

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No. 301
CP(IB)/139(AHM)2024

Order under Section 94 of IBC, 2016

In The Matter Of:

Mr. Zankarsinh Kishorsinh Solanki (PG)
V/s
Bank of Baroda & Ors.

.....Applicant

.....Respondent

Order delivered on: 17/04/2024

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 the pronouncement of the 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**

CP/IB/139/NCLT/AHM/2024

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

*In the matter of **Mr. Zankarsinh Kishorsinh Solanki***

Mr. Zankarsinh Kishorsinh Solanki

Residing at # 43, Rutt, Tirthnagar Part -1,
B/H Sun and Step Club,
Memnagar, Ahmedabad- 380052.

... Applicant Personal/Guarantor

VERSUS

1. Bank of Baroda

Branch known as "Ashram Road Branch,
Situating at 188-A, Ashram Road,
Dena Laxmi Building, Ahmedabad 380009

2. ASREC (India) Limited (Formerly known as

Volkswagen Finance Private Limited)

Having office at

Unit No. 201, 200A, 202 & 200B,

Ground Floor, Build No. 2,

Solitaire Corporate Park, Andheri (E),

Andheri Kurla Road,

Mumbai, Maharashtra, India, 400059

3. Indiabulls Housing Finance Limited.

Having corporate office at
448-51, Udhyog Vihar,
Phase IV, Gurugram,
Haryana, India - 122016

.... Respondents

Order pronounced on 17.04.2024

CORAM:

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

For Applicant : Mr. Pavan Godiawala, Advocate
For the :
Respondent/FCs.

ORDER

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 Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019. The prayer made is to initiate the Insolvency Resolution Process (hereinafter referred as "IR Process") against the Applicant/Debtor who is the Personal Guarantor of Corporate Debtor for an amount of **Rs.1,08,82,84,551.32ps.** in relation to the

Credit Facilities extended by the Respondent/Financial Creditors in favour of **M/s Torque Automotive Private Limited** (hereinafter referred as the "Corporate Debtor").

2. The case of the Applicant is that the Applicant as Personal Guarantor had given a personal guarantee on 18.07.2014 in respect of Credit Facilities granted in favour of Corporate Debtor - **M/s Torque Automotive Private Limited** by the Respondents/Financial Creditors. The aforesaid Credit Facilities were renewed and enhanced for which on 30.03.2012, 18.07.2014, 27.08.2014, and 30.05.2015 various loan/security documents were executed in favour of the Respondents/Financial Creditors.
3. However, after availing the aforesaid Loan/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 and Corporate Debtor defaulted in repayment of dues. Accordingly the debt was classified as Non-Performing

Asset by the Financial Creditors on 31.07.2019, 11.03.2019, 21.09.2019 respectively.

4. Thereafter, Demand Notice dated 24.09.2019 was issued by the Respondent/FC Indiabulls Finance Limited U/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, calling upon the borrower **M/s Torque Automotive Private Limited**. to repay the amount mentioned in the demand notice with further interest and other incidental charges.
5. Simultaneously, a Recall Notice dated 25.11.2019 was issued by the Respondent/FC Bank of Baroda calling upon the borrower **M/s Torque Automotive Private Limited** to repay the amount mentioned in the recall notice with further interest and other charges. The Financial Creditor by way of this Recall notice also invoked the Personal Guarantee of the Applicant and others.

6. Thereafter, the Respondent/FC Bank of Baroda also filed O.A. 69 of 2020 before DRT, Ahmedabad against the Corporate Debtor and others which is pending for adjudication.
7. Thereafter, CIRP was initiated for M/s Torque Automotive Private Limited by NCLT, Ahmedabad Bench vide Order dated 24.02.2021 in CP IB 781/9/NCLT/AHM/2019. Thereafter, an Application was filed for the Order of the Liquidation of the Corporate debtor by the Resolution Professional bearing IA 335 (AHM) of 2022 CP IB 781 of 2019 which is pending adjudication before the Adjudicating Authority.
8. The Applicant/Personal Guarantor has filed this petition in prescribed FORM-A on 19.03.2024 under Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019 before this Adjudicating Authority for initiation of Insolvency Resolution Process. The Applicant in Part-IV of the Form-A (Page-13) has proposed the name of one CA

Dr. Anjali Choksi as Interim Resolution Professional. The Applicant has also annexed the Written Consent in the Format of Form-2 of the IP, having Registration No. IBBI/IPA-001/IP-P00820/2017-18/11382 to be appointed as the Interim Resolution Professional.

9. We have heard the learned Counsel for the Applicant and perused the documents on record.
10. It is observed that after availing the aforesaid Loan/Credit Facilities, the Corporate Debtor defaulted in repayment of dues and the debt was classified as Non-Performing Asset on 31.07.2019, 11.03.2019, 21.09.2019 respectively by the Financial Creditors and a Recall Notice dated 25.11.2019 was issued by invoking the Personal Guarantee of the Applicant and others.
11. Therefore, the application filed by the Applicant /Personal Guarantor on 19.03.2024 under Section 94 of the seeking initiation of Insolvency Resolution Process in terms of in terms of Rule 6 of the IB (AAA for IRP for PGCD) Rules, 2019 in respect of the Applicant/Personal Guarantor of

Corporate Debtor is prima facie maintainable and in limitation in view of judgment of Hon'ble Supreme Court ***in Suo Moto WP (Civil) No. 3 of 2022 in Re: Cognizance for Extension of Limitation*** wherein held that the period i.e. 15.03.2020 to 28.02.2022 is excluded for the purposes of computing limitation prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings in light of the spread of the wave of the Covid-19 pandemic.

12. Therefore, we hereby appoint CA **Dr. Anjali Choksi, having registration number IBBI/IPA-001/IP-P00820/2017-18/11382** as IRP in respect of the Applicant /Personal Guarantor with direction to submit the report under Section 99 of the IBC Code, 2016 within ten days. Let copy of the petition as well as this order be served upon the concerned IRP for preparing the Report under Section 99 of IBC, 2016 by the Applicant /Personal Guarantor.

13. The IRP is required to examine the Application as set out in Section 97(6) of IBC, 2016 and after examining the

Application, as per Section 97(7) of the IBC, 2016 the IRP may recommend for the acceptance or rejection of the Application in his report, within a period of 10 days as contemplated under Section 99(1) of the IBC, 2016.

14. Let report by filed through separate IA in this matter by the IRP after serving the same on all the Financial Creditors and Corporate Debtor.

15. All challenges to the present application, if any, to be taken up at the time, when necessary, order under Section 100 of the IBC Code, 2016 is to be passed by this Tribunal.

Accordingly, **C.P. (IB)/139(AHM) 2024** is ordered.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)