

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

ITEM No.3
C.P.(IB)/146(AHM)2024

Proceedings under Section 94(1) IBC

IN THE MATTER OF:

MRS.ASHADEVI SANTOSH KUMAR BAID
V/s.
ICICI BANK

.....Applicant

.....Respondent

Order delivered on 10/04/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant : Mr. Kuldeep Adesara, Advocate
For the Respondent :

ORDER

1. This application has been filed under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 by the Applicant/Personal Guarantor to initiate insolvency resolution process in terms of Rule 6 of the IB (AAA for IRP for PGCD) Rules, 2019.
2. The present application is filed by Ms. Ashadevi Santoshkumar Baid, who is stated to be a guarantor to the Corporate Debtor – M/s. Ankur Clothing Pvt. Ltd.. On perusal of the application it is observed that, the Deed of Guarantee is not annexed to the present application.
3. However, the Applicant has filed copy of the Demand Notice dated 07.06.2023 issued by the Respondent/ICICI Bank U/s 13(2) of SARFAESI Act, 2002 and Possession Notice dated 20.09.2023 issued U/s 13(4) of SARFAESI Act, 2002 read with Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 which are annexed as **Annexure-D and E** with the application.

4. On perusal of these notices issued by the Respondent/ICICI Bank, it is observed that said notices are issued only for the purpose of enforcing security interest and not to invoke any Personal Guarantee.
5. The learned Counsel for the Applicant may be right in his submission that by virtue of Demand Notice dated 07.06.2023 issued U/s 13(2) of the SARFAESI Act, 2002, the Applicant was also asked to make the payment of dues. But there is neither anything on record to show that any other notice has been issued by Respondent Bank to the Applicant in the capacity of Personal Guarantor to invoke the Personal Guarantee nor any steps have been taken by the Respondent Bank to recover the dues from the Applicant by sale of personal assets except secured assets.
6. The Hon'ble NCLAT in its decision in the matter of **Amanjyot Singh Vs. Navneet Kumar Jain & Ors.** (Company Appeal (AT) (Insolvency) No. 961 of 2022) has upheld the view taken by NCLT, Delhi dismissing an application filed by the Appellant under section 94. The relevant para of the said order is reproduced below:-

“7. Notice under Section 13, sub-section (2) is issued by the Bank for enforcing the security interest. Section 13, sub-section (1) and (2) of the SARFAESI Act is as follows:-

"13. Enforcement of security interest.--(1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub- section (4).

Provided that—

(iii) the requirement of classification of secured debt as non-performing asset under this subsection shall not apply to a borrower who has raised funds through issue of debt securities; and

(iv) in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of Company Appeal (AT) (Insolvency) No. 961 of 2022 6 security documents executed in favour of the debenture trustee."

8. The definition of 'borrower' given in SARFAESI Act under Section-2 (f) is wide enough to include a Guarantor also. Section 13 is for enforcement of security interest. The borrower within the meaning of Section 13, sub-section (2) shall obviously include the Guarantor also.

12. We, thus, are satisfied that foundation which was laid down by the Appellant for initiating the CIRP against the Appellant, was not sufficient to admit Section 94 Application and initiate the CIRP against the Appellant. We may further notice that Section 10 Application against the Corporate Debtor has already been admitted and CIRP against the Corporate Debtor had been initiated. The case taken up by the Bank being categorical and clear that **no steps have been taken by the Bank against the Appellant, there is no cause for the Appellant to pray for initiation of CIRP against the Appellant – the Personal Guarantor. We, thus, do not find any good ground to interfere with the impugned order in this Appeal. The Appeal is accordingly dismissed. No costs.**

7. In the present case no document is annexed with the application which suggests that guarantee is invoked by the Respondent Bank. Therefore, by looking at the facts of the present case and relying on the decision of Hon'ble NCLAT *supra* we are of the view that the present application is filed without any cause and is premature. Hence, **CP/IB/146/AHM/2024** stands dismissed with liberty.

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

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