeting of the creditors shall be conducted in accordance with section 108,109,110 & 111. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 and submit the same to this Authority, copies of which shall be provided to the debtor

and the creditors. It is made clear that the resolution professional shall perform his function and duties in compliance with the code of Conduct provided under section 208 of the IBC,2016.

- (vii) The applicant is directed to deposit Rs.2 lakhs to the bank account of RP within one week, towards his fees. This shall be subjected to the Rules and Regulations under the provisions of IBC,2016
- (viii) Accordingly, CP(IB) 361 of 2020 is disposed off.

-Sd-

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

-Sd-

CHITRA HANKARE
MEMBER (JUDICIAL)